



**BERKELEY CITY COUNCIL LAND USE, HOUSING, & ECONOMIC
DEVELOPMENT COMMITTEE
REGULAR MEETING**

**Thursday, March 4, 2021
10:30 AM**

Committee Members:

Councilmembers Sophie Hahn, Rigel Robinson, and Lori Droste
Alternate: Councilmember Ben Bartlett

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH
VIDEOCONFERENCE AND TELECONFERENCE**

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the City Council Land Use, Housing, & Economic Development Committee will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL <https://us02web.zoom.us/j/88089267316>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen.

To join by phone: Dial **1-669-900-9128 or 1-877-853-5257 (Toll Free)** and Enter Meeting ID: **880 8926 7316**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair.

Written communications submitted by mail or e-mail to the Land Use, Housing, & Economic Development Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record. City offices are currently closed and cannot accept written communications in person.

AGENDA

Roll Call

Public Comment on Non-Agenda Matters

Minutes for Approval – None

Draft minutes for the Committee's consideration and approval.

Committee Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

Committee Action Items

1. **Quadplex Zoning** *(Item contains revised material.)*

From: Councilmember Droste (Author), Councilmember Taplin (Author), Councilmember Kesarwani (Author), Mayor Arreguin (Co-Sponsor)

Referred: February 8, 2021

Due: June 29, 2021

Recommendation: 1. Refer to the City Manager and Planning Commission revisions to the zoning code and General Plan, to require proposed housing developments containing up to 4 residential units to be considered ministerially, if the proposed housing development meets certain requirements but not limited to:

- that the proposed housing development would not require demolition or alteration of housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income,
- that the development is not located within a historic district, is not included in the State Historic Resources Inventory, or is not within a site that is legally designated or listed as a city or county landmark or historic property or district.
- that the development is not located within particularly vulnerable high fire wildfire danger areas, as specified by Cal Fire.

Additional considerations:

- Consider a local affordable housing density bonus for deeper affordability in certain jobs-rich or transit-oriented areas if a certain percentage of the units are affordable to 80% of area median income.
- Conduct a displacement risk analysis and consider possible ways that zoning changes can be crafted to prevent and mitigate negative externalities which could affect tenants and low and moderate-income homeowners.
- Allow for the possibility of existing homes/footprints/zoning envelopes to be divided into up to four units, potentially scaling the floor area ratio (FAR) to increase as the number of units increase onsite, creating homes that are more affordable, saving and lightly modifying an older structure as part of internally dividing it into more than one unit.

Council directs that staff initiate this work immediately and the Planning Commission incorporate zoning reform into its 2021 and 2022 work plan to institute these changes in anticipation of the Housing Element update. Staff and the commission should examine how other cities have prepared for and implemented missing middle housing in Minneapolis, Portland, and Sacramento and conduct extensive community outreach during the course of this update.

Financial Implications: See report

Contact: Lori Droste, Councilmember, District 8, (510) 981-7180

Committee Action Items

2. Tenant Opportunity to Purchase Act, Adding BMC Chapter 13.89

From: Mayor Arreguin (Author)

Referred: February 24, 2020

Due: April 20, 2021

Recommendation: 1. Adopt a first reading of an ordinance adding Berkeley Municipal Code Chapter 13.89, the Tenant Opportunity to Purchase Act (TOPA), that will take effect on final adoption with an implementation start upon completion of Administrative Regulations and funding of related program costs; and
2. Direct the City Manager to take all necessary steps to implement this chapter including, but not limited to:

1. Developing Administrative Regulations;
2. Preparing an implementation strategy;
3. Identifying resources to align databases from Finance, Planning, and the Rent Board to accurately reflect the properties that would be subject to TOPA;
4. Determining necessary staffing for program administration and hearing officers for adjudication;
5. Timelines for project “roll-out”;
6. Determining appropriate amount of funding needed to support the acquisition of TOPA properties and recommending possible funding sources;
7. Quantifying an annual program budget and referring such program costs to the June 2020 Budget process.

Financial Implications: See report

Contact: Jesse Arreguin, Mayor, (510) 981-7100

Committee Action Items

3. **Resolution Recognizing Housing as Human Right; Referring City Manager to Study Financial Feasibility of Municipal Housing Development Pilot Program with Cooperative, Nonprofit, and Public Ownership Models, Administered as Automatic Stabilizers to Guarantee Adequate Housing** *(Item contains revised material.)*

From: Councilmember Taplin (Author), Mayor Arreguin (Co-Sponsor), Councilmember Harrison (co-sponsor), Councilmember Hahn (Co-Sponsor)

Referred: February 8, 2021

Due: June 29, 2021

Recommendation:

Refer the City Manager's office to study the financial feasibility of a municipal housing development pilot program administering automatic stabilizers to guarantee adequate housing security in Berkeley, with regular community input and periodic monitoring of socioeconomic indicators. Pilot program feasibility study shall include, but not be limited to:

1. Feasibility study of public lands suitable mixed-income transit-oriented housing development identified in 2017 Analysis of City-Owned Lands and zoning changes needed for affordable housing at listed sites to address all income categories in upcoming Regional Housing Needs Allocation (RHNA) cycle;
2. Pilot program to establish a Reparative Justice Revolving Loan Fund with affirmative racial justice and anti-displacement goals, providing low-interest loans for tenants, nonprofits, limited-equity co-operatives, and community land trusts to acquire, develop, and/or maintain permanently affordable housing.
3. Pilot program to establish publicly available, user-friendly data dashboard monitoring Housing Justice Indicators in the city including, but not limited to, (a) health and safety standards, (b) affordability, (c) stability, and (d) discrimination and disparate impacts under US Department of Housing and Urban Development's Affirmatively Furthering Fair Housing (AFFH) rule; aligning Indicators with thresholds for corrective actions including land-use policy review and fiscal analysis.
4. State and regional partnerships with the California Department of Housing and Community Development, the Metropolitan Transportation Commission (MTC) and Association of Bay Area Governments (ABAG), UC Berkeley, and Bay Area Rapid Transit to develop fiscally resilient mixed-income housing and community reinvestment through land held in public trust and/or limited-equity cooperatives and community land trusts.

Financial Implications: See report

Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Committee Action Items

4. Affordable Housing Overlay

From: Councilmember Taplin (Author), Councilmember Bartlett (Co-Sponsor), Councilmember Robinson (Co-Sponsor)

Referred: February 22, 2021

Due: July 12, 2021

Recommendation: Refer to the City Manager and Planning Commission revisions to the zoning code and General Plan, permitting increased height and density for 100% affordable housing developments, including but not limited to:

1. Exceeding standards set forth in California Government Code Section 65915 with additional height and density incentives for qualifying 100% affordable projects deed-restricted for low- and moderate-income households, including:

a. An additional 33' local density bonus for qualifying projects with low- and moderate-income units deed-restricted for households earning up to 100% of Area Median Income, aiming to maximize total unit count restricted for Very Low and Extremely Low Income households;

b. Expanding waiver of density limits, including units per acre and floor area ratio, for transit-adjacent projects to include all parcels within one half mile of a commuter rail station, and within 1/4 mile of an AC Transit bus route with 7-day service in Fiscal Year 2019;

c. Reduced density limits for projects outside of transit proximity threshold with additional Transportation Demand Management (TDM) policies, including bike parking, paratransit and shared micro-mobility systems;

d. Ministerial approval of all qualifying projects meeting objective design criteria and union labor requirements;

e. Exempting parcels with Designated Historic Landmarks and maintaining demolition restrictions consistent with state law.

2. Ministerial approval for a baseline of 76' for 100% affordable residential dwelling units in all commercial zones, and provisions for ground-floor retail and/or live-work space;

3. In R-1, R-1A and R-2 zones, provide ministerial approval for a 10' local density bonus for 100% affordable housing, with waived density requirements for dwelling units per acre and lot coverage. On parcels within high-risk wildfire zones as determined by the California Department of Forestry and Fire Protection (CalFire), ministerial approval for 100% affordable projects should be contingent on fire-blocking design and defensible space standards certified by the Planning Department.

Council directs the Planning Commission and staff to codify an Affordable Housing Overlay for 100% affordable housing as specified above in 2021-2022 work plans in anticipation of 2023-2031 RHNA targets. Staff and the commission should build upon the framework established in Government Code Section 65915 as well as municipal implementations of Affordable Housing Overlays in other states, such as Cambridge and Somerville, MA.

Financial Implications: See report

Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

- 5. Amendments to Berkeley Municipal Code 23C.22: Short Term Rentals**
From: Councilmember Harrison (Author)
Referred: July 28, 2020
Due: September 30, 2021
Recommendation: Amend Berkeley Municipal Code 23C.22: Short Term Rentals to clarify the ordinance and insure adequate host responsibilities, tenant protections and remedies for violating the ordinance.
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Items for Future Agendas

- Discussion of items to be added to future agendas

Adjournment

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*Written communications addressed to the Land Use, Housing & Economic Development Committee and submitted to the City Clerk Department will be distributed to the Committee prior to the meeting.*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Members of the City Council who are not members of the standing committee may attend a standing committee meeting even if it results in a quorum being present, provided that the non-members only act as observers and do not participate in the meeting. If only one member of the Council who is not a member of the committee is present for the meeting, the member may participate in the meeting because less than a quorum of the full Council is present. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900.*



### COMMUNICATION ACCESS INFORMATION:

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date.

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I hereby certify that the agenda for this meeting of the Standing Committee of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on February 25, 2021.



Mark Numainville, City Clerk

Communications

Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA, and are available upon request by contacting the City Clerk Department at (510) 981-6908 or policycommittee@cityofberkeley.info.



Lori Droste
Vice Mayor, District 8

SUPPLEMENTAL AGENDA MATERIAL

For the Land Use and Economic Development Policy Committee

Meeting Date: February 18, 2021

Item Number: 2

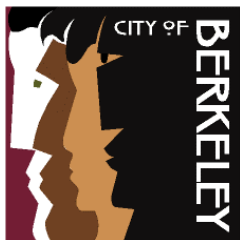
Submitted by: Vice Mayor Lori Droste

The recommendation has been amended to:

1. Clarify which Berkeley high wildfire zones (ES-R) will be exempt because CalFire zones do not align with Berkeley fire zones.
2. Make explicit tenant protections that currently exist under state and local regulations will still apply and added language to provide further tenant protections under this measure.
3. Provided additional language to address potential alternatives or incentives to capture more affordability.

Non-substantive or background edits:

4. Change the title to “Inclusive Neighborhood Scale Zoning”
5. Minor background edits as it relates to:
 - a. RHNA allocations
 - b. Neighborhood Preservation Ordinance
 - c. Research on housing prices
 - d. Recent discourse on exclusionary zoning
 - e. American Community Survey data showing building age and median income.
 - f. Links to articles on zoning history



Lori Droste
Vice Mayor, District 8

ACTION CALENDAR
March XX, 2021

To: Honorable Mayor and Members of the City Council

From: Vice Mayor Lori Droste, Councilmember Terry Taplin, Councilmember Rashi Kesarwani **and Mayor Jesse Arreguín**

Subject: Inclusive Neighborhood Scale Zoning

RECOMMENDATION
RECOMMENDATION

Refer to the City Manager and Planning Commission to develop and recommend revisions to the zoning code and General Plan, to permit developments of up to 4 residential units in all residential zoning districts, except in the ES-R District, and subject to the requirements below.

Proposed housing developments containing up to four residential units may be approved ministerially, if the proposed housing development meets certain requirements/limitations including but not limited to:

- that the proposed housing development would not require demolition or elimination of housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income, (i.e. subsidized affordable units, inclusionary housing or units under Section 8 contract) or units subject to Berkeley's Rent Stabilization and Eviction for Good Cause Ordinance.

- that the development is not located within a historic district, is not included in the State Historic Resources Inventory, or is not within a site that is legally designated or listed as a city or county landmark or historic property or district.
- ~~that the development is not located within particularly vulnerable high fire wildfire danger areas, as specified by Cal Fire.~~
- expanded and permanent tenant protections pursuant to Government Code 66300¹, including but not limited to increased relocation payments and conferring right-to-return and relocation benefits to tenants not covered by Berkeley's Rent Stabilization Ordinance.
- projects involving the demolition of an existing tenant-occupied single family home or multi-unit property to create a four-unit project shall be subject to the city's Demolition Ordinance, BMC Chapter 23C.08.

Additional anti-displacement, affordability, and design considerations:

- Consider a local affordable housing density bonus for deeper affordability in certain jobs-rich or transit-oriented areas if a certain percentage or number of the units are affordable to 80% or less of area median income² or further zoning incentives in exchange for capturing additional affordability in the form of fees or units, including waiving or increasing certain lot development standards.
- Prohibit ministerial approval of a 4-unit project if the building was removed from the rental market under the Ellis Act during the preceding five (5) years or there have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years.
- Require notice be provided to tenants of an application for demolition, elimination or consolidation of units to create a 4-unit project (notice is not required if the project is ministerially approved).
- Conduct a displacement risk analysis and consider possible ways that zoning changes can be crafted to prevent and mitigate negative externalities which could affect tenants and low and moderate-income homeowners.

¹https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=1.&title=7.&part=&chapter=12.&article=

² Jobs-rich and transit-oriented definitions should be defined by the Planning Commission in consultation with staff.

- Allow for the possibility of existing homes/footprints/zoning envelopes to be divided into up to four units, potentially scaling the floor area ratio (FAR) to increase as the number of units increase onsite, creating homes that are more affordable, saving and lightly modifying an older structure as part of internally dividing it into more than one unit.³
- Consider permitting a variety of building types (attached, detached, etc.) to maximize potential opportunities for homeownership.

Council directs that staff initiate this work immediately and the Planning Commission incorporate zoning reform into its 2021 and 2022 work plan to institute these changes in anticipation of the Housing Element update. Staff and the commission should examine how other cities have prepared for and implemented missing middle housing in Minneapolis, Portland, and Sacramento and conduct extensive community outreach during the course of this update. In addition, Planning staff is encouraged to seek regional and state funding to support this work.

CURRENT PROBLEM AND ITS EFFECTS

The nine-county Bay Area region is facing an extreme shortage of homes that are affordable for working families. The Metropolitan Transportation Commission illustrates the job-housing imbalance in a report showing that only one home is added for every 3.5 jobs created in the Bay Area region.⁴ Governor Gavin Newsom has called for a “Marshall Plan for affordable housing” and has pledged to create millions of more homes in California to tackle the state’s affordability and homelessness crisis.

In Berkeley, the median sale price of a home is \$1.4 million (as of December 2020)—an increase of 56% over the median sale price in December 2015 of \$895,000.⁵ These escalating costs coincided with an increase of 14% in Berkeley’s homeless population from 2017 to 2019, and a 34% increase from 2015 to 2019 point-in-time counts.⁶ These skyrocketing housing costs put extreme pressure on low-, moderate- and middle-income households, as they are forced to spend an increasing percentage share of their income on housing (leaving less for other necessities like food and medicine), live in overcrowded conditions, or endure super-commutes of 90 minutes or more in order to make ends meet.

Low-Income Households Cannot Afford to Live in Berkeley

³ City of Portland, <https://www.portlandoregon.gov/bps/article/711691>

⁴ Metropolitan Transportation Commission, 2018. <http://www.vitalsigns.mtc.ca.gov/>

⁵ Berkeley Home Prices and Values, <https://www.zillow.com/berkeley-ca/home-values/>

⁶ https://everyonehome.org/wp-content/uploads/2019/09/2019HIRDReport_Berkeley_2019-Final.pdf

Recently, low-income households experienced the greatest increases in rent as a portion of their monthly income. The U.S. Department of Housing and Urban Development (HUD) defines "affordable" as housing that costs no more than 30 percent of a household's monthly income. Households are considered to be "rent burdened" when more than a third of their income goes toward housing costs. In Alameda County, "Although rent burden increased across all income groups, it rose most substantially for low- and very low-income households. In both 2000 and 2015, extremely low-income renters were by far the most likely to experience severe rent burden, with nearly three quarters spending more than half their income on rent."⁷

Although residents of Berkeley passed Measure O which will substantially increase funding for affordable housing, low-income units are increasingly expensive to create. Low-income housing units typically cost well over \$500,000 to create and the demand for this type of affordable/subsidized housing exceeds the supply.⁸ Without a substantial additional increase in funding for affordable housing, the City will be increasingly challenged to create enough subsidized housing to meet the demand. For example, roughly 700 seniors applied for the 42 affordable/subsidized units at Harpers Crossings in Berkeley. This project cost \$18 million to build.⁹ While Berkeley should continue to support subsidized housing, subsidized housing alone is insufficient to address the growing housing and homelessness crisis.

Middle-Income Households Can't Afford to Live in Berkeley

In the Bay Area, those earning middle incomes are facing similar challenges in finding affordable homes. The Pew Research Center classifies middle income households as those with "adults whose annual household income is two-thirds to double the national median." In 2018, middle income households were those earning approximately \$48,500 to \$145,500 for a household of three.¹⁰ According to the Pew Research Center, "The San Francisco-Oakland-Hayward metropolitan area in California is one of the most expensive areas, with a price level that was 31.6% higher than the national average. Thus, to step over the national middle-class threshold of \$48,500... a household in the San Francisco area needs a reported income of about \$63,800, or 31.6% more than the U.S. norm, to join the middle class."¹¹

⁷ Zuk, M., & Chapple, K. (2015). Urban Displacement Project.

http://www.urbandisplacement.org/sites/default/files/images/alameda_final.pdf

⁸ "The Cost of Building Housing" *The Turner Center* <https://turnercenter.berkeley.edu/construction-costs-series>

⁹ Flood, Lucy. (1/18/2018). "Berkeley low-income seniors get a fresh start at Harper Crossing."

<https://www.berkeleyside.com/2018/01/18/berkeley-low-income-seniors-get-fresh-start-harper-crossing>

¹⁰ <https://www.pewresearch.org/fact-tank/2020/07/23/are-you-in-the-american-middle-class/>

¹¹ <https://www.pewresearch.org/fact-tank/2020/07/23/are-you-in-the-american-middle-class/>

In the Bay Area, a family currently has to earn \$200,000 annually to afford the principal, interest, taxes and insurance payments on a median-priced home in the Bay Area (assuming they can pay 20 percent of the median home price of \$1.4 million up front).¹² This means that many City of Berkeley employees couldn't afford to live where they work: a fire captain (making \$144,000) with a stay at home spouse wouldn't be able to afford a home. Even a firefighter (earning \$112,000 annually) and a groundskeeper (making \$64,000), or two librarians (making \$89,000 each) couldn't buy a house.¹³

Berkeley Unified School District employees have recently been advocating for teacher housing. Unfortunately, the housing options for teachers are insufficient for the overwhelming need. According to a recent Berkeley Unified School District (BUSD) survey, 69% of teachers or staff who rent believe that high housing costs will impact their ability to retain their BUSD positions.¹⁴ Since individual K-12 teacher salaries average ~\$75,962,¹⁵ the majority of teachers are not classified as low-income (<\$62,750), according to Housing and Urban Development guidelines. As a result, many cannot qualify for affordable housing units. Since middle-income individuals and families can't qualify for affordable housing units and very few subsidies are available to help, the vast majority have to rely on non-governmental subsidized methods and the private market to live in the Bay Area.

Families Are Struggling to Live in Berkeley

Many families are fleeing the Bay Area due to the high cost of living. According to a study by the Turner Center for Housing Innovation, the income and racial patterns of out-migration and in-migration indicate that "the region risks backsliding on inclusion and diversity and displacing its economically vulnerable and minority residents to areas of more limited opportunity."¹⁶ Rent for a two-bedroom apartment in Berkeley costs approximately \$2,070/month¹⁷ while the median child care cost in Alameda County is \$1,824 a month, an increase of 36% in the past four years.¹⁸ Consequently, many families are paying well over \$60,000 for living and childcare expenses alone.

¹² "The salary you must earn to buy a home in the 50 largest metros" (10/14/2018). HSH.com <https://www.hsh.com/finance/mortgage/salary-home-buying-25-cities.html#>

¹³ City of Berkeley Human Resources, "Job Descriptions" <http://agency.governmentjobs.com/berkeley/default.cfm?action=agencyspecs&agencyID=1568>

¹⁴ Berkeley Unified School District, "Recommendation for District-Owned Rental Housing for Employees", <https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Aascds%3AUS%3Adfd74865-9541-4ff8-b6a6-4dcbd30acdc3>

¹⁵ Education Data Partnership, "Teacher Salaries" <http://www.ed-data.org/district/Alameda/Berkeley-Unified>

¹⁶ Romem, Issa and Elizabeth Kneebone, 2018. "Disparity in Departure: Who Leaves the Bay Area and Where Do They Go?" <https://turnercenter.berkeley.edu/disparity-in-departure>

¹⁷ Berkeley Rentals, <https://www.zumper.com/blog/san-francisco-bay-area-metro-report/>

¹⁸ D'Souza, Karen, 2/3/19. "You think Bay Area housing is expensive? Child care costs are rising, too." <https://www.mercurynews.com/2019/02/03/you-think-bay-area-housing-is-expensive-childcare-costs-are-rising-too/amp/>

Homelessness is on the Rise in the Bay Area

High housing costs also lead to California having among the highest rates of poverty in the nation at 19%.¹⁹ Consequently, homelessness is on the rise throughout California. The Bay Area has one of the largest and least-sheltered homeless populations in North America.²⁰ The proliferation of homeless encampments—from select urban neighborhoods to locations across the region—is the most visible manifestation of the Bay Area’s extreme housing affordability crisis. According to the 2019 point-in-time count, Berkeley had approximately 1,108 individuals experiencing homelessness on any given night.²¹ In order to act in accordance with best practices research on alleviating homelessness and help homeless individuals get housed, the City needs to create more homes.²² Tighter housing markets are associated with higher rates of homelessness, indicating that the creation of additional housing for all income levels is key to mitigating the crisis.²³ In the 1,000 Person Plan to Address Homelessness, Berkeley’s Health, Housing and Community Services staff also recommend that Council prioritizes “implementing changes to Berkeley’s Land Use, Zoning, Development Review Requirements for new housing with an eye toward alleviating homelessness.”

BACKGROUND

In 2019, Councilmembers Lori Droste, Ben Bartlett, Rashi Kesarwani and Rigel Robinson introduced Missing Middle Housing legislation in order to facilitate the construction of naturally affordable missing middle housing. Missing middle housing refers to small multi-unit buildings that are compatible in scale with single-family neighborhoods. The final legislation passed by Council was an agreement to **study** how the City of Berkeley can incorporate varying building types throughout Berkeley and address exclusionary zoning practices. While the entire City Council voted unanimously to study this, the COVID-19 pandemic led to budget cuts which would have funded such a study. In July of 2020, Berkeley City Council additionally supported Senate Bill 902,

¹⁹ The U.S. Census The Supplemental Poverty Measure adjusts thresholds based on cost of living indexes.

²⁰ SPUR: Ideas and Action for a Better City. “Homelessness in the Bay Area: Solving the problem of homelessness is arguably our region’s greatest challenge.” Molly Turner, Urbanist Article, October 23, 2017 <https://www.spur.org/publications/urbanist-article/2017-10-23/homelessness-bay-area>

²¹ Berkeley Homeless Point-in-Time Count and Survey Data, 2019. https://everyonehome.org/wp-content/uploads/2019/09/2019HIRDReport_Berkeley_2019-Final.pdf

²² United States Interagency Council on Homelessness “The Evidence behind Approaches that Drive an End to Homelessness” December 2017, https://www.usich.gov/resources/uploads/asset_library/evidence-behind-approaches-that-end-homelessness.pdf

²³ *Homeless in America, Homeless in California*. John M. Quigley, Steven Raphael, and Eugene Smolensky. The Review of Economics and Statistics, February 2001, 83(1): 37–51 © 2001 by the President and Fellows of Harvard College and the Massachusetts Institute of Technology. https://urbanpolicy.berkeley.edu/pdf/qrs_restat01pb.pdf

which would have allowed missing middle housing in transit-oriented or jobs-rich areas.²⁴

Regional Housing Needs Goals

In January of 2021, the Association of Bay Area Governments passed new Regional Housing Needs Allocations for the Bay Area. As a result, Berkeley will have to plan for approximately 8,900 homes. This is a significant increase over the previous years. As a result, Berkeley **must** zone for significantly more housing. One way Berkeley can address this proposed increase is to allow quadplexes throughout Berkeley and undo the legacy of exclusionary zoning. **While zoning for four units will not meet the city's assigned Regional Housing Needs Allocations, it is important for the entire city to contribute to the final zoned capacity of approximately 9,000 units and not concentrate these zoning changes in certain parts of the city.**²⁵

Quadplexes

What are quadplexes?

Quadplexes are:

1. A type of missing middle housing that has up to four units within a structure that is often similar in size, scale, and design to a large single-family home.
2. Housing types that are naturally affordable and less expensive than most housing options available within Berkeley.

The current housing market has led to “barbell” housing delivery. That is, new units tend to be highly-priced (market rate or luxury) or highly subsidized (affordable).

Consequently, the majority of the population can't access quadplexes and other missing middle units because the dearth of funding, scarcity of land, and high construction costs impose challenges on viability. One study found that individuals trying to create missing middle housing cannot compete financially with larger projects in areas zoned for higher density, noting “many smaller developers have difficulty obtaining the necessary resources, including the competitive funding, required to offset the high initial per-unit development costs, and larger developers with deeper pockets and more experience navigating complex regulatory systems will almost always opt to build projects that are large enough to achieve the bulk per-unit development rate.”²⁶

²⁴https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/07-28_Annotated_Agenda_pdf.aspx

²⁵ Association of Bay Area Governments, “Draft 2023-2031 RHNA Methodology”, January 2021. <https://mtc.legistar.com/View.ashx?M=F&ID=9072762&GUID=41EF088E-3326-4D6E-9984-04A4F053AC78>

²⁶ The Montgomery Planning Dept., “The Missing Middle Housing Study,” September 2018. http://montgomeryplanning.org/wp-content/uploads/2018/09/MissingMiddleHousingStudy_9-2018.pdf

Additionally, missing middle housing is not permitted in areas zoned R1 (single family family and one accessory dwelling unit only), R1A (limited two family), and R2 (restricted two family). Other factors that may prevent the creation of missing middle housing include lot coverage ratios and setback and parking requirements.²⁷

According to the U.S. Census American Community Survey, newly built missing middle housing like duplexes and quadplexes more often houses middle and lower income families in Berkeley, while single-family homes, no matter what year built, are exclusively higher income.

Median household income, Berkeley & Albany, by building age & type					
	Pre-1950	1950-1969	1970-1989	1990-2004	2005-
Single-family detached	148,590	139,295	107,081	131,004	148,835
Single-family attached	84,903	126,930	96,233	167,025	134,460
2-4 units	79,012	63,973	53,335	45,403	48,691
5-19 units	46,037	41,104	39,811	42,243	27,950
20+ units	25,628	42,319	41,387	23,585	40,518

Source: American Community Survey, 2014-18, Public Use Microdata Set, US Census.

Quadplexes generally have small- to medium-sized footprints and are often two stories or less, allowing them to blend into the existing neighborhood while still encouraging greater socioeconomic diversity. One home within a quadplex is undeniably less expensive than comparable single family homes, leading to greater accessibility to those earning median, middle, or lower incomes. The median price of a single family home in Berkeley is \$1.4 million, which is out of reach for the majority of working people.²⁸ While some may erroneously argue that the *only* way to address the needs of low- or moderate- income families is to provide subsidized housing, ample research indicates this is not the case because the distribution of land costs can be spread across multiple units and construction costs are lower. Approximately half of Berkeley’s housing stock consists of single family units²⁹ and more than half of Berkeley’s residential land is zoned in ways that preclude most quadplexes. As a result, today, mainly wealthy households can afford homes in Berkeley.

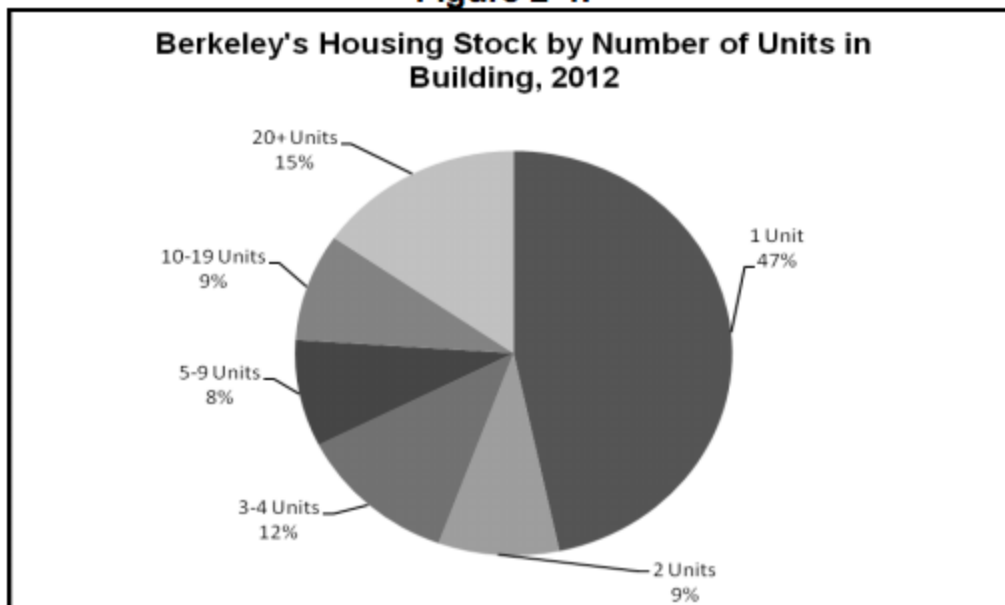
²⁷ Ibid.

²⁸ Berkeley Home Prices and Values, <https://www.zillow.com/berkeley-ca/home-values/>

²⁹ City of Berkeley 2015 -2023 Housing Element.

https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2015-2023%20Berkeley%20Housing%20Element_FINAL.pdf

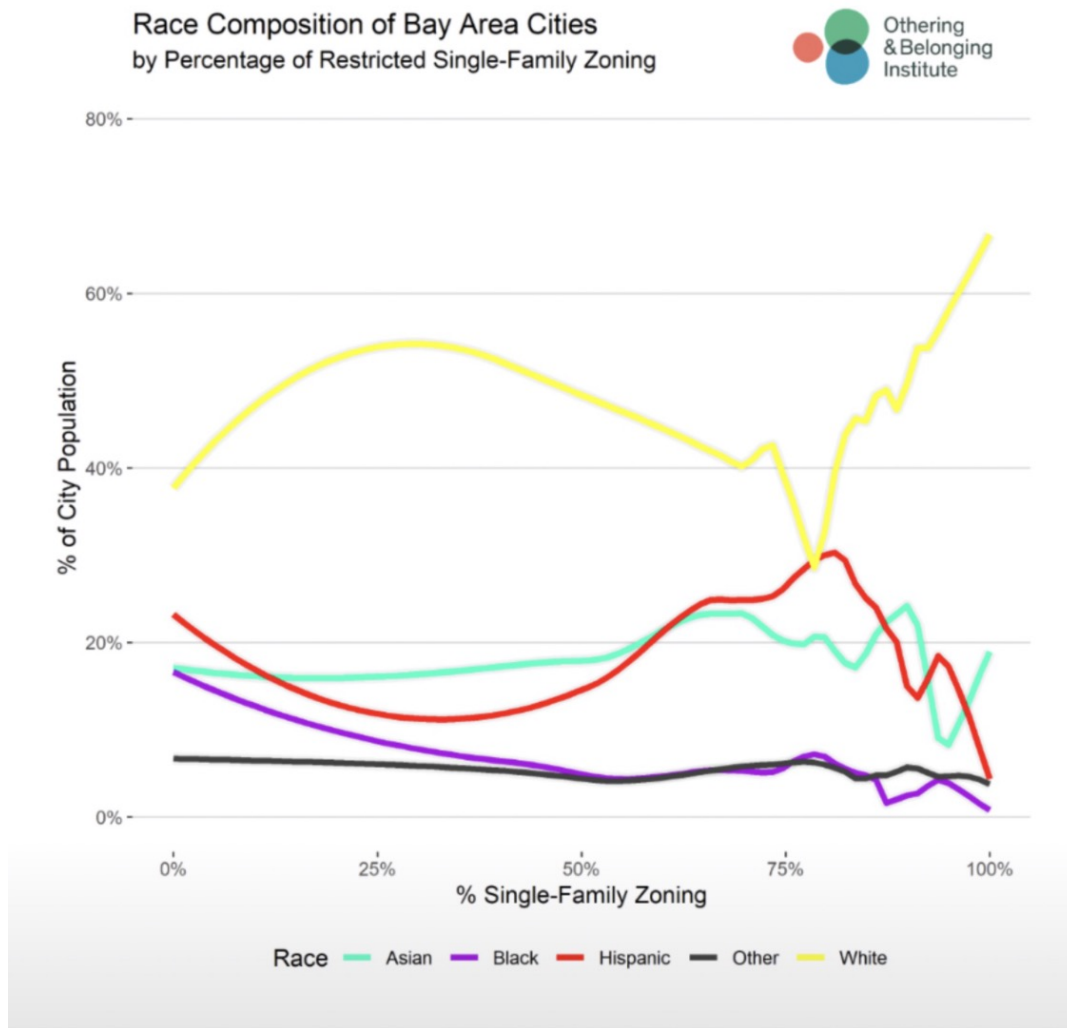
Figure 2-4:



Source: US Census, ACS 2008-2012 5-Year Estimate., Table B25024

These types of homes exist in every district of Berkeley, having been built before they were banned in districts only allowing single family homes. Quadplexes were severely limited in other districts by zoning changes initiated in 1973 with the Neighborhood Preservation Ordinance. Regardless of the original intent of the Neighborhood Preservation Ordinance, the effect of this citizen-led measure was to downzone large swaths of Berkeley. Downzoning meant that fewer housing units were allowed to be built in Berkeley over the past 47 years. Many scholars have studied the effect of land use policies and have concluded that downzoning leads to higher housing costs and economic and racial segregation.³⁰

³⁰ Lens, Michael and Paavo Monkonnen. (2015). "Do Strict Land Use Regulations Make Metropolitan Areas More Segregated by Income?" <https://www.tandfonline.com/doi/full/10.1080/01944363.2015.1111163#abstract>



History of Exclusionary Zoning, Racial and Economic Segregation, and Current Zoning

Single family residential zoning was born in Berkeley in the Elmwood neighborhood in 1916. This zoning regulation forbade the construction of anything other than one home per lot. In 1915, Berkeley’s City Attorney Frank V. Cornish wrote, “Apartment houses are the bane of the owner of the single family dwelling” while the consultant who penned Berkeley’s zoning ordinance stated, “[The] great principle of protecting the home against the intrusion of the less desirable and floating renter class.”³¹ Subsequently, the Mason McDuffie Company’s use of Berkeley’s zoning laws and racially-restrictive

³¹ Frank V. Cornish. “The Legal Status of Zone Ordinances” and Charles Cheney. “The Necessity for a Zone Ordinance in Berkeley.” Berkeley Civic Bulletin, May 18, 1915.

property deeds and covenants prevented Black, Indigenous, and People of Color from purchasing or leasing property in east Berkeley.³²

Mason-McDuffie race-restrictive covenants stated, “if prior to the first day of January 1930 any person of African or Mongolian descent shall be allowed to purchase or lease said property or any part thereof, then this conveyance shall be and become void...”³³ In 1916, McDuffie began lobbying for the exclusionary zoning ordinances in Berkeley to protect against the “disastrous effects of uncontrolled development”³⁴ and restrict Chinese laundromats and African American dance halls, particularly in the Elmwood and Claremont neighborhoods.³⁵

After *Buchanan v. Warley* in 1917, explicit racially restrictive zoning became illegal. However, consideration to maintaining the character of districts became paramount and Mason-McDuffie contracts still stipulated that property owners must be white.

In 1933, the federal government created a Home Owners Loan Corporation (HOLC), which produced residential maps of neighborhoods to identify mortgage lending risks for real estate agents, lenders, etc. These maps were based on racial composition, quality of housing stock, access to amenities, etc. and were color coded to identify best (green), still desirable (blue), definitely declining (yellow), and hazardous (red) neighborhoods. These maps enabled discriminatory lending practices (later called ‘redlining’) and allowed lenders to enforce local segregation standards.³⁶

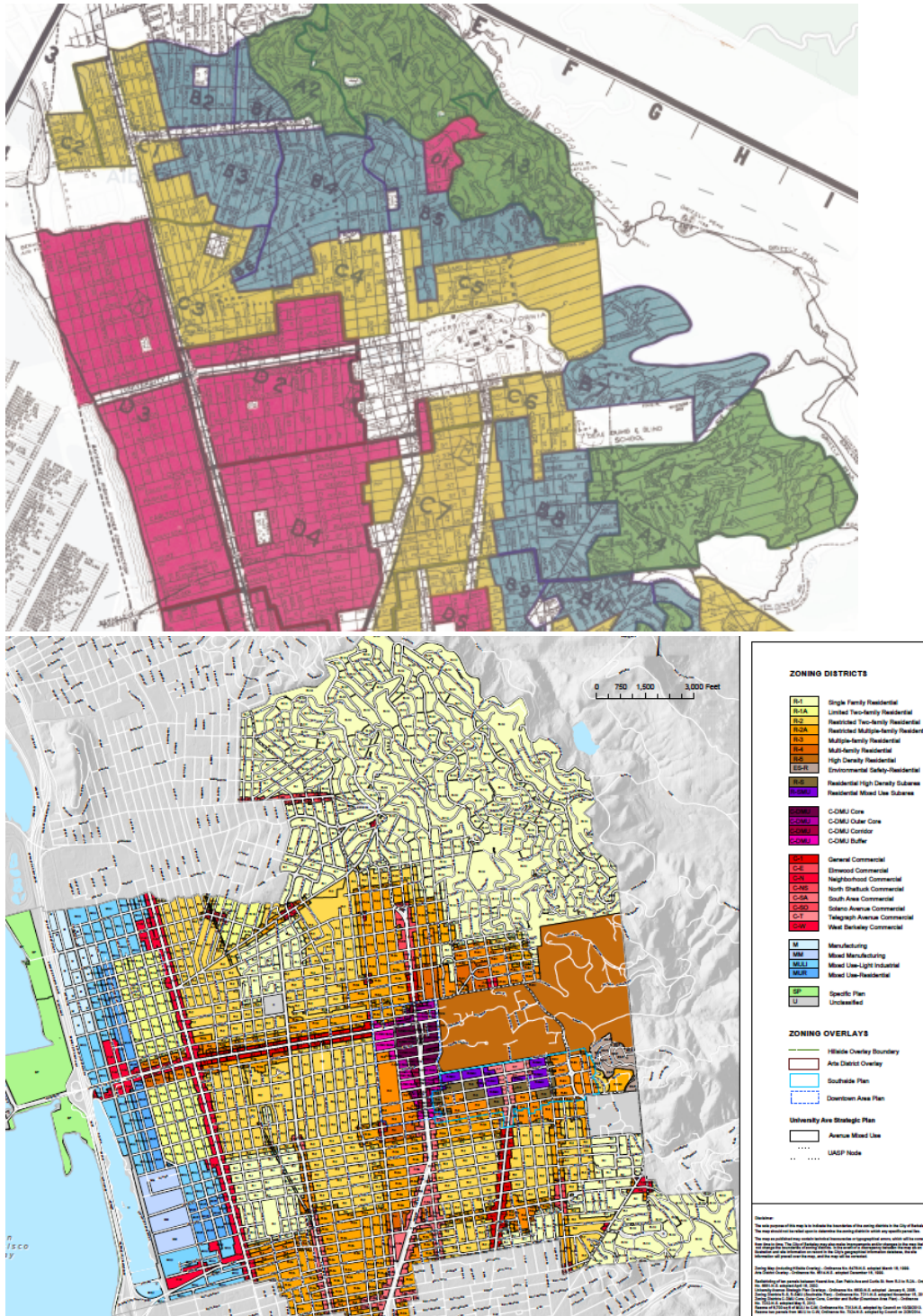
³² Wollenberg, *Berkeley, A City in History*, 2008.

³³ Claremont Park Company Indenture, 1910

³⁴ Lory, Maya Tulip. “A History of Racial Segregation, 1878–1960.” *The Concord Review*, 2013. <http://www.schoolinfosystem.org/pdf/2014/06/04SegregationinCA24-2.pdf>

³⁵ Weiss, M. A. (1986). Urban Land Developers and the Origins of Zoning Laws: The Case of Berkeley. *Berkeley Planning Journal*, 3(1). Retrieved from <https://escholarship.org/uc/item/26b8d8zh>

³⁶ NCRC Opening Doors to Economic Opportunity, “HOLC “REDLINING” MAPS: The persistent structure of segregation and economic inequality.” Bruce Mitchell and Juan Franco. https://ncrc.org/wp-content/uploads/dlm_uploads/2018/02/NCRC-Research-HOLC-10.pdf



The images above compare a HOLC-era (Thomas Bros Map) map of Berkeley with a current zoning map. Neighborhoods identified as “best” in green on the HOLC-era map typically remain zoned as single family residential areas today. Red ‘hazardous’ neighborhoods in the first map are now largely zoned as manufacturing, mixed use, light industrial, or limited two family residential.³⁷

³⁷ Robert K. Nelson, LaDale Winling, Richard Marciano, Nathan Connolly, et al., “Mapping Inequality,” American Panorama, ed. Robert K. Nelson and Edward L. Ayers, <https://dsl.richmond.edu/panorama/redlining/#loc=10/37.8201/-122.4399&opacity=0.8&sort=17&city=oakland-ca&adview=full>

Prior to the 1970s and the passage of the Neighborhood Preservation Ordinance, a variety of missing middle housing --duplexes, triplexes, and other smaller multi-unit building typologies-- was still being produced and made available to families throughout the Bay Area, particularly in Berkeley. In 1973, the residents of Berkeley passed the Neighborhood Preservation Ordinance which restricted multi-unit housing in certain parts of Berkeley. As Councilmember Ben Bartlett and Yelda Bartlett wrote in their 2017 *Berkeleyside* op-ed, the neighborhood preservation ordinance “[the Neighborhood Preservation Ordinance] did not mention race, but instead tried to preserve ‘neighborhood character.’ As a result, from 1970 to 2000, fewer than 600 dwelling units were built in Berkeley. Areas zoned for single family residential (R-1), limited two-family residential (R-1A), and restricted two-family residential (R-2) are now some of the most expensive parts of our city—especially on a per-unit basis.”³⁸

Until 1984, Martin Luther King Jr Way was known as Grove Street. For decades, Grove Street created a wall of segregation down the center of Berkeley. Asian-Americans and African-Americans could not live east of Grove Street due to race-restrictive covenants that barred them from purchasing or leasing property. While race-restrictive covenants no longer prohibit individuals from purchasing or leasing homes, most cities still retain the vestiges of exclusionary zoning practices.

The UC Othring and Belonging Institute recently released a study on racial segregation and zoning practices which revealed that 83% of residential land in the Bay Area is zoned for single family homes.³⁹ The authors found that the ramifications of such zoning practices leads to a greater percentage of white residents, as recounted in KQED’s “The Racist History of Single Family Zoning.”⁴⁰ By banning less expensive housing options, such as duplexes, tri-/four-plexes, courtyard apartments, bungalow courts, and townhouses, in low-density, “desirable” places in Berkeley, the current zoning map dictates that only wealthier families will be able to live or rent in certain parts of Berkeley, mainly in North and East Berkeley. Today, with the median home sale price at \$1.3 million⁴¹ and the typical White family having eight times the wealth of the typical Black family,⁴² this de-facto form of segregation is even more pronounced. *Missing*

³⁸<https://www.berkeleyside.com/2017/06/13/opinion-berkeleys-zoning-laws-wall-off-communities-color-seniors-low-income-people-others>

³⁹Racial Segregation in the San Francisco Bay Area (2020) UC Othring and Belonging Institute. <https://belonging.berkeley.edu/racial-segregation-san-francisco-bay-area-part-5>

⁴⁰ <https://www.kqed.org/news/11840548/the-racist-history-of-single-family-home-zoning>

⁴¹ Berkeley, CA Real Estate Market (2021). https://www.realtor.com/realestateandhomes-search/Berkeley_CA/overview

⁴² Survey of Consumer Finances (2020). Federal Reserve. <https://www.federalreserve.gov/econres/scfindex.htm>

middle housing can directly benefit those harmed by this modern-day exclusionary zoning practice that perpetuates socioeconomic and racial segregation.

According to the data mapped by UC Berkeley's Urban Displacement Project, most of the low-income tracts in Berkeley are at-risk or have ongoing displacement and gentrification. Higher-income tracts in Berkeley are classified as 'at-risk of exclusion', currently feature 'ongoing exclusion', or are at stages of 'advanced exclusion'. Degrees of exclusion are measured by a combination of data: the loss of low-income households over time, presence of high income households, being considered in a 'hot housing market,' and migration patterns. The Urban Displacement Project's findings indicate that exclusion is more prevalent than gentrification in the Bay Area.⁴³ While Berkeley has created policies and designated funding to prevent gentrification, policies that focus on preventing exclusion have lagged.

University of California-Berkeley Professor Karen Chapple, anti-displacement expert and director of the Urban Displacement Project, stated that "the Urban Displacement Project has established a direct connection between the neighborhood designations by the Home Owners Loan Corporation (HOLC), and 75% of today's exclusionary areas in the East Bay... Thus, this historic legacy, compounded by Berkeley's early exclusionary zoning practices, continues to shape housing opportunity and perpetuate inequities today."⁴⁴ Not surprisingly, Chapple has indicated that zoning reform "has the potential not just to address the housing crisis but also to become a form of restorative or even transformative justice. There is no more important issue for planners to tackle today."⁴⁵

Historic Redlining

Redlining was a practice whereby certain neighborhoods or areas were designated as being high-risk for investment. These high-risk designations were literally marked on maps using red coloring or lines, hence "redlining." The designations were typically applied to areas with large non-white and/or economically disadvantaged populations, and resulted in people who lived in or wanted to move to these areas being denied loans, or only being provided loans on much worse terms than their counterparts who could access non-redlined areas, due to their ethnicity or higher economic status.

Because redlining practices were contemporaneous with segregationist race-restricted deeds that largely locked minorities out of non-redlined neighborhoods, most non-white

⁴³ Zuk, M., & Chapple, K. (2015). Urban Displacement Project. <http://www.urbandisplacement.org/map/sf>

⁴⁴ Karen Chapple's February 25, 2019 letter to Berkeley City Council in support of this proposal. <https://www.berkeley.com/wp-content/uploads/2019/02/Letter-on-Council-Item-22-Chapple-2.25.19.pdf>

⁴⁵Ibid.

households were effectively forced to live in areas where buying and/or improving residential property was extremely difficult. Consequently, low-income and minority families were often locked out of homeownership, and all the opportunities for stability and wealth-building that entails. Therefore redlining tended to reinforce the economic stagnation of the areas to which it was applied, further depressing property values and leading to disinvestment. Although redlining is no longer formally practiced in the fashion it was historically, its effects continued to be felt in wealth disparities, educational opportunity gaps, and other impacts.

One way in which the practice of redlining continues to be felt is through the continuation of exclusionary zoning. By ensuring that only those wealthy enough to afford a single family home with a relatively large plot of land could live in certain areas, exclusionary zoning worked hand in hand with redlining to keep low-income families out of desirable neighborhoods with good schools and better economic opportunity. Cities, including Berkeley, adopted zoning that effectively prohibited multi-family homes in the same areas that relied on race restrictive deeds to keep out non-whites, meaning that other areas, including redlined areas, were more likely to continue allowing multi-family buildings. Economists Enrico Moretti and Chiang Tai Hsieh have estimated that strict zoning laws and other restrictive land use policies have inflated housing prices so much it lowered aggregate growth by 50% from 1964-2009.⁴⁶

Ironically, because these patterns of zoning have persisted, many areas that were historically redlined are now appealing areas for new housing development precisely because they have continued to allow multi-family homes. Any area which sees its potential housing capacity increase will become more appealing for new housing development. When these changes are made in historically redlined areas where lower-income and minority households tend to be more concentrated, it is especially important to ensure those policies do not result in displacement or the loss of rent-controlled or naturally affordable housing units.

Current Discourse on Exclusionary Zoning Regulations

In 2019, Councilmembers Lori Droste, Ben Bartlett, Rashi Kesarwani and Rigel Robinson introduced Missing Middle Housing legislation in order to facilitate the construction of naturally affordable missing middle housing. The final legislation passed by Council was an agreement to **study** how the City of Berkeley can incorporate varying building types throughout Berkeley and address exclusionary practices. While the entire City Council voted unanimously to study this, the COVID-19 pandemic led to budget cuts which would have funded such a study. In July of 2020, Berkeley City Council

⁴⁶ "Housing Constraints and Spatial Misallocation" Hsieh, Chang-Tai and Enrico Moretti, *National Bureau of Economic Research*, https://www.nber.org/system/files/working_papers/w21154/w21154.pdf

additionally supported Senate Bill 902, which allowed for missing middle housing in transit-oriented or jobs-rich areas.⁴⁷

Exclusionary zoning laws also became a prevalent national topic during the 2020 Presidential campaign under the guise of “protect[ing] America’s suburbs.”⁴⁸ Celebrity Apprentice host and former President Donald Trump and his Housing and Urban Development Secretary Ben Carson expressed a concern that removing exclusionary zoning laws would prevent single family home ownership and “destroy suburbs” despite the fact that these reforms don’t bar single family home construction but allow the creation of duplexes, triplexes, and other multi-unit properties. Furthermore, exclusionary zoning practices were amplified with the termination of the 2015 Obama-era Fair Housing rule which outlawed discrimination in housing. In doing so, Trump stated that Democrats wanted to “eliminate single-family zoning, bringing who knows into your suburbs, so your communities will be unsafe and your housing values will go down.”⁴⁹ On the other hand, Democratic Presidential candidates embraced zoning reform, most notably Elizabeth Warren and Cory Booker. President Biden has also indicated that he plans to invest \$300 million in local housing policy grants to give communities the planning support they need to eliminate exclusionary zoning.⁵⁰

Even the League of California Cities, which has opposed many state measures to spur housing production, has endorsed the concept of fourplexes in single family zones in their 2020 *Blueprint for More Housing*.⁵¹

In January 2021, the Association of Bay Area Governments also voted to approve the implementation of Senate Bill 828 which was designed to address the extreme housing shortage across California. As a result, Bay Area cities will have to zone for 441,000 new homes. Berkeley will see a 19% increase — approximately 8,900 — in the number of homes for which it must zone.

ALTERNATIVE ACTIONS CONSIDERED

⁴⁷https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/07-28_Annotated_Agenda_pdf.aspx

⁴⁸ Trump, Donald J and Ben Carson. “We’ll Protect America’s Suburbs.” Wall Street Journal. <https://www.wsj.com/articles/well-protect-americas-suburbs-11597608133>

⁴⁹ “Seeking Suburban Votes, Trump to Repeal Rule Combating Racial Bias in Housing.” (2020). NPR <https://www.npr.org/2020/07/21/893471887/seeking-suburban-votes-trump-targets-rule-to-combat-racial-bias-in-housing>

⁵⁰ “The Biden Plan for Investing in Our Communities Through Housing.” (2020) <https://joebiden.com/housing/>

⁵¹ “Blueprint for More Housing” *League of California Cities* <https://www.cacities.org/Resources-Documents/News/News/2020/Housing-Production-Proposal-Factsheet.aspx>

The authors considered passing a budget referral to fund another study for missing middle housing. However, given the new Regional Housing Needs Allocations, [the pending Housing Element update, and](#) the scarcity of housing for individuals and families throughout the Bay Area, we felt the need to act immediately and not wait to study this issue.

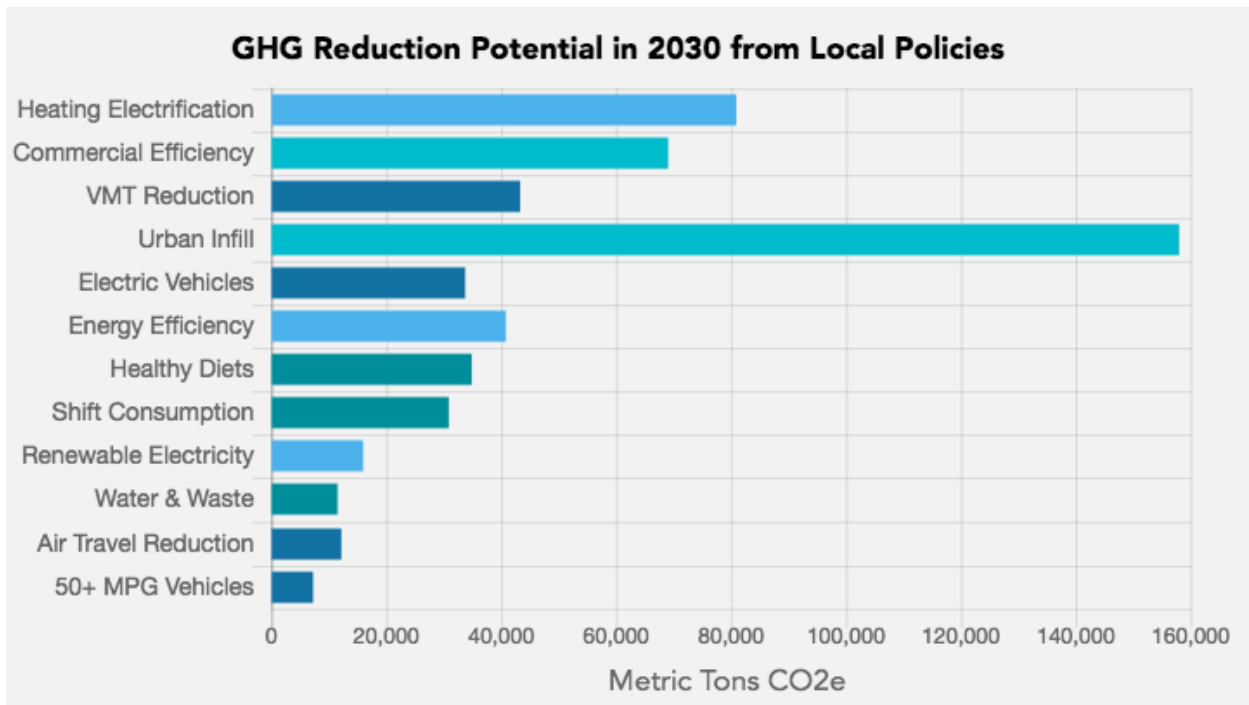
FINANCIAL IMPLICATIONS

Costs for consultants to provide additional analysis can range from \$25,000-\$100,000. Staff should also consider augmenting existing work on the Housing Element update and density standard study to align with the objectives of this legislation.

ENVIRONMENTAL SUSTAINABILITY

Berkeley declared a climate emergency in 2018. Among other concerns, wildfires and sea level rise are constant ecological threats to our community. The City of Berkeley needs to act urgently to address this imminent danger. Last year, climate researchers in Berkeley quantified local and state opportunities to reduce greenhouse gases from a “comprehensive consumption-based perspective.”⁵² The most impactful local policy to potentially reduce greenhouse gas consumption by 2030 is urban infill. In short, Berkeley can meaningfully address climate change if we allow the production of more homes near job centers and transit.

⁵² “Carbon Footprint Planning: Quantifying Local and State Mitigation Opportunities for 700 California Cities.” Christopher M. Jones, Stephen M. Wheeler, and Daniel M. Kammen. *Urban Planning* (ISSN: 2183–7635) 2018, Volume 3, Issue 2. <https://rael.berkeley.edu/wp-content/uploads/2018/04/Jones-Wheeler-Kammen-700-California-Cities-Carbon-Footprint-2018.pdf>



CONTACT PERSON(S):

Lori Droste, 510-981-7180

ATTACHMENTS/LINKS:

Minneapolis Plan:

https://minneapolis2040.com/media/1428/pdf_minneapolis2040_with_appendices.pdf

Seattle Plan:

<http://www.seattle.gov/Documents/Departments/SeattlePlanningCommission/SPCNeighborhoodsForAllFINAL121318digital.pdf>

Sacramento's Plan:

https://sacramento.granicus.com/MetaViewer.php?view_id=22&clip_id=4822&meta_id=612624

Berkeleyside

Opinion: We can design our way out of Berkeley's housing crisis with 'missing middle' buildings

A Berkeley architect argues that Berkeley should build more small-scale, multi-unit buildings such as duplexes, bungalow courts, fourplexes, and small mansion apartments.

By Daniel Parolek

Dec. 19, 2017

Berkeley's housing problems have gone national recently, as The New York Times' Conor Dougherty highlighted in a thought-provoking article, "The Great American Single-Family Home Problem." Dougherty examines the conflicting interests and regulations that threatened to halt the development of one lot on Haskell Street, and shows how those conflicting forces are contributing to the affordable housing crisis we are seeing in our state – and across the country.

As an architect and urban designer based in Berkeley for the past 20 years, I agree that California municipalities have an urgent need to deliver more housing. That said, just delivering more housing is not enough. We need to think about how this housing reinforces a high quality built environment and how to provide a range of housing for all segments of the market, including moderate and low-income households. More small-scale, multi-unit buildings such as duplexes, bungalow courts, fourplexes, and small mansion apartments, or what I call "Missing Middle Housing," should be a key focus of that housing.

Unfortunately, the design proposed for the Haskell Street site in Berkeley does not deliver on reinforcing a high quality built environment or affordability and, as the NYT article makes clear, does not deliver on any level of affordability. There are better design solutions that deliver a more compatible form, that have more and a broader range of housing units, and that can be more effective at building local support for this and similar infill projects.

For example, the 50' x 150' lot at 310 Haskell Street is big enough to accommodate a traditional fourplex, with two units down and two units above in a building that is the scale of a house (see image attached from our Missing Middle research). The units would typically be between 750-900 square feet each. An important characteristic of this housing type is that they do not go deeper onto the lot than a traditional house, thus eliminating the concern about privacy and shading and providing high-quality outdoor

living spaces. These fourplex housing types exist all over Berkeley and are often successfully integrated onto blocks with single-family homes.

So how do we get there? Berkeley and most cities across the country need to sharpen their pencils on their outdated zoning codes, first to remove barriers for better solutions and secondly, to create a set of regulations that ensure that inappropriate design solutions like the one proposed for Haskell Street or even worse are not allowed on these sites. Lower densities do not equal better design solutions and higher densities do not need to mean larger or more buildings. This is a delicate balance that few zoning codes achieve and few code writers fully understand.

We also need to change the way we communicate about housing needs in our communities. If we are using George Lakoff's rules for effective communication we would never go into a housing conversation with a community and use terms like "increasing density, adding multi-family, or upzoning a neighborhood." I can think of few neighborhoods that would feel good about saying yes to any of those options if they were framed in that way, but which can mostly get on board with thinking about aging within a neighborhood, or ensuring their kids or grandkids can afford to move back to the city they grew up in. Beginning this conversation by simply showing photographic and/or local existing documented examples of good Missing Middle housing types often disarms this conversation and leads to more fruitful results.

Berkeley's challenges related to housing are not going to go away anytime soon. We need to thoughtfully remove barriers to enable a broad range of solutions like the fourplex that have been a core part of choices provided in our communities already and learn how to effectively build consensus and support for good design solutions such as Missing Middle housing types.

Daniel Parolek is an architect and urban designer who co-authored the book "Form-Based Codes," coined the term Missing Middle Housing (www.missingmiddlehousing.com) and speaks and consults nationally on these topics.



February 25, 2019

Honorable Mayor and City Council members:

I am writing to convey my strong support for the "Missing Middle Report" on your 2/26 Council meeting.

As the Council item co-authored by Councilmembers Droste, Bartlett, Kesarwani, and Robinson points out, Berkeley's housing crisis today is a legacy of its past racist and exclusionary practices. I commend their effort to push Berkeley to confront its history in order to build a more inclusive future.

Our research at the Urban Displacement Project has established a direct connection between the neighborhood designations by the Home Owners Loan Corporation (HOLC) and today's patterns of residential displacement and exclusion.¹ Overall, 83% of today's gentrifying areas in the East Bay were rated as "hazardous" (red) or "definitely declining" (yellow) by the HOLC, and 75% of today's exclusionary areas in the East Bay were rated as "best" (green) or "still desirable" (blue) by HOLC. Thus, this historic legacy, compounded by Berkeley's early exclusionary zoning practices, continues to shape housing opportunity and perpetuate inequities today.

Should Berkeley elect to proceed to study the potential for zoning reform, it will be in good company. As the item authors note, Minneapolis and Seattle are already experimenting with ways to open up single-family zones, and Berkeley should be leading the charge as well.² Zoning reform has the potential not just to address the housing crisis but also to become a form of restorative or even transformative justice. There is no more important issue for planners to tackle today.

I urge you to vote yes on Item 22 to request a Missing Middle report. Please do not hesitate to call on me if any research on zoning impacts or alternatives is needed.

Sincerely,

Karen Chapple
Professor, City and Regional Planning
Carmel P. Friesen Chair in Urban Studies
Faculty Director, The Urban Displacement Project

¹ See <http://www.urbandisplacement.org/redlining>

² Interestingly, leading the charge in Minneapolis is City Council President Lisa Bender, a graduate of UC-Berkeley's Department of City and Regional Planning.

[Other articles of interest:](#)

<https://www.kqed.org/news/11840548/the-racist-history-of-single-family-home-zoning>

<https://www.vox.com/22252625/america-racist-housing-rules-how-to-fix>

<https://www.berkeleyside.com/2021/02/17/berkeley-may-get-rid-of-single-family-zoning-as-a-way-to-correct-the-arc-of-its-ugly-housing-history>

<https://www.berkeleyside.com/2019/03/12/berkeley-zoning-has-served-for-many-decades-to-separate-the-poor-from-the-rich-and-whites-from-people-of-color>



Lori Droste
Vice Mayor, District 8

ACTION CALENDAR
February 23, 2021

To: Honorable Mayor and Members of the City Council

From: Vice Mayor Lori Droste, Councilmember Terry Taplin, Councilmember Rashi Kesarwani, Mayor Jesse Arreguin

Subject: Quadplex Zoning

RECOMMENDATION

1. Refer to the City Manager and Planning Commission revisions to the zoning code and General Plan, to require proposed housing developments containing up to 4 residential units to be considered ministerially, if the proposed housing development meets certain requirements but not limited to:
 - that the proposed housing development would not require demolition or alteration of housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income,
 - that the development is not located within a historic district, is not included in the State Historic Resources Inventory, or is not within a site that is legally designated or listed as a city or county landmark or historic property or district.
 - that the development is not located within particularly vulnerable high fire wildfire danger areas, as specified by Cal Fire.

Additional considerations:

- Consider a local affordable housing density bonus for deeper affordability in certain jobs-rich or transit-oriented areas if a certain percentage of the units are affordable to 80% of area median income.¹
- Conduct a displacement risk analysis and consider possible ways that zoning changes can be crafted to prevent and mitigate negative externalities which could affect tenants and low and moderate-income homeowners.
- Allow for the possibility of existing homes/footprints/zoning envelopes to be divided into up to four units, potentially scaling the floor area ratio (FAR) to increase as the number of units increase onsite, creating homes that are more affordable, saving and lightly modifying an older structure as part of internally dividing it into more than one unit.²

Council directs that staff initiate this work immediately and the Planning Commission incorporate zoning reform into its 2021 and 2022 work plan to institute these changes in anticipation of the Housing Element update. Staff and the commission should examine how other cities have prepared for and implemented missing middle housing in Minneapolis, Portland, and Sacramento and conduct extensive community outreach during the course of this update.

CURRENT PROBLEM AND ITS EFFECTS

The nine-county Bay Area region is facing an extreme shortage of homes that are affordable for working families. The Metropolitan Transportation Commission illustrates the job-housing imbalance in a report showing that only one home is added for every 3.5 jobs created in the Bay Area region.³ Governor Gavin Newsom has called for a “Marshall Plan for affordable housing” and has pledged to create millions of more homes in California to tackle the state’s affordability and homelessness crisis.

In Berkeley, the median sale price of a home is \$1.4 million (as of December 2020)—an increase of 56% over the median sale price in December 2015 of \$895,000.⁴ These escalating costs coincided with an increase of 14% in Berkeley’s homeless population from 2017 to 2019, and a 34% increase from 2015 to 2019 point-in-time counts.⁵ These skyrocketing housing costs put extreme pressure on low-, moderate- and middle-income households, as they are forced to spend an increasing percentage share of their income on housing (leaving less for other necessities like food and medicine), live in

¹ Jobs-rich and transit-oriented definitions should be defined by the Planning Commission in consultation with staff.

² City of Portland, <https://www.portlandoregon.gov/bps/article/711691>

³ Metropolitan Transportation Commission, 2018. <http://www.vitalsigns.mtc.ca.gov/>

⁴ Berkeley Home Prices and Values, <https://www.zillow.com/berkeley-ca/home-values/>

⁵ https://everyonehome.org/wp-content/uploads/2019/09/2019HIRDReport_Berkeley_2019-Final.pdf

overcrowded conditions, or endure super-commutes of 90 minutes or more in order to make ends meet.

Low-Income Households Cannot Afford to Live in Berkeley

Recently, low-income households experienced the greatest increases in rent as a portion of their monthly income. The U.S. Department of Housing and Urban Development (HUD) defines "affordable" as housing that costs no more than 30 percent of a household's monthly income. Households are considered to be "rent burdened" when more than a third of their income goes toward housing costs. In Alameda County, "Although rent burden increased across all income groups, it rose most substantially for low- and very low-income households. In both 2000 and 2015, extremely low-income renters were by far the most likely to experience severe rent burden, with nearly three quarters spending more than half their income on rent."⁶

Although residents of Berkeley passed Measure O which will substantially increase funding for affordable housing, low-income units are increasingly expensive to create. Low-income housing units typically cost well over \$500,000 to create and the demand for this type of affordable/subsidized housing exceeds the supply.⁷ Without a substantial additional increase in funding for affordable housing, the City will be increasingly challenged to create enough subsidized housing to meet the demand. For example, roughly 700 seniors applied for the 42 affordable/subsidized units at Harpers Crossings in Berkeley. This project cost \$18 million to build.⁸ While Berkeley should continue to support subsidized housing, subsidized housing alone is insufficient to address the growing housing and homelessness crisis.

Middle-Income Households Can't Afford to Live in Berkeley

In the Bay Area, those earning middle incomes are facing similar challenges in finding affordable homes. The Pew Research Center classifies middle income households as those with "adults whose annual household income is two-thirds to double the national median." In 2018, middle income households were those earning approximately \$48,500 to \$145,500 for a household of three.⁹ According to the Pew Research Center, "The San Francisco-Oakland-Hayward metropolitan area in California is one of the most expensive areas, with a price level that was 31.6% higher than the national average. Thus, to step over the national middle-class

⁶ Zuk, M., & Chapple, K. (2015). Urban Displacement Project.

http://www.urbandisplacement.org/sites/default/files/images/alameda_final.pdf

⁷ "The Cost of Building Housing" *The Turner Center* <https://turnercenter.berkeley.edu/construction-costs-series>

⁸ Flood, Lucy. (1/18/2018). "Berkeley low-income seniors get a fresh start at Harper Crossing."

<https://www.berkeleyside.com/2018/01/18/berkeley-low-income-seniors-get-fresh-start-harper-crossing>

⁹ <https://www.pewresearch.org/fact-tank/2020/07/23/are-you-in-the-american-middle-class/>

threshold of \$48,500... a household in the San Francisco area needs a reported income of about \$63,800, or 31.6% more than the U.S. norm, to join the middle class.”¹⁰

In the Bay Area, a family currently has to earn \$200,000 annually to afford the principal, interest, taxes and insurance payments on a median-priced home in the Bay Area (assuming they can pay 20 percent of the median home price of \$1.4 million up front).¹¹ This means that many City of Berkeley employees couldn't afford to live where they work: a fire captain (making \$144,000) with a stay at home spouse wouldn't be able to afford a home. Even a firefighter (earning \$112,000 annually) and a groundskeeper (making \$64,000), or two librarians (making \$89,000 each) couldn't buy a house.¹²

Berkeley Unified School District employees have recently been advocating for teacher housing. Unfortunately, the housing options for teachers are insufficient for the overwhelming need. According to a recent Berkeley Unified School District (BUSD) survey, 69% of teachers or staff who rent believe that high housing costs will impact their ability to retain their BUSD positions.¹³ Since individual K-12 teacher salaries average ~\$75,962,¹⁴ the majority of teachers are not classified as low-income (<\$62,750), according to Housing and Urban Development guidelines. As a result, many cannot qualify for affordable housing units. Since middle-income individuals and families can't qualify for affordable housing units and very few subsidies are available to help, the vast majority have to rely on non-governmental subsidized methods and the private market to live in the Bay Area.

Families Are Struggling to Live in Berkeley

Many families are fleeing the Bay Area due to the high cost of living. According to a study by the Turner Center for Housing Innovation, the income and racial patterns of out-migration and in-migration indicate that “the region risks backsliding on inclusion and diversity and displacing its economically vulnerable and minority residents to areas of more limited opportunity.”¹⁵ Rent for a two-bedroom apartment in Berkeley costs approximately \$2,070/month¹⁶ while the median child care cost in Alameda County is

¹⁰ <https://www.pewresearch.org/fact-tank/2020/07/23/are-you-in-the-american-middle-class/>

¹¹ “The salary you must earn to buy a home in the 50 largest metros” (10/14/2018). HSH.com <https://www.hsh.com/finance/mortgage/salary-home-buying-25-cities.html#>

¹² City of Berkeley Human Resources, “Job Descriptions” <http://agency.governmentjobs.com/berkeley/default.cfm?action=agencyspecs&agencyID=1568>

¹³ Berkeley Unified School District, “Recommendation for District-Owned Rental Housing for Employees”, <https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Aascds%3AUS%3Adfd74865-9541-4ff8-b6a6-4dcbd30acdc3>

¹⁴ Education Data Partnership, “Teacher Salaries” <http://www.ed-data.org/district/Alameda/Berkeley-Unified>

¹⁵ Romem, Issa and Elizabeth Kneebone, 2018. “Disparity in Departure: Who Leaves the Bay Area and Where Do They Go?” <https://turnercenter.berkeley.edu/disparity-in-departure>

¹⁶ Berkeley Rentals, <https://www.zumper.com/blog/san-francisco-bay-area-metro-report/>

\$1,824 a month, an increase of 36% in the past four years.¹⁷ Consequently, many families are paying well over \$60,000 for living and childcare expenses alone.

Homelessness is on the Rise in the Bay Area

High housing costs also lead to California having among the highest rates of poverty in the nation at 19%.¹⁸ Consequently, homelessness is on the rise throughout California. The Bay Area has one of the largest and least-sheltered homeless populations in North America.¹⁹ The proliferation of homeless encampments—from select urban neighborhoods to locations across the region—is the most visible manifestation of the Bay Area’s extreme housing affordability crisis. According to the 2019 point-in-time count, Berkeley had approximately 1,108 individuals experiencing homelessness on any given night.²⁰ In order to act in accordance with best practices research on alleviating homelessness and help homeless individuals get housed, the City needs to create more homes.²¹ Tighter housing markets are associated with higher rates of homelessness, indicating that the creation of additional housing for all income levels is key to mitigating the crisis.²² In the 1,000 Person Plan to Address Homelessness, Berkeley’s Health, Housing and Community Services staff also recommend that Council prioritizes “implementing changes to Berkeley’s Land Use, Zoning, Development Review Requirements for new housing with an eye toward alleviating homelessness.”

BACKGROUND

In 2019, Councilmembers Lori Droste, Ben Bartlett, Rashi Kesarwani and Rigel Robinson introduced Missing Middle Housing legislation in order to facilitate the construction of naturally affordable missing middle housing. Missing middle housing refers to small multi-unit buildings that are compatible in scale with single-family neighborhoods. The final legislation passed by Council was an agreement to **study** how the City of Berkeley can incorporate varying building types throughout Berkeley and

¹⁷ D’Souza, Karen, 2/3/19. “You think Bay Area housing is expensive? Child care costs are rising, too.” <https://www.mercurynews.com/2019/02/03/you-think-bay-area-housing-is-expensive-childcare-costs-are-rising-too/amp/>

¹⁸ The U.S. Census The Supplemental Poverty Measure adjusts thresholds based on cost of living indexes.

¹⁹ SPUR: Ideas and Action for a Better City. “Homelessness in the Bay Area: Solving the problem of homelessness is arguably our region’s greatest challenge.” Molly Turner, Urbanist Article, October 23, 2017 <https://www.spur.org/publications/urbanist-article/2017-10-23/homelessness-bay-area>

²⁰ Berkeley Homeless Point-in-Time Count and Survey Data, 2019. https://everyonehome.org/wp-content/uploads/2019/09/2019HIRDReport_Berkeley_2019-Final.pdf

²¹ United States Interagency Council on Homelessness “The Evidence behind Approaches that Drive an End to Homelessness” December 2017, https://www.usich.gov/resources/uploads/asset_library/evidence-behind-approaches-that-end-homelessness.pdf

²² *Homeless in America, Homeless in California*. John M. Quigley, Steven Raphael, and Eugene Smolensky. The Review of Economics and Statistics, February 2001, 83(1): 37–51 © 2001 by the President and Fellows of Harvard College and the Massachusetts Institute of Technology. https://urbanpolicy.berkeley.edu/pdf/qrs_restat01pb.pdf

address exclusionary zoning practices. While the entire City Council voted unanimously to study this, the COVID-19 pandemic led to budget cuts which would have funded such a study. In July of 2020, Berkeley City Council additionally supported Senate Bill 902, which would have allowed missing middle housing in transit-oriented or jobs-rich areas.²³

Regional Housing Needs Goals

In January of 2021, the Association of Bay Area Governments passed new Regional Housing Needs Allocations for the Bay Area. As a result, Berkeley will have to plan for approximately 8,900 homes. This is a significant increase over the previous years. As a result, Berkeley needs to zone for significantly more housing. One way Berkeley can address this proposed increase is to allow quadplexes throughout Berkeley and undo the legacy of exclusionary zoning.

Quadplexes

What are quadplexes?

Quadplexes are:

1. A type of missing middle housing that has up to four units within a structure that is often similar in size, scale, and design to a large single-family home.
2. Housing types that are naturally affordable and less expensive than most housing options available within Berkeley.

The current housing market has led to “barbell” housing delivery. That is, new units tend to be highly-priced (market rate or luxury) or highly subsidized (affordable).

Consequently, the majority of the population can’t access quadplexes and other missing middle units because the dearth of funding, scarcity of land, and high construction costs impose challenges on viability. One study found that individuals trying to create missing middle housing cannot compete financially with larger projects in areas zoned for higher density, noting “many smaller developers have difficulty obtaining the necessary resources, including the competitive funding, required to offset the high initial per-unit development costs, and larger developers with deeper pockets and more experience navigating complex regulatory systems will almost always opt to build projects that are large enough to achieve the bulk per-unit development rate.”²⁴

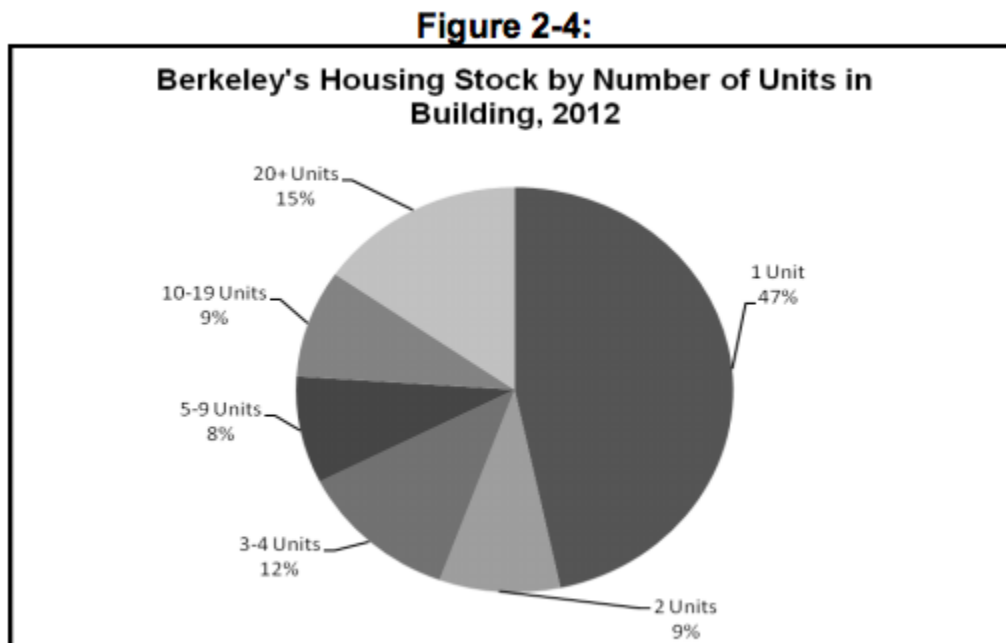
Additionally, missing middle housing is not permitted in areas zoned R1 (single family family and one accessory dwelling unit only), R1A (limited two family), and R2

²³https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/07-28_Annotated_Agenda_pdf.aspx

²⁴ The Montgomery Planning Dept., “The Missing Middle Housing Study,” September 2018. http://montgomeryplanning.org/wp-content/uploads/2018/09/MissingMiddleHousingStudy_9-2018.pdf

(restricted two family). Other factors that may prevent the creation of missing middle housing include lot coverage ratios and setback and parking requirements.²⁵

One home within a quadplex is undeniably less expensive than comparable single family homes, leading to greater accessibility to those earning median, middle, or lower incomes. Currently, the median price of a single family home in Berkeley is \$1.4 million dollars, which is out of reach for the majority of working people.²⁶ While some may erroneously argue that the *only* way to address the needs of low- or moderate- income families is to provide subsidized housing, ample research indicates this is not the case because the distribution of land costs can be spread across multiple units and construction costs are lower. Approximately half of Berkeley's housing stock consists of single family units²⁷ and more than half of Berkeley's residential land is zoned in ways that preclude most quadplexes. As a result, today, only wealthy households can afford homes in Berkeley.



Source: US Census, ACS 2008-2012 5-Year Estimate., Table B25024

Quadplexes generally have small- to medium-sized footprints and are often two stories or less, allowing them to blend into the existing neighborhood while still encouraging greater socioeconomic diversity. These types of homes exist in every district of Berkeley, having been built before they were banned in districts only allowing single

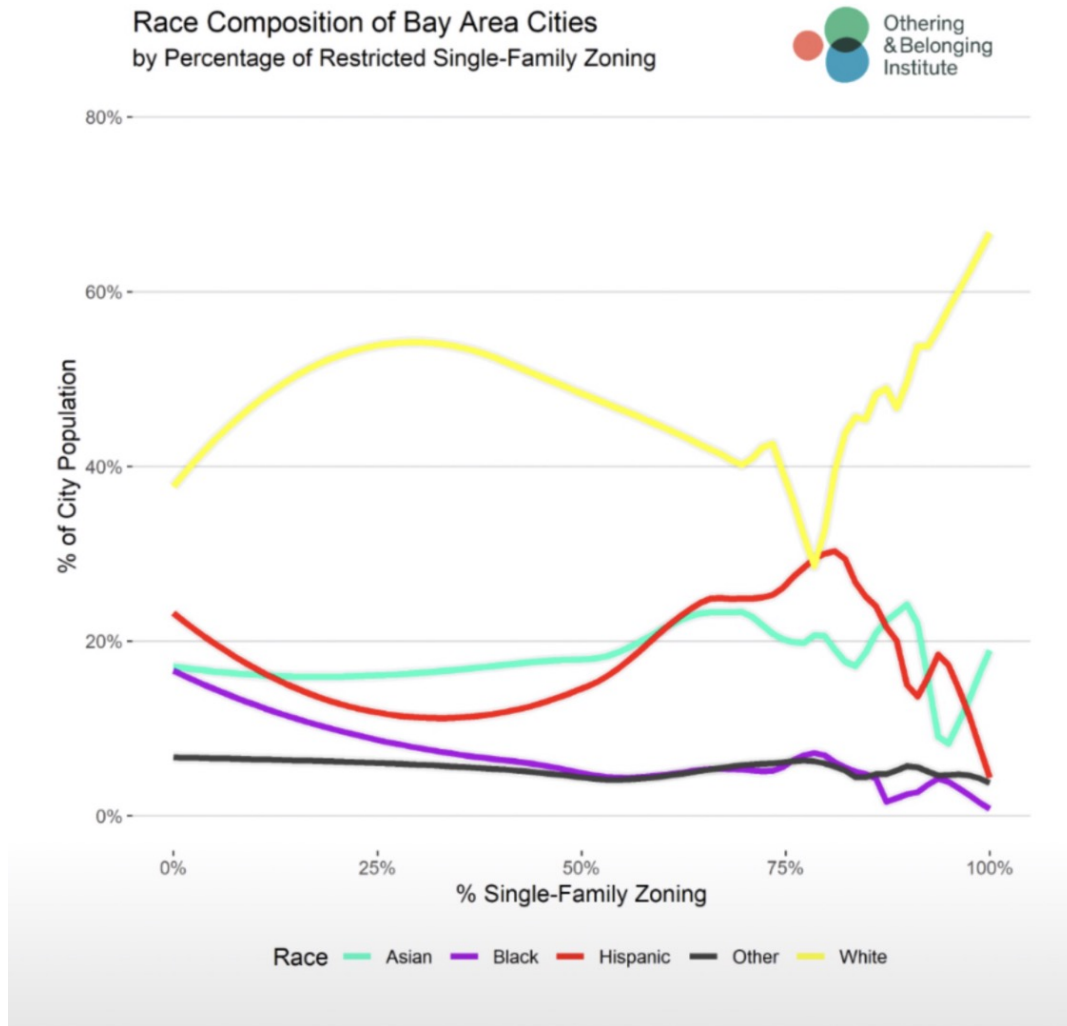
²⁵ Ibid.

²⁶ Berkeley Home Prices and Values, <https://www.zillow.com/berkeley-ca/home-values/>

²⁷ City of Berkeley 2015 -2023 Housing Element.

https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2015-2023%20Berkeley%20Housing%20Element_FINAL.pdf

family homes. Quadplexes were severely limited in other districts by zoning changes initiated in 1973 with the Neighborhood Preservation Ordinance. Regardless of the original intent of the Neighborhood Preservation Ordinance, the effect of this citizen-led measure was to downzone large swaths of Berkeley. Downzoning meant that fewer housing units were allowed to be built in Berkeley over the past 47 years. Many scholars have studied the effect of land use policies and have concluded that downzoning leads to higher housing costs and economic and racial segregation.²⁸



²⁸ Lens, Michael and Paavo Monkonnen. (2015). "Do Strict Land Use Regulations Make Metropolitan Areas More Segregated by Income?" <https://www.tandfonline.com/doi/full/10.1080/01944363.2015.1111163#abstract>

History of Exclusionary Zoning, Racial and Economic Segregation, and Current Zoning

Single family residential zoning was born in Berkeley in the Elmwood neighborhood in 1916. This zoning regulation forbade the construction of anything other than one home per lot. In 1915, Berkeley's City Attorney Frank V. Cornish wrote, "Apartment houses are the bane of the owner of the single family dwelling" while the consultant who penned Berkeley's zoning ordinance stated, "[The] great principle of protecting the home against the intrusion of the less desirable and floating renter class."²⁹ Subsequently, the Mason McDuffie Company's use of Berkeley's zoning laws and racially-restrictive property deeds and covenants prevented Black, Indigenous, and People of Color from purchasing or leasing property in east Berkeley.³⁰

Mason-McDuffie race-restrictive covenants stated, "if prior to the first day of January 1930 any person of African or Mongolian descent shall be allowed to purchase or lease said property or any part thereof, then this conveyance shall be and become void..."³¹ In 1916, McDuffie began lobbying for the exclusionary zoning ordinances in Berkeley to protect against the "disastrous effects of uncontrolled development"³² and restrict Chinese laundromats and African American dance halls, particularly in the Elmwood and Claremont neighborhoods.³³

After *Buchanan v. Warley* in 1917, explicit racially restrictive zoning became illegal. However, consideration to maintaining the character of districts became paramount and Mason-McDuffie contracts still stipulated that property owners must be white.

In 1933, the federal government created a Home Owners Loan Corporation (HOLC), which produced residential maps of neighborhoods to identify mortgage lending risks for real estate agents, lenders, etc. These maps were based on racial composition, quality of housing stock, access to amenities, etc. and were color coded to identify best (green), still desirable (blue), definitely declining (yellow), and hazardous (red) neighborhoods. These maps enabled discriminatory lending practices (later called 'redlining') and allowed lenders to enforce local segregation standards.³⁴

²⁹ Frank V. Cornish. "The Legal Status of Zone Ordinances" and Charles Cheney. "The Necessity for a Zone Ordinance in Berkeley." Berkeley Civic Bulletin, May 18, 1915.

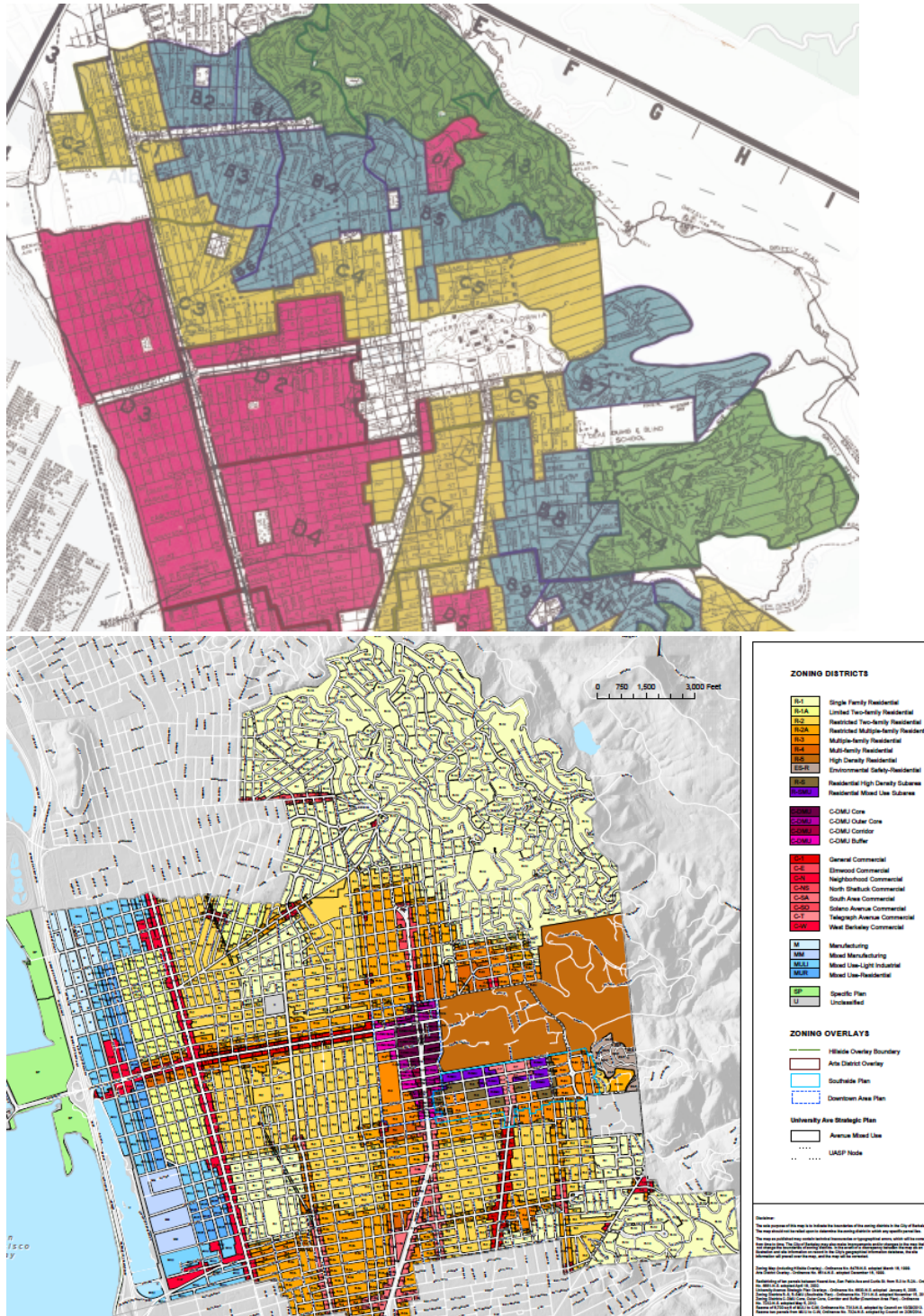
³⁰ Wollenberg, *Berkeley, A City in History*, 2008.

