

Housing Opportunities Made Easier (HOME) Act

MODEL STATE ZONING BILL

Institute for Justice

August 24, 2023

Section 1. Short Title. This Act shall be known as the “Housing Opportunities Made Easier (HOME) Act.”

Section 2. Definitions. For purposes of this Act:

- (a) Duplex means a house divided into two Dwelling Units, with a separate entrance for each.
- (b) Dwelling or Dwelling Unit means a house, apartment, or other place of residence.
- (c) Home Occupation means a business conducted full-time or part-time in a Dwelling Unit that serves as the principal residence of the person conducting the business.
- (d) Mobile Tiny Home means a residence that is under 500 square feet and is on wheels, so that it is mobile. A mobile tiny home shall not include a traditional car, truck, or sports utility vehicle.
- (e) Municipality means the government of a specific local area constituting a subdivision of the State, including cities, towns, villages, and counties.
- (f) Nuisance means the unreasonable interference with the possessory interest of an individual in the use or enjoyment of his land, including pollution, loud noises, unpleasant odor, mist, dust, harmful use of pesticides, or vibration.
- (g) Public Transportation Stop means a stop where a bus, subway, or other public transit service picks up and drops off passengers.
- (h) Quadplex means a house divided into four Dwelling Units, with a separate entrance for each.
- (i) Secondary Dwelling Unit means a secondary house or apartment that shares the same lot as a primary home. Also known as an Accessory Dwelling Unit.
- (j) State means the State of [[____]] and its political subdivisions.
- (k) Tiny Home means a residence that is under 500 square feet. Tiny homes do not include (i) tents or (ii) homes made from cardboard crates, scrap wood, plastic bags, bedding, tarps, or similarly misused materials.
- (l) Triplex means a house divided into three Dwelling Units, with a separate entrance for each.

Section 3. Minimum Size Requirements.

- (a) A Municipality shall not establish minimum square footage requirements on Dwellings unless those requirements are necessary to protect health and safety.¹
 - i. Minimum square footage requirements in excess of any requirements established by applicable building codes are presumptively not related to health and safety.
- (b) A Municipality shall not establish minimum square footage requirements on lots.²

¹ [North Carolina](#) and [Connecticut](#) passed state laws in 2019 and 2021, respectively, that prohibit local zoning ordinances from setting a minimum dwelling size.

² While no state has yet prohibited lot size minimums, there have been recent efforts to reduce such minimums. [A bill in the Texas legislature to reduce lot size minimums statewide](#) to 1,400 square feet (the same as Houston’s current minimum) passed the Senate but did not get a vote in the House.

Section 4. Subjective and Expensive Design Requirements on Housing

- (a) Except as provided otherwise in this Section, a Municipality shall not establish design requirements on the aesthetics of Dwellings, garages, and accessory buildings unless those requirements are necessary to protect health and safety and the structural integrity of the buildings. Presumptively impermissible design standards include, but are not limited to:
 - i. Requiring, or prohibiting, a certain architectural style of home (e.g., Victorian, Craftsman, ranch, etc.).
 - ii. Requiring certain exterior building materials, such as stone, brick, or a specific type of siding.
 - iii. Requiring a certain amount or style of landscaping, unless the landscaping is necessary to address drainage and water runoff or to create permeable surfaces.
 - iv. Requiring garages or establishing architectural requirements on garages, unless necessary for protecting health and safety for the garage's structural integrity.
- (b) Aesthetic decisions are at the sole discretion of the property owner or a private homeowners' association. All aesthetic features shall otherwise be presumed permissible unless:
 - i. The aesthetic features constitute a Nuisance; or
 - ii. The aesthetic features conflict with already existing design standards made applicable by way of a property's inclusion within an already designated special or historic district.³

Section 5. Multi-Family Dwellings.

- (a) Any zoning district that allows single-family homes as of right shall also allow Duplexes as of right. A Municipality may require Duplexes to comply with reasonable setback and height restrictions applicable to single-family homes but shall not establish additional requirements or restrictions on Duplexes.⁴
- (b) In cities of at least [[#]] people, any zoning district that allows single-family homes as of right shall also allow Triplexes and Quadplexes as of right. A Municipality may require Triplexes and Quadplexes to comply with setback and height restrictions applicable to single-family homes but shall not establish additional requirements or restrictions on Triplexes or Quadplexes.⁵
- (c) A Municipality shall not prohibit or restrict a property owner from fully or partially demolishing or removing an existing structure on a single-family zoned property that the owner wishes to convert to a Duplex, Triplex, or Quadplex.
- (d) A Municipality shall not prohibit or restrict a property owner from subdividing an existing single-family zoned lot in a manner and number consistent with the establishment of a Duplex, Triplex, or Quadplex on that lot.

