



PUBLIC HEARING(S): November 5, 2019 and November 19, 2019

TO: Planning Commission

FROM: Rebecca Lowell, Development Services

SUBJECT: STAFF REPORT FOR AFFORDABLE HOUSING CODE AMENDMENTS (CA17-0008)

RECOMMENDED ACTION:

Staff recommends the Planning Commission (Commission) hold a public hearing on November 5, 2019 to listen to public testimony. Further, on November 19, 2019 staff recommends the Commission hold a second public hearing, take additional public testimony and then make a motion to approve the Affordable Housing Code amendments found in **Attachment 5** that are before the Commission.

INTRODUCTION/BACKGROUND:

Soon after adoption of the City's Comprehensive Plan (Plan) in late 2016 the City identified the need to adopt code amendments aimed at the creation of housing affordable to those earning 80% of the area median income and below. In 2017 the City started work on these code amendments and contracted with BERK consulting that kicked off this work program by conducting interviews with local housing stakeholders. **Attachment 1** of this memo is a summary of these interviews.

After the above-described interviews were complete BERK worked with City staff, the Commission and Council to refine the scope of the proposed code amendments. **Attachment 2** contains copies of the briefings provided by BERK and staff to the Commission and Council in late 2017 and early 2018. BERK also created a Memorandum to city staff containing code suggestions that is attached to this memo identified as **Attachment 3**.

Staff is aware that others have been critical of the City because the current code amendments were delayed from early 2018 to the present. In case the Commission has heard this same criticism staff feels compelled to provide details about the other housing work plan items that were adopted by the City from 2017 to the present that were all aimed at helping vulnerable populations and encouraging affordable housing.

- **Ordinances 3712, 3743, 3780, and 3790:** authorizing Permanent Supported Housing Facilities, Temporary Homeless Encampments, emergency cold weather shelters, and safe parking.
- **Ordinances 3748, 3749, and 3750:** adopted the South Kincaid Subarea Plan, rezoned 79 parcels and created a new zoning district. This new subarea and its associated regulations will lead to the creation of hundreds of new multi-family residential units that would otherwise not have been allowed. Increasing the City's supply of multi-family housing has been identified as an affordable housing issue.

- **Ordinance 3775:** adopted amendments to the C-3 and C-4 zones to remove the density limits for multi-family units in these zones. As stated above, increasing the City's supply of multi-family housing has been identified as an issue.
- **Ordinance 3754:** reducing traffic impact fees - ensuring city fees are as low as possible is important to the production of affordable housing.
- **Ordinance 3776:** revisions to procedural codes to allow electronic plan review - permit time frames are important when developers are trying to create affordable housing.

FINDINGS/CONCLUSIONS:

Attachment 4 to this memo includes three different research papers/reports documenting why it is so important for the City to require affordable housing units created through the code amendments before the Commission to remain affordable in perpetuity. Following are summary remarks from one of the referenced reports that staff hopes will resonate with the Commission:

Hickey, etal (2014) found that *“Declining federal funding for affordable housing programs will shift greater responsibility to states and localities to find innovative ways to meet local housing challenges...It is important to protect the public investment used to create affordable homes...by developing strategies to ensure the long-term affordability of the housing units and preserve affordable homeownership and rental opportunities for future generations” (p. 38).*

The procedural requirements for the code amendments before the Commission have been satisfied, specifically:

- A. The Department of Commerce was notified of the proposed amendments on September 26, 2019, an acknowledgement letter was received from Commerce dated October 2, 2019, and Commerce granted the City expedited review (their identification number: 2019-S-732); and as such, the City is in compliance with RCW 36.70A.106 (1).
- B. A SEPA Threshold Determination of Non-significance (DNS), non-project action, was issued on October 3, 2019 and published and routed to all applicable Federal, State, and Local Agencies, Utilities, and Tribes on October 7, 2019. The comment period for the DNS ended on October 21, 2019; and the appeal period for the DNS ended on October 31, 2019. There were no comments received or appeals filed.
- C. The requirements for public participation in the development of this amendment as required by the State Growth Management Act (GMA) and by the provisions of City of Mount Vernon Resolution No. 491 have all been met.

ATTACHED:

Attachment 1: Housing Stakeholder Interviews
 Attachment 2: Commission and Council Briefings
 Attachment 3: Housing Affordability Program Code Suggestions
 Attachment 4: Research to Support Permanent Affordable Housing Policies
 Attachment 5: Draft Code
 Attachment 6: Copies of Procedural Items

Housing Stakeholder Interviews

Mount Vernon Housing Code Amendments 2017

Interviews

Five interviews were held on September 25, 2017 with local housing stakeholders. BERK consulting introduced a series of questions related to the development of housing in Mount Vernon.

Questions for Developers/Builders:

- What kind of housing/development do you do now?
- Are you working in Mount Vernon now? Why or why not?
- What are the market trends and opportunities for housing development/construction in and around Mount Vernon?
- Would you ever consider trying a different housing market or housing product? What might influence your decision?
- In the communities in which you work do you ever use development tools or incentives offered by local government? Why or why not?
- Would you consider building affordable units as part of a future project?
- Is there anything that the City could do that would help you to include affordable units in your next project? (Here we can specifically ask about different incentives and bonuses)
- Would you ever consider partnering with a non-profit or public agency to build affordable housing?

Questions for Non-profit/Housing agencies:

- What is your role in housing development now?
- Are you working in Mount Vernon now? Why or why not?
- What do you see as the biggest gaps in the Mount Vernon housing market or housing supply?
- What needs to be done to fill the gaps you identified? Are there regulatory, geographical, or other solutions?
- In the communities in which you work do you ever use development tools or incentives offered by local government? Why or why not?
- Is there anything that the City could do that would help you to develop, construct, or manage your next project?

PARTICIPANTS

Paul Woodmansee – BYK Construction
Dave Prutzman – Samish Bay Land Company
Dan Mitzel – Hansel-Mitzel Homes
Jodi Monroe – Community Land Trust
Kent Haberly – Community Land Trust
Bill Henkel – Community Action
John J. Piazza – Piazza and Associates Consultants
Jay Manhas – JJ Place
Darren Bell – Bell and Sons Construction
Melissa Self – Skagit Council Housing
April Axthelm – Skagit Council Housing
Jim VanderMey – Skagit Council Housing
LuAnne Burkhart – Skagit Council Housing

Summary

This section summarizes the ideas presented by the participants in the interviews. The material is based on personal experiences and opinions. Since the interviews were conducted in five sessions, participants were not present to hear or respond to the input given by many of the other participants. There is no consensus opinion amongst the participants and some of the ideas presented may be in conflict. It is also worth noting that some participants held incorrect assumptions about the Mount Vernon Municipal Code. In such cases barriers were identified that do not exist. For example, participants mentioned allowing manufactured housing in the single-family zone and allowing multi-family uses in the C-1 zone. Yet both uses are allowed in the respective zones. The purpose of the interview summary is merely to report the results of the interviews.

Market Information

Mount Vernon is the residential center of Skagit County and its location makes it within acceptable commute distance of employment in Everett and even Seattle. The remaining land in Mount Vernon is not high quality and tends to be difficult to develop. The cost of development has many builders only looking at lots that are ready to go. They are not taking on development costs themselves. This has significantly slowed the pipeline of housing production in Mount Vernon.

There are areas of Mount Vernon that were suggested as good sites for new housing:

- Fairgrounds
- Area near Cleveland and Blackthorn (rehabilitation of housing)

Multi-family housing is a very hot market in the region. However, at the current densities, it is not

economically feasible in most circumstances in Mount Vernon. Higher density would allow fixed costs to be distributed across more units, thus making the units more affordable.

People making a median income cannot afford the median home price unless they have existing equity in a home. There are also few homes available to rent for families with modest incomes. There is demand for housing but the supply is limited.

For new construction of housing for people with incomes of 50% AMI or less, additional resources will be needed because it is very difficult to make that pencil.

Equity Considerations

The Latino community is disproportionately affected by the housing shortage. They have a strong sense of neighborhood and community and will double up to help prevent homelessness. This can create areas with tight density and neighborhoods with people of different classes and cultures, which is positive for the community. However, overcrowding also is subject to community bias and racism based on stereotypes.

Mount Vernon Code

There is a big increase in age-restricted senior housing because it has more relaxed requirements and does not pay as much in impact fees. This is an implicit incentive to develop age-restricted housing.

A mixed-use development on a two-acre lot in the Sedro Wooley CBD zone (equivalent to the Mount Vernon C-1 zone) produced 8,000 square feet of commercial and 48 residential units over three stories. These units are affordable at median income and could be developed as affordable to 80% AMI without additional bonuses. This is because the City of Sedro Wooley allowed increased density and relaxed parking requirements.

There were several suggestions for zoning changes that would make the development of new housing and affordable housing easier in Mount Vernon:

- Zoning changes:
 - Create more areas of multi-family zoning
 - Consider rezoning unused commercial parcels for multi-family use
 - Allow more mixed-use zoning
 - Allow additional uses in multi-family zones
 - Allow multi-family uses in the C-1 and C-2 zone
 - Allow horizontal mixed use (like Sedro Wooley)
 - Allow row houses, small lot single-family detached housing, co-op housing, zero lot line, cottages, compact housing types, ADUs, live-work units
 - Allow high end manufactured homes on single-family lots
- Density changes:
 - Allow additional density in all zones
 - Change the density calculation back to gross density not net density

- Consider the TDR program
- Allow densities of 45 units an acre and 6-10 stories in multi-family zones
- Density bonuses to consider:
 - If C-2 is a mixed-use zone (see above) allow density bonuses for commercial development on the ground floor
 - Allow increased density if development pays into an affordable housing fund (look at Burlington)
 - Density bonuses for setting aside land for the Community Land Trust or other affordable housing providers
 - Allow density bonuses for the percentage of affordable units in a project
- Development regulation and standards changes:
 - Reduce setbacks for buildings as they get taller, instead of the opposite
 - Allow smaller yards and setbacks
 - Consider relaxing development standards for infill projects
 - Reduce landscaping requirements and pay extra parks fee or fee in lieu
 - Allow fee-in-lieu for park requirements
 - Eliminate requirement for two car garage in R-2 and R-3 zones
 - Examine and reduce parking requirements
 - Eliminate requirements or incentives that involve structured parking
 - Reduce regulations on mobile home parks
 - Examine street standards and the costs to implement them
 - Examine conflicting requirements, e.g. street standards require more ROW but stormwater standards require less impervious surface
 - Adjustments to the clearing code, which is seen as costly and puts too much decision making to the arborist
 - Examine the costs associated with energy regulations
- Fee adjustments:
 - Allow impact fee waivers and fee reductions for affordable housing
 - Allow on-site improvements that will result in waived impact fees
 - Reduce impact fees for multi-family units and for smaller unit types like townhomes

Permit Streamlining

Permit streamlining was very important to many participants. Suggested ways to improve the permit

process included:

- Reduce the number of review processes that projects must go through
- Examine the land use approval process for efficiencies
- Examine the design standards process for efficiencies
- Reduce permitting requirements for home rehabilitation
- Consider developing templates for certain housing types that could have reduced review
- Add additional staff to help process permits
- Develop checklists for the whole process
- Estimate permitting fees up front for the whole process
- Create a guide to development and building, perhaps on video
- Develop a process so people with unique ideas can get approval without a code amendment
- Ensure that there is plenty of notice and opportunity to comment on regulation changes.

Supporting Affordable Housing Creation

Non-profit and affordable housing providers need land and cash most of all. Free or cheap land that is zoned and ready for housing is most needed. Zoning should be in the range of 20-50 units an acre. Inexpensive bank-owned lands are harder to come by now that the economy is recovered. Cash is needed to build the development itself.

Sources of support for affordable housing creation include:

- City money (from REET2) to pay impact fees
- Federal funds and HUD money, CDBG funds
- Donations of land and money
- Low Income Housing Tax Credits
- Working with builders who are willing to work at cost instead of at a profit
- Property tax levy (look at how Bellingham does it)
- HomeFirst (a successful housing trust fund model in Portland)
- Socially-minded investors willing to put at least 1/3 of the money down for a project
- The City supporting an embedded social worker to help with case management for special populations

Affordable housing should be located throughout the city, but located where there is transit and City services.

The City could act as an advocate by convening those interested in creating affordable housing and working on creating partnerships in the local community and in the region. It should also support land use changes for projects, such as Mount Vernon Manor, that would create affordable housing.

Community Land Trust would consider buying substandard homes and rehabilitating them, which would avoid impact fee costs, but they would need a partner or funding source to help them to the rehabilitation work.

Community Land Trust, Community Action, and Skagit Council Housing have all managed affordable housing in the past or present.

Next Steps

Based on the *Approaches to Housing Affordability* memo from August 2017 and input from the stakeholder interviews, the following code review is recommended:

- Examine densities in residential zones
- Allow and encourage a variety of housing types
- Examine regulations on manufactured housing and mobile home parks
- Consider reduced or flexible standards for infill development
- Identify regulations or standards that may be relaxed (or processes streamlined) for the development of affordable housing such as parking, landscaping, setbacks, height, design, etc.
- Look at the development of templates to improve permitting for ADUs
- Identify fee waivers or reductions that might be considered for affordable housing
- Look at impact fee reductions based on the size of the unit
- Examine density bonuses for affordable housing including land set-asides, fee-in-lieu, or on-site construction of affordable units
- Consider ways in which an affordable housing program could generate land or cash for non-profits to develop and build affordable housing projects in Mount Vernon
- Identify a management process for ensuring that affordable units will remain affordable

The following review could be tabled for the 2018-2020 review of increasing market rate housing production:

- Review the City zoning map to look for areas that can be rezoned for multi-family zoning
- Consider provisions for multi-family and mixed-use development in commercial zones
- Review how density is calculated
- Consider density bonuses for mixed use development
- Examine TDR program
- Look at the costs associated with development standards such as street standards, stormwater standards, land clearing, or energy codes
- Examine permit streamlining efforts



DEVELOPMENT SERVICES

*Public Meeting
Affordable Housing Code Amendments
December 19, 2017*



PRESENTATION SUMMARY

Affordable Housing Code Amendments, CA17-005

1. Introductions (R. Lowell)
2. Background and Framework (R. Lowell)
3. Work To-Date (E. Rhett)
4. Case Studies (E. Rhett)
5. Recommendations for Mount Vernon (E. Rhett)
6. Next Steps (E. Rhett)
7. Q & A with Commission

Introductions

Affordable Housing Code Amendments, CA17-005



Erika Rhett, AICP



Erika is a Senior Land Use Planner with more than 14 years of experience working in the public sector. Her experience is in comprehensive planning, rural lands, and shoreline master programs.

Prior to joining BERK, she worked as a Senior Planner at the City of Bellevue. Erika served as the Outreach Plan Manager for the Comprehensive Plan Update completed in 2015. For the City of Renton, she managed the VISION 2040 Award-winning Sunset Area Community Planned Action EIS. This Plan was NEPA and SEPA compliant, and won the 2013 Governor's Smart Communities Award.

Erika has presented at numerous APA and other land use planning conferences since 2012. She has been published by the APA Urban Design and Preservation Division, and has led conference sessions and webinars on a variety of topics.

Background

Affordable Housing Code Amendments, CA17-005



1

REDUCE SPRAWL

2

PROTECT CRITICAL AREAS

3

PROMOTE ECONOMIC GROWTH

4

COORDINATE PLANNING

City's 1st Comprehensive Plan: 1960

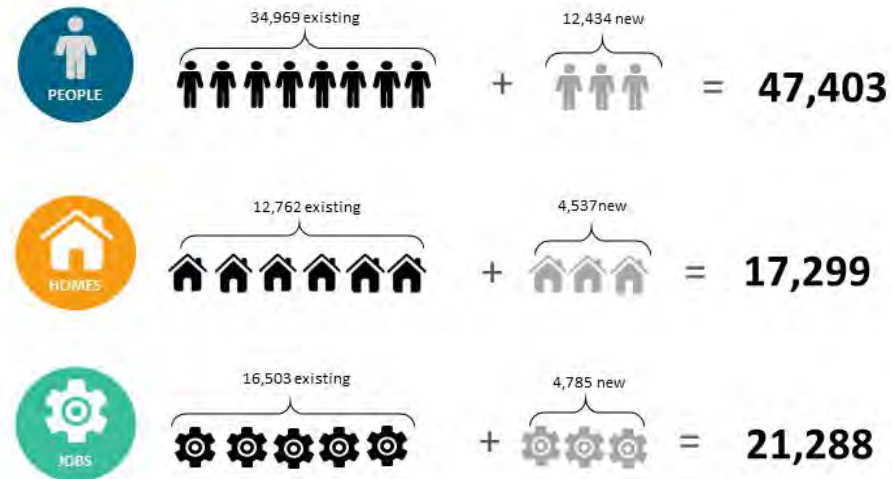
1990/1991: Growth Management

Background

Affordable Housing Code Amendments, CA17-005

20-Year Planning
Horizons (2016 to 2036)

Update Every 8-Years
(2016)



Do we have enough land for
homes and jobs?

Will our roads support this many
new vehicles?

Do we have a range of
housing options? Housing
affordability?



Do we have capacity in our utilities?
Can we provide police and fire services?

GMA Comprehensive Planning

ISSUE IDENTIFIED: HOUSING AFFORDABILITY

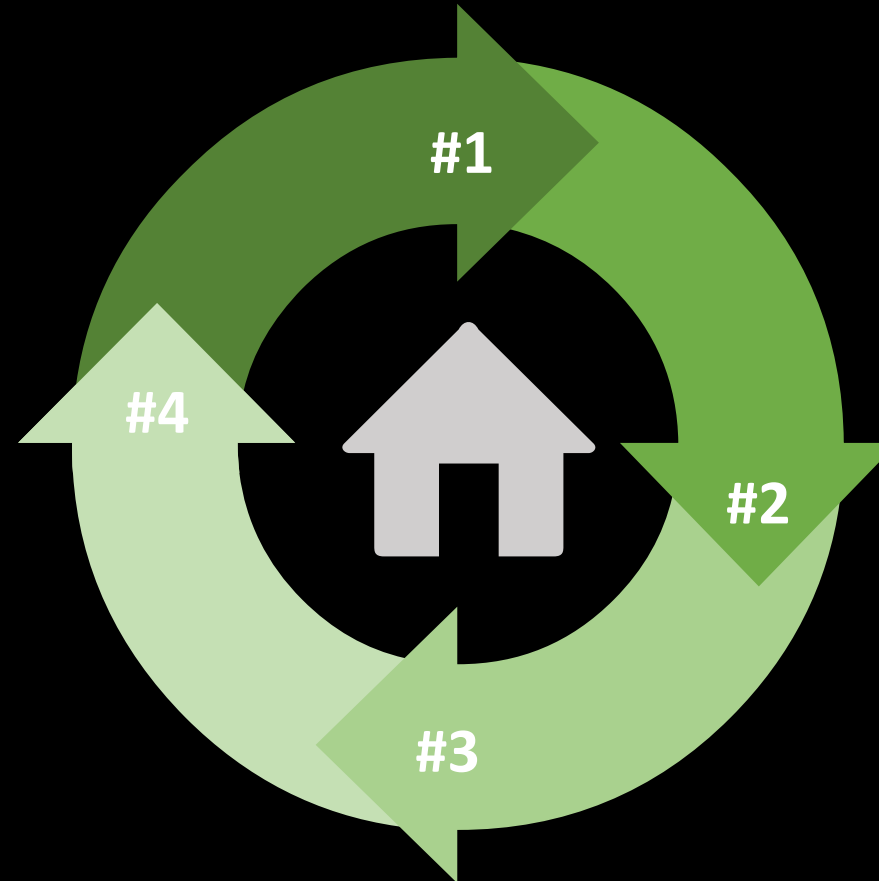
#1 DEFINE THE PROBLEM

“Well defined problems lead to breakthrough solutions”. Problems need to be critically analyzed and clearly articulated. A poorly defined problem is much more difficult to solve!

High Housing Costs &
Too Little Income.

#4 PLAN OF ACTION/IMPLEMENTATION

Plan of Action = Goals, Objectives & Policies within Comprehensive Plan
Implementation = changes to city regulations



#2 ANALYZE THE PROBLEM

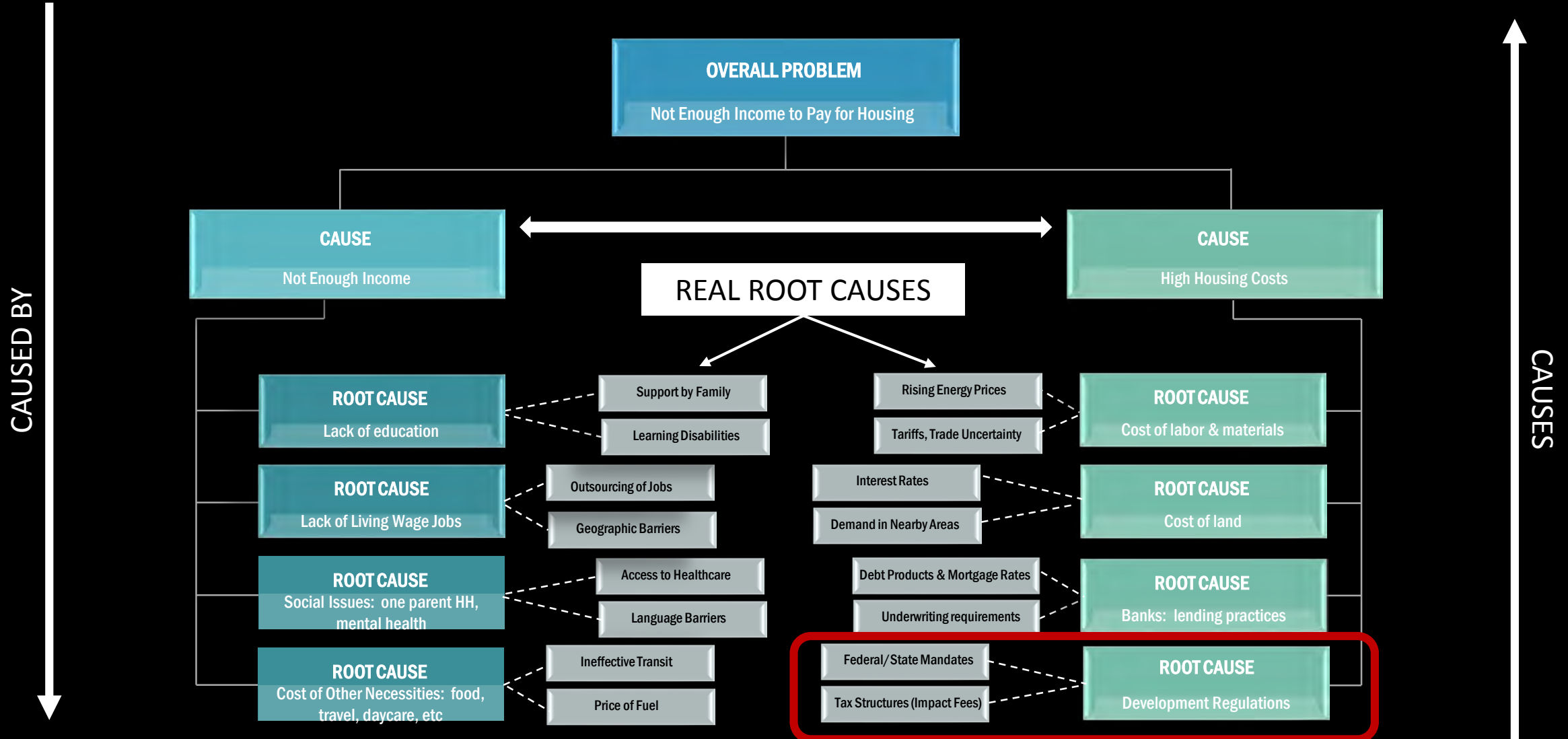
Gather accurate, reliable information....and keep asking the “but why” questions, analyze “root” causes
Restraining Forces = keep the situation the same
Driving Forces = what is pushing the situation to change

Housing Element contains this analysis.

#3 IDENTIFY & CHOOSE SOLUTIONS

Need to identify targets and understand what your organization can actually change. What is within our sphere of influence?
Think like a doctor: the cause of a problem is almost never where the symptom shows up....find the cause and fix it – you can’t fix a symptom.

AFFORDABLE HOUSING – A WICKEDLY COMPLEX PROBLEM



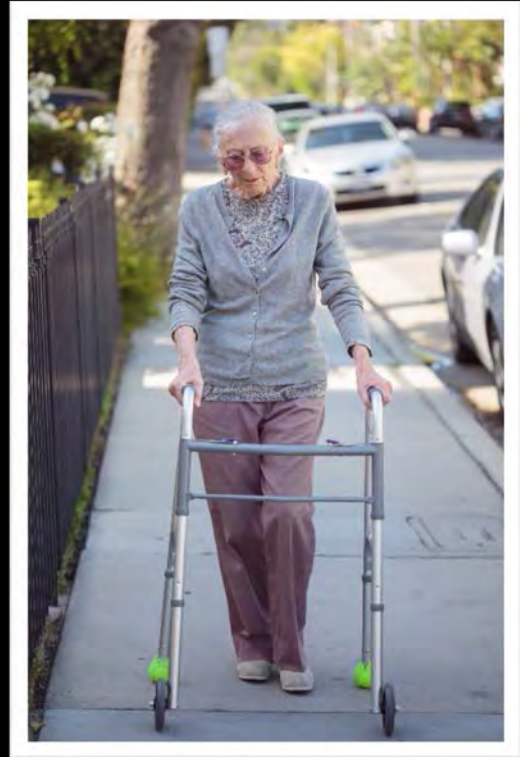
Housing Affordability

Housing is defined as unaffordable when more than 30% of an individual's (or families) income is spent on housing. Relationship of two variables: income and housing cost.



Family of 4 has a
yearly income of
\$100,000.00

Affordable housing
to them would be
\$2,500.00/month
for housing



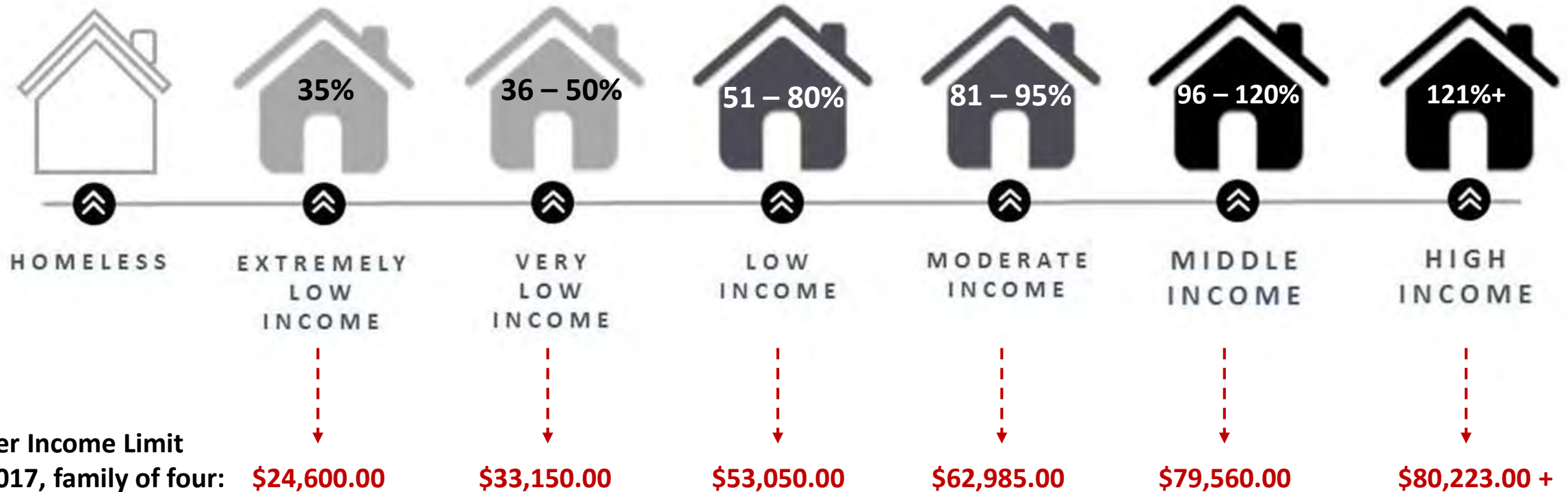
Single woman has a
yearly income of
\$18,000.00

Affordable housing
to her would be
\$450.00/month for
housing

Housing Affordability

ATTACHMENT 2: POSTAFF REPORT

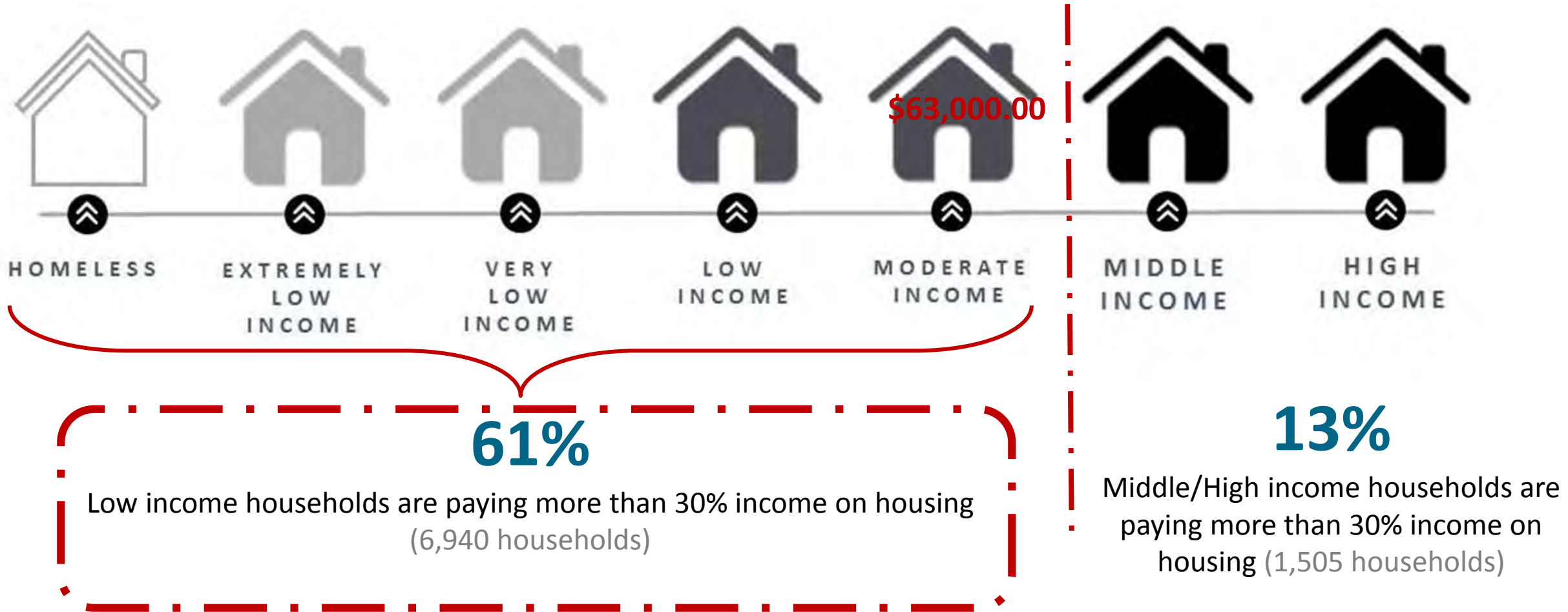
2017 Skagit County Area Median Income (AMI): **\$66,300.00** *(family of four)*



Housing Affordability

ATTACHMENT 2: POSTAFF REPORT

HUD data (2014): 11,308 occupied dwelling units



26% Middle income and paying 30% of income on housing (or less)

Housing Affordability

61% =

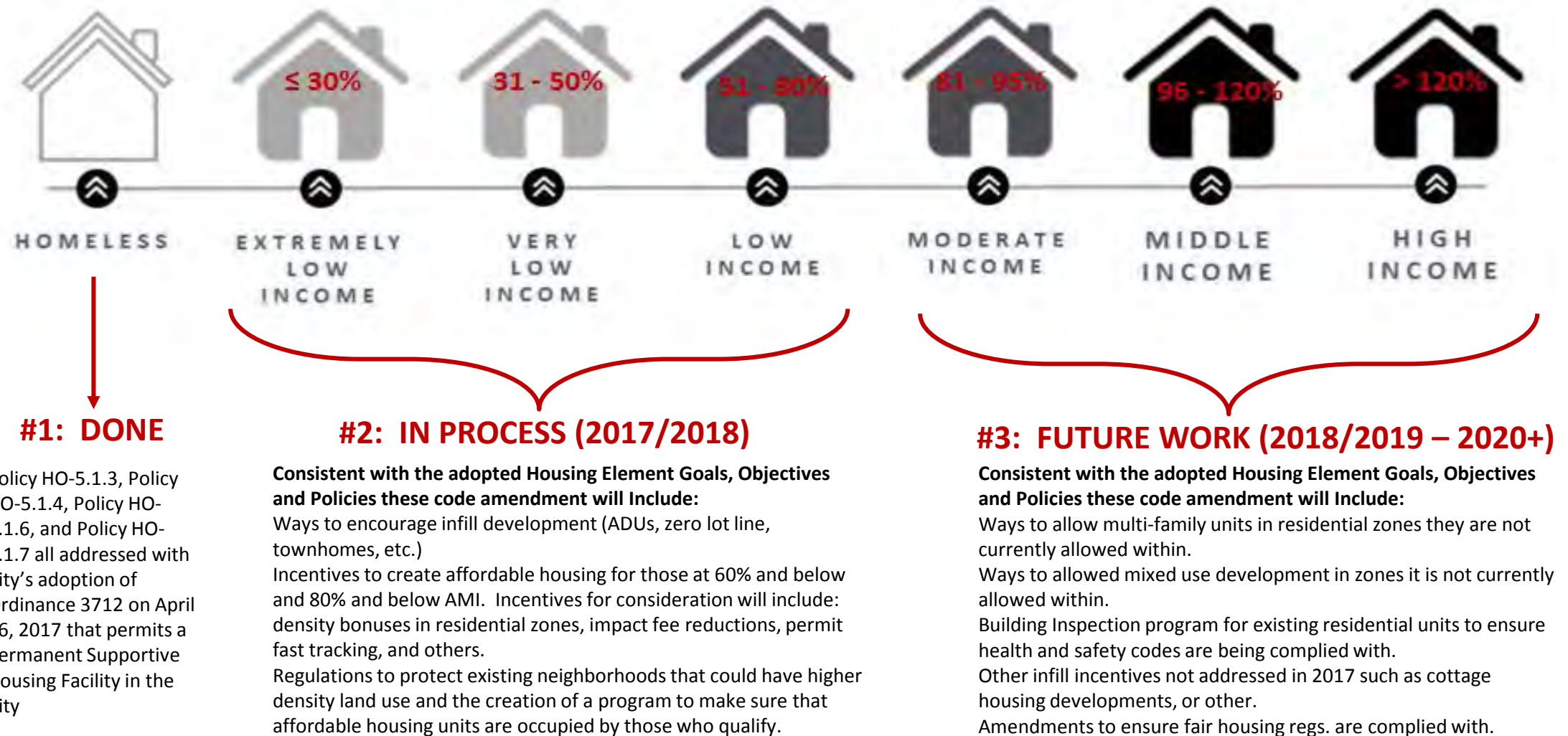


84% of Mount Vernon's
Affordable Housing Problem
(5,825 households)

16% of Mount Vernon's
Affordable Housing Problem
(1,115 households)

47% of the 84% is 50%
AMI and below

Comprehensive Plan Implementation Strategy



Work to Date

Work on Affordable Housing

- Comprehensive Plan Update – Housing Element
- Approaches to Housing Affordability Memo
 - Reviews City Policy and Examines Case Studies on:
 - Diversity of Housing Types
 - Affordable Housing Programs
 - Management of Affordable Housing
- Stakeholder Interviews with Developers and Non-Profits
 - What is needed to create affordable housing in Mount Vernon?
 - Offered ideas on codes, policies, permitting processes, and economic considerations

Capacity Analysis

- Part of the Comprehensive Plan Update
- Indicates that more than 2/3 of new development will occur through large development and infill
- Suggests that affordability may require a two-pronged approach

Category of Development	# of Units Created within the Development	% of Future Unit Creation (not including UGAs)
Infill	1 to 9	27%
Small Developments	10 to 25	13%
Medium Developments	26 to 100	18%
Large Developments	100 or more	42%

Two Approaches for Affordability

Density Bonuses

- Recommended by developers and non-profits in the stakeholder interviews
- Typically works well on larger projects
- Allows costs to be spread among a greater number of homes
- Works well in markets with high land costs, high home prices/rents and a shortage of affordable housing
- Most likely to produce housing affordable at targeted levels (80% or 60% AMI)

Infill Housing

- No or lower costs related to infrastructure development
- Provides housing affordable at market rates
- Relies on diverse, often smaller, housing types to meet community needs

Density Bonuses - Case Studies

Federal Way

- 10% Density Bonus for Affordable Housing
- Must be for 80% AMI or below for home ownership units; 50% AMI or below for rental units
- Requires affordability to be in place through a covenant that lasts the life of the project
- Allows lots with affordable units to be reduced by 20% in size
- Straight forward, easy to administer
- Probably not enough bonus for Mount Vernon

RESIDENTIAL ZONING DISTRICTS	EXISTING DENSITY REQUIREMENTS		10% DENSITY BONUS
	MINIMUM	MAXIMUM	
R-1, 4.0, Single-Family Residential	4.0 du/acre	4.54 du/acre	4.99 du/acre
R-1, 5.0, Single-Family Residential	4.0 du/acre	5.73 du/acre	6.30 du acre
R-1, 7.0, Single-Family Residential	4.0 du/acre	7.26 du/acre	7.99 du/acre
Duplex and Townhouse (R-2)	8.0 du/acre	10.0 du/acre	11 du/acre
Multi-Family (R-3)	10.0 du/acre	12.0 du/acre - or - 15 du/acre if 50% of required parking located beneath the habitable floors of the building	13.2 du/acre - or - 16.5 du/acre if 50% of required parking located beneath the habitable floors of the building
Multi-Family (R-4)	10.0 du/acre	15.0 du/acre - or - 20 du/acre if 50% of required parking located beneath the habitable floors of the building	16.5 du/acre - or - 22 du/acre if 50% of required parking located beneath the habitable floors of the building

Poulsbo

- 20% Density Bonus for Affordable Housing if at least 10% affordable to low incomes
- 25% Density Bonus for Affordable Housing if at least 15% affordable to low incomes
- Requires affordability to be in place through a covenant that requires the City to review the sale or lease of the unit to verify affordability requirements are met
- 25% bonus does not provide additional incentive

RESIDENTIAL ZONING DISTRICTS	EXISTING DENSITY REQUIREMENTS		20% DENSITY BONUS	25% DENSITY BONUS
	MINIMUM	MAXIMUM		
R-1, 4.0, Single-Family Residential	4.0 du/acre	4.54 du/acre	5.45 du/acre	5.68 du/acre
R-1, 5.0, Single-Family Residential	4.0 du/acre	5.73 du/acre	6.88 du/acre	7.16 du/acre
R-1, 7.0, Single-Family Residential	4.0 du/acre	7.26 du/acre	8.71 du/acre	9.08 du/acre
Duplex and Townhouse (R-2)	8.0 du/acre	10.0 du/acre	12 du/acre	12.5 du/acre
Multi-Family (R-3)	10.0 du/acre	12.0 du/acre - or - 15 du/acre if 50% of required parking located beneath the habitable floors of the building	14.4 du/acre - or - 18 du/acre if 50% of required parking located beneath the habitable floors of the building	15 du/acre - or - 18.75 du/acre with 50% of required parking located beneath the habitable floors pf the building
Multi-Family (R-4)	10.0 du/acre	15.0 du/acre - or - 20 du/acre if 50% of required parking located beneath the habitable floors of the building	18 du/acre - or - 24 du/acre if 50% of required parking located beneath the habitable floors of the building	18.75 du/acre - or - 25 du/acre if 50% of required parking located beneath the habitable floors of the building

Kirkland

- 10% inclusionary requirement
- 2 market rate units for each affordable unit when affordable units exceed 25% of the project
- Maximum bonus density 50%
- ARCH manages housing
- Allows fee-in-lieu payment
- Complex system
- Largest bonus studied – may be needed in that market

RESIDENTIAL ZONING DISTRICTS	EXISTING DENSITY REQUIREMENTS		DENSITY BONUS
	MINIMUM	MAXIMUM	
R-1, 4.0, Single-Family Residential	4.0 du/acre	4.54 du/acre	6.83 du/acre maximum
R-1, 5.0, Single-Family Residential	4.0 du/acre	5.73 du/acre	8.6 du/acre maximum
R-1, 7.0, Single-Family Residential	4.0 du/acre	7.26 du/acre	10.89 du/acre maximum
Multi-Family (R-3)	10.0 du/acre	12.0 du/acre - or - 15 du/acre if 50% of required parking located beneath the habitable floors of the building	18 du/acre maximum - or - 22.5 du/acre maximum with parking located beneath the habitable floors of the building
Multi-Family (R-4)	10.0 du/acre	15.0 du/acre - or - 20 du/acre if 50% of required parking located beneath the habitable floors of the building	22.5 du/acre maximum with parking located beneath the habitable floors of the building 30 du/acre maximum with parking located beneath the habitable floors of the building

Ellensburg

- One market rate unit for each affordable unit up to 50% bonus density
- Must be affordable at 80% AMI
- Requires covenant in place for 25 years
- Easy to administer
- Would be a significant increase in density in Mount Vernon's single-family zones

RESIDENTIAL ZONING DISTRICTS	EXISTING DENSITY REQUIREMENTS		50% DENSITY BONUS
	MINIMUM	MAXIMUM	
R-1, 4.0, Single-Family Residential	4.0 du/acre	4.54 du/acre	6.81 du/acre
R-1, 5.0, Single-Family Residential	4.0 du/acre	5.73 du/acre	8.60 du/acre
R-1, 7.0, Single-Family Residential	4.0 du/acre	7.26 du/acre	10.89 du/acre
Duplex and Townhouse (R-2)	8.0 du/acre	10.0 du/acre	15 du/acre
Multi-Family (R-3)	10.0 du/acre	12.0 du/acre - or - 15 du/acre if 50% of required parking located beneath the habitable floors of the building	18 du/acre - or - 22.5 du/acre if 50% of required parking located beneath the habitable floors of the building
Multi-Family (R-4)	10.0 du/acre	15.0 du/acre - or - 20 du/acre if 50% of required parking located beneath the habitable floors of the building	22.5 du/acre - or - 30 du/acre if 50% of required parking located beneath the habitable floors of the building

Recommendation for Mount Vernon

Mount Vernon

- Easy to administer - One market rate unit for each affordable unit
- Provide an incentive for moderate and low incomes – requires half of the bonus to be 60% AMI or below, other half up to 80% AMI
- Preserves distinction between single-family zones with a higher maximum bonus density in denser zones

RESIDENTIAL ZONING DISTRICTS	EXISTING DENSITY REQUIREMENTS		MINIMUM LOT SIZE	SUGGESTED MAXIMUM DENSITY INCREASE
	MINIMUM	MAXIMUM		
R-1, 4.0, Single-Family Residential	4.0 du/acre	4.54 du/acre	7,500 s.f.	5.45 du/acre (20% total)
R-1, 5.0, Single-Family Residential	4.0 du/acre	5.73 du/acre	6,000 s.f.	6.88 du/acre (20% total)
R-1, 7.0, Single-Family Residential	4.0 du/acre	7.26 du/acre	4,500 s.f.	9.44 du/acre (30% total)
Duplex and Townhouse (R-2)	8.0 du/acre	10.0 du/acre	6,500 s.f. for a duplex or townhouse unit	14.0 du/acre (40% total)
Multi-Family (R-3)	10.0 du/acre	15 du/acre*	N/A [#]	22.5 du/acre (50% total)
Multi-Family (R-4)	10.0 du/acre	20 du/acre*	N/A [#]	30 du/acre (50% total)

* Maximum density may only be achieved so long as 50% or more of the required parking spaces are located in an enclosed area beneath the habitable floors of the building.

[#] The lot must be of sufficient size to support the density, setbacks, parking, landscaping, infrastructure, and any other items required to comply with the City's development regulations.

RESIDENTIAL ZONING DISTRICTS	MAXIMUM EXISTING DENSITY	MAXIMUM SUGGESTED DENSITY	TOTAL UNITS UNDER EXISTING CODE	TOTAL UNITS UNDER SUGGESTED CODE
R-1, 4.0, Single-Family Residential	4.54 du/acre	5.45 du/acre (20% total)	31 units	38 units 34 market rate units 4 total affordable units (at least 2 affordable at 60% AMI or less)
R-1, 5.0, Single-Family Residential	5.73 du/acre	6.88 du/acre (20% total)	40 units	48 total units consisting of: 44 market rate units 4 total affordable units (at least 2 affordable at 60% AMI or less)
R-1, 7.0, Single-Family Residential	7.26 du/acre	9.44 du/acre (30% total)	50 units	66 total units consisting of: 58 market rate units 8 total affordable units (at least 4 affordable at 60% AMI or less)
Duplex and Townhouse (R-2)	10.0 du/acre	14.0 du/acre (40% total)	70 units	98 total units consisting of: 84 market rate units 14 total affordable units (at least 7 affordable at 60% AMI or less)
Multi-Family (R-3)	15 du/acre*	22.5 du/acre (50% total)	105 units	157 total units consisting of: 131 market rate units 26 total affordable units (at least 13 affordable at 60% AMI or less)
Multi-Family (R-4)	20 du/acre*	30 du/acre (50% total)	140 units	210 total units consisting of: 175 market rate units 35 total affordable units (at least 17 affordable at 60% AMI or less)

10 gross acres
7 net acres

Infill Housing – Code Recommendations

- Uses – allow duplexes, ADUs, cottage housing, zero lot line homes, small lot single-family as a permitted use in a greater variety of residential zones
 - ❑ Allow duplexes as permitted outright in the R-1 zone, but require compliance with all single-family development standards
 - ❑ Allow ADUS in R-2, R-3, R-4 zones
 - ❑ Allow cottage housing in R-1 and R-2 zones, limit size and scale but allow additional density
 - ❑ Allow zero lot line and small lot single-family in the R-2 zone
- Development standards – need some flexibility to support infill development, similar to the 20% modification already allowed for ADUs
- Design standards – these should be performance based and focus on scale, landscaping, and site planning

Implementation Considerations

- Impact fee reductions, particularly for units at 60% AMI or less
- Allow fee-in-lieu, can consolidate funds for non-profit housing development
- Program Management
 - Must be affordable for 50 years
 - Require a covenant
 - Enforcement options:
 - Compliance review conducted by the City
 - Contracted management with non-profit or private agency

Next Steps

Next Steps

- Need confirmation of direction on incentives and infill housing
- Need preferences for program management and implementation considerations
- This addresses only the creation of affordable housing, market rate housing will be reviewed in 2018-2020

Questions & Comments



DEVELOPMENT SERVICES

*Public Meeting
Affordable Housing Code Amendments
January 17, 2018*



PRESENTATION SUMMARY

Affordable Housing Code Amendments, CA17-005

1. Introductions (R. Lowell)
2. Set the Stage (R. Lowell)
3. Work To-Date – Case Studies (E. Rhett)
4. Recommendations for Mount Vernon (E. Rhett)
5. Next Steps (E. Rhett)
6. Q & A with Commission

Introductions

Affordable Housing Code Amendments, CA17-005



Erika Rhett, AICP



Erika is a Senior Land Use Planner with more than 14 years of experience working in the public sector. Her experience is in comprehensive planning, rural lands, and shoreline master programs.

Prior to joining BERK, she worked as a Senior Planner at the City of Bellevue. Erika served as the Outreach Plan Manager for the Comprehensive Plan Update completed in 2015. For the City of Renton, she managed the VISION 2040 Award-winning Sunset Area Community Planned Action EIS. This Plan was NEPA and SEPA compliant, and won the 2013 Governor's Smart Communities Award.

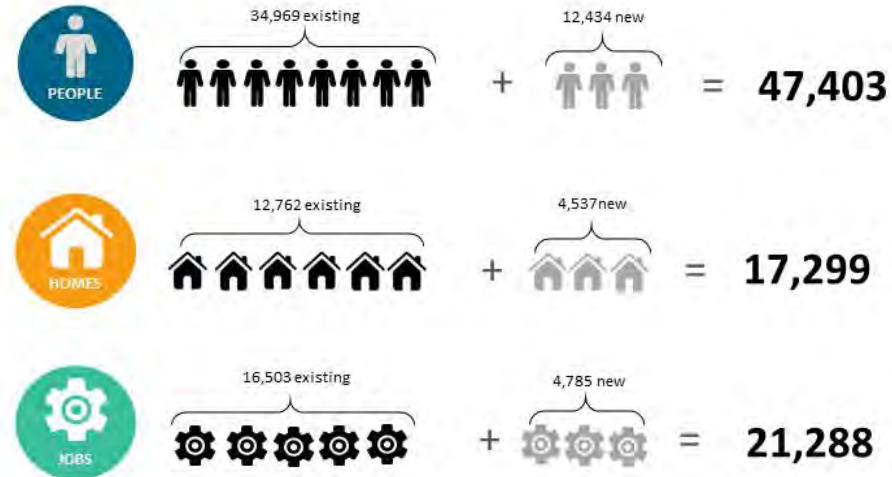
Erika has presented at numerous APA and other land use planning conferences since 2012. She has been published by the APA Urban Design and Preservation Division, and has led conference sessions and webinars on a variety of topics.

Setting the Stage

Affordable Housing Code Amendments, CA17-005

2016 completed our 8-Year Comp. Plan Update

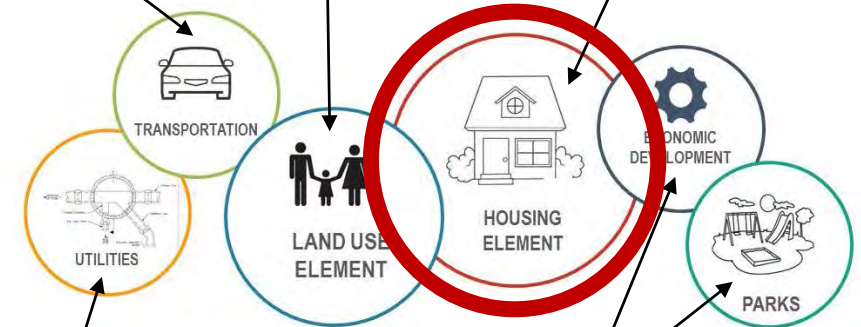
20-Year Planning Horizons
(2016 to 2036)



Will our roads support this many new vehicles?

Do we have enough land for homes and jobs?

Do we have a range of housing options? Housing affordability?



Do we have capacity in our utilities?
Can we provide police and fire services?

Can we balance jobs and homes?
Do we have enough land for parks?

GMA Comprehensive Planning

ISSUE IDENTIFIED: HOUSING AFFORDABILITY

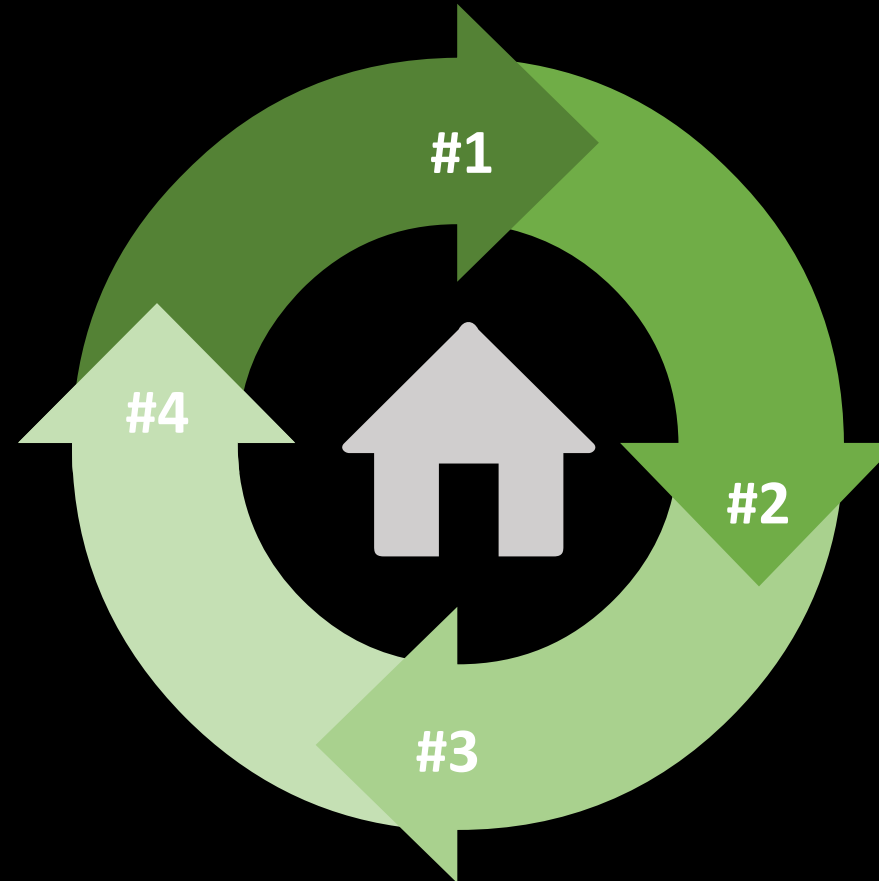
#1 DEFINE THE PROBLEM

“Well defined problems lead to breakthrough solutions”. Problems need to be critically analyzed and clearly articulated. A poorly defined problem is much more difficult to solve!

High Housing Costs &
Too Little Income.

#4 PLAN OF ACTION/IMPLEMENTATION

Plan of Action = Goals, Objectives & Policies within Comprehensive Plan
Implementation = changes to city regulations



#2 ANALYZE THE PROBLEM

Gather accurate, reliable information....and keep asking the “but why” questions, analyze “root” causes

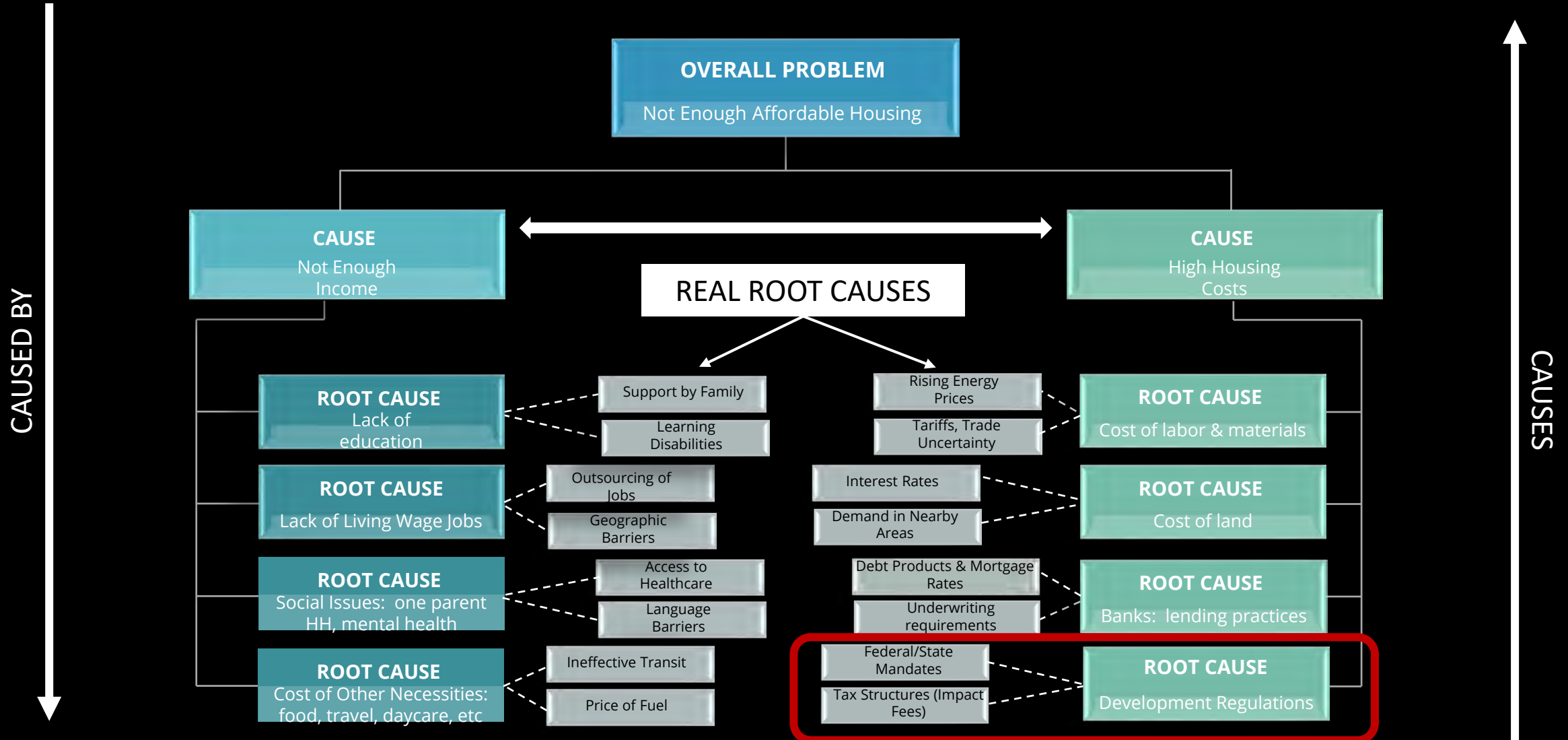
Housing Element contains this analysis.

#3 IDENTIFY & CHOOSE SOLUTIONS

You have to understand what your organization can actually change. What is within our sphere of influence?

Think like a doctor: the cause of a problem is almost never where the symptom shows up....find the cause and fix it – you can’t fix a symptom.

AFFORDABLE HOUSING – A WICKEDLY COMPLEX PROBLEM



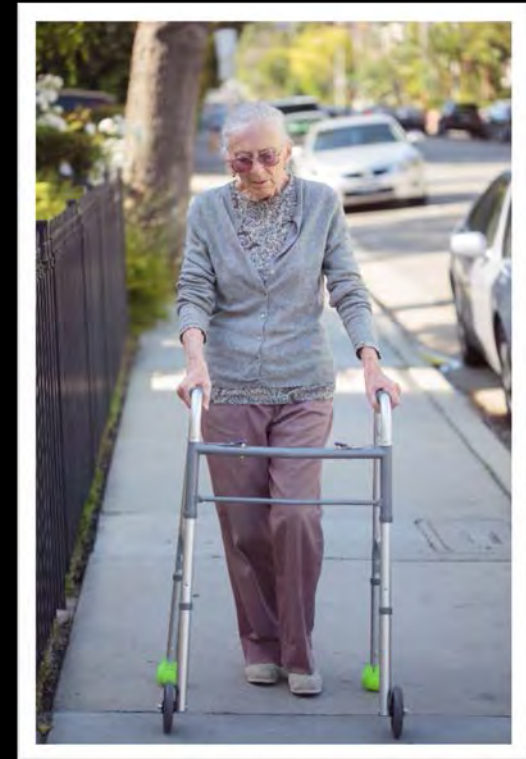
Housing Affordability

Housing is defined as unaffordable when more than 30% of an individual's (or families) income is spent on housing. Relationship of two variables: income and housing cost.



Family of 4 has a
yearly income of
\$100,000.00

Affordable housing
to them would be
\$2,500.00/month
for housing



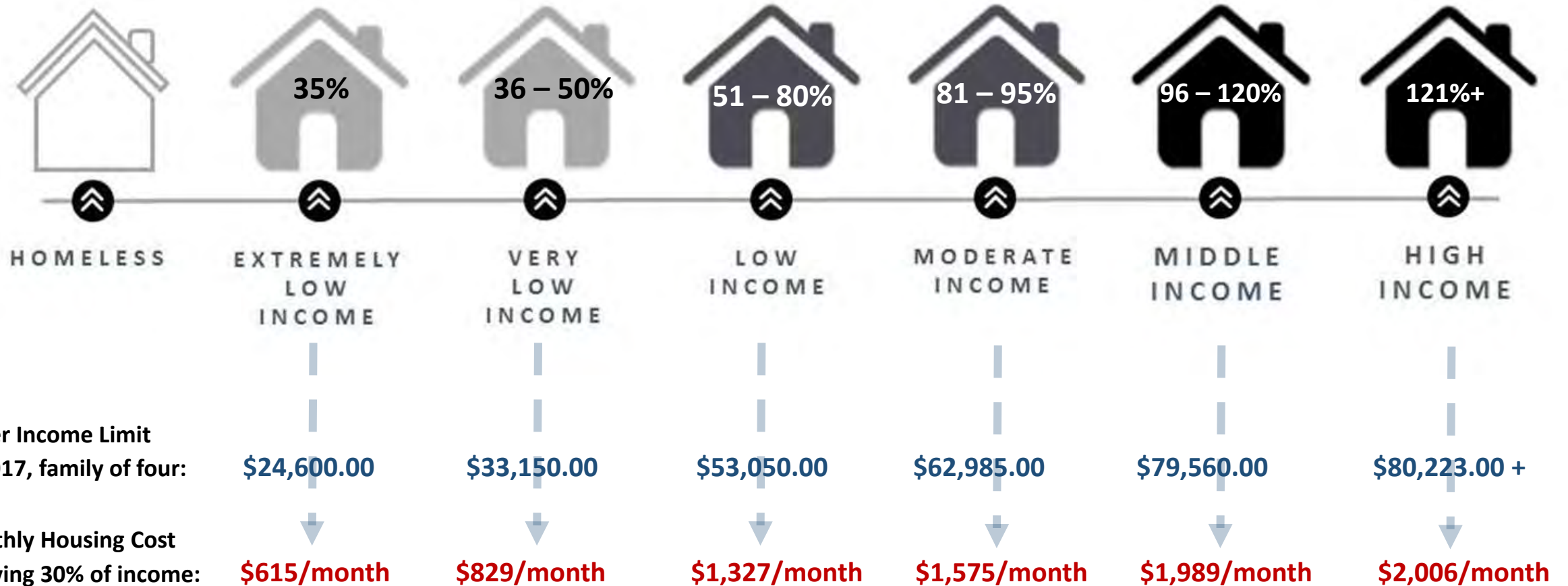
Single woman has a
yearly income of
\$18,000.00

Affordable housing
to her would be
\$450.00/month for
housing

Housing Affordability

ATTACHMENT 2: POSTAFF REPORT

2017 Skagit County Area Median Income (AMI): **\$66,300.00** *(family of four)*



Housing Affordability

ATTACHMENT 2: POSTAFF REPORT

HUD data (2014): 11,308 occupied dwelling units



61%

- Low income households are paying more than 30% income on housing (6,940 households)

26%

Middle income and paying 30% of income on housing (or less)



13%

- Middle/High income households are paying more than 30% income on housing (1,505 households)

Housing Affordability

61% =

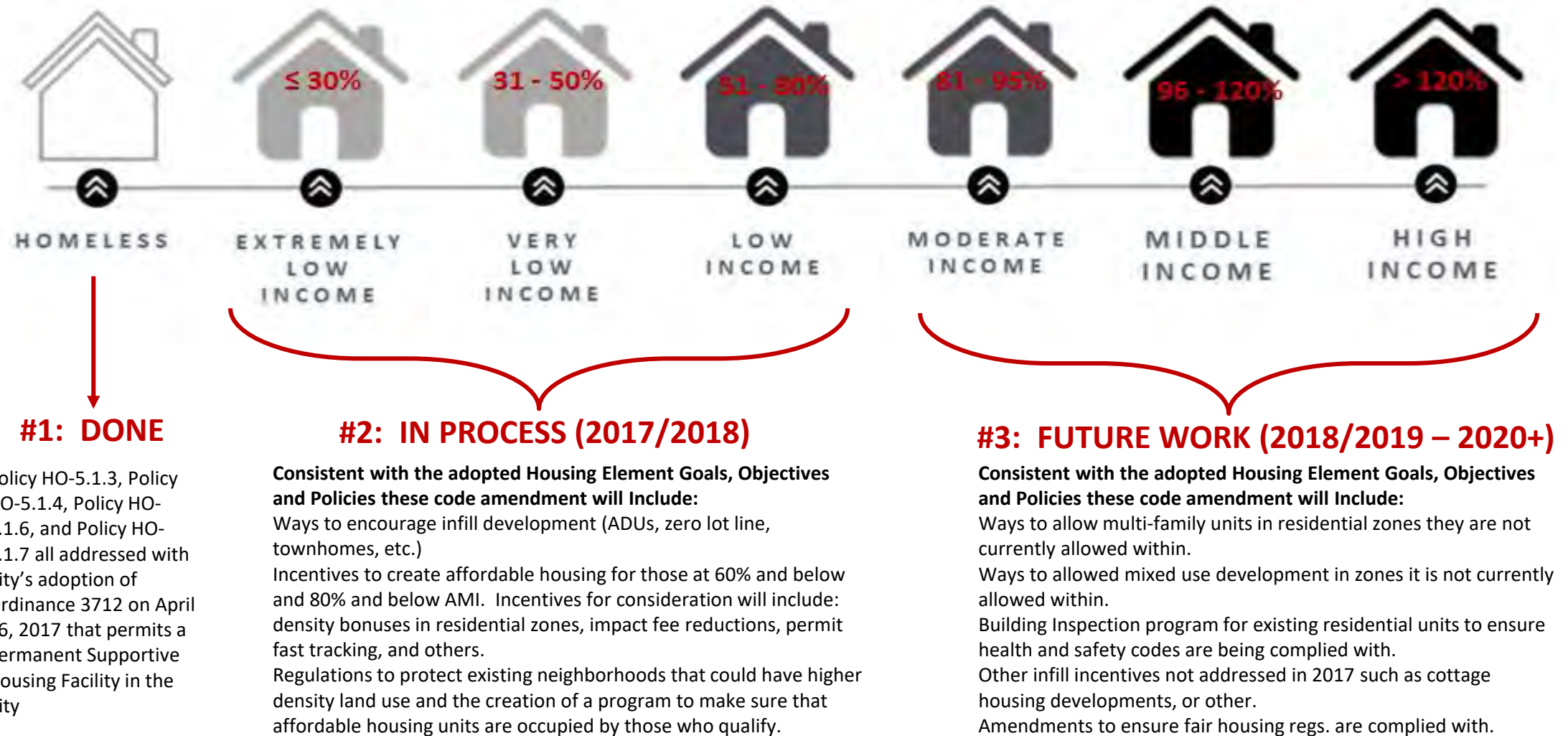


84% of Mount Vernon's
Affordable Housing Problem
(5,825 households)

16% of Mount Vernon's
Affordable Housing Problem
(1,115 households)

47% of the 84% is 50%
AMI and below

Comprehensive Plan Implementation Strategy



Work on Affordable Housing to Date

- Comprehensive Plan Update – Housing Element
- Approaches to Housing Affordability Memo
 - Reviews City Policy and Examines Case Studies on:
 - Diversity of Housing Types
 - Affordable Housing Programs
 - Management of Affordable Housing
- Stakeholder Interviews with Developers and Non-Profits
 - What is needed to create affordable housing in Mount Vernon?
 - Offered ideas on codes, policies, permitting processes, and economic considerations
- Planning Commission Briefing

Two Approaches for Affordability

Density Bonuses

- Recommended by developers and non-profits in the stakeholder interviews
- Typically works well on larger projects
- Allows costs to be spread among a greater number of homes
- Works well in markets with high land costs, high home prices/rents and a shortage of affordable housing
- Most likely to produce housing affordable at targeted levels (80% or 60% AMI)

Infill Housing

- No or lower costs related to infrastructure development
- Provides housing affordable at market rates
- Relies on diverse, often smaller, housing types to meet community needs

Density Bonus Case Studies

Federal Way – 10% bonus, maximum 80% AMI for ownership, 50% AMI for rental

Poulsbo – 20% bonus for 10% affordable, 25% bonus for 15% affordable

Kirkland- bonus system is supplemental to inclusionary requirements, allows two market rate units for each affordable unit, up to 50% bonus, but complicated system where lower income units count for more

Ellensburg- allows one market rate unit for each affordable unit, up to 50% bonus

Lessons Learned

- A straight forward, easy-to-administer code is needed
- Should include an affordability covenant
- Should consider incentives that support housing at 50% AMI or lower
- Need a bonus that provides enough incentive, but preserves the distinctiveness of the residential zones
- Consider a fee-in-lieu option
- Review development standards to see if adjustments need to be made to accommodate development with a full bonus

Recommendation for Mount Vernon

- Easy to administer - One market rate unit for each affordable unit
- Provide an incentive for moderate and low incomes – requires half of the bonus to be 60% AMI or below, other half up to 80% AMI
- Preserves distinction between single-family zones with a higher maximum bonus density in denser zones

RESIDENTIAL ZONING DISTRICTS	EXISTING DENSITY REQUIREMENTS		MINIMUM LOT SIZE	SUGGESTED MAXIMUM DENSITY INCREASE
	MINIMUM	MAXIMUM		
R-1, 4.0, Single-Family Residential	4.0 du/acre	4.54 du/acre	7,500 s.f.	5.45 du/acre (20% total)
R-1, 5.0, Single-Family Residential	4.0 du/acre	5.73 du/acre	6,000 s.f.	6.88 du/acre (20% total)
R-1, 7.0, Single-Family Residential	4.0 du/acre	7.26 du/acre	4,500 s.f.	9.44 du/acre (30% total)
Duplex and Townhouse (R-2)	8.0 du/acre	10.0 du/acre	6,500 s.f. for a duplex or townhouse unit	14.0 du/acre (40% total)
Multi-Family (R-3)	10.0 du/acre	15 du/acre*	N/A [#]	22.5 du/acre (50% total)
Multi-Family (R-4)	10.0 du/acre	20 du/acre*	N/A [#]	30 du/acre (50% total)

* Maximum density may only be achieved so long as 50% or more of the required parking spaces are located in an enclosed area beneath the habitable floors of the building.

[#] The lot must be of sufficient size to support the density, setbacks, parking, landscaping, infrastructure, and any other items required to comply with the City's development regulations.

RESIDENTIAL ZONING DISTRICTS	MAXIMUM EXISTING DENSITY	MAXIMUM SUGGESTED DENSITY	TOTAL UNITS UNDER EXISTING CODE	TOTAL UNITS UNDER SUGGESTED CODE
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10 gross acres
7 net acres

Infill Housing – Code Recommendations

- Uses – allow duplexes, ADUs, cottage housing, zero lot line homes, small lot single-family as a permitted use in a greater variety of residential zones
 - ❑ Allow duplexes as permitted outright in the R-1 zone, but require compliance with all single-family development standards
 - ❑ Allow ADUS in R-2, R-3, R-4 zones
 - ❑ Allow cottage housing in R-1 and R-2 zones, limit size and scale but allow additional density
 - ❑ Allow zero lot line and small lot single-family in the R-2 zone
- Development standards – need some flexibility to support infill development, similar to the 20% modification already allowed for ADUs
- Design standards – these should be performance based and focus on scale, landscaping, and site planning

Implementation Considerations

- Impact fee reductions, particularly for units at 60% AMI or less
- Allow fee-in-lieu, can consolidate funds for non-profit housing development
- Program Management
 - Must be affordable for 50 years
 - Require a covenant
 - Enforcement options:
 - Compliance review conducted by the City
 - Contracted management with non-profit or private agency

Next Steps

- Need confirmation of direction on incentives and infill housing
- Need preferences for program management and implementation considerations
- This addresses only the creation of affordable housing, market rate housing will be reviewed in 2018-2020

Questions & Comments

Capacity Analysis & Case Study Details (if needed)

Capacity Analysis

- Part of the Comprehensive Plan Update
- Indicates that more than 2/3 of new development will occur through large development and infill
- Suggests that affordability may require a two-pronged approach

Category of Development	# of Units Created within the Development	% of Future Unit Creation (not including UGAs)
Infill	1 to 9	27%
Small Developments	10 to 25	13%
Medium Developments	26 to 100	18%
Large Developments	100 or more	42%

Federal Way

- 10% Density Bonus for Affordable Housing
- Must be for 80% AMI or below for home ownership units; 50% AMI or below for rental units
- Requires affordability to be in place through a covenant that lasts the life of the project
- Allows lots with affordable units to be reduced by 20% in size
- Straight forward, easy to administer
- Probably not enough bonus for Mount Vernon

RESIDENTIAL ZONING DISTRICTS	EXISTING DENSITY REQUIREMENTS		10% DENSITY BONUS
	MINIMUM	MAXIMUM	
R-1, 4.0, Single-Family Residential	4.0 du/acre	4.54 du/acre	4.99 du/acre
R-1, 5.0, Single-Family Residential	4.0 du/acre	5.73 du/acre	6.30 du acre
R-1, 7.0, Single-Family Residential	4.0 du/acre	7.26 du/acre	7.99 du/acre
Duplex and Townhouse (R-2)	8.0 du/acre	10.0 du/acre	11 du/acre
Multi-Family (R-3)	10.0 du/acre	12.0 du/acre - or - 15 du/acre if 50% of required parking located beneath the habitable floors of the building	13.2 du/acre - or - 16.5 du/acre if 50% of required parking located beneath the habitable floors of the building
Multi-Family (R-4)	10.0 du/acre	15.0 du/acre - or - 20 du/acre if 50% of required parking located beneath the habitable floors of the building	16.5 du/acre - or - 22 du/acre if 50% of required parking located beneath the habitable floors of the building

Poulsbo

- 20% Density Bonus for Affordable Housing if at least 10% affordable to low incomes
- 25% Density Bonus for Affordable Housing if at least 15% affordable to low incomes
- Requires affordability to be in place through a covenant that requires the City to review the sale or lease of the unit to verify affordability requirements are met
- 25% bonus does not provide additional incentive

RESIDENTIAL ZONING DISTRICTS	EXISTING DENSITY REQUIREMENTS		20% DENSITY BONUS	25% DENSITY BONUS
	MINIMUM	MAXIMUM		
R-1, 4.0, Single-Family Residential	4.0 du/acre	4.54 du/acre	5.45 du/acre	5.68 du/acre
R-1, 5.0, Single-Family Residential	4.0 du/acre	5.73 du/acre	6.88 du/acre	7.16 du/acre
R-1, 7.0, Single-Family Residential	4.0 du/acre	7.26 du/acre	8.71 du/acre	9.08 du/acre
Duplex and Townhouse (R-2)	8.0 du/acre	10.0 du/acre	12 du/acre	12.5 du/acre
Multi-Family (R-3)	10.0 du/acre	12.0 du/acre - or - 15 du/acre if 50% of required parking located beneath the habitable floors of the building	14.4 du/acre - or - 18 du/acre if 50% of required parking located beneath the habitable floors of the building	15 du/acre - or - 18.75 du/acre with 50% of required parking located beneath the habitable floors pf the building
Multi-Family (R-4)	10.0 du/acre	15.0 du/acre - or - 20 du/acre if 50% of required parking located beneath the habitable floors of the building	18 du/acre - or - 24 du/acre if 50% of required parking located beneath the habitable floors of the building	18.75 du/acre - or - 25 du/acre if 50% of required parking located beneath the habitable floors of the building

Kirkland

- 10% inclusionary requirement
- 2 market rate units for each affordable unit when affordable units exceed 25% of the project
- Maximum bonus density 50%
- ARCH manages housing
- Allows fee-in-lieu payment
- Complex system
- Largest bonus studied – may be needed in that market

RESIDENTIAL ZONING DISTRICTS	EXISTING DENSITY REQUIREMENTS		DENSITY BONUS
	MINIMUM	MAXIMUM	
R-1, 4.0, Single-Family Residential	4.0 du/acre	4.54 du/acre	6.83 du/acre maximum
R-1, 5.0, Single-Family Residential	4.0 du/acre	5.73 du/acre	8.6 du/acre maximum
R-1, 7.0, Single-Family Residential	4.0 du/acre	7.26 du/acre	10.89 du/acre maximum
Multi-Family (R-3)	10.0 du/acre	12.0 du/acre - or - 15 du/acre if 50% of required parking located beneath the habitable floors of the building	18 du/acre maximum - or - 22.5 du/acre maximum with parking located beneath the habitable floors of the building
Multi-Family (R-4)	10.0 du/acre	15.0 du/acre - or - 20 du/acre if 50% of required parking located beneath the habitable floors of the building	22.5 du/acre maximum with parking located beneath the habitable floors of the building 30 du/acre maximum with parking located beneath the habitable floors of the building

Ellensburg

- One market rate unit for each affordable unit up to 50% bonus density
- Must be affordable at 80% AMI
- Requires covenant in place for 25 years
- Easy to administer
- Would be a significant increase in density in Mount Vernon's single-family zones

RESIDENTIAL ZONING DISTRICTS	EXISTING DENSITY REQUIREMENTS		50% DENSITY BONUS
	MINIMUM	MAXIMUM	
R-1, 4.0, Single-Family Residential	4.0 du/acre	4.54 du/acre	6.81 du/acre
R-1, 5.0, Single-Family Residential	4.0 du/acre	5.73 du/acre	8.60 du/acre
R-1, 7.0, Single-Family Residential	4.0 du/acre	7.26 du/acre	10.89 du/acre
Duplex and Townhouse (R-2)	8.0 du/acre	10.0 du/acre	15 du/acre
Multi-Family (R-3)	10.0 du/acre	12.0 du/acre - or - 15 du/acre if 50% of required parking located beneath the habitable floors of the building	18 du/acre - or - 22.5 du/acre if 50% of required parking located beneath the habitable floors of the building
Multi-Family (R-4)	10.0 du/acre	15.0 du/acre - or - 20 du/acre if 50% of required parking located beneath the habitable floors of the building	22.5 du/acre - or - 30 du/acre if 50% of required parking located beneath the habitable floors of the building

MEMORANDUM

DATE: December 12, 2017

TO: Rebecca Lowell, Mount Vernon City Planner

FROM: Erika Rhett, Senior Associate, BERK

RE: Housing Affordability Program Code Suggestions

INTRODUCTION

Mount Vernon is the residential center of Skagit County and an attractive community in which to live. Yet, the production of housing in the city is not keeping up with demand. As housing becomes harder to secure and more expensive, families are paying larger portions of their incomes toward rents and mortgages. According to the Comprehensive Plan, more than a third of households spend more than 30% of their income on housing, which is the state and national benchmark of affordability. Mount Vernon also has the highest rate of overcrowding in Skagit County.

The local development community indicates that there are several likely reasons for the slowed pipeline of housing in Mount Vernon. They cited factors such as physical constraints, density limits, development regulations, and permitting issues. Additionally, the development of housing affordable to those at 80% of the AMI (area median income) comes with additional financing considerations.

In 2016 the City adopted a new Housing Element into the Comprehensive Plan that included several Goals, Objectives and Policies regarding affordable housing. The City's implementation strategy for these Goals, Objectives and Policies directs the adoption of code amendments aimed at helping those with the least resources first. As such, the code amendments BERK was retained to assist the City with involve improving housing affordability with the following two approaches:

- Increase the production of housing affordable to those at 80% of the AMI and below through incentive-based requirements that include tracking programs to ensure that affordable housing remains affordable for at least 50-years.
- Increase the production of infill housing in residential zones.

To facilitate these approaches, this memo looks at three areas: bonus densities, infill housing, and other factors to implement affordable housing in Mount Vernon.

WORK TO DATE

In March BERK produced a memo on approaches to housing affordability. This memo outlined the policy support in the Comprehensive Plan for making the housing more affordable in Mount Vernon by increasing the diversity of housing types and developing an affordable housing program. It lists best practices, approaches other communities have used, and information about managing affordable housing.

Following this work, BERK held a series of interviews with local housing stakeholders, including market-rate developers and builders and non-profits working to support affordable housing. The interviews sought to better understand the housing market in Mount Vernon and the potential barriers to housing affordability. It gathers a list of recommendations for reviewing development regulations and zoning designations, as well as looking at fees and permit streamlining. A full write up of the Housing Stakeholder Interviews can be found attached to this memo.

Capacity Analysis

One component of the City's adopted Land Use Element of the Comprehensive Plan is a Buildable Lands & Land Capacity Analysis. The Capacity Analysis is developed in support of the Comprehensive Plan and, among other things, analyzes and quantifies the number of additional dwelling units that could be created City-wide. As part of this effort BERK asked City staff to summarize how many future dwelling units are expected to be developed by development type. This aids in understanding how much land may be available for different types of developments ranging from small in-fill and very large planned developments. The table below provides details regarding how each of these categories are defined and the percent of future development anticipated to be created within each of the identified categories.

Exhibit 1. Capacity for Development by Development Type

Category of Development	# of Units Created within the Development	% of Future Unit Creation (not including UGAs)
Infill	1 to 9	27%
Small Developments	10 to 25	13%
Medium Developments	26 to 100	18%
Large Developments	100 or more	42%

Source: City of Mount Vernon, 2017

This analysis found that within City limits future residential development is anticipated to be almost equally split between infill and small developments (total of 40%) and large developments (42%) over the planning horizon. Between these two extremes, 18% of future residential development is anticipated to create a range of 26 to 100 lots each. This data supports the two-pronged approach to housing affordability that looks at creating opportunities for both infill housing and integrating affordability into larger housing developments.

DENSITY BONUSES

Outreach to for-profit and non-profit developers and builders in Mount Vernon revealed that one of the most desired changes is to allow increases in density. Additional density will help make new development more financially feasible, particularly for affordable housing. Remaining land in Mount Vernon is difficult to develop due to natural features like topography or critical areas, as well as economic features such as the cost of extending utilities and services. Spreading costs across a greater number of units lowers the overall cost of each home.

Density bonuses allow developers to build at higher densities than normally allowed in a zone if they provide affordable housing units. The additional density is intended to offset the cost of the affordable units with revenues from the additional market rate units, so the value of the bonus should be greater than the cost of providing the affordable units. Density bonuses work best in strong housing markets with high land costs, high home prices, and high market rents where local government has identified a shortage of affordable housing for low and/or moderate-income households. In other communities, density bonuses are very attractive when housing developers desire additional density. Mount Vernon's housing market is characterized by many of these factors, which makes it a favorable environment for the use of density bonuses.

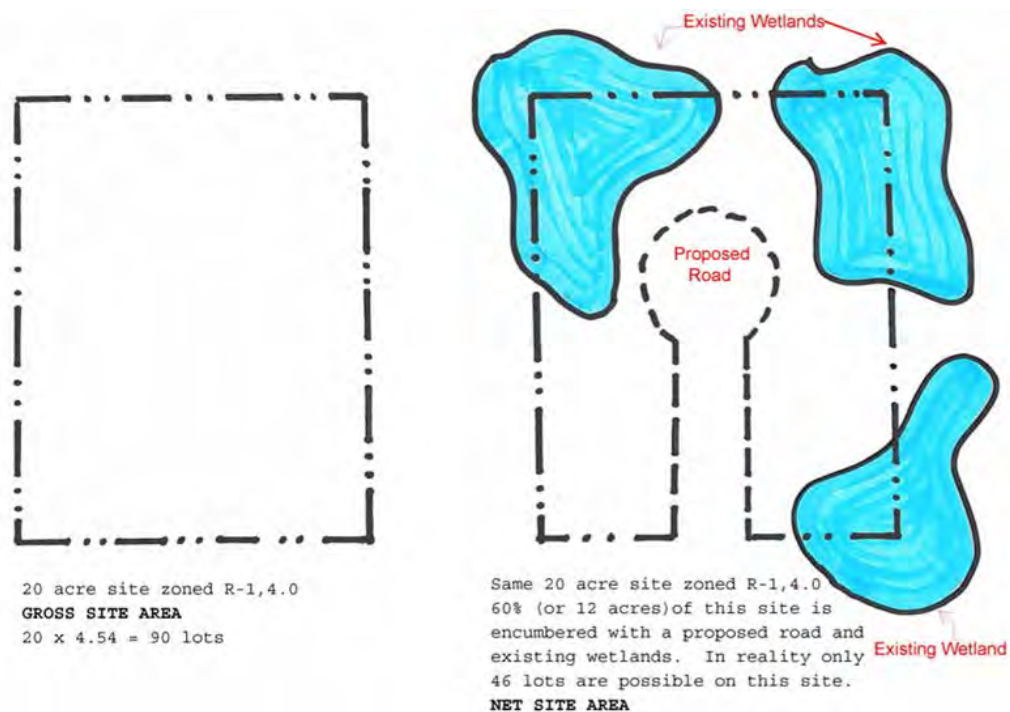
Density Calculations

Density is defined the number of dwelling units per acre. Mount Vernon's Comprehensive Plan and municipal code both use net density calculations because it is more accurate and reinforces to property owners and developers that they need to be aware that infrastructure is required to serve new development and if critical areas are found on/near a site the intensity of future development will be impacted.

Non-buildable areas such as public streets, open water, critical areas (such as wetlands), and their buffers are excluded from a gross acreage calculation to get net acreage. Net acreage is multiplied by the maximum number of lots allowed by zoning to get the maximum net density.

Exhibit 2 illustrates how net density is calculated.

Exhibit 2. Gross Versus Net Density Calculations



Source: City of Mount Vernon, 2017

Where vacant and available land is encumbered with waterways, critical areas, or critical area buffers, net density results in far fewer lots for development than the underlying zoning may indicate. As a result, existing zoning may not be able to yield net densities that express the full density allowed under the development regulations. Understanding the difference between gross and net density is important to understanding how density standards are applied.

Existing Density

The Mount Vernon Municipal Code currently allows densities of 3.23 - 7.26 units per acre in single family zones (R-1 in all its variations), 8-10 units per acre in the duplex and townhouse zone (R-2), and 10-20 units per acre in the multifamily zones (R-3 and R-4). Commercial zones that allow residential uses include the Limited Commercial (LC) zone, the C-1 zone, and the C-4 zone. Development of multi-family uses in these commercial zones is subject to the rules and standards of the R-3 zone. As a result, the rules for residential development in commercial zones are not shown in the table of existing standards in Exhibit 3.¹

Exhibit 3. Existing Density in Mount Vernon Residential Zones

RESIDENTIAL ZONING DISTRICTS	EXISTING DENSITY REQUIREMENTS		MINIMUM LOT SIZE
	MINIMUM	MAXIMUM	
R-1, 4.0, Single-Family Residential	4.0 du/acre	4.54 du/acre	7,500 s.f.
R-1, 5.0, Single-Family Residential	4.0 du/acre	5.73 du/acre	6,000 s.f.
R-1, 7.0, Single-Family Residential	4.0 du/acre	7.26 du/acre	4,500 s.f.
Duplex and Townhouse (R-2)	8.0 du/acre	10.0 du/acre	6,500 s.f. for a duplex or townhouse unit
Multi-Family (R-3)	10.0 du/acre	15 du/acre*	N/A [#]
Multi-Family (R-4)	10.0 du/acre	20 du/acre*	N/A [#]

* Maximum density may only be achieved so long as 50% or more of the required parking spaces are located in an enclosed area beneath the habitable floors of the building.

[#] The lot must be of sufficient size to support the density, setbacks, parking, landscaping, infrastructure, and any other items required to comply with the City's development regulations.

Source: Mount Vernon Municipal Code, 2017

Case Studies

There are a variety of communities in Washington that provide density bonuses. Below a brief description of four different programs are provided. Some density bonuses are very simple to apply. Other bonus programs may vary the amount of bonus based on factors such as the target income range of the affordable housing or the amount of affordable housing included in a project. Each example includes a table that applies the density bonus to Mount Vernon's residential zones. This gives a sense of comparison between bonus systems.

¹ Stakeholders identified a number of potential amendments to residential development in commercial zones. These amendments will be considered at a later date.

Federal Way

Federal Way grants a density bonus of 10% for affordable housing. It defines affordable housing as units affordable to households at 80% AMI or below for home-ownership units and affordable to households at 50% AMI or below for rental units. Housing must be affordable for the life of the project and is required to record a covenant to memorialize this. There is no other enforcement measure noted in the code.

Exhibit 4. 10% Density Bonus

RESIDENTIAL ZONING DISTRICTS	EXISTING DENSITY REQUIREMENTS		10% DENSITY BONUS
	MINIMUM	MAXIMUM	
R-1, 4.0, Single-Family Residential	4.0 du/acre	4.54 du/acre	4.99 du/acre with bonus units being affordable and allowing lots with affordable units to be reduced by 20% of minimum lot size
R-1, 5.0, Single-Family Residential	4.0 du/acre	5.73 du/acre	6.30 du acre with bonus units being affordable and allowing lots with affordable units to be reduced by 20% of minimum lot size
R-1, 7.0, Single-Family Residential	4.0 du/acre	7.26 du/acre	7.99 du/acre with bonus units being affordable and allowing lots with affordable units to be reduced by 20% of minimum lot size
Duplex and Townhouse (R-2)	8.0 du/acre	10.0 du/acre	11 du/acre with bonus units being affordable and allowing one bonus market rate unit for each affordable unit included in project
Multi-Family (R-3)	10.0 du/acre	12.0 du/acre	13.2 du/acre with bonus units being affordable and allowing one bonus market rate unit for each affordable unit included in project
		- or - 15 du/acre if 50% of required parking located beneath the habitable floors of the building	- or - 16.5 du/acre if 50% of required parking located beneath the habitable floors of the building and with bonus units being affordable and allowing one bonus market rate unit for each affordable unit included in project
Multi-Family (R-4)	10.0 du/acre	15.0 du/acre	16.5 du/acre with bonus units being affordable and allowing one bonus market rate unit for each affordable unit included in project
		- or - 20 du/acre if 50% of required parking located beneath the habitable floors of the building	- or - 22 du/acre if 50% of required parking located beneath the habitable floors of the building and with bonus units being affordable and allowing one bonus market rate unit for each affordable unit included in project

Source: Federal Way Revised Code 19.110.010 and City of Mount Vernon, 2017.

The Federal Way affordability bonus is straightforward and would be easy to administer. However, the 10% affordable bonus probably does not give enough incentive in the Mount Vernon market. Mount Vernon's residential zones have small density ranges and the small unit of increase is unlikely to improve the feasibility of building affordable housing.

Poulsbo

Poulsbo grants a density bonus of 20% to any project that includes at least 10% of the (pre-density bonus) units as affordable to those with low incomes. The City grants a 25% bonus for projects that include at least 15% affordable units. Units created under the affordable housing provisions must remain affordable for 20 years. Poulsbo requires the recording of a covenant and for the property owner to gain the City's consent prior to selling or leasing the unit, so the City can verify that affordability requirements are met.

Exhibit 5. 20% and 25% Density Bonuses

RESIDENTIAL ZONING DISTRICTS	EXISTING DENSITY REQUIREMENTS		20% DENSITY BONUS	25% DENSITY BONUS
	MINIMUM	MAXIMUM		
R-1, 4.0, Single-Family Residential	4.0 du/acre	4.54 du/acre	5.45 du/acre if 10% of pre-density bonus units are affordable	5.68 du/acre if 15% of pre-density bonus units are affordable
R-1, 5.0, Single-Family Residential	4.0 du/acre	5.73 du/acre	6.88 du/acre if 10% of pre-density bonus units are affordable	7.16 du/acre if 15% of pre-density bonus units are affordable
R-1, 7.0, Single-Family Residential	4.0 du/acre	7.26 du/acre	8.71 du/acre if 10% of pre-density bonus units are affordable	9.08 du/acre if 15% of pre-density bonus units are affordable
Duplex and Townhouse (R-2)	8.0 du/acre	10.0 du/acre	12 du/acre if 10% of pre-density bonus units are affordable	12.5 du/acre if 15% of pre-density bonus units are affordable
Multi-Family (R-3)	10.0 du/acre	12.0 du/acre	14.4 du/acre if 10% of the pre-density bonus units are affordable	15 du/acre if 15% of the pre-density bonus units are affordable
		- or - 15 du/acre if 50% of required parking located beneath the habitable floors of the building	- or - 18 du/acre if 50% of required parking located beneath the habitable floors of the building and if 10% of pre-density bonus units are affordable	- or - 18.75 du/acre with 50% of required parking located beneath the habitable floors of the building and if 15% of pre-density bonus units are affordable
Multi-Family (R-4)	10.0 du/acre	15.0 du/acre	18 du/acre if 10% of the pre-density bonus units are affordable	18.75 du/acre if 15% of the pre-density bonus units are affordable
		- or - 20 du/acre if 50% of required parking located beneath the habitable floors of the building	- or - 24 du/acre if 50% of required parking located beneath the habitable floors of the building and if 10% of pre-density bonus units are affordable	- or - 25 du/acre if 50% of required parking located beneath the habitable floors of the building and if 15% of pre-density bonus units are affordable

Source: Poulsbo Municipal Code 18.70.070B and City of Mount Vernon, 2017.

A bonus of 20% or 25% is a more feasible incentive for Mount Vernon because it creates enough extra density to spread the costs of affordable housing over the project. At the 20% level, the bonus allows for the maximum development under the base zoning, 10% affordable units, and 10% extra market rate units. At the 25% level, there is really no additional incentive for creating affordable units, as it allows for maximum development under the base zoning, 15% affordable units, and 10% extra market rate units, but it could be a useful provision for non-profit developers. By setting a baseline of either 10% or 15% affordability for participation in the bonus, these provisions may prevent the inclusion of affordable housing at lower levels (say 5% or 8% of a major project).

Kirkland

Kirkland has inclusionary zoning that requires that 10% of all new units to be affordable. Using a sliding scale, units geared toward households with lower incomes may count as more than one unit. Payment of a fee-in-lieu of development is allowed. Beyond that requirement, the City includes a bonus for affordable housing when it exceeds 25% of the project. The bonus allows two additional market rate units for each affordable unit, up to 50% total bonus density. Kirkland belongs to ARCH (A Regional Coalition for Housing), in which Eastside jurisdictions collaborate to address and manage affordable housing. ARCH assists in housing development, establishing pricing and income qualifications, marketing, education, annual monitoring, and sales and resales of ownership units. Member cities pay into a fund that keeps ARCH running.

Exhibit 6. Two Market Rate Unit Bonus for Each Affordable Unit

RESIDENTIAL ZONING DISTRICTS	EXISTING DENSITY REQUIREMENTS		DENSITY BONUS
	MINIMUM	MAXIMUM	
R-1, 4.0, Single-Family Residential	4.0 du/acre	4.54 du/acre	6.83 du/acre maximum with two market rate bonus units allowed for every affordable unit created when the total affordability of the project exceeds 25%
R-1, 5.0, Single-Family Residential	4.0 du/acre	5.73 du/acre	8.6 du/acre maximum with two market rate bonus units allowed for every affordable unit created when the total affordability of the project exceeds 25%
R-1, 7.0, Single-Family Residential	4.0 du/acre	7.26 du/acre	10.89 du/acre maximum with two market rate bonus units allowed for every affordable unit created when the total affordability of the project exceeds 25%
Multi-Family (R-3)	10.0 du/acre	12.0 du/acre - or - 15 du/acre if 50% of required parking located beneath the habitable floors of the building	18 du/acre maximum with two market rate bonus units allowed for every affordable unit created when the total affordability of the project exceeds 25% - or - 22.5 du/acre maximum with two market rate bonus units allowed for every affordable unit created when the total affordability of the project exceeds 25%
Multi-Family (R-4)	10.0 du/acre	15.0 du/acre - or - 20 du/acre if 50% of required parking located beneath the habitable floors of the building	22.5 du/acre maximum with two market rate bonus units allowed for every affordable unit created when the total affordability of the project exceeds 25%- or - 30 du/acre maximum with two market rate bonus units allowed for every affordable unit created when the total affordability of the project exceeds 25%

Source: Kirkland Municipal Code 112 and City of Mount Vernon, 2017.

Kirkland's affordable housing program is multi-tiered, with required and incentivized housing, and with a sliding scale that incentivizes the creation of housing for households with low and very low incomes. Such a system may be complicated to administer and enforce. However, it allows two market rate units as bonus for each affordable unit created, which is the largest bonus studied. Given the cost of housing development in the Eastside market, such a large bonus may be necessary to incentivize affordable housing production. However, allowing a bonus density of up to 50% may result a significant increase in Mount Vernon's single-family residential zones, which currently have small density ranges that distinguish them from one another.

Ellensburg

Ellensburg allows a density bonus of one additional market rate unit for each affordable unit created, up to 50% of the pre-bonus density. Housing must be affordable to incomes at 80% of county AMI. Long-term affordability is assured by the recording of a covenant that is in place for 25 years.

Exhibit 7. 50% Density Bonus

RESIDENTIAL ZONING DISTRICTS	EXISTING DENSITY REQUIREMENTS		50% DENSITY BONUS
	MINIMUM	MAXIMUM	
R-1, 4.0, Single-Family Residential	4.0 du/acre	4.54 du/acre	6.81 du/acre with ½ of bonus units being affordable and ½ bonus units being market rate
R-1, 5.0, Single-Family Residential	4.0 du/acre	5.73 du/acre	8.60 du/acre with ½ of bonus units being affordable and ½ bonus units being market rate
R-1, 7.0, Single-Family Residential	4.0 du/acre	7.26 du/acre	10.89 du/acre with ½ of bonus units being affordable and ½ bonus units being market rate
Duplex and Townhouse (R-2)	8.0 du/acre	10.0 du/acre	15 du/acre with ½ of bonus units being affordable and ½ bonus units being market rate
Multi-Family (R-3)	10.0 du/acre	12.0 du/acre	18 du/acre
		- or - 15 du/acre if 50% of required parking located beneath the habitable floors of the building	- or - 22.5 du/acre if 50% of required parking located beneath the habitable floors of the building and with ½ of bonus units being affordable and ½ bonus units being market rate
Multi-Family (R-4)	10.0 du/acre	15.0 du/acre	22.5 du/acre
		- or - 20 du/acre if 50% of required parking located beneath the habitable floors of the building	- or - 30 du/acre if 50% of required parking located beneath the habitable floors of the building and with ½ of bonus units being affordable and ½ bonus units being market rate

Source: Ellensburg City Code 15.330 and City of Mount Vernon, 2017.

Ellensburg's code creates a strong incentive that is easy to understand and administer. However, allowing a bonus density of up to 50% may be seen as a significant increase in Mount Vernon's single-family residential zones, which currently have small density ranges that distinguish them from one another.

Bonus Density for Mount Vernon

After reviewing the case studies, desirable features of a bonus density for affordable housing for Mount Vernon may include the following features:

- Easy to understand and administer. Allow one additional market rate unit for each affordable housing unit (up to a maximum bonus density).
- Provide incentives for housing affordable to moderate and low or very low incomes. Require half of the units created through the incentives to be targeted toward households with incomes above 60% and up to 80% AMI and half of the units targeted toward households with incomes at or below 60% AMI.

- The density bonus preserves the distinction between the existing single-family zones. Allow a total bonus of up to 50% in multi-family (R-3, R-4) zones and up to 40% in the duplex-townhouse (R-2) zone. This allows a greater bonus in areas already identified for denser housing. Single-family zones allow a smaller maximum bonus to preserve their character and distinctiveness.

Exhibit 8. Suggested Maximum Density Increases in Mount Vernon

RESIDENTIAL ZONING DISTRICTS	EXISTING DENSITY REQUIREMENTS		MINIMUM LOT SIZE	SUGGESTED MAXIMUM DENSITY INCREASE
	MINIMUM	MAXIMUM		
R-1, 4.0, Single-Family Residential	4.0 du/acre	4.54 du/acre	7,500 s.f.	5.45 du/acre (20% total)
R-1, 5.0, Single-Family Residential	4.0 du/acre	5.73 du/acre	6,000 s.f.	6.88 du/acre (20% total)
R-1, 7.0, Single-Family Residential	4.0 du/acre	7.26 du/acre	4,500 s.f.	9.44 du/acre (30% total)
Duplex and Townhouse (R-2)	8.0 du/acre	10.0 du/acre	6,500 s.f. for a duplex or townhouse unit ²	14.0 du/acre (40% total)
Multi-Family (R-3)	10.0 du/acre	15 du/acre*	N/A [#]	22.5 du/acre (50% total)
Multi-Family (R-4)	10.0 du/acre	20 du/acre*	N/A [#]	30 du/acre (50% total)

* Maximum density may only be achieved so long as 50% or more of the required parking spaces are located in an enclosed area beneath the habitable floors of the building.

[#] The lot must be of sufficient size to support the density, setbacks, parking, landscaping, infrastructure, and any other items required to comply with the City's development regulations.

Source: Mount Vernon Municipal Code and BERK Consulting, 2017.

Example Application of Suggested Affordability Bonus

Consider the following hypothetical development scenario to better understand the application of the suggested affordability bonus. A developer wants to develop a property consisting of 10 gross acres. The site has a small wetland and buffer that will need to be subtracted from the gross acreage, as well as future road rights-of-way and a stormwater detention pond. As a result, the net acreage of the parcel is now approximately 7 acres. Exhibit 9 shows the number of units that would be created under existing zoning and if the maximum suggested affordability bonus is applied.

² For properties currently in the R-2 zone 6,500 s.f. is the minimum lot size for duplex or townhome development. Multiple units may be constructed on a single lot. For properties achieving a maximum 50% bonus density in the R-2 zone, a smaller minimum lot size would be needed to develop duplex units. It would need to be less than 6,200 s.f. to fit duplex units at 14.0 units per acre.

Exhibit 9. Affordability Bonus for Hypothetical Development (10 gross acres/ 7 net acres)

RESIDENTIAL ZONING DISTRICTS	MAXIMUM EXISTING DENSITY	MAXIMUM SUGGESTED DENSITY	TOTAL UNITS UNDER EXISTING CODE	TOTAL UNITS UNDER SUGGESTED CODE
R-1, 4.0, Single-Family Residential	4.54 du/acre	5.45 du/acre (20% total)	31 units	38 units ■ 34 market rate units ■ 4 total affordable units (at least 2 affordable at 60% AMI or less)
R-1, 5.0, Single-Family Residential	5.73 du/acre	6.88 du/acre (20% total)	40 units	48 total units consisting of: ■ 44 market rate units ■ 4 total affordable units (at least 2 affordable at 60% AMI or less)
R-1, 7.0, Single-Family Residential	7.26 du/acre	9.44 du/acre (30% total)	50 units	66 total units consisting of: ■ 58 market rate units ■ 8 total affordable units (at least 4 affordable at 60% AMI or less)
Duplex and Townhouse (R-2)	10.0 du/acre	14.0 du/acre (40% total)	70 units	98 total units consisting of: ■ 84 market rate units ■ 14 total affordable units (at least 7 affordable at 60% AMI or less)
Multi-Family (R-3)	15 du/acre*	22.5 du/acre (50% total)	105 units	157 total units consisting of: ■ 131 market rate units ■ 26 total affordable units (at least 13 affordable at 60% AMI or less)
Multi-Family (R-4)	20 du/acre*	30 du/acre (50% total)	140 units	210 total units consisting of: ■ 175 market rate units ■ 15 total affordable units (at least 17 affordable at 60% AMI or less)

* Maximum density may only be achieved so long as 50% or more of the required parking spaces are located in an enclosed area beneath the habitable floors of the building.

INFILL HOUSING

Supporting infill housing is another way to increase the affordability of housing in Mount Vernon. Vacant parcels and lower density single-family areas, especially those closer to the center of town, present an opportunity for increasing the supply of housing and revitalizing neighborhoods through infill development. Costs related to the construction of utilities or roads can be reduced, providing a natural incentive for development if there are no other barriers to discourage innovation or significantly increase development costs. Infill projects may be able to take advantage of bonus density provisions for affordable housing. However, it is more likely that infill will provide affordable and diverse housing options at market rates.

There are several code changes that will support the development of quality infill housing. First, a greater diversity of housing types can make housing generally more affordable by supplying smaller housing units that meet different community needs. Second, additional flexibility is needed in development regulations such as lot size, setbacks, height, and coverage to meet the needs of different housing types and make infill development. Finally, attention to design and landscaping helps to ensure that individual privacy and compatibility of uses are maintained.

Mount Vernon should consider the following code amendments to encourage infill housing:

- Allow duplexes as an outright permitted use in the R-1 zone. Duplexes should be required to meet all development standards as if they were a single-family use, including density requirements.
- Allow accessory dwelling units (ADUs) in the R-2, R-3, and R-4 zones. Accessory dwelling units should be allowed at one ADU per lot and follow all applicable provisions and size limitations in MVMC 17.81. However, the code should be amended to allow ADUs to be constructed on any lot. This could facilitate the development of “carriage units” in non-single-family developments, where there is a small housing unit attached to the garage. The code should also allow ADUs to be part of new construction projects in addition to the conversion of existing spaces.³
- Allow cottage housing in the R-1 and R-2 zones. Limit cottage housing in size and scale but allow it additional density. The scale of cottage housing allows it to blend in with single-family neighborhoods without sacrificing character. It is also an adaptable housing type that can be applied in lower density multi-family neighborhoods characterized by duplexes, triplexes, and townhomes. Just as ADUs have their own development standards, develop specialized standards for cottage housing.
- Allow zero lot line and small lot single-family homes in the R-2 zone. A 6,500 s.f. minimum lot size is required for townhome or duplex development in the R-2 zone (it allows multiple units per lot). However, this minimum lot size prevents the development of small lot single-family homes or zero lot line development (such as townhomes or duplexes that are individually owned, not rented) that can provide good opportunities for first time home buyers. Zero lot line development will also require a minor amendment to setback standards to allow attached housing.
- Allow administrative modification of lot coverage, setback, lot width, and lot size standards for infill housing where new housing is developed on a lot that contains existing housing (this could include land that is short platted). The ADU code already allows administrative approval of variances of up to 20% for lot width, setbacks, lot coverage, height, parking, and buffers, so there is precedence for modifications. The potential impacts of modifying the standards could be off-set by limiting the size of the new dwelling unit(s) and/or increasing landscaping requirements.

