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The End of Single-Family Zoning in California: How Chapter 162's Impact is More Symbolic than Transformative

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The End of Single-Family Zoning in California: How Chapter 162’s Impact is More Symbolic than Transformative

Tooba Naveed*

Code Sections Affected

Government Code §§ 66452.6 (amended), 65852.21, 66411.7 (new)
SB 9 (Atkins); 2021 STAT. CH. 162

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I. INTRODUCTION

In 1916 Berkeley, California, the district of Elmwood became the first district to designate single-family zones.¹ The new zoning ordinance had the direct impact of preventing construction of a Black-owned dance hall near a white-only subdivision.² Prominent real estate developers in Berkeley feared this dance hall and other developments like it would lower the property values of homes in the district.³ Despite the fact that racial covenants already restricted non-white people from buying or renting in the neighborhood, city developers sought to solidify its exclusive character through zoning.⁴ And while the courts eventually outlawed racially-restrictive covenants, single-family zoning laws remained.⁵

Meanwhile, single-family zoning laws push low-income Black, Latinx, and immigrant communities to relocate to dense, impoverished areas.⁶ Exclusionary zoning harms the education, health, and career prospects for low-income families and families of color by limiting their proximity to good schools, environments, and jobs.⁷ Limiting development to one house per parcel also severely restricts the housing supply and consequently raises the cost of housing.⁸ In response, recent

1. Jesse Barber, *Berkeley Zoning Has Served for Many Decades to Separate the Poor from the Rich and Whites from People of Color*, BERKLEYSIDE (Mar. 12, 2019), <https://www.berkeleyside.org/2019/03/12/berkeley-zoning-has-served-for-many-decades-to-separate-the-poor-from-the-rich-and-whites-from-people-of-color> (on file with the *University of the Pacific Law Review*).

2. *Id.*

3. *See id.* (discussing how three different Asian laundromats, which McDuffie referred to as “nuisances,” were kicked out of downtown because their establishments were now illegal in the zone).

4. *See id.* (describing how developers proposed single-family only zones to Berkeley’s city council to ensure the properties’ character and value would not be disturbed by high-density housing and industries).

5. *See Shelley v. Kraemer*, 334 U.S. 1, 13 (1948) (holding that racially restrictive covenants—agreements written in property deeds that prohibit sale and rental to certain ethnic groups—are a violation of the 14th Amendment).

6. Barber, *supra* note 1.

7. *See* Maya Brennan et al., *How Zoning Shapes Our Lives*, HOUS. MATTERS (June 12, 2019), <https://housingmatters.urban.org/articles/how-zoning-shapes-our-lives> (on file with the *University of Pacific Law Review*) (finding restrictive zoning laws make it difficult for low-income families to access available jobs and high-quality schools and can expose them to greater environmental hazards).

8. *The History and Future of Single-Family Zoning*, UNITED WAY BAY AREA (Apr. 6, 2021), <https://uwba.org/blog/the-history-and-future-of-single-family-zoning/> (on file with the *University of the Pacific Law Review*).

legislation has increased the availability of affordable housing.⁹ This success has prompted legislators to consider other policies to potentially foster the development of more housing in low-density, or single-family, neighborhoods.¹⁰

The Secretary of State, Shirley Weber, chaptered SB 9 in September 2021 and it went into effect as Chapter 162 in January 2022.¹¹ The new law permits homeowners to subdivide their lot or convert existing single-family homes into multiple units.¹² Chapter 162 allows homeowners to tap into the equity of their “developed, but underutilized land.”¹³ Chapter 162 attempts to increase housing availability and address California’s housing crisis; however, its solution is economically infeasible for most and various loopholes weaken the bill’s potential impact.¹⁴ Lawmakers should channel resources towards enforcing Chapter 162 by building advocacy networks to monitor compliance with the law and conducting outreach programs educating homeowners on utilizing Chapter 162.¹⁵

II. LEGAL BACKGROUND

Single-family zoning has gradually developed throughout the past century as a key tool for land control.¹⁶ The growth of urban populations and industries contributed to a need for cities to implement controlled development plans.¹⁷ Section A discusses the role private deed restrictions played in laying a foundation for zoning ordinances.¹⁸ Section B overviews key cases that helped shape zoning

9. See Ben Metcalf et al., *Will Allowing Duplexes and Lot Splits on Parcels Zoned for Single-Family Create New Homes?*, UC BERKELEY TERNER CTR. FOR HOUS. INNOVATION (July 21, 2021), <https://turnercenter.berkeley.edu/research-and-policy/duplexes-lot-split-sb-9/> (on file with the *University of the Pacific Law Review*) (finding recent laws have removed barriers to the construction and finance of additional dwelling units on residential lots, allowing additional dwelling unit (ADU) completions to nearly triple between 2018 and 2019).

10. *Id.*

11. CAL. GOV’T CODE §§ 66452.6, 65852.21, 66411.7 (amended and enacted by Chapter 162, respectively).

12. *Id.*

13. ASSEMBLY FLOOR, FLOOR ANALYSIS OF SB 9, at 2 (Aug. 16, 2021) (explaining how Chapter 162 can help homeowners leverage the untapped value of their home to build equity).

