



---

**TOWN OF YARMOUTH**  
200 Main Street, Yarmouth, Maine 04096  
[www.yarmouth.me.us](http://www.yarmouth.me.us)

## Report of the Yarmouth Affordable Housing Committee January 14, 2022

No teachers, police officers, town employees live in town...  
Commercial rentals lie empty, as larger commercial tenants are uninterested in town due to a lack of local workforce...  
The property tax burden falls increasingly on homeowners...  
An older, wealthier population doesn't prioritize public schools...  
Generational families no longer stay in town...  
Residency in Yarmouth is transactional and transitional with no concern for the long-term health of the community...  
Downtown is less vibrant, lacking the vitality that diversity brings...

This is some of what Yarmouth's future looks like if the Yarmouth Community, and in particular the Yarmouth Town Council, does not address the urgent problem of affordable housing in town. This is the scenario gleaned from findings in the 2019 *"Report to the Metro Regional Coalition Housing and the Region's Future"* by GPCOG, a report that calls for urgent attention to the lack of affordable housing in the Greater Portland Community.

For almost 30 years (at least) it has been clear that the lack of affordable housing is hurting the Yarmouth community. Yarmouth citizens have been aware of this. They have, in fact, been asking the Yarmouth Town Council to do something about the issue. In the 1993 Comprehensive Plan and again in the 2011 Comp Plan, Yarmouth residents listed "increase in affordable housing" as one of the top goals. But despite this overwhelming support, dating back at least 28 years, the Yarmouth Planning Board and Yarmouth Town Council have made almost no progress and little effort creating new affordable housing in town, with the exception of 28 senior affordable housing units in Bartlett Woods built by Yarmouth Senior Housing and Avesta Housing.

It is time to change that. Almost daily we hear about the challenge of finding housing in the Greater Portland area, a challenge that is far more difficult for families and individuals of limited means. We read/hear about how, within a few years, the absence of housing will dull the economic boom that has engulfed our area for about 10 years. We read about nearby towns struggling to build even a small amount of affordable housing. We on the YAHC urge the Yarmouth Town Council to lead on this. Let's find a way to show our neighbors that an economically diverse citizenry is the hallmark of a strong, vibrant, successful town.

The question before the Council is what kind of town is Yarmouth and what kind of town will it be? The Committee believes that the Yarmouth community wants the following now and in the future:

- A town for all ages- there are about the same number of kids and seniors in town according to the 2020 Census.
- A town that loves its Main Street with a mixture of local businesses, homes and apartments.
- A diversity of home styles, old and new, small and grand.
- A town that acts on the priority for affordable housing as documented in its comprehensive plans for the past three decades.
- A town that has a wide diversity of occupations and incomes.
- A town where local kids could live after they finished school.
- A town where a young couple could find a first home.

Will Yarmouth be a diverse, busy, multi-generational community? Or will it become a town only for the wealthy? Without urgent steps by the Town Council, Yarmouth will move toward the latter.

### Yarmouth Affordable Housing Committee

Meghan Casey, Chair  
Margaret Downing  
Cecilia Guecia  
Deborah Keefe  
Leigh Kirchner  
Steve Morris  
Jay Waterman

With support from:

Erin Zwirko, Director of Planning & Development  
Nicholas Ciarimboli, Code Enforcement Officer  
Michelle Cromarty, Town Council

## Introduction

The housing crisis experienced by so many jurisdictions across the country and in southern Maine is reaching a tipping point. While the issue in Maine is a statewide issue, the decisions about where new housing may be located are made at the local level. Zoning and land use compound this issue as many zoning and land use ordinances operate as exclusionary. Only now as communities across the country turn introspective and consider how these historical policies and regulations prevent the creation of new housing and new affordable housing are strides being made.

In Maine, the State Legislature has jump-started these conversations with a commission dedicated to taking a critical eye to zoning and land use restrictions that prevent the creation of housing. Cities and towns, such as Rockland and Camden, acknowledge that the lack of housing hurts the local economies and are bringing forward zoning amendments to spur the creation of new affordable housing. However, still other communities struggle with advancing projects. Recently a developer of affordable housing in Cape Elizabeth cancelled their project due to an impending referendum on the zoning amendments that would make the project possible.

In Yarmouth, the need for affordable housing has been well documented, yet little has been done. The 1993 Comprehensive Plan included the lofty goal of creating 70 affordable homes in five years between 1991 and 1996. In describing this goal, the 1993 Comprehensive Plan states *“Since affordable housing has not been built in Yarmouth under current zoning, it is necessary that the Town adopt land use policies and planning ordinances that provide developers with incentives to build affordable housing, and that the town provide assistance and support to developers in obtaining state monies and approvals for projects.”* There were a series of action items associated with this goal, and ultimately 23 affordable homes were built, but the long-term management of these units were lacking and having turned over to market rate units. The zoning that facilitated the construction of the few affordable homes sunsetted, and none of the other action items identified in the 1993 plan were acted upon.

The 2010 Comprehensive Plan again identified “diversity of population” as a major theme of the plan and stated this vision:

*Yarmouth will continue to be a community with a diverse population: young families with children, middle-aged couples, elderly residents, younger renters ranging from those with modest incomes to affluent households. To accommodate this population diversity, a wide range of housing choices will continue to be available in our community including housing that is affordable to households with modest income and a variety of rental housing. To help maintain an economically diverse population, at least 20% of newly created housing units will be units that are in housing other than single-family homes or that are affordable to households with modest incomes. (Page 26)*

Actions are included again that focus on addressing zoning and land use policies, but when bold action was taken to reduce the minimum lot size around the Village as directed by the comprehensive plan, the proposal was shelved amid limited support from the Council and community. No other action identified in the 2010 Plan has been taken other than improving the social services provided by the Town and community organizations.

The past two comprehensive plans have put a strong emphasis on being a community where many types of households can afford to live. However, over time the range of housing options have become more

limited, in part because of the Zoning Ordinance. Limited to no action has been made on the goals identified over nearly thirty years. In order to continue to be a community where all types of households may find an affordable home, action is needed now. The longer Yarmouth waits to address this crisis locally, the more homogenous the community will become in its housing options.

The stories are all similar. Yarmouth's housing costs for homeowners and renters are high and are creeping higher with a lack of housing options. The Committee collected a number of stories from community members who want to remain in Yarmouth due to their connection with the community, whether it be local jobs, family, school connections, volunteering, owning a small business, but these residents feel like they need to look and have looked to more affordable communities. Yarmouth is losing dedicated community members because they are no longer able to afford the cost of housing in this community.

Because Yarmouth cannot wait any longer, the Yarmouth Affordable Housing Committee forwards recommendations that address zoning, management, and financial elements of creating and preserving affordable housing:

#### Zoning Recommendations:

- Adopt an inclusionary zoning ordinance: Local inclusionary housing policies tie the creation of affordable homes for low- and moderate-income households to the construction of market-rate housing or commercial development. This is typically mandated.
- Adopt an affordable housing overlay district: An overlay district could include all of the same provisions of inclusionary zoning, but the key difference is that it is optional, so the incentive needs to be attractive enough for the overlay district to be utilized.
- Amend the ADU Ordinance: There are a series of recommendations that would liberalize the ADU regulations to support this low-impact housing option.
- Adjust existing zoning in order to increase overall housing production: The Committee's charge is to create affordable housing, but the Committee also recognizes that increased housing production can lead to increased supply and a reduction in housing costs and has forwarded a number of high impact recommendations.

#### Management Recommendations:

- The Committee strongly recommends that the Town consider the long-term oversight and management of affordable units so that no units are lost over time. This recommendation also requires further consideration by the Town in regard to bringing together the efforts of many town departments and organizations to increase housing stability when discussing management of affordable housing.

#### Financial Recommendations:

- The Committee strongly recommends that the Town consider financial options to support the creation and preservation of affordable housing, whether through a cash or land subsidy, tax mechanisms, leveraging existing funding, or through incentives.

This report provides a brief housing needs assessment and detailed information on the Committee's recommendations as described above. The Committee seeks the Council's support for the Committee to move forward with the zoning recommendations through collaboration with the Planning & Development Department and the Planning Board as well as further developing the management and financial recommendations. The Committee looks forward to discussing this report with the Town Council during the January 27, 2022, Operations Committee meeting.

### About the Yarmouth Affordable Housing Committee

The Yarmouth Affordable Housing Committee was created in December 2020 by order of the Town Council. Members were appointed in Spring 2021, and the first meeting was held in May 2021. As described in the Order creating the Committee, the following tasks were identified:

- Study the issues and make recommendations and proposed policies to encourage and support a balanced distribution of affordable housing throughout Yarmouth;
- Provide a report to the Town Council within the first six months from establishment on the Committee's work and its findings on housing trends and market conditions, projects, and factors to inform the Council on affordable home ownership and rental concerns in Yarmouth, and to provide the Town Council a report at least biannually thereafter;
- Provide education and outreach regarding affordable housing programs and encourage community input and participation; and
- Collaborate with nearby communities and state and regional organizations to advance the goals of affordable housing in Yarmouth and in the regional housing market area and to learn about other community's efforts seek that may be of assistance to Yarmouth.

The Committee has met regularly since May 2021 and created subcommittees to dive deeper into the materials and data in order to form their recommendations. This report is the outcome of the last eight months of learning and collaboration in order to prepare appropriate recommendations for future development.

The Committee Order also identified an initial definition of affordable housing and an initial focus:

*For the purposes of this Committee establishment Affordable Housing shall initially mean: Dwelling units for which the percentage of income a household pays in rent or other household expenses, or must pay in monthly mortgage payments (including taxes and insurance), does not exceed 30% of a household's income. After review and consideration, the AHC may modify or refine this definition.*

*For the purpose of this Committee establishment, the initial focus of the AHC should be on affordable housing for households with total annual income less than 80% and greater than 50% of the Median Family Income estimate for the Greater Portland metropolitan housing area as published annually by the US Department of Housing and Urban Development. After review and consideration, the AHC may modify or refine this definition.*

The Affordable Housing Committee has focused on the definition of affordable housing as well as the households intended to be served by any new affordable housing as outlined in the committee charge. The Committee has focused on these requirements in their initial discussions and in the preparation of this report; however, the Committee has also discussed housing production in general to combat the

housing shortage experienced in the greater Portland area (and throughout the country) for all types of households at all income levels.

From May through September 2021, the Committee was supported by an AmeriCorps Resilience Fellow from the Greater Portland Council of Governments. Julie Dubovsky provided invaluable support to the Committee in setting a baseline understanding through the preparation of a housing needs assessment.

## Housing Needs Assessment

Housing market trends over the last several years has made it increasingly difficult for Yarmouth to be resilient in its housing options, meaning offering a housing option for all types of households and all levels of household income to find decent and affordable housing. The attached Housing Needs Assessment provides more details, but the following data points make this point starkly:

### Less economic diversity

Yarmouth has become less economically diverse. In 1999, the median income in Yarmouth was \$58,030. Although this is about the same in inflation-adjusted terms as the current median income around \$90,000, the number of households which may be considered “moderate” has dropped 22.2% over the same period.<sup>1</sup>

### 2021 Yarmouth price increases were both a historical and national outlier

Between 2018 and 2020, the average growth of home prices was about 4 percent, once controlling for housing characteristics, although each year fluctuated. However, the rate increased sharply to 29 percent in 2021. While national prices also increased relatively quickly in 2021, they did so less sharply than in Yarmouth, on average. Moreover, while wages increased more sharply than previous in 2021 due to inflationary pressures, they did so at a far lesser rate than home values.

Yarmouth Single Family Home Price Appreciation Over 2018-2021<sup>2</sup>

Year	Yarmouth % Change	National % Change	Wage % Chg.
2018	3	6	5
2019	6	4	5
2020	2	6	2
2021	29	20	8

### Implications for down payment

The average single-family house sold in Yarmouth between 2016 and 2021 was a 2,500 square foot, 3 bedroom, 2 bath house on a lot of 175,000 square feet, built in 1966.<sup>3</sup> Further, the price of such a home, and implied down payments, are as follows:<sup>4</sup>

<sup>1</sup> 2019 American Community Survey as cited in the Housing Needs Assessment, prepared by Juliana Dubovsky, June 2021

<sup>2</sup> Yarmouth home % change was computed using all publicly available data on 300 Yarmouth single family sales over the period with full data on housing characteristics from Redfin. Controls for home square footage, lot size, year built, beds, and baths included. National % change is S&P/Case-Shiller U.S. National Home Price Index. Wage % Change is Gross domestic income: Compensation of employees, paid wages and salaries from Bureau of Economic Analysis. All 2021 figures are as of October 2021.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

## Yarmouth Price and Down payment for Average Yarmouth Single Family Home

Year	Price	10% Down	20% Down
2018	\$493,730	\$49,373	\$98,746
2019	\$521,973	\$52,197	\$104,395
2020	\$534,062	\$53,406	\$106,812
2021	\$691,204	\$69,120	\$138,241

Effectively, the increasing down payment amounts to a wealth requirement which is becoming increasingly difficult to pass.

## Who can afford to live in Yarmouth?

At 63% of median income (\$57,000), a teacher in Yarmouth could spend no more than \$1,425 monthly on housing to avoid being considered housing cost-burdened or spending more than 30% of their gross household income on housing costs. Down payments also seem out of reach for many, particularly younger families, and even for higher-paying professions like engineers.

In fact, while up to 57% of home sales were affordable in 2020 for purchase by households making 80% of the median income, the percentage of home sales in 2021 fell to just 37% for the same households in 2021.

Percent Yarmouth Single Family Home Sales Affordable: By Income<sup>5</sup>

Income as % AMI	2020	2021
30%	1%	0%
40%	7%	7%
50%	10%	13%
60%	22%	21%
70%	44%	26%
80%	57%	37%
90%	61%	37%
100%	64%	48%

## Fair Market Rents do not keep pace with actual market rents

Based on the information available on websites such as Zillow and Apartments.com, two-bedroom apartments in Yarmouth are being offered for around for \$2,000 by Taymil, but it varies widely based on the property and the actual unit being offered. Postings on Facebook pages regarding renting and selling in Yarmouth also provide some information about individual rentals, but there is no dataset that provides detailed and accurate information regarding rents charged across Yarmouth rental units.

We can look to the US Department of Housing and Urban Development's Fair Market Rents to understand the standards used by this agency in a variety of federally subsidized programs that support affordability.<sup>6</sup> When comparing the anecdotal information gleaned from public websites with the

<sup>5</sup> Uses 2021 100% Average Median Income (AMI)=\$93,300 and 6% inflation; Affordability calculated using smartasset.com with 1x income as down; payment, 30-year fixed rate mortgage, excellent credit, no debts. Actual home sale prices from Yarmouth collected from Redfin. Percentages shown in the aggregate over income bands.

<sup>6</sup> <https://www.huduser.gov/portal/datasets/fmr.html#2022>

standards used by the federal government, the Fair Market Rents are much lower than the market rents indicating that there is a gap between what is considered affordable and what rental units cost in Yarmouth.

#### Comparison of Fair Market Rent with Anecdotal Rental Information

Size of Unit	2021 Fair Market Rent	Apartments.com Reported Rent <sup>7</sup>
Studio	\$1,088	\$1,290 – \$2,650 (Studio, 1 Bath, 602 square feet)
1 Bedroom	\$1,229	\$1,400 – \$2,710 (1 Bed, 1 Bath, 626 square feet) \$1,485 – \$2,595 (1 Bed, 1 Bath, 830 square feet) \$1,675 – \$2,625 (1 Bed, 1 Bath, 800 square feet) \$1,675 – \$2,955 (1 Bed, 1 Bath, 972 square feet)
2 Bedroom	\$1,592	\$1,645 – \$2,930 (2 Bed, 1 Bath, 735 square feet) \$2,085 – \$3,275 (2 Bed, 1.5 Bath, 1,200 square feet) \$2,135 – \$3,455 (2 Bed, 1.5 Bath, 1,377 square feet)
3 Bedroom	\$2,061	\$2,255 – \$3,575 (3 Bed, 1.5 Bath, 1,423 square feet)
4 Bedroom	\$2,518	None Reported

In order to afford a two-bedroom rental at the Fair Market Rate of \$1,592 per month, a Yarmouth household needs to make at least \$30.62 per hour or \$63,680 annually when spending no more than 30% of their gross household income on housing costs. Regardless of whether the household is a single person or a family of four, that annual household income requires two and half minimum wage jobs.<sup>8</sup> As seen in the table above, the ranges for a two-bedroom vary substantially, but in order to afford the lowest reported monthly rate, the annual household income increases to \$65,800 or a dollar more per hour. When the other reported two-bedroom rental rates are hundreds of dollars more than the Fair Market Rate, that household income increases dramatically and does not keep pace with the Fair Market Rent.

#### Remarkably low vacancy rates

There was a 0.9 percent vacancy rate in rentals in Yarmouth.<sup>9</sup> In a tight apartment market, the demand for apartments exceeds the supply of available units, which lowers vacancy rates and is seen by the exceptionally low vacancy rate in Yarmouth. When prospective renters compete for the limited supply of available apartments, rents increase.<sup>10</sup> Additionally, this means that renters are unable to also change inadequate living situations and remain in Yarmouth due to the limited supply.

#### Summary

There seems to have been a period of time in Yarmouth housing history when the development of (relatively) affordable multifamily attached housing—including both condos and apartments—was deemed acceptable and being built around town. Examples include Blueberry Cove, Brookside, Riverbend, and the Taymil properties, which were all developed around the same period. In contrast,

<sup>7</sup> As accessed on January 10, 2022, from Apartments.com.

<sup>8</sup> National Low Income Housing Coalition. *Out of Reach: The High Cost of Housing*. 2021.

<sup>9</sup> 2019 American Community Survey as cited in the Housing Needs Assessment, prepared by Juliana Dubovsky, June 2021

<sup>10</sup>[https://www.jchs.harvard.edu/sites/default/files/Harvard\\_JCHS\\_Americas\\_Rental\\_Housing\\_2020.pdf](https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_Americas_Rental_Housing_2020.pdf)

more recent developments which may be considered high density including development of Goff's hardware and the NYA condos are different in nature in that they are less affordable.

Yarmouth's existing homeownership opportunities are primarily single-family homes or townhomes. While there is a rental market, the majority of those units are owned by a single landlord. Additionally, with the exception of the recently approved projects at 216 East Main Street, 350 Route One, and 298 Main Street totaling 15 condos and 42 apartments, the majority of new housing built in Yarmouth has been single family homes. Of the recent approvals, none were required to be deed-restricted affordable units, a significant missed opportunity.

Without making opportunities for more and diverse types of housing units, Yarmouth is no longer resilient to market changes and Yarmouth is on track to being affordable to only those households that earn the highest incomes.

## Zoning Recommendations

The Affordable Housing Committee looked to best practices for creating affordable housing, as well as housing production in general. In particular, the Committee took a close look at liberalizing the accessory dwelling unit (ADU) ordinance and adopting an inclusionary zoning ordinance and an affordable housing overlay district. In Maine, only Portland has adopted an inclusionary zoning ordinance to date, but Rockland is debating the merits of adopting an inclusionary zoning in order to be prepared for future development pressures.<sup>11</sup>

Beyond these three recommendations, there are also recommendations that will increase the supply of housing in Yarmouth by removing land use and zoning barriers that contribute to a low housing production. These recommendations are not necessarily focused on creating affordable housing; rather are focused on eliminating the barriers for housing development, which coupled with adoption of an inclusionary zoning ordinance could create the conditions necessary for inclusionary zoning to be successful. The Furman Center at New York University in 2018 reviewed whether more housing production benefits those households that have lower incomes and recommends that cities and towns need to take a balanced approach to meeting housing needs, including seeking subsidies, offering incentives and reducing barriers, and adopting inclusionary zoning in order to create new housing opportunities that are affordable for all types of households.<sup>12</sup>

Finally, the Maine Legislature created a Commission to Increase Housing Opportunities in Maine by studying zoning and land use restrictions this summer.<sup>13</sup> The Commission is tasked with making recommendations “that would encourage increased housing options in the State, including but not limited to municipal incentives, state mandates, eliminating or limiting single-family-only zones and allowing greater housing density near transit, jobs, schools or neighborhood centers.” The Commission has reviewed a wide-ranging number of recommendations focused on ADUs, single- and multi-family zoning, fair housing, technical assistance, incentive programs, housing trusts, priority development areas, fees, parking requirements, lot size requirements, among other topics.<sup>14</sup> On December 29, 2021, the Commission released its final report to the Legislature, and a subset of the Commission’s recommendations are tracking with the recommendations of the Affordable Housing Committees.<sup>15</sup>

The following are the recommendations to increase the supply of affordable housing in Yarmouth. For each recommendation, the Committee has identified whether the recommendation would have a high or low impact.

### Recommendation: Adopt an inclusionary zoning ordinance

Local inclusionary housing policies tie the creation of affordable homes for low- and moderate-income households to the construction of market-rate housing or commercial development. Simply put, market-rate developers are required to sell or rent a portion of their new units at below-market rates to income-qualified households. Inclusionary zoning policies are often adopted as a counterbalance to

---

<sup>11</sup> <https://bangordailynews.com/2021/09/12/news/midcoast/desperate-for-affordable-housing-two-midcoast-communities-look-to-zoning-for-help/>

<sup>12</sup> [https://furmancenter.org/files/Supply\\_Skepticism\\_-\\_Final.pdf](https://furmancenter.org/files/Supply_Skepticism_-_Final.pdf)

<sup>13</sup> <http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP0445&item=6&snum=130>

<sup>14</sup> <https://legislature.maine.gov/doc/7578>

<sup>15</sup> <https://legislature.maine.gov/doc/7698>

exclusionary zoning policies that have the effect of excluding lower-income households or other demographic groups.<sup>16</sup>

In Maine, only Portland has adopted inclusionary zoning provisions and has had moderate success with creating affordable units and/or obtaining in lieu of funds from market rate developers. Portland has had success because of the extensive development seen within the city over the past several years. Rockland is currently considering adopting an inclusionary zoning ordinance and would become the second city to do so in Maine after Portland.

An inclusionary zoning ordinance would have the following elements:

- For residential projects, a certain percentage of the residential units must be deed restricted affordable in perpetuity.
- Additionally, the ordinance may only apply to certain types of residential projects and a threshold could be established so that the applicability is only for projects with a certain number of more residential units. A payment in lieu or allowing off site units is also often an element of inclusionary zoning ordinances.
- Deed restricted means that the unit is restricted only to specific income eligible households and the rent or purchase price is tied to the income of the household or the area median income
- Deed restrictions need an entity to monitor to ensure that only income eligible households reside in the unit and rent requirements or resale requirements are adhered to. This could be a town staff member or a separate entity.

Inclusionary zoning is typically designed as a mandate and can have a high impact on the creation of affordable housing units within a community. However, there are a number of conditions that ensure that a community can successfully implement inclusionary zoning:<sup>17</sup>

- Inclusionary housing relies on market growth to produce new affordable housing resources; it is not likely to be successful in communities that are not experiencing or anticipating growth. Yarmouth has experienced some modest growth over the last year; however, that modest growth is not likely to create an abundance of affordable units in the near term without other zoning changes to spur development.
- Smaller communities may lack the capacity to effectively administer inclusionary programs. Communities that produce very few units may find that the burden of administration outweighs the benefits of an inclusionary housing program. The Committee also recommends policy discussions around effective management of any affordable housing discussions.

