

**Federal Incentives, State Preemptions, and Local Politics: Implementing Inclusionary Housing  
Policies in India and the United States**

by

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## **Dedication**

To my *Ammamma* (grandmother), Pramila Rani Nagisetty (1940 – 2021). You celebrated all my milestones and supported me every time I stumbled. I wish I could have celebrated this one with you!

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## Abstract

Cities around the world are experiencing increasing affordable housing shortages and socio-economic segregation. To encourage integrated and inclusive production of affordable housing, cities are increasingly turning to market-led housing strategies such as inclusionary housing. Inclusionary housing (IH) policy requires or incentivizes market housing developers to designate a certain percentage of units as income-restricted units. IH policies have strong supporters and opponents, given their underlying redistributive principles. IH literature has so far focused on how national governments in countries such as the U.K., the Netherlands, and American states like New Jersey and California have encouraged local IH policy adoption through legislation and dedicated funding. But what happens when federal governments cannot legislate IH policies and state governments oppose them? How do local regime politics shape IH policy design and implementation? How then do the federal, state, and local level actors and priorities come together in implementing IH policies? This dissertation responds to these questions by examining IH policies in diverse structural and sociopolitical settings that have so far been ignored in IH policy scholarship. Four papers informed by a total of 111 semi-structured interviews, extensive document analysis, site visits, archival research, and participant observation of public meetings, nuance the importance of federal and state roles in local IH policy implementation in India and the United States in different case contexts. These cases offer valuable insights into the politics of urban regimes, alternative IH mechanisms, and intergovernmental relations between multiple levels of governments, the civic sector, and developer associations. This dissertation contributes to urban politics and governance literature by demonstrating the need for studying local initiatives within multi-level governance systems.

The *first paper* focuses on India, where the federal government has no direct legal mandate for IH policy. The paper reviews the success of alternative tools employed by the federal government by examining Andhra Pradesh state's response to federal IH reform initiatives. The *second paper* discusses how states and cities creatively leverage federal housing

grants while evading federal IH intent through detailed cases of federal affordable housing projects implemented in Vijayawada city, Andhra Pradesh state. The *third paper* discusses the importance of the state policy environment on local planning and housing policies and offers an analytical framework to categorize the range of state-IH policy positions. It specifically discusses three states – Oregon, Texas, and Tennessee – that have a history of explicit legislative restrictions, called ‘state preemptions’ against city IH policies. The *fourth paper* focuses on three cities that faced state IH policy preemptions – Austin, Texas, Portland, Oregon, and Nashville, Tennessee – to investigate how state restrictions impact local IH policy and their subsequent policy choices. The concluding chapter reflects on the similarities and dissimilarities of IH policy experiences in the U.S. and India and offers ideas for exchange. The four papers collectively situate IH policies within a comparative intergovernmentalism framework and provide new dimensions to our understanding of IH policies by problematizing the related political, structural, ideological, and social issues.

## Chapter 1 Introduction

### Background

Low-income and marginalized communities are increasingly excluded from formal housing markets. This housing exclusion is a global phenomenon that leads to severe rent burden, homelessness, and informal settlements (Davis, 2017; Potts, 2020) that can cause long-term socio-economic and health-related impacts and disparities (Jones & Grigsby-Toussaint, 2021; Krieger & Higgins, 2002; Suresh et al., 2020). In the privatization era, where governments are rolling back direct housing provision, government housing policies are facilitating market-led affordable housing production strategies (World Bank, 1993; Yap, 2016). One prominent market-led housing approach is the use of inclusionary housing policies –policies that require or incentivize private housing developers to designate a certain percentage of units as income-restricted units to obtain planning permission approvals (Calavita & Mallach, 2010). Therefore, inclusionary housing policies can be designed as local housing strategies to increase affordable housing production and encourage integrated mixed-income development (Anacker, 2020; Calavita et al., 1997; Mukhija et al., 2015). This dissertation analyzes inclusionary housing policy implementation experiences from a political economy and governance perspective. It focuses on the role of various stakeholders – housing activists, developers, advocacy and grassroots coalitions, and multiple levels of government – city, state, and federal – in designing and implementing inclusionary housing policies in federal systems such as India and the United States.

Inclusionary housing (IH) or zoning (IZ) policies attract intense scholarly and political debate with both strong proponents and opponents. These policies have evolved considerably since their origins in the 1960s, in the United States, as a response to exclusionary zoning policies (Mukhija et al., 2015). More recently, they have taken the role of market-friendly incentive planning processes (Refer. Chapter 5 for a detailed review). Scholars have extensively discussed the mechanics of different forms of inclusionary housing policies (Basolo, 2011;

Brunick et al., 2004; Mukhija et al., 2015) and debated their effectiveness in increasing affordable housing supply, socio-economic development, and integration (Dawkins et al., 2017; Diagne et al., 2018; Jones et al., 2021; Kontokosta, 2014; Schwartz et al., 2012). Despite the inconclusive evidence, IH policies continue to attract tremendous interest in housing policy debates, both in the Global North and the Global South.

However, inclusionary housing policies encounter considerable opposition from developers and free-market thinkers because of their resistance to the underlying principles of economic redistribution (Basolo, 2011; Wang & Balachandran, 2021). Welfare economists and governance experts have argued that by nature of ‘city-limits’ (Peterson, 1981; Tiebout, 1956), economic activities that benefit rich and middle-income groups at the local level receive priority over redistributive initiatives such as affordable housing projects (Blanco et al., 2014; Peterson et al., 1986). Neighborhood groups also oppose inclusionary housing policies since they typically produce dense developments with affordable housing units (Anacker, 2020). Consequently, in most instances, affordable housing projects rely on interventions from the upper tiers of government at the national and the state level (Craw, 2006; Frug & Barron, 2013; Hoffman, 2009; Infranca, 2019). As an extension of this logic, within the context of IH programs, scholars have argued that federal and state-level interventions, in the form of legislation and mandates, can successfully influence city-level adoption of IH policies (Calavita & Mallach, 2010; Karki, 2015).

Existing evidence suggests that countries that are either unitary systems of governance or recognize the universal right to housing, like the UK, the Netherlands, and Brazil, can legislate IH policy mandates at the national level for eventual local implementation and adoption (Calavita & Mallach, 2010; De Kam, 2014; Santoro, 2019). In the U.S., scholarship has identified California, New Jersey, and Massachusetts as examples of supportive state-level environments for instituting local IH policies (Bandy, 2007; Calavita et al., 1997; Karki, 2015; Wiener & Barton, 2014). Together, these three states constitute about 90 percent of approximately 900 IH policy jurisdictions in the country (Thaden & Wang, 2017) and represent the bulk of cases in IH literature in the United States. *What happens when federal governments cannot legislate IH policies and state governments oppose them?* It is not clear how federal governments in countries such as India and the United States (U.S.) can catalyze local zoning



reforms such as IH policies since do not explicitly recognize a constitutional right to housing and have devolved legislative powers on urban and land use planning to their states. Within the U.S., we know very little about IH policy environments in states that are politically and ideologically opposed to IH programs and other redistributive and progressive policies. Such a research inquiry requires a rich contextual understanding of IH policies not only at the local level but also at the state and federal levels. This dissertation responds to these gaps by examining IH policies in diverse structural and sociopolitical settings that have so far been ignored in IH policy research within the U.S. and globally.

This dissertation expands our knowledge of multi-level governance processes and politics involved in the IH policy design and implementation by focusing on the – 1) Indian federal government’s use of non-legislative tools to institute local IH policies and 2) U.S. state government policy positions that adversely impact local IH policy adoption. Concurrently, the dissertation delves into local-level responses to these higher-level government policy positions through detailed case studies in each country. Therefore, four papers, two focused on India and two focused on the United States, examine IH policy experiences. One paper in each country–context focuses on the higher-level government’s IH policy position, drawing from governance and political science literature. The other paper nuances local responses to these high-level policy positions through field observations and policy implementation experience. The focus is on federal policy and subsequent state and local responses in India, and on state policy and subsequent local responses in the United States. These other state and federal contexts can offer new dimensions to our understanding of IH policies by shifting the focus to contexts where the governments cannot (and do not) take decisive and favorable pro-IH steps.

Recent federal interventions in urban policy and housing development in India have attracted considerable academic attention (Ahluwalia, 2019; Coelho & Sood, 2021; Khaire & Muniappa, 2021). On the other hand, cities in the U.S. are often celebrated as true examples of local governance and devolution (Tiebout, 1956). Similarly, despite some local initiatives, IH policies are primarily a federal initiative in India, and they are generally seen as a local government response to decreasing federal housing grants in the U.S.

Notwithstanding the increased research focus on federal housing programs in India, there are no documented studies that evaluate national IH policy efforts and their local

implementation. Overall, IH policy literature in India is scant and is rarely studied separately from slum redevelopment and land acquisition strategies (Mishra, 2017; Mishra & Mohanty, 2017). While there is a substantial amount of existing literature on IH policies in the United States, it is heavily skewed towards either explaining the mechanics and the many variants of IH policies (such as voluntary or mandatory programs, target income groups, percentage of income-restricted units, and developer incentives, among others) and distribution of IH policies in the country (Garde, 2016; Hollister et al., 2007; Robert Hickey et al., 2014; Schuetz et al., 2009; Thaden & Wang, 2017; Wang & Balachandran, 2021), or measuring their effectiveness in producing affordable housing units (Freeman & Schuetz, 2017; Mukhija et al., 2010), and assessing their impact on average housing prices (Bento et al., 2009; Means & Stringham, 2012; Schuetz et al., 2007). A performance assessment of a program and its outcomes, and suggestions for tweaking the policy design for better performance, are valuable research outcomes. However, such research is distanced from practice since it does not consider or contextualize the conditions within which the policy design occurs. Before we evaluate IH policies, we need to understand why cities initiated IH policies, what policy goals they pursued, who supported and opposed these efforts and why, what compromises were made, and how they affected the results. Very few studies have examined IH policies within specific case contexts and explored the political and social factors that aid their adoption and success (Meltzer & Schuetz, 2010; Pfeiffer, 2007; Stein, 2018). Identifying this gap in planning research on IH policies, Mukhija and other planning scholars (2015) call for detailed case study research “of why and how local governments decide upon various elements of their IZ policies,” suggesting that “interviews and surveys of planners and policymakers are largely absent in the current literature” (2015, p. 232). This dissertation responds to this call by training the lens on the creation of IH policy – the priorities that guide them, the people who shape these priorities, and the conditions that limit their scope.

Despite the distinct socio-economic and political structures and processes in the United States and India, it is useful to examine them together, if not under one research project, then as constituent parts of a larger work such as a dissertation. Some comparable country features for this study are:

1. Both countries are federal systems with a three-tier governance structure with federal, state, and local governments.
2. Affordable housing remains one of the key concerns for widening inequality and poverty rates in both countries, notwithstanding the difference in the intensity of the problem.
3. In both countries, land use planning is devolved, at least in principle, to the local level authorities with strong state government oversight.
4. Zoning regulations are the main instruments of local planning practice in both U.S. and Indian cities.

These key comparable structural features allow us to reflect on broader patterns and stakeholder priorities that shape IH policies and their success.

This dissertation mainly comprises of four papers that seek answers to four discrete but intertwined IH research questions. Each paper contains separate literature reviews, methods, and primary data and analysis.

The first paper, *“Paper forms and reforms: Federal approach to land use and inclusionary zoning reform in India,”* is a macro policy analysis that studies the effectiveness of federal incentives to encourage IH policy adoption by states and cities in India. It also examines how Andhra Pradesh state responded to these non-legislative tools and which actors influenced state decisions. The second paper, *“Low-income housing development in India: Strategies for income mixing and inclusive urban planning,”* primarily focuses on how Andhra Pradesh state and Vijayawada city evaded federal policy priorities and revealed the alternative housing strategies preferred by the state and city governments in place of IH policies. The third paper, *“Meddlesome-Middle? State preemptions and inclusionary housing policies,”* focuses on state-level IH policy environments in the United States and offers an analytical framework to categorize the range of state-IH policy positions that encourage or restrict local IH policy adoption to variable degrees. It specifically discusses three states – Oregon, Texas, and Tennessee – that have a history of negative state policy environments in the form of explicit legislative restrictions, called ‘state preemptions’ against city IH policies. The fourth and final paper, *“‘Victories have many mothers, defeats are an orphan’: Policy options when states preempt city inclusionary housing policies,”* focuses on three cities that faced state IH policy

preemptions - Austin, Texas, Portland, Oregon, and Nashville, Tennessee – to investigate how state restrictions affect IH policy possibilities and related housing policy choices.

Papers 1 and 2 (Chapter 2 and Chapter 3, respectively) discuss India’s top-down approach to inclusionary housing policies, and in contrast, Papers 3 and 4 (Chapter 4 and Chapter 5, respectively) highlight how state governments could deter local implementation of IH policies in the U.S. At the time this dissertation project was conceived in 2018, there were no favorable indications of federal initiative in IH policies in the U.S. Therefore, this project did not focus on the federal IH policy context in the U.S. However, recent White House proposals for institutional conditional grants to promote IH policies show considerable federal interest (The White House, 2022). The structural conditions of the federal setup and interest in both countries may allow an exchange of broad ideas and implementation lessons.

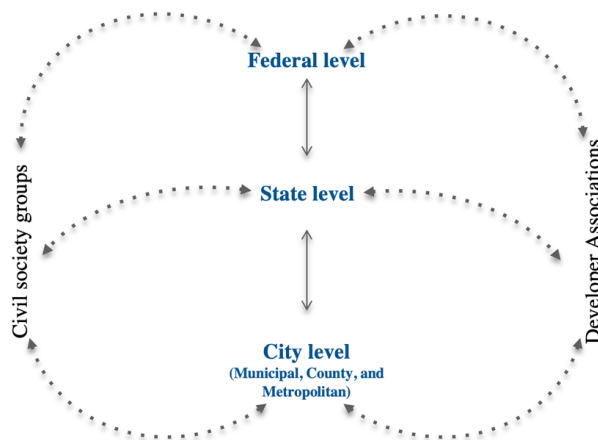
### **Conceptual framework**

To fully conceive of the policy interventions at play at the city level, it is not sufficient to observe the city from within. Confining the study of inclusionary housing to the local implementation level, i.e., at the city level, will significantly downplay the influence that other levels of government and actors exert on local IH policy design and implementation. Cities must be understood as part of a larger framework. “Due to the nature of interconnectedness between horizontal and vertical policy domains and actors,” a multi-level analysis of urban policies is important (Praharaj et al., 2018).

Policy evaluation research on city-level affordable housing programs seldom incorporates a study of policy process hierarchy or networks that influence city policy (perhaps with the rare exception of Canada) (Dodson, 2007). Equally rare are affordable housing studies that offer deep insights into the negotiations that take place within this context at the city level, with different stakeholders like civil society groups and developers (Bengtsson, 2009; Mukhija et al., 2015). Within IH literature, there is a dearth of research that examines the political economy of IH policies and the impact of multi-level actors and institutions in enacting them. Two distinct strands of theories remain relevant in studying the political economy of housing policies in the existing literature. Studies that assess the impact of power structures in decision-making at the city level predominantly use the urban regime theory framework (Stone, 1993). This framework, however, focuses almost exclusively on the horizontal power relationship between private and

public players and ignores the influence of governmental hierarchy at higher levels (Dodson, 2007; Stoker & Mossberger, 1994). On the other hand, housing studies that fall under the federalism literature often focus on the vertical hierarchical relations between different levels of the government and ignore the role that grassroots actors play (Bengtsson, 2009; Peters & Pierre, 2015). My dissertation brings together these two strands to examine the role of intergovernmentalism in the realization of IH policies. I define intergovernmentalism as a framework that includes both horizontal and vertical relations in a multi-level setup (See Figure 1.1) between different actors– government officials, elected representatives, developers, and social advocacy organizations. I argue that these actors are critical to IH provision and play a key role in mobilizing and leveraging support from one level of the government to the other.

*Figure 1.1: Inclusionary Housing Policy and Intergovernmentalism (by Author)*



## Methodology

This dissertation is bound together by a set of qualitative comparative studies on inclusionary housing policies and the political economy relevant to their formulation and implementation. Comparative studies can separate universal phenomena from system-specific regularities (Ward, 2010), and as a method, they are especially useful in non-reproducible scenarios (Denters & Mossberger, 2006; Robinson, 2011). Most social science research topics are non-reproducible, and most planning and urban studies are based on large-scale time-intensive projects. Therefore, the comparative method is useful in descriptive studies and allows

explanatory inquiry (DiGaetano & Strom, 2003; Seawright & Gerring, 2008). Comparativists, however, are careful to caution against oversimplified comparisons and exhort the importance of developing a deep contextual understanding in carrying out the urban political analysis (Ward, 2010). The important rule is to compare “functional equivalents,” like “modes and processes of development,” rather than “institutional names or labels,” and to understand them as part of relational histories and geographies with a qualitative focus on fewer cases (Pierre, 2005; Ward, 2010). This *relational comparison* is preferred in comparative planning research since it aids the process of “theorizing back” - understanding one case in a better way due to questions and issues brought into relief by the other cases (Ward, 2010). However, such detailed contextual analysis may create “noise” that can affect the researcher’s ability to observe the relevant patterns. To avoid the “contextual noise,” I followed Pierre’s (2005) advice and developed an analytical framework, identifying key variables and stakeholders, such as institutions and power networks.

I proposed the *intergovernmentalism framework* to arrange the relevant actors and institutions at three different levels – federal, state, and city. These three levels represent the broader geographic and constitutional units of power in federal systems. City-level constitutes both municipal and regional or metropolitan administrative boundaries. Each level within this framework incorporates the multi-governance actors including both government and non-governmental actors (Hooghe & Marks, 2003). Government actors include administrative departments, institutions, elected officials, and bureaucracy at multiple levels. Non-governmental actors include those in the non-profit sector such as housing policy advocates, civil society organizations, and private sector interest groups such as developer associations and chambers of commerce, among others, at all three levels. The intergovernmentalism framework provides the foundation for all four papers as they focus on IH initiatives and responses between each level of government.

In the concluding chapter, I compare findings from each of the four papers to look for broader lessons that can allow an exchange of reflexive learning between the U.S. and India at multiple levels of government. These reflections provide a multi-level comparison that is more valuable than the simple comparative gesture usually used in such diverse contexts or the traditional comparison method that can become easily mired in surface-level differences. Since the reflections are distilled from the findings of four constituent research projects bound within

the intergovernmentalism framework, they showcase more awareness of the contextual differences and similarities. This effort responds to the call from urbanists and urban comparativists to include perspectives from the Global South and expand urban theory outside of the Western story of urbanization (Robinson, 2011).

### *Cases*

My dissertation examines cases that have adopted IH policies in less-than-ideal conditions. I employed purposive case selection to examine cases that “deviate from theoretical norms” based on legal mandates for IH policies (Yin, 2014). Understanding these ‘uncommon’ or ‘other’ cases will push the boundaries of our existing knowledge and conception of practice (Patton, 2015). By bringing together these cases through four different but interrelated papers, my dissertation focuses on how different stakeholders, at multiple levels within a federal system, formulate and implement IH policies without express mandates and supporting constitutional provisions. Each paper discusses the case selection process separately. Broadly, in India, I use descriptive single cases focusing on a single state and city context since there is no relevant existing body of IH policy literature upon which I could build. On the other hand, though IH policies have not been studied in the context of state preemptions in the U.S., I could draw from the existing literature on IH policies and state preemptions separately. This existing scholarship made it feasible to undertake a multi-case comparison in the U.S. context.

### *Methods*

Each paper uses a diverse set of research methods, including primary data collection, to inform its analysis. In each of the case studies, I followed the longstanding tradition in urban planning scholarship to identify causal chains and mechanisms that produced different policy outcomes based on historical sequences (Bengtsson & Ruonavaara, 2011). Given this dissertation’s particular focus on policy dynamics, I found the method of process-tracing very useful to compare the differences and important links that span across the case studies to assess the varied approaches at play (Beach & Pedersen, 2019). For process tracing, I used extensive documentary analysis of newspaper and research reports, plan documents, and archival research of government documentation. Government documentation included policies, plans, intergovernmental communication, evaluation studies, and internal memos (See Table A.1 in Appendix A for a detailed list of data sources).

In addition, I observed previously recorded and live public meetings and conducted semi-structured interviews with various actors. Based on the proposed intergovernmentalism framework, I identified key actors or representative agencies – both governmental and non-governmental – at the federal, state, and local level (See more on interviewee selection in Appendix A: Note on Methodology and Data Collection). Participant selection of key informants based on their knowledge and involvement in a particular issue is a standard non-probability sampling approach (Parsons, 2008). Participants included government officials, planners, affordable housing and market housing developers, subject experts, and housing advocacy organizations at all three levels of governance. In-depth interviews with a total of 111 actors provided thick descriptions of cases (Geertz, 1973). Interviews were conducted in three Indian cities – New Delhi, Hyderabad, and Vijayawada with 61 stakeholders in India and with 50 actors in three U.S. cities – Austin, Texas, Nashville, Tennessee, and Portland (and Salem), Oregon (See Table A.1 and Table A.2 in Appendix A for interviewee list). These interviews served as both an account of contemporary oral histories to map processes and policy decisions and helped me understand and analyze stakeholder viewpoints and experiences in a dynamic environment (Vandenbussche et al., 2020). I transcribed all my interviews and coded them on Dedoose software using the constant comparison method.

### **Summary of chapters**

The following abstracts offer a brief overview of the following dissertation chapters based on the four papers.

#### ***Chapter 2 (Paper 1)***

This paper focuses on the Indian national government's initiative to encourage local adoption of IH policies through conditional project grants. Discussing the origin of federal IH policies and tracing their development through multiple federal housing and urban development programs since 2007, this paper provides a short history of the changing policy positions on IH policies and the underlying reasons. Importantly, it also captures the various ‘carrots, sticks, and sermons’ these federal programs use in engendering IH policy adoption and their effectiveness (Bemelmans-Videc et al., 2011). The paper further delves into the implementation realities of top-down approaches to inclusionary housing by examining their adoption in Andhra Pradesh state. The foundation of this chapter is the content analysis and the



historical policy analysis of five federal programs and their guidance documents and a series of state administrative orders, rules, and action plans from 2007 to 2019. Interviews with actors at both federal and state levels explained the reasons and actors behind different policy positions and changes.

### ***Chapter 3 (Paper 2)***

The second paper grounds the impact of federal and state-level IH policy positions examined in the first paper and their physical manifestation in the city of Vijayawada in Andhra Pradesh state. The paper presents four models of mixed-income housing strategies, employed by the state and city governments, to construct large-scale public housing projects instead of market-led small-scale IH developments. Interviews with developers, planners, and both local and state government officials explained why they preferred these large-scale approaches to IH policies. The paper reveals the underlying political, socioeconomic, and planning values and goals that conflict with IH policy objectives. This study provides a ‘southern turn’ to the mixed-income housing research currently dominated by Western examples (Watson, 2009).

### ***Chapter 4 (Paper 3)***

IH literature from the United States predominantly focuses on state and local IH policies in states such as California, New Jersey, and Massachusetts that have a positive state IH policy environment. However, there are also states in the U.S. that place legislative restrictions, called ‘state preemptions,’ that limit local governments from adopting IH policies. There is very little information on what state-level IH policy environments look like in such states. This paper focuses on three states that had or currently have restrictive state IH preemptions: Texas, Oregon, and Tennessee. I seek answers to the following questions: *What were the limitations placed on local adoption of inclusionary housing policies in states that generally restrict inclusionary housing policies? What considerations shaped these preemptions, and to what extent?* Interviews and detailed policy history in each state assembled from legislative research offer explanations of how political factors, institutions, and multiple actors negotiate and shape the overall state policy position. The main contribution of this paper is an analytical framework that provides a common language to discuss state policy environments on a range of preemption issues.

### ***Chapter 5 (Paper 4)***

My fourth paper focuses on how the cities of Austin, Nashville, and Portland have responded to state IH preemptions in Texas, Tennessee, and Oregon. This study provides new insights into the contextual dynamics and objectives that shape IH program design and success through extensive policy analysis, site visits, and interviews with public officials, developers, and housing advocates. Collating data from disparate sources of building permission approvals, this study also analyzes the number of IH units that these cities produce. It argues that housing policy evaluation needs to factor in local policy objectives that may prioritize quality over quantity of housing units. Cities and housing advocates facing similar challenges will benefit from understanding how IH preemptions can extend beyond IH programs and constrain other local housing policies. These cases can also suggest possible alternatives to IH policies and their merits and disadvantages.

### ***Chapter 6 (Conclusion)***

The final chapter presents the main findings and conclusions from each paper and draws broad IH policy lessons for practitioners. It provides an overarching reflection on the similarities and dissimilarities of IH policy experiences in the U.S. and India and offers ideas for exchange. Further, it calls for a revival of academic interest in urban politics and advances the praxis of multi-level inquiry through the intergovernmentalism framework.

### **Significance and contribution of the project to the field**

IH policies are becoming a battleground between progressive and conservative ideologies, neighborhood preservation and integration, property rights and the right to decent housing, developers and affordable housing advocates, and more recently in the U.S., between states and their cities. We need more research that is practically relevant – research that reveals the conditions practitioners face and the choices they make and informs them what to expect – not just the results at the end but the processes along the way. This dissertation is a modest contribution toward this important goal. It situates IH policies within an intergovernmentalism framework, offering a vertical dimension incorporating higher levels of governments and presenting their role in impacting local IH policy design and implementation experience in

multiple contexts. These cases can offer valuable lessons for each other in the form of governance *modes* and *processes*, even if they are not directly replicable policy prescriptions. This dissertation will help other countries from both the Global North and South by offering lessons regarding the possible pitfalls in IH policy design and inter-agency coordination. It also situates IH policies in the context of other closely related policies. Research based in India highlights what cities and states do when they do not want to use IH policies, and the U.S. cases show what cities do when states restrict their use of IH policies. These interesting contrasts in policy decisions and priorities offer a range of options to choose from for other practitioners and policymakers to best serve their contexts.

In federal systems, urban research has predominantly focused on the impact of prominent federal housing policies and programs. We have studied their macro-level performance in terms of the finances spent, and the number of housing units created. At the local level, we have studied their spatial manifestation and the resulting socio-economic impact<sup>1</sup>. However, such research is largely silent on the roles that state governments play between the national and local governments in both India and the United States (Brassil, 2010; McPike, 2015; Sanga et al., 2021). Within IH policy context, India's attempts signal a top-down approach while the cases examined in the U.S. are more evocative of prioritizing local interests. My dissertation finds that this celebration of top-down or bottom-up federalism ignores the middle layer – state level. We have not sufficiently studied the importance of state interests and the susceptibility of the state government to developer influence in either case. We also do not sufficiently understand the roles of housing advocacy organizations within multi-level governance setup. This dissertation aims to inspire academics and federal policymakers to better understand local constraints before proposing federal-local solutions to housing and land use policy issues that ignore or underestimate state government's role.

The key takeaway from this dissertation is not to simply say, “All levels of government have to work together.” Instead, this dissertation is an effort to show how and why different levels of government do not work well together. The objective is not to simply declare that IH

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<sup>1</sup> In India, the socio-economic impact studies usually target project-based initiatives and the spatial distribution and geographic and empirical analysis of poverty and socio-economic segregation is only recently emerging.

policies are ineffective; it is to show why and how they become ineffective. It is an attempt to highlight different structural and political limitations that precipitate the policy incoherence, as well as the hard work of different players that are constantly working to change the status quo in this intergovernmental framework.

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## **Chapter 2 Paper Forms and Reforms: Federal Approach to Land Use and Inclusionary Zoning Reform in India (Paper 1)**

### **Abstract**

Since 2007, national housing programs in India attempted to reform state and local land use barriers to affordable housing production by using conditional housing grants. Focusing on zoning reforms specifically geared toward IH policies, this paper analyzes federal housing and urban development programs since 2007 and the various ‘carrots, sticks, and sermons’ these programs use in engendering IH policy adoption and their success. The paper further delves into the implementation realities of top-down approaches to inclusionary housing by examining their adoption in Andhra Pradesh state. The study offers insights into how two-pronged approaches to affordable housing production, through grants and zoning reform, could become performative and highlights the need for more research and consultation on IH policies in the Indian context.

### **Introduction**

Low-income families have been unable to access sufficient land and resources for decent housing. People who have been historically marginalized by colonial and racial exploitation and injustice are being further excluded by the current market-led development patterns, financial lending practices, and planning regulations from the housing markets (Murray, 2017; Watson, 2009; Wetzstein, 2017). These exclusionary practices, coupled with widening income inequalities, are causing a severe urban housing crisis, physically manifesting in the form of informal settlements in the Global South (Davis, 2017; Potts, 2020; Satterthwaite & Mitlin, 2014). Global millennial and sustainable development goals have steadily highlighted the need

for targeted intervention in urban areas, and there is increased recognition by international development organizations for initiating national-level urban strategies to address these issues (UNHABITAT, 2022). Globalization and the growing economic importance of urban areas, on the other hand, have also brought more attention to the urban housing and infrastructure crisis (McNeill, 2016; Mohanty, 2016). As a result, at the turn of the new millennium, many national governments in the Global South started undertaking expansive national housing and urban development programs to improve housing and infrastructure conditions in their cities (Buckley et al., 2016; Sengupta et al., 2018). In 2005, India adopted a first-of-its-kind national program, JNNURM (Jawaharlal Nehru National Urban Renewal Mission), to support housing and infrastructure investments in cities and to encourage the devolution of urban functions to local governments (Kundu, 2014; Sivaramakrishnan, 2011). In addition to offering financial subsidies toward affordable housing development costs, this program identifies the need for inclusionary housing (IH) policies to reform land use and zoning practices (Mohanty & Mishra, 2016). While much has been written on the housing projects funded under the urban renewal mission, there is very little inquiry into the IH policy reforms in the Indian context.

Inclusionary housing (IH) policies are a popular tool that leverages market forces to cater to affordable housing needs by requiring or encouraging market housing developers to reserve (or set-aside) a percentage of land or housing units in their proposed project for affordable housing (Calavita & Mallach, 2010). These policies were introduced in some states as early as the 1970s in the United States, mainly as a response to counter exclusionary housing practices and racial segregation (Calavita et al., 1997; Mukhija et al., 2015). Many countries in Europe, including the United Kingdom and the Netherlands, introduced IH policies in the 1990s and early 2000s, intending to capture the profit that developers accrue from increasing property values (*land value recapture*) (Calavita & Mallach, 2010). While proponents are careful to point out that inclusionary housing policy is not a ‘panacea’ for affordable housing problems (Wiener & Barton, 2014), they argue that it is, however, an important tool for equitable production of affordable housing (Calavita & Mallach, 2010; de Kam et al., 2014; Schuetz et al., 2009). Within the Indian context, IH policy proponents argue that the lack of adequately serviced land for affordable housing in Indian cities call for IH policies (Mohanty & Mishra, 2016).

Countries such as the United Kingdom, Brazil, and the Netherlands have successfully incorporated IH mandates through national-level legislation (Calavita & Mallach, 2010; de Kam

et al., 2014; Santoro, 2019). While the United Kingdom and the Netherlands are unitary systems, Brazil is a federal system with a constitutional mandate for the Right to housing. Therefore, the national governments in these countries can play a direct role in housing matters and can require their sub-national governments to adopt IH policy mandates. However, in federal systems such as the U.S. and India, the legislative authority on urban planning and housing issues remains with the sub-national governments (Ahluwalia, 2019; Brassil, 2010; Sanga et al., 2021; Schuetz, 2022). Therefore, federal systems that do not constitutionally recognize the right to housing, and have devolved land use planning functions to their states, cannot legislate IH mandates at the national level. *In such instances, how are federal governments encouraging their cities and states to adopt IH policies? How effective are these efforts?*

Given the federal intent in adopting IH policies through the urban renewal mission, India offers an interesting case to study how the federal government tried to induce the state and local governments to adopt IH policies through non-legislative tools. This paper offers new insights into IH policies in a multi-governance perspective by examining a series of federal programs that encouraged IH policy adoption using different policy tools and by observing how states and local governments responded to these tools.

The paper mainly focuses on five national initiatives, taking place between 2007 - 2018, to capture the federal context and emphasis of IH policies and determine changing priorities and approaches. To gauge state response to these policies, I focus explicitly on Andhra Pradesh state IH policy response during the same timeframe.

The following sections first present a brief background on housing policy context and federalism in India and then discuss Bemelmans-Videc et al.'s (2011) 'carrots, sticks, and sermons' framework to categorize different policy tools that governments employ to implement policy priorities. The methodology section details the research methods that inform this study. It is followed by a discussion on federal IH priorities and state responses.

## **Literature Review**

### ***New Age National Housing Policies***

India's entry into global trade markets in the 1990s brought new attention to its cities. Through the 74th Constitutional Amendment Act (CAA) in 1992, India recognized its urban

local governments as the third tier of government in India's federal setup and required states to grant more municipal autonomy on local matters such as urban planning and slum redevelopment (Ahluwalia, 2019). Concurrently, federal support for several state public housing provision programs was slowly withdrawn as the government assumed the role of an "enabler" of market-led housing development (Mukhija, 2004; Parashar, 2014; Sanyal & Mukhija, 2001). However, as urbanization continued at a rapid pace, Indian cities and their dated and inadequate infrastructure systems could not meet the growing need, and informal settlements proliferated. Spurred by the global shelter strategies and development goals (Mitra, 2021), and to secure its vision as a global economic power (Roy, 2014), the Government of India introduced a national urban program, Jawaharlal Nehru National Urban Renewal Mission (JNNURM) in 2005 (Kundu, 2014; Sadoway et al., 2018). JNNURM aggressively sought to upgrade and redevelop city infrastructure and slums on the one hand and strengthen local governance by encouraging greater devolution of powers from states to their cities on the other hand (Burra, 2005; Nandi & Gamkhar, 2013; Sivaramakrishnan, 2011; Wellington, 2014).

The federal government in India has no direct role to play in housing and urban development matters (Ahluwalia, 2019; Sanga et al., 2021). However, using *conditional grants*, JNNURM sparked the evolution of a new federal role through policy and direction steered by financial outlays (Sadoway et al., 2018). Conditional grants are an important and widely used mode of intergovernmental fiscal transfers (Yilmaz & Zahir, 2020). However, the channeling of conditional grants through limited period programs, called centrally sponsored schemes, became a defining feature of federal programming on urban issues in India. Since JNNURM, there have been other federal housing programs, such as Rajiv Awas Yojana (RAY) and Pradhan Mantri Awas Yojana (PMAY), that adopted a similar model (Mitra, 2021). These programs have had a major impact on the urban and housing policy environment in the country (Coelho & Sood, 2021), even if they have invited severe criticism for their outcomes (Kundu, 2014; Sivaramakrishnan, 2011). Similar centrally sponsored schemes, related to urban infrastructure, public transport, smart cities, urban statistics, and livelihoods, among others, have been employed since 2005. These schemes operate on a shared finance mechanism between the center, (referred to as federal in this paper), and the states in areas that are constitutionally under the states' ambit (Swenden & Saxena, 2017). The post-JNNURM period has been coined the era of the 'rhetoric of cooperative federalism' in India (Aiyar & Raghunandan, 2014), and this

rhetoric has only strengthened since the election of the new government and the introduction of PMAY in 2015 (Sengupta, 2015; Sharma & Swenden, 2018).

Traditional definitions of cooperative federalism focus on the idea that multi-level governance structures – federal, state, and local – have equal partnership in policy framing and implementation. Closely related to the multi-level governance theory (Hooghe & Marks, 2003), this view of federalism recognizes the importance of all levels of government in policy success and implementation. Others have disputed this conception of a non-hierarchical model of power and argued that the concentration of fiscal strength at the federal level distorts the inherent power structures (Peterson et al., 1986; Volden, 2007). Therefore, in its implementation, they argue that cooperative federalism focuses on how national governments work in cooperation with lower levels of government to influence the federal level agenda (Peterson et al., 1986). This conception of cooperative federalism perhaps has close application in the Indian federal set-up due to the centralizing nature of its constitutional framework (Aiyar & Tillin, 2020; Veeneman & Mulley, 2018). However, within urban and housing matters, the power to legislate is decidedly with the states. Fiscal transfers and financial instruments to foster federal-state cooperation do not fully explain the intent behind the new age federal urban policy in “reforming” the subnational governments. Others have proposed that there is a broad range of approaches that different levels of government adopt to influence policy adoption and implementation. These ‘tools of government’ or ‘instrumentation of government policies’ (Bemelmans-Videc et al., 2011; Hood et al., 2007; Salamon, 2002) can include ‘soft’ strategies that the federal government deploys to “nudge” states toward policy experimentation (Bednar, 2011), or “direct” centrally sponsored schemes (Gudipati, 2017).

### ***Carrots, Sticks, and Sermons***

Salamon (2002) defines a ‘tool’ or ‘instrument’ of public action as an “identifiable method through which collective action is structured to address a public problem” (p. 20). Some of these methods include legislation, administrative direction or executive orders, grants, government-sponsored agencies, loan guarantees, contracting, social regulation, insurance, direct loans, tax credits, public information, etc. Bemelmans-Videc et al.'s (2011) categorize government’s means of engagement under three main categories– ‘carrots’ for incentives, ‘sticks’ for penalties, and ‘sermons’ for information sharing (Bemelmans-Videc et al., 2011). *Carrots* are mainly economic



measures that induce or incentivize action. Tax deductions, financial grants, and subsidies represent the main forms of economic measures. However, public recognition in the form of awards also serves as ‘carrots.’ *Sticks* mainly refer to regulatory measures that are legally binding or enforceable due to structural or institutional arrangements. *Sermons* chiefly emerge from the new governance theory that recognizes the power of information and the impact knowledge production and awareness have on policy initiatives. The list provided below in Table 2.1 is not exhaustive. It only indicates the main features of different policy tools or instruments grounded under three overarching approaches.

Table 2.1: Conceptual mapping of policy tools and instrument categories

Approach	Tools
<i>Carrots</i>	Direct loans, tax relief, loan guarantees, grants, subsidies, public recognition/awards
<i>Sticks</i>	Contracting, legislation, administrative direction
<i>Sermons</i>	Public information, social regulation, training

Despite the explosion of urban policy research on housing and urban management issues since JNNURM (Coelho & Sood, 2021), the soft strategies and policy tools adopted by the federal government have garnered little attention. Similarly, substantive issues of IH reform implementation have also been absent from the literature. While the federal agencies have ‘tracked’ the adoption of the IH policy reform by different state governments, success stories are discussed as a compendium of best practices scattered across different states and cities in the country (Ministry of Housing and Urban Poverty Alleviation (MoHUPA), 2015). The federal government in 2012 claimed that all states had adopted inclusionary housing policy reforms (Comptroller and Auditor General of India (CAG), 2013), however, anecdotal reports indicate poor implementation (Mishra, 2017). Therefore, it is important to see how state and local governments receive and implement different federal initiatives.

By focusing on the IH policy component of the federal housing programs since JNNURM, this paper aims to make a two-fold contribution: 1) to identify the use and effectiveness of different policy tools employed by the federal government in encouraging IH

policy adoption and 2) to examine the objectives behind the use of IH policies in furthering zoning and land use reform in India.

## **Methodology**

I conduct a detailed descriptive case analysis focusing on a single state due to the absence of a prior body of analytical work on IH policy implementation in India (Yin, 2014). To build the evidence base and policy framework, I analyze the program implementation of IH policies since 2007. For the analysis, I adopt Bemelmans-Videc et al.'s (2011) conceptual framework to evaluate the effectiveness of different policy tools within a multi-level context. Three main housing programs form the crux of this analysis: Jawaharlal Nehru National Urban Renewal Mission (JNNURM), Rajiv Awas Yojana (RAY), and Pradhan Mantri Awas Yojana (PMAY). Two other prominent policy efforts closely related to these three programs, National Urban Housing and Habitat Policy (NUHHP) and Affordable Housing in Partnership (AHP), are also included in this analysis (Refer to Table 2.2).

## ***Case description***

To evaluate the success of these policies, I study the impact of the federal IH policy reforms in the state of Andhra Pradesh through state IH policy frameworks and by aggregating the city-level implementation experiences within the state. Instead of seeking to evaluate how many states complied with federal IH conditions, this paper uses a single-case descriptive analysis to open the policy black box to reveal how the Andhra Pradesh state ‘complied’ with federal IH policy intent. I chose Andhra Pradesh because of its successful track record of utilizing federal money for housing programs and instituting reforms. As of 2012, federal documents suggest that Andhra Pradesh had implemented 93 percent of the JNNURM reforms, including IH policy reform (Sharma, 2018). As a forerunner in the implementation of federal housing policies (Ministry of Housing and Urban Affairs, 2015), Andhra Pradesh provides a good context to evaluate the success of IH policies initiated at the federal level.

Andhra Pradesh was one of the largest states in the country with a total population of nearly 85 million in 2011 (Census of India, 2012). The state split into two states – Andhra Pradesh and Telangana – in 2014. The estimated population of Andhra Pradesh after bifurcation is 54 million in 2021 (Unique Identification Authority of India, 2020). The original capital of the

combined state, Hyderabad, is now part of the state of Telangana, and the new administrative capital for the state, Amaravati is established, near Vijayawada city. Since the paper observes state IH policy response from 2007 onwards, the discussion on state policies until 2014 relates to the unified state of Andhra Pradesh and to the residual state of Andhra Pradesh after 2014. Even though the focus is on the residual state of Andhra Pradesh, some insights are also drawn from Telangana's IH policy experience with IH after 2014. I also conducted a preliminary policy analysis of Karnataka, Tamil Nadu, Rajasthan, Madhya Pradesh, and Gujarat, states to observe policy activity around key federal policy junctures.

### ***Methods and Analysis***

Given the lack of detailed academic research on inclusionary housing in India, I used project evaluation reports, working papers, newspaper articles, intergovernmental communication, and other government documentation to analyze policy intent and outcomes through content analysis and process tracing (Ulriksen & Dadalauri, 2016). I closely reviewed the program documents and supplemental guidelines to trace the history of policy evolution, changing priorities, and accompanying procedural steps. A total of 61 semi-structured interviews with stakeholders from New Delhi, Hyderabad, and Vijayawada helped construct the behind-the-scenes-reasons for certain policy decisions and actions at the national and state levels. The in-depth interviews with government officials, prominent urban scholars, policy aides, key members of the national urban task force groups and commissions, and housing advocates in New Delhi helped explain why and how federal IH policy priorities and implementation tools changed. Interviews with planners, state government officials, developers, and subject experts informed state policy responses in Andhra Pradesh. Key actors in relevant institutions helped tap into institutional memory and follow paper trails by sharing anecdotes and documents from personal archives (Parsons, 2008). I sought multiple accounts of the key policy junctures and decisions from interviewees to verify the authenticity of the information and the validity of the individual perspectives. The interviews for this research study were conducted between December 2018 and September 2019. Most of the interviews took place in-person and lasted anywhere from half an hour to 90 minutes. All interviewees are referred to using identification numbers denoted in square brackets to protect anonymity.

## Findings

British colonial planning and land management systems continue to influence current-day planning processes in India. The continued use of colonial housing standards and planning prescriptions, postcolonial scholars have long argued, have excluded much of the country from its formal land and housing markets (Bhan, 2013; Roy, 2009). Efforts to redistribute land to marginalized people after independence through Urban Land Ceiling and Regulation Act, 1976 had failed and further constrained the land markets (Acharya, 1987). Structural reforms and privatization of housing delivery prioritized the lowering of regulatory barriers and development costs and the repealing of the Urban Land Ceiling Act (Tiwari et al., 2016). JNNURM had stepped into reform these urban and land management practices and support large-scale upgrading of urban infrastructure and housing at the same time (Sivaramakrishnan, 2011). While JNNURM pursued several reform objectives, the following discussion mainly focuses on land use planning and zoning reforms and funding support that targeted the creation of affordable housing, specifically inclusionary housing.

Before getting into the policy specifics, it is useful to review some terms and acronyms that are central to India's housing and urban development policies. Interestingly, the terms *inclusionary zoning or housing* is not used anywhere in federal housing policy frameworks. Instead, the terms “*earmarking*” or “*reserving*” land or units for the “*EWS/LIG housing*” are used. Alternatively, incentive-based voluntary programs to encourage private participation in affordable housing production using financial subsidies are referred to broadly as PPPs (public-private partnerships). EWS (Economically Weaker Section), LIG (Low-income group), MIG (Moderate income group), and HIG (High-income group) refer to the income groups determined based on annual income ranges. These income standards, though subject to a lot of criticism, are frequently used to target housing policies and determine the household's eligibility to participate in a public program. Economically weaker sections are very low-income households, many below the poverty line. These families often work in the informal sector as daily-wage workers and are forced to reside in informal settlements. While the market has successfully met the housing needs of the high and middle-income groups, broadly, the housing needs of EWS and LIG groups remained largely unmet by the formal markets. Over 96 percent of the estimated housing shortages in India are for the EWS group, followed by about 3 percent for LIG group

(Ministry of Housing and Urban Poverty Alleviation, 2012a). The federal housing programs since 2007 were largely guided by the intent to engage the market in meeting the EWS and LIG housing needs.

Table 2.2 provides a review of IH policy stipulations under different national urban and housing development programs since 2007. A detailed synopsis of the programs and tools employed by these programs are presented in the following descriptions.

*Table 2.2: Review of IH requirements in federal programs and policies since 2007*

<b>Initiative</b>	<b>Conditions relevant to IH in the final policy guidelines</b>	<b>Tools</b>
<i>National Urban Housing and Habitat Policy (NUHHP) 2007</i>	Incentivize allocation of 10-15 % of land in every new public/private housing project or 20-25 percent built area	Policy Framework
<i>Jawaharlal Nehru National Urban Renewal Mission (JNNURM) 2005</i>	Earmarking at least 20-25 % of developed land in all housing projects for EWS/LIG category with a system of cross subsidization	Conditional grants, Guidelines, Awards, appraisals, MIS reform management
<i>Rajiv Awas Yojana (RAY) 2013</i>	15% of residential FAR or 35% of total dwelling units with incentives Inclusive comprehensive planning process	Guidelines, Pilot projects, Model state policy frameworks, handholding support and technical assistance, Awards, Reform incentive fund
<i>Pradhan Mantri Awas Yojana (PMAY) 2015</i>	Prepare/amend their Master Plans earmarking land for Affordable Housing	Conditional grants, MIS monitoring, PPP Guidelines
<i>Affordable Housing in Partnership (AHP) 2015</i>	35% housing units for EWS/LIG with incentives	For developers: Subsidies, interest deduction, tax relief, priority lending

The National Urban Housing and Habitat Policy (NUHHP) 2007 set the overarching housing policy agenda for the country (Ministry of Housing and Urban Poverty Alleviation, 2007). Even though it was a policy document with no implementation mechanisms, its key recommendations inform the policy objectives of all three federal housing programs since 2007. With the overall objective of promoting “sustainable development of habitat in the country,” the policy guidelines recommend public-private partnerships (PPP) as the means to address the affordable needs of all income groups in India. One of the key features of the NUHHP is the IH recommendation. NUHHP states that “10 to 15 percent of land in every new public/private housing project or 20 to 25 percent of FAR / Floor Space Index (FSI) whichever is greater will be reserved for EWS/LIG housing through appropriate legal stipulations and spatial incentives”

(Ministry of Housing and Urban Poverty Alleviation, 2007). The recommendation calls for states and local governments to prepare urban housing and habitat policies identifying their housing needs and necessary strategies and also suggests that IH policies serve as an integral part of this effort. The recommendation further suggests that IH policies need to be legislated with incentives such as increased densities for encouraging private participation and optimal utilization of land.

### ***Jawaharlal Nehru National Urban Renewal Mission (JNNURM), 2005***

The Jawaharlal Nehru National Urban Renewal Mission (JNNURM) was first introduced in 2005 and revised in 2007 to include a reform framework. It required participating states and cities to adopt 23 reforms to receive conditional grants for urban infrastructure and housing development projects. Of the 23 reforms, 13 were ‘mandatory’ reforms, and 10 were ‘optional.’ Optional reforms were not elective and instead had longer timelines for meeting their targets (Ministry of Urban Development (MoUD), 2007). Reforms were aimed at building state and local capacities for “long-term funding and planning of urban infrastructure without relying on federal monies” [53]. Each state and the participating city would sign a Memorandum of Agreement that would set specific milestones for achieving reforms within the project period until 2012, and project funding was contingent on meeting these milestones (MoUD, 2007).

IH policy was introduced as an optional reform and received less focus than other mandatory reforms on land and urban management, such as repealing of land ceiling act and land-sale stamp duty revisions [2, 24]. Although JNNURM included IH as a city-level optional reform, in reality, states control the implementation of IH policy reform. The JNNURM IH reform was adopted from the NUHHP 2007 policy direction. It was only, however, applicable to land reservations, and the reservation requirements were increased from the 10 - 15% stated in NUHHP to 20 – 25%. JNNURM also called for a system of cross-subsidization, but it failed to mention any developer incentives in the reform guidelines (MoUD, 2007). JNNURM IH policy guidelines were released after a two-year delay (High Powered Expert Committee, 2011). The 2009 primer on “earmarking developed land/built-up area for pro-poor housing” lists 15 steps to “ensure a consistent supply of land for EWS/LIG housing purposes” and to avoid the development of future informal settlements (National Institute of Urban Affairs, 2009). However, none of these steps either illustrate the intricacies of IH policies in determining

developer incentives or specify what implementation agencies were expected to do with the reserved land.

Reports on the first round of reform appraisals found that many states had failed to reach the reform milestones (Thornton, 2011). Consequently, the federal government withheld the housing and urban infrastructure project conditional grants to states and cities [24, 29, 35]. Only a few developmentally advanced states with necessary institutional capacities could access federal grants while the rest of the country lagged behind (Kundu, 2014). Minimal program spending reflected poorly on the federal government's performance [39, 57]. Stakeholders present at the Ministerial program review meetings in New Delhi recounted that the Congress party Minister had asked 13-15 states with a Congress party majority to pass the JNNURM reforms in an expedited manner and avail of the JNNURM funds [39]. In 2012, the reform appraisal mechanism was modified to a flexible system where reform compliance was determined based on a discrete point-based system rather than the fulfillment of a series of interlinked steps [29, 40]. Stakeholders described the new appraisal format as "trivial and procedural" without any assessment of ground-level implementation:

State policymakers had found that it was inevitable to implement the [IH] reform.

