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Third Coast Housing Solutions: The Case for Bringing YIMBY Legal Activist Strategies to Chicago

Abigail Kuchnir*

ABSTRACT

An insufficient supply of suitable housing stock is the root cause of issues like homelessness, overcrowding, and a cost burden on renters throughout the United States. A loose collective of activists and stakeholders comprise the YIMBY movement, an acronym for Yes In My Backyard. YIMBY advocates advance the perspective that additional housing stock is a necessary stratagem to improve housing availability and affordability, and they have used litigation as a tool towards developing new and diverse housing. This Comment examines the strategies currently used by legal activists in California, where impact litigation on this issue has been most prevalent. It also investigates whether these strategies could serve to improve the housing landscape in Chicago and, if so, how they could be most effectively adapted to the unique political and legal circumstances of the Chicago region.

Keywords: housing, homelessness, affordable housing, YIMBY, California Environmental Quality Act, accessory dwelling unit, Bring Chicago Home, Affordable Requirements Ordinance

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INTRODUCTION

A. *Chicago's Need for Better Housing*

Chicago is facing a housing crisis. Throughout the city, clusters of camping tents are springing up under highway overpasses and in parks near Lake Michigan, providing insufficient shelter to protect their denizens from harsh Chicago weather. Beyond tent cities and other highly visible symptoms of insufficient housing, 13% of Chicago Public School students experience homelessness during their school careers; most of these homeless students are “doubled up,” sleeping on sofas or in spare rooms in the homes of family and friends, their parents moving on with the kids when they sense that they have overstayed their welcome.¹ The root of these problems is Chicago’s insufficient stock of affordable housing, an issue that is hurting communities across the country.² California has experienced this housing supply crunch more acutely than any other state, as major population growth in urban centers has created demand that current housing stock cannot accommodate. California has the highest homelessness population of any U.S. state.³

While the Chicago region does not have the same land constraints as the San Francisco Bay Area, Chicago has also experienced a rise in housing costs leading to an increased homeless population and an affordability burden on middle- and low-income renters.⁴ Chicago’s housing shortage is not a direct result of land scarcity, which is the classic explanation for high costs in places like San Francisco whose booming growth is coupled with and constrained by geographic features that complicate the expansion of the housing supply to meet demand.⁵ However, high housing costs are also impacting communities around the country including Chicago.⁶

The lack of sufficient housing in Chicago is not the result of a geographic shortage, and the population of the city has actually lessened rather than grown in the past decade.⁷ Instead, Chicago’s housing shortage is the result of policy choices that have shifted away

¹ See generally KELLY HALLBERG, SHANTÁ ROBINSON, ANNE DRISCOLL, EMILY METZ, STEPHEN STAPLETON, & GINA CUSING, THE UNIV. OF CHI. INCLUSIVE ECON. LAB, “KNOWN, VALUED, INSPIRED”: NEW EVIDENCE ON STUDENTS EXPERIENCING HOMELESSNESS (2021), https://harris.uchicago.edu/files/known_valued_inspired_2021-08-04.pdf [<https://perma.cc/U2MJ-JGG5>].

² HUD Administrative Complaint at 5–6, *Chi. Area Fair Hous. All. v. City of Chicago* (Nov. 15, 2018), <https://www.povertylaw.org/wp-content/uploads/2019/11/CAFHA-et.-al-v.-City-of-Chicago-HUD-Administrative-Complaint.pdf> [<https://perma.cc/ABH8-UYHW>]; see also *2023 State of Rental Housing in the City of Chicago*, INST. FOR HOUS. STUD. AT DEPAUL U., (June 28, 2023), <https://www.housingstudies.org/releases/2023-state-rental-housing-city-chicago/> [<https://perma.cc/DS3C-PK42>].

³ ELAINE M. HOWELL, CAL. STATE AUDITOR’S OFF., HOMELESSNESS IN CALIFORNIA 1 (2018), <http://auditor.ca.gov/pdfs/reports/2017-112.pdf> [<https://perma.cc/YVZ9-MJWD>].

⁴ Maddie Ellis, *An Estimated 65,611 People in Chicago Experienced Homelessness in 2020, Coalition Report Says*, CHI. TRIB. (Sep. 20, 2022, 5:00 AM), <https://www.chicagotribune.com/news/breaking/ct-homelessness-increase-report-20220920-nmfrgnivrvexhg6iia4otsggkm-story.html> [<https://perma.cc/KWQ9-WUPE>].

⁵ *The Scarcity of Land*, THE ECONOMIST (June 18, 2009), http://www.economist.com/blogs/freeexchange/2009/06/the_scarcity_of_land [<https://perma.cc/HRD9-6BKH>].

⁶ Ellis, *supra* note 4.

⁷ WILLIAM SCARBOROUGH WITH AMANDA E. LEWIS & IVÁN ARENAS, MACARTHUR FOUND., SHIFTING POPULATIONS TRENDS IN CHICAGO AND THE CHICAGO METRO AREA (2022), <https://uofi.app.box.com/s/rgf5h8oc8bnjq9ua2463oolvdj23qyun/file/970584591836> [<https://perma.cc/3M5N-HQTZ>].

from prioritizing housing for decades. Some of these choices prioritize moral goals, like environmental sustainability and safety for renters. Others serve interest groups like current property owners who understand that limited supply makes their homes more valuable assets, or who fear that building apartment buildings instead of single-family homes would attract undesirable neighbors to their areas. However, none of these policies gives appropriate weight to the policy goal of providing adequate housing, and they work together to make the development of new housing increasingly difficult, even when it is clearly needed.

Housing crises around the country have inspired activism and advocacy on the streets and in the courts as advocates call for new legislation and judicial decisions that would increase the availability of housing at all price levels. Because California was one of the earliest places to experience an existential housing crisis, the state developed policies to alleviate the issue that were inspired and informed by tireless advocates within and outside of legal and government realms. Notably, a loose collective of activists and stakeholders comprises the YIMBY movement, an acronym for Yes In My Backyard, who act in direct opposition to homeowners who do not welcome new housing in their neighborhoods. While the YIMBY movement has its roots in Northern California, its successes in the region have given it traction across the country. YIMBY advocates advance the perspective that additional housing stock is a necessary stratagem to improve housing availability and affordability, and they have used both litigation and legislation as tools for promoting new and diverse housing.

This Comment will examine the strategies currently used by legal activists in California, where impact litigation on this issue has been most prevalent. I consider both the substance of policies, and the process of how the Californian YIMBY movement is advocating for them. I then explore how Chicago policymakers could adapt these strategies to improve the housing landscape in Chicago, and compare with Chicago's other policy options.

B. *California's Housing Shortage and Responses*

Unavailable and unaffordable housing is an issue across the country, in every region and in urban, suburban, and rural communities.⁸ However, California was one of the first places in the United States to experience housing unaffordability and unavailability as true crises, and its housing shortage is one of the most severe in the nation.⁹ Because of its

⁸ Patrick Sisson, Jeff Andrews, & Alex Bazeley, *The Affordable Housing Crisis, Explained*, CURBED (Mar. 2, 2020, 12:46 PM), <https://archive.curbed.com/2019/5/15/18617763/affordable-housing-policy-rent-real-estate-apartment> [<https://perma.cc/V2TY-8SVW>]; CONOR DOUGHERTY, *GOLDEN GATES: FIGHTING FOR HOUSING IN AMERICA* xi–xii (2020); Patrick Sisson, *The Rent's 'Too Damn High' in Rural America, Too*, CURBED (Apr. 2, 2019, 12:28 PM), <https://archive.curbed.com/2019/4/2/18291233/rent-apartment-rural-affordable-housing> [<https://perma.cc/PUV2-C55P>]; Chris Arnold, Robert Benincasa, Jacqueline GaNun, & Haidee Chu, *There's a Massive Housing Shortage across the U.S. Here's How Bad It Is Where You Live*, NPR (Jul. 14, 2022, 5:00 AM), <https://www.npr.org/2022/07/14/1109345201/theres-a-massive-housing-shortage-across-the-u-s-heres-how-bad-it-is-where-you-l> [<https://perma.cc/XK2Q-QQJK>].

