

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT
No. SJC-13580

THE ATTORNEY GENERAL,
Plaintiff/Counterclaim Defendant - Appellant,
v.

TOWN OF MILTON,
Defendant/Counterclaim Plaintiff/Third Party Plaintiff – Appellee, AND
JOE ATCHUE,
Defendant-Appellee,

v.

THE EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES,
Third Party Defendant -Appellant.

On Reservation and Report from the
Supreme Judicial Court for Suffolk County

**JOINT BRIEF OF THE PIONEER PUBLIC INTEREST LAW CENTER
AND ASSOCIATED INDUSTRIES OF MASSACHUSETTS
AS AMICI CURIAE IN SUPPORT OF THE ATTORNEY GENERAL,
PLAINTIFF/COUNTERCLAIM DEFENDANT - APPELLANT**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Judicial Court Rule 1:21, Pioneer Public Interest Law Center (“Pioneer Law Center”) hereby discloses that it is a non-profit, non-partisan, legal research and litigation entity organized under the laws of the Commonwealth of Massachusetts that defends and promotes accountable government, economic opportunity, and educational opportunities across New England. Through legal action and public education, Pioneer Law Center works to preserve and enhance constitutional and civil liberties. Pioneer Institute, LLC is the parent of Pioneer Law Center. Pioneer Law Center does not have any publicly held stock.

Pursuant to Mass. R. A. P. 17(c)(1), Associated Industries of Massachusetts (AIM) states that it is a 26 U.S.C. § 501(c)(6) nonprofit association incorporated in Massachusetts and headquartered in Boston. AIM is governed by a Board of Directors, the members of which serve solely in their personal capacities. AIM does not issue stock or any other form of securities and does not have any parent corporation.

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INTRODUCTION

Pioneer Law Center respectfully submits this brief pursuant to the Court's March 22, 2024 Announcement soliciting amicus briefs.

INTEREST OF THE AMICI CURIAE¹

Pioneer Law Center is a non-profit, non-partisan, legal research and litigation entity that defends and promotes freedom of association, freedom of speech, accountable government, economic opportunity, and education choice.

Founded more than one hundred years ago, AIM is a nonprofit association located in Boston. With over 3,400 employer members doing business in Massachusetts, it is the largest business association in the Commonwealth. AIM's mission is to promote the well-being of its members and their employees and the prosperity of the Commonwealth by improving the economic climate of Massachusetts, proactively advocating for fair and equitable public policy, and providing relevant and reliable information and excellent services.

Pioneer Law Center and AIM believe that affordable housing is fundamental to business growth in Massachusetts and that the MBTA Communities

¹Pursuant to Mass. R. App. P. 17(c)(5), the undersigned counsel declares that (1) no party's counsel has authored this Brief in whole or in part; and (2) no party, person or entity has contributed money to fund preparation or submission of this Brief. The undersigned counsel for the amicus curiae has prepared and submitted this Brief on a pro bono basis. Counsel do not represent any party in this case or in a proceeding or legal transaction at issue.

Act, G.L. c. 40A, § 3A (“MCA”), is an integral tool in the Commonwealth’s effort promote the prosperity, health, safety and welfare of Massachusetts residents.

SUMMARY OF ARGUMENT

Over the past several decades, and especially since the beginning of the COVID-19 pandemic, Greater Boston home buyers and renters have faced the combination of rising rents, fewer homes on the market and mortgage rates making home ownership more difficult. Indeed, homelessness is on the rise, and many Massachusetts families are struggling to afford the homes they currently live in.

Young professionals especially are leaving Greater Boston, lured by more affordable housing in other regions of the country; indeed, and studies demonstrate that many talented professionals and students are dissuaded from moving to the area for the same reasons. A recent poll conducted on behalf the Massachusetts Business Roundtable published in the Boston Globe on June 18, 2024, revealed that more than four-fifths of its members believe that the high cost of housing in the Boston area is far more likely to drive major employers in the area to expand their operations elsewhere. Indeed, Governor Healey recently stated “I hear from business leaders across the state that housing is the number one challenge their businesses are facing.”

Sufficient housing to meet the needs of the Greater Boston workforce is one challenge. Another is locating that housing in areas where residents have access to

public transportation. Public transportation, of course, has the attendant benefit of lessening traffic congestion and reducing the negative impacts caused by excessive automobile traffic. Recent studies performed before the adoption of MCA, found that then existing zoning in the Greater Boston area was a serious obstacle that needs to be fixed to address the dire need for housing in Massachusetts. The groups behind these studies advocated that lawmakers enact a statewide zoning law similar to the MCA. These studies not only examined the well-documented need for affordable housing in Massachusetts, but analyzed how the lack of housing is driving young professionals away from Massachusetts, making Massachusetts businesses less competitive and causing traffic congestion and associated impacts as workers are forced, in the absence of public transportation, to drive to their places of business far away from their residences.

Pioneer Law Center and AIM urge the Court to take into account this background information and the policy proposals that flow logically from it as it considers whether the Attorney General has standing to bring this action and the impact of current zoning on the prosperity, health, safety and welfare of Massachusetts residents. G.L. c. 40A, § 3A(a).

STATEMENT OF THE CASE AND FACTS

A. Massachusetts Housing Crisis Threatens Not Only Public Health and Safety, But the Very Prosperity of the Region.

It is axiomatic that we are experiencing a housing crisis in the Commonwealth. Inadequate housing construction and the absence of a regional housing plan has led to insufficient housing supply and little diversity in Massachusetts housing stock—a major problem for Greater Boston and Massachusetts since well before the pandemic. Carrie Bernstein, Calandra Clark, Ian Dinnie, Tom Hopper, Mark Melnik, Abby Raisz and Clark Ziegler, *The Greater Boston Housing Report Card 2021; Pandemic Housing Policy: From Progress to Permanence* p. 39 (June, 2021) https://www.tbf.org/-/media/tbf/reports-and-covers/2021/gbhrc2021_final.pdf. Even during the economic expansion from 2009 to early 2020, Greater Boston did not build enough homes to keep up with demand. Sarah Crump, Trevor Mattos, Jenny Schuetz, and Luc Schuster, *Fixing Greater Boston's housing starts with legalizing apartments near transit* p. 1 (Brookings October 14, 2020) <https://www.brookings.edu/articles/fixing-greater-bostons-housing-crisis-starts-with-legalizing-apartments-near-transit/> (the “Legalizing

Apartments Near Transit Study”).² Meanwhile, housing prices increased 53% during this period, far outpacing household income growth. *Id.*

The lack of access to affordable, decent quality, stable housing is most acute in metro areas such as Boston, where strong labor markets increase demand for housing while restrictive local zoning laws artificially constrain the amount of housing that can be built. Sarah Crump, Jenney Schuetz, Trevor Mattos, and Luc Schuster, *Zoned Out Why Massachusetts Needs to Legalize Apartments Near Transit*, Boston Indicators and Metropolitan Policy Program at Brookings (October 21, 2020) p.7 <https://www.bostonindicators.org/reports/report-website-pages/zoned-out> (“Zoned Out Study”).³ Specifically, wealthy suburbs across Greater Boston have adopted policies that prohibit the construction of anything other than single-family homes on plots of land that would accommodate multi-dwelling development. *Id.* By banning townhomes, duplexes and modest apartment buildings on most residential land, low- and moderate-income households have

² In the interests of brevity and judicial economy, excerpts from the Legalizing Apartments Near Transit Study are attached with inserted page numbers corresponding to their location in the study as Exhibit A in the attached addendum (Add. Ex. A p. 2).