Now how they did it, and how they appeared to be doing it without actually doing it, was completely up to the state governments [40].

The appraisal process was also not transparent, and stakeholders pointed to inconsistencies in the exemptions issued to different states and cities [34, 38]. A management information system (MIS), specifically designed to track reform adoption and automatically release housing project grants, was never used [60]. Overall, the rates of IH adoption significantly improved since the relaxation of reform appraisal, with 63 of the 65 JNNURM Mission cities having implemented the IH reform by 2013 (CAG, 2013). Despite the rapid change in reform status, and subsequent release of project-related conditional grants, nearly half of JNNURM's budget remained unspent, and this was reflected in the minimal number of low-income housing units funded by JNNURM. As of 2012, a total of 1.06 million housing units were approved under JNNURM, of which only around 28% had completed construction (CAG, 2013). A national program audit report (2013) finds that the delay in the execution of the projects is mainly due to the "non-availability of land." Researchers and policy analysts argue that linking project funding release to the

fulfillment of reform conditions resulted in many of the JNNURM's problems. Sadoway et al., (2018) compare JNNURM's conditional grants to structural adjustment reforms and the funding stipulations laid by international financial organizations. Scholars also criticized the JNNURM initiative for weak participation, excessive centralization of program management and monitoring at the federal level, poor construction quality, and delayed financial releases (Kundu, 2014; Public Policy Research Centre, 2014; Sadoway et al., 2018; Sivaramakrishnan, 2011).

Overall, JNNURM simultaneously employed sticks and carrots in the form of conditional grants and appraisals. It also used 'sermons' like MIS-based reform monitoring systems, primers on reforms, but inadequately.

### ***Rajiv Awas Yojana (RAY) - 2009***

Based on JNNURM's appraisal reports, and increased push from civil society members with the national advisory council, a new program called Rajiv Awas Yojana (RAY) was conceptualized. Even though the official implementation phase of RAY began after the end of JNNURM in 2012, the program was experimentally implemented in several cities since 2009 (Wellington, 2014). Funding from international agencies like DFID, through projects like Support for National Policies for Urban Poverty Alleviation (SNPUPR), helped in the programmatic planning and foundation-building exercise of RAY [12, 33]. A variety of stakeholders were involved in the policy design, including social activists, technical consultants, and academic researchers (Coelho et al., 2020). RAY was envisioned as a community-led slum redevelopment project that emphasized the issue of property rights to people in the informal settlements based on a detailed assessment of the locations and different tenurial arrangements in slums (Ministry of Housing and Urban Poverty Alleviation, 2013a). There were several program guidelines and manuals prepared during the RAY pilot phase that were continuously revised over the years until the program's full-fledged implementation [40, 12, 23]. A derived set of JNNURM reforms were adopted under RAY, with exclusive emphasis on 'pro-poor reforms' that discussed property rights, dedicated municipal budgeting for pro-poor expenditure, and IH policies. RAY's list of reforms sometimes grew, and other times shrunk, over the 4-year experimentation period. Yet the IH policy remained in the RAY reform agenda since 2009.

In 2009, RAY had directly adopted the JNNURM IH policy reform without any modifications. However, the reform focus and stipulations changed with time. Under RAY, the



federal government organized more consultations and outreach workshops compared to any other housing program, facilitating greater intergovernmental communication between the center and states with more dialogue and clarity on IH policy objectives [12, 24, 59]. I was able to access a federal government communication sent to states in 2011, sourced from a former state government official's personal archive. This federal RAY directive was by far the simplest but also the most comprehensive discussion on the IH policy. It gave a detailed list of action-oriented steps for state governments to introduce IH policy through amendments to different planning legislation and mechanisms (Ministry of Housing and Urban Poverty Alleviation, 2011). The directive clarified some of the confusion JNNURM reform guidelines created about the land reservations by setting qualifying development sizes at one hectare or 10,000 square meters. It also provided an in-lieu fee option for smaller lots between 4000 and 10000 square meters, called the *shelter fee*. This allowed developers to opt out of land reservations in smaller developments. Further, it reintroduced the NUHHP 2007 stipulation on the reservation of IH units in multi-unit housing developments. Unlike JNNURM reform guidelines, it also mentioned incentives and allotment processes for IH units.

A review of pro-poor reforms by Mahadevia and Datey (2012) indicates that a majority of states adopted the reform through government orders or through official press announcements by 2012. Only three states had legally adopted IH policies. At the end of 2012, the Taskforce on Promoting Affordable Housing openly acknowledged 'resistance' to the IH reform and mentioned that many states reserved lower percentages than the stipulated 20-25%, and that even in those cases, the implementation received 'limited success' (Ministry of Housing and Urban Poverty Alleviation, 2012b). Observing that the NUHHP 2007 IH set-aside requirements lacked necessary supporting evidence, the Taskforce committee reduced the set-asides for developed land to 15-20% and increased housing units' set-asides to 35%. It also reiterated the need for providing density bonuses and incentives to developers. However, rather than as a measure of local housing needs and conditions, the Taskforce's set-aside recommendations were also arbitrarily determined based on the existing proportion of slum population and slum-occupied land area in a sample of three cities.

RAY was officially launched after its 4-year pilot phase with an expanded set of reforms – with four being optional and four being mandatory – in 2013. In its final version, RAY IH reforms only referred to set-asides in multi-unit housing developments and dropped the land set-

aside requirements (Ministry of Housing and Urban Poverty Alleviation, 2013a). RAY offered conditional grants for reform implementation in phases and tied only the final installment of federal grants to the successful passing of the mandatory reforms at the end of three years. Additionally, it established a *reform incentive fund* to encourage states and cities to prepare state housing policies and legislative frameworks under the optional reforms. RAY also issued specific “Guidelines for Reforms” that provided detailed IH policy monitoring and implementation framework linked to other RAY processes, such as *State Affordable Housing Policy* and annual monitoring reports (Ministry of Housing and Urban Poverty Alleviation, 2013b). The federal government supported pilot state affordable housing policies with detailed models of PPP options, including IH policies, in five states by 2015.

Therefore, RAY underwent a series of changes and fine-tuning of policy material during its preparatory phase. Some of this fine-tuning, respondents suggested, “created confusion” [5]. However, the networks and numerous platforms for idea exchange and training helped cultivate a deeper awareness of the program [24]. RAY was by far the most comprehensive effort made by the federal government in attending to slum housing issues [29, 31, 38]. However, due to the change of federal government in 2014, RAY was officially implemented for under a year and reforms adoption was not tracked during this brief period [56, 24]. About 11,200 housing units were constructed under RAY (Ministry of Housing and Urban Poverty Alleviation, 2013a). The 160 city plans that provided a comprehensive picture of the distribution of slums, tenurial arrangements, and proposed models for redevelopment that were ready for implementation were scrapped, and state reform progress on property rights assignment and IH policies also stalled [12, 39]. A federal policy aide recounted:

Thousands of workshops, public meetings, outreach work, reports, surveys, all the hard-earned trust and hard work went down the drain. It was demotivating for so many people, public officials, consultants, NGOs, communities! [32]

Several people I met with at the federal, state, and local levels expressed similar disappointment that the preparatory steps under RAY had failed to materialize into concrete action.

RAY made exemplary use of ‘sermons’ through training programs, technical assistance, consultations, and importantly, elaborate guidelines and model policy frameworks to encourage

IH policy adoption. It also employed some sticks in the form of conditional grants. The impact of carrots, like enhanced federal project subsidies and use of incentives, is unclear as these were mainly available only during the limited time in which RAY was fully rolled out.

### ***Pradhan Mantri Awas Yojana (PMAY) - 2015***

With the change in government at the federal level, RAY was dismantled, and a refurbished policy, Pradhan Mantri Awas Yojana (PMAY) - Housing for All, was introduced in 2015. PMAY is a 7-year federal government project with the aim of ensuring decent housing for everyone in India by 2022. The program is in implementation across 4424 cities in the country and operates under four different verticals: the In-situ slum redevelopment is geared towards informal settlements and slum upgradation and found little support; Credit Linked Subsidy Scheme is an interest subvention scheme aimed at providing reduced interest rate to low and middle-income groups; Subsidy for beneficiary-led individual house construction or enhancement is an initiative that supports families with existing land holdings and housing; Affordable Housing in Partnership (AHP) is a private-developer led PPP affordable housing development project (Ministry of Housing and Urban Affairs, 2022a).

PMAY is considerably different from JNNURM and RAY on the reform front. PMAY has a set of five mandatory conditions, most of which are adaptations of reforms under JNNURM and RAY, that seek to encourage good urban management practices (Ministry of Housing and Urban Poverty Alleviation, 2016). Interestingly, the term “reform” is no longer in use and instead replaced with “conditions.” All the conditions listed are mandatory, and the disbursement of the final installment of 20% of project grants in the third year is linked to the satisfactory completion of the reforms. Similar to JNNURM and RAY, there are no means to hold either the federal government or the states accountable to reform and funding commitments. Overall, PMAY is largely “quiet about reforms” [45]. Activists and policy analysts observe that PMAY has indeed markedly distanced itself from the reform agenda and has instead placed the thrust on “getting units on the ground” [31, 40]. A senior federal ministerial official explained that PMAY was intentionally moving away from the reform rhetoric by choosing to “trust” states and not “micromanage” program implementation as in the case of JNNURM and RAY [35]. JNNURM and RAY had attempted devolution by using project-based grants to reach cities by often “circumventing” the states (Sadoway et al., 2018). However, PMAY design allows

decision making power at the state level instead of pressuring states to devolve power to the local bodies on urban matters. Consequently, PMAY mandatory conditions are directly addressed to the states as implementing agencies with no reference to cities.

In view of this revised federalism agenda, PMAY IH ‘condition’ was only a nominal version of the IH reform under JNNURM and RAY. PMAY IH condition states, “Prepare/amend their Master Plans earmarking land for Affordable Housing” without any recommendations for set-asides (Ministry of Housing and Urban Poverty Alleviation, 2016). There are neither accompanying paragraphs or guidance documents that discuss the PMAY conditions. It is interesting to note that the PMAY IH condition reverts to the land set-asides employed under the JNNURM instead of the housing units or built-up area used under RAY. In fact, PMAY completely undid much of the nuance to the IH policy explored under RAY. Discussions with consultants, ministerial officials in New Delhi, and representatives of the real estate consortiums like the National Real Estate Development Council revealed that the IH policy reform was ready to be excluded from the PMAY conditions but was retained to facilitate multi-state coordination in the New Delhi capital region planning process. In addition to the lack of necessary guidelines for instituting the IH condition, interactions with officials and consultants at the federal housing ministry revealed that PMAY did not conduct any reform appraisals. The final 20% installment tied to the implementation of mandatory conditions is released based on a self-declaration from states (Ministry of Housing and Urban Poverty Alleviation, 2016).

While PMAY’s reform monitoring is weak compared to its predecessors, the MIS system designed for project implementation is thorough with requirements for monthly updates and uploading of all project information on an online MIS portal [25, 61]. Unfortunately, none of this information is accessible for public use as of December 2021. According to the press release by the federal ministry, as of June 2022, the federal government sanctioned a total of 12.27 million PMAY units, of which 6 million have been fully constructed under different verticals under PMAY - Urban (Ministry of Housing and Urban Affairs, 2022b). About 60 percent of the sanctioned units are through direct owner subsidies and another 20 percent through bank-linked subsidies. Slum housing constitutes a very small percentage at 3.5%, and the rest is under PPPs through AHP. Activists argue that PMAY engendered a gradual shift of focus from pro-poor schemes to initiatives that appease the middle-income group [8, 29, 31, 38]. They claim that PMAY focuses on the “deserving” poor by servicing those who are “credit-worthy” with land

assets or formal low-wage employment and it clearly “excludes the poorest of the poor and informal settlements” [38].

Federal housing policies have discussed PPP models since NUHHP 2007. The State Affordable Housing Policy guidelines in 2013, the task force report on promoting affordable housing in 2013, also include several models of PPPs in affordable housing. Directions on how to incorporate the PPP objectives into state policies were circulated through a model State Urban Housing and Habitat Policy (SUHHP) to the states. These guidelines included specific components on mixed-income housing and the reservation of land and housing units for EWS/LIG housing through PPPs and IH policies. Under PMAY, the federal government had also offered financial aid and technical assistance to states for preparing their state policy documents and revising the short-lived state affordable housing plans (SAHP) prepared under RAY in 2013 [40]. However, these detailed recommendations attempted in the early stages were “shelved in favor of a less-prescriptive” federal role in housing policies [43, 56]. As a result, IH policy components prescribed in the state guidelines were never realized and instead amended to form a generic “PPP models for affordable housing” document (Ministry of Housing and Urban Affairs, 2017). PPP guidelines list steps to “engage,” “compensate,” and “incentivize” private developers in affordable housing production. The objective for private sector engagement, the document states is “to allow a self-propelled market” to address the housing needs of all income groups (Ministry of Housing and Urban Affairs, 2017, p. 9). However, these guidelines remain generic with no suggestions for states and local governments on how to implement them.

AHP is the only financially incentivized scheme at the federal level that actively fosters private engagement in the development of affordable housing with a mixed-income PPP approach. Under AHP, financial subsidies are provided to large housing projects with a minimum of 250 units, where 35% (or more) of the housing units are constructed for EWS income groups. AHP was introduced under JNNURM in 2009 to leverage private lands for affordable housing when the federal government found that land scarcity for low-income housing construction was the primary reason for the slow uptake of housing projects. However, AHP failed to gain much traction under JNNURM and RAY due to the low subsidy amount [2, 36]. In addition to the increase in the subsidy amount, under PMAY, AHP projects receive a 100% tax deduction on profits. While a clear list of state-wise distribution of projects under the four verticals of PMAY is not available, housing experts find that even with the spurring of new

interest in AHP under PMAY, most of the AHP projects are concentrated in 4-5 states [31, 38]. They argue that the state governments in the developmentally advanced states from the south and the western part of India have benefitted more from AHP than the others. However, AHP and PMAY implementation, in general, in other parts of the country suffered without federal assistance to handhold and provide technical assistance [40]. Scholars find that AHPs are more successful in producing units where the state government had created land banks for affordable housing development (Bhan et al., 2014; Sengupta, 2013). The performance of the Affordable Housing in Partnership projects on private lands has been dismal overall, with very few projects located on private lands and those too in unviable locations that lead to low occupancy rates (Bhide, 2018; Deb, 2016).

The success of AHP projects at the ground level is highly reliant on the planning processes and state interference (Deloitte, 2016; Meraqi, 2018) – two areas from which the PMAY completely distances itself. During the interviews, developers revealed that state and local governments do not offer necessary zoning incentives and that working with them involved “multiple stages of bureaucratic mess” [43]. Subsidies and additional revenue from the sale of market-rate units through cross-subsidization, they claim, “do not adequately compensate” for the inherent difficulty in dealing with the government and the high land costs in urban areas [43, 57]. Overall, while there is a definite rise in private sector interest and investment in the affordable housing segment since the launch of PMAY, its cumulative effect is marginal, especially in catering to the housing needs of the EWS and LIG income groups. Without linking mechanisms for either finding suitable public land for affordable housing or leveraging private land for affordable housing through well-designed IH policies, the disconnect between housing production goals and implementation realities continues.

PMAY’s focus, actors agree, was “getting units on the ground rather than the building of a sustainable affordable housing policy” [29, 56]. PMAY primarily employed project-based conditional grants. However, the conditions were not enforced rigidly as in the case of JNNURM and therefore remained predominantly in the form of carrots rather than sticks. PMAY also made several attempts to ‘sermon’ states through guidelines and model policies and guidelines. However, these attempts before 2016 fizzled out and were never formally adopted or conveyed to the states. Within the AHP vertical, PMAY has offered more carrots in encouraging the

private sector to take on affordable housing projects. Tax deductions, enhanced subsidies, and access to credit were all improved under AHP.

The above discussion presents different IH policy stipulations within the federal policy ambit with an explicit focus on the federal government and how different actors perceived the federal housing policies. Discussion on states and their role in federal policy implementation is not clear from the aggregated view of housing program implementation experiences from different parts of the country. To ground these high-level policy discussions, it is important to observe their interaction with state and local implementation agencies. There is an absence of clear IH policy discussion in India and given the variable nature of the IH policy implementation, I used a detailed descriptive case of IH policy response and implementation in Andhra Pradesh state.

### **Andhra Pradesh State response to federal IH policies**

Andhra Pradesh state was one of the first states in the country to adopt inclusionary housing policies in response to federal IH policy reforms. The state policy response in Andhra Pradesh is not representative of the conditions in the rest of the country, especially given the state's economic and institutional strength. However, it can help predict the success of federal IH policy acceptance in less economically advanced states.

In the following discussion, key federal policy junctures are mapped to state responses to gain an in-depth understanding of the *federal policy – state response* dynamic in the IH context. A summary of this changing policy landscape is provided in **Error! Reference source not found.**

#### ***Under JNNURM***

The state government of Andhra Pradesh introduced IH policies in Hyderabad, a JNNURM participating city, in 2008 during the early stages of JNNURM reform implementation through government executive orders (Municipal Administration and Urban Development Department, 2008). IH policy was only enforced in Hyderabad's newly incorporated urban extension areas as a direct response to the federal JNNURM reform. Andhra Pradesh state government had at first introduced IH policy as a mandatory stipulation in land subdivisions, multi-family housing, and land pooling schemes while offering no incentives to the developers. Developer Associations like Andhra Pradesh Builders Forum and Andhra Pradesh Real Estate Developers Association in

Hyderabad severely opposed the IH policy and petitioned the High Court of Andhra Pradesh. They appealed to the state government that IH mandates would unfairly cut into their project amenities. Consequently, within three months, IH mandates were revised to allow the off-site provision of affordable housing units within a 5-kilometer radius of the proposed project. Revisions also provided for deductions in planning administrative fees and waived zoning change fees (Municipal Administration and Urban Development Department, 2008b). IH policy revisions also allowed developers the use of EWS/LIG land reservations in their housing projects for building ‘servant quarters.’

A senior state government planner shared the events that led up to the state’s IH policy adoption and quick amendments in 2008. He revealed that in 2008, the federal government withheld 8 billion Indian rupees of JNNURM housing grants (equivalent to 102 million USD)<sup>2</sup> to Hyderabad due to the city’s non-compliance with IH policy reform requirements. The state government and the planning machinery resolved to clear the financial blocks for a low-income housing project that was already underway and quickly passed an executive order replicating the JNNURM IH stipulations knowing well that the requirements were “impractical” [5]. He further recounted that they had found the JNNURM Primer on IH policy a vague document and stated that:

If they make a policy that says, “Make 20-25% land reservations for EWS housing,” they have to provide some reasoning for coming up with it, right? Why 20-25 %? What is the basis? It is a basic thing! [5]

Despite their misgivings, the state government went ahead and implemented the reform in Hyderabad and reported having amassed 50 acres within one year.

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<sup>2</sup> Calculated at 1 USD = 74 Indian Rupees



Table 2.3: Andhra Pradesh Inclusionary Housing Policy timeline

Year	Federal policy referred	IH Stipulations	Notes	Tools
April 2008	JNNURM NUHHP	- Land subdivisions and land pooling area – 5% EWS+ 10% LIG+ 10% MIG - Multi-family housing – 10% EWS +5% LIG + 5% MIG built-up area	<ul style="list-style-type: none"> <li>No incentives</li> <li>Restricted to Hyderabad extension areas</li> </ul>	Executive Orders (G.O 287 & 288)
July 2008	JNNURM NUHHP	- Land subdivisions – 5% EWS+ 5% LIG/EWS area - Multi-family housing – 5% EWS +5% LIG built-up area - Or separately within 5 km radius	<ul style="list-style-type: none"> <li>Amendments after developer court petition</li> <li>Off-site provision</li> <li>Incentives – no fees for EWS, 25% fees for LIG, automatic land-use change</li> </ul>	Executive Orders (G.O 526 & 527)
2009	RAY	- State Policy on Slum-free Andhra Pradesh by 2014	<ul style="list-style-type: none"> <li>Provides reform-based commitments for IH institutional setup and legislative amendments</li> </ul>	Policy (G.O MS 577 Annexure)
2009	RAY	- Draft Andhra Pradesh Slum Areas (Identification, Redevelopment and Rehabilitation) Act, 2010	<ul style="list-style-type: none"> <li>10% of developed land and 20% built-up area for EWS/LIG housing</li> </ul>	Draft policy
2011 & 2012	RAY	- Land subdivisions – 20% developed land for EWS/LIG	<ul style="list-style-type: none"> <li>Land subdivision minimum requirements lower for non-urban areas (2000 sqm), and 4000 sqm for big cities like Hyderabad, Vijayawada, and Vishakhapatnam</li> <li>No stipulations for multi-family housing</li> </ul>	Executive Orders (G.O 45 & 168 AP Building rules)
2012	JNNURM RAY	- Multi-family housing – Only >5 Ac - EWS 5% + LIG 5% of built-up area - Or EWS 12.5% units + LIG 12.5% units - Or buy EWS units from public housing projects or provide them separately within a 5 km/10 km radius	<ul style="list-style-type: none"> <li>Removed land provisions</li> <li>Additional incentives – 10% impact fee waiver for market rate units and total waiver for EWS/LIG</li> <li>Introduction of shelter fee for 3000 sqm to 5000 sqm to enhance ULB revenues</li> </ul>	Executive Orders (G.O 245)
2013	RAY	-	<ul style="list-style-type: none"> <li>Allotment preferences left to developers</li> <li>Identification of eligible ‘beneficiaries’ based on income</li> </ul>	Executive Orders G.O 196
2015	RAY	- Andhra Pradesh State Affordable Housing Policy 2015 based on the Model State Affordable housing policy	<ul style="list-style-type: none"> <li>Clear PPP models for different land ownership</li> <li>Detailed incentives and offsite provisions</li> <li>Sale deed restrictions</li> <li>Use of government lands</li> </ul>	Policy
2016	PMAY	- Draft State Housing and Habitat Policy	<ul style="list-style-type: none"> <li>Drafted with financial support from federal government, but not formally adopted</li> </ul>	
2017	-	- Multi-family housing – Only >5 Ac - EWS 5% + LIG 5% of built-up area - Or EWS 12.5% units + LIG 12.5% units - Or separately within 10 km radius - Or buy from other state EWS projects with 10 km - Or pay shelter fee	<ul style="list-style-type: none"> <li>Very similar to the IH policy in 2012 building regulations with option to pay in-lieu fee for any development &gt;3000sqm</li> <li>No reference to PMAY reform requirements</li> <li>Near doubling of shelter fee</li> </ul>	Executive Orders G.O 119 & 401
2018	-	- Multi-family housing – Only >5 Ac - EWS 5% + LIG 5% of built-up area - Or EWS 12.5% units + LIG 12.5% units - Or separately within 10 km radius - Or buy from other state EWS projects with 10 km - Or pay shelter fee	<ul style="list-style-type: none"> <li>Reduction of shelter fee to 2012 levels</li> <li>Option to pay in-lieu fee for any development &gt;4000sqm (upward revision of minimum land areas for MDU that trigger IH policy)</li> </ul>	Executive Orders G.O 223

## *Under RAY*

Andhra Pradesh state was supported through technical assistance from the federal ministry for housing and DFID programming support during the RAY pilot stage. The 2009 state policy commitment to “Slum-free Andhra Pradesh by 2014” and the draft property rights legislation provided proposals for instituting IH policies and passing property rights legislation for legalizing informal settlements in the state in response to the RAY reforms (Municipal Administration and Urban Development Department, 2019).<sup>3</sup> However, the actual IH policy implementation was limited to Hyderabad city outskirts. Further to several intergovernmental communications from the federal RAY implementation unit that outlined prescriptive steps for IH policy reform through state planning legislation, the state government adopted state-wide IH policy requirements in 2011 (Municipal Administration and Urban Development Department, 2011). Due to the codification of IH requirements in the state building regulations (Municipal Administration and Urban Development Department, 2012a), there was suddenly more interest in IH policies, and the state planning agency received multiple complaints and requests for clarification from municipal bodies across the state [54]. The Greater Municipal Corporation of Hyderabad, which was excluded from the 2008 IH policy stipulations, requested amendments to the 2012 policy, citing the loss of municipal revenue due to a “drastic fall in land permissions” from developers.

Top-down pressure from the federal government through RAY program, and the push-back from the implementing agencies on IH policy norms, resulted in an interdepartmental consultation on IH policies between major urban planning agencies, the state planning agency, and the municipal bodies from big cities in the state [51]. The state government constituted a four-member committee in 2011 that, for the first time, examined the rationale behind IH policy provisions – a full three years after the state first introduced the IH policy in 2008. The committee visited five states – Rajasthan, Chhattisgarh, Madhya Pradesh, Tamil Nadu, and Maharashtra to study their IH policy practices. I was able to access their field visit reports. The committee found that none of the five states had adhered to the JNNURM IH policy reform

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<sup>3</sup> The “State Policy on Slum-free Andhra Pradesh by 2014” committed to amending the state Town and Country Planning Act of 1920 and creating appropriate institutional setup to oversee the allotment of EWS/LIG housing created through IH policies.

conditions. They also found that other cities and states were successfully using density bonuses to incentivize IH policies. The abolishing of maximum building heights in Andhra Pradesh state in 2006 (Municipal Administration and Urban Development Department, 2006), officials claimed, “stripped the state of an important tool to negotiate with the developers” [3].

The state government subsequently overhauled the state-wide building regulations (Municipal Administration and Urban Development Department, 2012b). The government removed EWS/LIG reservation stipulations in the land subdivisions and instead introduced built-up area reservations in multi-family housing for EWS/LIG housing by substantially enhancing the minimum area and providing off-site provision options (Refer Table 2.3 for details). The 2012 amendments also introduced an in-lieu fee called ‘shelter fee’ and prescribed ranges for multi-family housing proposed in smaller lots (Municipal Administration and Urban Development Department, 2012b). In accordance with RAY requirements, the new state IH stipulations also require cities to use the dedicated shelter fee for low-income housing. Separate regulations after a year provide guidance to developers regarding eligibility requirements for allotment of IH units (Municipal Administration and Urban Development Department, 2013). Interviews revealed that close monitoring and interaction with the federal RAY implementation units and state technical representatives helped flag the need for timely issue of allotment criteria for IH units [12, 14, 5]. However, while the 2013 regulations recommend prosecuting developers for IH non-compliance, they do not assign any responsibilities to government agencies for tracking and monitoring IH units.

### ***Under PMAY***

The period after 2013 was a tumultuous time in the state of Andhra Pradesh due to the state bifurcation. The residual state of Andhra Pradesh adopted a State Affordable housing policy in 2015 that was based on the RAY model guidelines (Municipal Administration and Urban Development Department, 2015). The state policy integrated IH policies from the state building regulations and PPP models under AHP, with incentives such as stamp duty exemptions, reduced parking requirements, and fast-track approval, among other state incentives. Other states like Karnataka, Odisha, and Maharashtra adopted similar policies during the 2015-16 period.

Abandoning the state policies and IH reforms prepared under RAY, PMAY asked states to prepare State Urban Housing and Habitat policies (SUHHP) enlisting appropriate steps for

involving private developers in affordable housing production. Due to the lack of further follow-up on these state plans, the draft SUHHP was never formally adopted by the state government. The state government opted to bypass the private developers and undertook mass public housing construction instead of mixed-income housing on its own under AHP.

Subsequently, in 2017, when PMAY diluted IH reform conditions, the state government revised its 2012 building regulations (Municipal Administration and Urban Development Department, 2017). The revised regulations made IH policies voluntary with the same set-asides and developer incentives as before. All qualifying multi-family housing developments could opt out of providing IH units by paying a shelter fee. The shelter fee was increased to nearly twice the 2012 rates. Within six months, IH policy stipulations were further diluted by increasing the qualifying project area to 4000 square meters from the earlier 3000 square meters (Municipal Administration and Urban Development Department, 2018). More important, the shelter fee rates were again reduced to their 2012 rates. Table 2.4 below provides the total shelter fee collected in the state of Andhra Pradesh since 2016. A total of 112 million INR was collected in the state during the 2.5-year period between March 2016 and August 2019 (Directorate of Town and Country Planning, 2019). This information is not publicly available and was secured from the online building permission system in use in urban bodies since 2016. Local planners informed that there were no records of shelter fees collected prior to 2016. Right to Information requests also yielded no results citing loss of records during the transfer of state capital. Subsequent interviews with local planners revealed that there were no prior monitoring mechanisms that recorded this information. The total shelter fee collected in the state was only a fraction of the 816 million INR collected in the form of building permit fees. However, it is also impossible to ascertain whether any IH units were generated after 2016, as the online system, unfortunately, does not track IH units [15]. I reviewed a list of high-profile large-scale private housing projects in the state to check if any of these large projects included IH units. I found that all these big projects had retroactively opted to pay the shelter fee once the IH policy norms were relaxed in 2017 [7]. This explains the substantial increase in the 2017-18 share of shelter fees. Subsequent reduction in shelter fee collections coincides with the revision of shelter fee rates to their 2012 ranges.

Table 2.4: Shelter fee collected in the state of Andhra Pradesh from all local implementing agencies between March 2016 - August 2019 (Source: Directorate of Town and Country Planning, 2019)

Year	Shelter fee (INR)	Building Permission fee (INR)	Proportion of shelter fee to building permission fee
2016-2017	6,928,335	311,489,887	0.02
2017-2018	49,343,382	323,738,067	0.15
2018-2019	56,237,426	181,283,549	0.31
Total	112,509,143	816,511,503	0.14

### ***IH output***

There are no evaluation studies of IH policy implementation in Andhra Pradesh or Telangana to date. Records obtained for this study, from Hyderabad, suggest that between the years 2004 and 2015, the agency held a total of 19 ha of land for EWS and LIG housing, along with other infrastructure reservations under the land and multi-family housing regulations. Interviews with developers and planning officials in Hyderabad revealed that the government auctioned off most of the land assimilated under the master plan reservations instead of diverting this land to appropriate agencies for housing construction [5, 54]. Public housing institutions complained that the planning agency ignored their sporadic requests for land transfers [11]. There are no records of the land appropriated by the planning agency from IH land set asides or the number of EWS/LIG units constructed by the builders [54]. Where developers had constructed EWS/LIG units as part of multi-family housing projects, builders claimed that there were no eligible takers given the high maintenance costs (or HOA fees) in these establishments [6, 42]. A few people who purchased these units had instead sold them by merging two smaller plots for higher-income housing. On the whole, officials and builders concur that the net impact of affordable housing production as part of master plan reservations in Hyderabad is almost negligible. Similarly, in the residual state of Andhra Pradesh, there were no records of IH units created, and the shelter fee generated from the opt-out fees was merged into the local government operating budgets.

In addition to poor policy design and conception, the lack of interdepartmental coordination and the absence of a single responsible authority to monitor the entire life-cycle of IH policy resulted in its poor implementation where “no one is aware of other department’s policies” [21].

### *Powerful developer nexus*

Over time, the developer nexus won over the Andhra Pradesh state planning agency, and IH requirements were severely diluted to the extent that the only remaining IH stipulation was the levying of a small in-lieu fee in the planning permission process.

A prominent developer at the forefront of opposition to IH policies, since the writ petition to the high court in 2008, observed that the government was forced to revise its policies repeatedly since they were “ill-framed:”

If some builders are violating, GOs [government or executive orders] are right; if everyone is violating, then the GOs are wrong! [6]

Therefore, he argued that the state builders’ association had mobilized several developers and real estate consortiums in opposing the 2008 IH regulations through court orders. Stating that builder consortiums were highly organized and motivated to work together, he recounted an earlier success that resulted in the abolishing of building height restrictions in Hyderabad. Relatedly, an official who was with the Hyderabad planning agency at that time remarked on the power the developer community wields in the state, “It is the builders that write the GOs in Andhra Pradesh” [3]. Two officials from other state agencies, who worked during the period 2000 to 2015, concurred with this view, observing the relative ease with which developers could meddle with the planning framework through GOs [4, 5]. These officials mentioned that, prior to 2006, building rules were part of the master plan – a legally binding document – that required due legislative processes to carry out any amendments. In addition to abolishing building height restrictions in the state, that initiative had also allowed for the separation of building rules from the master plan. They noted that this separation started the steady decline of the integrity of building rules and development control regulations by paving the way for easy political and real estate intervention in planning and zoning policies [3, 4].

Some of the builders' opposition to IH policies in Andhra Pradesh is valid, given the complete lack of consultation and collaboration since the beginning. Nevertheless, IH policy deliberations and the resulting amendments opened a pathway for developers to continuously subjugate planning norms. Developers fight planning regulations in a cycle: negotiate the reconsideration of existing executive orders for less stringent rules, flout them, and force the administration to reassess and further dilute regulations to promote compliance. The latest IH

policy stipulation in 2017 set such low fees-in-lieu that even the builders deemed it a “paltry” sum [42]. However, any fee is one too many for builders who ask, “Why should I provide affordable housing on the piece of land that I own?” [43] I asked the Chief Planner responsible for framing the state building regulations how the government determined the shelter fee rates. He responded matter-of-factly, “They [developers] determined the rates” [51].

## **Discussion**

Andhra Pradesh’s IH policy journey, in response to federal mandates, serves as a clear testament to the desperation of different political and government units in ‘making do’ and finding means to simultaneously conform to and evade federal requirements. While alternative policy tools like grants-in-aid helped bring states on board, they also provided enough room for states to make a perfunctory nod to the federal reforms while only implementing what was feasible. More important, federal reforms displayed a very superficial understanding of what IH policies look like at the implementation level and, as a result, promoted a patchwork of policies with inconsistent support and ineffective results.

### ***Tools for implementation***

This section evaluates the effectiveness of different policy tools employed by a series of federal housing and urban programs in perpetuating inclusionary housing policies (See Table 2.5). Federal programs used a combination of policy tools with varying precedence based on the overall program objectives. I use the 'effective' indicator to refer to the success of different federal programs in influencing state action in adopting IH policy initiatives. Since there is no means to track the production of IH units, I use the 'efficiency' indicator to denote the number of EWS/LIG housing units built as part of the respective program. While this comparison is not a direct measure of the impact of federal policy initiatives, it is a direct representation of the discordant objectives pursued by the federal housing programs. The discordance is inherent in the program design. While the funding and outcome measures of all these federal programs are based on the number of housing units built, reform criteria like IH policies are pursued with overarching program objectives of encouraging private involvement, devolution, or efficient urban land management.

Multiple programs have used a combination of tools in encouraging IH policy adoption by state and city governments. The main federal programs, JNNURM, RAY, and PMAY, all employ conditional grants to institute IH policies, with varying degrees of effectiveness and efficiency. Conditional grants carry the dubious function of sticks attached to carrots. They incentivize and regulate at the same time.

Table 2.5: Federal programs and Inclusionary housing policies - policy tools and their impact

Initiative	Tools used			Impact	
	Carrots	Sticks	Sermons	Efficient (units)	Effective (IH reform)
<i>NUHHP 2007</i>			Medium		
<i>JNNURM 2007</i>	Low	Medium		Low	Medium
<i>RAY 2013</i>	Low	Low	High	Very low	High
<i>PMAY 2015</i>	Medium			High	Low
<i>AHP 2015</i>	High		Low	Medium	Low

RAY was distinct in its efforts in using ‘sermons’ and creating better awareness on both program design and reform criteria through its 4-year preparation period. Handholding support, model legislation, and guidelines attended to the technical difficulties states faced in instituting reform objectives like IH policies. A review of state initiatives in five states, Karnataka, Tamil Nadu, Rajasthan, Madhya Pradesh, and Gujarat, revealed that states had promoted more IH policy initiatives under RAY than any other program. However, it is difficult to ascertain the efficiency of these IH initiatives in producing EWS/LIG units in integrated neighborhoods without a deeper evaluation of IH policy implementation at the state level. Interviews revealed that policymakers during PMAY programming had deliberately moved away from the use of model legislation, a key tool during RAY’s era, to discourage “blind copying” by the states [27]. It was felt that states were not dedicating sufficient time and thought to making their state policies. But housing policy experts observe that “taking time to prepare policies” is not feasible given the short federal program periods and even shorter deadlines for carrying out reforms [39]. Experts also added that the ability of states to prepare policies varies widely and that some states required more handholding support and guidance given their resource constraints.



The early years of PMAY implementation, until 2016 or so, also focused on training and information-sharing for engendering good urban land management practices and private participation at the state level. Similar to the JNNURM experience, the PMAY project implementation subsequently suffered in terms of the number of housing units built [24]. The new government forged on ahead with the primary objective of “putting units on ground” to the neglect of other reform criteria and ‘sermons.’ Heavy financial inflows in the form of subsidies, tax relief, and access to credit were the ‘carrots’ that ramped up the rate of construction of EWS/LIG units under AHP. Sticks like strong monitoring frameworks and MIS, that centralized program implementation power at the federal government, were also reoriented to facilitate quick construction approvals.

Broadly, one could conclude that grants and other carrots succeed in yielding housing units. Sermons create more awareness and prepare implementation agencies to accept change. Sticks on their own are impossible to implement on urban matters given the constitutional constraints in India’s federal setup. Carrots and sticks, when pursuing different objectives, create confusion both at the federal level and the state and city levels. An important combination that hasn’t been sufficiently practiced is the use of carrots and sermons together.

### ***A top-down IH policy***

India’s IH policy experience is, at a glance, indicative of restricted top-down efforts. The federal government can only advise, monitor, and ‘sermon.’ It cannot regulate given the lack of federal control on housing and land matters. The lack of constitutional rights to housing also severely constrains national-level legislation that mandates IH policies.

A quick review of the IH mandates and their evolution in Table 2.2 suggests that there is a steady dilution of policy emphasis on IH. From a rigid prescriptive mandatory requirement, the IH policy reform went through several iterations to become a ‘name-sake’ policy. Housing policy experts, aware of the research debates surrounding IH policies in other parts of the world, suggested that the federal government’s efforts through JNNURM failed because they made IH a mandatory policy instead of promoting voluntary schemes and focusing on the incentives [2]. On the other hand, state implementation functionaries mentioned the lack of clear reasoning for the EWS/LIG set-aside numbers as the main policy drawback. Neither the primer on the JNNURM reforms, nor the NUHHP 2007, mentions why certain stipulations were made or how they were

derived. The National Institute for Urban Affairs, the federal-level project management agency for the implementation of the JNNURM reforms, was also unsure of the origins of the specific numeric stipulations. I talked to the authors of the NUHHP- 2007 and received no further insights. A federal ministerial official ventured that the 20-25% figure perhaps reflects the proportion of urban poor in Indian cities [32]. I found a similar reference to the Taskforce report on the promotion of affordable housing under the RAY regime (Ministry of Housing and Urban Poverty Alleviation, 2012b). However, none of the key stakeholders who were at the forefront of these processes was able to recollect if any feasibility studies or meetings were conducted to determine this number under NUHHP 2007 or JNNURM. The question posed by both state-level officials and developers seemed valid: “How did the federal government decide that this is a good number, let alone a workable number?” for IH projects. There was also no indication of consensus building or discussion of modalities through which such an objective might be realized. Even the more elaborate documentation processes like “RAY guidelines for reform implementation” (Ministry of Housing and Urban Poverty Alleviation, 2013b) were curiously devoid of consensus-building and IH policy framing for different contexts.

One of the pitfalls of the IH policy in India has been that the federal government was too quick to determine the developer’s share of affordable housing. They completely neglected to ask what the states were willing to enforce and then determine what the cities were willing to do within their regulatory and planning ambit. Consequently, state governments devised intermittent means through executive orders to access federal funds. These intermittent means replacing outright legislation also meant less opposition from the builders’ associations. It is important to realize that the federal government, on the other hand, is not ignorant of these tactics. However, unutilized budgets that were under the threat of surrender and criticism from opposition parties led to the ‘softening’ of their stance. Instead of allowing weak reform implementation on paper, a prudent approach would have been to revise the reform framework itself under JNNURM. A relaxed approach to reform monitoring under JNNURM had set the wrong precedent for the states in “bypassing” reform requirements [29]. JNNURM was more ideological in its approach and often preferred to view urban scenario and management practices based on ‘what should be’ than ‘what is.’ In its haste to enforce devolution of planning powers to the local government, JNNURM ignored the existing control states already held over land use and zoning reform. The

introduction of IH policy reform as part of the city reform agenda is an example of this willful oversight.

RAY, during its long preparatory phase, made elaborate efforts to understand the ‘as-is’ scenario. RAY was also able to capitalize and then enhance the programmatic monitoring structures that JNNURM already enforced. Additionally, RAY’s singular focus on three main ‘pro-poor’ reforms, when compared to the “laundry list” that was the JNNURM reform agenda, made IH policy more effective [39]. RAY was also able to ‘reach’ the states with its model legislation and guidelines that could ‘engage’ with the legal planning and land use frameworks that determine states’ responses. In fact, RAY was perhaps the only program that exhibited a clear understanding of the variants of IH policies and the multiple scales at which planning frameworks could intervene in fostering IH policies. However, this knowledge only minimally translated into the final program design. AHP, on the other hand, does not refer to planning or land-based mechanisms and instead focuses on financial instruments and strategies. This lack of clarity in expected state and local government roles in IH policies represents another issue in the conceptualization of IH policies at the federal level.

### ***Quantity over quality***

Another key problem in the implementation of IH policies in India is that, given India’s massive housing shortages for the poorest of the poor, the government also proposes IH units for families in that designated income group. However, IH practice elsewhere in the world suggests that the market can accommodate only moderate-income families in IH projects. To reach lower-income groups, the government may need to heavily create and subsidize a stronger incentive mechanism.

The federal government in India is so far from the implementation level that its policy prescriptions are unrealistic for ground-level conditions and are unsuitable for a ‘one-size-fits-all’ approach. As a result, there are many instances where states also do not follow federal instructions. Using intergovernmental channels and practices that are innovative, and occasionally subversive, several state governments implement federal programs with special

programmatic changes.<sup>4</sup> Program spending priorities deter the federal government from looking too closely at such subversive practices. Unspent budgetary allocations would mean program lapse and a bad reputation for the overall efficacy of the government program and reign. Therefore, the end-of-year budget review invariably involved the relaxation of many conditions for grants-in-aid based on ‘fund utilization.’ States tend to wait for this opportunity to negotiate with the federal government and succeed in obtaining relaxations to policy prescriptions.

Curious about the change in PMAY IH reform conditions and relaxation of qualifying location criteria for siting low-income housing projects, I probed one of the federal PMAY officials about the thinking behind the change. He retorted irritably, “They [low-income families] are getting houses, what more do you want?” [27] The question of where these houses come up and whether poor people would want to move receives marginal importance in this game of numbers. On the other hand, there isn’t enough pressure from housing activists to streamline the IH policy processes. There is a tacit agreement among housing activists that market developers would never agree to part with their profits and that state governments could not implement and manage these units appropriately. Social activists and NGO representatives on housing issues in India unanimously agree that the solution to India’s housing crisis is granting land tenure and enabling self-help housing development in slums and informal settlements. With such diametrically opposite philosophies to low-income housing, it is no surprise that there exists such a wide chasm between policy goals and implementation realities.

Different stakeholders unanimously demand that the federal government do more than provide carrots, sticks, and sermons. Activists ask, “Why can’t the federal government formally adopt the constitutional Right to Housing instead of playing this cat and mouse game with the states” 29]. The state and local implementing agencies frustrated with changing federal mandates say, “Federal government needs to fund affordable housing projects without blindsiding us with unfunded mandates.” And builders belligerently demand,

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<sup>4</sup> For example, under PMAY, Uttar Pradesh state undertook land distribution initiatives in some districts before embarking on BLC. In these cases, where the applicants have no land to undertake housing construction, PMAY originally prescribed PPP based projects under the AHP component. Andhra Pradesh, on the other hand, has modified the AHP component to undertake 100% LIG/EWS units instead of mixed income developments as PMAY proposed.

Why should we build affordable housing? The federal government should stop skewing the urban land markets with the large public sector land holdings that are completely underutilized. Instead of devising corporate social responsibilities, the government should chalk out ministerial social responsibilities and solve the affordable housing crisis [6]

Further, IH policies cannot be the only means to reform the existing exclusionary planning and land management environment, especially given the massive affordable housing shortages in India's cities. As a planner remarked,

IH policies since the 1950s, when implemented right, might have ensured that we didn't have the current housing crisis or these many slums. But we are now past the point where IH policy could help. We need large-scale plans. [5]

### ***Progressive states and paper policies***

A series of federal policies aimed to engender competitive federalism by allowing states and cities to compete for limited federal dollars through conditional grants and reform mandates. The federal-level policies have, in many ways, succeeded only in creating policies rather than legislation. The long list of Andhra Pradesh state policy responses to federal IH mandates listed under **Error! Reference source not found.** indicates that federal reforms were more tangible in the appraisal forms filled by the implementing agencies, but not in legislative action or implementation. In a country where planning is more flouted than practiced (Roy, 2009), legal authority gives implementing agencies more teeth and regulatory ground. As one local official aptly summarized the issue,

Law is a law; we are bound by it. If it exists, we implement or at least try to do the best of our abilities, but with government orders, if you delay long enough, they will change, and you are not accountable [9]

At least three [10, 12, 18] other local and state-level officials concurred with this view. The states and the developers have successfully used executive orders as a nebulous policy tool in response to federal reform mandates. Any legal sanctity to IH policies was toothless as IH policy remained a standalone initiative without any accompanying institutional roles and

monitoring framework. The state government prefers executive orders for their convenience, and builders prefer them for their flexibility.

"Andhra Pradesh has always been great at moving papers," remarked a federal policy aide who coordinated state matters at the federal government [32]. In the era of competitive federalism in India, 'paper moving' is undoubtedly a handy governance tool to have. This sign of 'readiness' and willingness to undertake federal government initiatives has created the definite illusion of inclusionary housing policy penetration and success in Andhra Pradesh's case.

Despite its reputation as a developmentally advanced state with well-developed institutional capacities, IH implementation experience in Andhra Pradesh clearly highlights the issues with institutional coordination and implementation monitoring. There is a serious need to build state and local government capacities to cater to India's development needs. Additionally, there is also a need for building civil society strength on housing advocacy issues at the state level. The absence of housing advocacy organizations participating in housing policy discussions at the state-level was palpable when faced with the strength of the developer lobby.

### ***Path forward***

The federal government, with its proprietary control of the largest chunk of tax receipts in India, also has the greatest responsibility to provide adequate financial support to the states and local governments (Ahluwalia, 2019). This applies to issues that the federal government has no constitutional mandate to provide, including housing, claim the housing activists [8]. The current model of tying reforms to conditional grants has not yielded the intended benefits outside of ticking some reform check boxes. The model has instead created confusion in pursuing divergent program objectives.

During my fieldwork in Andhra Pradesh and Telangana states, implementation agencies reiterated that conditional grants were not an effective tool for policy change and implementation. Incentives, they claimed, were better suited for ensuring active engagement. While incentives and conditional grants are in many ways similar, states argue that given the crippling affordable housing needs in the country, grants for affordable housing cannot come tied with too many stipulations. A senior state official from Telangana, where the state government had issues with PMAY funding stipulations, said:

Give us money and let us choose to do it our way because we understand our needs better; if you want it done a specific way, incentivize it. Do not tie all of it in project disbursements [14].

Perhaps the way forward would be for the federal government to let go of the IH policy mandates and instead encourage states to create public land policies to find viable land for affordable housing. If the federal government were to make a percentage of housing project funds contingent on state land banks created for affordable housing policies, it might trigger state-level initiatives that explore inclusive housing policies at multiple scales to find well-connected land. Guidelines and best practices by the federal government on land bank creation could nudge the state governments and provide technical know-how. It would also improve developer confidence in entering the affordable housing sector. In addition to resolving several glitches in project implementation due to land transfers in the current model, it would also provide the necessary opportunities for convergence of housing, land management, and planning policies and tools.

Some respondents shared an optimistic future for IH policy in India's current housing federalism. They argued that, with increasing housing shortages, "state governments will come to recognize the importance of IH reforms" [40]. One developer said that housing markets in India have, in fact, started to skew in favor of low-income housing and that demand for high- and middle-income housing is tapering off [41]. He was optimistic that now is a good time for developers to collaborate with the government in shaping policies that make low-income housing production more profitable. This view portends a potentially more hopeful future for IH policy than this paper may lead us to believe.

## **Conclusion**

The Indian federal government has 21st-century ambitions of establishing the nation as a global economic power. It must contend, however, with its 20th-century planning ideology and tools. The study of federal IH objectives and state responses evidences this disjuncture with which India consistently struggles. While the federal government can afford to seem contemporary in its policies and political ambitions, states and cities serve as the implementing agents who cannot escape outdated federal housing policy and programming practices.

Andhra Pradesh's experience with inclusionary housing policies, at the behest of federal programmatic design, tells a story of steady decline. Conversely, the Andhra Pradesh IH policy experience may be viewed as phasing out an "impractical policy." However, we can view Andhra Pradesh's IH implementation experience as a definitive study of India's federalism. We can see how the federal agencies *push* reforms and states *pull* federal resources. We can also see how reforms exist on paper instead of in actual delivery, how objectives for economic progress battle with fractured institutional systems, and how governmental ideals of social equity conflict with their deeply embedded structural inequalities.

This study shows that in the absence of laws and mandates, federal governments exercise a range of intergovernmental tools, including 'carrots, sticks, and sermons,' to encourage local adoption of IH policy. There is a growing use of federal conditional grants and incentive programs in India's urban sector to encourage state and local government participation in many areas, such as infrastructure, service delivery, and urban management. Internationally, there is an increased focus on how national policies can guide sub-national governments in achieving development goals. This study can offer insights into the possible non-legislative tools national governments can employ to engage their regional and local governments.



