



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

**Thursday, June 17, 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/85943483266>. 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: **859 4348 3266**. 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

Draft minutes for the Committee's consideration and approval.

1. Minutes - May 20, 2021

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.

2. Disposition of Existing Agenda Items Pursuant to Appendix D of the City Council Rules of Procedure and Order Related to Temporary Rules for Policy Committees

Committee Action Items

3. Resolution Recognizing Housing as Human Right; Referring to City Manager Several Measures to Begin Developing Social Housing in the City of Berkeley
(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: Adopt a Resolution recognizing housing as a human right; refer to the City Manager's office several measures to begin developing social housing in the City of Berkeley. Measures shall include, but not be limited to:

1. Study and report to council on development potential, including density bonuses, for mixed-income housing development starting with the city-owned parcels at 1011 University Ave, and seek information through an RFI or other process on the potential for cross-subsidized limited-equity leasehold and rental models or other social housing development models;
2. Study and return to council a report and, if feasible, a proposal for a Reparative Justice Revolving Loan Fund with affirmative racial justice and anti-displacement goals in coordination with the city's Small Sites Program:
 - a. Providing low-interest loans for tenants, nonprofits, limited-equity co-operatives, and community land trusts to acquire real property; support Low Income Housing Tax Credit (LIHTC) funding; develop and/or maintain mixed-income and permanently affordable housing;
 - b. Leveraging local funds with state and regional partnerships through the Bay Area Housing Finance Agency (BAHFA) with the Association of Bay Area Governments (ABAG), Berkeley Housing Authority, Berkeley Unified School District (BUSD) and BART;
 - c. Consider best practices from other agencies and other partnership opportunities;
3. Establish a publicly available, user-friendly data dashboard potentially using third-party data visualization tools for monitoring Housing Justice Indicators in the city including, but not limited to:
 - a. State certification of city's Housing Element and progress toward RHNA goals for each income tier in annual Housing Pipeline Reports;
 - b. Housing Element compliance with Affirmatively Furthering Fair Housing (AFFH) rule pursuant to California Government Code Section 65583 and Chapter 15, Section 8899.50 of Division 1 of Title 2, presented with, at a minimum;
 - Citywide and regional affordability as defined by median rents and home prices as share of one-third of the City of Berkeley and Alameda County's median household income in most recent American Community Survey data;
 - Local funding and open BMR housing application slots available to meet housing needs of Moderate, Low-, Very Low-, and Extremely Low-Income households;
 - Anti-displacement metrics using UC Berkeley Displacement Project data and tracking successful applications to affordable housing units in the city using Local Preference policy;
 - Geographic considerations including historic redlining and segregation; Sensitive Communities and High Displacement Risk Areas identified in the 2019 CASA Compact by the Metropolitan Transportation Commission (MTC); and access to

Committee Action Items

economic opportunity as measured by State of California Tax Credit Allocation Committee (TCAC) Opportunity Area Maps;

- Any other considerations relevant to AFFH compliance and reparative housing justice.

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.

4. **Affordable Housing Overlay**

From: Councilmember Taplin (Author), Councilmember Bartlett (Co-Sponsor), Councilmember Robinson (Co-Sponsor) (Item contains revised material.)

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 (AB-1763) with additional local height and density incentives, including waivers and modifications similar to those vested in state density bonus law, with ministerial approval contingent on objective zoning and design criteria, for qualifying 100% affordable projects deed-restricted for Low, Very Low, Extremely Low, and Moderate Income households (exclusive of manager's unit) pursuant to AB-1763, specifying:
 - a. In R3, R4, and all C-prefixed zoning districts, a local density bonus in addition to, and duplicative of, the state density bonus under Government Code Section 65915 for up to a total of 85' for qualifying projects;
 - b. In R-1, R-1A, R-2, and R-2A zones, a local 12' height bonus for qualifying projects, waiving density limits and permitting up to 80% lot coverage;
 - c. In all qualifying transit-adjacent areas, inclusive of all parcels within one-half mile of a commuter rail station, or within 1/4 mile of an AC Transit bus route with 7-day service in Fiscal Year 2019, waiving density limits, including units per acre, floor area ratio, and up to 80% lot coverage;
 - d. Create General Plan amendments that allow for 100% affordable qualifying projects to avoid inconsistencies with General Plan densities;
 - e. Increased density for projects outside of transit proximity threshold specified in 1(c) above contingent upon additional Transportation Demand Management (TDM) policies aiming to reduce Vehicle Miles Traveled (VMT) per capita, including bike parking, paratransit and shared micro-mobility systems;
 - f. Skilled and trained workforce standards as defined by the February 18, 2021 version of SB-7 (Atkins) for qualifying projects with at least 50,000 square feet of total floor area;
2. Exempting parcels with Designated Historic Landmarks and maintaining demolition restrictions consistent with state law;
3. On parcels within high-risk wildfire zones as determined by the California Department of Forestry and Fire Protection (CalFire), ministerial approval for qualifying 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 cycle. 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 jurisdictions.

Unscheduled Items

Financial Implications: See report

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

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

6. **Referral to the City Manager to Streamline Accessory Dwelling Unit (ADU) Permit Review and Approval**
From: Councilmember Kesarwani (Author), Councilmember Wengraf (Co-Sponsor), Councilmember Droste (Co-Sponsor), and Councilmember Bartlett (Co-Sponsor)
Referred: April 26, 2021
(Item placed on “Inactive” status by the Agenda & Rules Committee pursuant to Appendix D of the Rules of Procedure)
Due: February 14, 2022
Recommendation: 1. Refer to the City Manager to streamline the Accessory Dwelling Unit (ADU) permitting process in order to reduce staff time spent on review and enhance customer service. Further, assess effectiveness of process improvements specified below by reviewing over time: the number of ADUs permitted, average amount of staff time spent on ADU permit review, and permit fee levels.
2. Recommend that the City Manager develop for Planning staff use an ADU Universal Checklist and accompanying user-friendly webpage:
 - a. ADU Universal Checklist. A clear set of universal guidelines and construction requirements should be developed among staff from Planning (both Land Use and Building and Safety Divisions), Fire, and Public Works Departments that is easy to follow in order to eliminate (or significantly reduce) the need for multiple departments to review ADU permit applications and for multiple rounds of review by the same department. The Universal Checklist should be a single document utilized by all City staff to review ADU permit applications and by customers to understand code requirements. The Universal Checklist should enable all City staff and customers to have the same clear understanding of all of the requirements that, if adhered to, would expedite the permitting process and lead to lower permit fees over time.
 - b. Accompanying User-Friendly Webpage. As a companion to the ADU Universal Checklist, the City should also create a user-friendly webpage for customers (and prospective customers) with up-to-date information that provides clarity and greater certainty about the process and expected timeline for the creation of an ADU or Junior ADU, which is within a main dwelling unit. At a minimum, the webpage should include:

Unscheduled Items

- i. A list of relevant fees and expected payment amounts for permits, inspections, and other requirements;
 - ii. Plan requirements, worksheets, and projected timelines for each step of the process; and
 - iii. Consolidated up-to-date state and local regulations that are easy to understand.
3. Recommend that the City Manager consider adoption of the following two best practices:
- a. Pre-Approved ADU Design Plans. Consider development of
 - (1) free ADU designs available to download--of varying sizes and styles--that already conform to all City and state requirements and safety codes; and/or
 - (2) a list of vendors with architectural designs and construction drawings that have already been approved by the City and are available to customers for a nominal fee to the architect.
 - b. ADU Ally. Consider dedicating existing Planning staff member(s) time to the role of an "ADU Ally." The ADU Ally is a customer-facing staff person(s) who is an expert on all current state and local ADU regulations and acts as an ally to customers through the planning and building process.

Financial Implications: See report

Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110

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 Thursday, June 10, 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.

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

**Thursday, May 20, 2021
10:30 AM**

Committee Members:

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

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH
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MINUTES

Roll Call: 10:32 am. Councilmembers Droste, Hahn, and Robinson present.

Public Comment on Non-Agenda Matters: 8 speakers.

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - May 6, 2021

Action: M/S/C (Droste/Hahn) to approve the May 6, 2021 minutes.

Vote: All Ayes.

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.

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

From: Mayor Arreguin (Author) (Item contains revised material.)

Referred: February 24, 2020

Due: May 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 and hiring staffing to support the program upon implementation;
 5. Timelines for project "roll-out";
 6. Determining appropriate amount of funding needed to support the acquisition of TOPA properties and identify funding sources;
 7. Quantifying an annual program budget and referring such program costs to the June 2021 Budget process.

Financial Implications: See report

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

Committee Action Items

Action: 63 speakers. Discussion held. M/S/C (Hahn/Robinson) Qualified Positive Recommendation to: 1. Send the item to the full Council incorporating the Mayor's May 20, 2021 amendments with the following revisions: i. Increasing the Acceptance of Offer timelines for the Right of First Refusal process from 5 days to 14; ii. Adding the possibility of a 30-day extension to the Close of Transaction timelines for the Right of First Refusal process for properties under 5 units; iii. Clarify that the budget referral of \$100,000 would be for the purpose of hiring "consultants" rather than "a consultant" who would additionally "recommend any adjustments to the policy that may be warranted"; iv. Clarifying that the definition of "children" includes step-children, and further referring to Council to consider the possibility of adding nieces and nephews; and v. Referring to Council to consider the possibility of including parents into the imminent healthcare expense provision; and 2. Recommend the City Council consider the possibility of a phased launch of the Ordinance wherein properties over 5 units would be covered first followed by the remainder of other properties after two or three years.

Vote: Ayes – Hahn, Robinson; Noes – Droste.

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.

3. **Resolution Recognizing Housing as Human Right; Referring to City Manager Several Measures to Begin Developing Social Housing in the City of Berkeley** *(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: Adopt a Resolution recognizing housing as a human right; refer to the City Manager's office several measures to begin developing social housing in the City of Berkeley. Measures shall include, but not be limited to:

1. Study and report to council on development potential, including density bonuses, for mixed-income housing development starting with the city-owned parcels at 1011 University Ave, and seek information through an RFI or other process on the potential for cross-subsidized limited-equity leasehold and rental models or other social housing development models;
2. Study and return to council a report and, if feasible, a proposal for a Reparative Justice Revolving Loan Fund with affirmative racial justice and anti-displacement goals in coordination with the city's Small Sites Program:
 - a. Providing low-interest loans for tenants, nonprofits, limited-equity co-operatives, and community land trusts to acquire real property; support Low Income Housing Tax Credit (LIHTC) funding; develop and/or maintain mixed-income and permanently affordable housing;
 - b. Leveraging local funds with state and regional partnerships through the Bay Area Housing Finance Agency (BAHFA) with the Association of Bay Area Governments

Unscheduled Items

(ABAG), Berkeley Housing Authority, Berkeley Unified School District (BUSD) and BART;

c. Consider best practices from other agencies and other partnership opportunities;
3. Establish a publicly available, user-friendly data dashboard potentially using third-party data visualization tools for monitoring Housing Justice Indicators in the city including, but not limited to:

a. State certification of city's Housing Element and progress toward RHNA goals for each income tier in annual Housing Pipeline Reports;

b. Housing Element compliance with Affirmatively Furthering Fair Housing (AFFH) rule pursuant to California Government Code Section 65583 and Chapter 15, Section 8899.50 of Division 1 of Title 2, presented with, at a minimum;

- Citywide and regional affordability as defined by median rents and home prices as share of one-third of the City of Berkeley and Alameda County's median household income in most recent American Community Survey data;

- Local funding and open BMR housing application slots available to meet housing needs of Moderate, Low-, Very Low-, and Extremely Low-Income households;

- Anti-displacement metrics using UC Berkeley Displacement Project data and tracking successful applications to affordable housing units in the city using Local Preference policy;

- Geographic considerations including historic redlining and segregation; Sensitive Communities and High Displacement Risk Areas identified in the 2019 CASA Compact by the Metropolitan Transportation Commission (MTC); and access to economic opportunity as measured by State of California Tax Credit Allocation Committee (TCAC) Opportunity Area Maps;

- Any other considerations relevant to AFFH compliance and reparative housing justice.

Financial Implications: See report

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

4. Affordable Housing Overlay

From: Councilmember Taplin (Author), Councilmember Bartlett (Co-Sponsor), Councilmember Robinson (Co-Sponsor) *(Item contains revised material.)*

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 (AB-1763) with additional local height and density incentives, including waivers and modifications similar to those vested in state density bonus law, with ministerial approval contingent on objective zoning and design criteria, for qualifying 100% affordable projects deed-restricted for Low, Very Low, Extremely Low, and Moderate Income households (exclusive of manager's unit) pursuant to AB-1763, specifying:

a. In R3, R4, and all C-prefixed zoning districts, a local density bonus in addition to, and duplicative of, the state density bonus under Government Code Section 65915 for up to a total of 85' for qualifying projects;

Unscheduled Items

- b. In R-1, R-1A, R-2, and R-2A zones, a local 12' height bonus for qualifying projects, waiving density limits and permitting up to 80% lot coverage;
 - c. In all qualifying transit-adjacent areas, inclusive of all parcels within one-half mile of a commuter rail station, or within 1/4 mile of an AC Transit bus route with 7-day service in Fiscal Year 2019, waiving density limits, including units per acre, floor area ratio, and up to 80% lot coverage;
 - d. Create General Plan amendments that allow for 100% affordable qualifying projects to avoid inconsistencies with General Plan densities;
 - e. Increased density for projects outside of transit proximity threshold specified in 1(c) above contingent upon additional Transportation Demand Management (TDM) policies aiming to reduce Vehicle Miles Traveled (VMT) per capita, including bike parking, paratransit and shared micro-mobility systems;
 - f. Skilled and trained workforce standards as defined by the February 18, 2021 version of SB-7 (Atkins) for qualifying projects with at least 50,000 square feet of total floor area;
2. Exempting parcels with Designated Historic Landmarks and maintaining demolition restrictions consistent with state law;
 3. On parcels within high-risk wildfire zones as determined by the California Department of Forestry and Fire Protection (CalFire), ministerial approval for qualifying 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 cycle. 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 jurisdictions.

Financial Implications: See report

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

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

Unscheduled Items

6. Referral to the City Manager to Streamline Accessory Dwelling Unit (ADU) Permit Review and Approval

From: Councilmember Kesarwani (Author), Councilmember Wengraf (Co-Sponsor), Councilmember Droste (Co-Sponsor), and Councilmember Bartlett (Co-Sponsor)

Referred: April 26, 2021

(Item placed on “Inactive” status by the Agenda & Rules Committee pursuant to Appendix D of the Rules of Procedure)

Due: February 14, 2022

Recommendation: 1. Refer to the City Manager to streamline the Accessory Dwelling Unit (ADU) permitting process in order to reduce staff time spent on review and enhance customer service. Further, assess effectiveness of process improvements specified below by reviewing over time: the number of ADUs permitted, average amount of staff time spent on ADU permit review, and permit fee levels. 2. Recommend that the City Manager develop for Planning staff use an ADU Universal Checklist and accompanying user-friendly webpage: a. ADU Universal Checklist. A clear set of universal guidelines and construction requirements should be developed among staff from Planning (both Land Use and Building and Safety Divisions), Fire, and Public Works Departments that is easy to follow in order to eliminate (or significantly reduce) the need for multiple departments to review ADU permit applications and for multiple rounds of review by the same department. The Universal Checklist should be a single document utilized by all City staff to review ADU permit applications and by customers to understand code requirements. The Universal Checklist should enable all City staff and customers to have the same clear understanding of all of the requirements that, if adhered to, would expedite the permitting process and lead to lower permit fees over time. b. Accompanying User-Friendly Webpage. As a companion to the ADU Universal Checklist, the City should also create a user-friendly webpage for customers (and prospective customers) with up-to-date information that provides clarity and greater certainty about the process and expected timeline for the creation of an ADU or Junior ADU, which is within a main dwelling unit. At a minimum, the webpage should include: i. A list of relevant fees and expected payment amounts for permits, inspections, and other requirements; ii. Plan requirements, worksheets, and projected timelines for each step of the process; and iii. Consolidated up-to-date state and local regulations that are easy to understand. 3. Recommend that the City Manager consider adoption of the following two best practices: a. Pre-Approved ADU Design Plans. Consider development of (1) free ADU designs available to download--of varying sizes and styles--that already conform to all City and state requirements and safety codes; and/or (2) a list of vendors with architectural designs and construction drawings that have already been approved by the City and are available to customers for a nominal fee to the architect. b. ADU Ally. Consider dedicating existing Planning staff member(s) time to the role of an “ADU Ally.” The ADU Ally is a customer-facing staff person(s) who is an expert on all current state and local ADU regulations and acts as an ally to customers through the planning and building process.

Financial Implications: See report

Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110

Items for Future Agendas

- None

Adjournment

Action: M/S/C (Droste/Robinson) to adjourn the meeting.

Vote: All Ayes.

Adjourned at 1:53 p.m.

I hereby certify that this is a true and correct record of the Land Use, Housing, & Economic Development Committee meeting held on May 20, 2021.

Sarah K. Bunting, Assistant City Clerk

APPENDIX D. TEMPORARY RULES REGARDING POLICY COMMITTEES AND LEGISLATIVE WORKFLOW DURING THE COVID-19 LOCAL EMERGENCY

To support staff, councilmembers, and members of the public in their focused work to address the COVID-19 pandemic; manage health, mental health, and economic impacts; and navigate the complexities of reopening after more than a year of shelter-in-place, these temporary rules limiting Policy Committee and City Council consideration of new significant legislation are hereby adopted.

- 1) Except as provided below, “new significant legislation” is defined as any law, program, or policy that represents a significant change or addition to existing law, program, or policy, or is likely to call for or elicit significant study, analysis, or input from staff, Councilmembers or members of the public.
- 2) New significant legislation originating from the Council, Commissions, or Staff related to the City’s COVID-19 response, including but not limited to health and economic impacts of the pandemic or recovery, or addressing other health and safety concerns, the City Budget process, or other essential or ongoing City processes or business will be allowed to move forward, as well as legislative items that are urgent, time sensitive, smaller, or less impactful.
- 3) New significant legislation not related to the City’s COVID-19 response may be submitted to the Agenda process to be referred to the appropriate Policy Committee but will be placed on the committee’s unscheduled items list, and timelines will be tolled for the duration of these temporary rules.
- 4) Councilmembers, Commission Chairs/representatives, and Staff may request reconsideration of Agenda Committee determinations regarding significance/impacts, time sensitivity and/or relevance to factors listed in (2), above.
- 5) Policy Committees may take up items referred previous to adoption of these temporary rules or may place them on the unscheduled list where timelines will be tolled. Reconsideration of a determination to place an item on the unscheduled calendar may be requested by the author on the same basis as a reconsideration by the Agenda Committee. Policy Committees are asked to prioritize pending items related to categories listed in (2), above. When a Policy Committee has no active items the Committee will not meet.
- 6) The Agenda & Rules and Budget & Finance Policy Committees will continue to meet to carry out their essential agenda setting and budget policy making roles; other legislation before these committees may be placed on the unscheduled calendar where timelines will be automatically tolled for the duration that this policy is in place.
- 7) Any outstanding items voted out of Policy Committee should include staffing and budgetary needs and a budget referral. Implementation of new ordinances, programs or policies may be deferred for the duration of these temporary rules and/or if resources are not identified and allocated.

