

NIMBYism Overview and Case Study

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Affordable Housing Needs

The 2025 Gap Report, released jointly by the National Low Income Housing Coalition (NLIHC) and the Coalition on Homelessness and Housing in Ohio (COHHIO)

**Surplus (Deficit) of Affordable
and Available Rental Units**

AT OR BELOW EXTREMELY LOW INCOME

-264,083

AT OR BELOW 50% AMI

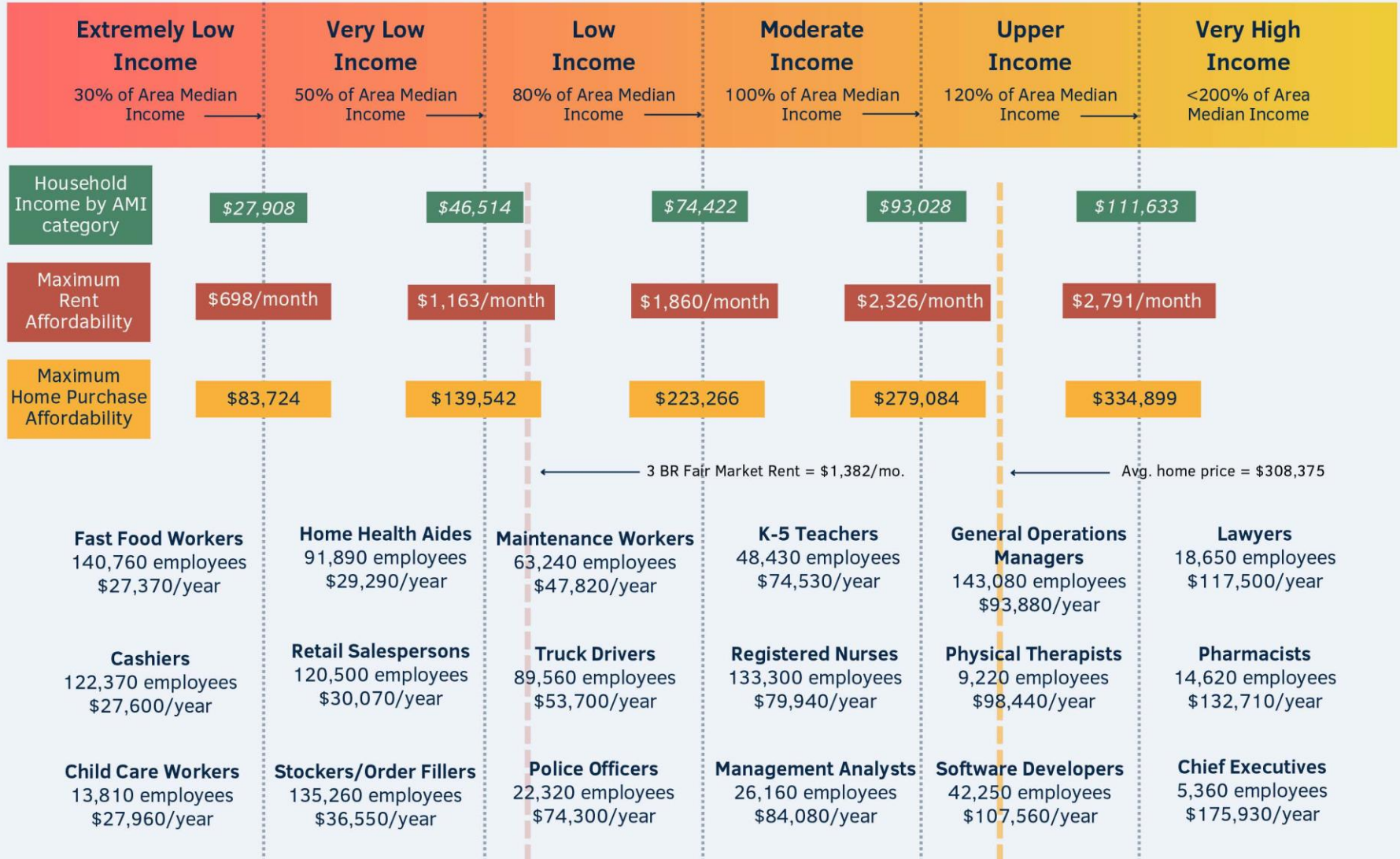
-202,382



Coalition on Homelessness
and Housing in Ohio

HOUSING AFFORDABILITY IN OHIO BY JOB AND INCOME

Ohio Four-Person Area Median Income = \$93,028



Sources: National Low Income Housing Coalition "Out of Reach 2024" report (rent affordability based on 30% of income); Ohio REALTORS average home price June 2024 (home purchase affordability based on 3 times annual income); U.S. Bureau of Labor Statistics May 2023 Ohio Occupational Employment and Wage Estimates. Updated August, 2024