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## Chapter 3 Low-Income Housing Development in India: Strategies for Income Mixing and Inclusive Urban Planning (Paper 2)

### Abstract

Federal housing programs in rapidly urbanizing countries like India are targeting the expansion of low-income housing stocks. However, most of these large-scale low-income housing developments occur in the urban peripheries, and they are cut off from opportunities and essential urban infrastructure. They not only indicate policy failure but also exacerbate urban segregation in growing cities. Federal policies to tackle these problems in India are geared towards relatively small-scale mixed-income initiatives like inclusionary housing and public-private partnerships. Evaluating these efforts based on four cases in the city of Vijayawada in Andhra Pradesh, this paper expands the literature on social-mix and mixed-income housing initiatives that is dominated by studies from the Global North. It identifies multi-pronged approaches to address 1) the failure of the current Indian federal policy involving small-scale mixed-income initiatives, and 2) the need to integrate housing initiatives with urban development at multiple levels, especially in the urban peripheries.

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## Introduction

Rising income inequalities and residential segregation are global phenomena (van Ham et al., 2021; Murray, 2017). These issues are more severe in the developing economies of the Global South. In these countries, rapid urbanization has exacerbated affordable housing shortages, resulting in the proliferation of informal settlements (Satterthwaite & Mitlin, 2014; Davis, 2017). Meanwhile, rising income disparities due to globalization forces have created enclaves of prosperity and affluence adjacent to spaces of abject poverty that do not have access to basic services (Smets & Salman, 2008; Murray, 2017). Spurred by international development goals, national governments in many Global South countries like India are pursuing expansive low-income housing policies aimed at providing improved structural housing conditions to low-income families (Buckley et al., 2016b; Tiwari & Rao, 2016). Most of these projects are located in urban peripheries due to high land costs in urban centers. Scholars and observers have pointed out that these efforts have often emphasized the expansion of low-income housing production without due consideration for overall urban development patterns and access to opportunities (Turok, 2016). In India, more than 200,000 units constructed under two national housing programs, *Jawaharlal Nehru National Urban Renewal Mission* and *Rajiv Awas Yojana*, during the period between 2005 and 2013 were vacant in 2016 due to their distance from economic centers and other social infrastructure (The Economic Times, 2016). Others have noted how patterns of spatial economic segregation are also being reproduced in the urban peripheries due in part to the development of enclaves of low-income housing without proper connectivity to jobs and infrastructure (Caldeira, 2017; Coelho et al., 2020; Murray, 2017). These patterns of *state-sponsored segregation* need careful study to encourage the integrated development of low-income housing projects to avoid the problems witnessed in some public housing projects in the Global North. It poses two key challenges to low-income housing provision in these rapidly urbanizing contexts. First, how can a balance be struck between producing high numbers of affordable housing units while ensuring that these units are connected to economic and social opportunities? Second, how can the integration of different socio-economic groups be encouraged while preserving their community ties and preventing displacement?

This paper argues that social integration and affordable production are not mutually exclusive objectives and that they may be achieved together when governments integrate low-

income housing policies with broader urban development strategies. This integration needs to be pursued at multiple levels and scales to provide improved opportunities for low-income families and facilitate socio-economic integration in growing cities. Current literature on housing policies for socio-economic integration in the Global North predominantly focuses on mixed-income housing policies – “a deliberate effort to construct and/or own a multifamily development that has the mixing of income groups as a fundamental part of its financial and operating plans” (Brophy & Smith, 1997) – at the neighborhood level (Andersson & Musterd, 2010; Chapple, 2015). However, as Tach et al. (2014) have argued, income mixing initiatives at broader spatial scales, such as comprehensive planning and inclusive development policies, can help deliver equitable housing and employment opportunities for all income groups. As this paper will demonstrate based on the experience from India, there is a need to deploy place-based housing strategies for socio-economic integration and income mixing at both the city level and in urban expansion areas.<sup>5</sup> These interventions should be paired with small-scale mixed-income housing initiatives like inclusionary housing policies to foster integrated and inclusive urban development.

Evidence gathered from four case studies of local implementation of federal mixed-income housing policies in Vijayawada, a city in Andhra Pradesh, India, shows that federal housing policies that encourage small-scale mixed-income housing strategies are not being implemented at the local level. Instead, given the acute shortages of low-income housing, local authorities are pursuing other strategies to find land and capital for producing large-scale low-income housing. When adopted through comprehensive planning and other land-use regulatory frameworks, these other strategies can provide sustained mechanisms for creating integrated communities and facilitate the development of mixed-income housing at small scales. This paper proposes incremental policy changes based on stakeholder perceptions and reception to existing policy ideas and suggests immediate intervention in the urban expansion areas where much of the future development is set to happen.

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<sup>5</sup> This paper uses the term ‘urban expansion areas’ to mean urban peripheries and growth areas that are not currently part of the city administration limits but are either contiguous or in close proximity to the city limits.

## Literature Review

### *Socio-economic segregation in Indian cities*

India's urbanization processes and its land use regulations are exclusionary towards the poor (Bhan, 2013; Kundu, 2014). Land use planning standards through building and zoning regulations often deem small building lots, low-quality construction materials, and built-up areas without large setbacks illegal. These regulations often serve to hinder poor people's access to decent living conditions (Mishra, 2017; Watson, 2009). The rising costs of urban land further disenfranchise the poor from accessing formal housing opportunities in cities (Steel et al., 2017; Turok, 2016). Consequently, squatting and densification of existing informal settlements within the urban core, particularly in those that offer employment opportunities, are a regular feature in Indian cities. These processes have resulted in the 'ghettoization' of the poor into informal settlements, otherwise labeled as *slums*<sup>6</sup> in government policy documents and regular parlance. These informal settlements are deprived of basic infrastructure services, face environmental precarity, and battle constant threats of eviction. At the turn of the 21<sup>st</sup> century, informal settlements were slowly becoming accepted as poor people's response to the market's failure and rigid government land use and development control (Buckley & Kalarickal, 2005; Roy, 2005; Satterthwaite & Mitlin, 2014). These pockets of poverty are growing together with the emergence of enclaves of affluence in fast-growing cities due to rising inequalities in the era of globalization (van Ham et al., 2021; Murray, 2017).

Recent studies have found that segregation is also clearly prevalent at the street and neighborhood levels in Indian cities along caste lines (Bharathi et al., 2021). These authors point out that such deeply embedded patterns of caste and religion-based segregation are comparable to race-based socio-economic segregation in the United States (Bharathi et al., 2021). Thus, reviewing the U.S. experience in addressing residential segregation may offer lessons in understanding India's efforts.

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<sup>6</sup> The usage of the term, 'slum' is widespread in policy and other government documents in India. While the term is not often used in the same pejorative sense as in the Western countries, the author recognizes the adverse impact of the usage of the label. This paper uses an italicized form of the word to denote the original use of the term in government policy and programs in India. Where the author discusses issues outside of government terminology, the term 'informal settlements' is used.

### ***Integrated urban and housing development: income mixing strategies beyond public housing redevelopment***

As the literature has widely documented, the U.S. federal government has launched mixed-income housing projects during the past 20 years, largely in response to the concentration of poverty in inner-city neighborhoods in general and public housing projects in particular (Goetz, 2000; Schwartz & Tajbakhsh, 1997; Vale & Shamsuddin, 2017). The objective of mixed-income housing development, a type of social mix housing, is to promote socio-economic integration and advancement of marginalized communities through exposure to the social and economic advantages accessible to their high-income neighbors (Arthurson, 2010b; Chaskin & Joseph, 2015; Imbroscio, 2016). Social scientists have argued that inner-city crime and socio-economic distress resulted primarily from the concentration of poverty in public housing projects that adversely impacted low-income residents (Bloom et al., 2015; Chaskin & Joseph, 2015). These adverse effects ranged from poor behavioral effects on children due to the lack of appropriate role models to reduced socio-economic opportunities for adults and low collective bargaining power in city politics for improved infrastructure and the built environment (Chaskin & Joseph, 2011; Curley, 2010). However, empirical results from mixed-income housing initiatives aimed at mitigating these adverse effects show conflicting results as described below (Thurber et al., 2018).

It appears that the direction of income mixing and whether it is by residents' own choice are important in determining the success and desirability of those mixed-income housing initiatives. Mixed-income housing initiatives that relocated some low-income families to high-income neighborhoods were found to have improved development outcomes in health, education, employment, and safety in young children (Chetty et al., 2016). In contrast, those that redeveloped existing public housing projects by displacing low-income families were found to be harmful (Bloom et al., 2015; Musterd & Andersson, 2005). Overall, scholars argue that low-income families mainly benefit from access to the improved living environment, including schools, transportation, and neighborhood services that mixed-income developments offer (Berube, 2006; Curley, 2010; Fraser et al., 2013), rather than close social interaction through proximity to higher-income groups themselves (Arthurson et al., 2015; Bloom et al., 2015). Given these findings, it seems that cities could pursue two types of strategies to improve low-

income residents' access to social and economic opportunities. The first is to enhance connectivity to opportunities and infrastructure in the existing low-income neighborhoods while protecting them against gentrification; the second is to create new developments that are socio-economically integrated. Given this study's focus on new developments, the rest of the paper will focus on the second type of strategy.

Strategies for new mixed-income housing developments could occur at smaller scales through project-based financial subsidies or land-use planning instruments like inclusionary housing. *Inclusionary housing policies* require developers to provide a specific portion of income-restricted units in new development as determined by the local authority (Kontokosta, 2014). Cities widely use inclusionary housing policies to mandate or incentivize the production of affordable housing by private developers (Thaden & Wang, 2017). The underlying objective is that being tied to market demand would result in the location of inclusionary housing units in high-opportunity areas with high-quality infrastructure (Calavita & Mallach, 2010). However, the need for the equitable spatial distribution of opportunities is not limited to infrastructure within neighborhoods. Other considerations like broader access to economic opportunities, quality health services, availability of recreation activities, and safety from environmental risks are also relevant in an urban setting (Galster & Sharkey, 2017). These considerations extend to geographies beyond the immediate impact areas of the close-grained mixed-income housing policies like inclusionary housing to city and sub-city levels, spreading across political jurisdictions and the metropolitan region (Andersson & Musterd, 2010; Galster & Sharkey, 2017). Strategies at those broader levels can also encourage mixing of different income groups and create inclusive and diverse areas at the city and sub-city level through a variety of deliberate interventions: 1) removing barriers like *exclusionary zoning* practices that restrict the building of low-income housing in high-income areas (Orfield, 2005; Serkin & Wellington, 2014); 2) requiring accommodation of housing needs of all income groups through *fair-share housing goals* (Basolo & Scally, 2008; Calavita & Mallach, 2010); 3) reserving pockets of *residential zones for geographically dispersed low-income housing* (Santoro, 2019); and 4) leveraging public land and financial resources to require a greater share of low-income housing development in large-scale *public-private partnership* (PPP) projects (Okechukwu Onatu, 2010).

The existing literature on mixed-income or social mix housing models does not adequately factor in the question of scale and level of intervention (Arthurson, 2010a; Chapple, 2015). Approaching integrated and inclusive development at larger scales allows cities to tackle existing challenges in the spatial distribution of opportunities without forcefully redeveloping existing housing stock, as with public housing redevelopment efforts. It also helps guide future growth by facilitating the balance between integrating different social classes and preserving the sense of social belonging within each group while providing equitable access to opportunities. Those efforts may include city-level initiatives like removing barriers to affordable housing production as noted above, although without appropriate sub-local changes, enclaves of affluence and poverty can still persist (Serkin & Wellington, 2014). Efforts may also include infrastructure upgrades and income mixing at the sub-city scale or intermediate level through transit-oriented-development, zoning that encourages low-income housing, and leveraging public lands for affordable housing development so that residents “share important civic and commercial spaces and transportation facilities” (Tach et al., 2014, p. 10). The intermediate level is also a scale at which a natural balance between social integration and a desired amount of clustering may be facilitated within different parts of the city.

As this paper will show, strategies at these different levels are critical in rapidly growing Indian cities that have experienced widening gaps in income and living standards. The next section provides an overview of those place-based policies at different scales issued by India’s federal government. The sections that follow discuss their implementation success at the local level.

### ***National policies for low-income housing: Strategies for income mixing and inclusive development in India***

Starting in 2005, the Indian national government took a keen interest in urban development and housing policy issues. A series of national policies were issued that promote low-income housing production and *slum* redevelopment while prioritizing private participation through project-based funding (Yap, 2016). Three main programs, *Jawaharlal Nehru National Urban Renewal Mission* (2005-13), *Rajiv Awas Yojana* (2009-14), and *Pradhan Mantri Awas Yojana* (2015-current), were created as conditional grant programs that required state and local governments to enact a series of urban reforms in order to receive funding. Scholars and



international agencies have written extensively about these policies from the low-income housing and *slum* redevelopment perspectives. However, these initiatives have important policy components for income mixing and integrated development that were underexplored in previous studies. This paper contributes to this literature by studying low-income housing initiatives funded under the three federal programs since 2005 and the accompanying strategies for income mixing and integrated development.

Two federal schemes, *Jawaharlal Nehru Urban Renewal Mission* and *Rajiv Awas Yojana*, mandated the adoption of inclusionary housing policy reforms (coined as 'earmarking of land/housing for pro-poor housing') through conditional grants for land sub-divisions and housing developments, respectively (Jawaharlal Nehru National Urban Renewal Mission, 2006; Ministry of Housing and Urban Poverty Alleviation, 2013). *Rajiv Awas Yojana* also encouraged state and local property rights legislation to treat all informal households in a city to be legal and be marked as a residential zone in the city's comprehensive or master plan. However, the program that succeeded it, *Pradhan Mantri Awas Yojana*, has diluted both inclusive planning norms and inclusionary housing policy reforms and instead mainly focused on financial subsidies for PPP projects under the *Affordable Housing in Partnership* component. Under this component, private builders are compensated for including a minimum of 35% of the units for affordable housing in a mixed-income development in this PPP mode (Ministry of Housing and Urban Poverty Alleviation, 2016).

A careful review of federal housing policies in India revealed that each policy promoted a combination of income mixing and inclusive development initiatives that prominently targeted the delivery of low-income housing units by private developers. Policy interventions promoted inclusionary housing programs that were predominantly small-scale initiatives, while PPPs could either be small or large-scale projects depending on the size of land parcels involved in the process. There were some requirements under *Rajiv Awas Yojana* for government-led city-level initiatives on ending exclusionary zoning and offering protection for *slums* as residential zones for a limited period. Yet, the existing academic literature has largely focused on discrete examples of inclusionary housing (Mishra & Mohanty, 2017; Mishra & Sen, 2020) and PPPs (Mahadevia et al., 2018; Parashar, 2014; Sengupta, 2013). What is lacking is a clear

understanding of how federal mixed-income policy initiatives were translated into local-level implementation efforts and stakeholders' response to these initiatives.

## **Research Methodology and Context**

This study examines four mixed-income housing models promoted under India's three federal housing programs operating since 2005 in Vijayawada, located in Andhra Pradesh. The aim is to examine how federal housing initiatives have interacted with local efforts and actors to produce mixed-income housing in Vijayawada and to evaluate possible opportunities for intervention.

Vijayawada is the commercial capital of the southern state of Andhra Pradesh. It is located in a rich river-delta region with excellent road and rail connectivity to the rest of the country. The new capital of Andhra Pradesh, Amaravati, is under construction and within 20 km distance to Vijayawada with the intent to function as part of the larger urban agglomeration. Vijayawada is highly dense, with a total population of one million (according to the 2011 census) living in 61.88 square kilometers of the municipal area (Vijayawada Municipal Corporation, 2018). The acute land shortage resulted in the growth of informal settlements on canal bunds and hillslopes. A quarter of the city's population (about 227,000) is below the national poverty line, and a majority of them live in the 105 *slums* located within the municipal limits (Vijayawada Municipal Corporation, 2018). Vijayawada serves as a good site for examining mixed-income housing models, given its successful engagement with all three federal programs since 2005 through award-winning housing initiatives that are often showcased in federal government reports on best practices. Three of the four models included in this study were based on these reports. The fourth model was selected based on interviews with the key informants.

Document analysis, interviews, and site visits were conducted in an iterative process that helped continually inform the data collection and analysis process. All the interviews and field visits for the study were conducted between December 2018 and September 2019.

A total of 270 documents, including government policy documentation, executive orders, intergovernmental communications, evaluation and progress reports, newspaper articles, and government press releases, were analyzed. A manual content analysis of the documents was conducted, paying attention to the definition of terms, actors and agencies involved, specifics of the policy design, and project progress. Content analysis also helped construct the historical

timeline of mixed-income efforts and provided the framework for the stakeholder interviews.

Six key informants in different institutions at the federal, state, and local levels involved in the program design and implementation of the three federal housing programs helped identify other stakeholders through snowball sampling. A total of 61 interviews of planners, policymakers, housing activists, and developers provided the *thick descriptions* around policy choices and implementation realities (Geertz, 1973). On average, each interview lasted between 45 and 60 minutes. Interviews were recorded, transcribed, and coded using Dedoose software based on the overarching themes. Themes were drawn inductively from the data relating to different policy and project specifics: formulation/design process, roles, impressions, primary barriers, and feasibility assessment. These themes were further categorized based on different stakeholder groups and analyzed using a constructionist approach to thematic analysis focusing on the realities of data (Braun & Clarke, 2006). Direct quotes from the interviews are followed by numbers in square brackets that denote the identification number assigned to the specific interviewee to ensure confidentiality.

Field visits were possible only for three of the four mixed-income housing models evaluated as part of this study. The author visited each of the three field sites on two separate occasions. The second visit was within a month of the first visit to the site. On each visit, the author spent approximately 4 hours walking around the site, observing, and informally conversing with different actors present. Only one of the three sites was inhabited while the other two sites were in various stages of construction with an opportunity to observe the visitors and families who were already allotted units. Site visits helped contextualize how plan documents translated on the ground and provided a sense of the transportation access to the project site, the desirability of the living conditions, and the amenities available on site.

## **Findings**

### ***Four Models of Mixed-Income Housing Efforts in Vijayawada city***

This study evaluates the impact of federal mixed-income housing initiatives by examining Vijayawada's experience. Vijayawada Municipal Corporation is actively involved in *slum* rehabilitation and low-income housing development programs supported by the federal government. The following are some prominent examples of Vijayawada's experience with federal mixed-income housing policies since 2005. While each of the cases are carried out due to

federal mixed-income housing initiatives, their local implementation resulted in the expansion of implementation to larger scales at the city and sub-city level. Model 1 was a response to federal inclusionary housing mandates. Models 2 and 3 were carried out at a larger scale as part of the *slum* rehabilitation and PPP efforts in urban expansion areas. Model 4 is also a PPP-funded project integrated as part of a comprehensive plan for a greenfield city. There are no implementation examples for Model 1. Three different sites for Models 2, 3, and 4 are depicted in Figure 3.1.

Figure 3.1: Project location sites in the Vijayawada Metropolitan Region (adapted from Google maps, pictures by author)



### ***Model 1: The Inclusionary Housing Efforts***

In response to the inclusionary reform mandates at the federal level under *Jawaharlal Nehru National Urban Renewal Mission* (2007), land-based reservations were first introduced in 2011 through state-level regulation in Vijayawada for layouts (or subdivisions) proposed in an area greater than 4000 sq m. This requirement was repealed in less than a year due to widespread developer opposition. Instead, inclusionary zoning requirements were applied to multi-unit developments as per *Rajiv Awas Yojana* requirements (Ministry of Housing and Urban Poverty Alleviation, 2013). Twenty-five percent of the total housing units proposed in a land area greater than 5 acres (around 20,000 sqm) were to be reserved for low-income housing, while those in the

area ranging from 3,000 sqm to 5 acres were only required to financially compensate in the form of opt-out fees called shelter fees (also known as fees-in-lieu in other country contexts). These mandatory inclusionary housing requirements were revised to become voluntary provisions in 2017 under the *Pradhan Mantri Awas Yojana* with an option to pay a fee-in-lieu for even those developments in an area greater than 5 acres.

The actual implementation of inclusionary zoning stipulations is hard to assess due to the absence of appropriate monitoring systems and staff awareness. Multiple town planning officials from Vijayawada Municipal Corporation — both past and present — confirmed that no layout approvals were issued during the years 2011 and 2012 that would have required land reservations for low-income housing [interviews 10, 18, 20]. They also explained that there were no private large-scale housing developments in areas exceeding five acres, even in Vijayawada's metropolitan region that would trigger inclusionary units before 2015. While some projects prompted inclusionary housing requirements after 2015, due to the policy change in 2017, all qualifying developments opted to pay the fees instead of providing low-income housing units [7, 55]. Mostly, inclusionary housing policies in Vijayawada appear to have failed to produce any actual housing or land for low-income housing needs.

### ***Model 2: Jakkampudi Land Pooling Scheme under Jawaharlal Nehru National Urban Renewal Mission***

The Jakkampudi land pooling scheme is hailed as one of the best practices of inclusive planning and successful innovative land-sharing practices in India (Mishra, 2017). Funded under *Jawaharlal Nehru National Urban Renewal Mission*, contingent on the passing of inclusionary zoning requirements in Vijayawada, Jakkampudi is a township development on a *60:40 land-sharing model*. In land sharing or readjustment models, the government aggregates disparate parcels of land from the landowners and returns a predetermined percentage of their land as developed lots after planned development with infrastructure access and land use permissions at little or no cost (Turk, 2008).

In 2007, when the Vijayawada Municipal Corporation could not find viable public land close to the city as part of a *slum* rehabilitation effort, it approached landowning farmers about 7 kilometers outside the city limits of Vijayawada who agreed to a land-sharing model [10]. After pooling the land with the power of a tailored executive order for this project alone, in the *60:40*

*land sharing model*, the government developed the land and handed over 60 percent of their initial holdings to the landowners. A certain portion of the remaining 40 percent of the land after infrastructure provision was used for constructing low-income housing. A total of 226.54 acres were pooled from farmers from the villages of Jakkampudi and Gollapudi. Mohanty (2014) estimates that a full land acquisition effort for approximately 90 acres would have cost the government nearly INR 529 million (approximately 7.2 million USD) at the rate of INR 5.8 million per acre (about 800,000 USD)<sup>7</sup>. However, the development of trunk infrastructure at the cost of INR 460 million (6.3 million USD) and the conversion of agricultural land to urban use resulted in an almost three-fold increase in land value for the farmers and a savings of INR 69 million (about 940,000 USD) in land acquisition costs to the government (Mohanty, 2014).

Jakkampudi Jawaharlal Nehru National Urban Renewal Mission township, named after the federal program, is locally referred to as *Jakkampudi JNNURM colony*. Today, it is a thriving housing development with inbuilt social infrastructure like a school, community hall, post office, parks, and playground, as well as well-connected trunk infrastructure, additional facilities such as bus bays, a sewage treatment plant, and solar power panels. However, this site was not well-connected to the city when the project was proposed in 2007. As a local developer remarked, Jakkampudi was known as the “*adda* [den] of pickpockets and thieves” and that it is “no wonder that the landowners were willing to part with their land back then” [41]. The township is now “well-connected to the railway station and the city center and has good bus service access, thanks to government intervention and the growth of the city” [10].

Site visits revealed that the developed land returned to the farmers for higher-income housing was located three kilometers away from the township. In place of a high-income thriving version of the colony, there was a barren skeleton of sunken roads with teetering streetlight poles and overgrown weeds cutting off road access. The planner initially responsible for the housing project’s design hesitantly disclosed that landowners “did not want to be located adjacent to the low-income housing development with shared amenities and access roads” [10]. As a result, land developed for higher-income housing remains vacant with crumbling infrastructure due to lack

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<sup>7</sup> One USD (U.S. Dollar) is equivalent to 73.4 INR (Indian Rupees) based on conversion rates as of October 19, 2020

of use. Others noted that the landowners had gained immensely from the conversion of agricultural land to urban residential use with “no cost or hassle,” and the rapid growth of the city would ensure a “twenty-fold increase in land value for future development” [58]. Therefore, while the land pooling model helped secure land for low-income housing, the mixed-income aspect of the development failed as an integration effort. Nevertheless, Jakkampudi is a definite win from the government’s perspective for its ability to secure land for low-income housing while providing access to necessary infrastructure within the development and to the city at large.

### ***Model 3: Jakkampudi funded under the PPP model- Pradhan Mantri Awas Yojana-Affordable Housing in Partnership***

About six kilometers further away from the Jakkampudi Jawaharlal Nehru National Urban Renewal Mission land pooling project, Vijayawada Municipal Corporation again proposed about 28,000 low-income housing units on 265 acres under the *Pradhan Mantri Awas Yojana-Affordable Housing in Partnership* component during the period 2017-20. It is one of the largest developments sanctioned in the country that envisions PPP developments to encourage private-sector participation in the affordable housing sector (Ministry of Housing and Urban Affairs, 2017).

Discussions in the field revealed that the Andhra Pradesh state had altered the *Affordable Housing in Partnership* model to construct 100% low-income housing without involving private developers [16, 49]. They also created a new organization called Andhra Pradesh Township and Industrial Development Corporation (APTIDCO), responsible for the planning, approval, 24/7 video surveillance construction monitoring, and maintenance of the *Pradhan Mantri Awas Yojana* projects. Officials note that the organization had applied the lessons learned from *Jawaharlal Nehru National Urban Renewal Mission* by ensuring high-quality construction through shear-wall technology, provision of the trunk and social infrastructure, and employment opportunities [46]. The state government is, therefore, completely embedded in the entire lifecycle of the project.

The site was originally a hill surrounded by mango orchards, paddy fields, and a lake. At the time of field visit, the massive hillside was being blasted and leveled to create buildable land. Additionally, the site is embroiled in several legal and practical problems. The project was

initially proposed as mixed-income housing and mixed-use development. However, negotiations for land pooling with the surrounding landowners failed due to extremely high market demand for land, and the project, as of 2019, caters only to the low-income families with some light industry.

Further inquiry revealed that during the initial setup phases in 2016, APTIDCO had planned to implement the *Affordable Housing in Partnership* component in the manner envisaged by the federal government. However, the state government chose not to accede to the incentives that the developers had requested: an increase in state subsidy contribution, several fee waivers, transferrable development rights, and relaxations of parking requirements. Instead, the state government adopted a model that gave them the control and resources to develop housing *en masse* and show “political favoritism” in determining who gets the housing and where [52].

In essence, *Pradhan Mantri Awas Yojana-Jakkampudi* is a very example of the large-scale low-income public housing projects located in city peripheries that the *Pradhan Mantri Awas Yojana-Affordable Housing in Partnership* guidelines hoped to change through PPP models and integrated development. However, the high-quality and speed of construction, in addition to the pressure from extremely skewed land markets in Vijayawada, appear to have aided the government effort at this stage.

#### ***Model 4: Comprehensive Plan for a Greenfield City – Amaravati***

Amaravati is the new capital city being built in the metropolitan region of the Vijayawada-Guntur-Tenali. The ambitious capital-building process started in 2015, for which a total of 217 square kilometers of agricultural land was assembled through a land pooling scheme by convincing 28,181 farmers to handover their land to the government (Andhra Pradesh Capital Region Development Authority, 2019). In addition to obtaining 25 percent of land in reconstituted land parcels, farmers also received 10-year annuities. The land pooling mechanism adopted as part of the Amaravati Master Plan (comprehensive plan) is different from that of the *Jawaharlal Nehru National Urban Renewal Mission Jakkampudi* project. While the government initiated the Jakkampudi land pooling process through an executive order for that single initiative, in Amaravati, the legislation explicitly passed to create the capital city determined the process. The Andhra Pradesh Capital Region Development Authority Act (2014) sets statutory



provisions for the reservation of 5 percent of the land pooled using this scheme for low-income housing.

When the development authority created the master plan for the new capital, it also reserved land for the poor. However, this mainly came out of the land pooling process, which itself experienced severe opposition from some villages (Ramachandraiah, 2016). The Amaravati city master plan is the only master plan in Andhra Pradesh — perhaps in the country — that included designated land parcels for low-income housing in different residential zones [5]. The development authority allocated land in ten different locations in the capital city region, where landless families from five villages are clustered on sites reserved for low-income housing. Under the *Pradhan Mantri Awas Yojana*, construction of a total of 5,024 units has been proposed (Andhra Pradesh Township and Industrial Development Corporation, 2019). Many of these have already been grounded, and some were closer to completion during the site visits.

According to one of the planners interviewed in this study, the actual implementation resulted in about 3% set-asides against the 5% requirement stipulated in the Andhra Pradesh Capital Region Development Authority Act (2014) [55]. The Capital Development Authority planners also said that these set-asides were a one-off case and that there were no plans to reserve any land parcels for low-income housing in the future. Additionally, the revision of inclusionary housing mandates in 2017 means that developers may choose to pay a shelter-fee instead of building low-income housing units in any future housing developments. Therefore, once fully developed, Amaravati and its surrounding areas could ultimately become like every other Indian city where the poor are forced to make their own space through informal means and land occupation.

## **Discussion**

### ***Federal policies and local low-income housing initiatives: Where is the disconnect?***

Overall, federal reforms that prioritized small-scale mixed-income initiatives like inclusionary housing policies and PPPs, which shift the onus of low-income housing provision to private developers, have failed in Vijayawada, as examined under Models 1 and 3. The city-level initiative, as discussed under Model 4 in Amaravati, was an isolated effort. Overall, in the state of Andhra Pradesh, suggestions for inclusive development at the city level through

comprehensive planning initiatives, such as reservation of residential zones for low-income housing, had no impact. Some protection was being offered to informal settlements by conferring property rights or a level of security of tenure on a case-by-case basis [5, 4, 21]. The only initiatives that appear to have succeeded in their implementation were large-scale low-income housing projects in urban extension areas under Models 2 and 3. While these were developed under the PPP component encouraged by the federal government, they deviated from the federal intent, being neither delivered by private developers nor provided on private lands. More importantly, they were not mixed-income housing. Instead, they were primarily led by the state and local governments on public land where possible or by pooling land when necessary, and exclusively provided for low-income families. Insights into the disconnect between federal policies and local implementation through local actors' perceptions can help explain the barriers and possibilities for policy reception. The following discussion is grouped by major place-based initiatives.

### ***Comprehensive plans do not respond to equity concerns***

Master planning (or comprehensive plan) processes in India are disconnected from realities on the ground and have consistently disenfranchised poor people with impractical building standards (Bhan, 2013; Mishra & Mohanty, 2017). Therefore, housing activists are justifiably skeptical of planners' ability to cater to low-income housing needs. Other measures, like the setting of fair-share goals through comprehensive plans, are also partial and unreliable efforts. Most master plan-enabling legislation requires a housing needs estimation for different income groups based on population projections. However, such projections are mostly far-removed from the reality of the growth patterns experienced by Indian cities (Ahluwalia et al., 2017), and these projections rarely translate into zoning stipulations [23].

Local town planners are also resistant to incorporating residential zones for low-income housing at the city level. While some claimed it was an impractical initiative [7, 10, 14], others objected to the principle. One town planner explained, "I can't get the developers to accept a low value for their lands because I decided to shade [color coding on zoning map] their land for low-income housing. It is not for environmental concerns" [51].

Another town planner felt that equity-based concerns had no room in land use planning; "Any policy efforts that try to link urban poverty and town planning are just conceptualizing

wheels within wheels” [3]. Therefore, when federal government reforms required master plans to incorporate reservations for low-income housing, planners conveniently passed these requirements on to the developers through inclusionary zoning mandates for private sector-led new housing developments instead of making city-level changes.

One planner who was sympathetic to planning for equity explained that even though equity objectives are important in planning processes, there is very little they could do in the already built-up areas of the city. He said that it is easier to incorporate equity measures when “we are building from scratch” [5]. Model 4 in Amaravati is a clear example of this process, where residential land was reserved for the lowest-income group through the land pooling legislation as a greenfield city was built. However, initiatives to build new towns are very few, and most of the urban growth occurs in the existing cities.

***Inclusionary housing policies are ‘too close for anybody’s comfort’ and financially unviable for developers***

Developers during the author’s fieldwork were very critical of planning norms like inclusionary housing policies that were redistributive in intent. This sentiment is perhaps understandable from developers, given the perception of public officials discussed above. Developer resistance resulted in repeated amendments and dilution of inclusionary housing norms. Private developers stated, “We don’t want to do this [inclusionary housing] as a charity” [43]. Policies that require them to give up the most expensive commodity in India — urban land — developers argue, are “unfair” and implausible [6]. Government functionaries were also clear that inclusionary housing policies were not a priority at present and that there were no plans to modify the incentive structure to accommodate developer concerns.

One developer laughed at the idea of housing extremely poor people in a mixed-income development and said disparagingly, “Do you think people from the *shums* would know how to use the community swimming pools? They will likely wash their clothes in them” [6]. Housing very poor people adjacent to high-income families within one project, sharing the same amenities was “too close for anybody’s comfort,” according to another developer [57]. While entertaining the idea of mixed-income housing, another said the idea of “servant quarters” might be a selling point for high-income flat owners who may be interested in buying low-income units for housing their “drivers and other household help” in close proximity for “convenience” and “making sure

that they remain ‘loyal’ and reliably available” [42]. Many planners and activists agreed with the developers that the most significant selling point to the idea of mixed-income housing would be to market the idea of servant quarters given the socio-economic fabric in India. This notion clearly underscores the innate class differences and their acceptance in the Indian context. One housing activist clarified their position, “Poor people don’t have a square foot space to call their own in our cities, to stop their evictions and to protect their right to stay is itself an uphill battle, how can we even think of social integration when basic needs are not being met?” [38]. The highest priority, other activists concurred, should be protecting and encouraging incremental development of existing informal housing and extending these rights to informal settlements in the future as well. Another activist responded to the researcher’s prodding regarding inclusionary housing policies with a frustrated sigh: “If the government that has a clear responsibility to provide for the poor people won’t do anything on their own, it is laughable to think private developers would cut their profit margins to house poor people” [8].

When asked about the possibility of providing low-income housing directly to low-income families, builders concurred that it was "impossible" for them to offer price points for people in the lowest income quartile in their developments, even if inclusionary housing policies were designed with better incentive structures. Experience from the United States also suggests that inclusionary housing policies mainly cater to workforce housing, rather than low-income families served by public housing (Thaden & Wang, 2017). Therefore, inclusionary housing policies’ ability to realize close-grained social integration in India is hampered by both developers’ financial concerns and the deeply embedded notions of class segregation by all the actors involved.

### ***Private developer participation in PPPs for low-income housing: Why they don’t and what they want***

In federal low-income housing policies that envisioned delivery of low-income housing units by private developers, PPPs received the maximum attention and financial thrust. While inclusionary housing policies were favored as conditional reforms, their actual implementation relied heavily on local and state interest and compliance (Mahadevia & Datey, 2012). On the other hand, PPPs are designed and funded directly by the federal government with a continuous upward revision of financial subsidies since the *Affordable Housing in Partnership* scheme’s

introduction in 2007. Scholars have pointed out that PPP projects were mainly prevalent only in states where the government could offer public land for the development of affordable housing (Bhan et al., 2014). Where private lands were involved, they were located in far-flung areas with poor connectivity and infrastructure, resulting in very poor occupancy rates (Deb, 2016).

Discussing their disinterest in PPP projects under the *Pradhan Mantri Awas Yojana-Affordable Housing in Partnership*, developers in Vijayawada revealed that urban land management and planning processes at the local level were major deterrents. They explained that government subsidies and any additional revenue from the sale of market-rate units through cross-subsidization “does not adequately compensate” for the issues inherent in dealing with “multiple stages of bureaucratic mess, let alone towards the high land costs in urban areas” [43, 57]. They also stated that they would not be able to cater to the housing needs of people with informal jobs and that “it is a segment best served by the government” [58]. Overall, developers concur that the biggest attraction to leveraging private land in large PPP projects is the easy access to trunk infrastructure and planning permissions for their land parcels with government support. Financial incentives offered by the government, they said, though a welcome sign, are “minuscule when compared to the value appreciation” their lands acquire from the connectivity [42]. This aspect indicates a high potential for the government to bargain for at least moderately low-income units in urban expansion areas. Additionally, they argued that with its large-scale low-income housing construction, as shown in Model 3, the state government of Andhra Pradesh has “completely taken over the low-income housing segment” and that it is difficult for developers to offer competitive pricing options [41].

One of the recurring sentiments from the builders, planners, and the housing activists was, “Why ask the private developers when the government is taking such a big interest in building affordable housing themselves for cheap?” Stakeholders answered simply: “vote-bank politics” [10, 43]. They explained how these public housing developments, called housing colonies, became a hotbed for vote extraction. Many still bear the symbol of the political parties and statues of the leaders under whose aegis the development took place. Therefore, local governments with institutional and strategic advancements are more drawn to mass-housing projects with a high proportion of the shelter-poor population with voting rights.

### ***Large-scale low-income public housing may be an inescapable reality***

Examining the four models for low-income housing provision in Vijayawada and discussions with different stakeholders shows how state and local governments dominate the low-income housing markets. This centralization of government initiative and investments in large-scale public housing projects in India coincides with global trends in rapidly developing countries (Buckley et al., 2016b; Sengupta et al., 2018).

Governments may be unwilling or unable to entirely rely on private developers for low-income housing production for various reasons. As discussed in the earlier sections, these reasons may range from 'vote-bank politics' to the private sector's disinterest. An important factor underlying these reasons is the massive housing shortage for the lowest-income group in Indian cities. Primarily, 96% of India's 18.78-million-unit urban housing shortage is for families earning up to 600,000 INR (about 8200 USD) per annum (Ministry of Housing and Urban Affairs, 2012). Of these, 60% of the housing shortages apply to the lowest income group earning up to 300,000 INR (about 4100 USD) per annum. These families are mainly employed in the informal sector and reside in informal settlements. It is also the income group national affordable housing policies attempt to target, and that the private commercial developers do not reach. Support for self-help housing and *slum* upgradation projects, on the other hand, has been conservative (Buckley et al., 2016a). Instead, large-scale public housing delivery appears to have emerged as a preferred solution at the implementation level, citing the massive housing shortages, the need for deep affordability, and "big plans" [3].

However, such large-scale projects also require large parcels of land that are hard to find within the city limits. This shortage makes building large-scale public low-income housing in the urban peripheries a "tough reality that implementation agencies have to contend with on the ground" [46]. Models 2, 3, & 4 examined in this study suggest cautious success in urban extension areas and may provide some lessons on what can be done to ensure the success of such initiatives.

### ***Opportunities for integrating housing initiatives and urban development in urban extension areas***

Models 2 and 4 (and to some extent, Model 3) suggest how local implementation agencies adapt federal policies and funding stipulations to work within local conditions and strategic priorities. Instead of working within the confines of PPP and inclusionary housing policy frameworks, state and local governments in Vijayawada adopted land-sharing approaches to find appropriate land with potential for quick urban development and connectivity. A local planner explained their approach: “What is *around* the housing project is as important as what is *inside* the public housing project [added emphasis]" [20]. He suggested that the Jakkampudi JNNURM colony (Model 2) was successful since they prioritized an "integrated environment" by enlarging the scope and considering infrastructure considerations and connectivity beyond the narrow focus on an individual low-income housing project. He agreed that the social integration component did not "play out as expected" but reiterated that planning for a wider area provided infrastructure investments and accelerated the city's growth towards the project site. More importantly, he suggested that the provision of plotted developments for higher-income groups helped uplift the area's development potential overall and brought more opportunities and connectivity to the low-income housing colony.

Unlike with Model 2, under Model 4 in Amaravati, vast expanses of land were pooled for a greenfield city, and low-income housing units were scattered across key sites instead of concentrating them in one location. While it is still early to speculate on the success of an ongoing project as the capital construction project is in itself on hold, Model 4 may have increased options for social integration with other socio-economic groups. On the other hand, it may lack supporting infrastructure provided exclusively for low-income families, such as skill development and training institutes, schools, market space, etc., in Model 2. It requires careful experimentation and evaluation to find an appropriate balance between clustering and social-mixing to realize social integration objectives in the Indian context. However, at this time, land pooling appears to have worked as a successful strategy for models 2 and 4 in securing suitable land for new low-income housing development with the potential for rapid and planned urban integration. Yet, land pooling attempts were explicitly tailored as an individual initiative, rather than through a systemic mechanism using zoning regulations, in both these cases. Issues faced in Model 3's implementation suggest a need for a sustained initiative that supports planned urban

expansion through planning and zoning regulations with inbuilt mechanisms for reserving land for low-income housing. However, cash-strapped local planning and civic agencies charged with policy implementation can only afford to undertake large-scale infrastructure upgradation and planned expansion with federal financial support.

### ***Ending the disconnect: Need for a multi-level approach***

The current federal housing programs in India offer funding to subsidize the construction costs of low-income housing development but do not address the needs for integrated land development and planning (Tiwari & Hingorani, 2014). There was a clear disconnect between local strategies and federal intent for low-income housing delivery on the policy front. While local models relied on land-sharing mechanisms in the urban expansion areas, federal policies failed to recognize the need for a complementary regulatory reform for integrated development in the urban expansion areas. Instead, federal policies encouraged small-scale, developer-led models for mixed-income housing “to allow a self-propelled market” in delivering low-income housing (Ministry of Housing and Urban Affairs, 2017, p. 9).

The biggest disconnect in the federal government’s approach is that small-scale mixed-income strategies like inclusionary housing and PPP approaches were proposed as *low-income housing enabling mechanisms* that emphasize the participation of private developers, rather than as mechanisms for encouraging a social mix of different income groups. To truly encourage small-scale mixed-income initiatives that foster social integration, the federal government has to offer deeper subsidies, encourage ownership and rental models for a mix of income thresholds, and require local governments to offer better incentives for inclusionary housing policies.

Another aspect that needs particular attention in federal policy is evaluating and eliminating existing barriers to inclusive and integrated urban development. Incorporating social equity objectives into land-use planning and regulation regimes through the comprehensive planning process is a challenge given the planners' apparent resistance to it, as was observed in the author’s fieldwork. At the city scale, housing initiatives and strategies need to be better integrated with urban development plans through fair-share goals that are then translated into zoning stipulations, especially in the area of place-based production strategies for low-income housing. Land use planning and other regulatory frameworks at the state and city levels should protect existing informal settlements by reserving them as residential zones for low-income



housing. There is also a need for greater action to modify exclusionary planning norms and building regulations that create entry barriers for poor people in accessing formal housing markets. At a sub-city scale, project proposals for large-scale land-use change and the use or sale of public land should trigger land dedication requirements for low-income housing development. In the urban expansion areas, land readjustment schemes could be carried out to ensure planned urban growth that would meet the housing needs of all income groups.

Among those proposed efforts, the federal government needs to pay immediate attention to urban expansion areas. These areas have not received any attention in federal housing policies to date, yet they witness considerable activity through federally funded low-income housing projects. Lessons from Vijayawada suggest that low-income housing developments benefit greatly from planned infrastructure development in urban expansion areas, particularly those that cater to the needs of market housing development. Federal policies and support can help address the twin challenges of unplanned urban growth and low-income housing shortages by encouraging regulatory and zoning changes for planned development in urban expansion areas that include low-income housing needs. This approach would help local implementation agencies to leverage land readjustment and sharing tools in the urban expansion areas, not only to find viable land for low-income housing but also to build inclusive urban environments.

At these expanded scales, low-income housing provision through integrated development of land, infrastructure, and market housing for other income groups can help create *self-propelled* economic opportunities. If the Indian government continues to ignore location and infrastructure needs in those urban expansion areas where the government has more bargaining power and a relatively clean slate to create integrated housing options, the country's affordable housing crisis will deteriorate, further exacerbating urban inequalities and residential segregation to the point of no return.

## **Conclusion**

Experience from the current federal approach to low-income housing provision in India shows a clear disconnect with local implementation challenges and preferences, and highlights how disengaged these efforts are from urban planning and development practices as well as the local regulatory framework. These efforts point to missed opportunities in bridging the extreme

socio-economic disparities and deeply embedded patterns of caste and income-based segregation in Indian cities.

This study offers suggestions for effective government intervention to connect federal housing policy objectives and implementation realities and identifies priorities for intervention. In doing so, it has contributed to the existing literature on scale-based strategies for promoting social integration and socio-economic development of low-income housing communities. It lends support to the argument that intermediate scales at the sub-city level may serve as areas for effective intervention for witnessing physical changes that can yield high policy impact. In the Indian context, it might also offer the path of least resistance at this time. However, over time, federal policies and local plans need to incorporate low-income housing and equity concerns at multiple scales to promote inclusive urban development. What these different scales mean may vary in different urban contexts based on population aggregates, densities, levels of development, and the growth rates of cities. However, charting planning strategies and housing initiatives at multiple levels offers clarity in assessing the conflicts that may arise when policies and implementation work at cross-purposes. We need more housing research that addresses urban segregation and inequalities at multiple scales in developing economies like India. Such research will help identify targeted government interventions that recognize the polarizing patterns of urban growth at large and in assessing government's own role in exacerbating them.

Large-scale expansions of low-income housing stock in Global South countries like India encounter difficult challenges but also present unique opportunities for making impactful decisions. This study argues that affordable housing policies, inclusive development goals, and social integration objectives should be pursued together under a unified objective, aided by both financial and land use planning and regulation framework. Such a unified effort will not only attend to low-income housing needs in a comprehensive manner but will help create a better and more integrated blueprint for an equitable urban future.

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## **Chapter 4 Meddlesome-Middle? State Preemptions and Inclusionary Housing Policies (Paper 3)**

### **Abstract**

States play an important role when it comes to influencing local policy in the US federal system. Within inclusionary housing policy literature, where studies on state policies exist, they focus on states like California, New Jersey, and Massachusetts, states that have explicit mandates for inclusionary housing (IH) policies. However, state policies through explicit legislative restrictions, called ‘state preemptions,’ can also impact local policy. There is very little information, however, on negative political and ideological state-level IH policy environments. This paper focuses on three states that preempted local IH policies: Texas, Oregon, and Tennessee. Based on 50 semi-structured interviews and an extensive document analysis of government policies, legislative hearings, memos, and press releases, this paper finds that, rather than a binary choice, state IH policy positions are on a continuum between promoting and banning. The detailed cases in this study can provide guidance to housing activists and progressive local governments battling preemptions in their state contexts.

### **Introduction**

There is an immense interest in zoning reform in the United States, spurred by recent federal interest in zoning and its relevance for housing equity. In several states, such as Oregon, Colorado, California, and Connecticut, we are witnessing heightened action and interest in housing policy and zoning reform, including rent stabilization, banning single-family only

zoning, expansion of missing-middle housing, Accessory Dwelling Units, and inclusionary zoning policies, among others. These state-level policy initiatives aim to foster positive local change in zoning and housing policy practices. Planners have argued that state planning is necessary to discourage exclusionary local zoning practices and encourage affordable housing production (Infranca, 2019; Pendall, 2007; Witten, 2003). However, what happens when state planning discourages local affordable housing policies that attempt to tackle exclusionary zoning practices?

Planning research has paid little attention to state-level initiatives limiting local zoning and housing reform policies through state preemptions. State preemptions are legislative or regulatory action by the state government to eliminate or reduce the authority of local government over a given issue (Public Health Law Center, n.d.). Advocacy organizations and scholars argue that state preemptions increase health inequalities (Carr et al., 2020) and disproportionately impact women and people of color (Partnership for Working Families, 2019). According to a 2019 report, “At least 35 states currently enforce some limitation on cities' ability to protect or create affordable housing, whether by preventing them from enacting rent control and anti-discrimination measures, mandating inclusionary zoning, regulating short-term rentals, or some combination of these measures” (Kasakove, 2019).

Inclusionary housing (IH) policies<sup>8</sup> work in the intersection of zoning and housing policies. They have a long history of serving as a response to exclusionary zoning practices and racial segregation in the United States (Calavita & Mallach, 2010). They usually require or encourage market developers to dedicate a percentage of units or area in their project for affordable housing. There are several types of IH policies, and local authorities can tailor them to promote social integration and increase affordable housing supply in high opportunity areas (Wang & Balachandran, 2021). Existing research predominantly focuses on the merits and downsides of IH policies.

Within IH literature, there is a limited focus on multi-level governance structures and their impact on local IH policy interest and design. Where studies on state policies exist, they focus on states that have state-level support frameworks for IH policies, like California, New

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<sup>8</sup> This paper uses the term IZ and IH interchangeably to denote inclusionary housing or inclusionary zoning policies.

Jersey, and Massachusetts (Calavita & Mallach, 2010; Karki, 2015; Wiener & Barton, 2014). Together, these three states constitute about 90% of approximately 900 IH policy jurisdictions in the country – a clear indication of the importance of state-level promotion of housing policies for successful local adoption (Thaden & Wang, 2017). But there is very little information on what state-level policy environments look like in states that are politically and ideologically opposed to IH policies. Currently, eight US states ban IH policies, and several other states are deliberating similar action (Grounded Solutions Network, 2020). Studies have found that state preemptions against local adoption of IH policies have an adverse health impact both on the population at large and on Black people, specifically (Melton-Fant, 2020; Partnership for Working Families, 2019). The rise of state preemptions against local IH policies, and their negative impacts on communities of color, calls for a closer examination of state preemptions on IH policies.

This paper focuses on three states that had, or currently have, state preemptions that restrict local inclusionary housing policies: Texas, Oregon, and Tennessee. While the restrictions are still in force in Texas and Tennessee, Oregon lifted its preemption against inclusionary zoning in 2016. I seek answers to the following questions:

*What were the limitations placed on local adoption of inclusionary housing policies where states generally restrict inclusionary housing policies? What considerations shaped these preemptions, and to what extent?*

In studying these three states, this paper shows that state restrictions are best explained by a diverse set of political, socio-economical, institutional, and ideological conditions. It offers new dimensions to existing research on both state preemptions and planning efforts.

Contrary to the predominant literature on preemptions, which suggests that states either promote or ban local policy initiatives, this study argues that state policy positions on local matters are dynamic and exist on a continuum. It shows how different stakeholders manipulate state positions with sufficient motivation and effort over time. Further, the study demonstrates how preemptions in certain areas connect closely to other areas and how competing priorities shape stakeholder interest and policy negotiations.

