



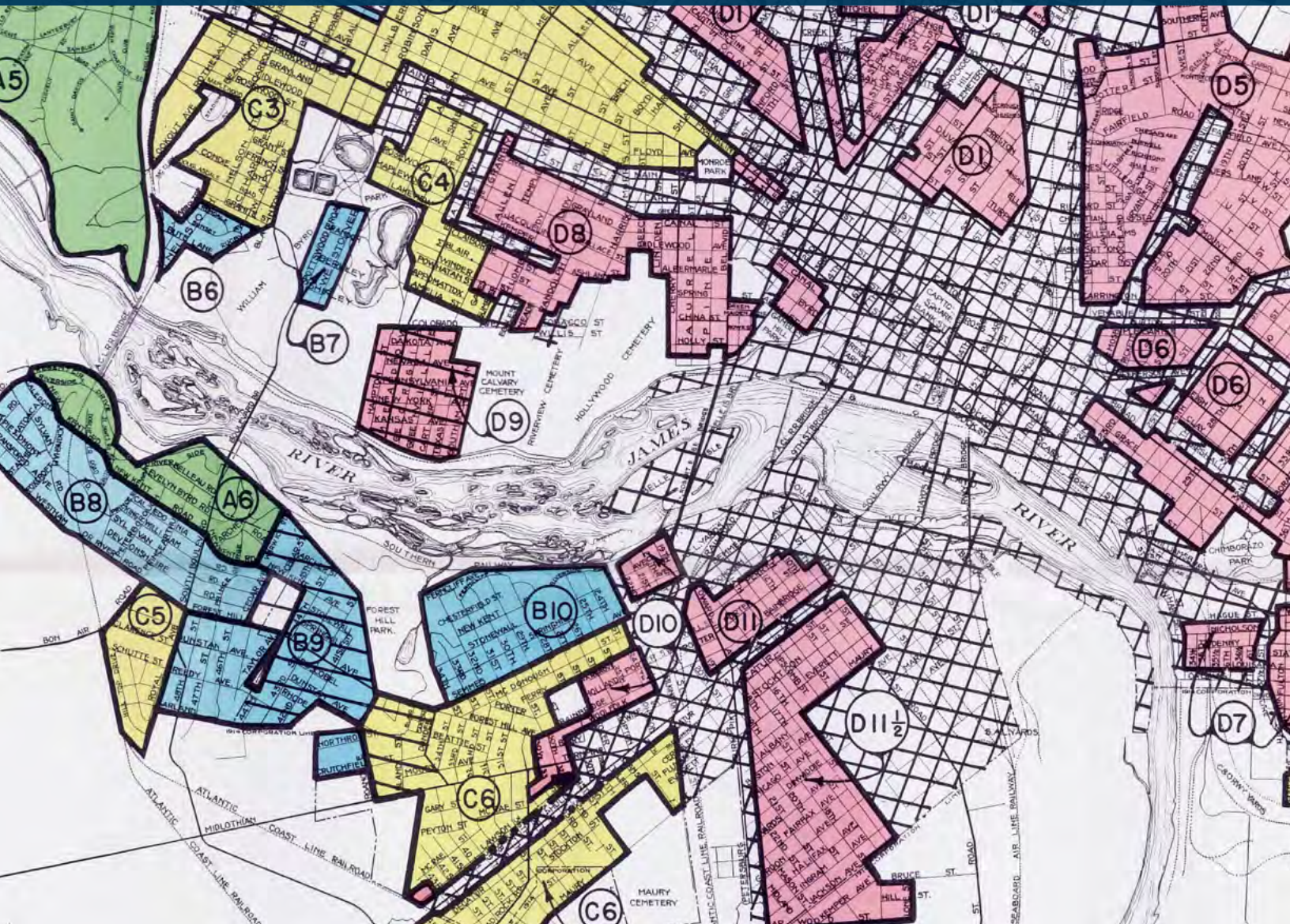
McGUIREWOODS

McGUIREWOODS
CONSULTING
Public Affairs Solutions

ZONING AND SEGREGATION IN VIRGINIA: PART 2

Expanding Housing Choices for the Future of Virginia

EXECUTIVE SUMMARY



Executive Summary

THE PROBLEM

As described in McGuireWoods' ["Zoning and Segregation in Virginia: Part 1,"](#) neighborhoods in the commonwealth remain racially and economically segregated a half-century after the Fair Housing Act of 1968 prohibited racial discrimination. One of the primary reasons housing segregation continues today is that zoning laws and policies perpetuate the separation of housing by wealth and income.

Remediating housing segregation in Virginia requires significant policy changes at the local and state levels. Specifically, zoning and planning laws and policies must be altered to increase housing opportunities for all Virginians and remove barriers for less-wealthy households to live in or near more-wealthy communities. It is in these more-wealthy communities where the most-valued public resources (better schools, parks, libraries, jobs, etc.) are located. These changes require the adoption of multiple strategies to overcome the legacy of segregation.

The goal of these strategies is to achieve housing equality. Our vision of housing equality does not mandate where people should live. Rather, it removes legal barriers that continue the economic and racial segregation of communities.

POSSIBLE SOLUTIONS

This report offers complementary strategies that apply to different levels of government. This report takes a two-tiered approach, making separate recommendations for local and state governments.

Local policy recommendations:

- 1. Include housing equality in every comprehensive plan.** State law requires the comprehensive plan as a guide for the local government's decision-making about zoning. Each plan should include strategies tailored to the individual locality to achieve housing equality.
- 2. Update zoning ordinances and maps to encourage mixed use with higher residential density in existing commercial areas.** Zoning had the original purpose of separating different land uses, and many ordinances still prevent housing in commercial zones. Allowing a mix of uses and increasing potential density in those zones can provide new housing without affecting existing residential neighborhoods.
- 3. Offer affordable housing incentives using density bonuses, parking reductions and tax abatement.** Incentives provide a reason for developers to build affordable housing that may otherwise generate less profit than market-rate housing.
- 4. Adopt proportional proffer guidelines adapted to housing size and income restrictions.** Virginia localities typically require the contribution of public benefits, known as proffers, in exchange for the rezoning of property. Many localities have adopted formulas, known as proffer guidelines, which determine the value and type of proffers expected based on the number of





dwellings permitted by the rezoning. These guidelines should require less-expensive proffers in exchange for rezonings providing smaller houses and dwellings set aside for lower-income households. This would allow developers to balance constructing less-profitable homes with lower proffers.

5. **Promote greater home ownership for low-income and moderate-income households.** Most programs for housing affordability focus on rental apartments. In addition, localities should adopt programs to encourage affordable homes for purchase.
6. **Add “missing middle” housing types to residential zones.** Residential zones often allow either detached single-family houses or high-density apartments. Between these extremes are “missing middle” housing types such as duplexes, cottage homes, townhouses or courtyard buildings. Adding “missing middle” housing increases choices for a greater range of incomes.
7. **Cooperate with other localities to coordinate regional housing supply.** The structure of Virginia’s local governments often prevents solutions to regional housing supply problems. Voluntary coordination of efforts can help overcome these obstacles.

State policy recommendations:

1. **Amend state law to require comprehensive plans to measure and address housing equality.** Communities can’t improve what they don’t measure. Requiring these guides for local decision-making to include housing equality focuses attention on the problem while allowing each locality to choose individual solutions.
2. **Provide technical support through Virginia Department of Housing and Community Development.** Many smaller localities can’t afford the staff needed to analyze demographic data and develop the ordinances recommended above. DHCD can provide these resources.
3. **Reform state law to expand the use of inclusionary zoning.** Inclusionary zoning can require private real estate developers to build affordable housing in exchange for approval of more market-rate housing. This report recommends specific reforms.
4. **Require local zoning to allow accessory dwelling units in single-family districts.** Accessory dwelling units, such as “granny flats” or basement apartments in detached houses, increase housing choices without changing the character of single-family neighborhoods. Each locality should allow some forms of accessory dwelling units in all single-family districts.

THE STUDY

This report provides a detailed rationale for each local and state policy recommendation. The report also includes supplemental materials providing additional information on localities across the United States that address racial segregation in their comprehensive plans and outlining an approach to affordable home ownership through community land trusts. Moreover, the recommendations not only include actions that address historic racial discrimination, but also result in increased availability of attainable housing for many segments of the community, including essential workers, first responders, teachers, nurses and younger buyers seeking to locate near their families.

ABOUT MCGUIREWOODS' ZONING AND SEGREGATION WORK GROUP

We are a group of real estate and zoning lawyers, land use planners and government relations consultants who are concerned about continuing segregation in our communities. We have come together to bring our collective experience to research zoning and segregation and propose reforms to address the legacy of segregation. McGuireWoods' Zoning and Segregation Work Group, along with the firm's [Racial Justice Task Force](#), strategizes with local leaders on how to work together to make racial equality a reality. The firm focuses on achieving long-lasting positive change in communities across the country where we live and work.

Key Contacts



SCOTT ADAMS
PARTNER
+1 703 712 5461
sadams@mcguirewoods.com
TYSONS



SHERI AKIN
SENIOR LAND USE PLANNER
+1 703 712 5483
sakin@mcguirewoods.com
TYSONS



TRACY BAYNARD
SVP INFRASTRUCTURE & ECONOMIC DEVELOPMENT
+1 703 712 5083
tbaynard@mcguirewoods.com
TYSONS



JAMES DYKE
SENIOR ADVISOR, MWC
+1 703 712 5449
jdyke@mcguirewoods.com
TYSONS



LORI GREENLIEF
SENIOR LAND USE PLANNER
+1 703 712 5433
lgreenlief@mcguirewoods.com
TYSONS



GEORGE MARTIN
PARTNER
+1 804 775 1057
gmartin@mcguirewoods.com
RICHMOND



STEVEN MIKULIC
ASSOCIATE
+1 703 712 5375
smikulic@mcguirewoods.com
TYSONS



JONATHAN RAK
PARTNER
+1 703 712 5411
jrak@mcguirewoods.com
TYSONS



GREG RIEGLE
PARTNER
+1 703 712 5360
griegle@mcguirewoods.com
TYSONS



MARGARET ROCKWELL
AVP INFRASTRUCTURE & ECONOMIC DEVELOPMENT
+1 804 775 1940
mrockwell@mcguirewoods.com
RICHMOND



MICHAEL VAN ATTA
LAND USE PLANNER
+1 703 712 5335
mvanatta@mcguirewoods.com
TYSONS



