

Housing and Homelessness

There is no way to address poverty in California without addressing the lack of affordable housing and the associated rise in homelessness. As Governor Newsom has said, “It’s a disgrace that the richest state, in the richest nation—succeeding across so many sectors—is falling so far behind to properly house, heal and humanely treat so many of its own people.”¹

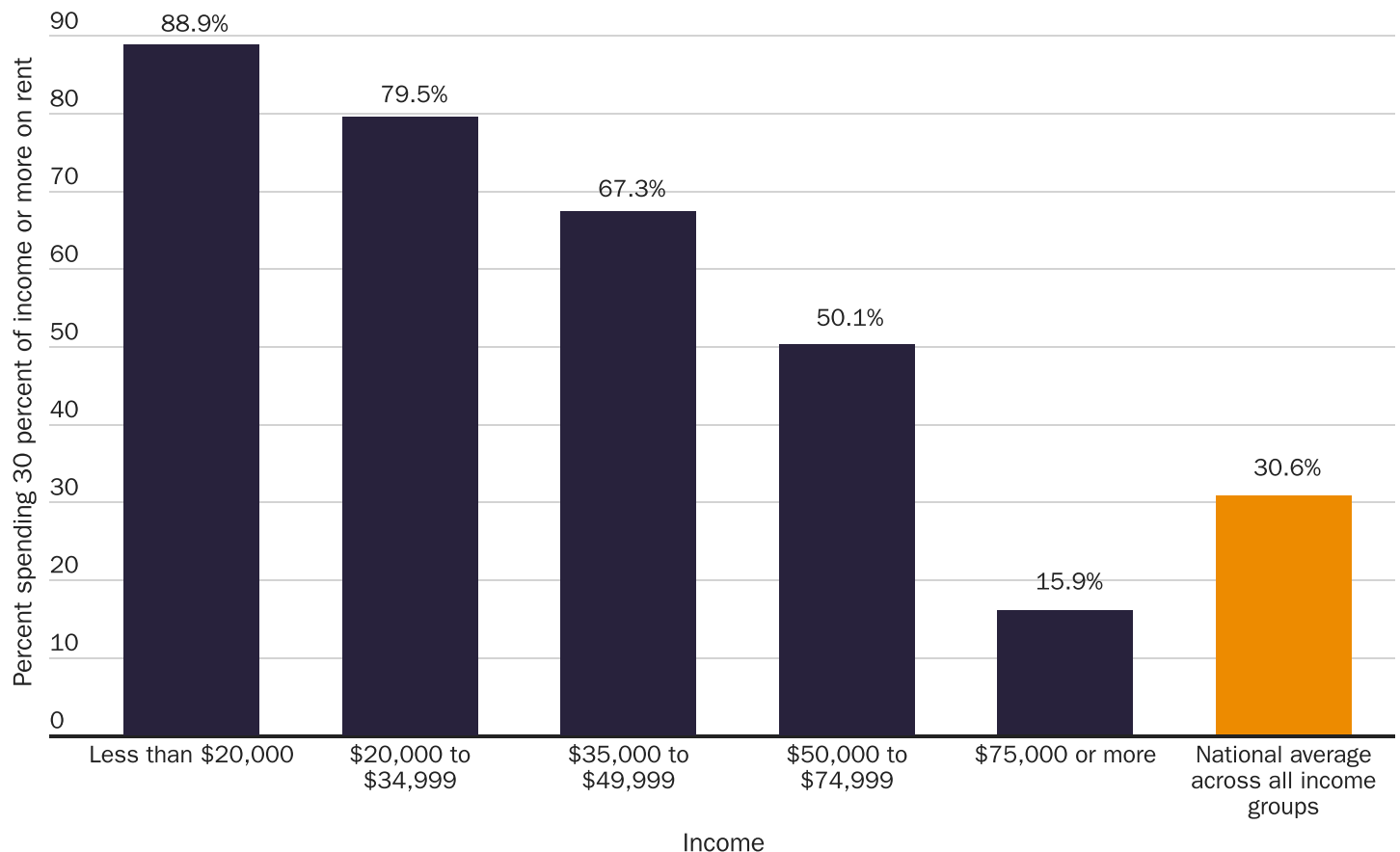
Stable and affordable housing is critical to fighting poverty on several levels. A home in a safe neighborhood, with good schools and close to jobs, can serve as a springboard for economic success. On the other hand, a lack of affordable housing can confine poor families to dangerous neighborhoods with substandard schools and few economic opportunities.²

Economists generally agree that families should spend roughly no more than about 30 percent of their income on housing. The reality, however, is that most people living in poverty spend much more. Indeed, Americans in the bottom third of incomes who rent spend on average 40 percent of their income on housing.³ In California, this problem is extensive and extends further up the income scale. For low-income Californians, the share of rent-burdened households is more than 80 percent (see Figure 2.1).⁴ In addition, 37 percent of middle-income families spend above the 30 percent threshold.

With a median home price statewide exceeding \$500,000, the Hoover Institution estimates that less than a third of

Figure 2.1

Portion of Californians who are rent-burdened compared to the national average



Source: “American Communities Survey,” U.S. Census Bureau, 2019.

Note: Rent-burdened is defined as spending more than 30 percent of income on rent.

California families, even in multi-earner households, can afford the state's median home price. In some areas, such as the city of San Francisco or Santa Clara County, barely 15 percent of households can afford to purchase a home at the median price.⁵

The median rent for a two-bedroom apartment tops \$1,500 per month, roughly 55 percent higher than the national median (see Figure 2.2).⁶ In some cities, such as Los Angeles and San Francisco, average rents can exceed \$3,000 per month.⁷ From 2005 to 2015, rents increased by 38 percent in Los Angeles, 43 percent in San Francisco, 28 percent in Riverside, 33 percent in San Diego, 24 percent in Sacramento, and 57 percent in San Jose.⁸ Since then, the rise has only accelerated. California has six of the 15 most expensive rental markets in the nation.⁹ More than half of California renters pay rents that exceed industry standards for affordability. Considering that the U.S. Census Bureau's

official poverty threshold for a family of three is \$20,212 per year, or \$1,684 per month, and that the median rent in California for a two-bedroom home was \$1,562 in 2018 (and, as previously noted, much higher in some areas), the problem is obvious.¹⁰ See Figure 2.3 for states with the highest average rents for a one-bedroom apartment.

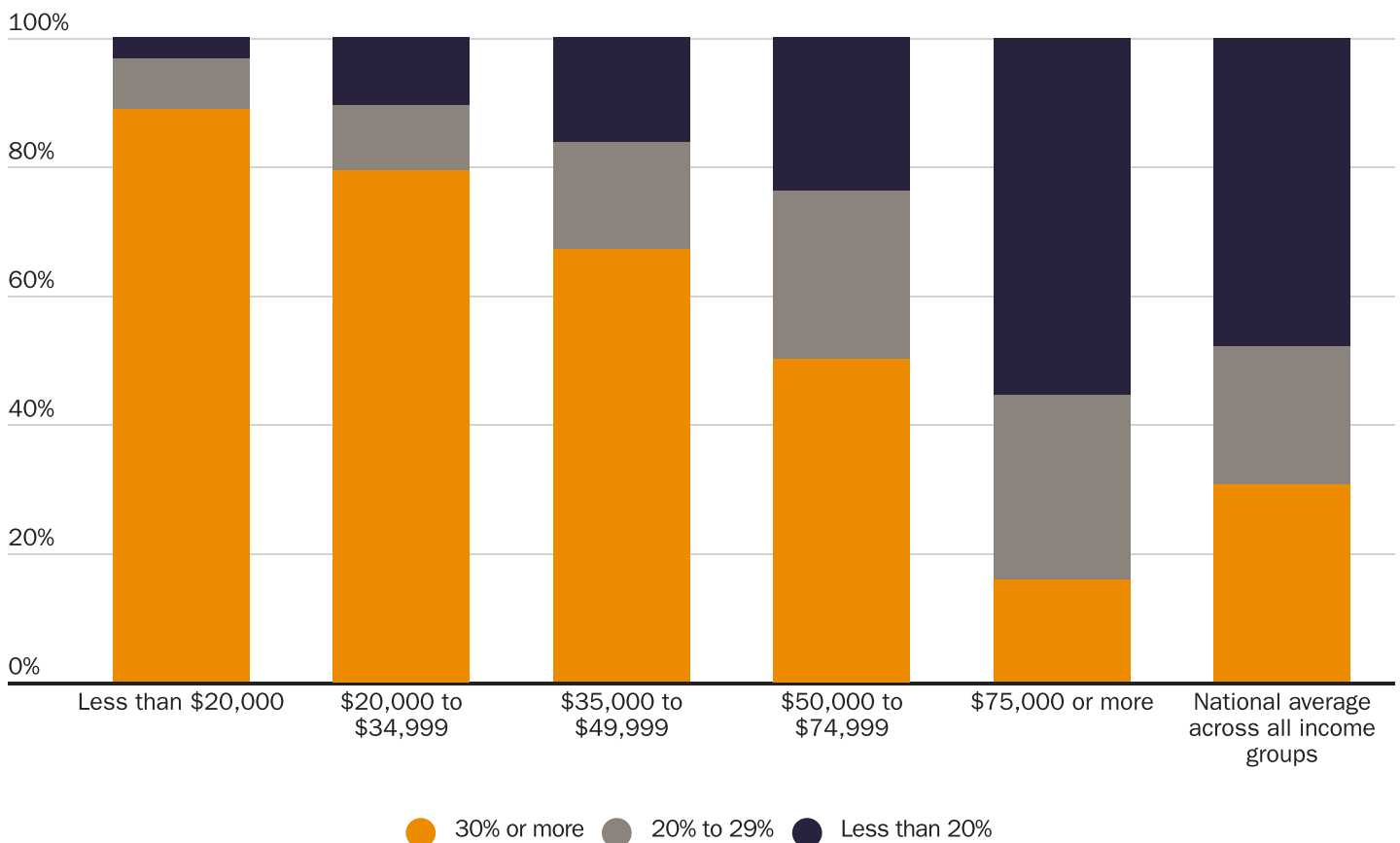
As a result, more than half of Californians worry that they or someone in their family will not be able to afford housing. Such anxiety is particularly high among low-income Californians, with nearly two-thirds expressing worries about housing costs.¹¹ There is good reason for worry. The high cost of housing carries significant consequences for the state's poor.