Within the planning context, this paper draws attention to the understudied state environments and their actions on planning matters. We are witnessing renewed national attention to state zoning reform that benefits from a comprehensive understanding of state policy

positions. However, the focus still remains on states that proactively address exclusionary zoning practices. To effectively tackle housing problems nationally, we need to understand other state contexts where states are not just reticent but also restrictive toward local exclusionary zoning reform.

The literature review will first introduce the concept of preemption, subjects and the determinants of preemption, and their types. In the next section, we will examine the role state governments play generally within the planning field and specifically within inclusionary housing policy. A conceptual framework integrating scholarship on state planning and state preemptions is then proposed to analyze state policy positions in the inclusionary housing context. The methodology section explains the choice of cases and methods of data collection and analysis. This section is followed by the three case descriptions and a discussion comparing the three state contexts.

## **Literature Review**

### ***State preemptions: An overview***

While states have wielded state preemptions for almost a century, academic interest in social science is relatively new (Fowler & Witt, 2019). Planning scholarship on state preemptions has been noticeably sparse to this date despite the keen impact preemptions have on city administration and policymaking. Recently, starting in the latter part of the 2010s, multiple national policy think-tanks and advocacy organizations began tracking state preemptions against local matters. State preemptions against local mask mandates and discussions on rent-eviction moratoriums during the COVID-19 pandemic have resulted in broader public awareness and an uptick in scholarly publications about state preemptions in recent times (Brandtner et al., 2021; Mallinson, 2020; McDonald et al., 2020).

The term state preemption and its legal interpretation are value-neutral in that they are used to indicate state-level initiatives that can either restrict or enable local action (Schragger, 2017). However, states usually use preemptions to restrict local action rather than enable it, and they are more common in states under the Republican party's control (Boeckelman & Day, 2021). However, many Democrat-controlled state legislatures used state preemptions in the years preceding and during the civil-rights era to check discriminatory local policies. The new era of

state preemptions, scholars argue, is different in that they are characterized by rigid state control against progressive local action and urban innovation (Einstein & Glick, 2017; Frug & Barron, 2013; Scharff, 2017). Therefore, preemptions are generally discussed in the context of restrictive state-action, and this study will adopt a similar meaning. Where a specific type of preemption is referred to, qualifying descriptors are used.

Four aspects of literature that benefit from examination in this context:

1. What subjects are preempted?
2. What factors explain or aid state interference in the form of preemption?
3. What is the impact of the different kinds of state preemption on local action?
4. What can help change the status quo?

Much of the literature available on preemption from think-tanks focuses on the first question, and the emerging political science literature focuses on the second question. However, there is minimal existing scholarship on the third and fourth questions beyond some specific area studies. In the following paragraphs, I briefly review the current literature on preemptions in response to these four questions.

### ***Areas of preemption***

Different interest groups, such as the National League of Cities, Supporting Working Families, PolicyLink, Local Solutions Support Center, Grassroots Change, Economic Policy Institute, Movement Advancement Project, and National Multifamily Housing Council, are tracking state preemptions on several areas of interest. Local regulations on minimum wage, sharing economy, broadband and 5G technology, gun control, sick leave, plastic bag ban, fair hiring, LGBTQ rights, mask mandates, vaccination requirements, and sanctuary cities represent some of the many areas associated with a heightened state preemption in recent years (DuPuis et al., 2018; Haddow et al., 2019; Riverstone-Newell, 2020; Schragger, 2017). In areas related to planning practice, there have been preemptions that limit local regulation of housing and zoning issues, including income-source discrimination, inclusionary zoning policies, rent-control, construction materials, and short-term rentals (McFarland et al., 2019; Partnership For Working Families, 2019).

### *Determinants of state interference and preemption*

Political scientists have observed increasing interest in identifying explanatory factors of state preemptions in local matters (Briffault, 2022; Flavin & Shufeldt, 2020). Existing scholarship predominantly tries to assess preemption incidence related to state political affiliation. Scholars have argued that state-level conservative political interests actively oppose progressive city policies (Boeckelman & Day, 2021; Fowler & Witt, 2019; Riverstone-Newell, 2017). Additionally, they argue that the state's urban-rural population divide may contribute to this state-level bias against progressive urban policies (Scharff, 2017) and the "constitutional anti-urbanism" inherent to America's federalism (Schragger, 2018). This translates into opposition towards liberal politics of big cities who make up a greater share of the state legislature and thus significantly impact state politics (Rodden, 2019). This bias becomes further strengthened in states with unified control of government by a single party in the form of a trifecta of governorship and majority in both chambers of state legislature (Wagner et al., 2019). Barber and Dynes (2021) reject this view and suggest that the incidence of state preemptions is best explained by the extent of the ideological distance between the state and local political views. That is, Democrat-controlled state governments with liberal views may still be ideologically distant from an extremely liberal city. Overall, scholars point to a rearrangement of state-local relations that significantly impacts city powers (Schragger, 2017). Kim and Warner (2018) observe the rescaling of the state that constrains local policy innovation and revenue resources while increasing their responsibilities through unfunded mandates.

Conventional political science literature theorizes state-local relations, based on three defining factors. 'political culture,' wealth, and strength of advocacy in the state (Smith & Greenblatt, 2019). These factors do not directly engage with the contemporary debates on political and electoral explanations and instead focus on the 'culture' of individual states. The state's wealth evidently determines its ability to spend on human and business services. Advocacy and interest groups influence legislative opinion and raise common awareness regarding specific issues. Smith and Greenblatt define political culture as the "attitudes and beliefs broadly shared in a polity about the role and responsibility of government" (2019, p. 7). They suggest that Elazar's (1962) classification of states based on historical migration and settlements still broadly explain different state political cultures in the U.S.: Moralistic,



Individualistic, and Traditionalistic (Elazar, 1962).<sup>9</sup> Moralistic cultures view the government as essential in making positive policy changes for society's benefit. Individualistic cultures view government as a service provider to facilitate market forces for individual benefit.

Traditionalistic cultures are hierarchal in that politics is considered the realm of the elites to maintain the status quo. However, all these three factors, state wealth, political culture, and advocacy strength, determine and influence the overall policy direction of the state and eventually impact local affairs.

### ***Types of state preemptions***

State interference in local policymaking may take different forms, and each form can have specific impact. Two classifications mainly apply to preemptions based on their *extent* and *intent*. While they apply to any higher-level government interference, we will examine them from the context of state-local relations in this study. Change Lab Solutions proposes three types of preemption, ceiling, floor, and vacuum, that determine the extent of state action (Change Lab Solutions, 2019). The recent aggressive state action on local matters are being enacted through ceiling preemptions where the states do not allow their local governments to require “anything more or different” than what the state stipulates (Change Lab Solutions, 2019). Floor preemptions are state interventions where the state sets the benchmark for minimum standards, and local governments can set more rigorous standards. Public health advocacy groups prefer floor preemptions because of their ability to apply basic health and safety standards across the state (Public Health Law Center, 2010). Vacuum preemptions or null preemptions occur when state governments disallow local governments to act in some areas, even when the state does not provide any regulatory direction in those areas.

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<sup>9</sup> While some scholars believe that the political cultures are best explained by how people historically migrated and settled in the United States (Elazar, 1962), other people believe more strongly in the influence of regional groups and ideological concentration (North, South, Mid-West etc.). Yet some others reject these ‘archaic’ classifications and attempt a more ‘scientific’ method based on existing demographics on indicators such as women’s occupation, non-traditional families, and educational attainment to indicate ‘new political culture’ or ‘unconventional culture index’ (Clark et al., 1998; Sharp, 2005). Despite these many classifications, Smith and Greenblatt (2019) emphatically state that Elazar’s grouping still broadly applies to the U.S. states. For this paper, Elazar’s broad classification will suffice to provide a brief contextual background for each of the three states.

Figure 4.1: Types of state preemptions (compiled from (Change Lab Solutions, 2019))

Types	Description
<i>Ceiling preemption</i>	The state government does not allow local governments to require “anything more or different” than what the state stipulates.
<i>Floor preemption</i>	The state sets the benchmark for minimum standards, and local governments are allowed to set more rigorous standards.
<i>Vacuum (or null) preemption</i>	State governments disallow local governments to act in some areas, even when the state does not provide any regulatory direction in those areas.
<i>Express preemption</i>	The state passes a statute explicitly stating its position on a particular issue.
<i>Implied preemption</i>	Other state statutes might infer the state’s position on a given subject without an explicit preemption.

The intent of the state action characterizes the other classification of preemptions. When the state passes a statute explicitly stating its position on a particular issue, this is known as express preemption. When other statutes might infer the state’s position on a given subject without an explicit preemption, this is known as implied preemption. In implied preemption cases, courts may be approached to clarify the status, or the legislature may take it upon itself to pass an explicit preemption clarifying its position. There is a significant amount of overlap in preemption types.

The extent that state legislatures grant home rule to their local bodies determines how state interventions impact local authority. Local authorities in Dillon states require explicit state enabling legislation to designate certain functions to their local authorities. This legislation effectively becomes a vacuum preemption barring local action when the state does not act. Home-Rule states may enable their local government purview over certain areas but might be able to *clawback* certain functions or place maximum or minimum limits through ceiling or floor preemptions based on its overall intent. While Home-Rule states may allow local governments more freedom over local matters than Dillon states, home-rule status does not provide immunity to local authorities from state intervention if the state chooses to interfere (Stahl, 2019).

### ***Changing the status quo***

Advocacy and interest lobbying groups play a critical role in influencing state-level policy intervention. Research has specifically focused on how special interest groups have influenced

state preemptions by promulgating model bills (Kim et al., 2021; Riverstone-Newell, 2017). Law reviews have predominantly documented cases where parties have used ballot initiatives and litigations to settle state-local conflicts. Other studies, specifically related to tobacco-related preemptions, have discussed how advocacy coalitions organize and educate the public and legislators to rally support (Douglas et al., 2015). Advocacy and interest groups play a critical role in using media to influence public opinion and shaping the terms of the debate to sway the opinions of policy managers (Herbst, 2002). Advocacy actors include both *grassroots* actors representing marginalized communities with a broad membership support base such as tenant and labor unions, and *grassstops* agencies, that have powerful connections and a high-level understanding of policy specifics.

Overall, the literature review suggests that research on state preemptions has focused on the broader political and demographic determinants and distribution of state preemptions in the country. How preemptions on a given substantive area differ from one state to another, and how they impact local action and options to change the status-quo, have received very little interest. Specifically, existing scholarship on state preemptions does not nuance the desirability of some forms of state interference over the others by some actors. These actors may represent certain interest groups, academic fields and sub-fields with variable views on appropriate and desirable state action. The section below discusses how planners generally interpret state interference in land use issues.

### ***State interference in land use planning and zoning***

While the literature on preemptions generally discusses them as an overreach of state powers, planning literature has not always adopted such a critical stand. In fact, in the early 1970s, the era dubbed as the ‘quiet revolution in state planning,’ planners celebrated state involvement in local land use regulation. Arguing the limits of local governments in embracing redistributive policies (Peterson, 1981; Tiebout, 1956), planning scholars often call for state and federal government intervention in local planning and housing matters (Infranca, 2019; Lemar, 2018; Pendall, 2007).

Some scholars have argued that the quiet revolution in state planning failed due to weak enforcement mechanisms (Bronin, 2008), and others have called for more state action to end the malaise of exclusionary and restrictive local zoning regulation in the country (Lemar, 2018).

According to Infranca (2019), in the 1970s, states pressured local governments to support affordable housing development through increased regulation in the form of “additional planning requirements, procedural steps, or potential appeals” that increased local burden (2019, p. 824). In contrast, Infranca (2019) welcomes the current era of state intervention that is “displacing local discretion,” discussing a range of new state planning initiatives and proposals in California, Massachusetts, and New Jersey on ADUs and transit-oriented residential development. He supports these “bold new forms of state intervention,” advocating for complete preemptions of narrow elements of local discretion. Others have argued that more state preemptions could help make cities “freer and cleaner” (Gray, 2017).

Overall, even when discussing the new age preemption, planning scholars appear to have focused on initiatives with strong state action motivated by an effort to counter exclusionary zoning practices and increase affordable housing production and access. However, strong state action is not always motivated toward these objectives. As the earlier discussion on state preemptions suggests, states also act against local progressive policies that attempt to counter exclusionary zoning and housing practices, practices such as rent control, income-source discrimination (landlord discrimination against housing voucher-holders) inclusionary housing. Thus far, planning literature has focused very little on these instances of adverse state action against local policies.

### ***State frameworks for inclusionary housing policy***

Some states in the US took significant steps to guide and influence local land use regulation to discourage exclusionary housing practices responsible for urban racial segregation. The frameworks included *fair-share requirements* where local governments are either legally required to plan for affordable housing needs (as in New Jersey) or zone adequately for low-income housing needs to comply with comprehensive planning mandates (as in California). They also included *builders' remedies* that allowed developers of low-income or mixed-income housing projects to bypass exclusionary local zoning decisions (as in the case of Massachusetts). Such state-level frameworks do not serve as direct mandates for inclusionary housing policies. They are, however, tools that state governments deploy to influence local government action. In New Jersey, through court-ordered requirements (Mt. Laurel II) to discourage exclusionary zoning and the resulting state Fair Housing Act 1985, local governments were encouraged to

adopt IZ, and developers were granted builder's remedy (Bratt, 2012). In California, the supportive state policy frameworks for IH were incremental and more decentralized. Local authorities had a greater choice in preparing their housing elements and had a lower impact than New Jersey's judicial and legislative efforts. However, both California and New Jersey offered protections against legal challenges to cities that adopted IZ programs. Therefore, state frameworks to counter exclusionary zoning in the 1970s and 80s resulted in the country's first wave of inclusionary zoning programs (Pendall, 2009).

Over time, the growing development industry and increasing real estate prices led to the adoption of inclusionary zoning programs by cities and suburbs throughout the country, even without state frameworks (Calavita & Mallach, 2010). These local governments and their housing advocates look to IH programs to recapture the land value increases accumulated by developers for the public. This recapturing is done either through linkage fees or by asking developers to deliver centrally located affordable housing units tied to market development. *Linkage fees* are dedicated fees earmarked for affordable housing development and collected as a percentage of new permit applications for residential and other uses based on square footage. IH policies are often met with stiff opposition from developers since they cause regulatory burden and can slow the construction activity and increase costs (Anacker, 2020). Cities generally respond to developer concerns in two ways: Some cities take advantage of stringent IH requirements to discourage development and further social exclusion. Many offer incentives such as density bonuses, parking requirement waivers, and administrative fast-tracking and fee waivers to offset construction costs for affordable housing in IH projects (Schuetz et al., 2009). To discourage exclusionary IH programs, states like California created state-wide IH policy enabling mechanisms that set minimum standards for incentivizing developer participation through density bonuses.

IH policies continue to attract intense debate and have both strong proponents and opponents. There is contradictory existing evidence regarding IH policies' negative impact on the overall housing market when it comes to increasing housing prices and decreasing production (Bento et al., 2009; Freeman & Schuetz, 2017; Means & Stringham, 2012; Schuetz et al., 2007), and more encouraging evidence on IH's positive impact in improving socioeconomic conditions and community well-being (Dawkins et al., 2017; Diagne et al., 2018; Jones et al., 2021; Kontokosta, 2014, 2015; Schwartz et al., 2012). Despite the ongoing academic debates on the

effectiveness of IH policies, there local US are taking more interest in instituting IH policies (Spauster et al., 2021; Wang & Balachandran, 2021).

As states and cities continued to experiment with IH policies, multiple policy variations emerged. Considering the scope of this paper, we will restrict the discussion to mandatory and voluntary IH policies, referred to as MIH and VIH, respectively. MIH policies require developers to make affordable housing provisions with or without incentives. VIH policies are triggered only when the developer requests the city for enhanced zoning entitlements or variances. VIH policies may allow developers to opt-out from providing affordable housing either in the form of fees or allow other community benefit options such as public spaces, bike racks, and others. Local authorities may create IH policies with varying requirements based on the size of the development, type of development (rental or ownership), affordability period, among many other criteria, and state directives could impact local policy positions in many ways.

State policy positions on IH policies vary primarily for MIH and VIH policies and rental and ownership-based programs. Home-rule states that grant local land use regulation powers to their local jurisdictions may permit both MIH and VIH policies. Dillon Rule states must specifically enable the IH provisions at the state level to allow their local authorities to introduce any IH programs. Many states grant home-rule status for land use planning, at least to their big cities. However, states could claw back some powers or prohibit local governments from exercising previously granted functions. States may also indirectly impact IH policy provisions. In the 1970s and 80s, many states in the US passed explicit legislations (express preemptions), prohibiting their local authorities from passing rent control ordinances. These rent control preemptions<sup>10</sup> may prevent cities from instituting IH programs that target rental units because such IH programs may be inferred as government control of market rents. States that espouse market-friendly policies prohibit MIH policies since they are considered a ‘tax’ on developers. They may instead favor VIH policies and ask local authorities to ‘compensate’ developers for the additional costs of providing affordable housing.

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<sup>10</sup> According to the database, 26 states have rent control bans that pose barriers to IH policy adoption for rental housing. In three of these states (CA, CO & WI), legal challenges in court led to judicial ruling against IH policies for rental units. California amended its rent control ban to ensure IH rental policies are not in conflict and Colorado’s recent repeal of IH ban enabled MIH and VIH policies for rental properties.

Therefore, three broad state policy positions on IH policies through preemptions could be summarized as below:

1. States may stay silent on IH policies: Dillon states that are silent on IH policies create vacuum IH preemptions. Home-rule states with devolved land use planning functions may de-facto allow IH policies if there are no other conflicting state policy positions.
2. States may ‘enable’ IH policies: States may enable IH policies through explicit legislation sanctioning local governments’ authority to institute MIH and/or VIH policies through express preemptions. Express preemptions may institute floor preemptions that can enable IH policies while setting minimum standards (as in CA).
3. States may ‘restrict’ IH policies: Explicit preemptions may prohibit certain IH policies. Some states preempt MIH policies. In the same legislation, they might enable VIH policies. Enabling IH policies may also be express preemptions that are restrictive ceiling preemptions. Implied preemptions through conflict with other state legislation, such as state legislation prohibiting local Rent Control ordinances, may also create restrictive IH policy state environments.

Studies have found that, despite the spread of IH programs in different regions of the country, these programs are more prevalent in California, New Jersey, and Massachusetts due to their state frameworks (Thaden & Wang, 2017; Wang & Balachandran, 2021). Understandably, existing planning literature has predominantly focused on these states and their ‘enabling’ mechanisms for IH (Brunick & Maier, 2010; Calavita & Mallach, 2010; Cowan, 2006; Karki, 2015; Witten, 2003). For the most part, this literature is also devoid of any interaction with the political science literature on state preemptions.

Recently, a national-level IH program database by Grounded Solutions has examined state frameworks in greater detail through an Inclusionary Housing Map and presented four descriptive categories (Grounded Solutions Network, 2020). Wang and Balachandran (2021) group states into these four categories and summarize them accordingly: “Nine states explicitly permit all types of IH policies, 11 ‘home rule’ states do not prohibit rent control and do not pose legal barriers to local adoption of IH, 23 states legal barriers but without explicitly prohibiting IH policies, and seven states clearly prohibit (p.5).” These numbers have since changed after the passing of Colorado’s IH enabling legislation and Montana’s IH ban in 2021.

Grounded Solutions Network applies a combination of states' characteristics and positions such as home-rule status, rent control ban and its impact on rental IH, and presence of enabling and prohibiting IH legislation for VIH and MIH policies. These four categories are more helpful and nuanced than the existing literature on state IH policy frameworks. They offer insight into the grey areas between enabling and prohibiting state environments. However, it is not clear what combination yielded the four categories. As a national database, the study does not offer insights into the contextual nature of IH policy environments in each of these states. It appears that the study deems states that have enabled all types of IH policies through express preemptions as preferable to states that have enabled only VIH policies and stayed silent on MIH policies. However, enabling IH preemptions could be either floor or ceiling and can severely constrain local policy choices. On the other hand, even in the absence of explicit enabling legislation for MIH policies, states could proactively remove implied barriers due to rent control prohibitions and provide institutional and financial support for local IH policies. Therefore, this paper proposes a conceptual framework based on the three listed policy positions above and their interactions with different types of preemptions, institutional, and legislative features to yield a spectrum of state policy positions. Such a spectrum may offer more nuance in understanding state policy positions.

### **Conceptual Framework**

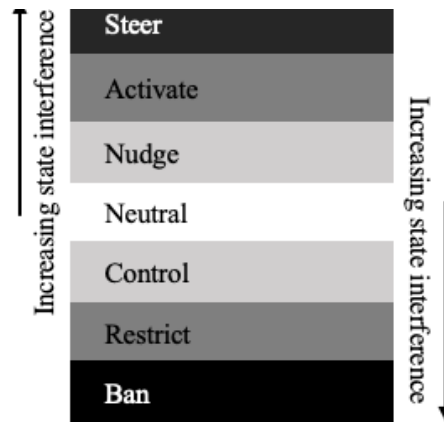
This paper proposes a continuum of state policy positions on specific issues based on increasing state interference. In contrast to the existing literature on state preemptions that generally treat state interference in local matters as harmful or undesirable, this framework accommodates the interventionist state role that some policy advocates desire for specific issues.

Where one wants the state position to be understandably varies for different stakeholders. States may 'steer' their local jurisdictions towards certain policies through prescriptive legislation, 'activate' possible channels that encourage local policy in a certain direction, 'nudge' local authorities to experiment, stay 'neutral' without policy preference in any one direction, 'control' local policy design to not exceed beyond a threshold, 'restrict' local policy initiative to very limited possibilities, and 'ban' or completely take away local initiative on a given issue. This framing is critical in conceptualizing a shared understanding of the preferred state role in



furthering field-specific substantive interests. For different interest groups to come together on various issues, we need a common lexicon to determine where we are and where we want to be.

*Figure 4.2: Conceptual framework on range of state policy positions*



I use this framework to understand state policy positions in the inclusionary housing context. Since a detailed examination of all 50 states is beyond the scope of this paper, I focus on the lower end of the spectrum by examining state preemptions that prohibit IH policies in three states. I examine these cases based on the following four broad parameters drawn from the scholarship on state preemptions and state role in land use planning:

1. State politics – political culture, representation, and urban-rural dynamics
2. State land use and housing policy environment: Legal, regulatory, and institutional framework
3. State-wide housing scenario
4. Interest groups

This paper does not attempt to create a predictive model to determine the propensity of state preemptions against inclusionary housing. Instead, it provides a close interpretation of how different factors coalesce in shaping specific existing state-policy environments for inclusionary housing policies. The discussion is limited to examining what transpired in these three states

rather than exploring possibilities and strategies to change the status quo. A future paper will discuss advocacy strategies that help lift state preemptions. To the extent that advocacy and interest groups are relevant to this paper, where appropriate to the discussion, I draw distinction between grassroots and grassroots organizations representing specific interest areas.

## Research Methodology

To illustrate the contextual specifics of state IH policy frameworks, this paper zeroes in on states with explicit preemptions against IH policies. As of February 2022, there are eight states with explicit preemptions against IH policies: Wisconsin, Arizona, Idaho, Indiana, Kansas, Montana, Tennessee, and Texas. Two other states, Oregon and Colorado lifted their prior IH bans. I chose three states, Tennessee, Texas, and Oregon, with IH preemptions due to the incidence of city-level IH programs in these states (Refer Table 4.1) and since the preemptions were not passed too recently. My cases allow me to problematize the issue of state preemptions against progressive city policies.

*Table 4.1: State preemptions against local IH policies in three states*

State	State IH Preemptions	Preemption initiated in response to IH policies in	Restrictions imposed
<i>Oregon</i>	1999	Portland	Mandatory IH ban lifted in 2015 with limitations
<i>Texas</i>	2005	Austin	Express preemption against mandatory IH policies for-sale housing and lots
<i>Tennessee</i>	2016 and 2018	Nashville	Express successive IH bans against both mandatory and voluntary IH policy

I used extensive document analysis of government policies, legislative hearings, memos, and press releases, in addition to 50 semi-structured interviews across three states. I interviewed policymakers, the civic sector, developers, housing advocacy organizations, and officials at the state and local levels to map critical junctures in policymaking. Key informants were selected based on the snow-ball sampling method (Bernard, 2006; Parsons, 2008). I conducted these interviews and reviewed the literature to capture policy objectives and responses at city and state levels through the process-tracing method (Bengtsson & Ruonavaara, 2011). In a related paper, I examine how cities responded locally to the state restrictions in IH policy. In this paper, I specifically focus on understanding the motivations behind the preemptions, the responsible

agencies, and the impact of the preemptions on the state IH policy position. Deeming the ‘states’ as comparable units of analysis, I adopt Kemeny and Lowe’s (1998) comparative housing policy inquiry to focus on the divergences or systematic ‘variances’ between these three states while recognizing that these states exhibit varying political cultures, governance structures, and demographics. As Table 4.2 illustrates, each of the three states exhibits different demographics in size, distribution, and composition of their population and economy. However, they have all imposed IH preemptions against local IH policy measures and broadly enjoy the same constitutional power and mandates as state governments in the US federal structure. Oregon’s change of preemption status in 2016 allows us to focus on critical junctures in policy change and the events that preceded and followed it. Therefore, the section on Oregon is more detailed and it, in turn, facilitates a rich foundation for constant comparison between the cases.

*Table 4.2: Comparison of key characteristics and demographics: Tennessee, Texas, and Oregon states and the United States national statistics (Source: Compiled from Census 2020 and 2010)*

<b>Fact</b>	<b>United States</b>	<b>Oregon</b>	<b>Texas</b>	<b>Tennessee</b>
<i>Population, Census, April 1, 2020</i>	331,449,281	4,237,256	29,145,505	6,910,840
<i>Population, percent change from 2010</i>	6.30%	10.10%	15.30%	7.60%
<i>Urban population, percent 2010</i>	80.7%	81%	84.7%	66.4%
<i>White percent</i>	76.30%	86.70%	78.70%	78.40%
<i>Persons in poverty, percent</i>	11.40%	11.40%	13.60%	13.90%
<i>Political culture</i>	-	Moralistic	Traditionalistic	Traditionalistic
<i>Home-rule/ Dillon</i>	-	Non-Dillon state, strong Home-Rule	Limited Home-Rule	Dillon in non-Home-Rule cities

The interviews for this project were conducted between August 2018 and March 2020 during at least two trips to each of the three states. I conducted most interviews in-person and some over the telephone where key stakeholders were not available during the visit or had relocated to other cities. I transcribed all the interviews and coded on Dedoose using grounded-theory open coding (Charmaz, 2014). All responses are anonymized, and interviewees were assigned identification numbers to protect confidentiality. These numbers are denoted in square brackets to indicate the source of direct quotes. Interviews usually lasted from 40 - 90 minutes.

The second round of interviews was conducted with key informants in each of the three states to gauge policy advancements and direction. The primary data presented in this paper mainly refers to the policy changes before the COVID-19 pandemic struck in the United States in March 2020.

### **Findings: Inclusionary Housing Preemptions in three states**

#### ***Oregon***

Oregon, according to Elazar (1962), exhibits moralistic political culture allowing an increased role for government in policy innovation and change. This political culture also permeates the strength of institutional structures and advocacy support for land use and housing policies at the state level. Oregon is a home-rule state where land use regulation functions have been fully devolved to the local authorities. Oregon was one of the front runners in establishing a state planning framework for land use as early as the 1970s, interestingly, under a Republican majority government. While the motivation behind Oregon's regional and state-level thinking on land use issues emerged from conservative rural and environmental groups protesting undeterred urban growth, the ensuing policy framework for land use planning has been hailed as a progressive practice in planning.

Planning in Oregon is conceptualized as a coordinated process between the state, metropolitan, and city governments with supporting legislative and institutional frameworks at the state level (Irazábal, 2017). A state-level dedicated department is responsible for comprehensive plan reviews and advising local governments and state legislature on land use planning issues. On the housing front, several policy initiatives were instituted in recent years, including the expansion of state-funded housing programs and preparation of a state-wide strategic housing plan (Oregon Housing and Community Services, 2019). Oregon's 1973 Land Use Planning Act is a landmark legislation that guides land use and planning processes in the state. It requires local governments to create comprehensive plans that guide their zoning code. Goal 10 of the 1973 Act introduces a fair-share principle that requires local governments to prepare an inventory of available land to meet the region's future housing needs. However, the derived fair-share principle is not evaluated for providing housing choices for different income groups. Rather, the targets indirectly encourage higher density. But as a famous phrase goes, "Density does not equal affordability." Overall, Goal 10's implementation at the local level has

been unsatisfactory due to weak enforcement mechanisms and affordability requirements (Knaap, 1990).

Oregon passed its preemption against the inclusionary housing policy during a time of divided political control in 1999. The Republican-controlled legislature had passed the preemption bill, and the Democrat Governor signed it despite advocates' demand to "veto the bill" [16]. The Home Builders' Association (HBA) had introduced the preemption bill in 1999 in response to IH deliberations underfoot during the Metro Regional Housing Strategy consultations (HB 2658: Relating to Local Government Regulation of Affordable Housing, 1999). An HBA representative explained that the preemption measure was "prophylactic." Knowing that the association "couldn't win" at the local level, they instead went to the state and said, "They're [Portland] trying to do something silly. Tell them they can't" [14].

Since 1999, advocacy groups had tried to lift the preemption several times but without success. However, the fight for repealing the IH ban became more visible around 2010 when a new set of advocates reinvigorated the discussion and formed a coalition called IZ (Inclusionary Zoning) Coalition partners. This momentum came during Portland's comprehensive plan consultations. A coalition of advocacy groups called Anti-displacement PDX identified inclusionary housing policy as one way to tackle rampant displacement and gentrification in Portland (Bates, 2013). This realization translated into the channeling of state-level advocacy efforts on repealing the IH preemption.

After the declaration of housing emergency in 2015 in Portland, the City of Portland lent its full weight to negotiate the repeal of the IH ban in the state (City of Portland, 2016). After failing in three successive attempts, the IZ coalition finally succeeded in lifting the state preemption in 2016. The observers point out that Oregon's state-wide housing crisis and the legislature's keen interest in housing issues were critical to lifting the IZ ban and the subsequent passing of progressive state policy measures in rent stabilization, banning single-family only zoning, fast-tracking of affordable housing permits, among others. However, instead of a "clean lift of the preemption" [10], the IH repeal bill went through quick closed-door negotiations between the HBA and Portland, primarily during a short legislative session that ultimately resulted in what advocates in Oregon termed as a "partial lift" of IH state preemption that was

“highly detailed and specific, very *proscriptive* legislation that says you can do inclusionary housing or zoning in these ways only” (emphasis added) [16].

During the negotiations, the HBA introduced sideboards that exempted the homebuilders’ focus of business – single-family housing developments – from IH programs in the state. The sideboards in the IH preemption bill allow mandatory IH requirements to be applied to only multi-unit developments with more than 20 units and also require cities to compensate developers through density bonuses or other tax and financial incentives in exchange for affordable housing units (SB 1533: Relating to Affordable Housing, 2016). The HBA representative who was instrumental in the passing of IH preemption in 1999 explained why they decided to join the negotiations in 2016:

So every session it [preemption repeal bill] came up, every session, we were able to defeat it ... But as it [the legislature] *moved left politically*, it became obvious to me that my ability to stop things was weakening. And so, we started looking for a place where we could *make deals and discussion*...A lot of the impetus behind that agreement [SB 1533] was *political, not policy*... If I thought I could have continued to kill the bill, I would have probably done that. Because I think that is bad policy.  
[14]

Therefore, instead of repealing a ban, Oregon introduced a ceiling preemption for inclusionary housing. Field observations and stakeholder interviews confirmed that the drive to lift the state preemption was fueled in large part by Portland’s intent to introduce mandatory IH rather than any other city in Oregon, specifically. While the advocacy community from Portland led the effort, Portland’s elected leadership also played a determining role in lifting the state ban. As a lobbyist explained:

I think that Portland is the only one that was truly enthusiastic and actively pursuing that policy. Others were interested in its outcome and were hopeful that they'd be able to utilize the tool. But in looking at the tool that came out of the process, felt that it just wasn't going to fit their community and their ability to drive developers to do specific things [4].

In effect, the sideboards made it feasible only for Portland to introduce mandatory IH policies in the state, given the strength of its real-estate market demand. The bill also equipped

cities with another tool known as the Construction Excise Tax,<sup>11</sup> which allowed cities to levy up to 1% on all construction and use these funds for subsidizing affordable housing. There was palpable disappointment from the IZ coalition regarding how the preemption was lifted. The coalition supported another bill in 2017 to amend the IH sideboards, but these efforts were unsuccessful. Advocates and Portland city officials clarified that there were no immediate plans to attempt a complete repeal of IH preemptions in the state.

While Portland's housing crisis precipitated the interest in IH preemption repeal, many factors were responsible for the productive legislative action in 2016 following multiple failed attempts. Stakeholders in Oregon explained that the state-wide housing crisis was an essential precondition to engage the legislature's interest in housing policy conversations and lifting of the IH preemption. As Table 4.3 indicates, the average median value of a house in Oregon is very high, almost 50% more than the national average. On the other hand, the rate of new development appears to be slow based on the number of building permits issued in 2020. An advocate at the statewide housing coalition explained:

It has taken it *being a huge statewide problem* and not just for folks with low incomes, but for folks with moderate incomes to be to kind of be more understandable to legislators. So now, when they go out and door knock when they're running for election, they hear about evictions. They hear about housing affordability. They hear about rents and mortgages going up. They hear about people getting pushed out of neighborhoods they've lived in forever. They hear about people sleeping in their cars. They know people personally who are like one paycheck away from becoming homeless. And that has changed their interest in it, in addressing this issue in ways that advocates never can. [1]

Exacerbated state-level housing conditions also explains why prior attempts at the legislature with the IH ban repeal bill failed to gain any traction. The statewide crisis also allowed legislative representatives from rural areas to vote in favor of the repeal. As the HBA representative mentioned, the left-leaning legislature turned the tide. Others were cautious against labeling the legislature "progressive," especially at the time of lifting the preemption in

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<sup>11</sup> The preemption against construction excise tax was passed in 2005 by the HBA.

2016. Oregon, in fact, enjoyed a democratic trifecta since 2006<sup>12</sup>, and it has managed to pass several progressive state-level land use and housing bills in recent times, such as the ban of single-family only zoning and rent control bill. However, activists and political aides also point to other failed progressive initiatives, including the prior attempts to repeal the state IH ban. They suggest that while Democrats controlled the assembly, “as it relates to housing policy...we are still a pretty conservative state...SB 608 was one of the only housing bills that passed on a party-line vote” [17]. Additionally, they went on to explain that even though there was some palpable opposition and discontent to the IH preemption bill, Portland’s demographic primacy in the state, and its greater representation in legislature, allowed the tailoring of IH sideboards to create a “Portland-area solution for the state” [17].

In summary, despite the creation of enabling mechanisms for MIH and VIH policies in Oregon, the 2016 passing of SB 1533 has helped state IH regulation place considerable constraints on local policymaking.

*Table 4.3: Housing market and costs across three states and cities (Source: Compiled from Census 2020)*

<b>Fact</b>	<b>United States</b>	<b>Oregon</b>	<b>Portland</b>	<b>Texas</b>	<b>Austin</b>	<b>Tennessee</b>	<b>Nashville</b>
<i>Building permits, 2020</i>	1,471,141	18,665	-	230,503	-	49,719	-
<i>Owner-occupied housing unit rate, 2015-2019</i>	64.00%	62.40%	53.40%	62.00%	45.10%	66.30%	53.90%
<i>Median value of owner-occupied housing units, 2015-2019</i>	\$217,500	\$312,200	\$412,000	\$172,500	\$337,400	\$167,200	\$239,000
<i>Median gross rent, 2015-2019</i>	\$1,062	\$1,110	1248	\$1,045	1280	\$869	1100
<i>Rent-burdened households (&gt;30% household income on rent)</i>	46%	49.3%	47.10%	45.2%	45.50%	44.4%	44.60%
<i>Median housing price-to-household income ratio</i>	3.5	5.0	5.8	2.8	4.7	3.1	4.0

### **Texas**

According to Elazar’s (1962) classification of political cultures, Texas is classified as a traditionalistic/individualistic state that “places a premium on limiting community intervention” and “accepts a hierarchical society as part of the natural order of things.” Texas grants home-rule

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<sup>12</sup> It was a split legislature briefly in 2012 and again returned to a Democratic trifecta in 2014.



authority to its municipalities to prepare zoning regulations<sup>3</sup> in accordance with their comprehensive plans. However, Texas does not require its municipalities to prepare comprehensive plans (Ramsey-Musolf, 2017); it merely provides minimal guidance as to what a city's comprehensive plan should provide (APA Texas, 2013). Texas allows its cities to determine how well zoning code changes<sup>13</sup> must conform with the comprehensive plan. In their comprehensive plans, home-rule municipalities in Texas are not required to prepare housing elements. Overall, the state gives very little guidance and monitoring over a city's comprehensive plan and zoning regulations.

In the last two decades, Texas has experienced unprecedented financial and population growth with the expansion of its economic sector. This has caused the polarization of the state's political make-up, with many of its big cities turning blue while the state remains a Republican stronghold (Pulliam, 2016). The state offers several economic incentives to encourage business interests. One of those is a property tax abatement issued to private developers of multi-unit housing projects (Way, 2020). However, despite the pressure from housing activists, there are no affordability parameters set to this policy (Reform Austin, 2020). Overall, there are no major state-led affordable housing funding programs or policies outside mortgage revenue bonds and disbursement of federal program funds for housing (Texas Department of Housing and Community Affairs, n.d.).

The issue of mandatory inclusionary housing came to the state's notice when housing advocates in Austin mooted the idea as the city was considering several rezoning proposals. The HBA in Texas, after consulting with HBA lobbyists in Oregon on their preemption, approached the legislature to introduce a similar preemption banning mandatory inclusionary zoning (MIH) in Texas in 2005 through HB 2266. The IH preemption prohibits the municipality from setting a "maximum sales price for a privately produced housing unit or residential building lot" (HB 2266: Ban on Residential Sales Price, 2005). The bill, however, specifically stipulates that cities may consider issuing other incentives in the form of density bonuses and subsidies to developers (VIH policies) in exchange for affordable housing units. A housing activist observed that "the

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<sup>13</sup> "Texas adopted the Standard Zoning Enabling Act, and it is codified as Chapter 211 of the Texas Local Government Code. It outlines the purposes of zoning to be the protection of health, safety and morals and the protection of historic, cultural and architectural areas, though many ordinances enumerate other purposes as well." APA Texas, 2013

legislature was, as it is today, very conservative. And the homebuilders back then, as today, wielded a lot of power in the walls of the Capitol” [29]. The legislative session recordings include a declaration by the bill author that the bill “mirrors and is virtually identical” to the Oregon statute preemption (*HB 2266 Legislative Proceedings Video Recording, 2005*). The preemption was introduced with the notion that MIH policies set price controls on the market, are unfriendly towards developers, and therefore deter real estate development, in turn exacerbating affordable housing issues. The bill was passed despite testimonies from advocates against these assertions and requesting the legislature not to “prescript” local zoning authority.

However, during the negotiations, a small group of well-connected housing advocates with policy and research backgrounds organized to carve some exceptions in the legislation. The first exception was to remove rental units from the IH ban bill since home builders’ primary objection was about IH requirements on homeownership units [23]. Another exception was to create special districts where MIH could be implemented. Austin's local legislature representative, Eddie Rodriguez used HB 525 to propose these special districts, also known as Homestead Preservation Districts (HPD) (Texas Local Government Code: Homestead Presevation Districts, 2005). HPDs are designated residential boundaries experiencing rapid gentrification based on qualifying criteria such as poverty rates, median income, and population. They allow qualifying local governments with population below a specified limit to create dedicated funding channels to reinvest in improving housing affordability and protect existing households from ongoing gentrification. The population criteria were exclusively set to match Austin’s population at that time (Texas Local Government Code: Linkage Fees, 2017). That is, effectively, the IZ preemption bill created an exception to allow Austin to include MIH stipulations in rapidly gentrifying areas of the city. It also allowed the city to introduce several voluntary inclusionary housing policies using density bonuses and allowing an in-lieu fee into Austin’s Housing Trust Fund. The preemption was introduced during a Republican Trifecta, but so were the exceptions. The key to creating successful exceptions at the state legislature, a housing advocate explained, is to “stay low and don’t make noise. Be quiet, and hopefully, we’ll get this through” [22]. Such caution was necessary due to the urban-rural divide in the state and the strong representation of rural areas in the legislature. One state lobbyist explained that rural legislators often scan for bills pertaining to urban areas asking, “What is that? And why is that allowed? We can stop that!” without sufficient understanding of the issues [33].

Austin created its first Homestead Preservation District in 2007. The city population subsequently grew beyond the city population qualifications set in the 2005 HPD bill. Since it outgrew the stipulations, Austin could not pursue the creation of three additional HPDs without an amendment to the HPD definition. The amendment, introduced in 2017 through HB 3281, managed to pass the legislature. The governor, however, vetoed it (HB 3281: HPD Revision, 2017). Housing advocates point out that the governor's vetoing of the HPD bill clearly indicates the “political distrust and dislike” [29] for Austin as there was no opposition to the creation of HPDs by the legislature or specific interest groups such as the HBA as in the case of MIH. In 2017, the Texas legislature also passed another preemption, HB 1449, against linkage fees, further narrowing local policy options for creating affordable housing (Texas Local Government Code: Linkage Fees, 2017) (Way et al., 2018). Stakeholders felt that the tensions between the state of Texas and the City of Austin have escalated beyond the conventional explanations of political ideology mismatch and urban-rural divide and that they are now in the realm of “prejudice and vendetta” [19] (Mize, 2015).

National databases on affordable housing preemptions claim that Texas bans rent control (Grounded Solutions Network, 2020; McFarland et al., 2019). However, legal practitioners and advocates from the state clarified that the rent control provision in the Texas municipal code only states that cities may use rent control provisions when experiencing natural disasters (Texas Local Government Code: Rent Control, 1987). That is, based on the language of the 2005 IH preemption bill, Texas municipalities may introduce mandatory IH for rental units.

But stakeholders are cautious about such experimentation observing that “just because there is no preemption now, doesn’t mean that the legislature won’t come back and take it away or that the Governor won’t veto it” [27] if the state is alerted to such loopholes. Stakeholders also explained that the presence of hostile courts in Texas towards renter rights, affordable housing, and city powers deters cities from taking affirmative steps. They conceded that housing advocacy at the state level has been disparate and weak, both from housing groups and city coalitions. Cities usually operate individually and create exceptionalism saying, “I want this tool” [27] at the legislature rather than collaborating for unified change.

The overwhelming number of preemption bills in the legislature has put cities, housing advocacy organizations, and their lobbying groups on constant defense. A state lobbyist for cities in Texas explained:

I spent 98 percent of my time killing bills; we just don't pass anything because there's rarely anything that the cities want so badly that they're willing to expend those resources, and so we rarely even file bills anymore. They just want to be left alone. So that's what we spend all of our time doing. When people say, 'Oh, we had a successful legislative session,' that's determined on how many bad bills were killed. [25]

Austin's newly elected state representative, Gina Hinojosa, introduced an IH preemption repeal bill HB 3050 in 2019. The bill also received the City Council's support through resolution, 20190328-041. However, the bill failed to receive a committee hearing. Policy advisor to Representative Hinojosa said that they would continue to pursue the repeal if they can create sufficient interest at the committee level in the coming years. Currently, the average for-sale housing prices in Texas are lower than the national averages, while the rental prices are higher as seen in Table 4.3 The cost differentials are contributed mainly by rising costs in the big cities in Texas, (as seen from Austin's housing characteristics), with relatively low costs in its rural areas. Many stakeholders in Texas are hopeful that the state's changing demographics and the rapid growth of many of its urban areas "will slowly, but surely" induce positive state action in the affordable housing sector. Others were not so optimistic about changes to IH preemption at the Texas State legislature:

Not in my lifetime. It's a philosophical thing in Texas. I have no optimism. Texas legislature is a very consistent body. It has a primary goal of protecting property rights. Again, it sees anything done on a mandatory level [for IH] as inviolate of the major policy drivers of Texas, which is *protecting private property*. [23]

Therefore, Texas's legal position on IH is less restrictive than literature leads us to assume. The state allows VIH policies and MIH policies (for rental units and in HPD areas). It has no explicit ban on rent control legislation or any voluntary development agreements between developers and local jurisdictions. However, given the legislature's

track record, stakeholders feel that any local policy experimentation on IH, and other progressive initiatives that test the boundaries of state policy positions, may invite unnecessary notice and further restrictions.

### *Tennessee*

Tennessee is similar to Texas in political culture and state land use framework. It has a traditionalistic political culture that prioritizes the interests of the market and believes in the minimal role of the state. While Tennessee's constitution allows local jurisdictions to adopt home-rule charters, only 14 cities and two counties have adopted them (Local Solutions Support Center, 2020). Therefore, Tennessee's Dillon rule applies to the majority of the state. As Table 4.3 depicts, the state is predominantly rural compared to the national average and has a higher incidence of poverty. The overall population growth is much lower than in other states in the country. Many cities in Tennessee have shrunk in size. At the same time, the Nashville-Davidson Metro region, (referred to as Nashville here), is the only prominently sized city experiencing rapid urban growth. Tennessee does not require its cities to prepare comprehensive plans and, therefore, zoning and land use regulations are not required to align with plans (Tennessee Advisory Commission on Intergovernmental Relations, 2011). There is also no statewide planning agency responsible for setting overall land use goals.

Tennessee passed its first IH preemption in April 2016 as Nashville was considering implementing a mandatory inclusionary zoning policy as part of its downtown rezoning project. In response, Greater Nashville Apartment Association prodded the legislature to pass a preemption against MIH policies through concurrent bills, House Bill 1632 and Senate Bill 1636, citing their interference with Tennessee's Rent Control Ban of 1996 (HB 1632: Related to Prohibition of Rent Control, 2016). The preemption maintains that cities can pursue incentive policies for affordable housing. Describing the preemption as a "compassionate program" during the hearing session, SB 1636 sponsor Representative Casada assured that cities are not restricted from offering incentives to developers to encourage mixed-income housing (*HB 1632 Legislative Proceedings Video Recording*, 2016). The bill passed with little debate in the legislature. When prompted regarding the legislature's thinking on IH issues, a long-standing housing advocate in Nashville remarked,

Quite honestly, they [legislators] don't have a clue, but rather than trying to see how it's [IH] beneficial, it's kind of like, it is a nationalist thought that 'we've got to be against it.' And it's no big dramatic thing. They just, you know, legislate, piece legislation together, and...outlawed! [39]

Further to the preemption, Nashville introduced two voluntary IH programs, a density bonus program and a gap financing program in 2016. However, a local conservative legal group and HBA came down strongly against the Metro, questioning the density bonus policy's "voluntary" nature, and filed a lawsuit (*Home Builders Association of Middle Tennessee v. The Metropolitan Government of Nashville and Davidson County*, 2017). The claim was that the program was not voluntary since the city was making the granting of density bonuses contingent on the provision of affordable housing units. For a policy to be genuinely voluntary, they argued, it must allow the developers the choice to not provide affordable housing (or pay an in-lieu fee) if they did not desire to offer it. The state legislature codified their demand in the form of a preemption disallowing cities to use planning incentives in exchange for inclusionary housing units in 2018 clarifying that:

Neither Nashville nor any local government has the authority to enact such an ordinance that would place requirements regarding inclusionary, affordable, or below market value housing when entitlements, variances, or any other form of permit or authorization is sought from the local government (SB 363: Relative to Housing Sold or Rented at below Market Value, 2018)

Essentially, the Tennessee legislature redefined a voluntary inclusionary housing policy in planning practice. It allows Tennessee's cities to implement an IH program only if they fully compensate developers for reserving some units in their developments for below-market renters or owners. The language of the preemption bars local jurisdictions from using zoning entitlements to claim public benefit in the form of affordable housing. This is a very stringent and restrictive preemption that severely curtails local control in land use planning processes. It bans not only MIH and VIH policies but also any case-by-case negotiated development agreements between local authorities and developers that require affordable housing.

Opponents to IH policy were clear that they objected to the principle of IH policies on constitutional grounds as it demands "the sacrifice of property rights" for a property owner [38]:

What it is, is that you can't make private parties bear the cost of public problems unless they create the problem. And the Fifth Amendment is expressly concerned with [preventing] private parties bear the cost of things that should be borne by the public. So, for something like inclusionary zoning or sidewalks. The problem is they're [local government] not paying for it. They're making you [developers or landowners] pay for it individually...where the city takes a discretionary benefit. [40]

Housing advocates explained that once the MIH preemption was passed, they had little hope to interest developers in VIH policies:

We knew the developers didn't care about voluntary [IH]. In the South, we don't want the government to tell us what to do. Even though the government is going to give three or four stories on their building. They want that for free and [redacted] the government for telling me that I owe them some. That's the attitude. [42]

Several housing advocates agreed that they did not have a strong advocacy network at the state level and had not aggressively lobbied the legislature during the time of IH preemptions. They explained that inter-city coalitions focused on specific housing policies were difficult to rally in Tennessee since, unlike Nashville, other big cities in the state were shrinking and faced very different problems. Despite these issues, since early 2020, especially during the pandemic, advocacy coalitions are making increased efforts to “educate legislators on housing concerns” and highlight state preemption issues [47]. The Nashville Metro government made some efforts through their local representatives during the IH preemptions in 2016. However, the Mayor’s office had other legislative priorities, and IH policy took a backseat. Advocates and city officials concurred that the state-local dynamics were central to state policy decisions. One city official explained, “[If] Nashville's for it, it will make the state against it” [35].