- 8) These temporary measures will automatically expire on July 28, 2021 unless the term is shortened or extended by a vote of the City Council.

- 9) When Policy Committees are reopened by the full City Council, items pending before the Committee will be prioritized by vote of the members of each Committee, based on a proposal by the Chair, in an order that takes into account and balances, among other things, (i) the amount of time items have been pending before the Committee, (ii) the time sensitivity of the issues/topics raised by the legislation, (iii) a fair distribution of items from all Councilmembers within the queue, and (iv) a fair distribution of topic areas.



SUPPLEMENTAL AGENDA MATERIAL

For Land Use and Economic Development Committee

Meeting Date: March 18, 2021

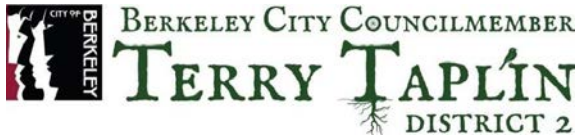
Item Number: 3

Item Description: Resolution Recognizing Housing as Human Right; Referring to City Manager Several Measures to Begin Developing Social Housing in the City of Berkeley

Submitted by: Councilmember Taplin

Amendment would make the following additions to the referral:

- Revised title
- Clarifying and narrowing referral to study social housing development, specifying site at 1011 University Ave and allowing for flexibility in studying a variety of social housing models
- Clarifying scope of proposal for revolving loan fund
- Clarifying scope of public data dashboard on Housing Justice Indicators to be with explicit reference to compliance with AFFH requirements in state Housing Element law
- Non-substantive background additions



ACTION CALENDAR
DATE: 2/23/21

To: Honorable Mayor and Members of the City Council

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

Subject: Resolution Recognizing Housing as Human Right; Referring ~~to~~ 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~~Several Measures to Begin Developing
Social Housing in the City of Berkeley.

RECOMMENDATION

~~Refer~~Adopt a resolution recognizing housing as a human right; refer to 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~~several measures to begin
developing social housing in the City of Berkeley. Measures shall include, but not be
limited to:

1. ~~Feasibility study of~~Study and report to council on development potential,
including density bonuses, for public lands suitable mixed-income transit-oriented
housing development identified in 2017 Analysis of City-Owned Lands starting
with the city-owned parcels at 1011 University Ave and zoning changes needed
for affordable housing at listed sites to address all income categories in
upcoming Regional Housing Needs Allocation (RHNA) cycle, and seek
information through an RFI or other process on the potential for cross-subsidized
limited-equity leasehold and rental models or other social housing development
models;
2. ~~Pilot Study and return to council a report and, if feasible, a proposal for a~~
~~program to establish a~~ Reparative Justice Revolving Loan Fund with affirmative
racial justice and anti-displacement goals in coordination with the city's Small
Sites Program:
 - a. ~~Providing~~ Providing low-interest loans for tenants, nonprofits, limited-equity co-
operatives, and community land trusts to acquire real property; support
Low Income Housing Tax Credit (LIHTC) funding; develop and/or maintain
mixed-income and permanently affordable housing; ~~;~~

b. Leveraging local funds with state and regional partnerships through the Bay Area Housing Finance Agency (BAHFA) with the Association of Bay Area Governments (ABAG), Berkeley Housing Authority, Berkeley Unified School District (BUSD) and BART;

2-c. Consider best practices from other agencies and other partnership opportunities;

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3. Pilot program to Establish ~~establish~~ publicly available, user-friendly data dashboard potentially using third-party data visualization tools for 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;

a. State certification of city's Housing Element and progress toward RHNA goals for each income tier in annual Housing Pipeline Reports;

b. Housing Element compliance with Affirmatively Furthering Fair Housing (AFFH) rule pursuant to California Government Code Section 65583 and Chapter 15, Section 8899.50 of Division 1 of Title 2, presented with, at a minimum;

- Citywide and regional affordability as defined by median rents and home prices as share of one-third of the City of Berkeley and Alameda County's median household income in most recent American Community Survey data;
- Local funding and open BMR housing application slots available to meet housing needs of Moderate, Low-, Very Low-, and Extremely Low-Income households;
- Anti-displacement metrics using UC Berkeley Displacement Project data and tracking successful applications to affordable housing units in the city using Local Preference policy;
- Geographic considerations including historic redlining and segregation; Sensitive Communities and High Displacement Risk Areas identified in the 2019 CASA Compact by the Metropolitan Transportation Commission (MTC); and access to economic opportunity as measured by State of California Tax Credit Allocation Committee (TCAC) Opportunity Area Maps;
- Any other considerations relevant to AFFH compliance and reparative housing justice.

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3. aligning Indicators with thresholds for corrective actions including land-use policy review and fiscal analysis.

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

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.

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

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/>

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

In California, voters passed Proposition 13 in 1978, further entrenching wealth inequality with constitutional caps on property tax rates and assessments. Data from 2016 shows that property owners in the state’s wealthiest municipalities such as Palo Alto and Beverly Hills enjoy some of the lowest effective property tax rates, while lower-income inland cities such as Beaumont, Lancaster and Palmdale pay the highest.¹⁸ According to a 2020 study by the Urban Institute, the current property tax system and the lack of “split-roll” assessment also incentivizes underutilization of commercial property and may suppress housing supply.¹⁹

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”²⁰—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 land²¹. A 2015 study by the nonpartisan Legislative Analyst Office found that growth control policies increased home prices by 3-5%.²² 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%,²³ while a 2016 study by UC Berkeley’s Urban Displacement Project found that affordable housing has

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

¹⁸ McLaughlin, R. (2016). *Prop 13: Winners and Losers from America’s Legendary Property Tax Revolt*. *Trulia*. Retrieved from <https://www.trulia.com/research/prop-13/>

¹⁹ Greene, S. et al. (2020). *Housing and Land-Use Implications of Split-Roll Property Tax Reform in California*. *Urban Institute*. Retrieved from https://www.urban.org/sites/default/files/publication/102883/housing-and-land-use-implications-of-split-roll-property-tax-reform-in-ca_1.pdf

²⁰ 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>

²¹ 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).

²² 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>

²³ 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.

double the effect of mitigating displacement as market-rate housing.²⁴ 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.”²⁵

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 development.²⁶ 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.²⁷ 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.²⁸

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

²⁴ 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

²⁵ Quigley, J.M. (2001). Homeless in America, Homeless in California. *The Review of Economics and Statistics*. 83(1): 37–51.

²⁶ Trounstein, J. (2020). The Geography of Inequality: How Land Use Regulation Produces Segregation. *American Political Science Review*. Cambridge: Cambridge University Press.

²⁷ 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>

²⁸ 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>

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.²⁹

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 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.”³⁰ 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.”³¹

Issuing stimulus payments automatically and universally to households rather than negotiating periodically in partisan politics could prevent widespread poverty among the

²⁹ 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>

³⁰ Sahm, C. (2019). Direct Stimulus Payments to Individuals. *The Hamilton Project*. Retrieved from https://www.hamiltonproject.org/assets/files/Sahm_web_20190506.pdf

³¹ 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>

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.³²

President Joseph R. Biden's 2020 campaign platform included massive increases to federal funding for public housing and the Section 8 housing voucher program.³³ 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 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.

³² Bertaud, A. (2018). *Order Without Design: How Markets Shape Cities*. Cambridge, MA: The MIT Press.

³³ Biden, J. (2020). The Biden Plan for Investing in our Communities Through Housing. Retrieved from <https://joebiden.com/housing/>

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 developments³⁴, 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"³⁵—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

³⁴ Wohnpartner Wien. (2019). Vienna Social Housing – Tools of Success. Retrieved from https://socialhousing.wien/fileadmin/user_upload/20190325_Einlageblaetter_Gesamt_Englisch.pdf

³⁵ 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>

for residential development.³⁶ 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.³⁷ 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.³⁸ The Berkeley Unified School District is also exploring the potential to develop workforce housing on its properties.³⁹

~~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.”⁴⁰ 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.

³⁶ 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/>.

³⁷ University of California. (2019). Capital Financial Plan 2019-25. Retrieved from <https://ucop.edu/capital-planning/files/capital/201925/2019-25-cfp.pdf>

³⁸ 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

³⁹ 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/>

⁴⁰ ~~https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/2019-04-25%20Land%20Use%20Agenda%20for%20Posting.pdf~~

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.⁴¹ 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.

Under California Government Code Section 65583(c), state Housing Element law now requires in part:⁴²

A program that sets forth a schedule of actions during the planning period, each with a timeline for implementation...that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls, the provision of regulatory concessions and incentives, the utilization of appropriate federal and state financing and subsidy programs when available...

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This subsection requires the program to include, for AFFH compliance:

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...an assessment of fair housing in the jurisdiction that shall include all of the following components:

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(i) A summary of fair housing issues in the jurisdiction and an assessment of the jurisdiction’s fair housing enforcement and fair housing outreach capacity.

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(ii) An analysis of available federal, state, and local data and knowledge to identify integration and segregation patterns and trends, racially or ethnically concentrated areas of poverty, disparities in access to opportunity, and disproportionate housing needs within the jurisdiction, including displacement risk.

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(iii) An assessment of the contributing factors for the fair housing issues identified under clause (ii).

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(iv) An identification of the jurisdiction’s fair housing priorities and goals, giving highest priority to those factors identified in clause (iii) that limit or deny fair housing choice or access to opportunity, or negatively impact fair

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⁴¹ Elmendorf, C. et al. (2020). Superintending Local Constraints on Housing Development: How California Can Do It Better. *UC Davis Legal Studies Research Paper Series*.

⁴² https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=65583

housing or civil rights compliance, and identifying the metrics and milestones for determining what fair housing results will be achieved, (v) Strategies and actions to implement those priorities and goals, which may include, but are not limited to, enhancing mobility strategies and encouraging development of new affordable housing in areas of opportunity, as well as place-based strategies to encourage community revitalization, including preservation of existing affordable housing, and protecting existing residents from displacement.

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However, ~~when municipalities have been out of compliance, this policy~~the Housing Element framework ~~is ultimately~~until recently has been ~~ultimately enforced~~held accountable by private right of action. For example, ~~on both sides of the issue: unsuccessful litigation attempted to overturn state-compliant by right permits for housing development in Cupertino⁴³, and~~ nonprofit advocates successfully sued the cities of Pleasanton⁴⁴ 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 who are by definition with less housing security and less able to assert their diffuse legal rights and entitlements 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. There exists no legal liability for~~ the public sector's ability to guarantee adequate housing. To the extent that a municipal government chooses to take on universal on such entitlements and freedoms to housing "liabilities" as a moral, not legal 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."⁴⁵

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

⁴³ ~~Friends of Cupertino v. City of Cupertino. No. 18CV330190. Superior Court of California, County of Santa Clara. (2020).~~

⁴⁴ Urban Habitat Program v. City of Pleasanton. No. A118327. Court of Appeal, First District, Division 2, California. (2008).

⁴⁵ See footnote 1.

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 Report⁴⁶, 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:⁴⁷

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-agency projects~~ such as the state's Tax Credit Allocation Committee (TCAC), ~~the Metropolitan Transportation Commission (MTC), and UC Berkeley scholars already~~

⁴⁶ https://www.cityofberkeley.info/Clerk/City_Council/2019/04_Apr/Documents/2019-04-23_Item_32_Missing_Middle_Report.aspx

⁴⁷ https://www.cityofberkeley.info/Clerk/City_Council/2019/02_Feb/Documents/2019-02-26_Item_20_Referral_Response_1000_Person_Plan.aspx

~~maintain active measures of~~ Opportunity Area Maps and the 2019 CASA Compact⁴⁸ by the Metropolitan Transportation Commission (MTC) have established best practices for measuring and mapping economic opportunity, racial segregation, transit access, environmental health, and other positive outcomes for developing policy recommendations.

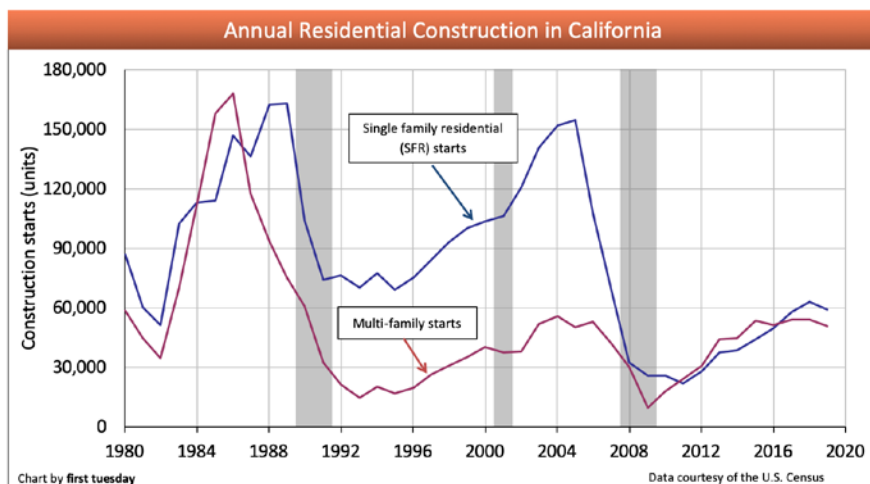
An “automatic stabilizer” paradigm with (a) a revolving land equity fund financing Reparative Housing Justice goals, and (b) periodic empirical review of land-use policy by the Planning Department, could quickly quantify unmet needs for housing security. Developing and implementing responses to needs 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 2001.⁴⁹

⁴⁸ Metropolitan Transportation Commission. (2018). Racial Equity Analysis for the CASA Compact. Retrieved from https://mtc.ca.gov/sites/default/files/Racial_Equity_Analysis_for_the_CASA_Compact.pdf

⁴⁹ 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 the start of the economic recovery in 2011.⁵⁰ 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.⁵¹

⁵⁰ 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

⁵¹ 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)⁵² or Enhanced Infrastructure Finance Districts (EIFDs), which have been studied or proposed for financing affordable housing and other capital costs at BART stations.

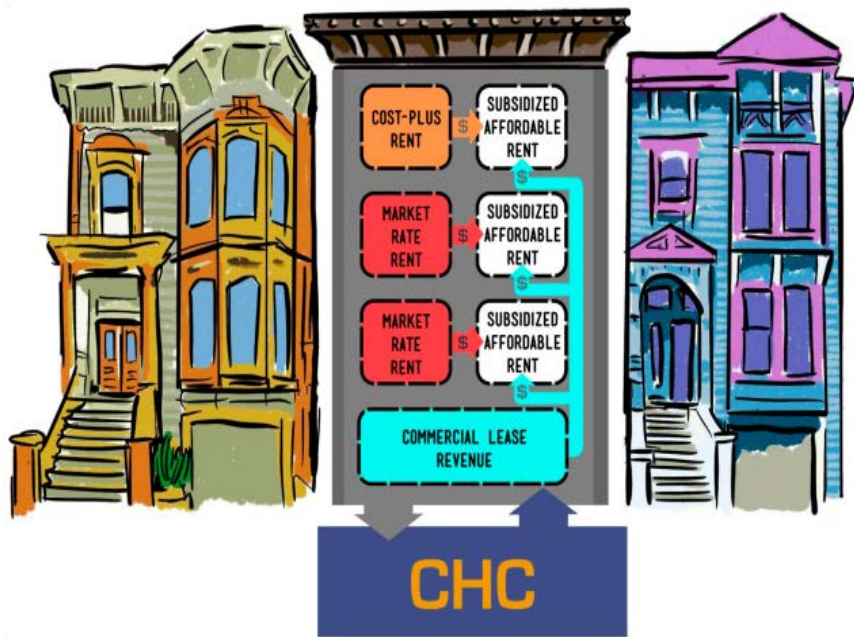
As a countercyclical policy to sustain affordable housing financing across market cycles, a municipal revolving loan fund could provide loan guarantees or bridge loans to LIHTC developments to ensure their completion. As a reparative anti-displacement policy, a revolving loan fund could reinforce the 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

⁵² 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

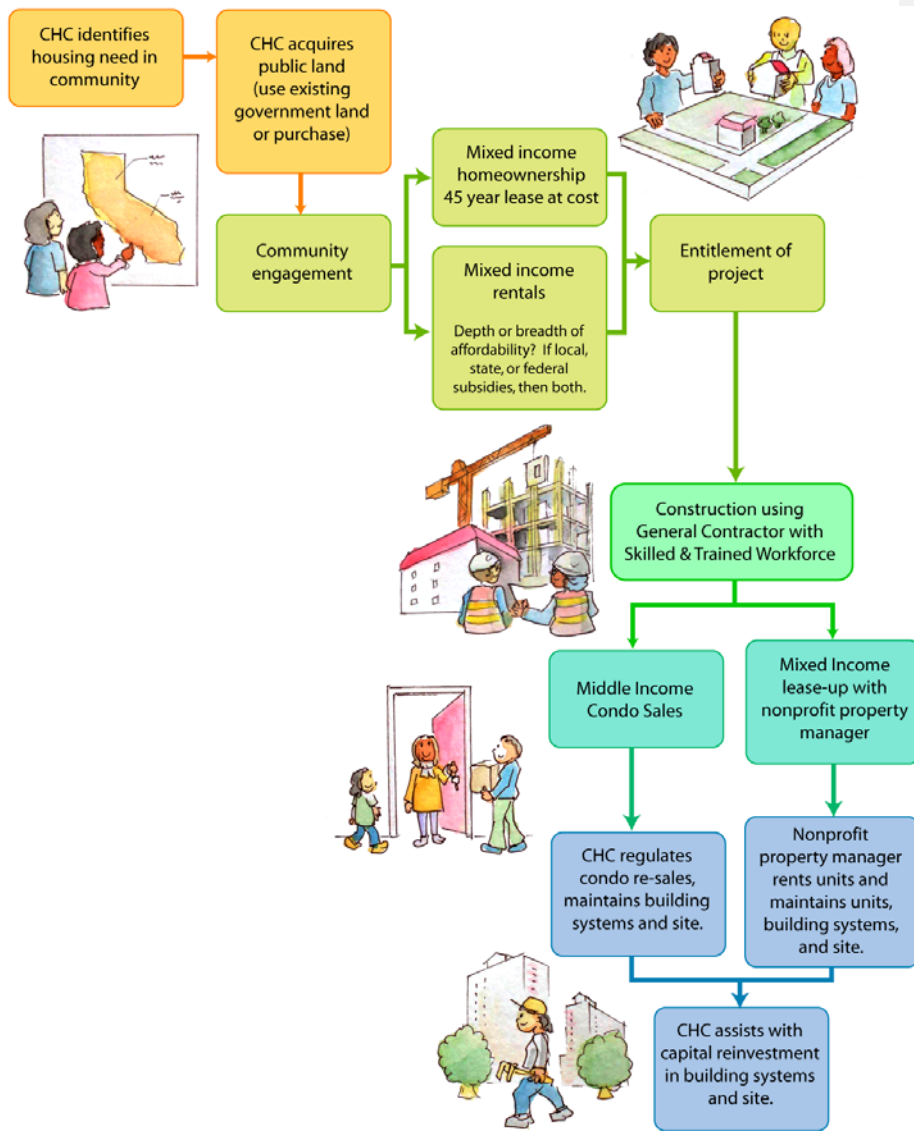
of assets to self-finance operating costs while investing in new affordable housing projects.⁵³

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

⁵³ 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 Mollineux and Alfred Twu⁵⁴

⁵⁴ 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 Update⁵⁵, 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.⁵⁶ 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."⁵⁷ 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."⁵⁸

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

⁵⁵ 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

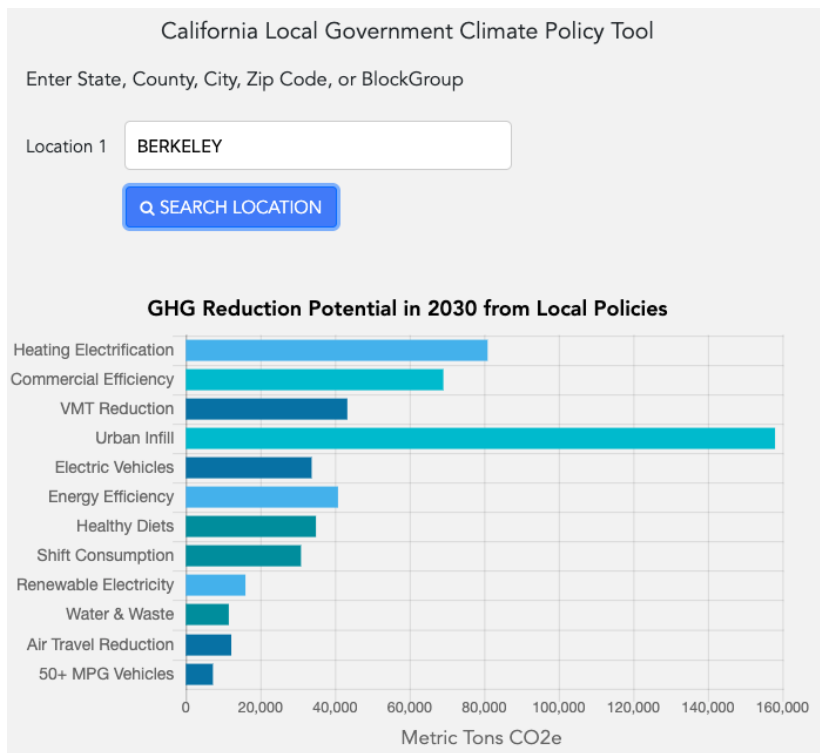
⁵⁶ https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-21_Special_Item_05_Climate_Action_Plan_pdf.aspx

⁵⁷ https://ww2.arb.ca.gov/sites/default/files/2018-11/Final2018Report_SB150_112618_02_Report.pdf

⁵⁸ 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 Berkeley⁵⁹ 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.⁶⁰ 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.