⁹ David Roberts, *The Future of Housing Policy is Being Decided in California*, VOX (Apr. 4, 2018, 9:22 AM), <https://www.vox.com/cities-and-urbanism/2018/2/23/17011154/sb827-california-housing-crisis> [<https://perma.cc/C39D-QHZA>]; MAC TAYLOR, LEGIS. ANALYST'S OFF., *CALIFORNIA'S HIGH HOUSING COSTS: CAUSES AND CONSEQUENCES* 3 (2015), <https://www.lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf> [<https://perma.cc/9Y4P-APU9>].

desirable climate and thriving technology industry, as well as growth in other sectors of its economy, California experienced a burst of population growth that outpaced growth in its housing stock a few decades before the housing shortage issue became front of mind in many other regions.¹⁰

While California had a head start on solving its housing issues, its housing shortage is also unique in depth and severity.¹¹ There are several structural barriers to building new housing in California that hinder the ability of the market to expand supply and stabilize prices. One structural barrier is single family zoning, a phenomenon which is prevalent throughout much of the United States, and until January 1 of this year was the law for 78% of the developable land in California's populous Bay Area, which is ground zero for the housing crisis nationwide.¹² Zoning restrictions that cap the number of units per area to prevent development of multifamily properties like townhomes, duplexes, triplexes, and apartment buildings severely limit supply and create housing shortages, especially in the most desirable neighborhoods.

Because California's housing crisis is unique in the United States as a result of its timeline and scope, people have been calling for change since at least 2014.¹³ California presents a model for the rest of the country for how to address existential housing issues through new innovation in the executive, legislative, and judicial branches of state government. California has passed a number of new measures to address these issues, such as SB9 which allows for accessory dwelling units in most lots that were previously zoned for single family housing only, and SB10 which promotes denser development in high-traffic transit corridors.¹⁴

One of the movements that has evolved in part in response to California's severe housing crunch is the "YIMBY" movement, which has had a direct impact on the passing of SB9, SB10, and other pro-housing legislation.¹⁵ Its name is a direct response to the pejorative descriptor NIMBY, Not In My Back Yard, which has been ascribed to homeowners who advocate against new development or housing in their immediate area because of concerns that increased traffic or new demographic groups may change the social balance of their communities or impact their home values.¹⁶

The term YIMBY was first seen in a 1993 article in the Journal of the American Planning Association, which provided guidance for planners trying to earn buy-in for

¹⁰ HOWELL, *supra* note 3, at 9.

¹¹ *Id.*

¹² Stephen Menendian, Samir Gambhir, Karina French, & Arthur Gales, *Single-Family Zoning in the San Francisco Bay Area*, OTHERING AND BELONGING INST. AT U.C. BERKELEY (Oct. 7, 2020), <https://belonging.berkeley.edu/single-family-zoning-san-francisco-bay-area> [<https://perma.cc/66VD-UR73>].

¹³ Conor Dougherty, *In Cramped and Costly Bay Area, Cries to Build, Baby, Build*, N.Y. TIMES (April 16, 2016), <https://www.nytimes.com/2016/04/17/business/economy/san-francisco-housing-tech-boom-sf-barf.html> [<https://perma.cc/2AAX-ZSBE>].

¹⁴ CAL. GOV'T CODE § 65852.21 (West 2022); CAL. GOV'T CODE § 65913.5 (West 2022).

¹⁵ *Legislation*, CAL. YIMBY, <https://cayimby.org/legislation/> [<https://perma.cc/NJ4P-7C2C>] (last visited Nov. 11, 2023).

¹⁶ Conor Dougherty, *Twilight of the NIMBY*, N.Y. TIMES (June 5, 2022), <https://www.nytimes.com/2022/06/05/business/economy/california-housing-crisis-nimby.html> [<https://perma.cc/N7XA-NC98>].

development projects from hesitant community members.¹⁷ The term gained widespread use in the 2010s to describe a movement of people in favor of increased dense development within and outside of the planning profession.¹⁸ Since then, YIMBY has remained a loose moniker describing a point of view rather than describing an organized group of activists. However, several groups subscribing to the YIMBY philosophy have cropped up around the country and established formal operations. One of these is YIMBY Law, an organization based in Northern California that has harnessed pro bono support at law firms to pursue litigation in favor of development, primarily in California.

C. *Understanding YIMBY in an Economic Context*

The YIMBY philosophy is based on the theory that increasing housing stock will naturally improve housing availability and affordability. One of the most basic tenets of economic theory is that supply and demand are the two functions of the price of a good. If the supply of a certain good is low and the demand remains constant, the price will rise so the good is allocated to the buyer who values it the most and thus is willing to pay an increased price. If the demand rises, the increased demand will force prices yet higher as sellers attempt to garner the highest possible price for their wares.¹⁹ Consequently, this basic model also underpins an incentive-based explanation for the NIMBY ethos: that homeowners have a vested interest in restricting the construction of new housing because the resulting stagnation of supply paired with rising demand will force housing prices up in their area. This increase in price will benefit those whose homes are a major asset by increasing their home equity without any other economic change. It also explains why the YIMBY movement is committed to the increase of housing availability of all types, including market rate housing and luxury housing: if the supply of housing is able to rise due to new construction in response to rising or stable demand, all prices will fall according to the basic supply and demand model.

However, the basic supply-and-demand model has been criticized as oversimplifying housing crunches, and alternative strategies for improving housing availability besides building more housing stock are also commonly proposed. The most simplistic conception of microeconomics assumes that everyone has equal access to capital at a low cost. Economic models often conflate willingness to pay with ability to pay.²⁰ This is at odds with a reality in which people from different socioeconomic classes have different abilities to pay for housing and the amount that each is willing to pay for the same home may not represent accurately how much value they expect to derive from owning or renting it. Because the basic microeconomic model does not accurately consider socioeconomic inequality, building luxury homes may not lower the price of housing at all. There could still be demand at higher pricing levels, but those homes are out of reach for middle class

¹⁷ Robert W. Lake, *Planners' Alchemy Transforming NIMBY to YIMBY: Rethinking NIMBY*, 59 J. AM. PLAN. ASS'N 87 (1993).

¹⁸ Erin McCormick, *Rise of the Yimbys: The Angry Millennials with a Radical Housing Solution*, THE GUARDIAN (Oct. 2, 2017), <https://www.theguardian.com/cities/2017/oct/02/rise-of-the-yimbys-angry-millennials-radical-housing-solution> [<https://perma.cc/56N9-6FP7>].

¹⁹ See generally DAVID SHAPIRO, DANIEL MACDONALD, & STEVEN A. GREENLAW, PRINCIPLES OF ECONOMICS 3E (2022).

²⁰ Jan Abel Olsen & Richard D Smith, *Theory Versus Practice: A Review of 'Willingness-to-Pay' in Health and Health Care*, 10 HEALTH ECON. 39, 39 (2001).

families. The greatest need in housing is for homes at affordable prices, but the profit margin for new construction on affordable units would be lower than the profit margin on luxury units. Therefore, state and local governments repealing regulations on new construction and providing incentives that are targeted towards increasing housing availability across the board are likely to result in an increase in units, but not necessarily units that actually address the affordability problem. Regulations that specifically prioritize affordable units could address this issue but would not incentivize new construction as much as policies that encourage construction of new housing overall, including housing that will rent at market price. Some people even call for policies that do not increase the supply of housing stock at all, such as rent control or housing vouchers; this camp criticizes deregulation because it prioritizes market forces, which favor those with capital available and penalize the poor.²¹ However, in the current landscape, there is simply not enough housing. Reallocating it more equitably is a reasonable goal, but not sufficient to address the problem.

Another issue with a purely market-based response to a housing shortage is that investors seeking to maximize profits are not oriented towards providing housing for all. To address cost-burdens and homelessness, we need regulation to prevent the rich from hoarding housing stock and prioritize primary residence needs rather than the needs of vacationers. Solutions addressing this concern include strict regulations on short-term rentals, like Airbnbs, and raising property taxes but increasing homestead exemptions, which provide a property tax break for primary residences.²²

These solutions, like any policy changes, will likely have unforeseen consequences. An examination of how California's case law and statutory law has developed, and the subsequent effect, provides some guidance. Part II of this Comment discusses case studies from California where YIMBY lawyers and legislators vie for more housing. Part III suggests Chicago-specific pro-housing legislation and impact litigation ideas that are informed by California activists' successes. The Conclusion suggests the most promising paths to more housing supply in Chicago.

