

# Regulatory Barriers to Home Construction and Rehab

POSITION PAPER

VERSION 1

Regulatory barriers make housing less affordable to millions of households in the US and abroad. If regulatory barriers were reduced, small developers could provide housing at more affordable prices. This article assesses the current state of knowledge about the effects of federal, state, and local regulations on the supply and cost of housing.

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## Regulating the Dream Out of Existence

Defining a regulatory barrier can be somewhat subjective, but generally speaking, a regulatory barrier is an unnecessarily burdensome rule, one that policymakers have the power to alter or eliminate. Regulatory barriers are particularly problematic in the fields of housing construction and rehabilitation. “The American dream is a universal dream. But all too often this dream of ownership, of decent and affordable housing, is being denied to first-time homebuyers and low- and moderate-income families. Government rules and red tape are regulating the dream out of existence.”

A quarter-century after Jack Kemp, then-Secretary of Housing and Urban Development, uttered those famous words at the First Meeting of the Advisory Commission on Regulatory Barriers to Affordable Housing in May 1990, excessive and misdirected government regulation continues to hinder housing affordability across the nation. In fact, as Michael Schwartz said in *Housing Policy in the United States*, despite the recent boom in housing construction in the United States, housing affordability eclipses both housing quality and overcrowding as the most serious housing challenge our nation faces. Many factors, including stagnant family incomes, affect housing affordability. But perhaps no factor is as workable as that of regulatory barriers.

This article looks at what President George H. W. Bush, in 1991’s *Advisory Commission on Regulatory Barriers to Affordable Housing*, characterized as “excessive rules, regulations, and red tape that add unnecessarily to the cost of housing...” It offers several practical ways to address these challenges, including by supporting the new initiative known as Lean Urbanism, directed toward barrier reduction.

## Housing Affordability

Many regulations are unnecessary and inefficient, and they disproportionately affect low- and moderate-income households. Such regulations unfairly increase the cost of housing — often by tens of thousands of dollars or more — or create perverse incentives to allow existing housing to deteriorate. These regulations stifle the ability of the housing market to provide affordably priced housing throughout the country.

Housing and transportation costs constitute most households’ largest expenditures. Most national standards do not take transportation costs into account, instead using the calculation that affordably priced housing is scarce when low- and moderate-income households must spend more than 30 percent of their pre-tax income to rent or buy dwellings of decent quality dwelling. Spending more than this amount often limits a family’s ability to afford essentials such as food and healthcare. The Joint Center for Housing Studies at Harvard University, in its latest annual report, *The State of the Nation’s Housing*, reveals that 40.9 million US households — more than a third of all households in the country — paid excessive shares of income for housing in 2012, an increase of more than 9 million from 2002.

The number of cost-burdened households remains near a record high despite a modest retreat last year. Millions of homeowners, particularly in minority and high-poverty neighborhoods, are still underwater on their mortgages, while millions more renters have been forced to live in housing they cannot afford or is structurally inadequate. Regulatory barriers are an important contributor to the problem. If more small developers could provide housing at an affordable range of prices, free from unnecessary regulations, millions more households could have their housing needs served.

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## Types of Regulatory Barriers

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A wide range of regulations reduces the supply of housing and generates substantial costs. The most prevalent kinds include:

1. **Building codes.** Building codes stipulate minimum standards that developers must meet when constructing or renovating housing. While building codes are widely considered to be both legitimate and necessary, they can become regulatory barriers. For example, some codes require the use of materials that far exceed minimum health and safety requirements. In some instances code provisions might result purely from lobbying by building materials manufacturers or labor unions. Alternatively, overly burdensome building codes can be adopted so as to exclude housing that is affordable to low- and moderate-income families.

Building codes can become less uniform because of jurisdictional changes, leading to high production costs. Complexity can also create delay because of the greater need for discretionary approvals from government officials. The literature on the effect of building codes on the price of housing is limited, but according to David Listokin and David Hattis' 2005 article, "Building Codes and Housing," the effect on price is approximately five percent of construction costs.

Building codes also can affect housing supply by hindering the rehabilitation of buildings. In many localities, entire systems have to be replaced at great expense. In an effort to overcome those costs, some states have enacted "rehab codes" specifically geared toward renovation. The adoption of a rehabilitation code by the state of New Jersey may have reduced rehabilitation costs by between 10 and 40 percent, and substantially increased the amount of building renovation activity.

2. **Zoning and Land Use.** Traditionally, zoning sought to separate uses that might be incompatible, such as residential and industrial uses. Over time, zoning ordinances became more stringent and arbitrary, often prohibiting, for example, single-family and multifamily dwellings in close proximity to one another. They also began to impose an array of requirements on the permitted sizes of buildings, including height restrictions and minimum floor-area requirements. Many localities also enacted requirements for developers who sought to subdivide their properties. Developers often must provide roads, schools, and other public facilities to the locality. Over time, the variety of land-use regulations has expanded. Building-permit quotas, architectural standards, and other zoning-related regulations have proliferated as well. Sandy Sorlien's paper, "Lean Development Codes,"

Studies have examined the effects of land-use regulations on the price and quantity of housing. Caps on development, restrictive zoning limits on allowable densities, urban growth boundaries, and long permit-processing delays have all been associated with increased housing prices. Research, however, fails to sort out whether the increase can be attributed to constricted housing supply (the supply effect) that results from said regulations or to the premium that some buyers are willing to pay as a result of the enhanced amenities that result (the amenity effect).