³¹ Claremont Park Company Indenture, 1910

³² Lory, Maya Tulip. "A History of Racial Segregation, 1878–1960." *The Concord Review*, 2013. <http://www.schoolinfosystem.org/pdf/2014/06/04SegregationinCA24-2.pdf>

³³ Weiss, M. A. (1986). Urban Land Developers and the Origins of Zoning Laws: The Case of Berkeley. Berkeley Planning Journal, 3(1). Retrieved from <https://escholarship.org/uc/item/26b8d8zh>

³⁴ NCRC Opening Doors to Economic Opportunity, "HOLC "REDLINING" MAPS: The persistent structure of segregation and economic inequality." Bruce Mitchell and Juan Franco. https://ncrc.org/wp-content/uploads/dlm_uploads/2018/02/NCRC-Research-HOLC-10.pdf



The images above compare a HOLC-era (Thomas Bros Map) map of Berkeley with a current zoning map. Neighborhoods identified as “best” in green on the HOLC-era map typically remain zoned as single family residential areas today. Red ‘hazardous’ neighborhoods in the first map are now largely zoned as manufacturing, mixed use, light industrial, or limited two family residential.³⁵

³⁵ Robert K. Nelson, LaDale Winling, Richard Marciano, Nathan Connolly, et al., “Mapping Inequality,” American Panorama, ed. Robert K. Nelson and Edward L. Ayers, <https://dsl.richmond.edu/panorama/redlining/#loc=10/37.8201/-122.4399&opacity=0.8&sort=17&city=oakland-ca&adview=full>

Prior to the 1970s and the passage of the Neighborhood Preservation Ordinance, a variety of missing middle housing --duplexes, triplexes, and other smaller multi-unit building typologies-- was still being produced and made available to families throughout the Bay Area, particularly in Berkeley. In 1973, the residents of Berkeley passed the Neighborhood Preservation Ordinance which outlawed multi-unit housing in certain parts of Berkeley. As Councilmember Ben Bartlett and Yelda Bartlett wrote in their 2017 *Berkeleyside* op-ed, the neighborhood preservation ordinance “[the Neighborhood Preservation Ordinance] did not mention race, but instead tried to preserve ‘neighborhood character.’ As a result, from 1970 to 2000, fewer than 600 dwelling units were built in Berkeley. Areas zoned for single family residential (R-1), limited two-family residential (R-1A), and restricted two-family residential (R-2) are now some of the most expensive parts of our city—especially on a per-unit basis.”³⁶

Until 1984, Martin Luther King Jr Way was known as Grove Street. For decades, Grove Street created a wall of segregation down the center of Berkeley. Asian-Americans and African-Americans could not live east of Grove Street due to race-restrictive covenants that barred them from purchasing or leasing property. While race-restrictive covenants no longer prohibit individuals from purchasing or leasing homes, most cities still retain the vestiges of exclusionary zoning practices.

The UC Othring and Belonging Institute recently released a study on racial segregation and zoning practices which revealed that 83% of residential land in the Bay Area is zoned for single family homes.³⁷ The authors found that the ramifications of such zoning practices leads to a greater percentage of white residents, as recounted in KQED’s “The Racist History of Single Family Zoning.”³⁸ By banning less expensive housing options, such as duplexes, tri-/four-plexes, courtyard apartments, bungalow courts, and townhouses, in low-density, “desirable” places in Berkeley, the current zoning map dictates that only wealthier families will be able to live or rent in certain parts of Berkeley, mainly in North and East Berkeley. Today, with the median home sale price at \$1.3 million³⁹ and the typical White family having eight times the wealth of the typical Black family,⁴⁰ this de-facto form of segregation is even more pronounced. *Missing*

³⁶<https://www.berkeleyside.com/2017/06/13/opinion-berkeleys-zoning-laws-wall-off-communities-color-seniors-low-income-people-others>

³⁷Racial Segregation in the San Francisco Bay Area (2020) UC Othring and Belonging Institute. <https://belonging.berkeley.edu/racial-segregation-san-francisco-bay-area-part-5>

³⁸ <https://www.kqed.org/news/11840548/the-racist-history-of-single-family-home-zoning>

³⁹ Berkeley, CA Real Estate Market (2021). https://www.realtor.com/realestateandhomes-search/Berkeley_CA/overview

⁴⁰ Survey of Consumer Finances (2020). Federal Reserve. <https://www.federalreserve.gov/econres/scfindex.htm>

middle housing can directly benefit those harmed by this modern-day exclusionary zoning practice that perpetuates socioeconomic and racial segregation.

According to the data mapped by UC Berkeley's Urban Displacement Project, most of the low-income tracts in Berkeley are at-risk or have ongoing displacement and gentrification. Higher-income tracts in Berkeley are classified as 'at-risk of exclusion', currently feature 'ongoing exclusion', or are at stages of 'advanced exclusion'. Degrees of exclusion are measured by a combination of data: the loss of low-income households over time, presence of high income households, being considered in a 'hot housing market,' and migration patterns. The Urban Displacement Project's findings indicate that exclusion is more prevalent than gentrification in the Bay Area.⁴¹ While Berkeley has created policies and designated funding to prevent gentrification, policies that focus on preventing exclusion have lagged.

University of California-Berkeley Professor Karen Chapple, anti-displacement expert and director of the Urban Displacement Project, stated that "the Urban Displacement Project has established a direct connection between the neighborhood designations by the Home Owners Loan Corporation (HOLC), and 75% of today's exclusionary areas in the East Bay... Thus, this historic legacy, compounded by Berkeley's early exclusionary zoning practices, continues to shape housing opportunity and perpetuate inequities today."⁴² Not surprisingly, Chapple has indicated that zoning reform "has the potential not just to address the housing crisis but also to become a form of restorative or even transformative justice. There is no more important issue for planners to tackle today."⁴³

Historic Redlining

Redlining was a practice whereby certain neighborhoods or areas were designated as being high-risk for investment. These high-risk designations were literally marked on maps using red coloring or lines, hence "redlining." The designations were typically applied to areas with large non-white and/or economically disadvantaged populations, and resulted in people who lived in or wanted to move to these areas being denied loans, or only being provided loans on much worse terms than their counterparts who could access non-redlined areas, due to their ethnicity or higher economic status.

Because redlining practices were contemporaneous with segregationist race-restricted deeds that largely locked minorities out of non-redlined neighborhoods, most non-white

⁴¹ Zuk, M., & Chapple, K. (2015). Urban Displacement Project. <http://www.urbandisplacement.org/map/sf>

⁴² Karen Chapple's February 25, 2019 letter to Berkeley City Council in support of this proposal. <https://www.berkeleyside.com/wp-content/uploads/2019/02/Letter-on-Council-Item-22-Chapple-2.25.19.pdf>

⁴³Ibid.

households were effectively forced to live in areas where buying and/or improving residential property was extremely difficult. Consequently, low-income and minority families were often locked out of homeownership, and all the opportunities for stability and wealth-building that entails. Therefore redlining tended to reinforce the economic stagnation of the areas to which it was applied, further depressing property values and leading to disinvestment. Although redlining is no longer formally practiced in the fashion it was historically, its effects continued to be felt in wealth disparities, educational opportunity gaps, and other impacts.

One way in which the practice of redlining continues to be felt is through the continuation of exclusionary zoning. By ensuring that only those wealthy enough to afford a single family home with a relatively large plot of land could live in certain areas, exclusionary zoning worked hand in hand with redlining to keep low-income families out of desirable neighborhoods with good schools and better economic opportunity. Cities, including Berkeley, adopted zoning that effectively prohibited multi-family homes in the same areas that relied on race restrictive deeds to keep out non-whites, meaning that other areas, including redlined areas, were more likely to continue allowing multi-family buildings.

Ironically, because these patterns of zoning have persisted, many areas that were historically redlined are now appealing areas for new housing development precisely because they have continued to allow multi-family homes. Any area which sees its potential housing capacity increase will become more appealing for new housing development. When these changes are made in historically redlined areas where lower-income and minority households tend to be more concentrated, it is especially important to ensure those policies do not result in displacement or the loss of rent-controlled or naturally affordable housing units.

ALTERNATIVE ACTIONS CONSIDERED

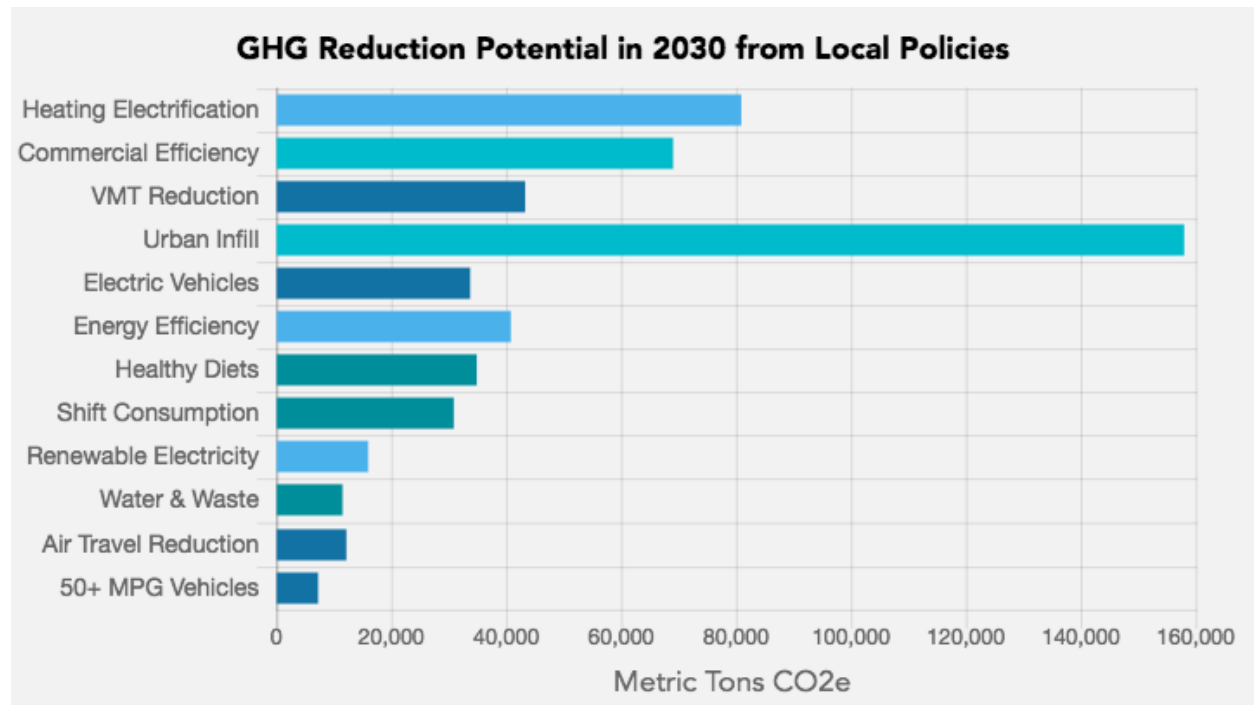
The authors considered passing a budget referral to fund another study for missing middle housing. However, given the new Regional Housing Needs Allocations and the scarcity of housing for individuals and families throughout the Bay Area, we felt the need to act immediately and not wait to study this issue.

FINANCIAL IMPLICATIONS

Costs for consultants to provide additional analysis can range from \$25,000-\$100,000. Staff should also consider augmenting existing work on the Housing Element update and density standard study to align with the objectives of this legislation.

ENVIRONMENTAL SUSTAINABILITY

Berkeley declared a climate emergency in 2018. Among other concerns, wildfires and sea level rise are constant ecological threats to our community. The City of Berkeley needs to act urgently to address this imminent danger. Last year, climate researchers in Berkeley quantified local and state opportunities to reduce greenhouse gases from a “comprehensive consumption-based perspective.”⁴⁴ The most impactful local policy to potentially reduce greenhouse gas consumption by 2030 is urban infill. In short, Berkeley can meaningfully address climate change if we allow the production of more homes near job centers and transit.



CONTACT PERSON(S):

Lori Droste, 510-981-7180

ATTACHMENTS/LINKS:

Minneapolis Plan:

https://minneapolis2040.com/media/1428/pdf_minneapolis2040_with_appendices.pdf

Seattle Plan:

⁴⁴ “Carbon Footprint Planning: Quantifying Local and State Mitigation Opportunities for 700 California Cities.” Christopher M. Jones, Stephen M. Wheeler, and Daniel M. Kammen. Urban Planning (ISSN: 2183–7635) 2018, Volume 3, Issue 2. <https://rael.berkeley.edu/wp-content/uploads/2018/04/Jones-Wheeler-Kammen-700-California-Cities-Carbon-Footprint-2018.pdf>

<http://www.seattle.gov/Documents/Departments/SeattlePlanningCommission/SPCNeighborhoodsForAllFINAL121318digital.pdf>

Sacramento's Plan:

https://sacramento.granicus.com/MetaViewer.php?view_id=22&clip_id=4822&meta_id=612624

Berkeleyside

Opinion: We can design our way out of Berkeley's housing crisis with 'missing middle' buildings

A Berkeley architect argues that Berkeley should build more small-scale, multi-unit buildings such as duplexes, bungalow courts, fourplexes, and small mansion apartments.

By Daniel Parolek

Dec. 19, 2017

Berkeley's housing problems have gone national recently, as The New York Times' Conor Dougherty highlighted in a thought-provoking article, "The Great American Single-Family Home Problem." Dougherty examines the conflicting interests and regulations that threatened to halt the development of one lot on Haskell Street, and shows how those conflicting forces are contributing to the affordable housing crisis we are seeing in our state – and across the country.

As an architect and urban designer based in Berkeley for the past 20 years, I agree that California municipalities have an urgent need to deliver more housing. That said, just delivering more housing is not enough. We need to think about how this housing reinforces a high quality built environment and how to provide a range of housing for all segments of the market, including moderate and low-income households. More small-scale, multi-unit buildings such as duplexes, bungalow courts, fourplexes, and small mansion apartments, or what I call "Missing Middle Housing," should be a key focus of that housing.

Unfortunately, the design proposed for the Haskell Street site in Berkeley does not deliver on reinforcing a high quality built environment or affordability and, as the NYT article makes clear, does not deliver on any level of affordability. There are better design solutions that deliver a more compatible form, that have more and a broader range of housing units, and that can be more effective at building local support for this and similar infill projects.

For example, the 50' x 150' lot at 310 Haskell Street is big enough to accommodate a traditional fourplex, with two units down and two units above in a building that is the scale of a house (see image attached from our Missing Middle research). The units would typically be between 750-900 square feet each. An important characteristic of this housing type is that they do not go deeper onto the lot than a traditional house, thus eliminating the concern about privacy and shading and providing high-quality outdoor

living spaces. These fourplex housing types exist all over Berkeley and are often successfully integrated onto blocks with single-family homes.

So how do we get there? Berkeley and most cities across the country need to sharpen their pencils on their outdated zoning codes, first to remove barriers for better solutions and secondly, to create a set of regulations that ensure that inappropriate design solutions like the one proposed for Haskell Street or even worse are not allowed on these sites. Lower densities do not equal better design solutions and higher densities do not need to mean larger or more buildings. This is a delicate balance that few zoning codes achieve and few code writers fully understand.

We also need to change the way we communicate about housing needs in our communities. If we are using George Lakoff's rules for effective communication we would never go into a housing conversation with a community and use terms like "increasing density, adding multi-family, or upzoning a neighborhood." I can think of few neighborhoods that would feel good about saying yes to any of those options if they were framed in that way, but which can mostly get on board with thinking about aging within a neighborhood, or ensuring their kids or grandkids can afford to move back to the city they grew up in. Beginning this conversation by simply showing photographic and/or local existing documented examples of good Missing Middle housing types often disarms this conversation and leads to more fruitful results.

Berkeley's challenges related to housing are not going to go away anytime soon. We need to thoughtfully remove barriers to enable a broad range of solutions like the fourplex that have been a core part of choices provided in our communities already and learn how to effectively build consensus and support for good design solutions such as Missing Middle housing types.

Daniel Parolek is an architect and urban designer who co-authored the book "Form-Based Codes," coined the term Missing Middle Housing (www.missingmiddlehousing.com) and speaks and consults nationally on these topics.



February 25, 2019

Honorable Mayor and City Council members:

I am writing to convey my strong support for the "Missing Middle Report" on your 2/26 Council meeting.

As the Council item co-authored by Councilmembers Droste, Bartlett, Kesarwani, and Robinson points out, Berkeley's housing crisis today is a legacy of its past racist and exclusionary practices. I commend their effort to push Berkeley to confront its history in order to build a more inclusive future.

Our research at the Urban Displacement Project has established a direct connection between the neighborhood designations by the Home Owners Loan Corporation (HOLC) and today's patterns of residential displacement and exclusion.¹ Overall, 83% of today's gentrifying areas in the East Bay were rated as "hazardous" (red) or "definitely declining" (yellow) by the HOLC, and 75% of today's exclusionary areas in the East Bay were rated as "best" (green) or "still desirable" (blue) by HOLC. Thus, this historic legacy, compounded by Berkeley's early exclusionary zoning practices, continues to shape housing opportunity and perpetuate inequities today.

Should Berkeley elect to proceed to study the potential for zoning reform, it will be in good company. As the item authors note, Minneapolis and Seattle are already experimenting with ways to open up single-family zones, and Berkeley should be leading the charge as well.² Zoning reform has the potential not just to address the housing crisis but also to become a form of restorative or even transformative justice. There is no more important issue for planners to tackle today.

I urge you to vote yes on Item 22 to request a Missing Middle report. Please do not hesitate to call on me if any research on zoning impacts or alternatives is needed.

Sincerely,

Karen Chapple
Professor, City and Regional Planning
Carmel P. Friesen Chair in Urban Studies
Faculty Director, The Urban Displacement Project

¹ See <http://www.urbandisplacement.org/redlining>

² Interestingly, leading the charge in Minneapolis is City Council President Lisa Bender, a graduate of UC-Berkeley's Department of City and Regional Planning.



Office of the Mayor

ACTION CALENDAR

March 10, 2020

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín

Subject: Tenant Opportunity to Purchase Act, Adding BMC Chapter 13.89

RECOMMENDATION

1. Adopt a first reading of an ordinance adding Berkeley Municipal Code Chapter 13.89, the Tenant Opportunity to Purchase Act (TOPA), that will take effect on final adoption with an implementation start upon completion of Administrative Regulations and funding of related program costs; and
2. Direct the City Manager to take all necessary steps to implement this chapter including, but not limited to:
 1. Developing Administrative Regulations;
 2. Preparing an implementation strategy;
 3. Identifying resources to align databases from Finance, Planning, and the Rent Board to accurately reflect the properties that would be subject to TOPA;
 4. Determining necessary staffing for program administration and hearing officers for adjudication;
 5. Timelines for project “roll-out”;
 6. Determining appropriate amount of funding needed to support the acquisition of TOPA properties and recommending possible funding sources;
 7. Quantifying an annual program budget and referring such program costs to the June 2020 Budget process.

SUMMARY

TOPA is a policy that empowers tenants to determine the future of their housing when an Owner is ready to sell, by giving tenants the opportunity to collectively purchase the property they live in. It does this by creating legal rights for tenants to purchase or assign rights to an affordable housing developer, and providing technical assistance, education, and financing to help make these purchases possible. TOPA provides a way to stabilize existing housing for tenants and preserve affordable housing in Berkeley. It

also creates pathways for tenants to become first-time homeowners and facilitates democratic residential ownership. TOPA will apply to all rental properties in Berkeley, subject to a number of exemptions, including owner-occupied Single Family/Owner Occupied properties, including those with an Accessory Dwelling Unit (ADU) or other secondary dwelling unit, that do not have a homeowner exemption registered with the County Tax Assessor.

The first right to purchase is conferred to tenants, and includes a right of first offer, right of first refusal, and a right for tenants to assign rights to a qualified affordable housing organization. If tenants waive their rights, the list of qualified affordable housing organizations have a second opportunity to purchase the property within shorter timelines. Qualified affordable housing organizations must be committed to permanent affordability and democratic residential control. Assigning rights in this manner also benefits the affordable housing developers, especially community land trusts, as the tenant buy-in is often critical to the successful management of the property.

The policy is designed to maintain properties purchased under TOPA as permanently affordable for future generations. Any TOPA property that receives City investment would be deed restricted to ensure that the property remains permanently affordable. TOPA properties that are purchased without City investment would also have a deed restricted upper limit for property appreciation. This would result in the accessibility of those properties to serve tenants around 80% AMI.

Multi-tenant buildings that include a mix of TOPA buyers and tenants who wish to continue renting will be required to ensure tenant protections and the enforcement of tenant's rights. This will prevent any internal displacement caused by the exercising of TOPA rights.

TOPA sales have longer escrow periods in order to provide tenants time to organize, engage technical assistance, form an organization that would qualify for financing, and obtain the necessary financing to close a transaction. In order to incentivize owners to participate in a TOPA sale, since it may potentially take more time, upon close of escrow the City would refund to the seller the City's portion of the Real Property Transfer Tax (.75%) not including the proportional amount attributed to Measure P. Recent transactions, including asking vs. sales price and days on the market were gathered from *Zillow* and provided in Attachment 2.

Moving forward a TOPA policy will require detailed Administrative Regulations and a well-funded infrastructure to administer and enforce the policy. There is also a vital need to provide adequate education, legal and technical assistance to tenants as part of the implementation. Finally, a more robust and vibrant acquisition fund will be required that can work efficiently with the TOPA ordinance. This funding could be accommodated through the Small Sites Program with potential funding coming from

Measure U1 tax receipts, the Housing Trust Fund, and Measure O or through another funding mechanism including grants.

BACKGROUND

Since 2015, Mayor Arreguin and community-based organizations such as the East Bay Community Law Center (EBCLC) and Northern California Land Trust (NCLT) have been researching TOPA's effectiveness as an anti-displacement strategy in Berkeley, to be paired with a robust Small Sites acquisition program.

On February 14, 2017, Mayor Arreguin introduced a Council item entitled "*Small Sites Acquisition Program and Tenant Opportunity to Purchase Act*"¹ which among other provisions, referred to the City Manager to:

Review and develop an ordinance modeled after Washington D.C.'s Tenant Opportunity to Purchase Act that offers existing tenants the first right of refusal when property owners place rental property on the sale market, which can be transferred to a qualifying affordable housing provider.

On May 30 and November 28, 2017, the Berkeley City Council adopted the "*Affordable Housing Action Plan*"² which included a referral to staff to develop a Tenant Opportunity to Purchase Ordinance (TOPA) modeled after a Washington DC law that was enacted in 1980. On June 11, 2019, City staff returned to Council with an Information item³ that outlined its research and discussed the administration and implementation requirements. This item was referred to the Agenda & Rules Committee for scheduling at a future Council meeting. On September 24, 2019, the information item was included on the Consent Calendar with an action of "received and filed".

Since the last date of Council action, the Mayor's Office has been working to develop a TOPA ordinance, which has been drafted by the East Bay Community Law Center (EBCLC), with a diverse group of stakeholders including EBCLC, the Northern California Community Land Trust (NCLT), Bay Area Community Land Trust (BACLt), tenant advocates, legal professionals that specialize in tenant rights, experts familiar with the Washington DC policy and its implementation history, and City of Berkeley staff from the City Attorney's Office, Planning Department, HHCS, Finance and the Rent Board.

Additionally, in September 2019, City Planning staff and the East Bay Community Law Center applied for a grant from the San Francisco Foundation as part of the Partnership

¹ https://www.cityofberkeley.info/.../2017-02-14_Item_18b_Small_Sites_Acquisition.aspx

² https://www.cityofberkeley.info/.../2017-11-14_Item_26_Implementation_Plan_for_Affordable_Housing.aspx

³ https://www.cityofberkeley.info/.../2019-06-11_Item_50_Referral_Response_Tenant_Opportunity_to_Purchase.aspx

for the Bay's Future initiative. The Grant purpose was to be used for technical assistance to jurisdictions for projects focused on protection and preservation of affordable housing that result in measurable benefits for tenants. Staff applied for the grant in response to the Berkeley City Council directive, in part, to develop a TOPA policy as part of the City's Housing Action Plan (HAP), adopted in 2017.

On February 4, 2020 the San Francisco Foundation officially announced the awards, one being the City of Berkeley and the East Bay Community Law Center, for the purposes of developing a Tenant Opportunity to Purchase ordinance and a Local Housing Preference Policy.⁴

CURRENT SITUATION AND ITS EFFECTS

Housing Affordability and Regional Impacts

At the end of 1998, just before State-mandated vacancy decontrol took effect, the average rent in Berkeley's 20,000 apartments built before 1980 was \$720 a month. Twenty years later the average rent for these same units is \$1,956. If rents had risen only by the rate of inflation, they would average \$1,150 a month. In the last five years alone, rents have increased by 50 percent. Similarly, in 2000 the median home price in Berkeley was \$380,000, rising to \$704,000 in 2013 and by 2019 it had reached \$1,300,000.⁵

Rents in Berkeley and the greater Bay Area continue to rise, with low vacancy rates.⁶ Future trends are indicating additional loss of naturally occurring affordable housing, according to the County of Alameda Regional Analysis of Impediments to Fair Housing Choice (IFHC). As an example: for decades, a 13-unit complex on Solano Ave. housed a mix of residents — including, teachers, business owners and a 96-year-old woman. The property is rent-controlled and subject to Berkeley's eviction protections, but the owners invoked the Ellis Act that permits full-building evictions if the property is removed from the rental market altogether (the owners intend to convert the building to a "tenancy-in-common" and sell the units at market rates).⁷

Anecdotal research, received from local real estate brokers over the past two months, indicate a desire to increase returns on investment as well as concerns about buyers moving away from the multi-unit property market.⁸ Due to rent control, tenant protections and eviction laws some owners are looking to sell multi-unit properties, however existing tenant rents impact the sales price. Some of the methods being utilized to raise rents, and therefore increase the property value for sale, include paying

⁴ <https://sff.org/partnership-for-the-bays-future-marks-one-year-anniversary/>

⁵ [Housing for a Diverse, Equitable and Creative Berkeley, July 16, 2019](#)

⁶ <https://www.huduser.gov/portal/publications/pdf/OaklandCA-comp-17.pdf>

⁷ <https://www.berkeleyside.com/2019/12/10/theyve-been-evicted-from-a-north-berkeley-building-now-they-want-to-buy-it-with-help-from-a-land-trust>

⁸ <https://www.fool.com/millionaires/real-estate-market/articles/8-real-estate-market-predictions-2020/>

tenants to move out of the building, evictions for cause (when a case can be made), owner-move-in evictions, and Condo/Tenants-in-Common conversions.

Economic Factors

As the Bay Area region experiences increased economic growth and a high demand for housing, this growth is causing housing prices to rise that then displaces low-income residents. As seen throughout the IFHC report, low-income residents tend to also be minority residents. Therefore, continued growth of the region could lead to more displacement of minority residents and increased segregation unless certain actions are taken to encourage economic and racial/ethnic integration and access to stable affordable units in a range of sizes. Contributing factors affecting disproportionate housing needs include:

- Lack of private investments in specific neighborhoods
- The availability of affordable units in a range of sizes
- Displacement of residents due to economic pressures
- Limited supply of affordable housing within neighborhoods
- Lack of economic support for low income home ownership

The National Low-Income Housing Coalition (NLIHC) *2018 Out of Reach Study* listed the Bay Area region as one of the least affordable areas in the United States. To be able to afford a two-bedroom market rate unit in Alameda County, a household would need to earn \$44.79 per hour or \$93,163 annually (“housing wage”). Comparatively, the average housing wage for California is \$32.68 per hour or \$67,974 annually.

Regional Policy 6, as recommended by the IFHC, is to:

Increase homeownership among low- and moderate-income households by allocating funds for homeownership programs that support low- and moderate-income households. This would include down payment assistance, first time home buyer programs, Mortgage Credit Certificate, below market rate (BMR) homeownership programs and financial literacy and homebuyer education classes. There is also a requirement to promote the programs and any other existing programs through marketing efforts.⁹

National Research on Ownership

While today’s economy is strong and job growth high, there is a growing gap between rates of economic growth and the levels of income. Wages can be growing but not at the same rate as the economy. Many low to middle income people do not have enough money to cover the basic needs due to rising costs – especially in housing. These lower

⁹ <http://www.acgov.org/cda/hcd/documents/Draft-AI-Combined2019-10-24.pdf>

earnings lead to fewer assets and less wealth. For most Americans the greatest source of their wealth is their home, but home ownership is considerably lower than in past decades. Among African Americans, home ownership has decreased to a 60-year low.¹⁰

Providing ownership options for tenants is a mechanism to sustain affordability. According to the *Urban Institute's Opportunity and Ownership Project*, creating ownership within existing rental units provides opportunities for low income renters that will keep their housing costs stable over many years. They suggest that, rather than providing housing subsidies at the Federal and State level for new construction, investing in existing housing would provide many more units at an affordable level (new construction – especially in a good economy – is increasingly expensive).¹¹

Further academic analysis from the *Joint Center for Housing Studies, Harvard University* states: “Public policies attempt to subsidize these barriers to home buying for low-income people through tax policies, grants and other strategies. Current policies are, at best, inefficient and inequitable, and, at worst, ineffective. A more systematic approach would adhere to a set of operating principles including achieving scale, focusing on moving renters to ownership, targeting subsidies to underserved populations, creating incentives for repayment, and maximizing efficiency”.¹²

City of Berkeley Housing Policies and TOPA Opportunity

Housing development has accelerated in Berkeley and while new permits issued from January 1, 2017 through December 31, 2018 exceed Regional Housing Needs Allocation (RHNA) requirements for above moderate incomes by 141%, affordable housing development is well below regional goals. The following table shows Berkeley's progress toward its RHNA goals through December 2018.¹³

¹⁰ <http://wbur.org/hereandnow/2020/02/10/job-economy-middle-class>

¹¹ <https://www.urban.org/sites/default/files/publication/46626/411523-Promoting-Homeownership-among-Low-Income-Households.PDF>

¹² <https://www.jchs.harvard.edu/sites/default/files/hbtl-08.pdf>

¹³ [Item 13 Annual Housing Pipeline Report](#)

Progress towards 2014-2022 RHNA: Approved Building Permits January 1, 2014 – December 31, 2018							
Building Permit Action Year	Ext Low <30% AMI	VLI 31%-50% AMI	LI 51%-80% AMI	MOD 81-120% AMI	BMR Total	Above MOD	Total
January 1, 2014 – December 31, 2018	0	174	66	0	240	1,975	2,215
RHNA	266	266	442	584	1,558	1,401	2,959
Remaining RHNA Capacity Requirement	266	92	376	584		-574	
Percent of Goal Achieved	0%	65%	15%	0%		141%	
The current RHNA is for an 8.8-year period, from January 1, 2014 through October 31, 2022.							

Housing affordability is the first objective of the *Housing Element of the City of Berkeley General Plan*. Policy H-1 - Extremely Low, Very Low, Low, and Moderate-Income Housing sets the goal of increasing housing affordable to residents with lower incomes and outlines a number of actions to achieve this goal, including encouraging incentives for affordable housing development.¹⁴

The Berkeley City Council, in the referenced *Housing Action Plan* (HAP), stated support for Non-profit housing developers and Community Land Trust acquisition of property to stabilize rents through a Small Sites Program. Two such recent transactions, at 2321-2323 Tenth Street and 1640 Stuart Street, have resulted in maintaining 16 units at below-market rates. This policy also stated consideration for the creation of limited and non-equity cooperatives affiliated with a democratic community land trust. This program was initially funded through Measure U1 tax receipts with an option of also utilizing Housing Trust Fund resources.

Until 1996, Berkeley condominium conversions provided the tenants a first right to purchase their unit, as did policies in Santa Monica whose policy was more far reaching.

TOPA working group members estimate that approximately 42% of all Berkeley residential properties would fall under TOPA. This estimate was based on an analysis of the property type, homeowner exemption and number of units from the 2018/2019 Alameda Property Tax roll. It is not reflective of the total **number** of units that would benefit from a TOPA Ordinance. (See Attachment 3).

Washington D.C. TOPA

Washington D.C. passed the Tenant Opportunity to Purchase Act (TOPA) in 1980. This policy regulates the conversion of use, sale and transfer of rental housing. Tenants have the first right of refusal to purchase their buildings and also can assign their rights to third parties, such as affordable housing developers. The impact of this policy has been immense with approximately 30% of annual multi-unit sales going through the

¹⁴ https://www.cityofberkeley.info/Planning_and_Development/Home/General_Plan_-_Housing_Element.aspx

TOPA process. Since 2002, this policy has helped preserve over 3,500 units of affordable housing, 2,000 of which have been preserved since 2013.¹⁵ The growing impact of TOPA is due to massive and sustained increases in DC's Housing Production Trust Fund, collaborative efforts to identify and harness other funding/financing, as well as sustained support for the community based organizations that help tenants understand and exercise their TOPA rights.

In order to fund the program, Washington DC dedicates \$10M per year in Housing Trust Fund (HTF) allocations directly to TOPA and the Housing Production Trust Fund which has \$40M for affordable housing preservation.

TOPA has also helped to create many limited equity cooperatives (LECs) in DC, which currently number 4,400 units across 99 buildings.¹⁶ The DC Limited Equity Cooperative Task Force, formed in 2018, came out with recommendations in October 2019 to increase the number of LEC units in DC by 45% by 2025 (additional 2000 units). TOPA will be a major vehicle to create these additional units. The task force has also identified how to improve/expand existing policy, financing and technical assistance to support the health of existing and future LECs.

Finally, TOPA has led to the creation of hundreds of tenant associations across Washington, DC. Many of these tenant associations were the main leaders and organizers in creating the DC Tenants Union in 2019.¹⁷ The Tenants Union is focused on supporting rent control and other tenant protection policies and plans to build power and solidarity across tenant associations from different parts of the city. (See Attachment 4)

San Francisco COPA¹⁸

In April 2019, the San Francisco Board of Supervisors passed, by a unanimous vote, the Community Opportunity to Purchase Act (COPA). COPA is designed to stabilize communities by preventing displacement and preserving affordable housing and applies to the sale of any non-condo residential building of 3 or more units. It gives qualified non-profit organizations a right of first offer prior to the property going on the market and a right of first refusal when the owner has a bona fide offer from a potential buyer.

Nonprofit buyers have a limited time (25 days) to work with tenants, exercise their rights under COPA and enter into a Purchase-Sale agreement. Recent articles are indicating challenges to the prescribed timeframes.¹⁹ While a seller is not required to accept the

¹⁵ https://www.dcfpi.org/wp-content/uploads/2013/09/9-24-13-First_Right_Purchase_Paper-Final.pdf

¹⁶ <https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/publication/attachments/Greysteel-%20D.C.%20Multifamily%20Market%20Statistics.pdf>

¹⁷ <https://www.streetsemmedia.org/article/dc-residents-launch-a-city-wide-tenant-union-in-hopes-to-foster-solidarity-across-the-district/#.XjSX3i2ZOt8>

¹⁸ <https://sfmohcd.org/community-opportunity-purchase-act-copa>

¹⁹ <https://www.sfchronicle.com/bayarea/article/City-officials-want-landlord-to-delay-sale-of-76-15002958.php>

offer, the qualified nonprofit also has a right of first refusal to match a competing offer. At closing, deed restrictions are placed on the building restricting the building to affordable housing for the life of the building with a mean value of rents not to exceed 80% AMI.

The building could eventually be transferred to tenant ownership under a Limited Equity Cooperative or other model, as long as permanent affordability deed restrictions are maintained. The ordinance includes incentives, including partial exemption from the City's transfer tax and the potential for qualified nonprofits to facilitate sellers' efforts to obtain federal tax benefits.

San Francisco will set aside \$40M – 90M in a specific MOHCD fund to support first time home buyers and its Small Sites Program that could also support the COPA ordinance. This fund provides resources for deposits, down payments and bridge loans until permanent financing is in place.

Oakland TOPA

Inspired by the Moms-for-Housing advocates, on January 30, 2020 at the Oakland City Council's Rules and Legislation Committee meeting, a TOPA ordinance was introduced and is scheduled for a vote in the Community and Economic Development Committee in March 2020. From there it could go to a full City Council vote.²⁰ Oakland Mayor Libby Schaaf has already expressed support for the ordinance.

The Oakland ordinance has been developed since 2018 by a group of community land trusts, tenant advocacy organizations, and the East Bay Community Law Center, whose draft ordinance for Berkeley provided a foundation for Oakland's ordinance. The Oakland ordinance largely mirrors this proposal but will also reportedly include a COPA option for non-profits to buy vacant properties.

The political will for TOPA in Oakland was prompted by Moms 4 Housing — a group of homeless women who took over an empty, investor-owned house in West Oakland for two months before they were evicted and arrested. Their actions garnered national attention and symbolize the Bay Area's housing and homelessness crisis.

Since the eviction of the Moms 4 Housing, the property owner has agreed to negotiate to sell the house to the nonprofit Oakland Community Land Trust. They have also agreed to give the land trust or other nonprofits a chance to buy dozens of other single-family homes it owns in Oakland.

New York State TOPA

At the end of January 2020, New York State Sen. Zellnor Myrie, who represents Central Brooklyn, announced that he is in the process of drafting new legislation that would give

²⁰ <https://www.mercurynews.com/2020/01/30/oakland-councilwoman-to-introduce-moms-4-housing-inspired-ordinance/>

tenants the first right to buy their landlord's property should it come up for sale. Myrie stated that "Landlords who claim they will be unable to keep their buildings in good repair or cover the cost of capital improvements" would have an opportunity, in the New York rent-regulated market, to "keep tenants in their homes, create a path to ownership and maintain buildings,"

This Tenant Opportunity to Purchase Act is said to be modeled after right-of-first-refusal statutes in Washington D.C.²¹

Financing for TOPA projects

Financing for TOPA projects is expected to be provided from a combination of city subsidies, the private capital of tenants, and loans from community-oriented banks and lending institutions like credit unions, CDFIs, local banks, future public banks and others. In this sense, TOPA effectively leverages both private and public financing in advancing permanent affordability.²²

Subsidies

In order to make TOPA effective and responsive to the full scale of anticipated community needs²³, the City will need to enlarge the current Small Sites Program (SSP), or create a new fund, to a minimum of \$10-15 million dollars per year and reconfigure SSP guidelines to align with TOPA. While TOPA projects can benefit from existing streams of affordable housing funding, the scale of community need far outweighs the existing funding sources. As demonstrated by the case of the D.C. TOPA, it was only with substantial financing added to its Housing Production Trust Fund that the ordinance became an effective way to prevent and fight displacement - DC has an annual \$116M for their Housing Production Trust Fund (HPTF), with a minimum of \$10M set aside for TOPA projects. However, D.C. typically spends more out of its HPTF on TOPA - in FY2018, DC spent close to \$22.5M on TOPA acquisition projects with additional funds for rehab in some instances (449 units over 9 projects). Without similar enhancement of SSP, or another funding source, TOPA will not be able to produce the necessary impactful levels of affordability needed to meet the crisis, particularly for those

²¹ <https://therealdeal.com/2020/01/31/bill-make-landlords-give-tenants-first-shot-to-buy-buildings/>

²² While financing percentages of each project may vary substantially according to building costs, tenant resources, and subsidy availability a combination of these financing streams is expected to be a part of most if not all TOPA projects.

²³ 2019 real estate transaction data for Berkeley show that approximately 250 multi-unit buildings (duplexes and up) sold. Assuming similar sales volume and that a similar percentage (32%) of tenant groups exercise their right to purchase as under the D.C. ordinance we anticipate potentially 80 projects annually, with a greater number of smaller unit buildings participating than occur in DC.

of very-low, low and moderate income who may not be able to leverage their own private capital to get a loan.

Private Capital of Tenants

Single family home households and tenants of multi-unit buildings with mixed income units would be able to purchase buildings on their own or with smaller amounts of subsidy involved because these tenants will most likely be able to pay a higher debt service coverage ratio in order to obtain a mortgage from an institutional lender to acquire a property. This could allow higher income tenants with private capital to assist lower income tenants with less capital by securing a blanket mortgage to purchase the building for mutual benefit. This would also benefit “missing middle” income tenants who may not be able to purchase homes on their own, in the current market, but might have enough private capital saved to contribute to the purchase of their building.

Loans from Institutional Lenders

Many banks are willing to work with re-sale restricted properties such as those created by TOPA, the majority of which are local commercial lenders, credit unions, cooperative banks, and Community Development Finance Institutions (CDFIs).²⁴ However, even mainstream primary lenders have told community partners (NCLT & BACL T) that there is no inherent obstacle to lending to resale restricted properties such as a community land trust (CLT)²⁵ or limited equity housing cooperative (and LEHC) since they are valid forms of California non-profit corporation. In fact, many mainstream primary lenders have provided CLT loans for single family homes.²⁶ Additionally, there is nothing to prevent newly formed tenant organizations from acquiring property collectively as it is not uncommon for lenders to process and begin underwriting loan applications from newly formed corporate entities during the acquisition phase. While the most common form of ownership is an LLC, there have also been many instances of newly created 501(c)3 non-profit corporations like the non-profit public²⁷ or mutual benefit²⁸ corporation, the legal entity that is the basis of the limited equity housing cooperative, which have been successful in acquiring loans.²⁹

²⁴ For example Clearinghouse CDFI, Community Bank of the Bay, National Housing Trust, Capital Impact Partners, Heritage Bank (formerly Presidio Bank), and the Local Initiatives Support Corporation (LISC).

²⁵ https://www.lisc.org/media/filer_public/f0/e0/f0e07be0-1ca5-4720-b78c-3a0d7a0181dd/022519_white_paper_community_land_trusts.pdf

²⁶ http://www.freddiemac.com/singlefamily/land_trust_mortgages_faq.html, <https://groundedsolutions.org/tools-for-success/resource-library/mortgage-financing-options>

²⁷ http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CORP§ionNum=5151.

²⁸ https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=CORP&division=2.&title=1.&part=3.&chapter=&article=

²⁹ For example: Derby Walker House in Berkeley, California and Columbus United in San Francisco CA.

An important factor to note is that the loans that would be provided to TOPA tenants are commercial loans, not consumer loans, because the borrower is not a natural person, but rather a corporate entity (even though the owners of the entity will be owner-occupants of the property), which means they are for a shorter term of 10-15 years. The loan approval process for such commercial loans, from lenders willing to loan on such re-sale restricted properties, tends to range from 90 to 120 days depending on the lender & lender type (e.g. CDFIs tend to take longer). The most limiting factor in this estimate is the ability of the borrowing entity (the tenant group) to timely respond to lender's underwriting requests. This variable can be dramatically improved and streamlined with a robust technical assistance program through the City and Supportive Partners.

The most important considerations for an institutional lender in underwriting a loan for a tenant organized entity (including LEHCs³⁰) will be:

Repayment of the Loan: First and foremost, the lender will look at the fair market value of the underlying property (that there is adequate loan to value ratio); and secondly, they look at net operating income of the property, and that there is adequate debt service coverage ratio. In other words, the primary underwriting is of the property itself, similar to how a lender would look at a residential rental property.

Viability & Validity of the Borrowing Entity: As stated above, the lender can start the loan review and underwriting process while the entity is still being formed. However, they will require that the Articles of Incorporation have been filed to start the process. A condition of loan closing will be that the entity is duly formed (i.e. that the Secretary of State has approved the Articles, typically a 30-day process; and that all other governing docs, such as by-laws, have been finalized). This condition being met will also be necessary for the entity to properly take title.

Stability of Property/Asset Management: This is determined by the capacity of the tenants to manage and maintain the property, fill vacancies, properly budget income & expenses for the property. In self-managed properties, banks will look to the experience of the individuals, their internal property management plan, and any partnerships/alliances with outside property management firms or organizations. A second option is for the tenant organization to hire a professional property management firm, which can be an expedient way to get loan approval

³⁰ <https://groundedsolutions.org/sites/default/files/2018-11/Limited%20Equity%20Co-ops%20by%20Community%20Land%20Trusts.pdf>

and through the acquisition process, while a tenant group develops the skills and leadership necessary to self-manage in the future.

Credit enhancements, supporting partners and other backstop mechanisms: Many existing resident initiated purchases that were structured in models such as LEHC's and limited equity condominiums overcame underwriting challenges through backstop mechanisms such as a Community Land Trust, other organizational partner and/or municipality providing a credit enhancement such as a loan guarantee or co-signature on the primary mortgage.

ALTERNATIVE ACTIONS CONSIDERED

No Action

Taking no action could, over time, further reduce naturally occurring affordable housing. It would also take away an opportunity for lower income tenants to participate in the ownership of their residence and increase their personal wealth – the historic driver of lower to middle class wealth creation.³¹

No Action would direct Housing Trust Fund, Measure U1 and other assets primarily to the construction of new affordable housing projects. It would also require no investment of other City General Fund/Other Resources in administrative implementation and oversight.

Support the Repeal of Costa Hawkins

For over twenty years, the Costa-Hawkins Rental Housing Act (*California Civil Code Sections 1954.50-1954.535*) has impacted California renters and the affordability of housing. A statewide law backed by the real estate industry that passed in 1995, Costa-Hawkins ties the hands of cities when it comes to protecting tenants and stabilizing rents:

- Cities can't pass vacancy control; if a tenant leaves or is forced out of a rent-controlled unit, a landlord can raise the rent to whatever the market will bear upon new tenancy;
- Cities can't extend rent control to any rented condominiums, single-family homes, and any new housing built after 1995.

Since Costa-Hawkins passed, tenants have paid ever increasing rents and been forced from their communities or into homelessness due to high housing costs. Additionally,

³¹ <https://www.cato.org/publications/policy-analysis/exploring-wealth-inequality#poverty-matters-not-inequality>

since the Great Recession, roughly tens of thousands of single-family home rentals have been purchased by investors all across the state and nationwide.

On October 27, 2015, the Berkeley City Council unanimously adopted a resolution calling on the Governor and State Legislature to repeal the Costa-Hawkins Rental Housing Act.³²

Costa-Hawkins was also a key part of a 2009 court decision, *Palmer v. the City of Los Angeles*, that found that the imposition of local inclusionary housing requirements for rental housing was in conflict with Costa-Hawkins. In 2017, former Governor Jerry Brown signed AB 1505 to restore the ability for California cities to require developers include affordable units in new rental projects. Additionally, in 2019 the State passed historic legislation, AB 1482, which implemented a cap on rents for non-controlled units of 5% plus CPI, and just cause for eviction statewide. These protections will apply to most housing units not currently deed restricted or controlled, including those exempt from rent control under Costa-Hawkins.

There has been movement among tenant rights advocates to repeal Costa Hawkins to give cities the option to expand and strengthen rent control policies. The latest effort is a statewide ballot measure similar to Proposition 10, which California voters rejected in 2018. Should this new measure succeed, cities would still need to go through the process of passing new legislation before the repeal would have any effect.³³

While new statewide rent control legislation might provide some relief to tenants, it is still unknown as to what properties would be included in the legislation, what level of rent increases would be allowed. It would not give tenants an option to participate in the ownership of their properties nor would there be deeded restrictions to provide rent stabilization for years into the future.

Rely on Regional Policy

The current need for deed restricted affordable units in Alameda County is 52,591 according to California Housing Partnership.³⁴ Much work is being done on the regional level to address this crisis. In January 2019, the Metropolitan Transportation Commission (MTC) released the *CASA Compact: A 15-Year Emergency Policy Package to Confront the Housing Crisis in the San Francisco Bay Area*.³⁵ This report was the product of over two years of stakeholder meetings with elected officials, builders, affordable housing developers and other housing professionals to study the root causes and develop solutions to the region's housing crisis. The CASA Compact

³² https://ci.berkeley.ca.us/.../2015-10-27_Item_16_Urging_the_State_Legislature.aspx

³³ <https://la.curbed.com/2018/1/12/16883276/rent-control-california-costa-hawkins-explained>

³⁴ <https://1p08d91kd0c03rlxhmhtydpr-wpengine.netdna-ssl.com/wp-content/uploads/2019/05/Alameda-HNR-2019-Final.pdf>

³⁵ https://mtc.ca.gov/sites/default/files/CASA_Compact.pdf

provides a roadmap for regional action on housing affordability. It recommends a series of policies and programs to Produce, Preserve and Protect housing and renters in the Bay Area. Preservation of existing naturally occurring affordable housing as a key strategy and the plan recommended a variety of regional funding sources to help acquire and rehabilitate existing housing to preserve affordability. This year, the Association of Bay Area Governments (ABAG) and MTC are considering the placement of a regional housing finance measure on the November 2020 ballot.

In addition, ABAG and MTC are currently developing *Plan Bay Area 2050*, the region's Transportation Plan and Sustainable Communities Strategy, which will identify where growth should be concentrated and how to ensure that the Bay Area is affordable, equitable, sustainable and resilient for the future. The Plan will be aligned with the Regional Housing Needs Allocation (RHNA) which will take into account the number of affordable housing units for which each community is responsible for and the number of units required for each income level. Preservation of existing housing is a policy strategy already proposed in the draft Blueprint.

Alameda County Measure A1, the county affordable housing bond approved by voters in 2016, has provided new resources to create new affordable units. Approximately 1,000 new units are in some stage of development. The bond could yield approximately 3,500 affordable units countywide.

While this work is promising, it has a long horizon and the need to maintaining existing affordable housing units is immediate.

Investor Only TOPA Application

An "investor only" approach would craft a TOPA ordinance that would apply to owners with a 50% or greater ownership position in 3 or more rental units within the City of Berkeley.

There is great difficulty in identifying what properties would fall under this approach. Many investors create Limited Liability Companies (LLCs) for legal protection. Without review of the underlying documents, the City would not know the make-up of ownership and whether one or more owners own greater than 50% in each individual property in an LLC or LLCs. There are also many properties that are owned in Trust. The beneficiaries of these trusts could own different percentages of each property and in this situation trust documents would need to be obtained and analyzed for each property owned. While it might be possible to create a database that would identify all rented properties in Berkeley and the ownership entities, the ownership participation and owner names associated with properties could be impossible and could change from property to property.

This approach would require significant resources for enforcement, for a City agency to determine who has a 50% or more ownership interest in every rental property, and to count up the number of rental units owned by each owner to determine which properties TOPA applies to. This could cause confusion by tenants and owners as to the basic question of whether TOPA applies to a given property and could undermine TOPA's effectiveness and usefulness overall.

When analyzing the number of properties that would fall under an Investor Only TOPA, recent property tax rolls were reviewed and sorted by ownership name/entity. The applicability standard with this approach would yield approximately 1/3 the potential properties that would fall under a TOPA ordinance. (See Attachment 2)

San Francisco COPA Model

The San Francisco COPA model would provide a first right to purchase to nonprofit qualified organizations. Tenants do not have a say in the nonprofit provider that will own their building and there are no pathways for tenant ownership or democratic control by the tenants once the property changed hands. SF COPA does not provide the facilitated resident ownership models as does the Berkeley TOPA Ordinance.

Timeframes to respond to exercise the COPA are short and have resulted in lost opportunities.³⁶ Incentives that are available to sellers that participate in the SF COPA have been used as a model for the TOPA Ordinance in Berkeley.

SF COPA does have some valuable elements which have been incorporated into the TOPA ordinance in Berkeley, such as a right of first offer and accompanying incentives to sellers who accept the initial offer, as well as a vetting process for qualified affordable housing organizations who can purchase.

The SF COPA makes more sense given the rental housing stock in San Francisco is generally larger buildings. Utilizing a SF COPA Model for Berkeley would result in 50% fewer TOPA opportunities than the Investor Only TOPA application.

At a time when investor ownership is the greatest percentage of the multi-unit property ownership TOPA, when exercised by tenant organizations, is in keeping with the value Berkeley incorporates into its equity policies.

³⁶ [SF Chronicle, City Officials Want Landlord to Delay Sale](#)

CONSULTATION/OUTREACH OVERVIEW AND RESULTS***City Staff Research***

As part of the 2017 referral to the City Manager to create a TOPA policy, City staff in the Health, Housing and Community Services Department (HHCS) conducted research and interviews with a variety of stakeholders about TOPA policy and implementation including:

- Apartment and Office Building Association of Metropolitan Washington
- City of Los Angeles, Office of the Chief Legislative Analyst
- City of San Francisco, Office of Supervisor Sandra Lee Fewer
- DC Association of Realtors
- East Bay Community Law Center
- Housing Counseling Services (City-funded technical assistance provider)
- Latino Economic Development Corporation (City-funded technical assistance provider)
- Washington, DC Department of Housing and Community Development, Rental and Sales Division

The research staff presented the Council informed the development of this ordinance.

Tenant Outreach and Focus Groups

In addition to a number of TOPA workshops conducted for Berkeley community members over the years, EBCLC designed and conducted tenant-centered focus groups for the purpose of eliciting feedback on key provisions of the TOPA Ordinance to inform policy proposals. EBCLC identified key questions, had a purposeful recruitment strategy during which they reached out to a number of tenant organizations to gauge interest in participating, and prepared participants via orientations beforehand to provide background on TOPA and answer any questions. Two focus groups were held with a total of nine participants, and there was a post-focus group survey with additional questions.

With the exception of one homeowner participant, all focus group participants were Berkeley tenants and included three Section 8 voucher holders and almost all were low-income, with varying levels including 80% of AMI, 50% of AMI, and 30% of AMI and below. Participants lived in property types ranging from multi-family to single family, an ADU and senior housing. Out of the four people of color, two identified as Latino/Hispanic, one as Black/African American, and one as Asian/Pacific Islander. An even spread of ages from 25 to 60+ years of age were represented with five participants identifying as female, three as male, and one as non-binary. All participants had some form of high school education, six having at least a bachelor's degree.

Tenants were engaged through presentations, simulations, and written feedback on two core provisions of TOPA: timelines and permanent affordability restrictions. The decision points for the timelines included eliciting feedback on the amount of time it would take to submit a statement of interest and submit an offer. To perform these milestones, tenants were advised that they would need to organize a tenant meeting, gather financial information, and decide on ownership type. The results showed that tenants needed more time across all property types. Considerations for timelines that were raised during focus groups included the time necessary for tenants to build consensus, gather financial information, receive guidance on options of assigning rights vs. purchasing, and learning about first-time homeownership, including a cost-benefit analysis.

Participants identified the following supportive service needs: City-sponsored workshops, financial assistance in the form of subsidy and financial advising, centralized forms and documents regarding a clear articulation of TOPA rights and process, legal assistance, and mediation services especially for multi-family homes. Overall, tenants were excited about the prospect of being able to purchase or assign their rights to an affordable housing organization. However, tenants would like to ensure that non-profits are held to a high standard of care.

Permanent affordability requirements for all TOPA projects were presented, as well as the major trade-offs of equity building and future affordability. Participants were asked for their impressions on the fairness of permanent affordability in exchange for the bundle of rights that TOPA provides to tenants. Overall, there was a strong sense from participants that they would want to use the TOPA rights to buy the property they live in primarily for the purpose of staying there, and that keeping the property affordability for future generations was more important than individual profit gain or reaping a high appreciation on the property. All of the participants agreed that permanent affordability needs to be a part of any TOPA transaction.

General feedback from the focus groups demonstrated that there is support for a TOPA policy, although it is contingent on resources such as financial and technical assistance. There is a strong sense among low-income tenants that technical and financial assistance are necessary for them to exercise their TOPA rights.

The focus groups, despite the small sample size, provided useful feedback to inform the policy. Nonetheless, EBCLC, NCLT, and BACL T intend to continue reaching out to more residents and groups, especially those representing low-income people of color and particularly groups most impacted by the displacement crisis, to do outreach and solicit feedback as necessary.

Lender/financing overview

The TOPA working group has contacted the following banks and lending institutions in recent months: Clearinghouse CDFI, Community Bank of the Bay, National Housing Trust, Capital Impact Partners, Heritage Bank (formerly Presidio Bank), and the Local Initiatives Support Corporation (LISC). Early conversations with these lenders, as reflected previously, indicate that there is interest in funding TOPA projects so long as they meet the necessary requirements. Again, in the case of most lenders, they do not offer 30-year consumer loans for these types of projects, but instead offer the more typical 10-15 year term commercial acquisition loans. However, TOPA working group members have been in conversation with several of these lenders who have interest in creating a new/hybrid type of consumer/commercial loan geared towards the owner-occupants of LEHC properties. This would ideally be a fully amortized 30 year loan, backed by the types of investments which offer the more favorable interest rates typical of consumer (owner-occupied) mortgages. With a solid potential demand for more of these types of loans through TOPA, there could be the momentum needed to persuade lenders to advance this concept.

Research of rental sales professionals

Real estate professionals from four different organizations were interviewed and asked about asking vs. sales price and also length of time the properties were on the market, including escrow time. Additionally, several online resources and articles were reviewed to greater understand buyers of multi-tenant properties and market speculation expectations for 2020. Comments gathered directly from real estate professionals included:

- Berkeley/Oakland property is seen as a safe investment because selling prices don't usually go below asking prices
- Due to rent control, tenant protections and eviction laws investors are looking to move out of property ownership in Berkeley/Oakland
- It is difficult to make improvements on properties due to inability to raise rents and recoup improvement investment costs
- Property desirability depends on tenant occupation, property condition, cash flow, location and zoning (depending on buyers intended use)
- Selling time is longer and price is lower for multi-unit properties with rent-controlled units because it is difficult to make profitable returns on investment
- Larger companies that buy multi-unit properties are often looking to redevelop

Property sale and time on the market, gathered from *Zillow*, is included in Attachment 2.

In order to ensure that TOPA ordinance development would align with the work of the San Francisco Foundation grant, additional outreach will continue during the City

Council Committee process. Feedback from proposed meetings with Berkeley Property Owners Association and BRIDGE Association of Realtors will be included as Attachment 5.

RATIONALE FOR RECOMMENDATION

Taking no action or waiting for significant changes in state rental laws or for more affordable housing production will continue to exacerbate the housing affordability crisis. The need to provide more options for low income tenants is immediate.

Increasing affordable housing is a policy priority for Berkeley. The most cost-effective way to do so is creating sustained affordability within existing housing stock. The recommendation to apply TOPA to all properties with the exception of Single Family/Owner Occupied Residences including those with ADUs, will at least **triple** the number of units that could be made available to tenants under TOPA (compared to other options that were considered). This policy would provide ownership opportunity for low income tenants or stabilize rents, keeping their housing cost affordable for generations. Furthermore, maximizing the number of units that could invoke the TOPA policy would justify the City's investment of resources for purchase, administration and enforcement.

Legislation of a Tenant Opportunity to Purchase Act (TOPA) has inherent and significant benefits for tenants, including:

- Effective anti-displacement tool by giving tenants options to stay in their home
- Creates pathways to homeownership for tenants, thereby helping low-income families of color to have permanency in Berkeley and build equity
- Stabilizes rents and keeps rental properties from converting to market-rate
- Levels the playing field for tenants and affordable housing developers by providing an opportunity for them to purchase properties, and incentivizing owners to sell to them when the owner is ready
- Provides Tenants empowerment and control of their housing
- Preserves existing, naturally occurring affordable units
- Creates more affordable housing by converting rental properties to deed-restricted permanently affordable properties
- Provides an opportunity for tenants to stay in their homes without fear of eviction

Future regional housing policy will require greater accountability for housing production and more requirements to provide affordable units. Converting existing housing stock to affordable units could help Berkeley meet these required housing goals.

IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT

Optimally, the goal for the TOPA policy to be in full force and effect would be following funding in the June 2020 Budget process. In order to meet that goal, additional work must be completed:

- Develop Administrative Regulations. The fellow awarded to the Planning Department by the San Francisco Foundation for the Bay's Challenge Grant will be working with the East Bay Community Law Center in developing the Administrative Regulations and Implementation Plan for the TOPA Ordinance.
- Database development. A consultant should be hired to create an accurate database of all rental properties that will support many other existing programs, such as the Rental Housing Safety Program, Measure U1, Below Market Rate units and measuring RHNA goals. This could be accomplished in much the same manner as the database for short term rentals.
- Program administration, oversight and enforcement. Adequate funding to support the administration, oversight and enforcement must be identified. The Rent Board is willing to assume the role as the administering body and will also adjudicate any claims of noncompliance through their hearing officer processes.
- Funding for Program Costs. Quantifying adequate project costs, that would be included in a budget referral, are a component of the required actions contained herein. The City must be prepared to fully fund the program however, future State housing incentives and regional philanthropy could help offset City investment and such opportunities should be followed and pursued by the City Manager and the administering body.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES AND LAWS

TOPA aligns with the Berkeley plans, programs, policies and laws in the following way:

City of Berkeley 2019-2020 Strategic Plan

- Create affordable housing and housing support services for our most vulnerable community members
- Champion and demonstrate social and racial equity
- Foster a dynamic, sustainable and locally based economy

Housing Element of the General Plan*Objectives*

- **Housing Affordability.** Berkeley residents should have access to quality housing at a range of prices and rents. Housing is least affordable for people at the lowest income levels, and City resources should focus on this area of need.
- **Maintenance of Existing Housing.** Existing housing should be maintained and improved.
- **Fair and Accessible Housing.** The City should continue to enforce fair housing laws and encourage housing that is universally accessible.
- **Public Participation.** Berkeley should continue to improve the role of the neighborhood residents and community organizations in housing and community development decision making.

Policies and Actions

- **Policy H-1 Affordable Housing.** Increase the number of housing units affordable to Berkeley residents with lower income levels.
- **Policy H-2 Funding Sources.** Aggressively search out, advocate for, and develop additional sources of funds for permanently affordable housing, including housing for people with extremely low incomes and special needs.
- **Policy H-3 Permanent Affordability.** Ensure that below market rate rental housing remains affordable for the longest period that is economically and legally feasible.
- **Policy H-4 Economic Diversity.** Encourage inclusion of households with a range of incomes in housing developments through both regulatory requirements and incentives.
- **Policy H-5 Rent Stabilization.** Protect tenants from large rent increases, arbitrary evictions, hardship from relocation and the loss of their homes.
- **Policy H-6 Rental Housing Conservation and Condominium Conversion.** Preserve existing rental housing by limiting conversion of rental properties to condominiums.
- **Policy H-7 Low-Income Homebuyers.** Support efforts that provide opportunities for successful home ownership for residents and workers in the City of Berkeley.
- **Policy H-8 Maintain Housing.** Maintain and preserve the existing supply of housing in the City.

Affordable Housing Action Plan adopted November 28, 2017:

High Priority #2: Develop an ordinance modeled after Washington D.C.'s Tenant Opportunity to Purchase Act (TOPA) that offers existing tenants the first right of

refusal when property owners place rental property on the sale market, which can be transferred to a qualifying affordable housing provider.

Rent Stabilization and Eviction for Good Cause Ordinance

In June 1980, Berkeley residents passed the City's comprehensive rent stabilization law known as the Rent Stabilization and Eviction for Good Cause Ordinance (BMC Chapter 13.76). The Ordinance regulated most residential rents in Berkeley and provided tenants with increased protection against unwarranted evictions and is intended to maintain affordable housing and preserve community diversity. However, in 1995, the California Legislature enacted Costa-Hawkins Rental Housing Act. Since that time owners may now set a market rent for most tenancies once a new tenant occupies a unit. While there are some tenants that remain in previous units under the Berkeley Rent Stabilization Ordinance, their rents increase by a set percentage annually. Landlords of rent stabilized units are motivated to get their long tenants to move out, therefore putting these tenants at risk of eviction. TOPA aligns with the spirit of the 1980 law in that it would stabilize the rents in TOPA acquired properties.

Housing for a Diverse, Equitable and Creative Berkeley: Proposing a Framework for Berkeley's Affordable Housing

Referred to the Housing Advisory Commission, Measure O Committee, and Homeless Services Panel of Experts in July 2019, the proposed Framework presents a vision for affordable housing policy and proposes aligning funding streams with existing and new programs. It is intended to guide the work of City Commissions and the Council in implementing Measure U1, Measure O and Measure P and City housing policies. The Framework also sets an ambitious goal of 30% of all housing being dedicated as subsidized affordable housing. Among the many policies and programs recommended, it specifically calls out the acquisition and preservation of existing housing and democratic ownership and control. These strategies are identified as key to preventing displacement, preserving affordability and building wealth. TOPA is also called out as a policy strategy. The Framework is under review by Commissions and has not been adopted by the City Council.

Regional Policies

ABAG and MTC are developing a regional transportation and land use plan to address the region's housing crisis through 2050. Along with determining the allocation by city, it is also looking at revenue generation and financing methods to support the need for low income housing. TOPA could help Berkeley meet its low-income regional allocation and there is also a possibility that funds generated through ABAG policy could help fund some TOPA projects in the future.

FINANCIAL IMPLICATIONS

Revenue impact of Incentive to Sellers

Based on transactions from November 1, 2018 to November 30, 2019, 245 multi-unit residential (including mixed use) properties transferred hands for a total of \$9.65M in base transfer tax revenue. Half of the base transfer tax from these properties is approximately \$4.825M; this would be the amount the City would forgo with the TOPA program.

Total Base Transfer Tax from November 2018 to November 2019 from multi-unit residential properties	\$ 9.65M
Eligible amount for TOPA rebate (1/2 of transfer tax)	\$ 4.83M

% participation in TOPA	Revenue Loss in Millions
100%	\$ 4.83
50%	\$ 2.41
25%	\$ 1.21
10%	\$ 0.48

The City currently has a Seismic Retrofit Refund Program which provides refunds for voluntary seismic upgrades to residential properties. Up to one-third of the base 1.5% transfer tax may be refunded on a dollar-for-dollar basis. This program applies to structures that are used exclusively for residential purposes, or any mixed-use structure that contains two or more dwelling units.

If half of the base transfer tax is given to sellers via the TOPA program, this will have a negative impact on the Seismic Retrofit Refund Program. It should be noted that the Planning Department is making an effort to enhance the seismic program to include other qualifying measures (regarding energy efficiency) that require a permit. The amount available for rebate would significantly be reduced due to the lower base amount once TOPA is implemented.

Cost for Administration, Education, Outreach and Purchase Support

Council can consider additional policies to support TOPA acquisitions that would supplement current funding sources such as: Small Sites Program, Measure U1 tax

receipts, Housing Trust Fund and other government resources that might come in the future. One consideration would be the establishment of a Housing Accelerator Fund similar to that established in San Francisco. Acquisition support could include, but not be limited to, purchase deposits, appraisals, down payment assistance, capital improvements and capital reserves.

Additional resources for implementation, administration, enforcement and adjudication are being referred to the City Manager to determine the appropriate level of funding to support the program:

- Cost of administration (including notices, database management, rental cost history and adjustments for non-ownership units)
- Cost of tenant education/outreach/purchase support/adjudication

The estimates below draw on D.C.'s workload experience and tenant participation rate to generate expected staffing needs. Berkeley and D.C. could have a comparable number of sales each year covered under TOPA, but D.C.'s housing stock features much larger buildings that require more organizing and technical assistance support.

Budget estimates are broken down into 2 priorities:

1. Ongoing staffing support for Supportive Partners
2. Pre-development and project management needs for Qualified Organizations

Staff for "Supportive Partners" (i.e. technical assistance, on-going)

Berkeley's TOPA requires tenants to work with a Supportive Partner in order to exercise their rights to purchase under the policy. Supportive partners function in a supportive role to assist tenants in exercising their rights. This may include education, outreach, organizing, supporting tenants through the purchase, connecting tenants to resources, and counseling tenants on first-time homeownership and collective ownership structures.

Washington D.C. funds the equivalent of 8 FTE staff to provide direct outreach and resident organizing support under TOPA, which is broadly comparable to the scope of work envisioned for the Supportive Partners. This level of staffing support provides assistance for 30 transactions per year. Given the slightly reduced organizing workload with smaller buildings, we anticipate a need going forward for 6 FTE staff in order to adequately and professionally support the anticipated number of tenant groups exploring their TOPA rights and either purchasing or assigning their rights. Expected costs for 6 FTE staff positions for Supportive Partners. Salary costs vary but an anticipated average cost of \$125,000/year per FTE assuming a salary of

between \$60,000 to \$75,000 plus taxes, benefits and insurance was assumed for estimating.

Total: 6 FTE at \$125,000 each = \$750,000

Costs for pre-development work and project management needs of Qualified Organizations (on-going)

An essential part of the program is sufficient project management capacity at the Qualified Organizations to support the development of TOPA projects. Again, referring to the D.C. model, the City helps support the project management capacity via developer fees. Since this capacity was built up over 40 years of TOPA implementation, it is anticipated that Berkeley will need to support start-up capacity and allow for ongoing support through pre-development funds related to specific TOPA projects.

For the first year of TOPA, Qualified Organizations will need to be able to request pre-development funds of ~\$25,000 per project from the City. The City's existing pre-development loan process provides an excellent model for covering the out of pocket costs of projects, but typically does not cover the staffing and project management costs at that phase.

Due to the unique nature of TOPA project staffing, close work with residents is expected to be a substantial portion of the development workload. If there is a large volume of TOPA projects at once, the Qualified Organizations will likely need a mechanism to advance a portion of developer's fees to cover early-stage project management. This could mean that Qualified Organizations serving Berkeley may each need a project manager staff to support the volume of projects.

ENVIRONMENTAL SUSTAINABILITY

Creating and preserving affordable housing in Berkeley will allow lower income individuals and families to live closer to transit and to their workplaces, reducing greenhouse gas emissions. Preserving and refurbishing existing housing stock is an important environmental strategy, as reuse/repair/refurbishment of materials avoids spending resources on a new building construction, and the disposal of construction debris. Finally, increasing affordable housing in Berkeley will make the City more economically and racially equitable, which is a goal in Berkeley's *Resilience Strategy*.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

1. Ordinance
2. Zillow Multi Unit Property Sale Information
3. Berkeley Properties and TOPA Applicability
4. DC Apartment Buildings and TOPA
5. [Future feedback from BRIDGE and BPOA]

ORDINANCE NO. -N.S.

TENANT OPPORTUNITY TO PURCHASE ACT

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. Title

This Ordinance shall be known as the “Tenant Opportunity to Purchase Act”.

Section 2. That Berkeley Municipal Code Chapter 13.89 is created to read as follows:

Chapter 13.89

TENANT OPPORTUNITY TO PURCHASE ACT

Sections

- 13.89.010 Findings**
- 13.89.020 Definitions**
- 13.89.030 “Sale” Defined**
- 13.89.040 Authority**
- 13.89.050 Applicability**
- 13.89.060 Exemptions**
- 13.89.070 First Right to Purchase**
- 13.89.080 Tenant Decision-Making; Tenant Organizations**
- 13.89.090 Qualified Organizations**
- 13.89.100 Supportive Partners**
- 13.89.110 Assignment of Rights**
- 13.89.120 Waiver of Rights**
- 13.89.130 Notice Requirements**

- 13.89.140 Right of First Offer**
- 13.89.150 Right of First Refusal**
- 13.89.160 Third Party Rights**
- 13.89.170 Right to Appraisal**
 - 13.89.180 Contract Negotiations**
 - 13.89.190 No Selling of Rights**
 - 13.89.200 Tenant Protections**
 - 13.89.210 Price Stabilization**
 - 13.89.220 Incentives**
 - 13.89.230 Enforcement**
 - 13.89.240 Statutory Construction**
 - 13.89.250 Administration and Reports**
 - 13.89.260 Severability**

13.89.010 Findings.

- A. As the Bay Area region experiences increased economic growth and a high demand for housing, housing prices continue to rise which leads to displacement of low-income residents.
- B. In April 2019, the average rent for an apartment was \$3,191. To be able to afford a two-bedroom fair market rate unit, a household would need to earn \$44.79/hour or \$93,163 annually. Comparatively, the average for California is \$32.68/hour or \$67,974 annually.
- C. The Department of Housing and Urban Development (“HUD”) sets the income standards for housing vouchers based on the Area Median Income (“AMI”). In 2019, for a Berkeley family of four to qualify as extremely low income at 30% AMI, their income could not exceed \$37,150, very low income at 50% AMI could not exceed \$61,950 and low income at 80% AMI could not exceed \$98,550.
- D. Housing production in Berkeley has accelerated but there remains a significant unmet need for affordable housing for low-income people. Between January 1, 2014 and December 31, 2018, Berkeley permitted 141% above moderate income units (+120% AMI), 0% moderate income units (81-120% AMI), 15% low income units (51 - 80% AMI),

65% very low income units (31 - 50% AMI) and 0% extremely low income units (less than 30% AMI) toward meeting the Association of Bay Area Governments' ("ABAG") RHNA goals.

- E. The current need for affordable housing units in Alameda County is 52,591 units. Approximately 20% of residents in Berkeley are living in poverty.
- F. The lack of affordable housing for Berkeley's low-income communities is resulting in Berkeley residents having no option but to leave the City entirely or risk becoming homeless. Currently, there are an estimated 2,000 people who experience homelessness in Berkeley each year, and in December 2019 the Council extended its declaration of a homeless shelter crisis to January 2022.
- G. Affordable housing preservation and anti-displacement strategies will help keep low income tenants in their homes and is codified in the Berkeley General Plan Housing Element. Furthermore, production and maintaining affordable housing, at all income levels, is a stated priority of the City Council in its Housing Action Plan.
- H. This program finds that in the interest of preventing the displacement of lower-income tenants and preserving affordable housing, it is necessary and appropriate to require that the owners of rental properties in the City offer tenants the first opportunity to purchase and, in some cases defined herein, Qualified Organizations the second opportunity to purchase the property before it may be sold on the market to a third-party purchaser.
- I. The purpose of this chapter is to promote the health, safety, and general welfare of the residents of the City of Berkeley and the economic stability and viability of neighborhoods and ensure protection of the socioeconomic diversity and social fabric of the City.

13.89.020 Definitions.

For the purposes of this Chapter, the following words and phrases shall have the meanings set forth below. **Unless the context clearly indicates otherwise, the singular term includes the plural and the plural term includes the singular.**

- A. "Accessory Dwelling Unit" (ADU) has the same meaning as in Chapter 23C.24 and includes a Junior ADU.
- B. "Administrative Regulation" means such rules and regulations the City shall issue to further the purposes of this Chapter.
- C. "AMI" means Area Median Income established by the U.S. Department of Housing and Urban Development (HUD), pursuant to 42 U.S.C. Chapter 1427 et seq., to establish local income classification levels.

- D. "Appraised value" means the value of the Rental Housing Accommodation as of the date of the appraisal, based on an objective, independent property valuation, performed according to professional appraisal industry standards.
- E. "Bona fide offer of sale" means an offer of sale for a Rental Housing Accommodation:
 - 1. For a price and other material terms at least as favorable to a Tenant, Tenant Organization, and Qualified Organization as those that the Owner has offered, accepted, or is considering offering or accepting, from a Purchaser in an arm's length third-party contract; or
 - 2. In the absence of an arm's length third-party contract, an offer of sale containing a sales price less than or equal to a price and other material terms comparable to that at which a willing seller and a willing buyer would sell and purchase the Rental Housing Accommodation, or an appraised value.
- F. "The City" means the City of Berkeley, including any departments within the City that are assigned any responsibilities under this Chapter.
- G. "City Manager" is defined as the City Manager or his or her delegate
- H. "CPI" means the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics for the San Francisco-Oakland-Hayward metropolitan area. If publication of the Consumer Price Index ceases, or if it is otherwise unavailable or is altered in a way as to be unusable, the City shall determine the use of an appropriate substitute index published by the United States Department of Labor, Bureau of Labor Statistics or any successor agency.
- I. "Days" means calendar days unless otherwise stated.
- J. "Governing Document" means a constitution, articles, bylaws, operating agreement, or other writings that governs the purpose and operation of a Tenant Organization and the rights and obligations of its members, which shall include provisions on the Tenant Organization's decision-making processes and appointing officers and other authorized agents to act on its behalf.
- K. "Governing Principles" means the governance and management principles stated in a Tenant Organization's Governing Documents.
- L. "Highest and best use" means the reasonably probable legal use of a property that is physically possible, appropriately supported, and financially feasible and that results in the highest value of the property.
- M. "Limited Equity Housing Cooperative" means the form of ownership defined in Section 11003.4(a) of the Business and Professions Code, which limits the increase of share values to below 10 percent annually, as well as prohibits more than 10 percent of the

total development cost of the cooperative housing units to be provided by share purchasers pursuant to Sections 11003.4 and Section 11003.2 of the Business and Professions Code, and that also meets the criteria of Sections 817 and 817.1 of the Civil Code.

- N. "Majority" means an affirmative vote of more than fifty percent (50%) required for decision-making under this Chapter.
- O. "Matter-of-right" means a land use, development density, or structural dimension to which a property owner is entitled by current zoning regulations or law.
- P. "Owner" means one or more persons, corporation, partnership, limited liability company, trustee, or any other entity, who is the owner of record of the Rental Housing Accommodation at the time of giving notice of intention to sell, and each person, corporation, partnership, limited liability company, trustee, or any other entity, who, directly or indirectly, owns 50 percent or more of the equity interests in the Rental Housing Accommodation at the time of giving notice of intention to sell. For purposes of complying with the notice requirements described in this Chapter, "Owner" may refer to any person acting as an authorized agent of the Owner.
- Q. "Qualified Organization" is defined in Section [Qualified Organizations].
- R. "Rent" has the same meaning as in the Rent Stabilization and Eviction for Good Cause Ordinance (section 13.76.040.E). It means the consideration, including any deposit, bonus, benefit or gratuity demanded or received for or in connection with the use or occupancy of rental units and housing services. Such consideration shall include, but not be limited to, monies and fair market value of goods or services rendered to or for the benefit of an Owner under the Rental Agreement.
- S. "Rental Agreement" has the same meaning as in the Rent Stabilization and Eviction for Good Cause Ordinance (section 13.76.040.F). It means an agreement, oral, written or implied, between an Owner and a Tenant for use or occupancy of a unit and for housing services.
- T. "Rental Housing Accommodation" means any real property, including the land appurtenant thereto, containing one or more Rental Units and located in the City of Berkeley.
- U. "Rental Unit" or "unit" has the same meaning as in the Rent Stabilization and Good Cause Ordinance (Chapter 13.76) and accompanying regulation 403. It means any unit in any real property, including the land appurtenant thereto, that is available for rent for residential use or occupancy (including units covered by the Berkeley Live/Work Ordinance No. 5217-NS), located in the City of Berkeley, together with all housing services connected with the use or occupancy of such property such as common areas and recreational facilities held out for use by the Tenant.

- V. "Rent Board" or "Board" has the same meaning as in the Rent Stabilization and Good Cause Ordinance (section 13.76.040.A).
- W. "Rent Stabilization and Eviction for Good Cause Ordinance" means Chapter 13.76 of the Berkeley Municipal Code.
- X. "Sale" or "sell" is defined in Section ["Sale" Defined].
- Y. "Single Family Home" means any Rental Housing Accommodation comprised of no more than one Rental Unit, whether or not the Rental Unit has one or more Tenant Households. A Single Family Home includes a condominium dwelling.
- Z. "Supportive Partner" is defined in Section [Supportive Partner].
- AA. "Tenant" means one or more renter, tenant, subtenant, lessee, sublessee, or other person entitled to the possession, occupancy, or benefits of a Rental Unit within a Rental Housing Accommodation. "Tenant" does not include transient guests who use or occupy a unit for less than fourteen consecutive days.
- BB. "Tenant Household" means one or more Tenants, whether or not related by blood, marriage or adoption, sharing a dwelling unit in a living arrangement usually characterized by sharing living expenses, such as rent or mortgage payments, food costs and utilities, as well as maintaining a single lease or Rental Agreement for all members of the household and other similar characteristics indicative of a single household.
- CC. "Tenant-occupied unit" means any Rental Unit currently occupied by one or more Tenants.
- DD. "Tenant Organization" means Tenants who have organized themselves as a legal entity that:
 - 1. Can acquire an interest in real property;
 - 2. Represents at least a majority of the Tenant-occupied Rental Units in a Rental Housing Accommodation as of the date of the Owner's notice of intent to sell pursuant to Section [Right of First Offer];
 - 3. Has adopted a Governing Document and Governing Principles; and
 - 4. Has appointed officers and any other authorized agents specifically designated to execute contracts act on its behalf.
- EE. "Third-party Purchaser" means any person or entity other than a Tenant, Tenant Organization, or Qualified Organization, engaged or seeking to engage, in purchasing a Rental Housing Accommodation from an Owner under this Chapter.

FF. "TOPA Buyer" means a Tenant, Tenant Organization, or Qualified Organization who is purchasing or has purchased a Rental Housing Accommodation from an Owner under this Chapter.

GG. "Under threat of eminent domain" refers to the commencement of the process of eminent domain, including but not limited to, any formal or informal contact with the owner by the government or government agents regarding the potential or ongoing assertion of eminent domain, and any hearings or court proceedings regarding the same.

13.89.030 "Sale" Defined.

A. "Sale" or "sell" includes, but is not limited to:

The transfer, in exchange for money or any other thing of economic value, of a present interest in the Rental Housing Accommodation, including beneficial use, where the value of the present interest is the fee interest in the Rental Housing Accommodation, or substantially equal to the value of that fee interest.

For purposes of this Section ["Sale" Defined], a transfer may include those completed in one transaction or a series of transactions over a period of time.

13.89.040 Authority.

The City Manager and their designees are authorized to enforce the provisions of this Chapter, and for such purposes, shall have the powers of a law enforcement officer. The City Manager is authorized to establish standards, policies, and procedures for the implementation of the provisions of this chapter to further the purpose set forth herein.

13.89.050 Applicability.

TOPA shall apply to all Rental Housing Accommodations unless exempted herein.

13.89.060 Exemptions.

A. Residential Property Types Exempted. The following properties are not Covered Properties for purposes of this Chapter:

1. Properties owned by the local, state, or federal government.
2. Properties owned by and operated as a hospital, convent, monastery, extended care facility, convalescent home, or dormitories owned by educational institutions.
3. A Single Family Home that an Owner occupies as their principal residence as defined in Administrative Regulations.

4. A Single Family Home with an ADU or other secondary dwelling unit, where an Owner occupies either the Single Family Home or the secondary unit as their principal residence as defined in Administrative Regulations.
5. Properties owned by cooperative corporations, owned, occupied, and controlled by a majority of residents.
6. Properties defined as “assisted housing developments” pursuant to California Government Code Section 65863.10(a)(3) so long as the provisions of California Government Code Section 65863.10, 65863.11, and 65863.13 apply.
7. Properties properly licensed as a hotel or motel.

B. Transfers Exempted

1. An inter-vivos transfer, even though for consideration, between spouses, domestic partners, parent and child, siblings, grandparent and grandchild.
2. A transfer for consideration, by a decedent’s estate to members of the decedent’s family if the consideration arising from the transfer will pass from the decedent’s estate to, or solely for the benefit of, charity.
 - a. For the purposes of (this subsection X), the term “members of the decedent’s family” includes:
 - i. A spouse, domestic partner, parent, child, grandparent, grandchild
 - ii. A trust for the primary benefit of a spouse, domestic partner, parent, child, grandparent, or grandchild
3. A transfer of bare legal title into a revocable trust, without actual consideration for the transfer, where the transferor is the current beneficiary of the trust.
4. A transfer to a named beneficiary of a revocable trust by reason of the death of the grantor of the revocable trust.
5. A transfer pursuant to court order or court-approved settlement.
6. A transfer by eminent domain or under threat of eminent domain.

C. Exemption Procedures and Burden of Proof.

1. Burden of Proof. The burden of proof to establish that a property type or planned transaction is exempt under this Chapter is on the Owner of the Rental Housing Accommodation.

2. The Owner of a Rental Housing Accommodation who believes that they should be granted an exemption under this Section [Exemptions] shall comply with procedures that the City shall create for claiming an exemption.

D. Voluntary Election to Participate. An Owner whose property or planned transaction is exempt from this Chapter pursuant to Sections [Applicability and Exemptions] may elect to subject their property to this Chapter by complying with procedures that the City shall create through Administrative Regulations, provided that the Owner who voluntarily subjects their property to this Chapter shall comply with this Chapter in its entirety. Each Tenant living in such property shall be granted all of the rights described in this Chapter, including the opportunity to decide whether to exercise their First Right of Purchase. No Owner shall be eligible for incentives described in Section [Incentives] without complying with this Chapter in its entirety.

13.89.70 First Right to Purchase.

This Chapter shall be construed to confer upon each Tenant a First Right to Purchase a Rental Housing Accommodation, subject to the exemptions in Section [Exemptions], in a manner consistent with this Chapter. The First Right to Purchase shall consist of both a Right of First Offer, as set forth in Section [Right of First Offer], and a Right of First Refusal, as set forth in Section [Right of First Refusal]. The First Right to Purchase is conferred to each Tenant but shall be exercised collectively pursuant to Section [Tenant Decision-Making]. The First Right to Purchase shall include the right to assign these rights to a Qualified Organization as set forth in Section [Assignment]. The First Right to Purchase shall be conferred where the Owner intends to sell the Rental Housing Accommodation. This Chapter shall not be construed to limit the right of first offer provided under Chapter 21.28.

13.89.080 Tenant Decision-Making; Tenant Organizations.

- A. **Tenant Decision-Making.** Except in the case of a duly formed Tenant Organization with its own adopted Governing Document, any action required of Tenants under this Chapter shall be approved by one of the following decision-making standards:
1. At least a Majority of Tenant-occupied units, in the case of a Rental Housing Accommodation with more than one Tenant-occupied unit.
 2. At least a Majority of Tenant Households, in the case of a Rental Housing Accommodation with only one Tenant-occupied unit but multiple Tenant Households.
 3. The Tenant Household, in the case of a Rental Housing Accommodation with only one Tenant Household.

B. Tenant Organizations.

1. In order to submit an offer of purchase pursuant to Section [Right of First Offer to Purchase] and respond to the Owner's Offer of Sale pursuant to Section [Right of First Refusal], Tenants shall:
 - a. Form a Tenant Organization, approved by the requirements described in subsection [Tenant Decision-Making], unless such a Tenant Organization already exists in a form desired by the Tenants.
 - i. Exception to Form Tenant Organization. If there is only one Tenant Household in a Rental Housing Accommodation, the Tenant Household may exercise the Right of First Offer and Right of First Refusal without forming a Tenant Organization pursuant to subsection [Formation Requirement]; however, the Tenant Household shall still comply with subsections [Supportive Partner] and [TO Registration].
 - b. Select a Supportive Partner, as defined in Section [Supportive Partner].
 - c. Deliver an application for registration of the Tenant Organization, or the Tenant Household, if applicable, to the City, and a copy to the Owner, by hand or by certified mail by the deadline of submitting an offer of purchase pursuant to Section [Right of First Offer]. The application shall include: the name, address, and phone number of Tenant officers and the Supportive Partner; a copy of the Formation Document, as filed; a copy of the Governing Document; documented approval that the Tenant Organization represents subsection [Tenant Decision-Making, A1 or A2) as of the time of registration; and such other information as the City may reasonably require. Tenants may form and register the Tenant Organization with the City pursuant to this subsection [Tenant Organizations], at any time; provided that this Section [Tenant Decision-Making; TO] shall not be construed to alter the time periods within which a Tenant Organization may exercise the rights afforded by this Chapter.
2. Upon registration with the City, the Tenant Organization shall constitute the sole representative of the Tenants.

13.89.090 Qualified Organizations

A. The City Manager shall establish an administrative process for certifying organizations that meet the following minimum criteria:

1. The organization is a bona fide nonprofit, as evidenced by the fact that it is exempt from federal income tax under 26 U.S.C. § 501(c)(3), or a California cooperative corporation, as evidenced by its articles of incorporation;
2. The organization has demonstrated a commitment to democratic residential control, as evidenced by its ownership and governance structure and relationship with residents;
3. The organization has agreed to transfer ownership of the Rental Housing Accommodation to the Tenants when feasible if Tenants so wish;
4. The organization has demonstrated a commitment to the provision of affordable housing for low, very low, and extremely low income City residents, and to prevent the displacement of such residents;
5. The organization has agreed to obligate itself and any successors in interest to maintain the permanent affordability of the Rental Housing Accommodation, in accordance with Section [Price Stabilization];
6. The organization has demonstrated a commitment to community engagement, as evidenced by relationships with neighborhood-based organizations or tenant counseling organizations;
7. The organization has demonstrated the capacity (including, but not limited to, the legal and financial capacity) to effectively acquire and manage residential real property at multiple locations within the Bay Area's nine counties;
8. The organization has acquired or partnered with another housing development organization to acquire at least one residential building using any public or community funding, or has acquired or partnered with another nonprofit organization to acquire any residential buildings; and
9. The organization has agreed to attend mandatory training to be determined, from time to time, by the City.