⁵⁹ 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

⁶⁰ 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.

This tool projects GHG reductions based on default assumptions of total policy adoption rate by 2050. If the urban infill policy were adopted at 35%, or half the default assumed rate, it would reduce GHG emissions by roughly 80,000 metric tons of CO2e by 2030, roughly equivalent to the emissions reduction potential from VMT reduction and heating electrification. With the passage of Ordinance No. 7,672 in 2019, Berkeley Municipal Code Chapter 12.80 prohibits natural gas infrastructure in new buildings in the City of Berkeley. GHG reductions enabled by heating electrification would thus be maximized under this proposal regardless of urban infill policy.

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 to the City Manager's office several measures to begin developing social housing in the City of Berkeley. Measures shall include, but not be limited to:

1. Study and report to council on development potential, including density bonuses, for mixed-income housing development starting with the city-owned parcels at 1011 University Ave, and seek information through an RFI or other process on the potential for cross-subsidized limited-equity leasehold and rental models or other social housing development models;
2. Study and return to council a report and, if feasible, a proposal for a Reparative Justice Revolving Loan Fund with affirmative racial justice and anti-displacement goals in coordination with the city's Small Sites Program:
 - a. Providing low-interest loans for tenants, nonprofits, limited-equity co-operatives, and community land trusts to acquire real property; support Low Income Housing Tax Credit (LIHTC) funding; develop and/or maintain mixed-income and permanently affordable housing;
 - b. Leveraging local funds with state and regional partnerships through the Bay Area Housing Finance Agency (BAHFA) with the Association of Bay Area Governments (ABAG), Berkeley Housing Authority, Berkeley Unified School District (BUSD) and BART;
 - c. Consider best practices from other agencies and other partnership opportunities;
3. Establish a publicly available, user-friendly data dashboard potentially using third-party data visualization tools for monitoring Housing Justice Indicators in the city including, but not limited to:
 - a. State certification of city's Housing Element and progress toward RHNA goals for each income tier in annual Housing Pipeline Reports;
 - b. Housing Element compliance with Affirmatively Furthering Fair Housing (AFFH) rule pursuant to California Government Code Section 65583 and Chapter 15, Section 8899.50 of Division 1 of Title 2, presented with, at a minimum:
 - Citywide and regional affordability as defined by median rents and home prices as share of one-third of the City of Berkeley and

- Alameda County's median household income in most recent American Community Survey data;
- Local funding and open BMR housing application slots available to meet housing needs of Moderate, Low-, Very Low-, and Extremely Low-Income households;
- Anti-displacement metrics using UC Berkeley Displacement Project data and tracking successful applications to affordable housing units in the city using Local Preference policy;
- Geographic considerations including historic redlining and segregation; Sensitive Communities and High Displacement Risk Areas identified in the 2019 CASA Compact by the Metropolitan Transportation Commission (MTC); and access to economic opportunity as measured by State of California Tax Credit Allocation Committee (TCAC) Opportunity Area Maps;
- Any other considerations relevant to AFFH compliance and reparative housing justice.

~~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,~~

~~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;~~

~~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.~~

~~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.~~

~~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:

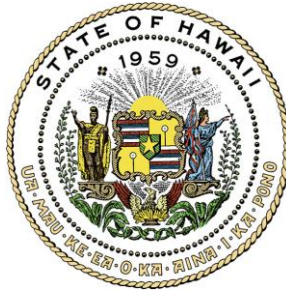
Establishes the ALOHA homes program to develop low-cost homes on state-owned and county-owned land in urban redevelopment sites to be sold in leasehold by the Hawaii Housing Finance and Development Corporation (HHFDC) to qualified residents. Exempts certain land from the definition of public lands. Requires 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>

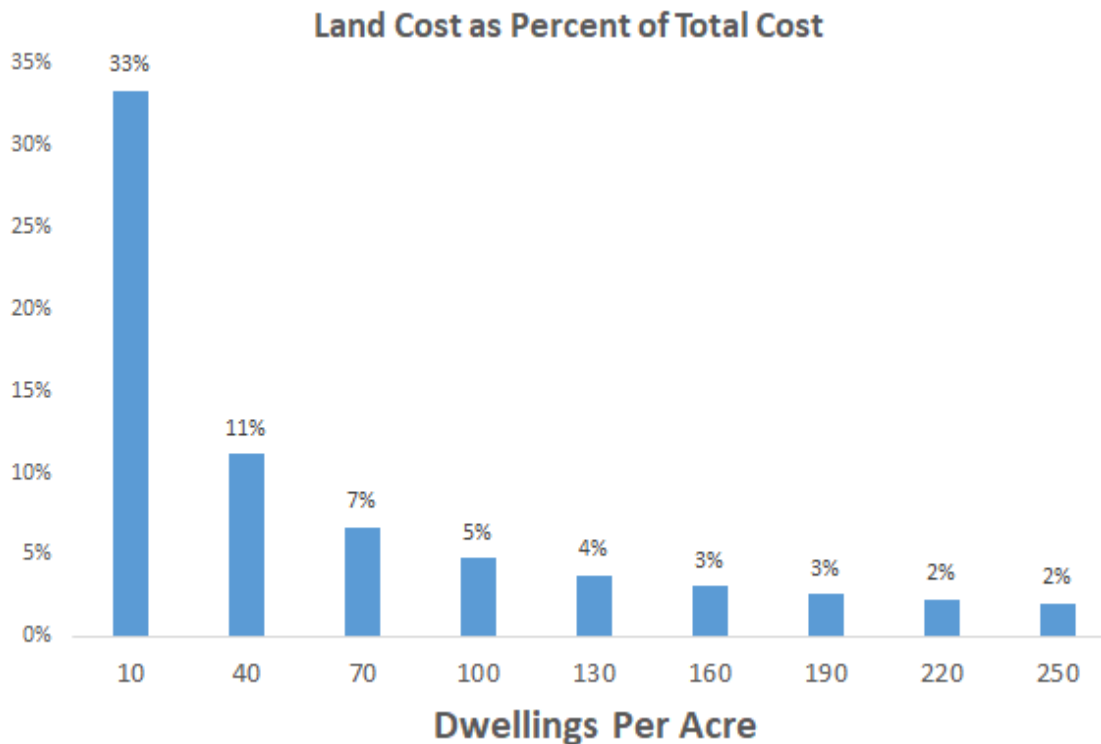
³⁴ 2020, “The Role of Social Housing and Actions to Reduce Homelessness in Finland.” presentation by The Housing Finance and Development Centre of Finland.

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

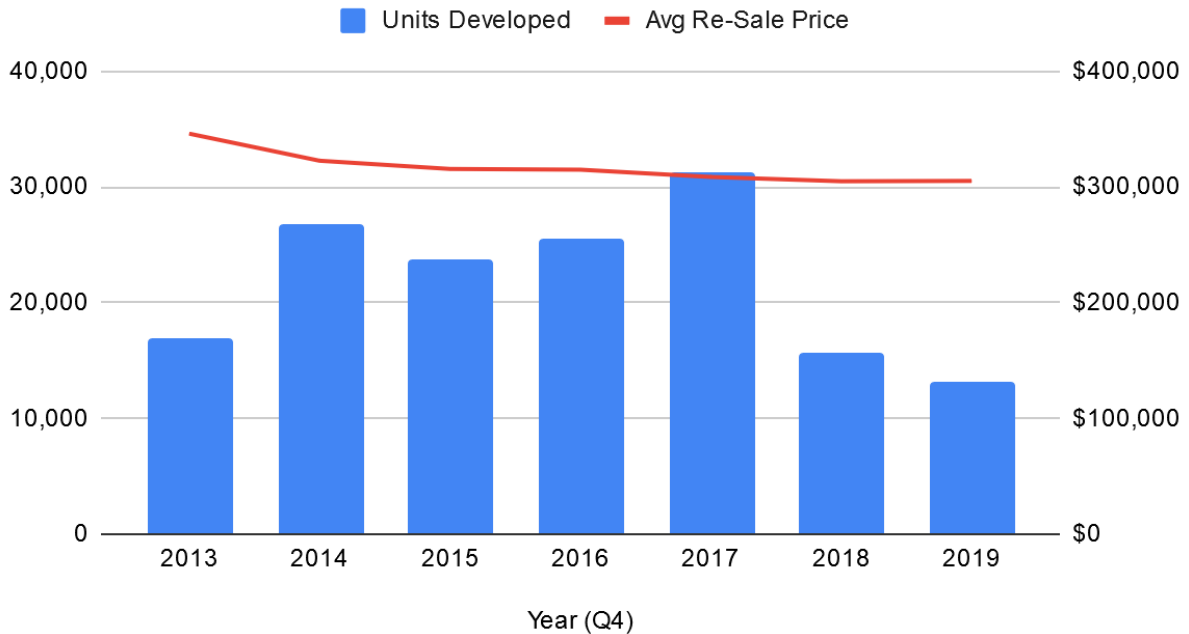
Public land contribution is key: One important practice in all three jurisdictions studied—Helsinki, Vienna and Singapore—is that public land is used for affordable housing. As a result of their investments and long-term vision, each city builds enough quality housing to reasonably match demands. Rents 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

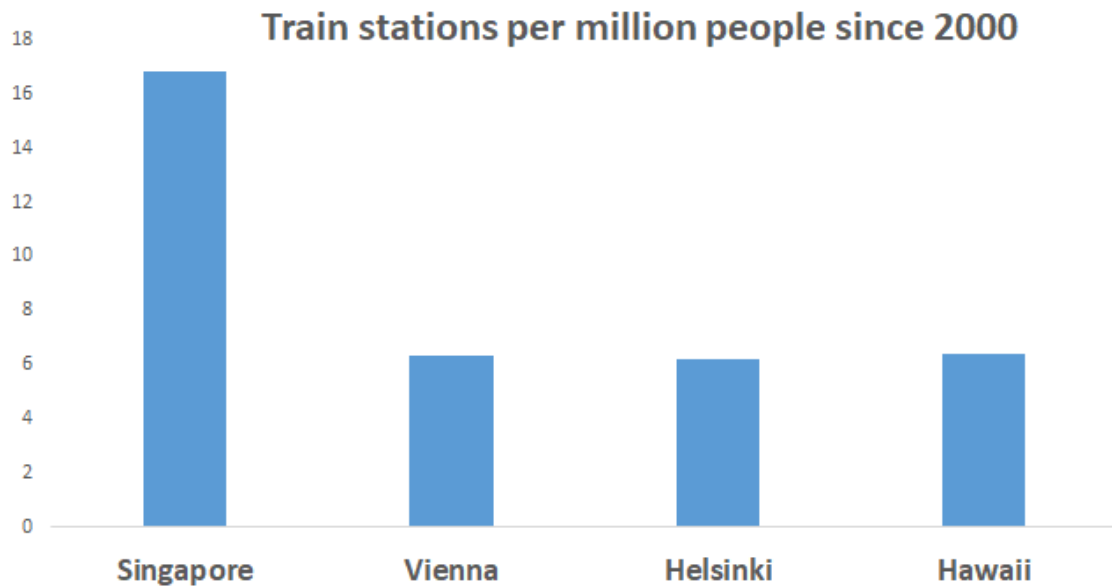


Helsinki and Vienna use price controls to maintain long-term affordability. The government and political structure of Vienna and Helsinki make the process of acquiring new developable land with public infrastructure and transportation more difficult and time intensive. For example, Singapore has added 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

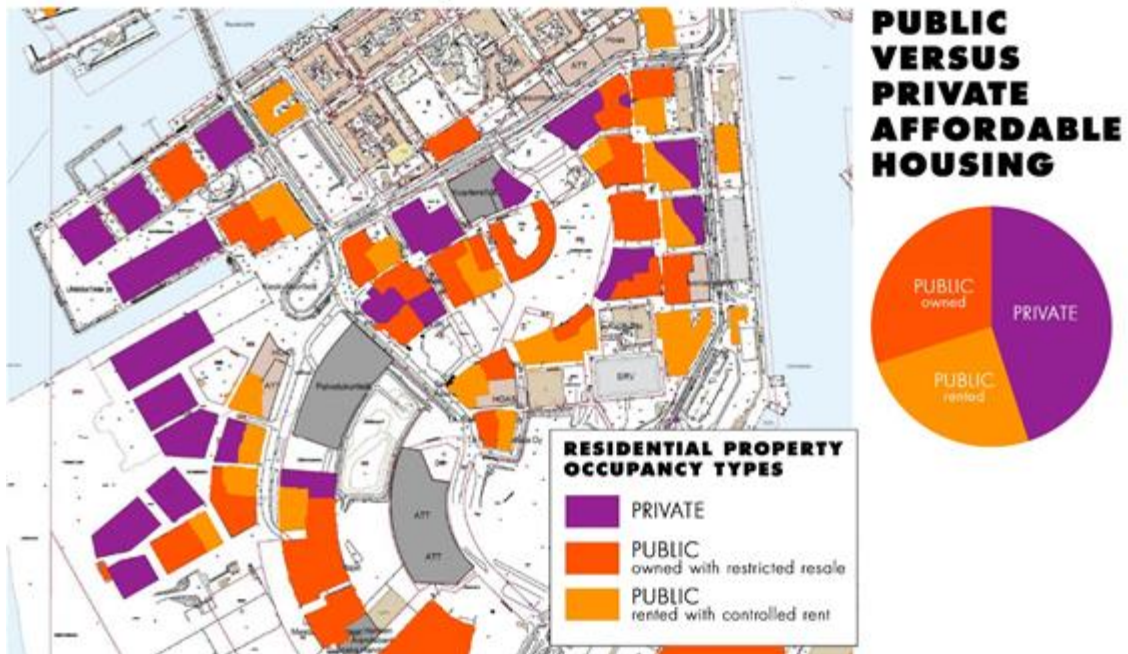
A newly developed waterfront neighborhood in Helsinki provides an excellent example of planning for affordability. Jätkäsaari was an old industrial waterfront neighborhood similar to Honolulu's Kaka'ako neighborhood. In 2010, Helsinki began efforts to transform the area into residential and commercial 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.

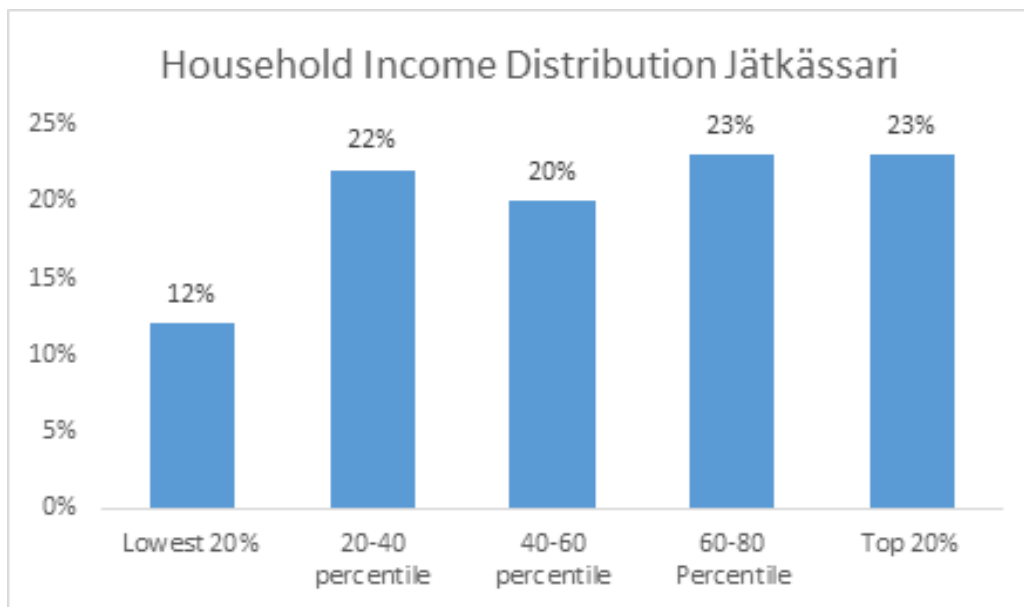
³⁸ Helsinki Municipal Website. (2020). Jätkäsaari. Available at: <https://www.uuttahelsinki.fi/fi/jatkasaari>

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.