³ States that have passed recent laws that prohibit or limit aesthetic or design material provisions in local zoning codes include Arkansas and Texas. Connecticut also prohibits qualities such as "character" from being used as rationale for zoning rules.

⁴ States that have recently enacted laws that legalize duplexes as of right in formerly single-family-only zones include California, Maine, Montana, Oregon, Vermont, and Washington state.

⁵ States with laws that allow triplexes and/or quadplexes as of right throughout the state or in most jurisdictions above a relatively small number of people include California, Oregon, Vermont, and Washington state.

Section 6. Secondary Dwellings.

- (a) Any lot that contains a single-family home shall be allowed an attached or detached Secondary Dwelling Unit as of right.⁶
- (b) A Municipality may establish reasonable and objective restrictions on a Secondary Dwelling Unit. These restrictions include reasonable setback requirements. Reasonable restrictions do not include:
 - i. A requirement that the Secondary Dwelling Unit have a permanent foundation.
 - ii. A prohibition on a Secondary Dwelling Unit being a Mobile Tiny Home.
 - iii. A requirement that the owner(s) of the single-family home also own the Secondary Dwelling Unit.
 - iv. A requirement that the owner(s) of the single-family home reside on the property that has a Secondary Dwelling Unit.
 - v. A prohibition on renting the Secondary Dwelling Unit.
 - vi. A requirement that the occupant of the secondary dwelling unit be related by blood or marriage to the owner(s) of the single-family home.
- (c) If a Municipality requires permits for Secondary Dwelling Units, then permit applications that comply with the Municipality's reasonable restrictions (if any) shall be administratively approved. Failure to deny permits within 30 days shall be deemed approval.
- (d) Instead of having a Secondary Dwelling Unit, a property owner may rent space on the owner's land to one Mobile Tiny Home, regardless of whether the property owner owns the Mobile Tiny Home. Such arrangements shall not require a permit, registration, or other form of permission.
- (e) A Municipality shall not prohibit or restrict a property owner from subdividing an existing lot in a manner and number consistent with the establishment of a Secondary Dwelling on that lot.

Section 7. Restrictions on Tiny Homes and Other Dwellings.

- (a) An owner of a residential vacant lot or other lot allowing residential use shall be allowed to establish a Tiny Home, including a Mobile Tiny Home, on that lot, as of right.⁷
 - i. The Tiny Home can be inhabited by the owner or rented to another person or persons.
 - ii. A municipality shall not establish durational limits or restrictions on Tiny Homes offered for rent under this section.
- (b) Any home that is manufactured in compliance with the U.S. Department of Housing and Urban Development (HUD) Code shall be permitted as of right in any residential zone without requiring any additional standards or inspections.

⁶ States now allowing secondary dwelling units (also known as accessory dwelling units, or ADUs) as of right include California, Connecticut, Maine, Montana, Oregon, Utah, Vermont, and Washington state.

⁷ While no states have broadly legalized tiny homes as of right, many states and local governments have adopted [Appendix Q](#) of the International Residential Code. In such states—or in local jurisdictions that have adopted Appendix Q—the building code does not stand in the way of these homes, which must be under 400 square feet.

Section 8. Delays and Fees for Building Permits.

- (a) Any permit required for a Dwelling Unit, besides a Secondary Dwelling Unit, shall be deemed approved if not denied within 60 days.
- (b) Building permits shall not require more than two hearings before a Municipality, including the city council or any municipal, zoning, or planning board. This provision does not include a resident's inquiries made to a Municipality's elected officials or staff or other government officials. It shall not affect an applicant's right to appeal an adverse zoning decision.
- (c) A Municipality cannot require excessive fees for permit applications or approvals. Fees over \$500 are presumptively excessive.
- (d) Protest petitions shall not be used to block applications for rezoning or other permits. This provision shall not stop citizens from publicly objecting to any proposal.⁸
- (e) A Municipality shall not require permit applicants to pay for an unreasonable number of studies on the proposed development, nor require studies at an unreasonable expense.
- (f) Any obligations imposed as a condition of the issuance of a permit must bear a clear nexus to the project or use for which the permit is issued.
- (g) Any obligations imposed as a condition of the issuance of a permit must be expressly stated by the issuing authority at the time of the issuance of the permit and may not be modified thereafter.

Section 9. Delays and Fees for Variances.

- (a) Any request for a variance related to the use or construction of a Dwelling Unit shall be deemed approved if not denied within 60 days, except for variances related to a Secondary Dwelling Unit, which shall be deemed approved if not denied within 30 days.
- (b) Requests for variances shall not require more than two hearings before a Municipality, including the city council or any municipal, zoning, or planning board.
- (c) Total fees for such a variance, including any amount required to be held in escrow, shall not exceed \$500.
- (d) Any obligations imposed as a condition of the issuance of a variance must bear a clear nexus to the project or use for which the variance is issued.
- (e) Any obligations imposed as a condition of the issuance of a variance must be expressly stated by the issuing authority at the time of the issuance of the variance and may not be modified thereafter.

