

Tool: By-Right Development

THE HOUSING AFFORDABILITY TOOLKIT

Developed in Partnership with
HR&A Advisors

By-Right Development

Establishing by-right development allows the supply of housing to grow with demand and helps to stabilize and lower rents.

What Is By-Right Development?

A housing development policy that prioritizes the development of higher density multifamily housing through uniform, codified, and consistent zoning and development regulation.

HOW BY-RIGHT DEVELOPMENT WORKS

A by-right development approval process establishes a rule-based development approval process that improves the ability of the housing market to create new housing in response to increased demand.

BY-RIGHT DEVELOPMENT IMPROVES AFFORDABILITY IN TWO WAYS:

1. Lowers the cost of development through a faster, more predictable approval process.
2. Increases the supply of housing.

Faster, more predictable approval processes lower the cost to obtain development approval, reducing overall development costs. Creating new housing increases the supply of housing and reduces competition between new and long-time residents for existing housing.

“All neighborhoods benefit in the long run if they allow for the production of new housing units.”

– Mark Willis, Senior Policy Fellow, NYU Furman Center

RULE-BASED VS. DISCRETIONARY

A rule-based approach clearly outlines the permitted use, shape, and density at a parcel level. When development projects are submitted, review is administrative and does not exercise discretionary judgement on the project.

Conversely, a discretionary approval process gives increased power to legislative bodies and city staff to create conditions and requirements that are unique to specific projects.

NOT IN MY BACKYARD (NIMBY)

NIMBYs are individuals or organizations that oppose the development of new housing in their neighborhood. NIMBYs routinely use discretionary, non-rule-based development approval processes to block the development of new housing.

Effective Policies



1. Rely on rule-based approval process



2. Encompass a significant portion of the market



3. Apply to more desirable neighborhoods



4. Require strong political support

Recommendations

1. Effective by-right development relies on a rule-based approval process.

The development approval process should be predictable. Developers should be able to evaluate with confidence what types of developments will be approved, what types of requirements the community will impose, and how long approval processes will take. Predictability reduces the cost of development by reducing the cost of obtaining development approvals and allows developers to focus on projects that will be approved, increasing overall supply.

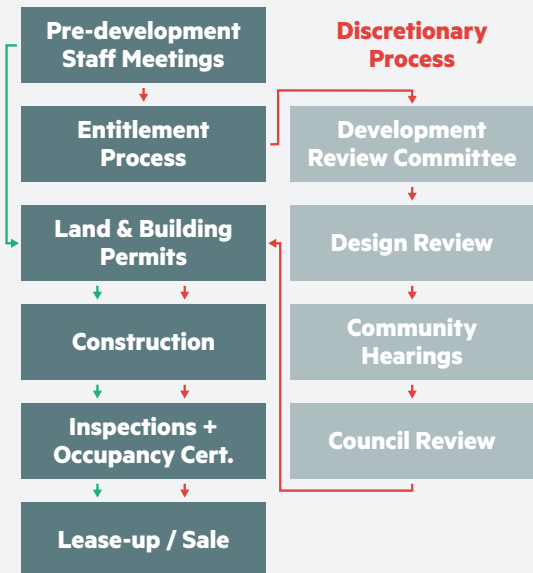
By-Right vs. Discretionary

Most cities exist on a spectrum between rule-based zoning and discretionary zoning. A rule-based approach clearly outlines the permitted use, shape, and density at a parcel level. When development projects are submitted, reviews are administrative and do not exercise discretionary judgement on the project. If all the zoning and code requirements are met, approval must be given for the project.

Conversely, a discretionary approval process gives increased power to review boards, elected officials, and city staff to create conditions and requirements that are unique to specific projects.

Most discretionary approval processes create a series of discretionary reviews, each of which can block development or increase costs. The development map to the right represents a typical development process distilled from a literature review of multifamily development processes across the country. Any one of the reviews can be used by NIMBYs to prevent the development of additional housing.