³ In the interests of brevity and judicial economy, excerpts from the Zone Out Study are attached with inserted page numbers corresponding to their location in the study as Exhibit B in the attached addendum (Add. Ex. B p. 13).

effectively been blocked from ever even contemplating moving to these often highly attractive communities. *Id.*

Notably, legal prohibitions against building anything other than single-family homes do not hurt only low- and moderate-income families. *Id.* In the aggregate, dramatically limiting the availability of modest housing options leads to much higher housing costs region-wide, which in turn makes it harder for employers to hire and retain a ready workforce. *Id.* Recently, four-fifths of the Massachusetts Business Roundtable members participating in a survey indicated that high housing costs are impacting their decisions to grow or reduce their businesses in Massachusetts. Jon Chesto, *Housing costs take a mounting toll on Boston-area business, survey says*, Boston Globe, June 18, 2024

<https://www.bostonglobe.com/2024/06/18/business/housing-costs-business-roundtable/?event=event12>. In a press release dated May 8, 2024, Governor Healey emphasized that “Lieutenant Governor Driscoll and I hear from business leaders across the state that housing is the number one challenge their businesses are facing.” Governor Maura Healey and Lt. Governor Kim Driscoll Press Release (May 8, 2024), *Healey-Driscoll Administration Meets with Business Leaders to Address Housing Challenges, Identify Solutions*,

<https://www.mass.gov/news/healey-driscoll-administration-meets-with-business-leaders-to-address-housing-challenges-identify-solutions>. Continuing, she stated

“[w]e are working to address our housing challenges so that our talented workforce can afford to live in Massachusetts and that our employers have skilled talent to meet their needs.” *Id.*

Annual net outmigration from Massachusetts has soared by a stunning 1,100 percent to 39,000 people since 2013, according to a new Boston University study. If the trend continues, the researchers found, the state’s net outmigration could reach 96,000 by 2030. Mark Williams, *Massachusetts Outmigration Study*, (Insights@Questrom)(May 1, 2024) p.1 <https://insights.bu.edu/Massachusetts-outmigration-study/>. According to Professor Williams and his team, outmigration cost Massachusetts \$4.3 billion in adjusted gross income (AGI) and \$213.7 million in tax revenue during the 2020-21 tax year. *Id.* “To make matters worse, those who are leaving tend to be younger and earn more than state averages,” said Professor Williams, the primary researcher of the study. *Id.* at p.2 “These are the people the Commonwealth needs for its future workforce.” *Id.* In fact, the age group leaving in the largest numbers are the ages 26-34. *Id.*

In addition to driving up the cost of housing and negatively impacting the competitiveness of Massachusetts business, limiting housing development near job centers and public transit leads more workers to undertake long-distance solo car commutes, worsening automobile traffic and creating harmful impacts. *See Zoned Out Study*; Add. Ex. B p. 14. We hazard that every member of the panel is aware

that workers are commuting as far as southern Maine, southern New Hampshire and Central Massachusetts.

Prior to the adoption of the MCA, zoning laws artificially constrained the number of homes that could be clustered near train stations. *Id.* This results in more people commuting to work alone in their cars. *Id.* People also increasingly prefer to live near amenities like schools, restaurants, and grocery stores, but more of these walkable downtown clusters will not emerge communities do not allow for modest new development around transit. *Id.*

Greater Boston has a well-established commuter rail network with multiple train stations throughout suburbs in a wide range of housing price points. *Id.* But while the state built these valuable transit assets for the benefit of everyone regionwide, it has failed to require these benefitted communities to allow multifamily housing to be built in close proximity to stations. *Id.* The Commonwealth has not done nearly enough to require all communities to contribute a baseline amount of accessible housing to help meet our state's shared housing needs. *Id.* The MCA is an effort, perhaps belated, by the Legislature to remedy this critical situation.

Through its interactive Transit-Oriented Development Explorer (TODEX) the Center for Housing Data at the Massachusetts Housing Partnership has created a database for analyzing the current state of housing production near

transit across Greater Boston. *Id.*, Add. Ex. B p. 17. The Center has concluded that median housing density around all Commuter Rail stations is a meager 2.8 units per acre, which equates to single-family homes on one-third acre lots. *Id.* That data demonstrates that zoning regulation is preventing housing markets from working. *Id.* Again, the MCA is an attempt to remediate this structural zoning defect.

B. Quantitative Studies Demonstrate that the MCA Should Have A Dramatic and Positive Impact on Affordable Housing Development.

Prior to the enactment of the MCA several housing policy groups, including Boston Indicators and the Metropolitan Policy Program at Brookings, advocated that the Commonwealth adopt zoning legislation allowing moderate-density housing to be built as-of-right within a half mile of transit stations. *See, e.g., id.* Moderate-density housing includes duplexes, attached townhouses, and low- to mid-rise multifamily buildings. *Id.*

The study groups also analyzed what a revised zoning requirement might look like if applied at or near four representative commuter rail stations: Beverly Farms, Melrose Cedar Park, Needham Heights, and Wellesley Hills. *Legalizing Apartments Near Transit Study*; Add. Ex. A p. 2. The conclusions are not predictions, rather they are examples developed for the purpose of illustration:

- Beverly Farms and Wellesley Hills are surrounded by very low-density housing, with typical lot sizes well over half an acre. These lots could easily accommodate five side-by-side townhouses, or

more than 10 two-bedroom condominiums in low-rise multifamily buildings. *Id.* p. 4.

- In Needham Heights, the typical single-family lot is about half the size as Beverly Farms but could still accommodate six condominiums. *Id.*
- Several homes on expensive land reduce the cost of each home. Allowing more homes to be built on a single parcel of land can substantially reduce the cost of new homes, especially in locations where land is expensive. An acre of land near the Wellesley Hills station is worth \$1.5 million, so the cost of acquiring a typical single-family lot is about \$850,000, even before construction begins. After adding in other development costs (e.g., materials and labor, financing, insurance, developer profits), a newly built single-family house near Wellesley Hills station can cost nearly \$2 million. *Id.* p. 7.
- After re-zoning, building five townhouses on the same sized lot allows land costs to be spread across five homebuyers, who would pay around \$830,000 per home—a big discount from the single-family price. A low-rise condominium building reduces per-unit costs even further, with land costs divided among 11 homebuyers, each paying \$500,000. While these prices would be out of reach for low- and moderate-income households, they represent substantial discounts over the homes currently available in these affluent communities. *Id.*
- Moderate-density housing makes exclusive communities more affordable. Allowing the development of moderate-density homes offers the greatest potential affordability gains in places where housing prices are highest. Comparing the per-unit prices of new townhouses and condominiums to the distribution of existing home values in each community shows that Wellesley and Needham have the most to gain from smaller homes. The median existing

home in Wellesley is worth \$1.1 million—nearly \$300,000 more than a newly built townhouse and more than twice the price of a new condominium. New condominiums priced at \$500,000 would be quite a bargain, falling into the lowest quartile price compared to existing Wellesley homes. New condominiums in Needham would also be in the lowest quartile of home values (nearly \$300,000 below the median), while new townhouses would cost only slightly above the median. *Id.* at p. 8.