14. Metcalf, *supra* note 9; GOV’T §§ 66452.6, 65852.21, 66411.7; Gabriel Poblete, *Not Just Mountain Lions: California’s Cities Gird to Block State Housing Efforts*, REAL DEAL (Feb. 14, 2022), <https://therealdeal.com/sanfrancisco/2022/02/14/not-just-mountain-lions-california-cities-gird-to-block-state-housing-efforts/> (on file with the *University of the Pacific Law Review*) (allowing cities to impose their own objective zoning standards on Chapter 162 permits has led to several communities passing ordinances with meticulous requirements to limit Chapter 162 developments).

15. Manuela Tobias, *With More Enforcement Power Than Ever, State Relies on Activists to Enforce Duplex Law*, CALMATTERS (Apr. 22, 2022), <https://calmatters.org/housing/2022/04/california-duplex-housing/> (on file with the *University of the Pacific Law Review*).

16. Alexander von Hoffman, *Single-Family Zoning: Can History Be Reversed?*, JOINT CTR. FOR HOUS. STUDIES OF HARVARD UNIV. (Oct. 5, 2021), <https://www.jchs.harvard.edu/blog/single-family-zoning-can-history-be-reversed/> (on file with the *University of the Pacific Law Review*).

17. *Id.*

18. *Infra* Section II.A.

law.¹⁹ Section C addresses the historic practice of redlining and how segregation shaped American suburbs.²⁰ Section D explores the ongoing housing crisis in the state and some solutions cities have deliberated to increase affordable housing.²¹

A. Not in My Neighborhood: How Restrictive Covenants and Zoning Laws Shaped California's Neighborhoods

Private deed restrictions, or covenants, were the primary form of land control before 1916.²² Restrictive covenants impose clauses within the property's deed to restrict how buyers can utilize their property.²³ Historically, these restrictions proved to make residential districts more desirable to homebuyers, given the appealing nature of owning a home with predictable and privately controlled arrangements.²⁴ Restrictive covenants fell short on many fronts, however, especially given that they could not protect the land around a restricted subdivision.²⁵

To fill the gap left by restrictive covenants, developers proposed a concept cities had yet to utilize anywhere in the U.S.: restricting development in certain zones to only single-family homes.²⁶ Single-family housing aimed to stabilize property values in restricted districts by protecting financially qualified homeowners from the nuisance of industrial development and commercial business.²⁷ Racial and class prejudices undeniably played a role in establishing the allure of these neighborhoods—affluent white buyers were drawn to their racial homogeneity.²⁸

19. *Infra* Section II.B.

20. *Infra* Section II.C.

21. *Infra* Section II.D.

22. Marc A. Weiss, *Urban Land Developers and the Origins of Zoning Laws: The Case of Berkeley*, 3 BERKELEY PLAN. J. 7, 8 (1986); Daniel Thomas Mollenkamp, *Single-Family Zoning: This Housing Restriction Can Lead to High Rates of Segregation*, INVESTOPEDIA (May 25, 2022), <https://www.investopedia.com/single-family-zoning-5192299#citation-32> (on file with the *University of the Pacific Law Review*).

23. *Id.*; Bona Law PC, *Restrictive Covenants and California Real Estate*, TITLES & DEEDS (July 16, 2018) <https://www.titlesanddeeds.com/restrictive-covenants-and-california-real-estate/> (on file with the *University of the Pacific Law Review*) (explaining how private deed restrictions impose clauses in a deed that restrict how buyers can use the property).

24. Weiss, *supra* note 22, at 8 (finding potential buyers favored residential properties that were protected by agreements restricting and segregating land uses); Bona Law PC, *supra* note 23 (discussing how although restrictive covenants are still enforceable today, covenants which restrict the sale of property to members of a particular race were eventually outlawed).

25. Weiss, *supra* note 22, at 8.

26. *See id.* (finding Berkeley developers believed the interests represented in restrictive covenants could more adequately be presented in “the public planning process”).

27. *Id.*

28. Daniel Thomas Mollenkamp, *Single-Family Zoning: This Housing Restriction Can Lead to High Rates of Segregation*, INVESTOPEDIA (May 25, 2022), <https://www.investopedia.com/single-family-zoning-5192299#citation-32> (on file with the *University of the Pacific Law Review*).

The desire to keep single-family districts distinct and separate from multi-family and industrial zones effectively cloaked the segregationist undertones of this exclusionary zoning practice.²⁹

B. The Supreme Court Ensures “Parasites” Stay Out of Single-Family Neighborhoods

In 1926, the United States Supreme Court decided in *Euclid v. Ambler* that excluding non-residential or high-occupancy buildings from residential districts was a valid exercise of a municipality’s authority.³⁰ This landmark zoning case held that cities merely needed to prove a rational connection between the zoning ordinance and the general welfare, health, or safety of the community.³¹ The Court noted in its decision that expert reports refer to apartment buildings as a “parasite” that effectively destroys the attractive surroundings of residential districts.³² This decision allowed cities to continue imposing comprehensive zoning laws like single-family zoning, unless arbitrary or unreasonable.³³

In 1977, the Supreme Court made its most impactful decision in exclusionary zoning under *Village of Arlington Heights v. Metropolitan Housing Co.*³⁴ The Village mainly zoned a predominantly white suburb for single-family residences, and the development company sought to construct racially-integrated housing for low-income families.³⁵ When the city denied the development company a permit to build, a suit followed, alleging the denial was a violation of the Fourteenth Amendment’s Equal Protection Clause.³⁶ The Court ultimately decided that absent a clear discriminatory pattern, the rezoning denial was not invalid.³⁷ This decision effectively precluded any challenges to exclusionary zoning on the basis of the Equal Protection Clause.³⁸

29. *Id.* (discussing how clauses that barred businesses from operating in single-family zones were targeted specifically at Asian and Black businesses).