Typical Development Process Map



An effective by-right development process limits discretionary reviews. Every discretionary review can decrease the potential housing supply, either by blocking projects or reducing their size. A restricted housing supply contributes to affordability challenges. Communities may choose to include some additional discretionary reviews related to key public policy goals. But to keep the affordability benefits of a by-right approach, the number of reviews must be limited.

“ Design guidelines should control only those elements of design that don’t affect the basic entitlement.”

– Los Angeles ReCode, 2014

Recommendations

1. Effective by-right development relies on a rule-based approval process.

Discretionary reviews in the development approval process should have well-defined criteria that set high thresholds for intervening in a proposed housing development. Discretionary reviews often use broad jurisdiction to interpret development standards. This flexibility allows NIMBYs to stretch the purpose of discretionary reviews and block new housing, often based on issues beyond the intended purpose of the review.

Design Review Roadblocks

A review of Los Angeles's zoning code¹ showed that the city often requires a lengthy urban design review process for multifamily buildings. This design review was often used as a tool by those that opposed new housing to limit zoning approvals and directly undermine the city's housing affordability goals.

An effective by-right process can still include minor additional discretionary reviews for extremely large projects. A catalytic redevelopment of a city block or a development proposing 1,000 or more units may meet this threshold. **However, only a very small portion of multifamily developments would meet the threshold; most should be approved through a rule-based process.** Local governments tend to set low thresholds, resulting in required discretionary reviews for a significant portion of large projects.

Although the implementation of a rule-based system is an important step in expanding by-right development, it can still be misused to restrict the supply of housing. The wealthy Silicon Valley suburb of Los Altos Hills has by-right zoning that only allows low-density, single-family housing and does not allow for any multifamily housing within city limits. The city does not contribute to the region's supply of housing, despite being adjacent to large and growing job centers.

“Large Project” Zoning Approval in Boston, MA

In Boston², any project larger than 50,000 square feet (40-45 units) requires a “large project review,” which triggers a public comment period, reviews with interested City and State agencies, design review, and a negotiation process with the planning board. This has resulted in projects being “engineered” to fit the allocated 50,000 SF by reducing units, which artificially reduces Boston's housing supply. This process can take dozens of months and has created a cottage industry of consultants that manage multiple layers of review.

The process has three public review steps:

1. A Project Notification Form;
2. A Draft Project Impact Review analyzing the environmental, traffic, neighborhood, and other impacts of the project; and
3. A Final Project Impact Report in response to concerns raised during the public hearing.

At each point in this process, pressure from neighborhood groups can mount and halt or shrink the project, despite Mayor Walsh's housing goals in the Boston 2030 comprehensive plan.

A city's rule-based zoning policy must facilitate sufficient multifamily housing development to be an effective housing affordability tool.

¹ Los Angeles ReCode, 2014

² “What is Article 80?,” Boston Planning and Development Authority

Recommendations

2. Effective by-right development encompasses a significant portion of the market.

The larger the scale of a by-right policy, the greater the potential impact on affordability.

By-right development primarily impacts affordability by allowing the supply of housing to meet demand. Cities often restrict by-right multifamily development to a small area, substantially restricting the policy's ability to address affordability challenges. For a by-right policy to be effective, it must apply to a significant portion of the market.

Local governments need to understand the magnitude of projected growth and scale their by-right policies accordingly. Local governments should execute thoughtful planning exercises to predict the volume of growth and the location of high-growth areas prior to establishing the scope of by-right policies. When by-right development policies are not aligned with market conditions, they are far less effective at impacting affordability.

A regional approach to by-right development is often the most effective. Housing markets operate at a regional scale, so sole local governments may struggle to accommodate regional growth, even with a by-right policy in place.

“ [SB 827]...could be “the biggest environmental boon, the best job creator, and the greatest strike against inequality anyone’s proposed in the United States in decades.”

– Boston Globe, June 2018¹

“A Statewide Upzone” – SB 827

In 2016, the McKinsey Global Institute found that California needed to build 3.5 million homes by 2025² to address pent-up demand and stabilize rents across income groups.