- Building lower-cost housing would make Wellesley and Needham affordable to households who currently cannot purchase homes there. In both locations, a new condominium would be affordable to a household earning around \$90,000 a year, which is about half as much as the median income of Wellesley’s current residents (\$188,000) and 60% of the median income in Needham (\$153,000). Introducing smaller housing types to these communities is essential to achieving more economically diverse populations. *Id.* at p. 9.
- Upzoning near transit stations allows more housing in places that build very little. Many of Boston’s affluent suburbs have such restrictive zoning that they are effectively “built out,” meaning that there is no legal capacity to create additional housing. A statewide policy allowing townhouses and apartments to replace single-family homes near transit would increase total housing capacity within walking distance of stations in communities that currently build little or no additional housing. Even using very conservative assumptions about how many single-family lots would be redeveloped, estimates showed that allowing low-rise multifamily condominiums could generate between 200 and 600 new housing units within a half mile of each station over the next five years. *Id.* at 9.
- To put these numbers in context, between 2015 to 2019, Wellesley permitted roughly 300 new homes in the entire town—roughly the

same number as our most conservative estimate for condominium development just in one small neighborhood. All but two of Wellesley's newly permitted homes were single-family (the most expensive structure type). *Id.* at p. 10.

See also Zoned Out Study.

C. The MCA.

On January 14, 2021, Governor Banker signed into law the MCA by adding section 3A to Chapter 40A. The Legislature enacted the MCA to address the supply and cost of housing. *See* G.L. c. 40A, § 3A. It sought to ameliorate the housing crisis in the Greater Boston Area by requiring that over-170 “MBTA Communities . . . have a zoning ordinance or by-law that provides for at least 1 district of reasonable size in which multi-family housing is permitted as of right. *See* G.L. c. 40A, §§ 1A and 3A , G.L. c. 161A, § 1. The district must: “have a minimum gross density of 15 units per acre . . . ; and (ii) be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.” G.L. c. 40A, § 3A(a).

CONCLUSION

Pioneer Law Center and AIM respectfully request that the Court examine the housing policy studies cited in this brief which document the impacts of unaffordable housing on workers and families in Massachusetts and their employers. These studies also explain why by-right multifamily dwellings situated

near public transit locations is an integral tool that can be used to address Massachusetts' housing crisis, a crisis that has and will damage the Commonwealth's economic future and the prosperity of the region. As this Court considers whether the Attorney General has standing to enforce the MCA,⁴ the background information set forth herein may aid the Court in determining whether the Attorney General is acting in the public interest.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE (Mass. R. App. P. 16(k))

This Amicus Brief complies with the rules of court that pertain to the filing of Amicus Briefs, including, but not limited to: Mass. R. App. P. 16(a)(13)(B) (appealed judgment and decision), 16(a)(13)(C) (reproduction of statutes, rules, regulations), 16(a)(13)(D) (copy of unpublished decisions cited), 16(a)(13)(E) (copy of plans or maps), 16(e) (references to the record), 17(c) (Amicus Briefs),

⁴ Neither Pioneer Law Center nor AIM are taking a position on the Attorney General's standing in this matter.

and 20 (form and length of briefs). Rule 21 (redaction) is not applicable to this Amicus Brief.

For the purposes of the length limitation contained in Appellate Rule 20, this Amicus Brief contains 3,344 non-excluded words and uses Times New Roman 14-point font in Microsoft® Word for Microsoft 365 MSO (Version 2208 Build 16.0.15601.20148) 64-bit.

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CERTIFICATE OF SERVICE

The undersigned certifies that on this day he served a copy of the foregoing Amicus Brief of the Pioneer Law Center on counsel of record for the parties hereto through the Tyler-filing system, directed to their counsel of record as follows:

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Dated: September 16, 2024

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EXHIBIT “A”

BROOKINGS

RESEARCH

Fixing Greater Boston's housing crisis starts with legalizing apartments near transit

Sarah Crump, Trevor Mattos, Jenny Schuetz, and Luc Schuster

October 14, 2020

Editor's note: Read the full report, [Zoned Out: Why Massachusetts Needs to Legalize Apartments Near Transit](#).

Even during the economic expansion from 2009 to early 2020, Greater Boston didn't build enough homes to keep up with demand. Meanwhile, housing prices increased 53% ¹ during this period, far outpacing household income growth. It's a pattern that has emerged across many of the nation's wealthy, economically vibrant ² metro areas, from California (<https://www.brookings.edu/blog/the-avenue/2019/07/10/california-needs-to-build-more-apartments/>) to Washington, D.C. (<https://www.brookings.edu/blog/the-avenue/2019/05/15/the-capital-region-needs-more-housing/>) But high housing costs and inadequate supply are not a natural outcome of market forces; they are the result of policy choices. Too many of the cities and towns in the Boston area and places like it have used zoning ³ and other regulations ⁴ to limit ⁵ new housing development ⁶, especially of small, moderately priced homes.

Overly restrictive zoning by Boston's suburbs creates three problems for the region. First, high housing costs impede the regional labor market ⁷, making it harder for employers to hire and retain workers. Second, limiting housing development near job centers and public transit leads more workers to undertake long-distance solo car

commutes, worsening traffic and creating harmful environmental impacts ⁷. Third, exclusionary zoning ⁷ by affluent, mostly white communities exacerbates racial and economic segregation ⁷ in the region, limiting Black and Latino or Hispanic families' access to high-opportunity communities.

This tension between local control over housing and these economic, environmental, and social harms is not new. Massachusetts and its constituent local governments have been locked in a legal and political tug-of-war since at least 1969, when the state's widely known affordable housing remedy, Chapter 40B ⁷, was adopted. While public attention is now rightly focused on immediate challenges related to COVID-19 and the economic slowdown, Massachusetts policymakers must also work to ensure better longer-run outcomes for the state's residents. Changing the rules of housing development to allow moderately priced housing in high-opportunity communities is essential for a more equitable, resilient, and thriving region. In a new report, we propose one strategy to do that: a statewide policy legalizing development of moderate-density housing near transit stations.

