

State Laws to Increase Housing Stock

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Issue

Provide examples of laws other states have recently enacted to increase housing stock, specifically affordable housing.

Summary

This report focuses on recent legislative and executive actions related to (1) state development of affordable housing, including the development of housing on state-owned land, and (2) zoning requirements to facilitate housing production, particularly through the conversion of commercial buildings.

Though few examples exist of state governments developing affordable housing, a recent Colorado law created a public entity to develop affordable rental housing projects for middle-income workforce housing. Another Colorado law and California executive order are meant to facilitate the development of affordable housing on state-owned land through public-private partnerships. Additionally, Rhode Island's legislature allocated \$10 million of federal American Rescue Plan Act (ARPA) funding in its [2023 state budget](#) for a [pilot program](#) to build public housing, but the program does not appear to have been implemented to date.

In recent years, numerous states have considered and enacted legislation preempting certain local zoning authority in an attempt to facilitate housing development generally and affordable housing production specifically. These laws range from minor permitting process changes, to generally requiring municipalities to allow multifamily development in areas zoned for residential use. In response to increased commercial vacancies across the country, several state legislatures passed laws in 2023 aimed at encouraging (1) housing production in commercial areas or (2) the

conversion of commercial buildings into housing (and in some cases, specifically affordable housing).

The federal government recently announced new actions to support the conversion of high-vacancy commercial buildings to residential use, including through Department of Transportation financing; more information is available [here](#).

State Development of Affordable Housing

While state development of affordable housing is uncommon, several states have explored this option in recent years. In 2022, California considered a bill that would have created a state entity to develop social housing (i.e., developments with units accommodating a mix of household income ranges, including low-income households) for state residents ([AB 2053](#)). Additionally, certain western states have considered using [state-owned trust lands](#) to develop affordable housing.

Below, we describe a California executive order and Colorado law meant to facilitate the development of affordable housing on state-owned land. Additionally, we summarize another Colorado law establishing a public entity to develop affordable rental housing projects for middle-income workforce housing.

California

In 2019, the California governor signed an executive order requiring the Department of General Services (DGS) to create an inventory of all excess state-owned parcels and develop screening tools for prioritizing affordable housing development on this land, in collaboration with state housing agencies. The executive order also requires the department to (1) generate a comprehensive map of the parcels where developing affordable housing is feasible and will help address regional underproduction and (2) issue and accept requests for proposals from affordable housing developers interested in entering into low-cost, long-term ground leases of parcels on the priority map. It additionally directs state agencies to prioritize these developments by, among other things, giving them preference in awarding state funding.

Where appropriate, the order requires states agencies to consider exchanging excess state land with local governments for other parcels for the purposes of affordable housing development and preservation ([Executive Order N-06-19](#)).

In January 2023, DGS and the Department of Housing and Community Development [issued an RFP](#) seeking developers for the conversion of three state office buildings to housing in downtown Sacramento. According to the governor's office, as of this RFP announcement, the executive order

had resulted in 16 public-private partnerships resulting in more than 5,000 new rental units in various stages of development.

Colorado

Colorado's [Public-Private Partnership Collaboration Unit](#), created in 2022, promotes the use of partnerships between state public entities and private partners. In 2023, the Colorado legislature passed a law requiring the unit to give preference to proposed or executed public-private partnership agreements using state-owned property for mixed-income development and affordable housing proportional to a community's demonstrated affordable housing needs.

The law also authorizes the unit to undertake additional functions connected to these projects, such as (1) accepting gifts, grants, and donations, which must be credited to the unused state-owned real property fund; (2) using proceeds from real estate transactions and revenue from public-private agreements; and (3) establishing a process for using requests for information to solicit public projects. Under the law, the unit can use money from the unused state-owned real property fund for public projects that provide affordable housing. It provides \$5 million for the fund ([SB 23-1](#)).

Connecticut's Study of State-Owned Property for Housing

A new law requires the Office of Policy and Management secretary, in consultation with the administrative services and transportation commissioners, to study whether any state-owned real property (excluding conserved lands) is available and suitable for developing as housing. The study must focus on property that is suited to transit-oriented and affordable housing development and must be submitted to the governor and legislature by January 1, 2024 ([PA 23-204](#), § 200).