MATTHEW WEINSTEIN
ASSOCIATE
+1 703 712 5420
mweinstein@mcguirewoods.com
TYSONS



McGUIREWOODS



McGUIREWOODS
CONSULTING
Public Affairs Solutions

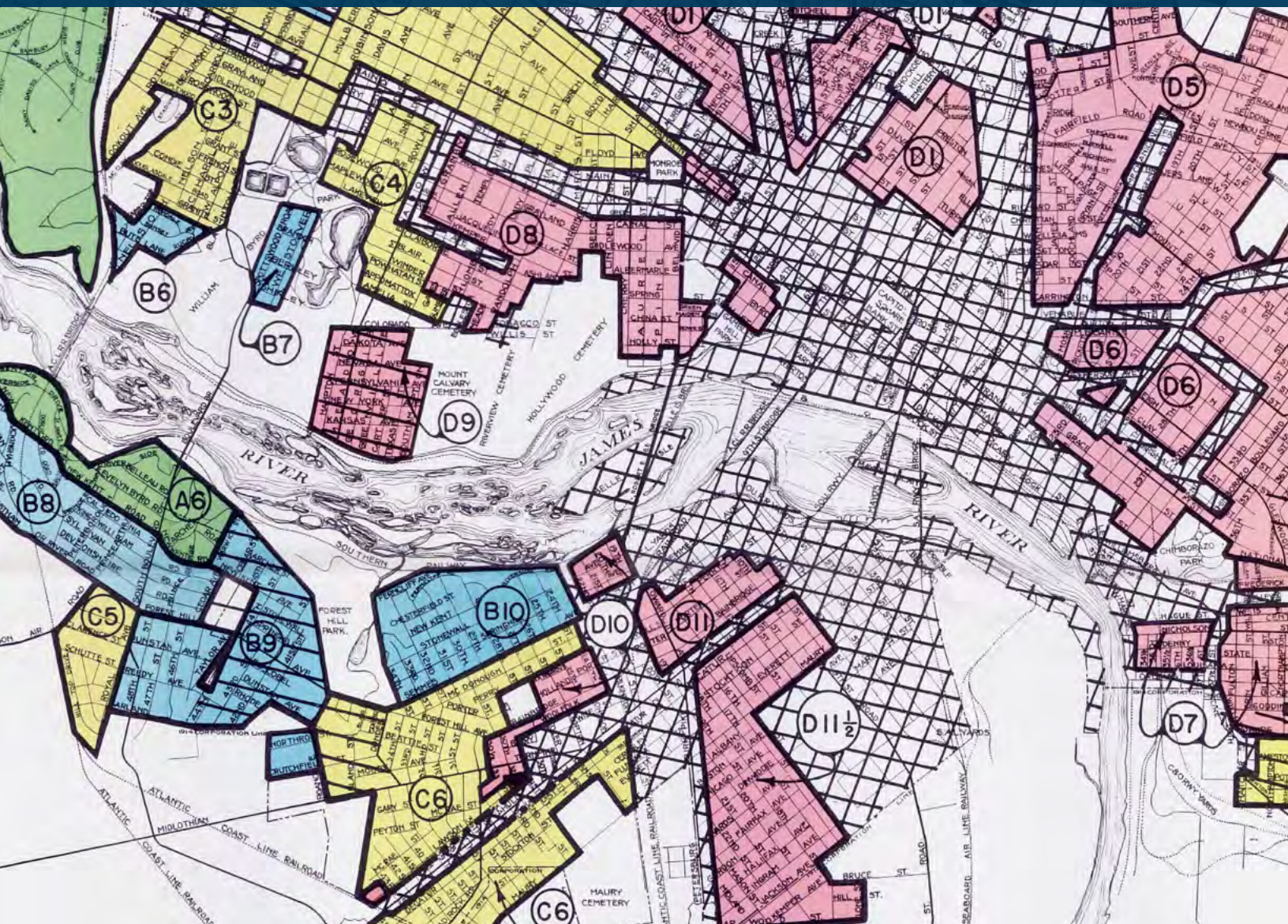


McGUIREWOODS

McGUIREWOODS
CONSULTING
Public Affairs Solutions

ZONING AND SEGREGATION IN VIRGINIA: PART 2

Expanding Housing Choices for the Future of Virginia



Dedication

This report is dedicated to Rhonda Michelle Harmon, who was a passionate advocate for equality, fairness, and justice. Rhonda, as a lawyer with Mezzullo & McCandlish, played a major role in litigating discrimination cases, including the landmark case of *Housing Opportunities Made Equal (HOME) v. Nationwide Insurance Company*. That case produced a major victory resulting in nationwide changes in discriminatory redlining practices.

The George Floyd tragedy serves as a reminder that there still is much work to do to address racism and the vestiges of discrimination. This served as the impetus for McGuireWoods' creation of its Racial Justice Committee as a way to effect change. Rhonda's life personified action designed to make life better for all, but especially the disadvantaged. Her life inspired McGuireWoods as a whole and the entire McGuireWoods Zoning and Segregation Working Group, to continue her work, mission, and her accomplishments, which became the cornerstone of our zoning and segregation project.

Since Rhonda dedicated her life to equality, fairness, and justice, the McGuireWoods Zoning and Segregation Working Group dedicates this zoning project to her.





Table of Contents

I. Introduction	4
II. Foreword by Jim Dyke	5
Background - Contextual Considerations	6
Consequences - Discriminatory Governmental Actions Widen Gaps Between the Races	7
Consequences - The Human Toll	8
Consequences - The Financing Barriers	9
Next Steps - The Positive Outcomes From Ridding Society of Housing Segregation	10
Conclusion	12
III. Recommendations	13
A. Local Recommendations	13
1. Include Housing Equality in Every Comprehensive Plan	13
2. Update Zoning Ordinances and Maps to Encourage Mixed Use With Higher Residential Density in Existing Commercial Nodes	13
3. Offer Affordable Housing Incentives Through Density Bonuses, Parking Reductions and Tax Abatement	14
4. Adopt Proportional Proffer Guidelines Adapted to Housing Size and Income Restrictions	15
5. Promote Home Ownership for Low-/Moderate-Income Households	16
6. Add “Missing Middle” Housing Types to Residential Zones	16
7. Cooperate With Other Localities to Coordinate Regional Housing Supply	19
B. State Recommendations	21
1. Amend Comprehensive Plan Enabling Legislation to Address Housing Equality	21
2. Provide Technical Support Through Virginia DHCD	21
3. Reform Inclusionary Zoning Enabling Legislation	23
4. Require Zoning to Allow Accessory Dwelling Units in Single-Family Districts	25
IV. Conclusion	27
Appendix	28

I. Introduction

In the United States, the wealth gap between Whites and Blacks is escalating at alarming rates and continues to significantly harm the U.S. people and economy. According to the latest *Washington Post* update, “The median White household had a net worth of \$188,200 in 2019, of which residential real estate composed a major share, whereas the median Black family had \$24,100 — about one-eighth as much — according to the Federal Reserve.”¹ This stark gap did not happen overnight. It is the legacy of government policies, including those that limit racial minorities’ access to housing opportunities.

As discussed in [“Zoning and Segregation in Virginia: Part 1.”](#) Virginia and its localities mandated segregated housing for years. When the U.S. Supreme Court finally declared segregated housing unconstitutional, the commonwealth used zoning laws to continue segregation, which visited on the Black community and other marginalized populations the many intended negative consequences of segregation. These consequences compounded over decades. Blacks were denied wealth accumulation through home ownership and access to federally backed mortgages. Black communities saw investment diverted to White neighborhoods and concrete rather than green space. As a result, Black communities experienced disproportionate rates of diabetes, high blood pressure, asthma and other health issues; life expectancy plateaued at abysmal levels; and property values plummeted.

This study report, “Expand Housing Choices for the Future of Virginia,” offers specific reforms to address Virginia’s legacy of racial segregation in housing. Part 1 of this report describes the ways zoning laws segregate communities by wealth and income and perpetuate a legacy of racial segregation. Given Virginia’s long history of housing segregation, racial and social injustice were predictable. Virginia’s legal and social institutions used their considerable power to significantly diminish the quality of Black life. Our purpose is not to point fingers, assess blame or make anyone feel bad for what happened in the past. We all need to understand how we got here so we can take appropriate steps to rectify the vestiges of past discrimination. Virginia must now implement local and state policies to enhance quality of life for marginalized and underrepresented population groups, establish true equality, and address historic government-created and sanctioned injustices. By making these changes, we will also be creating opportunities for *all* citizens to have access to attainable housing, citizens like essential workers, teachers, first responders, and young family members whose income may not be as much as their parents’, thus making it difficult to purchase homes in their parents’ neighborhood. Part 2 recommendations specifically focus on changes to Virginia’s planning and zoning laws at the local and state levels to increase housing choices and remove barriers to diverse neighborhoods as well as increase everyone’s access to attainable housing.

Specifically, this report, “Expand Housing Choices for the Future of Virginia,” makes the following recommendations.





Local Recommendations

- A. Include Housing Equality in Every Comprehensive Plan.
- B. Update Zoning Ordinances and Maps to Encourage Mixed Use With Higher Residential Density in Existing Commercial Nodes.
- C. Offer Affordable Housing Incentives Through Density Bonuses, Parking Reductions and Tax Abatement.
- D. Adopt Proportional Proffer Guidelines Adapted to Housing Size and Income Restrictions.
- E. Promote Home Ownership for Low-Income and Moderate-Income Households.
- F. Add “Missing Middle” Housing Types to Residential Zones.
- G. Cooperate With Other Localities to Coordinate Regional Housing Supply.

State Recommendations

- A. Amend Comprehensive Plan Enabling Legislation to Require Provisions to Address Housing Equality.
- B. Provide Technical Support Through Virginia Department of Housing and Community Development.
- C. Reform Inclusionary Zoning Enabling Legislation.
- D. Require Zoning to Allow Accessory Dwelling Units in Single-Family Districts.

The recommendations and historical context contained in this report are not new. Fifty years ago, a member of the study team, Jim Dyke, then a third-year student at Howard Law School, wrote an article for the *Howard Law Journal* titled “The Use of Zoning Laws to Prevent Poor People from Moving into Suburbia.” That article contained concepts and recommendations reflected in the team’s current study. Sadly, in the 50 years following that article, little has been done to correct the inequities caused by zoning and racial housing segregation. Now is the time to finally take action to make these changes and guarantee every American access to attainable housing anywhere in this great country.²

II. Foreword

By Jim Dyke

In this era of reckoning on racial injustice intensified by the death of George Floyd and its aftermath, there can be no doubt that housing segregation and its intended results of poverty-centric neighborhoods, race-based barriers to affordable housing, unequal investment in minority communities, and limited availability of financial support to minority homebuyers did not happen by accident.

While the private sector — including developers, realtors, bankers, financiers and law enforcement — played key roles in facilitating housing discrimination, this blatant inequity and inequality are the intended consequence of a century of social engineering on the part of federal, state and local governments.

As Richard Rothstein noted in his groundbreaking work on the racial legacy of zoning, *The Color of Law*, “[R]acially explicit government policies to segregate our metropolitan areas are not vestiges, were neither subtle nor intangible and were sufficiently controlling to construct de jure segregation that is now with us in neighborhoods and hence in schools.... African Americans were unconstitutionally denied the means and the right to integration in middle class neighborhoods, and because this denial was state-sponsored, the nation is obligated to remedy it.”³

BACKGROUND - CONTEXTUAL CONSIDERATIONS

This report, “Expand Housing Choices for the Future of Virginia,” focuses on housing discrimination and the barriers it created for Black Americans to build wealth, making the American dream elusive at best, not only for Black Americans but for all Americans. Martin Luther King Jr. understood the interconnected nature of society when he said: “All men are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.” Every citizen is harmed when any citizen is denied the opportunity to engage fully in and benefit from the many privileges afforded citizens of the greatest democracy in the world. The American Dream becomes a greater reality for everyone if it is attainable by all. The political notion so prevalent today that one group brings down the economic health of all others will be seen as the easy excuse it is if society takes those steps necessary to correct past injustices and create a society where every citizen can be a productive participant. The goal of this study is not to assign blame.

The issues addressed are not new. In 1968, America was in the throes of rioting and civil unrest in its inner cities. The nation’s political leaders needed to understand the root causes of the civil unrest before they could devise strategies to change the course of American life. Toward this end, President Lyndon Johnson appointed the Kerner Commission. The conclusion of the Kerner Commission report is just as true today as it was in 1968. While a cause of the riots may have had something to do with Black frustration at the lack of economic opportunity caused by federal and state governments’ failed housing, education and social service policies, the report cited a more direct cause: White racism — not Black anger — as the center of national unrest. The commission warned:

[Our] nation is moving toward two societies, one Black, one White — separate and unequal.... What white Americans have never fully understood — but what [Blacks] can never forget — is that White society is deeply implicated in the ghetto. White institutions created it, White institutions maintain it, and White society condones it.⁴

The Kerner report called for efforts to create new jobs; to construct new, affordable and available housing; and to stop de facto and de jure segregation to eliminate the debilitating ghetto environment. The report recommended, among other things, investing billions in housing programs aimed at dismantling residential segregation.

America’s history of discrimination in housing has been continuous and consistent, beginning with Union General William Tecumseh Sherman’s post-Civil War effort to provide newly freed Black men with over 400,000 acres in the South to create wealth, only to see that noble gesture overturned by President Andrew Johnson, who instead gave the land to Confederate soldiers. That egregious act was followed by other blatant, discriminatory governmental actions that looked principled at first glance, but rather were designed to





discriminate. As stated by *The Washington Post* editorial board on July 30, 2021:

The Federal Housing Act. The Social Security Act. The G.I. Bill. To list these landmark 20th Century laws is to understand how important government support was to building a broad middle class, endowed with a modest but meaningful “piece of the rock,” in the United States. It is also to acknowledge that this historic effort mostly bypassed people of African descent — who were deliberately, if often implicitly, denied the benefits. Of the \$120 billion worth of housing built with federal backing between 1934 and 1962, only 2 percent was available to Black people due to “redlining” and other obstacles.⁵

CONSEQUENCES - DISCRIMINATORY GOVERNMENTAL ACTIONS WIDEN GAPS BETWEEN THE RACES

Residential segregation is morally bankrupt and in need of a remedy. Unfortunately for Black America, residential segregation was only one facet of America’s racial discrimination, inequity and inequality, causing far-reaching damage. Historical and current racial discrimination has created a substantial income gap between Black and White Americans. Blacks on average earn about 60% less than Whites earn. The separation of Black families from White families has contributed significantly to two entrenched inequalities: the enormous wealth gap between the races and their vast unequal access to strong public education opportunities.⁶

Black households headed by an individual with a bachelor’s degree have two-thirds of the wealth, on average, of White households headed by someone who lacks a high school degree. Equally astonishing, middle-class Blacks live in neighborhoods with higher poverty rates than low-income Whites. These negative outcomes are largely a result of racial segregation. Since homes are the largest financial asset and biggest investment for most Americans, segregated markets significantly reduce the accumulated wealth of Blacks. While median income for Black households is 60% of that of White households, Black median household net worth is just 8% of White household net worth, according to the Federal Reserve.⁷

The goal of the Federal Housing Administration (FHA) was to ensure that private lending institutions made residential loans available to create long-term, low-down payment mortgages, which are still in use today. Yet Blacks and homes near Black neighborhoods were excluded from these loans by redlining, an illegal practice described in the Fair Housing Act as “mortgage lenders — drawing red lines around portions of a map to indicate areas or neighborhoods in which they do not want to make loans,” i.e., Black neighborhoods.