Nimby Overview adapted from
Michael Allen of Relman Colfax, PLLC

*“Municipal Liability Under the Fair Housing Act for
Resistance to Affordable Housing”*

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Confronting Common NIMBY Concerns

Defining NIMBYism

- Communities have said many times: “We don’t oppose housing for poor people. We just think it ought to be located somewhere else.”
- From coast to coast, whether in urban, suburban, or rural settings, variations of this phenomenon is often described as “NIMBYism” -deriving from the acronym, “***Not In My Back Yard***”
- NIMBYism appears in almost every community and is not limited to individuals of a certain race or class

COMMON COMMENTS

- We have worked all our lives to buy this house. Now you want to come in here with this affordable housing and rob us of our life's savings.
- No one in his right mind would ever buy my house now that a group home is next door.
- My brother-in-law is a real estate agent. He says that it will take much longer to sell my house, and that I won't get my investment back out of it now that there are apartments going up down the block.
- We have enough apartments in this town already. We ought to be encouraging single-family home ownership, which will help protect the value of our homes.
- Where are all those people going to go when you tear down those "projects"?
 - We do not need anymore over here.
 - We do not want them over here

COMMENTORS

EVERYONE

- Wealthy suburbanites
- Urbanites
- Rural dwellers
- CDBG qualifying communities
- Men, Women
- White, Black, Other
- Leaders of special interest groups that serve “those” people
- Municipal staff working on programs that serve “those” people but live in “preferred” communities
- Church leaders

MOST COMMON OPPOSITION CONCERNS

Despite more than 25 years of research debunking opposition concerns, they continue to resurface in nearly every conflict about affordable housing:

- Property values
- Crime rates
- Character of the neighborhood will change
- Affordable housing is badly designed and cheaply built and will be unattractive
- Affordable housing contributes to overcrowding of public schools

Property Values: Research Findings

- 2023-A-Mark Foundation report evaluated 11 studies dating from 1993 to 2022. All studies concluded that there was either a positive or neutral impact on property values.
 - 7 of the 11 concluded affordable housing had a positive impact.
 - 4 of the 11 concluded no impact.
 - [https://amarkfoundation.org/wp-content/uploads/2024/03/What Impact Low Income Housing Property Values.pdf](https://amarkfoundation.org/wp-content/uploads/2024/03/What_Impact_Low_Income_Housing_Property_Values.pdf)
- 2022 –Urban Institute briefing concluded that affordable housing developments in Alexandria, Virginia, not only failed to lower property values—but were actually linked to a modest but statistically significant increase
 - <https://www.urban.org/sites/default/files/2022-04/Alexandria%20Affordable%20Housing%20Brief.pdf>

Crime and Affordable Housing: Research Findings

- 2013 City and Community -“Our findings suggest that affordable housing can indeed be developed in an affluent suburban community without increasing social disorganization or producing negative externalities in terms of crime, property values, or taxes.”
 - Albright, Len, et al. “Do Affordable Housing Projects Harm Suburban Communities? Crime, Property Values, and Taxes in Mount Laurel, NJ.” *City & Community*, vol. 12, no. 2, June 2013, pp. 89–112, <https://doi.org/10.1111/cico.12015>

Affordable Housing and Design

- The most prestigious architectural award in the nation—the American Institute of Architects National Honor Award—has been won by affordable housing developments.
 - HomeBase, *Building Inclusive Community* (1996)



Affordable Housing and Schools: Research Findings

- 2024 Shelterforce Report “...American K-12 schools are all facing a looming “enrollment cliff,” that has been coming since well before the pandemic. The National Center for Education Statistics projects enrollment in U.S. elementary and secondary schools will drop by 8 percent between 2019 and 2030. The causes are complex, but stem primarily from falling birth rates... Birthrates dropped notably after the 2008 recession and never picked back up—translating to a projected nationwide decrease in K-12 school enrollment by more than 4 million students between 2019 and 2030”
 - <https://shelterforce.org/2024/12/03/fact-check-new-housing-doesnt-lead-to-overcrowded-schools/>

Zoning and Land Use

Interaction of the Fair Housing Act and Local Zoning Ordinances

- For the past 75 years, local elected officials have used zoning and land use powers to define and maintain the character of urban, suburban and rural communities.
- Historically, local governments had broad latitude in adopting and enforcing local zoning ordinances.
- In passing the Fair Housing Act, Congress said that it intended to remedy discrimination that occurred as a result of the application of local zoning laws.
- For that reason, local zoning ordinances may be challenged if they intentionally discriminate against people of color or people with disabilities, or if they have a harsher impact on those groups.