II. THE SUCCESSES AND CHALLENGES OF CALIFORNIA'S YIMBY MOVEMENT

A. *Litigation battles over housing development: CEQA*

Litigation is a weapon: even the mere threat of it can derail an opponent's plan because of inevitable costs and time. If the parties do not settle, a case can wind through the court system for years before reaching a final conclusion. This Section will explore the ways that interest groups like NIMBY opposed to creating new housing use litigation to stop development projects before they begin. It will also discuss lawsuits brought by YIMBY groups like YIMBY Law and finally, brainstorm how litigation can be a tool for housing advocacy rather than only a barrier to overcome.

²¹ Laura S. Underkuffler, *In Search of Affordable Housing: How Deregulatory Strategies Fail the Poor*, 9 BRIGHAM-KANNER PROP. RTS. CONF. J. 227 *passim* (2020).

²² For example, New York City has recently adopted strict rules for short-term rentals that exemplify this approach. Mihir Zaveri, *New York City's Crackdown on Airbnb Is Starting. Here's What to Expect*, N.Y. TIMES (Sep. 5, 2023), <https://www.nytimes.com/2023/09/05/nyregion/airbnb-regulations-nyc-housing.html> [<https://perma.cc/A6Z6-QLUB>].

A major contributing factor to the difficulty of building new housing in California is the California Environmental Quality Act (CEQA). Originally passed during Ronald Reagan's term as governor of California, "CEQA is intended to inform government decisionmakers and the public about the potential environmental effects of proposed activities and to prevent significant, avoidable environmental damage."²³ CEQA requires builders aspiring to create new public projects to produce a detailed report describing the environmental impact the projects might have.²⁴ However, in early jurisprudence that significantly expanded the scope of the statute, California courts interpreted building permits to fall under the statutory term "public projects", thereby subjecting almost all new building development to CEQA review.²⁵

Unfortunately, this judicial interpretation of the statute has led to anti-building development groups weaponizing CEQA to prevent new projects from being built.²⁶ This legal barrier to constructing new housing leads to rising prices for existing aging housing stock by limiting new supply. CEQA gives citizens and interest groups the power to sue new development projects for extensive environmental impact statements.²⁷ While the requirement to explore the environmental impact of a new construction project might seem benign and beneficial, in practice the reports have so many detailed requirements and can be challenged on so many bases that facing a CEQA challenge is often a death sentence for new apartment buildings or other forms of housing.²⁸ The threat of a CEQA suit is especially difficult for residential development projects to overcome because they already have lower profit margins and a greater expectation of risk for investors than new commercial or industrial developments.²⁹ Even if the developer goes to court, California courts have vowed to "scrupulously enforc[e] all legislatively mandated CEQA requirements,"³⁰ without taking a holistic approach to whether the developments they are delaying would advance environmental goals. The CEQA reports are expensive and completed reports can be subject to citizen suits claiming that the report is insufficient; mounting a defense creates further expense for developers.³¹ Furthermore, a CEQA challenge is often raised not because of environmental concerns, but out of a cynical desire by entrenched landowners to keep the value of their own property high by artificially limiting the supply of housing units in the area.³² Another motive for raising CEQA objections to a new project is to maintain the historic character of a town or neighborhood,

²³ *CEQA: The California Environmental Quality Act*, GOVERNOR'S OFF. OF PLAN. AND RSCH., <https://opr.ca.gov/ceqa/> [<https://perma.cc/KRT3-8QFQ>] (last visited Nov. 11, 2023).

²⁴ CAL. PUB. RES. CODE § 21151 (Deering).

²⁵ *Friends of Mammoth v. Bd. of Supervisors*, 502 P.2d 1049, 1059 (Cal. 1972).

²⁶ Noah DeWitt, *A Twisted Fate: How California's Premier Environmental Law Has Worsened the State's Housing Crisis, and How to Fix It*, 49 PEPP. L. REV. 413, 417 (2022).

²⁷ CAL. PUB. RES. CODE § 21080 (Deering).

²⁸ DeWitt, *supra* note 26, at 434.

²⁹ Sudarshan Lodha & Armaan Joshi, *Commercial Vs Residential Real Estate Investing*, FORBES (Sep. 17, 2021, 9:58 PM), <https://www.forbes.com/advisor/in/investing/commercial-vs-residential-real-estate-investing/> [<https://perma.cc/ULS6-LZVU>].

³⁰ *Banning Ranch Conservancy v. City of Newport Beach*, 392 P.3d 455, 466 (Cal. 2017) (quoting *Citizens of Goleta Valley v. Bd. of Supervisors*, 801 P.2d 1161, 1167 (Cal. 1990)).

³¹ DeWitt, *supra* note 26, at 434.

³² Dougherty, *supra* note 16.

which limits growth and calcifies the place in the past without allowing any flexibility to meet current housing needs.³³

CEQA was created to protect the environment, but it can harm the environment as well as exacerbate the housing crunch. New high-density housing projects are most at risk of being targeted by a CEQA challenge and ultimately never built.³⁴ Additionally, CEQA attacks are more likely to target in-fill development, which is better for the environment than “greenfield” developments that worsen sprawl.³⁵ The result of persistent CEQA challenges is that Californians are left with single-family homes as the only remaining option, driving up the demand for new single family developments which contribute to urban sprawl. This, in turn, necessitates excessive car use as residents’ basic daily needs are too far from their homes for them to walk to or to support robust public transportation.³⁶ Car dependency is one of the main drivers of carbon emissions in the United States.³⁷ Another effect of urban sprawl in California is that residential areas are cutting deeper and deeper into undeveloped natural land, which harms biodiversity and the availability of wild lands for recreation and carbon capture.³⁸ The impact of new single-family home neighborhoods cropping further into wilderness is also that these new homes are more vulnerable to wildfires, which creates an endless cycle as fires damage homes and people rebuild them in the same areas.³⁹ CEQA, a statute seeking to protect the environment, has instead contributed to environmental destruction because it limits multifamily housing. Ultimately, the California legislature should consider amending CEQA so it is tailored to the issue it intends to address without creating additional strain on housing supply.⁴⁰

While CEQA litigation presents a barrier to creating dense housing, litigation can also be a tool in service of expanding housing supply. One of the most prominent and successful litigation strategies that housing activists have used in California to support new housing development has been challenging the legality and application of state and local

³³ *Id.*

³⁴ Jennifer Hernandez, *California Environmental Quality Act Lawsuits and California's Housing Crisis*, 24 HASTINGS ENV'T L.J. 21, 32 (2018).

³⁵ Greenfield development creates new housing and commercial real estate on completely undeveloped land, often skipping over land closer to city centers because it is more expensive. Infill development created housing in the land that has been passed over by previous greenfield developments. JENNIFER L. HERNANDEZ, DAVID FRIEDMAN, & STEPHANIE DEHERRERA, HOLLAND & KNIGHT, IN THE NAME OF THE ENVIRONMENT: HOW LITIGATION ABUSE UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT UNDERMINES CALIFORNIA’S ENVIRONMENTAL, SOCIAL EQUITY AND ECONOMIC PRIORITIES—AND PROPOSED REFORMS TO PROTECT THE ENVIRONMENT FROM CEQA LITIGATION ABUSE 70 (2015), https://issuu.com/hollandknight/docs/ceqa_litigation_abuseissuu?e=16627326/14197714 [<https://perma.cc/6E73-CUK7>].

³⁶ M. Nolan Gray, *How Californians Are Weaponizing Environmental Law*, THE ATLANTIC (Mar. 12, 2021) <https://www.theatlantic.com/ideas/archive/2021/03/signature-environmental-law-hurts-housing/618264/> [<https://perma.cc/Q89M-EEAU>].

³⁷ EPA, INVENTORY OF U.S. GREENHOUSE GAS EMISSIONS AND SINKS: 1990-2020, at 2–35 (2022), <https://www.epa.gov/system/files/documents/2022-04/us-ghg-inventory-2022-main-text.pdf> [<https://perma.cc/Q7EC-KBWD>].

³⁸ HERNANDEZ, FRIEDMAN, & DEHERRERA, HOLLAND & KNIGHT, *supra* note 32 at 70.

³⁹ F. NOEL PERRY, COLLEEN KREDELL, MARCIA E. PERRY, & STEPHANIE LEONARD, NEXT 10, REBUILDING FOR A RESILIENT RECOVERY: PLANNING IN CALIFORNIA’S WILDLAND URBAN INTERFACE 2 (2021), <https://www.next10.org/sites/default/files/2021-06/Next10-Rebuilding-Resilient-Final.pdf> [<https://perma.cc/N82P-7K3N>].