The Committee recognizes that inclusionary housing is one tool among several that may be deployed to address the need for more affordable housing. For inclusionary zoning to be successful in Yarmouth, development and growth is necessary.

Impact: HIGH

### Recommendation: Adopt an affordable housing overlay district

In the 1990s, Yarmouth adopted an affordable housing overlay district. As previously adopted, the overlay district required new projects to contribute 10 percent of the number of units as affordable and

<sup>16</sup> [https://groundedsolutions.org/sites/default/files/2021-01/Inclusionary\\_Housing\\_US\\_v1\\_0.pdf](https://groundedsolutions.org/sites/default/files/2021-01/Inclusionary_Housing_US_v1_0.pdf)

<sup>17</sup> <https://inclusionaryhousing.org/inclusionary-housing-explained/what-is-inclusionary-housing/where-does-it-work-3/>

included incentives to spur development such as reduced lot sizes. The Committee tasked with this effort believed that based on current growth trends in the early 1990s, it was likely that at least 70 new housing units would be affordable. Unfortunately, this estimate was not achieved with only a few units were built when the ordinance sunsetted in 2000.

There may be many reasons why the affordable housing district adopted in 1990 was not successful, but overlay districts are becoming a popular tool for creating affordable housing. Cities in California and Cambridge, Massachusetts, have recently adopted overlay districts in order to create the conditions necessary for the creation of affordable housing.

Some key elements of an affordable housing overlay district:

- An overlay district overlays the base zoning district, so an overlay district could overlay the entire town regardless of the base zoning or it could overlay certain zoning districts. The 1990 version of the overlay district only included the Medium Density Residential (MDR) district, but an updated version may include a larger area of town, including for example, the Rural Residential and Low Density Residential districts.
- An overlay district could include all of the same provisions of inclusionary zoning, but the key difference is that it is optional, so the incentive needs to be attractive enough for the overlay district to be utilized.

The scope of the incentives could include all of the following to create the appropriate market conditions for this regulation to have a high impact:

- Increased density by lowering the minimum lot size;
- Increased height allowances;
- Lower parking requirements; and
- Allowing housing in areas not currently zoned for housing or only for single-family housing.

In exchange, the developer may be required to provide a higher number of affordable units or all affordable units.

The Committee believes that both an overlay district and inclusionary zoning could co-exist if the two ordinances are designed appropriately. Additionally, the Committee believes that elements of both ordinances could be combined. There would still be a mandate for affordable housing, but if additional affordable housing units were contributed, incentives would be provided.

Impact: HIGH

### Recommendation: Amend the ADU Ordinance

Yarmouth originally adopted the ADU Ordinance in 2005. ADUs are becoming increasingly popular as a low impact housing options for cities and towns to allow. However, with the adoption of the ADU ordinance almost twenty years ago, this low-impact option has created housing options for the Yarmouth community. The Ordinance has been amended piecemeal over time, and the most recent amendment under consideration would remove the requirement for public water and public sewer. This amendment was recommended by the Planning Board to the Town Council on November 10, 2021.

The following amendments could have a high impact in the creation of ADUs:

- Eliminate the requirement for Minor Site Plan Approval: ADUs are required to be reviewed as a minor site plan review as described in Chapter 702. Although this is an administrative review, it still requires a public comment period and is one of the most stringent reviews required in

similarly situated cities and towns. The Committee proposes to eliminate the minor site plan approval in favor of a simple permit review by the Code Enforcement Officer in conjunction with the building permit. This would remove one of the most cited barriers to taking on the creation of an ADU.<sup>18</sup>

- Increase the size limitation: The ordinance currently restricts the size of an ADU to 900 square feet. This is a generous size based on a comparison with other cities and towns, but by increasing this size modestly, living in an ADU becomes a real possibility for a family.

Impact: HIGH

The following amendments would have a lower impact in the creation of ADUs:

- Remove or clarify the subjective aesthetic requirements: The ADU Ordinance has twenty-three technical standards. Of those 23 technical standards, seven are aesthetic requirements. By clarifying these requirements to be more concrete requirements, the ADU Ordinance will become more predictable so that owners know what is required and neighbors will have an understanding of what will be built.
- Remove the requirement for additional parking: The ADU Ordinance requires an additional parking space for a studio ADU or a one-bedroom ADU and two parking spaces for a two-bedroom ADU. Creating additional parking can be expensive for the property owner and the lot may not be able to support the additional parking. Although many of the typical lot sizes in Yarmouth can support additional parking, requiring additional parking is often found to be a significant barrier to creating ADUs.<sup>19</sup>

Impact: LOW

The Committee also discussed the following recommendations, but acknowledges that these recommendations would need additional study and coordinated policy and staffing discussions:

- Incentivize property owners to cap the ADU rent through a subsidy or a tax break with annual certifications: There are limited examples of cities and towns successfully incentivizing property owners to create affordable ADUs. While this option may be effective to create deed restricted affordable units, policy decisions on how staff would support the property owner is monitoring the deed restriction and rent requirements as well as the funding for a subsidy would need to be made by the Town Council. The expertise of Town Hall staff and limited and unsustainable funding could not support this recommendation at this time.
- Remove the owner occupancy requirement: The Committee acknowledges that this recommendation may receive limited support but could be effective in adding to the supply of ADUs in Yarmouth.

Impact: HIGH, but challenging

---

<sup>18</sup> <https://www.aarp.org/content/dam/aarp/livable-communities/housing/2021/AARP%20ADU%20Model%20State%20Act%20and%20Local%20Ordinance-0212021-08.pdf>

<sup>19</sup> <https://www.aarp.org/content/dam/aarp/livable-communities/housing/2021/AARP%20ADU%20Model%20State%20Act%20and%20Local%20Ordinance-0212021-08.pdf>

### Recommendation: Adjust existing zoning in order to create housing production

The Committee's charge is to create affordable housing, but the Committee also recognizes that increased housing production can lead to increased supply and a reduction in housing costs. The Committee recommends that the zoning amendments that would have the highest impact and immediate results are those that change the existing zoning requirements including:

- Reducing lot size requirements in all or select residential zoning districts;
- Reducing lot area per dwelling requirements and other requirements regulating the number of residential units in a building;
- Allowing two-family, three-family and multifamily dwellings in more zoning districts; and
- Reducing the residential parking requirements from 2 spaces per unit to a lower ratio.

The Committee recognizes that there may be limited support for these sweeping zoning changes at this time. It may be appropriate to ensure that the updated Comprehensive Plan includes discussion on these changes. However, without ensuring that all households have access to housing options that are affordable relative to their household income, the town will continue to become less economically diverse.

Impact: HIGH, but challenging

## Organizational Recommendations

While not fully developed at this time, the Affordable Housing Committee has also discussed long-term management and oversight of affordable housing in the community. The Committee learned about past efforts to create affordable housing in Yarmouth through the work of Shannon Chisholm, an intern to the Planning, Codes, and Economic Development departments this past summer. The Committee is adamant that without oversight and management, affordable units may be lost over time through conversion to market rate units. The Committee also acknowledges that this oversight and management overlaps with efforts from other Yarmouth departments and committees and would generally recommend that the Town consider bringing together the efforts to increase housing stability when discussing management of affordable housing.

In addition, the Committee also believes that there can be regional approaches to oversight and management. As noted elsewhere in this report, many Maine communities are working toward developing affordable housing, and may find that there are opportunities to partner with existing organizations and/or other communities that are advancing similar goals.

### Conventional Non-profit (501(c)3)

The example of a conventional non-profit that oversees affordable housing is the Freeport Housing Trust.<sup>20</sup> In this case, the organization is formed around affordable housing goals which the Board of Directors and Executive Director carry out. The Freeport Housing Trust forms additional subsidiaries that carry out duties, such as ownership entities for the various properties owned and managed by the Freeport Housing Trust. The non-profit status also enables this organization to be certified as a Community Housing Development Corporation (CHDO) making it eligible for certain funding sources from HUD.

### Local Development Corporation

A local development corporation is any non-profit organization that has the purposes of a “local development corporation” under 5 M.R.S. § 13120-B (9) and is formed under 13-B M.R.S. § 201 et. seq. Local development corporations are typically organized around economic development interests, of which housing is cited as a supporting goal. The Yarmouth Economic Development Advisory Board (EDAB) is creating a local development corporation for economic development purposes and expressly includes housing as an activity. There may be a natural fit with this organization, when it is established, at least initially. However, it is important for any organization to be able to act quickly when opportunities, especially real estate opportunities, arise if they are aligned with the mission of the organization.

An example is the Isle au Haut Community Development Corporation.<sup>21</sup>

### Community Land Trust

Community land trusts can be used for many types of development, including commercial and retail, but are primarily used to ensure long-term housing affordability, and typically for ownership units. The trust acquires land and maintains the ownership of the land permanently. When there are prospective homeowners, the trust enters into a long-term, renewable lease with the homeowner rather than

---

<sup>20</sup> <https://freeporthousingtrust.org/>

<sup>21</sup> <https://www.isleauhaut.org/>

complete a traditional sale. When the homeowner sells, the household earns only a portion of the increased property value. The remainder is kept by the trust, preserving the affordability of future low- to moderate-income households that may purchase the home.

Examples of community land trusts include the Greater Portland Community Land Trust, the Kennebunkport Heritage Housing Trust, and the Island Housing Trust.<sup>22</sup>

---

<sup>22</sup> <http://gpclt.org/>, <https://www.khht.org/>, <https://www.islandhousingtrust.org/>

## Financial Recommendations

The Committee believes that the modest amount of funds in the Affordable Housing Reserve (\$350,000) could be seed money for establishing an oversight and management organization or to seed efforts of another organization dedicated to creating and preserving affordable housing in Yarmouth. It could also be managed as local matching funds for any grant programs that make sense for affordable housing initiatives in the community.

The following recommendations illustrate several ways the Town of Yarmouth can financially support an affordable housing project. The following recommendations do not need to be immediately addressed, but as the Town coalesces around zoning and management recommendations, financial considerations need to be discussed and acted upon.

### Budget Line Item

The Town could consider dedicating a continuous source of funding for affordable housing through its annual budget. An example of Cary, North Carolina, directs 1 cent per hundred dollars of the annual tax base toward its housing reserve.<sup>23</sup>

### Cost of Land

Land cost is, perhaps, the biggest financial burden for developers wanting to develop affordable housing. The Town could help lessen the risk in the following ways:

- Identify and promote eligible Yarmouth sites for affordable housing with existing infrastructure that meet Smart Growth criteria. Additionally identify under-utilized Town-owned properties that could be put out to Request for Proposals (RFP).
- Expand the Open Space Land Acquisition Fund and/or the Housing Support Reserve Fund to include funding to buy potential sites for affordable housing, which could then be awarded by RFP to developers of affordable housing that pledge to provide both affordable housing and public open space.
- Promote MaineHousing's Affordable Housing Subdivisions program that provides subsidy for the development of a minimum of five affordable homeownership units for those earning up to about \$115,000. The program offers 0%, forgivable subsidy up to \$22,500 per unit for land and infrastructure costs.
- Ensure there are incentives for developers to develop sites that already have town water and sewer, along with higher density allowances, to reduce site development costs.

### Tax Increment Financing

The Affordable Housing Tax Increment Financing (AHTIF) Program is a financing tool authorized under state law (30-A M.R.S.A. §§5245-5250-G) to support the implementation of affordable housing development programs.<sup>24</sup> The Town should promote the use of TIF districts to provide a form of financing for affordable housing projects. Projects are eligible for this type of financing if a third of the units in the AHTIF district earn no more than 120% of Area Median Income.

---

<sup>23</sup>[https://d3n8a8pro7vhmx.cloudfront.net/ocjusticeunited/pages/1933/attachments/original/1635871350/Cary\\_Penny\\_Primer.pdf](https://d3n8a8pro7vhmx.cloudfront.net/ocjusticeunited/pages/1933/attachments/original/1635871350/Cary_Penny_Primer.pdf)

<sup>24</sup> <https://www.mainehousing.org/programs-services/housing-development/developmentdetails/affordable-housing-tax-increment-financing-program>

The key to this program is that it is new taxable property value that would not otherwise be providing revenue to the Town if the project did not go forward. Communities using AHTIF also avoid the decreases in state revenue sharing and state education subsidy and increases in county taxes that otherwise would occur with increased property values from the AHTIF district. There may be some overlap with Yarmouth's existing economic development TIF district, which is allowed to spend funds for affordable housing even if that is not the original purpose of the district.

### MaineHousing's Federal Low Income Housing Tax Credit Program

The only remaining Federal financing program for production of new affordable housing is the Low Income Housing Tax Credit program administered by Maine State Housing Authority.<sup>25</sup> These federal tax credits are awarded through an extremely competitive process that gives points based on many criteria, a few of which are impacted by whether a municipality is proactive regarding affordable housing. Many towns in Maine have taken a proactive role in understanding what is called the Qualified Allocation Plan (QAP). The QAP determines the ways this scarce resource is awarded to developers of affordable housing. These projects win or lose funding often by no more than 3 points out of 100 points, making each of the following important ways Yarmouth could attract more affordable housing:

- Create a planning process for areas that would be part of a Community Revitalization Plan and identify potential affordable housing sites for redevelopment or environmental remediation (3 points);
- Streamline the planning board process for affordable housing so developers can have planning board approval at the time of application (6 points);
- Implement a Tax Increment Financing program providing 50% to 75% tax rebates for a period of 15-30 years for affordable housing proposals (up to 6 points);
- Expand fixed-route public transit so more parts of Town are within ½ mile walking distance of a transit stop (5 points);
- Ensure that Yarmouth continues to be listed as a "High Opportunity Area" by MaineHousing (3 points); and
- Work with the Economic Development Department to understand (and possibly remedy) why Yarmouth is not considered a "Service Center Community" (up to 8 points).

### Leverage Federal and State Resources

Now is a unique time in Maine when there are some additional Federal and State resources for funding affordable housing. Yarmouth should lay the groundwork for allowing more development of affordable housing while the resources are more available. Funding is cyclical and if the Town does not act now, many of these resources could dry up in the years to come.

Maine passed a law in late 2019 authorizing the first-in-Maine State Low Income Housing Tax Credits that can be paired with the Federal Tax Credits. This is an incredible new source of funding that should be available for years to come, but it is unclear if this funding will continue to be funded past the initial 5-year plan.

Community Development Block Grant (CDBG) funds are available for site and infrastructure improvements and renovation or demolition of older buildings to provide new affordable units through Cumberland County.

---

<sup>25</sup> <https://www.mainehousing.org/programs-services/housing-development/developmentdetails/low-income-housing-tax-credit-program>

Cumberland County also is distributing American Rescue Plan Act funding (ARPA) through RFP grant rounds. This is another grant source that can potentially jump start an affordable housing initiative.

## Summary

For the past 8 months, the Affordable Housing Committee has been dedicated to growing a baseline understanding of the need for affordable housing in Yarmouth. It is no small task, and the housing crisis affecting southern Maine and the rest of the state will not cease without action from each individual municipality and from the state level. While many of these discussions may and should happen during the development of the next comprehensive plan, the Town's last two comprehensive plans covering nearly thirty years have already called for action on affordable housing. The Affordable Housing Committee believes that the time is now to advance responsible and appropriate action after years of acknowledging the issue yet doing very little to proactively address it.

Developing affordable housing is a complex, expensive process that carries significant up-front risk. Developers must navigate identifying an appropriate site, meet a town's zoning ordinance and permit requirements, assemble multiple funding sources, design a marketable project, and shepherd the project through an extremely volatile construction process. While changes to the Zoning Ordinance can provide real financial incentives that encourage the development of affordable housing, developers will only attempt a project in town if there is local support. The reason for the recent abandonment of a project in Cape Elizabeth was given by the developer as (paraphrased) "We do not build affordable housing in towns that do not want us."<sup>26</sup>

Specifically, the Affordable Housing Committee has identified the following tasks to advance this important work:

1. The Committee will hold a joint meeting with the Planning Board to receive input on the zoning recommendations from the Planning Board members;
2. The Committee will hold a series of listening sessions in the community to gain an understanding about community attitudes toward affordable housing and how that might inform future public engagement;
3. The Committee will discuss with planners and similar committees in other communities on how they are tackling affordable housing policy in order to learn from those experiences and identify ways to partner; and
4. The Committee will work with the Planning Board and the Planning & Development Department to draft appropriate zoning ordinances for further consideration by the community and Council.

The Committee looks forward to discussing its work during the January 27, 2022, Operations Committee meeting. The Committee seeks support from the Council to pursue further development of these recommendations with support from the Planning & Development Department and the Planning Board.

---

<sup>26</sup> <https://www.pressherald.com/2021/11/30/developers-pull-plug-on-cape-elizabeth-affordable-housing-project/>

## Attachments:

1. Collected Stories from the Yarmouth Community.
2. Housing Needs Assessment, prepared by Juliana Dubovsky for the Affordable Housing Committee, June 2021.
3. *Report to the Metro Regional Coalition: Housing and the Region's Future*. Frank O'Hara, September 3, 2019.
4. Excerpt from the Final Report by the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions, December 2021.

## Attachment 1

Collected Stories from the Yarmouth Community

## **Stories from Yarmouth residents about affordable housing**

### **Story #1**

Single female renting in Yarmouth, working a full time job plus two part time jobs. One of the part-time jobs is as a high school sports coach in Yarmouth. Several years ago, this woman regularly gave back to the community by volunteering weekly in Yarmouth, however she no longer can because she feels that all she has time to do is work. She grew up in Yarmouth and doesn't want to move away but feels that she may have no choice soon.

### **Story #2**

Single female with 4 children, currently living with her parents in Yarmouth while working full time as a nurse. She recently divorced and plans on buying a home after the divorce is finalized (the previous home was sold prior to the divorce). She grew up in Yarmouth, her children have all attended Yarmouth public schools, however, she may not be able to purchase a home in Yarmouth because of high home values. She has started considering more affordable towns.

### **Story #3**

Single male working full time as an executive director for a non-profit organization. Currently renting in Yarmouth and getting ready to purchase a home but feels forced to look at more affordable towns.

### **Story #4**

Single female with one child, newer small business owner. Has been renting in Yarmouth since 2010. Rent has doubled since 2017.

### **Story #5**

Young family with 2 parents and 5 children renting a 2 bedroom apartment in Yarmouth. Both parents work minimum-wage jobs. Dad also volunteers in the community. They desperately need more space but can't afford a larger apartment in Yarmouth.

**Story #6:** *A young English teacher from Yarmouth High School. He and his wife have two young children.*

Everything about living in Yarmouth helped me be a better teacher. I would not have been able to do as many extras (like coaching the Speech & Debate Team, co-chairing the ELA dep't, or serving with the BARWE group to name a few) if I had lived in Portland, Brunswick, etc. And I loved growing up in Yarmouth. In particular, I loved my time in Yarmouth Schools. The thought of giving my children a similar experience was exciting.

But finances were a major obstacle. Based on my income we could afford \$1300 or so a month on housing. Another obstacle was the overwhelming demand relative to the limited supply in town. There were a few rentals we looked at and liked, but those apartments ultimately went to other renters. This level of competition also made the search for a house functionally impossible. We did consider buying, but there was so little within our price range, and many of the houses that appeared to be in range proved not to be when they sold for well over asking price. But again the bigger issue was just how many other prospective buyers we were up against each time we considered a home.

Until housing in Yarmouth becomes far more accessible, it will remain a community of disproportionate privilege and homogeneity.

## **Story #7**

**Mike Caron, Yarmouth Community Services:**

### **Why are you interested in living in Yarmouth?**

The biggest reason we would like to purchase a home in Yarmouth is to be a part of this wonderful community we serve. We love the people, the school system, the programs and resources available to residents, as well as the overall sense of community. It is very rewarding to see first-hand the impact of what we do from the perspective of a resident. With a one year old daughter and another daughter on the way, we plan to be very active in the community we live in, and have been holding out hope that community would be Yarmouth. For that reason, we have delayed purchasing a home while renting in Yarmouth over the past four years. Always hopefully we'd be able to save enough to purchase in Yarmouth when the right opportunity presents itself. Unfortunately, our ability to save has been outpaced by the increases in the housing market, making it seem unlikely we'll be able to fulfill this desire.

**How would living in Yarmouth benefit your job as a Town employee?** My role with the Town is all about serving the community and bringing people together. I feel that living in Yarmouth is the best way to immerse myself in the community to stay attuned to the communities interests and needs, while providing the best opportunity to build the necessary relationships to meet those interests/needs. Being invested in the community I serve is mutually beneficial; living in Yarmouth strengthens my ability to serve Yarmouth, and serving Yarmouth increases my desire to live in Yarmouth.

### **How does not living in Yarmouth detract from your job?**

The biggest detraction of not living in the community I serve is losing the perspective of being a resident, and not knowing people as both a neighbor and Town employee. Beyond the personal convenience for my family of living close to where we work, I am best able to react quickly to unexpected situations by living in Yarmouth. Lastly, many of the things I envision for my family over the next few decades correspond closely with my line of work. I would greatly appreciate the ability to invest my personal time and attention to this community, in addition to my professional life.

## **Story #8**

**Sandra McCatherin-Executive Director/Property Manager Yarmouth Senior Housing:** Sandra describes a very different senior housing situation at Bartlett Circle in the time of COVID. No one wants to move, and in some cases, they can't move. Apartments aren't turning over, even when the tenants really are no longer capable of independent living. There is nowhere for them to go for assisted living as those facilities are full. So they are staying in place doing the best they can with some help from family and friends. Sandra said she has a waiting list of about 10, all quite elderly (80's and 90's) people but she now anticipates that units will turnover only when a resident dies.

## **Story #9**

**Michael Robitaille- Fire/Rescue Chief:** According to Chief Robitaille, in past years he was able to hire young students when they finished their Fire and EMS training to fill his permanent staffing ranks. Over time, these hires would become the core of the Fire/Rescue department staff. But that's no longer the case as the graduating students can't afford to live in town. The graduates move to other, more affordable, towns and get jobs elsewhere. As a result, it's become increasingly difficult to fill paid positions.

The same dynamic applies to Fire and EMS volunteers. As recently as a few years ago, there were young people who grew up in town who volunteered with Fire/Rescue, got married and bought a house in town. Now new young people aren't taking their places, as young folks can't afford to live in town and have moved on. The chief says he now relies on a volunteer force whose average is mid-50's with no young folks coming up behind them.

## Attachment 2

Housing Needs Assessment, prepared by Juliana Dubovsky for the Affordable Housing Committee, June 2021

# Yarmouth Affordable Housing Committee

June 10, 2021

Housing Needs Assessment

Juliana Dubovsky

---

## Executive Summary

A Housing Needs Assessment was prepared on the Town of Yarmouth to provide a local demographic profile, an inventory of the rental and privately owned housing stock, and a housing gap analysis. Supplemental information was provided prior to the meeting to illustrate the connection between Yarmouth's changing conditions and the housing trends occurring in the greater Portland region. Many of these materials were created for the Metro Regional Coalition (MRC) and were prepared by the Greater Portland Council of Governments (GPCOG) on the challenge of diminishing housing choices in the area. The materials provided to the committee can be found on the Town website:

## Key Findings

### Demographics

An analysis of US Census data shows that the Town of Yarmouth's population continues to grow older and more affluent than the rest of the greater Portland region. As compared to a median age of 42 years in Cumberland County, the median age in Yarmouth has increased to 48.3 and the median income was \$89,984 in 2019. Households considered to be in the "middle-income" for the region, those

earning below \$75,000 annually, have also largely decreased in numbers in the town. Housing expenditures in the Town are also above the national average by 13%-15%, particularly for housing and transportation costs, which combined are considered an indicator of “affordability.”