³ Consider a longer-term strategy of working with an architect to design a few ADU templates with building plans. Special use permits for ADUs designed according to an approved template could be approved over the counter by appointment. This would facilitate the construction of ADUs.

- Adopt performance-based design guidelines to ensure graceful transitions between infill development and existing development, and that new development matches the character of the existing neighborhood.

AFFORDABLE HOUSING IMPLEMENTATION CONSIDERATIONS

Fee Reductions

Impact fees and other fees increase the costs of developing housing. Mount Vernon assesses impact fees for transportation, fire services, schools, and park and recreation. These services are essential to maintaining quality of life for local residents. The Growth Management Act allows cities to exempt affordable housing from impact fees under RCW 82.02.060. Impact fee reductions lower some of the upfront costs and make affordable housing more economically feasible. However, the need for affordable housing should still be balanced with other community needs.

Affordable housing at or below 60% AMI faces the most challenges for feasibility. Stakeholders reported in interviews that at this level of affordability financial assistance is most needed. As a result, an impact fee reduction of 50% is recommended for affordable housing units targeted toward households with incomes at 60% AMI or less.

Fee-in-lieu Program

A fee-in-lieu program would allow a housing developer to capture the bonus density for a project without building the required affordable housing on-site. Instead, the developer would pay a fee to the City that could then be used to build affordable housing elsewhere. Although it is possible that the City could develop affordable housing on its own, it is probably more effective for the City to provide funds to a non-profit affordable housing developer. Fee-in-lieu funds could be used to assist non-profit developers in a number of ways such as: the purchase of land, to leverage for grants or other financing tools, and to provide cash funding for construction, mortgage costs, or other needs.

Fee-in-lieu programs offer flexibility to the developer and were recommended by participants during stakeholder interviews in September. Affordable projects built using fee-in-lieu funds are less likely to be scattered throughout the community. However, they are developed by non-profit housing providers with expertise in affordable housing creation and management.

On-going Program Management

Once affordable housing is created, it is important that it stays affordable for at least 50 years.⁴ Although there are several mechanisms that can be used, covenants are the most common tool used to ensure that affordable housing created under bonus provisions remains available to people with low incomes over time. Requiring adoption of covenants for affordable housing should be included in Mount Vernon's code.

⁴ Required under affordable housing provisions in RCW 36.70A.540.

Monitoring and enforcement of the covenant must also be managed. Options that might work for Mount Vernon include:

- Annual compliance review conducted by the City. This could be processed similar to a permit, where affordable housing units or projects must complete a compliance form with supporting documentation. The City would need staffing to process the review, which could become significant over time as affordable housing incentives are successful. Additionally, the City would need policies and procedures for enforcement if units are out of compliance because they are leased or sold to occupants that do not meet income qualifications.
- Contracted management. Ideally, this could be a non-profit organization (such as Community Land Trust, Community Action, or Skagit Council Housing), but it could also be a private agency. The City would need to establish a reliable funding source to pay for the costs of contracted management. The *Approaches to Housing Affordability* memo dated August 2017 includes a list of possible funding sources. Contracted management could engage at various levels of service:
 - Annual compliance review, similar to the option stated above for the City.
 - Compliance review prior to the sale or lease of affordable housing units. This would avoid the problem of trying to enforce covenants after a unit has been improperly leased or sold, but would likely include review of leases and real estate documents and possibly occupant screening or income qualification review.
 - Full management of the affordable housing program including marketing, screening, and selection of eligible occupants, resident education, and managing rental units.

CONCLUSION

This memo suggests an affordable housing program for Mount Vernon. The first part of the program is to use bonus density incentives to encourage the development of housing affordable to households with incomes of 80% AMI or less. The second part of the program is to increase the affordability of market rate infill housing by allowing a wider variety of housing types and allowing the modification of some development standards. Implementation of this program also requires consideration of how the City might best financially support affordable housing development and how to ensure the perpetuity of affordable housing through monitoring and enforcement.

Direction on these issues is needed to move on to the next step of developing draft code amendments.

These code amendments would also be the first phase of updates to implement that Comprehensive Plan. In the period 2018-2020, the City will be looking at further code updates that could include review of:

- Multi-family zoning locations on the Zoning Map.
- Provisions for mixed use and multi-family development in commercial zones.
- Permit streamlining.
- The costs of implementing development standards.

Housing Stakeholder Interviews

Mount Vernon Housing Code Amendments 2017

Interviews

Five interviews were held on September 25, 2017 with local housing stakeholders. BERK consulting introduced a series of questions related to the development of housing in Mount Vernon.

Questions for Developers/Builders:

- What kind of housing/development do you do now?
- Are you working in Mount Vernon now? Why or why not?
- What are the market trends and opportunities for housing development/construction in and around Mount Vernon?
- Would you ever consider trying a different housing market or housing product? What might influence your decision?
- In the communities in which you work do you ever use development tools or incentives offered by local government? Why or why not?
- Would you consider building affordable units as part of a future project?
- Is there anything that the City could do that would help you to include affordable units in your next project? (Here we can specifically ask about different incentives and bonuses)
- Would you ever consider partnering with a non-profit or public agency to build affordable housing?

Questions for Non-profit/Housing agencies:

- What is your role in housing development now?
- Are you working in Mount Vernon now? Why or why not?
- What do you see as the biggest gaps in the Mount Vernon housing market or housing supply?
- What needs to be done to fill the gaps you identified? Are there regulatory, geographical, or other solutions?
- In the communities in which you work do you ever use development tools or incentives offered by local government? Why or why not?
- Is there anything that the City could do that would help you to develop, construct, or manage your next project?

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Summary

This section summarizes the ideas presented by the participants in the interviews. The material is based on personal experiences and opinions. Since the interviews were conducted in five sessions, participants were not present to hear or respond to the input given by many of the other participants. There is no consensus opinion amongst the participants and some of the ideas presented may be in conflict. It is also worth noting that some participants held incorrect assumptions about the Mount Vernon Municipal Code. In such cases barriers were identified that do not exist. For example, participants mentioned allowing manufactured housing in the single-family zone and allowing multi-family uses in the C-1 zone. Yet both uses are allowed in the respective zones. The purpose of the interview summary is merely to report the results of the interviews.

Market Information

Mount Vernon is the residential center of Skagit County and its location makes it within acceptable commute distance of employment in Everett and even Seattle. The remaining land in Mount Vernon is not high quality and tends to be difficult to develop. The cost of development has many builders only looking at lots that are ready to go. They are not taking on development costs themselves. This has significantly slowed the pipeline of housing production in Mount Vernon.

There are areas of Mount Vernon that were suggested as good sites for new housing:

- Fairgrounds
- Area near Cleveland and Blackthorn (rehabilitation of housing)

Multi-family housing is a very hot market in the region. However, at the current densities, it is not

economically feasible in most circumstances in Mount Vernon. Higher density would allow fixed costs to be distributed across more units, thus making the units more affordable.

People making a median income cannot afford the median home price unless they have existing equity in a home. There are also few homes available to rent for families with modest incomes. There is demand for housing but the supply is limited.

For new construction of housing for people with incomes of 50% AMI or less, additional resources will be needed because it is very difficult to make that pencil.

Equity Considerations

The Latino community is disproportionately affected by the housing shortage. They have a strong sense of neighborhood and community and will double up to help prevent homelessness. This can create areas with tight density and neighborhoods with people of different classes and cultures, which is positive for the community. However, overcrowding also is subject to community bias and racism based on stereotypes.

Mount Vernon Code

There is a big increase in age-restricted senior housing because it has more relaxed requirements and does not pay as much in impact fees. This is an implicit incentive to develop age-restricted housing.

A mixed-use development on a two-acre lot in the Sedro Wooley CBD zone (equivalent to the Mount Vernon C-1 zone) produced 8,000 square feet of commercial and 48 residential units over three stories. These units are affordable at median income and could be developed as affordable to 80% AMI without additional bonuses. This is because the City of Sedro Wooley allowed increased density and relaxed parking requirements.

There were several suggestions for zoning changes that would make the development of new housing and affordable housing easier in Mount Vernon:

- Zoning changes:
 - Create more areas of multi-family zoning
 - Consider rezoning unused commercial parcels for multi-family use
 - Allow more mixed-use zoning
 - Allow additional uses in multi-family zones
 - Allow multi-family uses in the C-1 and C-2 zone
 - Allow horizontal mixed use (like Sedro Wooley)
 - Allow row houses, small lot single-family detached housing, co-op housing, zero lot line, cottages, compact housing types, ADUs, live-work units
 - Allow high end manufactured homes on single-family lots
- Density changes:
 - Allow additional density in all zones
 - Change the density calculation back to gross density not net density

- Consider the TDR program
- Allow densities of 45 units an acre and 6-10 stories in multi-family zones
- Density bonuses to consider:
 - If C-2 is a mixed-use zone (see above) allow density bonuses for commercial development on the ground floor
 - Allow increased density if development pays into an affordable housing fund (look at Burlington)
 - Density bonuses for setting aside land for the Community Land Trust or other affordable housing providers
 - Allow density bonuses for the percentage of affordable units in a project
- Development regulation and standards changes:
 - Reduce setbacks for buildings as they get taller, instead of the opposite
 - Allow smaller yards and setbacks
 - Consider relaxing development standards for infill projects
 - Reduce landscaping requirements and pay extra parks fee or fee in lieu
 - Allow fee-in-lieu for park requirements
 - Eliminate requirement for two car garage in R-2 and R-3 zones
 - Examine and reduce parking requirements
 - Eliminate requirements or incentives that involve structured parking
 - Reduce regulations on mobile home parks
 - Examine street standards and the costs to implement them
 - Examine conflicting requirements, e.g. street standards require more ROW but stormwater standards require less impervious surface
 - Adjustments to the clearing code, which is seen as costly and puts too much decision making to the arborist
 - Examine the costs associated with energy regulations
- Fee adjustments:
 - Allow impact fee waivers and fee reductions for affordable housing
 - Allow on-site improvements that will result in waived impact fees
 - Reduce impact fees for multi-family units and for smaller unit types like townhomes

Permit Streamlining

Permit streamlining was very important to many participants. Suggested ways to improve the permit

process included:

- Reduce the number of review processes that projects must go through
- Examine the land use approval process for efficiencies
- Examine the design standards process for efficiencies
- Reduce permitting requirements for home rehabilitation
- Consider developing templates for certain housing types that could have reduced review
- Add additional staff to help process permits
- Develop checklists for the whole process
- Estimate permitting fees up front for the whole process
- Create a guide to development and building, perhaps on video
- Develop a process so people with unique ideas can get approval without a code amendment
- Ensure that there is plenty of notice and opportunity to comment on regulation changes.

Supporting Affordable Housing Creation

Non-profit and affordable housing providers need land and cash most of all. Free or cheap land that is zoned and ready for housing is most needed. Zoning should be in the range of 20-50 units an acre. Inexpensive bank-owned lands are harder to come by now that the economy is recovered. Cash is needed to build the development itself.

Sources of support for affordable housing creation include:

- City money (from REET2) to pay impact fees
- Federal funds and HUD money, CDBG funds
- Donations of land and money
- Low Income Housing Tax Credits
- Working with builders who are willing to work at cost instead of at a profit
- Property tax levy (look at how Bellingham does it)
- HomeFirst (a successful housing trust fund model in Portland)
- Socially-minded investors willing to put at least 1/3 of the money down for a project
- The City supporting an embedded social worker to help with case management for special populations

Affordable housing should be located throughout the city, but located where there is transit and City services.

The City could act as an advocate by convening those interested in creating affordable housing and working on creating partnerships in the local community and in the region. It should also support land use changes for projects, such as Mount Vernon Manor, that would create affordable housing.

Community Land Trust would consider buying substandard homes and rehabilitating them, which would avoid impact fee costs, but they would need a partner or funding source to help them to the rehabilitation work.

Community Land Trust, Community Action, and Skagit Council Housing have all managed affordable housing in the past or present.

Next Steps

Based on the *Approaches to Housing Affordability* memo from August 2017 and input from the stakeholder interviews, the following code review is recommended:

- Examine densities in residential zones
- Allow and encourage a variety of housing types
- Examine regulations on manufactured housing and mobile home parks
- Consider reduced or flexible standards for infill development
- Identify regulations or standards that may be relaxed (or processes streamlined) for the development of affordable housing such as parking, landscaping, setbacks, height, design, etc.
- Look at the development of templates to improve permitting for ADUs
- Identify fee waivers or reductions that might be considered for affordable housing
- Look at impact fee reductions based on the size of the unit
- Examine density bonuses for affordable housing including land set-asides, fee-in-lieu, or on-site construction of affordable units
- Consider ways in which an affordable housing program could generate land or cash for non-profits to develop and build affordable housing projects in Mount Vernon
- Identify a management process for ensuring that affordable units will remain affordable

The following review could be tabled for the 2018-2020 review of increasing market rate housing production:

- Review the City zoning map to look for areas that can be rezoned for multi-family zoning
- Consider provisions for multi-family and mixed-use development in commercial zones
- Review how density is calculated
- Consider density bonuses for mixed use development
- Examine TDR program
- Look at the costs associated with development standards such as street standards, stormwater standards, land clearing, or energy codes
- Examine permit streamlining efforts

From: [Paul Woodmansee](#)
To: [Lowell, Rebecca](#)
Subject: RE: Affordable Housing Interviews on 9.25.17
Date: Tuesday, September 26, 2017 1:25:36 PM

Rebecca,

Thank you for letting me be a part of the interview with the Berk Consultants. Since I got the questions on Monday morning I did not have time to prepare answers like I was hoping to. I figured I would send my answer to the one question that matters most your way in hopes you would pass it on to Erika as I did not want to contact her directly without your knowledge.

Is there anything that the city could do that would help you to include affordable units in your next project? (Here we can specifically ask about different incentives and bonuses)

1. **Density is the key in Multifamily** - The need is 45 units an acre, 6 to 10 story buildings. **Allowing all lot square footage to be calculated in the density calculation.** You might be concerned about too many units then on small buildable areas, but other planning issues like parking can then dictate how many units are built. Density bonuses and incentives should be available in all zones whether it by any method the City deems appropriate. The bottom line is density is **important** and I think the City can take advantage of this in many ways. Density bonuses for % of affordable units is a great way to get a diverse mix of housing in the same building.
2. **Multi-family building code change** - delete the landscaping space needed for extra park impact fee? Reduce setbacks for buildings that go taller, as of now the building footprint gets smaller the taller you go in some zones. Get rid of the two car garage requirement in the R2 and R3. I would be more than happy to be a free consultant to bounce ideas off of.
3. **Impact fee reduction for affordable units** – I know this is already being discussed however, I would include this on all multifamily units, a reduction of impact fees for all multifamily construction. Multifamily is the new affordable and the only way we can really make a dent in the availability crisis.
4. **C2 zone** – needs to allow multifamily housing as an outright use. In my humble opinion, MV has more than enough commercial property available that is not being used and a lack of multifamily needs. Density bonuses could be given if the Developer includes commercial space below or on the street frontage. This could also include live work units that are designed as single family buildings or multifamily buildings but the City would want to watch where these are constructed.
5. **Development Clearing code** – I know that the code was written for a purpose and the intent was not to disturb development, but we figure it adds at minimum \$10,000 of cost per lot. This is one of the primary reasons we walked away from the Property off of Division, as the lot costs were higher than the end value of the lots. A developer cannot put their financial interests into the hands of an arborist. This code must be deleted or rewritten. The big indicator with this is that all the projects that have moved forward recently in MV are projects that do not have the clearing code affecting them.

Also, I applaud you for allowing the development community to be a part of this discussion as the City navigates code changes that directly affect our day to day financial decisions and the housing affordability and availability issues. I did not realize that there was going to be 3 of us attending the interview, with that being said, I want to separate myself from the negative tone brought on by **one** of the other interviewees. I like to stick to discussions that build better communication and processes, and I want to stick to issues not old/new war stories. I hope that the Home Trust, and Community Action meetings went well as I am working with both of them to help with affordable housing situations in Skagit County.

Thanks again, and please let me know if you would like me to be involved in any other code planning with the current Comp plan code updates.

Be Blessed,

Paul Woodmansee

BYK Construction, Inc.
1003 Cleveland Ave. Suite A
Mount Vernon, WA 98273
Cell - 360-661-5325
Fax – 360-755-3101

From: Lowell, Rebecca [mailto:rebeccab@mountvernonwa.gov]
Sent: Monday, September 25, 2017 8:12 AM
To: Paul Woodmansee <Paul@bykconstruction.com>
Subject: RE: Affordable Housing Interviews on 9.25.17

Hi Paul:

Below is a list of the type of questions Erika will be asking today.

Thanks,

Rebecca

Questions for Developers/Builders:

What kind of housing/development do you do now?

Are you working in Mount Vernon now? Why or why not?

What are the market trends and opportunities for housing development/construction in and around Mount Vernon?

Would you ever consider trying a different housing market or housing product? What might influence your decision?

In the communities in which you work do you ever use development tools or incentives offered by local government? Why or why not?

Would you consider building affordable units as part of a future project?

Is there anything that the city could do that would help you to include affordable units in your next project? (Here we can specifically ask about different incentives and bonuses)

Would you ever consider partnering with a non-profit or public agency to build affordable housing?

From: Paul Woodmansee [<mailto:Paul@bykconstruction.com>]

Sent: Monday, September 18, 2017 4:28 PM

To: Lowell, Rebecca <rebeccab@mountvernonwa.gov>

Cc: Beacham, Linda <lindabe@mountvernonwa.gov>; Phillips, Chris <cphillips@mountvernonwa.gov>

Subject: RE: Affordable Housing Interviews on 9.25.17

Thanks all,

I will review before Monday.

Is there a list of questions I will be asked? I am usually better at thinking over time than on the spot answers.

Paul

From: Lowell, Rebecca [<mailto:rebeccab@mountvernonwa.gov>]

Sent: Monday, September 18, 2017 11:45 AM

To: Lowell, Rebecca <rebeccab@mountvernonwa.gov>

Cc: Beacham, Linda <lindabe@mountvernonwa.gov>; Phillips, Chris <cphillips@mountvernonwa.gov>

Subject: Affordable Housing Interviews on 9.25.17

Hello:

ATTACHMENT 3: PC STAFF REPORT

In anticipation of having you meet with Erika Rhett with BERK consulting next Monday please find attached background information and details regarding different approaches the City could take.

Thank you,

Rebecca Bradley-Lowell
Senior Planner
City of Mount Vernon
Development Services Department
910 Cleveland Ave / P.O. Box 809
Mount Vernon, WA 98273
360.336.6214

City of Mount Vernon: Affordable Housing**Comments:**

Affordable housing in MV is an oxymoron

- Low income and affordable are different.
- What's it tell you when you have small 3 bedroom homes with 5-6 cars parked in the driveway, front yard, street, etc.
- City Council is actually a hindrance by reacting to political pressures and adopting regulations which harbor unintended consequences.
- A good idea shouldn't have to wait 2-3 years because of entitlement/permitting process....if it does then the system is broken. This effort will likely take 3-5 years to implement under current regulations.
- "MV is un-developable...finished lots only", comments from major regional and national builders.
- Homes being built in last 2-3 years are all being built on foreclosed, REO properties. How many new applications have been submitted in last 24 months and what's their lot total?
- NIMBY's will oppose by every means.
- Buildable lands inventory: quantitative v.s. qualitative.
- What people expect has changed.....3 bedroom, 1,000 s.f. rambler isn't good enough for affordable, maybe low income, but not affordable.

Suggested Changes

- Flexible, "common sense" regulations.
- Streamlined approvals
- Make short plats lots, not lots and tracts.
- Allow high-end mfr in sfr zones.....MV has zero high-end mfr, it's all in large blocks that totally impact surrounding areas.
- Create Opportunity Zones for new/upgraded infill sfr homes/projects.
- Infill sfr, downzone one lot size, i.e., 7,500>6,000, etc.
- Road standards requiring 100% imported gravel are ridiculous....don't penalize entire industry for someone's past-mistakes.
- Get rid of Tree Retention Ordinance....it adds at least \$6,000-\$7,000 to price of a house and 3-4 months to permitting process.
- Design Review Standards....I now have a staff planner and some architect telling what and how I should build my homes, plus it adds another 3-6 months to permitting process and several thousand dollars to cost of homes. There has to be a simpler way.
- UGA needs to be expanded and not take 2-3 years to implement.

Final Idea: SOPO

Partner with Skagit County to develop County Fairgrounds into a centerpiece community of affordable, low-income, transit oriented, schools, central park, etc., etc. Make the area north of Fairgrounds a sfr Opportunity Zone and employ incentives. Make this area of deteriorating and under-utilized land and housing into a Gem. As it stands, the City can't go into the County, but the County can come into the City....call them on that hypocrisy.

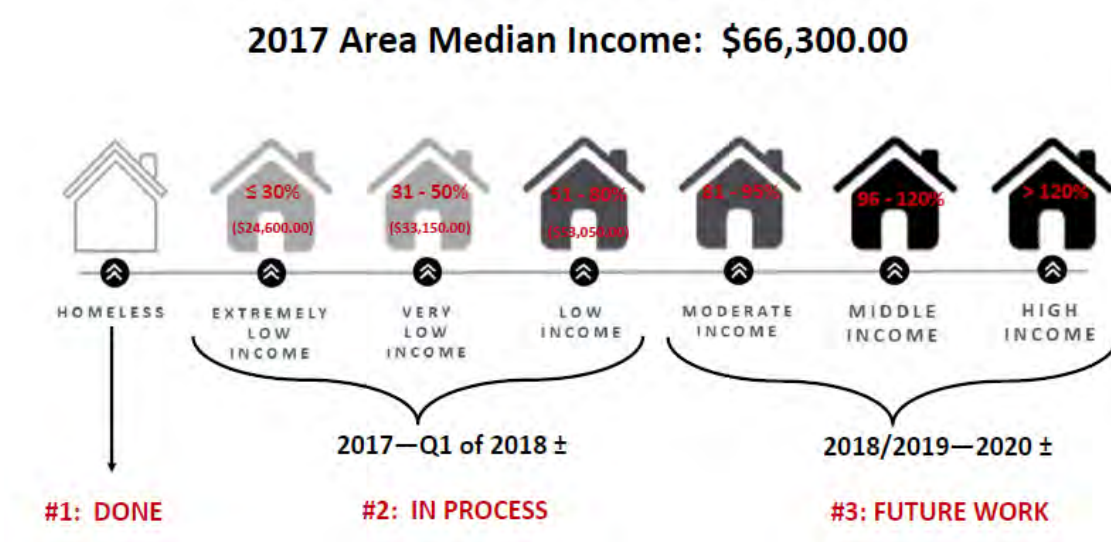


2017 AFFORDABLE HOUSING CODE AMENDMENTS PHASE 1 PUBLIC OUTREACH

September 25, 2017
Mount Vernon City Hall
910 Cleveland Ave., Mount Vernon

BACKGROUND INFORMATION:

In 2016 the City adopted a new Housing Element into the Comprehensive Plan that included a number of Goals, Objectives and Policies regarding affordable housing. Following this the City created an implementation strategy involving the adoption of code amendments aimed at helping those with the least resources first. This is illustrated in the graphic below.



To-date the City has adopted regulations that will allow a new permanent supportive housing facility to be constructed with up to 80 dwelling units within the City. With this completed staff has turned the focus onto code amendments aimed at creating affordable housing for those earning 80% AMI and below.

I've attached a copy of a memo prepared by BERK regarding potential approaches to housing affordability for your review prior to meeting with Erika Rhett next week.

Thank you again for agreeing to meet with Mrs. Rhett.



MEMORANDUM

DATE: September 18, 2017

TO: Rebecca Bradley-Lowell, Senior Planner, City of Mount Vernon

FROM: Erika Rhett, Senior Associate, BERK

RE: Approaches to Housing Affordability

INTRODUCTION

Mount Vernon's Comprehensive Plan expresses a vision in its Housing Element as *"... a home-town atmosphere, with a diverse housing options available to a full spectrum of its residents throughout their lives..."* The housing analysis that follows shows that some of the current conditions in Mount Vernon will need to change for this vision to be realized. As housing becomes more expensive and thus harder to secure families are paying larger portions of their incomes on their rents and mortgages. Thirty six percent (36%) of all households in Mount Vernon spend more than 30% of their income on housing and 18.4% spend more than 50%. Overall, renters are more cost burdened than homeowners. Mount Vernon has the highest rate of overcrowding in Skagit County.

The Housing Element includes several strategies for achieving the housing vision. These strategies include: income and job creation, preservation of existing housing and new infill development, and creating diversity in home types.

Communities across the state and across the country face growing housing demand and challenges to housing affordability. Approaches include increasing the supply and variety of housing types and the development of affordable housing programs.

APPROACH

Implementation of the new Goals, Objectives, and Policies adopted within the 2016 Housing Element will be a major undertaking for the City. To tackle this work the City organized and prioritized their code amendment work as follows:

- 2017: code amendments to assist in locating a permanent supported housing facility in the city. City staff confirmed that this has been completed.
- 2017/2018: code amendments to incentivize and encourage the production of affordable multi-family housing for those at 80% area median income (AMI) and below and small scale in-fill development in single-and-multi-family residential districts. In addition, mechanisms to ensure housing is income restricted and remains affordable over the required 50 year timeframe, and regulations to create or maintain graceful transitions between higher and lower density areas. These are the amendments that BERK has been retained to facilitate.
- 2018 – 2020: code amendments to encourage the production of affordable market rate housing (targeted at those above 80% AMI), additional infill and mixed use developments.

DIVERSITY OF HOUSING TYPES

Goal 1 of the Housing Element is to: *“Enhance Mount Vernon’s cultural and economic vitality by encouraging the development of housing solutions of all types that provide for varied densities, sizes, costs and locations that are safe, decent, accessible, attractive, appealing, and affordable to a diversity of ages, incomes, and cultural backgrounds.”* This is reflected in several housing policies:

- *HO-1.1.2: In recognition of community needs, the City shall maintain a variety of future land use classifications and implement zoning to accommodate a range of housing types with varying densities and sizes.*
- *HO-1.1.4: Continue to promote plans and policies that encourage in-fill residential projects in close proximity to neighborhood centers, shopping and retail facilities, parks, transit routes and other service uses.*
- *HO-1.1.5: Continue to promote plans and regulations that allow incentives such as bonus densities and flexible design standards that support and promote the construction of new innovative or affordable housing styles, compatible with the planned uses of surrounding sites. Ground related housing types such as cottages, townhouses, zero lot line developments and other types are examples of housing choices that promote individuality and ownership opportunities. Consider adopting new development regulations that would offer new ways to encourage these types of housing choices.*

Vacant lands and lower density single-family areas, especially those closer to the center of town, present an opportunity for increasing the supply of housing, adding new housing types, and revitalizing neighborhoods. Costs related to the construction of utilities or roads can be reduced, providing a natural incentive for development if there are no other barriers to discourage innovation or significantly increase development costs. However, the strict application of development standards written without consideration to the challenges of infill housing or without consideration of varied housing types can be an obstacle. With appropriate development standards in place, communities can encourage a diversity of housing types as compatible infill in existing residential areas.

A greater diversity of housing types can make housing generally more affordable by supplying housing units that meet different community needs. Mount Vernon’s housing stock is predominantly single-family housing, with multi-family housing comprising only about a third of all housing units in the city. Small lot single-family development, townhomes, accessory dwelling units, small-scale multi-family housing types, and attached single-family developments could provide housing units that are compatible with existing single-family neighborhoods and meet many different needs.

Allowing a wide variety of housing types by right in the zoning code is the first step. However, additional flexibility is needed in development regulations such as lot size, setbacks, height, and coverage to meet the needs of different housing types and make infill development feasible (see also Flexible Development Standards, below). Simple design regulations help to ensure the compatibility of uses.

Examples

Bellingham's Infill Housing Toolkit (BMC 20.28) is a set of regulatory changes that allows nine new housing types to encourage infill housing in city neighborhoods, urban villages, and the urban growth area. The types are not applied in the lowest density single-family neighborhoods. Types include smaller house, small house, cottage, carriage house, detached accessory dwelling unit (ADU), duplex/triplex, shared court housing, garden court housing, and townhouses. Each housing type has its own simplified set of site, bulk, parking, and design standards that override the standards in the underlying zone. This allows for needed flexibility and also helps to manage neighborhood compatibility. In some allowed zones, infill types get a higher density allowance than the underlying zone. Portland, Oregon takes a similar approach.

Auburn has infill residential standards (ACC 18.25) that allow alternate standards for properties creating one new lot or dwelling unit in single-family residential zones or for properties under an acre in size in medium intensity residential zones. Modified standards allow changes of approximately 10-20% for lot standards, setbacks, parking requirements, height, and density. Simple design standards address potential compatibility issues.

Kirkland's Code (Chapter 113) allows for cottages, carriage houses, and two or three unit homes in single-family zones to promote a diversity of housing types. Each housing type has a full set of alternate development standards that include site standards, unit size, height, parking, and open space. Density is allowed at two times the number of detached dwelling units allowed in the underlying zone. Design standards require common open space, shared parking/garage, and low impact development storm water control in addition to addressing potential compatibility issues.

Recommendations

Mount Vernon's policies within the Housing Element of the Comprehensive Plan support infill housing and a diversity of housing types. ADUs, townhomes, and zero lot line development may be appropriate to encourage in different zones. The City should consider the following in developing and implementing code amendments:

- Encourage a variety of housing types with the following changes:
 - Allow ADUs in all residential zones including zoning districts R-2, R-3, and R-4.
 - Allow ADUs that are attached to a single-family structure, to a garage structure, or are detached.
 - Allow over the counter land use permitting for ADUs that conform to a standard template.
 - Eliminate notice requirements for ADUs.
 - Allow zero lot line housing¹ types (in addition to townhomes) in the R-2, R-3, and R-4 zones.

¹ Zero lot line housing has at least one wall placed on the boundary of the property. It can include attached housing such as row houses or townhomes, or detached housing and can be single story or multi-story. Zero lot line housing

- Allow ADUs to have separate utility service and meters.
 - Require zero lot line development to have separate utility service and meters.
 - Amend the impact fee structure to reflect that smaller unit housing types are closer in impact to multi-family types than single-family.
- Consider allowing modifications to development standards for height, setbacks, lot size and coverage, density, and parking that make it easy to create new housing but still maintain neighborhood character (see also Flexible Development Regulations, below):
 - Develop alternate dimensional standards for infill housing types such as ADUs and zero lot line development that do not require a variance.
 - Allow further modifications to development standards through an administrative deviation process.
- Implement design, open space, or parking requirements that enhance compatibility and attractiveness without adding overly burdensome regulatory complications.

AFFORDABLE HOUSING PROGRAMS

Mount Vernon's Housing Element Goal 4 states: *"Encourage safe, decent, accessible, attractive and affordable housing development that meets community needs and is integrated into, and throughout, the community including areas of higher land cost where greater subsidies may be needed."* This is supported by Objective HO-4.1 and related policies which promote the development of a voluntary or required affordable housing program consistent with federal rules and state law.

- *Objective HO-4.1 Encourage the creation of ownership and rental housing that is affordable for all households within the City, with a particular emphasis on low, very-low, and extremely low income households as defined by the U.S. Department of Housing and Urban Development (HUD).*
- *Policy HO-4.1.1 Evaluate the adoption of zoning regulations targeted at otherwise market-rate developments that require or incentivize a minimum percentage of new dwelling units and/or lots that are created (whether multi-family or single-family) be income restricted.*
- *Policy HO-4.1.2 Evaluate the adoption of zoning regulations that would allow multi-family residential developments that are income-restricted to those at or below 60 percent of the area median income for at least fifty years to be located in zoning districts other than multi-family residential.*
- *Policy HO-4.1.3 Evaluate the adoption of zoning regulations that provide bonuses in density for developments that create income restricted units aimed at those earning less than 80% of the area median income (AMI) with greater bonuses provided to housing reserved for those earning 60% of the AMI and below.*

allows for ownership of the land associated with the housing unit, even though the land associated with the unit can be very small. This distinguishes it from other types of multifamily housing in which units share a common parcel of land that is either owned by a single owner or by several owners through condominium ownership.

- *Policy HO-4.1.6 Maintain and explore enhancing regulatory incentives to encourage the production and preservation of affordable ownership and rental housing such as through density bonuses, impact fee reductions, permit fast-tracking, or other methods.*

The U.S. Department of Housing and Urban Development (HUD) defines affordable housing as housing in which the occupants pay no more than 30% of their gross income for housing costs, including utilities.² It also establishes income categories that are used in the application of its affordable housing programs as shown in

Figure 1. Income categories are based on the area median income (AMI) and adjusted for family size.

Figure 1- HUD Family Income Definitions

Income Category	Maximum Family Income
Moderate Income	95% AMI
Low Income	80% AMI
Very Low Income	50% AMI
Extremely Low Income	30% AMI

Source: U.S. Department of Housing and Urban Development

In Washington state, the Growth Management Act (GMA) authorizes affordable housing programs that aim to create low income housing units through development regulations or permitting decisions.³ It defines affordable rental units as affordable to households at 50% AMI, and 80% of AMI for ownership units. Affordability may be adjusted based on household size and total housing costs, including basic utilities, but may not exceed 30% of the household's income. These limits may be adjusted up or down if the local jurisdiction holds a public hearing and finds that different income levels will better meet local needs. However, affordable rental units may not exceed a standard of 80% AMI or 100% AMI for ownership units.

Under GMA, affordable housing units developed as part of a market rate development should be distributed throughout the development and be provided in a range of sizes comparable to the market rate units. Although the law encourages the development of affordable housing on-site, it authorizes off-site and fee-in-lieu alternatives to support the construction of affordable housing. Jurisdictions creating affordable housing programs must do the following: identify zones or geographic locations where new housing is consistent with local housing policies, provide increased development capacity through regulatory changes or incentives, and determine that the area targeted for increased housing has development capacity to allow the affordable housing program to be utilized. Affordable housing

² Office of Policy Development and Research, U.S. Department of Housing and Urban Development.
https://www.huduser.gov/portal/glossary/glossary_a.html

³ RCW 36.70A.540 and WAC 365-196-870.

programs may include density bonuses, height and bulk bonuses, fee waivers or reductions, tax exemptions, or expedited permitting.

Incentive Zoning

Incentive zoning encourages developers to provide affordable housing as a public benefit. Incentive zoning is a system that allows development flexibility in one or more areas in exchange for building affordable housing. The incentive system is implemented on top of base zoning regulations and can be used to encourage other desired public benefits such as open space, environmental enhancement, or public art (this memo only focuses on affordable housing incentives). Incentive systems acknowledge that building affordable housing is difficult in areas where land prices are high because the rents do not cover the costs.

Incentive zoning is applied to specific zones or specific types of projects. It establishes an explicit list of public benefits and incentives and can be applied to single-family or multi-family zones, ownership or rental developments. Since incentive zoning is voluntary, provisions are unlikely to be implemented unless they are easy to use and attractive to developers. To be most effective, incentives are tailored to the local housing market, giving a desired bonus to developers in exchange for providing affordable units. Sometimes the incentives that work well in a strong housing market may not work as well in a weaker market. When providing incentives, it is important that they are easy to understand and apply so they do not complicate the development process or interfere with other planning goals. Incentives can include density bonuses, flexible development regulations, fee waivers or reductions, or tax exemptions.

Density Bonuses

Density bonuses allow developers to build at higher densities than normally allowed in a zone if they provide affordable housing units. Such bonuses can be part of an incentive zoning system. Density bonuses work best in strong housing markets with high land costs, high home prices, and high market rents where local government has identified a shortage of affordable housing for low and/or moderate income households. The additional density is intended to offset the cost of the affordable units with revenues from the additional market rate units, so the value of the bonus should be greater than the cost of providing the affordable units. Where developers can easily develop low density market rate housing, a density bonus is unlikely to be used.⁴

Examples

Poulsbo grants a density bonus of 20% to any project that includes at least 10% of the (pre-density bonus) units as affordable to those with low incomes. The City grants a 25% bonus for projects that include at least 15% affordable units.

Ellensburg allows a density bonus of one additional market rate unit for each affordable unit created, up to 50% of the pre-bonus density. Housing must be affordable to incomes at 80% of county AMI.

⁴ Puget Sound Regional Council. *Housing Innovations Program*.
<http://www.psrc.org/growth/housing/hip/>.

Redmond incentivizes the creation of housing for people with very low incomes by providing a bonus of two market rate units for every very low income unit (50% AMI) produced, versus a bonus of a single market rate unit for the production of a low income unit (80% AMI).

Monterey, California grants a density bonus for affordable housing created for low, very low, or moderate incomes in accordance with California's Density Bonus Law.⁵ This law allows up to a 35% density bonus according to a sliding scale. It also has provisions for flexible site development regulations where development can earn one, two, or three site concessions, depending on the amount of affordable housing that is provided. Affordability must be preserved for 55 years.

Flexible Development Regulations

Flexible development regulations allow and encourage development that is denser and more diverse by permitting variable development standards in exchange for providing affordable housing. By permitting lot size, setback, sidewalks, street widths, height, etc. to be varied, the developer can save some development costs. Some communities allow flexible development regulations through a Planned Unit Development (PUD) ordinance, but the ordinance may not necessarily link the use of the PUD to the production of affordable housing. Other communities may allow variances of standards, such as setbacks, street requirements, or heights specifically associated with an affordable housing program.

Examples

As part of Kirkland's program, affordable housing may be allowed to include additional height, additional capacity, or bonus units (up to 25% of the underlying zoning) in applicable zones. Development standards may be modified for maximum lot coverage, parking requirements, structure height, required yards, and common recreational space to accommodate the affordable units.

Monterrey uses flexible development standards in coordination with incentive zoning to support affordable housing (cited in the example above).

Waivers, Reductions, Exemptions

Impact fees, mitigation fees, and building permit fees increase the costs of developing housing. GMA allows cities to exempt affordable housing from impact fees under RCW 82.02.060. Jurisdictions may also waive other fees for projects including affordable housing units such as permitting fees or utility connection charges. By lowering some of the upfront costs, developers can recoup the cost of building affordable housing. Fee waivers or reductions can encourage affordable housing across the spectrum of housing including single-family and multi-family, ownership and rental units.

Similarly, RCW 84.14 allows cities to establish a tax exemption to encourage the construction of multi-family housing in designated areas. Qualifying projects receive an 8 or 12-year tax exemption on the value of the residential improvements. Only projects with at least 20% affordable housing are eligible for the 12-year exemption. Multi-family tax exemption is a tool used by many communities to help stimulate a market for multi-family housing and affordable housing.

Local governments need to understand the financial implications of waivers or reductions to ensure that there is adequate revenue to support on-going programs. Tax exemptions and reduced permitting fees,

⁵ California Government Code Sections 65915 – 65918.

impact fees, or utility fees may need to be subsidized with other funding sources, particularly as the affordability program becomes successful.

Examples

Puyallup's Municipal Code 17.04.080, allows a waiver of building permit fees for the construction, alteration, or repair of single-family dwellings when the structure is intended for low income families, the project involves some volunteer labor, and is being constructed by a non-profit organization. This waiver is carefully crafted to apply to a particular type of affordable housing development project.

King County Code 21A.43.080 exempts low or moderate income housing projects developed by public agencies or non-profit housing developers from impact fees. The amount of school impact fees is paid through other public funds set aside by the County. Private developers who create affordable housing units may apply for a reduction in impact fees. Low or moderate income purchasers, who are purchasing homes within income limits consistent with the County's Affordable Housing Strategy, are exempt from impact fee payment. King County requires a covenant ensuring affordability for ten years for individual owners and 15 years for private developers.

Kirkland exempts affordable housing units from the payment of transportation and parks impacts fees as well as planning, building, mechanical, and electrical permit fees in Kirkland Municipal Code 112.20(5).

A number of communities have included multi-family tax exemptions as part of their affordable housing toolbox. For example, Bellingham provides a 12-year exemption to affordable projects in selected neighborhoods (Bellingham Municipal Code 17.82.030). Renton provides both an 8-year and a 12-year exemption for projects in selected neighborhoods (Renton Municipal Code 4-1-220).

Expedited Permitting

Delays during the development process can add to the cost of new housing. Any efforts to reduce the time, costs, and uncertainty of obtaining permits and approvals will support affordable housing.

Expedited permitting could include:

- Prioritized review where affordable projects are moved to the front of the line.
- Process reduction and streamlining where some types of permits are offered over the counter, permit checklists and pre-application assistance are used to simplify submittals, or administrative procedures are simplified (for example raising categorical exemptions for SEPA).
- Coordinating review of permits through the use of a permit expeditor, concurrent review by departments or agencies, reducing the number of people involved in review, reducing the number of rounds of review, or setting reduced permit review times.
- The creation of architectural drawings and site plans for simpler construction projects like accessory dwelling units (ADUs) that the City could provide to property owners wishing to construct these types of units. This would cut costs and expedite the permitting process for these types of infill housing projects.

Expedited permitting techniques make use of existing City staff and resources so it can be inexpensive. It requires a careful look at permitting regulations and processes, and often interdepartmental or interagency cooperation, to implement these measures. Some of the expedited permitting techniques

could also place additional demands on staff. For example, prioritized review is a benefit for affordable housing projects, but there needs to be adequate staffing to conduct all permitting operations within statutory timelines, even if they are a lower priority than affordable projects. Likewise, expedited permitting techniques that provide more certainty for the affordable housing developer can add to workloads if staff need to take on additional coordination roles.

Recommendations

Mount Vernon's policies support the development of an affordable housing program. The City may consider the following in developing code to support this:

- Talk with the local development community to better understand which development incentives would increase the production of affordable housing.
- The affordable housing program should apply a density bonus and flexible development standards as a package in the R-1 zones with maximum densities of 4.54, 5.73, and 7.26 du/acre, R-2, R-3, and R-4 zones.
- Encourage the development of housing at 60% AMI or less by providing additional incentives, such as impact fee reductions, additional density, or other provisions that are attractive to local developers.
- Use partial or full impact fee reductions to reduce the costs associated with the development of affordable housing. Ensure that there is adequate funding for facilities and services needed to support new growth if impact fees are reduced.
- Review processes and procedures to develop fast-track permitting options for affordable housing review that work for the City and developers.

MANAGING AFFORDABLE HOUSING

HUD Benchmarking⁶

HUD encourages benchmarking for all of the nation's housing stock, but is in the process of developing standards for housing developed with federal funds. Benchmarking is a management practice that involves tracking, analyzing, and reporting utility consumption and utility costs for a property. It provides key performance information on energy and water usage that can be used to reduce operating costs, meet tenant needs, and achieve environmental goals. Participating projects go through a planning process to develop a benchmarking plan for collecting, verifying, analyzing data, and communicating results.

Ensuring Affordability

Once affordable housing is created, it is important that it stays affordable for the length of time specified by law. Units created under the affordable housing program provisions in RCW 36.70A.540 are to remain affordable for 50 years. To guarantee long-term affordability, housing must be managed to

⁶ HUD Exchange: <https://www.hudexchange.info/programs/utility-benchmarking/>

ensure that owners or tenants comply with income restrictions and any other conditions that may be put into place. Communities that did not plan for the management of affordable housing provisions have found it difficult to maintain their affordable housing stock over the long term.⁷

Although there are several mechanisms that can be used, covenants are the most common tool local governments use to ensure that housing created through an affordable housing program remains available to people with low incomes over time. Jurisdictions typically mandate a covenant that runs with the land and will specify provisions for income eligibility and the duration of the affordability requirement. Kirkland requires a binding covenant to be approved by the city attorney that covers price restrictions, homebuyer or tenant qualification, long-term affordability, and other applicable topics. Poulsbo requires a development agreement that requires deed restrictions on the designated affordable units to prevent their resale, rental, or lease without written approval of the City confirming that the property will continue to be reserved for low income households. Montgomery County, Maryland has a covenant template that can be filled out and recorded to ensure long-term affordability.

Once housing is created and covenants, agreements, or deed restrictions are in place, it is still necessary to price units for rent or sale, market the properties to eligible residents, screen and select residents, educate residents about program requirements, monitor units to ensure compliance, enforce requirements as needed, and manage the process again when tenants move out or owners wish to sell. At the very least, local government needs to ensure annually that affordable housing units comply with income and other requirements. If a community accepts fee-in-lieu payments, it will also need a plan in place for managing those funds.

Management Options

Around the country, communities have managed affordable housing compliance with five different structures for service delivery:

- **Local government.** In this structure a city, county, or housing authority manages aspects of the affordable housing program, hiring permanent staff to do so. This approach works well with larger programs where local government handles the entire process, but could be adapted for a smaller effort. With a more limited effort, local government could monitor compliance annually, requiring property managers of rental units or affordable unit homeowners to submit compliance documents for review.
- **Multi-jurisdictional collaboration.** In this model, several local jurisdictions collaborate on a regional basis to address and manage affordable housing. ARCH (A Regional Coalition for Housing) in King County's Eastside is an example of such a collaboration. The sixteen member jurisdictions set their own affordable housing programs, but contribute funding to ARCH and the ARCH Housing Trust Fund. ARCH assists in housing development, establishing pricing and income qualifications, marketing, education, annual monitoring, and sales and resales of ownership units. Such a model can be very effective in creating and managing affordable housing programs, but depends on the collaboration of multiple jurisdictions within the region.

⁷ Policy Link. Delivering on the Promise of Inclusionary Housing: Best Practices in Administration and Monitoring.

- **Private contractor.** Local government contracts with a private company to manage aspects of the affordable housing program such as monitoring compliance. A private contractor can work well for a community with limited local staff by collecting and processing information from property managers and individual owners and submitting an annual report to the local jurisdiction.
- **Non-profit housing agency.** Local government contracts with a non-profit to manage aspects of the affordable housing program. This can work similarly to hiring a private contractor if there is a local non-profit with the experience and capacity to take on this work.
- **Community land trust.** This model only works for ownership housing. Developers build units and sell them to the land trust who manages the program. In a community land trust, the trust retains ownership of the land and sells the homes to income qualified buyers. The trust ensures compliance with all conditions of ownership designed to keep the housing affordable.

Funding Sources

With any of these delivery structures there needs to be a reliable source of funding to pay for administrative costs or contracts. Potential sources of funding could include:

- **Local government general funds.** This can be a reliable source of funds to support in-house staff, regional collaboration efforts, or contracting. However, local government needs to have a strong commitment to affordable housing since this funding will compete with other local needs and priorities every budgeting cycle.
- **Permit fees.** A portion of the permitting fees can be set aside for management of the program. While in theory this helps development to pay for itself, it is another cost that must be accounted for when developing an incentive-based affordable housing program, particularly if fee reductions or waivers are part of the incentive package.
- **Local housing funds.** These funds can come from a variety of sources including in-lieu-fees, local housing trust funds, or federal HOME or CDBG dollars. While most of these sources allow (or can be set up to allow) money to be spent on staffing and administration, this pool of money could also be spent on the creation of new housing.
- **Sales and resale fees.** Home ownership units are charged a fee (typically 1-4%) that funds the management of the resale process. Although less than a typical 6% real estate commission, the fee is borne by the seller who is already selling below market rate as required by agreement to keep the unit affordable. Owners may also need to retain a real estate agent to complete their transaction, particularly in cases where the affordable housing program is not comprehensively managed through a local government or regional collaboration effort.
- **Application fees.** This model charges a fee to those who apply for housing (either rental or ownership). While this can generate some revenue to support program administration, there is an equity consideration with this option since all applicants pay the fee whether or not they ultimately receive housing.
- **Administration fees.** Annual or monthly fees are charged to residents of affordable units to cover the costs of compliance monitoring. While this is more commonly used in rentals, a few

communities charge such a fee for ownership units, and community land trusts sometimes charge a small monthly land rent. In any case, the cost of the fee is borne by the resident and may increase their need for subsidy.

Recommendations

How Mount Vernon ensures the long-term affordability of its housing program will depend on the type of affordable housing program it chooses. Consider the following:

- Consider options for contracting out the services needed to ensure compliance with affordable housing program rules to either a non-profit, private contractor, or through a collaborative model.
- Establish the funding mechanisms necessary to support compliance.
- Recognize that the model used to deliver and fund affordable housing compliance could change over time as the affordable housing program achieves success.

NEXT STEPS

1. BERK will conduct outreach with property developers, builders, and others involved in affordable housing issues to discuss and gain insight into the best practices presented herein.
2. Once BERK has completed this outreach, City Council will be briefed on the results and will be asked for initial direction and input.
3. The best practices presented within this memo will be refined and additional details will be provided focusing on the direction and input from City Council. BERK will solicit public comments and input on the new materials.
4. BERK will assist City staff in completing the procedural requirements when development regulations are amended including the SEPA process, Department of Commerce review, and public meetings and hearing before the Planning Commission and City Council.

ADDITIONAL REFERENCES

Hickey, Robert. 2013. *After the Downturn: New Challenges and Opportunities for Inclusionary Housing*. Center for Housing Policy. February 2013.

Urban Land Institute. 2014. *Bending the Cost Curve: Solutions to Expand the Supply of Affordable Rentals*.

The Housing Partnership. 2007. *The Ins and Outs: A Policy Guide to Inclusionary and Bonus Housing Programs in Washington*.

Wheeler, Stephen. 2002. *Smart Infill: Creating More Livable Communities in the Bay Area, A Guide for Bay Area Leaders*. Green Belt Alliance.

From: [Paul Woodmansee](#)
To: [Lowell, Rebecca](#)
Subject: RE: Affordable Housing Interviews on 9.25.17
Date: Tuesday, September 26, 2017 1:25:36 PM

Rebecca,

Thank you for letting me be a part of the interview with the Berk Consultants. Since I got the questions on Monday morning I did not have time to prepare answers like I was hoping to. I figured I would send my answer to the one question that matters most your way in hopes you would pass it on to Erika as I did not want to contact her directly without your knowledge.

Is there anything that the city could do that would help you to include affordable units in your next project? (Here we can specifically ask about different incentives and bonuses)

1. **Density is the key in Multifamily** - The need is 45 units an acre, 6 to 10 story buildings. **Allowing all lot square footage to be calculated in the density calculation.** You might be concerned about too many units then on small buildable areas, but other planning issues like parking can then dictate how many units are built. Density bonuses and incentives should be available in all zones whether it by any method the City deems appropriate. The bottom line is density is **important** and I think the City can take advantage of this in many ways. Density bonuses for % of affordable units is a great way to get a diverse mix of housing in the same building.
2. **Multi-family building code change** - delete the landscaping space needed for extra park impact fee? Reduce setbacks for buildings that go taller, as of now the building footprint gets smaller the taller you go in some zones. Get rid of the two car garage requirement in the R2 and R3. I would be more than happy to be a free consultant to bounce ideas off of.
3. **Impact fee reduction for affordable units** – I know this is already being discussed however, I would include this on all multifamily units, a reduction of impact fees for all multifamily construction. Multifamily is the new affordable and the only way we can really make a dent in the availability crisis.
4. **C2 zone** – needs to allow multifamily housing as an outright use. In my humble opinion, MV has more than enough commercial property available that is not being used and a lack of multifamily needs. Density bonuses could be given if the Developer includes commercial space below or on the street frontage. This could also include live work units that are designed as single family buildings or multifamily buildings but the City would want to watch where these are constructed.
5. **Development Clearing code** – I know that the code was written for a purpose and the intent was not to disturb development, but we figure it adds at minimum \$10,000 of cost per lot. This is one of the primary reasons we walked away from the Property off of Division, as the lot costs were higher than the end value of the lots. A developer cannot put their financial interests into the hands of an arborist. This code must be deleted or rewritten. The big indicator with this is that all the projects that have moved forward recently in MV are projects that do not have the clearing code affecting them.

Also, I applaud you for allowing the development community to be a part of this discussion as the City navigates code changes that directly affect our day to day financial decisions and the housing affordability and availability issues. I did not realize that there was going to be 3 of us attending the interview, with that being said, I want to separate myself from the negative tone brought on by **one** of the other interviewees. I like to stick to discussions that build better communication and processes, and I want to stick to issues not old/new war stories. I hope that the Home Trust, and Community Action meetings went well as I am working with both of them to help with affordable housing situations in Skagit County.

Thanks again, and please let me know if you would like me to be involved in any other code planning with the current Comp plan code updates.

Be Blessed,

Paul Woodmansee

BYK Construction, Inc.
1003 Cleveland Ave. Suite A
Mount Vernon, WA 98273
Cell - 360-661-5325
Fax – 360-755-3101

From: Lowell, Rebecca [mailto:rebeccab@mountvernonwa.gov]
Sent: Monday, September 25, 2017 8:12 AM
To: Paul Woodmansee <Paul@bykconstruction.com>
Subject: RE: Affordable Housing Interviews on 9.25.17

Hi Paul:

Below is a list of the type of questions Erika will be asking today.

Thanks,

Rebecca

Questions for Developers/Builders:

What kind of housing/development do you do now?

Are you working in Mount Vernon now? Why or why not?

What are the market trends and opportunities for housing development/construction in and around Mount Vernon?

Would you ever consider trying a different housing market or housing product? What might influence your decision?

In the communities in which you work do you ever use development tools or incentives offered by local government? Why or why not?

Would you consider building affordable units as part of a future project?

Is there anything that the city could do that would help you to include affordable units in your next project? (Here we can specifically ask about different incentives and bonuses)

Would you ever consider partnering with a non-profit or public agency to build affordable housing?

From: Paul Woodmansee [<mailto:Paul@bykconstruction.com>]

Sent: Monday, September 18, 2017 4:28 PM

To: Lowell, Rebecca <rebeccab@mountvernonwa.gov>

Cc: Beacham, Linda <lindabe@mountvernonwa.gov>; Phillips, Chris <cphillips@mountvernonwa.gov>

Subject: RE: Affordable Housing Interviews on 9.25.17

Thanks all,

I will review before Monday.

Is there a list of questions I will be asked? I am usually better at thinking over time than on the spot answers.

Paul

From: Lowell, Rebecca [<mailto:rebeccab@mountvernonwa.gov>]

Sent: Monday, September 18, 2017 11:45 AM

To: Lowell, Rebecca <rebeccab@mountvernonwa.gov>

Cc: Beacham, Linda <lindabe@mountvernonwa.gov>; Phillips, Chris <cphillips@mountvernonwa.gov>

Subject: Affordable Housing Interviews on 9.25.17

Hello:

ATTACHMENT 3: PC STAFF REPORT

In anticipation of having you meet with Erika Rhett with BERK consulting next Monday please find attached background information and details regarding different approaches the City could take.

Thank you,

Rebecca Bradley-Lowell
Senior Planner
City of Mount Vernon
Development Services Department
910 Cleveland Ave / P.O. Box 809
Mount Vernon, WA 98273
360.336.6214

City of Mount Vernon: Affordable Housing

Comments:

Affordable housing in MV is an oxymoron

- Low income and affordable are different.
- What's it tell you when you have small 3 bedroom homes with 5-6 cars parked in the driveway, front yard, street, etc.
- City Council is actually a hindrance by reacting to political pressures and adopting regulations which harbor unintended consequences.
- A good idea shouldn't have to wait 2-3 years because of entitlement/permitting process....if it does then the system is broken. This effort will likely take 3-5 years to implement under current regulations.
- "MV is un-developable...finished lots only", comments from major regional and national builders.
- Homes being built in last 2-3 years are all being built on foreclosed, REO properties. How many new applications have been submitted in last 24 months and what's their lot total?
- NIMBY's will oppose by every means.
- Buildable lands inventory: quantitative v.s. qualitative.
- What people expect has changed.....3 bedroom, 1,000 s.f. rambler isn't good enough for affordable, maybe low income, but not affordable.

Suggested Changes

- Flexible, "common sense" regulations.
- Streamlined approvals
- Make short plats lots, not lots and tracts.
- Allow high-end mfr in sfr zones.....MV has zero high-end mfr, it's all in large blocks that totally impact surrounding areas.
- Create Opportunity Zones for new/upgraded infill sfr homes/projects.
- Infill sfr, downzone one lot size, i.e., 7,500>6,000, etc.
- Road standards requiring 100% imported gravel are ridiculous....don't penalize entire industry for someone's past-mistakes.
- Get rid of Tree Retention Ordinance....it adds at least \$6,000-\$7,000 to price of a house and 3-4 months to permitting process.
- Design Review Standards....I now have a staff planner and some architect telling what and how I should build my homes, plus it adds another 3-6 months to permitting process and several thousand dollars to cost of homes. There has to be a simpler way.
- UGA needs to be expanded and not take 2-3 years to implement.

Final Idea: SOPO

Partner with Skagit County to develop County Fairgrounds into a centerpiece community of affordable, low-income, transit oriented, schools, central park, etc., etc. Make the area north of Fairgrounds a sfr Opportunity Zone and employ incentives. Make this area of deteriorating and under-utilized land and housing into a Gem. As it stands, the City can't go into the County, but the County can come into the City....call them on that hypocrisy.

Achieving Lasting Affordability through Inclusionary Housing

Robert Hickey, Lisa Sturtevant, and Emily Thaden

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Lincoln Institute of Land Policy Working Paper

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Executive Summary

Inclusionary housing policies are local land use policies that link approvals for market-rate housing to the creation of affordable homes for low- and moderate-income households. The primary goals of inclusionary housing programs are to expand the supply of affordable housing and promote social and economic integration. The ability to not only produce affordable homes, but also to ensure their long-term affordability, is critical for meeting the housing needs of the lower-income families and individuals that inclusionary housing programs aim to serve. Even as inclusionary housing programs have become more prevalent, there is a lack of information on successful strategies for facilitating lasting affordability.

This paper analyzes a set of 20 inclusionary housing programs to highlight how long affordability periods, strong legal mechanisms, carefully designed resale formulas, dedicated program stewardship, and strategic partnerships can help preserve affordable homes produced through inclusionary housing programs for multiple generations. In addition, this research describes initial findings from a first-of-its-kind, national directory of local inclusionary housing programs.

Inclusionary housing policies can be found today in nearly 500 local jurisdictions across 27 states and Washington, DC, according to the national inventory compiled for this report. A sizeable share of inclusionary housing programs requires long-term affordability periods. For the 307 programs for which affordability period data was available:

- Eighty-four percent of homeownership inclusionary housing programs, and 80 percent of rental programs require units to remain affordable for at least 30 years; and
- One-third of inclusionary housing programs require 99-year or perpetual affordability for rental and/or for-sale housing.

The case study analysis of 20 programs provides additional insights on the evolution of affordability terms over time, and the mechanisms needed to ensure the lasting affordability of inclusionary units. As inclusionary housing programs have matured, local jurisdiction typically lengthened, rather than shortened, affordability periods. In addition, almost all of the programs studied that have less than perpetual affordability periods restart their affordability terms whenever a property is resold within the control period. This requirement is helping to achieve lasting affordability in places that have not adopted “perpetual” affordability periods for legal or political reasons.

But as the 20 case study programs revealed, achieving lasting affordability requires more than simply setting long affordability periods. Strong legal mechanisms, carefully designed resale restrictions, pre-purchase and post-purchase stewardship practices, and strategic partnerships are important for ensuring that inclusionary properties continue to

be sold or rented at affordable prices, and are not lost due to illegal sales, foreclosure, or lax rental management practices.

Key legal mechanisms help jurisdictions stay notified of illegal sales, improper refinancing, over-encumbrance with second loans, and defaults that could jeopardize the continued availability of inclusionary homes. These mechanisms include not only deed covenants, but also deeds of trust, the preemptive right to purchase, the right to cure a foreclosure, the right to purchase a home entering foreclosure, and requirements of notice of default or delinquency.

Resale formulas are being designed to balance the goals of ensuring lasting affordability for subsequent homeowners and promoting wealth-building among homeowners. The most popular resale formula used by case study jurisdictions ties the resale price to the growth in area median income (AMI) over time. But other approaches were reported, including fixed-percentage, appraisal-based, and mortgage-based resale formulas, as well as hybrids of two or more of these approaches.

Monitoring and stewardship activities are critically important for ensuring lasting affordability of inclusionary housing units. Effective stewardship of a program's homeownership inclusionary portfolio includes preparing homebuyers for the responsibilities of homeownership, helping owners avoid pitfalls such as delinquencies or foreclosure, monitoring resale and refinancing activities, encouraging and enabling ongoing investment in property maintenance and repair, and staying in regular communication with homeowners. Effective stewardship of a rental inclusionary portfolio includes regular oversight over the leasing and tenant selection process. In some case study programs, this administration involved regular review and training of property managers, while others used in-house management of a centralized waiting list and tenant selection process.

Despite the acknowledged importance of stewardship, most jurisdictions report having insufficient resources for comprehensive stewardship and many have not adequately planned for long-term monitoring and stewardship of inclusionary housing units. In addition, while many best practices exist for stewardship activities on the homeownership side, there is a need for more guidance on how best to monitor and steward rental units. As rental units become a growing share of the inclusionary housing inventory, local jurisdictions are looking for guidance on the trade-offs between managing rental in-house and partnering with property managers and/or other outside organizations.

Third-party partnerships with nonprofit organizations, such as community land trusts, for-profit administrative agents, local housing authorities, and nonprofit housing developers enable many inclusionary housing programs to improve their stewardship and oversight of for-sale and rental inclusionary units. These partnerships will be key to ensuring lasting affordability of inclusionary housing units where financial resources or staff capacity is low.

This research marks an important advance in the knowledge of the landscape of inclusionary housing programs. Future research is needed to rigorously evaluate which models work best for fostering lasting affordability of affordable homes produced through inclusionary housing programs. In addition, there is more that needs to be understood about the necessary monitoring and stewardship activities associated with rental housing created through inclusionary housing programs. Finally, as inclusionary housing becomes a more common means by which affordable housing is created in communities across the country, there is a general need for better understanding of the program characteristics that are associated with successful programs, particularly in different legal, economic, and political climates. The case study analyses and the national directory of inclusionary housing programs developed for this research mark an important first step in the data collection efforts needed to conduct more evaluative research of inclusionary housing programs.

About the Authors

Robert Hickey is a Senior Research Associate for the National Housing Conference. He holds a master's degree in city and regional planning from the University of California-Berkeley. His primary areas of research include inclusionary housing and policy and planning strategies for creating affordable homes in transit-oriented communities. He is the recent author of *After the Downturn: New Challenges and Opportunities for Inclusionary Housing*; *Losing Ground: the Struggle of Moderate-Income Households to Afford the Rising Costs of Housing and Transportation*, and a report on the role of community land trusts in fostering equitable transit-oriented development, published by the Lincoln Institute of Land Policy.

Lisa Sturtevant, Ph.D. is Vice President for Research for the National Housing Conference and Executive Director of the Center for Housing Policy. Dr. Sturtevant holds a doctoral degree in Public Policy with a concentration in Regional Economic Development from George Mason University, a master's degree in Public Policy from the University of Maryland and a bachelor's degree in mathematical economics from Wake Forest University. Her primary areas of research include the relationship between housing and economic development, residential mobility, and demographics. Her research has been published in *Growth and Change*, *Journal of Urban Affairs* and *Journal of the Center for Real Estate Studies*.

Emily Thaden, Ph.D. is the Research & Policy Development Manager for the National Community Land Trust Network. She holds a doctoral degree in Community Research and Action from Vanderbilt University's Peabody College and a bachelor's degree from New York University. Dr. Thaden specializes in shared equity homeownership models and community land trusts; her relevant work has been published in *Housing Studies*, *Shelterforce*, *Land Lines*, and working papers published by the Lincoln Institute of Land Policy.

Acknowledgements

We thank the Lincoln Institute of Land Policy for supporting this research. This research was conducted in partnership by the National Housing Conference's Center for Housing Policy and the National Community Land Trust Network. Chris Marshall, intern at the Center for Housing Policy, deserves special recognition for his substantial contributions on data collection, analysis, and presentation of findings in this report.

We would like to acknowledge members of this project's Advisory Board, who helped to inform the design of this project, provided information to compile the national directory of inclusionary housing programs, and reviewed drafts of the working paper. Special thanks to:

- Josh Abrams, Consultant for Cornerstone Partnership from Community Planning Collaborative;

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- Brian Pine, Assistant Director for Housing, Community & Economic Development Office, City of Burlington;
- Peter Pollock, Ronald Smith Fellow, Lincoln Institute of Land Policy;
- Heather Schwartz, Policy Researcher, RAND Corporation; and
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Achieving Lasting Affordability through Inclusionary Housing

Introduction

Inclusionary housing, also called inclusionary zoning, refers to local land use ordinances that require or encourage developers to include affordable units in new residential developments. Affordability is often achieved through an indirect subsidy to residential developers—including through increased development capacity or other accommodations during the development review process—and therefore the public cost of generating affordable homes can be relatively low. However, ongoing public management and oversight is critical to ensure that homes remain affordable to low- and moderate-income households over the long-term and the investment in affordable housing is retained. This paper analyzes program data from a set of inclusionary housing programs to highlight how policies designed with long affordability periods, strong legal mechanisms, carefully designed resale formulas, and dedicated program stewardship can help preserve the long-term affordability of inclusionary housing units. Partnerships between public agencies and nonprofit organizations are also critical components to achieving lasting affordability.

Inclusionary housing policies were first established four decades ago in suburban communities outside Washington, DC and in California. During the last 15 years, in response to rising home prices and along with a greater tendency for local governments to make developers pay for costs associated with new development (Calavita and Mallach 2009), inclusionary housing has become an increasingly common way for local communities to produce affordable housing. At present, roughly 500 municipalities across the United States have adopted inclusionary housing policies. The primary goals of inclusionary housing programs are to increase the supply of affordable housing¹ and to promote social and economic integration.

The capability for ensuring lasting affordability, in addition to producing affordable homes, is critical for meeting the housing needs of the lower-income families and individuals that inclusionary housing programs aim to serve. Across the universe of inclusionary housing programs, there is substantial variation in the lengths of the required affordability periods, the legal mechanisms by which affordability is guaranteed, the formulas established for reselling homes and the approaches taken to monitor and steward inclusionary housing units over time. The ways programs are designed can have a significant impact on the likelihood that inclusionary housing programs can achieve lasting affordability.

The goals of this paper are: (1) to characterize the current landscape of inclusionary zoning programs in the U.S.; (2) to compare programs' approaches for preserving ongoing affordability; and (3) to evaluate best practices within inclusionary housing policies and programs for achieving long-term affordability.

¹ Housing is considered affordable when a household spends no more than 30 percent of its gross income on total housing costs (e.g. rent or mortgage plus utilities). Some jurisdictions may define affordable housing based on locally determined criteria, but the 30-percent rule is a commonly accepted measure of housing affordability (HUD undated).

Literature Review

Research on the characteristics and impacts of inclusionary housing programs has been growing; nevertheless, detailed data on the landscape of inclusionary housing programs remains scarce, and analysis of efforts to preserve affordability of housing units over time is even more limited. This literature review describes the studies to date that document the landscape of inclusionary housing programs in the U.S., focusing on findings related to long-term affordability. This section continues with a review of the research on the rationale for ensuring long-term affordability and an assessment of key elements of affordable housing programs that promote lasting affordability.

Inclusionary Housing Programs

The paucity of available program data has posed challenges for reliably assessing the scale and scope of U.S. inclusionary housing programs and for evaluating program efficacy and outcomes. Few states have developed databases of local inclusionary housing programs; the online database of local programs in California maintained by the California Coalition for Rural Housing is the notable exception (<http://www.calruralhousing.org>). Up until the date of this report, a national database of local inclusionary housing programs has not existed. Porter (2004) concluded that it would be “impossible” to get a definitive count of all jurisdictions with an inclusionary housing program or an estimate of the number of affordable units produced through the universe of inclusionary housing programs (25).

Much of the difficulty in collecting systematic program data stems from the fact that information about these programs is maintained in many different places—from publicly available official zoning ordinances to informal department policy documents. Because there is no mandate for the types of program and production data that localities must collect (other than in the state of New Jersey), there is significant variation in the quantity and quality of information kept at the local level (Leckington and Gottesman 2010). Furthermore, individual local jurisdictions historically have not carefully tracked their own affordable housing production, and have been particularly inattentive to tracking inclusionary units separate from affordable housing produced through other programs.

Despite these challenges, some research has been done exploring the characteristics of inclusionary housing programs. Fewer studies have measured and evaluated program production levels. Some of the common findings in the literature on the U.S. landscape of inclusionary housing include: (1) program design and implementation vary substantially; (2) affordable housing production and preservation varies considerably; (3) programs contribute to increased economic integration; and (4) economic, political, and legal factors have resulted in changes to programs. Within the current literature, there is very little systematic analysis of programmatic elements related to *preserving* affordability, not just *generating* affordability.

Design and Implementation Vary Significantly by Program

A central finding in studies that have described the characteristics of inclusionary housing programs is the substantial variation in almost all aspects of program design. Many inclusionary housing programs are mandatory while others are voluntary. In some cases, inclusionary housing policies provide exceptions to the affordable housing requirements. For example, small projects with units below a certain threshold may be exempted from the inclusionary mandate. Many localities offer a buyout option, allowing developers to pay an in-lieu fee to an affordable housing fund instead of providing affordable units within the new development. Many jurisdictions offer cost offsets or increased density to incentivize the provision of affordable housing.

In recognition of the inherently local and varied nature of inclusionary housing programs, Mulligan and Joyce (2010) not only catalogued and described variations in inclusionary housing policies but also developed a detailed guide for drafting local inclusionary zoning ordinances. Their book provides local officials with a framework for drafting an ordinance along with examples of ordinance language and practical and legal analysis.

Some of the variation in local inclusionary housing programs is related to state policy, as the ability for local municipalities to implement an inclusionary housing policy rests with the authority granted (or at least not expressly prohibited) by the state (Hollister et al. 2007). However, even within the same state where localities are subject to the same state regulatory and political influences, local jurisdictions adopt different programmatic elements in response to local conditions.

In addition to the many other elements of the program design and implementation, inclusionary housing programs across the country vary substantially in terms of the characteristics that affect prospects for lasting affordability, including lengths of affordability periods, enforcement mechanisms, and resale formulas. However, the current research provides only limited information on these particular elements of inclusionary housing programs. For example, in a 2007 study of inclusionary housing programs in California, the Non-Profit Housing Association of Northern California (NPH) found that while almost all of the state's inclusionary housing programs were mandatory at the time of the report, there were significant differences across programs in terms of targeted income groups and the size of projects that were subject to the affordability requirements. However, relatively little information was reported on the affordability terms, the legal mechanisms for ensuring affordability and the process for monitoring inclusionary units. In Massachusetts, Blaesser et al. (2002) documented substantial variation across 100 local programs in terms of the geographic scope of the programs (e.g. municipality-wide versus particular parts of the city or town), the size and types of projects subject to affordability requirements, and the availability of exemptions and opt-outs for developers. But again, there was little discussion of other elements related to preservation of affordable units.

Levy et al. (2012) summarized the characteristics of the inclusionary housing programs in Fairfax County, VA and Montgomery County, MD, two suburban communities located outside of Washington, DC, and documented differences in terms of the programs'

affordability requirements, length of affordability terms, and oversight and monitoring procedures. While the two counties are located within the same housing market, the differences the authors observed were attributed to separate municipal governance as well as differences in local economic conditions and political environments.

One of the most recent comprehensive assessments of a national sample of inclusionary housing programs was done by Heather Schwartz and colleagues at RAND (2012). Schwartz et al. analyzed the characteristics of 11 inclusionary housing programs across the country, including oft-studied jurisdictions, such as Montgomery County, but also more geographically varied and recent programs (e.g. Santa Fe, NM and Denver, CO). The authors found that the 11 programs they reviewed varied considerably in terms of nearly every programmatic characteristic—including the affordability terms and the procedures in place to monitor the units for long-term affordability.

The current research characterizes the significant variation across inclusionary housing programs; however, much remains unknown about how local economic, political, and regulatory factors affect the design and effectiveness of inclusionary housing policies and how these factors affect prospects for ensuring lasting affordability.

Affordable Housing Production Varies Considerably by Program

One of the main criticisms of inclusionary housing programs is that, while they can create large numbers of affordable units in some communities, overall they have had a relatively small impact on the supply of affordable housing nationwide (Mulligan and Joyce 2010; Rusk 2008). Differences in the production levels of programs appear to be predominantly explained by (1) whether policies are mandatory or voluntary and (2) local housing market conditions. Evidence strongly suggests that mandatory programs are more productive than voluntary programs (Brunick 2003; Mukhija et al. 2010). Additionally, localities that have fostered greater political will to support affordable housing and build acceptance in the development community that providing affordable housing is “the cost of doing business” tend to have more productive programs (Levy et al. 2012). Lastly, “hotter” housing market conditions and strong demand for market-rate housing have produced more affordable units through inclusionary housing programs compared to weaker housing markets (Mintz-Roth 2008).

No national research on the affordable housing production in inclusionary housing programs has been conducted, but production numbers exist for some local programs at different points in time. In a review of inclusionary housing programs in California, NPH (2007) found that about 30,000 inclusionary housing units were produced by approximately one-third of California’s inclusionary housing programs between 1999 and 2006, but production varied substantially across localities. In research on inclusionary housing programs in the San Francisco, Washington, DC and Boston metropolitan areas, Schuetz et al. (2008) also found differences in production across regions and localities but generally observed relatively low affordable housing production totals. In both the NPH (2007) and Schuetz et al. (2008) studies, the researchers not only found differences in production levels across jurisdictions,

but they also found significant variability in the availability and quality of production data available from local jurisdictions.

In research investigating how cost offsets and developer incentives affect affordable housing production through inclusionary housing programs, Brunick (n.d.) found that the total number of affordable units produced through inclusionary housing programs in Boston, San Diego and San Francisco amounted to between just two and four percent of all units built. In Chapel Hill, NC, however, the inclusionary units produced between 2002 and 2004 comprised approximately 10 percent of all housing units built. The authors concluded that different features of the inclusionary housing programs, particularly whether the program was mandatory or voluntary and whether developers were allowed to cash out or opt out of the program, primarily explained production differences.

Despite the evidence of limited production in many places, inclusionary zoning programs in some localities have been a relatively substantial source of affordable housing units. For instance, in Montgomery County, the inclusionary zoning program accounted for half of all the affordable housing built between 1974 and 1999 (Brown 2001). In New Jersey, inclusionary housing programs are second only to the Low Income Housing Tax Credit (LIHTC) program in terms of affordable housing production (Calavita and Mallach 2010).

Measuring the *preservation* of affordable inclusionary housing is as important as *production* to understanding the outcomes of inclusionary housing programs, since measuring production alone does not capture the number of affordable inclusionary units that continue to be available in a locality's housing stock. To date, ongoing affordability of units generated by inclusionary housing programs has not been systematically examined in the literature.

Programs Contribute to Increased Economic Integration

Inclusionary housing is an important tool for generating and preserving affordability because it can help create economically and racially integrated communities. Based on a small set of existing research on the social impacts of inclusionary housing, evidence suggests that these policies locate affordable housing in low-poverty, high-opportunity neighborhoods more effectively than other affordable housing programs, including the Housing Choice Voucher and the LIHTC programs (Ellen and Horn 2012).

In a study of Montgomery County, Schwartz (2010) found that children of public housing residents who were living in inclusionary zoning units throughout the county were attending lower poverty schools and had better school performance than children living in public housing in higher poverty neighborhoods. In a later study of 11 localities with inclusionary housing programs, Schwartz et al. (2012) found that inclusionary units are widely dispersed throughout the jurisdictions, located in relatively lower poverty neighborhoods and assigned to relatively lower poverty schools than other housing affordable to very low income households. The results for Montgomery County confirm earlier research by Myron Orfield (2005), which found that the county's inclusionary housing program was successful in promoting racial integration. Additionally, Holmqvist (2009) used Davis, CA as a case study to examine how its inclusionary housing program affected racial and economic integration.

In her analysis of data over the 1980–2000 period, she found that Davis’ inclusionary zoning program promoted racial integration in the jurisdiction.

These findings on economic integration are particularly important as local communities become subject to new fair share housing regulations under HUD’s Affirmatively Furthering Fair Housing rule. (See http://www.huduser.org/portal/affht_pt.html for details on the proposed rule.) Encouraging the production and preservation of affordable homes through an inclusionary housing program will likely be part of many localities’ strategies to meet the new federal affordable housing requirements. Furthermore, maintaining the affordability of inclusionary housing is particularly important for advancing economic and racial integration because new construction can lead to escalating housing costs in fast-growing markets; hence, creating a stock of permanently affordable housing ensures ongoing access to high-opportunity neighborhoods.

Economic, Political and Legal Factors Result in Evolving Policies and Programs

Recent research and commentary on inclusionary housing highlights major shifts in the approaches used to produce and preserve affordable homes through inclusionary housing policies. The evolutionary nature of inclusionary housing provides opportunities to make recommendations to improve programs’ capabilities for ensuring lasting affordability.

Hickey (2013) found that in the aftermath of the recession, while very few communities eliminated their inclusionary housing programs during the downturn, several reduced their affordability requirements and many are facing new challenges. One key challenge communities increasingly faced is the difficulty selling (and reselling) inclusionary units in markets that are still recovering from the downturn. In response to these obstacles, some jurisdictions broadened their pool of buyers by expanding eligible household incomes (e.g. from 80 percent to 100 percent of area median income) while keeping the price restrictions in place. Others gave developers the option to rent inclusionary units if they are unable to find an eligible buyer after a certain period of time. Solutions to emerging challenges related to selling and reselling inclusionary units involve program flexibility and proactive stewardship (including asset management, monitoring and enforcement, and residential support) of the inclusionary homes.

Legal challenges have also forced some localities to make changes to their inclusionary housing programs and may have kept others from pursuing mandatory policies. Most notably, the recent *Palmer* decision in California raised questions about the legal status of rental inclusionary zoning programs (Shigley 2009). In response to the *Palmer* decision, many localities in California have excluded rental developments from their inclusionary housing requirements. Furthermore, recent legal challenges in California may make localities in other states more reticent to develop strong policies in case similar legal restrictions are imposed in their state.

The landscape of inclusionary housing programs has also changed as programs have been implemented and expanded in geographically and politically more diverse localities. While inclusionary housing programs had their origins in progressive, suburban communities in

California and the Washington, DC area, the use of inclusionary housing is now common in many large urban centers, including New York, San Francisco, Washington, DC and Chicago (Brunick et al. n.d.). In addition, smaller communities in the southeast have increasingly adopted inclusionary zoning ordinances in response to rising home prices (Mulligan and Joyce 2010). One of the most significant changes in approaches to inclusionary housing programs is in New York City, where Mayor deBlasio recently announced that the city's voluntary inclusionary housing program would become a mandatory program, tied to increases in development capacity and building heights in key parts of the city (Goldman 2014).

The evolving nature of inclusionary housing programs suggests that the time is particularly ripe to modify and implement programs so that they are effective, not only at producing affordable units, but also at ensuring their affordability over the long-term. As a result, it is critically important to evaluate how successful programs are setting affordability periods, structuring legal instruments for affordability requirements, setting resale prices, and monitoring and stewarding units to ensure affordability.

Permanent Affordability

In the current research that reviews inclusionary housing programs, there is limited information about affordability periods and preservation mechanisms (Jacobus 2007b; Levy et al. 2012). Even less is known about the effectiveness of the procedures for ensuring inclusionary units remain affordable over the long term.

Despite the lack of comprehensive analysis of long-term affordability strategies, there is ample support for ensuring the lasting affordability of units created through public programs. Affordable housing expert, Rick Jacobus, has written that, "Any lasting solution to the need for affordable homeownership will require an ongoing infrastructure to monitor and administer the public asset that is created through these programs" (Jacobus 2007b, 5). In 2009, the Association for Neighborhood and Housing Development (ANHD) brought together dozens of housing practitioners and consultants to discuss the importance of ensuring permanent affordability. While the conversation was designed to center around federally-subsidized housing units, the presentations and discussions covered the benefits of permanent affordability more broadly. The consensus among practitioners was that ensuring permanent affordability is essential for a number of reasons: It assures the highest return on public investment in affordable housing production, helps meet the growing housing affordability challenges communities are facing, and provides a key mechanism by which affordable units remain affordable when market pressures are increasingly likely to remove them from the affordable housing stock (Johnstone 2009).

Some of the most compelling arguments for the need to ensure permanent affordability have come from analyses of federally-subsidized rental units (e.g. Project Based Rental Assistance). According to an analysis by the National Low Income Housing Coalition (NLIHC), nearly half a million of the nation's 1.4 million federally-assisted rental units are at risk of leaving the affordable stock because of "owners opting out of the program, maturation of the assisted mortgages, or failure of the property under HUD's standards." NLIHC

advocates for the need to preserve these existing units, pointing to research that indicates that it cost 40 percent less to preserve an existing affordable unit than to build a new one (NLIHC).

In a study of federally-subsidized units in Florida, the Shimberg Center presents data showing an increase in the number of assisted units disappearing from the affordable stock and a concurrent rise in the need for affordable housing in the state (Shimberg Center 2008). The Center developed a tool to identify properties most at risk of leaving the affordable housing stock so that local governments, advocates and other organizations could intervene to preserve those affordable homes (see tool at http://flhousingdata.shimberg.ufl.edu/AHI_introduction.html).

Interest is also mounting in the long-term affordability prospects for properties developed with the LIHTC program. Currently, the LIHTC program is the primary means by which affordable rental housing is developed in the U.S. (Cadick 2013). Khadduri et al. (2012) found that more than one million affordable homes developed under the program could leave the affordable inventory by 2020 as a result of expiring affordability terms. The authors recommended targeted efforts by state housing finance agencies to identify tax credit properties nearing the end of their affordability terms and make resources available to current property owners or “preservation purchasers” in order to extend affordability periods (80). Nelson and Sorce (2013) also reviewed the extent of LIHTC properties nearing the end of their affordability periods and stressed the need for changes to state Qualified Action Plans (QAPs) to support permanently affordable housing. While the issue of permanent affordability within the LIHTC program is complex, these studies highlight the growing interest in considering lasting affordability in the development of tax credit properties.

Support for homeownership programs that produce permanent affordability continues to mount (e.g. Davis 2006; Hackworth 2007; Immergluck 2009; Jacobus 2007c; Jacobus and Abromowitz 2010; Manning 2009). These types of models are commonly referred to as “shared equity homeownership” or “permanently affordable homeownership” (hereinafter shared equity homeownership, SEH). In SEH models, public funds are invested into a property in order to make home purchase affordable for lower income households. The original public investment remains invested in the property and proceeds upon resale are shared between the program and seller. SEH programs differ significantly from more prevalent down payment or closing cost assistance programs used to support lower income homeownership because the public investment remains with the property and benefits multiple homeowners (Grover 2007). SEH may be implemented through a variety of submodels, including: (1) limited equity housing cooperatives; (2) community land trust (CLTs); (3) homeownership programs that utilize long-term deed covenants to provide permanently affordable homes; and (4) shared appreciation loan programs that are designed to keep properties permanently affordable.

At present, research has inadequately addressed whether and how inclusionary housing programs have incorporated lasting affordability into their policies and programs. However, the existing literature on SEH programs more broadly, and CLTs specifically, offers valuable insights on components that are necessary to implement successful programs that create and

preserve the permanent affordability of inclusionary units. This literature indicates four important program features for ensuring that inclusionary housing units retain their affordability: (1) long affordability periods; (2) carefully designed legal instruments; (3) well planned resale formulas; and (4) deliberate and ongoing stewardship of affordable units.

Affordability Periods

Lasting or permanent preservation of the public's investment in affordable housing is not required by federal programs. For example, the LIHTC program, the nation's largest affordable rental housing subsidy program, requires a minimum affordability period of 30 years. In reality, however, many LIHTC projects do not retain their affordability after 15 years since investors are no longer subject to IRS penalties for failure to comply with program rules (Nelson and Sorce 2013). Alternatively, some states require or give preference to projects with longer affordability periods through their Qualified Allocation Plans for awarding LIHTCs. Under HUD's project-based rental assistance program, properties have been required to remain affordability for terms ranging from 15 to 40 years. Under the HOME program, affordability requirements for homeownership units only range from 5 to 15 years (U.S. Department of Housing and Urban Development n.d.).

Ultimately, local inclusionary housing policies frequently preserve the affordability of housing for longer durations than many other affordable housing programs. Based on the findings from one set of research, affordability control periods for inclusionary housing programs can range from just 10 years to 99 years. For some programs, affordability is required "in perpetuity" or as long as permissible by law (Mulligan and Joyce 2010). In California, "permanent affordability" terms were reported in at least 20 percent of the 145 programs reviewed (Calavita and Mallach 2010).

The varied ways in which affordability periods and related legal provisions are designed means there is no universally-accepted definition of "long-term," "lasting," or "permanent" affordability. For owner-occupied units, affordability periods alone do not fully operationalize an inclusionary housing program's intention of ensuring lasting affordability. While longer affordability durations increase the likelihood that an inclusionary unit will remain affordable, some programs have shorter affordability periods due to jurisdictional rules against perpetuities, which frequently limit the durations of deed covenants to no longer than 30 years (Abromowitz 2010). However, programs operating under these state laws that aim to ensure permanent affordability may do so by incorporating additional legal provisions, such as the preemptive option to purchase a property or ability to renew legal contracts (Sherriff 2010). Hence, programs have been considered "permanently affordable" if affordability durations are at least 30 years and additional legal provisions are incorporated that enable the program to preserve affordability over the course of property transfers (Sherriff 2010).

Legal Mechanisms

Generally, SEH programs invest public funds into a property in order to make the purchase of a home affordable for low- or moderate-income households. In return for being able to

purchase a home for a price substantially lower than the property's fair market value, the homeowner will agree to share proceeds upon resale in order to keep the property affordable for subsequent low- or moderate-income buyers. SEH programs utilize various legal mechanisms to impose restrictions on use, occupancy, and transfers. Specifically, these legal documents will stipulate the homeowner's maximum return on their investment, price restrictions for resale, and income-eligibility requirements for the subsequent purchaser.

Three legal mechanisms used by SEH programs to preserve affordability are reviewed below: ground leases, deed covenants, and shared appreciation loans². A thorough review of the relative merits and weaknesses of each legal mechanism is beyond the scope of this paper (see Abromowitz 2010; Sherriff and Lubell 2009). However, each legal mechanism may be used to create permanently affordable homes, and arguably, it is the content and implementation of legal contracts that arguably matters most to the success of SEH programs (Thaden 2014).

Ground Leases

Ground leases used for the creation of permanently affordable homes are predominantly utilized by community land trusts (CLTs). CLTs are nonprofit organizations that are committed to community control of land. CLTs often produce permanently affordable rental housing and for-sale housing. Some CLTs also provide cooperative housing, commercial spaces, or urban agriculture projects; some CLTs also conserve natural lands or green spaces.

CLTs most frequently use ground leases to implement their homeownership programs (although some use deed covenants). Owners of homes in CLTs purchase only the improvements (i.e. the built structure or home) and lease the land where the home is located at a nominal monthly fee from the CLT. Hence, the CLT retains ownership of the land, which enables lower income households to purchase homes at prices well below the appraised value of the land and improvements. In return, the homeowner agrees to restrictions on the price for which the home may be sold in the future in order to keep it affordable for subsequent lower income households (see Resale Formulas).

Ground leases tend to be perceived as “out of the box” to mortgage lenders and public funders; hence, they can be more challenging to implement. However, ground leases are considered more legally durable and enforceable than the other legal mechanisms described below (Abromowitz 2010).

Deed Covenants

Some SEH programs utilize deed covenants (commonly referred to as “deed restrictions”) as the legal mechanism to preserve lasting affordability. When deed covenants are utilized, typically a subsidy is provided to make the home affordable to a low- or moderate-income household. Similar to ground leases, the deed covenant will restrict the price for which the

² It is worth noting that limited equity housing cooperatives are also a form of shared equity homeownership with distinct legal mechanisms. Because cooperatives development is not prevalent in inclusionary housing programs, they are omitted from this review.

home may be sold to subsequent income-qualified buyers (see Resale Formulas). Due to state regulations against perpetuities, the duration of deed covenants tend to be shorter than ground leases, frequently ranging from 30 to 50 years (Sherriff 2010). As a result, SEH programs utilizing deed covenants will often bolster their ability to keep properties permanently affordable by signing new covenants that reset the affordability period with each new homeowner. Additionally, programs often will have the preemptive option to purchase the property back from the homeowner to ensure the home is resold to another lower income buyer at an affordable price. (Notably, these are best practices for all SEH models and commonly used by CLTs as well).³

SEH programs that utilize deed covenants are frequently perceived as more “straight-forward” by mortgage lenders and public funders. Because the title from land and improvements is not separated, there is often greater acceptance from lenders, funders, and homebuyers for deed covenants compared to ground leases. However, deed covenants aimed at producing permanently affordable homes can be deemed less legally durable due to jurisdictional rules against perpetuities and harder to monitor since they lack the ownership stake allotted by ground leases (Abromowitz 2010).

Shared Appreciation Loans

A small minority of SEH programs utilize shared appreciation loans as the mechanism to provide lasting affordability. In these programs, homes are made affordable by providing a soft second mortgage loan. Typically, these second loans are structured as 30-year, due-upon-sale loans with 0 percent interest; hence, they operate as a “subsidy” to make the home affordable. Different from the aforementioned legal mechanisms—which sell and resell homes at resale-restricted prices—shared appreciation loan programs typically sell properties at fair market value. Therefore, the homeowner makes affordable monthly mortgage payments on the first mortgage loan, pays off the second mortgage loan upon resale, and shares some portion of the proceeds at resale with the SEH program. Consequently, the program will then issue a new second mortgage loan to the subsequent lower income homebuyer, which will be increased as needed to make the fair market valuable affordable to the next buyer.

Many shared appreciation loan programs will also record a deed covenant in order to stipulate use and occupancy restrictions, a formula for the share of proceeds upon sale, and income-eligibility restrictions. They can also add additional safeguards mentioned above to enable lasting affordability of the properties (i.e. issue new loans upon transfers and establish the preemptive option to purchase).⁴

³ Deed covenants are frequently utilized in the housing industry as well as by other affordable housing programs, but they should not be confused with those designed to preserve lasting affordability. Deed covenants are prevalent in the housing industry for planned communities and subdivisions to regulate property modifications. In affordable housing, deed covenants are commonly used to stipulate restrictions in accordance with federal programs, such as requirements relating shorter affordability controls.

⁴ SEH programs that utilize shared appreciation loans should not be confused with first mortgage shared appreciation loans that have been offered by poorly-designed and unsuccessful government programs in the United Kingdom and United States (Gandel 2009; Kelly n.d; Kitchin 2008). They should also not be confused with “shared appreciation loan” products provided as first mortgages by for-profit companies, whereby a homebuyer receives an initial amount of capital, which buys down the price of a home to make the monthly mortgage payments more affordable. In these instances, the homebuyer gives

Soft second loan programs maintain the benefit of being common and accepted by lenders and public funders. However, legal concerns have been raised about shared appreciation loan programs designed to create permanently affordable properties since borrowers must be able to pay off indebtedness. Hence, second mortgages must have the option to be repaid, which leaves SEH programs vulnerable to losing a “permanently affordable” home if homeowners opt to pay off the second mortgage (Abromowitz 2010).

Resale Formulas

SEH homeownership programs set the resale price of homes in a variety of ways in order to guarantee that it will remain affordable, including:

- index-based formula, where the resale price is indexed to changes in area median income, cost of living, or some other metric;
- mortgage-based formula, where the resale price is determined by calculating the maximum mortgage financing a buyer at a targeted income level can afford (taking into account mortgage interest rates, property taxes, and insurance rates when the home is resold);
- appraisal-based formula, where the resale price is determined by adding to the original price a percentage of the difference between the home’s appraised value at time of purchase and time of resale; and
- fixed-percentage formula, where the resale price is determined by adding to the original price a pre-determined percentage increase each year.

Research on resale formulas in SEH programs suggests that different approaches are more effective depending on the type of market, the incomes of households served, and the overall objectives of the program. A thorough review of the relative merits and weaknesses of different resale formulas is beyond the scope of this paper (see Jacobus and Lubell 2007; National Community Land Trust Network 2011). Ultimately, a well-designed resale formula aims to balance the goals of ensuring lasting affordability for subsequent homeowners and promoting wealth-building among homeowners.

Unfortunately, existing literature provides little guidance on legal mechanisms and effective procedures for preserving affordability of rental units. Despite the assertion that keeping rental units affordable is “rarely a problem” (Brunick et al. 2004), the LIHTC and federal subsidy programs provide evidence that the way in which affordability terms are structured and the options available to property owners at the end of the terms remain important to the long-term affordability of rental homes.

the lending institution a portion of the property’s appreciation at resale. These products have no intention of keeping homes permanently affordable, and they do not have a solid track record of building wealth among low-to-moderate income homeowners (Thaden 2013).

Monitoring and Stewardship

Monitoring and ongoing stewardship of affordable requirements are among the most important elements of an inclusionary housing program (Davis 2006; Jacobus 2007b). A study of inclusionary housing programs in California found that programs experienced fewer losses of both rental and ownership inclusionary units when the program had strong monitoring procedures (Levy et al. 2012). However, in many cases, ongoing monitoring and enforcement of program rules are not built into a locality's inclusionary housing program and localities do not plan for sufficient oversight and stewardship (Jacobus 2007b). One misconception is that inclusionary housing programs will not require significant public oversight or management since they do not involve direct public subsidy, but instead work through the locality's zoning and land use process (Jacobus 2007b).

To date, limited information has been gathered on the stewardship and monitoring activities of inclusionary housing programs (Abrams et al. 2010). In his 2007 report on successful inclusionary housing strategies, Rick Jacobus outlined the tasks necessary for ongoing administration of inclusionary housing units, highlighting different approaches localities have taken. The author suggests nine key elements for promoting long-term affordability of inclusionary homeownership units; several are also important to preserving affordability of rental units (Jacobus 2007b):

- overseeing production (also rental),
- pricing units (also rental),
- educating potential buyers,
- screening and selecting residents (also rental),
- ensuring access to financing,
- monitoring occupancy and payments (also rental),
- managing resales, and
- enforcing other requirements (also rental).

In developing effective inclusionary homeownership programs, program elements such as homebuyer education, monitoring, and resale management should be planned for at the program's implementation to ensure active stewardship of inclusionary units. While costs for administrative activities can be high, without ongoing stewardship inclusionary housing programs cannot be a permanent solution to affordability challenges (Jacobus 2007b).

Additional literature on CLTs provides "best practices" for homeownership programs that aim to preserve affordability in perpetuity. The stewardship practices recommended in the literature for inclusionary homeownership programs and CLTs are quite similar, although CLTs often engage in more intensive contact with homeowners. During the pre-purchase, CLTs typically require homebuyers to complete homebuyer education counseling and CLT-specific education session(s) that review resale-restrictions and homebuyer obligations per the legal contract. The CLT reviews and approves home purchase loans to ensure the property is affordable upon sale and loan terms are sound. Post-purchase, CLTs typically verify owner-occupancy, review and approve refinance and/or home equity loans, provide

referrals or financial support with home maintenance or repairs, manage resales, identify delinquencies (e.g. HOA dues, property taxes, mortgages, ground lease fees), and provide loss mitigation or foreclosure prevention counseling if needed. Additionally, CLTs retain the right to cure delinquencies and preemptive option to purchase the home out of foreclosure from the lender in order to prevent the loss of the unit to foreclosure (Thaden and Davis 2010; Thaden 2012).

The affordability, legal rights, and ongoing stewardship services provided by many SEH programs (especially CLTs) has been shown to effectively preserve affordability over resales and to enable accessibility and sustainability of homeownership for lower income residents resales (Temkin, Theodos and Price 2010). Furthermore, national studies of CLTs found that conventional homeowners across all income levels were much more likely to be in foreclosure proceedings and to be seriously delinquent than lower income owners of CLT homes (Thaden 2011; 2013).

While it is unknown how prevalent these intensive stewardship practices are among inclusionary housing programs, the best practices for monitoring and stewardship found in CLTs may be incorporated into inclusionary housing programs to better preserve affordability or improve resident outcomes.

An important limitation in the existing literature is the focus on homeownership, providing little guidance for ensuring lasting affordability of rental housing produced through inclusionary housing programs (or CLTs, for that matter).⁵ In inclusionary housing programs, ensuring rental units have affordable rents and are rented by income-eligible households is often assumed to be the responsibility of the property owner or manager, and therefore requires little public oversight. However, rental housing may actually require *more*, not less, active monitoring and management than is required with homeownership units (Jacobus 2007a). One commonality found across inclusionary housing programs is insufficient documentation of the requirements of developers and property managers to ensure ongoing compliance with affordability requirements (Schwartz et al. 2012).

The research presented below addresses an important gap in the understanding about the current landscape of inclusionary housing programs and the extent to which programs are successfully facilitating lasting affordability. The research findings can help guide housing practitioners who want to develop successful programs and partnerships to meet their local affordable housing challenges and help policy makers adopt effective inclusionary housing policies and programs.

⁵ It is worth noting that CLTs have approximately double the amount of rental units than homeownership units in their portfolios; therefore, the dearth of information on stewardship and property management for rentals signals a major gap in the literature.

Research Methods

This section describes the research design, sample selection, and data collection methods used to build a national directory of inclusionary housing programs and case studies of 20 inclusionary housing programs.

Research Design

This research study has three main objectives:

1. To characterize the landscape of inclusionary housing programs nationwide, with a particular focus on the degree to which inclusionary housing programs require long-term affordability;
2. To compare how programs implement long-term affordability (e.g. legal instruments, resale procedures, and stewardship strategies); and
3. To evaluate the best practices and challenges of programs that seek to preserve the affordability of their inclusionary housing portfolio over the long term.

To achieve these aims, a first-of-its-kind, nationwide directory of inclusionary housing programs was assembled, and 20 case studies were prepared to describe a sample of these programs in greater detail. Detailed analyses of 20 programs allowed for a closer examination of the programmatic elements that hold the most promise for achieving lasting affordability of inclusionary homes.

For the purposes of this study, “inclusionary housing” is defined as a local policy that works through the development approvals process to require or incentivize the inclusion of income-targeted housing in otherwise market-rate housing developments. The population of inclusionary housing policies considered for this research included policies that apply jurisdiction-wide, as well as overlay zones, district plans, or other policies that apply to limited neighborhoods. This definition excludes policies that foster mixed-income housing through ad hoc negotiations for master-plan, PUD, or similar land use approvals. “Permanent affordability” in this study is defined as programs that have at least 30-year affordability periods coupled with a requirement that the affordability period is reset if the home is resold during the term or the regular use by the local jurisdiction of a preemptive option to purchase at the first sale after the affordability period.

Data Collection Methods

Nationwide Inventory

A directory of national inclusionary housing programs was developed in an effort to build a more comprehensive set of information about inclusionary housing programs in communities around the country. A basic set of program information was sought for inclusionary housing programs as part of the nationwide inventory:

- Program name,
- Mandatory or voluntary policy,
- Affordability control period,
- Affordability set-aside requirements,
- Income targets,
- The size of developments subject to the policy,
- Year of program adoption, and
- Website and program administrator contact information.

As discussed in the literature review, existing data on inclusionary housing policies and programs is highly fragmented. Accordingly, multiple resources were consulted to develop a comprehensive inventory, starting with:

- the California Inclusionary Housing Policy database, administered by the California Coalition for Rural Housing (<http://www.calruralhousing.org>);
- survey data gathered by the Innovative Housing Institute (2010);
- Schwartz et al. (2012);
- Mulligan and Joyce (2010);
- Hollister et al. (2007); and
- existing Center for Housing Policy research and data.

These sources were supplemented by:

- details on inclusionary housing programs from the Citizens Housing and Planning Association (CHAPA);
- online municipal code searches for terms such as “affordable housing,” “inclusionary housing,” and “workforce housing” using Municode.com, Amlegal.com, and eCode360.com;
- data courtesy of the New Jersey Council on Affordable Housing (COAH) and David Kinsey describing inclusionary housing production in New Jersey’s municipalities as of 2007;
- Price (2007);
- Rhode Island Statewide Planning Program (2006);
- phone interviews and email correspondence with housing advocates and other housing policy experts in various states;
- an emailed survey from the National Community Land Trust Network to its members regarding known inclusionary housing programs;
- reviews of program and policy documents and ordinances; and
- phone/email conversations with select program administrators.

Finally, program administrators for whom email contact information was available (approximately 100 programs) were given an opportunity to validate and correct program data in the inventory.

Case Study Sample

The 20 case study programs comprise a purposive sample, which reflects a wide range of inclusionary housing programs in the field. To be included in the sample group, programs had to have been operational for five or more years and have produced 50 or more inclusionary housing units (which favored mandatory programs since few voluntary programs have produced 50 or more units). These selection criteria ensured that program administrators could reflect on issues related to ongoing program administration. Programs were then selected to provide diversity across the following categories:

- program vintage: (1) 1980's and earlier, (2) 1990's, (3) 2000s
- region: (1) Northeast; (2) Mid-Atlantic, (3) South, (4) Midwest, (5) Mountain, (6) West
- affordability duration: (1) 0-14 years, (2) 15-29 years, (3) 30+ years
- program type: (1) mandatory, (2) voluntary
- jurisdiction size: (1) large city or county (greater than 250,000 residents), (3) medium city (101,000 to 250,000); (5) small city (25,000 to 100,000); (6) small town (less than 25,000).
- tenure applicability (1) rental and for-sale, and (2) just for-sale, and
- administrative approach (such as administered "in house," or administered with the help of a community land trust, nonprofit, or other third-party partner).

The resulting sample is therefore not representative of the universe of inclusionary housing programs. Four jurisdictions in New Jersey, New York, and California were asked to participate, but declined.

Table 1. Case Study Programs

Place	Year Adopted	Size ^(a)	Policy Type
Davis, CA	1987	Small city	Mandatory
Irvine, CA	2003	Medium city	Mandatory
San Francisco, CA	2002	Large city	Mandatory
San Mateo, CA	1992	Small city	Mandatory
Santa Monica, CA	1990	Small city	Mandatory
Boulder, CO	2000	Medium city	Mandatory
Denver, CO	2002	Large city	Mandatory/voluntary ^(b)
Stamford, CT	2003	Medium city	Mandatory
Washington, DC	2007	Large city	Mandatory
Chicago, IL	2003	Large city	Voluntary
Montgomery Co., MD	1974	Large county	Mandatory
Cambridge, MA	1998	Medium city	Mandatory
New Jersey Jurisdictions ^(c)	~1985	Variable	Mandatory
Chapel Hill, NC	2000 ^(d)	Small town	Mandatory
Davidson, NC	2001	Small town	Mandatory/voluntary ^(b)
Santa Fe, NM	1998	Small city	Mandatory

Park City, UT	1993	Small town	Mandatory
Burlington, VT	1990	Small city	Mandatory
Fairfax Co., VA (ADU policy)	1990	Large county	Mandatory
(WDU policy)	2010		Voluntary
Redmond, WA	1994	Small city	Mandatory

(a) Large cities or counties have greater than 250,000 residents. Medium city: 101,000 to 250,000 residents. Small city: 25,000 to 100,000 residents. Small town: less than 25,000 residents.

(b) The program is voluntary for rental housing.

(c) The 1985 New Jersey Fair Housing Act prompted many New Jersey communities to adopt inclusionary housing policies. The Act also led to uniform standards for the design and administration of inclusionary housing programs statewide, which makes it possible to treat the state as a case study in its entirety.

(d) Chapel Hill began with a voluntary inclusionary zoning policy in 2000 and then adopted a similar but more formal, mandatory policy in 2010.

Interviews with program staff and/or contracted administrators were conducted during March and April 2014 to explore the 20 programs in greater depth. In addition to participating in an hour-long interview, program administrators were sent a follow-up survey asking for detailed information on program design and stewardship practices.⁶ In return for their participation in the telephone interview and survey, local program administrators were offered a free annual membership, free conference registration and travel scholarship by the National Community Land Trust Network to attend its April 2014 conference.

A semi-structured interview protocol was designed to foster consistency in the interviews. While some interviews explored certain questions more deeply than others, the interviews were generally organized around questions pertaining to program requirements, program evolution, inclusionary housing production, affordability terms, legal instruments, stewardship and retention practices, partnerships, and key administrative challenges.