⁴⁰ For a detailed discussion of proposed changes, see DeWitt, *supra* note 26.

regulations, particularly the Housing Accountability Act.⁴¹ Local government bureaucrats sometimes misapply regulations, either failing to enforce pro-housing legislation or refusing permits without legitimate reasons.⁴² In the future, advocates might consider advancing creative and novel legal claims, such as the argument that the state police power presents limits on the regulations that state governments can pass and enforce.⁴³

Because of the long timeline of litigation, many of the impact litigation cases brought forth by advocates in favor of building more housing are still in active litigation and initial decisions by courts are likely to be appealed. However, early decisions are promising and illustrate the success that is possible for advocates through lawsuits. These lawsuits position YIMBY advocates as the plaintiff rather than on the defense side in CEQA litigation. In *Yes in My Back Yard v. City of Simi Valley*, YIMBY Law sued a California city in the greater Los Angeles region that refused to allow an assisted living community to benefit from the Housing Accountability Act (HAA), a law meant to support the construction of new housing in California.⁴⁴ In a tentative decision, the trial court ruled that the assisted living community was a residential project and thus the City faced a higher burden to block its development than for a non-residential development.⁴⁵ The court found that the assisted living community falls under the defined term “residence” in the HAA, and thus should be afforded the deference that HAA requires cities to give to residential developments.⁴⁶ Litigation that challenges the way cities categorize new projects and encourages a broader view of developments to meet housing needs is an important aspect of the YIMBY impact litigation toolkit.

A more novel litigation approach goes beyond pleading a claim that a regulation is being improperly enforced. Plaintiffs could sue the city for improperly promulgating the regulation in the first place because it extends beyond the scope of the police power. Claims of this type are still uncommon, and I am unaware of any that have been filed to date specifically claiming that housing regulations are illegal because they violate the confines of the state police power, but this legal strategy is becoming more prevalent in other areas challenging the police power. For example, lawsuits filed during the Covid-19 pandemic challenged state safety regulations on the grounds that they exceeded the scope of state police power in a few states.⁴⁷ Judges generally understand the state police power as granting state governments the authority to issue any regulations elected officials deem to be in furtherance of the public good, but this standard is vulnerable to reinterpretation. A California court said in 2011 that “[t]he definition of ‘police power’ is broad and rather nebulous. ‘The police power is the authority to enact laws to promote the public health, safety, morals and general welfare. Legislation is within the police power if it is reasonably

⁴¹ See, e.g., *Honchariw v. County of Stanislaus*, 132 Cal. Rptr. 3d 874 (Ct. App. 2011); *Sequoyah Hills Homeowners Ass'n v. City of Oakland*, 29 Cal. Rptr. 2d 182 (Ct. App. 1993); *N. Pacifica, L.L.C. v. City of Pacifica*, 234 F. Supp. 2d 1053 (N.D. Cal. 2002), *rev'd on other grounds*, 526 F.3d 478 (9th Cir. 2008).

⁴² See, e.g., *Sequoyah Hills*, 29 Cal. Rptr. 2d 182.

⁴³ Daniel B. Rodriguez, *The Inscrutable (Yet Irrepressible) State Police Power*, 9 N.Y.U. J.L. & LIBERTY 662, 668 (2015).

⁴⁴ *Yes in My Back Yard v. City of Simi Valley*, No. 56-2020-00539590-CU-WM-VTA, 2021 WL 4813822 (Cal. Super. Ct. 2021) (interpreting CAL. GOV'T CODE § 65589.5 (West)).

⁴⁵ *Id.* at *4.

⁴⁶ *Id.* at *3.

⁴⁷ For a general discussion, see Phillip D. Corley, Jr., April B. Danielson, & Gabe M. Tucker, *Overview of State and Local Government Powers During the Covid-19 Pandemic*, 81 ALA. LAW. 296 (2020).

related to a proper legislative goal.”⁴⁸ The “public health, safety, morals and general welfare” language is common throughout decisions on the issue, including those from Illinois courts.⁴⁹ However, this broad interpretation of the scope of the state police power is not the only interpretation available.⁵⁰ Certainly, not every action that a state government might take can be reasonably expected to promote the public health, safety, morals, and general welfare, even though it is a broad directive.

State case law does not sufficiently address the boundaries of the state police power or offer a cogent rule for when a regulation is not in the furtherance of the public good.⁵¹ YIMBY Law is developing a legal argument that regulations curtailing the development of new housing in areas where it is desperately needed not only fail to advance the public good, but actively undermine it.⁵² However, this argument will likely struggle in courts because the definition of the public good is so subjective and courts will likely hesitate to use their own judgment to weigh in on the lawmaking process, preferring to allow the political system to allow changes as statutes become disfavored.⁵³

Litigation has thus far primarily been a hindrance to housing in California, as NIMBY groups and municipalities have used CEQA to block new development. This is a major challenge for the development of new homes in the state. However, litigation also has potential to be useful to the pro-housing movement. YIMBY groups should reposition as plaintiffs to get the courts to create favorable law in the fact patterns most sympathetic to the pro-housing movement. When considering the challenges and triumphs of YIMBY groups in California, other regions should learn that while defendants are forced to be reactive, plaintiffs have an opportunity to bring cases that present their goals in the most favorable possible light. More proactive litigation can produce caselaw that further advances pro-housing goals.

B. *Legislative solutions to housing shortages*

Several innovative legislative solutions have passed state-wide in California to make building new housing easier and prevent individual towns and cities from blocking development within their borders.⁵⁴ This Section analyzes three bills that can serve as inspiration for similar legislation in Chicago. These policies and other pro-housing state statutes have been championed by California State Senator Scott Wiener, a housing advocate who has been vocal about his support for increased housing supply.⁵⁵ Another

⁴⁸ Goldbaum v. Regents of Univ. of Cal., 119 Cal. Rptr. 3d 664, 671 (Ct. App. 2011).

⁴⁹ *In re Pension Reform Litig.*, 32 N.E.3d 1, 20 (Ill. 2015); *City of Chicago v. Chi. & N.W. Ry. Co.*, 122 N.E.2d 553, 558 (Ill. 1954); *New Orleans Campaign for a Living Wage v. City of New Orleans*, 825 So. 2d 1098, 1104 (La. 2002).

⁵⁰ See, e.g., Hugh D. Spitzer, *Municipal Police Power in Washington State*, 75 WASH. L. REV. 495, 506 (2000).

⁵¹ See generally Rodriguez, *supra* note 43, at 662.

⁵² *Zoning & Policing*, YIMBY L. (Mar. 16, 2021), <https://www.yimbylaw.org/law-journal/zoning-amp-policing> [<https://perma.cc/UK2V-4YCE>].

⁵³ In the case of an ambiguous statute, courts interpret the statute in a way that renders it valid. *Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng'rs*, 531 U.S. 159, 173 (2001).

⁵⁴ Trevor Bach, *Newsom Signs Flurry of Housing Bills*, THE REAL DEAL (Sep. 29, 2022, 8:00 AM), <https://therealdeal.com/la/2022/09/29/newsom-signs-flurry-of-housing-bills/> [<https://perma.cc/ZC4C-8LBH>].

⁵⁵ Scott Wiener (@Scott_Wiener), TWITTER (June 5, 2022, 10:09 AM), https://twitter.com/scott_wiener/status/1533466070945779712 [<https://perma.cc/2UQ2-GZBN>].

advocate for these and other policies has been California Governor Gavin Newsom, who declared that “NIMBYism is destroying the state” in an interview with *The San Francisco Chronicle* in 2022.⁵⁶ Leaders like Senator Wiener and Governor Newsom have been invaluable to the ongoing effort to enact pro-housing policy, and similar legislation in Chicago would need similar champions in the legislature in order to pass.