As Black soldiers returned home from fighting for their country abroad in World War II, President Franklin Delano Roosevelt signed the Servicemen’s Readjustment Act of 1944 (GI Bill) to, among other things, provide veterans with loans and mortgage subsidies to purchase homes, and job counseling and employment services to facilitate their reentry into the workforce. While the GI Bill helped White Americans prosper and accumulate wealth following the war, in its implementation, the bill failed miserably to help Black Americans who were routinely and inexplicably denied its assistance. This discrimination widened already existing gaps between Whites and Blacks in wealth, education and civil rights.

The implementation of the Federal Emergency Management Agency (FEMA) again shows White Americans reaping government benefits and largesse to a far greater extent than Black Americans. FEMA is the governmental agency tasked with providing emergency assistance to people during and after disasters, such as Hurricane Katrina. To qualify for such assistance, applicants must provide recorded deeds evidencing real property ownership. In the South, more than a third of Black-owned land is passed down informally — not by deed or will. This practice began in the Jim Crow era when Blacks were not allowed to participate in the southern legal system. Therefore, land handed down in such an informal manner became property collectively held by all the heirs without clear title. The Department of Agriculture reported that heirs' property was the leading cause of Black involuntary land loss. In parts of the South, FEMA turned down nearly one-fourth of applicants because they could not document ownership. Moreover, historians suggest that many of the Jim Crow-era lynchings related to White efforts to illegally misappropriate real property from Black America. According to a U.S.D.A. report, FEMA has tried to address this title issue since 2005, when 20,000 heirs, as property owners, were denied federal help after Hurricane Katrina.⁸ A clear consequence of this systemic, self-serving and repugnant practice is a widening of the existing economic gap between the races.

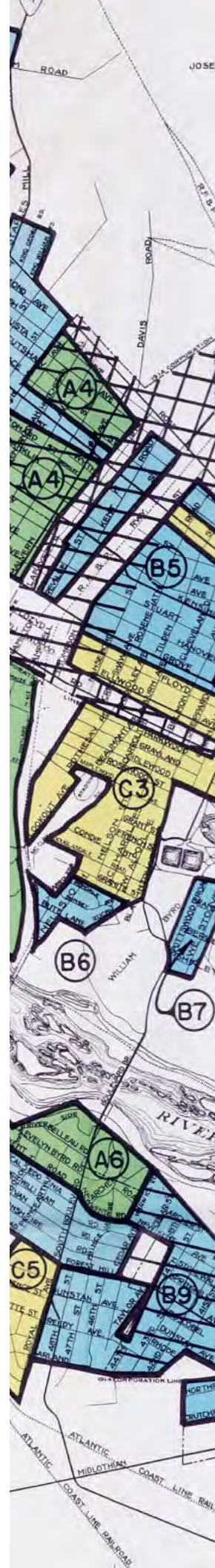
Data published by the Social Security Administration until 2014, when the administration ceased publishing race-based data, shows that Black families significantly rely on Social Security benefits rather than other forms of wealth more significantly relied upon by White Americans, i.e., income from assets, home ownership and private pensions or annuities. As stated by the National Committee to Preserve Social Security and Medicare:

These guaranteed [Social Security] insurance benefits are especially crucial to people of color who tend to have fewer alternative resources, become disabled at higher rates, and disproportionately rely on Social Security's family benefit features. African American workers more than most other Americans are concentrated in low-wage jobs that typically lack pension coverage, experience higher poverty and unemployment rates, and have less ability to save and invest for retirement.

The above-cited reasons given by the National Committee to Preserve Social Security and Medicare for the disproportionate reliance on Social Security benefits by Black Americans exemplifies the economic disadvantage visited on the Black community as a result of American injustice and inequity, including race-based educational and home ownership barriers. So entrenched and invasive is this notion of housing segregation that “for many years FHA, and the Veterans Administration (VA) openly advised and advocated the maintenance of “harmonious neighborhoods, i.e., racially and economically harmonious,” according to the opinion of Judge Stephen Roth of the U.S. District Court for the Eastern District of Michigan.⁹

CONSEQUENCES - THE HUMAN TOLL

Economic disadvantage from housing segregation is only the more obvious of the gruesome and egregious manifestations of inequity and inequality. Redlined neighborhoods across the nation consistently have far fewer trees and parks that help cool the air. They also have more paved surfaces such as asphalt lots and highways that absorb and radiate heat. These cities include Richmond, Virginia, where the poor and Black residents experience temperatures that can be 5 to 20 degrees hotter in summer than wealthier White neighborhoods.¹⁰ Local and federal officials, usually White, enacted policies that fostered racial segregation and diverted investment away from minority communities in ways that created large disparities in the urban heat environment. Those





disparities resulted in Black residents having greater rates of asthma, diabetes and high blood pressure, all conditions that are worsened by heat and exacerbated by the COVID-19 pandemic.

Black children are collaterally and cruelly damaged by housing segregation. Low-income neighborhoods include lower-valued homes, which create lower property tax revenue for municipalities that use tax revenue to fund education. As a result of insufficient funding, Black neighborhoods have poorer-quality schools than those in White neighborhoods. Consequently, Black children do not receive an education commensurate with the education White children receive. They simply are not able to compete fairly with their White counterparts. Ultimately, all Americans suffer, because America does not have the trained workforce necessary to compete in a 21st century global economy.

Low-income segregated neighborhoods are less likely to have safe, outdoor spaces for children to play, are more likely to expose minority children to adverse childhood experiences, which then are linked to poor adult outcomes, restrict economic mobility and make it less likely that minority children will be able to overcome their poverty.

Housing discrimination typically locks Black families into a rental market or a market in which housing values are depressed. As a result, the wealth gap between the races widens over generations, perpetuating inequality and segregation.

CONSEQUENCES - THE FINANCING BARRIERS

Black homebuyers pay an unequal and higher price for their homes because of limited access to financial tools related to home ownership.

Blacks have a harder time than Whites qualifying for a loan, because their credit scores are, on average, 60 points lower than White credit scores. Much of this disparity is tied to higher unemployment rates among Blacks and because the types of bills Blacks generally pay on a regular basis — cell phone, utilities and rent — are not included in the typical FICO score that most lenders use.¹¹

The riskier the buyer, the more the buyer is charged for the loan. For example, half of Black homebuyers obtain loans backed by Fannie Mae and Freddie Mac. These common financing vehicles use two main variables in determining risk — credit scores and down payment amounts. Blacks tend to have lower credit scores and make smaller down payments, resulting in a perceived higher risk that translates to higher costs to the borrower. Interestingly, researchers have shown that Black and Latinx borrowers are still charged more for loans, even after the risk to the lender is controlled. Strip away lender hyperbole and what's left is nothing more than a Black/Latinx tax on home ownership.

The cost of mortgage insurance also increases adversely with a decrease in down payment amount. Simply, the borrower pays for the risk the lender takes, with Blacks usually paying higher amounts.

Interestingly, none of the barriers mentioned above violate or are considered discriminatory under the Fair Housing Act. They do, however, raise the need for the homebuying community to review its treatment of Black prospective homebuyers and develop creative approaches to overcome the barriers.

These contextual points are raised to demonstrate that, while the heart of this study is to

outline steps that state and local governments must take to address housing discrimination – such as inclusive zoning, more attainable housing and better land use planning – there are other critical areas that those in government and the private sector must address to implement the changes needed to end housing segregation.

NEXT STEPS - THE POSITIVE OUTCOMES FROM RIDDING SOCIETY OF HOUSING SEGREGATION

Correcting the consequences of decades of systemic racial discrimination will benefit every American. An environment where everyone is respected and appreciated will help generate a more welcoming, inclusive society as the nation moves toward a majority minority population, a trend confirmed by early data from the 2020 census. Americans should celebrate this country's diverse culture and be more compassionate global citizens during interactions with other nations and cultures.

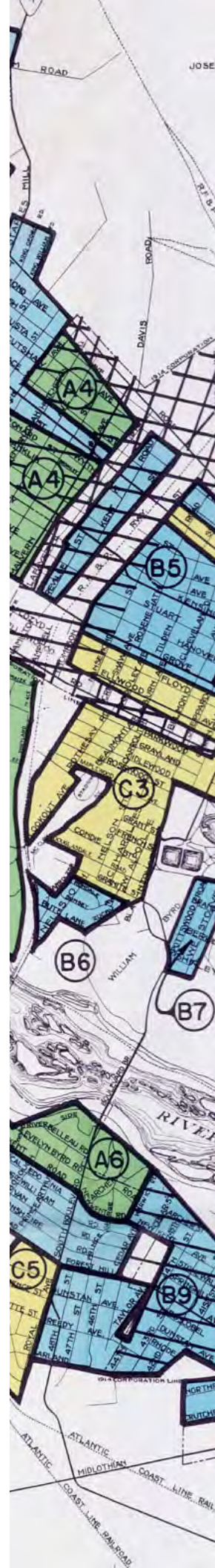
Changing the attitudes and actions of realtors will help level the homebuying playing field. For example, at one point, the National Association of Real Estate Boards adopted a provision that prohibited brokers from selling to buyers who would disrupt the racial composition of the neighborhood, and further, state law authorized commissions to revoke the licenses of brokers who did not follow that provision. With that in mind, realtors must evaluate their professional interactions to understand if any of their practices result in discrimination and sustain residential segregation. They must adopt strategies for showing and directing potential buyers to available homes in a nondiscriminatory manner. Empirical evidence shows that realtors do not treat all buyers equally. Not all buyers are shown all available homes, and many times, that decision is based on race. A key opportunity to rid society of housing segregation is for realtors to provide Blacks with the full range of housing options in a nondiscriminatory manner.

Utilizing the talents of every citizen to become fully prepared for the workforce will create productive, tax-paying citizens who help grow the economy and build more wealth for every American. Simply, America will benefit when all its citizens are respected, appreciated, allowed and encouraged to meet their full potential.

By fostering segregation, the nation deprives itself of an educated populace with the ability to build wealth and develop into productive taxpayers who play an active and positive role in growing the economy and bettering the lives of all Americans. Also, by fostering segregation, America stagnates from a monolith of homogeneity by depriving itself of the cultural richness born from understanding, embracing and appreciating the disparate backgrounds, life experiences, customs, beliefs and dreams of others.

Making available attainable housing in every community enhances the prospects that all families – Black, White, Latinx, Asian, Native American – can purchase homes near their family members. Attainable housing located in wealthy neighborhoods permits adult children to raise the next generation near older family members, especially when grown children are not matching or exceeding the earnings of their parents.

By creating more attainable workforce housing, Virginia can maintain its rating as a top prospect for new businesses relocating in the commonwealth and for the growth of existing businesses. Virginia's recent efforts to improve diversity, equity and inclusiveness, together with its commitment to provide attainable housing, was a major factor in CNBC rating Virginia, for the second straight year, as the best state for business. A welcoming community with available attainable workforce housing means teachers, first responders and essential healthcare providers, among others, can live and work in the communities they serve, thereby decreasing commuting time.





Logic suggests that a community recognizing the above points should be a welcoming community with an atmosphere that reduces the not-in-my-backyard “NIMBY” reaction of residents unwilling to open their neighborhood to a variety of housing options. Addressing NIMBYism is essential to implementing the changes needed to undo residential segregation.

The Virginia Chamber of Commerce also has acknowledged the need to take aggressive measures to address past governmental actions that resulted in housing segregation. The chamber recently articulated the added advantage of benefiting Virginia’s overall business climate by increasing the supply of attainable housing available to essential workers, first responders, teachers and younger citizens seeking housing closer to family and their workplaces.

In its Blueprint 2030, after hearing from more than 7,000 business leaders from every region of Virginia, the Chamber of Commerce stated that businesses support having available, appropriately priced housing where they operate to attract and retain their workforce. To quote the Blueprint, “when homes are affordable and accessible to jobs, individual jobs are improved and communities as a whole grow stronger.”

