

ZONING PRACTICE

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Zoning Alternatives to Penalizing Homelessness



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Zoning Alternatives to Penalizing Homelessness

By Chasidy Miles and Lauren Ashley Week

In June 2024, the U.S. Supreme Court issued its decision in [Grants Pass v. Johnson, 603 U.S. 520](#), which sanctioned the use of local camping prohibitions, even if the “campers” in question have nowhere else to go. Later that year, the U.S. Department of Housing and Urban Development (HUD) released its [Annual Homelessness Assessment Report](#), revealing that 771,480 people experienced homelessness—an all-time high (albeit likely still an undercount) (Goldstone 2025). More than a third of these individuals slept in places not meant for habitation.

In response to the ruling, local and state governments across the country are adopting new ordinances or fortifying existing laws that target the unhoused by prohibiting sleeping or lingering on public property. Failure to comply can result in fines, imprisonment, or forced relocation. Despite the risk of increasingly severe punishment, homeless populations often return to the spaces that officers or government staff previously removed them

from. This “whack-a-mole” tactic repeatedly fails to deliver positive outcomes (Figueroa 2024).

This issue of *Zoning Practice* explores regulatory alternatives to criminalizing homelessness. Following a discussion of the state of homelessness and the costs of criminalization, it outlines zoning and land-use-based solutions that balance the rights of the unhoused with a jurisdiction’s duty to promote public health, safety, and welfare.

An encampment known as “the Pit” in Portland, Oregon, as it appeared in October 2023 (Credit: Kevin Dahlgren/iStock/Getty Images Plus)



Note on Terminology

The terminology used to describe homelessness has transformed over time. This article will use *unhoused* and *homeless* interchangeably but recognizes and advises that some descriptors—such as *unsheltered*—have specific legal and technical definitions that vary by agency or jurisdiction (Goldstone 2025). Furthermore, words carry important social and cultural connotations. We encourage planners and allied professionals to use the terminology preferred by the individuals and communities they are working with. This article also relies on the following definitions for housing models and resources:

- **Temporary or emergency shelters** provide those experiencing homelessness with a short-term place to sleep or live, typically for a specified period ranging from one night to several months.
- **A homeless resource center (HRC)** is a facility that provides centralized services for unhoused populations, including sleeping, bathing, and laundry facilities, food distribution, medical care, counseling, and case management.
- **Transitional housing** is a development that provides temporary, intermediate-term housing and programmatic support services.
- **Single-room occupancy (SRO)** units consist of a private room for sleeping and storage and shared kitchen or bathroom facilities.
- **Permanent supportive housing (PSH)** is a development that provides permanent, affordable housing and services to formerly homeless individuals. Note PSH can also refer to a specific HUD-funded initiative.



The State of Homelessness

Under HUD's Continuum of Care (CoC) program, local agencies and organizations must coordinate Point-in-Time (PIT) counts. Conducted annually since 2007, these nationwide surveys aim to estimate homelessness by documenting the number of people living in emergency facilities, transitional housing, or unsheltered on a single night during the last week of January. The 2024 PIT count represents a 19 percent increase in overall homelessness and a seven percent increase in unsheltered homelessness (HUD 2024).

While all forms of housing insecurity can lead to poor economic and health outcomes, the long-term, compounded consequences of unsheltered homelessness make its rise particularly alarming (Richards and Kuhn 2023). In 2024, the questions of whether, how, and when municipalities can restrict the right to sleep outside (i.e., unsheltered) came before the U.S. Supreme Court.

The Grants Pass Decision

In *Grants Pass*, the Supreme Court held that the Eighth Amendment does not prevent municipalities from passing and enforcing ordinances that regulate camping and related behaviors, provided the ordinances are generally applicable.

The case involved a class of unhoused residents from Grants Pass, Oregon, who challenged city codes that prohibited camping or sleeping on public property, whether in a tent pitched in a park, in a

Volunteers preparing for Washington, D.C.'s Point-in-Time count in January 2014 (Credit: [Sam Bermas-Dawes/Street Sense Media/Flickr](#))

sleeping bag laid along a sidewalk, or in a personal vehicle parked on a street. Relying on a 2018 decision that struck down similar laws in Boise, Idaho ([Martin v. Boise, 902 F.3d 1031 \(9th Cir. 2018\)](#)), the plaintiffs argued that when a city's shelter capacity is insufficient—as was the case in Grants Pass—enforcing camping ordinances against the homeless constituted “cruel and unusual punishment” because it criminalized *status*. Furthermore, even if the ordinance's language targeted *conduct* (i.e., sleeping outside), such actions are *involuntary* and correlate to one's homeless status.