30. *See Euclid v. Ambler*, 272 U.S. 365, 397 (1926) (holding that governing authorities have soundly determined that certain developments, such as industrial uses, should proceed within definitely fixed lines).

31. *Id.* at 394.

32. *See id.* at 394 (referring to how the apartment building attracts the disturbing noises and dangers of increased traffic and business).

33. *Id.* at 395.

34. *Village of Arlington Heights v. Metro. Hous. Dev. Co.*, 429 U.S. 252, 252 (1977); *see also* Cecilia Rouse et al., *Exclusionary Zoning: Its Effect on Racial Discrimination in the Housing Market*, WHITE HOUSE (June 17, 2021), <https://www.whitehouse.gov/cea/written-materials/2021/06/17/exclusionary-zoning-its-effect-on-racial-discrimination-in-the-housing-market/> (on file with the *University of the Pacific Law Review*) (classifying exclusionary zoning as land use controls that tend to exclude low-income and minority families); JOHN G. SPRANKLING, *UNDERSTANDING PROPERTY* 668 (4th ed. 2020).

35. *Arlington Heights*, 429 U.S. at 255–57; SPRANKLING, *supra* note 34, at 668.

36. SPRANKLING, *supra* note 34, at 668; *see also Arlington Heights*, 429 U.S. at 254; U.S. CONST. amend. XIV, § 1 (“No State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws.”).

37. *Arlington Heights*, 429 U.S. at 266; SPRANKLING, *supra* note 34, at 669.

38. *Arlington Heights*, 429 U.S. at 271; SPRANKLING, *supra* note 34, at 669.

C. Redlining and the Foundation of a Racially Segregated Suburbia

Metropolitan areas in major U.S. cities saw exponential growth after World War II.³⁹ This population growth, coupled with an emergent economy, led to a rapid expansion of cities and towns with low-density, single-family residences, otherwise known as “urban sprawl.”⁴⁰ The desire for homes with larger yards, more privacy, and increased living space contributed to the migration to the suburbs for those who could afford it.⁴¹ Inequitable housing practices such as redlining ensured only a selective portion of the American population could pursue this ideal.⁴² These practices fostered long-standing racial segregation in suburban districts, which persisted despite the 1968 Fair Housing Act outlawing racial discrimination in property transactions.⁴³ Single-family zoning laws helped preserve these stratified development patterns, cementing the racial and class divisions of segregation into the country’s residential areas for decades to come.⁴⁴

Since 1970, local officials have continued to impose limiting measures on developments in residential zones to preserve the low-density and environmentally-conscious nature of these areas.⁴⁵ The stake suburban communities have in maintaining the social and physical characteristics of single-family living has pushed cities to continue to impose restrictions on expanding development.⁴⁶ Local officials make it increasingly difficult for builders to obtain permits that vary against a particular zoning use, especially ones that substantially alter a neighborhood’s character.⁴⁷ These restrictions make high-density developments scarce, which raises the cost of housing.⁴⁸

39. John Rafferty, *The Problem of Urban Sprawl*, BRITANNICA <https://www.britannica.com/explore/savingearth/urban-sprawl> (last visited Aug. 10, 2022) (on file with the *University of the Pacific Law Review*).

40. *Id.*

41. *Id.*

42. See Becky Little, *How a New Deal Housing Program Enforced Segregation*, HISTORY (June 1, 2021), <https://www.history.com/news/housing-segregation-new-deal-program> (on file with the *University of the Pacific Law Review*) (explaining how banks used redlining, which marked predominantly Black neighborhoods in red on city maps, to deny lending and investment services to Black Americans).

43. *Id.*

44. Barber, *supra* note 1 (describing how zoning tends to freeze cities in their current forms, making it difficult to reintegrate segregated areas).

45. Hoffman, *supra* note 16 (describing how local officials during this period “implement measures that impeded or blocked new construction in the name of saving nature”—a process sometimes referred to as “the environmental protection hustle”).

46. *Id.*

47. *Id.*; see also Victoria Theater, *Neighborhood Character*, SUBSIDIARIES PROJECTS, https://cdn.esd.ny.gov/Subsidiaries_Projects/VictoriaTheater/19_NeighborhoodCharacter.pdf (last visited July 16, 2022) (on file with the *University of the Pacific Law Review*) (describing neighborhood character as “an amalgam of various elements,” such as land use, urban design, historic resources, and socioeconomics).

48. Hoffman, *supra* note 16.

D. The Housing Shortage Shifts Attitudes Towards Embracing Multi-Family Housing

Cities are beginning to face the environmental and social ills that single-family zoning causes.⁴⁹ Evidence indicates single-family zoning and urban sprawl damage the environment by encouraging reliance on automobiles.⁵⁰ Single-family housing also contributes to the lack of affordable housing by restricting the available housing supply and continuing to exclude low-income families from prosperous neighborhoods.⁵¹ These concerns have encouraged legislators to consider policies which will allow for construction of more affordable housing units in low-density areas.⁵²