Findings

Results from the Nationwide Inventory

Extent of Inclusionary Housing Nationwide

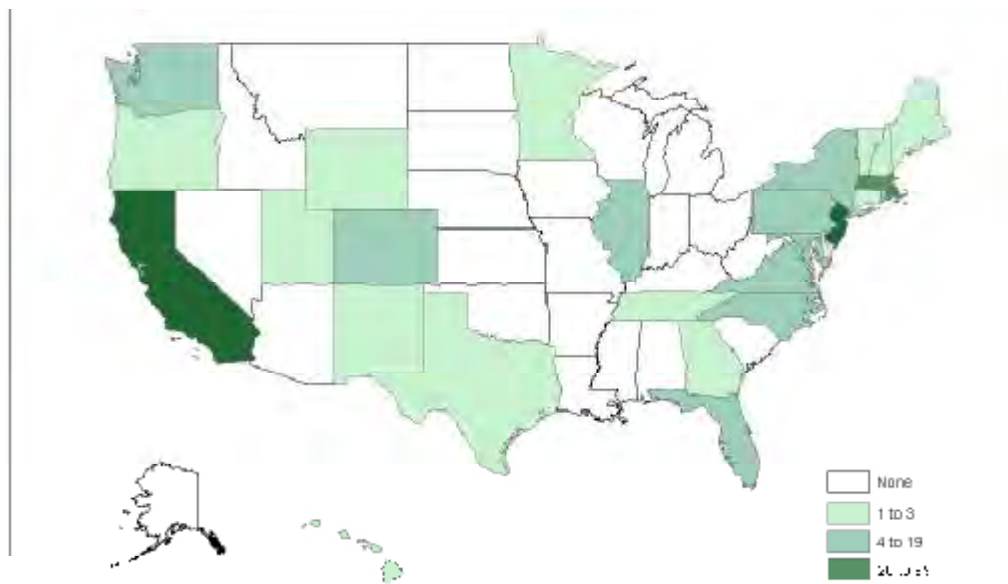
Inclusionary housing policies have been adopted in more states and places than commonly thought. The nationwide scan conducted for this research identified 507 inclusionary housing programs in 482 local jurisdictions. As evidenced by the totals, some jurisdictions have multiple inclusionary housing policies. Often this includes one policy that applies jurisdiction-wide and a second that applies to a specific neighborhood or district, such as a neighborhood or corridor in which intensive redevelopment is occurring. Programs were found in 27 states and the District of Columbia. Of the 507 programs, 36 percent was located

⁶ The survey was modified from the “Inclusionary Housing Program Assessment,” which was created by Cornerstone Partnership, a program of NCB Capital Impact, based in part on works developed by the National Community Land Trust Network. The Assessment is licensed under a Creative Commons Attribution-Share Alike 3.0 United States License.

in New Jersey and 29 percent was located in California. Approximately 83 percent of identified programs were mandatory and 17 percent were voluntary.⁷

Inclusionary programs are found predominantly in New Jersey, California, and Massachusetts, where state laws incentivize or require localities to create a definable share of affordable housing. But a surprising number of mandatory and voluntary inclusionary housing policies are now found in other areas of the country, including the Midwest, southeast, Rocky Mountain West, and every coastal state besides South Carolina. Furthermore, inclusionary housing has also established a critical mass in states such as New York, Colorado, Rhode Island, and North Carolina, where inclusionary housing policies can be found now in ten or more localities. Voluntary inclusionary housing policies have been introduced in states such as Minnesota, Georgia, and Tennessee where it had been difficult to generate political will for mandatory programs.

Figure 1. Location of Inclusionary Housing Programs (n = 507)



⁷ These figures are approximate as sometimes the line between a mandatory and voluntary program is blurry. In this survey, to meet the definition of a voluntary program, development of a property must be theoretically possible without meeting the terms of the program. But in multiple jurisdictions where zoning is highly constrained, redevelopment rarely occurs without the developer using the nominally optional incentives provided through the voluntary inclusionary housing policy. These programs, while categorized as voluntary, may more closely resemble mandatory programs.

Prevalence of Long-Term Affordability Controls

Data on affordability control periods were obtained for 330 of the inclusionary housing programs identified in the national policy scan (65 percent of 507 total programs). Of these programs, more than one-third requires perpetual affordability for either rental units, for-sale units, or both (Table 2). Without additional information, it is unclear how many programs may be designed to create units with lasting affordability through supplemental legal mechanisms. However, it is clear that only a small share of programs have affordability terms of less than 15 years for rental units (12 percent of programs) or for owner-occupied homes (15 percent of programs). Long-term affordability is more frequently required of rental units than for-sale units, but not by a sizeable margin. Hence, these findings confirm that inclusionary housing programs are preserving affordability for longer durations than federal affordable housing programs.

Table 2. Affordability Terms for Inclusionary Housing Programs in the U.S.^(a)

Affordability Term Length (years)	Rental	%	For-sale	%
0 to 14	37	12%	49	15%
15 to 29	24	8%	31	9%
30 to 49	69	23%	100	31%
50 to 98	66	22%	38	12%
99 or perpetual	110	36%	109	33%
Total	306 ^(b)	100%	327 ^(b)	100%

^(a) Includes 330 programs for which there is affordability term length data.

^(b) 24 programs only apply their requirements to homeownership units, and 3 programs only apply them to rental units.

Program data was available inconsistently on other characteristics, such as affordability set-aside requirements, income targets, the size of developments subject to the policy, and year of program adoption. For this reason, these characteristics are not discussed.⁸

Results from Case Studies

The section below focuses on five features of program design that fundamentally affect the availability of inclusionary homes over time: (1) affordability periods; (2) legal mechanisms; (3) resale controls; (4) stewardship practices; and (5) administrative partnerships. For each program element, this section reviews findings from the interviews, surveys, and document reviews. Additionally, each section reviews common challenges and potential solutions for promoting lasting affordability based upon best practices identified by practitioners. Table 3 presents a summary of program characteristics by inclusionary housing program. Appendix A presents profiles detailing additional information on the 20 case studies.

⁸ Inquiries about the national directory should be directed to the National Community Land Trust Network: 503-493-1000 or info@cltnetwork.org.

Table 3. Detailed Program Features

Jurisdiction	Affordability Period (in years)		Homeownership Program's Legal Mechanism	Resale Formula	Requires Homebuyer Education	Who administers	Total Inclusionary Housing Production ^(a)		
	Rental	For-Sale					Total	Rental	Sale
Boulder	Perpetuity	Perpetuity	Deed covenant	Fixed- percentage	No	Rental: Boulder housing authority and nonprofit agencies; For-sale: in-house	~ 750	~ 625	~ 125
Burlington	99	99	Deed covenant or ground lease	Appraisal- based	No	Rental: in-house; For-sale: mostly Champlain Housing Trust (CLT)	212	87	125
Cambridge	Perpetuity	Perpetuity	Deed covenant	"Return on Equity" ^(b)	Yes	In-house	527	334	193
Chapel Hill	N/A	99	Ground lease	Appraisal- based	No	Community Home Trust (CLT)	190	N/A	190
Chicago	30	99	Deed covenant	Appraisal- based	Yes	Rental: in-house; For-sale: Chicago Community Land Trust (CLT)	~ 850		
San Mateo	Life of building	45	Deed covenant	Index- based	No	In-house	325	196	129
Davidson	99	99	Deed covenant	Index- based	Yes	In-house	64	8	56
Davis	Perpetuity	Perpetuity	Deed covenant	Fixed- percentage	Yes	In-house	~ 2,000	~ 1200	~ 800
Denver	15	15	Deed covenant or ground lease	Index- based	Yes	In-house; Colorado	77	0	77

[illegible]

Washington DC	Perpetuity	Perpetuity	Deed covenant	Index- based	Yes	In-house	53	47	6

- (a) As of March 2014, unless otherwise indicated. Figures reflect total units built to meet program requirements on-site, off-site, or through land dedication. These figures do not include affordable units supported with the support of in-lieu fees.
- (b) Formula allows for an annual return based on annual principal payments multiplied by a rate tied to a federal Treasury Bill. The return is calculated annually without compounding and added to the original purchase price.
- (c) As of 2006, ordinances must be designed with affordability restrictions that continue “until the municipality elects to release the unit from such requirements,” which can be no sooner than 30 years from initial purchase. In practice this amounts to default, perpetual affordability requirements.
- (d) Applicant households are required to homeownership counseling if monthly housing expenses for the home will be more than 33 percent of monthly income.
- (e) After 40 years, the city has the option of extending the affordability term for another 10 years.
- (f) For homes sold after the control period, the city recaptures any proceeds from sales in excess of the designated affordable price.
- (g) The resale price is determined by calculating the maximum mortgage financing a buyer at a certain income level can afford at a targeted household level (taking into account mortgage interest rates, property taxes, and insurance rates when the home is resold).

Affordability Periods

Many inclusionary housing programs have implemented long-term and perpetual affordability terms to maximize the benefit of the inclusionary housing subsidy and ensure that future households can benefit from inclusionary units. Where perpetual affordability has not been possible—either because of state statute or local opposition—many jurisdictions have made use of supplemental legal mechanisms that allow programs to preserve ongoing affordability. As programs have evolved, the trend has overwhelmingly been towards longer, rather than shorter affordability periods, often in response to losses of inclusionary units from the affordable housing inventory.

Montgomery County, MD, Davis, CA, San Francisco, CA, Davidson, NC and Chicago, IL all had shorter terms when they were first implemented but moved to perpetual affordability requirements as their programs matured. Montgomery County and Chicago each extended their affordability periods after experiencing a loss of previously built inclusionary housing units. Of the 14,000 inclusionary homes that have been built in Montgomery County over the past 40 years, approximately 9,400 have reverted to market rates due to expiring control periods. At the program's outset the affordability term was only five years. In 1981, the affordability period was increased to 10 years. It was not until the mid-2000s that county officials took more aggressive steps to preserve its inclusionary housing units, increasing affordability periods to their current levels—99 years for rental housing and 30 years for ownership units.

Similarly, Chicago initially allowed inclusionary homeowners to sell units on the open market after five years, resulting in the loss of many of the first homeownership units built through the city's inclusionary housing program. To prevent future losses, the city created the quasi-public Chicago Community Land Trust in 2006 to improve the stewardship of affordable homeownership units, prevent foreclosure, and retain units' affordability in perpetuity. Generally, all new for-sale inclusionary homes must be placed in the CLT, which requires homeowners to agree to a 99-year deed restriction.

Two programs in the set of case study programs reduced their required affordability terms—Fairfax County, VA and Santa Fe, NM—and each had mitigating circumstances. Fairfax County's Affordable Dwelling Unit (ADU) program, which was started in 1990 with 50-year terms, was reduced to 15-20 years in 1998 in the face of pressure from developers. The affordability period was then increased to 30 years in 2006. The county retains a preemptive option to purchase homes that have reached the end of the affordability period and are for sale on the open market (discussed further below). Also, if the county opts not to purchase the home, the seller must share half of the proceeds made in excess of what would have been an affordable resale price in order to make future investments in affordable housing. In 2007, the county adopted a supplemental inclusionary housing policy, known as its Workforce Dwelling Unit (WDU) policy. Under this policy, the county chose 50-year

affordability periods for rental units while preserving the 30-year period for owner-occupied units.

Santa Fe reduced its affordability term for rental units from 20 years to 10 years. According to staff, this decision was driven primarily by the city's interest in encouraging more market-rate rental housing in the city. Santa Fe maintains perpetual affordability requirements for homeownership units.

Several places established their program with perpetual affordability requirements from the outset. A motivation commonly cited by staff was the need to extend the impact of scarce affordability resources. Stamford, CT, for example, adopted its program in 2003 at a time when the city had just prepared an analysis projecting a shortage of 8,000 affordable housing units in the city. It was determined that, as a relatively small city, Stamford would need every single affordable unit to last. As the city's program director said "If we allowed these units to expire after 30 years, which was the conventional HUD affordability term, we'd start losing units as fast as we produced them, and it would be a futile program."

Similarly, Cambridge, MA administrators were motivated by their recent experience with the expiration of the city's federally-subsidized affordable housing units at a time when affordability needs were growing. Officials in Cambridge also reasoned that the affordability term should be permanent since the bonus density provided to the landowner as part of the inclusionary housing agreement would also be permanent. This latter argument was the primary motivation for Washington, DC's choice of perpetual affordability.

Programs with Less than "Perpetual" Affordability Periods Take Other Steps to Achieve Lasting Affordability

Some program administrators shared reservations about perpetual affordability requirements. Staff in several jurisdictions cited developer concerns about the marketability of for-sale homes with perpetual affordability restrictions. Others mentioned legal concerns about perpetual durations. For several profiled jurisdictions, this problem was solved by simply changing the term used. Davidson, Chapel Hill, NC, Burlington, VT, San Mateo, CA, and Redmond, WA all chose to define their affordability term as "the life of the building" or 99 years, rather than "in perpetuity."

Another way that programs get around concerns about "perpetual affordability" is to adopt control periods of 30 or more years and require that these terms restart for the next homebuyer if the home is resold within the control period. The administrators of programs in Montgomery County, Fairfax County, and San Mateo believe, plausibly, that this reset requirement will have the same impact as "perpetual" affordability requirements, because most homes tend to be sold within 30 years.

Fairfax County uses its preemptive option to purchase homes at the first sale of the home after the control period expires. The preemptive purchase option is another way

to protect inclusionary housing units and to extend their affordability in perpetuity; however, the jurisdiction must purchase the home at market price and then subsidize it to make it affordable, which can be very expensive and therefore reduces the impact of the original subsidy.

Yet another approach employed by jurisdictions with non-perpetual affordability periods is to recapture a portion of sales proceeds in excess of the affordable price when a home reaches the end of the affordability period and is sold on the open market. Montgomery County and Fairfax County capture half of these proceeds if the home sells after the completion of the 30-year affordability term. Jurisdictions in New Jersey capture 100 percent of the difference between the affordable price and market price, but this is calculated as the difference that existed at the time of initial sale. In other words, these townships capture 100 percent of the original affordability subsidy. The city of Redmond captures 100 percent of excess proceeds after the conclusion of a 50-year affordability term.

Strong Legal Mechanisms

Local jurisdictions establish affordability requirements through some type of legal instrument. For homeownership units, the most common tool is a deed covenant. However, in many cases, the deed covenant has not provided adequate structure to sufficiently monitor inclusionary units and to keep them in the affordable inventory. Foreclosures and illegal sales, in particular, can be difficult to identify and manage if only a deed covenant is utilized. As a result, many jurisdictions supplement the deed covenant with additional legal instruments to further preserve ongoing affordability.

Deeds of Trust

Despite the recordation of deed covenants on inclusionary units, many programs have had homes in their portfolio sold on the open market at unrestricted prices or to ineligible households because affordability restrictions were overlooked by title companies and subsequent homebuyers. To combat this practice, at least six jurisdictions supplement their deed covenant with a deed of trust on the property. With a deed of trust, legal title to the property is transferred to the municipality, which holds it as security for the “debt” that is owed by the inclusionary homebuyer for receiving the property at below-market-rate. This mechanism improves notification to the city of potential illegal resales and improper refinancing or second loans. Furthermore, if an illegal sale is made before the jurisdiction is able to prevent it, the program has better legal recourse to recapture the affordability subsidy provided to the homeowner.

San Mateo began using a deed of trust years after its program was first implemented. The city discovered in the mid-2000s that title companies were overlooking resale restrictions contained in the deed covenant. In addition, when inclusionary homebuyers refinanced, financial institutions often underwrote loans as if the properties were market-rate, without taking into account the resale restrictions. The

San Mateo program decided to add a promissory note and deed of trust to inclusionary for-sale homes at the point of initial sale. The deed of trust is recorded for an amount equal to the difference between the fair market value of the home and the affordable price—that is, the affordability subsidy provided to the inclusionary homeowner. City staff has found that this “security interest” in the property helps them be better notified of attempts to improperly refinance or sell homes.

Preemptive Right of Purchase (Right of First Refusal) at Resale

Each of the programs included in the case study analysis retains a preemptive right to purchase inclusionary units at resale, with the exception of Davidson. Seven profiled jurisdictions reported using this right in more than 90 percent of resales (Fairfax County, San Mateo, Burlington, Davis, Cambridge, Boulder, and San Francisco). By exercising the right to purchase homes at resale, programs gain greater control and oversight over the resale process by inserting themselves in the chain of sale. For example, Cambridge uses its right of first refusal to ensure that homeowners are chosen properly from the city’s resale pool of income-eligible households. The program also performs any necessary maintenance on the home to ensure it is in good condition before it is resold. Similarly, Fairfax County uses this option to ensure that homes are properly marketed in conformance with fair housing laws, and prospective homeowners are chosen in accordance with the county’s selection plan from the county’s waitlist. By acting as the intermediate buyer, as the county program’s administrator said, “we know for a fact that the home is staying in the program.”

Perhaps the most potent use of the right of first refusal is the ability to place a new, updated deed covenant on the inclusionary unit—with the latest affordability control period and program requirements—before selling it to a new household. In Fairfax County, which has changed its affordability periods over time, the option to purchase at resale gives the county the ability to bring units with 15-year affordability terms up to 30 years, simplifying the administration of what is otherwise a heterogeneous inclusionary housing portfolio.

Rather than actually taking ownership of the home, many programs including San Francisco and San Mateo assign their preemptive option to purchase to an income-qualified homebuyer, who then purchases the home from the previous homeowner at the designated affordable price.

Preemptive Right to Cure a Foreclosure or to Purchase a Home that has Entered Foreclosure

Each case study site requires that the jurisdiction has the right to cure first mortgage delinquencies on behalf of homeowners and the right to purchase homes from the lending institution in the event of foreclosure or assignment in-lieu of foreclosure. For example, in Fairfax County, mortgage lenders agree to give the Fairfax County Redevelopment and Housing Authority (FCRHA) 90 days to cure any default and 90 days to exercise a right to acquire the inclusionary property if it enters foreclosure. If

acquired by the county prior to a foreclosure sale, the lender agrees to sell the home to the FCRHA at the affordable price specified by the program. The county also retains a first right to purchase the home at the foreclosure sale. Such a purchase can often require substantial financial resources, which is why the right to cure a loan or purchase the home prior to foreclosure sale is so valuable.

Notice of Default or Delinquency

Several programs require that lenders notify them if inclusionary homeowners are delinquent on mortgage payments or in default, so that the program may work with the homeowner before reaching the point of foreclosure. The city of Redmond, for example, mandates that a “Third-Party Notification” document be recorded whenever a homeowner purchases an inclusionary home. This document requires that notices of delinquency are sent to the jurisdiction. Other localities have struggled, however, to get lenders to agree to these notifications. Lenders often state that these third party notification requirements are too burdensome to administer (especially since servicing and loan origination may be done by separate institutions). A lien or deed of trust may be of use in this situation; for example, San Mateo reports being notified of default or foreclosures due to being a junior lien holder.

Participating Lender Agreements

Several programs require participants to seek mortgage loans only from designated lenders that have agreed to one or more of the legal stipulations reviewed above. Montgomery County maintains a list of Participating Mortgage Companies that have agreed to comply with these requirements. A one-page document provided to prospective buyers of inclusionary homes lists the names and phone numbers of lenders at seven qualified lending institutions.

Resale Formulas

Each of the programs studied use resale restrictions to ensure that, whenever a home is resold during the affordability period, it is sold at an affordable price. But programs differ considerably in their choice of resale formula. Most programs seek to balance two goals—allowing the homeowner to benefit from some price appreciation in order to accumulate wealth and keeping resale prices affordable for subsequent low- and moderate-income homebuyers. Different programs give different priority to wealth accumulation and affordability preservation, depending on local market conditions and the characteristics of targeted households and/or neighborhoods. Additionally, some jurisdictions prioritize, above all else, the ease and simplicity of a resale formula to be transparent to buyers and lenders.

Among the case study jurisdictions, the most popular approach to setting a resale price is the index-based formula. Typically the program will set the resale price equal to the original affordable purchase price plus a set rate of appreciation tied to changes in area median income (AMI) or the consumer price index (CPI). Washington, DC

calculates the change in AMI based on a 10-year rolling average, which helps prevent a situation in which a homeowner would have to sell at a loss due to a short-term dip in AMI or sell at a price that is unlikely to allow the subsequent homeowner any price appreciation because of a short-term spike in AMI. The AMI-based appreciation model is one of the most intuitive approaches from a long-term affordability perspective, as it ensures that the home price will still be affordable to the same targeted income group in the future. The AMI-based index formula does not, however, ensure that basic homeownership cost assumptions will remain constant over time. For example, interest rates or down payment minimums may go up, reducing the purchasing power of a future homebuyer earning a given percentage of median income below what would be necessary to afford the AMI-adjusted home price.

To achieve resale prices that take these variables into consideration, the city of Santa Monica uses a mortgage-based resale formula. The resale price is determined by calculating the maximum mortgage financing that a buyer at the targeted income level can afford (taking into account mortgage interest rates, property taxes, and insurance rates when the home is resold). While more certain to be affordable to the subsequent, targeted-income household, this resale formula has fallen out of favor in the broader field of shared equity homeownership programs. Depending upon the interest rates upon resale, the seller could realize very poor returns or potentially owe more on their mortgage than the price for which they can sell the home (a major concern for lenders). It is significant that Santa Monica has only one for-sale inclusionary unit.

Three jurisdictions use a fixed-percentage formula whereby the resale formula is determined by adding a pre-determined percentage increase to the original purchase price each year. This approach has the appeal of being simpler to explain to potential homebuyers. It also affords homeowners greater certainty about what to expect at the point of resale. The city of Davis allows 3.75 percent appreciation per year, except in its Southfield Park community, where it permits 5.5 percent annual appreciation. Park City, Utah allows an annual appreciation rate of three percent, though if market values in the city appreciate less than three percent annually, the inclusionary homeowner is limited to the rate of citywide market appreciation.

Boulder uses a hybrid approach in an attempt to strike the right balance in their community. The program ties the resale price to an annual appreciation factor based on whichever index—the AMI or CPI—grew at a lower rate over the ownership period, but it also caps the price increase at 3.5 percent.

Burlington, Chicago, Santa Fe, and Chapel Hill use an appraisal-based (market-appreciation) formula. Under this structure, the resale price is set based on the original price plus a percentage of the difference between the home's original appraised value and the appraised value at the time of resale. Hence, this formula is most tied to the market. Localities often set limits on the maximum allowable appreciation. In Burlington, for example, the resale price can be increased by 25 percent of the home's market appreciation (as determined by appraisals).

In most cases, programs also allow the homeowner to increase the resale price to reflect the value of major repairs or other permitted improvements made by the homeowner during ownership. Programs have found that incentivizing repairs and improvements helps to maintain the quality and condition of the affordable housing stock. Certain closing costs can also be recouped during resale in some programs.

It is not always easy to predict what prices will result from a particular formula and how those resale formulas will affect wealth creation opportunities for current homeowners and affordability for subsequent homebuyers. Local housing market conditions can play a major role in how resale formulas set home prices. Over time, some jurisdictions have found that under certain resale formulas, such as Park City and Montgomery County, the calculated maximum resale price has risen too close to market prices, at least in certain neighborhoods. Competition with market-rate homes can result in homeowners being unable to sell for the maximum resale price (and, therefore, realize inadequate financial returns), or homeowners may experience difficulty selling because prospective homebuyers can purchase a similar home without affordability restrictions. This problem was compounded during the housing downturn in communities where home prices plummeted, as well as in jurisdictions where the initial affordable price was already close to market-rate prices.

Jurisdictions may find it helpful to monitor and adjust the resale price formula periodically to ensure they are striking the right balance between wealth accumulation and ongoing affordability. Some programs may also find that they need to set the initial affordable home price at a level well below market-price, so that there is an adequate pool of income-qualified buyers and the homes remain below market-rate. In instances when prices appreciate above affordable levels, some jurisdictions such as Burlington have simply stepped in and used their right of first refusal to purchase the home, and then invest local resources to subsidize the price so that it can be sold again at an affordable level. Diligent analysis and ongoing analysis of resale formulas can help to prevent the need for additional subsidization in order to keep properties affordable over time.

Stewardship Practice

The case study analysis provides unprecedented insight into the ways local jurisdictions handle stewardship as part of their inclusionary housing programs. Monitoring inclusionary housing units and engaging residents, developers, lenders and other partners are essential for ensuring lasting affordability. Despite evidence of best practices from other housing programs, such as CLTs, there is wide variation in local jurisdictions' approaches to stewardship—both the value placed on stewardship and the specific stewardship activities used. A common theme across programs was a lack of sufficient resources to sufficiently monitor and steward properties and homeowners. Local jurisdictions have also seen their inclusionary housing inventory evolve and become more diverse—with more rental units, varying affordability terms, and multiple partners—which makes stewardship more challenging to implement.

While many jurisdictions retain monitoring and stewardship activities in-house, trends indicate more programs are partnering with external organizations to provide these services.

Homeownership Programs

Effective stewardship of a program's for-sale inclusionary portfolio includes multiple activities related to monitoring inclusionary properties over time and supporting participating households so that they achieve financial success and avoid pitfalls, such as delinquencies or foreclosure. Five commonly cited issues are discussed below, drawing on promising solutions that emerged during the interviews.

1. Keeping homeowners out of default and foreclosure

Many inclusionary housing programs have developed pre-purchase and post-purchase activities and requirements to prevent defaults from occurring in the first place. These educational activities are important not just for keeping the homeowner out of default and foreclosure but also for retaining inclusionary homes. Loss mitigation and foreclosure prevention activities become even more important when programs do not have affordability controls that survive foreclosure (a trend reported by case study sites caused by mortgage lending institutions wanting to ensure that they can sell foreclosed properties without restrictions, fee simple).

One of the ways that homeowners can become vulnerable to foreclosure is by refinancing the home for more than the affordable property is worth or by assuming an unsupportable second mortgage. As discussed above, programs have several legal tools at their disposal to improve notification in these situations. But with notification remaining inconsistent, many programs have undertaken additional activities to promote sustainable homeownership for participating households:

Homebuyer education. Half of the programs profiled require homebuyers to complete pre-purchase counseling with a HUD-certified organization. Just over half of programs also require each homebuyer to attend an orientation session that includes basic elements of the program and, in many cases, a careful explanation of the resale formula.

Standards and approvals for mortgage loans. Half of the case study programs set underwriting standards for loans assumed by homeowners. San Mateo began this practice after multiple homebuyers during the mid-2000s took on mortgages that were improperly underwritten or unsustainable. In 2010, the city clarified requirements for home purchase and refinance loans assumed by the homeowner to promote the sustainability of homeownership. All but one program in the case study set requires that homeowners receive approval from the program in order to refinance or obtain a home equity line of credit.

Annual reminders and certifications of compliance with program requirements. Seven of the programs send out annual reminders of program requirements. San Mateo has also found it helpful to require its homeowners to complete annual certification forms affirming that they are in compliance with permissible types of home loans that can be assumed and the underwriting standards required for refinancing.

Proactive outreach. Several programs keep in touch with homeowners on a regular basis, such as mailings or annual invitations to trainings and events, which remind homeowners to contact the program if any financial difficulties arise. The sooner programs become aware of a potential foreclosure situation, the easier it is for them to help cure it or facilitate a work-out solution.

Fees as early warning systems. As described below, some programs assess homeowners a stewardship fee to help cover the costs of retaining inclusionary homes over time. Other inclusionary housing programs place homes in a land trust, whereby the land is owned by the CLT and leased to the homeowner for a nominal monthly ground lease fee. The CLTs closely monitor delinquencies on ground lease fees as early warnings of potential financial difficulties; they use the detection of ground lease payment delinquency to intervene with homeowners at risk of delinquency on mortgages, property taxes, or HOA dues.

2. Ensuring that homes remain in good shape for future occupants and are properly maintained over time.

A few jurisdictions expressed concern that properties may not be well maintained over time. A lack of proper maintenance could put inclusionary homes at a disadvantage when owners seek to sell them in the future, and ultimately, lead to their loss from the affordable housing stock. Park City has already experienced this as a problem. Two of its earliest inclusionary housing properties created in 1996 and 1998 have begun to show wear due to deferred maintenance. The owners are now struggling to sell the properties, in part due to the poor condition of the buildings.

To ensure ongoing investment in for-sale inclusionary housing properties, some jurisdictions provide financial support for maintenance and upkeep. For example, Chapel Hill provides periodic subsidies to its CLT, Community Home Trust, to conduct necessary renovations or maintenance work on homes before they pass from one homeowner to the next.

Another approach to ensuring properties are maintained is to require reserves for individual homeowners to prevent deferred maintenance. Park City, for example, is considering requiring that the homeowners' associations of properties with inclusionary homes report to the city annually about their reserve levels. The city is also considering a requirement that individual inclusionary homeowners set aside reserves for home upkeep over time. The Community Home Trust in Chapel Hill assesses a monthly homeowner repair/replacement reserve fee, which owners can

access to replace carpeting, HVAC, or similar appliances. In Burlington, the Champlain Housing Trust assists homeowners with financial assistance for major home repairs and general upkeep. New Jersey jurisdictions draw on local housing trust funds supported by in-lieu fee payments to repair existing units.

3. Making sure income-qualified households are occupying the units and preventing illegal renting.

Several jurisdictions struggle to prevent illegal renting of inclusionary homeownership units. While none describe this as a major problem, those that mentioned it indicated that they were not able to completely stamp it out.

To address this problem, some jurisdictions send out annual occupancy verification forms and closely monitor those that are not returned. Montgomery County, for example, works with its code enforcement division to inspect homes that raise this type of red flag. San Mateo conducts an annual review of tax records to see where property tax information is being sent. Some programs also make it easy for neighbors to report illegal occupancy of inclusionary units by circulating program contact information.

4. Ensuring residents can afford the high and rising cost of condominium fees.

Condominium fees can increase substantially over time, making the overall costs of homeownership unsustainable for low- and moderate-income households. Rising condominium fees are a growing problem for many municipalities that are seeing their new for-sale inclusionary homes primarily built as condominiums, including Washington, DC, Fairfax County, and Cambridge. Program administrators can set the initial affordable home price low enough to offset high initial condominium fees but, increases in these fees over time for new amenities or building repairs, can in some cases rival mortgage payments on below-market-rate units, leading to high overall housing costs, potential default, or homeowners being forced to sell their units.

Two promising solutions emerged through the research:

Keep condo fees manageable through proper initial pricing that also anticipates a rise in condo fees over time. Shortly after Washington DC adopted its inclusionary zoning program in 2007, there were several cases where high homeowners' association (HOA) and condo fees were compromising the overall affordability of affordable homeownership units created through a separate city program. This prompted the city to survey condo fees citywide to compare its cost assumptions about fees in its affordable homeownership program to prevailing practice. Having discovered that its fee assumptions were too low, the city lowered its standard affordable inclusionary home price in 2012 by 11 percent to better reflect prevailing condo fees in the monthly cost of the home and provide room for fees to rise over time.

Require that condo fees be proportional to the lower home values of inclusionary ownership units. Not all states authorize localities to require lower HOA or condominium fees for lower-value properties, but some do. The city of Cambridge takes advantage of this legal permission. It requires that developers and HOAs assess fees based on the reduced value of the inclusionary home to ensure that owners of affordable units are not paying fees as high as market-rate owners. Fee increases must also be proportional. Staff works to proactively address concerns about ad valorem assessments from condominium associations by educating them about what the owners of the affordable condominiums are giving up by agreeing to restricted resale prices.

5. Keeping track of units over time

Several programs acknowledged that they do not know exactly how many units they have produced through their inclusionary housing program. Often the lack of data on housing production is the result of lax stewardship practices and inadequate systems for monitoring during the early years of the program. In addition, difficulties with tracking inclusionary units over time occur because some programs manage portfolios of units with variable terms and affordability periods as a result of program requirements changing over time, which can complicate administrative and monitoring activities.

Some jurisdictions have found it helpful to utilize specialized computer software to track not just their large and growing inclusionary portfolio, but also the varying affordability periods, resale restrictions, and regular notifications involved with the constituent properties. Staff at the cities of Cambridge and San Mateo, for example, use Homekeeper software to help manage their for-sale portfolio. To monitor the city's rental portfolio, Cambridge uses Emphasys software commonly used by housing authorities.

Rental Programs

Almost all of the inclusionary housing programs studied have experienced rapid growth in rental housing in recent years. Roughly half now have portfolios that are predominantly comprised of rental housing, as shown in Table 3 above. Hence, the challenge of efficiently managing affordable rental housing is taking on growing importance. Typically, affordability requirements for rental units are established during the development process and managed by rental property managers. Many of the case study jurisdictions report that the challenges involve the number of rental units that need monitoring and the need to work with an increasing number of property managers in scattered locations throughout the jurisdiction to ensure enforcement.

With declining resources for staffing and the tendency for most third-party stewards to only handle homeownership units at present time, solutions for monitoring and stewarding rental units are few. As program director Brian Pine of Burlington said:

“This is what keeps me up at night.” Staff in Fairfax County spoke of being nervous about the “exploding” rental portfolio generated through their new WDU program.

Though there is still uncertainty about the best way to manage rental units in an inclusionary housing program, there is some guidance from the case study jurisdictions. Programs vary in how they approach the challenge of monitoring and stewarding rental units:

1. Some programs have found greater efficiencies by managing the rental property tenant selection and income verification process “in-house.”

Some jurisdictions with moderate-sized rental portfolios have shifted to handling the tenant selection and income verification process in-house. These jurisdictions report that a centralized, in-house approach is more efficient than working with dozens of property managers throughout the jurisdiction. In these instances, on-site property managers typically only retain the responsibility of annual income verification for tenants.

San Mateo, for example, found that property managers turn over so quickly that many were not handling tenant selection and income qualification properly. The city shifted to managing a master waitlist for all inclusionary rental units in the city. When a vacancy occurs in an inclusionary rental property, the city provides the property manager the names of the first five people on the waitlist. If the property manager elects not to select a particular individual on the list, s/he must provide the city with an explanation. According to program manager, Sandy Council, “This has been so much easier for everyone. Applicants don’t have to get on 15 waiting lists, and the city doesn’t have to constantly train a whole bunch of people.” The cities of Cambridge and Park City also administer their rental inclusionary housing programs in this way.

2. Other jurisdictions farm out the responsibility to property managers and rely on periodic audits to ensure ongoing program compliance.

A majority of case study jurisdictions delegate the responsibility of marketing and income qualification to the rental property managers and conduct regular trainings to ensure program requirements are being met. A few localities couple this decentralized approach to monitoring with periodic auditing to ensure greater quality control over the process. Some jurisdictions conduct random, surprise inspections of leasing records to stretch their enforcement capabilities without needing more staff.

No program, however, has solved the problem of monitoring a rapidly growing rental inclusionary portfolio. Accordingly, several jurisdictions discussed an interest in outsourcing the stewardship of the rental inclusionary housing portfolio to a third-party administrator. These types of partnership are discussed below.

Partnerships

Most program administrators report that they have insufficient staff to administer their programs effectively. Many places have faced major financial cuts in recent years. The strain of reduced financial resources has been especially acute in California, where the recent elimination of redevelopment agencies has eradicated funding previously used to partially support inclusionary housing administration. In Davis, CA, for example, the number of staff supporting the inclusionary housing program was reduced from 5.5 to 1.75 full-time employees during the past seven years. The city has had to rely on declining CDBG and HOME funding to cover the costs of its reduced staff. As the inventories of inclusionary housing units grow with the recovery of the housing market—particularly the resurgent rental market—few places have the necessary resources to increase program capacity.

Third-Party Stewards and Administrators

A handful of case study programs have found they have been able to reduce administrative and stewardship costs or improve administration by partnering with third-party stewards. Burlington, Irvine, Chapel Hill, and Denver all work with a separate CLT, which is responsible for administration and stewardship of some or all of the program's for-sale inclusionary housing units. In Burlington, for example, transferring the stewardship and administration of for-sale homes to the Champlain Housing Trust has enabled the city to reduce its program administration workload to approximately 10 percent of one full-time employee.

In Chapel Hill and Burlington, all new owner-occupied homes are placed with the CLT, though this is not explicitly required by policy. Burlington, however, does offer the Champlain Housing Trust first right of refusal for purchasing all for-sale inclusionary homes. Rental units are monitored in-house by the two cities, though Burlington is considering asking the Champlain Housing Trust to assume more rental stewardship activities as well, as the CLT has significant property management capacity. In Irvine, many new affordable homeownership homes are stewarded by the Irvine CLT.

In Denver, all of the for-sale inclusionary homes produced in the Lowry master planned community were placed with the Colorado Community Land Trust (CCLT). CCLT works extensively with homeowners to preserve units in jeopardy of foreclosure. CCLT can access a line of credit from Colorado Housing Finance Authority to buy back homes facing foreclosure and then resell the unit to eligible buyers. During the economic downturn, the foreclosure rate among Lowry inclusionary homes was zero, while in the other two master-planned communities in the city's inclusionary housing portfolio, foreclosure rates were 6 and 25 percent respectively.

In Redmond, the nonprofit organization, A Regional Coalition for Housing (ARCH), administers the entirety of the city's program, along with those of multiple other

jurisdictions in King County. Davis similarly partners with NeighborWorks of Sacramento to administer its inclusionary for-sale homes.

In New Jersey, most jurisdictions work with for-profit firms or nonprofit agencies to administer the entirety of their local inclusionary zoning programs.

In Redmond, Davis, and New Jersey, the regional scale at which third-party stewards operate allows for greater efficiencies than might be possible with single program administration. Furthermore, partnerships with high-capacity affordable housing organizations can result in better and more consistent program administration.

In addition to relieving stress on public agencies, third-party stewards are also able to more easily generate funds for stewardship through monitoring or administration fees. For example, the Champlain Housing Trust assesses a six percent fee on resales which it uses to cover the costs of programming. In Chapel Hill, the Community Home Trust charges homeowners a monthly \$12-24 covenant fee. As mentioned above, fees such as these can serve also as early indicators for when homeowners may be at risk of mortgage delinquency.

Partnerships with Mission-Driven Affordable Housing Developers and Housing Authorities

Many inclusionary housing programs nationwide allow alternative ways of complying with affordability requirements, including off-site development and land dedication. These options can facilitate the development of affordable housing by mission-driven affordable housing developers, who then assume ongoing management responsibilities. Many of these developers not only specialize in managing affordable housing communities, but also bring a commitment to lasting affordability.

In Boulder, for example, all of the city's inclusionary rental housing is managed by one of a few nonprofit affordable housing developers or by the Boulder housing authority (known as Boulder Housing Partners). This is a result of the city's response to a 2000 Colorado State Supreme Court decision, which made it illegal to set affordability terms on rental properties. As a result, the city began to require market-rate developers to work with the housing authority or another nonprofit agency to produce their inclusionary housing rental set-aside requirement. The impact has been to significantly reduce the city's rental administrative burden. These types of partnerships are also common, while voluntary, in other case study jurisdictions, such as San Francisco.

Montgomery County has partnered extensively with its housing authority (the Housing Opportunities Commission, or HOC) to preserve and deepen the affordability of its inclusionary housing portfolio. Early in the program's history, HOC was granted a first right of refusal for purchasing for-sale inclusionary housing

units at initial sale and resale. HOC currently holds approximately 1,450 inclusionary units—roughly one third of the county’s existing inclusionary housing portfolio.

Ultimately, CLTs, nonprofits, certain for-profit firms, and affordable housing developers, property managers, or housing authorities offer a variety of capacities and expertise to inclusionary housing programs that can improve outcomes, including the lasting preservation of units.

Conclusion

Local inclusionary housing programs play an increasingly important role in the production and preservation of affordable housing. Declining federal funding for affordable housing programs will shift greater responsibility to states and localities to find innovative ways to meet local housing challenges. At the same time, new federal fair housing requirements will compel localities to look for new ways to increase the diversity of housing in their communities. Finally, the proliferation of inclusionary housing programs in recent years—in geographically and politically diverse places—will increase awareness and acceptance of affordability requirements tied to new development.

It is important to protect the public investment used to create affordable homes through inclusionary housing programs by developing strategies to ensure the long-term affordability of the housing units and preserve affordable homeownership and rental opportunities for future generations. The time is particularly ripe to promote inclusionary programs designed not only to produce but also to sustain affordable housing. The results of this case study analysis suggest several key conclusions about successful and innovative strategies to help ensure lasting affordability:

- Inclusionary housing programs can only be successful in meeting affordable housing needs if they are both producing and preserving units.
- Without the upfront commitment to long-term affordability, inclusionary housing programs will not be able to meeting ongoing affordability challenges.
- Long affordability periods that reset offer a compelling alternative to “perpetual” affordability periods and go a long way towards achieving lasting affordability.
- Supplemental legal tools beyond deed restrictions will be needed to improve notification of defaults, potential illegal resales and burdens encumbered by homebuyers through second mortgages and refinancing. Inclusionary housing programs should also have in place legal mechanisms that strengthen the program’s ability to cure or purchase homes in foreclosure.

- The preemptive right of purchase can help strengthen a program’s control of the resale process and proactively keep inclusionary units in the affordable inventory. It can also be a helpful tool for increasing the affordability periods of units built under previous, shorter-term requirements.
- Local jurisdictions need to be responsive to local housing market conditions and household demographics when designing resale formulas and should evaluate the efficacy of their design over time to ensure affordability is being preserved.
- Inclusionary housing programs must actively monitor and steward inclusionary units, either in-house or through external partnerships. The programs highlighted in this case study analysis often made good decisions about setting up affordability periods and legal mechanisms with the goal of promoting lasting affordability. However, critical activities around monitoring and stewardship are often inadequately implemented. Successful programs should look to develop partnerships with organizations that have strong stewardship practices—including CLTs—in order to ensure that the affordable housing created through a well-designed inclusionary housing programs remains affordable to future owners and renters.
- Tapping local housing trust funds, which can be supported through in-lieu fees, is a practical way to support repair and crucial ongoing maintenance of inclusionary housing units.

The in-depth analysis of these 20 inclusionary housing programs has provided unprecedented information about program elements fostering lasting affordability. However, additional research evaluating which models work best for preserving affordable units under different conditions is needed. For example, are there some program requirements that are more successful in encouraging the development and preservation of inclusionary housing units during market downturns? Do some supplemental legal mechanisms work better to ensure lasting affordability in states where perpetual affordability terms are prohibited? To what extent does partnering with a CLT or other third-party entity for stewardship activities result in greater preservation and increased efficiencies for the inclusionary housing program?

There is also more that needs to be understood about the necessary monitoring and stewardship activities associated with rental housing created through inclusionary housing programs. To date, much of the enforcement and monitoring of rental units has been the responsibility of property managers with relatively little oversight from local governments. Additional research is needed to identify best practices around rental stewardship. For instance, are property managers enforcing affordability terms? Does in-house monitoring of rental units increase compliance and compliance with fair housing laws?

As inclusionary housing becomes a more common means by which affordable housing is created in communities across the country, there is a general need for better understanding of the program characteristics that are associated with meeting affordable housing needs, particularly in different legal, economic, and political climates. The national directory of inclusionary housing programs that was developed for this research marks an important first step in the data collection efforts needed to conduct more evaluative research of inclusionary housing programs. Future work should build out the national dataset with additional data on affordable housing production and preservation in order to advance knowledge in the field and provide guidance to practitioners and policy makers on best practices for meeting housing challenges and creating lasting affordability through inclusionary housing programs.

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Appendix A: Case Study Profiles

The following profiles of inclusionary housing policies and programs were based upon the information gathered during the interviews and, in most cases, follow-up conversations with administrators. Different procedures and practices are highlighted in the profiles to varying degrees of depth and breadth. If a particular profile does not mention a certain procedure or practice, it should not be inferred that the program or its administrators does not use set procedure or practice.

Davis, California

Place Overview

2013 Population Estimate (Census): 66,205

Population change from 2000 to 2013 (Census): 10%

Location: Sacramento-Roseville-Arden-Arcade metro area

Policy at a Glance

Name: Municipal Code Section 18.05: Affordable Housing

Year adopted: 1987 as a General Plan Policy and 1990 as a Code Section

Policy type: Mandatory

Production as of March, 2014: Approximately 2,000 (1,200 rental, 800 for-sale)

Geographic scope: Citywide

Affordable housing set-aside: 25-35% (rental), 10-25% (for-sale)

Incomes targeted: ≤80% of area median income (rental); ≤120% (homeownership)

Development size applicability: 5 or more units

Alternatives to construction: in-lieu fee, land dedication

Evolution

Davis's original affordable housing policy of the 1970s and 1980s focused on home design. The thought was that encouraging smaller dwelling units would mean the construction of affordable units. Over time, city officials realized that this approach was not sufficient, as local demand eventually made smaller units unaffordable to working class households. Moreover, smaller for-sale units were more prone to being purchased by investors and converted into rental units, thereby reducing the supply for affordable for-sale homes.

From this realization, local homebuilders, nonprofits, and the public sector coalesced around an inclusionary housing policy in the late-1980s. In recent years, the city has made certain revisions. First, the 2007-2009 recession resulted in: (1) a greater focus on obtaining in-lieu fees from developers, as those resources provide greater flexibility for where to locate affordable housing, and (2) increased options and a sliding scale percentage requirement to acknowledge denser development with greater constraints. Second, lax resale restrictions in the original policy motivated more stringent resale restrictions in the form of a 3.75% annual appreciation cap. Last, the loss of redevelopment funds from the state has caused the city to rely more on other sources (e.g. HOME and local Housing Trust Fund dollars) to help finance projects with solely affordable units.

Affordability Duration

Rental control period: Perpetuity

For-sale control period: Perpetuity

Rationale: With limited housing stock and affordable housing resources, it has become more and more critical to preserve affordable housing into the unforeseeable future.

Homeownership Program

Administrator: Predominantly in-house.

Legal mechanism: Deed covenant.

Homebuyer education: Two non-profit organizations, Community Housing Opportunities Corporation (previously named Davis Community Housing) and NeighborWorks Sacramento provides homebuyer education classes if required by funding sources.

Marketing and homebuyer selection: NeighborWorks Sacramento facilitates marketing and homebuyer eligibility verification. NeighborWorks advertises resales and certifies interested potential homebuyers. The city will conduct a lottery of qualified households who apply for housing. The city also implements a set of preferences for different household types, including local employees, seniors, and persons with disabilities.

Are there guidelines for permitted mortgage loans: No.

Annual reminder of program terms: No, aside from monitoring of owner occupancy.

Post-purchase support: None.

Resale process: The city holds the right of first refusal for inclusionary units that might be resold. Within a 60-day window, the city will find a qualified buyer from its waiting list and present that buyer to the unit seller. In the event that there is not a qualified buyer on the waiting list, and the city does not have the right of first refusal for a particular unit, the unit can be sold to a non-income qualified owner-occupant buyer after 60 days.

Resale formula: Fixed-percentage formula, 3.75-to-5.5% appreciation cap.

Rental Program

Marketing and tenant selection: Same as above.

Income verification: On an annual basis, the city reviews the rent and household incomes for affordable rental units. City staff will conduct a more thorough audit of 10% of each project's information.

Program Highlights/Ongoing Issues

Land Dedication. Land dedication has allowed a variety of affordable housing types, including a domestic violence shelter, senior housing, family housing, housing for individuals leaving homelessness, transitional housing, and housing for those with developmental disabilities.

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Irvine, California

Place Overview

2013 Population Estimate (Census): 236,716

Population change from 2000 to 2013 (Census): 66%

Location: Los Angeles-Long Beach-Anaheim metro area

Policy at a Glance

Name: Affordable Housing Implementation Procedure

Year adopted: 2003

Policy type: Mandatory

Production as of March, 2014: 417 (404 rental, 13 for-sale)

Geographic scope: Citywide

Affordable housing set-aside: 15%

Incomes targeted: ≤60% of area median income (rental and for-sale)

Development size applicability: 50 or more units

Alternatives to construction: In-lieu fee; off-site conversion of market rate to affordable housing; and credit transfer between properties. The credit transfer option is available whenever a developer builds more than the required number of affordable units on a given site; when constructing a future project, the developer can count difference between what is required and what is provided on the first project.

Evolution

Irvine was one of the early adopters of inclusionary housing, having implemented its original policy in the 1970s. Irvine has a major company that owns the vast majority of its land, which was willing to comply with voluntary housing goals before 2003. However, the original policy did not have any resale controls, thereby allowing most of the original units to be lost from the affordable housing stock. The program became mandatory in 2003.

Affordability Duration

Rental control period: 30 years

For-sale control period: 30 years required by policy; 99-years for units in Irvine CLT.

Rationale: The current version of the policy specifies a 30-year control period for both rental and for-sale units. Affordability durations tend to vary by projects and funding sources. For instance, projects that utilize low income housing tax credits are required to be affordable for 55 years. For homeownership units that are developed by or placed into the Irvine CLT, affordability is preserved for 99 years. The city developed the Irvine Community Land Trust as a way to retain affordability of for-sale homes in perpetuity.

Homeownership Program

Administrator: In-house or Irvine Community Land Trust.

Legal mechanism: Deed covenant; ground lease for future homes in Irvine CLT.

Homebuyer education: Potential homebuyers are required to go through pre-purchase counseling with a non-profit partner organization. Developers are made aware of these counseling services and refer potential buyers to homebuyer education.

Marketing and homebuyer selection: Housing developers are required to submit an affordable housing plan to the city. This plan will outline how they will comply with the ordinance, namely the option they plan to follow to fulfill the ordinance's intent (e.g. provide on-site units, pay a fee, dedicate land off-site). The plan will specify the developer's marketing strategy, which must be established 120 days before a building's lease-up.

Are there guidelines for permitted mortgage loans: Yes.

Annual reminder of program terms: No.

Post-purchase support: The program monitors insurance and owner-occupancy. Additional support may be offered by Irvine CLT for future homeownership units.

Resale process: Partially due to the relatively small number of for-sale units produced, the city has not experienced as resale as of March 2014. Its policy states that it will review and approve all resales. The city maintains the right of first refusal on any inclusionary unit that is up for resale.

Resale formula: Index-based formula that establishes the maximum resale price, which equals the initial purchase price plus an increase based on the AMI plus the value of approved capital improvements.

Rental Program

Marketing and tenant selection: Property managers handle the marketing of units and screening of tenants for both new units and vacancies.

Income verification: The project developer is responsible for verifying incomes of prospective buyers or tenants. The city monitors the rental properties by periodically making site visits and ensuring that the households are following the program requirements, especially those that pertain to tenant incomes.

Program Highlights/Ongoing Issues

Credits program poses challenges: The credits program is very difficult to understand and it reduces the overall number of affordable housing units produced. Staff would prefer to do away with the credits program; however, they anticipate that developers would not support this modification.

Reselling affordable units with down payment assistance is no longer available: As of March 2014, the city was working with its first set of re-sale homes. To make the homes more affordable, the initial buyers accessed down payment assistance loans from the city's redevelopment agency. However, since the state redevelopment agencies were dissolved due to the loss of state-level support for redevelopment, the down payment assistance loans are no longer available for subsequent buyers. The affordability of these homes is therefore compromised and poses challenges for finding future buyers at target income levels who cannot access down payment assistance. The lesson here is that affordable pricing needs to ensure that homes are affordable for initial and subsequent buyers, regardless of whether they can access down payment assistance.

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San Francisco, California

Place Overview

2013 Population Estimate (Census): 805,235

Population change from 2000 to 2013 (Census): 4%

Location: San Francisco–Oakland–Hayward metro area

Policy at a Glance

Name: Inclusionary Housing Program

Year adopted: 2002

Policy type: Mandatory

Production as of March, 2014: 1,560 affordable homes (632 rental; 928 for-sale)

Geographic scope: Citywide

Affordable housing set-aside: 12%

Incomes targeted: $\leq 55\%$ area median income (rental); $\leq 90\%$ (for-sale)

Development size applicability: 10 or more units

Alternatives to construction: “Inclusionary fee”; land dedication; off-site construction. The affordability requirement increases to 20% for developments that choose to build off-site, dedicate land, or pay the Inclusionary fee.

Evolution

San Francisco adopted a “loose” version of its current inclusionary zoning policy in 1992. It applied only to Planned Unit Developments (PUDs) and developments seeking conditional use permits. It required 10 percent affordability and provided no alternatives to on-site construction. The policy generated approximately 300 inclusionary housing units. In 2002, the policy was expanded to all new residential developments, including those allowed “by right” as well as previously exempted live-work lofts. The policy added off-site and in-lieu fee compliance options. In 2006, the affordability requirement was increased to 15 percent. In 2008, the city increased its affordability requirements in areas of the city that were being significantly “upzoned.”

In 2010, the city fundamentally changed the structure of its policy to comply with a new State Supreme Court decision known as the *Palmer* decision, which has cast doubt on the legality of mandatory inclusionary housing for rental units statewide. The city’s policy is now based on an affordable housing fee, but grants developers the option of meeting their fee obligation through on-site units, off-site units, or land dedication. Given high Inclusionary fees, and the 20 percent requirement that applies to developments that pay the fee, roughly half of developers choose to build rental inclusionary units rather than pay the fee. In 2012, the city reduced its inclusionary housing requirements across the board to current levels but retained the structure of slightly higher requirements for neighborhoods that had been recently upzoned.

Affordability Duration

Rental control period: Perpetuity.

For-sale control period: Perpetuity.

Rationale: The policy adopted in 2002 had an affordability term of 50 years. The city moved to perpetual requirements in 2007 because housing advocates wanted greater assurance that the city would be able to hold onto affordable units over time.

Homeownership Program

Administrator: In-house.

Legal mechanism: Deed covenant.

Homebuyer education: Mandatory. The course involves 8 hours of one-to-one training. Homebuyers are also required to attend an orientation session about basic elements of the program.

Marketing and homebuyer selection: The developer will hire an agent to develop and implement a marketing plan. The city provides income-qualified applicants.

Are there guidelines for permitted mortgage loans: Yes.

Annual reminder of program terms: Yes. Program staff will also check on an annual basis to make sure the homeowner is still living in the unit and paying insurance, HOA fees, and the mortgage.

Post-purchase support: The program provides some educational classes and financial counseling post purchase.

Resale process: Resales are handled through agents. The city reviews and must approve all resales.

Resale formula: The resale price is determined by adding to the original price a pre-determined percentage increase each year.

Rental Program

Marketing and tenant selection: The city holds ongoing lotteries to fill vacancies in all rental inclusionary units.

Income verification: Conducted annually by the property manager and must be forwarded to the city.

Program Highlights/Ongoing Issues

Ensuring notification when a homeowner refinances. In addition to its deed restriction, the city records a “note in deed” with the property, essentially a lien for the difference between the affordable price and fair market value. Staff report that this has been a great tool for being notified if a homeowner is trying to refinance or sell the home at an unrestricted price.

Increasing efficiency in the face of reduced administrative funding. In 2007, the city added a great deal more structure to its policy, with clearer policies and a new monitoring and procedures manual. This has proven to be very helpful for managing the city’s high volume of inclusionary housing units, especially its for-sale homes, in the absence of administrative funding previously received from the redevelopment agency (redevelopment agencies across the state were dissolved in 2012).

Rental administrative challenges. Staff report that rental inclusionary units involve more ongoing, administrative work than for-sale inclusionary units, particularly during the re-leasing process.

Paying for monitoring. The city adds a 5% fee to the overall closing costs of inclusionary home sales to support some of the costs of the city's for-sale monitoring.

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San Mateo, California

Place Overview

2012 Population Estimate (Census): 99,670

Population change from 2000 to 2010 (Census): 5%

Location: San Francisco-Oakland-Fremont metro area

Policy at a Glance

Name: Below Market Rate Program

Year adopted: 1992

Policy type: Mandatory

Production as of March, 2014: 325 affordable homes (196 rental; 129 for-sale)

Geographic scope: Citywide

Affordable housing set-aside: 10-15%⁹

Incomes targeted: 50-80% of area median income (rental); ≤ 120% (for-sale)

Development size applicability: 5 or more units

Alternatives to construction: Off-site construction (but only if applicant demonstrates that on-site construction is infeasible and the city approves. To date, no applicant has made this case.

Evolution

The city's inclusionary housing program was created through a height referendum. A developer was proposing a 10-story building as part of a major development downtown, where height were generally restricted to 3-to-4 stories. Residents concerned about excessive heights placed a measure on the ballot that included a 10 percent inclusionary requirement along with a height limit compromise. The ballot measure was successful. Later, in the early 2000s, the city increased its set aside requirement to 15 percent (or 10 percent with deeper affordability).

Affordability Duration

Rental control period: Life of building.

For-sale control period: 45 years

Rationale: City decision-makers wanted perpetual affordability for rental units because they did not want affordability to expire. For-sale inclusionary units do not receive city assistance so the program sought to match affordability requirements with Redevelopment Agency standards. However, the affordability period is reinstated every time a home resells so staff were confident that, for the majority of the units, the affordability is effectively permanent.

Homeownership Program

Administrator: In-house.

Legal mechanism: Deed covenant.

⁹ 10 percent if rental units are affordable for very low-income households, or for-sale units are affordable for lower-income households. Otherwise 15 percent.

Homebuyer education: Not required. But homebuyers are required to participate in a one-on-one orientation session about basic elements of the program and the resale process.

Marketing and homebuyer selection: The city hires a realtor to coordinate sales and resales. This includes maintaining a waiting list, coordinating the sales agreement, escrow, and closing, and conducting income verifications.

Are there guidelines for permitted mortgage loans: Yes.

Annual reminder of program terms: Yes. Program staff also sends homeowners an annual certification form, confirming that they are in compliance with all program requirements. This is a new feature of the city's monitoring program and began seven years ago after the city discovered that some homeowners had taken out second loans that were improperly underwritten, over-encumbered their properties, and led to foreclosure proceedings. Staff also regularly checks for junior liens and records a request of notice of default by other lien holders. Annually, staff also checks property tax records, which can help detect non-compliance with owner-occupancy requirements (if the address on file is different than the inclusionary home).

Post-purchase support: No. As part of the annual certification, the city sends out program compliance reminders on topics such as how to sell your home, tracking capital improvements, refinance process, etc.

Resale process: The program reviews and must approve all resales. The city also has a preemptive option to purchase units at resale at the established affordable price and uses this option regularly, assigning the right to purchase to an income-eligible buyer. The homeowner selling the inclusionary home is required to pay for inspection prior to resale.

Resale formula: Index-based. The resale price is determined by adding to the original price the percentage change in area median income.

Rental Program

Marketing and tenant selection: City staff manages a centralized waiting list, income-qualifies tenants, and selects tenants for all rental inclusionary units. Whenever there is a vacancy, the city provides the property manager with the names of the first five households on the waiting list that match the vacated unit size.

Income verification: Property managers conduct annual income verification and submit annual reports.

Program Highlights/Ongoing Issues

Greater enforcement through a deed of trust. Initially the city's program solely used a deed covenant to establish resale restrictions. But leading up to the housing downturn, staff found that owners were refinancing improperly and recorded resale restrictions were being ignored by title companies. The city then switched to requiring a note and deed of trust. This is a lien placed against the property equivalent to fair market value less the affordable price, sometimes referred to as the "Excess Sales Proceeds." The city is now notified when improper liens are placed on an inclusionary property. Staff also pointed out that if an illegal sale occurs, the city will at least be paid the excess sales proceeds rather than the seller collecting a windfall by selling at a price above the restricted price.

In-house rental management has been more efficient. Property managers used to handle the marketing, income qualification and tenant selection process for inclusionary units in their properties, using separate waiting lists. City staff was only responsible for training property managers in program requirements. But staff found that property managers turned over so frequently that units were being filled improperly and the administrative burden to train so many property managers was too great. The city decided to take on the administration of managing a master waiting list for all its rental inclusionary properties and handle the tenant selection and initial income qualification process. Staff report that “this has been so much easier for everyone,” including applicants who no longer have to place their names on up to 15 separate waiting lists. Property managers still conduct annual income verifications and file compliance reports. City staff will also conduct a random site visit once every couple of years.

Large unit incentives. The city’s policy provides an incentive for larger, family-sized units by allowing developers to count one three-bedroom affordable unit as equivalent to two smaller units.

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Santa Monica, California

Place Overview

2013 Population Estimate (Census): 92,472

Population change from 2000 to 2013 (Census): 10%

Location: Los Angeles-Long Beach-Anaheim metro area

Policy at a Glance

Name: Affordable Housing Production Program (AHPP)

Year adopted: 1998

Policy type: Mandatory

Production as of March, 2014: Approximately 1,000 (2 for-sale, all others are rental)

Geographic scope: Citywide

Affordable housing set-aside:

Rental: 5% of units for extremely low income households; 10% of units for very low income households; or 20% of units for low income households. If a project is in a non-residential zone, 100% of the set-aside must be for moderate-income households

For-sale projects: 4-15 units, 20% of units for moderate-income households; 16 or more units, 25% of units for moderate-income households

Incomes targeted: ≤60% of area median income (rental); ≤100% (homeownership)

Development size applicability: Two or more units

Alternatives to construction: Off-site new construction (must be within ¼ mile radius of the market-rate units), land dedication, in-lieu fees. Off-site construction option requires 25% more affordable housing than would be required on-site option.

Evolution

In 1990, Santa Monica voters passed Proposition R, requiring that 30% of new multifamily units be affordable homes. Starting in 1998, the AHPP became the program to implement Proposition R. In the more than 20 years since Proposition R was passed, approximately 34% of new multifamily units have been created as affordable units.

Affordability Duration

Rental control period: 55 years

For-sale control period: 55 years.

Rationale: City staff initially preferred a 99-year or perpetual affordability term, but decided to use California redevelopment law, which requires 55 years, as a guide instead.

Homeownership Program

Administrator: In-house.

Legal mechanism: Deed covenant.

Homebuyer education: The AHPP does not require prospective homebuyers to attend an education session nor a general orientation to the program.

Marketing and homebuyer selection: Initial marketing is the responsibility of the developer. In cases where demand for the units is expected to be high, the City may require that the developer work with the City to hold a lottery.

Are there guidelines for permitted mortgage loans: Yes.

Annual reminder of program terms: No.

Post-purchase support: No.

Resale process: The city reviews and approves all resales. The city does not currently inspect the home upon resale, nor does it require the homeowner to make needed repairs before resale.

Resale formula: Mortgage-based formula.

Rental Program

Marketing and tenant selection: The city maintains a list of applicants from which they select households whenever a new unit is available. Once households are selected, they are referred to the development whereby property managers show them the available units and verify their income eligibility.

Income verification: On an annual basis, the developers file an online report indicating the compliant incomes of their affordable unit tenants. The city then audits the reports to see the documentation on which the developers relied to compile the reports.

Program Highlights/Ongoing Issues

Nearly all inclusionary units are rental: The dynamics of the local housing market have produced almost all rental inclusionary units. According to program administrators, condo developers will nearly always opt to pay the in-lieu fee instead.

High share of affordable properties: Partially due to the production of the AHPP, almost 10% of all existing multifamily properties in Santa Monica have deed covenants with affordability controls.

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Boulder, Colorado

Place Overview

2013 Population Estimate (Census): 103,166

Population change from 2000 to 2013 (Census): 9%

Location: Denver-Aurora metro area

Policy at a Glance

Name: Inclusionary Housing

Year adopted: 2000

Policy type: Mandatory

Production as of May, 2014: approximately 750 (625 for-sale, 125 rental).¹⁰

Geographic scope: Citywide

Affordable housing set-aside: 20%

Incomes targeted: ≤ 80% area median income and 81% to 113% AMI (for-sale); ≤ 60% area median income (rental).

Development size applicability: 1 or more units

Alternatives to construction: In-lieu fee; land dedication; off-site construction; buying down and deed-restricting existing market-rate properties.

Evolution

The city of Boulder's inclusionary housing policy began as a voluntary policy in 1980, but two versions of this voluntary policy have produced virtually no units.¹¹ In 2000, the city converted to a mandatory policy resembling its current form today. Initially developers were required to meet at least half of their inclusionary housing obligations through on-site housing but in 2010 this requirement was eliminated, allowing greater use of the option to build off-site or pay an in-lieu fee.

Affordability Duration

Rental control period: Perpetuity.

For-sale control period: Perpetuity.

Rationale: City staff and council members were intent from the start on ensuring that the inclusionary housing policy would have the longest impact possible.

Homeownership Program

Administrator: In-house.

Legal mechanism: Deed covenant.

Homebuyer education: Required. Homebuyers must complete a HUD-approved homeownership training class and participate in a city-sponsored orientation session that explains the program and affordability restrictions.

Marketing and homebuyer selection: Mandatory 30-day open marketing and fair selection for permanently affordable homes. City collaborates with stakeholders and

¹⁰ Approximately 500 additional affordable units have been leveraged with the help of over \$33 million in cash-in-lieu payments. Of these units, approximately 75 percent have been rental, and 25 percent homeownership.

¹¹ Schwartz, et al. (2010).

other housing providers on program marketing efforts. City certifies buyers and conducts lotteries.

Are there guidelines for permitted mortgage loans: Yes.

Annual reminder of program terms: Yes.

Post-purchase support: The city provides education to homeowner associations and funds the Boulder County Housing and Community Education program, which provides post-purchase counseling. The city also offers a home repair program for low-income homeowners.

Resale process: The city determines the maximum resale price based on the covenant formula and monitors and approves all resales. The city also qualifies buyers, confirming income and asset eligibility and readiness for homeownership. City assessment of the condition of affordable homes is required. The city requires that homeowners make needed repairs before resale or has the right to reduce the maximum resale price by the cost of repairs.

Resale formula: Index-based. The resale price is equal to the original purchase price plus an annual increase tied to the change in the area median income (AMI) or the consumer price index (CPI), whichever is smaller, up to a maximum percentage change of 3.5%. The maximum resale price also includes capital improvement credit, closing cost credit and a shared realtor commission of 2.5% of the affordable price.

Rental Program

Marketing and tenant selection: Conducted by the property manager.

Income verification: Conducted by the property manager.

Other: A 2000 Colorado State Supreme Court decision¹² made it illegal for Colorado municipalities to require developers to restrict the price of rental inclusionary housing units, because such practice was found to be inconsistent with state law forbidding rent control. But the city of Boulder has found a way to generate rental inclusionary housing by utilizing an exemption granted in state rent control law to housing authorities or “similar agencies.” The city requires developers to work with a housing authority or “similar agencies” to create rental units. The housing authority or similar agency must own the affordable rental units, all or in part, and be responsible for ensuring affordability requirements for marketing, tenant selection, and income verification requirements are met over time.

Program Highlights/Ongoing Issues

Challenges with off-site construction: Offsite locations are reviewed on a discretionary basis based on a set of general criteria. Generally the city would prefer to see more inclusionary housing produced in places where affordable housing is presently limited. But neighborhood opposition has occasionally stymied approvals for some off-site locations.

HOA fees: High HOA and condo fees are becoming a growing affordability challenge.

Reducing income targets for rental housing: In recent years, market-rate rents in Boulder have dropped to levels affordable to households earning close to 60% of

¹² *Town of Telluride v. Lot Thirty-Four Venture, L.L.C.* (2000).

AMI, but program requirements still permit inclusionary rents to be priced at levels affordable for 60% of AMI.

Long-term condition of inclusionary units: The city requires inspections and some repairs to for-sale inclusionary homes prior to resale. However, in light its perpetual affordability requirements, the city is exploring ways to financially support the major repairs that will be necessary deeper into the lifecycle of for-sale inclusionary homes.

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Denver, Colorado

Place Overview

2013 Population Estimate (Census): 649,495

Population change from 2000 to 2013 (Census): 17%

Location: Denver-Aurora metro area

Policy at a Glance

Name: Inclusionary Housing Ordinance (IHO)

Year adopted: 2002

Policy type: Mandatory, for-sale housing only (developers may voluntarily set aside units for affordable rental housing)

Production as of March, 2014: 77 (all for-sale)

Geographic scope: Citywide

Affordable housing set-aside: 10% (only applies to for-sale housing)

Incomes targeted: 50-80% of area median income (can rise to 95% of AMI for “high-cost” structures¹³)

Development size applicability: 30 or more units

Alternatives to construction: In-lieu fee, off-site construction

Evolution

Prior to adoption of the IHO, the city negotiated for affordable housing on a project-by-project basis with each developer. In the late 1990s, the city negotiated for large numbers of affordable units from three new, master-planned communities on the eastern edge of the city—Stapleton, Lowry, and Green Valley Ranch. These large-scale redevelopments have generated 1,056 affordable rental and for-sale homes (excluded from the production number listed above). Though these affordability agreements preceded the IHO, they are now referred to as the city’s “Large IHO” program, because the incomes served and affordability durations of these homes closely resemble the requirements of the IHO. This affordable housing portfolio also includes rental housing.¹⁴

The IHO adopted in 2002 sought to provide greater predictability, as requested by private developers and the public, and to produce affordable for-sale housing units at a rate consistent with population and economic growth. Additionally, the IHO was motivated by concerns about rapidly rising home prices and gentrification in certain Denver neighborhoods. Production under this policy has been modest with 77 affordable for-sale homes generated since 2002. This is in part because the city has had few large-scale redevelopments since the policy’s adoption. Accordingly, the actual IHO program is now referred to as the “Small IHO” program.

A 2006 effort initiated by a new department director streamlined the IHO to make it easier for all parties to understand and for city officials to update as needed. Another

¹³ Developments in which buildings are greater than three stories tall, elevators are provided, and over 60% of the parking is in a garage.

¹⁴ 2011 *Inclusionary Housing Ordinance (IHO) Status Report*, August 11, 2011.

significant update came in 2013, when city officials allowed for affordable units to be sold to non-income-qualified households, so long as the maximum resale price adhered to ordinance requirements.

Affordability Duration

Rental control period: 15 years

For-sale control period: 15 years. If unit is sold 15-25 years after original purchase, the unit can be sold at market price, but the city receives half of any market appreciation.

Rationale: The for-sale control period was seen as a compromise between those supporting affordable home ownership opportunities and those concerned with household asset development. The 15-year period followed by ten additional years for recapturing shared appreciation was the compromised reached by both parties.

Homeownership Program

Administrator: In-house or Colorado Community Land Trust.

Legal Mechanism: Deed covenant or ground lease.

Homebuyer education: Recent amendments to the IHO require prospective homebuyers to complete pre-purchase counseling with a HUD- or city-approved organization.

Marketing and homebuyer selection: Project developers are required to submit an affordable housing plan to the Community Planning and Development Department and the Office of Economic Development. The plan must specify—among other things—how the developer will market the affordable units. The city will often suggest that developers separately list and describe the affordable units on their website or any other listing, in order to highlight their unique requirements.

Are there guidelines for permitted mortgage loans: No.

Annual reminder of program terms: No.

Post-purchase support: The city provides post-purchase education classes for homeowners.

Resale process: The current owner of a unit must provide 30-days notice to the city of his intent to sell the unit. From the date of receiving the notice, the city has 30 days to indicate if it wishes to purchase the unit and—if electing to do so—must purchase it within 60 days of the notice.

Resale formula: For units created before May 30, 2010: appraisal-based formula. For units created on or after June 1, 2013: index-based formula.

Rental Program

Due to a State Supreme Court decision in 2000 that declared mandatory rental inclusionary housing to be a form of impermissible rent control, the city has not produced rental units under its “Small IHO” program. It is not clear what role the city plays in monitoring rental units produced through the “Large IHO” program.

Program Highlights/Ongoing Issues

Foreclosures were a significant problem during the downturn, but not for those stewarded by the Colorado Community Land Trust (CCLT) in the Lowry

community. CCLT owns the land upon which each home is built; this model ensures long-term affordability by limiting a home's resale price but also allows the current owner to at least partially benefit from the home's appreciation. Additionally, CCLT works extensively with homeowners to preserve units in jeopardy of foreclosure. CCLT can access a line of credit from Colorado Housing Finance Authority to buy back homes facing foreclosure and then resell the unit to eligible buyers. The homeowner avoids foreclosure and CCLT keeps an affordable unit in its portfolio. During the economic downturn, foreclosure rates at the other two master-planned communities ranged from 6- 25%; the rate at Lowry was zero.¹⁵

Long affordability terms remain contentious. Denver's 15-year affordability terms are relatively short compared with other profiled jurisdictions.

In-lieu fees are producing limited affordable housing. Both the large-scale and small-scale IHO policies provide a cash subsidy of approximately \$5,500 per affordable unit to partially offset the costs of meeting IHO requirements. The subsidy is paid out of the city's Housing Incentive Fund. Consequently, many in-lieu fees collected through the Small IHO program have been used to cover promised subsidy payments in the Large IHO program.

Calibrating in-lieu fees based on neighborhood. City officials are considering modified incentives and fees for certain neighborhoods. High cost neighborhoods would have higher in-lieu fees but also more generous cost offsets (public subsidies), whereas low cost neighborhoods would have lower fees and offsets.

Negotiations with large developments. The city's IHO policy does not preclude staff from negotiating different affordability requirements in large-scale redevelopments. Indeed, city staff indicated that they are willing to negotiate *smaller* set-aside shares for large developments, as long as they are able to produce at least 200 affordable units. Staff acknowledges that—while these negotiations produce differences between projects—the benefit of gaining many affordable units outweighs the downside of a slightly smaller set-aside.

Contact Info

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¹⁵ 2011 Inclusionary Housing Ordinance (IHO) Status Report, August 11, 2011.

Stamford, Connecticut

Place Overview

2013 Population Estimate (Census): 126,456

Population change from 2000 to 2013 (Census): 3%

Location: New York-Newark metro area

Policy at a Glance

Name: Below Market Rate (BMR) Housing Program

Year adopted: 2003

Policy type: Mandatory

Production as of March, 2014: 449 (347 rental, 102 for-sale)

Geographic scope: Citywide

Affordable housing set-aside: 10%

Incomes targeted: ≤50% of area median income (rental and for-sale homeownership)

Development size applicability: Multifamily projects with 10 or more units

Alternatives to construction: In-lieu fee, land dedication, off-site construction

Evolution

Prior to 2003, there were unsuccessful attempts at implementing policies that created affordable housing via market-rate developments. For example, the city considered a proposal to establish a linkage fee for commercial properties to provide affordable housing to partially offset the housing demand generated by the jobs created, but these requirements proved to be unsuccessful. The zoning board eventually turned to inclusionary housing requirements for market-rate residential projects. The BMR program was created through a series of zoning amendments. Over time, various modifications have been added to the BMR program. For example, rising construction and land costs motivated the city to raise the original in-lieu fee; the current fee is equal to a certain percentage of the area median income, with a higher fee charged in-lieu of units meant for lower incomes.

Affordability Duration

Rental control period: Perpetuity

For-sale control period: Perpetuity

Rationale: The program was adopted when the city had just prepared an analysis projecting a shortage of 8,000 affordable housing units in the city. It was determined that as a relatively small city, Stamford needed every single affordable unit to last. The program administrator indicated that a conventional 30-year affordability term would allow affordable units to be lost at the same rate at which they were being built.

Homeownership Program

Administrator: In-house.

Legal mechanism: Deed covenant.

Homebuyer education: Homebuyer education is not required. A potential homebuyer can, however, elect to attend training via a local organization (the

Housing Development Fund) to help them qualify for a mortgage or access a down payment grant.

Marketing and homebuyer selection: The city uses a waiting list of persons interested in for-sale units. Selected households for a property may refuse an available BMR unit one time and remain on the waiting list. Upon a second refusal, the households are removed from the waiting list.

Are there guidelines for permitted mortgage loans: No.

Annual reminder of program terms: No.

Post-purchase support: None.

Resale process: Before a resale, the city requires that the seller complete any needed repairs. The city then requires inspection of the home upon resale.

Resale formula: Index-based formula.

Rental Stewardship

Marketing and tenant selection: Developers and property managers are responsible for marketing the affordable units, certifying the incomes of prospective tenants, and leasing the units. The waiting list mentioned above is also used for rental units.

Income verification: City staff reviews an annual report for each building, which indicates the tenants in each affordable unit and the eligibility of their incomes. At times, city staff audits more detailed records and responds to complaints from neighbors. City staff can also assess an administration fee, although they have not yet implemented one. While city officials have discussed contracting this work to a nonprofit organization, they have not yet chosen to do so.

Program Highlights/Ongoing Issues

Multiple waiting lists make for administrative burdens: Program administrators estimate that dozens of waiting lists exist for rental units, making the selection of prospective renters a complicated process.

Limited income-group targeting: The BMR program currently addresses primarily the housing needs of only one income range (50% of AMI) and needs to expand to serve multiple household incomes (25%, 50%, 60% and even 70% AMI).

Contact Info

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Washington, District of Columbia

Place Overview

2013 Population Estimate (Census): 646,449

Population change from 2000 to 2013 (Census): 13%

Location: Washington-Arlington-Alexandria metro area

Policy at a Glance

Name: Inclusionary Zoning (IZ)

Year adopted: 2007, implemented in 2009

Policy type: Mandatory

Production as of March, 2014: 53 (47 rental, 6 for-sale)

Geographic scope: Zone specific (mid- and high-density zones)

Affordable housing set-aside: Greater of 8-10% of residential floor area or 50-75% of bonus density

Incomes targeted: 50-80% of area median income

Development size applicability: New developments with 10 or more units, or renovations that increase the building floor area by 50% or more and add 10 or more units

Alternatives to construction: Off-site construction

Evolution

The precursor to the DC IZ program is the Affordable Dwelling Unit program, whereby city officials negotiate with developers of individual projects to set aside a certain share of units as affordable, generally in exchange for zoning relief, tax incentives, public financing and/or the right to purchase or lease District-owned land. In 2006, the DC Zoning Commission published zoning regulations while the city council passed enabling legislation that codified this one-off inclusionary housing program into a formalized IZ program (which became effective in March 2007). The IZ program was fully implemented in 2009 after the final administrative rules and the purchase price/rent schedule were published.

Affordability Duration

Rental control period: Perpetuity

For-sale control period: Perpetuity

Rationale: When the inclusionary program was being developed, city staff originally proposed a 20-year affordability term that reset upon resale (assuming the resale occurred within that 20-year term). However, the Zoning Commission pushed back on this proposal and instead opted for perpetual affordability; the Commission concluded that, as long as the resultant bonus density would last in perpetuity, so too should the affordability of the inclusionary units.

Homeownership Program

Administrator: In-house.

Legal mechanism: deed covenant.

Homebuyer education: Homebuyers are required to attend both a program orientation (to generally learn about the inclusionary program) as well as a pre-purchase counseling session with a HUD-certified organization.

Marketing and homebuyer selection: The DC Department of Housing and Community Development (DHCD) is initially responsible for marketing the units to households selected from a lottery list. The selected households are referred to the developer, who in turn shows the units to the households. If the developer cannot fill the units with household selected from the lottery list, they can do their own outreach to fill the units with income-eligible households. Available units are listed on the city's website of affordable housing options.

Are there guidelines for permitted mortgage loans: No.

Annual reminder of program terms: Yes.

Post-purchase support: No; however, the city has a network of counseling agencies that provide support upon request.

Resale process: DHCD reviews and approves all resales. DHCD does not currently inspect the home upon resale, nor does it require the homeowner to make needed repairs before resale.

Resale formula: Index-based formula, using ten-year compound annual growth rate of the area median income plus the value of eligible capital improvements, replacements, and repairs to the home.

Rental Program

Marketing and tenant selection: DHCD draws prospective, rental households from its lottery list. Once households are selected, they are referred to the development whereby property managers show them the available units and verify their income eligibility.

Income verification: The property managers for buildings with inclusionary units conduct annual income verifications.

Program Highlights/Ongoing Issues

Detecting and preventing foreclosures. Staff reports that the Federal Housing Administration (which provides access to FHA-insured mortgages, a critical source of mortgage financing) will not allow resale restrictions to survive foreclosure. The city maintains a preemptive option to purchase properties in foreclosure, but without advanced notifications of delinquencies and foreclosure proceedings, staff is concerned that they will have inadequate time to exercise their right to purchase in order to prevent the loss of an affordable unit from the inclusionary housing portfolio.

Home prices (especially for rental units) are too close to market rates. In some instances, the calculated home prices (particularly monthly rents) are relatively close to the market rate for similar homes. This could be the result of rents for those at 80% of AMI actually *being* the market rate in particular neighborhoods.

Condo fees. To help inclusionary homeowners with high condo fees, especially in buildings with high-end amenities, staff has set the initial sales price formula so that it factors in a realistic, estimated condo fee, along with room for this fee to increase over time.

Contact Info

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Chicago, Illinois

Place Overview

2013 Population Estimate (Census): 2,718,782

Population change from 2000 to 2013 (Census): -6%

Location: Chicago-Naperville-Elgin metro area

Policy at a Glance

Name: Affordable Requirements Ordinance (ARO)

Year adopted: 2003, expanded in 2007

Policy type: Voluntary (applies if a developer requests a zoning change that increases density or allows a residential use not previously allowed, receives city land or financial assistance, or pursues a Planned Development in downtown)

Production as of March, 2014: approximately 850

Geographic scope: Citywide

Affordable housing set-aside: 10%¹⁶

Incomes targeted: ≤60% of area median income (rental); ≤100% (homeownership)

Development size applicability: 10 or more units

Alternatives to construction: In-lieu fee

Evolution

Between 2003 and 2007, the city's ARO policy applied only to developments built with financial assistance, or built on discounted city land. In 2007, the policy was significantly expanded to require affordable units on all land sold by the city (not just discounted land), for Planned Unit Developments, and for projects in which a zoning change increased allowable floor area.

Affordability Duration

Rental control period: 30 years

For-sale control period: Units must be placed with the city's community land trust, which requires 99-year affordability.

Rationale: The for-sale affordability term used to be 5-30 years with a recapture mortgage, whereby the city would capture the difference between the affordable and market-rate price. But the city grew concerned that large number of homes quickly termed out of the program.

Homeownership Program

Administrator: Chicago Community Land Trust.

Legal Mechanism: Deed covenant.

Homebuyer education: Homebuyers purchasing condos must receive condo ownership training, and all homeowners must receive 8 hours of pre-purchase homebuyer education from a HUD-certified counseling agency. Homebuyers also must participate in a meeting at which the program requirements and resale formula are explained by staff.

¹⁶ 20% if developer receives city financial assistance (e.g. TIF)

Marketing and homebuyer selection: Initial marketing is the responsibility of the developer. In cases where demand for the units is expected to be high, the City may require that the developer work with the City to hold a lottery.

Are there guidelines for permitted mortgage loans: Yes.

Annual reminder of program terms: Yes.

Post-purchase support: Integration of the Chicago CLT with the ARO program has allowed the city to substantially increase its post-purchase support to inclusionary homeowners. Staff hosts annual events to get to know owners and encourages them to contact staff if they are experiencing financial challenges. The CLT contacts homeowners annually to confirm that they are still in compliance with program requirements. The CLT also provides post-purchase educational classes and financial counseling. Additionally, the CLT administers a \$25 monthly stewardship fee, which helps pay for stewardship activities while also serving as an early indicator of potential financial trouble. Fee delinquencies alert staff to the possibility that homeowners may be experiencing larger financial challenges that may threaten mortgage payments.

Resale process: The city is required to be notified at time of resale and income-qualifies the new buyer.

Resale formula: The resale price is determined by adding to the original price a percentage of the difference between the home's appraised value at time of purchase and time of resale.

Rental Program

Marketing and tenant selection: Property managers handle the marketing of units and screening of tenants for both new units and vacancies. The City's Homeownership Center and Compliance Division verifies tenants' information prior to approving the sign-off of the initial lease.

Income verification: The Department of Planning and Development monitors rental program compliance.

Program Highlights/Ongoing Issues

For-sale stewardship via municipal community land trust: In 2006, the city created a quasi-public CLT, Chicago CLT, to improve its tracking, retention, and stewardship of for-sale inclusionary affordable units. All new for-sale inclusionary units must be placed in city's CLT. Interest in a municipal CLT's ability to steward ownership units over time grew after the housing downturn, when a small number of for-sale inclusionary homes were lost to foreclosure. There are presently 69 homes in Chicago CLT. Only one for-sale home placed in the CLT has been lost to foreclosure. The CLT does not, however, accept rental units.

Condo fees: Staff struggle with how to help inclusionary homeowners with high condo fees.

99-year vs. 30-year renewable affordability terms: Staff is considering changing to a 30-year affordability term that resets whenever a home is sold within the control period, in place of the current 99-year term for ownership units placed in the CLT. It believes this might be less "frightening" to prospective homebuyers.

Contact Info

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Montgomery County, Maryland

Place Overview

2013 Population Estimate (Census): 1,016,677

Population change from 2000 to 2013 (Census): +17%

Location: Washington-Arlington-Alexandria metro area

Policy at a Glance

Name: Moderately Priced Dwelling Unit (MPDU) Program

Year adopted: 1974

Policy type: Mandatory

Production as of January, 2014: 14,029 (4,468 rental, 9,561 for-sale)

Geographic scope: Countywide

Affordable housing set-aside: 12.5% minimum; up to 15% with density bonus (rental and for-sale)

Incomes targeted: ≤65% of area median income (garden apartment rentals); ≤70% (homeownership)

Development size applicability: 20 or more units (voluntary under 20 units)

Alternatives to construction: In-lieu fee; land transfer; off-site new construction or conversion of existing market units

Evolution

Montgomery County's MPDU program is the oldest continuously running inclusionary zoning program in the United States. Over the 40-year history of the program, various requirements have been amended. The original program applied to larger developments and required shorter control periods than are found in the current program. The MPDU set-aside requirement has varied between 12.5% and 15%, and the related maximum density bonus has varied between 20% and 22%. The maximum set-aside and density bonus may be even higher in certain incentive-based zones that were recently adopted, which require provision of public benefits under the optional method of development.

Affordability Duration

Rental control period: 99 years

For-sale control period: 30 years

Rationale: For the first three decades of the MPDU program, affordability terms were relatively short. The control period for both rental and for-sale MPDUs was set initially at five years, and the control period for for-sale MPDUs did not reset if the MPDU was sold during the control period. The control period was increased to 10 years in 1981 for both rental and for-sale MPDUs (still with no reset requirement on for-sale MPDUs). In 1989, the MPDU rental control period was increased to 20 years, and in 2002, a reset provision was added to the 10-year for-sale control period. It was not until the mid-2000s that county officials took more aggressive steps to preserve MPDUs by increasing control periods to their current levels—99 years for rental housing and 30 years for ownership units. These changes were motivated by the need to prevent so many MPDUs from terming out. Of the 14,000 inclusionary homes that

have been built in Montgomery County over the past 40 years, approximately 9,400 have reverted to market rates due to expiring control periods.

Homeownership Program

Administrator: In-house or Housing Opportunities Commission (the housing authority, or HOC).

Legal mechanism: Deed covenant.

Homebuyer education: Prospective owners must attend a first-time homebuyer class, an MPDU orientation seminar, and an MPDU application session.

Marketing and homebuyer selection: The county will conduct a computerized drawing, choosing from a list of eligible applicants that are weighted according to factors including county residency, county employment, and length of time in the program. The county will share the list of selected applicants with the builder, at which point the builder markets the units to these applicants. Applicants to the MPDU programs are required to get pre-qualified for a mortgage loan through a program-certified “Participating Lender” to be accepted into the program. If the 90-day priority marketing period passes without finding a qualified buyer, the builder may request permission to sell the MPDU to a non-income qualified household.

Are there guidelines for permitted mortgage loans: No.

Annual reminder of program terms: No.

Post-purchase support: None.

Resale process: An MPDU home must be sold directly to another income-eligible household, at the designated affordable price. The HOC and non-profit organizations have a right of first refusal to purchase an MPDU that is being resold, although this right is exercised for less than 10% of resales (according to program administrators).

Resale formula: Index-based formula, using the growth in the Consumer Price Index plus the cost of eligible capital improvements.

Rental Program

Marketing and tenant selection: The County lists MPDU rental properties on its website. Prospective tenants, however, are responsible for applying at each of the particular properties (not through the County). If the 90-day marketing period passes without finding a qualified renter, the landlord may request permission to rent the MPDU to a non-income qualified household.

Income verification: Property managers are responsible for verifying the income of prospective and current tenants. County staff travels to the MPDU rental properties to monitor compliance with the requirements of the MPDU rental program.

Program Highlights/Ongoing Issues

Preemptive option to purchase for the housing authority and non-profit agencies has aided housing preservation. The county’s housing authority (HOC) and designated nonprofits have the first opportunity to purchase or master-lease up to 40 percent of the MPDUs in a property for both for-sale and rental developments. This has enabled the county to deepen the affordability of these units by layering in housing choice vouchers or other subsidies. It has also preserved a considerable share of the county’s current inventory of MPDUs that would have otherwise become

unaffordable. HOC currently holds approximately 1,450 MPDUs that are offered either as first-time homeownership opportunities for residents of HOC properties and recipients of HOC rental assistance or as deeply affordable rental housing. This is roughly one third of the county's existing inclusionary housing portfolio.

Recapture clause at the end of the control period. In addition to having affordability control periods that reset for the next homebuyer whenever a home is sold within the 30-year control period, the MPDU program captures half of any excess proceeds above the affordable price for homes that are sold after 30 years. These funds are then used to support the program and its existing portfolio or to create additional affordable housing.

Keeping prices affordable for subsequent homebuyers. In some cases, program administrators have observed that the program's resale formula produces a maximum resale price that exceeds affordability levels for income-qualified households, or even market-rate prices, compromising the affordability and ability to sell the MPDU unit. This was exacerbated during the recent housing downturn, when prices in certain neighborhoods dropped significantly, creating competition for MPDU units from market-priced homes. County law allows MPDU homeowners to sell to a non-income qualified household if they are unable to sell the home to an income-qualified purchaser after 60 days.

Contact Info

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Cambridge, Massachusetts

Place Overview

2013 Population Estimate (Census): 107,289

Population change from 2000 to 2010 (Census): 6%

Location: Boston-Cambridge-Newton Metro Area

Policy at a Glance

Name: Inclusionary Housing Policy

Year adopted: 1998

Policy type: Mandatory

Production as of March, 2014: 527 affordable homes (334 rental; 193 for-sale)

Geographic scope: Jurisdiction-wide

Affordable housing set-aside: 15%

Incomes targeted: 50 to 80 percent of city median income¹⁷

Applicability: 10 or more units

Alternatives to construction: In-lieu fee (but must show financial hardship; no one has yet)

Evolution

Prior to 1998, the city operated a voluntary policy based on a density bonus, but it failed to produce any affordable housing. As of 2008, the city's inclusionary housing portfolio was evenly split between rental and for-sale units but is now predominantly rental housing due to increased rental housing construction in the city.

Affordability Duration

Rental control period: Perpetuity

For-sale control period: Perpetuity

Rationale: The city was concerned about expiring, subsidized affordable housing in the face of growing affordability needs and persuaded by the argument that the affordability term should match the permanence of the density bonus offered by the program.

Homeownership Program

Administrator: In-house

Legal mechanism: Deed covenant

Homebuyer education: Required. Homebuyers also must participate in a meeting at which the resale formula and other program requirements are explained by staff.

Marketing and homebuyer selection: When a new for-sale property is built, the city reviews applications and holds separate lotteries for each new inclusionary unit.

Are there guidelines for permitted mortgage loans: Yes.

Annual reminder of program terms: No.

Post-purchase support: The city makes various financial counseling and homeowner education classes available to inclusionary homeowners. Financial support for home repair is also available through a separate city program.

¹⁷ May be less if households possess a housing choice voucher. Prices set at 65 percent of city median income.

Resale process: In most cases the city uses its preemptive option to purchase to buy back homes at resale. It then sells the home at an affordable price to an income-eligible household. The city makes use of this right to strengthen its control over the resale process, to ensure homeowners are chosen properly from the city's resale pool of income-eligible households, and to do any necessary maintenance on the home to ensure it is in good condition before it is resold.

Resale formula: "Return on Equity" formula. The maximum resale price is equivalent to the original purchase price plus an annual non-compounding rate of return based on annual principal payments multiplied by a rate tied to a federal Treasury bill.

Rental Program

Marketing and tenant selection: City staff handles the marketing of units and screening of tenants for both new units and vacancies. It then forwards selected names to property managers, who may conduct their own credit checks. The city used to hold lotteries for each new rental project but moved to a single rolling application process in 2010. Property managers are required to notify the city whenever a unit will be vacated.

Income verification: The city determines and verifies the income eligibility and annual recertifications of all tenants.

Program Highlights/Ongoing Issues

Managing rising condo fees: To ensure that condo fees don't undermine long-term affordability, the percentage interest of the inclusionary unit in the condo documents is approved by the city. It is based on value and is, therefore, lower than the percentage interest of market rate units. The condo fee is set using this lower percentage interest for the affordable units. Fee increases also use the lower percentage interest and therefore condo fees are kept affordable. .

Identical affordable and market-rate units: Relative to other profiled programs, the Cambridge program rigorously requires that the affordable units have the same features and finishings as the market-rate units. Moreover, city staff chooses which units in a development will be the affordable units. Both of these points differ from other programs profiled, which a) permit similar but less expensive finishings and equipment and b) allow the developer to choose where the affordable units are located.

Contact Info

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State of New Jersey

Place Overview

2013 Population Estimate (Census): 8,791,894

Population change from 2000 to 2013 (Census): 4%

Policy at a Glance

Name: Inclusionary Housing Programs (as governed by the state's Uniform Housing Affordability Controls)

Year adopted: 1985-present

Policy type: Mandatory

Production: 18,256 (as of January 2007)

Affordable housing set-aside: 15-20% (specific set-aside is chosen by particular municipality)

Incomes targeted: $\leq 80\%$ of median regional income for rental¹⁸; $\leq 80\%$ of median regional income for ownership, but excluding incomes $\leq 35\%$

Development size applicability: Determined by the local jurisdiction

Alternatives to construction: Determined by the local jurisdiction

Evolution

In 1975, the New Jersey Supreme Court ruled in its *Mount Laurel* decision that communities must use their zoning powers to provide realistic opportunities for the production of housing affordable to low- and moderate-income households. The ruling motivated the passage of the 1985 Fair Housing Act, which created affordable housing requirements for local jurisdictions throughout the state, and created the Council on Affordable Housing (COAH) to provide oversight. Jurisdictions are required to produce their "fair share" of affordable housing through inclusionary housing or similar policies and zoning practices. Over time, COAH has provided increasing specificity about how inclusionary housing policies must be structured, how programs must be administered, and how long units must remain affordable in order to receive "credit" toward meeting the municipality's fair share. This specificity is provided through the state's Uniform Housing Affordability Controls (UHAC), which has helped to standardize inclusionary housing programs in the state.

Affordability Duration:

Rental control period: At least 30 years (low-poverty Census tracts¹⁹); at least 10 years (high-poverty Census tracts²⁰).

For-sale control period: At least 30 years (low-poverty Census tracts); at least 10 years (high-poverty Census tracts).

¹⁸ COAH requires that at least half of the units be available to low-income households; that 10 percent of the units be available to those earning 35 percent or less than the regional median income; and that the remainder be devoted to moderate-income households.

¹⁹ Low-poverty census tract is defined as having a Census-determined poverty rate of less than 25 percent.

²⁰ High-poverty census tract is defined as having a Census determined poverty rate of more than 25 percent.

Homeownership Program

Administrator: Varies among jurisdictions. Jurisdictions will choose between in-house administration and out-sourcing it to an external partner.

Legal mechanism: Deed covenant.

Homebuyer education: Applicant households are required to attend housing counseling if the monthly housing expenses for a specific for-sale home are above UHAC standards (i.e. 33 percent of monthly income).

Marketing and homebuyer selection: Local jurisdictions must adopt an Affirmative Marketing Plan in order to attract households who are least likely to apply for affordable housing and to target households throughout the entire housing region in which the units are located. This plan is approved by COAH. COAH requires that the marketing plan include a newspaper advertisement, a broadcast advertisement, and at least one additional marketing method, such as an organizational newsletter or advertisement through an employer. The marketing must begin at least four months before a given unit is complete. Jurisdictions are required to maintain an applicant pool from which potential residents are selected. UHAC rules require that households are randomly selected for available housing units, with no preference besides matching household size. There is, however, an allowance for jurisdictions to give preferences to applicants that live or work in their COAH housing region. While jurisdictions can go about this random selection process in whichever manner they prefer, the process itself must be outlined in the Affirmative Marketing Plan.

Are there guidelines for permitted mortgage loans: Yes.

Annual reminder of program terms: Yes.

Post-purchase support: About 30% of municipal housing trust funds, supported by in-lieu fee payments, must be used to assist on-going affordability. Some localities use fund dollars to help defray unaffordable condo fees, pay for overdue utility bills, and fund emergency repairs.

Resale process: An owner will submit a completed “Notice of Intent to Sell” to the jurisdiction. The jurisdiction’s affordable housing administrator will review the unit and eligible capital improvements to calculate the maximum resale price. If a pool of income-certified households is available, the administrator will use a random selection process to choose a household and notify them of the available home. If a pool is not available, the administrator will market the unit according to the Affirmative Marketing Plan. The first selected, eligible household makes an offer on a home, after which the buying and selling household execute a typical contract of sale. The jurisdiction’s affordable housing administrator will ensure that the associated legal documents (e.g. deed, recapture mortgage) are included with the contract. For homes sold after the control period ends, sellers must provide jurisdictions with 100 percent of the difference between the initial market-rate and affordable sales price.

Resale formula: Index-based. The maximum resale price is determined using COAH’s Resale Price Calculator, which is based on COAH’s Annual Regional Income Limits Chart.

Rental Program

Marketing and tenant selection: Jurisdictions will generally follow the same process as outlined above. UHAC states that a certified household is not permitted to lease restricted rental units that would require more than 35 percent of the verified household income (40 percent for age-restricted units) to pay rent and utilities.

Income verification: State-level requirements do not require annual verification of tenant income nor household size. Therefore, both can increase without forcing the tenant to leave the affordable unit.

Program Highlights/Ongoing Issues:

Strong professionalization of administrative partners: COAH requirements are imposed on jurisdictions. The lack of capacity or expertise in some jurisdictions has led to a rise in jurisdictions contracting program administration to third-party affordable housing administrative entities. These entities are generally non-profit or for-profit organizations. They will take on the portfolios of many jurisdictions and conduct a full range of stewardship activities, such as income confirmation, affirmative marketing, and annual occupancy verifications. This group of administrative entities has become so professionalized they have their own member-based organization (Affordable Housing Professionals of New Jersey) for education, networking, and advocacy.

Ensuring that developers steward the units in a correct manner: Housing developers are permitted to take on some of the unit stewardship tasks, such as annual income certification of their rental tenants. In some instances, developers might follow state-mandated rules, whether it be from lack of experience, lack of institutional knowledge (from staff turnover), or—worse yet—a desire to avoid the rules. Some cited mistakes include no affirmative marketing plan, mistakes during income certification, incorrect unit pricing and size distribution, and incorrectly raising the rents. The aforementioned administrative entities have been framed as one way to address the stewardship shortcomings that are sometimes committed by developers.

Inclusionary housing on hold for several years: A dispute between the Governor and the state courts has kept inclusionary housing, and COAH, in limbo for several years. It appears however that COAH will create a new round of fair share requirements in 2014 and renew the state's affordability requirements for localities, encouraging localities to continue their inclusionary housing programs.

Contact Info

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Santa Fe, New Mexico

Place Overview

2013 Population Estimate (Census): 69,976²¹

Population change from 2000 to 2013 (Census): 12.50%

Location: Santa Fe metro area

Policy at a Glance

Name: Santa Fe Homes Program

Year adopted: 1998

Policy type: Mandatory

Production as of March, 2014: 154 (38 rental, 116 for-sale)

Geographic scope: Citywide

Affordable housing set-aside: 15% (rental), 20% (for-sale)

Incomes targeted: 50-80% of area median income (rental); 65-100% (homeownership)

Development size applicability: Two or more units. For projects of 2-10 units, a fee is paid; for 11 or more units, affordable homes are produced.

Alternatives to construction: Off-site construction, land dedication, in-lieu fees.

Evolution

Santa Fe's inclusionary housing program evolved from an ad hoc initiative to a requirement that developers include affordable housing if they wished for their land to be annexed by the city (thereby making the land eligible for actual development). After being challenged on the legal nexus between the affordable requirements and the annexation allowance, the city codified this practice into the Housing Opportunity Program (HOP) in 1998. It required 11-16 percent of units in market rate housing to be priced affordably. In 2005, the program was re-designed and implemented as the Santa Fe Homes Program, with a 30% requirement for for-sale projects and a 15% requirement for rental projects. In 2011, the program was amended to reduce the requirement to 20% for for-sale projects.

Affordability Duration

Rental control period: 10 years

For-sale control period: Perpetuity (although shared appreciation loan has 30-year term).

Rationale: The rental affordability term has been reduced to 10 years (from 20 years) largely from the belief that other programs are meeting the needs of low-income renters.

Homeownership Program

Administrator: In-house.

Legal mechanism: Shared appreciation mortgage loan. A mortgage lien is recorded on the home equal to the difference in dollars between the subsidized sales prices and

²¹ The city annexed an additional 20,000 residents in January, 2014. These residents are not reflected in the total.

95% of the appraised value (in order to give the homebuyer some equity at the start of the transaction).

Homebuyer education: Prospective homebuyers are required to complete HUD-approved homebuyer training, to be income-certified, and receive financial counseling as needed, during which they are oriented to the SFHP and their obligation under the program.

Marketing and homebuyer selection: Initial marketing is the responsibility of the developer. In cases where demand for the units is expected to be high, the City may require that the developer work with the City to hold a lottery.

Are there guidelines for permitted mortgage loans: Yes.

Annual reminder of program terms: No.

Post-purchase support: No. Similar to other jurisdiction, nonprofit homebuyer counseling agencies are accessible for homeowners who need help after purchasing their homes with financial counseling, refinancing, or foreclosure prevention assistance.

Resale process: While the city reviews and approves all resales, it does not require an inspection of the home at sale nor does it require the seller to make any necessary repairs before sale. When a current inclusionary homeowner wishes to sell, (s)he is required to submit an intent-to-sell letter to the city. For the next 90 days, the seller will find an income-certified buyer. If the seller finds an income-eligible buyer, the lien recorded against the home (described above) is passed onto the new owner. If the seller cannot find an income-eligible buyer, the home can be sold at market price. The lien will then be repaid to the city, which in turn uses that amount to help with down payment assistance programs.

Resale formula: The resale price is determined by adding to the original price a percentage of the difference between the home's appraised value at time of purchase and time of resale.

Rental Program

Marketing and tenant selection: The developer is obligated to market the units and determine income eligibility according to typical HUD standards and practices; the city monitors compliance on an annual basis.

Income verification: The city is responsible for verifying the incomes of prospective renters.

Program Highlights/Ongoing Issues

Fees calibrated to different areas of the city. In order to reflect the differing development and housing costs in different parts of the city, the program has four different in-lieu fee amounts, one for each quadrant of the city.

Instances in which fees are more appropriate than on-site housing. Program administrators indicated that new market-rate housing might be developed in areas that are not helpful for low- or moderate-income households, such as peripherally-located, large-lot developments that are removed from transit networks. In those instances, a fee paid in-lieu of one inclusionary unit can fund multiple down payment assistance loans and help households buy in locations that better serve their needs.

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Chapel Hill, North Carolina

Place Overview

2013 Population Estimate (Census): 59,635

Population change from 2000 to 2013 (Census): 22%

Location: Raleigh-Durham-Chapel Hill metro area

Policy at a Glance

Name: Inclusionary Zoning

Year adopted: 2000 (voluntary); revised in 2010 as a formal, mandatory program

Policy type: Mandatory

Production as of March, 2014: 190 (all for-sale)

Geographic scope: Jurisdiction-wide

Affordable housing set-aside: 10-15%

Incomes targeted: ≤80% of area median income

Development size applicability: 5 or more units

Alternatives to construction: In-lieu fee, off-site construction, land dedication, and converting existing, market-rate units into affordable units

Evolution

In 2000, the town council adopted a Comprehensive Plan strategy that took the form of a voluntary inclusionary housing program. The program stipulated that—in the case of a developer requesting a rezoning—15% of constructed housing units were to be affordable. This program required council approval of every rezoning request and—to the concern of some developers—allowed for the council to deviate from the 15% requirement. In response to an increasing desire for a standard, predictable program, the town created the current mandatory inclusionary housing program in 2010. The original program was not retired as a result of the new, mandatory program. Instead, the town refers to this policy whenever a rental project voluntarily agrees to set-aside units as affordable.

Affordability Duration

For-sale control period: 99 years.

Rationale: When the CLT was established in 1999 it was determined that the ground lease would be 99 years. Since the Town Council thought the CLT was the best mechanism for implementing the inclusionary policy, they adopted the 99 year restriction.

Homeownership Program

Administrator: Community Home Trust (CHT), a community land trust.

Legal mechanism: Ground lease.

Homebuyer education: While CHT does not require buyers to go through counseling from a HUD-approved organization, it does require that they attend an orientation on the program. CHT also requires both 8 hours of homebuyer education, and applicants must meet with the organization's financial counselor before purchasing a home.

Marketing and homebuyer selection: CHT buys the affordable units from the developer and resells the homes to income-qualified buyers.

Are there guidelines for permitted mortgage loans: Yes.

Annual reminder of program terms: No.

Post-purchase support: CHT offers post-purchase educational classes and financial counseling to its owners. Homeowners also contribute monthly to a stewardship fund for repairs and replacements, which helps owners maintain their homes.

Resale process: When a home is resold, CHT requires an inspection of the home and the homeowner to make needed repairs. Some of these repairs are supplemented by grants from the town to CHT. To find a new buyer, CHT markets the home to applicants on its waiting list and to local employers, realtors, etc.

Resale formula: Fixed-rate formula, with a maximum annual appreciation rate of 1.0%.

Rental Program

Chapel Hill's mandatory policy does not apply to rental housing and has not generated any rental inclusionary homes. State legal decisions have linked mandatory, rental inclusionary zoning to rental control, which is outlawed in North Carolina.

Program Highlights/Ongoing Issues

The town and the Community Home Trust have formed an effective partnership. The town relies heavily on CHT to sell, steward, and eventually resell the units produced through the program. The arrangement works well for both the town and CHT, as they each can focus on their particular strengths (policy creation for the former, stewardship and preservation for the latter).

Property upkeep is a priority. The town occasionally provides funding to CHT to make needed repairs so that homes remain in good condition for subsequent generations of homeowners.

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Davidson, North Carolina

Place Overview

2013 Population Estimate (Census): 11,750

Population change from 2000 to 2013 (Census): 65%

Location: Charlotte-Concord-Gastonia metro area

Policy at a Glance

Name: Affordable Housing Ordinance

Year adopted: 2001

Policy type: Mandatory for ownership, voluntary for rental

Production as of March, 2014: 56 for-sale units, 8 rentals

Geographic scope: Citywide

Affordable housing set-aside: 12.5%

Incomes targeted: ≤120% of area median income (for-sale), less than 80% rental

Development size applicability: 2 units

Alternatives to construction: In-lieu fee

Evolution

Between 1995 and 1999, community leaders began to notice a trend towards the construction of exclusive, higher-priced communities. This trend, in conjunction with the town's limited land availability from its lakefront location, inspired leaders to brainstorm ways in which the community could maintain and grow its stock of affordable homes. By 2001, the city settled on and implemented its inclusionary housing program. The program's initial version allowed for developers to construct affordable homes on-site, donate land, or pay an in-lieu fee. City officials were happy to receive land donations but found that they did not have the funds to develop the land; hence, a 2006 program revision removed land donation as an alternative compliance method. A 2007 revision raised the eligible income to 150% of the area median income, but it was subsequently removed in 2010 because the town had very few, if any, persons at higher income levels who were interested in purchasing an resale-restricted home. In 2007, the affordability term was expanded from 30 to 99 years.