The distinction between *status* versus *conduct*, regardless of its *involuntary* nature, failed to persuade the court. Underscoring that local governments across the country have similar public camping laws and that the consequences of violating them (e.g., fines and limited jail time) are neither unusual nor cruel, the court found in favor of Grants Pass. It thereby sanctioned the use of local camping and related ordinances nationally. However, at the same time, the court emphasized that “nothing in today's decision prevents [s]tates, cities, and counties from . . . declining to criminalize public camping altogether.” In other words, while the holding in the case allows municipalities to criminalize homelessness, it does not require them to do so.

The Decision's Aftermath

Despite this, as highlighted in the decision's dissent, “many local governments have made criminalization a frontline response.” Since June 2024, cities have introduced over 320 criminalization bills, and approximately 220 have passed nationwide (ACLU 2025). And at least nine states—from Washington to Mississippi—have adopted anti-homeless laws in this period (HNH 2025). While a statewide camping and outdoor sleeping ban failed in California, over a fifth of post-*Grants Pass* local criminalization ordinances, adopted at both the city- and county-level, stem from the Golden State (HNH 2025; Jeong et al. 2025). Across California and the country, criminalization measures are being adopted in rural, suburban, and urban places, regardless of political leadership or historic homelessness rates (Ludden 2024).



Limits of Grants Pass

Notwithstanding the holding in *Grants Pass*, localities must remain cognizant of how state laws and state court precedent may preempt their ability to regulate sleeping outdoors. For example, Oregon adopted a statute ([§195.500](#)) requiring “humane treatment” of unsheltered individuals. Planners and public officials must also be aware of related requirements that regulate the provision and production of housing at both the federal and state levels, such as: (1) fair housing and anti-discrimination laws, including protections for people with disabilities; (2) religious land use safeguards; and (3) environmental review and permitting requirements.

Advocates worry the increase in criminalization will continue due to recent executive orders. Only one month after the *Grants Pass* decision, California Governor Gavin Newsom issued [Executive Order N-1-24](#), directing state agencies and departments to clear encampments. Exactly a year later, President Donald Trump issued federal [Executive Order 14321](#), which incentivizes local and state governments to clear encampments, civilly commit unhoused individuals, and end research-backed “Housing First” programs. Furthermore, the order empowers the Attorney General to seek to reverse federal and state judicial precedents and terminate consent decrees that safeguard the rights of the homeless.

Riverside Park in Grants Pass, Oregon (Credit: Rob7 24/Wikimedia)

The Cost of Criminalization

The legal and social aftermath of *Grants Pass* should concern homeless

populations, housed community members, and government officials alike. In Grants Pass, conditions for unsheltered residents have worsened since the ruling. After forced relocation, many suffered health crises, could not access necessary services, and lost clothing, survival gear, and sentimental items they can never replace (Vanguard Staff 2025).

It is impossible to capture the value of belongings swept away. Beyond the resources and time required to replace items, the emotional toll is immeasurable. Jurisdictions and communities must also consider the broader ramifications: Criminalization likely prevents unsheltered populations from accessing sources of income and housing opportunities, thereby prolonging their time on the street (Dunton et al. 2020).

Moreover, housed residents should question whether criminalization policies and encampment sweeps constitute the best use of taxpayer dollars. One study estimated that, after receiving a move-along order, 91 percent of unsheltered people remained outdoors, moving only two to three blocks away. Even if temporarily incarcerated, individuals often return to the same neighborhoods and parks. By simply creating “a costly revolving

door that circulates individuals experiencing homelessness from the street to the criminal justice system and back,” or from neighborhood-to-neighborhood or block-to-block, enforcement expenditures are often counterproductive and wasteful (Grants Pass 2024; Vanguard Staff 2025).

In fact, HUD has concretely estimated the cost of criminalization, which local governments often bear. Cities annually spend between \$1,672 and \$6,208 per unsheltered individual (Dunton et al. 2020). Research shows it “can cost three times more to enforce anti-homeless laws” than to provide housing and services (Olivet 2022). For a strategy with limited long-term success, the cost to jurisdictions is simply not justified.