Emerging progressive politics in Nashville are in clear conflict with the state’s broader political ideology and culture. Developers said that affordable housing issues in Nashville resulted from local government interventions that attempt to regulate the market, “It always seems to me, the clumsiest tool in the box is government” [48]. Developers further explained that they approach the state to remedy local government’s overreach, “I really think the answer long

term is going to be state government [intervention] because you can get decisions made based on *logic* rather than the *emotion*” (emphasis added) [48]. Another actor reiterated that the state’s response to IH policy was always expected since the concept of IH was antithetical to the political culture of the state:

There will not be inclusionary zoning in this community in my lifetime... In Nashville, inclusionary zoning is highly politicized [because advocates see it as a means of social integration]. In this state, it is highly politicized [because it interferes with property rights]. And it's sort of a trigger word for emotions, not thought... because it bumps right into property rights and property rights are foundational for our nation. [38]

They further explained that Nashville leaders deliberately pursued controversial policies to complain, ““Once again, the will of the people of the County of Davidson was thwarted by those ugly Republicans in the state house.’ When you [Nashville administration] knew it, in the front end!” [38].

Tennessee’s IH ban is perhaps the most stringent version of state preemptions against inclusionary housing policies. The purview of the preemption is very aggressive since it severely impinges on local authorities’ ability to exercise zoning powers for affordable housing.

## **Discussion**

The detailed examination of three cases suggests that state IH policy positions exist on a continuum. States that ban IH policies impose varying degrees of restrictions, and states that pass an enabling preemption do not necessarily encourage IH policy adoption. Different determinants of preemptive state action react to context-specific conditions to yield varying results specific to the subject of preemption. The following discussion reflects on the literature reviewing the determinants of state preemptions and advances other considerations based on the three cases. Further, it discusses how different actors and conditions come together to impact the strength of state preemptions.

This study indicates that the presence or absence of home-rule provisions is not a strong determinant of state intervention. Oregon’s strong home rule did not offer better protection against state intervention than Texas’s limited home rule or Tennessee’s de-facto Dillon-rule



status. In each of the three states, state interference in the form of restrictive IH preemptions resulted at the behest of developer interest groups. Unsure of their success in negotiating with the local governments, developers lobbied the state legislators at the time of the conservative party majority at the legislature. Developers in all three states felt that state preemptions were an expedient way to influence city politics rather than embroil in lawsuits with local governments. They also felt that they could exert greater influence at the state level on economic policies rather than at the local level. Progressive politics at the local level, specifically the vanguard cities in each of the three states, Portland in Oregon, Austin in Texas, and Nashville in Tennessee, were the first to initiate IH policy proposals that resulted in the subsequent state interference. Therefore, the conflict between red states and blue cities was evident in all three cases. The political culture of the states played a key role in determining why the state interfered and to what extent. Oregon's moralistic political culture historically allowed a strong state-level legislative initiative in land use matters that set a precedent on state interference on local control issues and paved the way for the IH preemption in 1999. Texas and Tennessee's traditionalistic culture resulted in the state interfering to protect market interests against local initiatives. In all three states, stakeholders mentioned that a strong urban-rural divide precipitated the legislature's antipathy towards progressive cities in the form of restrictive preemptions. In both Texas and Tennessee, IH proponents in Austin and Nashville explained that legislators from rural areas and outside counties introduced the preemption bills to stop progressive initiatives falling within their city administrative boundaries.

The findings, thus far, conform with the broad literature on the determinants of state preemptions. However, a detailed examination of the three cases revealed that multiple factors come together to influence the strength of preemptions to various degrees. Table 4.4, depicted below, summarizes the findings from each state based on different parameters. Oregon's IH policy transition from a restrictive preemption to an enabling ceiling preemption offers an opportunity to observe the differences and the accompanying factors more closely in the other two states.

Table 4.4: Comparison of IH preemption contexts in the three states

	Oregon	Texas	Tennessee
<i>Political party representation during preemption</i>	Divided government (lifted during Democratic Trifecta)	Republican Trifecta	Republican Trifecta
<i>Political culture</i>	Moralistic	Traditionalistic	Traditionalistic
<i>Home-rule/ Dillon</i>	Non-Dillon state, strong home-rule	Limited home-rule	Dillon in non-home rule cities
<i>Housing affordability a state-wide crisis</i>	State-wide crisis (more legislative interest)	Mostly a big city problem (specifically Austin)	Not a state-wide concern
<i>State-City relationship - City response</i>	- Portland has economic and demographic primacy - Aggressive and surefooted approach	- Austin is smaller of the big cities (State Capital) - Defensive strategy and contentious approach	- Nashville is the biggest city (State capital) - Hesitant and cautious approach
<i>State-level land use and housing policy and institutions</i>	Strong (Goal 10, Housing strategic plan, state funding etc.)	Weak framework	Weak framework
<i>Interference with Rent Control Ban</i>	No legal binding with IH preemption	No legal binding with IH preemption	IH preemption bound to rent control
<i>Housing Advocacy at state-level, municipal league, city coalitions</i>	- Active grassroots and grass-tops state level advocacy and coalitions - City primacy	- Active grass-tops state-level advocacy, more grassroots state-level reach needed - Inactive big city coalitions	- Growing grassroots momentum and state level advocacy - Emerging but fractured big city coalitions

### ***What was different for Oregon***

Broadly, the lifting of Oregon’s IH ban during a Democratic trifecta at the state level might suggest that state-level progressive politics are necessary for changing the preemption status quo. A closer examination of Oregon’s IH preemption history reveals that, while a blue majority at the state level may have aided the change, it was not enough alone. One would expect that Oregon’s moralistic political culture, aided by a Democratic trifecta and the state’s overall interventionist approach on land use matters, would have resulted in a state-level mandate for IH policies. Instead, the state had passed a preemption repeal legislation that was very accommodating of developer concerns and, as a result, only partially lifted the 1999 MIH ban. Stakeholders had unanimously agreed that the statewide housing crisis was responsible for both the legislative interest in housing matters and the spearheading of several housing bills by influential state leaders such as the House Speaker and the Governor of Oregon. Actors from

other states also concurred that the intensity of housing problems across Oregon, combined with Oregon's active grassroots advocacy, were different from the experience in their states.

Because Oregon has a [housing] problem that's 10 times worse than ours, I mean, it's ridiculous. But also the topographical challenges that we don't have. They have a very aggressive local population. Right. I mean, their politics are considerably left of Davidson County's Blue, aggressively West Coast left. [36]

Oregon's strong state planning framework created state-level institutions with a history of administering and monitoring land use and housing programs. This was crucial to the success of recent state-level initiatives and lifting of IH preemption. It provided accessible data on state-wide housing needs and investments and identified areas for policy advocacy and legislative agenda. Oregon's state planning framework created "an even playing field across the state" and demonstrated how issues such as housing, transportation, immigration, and family protection are intertwined [16]. The decades of awareness and activism around land use at the state level greatly reduced IH proponents' work. As one state official explained, the idea that state government has an inherent responsibility to intervene in local land use and zoning decisions was prominent in Oregon's political culture:

Land use and land use policy that effectively desegregate communities requires statewide involvement just because of the political dynamic at the local level. You have to have the state that has more political cover to pass housing policy in a way that creates more inclusive communities. That is a unique position of the state. I also think a unique responsibility of the state to move into these spaces. [17]

The lack of a state-level planning framework makes the conversation more difficult in Texas and Tennessee. Stakeholders from these states also agreed that the absence of a state planning framework was partly responsible for the lack of strong state-level advocacy networks on housing and land use issues. Advocacy actors, both *grassroots* and *grassstops* agencies, were critical to the momentum behind IH preemption repeal efforts in Oregon.

The legal specifications and framing of the IH preemption bills alter the effort involved in lifting the ban. Generally, state rent control legislation is a precursor to the state IH ban. On their own or after a court decision, states ban local IH policies by passing express IH preemptions invoking IH policies' conflict with existing state rent control legislation. In Oregon, the MIH ban

in 1999 was not tied to the state's prior preemption on rent control. Housing advocates ventured that this perhaps caused fewer roadblocks in 2016 when it came to lifting the IH preemption since the rent control ban was still in force in Oregon until it was repealed later in 2019. Texas's MIH ban was based on Oregon's ban, and it also did not invoke the rent control stipulations. In Tennessee, however, the MIH ban was tied to the rent control ban.

Another important factor in Oregon's case was the state-city relationship. Even though national databases' view Oregon's 2016 IH ban repeal as an IH enabling legislation, local stakeholders felt that it was a legislative exception made for Portland's benefit. Portland is functionally a primate city in Oregon. It is not only the state's economic center, but it also has a greater share of political representation in the legislature due to the concentration of the state's population around the Metro region. While Portland, Nashville, and Austin receive more attention at the state level than they perhaps prefer, Austin and Nashville are more visible to the state as the state capitals, and their visibility at the state level proved more detrimental. There was a begrudging acceptance of the idea that "Portland does things Portland way" among all the stakeholders in Oregon. One could say that there was a certain conception of the three cities being an 'errant children;' while the perception in Oregon seemed more indulging, Nashville and Austin seem to be viewed as 'deviant.' This resulted in varying levels of state interest and action in matters pertaining to their progressive cities.

***What is preempted is just as important as why it is being preempted.***

State political culture, state-big city relationship, interest groups and lobbying, state demographics, and partisan politics are important broad determinants of state preemptions. However, the substantive issue at play, and how different interest groups perceive it, remains critical in shaping the rhetoric around preemption and its strength. Existing large N studies on preemptions ignore the substantive area in question. As the three cases studied in this project suggest, some substantive areas attract greater political attention. At the same time, they may also have dedicated proponents who negotiate the strength and extent of state restrictions through intergovernmental relations and public information. However, stakeholder motivation around the cause is also determined by the need and sentiment behind the policy cause, as well as the complexity and effectiveness of the policy. The three cases in this study suggest that preemptions

often occur in a negotiated space, and several factors impact them, including the opinions different actors hold regarding the effectiveness of IH policies and their objectives.

The subject of preemption may invoke more than just the ideological battles between local control and conservative free-market ideology. Despite strong constitutional provisions for local control in the form of home rule and its moralistic political culture, Oregon's IH preemptions in both 1999 and 2016 offered several protections to developers. On the other hand, Texas's conservative politics did not result in a complete preemption of both MIH and VIH policies, as was the case of Tennessee. In Oregon and Texas, the developers interviewed for my study were generally appreciative of the need for equity considerations in housing and on issues of gentrification and displacement. They were also supportive of the government aiding affordable housing production and generally supported VIH policies since they allowed them to build higher densities and obtain other incentives from the local governments. In Tennessee, opponents to IH policy questioned equity planning approaches and rejected any form of government intervention, including VIH stipulations that impacted property rights. Therefore, unlike other subjects of preemption where the conflict occurs between local control and free-market ideologies, IH introduces a more constitutionally sanctified issue of property rights. One interviewee said succinctly:

As much as Republicans say that they respect local control. They respect it when they agree with its outcomes. And I think inclusionary zoning is something that is further along the spectrum of just purely market-driven policies to total government intervention. And I think that's something that wouldn't have even been considered to be viable, like not even a conversation worth having. [28]

Developers in all three states said that pro-IH policy advocacy is influenced by “emotional,” “political,” and “ideological” reasons rather than economic ones. They argued that it is motivated by issues of redistribution and equity that treat developers as the “enemy” [31].

In all three states, state IH preemptions were quick to offer protections to developers stating that IH policy was not only an undue burden on the developers but was also economically harmful to the housing markets in general. The result was a hastily put-together bill that *reacted* to developer demands rather than carefully consider state policy position. For example, Texas and Oregon's IH bans were crafted without invoking the states' rent control, while the loopholes

in Tennessee’s 2016 IH preemption required further strengthening again between 2017 and 2018. In some ways, IH preemptions may be categorized as hasty and reactive prepositions that often require amendments and changes over time and sometimes leave loopholes of which cities and housing advocates can take advantage.

### *IH preemptions in an ecosystem of preemptions*

Since IH policies work in the contested sphere of zoning, taxation, and land development, negotiations often involve concessions and gains on other closely related issues. Stakeholders in all three states disclosed that “there was a lot of political horse-trading” [4] during discussions that impacted the strength of preemption legislation. For example, linkage fee policy – which was considered the “worst of the lot” by the developers in all three states, and labeled “anti-business,” was more feared than IH. In Oregon’s case, the City of Portland dialed down on the linkage fee bill when developers joined negotiations for the IH ban lift in 2016.<sup>14</sup> In Texas, developers feared that going against the VIH might open avenues for linkage fee reinstatement. Developers’ response was something akin to horror in Texas on the introduction of linkage fees and baffled curiosity in Tennessee, where they had never considered the possibility that such an initiative might be introduced in the legislature.

Even at the time of Oregon’s 1999 IH ban, stakeholders revealed that some “dominant housing advocacy groups” did not organize strongly against the IH preemption bill in exchange for developers’ compliance on other issues. Some advocates disclosed that this was also the reason for delayed success in lifting the preemption:

There were a number of groups when we started looking at inclusionary housing who dissuaded us from pursuing any sort of statewide action. The history of it was that it was a deal with the real estate industry on that before in statewide politics, that it was sort of a deal that dominant housing advocates would allow for inclusionary zoning to be banned or to move forward on other policies and get other sort of wins. We were dissuaded from looking at inclusionary; we’re

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<sup>14</sup> The IH ban repeal bill also repealed the 2005 ban on Construction Excise Tax in Oregon. This tax is similar to linkage fee in that both contribute towards dedicated fund for affordable housing from new developments. The difference is that construction excise tax is levied on the value of the permit (property) and linkage fee is prorated for square footage of the property.

told not to touch it because there was a deal struck, and that did not sit well with us. Since that time, I would say those individuals and those organizations have absolutely come around. [10]

In Texas, housing advocacy groups were mainly grassroots policy organizations who managed to create some exceptions through silent and defensive strategizing to avoid undue attention from the legislature. Tennessee's state-level grassroots engagement at the time of the preemption was extremely weak. Grassroots agencies, however, have recently been making some strides in highlighting housing concerns and preemption issues at the state level.

On the other hand, cities in each of the three states looked to IH policies for various reasons (See Chapter 5), due to demand from local communities and housing activists. The reasons for their interest in IH policy, and the support IH policies enjoyed locally, dictated the thrust for IH policy in their legislative agenda. Mayors have succeeded in carving *exceptionalism* in state legislatures when sufficiently motivated. These motivations may range from personal interest to see policy succeed, (as in Portland), to signature efforts that ensure long-term political mileage for Mayors (Nashville's transit plan). However, IH policies rarely receive this political interest. This is mainly due to its mixed results and the relative lack of support from grassroots housing advocacy and tenant organizing groups that prefer other efforts offering deeper affordability than IH policies. Given the considerable opposition from developers and market groups within the city and the state level, cities do not independently focus their limited capacities for a policy change on IH bans. A stakeholder from Nashville explained,

Our mayor never seemed terribly interested in this bill. The year that the inclusionary zoning was getting attacked at the state, our mayor wanted to pass some changes that had to do with transit in the state law. And she succeeded at that. And the inclusionary zoning got run over. [45]

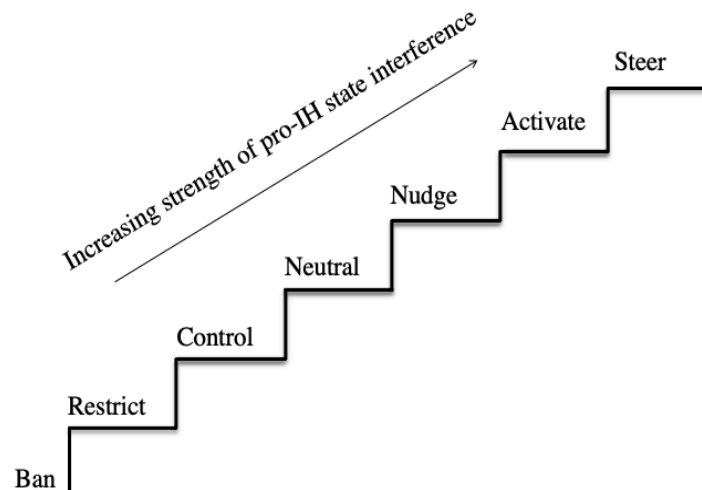
Other actors in Austin and Nashville concurred that the IH ban was not a current legislative priority for the city administration and that any local resolutions would only assuage housing advocates and shift blame to the state. While some of this disinterest may be due to other local policy priorities, local governments' decision to pursue IH ban repeals were also due to practical considerations regarding the feasibility of winning the preemption battle against the state, and not wanting to invite "legislature's wrath" [18]. Through numerous methods, the state

government can stymie local authorities in their efforts to address local barriers to IH implementation. Cities also face preemptions, or threats of preemption, against other issues that impact their long-term functioning, such as lobbying, borrowing capacity, and property taxation, among others, resulting in considerable roadblocks to local policy innovation.

**Conclusion: A common framework for understanding “State intervention”**

This study reveals varying degrees of opposition to inclusionary housing policies, even in the states with preemptions against inclusionary housing policy and those generally hailed as state planning leaders. While Oregon did lift its preemption against IH, it was done with sideboards. In effect, while Oregon permits all forms of IH policies, it still imposes conditions on local action in a continued form of ‘ceiling preemptions.’ In Texas and Tennessee, where ‘IH is banned,’ they are also a form of ceiling preemption, but varyingly prohibitive. Oregon, Texas, and Tennessee each fall on a continuum of restrictions. Where Oregon has a permissive but ‘controlling’ IH environment, Texas is more ‘restrictive.’ Tennessee, on the other hand, is an example of a complete IH ‘ban.’

*Figure 4.3: Policy Intervention Stairway - Increasing state interference on specific policy issues*



Such a continuum may also be applied to state interference that actively promotes IH adoption by cities. For example, inclusionary housing policies with court-mandated support and builders’ remedy in states like New Jersey ‘steer’ their cities’ IH policy adoption. States like California with housing elements and IH enabling legislation through floor preemptions



‘activate’ local adoption of IH policies. More indirectly, states like Louisiana are providing space for city experimentation through Governor Edwards’ ‘nudging’ before allowing the repeal of IH enabling legislation and its possible ban subsequently (Williams, 2018). Home-rule states like Maine are neutral toward IH policy with no intervention, positive or negative. These categories are only suggestive based on existing secondary information on state policy positions. However, a detailed examination of state IH policy environments may reveal greater nuance, as this study illustrates. Figure 4.3 shows a model incorporating different levels of state interference on IH that may be adapted to different subjects of preemption.

Practitioners, scholars, and policymakers may debate the merits and demerits of IH policies. Yet, the argument remains that state interference in the form of preemptions strips local jurisdictions of their choice and decision-making power to judge for themselves if IH policy suits their local conditions. Still, planners and social activists also see states as essential players in disciplining their local jurisdictions on issues of exclusionary zoning practices. Whether we want states to meddle or not is a value-laden decision that has its supporters and detractors. Therefore, state frameworks and policy positions are not explained by the type or extent of preemptions that impede or facilitate local functions. Instead, they are better understood as a state’s position in furthering or opposing a specific policy action. Put simply, state policy positions best represent the state’s position on policy rather than on local authority. This disciplinary distance in our understanding may be better bridged with a shared framework. If one were to encourage “bold new forms of state intervention,” it is also necessary to develop a shared understanding and lexicon that characterizes these interventions as a continuum illustrated in Figure 4.3.

This study shows more nuance to state preemptions based on a specific subject area. These concerns move beyond those considered in the political science literature on partisan politics, urban-rural divide, and broader political ideology and culture. Although clear patterns of state interference are evident based on political partisanship and ideology, there is hope for alignment in state policy response irrespective of ideological distance when a particular crisis reaches critical magnitude. The overall nature of state preemptions on a specific subject is also dependent on the related state legal and institutional provisions, the widespread nature of the problem at the state level, support base for the cause, and lobbying capacities of different interest groups.

In the case of IH preemptions, the state's policy position on related issues, such as rent control, state planning framework and institutions, the severity of state-wide housing crises, specific state-city relationship dynamics, and priorities of housing advocacy, combined with the broader state political conditions and ideologies, determined the state IH policy position. Additionally, the strategies advocacy organizations adopt and the organizations' faith in IH policy impact and stakeholders' practical considerations regarding the pros-cons of the engaging in policy deliberations affect the strength of IH preemption. While the combined sum of these forces swung in favor of partially overthrowing the state ban on inclusionary housing policies in Oregon, it tightened the restrictions in Tennessee. In Texas, the push and pull of these forces created microcosms of policy exceptions for specific city contexts.

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## **Chapter 5 “Victories have Many Mothers, Defeats are an Orphan”: Policy Options when States Preempt City Inclusionary Housing Policies (Paper 4)**

### **Abstract**

Many rapidly growing cities in the United States are actively creating local policy responses to tackle their housing challenges. Inclusionary housing (IH) programs represent a local initiative that requires or encourages market housing developers to designate a certain percentage of units as affordable housing. However, city policies that attempt to regulate market development encounter resistance from some state governments through legislative intervention in the form of state preemptions. This paper focuses on how the cities of Austin, Nashville, and Portland have responded to state IH preemptions in Texas, Tennessee, and Oregon. It provides new insights into the contextual dynamics and objectives that shape IH program design and success through extensive policy analysis, site visits, and interviews with public officials, developers, and housing advocates. Housing policy evaluation needs to account for local priorities for quality over quantity of housing numbers. City governments and housing advocates facing similar challenges will benefit from understanding how IH preemptions can extend beyond IH programs and constrain other local housing policies.

### **Introduction**

Cities with tight housing markets are acutely feeling the impact of decreasing federal funding as housing becomes increasingly unaffordable to their low- and medium income residents. In response, many cities in the United States are looking to engage private developers in affordable housing production. One popular solution has been the inclusionary housing policy

– a policy that requires or incentivizes market housing developers to designate a certain percentage of units as affordable housing to obtain planning permission approvals (Calavita & Mallach, 2010). According to some estimates, nationally, a total of 110,000 inclusionary units have been produced from a total of 1091 programs (Wang & Balachandran, 2021a). Some IH policies have been more successful than others. Programs with compulsory requirements, known as mandatory IH policies, are most successful in generating a greater share of below-market-rate units compared to voluntary IH policies that rely on developer interest (Anacker, 2020; Brunick, 2004; Lerman, 2006).

IH programs are more prominently found in states that encourage their local governments to adopt IH policies, such as California and New Jersey (Thaden & Wang, 2017). However, some states also restrict their local governments from adopting mandatory inclusionary housing policies through legislative action, called ‘state preemption’ (DuPuis et al., 2018). Scholars argue that such adverse action is predominantly found in conservative states against ‘progressive cities’ (Briffault, 2018; Riverstone-Newell, 2017). While there are national databases on both the prevalence of state preemptions against IH policies and the distribution of IH programs (Grounded Solutions Network, 2020; McFarland et al., 2019), there is limited detailed case study research on state preemptions and local IH policies. Additionally, there are no studies that examine them simultaneously, reviewing local IH implementation experiences facing state restrictions. This paper addresses the gap by examining three examples of cities that have implemented or attempted to implement mandatory IH policies and faced state discouragement. I select three cities – Austin, Texas, Portland, Oregon, and Nashville, Tennessee – to investigate how state restrictions impact IH policy possibilities in these cities and the policy choices these cities made as a result.

This study seeks to answer the following questions:

1. What prompted the city’s interest in inclusionary housing? How did the state preemptions against inclusionary housing policies alter the city's housing policy response? What other related housing policies did the city pursue in conjunction with the IH policy?
2. How many affordable housing units did these inclusionary housing programs approximately produce? Among communities with varying degrees of inclusionary housing policy success, what factors explain these different results?

To answer these questions, I will introduce the background to IH policy evolution in the city, its supporters, and the impositions on IH policies due to the preemption. I will then examine how local policymakers responded to the IH preemption stipulations. In doing so, I will focus on the IH policy itself, but also on related housing policies that the city government and other actors pursued concurrently, an approach absent in prior IH research (Pendall, 2007). Looking at other related policies is beneficial for two reasons. Policy review will help 1) verify the overall stated IH policy objective, and 2) closely examine barriers to voluntary IH policy when mandatory policies are outlawed.

Research that measures the effectiveness of IH policies tends to judge their ‘success’ based on the number of units that different programs produce (Freeman & Schuetz, 2017; Schuetz et al., 2011). However, local governments introduce IH policies with wide-ranging objectives and under varied conditions. It is critical to understand what conditions lead to policy adoption and its subsequent “failure” to find avenues for successful adoption and adaptation. Through careful case study analysis aided by in-depth policy analysis, stakeholder interviews, and field visits, this paper discusses IH policies in a new light. It shows how cities that produce fewer IH units are limited by several factors and are sometimes forced to elect low-performing options. Based on primary accounts from local stakeholders, this paper reveals how cities sometimes prioritize other socioeconomic objectives over the production of units through specific design and incentive structures. Most important, it demonstrates how IH policies are situated within the context of individual local housing policy and urban governance ecosystems that determine their design, functions, and effectiveness.

## **Literature Review**

A substantial portion of the literature on inclusionary housing (IH) policies tries to explain the mechanics and economics of IH policy, its variants, and the legal implications. The remaining literature is mostly dedicated to finding evidence to support or discredit the merits of inclusionary housing policies, and this evidence is often contradictory. Some scholars criticize IH policies as a “tax on new housing development” (Schuetz et al., 2011) that can increase housing prices (Bento et al., 2009; Schuetz et al., 2007) and reduce overall housing construction activity (Means & Stringham, 2012). Scholars also argue that IH policies can increase socio-economic segregation, and add very few affordable housing units (Freeman & Schuetz, 2017).

Others have contested these claims and suggested that the IH policy is a useful tool to provide affordable housing in high-opportunity neighborhoods (Kontokosta, 2015; Schwartz et al., 2012) and create equity gains for IH homeowners (Dawkins et al., 2017). IH policies, scholars find, also reduce racial disparities (Diagne et al., 2018; Kontokosta, 2014), enhance child education outcomes (Schwartz et al., 2012), and improve cardiovascular health (A. Jones et al., 2021). However, researchers on both sides have conceded that their results are not fully conclusive due to the context-specific nature of their findings, the limitations of research methodologies employed, and the lack of evidence available. Therefore, we are currently unable to confidently qualify the benefits or harms of inclusionary housing programs (Mukhija et al., 2015; Ramakrishnan et al., 2019). Cities in the U.S., however, continue to adopt IH policies at an increasing rate (Thaden & Wang, 2017). Instead of attempting to solve the debate on the effectiveness of inclusionary housing policy, this literature review will explore the context within which local governments adopt IH policies under four different strands:

1. Objectives of IH policies
2. Conditions that lead to IH policy adoption
3. Various forms and components of IH policies
4. IH programs' success factors

### ***Objectives of inclusionary housing policies***

Inclusionary zoning mainly originated in the U.S. suburbs during the 1960s and 1970s as an antidote to exclusionary zoning practices by enabling social integration (Calavita & Mallach, 2010; Mukhija et al., 2015). This civil rights aspect of inclusionary zoning policies has not been very prominent in recent policy agendas (Pendall, 2009). Rapidly growing cities with increasing housing burden turned to inclusionary zoning in the 1990s and have continued to do so in the last two decades (Brunick, 2003; Wang & Balachandran, 2021b). In these places, the rhetoric is mostly focused on recapturing the accrued land value from increased economic activity and creating affordable housing stocks as a redistributive public benefit (Kim, 2020b). Another closely related market-friendly argument focuses on leveraging market forces and incentivizing developers to produce affordable housing. These incentive-based policies can be voluntary or mandatory and often include non-zoning-based incentives, such as fee-waivers, fast-track permit processing, and tax abatements, making the term “Inclusionary Housing (IH) policy” more



appropriate in these instances. Over time, “inclusionary housing policy” has become the overarching terminology that encapsulates different forms of the policy. It is now often used interchangeably with the term inclusionary zoning.

We can summarize that, overall, cities may adopt IH policies with the following interrelated objectives:

1. To incentivize private participation in the affordable housing sector
2. To increase low-income housing production,
3. To recapture private land value increases for a public purpose,
4. To reverse the impact of exclusionary zoning practices and promote income integration, and
5. To provide affordable housing in high opportunity locations.

Despite the many objectives for pursuing IH policies, research emphasis has converged on the increased production of affordable housing units (Anacker, 2020; Li & Guo, 2020; Porter, 2004).

### ***Various forms and components of IH policies***

There are many types and forms of inclusionary housing policies, and it is important to understand their basic elements to analyze how they are deployed in different contexts. Scholars have distinguished IH policies based on several criteria. The primary classification is between mandatory and voluntary inclusionary housing policies (Wang & Balachandran, 2021b). Unlike mandatory inclusionary housing (MIH) policies, voluntary inclusionary housing (VIH) policies trigger affordability requirements only when developers request local jurisdictions to grant increased zoning entitlements or variances during the permitting process. In many instances, VIH policies allow developers to receive enhanced zoning entitlements by choosing other options, such as the provision of bike racks, green building features, and public spaces. The city, however, may offer additional incentives for prioritizing affordable housing production. A majority of IH programs are mandatory, almost 2.5 times the number of VIH programs (Reyes & Wang, 2021).

The two main defining components of both IH policies, MIH and VIH, are the set-aside requirements and income thresholds. *Set-aside* requirements are determined as a percentage of

units or built-up area of the proposed project set aside by the developer in their development as income-restricted units; they usually range from 10 to 20 percent. Income eligibility requirements are set with respect to the local Area Median Income (AMI) or the Median Family Income (MFI) for different family sizes. In general, they range anywhere from 50 percent to 120 percent AMI for IH policies. IH policies that target below market rate (BMR), i.e., less than 100 percent AMI, are preferable to those serving 80-120 percent AMI – often categorized as *workforce housing*. Within BMR units, most IH programs serve 50-80 percent of AMI income groups and rarely cater to those earning below 50 percent AMI (public housing assistance programs usually cater to those earning below 50 percent AMI). *Term limits* or affordability periods determine the duration for which the income restrictions apply to the IH units. They vary anywhere from a minimum of one year to 99 years. Both MIH and VIH policies may have a built-in opt-out option. *Opt-out* (or buy-out) policies may require developers to pay an *in-lieu fee* or surrender a portion of land (land in-lieu) in exchange for increased entitlements. Cities usually channel in-lieu fees into a city Housing Trust Fund (HTF) to subsidize affordable housing through other city housing initiatives. The surrendered land may be banked by the jurisdiction for future affordable housing development by public development authorities or non-profit developers. Many policies also allow developers to opt-out of on-site provision of affordable housing units through *off-site* options. Developers may be permitted to provide affordable units in other specified (off-site) locations, either in new developments or by retrofitting existing projects. Both MIH and VIH policies may have a minimum project threshold based on the total number of proposed units, built-up area, or lot size that trigger IH requirements. They may apply to specific tenure (rental and ownership units) and structure types (single-family, attached single-family or townhomes, multi-family). Some programs are applied across the entire jurisdiction. In contrast, some are selectively applied to specific areas such as downtown, Transit-Oriented Development (ToD) corridors, redevelopment or renewal districts, and newly annexed urban extensions (Porter, 2004). Many local jurisdictions also have more than one IH program, and they are either applied separately or overlaid on each other (Anacker, 2020). Another key component of IH policies is the *incentives* or *cost-offsets* provided to the developers to encourage program participation and reduce the associated costs of developing affordable units. Incentives may be zoning-based, administrative process-related, or financial. The most common incentive is a *density bonus*. Other zoning-based incentives include granting zoning variances, such as

reduction in parking requirements and other site-development and material use standards. Local jurisdictions may also offer fast-track processing and/or waive or reduce development and application fees. Additionally, direct subsidies and tax abatement or exemption programs may also be offered to developers as cost-offsets.

IH programs in the United States are sometimes written into ordinances, outlined in policy determinations, or brought about through negotiations (Porter, 2004). IH policies that are initiated through zoning ordinances (legislative initiative), or rules that directly yield income-restricted units, are generally known as *traditional* IH policies. Another variant, usually known as linkage programs, raise dedicated funding for supporting affordable housing through impact fees from new residential and, in some cases, commercial developments. Together, traditional IH programs and linkage programs may be classified as *schedule-based* (or *rule-based*) land use exaction programs since specific and uniform rules apply to any applicable proposal. In some cases, affordable housing units may also be extracted as public benefits based on *case-by-case negotiations* for specific project initiatives through *development agreements* between the developer and zoning authority (Kim, 2020a). Most studies on IH policies only focus on schedule-based programs and generally exclude negotiated or discretionary programs. Usually, schedule-based IH programs facilitate ‘*by-right*’ or ‘*as-of-right*’ approval processes through administrative review and approval of developer requests and may have fewer public consultation requirements (Kim, 2020a). The extent of public consultation requirements in ‘*by-right*’ processes is again context-specific and varies across different local jurisdictions in the country. Nevertheless, nationally, policy advocates have recommended the use of ‘*by-right*’-rule-led zoning processes for increasing housing affordability (National Multifamily Housing Council, 2021). ‘*By-right*’ housing, they argue, provided a “predictable” permitting (or zoning entitlement process) that encourages trust. However, there are areas where discretionary procedures may come in handy. Kim (2020a) suggests that Boston’s case-by-case review and negotiation process for large sites allows city officials to extract greater public benefit compared to schedule-based IH policies. Yet negotiated processes may also become protracted and rely on the zoning authority’s interest and wherewithal to exact benefits. Most important, negotiated zoning exactions may fall under “contract zoning” and be deemed illegal in some states.

### ***Conditions that lead to IH policy adoption***

Many scholars have argued that state-level housing and land use policy mandates for affordable housing result in a greater incidence of local IH program adoption (Calavita et al., 1997; Karki, 2015; Wang & Balachandran, 2021b). States like California, New Jersey, Massachusetts, have state-level requirements that directly or indirectly encourage local authorities to adopt inclusionary housing policies. The predominant concentration of IH programs in these three states in the country indicates the importance of state-level mandates for local IH adoption (Thaden & Wang, 2017). Locally, existing IH policy research has extensively focused on program parameters and their effectiveness after policy adoption. However, there is very little research that looks into local governments' interests in IH policies before and during their adoption (Dawkins et al., 2015; Pfeiffer, 2007). To the extent that prior researchers have considered the pre-implementation scenario, they have observed that local IH jurisdictions are typically characterized by:

1. high housing densities (Dawkins et al., 2015; Meltzer & Schuetz, 2010),
2. high housing costs (both rents and sale prices) (Anacker, 2020; Pendall, 2007),
3. higher incomes (Dawkins et al., 2015),
4. low-homeownership rates (Dawkins et al., 2015),
5. a greater share of Democratic party voters (Meltzer & Schuetz, 2010), and
6. a strong presence of housing advocacy organizations (Meltzer & Schuetz, 2010; Pfeiffer, 2007).

Housing and population demographics indicating tight housing markets may broadly explain why local governments might want to create local IH housing programs (Wang & Balachandran, 2021b). City governments with high housing densities and little vacant land might foresee the need for engaging private players to ensure the creation of affordable housing (Meltzer & Schuetz, 2010). In housing markets with a high rent burden, IH policies may serve to create income-restricted units to supplement other housing policy measures. Cities with increasing economic investments may see a rise in average household income but might be experiencing rapid gentrification and displacement. These cities might be interested in IH policies to find affordable housing options for the service workers who are necessary for the growing business sector (Pendall, 2009). Cities with low homeownership rates might encounter less resistance from homeowner groups against IH policies (Dawkins et al., 2015). A high proportion of homeownership population is associated with NIMBY-ism (Not-In-My-Backyard)

and is usually characterized by increased resistance to affordable and multi-family housing developments (Sally & Tighe, 2015). IH policies may also enjoy support from local constituencies with a high share of democratic voters due to their redistributive nature (Meltzer & Schuetz, 2010). And cities with a strong presence of housing advocacy groups may be able to pressure IH policy action from local leaders (Pfeiffer, 2007). While these are logical reasons that may explain the characteristics and possible reasons for local interest in IH policies, they mainly represent the typical characteristics of IH jurisdictions drawn from large-N studies. In reviewing the literature, there only appeared to be two context-specific studies on local adoption of IH policies, and both based on IH jurisdictions in California (Meltzer & Schuetz, 2010; Pfeiffer, 2007). However, both studies pay very little attention to the nuances of state influence on local policy adoption since their case samples come from the same state.

Overall, there is a need for detailed case studies on how local governments choose different elements of their IH policies, what needs they prioritize, and who influences their policy priorities (Mukhija et al., 2015). Such studies can assess the impact of developer opposition, IH policy advocacy by grassroots organizations, and state-local relations on the design and implementation of the IH policies within specific contexts.

### **IH programs' success factors**

Researchers unanimously agree that the design (requirements and incentives) of an IH program is largely responsible for the success of the policy (Garde, 2016; Schuetz et al., 2009; Wiener & Barton, 2014). The prevailing local conditions, and the IH objectives that implementing jurisdictions prioritize, together influence program choice and design criteria (Schwartz et al., 2012), which in turn determines the results of IH policy implementation (Mukhija et al., 2015).

IH policy design is a complex balancing act of incentives and requirements. When IH policy has too many requirements with too few incentives, the developers oppose it, and the construction slows down. In contrast, when IH policy offers more incentives with fewer requirements, the housing advocacy groups oppose it, and policy paralysis ensues and leads to construction delays and tight housing supply markets.

Among the myriad combinations of IH policy objectives and design variants, and the various resulting possibilities, there are some commonalities that determine IH policy feasibility and success. Many IH scholars have established that IH policies are best supported in ‘hotter’ real estate markets, characterized by high housing demand and construction activity and rising home prices (Mukhija et al., 2015; Robert Hickey et al., 2014; Wang & Balachandran, 2021b). Successful IH programs also offer developers a variety of incentives to offset costs (Stromberg & Sturtevant, 2016; Wang & Balachandran, 2021b). Local jurisdictions with low base zoning entitlements may have more bargaining power to interest developer participation by granting density bonuses (Robert Hickey et al., 2014). The complicated nature of IH policies requires strong local administrative capacities for successful program design and implementation monitoring (Jacobus, 2007). Schuetz and others (2011) found that jurisdictions with long-standing IH programs are more successful. Studies have also found that mandatory IH policies produce a greater number of affordable units compared to voluntary policies (Stromberg & Sturtevant, 2016; Wang & Balachandran, 2021b). Mandatory IH policies are also mainly found in states with strong IH policy frameworks. However, while states like California, Massachusetts, and New Jersey, with their strong supportive frameworks, may stimulate higher rates of policy adoption in their constituent jurisdictions, that does not necessarily guarantee successful IH policy implementation. In fact, studies have found that IH jurisdictions from other states contributed more than half of the total IH units in the country, despite constituting only a quarter of total IH jurisdictions nationally (Wang & Balachandran, 2021b). Local jurisdictions in states that encourage IH policies may create ‘perfunctory’ programs with weak provisions (Reyes & Wang, 2021).

IH policy proponents, in general, argue that mandatory IH policies are preferable to voluntary IH policies since they indicate a stronger commitment to affordable housing priorities from local institutions, produce a greater number of affordable housing units, are more likely to serve lower-income groups, and offer more predictability of policy enforcement and results (Brunick, 2003). VIH policies, in contrast, are typically understood to be weak, unreliable, and designed disproportionately in favor of market forces. However, some local authorities may be forced to choose VIH programs due to state policy restrictions. In such circumstances, how does one account for the factors that disallow local IH policy preference? When cities cannot adopt

the IH policies they hoped to have, what do they do? Local conditions that accompany the failure to launch mandatory IH policies have not been thoroughly examined in the literature.

I propose that, *when local authorities are fully committed to IH policy objectives, they may find ways to adhere to their local commitments even in the face of state restrictions.* In the absence of mandatory IH policies, these cities may adopt some form of VIH policies, but they may also embrace other related housing policies. The choice of these policy options may together serve as good indicators to reassess the objectives that initially led to local interest in IH policies. They also allow us to see how different stakeholders feel about the various options available to the cities in the face of state IH preemptions.

## **Methodology**

This study is a comparative case study of three progressive cities, Austin, Texas, Portland, Oregon, and Nashville, Tennessee, and their IH policy journeys in the face of state restrictions. The term “progressive city” primarily emerged in the 1970s during the retrenchment of federal aid to cities (Gendron & Domhoff, 2009). City mayors in some cities, like Chicago, Burlington, VA, and San Francisco, initiated progressive policies on land use planning, taxation, and community engagement practices to “defy the city limits and promote a more progressive, equity-oriented mode of urban development” (Schrock, 2015, p. 650). The rise of the technology industry has resulted in the emergence of progressive political constituencies in many cities in the country (Florida, 2014; Sperling et al., 2005). According to Pierre Clavel, “Progressives worry about inequality and advocate steps to reduce it; and they try to open up government to wider citizen participation” (Clavel, n.d.). Urbanists celebrate these cities as “incubators for ideas” that can reactivate federal and state action as a way of bottom-up federalism (McGuire, 2006). However, such a celebration often discounts the role of the states. The current era of “red state preemptions against blue cities,” where conservative state governments target progressive urban policies, calls for a greater focus on this state-local relations (Brownstein, 2021). We need to look beyond the incidence of state preemptions against local policies and focus on their scope for policy innovation and ground-level impact on city functioning. By finding three case contexts that experienced varying degrees of state preemption impact on IH policy implementation and housing policy innovation, we can test how bottom-up federalism battles against the structural forces of top-down federalism.

Grounding the discussion of inclusionary housing policies within each local context, this paper describes how discussions on IH policies unfolded in each of the three cities, the stakeholders who shaped the discussion, and the priorities that led the IH policy design efforts.

### *Case Selection*

To select my cases, I used the 2018 version of the Grounded Solutions national database of IH programs, that tracked around 900 jurisdictions, to determine the state-level distribution of IH policies in the U.S. (for updated database refer Grounded Solutions Network, 2020). From this set, I excluded the jurisdictions with state-level mandates (Calavita & Mallach, 2010; Karki, 2015; Wiener & Barton, 2014). I reviewed the remaining 129 jurisdictions to eliminate cities with populations of fewer than 100,000 people and selected cities that introduced IH policies between the years 2000 and 2017. To avoid both the potential loss of institutional memory and difficulties in identifying and approaching stakeholders involved in these policies too long ago, I set 2000 as the cut-off year. Through a purposive case selection process, I identified states with a history of preemptions against mandatory IH policies. From this list, based on the 2018 Grounded Solutions database, I excluded the states where there were no records of local IH programs. This process yielded the three cases for this study: Austin, Texas, Portland, Oregon, and Nashville, Tennessee. The state ban on mandatory IH policies was still in force in Texas and Tennessee at the time of fieldwork for this study. However, Oregon had partially lifted its 1999 state ban on mandatory IH policies in early 2016. Therefore, the Portland case provides an interesting opportunity to observe IH policy deliberations before and after 2016, along with the mandatory IH program currently in force. The ban in Tennessee was in 2016, and given the recent nature of the preemption, this study could capture Nashville's evolving response more closely. Austin continues to work within the confines of Texas's 2005 ban. However, there were renewed conversations around 2016 on IH policies when the city government was going through the public consultation processes for its zoning code rewrite. Figure 5.3 captures the timeline of key IH policy decisions in all three contexts and shows significant activity in Portland following the repeal of the ban.

Even though I selected the three cases based on a deductive sampling process, these cases are also theoretically significant in the context of state-local relations and the rise of state preemptions against 'progressive cities.' In the absence of academic models that enlist



progressive cities in the U.S. based on specific variables, we can apply the broader defining characteristics of progressive cities to our three case cities. All three cities are majority liberal constituencies, rapidly growing economic centers that have a strong technology industry. These cities are confronted with the adverse impact of their racist history and contemporary growth story on marginalized communities and their access to affordable housing. Active grassroots organizations in these three cities are advocating for progressive redistributive action from their local governments to respond to housing inequalities. All three cities turned to inclusionary housing policies as an attempt to initiate progressive housing and land use policy and have faced state opposition.

### *Methods*

While there are commonalities that led to the case selection, as is typical of a comparative case study analysis, the paper also focuses on the differences within and between the cases (Goodrick, 2020). I adopt a relational comparison to appreciate the contextual ‘differences’ of each case, inquiring into their institutional and administrative setup, housing market dynamics, socioeconomic makeup, political commitments, strength of state IH restrictions, and housing advocacy activity (DiGaetano & Strom, 2003; Ward, 2010). Rather than test a theory or draw broad generalizations, the purpose of this qualitative study is to elaborate and refine our current understanding of the contextual dynamics and decision-making processes in IH program design (Yin, 2014). Austin, Portland, and Nashville show varied success in the implementation of IH policies and offer strategies and lessons for other jurisdictions facing similar limitations.

Policy deliberation processes receive less attention in planning scholarship when compared to policy impact research. Studying policymaking processes poses the challenge of identifying a suitable timeframe to capture important phases of policy evolution. Examining IH policy deliberations and stakeholder perceptions around state preemptions offers an opportunity to identify and focus on the critical junctures of IH policy decisions made in these cities. This project adopts an interview-led approach to assemble important events and processes in each case through process tracing (Beach & Pedersen, 2019) (Refer Figure 5.3 for key IH policy junctures). Key informants were first identified based on months of tracking newspaper entries in all three cases. Communication with them helped identify other stakeholders. I interviewed a total of 50 stakeholders in three cities. All relevant stakeholders, public officials, housing

advocates, and developers were contacted over email and telephone (See Table A.2 in Appendix A for interviewee list). I also used extensive document analysis of government policies, annual reports, City Council meetings, memos, and press releases in addition to several semi-structured interviews, and site visits (See Table A.3 in Appendix A for detailed data sources). Interviews served as oral histories to map processes and policy decisions. They also helped explore and analyze the roles different stakeholders played in the policy design process. I transcribed all the interviews and coded on Dedoose using grounded-theory open coding. Quotes from newspaper reports are attributed to the speaker as disclosed. However, excerpts from my stakeholder interviews are anonymized and referred by the identification numbers assigned to each interviewee in square brackets following any direct quotes. Interviews usually lasted from 40 - 90 minutes. Particulars from policy documents pertinent to IH policy specifics such as income thresholds, off-site options, incentives, dates of enforcement, among others, provided evidentiary support and technical and administrative details. Site visits to some IH projects helped engender a feeling for the location and verify the integrated nature of the project design. Where possible, I approached the property management office to visit the units and cross-verified project details with the information available with the city agencies.

### ***Study Scope***

While there are several nuanced aspects to this study on the political economy of housing policies and state-local relationships, this paper focuses on the substantive aspects of IH policies – local IH policy-making processes and priorities and related housing policies. The lens is trained on city IH policy response locally within state-imposed restrictions and *not* on how cities confront state interference outwardly through lobbying and coalition-building to change the state policy position.

Among the many types of IH policies, this study focuses mainly on traditional IH policies. I discuss other related policies with the objective to advance the discussion on IH policies and understand the choices local jurisdictions make in the absence of IH policies. I adopt a slightly modified version of Wang and Balachandran's (2021b) definition of IH programs. According to them, "an IH program is defined as a set of rules or a government initiative that encourages or requires the creation of affordable housing units or the payment of fees for affordable housing investments when new development occurs" (Wang & Balachandran, 2021b).

In their IH definition, ‘payment of fees’ refers to both linkage IH programs and in-lieu fees proposed as part of traditional IH programs. They treat all schedule-based IH programs, both traditional and linkage programs, as IH programs, while excluding negotiation-based and other non-rule-based programs that do not specify affordability periods and maximum income limits.

In this study, I use the definition as it primarily applies to traditional IH programs. However, linkage and negotiation-based programs, where present, are discussed as related policies to traditional IH policy options. Stakeholders referred all other related affordable housing policy initiatives discussed under each case in this paper. While the list of these other policies is not exhaustive, it represents the conversations on housing policy - past, present, and future - in conjunction with their IH policy implementation. It is possible that stakeholders only referred to policies that made sufficient implementation progress or attracted considerable public interest. Using the constant comparison method, efforts were made to determine if certain policy tools referred by stakeholders in one case were also in use in the other contexts. Despite these efforts, some other relevant policy efforts may not have been mentioned during stakeholder discussions and may remain underexplored in this study.

Further, the focus will be on rental programs for inclusionary housing rather than homeownership and non-profit management programs. This will allow the paper to focus on private sector participation in affordable housing production. Rental housing is understandably critical to meet the immediate housing needs of low-income families compared to IH policies for homeownership units that are usually geared towards higher-income groups.

### ***Cases Description***

Portland, Austin, and Nashville have all gained prominence as attractive destinations for technology and creative industries. All three cities have rapidly expanded in the last 20 years and are experiencing housing problems. As seen from Table 5.1, Austin is bigger in terms of population among the three cities with almost a million people in 2020 and Nashville is the biggest in terms of land area. Nashville’s is a consolidated city-county government for Nashville and Davidson County. Portland is understandably dense given Oregon’s strict smart growth policies that favored urban densification and discouraged sprawl. Compared to other big cities in Texas, Austin is relatively small. However, the city has almost doubled its population since 1990 and is one of the fastest-growing large cities in the country (Refer. Table 5.1). Nashville grew

from a ‘sleepy southern’ town to the ‘It’ city due to its rising prominence since the late 1990s as a music and hospitality industry destination (Haruch, 2020). Given the expanse of the city and the concentration of the growth industries in only certain areas, specifically, the Downtown, Nashville’s housing sub-markets vary widely (Thurber et al., 2014). Portland is predominantly white with fewer people of color, resulting in less visible patterns of segregation. More than a third of Austin’s population are LatinX people (Refer. Table 5.1), many of whom are on the east side and the city’s urban extension areas in the southeast. A significant portion of Nashville’s population is Black (nearly 28 percent); this share is much higher than the other two case cities. Nashville is also a highly segregated city in the country (Menendian et al., 2021), and a high proportion of its Black population is located in the central areas of the city (PolicyMap, n.d.). Housing submarkets in these central areas are experiencing heightened pressures of gentrification in Nashville and therefore disproportionately impacting Black people.

Nashville’s poverty rate is around 15 percent, this is marginally higher than poverty rates in Portland and Austin, as seen in Table 5.1. Conversely, median household incomes in Portland and Austin are significantly higher than those in Nashville. While median home values have doubled in all three cities during the last 20 years, Portland has significantly higher median home values compared to the other two. Overall, the rental housing scenario in Portland also appears to be tighter than those of the other two cities with lower vacancy rates, a greater increase in median monthly rents, and a higher proportion of cost-burdened<sup>15</sup> households.