Innovative housing legislation in California predates the inauguration of Governor Newsom. The HHA, passed in 1982 and amended in 2017, prevents municipal governments from blocking the construction of vital housing.⁵⁷ The HHA mandates that “local government not reject or make infeasible housing development projects, including emergency shelters, that contribute to meeting the need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action.”⁵⁸ The 1982 HHA only gave judges the power to impose fines on municipalities that attempted to block housing developments for low- or middle-income residents, but the 2017 amendment required courts to levy fines on cities or towns that fail to correct their behavior within sixty days of court enforcement of the HAA.⁵⁹ However, the HAA is imperfect. Cities do not always follow its mandate if they have not been subjected to suit,⁶⁰ and courts are somewhat deferential to cities over developers in deciding whether the HAA mandates the city to allow a given development.⁶¹

The California legislature and Governor Newsom recently approved Senate Bill 9 (SB9), allowing any Californian to build an accessory dwelling unit (ADU), colloquially known as a granny flat, in-law apartment, or coach house, on their property.⁶² ADUs can become housing for aging relatives, young adults, or tenants who need a smaller living space. ADUs present an opportunity for families that are currently “doubled up,” living in one home because of dramatic costs when the home does not suit the needs of the family. The approval of ADUs is a relatively simple change and it has potential to alleviate the pressure on housing supply. However, the success of SB9 has been limited thus far.⁶³ In a study including thirteen California cities like Los Angeles, San Diego, and San Francisco, city governments received only 282 permit applications for ADUs and approved only fifty-three of those permits, constituting an 81% rejection rate.⁶⁴ This highlights the necessity of synergy in legislative and litigation strategies for improving housing availability. New

⁵⁶ Sophia Bollag, ‘NIMBYism Is Destroying the State.’ *Gavin Newsom Ups Pressure on Cities to Build More Housing*, S.F. CHRON. (May 22, 2022, 8:05 AM), <https://www.sfchronicle.com/politics/article/newsom-housing-17188515.php> [<https://perma.cc/68EA-HJB2>].

⁵⁷ CAL. GOV'T CODE § 65589.5 (West 2023).

⁵⁸ David Garcia & Muhammad Alameldin, *California's HOME Act Turns One: Data and Insights from the First Year of Senate Bill 9*, TERNER CTR. FOR HOUS. INNOVATION AT U.C. BERKELEY (Jan. 18, 2023), <https://turnercenter.berkeley.edu/research-and-policy/sb-9-turns-one-applications/> [<https://perma.cc/8PPE-3GVX>].

⁵⁹ CAL. GOV'T CODE § 65589.5(k)(1)(B) (West 2023).

⁶⁰ See *supra* note 41 and accompanying text.

⁶¹ Jeff Clare, *Because Housing Is What? Fundamental. California's RHNA System As A Tool for Equitable Housing Growth*, 46 *ECOLOGY L.Q.* 373, 395 (2019).

⁶² See CAL. GOV'T CODE § 65852.21 (West 2022); Conor Dougherty, *After Years of Failure, California Lawmakers Pave the Way for More Housing*, N.Y. TIMES (Sept. 20, 2021), <https://www.nytimes.com/2021/08/26/business/california-duplex-senate-bill-9.html> [<https://perma.cc/YXF2-LNET>].

⁶³ Garcia & Alameldin, *supra* note 58.

⁶⁴ *Id.*

legislation passed with the best intentions still needs zealous advocates to ensure that it is correctly implemented and enforced. Legal advocates can ensure that courts are enforcing new laws meant to support housing development.

Another California bill that seeks to “upzone,” or change zoning regulations to allow for more density, is the recent Affordable Housing and High Road Jobs Act of 2022.⁶⁵ This act allows new residential developments to be built in areas that previously were only zoned for commercial or office use.⁶⁶ These state legislative efforts increase the allowable density and create more opportunity to build residential homes throughout the state.

Legislation in California has been piecemeal thus far, comprised of over a dozen statutes, including those described above.⁶⁷ Each statute has its own specific goal that contributes to the broader landscape of housing supply.⁶⁸ This piecemeal approach has advantages and disadvantages. It is politically advantageous because any change is incremental, enabling these bills to pass when more sweeping changes have stalled out in the legislature.⁶⁹ However, the piecemeal nature of the legislation belies a comprehensive plan for housing, land use, and development that could be truly transformative.

C. *Lessons from California’s Housing Journey*

California still has a long way to go to ensure available and affordable housing for all of its residents. Nevertheless, advocates, legislators, and others can still draw on the experience of the pro-housing movement in California to understand what strategies are more and less effective.

The first lesson is to be proactive in enforcing laws and building housing, rather than allowing NIMBY groups to set the agenda through litigation that places housing advocates on the defensive. When permits are wrongfully denied and neighbors block new development, YIMBY groups can support developers by threatening a lawsuit rather than killing the project. However, this lesson applies with some specificity to CEQA, which is unique to California, and may not translate to other parts of the country. By contrast, in Chicago, developers are often themselves the barriers to building sufficient housing rather than the solution because single-family homes or other lower-occupancy housing can be more lucrative than large multi-family developments that would do more to meet the housing need.⁷⁰

Another important lesson is to be thoughtful in creating legislation and implementing solutions that people will embrace, while also dreaming big. Chicago still greatly benefits from a revolutionary plan that made the city what it is today: the Chicago Plan. Daniel Burnham, one of the architects of the Chicago Plan, said, “[m]ake no little plans; they have no magic to stir men’s blood and probably themselves will not be realized. Make big plans;

⁶⁵ CAL. GOV’T CODE § 65912 (West).

⁶⁶ *Id.*

⁶⁷ Dougherty, *supra* note 16.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Hannah Alani, *Chicago Is Rapidly Losing Its Signature Home, the Two-Flat: ‘Now You Go Through Lincoln Park and It Looks Like The Suburbs’*, BLOCK CLUB CHI. (May 14, 2021), <https://blockclubchicago.org/2021/05/14/chicago-is-rapidly-losing-its-signature-home-the-two-flat-now-you-go-through-lincoln-park-and-it-looks-like-the-suburbs/> [<https://perma.cc/Z4KF-FWAE>].

aim high in hope and work.”⁷¹ Beyond the power for inspiration, big plans can be comprehensive and address land use issues along multiple axes, ensuring that zoning, development incentives, infrastructure, and environmental policies all align.

III. ADAPTING THE YIMBY MODEL TO CHICAGO

California’s ongoing struggle to house its population and the work of advocates who are trying to improve housing can inform other regions facing housing shortages and help them to adopt successful solutions. In Chicago, the shortage of affordable housing stems from different causes than the shortage of affordable housing in California. However, activists can still take cues from the California playbook to advance important goals and make housing more accessible in the region. Chicago activists can look to laws like SB9, which allowed ADUs across the state, but also took several attempts and different iterations to become law. Tenacity is crucial to change, and especially in housing advocacy, where the fruits of ongoing calls for change can take years to materialize.

A. *Litigation approaches*

Chicago housing advocates have an opportunity to bring lawsuits enforcing existing pro-housing legislation which currently have limited impact due to poor enforcement. While a plaintiff rather than defense posture creates opportunities, it also creates a few challenges for housing advocates. Plaintiffs bear the burden of proof, making litigation more expensive and challenging for housing advocates. They must also battle developers rather than working with them, as is possible in CEQA cases discussed in Section II. Additionally, the cost of suing developers goes beyond monetary costs. YIMBY activists want more housing to be built, and as seen in the discussion of CEQA litigation above, even the threat of litigation can be enough to make developers abandon a proposed project entirely.⁷² Pushing developers to create affordable housing creates the risk that they will build no housing at all. Therefore, Chicago housing advocates who believe that neighborhoods need an increase in units of all types should consider focusing primarily on legislative solution. For especially egregious cases, like environmental racism, lawsuits can serve as a complementary advocacy approach.

One of the biggest advantages to Chicago’s housing affordability is the wide diversity of sizes, ages, and styles in the stock of available housing. Diversity in housing stock supports affordability and overall quality of life.⁷³ One example of this is single room occupancy (SRO) housing, which are inexpensive single-room units, often in buildings with shared bathroom and kitchen facilities, and they present a low-cost option for low-income and transient residents, those on fixed incomes, and others who might be at risk of homelessness if not for very low-cost housing. The availability of SRO housing has a direct

⁷¹ Daniel H. Burnam, *Daniel H. Burnham “Make No Little Plans” Full Quote*, THE EDWARD H. BENNETT COLLECTION, <http://edwardbennett.lakeforest.edu/items/show/9> [<https://perma.cc/BMA8-WJB7>] (last visited Nov. 11, 2023).

⁷² DeWitt, *supra* note 26 at 434.