Some of the recommendations the chamber presented to then-Gov.-elect Glenn Youngkin were to:

- Target improvements for housing access and affordability for all Virginians, but especially to close gaps that exist among population groups.
- Review the impact residential segregation has on housing opportunities and access and explore ways to address it.
- Support workforce housing by addressing land-use issues and constraints on the construction and housing industries, such as exclusionary zoning practices.
- Expand pre- and post-closing financial literacy and housing counseling resources to enable sustainable home ownership.
- Develop targeted strategies to lessen disparities in home ownership.
- Expand access to financial resources in underserved areas.
- Establish and strengthen community and industry partnerships to identify and address key barriers facing underserved populations and markets.
- Increase wealth-building opportunities through home ownership in underserved populations.
- Expand outreach and marketing of affordable homeownership opportunities to potential homebuyers.
- Develop innovative solutions to expand the home purchase inventory.
- Remove barriers to increasing the housing supply, such as exclusionary zoning practices and other local regulatory limitations for home building and development.
- Support efforts to increase Virginia’s inventory of rental units and other high-density housing options as appropriate.

These recommendations should be addressed by the General Assembly, the governor, local governments, housing advocates, realtors, developers and others better positioned than land use attorneys to develop solutions in these areas. An “all hands” approach is needed to make the changes required to correct past actions and improve the quality of life for all Virginians.

The concept that all Americans play a key role in and benefit from correcting past injustices is best captured in a passage from *The Color of Law*, page xii:

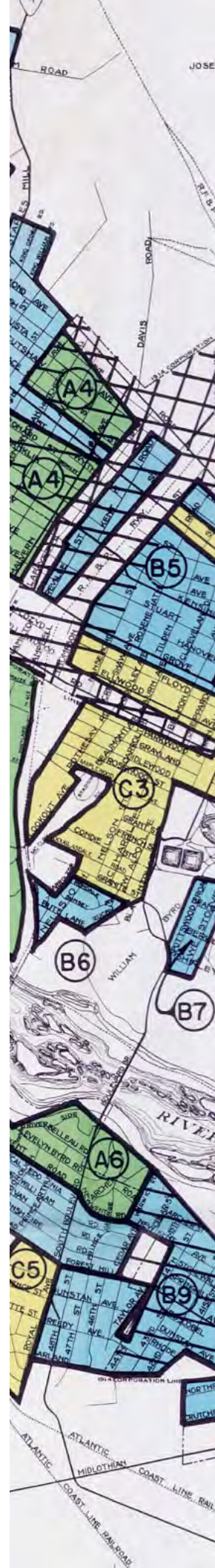
[S]cores of racially explicit laws, regulations, and government practices combine to create a nationwide system of urban ghettos surrounded by white suburbs. Private discrimination also played a role, but it would have been considerably less effective had it not been embraced and reinforced by government.... As citizens in this democracy, we — all of us, white, black, Hispanic, Asian, Native American and others — bear a collective responsibility to enforce our Constitution and to rectify past violations whose effects endure.

CONCLUSION

It was the collective knee of government on the necks of Blacks — not for nine minutes, but for centuries — that resulted in today’s segregated housing with its attendant unacceptable wealth gap in America. To reduce the gap requires government at all levels to act boldly to remove its knee from the collective necks of Blacks, let Blacks finally and freely take a deep breath and long stride toward realizing their full potential. Nowhere is a remedy needed more than in the Commonwealth of Virginia, where the blood of so many flowed to preserve slavery, inequality and injustice. As stated by the lead character in the movie *Lincoln* (which was filmed in Virginia), “the day of reckoning is nigh upon us.”

These recommendations, although innovative, are not novel. Many of them have been made in whole or in part by other jurisdictions in Virginia and across the nation and have already shown success. Other recommendations are currently being developed both in Virginia and elsewhere. Virginia must learn from others, but also must take the lead in developing and implementing those programs and taking the necessary action to correct decades of residential segregation that has deprived Virginia of benefits from the full contribution of its Black citizens.

The goal of this study is not to assign blame. It is not important to determine who and what were responsible for creating the racism behind residential segregation. What is significant is that everyone does whatever is necessary to end the racism and its attendant injustices as soon as possible. This helps assure that all Americans are treated fairly, develop to their full potential, and become productive, contributing, tax-paying citizens.





III. Recommendations

The McGuireWoods Zoning and Segregation Work Group recommends Virginia localities and the Virginia General Assembly take the following actions. These recommendations are divided into local recommendations that the governing bodies of counties, cities and towns may take, and state recommendations that the General Assembly may take.

Increasing housing supply and housing choices for all is the best path to begin correcting the legacy of racial segregation. Many of these recommendations focus on increasing housing available for lower-income households since that is the level of greatest need and fewest opportunities. Increasing housing choices also has the benefit of supporting business development by allowing workers at all income levels to live near their jobs.

A. LOCAL RECOMMENDATIONS

1. Include Housing Equality in Every Comprehensive Plan

Comprehensive plans should acknowledge and measure racial segregation and promote racial equality and opportunity. The comprehensive plan — also known as a general plan, master plan or land-use plan — is a document required for every Virginia locality. The purpose of the comprehensive plan is to articulate the long-range vision, goals and strategies that will steer a locality's future growth and development. The comprehensive plan guides future land use decisions and capital investments by landowners, developers, businesses, citizens and government.

As a first step, localities should amend their comprehensive plans to acknowledge past housing segregation and adopt guidance to consider housing equality in all future land-use decisions.

Existing enabling legislation already permits inclusion of housing equality in comprehensive plans.¹² Amendments for housing equality should be made at the next five-year review or sooner.¹³ Examples of comprehensive plans addressing housing equality adopted in cities and counties across the country are described in Appendix 1.

Comprehensive plans should, at a minimum, include:

- Measurement of racial segregation based on recent census data and historical trends.
- Measurement of income segregation.
- Aspirational goals to expand and geographically disperse housing opportunities for all races and incomes.

2. Update Zoning Ordinances and Maps to Encourage Mixed Use With Higher Residential Density in Existing Commercial Nodes

Rezoning existing residential neighborhoods is a difficult way to increase housing supply and diversity for many reasons. Rezoning areas of existing commercial, industrial or institutional uses can increase housing supply and housing choices faster and with less disruption. Particularly with the economic changes resulting from the COVID-19 pandemic, office or retail properties may be ripe for redevelopment. Depending on the location of such existing nonresidential areas, this can introduce new housing choices in areas that have been restricted to more expensive single-family houses.

3. Offer Affordable Housing Incentives Through Density Bonuses, Parking Reductions and Tax Abatement

Providing housing that is affordable to households with lower incomes requires a mix of subsidies and cost savings. Simply mandating a supply of affordable housing units as part of a special exception or rezoning process without making the numbers work for a developer is not feasible. The way this often works is that developers agree to restrictions on the rent or sales prices for new apartments or houses in exchange for incentives that reduce the cost of producing the residential unit. Two common examples of incentives that can lead to the development of affordable housing units include, but are not limited to, density bonuses and parking reductions.

PRIMARY INCENTIVES

Density Bonuses – Zoning restricts the number of residential units that may be built on an acre of land. This ratio is known as residential density. By increasing the residential density, the locality reduces the amount paid for land to support each residential unit. Localities can trade a density bonus for legal restrictions on the rent or sales price of some of the new homes. For example, Alexandria will increase residential density up to 30% in exchange for rent or sales price restrictions on one-third of the bonus units.¹⁴

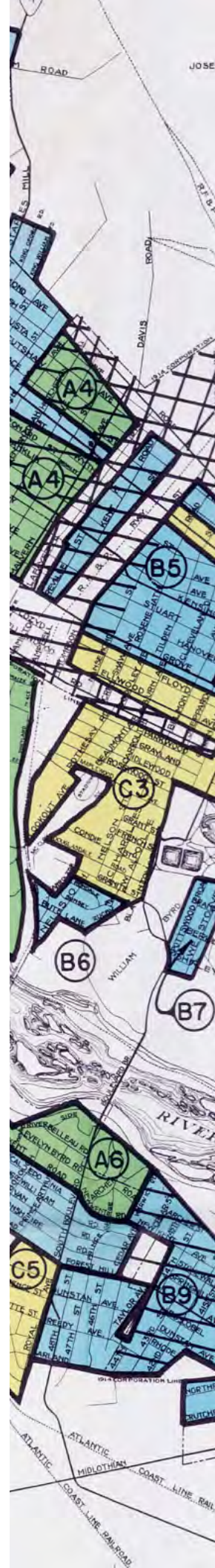
Parking Reductions – Each parking space provided for a residential unit can cost the developer \$30,000 or more. Many lower-income households have no car or fewer cars than similar-size households and don't need the number of parking spaces that may be required by zoning. Reducing parking requirements can reduce costs and provide an incentive for income-restricted residential units. This recommendation should be considered against the backdrop of an expanding transportation network. Reduced parking availability must be supplemented with transit availability to ensure residents have access to work, education and food. Therefore, parking reductions and improved transportation must go hand in hand.

ADDITIONAL INCENTIVES

In addition to bonus density and parking reductions, many Virginia jurisdictions offer regulatory and financial incentives, modification of development standards, or fee waivers to encourage affordable housing. Incentive programs that offer several ways of meeting the affordable housing requirement are most likely to be used. Flexibility can include constructing new affordable housing on the same site as market-rate housing, accepting in-lieu fees or land dedication that can be used for the creation of affordable housing, or accepting the conversion of existing market-rate units to income-restricted affordable units.

The cost of application and permit fees and the time and expense of lengthy and complex approval processes add considerably to the price of new or renovated housing. Localities can help reduce the cost of affordable housing by waiving application and permit fees and expediting the review of development that will be subject to income restrictions.

In July 2019, the provisions of HB 2229 became effective, through which the Virginia General Assembly expanded local governments' authority to waive building permit fees and other local fees for private sector builders involved in the construction of affordable housing. Previously, the law applied only to 501(c)(3) organizations pursuing affordable housing developments. The intent is to further reduce local-level impediments to the financing, development and construction of affordable housing units.





Below is a list of additional incentives localities should consider to encourage and facilitate the creation of new affordable units and the preservation of existing units. No one locality is the same as any other locality, so not all of these incentives will be appropriate for every locality in Virginia.

1. Incorporating a range of bonus density and other incentives for including affordable housing at various income tiers.
2. Adopting zoning ordinance regulations and creating comprehensive plan policies that encourage the preservation of affordable housing.
3. Using additional flexibility in meeting typical standards to achieve goals such as repurposing existing vacant buildings to accommodate new affordable units.
4. Providing flexibility for location and design standards for affordable housing units.
5. Creating options to locate affordable units off-site or create affordable housing land banks.
6. Establishing tax abatement programs or tax incentive programs for newly developed affordable units as well as the preservation of affordable units to incentivize voluntary provision of affordable units or to reduce the costs of affordable housing developments.
7. Providing parking reductions that lower the overall cost of including affordable units within developments, which can result in significant construction cost savings particularly for projects that would typically build parking structures.
8. Reducing and/or waiving application filing fees, permit fees and inspection fees for projects that meet or exceed affordable housing objectives.
9. Streamlining administrative permitting and inspection processes for developers and builders of newly constructed affordable housing projects, as well as renovations intended to preserve existing affordable housing.
10. Allowing expedited processing of affordable housing projects to save time and costs.
11. Providing staff assistance or an ombudsman to assist with the regulatory review of affordable housing proposals.

Smaller localities may be dependent on application and permit fees due to the revenue they produce. This may ultimately limit certain localities' ability to reduce these fees. In these circumstances, the state could establish housing equity incentives or grants to offset the revenue loss that might otherwise occur, ultimately allowing smaller localities to implement fee reductions without experiencing revenue loss.

4. Adopt Proportional Proffer Guidelines Adapted to Housing Size and Income Restrictions

Most localities in Virginia use conditional zoning, known as proffers, to mitigate the impact new housing has on public facilities such as schools, roads and parks. Many use proffer guidelines to determine the appropriate cash or in-kind contributions required to justify a rezoning, usually expressed as a formula calculating the dollar value of proffers expected per residential unit. Other localities have proffer guidelines for specific facilities such as recreation areas or targeted payments for school construction. Proffers are necessary but increase the price of housing. Proffer guidelines should be reduced for

smaller residential units that provide housing choices and for income-restricted affordable units.

Reducing the proffer cost for smaller types of residential development and income-restricted units removes a barrier to developing affordable housing. Without such an adjustment, developers will be motivated to build the largest (and most costly) homes to offset the proffer cost. Localities should grant reductions or relief from proffered contributions or requirements for requests to construct affordable housing units to incentivize the production of those units.

5. Promote Home Ownership for Low-/Moderate-Income Households

Increasing homeownership opportunities is needed to shrink the racial wealth gap in Virginia. In addition to planning and zoning reforms to increase the overall stock of affordable housing, localities should adopt programs that specifically support homeownership. Below are a few examples of how localities can promote affordable homeownership.

1. Encouraging condominium and cooperative forms of ownership.

Zoning ordinances sometimes include unintentional barriers to condominium or cooperative forms of ownership. These include restrictions on converting from rental to common-interest communities if a building is non-conforming (i.e., was built before compliance with new zoning rules was required).