Notwithstanding any other requirement of this section, the Berkeley Housing Authority shall be deemed a Qualified Organization for purposes of this Chapter.

B. Certification, Term, and Renewal. Organizations that the City Manager certifies as having met the criteria in subsection [QO Criteria] shall be known as "Qualified Organizations." An organization's certification as a Qualified Organization shall be valid for four years. The City Manager shall solicit new applications for Qualified Organization status at least once each calendar year, at which time existing Qualified Organizations shall be eligible to apply for renewed certification as Qualified Organizations.

C. Existence and Publication of Qualified Organizations List. The City Manager shall publish on its website, and make available upon request, a list of Qualified Organizations. In addition to such other information as the City Manager may include, this list shall include contact information for each Qualified Organization. This contact information shall include, but need not be limited to, a mailing address, an e-mail address that the Qualified Organization monitors regularly, and a telephone number.

D. Disqualification of Qualified Organization and Conflicts of Interest. The City Manager shall promptly investigate any complaint alleging that a Qualified Organization has failed to comply with this Chapter. Subject to Administrative Regulations, if, after providing the Qualified Organization with notice and opportunity to be heard, the City Manager determines that an organization listed as a Qualified Organization has failed to comply with this Chapter, the City Manager may suspend or revoke that organization's certification as a Qualified Organization. The City Manager shall establish a process for addressing potential and actual conflicts of interests that may arise among Supportive Partners, Qualified Organizations, and Tenants through Administrative Regulations.

13.89.100 Supportive Partners

A. The City Manager shall establish an administrative process for certifying individuals or organizations that meet the following minimum criteria:

1. The individual or organization has demonstrated ability and capacity to guide and support Tenants in forming a Tenant Organization;
2. The individual or organization has demonstrated ability and capacity to assist Tenants in understanding and exercising their rights under this Chapter;
3. The individual or organization has demonstrated expertise, or existing partnerships with other organizations with demonstrated expertise, to counsel Tenants on first-time homeownership and collective ownership structures;
4. The individual or organization has a demonstrated commitment to creating democratic resident-controlled housing; and
5. The individual or organization has agreed to attend mandatory trainings, to be determined, from time to time, by the City.

B. Certification, Term, and Renewal. Individuals and organizations that the City Manager certifies as having met the criteria in subsection [SP Criteria] shall be known as "Supportive Partners." An individual or organization's certification as a Supportive Partner shall be valid for four years. The City Manager shall solicit new applications for Supportive Partner status at least once each calendar year, at which time existing

Supportive Partners shall be eligible to apply for renewed certification as Supportive Partners.

C. Purpose of Supportive Partner. A Supportive Partner functions in a supportive role to assist Tenants in exercising their rights under this Chapter. This Chapter does not confer any rights to a Supportive Partner. A Supportive Partner is distinct from a Qualified Organization who is conferred subordinated rights under this Chapter as described in Section 13.89.070. The City Manager may determine that a Qualified Organization described in Section 13.89.090 who meets the criteria in subsection 13.89.100A is also eligible to serve as a Supportive Partner. The City may also serve as a Supportive Partner.

D. Existence and Publication of Supportive Partners List. The City Manager shall publish on its website, and make available upon request, a list of Supportive Partners. In addition to such other information as the City Manager may include, this list shall include contact information for each Supportive Partner. This contact information shall include, but need not be limited to, a mailing address, an e-mail address that the Supportive Partner monitors regularly, and a telephone number.

E. Disqualification of Supportive Partner and Conflicts of Interest. The City Manager shall promptly investigate any complaint alleging that a Supportive Partner has failed to comply with this Chapter. Subject to Administrative Regulations, if, after providing the Supportive Partner with notice and opportunity to be heard, the City Manager determines that an individual or organization listed as a Supportive Partner has failed to comply with this Chapter, the City Manager may suspend or revoke that individual or organization's certification as a Supportive Partner. The City Manager shall establish a process for addressing potential and actual conflicts of interests that may arise among Supportive Partners, Qualified Organizations, and Tenants through Administrative Regulations.

13.89.110 Assignment of Rights

- A. A Tenant or Tenant Organization may assign rights under this Chapter in compliance with subsection [Tenant Decision-Making] to a Qualified Organization of their choice.
- B. Subject to Administrative Regulations, the assignment of rights described in this Section shall occur prior to the Tenant or Tenant Organization waiving their rights pursuant to Section [Waiver of Rights]], and only during the process provided in Section [Statement of Interest] and Section [Right of First Offer]. Except as provided in section 13.89.120, the waiver and assignment of rights shall made in a written agreement executed by the Tenant or Tenant Organization and the Qualified Organization.
- C. Qualified Organizations shall not accept any payment, consideration, or reward in exchange for the assignment of rights under this Section.

13.89.120 Waiver of Rights

- A. Tenants may affirmatively waive their rights before the time periods specified in Sections [Right of First Offer] and [Right of First Refusal] elapse by notifying the Owner in writing, signed by the Tenants and in compliance with Section [Tenant Decision-Making; Tenant Organizations].
- B. Tenants' failure to complete actions required under Sections [Right of First Offer] and [Right of First Refusal] within the allotted time periods and any extensions thereof shall be deemed a waiver of Tenants' rights.

13.89.130 Notice Requirements

Any notices required or permitted by this Chapter shall also comply with Administrative Regulations.

13.89.140 Right of First Offer

- A. **General Construction.** Before an Owner of a Rental Housing Accommodation may offer it for sale to, solicit any offer to purchase from, or accept any unsolicited offer to purchase from, any Third Party Purchaser, the Owner shall give the Tenant of the Rental Housing Accommodation the first opportunity to make an offer as set forth in this Section.
- B. **Joint Notification.** In accordance with Section [Notice Requirements]], the Owner shall:
 - a) Notify each Tenant of the Owner's intent to Sell the Rental Housing Accommodation by certified mail and by posting a copy of the notice in a conspicuous place in common areas of the Rental Housing Accommodation.
 - i) The notice shall include, at a minimum:
 - (1) A statement that the Owner intends to sell the Rental Housing Accommodation.
 - (2) A statement of the rights of Tenants and Qualified Organizations and the accompanying timelines described in this Chapter.
 - (3) A statement of the rights of Tenants and Qualified Organizations and the accompanying timelines described in this Chapter.
 - (4) A statement that the Owner shall make the related disclosures described in this Chapter available to the Tenant.
 - (5) A statement in English, Chinese, and Spanish stating that if the Tenant requires the notice in a language other than English, they can contact the City and request the notice in their language and/or the assistance of an interpreter.
 - b) Notify each Qualified Organization, at the same time as notifying Tenants, of the Owner's intent to Sell the Rental Housing Accommodation, by sending an e-mail to each of the e-mail addresses included on the City's list

of Qualified Organizations described in Section [Qualified Organizations, subsection B “Existence and Publication of Qualified Organizations List”].

- c) File a copy of the notices with proof that they have been sent to the Tenants and Qualified Organizations with the City or its designated agency, at the same time notice is sent to Tenants and Qualified Organizations.

C. Related Disclosures. When the Owner, pursuant to [this Section], notifies each Tenant and Qualified Organization of its intent to sell a Rental Housing Accommodation, the Owner shall also provide each Tenant and Qualified Organization with the following information, at minimum:

1. A floor plan of the property;
2. An itemized list of monthly operating expenses, utility consumption rates, and capital expenditures for each of the two preceding calendar years;
3. A list of any known defects and hazards, and any related costs for repair;
4. The most recent rent roll: a list of occupied units and list of vacant units, including the rate of rent for each unit and any escalations and lease expirations.
5. Covenants, Conditions, & Restrictions and reserves, in the case of a condominium dwelling;
6. Any other disclosures required by California state law.

D. Time to Submit a Statement of Interest.

1. Upon receipt of the notice and disclosures described in subsections [Joint Notification and Related Disclosures], Tenants shall deliver one statement of interest to the Owner on behalf of the Rental Housing Accommodation.
2. Tenants shall have 20 days in a Rental Housing Accommodation comprised of 1 or 2 units, and 30 days in a Rental Housing Accommodation with 3 or more units, to deliver the statement of interest. Tenants in a Rental Housing Accommodation with 30 or more units shall be granted one extension of up to 15 days upon request, for a total of 45 days. If the Tenants waive their rights in accordance with Section [Waiver of Rights], Qualified Organizations shall have the remaining time or a minimum of 5 days, whichever is greater, to deliver a statement of interest to the Owner.
 - a) The statement of interest shall be a clear expression from the Tenants that they intend to further consider making an offer to purchase the Rental Housing Accommodation or further consider assigning their rights to a Qualified Organization.
 - b) The statement of interest shall also include documentation demonstrating that the Tenants’ decision was supported by the standard described in Section [Tenant Decision-Making].
 - c) If the Tenants waive their rights in accordance with Section [Waiver of Rights], the Owner shall notify all Qualified Organizations, via e-mail, on the same day that Tenants waive their rights, of the right of each Qualified Organization to submit a statement of interest to the Owner.

- d) Upon receipt of this notice, a Qualified Organization that intends to further consider making an offer to purchase the Rental Housing Accommodation shall deliver a statement of interest to the Owner and every other Qualified Organization via e-mail within the time periods in subsection [description of remaining time for QOs in this subsection above].
- e) The statement of interest shall be a clear expression that the Qualified Organization intends to further consider making an offer to purchase the Rental Housing Accommodation.
- f) If a Qualified Organization has delivered a statement of interest consistent with subsection [above], the Owner shall, subject to seeking Tenant approval for disclosure of any confidential or personal information, disclose to each such Qualified Organization, via e-mail, the names of Tenants in each occupied unit of the Rental Housing Accommodation, as well as any available contact information for each Tenant.
- g) If Tenants and Qualified Organizations do not deliver a statement of interest within the time periods specified in [this subsection], the Owner may immediately proceed to offer the Rental Housing Accommodation for sale to, and solicit offers of purchase from, prospective Third Party Purchasers, subject to the Right of First Refusal in Section [Right of First Refusal].

E. Time to Submit Offer.

1. **Rental Housing Accommodation with only one Tenant Household.** The following procedures apply to offers to purchase a Rental Housing Accommodation with only one Tenant Household.
 - a. Upon receipt of a statement of interest from Tenants consistent with Section [Time to Submit a Statement of Interest], an Owner shall afford the Tenants an additional 21 days to select a Supportive Partner and submit an offer to purchase the Rental Housing Accommodation. If the Tenants waive their rights in accordance with Section [Waiver of Rights], Qualified Organizations shall have the remaining time or a minimum of 5 days, whichever is greater, to submit an offer to the Owner.
 - b. If the Tenants waive their rights in accordance with Section [Waiver of Rights], the Owner shall notify all Qualified Organizations, via email, of their rights to submit an offer. Upon receipt of this notice, each Qualified Organization that intends to purchase the Rental Housing Accommodation shall submit an offer to the Owner within the time period specified in subsection [description of remaining time for QOs in this subsection above].
2. **2-unit property and Single Family Home with multiple Tenant Households.** The following procedures apply to offers to purchase a Rental Housing Accommodation with 2 units or a Single Family Home with multiple Tenant Households, unless subject to subsection [Rental Housing Accommodations with one Tenant Household].

- a. Upon receipt of a statement of interest from Tenants consistent with Section [Time to Submit Statement of Interest], an Owner shall afford the Tenants an additional 45 days to form a Tenant Organization, select a Supportive Partner, and deliver an offer to purchase the Rental Housing Accommodation. If the Tenants waive their rights in accordance with Section [Waiver of Rights], Qualified Organizations shall have the remaining time or a minimum of 5 days, whichever is greater, to deliver an offer to the Owner.
 - b. If the Tenants waive their rights in accordance with Section [Waiver of Rights], the Owner shall notify all Qualified Organizations, via e-mail, of their rights to submit an offer. Upon receipt of this notice, each Qualified Organization that intends to purchase the Rental Housing Accommodation shall deliver an offer within the time period specified in subsection [description of remaining time for QOs in this subsection above].
3. **3 or more unit properties.** The following procedures apply to offers to purchase a Rental Housing Accommodation with 3 or more units, unless subject to subsection [Rental Housing Accommodation with one Tenant Household].
- a. Upon receipt of a Statement of Interest from Tenants consistent with Section [Time to Submit Statement of Interest], an Owner shall afford Tenants an additional 60 days to form a Tenant Organization, select a Supportive Partner, and deliver an offer to purchase the Rental Housing Accommodation. Tenants in a Rental Housing Accommodation with 10-29 units shall be granted one extension of up to 30 days upon request, for a total of 90 days to submit an offer to the Owner. Tenants in a Rental Housing Accommodation with 30 or more units shall be granted two extensions of up to 30 days each, for a total of 120 days to deliver an offer to the Owner. If the Tenants waive their rights in accordance with Section [Waiver of Rights] Qualified Organizations shall have the remaining time within these time periods and any extensions thereof, or a minimum of 5 days, whichever is greater, to deliver an offer to the Owner.
 - b. If the Tenants waive their rights in accordance with Section [Waiver of Rights], the Owner shall notify all Qualified Organizations, via email, of their rights to submit an offer. Upon receipt of this notice, each Qualified Organization that intends to purchase the Rental Housing Accommodation shall deliver an offer within the time period specified in subsection [description of remaining time for QOs in this subsection above].
4. **Price Stabilization Agreement.** Within these timeframes for submitting an offer, the Tenant, Tenant Organization, or Qualified Organization that submits an offer to the Owner shall also submit an agreement to the City pursuant to Section [Price Stabilization subsection B] agreeing to be bound by requirements of Section [Price Stabilization].

F. **Owner Free to Accept or Reject Offer.** The Owner is free to accept or reject any offer of purchase from a Tenant, Tenant Organization or Qualified Organization. Any such acceptance or rejection shall be communicated in writing.

1. **Incentives to Accept Offer.** If the Owner accepts any such offer of purchase from a Tenant, Tenant Organization or a Qualified Organization, the Owner may be eligible to receive incentives pursuant to Section [Incentives].
2. **Rejection of Offer.** If the Owner rejects all such offers of purchase, the Owner may immediately offer the Rental Housing Accommodation for sale to, and solicit offers of purchase from, prospective Third Party Purchasers, subject to the Right of First Refusal described in Section [Right of First Refusal].
3. **Lapse of Time.** If 90 days elapse from the date of an Owner's rejection of an offer from a Tenant, Tenant Organization or a Qualified Organization, and the Owner has not provided an offer of sale as described in Section [Right of First Refusal], the Owner shall comply anew with this Section [Right of First Offer].

G. **Time to Secure Financing.**

1. **Single Family Home with a one Tenant Household.** The following procedures apply to a purchase of a Single Family Home with only one Tenant Household.
 - a. The Owner shall afford the Tenant or Qualified Organization 30 days after the date of the entering into contract to secure financing.
 - b. If, within 30 days after the date of contracting, the Tenant or Qualified Organization presents the Owner with the written decision of a lending institution or agency that states that the institution or agency estimates that a decision with respect to financing or financial assistance will be made within 45 days after the date of contracting, the Owner shall afford the Tenant or Qualified Organization an extension of time consistent with the written estimate.
 - c. If the Tenant or Qualified Organization do not secure financing and close the transaction within the timeframes described in subsections [Time to Secure Financing and Time to Close] and any extensions thereof, the Owner may immediately proceed to offer the Rental Housing Accommodation for sale to, and to solicit offers of purchase from prospective Third Party Purchasers other than the Tenant or Qualified Organization.
2. **2-unit property and Single Family Home with multiple Tenant Households.** The following procedures apply to a purchase of a Rental Housing Accommodation with 2 units or a Single Family Home with multiple Tenant Households.

- a. The Owner shall afford the Tenant Organization or Qualified Organization 90 days after the date of entering into contract to secure financing.
 - b. If, within 90 days after the date of contracting, the Tenant Organization or Qualified Organization presents the Owner with the written decision of a lending institution or agency that states that the institution or agency estimates that a decision with respect to financing or financial assistance will be made within 120 days after the date of contracting, the Owner shall afford the Tenant Organization or Qualified Organization an extension of time consistent with the written estimate.
 - c. If the Tenant Organization or Qualified Organization do not secure financing and close the transaction within the timeframes described in subsections [Time to Secure Financing and Time to Close] and any extensions thereof, the Owner may immediately proceed to offer the Rental Housing Accommodation for sale to, and to solicit offers of purchase from prospective Third-Party Purchasers other than the Tenant Organization or Qualified Organization.
3. **3 or more unit properties.** The following procedures apply to purchases of Rental Housing Accommodations with 3 or more units.
- a. The Owner shall afford the Tenant Organization or Qualified Organization 120 days after the date of entering into contract to secure financing.
 - b. If, within 120 days after the date of contracting, the Tenant Organization or Qualified Organization presents the Owner with the written decision of a lending institution or agency that states that the institution or agency estimates that a decision with respect to financing or financial assistance will be made within 160 days after the date of contracting, the Owner shall afford the Tenant Organization or Qualified Organization an extension of time consistent with the written estimate.
 - c. If the Tenant Organization or Qualified Organization do not secure financing and close the deal within the timeframes described in subsections [Time to Secure Financing and Time to Close] and any extensions thereof, the Owner may immediately proceed to offer the Rental Housing Accommodation for sale to, and to solicit offers of purchase from prospective Third-Party Purchasers other than the Tenant Organization or Qualified Organization.
- H. **Time to Close.** In addition to the time periods in subsection [Time to Secure Financing], the Owner shall afford each Tenant, Tenant Organization, or Qualified Organization with an additional 14 days to close. So long as the Tenant, Tenant

Organization, or Qualified Organization is diligently pursuing the close, the Owner shall afford them a reasonable extension beyond this 14-day period to close.

13.89.150 Right of First Refusal

A. General Construction. This Section [Right of First Refusal] shall be construed to confer a Right of First Refusal only upon each Tenant, Tenant Organization, and Qualified Organization that exercised the Right of First Offer pursuant to Section [Right of First Offer].

B. Offer of sale to Tenant, Tenant Organizations, and Qualified Organizations. Before an Owner of a Rental Housing Accommodation may sell a Rental Housing Accommodation, the Owner shall give each Tenant, Tenant Organization, or Qualified Organization that previously made an offer to purchase that Rental Housing Accommodation pursuant to Section [Right of First Offer], an opportunity to purchase the Rental Housing Accommodation at a price and terms that represent a Bona Fide Offer of Sale.

1. The Owner's offer of sale shall include, at minimum:
 - a. The asking price and terms of the sale. The terms and conditions shall be consistent with the applicable timeframes described in Sections [Time to Accept Offer, Time to Secure Financing, and Time to Close];
 - b. A statement as to whether a contract with a Third-party Purchaser exists for the sale of the Rental Housing Accommodation, and if so, a copy of such contract; and
 - c. A statement in English, Chinese, and Spanish stating that if the Tenant requires the offer of sale in a language other than English, they may contact the City and request the offer of sale in their language and/or the assistance of an interpreter.
2. If a Tenant or Tenant Organization is receiving the offer of sale, the Owner shall deliver the items in subsection [Offer of sale, subsection a] to each Tenant or Tenant Organization by providing a written copy of the offer of sale by certified mail.
3. If a Qualified Organization is receiving the offer of sale, the Owner shall deliver the items in subsection [Offer of sale, subsection a] to each Qualified Organization that previously made an offer to purchase the Rental Housing Accommodation. The Owner shall submit an offer of sale to each such Qualified Organization on the same day, and to the extent possible, at the same time, by e-mail.
4. If the Owner has a contract with a Third-Party Purchaser for the sale of the Rental Housing Accommodation, the Owner shall deliver all of the items in

subsection [Offer of sale, part a] to each Tenant, Tenant Organization or Qualified Organization within 2 days of entering into contract with the Third-Party Purchaser.

5. The Owner shall also provide the City with a written copy of the offer of sale and a statement certifying that the items in subsection [Offer of sale, subsection a] were delivered to each Tenant, Tenant Organization, or Qualified Organization.

C. Bona Fide Offer of Sale.

1. For purposes of this section, a “Bona Fide Offer of Sale” means an offer of sale for a Rental Housing Accommodation that is either:
 - a. For a price and other material terms at least as favorable to a Tenant, Tenant Organization or Qualified Organization as those that the Owner has offered, accepted, or is considering offering or accepting, from a Third Party Purchaser in an arm’s length third-party contract; or
 - b. In the absence of an arm’s length third-party contract, an offer of sale containing a sales price less than or equal to a price and other material terms comparable to that at which a willing seller and a willing buyer would sell and purchase the Rental Housing Accommodation, or an appraised value.

D. Time to Accept Offer.

1. **Rental Housing Accommodation with one Tenant Household.** The following procedures apply to a Rental Housing Accommodation with only one Tenant Household.
 - a. Upon receipt of the offer of sale from the Owner, a Tenant or Qualified Organization shall have 10 days to accept the offer of sale, provided, however, that the deadline to accept any offer of sale shall be extended to allow the Tenant or Qualified Organization to exercise their Right to an Appraisal pursuant to Section [Right to an Appraisal], if they believe that the offer of sale is not a Bona Fide Offer of Sale.
2. **Rental Housing Accommodation with multiple Tenant Households.** The following procedures apply to a Rental Housing Accommodation with multiple Tenant Households.
 - a. Upon receipt of the offer of sale from the Owner, a Tenant Organization shall have 30 days to accept the offer of sale.
 - b. Upon receipt of the offer of sale from the Owner, a Qualified Organization shall have 14 days to accept the offer of sale.
 - c. The deadline to accept any offer of sale shall be extended to allow the Tenant or Qualified Organization to exercise their Right to an

Appraisal pursuant to Section [Right to an Appraisal], if they believe that the offer of sale is not a Bona Fide Offer of Sale.

3. If, during these time periods, any Qualified Organization that has received such offer of sale decides to accept the Owner's offer of sale, that Qualified Organization shall notify the Owner and every other Qualified Organization of that decision by e-mail. After a Qualified Organization notifies the Owner of its decision to accept the Owner's offer of sale (that is, before any other Qualified Organization so noticed the Owner), that Qualified Organization shall be deemed to have accepted the offer of sale, and no other Qualified Organization may accept the Owner's offer of sale, whether or not the time periods in this subsection have elapsed.

E. Time to Secure Financing and Close. If a Tenant, Tenant Organization, or Qualified Organization accept an Owner's offer of sale in accordance with this Section [Right of First Refusal], the Owner shall afford such Tenant, Tenant Organization, or Qualified Organization time to secure financing and close, consistent with Sections [Time to Secure Financing and Time to Close].

F. Rejection of Offer. If each Tenant, Tenant Organization, and Qualified Organization that received an offer of sale consistent with this Section [Right of First Refusal] rejects that offer of sale or fails to respond within the timelines described in this Section, the Owner may immediately proceed with the sale of the Rental Housing Accommodation to a Third-Party Purchaser consistent with the price and material terms of that offer of sale.

13.89.160 Third-Party Rights

The right of a third party to purchase a Rental Housing Accommodation is conditional upon the exercise of Tenant, Tenant Organization, and Qualified Organization rights under this Chapter. The time periods for submitting and accepting an offer, securing financing, and closing under this Chapter are minimum periods, and the Owner may afford any Tenant, Tenant Organization, and Qualified Organization a reasonable extension of such period, without liability under a third party contract. Third Party Purchasers are presumed to act with full knowledge of the rights of Tenants, Tenant Organizations, and Qualified Organizations and public policy under this Chapter.

13.89.170 Right to Appraisal

- A. This Section shall apply whenever an offer of sale is made to a Tenant, Tenant Organization, or Qualified Organizations as required by this Chapter and the offer is made in the absence of an arm's-length third-party contract.
- B. **Request for Appraisal.** The Tenant, Tenant Organization, or Qualified Organization that receives an Owner's offer of sale may challenge that offer of sale as not being a Bona Fide Offer of Sale, and request an appraisal to determine the fair market value of the Rental Housing Accommodation. The party

requesting the appraisal shall be deemed the “petitioner” for purposes of this subsection. The petitioner shall deliver the written request for an appraisal to the City and the Owner by hand or by certified mail within 3 days of receiving the offer of sale.

- C. **Time for Appraisal.** Beginning with the date of receipt of a written request for an appraisal, and for each day thereafter until the petitioner receives the appraisal, the time periods described in Section [Time to Accept Offer] shall be extended by an additional day up to ten (10) business days.
- D. **Selection of Appraiser.** The petitioner shall select an appraiser from a list of independent, qualified appraisers, that the City shall maintain. City approved appraisers shall hold an active appraiser license issued by the California Bureau of Real Estate Appraiser and shall be able to conduct an objective, independent property valuation, performed according to professional industry standards. All appraisers shall undergo training organized by the City before they are approved and added to the City’s list.
- E. **Cost of Appraisal.** The petitioner, Owner, and the City, shall each be responsible for one-third of the total cost of the appraisal.
- F. **Appraisal Procedures and Standards.** The Owner shall give the appraiser full, unfettered access to the property. The Owner shall respond within 3 days to any request for information from the appraiser. The petitioner may give the appraiser information relevant to the valuation of the property. The appraisal shall be completed expeditiously according to standard industry timeframes. An appraised value shall only be based on rights an owner has as a matter-of-right as of the date of the alleged Bona Fide Offer of Sale, including any existing right an Owner may have to convert the property to another use. Within these restrictions, an appraised value may take into consideration the highest and best use of the property.
- G. **Validity of Appraisal.** The determination of the appraised value of the Rental Housing Accommodation, in accordance with this Section, shall become the sales price of the Rental Housing Accommodation in the Bona Fide Offer of Sale, unless:
 - a. The Owner and the petitioner agree upon a different sales price of the Rental Housing Accommodation; or
 - b. The Owner elects to withdraw the offer of sale altogether within 14 days of receipt of the appraisal.
 - i. The Owner shall withdraw the Offer of Sale by delivering a written notice by hand or by certified mail to the City and to the petitioner.
 - ii. Upon withdrawal, the Owner shall reimburse the petitioner and the City for their share of the cost of the appraisal within 14 days of delivery of written notice of withdrawal.
 - iii. An Owner who withdraws an offer of sale in accordance with this subsection shall be precluded from proceeding to sell the Rental Housing Accommodation to a Third-Party Purchaser without

complying with this Chapter anew and honoring the First Right of Purchase of Tenants and Qualified Organizations.

- c. The petitioner elects to withdraw the offer of sale altogether within 14 days of receipt of the appraisal.
 - i. The petitioner shall withdraw the Offer of Sale by delivering a written notice by hand or by certified mail to the City and to the Owner.
 - ii. Upon withdrawal, the petitioner shall reimburse the Owner and the City for their share of the cost of the appraisal within 14 days of delivery of written notice of withdrawal.

13.89.180 Contract Negotiation

A. Bargaining in good faith. The Owner and any Tenant, Tenant Organization, and/or Qualified Organization shall bargain in good faith regarding the terms of any Offer for Sale. Any one of the following constitutes prima facie evidence of bargaining without good faith:

- 1. The failure of an Owner to offer a Tenant, Tenant Organization, or Qualified Organization a price and other material terms at least as favorable as that offered to a Third Party Purchaser.
- 2. Any requirement by an Owner that a Tenant, Tenant Organization, or Qualified Organization waive any right under this Chapter.
- 3. The intentional failure of an Owner, Tenant, Tenant Organization, or Qualified Organization to comply with the provisions of this Chapter.

B. Reduced price. If the Owner sells or contracts to sell the Rental Housing Accommodation to a Third-Party Purchaser for a price less than the price offered to the Tenant, Tenant Organization, or Qualified Organization in the offer of sale, or for other terms, which would constitute bargaining without good faith, the Owner shall comply anew with all requirements of this Chapter, as applicable.

C. Termination of rights. The intentional failure of any Tenant, Tenant Organization, or Qualified Organization to comply with the provisions of this Chapter shall result in the termination of their rights under this Chapter.

13.89.190 No Selling of Rights

- A. A Tenant, Tenant Organization, or Qualified Organization shall not sell any rights under this Chapter.
- B. An Owner shall not coerce a Tenant or Tenant Organization to waive their rights under this Chapter.

13.89.200 Tenant Protections

- A. No Tenant in the Rental Housing Accommodation, including those Tenants who do not exercise rights to purchase under this Chapter, may be evicted by the TOPA Buyer, except for good cause in compliance with the City's Rent Stabilization and Eviction for Good Cause Ordinance and applicable state law.
- B. Should the maximum allowable rent provision of the City's Rent Stabilization and Eviction for Good Cause Ordinance not apply, TOPA Buyers shall adjust the rent annually to allow an increase of no more than the increase in the CPI plus a reasonable, pro rata share of capital improvements for common areas or agreed to capital improvements for the unit in accordance with Administrative Regulations and subject to Section [Price Stabilization re: rent restrictions]. These rent increase limits shall only apply to units that can be controlled in compliance with Costa-Hawkins Rental Housing Act.
- C. TOPA Buyers shall not refuse to provide Rental Housing Accommodations to any person based on the source of funds used to pay for the Rental Housing Accommodations, including but not limited to any funds provided by Berkeley Housing Authority Section 8 vouchers or any other subsidy program established by the Federal, State or County and the City of Berkeley, the City's Shelter Plus Care Program certificates or any future rent subsidy from the City or other governmental entity made available to extremely low to moderate low income households for vacant units in the purchased Rental Housing Accommodation, and shall comply with sections 13.31.010 and 13.31.020.

13.89.210 Price Stabilization

- A. Rental Housing Accommodation purchased by a TOPA Buyer under this Chapter shall be subject to permanent affordability restrictions as set forth in this Section and Administrative Regulations created with the intent of fulfilling the purpose of this Chapter.
- B. "Permanent affordability" means that future rents and future sales prices of the Rental Housing Accommodation, or separate ownership interests in the Rental Housing Accommodation, shall be made affordable to households with targeted income levels.
- C. Term. Subject to Administrative Regulations, permanent affordability standards shall restrict the use of the Rental Housing Accommodation to require that permanent affordability restrictions remain in force for 99 years and with an option to renew at year 100. This subsection is not to be construed to apply only to community land trusts.
- D. In exchange for the rights conferred under this Chapter, each TOPA Buyer agrees to maintain the permanent affordability of the Rental Housing Accommodation. No TOPA Buyer shall be entitled to contract under this Chapter without executing an agreement with the City to limit the future appreciation of the Rental Housing Accommodation and

only sell, or rent, to income-eligible households in accordance with this Section [Price Stabilization] and relevant standards and exemptions created by the City through Administrative Regulations. Under this agreement, each TOPA Buyer shall represent to the City that they agree to be bound by the permanent affordability requirements under this Section.. The TOPA Buyer shall deliver this agreement to the City no later than the deadline for submitting an offer provided under Section [Right of First Offer].

E. For a Tenant or Tenant Organization purchasing a Rental Housing Accommodation, permanent affordability standards created by the City shall:

1. Restrict the resale price of the Rental Housing Accommodation, or separate ownership interests in the Rental Housing Accommodation, by limiting the annual market appreciation of the Rental Housing Accommodation, or separate ownership interest, to an increase of no more than 25 percent of the appreciated value as determined by the difference between an appraisal made at the time of purchase and the appraisal made at the time of sale. The City may create standards to limit the annual market appreciation at less than 25 percent through Administrative Regulation;
2. Ensure that a unit in which a Tenant determines to remain a renter following a purchase under this Chapter shall be maintained as a unit subject to the requirements of Section [Tenant Protections - rent control mandate], unless the City determines a valid exemption or alternative standard should apply for such unit assisted by the City or other public subsidy program which is subject to separate permanent affordability requirements; and
3. At minimum, make the restricted resale price of the Rental Housing Accommodation, or ownership interests in the Rental Housing Accommodation, available only to households with income at or below the average AMIs of the initial TOPA Buyers as of the initial purchase date of the Rental Housing Accommodation, as verified and recorded by the City as of the initial purchase date.

F. For Qualified Organizations purchasing the Rental Housing Accommodation, permanent affordability standards created by the City shall:

1. Restrict the resale price of the Rental Housing Accommodation, or separate ownership interests in the Rental Housing Accommodation, by limiting the annual market appreciation of the Rental Housing Accommodation, or separate ownership interest, to an increase of no more than the percentage change in the regional CPI or AMI plus credits for capital improvements, at a minimum, but in no event more than 25 percent of the appreciated value as determined by the difference between an appraisal made at the time of purchase and the appraisal made at the time of sale;

2. Ensure that a unit in which a Tenant determines to remain a renter following a purchase under this Chapter shall be maintained as a unit subject to the requirements of Section [Tenant Protections - rent control mandate], unless the City determines a valid exemption or alternative standard should apply for such unit assisted by the City or other public subsidy program which is subject to separate permanent affordability requirement; and
3. Prioritize making vacant or vacated units in the Rental Housing Accommodation available to Households with income at or below 30 percent, 50 percent, and 80 percent of AMI.

G. Mechanism. Permanent affordability restrictions shall materialize as at least one of the following:

1. A restrictive covenant placed on the recorded title deed to the Rental Housing Accommodation that runs with the land and is enforceable by the City against the TOPA Buyer and its successors, and one of the following:
 - a. Other affordability restrictions in land leases or other recorded documents not specifically listed in this subsection, so long as the City determines that such restrictions are enforceable and likely to be enforced such as a recorded mortgage promissory note and/or regulatory agreements with the City where City subsidies are involved.
2. A community land trust lease, which is a 99-year renewable land lease with affordability and owner-occupancy restrictions.
3. A Limited Equity Housing Cooperative.

H. Required Recordings and Filings.

1. All covenants created in accordance with this Section [Price Stabilization] shall be recorded before or simultaneously with the close of escrow in the office of the county recorder where the Rental Housing Accommodation is located and shall contain a legal description of the Rental Housing Accommodation, indexed to the name of the TOPA Buyer as grantee.
2. Each TOPA Buyer of the Rental Housing Accommodation will be required to file a document annually with the City in which the TOPA Buyer affirmatively states the rents and share price for each unit in the Rental Housing Accommodation. The City may engage a third party monitoring agent to monitor the compliance of this subsection [annual certification], pursuant to Administrative Regulations.

I. Exemption from the City's Affordable Housing Mitigation Fee.

Qualified Organizations and Tenant Organizations shall not be subject to the payment of the City's affordable housing mitigation fee pursuant to the

Condominium Conversion Ordinance, Chapter 21.28, if converting units in the Rental Housing Accommodation to limited equity condominiums for the purpose of providing permanently affordable housing opportunities subject to and in compliance with the requirements of this Section [Price Stabilization] and Administrative Regulations.

13.89.220 Incentives

- A. Access to Buyers.** The City shall endeavor to maintain and publicize the list of Qualified Organizations described in Section XXX in a manner that, to the maximum extent feasible, promotes the existence of the Qualified Organizations as a readily accessible pool of potential buyers for Covered Properties. The City shall, to the maximum extent permitted by law and otherwise feasible, publicize the existence of this list in a manner intended to facilitate voluntary sales to Qualified Organizations in a manner that avoids or minimizes the need for a broker, other search costs, or other transactions.
- B. Partial City Transfer-Tax Exemption.** As set forth in Section XXX of the XXXX Municipal Code, the increased tax rate imposed by subsections XXX Section XXX shall not apply with respect to any deed, instrument or writing that affects a transfer under Section XXX of this Chapter, as Section XXX exists as of the effective date of the Ordinance.
- C. Potential Federal Tax Benefits.** Any Qualified Organization that purchases a Rental Housing Accommodation under the right of first offer set forth in Section XXX shall, to the maximum extent permitted by law and otherwise feasible, be obliged to work with the Owner in good faith to facilitate an exchange of real property of the kind described in 26 U.S.C. § 1031, for the purpose of facilitating the Owner's realization of any federal tax benefits available under that section of the Internal Revenue Code.
- D. Information to Owners.** The City shall produce an information sheet describing the benefits of an Owner's decision to accept a Tenants' or Qualified Organization's offer of purchase made in connection with the first right to purchase forth in Sections [Right of First Offer] and [Right of First Refusal]. The information sheet shall further explain that, even if a Owner does not accept a Tenants' or Qualified Organizations' offer to purchase a Rental Housing Accommodation pursuant to the right of first offer set forth in Section [Right of First Offer], the Rental Housing Accommodation will still be subject to the right of first refusal set forth in Section [Right of First Refusal]. The information sheet shall contain a field in which the Owner may acknowledge, in writing, that the Owner (or the Owner's authorized representative) has read and understood the information sheet. A Tenant, Tenant Organization, or Qualified Organization that makes an offer to purchase a Rental Housing Accommodation under the right of first offer set forth in Section XXX shall include a copy of, or link to, this information sheet with that offer of Purchase, but any failure to comply with this

Section XXX shall have no effect on a Qualified Organization's exercise of the right of first offer set forth in Section XXX.

13.89.230 Enforcement

A. Powers and Duties of the City.

1. The City is authorized to take all appropriate action, including but not limited to the actions specified in Section [Authority], to implement and enforce this Chapter.

B. Implementation

1. The City Manager shall promulgate rules and regulations consistent with this Chapter.
2. The City shall adopt regulations to implement a petition and hearing procedure for administering the enforcement of this Chapter.
3. The City shall establish and make available standard documents to assist Owners, Tenants, Tenant Organizations, and Qualified Organizations in complying with the requirements of this Chapter through an online portal, provided that use of such documents does not necessarily establish compliance.
4. **Owner Certification and Disclosures.** Every Owner of a residential property in the City shall, within 15 days of the sale of the residential property, submit to the City a signed declaration, under penalty of perjury, affirming that the sale of that residential property complied with the requirements of this Chapter. Such declaration shall include the address of the relevant residential property and the name of each new Owner of the Rental Housing Accommodation. The City shall publish all such addresses on its website. Failure to file a declaration required by this subsection [Owner Certification] shall result in the penalty described in subsection [Civil Penalties].

C. Enforcement

1. **Civil Action.** Any party may seek enforcement of any right or provision under this Chapter through a civil action filed with a court of competent jurisdiction and, upon prevailing, shall be entitled to remedies, including those described in Section [Penalties and Remedies].
2. **Penalties and Remedies.**
 - a. **Civil Penalties.** An Owner who willfully or knowingly violates any provision of this Chapter shall be subject to a cumulative civil penalty imposed by the

City in the amount of up to [\$1,000] per day, per Tenant-occupied unit in a Rental Housing Accommodation, for each day from the date the violation began until the requirements of this Chapter are satisfied, payable to [the Housing Trust Fund established by the City].

- b. **Legal Remedies.** Remedies in civil action brought under this Section [Enforcement] shall include the following, which may be imposed cumulatively:
- i. Damages in an amount sufficient to remedy the harm to the plaintiff;
 - ii. In the event that an Owner sells a Rental Housing Accommodation without complying with the requirements of this Chapter, and if the Owner's violation of this Chapter was knowing or willful, mandatory civil penalties in an amount proportional to the culpability of the Owner and the value of the Rental Housing Accommodation. There shall be a rebuttable presumption that this amount is equal to 10 percent of the sale price of the Rental Housing Accommodation for a willful or knowing violation of this Chapter, 20 percent of the sale price for a second willful or knowing violation, and 30 percent of the sale price for each subsequent willful or knowing violation. Civil penalties assessed under this subsection [Owner's knowing and willful violation] shall be payable to the Housing Trust Fund established by the City; and
 - iii. Reasonable attorneys' fees.
- b. **Equitable Remedies.** In addition to any other remedy or enforcement measure that a Tenant, Tenant Organization, Qualified Organization, or the City may seek under subsection [Legal Remedies], any court of competent jurisdiction may enjoin any Sale or other action of an Owner that would be made in violation of this Chapter.

13.89.240 Statutory Construction.

The purpose of this Chapter is to prevent the displacement of lower-income Tenants from the City and to preserve affordable housing by providing an opportunity for Tenants to own or remain renters in the properties in which Tenants reside as provided in this Chapter. If a court finds ambiguity and there is any reasonable interpretation of this Chapter that favors the rights of the Tenant then the court should resolve ambiguity toward the end of strengthening the legal rights of the Tenant or Tenant Organization to the maximum extent permissible under law.

13.89.250 Administration and Reports

- A. The City Manager shall report annually on the status of the Tenant Opportunity to Purchase Act Program to the City Council or to such City Council Committee as the City Council may designate. Such reports shall include, but shall not be limited to the following:
 - 1. Statistics on the number and types of sales of tenant occupied properties
 - 2. Statistics on the number of Tenants and Qualified Organizations that invoke action under this chapter.
 - 3. Number and types of units covered by this Chapter.
 - 4. Any other information the City Council or Committee may request.

- B. The City shall make available translation services in languages other than English, where requested in advance by a Tenant, Tenant Organization, Qualified Organization, Owner, or member of the public as it relates to TOPA, to interpret and translate documents and procedures as needed.

13.89.260 Severability

If any word, phrase, clause, sentence, subsection, section, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason by a decision of a court of competent jurisdiction, then such word, phrase, clause, sentence, subsection, section, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this Chapter, and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or words had been declared invalid or unconstitutional.

Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

BERKELEY				
Address	Details	Market Time	Asking Price	Sale Price
1500 Ward St, Berkeley, CA 94703	8 bd, 4 ba	472 days	\$1,354,000 (-9.1%)	
1616 Prince st	5 units	111 Days	\$1,500,000	
1257 Francisco St, Berkeley, CA 94702	6 units	118 days	\$3,325,000 (-5%)	
2326 Mckinley Ave, Berkeley, CA 94703	4 units	226 days	\$2,650,000 (-8.6%)	
1901 9th St, Berkeley, CA 94710	2 units	57 days	\$995,000 (-10%)	
1947 Virginia St	3 units	28 days	\$1,300,000	\$1,460,000
1235 Carrison St	4 units	52 days	\$999,000	\$999,000
2919 Fulton st	4 Units	112 days	\$1,695,000	\$1,550,000
2330 Grant st	4 units	45 days	\$1,225,000	\$1,320,000
906 Channing Way	4 units	30 days	\$1,500,000	\$1,710,000
1610 Russell St	10 Units	38 days	\$2,440,000	\$2,500,000
1235 Carrison st	4 units	45 days	\$999,000	\$999,000
1308 Hopkins st	5 units	89 days	\$1,795, 000	\$1,900,000
2875 California st.	8 units	61 days	\$2,100,000	\$2,178,000
2919 Fulton st.	4 Units	106 days	\$1,695,000	\$1,550,000
1627 Posen Ave	3 Units	76 days	\$1,385,000	\$1,660,000

Oakland				
Address	Details	Market Time	Asking Price	Sale Price
663 Apgar st	4 units	40 days	1,400,000	1,295,000
411 Lusk st	2 units	300 days	749,000	650,000
211 monte vista	4 units	53 days	1,500,000	1,594,000
3942 Wilda ave	4 units	53 days	1,500,000	1,594,000
295 Mather st	3 units	55 days	1,295,000	1,286,000
1808 90th ave	4 units	250 days	729,000	899,000
1524 11th ave	4 units	112 days	1,380,000	1,310,000

All data consolidated from Zillow during January 2020

BERKELEY PROPERTIES AND TOPA APPLICABILITY

BERKELEY PROPERTY TYPE & NUMBER		# OF PROPERTY TYPE W/ TOPA RIGHTS	
Housing Type	Total Number	<u>Previous Investor Applicability Standard:</u> Owner w/3+ rental units	<u>Proposed Applicability Standard:</u> All rental properties; exempt owner-occupied SF homes, including those with ADUs
SF/Townhouse	17,131	323	3,906
Condo	2,286	362	1,246
Duplex/2 units	1,869	247	1,869
Triplex/Duplex w SF/3 units	725	429	725
Fourplex/Triplex w SF/4 units	683	679	683
2-4 SF homes	681	82	681
2-4 units w/rooming house	44	12	44
5+ homes/SF converted to 5+ units	144	144	144
Multi 5+ units	1,174	1,174	1,174
TOTAL	24,737	3452	10,472



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ATTACHMENT 4

DC Apartment buildings and TOPA

As of March 2018, at least 40% of DC's residential units (6.5% of its residential buildings) fell under TOPA; this included 7,510 apartment buildings with 120,619 units. The total number of residential housing units in the city at that time was 297,531 units, 103,250 of which were owner occupied and an unknown number of single-family homes, condominiums and cooperatives that were rented.¹

From 2002-2018, at least 3,500 units were preserved through TOPA.² The city of DC does not have comprehensive TOPA data from before 2002. As of 2019, 4,400 Limited Equity Cooperative (LEC) units existed across 99 buildings; many of these LECs were created through TOPA.³

DC multifamily sales data from 2014-2015 is helpful in understanding the number of TOPA sales that happen every two years.⁴ During that time period, 131 sales of multi-family buildings took place. 32% of these sales (42 buildings) went through the TOPA process. Another 14 sales transacted outside of TOPA but were offered directly to the tenants. Therefore, every two years it is likely that at least 0.6-0.7% of the existing DC rental stock is going through the TOPA process or being purchased by tenants.

More recent data from the DC Department of Housing and Community Development (DHCD) highlights that larger multifamily buildings are the TOPA transactions most often supported with subsidy from DC's Housing Production Trust Fund. DHCD closed funding for 13 TOPA projects of 832 units in FY17 and 9 TOPA projects of 449 units in FY18.⁵ In FY19, DHCD funded acquisitions for 15 TOPA projects, 2 of which were sold to tenants creating an LEC.⁶

¹ *Stock of the District's Housing Stock*. Taylor, Yes Sayin. D.C. Policy Center. March 2018. https://www.dcpolicycenter.org/wp-content/uploads/2018/03/DC-Policy-Center-Housing-Report.final_March25.pdf

² *DC's First Right Purchase Program Helps to Preserve Affordable Housing*. Reed, Jenny. DC Fiscal Policy Institute. September 2013. https://www.dcfpi.org/wp-content/uploads/2013/09/9-24-13-First_Right_Purchase_Paper-Final.pdf

DC Multifamily Market Statistics - Multifamily Sales 2014-2015. Greysteel. 2016. <https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/publication/attachments/Greysteel-%20D.C.%20Multifamily%20Market%20Statistics.pdf>

Building a Local Housing Preservation Ecosystem. DC Department of Housing and Community Development. November 2018. <http://oakclt.org/wp-content/uploads/2018/12/Oakland-TOPA-Final.pdf>

³ *Final Report*. DC Limited Equity Cooperative Task Force. October 2019. https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/page_content/attachments/Final%20LEC%20Recommendations_10.21.19.pdf

⁴ *DC Multifamily Market Statistics - Multifamily Sales 2014-2015*. Greysteel. 2016. <https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/publication/attachments/Greysteel-%20D.C.%20Multifamily%20Market%20Statistics.pdf>. This data doesn't include single-family or condo sales that went through the TOPA process.

⁵ DC DHCD Performance Oversight Hearing responses to DC Council. February 2019. <https://dccouncil.us/wp-content/uploads/2019/02/dhcd19.pdf>

⁶ DC DHCD Performance Oversight Hearing responses to DC Council. February 2020. <https://dccouncil.us/wp-content/uploads/2020/02/dhcd.pdf>

Criticisms of DC TOPA

Criticism 1: DC TOPA promotes tenant capitalism instead of combating displacement and preserving affordable housing.

Response:

Berkeley's TOPA ordinance is distinguishable from DC TOPA in these three ways:

- 1) Tenants cannot sell their rights.
- 2) Tenants can only assign their rights to Qualified Organizations (QOs) that the city vets. These QOs are affordable housing developers and must meet a list of criteria outlined in the ordinance, such as strict commitments to maintaining the property as affordable, tenant engagement, and other relevant experience.
- 3) All housing purchased through TOPA, whether by tenants or QOs, will have some form of permanent affordability restrictions to ensure affordability for future owners/renters.

Also, despite tenants in DC being able to sell their TOPA rights and receive buyouts from third parties, DC TOPA has still helped preserve thousands of units of housing. Since 2002, at least 3,500 units have been purchased through TOPA, most with public subsidy. The total number of units purchased/preserved through TOPA since its passage in 1980 is obviously much larger, but accurate data was not recorded until 2002. In 2002, DC established its Housing Production Trust Fund, which now has an annual allocation of \$116 million.

Criticism 2: DC TOPA attracts bad actors that hold up owners for money and add time to the sales process. This is why DC got rid of TOPA for Single Family Accommodations (SFAs).

Response:

DC TOPA covered SFAs for 39 years. In 2019, the TOPA law was amended to exempt all SFAs. Unfortunately, a couple of bad actors had convinced several tenants living in owner-occupied Single Family Homes to sell their TOPA rights and then these bad actors held up owners for additional money.

Berkeley's ordinance considered all of this. This is why Berkeley's ordinance does not allow tenants to sell their rights, and therefore prevents bad actors from being able to enter the TOPA process. In addition, Berkeley's TOPA ordinance requires tenants to work with a supportive partner after they have expressed interested in purchasing. Supportive partners will help tenants understand their TOPA rights, how to make corporate decisions, as well as the possible financial costs and support for the transaction.

Finally, Berkeley's housing stock is comprised primarily of small sites and many SFAs, which are not appropriate for most large-scale affordable housing subsidies. TOPA presents a great opportunity to bring these rental properties under permanent affordability and provide much-needed protections to tenants in SFAs who currently have little to no protections. Berkeley's TOPA ordinance also has an exemption for owner-occupied SFAs and owner-occupied SFAs with a secondary dwelling unit if either unit is owner-occupied.

ACTION CALENDAR

DATE: 2/23/21

To: Honorable Mayor and Members of the City Council

From: Councilmember Terry Taplin, Mayor Jesse Arreguín (co-sponsor),
Councilmember Harrison (co-sponsor), Councilmember Hahn (co-sponsor)

Subject: Resolution Recognizing Housing as Human Right; Referring City Manager to Study Financial Feasibility of Municipal Housing Development Pilot Program with Cooperative, Nonprofit, and Public Ownership Models, Administered as Automatic Stabilizers to Guarantee Adequate Housing.

RECOMMENDATION

Refer the City Manager's office to study the financial feasibility of a municipal housing development pilot program administering automatic stabilizers to guarantee adequate housing security in Berkeley, with regular community input and periodic monitoring of socioeconomic indicators. Pilot program feasibility study shall include, but not be limited to:

1. Feasibility study of public lands suitable mixed-income transit-oriented housing development identified in 2017 Analysis of City-Owned Lands and zoning changes needed for affordable housing at listed sites to address all income categories in upcoming Regional Housing Needs Allocation (RHNA) cycle;
2. Pilot program to establish a Reparative Justice Revolving Loan Fund with affirmative racial justice and anti-displacement goals, providing low-interest loans for tenants, nonprofits, limited-equity co-operatives, and community land trusts to acquire real property, develop and/or maintain mixed-income and permanently affordable housing.
3. Pilot program to establish publicly available, user-friendly data dashboard monitoring Housing Justice Indicators in the city including, but not limited to, (a) health and safety standards, (b) affordability, (c) stability, and (d) discrimination and disparate impacts under US Department of Housing and Urban Development's Affirmatively Furthering Fair Housing (AFFH) rule; aligning Indicators with thresholds for corrective actions including land-use policy review and fiscal analysis.
4. State and regional partnerships with the California Department of Housing and Community Development, the Metropolitan Transportation Commission (MTC) and Association of Bay Area Governments (ABAG), UC Berkeley, and Bay Area Rapid Transit to develop fiscally resilient mixed-income housing and community

reinvestment through land held in public trust and/or limited-equity cooperatives and community land trusts.

BACKGROUND

Guaranteeing Adequate Housing: Global and Local Comparison

International law has recognized a right to adequate housing since the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Economic, Social and Cultural Rights, establishing freedoms and entitlements that include security of tenure, privacy, affordability, freedom of movement and non-discriminatory access.¹ By definition, the City of Berkeley has not affirmed this right for at least 1,000 homeless residents, with 813 unsheltered according to the 2019 Homeless Point-in-Time Count in Alameda County.² To obtain secure homeownership, the city's December 2020 median home price of \$1.39 million would require an income over three times as high as Berkeley's 2018 median household income of \$80,000.³ Meanwhile, the state of California leads the nation in its share of the homeless population⁴; over half the state's renters and a third of its homeowners are excessively cost-burdened, paying over 30% of their income for housing; and more than two-thirds of Californians facing excessive housing costs are people of color.⁵ According to the California Budget & Policy Center, "Poor housing quality, living in a low-income neighborhood, overcrowding, moving frequently, and homelessness are all associated with adverse health outcomes."⁶

In urban areas throughout the world, other nations with lower rates of homelessness and housing insecurity provide adequate housing for their citizens through various policies that address housing as public infrastructure. Housing systems are administered in varying degrees of "decommodification,"⁷ ensuring a minimum standard of living through the welfare state above what individuals can obtain through the private market. Different governments approach decommodification of housing through

¹ Office of the United Nations High Commissioner for Human Rights. (2009). *Fact Sheet No. 21: The Right to Adequate Housing*. (Rev. 1). United Nations: Geneva. Retrieved from https://www.ohchr.org/documents/publications/fs21_rev_1_housing_en.pdf

² https://everyonehome.org/wp-content/uploads/2019/07/ExecutiveSummary_Alameda2019-1.pdf

³ <https://www.zillow.com/berkeley-ca/home-values/>

⁴ Passy, J. (2019). Nearly half of the U.S.'s homeless population live in one state: California. *MarketWatch*. Retrieved from <https://www.marketwatch.com/story/this-state-is-home-to-nearly-half-of-all-people-living-on-the-streets-in-the-us-2019-09-18#>

⁵ Kimberlin, S. (2017). Californians in All Parts of the State Pay More Than They Can Afford for Housing. *California Budget & Policy Center*. Retrieved from <https://calbudgetcenter.org/resources/californians-parts-state-pay-can-afford-housing/>

⁶ Ramos-Yamamoto, A. (2019). Advancing Health Equity: How State Policymakers Can Increase Opportunities for All Californians to Be Healthy. *California Budget & Policy Center*. Retrieved from <https://calbudgetcenter.org/blog/advancing-health-equity-how-state-policymakers-can-increase-opportunities-for-all-californians-to-be-healthy/>

⁷ Esping-Andersen, G. (1990). *The Three Worlds of Welfare Capitalism*. Princeton, NJ: Princeton University Press. p. 21-23.

strategies for subsidizing the supply channel by providing low-cost housing, or the demand channel by supporting consumer purchasing power.

In two case studies, the cities of Vienna and Singapore own and operate public housing development corporations that retain some amount of land title in the common trust in order to stabilize the housing market—either by restricting ownership to leases, or encouraging low-cost rentals and developing on public land holdings. Both also retain a “reserve supply” of land and/or development rights to stabilize housing affordability through recessionary demand shocks. These cities are able to provide housing to any citizen at an affordable cost regardless of their income, effectively reinvesting revenues from higher-income households to subsidize housing for lower incomes. In Tokyo, while housing is more commodified, Japanese federal land-use policy treats housing essentially as a non-durable consumer good, prioritizing its utility as shelter over its capacity to increase financial wealth.⁸

Vienna and Singapore rank 1st and 25th on the 2019 Mercer Quality of life ranking, respectively, above any city in the United States. Vienna has held the top position for the past ten years.⁹

The United States has tended toward the extreme opposite end in the spectrum of housing commodification. Modern economic policy and property rights have treated housing primarily as means to a guarantee for growing financial asset wealth and enforce a white supremacist caste system. Housing is commodified to an extreme degree that is incompatible with material needs of the general population. Subsidies for both supply and demand channels have been historically insufficient while support for American asset wealth primarily in white communities has been more robust and resilient. This has widened the racial wealth gap between white and Black households, and ultimately proved incompatible with universal housing security.

The Great Recession of 2008 effected an abjectly cruel transfer of wealth from lower-income Black homeowners¹⁰ targeted with predatory subprime loans to private equity firms¹¹ buying up large portfolios of “distressed” properties before the economy recovered. This longstanding pattern of usury and community displacement further has further excluded people of color from the fruits of economic recovery and deepens the racial wealth gap. We risk repeating this process in the current COVID-19 depression, as renters and low-income homeowners face an unprecedented homelessness crisis

⁸ Karlinsky, S. et al. (2020). From Copenhagen to Tokyo: Learning from International Housing Delivery Systems. *SPUR Regional Strategy Briefing Paper*. Retrieved from <https://www.spur.org/publications/white-paper/2020-08-06/copenhagen-tokyo>.

⁹ Mercer. (2019). Quality of life city ranking. Retrieved from <https://mobilityexchange.mercer.com/insights/quality-of-living-rankings>

¹⁰ White, G.B. (2015). The Recession’s Racial Slant. *The Atlantic*. Retrieved from <https://www.theatlantic.com/business/archive/2015/06/black-recession-housing-race/396725/>

¹¹ Warren, E. & Fife, C. (2020). Families see a looming catastrophe. Private equity firms see dollar signs. *The Washington Post*. Retrieved from <https://www.washingtonpost.com/opinions/2020/08/06/nation-is-facing-housing-crisis-private-equity-firms-just-see-dollar-signs/>

due to job losses during the pandemic, while relatively affluent cities like Berkeley see median home prices continue to rise.

Local, state and federal governments alike have made routine practice of devaluing or outright destroying black asset wealth for the benefit of more affluent, exclusively white communities, most visibly through usurious redlining and destructive “urban renewal.”¹² Fundamentally, the government has devoted more resources in absolute terms to protecting the right to capital gains of property owners, at the expense of adequate housing and any right to basic living standards for Black people. After a brief wartime period in which public housing was conceived to sustain middle-class households U.S. public housing developments in the mid-20th century were notoriously racially segregated poverty traps located far from public services and economic opportunity, starved of operational funds and “destined to fail.”¹³

The inequities of our current housing crisis are rooted in histories of Jim Crow segregation, mortgage guarantees of the New Deal era, and deflationary policy of the late 1970s. Where neighborhoods were once segregated explicitly by racial covenants and *de jure* statutes, government mortgage guarantees sublimated this segregation into self-reinforcing actuarial assessments promulgated by the Home Owners Loan Corporation (HOLC) and Federal Housing Administration (FHA), established under President Franklin Roosevelt. This practice known as “redlining” infamously denied mortgage credit to primarily Black and Latinx neighborhoods throughout the country, giving more affluent white neighborhoods exclusive access to risk-free mortgage credit while trapping communities of color in poverty. According to UC Berkeley’s Urban Displacement Project, neighborhoods that were once redlined are now at greater risk of gentrification and displacement.¹⁴

The United States and other anglophone countries further commodified housing in order to provide welfare through asset ownership to compensate for stagnation in real purchasing power.¹⁵ In response to high inflation of the 1970s, the Federal Reserve drastically raised interest rates beginning in 1978, triggering a period of deflation that boosted asset prices while suppressing real wages and economic growth. With accompanying deregulation of the financial sector, housing became “financialized” as a special asset class attracting a rush of speculative capital, because it retained the imprimatur of government mortgage guarantees while enjoying fewer capital controls, practically guaranteeing that household asset wealth would outpace low inflation and stagnating wages.¹⁶ A growing body of research strongly suggests that financialization

¹² Baradaran, M. (2017). *The Color of Money: Black Banks and the Racial Wealth Gap*. Cambridge, MA: Harvard University Press. p. 141.

¹³ Perry-Brown, N. (2020). *How public housing was destined to fail*. Greater Greater Washington. Retrieved from <https://ggwash.org/view/78164/how-public-housing-was-destined-to-fail>

¹⁴ The Legacy of Redlining. (2018). Retrieved from <https://www.urbandisplacement.org/redlining>

¹⁵ Adkins, L. et al. (2019). Class in the 21st century: Asset inflation and the new logic of inequality. *Environment and Planning A: Economy and Space*. doi.org/10.1177/0308518X19873673

¹⁶ Feygin, Y. (2021). The Deflationary Bloc. *Phenomenal World*. Retrieved from <https://phenomenalworld.org/analysis/deflation-inflation>.

of housing has intensified business cycle volatility and deepened periodic recessions, as “consumption became more correlated with housing wealth.”¹⁷

Berkeley pioneered other methods of guaranteeing housing price inflation: single-family zoning was first established in the Elmwood and Claremont neighborhoods to sustain real estate values and exclude racial minorities. The Mason-McDuffie Company developed residential neighborhoods in Berkeley with racial covenants in property deeds preventing lease or sale to anyone of “African or Mongolian descent,” and lobbied for restrictive zoning in 1916 to protect against “disastrous effects of uncontrolled development”¹⁸—the implied “disastrous effects” being stable prices and an influx of Black and Chinese residents.

Restrictive zoning reduces multifamily development, constrains supply and enforces a high price floor on dwelling units in high-cost land¹⁹. A 2015 study by the nonpartisan Legislative Analyst Office found that growth control policies increased home prices by 3-5%.²⁰ Correspondingly, emerging research from UC Berkeley finds evidence that new market-rate development in San Francisco lowered rents by 2% on parcels within 100 meters and reduced displacement risk for renters in that area by 17%,²¹ while a 2016 study by UC Berkeley’s Urban Displacement Project found that affordable housing has double the effect of mitigating displacement as market-rate housing.²² According to a 2001 study on homelessness in California, “rather modest improvements in the affordability of rental housing or its availability can substantially reduce the incidence of homelessness in the United States.”²³

Exclusionary zoning effectively limits where and to what extent these effects can occur, maintaining the spatial segregation of redlining after the latter practice was outlawed by the 1968 Fair Housing Act. In a study of 197 metropolitan areas in the United States, UC Merced political scientist Jessica Trounstein has found that restrictive land use policies predicted sustained racial segregation in cities between 1970 and 2006, while larger, sustained white minorities were predictive of cities’ resistance to new residential

¹⁷ Ryan-Collins, J., et al. (2017). *Rethinking the Economics of Land and Housing*. London, UK: New Economics Foundation.

¹⁸ Lory, Maya Tulip. (2013). A History of Racial Segregation, 1878–1960. *The Concord Review*. Retrieved from <http://www.schoolinfosystem.org/pdf/2014/06/04SegregationinCA24-2.pdf>

¹⁹ Murray, C. & Schuetz, J. (2019). Is California’s Apartment Market Broken? The Relationship Between Zoning, Rents, and Multifamily Development. *UC Berkeley Turner Center for Housing Innovation*. (2019).

²⁰ Legislative Analyst Office. (2015). California’s High Housing Costs: Causes and Consequences. Retrieved from <https://lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf>

²¹ Pennington, K. (2021). Does Building New Housing Cause Displacement?: The Supply and Demand Effects of Construction in San Francisco. *Working Paper*. Retrieved from https://www.dropbox.com/s/oplls6utgf7z6ih/Pennington_JMP.pdf?dl=0.

²² Zuk, M. & Chapple, K. (2016). Housing Production, Filtering and Displacement: Untangling the Relationships. *Institute of Governmental Studies Research Brief*. Berkeley, CA: UC Berkeley IGS. Retrieved from https://www.urbandisplacement.org/sites/default/files/images/udp_research_brief_052316.pdf

²³ Quigley, J.M. (2001). Homeless in America, Homeless in California. *The Review of Economics and Statistics*. 83(1): 37–51.

development.²⁴ Research from UC Berkeley's Othering and Belonging Institute finds that single-family zoning in the Bay Area is strongly correlated with high-resource, high-opportunity, and highly segregated communities.²⁵ Karen Chapple, Director of UC Berkeley's Urban Displacement Project, stated in a February 25, 2019 letter to the Berkeley City Council, "the Urban Displacement Project has established a direct connection between the neighborhood designations by the Home Owners Loan Corporation (HOLC), and 75% of today's exclusionary areas in the East Bay... Thus, this historic legacy, compounded by Berkeley's early exclusionary zoning practices, continues to shape housing opportunity and perpetuate inequities today." These inequitable distributions of access to housing and asset appreciation has historically perpetuated and remains a primary factor in country's the racial wealth gap.²⁶

The highly commodified political economy in the United States is enforced by a doctrine of strong property rights for protecting capital gains from asset inflation (colloquially referred to as "financialization" or "commodification") over rights to material well-being, perpetuating a permanent affordability crisis for most workers who did not already own their homes. This fundamental conflict of moral values and economic rights came into stark display in early 2020, when the group Moms 4 Housing occupied a vacant home in West Oakland owned by Wedgewood Inc., a private equity firm that flipped houses nationwide. In the early hours of January 14, 2020, Alameda County sheriff's deputies enforced an eviction order with guns and armored cars on display, arresting four members of the group who had previously been homeless or housing insecure. On January 20, Oakland Mayor Libby Schaaf and Governor Newsom announced a deal with Wedgewood to sell the house to the Oakland Community Land Trust, and offer first right of refusal to the land trust for its property portfolio in Oakland for permanently affordable housing.²⁷

This political value statement, backed by a real transfer of wealth and rights of secure tenure, does not need to be an *ad hoc* bartering between the sweat equity of community organizers, the bully pulpit of elected officials, and the real physical danger of tactical civil disobedience. These values can instead be operationalized as part of the baseline administration of public services. In response to the Moms 4 Housing success, the state legislature passed SB-1079 by Senator Nancy Skinner (D-Berkeley) in September of 2020, authorizing fines of from \$2,000 to \$5,000 per day on buyers of foreclosed homes left vacant for over 90 days; banning bundled sales of foreclosed houses; and giving

²⁴ Trounstine, J. (2020). *The Geography of Inequality: How Land Use Regulation Produces Segregation*. *American Political Science Review*. Cambridge: Cambridge University Press.

²⁵ Menendian, S., et al. (2020). *Single Family Zoning in the Bay Area: Characteristics of Exclusionary Communities*. *UC Berkeley Othering & Belonging Institute*. Retrieved from <https://belonging.berkeley.edu/single-family-zoning-san-francisco-bay-area>

²⁶ Darity Jr, W. et al. (2018). *What We Get Wrong About the Racial Wealth Gap*. *Samuel DuBois Cook Center on Social Equity*. Durham, NC: Duke University. Retrieved from <https://socialequity.duke.edu/wp-content/uploads/2020/01/what-we-get-wrong.pdf>

²⁷ La Ganga, M. L. (2020). *Evicted Oakland moms will get their house back after a deal with Redondo Beach company*. *Los Angeles Times*. Retrieved from <https://www.latimes.com/california/story/2020-01-20/homeless-moms-4-housing-oakland-wedgewood-properties-deal>

tenants, nonprofits, and community land trusts 45 days to match the final highest bid for the property.

Aligning public financing with more inclusive land-use regulations can offer a path to automating these sorts of progressive, reparative distributions of material well-being and housing security at a broader scale.

Automatic Stabilizers

Economists have proposed “automatic stabilizers” to respond to recessions with increased urgency since the Obama Administration’s stimulus efforts following the Great Recession were hamstrung by partisan gridlock in Congress. Federal Reserve economist Claudia Sahm developed the “Sahm rule” for defining the onset of a recession with a specific threshold of sustained unemployment, and a proposal in which this rule could trigger automatic stimulus payments “to broadly support aggregate demand in a recession.”²⁸ In her testimony on January 19, 2021 at a confirmation hearing for her appointment to Treasury Secretary, former Federal Reserve chair Janet Yellen stated: “Our current system needs both updating and expansion... Designing and implementing a modern and effective system of automatic stabilizers is an important step to take now, so that we can minimize the negative impacts of any future recessions.”²⁹

Issuing stimulus payments automatically and universally to households rather than negotiating periodically in partisan politics could prevent widespread poverty among the least fortunate and also blunt a recession’s severity by sustaining consumer demand—stabilizing both material conditions for lower-income households, and consumption writ large. Analogous benchmarks can be operationalized to “stabilize” housing security in the city throughout business cycles and state planning certification periods. For example, urban planner Alain Bertaud has proposed automating updates to land-use policy as a function of land values to programmatically enforce widespread housing affordability.³⁰

President Joseph R. Biden’s 2020 campaign platform included massive increases to federal funding for public housing and the Section 8 housing voucher program.³¹ If the new presidential administration can increase housing subsidies through both supply and demand channels to more closely meet present and future needs, the City of Berkeley

²⁸ Sahm, C. (2019). Direct Stimulus Payments to Individuals. *The Hamilton Project*. Retrieved from https://www.hamiltonproject.org/assets/files/Sahm_web_20190506.pdf

²⁹ Yellen, J. (2021). Hearing to Consider the Anticipated Nomination of the Honorable Janet L. Yellen to Secretary of the Treasury. *U.S. Senate Committee on Finance*. Retrieved from <https://www.finance.senate.gov/imo/media/doc/Dr%20Janet%20Yellen%20Senate%20Finance%20Committee%20QFRs%2001%2021%202021.pdf>

³⁰ Bertaud, A. (2018). *Order Without Design: How Markets Shape Cities*. Cambridge, MA: The MIT Press.

³¹ Biden, J. (2020). The Biden Plan for Investing in our Communities Through Housing. Retrieved from <https://joebiden.com/housing/>

would have more resources to proactively ensure adequate, stable, and non-discriminatory housing is further guaranteed.

Municipal Housing Development

Mixed-income municipal housing development has distinct global variants, and is already currently being explored in the United States. In California, AB-387 also known as “the Social Housing Act of 2021” by Assemblymembers Lee (D-San Jose) and Wicks (D-Oakland), sets forth the intent to “establish the California Housing Authority for the purpose of developing mixed-income rental and limited equity homeownership housing and mixed-use developments to address the shortage of affordable homes for low and moderate-income households.” (See Attachment 4.) Importantly, state revenue bonds for infrastructure projects do not require voter approval.

The state legislature of Hawaii is considering a state-led housing development proposal known as ALOHA Homes, modeled after Singapore's Housing and Development Board (HDB). SB1 by State Senator Stanley Chang (D-Honolulu) would establish a program within the state's housing finance agency to use existing and newly-acquired state lands near public transit to develop high-density housing. (See Attachment 2.) The state would sell housing units at-cost to residents on 99-year leases. The agency would establish a dedicated revolving fund to provide low-cost loans to support long-term affordability, property maintenance and development. By leasing public land for development while retaining title in the public trust, public agencies can ensure that a proportionate degree of real estate value increased by public investment can be recaptured for the public benefit.

In Singapore, the resale market for 99-year home leases are regulated to ensure long-term affordability with assistance to help households exchange their leasehold equity for larger or smaller units throughout the lease term to adapt to changing needs as family members age. Over 80% of Singaporeans live in HDB housing developments.

In Austria, over 60% of Vienna's residents live in social housing, consisting of roughly 200,000 municipally-owned housing units and 220,000 nonprofit-owned units. For non-citizens, a minimum of five years' residency is required to apply for a social housing unit, and subsidized units must be for a household's primary residence. Public investments for construction, property management, and preservation of the social housing stock are subsidized by a federal income tax and the state's general fund, as well as a revolving loan fund managed by the Vienna Housing Fund. The Vienna Housing Fund operates as a community-owned nonprofit land bank, established by Social Democrats in the 1920s with large investments in public land in response to a housing shortage following the First World War. The self-sustaining nonprofit entity acquires existing housing or develops new projects with the aim of long-term affordability.

The Vienna Housing Fund is a major entity developing thousands of new housing units every year, while buying and selling real property on the open market. It maintains a

two-year reserve of land to stabilize its property portfolio throughout real estate market cycles. The Vienna Housing Fund collaborates with the municipal government and nonprofit housing developers to provide affordable housing on public land via low-interest loans for new developments³², with loan payments reinvested into a revolving loan fund for future loans and subsidies.

Vienna also indirectly subsidizes private development by arranging land transfers and low-interest loans with private firms through a competitive bidding process, in which a jury panel evaluates applicants' projects based on criteria for design, sustainability, and affordability. The city rents a portion of the units at affordable rents to lower-income residents, but means-testing is only applied at the initial move-in. Effectively, Vienna's social housing program subsidizes affordable affordable housing through the supply channel rather than the demand channel (i.e. by subsidizing tenants themselves). Unlike Singapore, the city of Vienna's land-use planning promotes rentals over private homeownership, but similarly favors community longevity, recreational facilities, and supportive services. In 2016, the Social Democratic Party of Austria introduced the "wohnbauoffensive"³³—an initiative to streamline construction and permitting to increase housing production by 30%.

There are also examples in present-day California of revolving funds for community land reinvestment that sustain communities across the state. In Palm Springs, the Agua Caliente Band of Cahuilla Indians own and lease land to nearly 20,000 people and businesses in a non-contiguous checkerboard arrangement, with up to 99-year leases for residential development.³⁴ At a larger scale, University of California and California State University systems develop and manage large portfolios of student housing across the state. The universities own tens of thousands of rental beds and dwelling units in urban, suburban and rural jurisdictions. Each UC campus prepares and implements a capital management plan to develop property for rental housing—plans which include revolving reinvestments in their existing portfolio.³⁵ In Berkeley and neighboring jurisdictions, BART is planning for housing development on BART property by leasing land to private and nonprofit developers, using the land-lease model as leverage to achieve the agency's goal of 35% Below Market-Rate housing systemwide.³⁶ The Berkeley Unified School District is also exploring the potential to develop workforce housing on its properties.³⁷

³² Wohnpartner Wien. (2019). Vienna Social Housing – Tools of Success. Retrieved from https://socialhousing.wien/fileadmin/user_upload/20190325_Einlageblaetter_Gesamt_Englisch.pdf

³³ Stadt Wien Press service. (2016). "More, faster, cheaper and sustainable" – the City of Vienna is launching an additional housing offensive. Retrieved from <https://www.wien.gv.at/presse/2016/02/17/mehr-schneller-preiswert-und-nachhaltig-stadt-wien-startet-eine-zusaetzliche-wohnbau-offensive>

³⁴ Murphy, R. (2016). Half of Palm Springs sits on rented land. What happens if the leases end? *Desert Sun*. Retrieved from <https://www.desertsun.com/story/money/real-estate/2016/09/22/palm-springs-agua-caliente-land-lease/87944598/>.

³⁵ University of California. (2019). Capital Financial Plan 2019-25. Retrieved from <https://ucop.edu/capital-planning/files/capital/201925/2019-25-cfp.pdf>

³⁶ BART Board of Directors. (2016). Transit-Oriented Development Performance Measures and Targets. Retrieved from

In 2017, an analysis of city-owned property in Berkeley by the Department of Health, Housing and Community Services found several sites such as the Elmwood Parking Lot, which “would need to be rezoned to support multifamily housing development at a large enough scale to make affordable housing feasible.”³⁸ Other properties identified would require zoning changes and further study at a minimum.

RATIONALE FOR RECOMMENDATION

Homelessness and housing insecurity are the result of deliberate but diffuse policy choices. The feasibility of permanently guaranteeing housing security in Berkeley remains unknown, but our community nevertheless recognizes the imperative to make different policy choices to that end. The City of Berkeley can build on the precedents and procedures established in state law, affirm housing as a human right, and enforce concrete goals toward reparative housing justice as a permanent mandate of our municipal public service.

Public housing development corporations in California could make both short-term and permanent impacts on housing affordability, construction sector employment, and other equity-based outcomes, while operating under standard land-use planning processes already being streamlined under state law.

Recent state legislation such as SB-35 (2017) and SB-330 (2019) already reform municipal land-use authority to support housing production within measurable benchmarks, limiting local discretion in permitting and zoning according to standards set by the Regional Housing Need Allocation (RHNA) process, the Housing Accountability Act (HAA), and the state Housing Element process.³⁹ The state legislature has also moved to increase affordable housing financing for municipalities by establishing the Bay Area Housing Finance Authority (BAHFA) in 2019; and in Senate Constitutional Amendment 2 (2021) by Sen. Ben Allen (D-Santa Monica), proposing removal of the state constitutional requirement for local referendum approval “low-rent” housing with more than 50% of its funding from the local jurisdiction. State law under AB-686 (2018) also requires cities to meet the goals of the Obama Administration’s Affirmatively Furthering Fair Housing rule under the 1968 Fair Housing Act in their housing elements and general plans. However, this policy framework is ultimately enforced by private right of action, on both sides of the issue: unsuccessful litigation attempted to overturn state-

https://www.bart.gov/sites/default/files/docs/B-%20TOD%20Performance%20Targets%202040%20Adopted%2012-1-16_0.pdf

³⁷ Doocy, S. (2018). School District Employee Housing in California. *UC Berkeley Turner Center for Housing Innovation*. Retrieved from <https://turnercenter.berkeley.edu/research-and-policy/school-district-employee-housing-in-california/>

³⁸ https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/2019-04-25%20Land%20Use%20Agenda%20for%20Posting.pdf

³⁹ Elmendorf, C. et al. (2020). Superintending Local Constraints on Housing Development: How California Can Do It Better. *UC Davis Legal Studies Research Paper Series*.

compliant by-right permits for housing development in Cupertino⁴⁰, and nonprofit advocates successfully sued the cities of Pleasanton⁴¹ after it failed to produce a state-compliant Housing Element. But rather than a positive guarantee to universal housing security, enforcement through private right of action puts the onus on the coordination of constituencies by definition with less housing security to assert their diffuse legal rights through state and local jurisdictions.

This adversarial legal environment is inconsistent with a public commitment to universal fair housing. Liability does not ultimately hinge on the public sector's ability to guarantee adequate housing. To the extent that a municipal government chooses to take on such "liabilities" as a moral obligation, it must also devote its real assets to meet this obligation and balance the moral ledger. Local governments can coordinate and amplify their resources to improve housing outcomes through more inclusive land-use regulations, and an expanded authority as lender and lessor of last resort.

However, the United Nations Office of the High Commissioner for Human Rights (OHCHR) specifies that the right to adequate housing "clearly does not oblige the Government to construct a nation's entire housing stock."⁴²

Rather, the right to adequate housing covers measures that are needed to prevent homelessness, prohibit forced evictions, address discrimination, focus on the most vulnerable and marginalized groups, ensure security of tenure to all, and guarantee that everyone's housing is adequate. These measures can require intervention from the Government at various levels: legislative, administrative, policy or spending priorities. It can be implemented through an enabling approach to shelter where the Government, rather than playing the role of housing provider, becomes the facilitator of the actions of all participants in the production and improvement of shelter.

To that end, the City of Berkeley could proactively affirm housing as a human right according to measurable parameters of cost-burden and non-discriminatory access, as well as broader historical data and actionable moral commitments to restorative justice. Rather than *retroactive* enforcement of state housing mandates through private right of action, the City's administrative departments should continuously monitor the availability, adequacy, and equitable distribution of housing as publicly available Housing Justice Indicators, reevaluating policy tools including public investment and planning and development goals as needed to *proactively* guarantee housing as a basic right. A publicly available, user-friendly data dashboard of Housing Justice Indicators could maintain accountability of the City's civic institutions in meeting this mandate.

⁴⁰ Friends of Cupertino v. City of Cupertino. No. 18CV330190. Superior Court of California, County of Santa Clara. (2020).

⁴¹ Urban Habitat Program v. City of Pleasanton. No. A118327. Court of Appeal, First District, Division 2, California. (2008).

⁴² See footnote 1.

Vienna's 2016 "wohnbauoffensive" reforms, considered analogously with the Berkeley City Council's 2019 referral for a Missing Middle Report⁴³, are both essentially *ad hoc* responses to an immediate crisis, recognizing that inequitable land-use planning should be reformed to actively promote economic justice. Regular administrative oversight could be implemented to more quickly intervene in these inequities and further prevent material harm to vulnerable communities. The City Manager's office has already recommended a strategic focus on streamlining and reforming land use policy to enable a greater scale of housing production in its 1000 Person Plan to Address Homelessness:⁴⁴

4. Continue to implement changes to Berkeley's Land Use, Zoning, and Development Review Requirements for new housing with an eye towards alleviating homelessness. If present economic trends continue, the pace with which new housing is currently being built in Berkeley will likely not allow for a declining annual homeless population. Berkeley should continue to streamline development approval processes and reform local policies to help increase the overall supply of housing available, including affordable housing mandated by inclusionary policies.

The calibration of housing stability policy should continuously operate within transparent parameters of community engagement and historical data, so that a pilot program can begin from the outset with a concretely-defined goal of affirmatively redressing racial inequities in wealth, opportunity, health and educational outcomes. State and regional entities such as the state's Tax Credit Allocation Committee (TCAC), the Metropolitan Transportation Commission (MTC), and UC Berkeley scholars already maintain active measures of economic opportunity, racial segregation, transit access, environmental health, and other positive outcomes for developing policy recommendations.

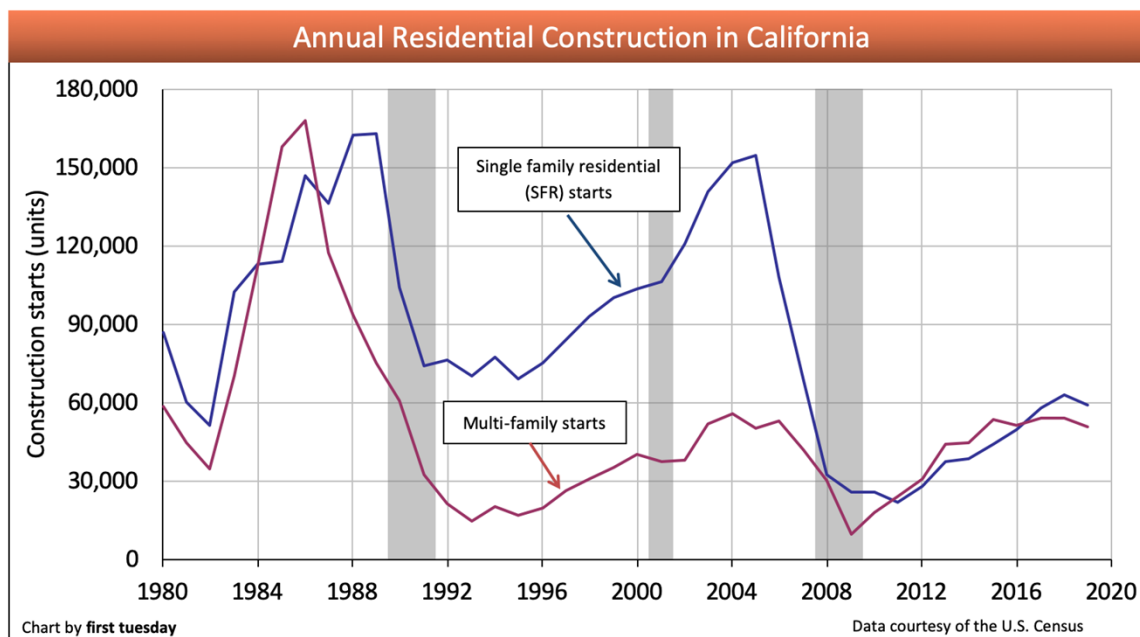
An "automatic stabilizer" paradigm with (a) a revolving land equity fund financing Reparative Housing Justice goals, and (b) periodic empirical review of land-use policy by the Planning Department, could quickly quantify unmet needs for housing security. Developing and implementing responses to needs in the community codified and expeditious administrative process, just as automated stimulus payments could quickly reduce material deprivation during business cycle downturns. Unlike stimulus payments, however, restorative housing justice should be a permanent goal of city service administration.

Public development entities enjoy the benefit of longer-term financial horizons that help produce more stable housing outcomes. Unhindered by the fiduciary duty to produce short-term positive returns for private investors, public housing development agencies are not obligated to cease production and layoff construction workers during recessions.

⁴³ https://www.cityofberkeley.info/Clerk/City_Council/2019/04_Apr/Documents/2019-04-23_Item_32_Missing_Middle_Report.aspx

⁴⁴ https://www.cityofberkeley.info/Clerk/City_Council/2019/02_Feb/Documents/2019-02-26_Item_20_Referral_Response_1000_Person_Plan.aspx

The private market has been incapable of meeting the need for shelter in California across business cycles. Private capital bids up the costs of inputs during upcycles, but financing dries up during recessions as investors flee the volatile market. Recovery in the construction sector is sluggish, but demand for shelter does not disappear. Construction rates collapsed after the Great Recession of 2008, but as of 2020, they had barely recovered to rates of the previous recession of 2001.⁴⁵



In a crudely Keynesian paradigm, these downturns are precisely when the public sector should step in to sustain housing development to meet the need for shelter, sustain employment, and boost aggregate demand. Unfortunately, California's housing market volatility limits the state and local government's resources when they are needed the most. For instance, California's construction workforce in 2017 lagged below its historic peak in 2006, equivalent to the size of the workforce at the start of the economic recovery in 2011.⁴⁶ In contrast, Vienna's social housing program also stabilizes employment in the region by employing 20,000 workers in the building trades.

Compounding this structural deficit, state and local funding sources for affordable housing are pro-cyclical and likelier to see a decline in revenues during economic downturns. Berkeley's inclusionary zoning and Affordable Housing Mitigation Fee produce Below Market-Rate homes or revenues for the Housing Trust Fund contingent on "value capture" policies that rely on the willingness of private capital to invest in the

⁴⁵ The slowing trend in California construction costs. (2019). first tuesday Journal. Retrieved from <https://journal.firsttuesday.us/the-rising-trend-in-california-construction-starts/17939/>

⁴⁶ Littlehale, S. (2019). Rebuilding California: The Golden State's Housing Workforce Reckoning. *Smart Cities Prevail*. Retrieved from https://www.smartcitiesprevail.org/wp-content/uploads/2019/01/SCP_HousingReport.0118_2.pdf

value. The Low Income Housing Tax Credit program (LIHTC), the linchpin of affordable housing financing in the United States, relies on the incentive of corporate tax liability by providing tax credits to large corporations and financial institutions in exchange for equity in low-income housing projects within a finite time horizon. Reductions in corporate profits during recessions and cuts to the corporate tax rate have both reduced the value of these tax credits periodically.⁴⁷

At the same time, highly leveraged private equity firms that specialize in liquidation of large portfolios or “asset stripping” benefit from volatile recessions that displace lower-income homeowners primarily in communities of color with less liquid capital to sustain riskier mortgage debt. Poorer households, primarily Black and Latinx residents, are more likely to end up trapped in cycles of poverty and homelessness, suffering for the benefit of wealthier and whiter financial institutions.

The Vienna Housing Fund offers a model for building wealth in the local community and affirmatively redressing the historic inequities intensified by cyclical volatility. By providing a revolving low-interest loan fund for tenants, nonprofits, limited equity cooperatives and Community Land Trusts, the City could plan for optimizing housing decommodification to meet concrete benchmarks in material outcomes: eliminating involuntary displacement, repairing wealth inequities in communities of color, and maintaining market price parity with regional incomes.

Rather than bearing 100% of project costs independently, a municipal fund could seek to partner with state and regional mechanisms for land value redistribution, such as Transit Value Capture Districts (TVCDs)⁴⁸ or Enhanced Infrastructure Finance Districts (EIFDs), which have been studied or proposed for financing affordable housing and other capital costs at BART stations.

As a countercyclical policy to sustain affordable housing financing across market cycles, a municipal revolving loan fund could provide loan guarantees or bridge loans to LIHTC developments to ensure their completion. As a reparative anti-displacement policy, a revolving loan fund could reinforce the city’s Local Preference policy for affordable housing included in the Adeline Corridor Specific Plan by providing favorable loan terms to community land trusts, tenant acquisitions, and nonprofit affordable housing developments that prioritize the return of formerly displaced residents from low-income communities of color. The loan fund can also seek matching funds from the newly-established Bay Area Housing Finance Authority (BAHFA), in direct partnership with the MTC and Association of Bay Area Governments (ABAG). In order to provide more housing security across the economic spectrum, a municipal revolving loan fund can

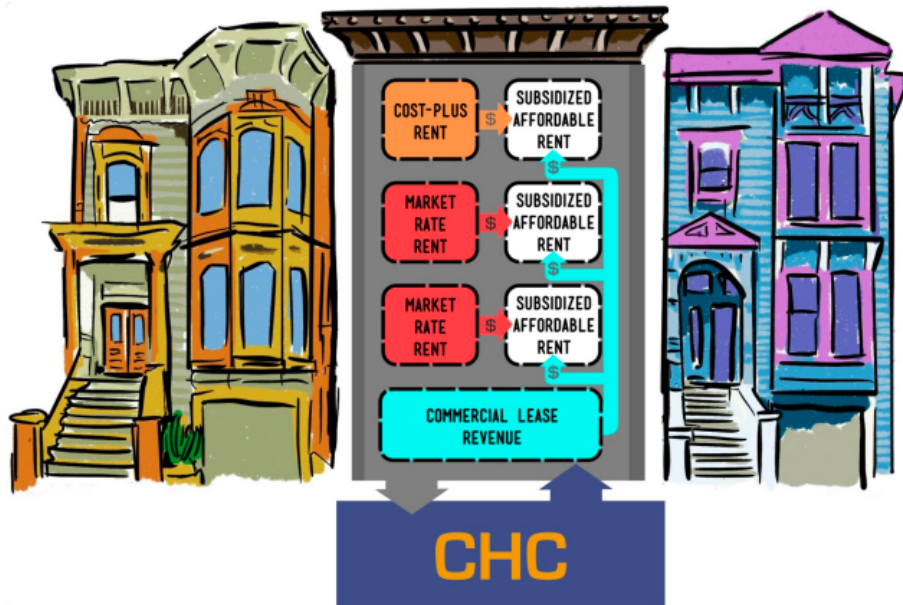
⁴⁷ Scally, C. et al. (2018). The Low-Income Housing Tax Credits: Past Achievements, Future Challenges. *Urban Institute*. Retrieved from https://www.urban.org/sites/default/files/publication/98761/lihtc_past_achievements_future_challenges_finalized_1.pdf.