THE FAIR HOUSING ACT PREEMPTS LOCAL LAWS

- Any state or local law that discriminates on the basis of protected class is invalid under the Fair Housing Act

THE FAIR HOUSING ACT DOES NOT PREEMPT ALL LOCAL ZONING AUTHORITY

- Localities may continue to enact zoning ordinances that...
 - Create single-family districts
 - Preserve open space
 - Prevent overcrowding
 - Promote adequate access to public utilities
- Localities may continue to enact zoning ordinances that...
 - Ensure adequate parking
 - Prevent congestion and mitigate the effects of automobile and other traffic
 - Enforce health and safety regulations and other non-discriminatory laws designed to protect health and safety
- **But** when zoning laws and practices discriminate on the basis of race, color, religion, national origin, sex, familial status or disability, they may be successfully challenged

They Can't
Do That,
Can They?

Community Opposition To Affordable Housing Takes Many Forms

- Decision makers—elected or appointed officials-- who don't want a particular type of housing, or a particular type of person living in the housing.
- The community itself may be the source of the opposition because they object to the kind of housing or the people who are likely to live there.
- The government may impose restrictions or limits that harm development plans, or may treat one development plan differently from another proposal in the planning process, in the funding process, or in granting zoning approvals.
- Often the result of these objections is that the proposed housing development is halted in its tracks, or so restricted that it is not economically or practically feasible.

What the Fair Housing Act Forbids

- Discrimination in housing-related transactions because of race, color, religion, national origin, sex, familial status, or disability
- Refusing to rent or sell, or “otherwise making housing unavailable”
- Differential terms and conditions
- Refusal to make reasonable accommodations (disability only)
- Discriminatory statements/notices/advertisements
- False representation that no housing is available
- “Blockbusting”- persuading owners to sell property cheaply because of the fear of people of another ethnic or social group moving into the neighborhood, and then profiting by reselling at a higher price “Steering”- add definition
- “Steering”-influencing a buyer's choice of communities based upon one of the protected classes under the Fair Housing Act
- Interference, coercion, intimidation against those who have asserted their own Fair Housing Act rights, or those who assist others to assert rights

Other Civil Rights Laws

- The Americans with Disabilities Act (ADA) applies to all “public services” of state and local governments, regardless of whether they receive federal funds. The ADA requires that such services be offered in the “most integrated setting” appropriate for people with disabilities. Several courts have struck down zoning provisions that limit housing for people with disabilities.
- By receiving certain funds, counties, cities and towns are also required to comply with Title VI of the Civil Rights Act (prohibiting discrimination on the basis of race, color and national origin) and Section 504 of the Rehabilitation Act of 1973 (prohibiting discrimination on the basis of disability)
- As a condition of receiving federal financial assistance, such as CDBG and HOME funds, local governments must also take steps to eliminate barriers to fair housing as a means of “affirmatively furthering fair housing.”

LAND USE POLICIES WITH A POSSIBLE DISPARATE* IMPACT

- Density requirements: units per acre, ceilings on number of units
- Prohibition of multifamily housing, tax credit housing, Section 8 housing
- Mandated design and other criteria that result in an extremely high per-unit cost
- Ceiling of 4 unrelated adults in housing

*A discriminatory effect resulting from a seemingly neutral policy or practice that disproportionately harms individuals within a protected class, even if the policy was not intentionally discriminatory

Adverse Zoning Actions That May Indicate a Fair Housing Violation

- There is direct evidence that the real reason may be illegal discrimination
 - Decision-makers, whether elected or appointed, make discriminatory statements
 - Community opposition expresses illegal discrimination and elected officials appear to base their decisions on these sentiments

Adverse Zoning Actions That May Indicate a Fair Housing Violation

- There are departures from usual procedural steps
 - A hearing is scheduled when normally there is no hearing, the comprehensive plan is not followed when it normally is followed, the comprehensive plan is amended
- The usual reasons for accepting or denying similar approvals are not applied
 - New reasons or additional requirements are imposed after community opposition arises or a particular application is submitted
 - Issues that appear to be valid concerns are raised that have never been discussed before

Adverse Zoning Actions That May Indicate a Fair Housing Violation

- Nondiscriminatory race- or national origin-neutral reasons, like traffic, safety, crime rates, impact on public services, are cited without any comprehensive study of their content. They are either not applicable or the study is not accurate or back by data
- Similar housing is not viewed with the same scrutiny as housing that will have a significant minority population, or a significant number of families with children, or a significant number of people with disabilities

Elected Officials Can Be
Held Responsible When
They Adopt And Act on
the Discriminatory Views
of Neighbors

