HOUSING POLICIES IN THE WESTERN STATES

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INTRODUCTION

Researchers of landlord-tenant legislation generally agree that policies designed to help low-income residents secure affordable housing, instead have the tendency to create a lack of mobility and an ever-increasing hostile relationship between landlords and their renters. While this has been seen in such cities as San Francisco and New York City, the matter at hand is far more complex than issues of bad public policy and requires an in-depth analysis of several driving factors.

Nevada REALTORS®, in partnership with Strategic Guidance Systems and Portland State University, has developed a comprehensive overview of landlord-tenant legislation in the Western United States. This report examines the history of such legislation, as well as the need for affordable housing to address supply constraints.

While landlord-tenant legislation often aims to address a lack of affordable housing, this study suggests that such efforts ultimately fail. Yet, as the supply of housing is often filled by the private sector, these concerns may be headed off with meaningful changes to permitting, zoning, and incentivizing positive growth.

LANDLORD-TENANT LEGISLATION THROUGH THE YEARS

The United States has a long history with landlord-tenant regulations at all levels of government. Many of these laws sought to regulate the supply of housing, how much rent can be increased from year to year, and the circumstances by which a landlord can evict a tenant.

1918 Fair Rent Committees established in cities throughout the United States in response to World War I.

1942 The Emergency Price Control Act gave inflation control to the Federal Government to help manage production during World War II.

1951 Many federal rent control laws, which control rent prices, were phased out after World War II, with only New York adopting its own legislation.

1960 New York City Mayor John Lindsey enacts rent stabilization ordinances to deal with increasing prices and lack of vacancies.

1970 The Economic Stability Act, passed by President Richard Nixon, included inflation control and rent stabilization during the Vietnam conflict.

1974 New York's Emergency Tenant Protection Act placed all units under rent stabilization and capped the amount rents could increase from year to year. This became the basis for many landlord-tenant policies to come.

1979-1985 Cities in California passed local landlord-tenant policies, many of which capped rent increases and outlawed month-to-month leases. However, many of these laws had loopholes that were exploited.

1981 Colorado enacted a statewide ban on rent controls. This ban was challenged in 2019, but ultimately failed.

1984 New York's Omnibus Housing Act brought all landlord-tenant laws under state administration.

1994 New York allowed deregulation of vacant units with monthly rents over $2000. Now most units are considered deregulated.

1995 California's Costa-Hawkins Rental Housing Act limited municipal ordinances affecting rental properties and gave that power to the state.

2019 The California legislature proposes nearly 200 new bills to address the current housing crisis. The Tenant Protection Act caps rent increases to 5% from year to year, plus inflation.

2019 Oregon passes Senate Bill 608, which limits the circumstances by which a renter can be evicted, as well as puts limits on rent increases.

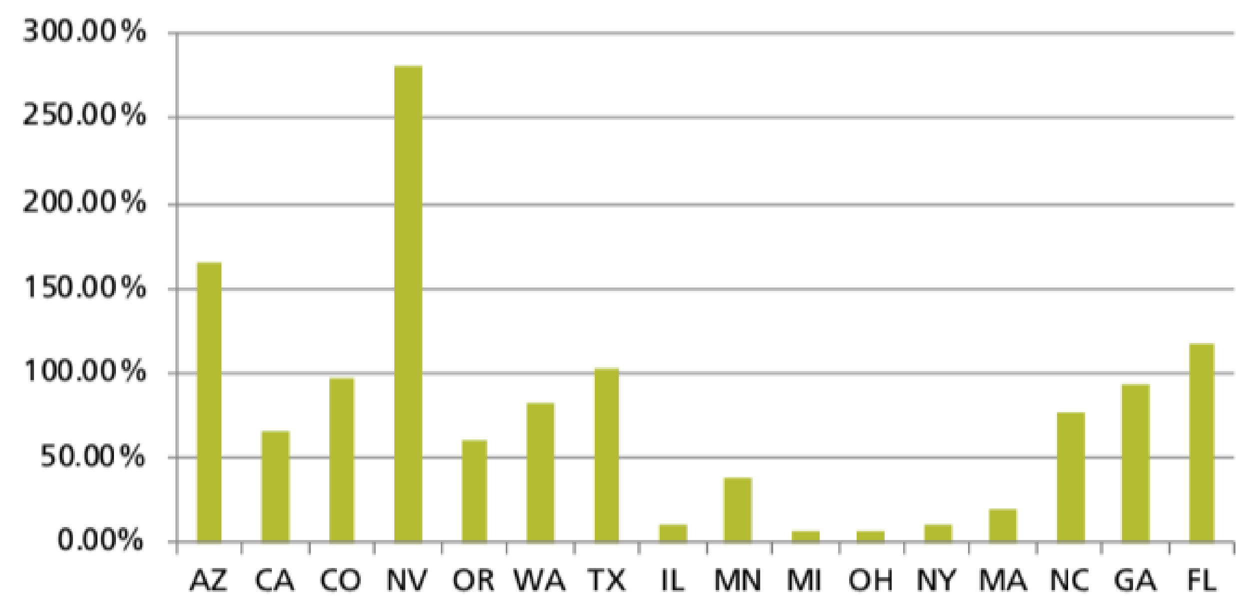
2019 The Nevada legislature proposes Senate Bill 256 to limit evictions. Senate Bill 151 would ultimately pass with some elements of SB 256 included.