Other indicators pointing to challenges in housing affordability is the monthly cost burden of housing, which includes gross rent (plus utilities) and ownership costs like mortgage payments, condominium fees, real estate taxes, insurance, etc. Paying greater than 30% of their income towards housing continues to be a national standard for “housing burdened” households. Even as Yarmouth lost population in the lower-income brackets between 2010 and 2019, those remaining, particularly renters, are increasingly paying more than 30% of their monthly household income towards housing. More affluent renters and homeowners may choose to spend more than 30% of their income on housing, due to the preferred amenities and services in the community, but even those “cost-burdened” upper-income owner cohorts in Yarmouth have decreased.

### Housing Inventory

This is particularly challenging with an already tight and limited rental housing stock in the town. While the estimates for the number of renter occupied units have increased slightly since 2010, the homeowner and rental vacancy rates are low, at 1.3 and 0.9 respectively, suggesting a very tight sales and rental market. Yarmouth’s home-sales trends mirror the region, with demand outpacing supply and median sale prices increasing greater than 75% in Yarmouth, according to Redfin.

Other than single-family detached dwellings and 1-unit attached structures, other housing structure types have not drastically increased since 2010. The majority of new construction continues to be of units for larger household sizes, with very few studios and smaller than two-bedroom units. Overall, the number of multi-family units have not increased drastically since 2010. Exceptions can be found in the multi-family senior family developments in the town.

### Housing Gap Analysis

Typically a housing gap analysis also includes an assessment of housing supply and population growth, and typically focuses on the supply of those affordable to low- to moderate-income renters and homeowners (those earning up to 100% of the area median income). This may also include an analysis of the groups and households that are not being served by the market, such as

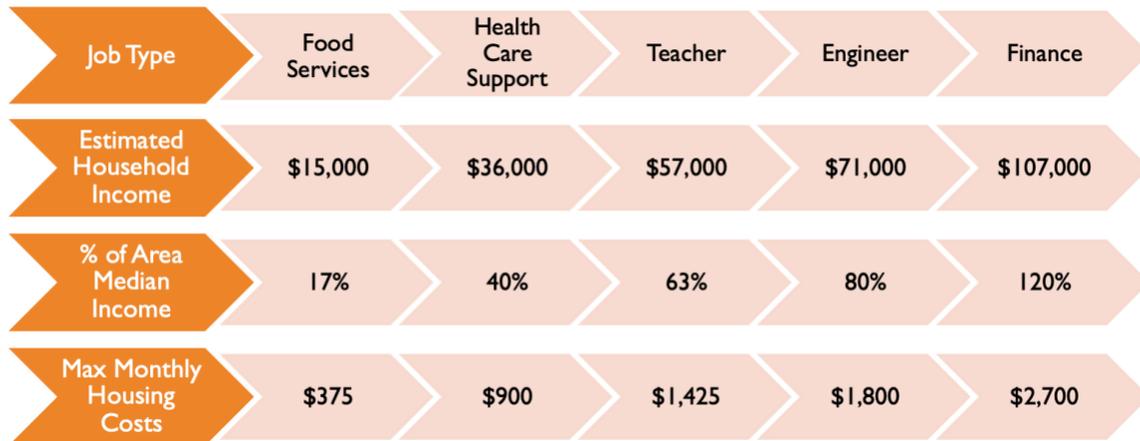
Figure 1. Area Median Income (2019)

% of Area Median Income (AMI)	2019 \$	Monthly Housing Costs Less Than 30% of Income (not including taxes or utilities)
<b>30% AMI</b>	<b>\$26,995</b>	<b>Costs &lt; \$675</b>
<b>50% AMI</b>	<b>\$44,992</b>	<b>Costs &lt; \$1,125</b>
<b>80% AMI</b>	<b>\$71,987</b>	<b>Costs &lt; \$1,800</b>
<b>100% AMI</b>	<b>\$89,984</b>	<b>Costs &lt; \$2,250</b>
<b>120% AMI</b>	<b>\$107,980</b>	<b>Costs &lt; \$2,700</b>

various income levels, Older Adults, housing by ethnicity or race. Considering that the Census Data suggests decreasing demographic diversity overall, it did not seem pertinent to break down the housing gap beyond income and housing supply.

In 2019, there were an estimated 268 units in Yarmouth with gross rents between \$500 and \$999 dollars, and zero for less than \$500. Based on local earnings, this shortage would mean that for households earning less than 30% AMI (severely low-income) and 50% AMI (low-income), such as person working in the food services or healthcare industries (Figure 2), it would be very difficult to find affordable rental housing in Yarmouth. In addition to a dearth of options for households of varying financial characteristics, there is a shortage of housing supply to meet a range of household types.

Figure 2. Local Occupations and Housing Affordability



A further analysis of the housing gap in Yarmouth could include existing and projected demographics, development trends, emerging household preferences post the COVID-19 pandemic, and regional economic indicators to understand unmet housing needs.



# TOWN OF YARMOUTH HOUSING NEEDS ASSESSMENT

YARMOUTH  
AFFORDABLE  
HOUSING  
COMMITTEE  
JUNE 7, 2021



# CONTENTS

- Community Demographics
- Housing Expenditures
- Housing Stock Inventory
- Housing Gap Analysis
- Regional Housing Assessment



# TOWN OF YARMOUTH DEMOGRAPHICS



# COMMUNITY CHARACTERISTICS

## Age & Race

- 8,529 Total Population.
- 48.3 Median Age (39.2 in 2010)
- 77.7% are 18 years and older
- 22.1% are 65 years and older
- 94% White Alone

## Household Types

- 67.3% are Family Households (majority 2-person household)
- 32.7% are Non-Family Households (majority 65+ living alone)
- 69.% have no related children under 18 years
- 55.2% of Non-Family Households are Renters

## Wealth and Income

- Median Household Income in 1999 was \$58,030 (**\$94,322 inflation adjusted**)
- Median Household Income in 2019 was \$89,984 (**\$146,260 inflation adjusted**)
- Most households have 2 vehicles available
- 38.4% Bachelors Degree
- 29% Graduate or Professional Degree

## Poverty Status

- 3.5% Poverty Rate in 2019
- 94.6% of the population are at or above 150% of the poverty level
- Roughly 10 families had income below the poverty level in 2019
- Households with income at or below poverty rate

## Town of Yarmouth Population Change

1990	8,103 (Approx.)
2000	8,360
2010	8,390
2019	8,529 (Approx.)

Household Income	2000	2010	2019	Percent Change (2000-2019)
Less than \$9,999	5.4%	1.3%	3.9%	-1.5%
\$10,000 to \$14,999	4.7%	2.4%	0.4%	-4.3%
\$15,000 to \$24,999	9.6%	8.8%	4.1%	-5.5%
\$25,000 to \$34,999	7.2%	5.6%	8.2%	1.0%
\$35,000 to \$49,999	14.9%	13.8%	10.7%	-4.2%
\$50,000 to \$74,999	21.7%	19.0%	13.8%	-7.9%
\$75,000 to \$99,999	13.6%	11.3%	15.7%	2.1%
\$100,000 to \$149,999	13.1%	15.7%	17.5%	4.4%
\$150,000 or more	9.9%	22.2%	25.6%	15.7%

# CHANGE IN HOUSEHOLD INCOME AS A PERCENTAGE OF OCCUPIED HOUSING UNITS IN YARMOUTH

\*Only the 2000 Decennial Census had “\$150K-\$199,999” and “\$200,000 or More” as an income bracket. Approx. 259 households (7.5%) had annual of \$200K or more.

# WORKERS LIVING IN YARMOUTH

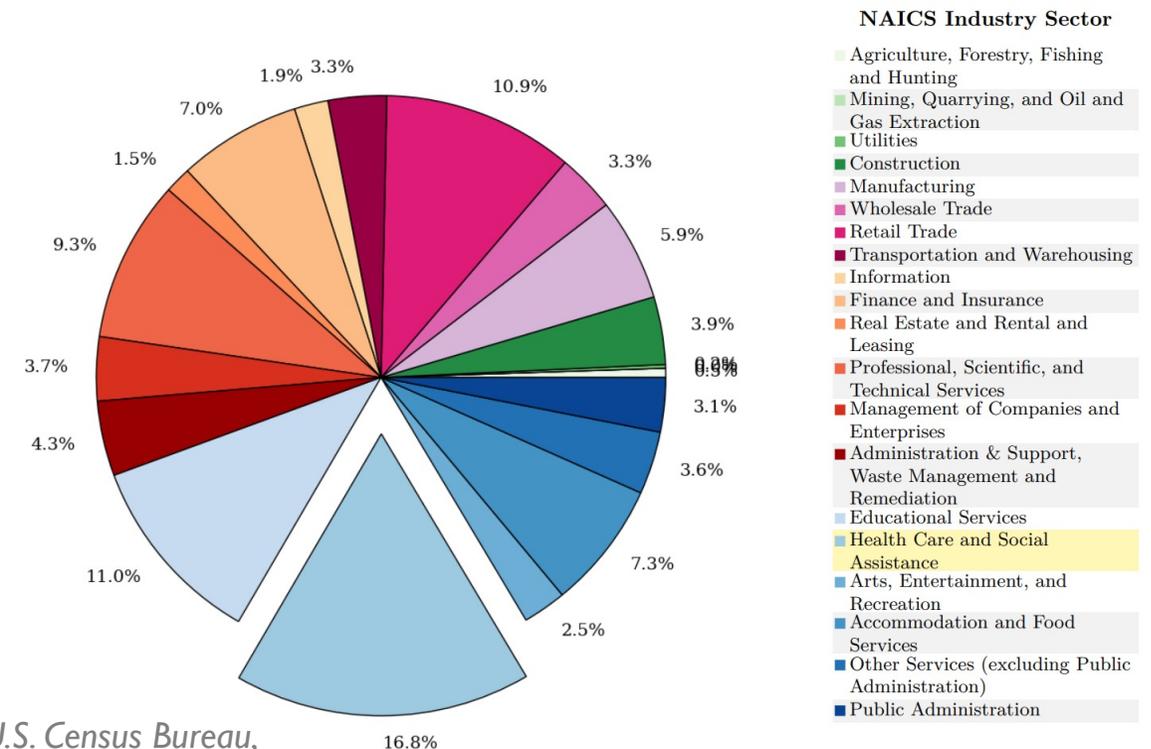
## Earnings in 2018:

20% earned less than \$1,250 a month  
 26% earned \$1,251- \$3,333 a month  
 54% earned more than \$3,333 a month

- 25% of Yarmouth's population work from home (2019)
- Those that work outside of the home, 90% worked in Cumberland County and the mean travel time to work was only 22 minutes (2019)
- 24% percent of workers living in Yarmouth earned more than \$75,000 in the past 12 months (2019)
- Median Household Income in Yarmouth was \$89,984 (2019)

All Jobs for All Workers by NAICS Industry Sector in 2018

Living in Selection Area



Sources: U.S. Census Bureau American Community Survey, 2019 Five Year Estimates; U.S. Census Bureau, Center for Economic Studies, LEHD, 2018

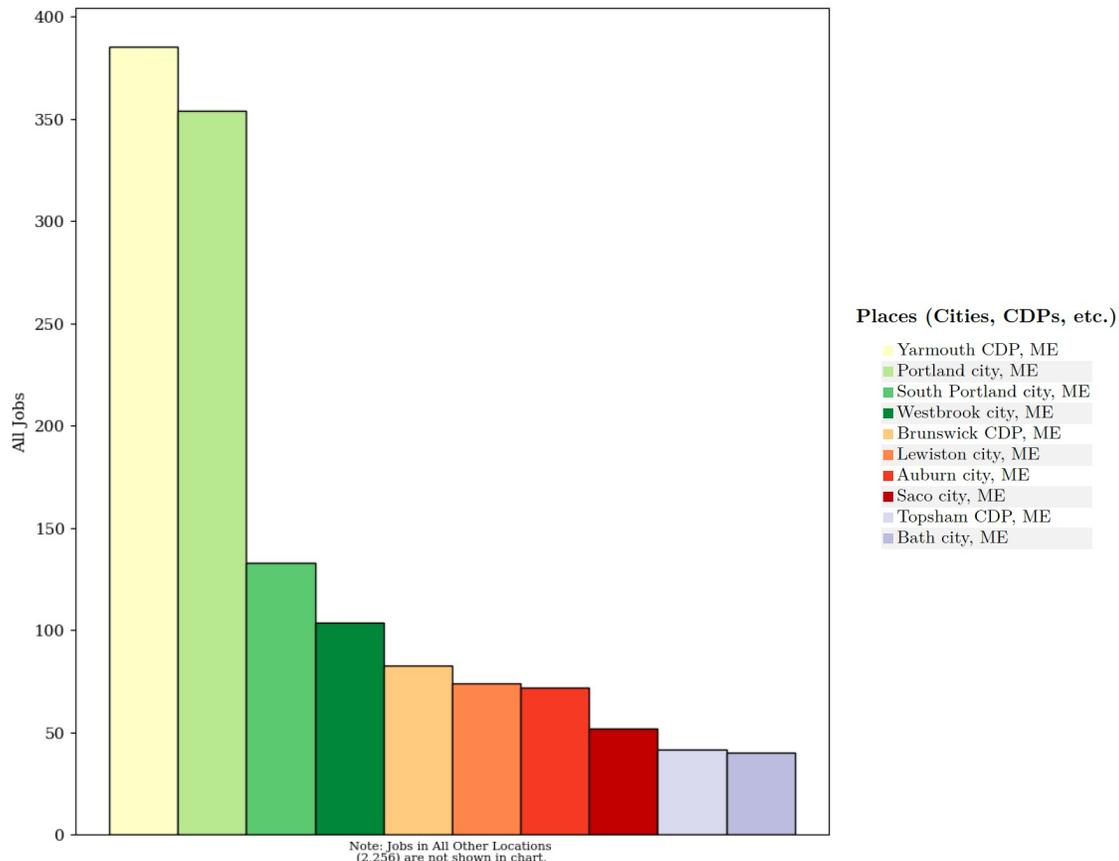
# WORKERS IN YARMOUTH

## Earnings in 2018:

23% earned less than \$1,250 a month  
 29% earned \$1,251- \$3,333 a month  
 47.5% earned more than \$3,333 a month

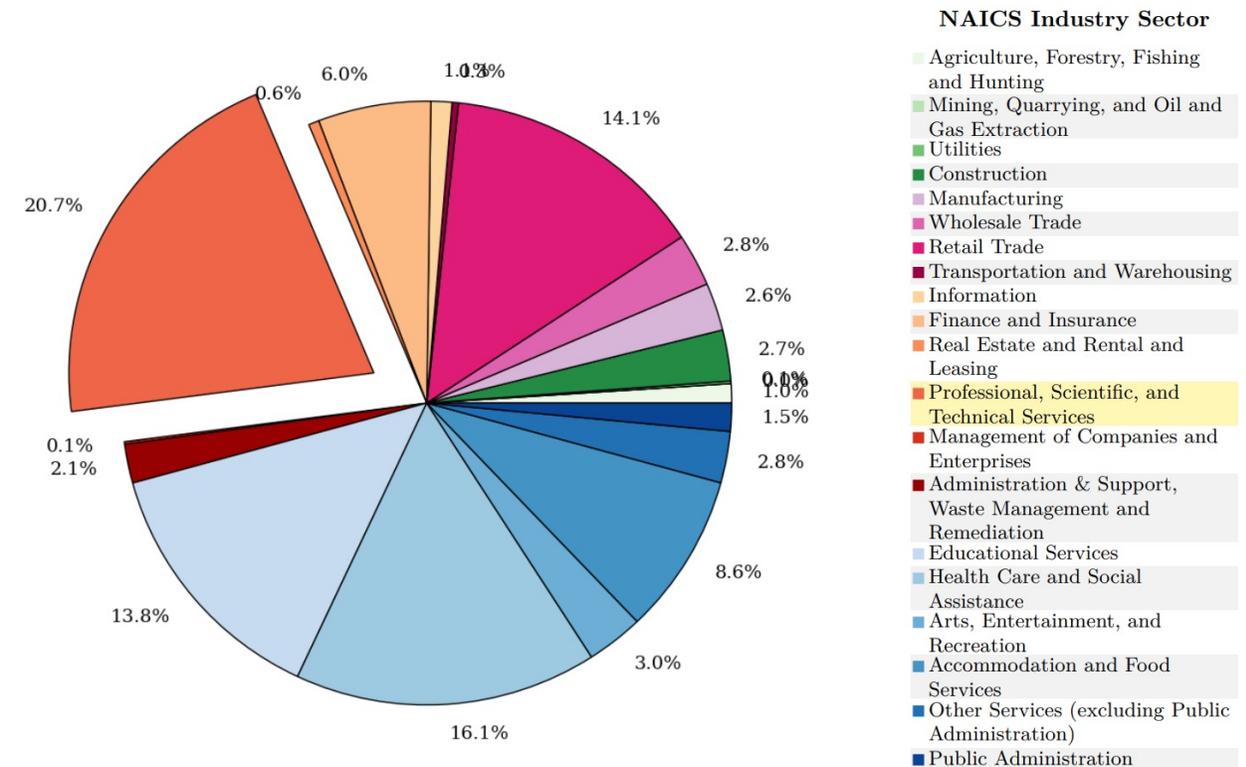
All Jobs from Work Selection Area to Home Places (Cities, CDPs, etc.) in 2018

All Workers



All Jobs for All Workers by NAICS Industry Sector in 2018

Employed in Selection Area





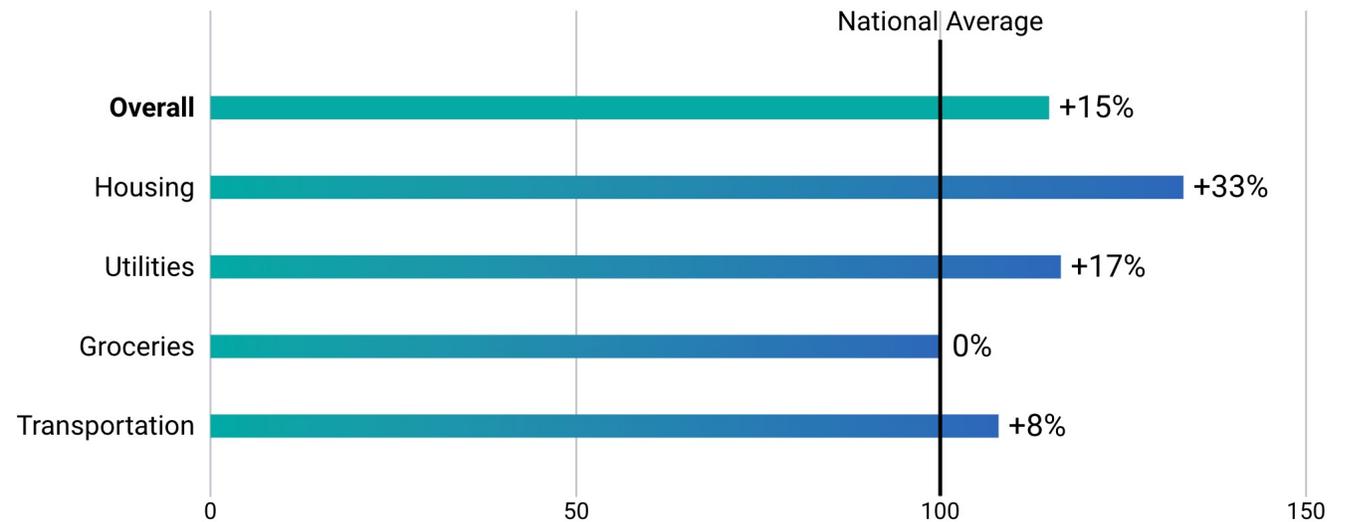
# HOUSING EXPENDITURES



# OVERALL COSTS OF LIVING

## 13%-15% ABOVE NATIONAL AVG

### Cost of Living in Yarmouth, Maine by Expense Category



Cost of living increases in 2020

- **Average ME Utility Bill \$87.21/month (2019)**

# HOUSING COST BURDEN

Selected Monthly Owner Costs as a Percentage of Household Income		2010	2019
With a Mortgage			
	30% - 34.9%	7.7%	6.6%
	35% or More	26.4%	20.2%
Without a Mortgage			
	30% - 34.9%	4%	4%
	35% or More	17.2%	13.7%

Gross Rent as a Percentage of Household Income	2010	2019
30% - 34.9%	10.1%	16.5%
35% or More	37.4%	40.5%

*(Household expenditures exceeding 30% of monthly income are considered "burdened")*

■ The housing cost burden increased for renters but eased up on owners as they grew increasingly affluent over the decade

Percentage of Housing Cost Burdened Households (+30% Month)						
Income Bracket	2010		2019		Change	
	Owner	Renter	Owner	Renter	Owners	Renters
Less Than \$20K	3.4%	13.4%	2.3%	11.3%	-1.1%	-2.1%
\$20K to \$34.9K	5.0%	25.2%	5.6%	15.5%	0.6%	-9.7%
\$35,000 to \$49,999	5.4%	5.9%	2.7%	9.7%	-2.7%	3.8%
\$50,000 to \$74,999	5.7%	2.7%	5.8%	10.2%	0.1%	7.5%
\$75,000 or more	10.7%	0.0%	7.1%	3.2%	-3.6%	3.2%

# HOUSING COSTS (2019\$)

VS.

% OF AREA  
MEDIAN  
INCOME

- Median Value of Owner-Occupied Housing = \$374,600 ▲
- Median Monthly Owner Costs (SMOC) = \$2,281 ▲
- Median Gross Rent = \$1,227 ▲
- Median Household Income for Town = \$89,984 ▲

% of Area Median Income (AMI)	2019 \$	Monthly Housing Costs Less Than 30% of Income (not including taxes or utilities)
30% AMI	\$26,995	Costs < \$675
50% AMI	\$44,992	Costs < \$1,125
80% AMI	\$71,987	Costs < \$1,800
100% AMI	\$89,984	Costs < \$2,250
120% AMI	\$107,980	Costs < \$2,700



# LOCAL HOUSING STOCK INVENTORY



# HOUSING TENURE

■ *Note that American Community Surveys are estimates with Margins of Error.*

	2010 ACS Estimates	2019 ACS Estimates
Total Housing Units	3,656	3,632
Occupied Housing Units	3,471	3,409
Vacant Housing Units	185	223
Homeowner Vacancy Rate	1.3	1.3
Rental Vacancy Rate	0.0	0.9
Owner Occupied Units	2,483	2,480
Renter Occupied Units	988	929

Sources: U.S. Census Bureau American Community Survey, 2000 and 2019 Five-Year Estimates

# HOUSING TYPES

## Unit Variations (2019 ACS)

- More than 20% of units have 6 or more rooms
- Fewer than 3% of units are studios
- More than 30% have 3 bedrooms

*Note: American Community Surveys are estimates with Margins of Error.*

Units in Housing Structures	2010 Estimates	2010 Percentage Estimates	2019 Estimates	2019 Percentage Estimates
1 Unit, Detached	2,577	70.5%	2,455	67.6%
1 Unit, Attached	232	6.3%	385	10.6%
2 Units	161	4.4%	141	3.9%
3 or 4 Units	143	3.9%	138	3.8%
5 to 9 Units	371	10.1%	280	7.7%
10 to 19 Units	92	2.5%	17	0.5%
20 or More	80	2.2%	131	3.6%
Mobile Home	0	0.0%	85	2.3%

Sources: U.S. Census Bureau American Community Survey, 2010 and 2019 Five Year Estimates

# YEAR STRUCTURE BUILT

Year Built	2010 Housing Unit Estimate	2010 Percentage Estimates	2019 Housing Unit Estimate	2019 Percentage Estimates
Built 2014 or later	—	—	69	1.9%
Built 2010 to 2013	—	—	81	2.2%
Built 2000 to 2009	149	4.1%	264	7.3%
Built 1990 to 1999	326	8.9%	414	11.4%
Built 1980 to 1989	780	21.3%	740	20.4%
Built 1970 to 1979	790	21.6%	743	20.5%
Built 1960 to 1969	348	9.5%	297	8.2%
Built 1950 to 1959	342	9.4%	322	8.9%
Built 1940 to 1949	62	1.7%	126	3.5%
Built 1939 or earlier	859	23.5%	576	15.9%
<b>TOTALS</b>	<b>3,656 (MOE +- 211)</b>		<b>3,362 (MOE +-194)</b>	

Sources: U.S. Census Bureau American Community Survey, 2010 and 2019 Five Year Estimates

# SENIOR HOUSING

- Assisted Living

- Bay Square at Yarmouth

- 2 Bedroom Apartments

- The Harbor Program for Alzheimer's Care

- Nursing Care

- Brentwood Center for Health & Rehabilitation

- Coastal Manor Nursing Home



- Income Limited

- Bartlett Woods (Avesta & Yarmouth Senior Housing Inc.)