EFFECTS ON PEOPLE WHO ARE POOR

Using the official Census Bureau definition of poverty, 12.5 percent of Californians would be considered poor,

Figure 2.2

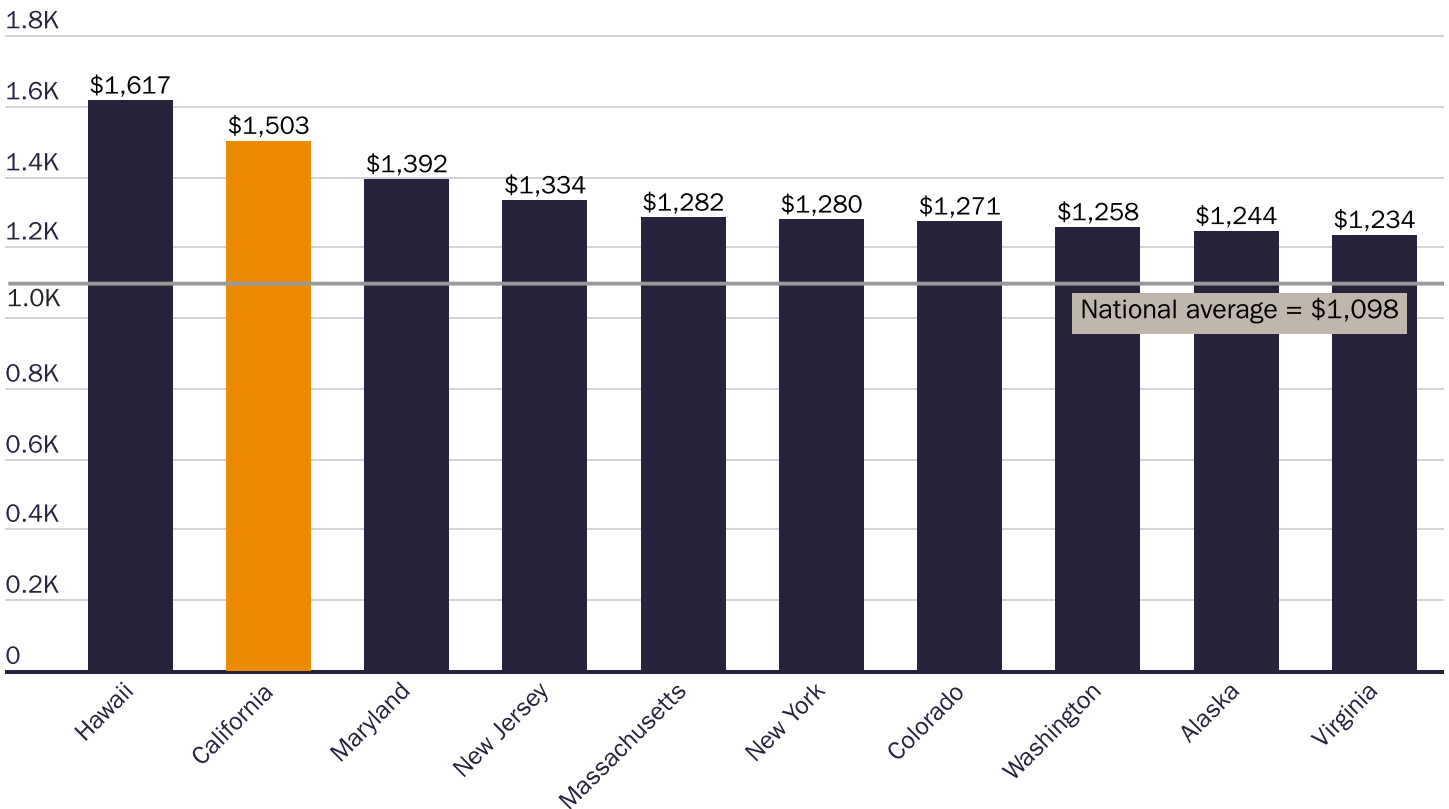
Rent spending by income group in California compared to the national average



Source: "American Communities Survey," U.S. Census Bureau, 2019.

Note: Rent-burdened is defined as spending more than 30 percent of income on rent.

Figure 2.3

States with highest average rent for a one-bedroom apartment in 2021

Source: "Average Rent by State 2021," World Population Review.

ranking the state 18th in the nation.¹² However, using the Supplemental Poverty Measure, which considers the cost of living (housing being the biggest component), California's poverty rate rises to 18.1 percent, the highest in the nation.¹³

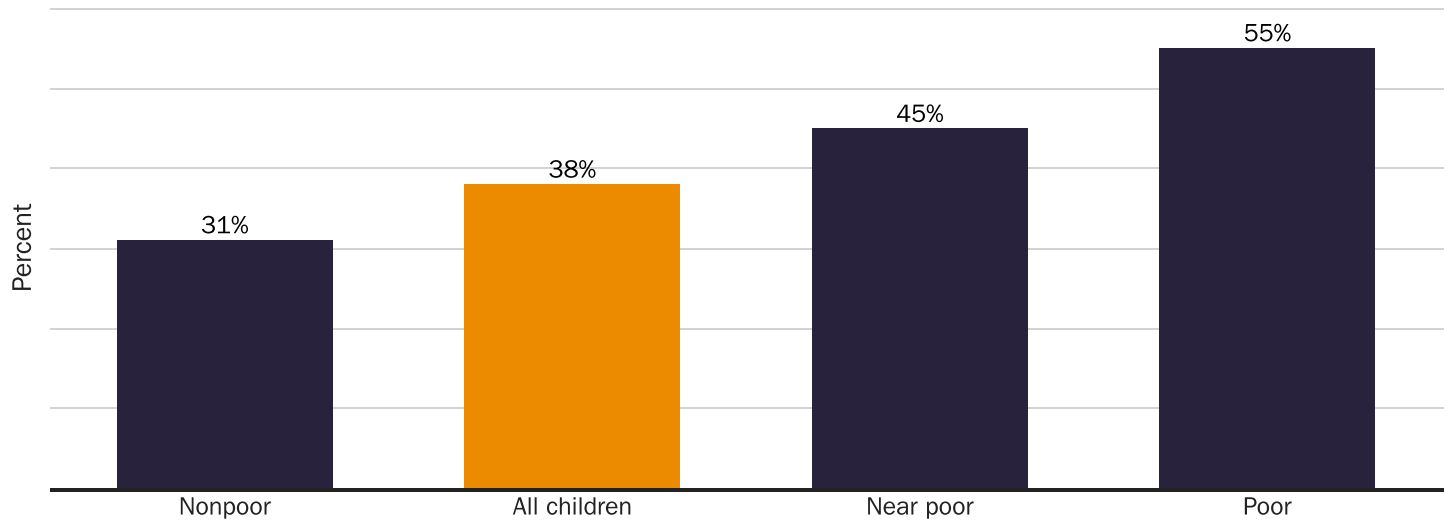
High housing costs harm low-income Californians in several ways. Most obviously, high rents put an enormous budgetary strain on Californians living in poverty. One study, for example, found that 38 percent of low-income families in Ventura and Santa Barbara counties were forced to cut spending for food or health care.¹⁴

Unsurprisingly, low-income people move far more often than those with better housing options. In part, this may be an attempt to move from neighborhoods with high crime, poor schools, and few resources.¹⁵ However, moves are also frequently precipitated by circumstances beyond a person's control, including an inability to pay rent, changes in family circumstances (i.e., the birth of a child or loss of a job), or the unsuitability of the conditions of the rental unit (i.e., lack of heat, plumbing problems, pest infestations, etc.).

An analysis of data from the American Housing Survey shows that 55 percent of children in low-income families move each year, compared to less than a third of children from non-low-income families (see Figure 2.4). Another study found that roughly 20 percent of low-income families had moved more than six times in six years.¹⁶ Families that spend more than half their income on rent were more likely to move than those with lower income shares spent on rent.

Studies also show that a lack of stable housing often brings about other forms of instability that contribute to trapping families in poverty. Results from the Milwaukee Area Renters Study, conducted from 2009 to 2011, found that workers who involuntarily lost their housing were roughly 20 percent more likely to subsequently lose their jobs compared to similar workers who did not lose their housing.¹⁷ Similarly, a 2015 study by Matthew Desmond and Carl Gershenson of Harvard University found that workers who had been forced to move were significantly (11–22 percent) more likely to be laid off compared to observationally identical workers who were not forced to move.¹⁸

Figure 2.4
Percentage of children who moved from 2007–2009 by income group



Source: Rebecca Cohen and Keith Wardrip, “Should I Stay or Should I Go? Exploring the Effects of Housing Mobility on Children,” Center for Housing Policy, February 2011.