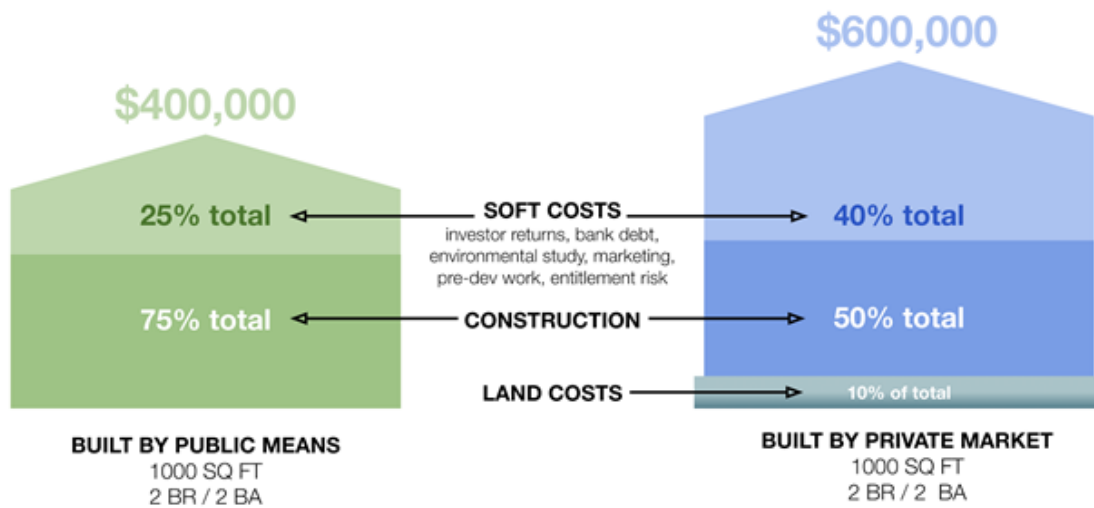
Analysis of Key Cost Savings Approaches

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

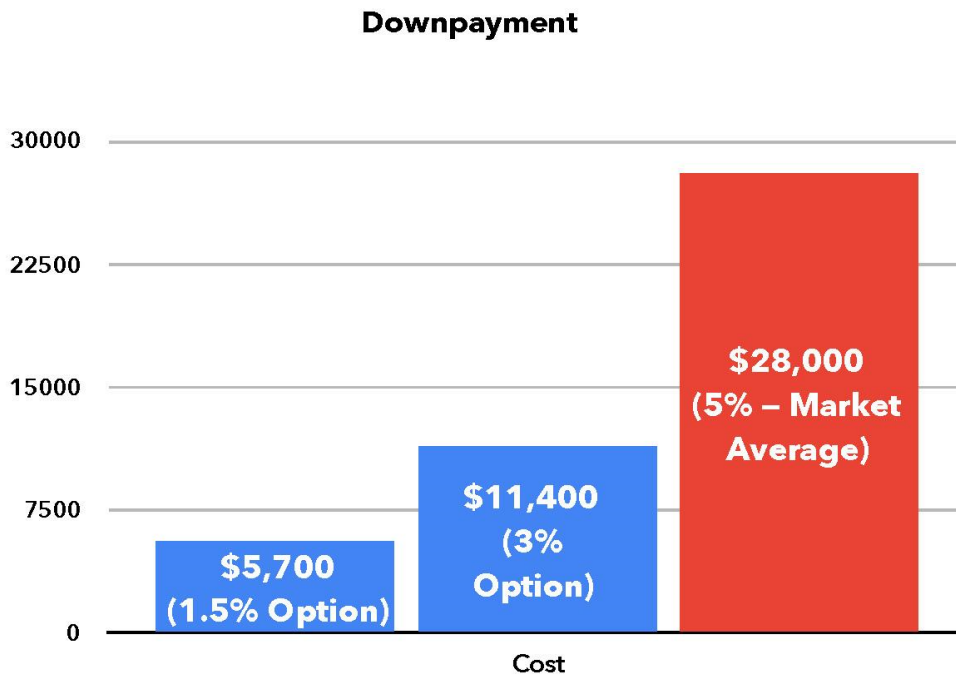
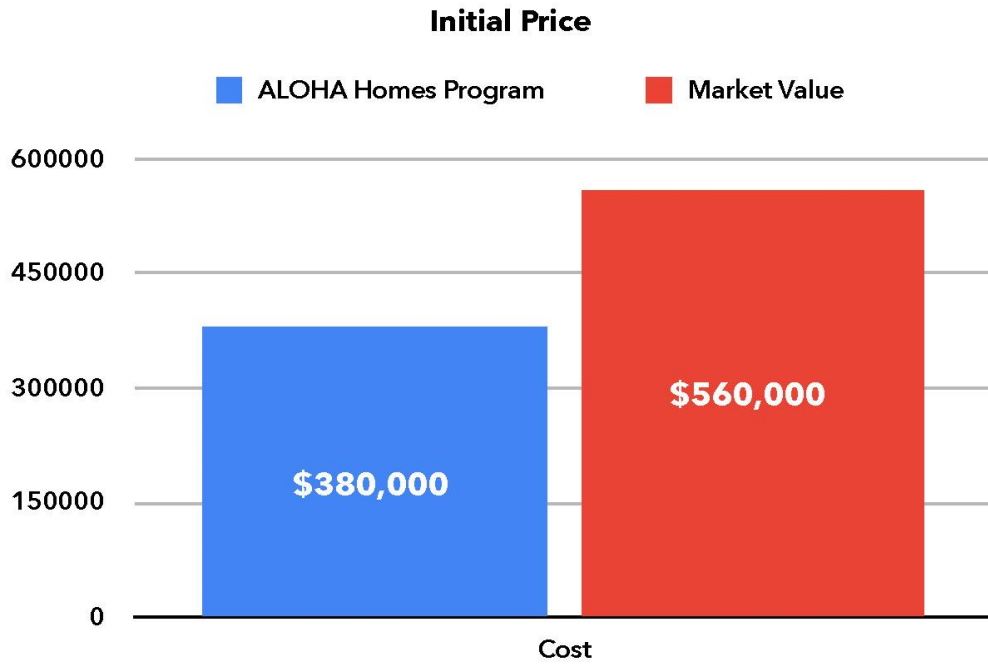
| | Washington DC | Portland, OR | San Francisco, CA | San Diego, CA |
|------------------------------|---|-----------------------------|---|------------------------------|
| Managed by | Department of Housing and Community Development | Portland Housing Bureau | Mayor's Office of Housing and Community 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> |
|----------------------------------|--|--|--|--|

Appendix C: Equity Share Model

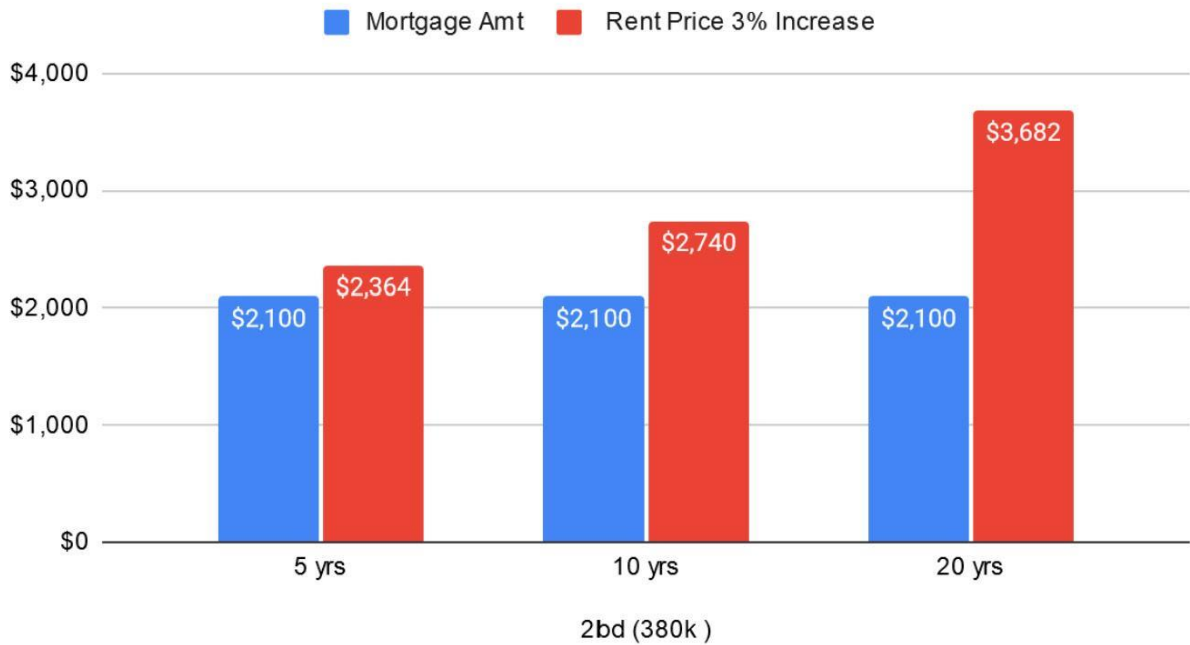
**Cost Difference: Affordable versus Market Rate (FOR SALE)
(Two-Bedroom, Two-Bath Units)**



Mortgage Payments: Affordable Leasehold \$380,000 vs. Market Rate \$570,000

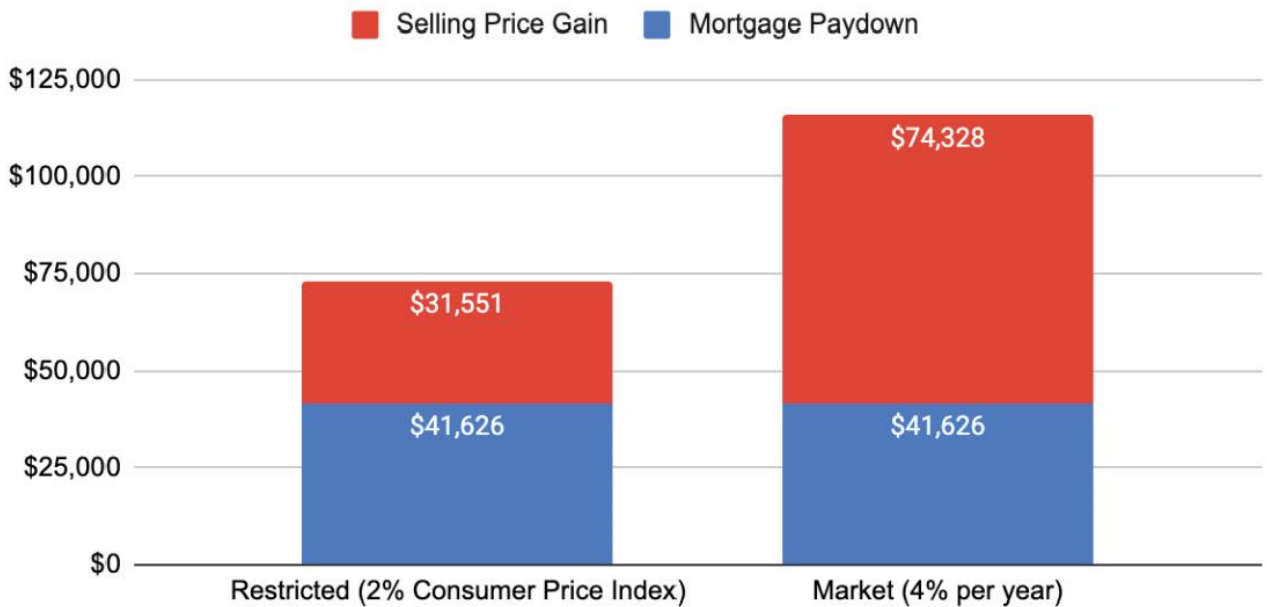


2 Bed/ 2 bath: Affordable Leasehold \$380,000 vs. Market Rate Rental

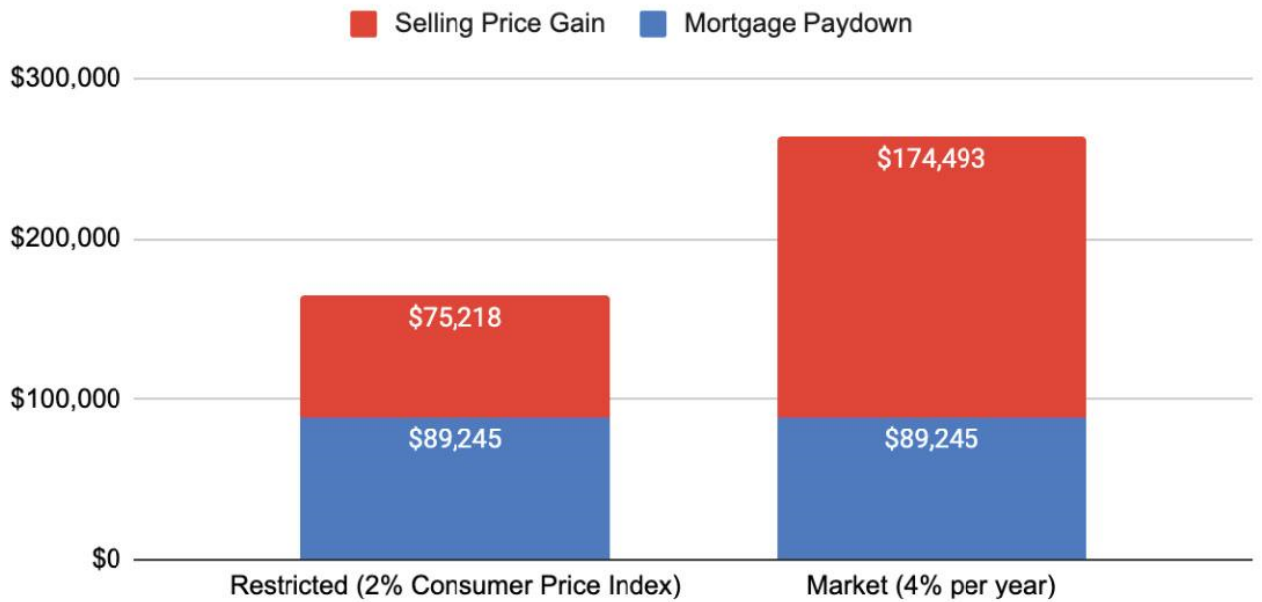


**Equity-Share Difference: Affordable versus Market Rate (FOR SALE)
(Two-Bedroom, Two-Bath Units)**

After 5-Years



After 10-Years



Appendix D: Hawai'i Three-Year Taxable Bonds

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Hawaii Housing Authority
Hawaii Housing Finance Authority, Mortgage Revenue Bonds, Series 2021 (3-Year)

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| 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



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.

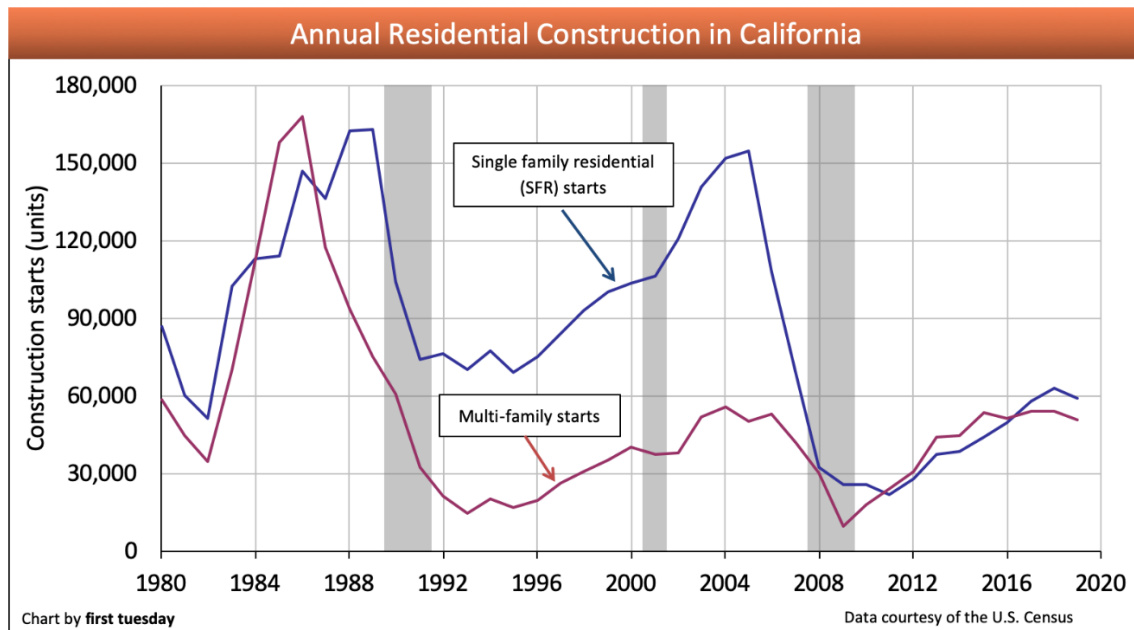
An "automatic stabilizer" paradigm with (a) a revolving land equity fund financing Reparative Housing Justice goals, and (b) periodic empirical review of land-use policy by the Planning Department, could quickly quantify unmet needs for housing security. Developing and implementing responses to needs 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

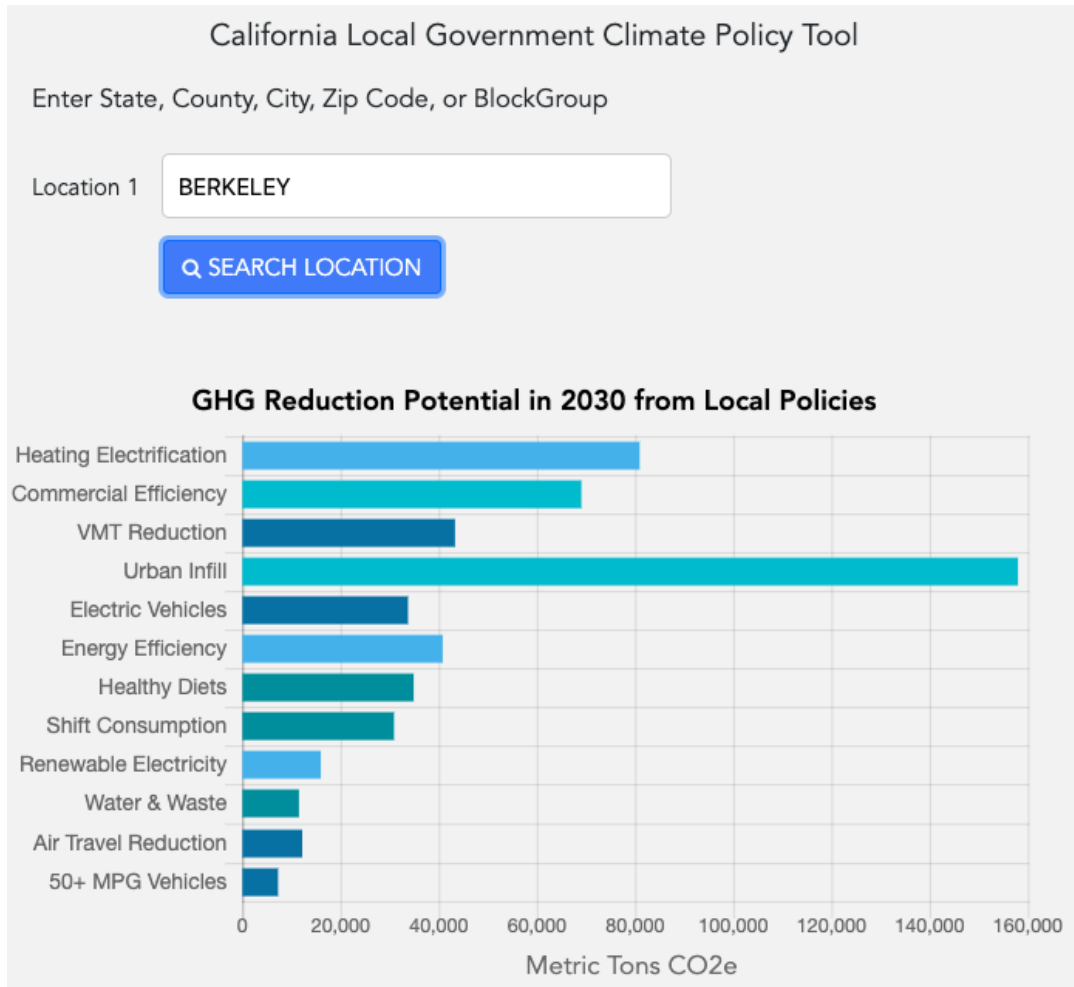
Critically, though, economic integration is vital to promoting an absolute reduction in per capita VMT. Mixed-income development providing transit-accessible housing security across the entire economic spectrum should maximize the potential for both reducing the carbon footprints of affluent, higher-emission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

THE SENATE
THIRTIETH LEGISLATURE, 2019
STATE OF HAWAII

S.B. NO. ¹
S.D. 2

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;



- 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."