2. Expanding affordable housing proffer requirements and incentives to provide homeownership.

Zoning requirements and incentives for affordable housing typically favor rental housing because the subsidy required is much less to meet income qualifications. Such requirements and incentives should equalize the cost to the developer between providing rental and ownership units. This will inevitably mean that fewer affordable ownership units will be created than rental, but the benefits of homeownership have generational impacts and the subsidy can be carried forward to other income-qualified buyers upon resale of the property.

3. Converting affordable units to lease-to-own units.

At the sunset of a rental affordable dwelling unit housing program (typically 15 to 30 years), local housing authorities should consider converting some of the units to a lease-to-own program.

6. Add “Missing Middle” Housing Types to Residential Zones

What Is “Missing Middle” Housing?

To fully address housing segregation and related social inequities, a diverse range of housing options is needed. Other market-rate strategies must be promoted in tandem with inclusionary zoning policies and regulations in order to reduce racial segregation, address housing inequities and curb overall housing costs. A crucial but sometimes overlooked priority is increasing overall housing supply and, in particular, “missing middle” housing types.



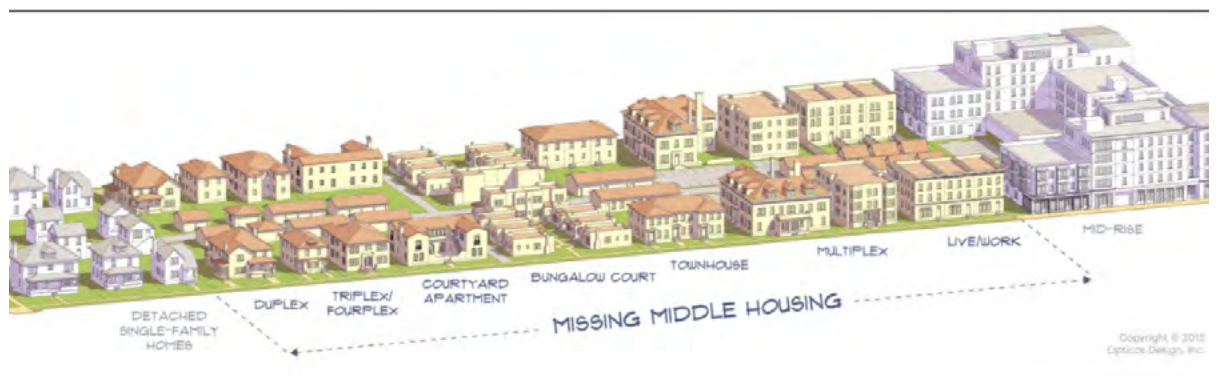


As explained in “Zoning and Segregation in Virginia: Part 1,” vast swaths of land are off-limits to a diversity of housing types due to prevailing single-family zoning. Some researchers argue that zoning exclusively for single-family detached dwellings should no longer be an option, in order to mitigate impacts of inequality and climate change. Put bluntly, “there is no defensible rationale grounded in health, safety, or public welfare for effectively mandating a 3,000-ft² house with one unit while prohibiting three 1,000-ft² units within the same building envelope.”¹⁵

Research shows that permitting a range of “missing middle” housing types better positions communities to meet demographic changes, solve housing affordability issues and promote diversity in communities. Missing middle housing is a residential typology spanning the range of densities between single-family detached homes and midrise to high-rise apartment buildings.¹⁶ As reflected by the graphic below, these housing types range from accessory dwelling unit bungalows, to duplexes, triplexes and quadplexes, and from townhomes to stacked two-over-two units, to small-scale apartment buildings.

Benefits of Missing Middle Housing

Localities across the United States have made legislative and policy changes to promote additional missing middle housing options in single-family neighborhoods. Moderate density increases or “gentle density”¹⁷ afforded by missing middle housing types can better support public transit services and amenities within walking distance and ultimately reconfigure sprawling single-family neighborhoods into more complete and walkable “10-minute” neighborhoods.¹⁸ Missing middle housing is also a creative response to account for the increasing land costs.¹⁹ Ultimately, the challenge of increasing housing affordability does not have a single solution. Missing middle housing provides a menu of options to meet housing affordability challenges with a diverse range of housing types. Homeowners and renters across the spectrum can benefit from missing middle housing types, including recent college graduates, couples entering the housing market, single-parent families, aging-in-place seniors and adults with disabilities.²⁰



Form-Based Code

A number of localities have implemented a “form-based code” approach, rather than relying on conventional zoning regulations to appropriately guide missing middle housing. Form-based code is a type of land development regulation that uses physical form, rather than separation of uses, as the organizing principle for the code.²¹ Conventional zoning is inherently at odds with missing middle housing, as it relies on separating residential dwelling types numerically by density factors versus looking at compatibility factors. Many missing middle housing types are typically categorized as multifamily by most jurisdictions.

In reality, missing middle housing can blend seamlessly into single-family neighborhoods.²² Said differently, perceived density of missing middle housing is often not nearly as high as the actual numerical density.²³ Shifting to a form-based code allows localities to remove unnecessary barriers to missing middle housing types. Localities that have implemented a form-based code to guide missing middle housing include Austin, Texas;²⁴ Cincinnati, Ohio;²⁵ Olympia, Washington;²⁶ and Portland, Oregon.²⁷

MISSING MIDDLE HOUSING PRECEDENTS

Many localities across the country have approved legislation to create greater permissibility and flexibility for missing middle housing options that include duplexes, accessory dwelling units and other housing types. Minneapolis recently eliminated single-family zoning, making it the first major city in the United States to do so. It started with clear marching orders to develop a plan that addresses racial equity, housing affordability and climate change.²⁸ Portland, Oregon’s “Residential Infill Development Project” permits accessory dwelling units, duplexes, triplexes and quadplexes in the majority of its single-family zoning districts.²⁹ Charlotte followed suit by recently approving “The 2040 Plan,” which permits higher-density housing, including duplexes, triplexes, tiny homes and accessory dwelling units in traditional single-family neighborhoods.³⁰ Norfolk, Virginia’s city council recently approved a “Missing Middle Pattern Book” that clearly states how the production of missing middle housing types can help address housing affordability issues, promote more diverse housing, and ultimately create more equitable, inclusive and resilient communities.³¹

The federal government has also acknowledged the impact low-density zoning has on housing costs, suburban sprawl and racial segregation. As part of President Joe Biden’s infrastructure bill, financial incentives may be provided to local governments that change zoning laws to no longer restrict neighborhoods to single-family homes.³² The Build Back Better Act devotes \$150 billion to housing, including a new “Unlocking Possibilities” program that would make available \$1.6 billion to states, local governments and regional planning agencies to improve housing plans, streamline regulatory requirements and processes, and reform zoning codes.³³

Several local jurisdictions in Virginia have undertaken or have begun to review ADU ordinances in their locality,³⁴ and a 2016 update to the District of Columbia’s zoning code included by-right development of ADUs in many residential districts.³⁵ However, few Virginia localities have taken steps to minimize regulation and add financing, programming, education and incentives necessary to encourage ADUs as a central part of their growth strategy or to address affordable housing challenges. Arlington and Charlottesville, on the other hand, have taken proactive steps to offer support and incentives for ADUs to achieve broader housing goals.³⁶

Some state governments have taken a more proactive approach to missing middle housing types. In California, Assembly Bill 68 established a statewide framework that permits ADUs in almost all residential districts by right, and provides a base set of standards and ministerial approval guidelines upon which individual localities can build.³⁷ While localities retain the ability to tailor the ADU guidelines for their local jurisdictions, a base assumption in favor of administratively approved ADUs now applies across almost all residentially zoned properties in California.³⁸ Oregon’s House Bill 2001 expanded property owners’ ability to build certain missing middle housing types, like duplexes, in residential zones. The law requires updates to local laws that currently limit the types of housing people can build.³⁹





Housing Diversity Within Greenfield Development

Infill development is typically viewed as the optimal way to meet increased housing demand. However, infill strategies alone cannot happen fast enough or in great enough numbers to make a significant difference. Greenfield development, on the other hand, offers an attainable alternative to provide meaningful market-rate affordable housing. Not only are land prices cheaper in more exurban areas, but there are fewer constraints for land assemblage and to build comprehensively and efficiently. The market has begun to recognize the clear benefits of smart growth principles such as compact, multiuse development, open-space conservation and walkability. These principles can be applied in greenfield developments — such as in Celebration, Florida, or in Kentlands, Maryland — as an alternative to traditional sprawl. If reasonable densities are permitted, planned developments can support integrated neighborhoods with a variety of housing types and densities that blend market-rate affordable housing seamlessly alongside low-density housing without overburdening the development community.⁴⁰ Localities should be encouraged to amend local zoning ordinances to require new, larger developments of 20 acres or more to include a mix of housing types. Generally, a minimum of 10% of the dwelling units within new, large developments should consist of housing types other than traditional single-family detached dwelling units. Similarly, localities should be encouraged to include policy support for a mix of housing types in local comprehensive plans.

7. Cooperate With Other Localities to Coordinate Regional Housing Supply

Virginia's municipalities are divided into counties, independent cities and towns. For decades, a moratorium has prohibited Virginia's independent cities from annexing property located in neighboring counties. Due in part to the annexation moratorium, independent cities largely do not have the resources to establish affordable housing investment funds to incentivize private sector affordable housing development.

In Northern Virginia, Richmond and Hampton Roads, counties, cities and towns are inherently interconnected. Residents freely travel to multiple municipalities within a metropolitan area to work and home. No municipality is an island. Municipalities must foster regional cooperation to address housing needs that are region-specific.

Localities should foster regional cooperation and coordinate housing supply by encouraging metropolitan jurisdictions to coordinate regional housing development goals and affordable housing targets. Municipalities should incorporate these goals and affordable housing targets into their respective comprehensive plans.

COMMUNITY LAND TRUSTS

Community land trusts (CLTs) are a form of shared equity housing. Shared equity homeownership balances the goal of maintaining the affordability of a home for future purchasers with allowing current owners to build wealth through equity in the home. Thus, owning a CLT home allows a home purchaser a greater ability to afford the home by sharing in the cost of homeownership and allows a home purchaser to amass equity.

CLTs maintain an interest in the land through a renewable ground lease (typically costing the homeowner anywhere from \$100 per month to \$1 per year) and retain earned equity and a portion of the market appreciation upon the sale of the home. The CLT controls the resale of the home to ensure affordability in perpetuity. CLTs are involved with finding suitable land through purchase or donation and the rehabilitation and construction of homes. Many CLTs also offer ongoing support to homeowners regarding property maintenance and improvement. They are usually nonprofit or quasi-governmental organizations with boards of directors. Several CLTs are currently operating in Virginia.

A 2019 study of shared equity housing performance,⁴¹ which compared 58 programs across the country, concluded that shared equity models “provide affordable homeownership to lower income families generation after generation” and that such a model “strengthens residential stability and promotes equitable wealth building.” Also important is that CLTs are increasingly serving people of color. The number of minority households serviced by CLTs has increased since the early 2000s from 13% to 43%.

CLTs will often target a specific population for their programs, such as first-time homebuyers. The CLTs can also focus on racial disparities in the homeownership realm. For example, the Maggie Walker CLT, which has had a significant impact in the Richmond area, included as the No. 1 goal in its 2020-2022 strategic plan, to strengthen its programs to address racial inequities in homeownership.

Instead of buying a home outright with a traditional mortgage, lease-to-own programs allow a buyer to lease for a specified period of time with the goal of amassing the funds necessary for a down payment at the end of the lease. Lease-to-own programs have typically been managed by nonprofit organizations. The Maggie Walker CLT manages a lease-to-own program that sets aside a portion of the rent collected in an escrow account for the future homebuyer. Conditions can apply, such as requiring the future homebuyer to participate in a savings program, credit restoration program, etc. This “Homeownership Bridge Program” allows the CLT to serve buyers at the 50% of area median income level, which is significant.

Localities can support these homeownership programs in the following ways:

- Partner with available CLTs and/or the Virginia statewide CLT by placing land and/or units obtained through inclusionary zoning regulations into the CLT.
- Localities in which CLTs are located should consider an exemption from real property tax.

The Virginia General Assembly can support these programs in the following ways:

- Support a study of existing CLTs in Virginia with the goal of encouraging the creation of additional CLTs throughout the commonwealth.
- Amend §58.1-3607 to add Virginia’s affordable housing-focused CLTs to the list of organizations exempt from real and personal property taxation. That list currently includes several Confederate-oriented organizations.
- Identify sources of state-level funding for land purchases and administrative costs associated with CLTs.
- Support S. 98 and H.R. 2143 – Neighborhood Homes Investment Act.