Likewise, frequently uprooting children from their schools can make learning more difficult. A study by the Urban Institute found that “children experiencing residential instability demonstrate worse academic and social outcomes than their residentially-stable peers, such as lower vocabulary skills, problem behaviors, grade retention, increased high school drop-out rates, and lower adult educational attainment. . . . Residential instability is related to poor social development across age groups.”¹⁹

According to the Center for Housing Policy, families that move involuntarily face a higher risk of adverse educational outcomes following the move, such as increased difficulty in school and excessive school absenteeism among children.²⁰ Thus, housing instability can indirectly lead to poorer academic performance, which can mean an increased likelihood that children who are poor will become adults who are poor.

Californians are twice as likely to live in crowded housing than are Americans in general (in 2018, 8.3 percent of Californian households were crowded compared to 3.4 percent nationwide).²¹ California now has the second lowest number of housing units per capita, after Utah, of any state, 15 percent less than the national average. Some estimates suggest that California is short at least 3.5 million housing units compared to expected demand.²² Others indicate that the state will need to build 180,000–250,000 housing units per year to meet current needs.²³

The high cost of housing also forces people who are poor into neighborhoods with fewer jobs and resources, lower performing schools, and higher crime rates. Moreover, the search for affordable housing leads to longer commute times. According to a report by California’s Legislative Analyst’s Office, every 10 percent increase in a region’s median rent leads to an additional 4.5 percent increase in commuting time.²⁴

There are many factors driving the high cost of California housing. At its heart though is the simple matter of supply and demand. A state with job growth, natural scenic wonders, and a gentle climate will undoubtedly attract a growing population. Since 1950, California’s population has grown by 320 percent. That is generally a good thing—a growing population is an asset—but a growing population will inevitably put strains on housing stocks. Through the 1960s, California built many more homes relative to its population than the rest of the United States. This resulted in new housing for the many people who were moving to California, and at prices that, while higher than the national average, were still affordable to most families. However, in the 1970s and ’80s, California’s housing production dropped relative to the rest of the United States. The drop was even sharper in the highly desirable coastal regions.²⁵

Yet despite the need, the number of new construction permits declined over the past three years, falling by 5 percent

from 2017 levels (see Figure 2.5).²⁶ And this was before COVID-19 further slowed new housing starts.

THE STATE OF HOUSING IN CALIFORNIA

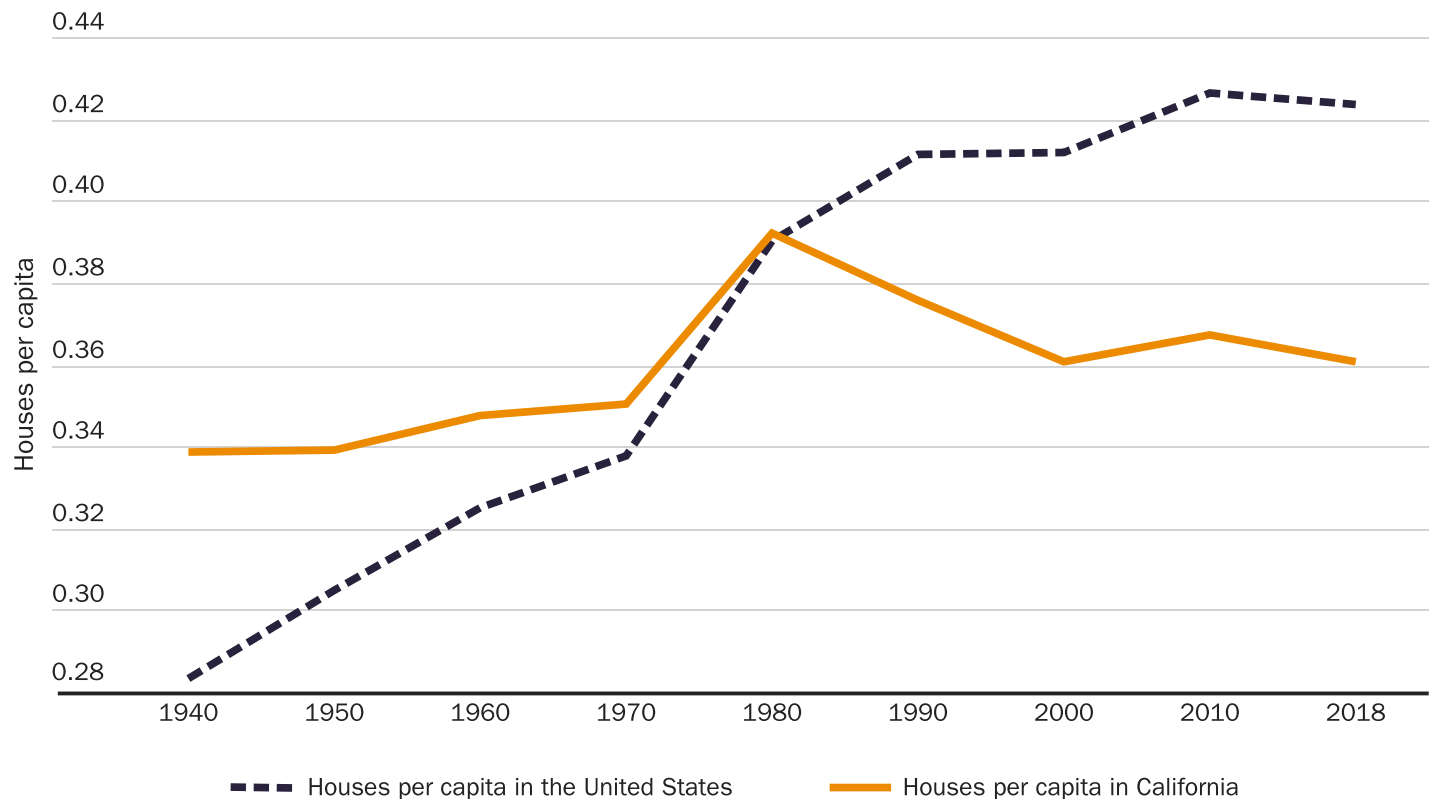
Given the factors driving the state's rapid population growth, we would expect strains on housing supplies and rising costs in even the best-run state. But far too many of California's housing problems are products of decades-old legislation and rulemaking that were either flawed from the start (such as exclusionary zoning policies) or went unreformed for so long that they fail to mirror the state's dynamic and decades-long transformation.

Currently, every city and county is required to develop a general plan that sets forth that community's vision for future development, including land use and housing. The housing provisions are supposed to be updated every eight

years to ensure that they meet the Regional Housing Needs Assessment (RHNA).²⁷ However, there are no penalties for noncompliance with this provision. As a result, a substantial minority of California communities, estimated to be at least 20 percent, do not update their housing plans as required. This includes such wealthy and populous communities as Huntington Beach.²⁸ Even those cities that do submit their plans often submit deficient ones, and only 18 California jurisdictions are on track to meet their RHNA goals.²⁹ Recent reforms have made the system better, and efforts to hold wealthy communities to the law's standards are admirable, but the system remains fundamentally flawed.

More significantly, wealthy communities frequently game the system to shift the housing burden to their less affluent neighbors. For example, Beverly Hills was required to plan for only *three* additional units of housing during the 2013–2021 planning period, while the much poorer city of Imperial, in Imperial County, with a population slightly

Figure 2.5
Growth rate of housing units per capita in California and the United States



Source: Author's calculations using "New Privately-Owned Housing Units Authorized by Building Permits," U.S. Census Bureau, 2018; and "Population Totals," U.S. Census Bureau, 2020.

more than half that of Beverly Hills and roughly the same geographic area was assigned over 1,300.³⁰ Notably, in 2013, Imperial's unemployment rate was more than twice that of Beverly Hills. The RHNA process planned for unemployment, not equity.

Even when communities comply with the planning process, however, and assume a share of new construction that is not only equitable but economically efficient, they frequently fail to follow through and meet their housing goals: only a small share of new housing that municipalities plan for is eventually built.³¹

That is because a smorgasbord of state and local rules, regulations, and policies has made it far too difficult to build housing or provide shelter and services for homeless people. A "sizable" number of construction approvals in San Francisco, according to a report from the Turner Center, take more than 10 years.³² In Santa Monica, the median approval time for new housing is longer than three years.³³ In one well-known case, the city of Solana Beach has taken over 27 years to provide affordable housing units that it promised to residents.³⁴ The time required to secure approval for a project can vary widely between jurisdictions and even between projects that should be broadly similar. There is also a severe lack of data on approval processes, despite this clearly being of interest to policymakers and stakeholders.

It is extremely hard to change those barriers to housing because the immediate beneficiaries of higher housing prices are, naturally, existing homeowners, who see the value of their homes rise commensurately, as well as landlords, who can charge correspondingly higher rents. Municipalities also benefit from both higher property values and limits on low-income housing. Moreover, historically, zoning and other regulations have been driven by efforts to maintain racial and class homogeneity in neighborhoods.³⁵ This creates a powerful and well-connected NIMBY (not in my back yard) constituency that has blocked numerous new construction projects as well as efforts to reform the state's building regulations.³⁶

Economists Roderick Hills and David Schleicher point out that the issues driving NIMBYism are much more likely to be of importance to wealthier residents. Poor families struggling to put a roof over their heads are less likely to be concerned

about whether there are sufficient "green spaces" or whether new construction blocks their view. As Hills and Schleicher put it, "On any given zoning vote, the supporters of restrictive zoning have an advantage over the supporters of additional housing supply even when less restrictive zoning across a given local government might be preferred by city residents."³⁷

"It is extremely hard to change those barriers to housing because the immediate beneficiaries of higher housing prices are, naturally, existing homeowners."