Zoning Alternatives and Supportive Strategies

In contrast to anti-camping and other ordinances that effectively criminalize homelessness, zoning can offer a more cost-effective, proactive, and humane response to the homelessness crisis. More permissive zoning for shelters, HRCs, and transitional, supportive, and permanent housing can help communities meet the needs of unsheltered residents. In

A National Park Service sweep of an encampment in McPherson Square Park in Washington, D.C., in February 2023 (Credit: [Elvert Barnes/Flickr](#))



practice, though, local zoning often creates significant barriers to entry for such uses. This fact is neither inevitable nor irreversible, as evidenced by the strategies below. Beyond adapting local zoning, municipalities can also rely on other land-use-based solutions to better support unhoused populations.

Allowing Uses By-Right in Specific Zones

Permitting emergency shelters, HRCs, transitional housing, or PSH by-right in specific zones is a valuable strategy to support unsheltered populations.

“By-right” development means no conditional use permit (CUP), variance, or other discretionary approval is required. As long as the proposed use aligns with local standards, by-right projects only need straightforward administrative approval before breaking ground; on some occasions, design review may be permissible, but the process remains ministerial rather than discretionary. Another benefit of by-right development is that, unless standard for other non-discretionary actions, no public notice is required. Furthermore, when a by-right project conforms with pre-existing height, setback, and size requirements, it can often bypass contentious public hearings.

To ensure by-right designation, local zoning codes should clearly define homelessness-related uses and include statements that affirm their equivalency to similar uses. Thus, ordinances should delineate what terms such as “emergency shelters,” “transitional,” and “supportive housing,” and other non-traditional housing options like “ADUs” and “SROs” mean and include. These definitions should highlight their *residential* nature. Nonresidential designations may face increased public opposition or arguably require discretionary approvals. Undefined or unclear use categories can also be subjected to costly legal challenges that postpone development.

To further avoid complications, planners and local officials should carefully review their zoning codes to evaluate whether existing use definitions will open the door to legal challenges or cause confusion. Examples of potentially troubling terms include “community care facilities” and “boarding houses,” which potentially

signify a clinical or institutional use. Legal opponents may point to these terms as overlapping or applicable to proposed projects. By either removing such definitions or clarifying that they do not include supportive and transitional housing, jurisdictions can help smooth approval processes. Furthermore, municipalities should examine the definition of “family” in their zoning codes to ensure it does not exclude common transitional and supportive housing arrangements (Bonett et al. 2017).

It is also useful to include affirmative statements following each definition to clarify that such uses “may be subject only to those restrictions that apply to other residential dwellings of the same type in the same zone.” This further enables developers to bypass stricter land use regulations and approval processes and helps prevent legal challenges.

Statewide legislation in California requires all local jurisdictions to identify at least one zone where emergency shelters can be constructed by right. Other statutes dictate HRCs and certain types of transitional housing as by-right uses in specified zoning districts (Bonett et al. 2017; Eliason 2025). To meet this mandate, Reedley, California, a small community in the Central Valley, affirmatively states that supportive and transitional housing ([§10.50.080](#)), as well as SROs ([§10.50.070](#)) and mobile home parks ([§10.50.110](#)), are subject to the same

Lee Hill, a permanent supportive housing development, operating on a Housing First model, in Boulder, Colorado (Credit: U.S. Department of Housing and Urban Development/ Flickr)



requirements as similar housing in the same zone. Reedley's code includes all of these terms in its definition section and, in defining such terms, emphasizes their residential nature. While Reedley does not include an affirmative statement after its emergency shelter description, it does define this use as housing.

Washington state has passed similar legislation, requiring localities to accommodate shelters, homelessness-related facilities, and transitional housing in any district that allows for residential dwelling units or hotels (Butler 2021). Cities, towns, and counties seeking to better support their homeless residents can implement such changes at the local level, even when state mandates like those in California and

Washington do not require them to. For example, without any state intervention, Saint Paul, Minnesota, began allowing homeless services facilities in certain zoning districts by right in 2021 ([§65.240](#)).