Recent housing laws in California have made several attempts at unlocking significant housing production to account for the shortage.⁵³ In 2016, Senate Bill (SB) 1069 and subsequent legislation removed barriers to the construction of additional dwelling units (ADU).⁵⁴ These bills had the immediate impact of slowly adding higher density residential units in single and multi-family properties across the state.⁵⁵ Some cities reported ADU permits constituted almost forty percent of all housing building permits in the years after these legislative bills passed.⁵⁶ The early success of ADU developments signaled the promise of easing restrictions on small-scale developments in existing low-density neighborhoods.⁵⁷

In 2019, Minneapolis became the first U.S. city to ban single-family zoning, allowing construction of duplexes and triplexes on lots the municipality previously zoned for only one home.⁵⁸ The state of Oregon followed suit and passed similar measures, allowing fourplexes in most of the state's cities.⁵⁹ In March 2021, the city of Berkeley made the historic decision of ending single-family zoning,

49. Rafferty, *supra* note 39.

50. *Id.*

51. Eric Jaffe, *Is It Time to End Single-Family Zoning?*, MEDIUM (Feb. 6, 2020), <https://medium.com/sidewalk-talk/is-it-time-to-end-single-family-zoning-56233d69a25a> (on file with the *University of the Pacific Law Review*).

52. Metcalf, *supra* note 9.

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. Hoffman, *supra* note 16; Richard D. Kahlenberg, *How Minneapolis Ended Single-Family Zoning*, THE CENTURY FOUND. (Oct. 24, 2019), <https://tcf.org/content/report/minneapolis-ended-single-family-zoning/?agreed=1> (on file with the *University of the Pacific Law Review*).

59. Hoffman, *supra* note 16; Laura Bliss, *Oregon's Single-Family Zoning Ban Was a 'Long Time Coming'*, BLOOMBERG (July 2, 2019), <https://www.bloomberg.com/news/articles/2019-07-02/upzoning-rising-oregon-bans-single-family-zoning> (on file with the *University of the Pacific Law Review*).

allowing the city to come full circle as the pioneer in the regulatory practice.⁶⁰ Many cities across California have also begun to allow the construction of multi-family units in zones where the municipality previously disallowed them.⁶¹

Existing law prior to Chapter 162 required a zoning administrator to hear and decide applications that varied from the zoning ordinance.⁶² Large housing projects typically required public hearings and administrative review.⁶³ Additionally, discretionary approval for these projects was subject to review under the California Environmental Quality Act (CEQA).⁶⁴ CEQA requires applicants to conduct an environmental impact analysis to obtain approval for developments.⁶⁵

Senator Toni Atkins and others introduced Senate Bill 1120 in 2020 which would have potentially allowed up to four units on existing single-family lots.⁶⁶ Although the bill managed to pass in both the California Assembly and Senate, it failed to meet its deadline and eventually died.⁶⁷ Housing advocates continued to push for a similar measure and managed to introduce SB 9, an almost identical bill that targets single-family zoning with some important changes.⁶⁸

III. CHAPTER 162

California State Senator Atkins introduced SB 9 to streamline the process for homeowners to subdivide their lot or turn their single-family residence into a duplex.⁶⁹ The bill went into effect across the state as Chapter 162 in January of 2022.⁷⁰ The new law essentially requires all jurisdictions in the state to allow construction of up to four units on most existing single-family parcels.⁷¹ Senator

60. Supriya Yelimeli, *Berkeley Votes for Historic Housing Change: An End to Single-Family Zoning*, BERKELEYSIDE (Mar. 25, 2021), <https://www.berkeleyside.org/2021/03/25/berkeley-single-family-zoning-city-council-general-plan-change> (on file with the *University of the Pacific Law Review*).

61. See John Metcalfe, *Berkeley May Get Rid of Single-Family Zoning as a Way to Correct the Arc of Its Ugly Housing History*, BERKELEYSIDE (Feb. 17, 2021), <https://www.berkeleyside.org/2021/02/17/berkeley-may-get-rid-of-single-family-zoning-as-a-way-to-correct-the-arc-of-its-ugly-housing-history> (on file with the *University of the Pacific Law Review*) (citing how cities like Sacramento, San Jose, and San Francisco considered reforming their single-family zoning codes to make way for more housing before Chapter 162 went into effect).

62. CAL. GOV'T CODE §§ 66452.6, 65852.21, 66411.7; ASSEMBLY FLOOR, FLOOR ANALYSIS OF SB 9, at 1 (Aug. 16, 2021).

63. GOV'T §§ 66452.6, 65852.21, 66411.7; ASSEMBLY FLOOR, FLOOR ANALYSIS OF SB 9, at 1 (Aug. 16, 2021).

64. GOV'T §§ 66452.6, 65852.21, 66411.7.

65. *Id.*

66. Metcalf, *supra* note 9.

67. *Id.*

68. See *id.* (finding SB 9 added various provisions which were not in SB 1120 as a result of community concerns).

69. ASSEMBLY FLOOR, FLOOR ANALYSIS OF SB 9, at 1 (Aug. 16, 2021).

70. GOV'T §§ 66452.6, 65852.21, 66411.7; *SB 9 Explained*, HOMESTEAD, <https://www.homestead.is/helping-homeowners-understand-sb9> (last visited Aug. 10, 2022) (on file with the *University of the Pacific Law Review*).