Despite, and because of, the continued resistance to reforms that would increase California's housing production, housing and homelessness were the most important issue for California voters before the COVID-19 pandemic and will likely return to the forefront of the political conversation as the pandemic recedes.³⁸ While California's housing shortage is the most widespread problem for low-income residents, California's homelessness crisis is the most visible image of poverty in California. These challenges are closely related, and efforts to expand access to affordable housing will ameliorate California's crisis of homelessness and stem the flow of low-income Californians to the streets.

RECOMMENDATIONS

Housing

California's housing shortage is the product of decades of shortsighted government policies, and rolling back these government policies, many of which stemmed from institutional racism,³⁹ is the first step toward creating a future in which Californians at all income levels can afford housing. Notably, California's strict regulation of land-use applies to subsidized affordable housing just as it does to market-rate housing. As such, reforming land-use regulation would help to make spending on subsidized housing in California more

efficient, in addition to promoting construction of market-rate developments. Clearly, these reforms should be an area where advocates of both free-market policies and continued government involvement should be able to work in tandem.

Reform is essential. California must build more housing. Therefore, we recommend the following.

End Exclusionary Zoning

Today's California landscape—acres of single-family houses across Los Angeles, San Diego, and even denser cities like San Francisco—wasn't predetermined. It was created by decades of government regulations; chief among these were zoning ordinances.

Zoning is typically set by each community to limit broad categories of development on each plot of land within the community. The limits apply to both type and form of use. Type zoning includes whether permitted development may be single-family residential, multifamily residential, or commercial, while form zoning specifies such things as building heights and bulk, the share of land that a building can occupy, the minimum distance between a building and roads or neighboring properties, and parking requirements. Some jurisdictions also include "design" requirements mandating that the physical form and aesthetics of development are uniform throughout a neighborhood.⁴⁰

There is consensus among economists that zoning inflates the cost of housing by limiting the amount of land available for housing as well as the amount of housing that can be built on a given piece of land, thereby reducing the overall availability of housing stock. As Harvard's Edward Glaeser points out, the price of a house consists of three elements: construction costs, the value of the land, and the value of the right to build on the property.⁴¹ Zoning and land-use laws drive up the value of the right to build on the property both directly and indirectly, leading to higher housing costs. According to a more recent study, zoning and other land-use regulations drive up the price of a quarter-acre lot by almost \$200,000 in Los Angeles and over \$400,000 in San Francisco.⁴²

Studies suggest that California's zoning ordinances increase housing costs by 30 percent in Los Angeles and Oakland and 50 percent in San Francisco and San Jose.⁴³

Until recently, more than 56 percent of available California residential property had been zoned solely for single-family homes, a much greater proportion than for similar high population states. But the state has finally begun taking steps to mediate the impact of zoning restrictions.

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In 2016, the legislature passed a package of laws to permit accessory dwelling units (ADUs) statewide and updated this legislation in 2017 and again in 2019.⁴⁴ ADUs are secondary dwellings on a property that cannot be bought or sold, such as a detached in-law's cottage or a basement rental apartment.

In 2021, the state went much further, passing Senate Bill 9, which allows property owners in most areas of the state to split their lots into two parcels and to construct duplexes on those lots. It effectively permits the construction of up to four units on property that had previously been zoned only for a single-family home.⁴⁵ This represents an important victory for affordable housing. Still, it remains to be seen how effective the legislation will prove in practice, since it leaves in place many of the nondensity zoning rules that can make duplex—or any new housing—construction impractical. Indeed, while abolishing single-family zoning (i.e., zones commonly classed as R1 in municipal zoning codes) has become a goal for land-use regulation reformers, the details of how municipalities mandate that new housing is constructed matter as much—if not more—than whether one or two units can be built on a given lot.⁴⁶

Many of these restrictions often act as hidden construction restraints, but even when they don't block new construction, they significantly increase the cost of building. According to the Legislative Analyst's Office, each additional requirement or restriction adds 3–5 percent to the cost of a home.⁴⁷

Common restrictions include parking requirements, setback rules, minimum lot sizes, and restrictions on tiny houses.⁴⁸

Parking Requirements

Among the most common nondensity restrictions are parking requirements: a mandate that a certain number of parking spaces be set aside for each new housing unit. Because available parking areas are often limited by spatial constraints, especially in urban areas, they effectively limit new construction. At a minimum, they force developers to purchase additional land and augment construction plans. In cities where land is expensive, this adds considerably to building costs. In Los Angeles, parking bundled with a housing unit was associated with \$200 more in monthly rent or \$40,000 in the purchase price.⁴⁹ And before they were repealed in 2018, parking restrictions in San Francisco were estimated to add \$20,000–\$50,000 to the cost of an apartment.⁵⁰ (San Diego has also eliminated some parking requirements but only for projects within half a mile of public transit.⁵¹) Today, all other California communities for which we have data mandate some sort of minimum parking requirement. Notably, a bill in the state legislature that would have eliminated parking requirements near transit was indefinitely stalled due to a procedural move.⁵²

“Individual renters and homebuyers can make decisions better than those imposed by zoning codes.”

Jurisdictions beyond California are already starting to reap the benefits of having cut their parking requirements: Miami, for example, eliminated parking requirements for buildings under 10,000 square feet, and new housing production that takes advantage of this change has begun to reach the market.⁵³

Setback Rules

In many areas, zoning codes require a certain amount of open space between a building and the property line or sidewalk. These regulations are designed to promote open space, to allow easier access to the property, and for a variety of other ostensibly public goals.⁵⁴ Generally, setback

requirements vary depending on a city's zoning code and the zoning of a particular property and may be different for different sides of the building (i.e., the rear of a building as opposed to the front). In effect, setback requirements are what make “detached residential” zones detached: a required setback prevents building townhouses, which would share walls on the property line.

By mandating open space, zoning codes institute a one-size-fits-all solution to the problem of how to use land most effectively. By using setbacks to bundle open space with housing, municipalities force residents to buy or rent space that they may not need or want and to pay higher prices for a privilege they may not desire. A more market-based system, eliminating these mandates, would allow developers and property owners to build a variety of housing forms, including both detached and townhouse-type buildings, increasing housing supply at a wider variety of price points and more efficiently using valuable land. Individual renters and homebuyers can make decisions better than those imposed by zoning codes.

Minimum Lot Sizes

As the name suggests, minimum lot size requirements mandate that each building be located on a lot of no less than a given size, which varies depending on zoning and a municipality's zoning code. Minimum lot size requirements are similar to density restrictions, although while a duplex or triplex, for example, would violate density limitations, they could be built without violating a minimum lot size requirement. Like setbacks and parking mandates, minimum lot sizes are a sort of “enforced bundling” regulation: the minimum lot size bundles land with a building without mandating that the land be used for open space or parking. The drawback of minimum lot sizes is that residents may or may not find the land desirable, but the property will undoubtedly cost more than an identical property without the additional land. A household may or may not want a yard, but forcing households to buy or rent a 4,000-square-foot lot when they only desire a fraction of that forces the housing market to provide a more costly form of housing at the expense not only of households' budgets but also at households' ability

to make the choice. Like parking requirements, the effect of minimum lot sizes may appear negligible to a casual observer, but a study of land-use regulation in Massachusetts shows that, in fact, this enforced bundling of land has among the highest effects on home price of any restriction.⁵⁵

Restrictions on Tiny Houses

A variety of restrictions block people from living in “tiny houses,” which typically are under 600 square feet in size and often significantly less expensive than traditional buildings.⁵⁶ Minimum lot sizes and density restrictions both play a part here. Building one tiny home on a lot can lead to only minor cost savings, given that minimum lot requirements would mandate the purchase of likely unnecessary land alongside the tiny home. Trying to use land more effectively and building more tiny homes on a lot, on the other hand, likely would run afoul of density restrictions in many areas. Despite these regulatory hurdles, tiny homes provide an important form of housing for a much lower cost and could reasonably become an important part of California’s housing stock.

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Moreover, permitting duplexes should be considered the bare minimum for housing reform. Any real fix for California’s housing shortage will require opening communities to multi-unit housing with few, if any, limitations.

Of course, some might argue that recent experience with the COVID-19 virus argues against increased density. Certainly, some of the hardest hit areas of California and the United States were among the most densely populated.⁵⁷ On the other hand, Seoul, South Korea, is 60 percent denser than Manhattan yet had far fewer cases. Moreover, a more

detailed look at county and borough breakdowns in the New York metro area suggests that density plays a smaller role than macro data indicate. Bronx County has the highest rate of infections per capita in the metropolis, while Manhattan County, the densest county in the United States, has the lowest.⁵⁸ Similarly, Staten Island appears to have a higher infection rate than Manhattan.⁵⁹ In California, San Francisco had a much lower infection rate than Los Angeles, despite much denser housing. Essentially, government delays and mismanagement of the crisis mattered a great deal more than simple density, despite a narrative highlighting density from some in government and the media.

We also need to differentiate between types of density. An apartment generates one type of density, but very expensive housing that results in multiple roommates or multiple generations sharing a very small apartment yields an equal density but under circumstances much more conducive to the spread of disease. Single-family housing requirements don’t necessarily reduce density as much as might be thought and may, in fact, lead to greater health risks.⁶⁰

Others argue that while affordable housing is needed, building more market-rate housing will do nothing to solve the problem. But this fundamentally misunderstands how housing markets work.