Additionally, 2022 legislation created a public entity named the [Colorado Middle-Income Housing Authority](#) (MIHA) to acquire, construct, rehabilitate, own, operate, and finance affordable rental housing projects for middle-income workforce housing. Under the act, MIHA may develop up to 3,500 units as part of an initial pilot program. Among other things, the law gives MIHA the power to (1) issue bonds in connection with its affordable rental housing projects, (2) enter into public-private partnerships and contract with real estate professionals to develop and operate affordable rental housing, and (3) employ its own personnel or contract with public or private entities for services needed to conduct its activities ([SB 22-232](#)).

In 2019, the Colorado legislature passed a law requiring each state agency and state institution of higher education to annually submit a list of non-developed land the agency or institution owns or controls; [the inventory's](#) purpose is to identify land that could be developed as affordable housing ([HB 19-1319](#)).

State Zoning Laws to Facilitate Housing Production

In recent years, a number of states have considered legislation preempting certain local zoning authority in an attempt to facilitate housing production. Below, we identify several of these laws that were enacted in California, Massachusetts, Oregon, and Nebraska. Table 1 summarizes additional examples of laws enacted in 2023, including those specifically aimed at encouraging the conversion of commercial buildings into housing.

Recent Legislation

California. In 2021, the California legislature enacted the California HOME Act ([SB 9](#)), which makes it possible for homeowners to split their home's lot and build up to four homes on a single-family parcel. Specifically, the act requires cities and counties, under certain circumstances, to ministerially approve duplexes in single-family zones, the subdivision of a parcel zoned for residential use into two parcels, or both. Under the act, the housing development or parcel to be subdivided cannot be located in certain areas (e.g., wetlands, farmland, conservation land, habitat for protected species, and historic districts) ([Cal. Gov't Code §§ 65852.21, 66411.7, & 66452.6](#)). Information on the act's implementation is available here: "[California's HOME Act Turns One: Data and Insights from the First Year of Senate Bill 9](#)" (Garcia & Alameldin).

Additionally, the California legislature passed the Affordable Housing and High Road Jobs Act of 2022 ([AB 2011](#)). Among other things, the law creates a ministerial, streamlined approval process for affordable housing projects in commercial zones and for mixed-income housing projects along commercial corridors. It requires housing to be "as of right" (i.e., not subject to a local government's discretionary approval process) if it conforms to certain requirements on affordability, location, objective standards, and labor ([Cal. Gov't Code §§ 65400, 65585, 65912.100](#) et seq.).

Massachusetts. The Massachusetts Legislature passed a law in 2021 requiring certain "MBTA communities" to provide for at least one reasonably sized district in which multifamily housing is permitted as of right and meets other statutory criteria (e.g., not age-restricted, generally has a minimum density of 15 units per acre, and is located within a half mile from certain types of transit stations) ([Mass. Gen. Laws ch. 40A, § 3A](#), as amended by [H. 43](#) (2023)). MBTA (Massachusetts Bay Transportation Authority) communities are cities and towns that host MBTA service or abut a host

community. According to Massachusetts' [Executive Office of Housing and Livable Communities](#), 177 MBTA communities are subject to these zoning requirements.

Nebraska. In 2020, the Nebraska legislature enacted the Municipal Density and Missing Middle Housing Act ([LB 866](#)). Among other things, the law requires cities to develop an affordable housing action plan with goals for multifamily and middle housing development; cities that fail to adopt a plan must allow (1) middle housing on land zoned for single-family use and (2) a duplex on each lot or parcel zoned for single-family use ([Neb. Rev. Stat. § 19-5505](#), as amended by [LB 531](#) (2023)).

Connecticut Zoning Legislation

In 2021, the General Assembly passed legislation placing certain limitations on local zoning ([PA 21-29](#), §§ 4 & 5). Among other things, the act prohibits zoning regulations from (1) establishing minimum floor area requirements for dwelling units that are greater than those required under applicable building, housing, or other code and (2) placing a fixed numerical or percentage cap on the number of dwelling units permitted in multifamily housing over four units, middle housing, or mixed-use developments. It also prohibits regulations from requiring more than one parking space for each studio or one-bedroom dwelling unit or more than two parking spaces for each dwelling unit with two or more bedrooms (unless the municipality opted out under a specified procedure) ([CGS §§ 8-2 & 8-2p](#)).