2020 The Covid-19 pandemic closes many businesses and eviction moratoriums are enacted in several states.

HOUSING SUPPLY LIMITATIONS & CONSTRAINTS

At the heart of many discussions on affordable housing is the lack of available units, both existing and needed, which arises from a population increase. Arizona, California, Colorado, Nevada, Oregon and Washington have a combined population increase of 82% since 1980, as shown in Figure 1.1.

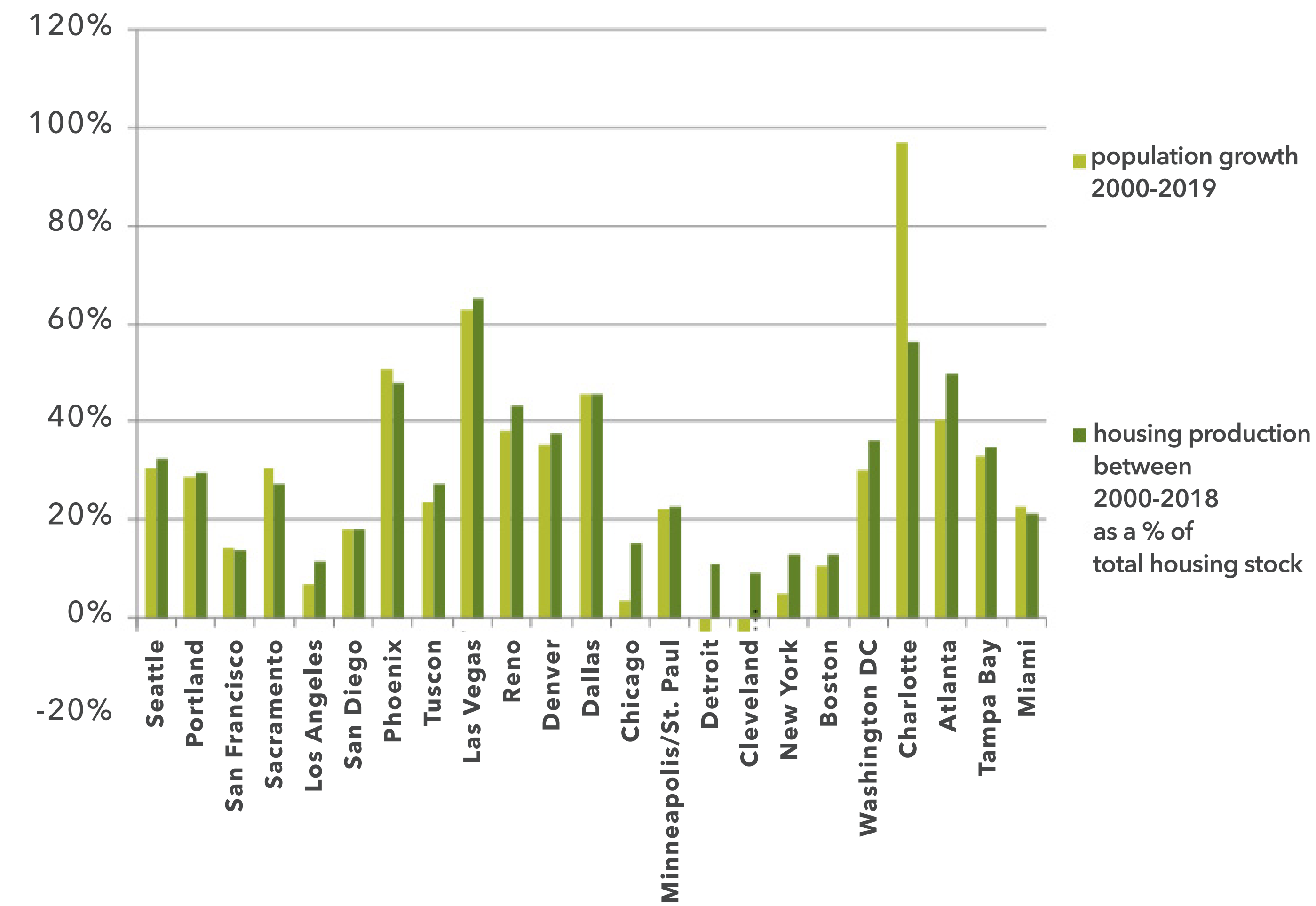
FIGURE 1.1
POPULATION GROWTH BY STATE, 1980 - 2019



Despite the fact that west coast cities like Seattle, Portland, San Francisco, Los Angeles, and San Diego have some of the highest median home prices, highest rates of price growth, and positive population growth, construction rates in these cities reflect the inverse.