In a well-functioning housing market, filtration occurs. As people become wealthier, they tend to exchange their current living arrangements for better, more costly homes. They may move to a bigger apartment in a better neighborhood or buy instead of rent. In doing so, they make their previous, less expensive location available for new occupants. As everyone moves up the scale, units at the bottom open up for those with limited incomes. A lack of availability of housing at the upper end, however, locks everyone in place, ultimately leading to fewer available units at the lower end. Building more high-end housing actually increases the supply of affordable housing. One study, by the Upjohn Institute, found that building “100 new market-rate units create[d] about 70 below-median income equivalent units.”⁶¹

Some point out that inclusionary housing mandates, which require market-rate developments to set aside or otherwise fund below-market-rate units, are responsible for creating affordable housing when developers build market-rate

housing. While inclusionary mandates are well-intentioned, they act as a tax on new housing and can end up crowding out, rather than promoting, new housing supply.

Finally, some worry that new housing construction will lead to gentrification of low-income neighborhoods and will displace current residents. This is not an unwarranted concern. Rising rents have made it harder for Californians to stay in their homes, and people intuitively connect rising rents with the new “luxury housing” production that builders complete in response to rising rent. The empirical evidence, however, suggests that this first impression is not the case. In fact, according to another Upjohn study, new market-rate housing reduces rents in the surrounding area by 5–7 percent.⁶²

“New housing itself does not cause higher rents in the surrounding neighborhood, even if the new housing has a higher rent than the neighborhood’s median.”

Moreover, the feared displacement is already occurring despite existing housing restrictions. In fact, those restrictions contribute to displacement. Low-income communities are far less likely to have the time, access, information, or organization to block new construction. Developers, facing a lengthy, expensive, and litigious process if they attempt to build in upper-income communities, are likely to move new construction to lower-income neighborhoods.

Reducing zoning restrictions would instead make it easier to build in higher-income areas that have higher rents. A pro-building program would open these areas to new building and spread the new housing across a wider area, as opposed to the current concentration of new housing in lower-income areas where residents are at risk of displacement.

At the same time, rising rents are correlated with new market-rate housing construction because higher rents make these projects possible, but the new housing itself does not cause higher rents in the surrounding neighborhood, even if the new housing has a higher rent than the

neighborhood’s median. Market-rate housing also increases the overall housing supply in a neighborhood. It can be thought of as providing a sort of buffer, allowing more people in the neighborhood overall and allowing new residents in the area without significant out-migration. New housing is positive-sum rather than zero-sum: people can move into the new housing without existing residents moving out.

At long last, California has begun taking steps to increase its housing supply. But given the state’s desperate need for more housing, and the impact of high housing costs on the most vulnerable Californians, none of these changes is sufficient. California should eliminate exclusionary zoning restrictions once and for all.

Move to a By-Right/Ministerial Approval Process

With some local variations, there are two types of review process for new construction. The most common in California is discretionary review. Under this process, even if a proposed project complies with all relevant zoning and other regulations, planning authorities may choose to approve or deny a requested permit (i.e., they have discretion over the permit’s approval). In general, discretionary review processes allow members of the community to appeal the permit’s issuance, which triggers delays and a public hearing process during which a project’s opponents can voice their views. Notably, because discretionary permits include active decisionmaking by government officials, some level of review under the California Environmental Quality Act (CEQA) is required.

The alternative approach is by-right or ministerial review, under which authorities *must* approve a permit if it complies with all relevant zoning and other regulations (i.e., the approval is not granted at the discretion of authorities but pursuant to relevant laws). This process still takes time, but it is generally much quicker than a discretionary process, as the criteria for approval are more limited, as is the appeal process for those who object to the permit (if such a process exists at all).⁶³

In general, cities and counties choose which approval process they follow. Today, a third of California cities, including Santa Monica, Long Beach, and San Francisco, use discretionary review for most new housing, while a few,

including Los Angeles and San Diego, have a ministerial/by-right system for even some multifamily projects.⁶⁴ The biggest exception to local control over the review process is the Subdivision Map Act, which requires that when a lot is divided into smaller pieces, including vertically (such as for condominiums), there must be a discretionary approval process.⁶⁵ In the state's Coastal Zone, the California Coastal Commission also has the power of discretionary review over development projects.⁶⁶

“Today, a third of California cities, including Santa Monica, Long Beach, and San Francisco, use discretionary review for most new housing.”

Many jurisdictions, especially in coastal areas where opposition to new housing is strongest, require multiple layers of review. Planning commissions, building departments, fire departments, health departments, and city councils may all weigh in.⁶⁷

As a result, discretionary review can significantly delay new construction and/or increase its cost. One study, looking at the review process in the San Francisco Bay Area, found that every additional layer of review added 4 percent to the cost of a home.⁶⁸

Discretionary review also opens the door to corruption. The San Francisco Public Works scandal in early 2020 highlights the fact that arcane permitting processes provide opportunities for misconduct.⁶⁹ The regulatory process has created a very valuable and scarce good (building permits) with unclear standards for its distribution: nobody should be surprised when unscrupulous actors accept bribes or kickbacks in exchange for favorable treatment. In contrast, it's much harder to see opportunities for corruption in a ministerial process: the city has no discretion in deciding whether to issue permits and therefore has no discretion to abuse.⁷⁰

The good news is that in recent years rules for secondary review have been weakening. Los Angeles is perhaps the most notable case of a city moving to ministerial approvals

for some housing. Los Angeles allows developments with up to 50 units to go through a ministerial, rather than discretionary, process. In 2014–2016, about a quarter of projects with more than five units in Los Angeles went through a ministerial process. Clearly this is better than the process in other cities, but from the fact that so many projects still went through a discretionary process, it is apparent that Los Angeles can further broaden its reforms.⁷¹

The biggest attempt at statewide reform came in 2016, when then governor Jerry Brown proposed changes to streamline the system of approvals, reducing both the time and cost involved for many new construction projects. Brown would have

- established a statewide ministerial permit process for multifamily infill housing projects that conformed to existing zoning regulations and included at least 5 percent affordable housing,
- established time limits for local officials to raise objections to these projects,
- limited design review,
- eliminated CEQA review, and
- required relocation assistance for displaced households.⁷²

Brown's proposal failed in part because unions objected to its lack of a prevailing wage provision. However, with some changes, it could still serve as a starting point for reform at the statewide level. In particular, the Legislative Analyst's Office has suggested that the affordable housing requirements be dropped.⁷³ Those changes would make the proposed reforms even more effective.

However, localities don't need to wait for state action. As Los Angeles and San Diego show, much of the push for reform has happened at the local level. A good start would be for municipalities to institute a ministerial process for all permitting of multifamily homes that comply with relevant zoning and land-use regulation. There would still be challenges (such as the Subdivision Map Act), but requiring developers to clear another hurdle and adding another delay to much-needed new housing make no sense if the proposed development complies with all relevant laws.

Restructure the California Environmental Quality Act

With the possible exception of single-family zoning, few California regulations have had as much effect on the housing supply as the California Environmental Quality Act (CEQA). Former governor Brown once called reforming CEQA, “the Lord’s work.”⁷⁴ CEQA reform has been advocated by other top Californian officials from across the political spectrum, including Sacramento mayor and former state senate president pro tempore Darrell Steinberg, State Sen. Andreas Borgeas of Fresno, business leaders, and affordable housing advocates.⁷⁵

Passed in 1970, and signed into law by then governor Ronald Reagan, CEQA was intended to provide local decision-makers with information and to ensure that environmental effects were not overlooked in approving new development. In practice, it has proved cumbersome and ripe for abuse.

The law mandates environmental review covering as many as 18 separate areas, including parking, traffic, air and water quality, endangered species, and historical preservation.⁷⁶ This is a notably stricter standard of review than other states: only Washington state, Minnesota, New York, and Washington, DC, have comparable requirements.

Most CEQA reviews for housing go relatively smoothly, requiring only a preliminary review. However, for the substantial number of projects that require a more extensive Environmental Impact Report (EIR), the process can be both lengthy and expensive. A study of CEQA reviews from 2004 to 2013 found that, on average, local agencies took two and a half years to approve a project requiring an EIR.⁷⁷

As problematic as that delay can be, it is not the EIR process that causes the most concern about CEQA’s effects on affordable housing. Rather, it is a provision that allows virtually anyone residing in California to sue virtually any project based on environmental concerns. The goal was worthy—to give average citizens, who would be most affected by environmental impacts, a role in the approval process. In practice, all sorts of people sue for all sorts of reasons, which may or may not be truly related to environmental impact. For instance, labor unions may sue to obtain control over allocation of jobs or to force higher wages. Rival developers may sue to delay or block a competing project. So-called bounty hunters file suit to score a quick financial settlement. And, of course, NIMBYs

frequently sue to block projects that they feel would be disruptive to the “character” of their communities.⁷⁸ Moreover, in roughly half of CEQA lawsuits, the person or organization filing the suit is anonymous.

The overwhelming majority of CEQA suits are not related to housing. In fact, about half target government projects. Still, a substantial number (roughly 29 percent) concern residential development, and more than two-thirds of those target the sort of infill projects that are unlikely to have major environmental impacts (see Figure 2.6).⁷⁹

“A good start would be for municipalities to institute a ministerial process for all permitting of multifamily homes that comply with relevant zoning and land-use regulation.”