The three cities have different urban governance set-ups. Austin has a 10-district representative council with a strong mayoral system. Portland is the only prominent big city in the country that has retained a commission form of government with commissioners and mayor chosen at large. In addition to legislative functions, the commissioners also have executive functions as administrative heads of specific city bureaus. Nashville is a metropolitan form of government with a strong mayor system, 35 representative ward councilors, and five at-large Metro councilor members. While both Austin and Portland have separate county governments, Travis and Multnomah County, respectively, Portland also has an elected metropolitan government, known as the Metro, that provides a regional growth strategy.

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<sup>15</sup> Families spending more than 30 percent of their income on housing costs.

Table 5.1: Case details and housing profile (Source: Collated by the author from (PolicyMap, n.d.; U.S. Census, 2020))

<b>Fact</b>	<b>Portland</b>	<b>Austin</b>	<b>Nashville</b>
Population (2020)	652,503	961,855	689,447
Land Area (2010)	133.43	297.9	475.13
Population per square Mile (2010)	4,375	2,653	1265
Growth rate of population (2010-20)	11.7	21.7	14.7
Percentage of White population (excludes Hispanic-white)	70.6 %	55.4 %	48.30 %
Percentage of Hispanic or Latino population	9.70 %	33.90 %	10.50 %
Percentage of Black population	5.80 %	8 %	27.60 %
Percent of population with a Bachelor's degree or higher	50.40 %	51.70 %	41.10 %
Median Household Income	\$71,005	\$71,576	\$59,828
Homeownership rate	53.40 %	45.10 %	53.90 %
Poverty rate	13.70 %	13.20 %	15.10 %
Median home value	\$412,000	\$337,400	\$239,000
Increase in median home value since 2000	166.30 %	179.30 %	113.80 %
Monthly Median Rent	1248	1280	1100
Rent-burdened households (>30 % household income on rent)	47.10 %	45.50 %	44.60 %
Median housing price-to-household income ratio	5.8	4.7	4.0
Increase in monthly median rent from 2000	100.60 %	76.80 %	79.20 %
Rental vacancy rate	4 %	6.60 %	7 %
Share of cost burdened rental households	47.10 %	45.50 %	44.60 %
Federal subsidized housing units	20,502	22,997	16,923
Federal subsidized housing units and their proportion of total rental stock	16.40 %	11 %	13.50 %

## Findings

### *Austin - Overview*

The City of Austin projects that its 2011 population will double in 30 years. In its comprehensive plan, *Imagine Austin*, the city government made a broad commitment to use zoning and incentives, such as “grants, loans, infrastructure investments, and innovative regulatory practices,” to deliver community benefits such as affordable housing and improved public space design (City of Austin, 2012). Austin’s Neighborhood, Housing, Community Development (NHCD) Department released a strategic housing plan adopted by the City Council in 2017 called the Housing Blueprint. The strategy projected a total demand for 135,000 new market units over the next 10 years and estimated that sixty thousand of these units were required

for housing families earning below 80 percent MFI (Neighborhood Housing and Community Development, 2017). To meet these targets, Austin would need an average of at least 500 new affordable units every month, with steps to ensure no loss of existing affordable housing units.

Responding to the comprehensive plan’s vision to create “economically mixed and diverse neighborhoods across all parts of the city, with a range of affordable housing options” (City of Austin, 2012), the Housing Blueprint calls for the location of at least 25 percent new affordable housing developments along the major (both existing and proposed) transit corridors and high opportunity areas delineated in their comprehensive plan. The city government has, to this end, considered several options to meet the affordable housing needs in its zoning code rewrite process that started in 2016 (Neighborhood Housing and Community Development, 2017a). Remarking on state restrictions that prevent Austin from pursuing mandatory IH policies, city leaders and stakeholders have sought to prioritize the recalibration of existing developer incentive programs (or Voluntary Inclusionary Housing - VIH programs) to “increase production” [20, 27, 29].

### ***Austin – IH Policy background***

Around 1998, Austin started witnessing high population growth and was considering creating special districts with enhanced zoning entitlements. The advocacy community came together at this time to ensure that “entitlements were not given away without some kind of community benefit in the form of affordable housing” [29]. Advocates with a legal background produced policy notes on inclusionary housing and impact fees as possible solutions. Even as housing advocates started engaging the city leadership in the IH conversation in the early 2000s [29], there were no formal resolutions from any city in Texas to adopt inclusionary zoning ordinances by 2005 (Henneberger, 2008). However, the Austin Home Builders Association (HBA) approached the state legislature to pass a preemption banning mandatory inclusionary zoning in the state (Texas Local Government Code Section 214 .905, 2005). Active engagement from a few knowledgeable housing advocates resulted in some “closed-door negotiations with legislators and the HBA” to create some exceptions to the purview of the state preemption [27].

One of the exceptions was the creation of a Homestead Preservation District (HPD)<sup>16</sup> to protect qualifying census tracts with a high incidence of poverty from gentrification (Texas Local Government Code Chapter 373A, 2005). Local governments are allowed to implement Tax Increment Financing (TIF) for preserving and creating housing affordability in these delineated zones and pursue mandatory inclusionary zoning in the HPDs. Overall, due to state intervention in IH policy options, Austin is

1. Unable to pursue mandatory IH (MIH) policies for homeownership units.
2. Able to pursue mandatory IH policies for IH rental units.<sup>17</sup>
3. Able to create HPDs and apply mandatory IH policies within HPDs.
4. Able to apply voluntary IH (VIH) policies to homeownership as well as rental units.

Of the above, the City of Austin has only aggressively pursued the VIH. The city also created one HPD in 2007(Housing Works Austin, 2015). However, the TIF zone and IH policy were not introduced in it due to coordination issues with the Travis County government [19, 29].

### ***Austin – IH policy performance***

In the absence of MIH, housing advocates wanted the city government to incorporate housing affordability requirements into its proposals for increased zoning entitlements in special zones. As a result, Austin has introduced several types of incentives for developer participation in the production of affordable housing units. They are spread across different parts of the city –

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<sup>16</sup> According to the city of Austin, “Homestead Preservation Districts (HPDs) are areas of Austin that qualify as special districts, under state legislation, that establish residential boundaries for the reinvestment of property taxes in an effort to increase household affordability throughout the city” (City of Austin, n.d.)

Implementing jurisdiction eligibility as per Sec. 373A.003. of the Texas Local Government Code

“a municipality with a population of more than 750,000 that is located in a uniform state service region with fewer than 550,000 occupied housing units as determined by the most recent United States decennial census.”

HPD eligibility criteria as per Sec. 373A.052 of the Texas Local Government Code

“1) fewer than 75,000 residents; 2) an overall poverty rate that is at least two times the poverty rate for the entire municipality; and 3) in each census tract within the area, a median family income that is less than 80 percent of the median family income for the entire municipality.”

<sup>17</sup> The general interpretation of the IH ban in Texas is that the rent control ban in Texas also bans the adoption of IH policies for rental units. However, closer examination of the stipulations in the Texas Local Government Code indicate that legally mandatory policies for IH rental is feasible in Texas. This take was also corroborated by legal experts in Texas. However, the general consensus from the city and the activists is that any attempt by the city to implement mandatory IH policy for rental units would be quickly shut down by the state with an explicit preemption that might even extend to voluntary IH policies.

ToD (Transit Oriented Development) corridors, downtown, university area, municipal extension areas, and designated Planned Unit development zones. There are a total of 15 different development incentive programs that include density bonus programs, development agreements, fee-waivers, relaxation of planning requirements, or a combination of different incentives (NHCD, 2021). There are currently 12 VIH programs being administered by the City of Austin - 10 density bonus programs targeting market developments along transit corridors and zones in the city, one recent density bonus program ('Affordability Unlocked' program) targeting affordable housing developments, and one fee-waiver program. These do not include other development agreements pursued by the city for specific projects.

The fee-waiver program, called SMART (Safe, Mixed-income, Accessible, Reasonably priced, Transit-oriented) was Austin's first VIH program introduced in 2000 (NHCD, 2000). SMART mainly offers fee waivers and fast-track processing of planning applications based on the percentage of income-restricted units on a sliding scale formula. The program was very successful in its early years, especially in the new subdivisions surrounding the city, and produced 9,515 affordable units until November 2020 (City of Austin, 2020). Some advocates pointed out that despite its impressive numbers, the SMART program mainly benefited from the construction boom in Austin around the early 2000s and that the market would have produced similarly priced units on its own [21]. However, the affordability requirements lasted for very short periods of time – one year for ownership units and five years for rental units. Around 2007, when Austin experienced a high real estate boom and housing prices increased, developers did not find SMART “a sufficiently favorable incentive on its own” [23].

A density bonus program called the University Neighborhood Overlay (UNO) zone was the first of the many density bonus programs to follow in Austin. An analysis of the Austin Housing Inventory data on the Austin open data portal provided detailed insights into affordable housing produced with city support over the years. As of Nov 3, 2020, a total of 7,249 affordable housing units, (both ownership and rental), were completed under the 15 developer incentive programs (City of Austin, 2020). These constitute approximately half of the total 15,309 affordable housing units produced in Austin, including various federal, state, and local government-funded projects and private activity bonds. Of the 7,249 units, affordability period restrictions have expired for 1669 units. Of the existing 5,580 units, about four percent serve families earning 50 percent MFI or lower, 74 percent serve families earning 50-60 percent MFI,



and another 21 percent serve families earning 80-100 percent MFI. Almost 80 percent (4,529 units) of the affordable housing units produced under the developer incentive programs also received SMART waivers (City of Austin, 2020). More than half the affordable housing units (2,916 of 4,529 total) that benefitted from the SMART waivers are Low Income Housing Tax Credit (LIHTC) program-funded projects with 100 percent affordable housing units. The remaining 1,613 affordable units that benefitted from SMART waivers also received development incentives from other density bonus programs and development agreements.

The ten density bonus programs, oriented towards market developments and currently in force in Austin, produced a total of 1,694 affordable housing units from completed projects by November 3, 2020. Four of these 10 density programs produced no units. The UNO was the first and most successful density bonus program introduced in 2005. It constitutes 50 percent (834 units) of the income-restricted units generated by the density bonus programs. It is followed by the Vertical Mixed-Use (VMU) zone, which produced 521 units (mostly at 80 percent MFI), and ToD program – 283 units. Of the total 1,694 affordable housing units from the density bonus programs on the market, nearly a third (492 units) were produced between January 2017 and October 2020. The Affordability Unlocked density bonus program, introduced in 2019, is a citywide program that waives planning compatibility requirements for subsidized housing projects comprising more than 50 percent affordable housing units (City of Austin, 2019b). None of Austin’s density bonus programs receive any city subsidies, a feature the city administration proudly advertises.

*Figure 5.1: East-side station property in Austin, ToD density bonus program*



East-side station property was developed as part of ToD density bonus program. Constructed in 2017 with a total of 281 units, 51<sup>18</sup> of which are affordable housing units for MFI  $\leq$  50 with an affordability period of 41 years (Author, March 2020)

The density bonus programs were all introduced at different points in time and created through different zoning processes, such as zoning overlays, regulating plans, and special zones. Developers could choose different public benefit options like greenspaces, day care centers, and affordable housing, in exchange for enhanced entitlements. The options vary widely across different programs, but policy amendments over the years prioritized affordable housing provision. Affordable housing requirements also vary substantially from one density program to the other, and the incentives are tailored to specific housing and real-estate sub-market conditions. Some affordable housing requirements are set as a percentage of the increased density bonuses rather than the overall project. The affordability period for units also varies widely with a maximum of 99 years for homeownership units and 40 years for rental units as indicated in Table 5.2. Most projects that created affordable units have a median affordability

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<sup>18</sup> This is different from the figures disclosed at the site by the property management company during the site visit. They related that the city records were based on their own formula and failed to include the final figures in the developer agreements.

term of 15 years.<sup>19</sup> Not all density programs prioritize on-site construction of affordable housing, six out of the 10 density bonus programs offer a fee-in lieu option, and the rates vary based on the specific zone (NHCD, 2021). For example, the downtown density bonus program is primarily geared towards the generation of in-lieu fees that are channeled into the Housing Trust fund. A total of \$ 9,053,413 was collected from the fees-in-lieu from the developer incentive programs into the HTF from completed projects as of November 2020 (City of Austin, 2020). Housing advocates said that the VMU was a successful model as it offered no in-lieu fee, (which meant on-site construction), and encountered less NIMBY opposition during the permitting process since “neighborhoods were allowed to either opt-in or opt-out” of the density bonus zone [21, 27]. Developers, on the other hand, said that the UNO program was a good model because of the reduced burden on developers given the city government’s dedicated infrastructure investments in UNO and the exceptionally high built-up area and height allowances granted by the program in the high-demand university area.

Austin’s density bonus programs are, for the most part, designed for administrative approval for increased entitlement requests. According to the respondents, however, in many cases, the entitlements are determined through multiple hearings at the City Council [31, 18, 27]. Only those with 100 percent affordability compliance are slated for administrative approval (as in the case of Downtown DB program), thus requiring the City Council’s involvement and some amount of project-by-project public consultation for plan approval. Developers complain that these protracted processes make the project timelines unpredictable. The city officials agree and further lament that such negotiations create “a sense of mistrust” towards the city administration from both developers and the community-at-large [18].

Overall, there is a clear consensus from different stakeholders that the density bonus programs in the city are functioning sub-optimally and that they need to be “recalibrated” for better output. While there are no central statistics on the types of housing units produced under Austin’s density bonus programs, anecdotal references noted that density bonus programs have primarily generated studio apartments and single-bedroom rentals that mainly target students and working youth. Some programs that have been introduced in the later years have included

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<sup>19</sup> Mainly due to the greater share of units produced under the UNO program that had an affordability period of 15 years.

stipulations regarding the production of family units. However, it is not clear how many of these units have been introduced into the market. A 2015 city auditor’s report also heavily criticized the development incentive programs for inconsistent reporting<sup>20</sup> and poor monitoring practices (Office of the City Auditor, 2015). However, the author’s field visits also revealed some continuing discrepancies in the city data against the reports available with onsite property managers. Overall, stakeholders felt that Austin’s density bonus programs would benefit from stricter compliance monitoring and “affirmative marketing” practices [24, 21, 32].

The city officials and housing advocates agreed that the “hodge-podge” [29] nature of the multiple density bonus policies, spread across the city, creates regulatory complexity and administrative burden. Developers added that it also created confusion and additional “entry barriers” for small-scale developers [31]. Unlike MIH policies, according to city officials, VIH policies create “unequal dispersion” of affordable housing units, while also “failing to capitalize on rezoning requests from other areas” in the city [18]. Another advocate argued that tying affordable housing to market housing perpetuates existing patterns of segregation in Austin where the gentrifying areas in East Austin continue to displace the people of color and a predominant part of West Austin remains “untouched, white, and exclusively single-family” [22]. All the stakeholders agreed that the priority of Austin’s VIH policies has been to increase the affordable housing supply. One stakeholder recounted:

When we first started talking about inclusionary zoning back in 1998-99, I don't remember it being about gentrification. The conversation was about the tools we can use to increase affordable housing in the city, which I mean, displacement was a part of that. So, it was really just about, what's the *full range of tools*? Here's a tool that *wouldn't cost the city* really anything to implement. And it's, you know, *capitalizing* on overall the market. (emphasis added) [29]

This view on density bonus programs has not changed much over the years. Austin regularly complains about losing MIH policy from its affordable housing “toolkit” due to the state ban. The City Council also consistently identifies lifting state preemption in its legislative agenda and

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<sup>20</sup> In response, the City has started publicly sharing its Affordable housing Inventory on its Open Data Portal – a resource that was very helpful for this study and improves accountability and transparency in Austin’s housing program administration (City of Austin, 2020).

passes city resolutions supporting IH bills introduced by Austin’s state representatives in the legislature. However, during my field visits, all stakeholders agreed that MIH policies and pursuing the repeal of state preemption were not currently a priority for Austin. The city government instead pursues several other policy initiatives to supplement its existing density bonus program performance.

*Table 5.2: IH policy features of case cities (ranges assembled from multiple program documents)*

<b>Policy Features</b>	<b>Austin</b>	<b>Portland</b>	<b>Nashville</b>
<i>Description</i>	Voluntary policies primarily based on increased zoning entitlements	Mix of mandatory and voluntary policies	Voluntary policy exclusively based on gap financing
<i>Applicable project size</i>	N/A	20 units	N/A
<i>Income threshold</i>	50-80 percent MFI for rental	60-80 percent MFI	60-120 percent MFI
<i>Set-aside requirement</i>	5-10 percent total units /area 10-25 percent total bonus area	8-20 percent based on location	N/A
<i>Incentives</i>	Combination of density bonus (predominantly), fee-waivers, parking reduction, fast-track processing	Density bonus, fee-waivers, tax exemptions	Financial subsidies as gap financing
<i>Affordability term</i>	5-40 years rental 1-99 years ownership	99 years	Annual contract renewal
<i>Geographic targeting</i>	Major transit corridors and centers	City-wide	Only few major transit corridors and centers
<i>Offsite options</i>	No	Yes	N/A
<i>Fee-in-lieu</i>	Mostly allowed (variable rates based on location; disallowed in VMU)	Discouraged (high rates)	N/A

### ***Austin – Related housing policy initiatives***

In addition to its density bonus policies, Austin oversees the implementation of several development agreements that include affordable housing set-asides. These include cases where the city is investing public resources in the form of land, infrastructure investment, or tax breaks for large-scale development activities. These are in a way, Public-Private Partnerships (PPP), for expansive investments where the government prioritizes affordable housing production as one of its key demands from the partnership. Austin has some good examples of Master Planned developments that have incorporated affordable housing set-asides. The Mueller Airport Redevelopment master plan agreement required developers to incorporate 25 percent affordable housing and shared equity homeownership program resulting in 1,425 units (60 percent MFI for rental and 80 percent MFI for homeownership) (NHCD, 2017). These set-asides are determined

based on extensive consultations with communities and developers on a case-by-case basis. Activists had asked that a similar opportunity be open for the PUD (Planned Unit Development)<sup>21</sup> districts in the city. However, to avoid possible legal complications in the name of “contract zoning,” that arise from case-by-case negotiations, Austin had instead adopted a broad city ordinance in the form of a density bonus program with built-in affordability requirements.

Austin tries to aggressively raise funding resources and has set up its housing trust fund (HTF) as far back as 2000 (City of Austin, 2000). Several streams of revenue contribute to the HTF. Currently, 100 percent of all tax revenues from public properties in Austin are channeled into HTF, in addition to general fund contributions and receipts from VIH in-lieu fees. Additionally, Austin has successfully raised general obligation bonds for housing, also known as affordable housing bonds, three times, in 2006, 2013, and 2018, for \$55 million, \$65 million, and \$250 million, respectively (NHCD, 2017b). A total of 3500 affordable housing units were created together from the 2006 and 2013 bonds serving families earning below 60 percent MFI (NHCD, 2017). Austin provides substantial financing assistance to support both rental and homeownership affordable housing. HTF funds supplement federal funding, along with the resources from the affordable housing bonds. Developers also apply for mortgage revenue bonds for multi-unit developments with at least 40 percent of units catering to families earning 60 percent MFI and a further 20 percent units to those earning 50 percent MFI (City of Austin, 2019a). The city government has also pursued other innovative tools to leverage private investment into affordable housing. It mobilized private investors and partners to set up a “socially responsible private investment fund,” known as the Austin Housing Conservancy to buy and preserve “well-located” existing multifamily housing (60-120 percent MFI) before they are “lost to gentrification” (Austin Housing Conservancy, 2022; City of Austin, 2017). This is

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<sup>21</sup> “A Planned Unit Development (PUD) is intended for large or complex developments under unified control planned as a single continuous project, to allow single or multi-use projects within its boundaries and provide greater design flexibility for development proposed within the PUD. The minimum size generally considered appropriate for a PUD in Austin is ten acres.” (August Harris, 2016)

another strategy to motivate private players to serve the workforce housing segment, which allows government to focus on lower-income housing options.

Austin is also pursuing other prospective solutions for addressing the affordable housing crisis. One such solution involves creating land banks - where Austin's Housing Finance Corporation (AHFC) holds the first right-of-refusal to large-scale transactions or sale of multi-family unit developments. The City of Austin has dedicated \$100 million dollars for affordable housing from the 2018 affordable housing bonds for land acquisition (Bramble, 2022). As part of an anti-displacement initiative in its newly approved Transit plan, Austin is also dedicating funds for acquiring land to build affordable housing [23].

Texas sets no requirements on its cities to create affordable housing options through their comprehensive plans and offers little support in the form of housing funds from the state budgets. Austin has adopted an innovative strategy in its Housing Blueprint, setting affordable housing targets for different council districts. City planners claim that these targets are akin to "fair-share goals for council districts" that create a measure of accountability for councilors to allow more affordable housing development in their districts.

Most important, the city has been preparing for a rewriting of its 30 years old zoning code since 2016. One of the key considerations in this process, city officials revealed, was to update their code to facilitate the preservation and creation of more affordable housing.

There has been like a laser focus on increasing affordability in the city. We've kind of turned down other ideas about green building standards etc., because of the housing crisis and our priority has been getting more housing units in the right places and right building types on the ground. [34]

In addition to recalibrating the existing density bonus programs to maximize affordable housing production, the city also has proposals to create a city-wide density bonus policy applicable to all areas outside of the current density bonus programs. Plans are also proposed to create missing-middle housing by allowing multiple units on single-family residential zones with increased entitlements when the proposed redevelopment includes affordable housing units.

Despite its many efforts, Austin has been lagging in utilizing some of the tools already available to it, such as the TIF and HPD. The HPD was created, in 2007, from state legislation

that was crafted individually to serve the interests of Austin and equip it with the tools to preserve affordable housing in rapidly gentrifying areas. Even as Austin delayed creating the Tax Increment Reinvestment Zone or enacting of MIH policy within the HPD due to coordination issues with Travis County, it proposed the creation of three new HPDs in 2015 (City of Austin, n.d.). The required state amendment with revised qualifying criteria that would allow Austin to create new HPDs was struck down by the Governor in 2017 (HB 3281: HPD Revision, 2017). Consequently, Austin has turned to other tools at its disposal while the HPD already created in 2007 continues to receive minimal attention. Regarding TIFs, city officials revealed that Austin was relatively conservative about forgoing its revenue sources and also prefers not to pursue tax abatement or exemption policies. Interestingly, Austin also did not pursue a proposal to offer property tax exemptions for multi-family development and encourage affordable rental housing (City of Austin, 2019c).

### ***Portland - Overview***

Famous for its compact urbanism, progressive locals, and well-connected public transit, Portland is known as a testing bed for planning innovations in the country (Abbott, 1997; Abbott & Gibson, 2002; Butz & Zuberi, 2012; Irazábal, 2017). It is also the biggest city in Oregon and faces severe housing shortages. In general, Oregon has been experiencing state-wide housing shortages for several years (Jaquiss, 2022). Stakeholders explained that this is due to an underbuilding of around ten to twelve thousand units per annum, causing high housing costs across regions and income groups in the state, and specifically in the City of Portland [7].

According to the Portland State of Housing Report (2016), average rents increased by about 30 percent between 2010 and 2015, with very low vacancy rates of 2.6 - 3.2 percent between 2012 and 2015. The increased rental burden was as high as 86 percent of earnings for a person earning full-time minimum wages, [7] and the resulting burden was felt by most Portlanders. This was a turning point in the policy sphere when housing concerns received political momentum. In 2015, the increased rental burden ultimately resulted in the declaration of a housing emergency in the city (Mesh, 2015). During this time, the city took several steps to actualize some of the strategies outlined in the 2009 Portland Plan, that was prepared as part of Portland's comprehensive plan preparation process [8]. This included a relook at the density and



entitlement bonus programs implemented in the city since the 1980s. It also paved way for enacting the subsequent mandatory IH (MIH) policy.

### ***Portland – IH Policy Background***

The support for Portland’s IH policy emerged from decades of advocacy work around issues of land use and affordable housing policy in the state. Stakeholders recounted that the early ideas for IH were mooted in 1997 when the Metro government was pursuing their “Regional Housing Strategy” and looking to expand the existing affordable housing strategies. City archives from Portland indicate active interest in introducing inclusionary housing. In addition to initiating a feasibility study, the city government also conducted awareness programs and community outreach on IH policies at that time. Making a case for the introduction of MIH policy, a testimony from Portland’s City Commissioner to the Metro Council reads,

In Portland, we have worked with every available tool, including huge cash subsidies, to build affordable housing, and we are still not meeting the need. We must have the region’s help, not because Portland can’t or shouldn’t do it, but people who make up all our communities need access to homes they can afford, close to jobs and schools. (Kafoury, 1997)

Suburbs within the Metro region were opposed to setting fair-share targets and sued the Metro (Provo, 2009). Since Metro was not allowed to set regional fair-share mandates, Metro could only “list” IH policies as one of the preferred approaches for reducing affordable housing shortages. It fell on the city governments to embrace the policy on their own. While it is unclear whether Portland would have independently pursued the policy without the regional mandate, City archives reveal that Portland had initiated community deliberations and an MIH program feasibility study at this time. However, while these MIH discussions were underway, the Home Builders Association (HBA) approached the state government and succeeded in passing a state preemption against MIH policies in 1999 (HB 2658: Relating to Local Government Regulation of Affordable Housing, 1999).

The state preemption against mandatory inclusionary zoning banned local authorities in Oregon from requiring developers to provide income-restricted units for zoning approvals. However, they were permitted to continue using VIH policies that allowed developers to obtain

additional zoning incentives in exchange for providing income-restricted units. Subsequent repeated attempts to lift the ban against MIH failed until 2016. In 2016, the state lifted the preemption against MIH policies (SB 1533: Relating to Affordable Housing, 2016). In lifting the ban, it created “sideboards” that limited the design of MIH policies to only rental developments with more than 20 proposed units. It also required cities to offer incentives, either in the form of tax abatements or other financial incentives, in exchange for requiring developers to provide affordable housing units. The bill also equipped cities with another tool known as the Construction Excise Tax (CET), which allows cities to levy up to 1 percent on all construction to fund affordable housing development.

As the city was emerging from the recession with an increase in construction activity, a coalition of advocacy groups called Anti-displacement PDX came together to find solutions to gentrification and displacement in Portland (Bates, 2021). Through years of grassroots and advocacy work starting from their strategic plan, The Portland Plan, the City of Portland slowly started embracing the ideas of equity and racial justice into its comprehensive plan (City of Portland, 2009). One of the strategies that emerged out of a city-commissioned policy brief listed “inclusionary housing policy” as a possible initiative to address displacement in cities (Bates, 2013). Subsequently, there were renewed interactions among the advocacy members and city leaders that identified the need for lifting the state preemption to enable IH in Portland. During the housing emergency in Portland, the city formally passed a city resolution that clarified the city’s intent to pursue lifting the state IH. There is tacit acceptance, by various stakeholders in Portland and the state, that the preemption’s sideboards were carved to make MIH feasible only in Portland’s hot real estate market. In keeping with its commitment, the City of Portland aggressively followed through on its resolution to introduce MIH in the city. In less than a year since lifting the state preemption, the city updated its zoning code with MIH provisions (City of Portland, 2016a).

### *Portland – IH policy performance*

While the conversation for MIH policy emerged prominently in the late 1990s in Portland, development incentive programs<sup>22</sup> were introduced as early as 1975 in downtown Portland (City of Portland, 2008). Development incentive programs in Portland have used a combination of financial and zoning incentives to encourage developer participation in residential development<sup>23</sup>. The first program was a tax-abatement policy known as the New Multiple-Unit Housing (NMUH) program. It was introduced in 1975 and offered tax abatements, for a period of 10 years, to promote the construction of both ownership and rental multi-family housing (City of Portland, 2008). Tax abatement programs were also introduced for single-family housing over time. The NMUH program was later supported by a zoning-based Central City Density bonus program in 1988 (Johnson Gardner, 2007). Between 1988 and 2003, the density bonus program was amended many times to expand the list of community benefits options that developers could provide in exchange for additional density. These 18 options ranged from a residential bonus, locker rooms, rooftop gardens, and parking, among others. Income restrictions for creating middle-income housing through residential bonuses was introduced to the list of options only much later, in 2003 (Johnson Gardner, 2007). The NMUH boundaries were also expanded beyond the downtown to the entire Central City area to help developers layer the density bonus program with tax abatements for increasing residential construction. Both density bonus and tax abatement programs were later extended to some ToD Corridors in the city in 1996 (Economic & Planning Systems, 2015). While the residential density bonus was utilized 51 times in the period from 1988 to 2016<sup>24</sup> (City of Portland, 2016b)<sup>1</sup>, it was not geared towards the production of affordable housing [4]. Since many of these development incentive programs were based in the central city area and along the major transit corridors, many developments also benefited from the city and federal financing for urban

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<sup>22</sup> While some scholars may deem these development incentive programs as voluntary IH or VIH policies, according to Wang and Balachandran's (2021b) definition, the absence of upper-income limits does not qualify these programs as VIH programs.

<sup>23</sup> Note that the objective of these programs was to catalyze residential development in general rather than promote affordable housing specifically.

<sup>24</sup> Evaluation reports do not report the number of residential units generated from the bonus programs and instead indicate only the number of times these permits were issued.

renewal and transit. In summary, we may conclude that different development incentive programs in Portland, launched between 1970 and 2010, succeeded in catalyzing housing production without the affordability requirements.

During the pre-recession construction boom, the City of Portland witnessed a marked uptick in the construction of multi-unit developments and noticed that very little of this development was catering to the affordable housing needs of Portlanders [8]. Policymakers and community activists decided to discontinue the central city density bonus and tax abatement programs until they were recalibrated to align with the Portland plan and its comprehensive plan objectives (City of Portland, 2008). In 2012, in partnership with the Multnomah County, the city government launched a new set of tax-abatement programs for multi-unit rental (MULTE – Multi-Unit Limited Tax Exemption program), homeownership (HOLTE – Homebuyer Opportunity Limited Tax Exemption program), and non-profit housing developments (NPLTE – Non-profit Limited Tax Exemption program). In the tax year 2017-18, a total of 13,005 units received tax exemptions, 80 percent (11,365 units) of which were non-profit developments serving below 60 percent AMI, 12 percent MULTE (1640 units: 334 market units, 1,217 units for below 60 AMI, and 89 units for 61-80 AMI rent-restricted), and 8 percent HOLTE (1,242 units) (Portland Housing Bureau, 2018a). To receive property tax exemptions for 10 years under the MULTE program, developers must dedicate 20 percent of the housing units for income groups earning 60 percent AMI (City of Portland, 2012). The density bonus programs also went through revisions during the comprehensive planning process and in their place, a city-wide voluntary incentive bonus policy and the Mixed-Use Zones project were proposed in 2015. The Mixed-Use Zones project prioritized affordable housing and commercial development in granting density bonuses to non-residential and mixed-use developments. However, passing the Mandatory Inclusionary Housing (MIH) Program in December 2016 resulted in the merging of both zoning and financial incentive programs into the MIH program (City of Portland, 2016b). Despite the many programs in implementation and their long history in Portland before MIH, their results are hard to track given the lack of data. These programs also underwent multiple changes that included transformed policy priorities and program names. Given the distributed nature of projects by different administration and jurisdictional units, and the layering of different programs and funding channels, it is hard to gauge the effectiveness of each of these programs and their contribution in terms of housing units.

Overall, it may be fair to say that, in the absence of MIH policies, Portland did not make any notable efforts to build VIH policies to promote housing affordability until 2012. However, at the behest of housing advocates, the city government undertook the following in this period: recognized the failure of its development incentive programs, commissioned evaluation studies of its policies, and suspended all policy initiatives as Portland weathered the recession. They also undertook an overhaul of their planning approach through the comprehensive plan consultation processes. Portland emerged out of the recession embracing an equity-led planning approach and preparing a suite of recalibrated VIH policies (See Figure 5.3 for timeline). However, these programs were not fully launched and adjusted before the city government declared a housing emergency in 2015. The city leadership fully supported the housing advocacy groups that were lobbying the state legislature to lift the MIH ban in 2016.

City officials and advocates were very clear that they saw MIH policy as a political response to grassroots demand for “engaging the private market in bringing some affordable housing.” One prominent player in MIH advocacy said,

Our approach really was a little bit blunt and that we really were looking to extract some sort of benefit for something from the private market. So, in that way, it was like a really socialist sort of approach, like we just *extract from private development* [laugh]. Because, you know, there's a ton happening and they're not building any affordable housing and they're not employing people of color and they're not, you know, they're not doing any of this. So, we need *something out of this massive building boom* that we're experiencing. (emphasis added) [10]

They further explained,

When people get pushed out due to gentrification and displacement from the inner city... A lot of this is exacerbated by the sort of building boom that had been happening in which you're having more and more higher-end units, so the experiences are sort of like, *why can't I live there?* (emphasis added) [10]

From the City's perspective, elected leaders found they were getting to a place where the developers just weren't interested" in the voluntary IH policies. This led to the thinking that “maybe we just have to *require it*” [7].

The MIH program came into effect in February 2017 – within a year of the state’s repeal of IH preemption. MIH policy requires any rental residential development with more than 20 units to dedicate 20 percent of units for families earning less than 80 percent AMI. In case the developer elected to provide deeper affordability, 10 percent of the units were to be income-restricted for 60 percent AMI (City of Portland, 2021a). To support the development costs, the city provides three major incentives to the developers: Tax-abatements under MULTE, waiver of System Development Charges and Construction Excise tax, and zoning entitlements in the form of density bonuses, and relaxed parking requirements. These incentives are provided on a pre-defined mix and match criteria determined based on the number of affordable units, proposed increase in density, and distance from transit stations and corridors (Portland Housing Bureau, 2021a). Due to the sideboards on the state IH preemption repeal bill, the city also provided developers with an option to pay an in-lieu fee into the Affordable Housing Fund to opt-out of IH mandate. However, the rates were set high. As a city official quipped, “They [developers] were interested in a fee-in-lieu option until they saw the fee-in-lieu [laugh],” explaining how the city government had intentionally set high opt-out fee rates<sup>25</sup> to prioritize the production of affordable housing units.

The MIH policy was also designed to prioritize long-term affordability for 99 years and produce of low-income housing in high opportunity areas (See Table 5.2 for comparison). City officials explained that while the voluntary MULTE program had good participation when the housing market recovered in 2015, it only supported a short-term affordability period of 10 years, whereas the MIH policy allowed permanent affordability. Overall, the MIH policy was designed with the understanding that, while the policy would incentivize developers to provide affordable housing, “the incentives were not necessarily going to offset the cost of providing the affordability” [5]. Review of public consultation meeting recordings suggested that this policy determination was a community demand. When developers complained of the financing difficulties MIH policy would impose on them, grassroots leaders responded:

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<sup>25</sup> \$27/Sq.ft for Central City and \$23/Sq.ft for other areas (Portland Housing Bureau, 2021b). It the highest in-lieu fee rate in the country with a national average of \$14.22/Sq.ft for rental development and \$15.41 for multi-family sale (Wang & Balachandran, 2021b).

Our communities... had to *adjust* [to the housing market and the displacement caused by it]... we ask the development community to now *adjust* to the needs of our region. (Portland City Council Special Session, 2016)

In contrast with most downtown IH policies that generally require lower affordability requirements and offer more opt-out options due to high land costs, Portland’s MIH policy places higher requirements in the Central City area. The idea was that higher market demand in these areas would provide more opportunities for developers to break even with the help of increased density entitlements. Also, IH units would provide equitable housing options in these high opportunity areas that typically have limited affordable housing options. Where off-site development options are available, they are restricted to pre-identified high opportunity zones within the city. However, in these off-sites, developers were required to provide deeper affordability – 10 percent of units at 30 percent or lower AMI, or 20 percent units at 60 percent or lower AMI (City of Portland, 2021a). Given community criticism regarding the scarcity of family-sized units – a common failure of IH policy output – Portland introduced reconfiguration options to its MIH program, allowing proportional allocation of bedrooms to larger family-sized units.<sup>26</sup> The MIH was designed for administrative approval to discourage protracted negotiation during the planning consultation process. Officials explained that the code was prepared with preemptive and “extensive consultations” with the community “so each application decision would not require too much public input” [8].

Another city official clarified that they deliberately moved away from a case-by-case approval process to ensure that the rules were “clear and objective, and applied uniformly” [7]. The city government prioritized compliance with Oregon’s land use law that encourages “equal interpretation of the law for everybody” and to avoid lawsuits [7]. The MIH policy underwent several adjustments over time to accommodate the changing real estate scenario and pre-IH building permit rush. These included the trade-offs between set-aside requirements for deeper affordability, a combination of cost-offsets, and incentives for developments in different parts of the city. The MIH policy received severe criticism for slowing down multi-family developments in the city (Cortright, 2021). Between its introduction in 2017 and May 2020, 61 IH rental units

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<sup>26</sup> Refer <https://www.portland.gov/phb/inclusionary-housing/faq#toc-reconfiguration-example> for an example of reconfiguration explanation and example

and two IH homeownership units came into the market. 28 of the 61 rental units are studio apartments, 20 are one-bedroom apartments, and nine are two-bedroom apartments (Portland Housing Bureau, 2020d). Another 400 IH rental units have been approved and are in various stages of construction; they are predominantly studio and single bedroom apartments. Only two projects that may have been subject to MIH stipulations opted to pay an in-lieu fee. Of the 234 proposed IH rental units in pending applications, some are voluntary – in that, they opted to participate in the MIH program to receive MIH incentives. 20 of these IH units are proposed in residential projects with fewer than 20 units, and six units were from “vested projects” (pre-IH permit applications). Between the time the MIH policy was first announced on March 5, 2016, and it came into effect on February 1, 2017, the city planning department received an influx of multi-unit building permission applications. Developers rushed their building permit applications for future proposed projects to avoid MIH requirements. According to the city reports, the building permits received for 19000 units in the pre-MIH rush were a “market anomaly that was equivalent to the previous eight years of multifamily unit permit totals combined” (Portland Housing Bureau, 2018b). This influx of prior applications, city officials note, resulted in the slower production of IH units in Portland. To attract developer interest in generating affordable units from the vested projects, the city government amended the MULTE provisions in 2018 to use tax abatements to support affordable housing in pre-IH (vested) projects (City of Portland, 2018). However, interest has been low so far and the pandemic appears to have further dampened the MIH policy outcomes. Meanwhile, the city government has undertaken several initiatives in keeping with the policy determinations made during its 2015 Housing Emergency.



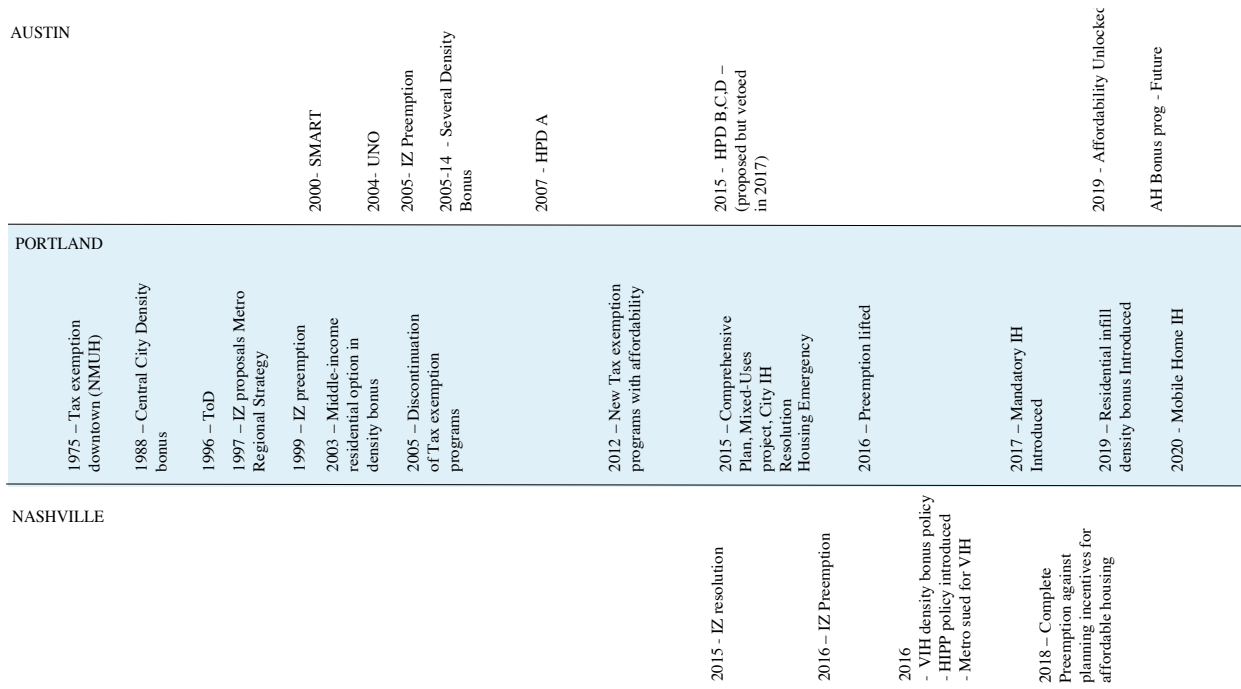
*Figure 5.2: 54 Woodstock corner property in Portland, Mandatory IH program*



54 Woodstock corner property in Southeast Portland, the first MIH units to go into the market. 3 1BR/Studio IH units, at 60 percent AMI in a 38-unit development for an affordability period of 99 years. (Author, August 2019)

In addition to the MIH policy, Portland has adopted other density bonus programs in exchange for affordable housing set-asides. To encourage low-cost market housing, the city recently adopted a density bonus policy to encourage manufactured housing where 50 percent of the units serve income groups earning below 60 percent AMI for a 99-year period (City of Portland, 2021b). Another set-aside for affordable housing through density bonus was created through the “residential infill” project (City of Portland, 2019). In 2016, Portland initiated the infill project in to encourage missing-middle housing in single-family residential zones. Community activism around this initiative led to the state-wide ban on single-family-only zoning in 2019, paving way for Portland’s policy (HB 2001 Single-Family Residential Zoning, 2019). Under Portland’s Residential Infill project, developers can build up to four units on a single lot. To encourage affordable housing expansion under the infill project, the city government has introduced, “Deeper Housing Affordability FAR Density program” allowing six units (three of which are income-restricted) in place of four units (City of Portland, 2021c).

Figure 5.3: Inclusionary housing policy timeline in three cities



**Portland – Related housing policy initiatives**

Portland’s comprehensive plan embraces “equity framework” as a central paradigm that guides all city initiatives and planning policies (Zapata & Bates, 2015). The City of Portland made some major shifts in land use and housing policy decisions following its comprehensive plan. Many of these changes were initiated around the 2015 housing emergency declaration in Portland. In integrating the goals of equity and racial justice in all facets of planning (Bates, 2021), affordable housing set-asides were incorporated in several policy initiatives. State-level apparatus and policy environment, for comprehensive planning and smart growth through Oregon’s 1973 Land Use Planning Act, have also indirectly resulted in the incorporation of fair-share objectives in the city’s policy priorities. While Goal 10 of the State Act sets no specific targets for housing production for different income groups, Oregon’s cities are required to zone residential land use to accommodate the housing needs of the overall projected population densities. The Metro Housing rule is another state statute adopted in 1981. According to this statute, within the Urban Growth Boundary expansion plans, the State requires at least 50 percent

of the residential zones to accommodate high-density housing such as attached single-family homes and multi-family units (Land Conservation and Development Department, 1981). Critics have argued that while Goal 10 may induce cities to zone for higher density residential development, it has failed to incorporate affordable housing needs requirements adequately (Hopkins & Abrams, 2005; Knaap, 1990). In Portland, the city has proactively set internal targets on housing production for different income groups and currently focuses on promoting housing production strategies to address these needs [8].

Given Portland's policy priority towards equity, we find considerations for affordable housing set-asides in initiatives led by multiple public agencies – City of Portland, Metro, and partnerships between different administrative units. While some are predominantly based on financial tools, others are based on zoning entitlements, or a combination of financial tools and zoning entitlements.

In addition to the City of Portland's expansive use of tax abatement programs, discussed prior within this work, the city, county, metropolitan governments and other administrative units, come together to offer financial subsidies to private and non-profit developers through Housing Bonds, TIFs, and layering of transportation subsidies. The 2016 Portland housing bond for nearly \$250 million and the 2018 Metro bond for nearly \$653 million (\$211 million of which went to the City of Portland), provide gap financing for affordable housing and fund new public housing units in the city (Portland Housing Bureau, 2020c). Oregon stipulations do not allow the use of bond dollars for private properties. However, a 2018 ballot measure, Oregon Measure 102, has allowed Oregon cities to subsidize affordable housing in private developments. 300 units of the total 1300-unit target from the Portland Housing Bond were built by 2020 (Portland Housing Bureau, 2020b). Overall, it appears that Portland and the larger Metro had several joint programs that overlaid zoning policies and financial instruments to increase housing production along transit corridors, with some support for affordable housing through mixed-income developments and urban renewal funds (City of Portland, 2009). For example, Tax-Increment Financing (TIF) set-asides for affordable housing in Urban Renewal Areas<sup>27</sup> have been in force since 2006 (City

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<sup>27</sup> Portland's urban renewal programs have a checkered history and have been criticized for large-scale displacement of African-Americans and other minority communities from the city center. City policies have over time attempted to respond to community demands and are working to make the urban renewal processes more participatory and inclusive.

of Portland, 2006). Set-aside targets have been established for different areas within the city ranging from 22 to 55 percent of the TIF investments for the development and preservation of affordable housing (Portland Housing Bureau, 2019). TIF investments into affordable housing represent the largest share of local government resources for affordable housing investments (Portland Housing Bureau, 2016). In ToD corridors, the unified metropolitan transit authority, TriMet, provides financing assistance that commits to set-aside at least 30 percent of the housing units constructed in their ToD projects for affordable housing. Between 2001-17, TriMet has constructed a total of 3600 housing units, of which 781 are income-restricted (Metro, 2018). These units were generated with support from a combination of zoning incentives, tax abatements, and gap financing support from different funding sources.

In addition to federal funds, Oregon state also offers support through several state-led housing development programs in the form of subsidies, loans, and tax credits for special needs housing, multi-family housing, and homelessness support. Given the layering of subsidies for different programs, and the lack of an accessible and comprehensive affordable housing database, it is hard to assess the individual contribution or effectiveness of each program.

Overall, as of 2017, there are a total of 23,485 regulated rental units in the City of Portland (Metro, 2019). While a little over half these units are managed by non-profit developers, 4,615 units are under the for-profit portfolio, and 6,145 housing units are government stock (Metro, 2019). The LIHTC project database from HUD reveals that in Portland city, an overwhelmingly large portion of projects, both by for-profit and non-profit developers, are 100 percent low-income housing. Through on-site set-aside requirements in its MIH program, and other housing policies, Portland is attempting to create affordable housing in mixed-income developments and high-opportunity areas. However, most of these policy options are still in the initial stages of implementation and the pandemic has affected their outcomes. It might take at least another five years to see their impact on the availability of affordable housing options in the market.

During the field visits, conversations around alternatives to IH policy in the city centred around developer-led initiatives with some mention of equity considerations within large-scale city proposals. Stakeholders also mentioned Portland's 'right to return' policy as an initiative deeply embedded in its commitment to racial equity and social justice. Portland is the first city in

the country that has a preference policy that prioritizes families displaced due to city-led urban renewal initiatives in the allotment process (Sevcenko, 2018). In its 2015 N/NE Neighborhood Housing Strategy, the city government has committed to investing \$20 million in affordable housing funds to help displaced families move back into subsidized housing in the neighborhood. So far, the city has invested \$70 million in creating 449 rental units and 82 homeownership units. It, and is also pursuing land banking and issuing grants and loans for home repair and retention (Portland Housing Bureau, 2020a). One housing activist pointed to the issue with Portland's seemingly successful and multi-faced approach to affordable housing policy:

I think right to return is trying to make amends for the previous displacement. So, it was retrospective, not really prospective. I think the prospective work has been underutilized like land banking. There's accidental land banking in urban renewal areas. There's so many properties for sale. Once they're snatched up, they're gone forever. So I think, you know, overall, there's no..there's been *little appetite for prospective* stuff. (emphasis added) [12]

As of 2021, Portland does not have a clear policy for creating land banks for affordable housing or a public land management policy prioritizing affordable housing. Tools for generating private financing for affordable housing have also not been fully explored. For the most part, the city government and its strong housing advocacy community have leveraged existing zoning and tax-based tools to a great extent and have succeeded in clearing many state-level barriers to their adoption. Work is underway in identifying other means of prospective city initiatives to proactively prepare for widening housing crisis.