Affordability Duration

Rental control period: 99 years

For-sale control period: 99 years

Rationale: Thirty years did not seem long enough considering the limited availability of land. The city also thought it unfair for one household to receive a windfall at the end of a relatively short affordability period and to not pass on the public investment to other households.

Homeownership Program

Administrator: Predominantly in-house.

Legal mechanism: Deed covenant.

Homebuyer education: Prospective homebuyers are required to attend a pre-purchase counseling session with a partner organization (the Davidson Housing Coalition).

Marketing and homebuyer selection: The Davidson Housing Coalition administers an eligibility process, whereby household incomes are verified to ensure that they meet the program requirements. The developer is required to market the affordable housing properties similar to the marketing provided for the market rate homes.

Are there guidelines for permitted mortgage loans: No.

Annual reminder of program terms: Yes.

Post-purchase support: Limited.

Resale process: The program administrator will work with local nonprofits to identify income-eligible households who might be interested in purchasing inclusionary units that are up for sale.

The city also has the right of first refusal to purchase the home, which has been exercised once in order to avoid a foreclosure. If the seller cannot find an eligible household, s/he can sell to a household with an income that exceeds the affordability requirement. The home is still sold at the restricted price and the deed restrictions remain with the property.

Resale formula: Index-based formula. The resale price includes the original purchase price plus the following: closing costs; costs of sale initially paid by the seller; real estate commission costs; capital improvement costs; and an inflationary factor equal to the percentage increase in the area median income over the term of ownership.

Rental Program

Marketing and tenant selection: Rental properties are advertised on the town website. All applicants must have income verification and background checks.

Income verification: The Davidson Housing Coalition verifies incomes of prospective rental households.

Program Highlights/Ongoing Issues

Reactions to the expanded affordability term: The town has increased the affordability term from 30 to 99 years. Some builders and developers think this is too daunting, and some potential homeowners shy away from buying an inclusionary unit partially (or wholly) from a concern about having this long term restriction placed on the resale price.

Resale formula pushing the maximum resale price beyond an affordable level: In some instances, the aggregation of all aforementioned formula elements has pushed the price beyond an affordable level. While the seller is appropriately adhering to the resale restrictions, the type of buyer the program intends to help may not be able to afford the higher prices.

Limited number of households to purchase resale: According to the program administrator, the waiting list is very small. With few households on the waiting list, sellers have fewer eligible households immediately available for quick resales. Building the waiting list remains a challenge.

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Park City, Utah

Place Overview

2013 Population Estimate (Census): 7,962

Population change from 2000 to 2013 (Census): 8%

Location: Salt Lake City metro area

Policy at a Glance

Name: Affordable Housing Guidelines

Year adopted: 1993

Policy type: Mandatory

Production as of March, 2014: 137 (45 rental, 92 for-sale)

Geographic scope: Zone-specific (master-planned communities and annexed land)

Affordable housing set-aside: 15% (rental and for-sale); commercial developments required to construct affordable units for 20% of expected employees

Incomes targeted: Park City does not have income limits but instead prices the units for particular income levels: 100% of the median Park City workforce wage (rental); 150% of the median Park City workforce wage (homeownership)

Alternatives to construction: Off-site construction, converting existing market-rate units to affordable units, land dedication

Affordability Duration

Rental control period: 40 years, with opportunity for city to extend the period for an unlimited number of 10-year terms

For-sale control period: 40 years, with opportunity for city to extend the period for an unlimited number of 10-year terms

Rationale: The opportunity to extend the control period stems from the city's desire to have the flexibility to determine at the end of a control period if more affordable homes are needed.

Homeownership Program

Administrator: In-house.

Legal mechanism: Deed covenant.

Homebuyer education: None required.

Marketing and homebuyer selection: Park City's program does not have any income qualifications. In essence, the three percent annual appreciation cap (described below) deters people who can afford to purchase on the open market, as they will likely have a higher rate of return on their market-rate purchase. Without having to verify the incomes of prospective buyers, city staff less to administer.

Are there guidelines for permitted mortgage loans: No.

Annual reminder of program terms: Yes.

Post-purchase support: None.

Resale process: The city maintains the preemptive option to purchase. Even though the city does not use it regularly, current owners must notify the city when they intend to sell.

Resale formula: Park City uses a modified version of an appraisal-based formula. The home can increase in value at a rate proportionate to the rest of the market, but the increase is capped at three percent per year.

Rental Stewardship

Marketing and tenant selection: Rental units are marketed by city staff.

Income verification: Rental properties will submit annual reports to the city that indicate the income of their tenants.

Program Highlights/Ongoing Issues

Concerns that the resale prices reach unaffordable levels. City staff pointed to two properties in particular that—after 16-18 years of allowable annual price growth of three percent—has pushed the resale prices beyond affordable levels.

Condition of properties. Some of the program’s older properties have deferred maintenance, and existing replacement reserves are not sufficient to cover these costs. City staff is considering requiring that homeowner associations report their reserve levels to ensure that any necessary maintenance can be funded. Staff is also considering requiring homeowners to set aside reserves for home repairs to ensure that homes are well maintained.

Small town setting requires the use of a different affordability standard. The HUD-defined area median income for all of Summit County is considerably less than the median income of Park City. Therefore, city staff has decided to use local data to set income targets. To further align the program’s income targeting with local affordability needs, the city calculates the median “workforce wage” (currently \$56,000) to ensure it is providing workforce housing.

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Burlington, Vermont

Place Overview

2013 Population Estimate (Census): 42,284

Population change from 2000 to 2013 (Census): 9%

Location: Burlington-South Burlington metro area

Policy at a Glance

Name: Inclusionary Zoning

Year adopted: 1990

Policy type: Mandatory

Production as of March, 2014: 212 (87 rental, 125 for-sale)

Geographic scope: Citywide

Affordable housing set-aside: 15-25%

Incomes targeted: $\leq 65\%$ of area median income (rental); $\leq 75\%$, or $\leq 80\%$ if no buyer is found at 75% (homeownership)

Development size applicability: 5 or more units

Alternatives to construction: In-lieu fee, off-site construction (required to build 150% of the units that they would have been required to build on site)

Evolution

Burlington's inclusionary zoning ordinance resulted from a five-year process in the late-1980s. A coalition was formed to advocate for expanded affordable housing opportunities. This coalition spanned political principles, with many participants attracted to the ordinance's proposal to grant bonus density for compliant developments. Another consensus building feature of the policy was allowing developers to opt out of on-site construction by paying an in-lieu fee or constructing the required affordable housing off site.

Affordability Duration

Rental control period: 99 years

For-sale control period: 99 years

Rationale: The 99-year affordability term was at least partially inspired by reactions to HUD-financed, privately-constructed affordable housing. When developers were allowed to convert these affordable units to market rates after 20 years, citizens grew frustrated that this taxpayer-funded program would not ensure longer-term affordability. The development community also supported a 99-year affordability term, as they deemed as fiscally sensible.

Homeownership Program

Administrator: Predominantly Champlain Housing Trust (CHT), a community land trust.

Legal mechanism: Ground lease or deed covenant.

Homebuyer education: Prior to purchasing a home, homebuyers are required to attend a program orientation. Homebuyer counseling, however, is not required by the inclusionary housing program but is required by CHT.

Marketing and homebuyer selection: The Champlain Housing Trust (CHT) is largely responsible for marketing the for-sale units and selecting the homebuyer. A developer will contact CHT to indicate how many affordable units will be completed on which date. CHT will find income-eligible buyers. CHT will also conduct a simultaneous closing between CHT and the developer and between the CHT and the buyer. Doing so allows for CHT to be a part of the chain of title.

Are there guidelines for permitted mortgage loans: Yes.

Annual reminder of program terms: Yes.

Post-purchase support: CHT assists homeowners with financial assistance for major home repairs and maintenance.

Resale process: Since nearly all for-sale units are placed with CHT, CHT will find another income-eligible buyer to whom a unit can be resold. When a unit is for-sale, both the city and CHT have the right of first offer and first refusal. Even for those few units that were not placed into the CHT portfolio, CHT will help the seller with the process by identifying an income eligible buyer.

Resale formula: Fixed-percentage formula. The seller can add 25% of the increase in the affordable unit's market rate value onto the original purchase price.

Rental Program

Marketing and tenant selection: The city and the rental building developer share responsibility for verifying the incomes of prospective tenants.

Income verification: Handled by property managers.

Program Highlights/Ongoing Issues

For-sale stewardship by local community land trust: The city works with the CHT to administer the inclusionary zoning ordinance for ownership units and steward most these homes over time. Outsourcing this work has enabled the city to only devote an estimated 10% of one full-time employee to administration. CHT charges a fee (six percent of the resale cost) to help pay for the cost of its stewardship work. Another revenue source is the city itself, which uses some federal grant money and revenues from the city's housing trust fund to support CHT.

Monitoring rental units: City staff indicates that the most time-consuming activity is monitoring its rental inclusionary units. Properties with rental inclusionary units tend to be in scattered locations. Monitoring these units requires working through different property managers, which can be inefficient. CHT has not played a role in administering the rental units. City staff is considering raising the applicability trigger so that there are fewer instances of single affordable rental units being produced whenever a relatively small development occurs. It is also exploring the possibility of engaging CHT to administer inclusionary rental properties.

Concerns about the impact on inclusionary zoning on downtown housing production. In recent years, the development community has softened in its traditional support of inclusionary zoning in Burlington and raised concerns that the policy is dampening downtown housing production. These claims were underscored in a May 2014 Downtown Housing Strategy Report, which found that relatively little market-rate housing had been built in the past decade, and that significant demand for housing coupled with limited production was adding to affordability crisis. The city is

working on ways it can modify the policy or provide better cost-offsets/incentives to spark more market-rate construction while also generating affordable units.

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Fairfax County, Virginia

Place Overview

2013 Population Estimate (Census): 1,130,924

Population change from 2000 to 2013 (Census): 17%

Location: Washington-Arlington-Alexandria metro area

Policies at a Glance

Names: Affordable Dwelling Unit (ADU) Program; Workforce Dwelling Unit (WDU) Program

Year adopted: 1990 (ADU); 2007 (WDU)

Policy type: Mandatory (ADU); Voluntary (WDU)

Production as of March, 2014: ADU – 2,560 (1,200 rental, 1,360 for sale); WDU – 162

Geographic scope: County-wide

Affordable housing set-aside: 5–12.5% (ADU, rental and for-sale), 12–20% (WDU, rental and for-sale)

Incomes targeted: ADU: 50–65% of AMI for rental; ≤ 70% AMI with for-sale; WDU: 60–120%²² (rental or for-sale).

Development size applicability:

ADU ordinance: Applies to developments with 50 or more units that are also “construction Type 5” (i.e. wood-framed and do not have podium parking).

WDU policy: Applies to developments of all types that are proffered in conjunction with a rezoning.

Alternatives to construction: In-lieu fees and land dedication; however, they are not encouraged and rarely have been approved for the ADU program. The WDU policy allows off-site construction; however, no developer has done so to date.

Evolution

Until 2007, the county did not have an inclusionary housing policy that applied to taller, steel-and-concrete-based residential buildings. The WDU program, adopted in 2007, provided an incentive-based policy for taller (non-type 5) buildings that was acceptable to the development community and responded to their concerns about the financial challenges of including affordable housing in high-rise buildings. The WDU policy creates “a proffer-based incentive system designed to encourage the voluntary development of new housing affordable to a range of moderate-income workers in Fairfax County’s high-rise/high-density areas.”²³ Developers must comply with the WDU program to take advantage of “redevelopment options” created through new specific plans that increase development potential in a given area. The program has been especially active in areas that are currently served by transit or in soon-to-be

²² The county asks for WDUs to be priced at various tiers within this range. For example, in the Tysons area, 2% of units must be priced for households at 60% of AMI; 3% at 70% of AMI; 5% at 80% of AMI; 5% at 100% AMI; and 5% at 120% AMI.

²³ Fairfax County. “Fairfax County Comprehensive Plan and Related Inclusionary Zoning Affordable Housing Provisions.” Not dated.

served areas like Tysons (in which the policy requires 20% of all new housing to be affordable). As the county becomes increasingly urban, county staff is noticing inclusionary housing production trending toward WDU units rather than ADU units.

Affordability Duration

Rental control period: 30 years (ADU); 50 years (WDU)

For-sale control period: 30 years (ADU); 30 years (WDU)

Rationale: The first units produced by the ADU program had 50-year affordability terms. By the late-1990s, developers and individual homeowners were arguing that the term was too long. In 1998, the county reduced the term for rental units to 20 years (with a 10-year buyout option for developers, in which they could be released from the program if they paid a fee to the county for the value of the land, and bonus units granted through the program). That year, the county also reduced the for-sale term to 15 years. In 2006, the affordability terms were increased to the current 30-year term; rental developers are no longer allowed to buy out of the affordability term.

Do affordability terms restart for the subsequent homeowner if the property is sold within the control period? Yes.

Homeownership Program

Administrator: In-house and Fairfax County Redevelopment and Housing Authority (FCRHA).

Legal mechanism: Deed covenant

Homebuyer education: ADU homebuyers are required to attend an orientation on the program, a homeownership education course through Virginia Housing Development Authority (VHDA), an application session and a pre-purchase counseling session prior to contract signing.

Marketing and homebuyer selection: FCRHA can purchase up to one-third of ADU and WDU units. All other units not purchased by FCRHA are sold through the county's First-Time Homebuyers Program (FTHB). Households seeking a unit through the ADU or WDU program will apply to be on the drawing list for the FTHB. A drawing for a given for-sale unit will first screen the applicant households for: a) having pre-approval for a mortgage loan and b) having the appropriate household size and age (relative to the unit size and potential location in a senior/adult community). After screening the applicants, a points-based preference system is used, whereby households who live and work in Fairfax County, households with dependents, and households who recertify each year (up to three years) on the FTHB list are given preference.

Are there guidelines for permitted mortgage loans: Yes.

Annual reminder of program terms: Yes.

Post-purchase support: None.

Resale process: The program makes regular use of its preemptive option to purchase inclusionary units at resale (i.e. a right of first refusal), doing so for more than 90 percent of resales. The program also requires an inspection of the home at resale and requires that the seller makes any needed repairs. If a home is sold after the 30-year control period, the appreciation is split between the seller and the FTHB.

Resale formula: Index-based formula.

Rental Stewardship

Marketing and tenant selection: Property managers are entirely responsible for leasing and managing both ADU- and WDU-created units.

Income verification: Property managers are required to file monthly reports with the county and submit annual income re-certifications.

Program Highlights/Ongoing Issues

Different affordability terms can add to administrative burdens: As indicated above, ADU units have one of three different affordability terms, depending on when a given unit was constructed. Changes in affordability terms over time create different requirements for staff to track.

Long-term affordability via resetting control periods and county purchase option: While the control periods are relatively short compared to other case studies, the county has built in opportunities to extend them by a) maintaining the exclusive right to purchase a resold ADU, and b) resetting the period if a unit is sold with the period to another private owner.

Monitoring and stewarding an “explosion” of rental WDUs. As of early 2014, there were approximately 4,200 WDUs approved and in the pipeline. A large share is expected to be rental housing. As these units come online over the next several years, there will be need for additional staff to monitor the programs.

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Redmond, Washington

Place Overview

2013 Population Estimate (Census): 57,530

Population change from 2000 to 2013 (Census): 27%

Location: Seattle-Tacoma-Bellevue metro area

Policy at a Glance

Name: Redmond Zoning Code Section 21.20: Affordable Housing

Year adopted: 1994

Policy type: Mandatory

Production as of March, 2014: Approximately 308 (283 rental and 25 for-sale)

Geographic scope: Zone-specific (areas that undergo a neighborhood plan update)

Affordable housing set-aside: 10%

Incomes targeted: ≤80% of area median income (rental and for-sale)

Development size applicability: 10 or more units

Alternatives to construction: None

Evolution

In the early 1990s, a task force in eastern King County (WA) concluded that the growing problems surrounding housing affordability were not contained to a single city. Concurrently, the Washington State Growth Management Act was placing new expectations on local governments to manage their growth in a more comprehensive way. These two developments motivated the creation of inclusionary housing policies in many King County jurisdictions (Redmond being one) and the founding of A Regional Coalition for Housing (ARCH), a local government partnership devoted to supporting affordable housing creation and preservation efforts of its member jurisdictions. Central to its work is administering the inclusionary housing policies of the member jurisdictions. Redmond was the first of these members to implement such a policy, having done so when its downtown district was rezoned in the mid-1990s. So long as developers in the downtown district could build to higher densities, they had to include affordable housing in their developments. This theme of requiring affordable housing in rezoned (often up-zoned) neighborhoods has continued to the present. ARCH plays a supporting role in working with developers and monitoring the affordable units.

Affordability Duration

Rental control period: Perpetuity

For-sale control period: 50 years

Homeownership Program

Administrator: A Regional Coalition for Housing (ARCH), a partnership of East King County Cities and the County.

Legal mechanism: Deed covenant.

Homebuyer education: Homebuyers are referred to local non-profit organizations which are endorsed by the Washington State Housing Financing Commission. These

organizations deliver the homeowner education that are available to but not required of prospective buyers.

Marketing and homebuyer selection: ARCH maintains a list of eligible buyers and will notify prospective buyers before the property's marketing efforts begin. The developer is responsible for marketing the units. ARCH will review and approve the developer's marketing materials.

Are there guidelines for permitted mortgage loans: No.

Annual reminder of program terms: No.

Post-purchase support: None.

Resale process: Whenever a for-sale unit is being resold, the city maintains the right of first refusal. According to the terms in the covenant, the city can assign this right to a government agency or non-profit organization. The resold unit will then be assigned to a buyer with a qualifying income. If a unit is sold beyond the affordability term (therefore to a buyer on the open market), any extra value beyond the affordable resale price is captured by the city. This extra value is invested in a housing trust fund. Before any resale, the city can require a home inspection and require the seller to make any needed repairs.

Resale formula: Index-based formula.

Rental Program

Marketing and tenant selection: Property managers handle the marketing of units and screening of tenants for both new units and vacancies.

Income verification: Property managers submit an annual income verification of their affordable unit tenants. The covenant used for inclusionary rental buildings allows for affordable unit tenant incomes to rise up to 20 percentage points above the affordability threshold (i.e. allows a household income to rise as high as 100% of AMI). If tenant income rises above 20 percentage points, the tenant can remain in the unit but must pay the market rate. The property manager will then designate another unit as affordable.

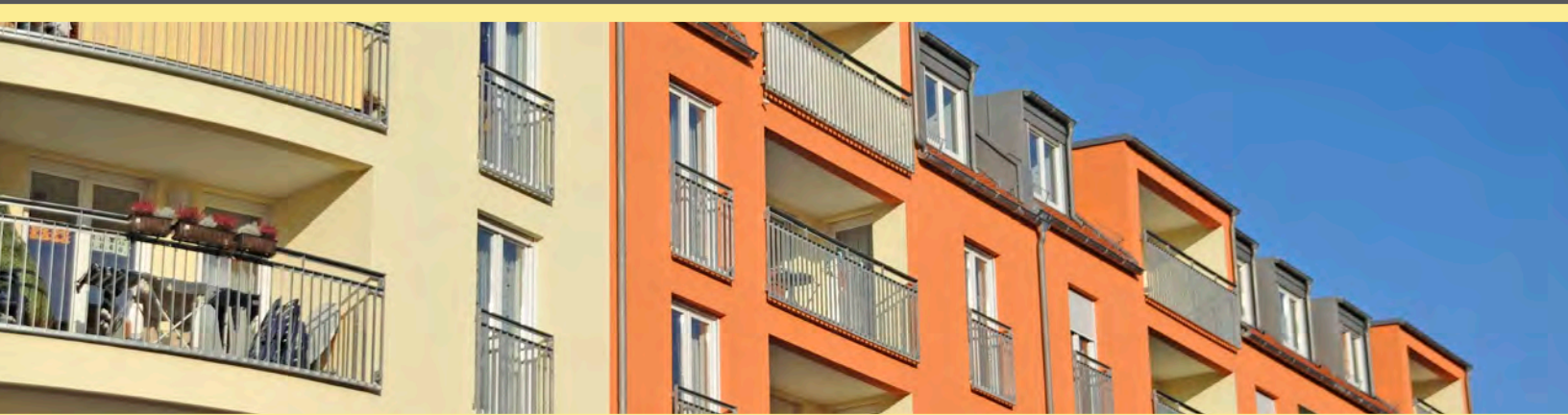
Program Highlights/Ongoing Issues

Standardized monitoring activities from a single organization: ARCH is a crucial entity in standardizing the processes and documents for the member jurisdictions in eastern King County. When a single organization monitors the units and produces common legal documents, the entire process is more efficient for all involved, including developers who work in multiple jurisdictions. This standardization is a key ingredient for getting buy-in from the developer community. This outsourcing of monitoring responsibilities also helps city staff create thorough new policies, as ARCH can indicate to them the practices that have and have not work in other communities. Notably, ARCH also plays a critical role in community planning and enabling the adoption of best practices for producing and preserving affordable housing in neighborhoods and cities.

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WHAT HAPPENS TO LOW-INCOME HOUSING TAX CREDIT PROPERTIES AT YEAR 15 AND BEYOND?



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WHAT HAPPENS TO LOW-INCOME HOUSING TAX CREDIT PROPERTIES AT YEAR 15 AND BEYOND?

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DISCLAIMER

The contents of this report are the views of the authors and do not necessarily reflect the views or policies of the U.S. Department of Housing and Urban Development or the U.S. Government.

ABSTRACT

The Low-Income Housing Tax Credit (LIHTC) program has been a significant source of new multifamily housing for a quarter century, producing more than 2 million units of affordable rental housing since 1987. In recent years, LIHTCs have provided funding for approximately one-third of all new multifamily housing units built in the United States. In the past few years, however, thousands of properties financed through LIHTC have become eligible to leave the program, ending rent and income-use restrictions. In the worst-case scenario, more than 1 million LIHTC units could leave the stock of affordable housing by 2020, a potentially serious setback to the goal of expanding housing choices for low-income households.

In addition to exploring the issue of whether owners of older LIHTC properties continue to provide affordable housing for low-income renters, this study examines the factors that affect those owners' decisions to leave the LIHTC program and the implications of these departures for the rental housing market. Based on interviews with owners, with tax credit syndicators and brokers, and with direct investors, the study describes the issues and decisions that LIHTC property owners confront as their tax-credit projects reach the 15-year mark. The information from interviews was analyzed in conjunction with tabulations from the U.S. Department of Housing and Urban Development National LIHTC Database and used to describe what happens to LIHTC properties as they reach the end of their tax-credit compliance period.

The results demonstrate that most LIHTC properties remain affordable despite having reached and passed the 15-year period of compliance with Internal Revenue Service use restrictions. A limited number of exceptions are closely related to the characteristics of the local housing market, as well as to events that occur at Year 15 and beyond. Some LIHTC properties will be recapitalized with new tax credits. Others will be repositioned as market-rate units, especially if they are located in low-poverty areas. Most property owners will confront the issue of how to meet substantial capital needs while preserving the housing as affordable. Future inquiry and research should address these issues as compliance periods continue to expire and tax credit properties continue to age.

WHAT HAPPENS TO LOW-INCOME HOUSING TAX CREDIT PROPERTIES AT YEAR 15 AND BEYOND?

FOREWORD

Enacted in 1987, the Low-Income Housing Tax Credit (LIHTC) program has become the most significant federal program for the production and preservation of affordable rental housing in the nation. To date, more than 2 million affordable units have been developed or preserved using the LIHTC, making the tax credit's portfolio substantially larger than the public housing stock at any point of that program's history. At LIHTC's quarter-century mark, however, policymakers are facing a growing challenge: tens of thousands of units have reached or are nearing the conclusion of a compliance period that restricts their affordability to tenants with incomes at or below 60 percent of Area Median Income. As the United States faces growing rental affordability challenges, the release of this study that examines the outcomes of LIHTC properties at the termination of their compliance period could not have come at a better time.

The U.S. Department of Housing and Urban Development (HUD) has a mission to serve low-income families by providing quality affordable housing. Tax credits are administered by the U.S. Department of the Treasury, however, and HUD has a relatively minor role. Nonetheless, policymakers have been concerned about the period of time during which LIHTC properties would continue to provide affordable housing. In response, Congress changed the provision of the law that governs the period of restricted use for LIHTC properties. Thus, properties that received LIHTC allocations before 1990 are subject to a 15-year period during which LIHTC units must remain affordable. For those properties with allocations in 1990 or later, there is an additional 15-year restricted-use period, for a total of 30 years. However, in some circumstances the owner of an LIHTC property with a 30-year restriction can elect to leave the program early. Since 2009, 10,634 LIHTC properties with 374,675 affordable rental units have either reached or passed their 15-year period of restricted use. The owners of these properties may apply for a new round of tax credits, may continue to operate the property as affordable housing without new subsidies, or may opt out of the program and reposition the former LIHTC property as market-rate housing.

HUD commissioned this study, *What Happens to Low-Income Housing Tax Credit Properties at Year 15 and Beyond*, to determine whether properties that reached the end of the 15-year compliance period remain affordable, the types of properties that do or do not remain affordable, and the major factors by which owners reach the decision to remain or leave. Based on in-depth interviews with more than 50 owners, tax-credit syndicators, and brokers, the researchers describe the issues and decisions that LIHTC property owners confront as their tax-credit compliance period ends.

This study's exhaustive review of the multifaceted processes that take place before, at, and after the compliance period is, in and of itself, a major contribution to the slim body of literature that seeks to better understand the effects of the LIHTC's simple conception, yet oftentimes complicated execution. The results of the study's interviews and data analysis are compelling. For instance, the researchers conclude that most LIHTC properties remain affordable after having completed the 15-year compliance period. One possible explanation posited by the authors is that many of these LIHTC property owners are committed to HUD's mission to expand housing options for low- and moderate-income families by preserving the affordability of existing units. There are indeed exceptions to this rule, however, which this paper attempts to examine. Moreover, it is unclear to what extent properties remain affordable for the very neediest of families across this country.

Some LIHTC properties will be recapitalized in the near future with new tax credits. Others will be repositioned as market-rate units in areas where the rental housing market is robust. For the properties that remain affordable, most owners will confront the issue of how to meet substantial capital needs. What happens to those properties is beyond the scope of this study, but should be investigated further, particularly as compliance periods continue to expire.

We trust this study will be of great interest to policymakers and others actively working with the LIHTC program, including syndicators, owners, investors, financial institutions, public agencies, and residents who are interested in evaluating the effectiveness of the program. We also believe that the release of this report comes at a critical time, as policymakers struggle to find ways to meet the ever-growing housing affordability challenge.



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EXECUTIVE SUMMARY

The Low-Income Housing Tax Credit (LIHTC) program has been a significant source of new multifamily housing for more than 20 years, providing more than 2.2 million units of rental housing. LIHTC units accounted for roughly *one-third* of all multifamily rental housing constructed between 1987 and 2006. As the LIHTC matures, however, thousands of properties financed using the program are becoming eligible to end the program's rent and income restrictions, prompting the U.S. Department of Housing and Urban Development's (HUD's) Office of Policy Development and Research to commission this study. In the worst-case scenario, more than a million LIHTC units could leave the stock of affordable housing by 2020, a potentially serious setback to efforts to provide housing for low-income households.

This study demonstrates that the worst-case scenario is unlikely to be realized. Instead, our answer to the question of whether older LIHTC properties continue to provide affordable housing for low-income renters is a qualified “yes.” ***Most LIHTC properties remain affordable despite having passed the 15-year period of compliance with Internal Revenue Service (IRS) use restrictions, with a limited number of exceptions.*** These exceptions are closely related to the characteristics of the local housing market, as well as to events that occur at Year 15.

In addition to considering the question of whether older LIHTC properties continue to provide affordable housing for low-income renters, this study also addresses several other questions:

- How many properties leave the LIHTC program at or after reaching Year 15?
- What types of properties leave, and what types remain under monitoring by state housing finance agencies (HFAs) for compliance with program rules?
- What are owners' motivations for staying or leaving?
- What are the implications of properties leaving the LIHTC program for the rental market? To what extent do properties that leave the LIHTC program continue to provide affordable housing?
- How do ownership changes and financing affect whether LIHTC properties continue to provide affordable rental housing and whether they perform well?

THROUGHOUT THE REPORT, **AFFORDABLE HOUSING** REFERS TO HOUSING WITH RENTS AT OR BELOW THE LIHTC MAXIMUM FOR THE AREA.

In answering these questions, we focused on properties that would have reached Year 15 by 2009—properties placed in service under LIHTC between 1987 and 1994. Over the course of this study, we conducted interviews with a number of industry participants, including syndicators, direct investors, brokers, owners, and HFA staff, as well as experts on multifamily finance and the LIHTC program. We also collected property-level records provided by syndicators, brokers, and owners. Sources of quantitative data used for this study include HUD's LIHTC database of properties and units placed in service each year; HUD's Public Housing Information Center database of units rented under the Housing Choice Voucher Program; and a survey conducted for this study of rents of a sample of LIHTC properties no longer monitored by HFAs.

Our interview sources reported remarkably consistent impressions of the real estate outcomes for Year 15 properties:

- *The vast majority of LIHTC properties continue to function in much the same way they always have, providing affordable housing of the same quality at the same rent levels to essentially the same population, without major recapitalization.* These properties may have some rehabilitation done at or shortly after Year 15, often

in connection with a change of ownership or refinancing, but the amount of work done is not extensive enough to be characterized as recapitalization.

- *A moderate number of properties are recapitalized as affordable housing with a major new source of public subsidy.* This new subsidy is most typically new tax credits, either 4 or 9 percent. These properties usually undergo a substantial program of capital improvements.
- *The smallest group of properties is repositioned as market-rate housing and ceases to operate as affordable.* The risk of this shift occurring is greatest in strong housing markets.

WHAT ARE THE OUTCOMES AT YEAR 15?

Which of the three outcomes will be realized is linked to events that happen at Year 15 and that affect the likelihood that a property will continue to serve as affordable housing in the years to come. These outcomes include whether the property's use restrictions change, whether the property is sold to a new ownership entity, and whether the property became financially or physically distressed before Year 15. The outcome may also be affected by market conditions where a property is located.

CHANGE IN USE RESTRICTIONS

During the first 15 years of a LIHTC property's compliance period, owners must report annually on compliance with LIHTC leasing requirements to both the IRS and the state monitoring agency. After 15 years, the obligation to report to the IRS on compliance issues ends, and investors are no longer at risk for tax credit recapture. For properties built before 1990, this requirement also marked the end of the affordability period required by federal law. Beginning in 1990, federal law required tax credit projects to remain affordable for a minimum of 30 years, for the 15-year initial compliance period and a subsequent 15-year extended use period.

In addition to complying with federal affordability restrictions, many LIHTC developments, including those placed in service between 1987 and 1994, are subject to other use restrictions that last well beyond Year 15. Some sources of such restrictions include mortgage financing from housing finance agencies or other mission-oriented lenders; subordinate debt or grant financing from state or federal sources (including HOME and Community Development Block Grants) that bear requirements for long-term use restrictions; and land-use agreements with states or municipalities that have contributed resources to the projects in exchange for long-term affordability commitments.

Properties subject to an extended LIHTC use restriction may seek to have that restriction removed. The legislation that extended LIHTC use restrictions from 15 to 30 years also established a Qualified Contract (QC) process under which owners may request regulatory relief from use requirements any time after Year 15. In the QC process, the owner requests the state agency to find a buyer for the property, and the state agency then has one year to find a potential buyer who will maintain the property as affordable housing. If the state is unsuccessful in finding a buyer, then the owner is entitled to be relieved of LIHTC affordability restrictions, and those restrictions phase out over 3 years.

In practice, each state agency can define its own regulations for implementing the QC, so there are in practice "fifty flavors of process." The process ranges from relatively simple and straightforward to so complex and

difficult—perhaps intentionally—that the process is essentially unworkable. Furthermore, a number of states either require or persuade developers seeking LIHTC to waive their right to use the QC process in the future. In these states, no QC applications are likely to be submitted. Therefore, QC sales tend to be concentrated in a few states and are not common.

CHANGE IN OWNERSHIP

A change in ownership for a LIHTC property can happen at any time. The ownership change is most likely to take place around Year 15, however, because it is in the interest of limited partners (LPs) to end their ownership role quickly after the compliance period ends. They have used up the tax credits by Year 10, and after Year 15 they no longer are at risk of IRS penalties for failure to comply with program rules.

By far the most common pattern of ownership change around Year 15 is for the LPs to sell their interests in the property to the general partner (GP) (or its affiliate or subsidiary) and for the GP to continue to own and operate the property. This pattern is overwhelmingly the case for properties with nonprofit developers, but also true in many cases of for-profit developers.

The minority of GPs who end their ownership interest at Year 15 almost always do so by selling the property. Almost always these are for-profit owners selling to for-profit buyers. These buyers, usually interested in larger LIHTC properties, appear to be motivated by the economies of scale they can achieve through expanding their portfolios. Other buyers who are also property managers reportedly may buy LIHTC properties mainly for the chance to earn management fees, and they may also be interested in smaller LIHTC properties. Still other buyers, the minority, aim to refinance and recapitalize a property with a new allocation of LIHTC credits or other subsidy funds. Owners proceed with these transactions with the goal of earning developer fees and positioning the property for at least 15 more years of physical and financial health.

FINANCIAL DISTRESS AND CAPITAL NEEDS

While the strong majority of LIHTC projects operate successfully through at least the first 15 years after they are placed in service under the tax credit, some properties fall into financial distress by the time they reach Year 15. Poor property or asset management practices, a problematic financial structure, poor physical condition of the property, and a soft rental market are the most common reasons for the rare instances of failure.

LIHTC properties tend to operate on tight margins both because of the stiff competition to obtain these subsidies initially and because of allocating agencies' obligation to ensure that they are providing the minimum amount of subsidy necessary to render the deals feasible. Given these tight margins, the percentage of foreclosures is surprisingly small, in the range of 1 to 2 percent. Both LPs and GPs are anxious to avoid foreclosure, because it would be considered premature termination of the property's affordability and subject them to recapture of tax credits, with interest, and forfeiture of all future tax credit benefits from the property. GPs most typically, but also investors and even syndicators, may fund operating deficits to avoid this consequence.

LIHTC properties are usually required to fund replacement reserves annually, out of operating income, to pay for capital repairs and renovations. The experts we interviewed agreed that these reserves are usually insufficient after 15 years, however, to cover current needs for renovation and upgrading. Nevertheless, we did not find a consensus about the extent of renovation and repair needs across LIHTC properties at Year 15. Probably the

most important determinant of physical condition at Year 15 is whether the property was newly constructed or rehabilitated when it was placed in service, and, if rehabilitated, the scope of the renovation work that was done then. If a property was new construction or a gut rehabilitation when initially placed in service under LIHTC, it is less likely to need significant upgrades at Year 15 than if it had only moderate renovations initially.

Market conditions may also affect property conditions over time. Properties in strong housing markets that can be rented at or near the maximum LIHTC rents are more likely to have high occupancy rates and to generate more operating funds that can be used for maintenance and repairs than can be obtained from housing in a weaker market, and thus enter Year 15 with fewer deferred repair and maintenance needs. Other factors that may be important are the target tenant population, property size, and the efficiency and skill of the property manager.

The extent and nature of a property's financial and physical distress will inevitably shape its Year 15 outcomes. For example, owners may be more likely to seek a new allocation of LIHTC or other major financial assistance to rescue a property with major capital needs, or with a problematic financial structure. If a property is continuing to operate at LIHTC rents, it may have to compete for tenants with new LIHTC properties, and the property in better physical condition will likely win out. Finally, if properties do fall into foreclosure, they may leave the affordable portfolio altogether as a consequence of the property sale to a buyer without affordable housing obligations.

OUTCOMES AFTER YEAR 15

After Year 15, properties take one of three paths: they remain affordable without recapitalization, remain affordable with a major new source of subsidy, or are repositioned as market-rate housing.

REMAIN AFFORDABLE WITHOUT RECAPITALIZATION

All the information gathered for this study shows that most LIHTC properties that reached Year 15 through 2009 are still owned by the original developer and that most are operating the properties as affordable housing, either with LIHTC restrictions in place or with rents that nonetheless are at or below LIHTC maximum levels. Even for properties subject to extended use restrictions, many owners reported that it simply was not worth the effort to try to leave the tax credit program through the QC process, because they could not increase rents outside the program or could increase them only marginally.

At least two types of properties will continue to provide housing at or below LIHTC rents despite the absence of use restrictions: properties with owners committed to long-term affordability and properties for which market rents are no higher than LIHTC rents. Nonprofit owners usually continue to operate properties as affordable housing beyond the term of any regulatory requirements because it is their mission to do so. Some for-profit owners interviewed for this study also described their missions as providing high-quality affordable housing, long-term.

When a property is not subject to use restrictions and does not have a mission-driven owner, the owner may still charge rents that are within the LIHTC standard of affordability, because the market will not support higher rents. Properties in which owners are able to charge rents higher than the LIHTC maximum have to be in locations where local rental market standards will support higher rents.

This pattern of properties remaining affordable with their original owners and without major recapitalization is common in strong, weak, and moderate markets alike. However, the specific financial condition of properties may vary. Properties able to achieve high occupancy levels and high rents—even if restricted below market levels—can generate significant cash flow and have real market value. So, although it is apparently true that most post-Year 15 LIHTC developments from the program’s early years have slipped into the mainstream of properties with rents around the middle of the market, over time these developments will continue to fare quite differently depending on where they are located.

Among the minority of LIHTC Year 15 properties sold to new ownership entities, most were sold to buyers willing to accept the LIHTC affordability restrictions and, at the same time, not buying for the purpose of recapitalizing the property with additional tax credits. These buyers describe the projects’ LIHTC history as more or less irrelevant to their business decisions and operations, regardless of whether they have to continue complying with LIHTC rules.

Both continuing and new owners typically refinance at Year 15, and low interest rates have enabled them to fund modest renovations at Year 15 without recapitalizing with new tax credits. Properties needing more extensive renovation have sometimes been able to obtain other sources of subsidy such as a new soft loan or an exemption from local real estate taxes.

REMAIN AFFORDABLE WITH NEW SOURCES OF SUBSIDY

Some LIHTC properties are recapitalized as affordable housing at Year 15 or shortly thereafter with a new allocation of tax credits. In addition to obtaining new tax credits, LPs typically refinance the mortgage and may also obtain new sources of soft debt. The new equity and debt are used to pay for renovation costs that often are substantial.

When deciding whether to seek a new allocation of tax credits to recapitalize a property—and accept a new period of use restrictions—owners weigh a variety of factors. At a minimum, the property must have some capital needs, because in order to qualify for a new LIHTC allocation, owners must complete rehabilitation of at least \$6,000 per unit per federal regulation (and, in many states, more extensive renovation per state requirements). Other factors internal to the property include: the need for modernization to compete with new affordable housing, whether an infusion of additional equity appears to be the only way to bail out a distressed property, whether it appears that the deal will generate substantial profits for the property’s owners such as new developer fees, and whether the owners might do even better by selling the property after current use restrictions have ended rather than extending them further.

State LIHTC policies and priorities also affect the decision to seek a new allocation of tax credits. Some states reserve 9-percent LIHTCs for creating additional units of affordable housing rather than preserving existing units. For some properties, 4-percent credits may be a good alternative because they may be more readily accessed than 9-percent credits for preservation projects. Analysis of the HUD LIHTC database to identify properties that appear to have been resyndicated with additional tax credits shows a gradual rise in the second use of tax credits.

REPOSITION AS MARKET RATE

By far the least common outcome for LIHTC properties is conversion to market-rate housing. Some properties are repositioned as market rate after a QC process, although this shift is not common. In cases where properties are repositioned as market rate, one owner told us that this option avoided the costs of reporting requirements rather than to raise rents. Some HFAs are using the QC process as a way to help properties in weak housing markets, such as parts of the Midwest, remain financially viable. With use restrictions lifted, the owner of the property is able to reach a slightly expanded pool of potential tenants and, sometimes, to charge rents that are slightly higher than the LIHTC maximum. For these properties, local conditions will limit rents to affordable levels for the foreseeable future.

Another outcome sometimes seen for a few LIHTC properties in weak markets is financial failure. Foreclosure of the loan on the property is followed by a property disposition by the lender to a new owner who will operate the property as market-rate housing at higher rents if the market will bear them.

The most likely properties to have been repositioned as unaffordable, market-rate housing are properties in low-poverty locations. We conducted a survey of the rents of a sample of a properties no longer reporting to an HFA and found that, even for this group of properties that should be at particularly high risk of becoming unaffordable, nearly one-half had rents less than the LIHTC maximum, and another 9 percent had rents only slightly more than LIHTC rents (see the exhibit that follows).

Affordability of Properties in Low-Poverty Census Tracts and No Longer Monitored by Housing Finance Agencies

Property Rents		
Greater Than 105 Percent of LIHTC Rent	Between 100 and 105 Percent of LIHTC Rent	Less Than LIHTC Rent
42%	9%	49%

Source: HUD National LIHTC Database

LATER YEAR PROPERTIES

Approximately 1.5 million housing units, in more than 20,000 LIHTC properties, were placed in service from 1995 through 2009 and will reach their 15-year mark between 2010 and 2024. How likely are those properties to follow the patterns that we observed around Year 15 for the early year LIHTC properties? The later year LIHTC properties appear to be at even lower risk of being repositioned as market-rate housing with unaffordable rents than the early year LIHTCs. A key factor is the very existence of extended use restrictions through Year 30, with the only possibility of relief being a QC process that some states have required owners to waive, while others make it procedurally difficult to succeed. Another factor is the much larger percentage of later LIHTC properties than early LIHTC properties that have nonprofit sponsors. Key differences between early year LIHTC properties and later year properties are summarized in the exhibit that follows.

One potentially offsetting factor is the lower share of later year properties that combined LIHTC with Section 515 loans from the Rural Housing Service (RHS), which have extended affordability restrictions that are difficult to remove. In addition, higher shares of later year properties are in high-value locations.

Later year LIHTCs typically have more complex financial and rent structures, which may mitigate repositioning as market-rate housing. These structures may also make it more difficult for later year LIHTC properties to use simpler conventional refinancing to join the mainstream of housing with affordable rents. More likely, many of the later year properties will continue to be part of a self-conscious industry of affordable housing providers. Although the greater proportion of later year LIHTCs that were either newly built or substantially renovated when placed in service may suggest a lower need for recapitalization at or around Year 15, both ongoing and new owners of tax credit properties may try to use a second round of tax credits.

Key Characteristics of LIHTC Properties Placed in Service, 1987 Through 1994 and 1995 Through 2009

	Early Year Properties: 1987–1994	Later Year Properties: 1995–2009
Number of projects	11,543	20,567
Number of units	411,412	1,521,901
Average project size	36.4	74.8
Construction type		
New construction only	56.7%	63.3%
Rehabilitation	43.3%	36.7%
	100%	100%
Nonprofit sponsor	10.1%	27.6%
RHS Section 515	31.1%	9.0%
Tax exempt bond financing	3.1%	21.7%
Location type		
Central city	46.6%	45.1%
Suburb	25.9%	30.9%
Nonmetropolitan	27.5%	24.0%
	100%	100%
Poverty rate of 10 percent or less	24.9%	29.8%
Percent of units with two or more bedrooms	54.5%	64.4%

RHS = Rural Housing Service.

LIHTC PROPERTIES AT YEAR 30

The three patterns observed at or somewhat after Year 15 will continue beyond Year 30: (1) some properties will continue to provide affordable rental housing, despite the absence of LIHTC use restrictions; (2) some will be recapitalized with public subsidies that bring new use restrictions; and (3) some will be repositioned with rents substantially greater than LIHTC-restricted rents or will no longer be rental housing. The balance among those three outcomes will shift after Year 30 in favor of the third pattern—repositioning and no longer affordable—but by how much?

Several types of properties will nearly certainly not be repositioned. These include properties with a mission-driven owner, a location in a state or city with use restrictions beyond Year 30, and the presence of restrictions associated with financing. Of the latter two groups, some of these properties will have agreed to rents less than the LIHTC maximum for some or all units and may be able to raise rents to something closer to the LIHTC

maximum. These units would still provide affordable housing to households with incomes around 60 percent of Area Median Income and still potentially be available to households using tenant-based vouchers.

Owners of the remaining properties—for-profit owners of properties with no use restrictions continuing beyond Year 30—are likely to make a financial calculation about what to do with the property that depends on the housing market. The key consideration is whether the location will support market rents substantially higher than LIHTC rents. Properties likely to no longer provide affordable rental housing are those for which market equivalent rents—or the value of converting the property to homeownership or commercial use—will be substantially higher than LIHTC rent. However, the large portion of LIHTC developments that have rents similar to unrestricted rents at about the middle of the housing market will continue to operate as affordable housing after the end of their use restrictions.

Some of these properties may have a difficult time producing enough cash flow to meet their operating needs and remain in even passable condition. Properties in rural areas and in other places with declining populations are most likely to fall into this category. Unmet capital needs may induce many of these properties to apply to their HFAs for additional allocations of LIHTC, although how HFAs will respond to this demand and assess its priority compared with other potential uses of LIHTC is difficult to predict.

CONCLUSIONS AND RECOMMENDATIONS FOR POLICYMAKERS

Most older LIHTC properties are not at risk of becoming unaffordable, the notable exceptions being properties with for-profit owners in favorable market locations. Maintaining physical asset quality turns out to be a larger policy issue for older LIHTC properties than maintaining affordability. Older LIHTC properties likely will follow one of three distinct paths: (1) some will maintain their physical quality through cash flow and periodic refinancing, in much the same way that conventional multifamily real estate does; (2) some will maintain their physical quality through new allocations of LIHTC or another source of major public subsidy; and (3) some will deteriorate over the second 15 years, with growing physical needs that will ultimately affect their marketability and financial health. This implies that an increasing number of owners, however, will apply for new tax credit allocations, either for 9-percent tax credits or for bond financing and 4-percent credits.

Given both of these kinds of needs, state HFAs will come under great pressure as the large stock of LIHTC housing ages. Restricted by finite resources, state policymakers are going to have to make choices. We recommend that those choices be made on the basis of a set of guiding principles and on careful examination of the housing markets in which the older LIHTC stock within their state operates. We suggest that HFAs place the highest priority on the developments that are most likely to be repositioned in the market—as higher rent housing or conversion to homeownership or another use. HFAs could benefit from additional data and tools from HUD to help identify the most appropriate properties. Having made a list of high-risk properties, HFAs should then make clear that resources will be available to preserve those properties as affordable housing—for example, additional allocations of 9-percent tax credits and other subsidies under the control of the HFA or other state agencies.

Some properties not at risk of being repositioned should still have high priority for investment in meeting their capital needs. These needs include—

- Properties that serve a special-needs population.
- Properties that have committed—or are willing to commit—to rent tranches of units below the LIHTC maximum, if the property is financially sustainable over the long term.
- Properties in a neighborhood where substantial public resources have been committed to a multifaceted revitalization effort and only if rehabilitation of the older LIHTC property is needed to prevent it from blighting the neighborhood.

In general, state policymakers should recognize that the majority of older LIHTC properties will, over time, become mid-market rental properties indistinguishable from other mid-market rental housing, and that this result is good.

We do not recommend that states extend use restrictions beyond 30 years because of the tradeoffs required. First, the longer the use restrictions last, the higher the initial subsidy needs to be. Second, under some market conditions, inflexible use restrictions may undermine the goal of preserving affordable housing in good condition by overly restricting the rental market for those properties.

We also suggest that federal policymakers take actions—specifically by revising Qualified Allocation Plan standards—that will create a high priority for preserving those older LIHTC properties that are at greatest risk of no longer being affordable, as well as those that serve a special-needs population. Federal policymakers should also recognize that LIHTC developments at risk of being lost to the affordable housing stock are not evenly distributed across the United States in proportion to population. Instead, they are most likely to be in states with high housing costs and limited housing supply, suggesting that LIHTC should be allocated on the basis of a measure of housing need, rather than per capita. Short of this change, which could weaken support for LIHTC, an alternative would be to enact a pool of bonus LIHTC funding to be used by the Treasury to reimburse states that allocate tax credits to carefully defined at-risk properties.

Additional research is essential for making policy about the future of the older LIHTC housing stock. One important area is research that focuses on the role of LIHTC in creating mixed-income housing, both by making housing available to low-income renters in locations where it otherwise would not be and by creating housing that has a mixed-income character within the development itself. Another recommendation is for research to understand better the role that adding new units of subsidized rental housing such as LIHTC plays in transforming—or weakening—a neighborhood. A better understanding of how to use LIHTC for special-needs housing and how to best link units with supportive services is also important.

A final set of issues is suggested by our observation that HFAs and other policymakers will have to make decisions about the LIHTC stock within constrained resources. HUD-sponsored research on the development and operating costs of LIHTC housing and how they vary around the country could be very useful for informing HFA policy standards, as well as for allocating tax credits and underwriting specific properties.

WHAT HAPPENS TO LOW-INCOME HOUSING TAX CREDIT PROPERTIES AT YEAR 15 AND BEYOND?

1. INTRODUCTION

The Low-Income Housing Tax Credit (LIHTC) program has been a significant source of new multifamily housing for more than 20 years. As the LIHTC matures, however, thousands of properties financed using the program are becoming eligible to end the program's rent and income restrictions, prompting U.S. Department of Housing and Urban Development's (HUD's) Office of Policy Development and Research to commission this study. In the worst-case scenario, more than a million LIHTC units will have left the stock of affordable housing by 2020, a potentially serious setback to efforts to provide housing for low-income households.

The research conducted for this study—including interviews with syndicators, LIHTC property owners, and industry experts, as well as analysis of HUD's LIHTC database and market research—demonstrates that the worst-case scenario is unlikely to be realized. Our answer to the question of whether older LIHTC properties continue to provide affordable housing for low-income renters is a qualified 'yes.' Most LIHTC properties remain affordable despite having passed the 15-year period of compliance with Internal Revenue Service (IRS) use restrictions, with a limited number of exceptions.

Other research issues addressed by this study include why and how owners and investors make decisions about the future of their properties, whether properties still in the LIHTC program are performing well financially, and the extent to which properties at around Year 15 seek additional allocations of tax credits.

The remainder of this chapter provides an introduction to the LIHTC and its role in the multifamily market, comparing it with previous rental production subsidies. Chapter 2 provides more detail on who owns LIHTC properties and how they are financed. Chapters 3 and 4 describe the outcomes for properties at the end of the 15-year IRS compliance period, including the mechanisms through which properties change ownership and the extent to which LIHTC properties are no longer monitored by state agencies after Year 15. Chapter 5 reports our findings on properties' financial and physical condition at Year 15. Chapter 6 describes three outcome patterns for early year LIHTC properties: remaining affordable without major recapitalization with new tax credits, recapitalization with new tax credits, and leaving the affordable housing stock. Chapter 7 assesses whether the patterns observed for early year LIHTC properties are likely to continue for properties placed in service in 1995 and later. Chapter 8 is a conclusion with a discussion of policy implications and recommendations for future research.

THROUGHOUT THE REPORT, **AFFORDABLE HOUSING** REFERS TO HOUSING WITH RENTS AT OR BELOW THE LIHTC MAXIMUM FOR THE AREA.

1.1 WHAT IS THE LOW-INCOME HOUSING TAX CREDIT?

The LIHTC was created by the Tax Reform Act of 1986, in part to replace the generous tax benefits for affordable multifamily housing that were abolished by the same legislation. As suggested by its name, it provides a subsidy to private developers of affordable housing through the federal tax code. Congress allocates tax credits to states based on population, in the amount of \$2.15 per state resident (as of 2011). In turn, states allocate tax credits through a competitive process, often administered by the state's housing finance agency (HFA). Properties must meet one of two criteria to qualify for tax credits: either a minimum of 20 percent of the units must be occupied by tenants with incomes less than 50 percent of Area Median Income (AMI), or 40 percent of units must be occupied by tenants with incomes less than 60 percent of AMI. These affordability restrictions

remain in place for a minimum of 15 years. Points are awarded to qualifying development proposals based on priorities documented in a Qualified Allocation Plan (QAP), which is created individually by each state and which states revise annually.

The tax credits are provided to developers through federal tax credits received annually for 10 years. Tax credits are set at either 70 percent of the present value of the qualifying costs (initial development costs, excluding the cost of land and certain other expenses), which translate to a yearly tax credit of about 9 percent. Credits in the amount of 30 percent of qualifying costs, which amounts to a yearly tax credit of about 4 percent, are distributed outside the allocation system. These are discussed in Section 6.2. The amount of the 9-percent credits depends on whether the project is new construction, substantial rehabilitation, or acquisition and minor rehabilitation of an existing property, whether it is in a difficult development area (DDA) or qualified census tract (QCT),¹ the share of units set aside for low-income households,² and other factors. With boosts in the qualified basis of a project for meeting certain requirements, the ultimate government subsidy can cover up to 91 percent of construction costs (Eriksen and Rosenthal, 2007).³

LIHTC developers frequently sell the tax credits to equity investors through a syndicator; syndicators serve as matchmakers between developers and tax credit investors, who are generally corporations with substantial and predictable federal tax obligations. Syndication is necessary because the real estate project itself is unlikely to generate enough federal tax liability for the owner to be able to claim the full value of the tax credits for itself. Purchasers have sufficient tax liability to be able to use the tax credits and may also benefit in other ways such as sharing in cash flow and resale value.

THE LIHTC IS THE LARGEST RENTAL HOUSING PRODUCTION PROGRAM IN HISTORY

Perhaps surprisingly for a government program embedded in arcane IRS regulations (Section 42 of the Internal Revenue Code), the LIHTC program is an important source of new rental housing. Recently, it has produced roughly 100,000 units each year. Altogether, about 2.2 million units in some 35,000 separate properties⁴ were placed in service under the program between 1987 and 2009, the latest year for which we have data.⁵ As of 2011, the number may be close to 2.4 million units. The LIHTC program has outstripped both public housing (with 1.1 million units currently existing) and HUD-assisted, privately owned housing (with up to 1 million units). LIHTC is thus the largest program in U.S. history providing property-based subsidies to rental housing, and since the early 1990s, has been the only such program developing substantial numbers of additional units.⁶

1. As part of the Omnibus Reconciliation Act of 1989, Congress added provisions to the LIHTC program designed to increase production of LIHTC units in hard-to-serve areas. Specifically, the act permits projects located in DDAs or QCTs to claim a higher eligible basis (130 percent of the standard basis) for the purposes of calculating the amount of tax credit that can be received. Designated by HUD, DDAs are defined by statute to be metropolitan areas or nonmetropolitan areas in which construction, land, and utility costs are high relative to incomes, and QCTs are tracts in which at least 50 percent of the households have incomes less than 60 percent of the AMI. The Housing and Economic Recovery Act of 2008 broadened this authority to allow any building designated by the state housing credit agency as requiring the increase in credit in order to be financially feasible to be treated as located in a difficult development area.
2. In reality, nearly all units in tax credit projects qualify as low-income, including 95 percent of units placed in service from 1995 to 2007 (Climaco et al., 2010).
3. The highest subsidies are for properties that receive both 9-percent credits and a 30-percent basis boost for locating in a QCT or a DDA.
4. The term *property* is used interchangeably with *project* and *development*.
5. <http://www.huduser.org/portal/datasets/lihtc.html>.
6. The HOME program is also used to produce new rental units, although on a much smaller scale. In addition, HOME funding is often used in combination with tax credits and does not produce units on a stand-alone basis.

Beyond the fact that they now outnumber other government-funded rental units, LIHTC-funded units increasingly represent an important share of all rental housing units. From 1987 to 2006, LIHTC units accounted for roughly one-third of all multifamily rental housing constructed (Eriksen and Rosenthal, 2010) and as of 2009 made up about 6 percent of all renter occupied housing units.⁷

LIHTC DIFFERS FROM OTHER RENTAL HOUSING PRODUCTION PROGRAMS

The tax credit program differs from earlier subsidized rental housing production programs such as the public housing built from the 1930s to the 1980s and the Section 8 projects built in the 1970s and 1980s, in several important ways. Tax credit units' rents are not related to specific tenants' income. Researchers have pointed out that, in many of the housing markets and specific locations where LIHTC housing has been built, LIHTC units compete with market-rate units because rents are quite similar to market rents. LIHTC projects sometimes have layered subsidies, however, and tiers of rents that are lower than either the LIHTC maximum rents or market rents.

Another programmatic difference from traditional public housing or Section 8 projects is that the federal role in tax credit projects is small, and the projects are allowed to fail if their financial condition is poor. Regardless of the fact that tax credit projects are subject to market discipline because of their similarity to market-rate housing, some inefficiencies exist in the program. Each of these features of LIHTC is discussed in more detail in the following section.

LIHTC RENTS ARE NOT BASED ON THE INCOMES OF INDIVIDUAL TENANTS

Tax credit rents are not based on the income of the tenants. Although tax credit units must be affordable to households at either 50 percent or 60 percent of the AMI, rents do not vary with actual tenant incomes—nor is rent limited to 30 percent of the tenants' income, an amount considered affordable. As a result, the program reaches a somewhat higher income group than previous production programs, unless it is coupled with other subsidies such as tenant-based housing vouchers. Wallace (1995) estimated that only 28 percent of LIHTC residents had incomes less than 50 percent of AMI, compared with 81 percent of those who reside in traditional public housing. That analysis was done at a time when lower tiers of rents in LIHTC properties were less common than they became later, so the percentage may be higher now.⁸

7. Based on a calculation using data on the total number of renter occupied units from the American Housing Survey: <http://www.census.gov/housing/ahs/data/ahs2009.html>.

8. Until recently, no systematic data were collected about the income levels of LIHTC tenants across the program. In 2008, HUD began collecting data on the elected rent/income ceiling for the low-income units in LIHTC projects (either 50 or 60 percent of area median gross income) and whether any units were set-aside to have rents that are less than the elected rent/income ceiling. (The 2008 collection included properties placed in service through 2006.) In 2010, HUD implemented a new mandate to collect tenant-level data, including annual income, for tenants residing in LIHTC units. These tenant-level data are not yet available for analysis.

LIHTC RENTS ARE SIMILAR TO MARKET RENTS

In some markets, tax credit units are no more affordable than rental units generally. Burge (2011) conducted a study of LIHTC projects in service as of 2002 in Tallahassee, Florida, considered to be a typical medium-sized metropolitan statistical area (MSA). Tallahassee has had a weak housing market in recent years, but not during the period covered by the study. Using hedonic regression analysis, Burge found that maximum tax credit rents are initially less than implied market rents because of the properties' high quality—their newness—when placed in service. This market advantage eroded, however, as the properties aged and declined in quality during the 15-year period of affordability required for compliance with the tax code.

This dynamic does not hold in all markets. In strong housing market areas such as parts of the Northeast and California, tax credit rents tend to be lower than market-rate rents for comparable units and may remain so over time. Even in strong housing markets, however, this trend depends on the specific location of the LIHTC property, as the competition for rental housing is for nearby properties, not those in a different part of a metropolitan area or rural region.

Baum-Snow and Marion (2009) analyzed 330 MSAs and also found that, in many cases, LIHTC maximum rents in 2000 did not result in LIHTC rents that were below unsubsidized rents. The nonbinding effect of the LIHTC restrictions was the case regardless of the income level of the neighborhood, but especially in low-income neighborhoods. They found that, when LIHTC properties were in tracts where 50 percent or fewer households were LIHTC-eligible, two-thirds of occupied rental apartments had rents below the LIHTC maximums. When LIHTC properties were in tracts with more than 50 percent of households LIHTC-eligible—that is, in low-income neighborhoods—82 percent of apartments had rents below the maximum rents.

Both Burge and Baum-Snow and Marion used maximum tax credit rents because they were not able to observe actual rents paid for LIHTC units. This highlights two points. First, although these authors' conclusions may be strictly accurate, the LIHTC units may be providing more affordability than they suggest because rents may be set below the LIHTC rent ceiling. Second, the LIHTC database does not include information on tenant-specific rent payments. The lack of data on LIHTC rents actually paid is an important gap in the information available about these units.

LIHTC UNITS COMPETE WITH MARKET-RATE RENTS

Unlike public housing and project-based Section 8, for which residents pay a percentage of their actual income, however low, tax-credit units often are in competition with other middle-market rental housing because the HUD-defined LIHTC maximum rent is often similar to market rent. This competition for renters provides incentives for owners to manage the projects well (Khadduri and Wilkins, 2008). Because of this competition, and also because of the design standards required by some HFAs and chosen by some LIHTC developers, tax-credit properties can be difficult to identify as low-income housing. Under some circumstances, they can create positive amenity effects such as the revitalization of low-income neighborhoods (Burge, 2011 and Freedman and Owens, 2011). The need to compete with other housing may also provide an incentive to avoid locating tax-credit projects in the most undesirable locations, where renters with a range of options would not choose to live.

LIHTC PROJECTS CAN INCLUDE HOUSEHOLDS WITH MIXED INCOMES

Tax-credit projects can sometimes be considered mixed income, because households with incomes close to 60 percent of AMI reside in the same complex as those assisted with Housing Choice Vouchers (HCVs), who usually have incomes below 30 percent of AMI. This income mixing allows tax-credit projects to serve households with poverty-level incomes, but also reduces the stigma attached to government-subsidized housing and, therefore, acceptance of the projects in relatively high-income communities. However, a lack of information about the tax credit program makes it impossible to assess the extent of income mixing (Khadduri and Wilkins, 2008).

THE FEDERAL ROLE IN PROGRAM DECISIONS IS LIMITED

LIHTC also differs substantially from previous production programs in that the federal role in program decisions is quite limited. As described previously, LIHTCs are allocated and monitored at the state level. Applications for tax credits almost always exceed the total availability of tax credits, which gives HFAs latitude in making awards. The role of the federal government is limited to funding the program through the income tax system and setting some broad parameters that are spelled out in law: maximum rents and income limits, a minimum percentage of nonprofit owners, the percentage of development costs that may be taken as a credit, and some requirements for QAPs.⁹ Because LIHTC is a tax provision rather than an appropriation of funds, the regulations governing the program have focused on appropriate interpretations of tax policy rather than on using the program as an instrument of housing policy. The federal government has essentially no role in the management of tax credit properties.

OWNERS OF LIHTC DEVELOPMENTS BEAR RISKS OF FINANCIAL FAILURE

Correspondingly, the risk that a property will fail is not taken by the federal government, but by owners, investors and lenders. In some cases, the federal government provides financing such as Federal Housing Administration (FHA) insured loans for tax credit properties, but tax credit properties often rely solely on conventional financing in addition to the equity provided by the tax credits. In general, LIHTC projects are at low risk of failure—at least during the first 15 years—because of monitoring by the syndicator, investors, and the developer and perhaps also because of the stringent penalties under the federal tax code for investors and owners for foreclosure. The state also monitors LIHTC projects and has a particularly strong incentive to ensure the financial viability of projects in cases where the HFA has provided some of the financing. According to a recent study of a sample of LIHTC projects, the cumulative foreclosure rate through 2006 was only 0.85 percent, and the annualized foreclosure rate since inception was 0.08 percent (Ernst & Young, 2010).

THE LIHTC PROGRAM DESIGN CREATES BOTH EFFICIENCIES AND INEFFICIENCIES

There is much debate about using a tax credit as the subsidy mechanism for housing development. Unlike previous rental production programs in which developers received a lump sum grant, developers of tax credit units receive the subsidy in an illiquid form and over a relatively lengthy period of time. Because credits are paid out over 10 years, although the investor supplies equity at the beginning of the deal, the tax credit price is discounted. That

9. For example, federal law requires QAPs to give priority to projects that serve the lowest income households and that ensure affordability for the longest period of time.

is, \$1 of tax credits is worth less than \$1 in affordable housing. The program has grown more efficient over time, however, increasing from below 50 cents per dollar of tax credits in the early years of the program to more than 90 cents per dollar for properties placed in service in 2006 (Ernest & Young, 2010). Discounting the stream of tax credits over the appropriate 10-year period indicates higher implied prices for tax credits (Cummings and DiPasquale, 1999). Investors also realize tax benefits from depreciation, which affects the cost of the housing subsidy to the federal government.

Some research suggests that the value of the tax credit subsidy is eroded by the complexity of the subsidy mechanism, which includes the costs of syndication and of complying with IRS affordability requirements. Eriksen (2009) analyzed a sample of tax credit properties in California allocated credits from 1999 to 2005 and found that the sale of developers' tax credit equity alone—required to realize the full value of the tax credits—required transaction fees of 15 percent or more during that period. Similarly, the Government Accountability Office (GAO) found that syndication costs amount to 10 to 27 percent of total equity raised (GAO, 1997).

Eriksen argues that the calculation of the qualified basis on which the amount of tax credits is awarded provides an incentive for developers to construct more expensive housing units than they would otherwise. He compared LIHTC housing units in his sample with unsubsidized units built over the same period, and found that unsubsidized units cost about 20 percent less per square foot to construct. A number of other explanations for this cost differential may exist, however, including the prevailing wage laws that may be triggered by sources of funds commonly paired with LIHTC; carrying costs associated with the long periods of time needed to apply for and secure tax credit allocations and other financing; and costs associated with additional regulation, oversight, and reporting involved in developing and leasing LIHTC housing.

And on the flip side, other researchers argue that the subsidy mechanism used by the LIHTC creates efficiencies. An important example is the delegated compliance monitoring (done primarily by investors and syndicators) and the powerful enforcement mechanism built into the program, the threat of tax credit recapture if the project is not maintained as affordable. Investment in tax credits has been allowed as a way for banks to meet their Community Reinvestment Act (CRA) obligations, which in some markets may increase the price of tax credits to more than their actuarially fair value (Desai et al., 2008). In addition, competition for tax credits may introduce efficiencies as well as allow states to best meet their housing policy goals (Deng, 2005).

LIHTC UNITS ARE AT RISK OF LOSS FROM THE AFFORDABLE HOUSING STOCK

Like earlier housing production programs, units subsidized using the LIHTC may eventually convert to market-rate housing with higher rents and thereby be lost from the stock of affordable housing. Initial affordability restrictions for the LIHTC program were limited to 15 years, after which the units could convert to market rate. Previous multifamily production programs have addressed the risk that privately owned, subsidized units might eventually become unaffordable by using grants to cover rehabilitation costs, forgiveness of debt (when properties had FHA insurance), and increases in the rents paid under subsidy contracts with HUD. Nonetheless, some properties left the affordable housing stock by prepaying mortgages with use restrictions and by opting out of their rental subsidy contracts (Finkel et al., 2006; Hilton et al., 2004).

Similar policy concerns about tax credit units motivate this research, but the relatively limited active involvement of the federal government means that federal legislative or regulatory tools for preserving the units as affordable are limited. Beginning in 1990, federal law required tax credit projects to remain affordable for a

minimum of 30 years, for a 15-year initial compliance period and a subsequent 15-year extended use period. However, the Qualified Contract (QC) process provides an option for owners to leave the LIHTC program after 15 years by asking the HFA to find a buyer, at a formula-determined price, who will agree to maintain the property under affordability restrictions. If no such buyer is found, affordability restrictions phase out over 3 years. The QC process is described in detail in chapter 4.2.

STATE EFFORTS TO PREVENT TAX CREDIT UNITS FROM REPOSITIONING TO MARKET RATE

Beyond this federally mandated period of affordability, the task of preserving tax credit units as affordable primarily belongs to the states, and states have responded by taking a variety of measures. California made longer affordability periods mandatory almost from the beginning of the program, and, by 2001, 41 states either required or gave preference to projects with affordability periods of longer than 30 years. These periods extend from 40 to 60 years and even to perpetuity in the case of Massachusetts, Michigan, and Vermont (Gustafson and Walker, 2002).

The binding constraint on the period of affordability is sometimes not the federal requirement or state QAPs, but the conditions imposed by other funders. States, local governments, and nonprofits sometimes provide additional sources of funding for construction of tax credit properties and often require periods of affordability longer than 30 years.

Finally, a number of states require tax credit applicants to waive the use of the QC process, ensuring that the property cannot phase out of the tax credit program as early as Year 18. According to our interviews, some states also discourage the use of the QC process by making the process complicated and expensive.

OTHER FACTORS AFFECTING THE AFFORDABILITY OF TAX CREDIT UNITS

Other factors also affect whether LIHTC properties will be repositioned to market rate. Many developments have socially motivated sponsors, often nonprofits whose mission is to create and preserve affordable housing in their neighborhoods. Even if no additional affordability restrictions prevent these organizations from converting properties to market rate, they typically maintain the units' affordability to achieve their mission. Federal law requires that 10 percent of tax credits be allocated to projects with nonprofit sponsors. In the first 2 years of the LIHTC program, states were not meeting that target but, by 1993, 18 percent of properties had nonprofit sponsors, and the percentage continued to grow.

Perhaps most important, the dynamics of rental markets affect whether tax credit properties are repositioned. In many places, rents for tax credit properties—particularly by Year 15, when the properties have aged—may already be at market potential.

OTHER FEDERAL HOUSING PROGRAMS ARE MORE COST-EFFECTIVE THAN LIHTC IN SOME MARKETS

Given the cost of the LIHTC program to the federal government—roughly \$5 billion in annual tax expenditures—surprisingly little research examines its cost-effectiveness. A body of literature beginning with the Experimental Housing Allowance Program (starting in the 1970s) demonstrates that housing production

programs are generally more expensive than housing vouchers.¹⁰ However, few studies specifically compare the costs of LIHTC—with its built-in private-market efficiencies—to other housing subsidy mechanisms. We are aware of only two studies, both are described in the following section.

Most recently, Deng (2005) compared newly constructed units placed in service after 1994 with vouchers in six metropolitan areas. She compared the subsidies required to produce a LIHTC unit with the voucher subsidy required to house a family with the same target income¹¹ in the metropolitan area. This research required detailed review of individual project cost certification forms and project evaluation worksheets to compile the necessary data on project development costs, which points to an important gap in the data readily available to researchers on LIHTC projects. Both state and federal subsidies were included in the analysis.

Deng found that the LIHTC units, all subsidized with 9-percent credits, were more expensive than the cost of vouchers over a 20-year period, but that the size of the LIHTC premium depends on the voucher payment standard and characteristics of the local housing market as well as local program administration.

Assuming a housing voucher payment standard of 90 percent of Fair Market Rent (FMR), tax credit units are more expensive than vouchers in all six metropolitan areas. In Atlanta, tax credit units are, on average, six times more expensive than vouchers. In Miami, tax credit units are 66 percent more expensive than vouchers under this payment standard. With a higher payment standard (110 percent of FMR), the cost-effectiveness of tax credit units increases, but are still more expensive than vouchers in four of the six metropolitan areas (Atlanta, Boston, Cleveland, and New York). With a voucher payment standard of 100 percent of FMR, tax credit units are more expensive than vouchers in all metropolitan areas, but only by 2 percent in San Jose and 12 percent in Miami.

Housing market tightness did not necessarily drive the cost effectiveness of tax credit units. Tax credit units are most cost effective in Miami, a balanced market, and in San Jose, a tight market, although the reasons for this effectiveness are quite different in each market. They are least cost effective in Atlanta, a balanced market, and Boston, a tight market. Again, the reasons for this are quite different in Atlanta and Boston. For example, Deng attributes the high cost of tax credit units in Atlanta to two primary factors. First, Atlanta's FMRs are relatively low, making the comparative cost of vouchers low. Second, the income targets for LIHTC units in Atlanta are relatively high: 50 to 60 percent of the AMI, a target driven by both program administration and local market conditions. In this market, most households residing in tax credit units would not qualify for a housing voucher because they could easily afford market rents (demonstrated by the fact that their minimum rent contributions are often higher than FMR). The voucher subsidy to these households is thus \$0, while tax credit units to house these families are expensive to build.

On the other hand, LIHTC units were estimated to be roughly equivalent to the cost of vouchers in San Jose, a tight market. Again, local conditions and program administration are important factors. FMRs are high in San Jose (higher than in either New York or Boston) and the metropolitan area has a history of high growth rates in FMRs, both conditions that make vouchers relatively expensive. In addition, LIHTC production costs are relatively low in San Jose because projects are relatively large (thus achieving economies of scale) and tend to be developed in suburban areas.

10. These studies are reviewed by Olsen, 2000, and include HUD 1974; Mayo et al. 1980; Olsen and Barton 1983; and Wallace et al. 1981. More recent studies include McClure 1998; and Shroder and Reiger, 2000.

11. Where the units' targeted family income was not available, maximum allowable rent was used.

In New York and Boston, the other tight markets, even new construction LIHTC projects tend to be smaller and developed in infill areas, increasing the costs of construction and thus reducing the cost effectiveness of tax credit units. The location of LIHTC projects in these areas is influenced by these states' focus on community revitalization as a secondary goal of affordable housing development.

An earlier study by GAO (2002) compared the cost (both of development and operations over the useful life of the project¹²) of six federal housing programs and found that LIHTC units are less expensive *to the government* than housing vouchers, but only because tenants—who are relatively higher income households and also often pay more than 30 percent of their income for rent—pay a larger share of the bill. The *total* cost of LIHTC units, considering costs both to the government and to tenants, is higher than the cost of housing vouchers. This was true in both metropolitan and nonmetropolitan areas, although not in all housing markets. Further, of the four production programs compared, LIHTC units were the most expensive for both one- and two-bedroom units in metropolitan areas, although differences in unit quality could not be controlled for by the study.

The GAO study did not consider other sources of project subsidies such as grants and soft debt from state or local governments or other sources. The study assumed that capital reserves would be sufficient to cover the properties' needs for a 30-year period during which the properties would provide housing for low-income renters. The authors noted that shortfalls in capital reserves, which are historically underfunded by production programs, would result in costs that were higher than estimated, perhaps by nearly 15 percent.

The present study strongly suggests that reserves for LIHTC properties are indeed often underfunded, as evidenced both from the interviews conducted for the study and from the observation that some LIHTC properties are resyndicated with new allocations of tax credits at Year 15.

LIHTC UNITS SUBSTITUTE FOR SOME PRIVATE MULTIFAMILY PRODUCTION

Unlike earlier public housing and Section 8 developments that were very heavily concentrated in low-income areas, Eriksen and Rosenthal (2010) point out that LIHTC projects are relatively well-distributed geographically across the income spectrum. As of 2000, nearly one-half of LIHTC projects (44 percent) were in neighborhoods in either the upper or middle third of their MSA's income distribution. In comparison, 77 percent of public housing units were in low-income neighborhoods in 2000. This may indicate that the program is expanding the stock of affordable housing in higher income neighborhoods.

A point of contention about the LIHTC, however, is whether the properties expand the overall stock of housing. That is, to what extent do tax credit units built substitute for—or crowd out—other multifamily rental housing that would have been built without a subsidy. If tax credit units completely replace private units, then there is no net addition to the housing stock, although the quality of the housing stock may improve. The substitution of tax credit units for privately funded units stems from their similarity to market-rate units. This similarity plays the useful role of imposing market discipline on tax credit projects. It also suggests, however, that in places where tax credit units have rents similar to unsubsidized rental housing, conversion of LIHTC properties to market-rate properties may not seriously threaten the total number of units that are affordable to moderate-income households.

12. This period was assumed to be 30 years.

Subsidized housing generally has been found to substitute for private housing to some degree, so that one unit of subsidized housing results in less than one unit of additional housing on net (Murray, 1983 and 1999 and Sinai and Waldfoegel, 2002). Research conducted specifically on LIHTC developments finds some degree of substitution for private rental housing, but is mixed in its conclusions on whether tax credit units entirely crowd out unsubsidized housing. Malpezzi and Vandell's (2002) study produced point estimates that indicate that place-based housing subsidies fully crowd out private, unsubsidized construction. Their analysis was at the state level, however, and they were unable to draw firm conclusions about crowding out because of a small number of observations (51) and thus large standard errors. Eriksen and Rosenthal (2010) studied tax credit properties using tract-level data for 1990 and 2000 with more conclusive results. Their estimates indicate that, over a 10-mile radius area, nearly all LIHTC development is offset by reductions in private unsubsidized construction. They suggest that the program may affect the location of affordable housing units more than the overall number of new housing units developed.

Two recent studies concluded that the degree of crowding out depends on the type of neighborhood where the housing is built. Eriksen and Rosenthal (2007) examined high- and low-income communities (those in the top third and bottom third of the income distribution in the MSA) and found that the impact of LIHTC developments was quite different between the two. In low-income communities, the developments had a positive effect. Within a small area, LIHTC units may actually encourage private construction. The opposite was true in high-income communities. For those communities, within an area with a 0.5 mile radius, construction of LIHTC units substituted fully for private, unsubsidized construction. Here LIHTC did not increase the total stock of rental housing, but instead may have affected who gets to live in those communities.

Baum-Snow and Marion (2009) likewise found that the LIHTC program's impacts on housing development differ across neighborhood types. In areas where home prices had been declining, new tax credit units nearby increased property values. In gentrifying areas, nearby development of tax credit units had a negative impact on incomes. Consistent with these impacts, they concluded that tax credit units crowd out private multifamily rental construction much more in gentrifying areas than in declining areas. In declining areas, new tax credit units increased the overall rental stock by 0.8 units within one kilometer of the project site. In gentrifying areas, however, each new tax credit unit increases the overall rental housing stock by only 0.37 units.

THE FINANCIAL HEALTH OF LIHTC PROPERTIES

Although very few LIHTC developments fail to the point where they are foreclosed, this does not mean that tax credit properties are without financial problems. The physical condition of units is often closely intertwined with financial health, as the financial stability of the property is an important factor in the decisions property managers make about maintenance and capital improvements.

As Cummings and DiPasquale (1998) point out, investment in a tax credit property is investment in real estate, and real estate investment is risky. Beyond the typical risks involved in real estate investment, LIHTC projects face some unique risks, including the rent restrictions, the complexity of the program and its compliance requirements, the special needs of the population being served if projects are designed to serve people with special needs, such as the homeless or disabled, and other factors related to the design of the tax credit program.

RENT RESTRICTIONS

The program's maximum rents restrict the cash flows that can be used to replenish reserves, pay debt, and make capital improvements to the property. That is the theory behind compensating owners who agree to rent restrictions with a development subsidy—the equity raised through the tax credit—that reduces the need for debt.

On the other hand, LIHTC properties in markets where maximum tax credit rents are below market rents may perform better because other affordable housing is scarce and also because higher incomes in areas such as the Northeast and California mean that the maximum tax credit rents in these markets may be high relative to the costs of operating the housing. Ernst & Young (2010) analyzed the operating performance of a sample of tax credit properties that were placed in service and leased by the end of 2005 and found that properties in the Northeast and Pacific regions had better median debt coverage and cash flow than properties in the Midwest, where tax credit rents and market rents tend to be very similar.

PROJECT MANAGEMENT

As in all real estate, the quality of management of LIHTC developments affects their financial and physical condition. In addition to facing the typical complexities of multifamily property management, LIHTC project managers must also screen applicants for compliance with required income levels, report to the HFA, and submit to property inspections. They may serve special-needs populations that require additional services.

In addition, the LIHTC program's design provides incentives for property managers to operate on very thin margins, with net cash flow frequently near zero. Importantly, LIHTC investors typically do not expect to receive their returns from cash flows, but from tax-related events. In addition to benefiting from the tax credits, investors may claim deductions for the project's depreciation and other expenses against other income, and positive cash flow reduces the value of the depreciation deductions (Usowski and Hollar, 2008). In practice, investors do not press for positive cash flow, but may instead encourage property managers to use operating income for property expenses. Some financing arrangements also provide incentives for partners to keep net income at or near zero: some soft loans, often provided by states or other government entities, require repayment only if cash flow is positive (Cummings and DiPasquale, 1998).

Managing the project's cash flow to achieve this balance adds to the difficulty of operating LIHTC projects. If cash flow is not managed successfully—for example, because cash flow projections made at the time of underwriting were too optimistic—the resulting negative cash flow may lead the project into a downward spiral of financial and physical deterioration. Although tax credit projects typically are of high quality compared with other nearby market-rate units when placed in service, over time inadequate operating income may cause property maintenance and physical condition to suffer, leading to increasing difficulty in attracting and retaining tenants.¹³ This can lead to a downward spiral by further exacerbating financial and physical problems as operating costs increase and rental income decreases (Korman-Houston, 2009).

13. Not surprisingly, the relationship between physical condition and occupancy is strong: one study found that mean occupancy was higher for properties in excellent condition (97 percent) than those in good and satisfactory condition (95 and 93 percent, respectively), and occupancy dropped sharply for properties in poor condition (85 percent) (Korman-Houston, 2009).

FACTORS RELATED TO LIHTC PROGRAM DESIGN

Healthy reserves are particularly important for properties operating on thin margins, and here the design of the LIHTC program works against the financial stability of the properties. When LIHTC properties are financed and decisions are made about budgeting for operations, reserves generally are budgeted at a higher level than is typical for conventionally financed properties. Unlike conventional properties, however, LIHTC properties are expected to operate for 15 years without raising capital for repairs by refinancing. LIHTC reserves—constrained by the property’s projected cash flow—generally are not funded at a high enough level to cover capital needs that arise over that period. The problem of inadequate reserves is exacerbated when negative cash flow leads to the use of reserves to cover operating costs. Several studies of the financial health of LIHTC properties find that a significant minority operate with negative cash flow, at least temporarily. More detailed discussion of this is presented in chapter 5.

The financial health of LIHTC projects—and the need for reserves—is also affected by production standards, including how much rehabilitation is done to older properties. In her analysis of Enterprise’s portfolio of tax credit projects, Korman-Houston (2009) found that rehabilitation projects were more likely to experience cash flow underperformance than new construction. Rehabilitation projects were also less likely to be in good condition than new construction projects, suggesting that the initial quality of rehabilitation projects is lower than that of new construction. For this reason, rehabilitation projects typically contribute more to replacement reserves than new construction projects (Ernst & Young, 2010).

1.2 THE EARLY YEAR LIHTC PROGRAM

As of 2009, more than 11,000 LIHTC properties, with more than 400,000 housing units, had reached their 15-year mark. These were properties placed in service under LIHTC between the start of the program in 1987 and 1994. Exhibit 1.1 shows, first, that the program grew steadily from 1987 through 1994, although it did not reach the 100,000 units per year that became typical in later years. Average property size grew as well, but remained relatively small even in 1993 and 1994, with 44 or 45 units per LIHTC development on average in those years. The percentage of larger properties, those with 100 units or more, also grew steadily, but during the 1987 through 1994 period less than 9 percent of all properties had that scale. This is reflective primarily of properties placed in service from 1987 through 1992. More than 11 percent of properties placed in service in 1993 and 1994 had at least 100 units.

During the first 3 years of the program, more than one-half of the properties were rehabilitated existing structures. By 1990, more than one-half of properties were new. During the period as a whole, about 57 percent of properties were newly constructed. The share of properties with nonprofit sponsors grew during 1987 through 1994, but for the whole period, only about 10 percent had nonprofit GPs.

Perhaps the most notable feature of the early year LIHTC program is the substantial use of the program for housing with Rural Housing Service (RHS) Section 515¹⁴ loans, 31 percent for the period as a whole. In contrast, a very small percentage of early year properties were financed with tax-exempt bonds.

14. Following the Department of Agriculture Reorganization Act of 1994, the USDA’s Office of Rural Development was created and took over administration of Farmers Home Administration (FmHA) activities, and the FmHA Section 515 loans became known as Rural Housing Service (RHS) Section 515 loans.

Exhibit 1.1. Number and Characteristics of LIHTC Properties Placed in Service, 1987 Through 1994

	1987	1988	1989	1990	1991	1992	1993	1994	All 1987–1994
Number of projects	812	1,726	1,784	1,410	1,472	1,425	1,452	1,462	11,543
Number of units	20,781	43,792	54,095	53,722	53,320	52,957	65,289	67,456	411,412
Average project size and distribution	27.2	26.3	31.5	38.6	36.8	37.3	45.2	46.6	36.4
0–10 units	42.3%	49.6%	44.4%	34.3%	30.7%	30.2%	19.4%	16.7%	33.5%
11–20 units	15.3%	13.3%	10.9%	11.8%	14.1%	14.0%	15.8%	12.2%	13.2%
21–50 units	31.7%	25.5%	29.0%	35.0%	38.3%	36.9%	40.3%	46.0%	35.2%
51–99 units	5.4%	5.5%	8.1%	9.2%	8.6%	10.9%	13.4%	14.0%	9.5%
100+ units	5.2%	6.2%	7.6%	9.8%	8.3%	8.0%	11.2%	11.2%	8.6%
	100%	100%	100%	100%	100%	100%	100%	100%	100%
Construction type									
New construction only	51.2%	46.5%	49.3%	59.5%	56.5%	65.5%	62.3%	66.0%	56.7%
Rehabilitation	48.8%	53.5%	50.7%	40.5%	43.5%	34.5%	37.7%	34.0%	43.3%
	100%	100%	100%	100%	100%	100%	100%	100%	100%
Nonprofit sponsor	1.7%	2.7%	8.2%	6.3%	9.8%	14.0%	18.4%	18.1%	10.1%
RHS Section 515	32.1%	23.2%	26.9%	36.5%	33.6%	34.6%	32.1%	33.8%	31.1%
Tax exempt bond financing	3.2%	2.3%	4.0%	3.7%	3.2%	3.1%	1.8%	3.4%	3.1%

LIHTC = Low-Income Housing Tax Credit. RHS = Rural Housing Service.

Notes: Projects used for analysis include only records with placed-in-service year data. Missing data information is in appendix E.

Source: HUD National LIHTC Database

1.3 RESEARCH QUESTIONS

This is not the first study to examine the outcomes for LIHTC developments after 15 years. In 2004 and 2005, Alex Schwartz and Edwin Meléndez interviewed seven LIHTC syndicators and other tax credit experts and, based on those interviews and on published literature on LIHTC, described the factors that would influence what happened to older LIHTC properties over time. They concluded that “the biggest threat to the long-term viability of tax credit housing as a resource for low-income households stems less from the expiration of income and/or rent restrictions and more from the need for major capital improvements. A relatively small segment of the inventory is likely to convert to market-rate occupancy—primarily housing built during the earliest years of the program, housing located in the most expensive housing markets, and housing that is not subject to additional regulatory restrictions” (Schwartz and Meléndez, 2008: 263).

Schwartz and Meléndez emphasized the small portion of the LIHTC inventory for which tax credits were allocated before 1990, before use restrictions that extended through Year 30 were in effect, and the fact that as many as one-half of those earliest properties were thought to have affordability restrictions other than those mandated by the LIHTC statute. They also cited expert opinion that few owners of LIHTC properties for which tax credits were allocated in 1990 and later would try—or succeed—in opting out of the 30-year use restrictions by asking the HFA to try to find a buyer for the property willing to pay a QC price. Finally, they pointed to the very small fraction of LIHTC properties that are located in census tracts where median rents are greater than the metropol-

tan median rent. Their view was that only owners of properties in such locations would have a strong incentive to leave the LIHTC program to seek market rents (Schwartz and Meléndez, 2008).

The research questions for this study are essentially the same as those suggested by Schwartz and Meléndez, now examined at least five years later and after many more properties have passed the 15-year mark:

- How many properties leave the LIHTC program after reaching Year 15?
- What types of properties leave, and what types remain under monitoring by HFAs for compliance with program rules?
- What are owners' motivations for staying or leaving?
- How are properties that remain in the LIHTC program performing physically and financially?
- What are the implications of properties leaving the LIHTC program for the rental market? To what extent do properties that leave the LIHTC program continue to provide affordable housing?
- How do ownership changes and financing affect whether LIHTC properties continue to provide affordable rental housing and whether they perform well?

In answering those questions, we focused on properties that would have reached Year 15 by 2009—that is, properties placed in service under LIHTC between 1987 and 1994. Given the time frame for data collection for this study, 2010 and early 2011, we anticipated that we would have data collected from HFAs on the universe of LIHTC properties through 2009 and that we would have interview-based information on properties that had reached Year 15 in 2009 or earlier.

We also decided to examine the outcomes after Year 15 primarily for those properties that do not have either project-based rental subsidies from Section 8 or similar programs or RHS Section 515 loans. Those federal subsidy programs carry other use restrictions and, perhaps more importantly, a different set of incentives. Instead, we focus on properties governed primarily by the rules and incentives of the LIHTC program itself.

Originally, we also decided to focus on properties that had not used LIHTC a second time. As data collection for the study progressed, however, it became clear that the extent to which LIHTC developments will be recapitalized and resyndicated with new tax credits is central to the future of LIHTC properties after Year 15. The further use of tax credits—both those allocated competitively by HFAs and the 4-percent credits that are available automatically to rental properties financed with tax exempt bonds—is an important dimension of how financing affects the future performance and affordability of LIHTC properties. Schwartz and Meléndez (2008) noted that additional tax credits were one way to meet an older property's capital needs, without offering a view as to how common this would become.

Many of the research questions are about LIHTC properties that are leaving the program, which we define as no longer being monitored by an HFA for compliance with LIHTC rules. However, the earliest properties, those that received LIHTC allocations before 1990, had use restrictions that lasted only 15 years. For those properties, no longer reporting to an HFA may imply nothing about whether a property continues to provide affordable housing. Owners may stop reporting simply because they no longer are required to do so. The properties may have other affordability restrictions, or they may continue to charge rents that are at or below the LIHTC standard because those are market competitive rents. For properties subject to 30 year use restrictions as well, no longer being monitored by the HFA may have ambiguous implications, because some HFAs do

not require reporting between years 15 and 30, instead relying on owners to comply with the use agreements to which they committed. Despite these ambiguities, we consider properties no longer monitored by HFAs to be those that *potentially* have left the LIHTC program and *potentially* are no longer affordable. Therefore, this is a useful group of properties to examine to answer some of the research questions.

1.4 DATA SOURCES AND METHODS

We used many data sources to answer the study's research questions. We can divide these data sources into quantitative data that lend themselves to numerical estimates because they are comprehensive or systematic and data that may support generalizations but must be considered qualitative.

Sources of quantitative data used for this study are—

- HUD's LIHTC database of properties and units placed in service each year.
- HUD's Public Housing Information Center (PIC) database of units rented under the HCV Program.
- A survey conducted for this study of rents of a sample of LIHTC properties no longer monitored by HFAs.

Sources of qualitative data used for this study are—

- Interviews with syndicators of and direct investors in properties that were placed in service from 1987 through 1994.
- Interviews with brokers who handle sales of early year LIHTC properties.
- Property-level records provided by syndicators and brokers.
- Interviews with owners.
- Property-level records provided by owners.
- Interviews with experts on multifamily finance and the LIHTC program.
- Discussions with HFA staff about agencies' policies and trends seen within the LIHTC program.

QUANTITATIVE DATA

The most comprehensive source of data on LIHTC properties is the HUD database of information collected from HFAs on the characteristics of LIHTC properties at the time they were placed in service.¹⁵ The data include the number of units in the property and their distribution by size (number of bedrooms), whether the property was newly constructed or rehabilitation of existing buildings, whether the sponsor (the General Partner) was a for-profit or a nonprofit entity, whether the property received 9- or 4-percent credits, whether the property had a Section 515 loan, the street address of the property, and contact information for the owner. The current data collection form for the HUD LIHTC database can be found in appendix A.

15. The HUD National LIHTC Database and recent reports based on database updates and revisions are available from HUD at <http://www.huduser.org/portal/datasets/lihtc.html>.

The HUD LIHTC database has been a rich source of information on the LIHTC program and has been used extensively by researchers (Freeman, 2004; Ellen and O'Regan, 2011; McClure, 2006 and 2010; Khadduri, Buron, and Climaco, 2006; Schwartz and Meléndez, 2008). The precise information on the location of LIHTC developments has been particularly useful for analyzing how LIHTC relates to housing markets and to racial segregation. The data have also been useful for describing trends in the LIHTC program over time. (Climaco et al., 2010, 2009, 2006)

HUD has been collecting data for the LIHTC database every year since the early 1990s on properties placed in service in the most recent year for which HFA records are complete. When collection of data began, HFAs were asked to provide data on properties placed in service between 1987 and 1994. HUD has requested updates and corrections to LIHTC project records through the data collection process, however, those data from the earliest years were less complete than data for properties placed in service since 1995. Therefore, for this study we asked the HFAs to review the data for early year properties and to add data both for missing properties and for missing data elements. We asked HFAs to provide data elements that HUD started collecting for the HUD National LIHTC Database only in recent years and to clarify the status of the oldest LIHTC properties by signifying properties no longer being monitored for the LIHTC program, checked if duplicate records existed in the database that may indicate a new allocation of tax credits, and to identify whether projects have left the program by the QC process. Because we wanted to make sure we could analyze separately those properties that did not have Section 8 rent subsidies, we asked HFAs to add information on that property characteristic, which had not been included in the early years of the database, and we also matched the addresses of LIHTC developments to HUD administrative data on Section 8 projects. For agencies that have upgraded their data systems in recent years, data on the earliest LIHTC projects were readily available, and in fact, many of these agencies had already provided updated information through HUD data collection for the LIHTC database. For many agencies, however, data on the early year properties were not maintained electronically, and the files were in storage and not readily accessible. Because of those difficulties, we were not able to get updated information from all HFAs.

The HUD LIHTC database does not include much information on the financial characteristics of the property. For example, no information is available about development costs, nor about the equity that was raised on the basis of the tax credit, the property's debt, or the rents actually charged for the units. Recently, HUD began to request data on the amount of the tax credit allocation, but those data have not been consistently provided for earlier tax credit properties. No information is available on the property's performance over time, both because HFAs often would not have this information and because the data are largely fixed at the time the property was placed in service. Therefore, the research questions that relate to the property's financial structure and performance cannot be answered using this data source.

Furthermore, the HUD LIHTC data are not updated to record changes in ownership over time. This limits the usefulness of the database for drawing a sample of properties for owner interviews, especially for a cohort of properties for which the owner contact information is at least 15 years old. Research that used the HUD LIHTC database as a sampling frame conducted much closer to the time the properties were placed in service already found much of the contact information was inaccurate. That research also found that many owners who could be reached refused to agree to be interviewed (Abravanel and Johnson, 1999).

Although in general the HUD LIHTC data reflect the property as it was when originally placed in service under the LIHTC program, there are two exceptions. In recent years, HFAs have been asked to provide a list of LIHTC properties that they no longer monitor, and those properties are given a flag in the database that identi-

fies them as such.¹⁶ Therefore, we are able to identify a set of early year properties that may have left the LIHTC program and may no longer have affordable rents.

Second, the HUD LIHTC data make it possible to identify properties that appear to have used LIHTC for a second time, by matching the street addresses and other identifying information for properties placed in service each year to those already in the database. One goal of data collection and updating the database is to account for properties and units only once. When new data are collected for the database, the records are checked against the current database for revisions, updates and duplicates. If a new record appears to represent an earlier record, the earlier record is removed from the database, and the new record has a notation added to indicate the record was previously in the database with a different record identifier. The record identifier for the database includes the project placed-in-service year, so a review of the data notation can show whether the project's placed-in-service year changed by only one or 2 years or much longer. When the timing suggests that the second appearance of the property in the database is not simply a correction by the HFA of an earlier data error, we can infer that the property has been refinanced and recapitalized with new tax credits.

To better understand the outcomes for LIHTC properties that are no longer monitored by HFAs and, in particular, to answer the questions about the extent to which these properties remain affordable, we used two approaches. Generalizations about the implications for the rental market of properties leaving the LIHTC program are based on those efforts.

First, we matched the addresses of properties no longer monitored by HFAs to the addresses of properties that had at least one tenant using an HCV during 2010. HUD's PIC database has street addresses for all properties rented under the voucher program. The premise for this analysis is that, if a property has rents that can be reached by a tenant with a voucher subsidy, that property has not left the housing stock of rental housing that can be made available for low-income families and individuals, although they may need rental assistance to make the housing affordable.¹⁷

Second, we conducted web searches for current rents of a small sample of about 100 properties no longer monitored by HFAs in locations where we thought market repositioning was most likely: census tracts with low poverty rates. We compared those rents with the LIHTC maximum rents applicable to the property's location. The premise for this analysis is that properties with rents that remain at or below the LIHTC standard have not left the affordable housing stock. For properties with rents that are greater than the LIHTC standard, we took into consideration that the property was a mixed affordable and market-rate property. Such properties are fairly rare in the LIHTC program.

QUALITATIVE DATA

Given the limited information in the HUD LIHTC database on what are the outcomes for LIHTC properties over time and our conclusion that a representative sample of owners of LIHTC properties could not be found and persuaded to be interviewed, we decided that the best single source for understanding what the outcomes are for LIHTC properties over time would be syndicators. That was the same determination made by earlier researchers who asked similar questions about LIHTC (Cummings and DiPasquale; Ernst & Young; Schwartz

16. The name of the variable is NONPROG.

17. Many tenants may need rental assistance to be able to afford LIHTC units even during the period when the units are subject to the program's rent restrictions.

and Meléndez). Syndicators understand the properties' ownership and financing structures, because they helped create them. They monitor the financial performance of the properties on behalf of the limited partner (LP) equity investors. They play a central role in property sales or changes in ownership structure. They are in a position to provide information about why and how LIHTC properties leave the affordable housing stock and about the properties' physical condition and financial performance. Therefore, a major element of the data collection for this study was telephone interviews and site visits with syndicators of early year LIHTC properties, as well as with some of the companies that had made equity investments in LIHTC properties during that time period and with real estate brokerage firms that have been active in sales of LIHTC properties to new owners or ownership entities.

- Seven syndicators participated in interviews and/or site visits for the study. LIHTC investment portfolios for these syndicators ranged from 1,150 properties to 2,800 properties; five of the seven had invested in 1,500 or more properties. All of the syndicators interviewed work across the country. All of the organizations have been in business since the LIHTC program's inception—or very shortly thereafter—and thus been associated with many properties placed in service during the early years of the program, 1987 through 1994.
- Four direct investors participated in telephone interviews or submitted written responses to questionnaires. All four have been major players in the program since the early days. Three of these direct investors had amassed LIHTC portfolios of 5,000 or more properties (in at least one case because of acquisition of other banks and their investments). These are all financial institutions or insurance companies.
- Three real estate brokerage firms with specialized practices in post-Year 15 properties participated in interviews and/or site visits for the research study. All three operate nationally. According to syndicators and other industry experts, these three brokers handle a very significant portion of the country's current sales of Year 15 properties that are being sold to new owners. Sales are being made to both individual and corporate owners. New owners have a variety of motives for buying mature LIHTC properties, as will be discussed later in this report.

The 11 syndicators and direct investors interviewed for this study during 2010 through 2011 had, among them, disposed of their interests in roughly 2,000 properties, meaning that they either transferred their limited partnership ownership interests or sold the properties to another owner. They all expected to continue disposing of their interests as additional properties in their portfolios approached Year 15.

At all these organizations, the research team interviewed senior staff who are knowledgeable about what is happening to properties as they reach Year 15. LIHTC syndicators and large investors have asset management staff who are responsible for tracking the performance—always including financial and usually also physical condition of LIHTC properties—and representing the interests of the LPs throughout the years that the LPs hold ownership interests in the properties. These staff annually review financial reports on each property, may inspect it periodically, and may intervene if they think a property is encountering major financial or physical problems. Most syndicators and investors with large portfolios also now have asset disposition staff who are specifically responsible for unwinding the LPs' interests in the property after 15 years.

These were the kinds of staff interviewed for this report. At a few organizations, interviews also included staff responsible for investing in new LIHTC properties, staff responsible for inspecting and monitoring the physical condition of properties, or in-house legal counsel with a broad overview of the organization's LIHTC investments. At the brokerage firms, senior brokers who handle the sale of LIHTC properties for both sellers (that is, existing owners) and buyers (prospective owners) were interviewed. During the site visits, the study team

collected detailed information from each organization's files on specific LIHTC properties that were placed in service between 1987 and 1994.

Because these organizations have each seen many properties pass through the Year 15 benchmark, they are able to generalize about what has happened to properties across the portfolio, as well as provide examples of diverse types of outcomes.

We estimate that together these organizations have information about a very large share of all the properties placed in service between 1987 and 1994. The properties we were most likely to miss learning about were small properties that were not syndicated. Given that most developers would have difficulty using the tax credits without bringing in partners (see chapter 2.2), we believe that such properties comprise a very small minority of early year LIHTC units.

We also conducted interviews with 13 other experts on the LIHTC program and multifamily finance. We also discussed with selected HFA staff their observations about what has happened to their earliest projects, including whether they noticed properties returning to apply for a new round of tax credits and what policies the HFAs had about awards of new tax credits for the earliest tax credit recipients.

The interview guides for the syndicator and broker interviews and the site visits can be found in appendix B. A list of syndicators, corporate investors, brokers, and other experts interviewed for the study can be found in at the end of this report.

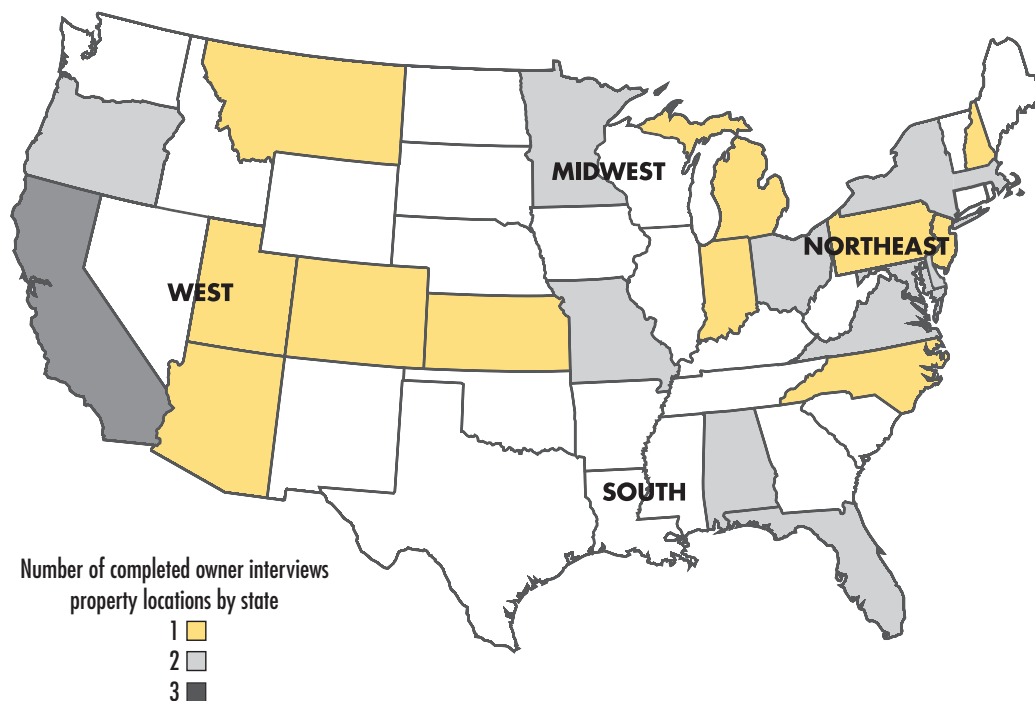
In addition, the research team completed 37 interviews with individual owners of post-Year 15 properties. The interview was with the General Partner (GP) or, in the case of properties whose initial limited partnerships had been dissolved, the owner. In one case, the interview was with the LP. These owners provided the study team with direct information about what was happening to their properties around Year 15 and prospects for the property going forward.

This was a convenience sample, based on owners who were identified by syndicators, by HFAs, by the study team, and by other LIHTC experts and who agreed to be interviewed for the study. It was also a purposive sample, however, in that we sought to interview owners whose properties illustrated several distinct outcome patterns that had been described by syndicators, brokers, and other experts and also to interview owners of properties in different parts of the country. Although this is not a large enough sample to provide statistical information, it enabled the research team to confirm and provide examples of the patterns that were identified by syndicators, investors, and brokers. The owner interviews included—

- 26 for-profit and 11 nonprofit organizations.
- Organizations throughout the country (see exhibit 1.2).
- Owners of properties in diverse kinds of areas: central cities, suburbs, exurban areas, and rural areas.
- Owners in diverse economic markets, ranging from strong markets such as large cities in California and Massachusetts to weak markets in Ohio and Michigan, and mid-range markets such as Maryland.
- Both developers of the properties originally, when they initial obtained LIHTCs, and more recent purchasers of properties at least 10 years after they were awarded LIHTCs. We interviewed 27 original and 10 new owners.

- Both properties that had been newly constructed when first placed in service (25) and properties that had been rehabilitations of existing structures (8) (original construction type was not known for four properties).
- Owners whose properties have been continuously in sound financial condition and those whose properties have encountered financial problems that required refinancing or sometimes a sale to a new owner before or around Year 15.

Exhibit 1.2. Locations of the 37 Owner Interviews



Note: The guides for the owner interviews are in appendix C.

Source: Owner interviews

ANALYSIS

The syndicator and broker interviews, together with the interviews of experts, are the basis for most of the generalizations made in this report about patterns of outcomes for different types of properties. The study team reviewed the files documenting those interviews. We found a lot of consistency in what we were told by representatives of different organizations.