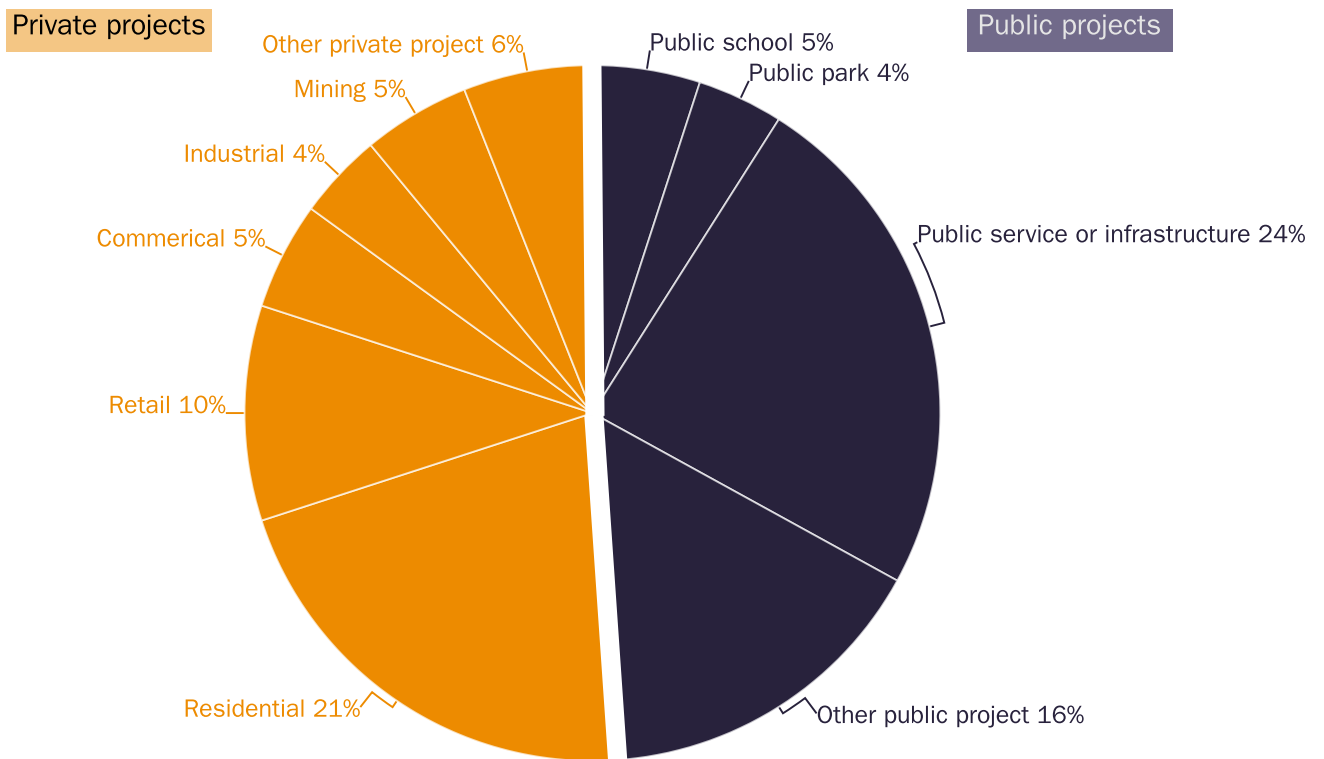
Theoretically, there is an exemption for infill housing (known as a Class 32 exemption). The Class 32 exemption has five criteria:

- consistent with general plan zoning,
- occurs within city limits and lot size is less than five acres in an urban area,
- not in an endangered species habitat,
- no significant effects on traffic, noise, air quality, or water quality, and
- served by utilities and public services.

However, a Class 32 exemption doesn’t realistically cover all infill housing (traffic impact is an easy hook to use against it). Additionally, while getting a Class 32 exemption may be one of the easiest methods to CEQA compliance, that process itself is far from painless. And finally, the threat of lawsuits remains even if a project has received a Class 32 exemption.⁸⁰ There is also an exemption stemming from a 2018 law for housing and mixed-use projects in unincorporated county areas. But that is not likely to help cities that face the biggest housing crunch.

Figure 2.6

California Environmental Quality Act challenges to public and private projects spending for 2020–2021



Source: Jennifer Hernandez et al., “In the Name of the Environment: How Litigation Abuse under the California Environmental Quality Act Undermines California Environmental, Social Equity, and Economic Priorities—and Proposed Reforms to Protect the Environment from CEQA Litigation Abuse,” Holland & Knight, 2019.

Looking strictly at lawsuits that are filed may understate CEQA’s effects because the mere threat of litigation is often enough to force the cancellation of projects or obtain a settlement that reduces the number of housing units and increases their cost. As local elected officials repeatedly told our project, CEQA is frequently used as “a blackmail tool.”

There are several ways to reform CEQA to prevent its abuse while continuing to ensure adequate environmental protections. A report by Jennifer Hernandez and David Friedman includes a set of reforms to CEQA that we would direct policymakers’ attention to:

- require CEQA lawsuit filers to disclose their identities and interests,
- eliminate duplicative lawsuits for projects that have completed the CEQA process, and
- restrict judicial invalidation of approvals to projects that would harm public health, destroy irreplaceable tribal resources, or threaten the ecology.⁸¹

In addition, the Class 32 infill exemption could be expanded, with traffic impact being removed as a hurdle for projects near high-frequency transit. Another approach to CEQA reform would be expanding ministerial approval processes, given that ministerially approved projects are already exempt from CEQA review. The ministerial option is particularly notable as it can be pursued at the local level, without potentially contentious state legislation.

Standardize and Cap Building Fees

The construction of new housing can bring economic benefits to communities, promoting regional and state-wide economic growth, enhancing employers’ access to the labor pool, and generating additional tax revenue. On the other hand, new construction also imposes costs on a community through increased demands for public services and infrastructure. In general, housing tends to bring less tax revenue compared with new costs than commercial

development. This is especially true given Proposition 13's limitations on property taxes. Therefore, communities attempt to recoup these costs by imposing a variety of fees on new development. Those fees can add considerably to the cost of new construction, from 6 to 18 percent of the cost of a home.⁸²

The number, timing, and size of fees varies significantly from city to city, adding about \$20,000 to the cost of a home in Sacramento, more than \$80,000 in Oakland, \$140,000 in Orange County, and a probable state high of \$157,000 in Fremont.⁸³ On average, California has the highest such fees in the nation. Notably, these fees have been particularly hard on low-income Californians, communities of color, and first-time homebuyers. In some anti-growth communities, fees have been deliberately set so high as to discourage building altogether.

“Fees are a politically popular way to finance government services because they spare current homeowners and businesses while hitting easy and unpopular targets such as developers.”

Such fees are a politically popular way to finance government services because they spare current homeowners and businesses while hitting easy and unpopular targets such as developers (who then pass the cost to renters and future homeowners). And if the high cost of new housing keeps low-income families and people of color out of some communities, that is often a goal as well.⁸⁴

Still, the necessity for increasing building and impact fees is debatable at best. While Proposition 13 certainly limited property tax revenue, California government at all levels has hardly been starved for revenue. Between 1977 and 2018, local government revenue increased from \$3,300 per person to \$4,183.87 (in 2019 inflation-adjusted dollars), according to data from the Census Bureau.⁸⁵ Other revenues, particularly for school districts and transportation funding, increasingly come from the state. Accordingly, state government revenue

increased from \$3,745.45 per person in 1977 to \$5,193.00 in 2017 (in 2019 dollars).⁸⁶

California's government is clearly larger today than it was in 1977. Local governments employed four times as many people on a per capita basis in 2018 as they did in 1977, while the state doubled its per-capita inflation-adjusted expenditures since Proposition 13 passed.⁸⁷

It is entirely appropriate to debate California's overall tax burden and the structure of taxes it imposes. But the use of building and impact fees as a generalized revenue source is contributing to the state's shortage of affordable housing.

Building fees should be limited to offsetting the actual cost of development on a community's services. Accordingly, California should establish a statewide cap on fees based on the median home price with a jurisdiction. Assemblyman Tim Grayson (D-Concord), for example, has introduced legislation that would limit fees to 12 percent of the median home value unless there is a waiver from the state.⁸⁸ In addition, such fees should be assessed on a per-square-foot basis, thereby removing a disincentive for the construction of smaller, less-expensive homes.

Reduce the Power of Local Agency Formation Commissions

Local Agency Formation Commissions (LAFCOs) are regional planning commissions that regulate land use, determine city boundaries, and oversee “special districts” that provide services to many cities, such as fire and police services, water and sanitation, and airport and harbor oversight. While this role is important for services that cut across traditional municipal boundaries, LAFCOs also increase housing costs through intervention in the development process, both as a regulatory agency and as a planning authority.

LAFCOs regulate city and special district boundaries, so any city that wishes to expand must receive LAFCO approval. Given the political dynamics of new housing construction in areas with resisting populations, many cities may find it easier to build housing on undeveloped land. But this often requires expanding the city's boundaries, and that is where they run up against the power of LAFCOs.

Because LAFCOs are made up of elected and politically appointed officials, they are subject to the same political pressures that have limited new housing construction. In particular, LAFCOs are highly responsive to the powerful and well-organized NIMBY constituencies rather than to those seeking additional housing. Moreover, LAFCOs are charged with preventing urban sprawl, protecting agricultural land, and preserving open spaces. But “urban sprawl” can be interpreted in a variety of ways, depending on the interests of political and social groups that wish to prevent development. As a result, the same inefficient, time-consuming, expensive, and often litigious approval process ends up restricting this potential supply of new housing, as is seen with housing within current municipal boundaries.

“Far too many Californians experiencing homelessness have simply ‘fallen to the street’ because they lack access to affordable housing.”

Legislators should limit the discretion and authority of LAFCOs to block new housing construction. A regulatory structure that was established decades ago in a very different environment should be updated to reflect the state’s housing crisis. LAFCOs should operate with a general presumption in favor of boundary expansions for the purpose of building new housing. In particular, legislators should eliminate LAFCOs’ responsibility to prevent urban sprawl and should substitute a charge that LAFCOs prioritize the expansion of city boundaries and their spheres of influence to accommodate new housing that can efficiently tie into existing city services and organizations.