⁴⁸ Sagehorn, D. & Hawn, J. (2020). Transit Value Capture for California. *Common Ground California*. Retrieved from http://cacommonground.org/pdf/2020-12_Transit_Value_Capture.pdf

consider more generous loan renegotiation terms or loan forgiveness, including the option of paying loans back to the fund in equity stakes.

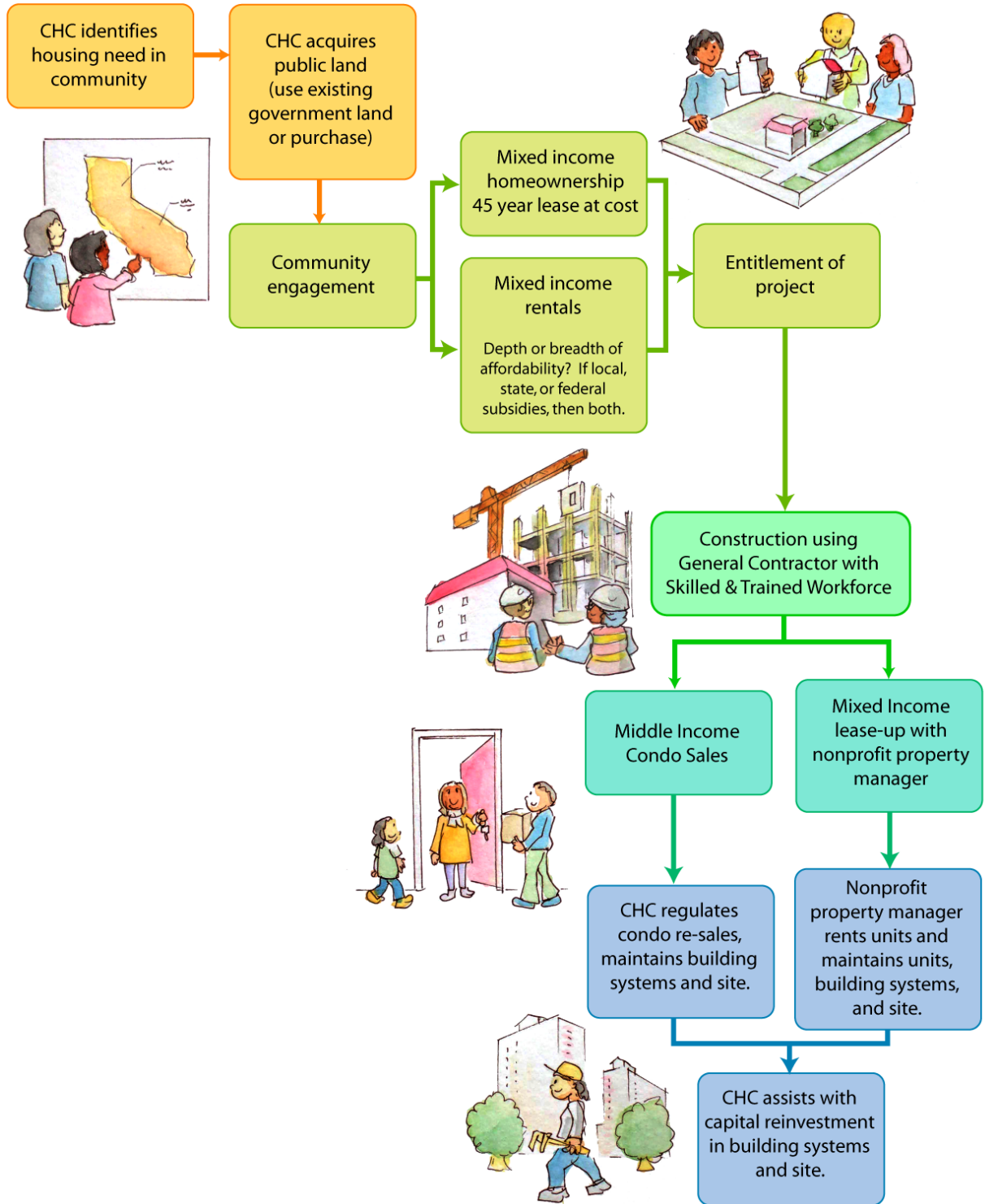
The City of Berkeley is fortunate to not find itself in the same conditions as a bombed-out postwar Vienna, which made the consolidation of a large public land portfolio for the Vienna Housing Fund tragically inexpensive. However, Berkeley is blessed with a robust and growing tax base. Initially, such a loan fund may start small, with seed capital from the city’s Small Sites Program and/or bootstrapped with Berkeley’s existing real property portfolio, but over time it would be able to draw upon its growing portfolio of assets to self-finance operating costs while investing in new affordable housing projects.⁴⁹

Conceptual Diagrams for a California Housing Corporation (CHC)



Cross-subsidization allows the rents of more affluent residents to defray the construction and operating costs for the benefit of lower-income residents

⁴⁹ Baxamusa, M. (2020). A New Model for Housing Finance: Public and Private Sectors Working Together to Build Affordability. *Routledge Focus*. p. 123.



Designs by Mark Mollineaux and Alfred Twu⁵⁰

⁵⁰ East Bay For Everyone. (2021). California Housing Corporation: The Case for a Public Housing Developer. Retrieved from <https://eastbayforeveryone.org/socialhousing/>

ALTERNATIVES CONSIDERED

The Berkeley City Council and the city’s voters have taken clear steps to invest in housing security and affordable housing production. To the extent that the City is already developing and implementing affordable housing policies, the feasibility of these policy tools would not be mutually exclusive with other public investments and reforms currently underway.

ENVIRONMENTAL IMPACTS

Mixed-income housing development adjacent to frequent, reliable public transit and walkable street infrastructure can further the goals of the City’s 2017 Climate Action Plan Update⁵¹, which include:

Goal 4. Increase compact development patterns (especially along transit corridors)

Encouraging sustainable modes of travel such as cycling, walking, and public transit, is fundamentally tied to compact development patterns and the mix of land uses near transit hubs and jobs. For example, evidence shows that people who live near transit drive between 20% and 40% less than those who do not.

The City’s 2018 Greenhouse Gas Inventory found that transportation accounted for 60% of Berkeley’s greenhouse gas (GHG) emissions.⁵² According to a 2018 Progress Report from the California Air Resources Board: “Even if the share of new car sales that are [zero-emission electric vehicles] grows nearly 10-fold from today, California would still need to reduce VMT [Vehicle Miles Traveled] per capita 25 percent to achieve the necessary reductions for 2030.”⁵³ A 2019 report by the United Nations’ International Resource Panel (IRP) emphasizes curbing suburban sprawl as a strategy to curb GHG emissions in urban areas that can also enhance the material outcomes provided by public services: “Optimizing densities and reducing sprawl also improves the sharing of resources (e.g. shared walls and roofs in apartment blocks) and reduces the distances that need to be covered by infrastructure networks (e.g. shorter pipes), allowing for savings in the materials and costs associated with service provision.”⁵⁴

Critically, though, economic integration is vital to promoting an absolute reduction in per capita VMT. Mixed-income development providing transit-accessible housing security across the entire economic spectrum should maximize the potential for both reducing the carbon footprints of affluent, higher-emission households, and preventing the

⁵¹ https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/2017-12-07%20WS%20Item%2001%20Climate%20Action%20Plan%20Update.pdf

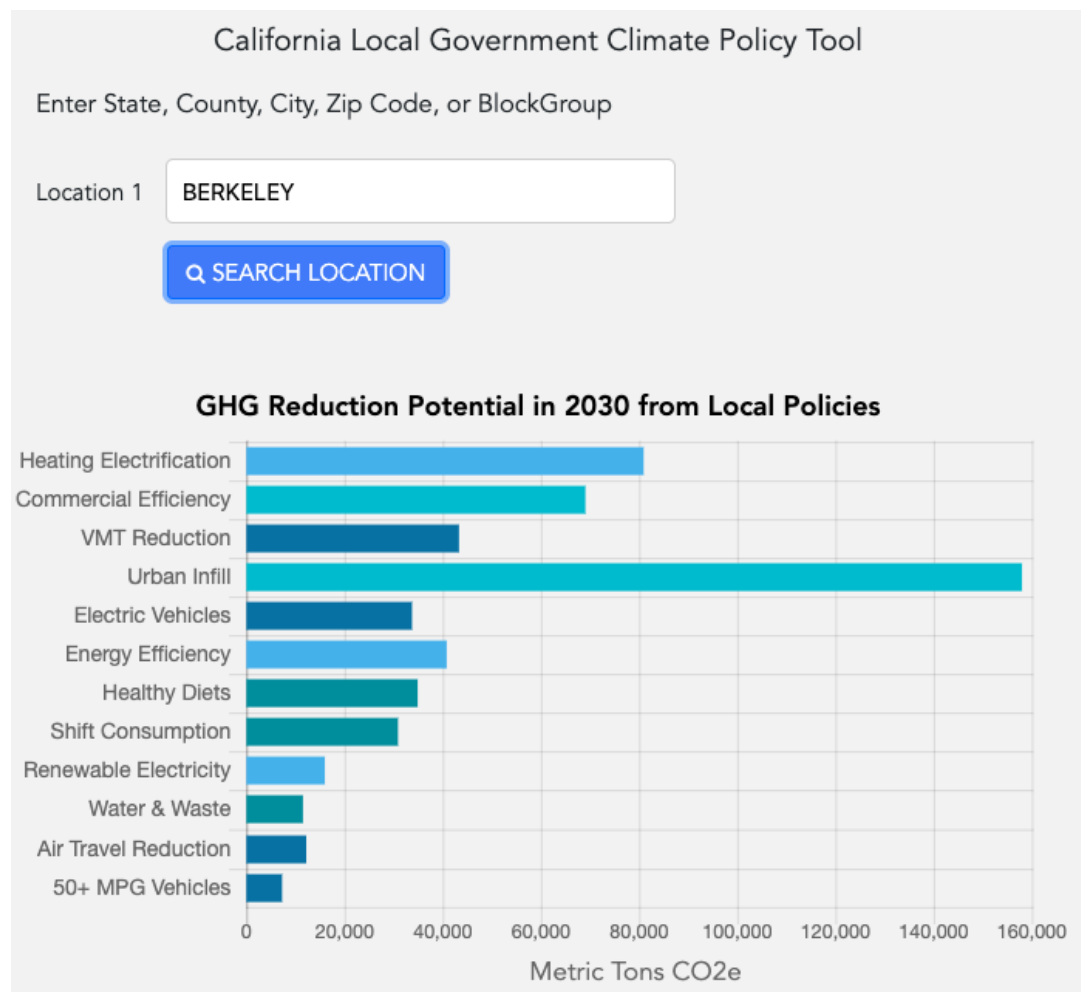
⁵² https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-21_Special_Item_05_Climate_Action_Plan_pdf.aspx

⁵³ https://ww2.arb.ca.gov/sites/default/files/2018-11/Final2018Report_SB150_112618_02_Report.pdf

⁵⁴ United Nations IRP. (2019). The Weight of Cities: Resource Requirements of Future Urbanization. Retrieved from <https://www.resourcepanel.org/reports/weight-cities>

displacement of poorer, lower-emission households to higher-VMT suburban areas with larger per capita carbon footprints.

While research from UC Berkeley⁵⁵ has found that wealthier households see larger emissions reductions from living in denser urban areas, a recent study of displacement and gentrification in Seattle also found significant increases in GHG emissions when lower-income households were displaced to outer suburbs with higher VMT land-use patterns and longer commutes.⁵⁶ Notably, the same UC Berkeley study evaluates emission reduction potentials of a suite of municipal public policies in 700 California cities. Using the modeling from this study, the California Local Government Policy Tool from the Cool Climate Network shows that urban infill development offers the greatest potential for mitigating Berkeley's GHG emissions.



⁵⁵ Jones et al. (2018). Carbon Footprint Planning: Quantifying Local and State Mitigation Opportunities for 700 California Cities. *Urban Planning*. 3(2). DOI: 10.17645/up.v3i2.1218

⁵⁶ Rice et al. (2020). Contradictions of the Climate-Friendly City: New Perspectives on Eco-Gentrification and Housing Justice. *International Journal of Urban and Regional Research*. 44(1):145-165.

FISCAL IMPACTS

TBD.—Staff time on financial feasibility study. The City Manager’s office has projected a \$12.7 million annual cost to achieve strategic goals enumerated in the 1000 Person Plan to End Homelessness by 2023, but the costs of reforming land use to affirmatively further housing justice remains unquantified. Because such a pilot program would aim to include a broader range of income levels and larger projects, project costs may ultimately not be comparable to the Small Sites Program. Feasibility study should aim for a long-term self-sustaining fiscal structure for Reparative Justice Revolving Loan Fund and identify hard costs of gathering, monitoring and planning policy directives in response to Housing Justice Indicators. A budget referral should only proceed following a feasibility study to identify policy and funding goals for monitoring progress toward benchmarks.

CONTACT

Councilmember Terry Taplin (District 2), 510-983-7120, ttaplin@cityofberkeley.info

ATTACHMENTS/SUPPORTING MATERIALS

1. Resolution
2. Senate Bill 1 (2021), State Senate of Hawaii
3. ALOHA Homes Feasibility Study (2021), Hawai'i Housing Finance and Development Corporation
4. Assembly Bill 387 (2021), State Assembly of California

RESOLUTION NO. ##,###-N.S.

RECOGNIZING HOUSING AS HUMAN RIGHT, REFERRING CITY MANAGER TO STUDY FINANCIAL FEASIBILITY OF MUNICIPAL HOUSING DEVELOPMENT PILOT PROGRAM TO ADMINISTER AUTOMATIC STABILIZERS FOR GUARANTEEING ADEQUATE HOUSING

WHEREAS, the United Nations has recognized housing as a human right in the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Economic, Social and Cultural Rights; and,

WHEREAS, the right to adequate housing includes freedoms such as protection against forced evictions and arbitrary destruction of housing; right to privacy; non-discriminatory choice of residence, and freedom of movement; and,

WHEREAS, the right to adequate housing includes entitlements such as security of tenure, restitution, equal and non-discriminatory access, and civic participation; and,

WHEREAS, the City of Berkeley has failed to affirm these freedoms and entitlements for its homeless residents, including 813 unsheltered identified in the 2019 Alameda County point-in-time count; and,

WHEREAS, the state of California and its local and regional governments have failed to affirm these freedoms and entitlements for at least 53% of renters who endure excessive cost-burdens, defined as paying over 30% of income for housing, according to the 2017 American Community Survey; and,

WHEREAS, cities around the world including Vienna and Singapore deliver better housing security and quality of life outcomes for their citizens with robust public housing development programs that reinvest revenues from mixed-income housing and real assets to fund operational costs and capital projects; and,

WHEREAS, histories of Jim Crow segregation endure in racial discrimination in mortgage credit and exclusionary land-use policies maintain disproportionate cost burdens and housing insecurity on Black people and low-income communities of color in the United States; and,

WHEREAS, the Berkeley City Council authorized a Missing Middle Report in 2019 on unanimous consent to study reforms to its land-use policies to enable more affordable times of housing construction, transit-oriented development, and racial and economic inclusion; and,

WHEREAS, the Berkeley City Council authorized a Local Preference policy for affordable housing when it passed the Adeline Corridor Specific Plan in 2020 to enable reparative housing security for low-income communities of color bearing the brunt of displacement and gentrification in Berkeley; and,

WHEREAS, the voters of the City of Berkeley authorized large increases in local funding for affordable housing in 2018 with the overwhelming passage of Measures O and P; and,

WHEREAS, a 2017 Analysis of City-Owned Property for Potential for Housing Development by Berkeley's Health, Housing and Community Services Department identified several publicly owned parcels that would require zoning changes and further study for affordable housing production;

NOW THEREFORE, BE IT RESOLVED, that the City of Berkeley recognizes adequate housing as a human right, with recognition of attendant freedoms and entitlements as enumerated by the United Nations;

BE IT FURTHER RESOLVED, that the Berkeley City Council refers the City Manager to study the financial feasibility of a municipal housing development pilot program administering automatic stabilizers to guarantee adequate housing security in Berkeley, with regular community input and periodic monitoring of socioeconomic indicators;

BE IT FURTHER RESOLVED, that the pilot program's feasibility study shall include, but not be limited to,

1. Feasibility study of public lands suitable mixed-income transit-oriented housing development identified in 2017 Analysis of City-Owned Lands and zoning changes needed for affordable housing at listed sites to address all income categories in upcoming Regional Housing Needs Allocation (RHNA) cycle;
2. Pilot program to establish a Reparative Justice Revolving Loan Fund with affirmative racial justice and anti-displacement goals, providing low-interest loans for tenants, nonprofits, limited-equity co-operatives, and community land trusts to acquire real property, develop, and/or maintain mixed-income and permanently affordable housing.
3. Pilot program to establish publicly available, user-friendly data dashboard monitoring Housing Justice Indicators in the city including, but not limited to, (a) health and safety standards, (b) affordability, (c) stability, and (d) discrimination and disparate impacts under US Department of Housing and Urban Development's Affirmatively Furthering Fair Housing (AFFH) rule; aligning Indicators with thresholds for corrective actions including land-use policy review and fiscal analysis.
4. State and regional partnerships with the California Department of Housing and Community Development, the Metropolitan Transportation Commission (MTC) and Association of Bay Area Governments (ABAG), UC Berkeley, and Bay Area Rapid Transit to develop fiscally resilient mixed-income housing and community reinvestment through land held in public trust and/or limited-equity cooperatives and community land trusts.

A BILL FOR AN ACT

RELATING TO HOUSING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the cost and
2 availability of housing in the State are significant challenges
3 facing Hawaii residents. Although Hawaii has the tenth highest
4 median wage nationally, living expenses are two-thirds higher
5 than the rest of the nation, with the cost of housing being a
6 major contributing factor. According to the Honolulu Board of
7 Realtors, by November 2020 the median price for a single-family
8 home on Oahu had risen to \$872,500, while the median price for
9 condominiums on Oahu had risen to \$420,000. With a simple
10 mortgage calculator and using conservative assumptions on
11 interest rates and down payment amounts, a household needs to
12 earn almost \$170,000 annually to afford to buy a median-priced
13 home on Oahu in 2020, making homeownership out of reach for many
14 of Hawaii's residents, especially first-time buyers.

15 Because of the many barriers hindering the production of
16 new housing, such as geographic limitations, lack of major
17 infrastructure, construction costs, and government regulation,



1 the State and housing developers have not been able to produce
2 enough housing for Hawaii residents. According to a 2015 report
3 from the department of business, economic development, and
4 tourism, the projected long-run estimate of demand for total new
5 housing in Hawaii is between 64,700 to 66,000 for the 2015 to
6 2025 period. The legislature has responded through the passage
7 of various legislation. During the regular session of 2016, the
8 legislature passed a bill enacted as Act 127, Session Laws of
9 Hawaii 2016, that, among other things, established a goal of
10 developing or vesting the development of at least 22,500
11 affordable rental housing units ready for occupancy by the end
12 of 2026. During the regular session of 2017, the legislature
13 passed a bill enacted as Act 54, Session Laws of Hawaii 2017, to
14 expand the types of rental housing projects that can be exempt
15 from general excise tax, thereby encouraging the development of
16 rental housing projects targeted for occupancy by households at
17 or below the one hundred forty per cent area median income
18 level. During the regular session of 2018, the legislature
19 passed a bill enacted as Act 39, Session Laws of Hawaii 2018,
20 that, among other things, provides an estimated total value of
21 \$570,000,000 to address Hawaii's affordable rental housing



1 crisis and is expected to generate more than 25,000 affordable
2 units by the year 2030.

3 Despite these efforts, the amount of new construction of
4 housing, especially for low- to middle-income families,
5 continues to be inadequate as the supply of housing remains
6 constrained while demand for housing increases. This lack of
7 supply leads to higher housing prices and rents for households
8 of all income levels, leaving all tenants with less disposable
9 income, increasing the personal stress on buyers and renters,
10 and exacerbating overcrowding and homelessness. Given these
11 consequences, the lack of affordable housing requires the
12 concentrated attention of state government at the highest level.

13 The legislature further finds that Singapore faced a
14 housing crisis in the 1940s through 1960s but was subsequently
15 able to provide nearly one million residential units for its
16 citizens. The housing and development board -- the government
17 entity responsible for the rapid increase in housing development
18 -- plans, develops, and constructs the housing units, including
19 commercial, recreational, and social amenities. The result is
20 that units built by the housing and development board house
21 eighty per cent of the resident population and that, overall,



1 ninety per cent of the resident population are owners of their
 2 units. Through government loans, subsidies, and grants and the
 3 use of money saved through a government-run mandatory savings
 4 program, residents are able to purchase residential units at an
 5 affordable price, including options to upgrade to a better
 6 living environment in the future.

7 The legislature further finds that with Honolulu's
 8 construction of an elevated rail transit system, the State has
 9 an opportunity to enhance Oahu's urban environment and increase
 10 the quality of life for residents by increasing the affordable
 11 housing inventory and eliminating the need for personal
 12 automobiles, among other public benefits. As the largest
 13 landowner of properties along the transit line, with
 14 approximately two thousand acres under the jurisdiction of
 15 various departments, the State must be proactive in establishing
 16 a unified vision and approach toward redevelopment of its
 17 properties to maximize the benefits of state lands available for
 18 redevelopment.

19 The purpose of this Act is to:

- 20 (1) End the housing shortage in Hawaii;



1 (2) Establish the ALOHA homes program to facilitate the
2 creation of low-cost leasehold homes for sale to
3 Hawaii residents on state-owned land near public
4 transit stations;

5 (3) Authorize the Hawaii housing finance and development
6 corporation to sell the leasehold interest in
7 residential condominium units located on state lands
8 for lease terms of ninety-nine years; and

9 (4) Develop an ALOHA homes demonstration project by
10 July 1, 2026.

11 SECTION 2. Chapter 201H, Hawaii Revised Statutes, is
12 amended by adding two new subparts to part II to be
13 appropriately designated and to read as follows:

14 "B. ALOHA Homes Program

15 §201H-A Definitions. As used in this subpart, the
16 following terms have the following meanings, unless the context
17 indicates a different meaning or intent:

18 "ALOHA" means affordable, locally owned homes for all.

19 "ALOHA home" means a residential unit within an urban
20 redevelopment site.



1 "Commercial project" means an undertaking involving
2 commercial or light industrial development, which includes a
3 mixed-use development where commercial or light industrial
4 facilities may be built into, adjacent to, under, or above
5 residential units.

6 "Multipurpose project" means a project consisting of any
7 combination of a commercial project, redevelopment project, or
8 residential project.

9 "Owner-occupied residential use" means any use currently
10 permitted in existing residential zones consistent with owner
11 occupancy, but shall not mean renting or leasing to any tenant
12 or lessee of any kind.

13 "Project" means a specific work or improvement, including
14 real and personal properties, or any interest therein, acquired,
15 owned, constructed, reconstructed, rehabilitated, or improved by
16 the corporation, including a commercial project, redevelopment
17 project, or residential project.

18 "Public agency" means any office, department, board,
19 commission, bureau, division, public corporation agency, or
20 instrumentality of the federal, state, or county government.



1 "Public facilities" includes streets, utility and service
2 corridors, and utility lines where applicable, sufficient to
3 adequately service developable improvements in an urban
4 redevelopment site, sites for schools, parks, parking garages,
5 sidewalks, pedestrian ways, and other community facilities.

6 "Public facilities" also includes public highways, as defined in
7 section 264-1, storm drainage systems, water systems, street
8 lighting systems, off-street parking facilities, sanitary
9 sewerage systems, facilities to address climate change and sea
10 level rise, as well as the land required for these facilities.

11 "Public facilities" also includes any facility owned and
12 operated by a public agency and having a useful life of at least
13 five years.

14 "Public transit station" means:

15 (1) A station connected to a locally preferred alternative
16 for a mass transit project; or

17 (2) For the city and county of Honolulu, a station of the
18 Honolulu rail transit system.

19 "Redevelopment project" means an undertaking for the
20 acquisition, clearance, replanning, reconstruction, and
21 rehabilitation, or a combination of these and other methods, of



1 an area for a residential project, for an incidental commercial
2 project, and for other facilities incidental or appurtenant
3 thereto, pursuant to and in accordance with this subpart. The
4 term "acquisition, clearance, replanning, reconstruction, and
5 rehabilitation" includes renewal, redevelopment, conservation,
6 restoration, or improvement, or any combination thereof.

7 "Residential project" means a project or that portion of a
8 multipurpose project, including residential dwelling units,
9 designed and intended for the purpose of providing housing and
10 any facilities as may be incidental or appurtenant thereto.

11 "Small and medium vendor" means a commercial vendor that
12 employs nine hundred ninety-nine employees or less.

13 **§201H-B ALOHA homes program.** There is established the
14 ALOHA homes program for the purpose of providing low-cost, high
15 density leasehold homes for sale to Hawaii residents on state-
16 owned lands within a one mile radius of a public transit
17 station.

18 **§201H-C Urban redevelopment sites; established;**
19 **boundaries.** There shall be established urban redevelopment
20 sites that shall include all state-owned land within a one mile



1 radius of a public transit station in a county having a
2 population greater than five hundred thousand.

3 §201H-D Rules; guidelines. (a) The corporation shall
4 establish rules pursuant to chapter 91 on health, safety,
5 building, planning, zoning, and land use, which shall supersede
6 all other inconsistent ordinances and rules relating to the use,
7 zoning, planning, and development of land and construction
8 thereon. Rules adopted under this section shall follow existing
9 law, rules, ordinances, and regulations as closely as is
10 consistent with standards meeting minimum requirements of good
11 design, pleasant amenities, health, safety, and coordinated
12 development. The corporation may provide that lands within
13 urban redevelopment sites shall not be developed beyond existing
14 uses or that improvements thereon shall not be demolished or
15 substantially reconstructed or provide other restrictions on the
16 use of the lands.

17 (b) The following shall be the principles generally
18 governing the corporation's action in urban redevelopment sites:

19 (1) The program seeks to produce enough housing to meet
20 housing demand;



- 1 (2) Each development may include facilities to replace any
- 2 facilities that must be removed for the development's
- 3 construction;
- 4 (3) Developments shall endeavor to be revenue-neutral to
- 5 the State and counties, and all revenues generated
- 6 shall be used for the purposes of this subpart;
- 7 (4) The corporation shall consider the infrastructure
- 8 burden of each development and the impact of the
- 9 development on the education system, and any
- 10 mitigation actions, prior to construction;
- 11 (5) The corporation may build infrastructure beyond what
- 12 exists in any development under this subpart and may
- 13 sell the infrastructure capacity to private sector
- 14 developers;
- 15 (6) The corporation may build common area facilities for
- 16 any development undertaken pursuant to this subpart,
- 17 which shall be paid through the sales of ALOHA homes
- 18 units;
- 19 (7) Developments shall result in communities that permit
- 20 an appropriate land mixture of residential,
- 21 commercial, and other uses. In view of the innovative



1 nature of the mixed use approach, urban design
2 policies shall be established for the public and
3 private sectors in the proper development of urban
4 redevelopment sites; provided that any of the
5 corporation's proposed actions in urban redevelopment
6 sites that are subject to chapter 343 shall comply
7 with chapter 343 and any federal environmental
8 requirements; provided further that the corporation
9 may engage in any studies or coordinative activities
10 permitted in this subpart that affect areas lying
11 outside urban redevelopment sites where the
12 corporation, in its discretion, decides that those
13 activities are necessary to implement the intent of
14 this subpart. The studies or coordinative activities
15 shall be limited to facility systems, resident and
16 industrial relocation, and other activities engaged in
17 with the counties and appropriate state agencies. The
18 corporation may engage in construction activities
19 outside of urban redevelopment sites; provided that
20 the construction relates to infrastructure development
21 or residential or business relocation activities;



1 provided further that the construction shall comply
2 with the general plan, development plan, ordinances,
3 and rules of the county in which the urban
4 redevelopment site is located;

5 (8) Activities shall be located so as to provide primary
6 reliance on public transportation and pedestrian and
7 bicycle facilities for internal circulation within
8 urban redevelopment sites or designated subareas;

9 (9) Where compatible, land use activities within urban
10 redevelopment sites, to the greatest possible extent,
11 shall be mixed horizontally within blocks or other
12 land areas and vertically as integral units of
13 multi-purpose structures;

14 (10) Development shall prioritize maximizing density;
15 provided that development may require a mixture of
16 densities, building types, and configurations in
17 accordance with appropriate urban design guidelines
18 and vertical and horizontal integration of residents
19 of varying incomes, ages, and family groups that
20 reflect the diversity of Hawaii.



- 1 (11) Development shall provide necessary community
- 2 facilities, such as parks, community meeting places,
- 3 child care centers, schools, educational facilities,
- 4 libraries, and other services, within and adjacent to
- 5 residential development; provided that any school that
- 6 is provided by the corporation as a necessary
- 7 community facility shall be exempt from school size
- 8 requirements as calculated by recent school site area
- 9 averages pursuant to section 302A-1602;
- 10 (12) Public facilities within urban redevelopment sites
- 11 shall be planned, located, and developed so as to
- 12 support the redevelopment policies for the sites
- 13 established by this subpart and plans and rules
- 14 adopted pursuant to it;
- 15 (13) Development shall be designed, to the extent possible,
- 16 to minimize traffic, parking, the use of private
- 17 automobiles, and noise;
- 18 (14) Development shall be subject to chapter 104;
- 19 (15) On-site and off-site infrastructure funded by the
- 20 State or county, as applicable, shall be brought to
- 21 the development site; provided that the State and



1 respective county may be reimbursed for its
2 infrastructure contributions with proceeds from the
3 sale of ALOHA homes; and

4 (16) Development shall include the establishment of a
5 building operating and maintenance program, together
6 with the funding to cover its cost.

7 (c) ALOHA homes within urban redevelopment sites shall not
8 be advertised for rent, rented, or used for any purpose other
9 than owner-occupied residential use; provided that the
10 corporation, by rule, shall establish penalties for violations
11 of this subsection up to and including forced sale of an ALOHA
12 home.

13 (d) The design and development contracts for ALOHA homes
14 shall be subject to chapter 103D.

15 (e) The corporation shall, in the interest of revenue-
16 neutrality, recoup expenses through the sales of the leasehold
17 interest of ALOHA homes and other revenue sources, including the
18 leasing of commercial space.

19 (f) The corporation shall transfer ALOHA homes units
20 within residential projects to the department of Hawaiian home
21 lands or to the office of Hawaiian affairs; provided that the



1 corporation shall adopt rules under chapter 91 to determine the
2 number of units or the percentage of units to be transferred to
3 the department of Hawaiian home lands or to the office of
4 Hawaiian affairs; provided further that the corporation may not
5 grant certificates of occupancy for any ALOHA homes units prior
6 to the implementation of these rules.

7 **§201H-E Sale of the leasehold interest of ALOHA homes;**
8 **rules; guidelines.** (a) The corporation shall adopt rules,
9 pursuant to chapter 91, for the sale of the leasehold interest
10 of ALOHA homes under its control within urban redevelopment
11 sites; provided that each lease shall be for a term of ninety-
12 nine years. The rules shall include the following requirements
13 for an eligible buyer or owner of an ALOHA home within an urban
14 redevelopment site:

15 (1) The person shall be a resident of the State; provided
16 that voting in the most recent primary or general
17 election shall be an indication of residency in the
18 State; provided further that not voting in any primary
19 or general election creates a rebuttable presumption
20 of non-residency;



1 (2) The person shall not use the ALOHA home for any
2 purpose other than owner-occupied residential use; and

3 (3) The person, or the person's spouse, or any other
4 person intending to live with the eligible buyer or
5 owner, shall not own any other real property,
6 including any residential and non-residential
7 property, beneficial ownership of trusts, and co-
8 ownership or fractional ownership, while owning an
9 ALOHA home in an urban redevelopment site; provided
10 that an eligible buyer may own real property up to six
11 months after closing on the purchase of an ALOHA home;
12 provided further that an owner of an ALOHA home in the
13 process of selling the ALOHA home may own other real
14 property up to six months prior to closing on the sale
15 of the ALOHA home to an eligible buyer;

16 provided that the rules under this subsection shall not include
17 any requirements or limitations related to an individual's
18 income or any preferences to first-time home buyers. The rules
19 shall include strict enforcement of owner-occupancy, including a
20 prohibition on renting or leasing an ALOHA home to any tenant or
21 lessee. Enforcement of the owner-occupancy condition may



1 include requirements for the use of facial recognition,
 2 fingerprint authorization, or retina scan technologies, in-
 3 person verification of owner-occupants, and prevention of access
 4 to all unauthorized persons. The corporation may also establish
 5 rules for a minimum number of days residents must be physically
 6 present on the premises and a maximum number of days non-
 7 residents may have access to the premises.

8 (b) The median ALOHA homes within urban redevelopment
 9 sites shall be priced at the minimum levels necessary to ensure
 10 that the development is revenue neutral for the State and
 11 counties. The median ALOHA homes price shall be adjusted
 12 annually for inflation, as determined by the Bureau of Labor
 13 Statistics Consumer Price Index for urban Hawaii.

14 (c) The corporation shall establish waitlists for each
 15 residential development for eligible buyers to determine the
 16 order in which ALOHA homes shall be sold. Waitlist priorities
 17 may include school, college, or university affiliation if the
 18 residential property is a redeveloped school, college, or
 19 university; proximity of an eligible buyer's existing residence
 20 to an ALOHA home within the urban redevelopment site; and other



1 criteria based on the impact that the development has on the
2 eligible buyer.

3 (d) ALOHA homes within urban redevelopment sites shall be
4 sold only to other eligible buyers.

5 (e) An owner of an ALOHA home may sell the ALOHA home
6 provided that the corporation shall have the right of first
7 refusal to purchase the ALOHA home at a price that is determined
8 by the corporation using the price at which the owner purchased
9 the ALOHA home as the cost basis, adjusted for inflation, as
10 determined by the department of business, economic development,
11 and tourism using the Consumer Price Index for All Urban
12 Consumers for Honolulu, and may include a percentage of the
13 appreciation, if any, in value of the unit based on an appraisal
14 obtained by the corporation. If the corporation does not
15 exercise its right to purchase the ALOHA home, the ALOHA home
16 may be sold by the owner to an eligible buyer; provided that the
17 corporation shall retain seventy-five per cent of all profits
18 from the sale net of closing and financing costs, using the
19 price at which the owner purchased the ALOHA home, plus
20 documented capital improvements, as the cost basis. Upon the
21 death of the owner of an ALOHA home, the ALOHA home may be



1 transferred to the deceased's heir by devise or as any other
2 real property under existing law.

3 (g) Any ALOHA home developed and sold under this subpart
4 shall not be subject to sections 201H-47, 201H-49, 201H-50, and
5 201H-51.

6 §201H-F Use of public lands; acquisition of state lands.

7 (a) If state lands under the control and management of other
8 public agencies are required by the corporation for the purposes
9 of this subpart, the agency having the control and management of
10 those required lands, upon request by the corporation and with
11 the approval of the governor, may convey or lease those lands to
12 the corporation upon terms and conditions as may be agreed to by
13 the parties.

14 (b) Notwithstanding the foregoing, no public lands shall
15 be conveyed or leased to the corporation pursuant to this
16 section if the conveyance or lease would impair any covenant
17 between the State or any county or any department or board
18 thereof and the holders of bonds issued by the State or that
19 county, department, or board.

20 §201H-G Acquisition of real property from a county.

21 Notwithstanding the provision of any law or charter, any county,



1 by resolution of its county council, may, without public
 2 auction, sealed bids, or public notice, sell, lease, grant, or
 3 convey to the corporation any real property owned by it that the
 4 corporation certifies to be necessary for the purposes of this
 5 subpart. The sale, lease, grant, or conveyance shall be made
 6 with or without consideration and upon terms and conditions as
 7 may be agreed upon by the county and the corporation.
 8 Certification shall be evidenced by a formal request from the
 9 corporation. Before the sale, lease, grant, or conveyance may
 10 be made to the corporation, a public hearing shall be held by
 11 the county council to consider the same. Notice of the hearing
 12 shall be published at least six days before the date set for the
 13 hearing in the publication and in the manner as may be
 14 designated by the county council.

15 **§201H-H Condemnation of real property.** The corporation,
 16 upon making a finding that it is necessary to acquire any real
 17 property for its immediate or future use for the purposes of
 18 this subpart, may acquire the property, including property
 19 already devoted to a public use, by condemnation pursuant to
 20 chapter 101. The property shall not thereafter be taken for any
 21 other public use without the consent of the corporation. No



1 award of compensation shall be increased by reason of any
2 increase in the value of real property caused by the designation
3 of the urban redevelopment site or plan adopted pursuant to a
4 designation, or the actual or proposed acquisition, use, or
5 disposition of any other real property by the corporation.

6 §201H-I Construction contracts. The construction
7 contracts for ALOHA homes shall be subject to chapter 103D.

8 §201H-J Lease of projects. Notwithstanding any law to the
9 contrary, the corporation, without recourse to public auction or
10 public notice for sealed bids, may lease for a term not
11 exceeding sixty-five years all or any portion of the real or
12 personal property constituting a commercial project to any
13 person, upon terms and conditions as may be approved by the
14 corporation; provided that all revenues generated from the lease
15 shall be used to support the purpose of the ALOHA homes program.

16 §201H-K Dedication for public facilities as condition to
17 development. The corporation shall establish rules requiring
18 dedication for public facilities of land or facilities by
19 developers as a condition of developing real property within
20 urban redevelopment sites. Where state and county public



1 facilities dedication laws, ordinances, or rules differ, the
2 provision for greater dedication shall prevail.

3 **§201H-L ALOHA homes revolving fund.** There is established
4 the ALOHA homes revolving fund into which all receipts and
5 revenues of the corporation pursuant to this subpart shall be
6 deposited. Proceeds from the fund shall be used for the
7 purposes of this subpart.

8 **§201H-M Expenditures of ALOHA homes revolving fund under**
9 **the corporation exempt from appropriation and allotment.** Except
10 as to administrative expenditures, and except as otherwise
11 provided by law, expenditures from the ALOHA homes revolving
12 fund administered by the corporation may be made by the
13 corporation without appropriation or allotment of the
14 legislature; provided that no expenditure shall be made from and
15 no obligation shall be incurred against the ALOHA homes
16 revolving fund in excess of the amount standing to the credit of
17 the fund or for any purpose for which the fund may not lawfully
18 be expended. Nothing in sections 37-31 to 37-41 shall require
19 the proceeds of the ALOHA homes revolving fund administered by
20 the corporation to be reappropriated annually.



1 **§201H-N Assistance by state and county agencies.** Any
2 state or county agency may render services for the purposes of
3 this subpart upon request of the corporation.

4 **§201H-O Lands no longer needed.** Lands acquired by the
5 corporation from another government agency that are no longer
6 needed for the ALOHA homes program by the corporation shall be
7 returned to the previous owner of those lands. Lands acquired
8 by the corporation from a private party that are owned by the
9 corporation and designated for the ALOHA homes program but are
10 subsequently no longer needed for the ALOHA homes program shall
11 be retained by the corporation.

12 **§201H-P Rules.** The corporation may adopt rules pursuant
13 to chapter 91 that are necessary for the purposes of this
14 subpart.

15 C. Leasehold Condominiums on State Lands

16 **§201H-Q Leasehold condominiums on state lands.** (a) The
17 corporation may sell leasehold units in condominiums organized
18 pursuant to chapter 514B and developed under this subpart on
19 state land to a "qualified resident" as defined in section
20 201H-32.



1 (b) The term of the lease may be for ninety-nine years,
2 and the corporation may extend or modify the fixed rental period
3 of the lease or extend the term of the lease.

4 (c) The sale of leasehold units shall be subject to
5 sections 201H-47, 201H-49, and 201H-50, except for units sold at
6 fair market value.

7 (d) State land set aside by the governor to the
8 corporation and lands leased to the corporation by any
9 department or agency of the State for a condominium described in
10 this section shall be exempt from the definition of "public
11 lands" under section 171-2; provided that lands described in
12 this subsection shall be considered "public lands" for the
13 purpose of accounting for all receipts from lands described in
14 section 5(f) of the Admission Act for the prior fiscal year,
15 pursuant to section 5 of Act 178, Session Laws of Hawaii 2006;
16 provided further that payment of receipts pursuant to this
17 subsection may be made in a form of remuneration or
18 consideration other than cash.

19 (e) The powers conferred upon the corporation by this
20 section shall be in addition and supplemental to the powers
21 conferred by any other law, and nothing in this section shall be



1 construed as limiting any powers, rights, privileges, or
2 immunities so conferred."

3 SECTION 3. Chapter 237, Hawaii Revised Statutes, is
4 amended by adding a new section to be appropriately designated
5 and to read as follows:

6 "§237- Exemption of sale of leasehold interest for ALOHA
7 home units. In addition to the amounts exempt under section
8 237-24, this chapter shall not apply to amounts received from
9 the sale of a leasehold interest in an ALOHA home under chapter
10 201H, part II, subpart B."

11 SECTION 4. Section 171-2, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "§171-2 Definition of public lands. "Public lands" means
14 all lands or interest therein in the State classed as government
15 or crown lands previous to August 15, 1895, or acquired or
16 reserved by the government upon or subsequent to that date by
17 purchase, exchange, escheat, or the exercise of the right of
18 eminent domain, or in any other manner; including lands accreted
19 after May 20, 2003, and not otherwise awarded, submerged lands,
20 and lands beneath tidal waters that are suitable for



1 reclamation, together with reclaimed lands that have been given
2 the status of public lands under this chapter, except:

3 (1) Lands designated in section 203 of the Hawaiian Homes
4 Commission Act, 1920, as amended;

5 (2) Lands set aside pursuant to law for the use of the
6 United States;

7 (3) Lands being used for roads and streets;

8 (4) Lands to which the United States relinquished the
9 absolute fee and ownership under section 91 of the
10 Hawaiian Organic Act prior to the admission of Hawaii
11 as a state of the United States unless subsequently
12 placed under the control of the board of land and
13 natural resources and given the status of public lands
14 in accordance with the state constitution, the
15 Hawaiian Homes Commission Act, 1920, as amended, or
16 other laws;

17 (5) Lands to which the University of Hawaii holds title;

18 (6) Lands that are set aside by the governor to the Hawaii
19 housing finance and development corporation; lands
20 leased to the Hawaii housing finance and development
21 corporation by any department or agency of the State;



1 or lands to which the Hawaii housing finance and
2 development corporation in its corporate capacity
3 holds title;

4 (7) Lands to which the Hawaii community development
5 authority in its corporate capacity holds title;

6 (8) Lands set aside by the governor to the Hawaii public
7 housing authority or lands to which the Hawaii public
8 housing authority in its corporate capacity holds
9 title;

10 (9) Lands to which the department of agriculture holds
11 title by way of foreclosure, voluntary surrender, or
12 otherwise, to recover moneys loaned or to recover
13 debts otherwise owed the department under chapter 167;

14 (10) Lands that are set aside by the governor to the Aloha
15 Tower development corporation; lands leased to the
16 Aloha Tower development corporation by any department
17 or agency of the State; or lands to which the Aloha
18 Tower development corporation holds title in its
19 corporate capacity;

20 (11) Lands that are set aside by the governor to the
21 agribusiness development corporation; lands leased to



1 the agribusiness development corporation by any
2 department or agency of the State; or lands to which
3 the agribusiness development corporation in its
4 corporate capacity holds title;

5 (12) Lands to which the Hawaii technology development
6 corporation in its corporate capacity holds title; and

7 (13) Lands to which the department of education holds
8 title;

9 provided that, except as otherwise limited under federal law and
10 except for state land used as an airport as defined in section
11 262-1, public lands shall include the air rights over any
12 portion of state land upon which a county mass transit project
13 is developed after July 11, 2005."

14 SECTION 5. Section 171-64.7, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) This section applies to all lands or interest therein
17 owned or under the control of state departments and agencies
18 classed as government or crown lands previous to August 15,
19 1895, or acquired or reserved by the government upon or
20 subsequent to that date by purchase, exchange, escheat, or the
21 exercise of the right of eminent domain, or any other manner,



1 including accreted lands not otherwise awarded, submerged lands,
2 and lands beneath tidal waters that are suitable for
3 reclamation, together with reclaimed lands that have been given
4 the status of public lands under this chapter, including:

5 (1) Land set aside pursuant to law for the use of the
6 United States;

7 (2) Land to which the United States relinquished the
8 absolute fee and ownership under section 91 of the
9 Organic Act prior to the admission of Hawaii as a
10 state of the United States;

11 (3) Land to which the University of Hawaii holds title;

12 (4) Land that is set aside by the governor to the Hawaii
13 housing finance and development corporation; land
14 leased to the Hawaii housing finance and development
15 corporation by any department or agency of the State;
16 or land to which the Hawaii housing finance and
17 development corporation in its corporate capacity
18 holds title;

19 (5) Land to which the department of agriculture holds
20 title by way of foreclosure, voluntary surrender, or



- 1 otherwise, to recover moneys loaned or to recover
 2 debts otherwise owed the department under chapter 167;
- 3 (6) Land that is set aside by the governor to the Aloha
 4 Tower development corporation; or land to which the
 5 Aloha Tower development corporation holds title in its
 6 corporate capacity;
- 7 (7) Land that is set aside by the governor to the
 8 agribusiness development corporation; or land to which
 9 the agribusiness development corporation in its
 10 corporate capacity holds title;
- 11 (8) Land to which the Hawaii technology development
 12 corporation in its corporate capacity holds title;
- 13 (9) Land to which the department of education holds title;
 14 and
- 15 (10) Land to which the Hawaii public housing authority in
 16 its corporate capacity holds title."

17 SECTION 6. Chapter 201H, Hawaii Revised Statutes, part II
 18 is amended by designating sections 201H-31 to 201H-70 as subpart
 19 A and inserting a title before section 201H-31 to read as
 20 follows:

21 "A. General Provisions"



1 SECTION 7. Section 302A-1603, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) The following shall be exempt from this section:

4 (1) Any form of housing permanently excluding school-aged
5 children, with the necessary covenants or declarations
6 of restrictions recorded on the property;

7 (2) Any form of housing that is or will be paying the
8 transient accommodations tax under chapter 237D;

9 (3) All nonresidential development; [~~and~~]

10 (4) Any development with an executed education
11 contribution agreement or other like document with the
12 department for the contribution of school sites or
13 payment of fees for school land or school
14 construction~~[-]~~; and

15 (5) Any form of development by the Hawaii housing finance
16 and development corporation pursuant to chapter 201H,
17 part II, subpart B."

18 SECTION 8. There is appropriated out of the general
19 revenues of the State of Hawaii the sum of \$ or so
20 much thereof as may be necessary for fiscal year 2021-2022 and
21 the same sum or so much thereof as may be necessary for fiscal



1 year 2022-2023 to be deposited into the ALOHA homes revolving
2 fund established pursuant to section 201H-L, Hawaii Revised
3 Statutes.

4 SECTION 9. There is appropriated out of the ALOHA homes
5 revolving fund established pursuant to section 201H-L, Hawaii
6 Revised Statutes, the sum of \$ or so much thereof as
7 may be necessary for fiscal year 2021-2022 and the same sum or
8 so much thereof as may be necessary for fiscal year 2022-2023
9 for the purposes for which the revolving fund is established.

10 The sums appropriated shall be expended by the Hawaii
11 housing finance and development corporation for the purposes of
12 this Act.

13 SECTION 10. There is appropriated out of the general
14 revenues of the State of Hawaii the sum of \$ or so
15 much thereof as may be necessary for fiscal year 2021-2022 and
16 the same sum or so much thereof as may be necessary for fiscal
17 year 2022-2023 to fund one full-time equivalent (1.0 FTE)
18 program manager position, one full-time equivalent (1.0 FTE)
19 compliance specialist position, and one full-time equivalent
20 (1.0 FTE) fiscal clerk position within the Hawaii Housing
21 Finance and Development Corporation for the ALOHA Homes program.



1 The sums appropriated shall be expended by the Department
2 of Business, Economic Development, and Tourism for the purposes
3 of this Act.

4 SECTION 11. In codifying the new sections added by
5 section 2 of this Act, the revisor of statutes shall substitute
6 appropriate section numbers for the letters used in designating
7 the new sections in this Act.

8 SECTION 12. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 13. This Act shall take effect on July 1, 2021.

11



Report Title:

HHFDC; Affordable Housing; ALOHA Homes; Public Land Exemptions; Appropriation

Description:

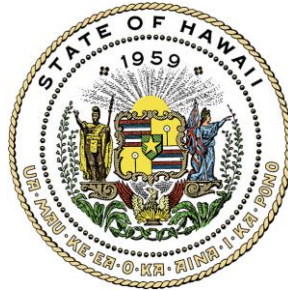
Establishes the ALOHA homes program to develop low-cost homes on state-owned and county-owned land in urban redevelopment sites to be sold in leasehold by the Hawaii Housing Finance and Development Corporation (HHFDC) to qualified residents. Exempts certain land from the definition of public lands. Requires HHFDC to gain legislative approval before disposing of certain lands. Requires HHFDC to transfer a number of ALOHA homes units to the Department of Hawaiian Home Lands or Office of Hawaiian Affairs. Provides for the disposition of lands acquired by HHFDC but no longer needed for the ALOHA homes program. Requires HHFDC to develop an ALOHA homes demonstration project by July 1, 2026. Appropriates funds. (Proposed SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



ALOHA Homes Implementation Study

PREPARED FOR



HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
(HHFDC)

PREPARED BY



HAWAII APPLESEED
CENTER FOR LAW & ECONOMIC JUSTICE



**HAWAII BUDGET
& POLICY CENTER**

ALOHA Homes Implementation Study

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Executive Summary

One of the defining public policy issues of our day is the inadequacy of housing for Hawai'i's families. The cost of housing is most often cited as the motivation for out-migration of families seeking better economic opportunities in other states and as a primary cause for our high rate of homelessness.

The ALOHA Homes Implementation Study aims to ascertain the feasibility of implementing the proposed ALOHA Homes program and, if feasible, formulate an implementation plan. As part of our research we evaluated key components of the Singapore leasehold housing model to see which could be applied in Hawai'i. Singapore was chosen as an inspiration for the ALOHA Homes bill because it has successfully provided high quality and affordable housing for its more than 5 million citizens, and virtually eliminated homelessness.

In our approach, we did not simply comment on the viability of the Singapore model but sought to provide solutions that could work in Hawai'i. Our research team met with housing experts from developers, to manufacturers, to administrators, to policy problem-solvers in order to assemble best-practices and lessons learned applicable to Hawai'i's unique circumstances. And we asked local consumers, who represent the target group for ALOHA Homes purchases, to weigh in on a proposed affordable leasehold model.

We found that many of the provisions proposed in the ALOHA Homes model would have the potential to address housing needs of middle-income earners that are currently priced out of the housing market and have very limited opportunities for homeownership.

In our analysis we found several key components of the Singapore model that would not be currently feasible in Hawai'i. Notable among these are:

- **Government structure:** Singapore has a highly centralized government with extensive land use authority and limited opportunities for citizen input in development decisions.
- **Cost of Construction:** Singapore is able to build housing and infrastructure at costs that are less than half the costs in Hawai'i, in large part because the construction workforce is dominated by nonunionized immigrant laborers.
- **Significant mortgage subsidies for lower-income residents:** Singapore ensures widespread affordability by reducing the home price for residents with lower incomes. These subsidies aim to keep monthly housing costs at approximately 22% of a resident's income.

The above elements of the Singapore model make some aspects of the current ALOHA Homes bill infeasible or not recommended for Hawai'i. Our findings indicate that other aspects proposed for the ALOHA Homes model which would not be recommended for other reasons.

Key components of the ALOHA Homes bill which are **infeasible** include:

- 1) **Constructing a 2 bedroom/2 bathroom home for \$300,000.**
Analysis: Our research indicates a feasible price to be approximately \$400,000.

2) **Minimum Density of 250 homes per acre.**

Analysis: Due to our government, social, and political structure, imposing a requirement that does not account for local needs or geographic variation would likely be an empty mandate.

3) **Delivering housing to low- and middle-income earners without State Subsidy.**

Analysis: Even at a low price of \$400,000, assuming a subsidy of State lands and district-wide infrastructure, house payments would be affordable to households earning approximately \$80,000 a year, or 80% of area median income for Honolulu.¹ Households with lower incomes would need further mortgage subsidies to make home purchases affordable.

Key components of the ALOHA Homes bill which are feasible, but **not a best practice** for maximizing long-term affordability include:

- 1) **Five-year affordability period.** Owner can sell at market price after five years, and will share 75 percent of the equity with the housing agency. The home is no longer affordable to future buyers.

Analysis: Singapore allows a sale at maximum price to qualified buyers after five years, without losing affordability because the government structure enables constant replacement of affordable homes and public land acquisition. This does not apply to Hawai'i or other places we researched with high citizen engagement in land use decisions.

- 2) **No income restriction.** A person at any income level can purchase an ALOHA home, even though in Singapore there are income restrictions for purchasing new and subsidized homes.

Analysis: Every jurisdiction in the U.S. with below-market housing has an income limit. European cities also generally have income limits, with Helsinki having a low-income preference instead of limit.

Other main program areas which need further consideration before implementation include:

- 1) **Stewardship:** Successful below-market housing programs require management, generally from a non-profit or other third-party organization. The State would need to find a partner.
- 2) **Infrastructure Funding:** Significant public investment in infrastructure is needed to enable housing construction in TOD areas at the prices proposed in this study. The public sector must take a much larger role in this area.
- 3) **State land contribution/Lease end game issues:** The ALOHA Homes Implementation Study proposes a 99-year lease but does not address what happens at the end of the lease term. In Singapore, the government does not extend the lease period but instead re-houses people as the property generally declines in value when the remaining lease period is shorter than 40 years. It is not clear if this would also be the plan for ALOHA Homes.

¹ Assumptions: 3% down payment, 30-year mortgage loan at 3% interest, HOA \$350/month, no PMI, homeowner's insurance \$500. HUD Honolulu Household 100% AMI 2020 is \$101,600

We continue to gather important stakeholder feedback on this issue, but it is clear the use of public lands for residential leasehold ownership is controversial with important legal, political, and financial considerations.

Although some parts of the ALOHA Homes proposal are currently infeasible, the lack of affordable housing is also unsustainable for too many Hawai'i residents. The scarcity of affordable homeownership opportunities for local residents who are earning average or even above-average wages is a frustrating and demoralizing experience, as voiced by one focus group participant- "I've been saving up for years, but it's just not enough." Some people when faced with this reality decide to limit their aspirations and give up on homeownership, while some others move to other states. During our focus group interviews it was striking how many people when presented with the prices and requirements of the leasehold program described in this study responded by saying they felt hopeful. They wanted to be kept informed of program progress and wanted to know where and when the housing would be built.

A state-supported affordable leasehold housing program, that addresses the above obstacles, could fulfill an important housing need for Hawai'i.

Methodology of Study

Project Team

The ALOHA Homes Implementation Study was commissioned by the Hawai'i Housing Finance and Development Corporation (HHFDC), the primary agency responsible for overseeing affordable housing finance and development in Hawai'i. The study was conducted by the Hawai'i Appleseed Center for Law & Economic Justice. The study team included:

- Kenna Stormogipson (Policy and Data Analyst, Hawai'i Budget and Policy Center)
- Williamson Chang, JD (Legal Analyst, UHM William S. Richardson School of Law)
- Dave Freudenberger (Public Finance Consultant, Goodwin Consulting Group)
- Charles Long (Developer and author of "Finance for Real Estate Development")
- Dennis Silva (Planner, Hawai'i Planning LLC)
- Jessica Sato (Freelance Designer)
- Abbey Seitz (Community Planner)
- Steven Miao, (Research Assistant, Hawai'i Budget and Policy Center)
- Jacob Heberle (Summer Intern, Hawai'i Appleseed)
- Arjuna Heim (Fall Intern, Hawai'i Appleseed)

The team members listed above represent a project team with local and regional expertise in housing policy, real estate finances, legal analysis, state housing policy and urban development.

Review of Relevant Housing Studies and Programs

The project team reviewed relevant housing studies and programs to document best practices in the design, distribution and management of affordable housing, both locally and abroad. The team's greatest focus was on public housing and "social housing" programs in Singapore, Vienna and Helsinki. These programs were given most attention because they are state-supported, effective housing delivery systems that provide affordable home-ownership and rental opportunities to low- and middle-income residents. Lessons learned from these publicly supported programs are included throughout the study. In addition to reviewing existing literature and publications about various public housing programs, the project team interviewed government officials from the model jurisdictions when possible.

Local Stakeholder Interviews and Focus Groups

To ensure that this study was centered on local knowledge, the project team conducted more than 30 local stakeholder interviews. Stakeholders represented government agencies, academic institutions, nonprofit organizations, community groups, and private developers that are involved in affordable housing in Hawai'i. Collectively, they provided details about the challenges of and opportunities for different affordable housing delivery systems, addressing costs, community engagement, government accountability and equity concerns. The full list of stakeholders who were interviewed is included in Appendix A.

The project team also gathered input from local residents about a potential ALOHA Homes Program through four one-on-one interviews and four focus groups. Each focus group was held via video conference, lasted approximately 1.5 hours, and included an average of four participants. In total, there were 18 participants. The names of focus group participants engaged in this study are not provided to protect their privacy. Key input from stakeholder interviews and focus groups is referenced throughout the study.

Description of ALOHA Homes Concept

Program History

The proposed ALOHA Homes Program was first championed by State Senator Stanley Chang (District 9), who represents the area stretching from Diamond Head to Hawai'i Kai. As chairman of the Senate Committee on Housing since 2019, Senator Chang has focused much of his attention on ending Hawai'i's housing shortage. He is particularly inspired by the affordable housing model of Singapore, a city-state at the southern tip of Malaysia where it is estimated that over 90 percent of the city's 5.5 million people are homeowners.²

² Phang, S. and Helble, M., (2016). Housing Policies In Singapore. ADBI Working Paper 559. Tokyo: Asian Development Bank Institute. Available: <http://www.adb.org/publications/housing-policies-singapore/>

In early 2019, Senator Chang introduced [Senate Bill 1](#) (“ALOHA Homes Bill”).³ While the ALOHA Homes Bill did not ultimately pass, the state approved legislation to study provisions in the bill in [Act 167](#) (Session Laws of Hawai‘i 2019). As part of Act 167, HHFDC is required to “to study and formulate a plan to implement an ALOHA Homes program to provide low-cost, high-density leasehold homes for sale to Hawai‘i residents on state-owned lands within a one-half mile radius of a public transit station.”⁴ This study is a result of this Act 167 requirement, and our goal is to provide data and analysis to help the State of Hawai‘i implement an affordable leasehold ownership program.

The Original Vision for the ALOHA Homes Program

State Senator Stanley Chang envisioned the ALOHA Homes Program to be based on the following principles, as outlined in the [ALOHA Homes Bill](#):

- **Housing should be affordable for Hawai‘i residents** with incomes at or below 80 percent of the area median income (AMI).⁵ This means a two-bedroom unit could cost no more than approximately \$300,000.
- **Down payments should be nonrestrictive for potential homeowners at 3 percent or less** so that the down payment for a two-bedroom unit would be approximately \$9,000 or less.
- **99-year leasehold tenure** for sales of residential condominiums on state land.
- **Housing should be revenue-neutral for the state** and all expenses should be recouped through the sale of the leasehold interest on ALOHA Homes and other revenue sources.
- **Housing should be high-density residential** to support future transit-oriented development (TOD) on O‘ahu. The ALOHA Homes Bill defined “high-density” as an area that has at least 250 dwelling units per acre. This density is the same as “801 South Street,” two mid-priced condominium towers built in downtown Honolulu between 2015 and 2017. These two towers have a density of roughly 250 homes per acre, with 46 stories reaching 400 feet high. The relatively affordable price of these two towers was due in part to their density, which allowed more apartments to fit on a parcel of land.
- **Housing should be part of mixed land-use communities**, accommodating both residential and commercial uses to promote walkable and livable neighborhoods.
- **Housing should be sited near community amenities** such as parks, community meeting places, childcare centers, schools, educational facilities and libraries.
- **Housing should be owner-occupied** to ensure local residents have the opportunity to build equity and have more control over their housing than they would as renters.
- **Housing should be sited in urban development areas**, to promote smart and sustainable growth in Hawai‘i. The ALOHA Homes Bill defined “urban development sites” as state and county land within county-designated TOD areas or within a half-mile radius of a public transit station in a county that has a population greater than 500,000.
- **There should be no first-time homebuyer or income limits on potential homeowners**, to promote neighborhoods that integrate residents with a variety of incomes and ages.

³ Senate Bill 1, S.D. 2. (2019). Related to Housing. Available here: https://www.capitol.hawaii.gov/session2019/bills/SB1_SD2_.pdf

⁴ Act 167 (H.B. No. 820, H.D. 1, S.D. 1, C.D. 1). (Session Laws of Hawai‘i 2019). Related to Housing. Available here: https://www.capitol.hawaii.gov/session2019/bills/GM1269_.PDF

⁵ Eighty percent of Hawai‘i’s area median income for a family of four in 2020 was \$96,400, according to DBEDT. Available: <https://dbedt.hawaii.gov/hcda/annual-ami-stats/>

- **Homeowners would not own any other real property** to prevent people from using the program primarily as a form of real estate investment. Anyone who currently owns property would be required to sell that property within six months of purchasing a below-market home. This clause emphasizes that the primary purpose of the program is to provide affordable housing and that wealth or equity building is secondary.
- **There would be waitlist preferences** to prioritize people who are affected by the new development, such as local area residents. The program would also prioritize residents affiliated with a school or university if housing is built on land owned by the school or university.
- **Restricted resale to eligible buyers** would ensure that the units are affordable long-term. Home sales would be restricted to buyers who meet the eligibility requirements as outlined above, including to local residents who own no other property.
- **Equity sharing** would provide a fair profit, but not a windfall to the owner who resells a unit. The owner has two options:
 1. The owner can sell the home back to the public agency for the original purchase price plus inflation for Honolulu as determined by the Consumer Price Index.
 2. If the agency does not exercise the right to purchase the home, the owner may sell the property to another qualified buyer at market price and keep 25 percent of the profit, while the public agency would retain 75 percent of the gain.

This equity share provision emphasizes that the purpose of the program is to provide and maintain a supply of affordable housing for local residents. While some profit for the owner is acceptable, it is not the main goal of the program.

Differences Between the ALOHA Homes Program and the Singapore Model

Although similar, there are key differences between Singapore's Housing and Development Board (HDB) approach to affordable housing and the original vision for the ALOHA Homes Program:

- **Singapore allows less citizen oversight and community involvement.** Generally speaking, the Singaporean government designed HDB with minimal citizen oversight or community involvement. Although the ALOHA Homes Bill does not currently outline any community involvement process, HHFDC must comply with numerous state rules and regulations designed to promote transparency and protect the public interest. Some examples of this include HRS §91 rulemaking procedures, which require agencies to provide the public access to information on and opportunities to inspect and provide input on agency laws and procedures.⁶

Hawai'i's Sunshine Laws also require meetings of the HHFDC board to be conducted as "openly as possible." In contrast, Singapore is one of a minority of countries that does not have "Freedom of Information" laws, for citizens to request government data,⁷ and in general

⁶ Hawai'i Revised Statutes (HRS) §91-2, Title 8, Public Proceedings and Records, Chapter 91 Administrative Procedure. Available at: https://files.hawaii.gov/dcca/oah/hrs/hrs_oah_91.pdf

⁷ Freedominfo.org A total 119 countries have Freedom of Information laws, but not Singapore.

the level of transparency and public involvement in land use planning in Singapore is much lower than in Hawai'i.

- **Singapore provides income-based subsidies for first-time buyers.** HDB provides income-based subsidies amounting to 20-25 percent of a person's income in order to ensure that mortgages are affordable. For example, a person earning \$2,000 per month would receive a subsidy to reduce their mortgage payment to \$450 a month, but a person earning \$4,000 a month would pay a \$900 monthly mortgage for the same home. Homeownership is made affordable for everyone because initial home prices are based partly on income, not just on the cost of building the home. The ALOHA Homes Bill does not include mortgage subsidies based on income. Instead, it emphasizes that the program is revenue-neutral for the state and the price of the homes is based on the cost of building the units.
- **Singapore has strict eligibility requirements for purchasers of new homes.** Purchasing new affordable housing with 99-year leases in Singapore is heavily regulated by residency, ethnicity, age and income requirements. Singapore eligibility restrictions include:
 - **Minimum age:** A married couple must be at least 21-years-old while the minimum age for a single person is 35-years-old.
 - **Income Restrictions:** Income limits apply to people purchasing a new HDB home. Although top income earners are excluded from the new construction program, there are no income restrictions on the secondary resale market.
 - **Strict Ethnic Quotas:** Singapore supports racial integration through its "Ethnic Integration Policy," which sets quotas for HDB blocks and neighborhoods for the city's major ethnic groups: Malay, Chinese and Indian/Others. The racial quotas are updated periodically to ensure they continue to reflect Singapore's demographics. For example, in 1989 the permissible proportion of HDB apartments for Malays was up to 22 percent in any given neighborhood and 25 percent within an HDB block.⁸ These ethnic quotas also apply to the secondary resale market.

None of the above restrictions apply to ALOHA Homes.

- **The Singapore model is entirely state financed:** The Singapore housing model is entirely financed by the state. No outside funders or investors are involved in building housing. The ALOHA Homes model does not explicitly identify its financing strategy, but says the program must be "revenue-neutral." In Singapore, the housing program is not revenue-neutral, but instead receives considerable subsidies from the government to ensure that almost every working Singapore resident can afford their first home purchase. A 2019 presentation by HDB for the World Bank highlights that affordability is made possible through "generous subsidies

⁸ Koo, A. (2020, August 12). "HDBGuide To Understanding HDB Ethnic Integration Policy (EIP) And Singapore Permanent Resident (SPR) Quota." Dollars and Sense. Available at: <https://dollarsandsense.sg/guide-understanding-hdb-ethnic-integration-policy-eip-singapore-permanent-resident-spr-quota/>

and concessionary loans.”⁹ These subsidies include not only a reduction in the price of the home, but also government issued mortgages with 2.6 percent interest, and down payment support through a government savings account.

In Singapore, subsidies are provided because housing is considered a right of citizenship, much like education and healthcare. As a fundamental right, the government develops tens of thousands of homes a year (15,800 homes in 2018) so that the affordable housing supply meets residents’ needs and no citizen is left homeless.

- **Singapore’s 37 percent payroll tax helps with down payment:** The Singapore government has a mandatory savings plan similar to social security in the United States, in which every employee and employer contributes a portion of a worker’s wages towards a government-managed savings account. The employee contributes 20 percent from each paycheck and the employer puts in 17 percent. The total 37 percent goes to the Central Provident Fund. This wage-based (i.e. payroll) tax is three times the U.S. Social Security tax of 12.4 percent (with 6.2 percent from employees and 6.2 percent from employers).

In Singapore, approximately 62 percent of a person’s Central Provident Fund savings is set aside to be used for a down payment, educational or other personal investments. According to HDB program documents,¹⁰ it takes the average worker three years to accumulate mandatory savings sufficient for a down payment.

The ALOHA Homes proposal does not create a mandatory payroll tax or propose a specific mechanism for helping residents acquire a down payment.

As is evident from the above description, the ALOHA Homes proposal was inspired by the Singapore model but differs significantly in key areas of program design, including owner qualifications, project financing and approval, and mandates and subsidies for leasehold buyers.

Intended Goals of the ALOHA Homes Program

As outlined in the 2019 ALOHA Homes Bill, the intended goals of the ALOHA Homes Program envisioned by Senator Chang are to:

- 1) End the housing shortage in Hawai‘i;
- 2) Facilitate development of affordable leasehold homes on state land near future transit stations;
- 3) Authorize HHFDC to sell residential units as 99-year leasehold properties; and
- 4) Develop an ALOHA Homes demonstration project by July 1, 2025.

⁹ April 2019 presentation to the World Bank, “Affordable Housing Financing and Delivery in Singapore” by Ms. Sia Tze Ming, Deputy Director Housing & Development Board, Singapore.

¹⁰IBID

Feasibility of Key ALOHA Homes Components

Why the Singapore Housing Model Cannot Be Replicated in Hawai'i

Styles of Governance

Singapore: One source¹¹ notes that Singapore enjoys political stability, honest and effective government, and successful economic policies but “is also known for its limited tolerance for opposition or criticism.” Though Singapore does have elections, the People’s Action Party has been in power since independence in 1965 and, by most accounts, is in little danger of being unseated in the near future. With no dissenting opinions from rival political parties or the public, Singapore’s top-down, unified style of government has allowed its Housing & Development Board to construct public housing at a scale uncommon in most democratic nations.

Hawai'i: Though Hawai'i's voters and elected officials are heavily Democratic-leaning, there is much disagreement about public spending and state-run programs. Community sentiment, especially about housing policy, can be sharply divided and strongly expressed. Because developing an adequate supply of affordable housing requires a significant and sustained public infrastructure investment, access to developable land, and community approval, it is difficult to imagine Hawai'i replicating Singapore’s speed and scale of development.

Labor Unions and Wages

Singapore: Singapore’s access to abundant, cheap, migrant labor has allowed it to build housing at a low cost. Singapore is one of the world's biggest net importers of migrant labor,¹² with workers coming primarily from Malaysia, Bangladesh, Nepal, India, China and other Asian nations. Legal constraints keep migrant workers from organizing for better wages and conditions. As a result, Singapore’s migrant construction workers earn notoriously low wages—approximately \$5–20 per hour.¹³

Hawai'i: Hawai'i leads the nation in union membership, with 23.1 percent of the state’s workers in labor unions. Political support for unions is strong.¹⁴ These unions allow workers to negotiate for higher compensation and better working conditions through the power of collective bargaining.¹⁵ In contrast to Singapore’s poorly-paid migrant laborers, Hawai'i’s construction workers earn an average of \$33 per hour.¹⁶

¹¹ <http://factsanddetails.com/southeast-asia/Singapore>

¹² Sacco, M. (2016, February 16). “What Does Singapore Owe Its Migrant Workers?” Carnegie Council for Ethics in International Affairs. Available at: https://www.carnegiecouncil.org/publications/ethics_online/0114

¹³ Kirk, M. (2015, June 9). “The Peculiar Inequality of Singapore's Famed Public Housing.” Bloomberg CityLab. Available at: <https://www.bloomberg.com/news/articles/2015-06-09/for-migrant-workers-in-singapore-it-s-build-high-live>

¹⁴ Sauter, M. (2019, April 10). “Hawaii, New York are strongest states for unions, S. Carolina and N. Carolina are weakest.” USA Today. Available at: <https://www.usatoday.com/story/money/2019/04/10/hawaii-new-york-strongest-states-trade-unions-north-carolina-south-carolina-weakest/39305975/>

¹⁵ Sauter (2019)

¹⁶ Bureau of Labor Statistics (2019), <https://www.bls.gov/oes/>

Construction Costs

Singapore: The average cost for constructing a standard mid-rise or high-rise condominium in Singapore is \$125–150 per square foot.¹⁷

Hawai‘i: The average cost to construct the same kind of multifamily dwelling in Hawai‘i is approximately \$275–400 per square foot, more than double Singapore’s cost of construction.¹⁸ Duplicating Singapore’s cost of construction would require construction wages that are not possible or desirable for Hawai‘i workers.

Models That Can Work in Hawai‘i

After determining that several aspects of the Singapore model cannot be replicated in Hawai‘i, our project team looked at examples of affordable housing programs in Helsinki and Vienna to explore other options that Hawai‘i might draw from. These two places are known for their exceptional affordable housing policies and, similar to Hawai‘i, they have very strong unions, a high cost of construction, and a robust process to engage citizens in planning decisions. Their projects also deal with a high degree of NIMBYism (Not In My Back Yard), which is prominent in Hawai‘i’s development processes.

Vienna, Austria

Cost of construction: \$250–300 per gross square foot¹⁹

Union labor representation: Trade unions are politically influential in Austria, particularly in Vienna.²⁰ Across Austria, there are an estimated 1.4 million employees who are trade union members, the majority of whom reside in Vienna.²¹ The Austrian Trade Union Federation provides various benefits to its members, such as negotiation of collective agreements, safeguarding of social standards and fair wages, and legal services.²²

Citizen engagement in land use decisions: Vienna has a long history of civic engagement in community planning, and it continues to guide urban development today. For example, to overcome recent opposition to city transit service initiatives and other car-free amenities, officials brought residents into the decision-making process by providing community groups and neighborhood associations with small grants (\$5,000) to plan and finance public-space improvement projects.²³

¹⁷ 2019, “Singapore: Quarterly Construction Cost Review” Arcadis Singapore Pte Ltd.

¹⁸ Based on pro-forma analysis of local projects and interviews with Hawai‘i builders and developers

¹⁹ Interview with Kurt Pachinger, Vienna City Administrator, Office of the Executive City Councillor for Housing, Housing Construction, Urban Renewal and Women’s Issues

²⁰ Federal Ministry, Republic of Austria Website. (2020). “Representation of employees”. Available at: <https://www.migration.gv.at/en/living-and-working-in-austria/working/representation-of-employees/>

²¹ Federal Ministry, Republic of Austria Website (2020)

²² Federal Ministry, Republic of Austria Website (2020)

²³ Federal Ministry, Republic of Austria Website (2020)

Public housing rent as a percentage of income: 18–22 percent²⁴

City liveability, housing access: In both 2018 and 2019, Vienna was named the world’s most “liveable city” on the Global Liveability Index.²⁵ This prestigious ranking is due in part to residents’ bountiful access to affordable housing and transportation. According to Bloomberg CityLab, Vienna—a city with approximately 2 million residents—experiences an annual increase of about 25,000 residents and adds approximately 13,000 new units of housing each year to accommodate them.²⁶ Strict land-use regulations have focused growth in existing urban neighborhoods, as opposed to suburban sprawl. Population growth is further supplemented by parks and public spaces and, today, more than half of the city is dedicated to green space.²⁷

Helsinki, Finland

Cost of construction: \$325–400 per gross square foot²⁸

Union labor representation: Trade unions are exceptionally strong in Finland, where 59 percent of the working population are members.²⁹ The average salary for a construction worker in Finland is \$54,500 a year or \$31 per hour, very similar to Hawai’i’s \$33 per hour.³⁰

Citizen engagement in land use decisions: Finland has high citizen engagement in land-use decisions and consequently, it is very difficult to add affordable housing to older neighborhoods. Instead the government housing development agency focuses on incorporating affordable housing into new neighborhoods.³¹

Public housing rent as a percentage of income: 18–28 percent³²

City liveability, housing access: In 2017, Helsinki was ranked as the second most liveable city in Europe, following Vienna.³³ One of the main reasons for this high ranking is a successful housing policy which has ensured affordable housing for almost all residents and virtually eliminated homelessness.³⁴

²⁴ 2019 Presentation for “Boston Initiative on Cities: Global Innovations in Urban Housing Conference April 2019,” by Eva Bauer of Austrian Federation of Limited Profit Housing Associations

²⁵ <https://www.eiu.com/topic/liveability>

²⁶ Dudley, D. (2019, October 29). Secrets of the World’s Most Livable City. Bloomberg CityLab. Available at: <https://www.bloomberg.com/news/articles/2019-10-29/here-s-why-vienna-tops-most-livable-cities-lists>.

²⁷ Dudley (2019)

²⁸ Interview with Housing Finance and Development Centre of Finland, pro-forma of recent project

²⁹ Construction & Labor Workers, Finland | 2020/21 (averagesalarysurvey.com)

³⁰ <https://julkaisut.valtioneuvosto.fi>

³¹ 2020 Interview with Jarmo Linden, Director, Housing Finance and Development Centre of Finland

³² Jan 2020, Presentation of Housing Finance and Development Centre of Finland “Role of ARA in Social Housing and in Actions to Reduce Homelessness in Finland.” Average Finish income from www.statista.com

³³ <https://www.eiu.com/n/campaigns/the-global-liveability-report-2017>

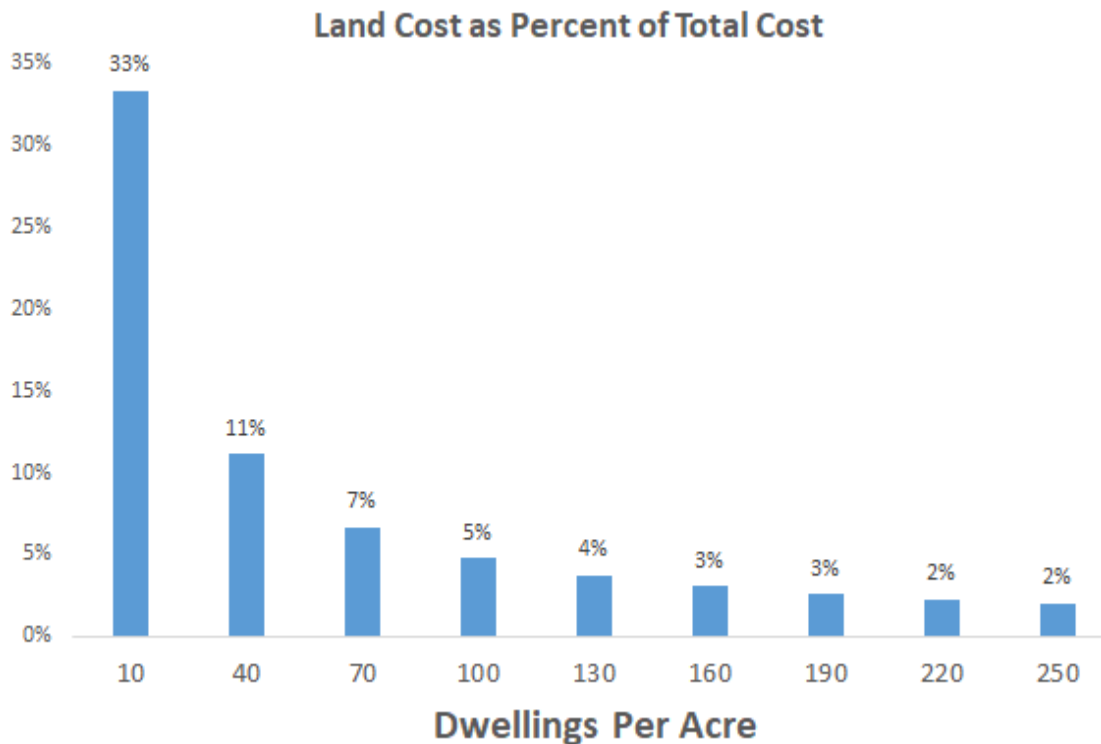
³⁴ 2020, “The Role of Social Housing and Actions to Reduce Homelessness in Finland.” presentation by The Housing Finance and Development Centre of Finland.

Summary: Although Vienna and Helsinki are farther away from Hawai'i than Singapore by location, these cities face many of the social, political, and cost constraints to building new housing that are common in Hawai'i. In many ways, compared to the Singapore model, housing policies in Vienna and Helsinki are more relevant to Hawai'i.

Case studies of Vienna and Helsinki further demonstrate that building new housing is expensive and requires significant community buy-in and participation. For these reasons, best practices from these two municipalities are included when evaluating various components of the ALOHA Homes proposal.

Feasibility of ALOHA Homes Components

High-Density: At Least 250 Units Per Acre



The more dwelling units built per acre, the less impact additional density has on overall costs. Assumptions: \$2 million per acre land cost and construction costs constant \$400,000 per unit.

One approach to cost savings is density, although savings diminish as density increases. The more homes that can be built on a specific parcel, the greater the savings in land costs. For example, if a 1-acre parcel is worth \$2 million and five homes are built, the land cost for each home is \$400,000. However, if 10 homes are built on that same parcel, the land cost per home drops to \$200,000, which could translate into significantly lower prices per home.

If the average cost to build a 1,000 square foot home is about \$400,000, there are significant savings when the density is increased from 10 homes to 40 homes, or even to 70 homes, but the savings greatly diminish after 130 homes per acre.

Density should fit local community needs. In most of the TOD areas on O‘ahu, mid-rise developments would blend in with the surrounding community. The ‘Iwilei, Chinatown and Downtown station areas may have higher density since this is the most urbanized area in the state and is the Central Business District (CBD). The Downtown TOD Neighborhood Plan states: “Develop new housing of varied types, including affordable, family-friendly and mixed-income, to allow a range of household types.” Higher density in the Downtown Honolulu CBD fits with the character of the surrounding district, while a mid-rise of between 100 to 200 homes per acre would be appropriate in areas further from the CBD.

Sense of community: We learned from discussions with developers that projects with high density can lack a sense of community and be less attractive to long-term residents. One developer recounted how a project of 120 homes per acre leased up much more quickly than another project of almost 200 homes per acre in the same neighborhood.

Conclusion: At least 250 homes per acre is only appropriate for some areas. For many TOD areas, a lower density would achieve cost savings, retain a sense of community, and fit the surrounding community.

Public Land Contribution in Transit Oriented Areas

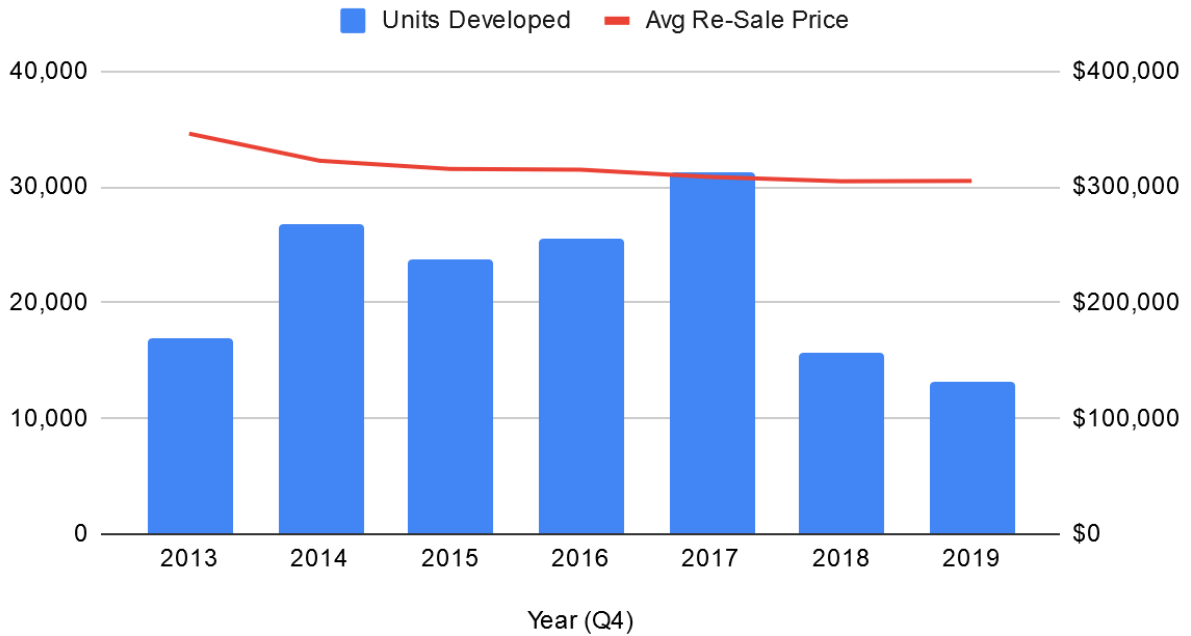
Public land contribution is key: One important practice in all three jurisdictions studied—Helsinki, Vienna and Singapore—is that public land is used for affordable housing. As a result of their investments and long-term vision, each city builds enough quality housing to reasonably match demands. Rents meet affordability standards of no more than 18–26 percent of residents’ incomes. In addition, each jurisdiction has virtually eliminated homelessness.

Use of public lands for long-term affordability: All three jurisdictions use public lands as a way to maintain affordability.

Singapore creates a constant supply of HDB flats to keep prices stable: In Singapore, the government is able to consistently build enough new homes to meet demand. They acquire land and develop train stations, public infrastructure, and other amenities as needed for the new developments. Due to the continual supply of new HDB flats, these public sector homes—which make up about 80 percent of the housing market—have maintained relatively stable prices. Resale prices for HDB flats ended 2020 slightly lower than at the beginning of 2013.³⁵ Of course, this ability to add public infrastructure and housing as needed is very difficult in places with less central government control and a high degree of citizen involvement in land-use decisions.

³⁵ Housing Development Board Data <https://www.hdb.gov.sg/residential/buying-a-flat/resale/getting-started/resale-statistics>

HDB Homes Developed and Re-Sale Price Change

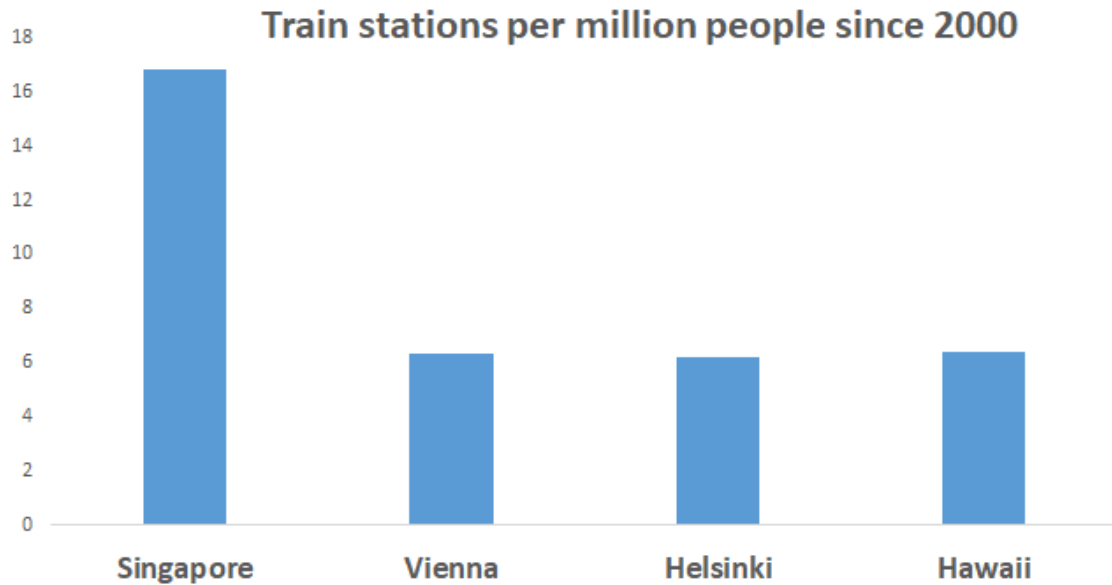


Helsinki and Vienna use price controls to maintain long-term affordability. The government and political structure of Vienna and Helsinki make the process of acquiring new developable land with public infrastructure and transportation more difficult and time intensive. For example, Singapore has added 122 stations to its public transit system since 2000,³⁶ whereas Helsinki has only added 8 and Vienna has added 12.³⁷

As a comparison, Hawai'i is about to complete nine stations of a rail system that has been discussed and planned for over 50 years. The amount of time, resources, and citizen consensus required in Hawai'i for major construction projects is more similar to Vienna and Helsinki than to Singapore.

³⁶<https://landtransportguru.net/singapore-rail-timeline/>

³⁷https://en.wikipedia.org/wiki/Helsinki_Metro#1982_onwards:_In_service,
https://en.wikipedia.org/wiki/Wien_Hauptbahnhof



Vienna and Helsinki both preserve the affordability of state supported housing by setting price limits. Price increases in rental and for-sale homes that receive government subsidies are generally limited to inflation plus the cost of improvements. The use of public land, financing, and long-term price controls ensures that every new development maintains a significant supply of affordable housing.