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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.



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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 Ben Bartlett, Councilmember Rigel 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 (AB-1763) with additional local height and density incentives, including waivers and modifications similar to those vested in state density bonus law, with ministerial approval contingent on objective zoning and design criteria, for qualifying 100% affordable projects deed-restricted for Low, Very Low, Extremely Low, and Moderate Income households (exclusive of manager's unit) pursuant to AB-1763, specifying:
 - a. In R3, R4, and all C-prefixed zoning districts, a local density bonus in addition to, and duplicative of, the state density bonus under Government Code Section 65915 for up to a total of 85' for qualifying projects;
 - b. In R-1, R-1A, R-2, and R-2A zones, a local 12' height bonus for qualifying projects, waiving density limits and permitting up to 80% lot coverage;
 - c. In all qualifying transit-adjacent areas, inclusive of all parcels within one-half mile of a commuter rail station, or within 1/4 mile of an AC Transit bus route with 7-day service in Fiscal Year 2019, waiving density limits, including units per acre, floor area ratio, and up to 80% lot coverage;
 - d. Create General Plan amendments that allow for 100% affordable qualifying projects to avoid inconsistencies with General Plan densities;
 - e. Increased density for projects outside of transit proximity threshold specified in 1(c) above contingent upon additional Transportation Demand Management (TDM) policies aiming to reduce Vehicle Miles Traveled (VMT) per capita, including bike parking, paratransit and shared micro-mobility systems;
 - f. Skilled and trained workforce standards as defined by the February 18, 2021 version of SB-7 (Atkins) for qualifying projects with at least 50,000 square feet of total floor area;

2. Exempting parcels with Designated Historic Landmarks and maintaining demolition restrictions consistent with state law;
3. On parcels within high-risk wildfire zones as determined by the California Department of Forestry and Fire Protection (CalFire), ministerial approval for qualifying 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 cycle. 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 jurisdictions.

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 an increase of up to 33' in permitted height, 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.

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=2ahUKEwjc3tDIntHuAhXWu54KHdyGAtAQFjABegQICRAC&usg=AOvVaw0eXQ4oP5AAL14h0lphPdr

² https://abag.ca.gov/sites/default/files/draft_rhna_allocation_presentation_to_exec_bd_jan_21.pdf

RATIONALE FOR RECOMMENDATION

As of 2019, development costs in the San Francisco Bay Area averaged \$600,000 for new housing funded by 9% Low Income Housing Tax Credits.³ At this cost, building nearly 4,000 housing units for low- and very low-income households would cost roughly \$2.5 billion, several orders of magnitude larger than the City of Berkeley’s General Fund and Measure O bond funding.

Additional density bonuses and ministerial approval could reduce per-unit costs for affordable housing and increase Berkeley’s capacity to meet its RHNA goals for low- and moderate-income housing. Increasing height limits allows smaller sites to fit enough homes to reach the economy of scale needed for affordable housing. According to an October 2014 report on affordable housing development by several state housing agencies, “for each 10 percent increase in the number of units, the cost per unit declines by 1.7 percent.”⁴ A 2020 study by UC Berkeley’s Turner Center on affordable housing projects funded by 9% Low Income Housing Tax Credits reported: “On average, efficiencies of scale translate into a reduction of about \$1,162 for every additional unit in a project.”⁵

Increased density and streamlined, predictable permitting processes through ministerial review can increase the amount of affordable housing that limited public subsidies are able to provide. In San Francisco, a new affordable housing project at 833 Bryant St using modular construction qualified for ministerial review under state law and “is on pace to build homes, conservatively, about 30 percent faster and at 25 percent less cost per unit than the similar project.”⁶

There is existing 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 2019.⁷ 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.

³ Reid, C. (2020). The Costs of Affordable Housing Production: Insights from California’s 9% Low-Income Housing Tax Credit Program. *UC Berkeley Turner Center for Housing Innovation*. Retrieved from https://turnercenter.berkeley.edu/wp-content/uploads/pdfs/LIHTC_Construction_Costs_March_2020.pdf

⁴ California Department of Housing and Community Development, et al. (2014). Affordable Housing Cost Study: Analysis of the Factors that Influence the Cost of Building Multi-Family Affordable Housing in California. Retrieved from https://www.treasurer.ca.gov/ctcac/affordable_housing.pdf

⁵ See footnote 3.

⁶ Decker, N. (2021). Strategies to Lower Cost and Speed Housing Production: A Case Study of San Francisco’s 833 Bryant Street Project. *UC Berkeley Turner Center for Housing Innovation*. Retrieved from <https://turnercenter.berkeley.edu/wp-content/uploads/2021/02/833-Bryant-February-2021.pdf>

⁷ 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

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.⁸

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.”⁹

The City Council of Cambridge, Massachusetts passed an Affordable Housing Overlay amendment to its zoning code in October of 2020.¹⁰ 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, in residential and commercial zones. 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.

These ordinances preserve open space requirements and comport with restrictions on historic districts. The Somerville¹¹ and Cambridge¹² Overlays were overwhelmingly supported by nonprofit affordable housing developers and activists. The city of Boston is now considering similar proposals.¹³

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

⁸ <http://housing.abag.ca.gov/policysearch>

⁹ http://www.friendsofrpe.org/files/HOZ_Fact_Sheet_FINAL_7-27-10%282%29.pdf

¹⁰ 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/>

¹¹ 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/>

¹² 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_overcome_so_many_obstacles

¹³ 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/>

staff to survey the region's affordable housing. "Overwhelmingly, we heard about two obstacles," Ewen-Campen wrote.¹⁴

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 in California 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 more density for residential uses on commercial corridors for 100% affordable housing can tap into a larger 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 this land tends to be evenly distributed between high- and low-opportunity neighborhoods as defined by the state's Tax Credit Allocation Committee.¹⁵

An overlay for 100% affordable housing with density bonuses and ministerial review are critical for ensuring that residential zoning does not exclude affordable housing for low- and moderate-income households from high-opportunity neighborhoods, a necessary precondition for the city to comply with fair housing law.

Pursuant to Assembly Bill 686 (Santiago) passed in 2018, jurisdictions are required to produce housing elements that comply with the Affirmatively Furthering Fair Housing rule published by the U.S. Department of Housing and Urban Development (HUD) on July 16, 2015. The bill defines this requirement in the context of housing elements as "taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically

¹⁴ 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>

¹⁵ 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>

concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.”¹⁶

Zoning standards that prohibit densities needed for more affordable housing in high-opportunity neighborhoods risk exacerbating gentrification and displacement. According to research by the UC Berkeley Urban Displacement Center, 83% of today’s gentrifying areas were rated “hazardous” or “declining” by the Home Owners Loan Corporation (HOLC), in part due to their Black and Asian populations, and denied federal mortgage insurance in the agency’s infamous redlining maps of the early 20th Century. “Desirable” neighborhoods with federal mortgage insurance were restricted to white homebuyers, and 75% of those neighborhoods are still measurably exclusionary today.¹⁷

The Urban Displacement Project has also reported that “subsidized housing is twice as effective as market-rate housing in mitigating displacement,” and Cash & Zuk (2019) recommend “equitable development considerations” which include “open[ing] up high-opportunity neighborhoods to low-income households.”¹⁸ Additionally, the researchers recommend local preference or right to return policies “to stabilize neighborhoods as new developments take root,” and the City of Berkeley has implemented a local preference policy as part of the Adeline Corridor Specific Plan.¹⁹

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.”²⁰ This proposal only refers broad recommendations for general plan amendments to the Planning Commission to align intended outcomes of the Affordable Housing Overlay with general plan revisions that will result from the upcoming Housing Element update, but a robust Overlay can continue to promote 100% affordable housing development in future cycles when general plan amendments are not under consideration.

Additionally, an enhanced density bonus program with robust skilled and trained workforce standards can incorporate consistent labor standards²¹ into beneficial economies of scale as innovations in the construction industry such as cross-laminated timber or modular housing offer faster and cheaper construction for nonprofit affordable housing developers, so that projects with reduced construction costs still guarantee prevailing wages.

¹⁶ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB686

¹⁷ Cash, A. (2020). Redlining in Berkeley: the Past is Present. *Berkeley Rent Stabilization Board*. Retrieved from [https://www.cityofberkeley.info/uploadedFiles/Rent_Stabilization_Board/Level_3_-_General/SPECIAL_Item%206_Redlining%20in%20Berkeley%20presentation_02.20.20_FINAL\(2\).pdf](https://www.cityofberkeley.info/uploadedFiles/Rent_Stabilization_Board/Level_3_-_General/SPECIAL_Item%206_Redlining%20in%20Berkeley%20presentation_02.20.20_FINAL(2).pdf)

¹⁸ Cash, A & Zuk, M. (2019). Investment Without Displacement: From Slogan to Strategy. *Shelterforce*. Retrieved from <https://shelterforce.org/2019/06/21/investment-without-displacement-from-slogan-to-strategy/>

¹⁹ https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Land_Use_Division/Adeline%20Corridor%20Specific%20Plan%20Nov.%202020.pdf

²⁰ <https://homeforallsmc.org/toolkits/housing-overlay-zones/>

²¹ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB7

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 Homelessness²² 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

Research from UC Berkeley scholars and the CoolClimate Network²³ finds that urban offers one of the greatest potential policy levers for municipalities to reduce their greenhouse gas emissions. Incentives for affordable housing, such as density bonuses, also offer potential to reduce per capita VMT by increasing housing options in Berkeley and shortening commute times for a greater share of the local workforce. In an analysis of 252 California Cities, Durst (2021) finds that "each additional affordable housing incentive is associated with a 0.37 percentage point decrease in the share of workers who commute more than 30 minutes."²⁴

An Affordable Housing Overlay coupled with the city's Local Preference policy could reduce Berkeley's transportation emissions by reducing per capita VMT pursuant to goals established in the city's Climate Action Plan.

FISCAL IMPACTS

TBD.

²² https://www.cityofberkeley.info/Clerk/City_Council/2019/02_Feb/Documents/2019-02-26_Item_20_Referral_Response_1000_Person_Plan.aspx

²³ Jones, C. et al. (2017). Carbon Footprint Planning: Quantifying Local and State Mitigation Opportunities for 700 California Cities. *Urban Planning*, 3(2). doi:10.17645/up.v3i2.1218.

²⁴ Durst, N. J. (2021). Residential Land Use Regulation and the Spatial Mismatch between Housing and Employment Opportunities in California Cities. *Terner Center for Housing Innovation*. Retrieved from <http://californialanduse.org/download/Durst%20Residential%20Land%20Use%20Regulation%202020.pdf>

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

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ATTACHMENTS/SUPPORTING MATERIALS

1. Cambridge, MA: Ordinance No. 2020-8
2. Assembly Bill 1763 (2019)

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



Affordable Housing Overlay

Low-Income and Moderate-Income housing deficit: 2020 Housing Pipeline Report

Table 5 – Status of Regional Housing Needs Allocation - All Housing Types.

Progress towards 2014-2022 RHNA: Approved Building Permits

January 1, 2014 – December 31, 2019

| | RHNA Allocation | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | Total Units to Date | Percent of Goal Achieved | Remaining RHNA |
|-------------------|-----------------|------|------|------|------|------|------|---------------------|--------------------------|----------------|
| VLI (<50% AMI) | 532 | 15 | 59 | 16 | 10 | 1 | 11 | 112 | 21% | 420 |
| LI (51%-80% AMI) | 442 | 0 | 17 | | | | | 17 | 4% | 425 |
| MOD (81-120% AMI) | 584 | 5 | 132 | | | | | 137 | 23% | 447 |
| BMR Total | 1558 | 20 | 208 | 16 | 10 | 1 | 11 | | | |
| Above MOD | 1401 | 258 | 326 | 212 | 262 | 329 | 403 | 1790 | 128% | -389 |
| Total | 2959 | 278 | 534 | 228 | 272 | 330 | 414 | | | |

| Jurisdiction | VERY LOW INCOME (<50% of Area Median Income) | LOW INCOME (50-80% of Area Median Income) | MODERATE INCOME (80-120% of Area Median Income) | ABOVE MODERATE INCOME (>120% of Area Median Income) | TOTAL |
|-------------------------------|--|---|--|--|--------------|
| ALAMEDA COUNTY | | | | | |
| Alameda | 1,421 | 818 | 868 | 2,246 | 5,353 |
| Albany | 308 | 178 | 175 | 453 | 1,114 |
| Berkeley | 2,446 | 1,408 | 1,416 | 3,664 | 8,934 |
| Dublin | 1,085 | 625 | 560 | 1,449 | 3,719 |
| Emeryville | 451 | 259 | 308 | 797 | 1,815 |
| Fremont | 3,640 | 2,096 | 1,996 | 5,165 | 12,897 |
| Hayward | 1,075 | 617 | 817 | 2,115 | 4,624 |
| Livermore | 1,317 | 758 | 696 | 1,799 | 4,570 |
| Newark | 464 | 268 | 318 | 824 | 1,874 |
| Oakland | 6,511 | 3,750 | 4,457 | 11,533 | 26,251 |
| Piedmont | 163 | 94 | 92 | 238 | 587 |
| Pleasanton | 1,750 | 1,008 | 894 | 2,313 | 5,965 |
| San Leandro | 862 | 495 | 696 | 1,802 | 3,855 |
| Unincorporated Alameda County | 1,251 | 721 | 763 | 1,976 | 4,711 |
| Union City | 862 | 496 | 382 | 988 | 2,728 |

City of Cambridge, MA: Affordable Housing Overlay (2020)



Goals of Affordable Housing Overlay



Trolley Square: new construction of 40 affordable units in mixed-use development

- Help affordable housing providers have more success in purchasing sites to create new affordable housing;
- Foster equitable distribution of affordable housing citywide by expanding the viability of affordable housing in areas where there are fewer affordable units;
- Create opportunities in all neighborhoods for residents of all incomes;
- Make it easier to permit 100% affordable housing developments so that affordable housing developers can build needed housing more quickly; and
- Help reduce costs of building new affordable housing to accomplish more with affordable housing funds.

City of Cambridge, MA: Affordable Housing Overlay (2020)

| | |
|--|--|
| Eligibility: “100%-Affordable Housing Projects” | All units subject to long-term affordability restrictions, occupied by income-eligible households, rent or initial sale price is affordable to eligible households |
| Existing Buildings | Non-conforming buildings can be adapted for reuse |
| Height and Scale | Districts allowing ≤ 40 feet: up to 4 stories Districts allowing b/t 40 and 50 feet: up to 6 stories Districts allowing > 40 feet: up to 7 stories |

City of Cambridge, MA: Affordable Housing Overlay (2020)

Design Guidelines (2019)

Site Design

- Response to Context
- Open Space & Landscape Design
- Circulation

Building Design

- Massing
- Facades
- Architectural Details, Materials, Color, and Finishes

Sustainability



Cambridge AHO Project: Walden Square II

VIEW FROM RAYMOND ST



VIEW FROM RICHDALE ST



Cambridge AHO Project: 54 New Street



City of Cambridge Community Development Department

Affordable Housing Overlay

- **All units** rented or sold to income-eligible households at affordable amounts
- Permanent affordability by covenant
- Rental units:
 - At least 80% of units affordable to households earning up to 80% of Area Median Income (AMI)
 - Rest may be affordable to households earning up to up to 100% of AMI
- Homeownership units:
 - At least 50% of units affordable to households earning up to up to 80% of AMI
 - Rest may be affordable to households earning up to up to 100% of AMI

State of California: AB-1763 (Chiu, 2019) 100% Affordable Density Bonus



- 100% BMR
- Minimum 80% of units low/very low-income; max. 20% moderate
- 80% Density Bonus + other incentives (up to +3 stories near transit)

City of Berkeley: Affordable Housing Overlay, 2021?

| | | |
|--|--------------------------|---|
| Zoning | R1, R1A, R2, R2A | R3, R4, Commercial |
| AB 1763 density bonus (100% affordable) | Not eligible for AB 1763 | 33' height bonus if ½ mile from rail or ferry station; or, 4 concessions |
| AHO proposal (100% affordable) | 12' height bonus | [AB 1763] + 0-33' bonus up to 85' total (incl. ¼ mile from bus stop) |