Homelessness

The increasing number of Californians experiencing homelessness represents a profound human tragedy. It also represents a challenge to the community. There are distinct community quality-of-life issues tied to increased

homelessness. And as the COVID-19 pandemic has shown, there are also public health issues.⁸⁹ There was urgency to solving the homeless crisis prior to the outbreak. That has only increased in its aftermath.

The lack of affordable housing has been a significant contributor to the state’s growing homeless population. Statewide, California has more than 130,000 homeless people, including around 28,000 in the San Francisco Bay Area and 60,000 in Los Angeles County.⁹⁰ Even often-overlooked cities such as San Diego have homeless populations in excess of 8,000.⁹¹ (Even a small county like Santa Barbara has more than 1,800 people experiencing homelessness.) By some calculations, more than half of all people who are homeless in America reside in California (see Figure 2.7).⁹²

Homelessness is often attributed to issues outside housing, such as mental health and substance abuse. Obviously, many of the people in California who are homeless, particularly those who are visibly unhoused and on the streets, suffer from one or both challenges. But far too many Californians experiencing homelessness have simply “fallen to the street” because they lack access to affordable housing. Any interruption in income—because of a lost job, medical problem, family emergency, etc.—can lead to eviction and then to homelessness. Some estimates suggest that in cities like Los Angeles, as many as two-thirds of homeless people fall into this latter category.⁹³

Our recommendations that are designed to make housing more affordable overall would go a long way toward reducing the number of people experiencing homelessness. However, there are also specific steps that the state should take to deal with homeless populations, including the following recommendations.

Reverse Efforts to Criminalize Homelessness

Many localities have responded to the rise in homelessness by enacting a variety of measures to criminalize behavior associated with homeless people, such as sleeping, sitting, or panhandling in public places.

One study, by the University of California, Berkeley School of Law, found that California was among the leading states

in terms of anti-homeless laws. At least 58 California cities, counties, and towns had passed more than 500 separate ordinances that made common behavior by homeless people illegal. Compared to other states, California cities were 25 percent more likely to have laws against sitting, lying down, or other types of loitering and 20 percent more likely to have a citywide ban on sleeping in public. While nationally only a third of U.S. cities prohibit sleeping in a car or other vehicle, fully 74 percent of California cities do.⁹⁴ Moreover, as the number of people experiencing homelessness in California has increased, so too have the number and severity of these laws (see Figure 2.8).⁹⁵

These laws are an attempt to respond to legitimate quality-of-life issues associated with large homeless populations. However, they are neither effective nor humane.

Law enforcement interacts with homeless populations in several ways. Some cities, like San Francisco, maintain special police “homeless outreach officers” to respond to issues surrounding homelessness, both in terms of services and law enforcement. People who are homeless also regularly encounter police officers working their beats. And, of course, the police respond to complaints involving

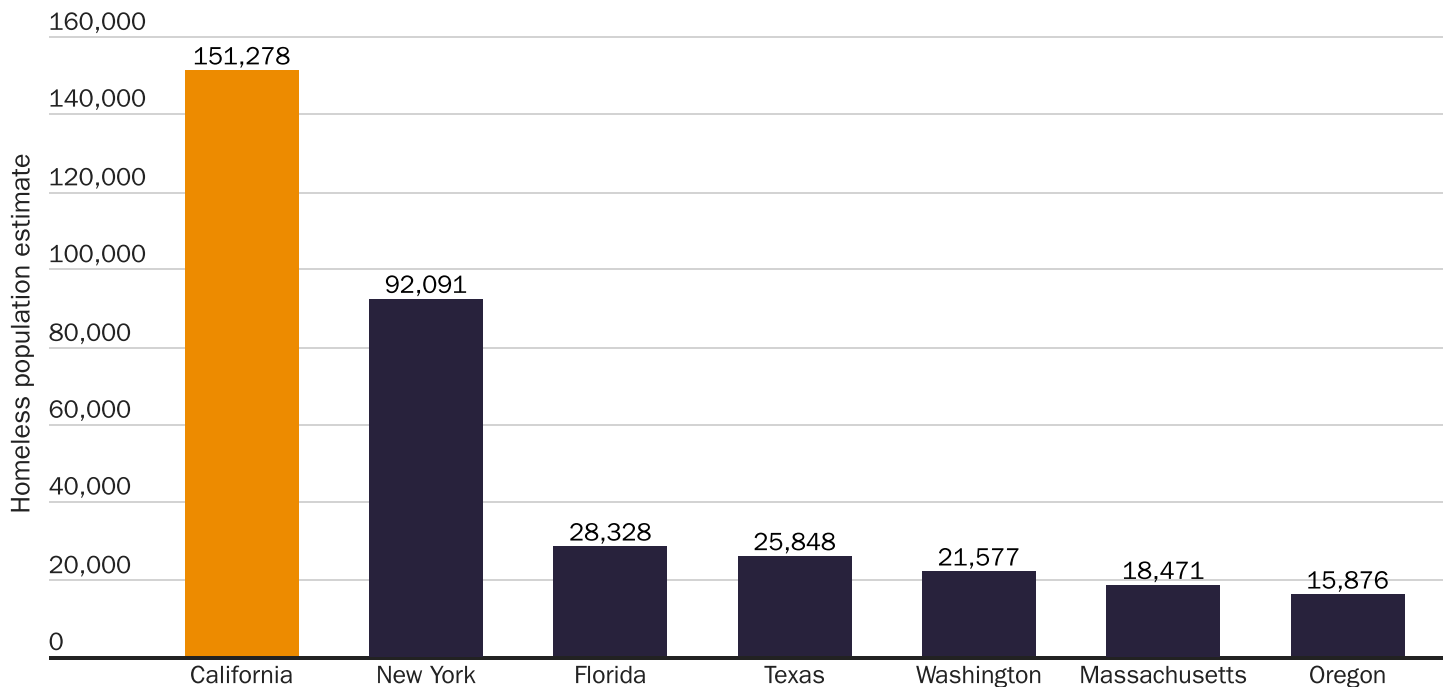
homeless people. According to a survey of people without housing in San Francisco, 45 percent of those living on the street, 46 percent of those camping in parks, and 20 percent of those living in a vehicle reported being approached by police at least once monthly.⁹⁶

While many of these interactions are relatively benign, others raise serious concerns about civil liberties. For example, 56 percent of respondents to the previously mentioned survey report being searched in the past year, 46 percent within the past month.⁹⁷ This suggests something akin to a “stop and frisk” policy applied to homeless populations.

Most frequently police simply try to move homeless people from areas of high concentration or visibility. This seldom results in any permanent change, as most people simply move to another location. In the absence of shelters or other forms of housing, there is simply no place for them to go.

Some police practices are considerably more troubling. For example, police frequently confiscate or destroy a homeless person’s possessions, including blankets, tents, sleeping bags, cash, identification, and prescription medications. Roughly 46 percent of homeless people in San Francisco

Figure 2.7
Homelessness by state, 2020



Source: “State of Homelessness: 2020 Edition,” National Alliance to End Homelessness, 2020.

reported having belongings confiscated within the past year, and 38 percent said those items were destroyed.⁹⁸

Such actions are particularly counterproductive. If a person is living in a vehicle, and the vehicle is then towed, police have deprived the person of not only what is likely their most valuable asset but also their residence. Similarly, confiscation or destruction of someone's personal property makes their life harder, and the loss of identification can make it especially hard to access services, find housing, or gain employment.

People who are homeless are also frequently cited and fined for minor quality-of-life violations. According to the San Francisco Human Services Agency, for example, police in that city alone issued 51,757 citations for "quality of life" crimes that predominantly or exclusively involved homeless people between 2004 and 2014. Some 22,000 of these were violations of such laws as bans on sleeping in public.