To alleviate potential community concerns, local governments can still adopt written standards for by-right facilities, provided that such standards are objective. This includes maximum bed limits, off-street parking requirements, allowable size and location of client intake areas, on-site management provisions, minimum separation between similar uses, permissible length of stay, and required outdoor lighting and security measures. Although it will create more burden on homelessness-related uses, municipalities can

also condition approval when a proposed use meets certain thresholds that may trigger community concern. (For an example of this, see the Saint Paul ordinance, which requires CUPs for facilities larger than 7,000 square feet.) At the same time, codes should not impose standards that are more restrictive than those required of other residential and commercial developments in the community, nor should there be mandates on amenities or conditions

on approval unless they are also required of similar residential and commercial uses in the same zone (Bonett et al. 2017).

Lastly, for the most effective implementation and to ensure by-right uses are shielded from legal challenge, localities should update any applicable tables of permitted uses throughout the zoning code and its districts, confirming they include newly defined shelters, HRCs, and transitional, supportive, and permanent housing (Bonett et al. 2017). Permitting such uses by right across districts ensures equal access to resources, facilitates community integration, and prevents concentration in limited areas of a city, which can strain resources and result in unfair burdens on certain neighborhoods (HCD 2025).

Authorizing as Accessory or Ancillary Uses

All the above designations, as well as other temporary solutions, can also be allowed as accessory or ancillary uses. Within the zoning context, accessory uses and structures are subordinate or incidental to the principal use or structure located on the same parcel. Traditionally, zoning codes permit accessory uses by right. Defining and allowing shelters, HRCs, transitional housing, PSH, as well as managed outdoor encampments, safe parking areas, and manufactured homes, as accessory uses can help jurisdictions take advantage of underutilized land, promote sustainable, infill development, and increase shelter and housing supply. Most homelessness-related uses are appropriate as an accessory to or on public, institutional, or religious facilities and land, while only some strategies may make sense for private property.

In response to homelessness and, more generally, the affordable housing crisis, many jurisdictions now consider shelter and housing as ancillary to non-profit and faith-based uses. Examples range from permitted small-scale emergency shelters and safe parking programs to temporary tiny home villages to full-scale conversion projects and new affordable housing developments. Santa Clara County, for example, facilitates shelter development by defining small-scale shelters or safe parking programs as

To alleviate potential community concerns, local governments can still adopt written standards for by-right facilities, provided that such standards are objective.



A former rooming house for nurses in Dayton, Kentucky, which was converted to transitional housing in the 1970s (Credit: [Warren LeMay/Flickr](#))

ancillary or incidental uses and providing a reduced approval process for these uses on institutional land, such as church parking lots ([§4.10.115](#); Bonett et al. 2017). Some local jurisdictions, such as Charlotte, North Carolina, have gone further and provide financial and technical assistance to qualifying organizations interested in developing affordable housing on underutilized property owned by nonprofit and religious groups (Charlotte 2025). The [July 2023 issue of Zoning Practice](#) delves further into this trend.

Localities around the country, as well as many states, have also encouraged the construction of secondary housing, such as accessory dwelling units (ADUs), tiny homes, and basement apartments, on private single-family residential lots. Permitting secondary housing as a by-right accessory use dovetails with the larger, national trend of allowing for higher-density housing types in traditionally single-family districts. For example, Grand Rapids, Michigan—which effectively eliminated single-family zoning in 2008—advocates for “expand[ing] the variety of housing types and price points” to achieve affordability and access in its current comprehensive plan (Grand Rapids 2025). The plan specifically highlights ADUs, as well as duplex, triplex, and quadruplex conversions, as tools to achieve this goal. While plans and corresponding zoning reforms may not have an explicit connection to

homelessness, permitting accessory dwellings makes housing more affordable by increasing supply and providing more economic options. In turn, such accessory uses help prevent homelessness and get individuals back into stable housing.

Cities, counties, and states interested in adapting zoning to accommodate homelessness-serving and dwelling accessory uses should abide by the same recommendations outlined above: 1) clearly define ancillary uses; 2) affirm their residential character; 3) outline objective standards; and 4) limit conditions and discretionary review requirements. Accessory uses on public, institutional, and faith-based land should have no or very limited exceptions and conditions. Standards and threshold conditions may be appropriate for accessory uses in residential districts to circumvent community opposition, as outlined above.

Developing Special Overlay Districts

Localities use special overlay districts, or “overlay zones,” to superimpose designated areas with specialized rules on top of existing zoning maps. Within their boundaries, which can intersect multiple districts, such zones modify and supplement the underlying zoning classification. This means parcels within a respective overlay district are subject to the regulations of the original zone and the additional or modified standards of the overlay.