⁷³ LEIGH ANN KING & JEFF HIRT, HOUSING DIVERSITY AND ACCESSIBILITY 7 (2008), <https://www.law.du.edu/images/uploads/rmlui/rmlui-sustainable-housingdiversity.pdf> [<https://perma.cc/J58M-GBFX>].

impact on lowering homelessness.⁷⁴ Chicago already has a regulation to preserve SRO housing.⁷⁵ The Chicago Single-Room Occupancy Preservation Ordinance requires that buyers who purchase SRO buildings maintain at least 80% of the total occupancy for very low-income residents.⁷⁶ Unfortunately, it is not always well-enforced, and 37% of Chicago's SROs have closed since the ordinance was enacted in 2014.⁷⁷ This could be an opportunity for advocates to file lawsuits in instances where the SRO Preservation Ordinance is misapplied or flouted.⁷⁸ This strategy is parallel to the litigation in California that calls for more stringent application of the HHA and other regulations that intend to protect and ensure housing availability.

California's recent legislation reflects the potential for positive impact that ADUs can have on the housing stock in a short timeframe and with a minimal impact on the aesthetics and culture of the surrounding area. Fortunately, Chicago has a strong history of ADUs throughout the city which contribute to density and diversity in the housing stock. However, the construction of ADUs was banned in 1957 and was only recently reallocated with the ADU experiment approved for only certain wards in 2020.⁷⁹ Unfortunately, the ordinance came with many restrictions.⁸⁰ In addition to limiting the construction of new ADUs to certain wards, the ordinance limited heights of accessory buildings, uses of the new units, and total new square footage is capped at 700 square feet.⁸¹ This area is small compared even to neighboring suburb Evanston, where coach houses are allowed to be up to 1,000 square feet even though it is more densely populated than many Chicago neighborhoods.⁸² Despite demand for ADU housing, only seventy-seven permits have been issued citywide as of September 2022.⁸³ Part of the dearth of new ADUs might be in response to the ordinance's limitations on new ADUs, which cannot be used for short-term rentals like Airbnb⁸⁴ or in response to the high costs of building and construction that have soared in recent years.⁸⁵ In addition, Chicago might deny permit applications due to the

⁷⁴ Noah M. Kazis, *Fair Housing for a Non-Sexist City*, 134 HARV. L. REV. 1683, 1729 (2021).

⁷⁵ CHI., ILL., MUN. CODE § 5-15 (2014).

⁷⁶ *Id.*

⁷⁷ RYAN A. FULGHAM & DR. JOSEPH K. HOERETH, WHERE HAVE THEY GONE? EXAMINING THE SUCCESS OF CHICAGO'S SRO PRESERVATION ORDINANCE (2019), <https://uofi.app.box.com/s/s6bp82ky9up6wnrxzo6btspdhcs8ibqj> [<https://perma.cc/B4T3-X888>].

⁷⁸ See, e.g., Kari Lydersen, *The Last Days of the Lugo Hotel?* CHI. READER (Mar. 4, 2016), <https://chicagoreader.com/news-politics/the-last-days-of-the-lugo-hotel/> [<https://perma.cc/H424-H7DA>] (alleging that market-rate developers were in talks to purchase an SRO building in Pilsen in violation of the SRO Preservation Ordinance).

⁷⁹ CHI., ILL., MUN. CODE § 2-44-106 (2020) (Affordable Conversion Unit Ordinance); David Roeder, *City's Test of Additional Dwelling Units Finds Most Takers in Gentrified Wards*, CHI. SUN-TIMES (Sep. 5, 2022), <https://chicago.suntimes.com/2022/9/5/23333672/coach-houses-adus-additional-dwelling-units-chicago-north-northwest-side-gentrified-wards> [<https://perma.cc/5HQN-DWR4>].

⁸⁰ CHI., ILL., MUN. CODE § 17-9-0200 (2020).

⁸¹ *Id.*

⁸² Roeder, *supra* note 79.

⁸³ *Id.*

⁸⁴ CHI., ILL., MUN. CODE § 17-9-0200 (2020).

⁸⁵ Alby Gallun, *Chicago Construction Costs Third-Highest in Country*, CRAIN'S CHI. BUS. (Mar. 5, 2020, 11:46 AM), <https://www.chicagobusiness.com/commercial-real-estate/chicago-construction-costs-third-highest-country> [<https://perma.cc/US7L-VC44>].

extensive requirements of the ordinance that are challenging for small developers to satisfy.⁸⁶

YIMBY advocates can borrow strategies from big developers to promote more housing, especially in the context of small-scale projects like ADUs. Big developers pursuing lucrative projects are better equipped to push for permission to build. One example is the controversial General Iron metal shredding and recycling facility.⁸⁷ General Iron used to operate an industrial facility in Lincoln Park, but residents successfully lobbied to have it removed from their neighborhood as it produced pollutants that people feared presented a public health concern.⁸⁸ After the facility was ousted from Lincoln Park, General Iron made plans to establish a new plant in Chicago's East Side neighborhood, a historically industrial part of the city on the far South Side with considerably less wealth and political clout than Lincoln Park.⁸⁹ Due to outcry from East Side residents, the city of Chicago denied General Iron a permit to establish the new plant and the facility is currently suing the city to challenge the permitting process.⁹⁰ Although the case was dismissed from federal court, the management company advocating for the metal shredding facility is still pursuing litigation in Illinois state court to win a permit from the city that would allow it to move forward.⁹¹ This litigation is ongoing and its success remains elusive, but it represents the resources that are funneled towards litigation in favor of lucrative developments where permits have been denied.

Although Illinois does not have a law like CEQA that allows any stakeholder to challenge a building permit on environmental grounds, developers who seek to build new housing still face barriers to getting permits and citizen protest can be a powerful force in preventing the city from issuing building permits, as seen in the case of the metal shredding facility. Builders who seek to develop new housing in the form of ADUs are often individuals or mom-and-pop landlords seeking to renovate one basement into an apartment or erect coach houses in the backyards of their homes. These developers cannot easily advance lawsuits like General Iron can, and YIMBY activists could promote the development of more housing in Chicago by providing legal support for would-be ADU developers whose plans have been foiled by the permitting process.

Another opportunity for YIMBY advocates to enforce regulations is presented by the Affordable Requirements Ordinance (ARO).⁹² Chicago's first ARO was passed in 2007, and included policies aimed at encouraging developers to build more affordable units by requiring large building projects to set aside a percentage of units for affordable housing or pay fees that would be used to create affordable housing in another way. In 2015, Chicago passed an amended ordinance requiring that all new developments set aside 10%

⁸⁶ CHI., ILL., MUN. CODE § 17-9-0200 (2020).

⁸⁷ *Gen. III, L.L.C. v. Arwady*, No. 21-cv-2667, 2021 U.S. Dist. LEXIS 121388 (N.D. Ill. June 29, 2021).

⁸⁸ Hannah Alani, *General Iron Officially Closes Lincoln Park Facility As Company Owner Works to Set Up Shop in East Side*, BLOCK CLUB CHI. (Jan. 4, 2021), <https://blockclubchicago.org/2021/01/04/general-iron-officially-closes-lincoln-park-facility-as-company-owner-works-to-set-up-shop-in-east-side/> [<https://perma.cc/N2T7-UENY>].

⁸⁹ *Id.*

⁹⁰ Elly Boes, Lara Diaz, Adriana Talavera, & Citlalli Velez, *Who Wants General Iron?*, 14 EAST (May 21, 2021), <http://fourteeneastmag.com/index.php/2021/05/21/who-wants-general-iron/> [<https://perma.cc/8SYF-32NG>].

⁹¹ *Gen. III, L.L.C.*, 2021 U.S. Dist. LEXIS 121388.

⁹² CHI., ILL., MUN. CODE § 2-44-085 (2021).

of their space for affordable housing or pay a fine to the city.⁹³ This law has several shortcomings, including its failure to provide the projected number of affordable units and for the city's use of the resulting fees, which were not earmarked to provide additional affordable units in the specific areas where they were most needed.⁹⁴ In 2021, the ARO was updated to require that developers of large projects build 50% of units in-kind, making it impossible to fulfill the requirement entirely through fees.⁹⁵ The 2021 amendment also requires that if the affordable units are built offsite, they are built within one mile of the new development⁹⁶ to ensure that new luxury buildings, which might spur gentrification and displace residents, come with affordable housing in the immediate vicinity to prevent displacement of residents to another neighborhood or out of Chicago altogether.

Developers sometimes fail to make the units available to families who need them even though they are required to build affordable units.⁹⁷ The Chicago Lawyers' Committee for Civil Rights had volunteers approach developers posing as potential tenants seeking affordable units in order to test whether the developers were following the law.⁹⁸ Forty-three percent of the participants reported that the housing providers either discriminated against them based on race or told them that the developers were not aware of or not complying with the Affordable Requirements Ordinance.⁹⁹ This study raises suspicion that the ARO is not being effectively enforced and presents an opportunity for housing advocates to sue. Even the threat of lawsuits can force developers to comply with regulations because litigation is an expensive and arduous process.