- Units for households earning at or below 50-60% AMI

- Bartlett Circle (Yarmouth Senior Housing Inc.)

- 1-2 bedroom single floor apartments

- Rent based on 30% of Income

- **Single:** At least \$15,400/yr (\$1,284/mo) and less than \$28,750/yr (\$2,396/mo)

- **Two-person:** At least \$17,360/yr (\$1,447/ mo) and less than \$32,850/yr (\$2,728/mo)

- Low Income-Affordable

- Yarmouth Falls Apartments (HUD)



# HOUSING GAP ANALYSIS

A LOOK AT WHO  
IS AND WHO IS  
**NOT** BEING  
SERVED BY THE  
HOUSING  
MARKET



# FOR SALE MARKET

## Redfin's Housing Market Trends for Yarmouth:

- A Median Sale Price \$925K (+78% since last year)
- Going 10% over listing price, multiple offers and pending sales in 7 days
- Considered “very competitive” in the local region

## Zillow's record of sales for the past 12 months:

- Majority 3+ bedrooms
- Median sale price \$500K
- Only 8 attached homes (townhouses/condos/co-ops) sold, all over \$300K

# RENTAL MARKET



- 1 Available on Zillow as of 6/4/21
  - \$1,595 for a Studio

## MISSING

Unit Type	Housing Type	Income
<ul style="list-style-type: none"><li>• Studios</li><li>• &gt;2 Bedrooms</li></ul>	<ul style="list-style-type: none"><li>• Attached</li><li>• Multi-Family</li></ul>	<ul style="list-style-type: none"><li>• Incomes &gt;\$75K</li><li>• Below 50%AMI</li></ul>

# OCCUPATIONS IN YARMOUTH & HOUSING AFFORDABILITY

Job Type	Food Services	Health Care Support	Teacher	Engineer	Finance
Estimated Household Income	\$15,000	\$36,000	\$57,000	\$71,000	\$107,000
% of Area Median Income	17%	40%	63%	80%	120%
Max Monthly Housing Costs	\$375	\$900	\$1,425	\$1,800	\$2,700

Sources: U.S. Census Bureau American Community Survey, 2019 Five Year Estimates; U.S. Bureau of Labor Statistics; and the U.S. Census Bureau, Center for Economic Studies, LEHD, 2018

# FY 2021 INCOME LIMITS FOR THE PORTLAND, ME HUD METRO FMR AREA

Median Family Income	FY 21 Income Limit Category	Persons in Family							
		1	2	3	4	5	6	7	8
\$99,900	Low Income (80%) Limits	55,950	63,950	71,950	79,900	86,300	92,700	99,100	105,500
	Very Low (50%) Income Limits	35,000	40,000	45,000	49,950	53,950	57,950	61,950	65,950
	Extremely Low (>30%) Income Limits	21,000	24,000	27,000	29,950	32,350	35,805	40,120	44,660

Geography includes the areas of **CUMBERLAND COUNTY, ME** TOWNS OF Cape Elizabeth town, ME; Casco town, ME; Chebeague Island town, ME; Cumberland town, ME; Falmouth town, ME; Freeport town, ME; Frye Island town, ME; Gorham town, ME; Gray town, ME; Long Island town, ME; North Yarmouth town, ME; Portland city, ME; Raymond town, ME; Scarborough town, ME; South Portland city, ME; Standish town, ME; Westbrook city, ME; Windham town, ME; Yarmouth town, ME;

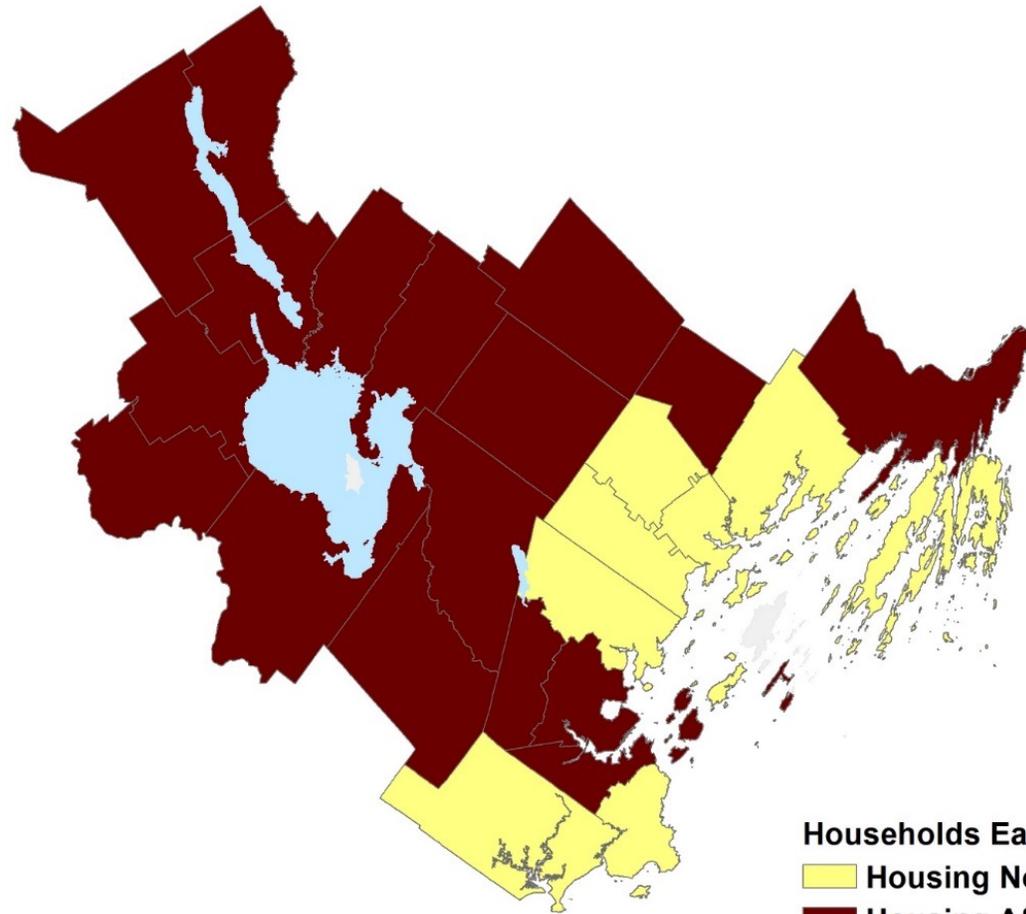
**YORK COUNTY, ME** TOWNS OF Buxton town, ME; Hollis town, ME; Limington town, ME; Old Orchard Beach town, ME; and Old Orchard Beach town, ME.



# REGIONAL CONTEXT



# REGIONAL HOUSING AFFORDABILITY IN 2000

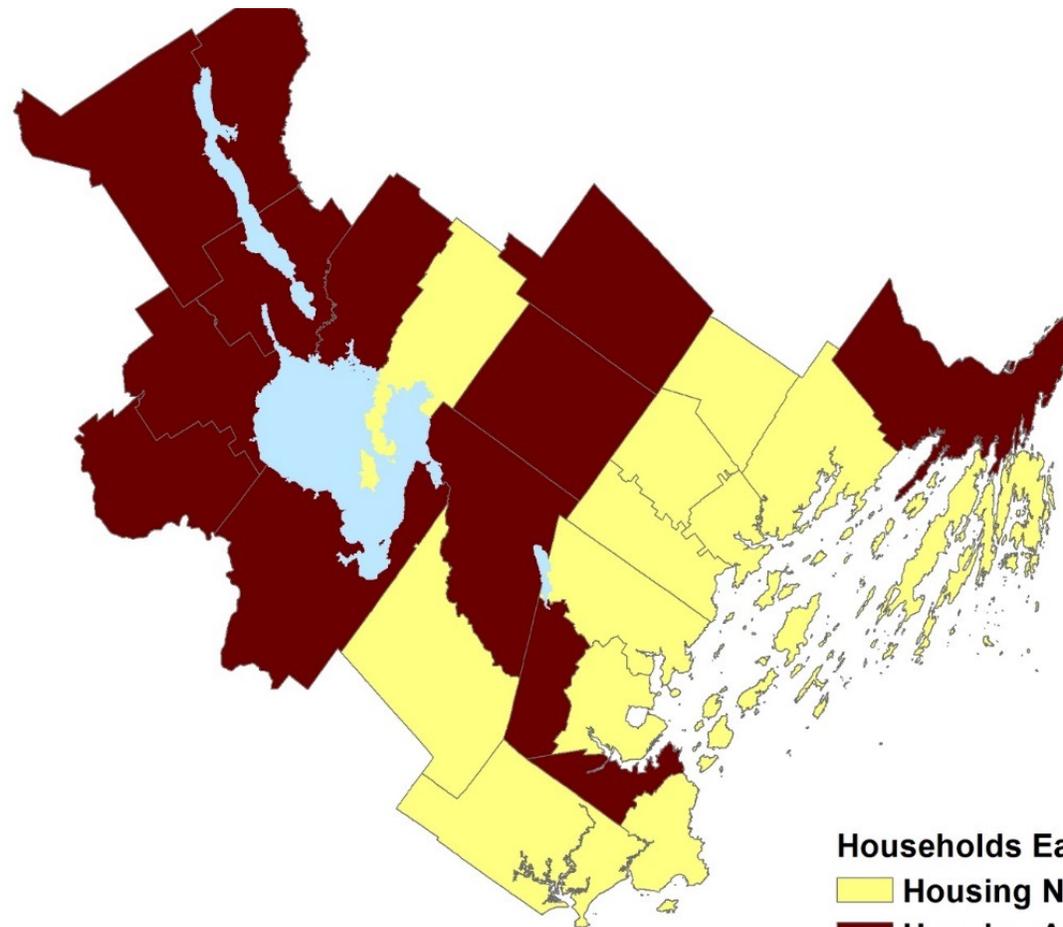


**Households Earning 100% of AMI 2000**  
**Yellow** Housing Not Affordable  
**Dark Red** Housing Affordable

*Source: US Census 2000, 2010, and ACS 2017 5-yr sample*

*Cumberland County 2000  
Median Household  
Income \$71,595  
(unadjusted \$44,048)*

# REGIONAL HOUSING AFFORDABILITY IN 2017



*Source: US Census 2000, 2010, and ACS 2017 5-yr sample*

*Cumberland County 2017  
Median Household  
Income \$79,152  
(unadjusted \$71,975)*

## REFERENCES

- U.S. Census Bureau (n.d.). Yarmouth Town Profile. <https://data.census.gov/cedsci/profile?g=06000000US2300587845>
- U.S. Census Bureau (n.d.). 2019 American Community Survey, 5-Year Estimates
- U.S. Census Bureau (n.d.), Center for Economic Studies, LEHD, OnTheMap. <https://onthemap.ces.census.gov/>
- U.S. Bureau of Labor Statistics, CPI Inflation Calculator. [https://www.bls.gov/data/inflation\\_\\_calculator.htm](https://www.bls.gov/data/inflation__calculator.htm)
- U.S. Census Bureau, Housing Topic Overview <https://www.census.gov/topics/housing.html>
- U.S. Office of Housing and Urban Development (HUD), FY 2021 Income Limits Documentation System <https://www.huduser.gov/portal/datasets/il/il2021/2021IICalc.odn>

# GLOSSARY OF TERMS

- **Selected Monthly Owner Costs (SMOC):** Selected monthly owner costs are the sum of payments for mortgages, deeds of trust, contracts to purchase, or similar debts on the property (including payments for the first mortgage, second mortgages, home equity loans, and other junior mortgages); real estate taxes; fire, hazard, and flood insurance on the property; utilities (electricity, gas, and water and sewer); and fuels (oil, coal, kerosene, wood, etc.). It also includes, where appropriate, the monthly condominium fee for condominiums and mobile home costs (installment loan payments, personal property taxes, site rent, registration fees, and license fees).
- **HUD Median Family Income (MFI):** Once the appropriate 2018 ACS 1-Year data has been selected, an inflation factor based on the Congressional Budget Office projection of the national Consumer Price Index for FY2021 is calculated to inflate the estimate from 2018 to April, 2021 (or mid FY2021). Housing costs adjustments are also made for areas where rental housing costs are unusually high in relation to median income.

## Attachment 3

Report to the Metro Regional Coalition: Housing and the Region's Future. Frank O'Hara, September 3, 2019

# Report to the Metro Regional Coalition

## Housing and the Region's Future

Frank O'Hara, Hallowell, Maine

Research assistance from Raegan LaRochelle

September 3, 2019

### Introduction

The purpose of this paper is to recommend a broad affordable housing strategy to the 7 communities of the Metro Regional Coalition. Part 1 of the paper places affordable housing in its context with transportation and other growth-related issues. The second part (page 8) recommends a strategy that addresses affordable housing in conjunction with related issues of transportation and open space.

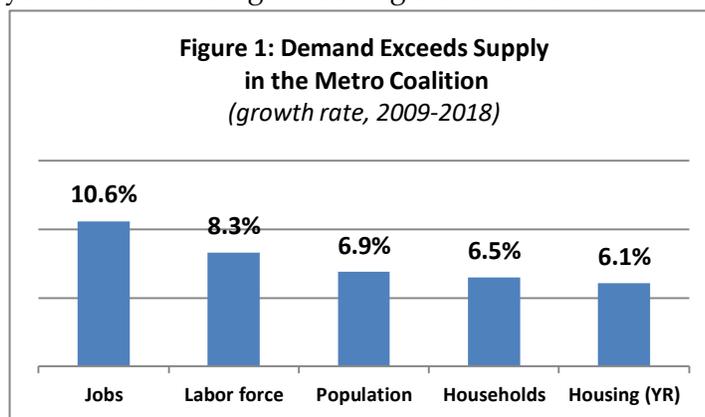
### Part 1: The Context for the Affordable Housing Issue in Greater Portland

#### *A. Demand is exceeding supply*

The economist Herbert Stein once coined a law which reads: "If something cannot go on forever, it will stop." Since the 2009 recession, demand has exceeded supply in Greater Portland in multiple areas. For the seven communities in Metro Coalition<sup>1</sup>, the demand for jobs has exceeded the growth in workforce – creating a labor shortage. The growth in workforce has exceeded the growth in population – meaning that we are squeezing as many workers out of the existing population as we are likely to get. The growth in households has exceeded the growth in year-round housing – meaning that there is not enough housing stock to accommodate the new growth that we need (see Figure 1).

These trends largely held across all of the individual communities in the Metro Coalition (see Table 1). Some differences include: in Falmouth and South Portland, labor force grew faster than local jobs; in Cape, housing units seem to have increased faster than households.

The year-round housing data deserves a special mention. These do not reflect local permit figures for two reasons. First, they are 5-year averages for 2009 and 2018, from the American Community Survey<sup>2</sup> (see note 2 below). Secondly, they also reflect



<sup>1</sup> Cape Elizabeth, Falmouth, Gorham, Portland, Scar borough, South Portland, and Westbrook

<sup>2</sup> The numbers in these charts and tables, unless otherwise noted, are from the American Community Survey (ACS). This is an annual survey covering about 3% of US households. In larger cities, like Portland, the sample is sufficient to allow the ACS to make estimates each year. In smaller communities, like the other 6 in the Metro Coalition, the ACS adds up survey results over 5 years to make an estimate. Thus, 2009 data in this report consists of survey results of 2005-2009. 2017 data consists of results from 2013-2017. So the numbers used in this report are an approximation for any given year, but are accurate in terms of long-term trends.

changes in use of the existing stock; for example, every year-round unit converted to Airbnb usage, and every condominium rented to a seasonal owner, moves one unit from the year-round category into seasonal/long term vacant category.

From 2015 to 2017, the American Community Survey (one-year estimate) reports an increase in the City of Portland alone of 660 units of seasonal occupancy (52% change) and 760 of “other vacant” units (72% growth) – the latter being units that are vacant but are not available for sale or rent to year-round residents, which presumably includes much of the short-term rental market.

So even though there was a reported growth of 5,300 units of housing in the Metro communities from 2009 to 2017, only 4,100 are reported to be available for year-round housing.

**Table 1: Demand Exceeds Supply, 2019-2018**

	Year	County	Portland	Cape	Falmouth	Gorham	Scarboro	So Portland	Westbrook
<b>Jobs in community</b>	2009	168,160	66,412	1,258	5,836	4,162	14,382	22,980	12,151
	2018	185,390	72,760	1,561	6,409	5,257	15,872	23,923	14,836
<i>Change 2009-2018</i>		17,230	6,348	303	573	1,095	1,490	943	2,685
<i>Percent</i>		10.2%	9.6%	24.1%	9.8%	26.3%	10.4%	4.1%	22.1%
<b>Labor Force</b>	2009	156,176	37,040	4,633	5,396	9,023	10,780	13,891	8,758
	2018	165,409	39,043	5,244	6,608	10,533	11,034	14,803	9,679
<i>Change 2009-2018</i>		9,233	2,003	611	1,212	1,510	254	912	921
<i>Percent</i>		5.9%	5.4%	13.2%	22.5%	16.7%	2.4%	6.6%	10.5%
<b>Total population</b>	2009	276,227	63,153	8,813	10,668	15,511	19,017	23,824	16,373
	2017	289,173	66,715	9,235	11,868	17,147	19,620	25,431	18,156
<i>Change 2009-2018</i>		12,946	3,562	422	1,200	1,636	603	1,607	1,783
<i>Percent</i>		4.7%	5.6%	4.8%	11.2%	10.5%	3.2%	6.7%	10.9%
<b>Total households</b>	2009	114,142	28,990	3,544	4,239	4,894	7,611	10,419	7,017
	2018	118,807	30,167	3,803	4,655	6,101	7,640	10,663	8,054
<i>Change 2009-2018</i>		4,665	1,177	259	416	1,207	29	244	1,037
<i>Percent</i>		4.1%	4.1%	7.3%	9.8%	24.7%	0.4%	2.3%	14.8%
<b>Year-round housing</b>	2009	116,332	29,892	3,544	4,291	5,003	7,811	10,544	7,096
	2017	120,769	30,834	3,829	4,655	6,169	7,784	10,790	8,250
<i>Change 2009-2018</i>		4,437	943	285	364	1,166	-27	246	1,155
<i>Percent</i>		3.8%	3.2%	8.0%	8.5%	23.3%	-0.3%	2.3%	16.3%

**B. It's Harming our Quality of Life**

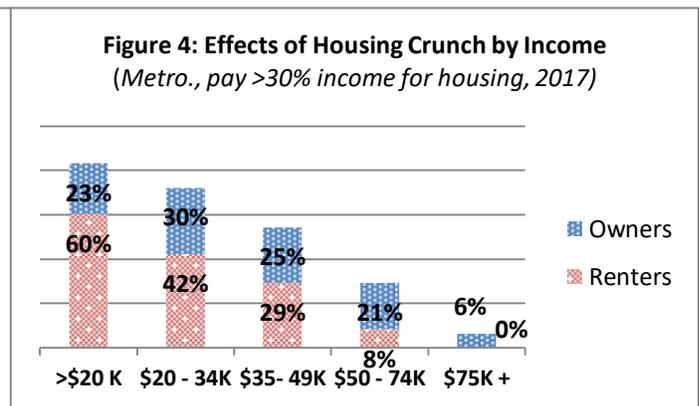
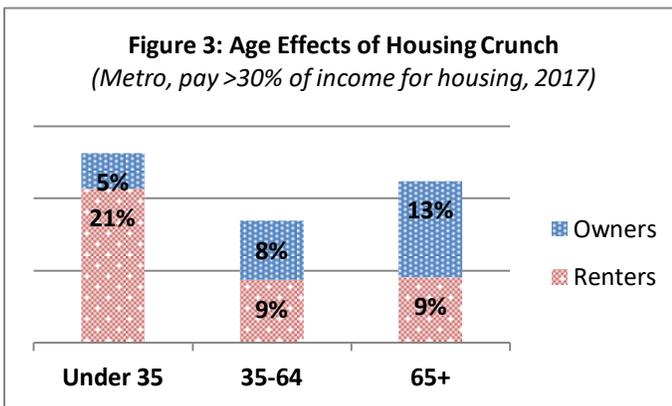
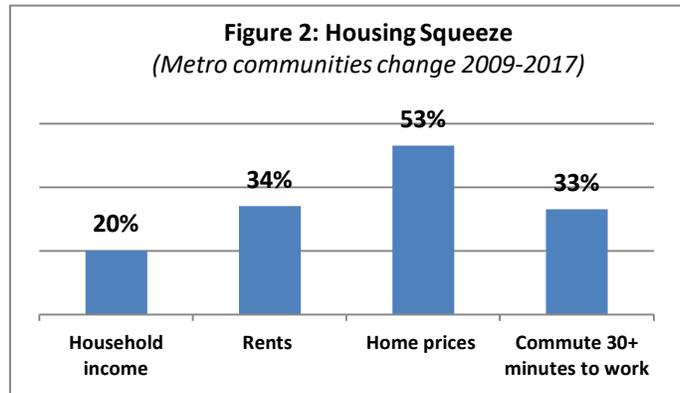


There are some positive aspects to demand exceeding supply. For those looking for work, there are more choices, and higher salaries. For those who already own a home, their house value appreciates and contributes to greater household wealth.