As early as 2000, municipalities in California introduced affordable housing overlays (TCHI 2019). These zones do not create additional requirements for development but instead offer incentives to encourage developers to build affordable housing. Examples include impact fee waivers, density bonuses, reduced parking ratios, changes to setback requirements, relaxed height standards, and, as discussed above, by-right zoning. While production of affordable housing can ultimately benefit unsheltered residents, local jurisdictions should also implement special overlay zones in a more targeted fashion.

Overlays can be used, for example, as a mechanism to permit emergency shelters, HRCs, and transitional and alternative housing models by-right. Cities across California—from urban to rural—have

established overlay zones to more directly serve homeless residents. In 2020, Compton, California, created an Emergency Shelter Overlay Zone ([§30-49](#)). That same year, California City, California, created a Residential Tiny and Small Homes Overlay Zone “to provide additional non-traditional housing” ([Ordinance No. 20-779](#)).

Outside of California, Salt Lake City approved a new overlay district to decentralize emergency shelters and support services, which had clustered around downtown, by transitioning to a scattered-site model with several smaller HRCs (García et al. 2025). The 2023 ordinance allows the council to approve HRCs by-right, and provides budgetary assistance for security needs ([§21A.34.160](#)). The provision also requires a public hearing process for overlay petitions, which should include input from both those experiencing homelessness and owners and tenants within 450 feet of the proposed overlay zone ([§21A.50.040](#)). Religious institutions are exempt, provided that the emergency shelter and services are part of their ecclesiastical function and comply with other applicable zoning provisions.

Despite some political pushback, overall, Salt Lake City’s HRC overlay ordinance provides a model regulatory framework for where and how HRCs can be permitted by-right via overlays; however, the process

of designating overlay zones and selecting appropriate sites remains complex. Planners and local officials should collect and analyze data to evaluate population needs, identify suitable locations, and understand capacity constraints. First, jurisdictions should determine their unsheltered homelessness count. Ideally, this count will include demographic information, such as race, gender, age, and veteran status, which can provide localities with important equity metrics. Second, planners and local officials should assess available sites for temporary shelters, managed encampments, HRCs, and affordable housing by considering transit access, proximity to services, and equitable distribution.

Providing Planned Unit Development Options

A planned unit development (PUD) allows developers and municipalities to bypass traditional zoning restrictions. Functioning as a variance, a PUD exempts a project from rigid single-use zoning and other land use controls but in return subjects developers to conditions not found in conventional variance agreements. PUDs provide greater flexibility for development design and land use, and can also benefit the community due to the conditions often imposed by the locality during the PUD review and approval process.

An emergency shelter with support services in Salt Lake City, Utah (Credit: The Road Home)



The Camp Hope outdoor encampment on the Mesilla Valley Community of Hope campus in Las Cruces, New Mexico (Credit: Google Earth)



A notable example of the use of a PUD in the homelessness context is Camp Hope, a managed outdoor encampment located in Las Cruces, New Mexico. Establishing the encampment in 2011 required the city and community members to leverage a PUD process, which provided leeway in areas such as density, building placement, circulation, and off-street parking. This was necessary for the site's proposed uses, as a temporary tent camp did not fall within the parameters of the property's prior zoning designation.

Initially, community members consisting of unhoused residents and the nonprofit Mesilla Valley Community of Hope (MVCH) petitioned for a temporary zoning agreement, which exempted the encampment from certain land use regulations and allowed homeless individuals to camp on a city-owned parcel adjacent to the Community of Hope campus for a trial period. This agreement was amended three years later, permanently formalizing the encampment's legal status with a limit of 45 tents and 50 occupants (NLC 2022). In 2023, Las Cruces adopted an amendment to the ordinance that expanded the PUD boundary from 8.01 acres to 16.59 acres and formally incorporated the MVCH Master Plan into future development. The amendment also included a mandatory provision of permanent potable water and 24-hour bathroom facilities for residents, a

perimeter fence around the camp, and prohibited hazards such as smoking or open flames in tents.

Offering Targeted Exemptions or Incentives

Targeted exemptions limit or waive zoning, permitting, and other regulatory requirements for defined projects. For instance, cities like Los Angeles have established zoning exemptions that apply during a declared "shelter crisis." These exemptions allow transitional shelters to operate on institutional land owned by religious or charitable organizations by right, regardless of the number of beds or persons served. The emergency exemptions also waive parking requirements ([§1.6.3](#)). Creating levers to remove discretionary review during times of emergency can afford flexibility and fast response when required.