Massachusetts' expensive—but underused—land near commuter rail stations

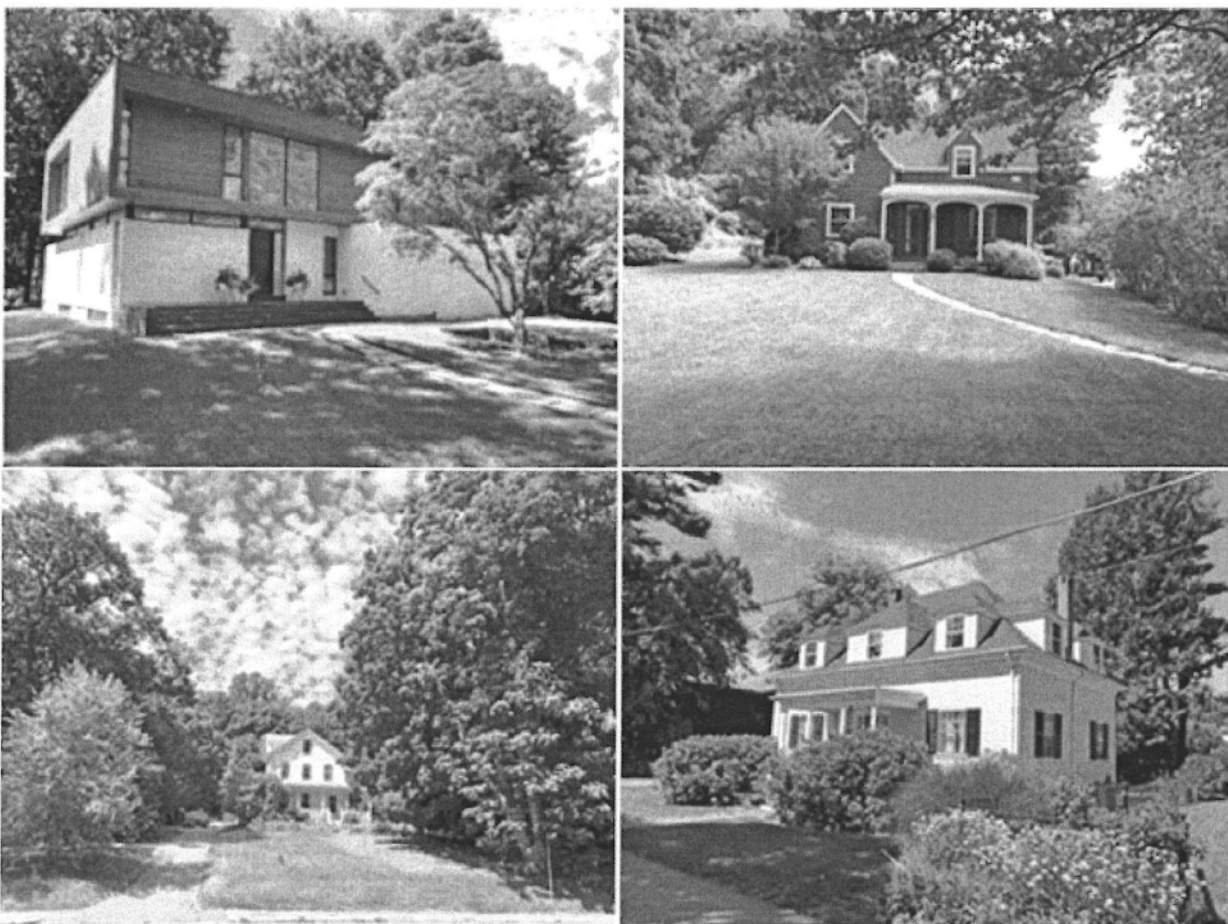
A core principle of urban economics is that in places where land is expensive ⁷, developers will use smaller amounts of land per home. Depending on the context, this translates into smaller lots for single-family homes, or shifting toward structure types such as attached rowhouses and multifamily buildings. Land near transit stations is typically quite expensive, because being close to transit reduces commuting costs ⁷ for households. Land is also more valuable ⁷ in communities with good schools, low crime rates, and other locally provided amenities. Therefore, in well-functioning housing markets, we would expect to see high-density housing clustered around transit stations, especially in affluent communities with good schools.

Looking at housing density around commuter rail stations in Greater Boston shows very different patterns than what economists expect. Land is very expensive, but the housing is mostly low-density: single-family detached homes with large yards. The Massachusetts Housing Partnership's TODEX ⁷ dataset shows that the median housing density near commuter rail stations is 2.8 homes per acre—equivalent to

single-family homes on one-third acre lots. This isn't a market outcome—it's a sign that zoning is preventing housing markets from working.

Figure 1. Big homes with big yards

Single-family detached houses within a half mile of Wellesley Hills station



Source: Photos by authors, July 31, 2020

B Metropolitan Policy Program
at BROOKINGS

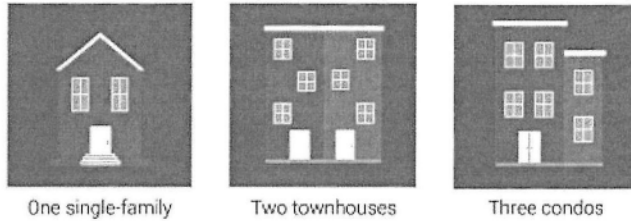
To allow for more housing to be built in high-demand locations, the state of Massachusetts should adopt a policy that allows moderate-density housing to be built as-of-right within a half mile of transit stations. Moderate-density housing includes duplexes, attached townhouses, and low- to mid-rise multifamily buildings. To illustrate how this could create more—and more affordable—homes, we analyzed what the policy would look like on the ground near four representative commuter rail stations: Beverly Farms, Melrose Cedar Park, Needham Heights, and Wellesley Hills.

Beverly Farms and Wellesley Hills are surrounded by very low-density housing, with typical lot sizes well over half an acre (Figure 2). These lots could easily accommodate five side-by-side townhouses, or more than 10 two-bedroom condos in low-rise multifamily buildings. In Needham Heights, the typical single-family lot is about half the size as Beverly Farms, but could still accommodate six condos. Melrose Cedar Park has the smallest existing lot size, so it would offer the least potential for additional housing.

Figure 2. Less yard, more homes

Schematics of single-family lots converted to townhouses or low-rise multifamily condos