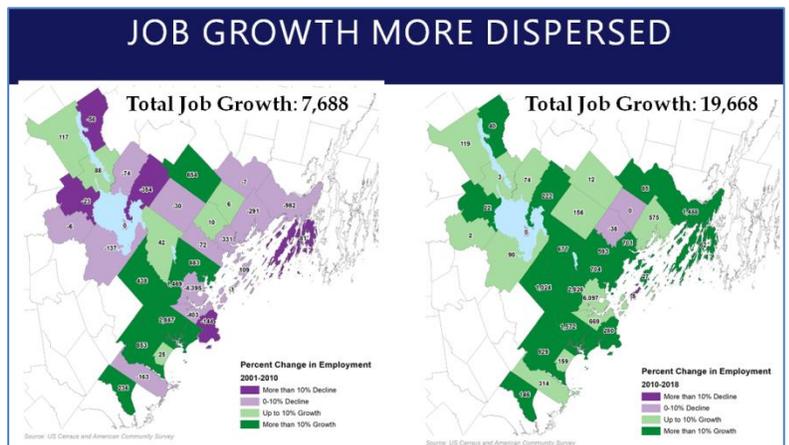


But for those moving to the area, or the young trying to set up a household, or automobile commuters, or renters, or older people facing higher property taxes and living costs, or employers, there is a loss of quality of life.

The housing cost crunch is hitting young people particularly hard, as well as those in the lower and middle income range. One in four households under the age of 35 pays 30% or more of its income for housing. These are also households burdened by high college loan repayments. Over half of working families with incomes between \$35,000 and \$50,000 pay over 30% of their income for housing.



Another effect of the housing cost crunch is that it is harder for people to move, and harder to find housing near places of employment. The number of workers commuting over 30 minutes to work increased by a third since the recession. Traffic has also increased in volume. The available data is difficult to generalize about on a community or regional level. But a proxy for traffic might be the Maine Turnpike. The Turnpike has seen an 18% increase in cars since the trough of the recession. The road network in Greater Portland is largely fixed, and has been so for years, so continuing traffic increases can be expected to lead to more congestion



**Table 2: Less Choice, Higher Costs, Longer Commutes**

Data	Year	County	Portland	Cape	Falmouth	Gorham	Scarboro	S Portland	Westbrook
<b>Unemployment Rate</b>	2009	6.5%	7.1%	5.7%	5.3%	5.4%	5.7%	6.9%	8.4%
	2018	2.7%	2.6%	2.3%	2.3%	2.7%	2.6%	2.6%	3.1%
<i>Change 2009-2018</i>		-3.8%	-4.5%	-3.4%	-3.0%	-2.7%	-3.1%	-4.3%	-5.3%
<b>Renter vacancy rate</b>	2010	5.7%	5.3%	0.0%	5.8%	14.3%	12.3%	3.2%	3.0%
	2017	5.0%	3.8%	5.6%	0.0%	6.8%	8.6%	3.0%	6.1%
<i>Change 2009-2017</i>		-0.7%	-1.5%	5.6%	-5.8%	-7.5%	-3.7%	-0.2%	3.1%
<b>Owner vacancy rate</b>	2010	1.5%	1.9%	0.0%	0.4%	0.0%	0.9%	0.8%	0.2%
	2017	1.2%	0.5%	2.1%	0.0%	1.1%	0.0%	1.0%	0.5%
<i>Change 2009-2017</i>		-0.3%	-1.4%	2.1%	-0.4%	1.1%	-0.9%	0.2%	0.3%
<b>Median Home Price</b>	2009	\$235,000	\$206,950	\$267,000	\$350,000	\$215,000	\$290,500	\$182,950	\$175,000
	2018	\$303,000	\$316,000	\$543,000	\$533,500	\$295,000	\$395,000	\$288,000	\$250,942
<i>Change 2009-2018</i>		\$68,000	\$109,050	\$276,000	\$183,500	\$80,000	\$104,500	\$105,050	\$75,942
<i>Percent</i>		28.9%	52.7%	103.4%	52.4%	37.2%	36.0%	57.4%	43.4%
<b>Median Gross Rent</b>	2009	\$851	\$840	\$1,133	\$1,036	\$813	\$1,110	\$881	\$788
	2017	\$1,029	\$1,018	\$1,060	\$1,657	\$1,024	\$1,308	\$1,119	\$899
<i>Change 2009-2017</i>		\$178	\$178	-\$73	\$621	\$211	\$198	\$238	\$111
<i>Percent</i>		20.9%	21.2%	-6.4%	59.9%	26.0%	17.8%	27.0%	14.1%
<b>Median HH income</b>	2009	\$54,342	\$43,601	\$80,644	\$83,139	\$68,014	\$74,389	\$50,319	\$43,588
	2017	\$65,702	\$51,430	\$106,157	\$108,547	\$76,267	\$89,255	\$59,515	\$51,062
<i>Change 2009-2017</i>		\$11,360	\$7,829	\$25,513	\$25,408	\$8,253	\$14,866	\$9,196	\$7,474
<i>Percent</i>		20.9%	18.0%	31.6%	30.6%	12.1%	20.0%	18.3%	17.1%
<b>Travel 30+ minutes to work</b>	2009	36,119	4,265	731	398	2,376	1,494	2,166	1,194
	2017	41,677	5,901	981	912	3,483	1,296	2,041	2,131
<i>Change 2009-2017</i>		5,558	1,636	250	514	1,107	-198	-125	937
<i>Percent</i>		15.4%	38.4%	34.2%	129.1%	46.6%	-13.3%	-5.8%	78.5%

A final effect of the housing cost crunch is that it is increasing the cost of land, and pushing buyers to get land in more rural areas. For this paper, we examined land sales in the seven Metro communities for the last three years. We limited the sample to residential land sales of fewer than 5 acres, to be sure that commercial uses were not mixed in.

In 195 transactions sampled, the average sale was \$136,900. On a per-acre basis, the average cost was \$117,000. A rule of thumb in real estate is that, in building a house, raw land costs should not consume more than 20% of the budget (improved land can be 25%). Using these ratios, the residential land is appropriate for new housing construction with average price in the \$500,000 to \$600,000 range.

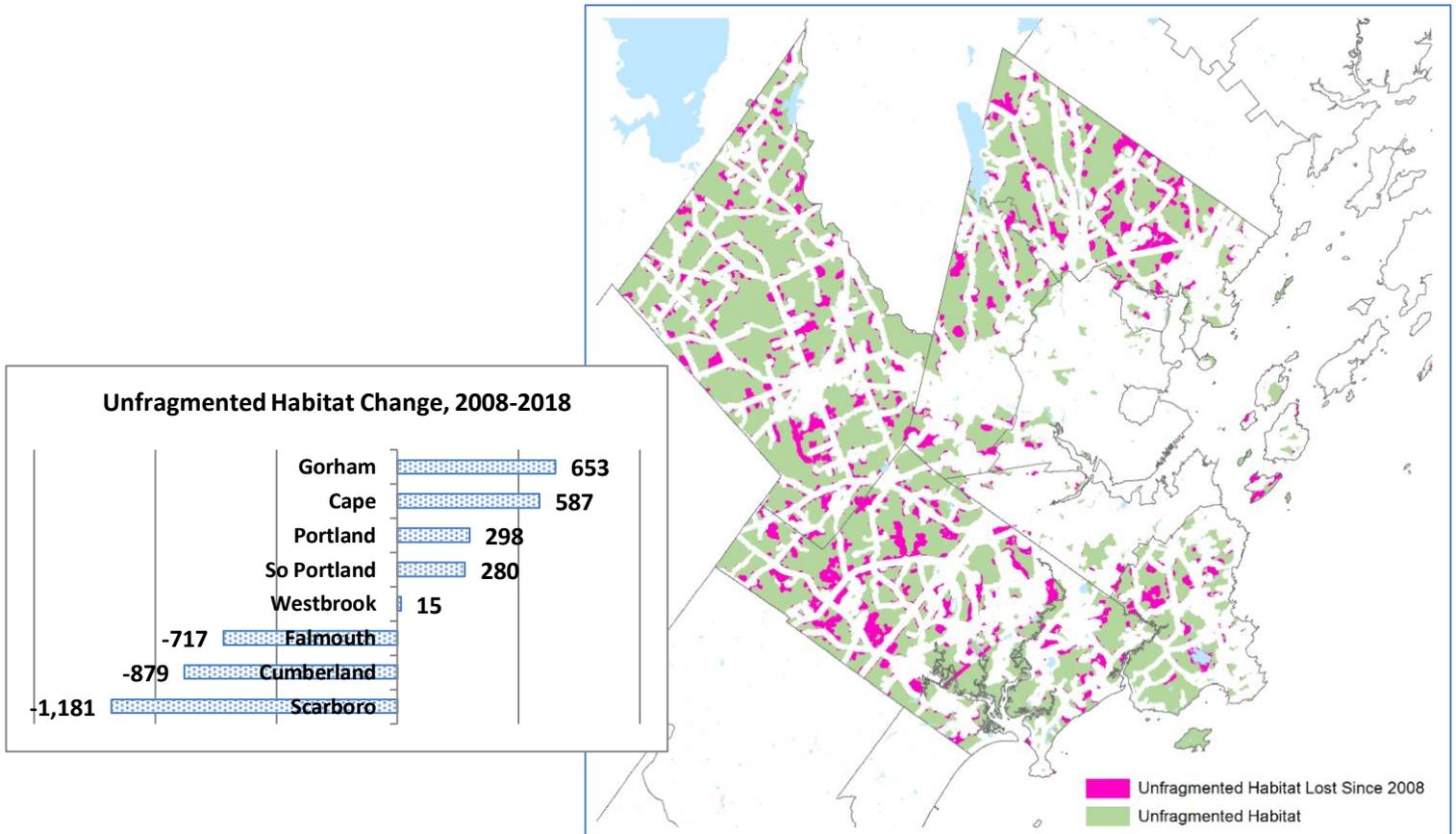
Note also that the per acre cost of land in Gorham is much less expensive than land in the urban area.

**Table 4: Residential Land Sale Prices, Under 5 acre parcels, 2017-2019**

Municipality	Residential land sales (<5 acres)	Acres	Per sale	Per acre
Cape Elizabeth	12	25.4	\$310,500	\$146,500
Falmouth	33	38.7	\$186,700	\$159,400
Gorham	35	59.1	\$99,700	\$59,100
Portland	45	22.1	\$129,200	\$263,300
Scarborough	38	49.6	\$120,800	\$92,600
South Portland	8	3.3	\$102,800	\$249,200
Westbrook	24	30.0	\$87,200	\$69,700
<b>Region</b>	<b>195</b>	<b>228.1</b>	<b>\$136,900</b>	<b>\$117,026</b>

The spreading out of growth is having a negative effect on open space and wildlife habitat. From 2008 to 2018, the Metro communities together lost a net of about 1,000 acres of unfragmented habitat.

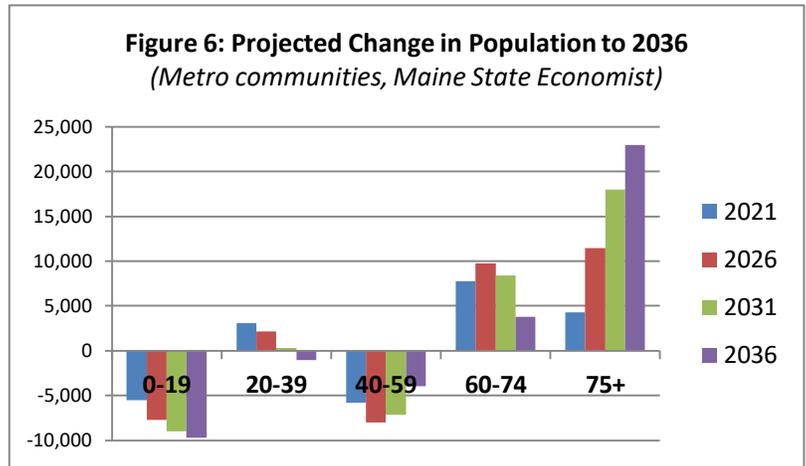
**Figure 5: Change in Unfragmented Habitat (source GPCOG)**



### C. Why Not Just Stop Growing?

If growth causes all of these problems, then why not stop growing? This choice was addressed by economists Michael LeVert and Catherine Reilly in Appendix A of the study *Greater Portland Tomorrow: Choices for Sustained Prosperity*<sup>3</sup>. LeVert and Reilly modeled the economic consequences of a policy that had *no new net in-migration* to Greater Portland between 2017 and 2034. What they found was that population would still grow by 1,700 due to natural increase – the excess of births over deaths.

Nevertheless, the labor force would drop by 15,400 – because a higher proportion of the population would then be elderly. Employment would drop by 14,600 – because there would not be enough workers for employers to create jobs. And municipal and state tax revenues from the region would drop precipitously – by \$53 million.



This is a future in which elementary schools are closing due to a lack of students; transportation services for air, mass transit, and roads, deteriorate; health care takes up an increasing share of local and state government budgets; parks and trails are not maintained; cultural institutions struggle to maintain activities.

**Table 5: No Growth Scenario Consequences in 2034**

No growth scenario	Change	
	Value	Percent
Population	+ 1,700	+ 0.7%
Labor Force	- 15,400	- 9.5%
Employment	- 14,600	- 9.4%
Earnings from Work	- \$694 million	- 9.4%
Tax Revenues	- \$53 million	- 9.4%

LeVert and Reilly also modeled the effects of the status quo – continuing in-migration at the rate now occurring. The status quo alternative is not much better than no-growth. It results in a 3% reduction in jobs, workforce, and tax revenues.

Finally, they modeled the effect of attracting an additional 1,500 new residents between the ages of 20 and 34 to the region each year. This was a totally different picture, and turned the equations around. The result is a net positive for jobs, income, and tax revenues.

<sup>3</sup> Barringer, McDonnell, O’Hara, *Greater Portland Tomorrow: Choices for Sustained Prosperity*, 2017; available online at <http://digitalcommons.usm.maine.edu/muskie>

**Table 6: The Effects in 2034 of 1,500 new 20-34 Year-old In-migrants Annually**

No growth scenario	Change	
	<i>Value</i>	<i>Percent</i>
Population	+ 42,000	+ 17.7%
Labor Force	+ 15,700	+ 9.7%
Employment	+ 14,900	+ 9.6%
Earnings from Work	+ \$498 million	+ 6.7%
Tax Revenues	+ \$38 million	+ 6.7%

***D. Can There Be Growth Without a Loss of Quality of Life?***

So we are confronted with a paradox. We need growth to continue to enjoy the quality of jobs, public services, and amenities offered by the region. However, in the current development pattern more growth means more cars, more traffic congestion, more driving around in circles to find a parking space, less open space and habitat, more carbon and climate change harm, and more expensive housing.

Is there a third way? Is there a way to have growth but at the same time create more open spaces, reduce the need for automobile travel, and provide housing at a price that local people could afford?

The answer is that there is a third way. But it means a whole different approach to zoning, transportation planning, and housing preferences. This is one that has been under development at the Greater Portland of Governments for the past ten years.

## **Part 2: An Integrated Approach to Housing Solutions**

The preceding section makes it clear that solutions for the affordable housing problem cannot be found in the absence of solutions for transportation and open space at the same time. It's not enough for each community to simply commit to building one or two "affordable projects" in the next decade. A more radical "systems" approach is needed.

Such a model has been under discussion in Southern Maine for the past ten years. It is called "Centers of Opportunity," and is described in a 2013 study by the Greater Portland Council of Governments.<sup>4</sup> This model is currently in development with PACTS Committees under the title of "Priority Centers and Corridors."

Here is how a "Center of Opportunity" is defined:

*"Centers of opportunity are places that are – or can be – highly competitive for the next generation of jobs and housing in Southern Maine. They are well positioned to tap into the market's desires for safe, livable, and walkable neighborhoods, with choices of housing and transportation. They will be the targets of focused investments in infrastructure to meet the needs of 21st century businesses and their workers."*

The PACTS study identified more than 160 potential town and neighborhood centers in southern Maine that could serve this function. The study then identified nine to serve as "pilot projects" for the concept – including Prides Corner in Westbrook, Mill Creek in South Portland, India Street in Portland, and Dunstan Corner in Scarborough.

What these centers have in common are:

- *Mixed use, with residential, commercial, and often civic or open space components – in different ratios based on the type of center*
- *Generally no more than a half-mile in diameter, or with the periphery of residences no more than a quarter-mile from the commercial spine or center;*
- *Utilities, telecommunications, and transportation infrastructure to support residential development, the demands of 21st century businesses, and easy movement by car, walking, bicycle, and in some instances transit within the center; and*
- *Connections between the centers by different modes of transportation. Travel from center to center is common, since, except for the most urban centers, most will not be self-contained or able to meet all the needs of those who live and work in them. Rather, the centers work in combination to meet a range of employment, shopping, service, and recreational needs.*

The planners worked with citizens in each community, and emerged with design concepts that would enable 1,200+ housing units and 1,000+ jobs in the four Metro communities working with the project (see Table 5).

---

<sup>4</sup> Richert et al, *Centers of Opportunity Pilot Projects*, GPCOG, 2013. See <http://sustainsouthernmaine.org/pilot-communities/>

**Table 7: Centers of Opportunity Planning results**

Municipality	Pilot Center	Acres	Potential new		
			Housing units	Commercial Square feet	Jobs
Scarborough	Dunstan Corner	112	500	150,000	300
Portland	India Street	57	550	180,000	350
South Portland	Mill Creek	38	120-240	85,0000 - 150,000	165 - 330
Westbrook	Pride's Corner	115	90 - 180	1650000 - 175,000	330 - 350
<b>Total</b>		<b>322</b>	<b>1,260 - 1,370</b>	<b>580,000 - 655,000</b>	<b>1,175 - 1,260</b>

**Figure 6: Citizen Plans for (clockwise from top right) Pride's Corner, Mill Creek, India Street, and Dunstan's Corner.**



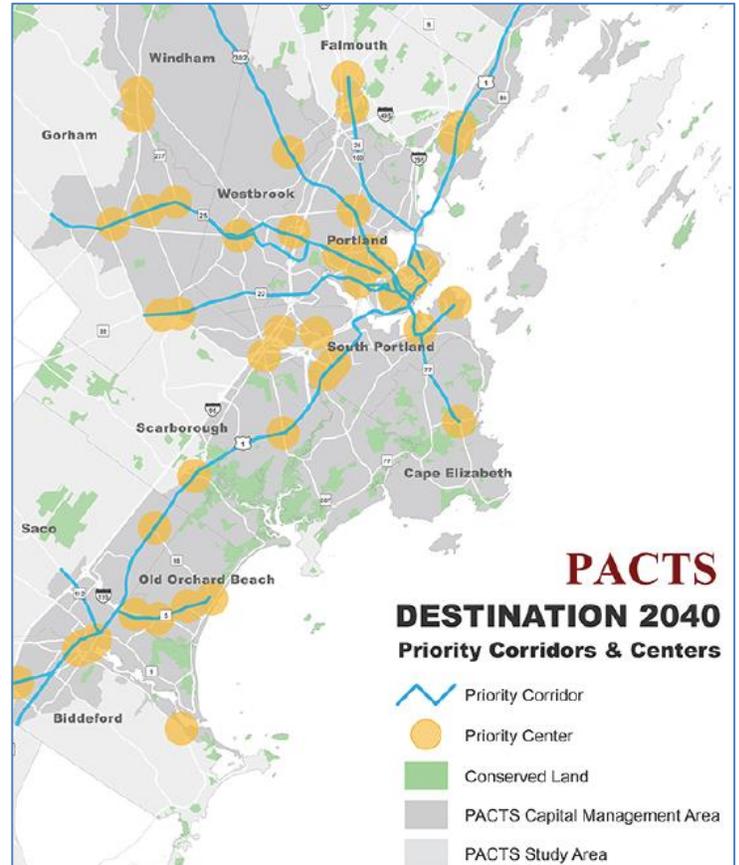
This concept has been picked up in the PACTS Destination 2040 Plan in its identification of priority corridors and centers. This means that public transportation corridors will be planned to connect these centers.

But the integrated approach will only work if higher-density housing is planned for and zoned for in the identified centers. For just as housing needs transportation, transportation needs housing at a sufficient density to generate passengers and make routes help to pay their way.

In addition, it will work best if the centers have housing appropriate to a range of incomes at each location.

This requires each municipality to:

- 1) **Rezone its potential centers of opportunity** to allow higher density residential housing and commercial housing. Preferably, this will be a community-initiated endeavor (as the “Centers of Opportunity” project was), and not a developer-initiated proposal.
- 2) **Make use of existing tools** to provide affordable rents and owner units within the project using a variety of tools:
  - a. The **State of Maine Affordable Housing Tax Increment Financing** tool allows municipalities to use the TIF tool to support housing that serves households with incomes up to 120% of median (in Greater Portland, this would be \$95,000). This is a vastly underused tool that can support middle income and working family housing without the need for any additional state or federal appropriations.<sup>5</sup>
  - b. Local **density bonus** ordinances such as that in the City of Portland<sup>6</sup> provide density bonuses of up to 2.5 times the base density, increased building heights, and decreased setbacks to developers who include workforce housing in their ordinances.
  - c. Make use of **subsidized housing and infrastructure** programs -- such as those from MaineHousing and the Federal Home Loan Bank Board and HUD and DECD – to lower development costs for the project.



It also requires the region – municipalities, Greater Portland COG, PACTS, the County – to collectively create (with the help of the state and federal governments) **new tools for regional infrastructure development**. The proposed new development pattern will require high upfront costs to create the transportation and utility infrastructure for new Centers of Opportunity. This will not be covered entirely by private or by local government investments. New external funding sources are needed.

<sup>5</sup> See <https://www.mainehousing.org/programs-services/housing-development/developmentdetails/affordable-housing-tax-increment-financing>

<sup>6</sup> See <https://www.portlandmaine.gov/2037/Affordable-Housing-Ordinance-Revisions>

### **Part 3: Conclusion and Recommendation**

This paper is an argument for viewing the affordable housing challenge in the context of a bigger picture – namely, that the current development pattern in Greater Portland is unsustainable, and will lead to a shrinking economy within the coming twenty years if it is not changed. The corollary is that affordable housing cannot be effectively developed in the absence of non-auto-based transportation alternatives, and public transportation can't survive without greater housing density. In the words of Portland Press Herald Editorial Page Editor Greg Kesich wrote, "Housing is a transportation issue (and vice versa)."<sup>7</sup>

What is the first step towards this new approach? We would suggest:

- 1) That each member of the Metro Coalition commit to planning the zoning and infrastructure planning needed to develop a new "Center of Opportunity" within the community, consistent with the PACTS-identified potential centers map. An Affordable Housing Tax Increment Financing District should be included within the proposed center.**
- 2) That the Greater Portland Council of Governments provide technical assistance to communities in this effort, and develop model zoning, infrastructure, and financing components.**
- 3) That PACTS funding formulas and METRO service plans be adjusted to prioritize mass transit services for new Centers of Opportunity.**
- 4) That the Greater Portland Council of Governments and Cumberland County collaborate to develop ideas for a new major infrastructure funding source for the region.**

---

<sup>7</sup> See <https://www.centralmaine.com/2019/07/14/greg-kesich-housing-is-a-transportation-issue-and-vice-versa/>

## Attachment 4

Excerpt from the Final Report by the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions, December 2021

Full Report can be accessed at <https://legislature.maine.gov/legislative-studies-130th-legislature/commission-to-increase-housing-opportunities-in-maine>.