This act calls for the creation of a new federal tax credit associated with home building and rehabilitation, which would operate like the low-income housing tax credit for rental housing. The lack of capital investment in low- and moderate-income neighborhoods has exacerbated the homeownership rate gap.





B. STATE RECOMMENDATIONS

1. Amend Comprehensive Plan Enabling Legislation to Address Housing Equality

Local planning commissions may amend their comprehensive plans to include housing equity, but there is no requirement for them to do so. To ensure that housing equity is considered throughout Virginia, the General Assembly should amend the enabling legislation to require provisions to address housing equity.

Section 15.2-2223 of the Virginia Code requires comprehensive plans to incorporate policies addressing transportation, water supply, community service facilities, projected sea level rise, etc., but do not require plans to reduce housing segregation. Section 15.2-2233(D) does require designation of areas and measures for affordable housing, but this does not deal directly with reducing racial and economic segregation, and therefore does not sufficiently address the issue.

Localities have expressed concerns that the requirements of what must be included in a comprehensive plan pursuant to Sections 15.2-2223 through 2232 have grown by accretion and are not well-coordinated. The Zoning and Segregation Work Group supports a comprehensive revision and restatement of these sections, provided that housing equity is incorporated as a required consideration in comprehensive plans.

2. Provide Technical Support Through Virginia DHCD

Many smaller localities lack the resources and expertise to address housing segregation. Even larger localities would benefit from technical assistance and a clearinghouse of resources to help enable the reforms proposed in this paper. The General Assembly should direct and fund the Department of Housing and Community Development to provide such technical support to localities. This should include:

- a. Indices to measure racial and economic segregation.
- b. GIS and census data support.
- c. Model ordinances.
- d. Education and advocacy for increasing housing choices.

UTILIZING PACE TO ADVANCE HOUSING EQUITY

The property-assessed clean energy (PACE) financing tool enables owners of residential and commercial properties to obtain long-term funds for the cost of energy and water efficiency upgrades.⁴² PACE offers an alternative to traditional lending vehicles and can fund improvement projects with no out-of-pocket costs. Specifically, PACE financing can be used for energy efficiency upgrades, disaster resiliency improvements, water conservation measures or renewable energy installations. The costs of the retrofits are paid using a voluntary tax assessment on the owner's property. Ultimately, the energy efficiency improvements reduce operating costs of the property and improve the property's value, ideally offsetting the overall cost of the PACE property assessment.⁴³

PACE is referred to as R-PACE when used for residential properties and C-PACE when used for commercial properties. R-PACE is not available in Virginia at the time of this writing; however, the Department of Mines, Minerals and Energy formed a workgroup in 2021 to determine the feasibility of an R-PACE program in the commonwealth. R-PACE could be particularly critical for Black property owners in Virginia who may be subject to discriminatory lending practices and housing segregation through traditional lending vehicles. The program offers a new approach to financing that helps property owners increase their capital without relying on traditional financing channels that have perpetuated racist housing policies in the past.

That said, as PACE loans are fundamentally asset-based and therefore attached to the property, the program may create challenges that could be detrimental to vulnerable homeowners in the commonwealth. Prospective buyers may be discouraged from purchasing a PACE-financed property as the buyer would assume responsibility for the loan if the seller is unable to pay the loan off before the sale. The PACE loan may thus inhibit the seller's ability to build wealth using the home's equity. While R-PACE has great potential, further study is needed to offset some of the possible negative impacts of the program. State leadership should address these and other possible impacts if the program advances.





3. Reform Inclusionary Zoning Enabling Legislation

Inclusionary zoning has emerged as a proven and practical strategy for local governments to address the well-documented and unprecedented housing inventory shortage in Virginia.⁴⁴ Inclusionary zoning policies, where provided, allow local governments to use their land use regulatory powers to require or incentivize the production of affordable housing in predominantly urban settings, proximate to access to transit, employment and community amenities.

Legislative Authority for Inclusionary Zoning

The first inclusionary zoning ordinance, still in effect today, was adopted in Fairfax County, Virginia, in 1971.⁴⁵ Since then, more than 800 communities across the country have adopted inclusionary zoning policies.⁴⁶ However, despite the commonwealth's pioneering role in inclusionary zoning, only a handful of Virginia localities (fewer than 20) have inclusionary zoning or accessory dwelling unit (ADU) ordinances.⁴⁷

In Virginia, localities are permitted to adopt inclusionary zoning programs under two separate provisions. Virginia Code § 15.2-2304 permits adoption of inclusionary zoning ordinances that offer builders a density bonus in return for developing moderately priced housing, but allows flexibility for localities to tailor their inclusionary zoning programs to local needs and considerations, including parameters of both density bonuses and number requirements for affordable units. Section 15.2-2304 is limited, applicable to certain counties and cities in Virginia.

In all other Virginia localities, the more prescriptive and restrictive Virginia Code §15.2-2305 governs inclusionary zoning programs. Section 15.2-2305 requires localities to maintain a ratio between the size of the density bonus (up to 30%) and number of affordable units (up to 17%), and limits applicability to certain high-density rezonings and special exceptions. It sets time limits for localities to process plans, requires giving public housing agencies a right to buy up to one-third of new housing units, and places “reasonableness” limitations on local enactments that may invite litigation. Overall, the restrictions and limitations §15.2-2305 imposes on local jurisdictions seem a likely culprit for the slow adoption of inclusionary zoning ordinances under this enabling authority.⁴⁸

Inclusionary Zoning Increases Supply of Affordable Housing

Inclusionary zoning policies typically employ economic incentives such as density bonuses, modified development standards and fee waivers to encourage or require developers to set aside a percentage of housing units to be sold or rented at below-market prices. Such policies may also provide flexible compliance methods, including on- and off-site unit construction, in-lieu fees, land dedication or conversion of existing market-rate units to affordable units.⁴⁹ These policies typically require much less direct subsidy than more traditional affordable housing programs.⁵⁰ Developers are also able to balance the economics of providing affordable dwellings with the overall increase to the densities of their projects.⁵¹

Where used, inclusionary zoning increases the overall supply of housing, especially in urban settings, which increases opportunities for diverse socioeconomic households to live and participate in newly developed communities, and increases access to transit, employment opportunities and neighborhood amenities for lower-income households.

Where Inclusionary Zoning Falls Short

Virginia's enabling legislation avoids the issue of defining what affordable housing is, which creates challenges for designing and implementing inclusionary zoning at the local level. Disagreement exists on the best way to define and understand the issue. Unsuccessful legislative efforts have attempted to allow localities to propose their own definitions of affordability and implement inclusionary zoning housing programs based on the fact that localities have different neighborhood compositions and different housing needs, while other unsuccessful legislation would have the Virginia Housing Commission examine usage of, and make recommendations regarding statewide standards for, affordable housing in the commonwealth.

Despite the demonstrated success of inclusionary zoning policies in jurisdictions that have adopted them, Virginia's enabling legislation does not require local governments to enact such policies or conduct reviews to ensure they are effectively addressing the issue of housing supply. This means that where political will is lacking, such policies are less likely to be adopted, and existing policies are less likely to be expanded to their greatest potential.

Collaboration With Industry

Inclusionary zoning can have the unintended consequence of suppressing housing production if the incentives, such as density bonuses, do not balance the cost of providing income-restricted housing. If the economic burden of supplying income-restricted housing exceeds the benefit of the incentive, developers will simply not build more housing. Each locality needs to collaborate with housing developers to calibrate the details of inclusionary zoning ordinances to reflect the costs in each jurisdiction.

Proposals to Support Inclusionary Zoning

Inclusionary zoning policies across Virginia have had a positive impact on increasing the availability of housing, but more can be done. Below are several steps, taken separately or together, that the General Assembly could consider to strengthen these policies and encourage broader adoption across the state:

- Amend Virginia Code § 15.2-2304 to apply to local jurisdictions across the state, rather than applying to a handful of localities, and incorporate certain best practices or minimum requirements consistent with the recommendations below. Require localities to periodically review and assess the impact of their adopted policies.
- Capture development currently not covered by inclusionary zoning policies by determining minimum densities for applicability of inclusionary zoning policies.
- Establish a definition of affordable housing to provide certainty and guidance to localities in establishing their own inclusionary zoning policies.
- Identify measures that localities may employ as part of their inclusionary zoning policies to provide additional relief for development projects providing desirable levels of affordable housing.





4. Require Zoning to Allow Accessory Dwelling Units in Single-Family Districts.

For many localities, allowing accessory dwelling units is an achievable first step for increasing market-rate affordable housing options within single-family neighborhoods. An accessory dwelling unit, or ADU, is a “smaller, independent residential dwelling unit located on the same lot as a stand-alone (i.e., detached) single-family home.”⁵² These units are typically created via garage conversions, finishing basements, wing additions or free-standing construction behind existing homes.⁵³ A common feature of single-family dwellings early in the 20th century, ADUs have had some recent successes as an attractive option in the 21st century.⁵⁴ ADUs can be an additional source of income and serve an incremental step to increasing the housing stock.⁵⁵ ADUs are generally more affordable than other forms of housing, and can be built relatively quickly without the same expense as other housing forms. This makes ADUs an attractive option to expand access to affordable housing options within existing neighborhoods predominantly characterized by single-family dwellings, as well as to stabilize neighborhoods where an increase in equity and income for homeowners can ease potential displacement pressures.⁵⁶

Local regulations significantly hinder the construction of ADUs, and construction financing can be a barrier, particularly since many lenders do not view ADUs as a formal housing unit. Conversely, localities that have removed unnecessary regulations and are facilitating ADU construction — such as in Portland, Seattle and Vancouver — are witnessing greater ADU production. These measures include reformed zoning regulations such as removing requirements for minimum lot size and maximum floor area, and easing owner occupancy requirements, as well as minimizing design review, waiving permit and utility connection fees, and providing technical assistance with ADU manuals and prototype plans. If the goal of allowing ADUs is building more housing units, a transition from complete ban to conditional ban or no ban may be appropriate.⁵⁷

Without guidance from the General Assembly, localities are left to implement a patchwork of local rules and regulations that stymie the access and availability of ADUs and other missing middle housing types, and can leave the ability to develop missing middle housing types in the hands of officials who are responsive to residents who may not support any further development in single-family neighborhoods.

By way of example, until recently ADUs were permitted in Fairfax County only with approval of a legislative special permit, and were limited to narrow criteria restricting approval to those situations where an ADU was occupied by “a person or persons who qualify as elderly and/or disabled.”⁵⁸ However, Fairfax County recently took commendable measures to adopt an amendment to its zoning ordinance that removes the requirement for tenants to be elderly or disabled, and to permit administrative approval of ADUs in certain circumstances.⁵⁹ County zoning staff had initially proposed even more flexibility for the size and location of administratively approved ADUs, but this additional flexibility was ultimately constrained upon significant community pushback. This example not only highlights the need for support from the state level, but also for a comprehensive community outreach strategy to clarify that increased permissibility and flexibility for ADUs will not jeopardize the character of, or otherwise adversely impact, established single-family neighborhoods.

Recommendations for General Assembly

The McGuireWoods Zoning and Segregation Work Group recommends legislation that allows ADUs in single-family zoning districts across the commonwealth, with the option for individual localities to pursue specifically tailored ordinances not inconsistent with the base framework established by the General Assembly. This would permit individual homeowners to begin the process of generating this necessary accessible housing stock. As a critical first step and pursuant to Virginia House Bill 2053, the Virginia Department of Housing and Community Development (DHCD) recently issued a report to provide input on key issues related to ADUs in Virginia and to identify best practices by localities and/or states regarding the role of ADUs as contributions to the local supply of housing.⁶⁰

Ensuring that ADUs can be reviewed and approved via an objective ministerial process, rather than a subjective discretionary one, reduces significant barriers to providing an affordable form of housing without significantly changing the residential character of neighborhoods. At a minimum, the baseline framework established by the Virginia General Assembly should include the following:

- Amending the Virginia enabling legislation to require by-right permissibility for at least one ADU to be located within any single-family dwelling.
- Amending the Virginia enabling legislation to require administrative approval for all ADUs, both attached and detached, within lots zoned for single-family housing.
- Amending the Virginia enabling legislation to require localities to remove lot size and ownership standards for ADUs.
- Amending the Virginia enabling legislation to support fee waivers and tax incentives for ADUs if the units are reserved as income-restricted affordable units.
- Amending the Virginia enabling legislation to prohibit establishment of new covenants, conditions and restrictions or similar instruments that would prohibit ADUs.
- Encouraging localities to amend local zoning ordinances to require new, larger developments of 20 acres or more to include a mix of housing types such that a minimum of 10% of the dwelling units within the new development consists of housing types other than traditional single-family detached dwelling units and likewise encouraging localities to include policy support for a mix of housing types in local comprehensive plans.
- Encouraging localities to amend local zoning ordinances to establish form-based codes based on compatibility factors (rather than conventional zoning regulations based on numerical density), to permit duplexes, triplexes, quadplexes and other missing middle housing types within single-family zoning districts.