Cities with the highest production rates tend to have lower overall median home prices. Markets like Charlotte, Atlanta, Dallas, Las Vegas, and Phoenix, where demand is also strong, have all produced roughly half of their total housing stock in the last 18 years, and between 10%-20% of total stock within the last 8 years. Figure 1.2 outlines population growth, compared to the relative rates of construction.

FIGURE 1.2
POPULATION GROWTH & CONSTRUCTION RATES

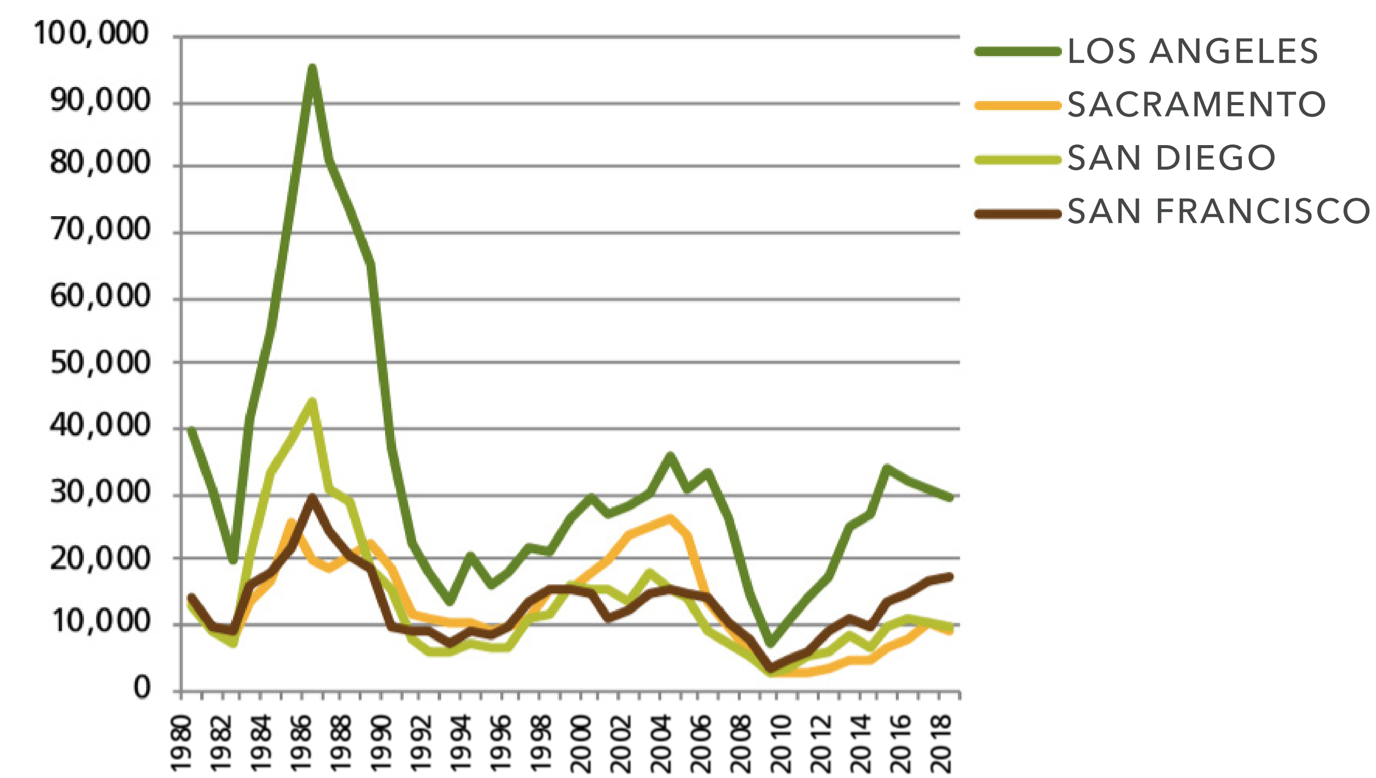


Since the market for housing is driven by demand and the private sector is almost always delivering the supply, the effectiveness of housing policies relies on a particular market's ability to produce more supply.