State of Maine  
130th Legislature, First Regular/Special Session

**Commission to Increase Housing  
Opportunities in Maine by  
Studying Zoning and Land Use  
Restrictions**

---

**December 2021**

Office of Policy and Legal Analysis



**STATE OF MAINE  
130<sup>th</sup> LEGISLATURE  
FIRST REGULAR/SPECIAL SESSION**

**Commission to Increase Housing  
Opportunities in Maine by  
Studying Zoning and Land Use  
Restrictions**

**Staff:**

**Hillary Risler  
Samuel Prawer  
Deirdre Schneider  
Legislative Analysts  
Office of Policy & Legal Analysis  
13 State House Station  
Room 215 Cross Office Building  
Augusta, ME 04333-0013  
(207) 287-1670  
<http://legislature.maine.gov/opla>**

**Members:**

**Sen. Craig V. Hickman, Chair  
Spkr. Ryan M. Fecteau, Chair  
Sen. Matthew G. Pouliot  
Rep. Amy Arata  
Hannah M. Pingree  
Kate Dufour  
John Napolitano  
Heather Spalding  
Dana Totman  
Erin Cooperrider  
Cheryl Golek  
Madeleine Hill  
Anthony Jackson  
Jeff Levine  
Dan Brennan**

## Table of Contents

	Page
<b>Executive Summary</b> .....	i
<b>I. Introduction</b> .....	1
<b>II. Commission Process</b> .....	3
<b>A. First Meeting, August 12, 2021</b> .....	3
<b>B. Second Meeting, September 9, 2021</b> .....	4
<b>C. Third Meeting, September 16, 2021</b> .....	6
<b>D. Fourth Meeting, September 30, 2021</b> .....	8
<b>E. Fifth Meeting, October 7, 2021</b> .....	9
<b>F. Sixth Meeting, October 28, 2021</b> .....	10
<b>III. Background Information</b> .....	10
<b>IV. Recommendations</b> .....	13

### Appendices

- A. Authorizing Legislation: Resolve 2021, chapter 59
- B. Membership list, Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions
- C. Housing in Maine: An Overview presented by Peter Merrill, Deputy Director, MaineHousing
- D. 2021 Maine Housing Profile (Greg Payne, Maine Affordable Housing Coalition)
- E. Commission Memo with Suggested Resources
- F. Written Testimony presented by Mayor Jason Levesque, Auburn
- G. Written Testimony presented by Christine Grimando, City of Portland Director of Planning and Urban Development.
- H. Maine Municipal Association Workgroup August 30th Memo
- I. Land use policy and zoning: what we know and how we can do better – presentation materials from Matt Mleczko, September 16, 2021
- J. The Role of Race in Zoning: A History and Policy Review – presentation materials from Yonah Freemark, September 16, 2021
- K. A Brief History on Racism & Discrimination in Maine: 1630-1970 – presentation materials from Andy O’Brien, September 16, 2021
- L. Morgan Williams, General Counsel, National Fair Housing Alliance Presentation Outline

- M. State Level Laws that Impact Zoning and Land Use in Maine Quick Reference Guide and Memo on U.S. Supreme Court rulings regarding exclusionary zoning prepared by Office of Policy and Legal Analysis
- N. Memo on the demographic and housing profile for the State of Maine, Daniel Brennan, Director, MaineHousing
- O. Greater Portland Council of Governments Pilot Project Proposal
- P. Suggested Recommendations from Commission Member List
- Q. Proposed Framework from Commissioners Erin Cooperrider, Dana Totman and Jeff Levine
- R. Public Law 2021, chapter 270
- S. 130th Legislature, LD 1312, An Act To Remove Barriers to Accessory Dwelling Unites and Allow Accessory Dwelling Units where Single-family Houses Are Allowed
- T. 130th Legislature, House Amendment "A" to Committee Amendment "A" to H.P. 968, LD 1312, An Act To Remove Barriers to Accessory Dwelling Unites and Allow Accessory Dwelling Unites where Single-family Houses Are Allowed

## Executive Summary

The 130<sup>th</sup> Legislature established the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions (referred to in this report as the “commission”), with the emergency passage of Resolve 2021, chapter 59 (Appendix A). Pursuant to the resolve, 15 members were appointed to the commission: two members of the Senate appointed by the President of the Senate; two members of the House of Representatives appointed by the Speaker of the House of Representatives; the Director of the Maine State Housing Authority, or the director's designee; one member representing the Office of the Governor appointed by the Governor; four public members appointed by the President of the Senate including: one representing a statewide municipal association, one representing a statewide organization that advocates for affordable housing, one representing statewide agricultural interests, and one who is in the building trades; and five public members appointed by the Speaker of the House, including: one representing a regional planning association or a statewide organization that advocates for smart growth policies and projects, one representing the real estate industry, one who is a residential developer, one representing an organization that advocates for low-income or middle-income renters or homeowners, and one representing a local or statewide organization promoting civil rights that has racial justice or racial equity as its primary mission. A list of commission members can be found in Appendix B.

Pursuant to Resolve 2021, chapter 59, the commission was charged with the following duties:

1. Review data on housing shortages in the State for low-income and middle-income households;
2. Review state laws that affect the local regulation of housing;
3. Review efforts in other states and municipalities to address housing shortages through changes to zoning and land use restrictions;
4. Consider measures that would encourage increased housing options in the State, including but not limited to municipal incentives, state mandates, eliminating or limiting single-family-only zones and allowing greater housing density near transit, jobs, schools or neighborhood centers; and
5. Review and consider the historical role of race and racism in zoning policies and the best measures to ensure that state and municipal zoning laws do not serve as barriers to racial equality.

Over the course of seven meetings the commission developed the following recommendations:

**Recommendation #1. Allow accessory dwelling units by right in all zoning districts currently zoned for single-family homes.**

**Recommendation #2. Eliminate single-family zoning restrictions in all residential zones across the State by allowing up to four residential units on all lots, in compliance with**

any health and safety requirements such as minimum septic and lot sizes, with a sunrise clause to provide adequate time for municipalities to prepare for this change.

**Recommendation #3. Prohibit municipal growth caps on the production of new housing.**

**Recommendation #4. Provide technical and financial assistance for all communities seeking support in making zoning improvements and in identifying opportunities for increasing affordable housing.**

**Recommendation #5. Create density bonuses in all residential zones throughout the State, giving low to middle-income housing projects 2.5 times the density of the existing zone, with a parking requirement of no more than .66 spaces per unit for the additional units, and with the requirement that those units be protected as affordable for a specific period of time.**

**Recommendation #6. Create a three-year statewide incentive program for municipalities as follows: in Year 1, a qualifying community must make a commitment to reviewing zoning and land use restrictions. In Years 2 and 3, adopt zoning and land use policies to promote housing opportunities; qualifying communities would receive a state financial reward for up to three years, so long as they remain in good standing with the program requirements.**

**Recommendation #7. Create a system of priority development areas, where multi-family housing is permitted with limited regulatory barriers.**

**Recommendation #8. Strengthen Maine’s Fair Housing Act by eliminating the terms “character,” “overcrowding of land,” and “undue concentration of population” as legal bases for zoning regulations.**

**Recommendation #9. Create a state-level housing appeals board to review denials of affordable housing projects made at the local level.**

## **I. Introduction**

The 130<sup>th</sup> Maine Legislature established the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions (referred to in this report as the “commission”) with the emergency passage of Resolve 2021, chapter 59, sponsored by Speaker of the House of Representatives, Ryan Fecteau of Biddeford (Appendix A).

Pursuant to the resolve, 15 members were appointed to the commission: two members of the Senate appointed by the President of the Senate; two members of the House of Representatives appointed by the Speaker of the House of Representatives; the Director of the Maine State Housing Authority, or the director's designee; one member representing the Office of the Governor appointed by the Governor; four public members appointed by the President of the Senate including: one representing a statewide municipal association, one representing a statewide organization that advocates for affordable housing, one representing statewide agricultural interests, and one who is in the building trades; and five public members appointed by the Speaker of the House, including: one representing a regional planning association or a statewide organization that advocates for smart growth policies and projects, one representing the real estate industry, one who is a residential developer, one representing an organization that advocates for low-income or middle-income renters or homeowners, and one representing a local or statewide organization promoting civil rights that has racial justice or racial equity as its primary mission.

The chairs designated the first-named member of the Senate as the Senate chair and the first-named member of the House of Representatives as the House Chair. As such, Senator Craig Hickman served as the Senate Chair, and Speaker Ryan Fecteau served as the House Chair. A copy of the commission membership is attached (Appendix B).

The resolve authorized the commission to meet six times,<sup>1</sup> and set forth the following duties for the commission:

1. Review data on housing shortages in the State for low-income and middle-income households;
2. Review state laws that affect the local regulation of housing;
3. Review efforts in other states and municipalities to address housing shortages through changes to zoning and land use restrictions;
4. Consider measures that would encourage increased housing options in the State, including but not limited to municipal incentives, state mandates, eliminating or limiting single-family-only zones and allowing greater housing density near transit, jobs, schools or neighborhood centers; and

---

<sup>1</sup> Although the resolve authorized only six meetings, the commission requested, and was approved by Legislative Council, for an additional meeting and an extension of the report date until December 15, 2021.

5. Review and consider the historical role of race and racism in zoning policies and the best measures to ensure that state and municipal zoning laws do not serve as barriers to racial equality.

Over the course of seven meetings, the commission received several presentations relevant to its duties from state government agencies, municipal leaders, national experts, and stakeholders. The commission also heard from members of the public through public comment periods at each of its meetings, except the last meeting, and through the submission of written testimony.<sup>2</sup>

Maine is facing an affordable housing crisis, and this commission was established to undertake an extensive review of how to tackle the barriers to producing more affordable housing in this State, including the web of various zoning and land use ordinances and state laws that are preventing sensible projects – large and small – from coming to fruition. However, it is important to note that changes to zoning alone will not address the challenges of housing Maine residents. Zoning is one important aspect of an overall housing policy, but there are other important aspects as well. Zoning changes will help with affordability and equity, but they are only one policy initiative among many that will address these challenges. Throughout its work, the commission intentionally focused on the specific duties with which the commission was charged, but any discussion of zoning and land use restrictions necessarily includes discussion of broader issues of land use policy, regulations, and factors outside of zoning and land use restrictions that affect the availability of affordable housing in this State. Some of these additional issues, while not formally part of the commission’s recommendations, are included as additional considerations for the Legislature in Part V of this report.

The enabling legislation charged the commission with submitting a report of its findings and recommendations, including any suggested legislation, to the Joint Standing Committee on Labor and Housing by November 3, 2021, although this deadline was extended at the request of the commission and with the approval from Legislative Council to December 15, 2021.

## **II. Commission Process**

The commission held meetings on August 12, September 9, September 16, September 30, October 7, October 28, and December 2, 2021. All meetings were held in either a hybrid (remote and in-person) format or fully remote format and were open to the public. Each meeting also included a public comment period. Each meeting of the commission was also livestreamed via the Legislature’s YouTube page and the Legislature’s audio streaming service.

---

<sup>2</sup> Written public comments submitted to the commission are available here: <https://legislature.maine.gov/presentation-materials>.

## A. First Meeting, August 12, 2021<sup>3</sup>

The first meeting of the commission was held on August 12, 2021. The meeting began with commission member introductions, opening remarks, and comments and suggestions on some of the challenges and barriers to increasing housing opportunities in Maine. Each member of the commission also identified what that member would like to see accomplished through the commission's work. Legislative staff then provided an overview of the enabling legislation (Resolve 2021, chapter 59 in Appendix A), covering the duties, process and timeline for the commission's work.

During the remainder of the first meeting, the commission focused on the current state of housing in Maine, including by hearing from two presenters who provided a review of current data on housing shortages for low-income and middle-income households in the State. Peter Merrill, Deputy Director of Maine State Housing Authority, who served on the commission for the first meeting only as the Director of Maine State Housing Authority's designee, provided an overview of housing and rental affordability in Maine, which as a largely rural, sparsely populated state with modestly sized urban or service centers,<sup>4</sup> has seen flat population growth since 2000. Handouts from MaineHousing's presentation are included as Appendix C. Greg Payne, who at the time was serving as the Director of the Maine Affordable Housing Coalition, provided a closer look at the shortage of rental homes that are both affordable and available to extremely low-income households in Maine and provided statistics regarding income-to-cost ratios for housing in each county across the State. Handouts from Greg Payne's presentation are included as Appendix D. Additional background information on the overall state of housing in Maine is included in Section III of this report.

At times during this meeting, commission members referenced helpful resources, news articles, and reports that other commission members might find interesting and helpful to the commission's work. Staff assisted in compiling and updating the list of these resources throughout the commission's work, which is included as Appendix E.

The commission then held a public comment period during which members of the public were invited to provide input on current challenges and barriers to increasing housing options in the State. The commission heard from: Mal Carey; George Rheault; Deborah Ibonwa, Maine Equal Justice; Doug Dunbar; Bridget Quinn, American Association of Retired Persons; Nick Murray, Maine Policy Institute; and Roberta Manter.

---

<sup>3</sup> The archived YouTube video of the August 12<sup>th</sup> meeting is available at the following link:

[https://www.youtube.com/watch?v=Z6uF\\_o32ycg](https://www.youtube.com/watch?v=Z6uF_o32ycg); the audio archive is available at:  
<https://legislature.maine.gov/Audio/#228?event=84846&startDate=2021-08-12T13:00:00-04:00>

<sup>4</sup> A service center community means a municipality or group of municipalities identified by the Department of Agriculture, Conservation and Forestry according to a methodology established by rule that includes 4 basic criteria, including level of retail sales, jobs-to-workers ratio, the amount of federally assisted housing and the volume of service sector jobs. 30-A MRSA §4301(14-A)

Topics of discussion at this meeting varied considerably as members of the public and commission members raised several areas of interest, goals, concerns, and barriers to increasing housing opportunities in Maine. Topics included, but were not limited to:

- Impacts of COVID-19 on housing availability and affordability;
- The rise in the average median housing cost from 2020 to 2021;
- The rate of housing costs and rent increases as compared to the rate of income increases;
- The racial history and impact of the law and policies that resulted in zoning laws and the availability of affordable housing;
- Reduction of housing supply and household size;
- Wait times and ability to utilize affordable housing vouchers;
- Credit score, background, and income barriers to housing;
- The relationship between local housing authorities and landlords;
- Data on seasonal housing versus year-round housing;
- Preferences for renting versus homeownership;
- How zoning can delay or block housing developments from being considered;
- Financing and infrastructure issues related to housing; and
- The impact of tax credits on housing affordability.

## **B. Second Meeting, September 9, 2021<sup>5</sup>**

The second meeting of the commission was held on September 9, 2021. The commission heard from a panel of municipal decision-makers on their experiences with affordable housing challenges and efforts in their respective municipalities to address housing shortages through changes to zoning and land use restrictions. The commission felt it was important to hear from a variety of municipalities covering both the urban and rural parts of the State, as well as southern and northern regions, as the needs of municipalities vary throughout the State. Accordingly, the panel consisted of:

- Jean-Marie Caterina, Councilor, Scarborough;
- Jason Levesque, Mayor, Auburn;
- Andrea Powers, Manager, Fort Fairfield; and
- Christine Grimando, Planning and Urban Development Department, Portland.

Key points of the presentations and questions from the commission included:

- The lack of affordable housing in Southern Maine;
- The need for monetary incentives for the production of affordable and workforce housing, as there are developers who want to build affordable housing, but cannot afford to do so;

---

<sup>5</sup> The archived YouTube video of the September 9<sup>th</sup> meeting is available at the following link: <https://www.youtube.com/watch?v=GSzDeEHSYKg>; the audio archive is available at: <https://legislature.maine.gov/Audio/#228?event=84857&startDate=2021-09-09T13:00:00-04:00>

- Recent initiatives discussed or implemented in Auburn, such as changing the definition of housing from “affordable” to “attainable,” eliminating commercial parking requirements, and eliminating exclusive zoning that segregated multi-unit housing into one area;<sup>6</sup>
- Manufactured scarcity, and how changing “affordable” to “attainable” wouldn’t prioritize the people most impacted in the housing crisis;
- A proposal to amend Maine’s Municipal Revenue Sharing formula to shelter the value of new affordable housing units;
- Recent initiatives discussed or implemented in Portland, such as adjusting dimensional standards for certain residential and business zones, exploring inclusionary zoning requirements, a new ordinance for accessory dwelling units, adopting more flexible parking standards, establishing density and height bonuses and permit fee reductions, and creating mechanisms to fund housing trusts;<sup>7</sup>
- What housing shortages and the “housing crisis” look like and how that can differ in different parts of the state (for example, in areas with limited space for building new affordable housing and in areas with aging properties);
- The importance of home rule authority, the balance of state mandates and local control, and a recognition that municipalities cannot be relied upon to implement policy changes without resources and funding;
- That no single tool will address all municipal needs and there must be a multiplicity of options proposed for addressing each issue;
- How to encourage diversity in housing, which is just as essential as dedicated affordable and workforce housing projects; and
- The need for community education and ongoing, robust community dialog about the need for change.

The commission also received a memorandum from the Maine Municipal Association’s Affordable, Senior and Workforce Housing Working Group, which highlights the fact that municipal leaders are keenly aware of the housing crisis and the opportunities that exist to amend local ordinances, state statutes, and rules to make zoning more inclusive and accessible.<sup>8</sup> The memorandum also noted the challenges, resources and solutions, which should be considered in attempting to solve the housing crisis.

Following the panel discussion, the commission held a public comment period. The commission heard from the following: Cynthia Dill; Eamonn Dundon, Portland Regional Chamber of Commerce; and George Rheault.

---

<sup>6</sup> For more information on Auburn’s work to increase affordable housing, *see* Jason Levesque’s written testimony, included as Appendix F.

<sup>7</sup> For more information on Portland’s work to increase affordable housing, *see* Christine Grimando’s written testimony included as Appendix G.

<sup>8</sup> See Appendix H for the memorandum from the Maine Municipal Association’s Affordable, Senior and Workforce Housing Working Group.

### C. Third Meeting, September 16, 2021<sup>9</sup>

The third meeting of the commission was held on September 16, 2021. The focus of this meeting was to review and consider the role of race and racism in zoning policies and the best measures to ensure that state and municipal zoning laws do not serve as barriers to racial equality. Prior to the meeting, the commission reached out to experts in this field, many at the suggestion of commission members. Ultimately, the commission heard presentations from:

- Matt Mleczo, Graduate Research Assistant, The Eviction Lab at Princeton University;<sup>10</sup>
- Yonah Freemark, Senior Research Associate, The Urban Institute;<sup>11</sup>
- Andy O'Brien, Communications Director, Maine AFL-CIO;<sup>12</sup> and
- Morgan Williams, General Counsel, National Fair Housing Alliance.<sup>13</sup>

During these presentations, the commission heard how zoning is a key tool that governments use to regulate land use and building form and about the following main elements of zoning: the zoning map and text, requirements and incentives, flexibility measures, administration, and procedures. The commission also heard that, in context, these elements fit inside broader state and federal regulations, the real estate market, and societal trends as a whole.

The commission also heard about the history of the earliest zoning laws, which segregated by race, and how exclusionary zoning disproportionately affects people of color. There is also evidence that exclusionary zoning inflates housing prices, exacerbates regional income inequality, and helps establish and maintain segregation. Limited evidence shows that “upzoning,” which typically amends zoning codes to increase density, relax height restrictions, or both, can result in higher densities and more housing supply but can also lead to higher short-term housing costs and increase the odds that a neighborhood becomes less diverse.

The commission also received information about the use of inclusionary zoning and impact fees to combat exclusionary zoning. As heard during the presentation, some economists view inclusionary zoning and impact fees as a tax on development, which raises housing prices and reduces supply, but can also produce more affordable housing and be a mechanism to increase residential integration via mixed-income developments.

In addition to the national experts, the commission received a brief history on racism and discrimination in Maine, including the examples of the forcible eviction of the mixed-race community of Malaga Island and the free black farming communities formed by Black Revolutionary War Veterans in Warren and Machias in the 1780s.

---

<sup>9</sup> The archived YouTube video of the September 16<sup>th</sup> meeting is available at the following link: <https://www.youtube.com/watch?v=C-Nh9e1JgZM>; the audio archive is available at: <https://legislature.maine.gov/Audio/#228?event=84887&startDate=2021-09-16T13:00:00-04:00>

<sup>10</sup> Matt Mleczo’s presentation materials are included as Appendix I.

<sup>11</sup> Yonah Freemark’s presentation materials are included as Appendix J.

<sup>12</sup> Andy O’Brien’s presentation materials are included as Appendix K.

<sup>13</sup> Morgan Williams’ presentation materials are included as Appendix L.

In the search for solutions, suggestions from presenters included: cutting bureaucratic red tape by streamlining municipal review and reducing discretion, allowing increased density, considering measures such as inclusionary zoning, density bonuses, eliminating parking requirements, and disposition of public land.

To ensure that state and municipal zoning laws do not serve as barriers to racial equality, presenters also recommended recentering race in zoning policy through rigorous enforcement of state and federal fair housing laws; renewed commitment to public subsidies; robust community engagement; regional approaches and state oversight; improved data, metrics and accountability; and the implementation of a state-level fair housing agency, board or other entity.

The final presenter, Morgan Williams, in particular focused specifically on four potential solutions:

- Affirmatively furthering fair housing;<sup>14</sup>
- Zoning and land use measures;
- Race-conscious housing programs; and
- Fair Housing Centers.<sup>15</sup>

These presentations also touched on some of the efforts in other states and municipalities to address housing shortages through changes to zoning and land use restrictions, including those in California (SB9),<sup>16</sup> Connecticut (Public Act 21-29),<sup>17</sup> Oregon (SB 2001),<sup>18</sup> Massachusetts (40B)<sup>19</sup> and Minneapolis, Minnesota.

---

<sup>14</sup> The federal Fair Housing Act includes a mandate that executive agencies and departments of the federal government and recipients of federal funds from the U.S. Department of Housing and Urban Development (“HUD”) further the Fair Housing Act’s policies and purposes. “Generally, in administering programs and activities relating to housing and community development, the federal government, HUD, and its recipients must: determine who lacks access to opportunity and address any inequity among protected class groups; promote integration and reduce segregation; and transform racially or ethnically concentrated areas of poverty into areas of opportunity.” [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/affh](https://www.hud.gov/program_offices/fair_housing_equal_opp/affh), HUD’s 2015 Affirmatively Furthering Fair Housing rule was indefinitely suspended in 2018, but an interim final rule was published on June 10, 2021. *See* <https://www.federalregister.gov/documents/2021/06/10/2021-12114/restoring-affirmatively-furthering-fair-housing-definitions-and-certifications>.

<sup>15</sup> The Fair Housing Initiative Program (FHIP), provides funding to organizations and other nonprofits to assist people who believe they have been victims of housing discrimination. The FHIP includes four initiatives, three of which provide funds through competitive grants to eligible organizations. The four initiatives of the FHIP are the Fair Housing Organizations Initiative, The Private Enforcement Initiative, the Education and Outreach Initiative, and the Administrative Enforcement Initiative. *See* [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/partners/FHIP](https://www.hud.gov/program_offices/fair_housing_equal_opp/partners/FHIP). Mr. Williams noted that full service fair housing centers are those that provide the full service of fair housing investigations and enforcement, but specified that he did not think that Pine Tree Legal provides that full service; however, in 2021 Pine Tree Legal was the recipient of grant funding under the Private Enforcement Initiative of the FHIP. Mr. Williams also provided a link with a list to all of the other states with Fair Housing centers: <https://nationalfairhousing.org/get-local-help/>.