Melrose Cedar Park | Average lot size - 6,995 sq ft

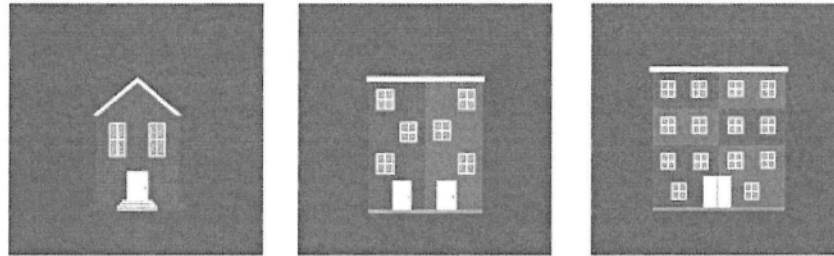


One single-family

Two townhouses

Three condos

Needham Heights | Average lot size - 12,930 sq ft

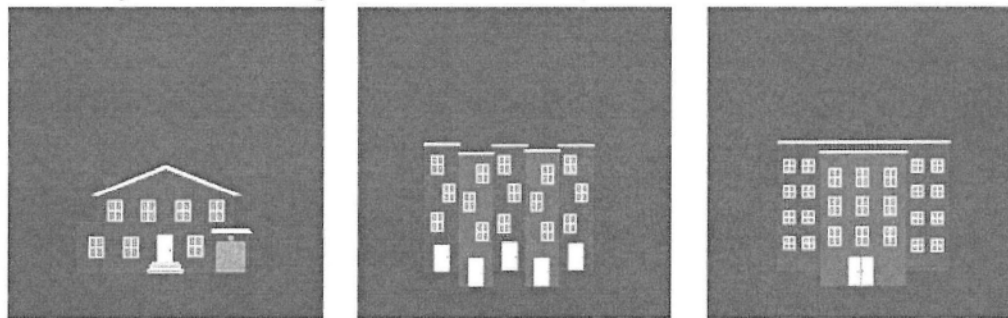


One single-family

Two townhouses

Six condos

Wellesley Hills | Average lot size - 24,506 sq ft

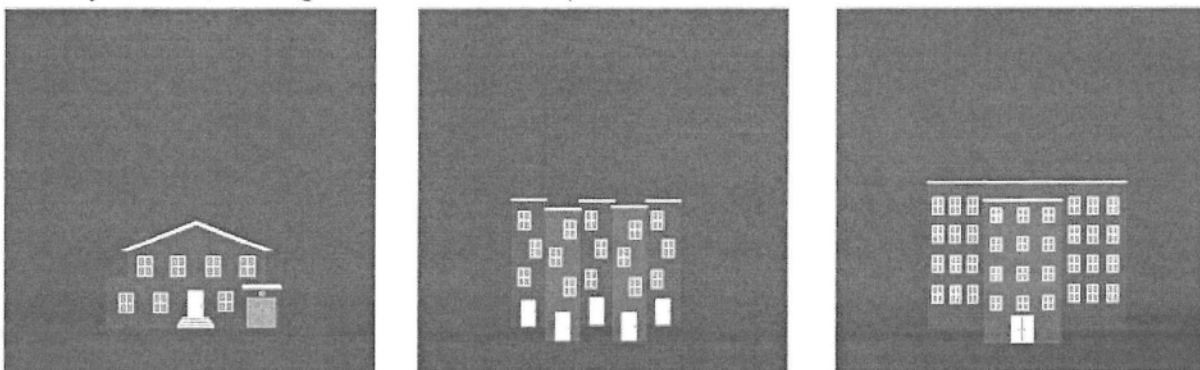


One single-family

Five townhouses

11 condos

Beverly Farms | Average lot size - 28,480 sq ft



One single-family

Five townhouses

13 condos

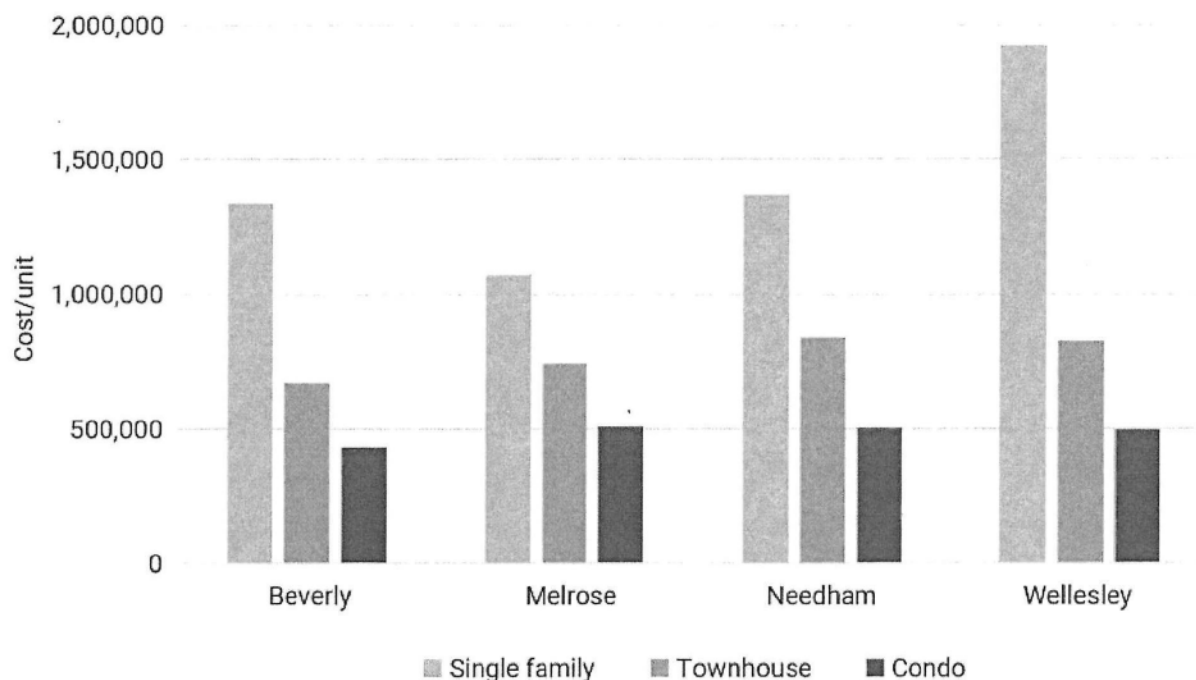
Source: Average single-family lot size calculated using housing density from the Massachusetts Housing Partnership's *TODEX*. Upzoning policy assumes a maximum of eight units per acre for townhouses and 20 units per acre for multifamily condos.

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Several homes on expensive land reduces the cost of each home

Allowing more homes to be built on a single piece of land can substantially reduce the cost of new homes, especially in locations where land is expensive⁷. An acre of land near the Wellesley Hills station is worth \$1.5 million, so the cost of acquiring a typical single-family lot is about \$850,000, even before construction begins. After adding in other development costs (<https://www.brookings.edu/research/making-apartments-more-affordable-starts-with-understanding-the-costs-of-building-them/>) (e.g., materials and labor, financing, insurance, developer profits), a newly built single-family house near Wellesley Hills station can cost nearly \$2 million (Figure 3).

Figure 3. Townhouses and condos offer substantial cost savings over new single-family homes
Development costs for new housing, by structure type



Source: Full details of the calculations, including underlying data and assumptions, are available in Crump, Mattos, Schuetz and Schuster (2020). Names refer to station areas listed above.