Case Study: Planning for affordability: Jätkäsaari in Helsinki, Finland

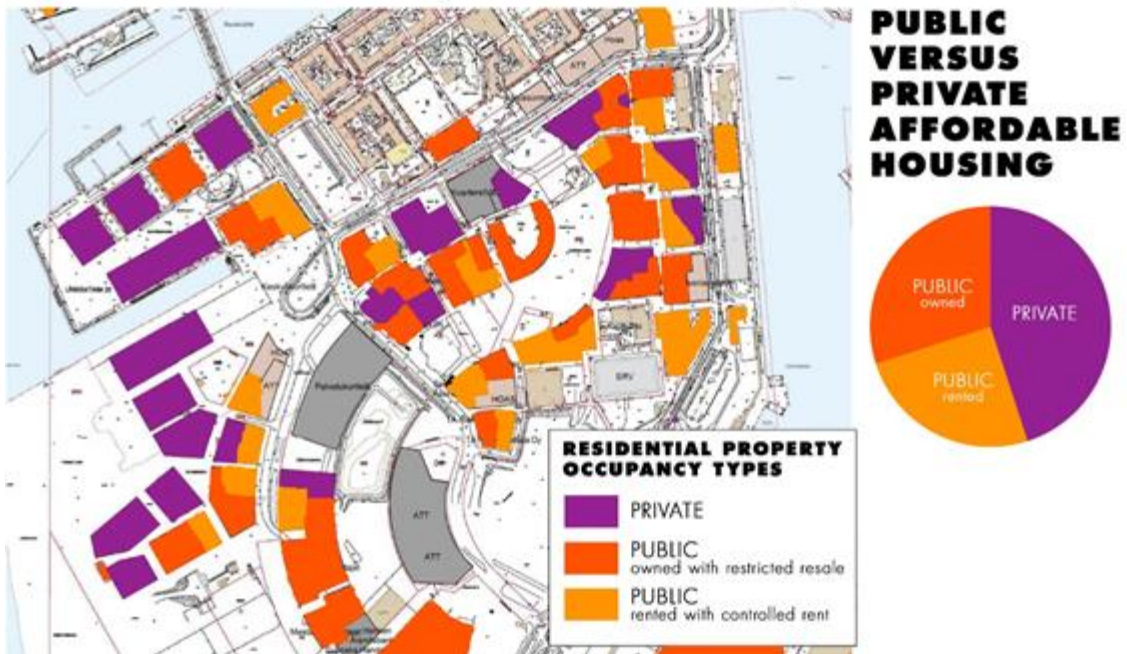
A newly developed waterfront neighborhood in Helsinki provides an excellent example of planning for affordability. Jätkäsaari was an old industrial waterfront neighborhood similar to Honolulu's Kaka'ako neighborhood. In 2010, Helsinki began efforts to transform the area into residential and commercial uses. As part of the development process, the Helsinki planning department purchased most of the land area, and between 2008 and 2019 the city invested more than \$275 million in Jätkäsaari, with another \$240 million budgeted for future development. The planning department sold about 45 percent of the land to the private market, and reserved the remaining land area for publicly-funded housing and other public purposes.

After the land-use decisions had been made, the municipality financed the construction of 60 new apartment buildings that were a mix of rental housing and shared equity ownership with restricted resale prices. Once construction is completed, it is estimated that Jätkäsaari will be home to 21,000 residents and offer jobs to 6,000 people.³⁸

To create a more equitable neighborhood, the public and private housing developments were integrated throughout the area.

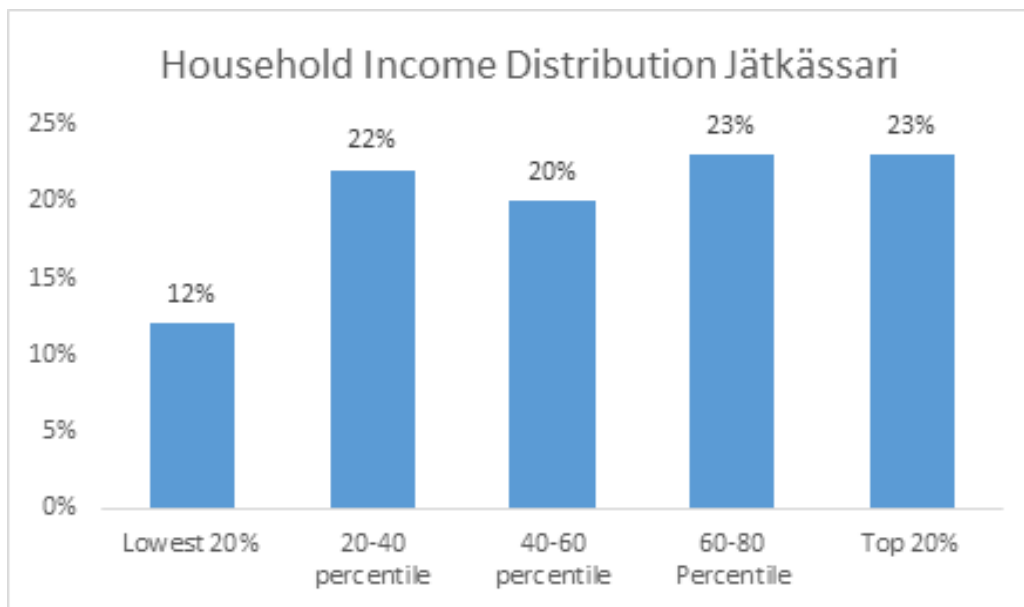
³⁸ Helsinki Municipal Website. (2020). Jätkäsaari. Available at: <https://www.uuttahelsinki.fi/fi/jatkasaari>

JÄTKÄSSARI, HELSINKI, FINLAND



This map by housing type clearly shows how Helsinki has planned for long-term affordability: more than half of the land and residential homes are publicly supported and will remain affordable for the life of the building.

Not only will this neighborhood maintain affordable housing, but it also ensures income diversity of residents by developing a mix of private housing and state subsidized rental and for-sale properties. Jätkäsaari is not a poor neighborhood or a wealthy neighborhood: it is a mixed neighborhood where the percentage of households in the various income quartiles is remarkably evenly distributed.



Vienna uses similar land-use and pricing strategies to maintain housing affordability.

“What makes Vienna unique is that you cannot tell how much someone earns simply by looking at their home address.” –Kathrin Gaál, Vienna’s Councilor of Housing ³⁹

Although Singapore, Vienna and Helsinki employ different strategies to maintain affordable pricing, all three use a combination of public land and publicly-funded infrastructure as the starting point.

Public Lands in Transit-Oriented Development Areas: A Tremendous Opportunity

The State of Hawai‘i is the largest landowner along the new 21-station rail system being built on O‘ahu. Between various state agencies, there are approximately 2,000 acres of land within a half a mile of the rail line.⁴⁰ Additionally, state and county land near bus transit corridors on neighbor islands offer opportunities for transit-oriented development and affordable housing.⁴¹ For example, Maui is developing a new bus transit hub on state lands, with the opportunity to build affordable housing on more than 5 acres of adjacent state lands. University of Hilo in Hawai‘i County, has land which could be used for student housing, and Kaua‘i is developing affordable housing on county lands at Lima Ola in ‘Ele‘ele.

Buyer Restrictions

The ALOHA Homes Bill proposes several restrictions related to the home purchaser. The following is the analysis of each restriction based on best practices from other jurisdictions.

Buyer owns no other real property. Home is primarily a place to live.

Purpose: When it takes considerable public resources to develop affordable housing, it is important that housing be **primarily** developed as a place for residents to live, not a wealth building vehicle. Restricting ownership to buyers with no other property supports the concept that housing is an essential human need and an important public purpose. Permitting the purchase of these units as second homes rather than as a primary residence, would subvert the purpose of public investment in housing as well as allowing a buyer to use them as investment vehicles.

Analysis: Provision is recommended. Limiting the amount of wealth generation from publicly subsidized housing is important for the long-term viability of a housing program. Restricting ownership as proposed is a standard requirement for most publicly-supported for-sale housing. Most jurisdictions in the United States include such a requirement for below-market for-sale housing offered under inclusionary zoning policies (See Appendix B for examples from other U.S. jurisdictions). Singapore, which has the largest owner-occupied public housing system in the world,

³⁹ 02/15/2019 “Vienna’s Affordable Housing Paradise,” by Adam Forrest, Huffington Post www.huffpost.com

⁴⁰ <http://planning.hawaii.gov/lud/state-tod/>

⁴¹ State Office of Planning and Hawaii Housing Finance and Development Corporation. (2018). State Strategic Plan for Transit-Oriented Development. Available at: https://planning.hawaii.gov/wp-content/uploads/State-TOD-Strategic-Plan_Dec-2017-Rev-Aug-2018.pdf

also has strict prohibitions about owning other property. Notably, Helsinki had a below-market homeownership program called HITAS, which allowed people to own other property. As purchasers increasingly used the program to build wealth by owning multiple homes, HITAS became unpopular and was considered a waste of public resources. It was discontinued in 2020.⁴²

Hawai'i considerations for fractional ownership of homestead and other properties: In Hawai'i, many residents have fractional ownership as a partial interest in a family owned property. These properties have significant cultural and family value but partial owners typically cannot use them as homes for themselves. Moreover, it can be difficult to divest from some partial ownership structures. It is, therefore, important to recognize and accommodate partial ownership of less than 50 percent when establishing restrictions to purchase state-sponsored housing.

Hawai'i Resident Requirement

Purpose: It is appropriate that the benefits of programs supported by state and local tax dollars are restricted to local residents. A failure to include such constraints could incentivize out-of-town residents to move Hawai'i for the benefit of affordable housing in such a desirable location.

Case Study: San Diego, CA

As part of their inclusionary zoning program, San Diego offers below-market for-sale homes to people up to 120 percent of area median income. Initially their program did not have a residency requirement, which prompted a significant number of applications from out-of-state residents. Since this was not the intended purpose of the program, the San Diego Housing Commission updated the rules in 2017 to **require two years of residency** in San Diego County, verified by three years of tax returns.⁴³ The policy has remained in place since then.

Legal Considerations: Durational-Residency Requirements Could Be Challenged

A durational-residency requirement for a public benefit which requires that a person live in a place for a certain length of time has generally been found by the courts to limit the “constitutional right to travel from one State another.” The right to travel has been interpreted to refer to not just entering and exiting another State but to the right to be treated like other citizens of that State.

For example, a California law attempted to limit welfare benefits for newly-arrived residents to the amount paid by their previous state of residence for their first twelve months in California, at which point they were entitled to benefits at the California rate. In *Saenz v. Roe* (526 U.S. 489, 119 S.Ct. 1518, 143 L.Ed.2d 689 (1999)), the U.S. Supreme Court invalidated California's restriction.

However, courts have made an exception to the general rule of disallowing durational-residency requirements for “portable” benefits that a nonresident could obtain and take out of the state. (See, for example, *Martinez v. Bynum*, 461 U.S. 321, 332–33, 103 S.Ct. 1838, 75 L.Ed.2d 879 (1983)). In-state tuition requirements are an important example of a “portable” benefit.

⁴² <https://finrepo.fi/en/news-helsinki-is-going-to-close-hitas-system>

⁴³ <https://www.sdhc.org/housing-opportunities/affordable-for-sale-housing/>

“The state can establish such reasonable criteria for in-state [college tuition] status as to make virtually certain that students who are not, in fact, bona fide residents of the State, but who have come there solely for educational purposes, cannot take advantage of the in-state rates.” *Vlandis v. Kline*, 412 U.S. 441, 453–54, 93 S.Ct. 2230, 37 L.Ed.2d 63 (1973)

Applicability to ALOHA Homes: One could argue that homeownership is a portable benefit as compared to renting. An owner builds equity in their home, which translates into a profit that can be taken out of state when the owner sells. However, before the sale of the home the benefit is not portable since it requires the owner to live in the home. Whether ownership is considered a portable benefit similar to college tuition or a non-portable benefit more similar to welfare has not yet been decided by the courts.

Analysis: The most conservative legal approach would be to require no specific length of time for residency but simply that a person be a current Hawai'i resident. Moreover, applicants to the ALOHA homes program would need to be on a pre-approved buyer list before construction begins. They would likely be waiting at least two years before construction is completed and they own a home. This reduces the likelihood that a person would establish residency in Hawai'i just for this program.

Recommendation: A current resident provision is likely to be sufficient to dissuade out-of-state residents from moving to Hawai'i just for this program. However, the requirement could be amended as a durational-residency requirement later if warranted.

Defining “Resident” by Voting Record

Description: The ALOHA homes bill states that a person “voting in the most recent primary or general election shall be an indication of residency in the State; provided further that not voting in any primary or general election creates a rebuttable presumption of non-residency.”

Purpose: This measure would disqualify non-voters from participating in the program and would presumably reward residents who do vote.

Legal Concerns: Voting is not a standard definition of residency and could be considered discriminatory. At the very least, it would discriminate against legal residents who are noncitizens and citizens who choose not to vote for personal or religious reasons.

The Hawai'i Supreme Court has adopted a common definition: “[a]ny person who occupies a dwelling within the State, has a present intent to remain within the State for a period of time, and manifests the genuineness of that intent by establishing an ongoing physical presence within the State together with indicia that his presence within the State is something other than merely transitory in nature.” (*Citizens for Equitable & Responsible Gov't v. Cty. of Hawaii*, 108 Haw. 318, 323, 120 P.3d 217, 222 (2005)).

Analysis: A standard definition of “resident” is someone who can demonstrate an intention to stay in Hawai‘i, which can be shown with a driver’s license, completed voter registration, or rental agreements with a Hawai‘i address etc.

Recommendation: Using a standard definition of “resident” will prevent legal challenges and still achieve goals of the program.

Income restrictions

Purpose: Having no income restrictions for buyers could make the program more popular among people who would not otherwise qualify. It would also support the idea that housing is a right which everyone is allowed to access.

Analysis: Not a best practice. A constrained housing supply requires prioritizing access, and higher income earners have options in the private market.

Our survey of affordable housing policies for for-sale homes shows that, to the extent the public is subsidizing the home, income limits and preferences are [typically](#) imposed. Even Singapore has income restrictions for who can qualify for their “new flat” program. As of 2019 the income limit was \$9,000 per month for a couple and \$4,500 for a single person in Singapore. An exception is Finland, where lower-income applicants have preferences but there is no set income limit.

Generally, the lesser the amount of affordable housing available, the stricter the income requirements. Places with large proportions of State-supported public housing, such as Singapore, Vienna and Finland, have relatively high income thresholds because there is enough housing to accommodate need. For example, Vienna’s income limits allow 80 percent of the population to buy state-supported homes. At the same time, they ensure that about 79 percent of the housing stock is affordable, with 50 percent owned directly by the City and 29 percent subject to rent control. However, in places without enough affordable housing to meet the demand, income requirements are stricter to ensure that housing is going to people with the greatest needs.

Factors to Consider when determining income limits:

- 1. Benefits of mixed income neighborhoods**
Good policy encourages mixed-income neighborhoods and discourages income segregation, which has forged many divisions and unequal access to opportunity.
- 2. Income limits high enough to qualify for a mortgage**
Where a publicly-supported project is designed to recoup the cost of units built, income limits for buyers must be high enough so that they can qualify for mortgages. For example, a one-bedroom affordable home at \$290,000 would still cost approximately \$1,800 a month in

housing costs, which would require a yearly salary of about \$65,000 or about 80 percent AMI for Honolulu⁴⁴.

3. **Income limits high enough that public workers can qualify: 140% AMI**

A state supported housing program should be available to teachers, police, firefighters and other public workers. An income limit of 120 percent AMI would disqualify many households with public sector workers. For example, the average teacher salary in Hawai'i for 2019 was \$65,800⁴⁵, so a household with two teachers would earn \$131,600 which is approximately 130 percent of the area median income for Honolulu. A limit of 140 percent AMI would include most public sector households.

4. **Offering opportunity to those with greatest need.**

Honolulu has a scarcity of affordable housing so publicly-supported housing should be allocated at least partly on the basis of need. This could be achieved by having preferences for qualified buyers who are lower-income for a portion of the homes.

Recommendation: Income limit of 140% AMI with some preferences for lower-income residents. Set an upper income limit of 140 percent AMI, with a goal of having some percentage of homes occupied by people earning 100 percent AMI and below. Lower-income residents could be provided a preference in a lottery system.

First-time Homebuyer

Purpose: The purpose of this provision is to allow more residents to access the program, including residents who have previously owned property or currently own property but would consider selling to purchase an affordable home.

Analysis: Many affordable for-sale programs do not require that a person be a first-time homebuyer, but do require that the person not own another home at the time of purchase.

Recommendation: First-time home buyer provision is not necessary. A first-time homebuyer provision could exclude people who previously owned property and are now priced out of private market ownership. The more important provision is that a person not own another home.

Owner Occupancy Enforcement

Owner-occupancy compliance has been a major concern with affordable housing units.

To address the potential of creating a “black market” of illegal rental units, we have examined two options for enforcing owner-compliance:

⁴⁴ <https://www.huduser.gov>

⁴⁵ January 2020, “Hawai'i Teachers Compensation Study and Recommendations” prepared for Hawaii Department of Education, pg. 42

1. **Biometric security systems**
Using iris, facial, or fingerprint scans to verify identities
2. **Stewardship specialist(s)**
Employing full- and part- time staff to monitor compliance

Biometric System

Benefits: Secure and Modern.

By requiring a retinal, facial, or fingerprint scan upon entry, a biometric system provides a highly secure form of owner occupancy enforcement. An automatic record is maintained of all entries to a home, which could have security benefits as well.

Focus Group Concerns: Privacy, Flexibility for Guests, and System Maintenance.

Though biometric systems are reliable, both providers and focus group participants raised concerns about privacy. While receiving quotes for biometric systems, the concern of whether biometrics have received the “sign off” was raised. Providers noted that tenant pushback is common with biometric systems and wondered if there are precedents for using them in owner-occupied housing. This apprehension was echoed by participants in our focus groups. While acknowledging that biometrics would ensure owner-occupancy, some participants expressed discomfort about having their data saved. Focus group participants also raised concerns about the effects of biometric systems on visiting friends or family members and about the overall flexibility of the system. Lastly, informants raised questions about the system’s performance during power outage or internet disruption, and what type of maintenance it would require.

Costs: \$1,500–\$2,800 for installation, on-going supervision and maintenance.

Quotes for biometric systems range between \$400 to \$600 per housing unit, exclusive of the cost to have a contractor install wiring or an internet connection and integrate it into a system.. Installation raises the price to \$1,500 to \$2,800 per unit⁴⁶. The system would also require staff to provide on-going oversight, manage connectivity problems, and enter system updates for guests and new residents.

Stewardship Specialist: Most common enforcement method

Affordable housing departments across the United States most commonly employ staff to manage enforcement. The Champlain Housing Trust in Vermont serves as one of the largest and most successful land trusts in the country. The Trust employs a staff of five to manage their inventory of more than 630 homes and enforce occupancy rules. The service is financed by monthly charges to each home, similar to an HOA fee. The Champlain Trust team handles not just owner-occupancy requirements but also compliance with re-sale restrictions, re-financing requests and disputes that may arise between owners. Enforcement is based on random checks and annual audits. The success of the Champlain Land Trust and many others is due to the stewardship specialist role and to adjusting the size of the team as the housing inventory grows.

Benefits: Flexible, Human Enforcement, Includes other services.

A stewardship approach would more easily accommodate guests or other changes in unit occupancy. It also makes enforcement feel less invasive than a high-tech approach. Lastly, a steward specialist helps with all aspects of the leasehold agreement including resales and conflicts between occupants.

⁴⁶ Based on quote from Fulcrum Biometrics, Iris Id 2020

Concerns: Human error, less predictable: Unlike biometric systems, the stewardship specialist system is human-operated and managed. This can lead to a higher margin for error and a greater variability in the quality of services, depending on the skill and training of the staff.

Costs: \$50–\$75 monthly fee per home. A stewardship specialist program is supported by monthly homeowner fees also referred to as “ground lease fees,” since they are used to ensure compliance with lease terms such as owner-occupancy. Many stewardship programs also use a software program called “HomeKeeper,” which has a one-time set-up fee of \$3,500 and an annual cost of approximately \$3,000.

Recommendation: We recommend a Stewardship approach.

While both owner occupancy enforcement methods have their benefits, a stewardship specialist would provide more services, including managing the resale process and dealing with lease disputes. This allows the position to be much more involved in the overall program and invested in its long-term success. When paired with substantial fines for breaking owner-occupancy rules, the stewardship model has proven to be effective for many below-market for-sale programs.

99-Year Leases and Use of State Lands

Affordable Housing on State Lands and Length of Lease Terms

The issues of affordable housing development and length of lease terms on State lands—crown and government lands of the Hawaiian Kingdom which had been designated as “ceded” to the Republic of Hawai’i and then the United States before being conveyed to the State of Hawai’i—are complex on many grounds: legal, financial, and moral. Additional engagement with key stakeholders is necessary to accurately convey the key perspectives on these issues. The study will be supplemented in a few weeks once the authors have gathered the necessary input.

Five Year Affordability Period

Purpose: The intent of this provision is to give the buyer an incentive to maximize the resale price by maintaining the home, and it prevents any incentive for a “black market” because the new buyer will be purchasing the unit at market price instead of a discounted price.

Example: The current ALOHA Homes bill states:

“If the corporation does not exercise its right to purchase the ALOHA home, the ALOHA home may be sold by the owner to an eligible buyer; provided that the corporation shall retain seventy-five per cent of all profits from the sale net of closing and financing costs, using the price at which the owner purchased the ALOHA home, plus documented capital improvements, as the cost basis.”

2010: Discount Purchase Price: **\$300,000** by qualified buyer. Market Price = **\$400,000**

2020: Market Selling Price: **\$590,000** (4% yr increase) Total Equity Gains: **\$290,000**
 Buyer Equity: **\$72,500** (25%) Agency Equity: **\$217,500**

2020: Selling Price for next buyer: **\$590,000**

Several Concerns:

Home no longer affordable after first buyer.

In the above illustration, the affordable home is only affordable to the first buyer and any future buyers will be paying market price for the home. In this case, the affordability is lost to all subsequent buyers and the benefits of the public program accrue only to the first buyer.

Equity gained by the agency is not sufficient to replace the home.

In this example, the agency has gained \$217,500 from the sale, far less than the cost to replace the home that was lost. Not only will the agency need to pay for new construction, but it will need to undertake a new planning and permitting process and invest in the development of a new site.

Replacing the lost home is lengthy and costly, and unlikely to be in the same location.

The main downside of this model is that the affordable homes lost are **usually not replaced** in a meaningful timeframe. Providing affordable housing in desirable locations requires significant resources and often takes years -even decades - of planning, so it is both costly and difficult to replace units once lost. In addition, the State would have to continually provide new funding, which is not always feasible. Even if the agency gets funds to replace the homes at some point, completion is likely to be years or even decades later... if ever.

Case Study: Kaka'ako. Affordable homes lost have yet to be replaced.

From 2008–2019 Kaka'ako developed to 7,300 for-sale condominiums, of which 1,872 (26 percent) were priced below market rates. Most of those homes were required to remain affordable for only two to five years. As a result, today only 637 homes (9 percent) are still under an affordable price requirement. **By 2025 only 3 percent of for-sale homes will be under an affordability restriction,** and, without any new additions, by 2035 there will be no homes available at below-market prices.

Best Practices: Long term affordability periods.

Over the past few years, the trend in high-cost cities and counties across the U.S. is to extend the affordability period, with many requiring that the home stay affordable for the duration of the lease period. In San Diego, a below market home must stay affordable for 55 years, while in San Francisco, Washington D.C., and New York City, the affordability period is the life of the building.

Recommendation:

Maintain affordability for all subsequent buyers by restricting the resale price.

If the state invests funds to accomplish the public purpose of giving less-affluent people the opportunity to own their own homes, state policy should safeguard the supply of these homes so they'll be available to working families for years to come. We recommend that the sales price of affordable units be restricted so that subsequent buyers can purchase a home at the same area median income level as their predecessors. This way the home stays in the affordable pool, and the neighborhood maintains its affordability.

With this recommendation, the price appreciation is limited and will likely be lower than market price appreciation (unless the market price drops). However, the owners still enjoy significant equity gains that accrue as the owner pays down the mortgage—not to mention the security of owning one's

home. See Appendix C for models of gains made with equity sharing based on CPI. This model does not provide funds back to the agency, but it also does not require the agency to replace the home and it maintains affordable housing in that same neighborhood.

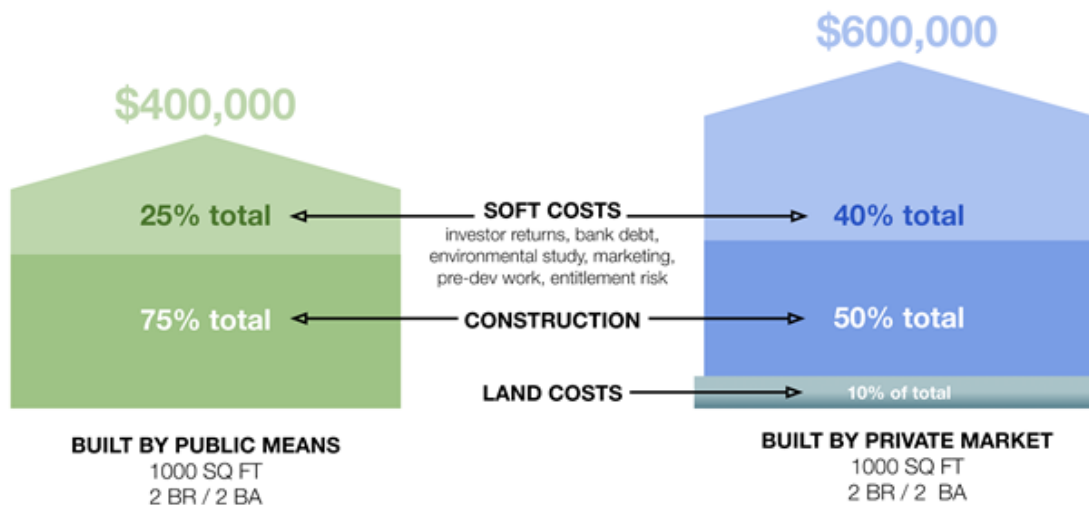
Analysis of Key Cost Savings Approaches

Estimated Cost is Significantly Below Market Prices

HOME TYPE	AVERAGE MARKET PRICE for all condos, Honolulu metro area only, 2019	STATE-SUPPORTED HOUSING COST RANGE for mid- to high-rise buildings	SQUARE FOOTAGE	STATE-SUPPORTED APPROXIMATE COST	SAVINGS
1bd / 1ba	\$395,000	\$280,000–\$325,000	600	\$300,000	24%
2bd / 2ba	\$569,000	\$385,000–\$425,000	830	\$405,000	30%
3bd / 2ba	\$744,000	\$460,000–\$530,000	1,000	\$500,000	33%

These savings arise from two main sources: State land contributions and reductions in all expenses that are not direct costs for vertical construction.

Public vs Private Development



Reducing all soft costs besides vertical construction is a best practice.

State-Supported Financing

The complexity and difficulty in securing financing contributes significantly to project delays and the overall cost of affordable housing.. Providing low-cost financing in a timely and straightforward manner would increase competition for projects and reduce development costs.

All three jurisdictions we researched provide access to low-cost funding to reduce the costs of affordable housing, as noted below:

Helsinki, Finland: Government-backed construction loans at 1 percent interest for 40 years

Vienna, Austria: Construction loans at 1 percent interest for 35 years.

Singapore: The Housing Development Board pays construction companies directly to build housing so no loans are needed.

After researching several financial tools, we recommend the following approach to minimize project financing costs and reduce risk for developers and the State.

1. **DURF for pre-development costs. The Dwelling Unit Revolving Fund (DURF) is** extremely flexible and could be used to cover pre-development costs such as due diligence, master planning, and a programmatic EIS.
2. **Streamline Entitlement: Environmental Impact Statements/Environmental Assessments.** Completing an EIS or an EA can add one to two years to a project timeline. In fact, this work can be done most efficiently if carried out directly by the State.
3. **Buyer Pipeline & Pre-Sales of Homes:** Ensuring a pipeline of qualified buyers and pre-sales is key to minimizing financial risk to the State and to developers. Every developer of lower-income for-sale housing emphasized the importance of programs that ready prospective buyers to take on a mortgage, for which an average of two years is needed. In addition to

buyers needing preparation, there is also likely a pool of *middle-income* buyers already mortgage qualified should a pilot project be developed.

4. **Issue taxable mortgage revenue bonds for construction.** These bonds affect the state budget less than general obligation (GO) bonds. The interest rate is currently 3–4%.

Fewer competing interests: Unlike GO bonds, taxable mortgage revenue bonds are not backed by the full faith and credit of the State of Hawai'i. They are, instead, secured by a pledge of mortgage payments and a deed of trust in the building. In this way, financing with mortgage revenue bonds does not compete with all the other State interests that are paid for with GO bonds, such as roads and schools, and are not a private activity bond.

Easy to sell bonds for affordable housing: Bonds backed by affordable housing projects in high cost areas such as Hawai'i are relatively easy to sell because investors know there is significant demand for below-market housing, and there is little risk that homes will go unsold. Catalyst Housing Group in California has partnered with local jurisdictions and the California Community Housing Authority to sell over \$550 million of limited obligation mortgage revenue bonds since 2017.⁴⁷ Currently, there are many times more buyers than available bonds and as a result the interest rate on these bonds is expected to continue to drop as this becomes a more common way to finance affordable housing for middle-income earners.

Efficient and straightforward: HHFDC could serve as the issuing authority for these bonds, which could be issued on a project-by-project basis. Since these bonds would not likely have to go through a complex budgetary or allocation process, they could be issued quickly, and that agility would reduce the time to secure project financing. The marginally higher interest rate cost compared to tax-exempt bonds is trivial.

Stand-alone financing or combined with other tools in the toolbox: A taxable mortgage revenue bond structured with a 3-year, interest-only, bullet maturity would act like a construction loan. It could fund all of the project costs or be combined with other sources of public or private financing, such as funding from nonprofit lenders or commercial banks offering community-based financing programs.

Bond issue example: Appendix D presents a high-level sample analysis of a 3-year taxable mortgage revenue bond. It would include two years of capitalized interest, which would allow debt service on the bonds to be fully covered for 2-½ of the three years, creating a real cash-flow advantage not available with many other sources of financing. At the end of the 3-year term only a small amount of debt service would remain, and it could be funded by the developer and rolled into the permanent financing, or, more likely, added to each homeowner's individual mortgage. With an average coupon of 3.5 percent, and an underwriter's discount and total issuance costs amounting to 2 percent of the bond issue, this form of financing would appear superior to many forms of private construction loans with higher rates and similar fees.

⁴⁷ Dec. 2020 Interview with Jordan Moss, founder of Catalyst Housing Group

Community Lending Options: Taxable municipal bonds could also be used in combination with commercial construction loans. Many banks have programs that are designed for community investment and would fund affordable housing construction. We spoke with several local banks that would be interested in partnering on this type of project.

Non-Profit Options: Many nonprofit lenders also have products designed to support affordable housing. Hawaiian Community Assets, among others, has funded affordable housing construction loans.

Off-Site Infrastructure part of District Plan

Off-Site Infrastructure Costs:

Individual Projects Paying for Off-Site Infrastructure is Inefficient and Drives Up Costs:

“Off-site” infrastructure costs are those not directly situated on the project site. It is more cost efficient and effective to have these costs paid for not by each project but as a publicly-supported district-wide infrastructure investment. Relieving developers of these requirements would allow them to be selected for what they do best: delivering housing. In fact, this is what all three jurisdictions—Vienna, Helsinki, and Singapore—do. There, the government has created the plan and put in the necessary backbone—roads, sewers, water and electrical services—before developers start building houses. These elements of the planned neighborhood are fairly standard and do not require much creative design. This model allows housing developers to compete on cost and design for the parts that customers will actually experience, such as the layout of the apartments and common area amenities. Also, when the public sector assumes the costs of basic infrastructure, the overall cost of building affordable housing is lower and homes can be sold at a lower price.

Public Infrastructure Investment best supports affordable housing in areas with public land

Market rate housing is affected less by savings in off-site infrastructure cost because its price is largely determined by the market, not by the cost to build. However, there are many places where even market rate housing cannot be built due to lack of infrastructure, and if the public sector provided the infrastructure, more houses would be built. This could lead to a reduction in price, although market rate housing would still not likely be as affordable as a publicly-supported housing project where the price is determined by the cost of building.

Two main ways for the public to pay for district infrastructure: GET or Property Assessment (Community Facilities District)

A July 2020 planning and implementation study prepared for the TOD Council⁴⁸ assessed various options to pay for infrastructure needed in TOD areas, and concluded that using General Excise Tax (GET) funding was preferable to other proposals. The study recommended that the State increase the GET rate by .01 percent on economic activity in the newly-developed area. It would dedicate the

⁴⁸ July 2020, “State Transit-Oriented Development Planning and Implementation Project for the Island of O‘ahu” Prepared for Office of Planning and Prepared by PBR Hawaii.

resulting revenue collected over 10 years to pay for state-supported infrastructure costs. In addition to GET, 30 percent of future property tax revenue from developed areas would be used to cover the costs.

We recommend considering a CFD model: More Equitable and can provide enough revenue

Although we appreciate that the authors of this study felt it was more politically feasible to use an increase in GET to pay for infrastructure, we believe that a Community Facilities District (CFD) model is more appropriate. In fact, such an approach might be more feasible since the COVID-19 pandemic recession has imposed new constraints on the State budget. The 2020 study *assumed a pre-COVID economy* when the State budget was not facing a \$2 billion budget shortfall, tourism was strong, and unemployment low. Additionally, the impacts of COVID have revealed a deeply inequitable economy: single family home prices keep increasing, while low- and middle-income workers are struggling with lost jobs and earnings.

Property assessments are a better tax: Can be adjusted to be progressive.

Property tax assessments tend to be progressive in nature (that is, wealthy households pay the most and low-income households pay the least) because the higher the value of the home, the larger the tax amount. The homeowner’s exemption of \$100,000 (or more) makes these taxes more progressive because it disproportionately benefits households in lower priced homes. In many Hawai’i counties, property taxes are becoming more progressive with increased rates for **non-owner occupants** and marginally higher rates for more expensive homes.⁴⁹

Community Facilities District Approach is a Targeted Tax: Only properties in improvement areas are impacted, not the entire island. Also, permanently affordable homes can be exempted.

Another advantage of a CFD approach for infrastructure is that the added tax can be targeted to new developments that benefit from the public improvements. The tax can also be crafted to largely exempt affordable homes, while remaining in place for *market priced homes*.

Based on data from the July 2020 study for the TOD council here is an example of how a CFD can pay for district-wide infrastructure:

Iwilei-Kapalama TOD Plan Projections for Phase I and II:⁵⁰

- Number of Homes to be Constructed between 2020- 2039: **16,661**
- Public Housing (HPHA projects): 3,800
- DHHL: 500
- HHFDC (Liliha Civic Center): 200
- Market Priced Homes: **12,161**

⁴⁹ See Maui County Property Tax Rates: <https://www.mauicounty.gov/DocumentCenter/View/122028/2020-Tax-Rate>

⁵⁰ “State Transit Oriented Development Planning and Implementation Project for the Island of Oahu” July 2020

Number of affordable homes, according to Honolulu County guidelines (15%) – 1,824
 Number of private homes sold at market prices: **10,337**

Using the above housing projections, an assessment could be implemented on the market rate property which would generate enough revenue to pay for both market rate and affordable housing.

Infrastructure Investment Needed for IK:⁵¹

Phase I: \$235 million Phase II: \$227 million **Total: \$512 million**

Based on some general assumptions, the following CFD assessments on *market rate homes* would produce funding adequate to support infrastructure investment needs.⁵²

Assessed Value	Current RPT Rate	Honolulu Infrastructure Tax	Total RPT Rate + CFD
0-500k	0.35%	0.5%	0.85%
500k- \$1M	0.35	1%	1.35%

Assumptions:

Annual CFD special tax revenues, in current dollars, would amount to \$33 million, assuming an average private market home value of \$569,000. Depending on future property value increases (we assumed 1–2 percent per year), the number of people claiming a homeowner’s exemption, and the timing of infrastructure requirements, ***this additional CFD revenue could generate approximately \$500M in net bond proceeds available to fund infrastructure.*** These CFD tax rate assumptions may be considered high, and lower CFD special tax rates would produce less funds, but that may be compensated for if private market home prices are higher than assumed in this simple example.

In this way, a Community Facilities District assessment on private market properties could subsidize the infrastructure costs needed for all homes, including the long-term affordable rental and for-sale.

Construction Methods

Our analysis determined that hard cost management for a state-supported affordable housing program should be ***the same*** as for market rate housing. We looked at three hard cost approaches and present our findings below:

- **Factory-built / Modular:** Savings begin only at an initial order of 4,000–5,000 homes
 Our interview with Factory OS indicated that, at this time, the only way modular construction of multi-story homes could save costs in Hawai’i would be if shipping costs were eliminated by having a factory built on O’ahu. In order for Factory OS to recover the costs of building a factory in Hawai’i, the state would need to approve and fund orders for 1,000–1,500 homes per year for four to five years.

⁵¹ Pg. 87-88 of “State Transit Oriented Development Planning and Implementation Project for the Island of Oahu” July 2020

⁵²Assumptions: Average price for 2bd condo in Honolulu Metro area in 2019: \$569,000, property value increase of 1.5% per year, no home-owners exemption.

At this time, with the concept of state-supported for-sale homes being a new approach to delivering affordable housing, it would be unwise to “guarantee” such a large order of homes. Funding a pilot project and testing the viability of the model should be the first priority. At a later time, if the price of a modular unit comes down, and the state-supported ownership housing model has proven effective, it could make sense to follow this route.

- **Artificial Intelligence (AI) Design:** Savings of 1–3%

According to two contractors who use Artificial Intelligence and Design, savings related to AI use are about 3–5 percent of hard construction costs or 1.5–2.5% of total project costs. Although it is not a significant amount of the final cost, it is one advancement that the state can take advantage of by providing financing for larger projects. While construction companies use this technology to gain a competitive edge over other companies, the State can directly pass these savings onto the buyer.

- **Limited Do-It-Yourself (DIY) Construction or “Shell Housing”** 5–10% savings

We interviewed several developers that have used sweat equity models in mid-rise dwellings, who report what future residents could have some significant savings by doing some of the finishing work themselves. Work that could be completed in a mid-rise includes installing floors, painting walls, hanging kitchen cabinets, and installing light and plumbing fixtures. Cost savings of even *just 5–10% would be significant* and especially if could be applied towards a down payment, as has sometimes been the case with Self-Help housing.

Streamlined Entitlement: Environmental Assessment

In TOD areas, the development of affordable housing and mixed-use developments could be expedited by the implementation of Programmatic Environmental Impact Statements (EIS) for regional areas. Further, there was a 2019 amendment to the Hawai'i Administrative Rules (HAR) regarding the waiver of an Environmental Assessment (EA) when developing affordable housing. An EA for each parcel adds significant time and costs to any development project. One way to save costs is for the state to complete a Programmatic EIS in TOD areas.

The utilization of the following HAR sections could expedite the development of affordable housing in TOD areas.

EA Waiver for affordable housing.

As stated in Hawai'i Administrative Rules:

“§11-200.1-15 General types of actions eligible for exemption:

(c) The following general types of actions are eligible for exemption:

(10) New construction of affordable housing, where affordable housing is defined by the controlling law applicable for the state or county proposing agency or approving agency, that meets the following:

(A) Has the use of state or county lands or funds or is within Waikiki as the sole triggers for compliance with chapter 343, HRS;

(B) As proposed conforms with the existing state urban land use classification;

- (C) As proposed is consistent with the existing county zoning classification that allows housing; and
- (D) As proposed does not require variances for shoreline setbacks or siting in an environmentally sensitive area, as stated in section 11-200 .1-13 (b) (11)."

The above HAR can be used to expedite the development of affordable housing. The EA completion and process ranges from 8-12 months; hence, the waiver of an EA expedites the development process by approximately one year.

Programmatic EIS can be used in instances requiring a “larger total undertaking.” If the project or a series of projects within an area sited for future development is proposed and the approving agency determines that the “larger total undertaking” requires an Environmental Impact Statement (EIS), the following HAR section can be implemented: Section 11-200.1-10.

Example: Aloha Stadium. A recent mixed-use development in a TOD area implementing the HAR section stated above is the New Aloha Stadium Entertainment District (NASSED) EIS. This multi-phased project is utilizing this HAR provision to complete their EIS requirement and process. The NASSED project is essentially a Programmatic EIS as it’s a large-scale development to be completed in phases.

Recommendation: To achieve cost savings, an ALOHA Homes project should qualify for an EA waiver or be included as part of a larger programmatic EIS.

Developer Fees

Developer Fees and Overhead at 4–6% of Project Costs.

This housing delivery model significantly reduces risks and costs for the developer, which can translate into a lower development fee still being an attractive level of compensation. In a model where the State is providing construction loan financing, in the form of taxable mortgage revenue bonds supported by a mortgage interest in the property (not a private activity bond), and where entitlements and permits have been streamlined, the developer assumes less risk. For the purposes of our sample pro-forma, we have used a middle number of a 5% developer fee. A few relevant comparisons include:

1. In places with a similar housing delivery model, such as Finland, the developer fees are 4 percent.
2. Some non-profit developers in Hawai'i complete projects with a 3–5 percent developer fee.
3. Lastly, average LIHTC projects have developer fees and overhead largely in the 6–8 percent range, so 4–6 percent seems reasonable for a project with less risk and lower upfront costs.

Hard Construction Costs

For affordable housing, costs of \$325–375 per sq ft of leasable area is achievable.

Based on our interviews with local industry experts including both construction companies and developers, the actual costs of vertical concrete construction in TOD areas with land well-suited for housing is \$260–\$300 per gross square foot. For an affordable housing project with limited amenities, the common areas, not including parking, are about 20 percent of the total constructed space. This

translates into a cost of roughly \$325–\$375 per square foot of leasable space for the project. In addition to having fewer amenities, affordable housing can use less expensive construction methods such as tunnel form construction employed by Hawaii Dredging. For affordable housing construction of sound quality but not luxury, we estimate that a hard cost of \$350 per square foot of leasable space is reasonable and accurate.⁵³ These hard costs are lower than what is found in typical LIHTC projects for two reasons:

1. The conditions on construction and compliance with LIHTC requirements adds to the cost.
2. An extended pre-development process often results from complicated financing structures and circumstances.

Parking Separated from Housing Cost

Best Practice: Unbundling parking from the cost of housing. The cost for a parking stall can range from \$25,000 to \$40,000. In Vienna and Helsinki parking is always unbundled and one parking structure is often shared by multiple buildings. High cost jurisdictions such as San Francisco, New York and Seattle are increasingly separating the cost of parking from the cost of housing. Especially in areas near transit this is becoming standard practice. Parking becomes an option that homeowners can pay for with a monthly fee instead of automatically being incorporated into the purchase. To finance parking sometimes a developer will partner with a private parking operator that owns, operates and maintains the structure. In TOD areas where there are other transit options some people would choose to own fewer cars or choose a car sharing option, such as the Hawaii Hui Car Share program where you can reserve cars for personal use.⁵⁴

Focus Group Results: Residents are receptive as long as parking is available. When presented with the option to separate the cost of parking in order to lower the purchase price of a home, our focus group participants agreed it would be good to have a choice. The main concern was ensuring enough parking for those who wanted to pay for it.

Development Model to Increase Competition

We recommend the following for a development model: **Two-step RFQ/RFP process with third-party verification of financial documents**

To encourage competition among developers and to reduce costs for the state, it is recommended that proposals undergo a two-step vetting process and that in the final proposal developers be required to submit their pro-forma for third-party verification.

1. **Create a two-step process in which developers** first submit qualifications. Invite no more than three developers to submit a more detailed RFP. This is the process in use by the New Aloha Stadium Redevelopment Authority to maximize competition and initial interest in a project. However, expect detailed plans from only the top contenders.

⁵³ Based on interviews with several local developers and construction contractors.

⁵⁴ www.drivehui.com

2. **Engage private consultants to provide third-party analysis** of private development proformas as a prerequisite for the contribution of publicly-owned land. This helps to build trust in the process through accountability and transparency. This is a common practice in many jurisdictions and the cost—about \$20,000—is minimal compared to the cost of the overall project. Additionally, the developer can wrap the cost into the overall project budget if a development agreement is executed.

Benefits of Implementation:

Ownership Opportunities for 80%–140% AMI

This model provides a pathway to ownership for people earning average and above-average wages, but who can still not afford to purchase in the private market. Based on the recent Hawai'i Housing Planning Study, there are approximately 5,000 households in the 80%-140% who would like to purchase a home.⁵⁵

Leasehold ownership, even with shared-equity, offers significant benefits over rental housing.

There are long-lasting benefits of a leasehold ownership model when compared to rental housing. Some of these include:

- 1) **Greater stability and control over lease terms:** Leasehold owners, as members of the housing association, can set rules for the building, priorities for common area spaces and determine the schedule for maintenance of the building.
- 2) **Sense of Ownership, Improved well-being:** In the words of one focus group participant, “Owning a home would make me feel like more of a community member, more of a citizen.” Numerous studies have shown that homeowners are more likely to be invested in their local community and that there are significant health and educational improvements for homeowners.^{56, 57}
- 3) **Inheritance: Transfer property to children.** Under a long-term leasehold model, a property can be passed down from parents to their children in the same way as fee simple. The ability to transfer property and equity to future generations is a significant benefit over renting.
- 4) **Financial Gains: Price stability, wealth generation, and tax benefits.** With a fixed 30-year mortgage, a person’s monthly housing costs are more stable over time, and not subject to annual increases that are allowable for most rental agreements. Also, even in a shared-equity model where the resale price is restricted, an owner can build up significant gains just by paying down their mortgage and benefiting from inflationary increases in home value. Lastly, tax benefits through the mortgage-interest deduction program amount to thousands of dollars in savings every year for homeowners. For residents with an income range of

⁵⁵ 2019, “Hawai'i Housing Planning Study”

⁵⁶ 2016, “Beneficial impacts of homeownership: A research summary”, Habitat for Humanity

⁵⁷ May 2012, “Homeownership and Civic Engagement in Low-Income Urban Neighborhoods: A longitudinal analysis.” Maturuk, Lindblad, Quercia Volume: 48 Issue 5

\$60,000 to \$90,000, who would most likely take advantage of this program, the savings would be approximately \$2,500-\$3,000 a year for the first five years of a mortgage.⁵⁸

None of the above advantages are available to renters.

Demand for State Supported Leasehold Housing: Focus Group Insights

After determining what a feasible price would be for this type of housing, we conducted focus groups to see if there would be interest in this housing model and what the concerns would be.

Methodology: To conduct the focus groups, we sent out messages via text and social media to the general public through our website and partner organizations including local unions. Over a period of four weeks over 160 people completed our survey. Ultimately, 18 people participated in either a one-on-one session or a group conversation.

We initially screened for people who had enough household or individual income to potentially qualify for a mortgage with our price assumptions. However, because approximately 66% percent of respondents would not be able to income qualify, we held one focus group with low-income participants to gauge interest in a rent-to-own model supported by low-income tax credits (LIHTC). This rent-to-own model is one of the few pathways to ownership for those below 80 percent of the area median income, and is something the state can facilitate through the existing LIHTC program. Because the ALOHA Homes model does not expressly contemplate a rent-to-own option, we conducted only one focus group with lower-income participants. Fourteen of our 18 focus group participants were income qualified.

Focus Groups' Key Input

- **Leaseholds: hesitation at first, receptive after learning details.**

Generally speaking, participants did not fully understand the limits and benefits of leasehold properties prior to participating in the focus groups. The focus group facilitator explained that leasing was a way to cut down costs, because “you don’t pay for the land, you only pay for the building.” While many participants were initially apprehensive about the idea of engaging in a leasehold agreement, most were open to it after better understanding the financial benefits of leaseholds.

Given the stigma of leasehold properties for many focus group participants, it was important to make a clear distinction between private-market leaseholds, and state-provided leaseholds, which offer a public benefit, and in some cases, operate similar to a public land trust.

- **Importance of pricing: low-monthly costs key to program interest.**

⁵⁸ Assumptions: 30 yr mortgage with 3% interest rate. Federal effective tax rate of 12%, Hawai'i rate of 7%.

Program participants who were initially very skeptical of a leasehold program became interested after being presented with monthly costs, including homeowners association (HOA) fees that are similar to market-rate rental prices. Even participants who strongly preferred fee simple ownership were interested in this option as an intermediate ownership strategy or a stepping stone. “I would do this for the next five years or so,” said one participant who was initially very skeptical. Three participants expressed concern that HOA fees would increase over time and wanted assurance that there were sufficient funds for maintenance.

- **Down payment assistance and mortgage readiness: critical for access.**

For most focus group participants, down payments were the greatest barrier to owning a property. Access to a lower down payment (3 percent or less) and potential down payment assistance was an important benefit to almost everyone. For some, it was the most attractive aspect of the entire program. Moreover, some participants indicated that financial literacy and mortgage readiness programs would be of great benefit to them, as they face credit score and debt barriers to receiving bank loans.

- **Shared equity: initial confusion, strong support after explanation.**

Similar to leaseholds, most participants did not fully understand the concept of shared equity prior to participating in the focus groups. The focus group facilitator used graphics to explain the concept, and the financial trade-offs of keeping housing affordable over the long-term. Once explained, participants almost unanimously supported the concept of shared equity. As one participant stated, “If I receive help buying a place, it only makes sense that I don’t make a lot of money if I sell the place.” Moreover, most participants felt it would be unfair for people to sell affordable units at market-rate value, at any time after the initial purchase.

- **99 yr lease vs 65 yr lease lengths.**

The main benefit people cited for longer leases was being able to pass the home onto their children.

- **Preferences and set-asides: Set asides perceived to be more fair.**

Focus group participants generally supported both preferences and set-asides for special groups in need of housing. However, some participants were hesitant about the idea of preferences because they thought “everyone should be equal.”

Notably, even the participants who were against preferences were in support of housing set-asides. A set-aside felt more fair to participants who were opposed to some applications receiving preference over others.

- **Sweat equity: highly popular option, 94% support.**

Nearly all focus group participants were in support of the sweat equity model and expressed interest in engaging in such a program if it could help reduce the cost of the home and the down payment. They also expressed interest in the fact that sweat equity would help create community among residents and provide homeowners with useful home maintenance skills. As one participant noted, “This [sweat equity] is a great way to solidify tenants’ commitment.”

- **Future resident involvement in planning: strong interest, once a month is feasible.**
Focus group participants believed future residents should be involved in the planning of the ALOHA Homes Program and the eventual design of affordable housing units. Many participants also expressed interest in participating themselves. However, there was some disagreement over the preferred frequency of involvement. Some participants indicated they would be interested in meeting on a monthly basis for about a year, while others said they would only participate a few times a year.
- **Housing amenities: gathering space desired, low HOA fees is priority.**
While focus group participants expressed a desire for amenities, such as recreation rooms and communal spaces with grills, there were few amenities which participants indicated would “make-or-break” their involvement in the ALOHA Homes Program. Instead, participants preferred lower HOA fees and fewer amenities. However, many participants indicated that having laundry machines within their own unit was critical; they would not live in a housing complex with shared laundry machines. Moreover, there was a general interest in having access to gardens or open green spaces.
- **Parking: support separating from cost of housing, concern there will be enough.**
The focus group facilitator began the discussion about parking by sharing information about how parking increases tenants’ mortgages. Many participants were surprised to learn the high costs associated with parking. Although participants generally desired the availability of parking, some participants were open to the idea of having a “one-car-family.” Others were open to not having parking, pending the availability of other transit options. Participants were particularly interested in the option of separating parking from the cost of housing by paying a separate monthly fee of approximately \$160 per stall in exchange for a lower mortgage. Participants appreciated the option to not have parking included in the cost of the mortgage.
- **Owner-occupancy enforcement: concerns with high-tech, management preferred.**
Focus group participants universally agreed that owner-occupancy must be a requirement of the ALOHA Homes Program and that it should be strictly enforced, including with high fines for residents who break the rules. Some participants, particularly single-women, felt this was important for ensuring safety.

Generally, participants were not in favor of technological solutions such as face-scanning and fingerprinting, as they felt it was an invasion of privacy, could be difficult to accommodate guests and was susceptible to technological error. As one participant put it, “I can’t even get my fob to work sometimes.” Participants were more in favor of solutions that involved a property manager enforcing the rules. They felt that the residents themselves should have an active role in monitoring and identifying tenants who are illegally renting their units. Lastly, participants expressed a need for flexibility in some cases where family and friends are visiting for extended periods.

- **Potential Pilot Project: Liliha Civic Center**
In order to make the program more tangible and relatable we suggested the Liliha Civic Center as a potential pilot project site. This site was selected because it is close to downtown

Honolulu, is nearby a future rail station and already has plans for affordable housing. Most participants were very interested in this location, with several commenting that it would save them significant time spent in their cars commuting to work. Some people were so enthusiastic that they asked when the project would start and to be kept informed of any progress.

- **Strong support for state-operated affordable leasehold housing.**

While there was disagreement over some of the potential elements of the ALOHA Homes program, focus group participants were generally supportive of the State pursuing this effort and felt that it was the responsibility of the State to provide affordable housing opportunities to its residents. Several participants expressed frustration that current properties being built were not affordable to local residents and one noted that “even the supposedly ‘affordable’ homes are not really affordable.”

Given the lack of affordable homeownership programs in Hawai‘i, focus group participants felt that many of their family members, friends and colleagues would be interested in this new and innovative opportunity. As one participant from Kaua‘i said, “I would actually move to Honolulu for this program.”

Conclusion:

There is likely high demand among local residents for leasehold affordable housing at the prices that are currently feasible with this model, especially if it is coupled with down payment assistance programs. Concerns that emerged about the model were the potential for HOA prices to increase, possible limits in being able to pass the property onto one’s children, and ensuring that the property be well-maintained and managed in the future.

The interest in affordable homeownership opportunities, even with shared equity and a restricted-resale price, mirrors the experiences in other high cost places shared with our research team. In San Francisco, there are 20 approved applications for every available below-market home, even with a permanent resale price restriction.⁵⁹ Other interviews with land trusts and local governments affirmed that ownership opportunities priced at least 25 percent below market have strong demand even with resale price and buyer restrictions.⁶⁰

Other Affordable Leasehold Program Considerations

State Land Contributions are Key: Mission Alignment of State Agencies

For this housing delivery model to be successful, it is critical that land is contributed at a minimal cost. Otherwise, the housing will require further subsidies in order to be affordable at 80–140 percent of area median income. It is also crucial that the housing projects are part of a larger mixed-use area plan where market rate housing and commercial properties can help subsidize the affordable homes.

⁵⁹Interview with San Francisco Mayor’s Office of Housing and Community Development

⁶⁰ Interviews with Grounded Solutions Network and several Community Land Trusts

Although the state has significant land holdings in TOD areas, the land is often owned by different state agencies whose missions do not include affordable housing. For example, the Department of Education must prioritize education goals and the Department of Accounting and General Services must provide office space for state agencies. However, for affordable housing to be built near rail or other transportation hubs, some of the lands controlled by these departments should be repurposed for housing.

The difficulty is determining which lands should be used for affordable housing, and then facilitating the transfer of development rights to an agency such as HHFDC or HCDA which can deliver the affordable housing. Also, landowning agencies which do not have housing missions, such as the Department of Education, should be compensated for their contribution of land towards affordable housing. Otherwise the goal of affordable housing will always be competing with the primary mission of other agencies. A land contribution can and should be a win-win.

Fortunately, the process of bringing agencies together to create a plan for affordable housing in TOD areas has already been started by the Hawaii Interagency Council for Transit Oriented Development. Created in 2016, the council has encouraged agency collaboration and has initiated important planning efforts for TOD areas. However, it does not have the authority to implement an affordable housing plan or the structure necessary to hold agencies accountable for moving a plan forward. To assist the TOD council and the state in reaching the goals of affordable housing, the following actions are recommended:

1. **Establish a TOD subcabinet under the governor's executive office.** The subcabinet would be responsible for advising the governor and guiding the planning and coordination of state agency TOD implementation. The governor should regularly attend TOD subcabinet meetings to assess progress towards housing goals and offer assistance with obstacles that emerge. To demonstrate that affordable housing is a top priority for the state, the governor must be visibly involved in ensuring that benchmarks are reached.
2. **Create the position of Director of Affordable Housing, who would report directly to the governor and ensure that progress is being made across departments and agencies.** The director would create a set of housing goals and report on progress towards them regularly to the governor. This position would emphasize the importance of affordable housing and require greater accountability from the state in progressing toward its goals.
3. **Support funding for the TOD council and the Director of Affordable Housing to provide seed money for planning efforts and hiring consultants as needed.** Even an annual budget of \$1–2 million for affordable housing planning and implementation efforts would create efficiencies in how hundreds of millions of state and county dollars are spent, and ensure that affordability is prioritized in future development plans.

Expanding the availability of affordable housing will depend on many agencies collaborating and working together towards this common purpose. Unfortunately, collaboration cannot be mandated or simply passed into law. Instead, it needs to be incentivized by providing resources and plans that advance affordable housing goals, compensating non-housing agencies that contribute land, and by continuous assessment of progress. There are no short-cuts to effective collaboration, or to achieving long-range, ambitious goals such as providing quality affordable housing to Hawai'i residents.

Mortgage Assistance: Down Payment Support and Mortgage Readiness

Down payment support is one of the most referenced hurdles for people trying to purchase a home. According to the Hawai'i Housing Planning Study of 2019, when researchers asked people for their top reasons for not buying a home, the overall price of the house was the response for 56 percent of respondents, followed by the down payment for 31 percent.⁶¹

This data aligns with our focus group research, which indicated that **the ability to obtain a 3 percent down payment** and other forms assistance such as grant or matched savings programs, was a significant benefit to interested residents. All of our focus group participants could afford the monthly house payments at our projected sales prices; it was simply the down payment and loan qualification requirements that would prevent homeownership.

Savings & Down Payment Programs in Hawai'i:

Hawaiian Community Assets (HCA) provides a MATCH Savings Program. HCA matches savings for individuals to put towards an identified savings goal. HCA also provides micro loans of up to \$10,000 that a buyer can put toward a down payment.

Local Banks: 3% down payment options. We spoke with three local lenders and all offered mortgage products with a 3% down payment.⁶²

Department of Hawaiian Home Lands: Pilot program.

As of December 2020, the Department of Hawaiian Home Lands (DHHL) approved a pilot program for down payment assistance to help those on the housing waitlist to make payments toward fee-simple residences not situated on Hawaiian Home Lands. By accepting this assistance, the applicant is removed from the list. Should the fee-simple property be sold, DHHL has first right of refusal. It is anticipated that applicants would have to pay for some portion of the down payment, but it is not yet clear how much.

PMI is not required for some below-market mortgages.

Private Mortgage Insurance (PMI) is required in most mortgages where the borrower contributes less than 20% for the down payment. Both Freddie Mac and Fannie Mae have adjustable or cancelable PMI based on the loan-to-market value amount achieved by the borrower. Other municipalities that provide below market housing suggested that this provision can be used to waive PMI if a home is sold for more than 20% below market, because the mortgage loan is already 80% loan to value without a down payment.

Future Resident Engagement in Planning and Design

Best Practice: Vienna, Helsinki and other European cities are adopting the practice. Involving future residents in project planning adds value to a project and creates a sense of community.

⁶¹ 2019 "Hawai'i Housing Planning Study" prepared for HHFDC

⁶² Interviews with Bank of Hawaii, Central Pacific Bank, and American Savings Bank

Over the past few decades, standards have increased for how future residents can be involved in the design and management of affordable housing projects. Below are some case studies:

Local Case Study: Community Involvement in Pu'uhonua O Wai'anae

With a community of nearly 250 people, Pu'uhonua O Wai'anae is one of the oldest and most established houseless encampments on O'ahu.⁶³ Although the residents are technically houseless, Pu'uhonua O Wai'anae is an established village on 19.5 acres of land, where residents grow their own food, share resources with one another, engage in community services, and plan community events.⁶⁴ Pu'uhonua O Wai'anae is organized into sections of 20 to 25 people, forming "communities within the community." Each section is appointed a village "captain" to help enforce rules and settle disputes.

In 2020, Pu'uhonua O Wai'anae succeeded in raising \$1.5 million in private donations to purchase a 20-acre parcel of land in Wai'anae Valley to relocate their village. The initial design concept for the new village included a cluster of tiny homes based on the village sections, and shared spaces at the center of the community, including restrooms, kitchens, cooking areas and gardens.

Village residents were then invited to participate in design charrettes to provide input on the design of proposed community spaces and the homes. Once the relocation site was selected and purchased, organizers and future residents began site visits, clearing rubbish, and building relationships with neighbors of the future village, establishing a sense of responsibility for the land before the building starts. Moreover, the selected design of the homes, A-frame structures, is simple enough to install that residents can actively participate in the process once construction begins. The simple design, communal kitchens and bathrooms, and villagers' demonstrated ability to perform functions like groundskeeping and security, help keep development and operating costs down- savings that will be passed on to residents in the form of rents below \$300 per household.

International Case Studies: Co-Determination in Vienna, Participation model in Helsinki

Vienna has a long history of government-sponsored housing. Today, 62 percent of residents in the city live in public housing.⁶⁵ The developers of public housing actively engage future tenants through a process of "co-determination." Through this process, residents can provide input on housing design, as well as on the use of and decoration of communal areas. The level of collected input varies by development, with some projects allowing residents to choose a floor plan, while others allow input on only common areas.

Helsinki multi-family housing developers are working with buyers during pre-construction to get design input especially for amenities and community spaces. Meeting with future occupants is seen by some developers as a way to add value to a project and have residents help with resource

⁶³ Friedheim, N. (2018, September 30). "This Wai'anae Homeless Camp Is Going Legit". Honolulu Civil Beat. Available at: <https://www.civilbeat.org/2018/09/this-wai'anae-homeless-camp-is-going-legit/>

⁶⁴ HCA. (2020). "Affordable Housing Development Training" Webinar. Available at: <https://www.dropbox.com/s/cs0dk5ofixdyvfd/Affordable%20Housing%20Development%20Training%20-%20Nov%202020.mp4?dl=0>

⁶⁵ Dudley (2020)

choices: should we have less parking and more car sharing options? How should communal space be used? Involving future occupants in these conversations can create better design and also save on project costs.⁶⁶

International Case Study: Senakw Development in Vancouver

In January, 2020, Squamish Nation members approved the construction of a new district, called Sedakw, in Vancouver that would house 11 towers with 6,000 total dwelling units for more than 10,000 residents.⁶⁷ The future development sits on 11.7 acres of former railway lands within one of Canada's smallest First Nations reserves.

Since Sedakw is on federal land and not city land, the planners of the future development have the flexibility to work outside of Vancouver's design standards. While the city typically mandates one parking stall per unit, only 10 percent of Sedakw apartments will include parking. Sedakw buildings will also forgo the podium-and-tower design that has become iconic in Vancouver.⁶⁸ Instead, the apartments will be slender high-rises with a density of 500 units per acre, on par with the density in cities such as Hong Kong.

The future Sedakw development challenges the notion that indigenous communities must be low-density, rural, and located on the outskirts of cities. Revery Architecture, the architecture firm responsible for the Sedakw design, worked with members of the Squamish Nation to ensure the design paid tribute to the site's history and relationship to the natural environment. For example, apartments near the Burrard Street Bridge, have been designed to emulate the feeling of entering a forest.⁶⁹

Lessons for the ALOHA Homes Program

- Engage future residents early: Consider ways for future residents to become involved with project design before construction begins. This builds a sense of community and adds value.
- Dense, urban design can still pay tribute to the area's history and natural environment.

Cost Recovery Principle: State Funding is Recycled

One advantage of an ownership model for affordable housing is that state funding for the project can be recovered and recycled for another project when new residents secure mortgages that cover the costs of development. Note that this is for the cost of the building only and not for all the offsite infrastructure, community-wide amenities, and other costs that go into a larger community plan. However, recycling the money for just the vertical construction costs helps create a sustainable path to expanding affordable homeownership in Hawai'i.

⁶⁶ New York Times (2020, October 14th) "Helsinki makes sustainability a guiding principle for development", by Dorn Townsend Available at: <https://www.nytimes.com/2020/10/14/todaysinyt/helsinki-makes-sustainability-a-guiding-principle-for-development.html>

⁶⁷ Halliday, M. (2020, January 3). "The bold new plan for an Indigenous-led development in Vancouver." The Guardian (Cities). Available at: <https://www.theguardian.com/cities/2020/jan/03/the-bold-new-plan-for-an-indigenous-led-development-in-vancouver>

⁶⁸ Halliday (2020)

⁶⁹ Halliday (2020)

Proposed Action Items

Legislative

Most of the tools needed to implement this model for affordable home-ownership already exist within current state laws and administrative rules.

Community Facility Districts for Infrastructure Financing

One area that might require some legislative change is allowing the state to be re-paid for infrastructure investments through Community Facilities Districts implemented by the counties. In this arrangement the state would put in the initial bond funding and the counties would repay the bond financing with increased property assessments in the various improvement districts. Further research is needed to assess whether this arrangement would require any changes in the HRS or if it simply requires a memorandum of understanding between the state and the county.

Affordable Housing Facilitator

Access to affordable housing is such a key issue for Hawai'i residents that it deserves high level attention and direct communication with the Governor's Office. This position would coordinate efforts across multiple agencies and work towards a long-term strategic plan.

Taxable Mortgage Revenue Bonds

This financing tool could be used by HHFDC to provide low-cost and efficient construction financing on a project-by-project basis without impacting the state budget or the private activity bond cap. Further legal research is being conducted to determine if the current HRS 201H provisions for Taxable Mortgage Securities Programs are sufficient for the purposes of financing affordable leasehold housing.

Lease end game issues

We are awaiting further input from important stakeholders and will amend this section.

Leadership

A new leasehold housing program would require high-level state leadership to facilitate negotiation and collaboration between multiple state agencies and departments. Although each department has a separate mission, there are ways for all stakeholders to benefit from providing affordable housing to Hawai'i residents.

Conclusion

In more than 5,000 households in Hawai'i, there are residents earning good wages, who want to purchase a home but find prices to be out of reach. We spoke with some of these residents—teachers, hotel workers, even real estate agents—and they all believe the state should play a role in expanding affordable ownership opportunities. This study provides an initial blueprint for one way to accomplish this without impacting general fund revenue. The model does require a state subsidy in the form of land use and access to expedited entitlements and financing. It also requires negotiation and collaboration across departments.

Adopting a leasehold ownership model faces significant obstacles and will not be easy. If it was, it would have been done already. As a case in point:

In 1970 the Hawai'i legislature passed Act 105 for the purpose of enabling the Hawai'i Housing Authority to develop affordable ownership opportunities. The act stated:

“The legislature has also determined that decent shelter and the responsibility of home ownership contributes to the pride and dignity of man and makes him a greater asset to the community and that lack of decent shelter and the *responsibility of home ownership* contributes to harmful frustration in our community. The home is the basic source of shelter and security in society, and the center of our society which provides the basis for the development of our future citizens. **Frustration in the basic necessity of decent shelter, in the satisfaction of the basic drive in man to provide a decent home for his family, provokes an unrest in our community that is harmful to the overall fiber of our society.**”

For more than fifty years the Hawai'i legislature has struggled to provide home-ownership opportunities to lower- and middle-income residents. The problem is arguably more pressing now than ever before: Hawai'i's population has declined each of the past four years, and one of the main reasons is the cost of housing. While the ALOHA Homes model needs work, the concept of affordable leasehold housing has great potential to fulfill an important housing need for local residents.

Appendix A: Interviewees

Local Developers and Construction Companies

Hawai'i Dredging
Albert C. Kobayashi Inc.
Stanford Carr
Hawai'i Island Community Development Corporation
Alaka'i Development
Mark Development Inc.
Self-Help Housing
Artspace
Hunt Co. Hawai'i
Ahe Group

Local Government

Office of Planning
OHA
DHHL
City and County of Honolulu, Planning Department
City and County of Hawai'i, Planning Department

Local Housing Organization

LURF
BIA

Lenders

Bank of Hawai'i
American Savings Bank
Central Pacific Bank
Hawai'i Community Assets

Financial Consultants

UH Office of Budget and Finance
280CapMarkets

Other Housing Organizations and Agencies

City of Burlington Department of Planning and Zoning
Portland Housing Bureau
San Diego Housing Commission
City and County of San Francisco
DC Department of Housing and Community Development
Champlain Housing Trust
Na Hale O Maui Land Trust
Grounded Solutions
ARA - Housing Finance and Development Centre of Finland
Habitat for Humanity NYC, Habitat for Humanity Maui
Catalyst Housing Group
Factory OS
Center for Budget and Policy Priorities

Interviewed People

Jonathan Huskey - Deputy Director for State Campaign Communications, Center for Budget and Policy Priorities

Bernie Bergmann - State Data and Campaigns Senior Manager, Center for Budget and Policy Priorities

Claudia Shay - Executive Director, Self-Help Housing

Craig Watase - President, Mark Development Inc.

Jarmo Linden - Director, The Housing Finance and Development Centre of Finland

Jeremy McComber - Development Manager, Hawaii Island Community Development Corporation

Keith Kato - Executive Director, Hawaii Island Community Development Corporation

Jon Wallenstrom - Principal, Alaka'i Development

Greg Handberg - Senior Vice President, Artspace

Naomi Chu - Vice President of Asset Management, Artspace

Juliana Bernal - Project Manager, Habitat for Humanity NYC

Kevin Brown - President, Factory OS

Paul Silen - Vice President - Commercial Division, Hawaiian Dredging

Stanford Carr - President, Stanford Carr Development

Paul Kay - Executive Vice President & COO, Hunt Development Group - Hawai'i Division

Thomas Lee - Senior Vice President of Development, Hunt Development Group - Hawai'i Division

Sharon Gi - Vice President of Development, Hunt Development Group - Hawai'i Division

Steve Colón - President, Hunt Development Group - Hawai'i Division

Ruby - Planner, Office of Planning (Honolulu)

Jeff Weiss - Hunt Development Group

Dwight Mitsunaga - President, Building Industry Association

Dean Uchida - President, Building Industry Association

Jessica Leorna - CEO of Building Industry Association

Sherri Dodson - Executive Director, Habitat for Humanity Maui

Jenee Gaynor - Capacity Building Manager, Grounded Solutions

Robert Leuchs - Director of Homeownership Center, Champlain Land Trust

Kalbert Young - Vice President and Chief Financial Officer, UH Office of Budget and Finance

Jordan Moss - Founder, Catalyst Housing Group

Shelly Tanaka - Vice President, John Child & Company

Roberta Hsu - Project Manager, Albert C. Kobayashi Inc.

Michael Young - Vice President, Albert C. Kobayashi Inc.

Tom Lockard - Managing Director, Head of Investment Banking, 280CapMarkets (Originations Head, Co-Founder)

Catherine Lee - 280securities

Jessica Conner - Senior Policy and Planning Coordinator, Portland Housing Bureau

Dory Van Bockel - Program Manager, Development Incentives Team, Portland Housing Bureau

Gene Bulmash - Inclusionary Zoning Manager, DC's Department of Housing and Community Development

Todd Rawlings - Housing Program Manager, City of Burlington Department of Planning and Zoning

David White - Director of Planning and Zoning, City of Burlington Department of Planning and Zoning

Rusty Rasmussen - SVP, Division Manager, Central Pacific Bank

Sujata Raman - Vice President, Single-Family Housing Finance - San Diego Housing Commission

Maria Benjamin - San Francisco housing department

Appendix B: Other Jurisdictions

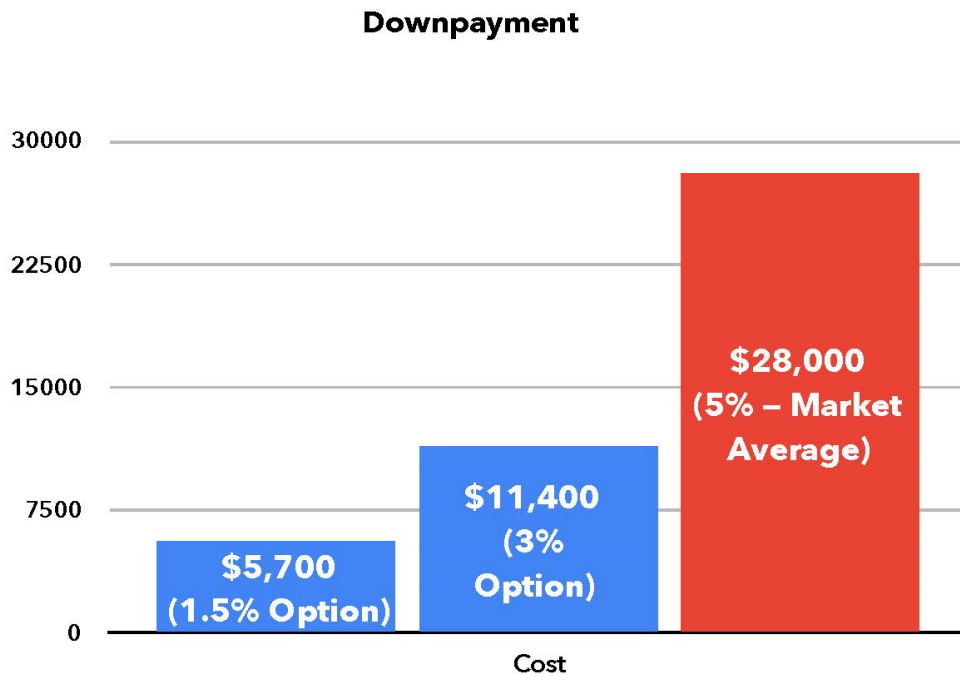
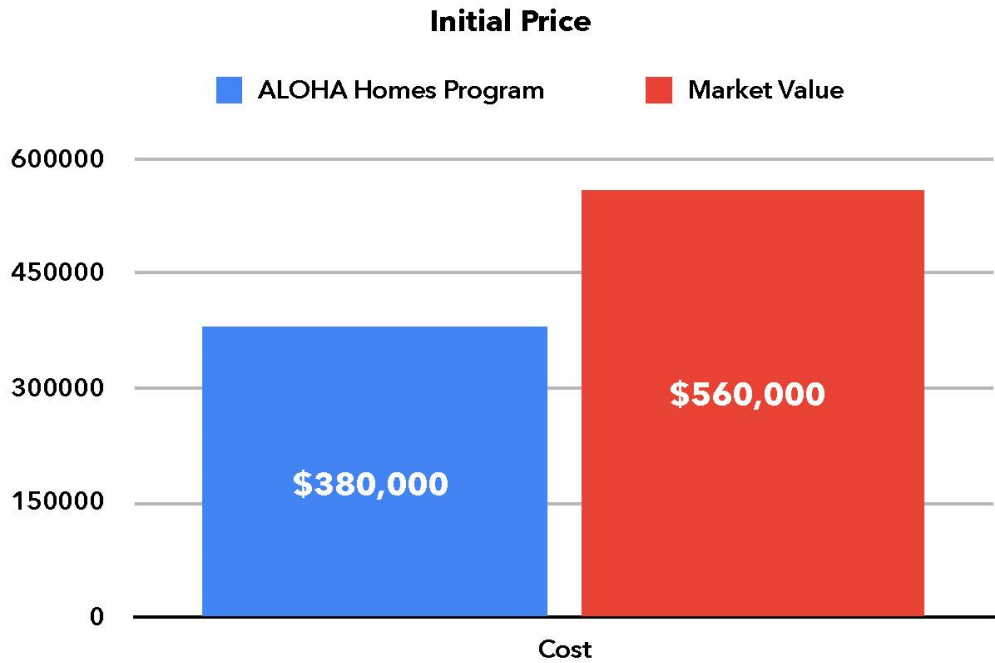
	Washington DC	Portland, OR	San Francisco, CA	San Diego, CA
Managed by	Department of Housing and Community Development	Portland Housing Bureau	Mayor's Office of Housing and Community Development	San Diego Housing Commission
AMI Range	50–80%	60–80%	80–130%	100–120%
% Units Affordable	8–10%	10–20%	12%	20%
Affordability Period	Life of the building	99 years	Life of the building	45–55 years
Owner-occupancy	Yes	Yes		Yes
Residency Requirement	Current Resident	Current resident	Current Resident	Live/work 2 years
Own Other Property	No other residential	No liquid assets > \$20,000	No residential	No other property

	Aspens, CO	Naples, FL (Collier County)	Boston, MA	New York, NY
Managed by	Aspen Pitkin County Housing Authority		City of Boston	New York City Department of Housing Preservation and Development
AMI Range	<205%	80–150%	Varies, <100%	80–130%
Affordability Period	Property Unique	15 years	50 years	Max 40 years
Owner-occupancy	Yes		Yes	Yes
Residency Requirement	Work full-time in Pitkin County or 75% of Income	Yes	Preference	Resident, Local area preference
Own Other Property	No residential			

<p>Other Requirements</p>	<p>Occupy unit at least 9 months out of the year</p>		<p>Preferences (depending on unit) for Veterans, senior citizens, first time homebuyers, approved professional artists, Boston residents</p>	<p>Sell to income-qualifying buyers at 2% appreciation</p>
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Appendix C: Equity Share Model

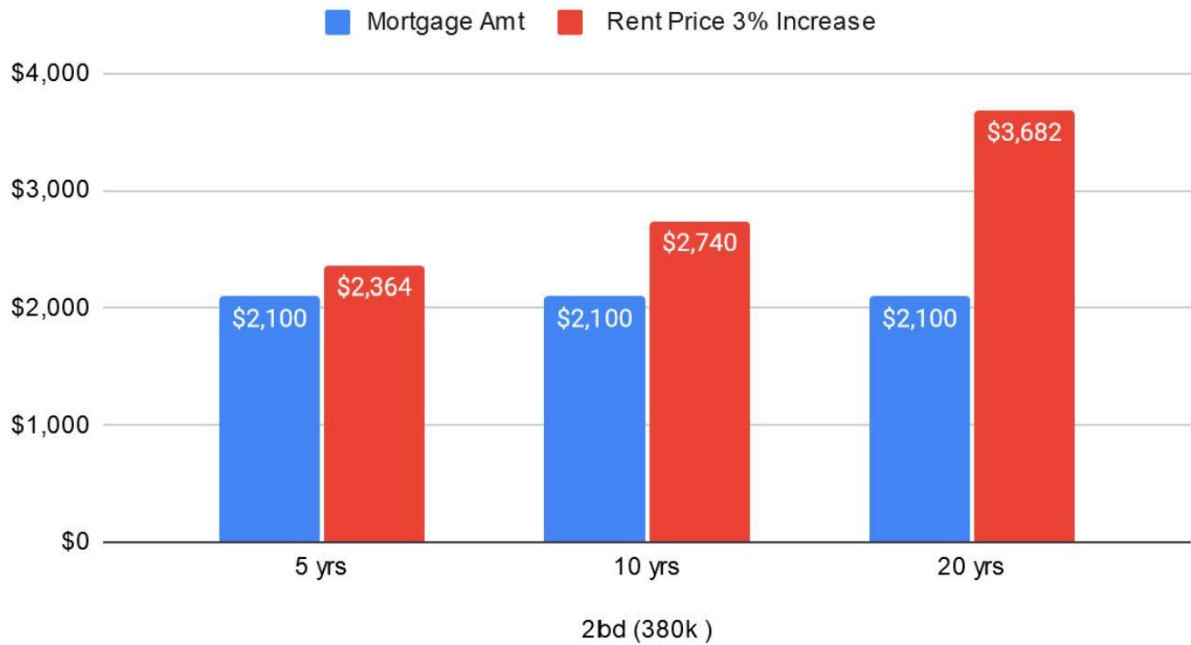
**Cost Difference: Affordable versus Market Rate (FOR SALE)
(Two-Bedroom, Two-Bath Units)**



Mortgage Payments: Affordable Leasehold \$380,000 vs. Market Rate \$570,000

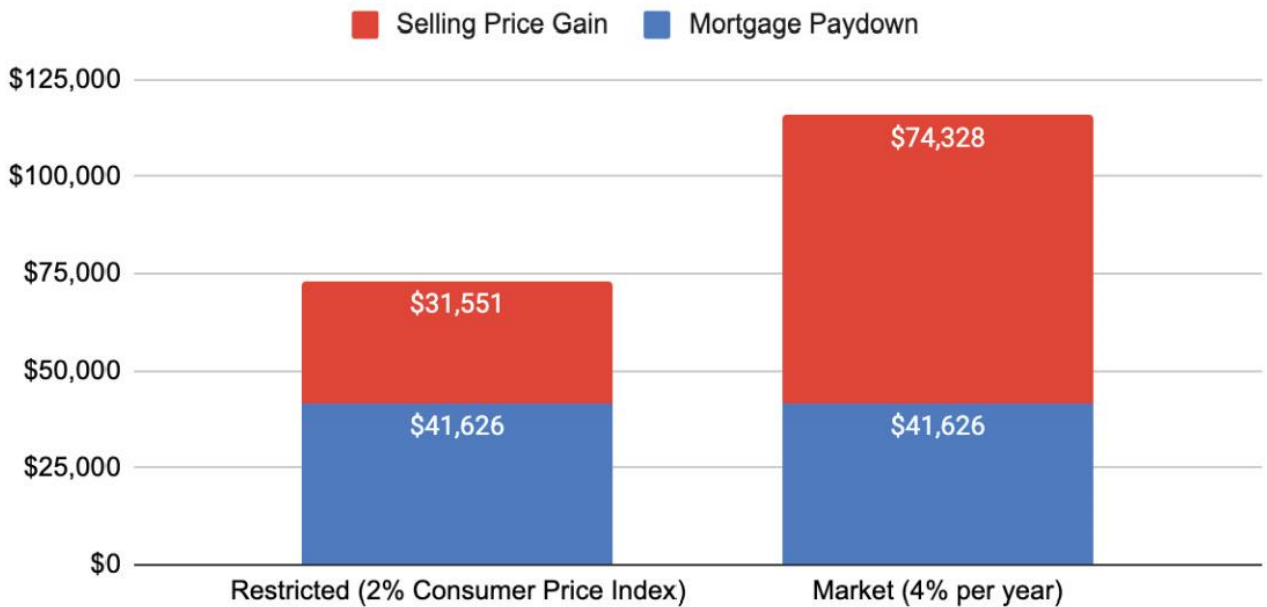


2 Bed/ 2 bath: Affordable Leasehold \$380,000 vs. Market Rate Rental

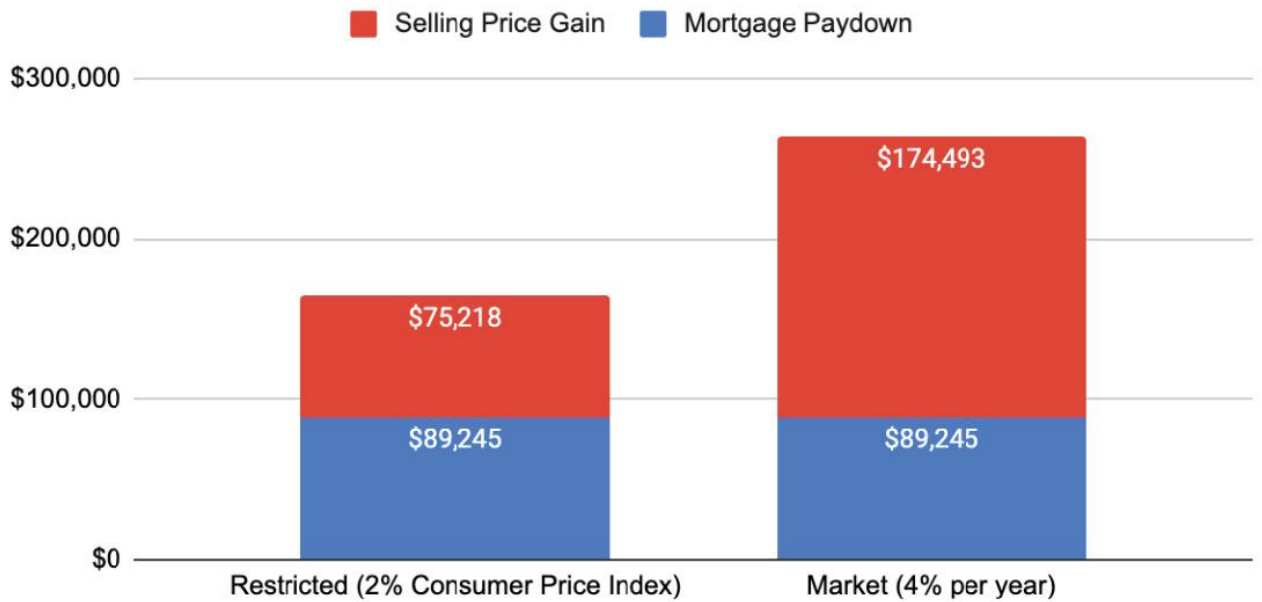


**Equity-Share Difference: Affordable versus Market Rate (FOR SALE)
(Two-Bedroom, Two-Bath Units)**

After 5-Years



After 10-Years



Appendix D: Hawai'i Three-Year Taxable Bonds

TABLE OF CONTENTS

Hawaii Housing Authority
Hawaii Housing Finance Authority, Mortgage Revenue Bonds, Series 2021 (3-Year)

<i>Report</i>	<i>Page</i>
Sources and Uses of Funds	1
Bond Summary Statistics	2
Bond Pricing	3
Bond Debt Service	4
Bond Solution	5
Net Debt Service	6

SOURCES AND USES OF FUNDS

Hawaii Housing Authority
Hawaii Housing Finance Authority, Mortgage Revenue Bonds, Series 2021 (3-Year)

Sources:

Bond Proceeds:	
Par Amount	50,000,000.00
	50,000,000.00

Uses:

Project Fund Deposits:	
Project Fund	44,883,811.81
Other Fund Deposits:	
Capitalized Interest Fund	4,116,188.19
Delivery Date Expenses:	
Cost of Issuance	500,000.00
Underwriter's Discount	500,000.00
	1,000,000.00
	50,000,000.00

Notes:

Cost of Issuance includes market study, appraisal, Financial Advisor, Bond Counsel, Disclosure Counsel, Issuer Fees, HOA Counsel, Trustee, Environmental Assessment, Construction Manager Consultant
30 months of capitalized interest
2023 bullet maturity

BOND SUMMARY STATISTICS

**Hawaii Housing Authority
Hawaii Housing Finance Authority, Mortgage Revenue Bonds, Series 2021 (3-Year)**

Dated Date	12/16/2020
Delivery Date	12/16/2020
Last Maturity	12/01/2023
Arbitrage Yield	3.470403%
True Interest Cost (TIC)	3.831217%
Net Interest Cost (NIC)	3.808028%
All-In TIC	4.196439%
Average Coupon	3.470000%
Average Life (years)	2.958
Duration of Issue (years)	2.836
Par Amount	50,000,000.00
Bond Proceeds	50,000,000.00
Total Interest	5,132,708.33
Net Interest	5,632,708.33
Total Debt Service	55,132,708.33
Maximum Annual Debt Service	51,735,000.00
Average Annual Debt Service	18,636,408.45
Underwriter's Fees (per \$1000)	
Average Takedown	
Other Fee	10.000000
Total Underwriter's Discount	10.000000
Bid Price	99.000000

<i>Bond Component</i>	<i>Par Value</i>	<i>Price</i>	<i>Average Coupon</i>	<i>Average Life</i>
Bond Component	50,000,000.00	100.000	3.470%	2.958
	50,000,000.00			2.958

	TIC	All-In TIC	Arbitrage Yield
Par Value	50,000,000.00	50,000,000.00	50,000,000.00
+ Accrued Interest			
+ Premium (Discount)			
- Underwriter's Discount	-500,000.00	-500,000.00	
- Cost of Issuance Expense		-500,000.00	
- Other Amounts			
Target Value	49,500,000.00	49,000,000.00	50,000,000.00
Target Date	12/16/2020	12/16/2020	12/16/2020
Yield	3.831217%	4.196439%	3.470403%

BOND PRICING

**Hawaii Housing Authority
Hawaii Housing Finance Authority, Mortgage Revenue Bonds, Series 2021 (3-Year)**

<i>Bond Component</i>	<i>Maturity Date</i>	<i>Amount</i>	<i>Rate</i>	<i>Yield</i>	<i>Price</i>
Bond Component:	12/01/2023	50,000,000	3.470%	3.470%	100.000
		50,000,000			

Dated Date	12/16/2020		
Delivery Date	12/16/2020		
First Coupon	06/01/2021		
Par Amount	50,000,000.00		
Original Issue Discount			
Production	50,000,000.00	100.000000%	
Underwriter's Discount	-500,000.00	-1.000000%	
Purchase Price	49,500,000.00	99.000000%	
Accrued Interest			
Net Proceeds	49,500,000.00		

BOND DEBT SERVICE

Hawaii Housing Authority
 Hawaii Housing Finance Authority, Mortgage Revenue Bonds, Series 2021 (3-Year)

<i>Period Ending</i>	<i>Principal</i>	<i>Coupon</i>	<i>Interest</i>	<i>Debt Service</i>
12/01/2021			1,662,708.33	1,662,708.33
12/01/2022			1,735,000.00	1,735,000.00
12/01/2023	50,000,000	3.470%	1,735,000.00	51,735,000.00
	50,000,000		5,132,708.33	55,132,708.33

BOND SOLUTION

Hawaii Housing Authority
Hawaii Housing Finance Authority, Mortgage Revenue Bonds, Series 2021 (3-Year)

<i>Period Ending</i>	<i>Proposed Principal</i>	<i>Proposed Debt Service</i>	<i>Total Adj Debt Service</i>
12/01/2021		1,662,708	1,662,708
12/01/2022		1,735,000	1,735,000
12/01/2023	50,000,000	51,735,000	51,735,000
	50,000,000	55,132,708	55,132,708

NET DEBT SERVICE

Hawaii Housing Authority
 Hawaii Housing Finance Authority, Mortgage Revenue Bonds, Series 2021 (3-Year)

<i>Period Ending</i>	<i>Total Debt Service</i>	<i>Capitalized Interest Fund</i>	<i>Net Debt Service</i>
12/01/2021	1,662,708.33	1,662,708.33	
12/01/2022	1,735,000.00	1,735,000.00	
12/01/2023	51,735,000.00	934,972.22	50,800,027.78
	55,132,708.33	4,332,680.55	50,800,027.78

Mid-Rise / High-Rise Building on 1.5 Acres - With Parking					
Type	# Homes	Area (gross sq sf per home)	Total Sq Ft	Parking Stalls	Site Sq Ft
2 Bedroom / 2 Bath Unit	150	830	124,500	120	65,340

Project Costs

	Basis	Explanation	Cost	Per Home	Per Sq Ft
Due Diligence, Entitlements, Etc.	Estimate	Reduced since State will complete a portion	\$250,000	\$1,667	\$2
Environmental Assessment	Not Applicable	State conducts analysis			
Off-Site Infrastructure	\$3,000	Part of District Wide Plan (\$3000 per home estimate)	\$450,000	\$3,000	
Land and Closing Costs/Commissions	Not Applicable	State/County contributes land			
On-Site Infrastructure, Site Prep, Etc (per site sq	\$10	Recent HI pro formas	\$653,400	\$4,356	\$5
Vertical Construction GMP (per bldg sq ft)	\$350	Input from HI developer contractors	\$43,575,000	\$290,500	\$350
Parking Structure (per stall)	\$35,000	Traditional Parking Structure	\$4,200,000	\$28,000	\$34
Hard Cost Contingency	5%	Average contingency for LIHTC and other projects	\$2,388,750	\$15,925	\$19
Permits and Fees	Estimate	Reduction or exemption for most fees	\$510,000	\$3,400	\$4
Design and Engineering	4% of hard costs	Work with general/subs from start; standardization	\$2,006,550	\$13,377	\$16
Developer Fee (5%) includes overhead	5% of subtotal	Less than typical due to lower risk and State financing	\$2,898,422	\$19,323	\$23
Construction Management and Inspection	2% of hard costs	Fee seen in other pro-formas	\$1,003,275	\$6,689	\$8
Taxes	Exempt	GET, RPT, and other tax exemptions			
Legal	set fee per project	Using State lawyers/consultants where possible	\$200,000	\$1,333	\$2
Insurance	1% of hard costs	Lower premiums if State supports/guarantees	\$501,638	\$3,344	\$4
Homebuyer Preparation and Pre-Sales	Set Fee per unit	High demand; Developer non-profit for pipeline	\$750,000	\$5,000	\$6
Construction Loan Origination Fee	1.5% of funding	Recent HI pro formas	\$677,211	\$4,515	\$5
Construction Interest- 100%	4% of hard costs	Low-Cost Financing through Revenue Bonds	\$802,620	\$5,351	\$6
Subtotal			\$60,866,865	\$405,779	\$489
Additional Contingency	3% of subtotal		\$1,826,006	\$12,173	\$15
TOTAL COST			\$62,692,871	\$417,952	\$504

Appendix E:

ASSEMBLY BILL**No. 387**

**Introduced by Assembly Member Lee
(Coauthor: Assembly Member Wicks)**

February 2, 2021

An act relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 387, as introduced, Lee. Social Housing Act of 2021.