Section 10. Parking Restrictions.

- (a) The construction of a Dwelling Unit shall not be conditioned on minimum parking requirements if the Dwelling Unit is within one half mile of a Public Transportation Stop.⁹

⁸ As documented by [Mercatus](https://www.mercatus.org/research/policy-briefs/rezoning-protest-petitions-are-ripe-reform), Massachusetts, North Carolina, and Wisconsin “have recently repealed or sharply reformed their protest petition statutes,” leaving 20 states that still allow small numbers of people to block local rezones. See <https://www.mercatus.org/research/policy-briefs/rezoning-protest-petitions-are-ripe-reform> for more on protest petitions.

⁹ California, Connecticut, Montana, Oregon, Rhode Island, Vermont, and Washington state have all passed some form of state-level reform capping the amount of parking local governments are allowed to require in their zoning ordinances, with some states already adopting IJ's model bill recommendation. See

Section 11. Home Business and Home Occupations

- (a) Home Occupations shall be allowed as of right and without a permit in all residential zoning districts unless the Home Occupation would result in a Nuisance. Home Occupations shall be allowed in a residential home or accessory structure by a resident of the home or accessory structure.¹⁰
 - i. Home Occupations that are allegedly in violation of this provision shall be entitled to a hearing and an opportunity to be heard before having their operation restricted or prohibited.
- (b) Although Home Occupations shall be allowed as of right, a Municipality may establish reasonable restrictions on Home Occupations' operations to prevent Nuisance. These restrictions shall not include:
 - i. Prohibitions on storing inventory or using equipment on the premises, including outside the home, unless the inventory or equipment usage could be a genuine public safety hazard or other Nuisance.
 - ii. Prohibitions on any customers from visiting the Home Occupation. Reasonable restrictions on parking and the number of daily or weekly customers shall be allowed.
 - iii. Prohibiting two or fewer nonresident employees from working at the Home Occupation.
 - iv. Requirements for structural modifications for a Home Occupation.
 - v. Restrictions on the amount of floor space the Home Occupation may use.
 - vi. Categorical prohibitions on certain types of Home Occupations, unless those businesses would inherently cause a Nuisance.
 - vii. Prohibitions on Home Occupations used for charitable purposes.
 - viii. Caps on the number of Home Occupations in one dwelling.

Section 12. Other Uses in Commercially Zoned Districts.

- (a) Subject to the local powers reserved herein and unless otherwise provided by law, a Municipality shall not prohibit or restrict residential uses in commercial zones.
- (b) Subject to the local powers reserved herein and unless otherwise provided by law, a Municipality shall not prohibit or restrict commercial or non-commercial uses for charitable purposes in commercial zones.

Section 13. Rental Restrictions.

- (a) A Municipality shall not limit or restrict the number of Dwellings or Dwelling Units that may be rented.
- (b) A Municipality shall not limit the amount of rent, deposits, or fees a property owner may require to rent a Dwelling or a Dwelling Unit.
- (c) A Municipality cannot set minimum or maximum durational restrictions for rental units.

<https://www.sightline.org/2023/07/20/from-vermont-to-oklahoma-legislatures-challenge-parking-mandates/> for more on recent state-level parking reforms.

¹⁰ For instance, [Florida enacted a law in 2021](#) that broadly legalizes home-based businesses throughout the state largely similar to the provisions in Section 11 of this model bill.

- (d) A Municipality shall not restrict the number of unrelated residents from living together, unless such residents create a genuine and demonstrable risk to public health and safety or Nuisance.¹¹
- (e) A Municipality shall not require a permit or permission or registration to offer a property for rent unless:¹²
- (f) A Municipality shall not establish excessive or onerous fees or taxes for a permit or permission to offer a property for rent.

Section 14. Connection to Health and Safety.

All zoning laws must have a real and substantial connection to protecting public safety, health, and/or reasonable enjoyments and expectations of property, including requiring the structural integrity of structures, safe plumbing, safe electricity, and preventing Nuisances. Otherwise, a zoning provision is invalid and unenforceable.¹³

Section 15. Access to Courts.

- (a) Any individual or party who is allegedly harmed by a Municipality’s law or actions or omission in violation of this Act has a right to challenge that law or action or omission in state or federal court. The court shall also have jurisdiction to decide any factually related claims the individual might have.
- (b) Any individual or party filing such a court challenge shall not be required to first exhaust administrative remedies before filing the challenge.
- (c) If a court should find that a challenged municipal action was unambiguously foreclosed under the terms of this Act, the property owner filing the challenge shall be entitled to an award of reasonable attorney fees.
- (d) Any ambiguity in this Act or a local zoning law shall be construed in favor of maximum use of property desired by the property’s owner.