We also reviewed systematically the documentation of the interviews with owners and the documents on property financing and performance that we received from owners or reviewed during site visits. That information is used in this report to provide illustrations and examples of the outcome patterns for early year LIHTC developments. The descriptions in this report of the outcomes of specific LIHTC properties, either from the syndicator

and broker files or from interviews with individual owners, have been worded in a way that masks the identity of specific owners and their properties.

We used the updated HUD LIHTC database to describe the characteristics of properties that were placed in service between 1987 and 1994 and to compare them with properties placed in service after 1994. This may help assess whether what the outcomes for the early year properties is a good indicator of the outcomes for properties that will pass the 15-year mark in the future.

We also used the LIHTC database to show the differences between properties that no longer report to the HFAs under the LIHTC program and those that do and to characterize the types of properties that appear to be using the tax credit for a second time. Finally, we used the data match between LIHTC properties and HCVs and the survey of rents of properties no longer under monitoring by HFAs to make generalizations about the extent to which LIHTC properties placed in service in the early years of the program are no longer affordable for low-income renters.

WHAT HAPPENS TO LOW-INCOME HOUSING TAX CREDIT PROPERTIES AT YEAR 15 AND BEYOND?

2. OWNERSHIP AND FINANCING

2.1 HOW ARE LIHTC DEVELOPMENTS FINANCED?

Conventional multifamily housing is financed with a combination of debt and equity. Developers will borrow a portion (say, 75 percent) of the cost of acquiring and building a property, and will provide equity capital for the balance. Depending on their resources and business arrangements, developers may provide their own equity capital, or they may secure additional equity capital from other investors.

In exchange for their capital, investors in conventional housing hope to get returns from three sources:

- **Cash flow:** Cash available to be paid out to owners from rents after all operating expenses and debt service payments have been covered.
- **Resale value:** Investors hope that property will appreciate over time, and that they will be able to realize a profit on the eventual sale of the multifamily development.
- **Tax benefits:** For conventional real estate, tax benefits from the property are generally limited to reductions in taxable income because of depreciation of the property.

HOW DO TAX BENEFITS FROM DEPRECIATION WORK?

Under the U.S. Internal Revenue Code, depreciation enables taxpayers to convert the up-front cost of developing a property to tax-deductible expenses over a period of time. For example, suppose a multifamily development is built at a cost of \$5 million. Current federal tax law allows residential properties to be depreciated over 27.5 years, on a straight-line basis. Thus, each year, the owners can claim 1/27.5 of the depreciable acquisition and construction costs as an expense—\$181,818 per year. This \$181,818 is not a current use of cash: the development costs were paid for up front, from debt and equity, when the project was built. Nonetheless, the owners can use this noncash expense to reduce their taxable income from the property. Let's say, for example, that this property has \$500,000 in rent revenues and \$250,000 in operating expenses. Before depreciation, the owners would have to pay income taxes on \$250,000 in profits. After depreciation is taken into account, however, the owner's taxable income is reduced by \$181,818 to \$68,182. In essence, for that year, the owner gets to enjoy \$181,818 in cash proceeds on which no federal income taxes are due.

Depreciation is a deferral rather than an elimination of tax liability. Let's say that, after operating this property for 5 years, the owners sell it for \$6 million—\$1 million more than it cost to develop. Because they have depreciated the property over time, the book value of the property will be reduced by the amount of depreciation taken: \$181,818 for 5 years, or \$909,090 in total. The fact that the property has depreciated by this amount means that the owners will need to pay taxes not only on the \$1 million appreciation in the property's value, but also on the \$909,090 in depreciation that is essentially reimbursed by the sale proceeds.

The depreciation deduction is valuable despite the fact that it defers, rather than eliminates, taxes, for several reasons:

- First, taxpayers benefit from deferral of taxes because of the time value of money; investors benefit from the use of the dollars that would have been paid in taxes during the years intervening before the property is ultimately sold.
- Second, capital gains, and recaptured depreciation, may be taxed at a lower rate than income; so when taxes are ultimately paid on sale, the tax burden may actually be less than it would have been if income had not been sheltered by depreciation.

Although the tax benefits associated with real estate ownership are valuable to investors in conventionally financed and operated multifamily real estate, these benefits are usually of secondary value. Generally, much larger shares of expected returns for owners of conventional real estate come from cash flow and profits on sale.

Real estate financed with the LIHTC alters this conventional formulation in a number of ways. The LIHTC program is designed to motivate developers to build properties with rents restricted to levels affordable to low-income households. Restricting the rents changes the overall financing picture in a number of critical ways:

- Properties with restricted rents have less revenue with which to pay a mortgage, and thus can support smaller amounts of debt than properties at higher market rents.
- Properties with restricted rents will typically generate less cash flow for owners than properties with higher market rents, reducing a major benefit of ownership.
- To the extent that rent restrictions are long term, they will reduce properties' resale value, reducing another major benefit to owners.

The LIHTC program is designed to counter these effects of reduced rents by providing a tax benefit to owners that compensates for the loss of cash flow and resale profits. Unlike the depreciation deduction (from which LIHTC investors also benefit), the LIHTC program offers federal tax credits to investors—a flat reduction, rather than a deferral, in the amount of federal income taxes paid. A project with a \$5,000,000 development cost might, for example, be eligible for roughly \$420,000 in annual LIHTC credits. That credit entitles the owners to subtract \$420,000 from their federal tax bill every year for 10 years.

This tax benefit is of a generous enough size that it motivates owners to contribute much greater amounts of equity than would be justified by cash flow or resale value alone, compensating for the reduction in debt that results from lowered rents. Typically, then, LIHTC properties differ from conventionally financed multifamily properties as follows—

- A much greater share of the financing comes from equity: While the capital structure of conventional residential real estate might have 20- or 25-percent equity and 75- to 80-percent debt, a LIHTC property might have 50-, 60-, or even 70-percent equity in its capital structure, with one-half or less of development costs paid for by mortgage debt.

- A much greater share of the benefits flowing to owners comes from tax benefits as opposed to cash flow or resale value.
- The tax benefits going to the owners are largely 10 years of direct tax credits against their income taxes, with only a minority of tax benefits coming from depreciation and other tax losses such as interest owed on deferred debt, although both kinds of tax benefits are available in LIHTC properties.

2.2 WHO OWNS LIHTC PROPERTIES?

To take advantage of the federal tax reductions offered by the LIHTC program, owners need to owe taxes in the first place. LIHTC credits are really valuable only to firms that have large and predictable federal tax obligations. In most cases, real estate developers themselves do not have income that is large enough or predictable enough to be able to fully use 10 consecutive years of tax reductions worth hundreds of thousands of dollars per project. As a result, LIHTC projects have almost always been developed using a limited partnership ownership structure.¹⁸

In a typical tax credit project, the real estate will be owned by a limited partnership formed for the single purpose of developing and owning that property. The limited partnership will typically be owned by the combination of (1) one GP holding a minority interest (1 percent or less) in the limited partnership and (2) one or more LPs holding the lion's share of the ownership (99 percent or more). The GP, typically the sponsor/developer or its affiliate or subsidiary, has day-to-day managerial responsibilities for developing and operating the real estate, completing financial and tax reporting, and ensuring compliance with use restrictions, as well as seeing to long-term asset management. GPs make the bulk of their profits through developer fees, most of which are typically paid after a property is fully occupied and operating at or greater than break-even levels for a specified period of time. GPs may also have rights to some or all of the property's cash flow, often through fees structured to provide incentives for good management of the real estate.

The LPs have restricted responsibilities and managerial rights, although they hold the right to approve any major alterations to the project or its management team and the right to step in and remove the GP if the development runs into trouble. LPs get financial returns primarily from tax benefits, including both tax credits and tax losses.

Businesses known as syndicators emerged to broker these arrangements, recruiting investors and matching them with LIHTC development projects, structuring the investment vehicle to minimize risks and maximize investor returns, and monitoring the assets over time to ensure that the investors' returns (largely provided by tax benefits) are preserved.

Most syndicators are private, for-profit firms, working predominantly (but not exclusively) with for-profit developers.¹⁹ From the early years of the program, however, national nonprofit syndicators emerged, with the goal of raising equity to support the work of nonprofit developers of affordable housing. Enterprise Community Investment, Inc. (formerly known as Enterprise Social Investment Corporation) was founded in 1984; the National Equity Fund was founded by Local Initiatives Support Corporation (LISC) in 1987. Both firms participated in

18. In more recent years, many LIHTC properties are owned by Limited Liability Companies (LLCs) instead of LPs. These LLCs operate in much the same way as LPs, with a managing member playing the role of the GP and limited members in the limited partner role. This shift to LLCs happened only in the more recent years of the program, so the discussion here will refer to limited partnerships, but the discussion applies equally to LLCs.

19. For-profit syndicators interviewed for this study reported that 75 to 80 percent of their developers were for-profit and 20 to 25 percent were nonprofit entities.

syndicating LIHTC investments from the program's inception in 1986. They were created by the parent organizations to support the development of affordable housing by nonprofit, often community-based, organizations. For example, LISC was founded in 1979 by the Ford Foundation to connect community organizations with the resources to improve their neighborhoods. From the outset, LISC helped provide access to financing that might typically not be available from conventional lenders—for example, predevelopment loans for community-sponsored real estate. When the LIHTC program began in 1986, LISC created the National Equity Fund to assemble investment monies from businesses and invest them in community-sponsored LIHTC properties. Over the years, NEF has expanded its activities to include for-profit sponsored housing, but it has retained a great interest in nonprofit sponsored properties.

State and regional nonprofit syndicators began to form a few years later—Merritt Capital in California (1989), the Ohio Capital Corporation for Housing (1989), and the Massachusetts Housing Investment Corporation (1990), to name only a few. Currently, a total of 14 state-based and regional nonprofit syndicators exist around the country. Although they invest in both for-profit and nonprofit sponsored projects, they have always had a strong interest in working with projects sponsored by nonprofits such as community development corporations.

Interviews with long-time industry participants, along with a series of studies on LIHTC investment performance published by Ernst & Young, reveals patterns in LIHTC investment vehicles over time. In the early years of the program, both private individuals and public corporations invested in tax credit properties. In the LIHTC program's first years, many syndicators created public funds for LIHTC investment. Syndicators marketed these funds to wealthy individual investors, selling fund shares through public offerings. A single public fund might have dozens or even hundreds of individual investors and would make investments in a portfolio of affordable housing projects, often spanning the entire country. These public funds required SEC registration and reporting. Marketing of LIHTC funds to individuals effectively ended by the early 1990s, however, because LIHTC program rules severely limited the amount of active income that individuals could shelter with these tax credits, rules that did not apply to corporate investors. The original 1986 legislation authorizing the LIHTC program provided some transition rules for projects that were already in development that facilitated their being marketed to individual investors, but these rules also ended by the early 1990s. Moreover, marketing to corporate investors was simpler because SEC registration was not required for institutional funds and typically such funds had many fewer investors than funds marketed to individuals, so long-term reporting and fund management were less complex.

Other syndicators recruited corporate investors to purchase the tax credit equity in portfolios of properties, creating institutional funds. The nonprofit syndicators limited their investor recruitment to corporations rather than individuals from the earliest days of the program, as did some private sector syndicators. The entire LIHTC equity market shifted sharply towards corporate rather than individual investors in 1993 through 1994 (although one of the syndicators interviewed for this study reported offering private funds as late as 2003). Changes in the federal tax code in 1993 prompted this shift. First, the LIHTC program became a permanent part of the tax code, giving corporate investors greater motivation to invest the time and effort necessary to understanding LIHTC investments. At the same time, the 1993 changes in the tax code also limited individual taxpayers' use of passive losses (such as the losses generated by real estate in which the investors do not play an active managerial role) to offset passive income (that is, investment income earned without the taxpayer's active managerial involvement). The passive loss rule did not apply to corporations, so they remained able to fully use the losses generated by LIHTC investments to offset their taxable income. LIHTC investments thus became more valuable to corporate investors than to individuals. Finally, syndicators found that working with corpo-

rate investors was less labor-intensive: public funds require SEC reporting and ongoing communications with a large pool of individual investors. Selling LIHTC investments to corporate buyers does not entail SEC reporting, and, since institutional funds involve a smaller number of entities making larger capital investments, the volume of communications required with investors is much smaller.

While many corporations invested in institutional funds through syndicators, several corporations became major direct purchasers of LIHTC investments from the early years of the program. Rather than work through a syndicator, these firms created the internal capacity to reach out to the developer community to acquire limited partnership interests in affordable housing projects and to underwrite deals, as well as to oversee management of these investments over time. Direct corporate investors included financial services firms (such as Fannie Mae, J.P. Morgan, and Bank of America) and insurance companies (such as Hancock, SunAmerica, and Transamerica/Aegon). Today, financial services firms and insurance companies are the dominant investors in the LIHTC market, both through direct investment and working through syndicators. In the program's early years, a number of nonfinancial firms also made extensive investments in LIHTC properties (for example, Chevron, Clorox, and Edison). Even today, a scattering of other kinds of businesses invests in LIHTCs, including such firms as Verizon and Google.

Some LIHTC equity investors have been motivated by community issues, as well as by financial returns. Banks around the country are regulated by the federal Community Reinvestment Act, which requires them to provide some financial services to their local geographic area. When banks seek federal approval for such actions as creating new branches or merging with another bank, they are evaluated, in part, by their range of CRA activities. Investing in LIHTC properties qualifies as a CRA activity, so for many large financial institutions, this type of investment has become an important way of satisfying CRA requirements while also sheltering income from federal taxes. This combination of investment and tax shelter is a major reason why financial institutions have been among the most frequent LIHTC investors, both through direct investments and syndication funds. Over the years, increasing numbers of financial institutions have become interested in this double benefit.

WHAT HAPPENS TO LOW-INCOME HOUSING TAX CREDIT PROPERTIES AT YEAR 15 AND BEYOND?

3. WHAT ARE THE OUTCOMES AT YEAR 15?

CHANGES IN OWNERSHIP

A change in ownership for a LIHTC property can happen at any time. It is most likely to take place around Year 15, however, because it is in the interest of limited partners (LPs) to end their ownership role quickly after the compliance period ends. They have used up the tax credits by Year 10, and after Year 15 they no longer are at risk that the tax credits will be recaptured because of failure to comply with program rules.

3.1 SALES OF LIMITED PARTNER INTERESTS TO THE GENERAL PARTNER

By far the most common pattern of ownership change around Year 15 is for the LPs to sell their interests in the property to the General Partner (GP) (or its affiliate or subsidiary) and for the GP to continue to own and operate the property.

One nonprofit syndicator estimates that 95 percent of its Year 15 properties are transferred to the original nonprofit developers: indeed, adding these properties to the nonprofits' permanent ownership portfolio is part of most nonprofit syndicators' missions. They expect the properties to remain with the nonprofit owners in perpetuity and to continue to be operated as affordable housing.

WHY DO LIMITED PARTNERS WANT TO SELL AT YEAR 15?

The low-income housing tax credits themselves, the greatest benefits of ownership, are used up after 10 years of occupancy; the next five years of ownership oversight allows investors to minimize the risk that the credits already taken will be subject to Internal Revenue Service (IRS) recapture for noncompliance. After these 15 years, however, the benefits are both gone and safeguarded, because the IRS will no longer seek recapture of prior tax benefits, even if the properties fall out of compliance with LIHTC income limits or other requirements, regardless of whether the properties are supposed to comply for 30 years. Although some state agencies may have some recourse against owners who violate compliance requirements between years 15 and 30, their sanctions do not carry the heavy weight of potential IRS tax recapture. Therefore, most investors find little economic motivation to stay in the deal after Year 15. Syndicators also are motivated to end the limited partnership to avoid tax reporting and other administrative burdens.

Tax losses might continue to flow for some time after Year 15, but these losses may not be desirable for corporate investors because they will reduce reported profits. This negative factor will no longer be offset by the need to protect the tax credit from recapture. All of the syndicators and direct investors interviewed for this study indicated that as a matter of policy, they work to engineer an investor exit as quickly as possible after the initial 15-year LIHTC compliance period: within a fairly short time after Year 15, most original investors will have exited the Limited Partner owner role. This exit can be accomplished by selling the Limited Partner interests (usually to the existing General Partner) or by selling the property (either to the existing General Partner or to a third party). If the property is sold to a third party, then the Limited Partnership is dissolved, and both the Limited and General Partners end their ownership roles.

Direct investors and for-profit syndicators also report transferring the majority of properties to the original developer/GP. While one syndicator estimated that only 60 percent of its dispositions go to the original GPs, other syndicators and direct investors reported selling 75 to 85 percent of their properties to the original GPs or their affiliated companies.

TERMS OF THE SALE OF LIMITED PARTNER INTERESTS TO THE GENERAL PARTNER

The terms of the sale of the LP interests to the GP make a difference for the ability of the property to continue to operate as affordable housing in good condition. If the GP is required to finance a sales price that exceeds the property's outstanding debt, that will limit the cash flow that is available for operating the property and meeting its capital needs over time.

In the early years of the LIHTC program, many partnerships were formed under terms that permitted the LPs to share in the property's value at the time of sale. In those cases, the exit processes involve an assessment of each property's market value, usually under a range of scenarios, and often including a formal real estate appraisal. Sometimes a brokerage firm is asked to give an opinion of value. If a property has LIHTC income restrictions for 30 years, then these restrictions will be used in assessing market value, although the assessment might also include what the property might sell for under a Qualified Contract (QC) sale. The assessment may change current operating assumptions—for example, increasing rents to the maximum allowed under LIHTC if rents are below that level or assuming more efficient property operations (if plausible), leading to greater cash flow and so greater market value. New mortgage financing at current rates is assumed in these valuation analyses.

If a property is determined to have value in excess of outstanding debt, then the LP investors may seek a sale of the property for the greatest achievable value, which may not be a sale to the GP. The partnership documents may give the GP a right to consent to any proposed sale, however, and therefore an ability to bargain for a price less than maximum value.

When properties have real economic value in excess of debt, the terms of a transfer may be subject to considerable negotiation between the LP and GP. An example is a property with more than 200 units in a strong housing market suburban area in the Upper Northwest, where the GP wanted to retain ownership beyond Year 15. After some discussion, the GP and LP agreed to seek an opinion of the property's value from a brokerage firm, and they used the resulting valuation to negotiate a multi-million dollar payment, beyond the value of the debt on the property, from the GP to the LP. The GP paid for this by refinancing the mortgage debt on the property, with the same national lender that had originally underwritten it, taking advantage of lower mortgage interest rates.

Other partnerships provide a right for the GP to purchase at specified terms. The two national nonprofit syndicators have always structured their projects to facilitate a sale to the nonprofit sponsor at around Year 15. One common scenario is for the GP to acquire the LPs' interests in return for assuming the obligations of all the existing debt on the property, including both hard and soft (nonamortizing) debt. In nonprofit-sponsored deals,

a right of first refusal is often granted up front to the nonprofit sponsor for the exit price specified in the federal tax code, which is assumption of outstanding debt plus exit tax liability.²⁰

The interviews conducted for this study suggest that exit taxes are not a major issue in establishing Year 15 sales prices. Only one syndicator, one of the nonprofit firms, named recovery of exit tax liability as a goal they seek to achieve for the LP investors.

Negotiations concerning the cost of buying out LP interests may also be extensive if the predefined price in the original partnership agreement is an unattractive proposition for a GP who thinks the property is not worth the stated amount. In other situations, the GP buyout price may be ambiguous in the initial documents or subject to interpretation and assessment (for example, if the right of first refusal is for the property's current market value). These situations can also lead to long negotiations between the two partners.

Many original GPs, both nonprofits and for profits, are in fact able to buy out LP interests for little or no consideration beyond assumption or repayment of outstanding debt. Syndicators indicate that most LIHTC properties have little value beyond debt at the end of Year 15: one syndicator claims that 80 percent of their properties are in this category. Other industry experts place this percentage even higher. The absence of value in excess of debt is particularly likely to be the case for projects with soft loans that remain unpaid during the compliance period, since these soft loans grow in value by virtue of accruing interest.

A transfer of LP interests to the GP for outstanding debt can occur in both strong and weak markets. For example, one project in the Upper Midwest was viewed by both parties as being in a weak market and having debt that exceeded the project's value. Before Year 15, the GP had fed the property nearly \$500,000 to keep it going. By selling it to the GP for \$1, the limited investor ended the risk that it, too, might have to invest more capital to keep the housing out of foreclosure. A property in a strong, stable market area of a major California city offers a market contrast, but with the same result. This 119-unit property, sponsored by a nonprofit and with a large amount of soft debt and a service population of homeless individuals, was acknowledged by both the LP and the GP to have debt in excess of its market value based on a real estate appraisal. The LP, therefore, agreed to transfer its interest to the GP for \$1.

In another example, also of a property in a strong housing market in California, the GP and LP agreed that the value of the project was less than the debt on the 180-unit property. The LP interest was transferred in exchange for the GP assuming the debt. In addition, per the partnership agreement, \$40,000 in replacement and operating reserves was distributed to the LP with the dissolution of the partnership. This was because it was not necessary for the GP to contribute to the capital account to maintain the property during the life of the partnership, so the GP did not have enough credit in the capital account to keep the reserves.

20. Section 42 of the federal tax code provides the option for nonprofit sponsors to have a right of first refusal to purchase a LIHTC property at the end of the compliance period for a specified price, which includes the assumption of all outstanding debt, plus payment of any investor exit taxes. Thus nonprofit syndicators tended to anticipate back-end sale at this price in the deals' initial structure from the outset of the LIHTC Program. Over time, as more syndicators and investors have worked on more nonprofit sponsored deals, this option has been more commonly included in their initial partnership agreements. If a partnership agreement contains this option, then the transfer of a property to full control of a nonprofit-owned GP may be quickly discussed and concluded between the GP and LP.

WHICH PROPERTIES ARE LIKELY TO HAVE EXIT TAX LIABILITY?

Investors will face exit taxes on sale if the tax losses they have been allocated exceed their invested capital and if they have used those losses along the way to reduce their taxable income. In general, bond deals are more likely to have issues with exit taxes. Exit taxes are difficult to predict for the funds that were syndicated to individual investors, both because individuals' tax situation may have fluctuated during the years they held the investment and because of changes to the federal tax law in 1993. That year, new federal tax law said that individual taxpayers could only use passive losses (such as those generated by a real estate investment) against passive income (generated by other investments in which the individual does not play an active role such as other real estate). This change meant that LIHTC investments by individuals could no longer shelter ordinary or earned income. Since many individual investors were unable thereafter to fully use the losses generated by their tax credit investments, the ultimate sale of those assets would actually produce a tax benefit by releasing suspended losses.

Investors most likely to face substantial exit tax liability are corporate investors who have used all of the tax losses and who have invested in properties where losses are particularly large because, in addition to depreciation, the properties have soft loans with large amounts of accruing interest. Interest on real estate loans becomes an operating expense or loss for tax purposes. Less commonly, large tax losses are generated during the life of a LIHTC property because of deeply negative property operations. All tax losses are passed through to Limited Partners in proportion to their legal ownership share of the limited partnership that owns a property.

Nonprofit-sponsored projects more commonly fit this profile of generating large losses because they are more likely to take on large amounts of soft debt in order to reduce at least some units' rents significantly below LIHTC levels. Sources of soft debt include HOME, CDBG, foundation funds, programs of the Federal Home Loan Bank, and state and local housing programs. Without soft loans or substantial operating cash losses, depreciation alone is unlikely to drive investor capital accounts negative. Still, exit taxes can be a problem for for-profits as well as nonprofits.

INTENTIONS OF THE GENERAL PARTNER AFTER YEAR 15

GPs or their affiliated companies may want to retain ownership of a LIHTC property for a number of reasons. Mission-driven owners—most nonprofit project sponsors, as well as some for-profit organizations—have an organizational plan that is to develop and own affordable housing long term.

GPs may also be motivated by the financial returns from the ongoing operations of the housing, through property management fees and/or cash flow. Continued ownership of the property after Year 15 may be critical to maintaining the scale or geographic concentration of a property management operation.

Some owners of LIHTC properties retain them at Year 15 with an eye toward the future: they hope that at a later date they can sell them at a profit or refinance them in a manner that will provide a financial return. These owners may or may not also be interested in the financial return from ongoing housing operations.

3.2 SALES OF THE PROPERTY TO A NEW OWNERSHIP ENTITY

Although most GPs retain ownership of their LIHTC properties at Year 15, a minority sells out. This exchange is almost always done by selling the property, although occasionally the GP interest is transferred to another organization, with the original partnership continuing to exist.

REASONS GPS SELL AROUND YEAR 15

Based on the research done for this study, GPs' motivations for selling are varied, sometimes driven by personal reasons and sometimes by financial considerations.

The most commonly reported GP motivations for selling are—

- *Retirement.* The GP has been a single individual who wants to retire or a small company whose several owners want to retire from the real estate business.
- *Leaving the business or change in business model.* A GP may decide that it no longer wants to be engaged in LIHTC properties, perhaps because its business model has shifted to focus on other kinds of housing or real estate. In one instance, the study team was told about a small LIHTC property sold by a national for-profit to a local nonprofit because the original owner decided that it no longer wanted to deal with such small properties. In another, the founder of the real estate firm that was the GP was about to retire, and his son wanted to focus on commercial real estate.
- *Outlier properties.* An outlier is a property that is remote geographically from other owned real estate, perhaps its sole property in a state, so a GP's ongoing ownership is, therefore, inefficient administratively and financially.
- *Financial difficulties at the property.* The property has been troubled financially, and the GP no longer wants to work on it or invest in it, or perhaps thinks another GP can operate it more effectively.
- *Corporate problems.* The GP or its sponsoring organization has run into corporate financial difficulties, and so is disposing of all or most of its assets. This was the case for a 123-unit property in a southeastern state. The previous sponsor was a large nonprofit that went through bankruptcy.
- *GP seeking financial return.* The GP is able to realize a good financial return by selling the property. One example of this was a 150+ unit senior property in a strong California market. The GP decided that the recent period of low interest rates on mortgages would be an ideal time to realize value, because the low rates would translate into a higher sale price, ongoing LIHTC use restrictions notwithstanding.
- *LPs seeking financial return.* Under the terms of some partnership agreements, syndicators or investors may be able to insist on a third-party sale if they believe the property has value, even with extended use restrictions, in excess of its outstanding debt and more than the price the GP is willing to pay.

MOST NEW OWNERS ARE FOR-PROFIT ORGANIZATIONS LOOKING FOR CASH FLOW AND OPERATIONAL SCALE

In recent years, a market has developed for the resale of properties reaching the end of the Year 15 tax credit compliance period. These properties are with for-profit owners, and the buyer also is a for-profit.²¹ The three market-dominant brokers specializing in sale of LIHTC properties reported to the research team that the dominant business feature of the for-profit buyers for these properties is that they are very strong operators. They are able to minimize operating costs and maximize revenues, usually within the confines of extended use restrictions.

Brokers describe most buyers of Year 15 properties as “conventional real estate guys” who generally rely on a conventional combination of debt plus private equity for financing. The equity comes from either their own resources or from a limited number of private business partners, without any formal syndication. Fannie Mae products are frequently mentioned as a source of new mortgage financing, although some buyers use conventional bank debt financing. Post-Year-15 LIHTC property buyers often use short-term debt. A popular Fannie Mae program described by one broker offers terms as short as 7 years.

Brokers and syndicators described for-profit buyers of older LIHTC properties as falling into two broad categories. First, many of the organizations buying older LIHTC properties are large-scale regional or national owners who achieve economic efficiencies through economies of scale. Residential real estate is very much a business of scale—per unit operating costs decline as property size increases, so much more money can be made operating a large property than a small one. Therefore, it is no surprise that most of the properties that end up sold to third parties appear to be among the largest in the LIHTC portfolio. Although more than 90 percent of LIHTC developments placed in service before 1995 have 99 or fewer units, one broker reports 100 units as the average size of Year 15 deals that they sell. Another broker publishes an annual report of their LIHTC dispositions group; the average size of LIHTC property sold each year between 2006 and 2009 ranged between 131 and 146 units—definitely at the larger end of the LIHTC portfolio.

The second category of for-profit buyer of LIHTC Year 15 properties consists of small, hands-on operators who own and operate modest-sized portfolios in a relatively tight geographic range. These businesses are able to achieve efficiency through close personal control and intimate knowledge of local markets and resources. Their sales are less likely to be handled by brokers and more likely to be arranged privately, either by the original owner or by the syndicator.

Some buyers who are also property managers have reportedly been willing to buy LIHTC properties solely for the chance to expand their operating portfolio, even when the properties have slim chance of generating economic benefits from cash flow or future resale value. The property price may be a multiple of management fees, since that is where the primary value is assumed to reside. Such properties tend to be smaller deals, under 50 units, located in mid- to weak-range market areas, where LIHTC rents are at or greater than market rents.

Occasionally a nonprofit organization will purchase an older LIHTC property. The research conducted for this study indicates that these acquisitions have been infrequent but are not unknown. One example was a nonprofit that was ending its real estate activities and sold its only LIHTC property to another nonprofit.

21. Only rarely do nonprofit owners sell their properties. When they do sell, the new owner also is almost always a nonprofit. We learned of one case of a for-profit organization selling a property to a nonprofit organization that had access to additional subsidies for recapitalizing the property.

Some buyers aim to refinance and recapitalize a property with a new allocation of LIHTC credits or other subsidy funds. Owners proceed with these transactions with the goal of earning developer fees and positioning the property for at least 15 more years of physical and financial health. The brokers interviewed for this study reported that a minority of buyers of older LIHTC properties are seeking to use new tax credits. We discuss what drives recapitalization, including use of LIHTC, in chapter 6.2 of this report.

WHAT HAPPENS TO LOW-INCOME HOUSING TAX CREDIT PROPERTIES AT YEAR 15 AND BEYOND?

4. WHAT ARE THE OUTCOMES AT YEAR 15? CHANGES IN USE RESTRICTIONS

4.1 USE RESTRICTIONS AFTER YEAR 15

During the first 15 years of a LIHTC property's compliance period, owners must report annually on compliance with LIHTC leasing requirements to both the Internal Revenue Service and the state monitoring agency. After 15 years, the obligation to report to the IRS on compliance issues ends, and investors are no longer at risk for tax credit recapture. For properties with extended LIHTC restrictions through Year 30, the use agreements between the original owners and the state allocating agencies remain in force. States vary in the extent and type of reporting they continue to require. Although an exhaustive survey of state monitoring regarding extended use restrictions was beyond the scope of this study, owner interviews revealed a range of state practices. Many states require reporting after Year 15 that is identical to the first 15 years. Some owners, however, claim that they continue to comply with extended affordability restrictions but the state agency enforces them through the honor system (or, perhaps, through the risk of litigation on behalf of tenants).

PROPERTIES SUBJECT TO USE RESTRICTIONS FROM ANOTHER FUNDING SOURCE OR MONITORING AGENCY

Many LIHTC developments, including those placed in service between 1987 and 1994, are subject to other use restrictions that last well beyond Year 15. Some sources of such restrictions are—

- *Mortgage financing from housing finance agencies or other mission-oriented lenders.* State HFAs around the country are some of the most frequent mortgage lenders for LIHTC properties. HFA mortgages may have terms of 30 or even 40 years. State HFAs typically require affordability restrictions that run the entire length of the mortgage term. These loans vary in other terms (for example, whether or not they permit prepayment and whether or not prepayment would end affordability restrictions). Other mission-oriented lenders include Community Development Finance Institutions or similar nonprofit financial institutions.
- *Subordinate debt or grant financing from state or federal sources (including HOME or Community Development Block Grants [CDBGs]) that bear requirements for long-term use restrictions.* These restrictions vary among programs and funders. For example, although the federal HOME program sets minimum affordability terms that are relatively short,²² states or localities that allocate these funds not uncommonly require longer affordability periods. Many states and localities have their own funds on which they set the length of affordability restrictions. For example, one nonprofit-sponsored development in a Northern California city has city sources of financing that come with 50-year use restrictions.

22. Federal minimum affordability requirements for HOME funds vary depending on the type of project. Refinance of a rehabilitation project previously assisted with HOME funds has a 15-year minimum affordability period; new construction must remain affordable for 20 years. Existing housing that is rehabilitated or acquired must remain affordable for 5, 10, or 15 years, depending on the average amount of HOME funds spent per unit.

- *Land use agreements with states or municipalities that have contributed resources to the projects in exchange for long-term affordability commitments.* While it may be possible to extinguish use restrictions associated with debt simply by repaying that debt, land use agreements typically run with the deed to the property and are more difficult to remove. LIHTC projects with sites acquired from state or local government agencies not uncommonly have affordability covenants that may extend for 40 or 50 years.

4.2 THE QUALIFIED CONTRACT PROCESS

Properties subject to an extended LIHTC use restriction may seek to have that restriction removed. The legislation that extended LIHTC use restrictions from 15 to 30 years for properties for which tax credits were allocated in 1990 and later also established a Qualified Contract (QC) process under which owners may request regulatory relief from use requirements after Year 15. The owner requests this relief from the state agency that originally awarded the tax credits to a property.

Although the overall QC process is outlined in the federal law that governs the LIHTC program, Section 42 of the Internal Revenue Code, the IRS has never issued final regulations detailing the process. As a result, each state agency can define its own regulations for implementing the QC process, so there are in practice “fifty flavors of process.”²³ Furthermore, a number of states either require that developers seeking LIHTC waive their right to use the QC process in the future or award competitive scoring points in return for waiving this right. In these states, no QC applications are likely to be submitted.

The steps in the QC process are—

- The owner requests the state agency to find a buyer for the property. The documentation that an owner must submit when making this request varies substantially from state to state and, in some places, is extensive, including for example, financial statements from the entire life of the property and capital needs assessments.
- The state agency then has one year to find a potential buyer who will maintain the property as affordable housing. The state then presents to the owner a QC to buy the property at a sales price governed by the formula specified in federal law.
- If the state presents a QC to the owner, then the owner is supposed to sell the property to the new owner. But, if the state cannot find a new owner that will offer a QC, then the owner is entitled to be relieved of LIHTC affordability restrictions, and those restrictions then phase down over 3 years.

23. Kevin Day, Vice President of Centerline Capital Group, speaking at a November 9, 2011, IPED conference on *Tax Credit Property Dispositions*.

THE QUALIFIED CONTRACT SALES PRICE

The “qualified contract” is supposed to name a price that will acquire any non-low-income portion of the property for “fair market value” and the low-income portion for the sum of—

- The “outstanding indebtedness secured by or with respect to the building,” plus
- The “adjusted investor equity in the building,” plus
- “Other capital contributions,” minus
- “Cash distributions from (or available for distribution from) the project.”

Without IRS regulation, the terms from federal law that define the qualified contract price are subject to interpretation. For example—

- Does “outstanding indebtedness” include loans made to the property by a general or limited partner and not secured by a mortgage?
- “Adjusted investor equity” is supposed to be increased by the value of the Consumer Price Index (up to 5 percent per year) for the time it has been invested. But does this include any funds invested by the limited partners that were not anticipated at the time the original partnership agreement was executed?
- How will “cash distributions” be computed? Are they computed before or after paying for any deferred developer fee or incentive management fees to either general or limited partners? Do they include reserve funds?

Perhaps because it is so complex and uncertain, the syndicators and experts interviewed for this study report that the QC process has rarely been used, even for properties that have not waived their right to use it. Chapter 6.3 describes some properties for which the QC process has been used.

4.3 PROPERTIES NO LONGER MONITORED AFTER YEAR 15

A total of 3,699 LIHTC properties were no longer monitored by HFAs as of 2009, according to information supplied by HFAs to the HUD LIHTC database (exhibit 4.1). Among properties that had only 15-year LIHTC restrictions because the allocation was made before 1990, about one-half of the properties are no longer monitored by HFAs: 2,712 are monitored and 2,737 are not. The fact that so many still are monitored may reflect HFA financing of the property’s debt. It may also reflect longer use restrictions that were imposed by a few states and encouraged by many, even for the earliest properties.²⁴ Some HFAs may continue to monitor properties that have use restrictions from other programs under agreements with the local or state public agencies that administer these funding sources, and they may or may not be included among the 2,712 properties still under monitoring.

24. As of 1990, at least 41 states required or gave preference to properties providing affordability for periods of longer than 30 years. By 2001, this trend was true for at least 47 states.

Exhibit 4.1. LIHTC Properties Placed in Service, 1987 Through 1994, and No Longer Monitored as of 2009

	No Extended Use: LIHTC Allocation, 1987 Through 1989		Extended Use: LIHTC Allocation, 1990 Through 1994	
	Monitored	No Longer Monitored	Monitored	No Longer Monitored
Number of projects	2,712	2,737	4,879	962
Number of units	94,217	74,925	209,425	21,071
Average project size and distribution	35.3	29.0	43.2	22.3
0–10 units	42.8%	40.4%	20.7%	58.9%
11–20 units	10.8%	14.9%	14.2%	10.0%
21–50 units	28.8%	31.9%	42.9%	20.1%
51–99 units	8.4%	7.1%	12.0%	6.1%
100+ units	9.2%	5.8%	10.1%	4.9%
	100%	100%	100%	100%
Construction type				
New construction only	46.3%	54.5%	65.4%	49.1%
Rehabilitation	53.7%	45.5%	34.6%	50.9%
	100%	100%	100%	100%
Nonprofit sponsor	6.2%	4.8%	15.1%	12.6%
RHS Section 515	24.5%	31.6%	38.1%	13.9%
Tax exempt bond financing	4.9%	1.7%	3.4%	2.1%
Location type				
Central city	57.0%	44.5%	40.6%	58.4%
Suburb	23.4%	29.6%	25.6%	24.1%
Nonmetropolitan	19.6%	26.0%	33.9%	17.5%
	100%	100%	100%	100%
Poverty rate of 10 percent or less	19.1%	26.6%	27%	21.8%
Percent of units with 2 or more bedrooms	59.5%	48.0%	53.7%	61.7%

LIHTC = Low-Income Housing Tax Credit. RHS = Rural Housing Service.

Notes: Projects used for analysis include only records with placed-in-service year data and tax credit allocation or award year. Projects do not include all allocations through 1994, only those placed in service by 1994. Missing data information are in appendix E. Data on whether a tax credit project was being monitored for LIHTC compliance are based on information provided by state allocating agencies.

Data on location type and poverty rate of 10 percent or less are based on LIHTC projects that were geocoded with census tracts from the 2000 Census. The geocoding rate for projects placed in service from 1987 through 1994 was 88.9 percent. Central city locations are based on central cities defined by 1999 metropolitan statistical areas (MSAs) defined by the Office of Management and Budget. Suburb locations are within an MSA but not in a central city. Nonmetropolitan locations are not in an MSA. Poverty rates are census tract-level rates from the 2000 Census.

Source: HUD National LIHTC Database

The 2,737 properties that were subject to 15-year LIHTC restrictions (because the tax credits were allocated in 1989 or earlier) and are no longer monitored are somewhat smaller, somewhat more likely to have been newly constructed, somewhat less likely to be in central cities, and much less likely to have project-based rental assistance than those that are still under monitoring. They also are somewhat more likely to be in census tracts with poverty rates less than 10 percent. These characteristics probably reflect differences in state policy and other sources of funding rather than decisions on the part of owners to leave the LIHTC program and no longer provide housing at affordable rents. For example, the high percentage of properties still under monitoring that have project-based rental assistance probably reflects HFA debt financing that would cause HFA monitoring to continue for those properties.

A much smaller number of properties that had 30-year LIHTC restrictions are no longer subject to HFA monitoring: 962 properties or about 16 percent of all properties placed in service before 1994 that had tax credits allocated in 1990 or later. These properties may include some properties that have gone through the QC process and are out of the 3-year phase down of LIHTC restrictions. They may also include properties in states that do not monitor compliance with use restrictions between Year 15 and Year 30. Properties with 30-year restrictions that are no longer monitored are much more likely to be small (10 units or fewer). They also are more likely to be in central cities and less likely to have been newly constructed when first placed in service. These differences are hard to interpret. They may suggest the type of properties likely to try—and succeed—in getting through the QC process. Or they may simply reflect differences between states that monitor compliance after 15 years and those that do not.

4.4 IMPLICATIONS FOR AFFORDABILITY OF CHANGES IN USE RESTRICTIONS

Properties that no longer have use restrictions from LIHTC or from other funding sources may or may not continue to provide affordable housing. At least two types of properties will continue to provide housing that is priced at or below LIHTC rents despite the absence of use restrictions: properties with owners committed to long-term affordability and properties for which market rents are no higher than LIHTC rents.

PROPERTIES WITH OWNERS COMMITTED TO LONG-TERM AFFORDABILITY

Nonprofit owners usually continue to operate properties as affordable housing beyond the term of any regulatory requirements because it is their mission to do so. Some for-profit owners interviewed for this study also described their missions as providing high-quality affordable housing, long term. These owners believe they can “do well, while doing good” and may be dedicated to retaining their properties to serve needy households.

Nonprofit syndicators interviewed for this study describe structuring the terms of the sale of LP interests to put extended use restrictions in place, ensuring long-term affordability even when no other agreement restricts a property’s use after Year 15. Corporate investors who choose to work with these nonprofit syndicators do so with the understanding that resale value is not expected to be among the investors’ own benefits.

Two direct corporate investors, both financial institutions, described long-term affordability as being among their primary goals in negotiating exits from their LIHTC investments. One of these investors described a willingness to sacrifice back-end value in exchange for assurances of long-term affordability.

PROPERTIES FOR WHICH MAXIMUM TAX CREDIT RENTS ARE AT OR GREATER THAN MARKET RENTS

When a property is not subject to use restrictions and does not have a mission-driven owner, the owner may still charge rents that are within the LIHTC standard of affordability, because the market will not support higher rents.

It is among the 3,699 properties that were no longer monitored by HFAs as of 2009 that we might find properties that are no longer affordable because their owners now charge rents that are higher than the LIHTC maximum. Those properties, however, would also have to be in locations where charging higher rents is possible.

5. WHAT ARE THE OUTCOMES AT YEAR 15? FINANCIAL DISTRESS AND CAPITAL NEEDS

5.1 PROPERTIES IN DISTRESS BY YEAR 15

While the strong majority of LIHTC projects operate successfully through at least the first 15 years after they are placed in service under the tax credit, some properties fall into financial distress by the time they reach Year 15.

FINANCIAL PERFORMANCE OF LIHTC PROPERTIES

The most commonly used indicators of financial distress are—

- *Negative cash flow:* The property's revenues are lower than its cash obligations, including operating expenses and debt service.
- *Debt service coverage ratio of less than 1.0:* This is the ratio of Net Operating Income (operating revenues minus operating expenses) to debt service. If this ratio is greater than 1.0, then the property is producing more than enough operating profit to fully pay its debt service. If the debt service coverage ratio is less than 1.0, then the property cannot pay its debt service obligations from operations alone and will need to make up the shortfall in some other way to avoid default. Generally, underwriters prefer to see properties operating at a debt service coverage ratio of 1.15 or higher.

LIHTC PROPERTIES ARE VULNERABLE TO FINANCIAL DISTRESS BECAUSE THEY ARE UNDERWRITTEN WITH TIGHT MARGINS

LIHTC properties are vulnerable to financial distress because of their financial structure. As distributors of scarce financial resources, the allocators of tax credits and other subsidies such as soft debt have been charged with providing each project with the minimum amount of subsidy necessary to make the deal work. HFAs and other subsidy allocators establish underwriting guidelines—for example, minimum and maximum debt service coverage ratios and expected ranges for operating costs and replacement reserve contributions—that allow them to determine that projects are supporting a reasonable amount of hard debt and are not over subsidized. Therefore, tax credit properties tend to operate with narrow margins.

At the same time, rents are limited to the lower of the LIHTC formula or the prevailing market rents. Projects with Section 8 subsidies can apply for modest annual rent increases to reflect the growth of operating costs. LIHTC properties without Section 8, by contrast, have no such option if markets are flat. Operating expenses tend to increase from year to year, even if rents do not. Levels of debt that may seem reasonable at initial financing can turn out to be excessive if rental revenues are flat or falling while expenses continue to grow.

The financial picture that emerges in the Ernst & Young *Understanding the Dynamics* reports confirms that LIHTC properties operate at narrow performance margins. The latest report, *Understanding the Dynamics V*, was published in 2010 and covers operating data that was provided by 51 syndicators and direct investors about

their properties' performance from 2000 through 2006. Median cash flow was a very modest \$247 per unit in 2006, and more than a one-third of properties experienced negative cash flow or debt coverage ratio of less than 1.0. At the same time, most negative cash flow was very close to breakeven, and most properties that underperformed in one year returned to positive cash flow and debt service coverage more than 1.0 in the next year.

The share of properties that had negative cash flow in any 2 consecutive years during the five-year Ernst & Young survey ranged from 9.5 percent (for the years 2002 through 2003) to 18.5 percent (for the years 2003 through 2004). The share of properties that had debt service coverage of less than 1.0 for a pair of consecutive years ranged between 16 percent (for the years 2002 through 2003) and 27.2 percent (for the years 2003 through 2004). In other words, between one in six and one in four properties suffered through at least 2 consecutive years where income was insufficient to pay both operating expenses and debt service (Ernst & Young, 2010).

FEW LIHTC PROPERTIES EXPERIENCE DEFAULT OR FORECLOSURE

Given the tight margins with which many LIHTC properties operate, the percentage of foreclosures is surprisingly small: Ernst & Young reports a cumulative foreclosure rate of only 0.85 percent from the program's inception through 2006. Syndicators interviewed in 2010 through 2011 for the current study reported similar results, with all syndicators reporting foreclosure rates of less than 2 percent and most reporting foreclosure rates of less than 1 percent.

Negative operating results are troubling for both limited and GPs. GPs may look to property cash flow as an important source of financial return for their efforts. LPs are less likely than GPs to look to cash flow as a source of financial return, but are deeply concerned with avoiding foreclosure, which is considered a premature termination of the property's affordability and results in recapture of tax credits, with interest, and forfeiture of all future tax credit benefits from the property. A property's operating success can also have an impact on its resale value. Therefore, partnership agreements typically allow the LPs to intervene if a property falls into distress.

Properties with cash flow insufficient to cover their obligations can avoid falling into default by drawing on reserves or through additional capital contributions from the GP, the LP or both. Most LIHTC properties capitalize operating reserves out of the development budget. Those reserves are intended to cover operating or debt service shortfalls. In addition, syndicators generally maintain reserves at the fund, or upper tier, level. They may choose to disperse these funds to support troubled properties in the portfolio and keep them out of foreclosure.

GPs and LPs may contribute capital beyond the original financing to support floundering properties. Partnership agreements generally obligate GPs to fund operating deficits for a period of time by advancing operating deficit loans. Beyond these requirements, many GPs interviewed for this study described it as their obligation to subsidize properties that run into operating difficulties. Several interviewees mentioned as a point of pride that they had always provided any support needed by struggling properties, even beyond the operating guarantees to which they were contractually obligated, and that they have never relied on syndicators or investors to contribute additional capital. They consider this part of their overall responsibilities as developers.

The Ernst & Young report shows that more than one-half (54 percent) of operating shortfalls are covered by the properties' operating reserves, and another 17 percent are covered by upper tier reserves. But reserves are finite and may not be sufficient to cover indefinitely the operating deficits of a chronically underperforming property. General partners (GPs) make loans to properties to cover 9 percent of operating deficits, and another 13 percent

are covered by deferral of property management fees.²⁵ Syndicators and investors cover a smaller percentage of operating deficits with additional capital contributions (6 and 1 percent, respectively).

PATTERNS OF DISTRESS AT YEAR 15

Floundering properties typically run into trouble for one or more of the following reasons:

- Poor property or asset management practices.
- Problematic financial structure.
- Physical condition of the property (damage, defects, or obsolescence).
- Soft rental market.

The following examples from the property-level data we collected for this study illustrate those reasons and the patterns of response by the property's owners and investors.

- *Poor property or asset management practices:* When occupancy plunged at a 120-unit property in a solid Pacific Northwest market and the property fell into disrepair, the syndicator diagnosed poor management as the cause. The LPs exercised their right to replace the original sponsor with a new GP they believed could turn the property around.
- *Problematic financial structure:* A 60-unit property in a suburban Ohio neighborhood struggled from the outset when projected commercial revenues from garage rentals never materialized. The property was thus saddled with debt that was much greater than it could ever support in practice. The investor was called on to make supplementary capital contributions from fairly early on in the property's life to avoid foreclosure. The investors ultimately replaced the GP. The new GP, in turn, recruited a trusted local property manager to turn the property around.
- *Physical condition of the property (damage, defects, or obsolescence):* Construction defects were among a number of problems plaguing a renovated historic hotel in a small southwestern town. The requirements of the historic renovation led to the problematic placement of air conditioning units on the building's roof, in a system that resulted in endlessly leaky pipes and extremely high air conditioning costs.
- *Soft rental market:* Market difficulties further added to problems faced by this historic hotel-turned-senior LIHTC property. With a declining local economy and the occupancy rate at a devastatingly low 59 percent, the property was never able to come close to financial stability, falling into default even before the construction loan was repaid. The syndicator, however, felt it was imperative to its reputation and relationships to keep the property out of foreclosure and protect the investors' credits. The syndicator ended up feeding the property more than \$1 million during the course of the compliance period—far more than the amount of the outstanding debt. The market continued to lose population, and demand for the units went from weak to weaker. When the property finally finished the compliance period, the investors gave the first mortgagee the deed in lieu of foreclosure: with no rescue scenario in sight, the property was much more of a liability to its owners than it had ever been a benefit.

25. Presumably, it is far simpler to get these fees deferred for self-managed rather than third party-managed properties, so deferred property management fees are effectively GP contributions.

The extent and nature of a property's distress will inevitably shape its Year 15 outcomes:

- If a LP has replaced the GP of a failing property at some point during the initial compliance period, the new GP may have been given a Year 15 purchase option in exchange for its services and investment in turning the property around. Such was the case for the Pacific Northwest property described previously, which had suffered as the result of poor performance from the original GP.
- Owners may seek a new allocation of LIHTC or other major financial assistance to rescue a property with major capital needs, or with a problematic financial structure. This was the case with a property in a strong southwestern market that needed to install an expensive rockfall mitigation system after a boulder crushed one of the units; failure to address this physical threat would have rendered the development unsafe and unsustainable had it not been addressed.
- Finally, if properties do fall into foreclosure, they may leave the affordable portfolio altogether. Such was the case with a 330-unit Florida property, on which the first mortgage lender (in that case the state housing finance agency (HFA) foreclosed. The property was resold to a buyer who is converting it to market-rate housing during a 3-year period.

5.2 CAPITAL NEEDS BY YEAR 15

The physical condition of LIHTC properties at Year 15 is widely varied, and so too are their renovation or repair needs. Probably the most important determinant of physical condition at Year 15 is whether the property was newly constructed or rehabilitated when it was placed in service 15 years previously, with key factors being the quality of the original, new construction and, if rehabilitated, the scope of the renovation work that was done then. Other factors that may be important are the target tenant population, market conditions, property size, and the efficiency and skill of the property manager.

CONDITION OF THE PROPERTY WHEN PLACED IN SERVICE UNDER LIHTC

If a property was new construction or a gut rehabilitation when initially placed in service under LIHTC, it is less likely to need significant upgrades at Year 15 than if it had only moderate renovations initially. Gut rehabilitation usually means that all HVAC systems and finishes in a property are replaced, exteriors are repaired or replaced (for example, new siding and roofing are installed), windows are replaced, and kitchens and bathrooms are remodeled and given completely new equipment. The property may also have had living spaces reconfigured. In contrast, much less is done under moderate renovation: only some systems may be replaced, while others are repaired; some kitchens and bathrooms may not be modernized; exterior improvements may be limited. After 15 years of occupancy, a property with only moderate renovation is likely to be quite worn out. For example, systems that were not replaced are at—or near—the end of their useful lives, and kitchen and or bathroom equipment is worn out and out-of-date. Roofs or windows that were middle-aged a decade-and-one-half ago likely need replacement.

Some new construction projects may have encountered unusual physical problems and need extensive renovations at Year 15. One syndicator described a new construction property where the exterior building envelope failed, leading to interior leaks and related problems and generating renovation needs of \$70,000 per unit by Year 15. Such a dramatic deficiency, however, is the exception rather than the rule.

Of the LIHTC properties placed in service between 1987 and 1994, 43 percent were rehabilitation projects rather than new construction, according to the HUD LIHTC database. What these data do not tell us is the level of renovation done. According to those interviewed for this study, however, in the early years of LIHTC a high proportion of projects received only moderate renovations. At that time, federal regulations for the LIHTC program required that a minimum of \$3,000 per unit be spent on renovations, and many projects were reportedly done with this minimum physical investment.

OTHER FACTORS AFFECTING PHYSICAL CONDITION BY YEAR 15

Properties that serve families with children usually endure greater wear and tear than properties targeted to the elderly. Family housing may have three to six, or even seven, people living in a unit, compared with, typically, only one adult in an apartment targeted to seniors. The owner of a property in a large city in the Northeast described a new construction family property, which after 15 years, needs renovations of more than \$100,000 per unit because of a combination of failing wood exterior siding, trim and related roof problems, wear and tear from large families with many children, and the need to provide improved, more energy-efficient systems and more environmentally friendly finishes, such as wood flooring instead of carpet—which is linked to asthma for some children.

Market conditions may affect property conditions over time. If a property can be rented at or near the maximum LIHTC rents because it is in a strong housing market and has high occupancy rates, higher rents are likely to generate more operating funds that can be used for maintenance and repairs than can be obtained from housing in a weaker market, so the higher market property may enter Year 15 with fewer deferred repair and maintenance needs. If a property is in a tough neighborhood where operating funds have to be spent on security, the property may, again, have less rental income available for ongoing maintenance and repairs, and so greater physical repair needs at Year 15.

A common industry view, shared by those interviewed for this study, is that the operating economies achievable by larger properties make it easier to generate funds for maintenance and repairs. Ernst & Young's analysis of the financial performance of LIHTC properties confirms this, reporting that cash flow per unit is twice as high for large properties as it is for small properties (Ernst & Young, 2010, reporting on performance through 2006). Larger properties are likely to be in better condition at Year 15 than smaller properties, although this is not universally true.

Some syndicators and a broker interviewed for this study pointed out that the skill and efficiency of property managers can have a large impact on the quality of LIHTC housing. Some managers run their property more effectively than others, doing more with the same rental income stream, because they have figured out how to get better economies in purchased services such as insurance or have figured out how to save by doing maintenance with their own staff (for example, doing snow plowing in house rather than through third-party contractors). The more efficient managers may be able to devote money to maintenance that can prevent larger repair or renovation needs—for example, fixing small leaks before collateral damage occurs or more regularly updating appliances, repainting, and replacing carpet or other flooring, so these remedies do not become a major call on capital funds or replacement reserves.

EXTENT OF CAPITAL NEEDS FOR EARLY YEAR LIHTC PROPERTIES AT YEAR 15

Syndicators, investors and other industry experts interviewed for this report have a range of views about the extent of renovation and repair needs across LIHTC properties at Year 15. One of the investors believes nearly all LIHTC deals need significant renovations by Year 15. In contrast, one broker thinks that repair needs are in the eye of the beholder, noting that private real estate operators looking at nearly any Year 15 property that was originally new construction would say that it needs little if any upgrading. LIHTC investors, in contrast, are accustomed to tapping public resources such as tax credits to provide improvements, and so they perceive a need for renovation.

LIHTC properties are required by state housing agencies, mortgage lenders, and investors/syndicators to fund annually, out of operating income, replacement reserves to pay for capital repairs and renovations that exceed routine maintenance. The annual reserve contribution funded by LIHTC properties typically runs between \$250 and \$400 per unit per year, and occasionally is higher. The general consensus of those interviewed for this report is that these reserves are insufficient after 15 years to cover current needs for renovation and upgrading. One large investor believes that most LIHTC properties—with a few large-scale properties perhaps exceptions—run out of reserves by Years 5 to 8 and, after that, spend reserves nearly as soon as they are funded.

Given the unpredictability of the rates at which building systems wear out or become obsolete, it is difficult to provide an estimate of the right level of reserves to cover capital needs during a period of 15 years or longer. A recent study conducted for HUD by Abt Associates of the capital needs of public housing developments estimates that the average annual accrual of needs for this multifamily housing is about \$3,000 per unit per year (Finkel et al., 2010). For many of the LIHTC properties we observed, this level would require that 6 months' rent each year be put into reserves, severely reducing or even eliminating rent available to retire debt. The properties would need more tax credit equity or more soft debt, either to create a substantial replacement reserve up-front or to permit a reserve to absorb such a large portion of the property's rental income. HFAs have been—and probably would be—reluctant to expend scarce tax credit and other resources to create reserves on this level, since that would reduce the overall number of affordable housing units they can support.

If reserves are insufficient to pay for renovations and major repairs at or around Year 15, LIHTC owners will need to figure out how to recapitalize their properties. Even if the property was originally newly constructed, more extensive needs will arise within another 5 to 10 years, both because physical systems such as roofs and heating systems will reach the end of their useful lives and because kitchens, bathrooms and finishes will need to be updated to remain competitive in the market, even when properties are continuing to be affordable. If a property is continuing to operate at LIHTC rents, it may have to compete for tenants with new LIHTC properties, and the property in better physical condition will likely win out. Even if they do not need to be modernized, finishes and equipment in kitchens and bathrooms are likely to wear out after 15, 20, or 25 years of use, depending on how high the quality was initially and how hard they have been used.

Periodic recapitalization is the way in which most privately owned housing (including single family homeownership housing) meets major repair and replacement needs over time. It is probably unavoidable for LIHTC developments to follow this pattern as well.

6. PATTERNS FOR LIHTC PROPERTIES AFTER YEAR 15

Study participants from all of the syndicators and direct investors interviewed, as well as a range of other industry experts, reported remarkably consistent impressions of the real estate outcomes for Year 15 properties:

- *The vast majority of LIHTC properties continue to function in much the same way they always have, providing affordable housing of the same quality at the same rent levels to essentially the same population, without major recapitalization.* These properties may have some rehabilitation done at Year 15, often in connection with a change of ownership or refinancing, but the amount of work done is not extensive enough to be characterized as recapitalization.
- *A moderate number of properties are recapitalized as affordable housing with a major new source of public subsidy.* This new subsidy is most typically new tax credits, either 4 or 9 percent. These properties usually undergo a substantial program of capital improvements.
- *The smallest group of properties is repositioned as market-rate housing and ceases to operate as affordable.*

These outcomes may be linked to the property's LIHTC use restrictions, to whether the property is sold to a new ownership entity, and to whether the property became distressed before Year 15. However, each of the three outcome patterns occurs for properties with and without extended use restrictions, for properties with both original and new GPs, and for properties that were and were not distressed before they reached Year 15.²⁶

6.1 PROPERTIES CONTINUING TO OPERATE AS AFFORDABLE HOUSING

Most early year properties continue to operate as affordable housing, in much the same manner as they had previously, after the expiration of the initial 15-year affordability period. This outcome is typical both for properties that continue to be owned by the General Partner (GP) or its affiliated organization and for properties that have changed ownership. Continued affordability may have one of several reasons:

- First, there may be use restrictions from other regulatory sources such as land use restriction agreements or soft funding that survive longer than 15 years. The sponsor may have initially waived its right to seek a Qualified Contract (QC).
- Second, the initial sponsor (or, less commonly, the investor) may have a long-term commitment to continued affordability. Nonprofit sponsors usually have such organizational commitments to providing affordable housing, and a few for-profit sponsors do as well.
- Third, the property may have other subsidies—for example, Section 8 housing assistance payment contracts—attached to the units, creating a secure source of occupancy and rental income that the owner does not want to give up.

26. A very small number of properties leave the rental housing stock altogether following a downward spiral of physical and financial distress. The site may or may not be redeveloped as market-rate housing. We do not consider this trend as a separate pattern, but instead group those examples with properties that are repositioned as market-rate housing with unaffordable rents.

- Finally, for a very large number of LIHTC properties, LIHTC rents are indistinguishable from market rents. This varies both by region of the country and by the narrower housing market within which the LIHTC property operates. If these properties are no longer covered by LIHTC or other use restrictions, they are simply absorbed into the general rental market with no particular competitive advantage by virtue of greater affordability. Owners of properties where LIHTC rents are indistinguishable from market rents, whether they are original sponsors or new purchasers, often describe these properties' post-Year 15 LIHTC status as irrelevant.

PROPERTIES REMAINING AFFORDABLE WITH ORIGINAL OWNERS

All the information gathered for this study shows that most LIHTC properties that reached Year 15 through 2009 are still owned by the developer who placed them in service between 1987 and 1994, and that most of those original GPs are operating the properties as affordable housing, either with LIHTC restrictions in place or with rents that nonetheless are at or below LIHTC maximum levels. They may or may not still be reporting to the HFA. These GPs may have refinanced the properties to take advantage of lower interest rates and to support modest levels of renovation, but they have not recapitalized them with new infusions of equity from a new syndication with additional tax credits. Many of the owners interviewed for this study told us that it simply was not worth the effort to try to leave the tax credit program through the QC process, because they could not increase rents outside the program or could increase them only marginally.

The pattern of properties remaining affordable with their original owners and without major recapitalization is common in strong, weak, and moderate markets alike. A 210-unit property in a suburb of a Pacific Northwest city provides a strong housing market example. The original GP is a family run developer/operator with a portfolio of 6,500 units in five states. A solid property in a strong housing market, this development had value beyond its outstanding debt at Year 15. The GP refinanced in order to buy out the LPs, who made a profit on the transaction. The refinanced debt was sufficient to replace the roof at the time of repurchase. Owners report that the property continues to operate successfully, generating sufficient cash to cover capital needs as they arise, and that the biggest operating challenge is finding tenants in the proper income window—that is, with incomes low enough to qualify but high enough to pay the rents.

An example in a very different market is a 100-unit property in a small Michigan city. Although the property had high occupancy initially, it suffered greatly from the decline in the dominant local manufacturing industry and from competition from new LIHTC properties that continued to come on-line despite the city's continuing economic distress. The LPs ended up selling their interest to the GP for no consideration beyond the outstanding debt. The state HFA contributed \$15,000 per unit in soft debt to meet Year 15 capital repair needs, not enough for us to consider this a major recapitalization and without a new allocation of LIHTC. The property remains affordable, and the original GP continues to operate the property at breakeven, despite the substantial market challenges.

Finally, an average market example is a 48-unit property in a rural community in the Midwest. The original developer also owns and operates the management company that has operated the property since inception and took full ownership of the property at about Year 15. While this property's owners might be able to use the QC process to end the LIHTC use restrictions, the local market limits rents to roughly LIHTC maximum levels. The property continues to operate solidly, and owners believe that they will be able to cover capital needs from reserves and cash flow for about 10 more years before they will need to refinance to cover larger repairs.

Owners of these affordable post-Year 15 properties seek to earn profits from operating cash flow, from property management fees, or both. As noted in chapter 5.1, the Ernst & Young studies show that most LIHTC properties provide positive cash flow most of the time. Whether nonprofit or for-profit, these owners consider themselves to be in the affordable housing business, and many own portfolios of properties that provide them with the scale important to efficient real estate operations.

Even if rents of nearby rental developments are a bit higher, owners may choose to keep LIHTC rents lower to achieve high occupancy. Like any other business operator, owners and managers of rental residential property need to find the ideal balance between price and volume to maximize revenues. High occupancy at lower rents may generate greater revenues than lower occupancy with higher rents. Property managers earn fees as a percentage of revenues, so higher revenues will lead to increased property management fees. Property managers' flexibility in setting rents in LIHTC properties, however, may depend on the properties' age. A study by Burge (2011) found that maximum tax credit rents are initially less than implied market rents because of the properties' newness when placed in service, which increases the appeal of the units to potential renters. During the 15-year compliance period, however, the properties aged and deteriorated in quality, and their market advantage eroded. At this point, property managers may be forced to trade off higher occupancy for higher rents or vice versa.

Sometimes the original GP of a LIHTC property will have refinanced before Year 15 to take advantage of better financing terms such as lower mortgage interest rates. This requires the approval and cooperation of all parties to a deal: GPs and Limited Partners (LPs) plus funders. An example of an early refinancing is a large new construction property serving families with two- and three-bedroom units, in the Mid-Atlantic region. The GP decided to refinance when the property was only 10 years old. A lower interest rate on a new mortgage from the same housing finance agency (HFA) that had held the original mortgage (6.9 percent compared with nearly 10 percent) plus a new 40-year mortgage term enabled the property to carry a larger mortgage that generated significant capital payments to both the GPs and LPs. Funds from the refinancing were also added to the property's replacement reserves. Since the LP investor had to approve the refinancing, it used the opportunity to negotiate the price of a "put" to sell its interest when Year 15 arrived. At Year 15, the GP bought the LP interest for the agreed-upon price, with the intention of continuing to operate the property as affordable housing under LIHTC rules.

At other times, the GP refinances at the same time as buying out the investors in the original syndication, because cash beyond the current mortgage is needed to meet the syndicator/LPs' price. Whether the property can take on additional debt at around Year 15 depends on such factors as the sales price of the LP interests, the ability of the property's rents to cover additional debt, how much of the original debt has been amortized, and whether current interest rates are favorable.

PROPERTIES REMAINING AFFORDABLE WITH NEW OWNERS

Among the minority of LIHTC 15-Year properties sold to new ownership entities, most were sold to buyers willing to accept the LIHTC affordability restrictions but, at the same time, not buying for the purpose of recapitalizing the property with additional tax credits. These properties are behaving much like conventional real estate: for-profit owners buy and hold them for a relatively short period, with a modest program of capital improvements. The buyers themselves describe the projects' LIHTC history as more or less irrelevant to their business decisions and operations, regardless of whether they have to continue complying with LIHTC rules.

Refinancing is nearly inevitable when a new owner purchases a property, since most first mortgages cannot be assigned to new owners, and since new owners will need to raise funds to pay for the purchase price and any needed renovations. The relatively short terms of the debt typically used by for-profit organizations to finance such purchases of LIHTC properties imply that these new owners will refinance or sell the properties in a much shorter timeframe than is customary for newly syndicated LIHTC properties, which generally are locked into financing for 15 years or more.

Brokers describe typical buyers as planning to own and operate properties for 3 to 7 years, a timeframe typical for conventional multifamily property owners. These buyers will generally perform a modest scope of renovation as part of the purchase transaction. One broker mentioned \$3,000 to \$5,000 per unit as a typical level of expenditure, used to update the property to make it more attractive—for example, improving landscaping or security systems, updating kitchen equipment, or replacing flooring.

Such was the buyer of a 44-unit property in a working class neighborhood in a Southern California city. This purchaser holds a residential portfolio of slightly more than 600 units, all in the same region. While he bought the property subject to an additional 40 years of LIHTC use restrictions required by the California state agency, he describes his interest in the property very much in conventional terms. He financed the purchase with conventional debt of 60 to 65 percent of the purchase price, with his own private equity making up the balance. On purchasing the property, he invested roughly \$2,275 per unit in improvements, largely cosmetic: landscaping, signage, and improvements to the courtyard and hallways, as well as the installation of a security system. He spoke of the improvements as growing out of a “certain pride of ownership in our buildings and a commitment to how we want to keep our buildings.” In this case, the owner plans to hold the property and operate it for cash flow indefinitely. With no soft funding in the project and no investors remaining in the deal, any cash flow the owner can achieve will be his to keep and to use to support periodic refinancing when needed for renovations. Although this is the owner’s first LIHTC property, he finds the regulatory framework (including qualifying tenants based on their income) familiar because of his work with Section 8 and other subsidy programs. Even though he considers LIHTC rents to be somewhat below market, he sees this as a business advantage, since it enhances occupancy and reduces unit turnover.

Another buyer of a LIHTC property in California with long-term use restrictions, in this case a 150+ unit senior property that is in a market where unrestricted rents would be higher, is generating substantial cash flow from the restricted LIHTC rents—which, given the property’s location, are quite substantial. The property originally carried soft debt that could have eaten into cash flow, but that debt was retired as part of the sale.

Another example, from a weaker market, is a 270-unit property in a small city in central Florida. The firm that purchased the property is based in the Southwest and develops and operates a large and diverse portfolio of properties of all types, including shopping malls, hotels, and single-family subdivisions. The firm recognized a value opportunity in this development, purchased for slightly more than \$30,000 per unit. Although the property was in good physical condition, the owner invested \$3,000 in improvements per unit. The owner’s intention is to operate the property for cash flow and management fees. Buying at a low price in a weak market, the new owner is well-positioned to benefit from appreciation in value if and when the market improves.

A fourth example is a 156-unit property in a Mountain state, purchased in part because investors in the new partnership wanted Community Reinvestment Act credit. The property was bought in the 12th year of the 15-year compliance period, and the buyer could have considered applying for a QC process (QCP). The buyer told us: “We would not consider a QCP. We don’t have experience with it, different states have different processes,

and we think the market is what it is.” The affordability restrictions had no negative impact on the decision to purchase the property, and the buyer intends to operate the property as affordable for the 8- to 10-year period during which the organization plans to hold the property. In this market, maximum LIHTC rents are higher than unrestricted rents, so although the new owner made minor renovations and raised rents slightly, the units remain affordable.

Even properties that were distressed around Year 15 can follow the pattern of continuing to operate as affordable housing without recapitalization. The new GP of a distressed Pacific Northwest property invested close to \$6,000 per unit and turned the property around. In return, he was permitted to buy the investors out at a very reasonable price and to recapture his investment capital as part of the financing. The property is now thriving, producing several hundred thousand dollars per year in cash flow.

PAYING FOR RENOVATIONS SHORT OF RECAPITALIZATION WITH NEW TAX CREDITS

The interviews conducted for this study indicate that many LIHTC properties incur rehabilitation costs at the modest level of \$1,000 to \$5,000 per unit around Year 15 if they are transitioning to more conventional real estate operations—that is, with owners motivated by cash flow and resale value rather than by LIHTC-driven developer fee, and where the expected ownership period is 3 to 7 years rather than 15 years. Generally, that work is paid for by simple refinancing of the property’s debt. Properties seeking refinancing often have been able to take advantage of lower interest rates.

A number of owners described properties that needed somewhat higher levels of renovation—in the range of \$7,500 to \$15,000 per unit, but still not enough to justify seeking new tax credits. One such property is a 47 unit, new construction development for families, largely two- and three-bedroom units in a city in the South. When the property reached Year 15, its rehabilitation needs included some new siding, new air conditioning systems, and some refurbishing of the apartments, at a cost of about \$10,000 to \$11,000 per unit. The GP acquired the LP interests for \$400,000 (\$8,500 per unit). As the sole owner of the property and a nonprofit, the GP was able to obtain an exemption from local real estate taxes, freeing up rents for both ongoing operations and new financing. The owner used both project reserves that the property had been funding at the unusually high level of \$500 per unit per year and a new soft loan from a national housing intermediary to cover rehabilitation costs.

A distressed property sometimes can pay for needed renovations without major recapitalization with new tax credits but instead using conventional types of financing. For example, the new manager of an Ohio project with a problematic financial structure ultimately bought the property for the value of the outstanding debt and was eventually able to take advantage of principal amortization and lower interest rates and refinance the debt down to levels the property could manage, while taking care of needed renovations.

Rents that are the lower of the LIHTC maximum or what the market will bear are extraordinarily different in different housing markets, both because the LIHTC formula is tied to the local Area Median Income (AMI) and because market rents vary. For example, rents reported by owners interviewed for this study include \$410 in rural Missouri, \$500 in suburban Ohio, \$750 in St. Paul, Minnesota, \$900 in a Montana resort community, \$1,000 in a distant suburb of New York City, and \$1,155 in a Virginia suburb of Washington, DC. Occupancy rates that can be achieved vary similarly. A property in Boston, Massachusetts, might operate with a 1- to 2-percent vacancy rate, while a high-performing property manager in rural Ohio might cap out at an 85-percent occupancy rate.

Properties able to achieve high rents and high occupancy levels can generate significant cash flow. Such properties have real market value, even with rents restricted below market levels. Their owners have opportunities to refinance in order to pay for capital improvements or to simply cash out some of their equity. A rental complex with \$950 average rents and a 5-percent vacancy rate is in a far better position to install dishwashers to keep up with the competition or deal with a surprise roof leak than a development with \$500 average rents and a 15-percent vacancy rate. So, although it is apparently true that most post-Year 15 LIHTC developments from the program's early years have slipped into the mainstream of properties with rents around the middle of the market, over time these developments will continue to fare quite differently depending on where they are located.

6.2 PROPERTIES RECAPITALIZED AS AFFORDABLE HOUSING WITH NEW TAX CREDITS

Some LIHTC properties are recapitalized as affordable housing at Year 15 or shortly thereafter with a new allocation of tax credits. New equity is brought into the property through a new partnership, which may include the original GP or may be a completely new ownership entity. In addition to new tax credits made available to the new limited partnership, the property typically is refinanced and may also have new soft debt. The new equity and debt are used to pay for renovation costs that often are substantial.

WHICH PROPERTIES ARE MOST LIKELY TO SEEK ADDITIONAL TAX CREDITS?

When deciding whether to seek a new allocation of tax credits to recapitalize a property, owners weigh a variety of factors, both factors internal to the property and factors in the external economic and policy environment.

FACTORS INTERNAL TO THE PROPERTY include the extent of the property's capital needs, the need for modernization to compete with new affordable housing, whether an infusion of additional equity appears to be the only way to bail out a distressed property, whether it appears that the deal will generate substantial profits for the property's owners, and whether the owners might do even better by waiting until current use restrictions have ended rather than extending them further.

- ***Dealing with major capital needs.*** When properties have major capital needs, resyndication with new tax credits can be an effective way to generate equity capital to pay for these expenses. We learned about two examples of properties with large, *unanticipated* capital needs by Year 15. One property in a strong southwestern market sought a new LIHTC allocation after a mountainside abutting the development became unstable and a boulder crashed into one of the units, revealing the need for an expensive rockfall mitigation system. Another property, in a city in the Northeast, suffered from defects in the original siding that led to water infiltration and a host of other problems.
- ***Competing with newer housing.*** Even where boulders have not crashed into the walls, many owners describe properties as tired and in need of updating after 15 years of operations. In some markets, there has been continuing development of new LIHTC properties, and owners say they need to complete improvements to retain existing residents and attract new residents when units become vacant. One owner of several elderly housing developments described needing to invest significantly both in modernizing apart-

ments and in better community space such as exercise rooms to compete with new LIHTC senior housing. Improvements to apartments include updated bathrooms, kitchens, and finishes, and are more important for marketing than community space, according to this owner. Another owner, in this case the purchaser of a family property, similarly reported that the new flooring, countertops, and appliances supported by new tax credit equity were important for making the property competitive with other LIHTC housing. If owners believe such renovation needs are extensive, they are more likely to seek a new allocation of tax credits than to try to finance them through cash flow or another type of refinancing.

- ***Rescuing a property from financial stress.*** Properties can use LIHTC recapitalization as a way to recover from financial distress. This was the case for a family property in an inner suburban low-income location in the Mid-Atlantic. The property had been distressed once before and was sold from the HUD property disposition inventory in the early 1990s with Section 8 rental subsidies and an allocation of LIHTC from the state agency. By Year 15, the property had become distressed once again and was again resyndicated with tax credits and soft debt.
- ***Earning profits for the owners.*** A number of development firms around the country have embraced resyndication and rehabilitation of older affordable properties as a business model. They can earn developer fees and then proceed to operate the property for cash flow. For some properties, the economics of resyndication may also support a higher transfer price from the old to the new owners, enabling them to realized greater profits on sale. Thus, resyndication of older LIHTC properties can be a way to achieve strong financial returns for both old and new owners. This was the case for a northern Florida property sold by a for-profit interested in liquidating its affordable housing portfolio. New tax credit equity was used by the purchaser to purchase the property and for renovations that in this case were fairly modest, \$16,000 per unit. Most of the development budget went to the acquisition cost.
- ***Accepting ongoing reporting requirements and use restrictions.*** If a project gets a new allocation of tax credits, it begins again the cycle of use restrictions and required reporting on LIHTC compliance. Depending on the owner's expectations for the housing market specific to the property's location and on other property characteristics, the owner may judge the net current benefits of resyndication with more tax credits more valuable than the possibility of drawing out future appreciation during the next 15 years.

FACTORS EXTERNAL TO THE PROPERTY include state LIHTC policies and priorities and the current market for equity investments in LIHTCs.

- ***Responding to state LIHTC policies and priorities.*** States have diverse policies and priorities that help determine whether or not they will award LIHTCs to a property. Some states are supportive of giving second allocations of competitive, limited 9-percent LIHTCs to the same properties, while others try to preserve this resource for creating additional units of affordable housing. In at least one state, New Hampshire, applications for resyndication are described as not competitive, and therefore unlikely to be funded with 9-percent credits. An alternative to competing for 9-percent credits is to seek a noncompetitive allocation of 4-percent LIHTCs. A state may be more willing to provide 4-percent credits because they depend only on the availability of tax-exempt private activity bonds within the state's overall ceiling.
- ***Assessing the current market for LIHTCs with equity investors.*** When evaluating whether to resyndicate with tax credits, an owner needs to assess the market for tax credits, just as is done when initially

determining a potential project's financial feasibility. Several syndicators and brokers reported that, during the economic downturn beginning in late 2007, the market for resyndications plummeted, just as it did for initial development of LIHTCs, so that fewer properties were resyndicated for several years thereafter.

STATE POLICIES AND PRIORITIES FOR NEW ALLOCATIONS OF 9-PERCENT TAX CREDITS

We heard a variety of opinions from syndicators, brokers, and other experts on how easy or difficult it is to get a second allocation of 9-percent credits. The 9-percent credits are awarded through a process that, in most states, is extremely competitive. Many industry participants and observers report that most states favor new production more than preservation in their Qualified Allocation Plans (QAPs). Even where the QAPs include a set-aside for preservation, allocators may be reluctant to award new 9-percent credits to projects that received a first allocation 15 years earlier. Other industry experts provided a different view and said that HFAs with which they are familiar prioritize preservation of older LIHTC developments.

Some of the properties covered in interviews for this study that were resyndicated with 9-percent credits received those credits in response to particularly dire and expensive capital needs crises that would have threatened the developments' continued operation as housing. For example, the two properties that had large, unanticipated capital needs (rockfall mitigation and siding defects) received 9-percent LIHTC allocations in states that did not include a preservation priority in their QAPs.

Data collected and analyzed by the National Housing Trust (NHT) show that most states have some type of priority in their QAPs for preservation and rehabilitation of existing housing. How an older LIHTC development would fare competitively within those priorities is difficult to determine in many cases. However, as of 2010 through 2011, California, Colorado, Delaware, Georgia, Hawaii, Illinois, Indiana, Michigan, Minnesota, Missouri, New York City, North Dakota, Oklahoma, Oregon, and Texas stated explicitly in their QAPs that existing tax credit developments qualified for points or a set-aside for preservation. Appendix D is a table provided by NHT showing more detail.

Even when an older LIHTC property qualifies for a set-aside or additional points for preservation of existing housing, it still must compete with other properties that get the points or qualify for the set-aside as well. Properties other than older LIHTC properties may score better on other aspects of the state's system for competitive allocations of 9-percent credits. Furthermore, the older LIHTC property may have to pass some threshold criteria such as the minimum level of rehabilitation needed to qualify for a 9-percent credit.²⁷

However, we heard of cases in which new owners bought LIHTC properties with the knowledge that they would be likely to get new 9-percent LIHTC allocations from the HFA because the state has a priority for preservation and also is the mortgage lender for the property.

Indeed, some experts told us that an industry of LIHTC preservation appears to be developing. One developer of affordable housing noted that his organization was only just getting started looking at acquiring properties that were reaching Year 15. Generally, their property acquisitions were for properties still in the initial 10-year period. In anticipation of more properties reaching Year 15, in 2011 the firm began to hire staff to deal with

27. The tax code establishes a minimum amount of rehabilitation work needed to be done—the greater of \$6,000 per unit or 10 percent of acquisition costs—to be able to qualify for LIHTCs, whether the 4-percent credit or the 9-percent credit. A state's QAP may establish other thresholds, for example, a minimum amount of rehabilitation work, for preservation projects to qualify for 9-percent credits.

acquisition opportunities that are coming up in the next 1 to 2 years. We spoke with another for-profit developer who bought the GP interest in a LIHTC property a few years before Year 15 from another for-profit who wanted to get out of the affordable housing business. The new owner wants to operate the property for cash flow and management fees, but also intends to form a new partnership and resyndicate the property with new tax credits as soon as that becomes possible.

WHEN DOES BOND FINANCING WITH 4-PERCENT CREDITS WORK?

Most developers would choose a 9-percent credit over a 4-percent LIHTC allocation if they were equally available. The 9-percent formula generates more than twice the equity for a given dollar amount of rehabilitation. Moreover, the use of 4-percent credits entails the issuance of tax-exempt bond debt, which brings a whole range of transactional costs and complications. But if 9-percent credits are not available, 4-percent credits may be a good alternative for some properties.

Since the 4-percent tax credits can be used only with tax-exempt mortgage financing, tapping them means assessing whether this kind of debt is appropriate for a project.

FINANCING WITH TAX-EXEMPT BONDS AND 4 PERCENT CREDITS

To qualify for 4 percent credits, properties must be financed with tax-exempt private activity mortgage bonds in an amount equal to 50 percent or more of their basis. This can be achieved in two ways:

- The bonds can be used for permanent financing: This strategy can only work for properties with very strong rents and relatively low operating expenses, because the properties must be able to support debt equal to at least one-half of their value (something many rent-restricted properties cannot achieve). Properties that have Section 8 rental assistance are likely to have high rents, and so may be able to afford tax-exempt bond financing.
- The bonds can be used for construction financing, or for a mix of construction and permanent financing: If some or all of the bonds are going to stay in the project only for construction financing, then there needs to be a permanent source for repayment of those bonds. Tax credit equity is one such source; but the formula for calculating 4 percent credits makes it impossible to generate sufficient equity to cover one-half of the development budget. Therefore, 4 percent projects that cannot support large amounts of mortgage debt can use private activity bonds for construction financing, but they must eventually bring a large amount of alternative funding (such as soft debt) into the projects to pay off the portion of the bonds that cannot be supported by permanent property operations. These projects will also need to find a bond-issuing agency willing to use their private activity bond allocation to provide construction financing in this way (not all state HFAs have adopted this practice).

Bond deals offer the advantage of keeping owners out of the highly competitive 9-percent credit application arena. Even if the property succeeded in obtaining a 9-percent allocation, the greater predictability of a 4-percent credit would reduce the developer's risk. But bond deals are complex, and transaction costs are high. So they are really only appropriate for larger projects that have sufficient scale to amortize the transaction costs over a large number of units. Furthermore, the economics of bond deals are such that tax losses comprise a significantly

higher proportion of benefits for investors than in 9-percent deals (9-percent deals will see a relatively higher proportion of benefits flowing from the tax credits themselves). Four-percent projects are perceived as somewhat higher risk than 9-percent deals, because they typically involve higher amounts of mortgage debt relative to equity. In addition, 4-percent deals generally offer smaller amounts of annual tax credits than 9-percent projects, making them less efficient as investment vehicles. Because of their smaller size and higher risk profile, it may be difficult for some 4-percent tax credit projects to attract investors, especially in weaker markets.

Perhaps most important, a property must be able to generate enough rental income to take on the amount of debt required for bond financing (see text box). A common industry perspective is that bond financing will work only in markets where both LIHTC rents and market competitive rents are quite high—or where the property has above-market rents supported by Section 8 subsidies.

Still, in cases where the economics of the market and the property support 4-percent tax credit refinancings, some industry observers believe there is a strong motivation for owners (new or old) to resyndicate with 4-percent credits, regardless of whether the property's current capital needs are particularly pressing. One owner interviewed for this study built a national portfolio of more than 10,000 units largely by purchasing properties in need of moderate levels of rehabilitation and syndicating—in some cases, resyndicating—these properties with 4-percent credits. These transactions can earn substantial fees for developers and offer the prospect of ongoing cash flow and management fee income for competent operators in strong housing markets.

HOW MUCH REHABILITATION IS DONE WHEN PROPERTIES ARE RESYNDICATED WITH NEW TAX CREDITS?

To qualify for a new LIHTC allocation, owners must complete rehabilitation costing a minimum of \$6,000 per unit or 20 percent of adjusted basis, whichever is greater, according to the rules in the federal tax code.²⁸ In practice, renovation programs for resyndicated properties often are much greater than the statutory minimum. Some owners interviewed about resyndicated projects pointed to construction budgets of \$68,000, \$80,000 and even \$130,000 per unit. We saw a rehabilitation budget of more than \$200,000 per unit for a small property in a Mid-Atlantic city that was a school converted to residential use when originally placed in service. The HFA had not yet allocated the requested 9-percent credits or approved the budget.

A variety of stakeholders influence the required scope of renovations:

- First, state HFAs often have rehabilitation expenditure requirements that exceed the federal statute because they want to be sure that properties remain in good condition for at least 15 years, and they think \$6,000 per unit will not provide this.
- Second, all of the syndicators interviewed for this study about their current practices cited minimum rehabilitation requirements for new syndication deals that they would be willing to support. These minimum requirements ranged from \$25,000 to \$40,000 per unit. In contrast, in its early years, the LIHTC program included many properties with more moderate levels of rehabilitation. Many of the industry participants and observers interviewed for this study pointed to these moderate renovation projects as the most likely to run into severe difficulties before the end of the initial compliance period. The industry seems determined not to make the same mistake again.

28. Requirements were increased to these levels in the 2008 HERA legislation. Previously, the requirement was \$3,000/unit or 10 percent of adjusted basis.

- Third, the GPs of the new partnerships themselves want to be certain that properties will be in sound operating condition for at least another 15 years. They do not want to be faced with unexpected major repair needs for which they often are required to cover part or all of the costs by the terms of partnership agreements. GPs looking for cash flow or property management fees do not want to spend income on major physical needs.
- Fourth, rehabilitation performed in the context of a resyndication will typically be subject to a much more stringent level of oversight and reporting requirements (from investor LPs and possibly also the state HFA) than renovation done without new tax credits. Other eyes may perceive and then require additional improvements.
- Fifth, some new subordinate debt sources, if they are involved, may require that the owners pay prevailing wages, which are widely thought to be significantly higher than unregulated construction wages.
- Finally, a major driver of renovation expenditures in resyndicated properties is the expected length of time between rounds of recapitalization and repair. Conventional properties turn over every 3 to 7 years. Each new owner brings new financing and typically conducts a modest scope of repairs and improvements. LIHTC properties, on the other hand, are not expected to have any refinancing or recapitalization events before 15 years have elapsed. By the time the typical LIHTC property changes ownership, a typical conventional property will have turned over three times—and undergone refinancing and moderate renovation at each turn.

HOW COMMON IS RESYNDICATION OF LIHTC 15-YEAR PROPERTIES WITH NEW TAX CREDITS?

One brokerage firm that is active in the LIHTC market reports that the interest of buyers of tax credit properties in resyndicating them with new tax credits has fluctuated over time. When the earliest LIHTC properties were sold in the early 2000s, most without extended affordability restrictions because the tax credits had been allocated before 1990, only 10 percent of them were resyndicated. Then, from around 2005 to early 2008, as much as 80 percent of the sales the firm brokered were to owners who intended to resyndicate. Tax credit pricing was very favorable during that time period. As the price for tax credit from investors plunged, so too did resyndications, which dropped to roughly 10 percent of sales. As of 2010 through 2011, the market for tax credits has stabilized and, according to the brokerage firm, 15 to 20 percent of LIHTC sales are resyndicated.

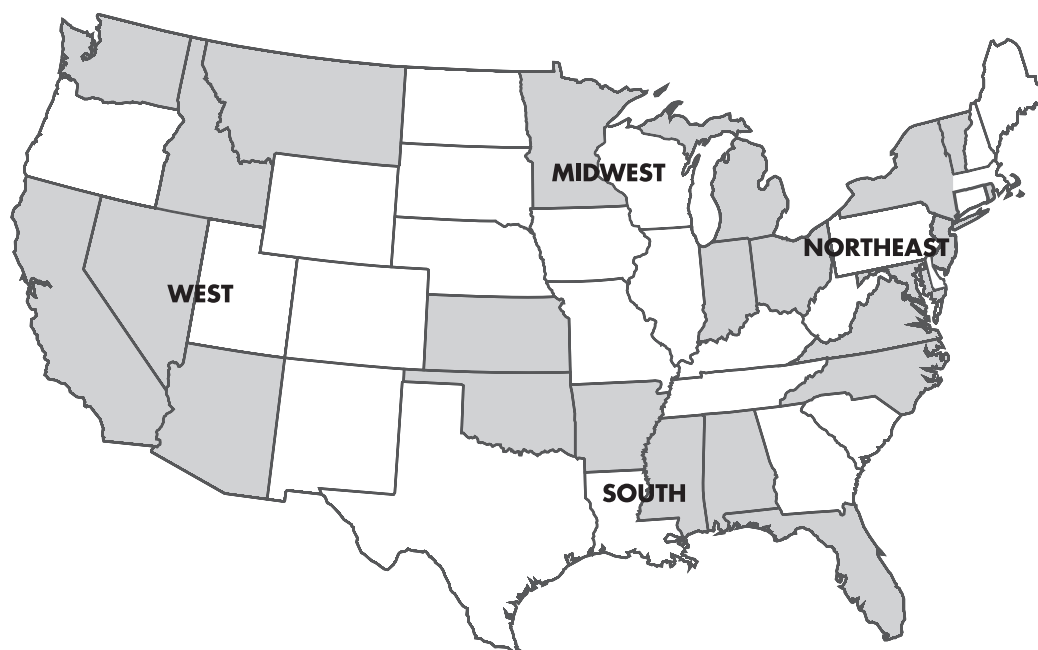
Syndicator estimates of the current percentage of Year 15 properties that are resyndicated are similar, 15 to 20 percent. They also agree that the portion was much lower during the period when tax credit pricing was unfavorable, with one syndicator estimating 5 percent resyndication from 2007 through 2009.

The HUD LIHTC database permits us to identify some LIHTC properties that appear to have been resyndicated with additional tax credits. When a property has a second placed-in-service date that is more than 10 years after the original date, we consider this a second use of LIHTC (rather than the correction of a data error by the HFA). Because we have data only through 2008, and partial data for 2009, and because the data are for properties placed in service, not those for which new tax credits have been approved and development is under way, this information misses a great deal of activity that has taken place recently. Nonetheless, it shows a gradual rise in second use of tax credits. Exhibit 6.1 is a map showing the states where second uses of LIHTC had reached a new placed-in-service date as of 2008 through 2009.

Somewhat surprisingly, more of these properties with second LIHTC allocations had been new construction when originally placed in service than had been rehabilitation, 58 versus 42 percent. If these limited data reflect

real patterns, it appears that new allocations are not used primarily to meet the capital needs of properties for which systems are reaching the end of their expected lives. They are used more often by nonprofit owners than the percentage of all early year LIHTCs that had nonprofit owners, 14 versus 10 percent. This makes sense, since HFAs are likely to look favorably on applications from nonprofits because of their concern for long-term stewardship and their lower emphasis on financial return via cash flow.

Exhibit 6.1. States With Properties With a Second LIHTC Allocation



Source: HUD National LIHTC Database

MAJOR RECAPITALIZATION WITH OTHER PUBLIC SUBSIDY

Properties sometimes are able to secure other, non-LIHTC forms of major public subsidy at Year 15 that make recapitalization with tax credits unnecessary, even for properties that cannot meet their capital needs from re-financing supported by cash flow. One property, purchased from a nonprofit owner in bankruptcy, was able to secure more than \$7 million in Neighborhood Stabilization Funds from a county government to perform a fairly extensive renovation (\$57,000 per unit), including security systems that the new owner deemed essential to tenant recruitment and retention and a new community center. The property has a tiered rent structure that enables it to reach some families with incomes considerably less than the LIHTC maximum and limits its cash flow. This property was purchased for \$0 by a joint venture between a private developer and the original syndicator, with the HFA agreeing to roll over soft debt that had been part of the original financing. It continues to operate subject to the original long-term use restrictions required by both LIHTC and the soft debt from the state.

6.3 PROPERTIES REPOSITIONED AS MARKET-RATE HOUSING

By far the least common outcome for LIHTC properties is conversion to market-rate housing. None of the syndicators or investors interviewed for this study could name more than one or two properties that had been repositioned to serve as market-rate housing. Those we interviewed had handled, among them, more than 2,000 LIHTC property dispositions—that is, transfers or sales of the LP interest to the GP or sales of the properties to a new ownership entity. The nonprofit syndicators said that none of their properties had been repositioned with above-LIHTC rents.

Staff of the major national broker interviewed most extensively for this study reported that very few sales to new owners have involved repositioning and said that this has become even less common for properties LIHTC use restrictions that extend to Year 30. Only a handful of owners have attempted to go through the QC process.

The Ernst & Young report, based on a much earlier and smaller set of dispositions, estimated that only 5 percent of them involved conversions to market-rate housing, and that was at a time (through 2006) when properties were likely to have been subject only to 15-year LIHTC restrictions.

Among the very few examples that syndicators and brokers were able to tell us about were a property that was repositioned at the end of use restrictions that lasted only 15 years and a few properties that had gone through the QC process. Two other properties had gone through foreclosure and probably were still operating as rental housing, but perhaps not at rents below the LIHTC maximum.

The property subject to only 15-year restrictions is in Puerto Rico and dated from the earliest days of the LIHTC program. The original sponsor took advantage of the development's excellent location and converted the property to condominiums. Sales proceeds were shared between the GP and the LPs. The conversion was completed in 2007.

PROPERTIES REPOSITIONED THROUGH THE QC PROCESS

When originally created, the QC process was seen as a mechanism that would balance preserving affordability of LIHTC properties with a way to give owners a back-end possibility of at least some profit. The data from the interviews conducted for this study suggest that few QC sales have occurred nationwide, and sales that are occurring may be concentrated in a few states. Owners are more likely to go through the QC process seeking relief from the LIHTC restrictions than with the expectation of receiving the proceeds of a QC sale. We heard that some owners start the QC process hoping it will give them leverage with the HFA in applying for a new allocation of 9-percent tax credits.

One property in a Central Plains state had a history of high occupancy and largely successful operations. The owner submitted a QC proposal to the state. No buyer was found, so the owner was ultimately allowed to extinguish the extended use requirements. The property was sold to a third party, netting a profit of roughly \$1 million for the original LPs. It is not clear whether ongoing rents for this property, which is now unregulated, remain within LIHTC program limits. If so, it would be because of market limitations.

One large LIHTC owner, an LP in several tax credit properties, is winding down its portfolio of properties, except in markets where the units provide CRA credit. This owner described most of his properties as having no value to the LP after paying off the mortgage, the GP's support loans, and developer fees. However, 20 percent of the properties have substantial remaining value, and his firm's approach to selling its interests in these properties always includes considering a QC process and applying for the process in cases where the QC price is higher than market value.

An owner's decision on whether to apply for relief from LIHTC use restrictions by requesting a QC sale must take into consideration the process set up by the particular HFA with jurisdiction over the property. Some states appear to have deliberately made the QC process difficult to prevent LIHTC properties from leaving the affordable housing stock. In Texas, for example, this large investor in LIHTC properties considers the QC process unworkable. He said, "We have GPs who have spent hundreds of thousands of dollars trying to go through the QC process and ultimately given up." He noted that investors believe they are entitled to a fair QC process, but are unwilling to challenge a state that may intentionally be making the process difficult—for example, through a lawsuit.

In another example, use restrictions were extinguished on a 57-unit property in the Midwest through the QC process, and then the property was sold. The property struggled financially during the compliance period, with a loan at 8.6-percent interest that could not be refinanced. The owner's decision to apply for the QC process was purely financial: the selling broker's opinion was that the property was worth about 15 percent more if use restrictions were lifted. The HFA was unable to find a buyer at the QC price, which was well more than market value, so the use restrictions were lifted. The property is currently in a 3-year decontrol period during which affordable units are converting to market rate. The former owner said about the QC process, "It was a simple, smooth process."

The units had been renting at well below maximum LIHTC rents, and the former owner believes the new owner will do substantial renovations—which are badly needed—and raise rents to encourage income-qualified renters to leave. The rent increase may be temporary; rents may revert to previous levels or lower after the controlled units have turned over. In this area, market-rate rents for units that are larger and newer than in this property are still below maximum permitted LIHTC rents. However, employment prospects in the area are improving, and the lack of use restrictions gives the new owner flexibility to raise rents in the future.

Another owner, also in a state in the Midwest, is partway through the QC process on a 112-unit property that was placed in service in three phases. The first phase has already been released from use restrictions by the state HFA through the QC process and is in a 3-year decontrol period. The remaining two phases are in the process of being released from use restrictions, also through the QCP. The owner, who operates primarily in the Midwest, has met little resistance in pursuing the QC process: "So long as it doesn't hurt the affordable housing market, we haven't had much pushback [from the HFA]," he said.

The owner's goal is always to convert properties to market rate after their 15-year compliance period has ended. After use restrictions have been lifted on all three phases of this particular property, the owner plans to sell it. The decision is financial, but is not driven by differences between market rents and LIHTC rents, but rather by savings on compliance costs. In this market, tax credit rents are less than market rents by only about \$20 per unit, but the owner described needing an additional staff person per property to do the work of verifying applicant and tenant incomes and meeting other reporting requirements.

Some HFAs are using the QC process as a way to help properties in weak housing markets remain financially viable. After the HFA fails to find a QC buyer, the owner of the property is able to reach a slightly expanded pool of potential tenants and, sometimes, to charge rents that are only slightly more than the LIHTC maximum. For these properties, local conditions will limit rents to affordable levels for the foreseeable future, especially if the relatively low LIHTC maximum rents (based on AMI) in these areas are taken into account.

An example involves two adjoining properties in a small city in the Upper Midwest. One of these properties had no extended use restrictions. The original sponsor eliminated the use restrictions on the second property

by going through a QC process. The original owners were then able to sell both properties without any use restrictions in place. The purchasers made some modest improvements to the properties and added some amenities, and then repositioned them to serve a slightly higher income demographic. The differential between rents available under the LIHTC program and market rents was not great, but repositioning allowed the new owner to achieve slightly higher rents and to recruit from a much wider range of potential tenants.

In another example, an Ohio property struggled to maintain occupancy in a weak local market with a glut of comparatively new multifamily housing development. The GP appealed for QC regulatory relief to expand the pool of eligible renters. He described having to turn away many households whose income narrowly exceeded the LIHTC limits. Cash flow at this property had been negative for several years, and the LPs and GPs had contributed hundreds of thousands of dollars to keep the property operating. The owner is hoping that the ability to rent to a wider range of tenants will help the development to improve occupancy and restore it to financial health. This is not the only property in Ohio for which the state HFA has worked through the QC process cooperatively to relax LIHTC rules in troubled housing markets.

PROPERTIES REPOSITIONED FOLLOWING FORECLOSURE

Another outcome sometimes seen for LIHTC properties in weak markets is financial failure. Foreclosure of the loan on the property is followed by a property disposition by the lender to a new owner who will operate the property as market-rate housing at higher rents.

An example is a large property in a floundering market in Florida. After the development's initial financial failure, the mortgagee (the state HFA) foreclosed on the property and extinguished all use restrictions. The property was then sold at bargain price. The new owner is phasing out affordable rents over 3 years, with the plan of making improvements to attract market tenants and achieving profitability when the market eventually improves.

Another example is the property discussed in chapter 5.1, a historic hotel that had been turned into senior housing and experienced both physical problems and a collapsing market. The first mortgagee received a deed in lieu of foreclosure, and the property no longer is in the affordable housing stock.

REPOSITIONING IS LIMITED BY MARKET RENTS

We asked each of the 37 owners we interviewed whether market rents for the property were higher than the LIHTC maximum rents. Only 13 of the owners we interviewed said that they were higher. The other 24 said that LIHTC maximum rents were comparable to market rents or higher than market rents.

Some examples of properties where market rents are indistinguishable from LIHTC rents, from owner interviews conducted for this study are—

- A 100-unit property in an industrial city in the Midwest, where the market has softened considerably in the wake of auto industry upheavals, was purchased after 15 years by the original GP for the existing debt and maintained at the same rent levels, which were lower than LIHTC maximums.
- A 64-unit property in the Rocky Mountain states, in a small city largely supported by tourism, was bought by a new operator after Year 15 but maintained at the same LIHTC rent levels, which are at about market rates.

- Two adjoining properties with a total of 156 units in an inner suburb of a major city in the Southwest were sold to new owners, who performed a modest level of rehabilitation to make the development competitive with others in the area. They continue to rent the units at LIHTC rents, which are similar to market rent levels.

PROPERTIES NO LONGER UNDER MONITORING BY HFAS

We may have simply missed properties that have left the affordable stock, given the nature of the data we collected for this study. Syndicators, investors, and even brokers may simply not know about LIHTC properties that have been converted to above-LIHTC market rents. HFAs that helped us find owners to interview are unlikely to have ongoing relationships with owners of properties that have been repositioned.

Therefore, we focused on the set of properties that, according to data submitted by the HFAs, are no longer monitored for compliance with LIHTC rules and conducted two types of analysis.

First we matched the addresses of LIHTC properties without project-based rent subsidies or Section 515 to HUD's administrative data on the addresses of households using Housing Choice Vouchers as of 2010. The premise is that, if households with vouchers can afford to live in the property and the owner is accepting them, the property provides housing that can be made available to low-income renters, although they may need rental assistance to make the housing affordable.²⁹ The results of that data match are shown in exhibit 6.2. That data match shows that, even among properties that are not reporting to HFAs, nearly 30 percent have at least one voucher holder renting in the property. The rate of voucher use is only slightly lower than for properties that *are* reporting to HFAs, which is 36 percent.

Properties with the earliest placed in service years, likely to have only 15-year restrictions, are less likely to have voucher users than those placed in service in 1992 through 1994 (39 percent), but 28 percent do have voucher users.³⁰

29. Many tenants may need rental assistance to be able to afford LIHTC units even during the period when the units are subject to the program's rent restrictions.

30. For properties not reporting to HFAs, the difference in the percent of properties with at least one voucher household from the earlier years compared to the later years is statistically significant.

Exhibit 6.2. Presence of Housing Choice Voucher Households in Earliest LIHTC Projects Properties Placed in Service 1987 Through 1994, Properties Without Rural Housing Service Section 515 Loans or Project-Based Rental Assistance

	Properties Reporting to HFAs			Properties Not Reporting to HFAs		
	Property Has an HCV Household	Property Has no HCV Household	Total Number of Properties	Property Has an HCV Household	Property Has no HCV Household	Total Number of Properties
All properties	36%	64%	5,579	30%*	70%	2,907
Placed-in-service year						
1987–1991	29%	71%	2,795	28%	72%	2,526
1992–1994	44%	56%	2,784	39%	61%	381
Nonprofit sponsor	51%	49%	843	40%*	60%	182
No nonprofit sponsor	35%	65%	4,736	30%*	70%	2,725
Poverty rate of 10 percent or less	36%	64%	1,343	28%*	72%	642
Location type						
Central city	38%	62%	3,351	33%*	67%	1,664
Suburb	37%	63%	1,317	27%*	73%	800
Nonmetropolitan	30%	70%	911	22%*	78%	443
Distribution by region						
Northeast	47%	53%	792	37%*	63%	738
Midwest	30%	70%	2,134	25%*	75%	976
South	34%	66%	1,815	24%*	76%	817
West	49%	51%	838	43%	57%	376

HCV = housing choice voucher. LIHTC = Low-Income Housing Tax Credit.

*Difference in the percent of properties not reporting to housing finance agencies (HFAs) with at least one voucher household and properties reporting to HFAs with at least one Housing Choice Voucher (HCV) household is statistically significant to the 95-percent confidence level.

Notes: Projects used for analysis include only records with placed-in-service year data. Missing data information is in appendix E. Information on the use of project-based rental assistance, including state or federal project-based rental assistance, was first collected by the U.S. Department of Housing and Urban Development with the 2006 placed-in-service year. Some state allocating agencies have been able to update this information for earlier placed-in-service years, but it is primarily missing for property records. To help fill in information on the use of project-based rental assistance, LIHTC project addresses were matched against data in a file created 3/22/2010 of *Multifamily Assistance & Section 8 Contracts*. The address match confirmed the existence of a project-based rental assistance contract but did not indicate that the LIHTC property did not have a federal project-based rental assistance contract. Because of inconsistencies in the completeness and formatting of address data, LIHTC property records that did not match to a record in the file of *Multifamily Assistance & Section 8 Contracts* may still have a federal or state project-based rental assistance contract.

Data on location type and poverty rate of 10 percent or less are based on LIHTC projects that were geocoded with census tracts from the 2000 Census. The geocoding rate for projects placed in service from 1987 through 1994 was 88.9 percent. Central city locations are based on central cities defined by 1999 metropolitan statistical areas (MSAs) defined by the Office of Management and Budget. Suburb locations are within an MSA but not in a central city. Nonmetropolitan locations are not in an MSA. Poverty rates are census tract-level rates from the 2000 Census.

Presence of an HCV household residing in a LIHTC property was based on address matching. The data file of HCV households was from December 2010. LIHTC properties were identified as having an HCV household if at least one HCV household address matched to the representative LIHTC project address.