8-story 100% affordable housing in San Francisco

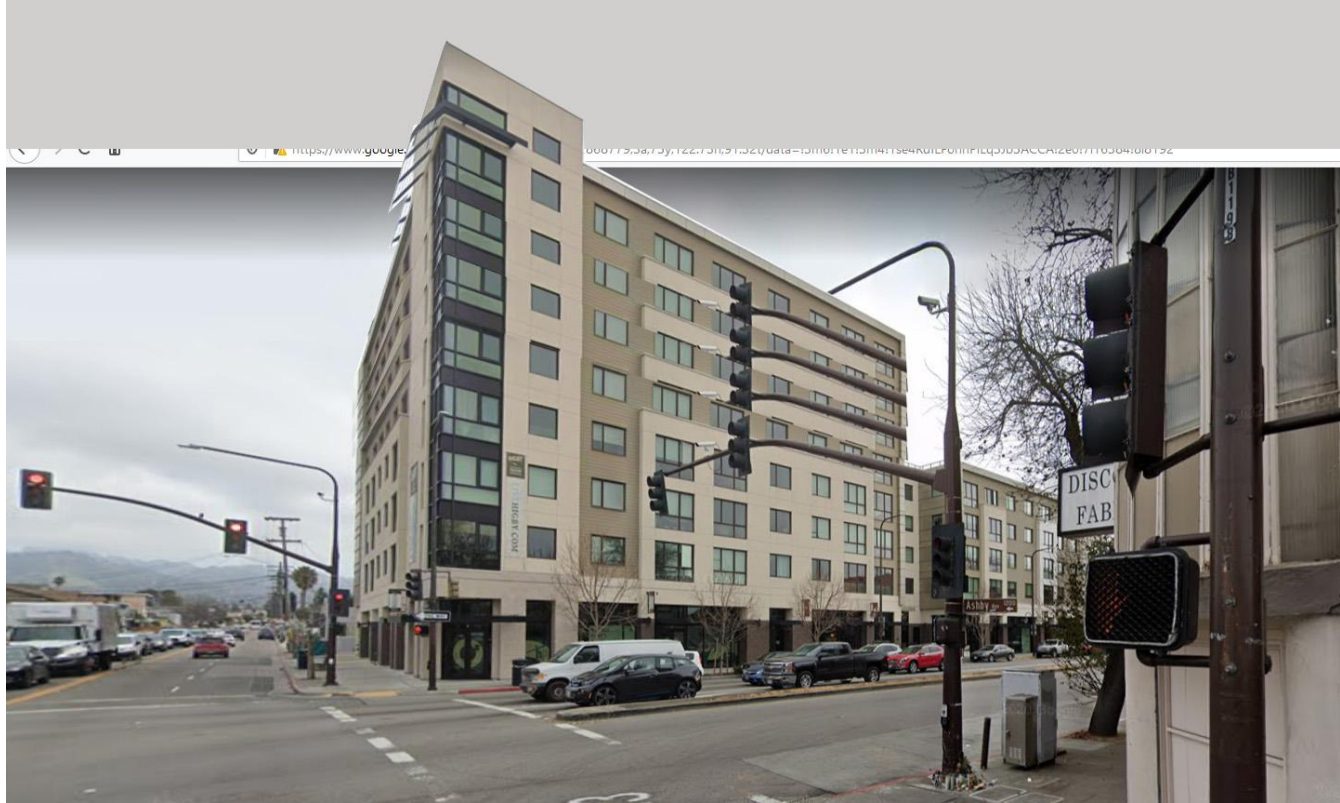


288 Beale St



255 Fremont St

If 3015 San Pablo Ave was 100% affordable with AHO



(Courtesy: Alfred Twu)

Challenges to building affordable housing:

- High land costs and competition from market-rate developers
- Discretionary review can add significant cost, unpredictable risk and delays to nonprofit affordable housing developers
- Low density zoning makes it hard to find sites large enough to have enough units to qualify for state funding
 - Since 2016, the smallest project in Alameda County receiving state tax credit funding was 35 units (1601 Oxford St, Berkeley)
 - Smallest project in same period receiving competitive 9% LIHTC: 64 units (Laguna Commons in Fremont)

Opportunities for building affordable housing:

- Density bonuses helps site acquisition and feasibility for nonprofit affordable housing
- More units per parcel reduces per-unit cost: “for each 10% increase in the number of units, the cost per unit declines by 1.7%.” (2014 HCD, CAHFA, TCAC Report)
- Ministerial review and modular construction reduces construction costs, shortens timeline (Turner Center [case study](#), 2021)

1601 Oxford St - 20-60% AMI - approved under SB35



(Zoning district is R3; currently not permitted in R1, R1A, R2, R2A)

CA HCD Guidance: Housing Element Site Inventory will enable by-right for *some* affordable housing (e.g. SB 35)

PART B: SITES TO ACCOMMODATE LOW AND VERY LOW- INCOME RHNA

Step 1: *NEW* Sites Used in Previous Planning Periods Housing Elements

Government Code section 65583.2(c)

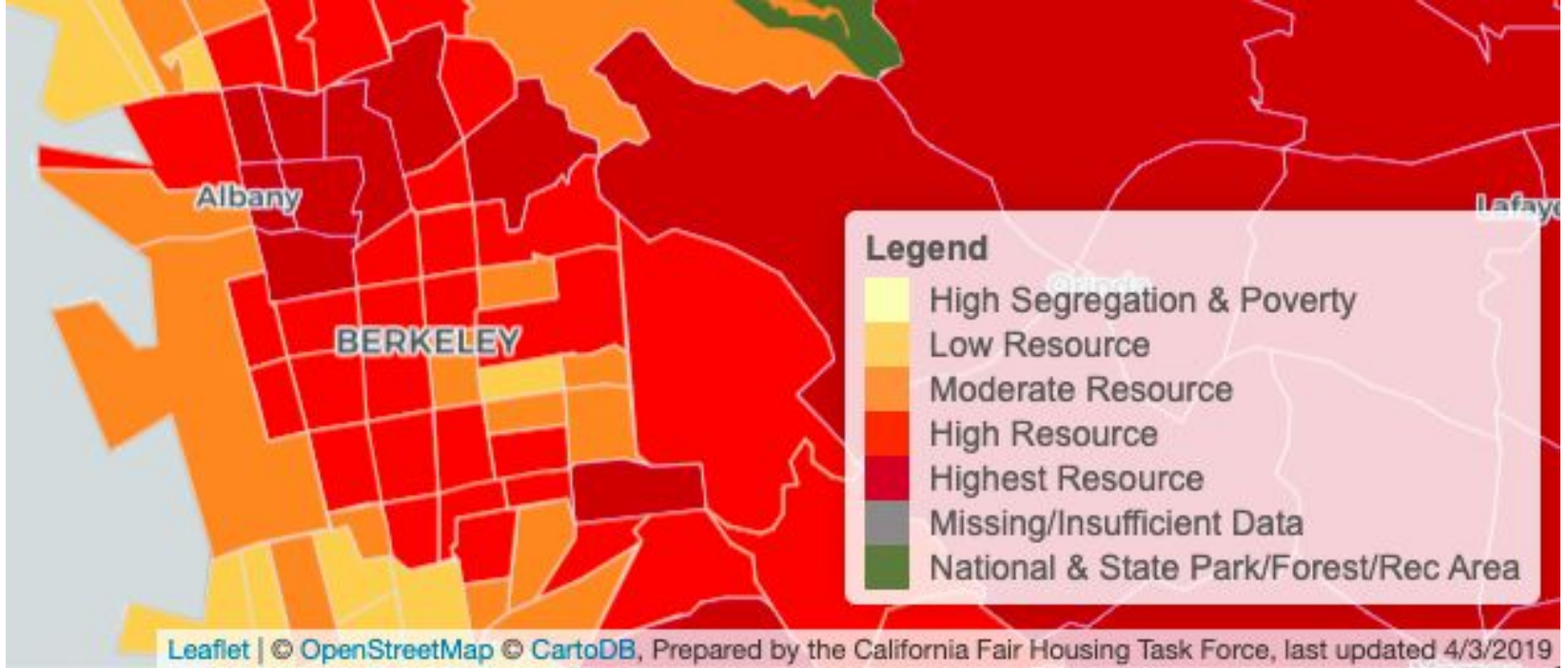
Step 1A:

Indicate in the housing element site inventory that this parcel was used in a prior housing element planning period.

Step 1B:

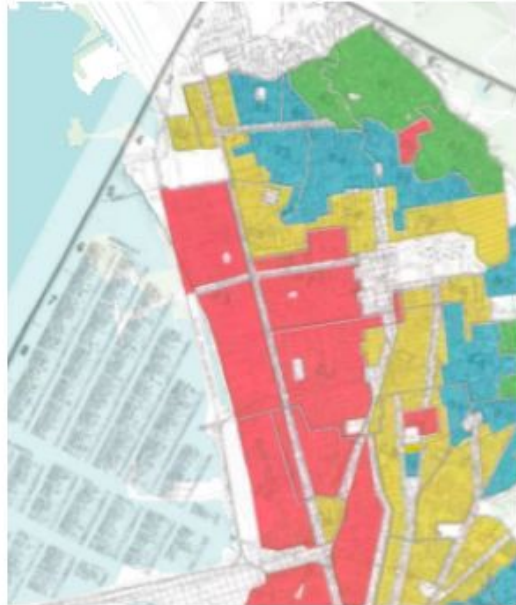
Include a program in the housing element requiring rezoning within three years of the beginning of the planning period to **allow residential use by right at specified densities (see Step 2) for housing developments in which at least 20 percent of the units are affordable to lower income households. This program can be an overlay on these specific sites.** Please be aware that the intent of this requirement is to further incentivize the development of housing on sites that have been available over one or more planning periods. The application of the requirement should not be used to further constrain the development of housing. As such, housing developments that do not contain the requisite 20 percent would still be allowed to be developed according to the underlying (base) zoning but would not be eligible for "by right" processing. However, the jurisdiction would have to make findings on the approval of that project pursuant to No Net Loss Law (Government Code section 65863) and proceed to identify an alternative site or sites pursuant to that law. Sites where zoning already permits residential "use by right" as set forth in Government Code section 65583.2 (i) at the beginning of the planning period would be considered to meet this requirement.

Increasing affordable housing in high-resource neighborhoods (TCAC Opportunity Map, 2019)



Segregation in Berkeley Today

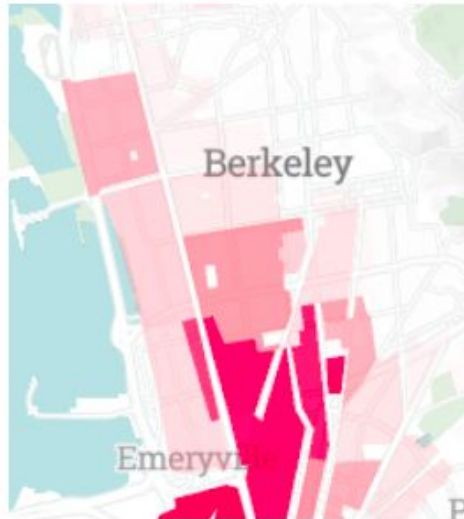
wenfeixu.com/redliningmap



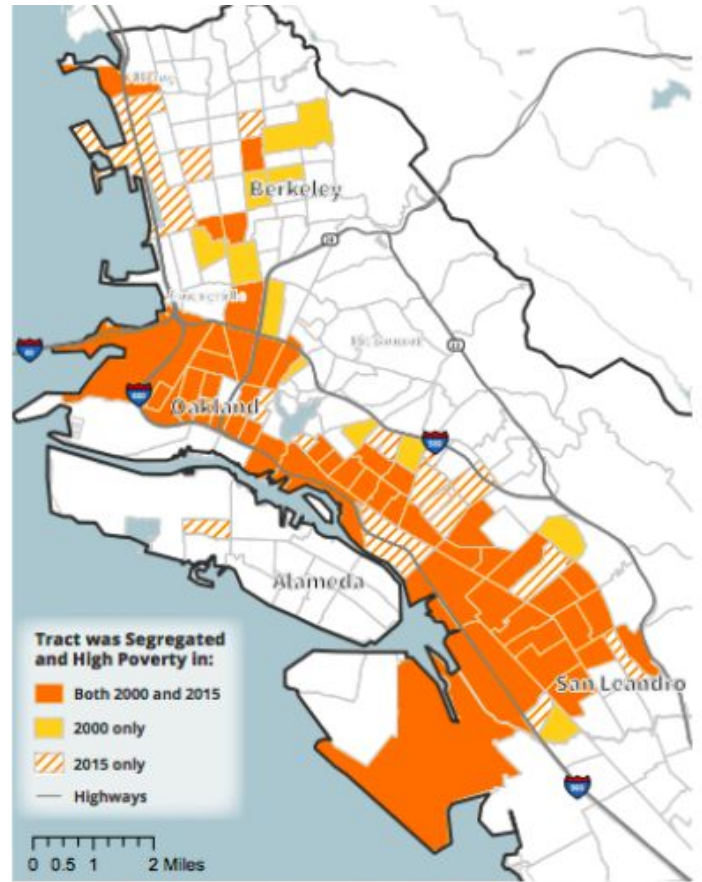
% Black (2016)



Source: NHGIS Decennial census and ACS



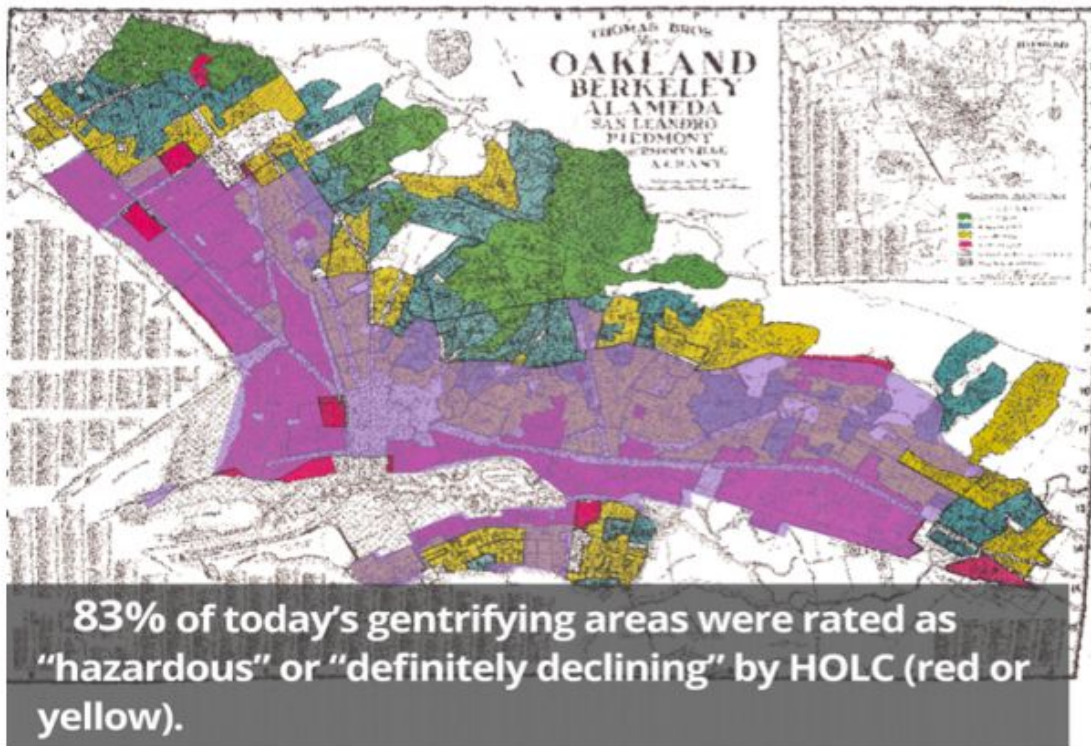
Source: Rent Board Report, 2020



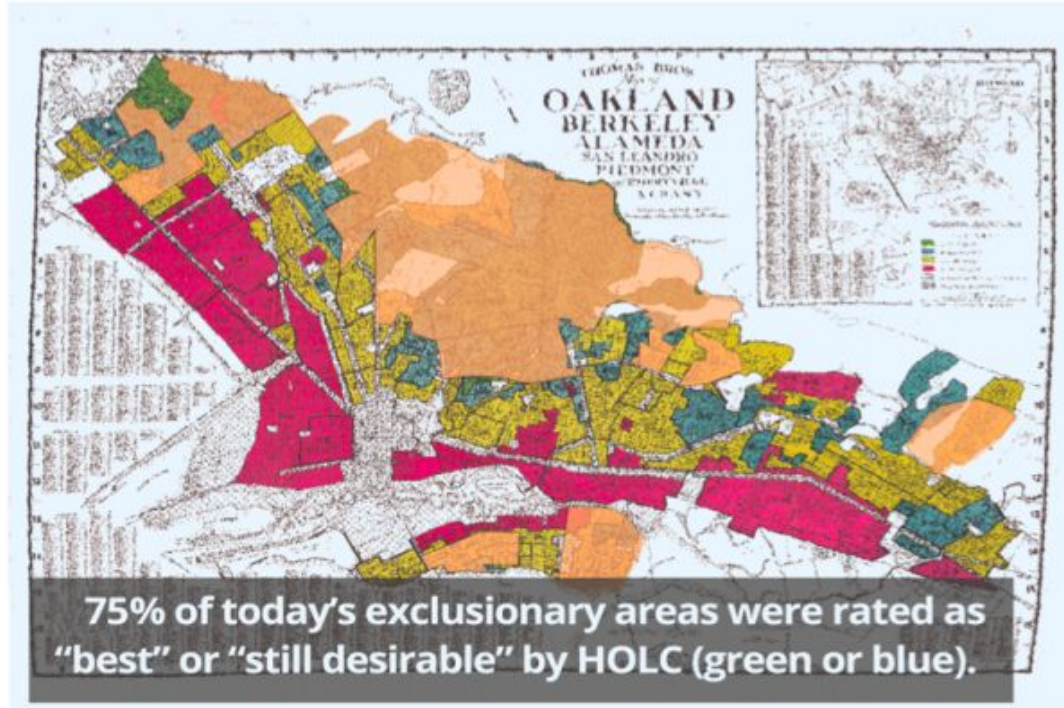
Source: U.S. Census 2000 (Table H063), ACS 2011-2015 (Table B25064)

(Urban Displacement Project, 2019)

Legacy of Redlining in East Bay - Gentrification



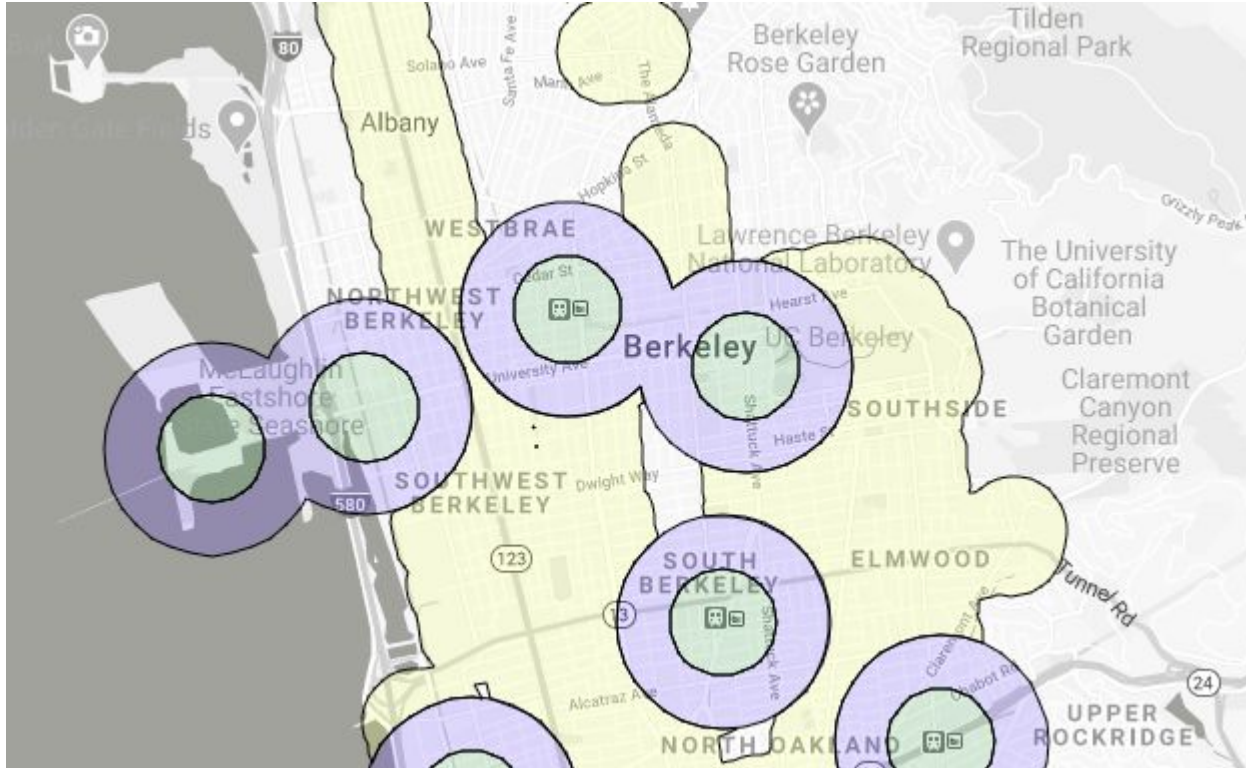
Legacy of Redlining in East Bay- Exclusion in “Desirable” Areas



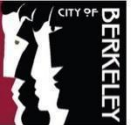
Additional considerations for ministerial review:

- Fire-blocking design and defensible space requirements
- Objective design standards
- Transportation Demand Management (TDM): proximity to transit, paratransit, micro-mobility, focus on VMT reduction

Transit Proximity: [SB-827 \(2018\)](#) but for 100% affordable



Green: 1/4 mile from rail/ferry; Purple: 1/2 mile from rail/ferry; Yellow: 1/4 mile from high quality bus stop



BERKELEY CITY COUNCILMEMBER
TERRY TAPLÍN
DISTRICT 2

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“I’m privileged to call Berkeley my hometown. More people of all backgrounds should be able to enjoy this privilege as a right.”