Oregon. In 2019, the Oregon legislature enacted [HB 2001](#), requiring cities with a population of at least 25,000, and those located within a metropolitan service district, to allow specific housing development. Under the law, these cities must allow (1) middle housing (e.g., duplexes, triplexes, quadplexes, cottage clusters, and townhouses) in areas zoned for residential use that allow for the development of detached single-family dwellings and (2) a duplex on each lot or parcel zoned for residential use that allows for the development of detached single-family dwellings ([ORS § 197.758](#), as amended by [HB 3395](#) (2023)).

2023 Legislation and Conversion of Commercial Buildings to Housing

In 2023, several states passed zoning laws aimed at facilitating housing production. Table 1 provides examples of these laws. We identified at least seven laws that seek to encourage (1) housing production in commercial areas or (2) the conversion of commercial buildings into housing (and in some cases, specifically affordable housing); these laws are highlighted in green below.

Table 1: Examples of State Zoning Legislation Enacted in 2023

2023 Bills	Summary of Select Provisions (laws related to housing production in commercial areas highlighted in green)
California	
SB 4	Requires housing developments on land owned by an independent institution of public education or a religious institution to be a use by right if the development meets certain criteria, including most of the units being deed-restricted for low- and moderate-income households
AB 1287	Generally requires local governments to grant an additional density bonus and other incentives if an applicant agrees to include more affordable units on top of the maximum under the state's existing density bonus law (For more information on California's density bonus law generally, see here)
SB 684	Facilitates the subdivision of multifamily zoned parcels of five acres or less into up to 10 for-sale lots, including by relaxing environmental review requirements, expediting permitting timelines, and mandating decision-making within 60 days
AB 1490	Makes affordable housing projects that adaptively reuse an existing building an allowable use under specified conditions, and limits local governments from imposing specified requirements despite any inconsistencies with local plans, zoning, or regulations
Florida	
SB 102	Preempts local governments' requirements on zoning, density, and height to allow for streamlined development of affordable housing in commercial and mixed-use zoned areas under certain circumstances
Montana	
SB 245	Requires certain larger municipalities to allow as a permitted use multi-unit dwellings and mixed-use developments with these dwellings on lots (1) with municipal water and sewer and (2) located in a commercial zone; generally prohibits these zoning regulations from requiring more than one off-street parking space per unit
SB 323	Requires cities with a population of 5,000 or more to allow duplexes as a permitted use on lots where a single-family residence is a permitted use; prohibits zoning regulations for duplexes from being more restrictive than those for single-family residences
SB 382	Requires local zoning regulations to include a minimum of five housing strategies, out of a list of 14 options, applicable to the majority of the area where residential development is permitted; examples of these strategies include: allowing duplexes as a permitted use where a single-unit dwelling is permitted; zoning for higher density housing near transit stations, employment centers, higher education facilities, and other population centers; eliminating or reducing off-street parking requirements; and allowing at least one internal or detached accessory dwelling unit (ADU) as a permitted use on lots with a single-unit dwelling occupied as a primary residence
SB 407	Requires local design review standards imposed by a local government to be clear, objective, and necessary to protect public health or safety or to comply with federal law
SB 528	Prohibits municipalities from making certain ADU requirements, such as requiring (1) a lot with an ADU to have additional parking; (2) an ADU to match certain design elements of the single-family dwelling; (3) the single-family dwelling or ADU to be owner-occupied; and (4) ADUs to meet various requirements if they are more restrictive than those for the single-family dwelling on the lot (e.g., maximum building height and lot coverage, minimum setback and lot size)

Table 1 (continued)