Source: HUD National LIHTC Database

Even in relatively high-income census tracts, those with poverty rates of 10 percent or less, 28 percent of non-reporting properties have voucher users. Use of vouchers in nonreporting properties is more pronounced in the Northeast and the West than in the South or West. This may reflect the relatively higher costs of rental housing overall in the Northeast and West, so that voucher holders are more likely to seek to rent in properties that were developed under the LIHTC program.³¹

Properties without voucher users may remain affordable because their rents are relatively low. They may simply have stopped reporting to the HFA because they are no longer required to do so. The most likely properties to have been repositioned as unaffordable, market-rate housing are properties in low poverty locations. To explore further whether these properties have become unaffordable, we conducted a survey of the rents of a sample of properties no longer reporting to the HFA, with 20 or more units, and in census tracts with poverty rates below 10 percent. Properties with Rural Housing Service Section 515 Loans or that were found to have project-based rental assistance were excluded. The resulting list was 234 properties. We did web searches for those properties based on property name and address to find out their current rents, usually through a phone call to the management office. We asked for the rents of each unit size and the utilities that were tenant-paid. We found current rents for 100 properties and then compared those rents (including both contract rent and an estimate of tenant-paid utilities) with the LIHTC rent limit, 18 percent of AMI, (that is, 30 percent of 60 percent). We found that, even for this group of properties that should be at particularly high risk of becoming unaffordable, nearly one-half had rents below the LIHTC maximum, and another 9 percent had rents only slightly more than LIHTC rents (exhibit 6.3). For the properties with rents more than 105 percent more than LIHTC rents, a small portion of the properties (15 percent) were known to include affordable rental units, as noted by the property management office.³²

Exhibit 6.3. Affordability of Properties in Low-Poverty Census Tracts and No Longer Monitored by HFAs

Property Rents		
Greater than 105 Percent of LIHTC Rent	Between 100 and 105 Percent of LIHTC Rent	Less Than LIHTC Rent
42%	9%	49%

Notes: Surveyed projects included only those with at least 20 units for which we had data on the year placed in service and on whether a tax credit project was being monitored for LIHTC compliance by the housing finance agency. Low-poverty census tracts were defined as having a poverty rate of 10 percent or less based on 2000 Census data. Because criteria for inclusion in the survey included census tract poverty rate, only geocoded properties were included. The geocoding rate for properties placed in service from 1987 through 1994 was 88.9 percent.

Source: HUD National LIHTC Database

Similar results on continued affordability were found by a rent survey conducted by the Shimberg Center at the University of Florida of the rents of Florida properties that formerly were in one of several federal and state subsidy programs and left the program between 2000 and 2008. More than one-half (57 percent) of properties formerly subject to LIHTC rent restrictions (not including those properties that had other forms of subsidy with lower affordability standards) still were renting at or below the LIHTC maximum rent (Blanco et al., 2011).

31. For properties not reporting to HFAs, the difference in the percent of properties with at least one voucher household by region is statistically significant.

32. Looking at the unit mix when these properties were first placed in service with tax credits, about a quarter of the properties were mixed LIHTC/market properties. The properties we found to have rents that are greater than 105 percent of the LIHTC standard were more likely to have been mixed LIHTC/market properties than those properties with rents at or less than the LIHTC standard, 34 percent compared to 20 percent.

6.4 WHAT WILL HAPPEN WHEN THESE PROPERTIES REACH YEAR 30?

So far this discussion has focused on what has happened at around Year 15 to LIHTC properties that were placed in service between 1987 and 1994. Some of those properties were subject to extended LIHTC use restrictions because their tax credits were allocated by the state HFAs in 1990 or later. As exhibit 6.4 shows, of the 5,841 such properties (with a total of 230,496 units), most were placed in service between 1992 and 1994. The extended use restrictions were to last until Year 30, unless the owner of the property was able to receive relief from the LIHTC income and rent restrictions from the QC process.

Exhibit 6.4. Extended Use Period Expiration of LIHTC Properties Placed in Service, 1990 Through 1994, With Extended Use Restrictions

Placed-in-Service Year		1990	1991	1992	1993	1994	1990–1994
Extended-Use Period Expiration		2020	2021	2022	2023	2024	2020–2024
		Projects Units	Projects Units	Projects Units	Projects Units	Projects Units	Projects Units
Allocation Year	1990	530 17,799	519 17,583	249 15,859	32 1,642	1 32	1,331 52,915
	1991		641 18,927	721 22,960	510 28,685	31 2,892	1,903 73,464
	1992			391 10,743	543 21,757	486 25,950	1,420 58,450
	1993				301 9,964	558 22,847	859 32,811
	1994					328 12,856	328 12,856
	1990–1994	530 17,799	1,160 36,510	1,361 49,562	1,386 62,048	1,404 64,577	5,841 230,496

LIHTC = Low-Income Housing Tax Credit.

Source: HUD National LIHTC Database

Notes: Projects used for analysis include only records with placed-in-service year data and tax credit allocation or award year. Missing data information are in appendix E. Data on whether a tax credit project was being monitored for LIHTC compliance are based on information provided by state allocating agencies.

For LIHTC projects allocated tax credits in 1990 and later, use restrictions expire 30 years following the placed-in-service date.

Speculating on what will happen at Year 30 to the early year properties with extended use restrictions is difficult. The earliest properties will reach Year 30 in 2020, and most will reach the end of extended use restrictions only beginning in 2022, 10 years from now. Many things may change in 10 years: housing markets will change in ways that are particularly difficult to predict in the wake of the turmoil of the past few years; resources available to support affordable rental housing may change, because of federal policy shifts, shifts in financial markets, or both; and state policies for using LIHTC and other public subsidy resources under state control also may change. Nonetheless, we will attempt some observations about what may happen when the properties placed in service through 1994 with extended use restrictions reach Year 30.

WHAT WILL THE OUTCOMES BE AS OF YEAR 30?

Basing our analysis on patterns we observed for what happened when these properties passed Year 15, we expect that, by the time properties placed in service in the early to mid-1990s reach Year 30:

Some additional properties will have been repositioned in the market and no longer provide affordable rental housing because they will have gone through the QC process. However, we do not expect a large percentage of owners to seek QC sales and to succeed in obtaining relief from LIHTC restrictions before they reach Year 30. Moreover, as discussed elsewhere in this report, until now a large proportion of properties that have successfully gone through the QCP have been in weak markets where owners have sought regulatory relief while continuing to have rents within LIHTC limits.

Some additional properties will have been recapitalized with new tax credits. Although the number doing so will not be trivial, it will not be most of the properties. HFAs will have competing priorities for 9-percent credits, and many properties will not be suitable for 4-percent credits and bond financing. Some owners will not want to commit to another 30 years of LIHTC use restrictions that will come with a new allocation of tax credits.

Some properties will have been refinanced based on cash flow. Despite the LIHTC use restrictions, some properties in some housing markets generate sufficient cash flow to follow the pattern of periodic refinancing to meet capital needs, sometimes with an ownership change, that is typical of private market real estate.

A large number of properties, probably the majority, will have large unmet capital needs. All properties will be at least 30 years old. Some will be older and will not have had all systems replaced before they were placed in service under LIHTC. Properties that have aged for 30 years and have not had major capital improvements will need to replace major systems such as wiring, plumbing, heating, and roofs; most will also need to upgrade finishes, cabinets and appliances. Regardless of their financial condition or market location, few—if any—properties will be able to cover their capital needs from reserves.

Ownership patterns will vary. Properties with nonprofit owners will almost all still have nonprofit owners, usually the same as the original developer that placed the property into service under LIHTC. Some for-profit owned properties will still be owned by entities that include LP investors, but many will have simpler ownership structures. The original for-profit developer likely will continue to be the owner for many properties. Others will have been sold, for a variety of reasons. The property may have been attractive to new owners because of positive cash flow, and the original owner may have decided it was time to realize value or may have changed its business focus. Or a new owner may have taken over a financially troubled property with the intention of running it more efficiently or applying for additional subsidies.

Exhibit 6.5 shows the characteristics of the projects that were placed in service in the early years of the LIHTC program, through 1994, with use restrictions that extend for 30 years. Among the notable characteristics of this slice of LIHTC properties are the very large number of properties (more than one-third) and units (about a one-fourth) that also have Rural Housing Service (RHS) Section 515 loans. Those properties are not the primary focus of this study.³³

33. Section 515 loans made after 1989 did not include a right to prepay. Of the roughly 16,000 properties in the entire RHS 515 portfolio, it has been estimated that about 10 percent have an economically viable prepayment option, primarily those in urbanizing areas. (ICF Consulting, 2004)

Exhibit 6.5. Characteristics of Early Year LIHTC Properties With Use Restrictions Expiring, 2020 Through 2024

	Projects	Units
Number of projects and units	5,841	230,496
Average project size and distribution	39.8	
0–10 units	26.9%	
11–20 units	13.5%	
21–50 units	39.2%	
51–99 units	11.1%	
100+ units	9.3%	
	100.0%	
Construction type		
New construction only	62.6%	57.8%
Rehabilitation	37.4%	42.2%
	100.0%	100.0%
Nonprofit sponsor	14.7%	17.7%
RHS Section 515	34.5%	24.6%
Tax-exempt bond financing	3.1%	9.6%
Location type		
Central city	43.6%	50.0%
Poverty rate of 10 percent or less	12.9%	16.7%
Poverty rate greater than 10 percent	87.1%	83.3%
Suburb	25.3%	30.0%
Poverty rate of 10 percent or less	51.5%	52.3%
Poverty rate greater than 10 percent	48.5%	47.7%
Nonmetropolitan	31.1%	20.0%
Poverty rate of 10 percent or less	23.9%	23.9%
Poverty rate greater than 10 percent	76.2%	76.1%
	100.0%	100.0%
Poverty rate of 10 percent or less	26.1%	28.8%
Percent of units with two or more bedrooms		54.5%

RHS = Rural Housing Service.

Notes: Projects used for analysis include only records with placed-in-service year data and tax credit allocation or award year. Missing data information are in appendix E. Data on whether a tax credit project was being monitored for LIHTC compliance are based on information provided by state allocating agencies.

Data on location type and poverty rate of 10 percent or less are based on LIHTC projects that were geocoded with census tracts from the 2000 Census. The geocoding rate for projects placed in service from 1987 through 1994 was 88.9 percent. Central city locations are based on central cities defined by 1999 metropolitan statistical areas (MSA) defined by the Office of Management and Budget. Suburb locations are within an MSA but not in a central city. Nonmetropolitan locations are not in an MSA. Poverty rates are census tract-level rates from the 2000 Census.

Source: HUD National LIHTC Database

HOW WILL PATTERNS SHIFT AFTER YEAR 30?

The three patterns observed at or somewhat after Year 15 will continue beyond Year 30: (1) some properties will continue to provide affordable rental housing, despite the absence of LIHTC use restrictions; (2) some will be recapitalized with public subsidies that bring new use restrictions; and (3) some will be repositioned with rents that are substantially higher than LIHTC-restricted rents or will no longer be rental housing. The balance among those three outcomes will shift after Year 30 in favor of the third pattern—repositioning and no longer affordable—but how much?

PROPERTIES THAT CONTINUE TO OPERATE AS AFFORDABLE HOUSING

This is likely the most common pattern for the early year LIHTC stock, despite the expiration of extended LIHTC use restrictions at Year 30.

Several types of properties will almost certainly not be repositioned. These properties include those with the following characteristics—

- *A mission-driven owner.* This includes the 15 percent of properties placed in service through 1994 with 30-year use restrictions that have nonprofit owners (exhibit 6.5).
- *Location in a state or city where use restrictions extend beyond Year 30.* This includes properties in three of the places where LIHTC properties are most likely to have greater value if no longer restricted: New York City, California, and Massachusetts.
- *The presence of use restrictions associated with financing.* This includes properties placed in service a second time under LIHTC. Some properties have other use restrictions—for example, use restrictions associated with land acquisition or with a source of debt that carries a use restriction with a very long term limit.

Owners of the remaining properties—for-profit owners of properties with no use restrictions continuing beyond Year 30—are likely to make a financial calculation about what to do with the property that depends on the housing market. The key consideration is whether the location will support market rents substantially higher than LIHTC rents. The large portion of LIHTC developments that have rents similar to unrestricted rents at about the middle of the housing market will continue to be affordable after the end of their use restrictions since the market will not sustain much higher rents.

These properties will now be 30 years old and, even if kept in good condition through cycles of refinancing and capital investment, may have drifted down in value in comparison with newer nearby rental housing. Relief from LIHTC restrictions will broaden the market for this housing to include students and those with incomes that are higher than the LIHTC income limits. The properties are likely to continue to provide rental housing and to do so at rents that families and individuals with modest incomes (around the LIHTC income standard of 60 percent of AMI) can afford. In many locations, they also will be available to households seeking private rental housing in which to use an HCV or similar tenant-based rent subsidy. The obligation that LIHTC properties have to accept voucher holders who pass regular landlord screening will cease, but many owners will be accustomed to renting to voucher holders and will appreciate the broadening of the market for their housing to include households that otherwise could not afford the rent.

Some properties with use restrictions that will expire starting in 2020 will have agreed to rents below both the LIHTC maximum and what the property would be able to charge without restrictions, either for the entire property or for “tiers” of units. Those agreements may have been made to make the project competitive for 9-percent tax credits in the state, or they may have been associated with soft debt. Although this was less common for early year LIHTC properties than it became later, some properties placed in service in 1994 or earlier are of that type. At Year 30, those properties may be able to raise rents to something closer to the LIHTC maximum—which will still provide affordable housing to households with incomes around 60 percent of AMI and will still be potentially available to households using tenant-based vouchers.

Another group of properties will continue to have affordable rents, but the rents they are able to charge with or without LIHTC restrictions are substantially below maximum LIHTC rents. These properties may have a difficult time producing enough cash flow to meet their operating needs and remain in even passable condition. As noted in a previous section, LIHTC rents—pegged to AMI—do not mean the same thing everywhere. In some locations, even rents at or only slightly below the LIHTC standard may produce inadequate cash flow—for example, properties in rural areas, in soft housing markets such as some midwestern communities, and in other places with declining populations. Some properties will be protected by having project-based Section 8 subsidies that have been set, administratively, at a level higher than competitive market rents.³⁴ Both HFAs and the federal government are likely to come under pressure to make additional subsidy resources available for these properties as their growing capital needs become apparent.

PROPERTIES RECAPITALIZED WITH NEW INFUSIONS OF LIHTC OR SIMILAR SUBSIDY

Even before properties with extended use restrictions reach Year 30 and are “at risk” of leaving the affordable housing stock, unmet capital needs will induce many of these properties—especially those in market areas that are not high in value and are not trending up—to apply to their HFAs for additional allocations of LIHTC. Some properties may be able to use bond financing and 4-percent credits. How HFAs will respond to this demand and assess its priority compared with other potential uses of LIHTC is difficult to predict. After Year 30, applications for new tax credits will come with the additional rationale that the property is at risk of becoming unaffordable—a point that may or may not be accurate for the particular property.

PROPERTIES THAT NO LONGER PROVIDE AFFORDABLE RENTAL HOUSING

For this group, market equivalent rents—or the value of converting the property to homeownership or commercial use—will be substantially higher than LIHTC rents, and the property is likely to be repositioned in the market within a fairly short period of time after the expiration of 30-year use restrictions. We can make only a very general estimate of how many properties fall into this category. It could be true of the 12.9 percent of the properties that are in central cities and the 51.5 percent in suburban locations that are in middle or middle or upper income census tracts with poverty rates of 10 percent or less (exhibit 6.5). This is only a rough indicator, but the number of properties, 960 (840 without a nonprofit sponsor), and the number of units, about 50,000 (42,700 without a nonprofit sponsor), is not huge. The modest numbers make preserving those properties a feasible policy objective, for which we make recommendations in the conclusion to this report.

34. From this study’s interviews with syndicators and other experts, we know that many early year properties had project-based Section 8 subsidies. The HUD LIHTC database does not have sufficient data on the use of project-based rental assistance for early year properties to support a numerical estimate, so we do not include one in exhibit 6.5.

WHAT HAPPENS TO LOW-INCOME HOUSING TAX CREDIT PROPERTIES AT YEAR 15 AND BEYOND?

7. LATER LIHTC PROPERTIES: WILL WE SEE THE SAME PATTERNS GOING FORWARD?

Approximately 1.5 million housing units in more than 20,000 LIHTC properties were placed in service from 1995 through 2009 and will reach their 15-year mark between 2010 and 2024. How likely are those properties to follow the patterns that we observed around Year 15 for the early year LIHTC properties? Are they more or less likely to continue to operate as affordable rental housing, without major recapitalization? Are they more or less likely to be recapitalized with new allocations of tax credits? And, finally, are they more or less likely to be repositioned as market-rate housing with higher rents?

Exhibit 7.1 provides the information available from the HUD LIHTC database for comparing properties placed in service between 1995 and 2009 with those placed in service earlier. The data show some notable differences. We also know about other differences that are not measured by the database, but that were evident from the syndicator, investor, and expert interviews conducted for this study.

LATER YEAR PROPERTIES ARE MUCH LESS LIKELY TO HAVE RURAL HOUSING SERVICE SECTION 515 LOANS

In the early years of the program, the LIHTC was heavily used together with Rural Housing Service (RHS) Section 515 loans. The HFA-supplied data in the HUD LIHTC database show that nearly one-third of all properties had this financing, 31.1 percent (exhibit 7.1). Between 1995 and 2009, only 9 percent tapped this RHS financing. The heavy use of LIHTC with Section 515 is reflected in the greater percentage of properties in nonmetropolitan locations in the early years. This combination of funding sources also dropped because of the declining fortunes of the Section 515 program. In 1995, funding for the Section 515 program was cut dramatically and has never been restored, and the program recently has produced only a few hundred units each year (Rapoza, 2006).³⁵

We deliberately did not focus on the Section 515 component of the LIHTC program in this study, because we considered those properties at less financial risk and also at less risk of being repositioned. Original Section 515 loans had 40- and 50-year terms, and the process of prepaying the loan—and thus removal of affordability restrictions—is complex. In general, owners of projects that received loans between 1979 and 1989 can request prepayment, although there are a number of restrictions and some incentives offered to owners encourage affordable housing preservation. Section 515 mortgages received before 1979 can be prepaid largely without restriction, and mortgages made after 1989 cannot be prepaid (George, 2007). We asked syndicators to talk to us about properties *without* Section 515 loans, but many told us that housing in this program was heavily represented in their early year LIHTC portfolios.

While it is not unknown for properties that have Section 515 loans to leave that program to seek higher rents, overall the smaller proportion of later year properties with this financing *increases* the number of properties with owners who might try to use the Qualified Contract (QC) process to end LIHTC use restrictions. Exhibit 7.1 also shows the characteristics of the approximately 19,000 later year properties that were not financed with Section 515.

35. In fiscal year 2006, Congress provided less than \$100 million for the Section 515 program.

Exhibit 7.1. Characteristics of LIHTC Properties Placed in Service, 1987 Through 1994 and 1995 Through 2009

	All Properties		Properties without RHS Section 515 Loans	
	1987–1994	1995–2009	1987–1994	1995–2009
Number of projects	11,543	20,567	8,817	18,967
Number of units	411,412	1,521,901	331,795	1,467,055
Average project size and distribution	36.4	74.8	38.7	78.3
0–10 units	33.5%	5.9%	42.5%	6.2%
11–20 units	13.2%	9.4%	11.4%	8.6%
21–50 units	35.2%	37.2%	23.5%	34.5%
51–99 units	9.5%	23.5%	11.5%	24.8%
100+ units	8.6%	24.0%	11.1%	25.9%
	100%	100%	100%	100%
Construction type				
New construction only	56.7%	63.3%	47.2%	64.9%
Rehabilitation	43.3%	36.7%	52.8%	35.1%
	100%	100%	100%	100%
Nonprofit sponsor	10.1%	27.6%	12.7%	28.6%
RHS Section 515	31.1%	9.0%	--	--
Tax exempt bond financing	3.1%	21.7%	4.1%	22.9%
Project-based rental assistance	NA	32.4%	NA	31.6%
Home funds	NA	23.1%	NA	23.1%
CDBG funds	NA	5.6%	NA	5.7%
Location type				
Central city	46.6%	45.1%	58.5%	48.5%
Suburb	25.9%	30.9%	25.0%	31.2%
Nonmetropolitan	27.5%	24.0%	16.5%	20.3%
	100%	100%	100%	100%
Poverty rate of 10 percent or less	24.9%	29.8%	23.2%	29.8%
Percent of units with two or more bedrooms	54.5%	64.4%	58.3%	64.8%

CDBG = Community Development Block Grant. LIHTC = Low-Income Housing Tax Credit. RHS = Rural Housing Service.

Notes: Projects used for analysis include only records with placed-in-service year data. Missing data information are in appendix E. Information on the use of project-based rental assistance, including state or federal project-based rental assistance, was first collected by the U.S. Department of Housing and Urban Development with the 2006 placed-in-service year. Some state allocating agencies have been able to update this information for earlier placed-in-service years, but it is primarily missing for property records.

Data on location type and poverty rate of 10 percent or less are based on LIHTC projects that were geocoded with census tracts from the 2000 Census. The geocoding rate for projects placed in service from 1987 through 1994 was 88.9 percent. The geocoding rate for projects placed in service from 1995 to 2009 was 93.5 percent. Central city locations are based on central cities defined by 1999 metropolitan statistical areas (MSAs) defined by the Office of Management and Budget. Suburb locations are within an MSA but not in a central city. Nonmetropolitan locations are not in an MSA. Poverty rates are census tract-level rates from the 2000 Census.

Source: HUD National LIHTC Database

A SUBSTANTIAL PORTION OF LATER YEAR PROPERTIES HAVE PROJECT-BASED RENTAL ASSISTANCE

Nearly one-third of later year LIHTC properties have project-based rental assistance (exhibit 7.1). In this case, we cannot make a direct comparison between properties placed in service between 1987 and 1994 and those placed in service later. This property characteristic was not included in the original data collection for the early year properties, and efforts to fill in that information retrospectively were not successful.³⁶ The syndicator and investor interviews, however, suggest that an even higher portion of the early year LIHTC program was linked to project-based rental assistance. In addition, when seeking to interview owners of early year properties, we often were told that an owner's early year LIHTC portfolio consisted entirely of properties with Section 8 contracts.³⁷

We focused data collection for this study away from Section 8 properties, because owners of most properties with rental assistance consider it very valuable and do not attempt to end their Section 8 contracts and reposition the housing to serve a higher income group of tenants at higher rents. An owner we interviewed about a LIHTC property that turned out to have project-based Section 8 said that competitive market rents in the property's location would have been lower than the rents permitted by HUD under the Section 8 contract.

The continued high percentage of LIHTC properties with project-based rental assistance reduces the number of properties likely to be repositioned as market-rate housing.

LATER YEAR PROPERTIES ARE LIKELY TO BE LARGER

The average size of a LIHTC property was 75 units in the later years, compared with only 36 units in the 1987 through 1994 period. Perhaps more important, nearly one-fourth of later year properties have 100 or more units, compared with only 8.6 percent in the earlier years (exhibit 7.1). This, together with the continued prevalence of rental assistance, may mean that many later year properties will have both the scale and the stream of rents needed for potential bond financing with 4-percent tax credits. As discussed in the next section, however, other features of later year properties may make them less suitable for bond financing.

LATER YEAR PROPERTIES ARE MORE LIKELY TO HAVE BEEN NEWLY CONSTRUCTED WHEN PLACED IN SERVICE AND, IF REHABILITATED, MORE LIKELY TO HAVE HAD SUBSTANTIAL WORK DONE

The percentage of LIHTC properties that were new when placed in service rose somewhat, from 57 percent in the early years to 63 percent from 1995 through 2009. Not counting Section 515 properties, the increase was larger, from 47 percent new to 65 percent new (exhibit 7.1).

Not available from the HUD LIHTC data, but a common theme in the syndicator, investor, and expert interviews is that many fewer later year properties were placed in service with only moderate levels of renovation supported

36. In addition to attempting to collect this information retrospectively from HFAs, we attempted to match data to HUD administrative data. The number of properties positively identified as having project-based rental assistance in the early years was too small to be credible.

37. The Section 8 Moderate Rehabilitation program was still active in the earliest years of LIHTC, and many owners who participated in that program were able to obtain LIHTC allocations, in part because the development process was already under way and HFAs considered that the properties would be completed and placed in service within the required time. The early year LIHTC program also coincided with efforts to preserve older Section 8 and other assisted properties through federal grant programs. LIHTC allocations frequently were obtained for those properties as well (ICF, 1991).

by LIHTC and other financing. This was discussed in chapter 6.2 in connection with the levels of rehabilitation now required when early year LIHTCs are resyndicated with second allocations of LIHTC. The higher renovation standards for later year LIHTCs reflect the shared perception of owners, syndicators/investors, and HFAs: when housing receives only modest renovations, it is more likely to encounter major physical problems.

With more properties that were newly built when placed in service, and with higher levels of renovation for rehabilitated properties, later year LIHTCs should be less likely to seek new allocations of tax credits because they have substantial capital needs at Year 15 and more likely to keep operating as affordable housing without recapitalization. Addressing a backlog of capital needs is not the only reason owners seek to resyndicate properties with additional tax credits, however, as discussed in chapter 6.2. Owners may want to upgrade the housing to keep it competitive or simply to earn the fees that are associated with a new redevelopment effort.

MANY MORE LATER YEAR LIHTC PROPERTIES HAVE NONPROFIT SPONSORS

During the 1987 through 1994 period, only 10.1 percent of LIHTC properties had nonprofit sponsors (General Partners), barely exceeding the minimum target required of LIHTC allocators by the tax credit law. In contrast, between 1995 and 2009, nearly 28 percent of all properties placed in service under LIHTC had nonprofit sponsors (exhibit 7.1). This set of owners is highly unlikely to attempt to reposition properties as market-rate housing with higher rents. Instead, at the end of the first 15 years, the nonprofit General Partners (GPs) will buy out the Limited Partner (LP) interests for most of these properties and continue to operate them as affordable housing.

Adding together the later year properties with nonprofit owners and those with for-profit owners and project-based rental assistance, more than one-third of LIHTCs placed in service during the 1995 through 2009 period (34.7 percent) are highly unlikely to seek to reposition their properties as market-rate housing by going through the QC process for relief from LIHTC restrictions.

LATER YEAR LIHTC PROPERTIES ARE LIKELY TO HAVE OWNERSHIP STRUCTURES THAT MAKE IT EASY FOR THE GENERAL PARTNER TO BUY THE LIMITED PARTNER INTERESTS

For-profit as well as nonprofit owners of later properties may find it easy to buy out the LPs for outstanding debt. Syndicators and industry observers describe a shift over time in the nature of LIHTC investment agreements. In later years, as investor competition to purchase LIHTC equity intensified, “back-end” dynamics moved decidedly in favor of GPs. The industry has evolved to the point that benefits offered to investors now often include little or no residual value or return of capital.

With a sales price no greater than the outstanding mortgage, many of these continuing owners will be able to continue to operate the property as affordable housing without a major recapitalization. However, the ability to refinance and the availability of cash flow may be complicated by the property’s financial structure and target population.

LATER TAX CREDIT PROPERTIES HAVE MORE COMPLICATED RENT STRUCTURES AND MORE COMPLICATED FINANCING

Many of the early year LIHTC projects profiled as part of this study were financed simply, with debt and tax credit equity, but with relatively smaller amounts of debt and larger amounts of equity than would be expected in conventional real estate. Debt for these projects was typically provided either by commercial lenders or by HFAs. Furthermore, many early year projects established affordability at the level required by the federal tax code—that is, they simply agreed to charge rents that were no more than 30 percent of 60 percent of Area Median Income (AMI).

As the LIHTC program matured, project financing became considerably more complex. By the mid-1990s, the LIHTC program had become well-established, and competition for tax credit allocations had become intense. State agencies took advantage of this opportunity to raise the bar for tax credit applicants, requiring developments to provide greater levels of public benefits to be competitive. Later projects often have multiple tiers of affordability—for example, some units affordable for households at 30 percent or 40 percent of AMI, some at 50 percent AMI, and some at 60 percent AMI. With data collection on LIHTC projects placed in service in 2006, HUD started to ask whether the elected rent/income ceiling for projects was 50 percent of AMI or 60 percent of AMI, and whether any project units were set-aside at levels below the program election. For projects placed in service in 2006 through 2007, more than two-thirds of projects placed in service had some units at a lower rent tier, according to the HUD LIHTC database (Climaco et al., 2010).³⁸

In addition to having lower rents, these properties are more costly to administer because property managers must work hard to identify and attract the households to whom apartments may be rented. Furthermore, many states award extra points in the tax credit application process for projects serving special-needs populations—homeless people or people with disabilities, for example. Properties serving special-needs populations often need to create working partnerships with organizations that can deliver health and social services.³⁹

Lower rents from greater income “tiering,” coupled with higher costs for administering those complex income tiers and for serving more needy resident populations, have lower net income projections and, therefore, can support less mortgage debt. With higher development costs and lower first mortgage debt, many later year LIHTC properties raised soft debt to cover the funding gap. While relatively few of the early year LIHTC developments had soft loan financing, a great many projects in the more recent years of the program did. We do not have this information for earlier years, but nearly 30 percent of all projects placed in service between 2003 and 2007 had HOME subsidies, and nearly 7 percent had Community Development Block Grants (Climaco et al., 2010).⁴⁰ Others (not recorded in the database) have soft debt from state- or city-funded housing programs.

Brokers and industry observers speculate that later year LIHTC properties will prove more difficult than early year properties to refinance and move into the conventional real estate world—either with affordable rents or with repositioned, higher rents. The upshot may be that a larger percentage of later year LIHTC properties end up being recapitalized with additional allocations of 9-percent tax credits.

38. The database records one rent/income ceiling election for each project. If properties with multiple buildings may have different rent/income ceiling elections, the maximum rent/income ceiling election is recorded.

39. These services might include mental health counseling, family intervention, adult job training and/or employment placement, or education services for children, with the specific services depending on the households that are targeted.

40. Data on the use of HOME and CDBG subsidies were first collected by HUD in 2005 for projects placed in service in 2003.

Properties with soft debt may be more difficult to finance with bonds and 4-percent tax credits, especially if the property has lower rent tiers, nontraditional expenses, or both—and, therefore, not much cash flow for amortizing bond-financed hard debt. These properties may also be more likely than earlier year properties to encounter exit tax issues when establishing a price for the sale of the LPs' interests. On the other hand, public funders may be willing to provide additional subsidies for properties that serve households with special needs or in lower income tiers. When permanent financing includes substantial soft debt, the property can meet the 4-percent tax credit test that 50 percent of the property's financing must be tax-exempt private activity bond debt through bond-funded construction loans repaid in part by the soft debt.

A SOMEWHAT HIGHER PERCENTAGE OF LATER YEAR LIHTCS ARE IN LOW-POVERTY CENSUS TRACTS

The poverty rate of the location of a LIHTC property can serve as a rough proxy for locations that might have the ability to charge rents greater than the LIHTC maximum and, therefore, as defined by this study, unaffordable. The percentage of properties in census tracts with poverty rates of 10 percent or less rose from about 25 percent in 1987 through 1994 to about 30 percent in 1995 through 2009, and the percentage in the suburbs rose as well (exhibit 7.1; McClure 2006). These properties could be at risk of repositioning through the QC process, as they are more likely to have rents that exceed the LIHTC maximum rents.

CONCLUSION

Overall, the later year LIHTC properties appear to be at even lower risk of being repositioned as market-rate housing with unaffordable rents than the early year LIHTCs. A key factor is the very existence of extended use restrictions through Year 30, with the only possibility of relief a complicated QC process that some states have required owners to waive, while others make it procedurally difficult to succeed. Another factor is the much larger percentage of later LIHTC properties that have nonprofit sponsors.

Offsetting factors might be the lower share of later year properties with Section 515 loans and the lower share with project-based rental assistance, as well as the higher share that are in high-value locations. Nearly one-third of later year properties, however, do have project-based rental assistance contracts.

The more complex financial and rent structures of later year LIHTCs also may militate against repositioning as market-rate housing. However, those structures also may make it more difficult for later year LIHTC properties to use simple, conventional refinancing to “melt into” the mainstream of housing with affordable rents. More likely, many of the later year properties will continue to be part of a self-conscious industry of affordable housing providers. Although the greater proportion of later year LIHTCs that were either newly built or substantially renovated when placed in service may suggest a lower need for recapitalization at or around Year 15, both ongoing and new owners of tax credit properties may try to use a second round of tax credits.

8. CONCLUSIONS: POLICY RECOMMENDATIONS AND SUGGESTIONS FOR FURTHER RESEARCH

8.1 POLICY RECOMMENDATIONS FOR MAINTAINING

A STOCK OF AFFORDABLE RENTAL HOUSING

A key objective of rental housing subsidy programs, including the Low-Income Housing Tax Credit, is for localities and housing markets across the nation to have a stock of housing that is affordable for low-income renters and in reasonable physical condition. This study has confirmed that policies for the older LIHTC stock will need to focus both on preserving affordability and on preserving physical quality. We have identified three basic paths that older LIHTC properties take: (1) they are repositioned as higher rent or no longer rental, (2) they are recapitalized with new public subsidy, or (3) they remain affordable even after their use restrictions expire. Based on observations made during this study, the third outcome has been the most common and would continue to be the most common even if no public policy tools were available to affect what the outcomes are for the older LIHTC housing stock. But policymakers and stakeholders do have tools, and their actions will affect not only the magnitude of each set of outcomes, but also which properties follow which path. Policymakers who affect the outcomes for this stock of housing comprise three groups:

- **State housing finance agencies (HFAs).** HFAs and associated state housing and community development agencies⁴¹ control most of the resources and other policy levers: they devise the Qualified Allocation Plans (QAPs) and other rules and processes for awarding new 9-percent credits; they define the rules and processes for Qualified Contract (QC) sales; they establish thresholds for bond financing and 4-percent credits; and they control other sources of soft debt such as state-funded programs and HOME. HFAs also have ongoing relationships with housing developers who may want to do business with them in the future.
- **The federal government—HUD, Treasury, and Congress.** The federal government can change the resources and policy levers available to HFAs. Congress can do so through new law, the Department of the Treasury (Treasury) through interpretation of the tax code, and HUD through proposals to Congress and Treasury. HUD also, through development of data on LIHTC and through research such as this study, can provide information that helps other policymakers make decisions.
- **Advocates, housing intermediaries, and mission-driven developers.** These organizations also make choices that shape policies and outcomes for the LIHTC housing stock. They influence policy on the state and federal levels and, in the case of developers, they make choices about where to focus their priorities: maintaining what they own, acquiring and reinvigorating older properties, or developing new ones.

41. In some states the agency that allocates LIHTC is different from the agency that administers the HOME program and state-funded housing subsidy programs.

RECOMMENDATIONS FOR STATE HOUSING FINANCE AGENCIES

State HFAs will come under great pressure as the large stock of LIHTC housing ages. Most use restrictions will not expire until 2022 or later, but the QC sale process will be open to owners before then. As LIHTC developments age, owners will seek new LIHTC allocations and other state-controlled resources for older LIHTC properties to replace worn-out systems and finishes and, in some cases, to improve the appeal of their developments in the face of competition from other rental housing. State policymakers are going to have to make choices—with finite resources, they will not be able to do everything. In view of the findings of this study on what happens to LIHTC properties in different market conditions, we recommend that those choices be made on the basis of a set of guiding principles and on careful examination of the housing markets in which the older LIHTC stock within their states operates. HFAs then should use their policy levers to carry out those principles as they make choices about particular older LIHTC developments.

OLDER LIHTC PROPERTIES AT RISK OF BEING REPOSITIONED IN THE MARKET

HFAs should place the highest priority on the developments that are most likely to be repositioned in the market—as higher rent housing or conversion to homeownership or another use. The starting point should be an analysis of the older LIHTC housing stock in the state—probably focusing on properties that have been in service for 15 years or more and are owned by for-profit entities—to create a priority list of properties that are in locations where they already could charge substantially higher rents, if unrestricted. The list should also identify properties in areas that are gentrifying and, therefore, are likely to be able to charge market-determined rents that are higher than LIHTC rents, or are likely to be able to do so within a few years because substantial evidence indicates that the area is gentrifying. The good news from this study is that this list is likely to constitute a minority of LIHTC properties and units in most states. The bad news is that it is likely to take considerable resources to forestall the conversion of the particular properties that are in valuable locations. Preserving these properties as affordable housing will almost always be less costly than investing in creating new affordable developments in neighborhoods that are not otherwise likely to provide housing opportunities to modest income households. This investment may be the most cost-effective way to encourage or maintain some amount of economic integration and diversity.

For properties that are nearing the end of the use restriction and have been identified as at high risk of conversion away from affordable rental housing, the HFA could announce that it is prepared to make resources available to a preservation purchaser or to a current owner willing to further extend the affordability period. These resources might include new allocations of 9-percent tax credits or soft debt from a state-controlled program, or both.

A property at risk of becoming unaffordable might need renovation at the time a preservation sale or an agreement by the current owner to extend use restrictions occurred, but might not. So, for these properties, the HFA should not impose a minimum on the amount of rehabilitation done with a new allocation of LIHTC beyond the federal minimum of \$6,000 per unit. In addition, to make these preservation deals feasible, the HFA might have to waive whatever standards it has established as maximum amount of tax credit per unit or per property.

Properties at risk of being repositioned with higher rents would be able to charge rents at the LIHTC maximum if continued under use restrictions. Therefore, especially in regions where the LIHTC maximum is relatively high, the property might be able to support enough debt to be able to use bond financing. So the HFA might decide it was advantageous to encourage preservation purchasers to use bond financing and 4-percent tax credits rather than applying for 9-percent credits, along with soft debt provided by the HFA or other state agency as needed.

OLDER PROPERTIES NOT AT RISK OF BEING REPOSITIONED IN THE MARKET

For properties not at risk of becoming unaffordable because they are not in locations where LIHTC rents are substantially below market rents, HFAs will have to decide how to identify those properties for which it is both necessary and important to provide resources for recapitalization from a fixed pot of housing subsidy resources. Establishing some principles is important for being able to say no to the owners of other properties. As long as bond financing and the 4-percent LIHTC equity that accompanies it is, in reality, not a finite resource—because demand does not exhaust the state’s private activity bond ceiling—HFAs should not place barriers in the way of LIHTC owners using that resource by itself to meet their recapitalization needs. But the HFA (and its sister agencies) should not agree to use finite resources such as allocations of 9-percent credits, state housing trust funds, or HOME dollars unless a property meets a further test that makes it a high priority for physical preservation. Only then should the state choose that property over the development of additional affordable housing.

We suggest the following categories of properties that should have high priority for investment in meeting their capital needs, despite their not being in locations where market rents already are higher than LIHTC rents or are likely to become so soon.

- Properties that serve a special-needs population should get high priority. Supportive housing for people with disabilities, including permanent supportive housing for formerly homeless people, is an obvious example. Supportive housing for seniors is another example, but housing that serves elders who do not need special services probably is not, as most housing markets have a good supply of housing units of a size suitable for individuals or couples at rents around the LIHTC standard.
- Properties that have committed—or are willing to commit—to rent tranches of units below the LIHTC maximum may be deserving of high priority. However, the HFA, when underwriting such projects, should scrutinize project feasibility carefully. LIHTC operators often have found it difficult to manage turnover and waiting lists to fill units within the tranches. If the state-controlled resource that could support recapitalization of these properties may be used instead for tenant-based assistance—as the HOME program and some state-funded housing programs can be—it probably makes more sense to meet the needs of households who cannot afford rents near the LIHTC maximum rents by making vouchers available to renters with incomes well below 60 percent of AMI.
- Properties that are in a neighborhood where a concerted neighborhood transformation effort is going on might get priority, but only if the older LIHTC property is in such bad physical condition—or is so badly managed—that a preservation program is needed to prevent it from blighting the neighborhood. Otherwise, any use of state housing development resources should be for additional housing—homeownership or rental—that could have a substantial positive impact on the neighborhood, rather than the marginal impact of fixing up a property that already is in reasonable condition. Furthermore, the bar should be set high for what qualifies as a concerted neighborhood transformation effort. Proposal rhetoric is not enough. The sponsor should be able to demonstrate that substantial public resources have been committed to a multifaceted revitalization effort in order to persuade the HFA that investment in old (or new) LIHTC developments is a priority use of resources.

Without such a concentrated neighborhood revitalization effort, the HFA’s policy should be to avoid weakening fragile neighborhoods further by creating a surplus of low-rent properties that compete with each other for a limited base of tenants. The HFA might make an exception and agree to allocate new resources in those

rare cases where properties placed in service under LIHTC are damaged by natural disasters or fail because of unforeseen defects in construction.

The overall principal should be that state housing resources are finite. A property's previous use of LIHTC (or LIHTC and other state-controlled subsidies) is not a sufficient reason for choosing to subsidize that property a second time, unless the property is at real risk of becoming unaffordable or serves a special-needs population or has another compelling function.

Instead, state decisionmakers should recognize that most older LIHTC properties will, over time, become mid-market rental properties indistinguishable for other mid-market rental housing, and that this is a good result. These properties will develop capital needs—all properties do. But it is not within the resources of HFAs to keep all mid-market rental housing in like-new physical condition. Instead, state policies should welcome and encourage older LIHTC properties to meet their capital needs in the same way that other rental housing does—through a combination of reserves and periodic refinancing. In some cases, the state agency may choose to resubordinate existing soft debt to facilitate this process.⁴²

For properties states can identify as not at risk of becoming unaffordable but that are struggling to find income-qualifying tenants, HFAs should not place barriers in the way of requests for QC sales that result in older LIHTC properties having their extended 30-year use restrictions lifted. Instead, HFAs should be willing to lift use restrictions for such properties through the QC sales process as a way of broadening the market for the properties enough to make them self-supporting. As noted in this report, some midwestern HFAs have already begun doing this.

NEW LIHTC PROPERTIES

Given that some older LIHTC properties, albeit a minority, are at risk of being repositioned as unaffordable at the end of 30-year use restrictions and that considerable expenditures of resources will be needed to prevent that from happening, should HFAs extend use restrictions beyond 30 years for which allocations are made in the coming years? We do not recommend this, for the following reasons.

Extended use restrictions come at a cost. This is inherent in the design of the LIHTC program, in which the tax credit compensates investors for reduced expectations of cash flow and resale potential. The longer the use restrictions last, the higher the initial public subsidy needs to be.

As this study has shown, under some market conditions, inflexible use restrictions may undermine the goal of preserving affordable housing in good condition by overly restricting the rental market for those properties. For example, we learned that in some midwestern states, many LIHTC properties are very similar to market-rate properties but use restrictions constrict the market for those properties just enough that they are at risk of failing physically and financially. The Ohio HFA has been willing to remove use restrictions for properties that will still provide good quality housing at modest rents.

Periodic reassessments of the relative importance of a particular property for expanding the opportunities for low-income renters to live in good quality, affordable housing are valuable. Such reassessments are triggered by the impending end of use restrictions and may not happen otherwise. Locking properties into very long-term

42. Whether resubordinating soft debt at the time of refinancing constitutes subsidizing the property a second time depends on whether a real expectation exists that the soft debt would be repaid.

use restrictions may place de facto obligations on public funders to continue to make investments in those properties, even if other properties with other locations and physical characteristics would be better places for low-income renters to live. The history of the public housing program is instructive.

RECOMMENDATIONS FOR THE FEDERAL GOVERNMENT

Federal government support for the LIHTC program has shown great resilience in the face of budget pressures, and we assume that it will continue to do so. At the same time, policies for the use of this resource need not be set in stone, and some were changed as recently as the changes made by the Housing and Economic Recovery Act in 2008. The 2013 federal budget includes some further proposals for changes to the LIHTC program.

Just as we have recommended some principles for states to follow in making choices about using their resources to preserve older, affordable housing, we suggest that federal policymakers take actions that will create a high priority for preserving those older LIHTC properties that are at greatest risk of no longer being affordable, as well as those that serve a special-needs population. Our recommendations for federal policy relate to QAPs, to the allocation of LIHTC authority to the states, and to the development of databases and analytical tools for states to use in making implementing their LIHTC programs and for advocates, intermediaries and mission-driven developers to use in carrying out their roles.

QUALIFIED ALLOCATION PLANS

Section 42 of the Internal Revenue Code sets the framework within which states draw up their QAPs for awarding 9-percent tax credits. The preferences and selection criteria included in the law are not exclusive and leave HFAs with broad leeway to add other criteria and to create scoring systems that emphasize some criteria more than others. *Notably absent from the federal QAP standards is whether the project is in a location where market rents are higher than rents at the LIHTC standard.* The selection criteria listed in the statute include location, but without further explanation of what features of the location are important. Similarly, the preferences include “projects which are located in qualified census tracts...and the development of which contributes to a concerted community revitalization plan,” but without further describing such a plan (IRC §42(m)(1)(C)(v)). The selection criteria also include tenant populations with special housing needs. The time may be ripe for federal agencies to propose—and Congress to enact—a revamped version of the QAP standards that sets the framework for when allocations of 9-percent LIHTC credits should be made to older LIHTC developments, those that have previously been placed in service under the tax credit. Alternatively, the Treasury (with advice from HUD) might issue guidance on QAPs that elaborates on the current statutory language to define location as a place where market rents are not affordable judged by the LIHTC standard, “concerted community revitalization plan” (IRC §42(m)(1)(B)(ii)(III)) as a commitment of substantial resources in such areas as school improvement, access to health services, access to job training and employment, and substantial physical redevelopment (such as investment in upgrading existing deteriorated housing or commercial properties or creating new housing), and “tenant populations with special housing needs” (IRC §42(m)(1)(C)(v)) as those who need health or other social services to maintain their tenancies.

ALLOCATION OF LIHTC AUTHORITY TO THE STATES

LIHTC developments likely to be repositioned in a way that makes them unaffordable are not evenly distributed across the United States in proportion to population. Instead, they are most likely to be in states with high housing costs and limited housing supply. The need for preventing LIHTC properties from becoming unaffordable is strongest in those states—as, for that matter, is the need for producing additional units of LIHTC-supported, affordable rental housing. The concept that LIHTC should be allocated on the basis of a measure of housing need, rather than *per capita*, is not new (Nelson, 1999, Nelson, 2002). However, the risk that large number of units in older LIHTC developments will become unaffordable when 30-year use restrictions expire, and the need to enable HFAs to act proactively to preserve them, means that the time may have come to make the change to a needs-based allocation formula. For example, a formula could allocate more LIHTC authority to states that have a relatively high level of mismatch between the number of renters with income below the LIHTC standard and the number of rental units affordable to households at or below that income level. Khaduri et al., (2004) provide a specific proposal for an allocation formula that includes this as well as other factors. The formula might also take into account differences in development costs in different parts of the country. The basis boost permitted for properties in Difficult Development Areas was intended to recognize differences in development costs that are not matched by differences in rent potential. Basis boosts, however, are made by HFAs out of the fixed, *per capita* amount of LIHTC allocated to the state.

A disadvantage of this proposed change is that moving away from a *per capita* allocation formula could weaken support for LIHTC from representatives of states that would lose LIHTC resources in a reallocation of a fixed national amount of LIHTC authority. On the other hand, developers and owners of private-market rental housing in those same states—where most LIHTC property competes directly with other rental housing—might be in favor of such a change. An alternative to a new formula for allocating 9-percent LIHTC credits would be to enact a modest pool of bonus LIHTC funding to be used by the Treasury to reimburse states that allocate tax credits to carefully defined at-risk properties. Yet another possibility is to permit basis boosts to the same, narrowly defined properties when they use bond financing and 4-percent credits. This is effectively a more narrowly targeted variation of a proposal in the 2013 budget intended to bring more resources into the LIHTC program by permitting basis boosts with 4-percent credits.

DATABASES AND ANALYTICAL TOOLS

HUD does a lot and could do more to create and maintain data and analytical tools that support decisionmaking at all levels around the LIHTC program. HUD has created and updates every year the LIHTC database on the characteristics of properties placed in service each year, one of the sources of information used for this study. That database has already been enhanced by additional questions on the type of financing used for projects placed in service in recent years. The database soon will be greatly enhanced by the addition of data on the demographic and income characteristics of the households that occupy LIHTC properties, on the rents actually paid for LIHTC units (which may be below the maximum rents permitted), and on whether the unit or the household also has a Housing Choice Voucher (HCV), Section 8, or other subsidy that permits the occupant to pay a much lower rent. HUD should certainly continue the basic effort and should make the enhanced data publicly available as soon as is possible and with whatever detail about unit occupancy and rents is consistent with privacy protections.

The 2-year time lag between HFA allocations of LIHTC and the date when properties are placed in service, together with the further time lag needed for receiving data for the past year from the HFAs and assembling it for publication, limits the usefulness of the HUD LIHTC database for monitoring recent changes in state policies and the evolution of the LIHTC program. HUD might consider collecting from HFAs, a separate set of data, information on each year's LIHTC awards, with a smaller number of property characteristics, not including those most likely to change before the property is placed in service. It might be possible for HUD to build on the annual survey of HFAs carried out by the National Council of State Housing Agencies that already collects some of this information. The LIHTC allocation data would include key indicators such as the street addresses where the developments will be located, the estimated number of units in the property, and whether the property is intended for a target population group.

In addition to this continued data development, HUD also could create analytical tools to help HFAs make the lists that we have recommended of properties most at risk of being repositioned as unaffordable housing. In particular, HUD could develop a methodology for states to use to identify housing markets and sub-markets where rents are greater than the LIHTC maximum or where neighborhood characteristics suggest that the neighborhood is on an upward trajectory.⁴³ HUD could make the methodology available to states and, possibly, also publish a list of such places.

RECOMMENDATIONS FOR ADVOCATES, INTERMEDIARIES, AND MISSION-DRIVEN DEVELOPERS

Advocates and housing intermediaries play a vital role both in recommending policy changes to HFAs and the federal government and in the implementation of policies as they affect individual properties. Given the findings of this study, we recommend these organizations support HFA efforts to identify those older LIHTC properties most at risk of becoming unaffordable. In some states, the HFA might ask advocates or intermediaries to take the lead in the analysis that creates and maintains a priority list of properties. Mission-driven developers, in turn, are the organizations to which HFAs will frequently need to turn to purchase older LIHTC properties in high-value locations and to operate the housing under use restrictions that keep it affordable. Leaders of those development entities should be engaging in strategic planning that positions their organizations to assume those responsibilities. This may mean being less reactive and more strategic about opportunities that come their way to develop and redevelop housing and declining opportunities to acquire properties that do not expand the range of locations in which low-income renters are able to live.

8.2 RECOMMENDATIONS FOR FUTURE RESEARCH

As suggested by the policy recommendations that flow from this study, understanding the role that LIHTC housing plays in housing markets and what it accomplishes for its residents are essential for making policy about the future of the older LIHTC housing stock. Therefore, one of our recommendations is for research that focuses on the role of LIHTC in creating mixed-income housing, both by making housing available to low-income renters in locations where it otherwise would not be and by creating housing that has a mixed-income character within the development itself. Some of the specific questions that this research would address are—

43. In addition to continuing in its general capacity of analyzing housing market data, HUD's Office of Policy Development and Research is in the process of developing a Neighborhood Opportunity Database that could be useful in identifying gentrifying locations.

- Besides average market rents, what identifies a location in which low-income renters would not be able to live without housing with use restrictions such as LIHTC?
- To what extent and in what sense do properties that contain both LIHTC and non-LIHTC units create opportunities for low-income families to live in mixed-income settings? Are these properties financially viable, and what are the challenges to operating them successfully?
- To what extent and in what sense do LIHTC properties that have income tiers with the maximum LIHTC rent limits create opportunities for low-income families to live in mixed-income settings? Are these properties financially viable, and what are the changes to operating them successfully?
- To what extent and in what sense do LIHTC properties in which families use HCVs create opportunities for low-income families to live in mixed-income settings? Are some of these properties becoming concentrations of poor families rather than mixed-income communities? If so, what leads to that result?
- Do LIHTC properties that no longer are subject to the program's use restrictions provide opportunities for mixed-income housing? To what extent does this depend on the availability of HCVs? What role do former LIHTC developments that *also* formerly had project-based Section 8 play in the housing market?
- What types of households (by income, race and ethnicity, and household type) live in different types of LIHTC developments (by location, property type, property ownership, etc.)? How are LIHTC properties marketed, and how do prospective tenants find out about them?

Another recommendation is for research to understand better the role that adding new units of subsidized rental housing such as LIHTC plays in transforming—or weakening—a neighborhood. HUD is undertaking an evaluation of Choice Neighborhoods that will document neighborhood change in a few places where the effort to change a neighborhood brings together concentrated resources across housing and other sectors. Other research has focused on New York City's massive investments in housing in the 1980s and 1990s. A broader research program should focus on other cities and on a broader range of neighborhoods. Some of the questions that this research would address are—

- How much new or substantially rehabilitated housing is needed to change the trajectory of a neighborhood?
- What combinations of rental and homeownership housing are most successful in changing a neighborhood? Of subsidized and market-rate rental housing?
- Which other investments or policy transformations are critical to neighborhood revitalization? Are neighborhood-focused employment efforts essential, or are transportation links to employment sufficient? How important is investment in school quality to attracting and retaining residents?
- What can we learn from revisiting investments in neighborhoods associated with the HOPE VI program?
- What can we learn from the housing recession about the role of rental housing in neighborhood dynamics?

Yet another area of research suggested by this study has to do with definitions and financing mechanisms for special-needs housing supported by LIHTC. For example, some of the research questions are—

- When should subsidized housing for seniors be defined as special-needs housing? At what level of linked services is this housing that low-income seniors would not otherwise be able to access?

- What models for supportive housing best link health programs to subsidized rental housing such as LIHTC developments? How can HFAs and state health agencies best coordinate their efforts? What level of commitment of services from the health system should HFAs seek in selecting LIHTC special-needs developments?
- How do LIHTC-funded developments that include both supportive housing units and units for general occupancy work? How many supportive housing units are needed to make service linkages feasible? Do such developments face underwriting challenges?

A final set of issues is suggested by our observation that HFAs and other policymakers will have to make decisions about the LIHTC stock within constrained resources. HUD-sponsored research on the development and operating costs of LIHTC housing and how they vary around the country could be very useful for informing HFA policy standards, as well as for allocating tax credits and underwriting specific properties. As described in chapter 1.1, the few studies that carefully compare the costs of LIHTC with other federal housing subsidies are limited by their inability to fully account for the costs of LIHTC development and operations.

For example, such research might examine—

- Development costs of LIHTC properties and how they vary by property characteristics such as floor space, amenities, design, and finish materials, as well as community space to meet the needs of special populations.
- Operating costs of LIHTC properties and how they compare with the operating costs of other affordable housing. This includes factors that affect operating costs such as where the property is in the compliance period and what type of population it serves.

Life-cycle costs of LIHTC properties and how that is affected by the timing of refinancing and recapitalization. This includes the life-cycle cost tradeoffs of front-end investments in energy-saving features such as highly insulated walls and windows and solar panels.

The Low-Income Housing Tax Credit is a major source of new production of multifamily rental housing, accounting for one-third of all new units in recent years. An often-mentioned strength of the program is that it is a front-end subsidy, placing no ongoing obligation on the federal government or state governments to provide operating support for the housing over time. As this study has shown, the role of the housing placed in service under LIHTC in local housing markets is diverse. State, federal, and private policymakers should keep that diversity in mind when making decisions about whether the older LIHTC stock should receive additional public subsidy with new, extended use restrictions or should be permitted—and encouraged—to blend into the broader stock of moderately priced private rental housing.

WHAT HAPPENS TO LOW-INCOME HOUSING TAX CREDIT PROPERTIES AT YEAR 15 AND BEYOND?

SYNDICATORS, BROKERS, AND LIHTC INDUSTRY EXPERTS INTERVIEWED FOR THE STUDY

The following tax credit syndicator and broker firms and organizations participated in the study by agreeing to be interviewed for this research effort. Organizations marked with an asterisk (*) allowed project staff to meet with them to complete more in-depth interviews.

Aegon USA

Apartment Realty Advisors

Bank of America

Boston Capital*

Boston Financial Investment Management*

CB Richard Ellis

Centerline*

Enterprise Community Investment, Inc.

Fannie Mae

JP Morgan Capital Corporation

Marcus & Millichap*

National Equity Fund

Raymond James Financial

Richman Capital

The following tax credit syndicators, brokers, state allocating agency staff, and other industry experts helped this research effort by agreeing to be interviewed for the study. Interviews completed for the owner survey are not included in this list.

Katherine (Katie) M. Alitz

Boston Capital

Joseph Callender

Ernst & Young, LLP

Dorothy Anderson

North Dakota Housing Finance Agency

Brian Carnahan

Ohio Housing Finance Agency

Randy Archuleta

Arizona Department of Housing

Brenda Champy

Boston Capital

Charles (CJ) Baier

Raymond James Financial
Raymond James Tax Credit Funds, Inc.

Robert Collier

Mississippi Home Corporation

Eric Barteldes

Federal National Mortgage Association

Christopher Collins

First Atlantic Capital, LLC

Timothy Bartlett

Boston Capital

Herbert Collins

First Atlantic Capital, LLC

Regina Bender

Bank of America

Marianne Cortland

Boston Capital

Georgette Benson

District of Columbia Department of Housing
and Community Development

Kevin Day

Centerline

Michael Bodaken

National Housing Trust

Dan DeLong

Illinois Housing Development Authority

Cassandra Brown

Michigan State Housing Development Authority

Renee Dickinson

Minnesota Housing Finance Agency

Judy Brummett

Arkansas Development Finance Authority

Matt Dillis

Boston Capital

Sylvia Burgess

North Dakota Housing Finance Agency

Rose Eaton

National Equity Fund

Cindy Fang

Ernst & Young, LLP

Thomas G. FischerCB Richard Ellis, National Tax Credit
Advisory Group***Gerald (Jerry) Flemming***

National Equity Fund

Tim Flint

Marcus & Millichap

David M. FournierApartment Realty Advisors, National Affordable
Housing Group***James A. Fox***Housing Investments
JP Morgan Capital Corporation***Anthony Freedman***

Holland and Knight

Noah Freiberg

New Jersey Housing and Mortgage Finance Agency

Michael Gladstone

Boston Financial Investment Management

Dmitri Gourkine

Marcus & Millichap

Greg Griffin

Enterprise Community Investment, Inc.

Brandon Grisham

Marcus & Millichap

Ethan Handelman

National Housing Conference

William Haynsworth

Boston Financial Investment Management

Ben Henderson

Aegon USA

Jack HodgkinsCommunity Investments and Lending Group
Wells Fargo***Jocelyn Iwamasa***Hawaii Housing Finance and
Development Corporation***Teresa Kile***

Nebraska Investment Finance Authority

Korey KoppWisconsin Housing and Economic
Development Authority***Mark Koppelkam***

New Hampshire Housing Finance Authority

Peter Lawrence

Enterprise Community Investment, Inc.

Thalia Lee

Arkansas Development Finance Authority

Teri Mamaril

Mississippi Home Corporation

Mark Romick

Alaska Housing Finance Corporation

Sandra McGougan

Oklahoma Housing Finance Agency

Judy Schneider

National Equity Fund

Dan Mendelson

Chesapeake Community Advisors, Inc.

Robert Sheppard

Marcus & Millichap

Brian Myers

Richman Capital

Ammer Singh

California Tax Credit Allocation Committee

Peter A. Nichol

The Reliant Group

David Smith

Recap Advisors

Vincent O'Donnell

Local Initiatives Support Corporation

Bettie Teasley Sulmers

Tennessee Housing Development Agency

Beth O'Leary

Enterprise Community Investment, Inc.

Marianne Votta

Bank of America

David Player

Fannie Mae

Walter Williams

Boston Capital

Jeffrey Rahn

Boston Financial Investment Management

Michael Regan

Boston Capital

Will Renner

Boston Financial Investment Management

David Reznick

The Reznick Group

APPENDIX A. HUD NATIONAL LIHTC DATABASE: CURRENT PROJECT DATA COLLECTION FORM

HUD LIHTC DATABASE DATA COLLECTION FORM

OMB APPROVAL NO. 2528-0165 (EXP. 05/31/2013)

State: _____ Allocating Agency Name: _____

Project Identifying Number (if any): _____

Project Name: _____

Project Address: _____

(NUMBER)

(STREET)

(CITY)

(STATE)

(ZIP)

Building Identification Numbers (BIN #): _____ (ST-YR-XXXXXX)

Building Address: _____

(STREET)

(CITY)

(ZIP)

(STREET)

(CITY)

(ZIP)

Owner/Owner's
Representative:

(FIRST NAME)

(LAST NAME)

(COMPANY NAME)

(NUMBER)

(STREET)

(CITY)

(STATE)

(ZIP)

(AREA CODE AND TELEPHONE NUMBER)

Annual Amount of Tax Credits Allocated: \$ _____

Number of *Total* Units: _____Number of Total Units *by Size*: _____ = _____

0BR

1BR

2BR

3BR

4+BR

TOTAL

Number of *Low-Income* Units: _____What is the elected rent/income ceiling for Low-Income Units in this Project? ☐ 50% AMGI ☐ 60% AMGI

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Are any units set aside to have rents below the elected rent/income ceiling? ☐ Yes ☐ No

If "Yes," how many units? _____

Year Placed In Service: _____

Year Project Received Allocation or Bond Issued: _____

Type (*check all that apply*):☐ New Construction☐ Rehab (with or without acquisition)Credit Percentage (*check one*):☐ 9% (70% present value)☐ 4% (30% present value)☐ Both**Does this LIHTC project:****Yes****No****If Yes, please provide:**

Have a non-profit sponsor?

☐☐Have increased basis due to qualified
census tract/difficult development
area or HERA-based designation?☐☐

Have tax-exempt bond financing?

☐☐Have a Rural Housing Service
(FmHA) Section 514 loan?☐☐

RD Loan #: _____

Have a Rural Housing Service
(FmHA) Section 515 loan?☐☐

RD Loan #: _____

Have a Rural Housing Service
(FmHA) Section 538 loan?☐☐

RD Loan #: _____

Have HOME Investment Partnership
Program (HOME) funds?☐☐

IDIS Activity ID: _____ Amount: _____

Have Community Development
Block Grant (CDBG) funds?☐☐

IDIS Activity ID: _____ Amount: _____

Have an FHA/Risk Sharing loan?

☐☐

Loan #: _____

Form part of a HOPE VI development?

☐☐

Amount: _____

Target a specific population? (If yes, check all that apply)

☐ Families☐ Elderly☐ Disabled☐ Homeless☐ Other _____

Have a federal or state project-based rental assistance contract?

☐ Federal☐ State☐ NeitherU.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
PREVIOUS EDITIONS UNUSABLE

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HUD LIHTC DATABASE DATA COLLECTION FORM
REVISED MAY 2010

HUD LIHTC DATABASE DATA COLLECTION FORM

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INSTRUCTIONS

State: Enter the Postal Service two-character abbreviation for your state.

Project Identifying Number: Enter the Project Identification Number. If there is not an established method of assigning PINs, HUD recommends using the following format: State Postal Abbreviation - Allocation Year – First two digits of BIN; e.g. CT-10-01.

Project Name: Enter the name of the project. Do not enter a partnership name (e.g., Venture Limited II).

Project Address: Enter the complete address of the property, including address number and street name, city, state, and ZIP Code. If the project has multiple addresses (e.g., 52-58 Garden Street), please provide the address range. Also, please provide the address for each building (BIN). Do not enter a P.O. Box.

Building Identification Number and Address: Enter the Building Identification Number (BIN) assigned to the building (from IRS Form 8609). According to IRS Notice 88-91, the BIN consists of a two-character state postal abbreviation followed by the two-digit designation representing the allocation year, and a five-digit numbering designation. For example, the identification number for one of 25 buildings allocated a credit in 2010 by the Connecticut Housing Finance Authority (the only housing credit allocating agency in the state) might read CT-10-01001.

Owner's Contact Name, Address and Phone Number: Enter the name, address and phone number of the owner or owner's contact person. This will often be a representative of the general partner. This information will be used for future mail or telephone contacts regarding the development. As such, we need an individual and company name and address as opposed to the partnership name.

Annual Amount of Tax Credits Allocated: Enter the total dollar amount of federal tax credits that may be claimed each year by the owners of this project.

Number of Total Units: Enter the total number of units in the project, summing across buildings if needed.

Number of Total Units by Size: Enter the number of units in the project (summing across buildings if necessary) that have 0, 1, 2, 3, or 4 or more bedrooms. Make sure the units sum to the total number of units in project.

Number of Low-Income Units: Enter the number of units in the project (summing across buildings if necessary) that were qualified to receive Low-Income Housing Tax Credits when the building(s) was/were placed in service.

Elected Rent/Income Ceiling: Indicate whether the project qualifies for tax credits with units set aside for tenants with income less than or equal to 50% of Area Median Gross Income (AMGI) or 60% of AMGI. "1" = 50% or "2" = 60%

Units Below Elected Rent/Income Ceiling: Check yes if any units in the project have rent levels set below the elected maximum. If yes, enter the number of units which meet this criteria. "1" = yes; "2" = no

Year Placed in Service: Enter the year the project was placed in service. If this is a multiple building project, with more than one placed in service date, enter the most recent date. Placement in service date is available from IRS Form 8609, Item 5.

Year Project Received Allocation or Bond Issued: Enter the initial allocation year for which tax credits were awarded for the project. Allocation date is available from IRS Form 8609, Item 1a. If the project received multiple allocations, use earliest allocation year. If no allocation was required (i.e., 50 percent or greater tax-exempt bond financed) and IRS Form 8609 Item 1a is blank, enter the year the bond was issued.

Type (New Construction or Acquisition/Rehab): Enter the production type for which the project is receiving tax credits, i.e., a newly constructed project and/or one involving rehabilitation. If the project involves both New Construction and Rehab, check both boxes. (Construction type can be inferred from IRS Form 8609, Item 6. If box a or b is checked, the building is new construction. If box c and d or e is checked, the building is acquisition/rehab.) "1" = New Construction; "2" = Acquisition and Rehab; "3" = Both New Construction and A/R

Credit Percentage: Indicate the type of credit provided: 9% credit (70% present value) or 4% (30% present value). Maximum applicable credit percentage allowable is available from IRS Form 8609, Item 2. The entry on the 8609 is an exact percentage for the project and may include several decimal places (e.g., 8.89% or 4.2%). Please check the closest percentage -- either 9 or 4 percent. The box marked "Both" may be checked for where acquisition is covered at 4% and rehab at 9%. "1" = 4% credit (30% present value); "2" = 9% credit (70% present value); "3" = both

Non-profit sponsor? Check yes if the project sponsor is a 501(c)(3) nonprofit entity. Use the same criteria for determining projects to be included in the 10 percent non-profit set aside. "1" = yes; "2" = no

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Increased Basis Due to Qualified Census Tract (QCT) or Difficult Development Area (DDA)? Check yes if the project actually received an increase in the eligible basis due to its location in a QCT, DDA, or HERA-authorized DDA designation. Increased basis can be determined from IRS Form 8609, Item 3b. (Note: Projects may be located in a QCT or DDA without receiving the increase.) "1"=yes; "2"=no

Tax-exempt bond financing? Check yes if financing was provided through tax-exempt bonds. Use of tax-exempt bonds can be determined from IRS Form 8609, Item 4, which shows percentage of basis financed from this source. "1"=yes; "2"=no

Rural Housing Service (RHS) Section 514 loans? Check yes if the project was financed with a Rural Housing Service Section 514 direct loan, and provide the loan number. "1"=yes; "2"=no

Rural Housing Service (RHS) Section 515 loans? Check yes if the project was financed with a Rural Housing Service Section 515 direct loan, and provide the loan number. "1"=yes; "2"=no

Rural Housing Service (RHS) Section 538 loans? Check yes if the project was financed with a Rural Housing Service Section 538 loan guarantee, and provide the loan number. "1"=yes; "2"=no

HOME or CDBG funds? Check yes if the project was developed using HOME or CDBG funds, and provide the IDIS Activity ID number and the dollar amount of funds. "1"=yes; "2"=no

FHA/Risk Sharing loan? Check yes if the project has an FHA /HUD Risk Sharing loan, and provide the loan number. "1"=yes; "2"=no

Part of a HOPE VI development? Check yes if the project is part of a HOPE VI public housing revitalization effort, and provide the dollar amount of HOPE VI funds related to development or building costs only. "1"=yes; "2"=no

Population targeting? Check yes if the project targets a specific population, such as families, elderly, people with disabilities, homeless, or other. "1"=yes; "0"=no or not indicated

Federal or state project-based rental assistance contract? Check if the project has a signed contract for federal or state project-based rental assistance, subsidizing rent for low-income tenants. "1"=Federal; "2"=State; "3"=neither

PUBLIC BURDEN STATEMENT

Public reporting burden for this collection of information is estimated to average 1 hour for each response. This includes the time for collecting, reviewing, and reporting the data. The information will be used to measure the number of units of housing financed with the Low-Income Housing Tax Credit (LIHTC) that are produced each year. The information will also be used to analyze the characteristics of these housing units, and will be released to the public. This agency (HUD) may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number.

APPENDIX B. SYNDICATOR AND BROKER INTERVIEW GUIDES

SYNDICATOR INTERVIEW GUIDES

LIHTC YEAR 15 STUDY SYNDICATOR INTERVIEWS (REVISED JANUARY 22, 2010)

INITIAL EXPLORATORY CALLS (APPROXIMATELY 2–3)

1. Explain the study briefly.
2. How would you describe your portfolio of early LIHTC (pre-1994) properties
 - a. Did it include many Farmer's Home projects?
 - b. Did it include many projects with project-based Section 8s?
3. Were most of your early TC investments done as public offerings to individuals or private offerings to institutional investors? If this changed over time, when did that occur and why?
4. Were many of your earliest properties (pre-1990) subject to extended affordability restrictions beyond 15 years? Do you know what were the primary sources of these restrictions: other financing (Farmer's Home, HOME, etc)? State agencies distributing the tax credits? Other sources (local land use restrictions, etc)?
5. Do you have a database that includes information about what has happened to your LIHTC properties that have reached Year 15? That is, whether there has been a disposition, and if so, what was the nature of the disposition? (GP purchase versus third-party sale, for example)
 - a. If you have such a database would you be willing to share it, confidentially, with the study?
 - b. Would this data include information on other major types of financing that the LIHTC projects had initially (e.g., Farmers Home, FHA, project based Section 8, etc)?
 - c. What other kind of information might be available in your database of post-Year-15 properties? Does it include information on property size, unit configuration, special populations served in the original project, property condition on disposition, etc?
6. Do you aggressively pursue Year 15 property dispositions? Do you usually initiate the process, or does the general partner? Do you begin planning for this in earlier years, e.g., years 13 or 14?
 - a. If you work actively to initiate property dispositions, why do you do this? E.g., to end reporting requirements and administrative burden?

7. Do you have a general set of goals or exit strategy when the initial limited partnerships end? For example, is your objective to end them as simply and quickly as possible? Minimize exit taxes for LPs? Maximize residual value and financial return? Manage a transition to new ownership? Or see whether your firm can play an ongoing role such as resyndicating the property?
 - a. Do your goals or strategy vary depending upon the type or location or the property or other variables? For example, whether there were individual or institutional investors, the market location, property condition, whether nonprofit or for profit GP/project sponsor?
8. When you are involved in the disposition of a Year-15 property, how much do you usually know about plans for the property's continued use? Would you know, for example:
 - a. Whether the property continued to be operated as affordable housing, under continued regulatory oversight (PROG)?
 - b. Whether the property was relieved of regulatory oversight, but continued to essentially serve the same population/income groups at the same rents (NON-PROG)?
 - c. Whether the property was repositioned to become market-rate rentals or condos, or was perhaps torn down altogether (NON-PROG)?
 - d. Whether the property has been resyndicated (PROG)?
9. [If respondent seems to know this]: What proportion do you think have remained affordable housing and what have not?
10. Do you have information on the new property owners? Do you have contact information for the new owners? Do you maintain any kind of ongoing relationship with these new owners?
 - a. [If the respondent seems to have information on new owners]: Our study will involve interviewing a modest number of new owners of post-Year-15 properties around the country to learn about what happened to these properties and why. Would you be able to help us contact a modest number of the new owners of post-disposition properties?
11. [If respondent says they have good data about many or all early TC investments]: Would you be willing to participate in the study?
 - a. All information collected will remain strictly confidential. Findings will be reported only in the aggregate.
 - b. Participation in the study will involve, at a minimum, sharing database information (if available) and an hour-long telephone interview.
 - c. We will be following up with day-long visits to a more limited number of syndicators. We would hope to have the opportunity to interview individual asset managers or disposition team members both about your firm's general approach to disposition and about specific properties.

PHONE INTERVIEWS (10 GROUPS; APPROXIMATELY 1 HOUR EACH)

The questions for these interviews are divided into three major sections:

- A. Overview of Your LIHTC Portfolio**
- B. Your Approach to Projects At Year 15**
- C. Information about Your Projects Which Have Reached Year 15**

A. OVERVIEW OF YOUR LIHTC PORTFOLIO

1. Explain the study briefly and describe confidentiality policy
2. Can you briefly describe your overall LIHTC portfolio
 - a. How many properties and how many units are in it?
 - b. Does it have a geographic focus?
 - c. Are the general partners (or their sponsoring affiliates) generally nonprofits, for profits or a mix?
 - d. Is there any focus on specific resident populations, e.g, families, elderly, or people with special needs?
 - e. Do you know how many projects in your portfolio have been foreclosed? Do you see an increase in foreclosures?
3. How would you describe your portfolio of early LIHTC (pre-1994) properties
 - a. Did it include many Farmer's Home projects?
 - b. Did it include many projects with project-based Section 8s?
 - c. Were project sponsors mostly for-profits, nonprofits, or a mix?
4. Were most of your early TC investments done as public offerings to individuals or private offerings to institutional investors? If this changed over time, when did that occur and why?
5. Were many of your earliest properties (pre-1990) subject to extended affordability restrictions beyond 15 years? Do you know what were the primary sources of these restrictions: other financing (Farmer's Home, HOME, etc)? State agencies distributing the tax credits? Other sources (local land use restrictions, etc)?
6. We have some questions about the market characteristics of your early LIHTC projects in comparison to later ones:
 - a. What proportion of early projects are in strong versus weak market areas? E.g., could you estimate what proportion were located in areas with high housing demand versus low housing demand? How does this compare to later projects' locations?
 - b. What proportion of early projects are in high rent areas versus low rent areas? How does this compare to later projects' locations?
 - c. What proportion of early projects received a basis boost for locating in a QCT (qualified census tract)? For locating in a DDA (difficult development area)? How do these compare to later projects' locations?

- d. Could you comment on the standards of design for the early projects? What proportion of early projects were built to modest design standards that are below those of the conventional rental market today? How does this compare to later projects' design standards?

B. YOUR APPROACH TO PROPERTIES AT YEAR 15

7. Do you aggressively pursue Year 15 property dispositions? Do you usually initiate the process, or does the general partner? Do you begin planning for this in earlier years, e.g., years 13 or 14 or even after Year 10 when the TCs end?
 - a. If you work actively to initiate property dispositions, why do you do this? E.g., to end reporting requirements and administrative burden?
8. Do you have a general set of goals or exit strategy when the initial limited partnerships end? For example, is your objective to end them as simply and quickly as possible? Minimize exit taxes for LPs? Maximize residual value and financial return? Manage a transition to new ownership? Or see whether your firm can play an ongoing role such as resyndicating the property?
 - a. Do your goals or strategy vary depending upon the type or location or the property or other variables? For example, whether there were individual or institutional investors, the market location, property condition, whether nonprofit or for profit GP/project sponsor?
 - b. Are exit taxes an issue for any/many (what proportion) of your early TC projects? How are they covered? Do you anticipate exit taxes being less of an issue for later projects? If so, why? E.g., they were covered in initial yield calculations; higher TC prices mean they are less of an issue, etc.?
 - c. Have you had properties sold through a Qualified Contract sales process? How many and in which states? How were the sales handled?
 - d. Do you think most (the majority, what percentage of) deals do or do not have much market value at Year 15? If not, why not? E.g., debt exceeds value; rents aren't sufficient to carry much real debt or barely cover operating costs; they were built modestly and don't meet current market standards for design or finishes; they haven't been well maintained; ongoing use restrictions limit their value, etc.
9. When you are assessing how to end limited partnerships at year 15, how do you go about preparing an assessment of the property's value? How do you document your exit analysis? If there is some market or residual value, are you obliged to try to realize it for limited investors? If so, how do you approach this?
10. Do you see many/any limited partners who are selling their shares on the secondary market before or after Year 10? Do you arrange such sales? If so, do you see any increase in them? If you have such sales, do they impact what happens at and after Year 15?
 - a. If these sales have occurred, how many have there been?
 - b. If they have occurred, does your role continue or change?

C. INFORMATION ABOUT YOUR PROPERTIES THAT HAVE REACHED YEAR 15

11. How many properties that have reached Year 15 have left your portfolio?
12. What information do you retain about the outcomes for post-year 15 properties that have been in your portfolio? (NOTE: for each of these questions, we should ask how accessible this information is: i.e., could it be retrieved from a database, or would it have to be researched through a case-by-case review of the files. I'm guessing that a – d could go either way, but that e & f will definitely need to be determined through deal memos, etc.)
 - a. Will you know whether the property continues to be subject to compliance monitoring due to extended use LIHTC restrictions, based on its original financing? (PROG)
 - b. Will you know whether the property continues to be subject to compliance monitoring due to use restrictions from other sources in its original financing? (PROG, maybe)
 - c. Will you know whether or not the property has had a disposition? (DISPOSITION/NON-DISPOSITION)
 - d. Whether the property was relieved of regulatory oversight, but continued to essentially serve the same population/income groups at the same rents (NON-PROG)?
 - e. Whether the property was repositioned to become market-rate rentals or condos, or was perhaps torn down altogether (NON-PROG)?
 - f. Whether the property has been resyndicated (PROG)?
13. Do you have a database that includes information about what has happened to your LIHTC properties that have reached Year 15? That is, whether there has been a disposition, and if so, what was the nature of the disposition? (GP purchase versus third-party sale, for example)
 - a. If you have such a database would you be willing to share it, confidentially, with the study?
 - b. Would this data include information on other major types of financing that the LIHTC projects had initially (e.g., Farmers Home, FHA, project based Section 8, etc?)
 - c. What other kind of information might be available in your database of post-Year-15 properties? Does it include information on property size, unit configuration, special populations served in the original project, property condition on disposition, etc?
14. What other information might you have on Year 15 properties? As in question 10, we will ask about each piece of information, whether it's available in readily accessible form through a database query, or whether it would need to be researched through an individual review of the files. *Note: We think it is unlikely they will have this information for properties that have been sold, unless they are involved in resyndicating them.*
 - a. Term of LIHTC restrictions/extended use
 - b. Term of other original restrictions (other than LIHTC)
 - c. Sponsor types – profit/nonprofit; multiple properties v. single properties
 - d. Target populations (elderly, spec. needs, etc.) served by developments

- e. Rehab needs at the time of refinance
 - f. Operating statements or audits for post-Y15 properties that have not yet undergone a disposition?
 - g. Operating statements or audits as of the time of disposition for post-Y15 properties that have already left the portfolio?
15. Do you have information on the new property owners? Do you have contact information for the new owners? Do you maintain any kind of ongoing relationship with these new owners?
- a. Our study will involve interviewing a modest number of new owners of post-Year-15 properties around the country to learn about what happened to these properties and why. Would you be able to help us contact a modest number of the new owners of post-disposition properties?
16. [If respondent says they have good data about many or all early TC investments]: Would you be willing to share more detailed information with us, in a site visit to your office? *Note: If they have a data base but aren't willing or are unsure about a site visit, ask if they will share the data base with us, confidentially.*
- a. All information collected will remain strictly confidential. Findings will be reported only in the aggregate.
 - b. Participation in the study will involve, at a minimum, sharing database information (if available)
 - c. We will be following up with day-long visits to a more limited number of syndicators. We would hope to have the opportunity to interview individual asset managers or disposition team members both about your firm's general approach to disposition and about specific properties.

SITE VISITS (APPROXIMATELY 4-5 ORGANIZATIONS)

Site visits should include 1-2 interviews with senior asset management or dispositions staff about general trends in dispositions, followed by individual meetings with asset management or dispositions staff about specific properties.

Recommend that we secure as much data in advance of the site visits as possible and that we send the questionnaires to syndicators & staff in advance.

Meeting with Director of Asset Management or other senior A.M. staff, regarding overall impressions of exiting properties. Note, if we don't already have the information, ask about the size and major characteristics of their LIHTC portfolio (see Questions 2, 3 and 6 for the phone interviews).

1. What portion of the portfolio of projects from 1992 and earlier is subject to use restrictions that are longer than the 15-year LIHTC period? (These questions try to identify how much we can count on this syndicator to identify PROG/NON-PROG properties.)
 - a. How many properties are subject to extended LIHTC restrictions? Properties from 1990 and earlier? Properties from 1990-1994?
 - b. How many properties are subject to use restrictions from other sources: USDA rural funding; project-based Section 8; HOME funds, longer state-required tax credit compliance, other state funding programs, local funding, land-use regulatory agreements? Do you collect and maintain information on these restrictions?
 - c. Are you aware of any properties that have taken steps to terminate ongoing use restrictions? How has this worked?
2. In your role as asset managers, how much information do you have about the physical condition of the properties as they approach Year 15? If you do get this information, how would you characterize the physical condition of most properties as they reach the end of their compliance period? What proportions are:
 - a. In good physical shape, with needs readily met through existing reserves;
 - b. In poor condition, needing major capital improvements that can only be realized through an infusion of new capital;
 - c. Somewhere in between—acceptable but a bit tired?
 - d. Do you think the condition of many early TC properties is more problematic than later properties? If so, why is this? E.g., Is it because more of the early projects received only moderate rehab compared to later ones?
 - e. Do you know whether or not projects approaching Year 15 have reserve funds to tap for capital needs? If you know, what proportion of projects do you think have (1) little or no reserves, (2) modest reserves, (3) substantial reserves?
3. Do you think most (the majority, what percentage of) deals do or do not have much market value at Year 15? If not, why not? E.g., debt exceeds value; rents aren't sufficient to carry much real debt or barely cover operating costs; they were built modestly and don't meet current market standards for design or finishes; they haven't been well maintained; ongoing use restrictions limit their value, etc.

4. Please describe your overall policy or strategy regarding projects reaching the end of the compliance period.
 - a. Do you attempt to initiate a disposition as a matter of general practice? Or does this vary with ownership, market conditions, or some other aspect of the situation?
 - b. If you seek to end the limited partnerships as a matter of general practice, why do you do this?
 - c. Is an assessment of the highest-and-best use of the property a part of your disposition process? Do you actively seek disposition options that maximize real estate sale prices?
5. What are your overall impressions about projects that have completed the compliance period?
 - a. Have most undergone some sort of disposition?
 - i. For what proportion of properties does the GP or sponsor acquire the LP interests, or purchase the properties outright?
 - ii. In what kinds of situations do the GP/sponsors choose NOT to acquire the properties or LP interests? What other kinds of buyers have you found for these properties?
 - b. Who tends to initiate these dispositions – syndicator, investor, GP?
 - c. What motivates the different parties who might initiate a transition?
 - d. Do outcomes/dispositions tend to vary between nonprofit and for-profit sponsors? Strong versus weak markets? Partnerships with individuals v. institutions as investors?
6. For properties that do not transition ownership or undergo a major refinancing at the end of Year 15, do you continue to perform an asset management function? *Note: We suspect that there are not many properties in this category.*
 - a. Collect operating information?
 - b. Perform audits or file checks?
 - c. Monitor compliance with any post-LIHTC restrictions?
7. For properties that do not transition ownership or that are simply taken over and continue to be owned by the initial GP or its affiliate, do you have a sense of what the plans were for these properties?
 - a. How often were owners trying to reposition the property to take advantage of higher market rents or other market potential, i.e. condo conversion?
 - b. How often were owners trying to raise additional funds for major capital improvements? Do you know what sources were typically tapped?
 - c. Did you see properties that were torn down?
8. For properties that do transition ownership to someone other than the initial GP or its affiliate, in other words, which have been sold to a new owner:
 - a. What proportion try to reposition the property to take advantage of higher market rents or other market potential, i.e., condo conversion?

- b. What proportion re-syndicate with a new infusion of LIHTCs? (How many 9%? How many 4%?)
- c. Do you see many properties repositioning to serve another low-income or special needs segment of the population?
- d. Do you see any buyers who are purchasing large numbers of TC properties or entire portfolios? Who are they? Do you have any view of their objectives/motivations?
- e. Have you had properties sold through a Qualified Contract process? Do know know how many and in which states? How were these sales handled?

Meeting with individual Asset Managers, working off a portfolio list of properties they have handled:

For each post-Year 15 property:

1. Based on the information you have about the new or continuing owner's plans for this property, can you tell us whether this property:
 - a. Continued to be operated as affordable housing, under continued regulatory oversight (PROG)?
 - b. Was relieved of regulatory oversight, but continued to essentially serve the same population/income groups at the same rents (NON-PROG)?
 - c. Repositioned to become market-rate rentals or condos, or was perhaps torn down altogether (NON-PROG)?
 - d. Has this property been resyndicated (PROG)?
2. Has this property undergone a disposition to someone other than the initial GP or its affiliate?
3. How would you characterize the original GP? Nonprofit? Small for-profit developer? Mid- or large-size private developer?
4. How would you characterize the rental market in which this property is located? E.g., weak demand, moderate demand, high demand? Rising, stable or falling rents?
 - a. How high are vacancy rates?
 - b. Are LIHTC rents appreciably lower than market rents, or are they comparable?
 - c. What is the general condition of the market's rental properties? Is quality at unrestricted properties better than, worse than, or comparable to the subject?
5. What financing did this property use during its original syndication? Do any of those sources involve affordability restrictions that outlast the 15 year TC compliance period?
6. Who initiated the disposition? What was their motivation?
 - a. To maximize economic value/profit
 - b. To serve an affordable housing or community development mission
 - c. To end an administrative burden
 - d. To free up capital for reinvestment elsewhere

7. How much do you know about the property's physical condition on transfer? If you have this information, how would you describe the property's condition:
 - a. In good physical shape, with needs readily met through existing reserves; in poor condition;
 - b. Needing major capital improvements that can only be realized through an infusion of new capital;
 - c. Somewhere in between—acceptable but a bit tired?
8. As far as you know, did the refinance involve recapitalization and rehab? How would you assess the scope of the rehab performed? (Dollar value, overall description—*should we use a 1-to-3 or 1-to-5 scale?*)
9. How much do you know about the property's post-transfer use? Did the property remain affordable to a low- or moderate-income population? Was this affordability under any regular compliance review?
10. What other information can you provide about the disposition of this property? Do you have a disposition or deal memo that you can share with us?
11. Does your firm have any ongoing role with this property?
 - a. If so, do you have access to post-LIHTC or post-transfer operating performance information? Will you share it with us? (Audits (if relevant); year-end statement of profit & loss, etc.) (*Note: this is extremely unlikely unless there has been no disposition, or unless the firm is involved in an ongoing role due to a re-syndication, etc.*)
12. Can you provide contact information for the property's current owner so that we can attempt to interview him/her?

BROKER INTERVIEW GUIDE

LIHTC YEAR 15 STUDY BROKER INTERVIEW GUIDE (JANUARY 14, 2010)

QUESTIONS FOR BROKERS HANDLING LIHTC PORTFOLIO DISPOSITIONS

Introduction: Describe the study and its purpose; confidentiality

1. We understand that your firm has been involved in brokering the dispositions of LIHTC portfolios. How many LIHTC portfolio sales have you brokered? Approximately how many transactions, properties, units?
 - a. Do you handle sales of individual LIHTC properties or only portfolios? How many individual properties have you handled?
 - b. Are you seeing an increase in the number of sales transactions over time?
2. Please describe a typical transaction (any details you choose to divulge will be held in complete confidence):
 - a. How big was the portfolio? How many properties? How many units?
 - b. Who was the owner at the time? Nonprofit? For-profit?
 - c. Who bought the properties? What was their intended use?
 - d. Is there a typical profile to the transitions, e.g., types of markets, geographic location, property condition, etc.
3. Do sales of LIHTC properties or portfolios constitute a major portion of your business? Do you only handle transactions of a certain size – i.e., involving a minimum number of properties, units, potential sales price? Or are you focused on a certain geographic area or kinds of markets?
4. How do you get engaged in these deals? Who tends to seek you out – owners, syndicators, potential buyers?
5. What tends to motivate the sellers?
 - a. Desire to get cash from the sales?
 - b. Desire to exit the business?
 - c. Other reasons?
 - d. What proportion of sellers are for profits v. nonprofits?
6. What tends to motivate the buyers?
 - a. Secure property management contracts/work?
 - b. Reposition the properties and rent or sell for profit or cashflow?
 - c. Preserve affordability?
 - d. Other reasons?
 - e. What proportion of buyers are for profits v. nonprofits?

7. For the properties whose sale you broker, do the affordability restrictions tend to remain in place? Or do you and the buyer actively work to end those restrictions in order to increase the properties' value and options for repositioning?
 - a. Does this answer vary by property types, buyer or seller characteristics, or markets?
 - b. If you/the buyer do take steps to end affordability restrictions, how does that process typically work?
8. [Ask the following question if it seems relevant.] When affordability restrictions have ended, what do you see happening to the properties? E.g., they remain relatively affordable within the market, they are rehabbed and converted to higher end rentals; converted to condos; torn down and the site use changed?
9. For projects that remain affordable, what kinds of financing are typically used by the buyers to finance the acquisition?
 - a. Do they often use a new allocation of LIHTCs? If so, do you typically see 9% or 4% credits plus bond financing?
10. Do most properties need capital improvements? If so, would you characterize these as modest or substantial? Are they needed to reposition the housing up to today's market standards or to remedy deficiencies or worn out materials?
11. Would you be willing to share data with us on a sample of sale transactions, with appropriate assurances that all information will be held in strict confidence?
12. Would you be willing to put us in touch with buyers or sellers of LIHTC portfolios so that we can interview them for our study?

APPENDIX C. OWNER SURVEY

OMB APPROVAL NO. 2528-0269 (EXP. 07/31/2014)

RESPONDENT INFORMATION

Respondent:

Name:

Company:

Address:

Phone:

Email:

Property Information:

Project Address:

Name of Original Project Sponsor:

Nonprofit Status:

Number of Units:

Bedroom Distribution:

Construction Type:

Allocation Year:

Name of HFA:

Placed in Service Year:

Items to request prior to interview/survey:

- Current unit mix and rents
- Confirmation of LIHTC-based initial use restrictions, 15-year or 30-year
- Original sources of financing
- Data available from HUD National LIHTC Database

Items to track during interview/survey:

Owner Type

- ☐ New Owner
- ☐ Continuing Owner
- ☐ Old Owner

Affordability Period

- ☐ 15 Years
- ☐ 30 Years Or More

LIHTC PROGRAM STATUS

- ☐ In LIHTC Program
- ☐ Not In LIHTC Program

Name of interviewee:

Date of interview:

LIHTC 15-YEAR STUDY: INTERVIEW GUIDE FOR OWNER INTERVIEWS

PUBLIC BURDEN STATEMENT

Public reporting burden for this collection of information is estimated to average 1 hour for each response. The survey will collect data on LIHTC property owners' experience with the LIHTC program, gathering information that factored into property disposition decisions. Data will also be collected on whether projects were sold and whether projects continued as affordable rental housing. This agency (HUD) may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number.

I. SCREENING AND BASIC PROPERTY INFORMATION

I-1. Are you / is your company the owner of _____?

☐ YES

CURRENT OWNER: If the current owner, were you or your affiliate also the owner of the property when it was originally placed in service under LIHTC?

☐ YES, CONTINUING OWNER

☐ NO, NEW OWNER

If address is wrong, enter correct address: _____

☐ NO

NOT CURRENT OWNER: If not the current owner, were you the owner when the property was first placed in service?

☐ YES, FORMER OWNER (**owner when property was first placed in service with tax credits**)

In what year did you sell the property? _____

☐ NO

*If neither current nor former owner, **terminate** the interview. Ask if the respondent can give you name and contact information for current or former owner and try to interview. _____*

Q I-1 comment: _____

Based on these questions, determine whether to treat this as a NEW OWNER property or a CONTINUING OWNER property when asking further questions. Note that even if you're talking to the old FORMER OWNER, you should treat the property as a NEW OWNER property if it has a new owner. But try to talk to the new owner, if possible.

☐ NEW OWNER

☐ CONTINUING OWNER

☐ FORMER OWNER

- I-2. Are you / is your company or were you / was your company either the sole owner of the property or the general partner or sponsor of an ownership entity that also includes limited partners?

Ownership entity with partners may be a Limited Partnership (LP) with a general partner (GP) or a Limited Liability Corporation (LLC) with a managing member.

- ☐ YES, sole owner, the GP or sponsor, or managing member
- ☐ NO

Not the sole owner or the GP or the managing member, confirm that the respondent is in a position to discuss the property's status and decisions made about it. Confirm the role of the possible interviewee; property or asset managers may not be able to discuss owner decisions about the property.

*If not a good informant, ask for name and contact information for someone more appropriate, and **terminate** the interview.* _____

I-2a. If some other type of owner, please explain. _____

Q I-2 comment: _____

- I-3. Please tell me a little more about your company. Is your company for profit or nonprofit?

- ☐ FOR PROFIT
- ☐ NONPROFIT

I-3a. Approximately how many units does your company own altogether, including this property?

Number of Units: _____

I-3b. *[If not sure of total units]* Does the company own...

- ☐ MORE THAN 100 UNITS
- ☐ MORE THAN 400 UNITS
- ☐ MORE THAN 1,000 UNITS
- ☐ MORE THAN 2,500 UNITS

I-3c. Please describe where your company does business. Do you own properties in many states around the country, or only in certain regions? _____

Q I-3 comment: _____

OMB APPROVAL NO. 2528-0269 [EXP. 07/31/2014]

I-4. (NEW OWNERS ONLY) Do you know the name of the original owner? My information shows that the original sponsor, _____ of the property was a _____ - choose one - _____. Is that correct?

☐ DON'T KNOW

☐ YES

☐ NO

Enter corrected information, including name of original owner and/or status of for profit/nonprofit.

☐ FOR PROFIT

☐ NONPROFIT

☐ DON'T KNOW

Q I-4 comment: _____

I-5. Please describe your experience and what happened at property disposition.

The purpose of this question is to allow the owner to tell the story of what happened at the time of property disposition. Some of the later questions may be answered through this narrative. Please confirm answers given here as you go through the rest of the survey.

Historical Property Information

New owners may not know answers to some of these historical questions about the property. Also, data on the property may be missing from HFA data sources. For data filled in from HFA records that the respondent does not know or cannot confirm, continue the interview based on the available HFA-based data.

I-6. I now have some more historical questions about the tax credit property. My information shows that this property was placed in service with (low-income housing) credits in _____. Is that correct?

☐ DON'T KNOW/CAN'T CONFIRM

☐ YES

☐ NO

Corrected placed in service year _____

*If placed in service later than 1995, ask if the property was originally placed in service in 1994 or earlier under an earlier allocation of LIHTC. If so, confirm or record both that date and the new PIS date; **terminate** and find a replacement property, using same source that found this property.*

Q I-6 comment: _____

I-7. Do you know if the project ever had a Rural Housing Service Section 515 loan? My information shows that when the property was placed in service in _____ it **did not** have a Rural Housing Service Section 515 loan.

☐ DON'T KNOW/CAN'T CONFIRM

☐ YES, there was a Section 515 loan when the property was placed in service

*If the property had an RHS 515 loan when placed in service; **terminate** and find a replacement property, using same source that found this property.*

☐ NO, there was no Section 515 loan when the property was placed in service

Did the property get a 515 loan at some time after the original placed-in-service date?

☐ YES

☐ NO

☐ DON'T KNOW

Can continue with the interview if the property got a 515 loan after the original placed in service year.

Q I-7 comment: _____

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I-8. Do you know if the project ever had project-based Section 8 or subsidies from a similar state or local project-based rental assistance program? My information shows that the property ***did not*** have project-based rental assistance.

☐ DON'T KNOW/CAN'T CONFIRM

☐ YES, there was project-based Section 8 or similar

Was Section 8 or other rental assistance attached to the property after the original placed-in-service date?

☐ YES

How many units or what proportion of units in the property had project-based Section 8 or other rental assistance? _____

☐ NO

☐ DON'T KNOW

*Continue interview if project-based rental assistance was attached after the original LIHTC placed in service year and less than 10 percent of the total units got project-based rental assistance. Otherwise, **terminate** and find a replacement property.*

☐ NO, there was no project-based Section 8 or similar

Q I-8 comment: _____

I-9. My information shows that the property had units, including: _____.
Is that correct?

☐ DON'T KNOW/CAN'T CONFIRM

☐ YES

☐ NO *[If available, enter correct unit count and unit distribution by bedrooms.]*

Q I-9 comment: _____

I-10. When originally placed in service, was the property targeting any particular population group – for example, family, elderly, disabled, homeless, special needs, or some other population? *[Other than low-income populations.]*

☐ DON'T KNOW/CAN'T CONFIRM

☐ YES

What group? _____

Does the property still target a particular population?

☐ YES *[list group(s)]* _____

☐ NO

☐ NO

Q I-10 comment: _____

I-11. My information shows that the property was _____ - choose one - _____. Is that correct?

☐ DON'T KNOW/CAN'T CONFIRM

☐ YES

☐ NO *[Corrected answer]* _____

If rehabilitation:

I-11a. Was the property converted from non-residential to residential use?

☐ YES

☐ NO

I-11b. Was the rehab substantial, moderate, or light?

☐ SUBSTANTIAL

☐ MODERATE

☐ LIGHT

☐ DON'T KNOW

I-11c. What was the approximate cost of the rehab?

☐ LESS THAN \$6,000 PER UNIT

☐ MORE THAN \$20,000 PER UNIT

☐ SOMEWHERE IN-BETWEEN \$6,000-\$20,000 PER UNIT

☐ OTHER _____

☐ DON'T KNOW

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I-11d. Please describe the scope of the rehab.

Allow respondent to provide details of rehab work, and also probe on the conditions of the building systems, whether new or like new, etc.

Q I-11 comment: _____

I-12. When this property was financed under LIHTC, was it syndicated through an investment firm, sold to one or more corporate investors, or sold to individual investors?

Note to interviewers: Some interviewees may not know whether the investment firm which syndicated a property put it into an individual investor fund or into a fund with corporate investors. We have also seen at least one property whose investor put its LIHTCs into 2 funds, one with individual investors and one with corporate investors.

☐ SYNDICATED

IF SYNDICATED, Can you tell us the name of the firm which syndicated the tax credits in the property?

☐ NAME OF FIRM _____

Did the firm invest the LIHTCs in a fund with individual investors or with corporate investors?

☐ INDIVIDUAL INVESTORS☐ CORPORATE INVESTORS☐ DON'T KNOW☐ CORPORATE INVESTORS

IF CORPORATE INVESTORS, Can you tell us the name(s) or the corporate investors?

☐ NAME OF FIRM _____☐ DON'T KNOW

Q I-12 comment: _____

I-13. What debt financing and what other financing was used in the original financing of the property, in addition to tax credits? For example, did it use a commercial mortgage, HFA, and/or a HUD-insured mortgage? HOME funds, CDBG funds, state or local own source funds, charitable funds, was it an RTC sale?

Respondent may not have clear information regarding original financing.

Debt Financing: _____

Other Financing *[May be considered equity if it doesn't need to be repaid or soft debt that is not required to be repaid.]*

I-13a. Did any of these funding sources require longer terms of affordability than 15 years? Please explain.

I-13b. Were there any other regulatory restrictions on the length of time during which the property would be subject to affordability restrictions? For example, was there a land use restriction agreement? Please explain.

Q I-13 comment: _____

I-14. My information shows that the tax credit allocation/award for the property was made in _____. Is that correct?

☐ DON'T KNOW/CAN'T CONFIRM

☐ YES

☐ NO *[Corrected answer]* _____

Q I-14 comment: _____

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I-15. The earliest (low-income housing) tax credit awards required a federal 15-year affordability period, and later tax credit awards required a 30-year affordability period. Was the property able to leave the LIHTC program after the 15-year affordability period?

- ☐ YES, earliest LIHTC award with no further IRS use restrictions
- ☐ YES, later award with further IRS use restrictions but it has left the LIHTC program
- ☐ NO, an early award but the state awarding the credits already required an affordability period longer than 15 years
- ☐ NO, later award with further IRS use restrictions
- ☐ OTHER *[Describe]* _____
- ☐ DON'T KNOW

Code as 15 year property or 30 year property:

- ☐ 15 YEAR PROPERTY
- ☐ 30 YEARS OR MORE PROPERTY

Q I-15 comment: _____

I-16. Do you know if this property is still in the (low-income housing) tax credit program? My information shows that this property [**continues to be monitored/is no longer being monitored**] by _____ or compliance with LIHTC rules. Is that correct?

- ☐ DON'T KNOW/CAN'T CONFIRM
- ☐ YES, property continues to be monitored by the HFA for LIHTC compliance
- ☐ NO, property is no longer being monitored by the HFA for LIHTC compliance

Code project's LIHTC PROGRAM STATUS.

- ☐ IN LIHTC PROGRAM (monitored by the HFA for LIHTC compliance)
- ☐ NOT IN LIHTC PROGRAM (no longer monitored by the HFA for LIHTC compliance)

Q I-16 comment: _____

II. TRANSITION IN OWNERSHIP AND LIHTC PROGRAM

II-1. (CONTINUING OWNERS NOT IN LIHTC PROGRAM) How did you come to stop reporting data on compliance with LIHTC program rules to the HFA? How did that work? What notifications or approvals, if any, did you need? How long did it take? *[May have to explain that we're defining leaving the program as being no longer subject to LIHTC use restrictions and no longer reporting to the HFA]*

II-1a. [30 YEAR PROPERTY] How were you able to leave the program if subject to the extended, 30-year use restrictions? _____

Q II-1 comment: _____

II-2. Is this property still affordable, still renting at rents that are within the LIHTC limits?

☐ YES

Why did you continue to keep rents affordable?

☐ STILL UNDER LIHTC IRS USE RESTRICTIONS

☐ OTHER USE RESTRICTIONS

☐ MARKET RENTS ARE COMPARABLE TO LIHTC RENTS

☐ ORGANIZATIONAL MISSION

☐ OTHER REASONS *[Describe.]* _____

☐ NO

Q II-2 comment: _____

For CONTINUING OWNERS NOT IN LIHTC PROGRAM, go to Section III.

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II-3. (NEW AND CONTINUING OWNERS IN LIHTC PROGRAM) Did you ever consider changing all or part of the property to market use?

☐ YES

Why didn't you pursue the change?

☐ MARKET WOULDN'T SUPPORT HIGHER RENTS

☐ HFA OR OTHER ENTITY OFFERED INDUCEMENTS TO STAY IN

☐ OWNER/SPONSOR COMMITMENT TO AFFORDABLE HOUSING

☐ OTHER REASONS *[Describe.]* _____

☐ NO

Q II-3 comment: _____

II-4. (NEW AND CONTINUING OWNERS IN LIHTC PROGRAM) [30 YEAR PROPERTY] Did you ever consider trying to leave the program through the Qualified Contract process and change all or part of the property to market use?

☐ YES

Did you file for the Qualified Contract Process?

☐ YES

What happened? Please explain. _____

☐ NO

☐ NO

Why not?

☐ ORGANIZATIONAL MISSION

☐ COMMUNITY COMMITMENT

☐ FORMAL OR LEGAL REQUIREMENTS

☐ MARKET LIMITATION ON RENTS

☐ OTHER REASONS *[Describe.]* _____

Q II-4 comment: _____

II-5. (NEW OWNERS) What year did the property change ownership?

Year _____

II-5a. Was that before or after the property passed its 15 year date?

- ☐ BEFORE
- ☐ AFTER
- ☐ DON'T KNOW/NOT SURE

Q II-5 comment: _____

II-6. (NEW OWNERS NOT IN LIHTC PROGRAM) Was leaving the program (no longer being subject to LIHTC use restrictions and reporting to the HFA) part of changing ownership or done before the ownership was changed?

Note to interviewers: if the new owner does not know the answer to some of these historical questions, you may have to seek an interview with the original owner. New owners may not know details that happened before change in ownership.

- ☐ PART OF CHANGING OWNERSHIP
- ☐ DONE BEFORE CHANGING OWNERSHIP

II-6a. How did that work? What notification or approvals were needed? _____

II-6b. How long did it take? _____

II-6c. [30 YEAR PROPERTY] How was the property able to leave the program if subject to the extended, 30-year use restrictions? _____

Q II-6 comment: _____

II-7. What was the mechanism used to accomplish the ownership transition in [year]?

- ☐ GP BOUGHT OUT LP
- ☐ SALE TO NEW ENTITY
- ☐ OTHER [Describe.] _____

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II-7a. (CONTINUING OWNERS) Do you know if the original documents on the property such as the partnership agreement or possibly an option-to-purchase or right of first refusal for the GP defined how a 15 year sale/disposition would be handled?

☐ YES

What was originally defined and was this scenario followed at the disposition, or was something different done? _____

☐ NO

☐ DON'T KNOW

II-7b. Was the price originally agreed upon?

☐ YES

☐ NO

☐ DON'T KNOW

II-7c. If the price was determined another way, how was it determined? For example, did the general partner and/or limited partner have the property appraised? Was a buy-out price established as part of a refinancing prior to Year 15? Did the new owner make a bid price for the property?

II-7d. If a new owner, did it work through a broker in buying the property or buy it directly from the owner?

Q II-7 comment: _____

II-8. What approvals, if any, were needed from the state tax credit regulatory agency or other public agencies for the disposition of the property? Please explain.

II-9. Were any approvals needed from local government? Please explain.

Q II-9 comment: _____

II-10. (NEW AND FORMER OWNERS) Is there any relationship between the previous sponsor(s) and current owners/sponsor(s) *[In other words, the former owner and the new owner, respectively.]*?