Existing law establishes the Department of Housing and Community Development and sets forth its powers and duties. Existing law establishes various programs providing assistance for, among other things, emergency housing, multifamily housing, farmworker housing, homeownership for very low and low-income households, and downpayment assistance for first-time homebuyers.

This bill would declare the intent of the Legislature to subsequently amend this bill to include provisions that would enact the Social Housing Act of 2021 to establish the California Housing Authority for the purpose of developing mixed-income rental and limited equity homeownership housing and mixed-use developments to address the shortage of affordable homes for low and moderate-income households.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. It is the intent of the Legislature to subsequently
- 2 amend this measure to include provisions that would enact the
- 3 Social Housing Act of 2021 to establish the California Housing

AB 387

— 2 —

- 1 Authority for the purpose of developing mixed-income rental and
- 2 limited equity homeownership housing and mixed-use
- 3 developments to address the shortage of affordable homes for low
- 4 and moderate-income households.

O



SUPPLEMENTAL AGENDA MATERIAL

For Supplemental Packet 2

Meeting Date: 2/23/21

Item Number:

Item Description: Resolution Recognizing Housing as Human Right; Referring City Manager to Study Financial Feasibility of Municipal Housing Development Pilot Program with Cooperative, Nonprofit, and Public Ownership Models, Administered as Automatic Stabilizers to Guarantee Adequate Housing.

Submitted by: Councilmember Taplin

Amendment would make the following additions to the referral:

- Adding co-sponsor Mayor Arreguín
- Correcting typo on referral date
- Adding ABAG to recommendation for partnering agencies
- Adding AB-387 as reference and attachment
- Adding link for footnote 38
- Non-substantive editorial revisions



ACTION CALENDAR

DATE: 2/23/21~~0~~

To: Honorable Mayor and Members of the City Council

From: Councilmember Terry Taplin, [Mayor Jesse Arreguin \(co-sponsor\)](#)

Subject: Resolution Recognizing Housing as Human Right; Referring City Manager to Study Financial Feasibility of Municipal Housing Development Pilot Program with Cooperative, Nonprofit, and Public Ownership Models, Administered as Automatic Stabilizers to Guarantee Adequate Housing.

RECOMMENDATION

Refer the City Manager's office to study the financial feasibility of a municipal housing development pilot program administering automatic stabilizers to guarantee adequate housing security in Berkeley, with regular community input and periodic monitoring of socioeconomic indicators. Pilot program feasibility study shall include, but not be limited to:

1. Feasibility study of public lands suitable mixed-income transit-oriented housing development identified in 2017 Analysis of City-Owned Lands and zoning changes needed for affordable housing at listed sites to address all income categories in upcoming Regional Housing Needs Allocation (RHNA) cycle;
2. Pilot program to establish a Reparative Justice Revolving Loan Fund with affirmative racial justice and anti-displacement goals, providing low-interest loans for tenants, nonprofits, limited-equity co-operatives, and community land trusts to acquire [real property](#), develop, and/or maintain [mixed-income and](#) permanently affordable housing.
3. Pilot program to establish publicly available, user-friendly data dashboard monitoring Housing Justice Indicators in the city including, but not limited to, (a) health and safety standards, (b) affordability, (c) stability, and (d) discrimination and disparate impacts under US Department of Housing and Urban Development's Affirmatively Furthering Fair Housing (AFFH) rule; aligning Indicators with thresholds for corrective actions including land-use policy review and fiscal analysis.
4. State and regional partnerships with the California Department of Housing and Community Development, the Metropolitan Transportation Commission ([MTC](#)) and [Association of Bay Area Governments \(ABAG\)](#), UC Berkeley, and Bay Area Rapid Transit to develop fiscally resilient mixed-income housing and community

reinvestment through land held in public trust and/or limited-equity cooperatives and community land trusts.

4-

BACKGROUND

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Guaranteeing Adequate Housing: Global and Local Comparison

International law has recognized a right to adequate housing since the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Economic, Social and Cultural Rights, establishing freedoms and entitlements that include security of tenure, privacy, affordability, freedom of movement and non-discriminatory access.¹ By definition, the City of Berkeley has not affirmed this right for at least 1,000 homeless residents, with 813 unsheltered according to the 2019 Homeless Point-in-Time Count in Alameda County.² To obtain secure homeownership, the city's December 2020 median home price of \$1.39 million would require an income over three times as high as Berkeley's 2018 median household income of \$80,000.³ Meanwhile, the state of California leads the nation in its share of the homeless population⁴; over half the state's renters and a third of its homeowners are excessively cost-burdened, paying over 30% of their income for housing; and more than two-thirds of Californians facing excessive housing costs are people of color.⁵ According to the California Budget & Policy Center, "Poor housing quality, living in a low-income neighborhood, overcrowding, moving frequently, and homelessness are all associated with adverse health outcomes."⁶

In urban areas throughout the world, other nations with lower rates of homelessness and housing insecurity provide adequate housing for their citizens through various policies that address housing as public infrastructure. Housing systems are administered in varying degrees of "decommodification,"⁷ ensuring a minimum standard of living through the welfare state above what individuals can obtain through the private market. Different governments approach decommodification of housing through

¹ Office of the United Nations High Commissioner for Human Rights. (2009). *Fact Sheet No. 21: The Right to Adequate Housing. (Rev. 1)*. United Nations: Geneva. Retrieved from

https://www.ohchr.org/documents/publications/fs21_rev_1_housing_en.pdf

² https://everyonehome.org/wp-content/uploads/2019/07/ExecutiveSummary_Alameda2019-1.pdf

³ <https://www.zillow.com/berkeley-ca/home-values/>

⁴ Passy, J. (2019). Nearly half of the U.S.'s homeless population live in one state: California. *MarketWatch*. Retrieved from <https://www.marketwatch.com/story/this-state-is-home-to-nearly-half-of-all-people-living-on-the-streets-in-the-us-2019-09-18#>

⁵ Kimberlin, S. (2017). Californians in All Parts of the State Pay More Than They Can Afford for Housing. *California Budget & Policy Center*. Retrieved from <https://calbudgetcenter.org/resources/californians-parts-state-pay-can-afford-housing/>

⁶ Ramos-Yamamoto, A. (2019). Advancing Health Equity: How State Policymakers Can Increase Opportunities for All Californians to Be Healthy. *California Budget & Policy Center*. Retrieved from <https://calbudgetcenter.org/blog/advancing-health-equity-how-state-policymakers-can-increase-opportunities-for-all-californians-to-be-healthy/>

⁷ Esping-Andersen, G. (1990). *The Three Worlds of Welfare Capitalism*. Princeton, NJ: Princeton University Press. p. 21-23.

strategies for subsidizing the supply channel by providing low-cost housing, or the demand channel by supporting consumer purchasing power.

In two case studies, the cities of Vienna and Singapore own and operate public housing development corporations that retain some amount of land title in the common trust in order to stabilize the housing market—either by restricting ownership to leases, or encouraging low-cost rentals and developing on public land holdings. Both also retain a “reserve supply” of land and/or development rights to stabilize housing affordability through recessionary demand shocks. These cities are able to provide housing to any citizen at an affordable cost regardless of their income, effectively reinvesting revenues from higher-income households to subsidize housing for lower incomes. In Tokyo, while housing is more commodified, Japanese federal land-use policy treats housing essentially as a non-durable consumer good, prioritizing its utility as shelter over its capacity to increase financial wealth.⁸

Vienna and Singapore rank 1st and 25th on the 2019 Mercer Quality of life ranking, respectively, above any city in the United States. Vienna has held the top position for the past ten years.⁹

The United States has tended toward the extreme opposite end in the spectrum of housing commodification. Modern economic policy and property rights have treated housing primarily as means to a guarantee for growing financial asset wealth and enforce a white supremacist caste system. Housing is commodified to an extreme degree that is incompatible with material needs of the general population. Subsidies for both supply and demand channels have been historically insufficient while support for American asset wealth primarily in white communities has been more robust and resilient. This has widened the racial wealth gap between white and Black households, and ultimately proved incompatible with universal housing security.

The Great Recession of 2008 effected an abjectly cruel transfer of wealth from lower-income Black homeowners¹⁰ targeted with predatory subprime loans to private equity firms¹¹ buying up large portfolios of “distressed” properties before the economy recovered. This longstanding pattern of usury and community displacement further has further excluded people of color from the fruits of economic recovery and deepens the racial wealth gap. We risk repeating this process in the current COVID-19 depression, as renters and low-income homeowners face an unprecedented homelessness crisis

⁸ Karlinsky, S. et al. (2020). From Copenhagen to Tokyo: Learning from International Housing Delivery Systems. *SPUR Regional Strategy Briefing Paper*. Retrieved from <https://www.spur.org/publications/white-paper/2020-08-06/copenhagen-tokyo>.

⁹ Mercer. (2019). Quality of life city ranking. Retrieved from <https://mobilityexchange.mercer.com/insights/quality-of-living-rankings>

¹⁰ White, G.B. (2015). The Recession’s Racial Slant. *The Atlantic*. Retrieved from <https://www.theatlantic.com/business/archive/2015/06/black-recession-housing-race/396725/>

¹¹ Warren, E. & Fife, C. (2020). Families see a looming catastrophe. Private equity firms see dollar signs. *The Washington Post*. Retrieved from <https://www.washingtonpost.com/opinions/2020/08/06/nation-is-facing-housing-crisis-private-equity-firms-just-see-dollar-signs/>

due to job losses during the pandemic, while relatively affluent cities like Berkeley see median home prices continue to rise.

Local, state and federal governments alike have made routine practice of devaluing or outright destroying black asset wealth for the benefit of more affluent, exclusively white communities, most visibly through usurious redlining and destructive “urban renewal.”¹² Fundamentally, the government has devoted more resources in absolute terms to protecting the right to capital gains of property owners, at the expense of adequate housing and any right to basic living standards for Black people. After a brief wartime period in which public housing was conceived to sustain middle-class households U.S. public housing developments in the mid-20th century were notoriously racially segregated poverty traps located far from public services and economic opportunity, starved of operational funds and “destined to fail.”¹³

The inequities of our current housing crisis are rooted in histories of Jim Crow segregation, mortgage guarantees of the New Deal era, and deflationary policy of the late 1970s. Where neighborhoods were once segregated explicitly by racial covenants and *de jure* statutes, government mortgage guarantees sublimated this segregation into self-reinforcing actuarial assessments promulgated by the Home Owners Loan Corporation (HOLC) and Federal Housing Administration (FHA), established under President Franklin Roosevelt. This practice known as “redlining” infamously denied mortgage credit to primarily Black and Latinx neighborhoods throughout the country, giving more affluent white neighborhoods exclusive access to risk-free mortgage credit while trapping communities of color in poverty. According to UC Berkeley’s Urban Displacement Project, neighborhoods that were once redlined are now at greater risk of gentrification and displacement.¹⁴

The United States and other anglophone countries further commodified housing in order to provide welfare through asset ownership to compensate for stagnation in real purchasing power.¹⁵ In response to high inflation of the 1970s, the Federal Reserve drastically raised interest rates beginning in 1978, triggering a period of deflation that boosted asset prices while suppressing real wages and economic growth. With accompanying deregulation of the financial sector, housing became “financialized” as a special asset class attracting a rush of speculative capital, because it retained the imprimatur of government mortgage guarantees while enjoying fewer capital controls, practically guaranteeing that household asset wealth would outpace low inflation and stagnating wages.¹⁶ A growing body of research strongly suggests that financialization

¹² Baradaran, M. (2017). *The Color of Money: Black Banks and the Racial Wealth Gap*. Cambridge, MA: Harvard University Press. p. 141.

¹³ Perry-Brown, N. (2020). *How public housing was destined to fail*. Greater Greater Washington. Retrieved from <https://ggwash.org/view/78164/how-public-housing-was-destined-to-fail>

¹⁴ The Legacy of Redlining. (2018). Retrieved from <https://www.urbandisplacement.org/redlining>

¹⁵ Adkins, L. et al. (2019). Class in the 21st century: Asset inflation and the new logic of inequality. *Environment and Planning A: Economy and Space*. doi.org/10.1177/0308518X19873673

¹⁶ Feygin, Y. (2021). The Deflationary Bloc. *Phenomenal World*. Retrieved from <https://phenomenalworld.org/analysis/deflation-inflation>.

of housing has intensified business cycle volatility and deepened periodic recessions, as “consumption became more correlated with housing wealth.”¹⁷

Berkeley pioneered other methods of guaranteeing housing price inflation: single-family zoning was first established in the Elmwood and Claremont neighborhoods to sustain real estate values and exclude racial minorities. The Mason-McDuffie Company developed residential neighborhoods in Berkeley with racial covenants in property deeds preventing lease or sale to anyone of “African or Mongolian descent,” and lobbied for restrictive zoning in 1916 to protect against “disastrous effects of uncontrolled development”¹⁸—the implied “disastrous effects” being stable prices and an influx of Black and Chinese residents.

Restrictive zoning reduces multifamily development, constrains supply and enforces a high price floor on dwelling units in high-cost land ¹⁹. A 2015 study by the nonpartisan Legislative Analyst Office found that growth control policies increased home prices by 3-5%.²⁰ Correspondingly, emerging research from UC Berkeley finds evidence that new market-rate development in San Francisco lowered rents by 2% on parcels within 100 meters and reduced displacement risk for renters in that area by 17%,²¹ while a 2016 study by UC Berkeley’s Urban Displacement Project found that affordable housing has double the effect of mitigating displacement as market-rate housing.²² According to a 2001 study on homelessness in California, “rather modest improvements in the affordability of rental housing or its availability can substantially reduce the incidence of homelessness in the United States.”²³

Exclusionary zoning effectively limits where and to what extent these effects can occur, maintaining the spatial segregation of redlining after the latter practice was outlawed by the 1968 Fair Housing Act. In a study of 197 metropolitan areas in the United States, UC Merced political scientist Jessica Trounstein has found that restrictive land use policies predicted sustained racial segregation in cities between 1970 and 2006, while larger, sustained white minorities were predictive of cities’ resistance to new residential

¹⁷ Ryan-Collins, J., et al. (2017). *Rethinking the Economics of Land and Housing*. London, UK: New Economics Foundation.

¹⁸ Lory, Maya Tulip. (2013). A History of Racial Segregation, 1878–1960. *The Concord Review*. Retrieved from <http://www.schoolinfosystem.org/pdf/2014/06/04SegregationinCA24-2.pdf>

¹⁹ Murray, C. & Schuetz, J. (2019). Is California’s Apartment Market Broken? The Relationship Between Zoning, Rents, and Multifamily Development. *UC Berkeley Turner Center for Housing Innovation*. (2019).

²⁰ Legislative Analyst Office. (2015). California’s High Housing Costs: Causes and Consequences. Retrieved from <https://lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf>

²¹ Pennington, K. (2021). Does Building New Housing Cause Displacement?: The Supply and Demand Effects of Construction in San Francisco. *Working Paper*. Retrieved from https://www.dropbox.com/s/oplls6utgf7z6ih/Pennington_JMP.pdf?dl=0.

²² Zuk, M. & Chapple, K. (2016). Housing Production, Filtering and Displacement: Untangling the Relationships. *Institute of Governmental Studies Research Brief*. Berkeley, CA: UC Berkeley IGS. Retrieved from https://www.urbandisplacement.org/sites/default/files/images/udp_research_brief_052316.pdf

²³ Quigley, J.M. (2001). Homeless in America, Homeless in California. *The Review of Economics and Statistics*. 83(1): 37–51.

development.²⁴ Research from UC Berkeley's Othring and Belonging Institute finds that single-family zoning in the Bay Area is strongly correlated with high-resource, high-opportunity, and highly segregated communities.²⁵ Karen Chapple, Director of UC Berkeley's Urban Displacement Project, stated in a February 25, 2019 letter to the Berkeley City Council, "the Urban Displacement Project has established a direct connection between the neighborhood designations by the Home Owners Loan Corporation (HOLC), and 75% of today's exclusionary areas in the East Bay...Thus, this historic legacy, compounded by Berkeley's early exclusionary zoning practices, continues to shape housing opportunity and perpetuate inequities today." These inequitable distributions of access to housing and asset appreciation has historically perpetuated and remains a primary factor in country's the racial wealth gap.²⁶

The highly commodified political economy in the United States is enforced by a doctrine of strong property rights for protecting capital gains from asset inflation (colloquially referred to as "financialization" or "commodification") over rights to material well-being, perpetuating a permanent affordability crisis for most workers who did not already own their homes. This fundamental conflict of moral values and economic rights came into stark display in early 2020, when the group Moms 4 Housing occupied a vacant home in West Oakland owned by Wedgewood Inc., a private equity firm that flipped houses nationwide. In the early hours of January 14, 2020, Alameda County sheriff's deputies enforced an eviction order with guns and armored cars on display, arresting four members of the group who had previously been homeless or housing insecure. On January 20, Oakland Mayor Libby Schaaf and Governor Newsom announced a deal with Wedgewood to sell the house to the Oakland Community Land Trust, and offer first right of refusal to the land trust for its property portfolio in Oakland for permanently affordable housing.²⁷

This political value statement, backed by a real transfer of wealth and rights of secure tenure, does not need to be an *ad hoc* bartering between the sweat equity of community organizers, the bully pulpit of elected officials, and the real physical danger of tactical civil disobedience. These values can instead be operationalized as part of the baseline administration of public services. In response to the Moms 4 Housing success, the state legislature passed SB-1079 by Senator Nancy Skinner (D-Berkeley) in September of 2020, authorizing fines of from \$2,000 to \$5,000 per day on buyers of foreclosed homes left vacant for over 90 days; banning bundled sales of foreclosed houses; and giving

²⁴ Trounstein, J. (2020). *The Geography of Inequality: How Land Use Regulation Produces Segregation*. *American Political Science Review*. Cambridge: Cambridge University Press.

²⁵ Menendian, S., et al. (2020). *Single Family Zoning in the Bay Area: Characteristics of Exclusionary Communities*. *UC Berkeley Othring & Belonging Institute*. Retrieved from <https://belonging.berkeley.edu/single-family-zoning-san-francisco-bay-area>

²⁶ Darity Jr, W. et al. (2018). *What We Get Wrong About the Racial Wealth Gap*. *Samuel DuBois Cook Center on Social Equity*. Durham, NC: Duke University. Retrieved from <https://socialequity.duke.edu/wp-content/uploads/2020/01/what-we-get-wrong.pdf>

²⁷ La Ganga, M. L. (2020). *Evicted Oakland moms will get their house back after a deal with Redondo Beach company*. *Los Angeles Times*. Retrieved from <https://www.latimes.com/california/story/2020-01-20/homeless-moms-4-housing-oakland-wedgewood-properties-deal>

tenants, nonprofits, and community land trusts 45 days to match the final highest bid for the property.

Aligning public financing with more inclusive land-use regulations can offer a path to automating these sorts of progressive, reparative distributions of material well-being and housing security at a broader scale.

Automatic Stabilizers

Economists have proposed “automatic stabilizers” to respond to recessions with increased urgency since Obama Administration’s stimulus efforts following the Great Recession were hamstrung by partisan gridlock in Congress. Federal Reserve economist Claudia Sahm developed the “Sahm rule” for defining the onset of a recession with a specific threshold of sustained unemployment, and a proposal in which this rule could trigger automatic stimulus payments “to broadly support aggregate demand in a recession.”²⁸ In her testimony on January 19, 2021 at a confirmation hearing for her appointment to Treasury Secretary, former Federal Reserve chair Janet Yellen stated: “Our current system needs both updating and expansion... Designing and implementing a modern and effective system of automatic stabilizers is an important step to take now, so that we can minimize the negative impacts of any future recessions.”²⁹

Issuing stimulus payments automatically and universally to households rather than negotiating periodically in partisan politics could prevent widespread poverty among the least fortunate and also blunt a recession’s severity by sustaining consumer demand—stabilizing both material conditions for lower-income households, and consumption writ large. Analogous benchmarks can be operationalized to “stabilize” housing security in the city throughout business cycles and state planning certification periods. For example, urban planner Alain Bertaud has proposed automating updates to land-use policy as a function of land values to programmatically enforce widespread housing affordability.³⁰

President Joseph R. Biden’s 2020 campaign platform included massive increases to federal funding for public housing and the Section 8 housing voucher program.³¹ If the new presidential administration can increase housing subsidies through both supply and demand channels to more closely meet present and future needs, the City of Berkeley

²⁸ Sahm, C. (2019). Direct Stimulus Payments to Individuals. *The Hamilton Project*. Retrieved from https://www.hamiltonproject.org/assets/files/Sahm_web_20190506.pdf

²⁹ Yellen, J. (2021). Hearing to Consider the Anticipated Nomination of the Honorable Janet L. Yellen to Secretary of the Treasury. *U.S. Senate Committee on Finance*. Retrieved from <https://www.finance.senate.gov/imo/media/doc/Dr%20Janet%20Yellen%20Senate%20Finance%20Committee%20QFRs%2001%2021%202021.pdf>

³⁰ Bertaud, A. (2018). *Order Without Design: How Markets Shape Cities*. Cambridge, MA: The MIT Press.

³¹ Biden, J. (2020). The Biden Plan for Investing in our Communities Through Housing. Retrieved from <https://joebiden.com/housing/>

would have more resources to proactively ensure adequate, stable, and non-discriminatory housing is further guaranteed.

Municipal Housing Development

Mixed-income municipal housing development has distinct global variants, and is already currently being explored in the United States. In California, AB-387 also known as “the Social Housing Act of 2021” by Assemblymembers Lee (D-San Jose) and Wicks (D-Oakland), sets forth the intent to “establish the California Housing Authority for the purpose of developing mixed-income rental and limited equity homeownership housing and mixed-use developments to address the shortage of affordable homes for low and moderate-income households.” (See Attachment 3.) Importantly, state revenue bonds for infrastructure projects do not require voter approval.

The state legislature of Hawaii is considering a state-led housing development proposal known as ALOHA Homes, modeled after Singapore’s Housing and Development Board (HDB). SB1 (2019) by State Senator Stanley Chang (D-Oahu) would establish a program within the state’s housing finance agency to use existing and newly-acquired state lands near public transit to develop high-density housing. (See Attachment 2.) The state would sell housing units at-cost to residents on 99-year leases. The agency would establish a dedicated revolving fund to provide low-cost loans to support long-term affordability, property maintenance and development. By leasing public land for development while retaining title in the public trust, public agencies can ensure that a proportionate degree of real estate value increased by public investment can be recaptured for the public benefit.

In Singapore, the resale market for 99-year home leases are regulated to ensure long-term affordability with assistance to help households exchange their leasehold equity for larger or smaller units throughout the lease term to adapt to changing needs as family members age. Over 80% of Singaporeans live in HDB housing developments.

In Austria, over 60% of Vienna’s residents live in social housing, consisting of roughly 200,000 municipally-owned housing units and 220,000 nonprofit-owned units. For non-citizens, a minimum of five years’ residency is required to apply for a social housing unit, and subsidized units must be for a household’s primary residence. Public investments for construction, property management, and preservation of the social housing stock are subsidized by a federal income tax and the state’s general fund, as well as a revolving loan fund managed by the Vienna Housing Fund. The Vienna Housing Fund operates as a community-owned nonprofit land bank, established by Social Democrats in the 1920s with large investments in public land in response to a housing shortage following the First World War. The self-sustaining nonprofit entity acquires existing housing or develops new projects with the aim of long-term affordability.

The Vienna Housing Fund is a major entity developing thousands of new housing units every year, while buying and selling real property on the open market. It maintains a

two-year reserve of land to stabilize its property portfolio throughout real estate market cycles. The Vienna Housing Fund collaborates with the municipal government and nonprofit housing developers to provide affordable housing on public land via low-interest loans for new developments³², with loan payments reinvested into a revolving loan fund for future loans and subsidies.

Vienna also indirectly subsidizes private development by arranging land transfers and low-interest loans with private firms through a competitive bidding process, in which a jury panel evaluates applicants' projects based on criteria for design, sustainability, and affordability. The city rents a portion of the units at affordable rents to lower-income residents, but means-testing is only applied at the initial move-in. Effectively, Vienna's social housing program subsidizes affordable affordable housing through the supply channel rather than the demand channel (i.e. by subsidizing tenants themselves). Unlike Singapore, the city of Vienna's land-use planning promotes rentals over private homeownership, but similarly favors community longevity, recreational facilities, and supportive services. In 2016, the Social Democratic Party of Austria introduced the "wohnbauoffensive"³³—an initiative to streamline construction and permitting to increase housing production by 30%.

There are also examples in present-day California of revolving funds for community land reinvestment that sustain communities across the state. In Palm Springs, the Agua Caliente Band of Cahuilla Indians own and lease land to nearly 20,000 people and businesses in a non-contiguous checkerboard arrangement, with up to 99-year leases for residential development.³⁴ At a larger scale, University of California and California State University systems develop and manage large portfolios of student housing across the state. The universities own tens of thousands of rental beds and dwelling units in urban, suburban and rural jurisdictions. Each UC campus prepares and implements a capital management plan to develop property for rental housing—plans which include revolving reinvestments in their existing portfolio.³⁵ In Berkeley and neighboring jurisdictions, BART is planning for housing development on BART property by leasing land to private and nonprofit developers, using the land-lease model as leverage to achieve the agency's goal of 35% Below Market-Rate housing

³² Wohnpartner Wien. (2019). Vienna Social Housing – Tools of Success. Retrieved from https://socialhousing.wien/fileadmin/user_upload/20190325_Einlageblaetter_Gesamt_Englisch.pdf

³³ Stadt Wien Press service. (2016). "More, faster, cheaper and sustainable" – the City of Vienna is launching an additional housing offensive. Retrieved from <https://www.wien.gv.at/presse/2016/02/17/mehr-schneller-preiswert-und-nachhaltig-stadt-wien-startet-eine-zusaetzliche-wohnbau-offensive>

³⁴ Murphy, R. (2016). Half of Palm Springs sits on rented land. What happens if the leases end? *Desert Sun*. Retrieved from <https://www.desertsun.com/story/money/real-estate/2016/09/22/palm-springs-agua-caliente-land-lease/87944598/>.

³⁵ University of California. (2019). Capital Financial Plan 2019-25. Retrieved from <https://ucop.edu/capital-planning/files/capital/201925/2019-25-cfp.pdf>

systemwide.³⁶ The Berkeley Unified School District is also exploring the potential to develop workforce housing on its properties.³⁷

In 2017, an analysis of city-owned property in Berkeley by the Department of Health, Housing and Community Services found several sites such as the Elmwood Parking Lot, which “would need to be rezoned to support multifamily housing development at a large enough scale to make affordable housing feasible.”³⁸ Other properties identified would require zoning changes and further study at a minimum.

RATIONALE FOR RECOMMENDATION

Public housing development corporations in California could make both short-term and permanent impacts on housing affordability, construction sector employment, and other equity-based outcomes, while operating under standard land-use planning processes already being streamlined under state law.

Recent state legislation such as SB-35 (2017) and SB-330 (2019) already reform municipal land-use authority to support housing production within measurable benchmarks, limiting local discretion in permitting and zoning according to standards set by the Regional Housing Need Allocation (RHNA) process, the Housing Accountability Act (HAA), and the state Housing Element process.³⁹ The state legislature has also moved to increase affordable housing financing for municipalities by establishing the Bay Area Housing Finance Authority (BAHFA) in 2019; and in Senate Constitutional Amendment 2 (2021) by Sen. Ben Allen (D-Santa Monica), proposing removal of the state constitutional requirement for local referendum approval “low-rent” housing with more than 50% of its funding from the local jurisdiction. State law under AB-686 (2018) also requires cities to meet the goals of the Obama Administration’s Affirmatively Furthering Fair Housing rule under the 1968 Fair Housing Act in their housing elements and general plans. However, this policy framework is ultimately enforced by private right of action, on both sides of the issue: unsuccessful litigation attempted to overturn state-compliant by-right permits for housing development in Cupertino⁴⁰, and nonprofit advocates successfully sued the cities of Pleasanton⁴¹ after it failed to produce a state-

³⁶ BART Board of Directors. (2016). Transit-Oriented Development Performance Measures and Targets. Retrieved from https://www.bart.gov/sites/default/files/docs/B-%20TOD%20Performance%20Targets%202040%20Adopted%2012-1-16_0.pdf

³⁷ Doocy, S. (2018). School District Employee Housing in California. *UC Berkeley Terner Center for Housing Innovation*. Retrieved from <https://ternercenter.berkeley.edu/research-and-policy/school-district-employee-housing-in-california/>

³⁸ https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/2019-04-25%20Land%20Use%20Agenda%20for%20Posting.pdf

³⁹ Elmendorf, C. et al. (2020). Superintending Local Constraints on Housing Development: How California Can Do It Better. *UC Davis Legal Studies Research Paper Series*.

⁴⁰ Friends of Cupertino v. City of Cupertino. No. 18CV330190. Superior Court of California, County of Santa Clara. (2020).

⁴¹ Urban Habitat Program v. City of Pleasanton. No. A118327. Court of Appeal, First District, Division 2, California. (2008).

compliant Housing Element. But rather than a positive guarantee to universal housing security, enforcement through private right of action puts the onus on the coordination of constituencies by definition with less housing security to assert their diffuse legal rights through state and local jurisdictions.

This adversarial legal environment is inconsistent with a public commitment to universal fair housing. Liability does not ultimately hinge on the public sector's ability to guarantee adequate housing. To the extent that a municipal government chooses to take on such "liabilities" as a moral obligation, it must also devote its real assets to meet this obligation and balance the moral ledger. Local governments can coordinate and amplify their resources to improve housing outcomes through more inclusive land-use regulations, and an expanded authority as lender and lessor of last resort.

However, the United Nations Office of the High Commissioner for Human Rights (OHCHR) specifies that the right to adequate housing "clearly does not oblige the Government to construct a nation's entire housing stock."⁴²

Rather, the right to adequate housing covers measures that are needed to prevent homelessness, prohibit forced evictions, address discrimination, focus on the most vulnerable and marginalized groups, ensure security of tenure to all, and guarantee that everyone's housing is adequate. These measures can require intervention from the Government at various levels: legislative, administrative, policy or spending priorities. It can be implemented through an enabling approach to shelter where the Government, rather than playing the role of housing provider, becomes the facilitator of the actions of all participants in the production and improvement of shelter.

To that end, the City of Berkeley could proactively affirm housing as a human right according to measurable parameters of cost-burden and non-discriminatory access, as well as broader historical data and actionable moral commitments to restorative justice. Rather than *retroactive* enforcement of state housing mandates through private right of action, the City's administrative departments should continuously monitor the availability, adequacy, and equitable distribution of housing as publicly available Housing Justice Indicators, reevaluating policy tools including public investment and planning and development goals as needed to *proactively* guarantee housing as a basic right. A publicly available, user-friendly data dashboard of Housing Justice Indicators could maintain accountability of the City's civic institutions in meeting this mandate.

Vienna's 2016 "wohnbauoffensive" reforms, considered analogously with the Berkeley City Council's 2019 referral for a Missing Middle Report⁴³, are both essentially *ad hoc* responses to an immediate crisis, recognizing that inequitable land-use planning should be reformed to actively promote economic justice. Regular administrative oversight could be implemented to more quickly intervene in these inequities and further prevent

⁴² See footnote 1.

⁴³ https://www.cityofberkeley.info/Clerk/City_Council/2019/04_Apr/Documents/2019-04-23_Item_32_Missing_Middle_Report.aspx

material harm to vulnerable communities. The City Manager's office has already recommended a strategic focus on streamlining and reforming land use policy to enable a greater scale of housing production in its 1000 Person Plan to Address Homelessness.⁴⁴

4. Continue to implement changes to Berkeley's Land Use, Zoning, and Development Review Requirements for new housing with an eye towards alleviating homelessness. If present economic trends continue, the pace with which new housing is currently being built in Berkeley will likely not allow for a declining annual homeless population. Berkeley should continue to streamline development approval processes and reform local policies to help increase the overall supply of housing available, including affordable housing mandated by inclusionary policies.

The calibration of housing stability policy should continuously operate within transparent parameters of community engagement and historical data, so that a pilot program can begin from the outset with a concretely-defined goal of affirmatively redressing racial inequities in wealth, opportunity, health and educational outcomes. State and regional entities such as the state's Tax Credit Allocation Committee (TCAC), the Metropolitan Transportation Commission (MTC), and UC Berkeley scholars already maintain active measures of economic opportunity, racial segregation, transit access, environmental health, and other positive outcomes for developing policy recommendations.

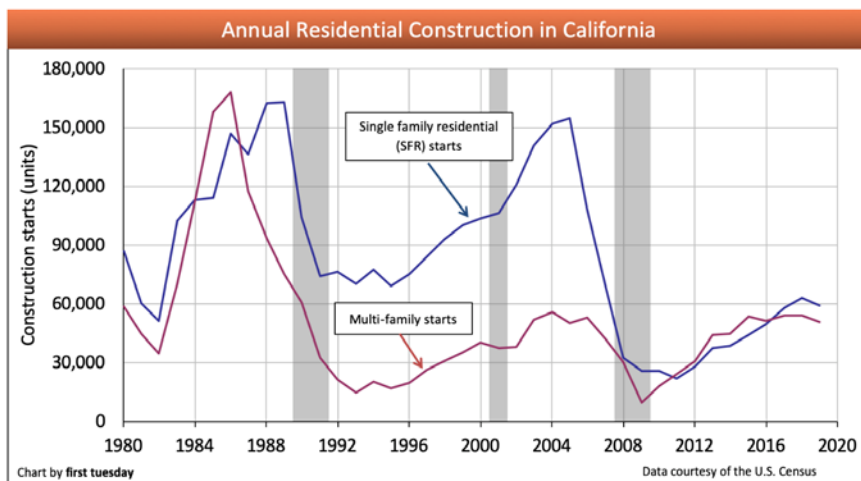
An "automatic stabilizer" paradigm with (a) a revolving land equity fund financing Reparative Housing Justice goals, and (b) periodic empirical review of land-use policy by the Planning Department, could quickly quantify unmet needs for housing security. Developing and implementing responses to needs in the community codified and expeditious administrative process, just as automated stimulus payments could quickly reduce material deprivation during business cycle downturns. Unlike stimulus payments, however, restorative housing justice should be a permanent goal of city service administration.

Public development entities enjoy the benefit of longer-term financial horizons that help produce more stable housing outcomes. Unhindered by the fiduciary duty to produce short-term positive returns for private investors, public housing development agencies are not obligated to cease production and layoff construction workers during recessions.

The private market has been incapable of meeting the need for shelter in California across business cycles. Private capital bids up the costs of inputs during upcycles, but financing dries up during recessions as investors flee the volatile market. Recovery in the construction sector is sluggish, but demand for shelter does not disappear.

⁴⁴ https://www.cityofberkeley.info/Clerk/City_Council/2019/02_Feb/Documents/2019-02-26_Item_20_Referral_Response_1000_Person_Plan.aspx

Construction rates collapsed after the Great Recession of 2008, but as of 2020, they had barely recovered to rates of the previous recession of 2001.⁴⁵



In a crudely Keynesian paradigm, these downturns are precisely when the public sector should step in to compensate with sustain housing development to meet the need for shelter, sustain employment, and boost aggregate demand. Unfortunately, California's housing market volatility limits the state and local government's resources when they are needed the most. For instance, California's construction workforce in 2017 lagged below its historic peak in 2006, equivalent to the size of the workforce at start of the economic recovery in 2011.⁴⁶ In contrast, Vienna's social housing program also stabilizes employment in the region by employing 20,000 workers in the building trades.

Compounding this structural deficit, state and local funding sources for affordable housing are pro-cyclical and likelier to see a decline in revenues during economic downturns. Berkeley's inclusionary zoning and Affordable Housing Mitigation Fee produce Below Market-Rate homes or revenues for the Housing Trust Fund contingent on "value capture" policies that rely on the willingness of private capital to invest in the value. The Low Income Housing Tax Credit program (LIHTC), the linchpin of affordable housing financing in the United States, relies on the incentive of corporate tax liability by providing tax credits to large corporations and financial institutions in exchange for equity in low-income housing projects within a finite time horizon. Reductions in

⁴⁵ The slowing trend in California construction costs. (2019). first tuesday Journal. Retrieved from <https://journal.firsttuesday.us/the-rising-trend-in-california-construction-starts/17939/>

⁴⁶ Littlehale, S. (2019). Rebuilding California: The Golden State's Housing Workforce Reckoning. *Smart Cities Prevail*. Retrieved from https://www.smartcitiesprevail.org/wp-content/uploads/2019/01/SCP_HousingReport.0118_2.pdf

corporate profits during recessions and cuts to the corporate tax rate have both reduced the value of these tax credits periodically.⁴⁷

At the same time, highly leveraged private equity firms that specialize in liquidation of large portfolios or “asset stripping” benefit from volatile recessions that displace lower-income homeowners primarily in communities of color with less liquid capital to sustain riskier mortgage debt. Poorer households, primarily Black and Latinx residents, are more likely to end up trapped in cycles of poverty and homelessness, suffering for the benefit of wealthier and whiter financial institutions.

The Vienna Housing Fund offers a model for building wealth in the local community and affirmatively redressing the historic inequities intensified by cyclical volatility. By providing a revolving low-interest loan fund for tenants, nonprofits, limited equity cooperatives and Community Land Trusts, the City could plan for optimizing housing decommodification to meet concrete benchmarks in material outcomes: eliminating involuntary displacement, repairing wealth inequities in communities of color, and maintaining market price parity with regional incomes.

Rather than bearing 100% of project costs independently, a municipal fund could seek to partner with state and regional mechanisms for land value redistribution, such as Transit Value Capture Districts (TVCDs)⁴⁸ or Enhanced Infrastructure Finance Districts (EIFDs), which have been studied or proposed for financing affordable housing and other capital costs at BART stations.

As a countercyclical policy to sustain affordable housing financing across market cycles, a municipal revolving loan fund could provide loan guarantees or bridge loans to LIHTC developments to ensure their completion. As a reparative anti-displacement policy, a revolving loan fund could reinforce the city’s Local Preference policy for affordable housing included in the Adeline Corridor Specific Plan by providing favorable loan terms to community land trusts, tenant acquisitions, and nonprofit affordable housing developments that prioritize the return of formerly displaced residents from low-income communities of color. The loan fund can also seek matching funds from the newly-established Bay Area Housing Finance Authority (BAHFA), in direct partnership with the MTC and Association of Bay Area Governments (ABAG). In order to provide more housing security across the economic spectrum, a municipal revolving loan fund can consider more generous loan renegotiation terms or loan forgiveness, including the option of paying loans back to the fund in equity stakes.

The City of Berkeley is fortunate to not find itself in the same conditions as a bombed-out postwar Vienna, which made the consolidation of a large public land portfolio for the

⁴⁷ Scally, C. et al. (2018). The Low-Income Housing Tax Credits: Past Achievements, Future Challenges. *Urban Institute*. Retrieved from https://www.urban.org/sites/default/files/publication/98761/lihtc_past_achievements_future_challenges_finalize_1.pdf.

⁴⁸ Sagehorn, D. & Hawn, J. (2020). Transit Value Capture for California. *Common Ground California*. Retrieved from http://cacommonground.org/pdf/2020-12_Transit_Value_Capture.pdf

Vienna Housing Fund tragically inexpensive. However, Berkeley is blessed with a robust and growing tax base. Initially, such a loan fund may start small, with seed capital from the city's Small Sites Program and/or bootstrapped with Berkeley's existing real property portfolio, but over time it would be able to draw upon its growing portfolio of assets to self-finance operating costs while investing in new affordable housing projects.⁴⁹ A budget referral should only proceed following a feasibility study to identify policy and funding goals for monitoring and addressing Housing Justice Indicators.

Homelessness and housing insecurity are the result of deliberate but diffuse policy choices. The feasibility of permanently guaranteeing housing security in Berkeley remains unknown, but our community nevertheless recognizes the imperative to make different policy choices to that end. The City of Berkeley can build on the precedents and procedures established in state law, affirm housing as a human right, and enforce concrete goals toward reparative housing justice as a permanent mandate of our municipal public service.

ALTERNATIVES CONSIDERED

The Berkeley City Council and the city's voters have taken clear steps to invest in housing security and affordable housing production. To the extent that the City is already developing and implementing affordable housing policies, the feasibility of these policy tools would not be mutually exclusive with other public investments and reforms currently underway.

ENVIRONMENTAL IMPACTS

Mixed-income housing development adjacent to frequent, reliable public transit and walkable street infrastructure can further the goals of the City's 2017 Climate Action Plan Update⁵⁰, which include:

Goal 4. Increase compact development patterns (especially along transit corridors)

Encouraging sustainable modes of travel such as cycling, walking, and public transit, is fundamentally tied to compact development patterns and the mix of land uses near transit hubs and jobs. For example, evidence shows that people who live near transit drive between 20% and 40% less than those who do not.

The City's 2018 Greenhouse Gas Inventory found that transportation accounted for 60% of Berkeley's greenhouse gas (GHG) emissions.⁵¹ According to a 2018 Progress Report

⁴⁹ Baxamusa, M. (2020). A New Model for Housing Finance: Public and Private Sectors Working Together to Build Affordability. *Routledge Focus*. p. 123.

⁵⁰ https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/2017-12-07%20WS%20Item%2001%20Climate%20Action%20Plan%20Update.pdf

⁵¹ https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-21_Special_Item_05_Climate_Action_Plan_pdf.aspx

from the California Air Resources Board: “Even if the share of new car sales that are [zero-emission electric vehicles] grows nearly 10-fold from today, California would still need to reduce VMT [Vehicle Miles Traveled] per capita 25 percent to achieve the necessary reductions for 2030.”⁵² A 2019 report by the United Nations’ International Resource Panel (IRP) emphasizes curbing suburban sprawl as a strategy to curb GHG emissions in urban areas that can also enhance the material outcomes provided by public services: “Optimizing densities and reducing sprawl also improves the sharing of resources (e.g. shared walls and roofs in apartment blocks) and reduces the distances that need to be covered by infrastructure networks (e.g. shorter pipes), allowing for savings in the materials and costs associated with service provision.”⁵³

Critically, though, economic integration is vital to promoting an absolute reduction in per capita VMT. Mixed-income development providing transit-accessible housing security across the entire economic spectrum should maximize the potential for both reducing the carbon footprints of affluent, higher-emission households, and preventing the displacement of poorer, lower-emission households to higher-VMT suburban areas with larger per capita carbon footprints.

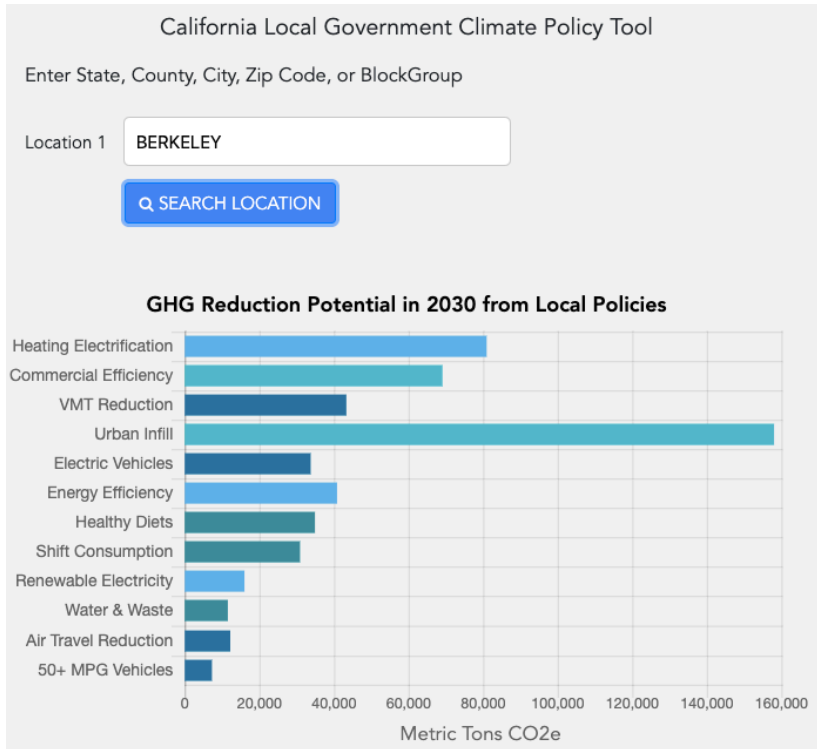
While research from UC Berkeley⁵⁴ has found that wealthier households see larger emissions reductions from living in denser urban areas, a recent study of displacement and gentrification in Seattle also found significant increases in GHG emissions when lower-income households were displaced to outer suburbs with higher VMT land-use patterns and longer commutes.⁵⁵ Notably, the same UC Berkeley study evaluates emission reduction potentials of a suite of municipal public policies in 700 California cities. Using the modeling from this study, the California Local Government Policy Tool from the Cool Climate Network shows that urban infill development offers the greatest potential for mitigating Berkeley’s GHG emissions.

⁵² https://ww2.arb.ca.gov/sites/default/files/2018-11/Final2018Report_SB150_112618_02_Report.pdf

⁵³ United Nations IRP. (2019). *The Weight of Cities: Resource Requirements of Future Urbanization*. Retrieved from <https://www.resourcepanel.org/reports/weight-cities>

⁵⁴ Jones et al. (2018). Carbon Footprint Planning: Quantifying Local and State Mitigation Opportunities for 700 California Cities. *Urban Planning*, 3(2). DOI: 10.17645/up.v3i2.1218

⁵⁵ Rice et al. (2020). Contradictions of the Climate-Friendly City: New Perspectives on Eco-Gentrification and Housing Justice. *International Journal of Urban and Regional Research*, 44(1):145-165.



FISCAL IMPACTS

TBD.—Staff time on financial feasibility study. The City Manager’s office has projected a \$12.7 million annual cost to achieve strategic goals enumerated in the 1000 Person Plan to End Homelessness by 2023, but the costs of reforming land use to affirmatively further housing justice remains unquantified. Because such a pilot program would aim to include a broader range of income levels and larger projects, project costs may ultimately not be comparable to the Small Sites Program. Feasibility study should aim for a long-term self-sustaining fiscal structure for Reparative Justice Revolving Loan Fund and identify hard costs of gathering, monitoring and planning policy directives in response to Housing Justice Indicators.

CONTACT

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ATTACHMENTS/SUPPORTING MATERIALS

1. Resolution
2. Senate Bill 1 (2019), State of Hawaii

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| [2-3. Assembly Bill 387 \(2021\), State of California](#)

A BILL FOR AN ACT

RELATING TO HOUSING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the cost and
2 availability of housing in the State are significant challenges
3 facing Hawaii residents. Although Hawaii has the tenth highest
4 median wage nationally, living expenses are two-thirds higher
5 than the rest of the nation, with the cost of housing being a
6 major contributing factor. In September 2018, the median price
7 for a single-family home on Oahu rose to \$812,500, while the
8 median price for condominiums on Oahu rose to \$428,000.
9 According to a local news report, a household would need to earn
10 almost \$160,000 annually to afford to buy a home on Oahu, making
11 homeownership out of reach for many of Hawaii's residents,
12 especially first-time buyers.

13 Because of the many barriers hindering the production of
14 new housing, such as geographic limitations, lack of major
15 infrastructure, construction costs, and government regulation,
16 the State and housing developers have not been able to produce
17 enough housing for Hawaii residents. According to a 2015 report



1 from the department of business, economic development, and
2 tourism, the projected long-run estimate of demand for total new
3 housing in Hawaii is between 64,700 to 66,000 for the 2015 to
4 2025 period. The legislature has responded through the passage
5 of various legislation. During the regular session of 2016, the
6 legislature passed a bill enacted as Act 127, Session Laws of
7 Hawaii 2016, that, among other things, establishes a goal of
8 developing or vesting the development of at least 22,500
9 affordable rental housing units ready for occupancy by the end
10 of 2026. During the regular session of 2017, the legislature
11 passed a bill enacted as Act 54, Session Laws of Hawaii 2017, to
12 expand the types of rental housing projects that can be exempt
13 from general excise tax, thereby encouraging the development of
14 rental housing projects targeted for occupancy by households at
15 or below the one hundred forty per cent and eighty per cent area
16 median income levels. During the regular session of 2018, the
17 legislature passed a bill enacted as Act 39, Session Laws of
18 Hawaii 2018, that, among other things, provides an estimated
19 total value of \$570,000,000 to address Hawaii's affordable
20 rental housing crisis and is expected to generate more than
21 25,000 affordable units by the year 2030.



1 Despite these efforts, the amount of new construction of
2 housing, especially for low- to middle-income families,
3 continues to be inadequate as the supply of housing remains
4 constrained while demand for housing increases. This lack of
5 supply leads to higher housing prices and rents for households
6 of all income levels, leaving all tenants with less disposable
7 income, increasing the personal stress on buyers and renters,
8 and exacerbating overcrowding and homelessness. Given these
9 consequences, the lack of affordable housing requires the
10 concentrated attention of state government at the highest level.

11 The legislature further finds that Singapore faced a
12 housing crisis in the 1940s through 1960s but was subsequently
13 able to provide nearly one million residential units for its
14 citizens. The housing and development board -- the government
15 entity responsible for the rapid increase in housing development
16 -- plans, develops, and constructs the housing units, including
17 commercial, recreational, and social amenities. The result is
18 that units built by the housing and development board house
19 eighty per cent of the resident population and that, overall,
20 ninety per cent of the resident population are owners of their
21 units. Through government loans, subsidies, and grants and the



1 use of money saved through a government-run mandatory savings
 2 program, residents are able to purchase residential units at an
 3 affordable price, including options to upgrade to a better
 4 living environment in the future.

5 The legislature further finds that with Honolulu's
 6 construction of an elevated rail transit system, the State has
 7 an opportunity to enhance Oahu's urban environment and increase
 8 the quality of life for residents by increasing the affordable
 9 housing inventory and eliminating the need for personal
 10 automobiles, among other public benefits. As the largest
 11 landowner of properties along the transit line, with
 12 approximately two thousand acres under the jurisdiction of
 13 various departments, the State must be proactive in establishing
 14 a unified vision and approach toward redevelopment of its
 15 properties to maximize the benefits of state lands available for
 16 redevelopment.

17 The purpose of this Act is to:

- 18 (1) Establish the ALOHA homes program to facilitate the
- 19 creation of low-cost leasehold homes for sale to
- 20 Hawaii residents on state-owned land near public
- 21 transit stations; and



1 (2) Authorize the Hawaii housing finance and development
 2 corporation to sell the leasehold interest in
 3 residential condominium units located on state lands
 4 for lease terms of ninety-nine years.

5 SECTION 2. Chapter 201H, Hawaii Revised Statutes, is
 6 amended by adding two new subparts to part II to be
 7 appropriately designated and to read as follows:

8 "B. ALOHA Homes Program

9 **§201H-A Definitions.** As used in this subpart, the
 10 following terms have the following meanings, unless the context
 11 indicates a different meaning or intent:

12 "ALOHA" means affordable, locally owned homes for all.

13 "ALOHA home" means a residential unit within the urban
 14 redevelopment district.

15 "Commercial project" means an undertaking involving
 16 commercial or light industrial development, which includes a
 17 mixed-use development where commercial or light industrial
 18 facilities may be built into, adjacent to, under, or above
 19 residential units.

20 "High density" means a project or area that has at least
 21 two hundred fifty units per acre.



1 "Multipurpose project" means a project consisting of any
2 combination of a commercial project, redevelopment project, or
3 residential project.

4 "Owner-occupied residential use" means any use currently
5 permitted in existing residential zones consistent with owner
6 occupancy, but shall not mean renting or leasing to any tenant
7 or lessee of any kind.

8 "Project" means a specific work or improvement, including
9 real and personal properties, or any interest therein, acquired,
10 owned, constructed, reconstructed, rehabilitated, or improved by
11 the corporation, including a commercial project, redevelopment
12 project, or residential project.

13 "Public agency" means any office, department, board,
14 commission, bureau, division, public corporation agency, or
15 instrumentality of the federal, state, or county government.

16 "Public facilities" includes streets, utility and service
17 corridors, and utility lines where applicable, sufficient to
18 adequately service developable improvements in the district,
19 sites for schools, parks, parking garages, sidewalks, pedestrian
20 ways, and other community facilities. "Public facilities" also
21 includes public highways, as defined in section 264-1, storm



1 drainage systems, water systems, street lighting systems, off-
2 street parking facilities, and sanitary sewerage systems.

3 "Public transit station" means:

4 (1) A station connected to a locally preferred alternative
5 for a mass transit project; or

6 (2) For the city and county of Honolulu, a station of the
7 Honolulu rail transit system.

8 "Redevelopment project" means an undertaking for the
9 acquisition, clearance, replanning, reconstruction, and
10 rehabilitation, or a combination of these and other methods, of
11 an area for a residential project, for an incidental commercial
12 project, and for other facilities incidental or appurtenant
13 thereto, pursuant to and in accordance with this subpart. The
14 terms "acquisition, clearance, replanning, reconstruction, and
15 rehabilitation" shall include renewal, redevelopment,
16 conservation, restoration, or improvement, or any combination
17 thereof.

18 "Residential project" means a project or that portion of a
19 multipurpose project, including residential dwelling units,
20 designed and intended for the purpose of providing housing and
21 any facilities as may be incidental or appurtenant thereto.



1 "Small and medium vendor" means a commercial vendor that
2 employs nine hundred ninety-nine employees or less.

3 §201H-B ALOHA homes program. There is established the
4 ALOHA homes program for the purpose of providing low-cost, high
5 density leasehold homes for sale to Hawaii residents on state-
6 owned lands within a one-half mile radius of a public transit
7 station.

8 §201H-C Community and public notice requirements; posting
9 on the corporation's website; required. For the purposes of
10 this subpart, the corporation shall adopt community and public
11 notice procedures pursuant to chapter 91 that shall include at a
12 minimum:

13 (1) A means to effectively engage the community in which
14 the corporation is planning a development project
15 under this subpart to ensure that community concerns
16 are received and considered by the corporation;

17 (2) The posting of the corporation's proposed plans for
18 any development project under this subpart, public
19 hearing notices, and minutes of its proceedings on the
20 corporation's website;



- 1 (3) The posting of every application for a development
- 2 project on the corporation's website when the
- 3 application is deemed complete;
- 4 (4) Notification by the applicant of any application for a
- 5 development project valued at \$250,000 or more by
- 6 first class United States mail, postage prepaid to
- 7 owners and lessees of record of real property located
- 8 within a three hundred foot radius of the perimeter of
- 9 the proposed project identified from the most current
- 10 list available from the real property assessment
- 11 division of the department of budget and fiscal
- 12 services of the city and county of Honolulu when the
- 13 application is deemed complete; provided that notice
- 14 mailed pursuant to this paragraph shall include but
- 15 not be limited to notice of:
- 16 (A) Project specifications;
- 17 (B) Requests for exemptions from statutes,
- 18 ordinances, charter provisions, and rules
- 19 pursuant to section 201H-38; and
- 20 (C) Procedures for intervention and a contested case
- 21 hearing; and



1 (5) Any other information that the public may find useful
 2 so that it may meaningfully participate in the
 3 corporation's decision-making processes.

4 **§201H-D Urban redevelopment district; established;**
 5 **boundaries.** The urban redevelopment district is established.
 6 The urban redevelopment district shall include all state-owned
 7 and county-owned land within county-designated transit-oriented
 8 development areas or within a one-half-mile radius of a public
 9 transit station in a county with a population greater than five
 10 hundred thousand.

11 **§201H-E Rules; guidelines.** (a) The corporation shall
 12 establish rules under chapter 91 on health, safety, building,
 13 planning, zoning, and land use, which shall supersede all other
 14 inconsistent ordinances and rules relating to the use, zoning,
 15 planning, and development of land and construction thereon.
 16 Rules adopted under this section shall follow existing law,
 17 rules, ordinances, and regulations as closely as is consistent
 18 with standards meeting minimum requirements of good design,
 19 pleasant amenities, health, safety, and coordinated development.
 20 The corporation may provide that lands within the urban
 21 redevelopment district shall not be developed beyond existing



1 uses or that improvements thereon shall not be demolished or
2 substantially reconstructed, or provide other restrictions on
3 the use of the lands.

4 (b) The following shall be the principles generally
5 governing the corporation's action in the urban redevelopment
6 district:

7 (1) The corporation shall endeavor to produce enough
8 housing supply to meet housing demand;

9 (2) Each development may include facilities to replace any
10 facilities that must be removed for the development's
11 construction;

12 (3) Development shall be revenue-neutral to the State, and
13 all revenues generated shall be used for the purposes
14 of this subpart;

15 (4) The corporation may build infrastructure beyond what
16 exists in any development under this subpart and may
17 sell the infrastructure capacity to other private
18 sector developers;

19 (5) The corporation may build common area facilities for
20 any development undertaken pursuant to this subpart,



1 which shall be paid through the sales of ALOHA homes
2 units;
3 (6) Development shall result in a community that permits
4 an appropriate land mixture of residential,
5 commercial, light industrial, and other uses. In view
6 of the innovative nature of the mixed use approach,
7 urban design policies shall be established for the
8 public and private sectors in the proper development
9 of the urban redevelopment district; provided that any
10 of the corporation's proposed actions in the urban
11 redevelopment district that are subject to chapter 343
12 shall comply with chapter 343 and federal
13 environmental requirements; provided further that the
14 corporation may engage in any studies or coordinative
15 activities permitted in this subpart which affect
16 areas lying outside the district, where the
17 corporation in its discretion decides that those
18 activities are necessary to implement the intent of
19 this subpart. The studies or coordinative activities
20 shall be limited to facility systems, resident and
21 industrial relocation, and other activities with the



1 counties and appropriate state agencies. The
2 corporation may engage in construction activities
3 outside of the urban redevelopment district; provided
4 that the construction relates to infrastructure
5 development or residential or business relocation
6 activities; provided further that the construction
7 shall comply with the general plan, development plan,
8 ordinances, and rules of the county in which the urban
9 redevelopment district is located;

10 (7) Existing and future light industrial uses accessory to
11 shall be permitted and encouraged in appropriate
12 locations within the urban redevelopment district. No
13 plan or implementation strategy shall prevent
14 continued activity or redevelopment of light
15 industrial and commercial uses which meet reasonable
16 performance standards;

17 (8) Activities shall be located so as to provide primary
18 reliance on public transportation and pedestrian
19 facilities for internal circulation within the urban
20 redevelopment district or designated subareas;



- 1 (9) Major view planes, view corridors, and other
2 environmental elements such as natural light and
3 prevailing winds, may be preserved through appropriate
4 regulation and design review;
- 5 (10) All projects shall comply with all applicable
6 statutes, rules, and ordinances related to historic
7 and cultural resource preservation;
- 8 (11) Where compatible, land use activities within the urban
9 redevelopment district shall to the greatest possible
10 extent be mixed horizontally within blocks or other
11 land areas, and vertically as integral units of multi-
12 purpose structures;
- 13 (12) Development shall prioritize maximizing density on
14 lands that are most urbanized and most suitable for
15 high density; provided that development may require a
16 mixture of densities, building types, and
17 configurations in accordance with appropriate urban
18 design guidelines and vertical and horizontal
19 integration of residents of varying incomes, ages, and
20 family groups that reflect the diversity of Hawaii.
21 Development shall provide necessary community



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1 facilities, such as parks, community meeting places,
 2 child care centers, schools, educational facilities,
 3 libraries, and other services, within and adjacent to
 4 residential development; provided that any school that
 5 is provided by the corporation as a necessary
 6 community facility shall be exempt from school size
 7 requirements as calculated by recent school site area
 8 averages pursuant to section 302A-1602;

9 (13) Public facilities within the urban redevelopment
 10 district shall be planned, located, and developed so
 11 as to support the redevelopment policies for the
 12 district established by this subpart and plans and
 13 rules adopted pursuant to it;

14 (14) Development shall be achieved through the efficient
 15 and cost-effective use of government and private-
 16 sector workforces through public-private partnerships
 17 and other mechanisms to incentivize development to be
 18 on time and on budget;

19 (15) Development shall be designed, to the extent possible,
 20 to minimize traffic, parking, the use of private
 21 automobiles, and noise;



1 (16) Development shall be subject to chapter 104; and

2 (17) Development shall incorporate universal design in
3 compliance with the Americans with Disabilities Act of
4 1990 and Uniform Federal Accessibility Standards, to
5 the extent possible, and exceed accessibility
6 requirements under those authorities.

7 (c) ALOHA homes within the urban redevelopment district
8 shall not be advertised for rent, rented, or used for any
9 purpose other than owner-occupied residential use; provided that
10 the corporation, by rule, shall establish penalties for
11 violations of this subsection up to and including forced sale of
12 an ALOHA home.

13 (d) The corporation shall establish a competition process
14 for selecting the design and development vendors of ALOHA homes
15 with the appropriate number of units to accommodate small and
16 medium vendors. The criteria of the competition process shall
17 include preferences on the basis of prior experience in the
18 State and an understanding of the State's unique culture;
19 provided that the corporation may include an opportunity for
20 community input through public vote. The corporation may



1 provide a stipend in a manner and an amount to be determined by
2 the corporation to competitors pursuant to this subsection.

3 (e) The corporation may transfer ALOHA homes units to the
4 office of Hawaiian affairs and department of Hawaiian home lands
5 for use by their respective beneficiaries.

6 (f) The corporation shall recoup all expenses through the
7 sales of the leasehold interest of ALOHA homes and other revenue
8 sources, including the leasing of commercial projects.

9 **§201H-F Sale of the leasehold interest of ALOHA homes;**
10 **rules; guidelines.** (a) The corporation shall adopt rules,
11 pursuant to chapter 91, for the sale of the leasehold interest
12 of ALOHA homes under its control within the urban redevelopment
13 district; provided that each lease shall be for a term of
14 ninety-nine years. The rules shall include the following
15 requirements for an eligible buyer or owner of an ALOHA home
16 within the district:

17 (1) The person shall be a resident of the State; provided
18 that voting in the most recent primary or general
19 election shall be an indication of residency in the
20 State; provided further that not voting in any primary



1 or general election creates a rebuttable presumption
2 of non-residency;

3 (2) The person shall not use the ALOHA home for any
4 purpose other than owner-occupied residential use; and

5 (3) The person, or the person's spouse, shall not own any
6 other real property, including any residential and
7 non-residential property, beneficial ownership of
8 trusts, and co-ownership or fractional ownership,
9 while owning an ALOHA home in the district; provided
10 that an eligible buyer may own real property up to six
11 months after closing on the purchase of an ALOHA home;
12 provided further that an owner of an ALOHA home in the
13 process of selling the ALOHA home may own other real
14 property up to six months prior to closing on the sale
15 of the ALOHA home to an eligible buyer;

16 provided that the rules under this subsection shall not include
17 any requirements or limitations related to an individual's
18 income or any preferences to first-time home buyers. The rules
19 shall include strict enforcement of owner-occupancy, including a
20 prohibition on the renting or leasing of an ALOHA home to any
21 tenant or lessee, and may include requirements for the use of



1 face recognition, verification of the presence of owner-
2 occupants and prevention of access of all unauthorized persons
3 through retina scan for a minimum number of days per year, or
4 fingerprint scan technology.

5 (b) ALOHA homes within the urban redevelopment district
6 shall be priced to be affordable, as determined by the United
7 States Department of Housing and Urban Development, to an
8 individual or family whose income does not exceed eighty per
9 cent of the area median income, or \$300,000, whichever is less;
10 provided that the price shall be adjusted for inflation.

11 (c) The corporation shall establish waitlists for each
12 residential development for eligible buyers to determine the
13 order in which ALOHA homes shall be sold. Waitlist priorities
14 may include school, college, or university affiliation if the
15 residential property is a redeveloped school, college, or
16 university; proximity of an eligible buyer's existing residence
17 to an ALOHA home within the urban redevelopment district; and
18 other criteria based on the impact that the development has on
19 the eligible buyer.

20 (d) ALOHA homes within the urban redevelopment district
21 shall be sold only to other eligible buyers.



1 (e) An owner of an ALOHA home may sell the ALOHA home
2 after five or more years of owner-occupancy; provided that the
3 corporation shall have the right of first refusal to purchase
4 the ALOHA home at a price that is determined by the corporation
5 using the price at which the owner purchased the ALOHA home as
6 the cost basis, adjusted for inflation, and may include a
7 percentage of the appreciation in value of the unit. If the
8 corporation does not exercise its right to purchase the ALOHA
9 home, the ALOHA home may be sold by the owner to an eligible
10 buyer; provided that the corporation shall retain seventy-five
11 per cent of all profits from the sale net of closing and
12 financing costs, using the price at which the owner purchased
13 the ALOHA home as the cost basis. Upon the death of the owner
14 of an ALOHA home, the ALOHA home may be transferred to the
15 deceased's heir by devise or as any other real property under
16 existing law; provided that if the heir is not an eligible
17 buyer, the heir shall sell the ALOHA home to the corporation at
18 a price that is determined by the corporation using the price at
19 which the owner purchased the ALOHA home as the cost basis,
20 adjusted for inflation, and may include a percentage of the
21 appreciation in value of the unit.



1 (f) If an owner of an ALOHA home sells the ALOHA home
 2 before five years of owner-occupation, the corporation shall
 3 purchase the ALOHA home at a price that is determined by the
 4 corporation using the price at which the owner purchased the
 5 ALOHA home as the cost basis, adjusted for inflation.

6 (g) Any ALOHA home developed and sold under this subpart
 7 shall not be subject to sections 201H-47, 201H-49, 201H-50, and
 8 201H-51.

9 **§201H-G Use of public lands; acquisition of state lands.**

10 (a) If state lands under the control and management of other
 11 public agencies are required by the corporation for the purposes
 12 of this subpart, the agency having the control and management of
 13 those required lands, upon request by the corporation and with
 14 the approval of the governor, may convey or lease those lands to
 15 the corporation upon terms and conditions as may be agreed to by
 16 the parties.

17 (b) Notwithstanding the foregoing, no public lands shall
 18 be conveyed or leased to the corporation pursuant to this
 19 section if the conveyance or lease would impair any covenant
 20 between the State or any county or any department or board



1 thereof and the holders of bonds issued by the State or that
2 county, department, or board.

3 **§201H-H Acquisition of real property from a county.**

4 Notwithstanding the provision of any law or charter, any county,
5 by resolution of its local governing body, may, without public
6 auction, sealed bids, or public notice, sell, lease, grant, or
7 convey to the corporation any real property owned by it that the
8 corporation certifies to be necessary for the purposes of this
9 subpart. The sale, lease, grant, or conveyance shall be made
10 with or without consideration and upon terms and conditions as
11 may be agreed upon by the county and the corporation.

12 Certification shall be evidenced by a formal request from the
13 corporation. Before the sale, lease, grant, or conveyance may
14 be made to the corporation, a public hearing shall be held by
15 the local governing body to consider the same. Notice of the
16 hearing shall be published at least six days before the date set
17 for the hearing in the publication and in the manner as may be
18 designated by the local governing body.

19 **§201H-I Condemnation of real property.** The corporation,
20 upon making a finding that it is necessary to acquire any real
21 property for its immediate or future use for the purposes of



1 this subpart, may acquire the property, including property
 2 already devoted to a public use, by condemnation pursuant to
 3 chapter 101. The property shall not thereafter be taken for any
 4 other public use without the consent of the corporation. No
 5 award of compensation shall be increased by reason of any
 6 increase in the value of real property caused by the designation
 7 of the urban redevelopment district or plan adopted pursuant to
 8 a designation, or the actual or proposed acquisition, use, or
 9 disposition of any other real property by the corporation.

10 **§201H-J Relocation.** The corporation shall adopt rules
 11 pursuant to chapter 91 in compliance with the Uniform Relocation
 12 Assistance and Real Property Acquisition Act of 1970 and chapter
 13 111 to ensure the appropriate relocation within or outside the
 14 district of persons, families, businesses, or services displaced
 15 by governmental action within the urban redevelopment district.

16 **§201H-K Construction contracts.** (a) The corporation
 17 shall award construction contracts for ALOHA homes in conformity
 18 with section 201H-E(d), without regard to chapter 103D.

19 (b) The corporation shall award construction contracts for
 20 commercial projects without regard to chapter 103D.



1 **§201H-L Lease of projects.** Notwithstanding any law to the
2 contrary, the corporation, without recourse to public auction or
3 public notice for sealed bids, may lease for a term not
4 exceeding sixty-five years all or any portion of the real or
5 personal property constituting a commercial project to any
6 person, upon terms and conditions as may be approved by the
7 corporation; provided that all revenues generated from the lease
8 shall be used to support the purpose of this subpart pursuant to
9 section 201H-B.

10 **§201H-M Dedication for public facilities as condition to**
11 **development.** The corporation shall establish rules requiring
12 dedication for public facilities of land or facilities by
13 developers as a condition of developing real property within the
14 urban redevelopment district. Where state and county public
15 facilities dedication laws, ordinances, or rules differ, the
16 provision for greater dedication shall prevail.

17 **§201H-N ALOHA homes revolving fund.** There is created the
18 ALOHA homes revolving fund into which all receipts and revenues
19 of the corporation pursuant to this subpart shall be deposited.
20 Proceeds from the fund shall be used for the purposes of this
21 subpart.



1 **§201H-O Expenditures of ALOHA homes revolving fund under**
2 **the corporation exempt from appropriation and allotment. Except**
3 **as to administrative expenditures, and except as otherwise**
4 **provided by law, expenditures from the ALOHA homes revolving**
5 **fund administered by the corporation may be made by the**
6 **corporation without appropriation or allotment of the**
7 **legislature; provided that no expenditure shall be made from and**
8 **no obligation shall be incurred against the ALOHA homes**
9 **revolving fund in excess of the amount standing to the credit of**
10 **the fund or for any purpose for which the fund may not lawfully**
11 **be expended. Nothing in sections 37-31 to 37-41 shall require**
12 **the proceeds of the ALOHA homes revolving fund administered by**
13 **the corporation to be reappropriated annually.**

14 **§201H-P Assistance by state and county agencies. Any**
15 **state or county agency may render services for the purposes of**
16 **this subpart upon request of the corporation.**

17 **§201H-Q Court proceedings; preferences; venue. (a) Any**
18 **action or proceeding to which the corporation, the State, or the**
19 **county may be a party, in which any question arises as to the**
20 **validity of this subpart, shall be brought in the circuit court**
21 **of the circuit where the case or controversy arises, and shall**



1 be heard and determined in preference to all other civil cases
2 pending therein except election cases, irrespective of position
3 on the calendar.

4 (b) Upon application of counsel to the corporation, the
5 same preference shall be granted in any action or proceeding
6 questioning the validity of this subpart in which the
7 corporation may be allowed to intervene.

8 (c) Notwithstanding any provision of law to the contrary,
9 declaratory relief may be obtained for the action.

10 (d) Any party aggrieved by the decision of the circuit
11 court may appeal in accordance with part I of chapter 641 and
12 the appeal shall be given priority.

13 **§201H-R Issuance of bonds.** The director of finance, from
14 time to time, may issue general obligation bonds pursuant to
15 chapter 39 in amounts as may be authorized by the legislature,
16 for the purposes of this subpart.

17 **§201H-S Violations and penalty.** (a) The corporation may
18 set, charge, and collect reasonable fines for violation of this
19 subpart or any rule adopted pursuant to chapter 91.

20 Notwithstanding section 201H-E(c), any person violating any rule
21 adopted pursuant to chapter 91, for which violation a penalty is



1 not otherwise provided, shall be fined not more than \$500 a day
2 and shall be liable for administrative costs incurred by the
3 corporation.

4 (b) The corporation may maintain an action for an
5 injunction to restrain any violation of this subpart and may
6 take any other lawful action to prevent or remedy any violation.

7 (c) Notwithstanding section 201H-E(c), any person
8 violating this subpart shall, upon conviction, be punished by a
9 fine not exceeding \$1,000 or by imprisonment not exceeding
10 thirty days, or both. The continuance of a violation after
11 conviction shall be deemed a new offense for each day of the
12 continuance.

13 **§201H-T Additional powers.** The powers conferred upon the
14 corporation by this subpart shall be in addition and
15 supplemental to the powers conferred by any other law, and
16 nothing in this subpart shall be construed as limiting any
17 powers, rights, privileges, or immunities so conferred.

18 **§201H-U State lands no longer needed.** State lands that
19 are no longer needed for affordable residential leasehold units
20 by the Hawaii housing finance and development corporation shall
21 be returned to the previous owner of those lands.



1 **§201H-V Rules.** The corporation may adopt rules, pursuant
2 to chapter 91, necessary for the purposes of this subpart.

3 C. Leasehold Condominiums on State Lands

4 **§201H-W Leasehold condominiums on state lands.** (a) The
5 corporation may sell leasehold units in condominiums organized
6 pursuant to chapter 514B and developed under this subpart on
7 state land to a "qualified resident" as defined in section
8 201H-32.

9 (b) The term of the lease may be for ninety-nine years,
10 and the corporation may extend or modify the fixed rental period
11 of the lease or extend the term of the lease.

12 (c) The sale of leasehold units shall be subject to
13 sections 201H-47, 201H-49, and 201H-50, except for units sold at
14 fair market value.

15 (d) State land set aside by the governor to the
16 corporation and lands leased to the corporation by any
17 department or agency of the State for a condominium described in
18 this section shall be exempt from the definition of "public
19 land" under section 171-2, except for the provision in section
20 171-2(6) that subjects corporation lands to the accounting for



1 all receipts for lands subject to section 5(f) of the Admission
2 Act.

3 (e) The powers conferred upon the corporation by this
4 section shall be in addition and supplemental to the powers
5 conferred by any other law, and nothing in this section shall be
6 construed as limiting any powers, rights, privileges, or
7 immunities so conferred."

8 SECTION 3. Chapter 237, Hawaii Revised Statutes, is
9 amended by adding a new section to be appropriately designated
10 and to read as follows:

11 "§237- Exemption of sale of leasehold interest for
12 ALOHA home units. In addition to the amounts exempt under
13 section 237-24, this chapter shall not apply to amounts received
14 from the sale of a leasehold interest in an ALOHA homes unit
15 under chapter 201H, subpart B."

16 SECTION 4. Section 171-2, Hawaii Revised Statutes, is
17 amended to read as follows:

18 **"§171-2 Definition of public lands.** "Public lands" means
19 all lands or interest therein in the State classed as government
20 or crown lands previous to August 15, 1895, or acquired or
21 reserved by the government upon or subsequent to that date by



1 purchase, exchange, escheat, or the exercise of the right of
 2 eminent domain, or in any other manner; including lands accreted
 3 after May 20, 2003, and not otherwise awarded, submerged lands,
 4 and lands beneath tidal waters that are suitable for
 5 reclamation, together with reclaimed lands that have been given
 6 the status of public lands under this chapter, except:

- 7 (1) Lands designated in section 203 of the Hawaiian Homes
 8 Commission Act, 1920, as amended;
- 9 (2) Lands set aside pursuant to law for the use of the
 10 United States;
- 11 (3) Lands being used for roads and streets;
- 12 (4) Lands to which the United States relinquished the
 13 absolute fee and ownership under section 91 of the
 14 Hawaiian Organic Act prior to the admission of Hawaii
 15 as a state of the United States unless subsequently
 16 placed under the control of the board of land and
 17 natural resources and given the status of public lands
 18 in accordance with the state constitution, the
 19 Hawaiian Homes Commission Act, 1920, as amended, or
 20 other laws;
- 21 (5) Lands to which the University of Hawaii holds title;



1 (6) Lands that are set aside by the governor to the Hawaii
2 housing finance and development corporation; lands
3 leased to the Hawaii housing finance and development
4 corporation by any department or agency of the State;
5 or lands to which the Hawaii housing finance and
6 development corporation in its corporate capacity
7 holds title; provided that lands described in this
8 paragraph shall be considered "public lands" for the
9 purpose of accounting for all receipts from lands
10 described in section 5(f) of the Admission Act for the
11 prior fiscal year, pursuant to section 5 of Act 178,
12 Session Laws of Hawaii 2006; provided further that
13 payment of receipts pursuant to this paragraph may be
14 made in a form of remuneration or consideration other
15 than cash;

16 (7) Lands to which the Hawaii community development
17 authority in its corporate capacity holds title;

18 (8) Lands to which the department of agriculture holds
19 title by way of foreclosure, voluntary surrender, or
20 otherwise, to recover moneys loaned or to recover
21 debts otherwise owed the department under chapter 167;



1 (9) Lands that are set aside by the governor to the Aloha
 2 Tower development corporation; lands leased to the
 3 Aloha Tower development corporation by any department
 4 or agency of the State; or lands to which the Aloha
 5 Tower development corporation holds title in its
 6 corporate capacity;

7 (10) Lands that are set aside by the governor to the
 8 agribusiness development corporation; lands leased to
 9 the agribusiness development corporation by any
 10 department or agency of the State; or lands to which
 11 the agribusiness development corporation in its
 12 corporate capacity holds title;

13 (11) Lands to which the Hawaii technology development
 14 corporation in its corporate capacity holds title; and

15 (12) Lands to which the department of education holds
 16 title;

17 provided that, except as otherwise limited under federal law and
 18 except for state land used as an airport as defined in section
 19 262-1, public lands shall include the air rights over any
 20 portion of state land upon which a county mass transit project
 21 is developed after July 11, 2005."



1 SECTION 5. Chapter 201H, Hawaii Revised Statutes, is
2 amended by designating sections 201H-31 to 201H-70 as subpart A
3 and inserting a title before section 201H-31 to read as follows:

4 "A. General Provisions"

5 SECTION 6. Section 302A-1603, Hawaii Revised Statutes, is
6 amended by amending subsection (b) to read as follows:

7 "(b) The following shall be exempt from this section:

8 (1) Any form of housing permanently excluding school-aged
9 children, with the necessary covenants or declarations
10 of restrictions recorded on the property;

11 (2) Any form of housing that is or will be paying the
12 transient accommodations tax under chapter 237D;

13 (3) All nonresidential development; [and]

14 (4) Any development with an executed education
15 contribution agreement or other like document with the
16 department for the contribution of school sites or
17 payment of fees for school land or school
18 construction[-]; and

19 (5) Any form of development by the Hawaii housing finance
20 and development corporation pursuant to chapter 201H,
21 part II, subpart B."



1 SECTION 7. There is appropriated out of the general
 2 revenues of the State of Hawaii the sum of \$ or so much
 3 thereof as may be necessary for fiscal year 2019-2020 to be
 4 deposited into the ALOHA homes revolving fund established
 5 pursuant to section 201H-N, Hawaii Revised Statutes.

6 SECTION 8. There is appropriated out of the ALOHA homes
 7 revolving fund established pursuant to section 201H-N, Hawaii
 8 Revised Statutes, the sum of \$ or so much thereof as may
 9 be necessary for fiscal year 2019-2020 for the purposes for
 10 which the revolving fund is established.

11 The sum appropriated shall be expended by the Hawaii
 12 housing finance and development corporation for the purposes of
 13 this Act.

14 SECTION 9. In codifying the new sections added by section
 15 2 of this Act, the revisor of statutes shall substitute
 16 appropriate section numbers for the letters used in designating
 17 the new sections in this Act.

18 SECTION 10. Statutory material to be repealed is bracketed
 19 and stricken. New statutory material is underscored.

20 SECTION 11. This Act shall take effect on July 1, 2050.



S.B. NO. ¹ S.D. 2

Report Title:

ALOHA Homes Program; Housing; HHFDC; Urban Redevelopment District; Transit-oriented Development; Leasehold Condominiums on Lands Controlled by the State; Appropriation

Description:

Establishes the ALOHA homes program under the Hawaii Housing Finance and Development Corporation (HHFDC) to facilitate the development of low-cost homes for sale to Hawaii residents on state-owned and county-owned land near rail stations of the Honolulu rail transit system, to be known as the urban redevelopment district. Establishes guidelines within the urban redevelopment district and provisions related to the sale of leasehold interest of ALOHA homes. Exempts lands to which HHFDC holds title and land set aside or leased to HHFDC from the definition of public lands in section 171-2, HRS, except for purposes of accounting for receipts from ceded lands. Establishes and appropriates funds into and out of the ALOHA homes revolving fund. Authorizes HHFDC to sell the leasehold interest in residential condominium units located on state lands for lease terms of 99 years. Effective 7/1/2050. (SD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



ASSEMBLY BILL**No. 387**

**Introduced by Assembly Member Lee
(Coauthor: Assembly Member Wicks)**

February 2, 2021

An act relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 387, as introduced, Lee. Social Housing Act of 2021.

Existing law establishes the Department of Housing and Community Development and sets forth its powers and duties. Existing law establishes various programs providing assistance for, among other things, emergency housing, multifamily housing, farmworker housing, homeownership for very low and low-income households, and downpayment assistance for first-time homebuyers.

This bill would declare the intent of the Legislature to subsequently amend this bill to include provisions that would enact the Social Housing Act of 2021 to establish the California Housing Authority for the purpose of developing mixed-income rental and limited equity homeownership housing and mixed-use developments to address the shortage of affordable homes for low and moderate-income households.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. It is the intent of the Legislature to subsequently
- 2 amend this measure to include provisions that would enact the
- 3 Social Housing Act of 2021 to establish the California Housing

AB 387

— 2 —

- 1 Authority for the purpose of developing mixed-income rental and
- 2 limited equity homeownership housing and mixed-use
- 3 developments to address the shortage of affordable homes for low
- 4 and moderate-income households.

O

RESOLUTION NO. ##,###-N.S.

RECOGNIZING HOUSING AS HUMAN RIGHT, REFERRING CITY MANAGER TO STUDY FINANCIAL FEASIBILITY OF MUNICIPAL HOUSING DEVELOPMENT PILOT PROGRAM TO ADMINISTER AUTOMATIC STABILIZERS FOR GUARANTEEING ADEQUATE HOUSING

WHEREAS, the United Nations has recognized housing as a human right in the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Economic, Social and Cultural Rights; and,

WHEREAS, the right to adequate housing includes freedoms such as protection against forced evictions and arbitrary destruction of housing; right to privacy; non-discriminatory choice of residence, and freedom of movement; and,

WHEREAS, the right to adequate housing includes entitlements such as security of tenure, restitution, equal and non-discriminatory access, and civic participation; and,

WHEREAS, the City of Berkeley has failed to affirm these freedoms and entitlements for its homeless residents, including 813 unsheltered identified in the 2019 Alameda County point-in-time count; and,

WHEREAS, the state of California and its local and regional governments have failed to affirm these freedoms and entitlements for at least 53% of renters who endure excessive cost-burdens, defined as paying over 30% of income for housing, according to the 2017 American Community Survey; and,

WHEREAS, cities around the world including Vienna and Singapore deliver better housing security and quality of life outcomes for their citizens with robust public housing development programs that reinvest revenues from mixed-income housing and real assets to fund operational costs and capital projects; and,

WHEREAS, histories of Jim Crow segregation endure in racial discrimination in mortgage credit and exclusionary land-use policies maintain disproportionate cost burdens and housing insecurity on Black people and low-income communities of color in the United States; and,

WHEREAS, the Berkeley City Council authorized a Missing Middle Report in 2019 on unanimous consent to study reforms to its land-use policies to enable more affordable times of housing construction, transit-oriented development, and racial and economic inclusion; and,

WHEREAS, the Berkeley City Council authorized a Local Preference policy for affordable housing when it passed the Adeline Corridor Specific Plan in 2020 to enable reparative housing security for low-income communities of color bearing the brunt of displacement and gentrification in Berkeley; and,

WHEREAS, the voters of the City of Berkeley authorized large increases in local funding for affordable housing in 2018 with the overwhelming passage of Measures O and P; and,

WHEREAS, a 2017 Analysis of City-Owned Property for Potential for Housing Development by Berkeley's Health, Housing and Community Services Department identified several publicly owned parcels that would require zoning changes and further study for affordable housing production;

NOW THEREFORE, BE IT RESOLVED, that the City of Berkeley recognizes adequate housing as a human right, with recognition of attendant freedoms and entitlements as enumerated by the United Nations;

BE IT FURTHER RESOLVED, that the Berkeley City Council refers the City Manager to study the financial feasibility of a municipal housing development pilot program administering automatic stabilizers to guarantee adequate housing security in Berkeley, with regular community input and periodic monitoring of socioeconomic indicators;

BE IT FURTHER RESOLVED, that the pilot program's feasibility study shall include, but not be limited to,

1. Feasibility study of public lands suitable mixed-income transit-oriented housing development identified in 2017 Analysis of City-Owned Lands and zoning changes needed for affordable housing at listed sites to address all income categories in upcoming Regional Housing Needs Allocation (RHNA) cycle;
2. Pilot program to establish a Reparative Justice Revolving Loan Fund with affirmative racial justice and anti-displacement goals, providing low-interest loans for tenants, nonprofits, limited-equity co-operatives, and community land trusts to acquire real property, develop, and/or maintain mixed-income and permanently affordable housing.
3. Pilot program to establish publicly available, user-friendly data dashboard monitoring Housing Justice Indicators in the city including, but not limited to, (a) health and safety standards, (b) affordability, (c) stability, and (d) discrimination and disparate impacts under US Department of Housing and Urban Development's Affirmatively Furthering Fair Housing (AFFH) rule; aligning Indicators with thresholds for corrective actions including land-use policy review and fiscal analysis.
4. State and regional partnerships with the California Department of Housing and Community Development, the Metropolitan Transportation Commission (MTC) and Association of Bay Area Governments (ABAG), UC Berkeley, and Bay Area Rapid Transit to develop fiscally resilient mixed-income housing and community reinvestment through land held in public trust and/or limited-equity cooperatives and community land trusts.