While targeted exemptions can facilitate shelter and housing production in special circumstances, development incentives often apply more broadly and thereby offer larger-scale opportunities. Examples of incentives include density or floor area bonuses or reduced or waived permitting fees. Such incentives improve financial feasibility and remove regulatory barriers that may otherwise inhibit projects. Los Angeles provides another example: The city's PSH ordinance offers various development incentives for

qualified projects, including increased density, floor area, and building height (§9.4.1). Furthermore, the ordinance incentivizes development by removing permitting barriers; it establishes ministerial approval for all qualified PSH. In exchange for such incentives, the ordinance has deep affordability clauses. At least 50 percent of units must serve formerly homeless or at-risk residents at 30 percent of the area median income. Developers must also record a 55- to 99-year affordability covenant with the city, which promotes long-term affordability.

Preparing and Integrating Homelessness Plans

Currently, few cities across the country coordinate zoning and land use planning with homeless prevention and response. Fortunately, a tool familiar to planners can help overcome this chasm: plans. Specifically, homelessness plans can help jurisdictions by collating data to support better decision-making, coordinating initiatives and services across agencies, and catalyzing progress by outlining goals and metrics to measure them against. Services-focused plans can and should be integrated with comprehensive and sub-area plans to ensure land use, housing, and transportation policy facilitates service provision and works towards the goal of solving homelessness.

While Washington is the only state that mandates development of local homeless housing plans (§43.185C.050),

even without a state (or federal) obligation, many cities across the country have adopted separate and specific homelessness planning documents. However, a study conducted by the Boston University Initiative on Cities found that these plans often fail to mention zoning or land use and rarely connect the dots between local homelessness policy and long-range planning for housing supply (Levine Einstein and Wilson 2023). Such integration promises stronger plans and more equitable communities.

Conclusion

Decades of research unequivocally demonstrate the futility and high cost of criminalization. The *Grants Pass* decision may have authorized more punitive ordinances, but that does not require local governments to use them. Yet, when confronted with either continuing expensive, “whack-a-mole” enforcement or embracing more permissive land use strategies that can expand housing opportunities, municipalities across the country have chosen to maintain the former approach.

Permissive zoning and supportive strategies offer a more compassionate and cost-effective path forward. Planners possess the values, skills, and mandate to plan our cities and communities more effectively, ensuring all residents have access to quality housing, safe streets, and healthy green spaces.



A Safe Stay temporary tiny home community authorized by Vancouver, Washington's Supportive Campsites ordinance (Ordinance No. M-4348) (Credit: City of Vancouver)

Ultimately, whether to criminalize unhoused neighbors is a moral question that requires planners and officials to consider their ethics, values, and commitment to equity—regardless of criminalization’s legality. It’s easy to revel in entitlement or cling to misunderstanding; it’s a lot harder to practice empathy for others and imagine their struggles as our own.

No matter what regulatory alternatives municipalities implement, the authors hope this article inspires planners and allied professionals to reflect on the role of planning processes and policies in contributing to the homelessness crisis and consider how zoning can help prevent unsheltered homelessness in the future and curb criminalization. In the words of Justice Sotomayor: “It is possible to acknowledge and balance the issues facing local governments, the humanity and dignity of homeless people, and our constitutional principles.”

Note: The authors express their gratitude to Donald L. Elliott, FAICP, for his guidance and for moderating our session at the 2025 National Planning Conference, which inspired this issue. We also extend our thanks to the editorial team at *Zoning Practice* for their thorough and thoughtful edits and for this opportunity.

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ZONING PRACTICE JANUARY 2026 | VOL. 43, NO. 1. Zoning Practice (ISSN 1548-0135) is a monthly publication of the American Planning Association. Joel Albizo, FASAE, CAE, Chief Executive Officer; Petra Hurtado, PhD, Chief Foresight and Knowledge Officer; David Morley, AICP, Editor. Subscriptions are available for \$65 (individuals) and \$120 (organizations). ©2026 by the American Planning Association, 200 E. Randolph St., Suite 6900, Chicago, IL 60601-6909; planning.org. All rights reserved. No part of this publication may be reproduced or utilized in any form or by any means without permission in writing from APA.