Adopting the Discriminatory Attitude of Community Opponents

- Government decision makers may not make discriminatory decisions in response to the biases of their constituents, even when their constituents demand that they do so
- Government officials must be free to HEAR all opinions, but not to ACT in a discriminatory way

Liability of Local Government Case Law-

- *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926 (2d Cir. 1988)
- *U.S. v. City of Birmingham, Mich.*, 727 F. 2d 560 (6th Cir. 1984)
- *Metropolitan Housing Development Corp. v. Village of Arlington Heights*, 558 F.2d 1283 (7th Cir. 1977), cert. denied, 434 U.S. 1025 (1978)
- Massachusetts City, U.S. Department of Justice Settle Migrant Housing Lawsuit (2005)
- United States v. Borough of Bound Brook (D.N.J., consent order entered March 10, 2004)
- Tsombanidis v. City of West Haven, 129 F. Supp. 2d 136, 150 (D. Conn. 2001)
- *Potomac Group Home v. Montgomery County*, 823 F.Supp. 1285 (D. Md. 1993)
- *Groome Resources, Ltd. v. Parish of Jefferson*, 52 F.Supp.2d 721 (E.D. La. 1999), affirmed 234 F.3d 192 (5th Cir. 2000)
- --*United States v. Schuylkill Township* (E.D. Pa. 1999)
- *Zimmer and United States of America v. Moon Township* (W.D. Pa. 1990)
- United States v. City of Philadelphia (3d Cir. 1994)
- United States v. Village of Palatine (7th Cir. 1994)

Enforcement Options

Local Governments That Are Sued for Civil Rights Violations Should Be Concerned About:

- The cost of defense. Often insurance does not cover defense of a civil rights law suit
- The burden of defense. Involvement in litigation is a time consuming process, and may include time collecting and copying material, meeting with attorneys—sometimes repeatedly—and participating in lengthy, depositions and hearings

Local Governments That Are Sued for Civil Rights Violations Should Be Concerned About:

- The risk of federal government intervention:
 - Including through a lawsuit brought or participated in by the United States Department of Justice under its authority to challenge discriminatory zoning and land use activities
 - Investigation by the United States Department of Housing and Urban Development
- The risk of loss:
 - If a civil rights lawsuit is successful, compensatory damages, punitive damages, attorneys fees and undertaking court ordered remedial action are all expensive to pay for and challenging to undertake

Local Governments That Are Sued for Civil Rights Violations Should Be Concerned About:

- The consequences to future funding:
 - Receipt of federal financial assistance obligate a government body to Fair Housing Act- failure to comply with civil rights laws may threaten current or future funding. HUD has denied funding approvals when civil rights violations have occurred, as demonstrated through a fair housing lawsuit.
- The community consequences:
 - A community that has suffered a long and divisive fight based in discriminatory opposition should be concerned about the emotional damage that such a fight has on a community's long term well being.

NIMBY in Disaster Recovery: A Case Study

Memorial Day 2019 Tornadoes

2019 Memorial Day Tornadoes

- 19 tornadoes ripped through out region damaging nearly 6,000 homes, 1,200 of which were classified as having major damage or being destroyed.
- The tornadoes' path disproportionately impacted low-income neighborhoods where many residents were un- or underinsured.

Tornadoes' Impact on Affordable Rental Housing

- More than 2,100 families were served through disaster case management.
- More than half of the survivors were renters (53%)
- There was a lack of affordable rental housing pre-tornadoes (only 42% of the region's housing is deemed affordable).
- More than 1,500 apartment units were condemned because of the tornadoes. These include several large complexes - Several still lie in complete disrepair and are not being rebuilt by the property owners.
- Many survivors who had been renting were forced to accept substandard housing situations or to relocate out of their home communities.

Emergency Management

- Immediate Impact and Emergencies

Short Term Recovery

- Roads Open, Schools Open

Long Term Recovery

- Rebuilding

CDBG Disaster Recovery

- President visits and tours with Mayor
- \$11MM CDBG DR
- HUD adopted State plan focused 80% of this funding in one zip code
- Funds to OHFA to be paired with multi family projects
- Numerous meetings with City Council, Staff, Community Members
- Work Session with OHFA Staff and City Council
- Community initially supportive of funding and projects
- Three projects totaling 150 units
 - New Library
 - New Courthouse
 - New Goodwill Easter Seals West Campus Community Center

- Historically disinvested area with new investments and amenities
- Lagging retail
- Great opportunity to help revive a part of the community that needs households to support new investment and retail

ELECTIONS HAVE CONSEQUENCES!

- New Mayor and Council ran against these projects
- Only support market rate new home construction
- Do not want the multi family replaced with affordable
- Frank opposition "Don't want those people back."
- Council reverses approval
- Lawsuit
- Settlement