<sup>16</sup> *See* [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB9](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB9)

<sup>17</sup> *See* <https://www.cga.ct.gov/2021/act/pa/pdf/2021PA-00029-R00HB-06107-PA.pdf>

<sup>18</sup> *See* <https://www.oregon.gov/lcd/UP/Pages/Housing-Choices.aspx>

<sup>19</sup> *See* <https://www.mass.gov/chapter-40-b-planning-and-information>

Following the presentations, the commission held a public comment period. The commission heard from the following: Zuri Rashad; Lado Lodoka; Timothy Wells, Greater Portland Community Land Trust; and Joby Thoyalil, Maine Equal Justice Partners.

#### **D. Fourth Meeting, September 30, 2021<sup>20</sup>**

The fourth meeting of the commission was held on September 30, 2021. After commission member introductions, legislative staff provided the commission a general overview of the laws governing zoning and land use regulation, including but not limited to those contained in Title 30-A of the Maine Revised Statutes, the state's Mandatory Shoreland Zoning laws,<sup>21</sup> an overview of the federal Fair Housing Act<sup>22</sup> and its Maine counterpart,<sup>23</sup> and a brief summary of some of the major court decisions regarding exclusionary zoning and other fair housing laws.<sup>24</sup>

The commission also invited representatives of state agencies whose purview includes zoning and land use issues to answer questions from the commission, including:

- Nick Livesay, Director, Bureau of Land Resources, Maine Department of Environmental Protection;
- Judith East, Executive Director, Land Use Planning Commission, Maine Department of Agriculture, Conservation, and Forestry;<sup>25</sup>
- Michael Allen, Associate Commissioner for Tax Policy, Department of Administrative and Financial Services;
- Deborah Johnson, Director, Maine Department of Economic and Community Development; and
- Richard McCarthy, Assistant State Fire Marshal, Department of Public Safety, Office of State Fire Marshall.

Commission member and Director of MaineHousing, Dan Brennan also provided the commission with a memorandum describing the demographic and housing profile of the State.<sup>26</sup>

Following the presentations provided by staff and the commission's opportunity to ask questions of the state agency representatives, the commission held a public comment period. The

---

<sup>20</sup> The archived YouTube video is available at the following link: <https://www.youtube.com/watch?v=maOaqHj6lfk>; the audio archive is available at: <https://legislature.maine.gov/Audio/#228?event=84903&startDate=2021-09-30T13:00:00-04:00>

<sup>21</sup> See 38-A MRSA §§435-448.

<sup>22</sup> An overview of the federal Fair Housing Act (FHA) published by the Congressional Research Service in 2016 can be found here: <https://crsreports.congress.gov/product/pdf/RL/95-710>

<sup>23</sup> See 5 MRSA §§ 4581-4583.

<sup>24</sup> A copy of legislative staff's presentations is included as Appendix M.

<sup>25</sup> On November 3, 2021, Judith East was announced as the new director of the Department of Agriculture, Conservation and Forestry's Bureau of Resource Information and Land Use Planning.

<sup>26</sup> A copy of the demographic and housing profile is included in Appendix N.

commission heard from the following: Kristina Egan, Greater Portland Council of Governments;<sup>27</sup> and George Rheault.

Prior to the conclusion of the fourth meeting, the commission chairs requested that each commission member compile and submit a list of proposed recommendations for discussion and review at the fifth meeting.

#### **E. Fifth Meeting, October 7, 2021<sup>28</sup>**

The fifth meeting of the commission was held on October 7, 2021. After commission member introductions, Senator Hickman opened the meeting for a public comment period. The commission heard from: Julia Basset Schwerin, Agents for the Built Environment; Eamonn Dundon, Portland Regional Chamber of Commerce; and George Rheault.

Following public comment, staff reviewed the commission's activities to date. At the September 30<sup>th</sup> meeting, the commission had been tasked with providing suggested lists of recommendations, which were then compiled into a single document by topic. This list was not intended to represent the entire universe of suggestions open for discussion, but rather an outline to help guide the commission's discussions and help the commissioners see how others were approaching the commission's work. Suggested recommendations and clarifications on certain recommendations that were provided during and after the October 7<sup>th</sup> meeting were also incorporated into the final, comprehensive list of potential recommendations, which is included as Appendix P.

The commission discussed many of the suggested recommendations submitted by members including, but not limited to those relating to accessory dwelling units, single and multi-family zoning, fair housing practices, and technical assistance for municipalities.

Over the course of the commission's discussion, it became clear that commission members were not comfortable voting on any of the suggested recommendations. Instead, they decided that they needed an additional meeting to complete their duties. Speaker Fecteau moved that the commission request authorization from Legislative Council for an additional meeting and extended deadline which was seconded by Commissioner Pingree. The commission unanimously voted in favor of the motion, and the request was ultimately granted by Legislative Council.

---

<sup>27</sup> During Kristina Egan's comments, Senator Hickman requested that the Greater Portland Council of Governments work with regional agency colleagues across the state to develop a proposal and budget regarding how the state can support municipalities with technical assistance. That proposal was provided to the commission for their October 28<sup>th</sup> meeting and is included as Appendix O. This proposal is discussed more fully in Part III, Recommendation # 6.

<sup>28</sup> The archived YouTube video of the October 7<sup>th</sup> meeting is available at the following link:

[https://www.youtube.com/watch?v=nUcD8IRKN\\_I](https://www.youtube.com/watch?v=nUcD8IRKN_I); the audio archive is available at:

<https://legislature.maine.gov/Audio/#228?event=84921&startDate=2021-10-07T13:00:00-04:00>

Following additional discussion of proposed recommendations, the meeting concluded with a discussion of next steps, including moving towards final recommendations and drafting the report.

#### **F. Sixth Meeting, October 28, 2021<sup>29</sup>**

The sixth meeting of the commission was held on October 28, 2021. After commission member introductions, Speaker Fecteau opened the meeting for the final public comment period. The commission received public comment from George Rheault.

Following public comment, Speaker Fecteau resumed the discussion of the suggested recommendations from commission members, focusing on the recommendations that had not been addressed at the previous meeting, including but not limited to: incentive programs such as density bonuses; housing trusts; priority development areas; fees; income requirements; and lot size and parking requirements.

After concluding its overview of the suggested recommendations, the commission also reviewed a proposed recommendation framework submitted by commission members Erin Cooperrider, Jeff Levine, and Dana Totman, which is included as Appendix Q. The commission then began substantive discussion and took preliminary votes on which recommendations the commission wanted to include in its final report.

#### **G. Seventh Meeting, December 2, 2021<sup>30</sup>**

At its seventh and final meeting on December 2, 2021, the commission reviewed a draft commission report as well as comments, questions, and feedback on the draft report that had been submitted by members prior to the meeting. The information regarding the substantive discussions, votes, and recommendations are included in the Recommendations section of this report.

### **III. Background Information<sup>31</sup>**

Maine is currently facing an affordable housing crisis, which has been exacerbated by the recent COVID-19 pandemic. Maine is a largely rural, sparsely populated state, with modestly sized urban or service centers, and while population in the United States is growing, the population growth rate in Maine and New England has been flat since 2000. In most areas of Maine, the population is also aging, with adults over age 65 likely to comprise 30% of the State's population

---

<sup>29</sup> The archived YouTube video of the October 28<sup>th</sup> meeting is available at the following link: <https://www.youtube.com/watch?v=bF-OQUK3pFA>; the audio archive is available at: <https://legislature.maine.gov/Audio/#202?event=84959&startDate=2021-10-28T11:30:00-04:00>.

<sup>30</sup> The archived YouTube video of the December 2<sup>nd</sup> meeting is available at the following link: <https://www.youtube.com/watch?v=nvDQ2X5Sc7U>; the audio archive is available at: <https://legislature.maine.gov/Audio/#202?event=85025&startDate=2021-12-02T13:00:00-05:00>.

<sup>31</sup> The data referenced in this section derives from several sources, specifically: the U.S. Census, MaineHousing, or the 2019 American Community Survey (ACS) 1-Year Estimates, and was provided to the commission by MaineHousing. See Appendices C, D, and N.

by 2030. However, some pockets of the State, especially Southern and coastal counties, are growing – some are even getting younger. To further complicate matters, there has been a continued shift toward non-family and smaller family households, with Maine currently ranked the third lowest in average household size and second lowest among owned units in the United States. Due in part to the COVID-19 pandemic, the supply of homes for sale is at a record low and low interest rates and the recent surge in home buying have significantly reduced the supply of affordable homes.<sup>32</sup> Maine also has the eighth oldest housing stock in the nation.

Statewide, 72% of occupied housing units are owned and 28% are rented. Prior to the COVID-19 pandemic, growth in rental units was outpacing those that are owned. However, the pandemic has affected housing preferences and home buying has increased sharply. The pandemic has also caused a shift in rental needs, from a pre-pandemic preference for living near urban areas, coastal counties, and the I-95 corridor, to a new preference for increased access to broadband. It is not yet clear whether these are trends that will continue beyond the pandemic.

In 2020, the median home price in Maine was \$256,000, a 14% increase over 2019, and the number of housing units sold in the same year was 19,921, a 10% increase. This median home price is unaffordable for median income households in all Maine counties except Aroostook, Kennebec, Penobscot, Piscataquis, Somerset and Washington counties.

The median rental is also unaffordable for median income households in all Maine counties except Franklin County.<sup>33</sup> Of the renters, 49.1% are cost-burdened, paying more than 30% of their income on housing, and approximately 37,245 renter households are extremely low income. Of those extremely low income renters, 16% are paying more than 50% of their income on housing and 54% have substandard housing, which is defined as lacking complete plumbing or kitchen facilities. Additionally, black or African American households are the only racial identity more likely to rent (70%) than own (30%). In Maine, renter households also have a median household income of \$25,103, 51% below homeowner households at \$71,913 - which helps explain the greater need for rental housing assistance.

Zoning and land use restrictions are key tools that governments use to regulate land use and production of housing, and they have a direct impact on the availability of housing and the ability of states and municipalities to increase housing opportunities. Federal, state, and local laws, regulations, and ordinances all play a role in zoning and land use.

As the commission heard during its third meeting, some of the earliest zoning laws explicitly segregated by race. Other early zoning codes, while purportedly addressing the perception that closely-knit communities were bad for health and that there were negative impacts of living near industrial uses, were actually implemented with racist motivations. Anti-density standards and single-family zoning, and restrictive covenants, were often used to prevent people of color from living in certain neighborhoods.

---

<sup>32</sup> Indeed, on average only 230 new affordable housing units are produced in Maine each year.

<sup>33</sup> The median two-bedroom rental in Maine costs \$1,062 per month.

A common term used to describe some of these practices is “exclusionary zoning,” which relates to restrictive land use and zoning policies meant to exclude certain uses of land and, in effect, persons of low or moderate income from a municipality. The exclusionary zoning policies are often accomplished through low-density regulation, large minimum lot sizes, parking requirements, height restrictions, explicit population growth controls, and sometimes excessive bureaucratic procedures and delays.<sup>34</sup> These exclusionary zoning laws have disproportionately affected people of color.

In 1968, the federal government enacted the Fair Housing Act “to provide, within constitutional limitations, for fair housing throughout the United States.” The Fair Housing Act prohibits discrimination on the basis of race, color, religion, sex, handicap, familial status, or national origin, and applies broadly to all sorts of housing, both public and private, including single family homes, apartments, condominiums, and mobile homes. The Fair Housing Act also includes a mandate that executive agencies and departments of the federal government and recipients of federal funds from the U.S. Department of Housing and Urban Development (“HUD”) further the Fair Housing Act’s policies and purposes. “Generally, in administering programs and activities relating to housing and community development, the federal government, HUD, and its recipients must: determine who lacks access to opportunity and address any inequity among protected class groups; promote integration and reduce segregation; and transform racially or ethnically concentrated areas of poverty into areas of opportunity.” This concept is generally referred to as affirmatively furthering fair housing.

At the state level, the Maine’s Human Rights Act also includes a subchapter on fair housing and provides that “the opportunity for an individual to secure housing in accordance with the individual’s ability to pay, and without discrimination because of race, color, sex, sexual orientation or gender identity, physical or mental disability, religion, ancestry, national origin or familial status ... is hereby recognized as and declared to be a civil right.”<sup>35</sup> During the last legislative session, the Legislature also enacted Public Law 2021, chapter 270, An Act to Preserve Fair Housing in Maine, effective October 18, 2021, which provides that “[t]he Maine State Housing Authority shall, to the extent consistent with federal law, ensure that any Maine State Housing Authority funding or any state or local funding is used in a manner that will affirmatively further fair housing in this State.” “Affirmatively further fair housing means to engage actively in efforts to address barriers to and create opportunities for full and equal access to housing without discrimination on the basis of race, color, sex, sexual orientation or gender identity, physical or mental disability, religion, ancestry, national origin, familial status or receipt of public assistance.”<sup>36</sup>

---

<sup>34</sup> See Matt Mleczko’s presentation materials, included as Appendix I. It is important to note that “inclusionary zoning,” which is the provision of below-market rate units alongside market-rate units (usually 20%) through either incentives or mandates is not necessarily the converse of exclusionary zoning.

<sup>35</sup> 5 MRSA §4581.

<sup>36</sup> P.L. 2021, ch. 270, §3 (enacting 30-A MRSA, §4741(20)). The law also directs Maine State Housing Authority to submit a report to the Joint Standing Committee on Labor and Housing no later than January 15, 2022 on the

While there are other State laws affecting zoning and land use restrictions, including but not limited to minimum lot sizes,<sup>37</sup> municipal boards of appeals,<sup>38</sup> municipal growth management and zoning,<sup>39</sup> enforcement of land use regulations,<sup>40</sup> and mandatory shoreland zoning,<sup>41</sup> one major principle of local zoning and land use regulation is derived from municipal home rule authority.

In 1969, Maine granted municipal home rule authority by adopting a provision to the Maine Constitution, which provides that “[t]he inhabitants of any municipality shall have the power to alter and amend their charters on all matters, not prohibited by the Constitution or general law, which are local and municipal in character.”<sup>42</sup> Accordingly, a municipality may freely adopt ordinances unless the ordinance conflicts with or is preempted by state or federal law.

Accordingly, Maine’s statutory scheme, when read in conjunction with the municipal home rule authority granted by the Maine Constitution, gives municipalities in Maine wide latitude to enact ordinances, so long as these ordinances do not prevent the efficient accomplishment of a defined state purpose.<sup>43</sup> However, this does not mean that the State cannot enact legislation requiring municipalities to adopt local ordinances consistent with state policy. One example is the mandatory shoreland zoning laws in the Maine Revised Statutes, Title 38 – this is an instance in which the state required local municipalities to adopt ordinances consistent with state law.

It is under this framework that this commission has been tasked with increasing housing opportunities in the State by studying zoning and land use restrictions, while also acknowledging that access to housing is a right and that everyone should have the right to safe, affordable housing, especially people who have been subject to a history of discriminatory practices.

#### **IV. Recommendations**

The commission was charged with studying the impact of zoning and land use restrictions on the availability of housing opportunities in Maine and was required to submit a report with its findings and recommendations, including any suggested legislation, to the Joint Standing Committee on Labor and Housing.

As summarized in Part II of this report, the commission met seven times in the development of these recommendations, engaged in robust discussions on the numerous issues related to, and the

---

development of a plan to ensure funds are used to affirmatively further fair housing in this State. The full text of P.L. 2021, ch. 270 is included as Appendix R.

<sup>37</sup> 12 MRSA §§4807 to 4807-G.

<sup>38</sup> 30-A MRSA §2691.

<sup>39</sup> 30-A MRSA §§4301-4371.

<sup>40</sup> 30-A MRSA §§4451-4453.

<sup>41</sup> 38 MRSA §§435-448.

<sup>42</sup> Me. Const. art. VIII, pt. 2, § 1; see also 30-A MRSA §§2101-2109

<sup>43</sup> See *Smith v. Town of Pittston*, 2003 ME 46, ¶ 24, 820 A.2d 1200.

impact of, zoning and land use restrictions on the availability of housing opportunities in Maine, and to hear from experts, state agencies, and members of the public in relation to each duty set forth in the commission's enabling legislation.

One theme that carried throughout these discussions was the necessity of achieving the appropriate balance between state mandates on municipalities and preserving local control under Maine's home rule authority.<sup>44</sup> However, as evidenced by the Legislature's passage of the enabling legislation of this commission, some zoning and land use restrictions have historically, and continue, to act as barriers to increasing housing opportunities in this State

To achieve the right balance between state mandate and local control, throughout the development of its recommendations, the commission specifically stresses the need to tie mandates on municipalities to the provision of technical and financial assistance to enable municipalities to successfully implement the legal changes, policies, and programs contemplated by the commission. As is discussed more thoroughly in Recommendation #4, it is important that, in considering methods of providing technical and financial assistance for municipalities, the Legislature consider how municipal needs vary and that an approach that works in some municipalities may not be successful in others. Furthermore, based on the complexity of some of these recommendations, the Legislature may wish to consider including sunrise clauses in legislation implementing these recommendations to allow municipalities sufficient time to plan for these critical, but difficult changes.

As has been previously noted, the full list of suggested recommendations proposed and considered by commission members is included in this report as Appendix P.

**Recommendation #1. Allow accessory dwelling units by right in all zoning districts currently zoned for single-family homes. (Vote 15-0)<sup>45</sup>**

The commission unanimously recommends allowing accessory dwelling units (also known as ADUs) by right in all zoning districts currently zoned for single-family homes. An ADU is currently defined in Maine law as a self-contained dwelling unit located within, attached to or detached from a single-family dwelling unit located on the same parcel of land.<sup>46</sup>

In addition to adopting this recommendation, the commission discussed at length whether to move forward with a recommendation related to LD 1312, *An Act to Remove Barriers to Accessory Dwelling Units and Allow Accessory Dwelling Units where Single-family Houses Are*

---

<sup>44</sup> Constitution of Maine, Article VII, Part Second, section 1; 30-A MRSA §3001.

<sup>45</sup> Support: Senator Craig Hickman, Speaker Ryan Fecteau, Senator Matthew Pouliot, Representative Amy Arata, Dan Brennan, Hannah Pingree, Kate Dufour, Dana Totman, Heather Spalding, John Napolitano, Jeff Levine, Madeleine Hill, Erin Cooperrider, Cheryl Golek, Anthony Jackson

<sup>46</sup> 30-A MRSA §4301(1-C).

*Allowed* (Appendix S). which was considered by the Joint Standing Committee on Labor and Housing during the First Special Session of the 130<sup>th</sup> Legislature.

The Joint Standing Committee on Labor and Housing unanimously voted LD 1312 “Ought To Pass As Amended,” but there was some confusion regarding the version passed in committee and it was subsequently further amended on the floor. LD 1312, as amended by House Amendment “A” to Committee Amendment “A” (Appendix T). was placed on the Special Appropriations Table and carried over to the 130<sup>th</sup> Legislature, Second Regular Session.

Although commission members generally support increasing the allowances for ADUs, as evidenced by this recommendation, there are concerns about the current language of LD 1312, as it appears on the Special Appropriations Table. One concern is whether LD 1312, as amended, would allow municipalities to essentially block ADUs by circumventing the ADU requirement through minimum lot size or other locally adopted ADU land use restrictions. Some commission members expressed greater support for the bill as originally drafted, rather than the amended version because the original version explicitly lays out the prohibited requirements. Conversely, other commission members are concerned that this bill will impose a mandate on local municipalities and ultimately function as a greater restriction on municipalities. These commission members would prefer to give communities wider latitude to implement land use regulations that impact the scale, location and environmental impacts of ADUs.<sup>47</sup>

Accordingly, the commission decided not to endorse LD 1312 specifically, but unanimously agreed that ADUs should be permitted by right in all districts zoned for single-family housing.

The commission also recognizes that there may be overlap between Recommendation #1 and Recommendation #2, which is described below. To the extent the Legislature moves forward with either of these recommendations, the commission encourages the Legislature to consider them in tandem to prevent any overlap. Moving forward with Recommendation #2, for example, could impact the need for requiring ADUs by right. Although, given the unique characteristics of ADUs, the implementation of Recommendation #1 may alternatively complement or augment legislation adopting Recommendation #2.

**Recommendation # 2. Eliminate single-family zoning restrictions in all residential zones across the State by allowing up to four residential units on all lots, in compliance with any health and safety requirements such as minimum septic and lot sizes, and with a sunrise clause to provide adequate time for municipalities to prepare for this change. (Vote 13-2)<sup>48</sup>**

---

<sup>47</sup> The commission also noted, but did not discuss in depth, recently passed legislation regarding accessory dwelling units in New Hampshire, RSA 674:71 through 674:73, which can be found at: <http://www.gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-LXIV-674.htm>.

<sup>48</sup> Support: Senator Craig Hickman, Speaker Ryan Fecteau, Representative Amy Arata, Dan Brennan, Hannah Pingree, Kate Dufour, Dana Totman, Heather Spalding, John Napolitano, Jeff Levine, Madeleine Hill, Erin Cooperrider, Cheryl Golek; Opposed: Senator Matthew Pouliot, Anthony Jackson

A majority of the commission recommends eliminating single-family zoning restrictions in all residential zones across the State by allowing up to four residential units on all lots, as long as the units are built in a way that complies with any health and safety requirements, such as building codes, and when determined to be environmentally sound on properties served by private wastewater and drinking water systems and on properties subject to applicable shoreland zoning laws and regulations. Because of the significance of this change, the commission recommends including a sunrise clause to provide municipalities adequate time to prepare for and adapt to this change.

As is mentioned in Recommendation #1, there is overlap between the proposal in Recommendation #2 to eliminate single-family zoning restrictions in all residential zones and the proposal in Recommendation #1 to allow ADUs by right. Accordingly, the commission recommends that the Legislature consider the impact that implementing both of these recommendations may have on one another.

In developing Recommendation #2, the commission considered several alternatives, including eliminating single-family zoning restrictions entirely, allowing up to two residential units on all lots, and, as ultimately recommended, allowing up to four residential units on all lots. The number of units the commission ultimately voted to support takes into consideration certain practical financial and regulatory implications. While a project of up to four units in the same building is usually considered to be a single family home, a project of more than four units is a multi-family residential property and is subject to different regulations and borrowing requirements.

Nevertheless, the commission recognizes that some factors which limit a lot to one unit of housing are not necessarily within the scope of zoning law, such as health and safety requirements, especially septic/subsurface wastewater disposal requirements, or even historic preservation laws or ordinances. While the commission recognizes the importance of such requirements, it cautions that they should not be used as *de facto* zoning to reduce housing construction. Similarly, zoning that is not directly related to housing, such as environmental or shoreland zoning, may restrict lot sizes or the number of units that are permissible. The commission recognizes adherence to these laws may necessitate exceptions to this recommendation but cautions, again, that such exceptions should not enable municipalities to evade the elimination of single-family zones nor should they be used as loopholes for municipalities to unnecessarily restrict multi-family units.

Commissioner Jackson noted in his opposition to this recommendation that his primary concern is not with the general recommendation to eliminate single-family zoning restrictions in all residential zones across the State, but rather with the ability of municipalities to impose zoning restrictions beyond those required at the State level. These additional restrictions could be used to prevent multi-family units despite the elimination of single-family zoning restrictions at the State level. Commissioner Jackson would have instead supported a version of this

recommendation that provides further guardrails against such manipulation, creating an allowance for creation of multi-family units by right.