### ***Nashville – Overview***

Nashville's meteoric rise as a destination for the music and hospitality industry completely transformed the city within a decade's time. The resulting influx of people and healthcare and technology industries resulted in the explosion of Nashville's population and steep increases in rents. Between 2011 and 2016, the average rent in Nashville increased by about 50 percent, from \$897 in 2011 to \$1,372 in 2016 (Plazas, 2017b). Nearly 23 percent of Nashville's renters are spending more than half their income on rent (Metro Human Relations Commission, 2021). Due to the increase in demand for high-income housing, market-rate development is extremely skewed towards the luxury housing sector. Metro commissioned

'Housing Nashville' report (2017a) estimates that if the current market trend continues, Nashville will have a deficit of 31,000 low income-housing units by 2025 (Mayor's Office of Housing, 2017a). Nashville's affordable housing crisis story from the prior discussion may sound similar to any rapidly growing 21<sup>st</sup>-century American city, including the two other cases examined in this study. There is, however, one significant difference in Nashville's current growth story. Eighteen census tracts in Nashville are more than 80 percent Black (PolicyMap, n.d.). The deep patterns of residential segregation in Nashville exacerbate the disproportionate impact of growing cities on their communities of color (Hightower & Fraser, 2020; Jones et al., 2020). Black people constitute almost a third of Nashville's population and are concentrated in its central region and downtown. Nashville's music scene and hotel businesses are primarily concentrated in the urban core, resulting in rampant demolitions, redevelopment, and gentrification of Black neighborhoods (Haruch, 2020). Nashville lost 20 percent of its affordable housing stock, almost 18000 units since 2000 (Mayor's Office of Housing, 2017a). The Black communities in Nashville's urban core are bearing the costs of the city's current development (Metro Human Relations Commission, 2021)

### ***Nashville – IH Policy Background***

As the city emerged from recession in 2015, community activists came together to address issues of poverty and rent increases in Nashville under the Voice for the Reduction of Poverty Coalition (Poster, 2015). The coalition consisted of a group of activists including affordable housing developers, religious institutions, and housing advocates (A Voice for the Reduction of Poverty, n.d.). A well-regarded local religious leader, Rev Bill Barnes, who worked for years on issues related to segregation and housing, advocated with local leaders to institute policy initiatives for affordable housing. In one of his speeches, he famously said, "Diversity is a trickle compared to the homogeneity in Nashville," pointing to issues of segregation and disparities in the city (Plazas, 2017a). He argued further that "Homogeneity is the enemy of affordable housing." Talking of issues of segregation and equality of opportunities he said,

Do we accept the fact that the homogenization of neighborhoods economically and racially is a terrible penalty for kids? If we accept that, do we care about that and what do we do about it? Leave it to the free market.. it's flunking. The free market is failing in preparing low-income kids for life. (Plazas, 2017a)

The housing coalition examined the Harvard team's study (Chetty et al., 2016) and highlights the benefits of mixed-income housing on child development indicators. It placed two demands in front of the Nashville Metro Council: increased funding under the Barnes Fund (Housing Trust Fund named after Rev. Barnes) and institution of inclusionary housing policy (A Voice for the Reduction of Poverty, 2015). At this time, the Metropolitan Government of Nashville and Davidson County (referred to as Metro or Metro Nashville) had proposed to undertake massive infrastructure upgradation using federal flood recovery funds and change the downtown land use and zoning code to accommodate the anticipated development [36]. Spurred by the need to include affordable housing concerns into the downtown upzoning proposals and tackle issues of segregation, housing advocates championed the adoption of mandatory inclusionary housing policy. Housing advocates rallied the Metro Council to pass a resolution and ordinance for mandatory inclusionary housing policy in May 2015 with an overwhelming majority 35-3 (Metropolitan Government of Nashville and Davidson County (Metro Nashville), 2015). The bill recommended a mandatory 14 percent set-aside for affordable and workforce housing in new residential construction. However, the policy was never implemented before the Mayor exited office. Issues of gentrification and affordable housing were key to the 2016 Mayoral elections. The new Mayor elected in 2016 won on an affordable housing plank and embraced "YIMBY-ism" (Yes in my backyard) to promote mixed-income and mixed-use neighborhoods with workforce housing and ToD (Mayor's Office of Housing, 2017a). However, instead of implementing a mandatory IH policy as resolved by the Council, she commissioned a feasibility study for a voluntary program (Economic & Planning Systems & Fraser, 2017). While some activists characterize this move as the administration's effort to "please the developers" [42,36], staff members argued that Metro's move toward the voluntary IH policy was due to anticipated legal issues around MIH policy's interference with the state Rent Control Ban [46,37].

As the Metro VIH deliberations were underway, the Greater Nashville Apartment Association had lobbied the state government to introduce a preemption in April 2016 (HB 1632: Related to Prohibition of Rent Control, 2016). The bill banned mandatory inclusionary zoning policies for rental units, invoking their interference with the state Rent Control Ban Act of 1996. Through intense and contested deliberations between different stakeholders, the Metro passed two VIH policies concurrently in September 2016, BL2016-133 and BL2016-342.

BL2016-133 is a voluntary IH policy in the traditional sense, in that it offered enhanced zoning and density allowances for inclusion of affordable housing units (Metro Nashville, 2016). BL2016-342, on the other hand, is a gap finance policy called HIPP (Housing Incentives Pilot Program) that offered developers grants to pay the difference between market rents and affordable rents (Metro Nashville, 2016). Developers and a Nashville-based free-market think-tank opposed the density-based VIH policy, suggesting that the conditional nature of issuing density bonuses in exchange for affordable housing units, or in-lieu fees, made the BL2016-133 a mandatory IH policy state government shared this view of BL2016-133 as an MIH policy. It passed another preemption in March 2018 and effectively stopped local governments from using zoning entitlements as incentives for affordable housing development by private developers (SB 363: Relative to Housing Sold or Rented at below Market Value, 2018).

### *Nashville - IH policy performance*

The VIH policy deliberations were extremely contested given the housing advocates' disappointment that the government disbanded MIH policy in favor of VIH. Advocates called the proposed VIH program, a "pro-development" policy that prioritized workforce housing in very limited areas known as Urban Zoning Overlay (UZO) area [47]. The Mayor's office and the Planning Department were clear in stating that the objective of the VIH policy they were pursuing was to ensure the incorporation of 'workforce units' in prime locations (Garrison, 2015). While there was also considerable opposition from business interests, the Metro government finally convinced Nashville's Chamber of Commerce and the local realtor groups to support the VIH density bonus by conceding to exclude for-sale high-rise developments from IH requirements and delay the policy implementation by nine months. Housing advocates, on the other hand, forced the Metro to extend the scope of the VIH density bonus policy to other parts of the city [37, 42, 49].

The VIH policy, BL2016-133, was applicable to residential and mixed-use developments with more than five units that either requested increased zoning entitlements, developed public property, or received public assistance for residential development (Metro Nashville, 2016). Set-aside requirements were pro-rated for a range of income groups – below 60 percent AMI, 60-80 percent AMI, and 80-100 AMI based on the base zone. Yet, unlike IH policies in other cities, what extended development rights mean in terms of density bonuses, or parking and other fee



waivers, are not listed in the policy and may be subject to intense negotiation. The policy also allows off-site construction of IH units within a maximum distance of one mile from the original development and an in-lieu fee called the Housing Incentive Fund. Affordability period requirements are capped at 15 years for rental units and 30 years for-sale units. However, Metro still faced threats of a lawsuit<sup>28</sup> from a free-market think-tank and the Home Builders' Association (HBA) of Middle Tennessee, who contested the voluntary nature of the provisions in the policy. They explained their objection:

The whole point of an inclusionary zoning scheme is to offload the costs of building these things to somebody else. The zoning upgrade portion of it is not voluntary. They may say it's voluntary, when they say you can only have this conditional benefit of a zoning upgrade if you agree to take on a public problem without compensation. Right. That's *not* voluntary! [40]

The VIH density bonus policy, BL2016-133, did not produce any units before the state preempted it in 2018. The other VIH policy based on financial incentives, BL2016-342 or HIPP, is the only market-led affordable housing set-aside policy the metro government was allowed to implement. HIPP encourages private developers to offer some units in their development for families earning between 60 and 120 percent AMI. Its intent is to provide housing options in high opportunity areas (in urban core and transit corridors) for working families. For rental units, HIPP pays the participating private developers the difference between the average market rent and the average affordable housing rent for eligible families. Metro offers one-time incentive grant total of \$20,000 capped at \$10,000 per unit for for-sale units based on their location. Metro introduced HIPP with an annual cap of 2 million dollars subject to the availability of annual funds and the disbursements are renewed through annual grant agreements. HIPP is also available to existing rental properties that choose to convert some of their units to affordable rental units (Mayor's Office of Housing, 2017b). In 2019, Metro allocated about \$350,000 in HIPP grants, and a total of 23 units were funded from the grant fund [35]. These units are distributed between three projects - two new developments and one pre-built with converted

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<sup>28</sup> This lawsuit was dismissed by the Chancery Court of Davidson County, Tennessee owing to the fact that the plaintiffs were unable to cite an example of loss experienced by a property owner due to the implementation of BL2016-133 (since there were no units produced from BL2016-133 before it was repealed)

units [44]. It also includes an annual administration fee of \$30,000 to a private management company [35]. There are no ownership units. Metro’s housing programs are programmatically managed within the mayor’s office as there is no civic department within the Metro for housing matters as of 2021. A two-person team created in 2016, under the Economic Opportunity office, worked on the IH policy initiative [37]. Due to insufficient in-house capacities, HIPP program administration was contracted out to a big property management company.

*Figure 5.4: The Gulch in Nashville downtown, Housing Incentives Pilot Program*



HIPP funded 11 workforce units (60-120 percent AMI) in the downtown urban renewal district in Nashville, known as The Gulch. (Author, March 2020)

While the VIH density bonus policy remained unutilized, HIPP has been utilized, though minimally. In general, both the advocacy community and the successive city leadership that inherited HIPP implementation were not very supportive of the HIPP policy. Many respondents were also critical of the way HIPP originated and suggested that it was a “market-friendly” city administration’s effort to introduce a “selective policy” designed to favor the business community. Policymakers involved in the policy design also explained that HIPP was developed as a “reimbursement plan” to “eliminate the cost of affordable housing development” [46]. Developer interest was minimal due to unreliable annual budgetary allotments and the “burden” of collaborating with the government. The existing HIPP unit agreements were a result of

personal connections between the mayor's office and prominent developers in the city "who had some philanthropic interests beyond their economic self-interest" [44].

Stakeholders pointed out that creating HIPP under the Economic Opportunity office was telling in that "people just saw workforce housing as a means to help our economy" [37]. Most HIPP units serve 80-120 percent AMI workforce families and only one or two units have served 60 percent AMI families. A disheartened housing advocate who was previously a devoted MIH proponent said,

When your AMI is fifty-eight thousand, we need workforce housing like we need a new hole in the head. We don't need twelve to fifteen hundred dollar a month rental units. We got all we can stand. They are all Airbnbs! [36]

The general idea was that the city was doing very little on its own to support the creation of deep affordable housing and that HIPP, as it stands, would be a waste of city resources. One interviewee summed it up succinctly:

When you have no programs in place to support affordability and then just introduce luxury products [through HIPP workforce units]. It's like, "Here's the cherry on the top." But there's nothing underneath the cherry! [35]

Metro officials and activists involved in the IH policy formulation for years were repeatedly required to change their policy preferences and directions due to local pressure from the development industry and multiple state preemptions. One Metro official voiced their frustration with Nashville's overall IH policy failure and the bad press the Metro administration received for it:

Victories have many mothers, defeats are an orphan. There's a cliché about it. No one wants to claim credit for things that don't work, but everyone claims credit for things that do work. [46]

After Mayor Barry, who led the VIH initiatives, resigned from office in 2018 and Nashville has since experienced some political upheaval with an intermittent mayor. Mayor Cooper, who won the 2019 mayoral race received the support of many housing advocates for his strong affordable housing agenda. There are some recent policy changes, including the setting-up of an Affordable Housing Task Force and an increase in Metro budgetary allotments for

affordable housing. Policy proposals also include the conversion of the HIPP program into a PILOT (Payment-in-lieu of taxes) program to help promote developer trust and participation.

### *Nashville – Related housing policy initiatives*

The affordable housing crisis in Nashville is a recent phenomenon. Stakeholders suggested that housing issues, caused by the steep pace of Nashville’s growth, were compounded by the absence of existing institutional mechanisms or policies that could adapt to the changing needs of the city. The Metro government was not involved in housing policies. The public housing authority for the region, Metropolitan Development and Housing Authority (MDHA) also undertakes development functions and administers federal housing program subsidies. The MDHA was, therefore, the solitary unit responsible for housing policy matters in the region. On the other hand, the Metro and the successive Mayors’ Office pursued economic development as their main agenda since the 1990s. As a result, Metro never had a civic department responsible for housing policy. While there was rampant gentrification occurring during this time, the “housing market overall had kept pace with the development” [44]. It was only after the recession that the affordable housing crisis had effects the regional level (Metro Nashville, 2021). Therefore, Nashville has a very short history of local-level housing policy, and most of it started around 2015, the same time as the IH policy discussions began in the city.

In Nashville, the primary local policy alternative to the inclusionary housing policy is the Barnes Housing Trust Fund. In effect, it may be the only substantial funding support offered for affordable housing production outside federal funds in the region. The Barnes fund mainly supports non-profit developers and partnerships in building affordable housing for families earning below 60 AMI for rental units and below 80 AMI for home-ownership units. The program also allows developers to build on Metro-land from property tax foreclosures. It was first instituted in 2013 with an expanded annual budget commitment of \$10 million for five years. The affordability requirements were increased from 20 to 30 years in 2021 (Metro Nashville, 2021a). The program experienced several budgetary cuts due to political transiency and Metro’s financial crisis. Housing advocates criticized the Metro for prioritizing business and economic interests over Nashville’s housing needs in its general fund dedications. In response, the Metro committed to match its contribution to Barnes housing trust fund with the economic incentives it offers to businesses (Metro Nashville, 2016b). Additionally, one-sixth of the

proceeds from taxes on short-term rentals in the Metro region go to the Barnes fund (Metro Nashville, 2015). However, without secure sources of funding, such as voter-backed affordable housing bonds in Portland and Austin, the Barnes fund is still vulnerable to volatile budgetary allotments. While Nashville has discussed raising affordable housing bonds<sup>29</sup>, to the tune of \$ 700 million, no related practical steps appear to have been taken. As of 2021, Metro Nashville invested a total of \$54 million to support 2500 income-restricted housing units (Metro Nashville, 2021a). Many of these projects also received support from federal and private funds (Metro Nashville, 2021a).

The only land use planning-related program to encourage affordable housing production appears to be the “fast-track” ordinance (introduced in March 2019 through Ordinance BL2019-1491), that requires five different Metro departments to prioritize permit applications that include at least 10 percent affordable housing units. The fast-track ordinance has lowered permit times from four months to six weeks, according to Metro calculations (Metro Nashville, 2020).

Another popular housing tool employed by the Metro is the leveraging of public land for private purposes, as in the case of the MLS (Major League Soccer) stadium at Fairgrounds, and the Wedgwood mixed-income housing development. In the case of soccer stadium, through the extensive work of a grassroots organization called StandUP Nashville, the soccer group and the community signed a Community Benefits Agreement (CBA). In addition to several donations, hiring and purchase commitments, and allotment of space for childcare and local artisan needs, among other benefits, the CBA includes affordable housing requirements. This includes 12 percent residential set-asides for families earning less than 60 percent AMI and an additional 4 percent each for income groups 60 – 80 percent AMI, and 80 - 120 percent AMI with measures for creating 3-bedroom family units (StandUP Nashville & National Soccer Holdings, 2018). CBAs in Tennessee do not include government agencies; they are exclusively signed between the private agency and the community [45]. The Metro government cannot legally arbitrate or

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<sup>29</sup> For a long time, cities in Tennessee were unable to use the General Obligation bonds for affordable housing purposes. An amendment was sponsored by the State legislator from Nashville at the behest of housing advocates to expand the use of bonds beyond infrastructure projects in 2016. However, it requires public agencies to have partial or complete ownership of the projects making them unsuitable for offering affordable housing subsidies to private developments. Oregon also had a similar stipulation that was amended recently.

enforce the agreement. Only the community can ensure compliance with the CBA. According to state laws, Metro Nashville also cannot prioritize affordable housing by signing development agreements with private developers in the rezoning process. In the absence of schedule-based IH policies, development agreements can be useful tool as voluntary IH policies (Kim, 2020a). However, these agreements are yet another tool that Nashville cannot access.

A local leader candidly disclosed that most city councilors have unofficially conveyed to developers that their applications would be looked at “favorably” if they included affordable housing units [45]. There are publicized instances of VIH developments in Nashville where developers have made commitments to dedicate some units for affordable housing to gain community support despite the absence of any formal IH regulation (Leese, 2018). This means an additional burden on the advocacy community and limited control for the local government to direct development. Therefore, grassroots activism is critical to negotiating with developers for public benefits like affordable housing. As one Nashville activist, stated,

Only through grassroots advocacy, partnerships with City Council and significant pushing and yelling and getting in the press...they were the only means through which any projects with moderately decent affordability agreements arrived at.  
[50]

The Wedgwood mixed-income Public-private Partnership (PPP) development was Metro’s first initiative to further its mixed-income objective when the state opposed its VIH policy (Mayor’s Office of Housing, 2017a). The Metro offered a Metro-owned 0.7 Acres property in a prime location, in addition to a tax break to a private developer, to build 153 single and two-bedroom workforce units for an affordability period of 20 years [35].

Taking the idea of mixed-income housing one step further, the public housing authority in Nashville, Metropolitan Development and Housing Authority (MDHA), proposed plans to redevelop all of Nashville’s public housing units into mixed-income communities in 2014. Through a Master Plan process called Envision Cayce, MDHA proposed redeveloping its public housing sites into mixed-income developments for a cost of \$600 million (Metropolitan Development and Housing Agency (MDHA), 2014b). The proposal involved redeveloping 2100 low-income public housing units into a 12000 unit mixed-income development – 40 percent of

which would be affordable housing units serving income groups earning below 60 percent AMI (MDHA, 2014). An MDHA official explained the motive behind the proposal:

So inclusionary zoning is never going to happen here. But the intent of it to provide the promise of this republic that we remediate the conditions that constrain people to be defined by their birth, not by the talents and desire of where they want to go... You can achieve that. You just can't do it through inclusionary zoning. you do it by achieving the mixed-income redevelopment of concentrated poverty in the heart of Nashville at six big sites.

Some project sites have already been redeveloped, and a total of 463 mixed-income units are completed as of March 2021 (Francis, 2021). However, the ambitious project is going through several financial hurdles and has faced stiff opposition from advocacy groups. The MDHA altered its self-funding model and requested that the Metro to invest its housing funds in redevelopment plans. Subsequent mayoral elections in 2018, and changes in the MDHA Board, have put these plans on hold due to differing priorities from the previous Mayoral plans [43].

As the housing development authority, MDHA also administers TIFs for urban renewal projects. However, according to recent evaluation studies, there are no policies for affordable housing set-asides from TIFs (Metro Affordable Housing Task Force, 2021; MDHA, 2014a; Metro Nashville, 2019). Tennessee's state law stipulations result in high property tax bills of LIHTC properties due to the inclusion of the value of tax-credits in property value assessments. MDHA administers a tax abatement PILOT program to offset costs incurred by the developers for LIHTC projects in tax dollars. The Metro, developers, and housing advocates agree that a program is an unnecessary drain on Nashville's resources. However, there is little being done to change the assessment process in the form of collective advocacy at the state level [47].

Housing advocates in Nashville have strongly opposed the idea of giving up government land for workforce or mixed-income housing when there are extremely few housing options for very low-income families. Their advocacy with the Metro Council also helped stop the Metro proposals for the sale of public land to balance budget shortfalls in 2018 (Garrison, 2018).

Despite state provisions for local land banks<sup>30</sup> (Thurber et al., 2014), and a persistent ask from the community regarding a proactive land bank policy, Nashville has so far seen little in the form of a “consistent policy” on public land management, sale, and acquisition [43,50].

Overall, in the absence of planning tools for supporting affordable housing development, Nashville appears to rely heavily on financial tools and public lands to meet its housing demands. However, budgetary challenges and mixed-income priorities create an unsustainable future for affordable housing production, to the detriment of deeply affordable public housing (Knight, 2019). There is some hope for positive change given the latest commitments from the mayor’s office. Changes are expected with the use of the federal American Rescue Plan dollars to boost Metro’s housing outlays to 72.5 million, institute a new Department and a Director for housing, and implement the Affordable Housing Taskforce recommendations (Metro Nashville, 2021c).

## **Discussion**

This discussion section will compare the types and characteristics of IH policies in each of our three cases (See Table 5.3 for a summary). We will explore the reasons behind varying IH policy performance and design in the three cities by examining their IH policy *objectives and priorities, processes, and outcomes* as they relate to housing initiatives in general. We will then examine the related housing policies these cities explored to supplement or replace their IH programs.

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<sup>30</sup> Through HB 2142 passed on May 16, 2014. Tennessee state legislature allowed home rule municipalities and metropolitan governments in the state to participate in the Tennessee local land bank pilot program.



Table 5.3: Comparison of IH policy implementation experience in Austin, Portland, and Nashville

Status	Austin, TX	Portland, OR	Nashville, TN
<i>Intent</i>	Density bonuses as one tool in a toolkit to leverage market forces to deliver high opportunity affordable housing with no public costs.	Mandatory IH as a tool for ensuring long-term affordability and capturing community benefits from private sector. Density bonuses and fee waivers for most new small and large-scale development.	Workforce housing in high opportunity areas and mixed-income developments.
<i>Feasibility</i>	High building activity and low base entitlements make some programs attractive to developers.	Still in the adjustment period, high demand and land supply constraints are favorable to IH success, some interest due to tax exemptions	Developer disinterest due to “hot housing submarkets in bubbles” and “easy supply of land in the metro”
<i>Challenges</i>	Confusing and labor-intensive regulation	Slowing of multi-family construction	Annual budget allotment is unreliable
<i>Outcomes</i>	Some programs have been very productive but have small affordability durations.	Fewer units with permanent affordability	Very few units in three properties that may be terminated at any point
<i>Monitoring</i>	“Weak monitoring” Open data and good reporting	Combined regulatory and monitoring framework	Through private agency
<i>Potential</i>	Need to be calibrated better for reaching its full potential	Need to be calibrated better for reaching its full potential	Unclear about continuation, maybe converted to PILOT.

### ***Objectives and priorities***

While Austin uses density bonuses intending to leverage market forces and deliver high opportunity affordable housing, Portland intends for IH policies to involve market developers in producing long-term affordable housing. However, in their origins, both Austin and Portland introduced their development incentive programs to motivate market developers to spur residential development with few or no affordability requirements. These policies have changed to accommodate changing housing needs. Nashville, on the other hand, has focused on creating mixed-income developments to allow workforce housing in select few premium locations in the city.

The difference between Austin’s and Portland’s approaches is that, while Portland adopts an equity planning approach, Austin prioritizes inclusive planning practice. Equity and inclusive planning are subtly distinct and can cause critical shifts in policy approaches. In Portland, affordable housing set-asides and redistribution ideals are embedded more comprehensively into policy attempts. This redistribution happens specifically at the policy origin and applies to both private and public players. It appears that the accountability for equity initiatives is bedrock to

the policy origins aiming to eliminate disparities. In Austin, set-asides for affordable housing seem more germane to the idea of inclusiveness - to provide some dividends of the city's growth to its marginalized communities, specifically based on income. While equity requires a complete reframing of the planning approach that "guides and decides" a policy's existence, inclusiveness is more accommodating in terms of overall acceptance but less reformative. It allows the status-quo to continue. Austin embodies IH and planning processes determined by *deficit* rather than *disparity*. In Nashville, the emphasis on social integration and mixed-income housing, without the power of zoning to bring change, weakened Metro's ability to generate meaningful change. Nashville's case clearly proves that financial tools alone cannot reverse the adverse effects of decades of racist and segregatory zoning and lending practices.

Advocacy communities, in all three cities, staunchly opposed IH policies aiming to incentivize developers through financial capital subsidies for workforce housing. Zoning entitlements and other administrative incentives, like fast-tracking and permit-fee waivers, were considered an acceptable bargain to encourage developer participation in workforce housing. Subsidies, they argued, are only fair when the city can layer those scarce resources for long-term deeply subsidized units:

There are very few dollars to provide public subsidies for very-low-income housing, and to ensure that workforce housing needs do not burden the public monies; it is important for private developers to produce more units in for the workforce. [16]

Austin's IH policy was cost-neutral, with no investment from the city in subsidies or forgone revenue through tax breaks. Portland, on the other hand, offered tax breaks as well as fee waivers. On the contrary, Nashville almost exclusively relied on financial subsidies from annual budgetary allotments, an unreliable source at the best of times.

### ***Process***

In Portland, IH policy and its prescribed direction emerged from a comprehensive plan. The deliberative process allowed time and space for education and awareness-building efforts around policy without battling the underpinning principles of equity and inclusion. Oregon's state mandates for land use planning and housing needs analysis, when combined with Portland's

equity approach, and active grassroots engagement, resulted in an integrated approach to IH policy. The process was more fractured in Austin with multiple density bonus programs that emerged over time. There were later attempts to integrate it with Austin's comprehensive plan. As a follow-up on their comprehensive plan, Austin created a Housing Blueprint that introduced metrics and targets, similar to fair-share requirements, for a range of median household incomes at the city level and identified several measures to modify their zoning code to aid affordable housing production. However, city-wide zoning changes often face problems from NIMBY groups, and Austin has failed to revamp its zoning code in two consecutive attempts since 2015. Nashville's general plan made some efforts to integrate housing concerns. However, housing advocates in Nashville explained that, without clear metrics and strategy, and most important, without a Metro housing department, accountability was weak and implementation poor.

Development incentive-based programs and city-led efforts for affordable housing production rely on extended administrative time and effort between two separate city departments responsible for land use and housing policies. These departments in Portland and Austin are well-equipped to tackle the burden. They can continuously plan and propose policy enhancements through research and advocacy. Nashville's housing programs mainly belong under the mayor's office, and their continuity is subject to variable political interest. Monitoring IH programs requires effective centralized reporting systems and coordination with multiple developers and project management companies. Despite Austin's considerable administrative capacities, city audits and field visits found inconsistencies in records.

On the other hand, while Portland appears to have a sound regulatory and monitoring framework in place, as of date it maintains no publicly available databases of either its affordable housing inventories or its funding mechanisms unlike Austin. Nashville is clearly an outlier given its recent foray into local housing policy and lack of prior experience with developer incentive programs and administrative capacities. As a result, the Metro had to dedicate program funds to hiring an external agency for program administration.

As we saw in the case details, housing advocacy groups provided the critical thrust for IH program adoption in each of the three local jurisdictions. However, developers also played a significant role in negotiating IH policy requirements and incentives. One of the key developer incentives is the regulatory ease of acquiring planning permissions and enhanced zoning

entitlements. Portland predominantly relies on non-discretionary administrative review processes for granting zoning incentives that are informed by a uniform set of rules in its schedule-based IH policy. While Austin is led by a similar set of rules, its review process for granting density bonuses is comparatively complicated. City officials in both cities suggested that discretionary procedures create unnecessary avenues for NIMBY groups to discourage development and erode developer trust. Developers also agreed that predictability in approval processes was most critical to their project success. However, public consultation processes are extremely place-specific and vary considerably based on state and local rules. In addition to ideological opposition to IH policies, developers in Nashville said they did not find IH incentives sufficiently motivating. They explained that IH policies can never be “by-right” and that every zoning entitlement goes through a drawn-out public consultation process in Nashville:

They're [zoning entitlement processes] wooden. It's never rubber-stamped. It's always a negotiation. Even the stuff by right is a negotiation. [48]

Therefore, while low base zoning entitlements and high housing demand may indirectly make IH policies more attractive to developers, ease and predictability of zoning approvals are significant to making schedule-based IH programs attractive.

### ***Outcomes***

Comparing the numbers of affordable housing production between different programs may be unfair given the different objectives the three cities are trying to pursue (Table 5.3). While Austin’s density bonus programs have perhaps delivered better numbers, most have short affordability periods. Austin has recently started pursuing long-term affordability, but at 40 years maximum period for rental units, it still only half the affordability period required by Portland’s MIH policy. As one activist succinctly put it,

The tool crafted here in the city of Portland is for integration of units in new development, not for the production of units quantity-wise... *quality over quantity*. There are other tools that we should be overlaying in order to get the quantity. This is about quality. [10]

On the other hand, in Nashville, HIPP was based on annual payouts that compensated the difference between affordable and market rents. Perhaps the same argument as above holds that

HIPP provides quality over quantity. However, local sentiment in Nashville was jaded in the face of rising housing burdens:

Great, you can say that mixed-income is important. We have 20 units where we could have 50 units if they were just a mile out of downtown. Those properties that are a mile from those properties where we could house two and a half people for the price of one person.[35]

When cities face the age-old housing policy battle between integration priorities and production numbers, IH policies will have to prioritize one and use tailored supplementing strategies to tackle the other.

IH policies, to varying degrees in all three cities, were seen as a response to gentrification-induced displacement. However, it is important to determine whether IH is introduced to create affordable housing options in already gentrified neighborhoods or those where there is a risk of gentrification from future growth? IH policies that prioritize socio-economic integration through deep public subsidies, in previously gentrified areas, are less favored by housing advocates when more units could be created for the same public investments in less gentrified areas. Where public subsidies are not involved, targeted incentive programs, such as those in Austin, may succeed in creating affordable housing in high-cost areas free of charge. However, some housing advocates argue that the concentration of affordable housing in policy-designated areas exacerbates Austin's economic segregation (Henneberger, 2016). Geographically limited housing policy tools, such as HIPP, are also fraught with political contestations and council infighting where "council members who represented areas that didn't have the HIPP eligibility opposed the disbursement of the budget and funds to areas that didn't benefit their constituents" [44]. Pan-city approaches, as in Portland, are necessary for geographic dispersion and multi-scalar integration. However, not all housing submarkets can attract developer interest through enhanced zoning entitlements. For a prospective housing policy that adapts to the future housing demands, and proactively creates affordable housing stock in tandem with market development in newly developing areas, we need city-wide IH policies – either mandatory or voluntary policies supported with financial subsidies.

Scholars unanimously agree that inclusionary housing is "not a silver bullet" and is also only "one of the arrows in the quiver" [24]. But the question is, is it the first arrow to launch?

Nashville’s experience suggests that it is not. Before cities design their IH policies, they need a diversified set of housing strategies targeted for meeting the housing needs of different income groups. If there is a significant unmet housing demand for the lowest income groups, housing advocacy groups would be disinterested in pursuing IH policy advocacy or would pressure the city government to design the IH policy with deep affordability (less than 50 percent AMI). This scenario might spark fierce opposition from the developers, resulting in policy gridlock. The absence of clear housing policy initiatives for lower-income housing segments heavily impacted IH policy discussions, especially since policies that targeted workforce housing in Nashville also relied on financial and public land resources.

Public housing initiatives for deep affordability (< 50 percent AMI) handled by the public housing authorities in Austin and Portland rarely surfaced in discussions with stakeholders, unlike in Nashville. The city departments for housing in both Austin and Portland appear to have contained the discussion on the income groups generally targeted by the IH programs, 60 - 80 percent AMI. Additionally, when redistributive policies like IH are proposed, developers first ask, “What is the government doing?” Therefore, in such instances, it falls on the city government to prove that they have done everything in their capacity to deliver affordable housing through initiatives such as tax increment financing, housing trust funds, public land dedications, and affordable housing bonds.

### ***Other options***

Affordable housing policies in Austin and Portland were more diverse than in Nashville’s case. Figure 5.5 broadly captures different related housing policies referred by diverse stakeholders in IH discussions during the fieldwork. While it is not exhaustive, it is representative of the conversations on housing policy - past, present, and future - that were discussed in conjunction with the IH policy implementation.

While Austin has introduced a broad set of tools to address its housing issues, Portland’s emphasis seemed more targeted. As one stakeholder from Austin remarked, “Austin attempts to use, for the most part, every tool that the legislature gives us” [23]. This maverick approach to policymaking is perhaps a result of the restrictive state environment, but it is also indicative of the diverse set of voices and actors and their ideas that come together in an interesting melting pot of free-market and progressive ideologies. Austin has focused on prospective strategies by

exploring both market-oriented options, such as private equity investments, and public initiatives, such as land banks, housing bonds, and fair-share goals for affordable housing. Portland is strongly led by its ideological lens on equity and justice, with a decided path to reform and confidence to influence the state environment. As But and Zuberi stated previously, this study also finds that Portland succeeded in “converting activism into progressive policy reform” at both local and state levels (2012, p. 264). However, where Austin’s focus is on prospective housing strategies, Portland currently appears to be focusing on ways to address retrospective equity issues in housing policy.

Most of Nashville’s housing policy is exclusively paid from the Metro’s general budget or by forgoing public revenues through PILOTs. Given the Metro’s financial troubles, housing budgets are often reduced. While there were plans to introduce a housing bond measure, it was never realized in Nashville. Both Portland and Austin have benefitted from bond dollars that directly cater to deep affordability.

Housing considerations were part of transit projects in both Austin and Portland – some through IH and developer incentive programs, but others through a layering of public subsidies by different agencies. Interestingly, the people of Nashville turned down the mayor’s ambitious transit plan after a massive campaign led by different grassroots groups criticizing the plan for ignoring the attendant housing issues (Transit Center, 2020).

In other instances, to further its objective of social integration, Nashville has leveraged public land in prime locations and invited private developers to construct market units with a certain percentage of subsidized units for low-income people. The Metro government and housing redevelopment agency also received heavy criticism for their massive plans for public housing redevelopment that prioritized mixed-income housing and social integration. This does not mean that there are no instances of leveraging public land in PPP partnerships in Austin and Portland. Stakeholders referred to the Mueller Airport Master Development Agreement, that created a considerable number of affordable homeownership units in Austin, as a successful PPP project. However, this was one of the many ways Austin was tackling its affordable housing crisis.

Figure 5.5: IH related policies considered in case cities as of March 2020

IH-related housing policies	Austin	Portland	Nashville
<i>Land Banks</i>			
<i>Private Equity Investment</i>			
<i>Development Agreements</i>			
<i>Community Benefits Agreements</i>			
<i>Public housing mixed-income redevelopment</i>			
<i>Affordable Housing Bonds</i>			
<i>Transit-Oriented Development</i>			
<i>PPPs on public lands</i>			
<i>TIFs for affordable housing</i>			
<i>Tax Abatement for affordable housing</i>			
<i>Construction Excise Tax</i>			
<i>Homestead Preservation Districts</i>			
<i>Urban Extension Areas</i>			
<i>2 or more units in Single-family residential zoning</i>			
<i>Fair share goals</i>			
<i>Housing Trust Fund</i>			

- Only policies that directly identified affordable housing requirements are listed above.
- Analysis is primarily based on stakeholder conversations and references to specific policies during interviews.

In contrast, housing activists in Austin complained about the city government’s excessive caution in avoiding project-by-project negotiations in anticipation of allegations of contract zoning. They claimed that Austin’s blanket density bonus policy for Planned Use Districts (PUD) result in fewer public benefits compared to project-by-project negotiations. They argued that community negotiations can better reflect the changing development potential of large sites. Portland also favored the predictability and uniform applicability of scheduled zoning entitlements based on IH policies. However, both Austin and Portland are still utilizing development agreements for large sites to grant enhanced zoning entitlements in exchange for a



highly negotiated set of public benefits in conjunction with, or independent of, Community Benefits Agreements (CBA). In Nashville, regrettably, state law limits elected representatives from negotiating community benefits for development projects. Negotiations for any large-scale projects demand commitment and consume greater energy and time from all parties involved. State impositions on Nashville mean that informal negotiations for public benefit and affordable housing are necessary for every sizeable, proposed project in the city. This causes an unnecessary burden to advocacy groups as well as political leaders and demands a greater commitment to affordable housing priorities. Additionally, such processes lack transparency and predictability and cause frustration to developers and the community while leaving little room for accountability and enforcement.

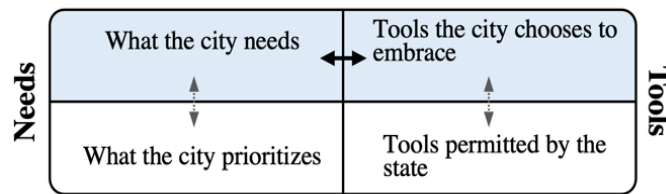
This is not to say that the cities do not “tie their own hands” or box themselves into a corner. In Austin, the poor implementation of HPDs and the city government’s conservative approach towards forgoing local revenue streams, including the limited use of state enabled TIF provisions, when compared to Portland’s strategies, shows how different factors and politics play into local decision-making. In Nashville, Metro has not utilized provisions such as land banking, despite state authorization. Additionally, Metro chooses not to increase property taxes even when it is severely cash-strapped, and finance-based tools remain its main housing policy recourse in the face of state preemptions. One Nashville leader summed up its problems:

We've got a city financial crunch going on where the only people not making money off the city booming is the local government. The rotating three mayors in 24 months and the fact that we don't have a separate housing department. We're in a self-inflicted cash crunch. We've got no consistency in leadership at the mayor's office. We don't have separate housing professionals. And we got the state picking off programs, and we've got one of the top five fastest-growing cities in America. [45]

Therefore, state preemptions may have a disparate impact and more adversely affect some cities over others. Specifically, cities with a relatively short history of housing policy innovation and administration struggle when definitive tools, such as inclusionary housing, are excised from their scope.

This study illustrates that housing policy decisions are not as straightforward as one assumes. Conventional logic suggests that upon identifying what the city needs, they choose a set of tools that are best suited to them. However, as shown in Figure 5.6, local governments may not prioritize what they need the most, and the tools they adopt are not necessarily what they want. As examined in this paper, state preemptions may narrow the policy options available to them, and the tools available to them may not best serve what cities need.

*Figure 5.6: Local government housing policy decisions - A dialogue between needs and tools*



This framework can also explain the intricacies of choosing between mandatory and voluntary IH policies. When states preempt MIH, they often point out that cities can still implement VIH policies. Cities can create ‘successful’ VIH policies using creative design leveraging their specific conditions and capacities. However, a better measure of their success would be evaluated by how well these results align with the city’s housing needs and what the city wants from their IH policies. All places are not equal, and similarly, all VIH policies are also not created equal. This study shows that when states preempt mandatory IH policies, they can restrict local policy choice and innovation in multiple ways. A combination of state decisions can severely constrain local governments from responding to their communities’ needs, leaving few tools at their disposal. Repeated preemptions can create undue local policy turbulence, weariness and low morale among the staff, and excess burden on the advocacy community.

## **Conclusion**

In all three cases, IH policies emerged from the idea that indiscriminate market-oriented development causing unchecked gentrification needed to be inclusive and provide affordable housing opportunities for those adversely affected by the development. While these were the broad objectives that initiated discussion in all three cities, other factors guided the parameters that influenced their actualization.

When the IH discussion was devoid of social integration and focused on the number of units, the result showed in the form of off-site units or raising in-lieu fees for gap financing affordable housing development (as in Austin's case). When the deliberations focused on preventing displacement, the results prioritized on-site building, but with fewer units (as in Portland's case). When the IH discussion focused on social integration with very little acceptance from developers and was introduced in areas with lower real estate demand, the result was a minimal number of market-produced units and reliance on through public initiative and leveraging of public lands for affordable housing (as in Nashville's case).

Existing literature focuses predominantly on hot real estate markets and high building activity, and, to a lesser extent, the prevalence of low base zoning densities and regulatory capacities as necessary conditions for productive IH policy. This study finds support for these claims. It also finds support for the arguments that heightened public awareness of housing policy issues and solutions, and a critical mass of housing advocates, are necessary for successful IH policy adoption. Importantly, from this study, we find that several factors shape the strength and effectiveness of policy design and choices, the overall IH policy objective, stable political leadership and policy stewardship, technical capacities and access to micro-level housing data and indices, the financial state of the local authority, a prior suite of established housing policy programs that focus on different areas of housing policy, precedence and access to a number of alternative tools (financial, tax-based, and zoning), and more important, lack of interference from the state government.

This begs the question -- Is the IH policy worth all the effort? Should cities instead undertake housing initiatives that are much more straightforward and encounter much less opposition? The answer is perhaps mixed. In the quest to find the ultimate solution to our housing problems, housing studies literature has pitched one policy tool against the other over time. Policy evaluation studies disagree over the effectiveness of one housing policy tool over the other, yet, they all agree on one significant fact – the success of different tools depends on local needs, conditions, and interests. In a market-driven economy, despite our efforts to find radical solutions to housing problems, we work within the confines of existing political and market dynamics. Our quest to maximize limited resources and find one solution to housing problems is symptomatic of the dominant free-market philosophy. Housing policy evaluation often points to the implementation failure of IH policy as the reason to prefer other policy tools.

However, implementation failures happen due to any number of reasons. Many reasons remain outside the power of local governments, and alternative strategies often rely on enormous and recurrent financial outlays.

Even abundant financial resources are not endless. Governments may choose to incentivize the market to cater housing options to the workforce housing, however, any available resources are best spent on fully meeting the demand of those most vulnerable in our society first. As witnessed in this study, purely financial solutions experience several implementation and location barriers.

Zoning has created many of our modern housing problems. Reformed zoning processes will never adequately reverse the damage on their own, and housing policy initiatives cannot be completely independent of zoning concerns. This logic can explain the growing popularity of IH over other alternatives. IH has the potential to modestly correct the market to favor income groups and communities underserved by it. More important, unlike many of the competing housing policy options, IH can be designed as a comprehensive framework that can integrate several discrete policy options, such as land banks, tax abatements, TIF, Housing Trust Funds, Transit-Oriented Development, to identify and target a diverse set of housing problems within the city. IH may not independently deliver the numbers one hopes to see because, unlike many other tools, implementing agencies may prioritize other objectives. Since IH is uniquely suited to deliver equity of housing opportunity and location to people from different socio-economic backgrounds, it cannot produce comparable number of units to large-scale government-supported housing projects. IH is perhaps best visualized as the foundation for building a diverse set of housing policy tools rather than as one singular tool. Given the diversity of our housing problems and urban needs, we must imagine a housing policy ecosystem with several constituent parts – some policy instruments need to be more permanent along with tools that are subjected to the variability of market and federal funding support.

Many cities in the country, spurred by the growing affordable housing crisis and local support for housing justice and equity, are actively attempting to deliver equitable housing solutions by breaking down the cycles of poverty and discrimination. Unencumbered by state preemptions, these cities can lead the next era of housing reform in the country, and IH may prove to be a useful building block in their efforts.

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## Chapter 6 Conclusion

Through four related papers based on two different federal contexts, this dissertation shows how higher levels of government actively shape local inclusionary housing policies. The papers together illustrate the different reasons why, and the ways how, higher-level governments intervene in IH policy issues. They additionally show how lower-level governments respond to these interventions. This study provides new dimensions to our understanding of IH policies by problematizing the political, structural, ideological, and social issues at play and situating IH policies within a comparative intergovernmentalism framework. It also shows that the ‘city limits’ to redistributive policies are not simply due to the nature of local politics or structural inequalities inherent to a federal system (Peterson, 1981). It shows how these limits are actively reinforced by higher-level governments. Urban governance and politics research needs to look past our self-imposed scholarly city limits to effectively capture the vertical tensions at play.

The four case cities in this dissertation, Vijayawada, Austin, Nashville, and Portland, are prominent cities with critical housing needs. However, these case cities are not the global urban giants like New York, London, Mumbai, or Sao Paulo that can dictate their regional government’s priorities (Portland perhaps is a partial exception in this regard). They are not (yet!) facing an extreme housing crisis that warrants global attention. However, they each tackle housing problems within their limited strengths and agency – Some are more involved than the others, some are more ‘successful,’ and others are still struggling. I argue that they are ‘ordinary’ cities with complex but common problems (Robinson, 2005), and that they only remain *uncommon* in academic theorization. The circumstances in these cities are not exceptional; they were simply rendered more visible after applying the intergovernmentalism theoretical lens. When we perceive cities within the larger governance framework, we see them as constituent units within this system. The four case cities in this dissertation are substantially impacted by their state government decisions – a scenario typical for most cities worldwide. Their IH policy journeys suggest that they are ‘progressive’ cities by different measures; Vijayawada is

progressive in the Indian context for its nimble government machinery; Portland for its equity-led objectives; Nashville for its social integration goals; and Austin for its market-oriented housing policy innovation.

## **Summary of papers**

### ***Paper 1***

The first paper is a policy review of the strategies the federal government of India employed in introducing state and local land use reforms, specifically IH policies. The paper analyzes the various *carrots*, *sticks*, and *sermons* that federal housing programs used from 2007 to 2018. These included conditional grants, institutional support, capacity building, and information mandates. This paper found that the national IH policy objectives, and the tools employed under different housing programs, have changed since their origin in 2007. Early IH reforms had set rigid affordable housing set-aside requirements. Many states and local governments struggled to conform to these requirements and failed to qualify for grant receipts. Due to strict federal monitoring and oversight for reform compliance, the program funds were underutilized, and affordable housing production suffered. Subsequent housing programs expanded the scale of IH policy programs to include inclusive city planning initiatives at the city scale in the form of exclusive residential zoning for low-income housing and the legalization of informal settlements and property rights. Over time, federal IH reform requirements gradually became diluted due to poor compliance and unutilized program grants. However, Andhra Pradesh state's response to these federal mandates offered interesting insights. First, among the various tools that the federal government used, I found 'sermons' such as information monitoring systems and capacity-building programs had more impact on state policy than sticks and carrots. Second, the study showed how planners' unfavorable perception of IH policies as unfair and impractical tools aided in the dilution of IH requirements over time.

Overall, the study finds that federal IH policy objectives in India prioritized private-led affordable housing development to reduce state and local governments' dependency on federal housing programs. Another objective was to tie affordable housing to market-oriented development to find well-connected locations. The federal policy did not consider social integration goals, and the state did not find IH policies necessary for achieving their respective

housing targets. The study shows how unclear and top-down objectives can render carrots and sticks performative rather than reformative.

There is a growing use of federal conditional grants and incentive programs in India's urban sector to stimulate state and local government participation in many areas, such as infrastructure, service delivery, and urban management. Internationally, there is an increased focus on how national policies can guide sub-national governments in achieving development goals. Paper 1 can offer insights into the possible non-legislative tools that national governments can employ to engage their regional and local governments.

### ***Paper 2***

Supporting the findings from Paper 1, Paper 2 shows how the lack of state buy-in on IH objectives ultimately impacted ground-level implementation. Under the state IH policies initiated in response to federal reforms, no IH units were produced in Vijayawada. However, based on detailed case studies of national affordable housing projects funded in Vijayawada since 2007, this study found that state and local government agencies practiced mixed-income strategies, albeit for different reasons. Contrary to the mixed-income objectives pursued in public housing projects for social integration and deconcentrating poverty in the Global North, these mixed-income strategies used in Vijayawada emerged as an incidental effect of the local agencies' effort to find land and capital for producing large-scale public housing. Interviewees expressed little receptivity to socially integrated housing. The developers and the state government also felt that housing extremely low-income families was not the market's responsibility. Due to a range of conditions, the state and local governments preferred mass public housing over small-scale developer-led initiatives. These conditions included the intensity of the housing problem, the sway of a powerful developer lobby, the availability of surplus federal grants for affordable housing production, the readiness of the government housing machinery, and the electoral ambitions of the state government.

Instead of IH reforms, the paper suggests that federal policies should respond to state and local government interests and implementation experiences by focusing on income mixing strategies at city and sub-city scales, especially in the urban expansion areas. Limited preparedness and awareness on the issues of socio-economic segregation, and the absence of any

discussion on these issues, in federal and state policy efforts suggests the need for incremental policy changes before IH policies can succeed. This is consistent for multiple stakeholders.

Many rapidly urbanizing contexts are experiencing severe affordable housing crises, largely due to the lack of adequate access to well-connected and -serviced urban land. National and sub-national governments can break the current development patterns from setting the tone for future inequities by paying closer attention to the urban peripheries.

### ***Paper 3***

Planning scholars in the U.S. have argued for decades that state planning is necessary to discourage exclusionary local zoning practices and encourage affordable housing production. To date, however, we have ignored the instances where states discourage local policies from combating exclusionary zoning practices. Based on an in-depth study of IH preemptions in three states – Texas, Tennessee, and Oregon, this study brings more nuance to our present understanding of state preemptions. My findings reveal varying degrees of opposition to inclusionary housing policies, even in the states with preemptions against them. The study finds that, while Oregon has a permissive but ‘controlling’ IH environment, Texas is more ‘restrictive’ towards mandatory IH policies. Tennessee, on the other hand, is an example of a state with a complete IH ‘ban.’ Drawing from these insights, I proposed an analytical framework that characterizes state policy positions on a continuum rather than a binary choice between promoting and banning. Such a continuum may also be applied to state interference that actively promotes IH adoption by cities. States can take the following courses on specific policy causes: *Steer > Activate > Nudge >*, remain *Neutral > Control > Restrict >*, or *Ban*.

The study details how IH policy positions in the three states resulted from intense negotiations and strategizing by different players. While developer and real estate interests aligned closely with the free-market philosophy of the majority party in state legislatures, housing advocates had also negotiated and obtained some successes. This study finds that the strength of state preemptions and the propensity for states to interfere in certain matters are deeply contextual. Although the study discovered clear patterns of state interference based on political partisanship and ideology, it also found scope for alignment in state policy response. This alignment can supercede the ideological distance between states and their cities when a crisis reaches critical magnitude.

Local governments and policy advocates in the U.S. are increasingly confronting the issue of restrictive state preemptions in several policy areas, including, but not limited to, immigration, reproductive rights, LGBTQ protections, and indoor masking mandates. This paper aims to bring attention to the detrimental impact of state preemptions on planning matters and calls for more scholarly attention to the issue of state preemption. Further, I hope that academics, advocates, and practitioners will benefit from adopting a common framework and language to appropriately describe the state policy positions in various policy areas.

#### *Paper 4*

This paper offers a bottom-up perspective on the impact of the state IH policy frameworks and preemptions on local government housing policy efforts, previously studied in paper three. It focuses on three cities, Portland, Austin, and Nashville, and their IH policy journeys. In all three cases, IH policies emerged from the idea that indiscriminate market-oriented development causing unchecked gentrification needed to change and become more inclusive by providing affordable housing opportunities for those adversely affected by the development. This idea originated from housing advocates demanding their city governments, during upzoning proposals, to ensure that the newly built developments also included below-market-rate housing units.

The paper then discusses how these cities altered their IH policy options based on the state policy restrictions and what objectives shaped their final policies. Austin leveraged its real estate boom to deliver high-opportunity affordable housing, primarily incentivizing its developers through zoning entitlements. Portland's goals were equity-driven, so the city and its stakeholders expected the market to respond to local housing needs. While the program offset some developer costs, it was not an incentive-led process. On the other hand, Nashville pursued mixed-income developments to allow workforce housing in a few prime city locations based on gap financing.

The paper also discusses other IH-related housing policy priorities that these cities pursued concomitantly to meet their housing goals. Studying these alternative processes allowed us to discern how state policy positions can severely limit local housing policy action by placing restrictions on a range of issues, such as the spending of housing bond dollars, property taxation and valuation, and development agreements. Therefore, when states preempt local action on



specific issues, it does not mean that local governments can automatically turn to other alternative policy tools that can deliver the same results.