A 2017 senate bill proposed by California State Senator Scott Wiener would have taken advantage of recently built transit infrastructure by enacting a statewide up-zoning to remove density limits and parking requirements on parcels within a ½ mile of high-speed transit. It was designed to override local zoning and set neighborhood maximum heights between 45 and 85 feet, depending on context.

An independent evaluation of the bill's impacts found that this would “significantly upzone nearly all of San Francisco to 45- and 85-foot heights (depending on distance to transit stops), as well as significant portions of Los Angeles, Long Beach, San Diego, Oakland and Berkeley.” Another localized study found that metro stops in Oakland would be upzoned up to five times their current capacity.³

Although the bill did not pass, it struck a national chord by illustrating how by-right development is essential to addressing housing affordability.

¹ Ramos, Dante, “Go on, California – blow your lousy zoning laws,” 2018

² Woetzel et al. “Closing California’s Housing Gap” McKinsey Global Institute, 2016

³ DiStefano, “How Might SB827 Impact California?,” 2018

Recommendations

3. Effective by-right policies apply to more neighborhoods with increased opportunities.

While development in all markets is helpful, developing new housing in strong areas has a larger stabilizing effect on a locality's rents than developing in weaker areas.

Neighborhoods with increased opportunities like good schools and amenities have the greatest demand.

They also tend to have more political and financial resources to use discretionary approval processes to block new housing. Moving to a by-right approach stops the misuse of discretionary reviews and leads to more housing development and more affordability.

“Living somewhere that feels like the suburbs but is next to an express train.”

DITMAS PARK, BROOKLYN

In order to reach the New York City's ambitious housing and equity targets, the Regional Planning Association (RPA) has recommended that the city up-zone and expand by-right development to all neighborhoods – including traditionally residential neighborhoods.¹

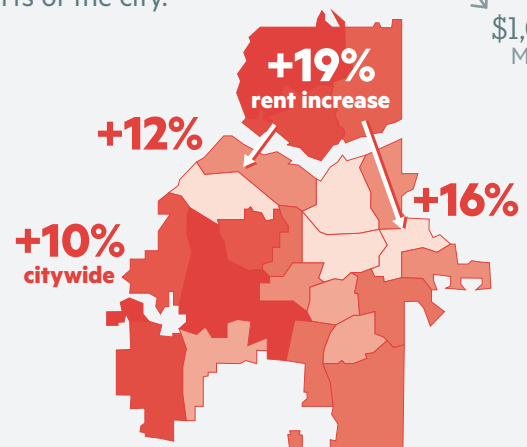
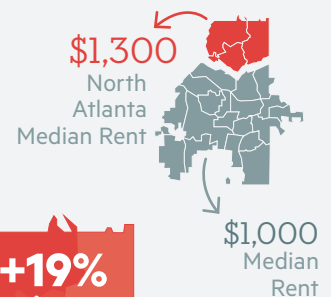
The RPA found that none of these “desirable” neighborhoods, defined by RPA as tracts with median incomes greater than \$50,000, top performing elementary schools, and within 0.6 miles of subway access, were up-zoned since 2000, unlike other middle-income neighborhoods in Brooklyn and Queens. These neighborhoods effectively blocked all up-zoning attempts and maintain low-density communities, while the city lacks sufficient housing.

If development is blocked in desirable neighborhoods, it moves to lower-income, largely minority communities.

The discretionary approval process and the lack of by-right development in high opportunity neighborhoods are rarely identified as culprits, but they play a key role in the process of displacement.

Demand for Housing in Desirable North Atlanta has Spilled Over to West and East Atlanta.²

95% of north Atlanta is zoned for single-family housing and is one of the most desirable parts of the city.



increasing single family exclusivity

Development in north Atlanta has been constricted by zoning, shifting demand to adjacent parts of the city. This has resulted in greater displacement and decreased affordability in parts of west and east Atlanta.