There can be several limits on housing production that can affect the overall supply. These limitations include geographical barriers, infrastructure availability, zoning regulations, and other external factors.

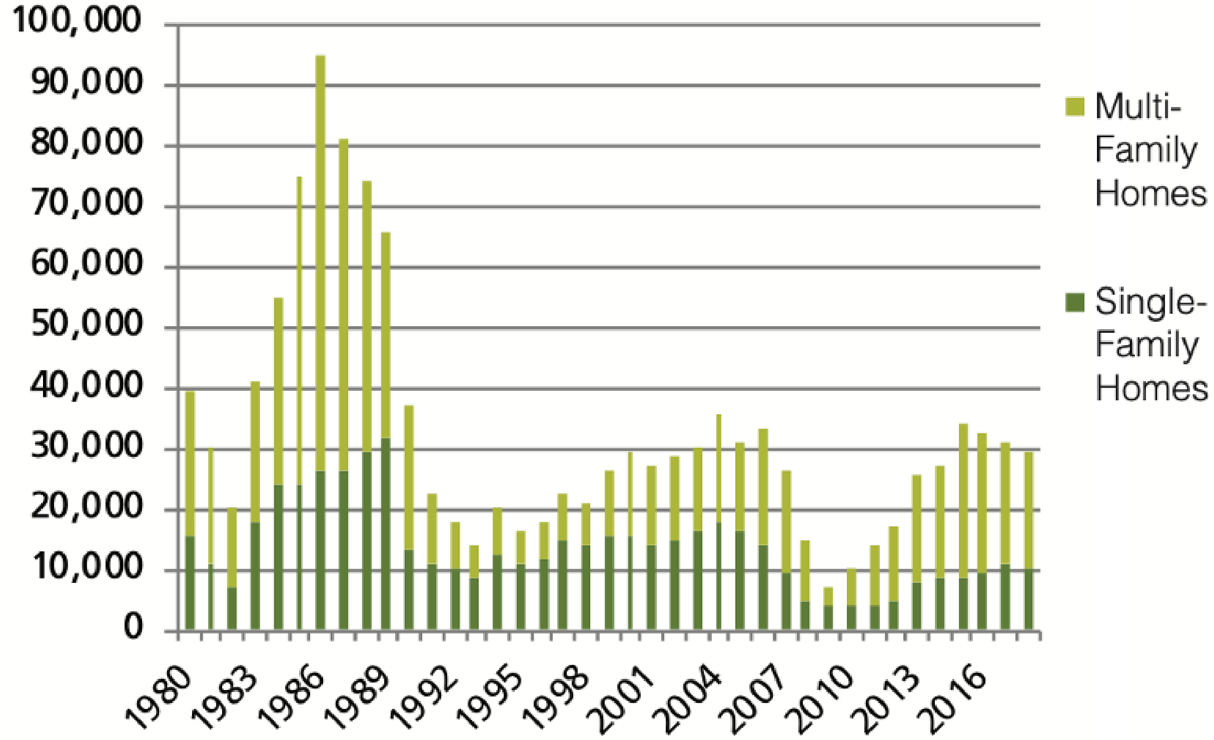
Housing policies have been a central focus of many local, state, and even federal regulations to address issues of access and affordability. These policies are many and wide in range; everything from tax policies to zoning laws create long-term, ripple effects in the housing market. Supply constraints can be seen using permitting data. As Figure 2.1 demonstrates, metropolitan areas in California with stronger regulations are less likely to grant building permits.

FIGURE 2.1
TOTAL PERMITS 1980 - 2018



Figures 2.2-2.5 highlight the breakdown between single-family and multi-family units produced in Los Angeles, Sacramento, San Diego and San Francisco. The ratio between the housing unit types are often a result of various local policies and zoning regulations.

FIGURE 2.2 LOS ANGELES METROPOLITAN STATISTICAL AREA
TOTAL PERMITS 1980 - 2018



LOS ANGELES

Most supply constraints in the Los Angeles MSA are a result of extensive, single-family residential zoning, and even as much as half to three-quarters of the land in the state is zoned only for single-family housing, according to UC Berkeley's Terner Center for Housing Innovation.

Despite median home prices and rents nearly double the national median, and possibly in response to it, Los Angeles is starting to see increased production, especially in multi-family housing as the area turns to development to accommodate a growing demand in a limited space. However, construction permit data demonstrates that production numbers still remain far below annual production rates from the 1980's.

The percentage of housing production in multi-family units has gone from just under half the total annual production in 2010 to 66% of total production in 2018, indicating that Los Angeles is responding to supply constraints with greater density (HUD). Additionally, single-family unit construction permits only saw two years between 1980 and 1999 that produced less than 10,000 permits, while the period between 2006-2017 saw no annual production rates of single-family units over 10,000.