3. **Impact Fees.** Many localities charge impact fees to the developers of new housing. This is done in place of or in addition to subdivision exactions. The fees aim to shift the financial burden of new development away from existing residents and onto new residents. Impact fees are associated with higher housing prices for newly constructed housing as well as existing housing. Researchers have even found the increase in price to be higher than the fee itself. Increased prices for housing do not necessarily mean an impact fee is a barrier that should be removed. Nevertheless, it might make housing in the jurisdiction unaffordable to low- and moderate-income families.
4. **Environmental Regulations.** Since the 1980s, the scope and quantity of environmental protection regulations have grown enormously. Federal and state water, environmental protection, and endangered species legislation, among other regulations, have limited where development can take place. In addition, governments at all levels often require developers to prepare far-reaching environmental-impact analyses.
5. **Administrative Processes.** Each of the previous regulations is likely to increase housing prices, but the increases might also reflect the benefits, not just the burdens, that the regulations generate. In addition to these, in many jurisdictions the cost of regulation grows as a result of inefficient and duplicative government administrative processes. Long, costly delays frequently occur and may be attributable to insufficient staffing of governmental agencies, long backlogs in processing, and antiquated procedures. The problems are multiplied when, as often happens, the developer must deal with multiple agencies, and even multiple governments, to obtain permits and approvals. Much development requires discretionary governmental approvals, processes that are keenly susceptible to NIMBY pressures. Administrative roadblocks add significantly to the cost of housing and are barriers to development.

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## **Overall Impacts**

Although work has been done to determine the effects of individual types of regulations, housing developers often face multiple regulations simultaneously. For example, a developer of a single site typically will need to obtain a building permit and a certificate of occupancy, and perhaps even apply for a rezoning or a variance. New construction often requires installation of sprinkler and elevator systems, while renovation projects often require extensive overhauls to electrical and plumbing systems. As such, the costs generated by government regulations and their effects on housing are cumulative.

In his Cityscape article, “Regulations and Housing Development: What We Know,” Michael H. Schill reviews a number of studies that analyze the impact of unnecessary government regulation. The studies indicate that such regulations add anywhere between four percent and 25 percent to the cost of housing construction in the United States. Such a burden makes housing unnecessarily unaffordable to households in every metropolitan area in the country.

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## **Federal Government’s Role in Barrier-Reduction Efforts**

Concerns with regulatory barriers have resulted in a number of major efforts over the last half-century. Since the mid-1960s, at least 10 federally sponsored commissions, studies, or task forces have examined how prevailing federal, state, and local regulations govern construction and rehabilitation and have recommended strategies for reducing such barriers.

The federal government, specifically the US Department of Housing and Urban Development, collects and disseminates information on existing barriers that inhibit the production and preservation of housing affordable to families of modest means. Created in the early 2000s, the Regulatory Barriers Clearinghouse maintains a searchable online database cataloging thousands of barriers and proposed solutions. The federal government can also make federal housing assistance contingent on the establishment of state and local barrier-removal strategies, relaxing federal requirements in response to reform efforts, and providing planning grants to assist in barrier removal.

The federal government should also reconsider its use of the 30-percent-of-household-income metric as a measure of housing affordability, and instead replace it with the “H +T” metric that considers the relationship of both housing (H) and transportation costs (T) on a household’s income; by doing so, the government

could support and even help fund local efforts that promote walkable neighborhoods, greater use of mass transit, transit-oriented development projects, and other tools that reduce housing and/or transportation costs.

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## **State Governments’ Role**

Because states delegate authority to local governments to regulate land use and development, states play an important role in barrier-reduction efforts. Potential changes states could make include: recognizing preserving housing affordability as a formal state goal, creating procedures for reconciling local regulations with state goals, setting statewide standards for maintaining the affordability of housing, and providing financial incentives for housing affordability and/or local regulatory reform.

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## **Local Efforts**

Ultimately, however, most of the regulations that affect housing originate not in Washington, DC, but in thousands of localities across the nation. Concerted educational and group actions are needed at the local level to expose the negative consequences of certain government regulations, to build coalitions for pursuing regulatory reform, and to stimulate local barrier-removal efforts. Government rules that impede housing construction or unnecessarily raise costs are wasteful. What is needed is a concerted, widespread effort that can drive home that point and challenge the status quo of governmental overregulation.

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## **Lean Urbanism’s Role**

Lean Urbanism is the most promising, locally aimed barrier-reduction strategy in years. The initiative seeks to ensure that community-building takes less time by providing ways to tackle onerous financial, bureaucratic, and regulatory processes. These tools will be freely available to governments seeking to streamline their processes as well as to entrepreneurs who need help navigating complex rules.

Some localities might embrace this approach because they seek to streamline their own regulations in pursuit of increased development activity. Lean Urbanism provides these places with a series of approaches to enhance their efforts.

Other places might be reluctant to change, for any variety of reasons. Lean Urbanism can play an important role in these places as well, by creating organized, informed coalitions of groups that can demand policy changes and greater efficiency. In such instances, Lean Urbanism can help to galvanize a constituency of pragmatic reformers whose self-interest

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also promotes greater social good — namely, by bringing down housing costs and putting homes within reach of a broader range of American households.

Ultimately, Lean Urbanism aims to address the challenge that regulatory barriers pose to community-building efforts. Regulatory barriers are the fundamental embodiment of lardiness, of government excess and impediments to affordability. Lean Urbanism is the antidote to lardiness. The time is now.

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*Many lack the expertise to find their way through the labyrinth of government regulations, and they cannot afford to hire an expeditor to guide them.*

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