1 “Is NYC as Transit-Oriented as We Think?” – RPA Lab, 2018

2 HR&A analysis, Atlanta Equitable Housing Study, ACS 2016 5-year survey

Recommendations

4. Effective by-right policies require strong political support.

Strong political will and leadership is required to establish and sustain an effective by-right development policy. NIMBYs will put pressure on elected and appointed officials to block by-right development that they believe will impact their quality of life.

There are a number of ways to create political support for by-right development and improve affordability. Local governments and concerned community members should pursue multiple approaches:

Encourage community support and Yes In My BackYard (YIMBY) groups that advocate for increased development and multifamily housing to stabilize rents and improve affordability.

These groups can be valuable partners of local governments and help spread awareness about the link between by-right development, increased supply, and greater affordability. Several of these groups have formed across the country, with active members in many cities facing high levels of discretionary zoning like Los Angeles, San Francisco, and Cambridge.

Review existing efforts to promote statewide by-right development. This is a drastic measure but may be necessary to overcome local opposition to new housing. A statewide approach takes the issue out of the hands of local elected officials and allows for the formation of broader coalitions of support.

“The Anti-Snob Law”

– MASSACHUSETTS CHAPTER 40B^{1,2}

The best example of this is the Chapter 40B “anti-snob law” in Massachusetts, which allows development of affordable housing to be built in towns where less than 10% of housing is affordable despite local town zoning ordinances. It was created in 1969 to reduce local zoning and permitting barriers to housing production and to encourage the production of housing in all communities throughout the state.

If certain conditions are met, developers are eligible to submit a comprehensive permit to the local Zoning Board of Appeals (ZBA). Projects are approved 90% of the time. If they are not approved, the developer can appeal to the state Housing Appeal Committee. In these cases, the burden of proof falls on the local ZBA to prove that the project “demonstrates a valid local concern that outweighs the regional housing need.”

¹ Interviews with Chapter 40B administrators

² Reid et al. “Borrowing Innovation, Achieving Affordability: What we can learn from Mass. Chapter 40B,” 2016

Considerations & Limitations

Efforts to improve affordability in a community must include some form of by-right development to be effective.

Impact

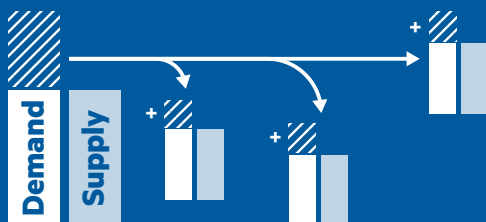
The reliance on discretionary zoning in place of by-right development restricts the supply of housing and decreases affordability for all income levels. Studies of the Bay Area, New York City, Boston, and Los Angeles have all found that sharp increases in zoning restrictions contribute to the current housing affordability crisis, exacerbate wealth disparities, and result in economic and racial segregation. The discretionary approval process allows NIMBYs to use traffic, school crowding, and environmental impacts of new housing to prioritize their quality of life over housing affordability for the broader community. Finally, by-right development reduces the potential impact of NIMBY groups on projects and communities.

“ In 1960, Los Angeles was zoned to accommodate 10M residents and had a population of 2.5M. In 2016, the city was zoned for only 4.3M with a population of 4M.”

Market

Expanding by-right development is an effective strategy to increase supply and affordability in strong and weak markets alike. In both strong and weak markets, there are neighborhoods where there is demand for more housing. **It is most effective to expand by-right development in neighborhoods where demand pressure is the highest – this is where there is the greatest need for additional supply.**

When desirable neighborhoods restrict zoning and create excess demand, it causes demand pressure on adjacent communities, resulting in widespread rent increases and displacement.



Housing Goals



**INCREASED
HOUSING
SUPPLY**



**INCLUSIVE,
MIXED-INCOME
NEIGHBORHOODS**

When implementing housing policies, local governments may pursue a range of housing goals. Expanding by-right development is an effective strategy to **increase the overall supply of housing** by responding to demand increases. It can also create mixed-income neighborhoods, as cities undo the deleterious effects of exclusionary zoning and build in more desirable neighborhoods.