ACTION CALENDAR

DATE: 2/23/21

To: Honorable Mayor and Members of the City Council

From: Councilmember Terry Taplin, Mayor Jesse Arreguín (co-sponsor),
Councilmember Sophie Hahn (co-sponsor)

Subject: Resolution Recognizing Housing as Human Right; Referring City Manager to Study Financial Feasibility of Municipal Housing Development Pilot Program with Cooperative, Nonprofit, and Public Ownership Models, Administered as Automatic Stabilizers to Guarantee Adequate Housing.

RECOMMENDATION

Refer the City Manager's office to study the financial feasibility of a municipal housing development pilot program administering automatic stabilizers to guarantee adequate housing security in Berkeley, with regular community input and periodic monitoring of socioeconomic indicators. Pilot program feasibility study shall include, but not be limited to:

1. Feasibility study of public lands suitable mixed-income transit-oriented housing development identified in 2017 Analysis of City-Owned Lands and zoning changes needed for affordable housing at listed sites to address all income categories in upcoming Regional Housing Needs Allocation (RHNA) cycle;
2. Pilot program to establish a Reparative Justice Revolving Loan Fund with affirmative racial justice and anti-displacement goals, providing low-interest loans for tenants, nonprofits, limited-equity co-operatives, and community land trusts to acquire, develop, and/or maintain permanently affordable housing.
3. Pilot program to establish publicly available, user-friendly data dashboard monitoring Housing Justice Indicators in the city including, but not limited to, (a) health and safety standards, (b) affordability, (c) stability, and (d) discrimination and disparate impacts under US Department of Housing and Urban Development's Affirmatively Furthering Fair Housing (AFFH) rule; aligning Indicators with thresholds for corrective actions including land-use policy review and fiscal analysis.
4. State and regional partnerships with the California Department of Housing and Community Development, the Metropolitan Transportation Commission (MTC) and Association of Bay Area Governments (ABAG), UC Berkeley, and Bay Area Rapid Transit to develop fiscally resilient mixed-income housing and community

reinvestment through land held in public trust and/or limited-equity cooperatives and community land trusts.

BACKGROUND

Guaranteeing Adequate Housing: Global and Local Comparison

International law has recognized a right to adequate housing since the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Economic, Social and Cultural Rights, establishing freedoms and entitlements that include security of tenure, privacy, affordability, freedom of movement and non-discriminatory access.¹ By definition, the City of Berkeley has not affirmed this right for at least 1,000 homeless residents, with 813 unsheltered according to the 2019 Homeless Point-in-Time Count in Alameda County.² To obtain secure homeownership, the city's December 2020 median home price of \$1.39 million would require an income over three times as high as Berkeley's 2018 median household income of \$80,000.³ Meanwhile, the state of California leads the nation in its share of the homeless population⁴; over half the state's renters and a third of its homeowners are excessively cost-burdened, paying over 30% of their income for housing; and more than two-thirds of Californians facing excessive housing costs are people of color.⁵ According to the California Budget & Policy Center, "Poor housing quality, living in a low-income neighborhood, overcrowding, moving frequently, and homelessness are all associated with adverse health outcomes."⁶

In urban areas throughout the world, other nations with lower rates of homelessness and housing insecurity provide adequate housing for their citizens through various policies that address housing as public infrastructure. Housing systems are administered in varying degrees of "decommodification,"⁷ ensuring a minimum standard of living through the welfare state above what individuals can obtain through the private market. Different governments approach decommodification of housing through

¹ Office of the United Nations High Commissioner for Human Rights. (2009). *Fact Sheet No. 21: The Right to Adequate Housing. (Rev. 1)*. United Nations: Geneva. Retrieved from https://www.ohchr.org/documents/publications/fs21_rev_1_housing_en.pdf

² https://everyonehome.org/wp-content/uploads/2019/07/ExecutiveSummary_Alameda2019-1.pdf

³ <https://www.zillow.com/berkeley-ca/home-values/>

⁴ Passy, J. (2019). Nearly half of the U.S.'s homeless population live in one state: California. *MarketWatch*. Retrieved from <https://www.marketwatch.com/story/this-state-is-home-to-nearly-half-of-all-people-living-on-the-streets-in-the-us-2019-09-18#>

⁵ Kimberlin, S. (2017). Californians in All Parts of the State Pay More Than They Can Afford for Housing. *California Budget & Policy Center*. Retrieved from <https://calbudgetcenter.org/resources/californians-parts-state-pay-can-afford-housing/>

⁶ Ramos-Yamamoto, A. (2019). Advancing Health Equity: How State Policymakers Can Increase Opportunities for All Californians to Be Healthy. *California Budget & Policy Center*. Retrieved from <https://calbudgetcenter.org/blog/advancing-health-equity-how-state-policymakers-can-increase-opportunities-for-all-californians-to-be-healthy/>

⁷ Esping-Andersen, G. (1990). *The Three Worlds of Welfare Capitalism*. Princeton, NJ: Princeton University Press. p. 21-23.

strategies for subsidizing the supply channel by providing low-cost housing, or the demand channel by supporting consumer purchasing power.

In two case studies, the cities of Vienna and Singapore own and operate public housing development corporations that retain some amount of land title in the common trust in order to stabilize the housing market—either by restricting ownership to leases, or encouraging low-cost rentals and developing on public land holdings. Both also retain a “reserve supply” of land and/or development rights to stabilize housing affordability through recessionary demand shocks. These cities are able to provide housing to any citizen at an affordable cost regardless of their income, effectively reinvesting revenues from higher-income households to subsidize housing for lower incomes. In Tokyo, while housing is more commodified, Japanese federal land-use policy treats housing essentially as a non-durable consumer good, prioritizing its utility as shelter over its capacity to increase financial wealth.⁸

Vienna and Singapore rank 1st and 25th on the 2019 Mercer Quality of life ranking, respectively, above any city in the United States. Vienna has held the top position for the past ten years.⁹

The United States has tended toward the extreme opposite end in the spectrum of housing commodification. Modern economic policy and property rights have treated housing primarily as means to a guarantee for growing financial asset wealth and enforce a white supremacist caste system. Housing is commodified to an extreme degree that is incompatible with material needs of the general population. Subsidies for both supply and demand channels have been historically insufficient while support for American asset wealth primarily in white communities has been more robust and resilient. This has widened the racial wealth gap between white and Black households, and ultimately proved incompatible with universal housing security.

The Great Recession of 2008 effected an abjectly cruel transfer of wealth from lower-income Black homeowners¹⁰ targeted with predatory subprime loans to private equity firms¹¹ buying up large portfolios of “distressed” properties before the economy recovered. This longstanding pattern of usury and community displacement further has further excluded people of color from the fruits of economic recovery and deepens the racial wealth gap. We risk repeating this process in the current COVID-19 depression, as renters and low-income homeowners face an unprecedented homelessness crisis

⁸ Karlinsky, S. et al. (2020). From Copenhagen to Tokyo: Learning from International Housing Delivery Systems. *SPUR Regional Strategy Briefing Paper*. Retrieved from <https://www.spur.org/publications/white-paper/2020-08-06/copenhagen-tokyo>.

⁹ Mercer. (2019). Quality of life city ranking. Retrieved from <https://mobilityexchange.mercer.com/insights/quality-of-living-rankings>

¹⁰ White, G.B. (2015). The Recession’s Racial Slant. *The Atlantic*. Retrieved from <https://www.theatlantic.com/business/archive/2015/06/black-recession-housing-race/396725/>

¹¹ Warren, E. & Fife, C. (2020). Families see a looming catastrophe. Private equity firms see dollar signs. *The Washington Post*. Retrieved from <https://www.washingtonpost.com/opinions/2020/08/06/nation-is-facing-housing-crisis-private-equity-firms-just-see-dollar-signs/>

due to job losses during the pandemic, while relatively affluent cities like Berkeley see median home prices continue to rise.

Local, state and federal governments alike have made routine practice of devaluing or outright destroying black asset wealth for the benefit of more affluent, exclusively white communities, most visibly through usurious redlining and destructive “urban renewal.”¹² Fundamentally, the government has devoted more resources in absolute terms to protecting the right to capital gains of property owners, at the expense of adequate housing and any right to basic living standards for Black people. After a brief wartime period in which public housing was conceived to sustain middle-class households U.S. public housing developments in the mid-20th century were notoriously racially segregated poverty traps located far from public services and economic opportunity, starved of operational funds and “destined to fail.”¹³

The inequities of our current housing crisis are rooted in histories of Jim Crow segregation, mortgage guarantees of the New Deal era, and deflationary policy of the late 1970s. Where neighborhoods were once segregated explicitly by racial covenants and *de jure* statutes, government mortgage guarantees sublimated this segregation into self-reinforcing actuarial assessments promulgated by the Home Owners Loan Corporation (HOLC) and Federal Housing Administration (FHA), established under President Franklin Roosevelt. This practice known as “redlining” infamously denied mortgage credit to primarily Black and Latinx neighborhoods throughout the country, giving more affluent white neighborhoods exclusive access to risk-free mortgage credit while trapping communities of color in poverty. According to UC Berkeley’s Urban Displacement Project, neighborhoods that were once redlined are now at greater risk of gentrification and displacement.¹⁴

The United States and other anglophone countries further commodified housing in order to provide welfare through asset ownership to compensate for stagnation in real purchasing power.¹⁵ In response to high inflation of the 1970s, the Federal Reserve drastically raised interest rates beginning in 1978, triggering a period of deflation that boosted asset prices while suppressing real wages and economic growth. With accompanying deregulation of the financial sector, housing became “financialized” as a special asset class attracting a rush of speculative capital, because it retained the imprimatur of government mortgage guarantees while enjoying fewer capital controls, practically guaranteeing that household asset wealth would outpace low inflation and stagnating wages.¹⁶ A growing body of research strongly suggests that financialization

¹² Baradaran, M. (2017). *The Color of Money: Black Banks and the Racial Wealth Gap*. Cambridge, MA: Harvard University Press. p. 141.

¹³ Perry-Brown, N. (2020). *How public housing was destined to fail*. Greater Greater Washington. Retrieved from <https://ggwash.org/view/78164/how-public-housing-was-destined-to-fail>

¹⁴ The Legacy of Redlining. (2018). Retrieved from <https://www.urbandisplacement.org/redlining>

¹⁵ Adkins, L. et al. (2019). Class in the 21st century: Asset inflation and the new logic of inequality. *Environment and Planning A: Economy and Space*. doi.org/10.1177/0308518X19873673

¹⁶ Feygin, Y. (2021). The Deflationary Bloc. *Phenomenal World*. Retrieved from <https://phenomenalworld.org/analysis/deflation-inflation>.

of housing has intensified business cycle volatility and deepened periodic recessions, as “consumption became more correlated with housing wealth.”¹⁷

Berkeley pioneered other methods of guaranteeing housing price inflation: single-family zoning was first established in the Elmwood and Claremont neighborhoods to sustain real estate values and exclude racial minorities. The Mason-McDuffie Company developed residential neighborhoods in Berkeley with racial covenants in property deeds preventing lease or sale to anyone of “African or Mongolian descent,” and lobbied for restrictive zoning in 1916 to protect against “disastrous effects of uncontrolled development”¹⁸—the implied “disastrous effects” being stable prices and an influx of Black and Chinese residents.

Restrictive zoning reduces multifamily development, constrains supply and enforces a high price floor on dwelling units in high-cost land¹⁹. A 2015 study by the nonpartisan Legislative Analyst Office found that growth control policies increased home prices by 3-5%.²⁰ Correspondingly, emerging research from UC Berkeley finds evidence that new market-rate development in San Francisco lowered rents by 2% on parcels within 100 meters and reduced displacement risk for renters in that area by 17%,²¹ while a 2016 study by UC Berkeley’s Urban Displacement Project found that affordable housing has double the effect of mitigating displacement as market-rate housing.²² According to a 2001 study on homelessness in California, “rather modest improvements in the affordability of rental housing or its availability can substantially reduce the incidence of homelessness in the United States.”²³

Exclusionary zoning effectively limits where and to what extent these effects can occur, maintaining the spatial segregation of redlining after the latter practice was outlawed by the 1968 Fair Housing Act. In a study of 197 metropolitan areas in the United States, UC Merced political scientist Jessica Trounstein has found that restrictive land use policies predicted sustained racial segregation in cities between 1970 and 2006, while larger, sustained white minorities were predictive of cities’ resistance to new residential

¹⁷ Ryan-Collins, J., et al. (2017). *Rethinking the Economics of Land and Housing*. London, UK: New Economics Foundation.

¹⁸ Lory, Maya Tulip. (2013). A History of Racial Segregation, 1878–1960. *The Concord Review*. Retrieved from <http://www.schoolinfosystem.org/pdf/2014/06/04SegregationinCA24-2.pdf>

¹⁹ Murray, C. & Schuetz, J. (2019). Is California’s Apartment Market Broken? The Relationship Between Zoning, Rents, and Multifamily Development. *UC Berkeley Turner Center for Housing Innovation*. (2019).

²⁰ Legislative Analyst Office. (2015). California’s High Housing Costs: Causes and Consequences. Retrieved from <https://lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf>

²¹ Pennington, K. (2021). Does Building New Housing Cause Displacement?: The Supply and Demand Effects of Construction in San Francisco. *Working Paper*. Retrieved from https://www.dropbox.com/s/oplls6utgf7z6ih/Pennington_JMP.pdf?dl=0.

²² Zuk, M. & Chapple, K. (2016). Housing Production, Filtering and Displacement: Untangling the Relationships. *Institute of Governmental Studies Research Brief*. Berkeley, CA: UC Berkeley IGS. Retrieved from https://www.urbandisplacement.org/sites/default/files/images/udp_research_brief_052316.pdf

²³ Quigley, J.M. (2001). Homeless in America, Homeless in California. *The Review of Economics and Statistics*. 83(1): 37–51.

development.²⁴ Research from UC Berkeley's Othring and Belonging Institute finds that single-family zoning in the Bay Area is strongly correlated with high-resource, high-opportunity, and highly segregated communities.²⁵ Karen Chapple, Director of UC Berkeley's Urban Displacement Project, stated in a February 25, 2019 letter to the Berkeley City Council, "the Urban Displacement Project has established a direct connection between the neighborhood designations by the Home Owners Loan Corporation (HOLC), and 75% of today's exclusionary areas in the East Bay... Thus, this historic legacy, compounded by Berkeley's early exclusionary zoning practices, continues to shape housing opportunity and perpetuate inequities today." These inequitable distributions of access to housing and asset appreciation has historically perpetuated and remains a primary factor in country's the racial wealth gap.²⁶

The highly commodified political economy in the United States is enforced by a doctrine of strong property rights for protecting capital gains from asset inflation (colloquially referred to as "financialization" or "commodification") over rights to material well-being, perpetuating a permanent affordability crisis for most workers who did not already own their homes. This fundamental conflict of moral values and economic rights came into stark display in early 2020, when the group Moms 4 Housing occupied a vacant home in West Oakland owned by Wedgewood Inc., a private equity firm that flipped houses nationwide. In the early hours of January 14, 2020, Alameda County sheriff's deputies enforced an eviction order with guns and armored cars on display, arresting four members of the group who had previously been homeless or housing insecure. On January 20, Oakland Mayor Libby Schaaf and Governor Newsom announced a deal with Wedgewood to sell the house to the Oakland Community Land Trust, and offer first right of refusal to the land trust for its property portfolio in Oakland for permanently affordable housing.²⁷

This political value statement, backed by a real transfer of wealth and rights of secure tenure, does not need to be an *ad hoc* bartering between the sweat equity of community organizers, the bully pulpit of elected officials, and the real physical danger of tactical civil disobedience. These values can instead be operationalized as part of the baseline administration of public services. In response to the Moms 4 Housing success, the state legislature passed SB-1079 by Senator Nancy Skinner (D-Berkeley) in September of 2020, authorizing fines of from \$2,000 to \$5,000 per day on buyers of foreclosed homes left vacant for over 90 days; banning bundled sales of foreclosed houses; and giving

²⁴ Trounstein, J. (2020). *The Geography of Inequality: How Land Use Regulation Produces Segregation*. *American Political Science Review*. Cambridge: Cambridge University Press.

²⁵ Menendian, S., et al. (2020). *Single Family Zoning in the Bay Area: Characteristics of Exclusionary Communities*. *UC Berkeley Othring & Belonging Institute*. Retrieved from <https://belonging.berkeley.edu/single-family-zoning-san-francisco-bay-area>

²⁶ Darity Jr, W. et al. (2018). *What We Get Wrong About the Racial Wealth Gap*. *Samuel DuBois Cook Center on Social Equity*. Durham, NC: Duke University. Retrieved from <https://socialequity.duke.edu/wp-content/uploads/2020/01/what-we-get-wrong.pdf>

²⁷ La Ganga, M. L. (2020). *Evicted Oakland moms will get their house back after a deal with Redondo Beach company*. *Los Angeles Times*. Retrieved from <https://www.latimes.com/california/story/2020-01-20/homeless-moms-4-housing-oakland-wedgewood-properties-deal>

tenants, nonprofits, and community land trusts 45 days to match the final highest bid for the property.

Aligning public financing with more inclusive land-use regulations can offer a path to automating these sorts of progressive, reparative distributions of material well-being and housing security at a broader scale.

Automatic Stabilizers

Economists have proposed “automatic stabilizers” to respond to recessions with increased urgency since Obama Administration’s stimulus efforts following the Great Recession were hamstrung by partisan gridlock in Congress. Federal Reserve economist Claudia Sahm developed the “Sahm rule” for defining the onset of a recession with a specific threshold of sustained unemployment, and a proposal in which this rule could trigger automatic stimulus payments “to broadly support aggregate demand in a recession.”²⁸ In her testimony on January 19, 2021 at a confirmation hearing for her appointment to Treasury Secretary, former Federal Reserve chair Janet Yellen stated: “Our current system needs both updating and expansion... Designing and implementing a modern and effective system of automatic stabilizers is an important step to take now, so that we can minimize the negative impacts of any future recessions.”²⁹

Issuing stimulus payments automatically and universally to households rather than negotiating periodically in partisan politics could prevent widespread poverty among the least fortunate and also blunt a recession’s severity by sustaining consumer demand—stabilizing both material conditions for lower-income households, and consumption writ large. Analogous benchmarks can be operationalized to “stabilize” housing security in the city throughout business cycles and state planning certification periods. For example, urban planner Alain Bertaud has proposed automating updates to land-use policy as a function of land values to programmatically enforce widespread housing affordability.³⁰

President Joseph R. Biden’s 2020 campaign platform included massive increases to federal funding for public housing and the Section 8 housing voucher program.³¹ If the new presidential administration can increase housing subsidies through both supply and demand channels to more closely meet present and future needs, the City of Berkeley

²⁸ Sahm, C. (2019). Direct Stimulus Payments to Individuals. *The Hamilton Project*. Retrieved from https://www.hamiltonproject.org/assets/files/Sahm_web_20190506.pdf

²⁹ Yellen, J. (2021). Hearing to Consider the Anticipated Nomination of the Honorable Janet L. Yellen to Secretary of the Treasury. *U.S. Senate Committee on Finance*. Retrieved from <https://www.finance.senate.gov/imo/media/doc/Dr%20Janet%20Yellen%20Senate%20Finance%20Committee%20QFRs%2001%2021%202021.pdf>

³⁰ Bertaud, A. (2018). *Order Without Design: How Markets Shape Cities*. Cambridge, MA: The MIT Press.

³¹ Biden, J. (2020). The Biden Plan for Investing in our Communities Through Housing. Retrieved from <https://joebiden.com/housing/>

would have more resources to proactively ensure adequate, stable, and non-discriminatory housing is further guaranteed.

Municipal Housing Development

Mixed-income municipal housing development has distinct global variants, and is already currently being explored in the United States. In California, AB-387 also known as “the Social Housing Act of 2021” by Assemblymembers Lee (D-San Jose) and Wicks (D-Oakland), sets forth the intent to “establish the California Housing Authority for the purpose of developing mixed-income rental and limited equity homeownership housing and mixed-use developments to address the shortage of affordable homes for low and moderate-income households.” (See Attachment 3.) Importantly, state revenue bonds for infrastructure projects do not require voter approval.

The state legislature of Hawaii is considering a state-led housing development proposal known as ALOHA Homes, modeled after Singapore's Housing and Development Board (HDB). SB1 (2019) by State Senator Stanley Chang (D-Oahu) would establish a program within the state's housing finance agency to use existing and newly-acquired state lands near public transit to develop high-density housing. (See Attachment 2.) The state would sell housing units at-cost to residents on 99-year leases. The agency would establish a dedicated revolving fund to provide low-cost loans to support long-term affordability, property maintenance and development. By leasing public land for development while retaining title in the public trust, public agencies can ensure that a proportionate degree of real estate value increased by public investment can be recaptured for the public benefit.

In Singapore, the resale market for 99-year home leases are regulated to ensure long-term affordability with assistance to help households exchange their leasehold equity for larger or smaller units throughout the lease term to adapt to changing needs as family members age. Over 80% of Singaporeans live in HDB housing developments.

In Austria, over 60% of Vienna's residents live in social housing, consisting of roughly 200,000 municipally-owned housing units and 220,000 nonprofit-owned units. For non-citizens, a minimum of five years' residency is required to apply for a social housing unit, and subsidized units must be for a household's primary residence. Public investments for construction, property management, and preservation of the social housing stock are subsidized by a federal income tax and the state's general fund, as well as a revolving loan fund managed by the Vienna Housing Fund. The Vienna Housing Fund operates as a community-owned nonprofit land bank, established by Social Democrats in the 1920s with large investments in public land in response to a housing shortage following the First World War. The self-sustaining nonprofit entity acquires existing housing or develops new projects with the aim of long-term affordability.

The Vienna Housing Fund is a major entity developing thousands of new housing units every year, while buying and selling real property on the open market. It maintains a

two-year reserve of land to stabilize its property portfolio throughout real estate market cycles. The Vienna Housing Fund collaborates with the municipal government and nonprofit housing developers to provide affordable housing on public land via low-interest loans for new developments³², with loan payments reinvested into a revolving loan fund for future loans and subsidies.

Vienna also indirectly subsidizes private development by arranging land transfers and low-interest loans with private firms through a competitive bidding process, in which a jury panel evaluates applicants' projects based on criteria for design, sustainability, and affordability. The city rents a portion of the units at affordable rents to lower-income residents, but means-testing is only applied at the initial move-in. Effectively, Vienna's social housing program subsidizes affordable affordable housing through the supply channel rather than the demand channel (i.e. by subsidizing tenants themselves). Unlike Singapore, the city of Vienna's land-use planning promotes rentals over private homeownership, but similarly favors community longevity, recreational facilities, and supportive services. In 2016, the Social Democratic Party of Austria introduced the "wohnbauoffensive"³³—an initiative to streamline construction and permitting to increase housing production by 30%.

There are also examples in present-day California of revolving funds for community land reinvestment that sustain communities across the state. In Palm Springs, the Agua Caliente Band of Cahuilla Indians own and lease land to nearly 20,000 people and businesses in a non-contiguous checkerboard arrangement, with up to 99-year leases for residential development.³⁴ At a larger scale, University of California and California State University systems develop and manage large portfolios of student housing across the state. The universities own tens of thousands of rental beds and dwelling units in urban, suburban and rural jurisdictions. Each UC campus prepares and implements a capital management plan to develop property for rental housing—plans which include revolving reinvestments in their existing portfolio.³⁵ In Berkeley and neighboring jurisdictions, BART is planning for housing development on BART property by leasing land to private and nonprofit developers, using the land-lease model as leverage to achieve the agency's goal of 35% Below Market-Rate housing systemwide.³⁶ The Berkeley Unified School District is also exploring the potential to develop workforce housing on its properties.³⁷

³² Wohnpartner Wien. (2019). Vienna Social Housing – Tools of Success. Retrieved from

https://socialhousing.wien/fileadmin/user_upload/20190325_Einlagebla__tter_Gesamt_Englisch.pdf

³³ Stadt Wien Press service. (2016). "More, faster, cheaper and sustainable" – the City of Vienna is launching an additional housing offensive. Retrieved from <https://www.wien.gv.at/presse/2016/02/17/mehr-schneller-preiswert-und-nachhaltig-stadt-wien-startet-eine-zusaetzliche-wohnbau-offensive>

³⁴ Murphy, R. (2016). Half of Palm Springs sits on rented land. What happens if the leases end? *Desert Sun*. Retrieved from <https://www.desertsun.com/story/money/real-estate/2016/09/22/palm-springs-agua-caliente-land-lease/87944598/>.

³⁵ University of California. (2019). Capital Financial Plan 2019-25. Retrieved from <https://ucop.edu/capital-planning/files/capital/201925/2019-25-cfp.pdf>

³⁶ BART Board of Directors. (2016). Transit-Oriented Development Performance Measures and Targets. Retrieved from https://www.bart.gov/sites/default/files/docs/B-%20TOD%20Performance%20Targets%202040%20Adopted%2012-1-16_0.pdf

In 2017, an analysis of city-owned property in Berkeley by the Department of Health, Housing and Community Services found several sites such as the Elmwood Parking Lot, which “would need to be rezoned to support multifamily housing development at a large enough scale to make affordable housing feasible.”³⁸ Other properties identified would require zoning changes and further study at a minimum.

RATIONALE FOR RECOMMENDATION

Public housing development corporations in California could make both short-term and permanent impacts on housing affordability, construction sector employment, and other equity-based outcomes, while operating under standard land-use planning processes already being streamlined under state law.

Recent state legislation such as SB-35 (2017) and SB-330 (2019) already reform municipal land-use authority to support housing production within measurable benchmarks, limiting local discretion in permitting and zoning according to standards set by the Regional Housing Need Allocation (RHNA) process, the Housing Accountability Act (HAA), and the state Housing Element process.³⁹ The state legislature has also moved to increase affordable housing financing for municipalities by establishing the Bay Area Housing Finance Authority (BAHFA) in 2019; and in Senate Constitutional Amendment 2 (2021) by Sen. Ben Allen (D-Santa Monica), proposing removal of the state constitutional requirement for local referendum approval “low-rent” housing with more than 50% of its funding from the local jurisdiction. State law under AB-686 (2018) also requires cities to meet the goals of the Obama Administration’s Affirmatively Furthering Fair Housing rule under the 1968 Fair Housing Act in their housing elements and general plans. However, this policy framework is ultimately enforced by private right of action, on both sides of the issue: unsuccessful litigation attempted to overturn state-compliant by-right permits for housing development in Cupertino⁴⁰, and nonprofit advocates successfully sued the cities of Pleasanton⁴¹ after it failed to produce a state-compliant Housing Element. But rather than a positive guarantee to universal housing security, enforcement through private right of action puts the onus on the coordination of constituencies by definition with less housing security to assert their diffuse legal rights through state and local jurisdictions.

³⁷ Doocy, S. (2018). School District Employee Housing in California. *UC Berkeley Turner Center for Housing Innovation*. Retrieved from <https://turnercenter.berkeley.edu/research-and-policy/school-district-employee-housing-in-california/>

³⁸ https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/2019-04-25%20Land%20Use%20Agenda%20for%20Posting.pdf

³⁹ Elmendorf, C. et al. (2020). Superintending Local Constraints on Housing Development: How California Can Do It Better. *UC Davis Legal Studies Research Paper Series*.

⁴⁰ Friends of Cupertino v. City of Cupertino. No. 18CV330190. Superior Court of California, County of Santa Clara. (2020).

⁴¹ Urban Habitat Program v. City of Pleasanton. No. A118327. Court of Appeal, First District, Division 2, California. (2008).

This adversarial legal environment is inconsistent with a public commitment to universal fair housing. Liability does not ultimately hinge on the public sector's ability to guarantee adequate housing. To the extent that a municipal government chooses to take on such "liabilities" as a moral obligation, it must also devote its real assets to meet this obligation and balance the moral ledger. Local governments can coordinate and amplify their resources to improve housing outcomes through more inclusive land-use regulations, and an expanded authority as lender and lessor of last resort.

However, the United Nations Office of the High Commissioner for Human Rights (OHCHR) specifies that the right to adequate housing "clearly does not oblige the Government to construct a nation's entire housing stock."⁴²

Rather, the right to adequate housing covers measures that are needed to prevent homelessness, prohibit forced evictions, address discrimination, focus on the most vulnerable and marginalized groups, ensure security of tenure to all, and guarantee that everyone's housing is adequate. These measures can require intervention from the Government at various levels: legislative, administrative, policy or spending priorities. It can be implemented through an enabling approach to shelter where the Government, rather than playing the role of housing provider, becomes the facilitator of the actions of all participants in the production and improvement of shelter.

To that end, the City of Berkeley could proactively affirm housing as a human right according to measurable parameters of cost-burden and non-discriminatory access, as well as broader historical data and actionable moral commitments to restorative justice. Rather than *retroactive* enforcement of state housing mandates through private right of action, the City's administrative departments should continuously monitor the availability, adequacy, and equitable distribution of housing as publicly available Housing Justice Indicators, reevaluating policy tools including public investment and planning and development goals as needed to *proactively* guarantee housing as a basic right. A publicly available, user-friendly data dashboard of Housing Justice Indicators could maintain accountability of the City's civic institutions in meeting this mandate.

Vienna's 2016 "wohnbauoffensive" reforms, considered analogously with the Berkeley City Council's 2019 referral for a Missing Middle Report⁴³, are both essentially *ad hoc* responses to an immediate crisis, recognizing that inequitable land-use planning should be reformed to actively promote economic justice. Regular administrative oversight could be implemented to more quickly intervene in these inequities and further prevent material harm to vulnerable communities. The City Manager's office has already recommended a strategic focus on streamlining and reforming land use policy to enable

⁴² See footnote 1.

⁴³ https://www.cityofberkeley.info/Clerk/City_Council/2019/04_Apr/Documents/2019-04-23_Item_32_Missing_Middle_Report.aspx

a greater scale of housing production in its 1000 Person Plan to Address Homelessness:⁴⁴

4. Continue to implement changes to Berkeley's Land Use, Zoning, and Development Review Requirements for new housing with an eye towards alleviating homelessness. If present economic trends continue, the pace with which new housing is currently being built in Berkeley will likely not allow for a declining annual homeless population. Berkeley should continue to streamline development approval processes and reform local policies to help increase the overall supply of housing available, including affordable housing mandated by inclusionary policies.

The calibration of housing stability policy should continuously operate within transparent parameters of community engagement and historical data, so that a pilot program can begin from the outset with a concretely-defined goal of affirmatively redressing racial inequities in wealth, opportunity, health and educational outcomes. State and regional entities such as the state's Tax Credit Allocation Committee (TCAC), the Metropolitan Transportation Commission (MTC), and UC Berkeley scholars already maintain active measures of economic opportunity, racial segregation, transit access, environmental health, and other positive outcomes for developing policy recommendations.

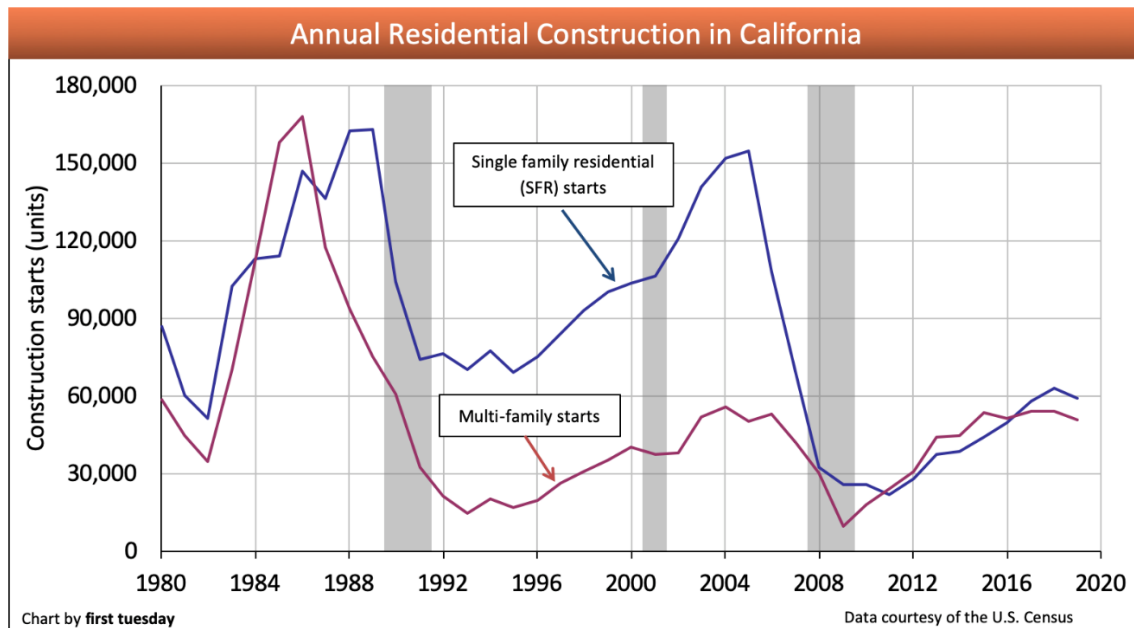
An "automatic stabilizer" paradigm with (a) a revolving land equity fund financing Reparative Housing Justice goals, and (b) periodic empirical review of land-use policy by the Planning Department, could quickly quantify unmet needs for housing security. Developing and implementing responses to needs in the community codified and expeditious administrative process, just as automated stimulus payments could quickly reduce material deprivation during business cycle downturns. Unlike stimulus payments, however, restorative housing justice should be a permanent goal of city service administration.

Public development entities enjoy the benefit of longer-term financial horizons that help produce more stable housing outcomes. Unhindered by the fiduciary duty to produce short-term positive returns for private investors, public housing development agencies are not obligated to cease production and layoff construction workers during recessions.

The private market has been incapable of meeting the need for shelter in California across business cycles. Private capital bids up the costs of inputs during upcycles, but financing dries up during recessions as investors flee the volatile market. Recovery in the construction sector is sluggish, but demand for shelter does not disappear. Construction rates collapsed after the Great Recession of 2008, but as of 2020, they had barely recovered to rates of the previous recession of 2001.⁴⁵

⁴⁴ https://www.cityofberkeley.info/Clerk/City_Council/2019/02_Feb/Documents/2019-02-26_Item_20_Referral_Response_1000_Person_Plan.aspx

⁴⁵ The slowing trend in California construction costs. (2019). first tuesday Journal. Retrieved from <https://journal.firsttuesday.us/the-rising-trend-in-california-construction-starts/17939/>



In a crudely Keynesian paradigm, these downturns are precisely when the public sector should step in to sustain housing development to meet the need for shelter, sustain employment, and boost aggregate demand. Unfortunately, California's housing market volatility limits the state and local government's resources when they are needed the most. For instance, California's construction workforce in 2017 lagged below its historic peak in 2006, equivalent to the size of the workforce at start of the economic recovery in 2011.⁴⁶ In contrast, Vienna's social housing program also stabilizes employment in the region by employing 20,000 workers in the building trades.

Compounding this structural deficit, state and local funding sources for affordable housing are pro-cyclical and likelier to see a decline in revenues during economic downturns. Berkeley's inclusionary zoning and Affordable Housing Mitigation Fee produce Below Market-Rate homes or revenues for the Housing Trust Fund contingent on "value capture" policies that rely on the willingness of private capital to invest in the value. The Low Income Housing Tax Credit program (LIHTC), the linchpin of affordable housing financing in the United States, relies on the incentive of corporate tax liability by providing tax credits to large corporations and financial institutions in exchange for equity in low-income housing projects within a finite time horizon. Reductions in corporate profits during recessions and cuts to the corporate tax rate have both reduced the value of these tax credits periodically.⁴⁷

⁴⁶ Littlehale, S. (2019). Rebuilding California: The Golden State's Housing Workforce Reckoning. *Smart Cities Prevail*. Retrieved from https://www.smartcitiesprevail.org/wp-content/uploads/2019/01/SCP_HousingReport.0118_2.pdf

⁴⁷ Scally, C. et al. (2018). The Low-Income Housing Tax Credits: Past Achievements, Future Challenges. *Urban Institute*. Retrieved from https://www.urban.org/sites/default/files/publication/98761/lihtc_past_achievements_future_challenges_finalize_d_1.pdf.

At the same time, highly leveraged private equity firms that specialize in liquidation of large portfolios or “asset stripping” benefit from volatile recessions that displace lower-income homeowners primarily in communities of color with less liquid capital to sustain riskier mortgage debt. Poorer households, primarily Black and Latinx residents, are more likely to end up trapped in cycles of poverty and homelessness, suffering for the benefit of wealthier and whiter financial institutions.

The Vienna Housing Fund offers a model for building wealth in the local community and affirmatively redressing the historic inequities intensified by cyclical volatility. By providing a revolving low-interest loan fund for tenants, nonprofits, limited equity cooperatives and Community Land Trusts, the City could plan for optimizing housing decommodification to meet concrete benchmarks in material outcomes: eliminating involuntary displacement, repairing wealth inequities in communities of color, and maintaining market price parity with regional incomes.

Rather than bearing 100% of project costs independently, a municipal fund could seek to partner with state and regional mechanisms for land value redistribution, such as Transit Value Capture Districts (TVCDs)⁴⁸ or Enhanced Infrastructure Finance Districts (EIFDs), which have been studied or proposed for financing affordable housing and other capital costs at BART stations.

As a countercyclical policy to sustain affordable housing financing across market cycles, a municipal revolving loan fund could provide loan guarantees or bridge loans to LIHTC developments to ensure their completion. As a reparative anti-displacement policy, a revolving loan fund could reinforce the city’s Local Preference policy for affordable housing included in the Adeline Corridor Specific Plan by providing favorable loan terms to community land trusts, tenant acquisitions, and nonprofit affordable housing developments that prioritize the return of formerly displaced residents from low-income communities of color. The loan fund can also seek matching funds from the newly-established Bay Area Housing Finance Authority (BAHFA), in direct partnership with the MTC and Association of Bay Area Governments (ABAG). In order to provide more housing security across the economic spectrum, a municipal revolving loan fund can consider more generous loan renegotiation terms or loan forgiveness, including the option of paying loans back to the fund in equity stakes.

The City of Berkeley is fortunate to not find itself in the same conditions as a bombed-out postwar Vienna, which made the consolidation of a large public land portfolio for the Vienna Housing Fund tragically inexpensive. However, Berkeley is blessed with a robust and growing tax base. Initially, such a loan fund may start small, with seed capital from the city’s Small Sites Program and/or bootstrapped with Berkeley’s existing real property portfolio, but over time it would be able to draw upon its growing portfolio of assets to self-finance operating costs while investing in new affordable housing

⁴⁸ Sagehorn, D. & Hawn, J. (2020). Transit Value Capture for California. *Common Ground California*. Retrieved from http://cacommonground.org/pdf/2020-12_Transit_Value_Capture.pdf

projects.⁴⁹ A budget referral should only proceed following a feasibility study to identify policy and funding goals for monitoring and addressing Housing Justice Indicators.

Homelessness and housing insecurity are the result of deliberate but diffuse policy choices. The feasibility of permanently guaranteeing housing security in Berkeley remains unknown, but our community nevertheless recognizes the imperative to make different policy choices to that end. The City of Berkeley can build on the precedents and procedures established in state law, affirm housing as a human right, and enforce concrete goals toward reparative housing justice as a permanent mandate of our municipal public service.

ALTERNATIVES CONSIDERED

The Berkeley City Council and the city's voters have taken clear steps to invest in housing security and affordable housing production. To the extent that the City is already developing and implementing affordable housing policies, the feasibility of these policy tools would not be mutually exclusive with other public investments and reforms currently underway.

ENVIRONMENTAL IMPACTS

Mixed-income housing development adjacent to frequent, reliable public transit and walkable street infrastructure can further the goals of the City's 2017 Climate Action Plan Update⁵⁰, which include:

Goal 4. Increase compact development patterns (especially along transit corridors)

Encouraging sustainable modes of travel such as cycling, walking, and public transit, is fundamentally tied to compact development patterns and the mix of land uses near transit hubs and jobs. For example, evidence shows that people who live near transit drive between 20% and 40% less than those who do not.

The City's 2018 Greenhouse Gas Inventory found that transportation accounted for 60% of Berkeley's greenhouse gas (GHG) emissions.⁵¹ According to a 2018 Progress Report from the California Air Resources Board: "Even if the share of new car sales that are [zero-emission electric vehicles] grows nearly 10-fold from today, California would still need to reduce VMT [Vehicle Miles Traveled] per capita 25 percent to achieve the necessary reductions for 2030."⁵² A 2019 report by the United Nations' International

⁴⁹ Baxamusa, M. (2020). A New Model for Housing Finance: Public and Private Sectors Working Together to Build Affordability. *Routledge Focus*. p. 123.

⁵⁰ https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/2017-12-07%20WS%20Item%2001%20Climate%20Action%20Plan%20Update.pdf

⁵¹ https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-21_Special_Item_05_Climate_Action_Plan_pdf.aspx

⁵² https://ww2.arb.ca.gov/sites/default/files/2018-11/Final2018Report_SB150_112618_02_Report.pdf

Resource Panel (IRP) emphasizes curbing suburban sprawl as a strategy to curb GHG emissions in urban areas that can also enhance the material outcomes provided by public services: “Optimizing densities and reducing sprawl also improves the sharing of resources (e.g. shared walls and roofs in apartment blocks) and reduces the distances that need to be covered by infrastructure networks (e.g. shorter pipes), allowing for savings in the materials and costs associated with service provision.”⁵³

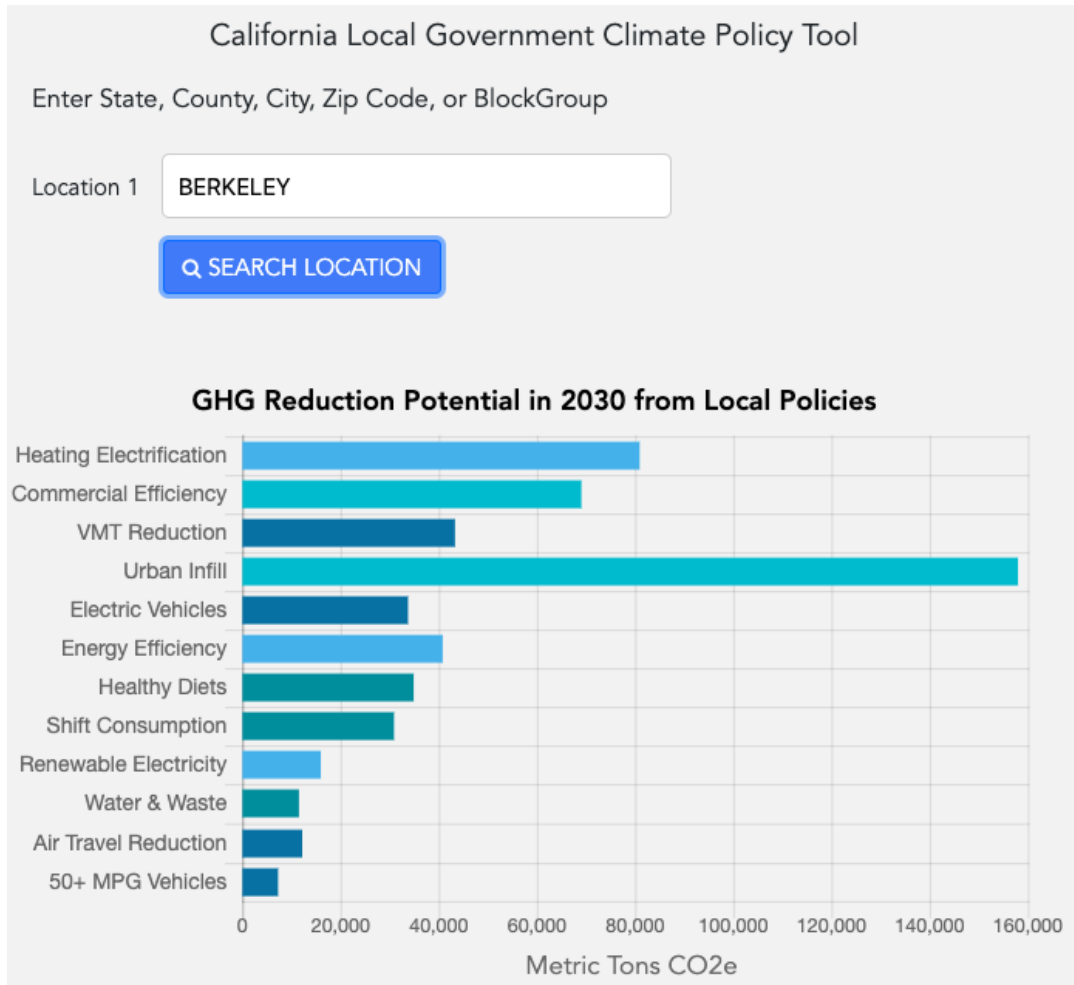
Critically, though, economic integration is vital to promoting an absolute reduction in per capita VMT. Mixed-income development providing transit-accessible housing security across the entire economic spectrum should maximize the potential for both reducing the carbon footprints of affluent, higher-emission households, and preventing the displacement of poorer, lower-emission households to higher-VMT suburban areas with larger per capita carbon footprints.

While research from UC Berkeley⁵⁴ has found that wealthier households see larger emissions reductions from living in denser urban areas, a recent study of displacement and gentrification in Seattle also found significant increases in GHG emissions when lower-income households were displaced to outer suburbs with higher VMT land-use patterns and longer commutes.⁵⁵ Notably, the same UC Berkeley study evaluates emission reduction potentials of a suite of municipal public policies in 700 California cities. Using the modeling from this study, the California Local Government Policy Tool from the Cool Climate Network shows that urban infill development offers the greatest potential for mitigating Berkeley’s GHG emissions.

⁵³ United Nations IRP. (2019). The Weight of Cities: Resource Requirements of Future Urbanization. Retrieved from <https://www.resourcepanel.org/reports/weight-cities>

⁵⁴ Jones et al. (2018). Carbon Footprint Planning: Quantifying Local and State Mitigation Opportunities for 700 California Cities. *Urban Planning*. 3(2). DOI: 10.17645/up.v3i2.1218

⁵⁵ Rice et al. (2020). Contradictions of the Climate-Friendly City: New Perspectives on Eco-Gentrification and Housing Justice. *International Journal of Urban and Regional Research*. 44(1):145-165.



FISCAL IMPACTS

TBD.—Staff time on financial feasibility study. The City Manager’s office has projected a \$12.7 million annual cost to achieve strategic goals enumerated in the 1000 Person Plan to End Homelessness by 2023, but the costs of reforming land use to affirmatively further housing justice remains unquantified. Because such a pilot program would aim to include a broader range of income levels and larger projects, project costs may ultimately not be comparable to the Small Sites Program. Feasibility study should aim for a long-term self-sustaining fiscal structure for Reparative Justice Revolving Loan Fund and identify hard costs of gathering, monitoring and planning policy directives in response to Housing Justice Indicators.

CONTACT

Councilmember Terry Taplin (District 2), 510-983-7120, ttaplin@cityofberkeley.info

ATTACHMENTS/SUPPORTING MATERIALS

1. Resolution
2. Senate Bill 1 (2019), State of Hawaii

3. Assembly Bill 387 (2021), State of California

RESOLUTION NO. ##,###-N.S.

RECOGNIZING HOUSING AS HUMAN RIGHT, REFERRING CITY MANAGER TO STUDY FINANCIAL FEASIBILITY OF MUNICIPAL HOUSING DEVELOPMENT PILOT PROGRAM TO ADMINISTER AUTOMATIC STABILIZERS FOR GUARANTEEING ADEQUATE HOUSING

WHEREAS, the United Nations has recognized housing as a human right in the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Economic, Social and Cultural Rights; and,

WHEREAS, the right to adequate housing includes freedoms such as protection against forced evictions and arbitrary destruction of housing; right to privacy; non-discriminatory choice of residence, and freedom of movement; and,

WHEREAS, the right to adequate housing includes entitlements such as security of tenure, restitution, equal and non-discriminatory access, and civic participation; and,

WHEREAS, the City of Berkeley has failed to affirm these freedoms and entitlements for its homeless residents, including 813 unsheltered identified in the 2019 Alameda County point-in-time count; and,

WHEREAS, the state of California and its local and regional governments have failed to affirm these freedoms and entitlements for at least 53% of renters who endure excessive cost-burdens, defined as paying over 30% of income for housing, according to the 2017 American Community Survey; and,

WHEREAS, cities around the world including Vienna and Singapore deliver better housing security and quality of life outcomes for their citizens with robust public housing development programs that reinvest revenues from mixed-income housing and real assets to fund operational costs and capital projects; and,

WHEREAS, histories of Jim Crow segregation endure in racial discrimination in mortgage credit and exclusionary land-use policies maintain disproportionate cost burdens and housing insecurity on Black people and low-income communities of color in the United States; and,

WHEREAS, the Berkeley City Council authorized a Missing Middle Report in 2019 on unanimous consent to study reforms to its land-use policies to enable more affordable times of housing construction, transit-oriented development, and racial and economic inclusion; and,

WHEREAS, the Berkeley City Council authorized a Local Preference policy for affordable housing when it passed the Adeline Corridor Specific Plan in 2020 to enable reparative housing security for low-income communities of color bearing the brunt of displacement and gentrification in Berkeley; and,

WHEREAS, the voters of the City of Berkeley authorized large increases in local funding for affordable housing in 2018 with the overwhelming passage of Measures O and P; and,

WHEREAS, a 2017 Analysis of City-Owned Property for Potential for Housing Development by Berkeley's Health, Housing and Community Services Department identified several publicly owned parcels that would require zoning changes and further study for affordable housing production;

NOW THEREFORE, BE IT RESOLVED, that the City of Berkeley recognizes adequate housing as a human right, with recognition of attendant freedoms and entitlements as enumerated by the United Nations;

BE IT FURTHER RESOLVED, that the Berkeley City Council refers the City Manager to study the financial feasibility of a municipal housing development pilot program administering automatic stabilizers to guarantee adequate housing security in Berkeley, with regular community input and periodic monitoring of socioeconomic indicators;

BE IT FURTHER RESOLVED, that the pilot program's feasibility study shall include, but not be limited to,

1. Feasibility study of public lands suitable mixed-income transit-oriented housing development identified in 2017 Analysis of City-Owned Lands and zoning changes needed for affordable housing at listed sites to address all income categories in upcoming Regional Housing Needs Allocation (RHNA) cycle;
2. Pilot program to establish a Reparative Justice Revolving Loan Fund with affirmative racial justice and anti-displacement goals, providing low-interest loans for tenants, nonprofits, limited-equity co-operatives, and community land trusts to acquire, develop, and/or maintain permanently affordable housing.
3. Pilot program to establish publicly available, user-friendly data dashboard monitoring Housing Justice Indicators in the city including, but not limited to, (a) health and safety standards, (b) affordability, (c) stability, and (d) discrimination and disparate impacts under US Department of Housing and Urban Development's Affirmatively Furthering Fair Housing (AFFH) rule; aligning Indicators with thresholds for corrective actions including land-use policy review and fiscal analysis.
4. State and regional partnerships with the California Department of Housing and Community Development, the Metropolitan Transportation Commission (MTC) and Association of Bay Area Governments (ABAG), UC Berkeley, and Bay Area Rapid Transit to develop fiscally resilient mixed-income housing and community reinvestment through land held in public trust and/or limited-equity cooperatives and community land trusts.

A BILL FOR AN ACT

RELATING TO HOUSING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the cost and
2 availability of housing in the State are significant challenges
3 facing Hawaii residents. Although Hawaii has the tenth highest
4 median wage nationally, living expenses are two-thirds higher
5 than the rest of the nation, with the cost of housing being a
6 major contributing factor. In September 2018, the median price
7 for a single-family home on Oahu rose to \$812,500, while the
8 median price for condominiums on Oahu rose to \$428,000.
9 According to a local news report, a household would need to earn
10 almost \$160,000 annually to afford to buy a home on Oahu, making
11 homeownership out of reach for many of Hawaii's residents,
12 especially first-time buyers.

13 Because of the many barriers hindering the production of
14 new housing, such as geographic limitations, lack of major
15 infrastructure, construction costs, and government regulation,
16 the State and housing developers have not been able to produce
17 enough housing for Hawaii residents. According to a 2015 report



1 from the department of business, economic development, and
2 tourism, the projected long-run estimate of demand for total new
3 housing in Hawaii is between 64,700 to 66,000 for the 2015 to
4 2025 period. The legislature has responded through the passage
5 of various legislation. During the regular session of 2016, the
6 legislature passed a bill enacted as Act 127, Session Laws of
7 Hawaii 2016, that, among other things, establishes a goal of
8 developing or vesting the development of at least 22,500
9 affordable rental housing units ready for occupancy by the end
10 of 2026. During the regular session of 2017, the legislature
11 passed a bill enacted as Act 54, Session Laws of Hawaii 2017, to
12 expand the types of rental housing projects that can be exempt
13 from general excise tax, thereby encouraging the development of
14 rental housing projects targeted for occupancy by households at
15 or below the one hundred forty per cent and eighty per cent area
16 median income levels. During the regular session of 2018, the
17 legislature passed a bill enacted as Act 39, Session Laws of
18 Hawaii 2018, that, among other things, provides an estimated
19 total value of \$570,000,000 to address Hawaii's affordable
20 rental housing crisis and is expected to generate more than
21 25,000 affordable units by the year 2030.



1 Despite these efforts, the amount of new construction of
2 housing, especially for low- to middle-income families,
3 continues to be inadequate as the supply of housing remains
4 constrained while demand for housing increases. This lack of
5 supply leads to higher housing prices and rents for households
6 of all income levels, leaving all tenants with less disposable
7 income, increasing the personal stress on buyers and renters,
8 and exacerbating overcrowding and homelessness. Given these
9 consequences, the lack of affordable housing requires the
10 concentrated attention of state government at the highest level.

11 The legislature further finds that Singapore faced a
12 housing crisis in the 1940s through 1960s but was subsequently
13 able to provide nearly one million residential units for its
14 citizens. The housing and development board -- the government
15 entity responsible for the rapid increase in housing development
16 -- plans, develops, and constructs the housing units, including
17 commercial, recreational, and social amenities. The result is
18 that units built by the housing and development board house
19 eighty per cent of the resident population and that, overall,
20 ninety per cent of the resident population are owners of their
21 units. Through government loans, subsidies, and grants and the



1 use of money saved through a government-run mandatory savings
 2 program, residents are able to purchase residential units at an
 3 affordable price, including options to upgrade to a better
 4 living environment in the future.

5 The legislature further finds that with Honolulu's
 6 construction of an elevated rail transit system, the State has
 7 an opportunity to enhance Oahu's urban environment and increase
 8 the quality of life for residents by increasing the affordable
 9 housing inventory and eliminating the need for personal
 10 automobiles, among other public benefits. As the largest
 11 landowner of properties along the transit line, with
 12 approximately two thousand acres under the jurisdiction of
 13 various departments, the State must be proactive in establishing
 14 a unified vision and approach toward redevelopment of its
 15 properties to maximize the benefits of state lands available for
 16 redevelopment.

17 The purpose of this Act is to:

- 18 (1) Establish the ALOHA homes program to facilitate the
- 19 creation of low-cost leasehold homes for sale to
- 20 Hawaii residents on state-owned land near public
- 21 transit stations; and



1 (2) Authorize the Hawaii housing finance and development
 2 corporation to sell the leasehold interest in
 3 residential condominium units located on state lands
 4 for lease terms of ninety-nine years.

5 SECTION 2. Chapter 201H, Hawaii Revised Statutes, is
 6 amended by adding two new subparts to part II to be
 7 appropriately designated and to read as follows:

8 "B. ALOHA Homes Program

9 **§201H-A Definitions.** As used in this subpart, the
 10 following terms have the following meanings, unless the context
 11 indicates a different meaning or intent:

12 "ALOHA" means affordable, locally owned homes for all.

13 "ALOHA home" means a residential unit within the urban
 14 redevelopment district.

15 "Commercial project" means an undertaking involving
 16 commercial or light industrial development, which includes a
 17 mixed-use development where commercial or light industrial
 18 facilities may be built into, adjacent to, under, or above
 19 residential units.

20 "High density" means a project or area that has at least
 21 two hundred fifty units per acre.



1 "Multipurpose project" means a project consisting of any
2 combination of a commercial project, redevelopment project, or
3 residential project.

4 "Owner-occupied residential use" means any use currently
5 permitted in existing residential zones consistent with owner
6 occupancy, but shall not mean renting or leasing to any tenant
7 or lessee of any kind.

8 "Project" means a specific work or improvement, including
9 real and personal properties, or any interest therein, acquired,
10 owned, constructed, reconstructed, rehabilitated, or improved by
11 the corporation, including a commercial project, redevelopment
12 project, or residential project.

13 "Public agency" means any office, department, board,
14 commission, bureau, division, public corporation agency, or
15 instrumentality of the federal, state, or county government.

16 "Public facilities" includes streets, utility and service
17 corridors, and utility lines where applicable, sufficient to
18 adequately service developable improvements in the district,
19 sites for schools, parks, parking garages, sidewalks, pedestrian
20 ways, and other community facilities. "Public facilities" also
21 includes public highways, as defined in section 264-1, storm



1 drainage systems, water systems, street lighting systems, off-
2 street parking facilities, and sanitary sewerage systems.

3 "Public transit station" means:

4 (1) A station connected to a locally preferred alternative
5 for a mass transit project; or

6 (2) For the city and county of Honolulu, a station of the
7 Honolulu rail transit system.

8 "Redevelopment project" means an undertaking for the
9 acquisition, clearance, replanning, reconstruction, and
10 rehabilitation, or a combination of these and other methods, of
11 an area for a residential project, for an incidental commercial
12 project, and for other facilities incidental or appurtenant
13 thereto, pursuant to and in accordance with this subpart. The
14 terms "acquisition, clearance, replanning, reconstruction, and
15 rehabilitation" shall include renewal, redevelopment,
16 conservation, restoration, or improvement, or any combination
17 thereof.

18 "Residential project" means a project or that portion of a
19 multipurpose project, including residential dwelling units,
20 designed and intended for the purpose of providing housing and
21 any facilities as may be incidental or appurtenant thereto.



1 "Small and medium vendor" means a commercial vendor that
2 employs nine hundred ninety-nine employees or less.

3 §201H-B ALOHA homes program. There is established the
4 ALOHA homes program for the purpose of providing low-cost, high
5 density leasehold homes for sale to Hawaii residents on state-
6 owned lands within a one-half mile radius of a public transit
7 station.

8 §201H-C Community and public notice requirements; posting
9 on the corporation's website; required. For the purposes of
10 this subpart, the corporation shall adopt community and public
11 notice procedures pursuant to chapter 91 that shall include at a
12 minimum:

13 (1) A means to effectively engage the community in which
14 the corporation is planning a development project
15 under this subpart to ensure that community concerns
16 are received and considered by the corporation;

17 (2) The posting of the corporation's proposed plans for
18 any development project under this subpart, public
19 hearing notices, and minutes of its proceedings on the
20 corporation's website;



- 1 (3) The posting of every application for a development
- 2 project on the corporation's website when the
- 3 application is deemed complete;
- 4 (4) Notification by the applicant of any application for a
- 5 development project valued at \$250,000 or more by
- 6 first class United States mail, postage prepaid to
- 7 owners and lessees of record of real property located
- 8 within a three hundred foot radius of the perimeter of
- 9 the proposed project identified from the most current
- 10 list available from the real property assessment
- 11 division of the department of budget and fiscal
- 12 services of the city and county of Honolulu when the
- 13 application is deemed complete; provided that notice
- 14 mailed pursuant to this paragraph shall include but
- 15 not be limited to notice of:
- 16 (A) Project specifications;
- 17 (B) Requests for exemptions from statutes,
- 18 ordinances, charter provisions, and rules
- 19 pursuant to section 201H-38; and
- 20 (C) Procedures for intervention and a contested case
- 21 hearing; and



1 (5) Any other information that the public may find useful
 2 so that it may meaningfully participate in the
 3 corporation's decision-making processes.

4 **§201H-D Urban redevelopment district; established;**
 5 **boundaries.** The urban redevelopment district is established.
 6 The urban redevelopment district shall include all state-owned
 7 and county-owned land within county-designated transit-oriented
 8 development areas or within a one-half-mile radius of a public
 9 transit station in a county with a population greater than five
 10 hundred thousand.

11 **§201H-E Rules; guidelines.** (a) The corporation shall
 12 establish rules under chapter 91 on health, safety, building,
 13 planning, zoning, and land use, which shall supersede all other
 14 inconsistent ordinances and rules relating to the use, zoning,
 15 planning, and development of land and construction thereon.
 16 Rules adopted under this section shall follow existing law,
 17 rules, ordinances, and regulations as closely as is consistent
 18 with standards meeting minimum requirements of good design,
 19 pleasant amenities, health, safety, and coordinated development.
 20 The corporation may provide that lands within the urban
 21 redevelopment district shall not be developed beyond existing



1 uses or that improvements thereon shall not be demolished or
2 substantially reconstructed, or provide other restrictions on
3 the use of the lands.

4 (b) The following shall be the principles generally
5 governing the corporation's action in the urban redevelopment
6 district:

7 (1) The corporation shall endeavor to produce enough
8 housing supply to meet housing demand;

9 (2) Each development may include facilities to replace any
10 facilities that must be removed for the development's
11 construction;

12 (3) Development shall be revenue-neutral to the State, and
13 all revenues generated shall be used for the purposes
14 of this subpart;

15 (4) The corporation may build infrastructure beyond what
16 exists in any development under this subpart and may
17 sell the infrastructure capacity to other private
18 sector developers;

19 (5) The corporation may build common area facilities for
20 any development undertaken pursuant to this subpart,



1 which shall be paid through the sales of ALOHA homes
2 units;
3 (6) Development shall result in a community that permits
4 an appropriate land mixture of residential,
5 commercial, light industrial, and other uses. In view
6 of the innovative nature of the mixed use approach,
7 urban design policies shall be established for the
8 public and private sectors in the proper development
9 of the urban redevelopment district; provided that any
10 of the corporation's proposed actions in the urban
11 redevelopment district that are subject to chapter 343
12 shall comply with chapter 343 and federal
13 environmental requirements; provided further that the
14 corporation may engage in any studies or coordinative
15 activities permitted in this subpart which affect
16 areas lying outside the district, where the
17 corporation in its discretion decides that those
18 activities are necessary to implement the intent of
19 this subpart. The studies or coordinative activities
20 shall be limited to facility systems, resident and
21 industrial relocation, and other activities with the



S.B. NO. ¹ S.D. 2

1 counties and appropriate state agencies. The
 2 corporation may engage in construction activities
 3 outside of the urban redevelopment district; provided
 4 that the construction relates to infrastructure
 5 development or residential or business relocation
 6 activities; provided further that the construction
 7 shall comply with the general plan, development plan,
 8 ordinances, and rules of the county in which the urban
 9 redevelopment district is located;

10 (7) Existing and future light industrial uses accessory to
 11 shall be permitted and encouraged in appropriate
 12 locations within the urban redevelopment district. No
 13 plan or implementation strategy shall prevent
 14 continued activity or redevelopment of light
 15 industrial and commercial uses which meet reasonable
 16 performance standards;

17 (8) Activities shall be located so as to provide primary
 18 reliance on public transportation and pedestrian
 19 facilities for internal circulation within the urban
 20 redevelopment district or designated subareas;



S.B. NO. ¹ S.D. 2

- 1 (9) Major view planes, view corridors, and other
- 2 environmental elements such as natural light and
- 3 prevailing winds, may be preserved through appropriate
- 4 regulation and design review;
- 5 (10) All projects shall comply with all applicable
- 6 statutes, rules, and ordinances related to historic
- 7 and cultural resource preservation;
- 8 (11) Where compatible, land use activities within the urban
- 9 redevelopment district shall to the greatest possible
- 10 extent be mixed horizontally within blocks or other
- 11 land areas, and vertically as integral units of multi-
- 12 purpose structures;
- 13 (12) Development shall prioritize maximizing density on
- 14 lands that are most urbanized and most suitable for
- 15 high density; provided that development may require a
- 16 mixture of densities, building types, and
- 17 configurations in accordance with appropriate urban
- 18 design guidelines and vertical and horizontal
- 19 integration of residents of varying incomes, ages, and
- 20 family groups that reflect the diversity of Hawaii.
- 21 Development shall provide necessary community



S.B. NO. ¹ S.D. 2

1 facilities, such as parks, community meeting places,
 2 child care centers, schools, educational facilities,
 3 libraries, and other services, within and adjacent to
 4 residential development; provided that any school that
 5 is provided by the corporation as a necessary
 6 community facility shall be exempt from school size
 7 requirements as calculated by recent school site area
 8 averages pursuant to section 302A-1602;

9 (13) Public facilities within the urban redevelopment
 10 district shall be planned, located, and developed so
 11 as to support the redevelopment policies for the
 12 district established by this subpart and plans and
 13 rules adopted pursuant to it;

14 (14) Development shall be achieved through the efficient
 15 and cost-effective use of government and private-
 16 sector workforces through public-private partnerships
 17 and other mechanisms to incentivize development to be
 18 on time and on budget;

19 (15) Development shall be designed, to the extent possible,
 20 to minimize traffic, parking, the use of private
 21 automobiles, and noise;



1 (16) Development shall be subject to chapter 104; and

2 (17) Development shall incorporate universal design in
3 compliance with the Americans with Disabilities Act of
4 1990 and Uniform Federal Accessibility Standards, to
5 the extent possible, and exceed accessibility
6 requirements under those authorities.

7 (c) ALOHA homes within the urban redevelopment district
8 shall not be advertised for rent, rented, or used for any
9 purpose other than owner-occupied residential use; provided that
10 the corporation, by rule, shall establish penalties for
11 violations of this subsection up to and including forced sale of
12 an ALOHA home.

13 (d) The corporation shall establish a competition process
14 for selecting the design and development vendors of ALOHA homes
15 with the appropriate number of units to accommodate small and
16 medium vendors. The criteria of the competition process shall
17 include preferences on the basis of prior experience in the
18 State and an understanding of the State's unique culture;
19 provided that the corporation may include an opportunity for
20 community input through public vote. The corporation may



1 provide a stipend in a manner and an amount to be determined by
2 the corporation to competitors pursuant to this subsection.

3 (e) The corporation may transfer ALOHA homes units to the
4 office of Hawaiian affairs and department of Hawaiian home lands
5 for use by their respective beneficiaries.

6 (f) The corporation shall recoup all expenses through the
7 sales of the leasehold interest of ALOHA homes and other revenue
8 sources, including the leasing of commercial projects.

9 **§201H-F Sale of the leasehold interest of ALOHA homes;**
10 **rules; guidelines.** (a) The corporation shall adopt rules,
11 pursuant to chapter 91, for the sale of the leasehold interest
12 of ALOHA homes under its control within the urban redevelopment
13 district; provided that each lease shall be for a term of
14 ninety-nine years. The rules shall include the following
15 requirements for an eligible buyer or owner of an ALOHA home
16 within the district:

17 (1) The person shall be a resident of the State; provided
18 that voting in the most recent primary or general
19 election shall be an indication of residency in the
20 State; provided further that not voting in any primary



1 or general election creates a rebuttable presumption
2 of non-residency;

3 (2) The person shall not use the ALOHA home for any
4 purpose other than owner-occupied residential use; and

5 (3) The person, or the person's spouse, shall not own any
6 other real property, including any residential and
7 non-residential property, beneficial ownership of
8 trusts, and co-ownership or fractional ownership,
9 while owning an ALOHA home in the district; provided
10 that an eligible buyer may own real property up to six
11 months after closing on the purchase of an ALOHA home;
12 provided further that an owner of an ALOHA home in the
13 process of selling the ALOHA home may own other real
14 property up to six months prior to closing on the sale
15 of the ALOHA home to an eligible buyer;

16 provided that the rules under this subsection shall not include
17 any requirements or limitations related to an individual's
18 income or any preferences to first-time home buyers. The rules
19 shall include strict enforcement of owner-occupancy, including a
20 prohibition on the renting or leasing of an ALOHA home to any
21 tenant or lessee, and may include requirements for the use of



1 face recognition, verification of the presence of owner-
2 occupants and prevention of access of all unauthorized persons
3 through retina scan for a minimum number of days per year, or
4 fingerprint scan technology.

5 (b) ALOHA homes within the urban redevelopment district
6 shall be priced to be affordable, as determined by the United
7 States Department of Housing and Urban Development, to an
8 individual or family whose income does not exceed eighty per
9 cent of the area median income, or \$300,000, whichever is less;
10 provided that the price shall be adjusted for inflation.

11 (c) The corporation shall establish waitlists for each
12 residential development for eligible buyers to determine the
13 order in which ALOHA homes shall be sold. Waitlist priorities
14 may include school, college, or university affiliation if the
15 residential property is a redeveloped school, college, or
16 university; proximity of an eligible buyer's existing residence
17 to an ALOHA home within the urban redevelopment district; and
18 other criteria based on the impact that the development has on
19 the eligible buyer.

20 (d) ALOHA homes within the urban redevelopment district
21 shall be sold only to other eligible buyers.



1 (e) An owner of an ALOHA home may sell the ALOHA home
2 after five or more years of owner-occupancy; provided that the
3 corporation shall have the right of first refusal to purchase
4 the ALOHA home at a price that is determined by the corporation
5 using the price at which the owner purchased the ALOHA home as
6 the cost basis, adjusted for inflation, and may include a
7 percentage of the appreciation in value of the unit. If the
8 corporation does not exercise its right to purchase the ALOHA
9 home, the ALOHA home may be sold by the owner to an eligible
10 buyer; provided that the corporation shall retain seventy-five
11 per cent of all profits from the sale net of closing and
12 financing costs, using the price at which the owner purchased
13 the ALOHA home as the cost basis. Upon the death of the owner
14 of an ALOHA home, the ALOHA home may be transferred to the
15 deceased's heir by devise or as any other real property under
16 existing law; provided that if the heir is not an eligible
17 buyer, the heir shall sell the ALOHA home to the corporation at
18 a price that is determined by the corporation using the price at
19 which the owner purchased the ALOHA home as the cost basis,
20 adjusted for inflation, and may include a percentage of the
21 appreciation in value of the unit.



1 (f) If an owner of an ALOHA home sells the ALOHA home
 2 before five years of owner-occupation, the corporation shall
 3 purchase the ALOHA home at a price that is determined by the
 4 corporation using the price at which the owner purchased the
 5 ALOHA home as the cost basis, adjusted for inflation.

6 (g) Any ALOHA home developed and sold under this subpart
 7 shall not be subject to sections 201H-47, 201H-49, 201H-50, and
 8 201H-51.

9 **§201H-G Use of public lands; acquisition of state lands.**

10 (a) If state lands under the control and management of other
 11 public agencies are required by the corporation for the purposes
 12 of this subpart, the agency having the control and management of
 13 those required lands, upon request by the corporation and with
 14 the approval of the governor, may convey or lease those lands to
 15 the corporation upon terms and conditions as may be agreed to by
 16 the parties.

17 (b) Notwithstanding the foregoing, no public lands shall
 18 be conveyed or leased to the corporation pursuant to this
 19 section if the conveyance or lease would impair any covenant
 20 between the State or any county or any department or board



1 thereof and the holders of bonds issued by the State or that
2 county, department, or board.

3 **§201H-H Acquisition of real property from a county.**

4 Notwithstanding the provision of any law or charter, any county,
5 by resolution of its local governing body, may, without public
6 auction, sealed bids, or public notice, sell, lease, grant, or
7 convey to the corporation any real property owned by it that the
8 corporation certifies to be necessary for the purposes of this
9 subpart. The sale, lease, grant, or conveyance shall be made
10 with or without consideration and upon terms and conditions as
11 may be agreed upon by the county and the corporation.

12 Certification shall be evidenced by a formal request from the
13 corporation. Before the sale, lease, grant, or conveyance may
14 be made to the corporation, a public hearing shall be held by
15 the local governing body to consider the same. Notice of the
16 hearing shall be published at least six days before the date set
17 for the hearing in the publication and in the manner as may be
18 designated by the local governing body.

19 **§201H-I Condemnation of real property.** The corporation,
20 upon making a finding that it is necessary to acquire any real
21 property for its immediate or future use for the purposes of



1 this subpart, may acquire the property, including property
2 already devoted to a public use, by condemnation pursuant to
3 chapter 101. The property shall not thereafter be taken for any
4 other public use without the consent of the corporation. No
5 award of compensation shall be increased by reason of any
6 increase in the value of real property caused by the designation
7 of the urban redevelopment district or plan adopted pursuant to
8 a designation, or the actual or proposed acquisition, use, or
9 disposition of any other real property by the corporation.

10 **§201H-J Relocation.** The corporation shall adopt rules
11 pursuant to chapter 91 in compliance with the Uniform Relocation
12 Assistance and Real Property Acquisition Act of 1970 and chapter
13 111 to ensure the appropriate relocation within or outside the
14 district of persons, families, businesses, or services displaced
15 by governmental action within the urban redevelopment district.

16 **§201H-K Construction contracts.** (a) The corporation
17 shall award construction contracts for ALOHA homes in conformity
18 with section 201H-E(d), without regard to chapter 103D.

19 (b) The corporation shall award construction contracts for
20 commercial projects without regard to chapter 103D.



1 **§201H-L Lease of projects.** Notwithstanding any law to the
2 contrary, the corporation, without recourse to public auction or
3 public notice for sealed bids, may lease for a term not
4 exceeding sixty-five years all or any portion of the real or
5 personal property constituting a commercial project to any
6 person, upon terms and conditions as may be approved by the
7 corporation; provided that all revenues generated from the lease
8 shall be used to support the purpose of this subpart pursuant to
9 section 201H-B.

10 **§201H-M Dedication for public facilities as condition to**
11 **development.** The corporation shall establish rules requiring
12 dedication for public facilities of land or facilities by
13 developers as a condition of developing real property within the
14 urban redevelopment district. Where state and county public
15 facilities dedication laws, ordinances, or rules differ, the
16 provision for greater dedication shall prevail.

17 **§201H-N ALOHA homes revolving fund.** There is created the
18 ALOHA homes revolving fund into which all receipts and revenues
19 of the corporation pursuant to this subpart shall be deposited.
20 Proceeds from the fund shall be used for the purposes of this
21 subpart.



1 **§201H-O Expenditures of ALOHA homes revolving fund under**
2 **the corporation exempt from appropriation and allotment. Except**
3 **as to administrative expenditures, and except as otherwise**
4 **provided by law, expenditures from the ALOHA homes revolving**
5 **fund administered by the corporation may be made by the**
6 **corporation without appropriation or allotment of the**
7 **legislature; provided that no expenditure shall be made from and**
8 **no obligation shall be incurred against the ALOHA homes**
9 **revolving fund in excess of the amount standing to the credit of**
10 **the fund or for any purpose for which the fund may not lawfully**
11 **be expended. Nothing in sections 37-31 to 37-41 shall require**
12 **the proceeds of the ALOHA homes revolving fund administered by**
13 **the corporation to be reappropriated annually.**

14 **§201H-P Assistance by state and county agencies. Any**
15 **state or county agency may render services for the purposes of**
16 **this subpart upon request of the corporation.**

17 **§201H-Q Court proceedings; preferences; venue. (a) Any**
18 **action or proceeding to which the corporation, the State, or the**
19 **county may be a party, in which any question arises as to the**
20 **validity of this subpart, shall be brought in the circuit court**
21 **of the circuit where the case or controversy arises, and shall**



1 be heard and determined in preference to all other civil cases
2 pending therein except election cases, irrespective of position
3 on the calendar.

4 (b) Upon application of counsel to the corporation, the
5 same preference shall be granted in any action or proceeding
6 questioning the validity of this subpart in which the
7 corporation may be allowed to intervene.

8 (c) Notwithstanding any provision of law to the contrary,
9 declaratory relief may be obtained for the action.

10 (d) Any party aggrieved by the decision of the circuit
11 court may appeal in accordance with part I of chapter 641 and
12 the appeal shall be given priority.

13 **§201H-R Issuance of bonds.** The director of finance, from
14 time to time, may issue general obligation bonds pursuant to
15 chapter 39 in amounts as may be authorized by the legislature,
16 for the purposes of this subpart.

17 **§201H-S Violations and penalty.** (a) The corporation may
18 set, charge, and collect reasonable fines for violation of this
19 subpart or any rule adopted pursuant to chapter 91.

20 Notwithstanding section 201H-E(c), any person violating any rule
21 adopted pursuant to chapter 91, for which violation a penalty is



1 not otherwise provided, shall be fined not more than \$500 a day
2 and shall be liable for administrative costs incurred by the
3 corporation.

4 (b) The corporation may maintain an action for an
5 injunction to restrain any violation of this subpart and may
6 take any other lawful action to prevent or remedy any violation.

7 (c) Notwithstanding section 201H-E(c), any person
8 violating this subpart shall, upon conviction, be punished by a
9 fine not exceeding \$1,000 or by imprisonment not exceeding
10 thirty days, or both. The continuance of a violation after
11 conviction shall be deemed a new offense for each day of the
12 continuance.

13 **§201H-T Additional powers.** The powers conferred upon the
14 corporation by this subpart shall be in addition and
15 supplemental to the powers conferred by any other law, and
16 nothing in this subpart shall be construed as limiting any
17 powers, rights, privileges, or immunities so conferred.

18 **§201H-U State lands no longer needed.** State lands that
19 are no longer needed for affordable residential leasehold units
20 by the Hawaii housing finance and development corporation shall
21 be returned to the previous owner of those lands.



1 **§201H-V Rules.** The corporation may adopt rules, pursuant
2 to chapter 91, necessary for the purposes of this subpart.

3 C. Leasehold Condominiums on State Lands

4 **§201H-W Leasehold condominiums on state lands.** (a) The
5 corporation may sell leasehold units in condominiums organized
6 pursuant to chapter 514B and developed under this subpart on
7 state land to a "qualified resident" as defined in section
8 201H-32.

9 (b) The term of the lease may be for ninety-nine years,
10 and the corporation may extend or modify the fixed rental period
11 of the lease or extend the term of the lease.

12 (c) The sale of leasehold units shall be subject to
13 sections 201H-47, 201H-49, and 201H-50, except for units sold at
14 fair market value.

15 (d) State land set aside by the governor to the
16 corporation and lands leased to the corporation by any
17 department or agency of the State for a condominium described in
18 this section shall be exempt from the definition of "public
19 land" under section 171-2, except for the provision in section
20 171-2(6) that subjects corporation lands to the accounting for



1 all receipts for lands subject to section 5(f) of the Admission
2 Act.

3 (e) The powers conferred upon the corporation by this
4 section shall be in addition and supplemental to the powers
5 conferred by any other law, and nothing in this section shall be
6 construed as limiting any powers, rights, privileges, or
7 immunities so conferred."

8 SECTION 3. Chapter 237, Hawaii Revised Statutes, is
9 amended by adding a new section to be appropriately designated
10 and to read as follows:

11 "§237- Exemption of sale of leasehold interest for
12 ALOHA home units. In addition to the amounts exempt under
13 section 237-24, this chapter shall not apply to amounts received
14 from the sale of a leasehold interest in an ALOHA homes unit
15 under chapter 201H, subpart B."

16 SECTION 4. Section 171-2, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§171-2 Definition of public lands. "Public lands" means
19 all lands or interest therein in the State classed as government
20 or crown lands previous to August 15, 1895, or acquired or
21 reserved by the government upon or subsequent to that date by



1 purchase, exchange, escheat, or the exercise of the right of
 2 eminent domain, or in any other manner; including lands accreted
 3 after May 20, 2003, and not otherwise awarded, submerged lands,
 4 and lands beneath tidal waters that are suitable for
 5 reclamation, together with reclaimed lands that have been given
 6 the status of public lands under this chapter, except:

- 7 (1) Lands designated in section 203 of the Hawaiian Homes
 8 Commission Act, 1920, as amended;
- 9 (2) Lands set aside pursuant to law for the use of the
 10 United States;
- 11 (3) Lands being used for roads and streets;
- 12 (4) Lands to which the United States relinquished the
 13 absolute fee and ownership under section 91 of the
 14 Hawaiian Organic Act prior to the admission of Hawaii
 15 as a state of the United States unless subsequently
 16 placed under the control of the board of land and
 17 natural resources and given the status of public lands
 18 in accordance with the state constitution, the
 19 Hawaiian Homes Commission Act, 1920, as amended, or
 20 other laws;
- 21 (5) Lands to which the University of Hawaii holds title;



1 (6) Lands that are set aside by the governor to the Hawaii
2 housing finance and development corporation; lands
3 leased to the Hawaii housing finance and development
4 corporation by any department or agency of the State;
5 or lands to which the Hawaii housing finance and
6 development corporation in its corporate capacity
7 holds title; provided that lands described in this
8 paragraph shall be considered "public lands" for the
9 purpose of accounting for all receipts from lands
10 described in section 5(f) of the Admission Act for the
11 prior fiscal year, pursuant to section 5 of Act 178,
12 Session Laws of Hawaii 2006; provided further that
13 payment of receipts pursuant to this paragraph may be
14 made in a form of remuneration or consideration other
15 than cash;

16 (7) Lands to which the Hawaii community development
17 authority in its corporate capacity holds title;

18 (8) Lands to which the department of agriculture holds
19 title by way of foreclosure, voluntary surrender, or
20 otherwise, to recover moneys loaned or to recover
21 debts otherwise owed the department under chapter 167;



1 (9) Lands that are set aside by the governor to the Aloha
 2 Tower development corporation; lands leased to the
 3 Aloha Tower development corporation by any department
 4 or agency of the State; or lands to which the Aloha
 5 Tower development corporation holds title in its
 6 corporate capacity;

7 (10) Lands that are set aside by the governor to the
 8 agribusiness development corporation; lands leased to
 9 the agribusiness development corporation by any
 10 department or agency of the State; or lands to which
 11 the agribusiness development corporation in its
 12 corporate capacity holds title;

13 (11) Lands to which the Hawaii technology development
 14 corporation in its corporate capacity holds title; and

15 (12) Lands to which the department of education holds
 16 title;

17 provided that, except as otherwise limited under federal law and
 18 except for state land used as an airport as defined in section
 19 262-1, public lands shall include the air rights over any
 20 portion of state land upon which a county mass transit project
 21 is developed after July 11, 2005."



1 SECTION 5. Chapter 201H, Hawaii Revised Statutes, is
2 amended by designating sections 201H-31 to 201H-70 as subpart A
3 and inserting a title before section 201H-31 to read as follows:

4 "A. General Provisions"

5 SECTION 6. Section 302A-1603, Hawaii Revised Statutes, is
6 amended by amending subsection (b) to read as follows:

7 "(b) The following shall be exempt from this section:

8 (1) Any form of housing permanently excluding school-aged
9 children, with the necessary covenants or declarations
10 of restrictions recorded on the property;

11 (2) Any form of housing that is or will be paying the
12 transient accommodations tax under chapter 237D;

13 (3) All nonresidential development; [and]

14 (4) Any development with an executed education
15 contribution agreement or other like document with the
16 department for the contribution of school sites or
17 payment of fees for school land or school
18 construction[-]; and

19 (5) Any form of development by the Hawaii housing finance
20 and development corporation pursuant to chapter 201H,
21 part II, subpart B."



1 SECTION 7. There is appropriated out of the general
 2 revenues of the State of Hawaii the sum of \$ or so much
 3 thereof as may be necessary for fiscal year 2019-2020 to be
 4 deposited into the ALOHA homes revolving fund established
 5 pursuant to section 201H-N, Hawaii Revised Statutes.

6 SECTION 8. There is appropriated out of the ALOHA homes
 7 revolving fund established pursuant to section 201H-N, Hawaii
 8 Revised Statutes, the sum of \$ or so much thereof as may
 9 be necessary for fiscal year 2019-2020 for the purposes for
 10 which the revolving fund is established.

11 The sum appropriated shall be expended by the Hawaii
 12 housing finance and development corporation for the purposes of
 13 this Act.

14 SECTION 9. In codifying the new sections added by section
 15 2 of this Act, the revisor of statutes shall substitute
 16 appropriate section numbers for the letters used in designating
 17 the new sections in this Act.

18 SECTION 10. Statutory material to be repealed is bracketed
 19 and stricken. New statutory material is underscored.

20 SECTION 11. This Act shall take effect on July 1, 2050.



S.B. NO. ¹ S.D. 2

Report Title:

ALOHA Homes Program; Housing; HHFDC; Urban Redevelopment District; Transit-oriented Development; Leasehold Condominiums on Lands Controlled by the State; Appropriation

Description:

Establishes the ALOHA homes program under the Hawaii Housing Finance and Development Corporation (HHFDC) to facilitate the development of low-cost homes for sale to Hawaii residents on state-owned and county-owned land near rail stations of the Honolulu rail transit system, to be known as the urban redevelopment district. Establishes guidelines within the urban redevelopment district and provisions related to the sale of leasehold interest of ALOHA homes. Exempts lands to which HHFDC holds title and land set aside or leased to HHFDC from the definition of public lands in section 171-2, HRS, except for purposes of accounting for receipts from ceded lands. Establishes and appropriates funds into and out of the ALOHA homes revolving fund. Authorizes HHFDC to sell the leasehold interest in residential condominium units located on state lands for lease terms of 99 years. Effective 7/1/2050. (SD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



ASSEMBLY BILL**No. 387**

**Introduced by Assembly Member Lee
(Coauthor: Assembly Member Wicks)**

February 2, 2021

An act relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 387, as introduced, Lee. Social Housing Act of 2021.

Existing law establishes the Department of Housing and Community Development and sets forth its powers and duties. Existing law establishes various programs providing assistance for, among other things, emergency housing, multifamily housing, farmworker housing, homeownership for very low and low-income households, and downpayment assistance for first-time homebuyers.

This bill would declare the intent of the Legislature to subsequently amend this bill to include provisions that would enact the Social Housing Act of 2021 to establish the California Housing Authority for the purpose of developing mixed-income rental and limited equity homeownership housing and mixed-use developments to address the shortage of affordable homes for low and moderate-income households.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. It is the intent of the Legislature to subsequently
- 2 amend this measure to include provisions that would enact the
- 3 Social Housing Act of 2021 to establish the California Housing

AB 387

— 2 —

- 1 Authority for the purpose of developing mixed-income rental and
- 2 limited equity homeownership housing and mixed-use
- 3 developments to address the shortage of affordable homes for low
- 4 and moderate-income households.