IV. Conclusion

Success in removing the vestiges of housing segregation demands a comprehensive approach by government and the private sector. Changing zoning laws and increasing access to affordable housing is only part of the solution. Government must correct disparate housing finance policy; enhance access to education, transportation, healthcare and financial literacy; and create innovative approaches to community planning and development.

While many of these matters are not directly within the scope of this study, the necessary follow-up action by government and the private sector to implement its recommendations must be undertaken in all these areas. This action is needed to create the systemic change necessary to provide Blacks and others the opportunity to achieve the wealth that is essential to participate fully in United States society but currently is realized only by the privileged. This is not just a racial justice matter, because racial justice is also good for the economy and business. Full participation by Blacks and other marginalized and underrepresented population groups will enhance the wealth and productivity of society as a whole. The nation's economy needs everyone to achieve their potential.

In creating solutions, several overriding principles must remain top of mind. First, as this report shows, other jurisdictions have taken steps like those recommended by the Zoning and Segregation Work Group in this report. Virginians would not be the first to act on many of these recommendations. This work group asks Virginians to learn from others as well as to take the lead in breaking new ground in developing creative solutions. Second, this group is not blaming Virginians of today for the actions of their ancestors, but rather, asking Virginians to be part of the solution to past inequities.

Everyone benefits from a more inclusive society, as was recently demonstrated when CNBC once again named Virginia the best state for business. One of the key factors in that designation was Virginia's recent efforts to enhance diversity and inclusiveness. That is commendable. But, as Will Rogers said, "Even if you are on the right track you will get run over if you just sit there." Virginia must continue to push forward to remove obstacles to Black wealth-building and to maintain a welcoming community for all its citizens and for the business community.

Finally, Virginians must work together to develop comprehensive messages for these recommended actions. Many will raise objections that more affordable housing for either renters or owners will damage home values or impact schools. These claims are not true, as other jurisdictions have demonstrated. Nonetheless, Virginia must clearly demonstrate why they are not true and involve the community so it can fully understand the positive results the state will enjoy once true equality becomes a reality for every citizen.

America is in the midst of a reckoning with respect to systemic racism. The time is right to study the substantial and widening economic gap between the nation's Black and White communities. The McGuireWoods Zoning and Segregation Work Group stands ready to work with government and the private sector to implement these recommendations and undertake all other steps that may be necessary to remove obstacles to wealth accumulation so the American Dream becomes a reality for all.

Appendix

COMPREHENSIVE PLANS

Roanoke Example

One Virginia locality, the city of Roanoke, used the Virginia Code's existing framework to include an "interwoven equity" section in its most recent comprehensive plan update.⁶¹ The interwoven equity section of Roanoke's comprehensive plan specifically acknowledges the role inequality has played, and continues to play, in Roanoke.

The Roanoke comprehensive plan states that any "conversation on equity must acknowledge racist policies that existed throughout the country and were present here in Roanoke. While openly racist laws may have come and gone, implicit or proxy policies took their place and some have yet to be completely left behind. The consequences of these policies are still felt today, manifested in de facto housing segregation along with persistent disparities in income, education, employment, incarceration rates, community health, and a pronounced wealth gap."

To combat this history, Roanoke's comprehensive plan identifies five policy priorities: (1) trust, (2) breaking the cycle of poverty, (3) neighborhood choice, (4) inclusion culture and (5) service delivery.

The Roanoke comprehensive plan represents a framework localities could use as guidance for future updates to their comprehensive plans without any changes to existing state or local law. Such future updates should include an acknowledgement of the role past and present policies have played in housing segregation and inequality and should present strategies to combat this legacy.

Seattle Example

Seattle included a component in its Seattle 2035 comprehensive plan that seeks to measure and analyze displacement and access to opportunity as related to Seattle's growth and development strategy.⁶² Seattle's approach sought to inform elected officials and the public about: (1) potential future displacement impacts of the recommended growth strategy on marginalized populations, and (2) strategies for mitigating identified impacts and increasing access to opportunity for marginalized populations.

To achieve this goal, Seattle incorporated an overarching analytical framework: (1) review historical demographic trends, (2) establish outcomes and categorize urban villages using the equitable development typology, (3) evaluate existing conditions, (4) identify potential impacts of the proposed growth strategy, and (5) identify public mitigation strategies and opportunities to leverage private development.

Part of Seattle's analytical framework included defining and identifying displacement risk indicators and access to opportunity indicators as shown in the tables below. Seattle took these two indicators to put together a composite risk indicator for each neighborhood in the city shown in the figure below.





Table 3 Displacement Risk Index indicators

Indicator	Description	Source	
1	People of color	Percentage of the population that is a race other than non-Hispanic White	2010 Census
2	Linguistic isolation	Percentage of households in which no one 14 and over speaks English only or no one 14 and over speaks both a language other than English "very well"	2008-2012 American Community Survey
3	Educational attainment	Percentage of the population 25 years or older who lack a Bachelor's degree	2008-2012 American Community Survey
4	Housing tenancy	Percentage of households that are renters	2010 Census
5	Housing cost-burdened households	Percentage of households with income below 80% of area median income (AMI) that are cost burdened (paying > 30% of income on housing)	Consolidated Housing Affordability Strategy (CHAS) (based on 2007-2011 American Community Survey)
	Severely housing cost-burdened households	Percentage of households with income below 80% of area median income (AMI) that are or severely cost burdened (paying > 50% of income on housing)	
6	Household income	Percentage of the population whose income is below 200% of poverty level	2008-2012 American Community Survey
7	Proximity to transit	Number of unique transit trips within a quarter-mile walking distance	King County Metro General Transit Feed Specification (GTFS)
8	Proximity to current or future Link light rail and streetcar	Location near a current and future light rail stations and streetcar stops, measured by walking distance	Sound Transit
9	Proximity to core businesses	Location within a certain distance of supermarket/grocery (0.5 mi), pharmacy (0.25 mi), and restaurant/cafe/diner (0.25mi)	City of Seattle
10	Proximity to civic infrastructure	Location within a certain distance of a public or private school (0.25 mi), community center (0.25 mi) or park of at least 0.25 acre (distance varies based on park size), or library (0.5 mi)	ReferenceUSA
11	Proximity to high-income neighborhood	Census tracts that (a) have a median household income < 80% of AMI and (b) about a tract where median household income is >120% of AMI	King County GIS
12	Proximity to job center	Travel time to designated King County Urban Centers and Manufacturing/Industrial Centers	City of Seattle
13	Development capacity	Parcels that allow residential uses identified as likely to redevelop in City development capacity model	2008-2012 American Community Survey
14	Median rent	Ratio of rent per net rentable square foot by tract to the Seattle average for rent per net rentable square foot	Dupre + Scott (Spring 2016)

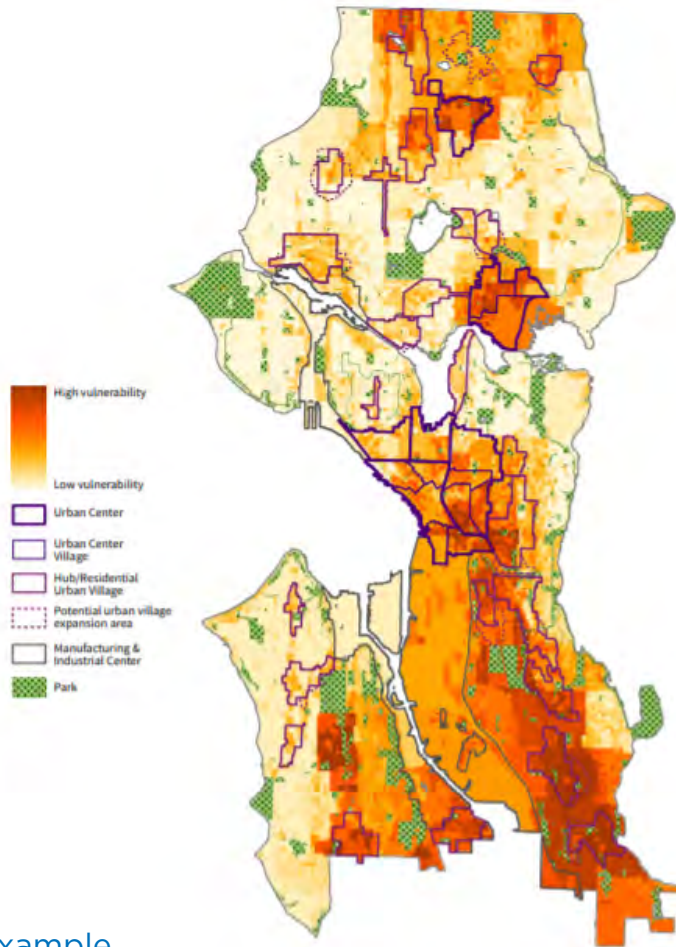
Table 4 Access to Opportunity Index indicators

Indicator	Description	Source
1 School Performance	Elementary school math and reading proficiency scores by attendance area	Washington Office of Superintendent of Public Instruction (OSPI)
2	Middle school math and reading proficiency scores by attendance area	
3 Graduation rate	High school graduation rate by attendance area	City of Seattle
4 Access to college or university	Location within 30 minutes of a college or university by transit (bus and/or light rail)	
5 Proximity to a library	Location within quarter-mile walking distance to a library	King County Metro GTFS Sound Transit
6 Proximity to employment	Location within quarter-mile walking distance to a library	City of Seattle
7 Property appreciation	Number of (by census tract centroid) jobs accessible in 30 minutes by transit	Puget Sound Regional Council 2013 Covered Employment Estimates
8 Proximity to transit	Change in median home value 2000-2013	2000 Census
9 Proximity to current or future Link light rail and street car	Number of unique transit trips within 0.25-mile walking distance	2009-2013 American Community Survey
10 Proximity to a community center	Location near a current and future light rail stations and streetcar stops, measured by walking distance	King County Metro General Transit Feed Specification (GTFS)
11 Proximity to a park	Location near a City-owned and City-operated community center, measured by walking distance (Proximity determined by the size of the park. Larger parks have larger service areas.)	Sound Transit City of Seattle
12 Sidewalk completeness	Location near a public open space, measured by as-the-crow-flies distance	City of Seattle
13 Proximity to a health care facility	Percentage of block faces within a quarter mile missing a sidewalk (excluding those SDOT has not identified should be improved)	City of Seattle
14 Proximity to a location that sells produce	Location near a health care facility, measured by walking distance	King County Public Health (2010)
	Location near a supermarket, produce stand, or farmers market, measured by walking distance	ReferenceUSA Washington State Farmers Market Association





Figure 4 Composite vulnerability indicators



Minneapolis Example

Minneapolis' comprehensive plan, Minneapolis 2040, requires elected officials, staff and the community to consider racial equity outcomes when shaping policies, practices, programs and budgets. Minneapolis 2040 created a process requiring a racial equity impact analysis (REIA) for most ordinances enacted by the city.

The REIA process requires analysis based on the following questions:

1. What is the desired outcome?
2. What will the data show if the action is successful?
3. Have you engaged with the community?
4. Have you analyzed how the program, policy, ordinance or budget item might improve racial equity, or how it might make it worse? Including people from diverse perspectives and backgrounds in the analysis will give the most robust, thorough and perceptive results.
5. How will the effect of this action be measured?

Taken together, Minneapolis' approach and Seattle's approach represent different ways localities can analytically review how segregation impacts existing conditions and how it might be mitigated by legislative actions under consideration. Seattle's approach is data-heavy and is heavily reliant on identifying criteria to analyze and defining terms. Minneapolis' approach, on the other hand, is process-oriented and is designed to be formally included in the legislative process.