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Building five townhouses on the same sized lot allows land costs to be spread across five homebuyers, who would pay around \$830,000 per home—a big discount from the

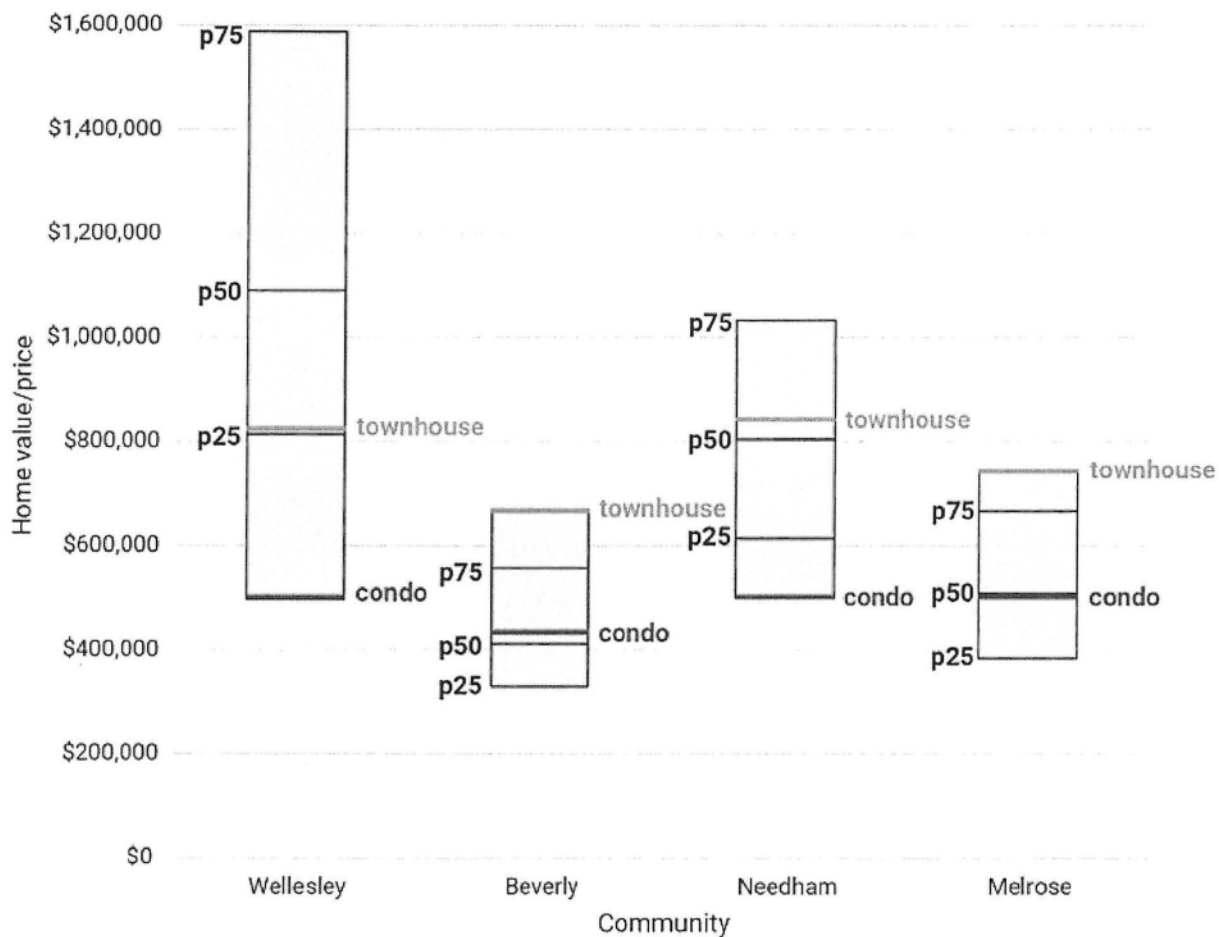
single-family price. A low-rise condo building reduces per-unit costs even further, with land costs divided among 11 homebuyers, each paying \$500,000. While these prices would be out of reach for low- and moderate-income households, they represent substantial discounts over the homes currently available in these affluent communities.

Moderate-density housing makes exclusive communities more affordable

Allowing the development of moderate-density homes offers the greatest potential affordability gains in places where housing prices are highest. Comparing the per-unit prices of new townhouses and condos to the distribution of existing home values in each community shows that Wellesley and Needham have the most to gain from smaller homes. The median existing home in Wellesley is worth \$1.1 million—nearly \$300,000 more than a newly built townhouse and more than twice the price of a new condo. New condos priced at \$500,000 would be quite a bargain, falling into the lowest quartile price compared to existing Wellesley homes. New condos in Needham would also be in the lowest quartile of home values (nearly \$300,000 below the median), while new townhouses would cost only slightly above the median.

Figure 4. Small multifamily condos expand affordability in the wealthiest communities

Comparing prices of new townhouses and condos to existing homes



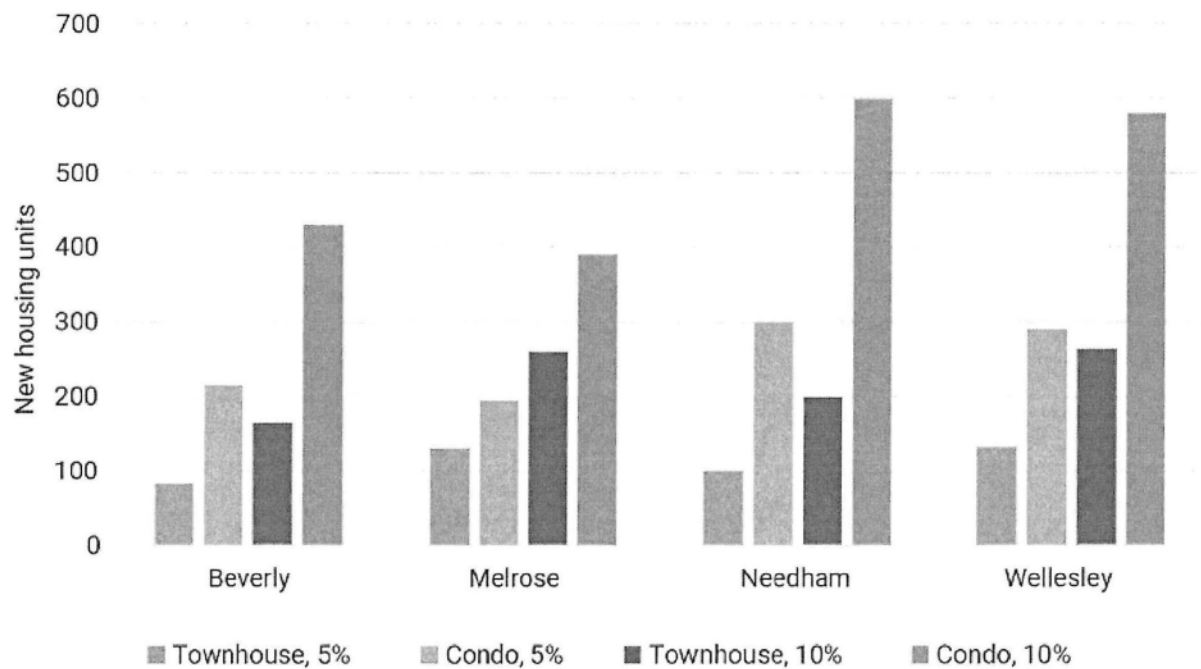
Source: Existing home values taken from the Census Bureau's American Community Survey 2014-2018. Prices for new townhouses and condos from Crump, Mattos, Schuetz and Schuster (2020).