The final litigation opportunity discussed in this Section is for YIMBY advocates to challenge the zoning code. Chicago has a history of prioritizing and preserving heavy industry and manufacturing operations within city limits.¹⁰⁰ However, the industry often clusters around low income and Black or Hispanic communities, as they have less political and economic clout than their wealthy and white counterparts.¹⁰¹ Attempts to remove damaging industrial practices from residential areas support housing access as well by freeing up available land. There is little reason now to allow heavy industry within city limits on land that could be better zoned for residential use. For example, there is a recent development in Bridgeport where land was zoned exclusively for industrial use.¹⁰² Although the plot of land was in a dense area, near public transportation, and in a desirable

⁹³ CHI., ILL., MUN. CODE § 2-44-080 (2015).

⁹⁴ *Id.*

⁹⁵ CHI., ILL., MUN. CODE § 2-44-085 (2021).

⁹⁶ *Id.*

⁹⁷ Ebony Ellis & Jess Schwalb, *Yes, Fair Housing Testing Still Matters*, CHI. LAWS.' COMM. FOR C.R. (Apr. 13, 2021), <https://fix8media-chicago.squarespace.com/blog/2021/4/13/yes-fair-housing-testing-still-matters> [<https://perma.cc/2J3M-4SKF>].

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Industrial Corridor Modernization Initiative*, CITY OF CHI. (Aug. 11, 2022), https://www.chicago.gov/city/en/depts/dcd/supp_info/repositioning-chicago-s-industrial-corridors-for-today-s-economy.html [<https://perma.cc/U8RC-7JCF>].

¹⁰¹ See Charles Isaacs, *Environmental Justice in Little Village: A Case for Reforming Chicago's Zoning Law*, 15 NW. J.L. & SOC. POL'Y 357, 361 (2020).

¹⁰² Amy Qin, *A Planned Amazon Warehouse in Bridgeport is the Latest Site in the Fight Against Industrial Development on the South and Southwest Sides*, S. SIDE WKLY. (Feb. 12, 2021), <https://southsideweekly.com/a-planned-amazon-warehouse-in-bridgeport-is-the-latest-site-in-the-fight-against-an-inequitable-distribution-of-warehouses-on-the-citys-south-and-southwest-sides/> [<https://perma.cc/4RT6-CRUB>].

neighborhood of the city for young professionals and families, the land was mandated for industrial use.¹⁰³ This zoning scheme could be challenged with a lawsuit against the city arguing that this practice amounts to environmental racism and is therefore an Equal Protection Clause violation.¹⁰⁴ As discussed above, white residents have successfully pushed heavy industry out of their neighborhoods, landing polluting facilities in neighborhoods that have a higher proportion of Black and Hispanic residents.¹⁰⁵ Furthermore, the interests supporting industrial-only zoned corridors have lost political will over the past few decades,¹⁰⁶ and even the threat of litigation in the current political climate might encourage the city to rethink its zoning code to support housing development and remove heavy industry from densely populated areas.

B. Legislative approaches

New regulations could make housing easier in Chicago. California provides some blueprints for effective legislation that could help to alleviate the housing shortage in Chicago in the short term with broad public support.

The Chicago Recovery Plan is one example of current legislation that supports development of additional housing in Chicago. The plan, which lists priorities for the city budget in the next several years, carves out one billion dollars for affordable housing. This amount will be allocated to fund a mix of building new affordable housing developments, transitioning existing structures into affordable housing through adaptive reuse, and preserving existing affordable housing.¹⁰⁷ The explicit goal of the plan's housing policies is to create affordable housing, as opposed to the California YIMBY priority of creating housing at every level. This affordability tailoring is more responsive to Chicago's housing needs but could still benefit from prioritizing density, like some of the recent California bills that upzone to allow for more density.

A proposed ordinance called Bring Chicago Home would allow voters to consider a new tax on real estate transfers over one million dollars and funnel the proceeds towards addressing and preventing homelessness through providing services and creating new affordable housing.¹⁰⁸ Unfortunately, passing this ordinance has been an uphill battle due to real estate industry interest groups lobbying against it. Grassroots campaigning for this ordinance has broad support across coalitions of YIMBY activists, developers, affordable housing advocacy groups, and other community organizations,¹⁰⁹ but the ordinance has

¹⁰³ *Id.*

¹⁰⁴ This would be a somewhat unusual legal argument, but it has had some success. In the Northern District of Texas, plaintiffs successfully avoided summary judgment on a theory that the defendant town had violated the Equal Protection Clause by subjecting a minority, low-income neighborhood to neighboring industry. *Miller v. City of Dallas*, No. 3:98-CV-2955-D, 2002 U.S. Dist. LEXIS 2341 at *23–24 (N.D. Tex. 2002).

¹⁰⁵ Alani, *supra* note 88.

¹⁰⁶ Qin, *supra* note 102.

¹⁰⁷ CITY OF CHI., CHICAGO RECOVERY PLAN 27 (2021) https://www.chicago.gov/content/dam/city/depts/obm/supp_info/2022Budget/ChicagoRecoveryPlan.pdf [<https://perma.cc/94HR-K6YF>].

¹⁰⁸ *What is Bring Chicago Home?*, BRING CHI. HOME, <https://www.bringchicagohome.org/what-is-bring-chicago-home/> [<https://perma.cc/U8PJ-3ZZB>] (last visited Dec. 15, 2022). For the text of the proposed ordinance, see R. 2021-919 CHI., ILL., CITY COUNCIL (2021), <https://chicityclerkelms.chicago.gov/Matter/?matterId=1685770A-E20D-ED11-82E3-001DD80693B4> [<https://perma.cc/FP3F-AJBD>].

¹⁰⁹ *Supporters*, BRING CHI. HOME, <https://www.bringchicagohome.org/supporters/> [<https://perma.cc/5BV7-ELCD>] (last visited Dec. 15, 2022).

struggled to garner support from elected officials.¹¹⁰ The Chicago City Council had the opportunity to vote on the ordinance in November 2022 and failed to reach quorum.¹¹¹

Zoning in Chicago is also ready for legislative innovation. Chicago's zoning code preserves several Industrial Corridors, areas that are restricted to industrial use rather than residential, commercial, or mixed-use. This historic zoning has not changed in over twenty-five years and actively impedes the ability for land use to adapt to Chicago's changing needs.¹¹² Much of the land designated for industrial uses is in neighborhoods like Pilsen, Bucktown, and Bridgeport, which are communities that are facing affordability crunches and increased demand for new residential stock as they gentrify.¹¹³ Chicago has proposed plans intended to modernize these industrially zoned areas but the plans maintain that new uses must be industrial in several of the corridors, especially those in neighborhoods on the South and West Sides that have higher Black and Hispanic populations.¹¹⁴ Rather than attempting to modernize the industrial corridors with small changes to their scope and regulations, Chicago should do away with them altogether.

While individual housing developers and landowners can petition for a zoning code change on a case-by-case basis to allow for individual residential projects, the existence of any heavy industry within city limits has the effect of worsening public health, lowering quality of life due to noise and pollution, and making the city less pedestrian friendly. Chicago upheld the industrial corridors when they were last challenged twenty-five years ago in the hope of maintaining blue-collar manufacturing jobs within city limits, which continues to be a primary goal of the modernization initiative.¹¹⁵ But mandated industrial zoning no longer serves the needs of working Chicagoans, nor does it fit the city's current economy. Instead, these zones actively harm nearby residents.¹¹⁶ Like the rest of the United States, Chicago is increasingly moving towards a service-based economy and the attempt to preserve manufacturing jobs through Industrial Corridor zoning ends up operating as a municipal subsidy to companies like Amazon, since they no longer have to compete with residential or other uses for prized land in what would be dense urban neighborhoods.¹¹⁷

California's legislative attempt to upzone especially in transit-dense areas, SB10, could serve as a model to Chicago in eliminating industrial-only land use. Additionally, Chicago's own efforts to revitalize the Industrial Corridors on its whiter, more affluent North Side should be applied to the rest of the city. In these plans, industrial corridors in Ravenswood and Lincoln Park were rezoned to allow for mixed-use commercial

¹¹⁰ Mina Bloom, *25 City Council Members Ditch Meeting About City's Homelessness Crisis*, BLOCK CLUB CHI. (Jan. 24, 2023), <https://blockclubchicago.org/2022/11/14/25-city-council-members-ditch-meeting-about-citys-homelessness-crisis/> [https://perma.cc/5ARW-7R65].