71. See GOV'T §§ 66452.6, 65852.21, 66411.7 (prohibiting states from imposing zoning standards that would prevent the development of duplexes or lot splits on a parcel, a piece or area of land); HOMESTEAD, *supra*

Atkins hopes Chapter 162 will help build multigenerational wealth and combat economic insecurity by creating flexible opportunities for families who have historically faced multiple barriers in homeownership.⁷²

The law requires a city or county to ministerially approve the development of no more than two units in a single-family zone.⁷³ It also allows for the subdivision of a parcel into two approximately equal lots.⁷⁴ Chapter 162 permits local governments to review these projects ministerially, without further approval from an elected official, and consequently dodging the hurdle of triggering review under CEQA.⁷⁵ Cities can still impose objective zoning, subdivision, and design standards, but they cannot conflict with the bill.⁷⁶ Once a homeowner splits their lot, they can build a duplex or up to two ADUs on each lot—allowing for a maximum of 8 units across both lots.⁷⁷

Chapter 162 requires jurisdictions to impose owner occupancy provisions, where the applicant must live in the unit for at least three years after the city approves the lot split.⁷⁸ Additionally, the law prohibits development on sites located within historic or landmark districts, high-fire zones, habitats for protected species, or flood sites.⁷⁹ Chapter 162 prohibits alteration or demolition of housing where the tenant occupied the dwelling in the last three years.⁸⁰ It also prevents alteration or demolition of rent-restricted housing the city preserves for low-income renters.⁸¹

IV. ANALYSIS

California's highly competitive housing market has created a growing need for affordable homes and increased living space.⁸² The imbalance between the housing supply and demand in the state continues to perpetuate its persistent housing

note 70.

72. ASSEMBLY FLOOR, FLOOR ANALYSIS OF SB 9, at 2 (Aug. 16, 2021).

73. GOV'T §§ 66452.6, 65852.21, 66411.7.

74. GOV'T §§ 66452.6, 65852.21, 66411.7.

75. ASSEMBLY FLOOR, FLOOR ANALYSIS OF SB 9, at 1 (Aug. 16, 2021); *see also* Jon Healy & Matthew Ballinger, *What Just Happened with Single-Family Zoning in California?*, L.A. TIMES (Sept. 17, 2021), <https://www.latimes.com/homeless-housing/story/2021-09-17/what-just-happened-with-single-family-zoning-in-california> (on file with the *University of the Pacific Law Review*) (explaining how CEQA reviews make a city's changes in zoning costly and time consuming).

76. GOV'T §§ 66452.6, 65852.21, 66411.7.

77. HOMESTEAD, *supra* note 70.

78. GOV'T §§ 66452.6, 65852.21, 66411.7 (requiring a local agency to mandate applicants to sign an affidavit stating they intend to occupy one of the units as their principal residence for at least 3 years).

79. GOV'T §§ 66452.6, 65852.21, 66411.7; HOMESTEAD, *supra* note 70.

80. GOV'T §§ 66452.6, 65852.21, 66411.7.

81. GOV'T §§ 66452.6, 65852.21, 66411.7.

82. Dan Walters, *California Housing Crisis Both Wide and Deep*, CALMATTERS (Dec. 7, 2021), <https://calmatters.org/commentary/2021/12/california-housing-crisis-both-wide-and-deep/> (on file with the *University of the Pacific Law Review*).

crisis.⁸³ The annual rate of new housing developments has failed to match the rate of population growth in the state, especially during the past two decades.⁸⁴ Studies have shown cities can offset the high cost of housing development by adding more dense developments—or allowing more housing units for each unit of land.⁸⁵ Section A discusses how Chapter 162 complements existing law that has gradually allowed development of more units in single-family zones, and some significant protective provisions of the bill.⁸⁶ Section B explores the law’s shortcomings.⁸⁷ Section C proposes solutions to foster greater compliance and encourage more homeowners to take advantage of the law.⁸⁸

A. Chapter 162 Can Increase the Housing Stock by Allowing More Density in Single-Family Zones

With Chapter 162, homeowners have greater opportunities to expand the available living space on their property.⁸⁹ Chapter 162 changes the municipal review process for homeowners who wish to subdivide their lot or add new units to their single-family lots.⁹⁰ Rather than being subject to discretionary, or a case-by-case review, new projects are now “subject to ministerial approval,” where cities must apply objective and consistent standards.⁹¹ As a result, cities can expedite the process of providing permits to homeowners who wish to expand their property with more units.⁹²

Prior to Chapter 162, legislation that removed barriers to the construction and financing of additional dwelling units showed promising success in encouraging more housing development.⁹³ The progress showcases how small-scale developments in low-density areas can increase housing and accommodate the growing population in the state.⁹⁴ Given that previous zoning laws restricted nearly three-quarters of California’s developable land to only single-family homes, Chapter 162 can significantly expand the state’s housing stock.⁹⁵ The University of California, Berkeley’s Turner Center for Housing Innovation’s study found Chapter 162 could facilitate construction of approximately 700,000

83. *Id.*

84. *Id.*

85. MAC TAYLOR, LEGIS. ANALYST’S OFF., CALIFORNIA’S HIGH HOUSING COSTS: CAUSES AND CONSEQUENCES 13 (2015).

86. *Infra* Section IV.A.

87. *Infra* Section IV.B.

88. *Infra* Section IV.C.