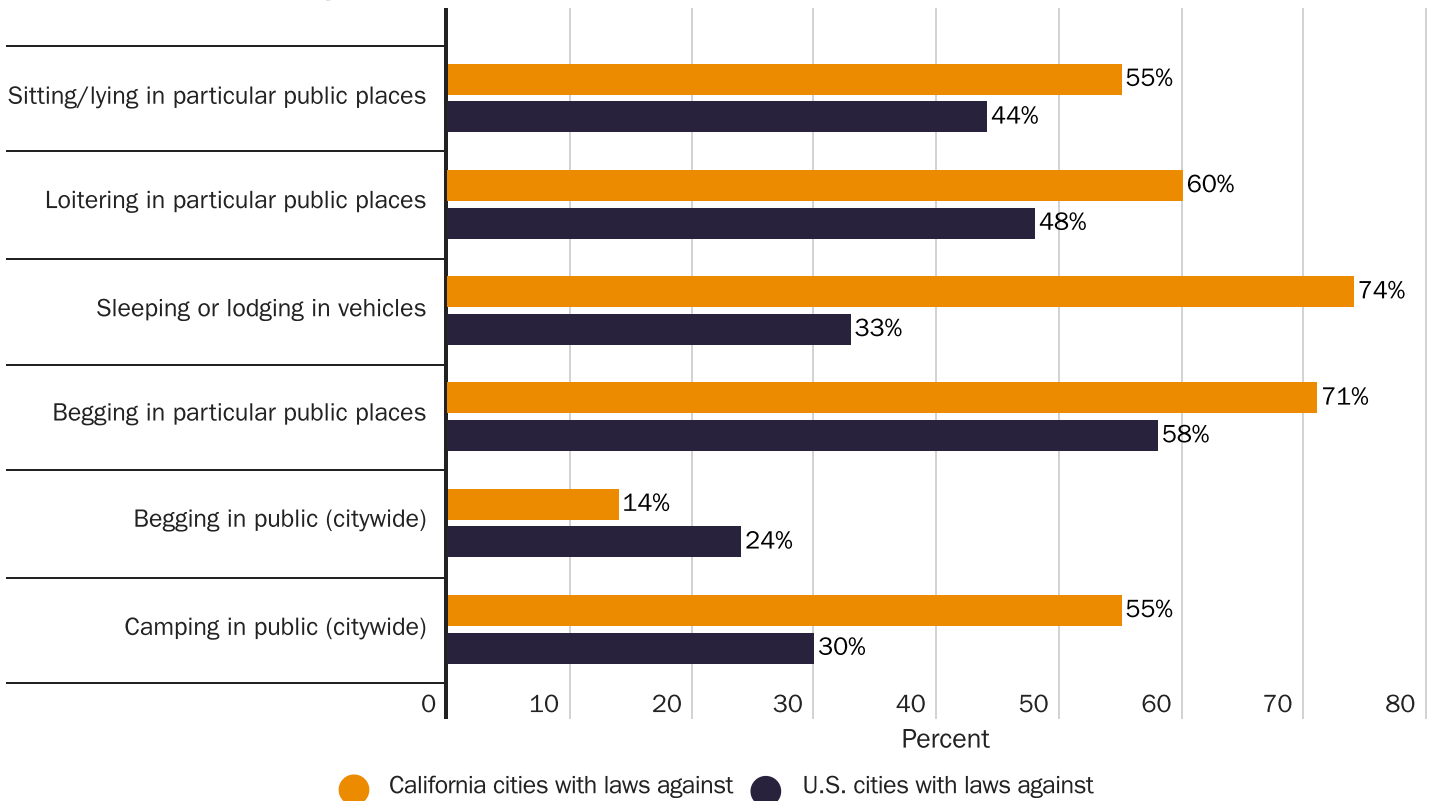
The excessive use of fines disproportionately affects low-income Californians (see pp. 44–45). Those issues are

likely to loom even larger for the homeless population, which is unlikely to have the resources to pay such fines. As a result, many homeless people are likely to end up in jail. In San Francisco, as much as 5 percent of the city's homeless population is in jail on any given night, and fully half of the city's homeless people have spent at least one night in jail in the past year.⁹⁹

Even brief jail time can lead to a vicious cycle that traps people on the streets. There is a perception among some elected officials that jail can offer rehabilitative services to people experiencing homelessness that they would not otherwise receive. This perception, however, is inaccurate. A report by the state auditor's office found that only a fraction of inmates receive mental health services, job training, or other rehabilitation (see Figure 2.9).¹⁰⁰ There is no reason to expect that this is better in county jails, especially because the length of stay is often not long enough for rehabilitation to be attempted. Incarceration is not helpful for a person's mental health or job prospects.

Figure 2.8

Prevalence of laws that target homelessness in California compared to the nation



Source: Marina Fisher et al., "California's New Vagrancy Laws: The Growing Enactment and Enforcement of Anti-Homeless Laws in the Golden State," Berkeley Law Policy Advocacy Clinic, February 12, 2015, <http://dx.doi.org/10.2139/ssrn.2558944>.

Strengthen California's Conservatorship Laws While Continuing to Protect Civil Liberties and Individual Autonomy

While a lack of affordable housing remains the biggest single driver of homelessness, we cannot ignore the fact that some homeless people are suffering from mental illness or substance abuse problems so severe that it inhibits their ability to function within society. Some of these individuals are clearly a danger to themselves or others or are so incapacitated that they cannot seek assistance on their own.

In 2019, California passed legislation designed to strengthen the state's conservatorship laws, creating a pilot program that allows county health officials to force some homeless individuals into housing and/or treatment. The program applies to individuals who have been placed on a psychiatric hold eight times within a year. The affected individuals are entitled to legal representation and can contest the mandated treatment.¹⁰¹ Currently, this program is being tried in Los Angeles, San Diego, and San Francisco.

Given the long history of abuse of involuntary commitment, there is a particular need to exercise caution in

strengthening conservatorship. Historically, that abuse has particularly affected women, the LGBTQ community, and people holding unpopular political opinions. There is a need to respect individual autonomy and lifestyle choices even if we disapprove of those choices. However, concerning people who are mentally ill and homeless, this respect for autonomy must be carefully balanced with a recognition that some people are—at least temporarily—unable to sensibly make and appreciate choices.

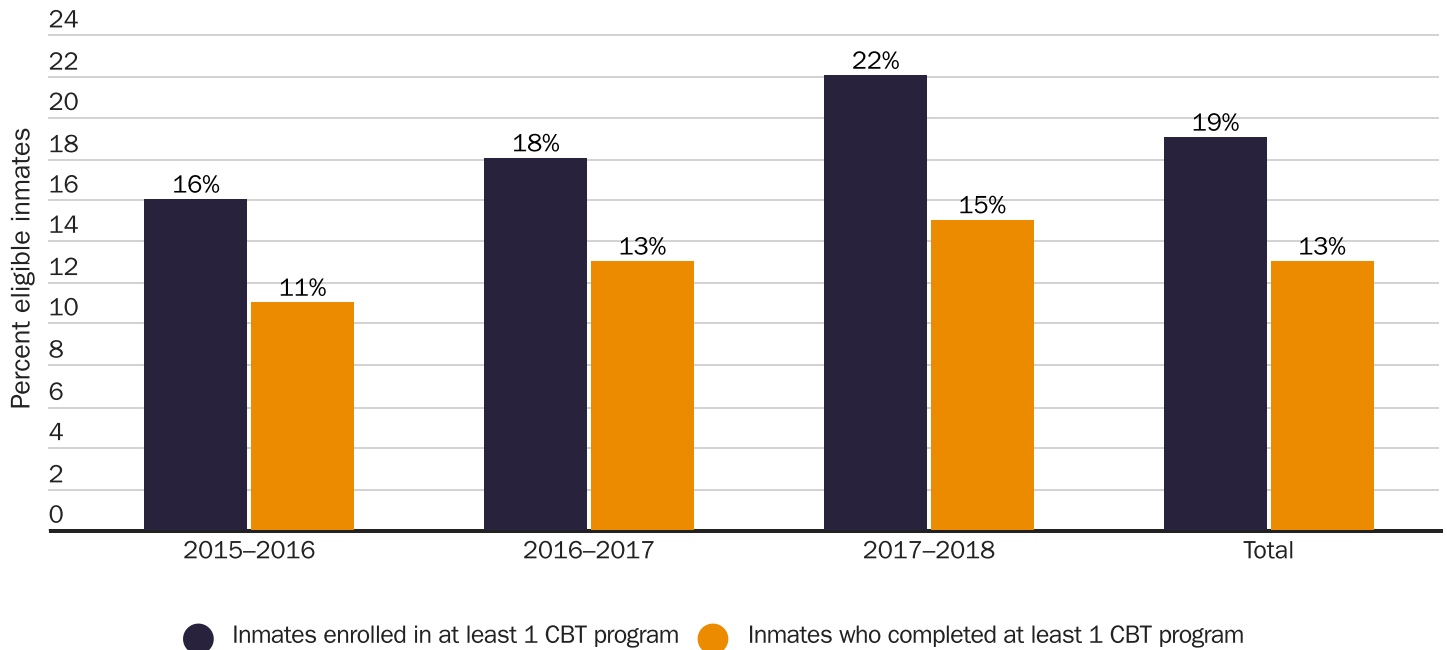
It is also important to differentiate conservatorship from the law enforcement approach. The purpose of conservatorship is to ensure treatment and housing, not to punish. We have too often seen where the involvement of law enforcement causes the situation to escalate.

Expand and Extend CEQA Exemptions for Homeless Housing/Shelter Projects and Allow Emergency Shelters in Any Zone

As previously discussed, CEQA has been a barrier to affordable housing. But CEQA has also been used to block

Figure 2.9

California inmates enrolled in cognitive behavioral therapy (CBT) programs



Source: "California Department of Corrections and Rehabilitation: Several Poor Administrative Practices Have Hindered Reductions in Recidivism and Denied Inmates Access to In-Prison Rehabilitation Programs," California State Auditor Report 2018-113, January 2019, <http://www.auditor.ca.gov/pdfs/reports/2018-113.pdf>.

Note: CBT is designed to help inmates with mental health problems.

shelters and other services for homeless people. Given that CEQA opens the door to often-frivolous lawsuits, neighbors can sue to delay much-needed new shelter space, and they have done so in several cases.¹⁰²

Homeless shelters are a stopgap measure in California's work to house residents, but it's a necessary one. For some community members to block or delay housing for unsheltered neighbors is disappointing, but at its heart, it is a problem with the law that California can take bolder steps toward fixing. California has already taken some steps to exempt homeless shelters from CEQA, and legislation introduced last year would have expanded those exemptions statewide, but it died in committee.¹⁰³

State law does require critics to designate zones in which homeless shelters are permitted, but some cities have chosen

“We cannot ignore the fact that some homeless people are suffering from mental illness or substance abuse problems so severe that it inhibits their ability to function within society.”

zones that account for relatively small areas of the overall municipality.¹⁰⁴ There is simply no compelling rationale for putting up regulatory hurdles to prevent the provision of shelter for homeless residents. Shelters for people experiencing homelessness should be allowed by-right in all parts of a city. While shelters are a stopgap measure, they are a necessary one.

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