Section 16. Estoppel

- (a) Any individual or party may reasonably rely on the representations of a government official, acting in his or her official capacity, with respect to an interpretation of a relevant statute, ordinance, restriction, or regulation.
- (b) Estoppel shall be an affirmative defense in any action alleging noncompliance of a zoning ordinance if the accused party can demonstrate that it reasonably relied on the representations of a government official.

¹¹ [Iowa](#) and [Oregon](#) passed laws that forbid local governments from limiting occupancy based on familial relationships in 2017 and 2021, respectively.

¹² A similar provision was adopted—and was judicially enforced against a municipality—in North Carolina. *See Schroeder v. City of Wilmington*, 872 S.E.2d 558 (N.C. Ct. App. 2022). North Carolina provided an exception, however, in two instances: (1) The property offered for rent has been the subject of more than four verified violations in a rolling 12-month period or two or more verified violations in a rolling 30-day period; or (2) The property offered for rent has been identified within the top ten percent (10%) of properties with crime or disorder problems as set forth in a local ordinance. *See* N.C. Gen. Stat. § 160D-1207(c). Each of these exceptions is further defined in the statute. *See* N.C. Gen. Stat. §§ 160D-1207(c)(1), (2); N.C. Gen. Stat. § 160D-1207(d).

¹³ For instance, in 2021, [Connecticut enacted changes to their zoning enabling act](#) that explicitly prevent local governments from using subjective terms like “character,” “undue concentration of population,” and “overcrowding of land” in their zoning ordinances.

- (c) A Municipality is estopped from bringing a code enforcement action alleging noncompliance of a zoning ordinance if the accused party can demonstrate that such alleged violation was open and known to the enforcement entity or its agents for a period of two years.

Section 17. Implementation.

- (a) A Municipality shall amend its zoning code to comply with this Act within 12 months of the Act's passage. But failure to amend shall not affect the applicability of these provisions to a Municipality, which shall apply upon the Act's effective date.
- (b) Failure of a Municipality to amend its zoning code shall not prevent a property owner from fully exercising the owner's rights under this Act, including the right to construct any Dwellings allowed as of right under this Act.

Section 18. Powers Reserved.

- (a) This Act shall not be construed to impede the ability of homeowners associations or other private deed-restricted communities from setting their own rules and regulations for their residents.
- (b) Nothing in this Act shall be construed to restrict the creation of new Dwellings or Dwelling Units in non-residential zones.

Section 19. Construction.

- (a) This Act does not restrict a Municipality's police powers to prohibit the use of tents, crates or other non-permanent structures in parks, sidewalks, and other public places.
- (b) This Act does not restrict the power of a Municipality to permit single-family homes in any residential zoning district.
- (c) This Act is not limited to only residential zoning districts but extends to all areas that provide for permissible residential uses.
- (d) This Act does not restrict the power of a Municipality to enact more permissive zoning rules than those set forth in this Act.

Section 20. Effective Date. This Act shall take effect on _____.

CONTACT
Institute for Justice
www.ij.org

Mr. Ari Bargil
Senior Attorney
Abargil@ij.org
(305) 721-1600

Ms. Jaimie Cavanaugh
Attorney & Legislative Counsel
JCavanaugh@ij.org
(703) 682-9320

Mr. Lee McGrath
Senior Legislative Counsel
Lmcgrath@ij.org
(612) 963-0296

OPTIONAL

Section 21. Purposes. This Act's purposes are to:

- Recognize that people should be able to use their property for reasonable and traditional uses, without unreasonable, arbitrary, or discriminatory zoning regulations that impair property rights and create a shortage of affordable housing.
- Allow private citizens to create more housing, free from unreasonable local regulations.

Section 22. Legislative Findings. The legislature finds the following:

- The State recognizes the importance of property rights. Overzealous zoning and land use laws are preventing people from using their property in ordinary and harmless ways. These laws are creating unjustifiable burdens on property owners.
- The State is also suffering from a historic housing crisis. Housing prices, to both rent or buy, have skyrocketed across the state. This prevents middle- and lower-income residents and families from being able to afford a place to live.
- There is expert consensus that a significant cause of the housing crisis has been the historically low inventory of homes to rent or buy. There is also a growing consensus that a major cause of this low inventory is the implementation of overzealous local zoning laws that restrict, prohibit, or increase the cost of new housing.
- Historically, zoning laws were often motivated by the goal of wrongly excluding certain people or groups from a particular place.
- Allowing property owners to build new homes or add additional density to existing structures, without being subject to unreasonable or arbitrary restrictions, will protect property rights, allow the natural creation of more housing, and help to alleviate the housing crisis.
- Evidence from other states that have enacted similar legislation shows no ill effects from the elimination of unreasonable, arbitrary, or overzealous restrictions on housing.