89. HOMESTEAD, *supra* note 70.

90. *Id.*

91. *Id.*

92. *Id.*

93. Metcalf, *supra* note 9.

94. *Id.*

95. Healy, *supra* note 75.

market-feasible homes in California.⁹⁶ Housing advocates voiced their apprehension before Chapter 162's enactment, arguing the law would invite predatory developers to build expensive units in moderate and low-income neighborhoods.⁹⁷ Chapter 162's owner-occupancy provision, which would require applicants to make one of the units on the site their primary residence for at least three years, addresses this concern.⁹⁸ Shortly before the Governor signed Chapter 162 into law, legislators amended the law to include the owner-occupancy provision to disincentivize homeowners from selling to speculative investors.⁹⁹ Chapter 162 targets gentrification of low-income neighborhoods by requiring applicants to live in one of the units for three years before dividing a single-family home into multiple units.¹⁰⁰ Other provisions in the bill, such as the prohibition on deconstructing affordable or rent-controlled housing, protect renters and homeowners from displacement.¹⁰¹

Opponents also expressed concerns that allowing higher-density developments would substantially alter neighborhoods' character—a concern the Supreme Court similarly voiced in its decision in *Euclid*.¹⁰² Chapter 162 accounts for this by allowing cities to “impose objective zoning standards” and remain in control of how homeowners can develop their properties.¹⁰³ Meanwhile, the law prohibits cities from imposing regulations that physically prevent construction of up to two units or prevent the units from being at least 800 square feet.¹⁰⁴ These two provisions indicate cities can still preserve the look and feel of their neighborhoods while permitting new developments but cannot impose standards to preclude developments altogether.¹⁰⁵

96. Metcalf, *supra* note 9.

97. *Housing is a Human Right Opposes California's SB 9 and SB 10*, HOUS. IS A HUM. RIGHT (May 11, 2021), <https://housinghumanrt.medium.com/housing-is-a-human-right-opposes-californias-sb-9-29f8128c0ff1> (on file with the *University of the Pacific Law Review*).

98. CAL. GOV'T CODE §§ 66452.6, 65852.21, 66411.7.

99. Metcalf, *supra* note 9.

100. Eric Payne, *Housing Reform Bill Would Right Some of Redlining's Wrongs*, CALMATTERS (June 21, 2021), <https://calmatters.org/commentary/my-turn/2021/06/housing-reform-bill-would-right-some-of-redlinings-wrongs/> (on file with the *University of the Pacific Law Review*) (discussing how Chapter 162 specifically allows working-class communities of color, rather than investors, to take advantage of the new affordable and accessible units the law would facilitate); GOV'T §§ 66452.6, 65852.21, 66411.7.

101. Payne, *supra* note 100.

102. See *Euclid v. Ambler*, 272 U.S. 365, 394 (1926) (“[T]he coming of one apartment house is followed by others . . . until finally, the residential character of the neighborhood and its desirability . . . are utterly destroyed.”).

103. GOV'T §§ 66452.6, 65852.21, 66411.7.

104. GOV'T §§ 66452.6, 65852.21, 66411.7.

105. GOV'T §§ 66452.6, 65852.21, 66411.7; ASSEMBLY FLOOR, FLOOR ANALYSIS OF SB 9, at 2 (Aug. 16, 2021).

B. A Modest Housing Law with Major Resistance

Senator Toni Atkins laid out clear expectations that Chapter 162 would only produce a modest amount of housing while providing homeowners with building opportunities that were previously inaccessible.¹⁰⁶ The new law has seen several unprecedented pitfalls since its enactment in January of 2022.¹⁰⁷ Subsection 1 discusses the practical findings the University of California, Berkeley’s Turner Center has assessed to measure the new law’s impact.¹⁰⁸ Subsection 2 explores how cities have persistently avoided implementing Chapter 162.¹⁰⁹ Subsection 3 explains the additional challenges permits and financing pose to homeowners who wish to take advantage of the new law.¹¹⁰

1. A Symbolic Solution: New Developments Under Chapter 162 Are Much More Modest Than Anticipated

Although Chapter 162 has promised the construction of a substantial number of new units, research indicates Chapter 162 would only enable development “on 5.4% of current single-family parcels.”¹¹¹ The owner-occupancy provision, though meaningful and significant, has a slight negative impact on the total financially viable units Chapter 162 facilitates.¹¹² The environmental limitations and historic district preservation requirements have a similar effect of reducing the total number of foreseeable developments under the new law.¹¹³ In reality, the number of new units Chapter 162 enables is merely a fraction of what the state needs to adequately address the housing shortage.¹¹⁴

The Turner Center’s report indicates Chapter 162 is not likely to lead to significant demolitions of the existing housing stock.¹¹⁵ The report finds that even with the new law, homeowners would retain about ninety-seven percent of single-family homes with no modifications or with less destructive developments.¹¹⁶ While Chapter 162 makes it more feasible to construct three or four units on single-family lots, duplexes are the most financially viable and practical development

106. Metcalf, *supra* note 9.

107. Tobias, *supra* note 15.

108. *Infra* Subsection IV.B.1.

109. *Infra* Subsection IV.B.2.

110. *Infra* Subsection IV.B.3.

111. Metcalf, *supra* note 9.

112. *See id.* (finding the owner-occupancy requirement decreases feasible units by 6 percent, which is approximately 400,000 less units).