Key Contacts



SCOTT ADAMS
PARTNER
+1 703 712 5461
sadams@mcguirewoods.com
TYSONS



SHERI AKIN
SENIOR LAND USE PLANNER
+1 703 712 5483
sakin@mcguirewoods.com
TYSONS



TRACY BAYNARD
**SVP INFRASTRUCTURE &
ECONOMIC DEVELOPMENT**
+1 703 712 5083
tbaynard@mcguirewoods.com
TYSONS



JAMES DYKE
SENIOR ADVISOR, MWC
+1 703 712 5449
jdyke@mcguirewoods.com
TYSONS



LORI GREENLIEF
SENIOR LAND USE PLANNER
+1 703 712 5433
lgreenlief@mcguirewoods.com
TYSONS



GEORGE MARTIN
PARTNER
+1 804 775 1057
gmartin@mcguirewoods.com
RICHMOND



STEVEN MIKULIC
ASSOCIATE
+1 703 712 5375
smikulic@mcguirewoods.com
TYSONS



JONATHAN RAK
PARTNER
+1 703 712 5411
jrak@mcguirewoods.com
TYSONS



GREG RIEGLE
PARTNER
+1 703 712 5360
griegle@mcguirewoods.com
TYSONS



MARGARET ROCKWELL
**AVP INFRASTRUCTURE &
ECONOMIC DEVELOPMENT**
+1 804 775 1940
mrockwell@mcguirewoods.com
RICHMOND



MICHAEL VAN ATTA
LAND USE PLANNER
+1 703 712 5335
mvanatta@mcguirewoods.com
TYSONS



MATTHEW WEINSTEIN
ASSOCIATE
+1 703 712 5420
mweinstein@mcguirewoods.com
TYSONS

ABOUT MCGUIREWOODS' ZONING AND SEGREGATION WORK GROUP

We are a group of real estate and zoning lawyers, land use planners and government relations consultants who are concerned about continuing segregation in our communities. We have come together to bring our collective experience to research zoning and segregation and propose reforms to address the legacy of segregation. McGuireWoods' Zoning and Segregation Work Group, along with the firm's [Racial Justice Task Force](#), strategizes with local leaders on how to work together to make racial equality a reality. The firm focuses on achieving long-lasting positive change in communities across the country where we live and work.

ENDNOTES

- ¹ Editorial Board, “Opinion: Narrowing the U.S. wealth gap is important. Narrowing the racial wealth gap is urgent.” *Washington Post*, July 30, 2021.
- ² [Black and White: A Matter of Capitalization - CMOS Shop Talk](#). Specifically, in this report we have written Black with a capital B and White with a capital W when it refers to racial and ethnic identity, according to *The Chicago Manual of Style*.
- ³ See Richard Rothstein, *The Color of Law*, page xiv.
- ⁴ Report of the National Advisory Commission On Civil Disorders. Washington: United States, Kerner Commission: U.S. G.P.O., 1968.
- ⁵ Editorial Board, “Narrowing the Racial Wealth Gap.”
- ⁶ Century Foundation Report, *Attacking the Black-White Opportunity Gap that Comes from Residential Segregation*, by Kimberly Quick and Richard D. Kahlenberg, June 25, 2019.
- ⁷ Heather Long and Andrew Van Dam, “The black-white economic divide is as wide as it was in 1968”, *The Washington Post*, June 4, 2020.
- ⁸ *The Washington Post*, “The Real Damage,” by Hannah Dreier and Andre Ba Tran, July 21, 2021.
- ⁹ *The Color of Law*, at page xiii.
- ¹⁰ *New York Times*, “How Decades of Racist Housing Policy Left Neighborhoods Sweltering,” by Brad Plumer and Nadja Popovich, August 24, 2020.
- ¹¹ *The Washington Post*, “The Real Damage,” by Hannah Dreier and Andre Ba Tran, July 21, 2021.
- ¹² Va. Code § 15.2-2223 et seq.
- ¹³ Every local planning commission is required to review the comprehensive plan at least once every five years. Va. Code § 15.2-2230.
- ¹⁴ Alexandria Zoning Ordinance Section 7-700.
- ¹⁵ Jake Wegmann, “Death to Single-Family Zoning... and New Life to the Missing Middle,” *Journal of the American Planning Association*, Volume 86, 2020.
- ¹⁶ The Missing Middle Housing Study, The Montgomery County Planning Department, The Maryland-National Capital Park and Planning Commission, September 2018, https://montgomeryplanning.org/wp-content/uploads/2018/09/MissingMiddleHousingStudy_9-2018.pdf.
- ¹⁷ “Single-Family Zoning in the District of Columbia,” District of Columbia Office of Planning, April 2020, https://plandc.dc.gov/sites/default/files/dc/sites/Comprehensiveplan/007_Single%20Family%20Housing%20Report.pdf.
- ¹⁸ Alison Kuznitz, “Charlotte now has a plan for equitable growth. Here’s what City Council decided,” *The Charlotte Observer*, June 22, 2021.
- ¹⁹ “Residential Infill Project, An Update to Portland’s Single-Dwelling Zoning Rules,” Bureau of Planning and Sustainability, City of Portland, Oregon, August 12, 2020, https://www.portland.gov/sites/default/files/2020-08/exhibit_b_volume_1_staff_report_adopted1.pdf.
- ²⁰ The Missing Middle Housing Study, The Montgomery County Planning Department, The Maryland-National Capital Park and Planning Commission, September 2018, https://montgomeryplanning.org/wp-content/uploads/2018/09/MissingMiddleHousingStudy_9-2018.pdf.
- ²¹ “Form-Based Codes Defined,” Form-Based Codes Institute, <https://formbasedcodes.org/definition/>.
- ²² OpticosDesign, Inc., “What’s the best way to enable Missing Middle Housing?” <https://missingmiddlehousing.com/about/how-to-enable>.
- ²³ National Association of Home Builders, “Density, Form-Based Codes, and Missing Middle Housing,” <https://www.nahb.org/-/media/NAHB/advocacy/docs/industry-issues/land-use-101/state-local-affordability/missing-middle-housing-overview.pdf>.
- ²⁴ Jo Clifton, “Planners seeking the missing middle in zoning,” *Austin Monitor*, January 31, 2020, <https://www.austinmonitor.com/stories/2020/01/planners-seeking-the-missing-middle-in-zoning/>.
- ²⁵ OpticosDesign, Inc., “What’s the best way to enable Missing Middle Housing?” <https://missingmiddlehousing.com/about/how-to-enable>.

- ²⁶ Stephen Fesler, “Olympia Enacts Targeted Citywide Missing Middle Housing Reform, Using GMA and SEPA ‘Safe Harbor,’” *The Urbanist*, December 14, 2020, <https://www.theurbanist.org/2020/12/14/olympia-enacts-targeted-citywide-missing-middle-housing-reform-using-gma-and-sepa-safe-harbor/>.
- ²⁷ “Residential Infill Project, An Update to Portland’s Single-Dwelling Zoning Rules,” Bureau of Planning and Sustainability, City of Portland, Oregon, August 12, 2020, https://www.portland.gov/sites/default/files/2020-08/exhibit_b_volume_1_staff_report_adopted1.pdf.
- ²⁸ Paul Mogush, “Advancing Racial Equity Through Land-Use Planning,” American Planning Association PAS Memo, May – June 2021.
- ²⁹ “Residential Infill Project, An Update to Portland’s Single-Dwelling Zoning Rules,” Bureau of Planning and Sustainability, City of Portland, Oregon, August 12, 2020, https://www.portland.gov/sites/default/files/2020-08/exhibit_b_volume_1_staff_report_adopted1.pdf.
- ³⁰ Alison Kuznitz, “Charlotte now has a plan for equitable growth. Here’s what City Council decided,” *The Charlotte Observer*, June 22, 2021.
- ³¹ “Missing Middle Pattern Book,” City of Norfolk, Work Program Architects, GARC, Dills Architects, June 22, 2021.
- ³² Andy Sullivan and Jarrett Renshaw, “Biden seeks to ease housing shortage with \$5 billion ‘carrot, no stick’ approach,” Reuters, April 8, 2021.
- ³³ Christian Britschgi, “Will the Democrats’ ‘Build Back Better’ Bill Do Anything to Fix Zoning?” *Reason Magazine*, November 8, 2021, <https://reason.com/2021/11/08/will-the-democrats-build-back-better-bill-do-anything-to-fix-zoning/>.
- ³⁴ David Taube, “Herndon Planning Commission reviews changes to accessory dwelling unit rules,” July 28, 2021, <https://www.restonnow.com/2021/07/28/herndon-planning-commission-reviews-changes-to-accessory-dwelling-unit-rules/>.
- ³⁵ See Arlington County, Accessory Dwelling Regulations Update <https://housing.arlingtonva.us/plans-reports/accessory-dwelling-ordinance-update/>; City of Alexandria, Accessory Dwelling Units in Alexandria, <https://www.alexandriava.gov/planning/info/default.aspx?id=113872>; Fairfax County Zoning Ordinance Modernization Project <https://www.fairfaxcounty.gov/publicaffairs/county-proposes-changes-accessory-dwelling-units-and-home-based-businesses-better-serve-residents>; and see DCOZ Zoning Handbook <https://handbook.dcoz.dc.gov/use-categories/other-uses/accessory-dwelling-units/>.
- ³⁶ “State of the Market and Local Policy: Accessory Dwelling Units in the Commonwealth of Virginia,” sponsored and led by Virginia Department of Housing and Community Development, prepared by George Mason University Center for Regional Analysis in collaboration with Virginia Polytechnic University Virginia Center for Housing Research and Housing Forward Virginia, November 2021.
- ³⁷ See California Assembly Bill No. 68, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB68.
- ³⁸ Id.
- ³⁹ Oregon Department of Land Conservation and Development, Urban Planning, “Housing Choices (House Bill 2001),” <https://www.oregon.gov/lcd/UP/Pages/Housing-Choices.aspx>.
- ⁴⁰ Jim Heid, “Greenfield Development Without Sprawl: The Role of Planned Communities,” Urban Land Institute, 2004.
- ⁴¹ “Tracking Growth and Evaluating Performance of Shared Equity Homeownership Programs During Housing Market Fluctuations,” Lincoln Institute of Land Policy, April 2019.
- ⁴² <https://www.ncsl.org/research/energy/pace-financing.aspx>.
- ⁴³ <https://www.energy.virginia.gov/energy-efficiency/PACE.shtml>.
- ⁴⁴ Rich Griset, “Virginia Sees Major Housing Inventory Shortage,” *Virginia Business*, April 5, 2021.
- ⁴⁵ David Tuller, “Housing and Health: The Role of Inclusionary Zoning,” *Health Affairs*, June 7, 2018.
- ⁴⁶ Emily Thaden, Ph.D. & Ruoni Wang, Ph.D., Grounded Solutions, “Network Inclusionary Housing in the United States: Prevalence, Impact, and Practices,” Lincoln Institute of Land Policy, September 2017.
- ⁴⁷ Bob Adams and Jonathan Knopf, Housing Virginia, Catherine Bray, HSAdvisors, “Welcome to the Neighborhood. A Practitioner’s Guide to Inclusionary Housing,” Housing Virginia, September 2017.
- ⁴⁸ Bob Adams and Jonathan Knopf, Housing Virginia, Catherine Bray, HSAdvisors, “Welcome to the Neighborhood. A Practitioner’s Guide to Inclusionary Housing,” Housing Virginia, September 2017.
- ⁴⁹ U.S. Department of Housing and Urban Development, “Inclusionary Zoning and Mixed-Income Communities,” Evidence Matters, Spring 2013.

⁵⁰ U.S. Department of Housing and Urban Development, “Inclusionary Zoning and Mixed-Income Communities,” Evidence Matters, Spring 2013.

⁵¹ Terwilliger Center for Housing, “The Economics of Inclusionary Zoning,” Urban Land Institute, 2016.

⁵² American Planning Association, *Accessory Dwelling Units*, <https://www.planning.org/knowledgebase/accessorydwellings/>.

⁵³ Coppage, Jonathan, *Accessory Dwelling Units: A Flexible Free-Market Housing Solution*, R Street Policy Study No. 89, March 2017.

⁵⁴ U.S. Department of Housing and Urban Development, Office of Policy Development and Research, *Accessory Dwelling Units: Case Study*, June 2008 <https://www.huduser.gov/portal/publications/adu.pdf>.

⁵⁵ “State of the Market and Local Policy: Accessory Dwelling Units in the Commonwealth of Virginia,” sponsored and led by Virginia Department of Housing and Community Development, prepared by George Mason University Center for Regional Analysis in collaboration with Virginia Polytechnic University Virginia Center for Housing Research and Housing Forward Virginia, November 2021.

⁵⁶ Garcia, David. *ADU Update: Early Lessons and Impacts on California’s State and Local Policy Changes*, December 2017, http://turnercenter.berkeley.edu/uploads/ADU_Update_Brief_December_2017_.pdf.

⁵⁷ “State of the Market and Local Policy: Accessory Dwelling Units in the Commonwealth of Virginia,” sponsored and led by Virginia Department of Housing and Community Development, prepared by George Mason University. Center for Regional Analysis in collaboration with Virginia Polytechnic University Virginia Center for Housing Research and Housing Forward Virginia, November 2021.

⁶¹ See City of Roanoke’s City Plan 2040: <https://planroanoke.org/city-plan-2040/>.

⁶² See Seattle 2035-Growth and Equity: <http://www.seattle.gov/documents/departments/opcd/ongoinginitiatives/seattlescomprehensiveplan/finalgrowthandequityanalysis.pdf>.

McGUIREWOODS



McGUIREWOODS
CONSULTING
Public Affairs Solutions