**Recommendation # 3. Prohibit municipal growth caps on the production of new housing.**  
*(Vote 14-1)<sup>49</sup>*

A majority of the commission supports the need to prohibit growth caps. Initially the majority was divided about the scope of such a prohibition: whether to recommend a prohibition of caps generally on housing production or whether the prohibition on caps should remain specific to the production of new affordable housing. At the final meeting, a majority of the commission agreed to support a general prohibition against growth caps on housing production. This consensus arose from a recognition that municipalities have many other tools at their disposal to plan for local development and growth more generally, and that growth caps are artificial and cumbersome barriers which are unnecessary. Ultimately, the production of more units will create more affordable housing, and the commission encourages municipalities to use those other tools, perhaps with technical assistance from the State, to responsibly plan for local development and growth without growth caps.

Commissioner Dufour noted in her opposition to this recommendation her concern that it is a one-size fits all approach which may have unequal impacts on certain municipalities, and that Recommendation #2 will limit the ability of communities to appropriately manage growth and plan for and finance adequate infrastructure improvements. Commissioner Dufour instead recommends that the State provide municipalities with the resources and assistance necessary to assess the need for growth limitations and the extent to which they are adopted.

**Recommendation #4. Provide technical and financial assistance for all communities seeking support in making zoning improvements and in identifying opportunities for increasing affordable housing.** *(Vote 15-0)<sup>50</sup>*

The commission unanimously recommends that the State provide technical and financial assistance to communities seeking the State's support in making zoning improvements and in identifying opportunities for increasing affordable housing. The commission recognizes that local governments will need additional resources to proactively plan for housing production for any of the commission's other recommendations to be implemented successfully and ultimately achieve the goal of increasing housing opportunities in this State. The State should provide funding for technical assistance for all communities seeking support in making zoning

---

<sup>49</sup> Support: Senator Craig Hickman, Speaker Ryan Fecteau, Senator Matthew Pouliot, Representative Amy Arata, Dan Brennan, Hannah Pingree, Dana Totman, Heather Spalding, John Napolitano, Jeff Levine, Madeleine Hill, Erin Cooperrider, Cheryl Golek, Anthony Jackson; Opposed: Kate Dufour

<sup>50</sup> Support: Senator Craig Hickman, Speaker Ryan Fecteau, Senator Matthew Pouliot, Representative Amy Arata, Dan Brennan, Hannah Pingree, Kate Dufour, Dana Totman, Heather Spalding, John Napolitano, Jeff Levine, Madeleine Hill, Erin Cooperrider, Cheryl Golek, Anthony Jackson

improvements and implementing other policy changes and programs. However, what that assistance looks like in each municipality may vary greatly depending on the needs of that particular community.

The commission received numerous suggestions on how to best provide this technical and financial assistance. While some of these suggestions are discussed in more detail below, the full list of suggested recommendations submitted by commission members is included in Appendix P.

It will be critical to designate an entity at the state level to provide the technical and financial assistance contemplated in Recommendation #4. The commission identified as potential state agencies to provide the technical and financial assistance the Department of Economic and Community Development and the Department of Agriculture, Conservation and Forestry. While there was general agreement on a need for technical assistance for municipalities, commission members believe further discussion and study should be conducted to determine whom and where that assistance should come from and how that assistance can be provided. Nevertheless, it is clear to the commission that a designated agency must be made responsible and be funded by the State to engage in this work that will be critical for municipalities to successfully implement the State's policy goals.

Some of the proposals deliberated by the commission and which the Legislature may want to consider include:

- Creating a state technical assistance office on housing and zoning, which could administer grants and provide direct technical assistance, or assistance through regional planning organizations or tools such as community land trusts. Alternatively, the technical assistance noted could be provided through an existing state agency, especially if federal funds are available for this purpose;
- Encouraging the creation of housing trusts, which can help leverage other funding sources through direct local investment. Local housing trusts could also be authorized to collect impact fees for housing from commercial development through state legislation, which could be used for reparations or down payment assistance to black homebuyers, and consideration could be given to a state match to local Housing Trust investments;
- Creating a Vacant Apartment Acquisition Program (VAAP);<sup>51</sup>
- Requiring municipalities to establish a minimum affordable housing goal on a regular basis;
- Creating a system of priority development areas;<sup>52</sup>
- Establishing an Equitable Share Housing Plan,<sup>53</sup> and

---

<sup>51</sup> See Commissioner Cheryl Golek's recommendation on VAAP programs included in Appendix P.

<sup>52</sup> For more information on the creation of a system of priority development areas, see Recommendation #7.

<sup>53</sup> See *id.*

- Creating incentives that support a diversity of housing sizes and types, as appropriate based on whether dealing with rural or urban areas, such as reducing the minimum lot size or relaxing parking requirements.<sup>54</sup>

The commission further notes that the Greater Portland Council of Governments also submitted a proposal for a pilot project, included as Appendix O, which the Legislature may want to consider. The proposal tasks a single state entity with establishing three channels of technical assistance: direct state technical assistance, regional technical assistance, and direct municipal technical assistance grants funded by the State. This proposal recognizes that a reliance on one channel of assistance, for example a single regional entity, will not be viable in all areas of the state, and that technical and financial assistance must be available to fill the gaps in areas where other channels would be less successful.

At its final meeting the Commission also noted the close relationship between the proposals in this recommendation and those contained later in this report as Recommendations #5, #6 and #7, each of which propose the establishment of different programs that may be useful in creating incentives and support for municipalities to prioritize the creation of affordable housing. Recommendation, #4, in conjunction with the other statewide policy recommendations within this report, represent important tools to strengthen the partnership between the State and local entities in order to encourage, promote and ultimately increase affordable housing options.

**Recommendation #5. Create density bonuses in all residential zones throughout the State, giving low- to middle-income housing projects 2.5 times the density of the existing zone, with a parking requirement of no more than .66 spaces per unit for the additional units, and with the requirement that those units be protected as affordable for a specific period of time. (Vote 14-1)<sup>55</sup>**

A majority of the commission recommends creating density bonuses in all residential zones throughout the State, allowing low to middle-income housing projects 2.5 times the density of the existing zones, with a parking requirement of no more than .66 spaces per unit for the additional units. In addition, these units must be protected as affordable for a specific period of time, although the commission does not make a formal recommendation on how long that specific period of time should be. The commission makes this recommendation in recognition of the general principle that a certain threshold number of units needs to be met in a project in order

---

<sup>54</sup> The commission originally envisioned this proposal as a standalone recommendation but the majority (14-1) of the commission concluded it was more appropriate to fold the proposal into other recommendations in the report. Commissioner Levine disagreed, and continues to support this as a standalone recommendation because these types of parking requirements limit housing development, either intentionally or unintentionally, and are often excessive with respect to the actual parking need. However, Commissioner Levine does not recommend implementing actual State-wide parking maximums, as developers and communities should still be free to discuss the appropriate parking level without a one-size-fits-all approach.

<sup>55</sup> Support: Senator Craig Hickman, Speaker Ryan Fecteau, Senator Matthew Pouliot, Dan Brennan, Hannah Pingree, Kate Dufour, Dana Totman, Heather Spalding, John Napolitano, Jeff Levine, Madeleine Hill, Erin Cooperrider, Cheryl Golek, Anthony Jackson; Opposed: Representative Arata

to spread out costs sufficiently to make those units affordable and density bonuses have proven to be an efficacious way of achieving that end. The commission recognizes this could be a highly effective tool for municipalities to encourage affordable housing, and believes any concerns about quality of life or segregation of low-income housing can be mitigated by requiring that density bonuses are applicable to all residential zones.

Representative Arata noted in her opposition to this recommendation her concern that focusing solely on density and affordability may result in a lower quality of life for low-income individuals.<sup>56</sup>

**Recommendation #6. Create a three-year statewide incentive program for municipalities as follows: in Year 1, a qualifying community must make a commitment to reviewing zoning and land use restrictions. In Years 2 and 3, adopt zoning and land use policies to promote housing opportunities; qualifying communities would receive a state financial reward for up to three years, so long as they remain in good standing with the program requirements. (Vote 14-1)<sup>57</sup>**

A majority of the commission recommends creating a three-year statewide program that will provide incentives to municipalities that want to review their zoning and land use restrictions. During the first year, a qualifying community would be required to make the commitment to reviewing its zoning and land use restrictions. During the second and third years, the community would be required to adopt zoning and land use regulations that promote housing opportunities, such as, such as reducing the minimum lot size or relaxing parking requirements.<sup>58</sup> Qualifying communities would receive a financial award from the State for up to three years, so long as the community remains in good standing with the program's requirements. This final piece is critical to ensuring that there is appropriate accountability for communities receiving the funds to make the desired zoning and policy changes. In considering incentives, the commission encourages that new units be affordable and accessible to people with low incomes and to people from racial and ethnic communities that have historically faced discrimination in housing. And, as it did in Recommendation #4 regarding technical and financial assistance for municipalities, the commission emphasizes that consistent and reliable state funding for incentive programs is

---

<sup>56</sup> For example, additional units may be exceedingly small or the lack of parking, may impact a person's ability to commute to work. These factors are particularly concerning if the density bonuses result in the segregation of low-income housing or if there is only partial implementation of the density bonuses and they are not applicable in all residential zones. Additionally, if the density bonuses require that the incomes of those occupying the units remain below a certain level, there could be a risk that some people could lose their housing if they are promoted or obtain a higher paying job.

<sup>57</sup> Support: Senator Craig Hickman, Speaker Ryan Fecteau, Senator Matthew Pouliot, Dan Brennan, Hannah Pingree, Kate Dufour, Dana Totman, Heather Spalding, John Napolitano, Jeff Levine, Madeleine Hill, Erin Cooperrider, Cheryl Golek, Anthony Jackson; Opposed: Representative Arata

<sup>58</sup> Relaxing parking standards can lower the cost of multi-family housing development, especially in areas that are walkable or near public transportation. The commission heard from Auburn Mayor Jason Levesque during the commission's second meeting about Auburn's efforts to eliminate minimum parking requirements for commercial development and to allow more downtown land to be used as residential property, especially in areas served by sidewalks or with proximity to municipal parking and public transportation.

paramount; partnership between the State and local communities is key to the success of these programs.

Although an earlier proposal would have required MaineHousing to develop and administer the program qualifications, provide oversight and accountability, and create model zoning polices for municipal reference, commission members were concerned that this would create a conflict for MaineHousing. For this reason, the commission recommends that the program be administered by a different agency or entity. While the commission does not formally recommend a specific agency, the commission identified as potential candidates the Department of Economic and Community Development or the Department of Agriculture, Conservation and Forestry, which is the agency that currently includes the Land Use Planning Commission, Municipal Planning Assistance Program, and other planning and land use offices that used to exist under the former State Planning Office. The Governor's Office of Policy, Innovation and the Future may also be a potential administrator for this program.

Representative Arata noted that her opposition to this recommendation is based on reservations about the program's funding source, or lack thereof. Should federal funding sources be identified that could be used for this purpose, there may be greater support for the implementation of this recommendation.

**Recommendation #7. Create a system of priority development areas, where multi-family housing is permitted with limited regulatory barriers. (Vote 10-5)<sup>59</sup>**

A majority of the commission recommends the creation of a system of priority development areas where multi-family housing is permitted at a significant density with limited regulatory barriers. Under this system, each community would be asked to pick a growth area in which state investment would be focused and in which state review of projects would be expedited if the community updates its local zoning and other ordinances - by, for example, upzoning - to encourage development in the priority development area.

Priority development areas should be reasonably sized and either centrally or otherwise conveniently located near resources such as municipal services, transportation, schools, employment, and amenities. Specific requirements should be developed for an area to qualify as an approved priority development area, such as allowing a certain density of housing on lots and lower parking requirements, as well as specifics on what a community gets in return for having a priority development area.

Depending on how different municipalities have handled development, some communities may find that they already have areas which qualify or could easily be made to qualify as priority

---

<sup>59</sup> Support: Speaker Ryan Fecteau, Dan Brennan, Hannah Pingree, Kate Dufour, Dana Totman, Heather Spalding, John Napolitano, Jeff Levine, Madeleine Hill, Erin Cooperrider; Opposed: Senator Craig Hickman, Senator Matthew Pouliot, Representative Amy Arata, Cheryl Golek, Anthony Jackson

development areas. For example, a likely candidate for a priority development area would be an existing traditional village or town center in those communities that have them. The designation as a priority development area would help put the infrastructure in place to make higher-density development workable in that area. However, any legislation implementing this recommendation should include a reasonable time limit for municipalities to complete any necessary tasks. Priority development areas such as these could also tie in with the financial and technical assistance highlighted in Recommendation # 4 as an additional incentive to municipalities to increase affordable housing opportunities.

Some members of the commission emphasize that a certain level of flexibility for municipalities is important, especially in retaining local authority to designate the location, type (*e.g.* duplexes, triplexes, row houses, multi-story, shared housing, etc.) and the scale of multi-unit development authorized in the priority development areas. But with current construction costs high, and likely to stay high for some time, the production of multifamily housing both for rent and for sale – such as apartments and condominiums, respectively – that are either affordable (subsidized in some way) or market rate will be an important factor in addressing the shortage of housing in Maine. At the same time, however, some commission members also caution that municipalities should be cognizant of the pitfalls of designating an area as a priority development area and creating an unintended consequence of increased segregation of that area.

Commission members who voted against this recommendation note this same concern: that focusing on focusing on specific areas for multi-family development may contribute to segregating renters from homeowners. And, because black or African American households are the only racial identity more likely to rent (70%) than own (30%), could also increase racial segregation.

Commissioner Golek expressed a concern that there is not enough definition in this recommendation about what is implied by the phrase “limited regulatory barriers,” and whether this only refers to the speed with which the State reviews projects, or if it could mean that other regulations would be waived, with the potential for loosening safety and quality requirements. More specificity would be required before Commissioner Golek could support this recommendation.

Commissioner Jackson also expressed concern that the recommendation doesn’t identify affordable housing specifically. Commissioner Jackson may have been more inclined to support this recommendation if it required a certain percentage of housing in priority development areas to be explicitly designated as affordable.

**Recommendation # 8. Strengthen Maine’s Fair Housing Act by eliminating the terms “character,” “overcrowding of land,” and “undue concentration of population” as legal bases for zoning regulations. (Vote 13-1)<sup>60</sup>**

The commission recommends strengthening Maine’s fair housing laws by eliminating the terms “character,” “overcrowding of land,” and “undue concentration of population” as legal bases for zoning regulations.

As the commission heard in presentations during the third meeting, exclusionary zoning relates to restrictive land use and zoning policies meant to exclude certain uses of land that are often accomplished through low-density regulation, large minimum lot sizes, parking requirements, height restrictions, explicit population growth controls, and sometimes excessive bureaucratic procedures and delays.<sup>61</sup> The terms “character,” “overcrowding of land,” and “undue concentration of population” are often vague terms that are used to restrict the construction of affordable housing. By contrast, consideration of physical site characteristics - not people or their income sources or levels - more appropriately provides guidelines for municipal officials and may still preserve, for example, historic site protection.

“Character,” “overcrowding of land” and “undue concentration of population” are not defined in Maine law, and the commission emphasizes that any reference to them in law should include explicit and clear definitions. Exclusionary zoning has historically been used unfairly, whether intended or not, and these are terms that have been used to underwrite it. Municipalities in particular will need guidance on how removing these vague terms will be implemented and a clear definition is needed so that communities can understand where violations may occur and the penalties for such violations. The commission emphasizes, however, that the recommendation is not intended to impose housing production requirements on municipalities.

Throughout the commission’s presentations, many presenters referenced the work currently being done in Connecticut around this issue. Indeed, the commission’s recommendation to prohibit the use of these specific terms derives from the work of the Desegregate Connecticut Coalition, which includes work on Connecticut’s Public Act 21-29 (HB 6107), requiring that all zoning regulations “affirmatively further fair housing,”<sup>62</sup> promote housing choice and economic diversity, address significant disparities in housing needs and access to educational, occupational and other opportunities, and expressly require the development of housing in the state’s consolidated plan for housing and community development. In strengthening Maine’s fair

---

<sup>60</sup>Support: Senator Craig Hickman, Speaker Ryan Fecteau, Dan Brennan, Hannah Pingree, Kate Dufour, Heather Spalding, John Napolitano, Jeff Levine, Dana Totman, Madeleine Hill, Erin Cooperrider, Cheryl Golek, Anthony Jackson; Opposed: Senator Matthew Pouliot; Absent from vote: Representative Amy Arata

<sup>61</sup> See presentation of Matt Mleczko, Appendix I.

<sup>62</sup> As noted previously, Public Law 2021, chapter 270 enacted a new provision of law, effective October 18, 2021, which provides that “[t]he Maine State Housing Authority shall, to the extent consistent with federal law, ensure that any Maine State Housing Authority funding or any state or local funding is used in a manner that will affirmatively further fair housing in this State. The full text of this law is attached as Appendix R.

housing laws, the commission suggests that the Legislature may want to explore some of the other policies that have also come out of the Desegregate Connecticut coalition.

**Recommendation #9. Create a state-level housing appeals board to review denials of affordable housing projects made at the local level. (Vote 12-2)<sup>63</sup>**

A majority of the commission recommends that the Legislature create a state-level housing appeals board to review denials of affordable housing projects that are made at the local level, especially in situations in which it appears that a community is engaging in exclusionary zoning or is effectively prohibiting or excluding viable affordable housing proposals from being developed. A housing appeals board could also fast-track viable affordable housing proposals that have zoning by right, but are met with costly or unreasonable delays, that are often fueled by local opposition. Although the Legislature would need to examine the details of a state-level housing appeals board, including but not limited to its composition, the scope of the board's authority, and the process by which appeals could be brought and by whom, a majority of the commission believes this board could serve as an effective tool to increase housing opportunities and to discourage local control that is effectively resulting in segregation, discrimination or poverty concentration.

Commissioner Dufour noted in her opposition to this recommendation that it would constitute an erosion of local control and home rule authority and that, with proper state resources and technical assistance in place, communities should be afforded the opportunity to make necessary changes before the Legislature considers a change of this magnitude. Additionally, Commissioner Dufour is concerned about the lack of specificity in this recommendation about who would serve on this board, how the process would be implemented, and under what circumstances and with what standards the board of appeals would operate.

Commissioner Hill opposed this recommendation because in her capacity as a representative of the Maine Association of Realtors, she is not authorized to take positions on issues of agency control or boards of appeals.

## **V. Additional Considerations**

Over the course of the commission's seven meetings, discussions were wide-ranging and included many topics that the commission was either not able to fully explore or felt were beyond the scope of the commission's charge. However, the commission feels that these additional topics merit inclusion in this report as additional considerations for the Legislature to consider as it advances the overall goal of increasing opportunities for quality, affordable housing in Maine.

---

<sup>63</sup> Support: Senator Craig Hickman, Speaker Ryan Fecteau, Senator Matthew Pouliot, Dan Brennan, Hannah Pingree, Dana Totman, Heather Spalding, John Napolitano, Jeff Levine, Erin Cooperrider, Cheryl Golek, Anthony Jackson; Opposed: Kate Dufour, Madeleine Hill; Absent from vote: Representative Amy Arata.

- Fees and Related Costs:** The commission had an extended discussion regarding a potential recommendation, submitted by Commissioner Jackson, to prevent zoning that charges unreasonable or different fees for multi-family affordable housing or land-lease communities, or impose onerous consulting fees on property owners. In support of this potential recommendation, commissioners noted that any *unreasonable* fee is discriminatory on its face, and that fees have been used as a tool to limit affordable housing projects. One example given was a situation in which tree fees<sup>64</sup> were being assessed on residential properties but not commercial properties. Similarly, some communities require that site improvement costs be bonded, held in escrow, or secured with a line of credit until site work is completed. These are the types of costs that could be waived for developments receiving MaineHousing or other public funding, or in the case of below-market affordable development. However, fees may be legitimately used for purposes related to, for example, the creation of affordable housing, and eliminating them would put costs back on property taxes. For example, a code enforcement program may be financed in part by fees and in part by property taxes; removing the fees would make the program entirely reliant on funds raised through property taxes. Ultimately, the commission felt that it did not receive much information or any substantive presentations on this particular topic, leaving the commission unable to make a full recommendation.
- Short-term rentals:** Short term rentals, such as Airbnb's, are another area of concern that was raised but that the commission believes requires a more in-depth study. Commissioners noted that the rapid growth of short-term rentals in Maine has taken existing housing stock out of the year-round rental pool, putting pressure on rental rates throughout the State. Although long-term impacts may not yet be known, there is evidence that short-term rentals are impacting the housing market. Of particular concern is the rise of non-owner-occupied short-term rentals in strong housing markets. While owners who rent out their own units at times can supplement their household income, non-owner-occupied short-term rentals do not provide the same benefits and can essentially remove a housing unit from the market. While the commission has not made a formal recommendation, this may be a topic that deserves further study to assess the benefits and drawbacks of regulating short-term rentals. Commission members are particularly interested in ensuring that new housing units produced using the recommendations from this report are used primarily as permanent, year-round housing for Maine residents.
- Farmworker housing:** One specific type of housing shortage that the commission did not have time to engage in more fully is workforce housing, and specifically housing for farmworkers. A related issue is the loss of prime agricultural land to development – both residential and commercial. Development and implementation of policies that address Maine's housing crisis should factor in the impacts on the State's farmland.

---

<sup>64</sup> The example given is part of a tree planting requirement in Portland, in which if a developer cannot plant a certain number of new trees on a site due to site constraints, the developer can pay a fee-in-lieu to the city for street trees.

Recommendations related to this topic that the Legislature may want to consider are specifically noted on the final page of the commission's suggested recommendations attached in Appendix \_\_.

- **Reconstitution of the State Planning Office:** In its discussions regarding the provision of technical assistance to municipalities, the commission discussed the former State Planning Office, which was eliminated in 2012. Members discussed the advantages and disadvantages of having a centralized office responsible for providing technical and financial assistance, whether that be a full separate agency or a smaller division within an existing state agency. Ultimately, in Recommendation # 4 the commission recommends that technical assistance must be provided to municipalities to encourage changes in zoning and land use regulation, but does not come to consensus or make a formal recommendation on where that technical assistance comes from or the umbrella agency under which it should sit.
- **Energy efficient building materials:** Although not directly related to zoning and land use regulation, one suggested topic that arose out of the discussion of the development of new affordable housing, is the quality of the building materials and the use of energy efficient and environmentally friendly building materials, especially when building new housing or refurbishing older buildings to be used as affordable housing.

## VI. Conclusion

The commission recognizes that the plan for addressing Maine's housing shortages must be multi-faceted, and that there is both an immediate need to increase housing opportunities in Maine and a need to plan for increased housing opportunities in the future. The commission also recognizes that the recommendations put forth in this report represent only the beginning of the work towards increasing housing opportunities in Maine. Commission members look forward to working with the Joint Standing Committee on Labor and Housing in refining the details of the recommendations and in crafting legislation that will implement these recommendations and in a way that advances the State's policy goals. The commission urges the Legislature to continue the work that this commission has begun, as continued research and study of these issues is critical.

Finally, the commission would like to thank all of the presenters and members of the public for generously offering their time, expertise, and advice on the complicated issues involved in increasing housing opportunities in this State. Their knowledge and perspectives were invaluable to the commission as it endeavored to develop recommendations on these challenging and complex, but also critical issues. The commission also would like to thank staff for their time and dedication to the commission's work.