113. *Id.*

114. *Id.*

115. *Id.*

116. *See id.* (finding the likelihood of demolition for a substantial number of homes to be low, as homeowners would likely pursue options like subdividing existing structures into a duplex instead).

option.¹¹⁷ These findings demonstrate that prospects for radically transformative changes in the makeup of single-family zones are much less likely than expected.¹¹⁸

2. Loopholes and Exceptions: How Cities Are Fiercely Avoiding Implementing Chapter 162

Since Chapter 162 authorizes cities to impose their own objective zoning and design standards on new construction, any potential development opportunities largely depend on local context.¹¹⁹ Some cities have taken advantage of this provision by imposing a maze of standards homeowners must meet before pursuing the type of developments that Chapter 162 enables.¹²⁰ In Cupertino, local officials passed an ordinance preventing owners from building any units that cast a shadow on “more than ten percent of a neighbor’s solar panel.”¹²¹ Los Altos Hills is limiting new units to a maximum of 800 square feet and requires the housing nearest to the property line to retain a hedge of evergreen shrubs.¹²²

Cities have also used Chapter 162’s attempts at historic and environmental preservation to evade the law’s developments in entire neighborhoods.¹²³ The city of Pasadena issued an urgency ordinance just before the law went into effect declaring their landmark districts as exempt from Chapter 162 developments.¹²⁴ The city claimed the neighborhoods have “historical, cultural, and architectural” value, effectively precluding twenty percent of Pasadena’s properties from future duplexes and lot splits.¹²⁵ Woodside, California, took a similar approach by using a clause in Chapter 162 that prohibits development in areas identified as habitats for species protected by the law.¹²⁶ The city alleges the endangerment of mountain lions in the area exempts every parcel within Woodside from Chapter 162 projects.¹²⁷ California Attorney General Rob Bonta has strongly condemned the actions of Woodside and Pasadena city officials who issued a letter stating neither ordinance was valid nor justifiable.¹²⁸ The city of Woodside heeded the warnings

117. Metcalf, *supra* note 9.

118. *Id.*

119. *Id.*; CAL. GOV’T CODE §§ 66452.6, 65852.21, 66411.7.

120. Poblete, *supra* note 14.

121. *Id.*

122. *Id.*

123. The Times Editorial Board, *Here’s a Warning, Pasadena. Don’t Even Think About Trying to Evade SB 9*, L.A. TIMES (Mar. 20, 2022), <https://www.latimes.com/opinion/story/2022-03-20/editorial-pasadena-sb9-density-historic> (on file with the *University of the Pacific Law Review*).

124. *Id.*

125. *Id.*

126. Timothy Bella, *Wealthy California Town Says It Can’t Build Mandated Affordable Housing. The Reason: Mountain Lions*, WASH. POST (Feb. 3, 2022), <https://www.washingtonpost.com/nation/2022/02/03/woodside-mountain-lions-housing-california/> (on file with the *University of the Pacific Law Review*).

127. *Id.*

128. Press Release, CAL. DEP’T JUST., *Attorney General Bonta Put City of Pasadena on Notice for*

and revoked its memorandum, and Pasadena amended its ordinance to clarify its provisions while keeping it mostly intact.¹²⁹ These ordinances indicate that despite legislators making adoption of Chapter 162's provisions compulsory, cities who disfavor the new law will find ways to maneuver around it.¹³⁰

3. Permits, Financing, and Local Regulation, the Three Barriers to an Effective Housing Bill

Though Chapter 162 has the potential to unlock a significant amount of housing in the state, permitting and financing pose significant challenges to any new developments.¹³¹ These obstacles are essentially the same as those that homeowners might encounter when attempting to make major renovations to their home.¹³² Since each city has the authority to implement Chapter 162 in accordance with their own zoning and design standards, homeowners must first comprehend their local regulations and requirements.¹³³ As the law's effectuation occurred recently, many cities have yet to develop an application process for projects under Chapter 162.¹³⁴

The cost of infill developments, which construct on existing but underutilized land, is more affordable than development costs for a single-family home.¹³⁵ However, banks are reluctant to finance infill developments, which poses an additional hurdle for constructing Chapter 162 projects.¹³⁶ Given the deeply rooted history of racist housing practices, homeowners of color have less assets than their white counterparts to afford financing new developments on their lot.¹³⁷ Evidence indicates in some cities, banks deny households of color mortgage lending for

Violating State Housing Laws (Mar. 15, 2022), <https://oag.ca.gov/news/press-releases/attorney-general-bonta-puts-city-pasadena-notice-violating-state-housing-laws> (on file with the *University of the Pacific Law Review*).

129. *Id.*; *Pasadena Cements Landmark District Exemptions from SB 9*, PASADENA OFF. CITY MAN. (May 10, 2022), <https://www.cityofpasadena.net/city-manager/news/pasadena-cements-landmark-district-exemptions-from-sb-9/> (on file with the *University of the Pacific Law Review*); see also Keith Calayag, *Planning Commission to Consider Amending Zoning Code to Comply with SB 9 Urgency Ordinance*, PASADENA NOW (Apr. 13, 2022), <https://www.pasadenanow.com/main/planning-commission-to-consider-amending-zoning-code-to-comply-with-sb-9-urgency-ordinance> (on file with the *University of the Pacific Law Review*) (discussing how Pasadena city officials incorporated Chapter 162 exemptions for landmark districts in its municipal code, highlighting its many historic districts already listed in the National Register of Historic Places).

130. HOMESTEAD, *supra* note 70.

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. John Walsh et al., *California's New Zoning Law Eases Building Restrictions but Depends on the Financing Industry to Play Its Part*, URBAN INST. (Jan. 6, 2022), <https://www.urban.org/urban-wire/californias-new-zoning-law-eases-building-restrictions-depends-financing-industry-play-its-part> (on file with the *University of the Pacific Law Review*).