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Building lower-cost housing would make Wellesley and Needham affordable to households who currently can't purchase homes there. In both locations, a new condo would be affordable to a household earning around \$90,000 a year, which is about half as much as the median income of Wellesley's current residents (\$188,000) and 60% of the median income in Needham (\$153,000). Introducing smaller housing types to these communities is essential to achieving more economically and socially diverse populations.

Figure 5. Redeveloping 5% to 10% of lots could yield several hundred new homes

Potential new housing, by structure type and conversion rate



Source: Full details of the calculations, including underlying data and assumptions, are available in Crump, Mattos, Schuetz and Schuster (2020).

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To put these numbers in context, between 2015 to 2019, Wellesley permitted roughly 300 new homes in the entire town—roughly the same number as our most conservative estimate for condo development just in one small neighborhood. All but two of Wellesley's newly permitted homes were single-family (the most expensive structure type). During the same time period, Beverly and Melrose issued permits for fewer than 200 new housing units in their entire jurisdictions, while the town of Needham permitted nearly 600 units.

Our analysis only estimates how much additional housing could be built through replacing individual single-family homes with small-scale projects, but a statewide legalization of apartments near transit would also enable larger-scale housing development, including conversion of commercial properties into housing. These projects are more idiosyncratic and take longer to complete, so it is harder to predict when and where they will occur. Our estimates should be taken as a lower bound of how much housing could be built under statewide zoning reform.

More market-rate housing doesn't solve every affordability problem, but it's an essential first step

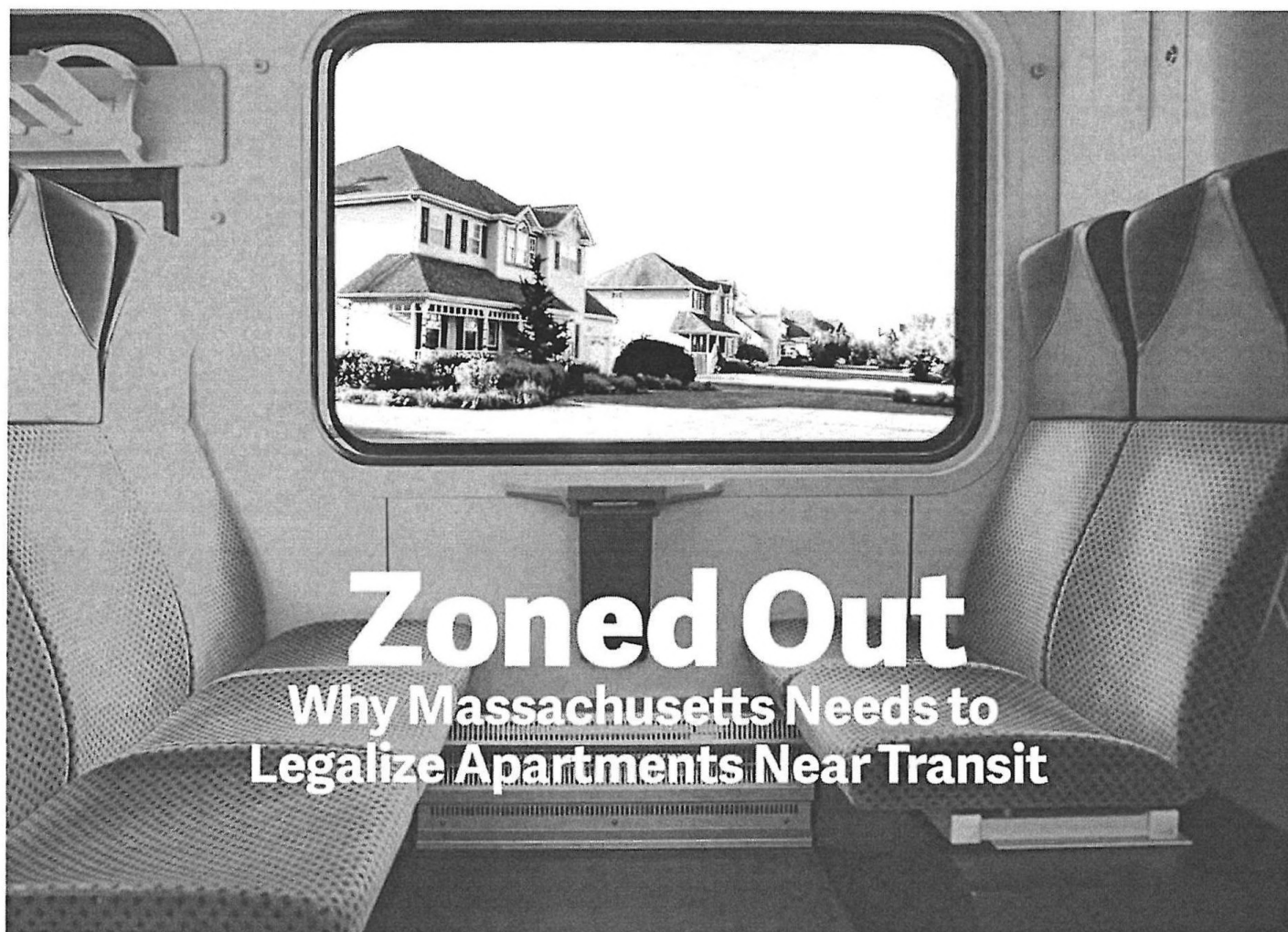
Like other high-cost coastal metro areas, Great Boston has two housing affordability problems [↗](#). First, restrictive zoning drives up housing prices and limits development of new housing that is affordable to middle-income households. Second, low-income households earn too little [↗](#) to pay for market-rate housing. A statewide policy allowing moderate-density housing near transit stations would directly address the first problem by enabling construction of more homes, at lower price points, in places with very high demand.

This policy would not solve the affordability crisis for low-income households, although it would provide some help through two channels. Most directly, building multifamily housing in affluent suburbs could expand the ability of low-income households who receive federally subsidized vouchers to move into high-opportunity neighborhoods. By our calculations, the monthly costs associated with new condos in Wellesley and Needham fall below the Department of Housing and Urban Development's Small Area Fair Market Rents [↗](#) in those communities, meaning that voucher holders could use vouchers to rent those condos. Currently, the lack of rental housing at almost any price point is a barrier to access in too many Boston suburbs.

Additionally, a statewide upzoning that allows developers to build in the most affluent, exclusive communities would take some of the pressure off moderate-income neighborhoods such as East Boston [↗](#) and Malden [↗](#), which have been providing much of the region's new housing. Allowing new construction in affluent, mostly white communities is one of the most effective ways to reduce the risk of gentrification and displacement in lower-income Black and Latino or Hispanic communities.

Alone, a larger supply of market-rate housing cannot address the fundamental problem that too many families earn too little money to afford decent-quality housing. For these families, direct financial support from the federal government—either through housing vouchers or income supplements—is the most effective way to close the gap between income and rent. Massachusetts' state policymakers cannot compel Congress to expand federal subsidies. But they can and should tackle the decades-long local barriers to building more moderately priced homes.