SACRAMENTO

Perhaps the most prominent policy constraints in Sacramento include fees to incentivize affordable housing. Chapter 15.40 of West Sacramento's municipal code contains inclusionary zoning, charging fees of $6,476 per unit in lieu of providing inclusionary housing. Section 22.35.050 of the Sacramento County Code charges a fee of $2.92 per square foot of each market-rate unit provided, forcing the private sector to subsidize affordable housing in the region.

Figure 2.3 displays permitting by unit-type in the Sacramento MSA, indicating that the market strongly favors single-family homes in the area, with the largest share of production of multi-family homes reaching 33% in 1987 (HUD). While Sacramento has been largely building single-family homes, it is clear that permits for multi-family homes have decreased in recent years, potentially due to increased fees for the affordable housing fund set up by the County.

FIGURE 2.3 SACRAMENTO METROPOLITAN STATISTICAL AREA
TOTAL PERMITS 1980 - 2018

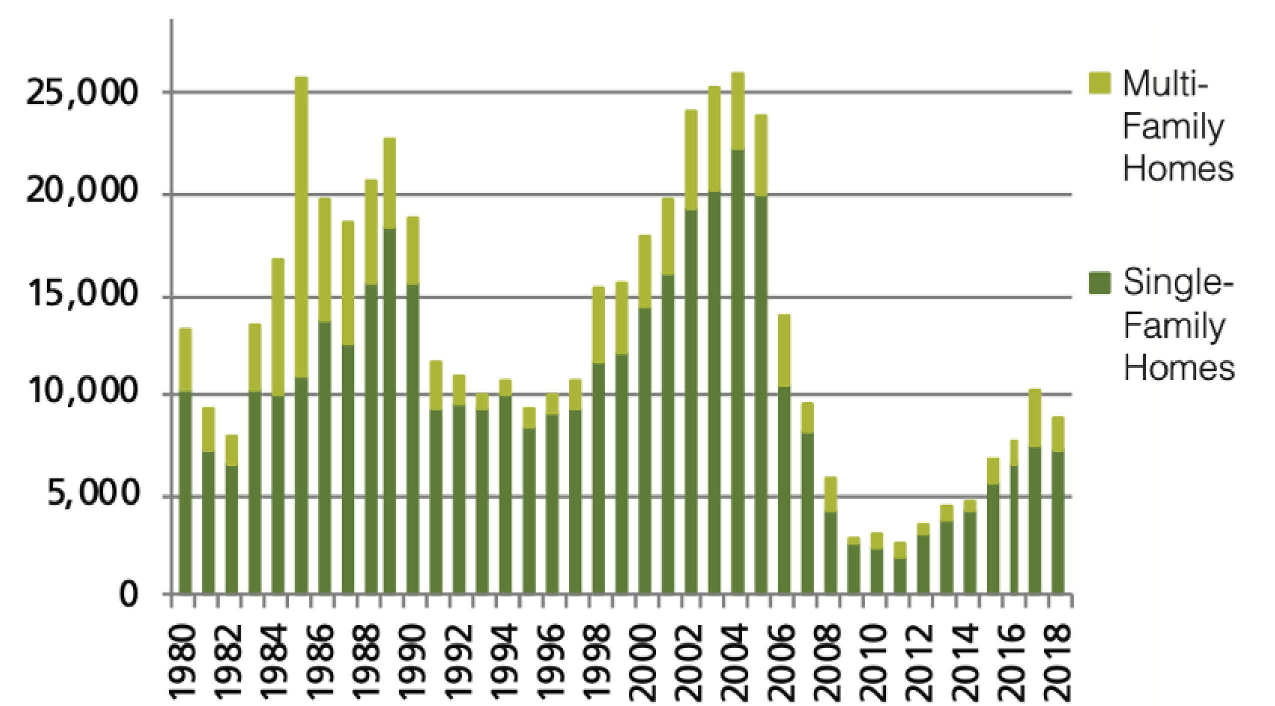
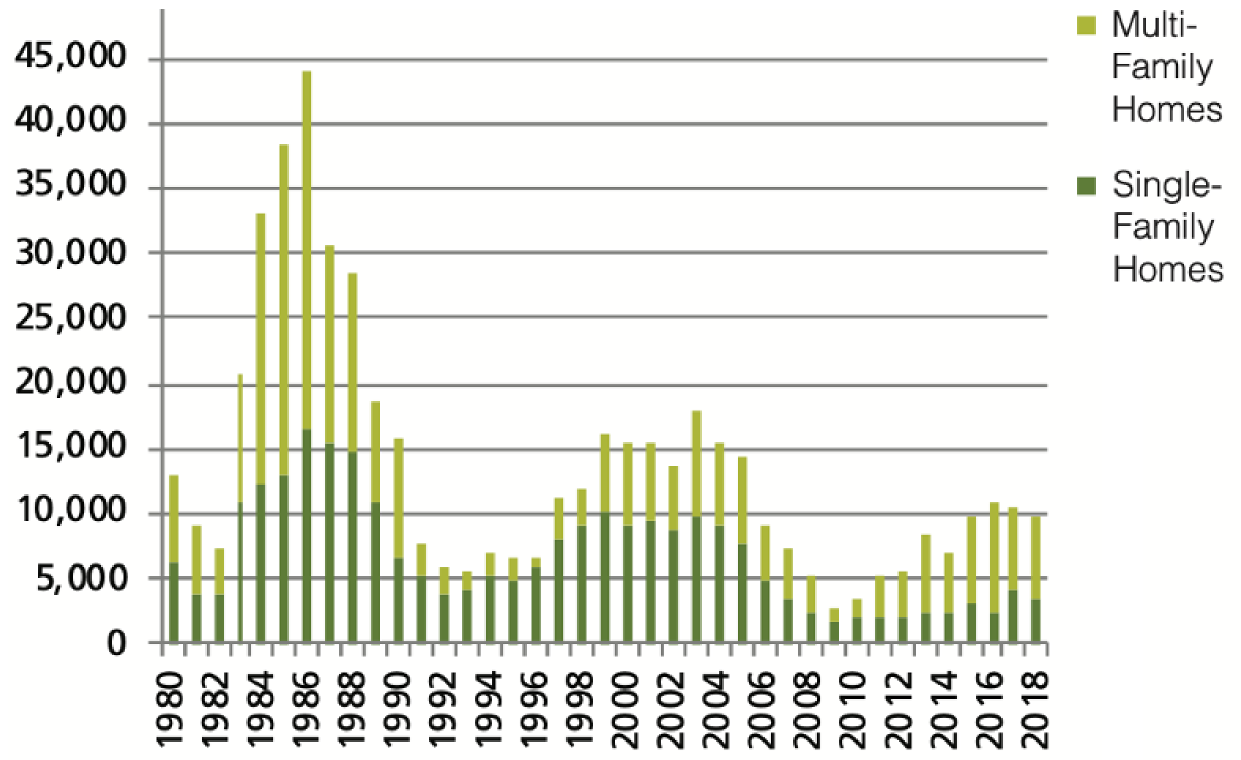