- ☐ YES. Please explain: _____
- ☐ NO

II-11. (NEW AND FORMER OWNERS) If the new GP or its sponsor was a nonprofit, was there a bargain sale to it?

- ☐ YES. Please explain: _____
- ☐ NO

II-12. (CONTINUING AND FORMER OWNERS) Did the LP have to pay exit taxes and, if so, were these covered through sales proceeds paid to it? Were there any sales proceeds net of expenses and, if so, how were they split between GC and LP?

II-13. (NEW AND CONTINUING OWNERS) Have you re-syndicated the property with a new allocation of tax credits or sold Limited Partnership interests to one or more corporate investors or individual investors?

- ☐ YES
- ☐ RE-SYNDICATED

What is the identity of the new syndicator?

NAME OF FIRM _____

CORPORATE INVESTORS

What is the name of the new corporate investor?

NAME OF FIRM _____

OTHER Please explain: _____

- ☐ NO

Do you intend to re-syndicate the property with a new allocation of (low-income housing) tax credits or sell Limited Partnership interests to one or more corporate investors or individual investors?

- ☐ YES
- ☐ NO

Q II-13 comment: _____

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II-14. (NEW OWNERS) When you bought this property, what were the sources of financing/refinancing, including any mortgage financing, when you bought the property, including public sources (HOME, CDBG, etc.)?

Note to interviewers: If the new owner says above that they re-syndicated the property, this may be financing in addition to the re-syndication.

Debt Financing: [Any sources of mortgage debt that must be paid currently.]

Other Financing: [May be considered equity if it doesn't need to be repaid or soft debt that is not required to be repaid.]

Equity:

II-14a. What was the amount from each source? *[May be listed with sources above.]*

II-14b. Did any of these sources carry with them any sort of new or extended regulatory limitations or requirements?

II-14c. Would you be willing to send us a budget with the source and uses for your acquisition financing?

☐ YES

☐ NO

☐ OTHER

Q II-14 comment:

II-15. (CONTINUING OWNERS) Did you ever refinance the property?

☐ YES

II-15a. Why was it refinanced? (For example, to pay for repairs, to qualify for rent subsidies, to take advantage of lower, more favorable interest rates, etc.)

II-15b. When was it refinanced?

II-15c. Using what sources, including public sources (HOME, CDBG, etc.) and what amount from each source?

II-15d. Did any of these sources carry with them any sort of new or extended regulatory limitations or requirements?

☐ NO

II-16. (CONTINUING OWNERS IN LIHTC PROGRAM) Did the property ever need an investment of funds from its limited investors or from the general partner in order to address financial problems?

☐ YES

When and why? For example, was the property at risk of mortgage default, unable to maintain a high level of occupancy, had large repair needs, had higher than projected operating expenses for taxes, utilities, etc.? _____

Who invested these funds: the general partner, the investor(s), or someone else? _____

How much was invested? _____

☐ NO

III. MARKET CONSIDERATIONS – NOT IN LIHTC PROGRAM

III-1. (NOT IN LIHTC PROGRAM) Have you taken all or part of the property to market since leaving the program – that is, have you altered the income mix of tenants, did you raise the rents beyond what LIHTC would have permitted, or did you convert the property to condos rather than rental housing? Was all or any part of the property demolished or converted to non-residential use? Please explain.

If not taken to market, go to section IV, but come back here if you decide later if the property was taken to market. _____

III-1a. Was all or part of the property changed?

☐ ALL OF PROPERTY CHANGED

☐ PART OF PROPERTY CHANGED

Please describe: _____

III-1b. Did taking the property to market include changing the target population—e.g., no longer intended to serve elderly, special needs, families, if one of those was the original target population?

☐ YES. Please describe: _____

☐ NO _____

Q III-1 comment: _____

III-2. (NOT IN LIHTC PROGRAM) Please describe how the decision to take the property to market was made. For example, who participated in this decision and how did that play out? Was the decision made when the property was first placed in service under LIHTC, as 15 years approached, or at a later time?

III-3. (NOT IN LIHTC PROGRAM) What were the reasons for conversion? For example, was it done because of market opportunities (higher rents/more cash flow), to convert the property to other residential or non-residential use? Were there other financial reasons, such as loss or change of rent subsidies or other financing? Please explain.

III-4. (NOT IN LIHTC PROGRAM) Did the conversion include refinancing? Did the property have unmet capital needs? What role did that play in the decision to convert? Please explain.

III-5. (NOT IN LIHTC PROGRAM) Were any approvals needed from the HFA, other public agencies, or other financing entities to change the use of the property? Were any approvals needed from local government? If so, explain how they worked.

III-5a. Did the HFA try to persuade you to keep the property affordable?

☐ YES. Please describe how: _____

Did you modify your plan as a result of their efforts?

☐ YES. Please describe how: _____

☐ NO

☐ NO

III-6. (NOT IN LIHTC PROGRAM) Did local government try to influence the changes?

☐ YES. Please describe how:

☐ NO

III-7. (NOT IN LIHTC PROGRAM) Did local community organizations and/or residents of the property play a role in the decision-making or approvals?

☐ YES. Please explain: _____

☐ NO

III-8. (NOT IN LIHTC PROGRAM) Are there any circumstances in which you would have kept the entire property affordable rental housing?

☐ YES. Please explain: _____

☐ NO

IV. REFINANCING, PHYSICAL CONDITIONS OF PROJECT

IV-1. Did the property need significant repairs/rehab before year 15, at year 15 (if new owner, at the time you bought the property), or since then?

☐ YES

IV-1a. When were these significant repairs needed?

☐ BEFORE YEAR 15. When: _____

☐ AT YEAR 15 OR AT SALE

☐ AFTER YEAR 15. When: _____

IV-1b. What kind of repairs / rehab were needed (for example, updating systems, modernizing units to meet current standards, meeting current codes, etc.)?

IV-1c. How/why these repairs prioritized? Were these repairs focused on infrastructure or market enhancement?

IV-1d. Were these completed?

☐ YES

☐ NO. What was completed? _____

IV-1e. What was the approximate cost per unit?

Cost Per Unit: _____

IV-1f. How were the repairs financed? Did this include any public subsidies? What were they?

☐ NO

Q IV-1 comment: _____

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IV-2. (CURRENT OWNERS) Do you think the property reserves are adequate for its ongoing repair/rehab needs?

☐ YES

Over what period of time do you think you will be able to meet the property's needs for further capital investments? _____

☐ NO

IV-3. (CURRENT OWNERS) Do you expect it will need to be refinanced in the next five to ten years?

Please explain. _____

IV-4. (IN LIHTC PROGRAM) Is the property meeting your expectations for cash flow or financially stable operations?

☐ YES☐ NO

Please explain. _____

V. CURRENT STATUS AND FUTURE PLANS

V-1. *[Ask if information was not received prior to interview.]* If the property has remained rental, what is the current residential rent schedule for the property?

RENTS FOR 0 BR UNITS _____

RENTS FOR 1 BR UNITS _____

RENTS FOR 2 BR UNITS _____

RENTS FOR 3 BR UNITS _____

RENTS FOR 4 BR UNITS _____

OTHER *[Describe.]* _____

Q V-1 comment: _____

V-2. Can you provide financial performance information (one year of audited or year-end operating statements) for this property?

☐ YES

☐ NO

Q V-2 comment: _____

V-3. (NEW AND CONTINUING OWNER) Do you plan to sell the property?

☐ YES.

Please explain: _____

☐ NO

Plans for Other LIHTC Properties

V-4. If you have other LIHTC projects which have not yet reached 15, do you think you will leave them under HFA monitoring or try to leave the LIHTC program? Will you convert the properties to market or leave them affordable? Why?

[Probe if the answer will vary for different types of properties or properties in different markets (e.g., urban v. rural v. suburban, or strong v. weak) or different geographies.]

V-5. Do you plan to acquire other LIHTC properties?

☐ YES

☐ NO

V-5a. What do you plan to do with those properties?

VI. OWNER VIEW OF NEIGHBORHOOD AND MARKET

VI-1. How would you describe the location of the property? E.g., rural, suburban, inner city neighborhood, other central city neighborhood, small town?

VI-2. How would you generally describe the condition of the surrounding neighborhood with regard to:
Physical Conditions (Good, Deteriorated, Mixed)

Security (e.g., High, Medium or Low Crime Rates)

VI-3. Has the neighborhood changed significantly since the property was first placed in service under the LIHTC program?

☐ YES

☐ NO

☐ DON'T KNOW

VI-3a. If it has changed significantly, how has it changed?

VI-4. Has the neighborhood changed significantly since year 15 or since you bought the property?

☐ YES

☐ NO

☐ DON'T KNOW

VI-4a. If it has changed significantly, how has it changed?

VI-5. How would you describe the residential real estate market in which the property is located? For example, not much demand, steady demand or weak demand for rental housing.

VI-5a. What are vacancy rates? _____

VI-5b. Are rents and values in the area stable, increasing, decreasing?

☐ STABLE

☐ INCREASING

☐ DECREASING

VI-5c. Are tax credit rents lower, higher, or comparable to unrestricted rents?

☐ LOWER

☐ HIGHER

☐ COMPARABLE

Q VI-5 comment: _____

APPENDIX D. NATIONAL HOUSING TRUST ANALYSIS OF LIHTC PRESERVATION POLICIES

HFA INCENTIVES FOR USING 9 PERCENT TAX CREDITS FOR PRESERVATION,
INCLUDING OLDER LIHTC DEVELOPMENTS, 2010-2011

Source: Analysis of the National Housing Trust database of state LIHTC policies conducted by National Housing Trust, 2011.

State Agency	2010 Incentives
Alabama HFA	In the 2010 QAP, AHFA has defined rehabilitation projects as being 50% or more occupied at the time of application to be considered existing multifamily residential rental housing. Rehabilitation costs must be at least \$20,000 in hard-construction costs per unit. A rehabilitation project that is less than 50% occupied at the time of the application is not considered existing housing and is treated as new construction when considering funding for targeting the elderly and families. The targeted population is not considered for rehabilitation projects that are at least 50% occupied. Rehabilitation properties are exempt from the minimum size requirements listed under the building characteristics. To encourage diverse site locations, only one new construction project (or rehabilitation project with less than 50% occupancy) for families and one new construction project for the elderly will be approved within each county.
Alaska HFC	Alaska's 2010 QAP awards points to rehabilitation properties based on per-unit hard costs. The range of possible points begins at 2 points for developments which have \$15,000 - \$25,000 in hard construction costs per unit and reaches 10 points for projects with costs of \$50,001 or more in hard costs per unit. Rehabilitation costs must be the greater of \$15,000 per unit or 10% of the 'adjusted basis' of the building and must consist of work items that are more than just cosmetic in nature. Five points are awarded to all projects including rehabilitation. At a minimum, the rehabilitation must consist of some sort of building renovation and/or demolition and reconstruction where a building is currently located at the project site.
Arizona DoH/HFA	In Arizona's 2010 QAP, two of the general goals for allocating Tax Credits include: 1) to enable substantial rehabilitation of existing rental housing in order to prevent losses to the existing supply of affordable apartments, and 2) to prevent the loss from the existing stock of low-income rental housing of those units under expiring contracts with federal agencies or subject to prepayment which, without the allocation of tax credits, would be converted to market rate apartments. Properties containing acquisition/rehabilitation and new construction will be given up to 30 points if the rehabilitation apartments total 50% or more of the total property and the acquisition/rehabilitation is 100% of the acquired apartments. Points awarded are proportional to rehabilitation costs per apartment. These points are also available to projects proposing the acquisition of an existing building. The points available depend on the pro rata rehabilitation hard costs per unit including site and demolition costs less property costs, as follows: \$35,000+ earns 30 points; \$25,000 - \$35,999 earns 15 points; \$15,000 - \$24,999 earns 10 points. In the 2010 QAP, up to 30 points are available to projects that preserve existing program or project-based rental assistance, such as project based Section 8 or other program-based rental assistance. The number of points available shall not exceed the product, rounded down to the next whole number, of 35 times the ratio of the number of section 8 or RD rental assistance units to the total number of units. Up to 30 points may be awarded for proposals to preserve historic properties. Projects are only eligible for one of the three preservation incentives. Rehabilitation projects also receive 4 points (out of a possible 13) in the tie-breaker criteria.

WHAT HAPPENS TO LOW-INCOME HOUSING TAX CREDIT PROPERTIES AT YEAR 15 AND BEYOND?

State Agency	2010 Incentives
Arkansas DFA	The 2011 QAP awards up to 10 points when a proposed development “involves preservation and rehabilitation of residential rental housing under an existing state or federal affordable housing program.” (Points are awarded according to what percent of the apartments under the affordable housing program are or become LIHTC.) The state also provides 10 points for properties involving ‘rehabilitation of existing structures.’ Rehabilitation hard costs must be no less than \$15,000 per apartment and no less than 20% of the developer’s total costs. The basis boost is directed toward assisted living projects and projects located in certain low-income counties.
California TCAC & CDLAC	The 2010 Allocation regulations provide a 5% set-aside for ‘at-risk’ properties defined as properties with subsidies (including tax credits) that expire within five years prior to or after the application date. Additionally, 10 points are provided to at-risk properties as meeting housing needs. Unit square footage requirements may be waived for rehab projects at the discretion of the executive director. Acquisition tax credits are only available to projects at risk of conversion. Applicants applying for competitive 9% tax credits and involving rehabilitation of existing buildings are required to complete the higher of: a minimum of \$20,000 in hard construction costs per unit unless they are ‘at risk’ properties which must complete \$10,000 in hard construction costs or 20% of the adjusted basis of the building.
Colorado HFA	The 2011 QAP provides 15 points for preservation developments, defined as existing tax credit developments eligible for acquisition/rehab credits that are retaining their current income targeting and developments which are eligible for acquisition/rehab credits and have federally subsidized rental assistance (HUD Section 8, Rural Development Section 515, etc.). Projects involving rehabilitation of blighted buildings, and/or those with serious building code violations that are abandoned or uninhabitable, are eligible for 5 project points. An additional point is available for rehabilitation developments that are located in an area that is part of a community revitalization plan. Colorado’s 2011 QAP also requires that the owner keep the units affordable for another 15 year extended use period (for a total of 30 years). The only way for an owner to get out of this is in the event of foreclosure OR if they sell the property to another party. Colorado awards points for projects that waive any rights to terminate the extended use period in the following increments: 15 Years of Compliance + 5 Years of Waiver = 10 pts; 15 Years of Compliance + 10 Years of Waiver = 20 pts; 15 Years of Compliance + 15 Years of Waiver = 30 pts; 15 Years of Compliance + 20 Years of Waiver = 34 pts; 15 Years of Compliance + 25 Years of Waiver = 38 pts. Colorado was among the first in the nation to use Tax Credit Assistance Program (TCAP) funding available through ARRA - \$1.7 Million in TCAP Funding to Support \$14 Million purchase and renovation of Denver Gardens Senior Housing.
Connecticut HFA	Connecticut’s 2010 QAP designates as a priority the development of housing which “preserves the existing stock of Federally assisted low-income housing, where loss of low-income service is possible upon prepayment of a mortgage or expiration of housing assistance contracts.” All applicants that meet the state’s threshold eligibility criteria are classified into one of three possible Allocation Priority Classes according to the characteristics of the proposed developments. General Class II includes applications for assistance necessary to preserve federally assisted apartments that will be lost due to mortgage prepayment, subsidy contract opt-out or subsidy contract termination. LIHTCs will be allocated first to nonprofit set-aside applicants, then to applications from General Class I (which can include acquisition and/or rehabilitation properties if they meet the Class I requirements, such as being part of Urban Regional Centers or Neighborhood Revitalization Zones), then to the extent available to applications from General Class II, and then to General Class III applications. Special Class I allows for qualified new construction or rehabilitation that is part of a comprehensive plan to replace and/or rehabilitate public housing units. The 2010 QAP also awards up to 10 points for new construction or rehabilitation proposals that provide additional apartments and 5 points for adaptive re-use of historic buildings, effectively acting as small preservation disincentives. Ten (10) additional points are available for the preservation of units as long as the proposed application does not result in a net loss of units after revitalization. The QAP also awards up to 20 points for per-unit cost effectiveness, a key characteristic of preservation.

State Agency	2010 Incentives
Delaware SHA	In the 2010 QAP, projects apply to specific pools, developments are ranked within those pools and the highest scoring developments in each are separately evaluated to determine the amount of tax credits required. For 2011, conversion developments now qualify for the Preservation Pool, which has approximately \$1,199,250 of Tax Credit Authority (45% of Delaware's credit pool). The following types of properties are eligible for this pool: 1) any tax credit housing development, which has completed its compliance period that is a) in need of substantial rehabilitation or b) at risk of losing its affordability; and 2) any currently subsidized housing development that is a) in need of substantial rehabilitation or b) at risk of losing its affordability. Up to 5 points will be awarded to developments that are of imminent risk of losing their affordability restrictions, depending on how soon affordability restrictions will expire. Substantial rehabilitation is defined as: at least \$35,000 hard cost in rehabilitation per unit and, the most recent use must be residential, 100% of the units must be rehabilitated, and no more than 25% new units can be added.
District of Columbia	The 2009 QAP awards 10 points to preservation projects. For projects involving rehabilitation, the costs must be the greater of \$6000/unit or 20% of the eligible basis. The 2009 QAP provides an exception to the 10-year rule for acquisition properties with Federal or other mortgages that are subject to prepayment provisions. 15 points will be awarded to projects that extend the affordability period 10 years beyond the required 30 year restriction, and 30 points are awarded to projects that extend the period by 20 years. Projects will also be awarded 10 points for the preservation of existing Section 8 and Section 236 projects as long as the applicant waives the rights to the developer fee. DHCD directs the 30% basis boost toward QCTs and DDAs.
Florida HFC	The 2011 draft QAP includes an increased 50% set-aside for preservation developments. Preservation projects are defined as rehabilitation of existing project based rental assistance developments and are required to have construction costs of at least \$10,000 in qualified basis per unit. There is a required 30-year period of occupancy restriction (includes 15 year federal requirement). A commitment to waive the option to convert after year 14 and to set-aside units beyond the required 30-year period is awarded up to 5 points on a pro-rata basis. Minimum extension period is 1 year and the max is 20 years, for a maximum total length of 50 years. There are separate points for new construction and rehab projects under "optional features and amenities."

WHAT HAPPENS TO LOW-INCOME HOUSING TAX CREDIT PROPERTIES AT YEAR 15 AND BEYOND?

State Agency	2010 Incentives
Georgia DCA/ HFA	In Georgia's 2010 QAP, 1.8M credits have been set-aside for preservation projects. Projects must fit into one of the following categories to be considered for this set-aside: existing tax credit project in the 14th or 15th year; PHA development using replacement housing factor funds or the PHA as the primary source of loans/cap funds; Section 515 for at least 50% of the units; project based Section 8 contract with opt-out eligible with 1 year notice to tenants; HUD 236; and any other HUD subsidized designated by HUD as a preservation project - DCA has veto power. 3 points are awarded for LIHTC project beyond 14th year or DCA HOME if statutory of affordability has expired (points can be claimed even if structure is demolished) New construction and rehab have same accessibility requirements. Rehab projects are required to complete a Physical Needs Assessment and a market analysis which considers the retention of existing tenants that are not rent burdened. Average per unit rehabilitation hard costs must equal or exceed \$25,000 for properties 20 years old or less and the average per unit rehabilitation hard costs equal or exceed \$30,000 for properties more than 20 years old. The total hard cost of any rehabilitation project must not exceed 90% of the as-completed unrestricted appraised value of the property. Rehabilitation properties will be considered for funding only if the average per unit rehabilitation hard costs equal or exceed \$25,000 for properties 20 years old or less and the average per unit rehabilitation hard costs equal or exceed \$30,000 for properties more than 20 years old. Rehab projects must have \$350 per unit per year for replacement reserves. Rehab projects that are awarded credits in 2010 must commence no later than Sept 30, 2011 and be completed by Dec 31, 2012.
HCDC of Hawaii	In the 2009 - 2010 QAP, Hawaii provides up to 2 points for "preservation of existing affordable rental housing at risk of being converted to market." To qualify for these points, proposals must be 1) acquisition/rehabilitation of a LIHTC property with an expiring compliance period (pre-1990) or an expiring extended use period (post-1990) and agree to extend the affordability for 30 additional years; or 2) acquisition/rehabilitation of a property which is at risk of being converted to market rate rental or for sale, which would result in lost affordable rental apartments. In this case, the property must have a contractual obligation with HUD, USDA RD or State or County housing programs to provide affordable housing, and must extend affordability for 30 additional years. The 2009 - 2010 QAP also provides up to 4 points for a property that "will be receiving project based rental assistance subsidies which would result in eligible tenants paying approximately 30% of their gross monthly income towards rent." Eligible programs include, but are not limited to, Section 515 or Section 8 programs. The number of points awarded depends on how many of the apartments have project based subsidies.
Idaho HFA	In the 2010 QAP, Idaho awards 15 points to developments that preserve existing rent-restricted units (defined as a development that will be converted to market rate apartments, as determined by the Association's review, at the end of its affordability regulatory agreement). This is a 5-point increase from the 2008 level, returning it to the 2007 level. Ten points are also available to developments which, due to the loss of federal project-based rental assistance subsidy, may revert to market use. This is a 5 point decrease for the 2008 level. For a building to be considered substantially rehabilitated, hard rehab costs during any 24-month period must equal or exceed an average of \$20,000 per unit.

State Agency	2010 Incentives
Illinois HDA	The 2010 QAP (which governs both 9% transactions and private activity bonds) removed the \$2 million set-aside from in the 2009 QAP for rehabilitation of currently occupied low-income housing developments whose conversion to market rate housing is likely or properties otherwise in danger of being lost due to need for substantial rehabilitation. There is a required 30-year period of occupancy restrictions (includes 15 year federal requirement). Eight (8) points are given to projects that incorporate an extended use period into the extended use agreement beyond the 30 year requirement, and 2 points are awarded for each additional 5 years beyond the 30 year requirement. Preservation projects can receive a maximum of 15 points in the 2010 QAP, 15 points if the project is rehab of a current low-income housing development that is financed under Sec 8, 202/811, public housing with a 1:1 replacement rate -or- 10 points if financed under 515 or 514 -or- 5 points if financed under 236, 42 or projects that are currently occupied, has no rent or income restriction and whose unit rents do not exceed 60% AMI. Chicago The City of Chicago receives a suballocation of tax credits from the state of Illinois. Chicago's 2009 QAP gives preference to non-public, at-risk federally assisted housing when awarding tax credits.
Indiana HFA	Indiana's 2011 QAP has a 20% preservation set-aside for developments which involve the substantial rehabilitation of an existing structure (affordable, market rate or otherwise) and/or a development otherwise in danger of being lost as affordable and/or the demolition and decentralization of housing units utilizing the same site (over 50% of the units must be replaced). The Authority may increase the eligible basis up to 30% for developments whose buildings are placed in service after July 30, 2008 if the eligible basis otherwise would be a low percentage of the total development costs due to competing under the preservation set-aside. This includes developments being removed from the affordable housing stock by a federal agency (i.e. HUD, Rural Development), rental housing RHHC developments with compliance periods that have expired or are expiring in the current year, developments which entail demolition and decentralization of apartments with replacement of apartments on the same site as described above, and the re-use of an existing structure for conversion into affordable housing where a minimum of 75% of the development is converted to affordable housing and/or its common areas. Rehabilitation hard costs must be in excess of \$30,000 per apartment to be considered in this category (\$20,000 for all other set-aside categories). Indiana also provides up to 8 points for preservation of existing affordable housing including: 8 points for the preservation of an affordable property with rental housing tax credits that expire in the current year or earlier; up to 8 points for the preservation of a previously HUD or USDA funded non-public housing development (such as project-based Section 8 or RD 515 properties), with developments receiving designation of high preservation priority from HUD or USDA getting 8 points, 5 points for medium priority and 3 point for low priority; or 6 points for proposed preservation of any other affordable housing development. Indiana awards 7 points for rehabilitation developments that support community preservation; the development must be at least 75% rehabilitation, part of a city or town's revitalization plan, or Infill housing that conforms to the existing neighborhood. The 2011 QAP offers up to 3 points for use of an existing, 100% vacant structure into rental housing. Two points are also available for projects that are historic in nature. Five points are available for federal assisted revitalization. New construction and rehabilitation projects are held to different standards concerning unit size square footage.
Iowa HFA	The 2010 QAP includes a 10% competitive set-aside for preservation of qualifying existing affordable properties where more than 50% of the units are income-restricted and rent-restricted to households at or below 60% AMI by Land Use Restriction Agreement, Reg Agreement, or Sec 8 project-based contract (a decrease in 10% from 2007). Additionally, 20 points will be awarded to projects where no less than 50% of the units are subsidized by a project-based rental assistance contract. The 2010 QAP also requires 30-year period of occupancy restriction (includes 15 year federal requirement).

WHAT HAPPENS TO LOW-INCOME HOUSING TAX CREDIT PROPERTIES AT YEAR 15 AND BEYOND?

State Agency	2010 Incentives
Kansas HRC	Kansas's 2010 QAP offers 10 points for proposals that preserve existing affordable housing "that would be subject to foreclosure or default if tax credits were not available as indicated by deteriorating physical condition, high vacancy rate, or poor financial performance." Up to 20 additional points are available for rehabilitating existing units that are structurally sound, energy efficient, and affordable. The amount of points offered in this category depends on the cost of rehabilitation. Five (5) points are available for rehabilitation costs between \$10,000 and \$15,000 per unit; 5 additional points are available for every additional \$5,000 per unit up to 20 points for costs in excess of \$25,000 per unit. Fifteen (15) "bonus points" are awarded for each priority housing need that is met, preservation being one of these needs. Kansas lists additional criteria for selecting properties for acquisition and rehabilitation credits. These include preferences for: developments with low acquisition to rehabilitation cost ratio, developments with low proposed rent increases, developments with no expected tenant displacement, developments with evidence that the private sector will not finance the acquisition and rehabilitation, developments under immediate threat of foreclosure and removal of existing tenants. All rehabilitation proposals must involve average rehabilitation costs of at least \$10,000 per unit.
Kentucky HC	In the 2011-2012 QAP, 10 points are awarded for projects that rehabilitate existing rental units in order to preserve the rental stock (minor rehabilitation such as cosmetic updates is not applicable). Substantial building rehabilitation of at least \$20,000 per low-income unit or 20% of adjusted basis, which is greater, is required. Housing credit in the amount of approximately \$750,000 is reserved for projects that have a pending application submitted to RD for the 515 or 538 programs or to HUD for the 202 or 811 programs to receive funds. This set-aside is for projects financed by RD or HUD for new construction or for projects in need of rehabilitation or order to preserve affordable rental units. Five (5) points will be awarded to proposals submitting an existing unsubsidized project which has rents at or below the affordable rent level.
Louisiana HFA	Louisiana's 2010 QAP grants 10 points for properties which require substantial rehabilitation (more than \$20,000/unit), 10 points for projects that involve historic rehabilitation, and 6 points for redevelopment projects (a property can't qualify as both redevelopment and rehab). Abandoned properties receive 10 points. Up to 5 penalty points may be deducted from a rehabilitation applicant's score if hard costs are less than \$20,000/unit, or if the development fee exceeds 25% of hard costs. Properties that extended the affordability period between 25-35 years may earn up to 4 points. Louisiana directs the 30% basis boost toward QCTs and DDAs.
Maine SHA	In Maine's 2011 QAP one 'Housing Need/Priority' identified by the MSHA is, "rehabilitation of existing housing stock, which does not result in displacement or substantially increased housing costs" and establishes a priority of the housing tax credits for, "projects involving acquisition and/or rehabilitation, which add to or significantly rehabilitate existing rental housing stock, and are rent-restricted to the lowest income households." \$100,000 is set-aside for rural development projects, currently financed under a multifamily housing program, where funding must be primarily for rehabilitation. The QAP provides 3 points to properties involving rehabilitation of existing housing stock of 5 or more apartments that also provide protection against displacement and substantial increases in housing costs attributable to the rehabilitation. In addition, rehabilitation projects containing more than 5 units that are located within designated community revitalization areas will receive 1 additional point. The QAP also includes a 90-year affordability period as a threshold requirement.

State Agency	2010 Incentives
Maryland DHCD	In the 2009 QAP, up to 20 points are awarded to applicants with long-term operating subsidies (up from 10 points in 2008), including project based rental subsidies. Applicants requesting tax credits from the 2009 QAP must agree to at least 40 years of low-income occupancy restrictions unless a structured 15 year homeownership program is created and accepted. For projects in either a qualified census tract or difficult to develop area, 10 points may be awarded under this category for rehabilitation or replacement projects, or 5 points for new construction projects, in neighborhoods that have existing community revitalizations plans. There is a \$15,000/apartment rehabilitation threshold, but DHCD may waive this if there is a strong need for preservation in the area of the proposal or if affordable apartments will be lost if the property in question is not financed using Department funds. Maryland has a 30% state basis boost that they will direct toward projects that need additional funding to be financially feasible. This is separate from the 30% boost reserved for QCTs and DDAs.
Massachusetts DHCD	For 2010, 40% of the available allocated credits are set aside for preservation properties (up from 35% in 2008), defined as: 1) housing at risk due to market conversion, 2) housing at risk due to physical condition and financial distress, 3) application represents a time-limited opportunity to purchase existing affordable housing, and 4) units are located in a large-scale significantly distressed public housing development and HOPE VI was already awarded. The minimum property size for the preservation set-aside is 8 apartments. One of the eight priorities established in the 2010 QAP is “projects that preserve valuable existing affordable units.” Additionally, a property must meet the threshold of demonstrating consistency with the Commonwealth’s Principles of Sustainable Development. The first of these 10 principles encourages re-using existing structures. Applicants are required to commit to a 30 year term of affordability; projects which commit to 50 years of affordable rents receive 6 points. The 30% basis boost may not be applied to the acquisition basis - only rehab projects that are located in a QCT or difficult-to-develop areas. Massachusetts has a unified application process, allowing developers to apply for low-income housing tax credits along with a variety of other funding options.
Michigan SHDA	MSHDA’s 2011 QAP targets 30% of its competitive 9% credits to preservation proposals. Preservation applies to the acquisition and renovation of existing properties. Adaptive re-use projects and entirely vacant residential buildings will not be considered new construction. Additionally, MSHDA provides substantial incentives available only to preservation applicants, including points for: containing rent increases, preserving project-based subsidies for the duration of or longer than the compliance period, acquisition costs less than 60% of the development cost, insufficient capital to provide needed continuing renovations and repairs, high-risk distressed properties (not in need of demolition), rehabilitation costs greater than \$20,000 per unit (with more points awarded to applicants proposing costs greater than \$30,000 per unit), local funding of at least \$5,000 per unit, federal funding for at least 30% of units, and replacement or redevelopment of public housing units. Eligible preservation properties include those with financing from HUD, USDA Rural Development, or MSHDA that is within 5 years of permitted prepayment of equivalent loss of low-income use restrictions; other below-market financing, properties with previous government funding of at least \$100,000; redevelopment of public housing units; or year 15 LIHTCs, allocated in 1994 or earlier. Projects meeting the threshold requirements for preservation are eligible for the 30% basis boost.

WHAT HAPPENS TO LOW-INCOME HOUSING TAX CREDIT PROPERTIES AT YEAR 15 AND BEYOND?

State Agency	2010 Incentives
Minnesota HFA	Minnesota's 2011 QAP requires applicants to meet at least one out of five thresholds requirements. One of these threshold requirements is: properties which preserve existing subsidized housing, if the use of tax credits is necessary to (1) prevent conversion to market rate use or (2) to remedy physical deterioration of the property which would result in loss of existing federal subsidies. Minnesota awards 10 selection points for the preservation of existing tax credit apartments and 20 preference points for the preservation of federally assisted apartments. Ten (10) points are also awarded for rehabilitation properties that meet certain minimum criteria, with 2 additional points if the proposal is part of a community revitalization plan. In order to receive preservation points, applicants must demonstrate that, without tax credit allocation, the affordable units would be lost either through the loss of subsidies within the next two years, conversion to market rate, or deterioration. Minnesota awards 3 selection points to applications proposing to acquire and rehabilitate a Foreclosed Property or are located in a Foreclosure Priority Area identified by Minnesota Housing that has been heavily impacted by the foreclosure crisis.
Mississippi HC	The 2010 QAP provides 15 points for applicants that are preservation, Hope VI developments or Historic preservation. There is another 10 possible points for a property that "preserves existing developments serving low-income residents that would be lost due to conversion to market rate, loss of rental assistance, foreclosure or default, and mortgage prepayment, or housing lost in a presidentially declared disaster area. To be eligible, the development must be currently in danger of conversion, foreclosure, default." In addition, the QAP awards 10 points (up from 7 in 2008) for applicants with development-based rental assistance for at least 51% of the development's apartments for five or more years or 3 points can be awarded if the project has tenant-based rental assistance (but not if receiving points for development-based assistance). Five (5) points are awarded for projects that received a commitment from the Preservation Loan Fund - rehab 515 housing. All properties committing to an extended compliance period of 40 years or longer are awarded 5 points. Ten (10) points are available if 20% of the units are set-aside for residents at 50% or lower AMI plus there is a commitment to provide housing for 40 years.
Missouri HDC	Missouri's 2011 QAP lists preservation of existing affordable housing as one of its six housing priorities. Developments that are not considered for the preservation priority but that do not contemplate the acquisition and rehabilitation of existing housing are encouraged and given extra consideration. The QAP does not have a numerical criteria system but MHDC will prioritize developments that have project-based rental assistance or operating subsidy or have a loan made prior to 1985 from any of the following loan programs: HUD 202/811, 221(d)(3) or (d)(4), 236 or USDA RD 515. Projects can also qualify under this priority through participation in HUD's Mark-to-Market restructuring program or by having a previous allocation of LIHTC prior to 1996. Rehabilitation projects seeking 9% credits must have construction costs equaling 40% or more of the total replacement costs. Proposals determined to meet the preservation priority qualify for a 30% basis boost.

State Agency	2010 Incentives
Montana BoH/HD	The 2011 QAP provides up to 2 points for properties that propose the preservation of existing federally assisted housing stock or increase the affordable housing stock through the use of the Rural Development 515 program, HOME program, the CDBG program or the FHLB Affordable Housing Program. If an owner substantially rehabilitated a building (by incurring rehabilitation expenditures the greater of either \$10,000 hard costs per rental unit or an amount which is not less than 20% of the adjusted basis of the building during a 24-month or shorter period), the rehabilitation expenditure is treated as a separate new building for purposes of the tax credit. The QAP also provides up to 4 points for the appropriateness of the property for the area's housing market (rehab. vs. new construction, or addressing vacant buildings). Comparisons will be made with the Market Study to determine how it addresses the considerations for rehabilitation or preservation of existing housing versus need for new construction. The QAP also provides 2 points for existing housing stock or properties applying for rehabilitation tax credits that have completed their initial 15-year compliance period. Projects are eligible for up to 10 points for committing to extend low-income use beyond 15 years depending on the length of the commitment.
Nebraska IFA	In the 2011 LIHTC application Self-Scoring Other Selection Criteria, 3 points are given to federally-assisted buildings in danger of having the mortgage assigned to HUD, RD, or of creating a claim on the federal mortgage insurance fund. Four points are available to developments involving the preservation of existing affordable housing.
Nevada HD	The 2010 QAP provides 3 points for projects that involve either "the acquisition and rehabilitation of at-risk properties listed in the National Housing Trust Publication" or preservation of a property "in an area covered by a state or local revitalization plan/strategy targeting the rehabilitation of existing housing." Rehabilitation developments must demonstrate that the rehab is substantial and involves at least \$40,000/apartment for expiring Section 8 and HAP projects or \$10,000/apartment for other rehab projects in direct hard costs. Acquisition/Rehab, Conversion or Change of Use Properties will be ranked based on the per-apartment rehabilitation investment (hard construction costs/number of apartments in the property). The property with the highest per-apartment rehabilitation investment will receive 10 points and the second highest scoring property will receive 5 points. Applications are scored and ranked by project type: Individuals/Families with Children; seniors; Assisted Living Developments; Mixed Income/Mixed Use; Projects Promoting Eventual Tenant Ownership; and Acquisition/Rehabilitation projects. The Acquisition/Rehabilitation category includes acquisition/rehab for projects with expiring Section 8 or HAP contracts, acquisition/rehab/conversion/change of use, and rehabilitation only. To qualify for acquisition/rehab for projects with expiring Section 8 or HAP contracts, 75% of the units must be preserved as affordable housing with rents at or below LIHTC rents. The application with the highest percentage of units receiving rental assistance times the number of years of the contract will be awarded 15 points. The application with the second highest will receive 10 additional points.
New Hampshire HFA	In New Hampshire's 2011 QAP, preservation projects are not eligible to apply for 9% LIHTC except for projects that are to be demolished and/or reconstructed while retaining or extending the project based rent subsidy contracts. Preservation projects are those that have been funded with federal project based rent subsidies that are currently subject to recorded regulatory documents limiting unit rents and/or tenant incomes. Properties that are located in formally-designated community revitalization areas, such as HUD Enterprise Zones, Main Street programs, designated blighted areas, or otherwise targeted areas can receive an additional 1 point if they preserve or renovate existing housing. The plan also establishes a minimum rehabilitation threshold of \$6,000 per apartment or 20% of the depreciable basis of the building. In a tie-breaker, new construction is favored over preservation. Combination projects are considered new construction.

WHAT HAPPENS TO LOW-INCOME HOUSING TAX CREDIT PROPERTIES AT YEAR 15 AND BEYOND?

State Agency	2010 Incentives
New Jersey HMFA	New Jersey's 2010 QAP includes four funding cycles: Family will receive at least \$9 million, Senior will receive at least \$3 million, Supportive will receive at least \$2 million, and Final will receive whatever credits are left over from the other cycles. For the Final cycle the highest ranked preservation proposal will be the first development funded. Preservation projects are defined as housing projects that are at least 50% occupied and at risk of losing its affordability controls or level of affordability. In general, minimum rehabilitation projects, proposals in which construction costs are less than \$25,000 per unit, are not eligible for competitive tax credits but they may be funded if there are no other eligible projects during the Supportive or Final cycles. In the family and final cycles, rehabilitation projects receive 3 points that generally only low-density buildings with large family units are eligible for. In all cycles, rehabilitation of historic buildings is worth 2 points.
New Mexico MFA	New Mexico's 2011 QAP awards 15 points to all rehabilitation properties incurring average rehabilitation hard costs of \$10,000/apartment or more. In combined new construction and rehabilitation, rehabilitated apartments must account for at least 20% of the total apartments and the separation of rehabilitation costs and new construction costs should be designated in the application. An additional 15 points is awarded to conversion plus rehabilitation properties that convert at least 50% of the existing market rate apartments to low-income apartments. There are 15 points available for preserving previously subsidized properties in which rents for 75% of the apartments are currently in excess of HTC Ceiling Rents and will be reduced to HTC Ceiling Rents, or for which use restrictions are to expire on or before December 31st, 2015. Rents will be limited to HTC ceilings despite other subsidy rules, except in properties with project based subsidies that allow for rents in excess of HTC ceilings. Note that projects receiving points from the rehabilitation-only category can receive points under the conversion plus rehabilitation OR the preservation category but not both, even if they are otherwise eligible for them. Rehabilitation expenditures qualify for the 9% tax credit when rehabilitation costs incurred during the 24-month period equal or exceed the greater of \$6,000 per low-income unit or 20% of the adjusted basis.
New York State DHCR	<u>DHCR</u> The New York State Division of Housing and Community Renewal (DHCR) is the lead Housing Credit Agency for the State of New York. DHCR's 2009 QAP defines preservation as property being rehabilitated to extend its useful life, which averts the loss of affordable housing and currently serves a population whose housing need would justify the replacement of the housing if it ceased to be available to that population. This definition does not distinguish between affordable unsubsidized or subsidized rental housing. The scope of the rehabilitation must be sufficient for the property to function in good repair as affordable housing for a period equal to at least 30 years from the date of issuance of the final credit allocation. Projects are required to maintain a 30-year period of occupancy restrictions (includes 15 year federal requirement). Ten (10) points are given for further extensions and 15 points for waiver of the right to terminate the extended use period. Preservation projects only need to meet visit ability standards as feasible. The acquisition cost cap (of 25% of total costs) is waived for preservation projects. Some competitive criteria act as preservation disincentives: Projects get 1 point for being located on a brownfield or grayfield, or for being an adaptive re-use project. Projects get 6 points for having a certain percentage of fully accessible units.
NY HFA	
Dev. Auth. of N. Country	

State Agency	2010 Incentives
NYC HPD	<u>HPD</u> New York City's Department of Housing Preservation and Development (HPD) receives an annual sub allocation of tax credits from the state. DCP's 2010 QAP states as one of its goals preserving "73,000 units of affordable housing for 220,000 New Yorkers, with a special emphasis on preserving units where subsidies are set to expire in the near future." Up to 16 points are available for "project characteristics." Preservation projects -- projects that preserve existing affordable housing that either: a) have, and continue to use if possible, project-based rental assistance and/or operating subsidy; b) have a loan made prior to 1984 from any of the following loan programs; HUD 202/811, 221(3)3 or (d)4 or 236; c) an HPD LIHTC Preservation Program where HPD has approved a re syndication plan -- and rehabilitation of existing housing are eligible for these points.
North Carolina HFA	North Carolina's 2011 QAP includes a 20% rehabilitation set-aside. To be eligible for the rehabilitation set-aside, a property must have either mortgage subsidies from a local government in excess of \$5,000 per unit or have federal rental assistance for at least 30% of the total apartments plus hard construction expenses in excess of \$15,000/unit and been placed in service on or before December 31, 1995. Preservation and rehabilitation applications do not receive point scores but instead are evaluated using an alternate criteria set. Priority will be given to the state's most distressed federally subsidized housing.
North Dakota HFA	The 2011 QAP awards 10 points for preserving federally assisted properties "at-risk" of being lost to market rate, including existing housing credit projects. In addition, properties with rehabilitation expenditures of \$15,000 up to \$30,000 per apartment receive 5 points, those with rehabilitation expenditures of \$30,000 or more per apartment receive 10 points, and all rehabilitation projects part of a community revitalization plan will receive an additional 3 points. NDHFA will waive the \$15,000 minimum rehabilitation threshold requirement if a capital needs assessment supports a lower rehabilitation requirement. NDHFA awards up to 9 points for extending the affordability period for 5, 10, or 15 years. North Dakota directs the 30% basis boost toward to QCTs, DDAs, and (1) projects designed to primarily serve special needs populations, i.e. homeless or those requiring permanent supportive services; (2) projects that target 20 percent or more of the units at 30 percent of area median income or less; (3) projects within tribal reservations, including the Trenton Indian Service Area; (4) new construction projects on in-fill lots a) with existing structures which need to be demolished, or b) require substantial environmental remediation; and (5) projects in rural areas without sufficient soft financing to be financially feasible in low market rent areas. Proposed rents (including utility allowance) must be the lesser of a) Fair Market Rents (FMR) or b) a minimum of 20% below Housing Tax Credit rent ceilings, either of which will be enforced through a land use restriction agreement (LURA). Developments with a project based federal rent subsidy are not eligible.

WHAT HAPPENS TO LOW-INCOME HOUSING TAX CREDIT PROPERTIES AT YEAR 15 AND BEYOND?

State Agency	2010 Incentives
Ohio HFA	In the 2011 QAP, Ohio set aside \$9.5 million of the low-income housing tax credits in a “preservation pool.” Properties that are eligible for the preservation pool include the following: a) Properties receiving project-based rental subsidy through a Section 8 Housing Assistance Payment Program (HAP) contract; b) Troubled properties that have received assistance through the USDA Rural Development (RD) office; c) Properties participating in the HUD Portfolio Reengineering Program (so-called Mark to Market). Projects that have closed their financing under this program and have not yet placed-in-service are eligible for the pool; d) Existing HUD Section 202 or 811 projects; e) Existing HUD Section 236 properties; f) New construction projects that preserve existing subsidies, such as HOPE VI, Choice Neighborhoods, or the use of Section 8 portability; g) Other properties judged by OHFA to encompass preservation principles. The minimum hard construction costs for rehabilitation properties are \$10,000/unit or 40% of total project costs, whichever is greater with the exception of project with tax-exempt bond financing in which minimum hard costs equal \$6,000/unit. The QAP grants exceptions for rehab projects from mandatory design standards infeasible for existing buildings. There is a required 30-year period of occupancy restrictions (includes 15-year federal requirement). Projects with a demonstrated financial need will be considered for the 30% basis boost on a case-by-case basis.
Oklahoma HFA	For 2010, the application packet awards 5 points to projects that preserve affordable housing units from pre-1995. These projects can be: • Properties with expiring project-based Section 8 contracts • Properties with USDA Section 515 loans • Properties financed with Low-Income Housing Tax Credits • Properties financed with Section 202/811 loans • Properties financed with 1937 Housing Act funds.
Oregon HCS	In the 2009 Qualified Allocation Plan, the state maintains its 25% set-aside for preservation properties (note that the amount of 9% tax credits actually used for preservation in 2006 was about 30%). Preservation properties include but are not limited to federally-financed existing properties where at least 25% of the property’s apartments have project based rental assistance or are expiring LIHTC properties which are currently offering rents 10% below market. Properties participating in, but not limited to the following programs, are considered federally financed: HUD, USDA Rural Development, and properties participating in programs that include the replacement of existing affordable housing units, including the HOPE VI program, as long as 25% of the units have project based assistance, and expiring LIHTC projects. In funding preservation projects, preference is given to applications that have at least 25% project based rental assistance. Projects are required to maintain a 30-year period of occupancy restrictions (includes 15-year federal requirement). Additional consideration will be given to projects which agree to extended use beyond 30 years. Preservation projects are considered “difficult-to-develop areas” and are therefore eligible for the 30% basis boost. Projects that serve permanent supportive housing goals, address workforce housing needs, are located in Transit Oriented Districts (TODs) or Economic Development Regions (EDRs) or in a designated state or federal empowerment/enterprise zone or Public Improvement District (PIDs), or other area designated for neighborhood preservation, redevelopment, or use of public transportation are also eligible for the basis boost. All projects must also commit to an extended use term of affordability of a minimum of 30 years.

State Agency	2010 Incentives
Pennsylvania HFA	Pennsylvania's 2010 QAP maintains the 15% preservation set-aside. Eligible properties include: (a) existing low-income units receiving project-based rental subsidies that are within two years of any permitted prepayment or subsidy contract expiration with a likely conversion to market rate housing or equivalent loss of low-income use restrictions; (b) developments requiring rehabilitation of systems or components in immediate need of repair or replacement, or (c) rehabilitation of already existing low-income units provided that the rehabilitation is being funded through the Agency and the development will be monitored through an Agency preservation program. Preference may be given to developments that face conversion to market or which have rehabilitation scope of work that addresses significant life safety issues. Developments must expend for rehabilitation a minimum of \$10,000 per unit in construction costs on major systems and components. Preservation projects are exempt from the requirement to ensure at least 25% of total units of a rehab development are visitable. They may be required to provide air conditioning if financially feasible. Rehab and preservation developer fees are limited to 10% of purchase price of the property less the cost of land. There is also a required commitment to serving low-income residents for a period of not less than 30 years OR offer homeownership opportunities to qualified residents after the initial 15 year compliance period.
Puerto Rico HFA	
Rhode Island HMFC	In the 2011 QAP, priority will be given to properties involving the substantial rehabilitation or redevelopment of deteriorated residential properties (substantial rehabilitation entails construction/rehabilitation costs in excess of 50% of replacement value). For a building to be substantially rehabilitated, the expenditures during any 24-month period must be at least the greater of: (a) 20% of the depreciable basis of the building determined as of the first day of the 24-month period; or, (b) an average of \$6,000 per low-income unit. Exceptions may apply for properties acquired from government entities and "expiring use" properties. Rhode Island may also provide an exception to their 10 year placed in service restriction for expiring use properties.
South Carolina SHFDA	In the 2011-2012 QAP, the South Carolina State Housing Finance and Development Authority (SHFDA) reserved up to \$1,200,00 (down from \$1,275,00) for preservation projects. This set-aside is for 100% rehabilitation developments only. SHFDA reserves up to \$700,000 of the state LIHTC ceiling for the exclusive use of eligible Rural Housing Service (RHS) developments. HOME funds will be provided to the set-asides as follows: Rehabilitation - \$780,000; RHS - \$390,000. Rehabilitation properties applying for 9% tax credits must have at least \$15,000 in hard constructions costs per unit, with at 50% of the costs attributable to interior unit costs. Projects can receive 5 points for extending the commitment period an additional 5 years. The eligible basis boost is directed toward QCTs, DDAs, 100% elderly projects, 100% special needs housing, and projects for older persons or families.
South Dakota HDA	South Dakota removed their 60% preservation set-aside in the 2011-2012 QAP. Properties involving existing development receive 75 points while new construction properties receive up to 10 points. To be eligible for competitive tax credits projects must have substantial rehabilitation costs, at least \$10,000 per unit or 20% of the original basis, whichever is greater. South Dakota's definition of preservation allows for presently affordable, multifamily, unsubsidized rental housing to qualify as preservation. Projects that commit to a 40 year extended use affordability agreement will receive 80 points. The 30% basis boost is directed to projects located in QCTs or DDAs; projects that are part of a concerted community revitalization plan; service-enriched housing; rural projects; and historic rehabilitation.
Tennessee HDA	Tennessee's 2011 QAP awards up to 40 points for rehabilitation developments involving replacement of major building components. Developments involving the use of existing housing as part of a community revitalization plan receive 1 point. No more than 40% of the total amount of tax credits available will be allocated to developments involving rehabilitation.

WHAT HAPPENS TO LOW-INCOME HOUSING TAX CREDIT PROPERTIES AT YEAR 15 AND BEYOND?

State Agency	2010 Incentives
Texas DHCA	In the 2010 QAP, at least 15% of the allocation to each region is set aside for 'at-risk' developments. To be eligible, subsidized properties include those insured under the HUD Section 221(d)(3) and (5), Section 236, Section 202, Section 101; those provided subsidies via project-based Section 8 programs; USDA Section 514, 515, 516; and Section 42 of the IRS Code. The property's contract providing the subsidy must be nearing expiration, or the mortgage must be eligible for prepayment or nearing the end of its mortgage term. Developments must be at risk of losing all affordability on the site and properties must renew or retain any federal assistance for which they remain eligible. TDHCA allows expiring tax credit properties to apply under the 'at risk' set-aside. All rehabilitation proposals (including reconstruction) or adaptive reuse proposals are awarded 3 points. In the event of a tie, applications involving any rehabilitation of existing apartments will win this first tier tie breaker over applications involving solely New Construction. Developments proposing adaptive re-use or proposing to increase the total number of units in the existing residential development are not considered rehab or reconstruction. In addition, developments that consist solely of acquisition/rehabilitation or rehabilitation only may exceed the maximum unit restrictions. Rehabilitation developments must establish that the rehabilitation will substantially improve the condition of the housing and will involve at least \$15,000 per unit in direct hard costs unless financed with TX-USDA-RHS in which case the minimum is \$9,000. If a developer extends the years of affordability beyond the required 30 by 5 years, 2 points are available - by 10 years, 4 points are available.
Utah HC	Utah's 2011 QAP designates the 'preservation and improvement of existing affordable housing units' as a housing need and the rehabilitation of 'existing housing stock for tenants at the same or less than current rents' as a housing priority for the allocation of credits (although no specific set-aside is given). The 2011 QAP awards 10 points to properties that rehabilitate the existing housing stock and maintain rents at or below the rent levels before negotiations were entered into for the Housing Credit Application. This is only available to substantial rehabilitation properties that maintain or lower targeted rents below those paid by the current tenants and to preservation properties that maintain rent levels. The minimum rehabilitation expense per unit for substantial rehabilitation projects is \$6,000 or 20% of the adjusted basis, whichever is greater. The following minimum rehabilitation expenditures are based on the age of the building(s): pre-1940 necessitates a minimum of \$50,000 per unit; 1940 - 1970 necessitates a minimum of \$35,000 per unit; 1971 - 1990 necessitates a minimum of \$25,000 per unit. The state also awards 5 points to properties that involve the use of existing housing as part of a Community Revitalization Plan.
Vermont HFA	Vermont's 2009 - 2010 QAP does not provide a point allocation system but instead states Evaluation Criteria and Top Priorities. The 5 Top Tier of these priorities include projects the provide rehabilitation, including lead-based paint abatement, accessibility modifications, and energy efficiency upgrades (along with infill new construction or places that lack affordable housing). The Second Tier priorities include creative rehab of a historic structure of statewide significance. Preference must also be given for the acquisition and rehab of existing federal subsidized projects, where preserving affordability is at-risk. Nine percent (9 %) credits required to be affordable into perpetuity. Rehab projects should be at least \$6,000/unit or 20% of adjusted basis. Projects that are less than 49 units and either meet Green Building and Design Standards or are 15% market unites are eligible for the 30% basis boost.
Virgin Islands HFA	

State Agency	2010 Incentives
Virginia HDA	The 2011 QAP awards 20 points to developments currently subject to HUD's Section 8 or Section 236 programs or Rural Development's Section 515 program. In addition, 10 points are awarded to developments receiving new project-based subsidy from HUD or RD for the greater of 5 apartments or 10% of the apartments of the proposed development. All applications seeking credits for rehabilitation of existing apartments must provide for contractor construction costs of at least \$10,000 per unit.
Washington State HFC	The 2010 QAP provides non-numerical priority for projects intended to 'preserve federally assisted projects as low-income housing units' and 'rehabilitate buildings for residential use.' At-risk properties that meet the following criteria are awarded 10 points: (1) the project has one or more Federally Assisted Building(s); (2) at least 50% of the total housing units in the project are low-income; (3) the applicant agrees to maintain the low-income housing units included in the project for a minimum of 30 years (i.e., make an additional low-income housing use period Commitment of at least 12 years); (4) the Federal agency regulating the low-income use certifies that the owner may be released from all low-income use restrictions within five years of the date of the Application; and (5) the market study clearly demonstrates that (a) market rate rents are significantly greater than current rents being charged and (b) those market rate rents are achievable, creating the likelihood that existing residents will be displaced as a result of increasing rents. Points are also awarded to rehabilitation proposals. Five points are awarded if a rehabilitation proposal rehabilitates at least 80% or more of the total existing housing units that exist in the project prior to rehabilitation or the conversion of one or more buildings from non-residential use and 50% or more of the total residential units in the project are included in the converted building(s). Rehabilitation proposals that are part of a community revitalization plan receive an additional 2 points. Projects located in Difficult to Develop Areas, Qualified Census Tracts, and rural areas are eligible for the 30% basis boost.
West Virginia HDF	West Virginia's 2009-2010 QAP sets aside 15% of credits for rural preservation and 25% for "HUD preservation or new construction." In the latter set-aside, new construction proposals receive between 40-50 points, depending on size, while rehab and acquisition/rehab proposals can only earn 0-30. However, in addition, for substantial rehabilitation properties or acquisition and substantial rehabilitation properties, an additional 10 points will be awarded if any such property includes the use of existing housing that is a clearly and specifically stated part of a community revitalization plan. Ten points will be awarded to properties committed to continuing to serve qualified tenants at rent-restricted rates for each year beyond the close of the initial 15-year minimum compliance period, up to a total of 150 points for 15 years beyond the minimum compliance period. Several "quality of housing" criteria may act as moderate preservation disincentives, including 25 points for minimum room sizes, 10 points for roofs with 30 year manufacture warranties, and 5 points for offering washer and dryer hookups in each unit.
Wisconsin HEDA	Wisconsin's 2011-2012 QAP includes a preservation set-aside of 30% (approximately \$3,562,507) for federally assisted housing units. Federally Assisted Housing Preservation includes low-income housing developments subsidized under the following or similar programs: Section 236, Section 221(d)(3) Below Market Rate (BMIR), Section 221(d)(3) Market Rate with Section 8 rental assistance, Section 8 project-based new construction, Section 202, Section 811, Section 221(d)(4), and Section 515-Rural Rental Housing Program, Rural Development, USDA and NAHASDA or other tribal subsidies. Additionally, 30 points are available for acquisition/rehabilitation, defined as a development proposing rehabilitation, or acquisition and rehabilitation, of existing housing units.

WHAT HAPPENS TO LOW-INCOME HOUSING TAX CREDIT PROPERTIES AT YEAR 15 AND BEYOND?

State Agency	2010 Incentives
Wyoming CDA	In Wyoming's 2011 QAP, rehabilitation properties must have a minimum expenditure of \$15,000 of actual rehabilitation hard costs per apartment in Life, Safety, Health, or Code Requirements which includes required major systems repairs or replacements of electrical, heating, roofing, foundation/structural, major energy upgrades. No more than 30% of rehabilitation costs can go for required General Property Improvements, (non-Life, Safety, Health, or Code Requirements). A property will receive up to 10 points if the current property involves use of existing housing as part of a community revitalization plan. Under the tie-breaker criteria, rehabilitation properties can receive up to 40 points for amenities and/or cost-effective upgrades. Wyoming awards up to 35 points for extending up to 20 years beyond the initial 30 year affordability period. The basis boost is directed toward difficult to develop areas.

APPENDIX E. HUD NATIONAL LIHTC DATABASE, MISSING DATA BY PLACED IN SERVICE YEAR

Variable (or Variable Group)	Year Placed in Service											
	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
Project Address ^a	0.74	0.58	0.90	0.64	0.61	0.49	0.21	0.41	0.33	0.49	0.51	1.03
Owner Contact Data	6.40	3.77	4.88	6.17	5.98	7.09	7.99	9.92	4.90	3.21	5.99	7.96
Total Units	6.03	3.42	3.64	1.21	1.49	0.49	0.62	1.03	0.13	0.28	0.73	0.29
Low-Income Units	2.46	2.67	4.20	4.47	2.24	1.89	1.79	0.82	1.19	1.05	1.83	0.88
Number of Bedrooms ^b	38.42	40.85	43.27	39.15	33.97	36.21	39.39	37.28	17.01	14.68	16.67	12.68
Allocation Year	1.97	0.87	1.57	0.14	0.14	4.49	3.65	4.99	0.26	0.07	0.07	0.07
Construction Type (new/ rehab)	12.93	9.62	10.26	9.86	10.12	15.65	15.77	19.43	5.43	4.47	3.51	3.98
Nonprofit Sponsorship	21.92	26.25	31.33	29.72	33.22	29.33	29.34	25.72	14.30	12.30	11.33	9.80
Use of Tax-Exempt Bonds	36.58	38.47	40.47	33.55	36.48	37.61	38.29	34.88	4.96	3.21	4.09	5.08
Use of RHS Section 515	19.09	20.10	23.65	25.60	20.31	26.74	24.59	31.33	11.85	9.36	10.53	14.81

Variable (or Variable Group)	Year Placed in Service											
	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Project Address ^a	1.03	1.04	0.87	0.49	0.37	0.33	0.79	1.16	0.85	0.84	3.18	3.04
Owner Contact Data	7.96	7.85	7.11	5.76	3.26	3.25	3.17	4.07	1.24	0.77	9.94	11.13
Total Units	0.29	0.71	0.87	0.35	1.11	0.73	0.40	1.52	1.11	1.95	4.82	3.88
Low-Income Units	0.88	1.56	1.74	0.84	1.55	1.79	2.97	4.92	1.70	4.31	14.86	14.00
Number of Bedrooms ^b	12.68	10.06	10.22	7.37	13.47	12.67	11.36	11.25	2.81	3.41	11.68	13.32
Allocation Year	0.07	0.39	0.44	0.77	0.44	1.26	1.19	1.16	2.55	3.20	13.22	12.98
Construction Type (new/ rehab)	3.98	3.31	3.34	2.39	8.51	4.44	8.12	9.06	2.87	3.34	8.40	7.76
Nonprofit Sponsorship	9.80	10.58	7.32	5.27	14.29	6.70	11.36	8.39	7.83	4.18	23.87	17.20
Use of Tax-Exempt Bonds	5.08	4.28	2.32	1.40	7.85	3.78	8.26	12.58	9.27	0.77	9.32	7.93
Use of RHS Section 515	14.81	11.68	5.80	4.99	11.84	9.62	20.48	13.07	8.94	13.50	41.19	34.40

Source: HUD National Low-Income Housing Tax Credit Database, 1987-2009.

Notes: Analysis included properties with data on placed in service year. Properties in Guam, Puerto Rico, and the Virgin Islands were not included in analysis.

^a Indicates only that some location was provided. Address may not be a complete street address.

^b For some properties, bedroom count was provided for most but not all units, in which case data is not considered missing. The percent of units with missing bedroom count data is based on properties where no data were provided on bedroom count.

WHAT HAPPENS TO LOW-INCOME HOUSING TAX CREDIT PROPERTIES AT YEAR 15 AND BEYOND?

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Community land trusts strive for permanent housing affordability

Community Land Trusts (CLTs) appear to have the potential to make homes permanently affordable. Here, we explore the workings of CLTs and examine some of the challenges to this innovative form of homeownership.

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Since the mid-1990s, the average price of a single-family home has risen considerably across the nation. In some areas, home prices have grown faster than household income over the same period, making it more difficult for a typical household to buy a typical home. Housing affordability may be at its lowest level in the past 15 years. According to the Housing Opportunity Index,^{[1/](#)} in the last quarter of 2006, 42 percent of homes nationwide were affordable to families earning the median income in their region, down from a rate of close to 60 percent through much of the 1990s and early 2000s.

There have been a number of public and private responses to the housing affordability issue. Some target homebuyers, especially first-time homebuyers, and are designed to ease the financial barriers to homeownership. These programs and incentives include down payment or closing-cost assistance, forgivable loans, and the federal mortgage tax credit. Another response is to build more housing that is affordable. This approach typically involves the use of federal, state or local funds to subsidize the development of owner-occupied housing units.

Recently, alternative strategies for increasing housing affordability have developed. One such alternative is the community land trust, or CLT. CLTs fall in a broad category of resale-restricted housing initiatives referred to as *shared equity homeownership*.^{[2/](#)} In CLT arrangements, the ownership of the home rests with the homeowner, while the ownership of the land, which is leased back to the homeowner, lies with the trust organization.

CLTs appear to have the potential to make homes permanently affordable. However, some players in the homebuying industry have raised questions about the CLT model. Here, we explore the workings of CLTs and examine some of the challenges to this innovative form of homeownership. Our exploration suggests that only time will tell whether the CLT strategy is truly effective at preserving affordability.

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Variety and commitment

The Institute for Community Economics (ICE), a Massachusetts-based support organization for land trusts, counts approximately 170 CLTs in operation nationwide.^{3/} There are 12 CLTs in the Ninth Federal Reserve District, 8 of which are located in the Twin Cities region.^{4/} (For a list of Ninth District CLTs, see the sidebar below.) Most CLTs are located in markets where housing prices grew rapidly from the mid-1990s through the early 2000s and concerns were raised about housing affordability.

ICE estimates the network of CLTs across the country has created over 6,000 units of affordable housing worth over \$1 billion. While most CLTs tend to be newly founded organizations with small portfolios, several are of greater longevity and scale.^{5/} One example is the Burlington Community Land Trust (BCLT) in Vermont, which controls close to 400 land trust units.^{6/}

CLTs differ in terms of the scope of their operations. Some are actively involved in the development or redevelopment of housing. Others, such as the City of Lakes Community Land Trust (CLCLT) in Minneapolis, are not involved in housing production per se. Instead, they create their land trust portfolios by working with individual homebuyers to carve out land trust set-asides with the aid of public subsidies from for-profit and nonprofit housing developers. (For more on CLCLT's approach, see the [accompanying interview](#).) While the history and business practices of CLTs vary, they all share a common commitment to creating permanently affordable homeownership.

The dual-ownership model

How do CLTs create and preserve affordability? The key lies in a dual-ownership model with divided ownership rights. The nonprofit land trust organization owns title to the land and the homeowner owns title to the building, which can be a detached single-family home or an attached unit in a multifamily dwelling, such as a townhome or a condominium. The land trust provides a ground lease to the homeowner, giving the homeowner the right to occupy the land on which the home is located. The lease can vary in length according to state law (most last 99 years) and is renewable and inheritable.

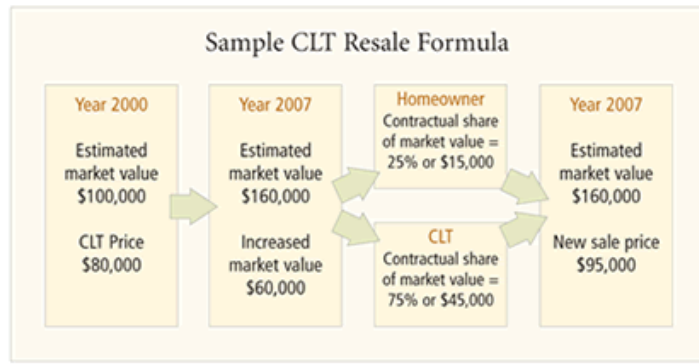
The CLT's position in the dual-ownership model allows the organization to control property modifications and, more importantly, stipulate the future sale price of the home, thereby preserving affordability. The typical ground lease contract contains the following stipulations:

- Limitations to building improvements and subleasing, including stipulations that limit absentee ownership;
- A clause allowing the CLT the first right to repurchase the property at sale or when a mortgage is in default; and
- A formula for determining the resale price of the property.

The resale formula is probably the most distinctive feature of the CLT model. In an effort to maintain affordability by reducing the effect of market appreciation, CLTs limit the share of the increased value of the property that is due to the homeowner following the sale of a land trust home. In the land trust model, a third-party

market appraisal is used to determine a home's value. The homeowner then receives a share of the increased value of the home from the sale. Homeowners typically recoup their original down payments and any principal paid over the life of the mortgage.

CLTs use a variety of resale formulas to calculate the amount owed to the homeowner. As a rule, the greatest share of the increase returns to the property via the land trust organization. If there is a loss or no gain in equity, the CLT and the homeowner usually share the burden. The chart below illustrates how the resale formula works.



For example, if a property originally appraised at \$100,000 appraises for \$160,000 when the home sells seven years later, the homeowner will receive a specific share of the \$60,000 increase. In our chart above, the homeowner's share amounts to \$15,000. The CLT sets the new sales price for the property by adding the amount paid to the seller to the old sale price for the property. This limits the level of appreciation in the property's sale price and preserves a degree of affordability for the next buyer. On the front end, CLTs are able to buy down the initial market value of a property through a variety of private grants, gifts or public subsidies.

CLTs typically use family income thresholds of between 50 to 80 percent of the area median family income to identify potential homebuyers. However, eligibility requirements vary depending on local housing conditions and the mission of the organization. For example, some CLTs extend the income threshold to up to 100 percent of an area's median family income. By identifying their area of operations, CLTs can also target their efforts to specific neighborhoods. According to a recent study of a sample of CLT organizations, the services provided by CLTs also vary. Some provide no services to their homeowners, while others provide a wide range of services, including mortgage preapproval, targeted homeownership training workshops and post-purchase support programs.²¹

Sources of support and revenue

Like other nonprofits, CLTs receive support through a wide variety of sources. In the early 1990s, the U.S. Department of Housing and Urban Development (HUD) decided to allow Home Investment Partnerships Program funding to support land trust activities, essentially categorizing CLTs as Community Housing Development Corporations. The decision made CLTs more attractive to localities that receive this form of funding. Recently,

Fannie Mae has also moved to support the land trust movement by developing a mortgage option that offers qualified CLT homebuyers low down payment and closing-cost requirements, reduced income qualifications, and higher loan-to-value ratios and debt qualifications.

In terms of revenue sources, many CLTs rely on developer fees and income associated with the acquisition and rehabilitation of properties. CLTs may also receive properties through outright donations. Each CLT homeowner also pays an annual lease fee, which can range from \$200 to \$400 a year. CLTs often use lease fee revenue to support their operations, especially if they have a large property portfolio.

Challenging the model

The CLT model has met with concerns and challenges, including a lack of full support from several key public and private sector actors. While HUD and Fannie Mae support the development of CLTs, other national housing entities—in particular, the Federal Housing Administration (FHA)—are not as supportive. FHA, an agency designed to expand access to mortgages for low-income, first-time homebuyers, requires the elimination of resale restrictions—a requirement that conflicts with the CLT goal of maintaining permanent affordability. The agency has been reluctant to purchase CLT mortgages without the addition of a rider eliminating the resale restrictions that are a key part of the land lease. Due to problems with securing FHA insurance, some CLTs have encountered obstacles in obtaining financing for projects where the mortgages contain resale restrictions.^{8/} The ICE and other organizations are working to resolve this issue with FHA.

Some private lenders have also hesitated to embrace the CLT model. Financing CLT homes through traditional mortgages is a legitimate form of lending, but lenders who are unfamiliar with the dual-ownership model have concerns about the fact that the loan collateral consists only of "improvements" (i.e., the building) plus the leasehold interest in the land, not the fee interest in the land. Similarly, they view resale and occupancy restrictions as factors that could further compromise the value of the home as collateral. The response from CLTs has been to increase outreach to specific lenders in order to alleviate these concerns through education. In addition, some CLTs credit Fannie Mae's support as a key factor in increasing lenders' comfort level for financing land trust homes.

Other concerns about the model focus on the unequal burdens and outcomes CLT homeowners face and the paucity of information about land trusts' success at maintaining affordability over time. In terms of unequal burdens, CLT homeowners typically pay all the taxes associated with the property, not just those associated with the building they own. While some trust organizations may offer limited tax abatements, most do not share this burden with the homeowner. Municipalities tax CLT properties at the same rate as other properties, even though CLT properties are not sold at the market rate. Consequently, CLT homeowners pay proportionally more property taxes for their homes.

the foundation of CLTs. They argue that homeownership is one of the only ways for low- and moderate-income households to create assets and wealth. Gaining only a limited share of the equity from a home sale could severely limit this ability. CLT advocates counter that the model may not make sense for all potential homebuyers and that the focus of their efforts is on long-term affordability, not asset development.

Lastly, little is known about the ability of CLTs to maintain affordability over time. While one study suggests the BCLT in Vermont has sustained an affordable portfolio of units,^{9/} there has been no broad-based study of all CLTs. Moreover, the vast majority of CLTs are nascent organizations and it would be premature to base any conclusions on their results.

The test of time

CLTs offer an innovative approach to creating and maintaining housing affordability. The small network of CLTs nationwide appears to fill an important niche in specific, high-cost housing markets and seems well poised to grow in size and scope. However, as they move into newer markets, these organizations will continue to meet questions about the underlying land trust model, especially its resale component.

Support from HUD and Fannie Mae, along with the outreach efforts of land trust organizations to lenders and policymakers, should help mitigate concerns. Still, the true test of the CLT model lies ahead, as more land trust homes undergo multiple sales over time. As the number of these transactions grows in the coming years, it will become possible to evaluate whether CLTs have succeeded in their mission to preserve affordability.

Community Land Trusts in the Ninth Federal Reserve District

Cannon River Community Land Trust
Northfield, Minnesota

Chaska Community Land Trust
Chaska, Minnesota

City of Lakes Community Land Trust
Minneapolis, Minnesota
www.clclt.org

First Homes Community Land Trust
Rochester, Minnesota
www.firsthomes.org

Greater Frogtown Community Development Corporation
St. Paul, Minnesota
www.greaterfrogtowncdc.org

Northern Communities Land Trust
Duluth, Minnesota
www.landtrustduluth.org

Rondo Community Land Trust
St. Paul, Minnesota
www.rondoclt.org

Two Rivers Community Land Trust
Stillwater, Minnesota
www.tworiversclt.com

West Hennepin Affordable Housing Land Trust
Minnetonka, Minnesota
www.homeswithinreach.org

Woodbury Community Land Trust
Woodbury, Minnesota

1/ The Housing Opportunity Index is calculated by the National Association of Home Builders and Wells Fargo and uses actual home prices, interest rate assumptions, and area income data to produce an affordability estimate. For details, visit www.nahb.org/page.aspx/category/sectionID=135.

2/ John Emmeus Davis, *Shared Equity Homeownership: The Changing Landscape of Resale-Restricted, Owner-Occupied Housing*, National Housing Institute, 2006, p. 3.

3/ See www.iceclt.org.

4/ NeighborWorks press release, July 19, 2006. For the ICE's full list of CLTs, visit www.iceclt.org/clt/cltlist.html.

5/ The first CLT in the U.S., New Communities near Albany, Ga., was established by African American farmers in 1968 (Davis, p. 21–22).

6/ Roughly 8 percent of the owner-occupied housing units in the city of Burlington are land trust units, according to an estimate based on data from a recent study of the BCLT and the number of owner-occupied units from Census 2000.

7/ Kevin Girga, Matt Rosenberg, Vicky Selkove, Joshua Todd and Rachel Walker, *A Survey of Nationwide Community Land Trust Resale Formulas and Ground Leases: A Report Prepared for the Madison Area Community Land Trust*, URPL 844: Housing and Public Policy, Department of Urban and Regional Planning, University of Wisconsin-Madison, April 2002.

8/ Ibid.

9/ See John Emmeus Davis and Amy Demetrowitz, *Permanently Affordable Homeownership: Does the Community Land Trust Deliver on Its Promises? A Performance Evaluation of the Community Land Trust Model Using Resale Data from the Burlington Community Land Trust*, Burlington Community Land Trust, May 2003.

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ORDINANCE NO.

AN ORDINANCE OF THE CITY OF MOUNT VERNON, WASHINGTON, ADDING TWO NEW CHAPTERS TO THE MOUNT VERNON MUNICIPAL CODE WITH THE FIRST TO BE NAMED, MOUNT VERNON MUNICIPAL CODE (MVMC) CHAPTER 17.73, REGULATIONS TO ENCOURAGE AFFORDABLE HOUSING, WITH THE NEW CHAPTER CONTAINING DEVELOPMENT REGULATIONS TO ENCOURAGE THE CREATION OF NEW DWELLING UNITS FOR THOSE EARNING 80% OF THE AREA MEDIAN INCOME (AMI) AND BELOW; WITH THE SECOND NEW CHAPTER TO BE NAMED CHAPTER 16.34, PLATTING OF DUPLEX AND TOWNHOUSE STRUCTURES, WITH ADDITIONAL AMENDMENTS TO MVMC CHAPTERS 17.06 (DEFINITIONS), 17.09 (DISTRICTS ESTABLISHED – ZONING MAP), 17.12 (R-A RESIDENTIAL AGRICULTURAL DISTRICT), 17.15 (R-1 SINGLE-FAMILY DETACHED RESIDENTIAL DISTRICT), 17.18 (R-2 DUPLEX AND TOWNHOUSE RESIDENTIAL DISTRICT), 17.24 (R-3 MULTIFAMILY RESIDENTIAL DISTRICT), 17.27 (R-4 MULTIFAMILY RESIDENTIAL DISTRICT), 17.30 (P PUBLIC DISTRICT), 17.33 (R-O RESIDENTIAL OFFICE DISTRICT), 17.42 (LC LIMITED COMMERCIAL DISTRICT), 17.45 (DOWNTOWN DISTRICTS), 17.48 (C-2 GENERAL COMMERCIAL DISTRICT), 17.51 (C-3 COMMUNITY COMMERCIAL DISTRICT), 17.54 (C-4 NEIGHBORHOOD COMMERCIAL DISTRICT), 17.57 (M-1 LIGHT MANUFACTURING AND COMMERCIAL DISTRICT), 17.69 (PLANNED UNIT DEVELOPMENTS), 17.70 (DESIGN REVIEW), 17.81 (SPECIAL USES), 17.105 (VARIANCES), 17.119 (TRANSFER OR PURCHASE OF DEVELOPMENT RIGHTS), 14.05 (PROCEDURES), AND 14.15 (FEES) TO SUPPLEMENT, TO REMOVE INCONSISTENCIES BETWEEN THE NEW CHAPTER 17.73 AND OTHER EXISTING REGULATIONS, AND TO ADD PERMITS FEES APPLICABLE TO CHAPTER 17.73 MVMC

WHEREAS, many City residents struggle to afford their housing each month and a shortage of affordable housing exists in every major metropolitan area in the United States; and

WHEREAS, there is a high demand for rental units in the City and very low vacancy rates, especially for affordable units; and

WHEREAS, the U.S. Department of Housing and Urban Development (HUD) considers a household paying more than 30 percent of their income on housing as “cost burdened and may have difficulty affording necessities such as food, clothing, transportation and medical care”. HUD’s Comprehensive Housing Affordability Strategy (CHAS) Data Query Tool shows that 36 percent of Mount Vernon households (both rented and owned) are paying more than 30 percent of their income on housing; and

WHEREAS, the rationale for incentivizing the creation of housing units specifically for those earning 80% of the AMI or less is to address the affordable housing needs of City residents; and

WHEREAS, the regulations adopted herein are only one of many actions the City intends to undertake to implement the Goals, Objectives, and Policies of the City’s Housing Element of the Comprehensive Plan; and

WHEREAS, the regulations adopted herein are intended to implement the Growth Management Act requirement to provide for housing opportunities for all economic segments of the community; and

WHEREAS, the City Council finds that the proposed development regulations contained herein are consistent with the City’s Comprehensive Plan. Further, the City finds that the following Goals, Objectives, and Policies adopted within the Land Use and Housing Element directly relate to the proposed regulations contained within this Ordinance:

HOUSING GOAL 1: ENHANCE MOUNT VERNON’S CULTURAL AND ECONOMIC VITALITY BY ENCOURAGING THE DEVELOPMENT OF HOUSING SOLUTIONS OF ALL TYPES THAT PROVIDE FOR VARIED DENSITIES, SIZES, COSTS AND LOCATIONS THAT ARE SAFE, DECENT, ACCESSIBLE, ATTRACTIVE, APPEALING AND AFFORDABLE TO A DIVERSITY OF AGES, INCOMES, AND CULTURAL BACKGROUNDS.

OBJECTIVE 1.1: In City plans and zoning regulations, accommodate a variety of housing types that are attractive and compatible in design, and available to all economic segments of the community.

Policy 1.1.2: In recognition of community needs, the City shall maintain a variety of future land use classifications and implement zoning to accommodate a range of housing types with varying densities and sizes.

Policy 1.1.4: Continue to promote plans and policies that encourage in-fill residential projects in close proximity to neighborhood centers, shopping and retail facilities, parks, transit routes and other service uses.

Policy 1.1.5: Continue to promote plans and regulations that allow incentives such as bonus densities and flexible design standards that support and promote the construction of new innovative or affordable housing styles, compatible with the planned uses of surrounding sites. Ground related housing types such as cottages, townhouses, zero lot line developments and other types are examples of housing choices that promote individuality and ownership opportunities. Consider adopting new development regulations that would offer new ways to encourage these types of housing choices.

HOUSING GOAL 2: PROMOTE THE PRESERVATION, MAINTENANCE AND ENHANCEMENT OF EXISTING HOUSING AND RESIDENTIAL NEIGHBORHOODS THROUGHOUT THE CITY.

OBJECTIVE 2.1: Promote infill housing that is compatible with abutting housing styles and with the character of the existing neighborhood.

Policy 2.1.1: Encourage infill housing on vacant or underutilized parcels having adequate services, and ensure that the infill development is compatible with surrounding neighborhoods.

Policy 2.1.2 : Adopt development regulations that enhance existing single family neighborhoods by requiring significant changes in density be transitioned near these existing neighborhoods. Ways to transition from higher-density

to existing single-family neighborhoods include (but are not limited to) the following: reducing densities and building heights closest to existing neighborhoods; and require landscaping treatments and fencing surrounding higher density developments.

Policy 2.1.3: Consider adopting regulations such as flexible lot sizes that encourage infill development on small lots consistent with the neighborhood's character.

Policy 2.1.4: Encourage the construction of attached and detached accessory dwelling units in single-family districts subject to specific development, design and owner occupancy provisions.

HOUSING GOAL 4: ENCOURAGE SAFE, DECENT, ACCESSIBLE, ATTRACTIVE AND AFFORDABLE HOUSING DEVELOPMENT THAT MEETS COMMUNITY NEEDS AND IS INTEGRATED INTO, AND THROUGHOUT, THE COMMUNITY INCLUDING AREAS OF HIGHER LAND COST WHERE GREATER SUBSIDIES MAY BE NEEDED.

OBJECTIVE 4.1: Encourage the creation of ownership and rental housing that is affordable for all households within the City, with a particular emphasis on low, very-low, and extremely-low income households as defined by the U.S. Department of Housing and Urban Development (HUD).

Policy 4.1.1: Evaluate the adoption of zoning regulations targeted at otherwise market-rate developments that require or incentivize a minimum percentage of new dwelling units and/or lots that are created (whether multi-family or single-family) be income restricted.

Policy 4.1.3: Evaluate the adoption of zoning regulations that provide bonuses in density for developments that create income restricted units aimed at those earning less than 80% of the area median income (AMI) with greater bonuses provided to housing reserved for those earning 60% of the AMI and below.

Policy 4.1.4: Encourage affordable housing to be dispersed throughout the City, within each Census tract, rather than overly concentrated in a few locations.

Policy 4.1.5: Where affordable housing is proposed together with market rate housing, affordable housing units should be comparable in design, integrated into the whole development, and should match the tenure of the whole development.

Policy 4.1.6: Maintain and explore enhancing regulatory incentives to encourage the production and preservation of affordable ownership and rental housing such as through density bonuses, impact fee reductions, permit fast-tracking, or other methods.

Policy 4.1.7: Ensure during development review processes that all affordable housing created in the city with public funds or by regulatory incentives remains affordable for the longest possible term; at a minimum 50 years.

WHEREAS, the City affirmatively furthers fair housing and is committed to: focusing on the future, working together to build strong neighborhoods, developing a sound economy, and providing a safe community; and

WHEREAS, the City Council finds that:

1. The proposed amendments bear a substantial relation to the public health, safety and welfare.
2. The proposed amendments promote the best long term interests of Mount Vernon; and

WHEREAS, the Department of Commerce was notified of the proposed amendments on September 26, 2019, an acknowledgement letter was received from Commerce dated October 2, 2019, and Commerce granted the City expedited review on October xx, 2019 (their identification number: 2019-S-732); and as such, the City is in compliance with RCW 36.70A.106 (1); and

WHEREAS, a SEPA Threshold Determination of Non-significance (DNS), non-project action, was issued on October 3, 2019 and published and routed to all applicable Federal, State, and Local Agencies, Utilities, and Tribes on October 7, 2019. The comment period for the DNS ended on October 21, 2019; and the appeal period for the DNS ended on October 31, 2019. There were no comments received or appeals filed; and,

WHEREAS, the requisite Planning Commission hearing held on November 5, 2019; and the City Council hearing held on November 20, 2019 were preceded with appropriate notice published on October 7, 2019; and

WHEREAS, the requirements for public participation in the development of this amendment as required by the State Growth Management Act (GMA) and by the provisions of City of Mount Vernon Resolution No. 491 have all been met; and

WHEREAS, the City is making a deliberate policy decision to require affordable housing created through the provisions of Chapter 17.73 MVMC (that will be codified with approval of this Ordinance) remain affordable in perpetuity. This policy decision based, in part, on the following documents:

- Hickey, Robert, etal. 2014. *Achieving Lasting Affordability through Inclusionary Housing*. Lincoln Institute (Produce Code WP14RH1)
- Khadduri, Jill, etal. 2012. *What Happens to Low-Income Housing Tax Credit Properties at Year 15 and Beyond?* (HUD's Office of Policy Development and Research)
- Grover, Michael. 2007. *Community Land Trusts Strive for Permanent Housing Affordability* (Federal Reserve Bank of Minneapolis)

WHEREAS, the City utilized the State Attorney General Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property for evaluating constitutional issues, in conjunction with and to inform its review of the Ordinance. The City has utilized the process, a process protected under Attorney-Client privilege pursuant to law including RCW 36.70A.370(4), with the City Attorney's Office which has reviewed the Advisory Memorandum and discussed this Memorandum, including the "warning signals" identified in the Memorandum, with decisions makers, and conducted an evaluation of all constitutional provisions potentially at issue and advised of the genuine legal risks, if any, with the adoption of this Ordinance to assure that the proposed regulatory or administrative actions did not result in an unconstitutional taking of private property, consistent with RCW 36.70A.370(2).

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOUNT VERNON, WASHINGTON, DO ORDAIN AS FOLLOWS:

SECTION ONE. Recitals Incorporated. The City Council adopts the recitals set forth above as findings justifying adoption of this Ordinance and incorporates those recitals as if set forth fully herein. The Council also adopts the following additional findings in support of the adoption of this Ordinance:

1. (insert after hearing)

SECTION TWO. **PLANNING COMMISSION RECOMMENDATION ADOPTED.**

A. Planning Commission Recommendation to the City Council:

At their public hearing on November 5, 2019 the Commission considered the items presented by City staff, the testimony of one individual and written comments by another individual. Following their deliberation of all these items the Planning Commission made a recommendation to adopt the amendments to the Mount Vernon Municipal Code that are contained in this Ordinance.

SECTION THREE. New Section. A new Chapter 17.73, Regulations to Encourage Affordable Housing, is added to the Mount Vernon Municipal Code as follows:

Chapter 17.73

REGULATIONS TO ENCOURAGE AFFORDABLE HOUSING

17.73.000	Purpose
17.73.010	Definitions
17.73.020	General Provisions
17.73.030	Encouraging Affordable Housing in Single-Family Zones (R-1)
17.73.040	Encouraging Affordable Housing in Duplex and Townhouse Zones (R-2)
17.73.050	Encouraging Affordable Housing in Multi-Family Zones (R-3 and R-4)
17.73.060	Encouraging Affordable Housing in Planned Unit Developments
17.73.070	Encouraging Affordable Housing in Downtown, Community and Neighborhood Commercial Zones (C-1, C-3 and C-4)
17.73.080	Required Affordable Housing for Rezones
17.73.090	Required Covenants and Agreements
17.73.100	Density Transitions and Design Standards
17.73.110	Accessory Dwelling Units

17.73.000 Purpose

The purpose of this Chapter is to encourage long-term affordable single-and-multi-family housing for those earning 80% of the Area Median Income (AMI) and below in the zones listed within this Chapter while ensuring neighborhood compatibility and quality living environments for all citizens.

17.73.010 Definitions

The following words when used in this Chapter shall be defined as indicated below.

- A. **“Area Median Income”** or (AMI), means an income estimate developed with U.S. Census data and an inflation factor based on the Congressional Budget Office (CBO) forecast of the national Consumer Price Index (CPI). The U.S. Department of Housing and Urban Development (HUD) calculates and releases this data on a yearly basis.
- B. **“Affordable Housing” and “Affordable Housing Unit”** are the additional dwelling units authorized by this chapter of the MVMC and are further defined as follows:
 1. A primary residence for an owner-occupied dwelling unit reserved for occupancy by eligible households and affordable to households whose household annual income does not exceed eighty percent of the Mount Vernon-Anacortes, WA Metropolitan Statistical Area (MSA) median household income, adjusted for household size, as determined by the United States Department of Housing and Urban Development (HUD), with no more than 30 percent of the monthly household income being paid for monthly housing expenses (mortgage and mortgage insurance, property taxes, property insurance and homeowners’ dues).
 2. A primary residence for a renter-occupied dwelling unit reserved for occupancy by eligible households and affordable to households whose household annual income does not exceed eighty percent of the Mount Vernon-Anacortes MSA median household income, adjusted for household size, as determined by HUD, with no more than 30 percent of the monthly household income being paid for monthly housing expenses (rent and an appropriate utility allowance).
- C. **“Base Units”** are the number of dwelling units authorized by the underlying zoning of a site calculated using the density calculations found in MVMC Chapter 17.06.
- D. **“Bonus Units”** are the additional dwelling units authorized through MVMC Chapter 17.73 that are required to be affordable housing for the life of the structure.

- E. **“Market Rate Units”** are housing units that can be single-family, duplex, or multi-family structures that have no ownership or rent restrictions; which means the seller or landlord is free to sell or rent at whatever price they wish to.

17.73.020 General Provisions

- A. All of the below listed regulations shall apply to all new dwelling units created using the provisions of this Chapter.
1. Affordable housing units shall be required to be created before, or within the same phase, as other dwelling units. Applicants will not be allowed to construct the market rate units first and wait to construct the affordable housing units.
 2. Developments using this Chapter of the Mount Vernon Municipal Code shall comply with the regulations of the zoning district within which a development is located unless this Chapter specifically states otherwise.
 3. Prior to the issuance of any building permits, the City shall review and approve the location and unit mix of the affordable housing units to ensure compliance with the following standards:
 - i. The affordable housing units shall be intermingled with all other dwelling units in the development. This means that the affordable housing units are not allowed to be placed together in one isolated area of a plat, or on one particular floor of a multi-family structure.
 - ii. The affordable housing units shall be available for occupancy in a time frame comparable to the availability of the rest of the dwelling units in the development.
 - iii. The affordable housing units shall have floor areas that are no less than thirty percent smaller than the average floor areas for the market rate units within the same development. The floor areas being compared shall be for the same type of dwelling units, i.e. comparing market rate multi-family units to affordable multi-family units and market rate single-family units to affordable single-family units. For example, if the average floor area of the single-family detached units is 2,000 square feet then the affordable housing units are required to be 1,400 square feet or larger.
 - iv. No less than fifty percent of the affordable housing units shall be required to have the same number of average bedrooms that the same type of market rate housing in the same development has. For example, if the average number of bedrooms for the multi-family units is three then no less than fifty percent of the affordable units will be required to have at least three bedrooms.
 4. All properties with affordable housing units created under the provision of this Chapter shall record covenants and agreements and shall comply with the Density Transitions and Design Standards as prescribed in MVMC 17.73.090 and 17.73.100.
 5. If after completing the initial density calculations required to determine the number of affordable and market rate housing units the number of units to be created changes the Applicant shall be required to complete the density steps to calculate the number of bonus units in total, and how many of the bonus units will be required to be Affordable Housing Units.

17.73.030 Encouraging Affordable Housing in Single-Family Zones (R-1)

- A. In each of the single-family zones listed below in Table 1 additional dwelling units may be created if a specified number of new homes are Affordable Housing Units.

TABLE 1: AFFORDABLE HOUSING BONUS DENSITY IN SINGLE FAMILY RESIDENTIAL ZONES

ZONING DESIGNATION	EXISTING REQUIREMENTS FROM CHAPTER 17.15	AFFORDABLE HOUSING DENSITY BONUS	DENSITY BONUS PROVISIONS AND REQUIREMENTS
R-1, 7.0 Single-Family Residential	Minimum and Maximum Density: 4.0 to 7.26 du/acre Minimum Lot Size: 4,500	50% bonus density from 7.26 to 10.89 du/acre if 33.3% of the bonus units are Affordable Housing Units	• No minimum lot sizes • Bonus units can be single-family, duplexes, townhouses, or multi-family • Covenants and Agreements per 17.73.090 required • Density transitions and Design Standards per 17.73.100 required
R-1, 5.0 Single-Family Residential	Minimum and Maximum Density: 4.0 to 5.73 du/acre Minimum Lot Size: 6,000	50% bonus density from 5.73 to 8.60 du/acre if 33.3% of the bonus units are Affordable Housing Units	• No minimum lot sizes • Bonus units can be single-family, duplexes, townhouses, or multi-family • Covenants and Agreements per 17.73.090 required • Density transitions and Design Standards per 17.73.100 required
R-1, 4.0 Single-Family Residential	Minimum and Maximum Density: 4.0 to 4.54 du/acre Minimum Lot Size: 7,500	50% bonus density from 4.54 to 6.81 du/acre if 33.3% of the bonus units are Affordable Housing Units	• No minimum lot sizes • Bonus units can be single-family, duplexes, townhouses, or multi-family • Covenants and Agreements per 17.73.090 required • Density transitions and Design Standards per 17.73.100 required

B. Following are the steps to calculate the number of bonus units in total, and how many of the bonus units will be required to be Affordable Housing Units. The steps listed below are required to be calculated in the order listed below. For added clarity, an illustrative example is also included.

1. The base density per MVMC Chapters 17.06 and 17.15 is calculated (assuming the maximum potential density per the underlying zoning designation).
2. The same density calculation is completed using the Affordable Housing Bonus Density (see the third column from the left in Table 1 above).
3. The base density (#1) is subtracted from the bonus density (#2). This is the number of bonus density units possible. When this calculation results in a fraction, the number of Affordable Housing Units shall be rounded up to the next whole number (unit) if the fraction of the whole number is at least 0.50.
4. 33.3% of the bonus units are required to be Affordable Housing Units. When this calculation results in a fraction, the number of Affordable Housing Units shall be rounded up to the next whole number (unit) if the fraction of the whole number is at least 0.50.
5. At the discretion of the Developer, the remaining 66.6% of the Bonus Units can be market rate or Affordable Housing Units.
6. Following is an example calculation using steps 1 to 5 above:

Assume a net site area: 8.73 acres that is zoned R-1. 7.0

Base Density Calculation: 8.73 acres x 7.26 du/acre = 63.38 single-family units

Bonus Density Calculation: 8.73 x 10.89 du/acre = 95.07 single-family units

BONUS DENSITY: Difference between standard zoning and this Chapter = 31.69 units

$31.69 \times 33.3\% = 10.65$, round up to 11 units. This means that 11 units are required to be Affordable Housing Units and the additional 21 units are given to the developer to be market rate or affordable units, the developer gets to decide.

- C. The dwelling units created shall:
1. Comply with the setbacks and lot coverage listed in MVMC 17.70 applicable to the type of unit (i.e. single-family, duplex, multi-family).
 2. Multi-family structures shall comply with the land coverage, and distance between buildings as required by Chapter 17.24 MVMC.
 3. Be limited to three stories but not more than 35 feet so long as the requirements of MVMC 17.73.100 are met.
 4. But for the duplex exception listed below, the dwelling units from the base density calculation are required to be single-family detached units; however, there is no prescribed minimum lot size.
 - i. A maximum of 20% of the single-family detached units calculated from the base density can duplex units. For example, if 20 single-family homes were permitted, an applicant could create 16 single-family homes and two duplexes.
 5. The bonus units can be single-family, duplexes, townhomes, or multi-family units.

17.73.040 Encouraging Affordable Housing in the Duplex and Townhouse Zone (R-2)

- A. In the Duplex and Townhouse zone, listed below in Table 2, additional dwelling units may be created if a specified number of the new homes are Affordable Housing Units.

TABLE 2: AFFORDABLE HOUSING BONUS DENSITY IN DUPLEX AND TOWNHOUSE RESIDENTIAL ZONE

ZONING DESIGNATION	REQUIREMENTS FROM CHAPTER 17.18	AFFORDABLE HOUSING DENSITY BONUS	DENSITY BONUS PROVISIONS AND REQUIREMENTS
R-2 Duplex and Townhome- Residential Zone	Minimum and Maximum Density: 8.0 to 10.0 du/acre	Density doubles from 10.0 to 20.0 du/acre if 33.3% of the bonus units are Affordable Housing Units	• Bonus units can be duplexes, townhouses, or multi-family • Covenants and Agreements per 17.73.090 required • Density transitions and Design Standards per 17.73.100 required

- A. Following are the steps to calculate the number of bonus density units in total, and how many of the bonus units will be required to be Affordable Housing Units. The below listed steps are required to be calculated in the order listed below. For added clarity, an illustrative example is also included.
1. The base density per MVMC Chapters 17.06 and 17.18 is calculated (assuming the maximum potential density per the underlying zoning designation).
 2. The same density calculation is completed using the Affordable Housing Bonus Density (see the third column from the left in Table 2 above).
 3. The base density (#1) is subtracted from the bonus density (#2). This is the number of bonus units possible. When this calculation results in a fraction, the number of Affordable Housing Units shall be rounded up to the next whole number (unit) if the fraction of the whole number is at least 0.50.

4. 33.3% of the bonus units are required to be Affordable Housing Units. When this calculation results in a fraction, the number of Affordable Housing Units shall be rounded up to the next whole number (unit) if the fraction of the whole number is at least 0.50.
5. At the discretion of the Developer, the remaining 66.6% of the Bonus Units can be market rate or Affordable Housing Units.
6. Following is an example calculation using steps 1 to 5 above:

Assume a net site area: 3.7 acres that is zoned R-2

Base Density Calculation: 3.7 acres x 10 du/acre = 37 units

Bonus Density Calculation: 3.7 x 20 du/acre = 74 units

BONUS DENSITY: Difference between standard zoning and this Chapter = 37 units

$37 \times 33.3\% = 12.32$. This means that 12 units are required to be Affordable Housing Units and the remaining 25 units are given to the developer to be market rate or affordable units, the developer gets to decide.

- B. The duplex and/or townhouse units/developments shall:
1. Comply with the setbacks listed in MVMC 17.70.
 2. Comply with the land coverage and parking as required by Chapter 17.18 MVMC.
 3. Be limited to three stories but not more than 35 feet so long as the requirements of MVMC 17.73.100 are complied with.
 4. The dwelling units from the base density calculation are required to be duplexes or townhomes; however, there is no prescribed minimum lot size.
 5. The bonus units can be duplexes, townhomes, or multi-family units.
 6. The creation of up to 35 dwelling units shall be an outright use and when 36 or more dwelling units are created they shall be permitted by a conditional use permit classified by MVMC 14.05 as a Type III permit.

17.73.050 Encouraging Affordable Housing in Multi-Family Zones (R-3 and R-4)

- A. In the multi-family zones listed below in Table 3 additional dwelling units may be created if a specified number of the new homes are Affordable Housing Units.

TABLE 3: AFFORDABLE HOUSING BONUS DENSITY IN MULTI- FAMILY RESIDENTIAL ZONES

ZONING DESIGNATION	REQUIREMENTS FROM CHAPTER 17.24 and 17.27	AFFORDABLE HOUSING DENSITY BONUS	DENSITY BONUS PROVISIONS AND REQUIREMENTS
R-3 Multi-Family Residential	Minimum and Maximum Density: 10 to 15 du/acre	Density doubles from 15 to 30 du/acre if 33.3% of the bonus units are Affordable Housing Units.	• Covenants and Agreements per 17.73.090 required • Density transitions and Design Standards per 17.73.100 required
R-4 Multi-Family Residential	Minimum and Maximum Density: 10 to 20 du/acre	Density doubles from 20 to 40 du/acre if 33.3% of the bonus units are Affordable Housing Units	• Covenants and Agreements per 17.73.090 required • Density transitions and Design Standards per 17.73.100 required

B. Following are the steps to calculate the number of bonus density units in total, and how many of the bonus units will be required to be Affordable Housing Units. The steps listed below are required to be calculated in the order listed below. For added clarity, an illustrative example is also included.

1. The base density per MVMC Chapters 17.06 and 17.24 or 17.27 (as applicable) is calculated (assuming the maximum potential density per the underlying zoning designation).
2. The same density calculation is completed using the Affordable Housing Bonus Density (see the third column from the left in Table 3 above).
3. The base density (#1) is subtracted from the bonus density (#2). This is the number of bonus density units possible. When this calculation results in a fraction, the number of Affordable Housing Units shall be rounded up to the next whole number (unit) if the fraction of the whole number is at least 0.50.
4. 33.3% of the bonus units are required to be Affordable Housing Units. When this calculation results in a fraction, the number of Affordable Housing Units shall be rounded up to the next whole number (unit) if the fraction of the whole number is at least 0.50.
5. At the discretion of the Developer, the remaining 66.6% of the Bonus Density Units can be market rate or Affordable Housing Units.
6. Following is an example calculation using steps 1 to 5 above:

Assume a net site area: 5.5 acres that is zoned R-4

Base Density Calculation: 5.5 acres x 20 du/acre = 110 units

Bonus Density Calculation: 5.5 x 40 du/acre = 220 units

BONUS DENSITY: Difference between standard zoning and this Chapter = 110 units

$110 \times 33.3 = 36.63$, round up to 37. This means that 37 units are required to be Affordable Housing Units and the remaining 73 units are given to the developer to be market rate or affordable units, the developer gets to decide.

C. The multi-family units/developments shall:

- a. Comply with the setbacks listed in MVMC 17.70.
- b. Comply with the land coverage, distance between buildings, and parking as required by Chapter 17.24 MVMC.
- c. Be limited to four stories and 45 feet so long as the requirements of MVMC 17.73.100 are complied with.
- d. The creation of up to 35 dwelling units shall be an outright use and when 36 or more dwelling units are created they shall be permitted by a conditional use permit classified by MVMC 14.05 as a Type III permit.

17.73.060 Encouraging Affordable Housing in Planned Unit Developments

A. In each of the single-family zones listed below in Table 4 additional dwelling units may be created if the Applicant uses the Planned Unit Development process codified within MVMC Chapter 17.69 and if a certain number of the bonus dwelling units are Affordable Housing Units.

TABLE 4: AFFORDABLE HOUSING BONUS DENSITY IN PLANNED UNIT DEVELOPMENTS

ZONING DESIGNATION	REQUIREMENTS FROM CHAPTER 17.15	AFFORDABLE HOUSING DENSITY BONUS	DENSITY BONUS PROVISIONS AND REQUIREMENTS
R-1, 7.0 Single-Family Residential	Minimum and Maximum Density: 4.0 to 7.26 du/acre Minimum Lot Size: 4,500	Density doubles from 7.26 to 14.52 du/acre if 33.3% of the bonus units are Affordable Housing Units.	• No minimum lot sizes • Covenants and Agreements per 17.73.090 required • Density transitions and Design Standards per 17.73.100 required
R-1, 5.0 Single-Family Residential	Minimum and Maximum Density: 4.0 to 5.73 du/acre Minimum Lot Size: 5,000	Density doubles from 5.73 to 11.46 du/acre if 33% of the otherwise not allowed bonus units are occupied by those earning 80% AMI and below.	• No minimum lot sizes • Covenants and Agreements per 17.73.090 required • Density transitions and Design Standards per 17.73.100 required
R-1, 4.0 Single-Family Residential	Minimum and Maximum Density: 4.0 to 4.54 du/acre Minimum Lot Size: 6,000	Density doubles from 4.54 to 9.08 du/acre if 33% of the otherwise not allowed bonus units are occupied by those earning 80% AMI and below.	• No minimum lot sizes • Covenants and Agreements per 17.73.090 required • Density transitions and Design Standards per 17.73.100 required

- B. PUDs incorporating bonus affordable housing units shall be allowed to have a minimum lot area for a proposed PUD of five gross acres, versus the 10 gross acres required per MVMC 17.69.030(A).
- C. PUDs incorporating bonus affordable housing units shall be exempt from complying with MVMC 17.69.020(E).
- D. PUDs incorporating bonus affordable housing units shall be required to comply with the neighborhood context and transitions codified in MVMC 17.69.080(C) and the density transitions outlined below in subsection 17.73.100. Should there be a conflict between these two code sections the regulation that will provide the larger buffer shall be applied.
- E. PUDs incorporating bonus affordable housing units within a PUD shall be exempted from complying with MVMC 17.69.100, Modification of permitted uses – Multifamily units and 17.69.110, Modification of permitted uses – Duplex units, and shall instead be required to comply with the following modified regulations:
1. The placement of multifamily and/or duplex units (as defined within MVMC 17.06) within a PUD is discretionary by the city council. The city council may allow multifamily and duplex uses in single-family residential zones which are not otherwise permitted in the underlying zone so long as the requirements of this Chapter and Chapter 17.69 are complied with.

2. The total multifamily and/or duplex units shall comprise no more than 50% of the overall number of single-family dwelling units that are allowed and could physically be platted as part of the entire PUD. For example, if 100 single-family residential lots could be platted on a site, no more than 50 multifamily or duplex units can be constructed; which means that 50 single-family and 50 multifamily units (or 50 single-family, 30 multi-family and 20 duplex units) would be permitted so long as the overall density is not exceeded; and so long as city council makes a finding that the multifamily and/or duplex units can be placed and designed in such a way as to preserve the single-family character of the PUD and the surrounding area.
3. The multifamily units shall:
 - a. Comply with the setbacks listed in MVMC 17.70.
 - b. Comply with the land coverage, distance between buildings, landscaping, parking and signage as required by Chapter 17.24 MVMC.
 - c. Be limited to four stories and 45 feet so long as the requirements of MVMC 17.73.100 are complied with.
 - d. No more than 75 multifamily units can be located in any one residential multifamily structure.
4. The duplex units shall:
 - a. Comply with the setbacks listed in MVMC 17.70.
 - b. Comply with the land coverage, distance between buildings, landscaping, parking and signage as required by Chapter 17.18 MVMC.
 - c. Be limited to three stories but not more than 35 feet so long as the requirements of MVMC 17.73.100 are complied with.

17.73.070 Encouraging Affordable Housing in Downtown, Community and Neighborhood Commercial Zones (C-1, C-3 and C-4)

- A. In the Community and Neighborhood Commercial zones listed below in Table 5 the maximum number of building stories and building height may be increased if a specified number of dwelling units that can be created as a result of the additional building story are Affordable Housing Units.