Supporting the existing literature, this study finds that local governments have turned to IH policies to initiate locally responsive housing strategies independent of public housing programs. Governments see these policies as valuable tools to cater to families that do not qualify for public housing and remain underserved by the market. They also see them as a method of simultaneously housing moderate-income households in high opportunity areas and facilitating socio-economic integration. Practitioners and housing advocates were aware that IH policies do not cater to very low-income families, and they were also aware that IH policies produced fewer units than other direct public housing investments. However, all of them found it to be an essential tool in their housing policy toolkits since it had the distinct advantages that other tools lacked – geographic dispersion of below-market-rate units, means to create some below-market-rate housing in rapidly gentrifying neighborhoods, minimal direct subsidies, socially integrated housing developments, and reduced reliance on federal grants.

Local policymaking is fraught with several tensions and regime politics, and there are limits to local government creativity in addressing housing needs when facing constant interference from the state. This paper found that repeated preemptions create undue local policy turbulence, weariness and low morale among the staff, and an excessive burden on the advocacy community.

### **Reflections on cross-country comparison**

Federal governments in both the United States and India have no constitutional mandate to play a role in local-level housing and urban development areas. However, federal governments indirectly get involved in these areas due to broader economic and welfare interests in both urban development and housing markets (Kantor, 2013). Federal governments in both countries have historically funded many urban renewal and housing projects through federal-local project-based grants that tried to bypass state governments in their policy frameworks (Conlan, 1998; Sanga et al., 2021).

The U.S. is a pioneer in introducing inclusionary housing policies as early as the 1970s. Evidence suggests that early local level policies were a direct result of the Fair Housing Act

(FHA). This federal-level legislation abolished segregatory planning practices. Over the past 50 years, the U.S. federal government tried to use many of its affordable housing programs to encourage integrated neighborhoods and mixed-income residential development (Schwartz, 2021). In 2015, the federal government introduced the revised Affirmatively Furthering Fair Housing (AFFH) rule to further its FHA objectives. Under AFFH, local governments that receive federal housing grants were required to propose actionable steps to address fair housing challenges in their communities. IH policies emerged as a possible option during AFFH deliberations in some U.S. cities (Grounded Solutions Network, 2019; Local Housing Solutions, n.d.). However, the newly elected federal government in 2016 repealed most of the key AFFH requirements in 2018, citing the unnecessary burden on local governments, especially in suburban communities (National Low Income Housing Coalition, 2020). Due to these and other changes in federal housing policy approaches in 2018, this dissertation project opted not to undertake a detailed study of federal IH practices in the U.S. However, after another political shift in 2020, federal interest in increasing the affordable housing supply and tackling exclusionary zoning policies has since been revived. The New Biden-Harris Administration Housing Action Plan, released on May 16, 2022, aims to comprehensively tackle America's housing crisis by 1) increasing public housing funding, 2) working with the private sector to increase housing supply, 3) providing more assisted gap financing options, and 4) rewarding local jurisdictions for undertaking zoning and land use planning reforms with federal grants (The White House, 2022b). In another announcement on May 10, 2022, the federal government stated a target of building one million affordable homes to ease housing inflation (The White House, 2022a). A few pending bills propose budgetary outlays and grants for realizing the federal government's vision, and many factors hinge on congressional approvals for implementing the housing action plan (Murakami, 2022). Housing advocates and scholars supporting increased federal interest are welcoming these plans. They are hopeful that the grants-based 'carrots' approach would motivate more states and cities to participate. Some predict that 'carrots' are not enough since they do not have the sticks to ensure that nonparticipating local governments with exclusionary zoning policies will undertake zoning reforms (Gates, n.d.; Sullivan & Renshaw, 2021). These interventions are still in early stages, and we cannot predict how these proposals will take shape and how prominently inclusionary housing policies will be in these proposals. However, these discussions on federal-local grants (and carrots) for land use reform, targeted

affordable housing production, and expanding federal housing budgets resemble India's federal housing program policy discussions in Paper 1.

This dissertation project did not involve a detailed analysis of different tools employed by the federal government in the U.S. to encourage state and local land use and housing reform. And despite federal IH policy interest in India since 2005, IH policies in India are fairly new as a policy idea with conflicting conceptions of what it means and hopes to achieve. The following sections present some reflections on IH policies by applying the intergovernmentalism framework to both these countries, as observed from the four papers. I first discuss the main positionalities of multiple actors at different levels in both countries and then draw some observations on their commonalities, contrasts, and the broad lessons they can offer each other.

### *What each player wanted*

The terms “federal,” “state,” or “local” government comprise many actors, institutions, and agencies at each level of government. Most important, these positions are changing and heavily influenced by the political party and leaders in power.<sup>31</sup> Nevertheless, it is worthwhile to broadly encapsulate the priorities of different levels of government. in both country contexts, as they relate to the IH policy environment.

According to the findings from Paper 1, the federal housing policy in India mainly prioritized: 1) producing more affordable housing units to meet the housing shortages nationally and 2) engaging the private sector in affordable housing production to reduce direct government provision and find good housing sites. Paper 2 shows how the Andhra Pradesh state policy prioritized: 1) making the most of federal grants to mass-produce affordable housing and 2) ensuring control over the housing construction and allotment process for electoral advantage. The local government planning body in Vijayawada was a minor actor mainly responsible for finding, acquiring, and servicing suitable sites for housing projects. Their priority was carrying out state government policy directives. Advocates were primarily active at the federal level with

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<sup>31</sup> For example, within the duration of this dissertation project, there were some critical political shifts. The state government in Andhra Pradesh, India, changed in 2019, and the federal government in the U.S changed in 2020, that critically shifted policy approaches and priorities. However, these shifts occurred after the field visits and interviews in both cases. Nevertheless, these political shifts impact subsequent policy discourse and direction for future steps.

almost no presence at the state and local levels.<sup>32</sup> Their advocacy focused on legal protections and property rights for informal settlements and slums. While there were active grassroots networks and community-based organizations at the city and neighborhood levels, their policy advocacy role was limited. The state government was not committed to market-led development for the most part and only conformed to federal IH policy mandates on paper to access federal grants. When the developers pushed for the dilution of IH stipulations, the local and state planning agencies acquiesced, citing the impracticality of the policy – administratively, economically, and socially. The disinterested IH implementation experience in Andhra Pradesh state is perhaps similar to that of some local governments in New Jersey and California that reluctantly adopted the IH policy.

The slow decentralization process in India causes a very prominent top-down approach to housing policy implementation, with local governments having little say and agency in determining their priorities. On the other hand, the state government’s priorities clearly aligned with the developers’ opinion – affordable housing was not in the realm of the formal private markets, and state-built mass public housing was the state government’s primary objective. The federal policy in India may have hoped to reform exclusionary planning processes to be more inclusive of affordable housing needs. However, the underlying goal was not social integration but finding suitable land for low-income housing and legalizing existing informal settlements. Even in the case of Andhra Pradesh, any efforts for inclusive planning approaches were led with the ultimate objective of finding appropriate land for mass-public housing. A key distinction, however, is that the state apparatus required for mobilizing such ad-hoc large-scale negotiated developments heavily rely on ready access to both federal funding support and state-level political interest. A concerning sign of this instability is the fact that several institutions and policies working on large-scale public housing construction instantly dissolved after the Andhra Pradesh state government changed in 2019.

Since the waning of the public housing era in the U.S. during the 1960s, the federal housing policy has prioritized 1) mixed-income public housing development to deconcentrate

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<sup>32</sup> Housing advocacy organizations have actively shaped federal policy objectives since 2005, most prominently during the 2009 Rajiv Awas Yojana. However, relations between the federal political administration and civil society were mostly contentious after the change of political party in power in 2014.

poverty and counter segregation 2) and engaging the private sector in delivering affordable housing. As Paper 3 suggests, there are diverse IH state policy environments in the U.S. However, for the most part, state mandates that encourage IH policy appear to target local exclusionary zoning policies to meet their fair share of affordable housing rather than force developers to contribute. In fact, most state IH-related policy directions also offer some protection to the developers in the form of minimum incentives or builders' remedies. In at least two of the three cases examined in Paper 3, these protections were extreme. The states (Texas and Tennessee) in these instances, prioritized 1) protecting free-market philosophy and property rights and 2) curtailing local government overreach. There were also variations in local government approaches to IH policies but with one clear commonality. All three case cities examined in Paper 4 were interested in IH policies for 1) finding appropriate high-opportunity locations for affordable housing solutions, 2) engaging the market, albeit through different modes. Broadly, policy objectives at the federal and local levels – at least in the three cities examined in Paper 4 – appear to align to an extent in the U.S., and this alignment may prove favorable to the proposed federal housing action plan, at least in the three progressive pockets examined in Paper 4. However, as developers from the three cities consistently pointed out, city councils typically succumb to the demands of their local electorates (especially NIMBY groups) and fail to bring about genuine zoning reform targeting issues such as single-family and low-density zoning – Austin's troubles with their zoning code revisions being a case in point. Developers in all three U.S. states were confident in their ability to pass IH preemptions by negotiating with their state legislatures rather than the city governments in the three cities. When it came to IH policies, conservative ideals had a near-perfect alignment with the developers' objectives. While housing advocates were relatively weak, (but steadily strengthening) in two of the three states, they were strong players at the city level. Housing advocates only supported IH policies in the three U.S. cities when IH programs were mainly based on zoning entitlements and did not require diversion of public subsidies to IH policy implementation.

### ***Commonalities – across three levels***

*Federal:* Based on macro-level observations on federal IH policy, and housing policy approaches in India and the U.S., there is some broad convergence in the federal-local incentives employed, the objectives for increased housing production, and interest in local zoning policies. The current efforts in the U.S. are perhaps more comparable to pre-2014

federal efforts in India. The intervening change in the federal government in 2016 heralded a marked shift in federal housing priorities in the U.S., in terms of federal grant allotments and priorities. However, this shift was less evident in India's case, at least on paper, with the introduction of a more expanded housing program, Pradhan Mantri Awas Yojana (as seen in Paper 1). The increased spending was mainly allotted to market-led developments and owner-assisted gap financing to achieve the government's target of 20 million new housing units. However, in both cases, federal housing subsidies for the most marginalized people were adversely affected, as demonstrated by decreased funding for public housing (and slum development) and community development needs (NLIHC, 2018; PRS India, 2021). In India, land use reform objectives were also severely diluted, similar to AFFH dilution in the U.S.

*State:* State governments broadly retain significant control over land, housing, and urban development issues even though states have mostly devolved the land-use regulation function to their local authorities in both India and the United States. Perhaps Dillon states in the U.S. are more comparable to states in India given the fact that local governments can only do what their states explicitly allow them to do. However, when it came to IH policies, the resulting state control on local autonomy was somewhat equivalent in Andhra Pradesh and home rule states like Oregon (and Texas to an extent). In Andhra Pradesh, the state directly determined the land use matters for all its local bodies. In the U.S. cases, states clawed back the authority already devolved to their cities on IH matters.

*City:* Cash-strapped municipalities are common in both countries. However, given the consolidation and redistribution of property taxes at the state level, and the poor collection rates, most cities in India fully depend on higher levels of government (High Powered Expert Committee, 2011; Mohanty, 2016), unlike U.S. cities. Within the cases studied, some strong parallels emerged between Nashville and Vijayawada, despite the apparent differences in IH policy experiences at the city level in India and U.S. The prevailing conditions, such as inadequate financial and human local government resources, the presence of a strong developer lobby, and a high share of low-income population may spark similar issues. In many ways, Nashville's housing problems and local barriers were comparable to issues that local bodies in India faced. Stretched local finances and administrative capacities severely limit local authorities' interest and ability to undertake IH programs. In Vijayawada, the municipal administration's interest in IH policy was only in capturing the in-lieu fees. These

fees were never held in a separate account and were consolidated into the general municipal budget. The lack of monitoring systems and resources for ensuring IH compliance and tracking posed issues in both Nashville and Vijayawada. While Vijayawada did not attempt to monitor the IH-related planning permissions, Nashville had contracted a private property management company to oversee their HIPP program. Many local bodies in India have relied on the sale of public lands for balancing their budgets (Mohanty, 2016); Nashville also considered a similar initiative in 2018 that was shelved when housing advocates severely opposed the Metro proposal.

### *Differences*

There are innumerable differences between the U.S. and Indian contexts. Perhaps, objectively, they are more dissimilar than similar. India's population, urbanization rate, poverty rate, economic status, small mortgage securitization market, and institutional structure pose greater housing and urban development challenges than related issues in the United States. Structurally, unlike the U.S. states that have individual constitutions, states in India operate within the constitutional ambit of the Republic of India.

Housing policy experts have long criticized India's housing policy for its predominant focus on low-income home ownership. While this is slowly changing due to more federal support for rental housing because of the COVID-19 pandemic, there is a key advantage to the emphasis on homeownership that explains the bi-partisan political interest in such expansive federal housing programs. The popular politics of providing highly subsidized homeownership opportunities to millions of households, and the possible electoral gains, capture significant political interest and state government participation in these programs.

Federal housing policies in India consistently refer to the need for inclusive planning approaches, but they fail to recognize the issues of socioeconomic segregation at play. When there is awareness, the problem is only understood within the context of informal settlements as enclaves of poverty within urban areas. Many have argued that slums and informal settlements are a symptom of the underlying exclusionary planning and formal housing market mechanisms and the policy discussion directly responds to this. However, emerging evidence shows the pervasive patterns of urban spatial segregation along income, religion, and caste lines. These effects may be less visible than racial segregation in the U.S., yet they are similarly problematic.

There is no recognition of this pervasive multi-dimensional socioeconomic segregation in housing policy discussions. Stakeholder interviews revealed some concern but mostly tolerance (and acceptance) of the discriminative values and practices. While present, such sentiments were not overtly acknowledged in the U.S. Interestingly, while respondents broadly referred to socioeconomic segregation during discussions on IH policies, race-specific discussions were limited. When questioned, many responded that racial segregation and income segregation were near identical in the U.S., and they strategically refrained from race-centered policy discussions to avoid unnecessary backlash.

One of the most glaring problems experienced in the Indian context manifested in local government capacities, specifically on housing issues. Most local governments do not carry out any housing function. Most of the housing policy operations, at both local and state levels, are restricted to low-income housing. Local governments do not collect or maintain any information on their housing stock, nor do they perform any detailed planning function on housing matters such as housing market analysis or needs analysis. Additionally, property tax registers are inadequately maintained.

Any recent federally sponsored efforts were too variable from one program to the other and failed to introduce any institutional practices or systems. Additionally, there are very few specialized affordable housing developers, unlike in the U.S., where community housing development organizations are strong players who carry out both affordable housing development and advocacy work. On the other hand, state housing institutions in many Indian states have extensive networks and have experience undertaking large-scale public housing projects. However, institutional capacities and efficiency vary widely, and the federal government has often pointed to this problem when encouraging market-led housing strategies.

### **Lessons from India's experience**

Unlike in the U.S., IH policy in India is not a visibly contested area. Perversely, one could attribute this 'compliance' to the possibility that none of the actors really expected it to be implemented. The federal government did not expect state governments to implement, state governments did not expect their local governments to enforce, and the local governments did not expect the developers to comply. This may be a symptom of India's notoriously "informal and deregulated" planning processes (Roy, 2009). Another reason could be the deeply flawed IH



stipulations set by the federal government. The 20 - 25% set-aside requirements for very low-income housing were perceived as unrealistic goals for market developers to meet without deep financial subsidies from the government.

While the India case *does not* tell us how to create and enact successful IH policies, it alerts us to ways in which such federal intent could be flouted:

1. Zoning reforms can be very slow to come about.
2. Conditional grants that tie housing project funds to zoning reform goals can severely delay necessary capital investments into affordable housing projects.
3. Unspent federal program allocations create budget reconciliation issues –a situation governments try to avoid.
4. When goals of effective zoning reforms for systemic change collide with housing unit targets, units take precedence at all levels of government.
5. *Sticks* are discarded, and different actors together find ways to check boxes and create ‘paper compliances’ to pave the way for *carrots* to build units. Instead of instituting systemic changes that can create funding and land access for affordable housing, implementing agencies adopt a project-based approach.
6. These *carrot-funded* affordable housing units are often built in ‘undesirable locations’ with inadequate infrastructure and connectivity due to land and location access barriers. These barriers mainly arise due to the underlying exclusionary zoning practices.
7. These units may also get built in moderately well-connected locations by resourceful states and local governments with sufficient administrative and institutional capacities.
8. States and local governments with weak institutional capacities fail to access and utilize these carrots, and the federal grant-making process, indirectly, continues to perpetuate the spatial economic and development disparities.

Although the above is a simplified summary of India’s experience with federal IH reforms, the key takeaway is that *sticks do not work, and carrots do not reform*. There is a need to go beyond carrots and sticks and a combination of *carrots and sermons* may be more impactful. Capacity building, technical assistance, and resource augmentation would be necessary sermons if reform-linked grants could serve their dual purpose.

## **Situating IH policies in the housing policy ecosystem**

Inclusionary housing policies are generally discussed as a means of engaging market developers in producing income-restricted housing, or they are referred to in the context of exclusionary zoning and land use policies – sometimes as a solution and other times as an exacerbating factor. Where inclusionary housing policies are presented as a response to exclusionary zoning policies, there is often staunch opposition from developers calling into question other areas of zoning and land use regulations that are prohibitive towards low-cost housing solutions, such as small-lot restrictions, high aesthetic standards and material requirements, and low-densities and single-family zoning, among others. Planning and zoning initiatives that attempt to eliminate barriers to low-cost affordable housing production are often referred to as *inclusive planning* approaches. Within an inclusive planning context, as the case studies in this dissertation suggest, housing activists often accord IH policies low priority when considering impactful local government action. Additionally, developers accuse the government of “passing the buck” and shifting public welfare responsibilities to the private sector. They point out that governments always prioritize their NIMBY electorate and pay a superficial nod to the matters of exclusion and segregation by snatching the low-hanging fruit – IH policies.

On the other hand, in a market-oriented economy, developers in high-demand real-estate markets predominantly produce high-cost housing that is often unaffordable to moderate and low-income households. In this exclusionary market-oriented housing development model, the government is expected to fill the residual gaps left by the market through public housing. When the government fails, marginalized people create their own housing options in the form of homeless encampments in the U.S. or informal settlements in India. Urban land shortages, high prices, legal precarity, and poor public investments in these low-income housing sites severely constrain connectivity and access to decent community infrastructure and opportunities. These underserved conditions are diagnosed as the result of “concentration of poverty (or poor people)” rather than the “concentration of poor infrastructure,” and federal housing policies in India and the United States have attempted to encourage mixed-income housing solutions in these sites by leveraging the existing land. Scholars and housing activists oppose these market-oriented redevelopment processes. They argue that existing informal occupations should be legalized and that government should continue to build public housing and extend support for maintenance, connectivity, and infrastructure upgrading. Public housing initiatives and other

federal policies for low-income production yield greater numbers of deeply subsidized affordable housing and are undoubtedly a preferred and necessary solution. However, as the implementation lessons from decades of public housing policies in both India and the US suggest, it is difficult to find good locations in capital-driven land markets, and federal public housing investments are often unreliable and insufficient.

Further to the above discussion, we may summarize the concerns and our responses as follows: Should exclusionary zoning and planning regulations be addressed to eliminate barriers to producing affordable housing? Yes. Should we continue to invest in public housing and recognize and encourage community ownership and occupation rights? Absolutely. However, neither of these scenarios serves as a standalone, quick, or dependable solution. As we continue to work within the ambit of a predominantly free-market economy, and political upheavals dictate public housing policy and funding priorities, IH programs can serve as intermediate housing policy approaches.

As a two-fold response to *exclusionary zoning practices* and *exclusionary market-oriented development processes*, targeted IH policies may prove to be useful tools for promoting socio-economic integration and creating equitable access to better infrastructure and opportunities. Distinct from other inclusive planning initiatives, targeted IH policies allow the development of integrated housing developments that cater to different income groups and promote voluntary socioeconomic integration and access to better infrastructure and opportunities.

As planners from India remarked, IH policies are not enough to compensate for decades of inadequate housing policy responses, and they are also unable to meet current affordable housing needs. But not acting now would mean more accumulated gaps and generational inequities. The mechanics of IH policymaking and implementation processes make it ineffective to produce greater numbers of affordable housing units. Their true virtue is in their incremental and long-term dividends. IH policies do not force low-income families to leave their homes or welcome new wealthy neighbors to deconcentrate poverty or desegregate neighborhoods. They instead offer them the same choices available to high-income households in market-led housing markets – to choose where they want to live and raise their families. And unlike housing voucher programs and public housing, they are not subjected to the ebb and flow of federal funding support.

IH policies, their proponents agreed, cannot and should not compete with concentrated public housing. The three U.S. cities studied in this project were not pursuing IH policies at the cost of public housing investments or other federal housing project grants. They intended for IH policies to serve low to moderate-income housing needs, not very low- and low-income housing needs specifically served by public housing. Any federal IH policy frameworks should also be aware of this important difference. IH policies cannot house extremely low-income households on their own; they need carefully calibrated layers of subsidies and incentives to meet the local housing needs.

However, as this dissertation shows, IH policies represent much more than a scientific exercise in predicting and calibrating housing needs and real estate potential. They are part of a deeply political process that internalizes ideological positions, structural hierarchy, and collective hopes for an improved future – for economic prosperity or for a *just* built environment. Since the combined sum of these constituent parts keeps changing, inclusionary housing policies need to be understood as dynamic and cumulative initiatives that reflect the contextual dynamics of local housing ecosystems.

More than a policy tool, IH policies are best described as a *policy platform*. They allow local governments to integrate several discrete policy options, such as land banks, tax abatements, TIF, Housing Trust Funds, and Transit-Oriented Development to identify and target a diverse set of housing problems within the city. Therefore, IH policies may be a foundation for building a diverse set of housing policy tools rather than one tool among the many.

Banning single-family-only zoning, upzoning near transit corridors, and allowing small-lot developments are zoning reforms that end exclusionary practices, but they do not automatically create below-market-rate housing. Just as creating inclusionary housing policies is not equivalent to ending exclusionary zoning practices, ending exclusionary zoning does not automatically mean creating inclusionary practices.

### **Suggested areas of action**

Some clear focus areas emerge based on the discussion on IH policies in an intergovernmentalism framework. While some suggestions are geared towards a multi-level coordination and planning framework to improve federally initiated conditional grants, others focus on improving local housing strategies with IH as a constituent part.

1. *Designing a housing policy ecosystem:* There is a need to envision a multi-level housing policy ecosystem that links zoning reforms to housing production and housing production to housing goals at different administrative levels. This system facilitates more synergy between reform incentive grants and housing project grants.
  - a. Craft housing policies to meet different objectives and categorize them to *target different income and housing needs*.
  - b. Clearly evolve *performance measurement* criteria for these targeted housing policies.
  - c. Target housing programs and investments that can best realize *housing gains from specific zoning reform initiatives*.
  - d. Incorporate the *geographic scale of intervention* in categorizing and addressing these policies such as city-scale, sub-city scale, and neighborhood scale. For example, fair-share targets for city council districts at the city scale, land-readjustment and municipal incorporation policies with low-income housing set asides in urban expansion areas, land dedications in sub-divisions and IH policies in multi-unit developments at the neighborhood scale.
2. *Funding infrastructure-led development:* Developers are unanimous in their view that well-laid service infrastructure networks are the most attractive public incentives for their participation in IH programs. However, very few local governments can undertake large-scale infrastructure upgradation on their own. Coordinated federal and state infrastructure may be a key driver for support tied to housing set-asides and other zoning reforms.
3. *Strengthening the state housing institutions and their capacities:* Relatively few states in U.S. and India sponsor state-funded housing programs, and state institutional capacities can be relatively limited. To initiate local zoning reform, there is a need for strong state institutional capacity on housing and land use issues to provide policy direction and coordination. If federal grants aim to involve conservative stronghold states, they may also need to support state housing institutions and their capacities.
4. *Finding land for public housing projects:* Finding land in high opportunity areas for public housing development is critical in both the U.S. and India. Creating special residential zones for low-income housing was a popular demand from housing advocates in India. Such zones would de facto legalize existing informal settlements and provide

well-connected land within urban limits for future public housing projects. Attempted through federal conditional grants, this zoning reform did not find favor among local and state governments. Such a practice might be unconstitutional in the U.S. due to the taking laws. However, support for creating public land banks by diverting public lands to prioritize affordable housing, right-of-first-refusal policies, land dedications from IH policies, and subdivision regulation could be useful strategies.

5. *Supporting housing policy advocacy*: In both countries, housing policy activism at the state level requires more consolidation and coalition-building. Even in states that do not have state planning frameworks that “steer” planning and zoning initiatives in cities, state legislatures can aggressively influence local decisions. In such circumstances, housing advocacy organizations and their coalitions can organize and negotiate to influence state policy positions. Additionally, while local housing advocacy was very strong in the three U.S. cities, such advocacy networks need to be created for effective local government action on affordable housing issues in many cities in the U.S. and India.

### **Seeing the state and beyond**

The discussion so far focuses predominantly on federal policies and local implementation. However, states consistently emerge in these conversations as key players. States in India and the United States prominently flex their power and authority to push back at the federal government on the one hand and, at the same time, pull back the powers they gave to their local governments. States have always been powerful players in federal systems (Allard, Burns, & Gamm, 1998; Frug & Barron, 2013), yet urban governance and housing policy research have curiously ignored them (Brassil, 2010). We tracked federal spending, observed local politics, and evaluated local outcomes, but we have not adequately acknowledged the state power.

With the recent change in federal government priorities in the U.S., and the proposed grants for encouraging progressive local land-use reform forecasted to increase housing supply, progressive cities in the U.S. may have increased support from the federal government in implementing IH and other progressive policies. However, as this dissertation suggests, states can (and will) pose barriers, and any federal-level policy targeting local governments cannot bypass states. Further, unlike prior federal-local grant processes, zoning reforms collide with the state’s legislative authority and may be subjected to more interference than national goals

account for. Even when there is no outright interference from the state, experience from Paper 4 suggests that cities like Nashville may still find it hard to leverage their planning powers to effectively meet affordable housing goals. Recently, there have been calls for a greater state role in U.S. housing policy, and researchers are beginning to problematize ways in which states can impede local zoning reform (Mallach, 2022; Schuetz, 2021).

Federal policies need to strengthen reliable governmental and non-governmental state institutions to generate knowledge, consolidate state-wide housing market trends, needs, and strategies, and encourage an informed dialogue on how best to meet these goals within their ideological and political framework. State governments are powerful and enduring entities in federal systems, sometimes appearing to kowtow to federal directives to pursue their own agendas (as seen in Papers 1 and 2 from India), sometimes standing up to federal overreach, but most times asserting their control over local governments to protect the free market, promote social equity, or fulfill some other agenda(s).

### **Overall Contribution**

Urban governance systems in many Global South contexts are deemed “unfit” to “enable sustainable and inclusive urban development” due to overlapping institutional frameworks, inadequate decentralization, insufficient resources, and weak public engagement processes (UN-Habitat, n.d.). This dissertation showcases how local government power and functionalities in advanced democracies, such as the U.S., are not immune to turbulence. Successfully decentralized systems can also be subjected to the recentralization of power. Imagining a clearly bounded local level with its own regime politics and urban governance systems is perhaps a preferable but impractical utopian construct. Urban governance studies cannot continue to ignore the state government's role in urban processes and relegate these concerns to ‘inadequate devolution and decentralization process.’ If local governments and different housing actors contend with, (and leverage), multi-level governance systems as constituent features of local policymaking and function, planning research should follow their lead and expand its scope.

Broadly, this dissertation is a study on policy alternatives or ‘other’ practices in ‘other’ contexts. The first paper discusses alternative tools to federal IH legislative mandates; the second paper responds to federal pro-IH policy objectives by studying the motivations and alternative approaches to IH policies that state and local governments prefer to employ; the third paper

discusses the alternatives to pro-IH state policy environments, specifically focusing on negative state IH policy environments; and the fourth paper is a study of altered IH policies and IH-related local strategies that local governments turn to when faced with state-level IH restrictions.

The collective contributions of the four papers in this dissertation are:

1. Expanding the IH policy literature by presenting rich contextual details to IH policymaking and negotiation processes.
2. Drawing attention to the impact of higher-level governments and other intergovernmental actors on local policy implementation in multi-level governance contexts.
3. Establishing the value of engaging with broader governance theories, public administration tools, and legislative processes in planning research.
4. Expanding our understanding of IH policies by bringing together their implementation experiences from the Global North and South.

Focusing on a combination of understudied processes, systems, and geographical contexts, and comparing them using constant and relational comparison methods, allowed this dissertation to capture and analyze deep contextual nuances. Policies, people, places, and their politics are distinct and diverse. Yet, in individualizing their differences, we can still observe and learn. My hope is that this dissertation succeeded in showing that learning is not always in transferable policies but also in understanding pitfalls, anticipating challenges, and coping with results.



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## **Appendix A: Note on Methodology and Data Collection**

The greatest challenge and reward to policy research is the constantly changing political and policy environment. Since the specific components of the study: the policy, process of policymaking, intergovernmental relations at play, and the case cities themselves (except for Portland), have not been well-documented in the literature, the study relied on primary data extensively. As suggested in a theoretical sampling process (Glaser & Strauss, 2017), I collected data in multiple phases through an iterative process where emerging data continuously informed the subsequent data collection steps, interviewee selection, and theory development. Through a combination of archival research, interviews, data, and policy document analysis, I triangulated the data through a constant comparison grounded theory method (Charmaz, 2014).

### ***Interviewee selection***

I developed a list of 8 -10 possible interviewees in each city prior to field visits. I listed these mainly by organizations prominently referred to in newspaper reports, public meeting minutes on local affordable housing issues in general, and IH policy discussions, specifically. Three main groups were identified – government officials, housing policy advocates, and developers. Within these groups, other associated players like consultants, legislative policy aides, associates from think tanks, municipal league officials, and subject experts emerged. Some stakeholders, therefore, could speak to the policy environment due to their continued role in the city as policymakers, advocates, or developers, and others were directly involved in IH policy deliberations – policy aides, consultants, and advocates. ‘Government officials’ represented a broad group that mainly comprised of officials from land use planning and housing departments within the local bodies, housing agencies, county or metropolitan government, state government departments, and concerned federal ministry (only in India). Some were elected officials, and some were policy staff to elected officials. Most, however, were government professionals with an administrative, planning, or housing background. Interview consent forms assured complete

participant anonymity and promised that no related identifying information would be revealed. Therefore, these subcategories of local government agencies and other organizations are not revealed in the interviewee lists. Where relevant, government planners were identified as a distinct group, specifically in the Indian context, since they made independent IH policy decisions with little elected government oversight and public consultation, unlike in the U.S. Since many respondents were involved in different capacities over time, I also identified their secondary affiliations that may have informed their views and knowledge on particular subjects. For example, many affordable housing developers played an important role in IH advocacy and housing policy advocacy in general (See Table A.1 and Table A.2).

Interviewing and document analysis occurred as an iterative process based on critical junctures in policy formulation and change. For example, in Austin, I first tried to identify the planning staff responsible for drafting their SMART program. I conducted newspaper archival research to find other people that participated in the policy deliberations around the year 2000 when SMART was adopted. Once I was able to construct these brief historical timelines from news reports and key informant interviews, I started a detailed review of policy documents around these critical policy junctures (Beach, 2016). I watched and analyzed old legislative and city council meeting recordings where available. I read policy notes, legislative bills, city ordinances, and resolutions and then traced references to related ordinances, bills, and evaluation reports (See Table A.3 for a detailed list of data and information sources). When reports were not available in the public domain, I wrote to city archives to obtain these materials. I also followed up with my interviewees when some reports still remained inaccessible. Respondents willingly shared memos and reports from their personal archives where possible. Constructing these policy timelines helped focus on stakeholders' roles between these junctures. Interview questions were aimed at understanding what roles different actors played leading up to these critical decision points. Questions were “framed and ordered” by setting the tone with generic questions on stakeholder work and contributions to housing policy issues (Charmaz, 2014). Responses to these questions helped gauge their interests and standpoints. The next set of questions was posed to construct the IH policy evolution and timelines from their subjective experience and perspective. Interviewees were then probed to describe ‘why’ and ‘how’ certain stakeholders influenced IH policy decisions and what they thought about it (Blatter & Haverland, 2014). They were also asked ‘what’ course and steps they think would have been more appropriate or

feasible. Although interviewees from specific stakeholder groups might be expected to have specific viewpoints, for example, housing advocates are assumed to be in favor of IH policies, care was taken to ensure that any preconceptions did not set the tone for the interview questions (Wimpenny & Gass, 2000). Grounded theory interviewing approach adopted in this research allowed recognition of nuances in how different advocacy groups – grassroots and grasstops – perceived IH policies differently. Any new information obtained from the interviews subsequently informed the data collection and policy analysis. This process was repeated until theoretical saturation was reached in the interviewing process (Charmaz, 2014). In each of the U.S. cases, a high degree of saturation was reached after approximately 13 - 15 interviews.

To select interviewees, I prioritized stakeholders who had the most contextual knowledge and history – sometimes they were in leadership positions in related organizations, and other times they were support staff. Within an organization, if stakeholders mentioned that another staff member might be more informed regarding certain questions, I immediately followed up with this other person and set up an appointment. I prepared a purposive sample of the interviewee pool through snowball sampling by chain referral method (Bernard, 2006). Every time I approached a possible interviewee through email or phone, I also solicited suggestions of actors who could help me learn more about specific aspects of the topic in those locations – actors from both pro-and anti-IH groups. I also contacted housing advocacy coalitions and developer associations, asking to be put in touch with people who could provide details about the city's present IH plans. I prioritized recurring names from multiple actors, next I tried to identify representative stakeholders from key groups. Since the project covers a time period stretching nearly 25 years in some instances, many key actors had either changed organizations, moved cities, or retired. Some advocacy coalitions had even been dissolved. I made every effort to reach important players through colleagues from their previous organizations, web searches, and professional social media networks. In some cases, introductory emails or phone calls from some stakeholders were very helpful. I was able to establish contact with most interviewees after a maximum of five separate attempts to reach them over a two-month period. Some interviewees were harder to reach, particularly among market developers. In two instances, promising leads to interview developers fell apart at the beginning of the COVID-19 pandemic in March 2020. The pandemic had a tremendous impact on everyone globally, and the stakeholders I had identified in my project were no exception, especially since they were also the key players at the forefront of

devising and delivering protective housing and health measures and responses for their communities. Further attempts to reach these stakeholders were disbanded considering the changing policy and macroeconomic circumstances. However, during this time, I continued following any key updates on IH policy measures in case sites.

All the interviewees who participated in this study were extremely generous with their views and time. I have not paid compensation to any of my interviewees for their participation in the study. I met with most of them in their workplaces - city council offices, developer field offices, and high-security locations like the Capitol and ministerial offices that required elaborate procedures for gaining security clearances. I met with some former employees, who had moved companies or retired, in public coffee places.

I regularly tracked policy updates from my case cities by regularly checking their official websites, setting up Google News alerts, and following social media updates from key organizations that had an active internet presence.

### ***Research trips***

Fieldwork in India was conducted between December 2018 to March 2019. During this period, I spent the majority of my time in Vijayawada. I made one trip to New Delhi and three trips to Hyderabad for meetings with different stakeholders. I met all interviewees in-person except for two I spoke to over the phone. I conducted follow-up interviews with six people (two each from New Delhi, Hyderabad, and Vijayawada) over the phone to seek clarifications and updates during the period August-September 2019. Interviews with 61 interviewees together contributed evidence to Papers 1 and 2. Most interviewees referred to in Paper 1 were from New Delhi and Hyderabad – the earlier capital of Andhra Pradesh, where much of the state IH policy deliberations transpired before the shifting of the new capital city to the Vijayawada region in 2015. Paper 2 mainly captures interviews from Vijayawada, and some conducted in Hyderabad. However, the 61 interviews together inform Papers 1 and 2.

Similarly, 50 interviews were conducted in the U.S. that together contributed to Papers 3 and 4. My U.S. research trips occurred between August 2018 and March 2020. I visited Austin twice, first in August 2018 and later in February 2020. I also made two trips to Nashville, one in August 2019 and another in March 2020. I interviewed most of my key stakeholders during an

extended first trip to Portland, and those I could not meet preferred to connect over the phone. I canceled my second trip to Portland planned for the last week of March 2020 due to COVID travel restrictions. Since both Nashville and Austin were state capitals, I was also able to meet key stakeholders relevant to Paper 3 on state-policy action interviews there. I traveled to Salem to interview two state-level actors in Oregon. All the other actors were primarily based in Portland. Even though different actors were identified mainly based on their role in a city or state-related action, certain actors spoke on both state and local issues. For example, local government officials, housing advocates, and developers were also prominent players at the state level. And even though some policy aides and lobbyists were mainly working at the state level, they shared some views regarding city politics and policies as residents of the same city. I conducted 17 interviews together in Portland and Salem, Oregon, 17 in Austin, and another 16 in Nashville.

Interviews were conducted with the intent to understand the stakeholders' thinking regarding different components of the proposed IH policy: what they liked about it, what they didn't, what they thought could have been better, and why they think some things could not have been achieved. This helped obtain specific data points to direct the conversation with interviewees through semi-structured interviews rather than having an open-ended discussion. Questions were also geared toward understanding their specific input and contribution to changing the shape of the policy. For example, if interviewees were developer associations involved in legislative action against the IH, I asked them why they felt they needed to approach the state. I also asked them what their primary objective through the preemption was, if they felt like they met their objective, what barriers they met in realizing their objectives, how they subverted them, and who their allies were. Additionally, I asked them if they considered asking the state for a more stringent action to protect developer interests and if they succeeded in their efforts. I posed similar questions to advocates and city officials involved in state preemption battles. Questions with local implementation agencies were much more detailed in order to obtain policy and implementation specifics through data records regarding planning permission approvals and fees collected. Interviews and communication with city functionaries were an iterative process that required multiple data points and clarifications (See Appendix B for example questions). After my initial meetings with key officials involved in the framing and implementation of city IH policies, I sought clarifications from them over the phone or email

when I came across any conflicting or completely new information from other stakeholders or document research. They were mostly responsive and shared additional resources and data points in response to my queries.

### *Interview analysis*

Most interviews were conducted in-person and some took place over the phone or Zoom. Interviews usually lasted from 45 to 60 minutes. The shortest interview was 20 minutes long and the longest lasted a little more than two hours. All the interviews were recorded except in two instances. One respondent preferred not to be recorded, and a technical glitch during another interview prevented the recording from taking place. However, detailed notes from these interviews were transcribed along with the rest of the interviews. All interviews were coded on Dedoose. For India interviews based on single cases, coding was completed based on overarching themes. Themes were drawn inductively from the data relating to different policy and project specifics: formulation/design process, roles, impressions, primary barriers, and feasibility assessment. These themes were further categorized based on different stakeholder groups and analyzed using a constructionist approach to thematic analysis focusing on the realities of data (Braun & Clarke, 2006). I conducted open coding of U.S. interview transcripts. Open coding is very context-sensitive and best suited to the constant comparison grounded theory approach. It was especially helpful to compare within the cases and between the cases (Chametzky, 2016; Charmaz, 2014). Working so closely with grounded data was also a useful approach due to my unfamiliarity with the U.S. case contexts. A total of 1031 child codes were generated from the first round of coding. These were categorized into core categories based on a constant comparison between cases through two separate rounds of categorizing to identify comparable features, processes, mechanisms, and patterns between cases. Given the rich database of information curated and analyzed for this study, it was a considerable challenge to clearly delineate the scope of each of the four individual papers in this dissertation. In the future, I hope to develop some of the other areas of research that emerged from this dissertation project on 1) housing advocacy and coalition-building strategies, 2) stakeholder perception analysis and framing of inclusionary housing policies, and 3) progressive city strategies to battle state preemptions.



### *Notes on field trips*

Gaining security clearances was especially challenging in India despite having professional connections in these offices due to my prior work. However, once I gained entry to these places, I was able to approach different players directly, some surprisingly easily, others after waiting for multiple hours in their office lobbies. Sometimes, at the end of public meetings, I could approach officials I could not reach over the phone or email, and they graciously allocated half an hour to talk to me between their appointments. On one such occasion, I conducted an interview with a high-profile official while he walked from one meeting to another in a large state administrative complex. At the end of the interview, he invited me to observe a critical meeting between planners and developers. These meetings not only allowed me to observe the power developers wielded in such settings but also perceive the political dynamics and priorities that made planners accede to developers' demands. On another occasion, I watched a live demonstration at the command-and-control center, where the construction activities of housing projects in more than 200 locations across the state were being virtually monitored 24/7.

In the U.S., I could schedule most of my meetings in advance of my research trips. I usually conducted about two interviews in one day, and, on rare occasions, three. Due to a devastating tornado during my trip to Nashville in March 2020, I extended my trip by two days to complete my interviews and field visits. There were very few impromptu meetings. When they occurred, they mainly took place during site visits to selected housing projects in each of the cities. My primary objective was to develop a sense of the amenities, connectivity, and quality of life in these projects. I compared project details officially shared by the local government with information available with the on-site property management company. On two occasions, I visited the IH units within the development to observe the shared spaces and physical amenities. I also compared site details against neighborhood walk scores, school ratings, and fair marketing practices on project websites.

Table A.1: List of interviewees, India (referred in Papers 1 and 2)

Interviewee identification number	Mode	Affiliation						
		Local Officials	State officials	Federal officials	Housing advocates	Developers	Planners	Consultants
1	In-person			X				
2	In-person			X	X1			
3	In-person	X1					X	
4	In-person	X						X1
5	In-person		X1				X	
6	Phone					X		
7	In-person	X1					X	
8	In-person				X			
9	In-person	X1					X	
10	In-person		X1				X	
11	In-person		X					
12	In-person		X1	X				
13	In-person	X						
14	In-person		X1				X	
15	In-person		X1				X	
16	In-person		X			X1		
17	In-person		X					X1
18	In-person	X1					X	
19	In-person	X						
20	In-person	X1					X	
21	In-person	X1					X	
22	In-person	X1					X	
23	In-person			X1			X	
24	In-person			X				X1
25	In-person			X				
26	In-person			X				X1
27	In-person			X				
28	In-person			X				
29	In-person				X			
30	In-person				X			
31	In-person				X			
32	In-person				X			X1
33	In-person							X1
34	In-person			X				X1
35	In-person			X				
36	In-person			X				

37	In-person			X			
38	In-person				X		
39	In-person				X	X1	
40	In-person			X			X1
41	In-person					X	
42	In-person					X	
43	In-person					X	
44	In-person						X
45	In-person		X				
46	In-person		X				
47	In-person		X				
48	In-person		X				
49	In-person		X				X1
50	In-person	X					
51	In-person		X1			X	
52	In-person		X1		X		
53	In-person			X1	X		
54	Phone	X	X1				
55	In-person	X1				X	
56	In-person				X1		X
57	In-person					X1	X
58	In-person					X	X1
59	In-person				X1		X
60	In-person						X
61	In-person		X				X1

X denotes primary affiliation. X1 denotes secondary affiliation.

Table A.2: List of interviewees, U.S. (referred in Papers 3 and 4)

Interviewee identification number	Place	Mode	Affiliation					
			Local Officials	State officials	Consultants	Community Activists	Developers	Other
1	Portland	In-person				X		
2	Portland	In-person					X	
3	Portland/Salem	In-person		X				
4	Portland/Salem	In-person						X
5	Portland	In-person	X					
6	Portland	In-person	X					
7	Portland	In-person	X					
8	Portland	In-person	X		X1			
9	Portland	In-person			X			X1
10	Portland	In-person				X		
11	Portland	In-person	X					
12	Portland	In-person				X		
13	Portland	In-person				X		
14	Portland	Phone					X	
15	Portland	Phone	X					
16	Portland	Phone				X		X1
17	Portland	Phone		X				
18	Austin	In-person	X					
19	Austin	In-person	X					
20	Austin	In-person	X					
21	Austin	In-person				X	X1	
22	Austin	In-person				X		
23	Austin	In-person	X			X1		
24	Austin	In-person				X1	X	
25	Austin	In-person						X
26	Austin	In-person						X
27	Austin	In-person				X		
28	Austin	In-person		X				
29	Austin	In-person				X1		X
30	Austin	In-person				X		
31	Austin	In-person					X	
32	Austin	In-person						X
33	Austin	Phone		X				
34	Austin	Phone	X					
35	Nashville	In-person	X					
36	Nashville	In-person				X	X1	
37	Nashville	Phone	X					
38	Nashville	In-person	X					
39	Nashville	In-person				X		
40	Nashville	In-person						X
41	Nashville	In-person						X
42	Nashville	In-person				X	X1	
43	Nashville	In-person	X1			X		
44	Nashville	In-person					X	
45	Nashville	In-person	X					

46	Nashville	In-person	X				
47	Nashville	In-person			X1	X	
48	Nashville	In-person					X
49	Nashville	In-person					X
50	Nashville	Zoom				X	

X denotes primary affiliation. X1 denotes secondary affiliation.

Table A.3: Data resources and information analyzed

Objective	Information type	Organization/institutions	Data Sources	Type of material analyzed
<i>To identify policy priorities, specifics, and updates</i>	Government/public office meetings	- Legislative hearings - City council meetings - Planning and zoning commission meetings	Legislative management information systems, City archives, Public library	Video recordings, minutes, agendas
	Legislative agenda and accomplishments	- City government (office of intergovernmental relations, housing, and planning departments) and state government officials	Interviews, City web archives, newspaper	City resolutions, ordinances, interview transcripts, newspaper reports, court decrees
		- Home Builders and Apartment Associations – local, regional, and state level - Housing advocacy Coalitions - FHAA - State Municipal league or league of cities	Interviews, Web archives, memos/reports shared by interviewees	Website blogs/updates, interview transcripts
	Plans and strategies, major project proposals	- City and Metro housing and planning departments	Interviews, website for current documents, city public library for old plans and maps, public consultation meeting material	Comprehensive plan, housing strategies, local municipal/zoning code, interview transcripts
		- Policy think-tanks - Housing Coalitions - Developer Associations	Interviews, Websites, archives, social media pages	Opinion pieces, policy and project impact reports, case descriptions, interview transcripts
<i>To understand current housing scenario and needs</i>	Demographic indicators, longitudinal data points	- City and Metro housing and planning departments, and other local actors	Interviews, websites, data portals, reports	Real estate demographics and housing needs, CAPER reports, Interview transcripts
		- HUD reports, RAY and JNNURM strategy reports - Policy think-tanks and other national databases	Websites, data portals, research reports, maps	- Census reports - American Housing Survey - American Community Survey - LIHTC approvals - Housing Needs Analysis reports – policy link - Segregation reports and city ranking
<i>To obtain the number of housing units produced under IH and relevant policies</i>	Building approvals, Affordable housing inventory	- City housing and planning departments - State housing finance corporations - Regional planning authorities	Interviews, list of project approvals, location maps	Open data portal, housing reports, third party evaluation reports, developer agreements
<i>To observe and obtain a feel for IH projects and living conditions</i>	Accessibility, neighborhood desirability, unit distribution within a project	- Housing property management office, city records	Site visits, website, interviews, location maps, social media announcements	Project websites for marketing information, Zillow for average rents in the area, school ratings, developer agreements

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## **Appendix B: Example Interview Guide (City of Portland)**

### **General**

1. How would you describe the City of Portland's relationship with the state government? How does Portland convey its interests to the state government?
2. Please describe briefly the key housing challenges faced by Portland.
3. What are some of the successful affordable housing policies that the city has initiated over the years?
4. How are different affordable housing policies of the city being converged? (e.g., LIHTC, HTF, Opportunity Zones, etc.)
5. What led to the declaration of a housing emergency in 2015?
6. How does the presence of the commission form of government and the Metro impact some of the land use and affordable housing priorities and dynamics in Portland?

### **IH Policy – early stages**

1. What led to Portland's interest in pursuing IH program? (Follow up with, When and how did the city realize that Inclusionary Housing (IH) Policy is a key tool that's unavailable to them?)
2. How was a consensus achieved at the city level that IH is a preferred policy choice and that the state has to be approached to lift the ban?
3. How did the city government mobilize different interest groups and organize efforts to lift the state ban? What were some of the key impediments during this process?
4. Are you happy with the final version of S.B 1533 that was passed? What components have been favorable and unfavorable?
5. IH policies exist in several forms and each city chooses to emphasize on particular aspects. What were your key objectives and policy choices when you set out to frame IH policy for Portland after the lifting of the state ban?
6. How did you overcome or circumvent some of the limitations imposed via the sideboards introduced in S.B 1533? (e.g., 20 units threshold etc.)



7. What was your primary IH policy objective? (Note: Find out if racial integration and equity concerns are mentioned, or just income integration. Follow up on other policies for racial equity and justice, including AFFH, etc.)
8. What is the role of different agencies in the implementation of IH policy in Portland?

### **IH Policy – implementation**

1. Please explain MULTE program and its key features – both before S.B 1533 and the pipeline MULTE program. How many units have been created over the years under this program? How do you see its future? (Based on Lit review)
2. What are some of the key implementation challenges of IH policy in Portland? How have you overcome them or plan to overcome them?
3. What are some of the key changes made to the IH policy since its introduction?
4. Portland is the only city in the state that has passed the IH policy. How does this alter or impact the development activity in the city when compared to other jurisdictions in the metro that are not subject to these limitations?
5. How much was collected as in-lieu fee since the adoption of the IH policy? How are the in-lieu fees being spent?
6. What are the numbers of built, under-construction, and IH units in-pipeline to date?
7. What role does the city play in the allotment process for the IH units?
8. What are some of city's efforts in the creation of public land banks? (confirmation question since policy review indicated that Portland currently does not have a clear land banking policy)

### **Next steps**

1. What according to you is the biggest win as part of your efforts for IH policy for Portland?
2. Do you collaborate with other city governments in the country and look to them for policy ideas?
3. What are the next steps for Portland's IH policy - at the city, the state, and the federal level?
4. What are some good projects to visit? Suggestions for contacts and people I should get in touch with.