FIGURE 2.4 SAN DIEGO METROPOLITAN STATISTICAL AREA
TOTAL PERMITS 1980 - 2018



SAN DIEGO

Many of the supply constraints in the San Diego area revolve around a variety of factors, but mostly due to the land development code and the airport land use compatibility plan. The proximity of the airport to San Diego's downtown, along with topographical constraints, have limited height and density in key neighborhood areas close to the city center according to the City of San Diego's Housing Element (2010).

Furthermore, the majority of these neighborhoods contain planned development covenants that restrict changes to the area, which has forced much of the development outward rather than upward. It was not until about 2011 that the San Diego market sees multi-family units make up the majority share of housing production, although the overall numbers have shrunk considerably from earlier years, as we have seen as the common trend in most western markets.

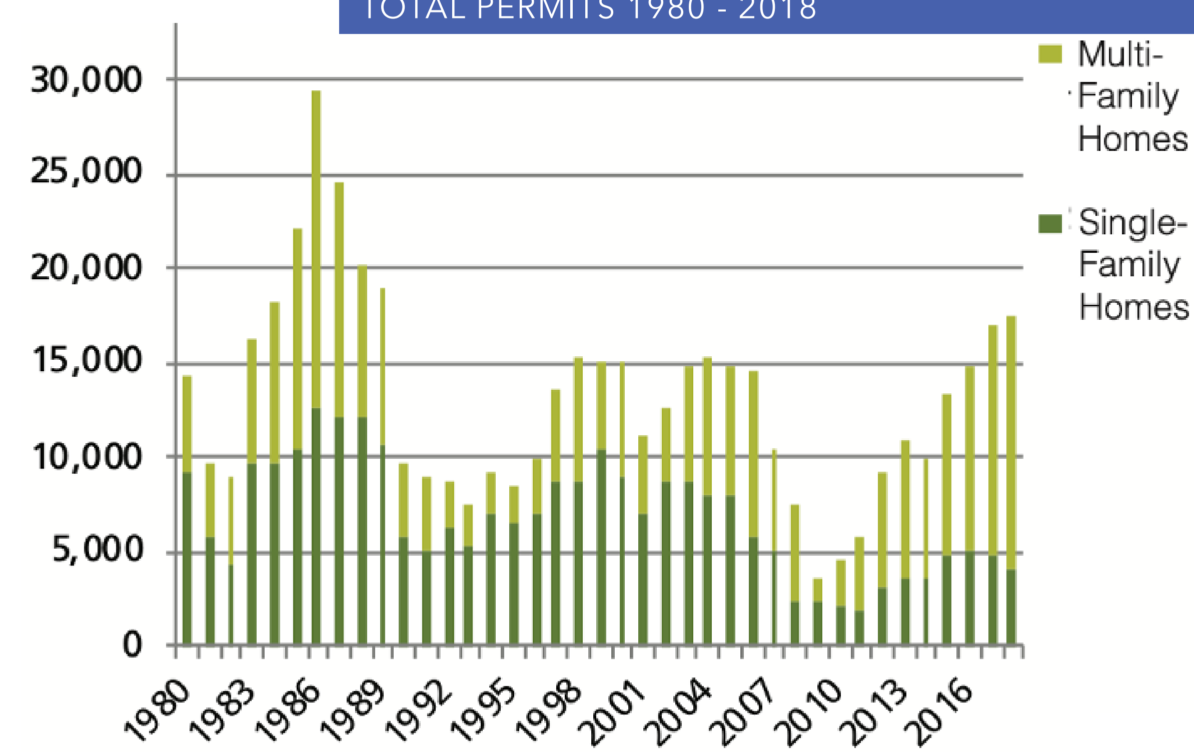
SAN FRANCISCO

The effects of rising prices in the San Francisco area are not limited to housing production, but also various municipal measures that have limited growth in the past. For example, Proposition M was approved by voters in 1986, declaring that developers cannot build more than 875,000 square feet of office space within a 12-month period.

Anti-development measures have continued into the 21st century, with recent office development regulations now affecting the housing market.

The approval of Proposition E in 2020 ties the amount of developable office space to the city's affordable housing goals, capping office development in order to incentivize affordable housing production.

FIGURE 2.5 SAN FRANCISCO METROPOLITAN STATISTICAL AREA
TOTAL PERMITS 1980 - 2018



In addition to rent control and inclusionary zoning, these measures, among others, introduced by the municipal government involve altering the equilibrium of supply and demand in the free market, and may see negative effects in their policy if development is not incentivized to build in the region. Restricting certain types of development to encourage others may result in an unequally tighter supply of space, exacerbating prices.

The 2008 housing crisis and recession impacted many large housing markets and Nevada was no exception. Markets like Las Vegas tend to be prone to overbuilding when market demands are high, but it also means that they tend to recover quickly because of elastic supply regulations to housing production.

Some state legislatures have been proactive in incentivizing construction in order to grow the supply of available housing. Senate Bill 448, 2019 in Nevada and House Bill 2343, 2019 in Washington both aimed to relieve costs for developers in order to encourage building.

NEVADA
SENATE BILL 448, 2019

- Creates a four-year pilot program to boost rental unit development
- Provides up to $10 million annually in state tax credits for building rental properties

WASHINGTON
HOUSE BILL 2343, 2019

- Relaxes parking space requirements for new construction
- Helps improve density, as parking is seen as a key limitation to development

Issues that persist in these areas generally come down to density and incentivizing multi-family units. While multi-family units are needed to drive down housing costs, developers continue to focus on single-family residents as these allow for a greater overall profit. An important factor that greatly influences housing is local policies which offer incentives to developers. These "smart growth" policies help to maximize the cost savings of developers which directly impacts the end cost to renters and homebuyers. If private sector builders and developers were able to efficiently and cost-effectively produce housing, they would not need to rely on high housing prices or rents in order to see a return on their investment.

NUMBERS ON THE GROUND:

HOMELESSNESS, EVICTIONS, & COVID-19

A great deal of push for landlord-tenant legislation comes from a desire to help those struggling with homelessness or hypermobility. Many families fall into one or more categories of homelessness or hypermobility as defined by the U.S. Department of Housing and Urban Development (HUD).

Categories one and two as defined by the United States government refer to families that are either literally homeless (who live in either a shelter or hotel) or lack a permanent night-time residence for more than 14 days. As shown in Table 1.1, the HUD Annual Homeless Assessment Report indicated that 7,169 Nevadans experienced some form of homelessness in 2020.