Recommendations Summary

To design an effective by-right policy, a city should take a four-tiered approach.

1. EFFECTIVE BY-RIGHT POLICIES RELY ON RULE-BASED APPROVAL PROCESSES

- The development approval process should be predictable.
- Discretionary approval processes used by most cities create a series of obstacles – often in the form of multiple layers of discretionary reviews – to develop new multifamily housing.
- An effective by-right development process should include only a limited number of discretionary reviews.
- Although a rule-based system is an important step in expanding by-right development, it can still be misused to restrict the supply of housing. A city's rule-based zoning policy must facilitate multifamily housing development to be an effective tool in stabilizing and reducing rents.

2. EFFECTIVE BY-RIGHT POLICIES ENCOMPASS A SIGNIFICANT PORTION OF THE MARKET

- The larger the scale of a by-right policy in terms of where it applies within a jurisdiction, the greater the potential impact on affordability.
- Local governments need to understand the magnitude of projected population growth and scale their by-right policies accordingly.

3. EFFECTIVE BY-RIGHT POLICIES APPLY TO MORE DESIRABLE NEIGHBORHOODS

- By-right development policies have the greatest impact on housing affordability in high-demand neighborhoods by reducing the competition between existing residents and new residents for a limited supply of housing.
- Moving to a by-right approach stops abuse of discretionary processes and leads to increasing housing development in desirable areas.
- When desirable neighborhoods reject by-right policies, new housing development concentrates in lower-income and minority communities, driving displacement.

4. EFFECTIVE BY-RIGHT POLICIES REQUIRE STRONG POLITICAL SUPPORT

- Strong political will and leadership is required to establish and sustain an effective by-right development policy.
- Encourage Yes In My BackYard (YIMBY) groups that advocate for increased development and multifamily housing.
- In strong markets, tie by-right policies directly to the production of units with below-market-rate rents.
- Consider regional or statewide policies mandating by-right development when necessary to overcome local opposition to new housing.

By-Right Development Economics

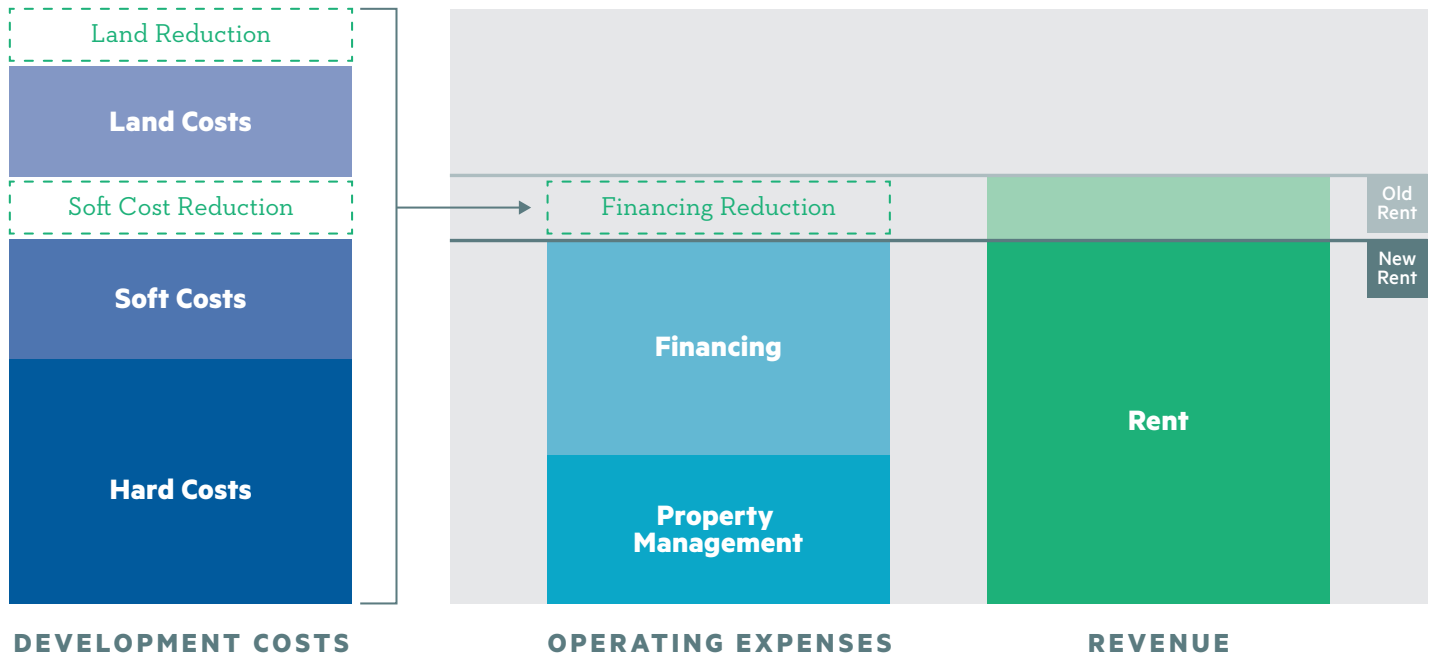
By-right development impacts affordability in two key ways – it reduces the cost of development and increases the supply of housing.