2023 Bills	Summary of Select Provisions (laws related to housing production in commercial areas highlighted in green)
Oregon	
HB 2984	Requires local governments to allow the conversion of a building from commercial to residential without requiring a zone change or conditional use permit (if the development is located within an urban growth boundary of a city with a population of at least 10,000)
HB 3395	Allows affordable housing and mixed-used affordable housing on lands zoned only for commercial uses (and not industrial uses) within urban growth boundaries, with specified exceptions (e.g., the development cannot be adequately served by water, sewer, storm water drainage, or streets)
Rhode Island	
SB 1032 / HB 6059	Requires municipal zoning ordinances to establish specific and objective criteria for issuing each use category of special-use permit, otherwise the category is deemed permitted; prohibits “consistency with comprehensive plan” from being one of these criteria
SB 1034 / HB 6061	Increases, from five to nine, the maximum number of buildable lots a developer can include in a project under the requirements for a “minor subdivision”
SB 1035 / HB 6090	<p>Makes adaptive reuse for the conversion of commercial buildings (e.g., offices, schools, religious facilities, medical buildings, and malls) into residential units or mixed-use developments a permitted use; requires municipal zoning ordinances to allow these conversions with specific and objective provisions</p> <p>Requires municipal zoning ordinances to include certain provisions related to these developments, such as (1) exempting them from off-street parking requirements of over one space per dwelling unit and (2) allowing a density of at least 15 dwelling units per acre if the development meets specified criteria (e.g., it includes a certain percentage of set-aside units for low- and moderate-income housing)</p>
SB 1037 / HB 6081	Makes changes to the state’s Low and Moderate Income Housing Act, including requiring that certain municipal zoning incentives be allowed for eligible projects, such as (1) density bonuses, (2) limits on off-street parking requirements, and (3) limits on restrictions for the number of bedrooms allowed per unit and floor area restrictions
Vermont	
SB 100	Makes multiple changes to municipal planning and zoning. Among other things the act (1) prohibits municipalities from requiring more than one parking space per dwelling unit in districts served by sewer and water, (2) requires municipalities to allow duplexes where single-family units are allowed, (3) requires municipalities to permit multi-unit dwellings with up to four units in areas served by sewer and water, (4) requires municipalities to subject ADUs to the same review standards as single-family homes and prohibits them from making attached ADU criteria stricter than for single-family homes, (5) requires municipalities to establish building and lot standards allowing at least five units per acre in residential districts served by sewer and water, and (6) prohibits dimensional standards for multi-unit dwellings from being more restrictive than those for single-family dwellings

Table 1 (continued)

2023 Bills	Summary of Select Provisions (laws related to housing production in commercial areas highlighted in green)
Washington	
HB 1042	Prohibits cities from imposing certain restrictions and requirements on existing buildings zoned for commercial or mixed use. Among other things, the act prohibits (1) restrictions on housing unit density that prevent the addition of housing at a density up to 50% more than what is allowed in the underlying zone if certain construction requirements are met; (2) parking requirements due to the addition of housing units; (3) permitting requirements beyond those applicable to all residential development within the building’s zone, with certain exceptions; (4) design standard requirements (e.g., setbacks, lot coverage, and floor area ratio) beyond those applicable to all residential development within the building’s zone; (5) bans on adding housing units in any specific part of a building except ground floor commercial or retail along a major pedestrian corridor, unless the units would violate applicable building codes or health and safety standards; and (6) current energy code requirements for unchanged portions of the building solely due to the addition of housing units
HB 1110	With certain exceptions, requires large cities and those in major metropolitan areas to authorize the development of a minimum number of units, based on the city’s population, on all lots zoned predominately for residential use (the number of units is higher for lots close to a major transit stop or that include affordable housing) Requires cities to allow certain types of middle housing to achieve these density requirements and establishes requirements for cities subject to the middle housing requirements (e.g., requiring only administrative design review, prohibiting standards that are more restrictive than those for detached single-family residences, generally requiring the same permit and environmental review processes that apply to detached single-family residences, prohibiting off-street parking requirements for middle housing located near a major transit stop)
HB 1293	Requires clear and objective design review standards for new developments, except for designated landmarks or historic districts; prohibits the design review process from including more than one public meeting Prohibits counties and cities from requiring any preapplication conferences or public meetings that are not required by state law

Sources: Kahn & Furth, [“Breaking Ground: An Examination of Effective State Housing Reforms in 2023,”](#) August 1, 2023 (Mercatus Center, George Mason University); Alameldin & Garcia, [“2023 California Housing Legislative Round Up,”](#) October 9, 2023 (Temer Center for Housing Innovation, UC Berkeley); select bill summaries posted on legislative websites.

For additional information on housing supply-related legislation considered and passed during 2023, see Table 1 in [“Breaking Ground: An Examination of Effective State Housing Reforms in 2023”](#) (Kahn & Furth). For more information on 2023 housing legislation in California specifically, see [“2023 California Housing Legislative Round Up”](#) (Alameldin & Garcia).

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