O



ACTION CALENDAR
DATE: March 9, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Terry Taplin, Councilmember Bartlett, Councilmember Robinson (co-sponsors)

Subject: Affordable Housing Overlay

RECOMMENDATION

Refer to the City Manager and Planning Commission revisions to the zoning code and General Plan, permitting increased height and density for 100% affordable housing developments, including but not limited to:

1. Exceeding standards set forth in California Government Code Section 65915 with additional height and density incentives for qualifying 100% affordable projects deed-restricted for low- and moderate-income households, including:
 - a. An additional 33' local density bonus for qualifying projects with low- and moderate-income units deed-restricted for households earning up to 100% of Area Median Income, aiming to maximize total unit count restricted for Very Low and Extremely Low Income households;
 - b. Expanding waiver of density limits, including units per acre and floor area ratio, for transit-adjacent projects to include all parcels within one half mile of a commuter rail station, and within 1/4 mile of an AC Transit bus route with 7-day service in Fiscal Year 2019;
 - c. Reduced density limits for projects outside of transit proximity threshold with additional Transportation Demand Management (TDM) policies, including bike parking, paratransit and shared micro-mobility systems;
 - d. Ministerial approval of all qualifying projects meeting objective design criteria and union labor requirements;
 - e. Exempting parcels with Designated Historic Landmarks and maintaining demolition restrictions consistent with state law.
2. Ministerial approval for a baseline of 76' for 100% affordable residential dwelling units in all commercial zones, and provisions for ground-floor retail and/or live-work space;
3. In R-1, R-1A and R-2 zones, provide ministerial approval for a 10' local density bonus for 100% affordable housing, with waived density requirements for dwelling units per acre and lot coverage. On parcels within high-risk wildfire zones as determined by the California Department of Forestry and Fire Protection (CalFire), ministerial approval for 100% affordable projects should be

contingent on fire-blocking design and defensible space standards certified by the Planning Department.

Council directs the Planning Commission and staff to codify an Affordable Housing Overlay for 100% affordable housing as specified above in 2021-2022 work plans in anticipation of 2023-2031 RHNA targets. Staff and the commission should build upon the framework established in Government Code Section 65915 as well as municipal implementations of Affordable Housing Overlays in other states, such as Cambridge and Somerville, MA.

BACKGROUND

Berkeley has made insufficient progress on meeting its state-mandated Regional Housing Need Allocation (RHNA) goals for low- and moderate-income housing in the 2014-2022 RHNA cycle. As recently as the city's 2020¹ Housing Pipeline Report, the city had only fulfilled 23% of its moderate-income RHNA goals, 21% of its RHNA goals for Very-Low Income households, and a mere 4% for Low-Income households. Berkeley's next RHNA cycle is estimated to mandate roughly 3 times as many units² as the previous cycle's total of 2,959 units across all income tiers. SB-330 by Sen. Nancy Skinner (D-Berkeley), passed in 2019, requires municipal general plans to zone adequately to meet residential capacity mandated by RHNA goals and state-certified Housing Elements.

Affordable housing will continue to be a high priority, but nonprofit affordable housing developers may face stiff competition for scarce land with market-rate developers, particularly during an anticipated period of economic recovery. In 2019, Governor Newsom signed AB-1763 by Assembly member David Chiu (D-SF), amending California Government Code 65915 to confer greater fiscal advantages for 100% affordable housing developments through state density bonus law. The bill prohibits minimum parking requirements (which Berkeley has recently removed) and grants a 3-story increase in allowable heights, with a waiver on density restrictions for projects located within a half-mile of major transit stops.

When the 42-unit affordable housing project at Harpers Crossing opened in Berkeley, at a total project cost of \$18 million, over 700 seniors applied. Without substantial funding and square footage for affordable housing, the City of Berkeley will be increasingly challenged to create enough subsidized housing to meet increasing demand. Increased allowable density and streamlined approvals for affordable housing will also be key to meeting Berkeley's RHNA goals for low- and moderate-income housing.

RATIONALE FOR RECOMMENDATION

¹ https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-28_Item_45_Annual_Housing_Pipeline_Report.aspx?sa=U&ved=2ahUKEwjc3tDIIntHuAhXWu54KHdyGAtAQFjABegQICRAC&usg=AOvVaw0eXQ4oP5AAL14h0lphPdr

² https://abag.ca.gov/sites/default/files/draft_rhna_allocation_presentation_to_exec_bd_jan_21.pdf

There is precedent in the state of California for meeting low-income RHNA goals with an Affordable Housing Overlay. In eastern Contra Costa County, the newly-incorporated city of Oakley established an Affordable Housing Overlay in 2005, which has yielded 7 affordable housing developments totaling 509 housing units combined as of 2019.³ Despite local opposition to low-income housing, the AHO enabled the city to obtain state certification for its first 2001-2007 Housing Element, procure funding from the county, and meet its low-income RHNA goals by rezoning 16.3 acres for multifamily housing.

According to the Association of Bay Area Governments (ABAG), 28 jurisdictions in the 9-county Bay Area have some form of Housing Overlay Zone policy.⁴

According to a 2010 fact sheet by Public Advocates and East Bay Housing Organizations (EBHO), “the more valuable the developer incentives included in a Housing Overlay Zone, the more effective the HOZ will be in encouraging production of homes that people can afford. Desirable incentives both motivate developers to take advantage of the HOZ, and reduce development costs to allow construction of more affordable homes.”⁵

The City Council of Cambridge, Massachusetts passed an Affordable Housing Overlay amendment to its zoning code in October of 2020.⁶ The City Council of Somerville, MA passed a similar zoning ordinance in December of 2020. These zoning overlays permit greater height and density for ministerial approval 100% Below Market-Rate housing developments, following objective design criteria. The intent of these ordinances is to increase the availability of infill sites with an advantage for affordable housing development where nonprofit and public entities may otherwise be unable to compete win the private market, as well as promoting a more equitable distribution of affordable housing in cities where class and racial segregation still mirrors the historical legacy of redlining and Jim Crow-era racial covenants.

³ UC Berkeley Turner Center for Housing Innovation. (2019). Affordable Housing Overlays: Oakley. Retrieved from https://turnercenter.berkeley.edu/wp-content/uploads/2020/10/Affordable_Housing_Overlay_Zones_Oakley.pdf

⁴ <http://housing.abag.ca.gov/policysearch>

⁵ http://www.friendsofrpe.org/files/HOZ_Fact_Sheet_FINAL_7-27-10%282%29.pdf

⁶ Sennott, A. (2020). Mayor: ‘An important social justice moment.’ Councilors pass Affordable Housing Overlay after more than 20 community meetings. *WickedLocal.com*. Retrieved from <https://www.wickedlocal.com/story/cambridge-chronicle-tab/2020/10/06/an-important-social-justice-moment-cambridge-councilors-pass-affordable-housing-overlay/114657068/>

These ordinances preserve open space requirements and comport with restrictions on historic districts. The Somerville⁷ and Cambridge⁸ Overlays were overwhelmingly supported by nonprofit affordable housing developers and activists. The city of Boston is now exploring similar policy initiatives.⁹

Prior to introduction of the city's Affordable Housing Overlay policy, Somerville City Councilor Ben Ewen-Campen, chair of the council's Land Use Committee, directed city staff to survey the region's affordable housing. "Overwhelmingly, we heard about two obstacles," Ewen-Campen wrote.¹⁰

First, and most obviously, is the cost of land. Today, it is nearly impossible for any non-profit housing developer to purchase property in Somerville. This is no surprise: they are competing against "market rate" developers and investors who can afford to pay far more because they'll soon be making windfall profits in our red-hot real estate market. Second, the funding agencies that support affordable housing are looking for predictability and certainty in the projects they support. This means that the uncertainty, delays, and discretionary nature of the permitting process in Somerville can be a major issue when attempting to secure funding. Together, these two obstacles mean that new affordable units in Somerville are almost always created by market rate developers through Somerville's "20% inclusionary zoning" policy, which is absolutely necessary but nowhere near sufficient to meet Somerville's goals for affordability.

Affordable housing nonprofits face similar fiscal and regulatory barriers to developing much-needed low- and moderate-income housing.

While Berkeley does not have an abundance of vacant and/or publicly-owned land close to transit to help meet these goals, an Affordable Housing Overlay permitting residential uses on commercial corridors for 100% affordable housing can tap into an abundant subset of commercial parcels with residential potential in the city. According to a study by the UC Berkeley Turner Center for Housing Innovation, mid-sized cities in the San Francisco Bay Area have an average of 32.4% of land zoned for commercial uses, and

⁷ Taliesin, J. (2020). Somerville moves to facilitate local affordable housing development. *WickedLocal.com*. Retrieved from <https://www.wickedlocal.com/story/somerville-journal/2020/11/23/residents-support-citys-move-ease-affordable-housing-development/6328944002/>

⁸ Eisner, D. (2020). The Historic Affordable Housing Overlay Is about to Pass. How Did It Overcome so Many Obstacles? *A Better Cambridge*. Retrieved from https://www.abettercambridge.org/the_historic_affordable_housing_overlay_is_about_to_pass_how_did_it_come_so_many_obstacles

⁹ Logan, T. (2020). Boston to consider looser zoning for affordable housing. *The Boston Herald*. Retrieved from <https://www.bostonglobe.com/2020/08/24/business/boston-mull-looser-zoning-affordable-housing/>

¹⁰ Ewen-Campen, B. (2020). We need a city-wide 'Affordable Housing Overlay District' in Somerville. *The Somerville Times*. Retrieved from <https://www.thesomervilletimes.com/archives/103539>

this land tends to be evenly distributed between high- and low-opportunity neighborhoods as defined by the state's Tax Credit Allocation Committee.¹¹

As the Home for All SMC Housing Overlay Zone fact sheet explains: "In locations where the zoning doesn't allow residential development, HOZs can enable housing construction while avoiding the lengthy process of amending a general plan."¹²

ALTERNATIVES CONSIDERED

Due to aforementioned state laws, there is no alternative in which the City of Berkeley does not rezone certain areas to meet its upcoming RHNA goals and have a certified Housing Element. While the city could simply abide by the standards set forth in AB-1763 with no additional incentives or streamlining for 100% affordable housing, this would risk insufficiently prioritizing low- and moderate-income housing, and is inconsistent with goals already identified by the City Manager's office to reduce homelessness and housing insecurity.

The City Manager's 1000 Person Plan to End Homelessness¹³ includes among its strategic recommendations:

"Continue implementing changes to Berkeley's Land Use, Zoning, and Development Review Requirements for new housing with an eye towards alleviating homelessness. If present economic trends continue, the pace with which new housing is currently being built in Berkeley will likely not allow for a declining annual homeless population. Berkeley should continue to streamline development approval processes and reform local policies to help increase the overall supply of housing available."

ENVIRONMENTAL IMPACTS

A 2019 study of displacement and gentrification in Seattle¹⁴ found qualitative evidence that the displacement of low-income households from central urban neighborhoods could increase emissions from the area with the influx of higher-income households with more carbon-intensive consumption, while those displaced may be more likely to move to where they contribute higher Vehicle Miles Traveled (VMT) in suburban communities. At the same time, research from UC Berkeley¹⁵ confirms that high-income households

¹¹ Romem, I. & Garcia, D. (2020). Residential Redevelopment of Commercially Zoned Land in California. *UC Berkeley Turner Center for Housing Innovation*. Retrieved from <https://turnercenter.berkeley.edu/wp-content/uploads/2020/12/Residential-Redevelopment-of-Commercially-Zoned-Land-in-California-December-2020.pdf>

¹² <https://homeforallsmc.org/toolkits/housing-overlay-zones/>

¹³ https://www.cityofberkeley.info/Clerk/City_Council/2019/02_Feb/Documents/2019-02-26_Item_20_Referral_Response_1000_Person_Plan.aspx

¹⁴ Rice, J. L., Cohen, D. A., Long, J., & Jurjevich, J. R. (2019). Contradictions of the Climate-Friendly City: New Perspectives on Eco-Gentrification and Housing Justice. *International Journal of Urban and Regional Research*. doi:10.1111/1468-2427.12740

¹⁵ Jones, C. et al. (2017). Carbon Footprint Planning: Quantifying Local and State Mitigation

moving to low-VMT urban neighborhoods enables major reductions in per-capita emissions. An Affordable Housing Overlay coupled with the city's Local Preference policy could promote environmental justice and reduce per-capita VMT pursuant to goals established in the city's Climate Action Plan.

FISCAL IMPACTS

TBD.

The City Manager's 1000 Person Plan to End Homelessness notes that the fiscal impact of land use reform "could not be quantified" at the time the report was issued.

CONTACT

Councilmember Terry Taplin (District 2), 510-983-7120, ttaplin@cityofberkeley.info

ATTACHMENTS/SUPPORTING MATERIALS

1. Resolution
2. Cambridge, MA: Ordinance No. 2020-8
3. Assembly Bill 1763 (2019)

RESOLUTION NO. ##,###-N.S.

WHEREAS the San Francisco Bay Area is in the midst of a crisis-level housing shortage disproportionately affecting low- and moderate-income households; and,

WHEREAS the City of Berkeley has failed to meet its Regional Housing Needs Allocation production goals for low- and moderate-income households in the 2014-2022 RHNA cycle; and,

WHEREAS the 2022-2031 RHNA cycle will likely allocate over 9,000 housing units to the City of Berkeley, while the previous cycle's housing needs for low- and moderate-income households remain unmet; and,

WHEREAS Assembly Bill 1763, passed in 2019, enables greater density and height allowances for 100% affordable housing, with low- and moderate-income households defined by Section 50053 of the Health and Safety Code; and,

WHEREAS state law will mandate sufficient residential capacity in the City's general plan to align its zoning with its housing element and RHNA goals;

WHEREAS the City of Oakley authorized an Affordable Housing Overlay in 2005 to meet its low-income RHNA goals; and,

WHEREAS several cities in the State of Massachusetts have implemented Affordable Housing Overlay policies to increase density in high-opportunity neighborhoods near transit to reverse patterns of historic segregation, produce more affordable housing, and give affordable housing profits an advantage in parcel acquisition;

THEREFORE, BE IT RESOLVED that the City Council of the City of Berkeley refers to the City Manager and Planning Commission revisions to the zoning code and General Plan, permitting increased height and density for 100% affordable housing developments, including but not limited to:

1. Exceeding standards set forth in California Government Code Section 65915 with additional height and density incentives for qualifying 100% affordable projects deed-restricted for low- and moderate-income households:
 - a. An additional 33' local density bonus for qualifying projects with low- and moderate-income units deed-restricted for households earning up to 100% of Area Median Income, aiming to maximize total unit count restricted for Very Low and Extremely Low Income households;
 - b. Expanding waiver of density limits, including units per acre and floor area ratio, for transit-adjacent projects to include all parcels within one half mile of a commuter rail station, and within 1/4 mile of an AC Transit bus route with 7-day service in Fiscal Year 2019;
 - c. Reduced density limits for projects outside of transit proximity threshold with additional Transportation Demand Management (TDM) policies, including bike parking, paratransit and shared micro-mobility systems;

- d. Ministerial approval of all qualifying projects meeting objective design criteria and union labor requirements;
 - a. Exempting parcels with Designated Historic Landmarks and maintaining demolition restrictions consistent with state law;
 2. Ministerial approval for a baseline of 76' for 100% affordable residential dwelling units in all commercial zones, with provisions for ground-floor retail and/or live-work space;
 3. In R-1, R-1A and R-2 zones, provide ministerial approval for two-story local density bonus for 100% affordable housing, with waived density requirements for dwelling units per acre and lot coverage. On parcels within high-risk wildfire zones as determined by the California Department of Forestry and Fire Protection (CalFire), ministerial approval for 100% affordable projects should be contingent on fire-blocking design and defensible space standards certified by the Planning Department;

BE IT FURTHER RESOLVED, that the City Council of the City of Berkeley directs the Planning Commission and staff to codify an Affordable Housing Overlay for 100% affordable housing as specified above in 2021-2022 work plans in anticipation of 2023-2031 RHNA targets.

ORDINANCE NO. 2020-8 – First Publication

CITY OF CAMBRIDGE

In the Year Two Thousand and Twenty

AN ORDINANCE

ORDERED: That the attached proposed zoning ordinance establishing an Affordable Housing Overlay be submitted by the City Council, and that it be referred to the Committee on Ordinances and the Planning Board for public hearings, as provided in Chapter 40A, Section 5 of the Massachusetts General Laws, to wit:

ORDERED: That the Cambridge City Council amend Section 2.000, DEFINITIONS, of the Zoning Ordinance of the City of Cambridge amended to insert the following definitions alphabetically:

Affordable Housing Overlay (AHO). A set of modified development standards set forth in Section 11.207.3 of this Zoning Ordinance intended to allow incremental increases in density, limited increases in height, and relaxation of certain other zoning limitations for residential developments in which all units are made permanently affordable to households earning up to 100% of area median income.

Affordable Housing Overlay (AHO) Dwelling Unit. A dwelling unit within an AHO Project for which occupancy is restricted to an AHO Eligible Household and whose rent or initial sale price is established by the provisions of Section 11.207.3 of this Zoning Ordinance.

Affordable Housing Overlay (AHO) Eligible Household. A household whose gross household income does not exceed the amounts set forth in Section 11.207.3 of this Zoning Ordinance.

Affordable Housing Overlay (AHO) Project. The construction of a new building or buildings and/or the modification of an existing building or buildings resulting in single-family, two-family, townhouse, or multifamily dwellings within which each dwelling unit is an AHO Dwelling Unit subject to the standards and restrictions set forth in Section 11.207 of this Zoning Ordinance.

Grade. The mean finished ground elevation of a lot measured either around the entire perimeter of the building or along any existing wall facing a public street, which ground elevation is maintained naturally without any structural support.

Ground Story or Ground Floor. The lowest Story Above Grade within a building. Story. That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above.

Story Above Grade. A Story whose highest point is more than 4 feet above the Grade.

Story Below Grade. Any Story that is lower than the Ground Story of a building.

ORDERED: That the Cambridge City Council amend of the Zoning Ordinance of the City of Cambridge, by inserting a new section 11.207, **AFFORDABLE HOUSING OVERLAY**, to read as follows:

11.207.1 Purpose and Intent

The purpose of this Section is to promote the public good by supporting the development of housing that is affordable to households earning up to 100% of area median income. The intent of this Section is to allow incremental increases in density, limited increases in height, and relaxation of certain other zoning limitations for residential developments in which all units are made permanently affordable to households earning up to 100% of area median income (referred to as “AHO Projects,” as defined in Article 2.000 of this Zoning Ordinance); to incentivize the reuse of existing buildings in order to create AHO Projects that are more compatible with established neighborhood character; to promote the city’s urban design objectives in Section 19.30 of this Zoning Ordinance while enabling AHO Projects to be permitted as-of-right, subject to non-binding advisory design consultation procedures that follow all design objectives set forth within this Zoning Ordinance and the results of the design review process shall be provided to the Cambridge Affordable Housing Trust; and to apply such standards throughout the City, to promote city planning goals of achieving greater socioeconomic diversity and a more equitable distribution of affordable housing citywide.

11.207.2 Applicability

- (a) The provisions set forth in this Section shall apply to AHO Projects, as defined in Article 2.000 of this Zoning Ordinance, in all zoning districts except Open Space Districts.
- (b) An AHO Project shall be permitted as-of-right if it meets all of the standards set forth in this Affordable Housing Overlay in place of the requirements otherwise applicable in the zoning district. Any development not meeting all of

the standards set forth in this Affordable Housing Overlay shall be subject to the requirements otherwise applicable in the zoning district, including any requirements for special permits.

11.207.3 Standards for Eligibility, Rent, and Initial Sale Price for AHO Dwelling Units

- (a) All dwelling units in an AHO Project shall comply with the standards for AHO Dwelling Units as set forth in this Section.
- (b) For all AHO Dwelling Units:
 - (i) AHO Dwelling Units shall be rented or sold only to AHO Eligible Households, with preference given to Cambridge residents, and former Cambridge residents who experienced a no-fault eviction in Cambridge in the last twelve (12) months, in accordance with standards and procedures related to selection, asset limits, and marketing established by the Community Development Department (CDD) and applicable state funding requirements.
 - (ii) AHO Dwelling Units shall be created and conveyed subject to recorded covenants approved by CDD guaranteeing the permanent availability of the AHO Dwelling Units for AHO Eligible Households.
- (c) For rental AHO Dwelling Units:
 - (i) The gross household income of an AHO Eligible Household upon initial occupancy shall be no more than one-hundred percent (100%) of AMI.
 - (ii) At least eighty percent (80%) of AHO Dwelling Units within the project shall be occupied by AHO Eligible Households whose gross household income upon initial occupancy is no more than eighty percent (80%) of AMI.
 - (iii) Rent, including utilities and any other fees routinely charged to tenants and approved by CDD, shall not exceed thirty percent (30%) of the gross household income of the AHO Eligible Household occupying the AHO Dwelling Unit or other similar standard pursuant to an applicable housing subsidy program which has been approved by CDD.

- (iv) After initial occupancy, the gross household income of an AHO Eligible Household shall be verified annually, or on such other basis required by an applicable housing subsidy program which has been approved by CDD, to determine continued eligibility and rent, in accordance with policies, standards, and procedures established by CDD.
 - (v) An AHO Eligible Household may continue to rent an AHO Dwelling Unit after initial occupancy even if the AHO Eligible Household's gross household income exceeds the eligibility limits set forth above, but may not exceed one hundred twenty percent (120%) of AMI for more than one year after that Eligible Household's gross household income has been verified to exceed such percentage, unless otherwise restricted pursuant to an applicable housing subsidy program which has been approved by CDD.
 - (vi) Notwithstanding the requirements set forth in (i) through (v) above, an owner may voluntarily choose to charge a lower rent than as provided herein for AHO Dwelling Units.
- (d) For owner-occupied AHO Dwelling Units:
- (i) The gross household income of an AHO Eligible Household upon initial occupancy shall be no more than one-hundred percent (100%) of AMI.
 - (ii) At least fifty percent (50%) of AHO Dwelling Units shall be sold to AHO Eligible Households whose gross household income upon initial occupancy is no more than eighty percent (80%) of AMI.
 - (iii) The initial sale price of an AHO Dwelling Unit shall be approved by CDD and shall be determined to ensure that the monthly housing payment (which shall include debt service at prevailing mortgage loan interest rates, utilities, condominium or related fees, insurance, real estate taxes, and parking fees, if any) shall not exceed thirty percent (30%) of the monthly income of:
 - 1) A household earning ninety percent (90%) of AMI, in the case of an AHO Dwelling Unit to be sold to an AHO Eligible Household whose income upon initial

occupancy is no more than one-hundred percent (100%) of AMI; or

- 2) A household earning seventy percent (70%) of AMI, in the case of an AHO Dwelling Unit to be sold to an AHO Eligible Household whose income upon initial occupancy is no more than eighty percent (80%) of AMI
- (e) An AHO Project meeting the standards set forth herein as approved by CDD shall not be required to comply with the Inclusionary Housing Requirements set forth in 11.203 of this Zoning Ordinance.

11.207.4 Use

- (a) In all zoning districts, an AHO Project may contain single-family, two-family, townhouse, or multifamily dwellings as-of-right. Townhouse and Multifamily Special Permit procedures shall not apply.
- (b) An AHO Project may contain active non-residential uses on the ground floor as they may be permitted as-of-right in the base zoning district or the overlay district(s) that are applicable to a lot, which for the purpose of this Section shall be limited to Institutional Uses listed in Section 4.33, Office Uses listed in Section 4.34 Paragraphs a. through e., and Retail and Consumer Service uses listed in Section 4.35 that provide services to the general public.

11.207.5 Development Standards

11.207.5.1 General Provisions

- (a) For the purposes of this Section, the phrase “District Development Standards” shall refer to the development standards of the base zoning district as they may be modified by the development standards of all overlay districts (with the exception of this Affordable Housing Overlay) that are applicable to a lot.
- (b) District Dimensional Standards shall include the most permissive standards allowable on a lot, whether such standards are permitted as-of-right or allowable by special permit. A District Dimensional Standard that is allowable by special permit shall include any nondiscretionary requirements or limitations that would otherwise apply.

- (c) An AHO Project that conforms to the following development standards shall not be subject to other limitations that may be set forth in Article 5.000 or other Sections of this Zoning Ordinance, except as otherwise stated in this Section.

11.207.5.2 Dimensional Standards for AHO Projects

11.207.5.2.1 Building Height and Stories Above Grade. For an AHO Project, the standards set forth below shall apply in place of any building height limitations set forth in the District Development Standards.

- (a) Where the District Dimensional Standards set forth a maximum residential building height of forty (40) feet or less, an AHO Project shall contain no more than four (4) Stories Above Grade and shall have a maximum height of forty-five (45) feet, as measured from existing Grade. For AHO Projects containing active non-residential uses on the ground floor, the maximum height may be increased to fifty (50) feet but the number of Stories Above Grade shall not exceed four (4) stories.
- (b) Where the District Dimensional Standards set forth a maximum residential building height of more than forty (40) feet but not more than fifty (50) feet, an AHO Project shall contain no more than six (6) Stories Above Grade and shall have a maximum height of sixty-five (65) feet, as measured from existing Grade, except as further limited below. For AHO Projects containing active non-residential uses on the ground floor, the maximum height may be increased to seventy (70) feet but the number of Stories Above Grade shall not exceed six (6) stories.
 - (i) Except where the AHO Project abuts a non-residential use, portions of an AHO Project that are within thirty-five (35) feet of a district whose District Dimensional Standards allow a maximum residential building height of forty (40) feet or less shall be limited by the provisions of Paragraph (a) above, except that if the AHO project parcel extends into that District, then the height limitation shall only extend thirty five (35) feet from the property line.
- (c) Where the District Dimensional Standards set forth a maximum residential building height of more than fifty (50) feet, an AHO Project shall contain no more than seven (7) Stories Above Grade and shall have a maximum height

of eighty (80) feet, as measured from existing Grade, except as further limited below.

- (i) Except where the AHO Project abuts a non-residential use, portions of an AHO Project that are within thirty-five (35) feet of a district whose District Dimensional Standards allow a maximum residential building height of forty (40) feet or less shall be reduced to a minimum of five (5) Stories Above Grade or a maximum height of sixty (60) feet, as measured from existing Grade, except that if the AHO project parcel extends into that District, then the height limitation shall only extend thirty five (35) feet from the property line.
- (d) The Height Exceptions set forth in Section 5.23 of this Zoning Ordinance shall apply when determining the building height of an AHO Project.

11.207.5.2.2 Residential Density

- (a) Where the District Dimensional Standards establish a maximum floor area ratio (FAR) of less than 1.00, an AHO Project shall not exceed an FAR of 2.00. Otherwise, there shall be no maximum FAR for an AHO Project.
- (b) There shall be no minimum lot area per dwelling unit for an AHO Project.

11.207.5.2.3 Yard Setbacks

- (a) For the purpose of this Section, the applicable District Dimensional Standards shall not include yard setback requirements based on a formula calculation as provided in Section 5.24.4 of the Zoning Ordinance, but shall include non-derived minimum yard setback requirements set forth in Article 5.000 or other Sections of this Zoning Ordinance.
- (b) Front Yards. An AHO Project shall have a minimum front yard setback of 15 feet, except where the District Dimensional Standards establish a less restrictive requirement, or may be reduced to the average of the front yard setbacks of the four (4) nearest pre-existing principal buildings that contain at least two Stories Above Grade and directly front the same side of the street as the AHO Project, or may be reduced to a minimum of ten (10) feet in the case of an AHO Project on a corner lot. Where the District Dimensional Standards set forth different requirements for residential and non-residential uses, the

non-residential front yard setback requirement shall apply to the entire AHO Project if the Ground Story contains a non-residential use as set forth in Section 11.207.4 Paragraph (b) above; otherwise, the residential front yard setback shall apply.

- (c) Side Yards. An AHO Project shall have a minimum side yard setback of seven and one-half (7.5) feet, or may be reduced to the minimum side yard setback set forth in the District Dimensional Standards for residential uses that is not derived by formula if it is less restrictive.
- (d) Rear Yards. An AHO Project shall have a minimum rear yard setback of twenty (20) feet, or may be reduced to the minimum rear yard setback set forth in the District Dimensional Standards for residential uses that is not derived by formula if it is less restrictive.
- (e) Projecting eaves, chimneys, bay windows, balconies, open fire escapes and like projections which do not project more than three and one-half (3.5) feet from the principal exterior wall plane, and unenclosed steps, unroofed porches and the like which do not project more than ten (10) feet beyond the line of the foundation wall and which are not over four (4) feet above Grade, may extend beyond the minimum yard setback.
- (f) Bicycle parking spaces, whether short-term or long-term, and appurtenant structures such as coverings, sheds, or storage lockers may be located within a required yard setback but no closer than seven and one-half (7.5) feet to an existing principal residential structure on an abutting lot.

11.207.5.2.4 Open Space

- (a) Except where the District Dimensional Standards establish a less restrictive requirement or as otherwise provided below, the minimum percentage of open space to lot area for an AHO Project shall be thirty percent (30%). However, the minimum percentage of open space to lot area may be reduced to no less than fifteen percent (15%) if the AHO Project includes the preservation and protection of an existing building included on the State Register of Historic Places.
- (b) The required open space shall be considered Private Open Space but shall be subject to the limitations set forth below and shall not be subject to the dimensional and other limitations set forth in Section 5.22 of this Zoning

Ordinance. Private Open Space shall exclude parking and driveways for automobiles.

- (c) All of the required open space that is located at grade shall meet the definition of Permeable Open Space as set forth in this Zoning Ordinance.
- (d) The required open space shall be located at Grade or on porches and decks that are no higher than the floor elevation of the lowest Story Above Grade, except that up to twenty five percent (25%) of the required open space may be located at higher levels, such as balconies and decks, only if it is accessible to all occupants of the building.
- (e) For the purpose of this Affordable Housing Overlay, area used for covered or uncovered bicycle parking spaces that are not contained within a building shall be considered Private Open Space.

11.207.5.3 Standards for Existing Buildings

A building that is in existence as of the effective date of this Ordinance and does not conform to the standards set forth in Section 11.207.5.2 above may be altered, reconstructed, extended, relocated, and/or enlarged for use as an AHO Project as-of-right in accordance with the standards set forth below. Except as otherwise stated, the required dimensional characteristics of the building and site shall be those existing at the time of the conversion to an AHO Project if they do not conform to the standards of Section 11.207.5.2. The following modifications shall be permitted as-of-right, notwithstanding the limitations set forth in Article 8.000 of this Zoning Ordinance:

- (a) Construction occurring entirely within an existing structure, including the addition of Gross Floor Area within the interior of the existing building envelope that may violate or further violate FAR limitations set forth in Section 11.207.5.2, and including any increase to the number of dwelling units within the existing building, provided that the resulting number of Stories Above Grade is not more than the greater of the existing number of Stories Above Grade or the existing height of the building divided by 10 feet.
- (b) The relocation, enlargement, or addition of windows, doors, skylights, or similar openings to the exterior of a building.

- (c) The addition of insulation to the exterior of an existing exterior wall to improve energy efficiency, provided that the resulting exterior plane of the wall shall either conform to the yard setback standards set forth in Section 11.207.5.2 above or shall not intrude more than eight (8) inches further into the existing yard setback and provided that the lot shall either conform to the open space standards set forth in Section 11.207.5.2 or shall not decrease the existing open space by more than 5% or 100 square feet, whichever is greater.
- (d) The installation of exterior features necessary for the existing structure to be adapted to meet accessibility standards for persons with disabilities, including but not limited to walkways, ramps, lifts, or elevators, which may violate or further violate of the dimensional requirements set forth in Section 11.207.5.2.
- (e) The repair, reconstruction, or replacement of any preexisting nonconforming portions of a building including but not limited to porches, decks, balconies, bay windows and building additions, provided that the repair, reconstruction or replacement does not exceed the original in footprint, volume, or area.
- (f) Any other alterations, additions, extensions, or enlargements to the existing building that are not further in violation of the dimensional requirements set forth in Section 11.207.5.2 above.

11.207.6 Parking and Bicycle Parking

The limitations set forth in Article 6.000 of this Zoning Ordinance shall be modified as set forth below for an AHO Project.

11.207.6.1 Required Off-Street Accessory Parking

- (a) There shall be no required minimum number of off-street parking spaces for an AHO Project except to the extent necessary to conform to other applicable laws, codes, or regulations.
- (b) An AHO Project of greater than 20 units, for which no off-street parking is provided shall provide or have access to either on-street or off-street facilities that can accommodate passenger pick-up and drop-off by motor vehicles and short-term loading by moving vans or small delivery trucks. The Cambridge Traffic, Parking, and Transportation Department shall certify to the Superintendent of Buildings

that the AHO Project is designed to reasonably accommodate such activity without causing significant hazard or congestion. The Cambridge Director of Traffic, Parking, and Transportation shall have the authority to promulgate regulations for the implementation of the provisions of this Paragraph.

11.207.6.2 Accessory Parking Provided Off-Site

- (a) Off-street parking facilities may be shared by multiple AHO Projects, provided that the requirements of this Section are met by all AHO Dwelling Units served by the facility and the facility is within 1,000 feet of all AHO Projects that it serves.
- (b) Off-street parking facilities for an AHO Project may be located within existing parking facilities located within 1,000 feet of the AHO Project and in a district where parking is permitted as a principal use or where the facility is a pre-existing nonconforming principal use parking facility, provided that the owner of the AHO Project shall provide evidence of fee ownership, a long-term lease agreement or renewable short-term lease agreement, recorded covenant, or comparable legal instrument to guarantee, to the reasonable satisfaction of the Superintendent of Buildings, that such facilities will be available to residents of the AHO Project.

11.207.6.3 Modifications to Design and Layout Standards for Off-Street Parking

- (a) Notwithstanding Section 6.43.2, parking spaces may be arranged in tandem without requiring a special permit, provided that no more than two cars may be parked within any tandem parking space.
- (b) Notwithstanding Section 6.43.6, owners of adjacent properties may establish common driveways under mutual easements without requiring a special permit.
- (c) Notwithstanding Paragraph 6.44.1(a), on-grade open parking spaces may be located within ten (10) feet but not less than five (5) feet from the Ground Story of a building on the same lot or seven and one-half (7.5) feet from the Ground Story of a building on an adjacent lot without requiring a special permit, provided that such parking spaces are screened from buildings on abutting lots by a fence or other dense year-round visual screen.

- (d) Notwithstanding Paragraph 6.44.1(b), on-grade open parking spaces and driveways may be located within five (5) feet of a side or rear property line without requiring a special permit, provided that screening is provided in the form of a fence or other dense year-round visual screen at the property line, unless such screening is waived by mutual written agreement of the owner of the lot and the owner of the abutting lot.

11.207.6.4 Modifications to Bicycle Parking Standards

- (a) Notwithstanding Section 6.104, long-term or short-term bicycle parking spaces may be located anywhere on the lot for an AHO Project or on an adjacent lot in common ownership or under common control.
- (b) Notwithstanding Section 6.107.5, up to 20 long-term bicycle parking spaces may be designed to meet the requirements for Short-Term Bicycle Parking Spaces, so long as they are covered from above to be protected from precipitation.
- (c) The requirement for short-term bicycle parking shall be waived where only four or fewer short-term bicycle parking spaces would otherwise be required.
- (d) The number of required bicycle parking spaces shall be reduced by half, up to a maximum reduction of 28 spaces, where a standard-size (19-dock) Public Bicycle Sharing Station is provided on the lot or by the developer of the AHO Project on a site within 500 feet of the lot, with the written approval of the City if located on a public street or other City property, or otherwise by legally enforceable mutual agreement with the owner of the land on which the station is located as approved by the Community Development Department. If additional Public Bicycle Sharing Station docks are provided, the number of required bicycle parking spaces may be further reduced at a rate of 0.5 bicycle parking space per additional Public Bicycle Sharing Station dock, up to a maximum reduction of half of the required number of spaces.
- (e) For AHO Dwelling Units created within an existing building, bicycle parking spaces meeting the standards of this Zoning Ordinance shall not be required but are encouraged to be provided to the extent practical given the limitations of the existing structure. Bicycle parking spaces shall be provided, as required by this Zoning Ordinance, for

dwelling units in an AHO Project that are constructed fully outside the envelope of the existing structure.

11.207.6.5 Transportation Demand Management

An AHO Project not providing off-street parking at a ratio of 0.4 space per dwelling unit or more shall provide, in writing, to the Community Development Department a Transportation Demand Management program containing the following measures, at a minimum:

- (a) Offering either a free annual membership in a Public Bicycle Sharing Service, at the highest available tier where applicable, or a 50% discounted MBTA combined subway and bus pass for six months or pass of equivalent value, to up to two individuals in each household upon initial occupancy of a unit.
- (b) Providing transit information in the form of transit maps and schedules to each household upon initial occupancy of a unit, or providing information and a real-time transit service screen in a convenient common area of the building such as an entryway or lobby.

11.207.7 Building and Site Design Standards for New Development

11.207.7.1 General Provisions

- (a) Except where otherwise stated, the Project Review requirements set forth in Article 19.000 of this Zoning Ordinance and any design standards set forth in Section 19.50 or elsewhere in the Zoning Ordinance shall be superseded by the following standards for an AHO Project.
- (b) The following design standards shall apply to new construction and to additions to existing structures. Except as otherwise provided, an existing building that is altered or moved to accommodate an AHO Project shall not be subject to the following standards, provided that such alterations do not create a condition that is in greater nonconformance with such standards than the existing condition.

11.207.7.2 Site Design and Arrangement

- (a) The area directly between the front lot line and the principal wall plane of the building nearest to the front lot line shall consist of any combination of landscaped area, hardscaped area accessible to pedestrians and bicyclists,

and usable spaces such as uncovered porches, patios, or balconies. Parking shall not be located within such area, except for driveway access which shall be limited to a total of thirty (30) feet of width for any individual driveway for each one hundred (100) feet of lot frontage.

- (b) Pedestrian entrances to buildings shall be visible from the street, except where the building itself is not visible from the street due to its location. All pedestrian entrances shall be accessible by way of access routes that are separated from motor vehicle access drives.
- (c) A building footprint exceeding two hundred and fifty (250) feet in length, measured parallel to the street, shall contain a massing recess extending back at least fifteen (15) feet in depth measured from and perpendicular to the front lot line and at least fifteen (15) feet in width measured parallel to the front lot line so that the maximum length of unbroken façade is one hundred fifty (150) feet.

11.207.7.3 Building Façades

- (a) At least twenty percent (20%) of the area of building façades facing a public street or public open space shall consist of clear glass windows. For buildings located in a Business A (BA), Business A-2 (BA-2), Business B (BB) or Business C (BC) zoning district, this figure shall be increased to thirty percent (30%) for non-residential portions of the building, if any.
- (b) Building façades shall incorporate architectural elements that project or recess by at least two feet from the adjacent section of the façade. Such projecting or recessed elements shall occur on an average interval of 40 linear horizontal feet or less for portions of the façade directly facing a public street, and on an average interval of 80 linear horizontal feet or less for other portions of the façade. Such projecting or recessed elements shall not be required on the lowest Story Above Grade or on the highest Story Above Grade, and shall not be required on the highest two Stories Above Grade of a building containing at least six Stories Above Grade. The intent is to incorporate elements such as bays, balconies, cornices, shading devices, or similar architectural elements that promote visual interest and residential character, and to allow variation at the ground floor and on upper floors where a different architectural treatment may be preferable.

11.207.7.4 Ground Stories and Stories Below Grade

- (a) The elevation at floor level of the Ground Story shall be at the mean Grade of the abutting public sidewalk, or above such mean Grade by not more than four feet. Active non-residential uses at the Ground Story shall be accessible directly from the sidewalk without requiring use of stairs or a lift. The requirements of this paragraph shall not apply if it is determined by the City Engineer that a higher Ground Story elevation is necessary for the purpose of flood protection.
- (b) Where structured parking is provided within the Ground Story of a building, the portion of the building immediately behind the front wall plane shall consist of residential units, common areas, or other populated portions of the building in order to screen the provided parking over at least seventy-five percent (75%) of the length of the façade measured parallel to the street and excluding portions of the façade used for driveway access. On a corner lot, the requirements of this Paragraph shall only apply along one street.
- (c) The façade of a Ground Story facing a public street shall consist of expanses no longer than twenty-five (25) feet in length, measured parallel to the street, which contain no transparent windows or pedestrian entryways.
- (d) If the Ground Story is designed to accommodate active non-residential uses, the following additional standards shall apply:
 - (i) the height of the Ground Story for that portion of the building containing active non-residential uses shall be at least fifteen (15) feet;
 - (ii) the depth of the space designed for active non-residential uses shall be at least thirty-five (35) feet on average measured from the portion of the façade that is nearest to the front lot line in a direction perpendicular to the street, and measured to at least one street in instances where the space abuts two or more streets; and
 - (iii) that portion of the Ground Story façade containing active non-residential uses shall consist of at least thirty percent (30%) transparent glass windows or, if the use is a retail or consumer service establishment, at least thirty percent (30%) transparent glass windows, across the combined façade on both streets in the case of a corner lot.

- (e) Ground Stories shall be designed to accommodate at least one space, with a total frontage equaling at least fifty percent (50%) of the existing retail frontage, for an active non-residential use, which may include retail or consumer establishments as well as social service facilities supporting the mission of the owner of the AHO Project, on sites that are located in a Business base zoning district, and where the project site contains or has contained a retail and or consumer service use at any point within the past two years prior to application for a building permit for an AHO Project.
- (f) Private living spaces within dwelling units, including bedrooms, kitchens, and bathrooms, may only be contained within Stories Above Grade. Stories Below Grade may only contain portions of dwelling units providing entries, exits, or mechanical equipment, or common facilities for residents of the building, such as lobbies, recreation rooms, laundry, storage, parking, bicycle parking, or mechanical equipment

11.207.7.5 Mechanical Equipment, Refuse Storage, and Loading Areas

- (a) All mechanical equipment, refuse storage, or loading areas serving the building or its occupants that are (1) carried above the roof, (2) located at the exterior building wall or (3) located outside the building, shall meet the requirements listed below. Mechanical equipment includes, but is not limited to, ventilation equipment including exhaust fans and ducts, air conditioning equipment, elevator bulkheads, heat exchangers, transformers and any other equipment that, when in operation, potentially creates a noise detectable off the lot. The equipment and other facilities: (a) Shall not be located within any required setback. This Paragraph (a) shall not apply to electrical equipment whose location is mandated by a recognized public utility, provided that project plans submitted for review by the City identify a preferred location for such equipment.
- (b) When on the ground, shall be permanently screened from view from adjacent public streets that are within 100 feet of the building, or from the view from abutting property in separate ownership at the property line. The screening shall consist of a dense year-round screen equal or greater in height at the time of installation than the equipment or facilities to be screened, or a fence of equal or greater

height that is comparable in quality to the materials used on the principal facades of the building, with no more than twenty-five (25) percent of the face of the fence open with adjacent planting.

- (c) When carried above the roof, shall be set back from the principal wall plane by a dimension equal to at least the height of the equipment and permanently screened from view, from the ground, from adjacent public streets and any abutting residentially used lot or lots in a residential zoning district. The screening shall be at least seventy-five percent (75%) opaque and uniformly distributed across the screening surface, or opaque to the maximum extent permissible if other applicable laws, codes, or regulations mandate greater openness.
- (d) Shall meet all city, state and federal noise regulations, as applicable, as certified by a professional acoustical engineer if the Department of Inspectional Services deems such certification necessary.
- (e) That handle trash and other waste, shall be contained within the building or screened as required in this Section until properly disposed of.

11.207.7.6 Environmental Design Standards

- (a) This Section shall not waive the Green Building Requirements set forth in Section 22.20 of this Zoning Ordinance that may otherwise apply to an AHO Project.
- (b) Where the provisions of the Flood Plain Overlay District apply to an AHO Project, the performance standards set forth in Section 20.70 of this Zoning Ordinance shall apply; however, a special permit shall not be required.
- (c) An AHO Project shall be subject to other applicable laws, regulations, codes, and ordinances pertaining to environmental standards.
- (d) New outdoor light fixtures installed in an AHO Project shall be fully shielded and directed to prevent light trespass onto adjacent residential lots.

11.207.8 Advisory Design Consultation Procedure

Prior to application for a building permit, the developer of an AHO Project shall comply with the following procedure, which is intended to provide an opportunity for non-binding community and staff input into the design of the project.

- (a) The intent of this non-binding review process is to advance the City's desired outcomes for the form and character of AHO Projects. To promote the City's goal of creating more affordable housing units, AHO Projects are permitted to have a greater height, scale, and density than other developments permitted by the zoning for a given district. This procedure is intended to promote design outcomes that are compatible with the existing neighborhood context or with the City's future planning objectives for the area.
- (b) The City's "Design Guidelines for Affordable Housing Overlay," along with other design objectives and guidelines established for the part of the city in which the AHO Project is located, are intended to inform the design of AHO Projects and to guide the Planning Board's consultation and report as set forth below. It is intended that designers of AHO Projects, City staff, the Planning Board, and the general public will be open to creative variations from any detailed provisions set forth in such objectives and guidelines as long as the core values expressed are being served.
- (c) At least two community meetings shall be scheduled at a time and location that is convenient to residents in proximity to the project site. The Community Development Department (CDD) shall be notified of the time and location of such meetings, and shall give notification to abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the lot on which the AHO Project is proposed and to any individual or organization who each year files with CDD a written request for such notification, or to any other individual or organization CDD may wish to notify.
 - (i) The purpose of the first community meeting shall be for the developer to share the site and street context analysis with neighborhood residents and other interested parties prior to building design, and receive feedback from community members.
 - (ii) The purpose of the subsequent community meeting(s) shall be to present preliminary project designs, answer questions from neighboring residents and other interested members of the public, and receive feedback on the design. The date(s), time(s), location(s), attendance, materials presented, and comments received at such

meeting(s) shall be documented and provided to CDD.

- (d) Following one or more such community meeting(s), the developer shall prepare the following materials for review by the Planning Board. CDD shall review to certify that the submitted written and graphic materials provide the required information in sufficient detail. All drawings shall be drawn to scale, shall include a graphic scale and north arrow for orientation, and shall provide labeled distances and dimensions for significant building and site features.
 - (i) A context map indicating the location of the project and surrounding land uses, including transportation facilities.
 - (ii) A context analysis, discussed with CDD staff, including existing front yard setbacks, architectural character, and unique features that inform and influence the design of the AHO Project.
 - (iii) An existing conditions site plan depicting the boundaries of the lot, the locations of buildings, open space features, parking areas, trees, and other major site features on the lot and abutting lots, and the conditions of abutting streets.
 - (iv) A proposed conditions site plan depicting the same information above as modified to depict the proposed conditions, including new buildings (identifying building entrances and uses on the ground floor and possible building roof deck) and major anticipated changes in site features.
 - (v) A design statement on how the proposed project attempts to reinforce existing street/context qualities and mitigates the planned project's greater massing, height, density, &c.
 - (vi) Floor plans of all proposed new buildings and existing buildings to remain on the lot.
 - (vii) Elevations and cross-section drawings of all proposed new buildings and existing buildings to remain on the lot, depicting the distances to lot lines and the heights of surrounding buildings, and labeling the proposed materials on each façade elevation.

- (viii) A landscape plan depicting and labeling all hardscape, permeable, and vegetated areas proposed for the site along with other structures or appurtenances on the site.
 - (ix) Plans of parking and bicycle parking facilities, as required by Section 6.50 of this Zoning Ordinance.
 - (x) Materials palettes cataloguing and depicting with photographs the proposed façade and landscape materials.
 - (xi) Existing conditions photographs from various vantage points on the public sidewalk, including photos of the site and of the surrounding urban context.
 - (xii) Proposed conditions perspective renderings from a variety of vantage points on the public sidewalk, including locations adjacent to the site as well as longer views if proposed buildings will be visible from a distance.
 - (xiii) A dimensional form, in a format provided by CDD, along with any supplemental materials, summarizing the general characteristics of the project and demonstrating compliance with applicable zoning requirements.
 - (xiv) A brief project narrative describing the project and the design approach, and indicating how the project has been designed in relation to the citywide urban design objectives set forth in Section 19.30 of the Zoning Ordinance, any design guidelines that have been established for the area, and the “Design Guidelines for Affordable Housing Overlay.”
 - (xv) Viewshed analysis and shadow studies that show the impact on neighboring properties with existing Solar Energy Systems.
 - (xvi) An initial development budget that shows anticipated funding sources and uses including developer fee and overhead.
- (e) Within 65 days of receipt of a complete set of materials by CDD, the Planning Board shall schedule a design consultation as a general business matter at a public meeting and shall give notification to abutters, owners of land directly opposite on any public or private street or

way, and abutters to the abutters within three hundred feet of the property line of the lot on which the AHO Project is proposed and to any individual or organization who each year files with CDD a written request for such notification, or to any other individual or organization CDD may wish to notify. The materials shall be made available to the public in advance, and the Planning Board may receive written comments prior to the meeting from City staff, abutters, and members of the public.

- (f) At the scheduled design consultation, the Planning Board shall hear a presentation of the proposal from the developer and oral comments from the public. The Board may ask questions or seek additional information from the developer or from City staff.
- (g) The Planning Board shall evaluate the proposal for general compliance with the requirements of this Section, for consistency with City development guidelines prepared for the proposal area and the “Design Guidelines for Affordable Housing Overlay,” for appropriateness in terms of other planned or programmed public or private development activities in the vicinity, and for consistency with the Citywide Urban Design Objectives set forth in Section 19.30. The Board may also suggest specific project adjustments and alterations to further the purposes of this Ordinance. The Board shall communicate its findings in a written report provided to the developer and to CDD within 20 days of the design consultation.
- (h) The developer may then make revisions to the design, in consultation with CDD staff, and shall submit a revised set of documents along with a narrative summary of the Planning Board’s comments and changes made in response to those comments.
- (i) The Planning Board shall review and discuss the revised documents at a second design consultation meeting, which shall proceed in accordance with Paragraphs (c) and (d) above. Following the second design consultation, the Planning Board may submit a revised report and either the revised report or if there are no revisions the initial report shall become the final report (the “Final Report”). Any additional design consultations to review further revisions may occur only at the discretion and on the request of the developer or the Cambridge Affordable Housing Trust.

- (j) The Final Report from the Planning Board shall be provided to the Superintendent of Buildings to certify compliance with the procedures set forth herein.

11.207.9 Implementation of Affordable Housing Overlay

- (a) The City Manager shall have the authority to promulgate regulations for the implementation of the provisions of this Section 11.207. There shall be a sixty-day review period, including a public meeting, to receive public comments on draft regulations before final promulgation.
- (b) The Community Development Department may develop standards, design guidelines, and procedures appropriate to and consistent with the provisions of this Sections 11.207 and the above regulations.

11.207.10 Enforcement of Affordable Housing Overlay

The Community Development Department shall certify in writing to the Superintendent of Buildings that all applicable provisions of this Section have been met before issuance of any building permit for any AHO Project, and shall further certify in writing to the Superintendent of Buildings that all documents have been filed and all actions taken necessary to fulfill the requirements of this Section before the issuance of any certificate of occupancy for any such project.

11.207.11 Review of Affordable Housing Overlay

- (a) Annual Report. CDD shall provide an annual status report to the City Council, beginning eighteen (18) months after ordination and continuing every year thereafter. The report shall contain the following information:
 - (i) List of sites considered for affordable housing development under the Affordable Housing Overlay, to the extent known by CDD, including site location, actions taken to initiate an AHO Project, and site status;
 - (ii) Description of each AHO Project underway or completed, including site location, number of units, unit types (number of bedrooms), tenure, and project status; and
 - (iii) Number of residents served by AHO Projects.
- (b) Five-Year Progress Review. Five (5) years after ordination, CDD shall provide to the City Council, Planning Board and

the Affordable Housing Trust, for its review, a report that assesses the effectiveness of the Affordable Housing Overlay in increasing the number of affordable housing units in the city, distributing affordable housing across City neighborhoods, and serving the housing needs of residents. The report shall also assess the effectiveness of the Advisory Design Consultation Procedure in gathering meaningful input from community members and the Planning Board and shaping AHO Projects to be consistent with the stated Design Objectives. The report shall evaluate the success of the Affordable Housing Overlay in balancing the goal of increasing affordable housing with other City planning considerations such as urban form, neighborhood character, environment, and mobility. The report shall discuss citywide outcomes as well as site-specific outcomes.

Passed to a second reading as amended at the City Council meeting held on September 14, 2020 and on or after October 5, 2020 the question comes on passage to be ordained.

Attest:- Anthony I. Wilson
City Clerk

Assembly Bill No. 1763

CHAPTER 666

An act to amend Section 65915 of the Government Code, relating to housing.

[Approved by Governor October 9, 2019. Filed with Secretary of State October 9, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1763, Chiu. Planning and zoning: density bonuses: affordable housing.

Existing law, known as the Density Bonus Law, requires a city or county to provide a developer that proposes a housing development within the jurisdictional boundaries of that city or county with a density bonus and other incentives or concessions for the production of lower income housing units, or for the donation of land within the development, if the developer agrees to construct a specified percentage of units for very low income, low-income, or moderate-income households or qualifying residents and meets other requirements. Existing law provides for the calculation of the amount of density bonus for each type of housing development that qualifies under these provisions.

This bill would additionally require a density bonus to be provided to a developer who agrees to construct a housing development in which 100% of the total units, exclusive of managers' units, are for lower income households, as defined. However, the bill would provide that a housing development that qualifies for a density bonus under its provisions may include up to 20% of the total units for moderate-income households, as defined. The bill would also require that a housing development that meets these criteria receive 4 incentives or concessions under the Density Bonus Law and, if the development is located within ½ of a major transit stop, a height increase of up to 3 additional stories or 33 feet. The bill would generally require that the housing development receive a density bonus of 80%, but would exempt the housing development from any maximum controls on density if it is located within ½ mile of a major transit stop. The bill would prohibit a housing development that receives a waiver from any maximum controls on density under these provisions from receiving a waiver or reduction of development standards pursuant to existing law, other than as expressly provided in the bill. The bill would also make various nonsubstantive changes to the Density Bonus Law.

Existing law requires that an applicant for a density bonus agree to, and that the city and county ensure, the continued affordability of all very low and low-income rental units that qualified the applicant for a density bonus for at least 55 years, as provided. Existing law requires that the rent for

lower income density bonus units be set at an affordable rent, as defined in specified law.

This bill, for units, including both base density and density bonus units, in a housing development that qualifies for a density bonus under its provisions as described above, would instead require that the rent for at least 20% of the units in that development be set at an affordable rent, defined as described above, and that the rent for the remaining units be set at an amount consistent with the maximum rent levels for a housing development that receives an allocation of state or federal low-income housing tax credits from the California Tax Credit Allocation Committee.

Existing law, upon the request of the developer, prohibits a city, county, or city and county from requiring a vehicular parking ratio for a development meeting the eligibility requirements under the Density Bonus Law that exceeds specified ratios. For a development that consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families, as provided in specified law, and that is a special needs housing development, as defined, existing law limits that vehicular parking ratio to 0.3 spaces per unit.

This bill would instead, upon the request of the developer, prohibit a city, county, or city and county from imposing any minimum vehicular parking requirement for a development that consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families and is either a special needs housing development or a supportive housing development, as those terms are defined.

By adding to the duties of local planning officials with respect to the award of density bonuses, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 65915 of the Government Code, as amended by Chapter 937 of the Statutes of 2018, is amended to read:

65915. (a) (1) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall comply with this section. A city, county, or city and county shall adopt an ordinance that specifies how compliance with this section will be implemented. Failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section.

(2) A local government shall not condition the submission, review, or approval of an application pursuant to this chapter on the preparation of an

additional report or study that is not otherwise required by state law, including this section. This subdivision does not prohibit a local government from requiring an applicant to provide reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p).

(3) In order to provide for the expeditious processing of a density bonus application, the local government shall do all of the following:

(A) Adopt procedures and timelines for processing a density bonus application.

(B) Provide a list of all documents and information required to be submitted with the density bonus application in order for the density bonus application to be deemed complete. This list shall be consistent with this chapter.

(C) Notify the applicant for a density bonus whether the application is complete in a manner consistent with the timelines specified in Section 65943.

(D) (i) If the local government notifies the applicant that the application is deemed complete pursuant to subparagraph (C), provide the applicant with a determination as to the following matters:

(I) The amount of density bonus, calculated pursuant to subdivision (f), for which the applicant is eligible.

(II) If the applicant requests a parking ratio pursuant to subdivision (p), the parking ratio for which the applicant is eligible.

(III) If the applicant requests incentives or concessions pursuant to subdivision (d) or waivers or reductions of development standards pursuant to subdivision (e), whether the applicant has provided adequate information for the local government to make a determination as to those incentives, concessions, or waivers or reductions of development standards.

(ii) Any determination required by this subparagraph shall be based on the development project at the time the application is deemed complete. The local government shall adjust the amount of density bonus and parking ratios awarded pursuant to this section based on any changes to the project during the course of development.

(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (f), and, if requested by the applicant and consistent with the applicable requirements of this section, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(C) A senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code, or a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

(D) Ten percent of the total dwelling units in a common interest development, as defined in Section 4100 of the Civil Code, for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

(E) Ten percent of the total units of a housing development for transitional foster youth, as defined in Section 66025.9 of the Education Code, disabled veterans, as defined in Section 18541, or homeless persons, as defined in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.). The units described in this subparagraph shall be subject to a recorded affordability restriction of 55 years and shall be provided at the same affordability level as very low income units.

(F) (i) Twenty percent of the total units for lower income students in a student housing development that meets the following requirements:

(I) All units in the student housing development will be used exclusively for undergraduate, graduate, or professional students enrolled full time at an institution of higher education accredited by the Western Association of Schools and Colleges or the Accrediting Commission for Community and Junior Colleges. In order to be eligible under this subclause, the developer shall, as a condition of receiving a certificate of occupancy, provide evidence to the city, county, or city and county that the developer has entered into an operating agreement or master lease with one or more institutions of higher education for the institution or institutions to occupy all units of the student housing development with students from that institution or institutions. An operating agreement or master lease entered into pursuant to this subclause is not violated or breached if, in any subsequent year, there are not sufficient students enrolled in an institution of higher education to fill all units in the student housing development.

(II) The applicable 20-percent units will be used for lower income students. For purposes of this clause, “lower income students” means students who have a household income and asset level that does not exceed the level for Cal Grant A or Cal Grant B award recipients as set forth in paragraph (1) of subdivision (k) of Section 69432.7 of the Education Code. The eligibility of a student under this clause shall be verified by an affidavit, award letter, or letter of eligibility provided by the institution of higher education that the student is enrolled in, as described in subclause (I), or by the California Student Aid Commission that the student receives or is eligible for financial aid, including an institutional grant or fee waiver, from the college or university, the California Student Aid Commission, or the federal government shall be sufficient to satisfy this subclause.

(III) The rent provided in the applicable units of the development for lower income students shall be calculated at 30 percent of 65 percent of the area median income for a single-room occupancy unit type.

(IV) The development will provide priority for the applicable affordable units for lower income students experiencing homelessness. A homeless service provider, as defined in paragraph (3) of subdivision (d) of Section 103577 of the Health and Safety Code, or institution of higher education that has knowledge of a person's homeless status may verify a person's status as homeless for purposes of this subclause.

(ii) For purposes of calculating a density bonus granted pursuant to this subparagraph, the term "unit" as used in this section means one rental bed and its pro rata share of associated common area facilities. The units described in this subparagraph shall be subject to a recorded affordability restriction of 55 years.

(G) One hundred percent of the total units, exclusive of a manager's unit or units, are for lower income households, as defined by Section 50079.5 of the Health and Safety Code, except that up to 20 percent of the total units in the development may be for moderate-income households, as defined in Section 50053 of the Health and Safety Code.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), an applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), (D), (E), (F), or (G) of paragraph (1).

(3) For the purposes of this section, "total units," "total dwelling units," or "total rental beds" does not include units added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

(c) (1) (A) An applicant shall agree to, and the city, county, or city and county shall ensure, the continued affordability of all very low and low-income rental units that qualified the applicant for the award of the density bonus for 55 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

(B) (i) Except as otherwise provided in clause (ii), rents for the lower income density bonus units shall be set at an affordable rent, as defined in Section 50053 of the Health and Safety Code.

(ii) For housing developments meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b), rents for all units in the development, including both base density and density bonus units, shall be as follows:

(I) The rent for at least 20 percent of the units in the development shall be set at an affordable rent, as defined in Section 50053 of the Health and Safety Code.

(II) The rent for the remaining units in the development shall be set at an amount consistent with the maximum rent levels for a housing development that receives an allocation of state or federal low-income housing tax credits from the California Tax Credit Allocation Committee.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of all for-sale units that qualified the applicant for the award of the density bonus are persons and families of very low, low, or moderate income, as required, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code. The local government shall enforce an equity sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following apply to the equity sharing agreement:

(A) Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The local government shall recapture any initial subsidy, as defined in subparagraph (B), and its proportionate share of appreciation, as defined in subparagraph (C), which amount shall be used within five years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote home ownership.

(B) For purposes of this subdivision, the local government's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

(C) For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the ratio of the local government's initial subsidy to the fair market value of the home at the time of initial sale.

(3) (A) An applicant shall be ineligible for a density bonus or any other incentives or concessions under this section if the housing development is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very low income households, unless the proposed housing development replaces those units, and either of the following applies:

(i) The proposed housing development, inclusive of the units replaced pursuant to this paragraph, contains affordable units at the percentages set forth in subdivision (b).

(ii) Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.

(B) For the purposes of this paragraph, "replace" shall mean either of the following:

(i) If any dwelling units described in subparagraph (A) are occupied on the date of application, the proposed housing development shall provide at least the same number of units of equivalent size to be made available at

affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy. If the income category of the household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. For unoccupied dwelling units described in subparagraph (A) in a development with occupied units, the proposed housing development shall provide units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as the last household in occupancy. If the income category of the last household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) If all dwelling units described in subparagraph (A) have been vacated or demolished within the five-year period preceding the application, the proposed housing development shall provide at least the same number of units of equivalent size as existed at the highpoint of those units in the five-year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known. If the incomes of the persons and families in occupancy at the highpoint is not known, it shall be rebuttably presumed that low-income and very low income renter households occupied these units in the same proportion of low-income and very low income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(C) Notwithstanding subparagraph (B), for any dwelling unit described in subparagraph (A) that is or was, within the five-year period preceding the application, subject to a form of rent or price control through a local government's valid exercise of its police power and that is or was occupied

by persons or families above lower income, the city, county, or city and county may do either of the following:

(i) Require that the replacement units be made available at affordable rent or affordable housing cost to, and occupied by, low-income persons or families. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) Require that the units be replaced in compliance with the jurisdiction's rent or price control ordinance, provided that each unit described in subparagraph (A) is replaced. Unless otherwise required by the jurisdiction's rent or price control ordinance, these units shall not be subject to a recorded affordability restriction.

(D) For purposes of this paragraph, "equivalent size" means that the replacement units contain at least the same total number of bedrooms as the units being replaced.

(E) Subparagraph (A) does not apply to an applicant seeking a density bonus for a proposed housing development if the applicant's application was submitted to, or processed by, a city, county, or city and county before January 1, 2015.

(d) (1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:

(A) The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.

(C) The concession or incentive would be contrary to state or federal law.

(2) The applicant shall receive the following number of incentives or concessions:

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.

(B) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.

(C) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.

(D) Four incentives or concessions for projects meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b). If the project is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, the applicant shall also receive a height increase of up to three additional stories, or 33 feet.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section that shall include legislative body approval of the means of compliance with this section.

(4) The city, county, or city and county shall bear the burden of proof for the denial of a requested concession or incentive.

(e) (1) In no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. Subject to paragraph (3), an applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical

environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

(2) A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(3) A housing development that receives a waiver from any maximum controls on density pursuant to clause (ii) of subparagraph (D) of paragraph (3) of subdivision (f) shall not be eligible for, and shall not receive, a waiver or reduction of development standards pursuant to this subdivision, other than as expressly provided in subparagraph (D) of paragraph (2) of subdivision (d) and clause (ii) of subparagraph (D) of paragraph (3) of subdivision (f).

(f) For the purposes of this chapter, “density bonus” means a density increase over the otherwise maximum allowable gross residential density as of the date of application by the applicant to the city, county, or city and county, or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density. The amount of density increase to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
17	30.5
18	32
19	33.5
20	35

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Very Low Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

(3) (A) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of senior housing units.

(B) For housing developments meeting the criteria of subparagraph (E) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of the type of units giving rise to a density bonus under that subparagraph.

(C) For housing developments meeting the criteria of subparagraph (F) of paragraph (1) of subdivision (b), the density bonus shall be 35 percent of the student housing units.

(D) For housing developments meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b), the following shall apply:

(i) Except as otherwise provided in clause (ii), the density bonus shall be 80 percent of the number of units for lower income households.

(ii) If the housing development is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, the city, county, or city and county shall not impose any maximum controls on density.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Moderate-Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19

25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not require, or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

(g) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county in accordance with this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density for the entire development, as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32

28	33
29	34
30	35

(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks an increase pursuant to both this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

(A) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned with appropriate development standards for development at the density described in paragraph (3) of subdivision (c) of Section 65583.2, and is or will be served by adequate public facilities and infrastructure.

(D) The transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, not later than the date of approval of the final subdivision map, parcel map, or residential development application, except that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government before the time of transfer.

(E) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of the transfer.

(F) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(G) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(H) A proposed source of funding for the very low income units shall be identified not later than the date of approval of the final subdivision map, parcel map, or residential development application.

(h) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a childcare facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the childcare facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the childcare facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The childcare facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the childcare facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or city and county shall not be required to provide a density bonus or concession for a childcare facility if it finds, based upon substantial evidence, that the community has adequate childcare facilities.

(4) “Childcare facility,” as used in this section, means a child daycare facility other than a family daycare home, including, but not limited to, infant centers, preschools, extended daycare facilities, and schoolage childcare centers.

(i) “Housing development,” as used in this section, means a development project for five or more residential units, including mixed-use developments. For the purposes of this section, “housing development” also includes a subdivision or common interest development, as defined in Section 4100 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(j) (1) The granting of a concession or incentive shall not require or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, study, or other discretionary approval. For purposes of this subdivision, “study” does not include reasonable documentation to establish eligibility for the concession or incentive or to demonstrate that the incentive or concession meets the definition set forth in subdivision (k). This provision is declaratory of existing law.

(2) Except as provided in subdivisions (d) and (e), the granting of a density bonus shall not require or be interpreted to require the waiver of a local ordinance or provisions of a local ordinance unrelated to development standards.

(k) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable and actual cost reductions, to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(2) Approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable and actual cost reductions to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(l) Subdivision (k) does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) This section does not supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios to which the applicant is entitled under this section shall be permitted in a manner that is consistent with this section and Division 20 (commencing with Section 30000) of the Public Resources Code.

(n) If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:

(1) “Development standard” includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.

(2) “Maximum allowable residential density” means the density allowed under the zoning ordinance and land use element of the general plan, or, if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. If the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.

(p) (1) Except as provided in paragraphs (2), (3), and (4), upon the request of the developer, a city, county, or city and county shall not require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivisions (b) and (c), that exceeds the following ratios:

(A) Zero to one bedroom: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) Notwithstanding paragraph (1), if a development includes the maximum percentage of low-income or very low income units provided for in paragraphs (1) and (2) of subdivision (f) and is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and there is unobstructed access to the major transit stop from the development, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds 0.5 spaces per bedroom. For purposes of this subdivision, a development shall have unobstructed access to a major transit stop if a resident is able to access the major transit stop without encountering natural or constructed impediments.

(3) Notwithstanding paragraph (1), if a development consists solely of rental units, exclusive of a manager’s unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the Health and Safety Code, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds the following ratios:

(A) If the development is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and there is unobstructed access to the major transit stop from the development, the ratio shall not exceed 0.5 spaces per unit.

(B) If the development is a for-rent housing development for individuals who are 62 years of age or older that complies with Sections 51.2 and 51.3 of the Civil Code, the ratio shall not exceed 0.5 spaces per unit. The development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(4) Notwithstanding paragraphs (1) and (8), if a development consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the Health and Safety Code, and the development is either a special needs housing development, as defined in Section 51312 of the Health and Safety Code, or a supportive housing development, as defined in Section 50675.14 of the Health and Safety Code, then, upon the request of the developer, a city, county, or city and county shall not impose any minimum vehicular parking requirement. A development that is a special needs housing development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(5) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide onsite parking through tandem parking or uncovered parking, but not through onstreet parking.

(6) This subdivision shall apply to a development that meets the requirements of subdivisions (b) and (c), but only at the request of the applicant. An applicant may request parking incentives or concessions beyond those provided in this subdivision pursuant to subdivision (d).

(7) This subdivision does not preclude a city, county, or city and county from reducing or eliminating a parking requirement for development projects of any type in any location.

(8) Notwithstanding paragraphs (2) and (3), if a city, county, city and county, or an independent consultant has conducted an areawide or jurisdictionwide parking study in the last seven years, then the city, county, or city and county may impose a higher vehicular parking ratio not to exceed the ratio described in paragraph (1), based upon substantial evidence found in the parking study, that includes, but is not limited to, an analysis of parking availability, differing levels of transit access, walkability access to transit services, the potential for shared parking, the effect of parking requirements on the cost of market-rate and subsidized developments, and the lower rates of car ownership for low-income and very low income individuals, including seniors and special needs individuals. The city, county, or city and county shall pay the costs of any new study. The city, county, or city and county

shall make findings, based on a parking study completed in conformity with this paragraph, supporting the need for the higher parking ratio.

(9) A request pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(q) Each component of any density calculation, including base density and bonus density, resulting in fractional units shall be separately rounded up to the next whole number. The Legislature finds and declares that this provision is declaratory of existing law.

(r) This chapter shall be interpreted liberally in favor of producing the maximum number of total housing units.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

O



Kate Harrison
Councilmember District 4

ACTION CALENDAR
July 28, 2020

To: Honorable Mayor and Members of the City Council
From: Councilmember Kate Harrison
Subject: Amendments to Berkeley Municipal Code 23C.22: Short Term Rentals

RECOMMENDATION

Amend Berkeley Municipal Code 23C.22: Short Term Rentals to clarify the ordinance and insure adequate host responsibilities, tenant protections and remedies for violating the ordinance.

BACKGROUND

Berkeley has had regulations on short term rentals (STRs) since 2017, allowing STRs in most residential and commercial zones, as long as the host pays the transient occupancy tax and the unit being rented fits particular criteria (no Below Market Rate unit may be a short term rental, no unit may be a short term rental if it has had a No Fault Eviction in the past five years, etc). The City of Santa Monica also has an ordinance regulating STRs that places the regulatory burden on the *host platform* (i.e., AirBnB or other corporate host platforms) rather than the individual renting out their unit. Santa Monica placed four obligations on the host platform: collecting and remitting transient occupancy taxes, regularly disclosing listings and booking information to the City, refraining from booking properties not licensed by the City, and refraining from collecting fees for ancillary services.¹ The Ninth Circuit Court of Appeals upheld the legality in the case of *Homeaway.com v. Santa Monica*, thus confirming the rights of Cities to regulate short term rental host platforms.

The proposed amendments update the City of Berkeley's STR regulations to more closely align with Santa Monica's ordinance, as well as other amendments intended to ensure that the short term rentals in Berkeley serve the needs of the City. The primary five changes are as follows:

1) Regulatory burden shifted to the Host Platform

We clarify the definition of a hosting platform in 23C.22.030.H (page 2) as a marketplace that derives revenue from maintaining said short term rental marketplace. Regulating the host platform consolidates regulation and ensures that the transient

¹ *Homeaway.com v Santa Monica*. United State Court of Appeals for the Ninth Circuit. No. 18-55367.

occupancy tax owned to the City gets paid. Recommended changes to 23C.22.050.H and I (page 5) state that if a hosting platform is utilized to book a short term rental, both it and the individual host are legally responsible and are jointly liable for remitting the transient occupancy tax. New section 23C.22.050.I (pages 5-6) also outlines new duties of the hosting platform, including a regular disclosure of short term rental listings in the City as well as their address, length of stay, and listed prices. In addition, the hosting platform is responsible for ensuring that all short term rentals are appropriately licensed with a Zoning Certificate and adds the requirements that STRs must list the Zoning Certificate on any STR advertisements. The new regulations also include a safe harbor clause, making clear that hosting platforms that disclose listings, regularly remit the transient occupancy tax, and ensure the listing has a Zoning Certificate will be presumed to be in compliance with the chapter.

2) Hosts can have only one residence

Individual people have the right to rent out their homes on a short term basis, but in a housing crisis, it is in the best interest of the City to ensure that no one has extra units for STRs when they could house someone long term instead. To that end, 23C.22.030.F and 23C.22.030.I (pages 2-3) clarify that hosts may not have more than one principle place of residency, which may include accessory buildings or ADUs.

3) Short term rentals limited to single ADUs, single Accessory Buildings or Golden Duplexes not rented for the past ten years

The current ordinance limits use of Accessory Buildings or Accessory Dwelling Units to those that have not been rented for ten years. Additions to Section 23C.22.020.D (page 1) expand that prohibition to include more than one Accessory Building or ADU on a property and prohibits short term rentals in Golden Duplexes if those units have been rented in the last ten years. Unpermitted use of these units would be investigated by the Rent Stabilization Board under Section 23C.22.060.I (page 7).

4) Closing 14/30 day loophole

Under current law, any rental over 14 days is not a short term rental and thus does not require paying a transient occupancy tax. Any rental that is shorter than 30 days is not a long term rental and thus rent control and other rental protections are awarded to the tenant. As it now stands there are instances of regularly renting a unit for a period of time between 14 days and fewer than 30 days, thus circumventing standard regulations. 23C.22.030.N (page 3) and 23C.22.040 (page 4) close this loophole by disallowing rentals between 14 and 30 days, and stating that no Zoning Certificate or advertisement for a short term rental may be permitted for rentals longer than 14 days.

5) Remedies

New language under 23C.22.060E and 23C.22.060.J (page 7) clarify that in the case of a private right of action the prevailing party is entitled to recover reasonable costs and attorney's fees, thus making private right of action more financially feasible. The new

Resolution in Support of Senate Bill 54 and Assembly Bill 1080:
The California Circular Economy and Plastic Pollution Reduction Act

ACTION CALENDAR
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language also gives the City the right to issue administrative subpoenas to determine whether short term rentals are in compliance with the chapter. Both of these edits are intended to encourage enforcement and compliance.

Finally, the ordinance clarifies the definitions of the terms Accessory Building, Accessory Dwelling Unit, and the Transient Occupancy Tax and defines a Golden Duplex and other clarifying language.

CONTACT PERSON

Kate Harrison, Berkeley City Councilmember, (510) 981-7140

ATTACHMENTS

Ordinance

100Chapter 23C.22 Short-Term Rentals

23C.22.010 Purposes

The purposes of the Short-Term Rentals related regulations contained in this Chapter are:

- A. To prevent long-term rental units from being replaced with Short-Term Rentals and protect affordable housing units from conversion.
- B. To preserve and protect neighborhood character and livability from nuisances that are often associated with Short-Term Rentals.
- C. To generate City revenue to share City infrastructure cost and other public expenditures by operation of Short-Term Rentals under established standards.
- D. To provide alternative forms of lodging. (Ord. 7521-NS § 1 (part), 2017)

23C.22.020 Applicability

- A. Short-Term Rentals shall be allowed in residential uses in the following zoning districts: R-1, R-1A, R-2, R-2A, R-3, R-4, R-5, R-S, R-SMU, C-DMU, C-1, C-NS, C-SA, C-T, C-W, and MU-R.
- B. Short-Term Rentals shall be prohibited in below market rate (BMR) units. BMR units for Short-Term Rental purposes refer to Dwelling Units whose rents are listed as a result of deed restrictions or agreements with public agencies, and whose tenants must be income-qualified.
- C. A property containing a Dwelling Unit protected by a No-Fault Eviction cannot operate Short-Term Rentals for five years from eviction unless it is a single-family home that has been vacated for purposes of Owner Occupancy in compliance with the Rent Stabilization Ordinance.
- D. Short-Term Rentals are only allowed in a single, Accessory Building and in single existing Accessory Dwelling Units (ADUs), or a Golden Duplex unless such ADUs are or have within the last 10 (ten) years preceding the effective date of this ordinance been used for long term rentals, as defined by the requirements of the Rent Stabilization Ordinance. Short-Term Rentals shall not be allowed in Accessory Dwelling Units permitted after the date this Ordinance first became effective. (Ord. 7521-NS § 1 (part), 2017)

23C.22.030 Definitions

The definitions set forth in this Section shall govern the meaning of the following terms as used in this Chapter:

A. Accessory Building: A detached building containing habitable space, excluding a kitchen, which is smaller in size than the main building on the same lot, and the use of which is incidental to the primary use of the lot.

B. Accessory Dwelling Unit: A secondary dwelling unit that is located on a lot which is occupied by one legally established Single-Family Dwelling that conforms to the standards of Section 23C.24. An Accessory Dwelling Unit must comply with local building, housing, safety and other code requirements and provide the following features independent of the Single-Family Dwelling: 1) exterior access to Accessory Dwelling Unit; 2) living and sleeping quarters; 3) a full kitchen; and 4) a full bathroom. An Accessory Dwelling Unit also includes an efficiency unit and a manufactured home, as defined in the Health and Safety Code.

C. "Adjacent Properties" mean the Dwelling Units abutting and confronting, as well as above and below, a Dwelling Unit within which a Short-Term Rental is located.

D. "Dwelling Unit" means a building or portion of a building designed for, or occupied exclusively by, persons living as one (1) household.

E. "Golden Duplex" means an owner-occupied duplex that is exempt from rent control and eviction protection, so long as it was occupied by the owner on December 31, 1979 and is currently occupied by the owner.

F. "Host" means any Owner and is used interchangeably in this Title with Owner Host. An Owner Host is a person who is the owner of record of residential real property, as documented by a deed or other such evidence of ownership, who offers his or her Host Residence, or a portion thereof, as a Short-Term Rental. For purposes of offering a Short-Term Rental, an Owner Host may not have more than one "Host Residence" in the City of Berkeley, excluding an Accessory Building or an Accessory Dwelling Unit on the same residential real property. A Tenant Host is a lessee of residential real property, as documented by a lease or other such evidence, who offers their Host Residence, or portion thereof, as a Short-Term Rental.

G. "Host Present" or "Host Presence" means the Host is living in the Host Residence during the Short-Term Rental period. In the case of a parcel comprised of a Single Family Dwelling and one or more authorized Accessory Dwelling Units and/or Accessory Buildings, the Host is considered Present if he or she is present in any Dwelling Unit on such property during the Short Term Rental period.

H. "Hosting Platform" means a business or person that provides a marketplace through which an Owner Host may offer a Dwelling Unit for Short-Term Rentals. A Hosting Platform is usually, though not necessarily, provided through an internet-based platform. It generally allows a Dwelling Unit to be advertised through a website provided by the Hosting Platform and provides a means for potential Short-Term Rental Transients to arrange and pay for Short-Term Rentals, and from which operator of the Hosting Platform derives revenue, including booking fees or advertising revenues, from providing or maintaining the marketplace.

L. "Host Residence" means a Host's principal place of residence as defined by whether the Host carries on basic living activities at the place of residence, and whether the place of residence is the Host's usual place of return. Motor vehicle registration, driver's license, voter registration or other evidence as may be required by the City shall be indicia of principal residency. A Host may have only one place of principal residency in the City and if that principal place of residency contains more than one dwelling unit, the principal place of residency shall be only one such dwelling unit.

J. "Host Responsibilities" means the requirements that a "Host" is obligated to comply with as set forth in this Ordinance.

K. "Local Contact" means a person designated by the Host who shall be available during the term of any Short-Term Rental for the purpose of (i) responding within sixty minutes to complaints regarding the condition or operation of the Dwelling Unit or portion thereof used for Short-Term Rental, or the conduct of Short-Term Rental Transients; and (ii) taking appropriate remedial action on behalf of the Host, up to and including termination of the Short Term Rental, if allowed by and pursuant to the Short Term Rental agreement, to resolve such complaints.

L. "No Fault Eviction" means an eviction pursuant to the Ellis Act or Sections 13.76.130.A.9 or 10 of the Berkeley Municipal Code.

M. "Short-Term Rental" or "STR" means the use of any Dwelling Unit, authorized Accessory Dwelling Unit or Accessory Building, or portions thereof for dwelling, sleeping or lodging purposes by Short-Term Rental Transients. Short-Term Rental shall be an accessory use to a residential use and be considered neither a Tourist Hotel nor a Residential Hotel for purposes of this Title.

N. Short Term Rentals are allowed for 14 or fewer consecutive days. Any rental for more than 14 consecutive days is not permitted as a Short Term Rental, and any rental for more than 14 consecutive days and less than 30 consecutive days is not permitted in the City of Berkeley.

O. "Short-Term Rental Transient" or "STR Transient" means any person who rents a Dwelling Unit, authorized Accessory Dwelling Unit or Accessory Building, or portion thereof, [for 14 or fewer consecutive days](#).

P. ["Transient Occupancy Tax" or "TOT" means local transient tax as set forth in Berkeley Municipal Code Section 7.36. The tax is paid by the Short-Term Rental Transient at the time payment is made for the Short-Term Rental. The TOT is then remitted to the City.](#)

23C.22.040 Permit And License Required

Short Term Rentals are permitted only in the Host Residence. A Zoning Certificate [and a Business License](#) for [a Short-Term Rental](#) shall be required for each Host to operate a Short-Term Rental. [A Host must provide the Uniform Resource Locator \(URL\) — specifically, the website address — for any and all advertisements for the STR, if applicable, on the Zoning Certificate application.](#)

[No Zoning Certificate may be issued to allow for a Short-Term Rental of more than 14 consecutive days, and no advertisement for a Short Term Rental of more than 14 consecutive days is allowed.](#)

23C.22.050 Operating Standards and Requirements

A Short-Term Rental is allowed only if it conforms to each of the operating standards and requirements set forth in this Section, [and the Host complies with all Host Responsibilities set forth in this Ordinance.](#)

A. Proof of Host Residency.

1. An Owner-Host of a Short-Term Rental must provide documentation of Owner Host and Host Residence status and, if applicable, Host Presence, as defined [above](#).

2. A Tenant-Host must provide documentation of lessee status, Host Residence and Host Presence, if applicable, as defined in subdivisions C, E, and B of Section [23C.22.030](#). In addition, a Tenant-Host must present written authorization allowing for a Short-Term Rental in the Host Residence from the building owner or authorized agent of the owner.

B. STR Duration and Required Residency Timeframes

1. When the Host is Present, the unit, or a portion thereof, may be rented as a Short-Term Rental for an unlimited number of days during the calendar year.

2. When the Host is not Present, the number of days that the unit can be used for Short-Term Rental purposes shall be limited to 90 days per calendar year.

C. Number of Occupants. The maximum number of Short-Term Rental Transients allowed for a Short-Term Rental unit shall be as provided for in the Berkeley Housing Code (BMC Chapter [19.40](#)).

D. Notification.

(i) Initial, one-time notification of the establishment of a Short-Term Rental by [Zoning Certificate](#) and Business license, shall be provided to the residents of all Adjacent Properties. Notification shall include Host and Local Contact information. Additional notification shall be required within a week of updated Host [or Local Contact information](#).

(ii) In any advertisement for the STR, a Host must include the [Zoning Certificate number](#).

E. Enforcement Fee. For the initial enforcement period, while enforcement costs are being determined, the Host shall pay an additional enforcement fee in an amount equal to 2% of the rents charged by that Host, not to exceed the cost of the regulatory program established by this Chapter over time. Such fees may be paid by the Hosting Platform on behalf of the Host. After the initial enforcement period, the Council may revise the enforcement fee by resolution.

F. Liability Insurance. Liability insurance is required of the Host, or Hosting Platform on behalf of the Host, in the amount of at least \$1,000,000.

G. Documents Provided to STR Transients. Electronic or paper copies of the Community Noise Ordinance and Smoke-Free Multi-Unit Housing Ordinance must be provided to STR Transients upon booking and upon arrival.

H. Transient Occupancy Tax. (“TOT”). The TOT shall be collected on all Short-Term Rentals. The Host is responsible for collecting and remitting the TOT, in coordination with any Hosting Platform, if utilized, to the City. If a Hosting Platform collects payment for rentals, then both it and the Host shall have legal responsibility for collection and remittance of the TOT.

I. Housing Platform Responsibilities.

(i) Subject to applicable laws, A Hosting Platform shall disclose to the City on a regular basis each rental listing located in the City, the names of the person or persons responsible for each such listing, the address of each such listing, the length of stay for each such listing, and the price paid for each booking transaction.

(ii) A Hosting Platform shall not complete any booking transaction for any STR unless the Host has a valid Zoning Certificate at the time the Hosting Platform receives a fee the booking transaction.

(iii) A Hosting Platform shall not collect or receive a fee for a STR unless the Host has a valid Zoning Certificate at the time the Hosting Platform would otherwise be entitled to receive a fee for the booking transaction.

(iv) Safe Harbor: A Hosting Platform operating exclusively on the internet, which operates in compliance with subsections (i), (ii) and (iii) above, shall be presumed to be in compliance with this Chapter.

J. Housing Code Compliance. Any building or portion thereof used for Short-Term Rentals shall comply with the requirements of the Berkeley Housing Code (BMC Chapter [19.40](#)).

K. Payment of Additional Taxes: The Host shall pay all City taxes and fees owed, in addition to the TOT, if applicable, in a timely manner. [100](#)

L. The Host shall be responsible for listing on any rental ad the Zoning Certificate number. The Host shall also provide both the Business License number, if required pursuant to Chapter [9.04](#), and Zoning Certificate for the STR to the City and/or a vendor hired by the City to administer this Chapter, upon request.

23C.22.060 Remedies

A. Compliance with Second-Response Ordinance. The Host shall comply with the Second Response Ordinance (BMC Chapter [13.48](#)). The Host shall be prohibited from operating Short-Term Rentals for one year upon issuance of a third violation affidavit.

B. Violation of any provision of this Chapter is punishable as set forth in Chapters [1.20](#) and [1.28](#).

C. Violation of any provision of this Chapter is hereby declared to be a public nuisance subject to abatement under Chapters [1.24](#), [1.26](#) and [23B.64](#).

D. In any enforcement action by the City, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs; provided that, pursuant to Government Code Section [38773.5](#), attorneys' fees shall only be available in an action or proceeding in which the City has elected, at the commencement of such action or proceeding, to seek recovery of its own attorneys' fees. In no action or proceeding shall an award of

attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.

E. Any resident of the City may bring a private action for injunctive or other relief to prevent or remedy a public nuisance as defined in this Chapter, or to prevent or remedy any other violation of this Chapter. No action may be brought under this subdivision unless and until the prospective plaintiff has given the City and the prospective defendant(s) at least 30 days written notice of the alleged public nuisance and the City has failed to initiate proceedings within that period, or after initiation, has failed to diligently prosecute. The prevailing party in any such action shall be entitled to recover reasonable costs and attorney's fees.

F. Any occurrence at a Short-Term Rental unit that constitutes a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of a neighborhood, such as excessive noise or traffic, obstruction of public streets by crowds or vehicles, public intoxication, the service to or consumption of alcohol by minors, fights, disturbances of the peace, litter or other similar conditions, constitutes a public nuisance.

G. It shall be a public nuisance for any STR Transient of a Short-Term Rental unit where an event is taking place to refuse access to, or interfere with access by, Fire Department or other City personnel responding to an emergency call or investigating a situation.

H. Notwithstanding any provision of Chapter [13.48](#) to the contrary, a public nuisance as defined in this Section shall be subject to remedies set forth in Section [23C.22.060](#). (Ord. 7521-NS § 1 (part), 2017)

I. A violation of this Chapter by a Host Owner who offers or rents a rent controlled unit, multiple ADU's, multiple Accessory Buildings, or a Golden Duplex, may be reported to the Berkeley Rent Stabilization Board for investigation by the Board. Upon report of a violation to the Rent Stabilization Board, the Board is required to provide a written report of the investigation within 30 days. Where a violation is found, the Rent Board will immediately provide the written report supporting its finding of a violation to the City Attorney's office for remedial action by the City.

J. The City may issue and serve administrative subpoenas as necessary to obtain specific information regarding Short-Term Rentals located in the City, including but not limited to, the names of the persons responsible for each such listing, the address of each such listing, the length of stay for each such listing and the price paid for each stay, to determine whether the STR and related listing complies with this Chapter. Any subpoena issued pursuant to this section shall not require the production of information sooner than 30 days

from the date of service. A person or entity that has been served with an administrative subpoena may seek judicial review during that 30 day period.