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.



Rashi Kesarwani
Councilmember District 1

CONSENT CALENDAR
May 11, 2021

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author), Councilmember Wengraf (Co-Sponsor), Councilmember Droste (Co-Sponsor), and Councilmember Bartlett (Co-Sponsor)

SUBJECT: Referral to the City Manager to Streamline Accessory Dwelling Unit (ADU) Permit Review and Approval

RECOMMENDATION

Refer to the City Manager to streamline the Accessory Dwelling Unit (ADU) permitting process in order to reduce staff time spent on review and enhance customer service. Further, assess effectiveness of process improvements specified below by reviewing over time: the number of ADUs permitted, average amount of staff time spent on ADU permit review, and permit fee levels.

Recommend that the City Manager develop for Planning staff use an ADU Universal Checklist and accompanying user-friendly webpage:

- **ADU Universal Checklist.** A clear set of universal guidelines and construction requirements should be developed among staff from Planning (both Land Use and Building and Safety Divisions), Fire, and Public Works Departments that is easy to follow in order to eliminate (or significantly reduce) the need for multiple departments to review ADU permit applications and for multiple rounds of review by the same department. The Universal Checklist should be a single document utilized by all City staff to review ADU permit applications and by customers to understand code requirements. The Universal Checklist should enable all City staff and customers to have the same clear understanding of all of the requirements that, if adhered to, would expedite the permitting process and lead to lower permit fees over time.
- **Accompanying User-Friendly Webpage.** As a companion to the ADU Universal Checklist, the City should also create a user-friendly webpage for customers (and prospective customers) with up-to-date information that provides clarity and greater certainty about the process and expected timeline

for the creation of an ADU or Junior ADU, which is within a main dwelling unit. At a minimum, the webpage should include:

- A list of relevant fees and expected payment amounts for permits, inspections, and other requirements;
- Plan requirements, worksheets, and projected timelines for each step of the process; and
- Consolidated up-to-date state and local regulations that are easy to understand.

Recommend that the City Manager consider adoption of the following two best practices:

- **Pre-Approved ADU Design Plans.** Consider development of (1) free ADU designs available to download--of varying sizes and styles--that already conform to all City and state requirements and safety codes; and/or (2) a list of vendors with architectural designs and construction drawings that have already been approved by the City and are available to customers for a nominal fee to the architect.
- **ADU Ally.** Consider dedicating existing Planning staff member(s) time to the role of an "ADU Ally." The ADU Ally is a customer-facing staff person(s) who is an expert on all current state and local ADU regulations and acts as an ally to customers through the planning and building process.

CURRENT SITUATION AND ITS EFFECTS

The City's Process for Reviewing ADU Plans Is Not Efficient. Today, builders and homeowners report that building an ADU in Berkeley is costly, cumbersome, and frustrating. ADU plans submitted by applicants to the City's Permit Service Center are routed to multiple departments for review--a time-consuming process that requires review from multiple plan examiners. Further, the ADU plans are put in the same queue as other larger building projects, creating substantial wait times for approval. Relatedly, there is currently no user-friendly City webpage to alert customers about the process, fees, and requirements for obtaining an ADU permit, making it difficult for prospective customers to understand whether they are eligible to create an ADU and how to embark on the process. Such a webpage could alert residents that the state has eliminated minimum lot size requirements for ADUs, for example, which could encourage more homeowners to consider building an ADU.

Inefficiency Leads to High Permit Fees. Currently, the City of Berkeley permitting fees are estimated at a flat rate (3-5 percent) of the job valuation.¹ Spending less

¹ See the City of Berkeley's Department of Planning and Development's Building Permit Fee estimator: <https://www.cityofberkeley.info/PermitFeeEstimator.aspx>

staff time on permit reviews will result in lower fees over time. Construction costs in California are high and building an average-sized detached ADU typically runs upwards of \$150,000. By creating greater certainty and a more streamlined process, customers will be better able to plan for financing their ADU.

Recent State Law Changes Have Made It Easier to Create ADUs. Recent changes to state law have made it easier for more homeowners to pursue ADU development, such as:

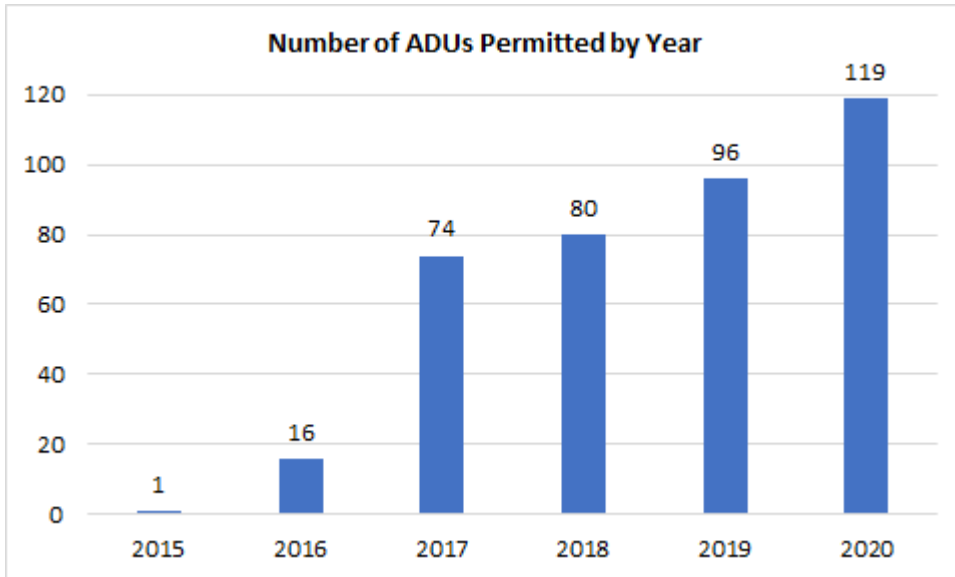
- ADUs are now required to be approved and permitted ministerially (AB 68, 2019)
- Elimination of minimum lot sizes for ADU development (AB 68, 2019)
- Exemption of ADU parking requirements under certain circumstances (SB 13, 2019)²

Best Practices From Other Local Jurisdictions Can Help to Increase ADU Production in Berkeley. Cities throughout the state are meeting an increasing demand among homeowners for ADUs by: revising their local ADU ordinance and simplifying zoning requirements, offering customer-friendly services, and streamlining the permit approval process. Taken together, these actions have shortened processing time, increased consistency, and reduced homeowner expenses. In Berkeley, interest in creating an ADU is growing: a total of 119 permits were approved for the construction of ADUs in 2020, a number that has steadily grown over the last five years, as shown in Exhibit 1. However, to date, the City of Berkeley has not implemented ADU best practices related to customer-friendly services and streamlining the permit approval process, meaning that more could be done to increase the number of ADU permits issued annually. We note that Berkeley is currently in the process of amending its ADU ordinance to comply with new state law changes, particularly with regards to emergency access and egress; installation of sprinklers; parking concerns in fire zones; maximum size of ADUs; as well as consideration of front yard setbacks, open space, and lot coverage.³

Exhibit 1: Number of ADUs Permitted in the City of Berkeley Has Steadily Grown

² For a complete discussion of statutory changes to California's ADU codes see the Department of Housing and Community Development's ADU Handbook, p. 23: https://www.hcd.ca.gov/policy-research/docs/adu_december_2020_handbook.pdf

³ See "Response to Short Term Referral for Amendments to the Accessory Dwelling Units (ADU) Ordinance and Related Definitions to Address Public Safety Concerns," Planning Commission Agenda Packet, April 7, 2021, https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2021-04-07%20PC_Item%209.pdf



Source: “Response to Short Term Referral for Amendments to the Accessory Dwelling Units (ADU) Ordinance and Related Definitions to Address Public Safety Concerns,” Planning Commission Agenda Packet, April 7, 2020,

https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2021-04-07%20PC_Item%209.pdf.

Three Best Practices From Other Jurisdictions Recommended for Berkeley

- **ADU Universal Checklist and Accompanying User-Friendly Webpage.**

The City of San Jose has become well known for its adoption of an ADU Universal Checklist (see attached) that reduces the amount of time that City staff spend reviewing ADU permits and answering customer questions. Prior to the creation of San Jose’s Universal Checklist two years ago, ADU customers were required to work with four different departments (Building Development, Planning, Fire, and Public Works) to know the requirements and get their ADU permits approved--similar to the situation in Berkeley today. The Universal Checklist now provides a one-stop shop that lists all the requirements across all four City departments. This tool gives homeowners and builders clear guidance on what is required and simplifies the plan check process. The initial effort to establish the Universal Checklist took three to four months of weekly meetings among staff from the four relevant departments, according to the San Jose Public Information Manager for the Department of Planning, Building and Code Enforcement Division. However, now that the Universal Checklist is in place, those same staff have more available time to devote to other projects, according to the Public Information Manager. San Jose began utilizing the Universal Checklist in early 2019 shortly before some changes to state ADU laws (such as AB 68) went into effect; that year saw a notable jump in annual applications to build ADUs--from 376 permit applications in 2018 to nearly double in 2019 at 688 permit applications, which

the Public Information Manager attributes to changes in state law, streamlined permitting, and marketing both of these changes.⁴

The marketing and advertising of these changes were facilitated by a user-friendly webpage that includes links to additional webpages with full descriptions of:

- The ADU Universal Checklist
- ADU plan review and permit process
- Pre-approved ADUs and lists of vendors
- Fees for ADUs
- ADU fire requirements
- Parking requirements and exemptions
- State and local ADU ordinances and updates⁵

The ADU Universal Checklist and accompanying user-friendly webpage are simple tools that could help all parties to be clear about the requirements for receiving an ADU permit. There is also precedent for using customer-friendly checklists, as the City of Berkeley already has many examples listed on its website, as shown in Exhibit 2.

Exhibit 2: Building Checklists Currently Available from Online Service Center

| Type of Checklist | Use |
|------------------------------------|--|
| Code Compliance Checklists | Kitchens; Building Permits Submittals; Bathroom and Laundry; Decks, Porches, Stairs; Electric Vehicle Charging; Reach code low-rise residential; Reach code non-residential high rise and hotel/motel; Residential floor plan; Solar Photovoltaic; Windows and Doors |
| Energy Conservation Checklists | CalGreen residential; CalGreen non-residential |
| Stormwater Requirements Checklists | C.3 and C.6 projects; C.3.i projects |
| Land Use Planning Checklist | Landmark Alterations Submittal Checklists |

Source: Online Service Center webpage, City of Berkeley website, https://www.cityofberkeley.info/Online_Service_Center/Home/Forms.aspx.

⁴ E-mail communication with Cheryl Wessling, San Jose’s Public Information Manager, Department of Planning, Building and Code Enforcement Division, April 14, 2021.

⁵ See City of San Jose’s Department of Planning, Building and Code Enforcement ADU webpage: <https://www.sanjoseca.gov/business/development-services-permit-center/accessory-dwelling-units-adus>

- **Pre-Approved ADU Design Plans.** Numerous jurisdictions have developed ADU design plans that are pre-approved by the jurisdiction’s Planning and Building Departments, ranging from conceptual drawings to full sets of building plans, which greatly reduces the amount of staff time required to approve planning and building permits. This approach streamlines the process for issuing a permit, which reduces design costs for the customer, reduces staff time for City Departments, and increases consistency among all the approved permits. San Diego County⁶ and the City of Encinitas⁷, for example, both offer a set number of optional pre-approved ADU designs (free and available for download) of varying sizes and styles that can eliminate fees for hiring an architect and streamline some of the permitting processes. San Jose utilizes a slightly different model, in which it offers a list of vendors with pre-approved full sets of construction drawings that homeowners may use for a small fee to the architect. The primary benefit of pre-approved ADU design plans is that City staff only need to evaluate the site-specific elements to approve the building permit, leading to a more efficient review and lower permit fees for the customer.⁸
- **ADU Ally.** The cities of Encinitas and San Jose both have dedicated staff whose sole responsibilities concern ADU development, providing staff responses to permitting requests and knowledgeable assistance steeped in state and local regulations.

BACKGROUND

As Home Prices Climb, ADUs are a Form of “Naturally Occurring” More Affordable Housing. Home prices continue to climb across the Bay Area, and Berkeley now ranks as the third most expensive large Bay Area city, with an average home price of \$1.45 million, as shown in Exhibit 3. The state of California has the third highest median home price in the country, after Hawaii and Washington, D.C.⁹ ADUs and Junior ADUs (within the main dwelling) are currently the only avenues available to increase the number of units in many residential zones. ADUs, also known as backyard cottages, have been found to be a form of “naturally occurring” more

⁶ See San Diego County’s Accessory Dwelling Units webpage:

<https://www.sandiegocounty.gov/content/sdc/pds/bldg/adu.html.html>

⁷ See City of Encinitas’ Permit Ready ADU (PRADU) webpage: <https://encinitasca.gov/pradu>

⁸ See City of San Jose’s Pre-approved ADU webpage:

<https://www.sanjoseca.gov/business/development-services-permit-center/accessory-dwelling-units-adus/adu-permit-plan-review-process/adu-single-family-master-plan-program>. It should be noted that residents need to seek out the vendors and the designs are not free. San Jose also offers a process through which vendors can get their designs approved by the City and thus be added to the binder of pre-approved vendor designs.

⁹ Experian, *Median Home Values by State*, Nov. 19, 2019, <https://www.experian.com/blogs/ask-experian/research/median-home-values-by-state/>.

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E-Mail: Rkesarwani@cityofberkeley.info

affordable housing when compared to the monthly cost to rent or own a single-family home.¹⁰

Exhibit 3: Berkeley Home Prices are Third Highest Among Large Bay Area Cities

| City | % change from Feb. 2020 to Feb. 2021 | ▼ Average value in Feb. 2021 |
|-----------------|--------------------------------------|------------------------------|
| Sunnyvale | 11.1% | \$1.8M |
| San Mateo | 1.6% | \$1.5M |
| Berkeley | 6.9% | \$1.5M |
| San Francisco | -3.2% | \$1.4M |
| Santa Clara | 12.2% | \$1.4M |
| Fremont | 7.7% | \$1.2M |
| San Jose | 14.0% | \$1.2M |
| Daly City | 3.2% | \$1.1M |
| Livermore | 10.4% | \$900K |
| Oakland | 8.9% | \$870K |

Source: Zillow, as reported by Neilson, Susie, Sumida, Nami, "Every major Bay Area city has seen home values go up in the pandemic. Except for one," *The San Francisco Chronicle*, April 10, 2021, <https://www.sfchronicle.com/local/article/Mapped-Real-estate-prices-soared-in-the-Bay-Area-16091650.php>.

RATIONALE FOR RECOMMENDATION

The proposed recommendations for streamlining the review of ADU permit applications are intended to ensure that staff time is used efficiently, customers receive their permits in a timely manner at a competitive price, and that ultimately, these process improvements encourage more homeowners to create ADUs--a form of naturally-occurring more affordable housing that is greatly needed across the Bay Area and state.

¹⁰ See both San Mateo County – April Report, *Affordability of Secondary Dwelling Units — 21 Elements*, April 9, 2014 (Used data from 2010- 2013): <https://norcalapa.org/wp-content/uploads/2018/07/Affordability-of-Second-Units-April-2014.pdf>; and Chapple, et. al., *Yes in My Backyard: Mobilizing the Market for Secondary Units*, 2012, Center for Community Innovation, Univ. of California, Berkeley, Page 10: https://communityinnovation.berkeley.edu/sites/default/files/yes_in_my_backyard_mobilizing_the_market_for_secondary_units.pdf?width=1200&height=800&iframe=true

FISCAL IMPACT

Time-limited staff time from relevant departments (Planning, Fire, and Public Works) to develop standardized sets of requirements to satisfy all building codes and safety regulations. Additional staff time from the Planning Department would be required to implement related ADU streamlining recommendations. We note that over time the initial outlay of staff time would lead to more efficient processing of ADU permit applications.

ENVIRONMENTAL SUSTAINABILITY

Encouraging the creation of ADUs and Junior ADUs enables the City to make more efficient use of residential land that is generally located in close proximity to public transit. Studies show that infill development is an effective strategy for reducing greenhouse gas emissions by reducing vehicle miles traveled when compared to homes created in outlying undeveloped areas.

CONTACT PERSON

Councilmember Rashi Kesarwani, District 1

(510) 981-7110

Attachment:

City of San Jose ADU Universal Checklist

ADU Universal Checklist

Are you thinking about building an Accessory Dwelling Unit (ADU)? This checklist will help ensure that your idea for an ADU aligns with the City’s Zoning Code, and will help you prepare for building permit requirements. Homeowners, designers, and construction professionals should all understand how the items in this checklist may affect the ADU design and requirements, before creating any building plans.

Need help?

- To find your property designations, visit www.sjpermits.org and tap “Permits & Property Information”; enter your address; and on the next screen, click on your property and select “Property Information.” A list of designations will appear.
- If you need further help, contact the ADU Ally at adu.ally@sanjoseca.gov or 408-793-5302.