EXHIBIT “B”



BOSTON INDICATORS

MEASURING WHAT WE VALUE

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- Introduction
- The Problem
- The Big Idea
- The Impact
- Case Studies

Published:

October 21, 2020

Authors

Section 8 vouchers. This paper proposes one big, yet also relatively simple, idea for helping on the home building front—legalizing apartments near transit.

The Big Idea in Brief

(organized by report section)

The Problems

- **Residential Segregation.** Greater Boston’s persistent residential segregation, both racial and economic, has been caused in part by legal prohibitions against the construction of diverse, lower-cost housing options like townhomes, duplexes and small apartment buildings (other causes include the practice of “redlining,” which prohibited many people living in lower-income neighborhoods of color from receiving federally-subsidized home loans). Suburban communities with some of the highest-performing public schools in the country, well-funded public infrastructure, and low rates of crime have used these housing prohibitions to effectively exclude many lower-income families and families of color from being able to live there. Half or more of the families living in places like Concord, Needham and Wellesley, for instance, earn more than \$150,000 a year, and only about 10 percent or less of their populations are Black or Latinx.
- **Housing Shortages and High Housing Costs.** We have a growing regional economy that yearns for many more housing options at a wider range of price points. But we leave our most important housing policy decisions up to local governments that aren’t elected to meet our region’s shared needs. This mismatch of interests allows municipalities to ban most forms of new housing development through their local zoning codes. And now we have a massive housing shortage with costs rising as a result. Further, local planning meetings tend to be dominated by homeowners who are older, whiter and richer than the population at large, encouraging status quo opposition to new housing proposals. Fundamentally, the wrong level of government—small cities and towns, rather than the state—is making too many of our important housing policy decisions. This paper offers one concrete model for how the state can take a more proactive role in setting land use regulations that work for everyone (while still giving cities and towns lots of local leeway).
- **Car Dependence and Climate Change.** Banning modest multifamily housing development is one contributing factor (among many others) to climate change. Because we have artificially constrained the number of homes that can be clustered near train stations, more people commute to work alone in their cars than otherwise would. Immediately preceding the pandemic, road traffic was way up across Greater

it much harder to practice social distancing during the pandemic. For a virus that is spread primarily through close physical proximity, it makes sense that we'd see worse outbreaks in more densely populated cities, and this dynamic has been a topic of news coverage as the virus has spread. But the connection between overall population density (residents per acre) and positive case rates is actually not as strong as one might expect. Multiple people crowding into a given housing unit, on the other hand, is a more precise measure of people living in close proximity to other people, and this measure has a very strong association with higher COVID case rates, as shown in the graph below. Due to a legacy of systemic discrimination and structural racism, these lower-income communities are also much more likely to have large shares of Black and Latino residents.

The lack of access to affordable, decent quality, stable housing is most acute in metro areas like Boston, where strong labor markets increase demand for housing while restrictive local zoning laws artificially constrain the amount of housing that can be built. Specifically, wealthy suburbs across Greater Boston have adopted policies that prohibit the construction of anything other than single-family homes on large plots of land. By banning townhomes, duplexes and modest apartment buildings on most residential land, low- and moderate-income households have effectively been blocked from ever even contemplating moving to these communities.

This form of “exclusionary zoning” has funneled displacement pressure into the few cities near the urban core that do allow some multifamily development—like Boston, Cambridge, Malden and Newton. This leads most of our region's intense debates around housing development, displacement and gentrification to occur in these communities. Meanwhile, many higher-income suburbs avoid these debates altogether because so few multifamily housing projects are ever even proposed.

Legal prohibitions against building anything other than single-family homes don't just hurt low- and moderate-income families. In the aggregate, dramatically limiting the availability of modest housing options leads to much higher housing costs region-wide, which in turn makes it harder for employers to hire and retain good workers.

Banning the construction of multifamily housing is especially problematic near public transportation because it causes more workers to undertake longer solo car commutes, thereby contributing to climate change and regional pollution. Greater Boston is fortunate to have a well-established commuter rail network that dots valuable train stations throughout all types of suburbs. But while the state built these valuable transit assets for the benefit of everyone regionwide, it has never required these beneficiary communities to allow multifamily housing to be built in close proximity to these stations. People live, work and play regionally and, yet, we haven't done nearly enough to require all communities to

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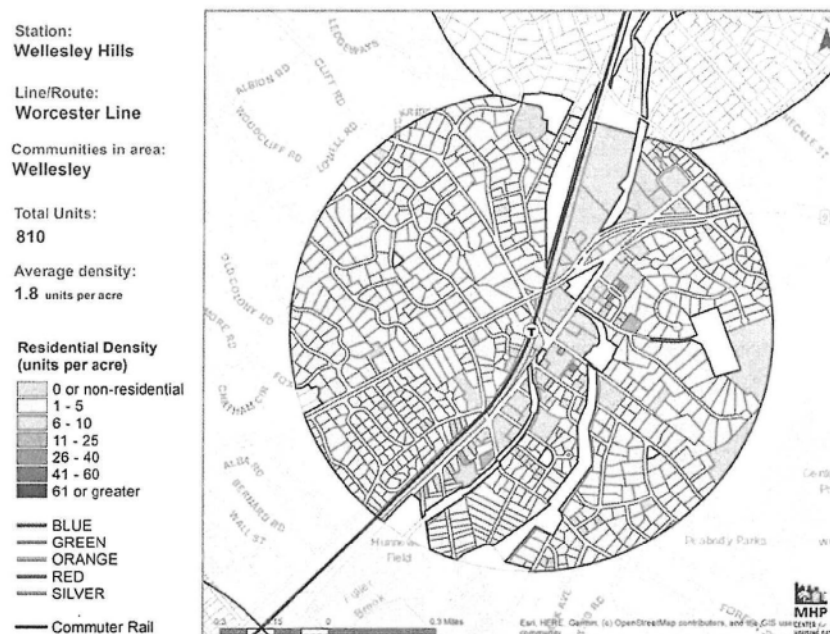
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contribute a baseline amount of accessible housing to help meet our shared housing needs.

Through its interactive [Transit-Oriented Development Explorer \(TODEX\)](#), the Center for Housing Data at the Massachusetts Housing Partnership has created an invaluable database for analyzing the current state of housing production near transit across Greater Boston; they find that median housing density around all Commuter Rail stations is a meager 2.8 units per acre. While this density may be appropriate for a select few or the most remote stations areas, huge numbers of these stations are within close proximity to job centers and desirable downtowns.

Later in this paper we provide case studies and model potential new housing development for four sample station areas, but to show what these current housing patterns look like for one of these station areas, below we show a map for the ½ mile area surrounding the Wellesley Hills Commuter Rail station. This neighborhood is less than 15 miles from downtown Boston, and the train takes commuters to Back Bay in Boston in less than 30 minutes at the height of rush hour. There's a small downtown along Washington Street with a few older apartment buildings. But here's the kicker: The town of Wellesley has made it illegal to build anything other than single-family homes on the vast majority of the land in this neighborhood. Current density for the full neighborhood is only 1.8 units of housing per acre.



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