¹¹¹ *Id.*

¹¹² *Industrial Corridor Modernization Initiative*, *supra* note 100.

¹¹³ *City of Chicago Zoning and Land Use Map*, CITY OF CHI., <https://gisapps.chicago.gov/ZoningMapWeb/?liab=1&config=zoning> (last visited Dec. 15, 2022).

¹¹⁴ For an example, see DEP'T OF PLAN. AND DEV., CITY OF CHI., *LITTLE VILLAGE FRAMEWORK* (2019), https://www.chicago.gov/content/dam/city/depts/zlup/Planning_and_Policy/Publications/draft-little-village-framework.pdf. [https://perma.cc/S6K3-UFJ7].

¹¹⁵ *Industrial Corridor Modernization Initiative*, *supra* note 100.

¹¹⁶ Qin, *supra* note 102.

¹¹⁷ *Id.*

developments.¹¹⁸ While the former Industrial Corridors on the North Side will still allow for some industrial land use, the area devoted to industrial uses is significantly diminished to allow for more land on which to build housing. In the former North Branch Industrial Corridor, which ran along the North Branch of the Chicago River between Kinzie Street and Fullerton Avenue, the lucrative Lincoln Yards project is now underway. Lincoln Yards is expected to be a dense, walkable mixed-use development featuring high-end apartments, offices, and green spaces.¹¹⁹ While this project has faced criticism of its own, largely focused on the large tax incentives for development,¹²⁰ it will provide new housing that would not have existed had the city maintained mandatory industrial zoning on this land. One of the biggest challenges in building new housing is ensuring that new development is equitable and meets the needs for increased housing stock throughout the city. The zoning commission should scrutinize its differential treatment of historic Industrial Corridors on the South and West Sides as compared to the North Side.

Finally, a legislative change that would improve housing in Chicago would be adopting a law that would limit the power of alderpeople, who are Chicago's City Council members. Both an arduous permitting process and individual alderpeople's influence over land use in their wards give alderpeople power to block new housing. Chicago would benefit from a unified approach to housing development that does not allow alderpeople to hoard power and pit their constituencies against one another. California's Housing Accountability Act, discussed above, provides a model for wresting power away from local interests to serve a citywide interest in increased housing development and thoughtful land use policy.

Alderpeople often oppose changes to zoning plans and other deregulation strategies because it decreases their direct oversight of land use in their wards. When developers seek to build new projects in Chicago that conflict with the zoned uses for their proposed project sites, they can apply for a zoning change by paying a thousand dollars, notifying surrounding property owners, and successfully gaining support of two-thirds of Chicago's alderpeople.¹²¹ When a zoning amendment is proposed for a given piece of land, the alderperson whose ward contains the affected parcel has outsized political influence to sway the rest of the city council to vote according to her priorities. Even alderpeople whose wards are not adjacent to the affected parcel have power to vote in consideration of a proposed amendment, and they are reluctant to relinquish that power.¹²² Zoning changes

¹¹⁸ See CHI. DEP'T OF PLAN. AND DEV., CITY OF CHI., RAVENSWOOD FRAMEWORK (2019), https://www.chicago.gov/content/dam/city/depts/zlup/Planning_and_Policy/Publications/ravenswood-framework-final.pdf [<https://perma.cc/WHS2-ZJVW>]; CHI. DEP'T OF PLAN. AND DEV., CITY OF CHI., NORTH BRANCH FRAMEWORK (2017), https://www.chicago.gov/content/dam/city/depts/dcd/supp_info/industrial/NBIC_Adopted_Final_For-Web.pdf [<https://perma.cc/6RJ8-2SZH>].

¹¹⁹ LINCOLN YARDS, <https://www.lincolnyards.com/> [<https://perma.cc/B4DD-PX56>] (last visited Dec. 15, 2022).

¹²⁰ Hannah Alani, *Fight To Stop \$1.3 Billion Tax Subsidy for Lincoln Yards Returns to Court*, BLOCK CLUB CHI. (Sep. 10, 2019), <https://blockclubchicago.org/2019/09/10/lincoln-yards-1-3-billion-tax-subsidy-battle-heads-to-court-as-opponents-try-to-stop-controversial-project/> [<https://perma.cc/T3T7-RH9P>]; see also *Grassroots Collaborative v. City of Chi.*, 186 N.E.3d 995 (Ill. App. Ct. 2020).

¹²¹ CHI. DEP'T. OF PLAN. AND DEV. & CHI. ZONING BUREAU, ZONING AMENDMENT APPLICATION & INFORMATION PACKET (2021), https://www.chicago.gov/content/dam/city/depts/zlup/Administrative_Reviews_and_Approvals/Publications/22.08.23_Zoning_Amendment_Application_w_updated_EDS_Fillable.pdf [<https://perma.cc/VFX3-V63J>].

¹²² *Id.*

take significant political hustle to achieve, in addition to lawyers' fees and neighbors' approval, and these barriers prevent the creation of badly needed housing. The segmentation of power adds to the time delay and expense of individual zoning amendments and makes them difficult to achieve for anyone but highly resourced developers with access to representation from a land use attorney.

In California, the HHA forced the hand of city and town governments whose officials were blocking new housing development. On a smaller scale, Chicago's alderpeople have similar incentives to those of California's municipal officials: they are responding to the demands of their constituents, who are concerned about their home values, traffic, and change to their neighborhood character. These concerns and incentives are not ridiculous, but they are malleable and a citywide vision for land use that prioritizes housing would realign incentives and prevent alderpeople from having an outsized impact on the land use of their wards in a way that undermines goals and priorities for Chicago as a whole.

CONCLUSION

Ultimately, Chicago's housing shortage presents challenges that cannot be easily addressed by most solutions that have been used to abate California's lack of housing stock. The activist litigation in California will be challenging to import to Chicago, since much of it is based on a litigative defense posture and the success of novel plaintiff arguments is uncertain. However, there are still lessons that advocates who wish to improve housing availability in Chicago should learn from California advocates, and some have already been put into place.

Recent litigation in California is also a great inspiration for Chicago housing policy. The ADU ordinance was a promising start but needs refining to become transformative. Zoning changes that prioritize the creation of new housing will look different but are fertile ground for innovation. Zoning and permitting changes are another way to limit the power of alderpeople and prevent individual wards from blocking new affordable housing, much like the HHA prevented municipal elected officials from blocking new housing in California.

Finally, YIMBY culture in California is often promoted by young white urban professionals, who mostly need apartments for one or two people.¹²³ These vocal advocates for more housing often orient advocacy around their own needs,¹²⁴ especially because California does not have enough housing at any price point.¹²⁵ Chicago's housing crisis is different because while it is not always easy to find housing in Chicago, the shortage in affordable housing is the primary issue.¹²⁶ In California, developers and advocates are often

¹²³ Liam Dillon, *A Major California Housing Bill Failed After Opposition From the Low-Income Residents It Aimed to Help. Here's How It Went Wrong*, L.A. TIMES (May 2, 2018, 12:05 AM), <https://www.latimes.com/politics/la-pol-ca-housing-bill-failure-equity-groups-20180502-story.html> [https://perma.cc/S3RF-M5ZH].

¹²⁴ *Id.*

¹²⁵ Conor Dougherty, *Build Build Build Build Build Build Build Build Build Build Build Build Build Build Build*, N.Y. TIMES (Sept. 16, 2021), <https://www.nytimes.com/2020/02/13/business/economy/housing-crisis-conor-dougherty-golden-gates.html> [https://perma.cc/LH23-LS57].

¹²⁶ Darcel Rockett, *Chicago Is 120,000 Units Short on Affordable Housing. Here's How the City and Developers Hope to Fix That Gap.*, CHI. TRIB. (Apr. 12, 2021, 12:55 PM), <https://www.chicagotribune.com/real-estate/ct-re-affordable-housing-in-chicago-0409-20210412-tzcbnjsslbdoxmnwdo27h7lehi-story.html> [https://perma.cc/B2DC-K7HQ].

on the same page, while in Chicago, they are more likely to clash. Chicago housing advocates should consider what goals and priorities they have in common with developers so that this powerful and well-resourced bloc can be an asset rather than an enemy of the housing movement.