Learn more about ADUs: www.sanjoseca.gov/ADUs

| QUESTION | YES | NO | | | | | | |
|--|--|------------------|---------------|--|-----------------------|--|--|--|
| SECTION A. PROPERTIES THAT QUALIFY | | | | | | | | |
| <p>1. Zoning. Is the property in a residential zone that begins with R-1, R-2, R-M, or PD? Or, regardless of zoning, is the property in one of the following General Plan designations:</p> <ul style="list-style-type: none"> - Residential Neighborhood or Mixed-Use Neighborhood or Mixed-Use Commercial - Urban Residential or Transit Residential or Rural Residential - Downtown or Urban Village <p>Find zoning designation: www.sjpermits.org Find General Plan designation: www.sanjoseca.gov/GPdesignation Questions on PD zones: Speak with a Planner at 408-535-3555 to learn about unique PD zones.</p> <p>> Outcome: If no, an ADU is not allowed. If yes, see the table below:</p> <table border="1"> <thead> <tr> <th>Property Type</th> <th>Qualifying Units</th> </tr> </thead> <tbody> <tr> <td>Single-family</td> <td>Subject to standards, one ADU and one JADU may be allowed -- see definitions, pages 2-4.</td> </tr> <tr> <td>Duplex or Multifamily</td> <td>Subject to standards (pages 2-4), two detached ADUs may be allowed. For a duplex, one attached ADU may also be allowed. For multifamily lots, a number of attached ADUs equivalent to up to 25% of existing units may also be allowed (for example, a building with 12 units may qualify for 3 attached ADUs).</td> </tr> </tbody> </table> | Property Type | Qualifying Units | Single-family | Subject to standards, one ADU and one JADU may be allowed -- see definitions, pages 2-4. | Duplex or Multifamily | Subject to standards (pages 2-4), two detached ADUs may be allowed. For a duplex, one attached ADU may also be allowed. For multifamily lots, a number of attached ADUs equivalent to up to 25% of existing units may also be allowed (for example, a building with 12 units may qualify for 3 attached ADUs). | | |
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| SECTION B. PROPERTY DESIGNATIONS | | | | | | | | |
| <p>2. Easements. Does the property have a dedicated easement? Easements are described in the title report that came with the purchase of your home. Contact a title company if you need to obtain a report. Tract and parcel maps may show easements, but may be less accurate than a title report. Find these maps at the County Surveyor Record Index tool at http://bit.ly/2ZhGjXc.</p> <p>> Outcome: If yes, you must comply with the requirements of the easements, which may include no construction allowed within the easement area.</p> | | | | | | | | |
| <p>3. Historic Designation. Is the property located in a Historic District identified on the California Register of Historic Resources? Find historic designations: www.sanjoseca.gov/HistoricResourcesInventory.</p> <p>> Outcome: If yes, simplified design standards will apply. Please speak with a Planner at 408-535-3555.</p> | | | | | | | | |
| <p>4. Geohazard Zone. Is the property in a designated “geohazard” or “landslide” zone? Find designations: www.sjpermits.org</p> <p>> Outcome: If yes, you will need a Geologic Hazard Clearance. Call Public Works at 408-535-7802 or email pwgeneralinfo@sanjoseca.gov</p> | | | | | | | | |
| <p>5. Flood Zones. Is the property in Flood Zones A, AE, AH, or AO? <i>Properties in D or X zones are excluded from these requirements.</i></p> <p>Find designation: www.sjpermits.org Questions: Call 408-535-7803 or email floodzoneinfo@sanjoseca.gov</p> <p>> Outcome: If yes, see flood zone design requirements in Bulletin #211-ADU Plan Requirements, found at www.sanjoseca.gov/home/showdocument?id=39040</p> | | | | | | | | |

continued >
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SECTION C. DEVELOPMENT STANDARDS - Per Municipal Code Section 20.30.150: <http://bit.ly/33Knz6c>

A great way to ensure your proposed ADU complies with the Zoning Code Development Standards is to meet with a City Planner. This free consultation can help you avoid designing plans that will NOT be approved. Come to the Permit Center and bring a completed Universal Checklist and a rough sketch of your property showing dimensions and the location of the main home and location of the proposed ADU. See full instructions for this consultation at www.sanjoseca.gov/ADUs.

QUESTION **YES** **NO**

6. Location. Is your proposed ADU located as follows?

| Property Type | Location Requirements |
|-----------------------|--|
| Single-Family | <p>Attached ADU: Must share a wall with main residence OR share a roof structure with main residence and be separated by no more than 10 feet. For an attached ADU in the front yard, the front door cannot be on same street-facing façade as that of the primary residence, with some exceptions (learn more by speaking with a Planner at 408-535-3555).</p> <p>Detached ADU: Must be in the rear yard or 45 feet from the front property line. Must have a minimum 6-foot separation from the main dwelling unit. May be a converted detached garage or accessory building OR may be built attached to a detached garage or accessory building.</p> <p>Junior Accessory Dwelling Unit (JADU): Must locate entirely within the main home’s existing footprint. You may have a JADU and a detached ADU. Both a JADU and attached ADU are not allowed.</p> |
| Duplex or Multifamily | <p>Attached ADU: Location is limited to a conversion of existing non-livable space, such as converting an attic, basement, garage, storage room, boiler room, or passageway.</p> <p>Detached ADU: Must be in the rear yard or 45 feet from the front property line, with a minimum 6-foot separation from the main building. The ADU may be a conversion of a detached garage or accessory building, or attached to a detached garage or accessory building.</p> <p>JADU: Not allowed.</p> |

> **Outcome:** If yes, your planned location for the ADU is in compliance. If no, your plans will not be approved.

7. Size. Is the size of the proposed ADU within the maximum limits as shown in the tables below AND does the proposed size account for the Rear Yard Coverage Limitation?

| SINGLE-FAMILY LOTS | | DUPLEX & MULTIFAMILY LOTS | |
|----------------------|--|---------------------------|------------------------------|
| Lot Size | Maximum Floor Area Allowed | Lot Size | Maximum Floor Area Allowed |
| Up to 9,000 sf | Detached ADU: 1,000 sf maximum | Any lot size | Detached ADU: 800 sf maximum |
| | Attached ADU: Size can be up to 800 sf OR up to 50% of the primary residence area without exceeding 1,000 sf. Example: For an 1,800 sf home, a 900 sf attached ADU is allowed. | | Attached ADU: 800 sf maximum |
| 9,000 sf and greater | Detached ADU: 1,200 sf maximum | | JADU: not allowed |
| | Attached ADU: Size can be up to 800 sf OR up to 50% of the primary residence area without exceeding 1,200 sf. Example: For an 2,400 sf home, a 1,200 sf attached ADU is allowed. | | |
| Any lot with a JADU | JADU: 500 sf maximum | | |
| | Detached ADU: 800 sf maximum | | |
| | Attached ADU: not allowed with a JADU | | |

How to calculate allowable square footage (sf):
The square footage of all living areas (existing or proposed) connected by a door or other opening counts toward the total allowable square footage of the ADU.

Rear Yard Coverage Limitation. The rear yard is the area that extends from the rear lot line to the rear of the main home across the full width of the lot. The cumulative coverage of the rear yard by structures — including coverage by the ADU, accessory buildings, sheds, gazebos, or other structures — may not exceed 40% of the rear yard or 800 sq.ft., whichever is greater. Does your project comply with this rule?

> **Outcome:** If yes, your ADU size is in compliance. If no, your plans will not be approved.

| QUESTION | YES | NO | | | | | | | | | | | | |
|--|---|-----------------------|---------------|---|-----------------------|---|-------------|---|---|------------------------------------|--|--|--|--|
| <p>8. Setbacks. Does your proposed ADU comply with these rules for setbacks?</p> <table border="1" data-bbox="168 205 1409 747"> <thead> <tr> <th data-bbox="168 205 370 233">Property Type</th> <th data-bbox="375 205 1409 233">Location Requirements</th> </tr> </thead> <tbody> <tr> <td data-bbox="168 239 370 415">Single-family</td> <td data-bbox="375 239 1409 415"> Attached ADU: Same setback requirements as apply to the main dwelling unit. Detached ADU: - Must be set back 45 feet minimum from front property line. - Rear/side setbacks less than 3 feet may be subject to fire mitigation measures, see p. 4. - A second story OR new ADU with greater than 40% rear yard coverage must be set back 4 feet from both rear and side property lines. </td> </tr> <tr> <td data-bbox="168 422 370 598">Duplex or Multifamily</td> <td data-bbox="375 422 1409 598"> Attached ADU: Setbacks not applicable as the attached ADU is limited to a conversion of existing non-livable space. Detached ADU: - Must be in the rear yard or 45 feet from the front property line. - Rear/side setbacks: Minimum 4 feet, allows for up to 1-foot projection for eaves - A second story must be set back 4 feet from both rear and side property lines. </td> </tr> <tr> <td data-bbox="168 604 370 632">Corner lots</td> <td data-bbox="375 604 1409 632">A 10-foot setback is required on the street side.</td> </tr> <tr> <td data-bbox="168 638 792 674">Lots ½ acre or greater along riparian corridors</td> <td data-bbox="797 638 1409 674">Minimum 100-foot setback required.</td> </tr> <tr> <td data-bbox="168 680 792 747">Decks, unenclosed entry landings, and second-story balconies</td> <td data-bbox="797 680 1409 747">Minimum 15-foot rear/side setback required. May not locate along building walls nearest to rear and side property lines.</td> </tr> </tbody> </table> <p>> Outcome: If yes, the setbacks for your ADU are in compliance. If no, your plans will not be approved.</p> | Property Type | Location Requirements | Single-family | Attached ADU: Same setback requirements as apply to the main dwelling unit. Detached ADU: - Must be set back 45 feet minimum from front property line. - Rear/side setbacks less than 3 feet may be subject to fire mitigation measures, see p. 4. - A second story OR new ADU with greater than 40% rear yard coverage must be set back 4 feet from both rear and side property lines. | Duplex or Multifamily | Attached ADU: Setbacks not applicable as the attached ADU is limited to a conversion of existing non-livable space. Detached ADU: - Must be in the rear yard or 45 feet from the front property line. - Rear/side setbacks: Minimum 4 feet, allows for up to 1-foot projection for eaves - A second story must be set back 4 feet from both rear and side property lines. | Corner lots | A 10-foot setback is required on the street side. | Lots ½ acre or greater along riparian corridors | Minimum 100-foot setback required. | Decks, unenclosed entry landings, and second-story balconies | Minimum 15-foot rear/side setback required. May not locate along building walls nearest to rear and side property lines. | | |
| Property Type | Location Requirements | | | | | | | | | | | | | |
| Single-family | Attached ADU: Same setback requirements as apply to the main dwelling unit. Detached ADU: - Must be set back 45 feet minimum from front property line. - Rear/side setbacks less than 3 feet may be subject to fire mitigation measures, see p. 4. - A second story OR new ADU with greater than 40% rear yard coverage must be set back 4 feet from both rear and side property lines. | | | | | | | | | | | | | |
| Duplex or Multifamily | Attached ADU: Setbacks not applicable as the attached ADU is limited to a conversion of existing non-livable space. Detached ADU: - Must be in the rear yard or 45 feet from the front property line. - Rear/side setbacks: Minimum 4 feet, allows for up to 1-foot projection for eaves - A second story must be set back 4 feet from both rear and side property lines. | | | | | | | | | | | | | |
| Corner lots | A 10-foot setback is required on the street side. | | | | | | | | | | | | | |
| Lots ½ acre or greater along riparian corridors | Minimum 100-foot setback required. | | | | | | | | | | | | | |
| Decks, unenclosed entry landings, and second-story balconies | Minimum 15-foot rear/side setback required. May not locate along building walls nearest to rear and side property lines. | | | | | | | | | | | | | |
| <p>9. Height. Does your proposed ADU comply with these height limitations?</p> <table border="1" data-bbox="168 869 1409 1083"> <thead> <tr> <th data-bbox="168 869 370 896">Property Type</th> <th data-bbox="375 869 1409 896">Location Requirements</th> </tr> </thead> <tbody> <tr> <td data-bbox="168 903 370 1003">Single-family</td> <td data-bbox="375 903 1409 1003"> Attached ADU: Same height limitations as apply to the main dwelling unit. Detached ADU: One story: 18 feet maximum. Two-story: 24 feet maximum If the property includes a JADU, height of a detached ADU is 16 feet maximum per state law. </td> </tr> <tr> <td data-bbox="168 1010 370 1083">Duplex or Multifamily</td> <td data-bbox="375 1010 1409 1083"> Attached ADU: Limited to a conversion of existing non-livable space and must maintain existing height. Detached ADU: 16 feet maximum per state law </td> </tr> </tbody> </table> <p>Outcome: If yes, the height of your ADU is in compliance. If no, your plans will not be approved.</p> | Property Type | Location Requirements | Single-family | Attached ADU: Same height limitations as apply to the main dwelling unit. Detached ADU: One story: 18 feet maximum. Two-story: 24 feet maximum If the property includes a JADU, height of a detached ADU is 16 feet maximum per state law. | Duplex or Multifamily | Attached ADU: Limited to a conversion of existing non-livable space and must maintain existing height. Detached ADU: 16 feet maximum per state law | | | | | | | | |
| Property Type | Location Requirements | | | | | | | | | | | | | |
| Single-family | Attached ADU: Same height limitations as apply to the main dwelling unit. Detached ADU: One story: 18 feet maximum. Two-story: 24 feet maximum If the property includes a JADU, height of a detached ADU is 16 feet maximum per state law. | | | | | | | | | | | | | |
| Duplex or Multifamily | Attached ADU: Limited to a conversion of existing non-livable space and must maintain existing height. Detached ADU: 16 feet maximum per state law | | | | | | | | | | | | | |
| <p>10. Sleeping Area. Up to two bedrooms are allowed, and the maximum bedroom size is 400 sf. Does the sleeping area or bedroom/s planned for the ADU or JADU comply with these standards?</p> <p>> Outcome: If yes, your layout for the sleeping area is allowed. If no, your plans will not be approved</p> | | | | | | | | | | | | | | |
| <p>11. Kitchen, Bathroom, Storage. Does your proposed ADU or JADU comply with these rules?</p> <p>Kitchen - ADUs must have a sink, food preparation counter, storage, cabinets, and permanent cooking facilities such as a range or cooktop and oven. JADUs may have the same OR a small efficiency kitchen with plug-in appliances.</p> <p>Bathroom/s - For ADUs, up to two bathrooms are allowed, requiring a sink, toilet, and shower and/or bath facilities. For JADUs, sharing the bathroom with the main residence is allowed or one bathroom or a half bathroom is allowed.</p> <p>Storage - A closet or other enclosed storage area cannot exceed 60 sq. ft.</p> <p>> Outcome: If yes, your design is in compliance. If no, your plans will not be approved.</p> | | | | | | | | | | | | | | |
| <p>12. Second Story Window Sill Height. Sill height for any openings must be a minimum 5 feet from the floor for walls nearest to rear and side property lines. Does your project comply with this rule?</p> <p>> Outcome: If yes, this window design is allowed. If no, the plans will not be approved.</p> | | | | | | | | | | | | | | |
| <p>13. Parking Requirements. Does your proposed ADU either provide a parking space OR qualify for an exemption?</p> <p>Exemptions: Many ADUs qualify for a parking exemption in accordance with state law. Please see the Parking Requirements page at www.sanjoseca.gov/ADUs for a list of the exemption criteria.</p> <p>Parking space location: If you are required to provide a parking space, it must be located on a surface free of mud or dust. It may be located within the front and side setbacks of the property, with a minimum driveway length of 18 feet.</p> <p>Parking requirements after a garage conversion: If you converted a garage to an ADU, replacement parking for the main home is no longer required.</p> <p>> Outcome: If yes, your proposed project is in compliance. If no, your plans will not be approved.</p> | | | | | | | | | | | | | | |

| SECTION D. FIRE SAFETY & EMERGENCY ACCESS | | |
|--|-----|----|
| We will review your ADU project for compliance with the California Fire Code (CFC) so that projects are built for safety and ease of access during an emergency. For questions, call the City's Fire Prevention Bureau: 408-535-7750 | | |
| QUESTION | YES | NO |
| <p>14. Hydrant Water Flow. Is a minimum flow of 1,000 gpm at 20 psi available at the closest hydrant? Ask your Water Company for this information. Send an email with "ADU WATER FLOW REQUEST" in the subject line and present this information:</p> <ul style="list-style-type: none"> ▪ Your name ▪ Street name and address of the project ▪ Nearest cross street to that location <p>Submit the letter from the Water Company that contains this water flow data with your building permit application. DON'T WAIT! A top reason for permit issuance delays is not having this letter. Your water company will respond, so contact them today. Find Water Company contact information at the ADU Fire Requirements webpage: https://www.sanjoseca.gov/business/development-services-permit-center/accessory-dwelling-units-adus/adu-fire-requirements</p> <p>> Outcome: If the flow is other than 1,000 gpm at 20 psi, Fire staff will review flow data and will evaluate if additional fire safety measures are required.</p> | | |
| <p>15. Hydrant Proximity. Are all exterior walls of the ADU within 600 feet of a fire hydrant?</p> <p>On the Site Plan Vicinity Map for plan submittal, mark one or more locations of fire hydrants closest to the project. Indicate the distance from the hydrant/s to the farthest exterior wall of the ADU, using the minimum 3-foot clear path of travel.</p> <p>> Outcome: If no, your project may require a Fire Variance that entails additional safety measures. Call 408-535-7750 for direction. Find the Variance application at: www.sanjoseca.gov/Home/ShowDocument?id=9343</p> | | |
| <p>16. Fire sprinklers. Is the primary residence protected by fire sprinklers?</p> <p>> Outcome: If yes, the ADU must have a fire sprinkler system.</p> | | |
| <p>17. Fire sprinklers and attached ADUs. Is the project an attached ADU greater than 500 square feet AND does the overall gross floor area with the main unit exceed 3,600 square feet?</p> <p>> Outcome: If yes, the entire house and ADU are required to be protected with a fire sprinkler system.</p> | | |
| <p>18. ADU Address. Does the ADU have its own address and is the address visible and legible from the street?</p> <p>Premises Identification guidelines: www.sanjoseca.gov/Home/ShowDocument?id=9323.</p> <p>On the Site Plan for plan submittal, show the address location on the primary dwelling unit and on the ADU.</p> <p>> Outcome: If no, please complete Form #302, found at: www.sanjoseca.gov/home/showdocument?id=25943</p> | | |
| <p>19. ADU Access. Is the distance from the street curb of the lot to all portions of the proposed ADU no greater than 200 feet as measured along a minimum 3-foot clear path to all sides of the ADU?</p> <p>On the Site Plan for plan submittal, show the distance along the minimum 3-foot clear path from the front property line to the ADU's farthest exterior side or projection (such as eaves), whichever is farthest.</p> <p>> Outcome: If no, your project may require a Fire Variance that entails additional safety measures. Call 408-535-7750 for direction. Find the Variance application at: www.sanjoseca.gov/Home/ShowDocument?id=9343</p> | | |
| SECTION E. MISCELLANEOUS | | |
| <p>20. Tree Removal. Will constructing an ADU require removal of an ordinance-size or heritage tree?</p> <p>> Outcome: If yes, please see the City's rules for removing trees: www.sanjoseca.gov/treepermit</p> | | |

ADU ALLY - HERE TO HELP YOU

Our ADU Ally is a staff member that will answer your questions; connect you to other staff who may be of assistance; and schedule your appointment for ADU plan submittal and review.

Email: adu.ally@sanjoseca.gov

Phone: 408-793-5302