Reduced Development Costs

By-right development reduces both soft costs and land costs. An efficient and predictable entitlement process reduces carrying costs, consulting fees, and other costs associated with approval processes when compared to a lengthy discretionary review process. Land costs are reduced when the zoning premium on multifamily land is rendered obsolete – by-right policies increase the number of parcels with few zoning restrictions, reducing competition and associated land costs.

When costs decrease, developments require less financing and less rent to ensure project viability. Policy changes that allow for more by-right development can lead to lower rents for individual multifamily projects, resulting in lower overall rents.

The magnitude of land and soft cost savings depends on the specific market conditions of each city, in addition to the current permissiveness and duration of the entitlement process.



By-Right Development Economics

By-right development impacts affordability in two key ways – it reduces the cost of development and increases the supply.

Increased Supply

By-right development policies increase the housing supply and, consequently, housing affordability. One of the largest factors driving the national affordability crisis is rising rents in existing low-rent housing. Those rent increases are the result of failing to build enough multifamily housing to accommodate new renter households.

By-right development increases affordability indirectly. As supply increases, it reduces competition for existing housing and leads to lower rents. This indirect impact can be significant. Below is the estimated¹ impact of a 1% increase in housing supply on rents and the number of households that would be able to afford rental housing as a result.

EFFECT OF 1% INCREASE IN SUPPLY		
DECREASE IN SHARE OF UNITS <\$800 SINCE 2000 (PERCENTAGE POINTS)	REDUCTION IN RENT	INCREASE IN AFFORDABILITY (BY HOUSEHOLDS)
Atlanta 15.7	0.63%	690
Sacramento 19.5	0.98%	720
Minneapolis 15.1	0.95%	780
Denver 20.9	0.98%	1,300
Pittsburgh 21.1	1.19%	730
San Antonio 19.3	0.82%	720
Seattle 14.5	1.02%	1,500
Tampa 26.8	1.00%	580

A **1% increase** in overall supply in Pittsburgh would add **1,200 units** to the market and reduce overall prices by **1.19%**. This would make Pittsburgh affordable to **730** additional households.²

¹ A 2018 study by the Bay Area Council Economic Institute (“Solving the Housing Affordability Crisis”) evaluated the effect of various housing policies based on the number of households for which housing would become affordable as a result of the policy, using a 30% housing-cost-burden assumption. The report evaluated the responsiveness of price to changing the supply through policy. Using a similar method, HR&A evaluated the number of households for which housing would become affordable, given a 1% increase in the overall supply of the eight case-study cities.

² 730 additional households would pass the threshold below 30% for affordability.