TABLE 1.1

State	Total Adult Homeless	Per 100k	Total Student Homeless	% Couch Surfing (Doubled Up)
Arizona	10,007	137	24,399	63%
California	151,278	383	263,058	84%
Colorado	9,619	167	22,369	75%
Nevada	7,169	232	20,685	75%
Oregon	15,876	415	23,141	75%
Washington	21,577	283	40,112	74%

US Interagency Council on Homelessness, 2020

As the table indicates, Nevada is on the low end of overall homelessness. Yet, the state has a higher than average rate of homeless per capita and the percentage of hypermobile individuals, or "couch surfers," is on par with many Western states.

To stem the rise of homelessness, several states have passed landlord-tenant regulations that directly address the circumstances surrounding evictions. For example, in 2019, the Nevada legislature proposed Senate Bill 256. If passed, this bill would have, among others:

- Prohibited a landlord from refusing to rent a dwelling in a low-income housing project to an applicant because the applicant has a previous history of an inability to pay rent.
- Required the landlord, during the 5-day period following the eviction or lockout, to provide the former tenant the opportunity to retrieve essential personal effects.
- Allowed the tenant to request a final inspection within 3 days of move out and receive a statement of any deficiencies.

Senate Bill 256 ultimately died in committee, but a companion bill, Senate Bill 151 did pass. SB 151 included the following provisions:

- Late fees are capped at 5% of the "Periodic Rent." Late fees cannot be based on existing unpaid fees.
- Redefines personal items to specifically include medications, baby formula, basic clothing, and personal care items.
- Allows the retrieval of the tenant's essential personal effects at the date and time and for a period necessary for the retrieval, determined by the court.

While such legislation is meant to quell evictions and increase tenant rights, scholarship indicates that the end result is a worsening relationship between landlords and their tenants. Scholarship also suggests that such laws do not tackle the larger problems of housing supply, which must be addressed through serious consideration of how affordable housing can be produced. To accomplish this goal there must be open communication and collaboration between legislators, housing advocates, and the builders and developers in the private sector.

It should be noted that during the Covid-19 pandemic, Nevada—like many other states—enacted a moratorium on evictions. The lasting impacts of Covid-19 on the economy and housing stability are sure to come into play in upcoming legislative sessions. Undoubtedly, the Covid-19 pandemic is an unprecedented public health event that will require an informed, reasoned, and pragmatic response. It is imperative that policymakers take the important steps to not only address the fallout from the pandemic, but to do so in a way that avoids the harmful regulations, which, as scholarship says, only creates more problems in the future.

STRONGER TOGETHER:
HOUSING COALITIONS

Many housing organizations, lobbying groups and activists, particularly in California, have formed robust coalitions to better leverage influence on public policy.

For example, The California Housing Consortium (CHC) is a non-partisan advocacy group for the production and preservation of affordable housing to low and moderate-income Californians. They were founded in 1997 to complement efforts of established regional associations of non-profit housing developers and service providers by bringing together the private, non-profit, and public sectors to enhance the delivery of affordable housing to Californians.

Organizations such as the 3P's Housing Plan helped pass ten housing bills, including landlord-tenant legislation. They are a powerful collection of policy leaders who advocate for new bills to be passed. Likewise, Housing NOW! California was launched in 2017 and is a broad and diverse movement aiming to make housing affordable and combating the displacement crisis that is disproportionately impacting working-class communities of color. The coalition has grown to over 60 organizations and has mobilized 1000 grassroots leaders from across the state.

Other coalitions, including the National Low-Income Housing Coalition, the San Francisco Housing Action Coalition, and Yes, In My Backyard have been influential in passing housing legislation throughout California.

Although all of these organizations have different goals and philosophies of sound housing policy, it is clear that by forming coalitions, specifically with those also concerned with affordable housing, individual organizations can increase their influence and leverage on housing issues and find meaningful, and potentially bipartisan solutions to the growing calls for tougher landlord-tenant legislation.

CONCLUSION

While landlord-tenant legislation appears on the surface to tackle the issue of rising evictions, it is generally considered by researchers to be a temporary fix on a larger issue. Without comprehensive change to aid development, housing supplies will continue to shrink, leading to migration out of the region.

The tragedy of the increasingly harsh regulatory climate for developing housing in the Western United States is that the region otherwise has a good quality of life and many of our most innovative companies. Moreover, if we were to identify the best place for the United States to grow while reducing our carbon footprint, we would probably focus on coastal California and the Northwest, which has a lower number of heating and cooling days than any region in the country.

Unless these regulatory barriers are reduced, and private sector builders and developers are able to supply affordable housing, it's likely that population growth will shift to other regions, notably the Southern United States, which has other advantages in terms of physical climate and business climate. Already, California is experiencing a high level of outmigration to neighboring states, and for the first time in the state's history, California is growing at a slower pace than the nation as a whole. While this exodus is bringing economic growth to the neighboring Western states, the new population is also bringing its support for more aggressive housing regulations.

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