136. See *id.* (explaining how banks' reluctance to finance infill housing construction limits which loan products are available to homeowners, forcing them to acquire several financing mechanisms to cover construction costs).

137. *Id.*

“two- to four-unit homes and for renovation loans more frequently than” for white households.¹³⁸ Wealthy borrowers with higher property values have the upper hand in securing lending for Chapter 162 projects.¹³⁹ Housing advocates hope that as the law becomes more commonplace, the challenges with permitting and financing will gradually become easier to navigate.¹⁴⁰ However, until banks and city officials gain more experience with the law and new projects under Chapter 162, these barriers will likely slow the rate of new developments.¹⁴¹

C. Watchers for the Watchmen: Advocacy Networks Monitoring Compliance and Enforcement

Chapter 162 will continue to have a limited impact on housing developments if policymakers keep allowing cities to carefully evade its implementation.¹⁴² Currently, the state government relies on pro-housing advocates to monitor how cities comply with the bill and report serious deviations from its provisions.¹⁴³ The Department of Housing and Community Development received \$4.65 million to form its Housing Accountability Unit, which will monitor compliance and ensure enforcement for housing laws in California.¹⁴⁴ Despite the State’s authority granted to this new unit within the agency, the housing department continues to depend on advocates and journalists to report when cities manage to elude Chapter 162.¹⁴⁵ A local newspaper story and vocal supporters of Chapter 162 on social media were able to bring Woodside’s noncompliance to the Attorney General’s attention.¹⁴⁶ The number of reports the agency has received from advocates documenting their cities’ evasion of Chapter 162 requirements shows the promise of building a more robust advocacy network.¹⁴⁷

As a more impactful way to combat noncompliance, legislators can require cities to submit their Chapter 162 implementation ordinances for approval by the state government.¹⁴⁸ Given the many exceptions within Chapter 162 and the control legislators allotted to cities in imposing objective zoning standards, this

138. *Id.*

139. *Id.*

140. HOMESTEAD, *supra* note 70.

141. *Id.*

142. Tobias, *supra* note 15.

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

147. Tobias, *supra* note 15.

148. *Id.*

enforcement strategy can help prevent noncompliance.¹⁴⁹ Channeling resources towards enforcement in more concrete ways through additional legislation can encourage cities to cooperate with Chapter 162 as well as other housing laws.¹⁵⁰

To ensure the law can be effective and reach the potential it seeks, policymakers should conduct outreach and ensure homeowners comprehend the housing opportunities Chapter 162 unlocks.¹⁵¹ Online platforms like Homestead provide homeowners with informative tools to understand how their city is implementing Chapter 162 and how to navigate the local rules and regulations.¹⁵² Homestead also provides financing options and project management assistance to help an interested homeowner unlock their property's potential.¹⁵³ Given that studies predict the construction of new units to remain modest, legislators should focus on these initiatives to ensure the law at least makes its proposed impact.¹⁵⁴

V. CONCLUSION

Chapter 162 makes incremental changes in dismantling exclusionary zoning, a sacrifice the state of California needed to make in order to address the lack of housing.¹⁵⁵ Though the law's impacts are not as grand as supporters hoped or as far-reaching as opponents feared, it helps lay the foundation for new and transformative living arrangements.¹⁵⁶ With the implementation of Chapter 162, Californians can begin to realize that slowly adding density to residential areas is not worth the fervent opposition the concept has received.¹⁵⁷ As homeowners throughout the state continue to take advantage of the new permitting developments, the state can begin taking steps towards filling the gaps exclusionary zoning created.¹⁵⁸

Though the law takes an important step in the right direction, policymakers must take additional action to ensure Chapter 162 reaches its full potential.¹⁵⁹ This means ensuring homeowners have access to financing opportunities, allocating

149. *See id.* (discussing how requiring cities to submit their implementation rules to the State can deter cities' evasive techniques when enforcing Chapter 162); *see also* HOMESTEAD, *supra* note 70 (explaining that because cities can use their own design standards, some cities have avoided implementing Chapter 162 in a way that honors not only its requirements, but intentions).

150. *See* Tobias, *supra* note 15 (explaining how when homeowners were struggling with obtaining ADU permits, the state responded by requiring cities to submit their ADU ordinances to help boost ADU construction).

151. Metcalf, *supra* note 9.

152. *Explore How Cities Are Implementing SB 9 Across California*, HOMESTEAD, <https://www.myhomestead.com/sb9-city-guide> (last visited Aug. 29, 2022) (on file with the *University of the Pacific Law Review*).

153. HOMESTEAD, *supra* note 70.

154. Metcalf, *supra* note 9.

155. Times Editorial Board, *supra* note 123.

156. *Id.*

157. *Id.*

158. HOMESTEAD, *supra* note 70.

159. Metcalf, *supra* note 9.

more resources towards compliance, and remaining firm on enforcement of the law.¹⁶⁰ Weak-willed enforcement and a lack of resources for homeowners interested in developing new units can easily curtail Chapter 162's already modest proposal of new housing.¹⁶¹ Taking action to strengthen the law's impact will ensure more Californians can access homeownership and begin to develop the desperately needed housing in the state.¹⁶²

160. Tobias, *supra* note 15; Walsh, *supra* note 135.

161. Tobias, *supra* note 15; *see also* Metcalf, *supra* note 9 (estimating that Chapter 162, as written, will not open the door to a significant amount of new housing).

162. Tobias, *supra* note 15.

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