TABLE 5: AFFORDABLE HOUSING INCREASE IN BUILDING STORIES AND HEIGHT COMMUNITY AND NEIGHBORHOOD COMMERCIAL ZONES

ZONING DESIGNATION	ADDITIONAL STORY AND HEIGHT	NUMBER OF AFFORDABLE HOUSING UNITS REQUIRED	ADDITIONAL REQUIREMENTS
C-3 Community Commercial	Adding one additional building story in this zone means that structures can be 5 stories and 65 feet in height	33.3% of the bonus units that can be created as a result of adding an additional story to the building are Affordable Housing Units	- Covenants and Agreements per 17.73.090 required - Density transitions and Design Standards per 17.73.100 required
C-4 Neighborhood Commercial	Adding one additional building story in this zone means that structures can be 4 stories and 55 feet in	33.3% of the bonus units that can be created as a result of adding an additional story to the building are Affordable	Covenants and Agreements per 17.73.090 required

ZONING DESIGNATION	ADDITIONAL STORY AND HEIGHT	NUMBER OF AFFORDABLE HOUSING UNITS REQUIRED	ADDITIONAL REQUIREMENTS
	height	Housing Units	Density transitions and Design Standards per 17.73.100 required

1. Following are the steps to calculate the number of bonus units in total, and how many of the bonus units will be required to be Affordable Housing Units. The steps listed below are required to be calculated in the order listed below. For added clarity, an illustrative example is also included.
 - i. The number of dwelling units to be created without the additional building story and height is calculated.
 - ii. The number of dwelling units to be created with the additional building story and height is calculated.
 - iii. The number of dwelling units from calculation (#1) is subtracted from the number of units calculated in (#2). This is the number of bonus units possible. When this calculation results in a fraction, the number of Affordable Housing Units shall be rounded up to the next whole number (unit) if the fraction of the whole number is at least 0.50.
 - iv. 33.3% of the bonus units are required to be Affordable Housing Units. When this calculation results in a fraction, the number of Affordable Housing Units shall be rounded up to the next whole number (unit) if the fraction of the whole number is at least 0.50.
 - v. At the discretion of the Developer, the remaining 66.6% of the Bonus Units can be market rate or Affordable Housing Units.
 - vi. Following is an example calculation using steps 1 to 5 above:

Without the additional building story and height a structure will have 68 units

With the additional building story and height the structure will have 90 units

BONUS UNITS: Difference between with and without the additional story = 22 units

$22 \times 33.3\% = 7.32$. This means that 7 units are required to be Affordable Housing Units and the additional 15 units are given to the developer to be market rate or affordable units, the developer gets to decide.

17.73.080 Required Affordable Housing for Rezones

All rezones approved after the effective date of the Ordinance codifying this Chapter of the Mount Vernon Municipal Code shall be required to provide affordable dwelling units as a condition of the rezone.

- A. This Chapter shall apply to all zoning districts that allow the creation of dwelling units in any form, i.e. single-family, duplex, townhomes, stacked flats, apartments, condominiums, etc, and constitutes a floating overlay zone over these districts that shall be implemented when dwelling units are constructed following approval of a rezone.
 1. All rezones shall be recorded with the Skagit County Auditor and shall include the requirements of this Chapter to ensure current and future property owners are fully aware of the requirements to create Affordable Housing Units when development occurs on the property.

- B. Following are the steps to calculate how many of the dwelling units will be required to be Affordable Housing Units for rezoned properties. The steps listed below are required to be calculated in the order listed below. For added clarity, an illustrative example is also included.
1. The base density per the underlying, or pre-rezone zoning designation in conjunction with MVMC Chapter 17.06 is calculated (assuming the maximum potential density per the pre-rezone zoning designation).
 2. The same density calculation is completed assuming the maximum potential density per the zoning designation the site will be rezoned to.
 3. The base density (#1) is subtracted from the rezone density (#2). This is the number of dwelling units possible because the site was rezoned. When this calculation results in a fraction, the number of dwelling units shall be rounded up to the next whole number (unit) if the fraction of the whole number is at least 0.50.
 4. 33.3% of the dwelling units possible as a result of the site being rezoned (i.e. the number of units calculated in #3 above) are required to be Affordable Housing Units. When this calculation results in a fraction, the number of Affordable Housing Units shall be rounded up to the next whole number (unit) if the fraction of the whole number is at least 0.50.
 5. At the discretion of the Developer, the remaining 66.6% of the Bonus Units can be market rate or Affordable Housing Units.
 6. Following is an example calculation using steps 1 to 5 above:

Assume a net site area: 13.21 acres

Rezone: site is zoned Public (P) and will be rezoned to Multi-Family Residential (R-3).

Base Density Calculation: The base density of the Public zone would be 0 because this zone does not allow single-family, duplex, or multi-family units.

Density Calculation Following Rezone: $13.21 \times 15 \text{ du/acre}$ (because one-half of the required parking will be provided beneath the habitable floors) = 198.15 multi-family units

DENSITY ATTRIBUTED TO REZONE: 198.15 multi-family units

$198.15 \times 33.3\% = 65.98$, round up to 66 units. This means that 66 units are required to be Affordable Housing Units and the additional 132 units can be market rate or affordable units, the developer gets to decide.

- C. All of the dwelling units created following the rezone shall:
1. Comply with the setbacks and lot coverage listed in MVMC 17.70 applicable to the type of unit (i.e. single-family, duplex, multi-family).
 2. As applicable, comply with the land coverage, lot size, building height, distance between buildings required by the zoning district the site was rezoned to.
 3. Comply with all of the General Provisions outlined in MVMC 17.73.020.

17.73.090 Required Covenants and Agreements

- A. Covenants and Agreements Required. Prior to final plat approval for subdivisions, or issuance of a certificate of occupancy for projects that do not require a subdivision, all properties with affordable housing units created under the provision of this Chapter shall, as applicable, record the below listed covenants and agreements with the Skagit County Auditor.

1. Covenant and Agreement to Ensure Affordability. This covenant and agreement shall ensure the affordability of the housing units by requiring these units to be Affordable Housing Units in perpetuity. The covenant shall be binding and shall run with the land. The covenant and agreement shall be substantially in the same format as the example Covenant and Agreement accompanying this Ordinance contained in Exhibit A. The Covenant and Agreement shall be approved by the Mount Vernon City Attorney in content and form; and the City Council shall authorize the Mayor to sign this document prior to recording. The Covenant and Agreement, at a minimum, shall include:
 - i. Price restrictions for both home ownership and rental units.
 - ii. Homebuyer or tenant qualifications.
 - iii. How income will be monitored.
 - iv. The content and form of yearly reports that will be required to be submitted to the City verifying income eligibility for affordable units
 - v. Any other applicable topics necessary to monitor and enforce the affordability of the bonus units.

2. Covenant and Agreement for Landscape Buffers, Parking Facilities, Open Space Amenities, and Exterior of Buildings and Accessory Facilities. This covenant and agreement shall require property owners to maintain all landscaping and landscape buffers, open spaces with their associated improvements (e.g. benches, gazebos, etc) parking lot striping, paint on curbs, signage, exterior walls and decorative components of structures, and accessory facilities (e.g. mail box covers). The covenant shall be binding and shall run with the land. The Covenant and Agreement shall be approved by the Mount Vernon City Attorney in content and form; and the City Council shall authorize the Mayor to sign this document prior to recording. The Covenant and Agreement, at a minimum, shall include:
 - i. Exhibit maps and detailed descriptions of all structures and improvements subject to the Covenant and Agreement.
 - ii. Detailed outline of specific maintenance, repair, and replacement required for each improvement that is covered by the Covenant and Agreement.
 - iii. Estimated maintenance and/or replacement schedule with approximate costs of such maintenance/replacement.

17.73.100 Density Transitions and Design Standards

- A. The purpose of the below listed landscaping buffers and height limitations is to preserve existing neighborhood character and to ensure existing neighborhoods and residential land use patterns have transitions in density and building heights as specified below.
 1. Proposed lots shall be greater than or equal to the square footage and width found on all abutting property that is zoned or developed with residential structures with the following exceptions:
 - a. If the abutting property consists of lots that are more than 9,600 square feet in size and are more than 95 feet in width the proposed lots are allowed to be a maximum of 9,600 square feet and 95 feet in width instead of being required to match the abutting lot sizes and widths.
 - b. If the developer chooses to create a 20-foot minimum forested buffer tract (as defined within MVMC 17.06.060) between the existing and proposed lots the proposed lots shall not be required to have a minimum square footage or lot width.
 2. Proposed lots and structures that abut nonresidentially zoned or used land shall be required to create or maintain a 20-foot minimum forested buffer tract between the newly created lots and structures and the nonresidentially zoned or used property.

3. All proposed structures shall be limited to the maximum number of stories and building height that abutting properties are allowed under their respective zoning code with the following exceptions:
 - a. Buildings that are proposed to be taller than the building height allowed under the respective zoning code for abutting structures shall observe an additional 1-foot setback in addition to what the underlying zoning requires for each additional 1-foot of building height in excess of what the abutting property is allowed. Following is an example of how this height transition is applied.

Proposed is a multi-family structure that is 45 feet in height above average abutting grade that abuts single-family residential lots on its north (side yard) and west (rear yard) boundaries.

The abutting single-family residential lots have a maximum height of 35 feet per their underlying zoning found in MVMC Chapter 17.15.

The difference between the proposed height and the allowed height of the abutting lots is 10 feet.

The proposed multi-family structure is required, per the underlying zoning, to observe 20-foot side and rear yard setbacks on its north and west boundaries. To have a structure that is 10 feet taller than structures on abutting properties are allowed to be its side and rear yard setbacks are required to be increased to 30 feet.

(insert illustration here)

17.73.110 Accessory Dwelling Units

- A. Accessory dwelling units shall be outright permitted uses in the single-family and Residential Agricultural zoning districts codified within Chapter 17.15 and 17.12 of the MVMC.
- B. Accessory dwelling units are required to comply with the below listed regulations:
 1. An accessory dwelling unit may be established in an existing single-family dwelling unit or in a detached structure on a legal lot by any one or by a combination of the following methods:
 - i. Alteration of interior space of the dwelling; or
 - ii. Conversion of an attic, basement, attached or detached private garage, or other previously uninhabited portion of a dwelling; or
 - iii. Addition of attached living area onto an existing dwelling; or
 - iv. Construction of a detached living area.
 2. Each single-family dwelling on a legal building lot shall have not more than one accessory dwelling unit.
 3. One of the dwelling units shall be occupied by one or more owners of the property as the owner's permanent and principal residence. "Owners" shall include title holders and contract purchasers. The owner shall file a certification of owner-occupancy with the Development Services Department prior to the issuance of the permit to establish an accessory dwelling unit.
 4. The floor area of the accessory dwelling unit shall not exceed 1,000 square feet.

5. Three off-street parking spaces shall be provided for the principal and accessory dwelling unit to share. When the property abuts an alley, the off-street parking space for the accessory dwelling unit shall gain access from the alley, unless topography makes such access impossible.
6. The single-family appearance and character of the dwelling shall be maintained when viewed from the surrounding neighborhood. Only one entrance to the residential structure may be located on any street side of the structure; provided, that this limitation shall not affect the eligibility of a residential structure which has more than one entrance on the front or street side on the effective date of the ordinance codified in this chapter.
7. The accessory and principal dwelling unit shall comply with all applicable requirements of the Building, Fire and Zoning Codes in effect when a technically complete application for an Accessory Dwelling Unit is submitted to the City.
8. The owner of a single-family dwelling with an accessory dwelling unit shall file an owner's certificate of occupancy in a form acceptable to the city attorney no later than April 1st of each year. Any person who falsely certifies that he or she resides in a dwelling unit at the stated address to satisfy the requirements of this section shall be subject to the violation and penalty provisions of Title 19 of the MVMC.
9. A permit for an accessory dwelling unit shall not be transferable to any lot other than the lot described in the application.
10. All accessory dwelling units shall also be subject to the condition that such a permit shall automatically expire whenever:
 - i. The accessory dwelling unit is substantially altered and is thus no longer in conformance with the approved plans; or
 - ii. The subject lot ceases to maintain at least three off-street parking spaces; or
 - iii. The applicant ceases to own or reside in either the principal or the accessory dwelling unit.
11. The applicant shall execute a Covenant and Agreement substantially in the same format as the Covenant and Agreement contained in Exhibit A of this Ordinance that is required to be recorded with the Skagit County Auditor, providing notice to future owners or long-term lessors of the subject lot that the existence of the accessory dwelling unit is predicated upon the occupancy of either the accessory dwelling unit or the principal dwelling by the person to whom the accessory dwelling unit permit has been issued. The Covenant and Agreement shall also require any owner of the property to notify a prospective buyer of the limitations of this section and to provide for the removal of improvements added to convert the premises to an accessory dwelling unit and the restoration of the site to a single-family dwelling in the event that any condition of approval is violated.

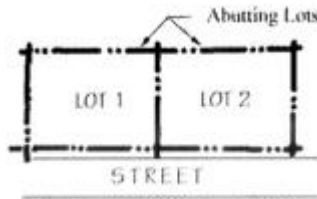
17.73.130 Other Affordable Housing Tools Offered by the City

- A. See MVMC Chapter 16.34 that authorizes the platting and subsequent sale of duplex and townhouse units.
- B. The creation of duplexes as an outright allowed use in the single-family residential districts codified in MVMC Chapter 17.15.
- C. The creation of additional dwelling units, and the ability to construct additional duplexes and multi-family structures through the Planned Unit Development process codified in MVMC Chapter 17.69.
- D. The creation of permanent supporting housing facilities authorized in MVMC Chapter 17.67.

SECTION FOUR. Section 17.06.010, A Definitions, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.06.010 A definitions.

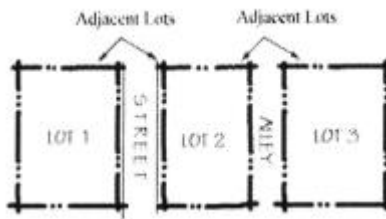
“Abutting” means to have boundaries that touch. When two parcels have a street or alley that runs between the two parcels, the two parcels are not abutting.



“Accessory building” means a subordinate building, the use of which is incidental to the use of the main building on the same lot where the building shall not exceed the height of and 50 percent of the existing gross floor area of the principal or main building, except where the principal or main building is less than 1,800 square feet in size, an accessory building of up to 900 square feet in size may be permitted.

“Accessory use” means a use incidental and subordinate in area, extent and purpose to the principal use and located on the same lot or in the same building as the principal or main use served on the same lot. This does not preclude the subject property from being subdivided through a binding site plan process at the time of development, or following the development of the proposed primary and accessory uses. Construction or initiation of an accessory use shall be concurrent with the primary permitted use or following the development and/or the commencement of the primary permitted use.

“Adjacent” means lots located across a public street, railroad, or right-of-way.



~~“Affordable housing” means units to be sold or rented to families earning less than 80 percent of the Skagit County median income, adjusted for family size, as determined by the U.S. Department of Housing and Urban Development.~~

“Area Median Income” or (AMI), means an income estimate developed with U.S. Census data and an inflation factor based on the Congressional Budget Office (CBO) forecast of the national Consumer Price Index (CPI). The U.S. Department of Housing and Urban Development (HUD) calculates and releases this data on a yearly basis.

“Affordable Housing” and “Affordable Housing Unit” are the additional dwelling units authorized by this chapter of the MVMC and are further defined as follows:

- A. A primary residence for an owner-occupied dwelling unit reserved for occupancy by eligible households and affordable to households whose household annual income does not exceed eighty percent of the Mount Vernon-Anacortes, WA Metropolitan Statistical Area (MSA) median household income, adjusted for household size, as determined by the United States Department of Housing and Urban Development (HUD), with no more than 30 percent of the monthly household income being paid for monthly housing expenses (mortgage and mortgage insurance, property taxes, property insurance and homeowners’ dues).
- B. A primary residence for a renter-occupied dwelling unit reserved for occupancy by eligible households and affordable to households whose household annual income does not exceed eighty

percent of the Mount Vernon-Anacortes MSA median household income, adjusted for household size, as determined by HUD, with no more than 30 percent of the monthly household income being paid for monthly housing expenses (rent and an approved utility allowance).

“Agricultural use” means:

- A. The growing of crops, except marijuana;
- B. The sale of products produced on the premises except marijuana; provided, that the lot area is greater than two acres; and provided, that only one sales stand, 450 square feet or less, shall be permitted; and
- C. The raising of livestock, except commercial hogs; provided, that the operation conforms to all applicable health laws; and provided, that no more than one hooved animal (excluding sucklings) shall be permitted for each one-half acre lot area. In no case shall any building housing livestock be located less than 200 feet from any property line.

“Alley” means a public thoroughfare which affords access to abutting property and is usually not intended for general traffic circulation.

“Alteration” means a change or rearrangement of structural parts, or an enlargement by extension of the existing structural parts, of a building, or the moving of a building from one location to another, or any change in addition to or modification of occupancy, business, commercial, industrial or similar uses. The installation or rearrangement of partitions affecting more than one-third of a single floor area shall be considered an alteration.

Area, Building. “Building area” means the total ground coverage of a building or structure which provides shelter, measured from the outside of its external walls or supporting members or from a point four feet in from the outside edge of a cantilevered roof.

Area, Site. “Site area” means the total horizontal area within the property lines, excluding external streets.

“Awning” means a shelter, typically for a pedestrian walkway, that projects from and is supported by the exterior wall of a building. Awnings have noncombustible frames, but may have combustible coverings. Awnings may be fixed, retractable, folding or collapsible. Any structure which extends above any adjacent parapet or roof of a supporting building is not included within the definition of awning. (Ord. 3714 § 7, 2017; Ord. 3627 § 10, 2014; Ord. 3598 § 2, 2013; Ord. 3595 § 3, 2013).

SECTION FIVE. Section 17.06.090, S Definitions, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.06.190 S definitions.

“School” means any building or part thereof which is licensed by the state and is designed, constructed, or used for elementary and secondary education.

“Secure community transition facility” (SCTF) means, under RCW 71.09.020, a residential facility for persons civilly committed and conditionally released to a less restrictive alternative under Chapter 71.09 RCW. A secure community transition facility has supervision and security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include but are not limited to the facility established pursuant to RCW 71.09.250 and any community-based facilities established under this chapter and operated by the Washington State Secretary of Social and Health Services or under contract with the Secretary.

“Setback” means the horizontal distance from the property line of the lot, or street or vehicular access easement or tract to the building line of the structure.

“Shelter care facility” means a residence that provides temporary lodging to the victims and/or families of victims of a crime or other traumatic event; provided, that the shelter care facility must meet the criteria set forth in subsection A of the definition of group home.

“Sight-obscuring” is an adjective applied to a fence or wall meaning that the view from outside the subject property is substantially blocked by an opaque construction such as abutting wood boards or masonry.

“Sign” means any commercial communication device, structure or fixture, visible from a public right-of-way ~~and using which uses~~ graphics, pictures, symbols or written copy ~~that is and is~~ intended to aid an establishment or business in promoting the sale of a product, goods or services. For the purpose of this title, ~~the definition of~~ a sign shall not ~~be considered to be include~~ building or structural designs, national flags or flags of political subdivisions, symbolic flags or insignias of an institution, point of purchase ~~mechanical~~ product dispensers, holiday decorations, gravestones, historical site plaques, holiday displays, works of art, murals, and supergraphics as defined within this Chapter, that contain no sign copy. ~~or window displays.~~

“Site plan review committee” or “SPRC” means a committee composed of the development services director, city engineer, fire chief, and building inspector or their designees and additional departments, consultants and/or agencies deemed necessary by the development services director to adequately review the project.

“Special uses” means certain uses which because of special requirements, unique characteristics, or infrequent occurrence may be allowed in certain use districts only if approved by the hearing examiner or city council, pursuant to the criteria and procedures established in this title.

“Specialized housing unit for the elderly” means a room or group of rooms used by one or more individuals living separately from others, in a structure designed for the needs of elderly people. These establishments shall provide services such as the supervision and care by supportive staff as may be necessary to meet the physical, emotional, and social needs of an elderly person. These facilities shall include the provision of personal care, supervision of self-administered medication, limited health facilities, communal dining facilities and services such as housekeeping, organized social and recreational activities and transportation services. These facilities can include programs where the elderly are provided social programs during the day without overnight stays. These units are commonly referred to as: Alzheimer care centers, assisted living facilities, congregate residences, continuing care retirement facilities, extended care facilities, long-term care facilities, residential health care facilities, skilled nursing homes, and hospice facilities. These facilities are not multifamily housing for the elderly. All specialized housing for the elderly shall comply with the following provisions:

A. The structure(s) shall comply with the city’s design standards and guidelines for multifamily buildings codified within Chapter 17.70 MVMC, but shall not have to comply with the standards for “Common Spaces/Usable Recreation Areas, Individual Outdoor Spaces, and Location of Parking.”

B. Limited signage shall be allowed to identify specialized housing for the elderly facilities. One identification sign not exceeding 20 square feet in sign area per sign face, and one directory sign not exceeding 15 square feet per sign face shall be permitted for each street frontage; however, signs shall not be internally illuminated, and pedestal signs shall not exceed five feet in height.

C. The number of parking spaces shall reflect all of the proposed uses within a structure utilized for specialized housing for the elderly. The following calculations shall be used to determine the number of off-street parking spaces on these sites. However, an applicant can choose to have a parking study completed by a licensed traffic engineer to determine the number of off-street parking spaces for a given facility. If such a study is submitted to the city; the applicant will pay for the city’s traffic engineer to

review and approve the parking recommendations outlined within such a report. If a parking study yields less parking than what is outlined below, the applicant will be required to justify the conclusions of their report; and the city may require restrictions in the form of covenants on a property to ensure that adequate parking spaces are provided. For example, the city could require that a covenant be placed on the property stating that a certain category of elderly resident not be able to have a vehicle on the site; or they could be limited to a certain number of vehicle(s) that a resident could bring with them. The off-street parking areas shall comply with the dimensional standards outlined within Chapter 17.84 MVMC.

1. Three-quarters parking spaces shall be provided for each room housing an elderly resident where a license from the State Department of Health is not required; and
2. For areas within the structure where skilled nursing care is required such as: nursing homes, hospice, and other similar facilities, there shall be one parking space for each five hospital type beds that are required to be licensed through the State Department of Health; and
3. For areas within the structure where assisted living or other similar care is required there shall be one parking space for each four hospital type beds that are required to be licensed through the State Department of Health; and
4. There shall be a parking space for every employee during the maximum shift so that employees are not parking within spaces designated for the elderly residents or their visiting guests; and
5. There shall be parking areas designated for the buses and/or vans that the facility will utilize for transporting their elderly residents; and
6. There shall be parking spaces designated specifically for guest parking.

“Specified anatomical areas” means both of the following:

- A. Less than completely and opaquely covered:
 1. Human genitals, pubic region;
 2. Buttock;
 3. Breast below a point immediately above the top of the areola;
- B. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

“Specified sexual activities” means all of the following:

- A. Human genitals in a state of sexual stimulation or arousal;
- B. Acts of masturbation, sexual intercourse, or sodomy;
- C. Fondling or other erotic touching of human genitals, pubic region, buttock, or breast.

Storage, Indoor. “Indoor storage” means a use engaged in the storage of goods and/or materials characterized by infrequent pick-up and delivery, and located within a building. The definition excludes hazardous material storage, self-service storage, warehousing and distribution.

Storage, Outdoor. “Outdoor storage” means a use engaged in outdoor storage, wholesale sales, rental, and distribution of products, supplies, and equipment. This definition excludes hazardous material storage, and warehousing and distribution.

“Story” means that portion of a building including between the upper surface of any floor and the upper surface of the floor above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement, cellar or unused under-floor space is more than six feet above grade, as defined in this chapter, for more than 50 percent of the total perimeter, or is more than 12 feet above grade at any point, such basement, cellar or unused under-floor space shall be considered as a story.

“Street” means a public or private thoroughfare which affords access to abutting properties.

Street, Arterial. “Arterial street” means streets intended for higher traffic volumes and speeds as designated by the public works department.

Street, Collector. “Collector street” means a street providing access with higher traffic volumes than a typical residential, commercial, or industrial access street. Collector streets are designated by the public works department.

“Structure” means a combination of materials constructed and erected permanently on the ground or attached to something having a permanent location on the ground. Not included are mobile homes, Recreational Vehicles (e.g. motor homes, travel trailers, fifth wheel trailers, popup trailer, or truck camper), residential fences, retaining walls less than three feet in height, rockeries and similar improvements of a minor character. (Ord. 3474 § 3, 2009; Ord. 3429 §§ 33, 34, 35, 39, 40, 41, 2008; Ord. 3425 § 5, 2008; Ord. 3315, 2006; Ord. 3092 § 40, 2002; Ord. 3026 § 7(4), 2000; Ord. 2997 § 1, 2000; Ord. 2966 § 4, 1999; Ord. 2957 § 1, 1999; Ord. 2943 § 47, 1999; Ord. 2865 §§ 5, 6, 1998; Ord. 2631 § 1, 1994; Ord. 2591 § 1, 1994; Ord. 2352, 1989).

SECTION SIX. Section 17.09.010, Districts established and designated, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.09.010 Districts established and designated.

To classify, segregate and regulate the use of land, buildings and structures, the city is divided into the use districts identified in the following table. This table also identifies the comprehensive plan designation associated with each zoning district.

ZONING DESIGNATION	COMPREHENSIVE PLAN DESIGNATION	MINIMUM NET DENSITY	MAXIMUM NET DENSITY (See Note 1)	MINIMUM LOT SIZE (See Note 2)
RESIDENTIAL ZONING DISTRICTS:				
R-1, 7.0 Single-Family Residential	High Density Single-Family (SF-HI)	4.0 du/acre	7.26 du/acre	4,500 square feet
R-1, 5.0 Single-Family Residential	High Density Single-Family (SF-HI)	4.0 du/acre	5.73 du/acre	6,000 square feet
R-1, 4.0 Single-Family Residential	Medium Density Single-Family (SF-MED)	4.0 du/acre	4.54 du/acre	7,500 square feet
R-1, 3.0 Single-Family Residential	Medium Density Single-Family (SF-MED)	3.23 du/acre (See the land use element of the comprehensive plan for minimum density policies)	3.23 du/acre	9,000 square feet
R-2 Two-Family Residential District	Low Density Multifamily (MF-LO)	8.0 du/acre	10 du/acre	6,500 square feet for a duplex or townhouse unit
R-3 Multifamily Residential District	Medium-High Density Multifamily (MF-MH)	10.0 du/acre	12 du/acre (Increased density up to a maximum of 15 du/acre may be achieved if at least 50% of the required parking spaces are located in an enclosed area beneath the habitable floors of the building or complex.)	N/A
R-4 Multifamily Residential District	Medium-High Density Multifamily (MF-MH)	10.0 du/acre	15 du/acre (Increased density up to a maximum of 20 du/acre)	N/A

ZONING DESIGNATION	COMPREHENSIVE PLAN DESIGNATION	MINIMUM NET DENSITY	MAXIMUM NET DENSITY (See Note 1)	MINIMUM LOT SIZE (See Note 2)
			may be achieved if at least 50% of the required parking spaces are located in an enclosed area beneath the habitable floors of the building or complex.)	
R-A Residential Agricultural District	Agricultural with Density Transfer (AG)	1.24 du/acre (See the land use element of the comprehensive plan for minimum density policies)	1.24 du/acre	35,000 square feet
COMMERCIAL, INDUSTRIAL, OFFICE, PUBLIC AND MISCELLANEOUS ZONING DISTRICTS:				
Public (P)	Government Center Churches Schools Community or Neighborhood Park Open Space Cemetery South Kincaid Subarea	N/A	N/A	N/A
Residential Office District (R-O)	Residential Office/Professional Office	N/A	N/A	4,500 square feet
Health Care Development District (HD)	Health Care Development	N/A	N/A	N/A
Professional Office District (P-O)	Residential Office/Professional Office	N/A	N/A	N/A
Mobile Home Park District (MHP)	High Density Single- Family (SF-HI)	8 double-width or 10 single-width manufactured homes per acre	8 double-width or 10 single-width manufactured homes per acre	5 acres
Central Business District (C-1a)	Downtown Retail or South Kincaid Subarea (See note 3)	N/A	N/A	N/A
Central Business District (C-1b)	Support Commercial	N/A	N/A	N/A
Central Business District (C-1c)	South Kincaid Subarea	N/A	N/A	N/A
General Commercial District (C-2)	Retail Malls, General Commercial, and Commercial/Industrial (See note 4)	N/A	N/A	N/A
Community Commercial District (C-3)	Community Retail, Mixed Use Center	N/A	N/A	N/A
Neighborhood Commercial District	Neighborhood Retail, Mixed Use Center	N/A	N/A	N/A

ZONING DESIGNATION	COMPREHENSIVE PLAN DESIGNATION	MINIMUM NET DENSITY	MAXIMUM NET DENSITY (See Note 1)	MINIMUM LOT SIZE (See Note 2)
(C-4)				
Limited Commercial (LC)	Commercial/Limited Industrial	N/A	N/A	6,000 square feet
Commercial/Limited Industrial District (C-L)	Commercial/Limited Industrial	N/A	N/A	N/A
Light Manufacturing and Commercial District (M-1)	Commercial/Industrial	N/A	N/A	N/A
Industrial District (M-2)	Commercial/Industrial	N/A	N/A	N/A
Floodplain District (F-1)	Open Space/Cemetery	N/A	N/A	N/A

(1) R-1, 4.0, R-1, 5.0, R-1, 7.0, R-2, R-3 and R-4 zones are all authorized through Chapters 17.73, Regulations to Encourage Affordable Housing, and 17.119, Transfer or Purchase of Development Rights, to increase the maximum densities outlined within this table

(2) R-1, 4.0, R-1, 5.0, R-1, 7.0, R-2, R-3 and R-4 zones are all authorized through Chapters 17.73, Regulations to Encourage Affordable Housing, and 17.119, Transfer or Purchase of Development Rights, to decrease minimum lot sizes outlined within this table.

(3) C-1a zoned properties located south of Kincaid Street shall have a comprehensive plan designation of South Kincaid Subarea. All other C-1a zoned properties shall have a comprehensive plan designation of downtown retail.

(4) South Kincaid Subarea comprehensive plan designation exists for general commercial (C-2) zoned property south of Kincaid Street, east of Interstate-5 and west of the railroad tracks. This is the only area that shall be zoned C-2 with a comprehensive plan designation of South Kincaid Subarea. (Ord. 3749 § 6, 2018).

SECTION SEVEN. Section 17.12.030, Accessory uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.12.030 Accessory uses.

Permitted accessory uses in the R-A district include:

- A. Those accessory uses permitted in the R-1 districts;
- B. Animal and implement barns, silos, sheds, accessory structures, and similar buildings needed in agricultural activities. Animal roaming areas shall be fenced;
- C. Home occupations as set forth in Chapter 17.96 MVMC and subject to the conditions contained therein;
- D. Private garage; and
- E. Each single-family residence is permitted to have one accessory structure that can be used as a shed to store tools or other household items as long as it complies with the following requirements:
 - 1. The total area of the accessory structure's roof shall be no more than 120 square feet.
 - 2. The accessory structure is required to be a single-story and is not allowed to be taller than the primary structure on the site.
 - 3. The accessory structure shall be located in the rear yard and is required to maintain a minimum 5-foot setback from all property lines and all other structures.
 - 4. The accessory structure shall not have a permanent heat source.
 - 5. The accessory structure is intended to be for storage of tools or other household items and is not to be a space that is slept in.

6. The accessory structure is not allowed in critical areas or their associated buffers regulated under Chapter 15.40 MVMC.

E. Each single family residence is permitted to have one accessory structure, which is exempt from building permit requirements, by definition of the International Building Code (120 square feet or less). These exempt structures are required to be located in the rear yard and maintain a minimum of 10 foot setback from any other building or property line.

F. Accessory Dwelling Units must comply with the requirements outlined in MVMC 17.73.100.

SECTION EIGHT. Section 17.12.045, Special uses, of the Mount Vernon Municipal Code is hereby repealed.

~~17.12.045 – Special uses.~~

~~Uses permitted by a special use permit in R-A districts are as follows:~~

~~A. Accessory dwelling unit, subject to the restrictions and regulations set forth in MVMC 17.81.110. (Ord. 3315, 2006; Ord. 2593 § 3, 1994).~~

SECTION NINE. Section 17.15.020, Subdistricts – Lot area requirements, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.15.020 Subdistricts – Lot area requirements.

District R-1 is further subdivided into districts as provided in the following table. Density is calculated per the definition of such found in Chapter 17.06 MVMC.

ZONING DESIGNATION	COMPREHENSIVE PLAN DESIGNATION	MINIMUM NET DENSITY	MAXIMUM NET DENSITY (See Note 1)	MINIMUM LOT SIZE (See Note 2)
R-1, 7.0 Single-Family Residential	High Density Single-Family (SF-HI)	4.0 du/acre	7.26 du/acre	4,500 square feet
R-1, 5.0 Single-Family Residential	High Density Single-Family (SF-HI)	4.0 du/acre	5.73 du/acre	6,000 square feet
R-1, 4.0 Single-Family Residential	Medium Density Single-Family (SF-MED)	4.0 du/acre	4.54 du/acre	7,500 square feet
R-1, 3.0 Single-Family Residential	Medium Density Single-Family (SF-MED)	3.23 du/acre (See the land use element of the comprehensive plan for minimum and maximum density policies)	3.23 du/acre	9,000 square feet

(1) R-1, 4.0, R-1, 5.0, and R-1, 7.0 zones are all authorized through Chapters 17.73, Regulations to Encourage Affordable Housing, and 17.119, Transfer or Purchase of Development Rights, to increase the maximum densities outlined within this table.

(2) R-1, 4.0, R-1, 5.0, and R-1, 7.0 zones are all authorized through Chapters 17.73, Regulations to Encourage Affordable Housing, and 17.119, Transfer or Purchase of Development Rights, to decrease the lot sizes outlined within this table.
(Ord. 3429 § 52, 2008).

SECTION TEN. Section 17.15.030, Permitted uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.15.030 Permitted uses.

The uses that are permitted as a matter of right in R-1 districts are:

- A. Detached, single-family residential dwelling units. This use is limited to the placement of one such dwelling unit per certified lot and may consist of manufactured homes.
- B. Group homes and shelter homes.
- C. Municipal parks and playgrounds of less than one-half acre.
- D. Planned unit developments may be permitted in the R-1, 7.0; R-1, 5.0; and R-1, 4.0 districts according to the procedures specified in Chapter 17.69 MVMC and may include additional uses recommended by the comprehensive plan (i.e., multifamily and/or commercial retail centers).
- E. Residential subdivisions platted and approved after the effective date of the ordinance codified in this section may request approval as part of the subdivision application to provide ~~single family attached dwellings in the form of duplexes; provided, that each unit shall be situated on an individually platted lot and separated by a common wall having a two-hour fire rating.~~

~~Further~~ provided, that all of the following conditions and requirements shall be met:

- ~~1. The lot area shall be a minimum of 6,500 square feet or equal to the zoning of the property, whichever is greater.~~
- ~~1. The lot area, setbacks, building height, maximum land coverage, landscaping, parking and signage shall be the same as the current zoning for the subdivision.~~
- ~~2. The design of each two-family unit shall be similar to other units in the subdivision and be designed to provide the appearance of a single-family unit by altering, for example, the location of front doors and windows, garages and access to garages, landscaping and fencing, etc. Additionally, the duplex units shall also comply with the City's Design Standards codified in MVMC Chapter 17.70.~~
- ~~4. The site plan (including all exterior improvements on the lot), building floor plans, elevations, landscaping plans, exterior colors, and location and design of fencing are approved as part of the preliminary and final plat process.~~
- ~~5. The site plan and supplemental information is recorded along with the final plat.~~
- ~~3. The CC&Rs and final plat shall identify for future lot owners the locations of all two-family units within the subdivision.~~
- ~~7. Building height shall not exceed the average height of all units within the subdivision.~~
- ~~8. The units may be allowed at a minimum spacing of 300 feet or more. The 300-foot spacing shall be measured from the lot lines.~~
- ~~9. A phasing plan for the development of the subdivision and each of the duplex units shall be provided and approved.~~
- ~~4. No more than 20 ~~40~~ percent of the single-family density that will actually be constructed within the subdivision can be duplexes. For example, if 20 single-family homes were permitted, an applicant could, if they meet all of the conditions above, create 16 ~~18~~ single-family homes and two ~~one~~ duplexes. (Ord. 3429 § 53, 2008).~~
- ~~F. Duplexes on lots of record subject to the City's Design Standards codified in MVMC Chapter 17.70 provided there are no other duplexes constructed on lots that are abutting or adjacent to the lot upon which a duplex is desired.~~
- ~~G. Rooms may be rented to not more than two persons, other than the family which occupies a single-family dwelling; provided, there is compliance with health, fire and building code requirements.~~
- ~~H. A day nursery, as defined in Chapter 17.06 MVMC; provided, they are state-licensed and care for more than six but less than 12 children, exclusive of the child care provider's own children, at one time.~~

SECTION ELEVEN. Section 17.15.040, Accessory uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.15.040 Accessory uses.

Permitted accessory uses in R-1 districts include:

A. Playgrounds when developed in connection with a small school, park, or community clubhouse not meeting size criteria of the public (P) district; provided, that playfields developed to the limits of a property shall be fenced with a six-foot-high fence with landscaping meeting the requirements of Chapter 17.99 MVMC along each side adjacent to developed private property. In lieu of fencing, a 15-foot buffer may be permitted;

B. Home occupations, as defined in Chapter 17.96 MVMC, and subject to the home conditions contained therein;

C. Housing of Small Animals. An accessory building used for the housing of small animals or fowl shall not exceed 36 square feet in floor area when located on a minimum lot and neither the building nor the fenced area for their roaming shall be closer than 25 feet to a property line, except by the recorded agreement of adjacent owners. The keeping of mink, goats, foxes or hogs is prohibited;

D. Gardening and fruit raising;

E. Private garages;

F. Day nurseries, as defined in Chapter 17.06 MVMC; provided, they maintain a valid city business license, are state-licensed, and provide in-home care for 12 or fewer children, and provided there shall be no visible change in any dwelling or housekeeping unit, such as lighting, signs, exterior display, or outdoor storage of materials and equipment, which would attract attention to the day nursery conducted therein;

G. Each single-family residence is permitted to have one accessory structure that can be used as a shed to store tools or other household items as long as it complies with the following requirements:

1. The total area of the accessory structure's roof shall be no more than 120 square feet.

2. The accessory structure is required to be a single-story and is not allowed to be taller than the primary structure on the site.

3. The accessory structure shall be located in the rear yard and is required to maintain a minimum 5-foot setback from all property lines and all other structures.

4. The accessory structure shall not have a permanent heat source.

5. The accessory structure is intended to be for storage of tools or other household items and is not to be a space that is slept in.

6. The accessory structure is not allowed in critical areas or their associated buffers regulated under Chapter 15.40 MVMC.

~~G. Each single family residence is permitted to have one accessory structure, which is exempt from building permit requirements, by definition of the International Building Code (120 square feet or less). These exempt structures are required to be located in the rear yard and maintain a minimum of five foot setback from any other building or property line.~~

H. Accessory Dwelling Units complying with the requirements outlined in MVMC 17.73.100.

SECTION TWELVE. Section 17.15.045, Administrative conditional uses, of the Mount Vernon Municipal Code is hereby repealed.

17.15.045—Administrative conditional uses.

Uses permitted by an administrative conditional use permit and classified as a Type II permit in R-1 districts are as follows:

~~A. Duplexes, subject to the regulations of Chapter 17.18 MVMC, where there is no more than one other duplex or multifamily use within 600 feet of the proposed use; provided, that there is at least a 100-foot separation between another duplex or multifamily use within a single family zone. The 600 feet may be reduced to 300 feet; provided, that 80 percent of the lots in the area described have single family homes~~

~~already built and that there is at least a 100-foot separation between another duplex or multifamily use within a single family zone;~~

~~B. Day nurseries; provided, that the size, location and design are compatible with the residential character of the neighborhood;~~

~~C. Rooms may be rented to not more than two persons, other than the family which occupies a single-family dwelling; provided, there is compliance with health and building code requirements. (Ord. 3429 § 55, 2008).~~

SECTION THIRTEEN. Section 17.15.055, Special uses, of the Mount Vernon Municipal Code is hereby repealed.

17.15.055—Special uses.

~~Uses permitted by a special use permit in R-1 districts are as follows:~~

~~A. A day nursery, as defined in Chapter 17.06 MVMC; provided, they are state-licensed and care for more than six but less than 12 children, exclusive of the child care provider's own children, at one time.~~

~~B. Accessory dwelling unit, subject to the restrictions and regulations set forth in Chapter 17.81 MVMC. (Ord. 3429 § 56, 2008).~~

SECTION FOURTEEN. Section 17.18.010, Intent, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.18.010 Intent.

The intent of this chapter is to provide for areas within neighborhoods containing attached dwellings in the form of duplexes or townhouses at a minimum net density of eight to a maximum net density of 10 dwelling units per acre. However, Chapters 17.73, Regulations to Encourage Affordable Housing, and 17.119, Transfer or Purchase of Development Rights, can be used to increase the maximum density of this zoning district. (Ord. 3315, 2006; Ord. 2352, 1989).

SECTION FIFTEEN. Section 17.18.020, Permitted uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.18.020 Permitted uses.

Permitted primary uses in the R-2 district include:

A. Those uses permitted in the R-1 district as long as the minimum net density for the district can be achieved;

B. Two-family dwelling unit also known as a duplex;

C. Townhomes;

D. Planned unit developments may be permitted according to procedures specified in Chapter 17.69 MVMC and may include additional uses recommended by the comprehensive plan (i.e., multifamily and/or commercial retail centers);

E. Municipal parks and playgrounds of less than one-half acre. (Ord. 3429 § 59, 2008).

F. Day nurseries; provided, that the size, location and design are compatible with the residential character of the neighborhood.

SECTION SIXTEEN. Section 17.18.030, Accessory uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.18.030 Accessory uses.

A. Permitted accessory uses in the R-2 district include those uses permitted in the R-1 district, except that no buildings to house small animals or fowl other than normal household pets shall be permitted.

B. Each duplex or townhouse structure is permitted to have one accessory structure that can be used as a shed to store tools or other household items as long as it complies with the following requirements:

1. The total area of the accessory structure's roof shall be no more than 120 square feet.
2. The accessory structure is required to be a single-story and is not allowed to be taller than the primary structure on the site.
3. The accessory structure shall be located in the rear yard and is required to maintain a minimum 5-foot setback from all property lines and all other structures.
4. The accessory structure shall not have a permanent heat source.
5. The accessory structure is intended to be for storage of tools or other household items and is not to be a space that is slept in.
6. The accessory structure is not allowed in critical areas or their associated buffers regulated under Chapter 15.40 MVMC.

~~B. Each dwelling unit is permitted to have one accessory structure, which is exempt from building permit requirements, by definition of the International Building Code (120 square feet or less). These exempt structures are required to be located in the rear yard and maintain a minimum of five-foot setback from any other building or property line. (Ord. 3429 § 60, 2008).~~

SECTION SEVENTEEN. Section 17.18.045, Administrative conditional uses, of the Mount Vernon Municipal Code is hereby repealed.

~~17.18.045—Administrative conditional uses.~~

~~Uses permitted by an administrative conditional use permit and classified as a Type II permit in R-2 districts are as follows:~~

~~A. Day nurseries; provided, that the size, location and design are compatible with the residential character of the neighborhood. (Ord. 3315, 2006; Ord. 3193 § 7, 2004).~~

SECTION EIGHTEEN. Section 17.24.010, Intent, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.24.010 Intent.

The intent of this chapter is to provide for areas within neighborhoods with good access containing multifamily residential development at a minimum net density of 10 to a maximum net density of 12 dwelling units per acre. However, Chapter 17.73 MVMC, Regulations to Encourage Affordable Housing can be used to increase the maximum density of this zoning district. (Ord. 3315, 2006; Ord. 2352, 1989).

SECTION NINETEEN. Section 17.24.020, Permitted uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.24.020 Permitted uses.

Permitted primary uses in the R-3 district include:

A. Two-family and townhouse dwelling units that can meet the minimum density requirements of this zone;

B. Multifamily residential developments of 75 dwelling units or less. The definition of “density for multifamily zoned developments” found in Chapter 17.06 MVMC describes how the maximum density is calculated within this zone;

C. Municipal parks and playgrounds of less than one-half acre;

D. Professional offices, such as medical and dental, under 4,000 square feet in gross floor area, providing the siting criteria of MVMC 17.24.045(A) are met and mitigate the impacts on the neighborhood. (Ord. 3773, 2019; Ord. 3429 § 62, 2008).

E. Professional offices, such as medical and dental offices; provided, that:

1. The type, size and construction are compatible with the residential intent or character of the district;

2. The design, landscaping and arrangement of parking spaces are compatible with the residential character of the project and the neighborhood;

3. Access is from a street capable of handling the traffic generated from the use, and is located such that it is compatible with the residential use and will not create a traffic hazard or congestion;

F. Specialized housing for the elderly with total building area under 12,000 square feet;

G. Day nursery; provided, that the size, location and design are compatible with the residential character of the development and neighborhood.

SECTION TWENTY. Section 17.24.030, Accessory uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.24.030 Accessory uses.

A. Permitted accessory uses in the R-3 district include those uses permitted in the R-1 district, except that accessory buildings for small animals or fowl, other than normal household pets, shall not be permitted.

B. Each multi-family structure is permitted to have one accessory structure that can be used as a shed to store tools or other household items as long as it complies with the following requirements:

1. The total area of the accessory structure's roof shall be no more than 120 square feet.

2. The accessory structure is required to be a single-story and is not allowed to be taller than the primary structure on the site.

3. The accessory structure shall be located in the rear yard and is required to maintain a minimum 5-foot setback from all property lines and all other structures.

4. The accessory structure shall not have a permanent heat source.

5. The accessory structure is intended to be for storage of tools or other household items and is not to be a space that is slept in.

6. The accessory structure is not allowed in critical areas or their associated buffers regulated under Chapter 15.40 MVMC.

~~B. Each primary building (regardless of number of units) of a multifamily residence is permitted to have one accessory structure which is exempt from building permit requirements by definition of the International Building Code (120 square feet or less). These exempt structures are required to be located in the rear yard and maintain a minimum of five-foot setback from any other building or property line. (Ord. 3429 § 63, 2008).~~

SECTION TWENTY-ONE. Section 17.24.045, Administrative conditional uses, of the Mount Vernon Municipal Code is hereby repealed.

17.24.045—Administrative conditional uses.

~~Uses permitted by an administrative conditional use permit and classified as a Type II permit in R-3 districts are as follows:~~

~~A. Professional offices, such as medical and dental offices; provided, that:~~

~~1. The type, size and construction are compatible with the residential intent or character of the district;~~

~~2. The design, landscaping and arrangement of parking spaces are compatible with the residential character of the project and the neighborhood;~~
~~3. Access is from a street capable of handling the traffic generated from the use, and is located such that it is compatible with the residential use and will not create a traffic hazard or congestion;~~
~~B. Specialized housing for the elderly with total building area under 12,000 square feet;~~
~~C. Day nursery; provided, that the size, location and design are compatible with the residential character of the development and neighborhood. (Ord. 3429 § 65, 2008).~~

SECTION TWENTY-TWO. Section 17.27.010, Intent, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.27.010 Intent.

The intent of this chapter is to provide for neighborhoods with close proximity to major arterials containing multifamily residential development at a minimum net density of 10 to a maximum net density of 15 dwelling units per acre. However, Chapter 17.73 MVMC, Regulations to Encourage Affordable Housing can be used to increase the maximum density of this zoning district. (Ord. 3315, 2006; Ord. 2352, 1989).

SECTION TWENTY-THREE. Section 17.27.020, Permitted uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.27.020 Permitted uses.

Permitted primary uses in the R-4 district include the following:

- A. Two-family and townhouse dwelling units that can meet the minimum density requirements of this zone;
- B. Multifamily residential developments of 75 dwelling units or less. The definition of “density for multifamily zoned developments” found in Chapter 17.06 MVMC describes how the maximum density is calculated within this zone;
- C. Municipal parks and playgrounds of less than one-half acre;
- ~~D. Professional offices, such as medical and dental, under 4,000 square feet in gross floor area, providing the siting criteria of MVMC 17.27.040(D) are met and mitigate the impacts on the neighborhood. (Ord. 3773, 2019; Ord. 3429 § 68, 2008).~~

D. Professional offices, such as medical and dental offices; provided, that:

- 1. The type, size and construction are compatible with the residential intent or character of the district;
- 2. The design, landscaping and arrangement of parking spaces are compatible with the residential character of the project and the neighborhood;
- 3. Access is from a street capable of handling the traffic generated from the use, and is located such that it is compatible with the residential use and will not create a traffic hazard or congestion;
- E. Specialized housing for the elderly with total building area under 12,000 square feet;
- F. Day nursery; provided, that the size, location and design are compatible with the residential character of the development and neighborhood.

SECTION TWENTY-FOUR. Section 17.27.030, Accessory uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.27.030 Accessory uses.

A. Permitted accessory uses in the R-4 district shall include those permitted in the R-1 district except that accessory buildings for small animals or fowl, other than normal household pets, shall not be permitted.

B. Each multi-family structure is permitted to have one accessory structure that can be used as a shed to store tools or other items as long as it complies with the following requirements:

1. The total area of the accessory structure's roof shall be no more than 120 square feet.
2. The accessory structure is required to be a single-story and is not allowed to be taller than the primary structure on the site.
3. The accessory structure shall be located in the rear yard and is required to maintain a minimum 5-foot setback from all property lines and all other structures.
4. The accessory structure shall not have a permanent heat source.
5. The accessory structure is intended to be for storage of tools or other household items and is not to be a space that is slept in.
6. The accessory structure is not allowed in critical areas or their associated buffers regulated under Chapter 15.40 MVMC.

~~B. Each primary building (regardless of number of units) of a multifamily residence is permitted to have one accessory structure which is exempt from building permit requirements by definition of the International Building Code (120 square feet or less). These exempt structures are required to be located in the rear yard and maintain a minimum of five-foot setback from any other building or property line. (Ord. 3429 § 69, 2008).~~

SECTION TWENTY-FIVE. Section 17.27.040, Conditional uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.27.040 Conditional uses.

Uses permitted by conditional use permit and classified as a Type III permit in the R-4 district are as follows:

- A. Churches; provided, that their principal access is from a secondary arterial street or greater and they shall conform to all the development standards and requirements of the public (P) zone and concurrent with approval the city shall require both the comprehensive plan and zoning designations to be changed to public (P) during the city's next comprehensive plan amendment cycle;
- B. Community clubhouses and community association offices serving the immediate neighborhood;
- C. Public utilities;

~~D. Professional offices, such as medical and dental offices; provided, that:~~

- ~~1. The type, size and construction are compatible with the residential intent or character of the district;~~
- ~~2. The design, landscaping and arrangement of parking spaces are compatible with the residential character of the project and the neighborhood;~~
- ~~3. Access is from a street capable of handling the traffic generated from the use, and is located such that it is compatible with the residential use and will not create a traffic hazard or congestion;~~

D. Specialized housing for the elderly exceeding 10,000 square feet in size and/or 15 units;

E. Multifamily residential developments of 76 dwelling units or more; provided, that no less than 50 percent of the sum of the building footprints shall be in open space, landscaping, and active play or activity areas. The definition of density for multifamily zoned developments found in Chapter 17.06 MVMC describes how the maximum density is calculated within this zone;

F. Neighborhood convenience uses; provided, that:

1. They are incorporated with the design of a multifamily structure or complex;
2. At least 50 percent of the planned residential units are constructed before the neighborhood convenience, professional office, restaurant or day care center can be constructed;
3. The number of dwelling units in such a complex exceeds 30;

4. No use shall exceed 1,500 square feet in area;
5. The design, landscaping and arrangement of parking are compatible with the residential character of the project and neighborhood;
6. Access is from a major street and is located such that it is compatible with the residential use and will not create a traffic hazard or congestion; and
7. The multifamily density meets the definition for density for mixed use buildings or developments found within Chapter 17.06 MVMC;

G. Restaurants; provided, that they meet the same requirements for neighborhood convenience uses as set forth in subsection F of this section;

H. Bed and breakfast establishments which meet the following criteria:

1. The structure shall be owner-occupied and serve as the primary residence of the owner;
2. Adequate off-street parking of one parking space per guest room plus two spaces for the owner shall be provided but shall not be in the required front yard unless it is screened and is compatible with the surrounding neighborhood;
3. The structure shall meet all city building and fire codes to protect the safety of customers;
4. Individual rooms that are rented shall not contain cooking facilities;
5. The only meal to be provided to guests shall be breakfast and it shall only be served to guests taking lodging in the facility;
6. There shall not be any other bed and breakfast establishments within a 300-foot radius;
7. The maximum number of days that a guest may stay shall be limited to 14 consecutive days. Guests may not stay more than 60 days in any one year;
8. The building structure may not be altered or remodeled to the extent that the resulting structure would be incompatible with the residential character of the neighborhood. (Ord. 3429 § 70, 2008).

SECTION TWENTY-SIX. Section 17.27.045, Administrative conditional uses, of the Mount Vernon Municipal Code is hereby repealed.

~~17.27.045—Administrative conditional uses.~~

~~Uses permitted by an administrative conditional use permit and classified as a Type II permit in the R-4 district are as follows:~~

~~A. Day nursery; provided, that the size, location and design are compatible with the residential character of the development and neighborhood. (Ord. 3429 § 71, 2008).~~

SECTION TWENTY-SEVEN. Section 17.30.030, Accessory uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.30.030 Accessory uses.

A. Permitted accessory uses in the P district shall include those uses and activities customarily associated with and necessary to the operation of the permitted primary use. This shall include day nurseries, preschools, heliports, medical office buildings (MOB), when associated with, and included as, part of the master plan for a hospital, and college housing/dormitories (group living quarters for a student body), subject to the regulations of the R-4 multifamily residential district and included as part of a master plan for a college, and where it can be shown the particular accessory use is necessary to and customarily associated with the particular permitted use.

B. Each primary structure is permitted to have one accessory structure that can be used as a shed to store tools or other items as long as it complies with the following requirements:

1. The total area of the accessory structure's roof shall be no more than 120 square feet.
2. The accessory structure is required to be a single-story and is not allowed to be taller than the primary structure on the site.

3. The accessory structure shall be located in the rear yard and is required to maintain a minimum 5-foot setback from all property lines and all other structures.
4. The accessory structure shall not have a permanent heat source.
5. The accessory structure is intended to be for storage of tools or other household items and is not to be a space that is slept in.
6. The accessory structure is not allowed in critical areas or their associated buffers regulated under Chapter 15.40 MVMC.

~~B. Each primary building or structure may be permitted to have one accessory building, which is exempt from building permit requirements, by definition of the International Building Code (120 square feet or less). These exempt structures are required to be shown on the master plan. (Ord. 3429 § 76, 2008).~~

SECTION TWENTY-EIGHT. Section 17.33.030, Accessory uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.33.030 Accessory uses.

A. Permitted accessory uses in the R-O district are private garages, storage and other uses customarily incidental to the permitted uses.

B. Each primary structure is permitted to have one accessory structure that can be used as a shed to store tools or other items as long as it complies with the following requirements:

1. The total area of the accessory structure's roof shall be no more than 120 square feet.
2. The accessory structure is required to be a single-story and is not allowed to be taller than the primary structure on the site.
3. The accessory structure shall be located in the rear yard and is required to maintain a minimum 5-foot setback from all property lines and all other structures.
4. The accessory structure shall not have a permanent heat source.
5. The accessory structure is intended to be for storage of tools or other household items and is not to be a space that is slept in.
6. The accessory structure is not allowed in critical areas or their associated buffers regulated under Chapter 15.40 MVMC.

~~B. Each primary building or structure is permitted to have one accessory building, which is exempt from building permit requirements, by definition of the International Building Code (120 square feet or less). These exempt structures are required to be located in the rear yard and maintain a minimum of five foot setback from any other building or property line. (Ord. 3429 § 80, 2008).~~

SECTION TWENTY-NINE. Section 17.42.030, Accessory uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.42.030 Accessory uses.

A. Permitted accessory uses in the LC district are garages, storage and other uses customarily incidental to the permitted uses.

B. Each primary structure is permitted to have one accessory structure that can be used as a shed to store tools or other items as long as it complies with the following requirements:

1. The total area of the accessory structure's roof shall be no more than 120 square feet.
2. The accessory structure is required to be a single-story and is not allowed to be taller than the primary structure on the site.
3. The accessory structure shall be located in the rear yard and is required to maintain a minimum 5-foot setback from all property lines and all other structures.
4. The accessory structure shall not have a permanent heat source.

5. The accessory structure is intended to be for storage of tools or other household items and is not to be a space that is slept in.

6. The accessory structure is not allowed in critical areas or their associated buffers regulated under Chapter 15.40 MVMC.

~~B. Each primary building or structure is permitted to have one accessory building, which is exempt from building permit requirements, by definition of the International Building Code (120 square feet or less). These exempt structures are required to be located in the rear yard and maintain a minimum of five foot setback from any other building or property line. (Ord. 3429 § 89, 2008).~~

SECTION THIRTY. Section 17.45.040, Accessory uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.45.040 Accessory uses.

Permitted accessory buildings and uses in the C-1 district include:

A. Residence for watchman, custodian, manager or property owner of permitted use provided it is located within the same building as the principal use. This residence can be located on the ground floor so long as it is not visible from the street.

B. Each primary building or structure is permitted to have one accessory building, which is exempt from building permit requirements, by definition of the International Building Code (120 square feet or less). These exempt structures are required to be located in the rear yard and maintain a minimum of five-foot setback from any other building or property line.

C. Accessory dwelling unit subject to the requirements outlined in MVMC 17.73.100.

D. Card room.

E. Indoor storage. (Ord. 3749 § 3, 2018).

SECTION THIRTY-ONE. Section 17.48.025, Accessory uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.48.025 Accessory uses.

Permitted accessory uses in the C-2 district include:

A. Residence for watchman, custodian, manager or property owner of permitted use provided it is located within the same building as the principal use;

B. Each primary structure is permitted to have one accessory structure that can be used as a shed to store tools or other items as long as it complies with the following requirements:

1. The total area of the accessory structure's roof shall be no more than 120 square feet.

2. The accessory structure is required to be a single-story and is not allowed to be taller than the primary structure on the site.

3. The accessory structure shall be located in the rear yard and is required to maintain a minimum 5-foot setback from all property lines and all other structures.

4. The accessory structure shall not have a permanent heat source.

5. The accessory structure is intended to be for storage of tools or other household items and is not to be a space that is slept in.

6. The accessory structure is not allowed in critical areas or their associated buffers regulated under Chapter 15.40 MVMC.

~~B. Each primary building or structure is permitted to have one accessory building, which is exempt from building permit requirements, by definition of the International Building Code (120 square feet or less). These exempt structures are required to be located in the rear yard and maintain a minimum of five foot setback from any other building or property line;~~

C. Mini-storage facilities;

- D. Commercial or public parking garages and/or commercial or public surface parking; and
- E. Card room. (Ord. 3429 § 97, 2008).

SECTION THIRTY-TWO. Section 17.51.020, Permitted uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.51.020 Permitted uses.

Permitted primary uses in the C-3 district include:

A. Commercial uses:

- 1. Retail stores;
- 2. Personal services;
- 3. Offices, banks, and financial institutions;
- 4. Hotels, motels, and lodging houses;
- 5. Eating and drinking establishments;
- 6. Theaters, bowling alleys, skating rinks and other entertainment uses;
- 7. Laundry and dry cleaning pickup stations;
- 8. Shopping centers consisting of either:
 - a. One to five retail uses occupying a lot area in excess of 60,000 square feet, or
 - b. Five or more retail uses sharing a common parking area and intended to function as a unified shopping complex regardless of lot area;
- 9. Drive-in banks and eating establishments; and
- 10. Gasoline service stations and automobile repair garages.

B. Public and quasi-public uses:

- 1. Governmental buildings, administrative offices;
- 2. Municipal parks of less than one-half acre;
- 3. Churches; provided, that their principal access is from a secondary arterial street or greater and they shall conform to all the development standards and requirements of the public (P) zone and concurrent with approval the city shall require both the comprehensive plan and zoning designations to be changed to public (P) during the city's next comprehensive plan amendment cycle;
- 4. Private vocational schools;

C. Other uses specifically permitted:

- 1. Printing operations;
- 2. Upholstery and furniture repair shops;

D. On-site hazardous waste treatment and storage facilities as an accessory use to a permitted use; provided such facilities comply with the State Hazardous Waste Siting Standards and Mount Vernon and State Environmental Policy Act requirements;

E. Emergency shelter for the homeless; provided emergency shelter for the homeless shall not be located within a 1,000-foot radius of any other emergency shelter for the homeless and an existing shelter shall not expand the existing square footage of their facility to accommodate additional homeless, except that the hearing examiner may approve a location within a lesser distance or an increase in square footage of the existing facility to serve additional homeless if the applicant can demonstrate that such location will not be materially detrimental to neighboring properties due to excessive noise, lighting, or other interference with the peaceful use and possession of said neighboring properties; and provided further, an emergency shelter for the homeless shall have 100 square feet of gross floor area per resident as defined by the city building code (MVMC Title 15); and provided further, an emergency shelter for the homeless shall have any and all licenses as required by state and local law. (Ord. 3429 § 99, 2008).

SECTION THIRTY-THREE. Section 17.51.025, Accessory Uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.51.025 Accessory uses.

Each primary structure is permitted to have one accessory structure that can be used as a shed to store tools or other items as long as it complies with the following requirements:

1. The total area of the accessory structure's roof shall be no more than 120 square feet.
2. The accessory structure is required to be a single-story and is not allowed to be taller than the primary structure on the site.
3. The accessory structure shall be located in the rear yard and is required to maintain a minimum 5-foot setback from all property lines and all other structures.
4. The accessory structure shall not have a permanent heat source.
5. The accessory structure is intended to be for storage of tools or other household items and is not to be a space that is slept in.
6. The accessory structure is not allowed in critical areas or their associated buffers regulated under Chapter 15.40 MVMC.

~~Each primary building or structure is permitted to have one accessory building, which is exempt from building permit requirements, by definition of the International Building Code (120 square feet or less). These exempt structures are required to be located in the rear yard and maintain a minimum of five-foot setback from any other building or property line. (Ord. 3429 § 100, 2008).~~

SECTION THIRTY-FOUR. Section 17.51.045, Administrative conditional uses, of the Mount Vernon Municipal Code is hereby repealed.

~~17.51.045—Administrative conditional uses.~~

~~Uses permitted by an administrative conditional use permit and classified as a Type II permit in the C-3 district are as follows:~~

~~A. Shopping centers, as limited below:~~

- ~~1. Those shopping centers consisting of either:

 - ~~a. One to five retail uses occupying a lot area in excess of 60,000 square feet;~~
 - ~~b. Five or more retail uses sharing a common parking area and intended to function as a unified shopping complex regardless of lot area;~~~~
- ~~2. An administrative conditional use permit for a shopping center shall constitute a permanent permit for the use regardless of any future transfer of ownership. However, any increase in size or departure from conditions attached to the original permit shall require the approval of a new administrative conditional use permit. Such new application will not jeopardize the original permit, but additional conditions may be required for approval of the new permit;~~

~~B. Drive-in banks and eating establishments; and~~

~~C. Gasoline service stations and automobile repair garages. (Ord. 3315, 2006; Ord. 3193 § 24, 2004).~~

SECTION THIRTY-FIVE. Section 17.51.070, Building height, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.51.070 Building height.

Maximum building height shall be four stories, but not more than 50 feet. These maximum limits may be increased to six stories or 65 feet if parking is provided beneath the habitable stories or through use of Chapter 17.73. Uninhabitable stories such as a church spire, fleche, campanile, nave, a dome and lantern or a clock tower may be permitted to exceed the height limit provided such structures are not intended as advertising devices. (Ord. 3775, 2019; Ord. 3315, 2006; Ord. 2352, 1989).

SECTION THIRTY-SIX. Section 17.54.030, Permitted uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.54.030 Permitted uses.

Permitted primary uses in the C-4 district shall include:

A. Commercial.

1. Barbershops and beauty shops;
2. Drugstores;
3. Bakeries or cafes;
4. Dry cleaning and laundry pickup stations;
5. Coin-operated laundries;
6. Banks;
7. Delicatessens;
8. Movie rental businesses;
9. Day nursery;
10. Bookstores; and
11. Markets.

B. Professional offices and offices for medical and dental service.

C. Other small scale commercial and office uses that are similar in nature and have similar impacts to the surrounding neighborhood as the permitted uses listed above. (Ord. 3606 § 6, 2013).

D. Day nurseries.

SECTION THIRTY-SEVEN. Section 17.54.035, Accessory uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.54.035 Accessory uses.

Each primary structure is permitted to have one accessory structure that can be used as a shed to store tools or other items as long as it complies with the following requirements:

1. The total area of the accessory structure's roof shall be no more than 120 square feet.
2. The accessory structure is required to be a single-story and is not allowed to be taller than the primary structure on the site.
3. The accessory structure shall be located in the rear yard and is required to maintain a minimum 5-foot setback from all property lines and all other structures.
4. The accessory structure shall not have a permanent heat source.
5. The accessory structure is intended to be for storage of tools or other household items and is not to be a space that is slept in.
6. The accessory structure is not allowed in critical areas or their associated buffers regulated under Chapter 15.40 MVMC.

~~Each primary building or structure is permitted to have one accessory building, which is exempt from building permit requirements, by definition of the International Building Code (120 square feet or less). These exempt structures are required to be located in the rear yard and maintain a minimum of five foot setback from any other building or property line. (Ord. 3429 § 104, 2008).~~

SECTION THIRTY-EIGHT. Section 17.54.045, Administrative conditional uses, of the Mount Vernon Municipal Code is hereby repealed.

~~**17.54.045—Administrative conditional uses.**~~

~~Uses permitted by an administrative conditional use permit and classified as a Type II permit in the C-4 district are as follows:~~

~~A. Day nurseries. (Ord. 3429 § 106, 2008).~~

SECTION THIRTY-NINE. Section 17.54.080, Building height, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.54.080 Building height.

Maximum building height shall be two stories but not more than 25 feet, except that if housing is included above commercial space, the height may be increased to three stories but not more than 35 feet. Building height can also be increased through use of Chapter 17.73. (Ord. 3315, 2006; Ord. 2352, 1989).

SECTION FOURTY. Section 17.57.023, Administrative conditional uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.57.023 Accessory uses.

A. Each primary structure is permitted to have one accessory structure that can be used as a shed to store tools or other items as long as it complies with the following requirements:

1. The total area of the accessory structure's roof shall be no more than 120 square feet.
2. The accessory structure is required to be a single-story and is not allowed to be taller than the primary structure on the site.
3. The accessory structure shall be located in the rear yard and is required to maintain a minimum 5-foot setback from all property lines and all other structures.
4. The accessory structure shall not have a permanent heat source.
5. The accessory structure is intended to be for storage of tools or other household items and is not to be a space that is slept in.
6. The accessory structure is not allowed in critical areas or their associated buffers regulated under Chapter 15.40 MVMC.

~~A. Each primary building or structure is permitted to have one accessory building, which is exempt from building permit requirements, by definition of the International Building Code (120 square feet or less). These exempt structures are required to be located in the rear yard and maintain a minimum of five foot setback from any other building or property line; and~~

~~B. Card room. (Ord. 3429 § 112, 2008).~~

SECTION FORTY-ONE. Section 17.60.030, Accessory uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.60.030 Accessory uses.

Permitted accessory uses in the M-2 district include:

- A. Residences for watchmen or custodians;
- B. Employees' cafeterias and auditoriums;
- C. Parking lots for employees' cars or equipment used in the business;
- D. Each primary structure is permitted to have one accessory structure that can be used as a shed to store tools or other items as long as it complies with the following requirements:
 1. The total area of the accessory structure's roof shall be no more than 120 square feet.
 2. The accessory structure is required to be a single-story and is not allowed to be taller than the primary structure on the site.
 3. The accessory structure shall be located in the rear yard and is required to maintain a minimum 5-foot setback from all property lines and all other structures.
 4. The accessory structure shall not have a permanent heat source.

5. The accessory structure is intended to be for storage of tools or other household items and is not to be a space that is slept in.

6. The accessory structure is not allowed in critical areas or their associated buffers regulated under Chapter 15.40 MVMC.

~~D. Each primary building or structure is permitted to have one accessory building, which is exempt from building permit requirements, by definition of the International Building Code (120 square feet or less). These exempt structures are required to be located in the rear yard and maintain a minimum of five foot setback from any other building or property line. (Ord. 3429 § 115, 2008).~~

SECTION FORTY-TWO. Section 17.69.020, Scope, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.69.020 Scope.

A. This chapter shall apply to all permitted uses within the R-1, 7.0, R-1, 5.0, R-1, 4.0, and R-2 residential districts and constitutes a “floating” overlay zone over these districts; provided, however, this chapter permits the development of limited multifamily and duplex housing and limited commercial development in the above specified residential zones, so long as the requirements of this chapter are satisfied.

1. This chapter may be applied where adequate vacant land exists to meet the standards and criteria of this chapter.

B. The PUD process provides an alternative to traditional development under prescriptive zoning and subdivision standards. The performance standards associated with a PUD allow for departure from strict compliance with zoning and subdivision development standards. However, all proposed PUD development standards that depart from strict compliance with zoning and subdivision standards must demonstrate that they allow for better design and are in the public interest.

C. A PUD application must be processed with either an application for short subdivision or standard subdivision approval. The scope of this chapter is to allow more innovative ways of designing such development applications, enabling applicants to take advantage of incentives, including flexible zoning standards, in exchange for public benefits.

D. PUDs are not intended to provide infill housing on smaller parcels in established residential areas of the city. (Ord. 3504 § 4, 2010).

E. MVMC Chapter 17.73 authorizes specific deviations from the requirements of this Chapter when an Applicant chooses to utilize Chapter 17.73. As such, the provisions of Chapter 17.73 supersede the provisions of this Chapter when there is a conflict.

SECTION FORTY-THREE. Section 17.70.020, Areas and Developments Requiring Design Review, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.70.020 Areas and Developments Requiring Design Review

A. The Design Review Standards for residential structures, contained within and adopted by reference, in this Chapter shall apply to all of the following:

1. All duplex and multifamily structures regardless of what zoning designation they are constructed within.
2. Subdivisions permitted through the Planned Unit Development process contained within MVMC Chapter 17.69.
3. Subdivisions that utilize Transfer of Development Rights permitted through MVMC Chapter 17.119.
4. Short plats or standard plats and all of the residential structures associated with said plats where the average lot size is 7,600 square feet or less. In calculating the average lot size only lots where single-family homes will be constructed can be utilized.

5. Development on existing lots not described in subsections 1 - 4 above, when a deviation from the development standards is requested, ~~but only if the deviation from the standard is the same or is within 20 percent of what all abutting properties observe. The applicant will be solely responsible for demonstrating graphically and in a narrative the development conditions of the abutting properties.~~

6. Any building footprint expansion or addition (not including private garages or carports) over 50 percent of an existing multifamily structure or duplex.

B. The Design Review Standards for areas in and surrounding the historic downtown identified in Map 1.0 (below) shall apply to all activities/work as noted below:

1. All proposals to build, locate, construct, remodel, alter or modify any facade on any structure or building, or other visible element of the façade, of the structure or building or site, including, but not limited to: landscaping, parking lot layout, signs, placement outdoor furniture or accessories, outdoor lighting fixtures, fences, walls and roofing materials. This includes exterior painting. See subsections 17.70.050 and 17.70.060 for information on how Design Review Standards apply to different types of projects.

C. Design Review Standards for areas in and surrounding the historic downtown identified in Map 1.0 (below) shall not apply to the following activities/work:

1. Ordinary maintenance and repairs as defined in this Chapter, examples include cleaning of exterior facades, re-roofing, and interior tenant improvements so long as the resulting improvements are not visible from abutting rights-of-way.

(insert Map 1.0 here)

SECTION FORTY-FOUR. Section 17.81.110, Accessory dwelling units, of the Mount Vernon Municipal Code is hereby repealed.

~~17.81.110—Accessory dwelling units.~~

~~In the zones in which an accessory dwelling to a single family use is listed as a special use, the community and economic development director shall review all proposals following the requirements of Article II of this chapter (MVMC 17.81.500 through 17.81.590), Special Use Permits. In addition, the following standards and regulations shall apply to all proposed accessory dwelling units:~~

~~A. An accessory dwelling unit may be established in an existing single family dwelling unit or in a detached structure on a legal building lot by any one or by a combination of the following methods:~~

- ~~1. Alteration of interior space of the dwelling; or~~
- ~~2. Conversion of an attic, basement, attached or detached private garage, or other previously uninhabited portion of a dwelling; or~~
- ~~3. Addition of attached living area onto an existing dwelling; or~~
- ~~4. Construction of a detached living area.~~

~~B. Each single family dwelling on a legal building lot shall have not more than one accessory dwelling unit.~~

~~C. One of the dwelling units shall be occupied by one or more owners of the property as the owner's permanent and principal residence. "Owners" shall include title holders and contract purchasers. The owner shall file a certification of owner occupancy with the planning department prior to the issuance of the permit to establish an accessory dwelling unit.~~

~~D. The floor area of the accessory dwelling unit shall not exceed 900 square feet.~~

~~E. The total number of persons who may occupy the principal and accessory dwelling units combined shall not exceed the number of persons that are defined by this title as a "family."~~

~~F. Three off-street parking spaces shall be provided for the principal and accessory dwelling units. When the property abuts an alley, the off-street parking space for the accessory dwelling unit shall gain access from the alley, unless topography makes such access impossible.~~

~~G. The single family appearance and character of the dwelling shall be maintained when viewed from the surrounding neighborhood. Only one entrance to the residential structure may be located on any street~~

side of the structure; provided, that this limitation shall not affect the eligibility of a residential structure which has more than one entrance on the front or street side on the effective date of the ordinance codified in this chapter.

H. Only one electric, one gas, and one water meter shall be allowed for the entire building, serving both the principal and accessory dwelling unit.

I. The accessory and principal dwelling unit shall comply with all applicable requirements of the International Building Code and zoning ordinance as adopted or amended by the city.

J. The owner of a single family dwelling with an accessory dwelling unit shall file an owner's certificate of occupancy in a form acceptable to the city attorney no later than April 1st of each year. Any person who falsely certifies that he or she resides in a dwelling unit at the stated address to satisfy the requirements of this section shall be subject to the violation and penalty provisions of Chapter 17.114 MVMC.

K. A permit for an accessory dwelling unit shall not be transferable to any lot other than the lot described in the application.

L. In addition to the conditions which may be imposed through the special use permit process, all accessory dwelling units shall also be subject to the condition that such a permit shall automatically expire whenever:

1. The accessory dwelling unit is substantially altered and is thus no longer in conformance with the approved plans; and
2. The subject lot ceases to maintain at least three off-street parking spaces; and
3. The applicant ceases to own or reside in either the principal or the accessory dwelling unit.

M. The applicant shall provide a covenant in a form acceptable to the city attorney and suitable for recording with the county auditor, providing notice to future owners or long term lessors of the subject lot that the existence of the accessory dwelling unit is predicated upon the occupancy of either the accessory dwelling unit or the principal dwelling by the person to whom the accessory dwelling unit permit has been issued. The covenant shall also require any owner of the property to notify a prospective buyer of the limitations of this section and to provide for the removal of improvements added to convert the premises to an accessory dwelling unit and the restoration of the site to a single family dwelling in the event that any condition of approval is violated. (Ord. 3429 § 129, 2008).

SECTION FORTY-FIVE. Section 17.81.120, Variances, special uses permits and appeals for ADU, of the Mount Vernon Municipal Code is hereby repealed.

17.81.120—Variances, and special use permits and appeals for ADU.

A. Authority to Grant Variances and Special Use Permits for ADU.

1. The community and economic development director may grant variances not exceeding 20 percent of the lot width, setbacks, maximum lot coverage, building height, parking, and buffers from the provisions of the zoning code and special uses for ADUs, upon finding that all of the conditions set forth in MVMC 17.81.110 or 17.105.050 are met.
2. The community and economic development director shall specify the information which is required to be included in a variance application and special use for ADU application and shall provide appropriate application forms. An applicant for a variance or special use for ADU must file an application for a variance or special use for ADU, which must be complete, including all required information, forms, and filing fees, before the community and economic development director will consider the variance or special use permit for ADU.
3. Following receipt of a completed application form requesting a variance or special use for ADU, the community and economic development department shall mail a notice to all property owners within 100 feet of the subject property, and post a notice on the property. If, in the opinion of the community and economic development director, the required notice would not reach all persons who may be impacted by granting of the variance, the community and economic development director

may require additional notice at his or her discretion. Substantial compliance with these requirements for notice of public hearing shall relieve the city of any liability for failure to comply with these notice requirements.

4. The public notice shall state the nature of the application, location of the property, a statement that written comments must be submitted to the community and economic development director within 14 calendar days of the notice mailing date, and a statement that only those persons who send written comments are entitled to a notice of decision and have the ability to file an appeal.

5. Following receipt of a completed application form requesting a variance or special use for ADU from the zoning code, the community and economic development director shall determine if the request complies with all of the criteria set forth in MVMC 17.81.110 and 17.105.050 for special use permit for ADU.

6. The community and economic development director may approve, approve with conditions, or deny the variance or special use permit for ADU request, or may forward the application to the hearing examiner for public hearing and decision as stipulated below. The community and economic development director's decision is the final city action on the variance or special use permit for ADU request unless appealed to the hearing examiner as set forth below.

7. The community and economic development director shall send his/her written decision to the applicant, parties of record, and those persons who sent written comments on the application. The community and economic development director shall give reasons for the decision and outline appeal procedures.

8. An approved variance or special use permit for ADU shall become void after the expiration of one year from the date of final decision unless:

- a. A building permit application conforming to the approved variance or special use permit for ADU is filed with the city; or
- b. A subdivision, short subdivision, or lot line revision application conforming to the approved variance is filed with the city; or
- c. The approved variance or special use permit for ADU specifically provides for a longer time limit.

9. The applicant may request an extension of the time limit by filing a written request and appropriate filing fee with the community and economic development director prior to the variance or special use permit for ADU expiration date. The community and economic development director shall send notice of his/her decision on the extension request according to subsection (A)(7) of this section.

B. Appeal to Hearing Examiner.

1. Any adjacent property owner, party of record, or any person who sent written comments to the community and economic development director during the public review period on a variance or special use permit for ADU application, may file a letter of appeal and filing fee, with the department of community and economic development. This letter must be submitted within 15 calendar days after the notice mailing date of written decision by the community and economic development director. The appeal letter must state the appellant's reason(s) for the appeal, and must state the appellant's opinion on how the variance or special use permit for ADU request complies or does not comply with the decisional criteria set forth in MVMC 17.81.540 and 17.105.050.

2. Following receipt of an appeal letter meeting the above requirements (or forwarding of an application by the community and economic development director), a public hearing shall be scheduled before the hearing examiner. Notice of the hearing shall be sent at least 14 calendar days prior to the hearing. The notice shall describe the variance request, community and economic development director's decision, and location of the site, and date, time, and place of the hearing. Substantial compliance with these requirements for notice of public hearing shall relieve the city of any liability for failure to comply with these notice requirements.

3. The hearing before the examiner shall be de novo. The examiner shall have the authority to: prescribe rules and regulations for the conduct of public hearings; administer oaths to witnesses;

~~subpoena witnesses and documents; allow for cross examination of witnesses; and to preserve order during the hearing.~~

~~4. The examiner shall render a written decision approving, approving with conditions, or denying the variance or special use permit for ADU request. The decision shall be supported by findings of fact and conclusions. The examiner shall determine if the variance request meets the criteria in MVMC 17.81.540 or 17.105.050.~~

~~5. Following receipt of the examiner's decision, the community and economic development director shall send a copy of the decision to all parties of record. The examiner's decision is the final city action on the application unless appealed to a court of competent jurisdiction. (Ord. 3429 § 130, 2008).~~

SECTION FORTY-SIX. Section 17.105.010, Authority to grant variance, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.105.010 Authority to grant variance.

A. Authority to Grant Variances ~~and Special Use Permits for ADU.~~

1. The community and economic development director may grant variances not exceeding 20 percent of the lot width, setbacks, maximum lot coverage, building height, parking, and landscape buffers from the provisions of the zoning code ~~and special uses for ADUs,~~ upon finding that all of the conditions set forth in MVMC ~~17.81.110 or~~ 17.105.050 have been met.

2. The hearing examiner may grant variances from the terms of the zoning ordinances, from the official map ordinance and from other land use regulatory ordinances prescribed by city ordinance that are not covered within subsection (A)(1) of this section.

3. The community and economic development director shall specify the information which is required to be included in a variance ~~and special use for ADU~~ application and the applicant shall provide appropriate application materials as required within Chapter 14.05 MVMC.

4. Following receipt of a completed application form requesting a variance ~~or special use for ADU,~~ the community and economic development department will follow the noticing requirements within Chapter 14.05 MVMC.

5. Following receipt of a completed application form requesting a variance ~~or special use for ADU~~ from the zoning code, the community and economic development director shall determine if the request complies with all of the criteria set forth in MVMC ~~17.81.110 and~~ 17.105.050 ~~for special use permit for ADU.~~

6. ~~Variances complying with section MVMC 17.105.010(A)(1):~~ the community and economic development director may approve, approve with conditions, or deny the a variance ~~or special use permit for ADU~~ request, or may forward the application to the hearing examiner for public hearing and decision as stipulated below. The community and economic development director's decision is the final city action on the variance ~~or special use permit for ADU~~ request unless appealed to the hearing examiner as set forth below.

~~i. 7.~~ The community and economic development director shall send his/her written decision to the applicant, adjacent property owners within 100 feet, and those parties of record. The community and economic development director shall give reasons for the decision and outline appeal procedures.

~~7. 8.~~ An approved variance ~~or special use permit for ADU~~ shall become void after the expiration of one year from the date of final decision unless:

- a. A building permit application conforming to the approved variance ~~or special use permit for ADU~~ is filed with the city; or
- b. A subdivision, short subdivision, or lot line revision application conforming to the approved variance is filed with the city; or
- c. The approved variance ~~or special use permit for ADU~~ specifically provides for a longer time limit.

~~9. The applicant may request an extension of the time limit by filing a written request and appropriate filing fee with the community and economic development director prior to the variance or special use permit for ADU expiration date. The community and economic development director shall send notice of his/her decision on the extension request according to subsection (A)(6) of this section. (Ord. 3429 § 173, 2008).~~

SECTION FORTY-SEVEN. Section 17.105.080, Appeal from decision – Time limits, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.105.080 Appeal from decision – Time limits.

A. The action by the hearing examiner on an application for a variance or an appeal from the decision of the community and economic development director shall be final and conclusive unless a party with standing files an appeal according to MVMC 14.05.190.

B. Appeal to Hearing Examiner.

1. Appeals to the Hearing Examiner are required to comply with the requirements outlined in MVMC Chapter 14.05.

~~1. Any party with standing may file a notice of appeal and filing fee with the department of community and economic development. This notice must be submitted within 14 days after the notice mailing date of written decision by the community and economic development director. The appeal notice must state the appellant's reason(s) for the appeal, and must state the appellant's opinion on how the variance or special use permit for ADU request complies or does not comply with the decisional criteria set forth in MVMC 17.81.540 and 17.105.050.~~

~~2. Following receipt of an appeal notice meeting the above requirements (or forwarding of an application by the community and economic development director, a public hearing shall be scheduled before the hearing examiner. Notice of the hearing shall be sent at least 14 calendar days prior to the hearing. The notice shall describe the variance request, community and economic development director's decision, and location of the site, and date, time and place of the hearing. Substantial compliance with these requirements for notice of public hearing shall relieve the city of any liability for failure to comply with these notice requirements.~~

~~3. The hearing before the examiner shall be de novo. The examiner shall have the authority to: prescribe rules and regulations for the conduct of public hearings; administer oaths to witnesses; subpoena witnesses and documents; allow for cross-examination of witnesses; and to preserve order during the hearing.~~

~~4. The examiner shall render a written decision approving, approving with conditions, or denying the variance or special use permit for ADU request. The decision shall be supported by findings of fact and conclusions. The examiner shall determine if the variance request meets the criteria in MVMC 17.81.540 and 17.105.050.~~

~~5. Following receipt of the examiner's decision, the community and economic development director shall send a copy of the decision to all parties of record. The examiner's decision is the final city action on the application unless appealed to a court of competent jurisdiction. (Ord. 3429 § 180, 2008).~~

SECTION FORTY-EIGHT. Section 17.119.010, Permitted, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.119.010 Permitted.

The use of the R-1, 4.0 and R-2 residential zoning district areas as shown on the official zoning map of the city of Mount Vernon as a receiving zone for transfer or purchase of development rights from land zoned and/or designated open space, parks, wetland preserve or residential agriculture on the official city of Mount Vernon comprehensive plan map; the TDRs to receiving sites shall be permitted at the rate of

one additional residential dwelling unit per entire net acre. The additional dwelling unit may be permitted in addition to dwelling unit bonuses for affordable housing as permitted under Chapter 17.73 MVMC. No fractional development rights shall be permitted. (Ord. 3515 § 3, 2011).

SECTION FOURTY-NINE. Section 17.119.025, Minimum lot size, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.119.025 Minimum lot size.

In no case can a lot created utilizing TDRs be smaller than 6,600. However, applications using TDRs and the provisions of MVMC Chapter 17.73 can create lots no smaller than 5,000 square feet. (Ord. 3315, 2006).

SECTION FIFTY. New Section. A new Chapter 16.34, Platting of Duplex and Townhouse Structures, is added to the Mount Vernon Municipal Code as follows:

Chapter 16.34

PLATTING OF DUPLEX AND TOWNHOUSE STRUCTURES

Sections:

- 16.34.010 Purpose
- 16.34.020 Definitions
- 16.34.030 Authority to Approve and Procedures
- 16.34.040 Additional Requirements

16.34.010 Purpose

The purpose of this Chapter is to:

- A. Allow duplex and townhouses structures to be platted with zero lot-lines to allow these units to be sold as individual, fee simple lots.
- B. Promote affordable housing, efficient use of land and energy, and the availability of a variety of housing types in different locations.
- C. Promote infill development.
- D. Provide for the public health, safety and welfare of the public and purchasers and residents of such townhouse units.

16.34.020 Definitions

The following words used in this Chapter are specifically defined in MVMC Chapter 16.04:

“Party Wall Agreement” or **“Common Wall Agreement”** means a document prepared by an Attorney licensed in the State of WA that contains/addresses all of the following elements with regard to party walls: easements, general rules of law, utilities, use, alteration of party wall, common roof and common foundations, sharing of repair and maintenance, weatherproofing, maintenance, damage, repair and destruction, insurance, and must run with the land in perpetuity.

“Party Wall” or **“Common Wall”** means the foundation wall, the footing under such foundation wall, the shaft liner fire wall supported by the foundation and a roof sheathing or parapet, if existing, capping such fire wall which are part of the original construction of the Units located on the Lots and are located and constructed on or adjacent to the common Lot boundary line which separates two

adjoining Lots, and which constitutes a common wall between adjoining Units, as such Party Wall may be repaired or reconstructed. A Party Wall is a structural part of and physically joins the adjoining Units on each side of the Party Wall. The term "Party Wall" shall also include any two (2) walls that generally meet this definition, and that together constitute the wall between two adjoining Units, even if such walls are separated by a de-minimus amount of air space.

“Conditions, Covenants and Restrictions” means a document that complies with applicable Federal and State laws and that contains/addresses all of the following elements:

1. Creation of an association of owners (e.g. Homeowner’s Association or Governing Body) of the proposed lots that are required to provide for the control and maintenance of all improvements that will be owned by the Governing Body (usually a Homeowner’s Association) such as, parking, access ways, open spaces, fences, street trees, stormwater facilities, etc.
2. Maintenance. The CC&Rs shall contain provisions establishing the obligation and duty of the governing body of the project to continually maintain the common areas in a manner which, at a minimum, ensures compliance with this Code and all other applicable laws, regulations, and standards.
3. Assessment for Maintenance of Common Areas and Facilities. To protect the public health, safety, and welfare, provisions shall be made for monthly or annual assessments that pay for maintenance of all common areas.
4. The CC&Rs shall run with the land and are required to be reviewed and approved by the city attorney and the Development Services Department prior to recording a final plat or short plat.
5. To achieve the purposes of this section, the declarations of conditions, covenants, and restrictions (CC&Rs) or other applicable documents relating to the management of common area and facilities shall be subject to approval by the Development Services Department and the City Attorney.
6. Amendments to the CC&Rs that would amend, delete, modify, or otherwise affect any provision required by this section shall require the prior written approval of the Development Services Director and the City Attorney. To that end, the amendment shall not be effective unless:
7. Any other provisions which the Development Services Director or City Attorney determine are necessary and reasonable for ensuring compliance with the provisions of the municipal code or the conditions of approval of the project.
8. The CC&Rs shall be recorded prior to or concurrently with of the recordation of the plat, which the plat shall contain the recording instrument numbers thereupon.

“Zero Lot Line” means a structure is placed with at least one wall on a property line.

16.34.020 Authority to Approve and Procedures

- A. All duplex and townhouse developments creating 9 (or fewer) lots, tracts or parcels shall be required to:
 1. Submit the same application materials outlined in MVMC Chapter 16.32 for preliminary and final short plats plus the items outlined below under sub-section C.
 2. Follow the same procedural steps and requirements, outlined in MVMC Chapter 16.32 for preliminary and final short plats.
 3. Be subject to the provisions of Chapters 16.04, 16.16, 16.20, and 16.28.
- B. All duplex and townhouse developments creating more than 9 lots, tracts or parcels shall be required to:
 1. Submit the same application materials outlined in MVMC Chapters 16.08 and 16.12, respectively plus the items outlined below under sub-section C.
 2. Follow the same procedural steps and requirements outlined in MVMC Chapters 16.08 and 16.12, respectively.

3. Be subject to the provisions of Chapters 16.04, 16.16, 16.20, and 16.28.
- C. In addition to the above-listed requirements, preliminary and final plats and short plats shall also be required to submit materials containing the following information:
 1. The location of the buildings in reference to the exterior boundaries of the property.
 2. Location, horizontal dimensions, and identification of the townhouse units within each building.
 3. Identification of the thickness of common walls/party walls between or separating the individual units.
 4. Designation and identification of all common elements.
 5. The location and identification of all utilities serving the townhouse units including connection points to each duplex or townhouse unit.
 6. A Party Wall Agreement.
 7. Conditions, Covenants and Restrictions.
 8. Additional wording shall be added to the surveyor's certification statement for townhouse plats as follows:

"This plat substantially depicts the location and horizontal measurements of each unit and townhouse lot, lot designations, the building locations, all utilities serving the units, the location of parking, common elements, and storage spaces."

"Each duplex and townhouse unit created in this plat is served by individual water and sewer services from the public mains. Each unit owner shall own and be responsible for the operation, maintenance, and replacement of the water service line from the property shut-off valve located near the utility easement boundary to their unit. Additionally, each unit owner shall own and be responsible for the operation, maintenance and replacement of the sewer service line from their unit to the public sewer main, including the tapping saddle. The City reserves the right of ingress, egress and maintenance in private utility easements, access ways, and common areas".

16.34.030 Additional Platting and Lot Requirements

- A. Each duplex or townhouse lot shall contain all elements of the individual unit's structure recognizing the common vertical walls will be shared with abutting units. The only exception to this is for detached garages that can be located on tracts or lots to be owned by the Homeowner's Association; however, the ownership of each garage space shall be identified on the recorded plat.
- B. Each duplex or townhouse lot shall contain the attached private open space required per MVMC 17.70.
- C. Each individual duplex or townhouse lot shall have a minimum width of 20 feet.
- D. Zoning Requirements. Each duplex or townhouse structure (not individual lot) is required to comply with the lot coverage, building setbacks (excepting side yard setbacks where two dwelling units share a common wall), building height, parking, and landscaping required according to the properties' underlying zoning designation or as modified by Chapter 17.73 MVMC.
- E. Subdivisions of sites containing previously constructed duplex or townhouse dwellings shall not be allowed unless all common walls meet, or are reconstructed to, current building code and fire code requirements for separately owned subdivided duplex or townhouse units, and all other standards of this Chapter are met.

SECTION FIFTY-TWO. Section 16.04, of the Mount Vernon Municipal Code shall have three new definitions added and is hereby repealed and reenacted with the new section to read as follows:

16.04.050 Definitions generally.

A. Words used in the present tense shall include the future tense; the future tense shall include the present tense. The singular number shall include the plural number; the plural number shall include the singular number. The word “may” is permissive; “shall” is mandatory. “Lot” includes the words “plot,” “parcel,” “tract,” and “site”; and “building” includes the word “structure.” “City” shall mean the city of Mount Vernon, Washington, and “county” shall mean Skagit County, Washington.

B. The definitions found within Chapters 14.05 and 17.06 MVMC are hereby adopted by reference in their entirety as they are currently written or amended in the future. (Ord. 3428 § 5, 2008).

16.04.060 Block.

“Block” means a group of lots, tracts or parcels within well-defined and fixed boundaries. (Ord. 3428 § 6, 2008).

16.04.070 City engineer.

“City engineer” means the duly appointed engineer for the city of Mount Vernon, is also known as the public works director, or his/her designee. (Ord. 3428 § 7, 2008).

16.04.080 City treasurer.

“City treasurer” means the duly appointed clerk-treasurer for the city of Mount Vernon. (Ord. 3428 § 8, 2008).

16.04.085 Codes, Covenants and Restrictions.

“Codes, Covenants and Restrictions” means a document that complies with applicable Federal and State laws and that contains/addresses all of the following elements:

1. Creation of an association of owners (e.g. Homeowner’s Association or Governing Body) of the proposed lots that are required to provide for the control and maintenance of all improvements that will be owned by the Governing Body (usually a Homeowner’s Association) such as, parking, accessways, open spaces, fences, street trees, stormwater facilities, etc.
2. Maintenance. The CC&Rs shall contain provisions establishing the obligation and duty of the governing body of the project to continually maintain the common areas in a manner which, at a minimum, ensures compliance with this Code and all other applicable laws, regulations, and standards.
3. Assessment for Maintenance of Common Areas and Facilities. To protect the public health, safety, and welfare, provisions shall be made for monthly or annual assessments that pay for maintenance of all common areas.
4. The CC&Rs shall run with the land and are required to be reviewed and approved by the city attorney and the Development Services Department prior to recording a final plat or short plat.
5. To achieve the purposes of this section, the declarations of conditions, covenants, and restrictions (CC&Rs) or other applicable documents relating to the management of common area and facilities shall be subject to approval by the Development Services Department and the City Attorney.
6. Amendments to the CC&Rs that would amend, delete, modify, or otherwise affect any provision required by this section shall require the prior written approval of the Development Services Director and the City Attorney. To that end, the amendment shall not be effective unless:
7. Any other provisions which the Development Services Director or City Attorney determine are necessary and reasonable for ensuring compliance with the provisions of the municipal code or the conditions of approval of the project.
8. The CC&Rs shall be recorded prior to or at the same time of the recordation of the plat, which plat shall contain the recording instrument numbers thereupon.

16.04.090 Comprehensive plan.

“Comprehensive plan” means the coordinated plan that has been prepared for the physical development of the municipality; or any plan included in the comprehensive plan that has been prepared for the physical development of such municipality, and that designates among other things, plans and programs to encourage the most appropriate use of land and to lessen congestion throughout the municipality in the interest of public health, safety and welfare. All actions taken pursuant to this chapter shall be in compliance with the city comprehensive plan. (Ord. 3428 § 9, 2008).

16.04.100 Condominium unit.

“Condominium unit” is defined pursuant to RCW 64.34.216(1)(d). (Ord. 3428 § 10, 2008).

16.04.110 Council.

“Council” means the city council of Mount Vernon. (Ord. 3428 § 11, 2008).

16.04.120 County assessor.

“County assessor” means the duly elected county assessor. (Ord. 3428 § 12, 2008).

16.04.130 County auditor.

“County auditor” means the duly elected county auditor of Skagit County. (Ord. 3428 § 13, 2008).

16.04.140 County treasurer.

“County treasurer” means the duly elected Skagit County treasurer. (Ord. 3428 § 14, 2008).

16.04.150 Covenant.

“Covenant” means a binding and solemn agreement made by two or more individuals, parties, etc., to do or keep from doing a specified thing or things. (Ord. 3428 § 15, 2008).

16.04.160 Dedication.

“Dedication” means the deliberate appropriation of land by an owner for any general and public uses, reserving to himself no other rights than such as are compatible with the full exercise and enjoyment of the public use to which the property has been devoted. The intention to dedicate shall be evidenced by the owner by the presentment for filing of a final plat or a short plat showing the dedication thereon and the acceptance by the public shall be evidenced by the approval of such plat for filing by the appropriate governmental unit. (Ord. 3428 § 16, 2008).

16.04.170 Existing street.

“Existing street” means a presently traveled way with a minimum width of 15 feet of hard surfacing, irrespective of whether it has been accepted by the city for maintenance. A hard-surfaced street shall be a street consisting of either portland cement or asphaltic concrete as a wearing surface. (Ord. 3428 § 17, 2008).

16.04.180 Health department.

“Health department” means the Skagit County Department of Health. (Ord. 3428 § 18, 2008).

16.04.190 Lot.

“Lot” means a fractional part of subdivided land having fixed boundaries being of sufficient area and dimension to meet minimum zoning requirements for width and area. The term shall include tracts or parcels of land. Lots shall be certified by the city according to the process outlined within Chapter 14.05 MVMC. (Ord. 3428 § 19, 2008).

16.04.200 Metes and bounds.

“Metes and bounds” means a description of real property that starts at a known point of beginning and describes the bearings and distances of the lines forming the boundaries of the property and is completed when the description returns to the point of beginning. (Ord. 3428 § 20, 2008).

16.04.210 Monument.

“Monument” means an object used to permanently mark a surveyed location. The size, shape and design of the monument are to be in accordance with standards specified by the city public works department. (Ord. 3428 § 21, 2008).

16.04.215 Party Wall Agreement.

“Party Wall Agreement” means a document prepared by an Attorney licensed in the State of WA that contains/addresses all of the following elements with regard to party walls: easements, general rules of law, utilities, use, alteration of party wall, common roof and common foundations, sharing of repair and maintenance, weatherproofing, maintenance, damage, repair and destruction, insurance, and must run with the land in perpetuity.

16.04.210 Party Wall.

“Party Wall” means the foundation wall, the footing under such foundation wall, the shaft liner fire wall supported by the foundation and a roof sheathing or parapet, if existing, capping such fire wall which are part of the original construction of the Units located on the Lots and are located and constructed on or adjacent to the common Lot boundary line which separates two adjoining Lots, and which constitutes a common wall between adjoining Units, as such Party Wall may be repaired or reconstructed. A Party Wall is a structural part of and physically joins the adjoining Units on each side of the Party Wall. The term “Party Wall” shall also include any two (2) walls that generally meet this definition, and that together constitute the wall between two adjoining Units, even if such walls are separated by a de-minimus amount of air space.

16.04.220 Pavement width.

“Pavement width” means the actual paved surface measured between faces of curbs of streets or from edge to edge of alley road surface. (Ord. 3428 § 22, 2008).

16.04.230 Plat.

A. “Plat” means a map or representation of a subdivision, showing thereon the division of a tract or parcel of land into lots, blocks, streets and alleys or other division and dedications.

B. “Preliminary plat” is a proposed subdivision showing the general layout of streets and alleys, lots, blocks, and restrictive covenants to be applicable to the subdivision, and other elements of a plat or subdivision which shall furnish a basis for the approval or disapproval of the general layout of a subdivision.

C. “Final plat” is the final drawing of the subdivision and dedication prepared for filing for record with the county auditor and containing all elements and requirements set forth in this title.

D. “Short plat” is the map of representation of a short subdivision. A short plat consists of nine or fewer lots. (Ord. 3428 § 23, 2008).

16.04.240 Right-of-way.

“Right-of-way” or “R/W” or “R-O-W” means a strip of land dedicated to the city for street and utility purposes and on a portion of which a street is built or utilities are installed. (Ord. 3428 § 24, 2008).

16.04.250 Street.

A. “Street” means a dedicated and accepted public or private right-of-way for vehicular traffic. The word “street” includes the words “road,” “drive,” “boulevard” or “way.”

B. “Arterial street” means an existing or proposed roadway designated an arterial by resolution of the city, or a roadway carrying or designed to carry more than 1,500 vehicles per day.

C. “Collector street” means a roadway designed to carry medium volumes of vehicular traffic, provide access to the major street system, and collect the vehicular traffic from the intersecting minor streets.

D. “Local or minor access street” means a street providing vehicular access to abutting properties.

E. “Cul-de-sac” means a street intersecting another street at one end and permanently terminated by a vehicular turnaround at the other end.

F. “Marginal access street” means a street that is parallel to and adjacent to a major arterial, that provides access to the properties abutting it and which separates the abutting properties from high-speed vehicular traffic.

G. “Accepted street” means a street that has been accepted for maintenance by the city. Usually any street that has or had been improved to the prevailing minimum city standard is regarded as an accepted street.

H. “Private street” means a privately owned and maintained access provided for by a tract, easement or other legal means.

I. “Alley” means a public thoroughfare which affords access to abutting property and is usually not intended for general traffic circulation. (Ord. 3428 § 25, 2008).

16.04.260 Street and utility standards of the city.

“Street and utility standards of the city” shall consist of requirements contained in the following: The latest edition of the Standard Specifications for Road, Bridge, and Municipal Construction prepared by the Washington State Chapter of APWA; city of Mount Vernon engineering standards approved by the city engineer; Criteria for Sewage Works Design prepared by Washington State Department of Ecology; and the design standards for streets of the city outlined in MVMC Title 16. (Ord. 3428 § 26, 2008).

16.04.270 Subdivider.

“Subdivider” means any person, firm or corporation who subdivides or develops any land deemed to be a subdivision and is also referred to as the “applicant.” (Ord. 3428 § 27, 2008).

16.04.280 Subdivision, short.

“Short subdivision” means the division of an area into nine or fewer lots, tracts or parcels. (Ord. 3428 § 28, 2008).

16.04.290 Subdivision, standard.

“Subdivision” means the division of land into 10 or more lots, tracts, parcels, sites or divisions for the purpose of sale or lease and shall include all re-subdivision of land. (Ord. 3428 § 29, 2008).

16.04.300 Zero Lot Line

“Zero Lot Line” means a structure is placed with at least one wall on a property line.

16.04.300 Plat.

Repealed by Ord. 3428. (Ord. 1950 § 1(3)(27), 1979).

16.04.310 Plat certificate.

Repealed by Ord. 3428. (Ord. 1950 § 1(3)(28), 1979).

16.04.320 Right-of-way.

Repealed by Ord. 3428. (Ord. 1950 § 1(3)(29), 1979).

16.04.330 Street.

Repealed by Ord. 3428. (Ord. 1950 § 1(3)(30), 1979).

16.04.340 Street and utility standards of the city.

Repealed by Ord. 3428. (Ord. 2632 § 1, 1994; Ord. 1950 § 1(3)(31), 1979).

16.04.350 Subdivider.

Repealed by Ord. 3428. (Ord. 1950 § 1(3)(32), 1979).
 16.04.360 Subdivision.
 Repealed by Ord. 3428. (Ord. 1950 § 1(3)(33), 1979).

SECTION FIFTY-THREE. Section 14.05.060, Permit classification table, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

14.05.060 Permit classification table.

Land Use Permit/Action	Permit Type					
	I	II	III	IV	V	VI
Administrative Determination	X					
<u>Accessory Dwelling Unit per MVMC 17.73.100</u>	<u>X</u>					
Binding Site Plan		X				
Boundary Line Adjustment	X					
Building Permit SEPA Exempt	X					
Code Interpretation	X					
Comprehensive Plan Map (and Rezone) or Text Amendments						X
Administrative Conditional Use Permit		X				
Conditional Use Permit			X			
Conditional Use Permit for EPFs				X		
Critical Area Ordinance Reasonable Use Exception, Variances and Appeals per MVMC 15.40.130			X			
Design Review with Building Permit, or Administrative Design Review	X					
Design Review with Hearing Examiner Land Use Permit			X			
Design Review by Design Review Board			X			
Design Review Waiver per Chapter 17.70 MVMC	X		X			
Development Regulation Text Amendments to Chapter 3.40 MVMC and MVMC Titles 15, 16 and 17						X
Development Regulation Text Amendments to Chapters Except Chapter 3.40 MVMC and MVMC Titles 15, 16 and 17					X	
Environmental Review		X				
Fence or Wall Permit	X					
Fill and Grade Permit I	X					
Fill and Grade Permit II		X				
Floodplain District Development Permit				X		

Land Use Permit/Action	Permit Type					
	I	II	III	IV	V	VI
Historic Structure – Designation				X		
Historic Structure – Exterior Alteration		X				
Home Occupation – Type I or Exemption	X					
Home Occupation – Type II		X				
Land Clearing Permits and Management Plans		X				
Land Clearing Moratorium Removal			X			
Land Clearing Single-Family Residential Moratorium Exception		X				
Landscape Modifications per MVMC 17.93.080	X					
Lot Certification	X					
Major Modification	X	X	X	X		
Master Plan Approval per MVMC 17.30.090				X		
Minor Modifications	X					
Model Home Permit	X					
Nonconforming Use – Ordinary Maintenance or Repair	X					
Nonconforming Use – Certificate of Use or Occupancy	X					
Nonconforming Use – Special Permission to Enlarge, Expand, or Reconstruct				X		
Plat, Preliminary				X		
Plat, Final					X	
Planned Unit Development				X		
Rezoning Consistent with Comprehensive Plan				X		
Shoreline Conditional Use Permit			X			
Shoreline Exemption	X					
Shoreline Substantial Development Permit		X				
Shoreline Variance			X			
Short Plat		X				
Site Plan Approval	X					
Site Plan Approval per MVMC 17.39.150				X		
Special Use Permit			X			
Special Use Permit for ADUs		X				
Street Vacations Subject to Procedural Requirements Outlined in Chapter 35.79 RCW						X
Street Design Modifications per Chapter 16.16	X					

Land Use Permit/Action	Permit Type					
	I	II	III	IV	V	VI
MVMC						
Temporary Homeless Encampment		X				
Temporary Use Permit Per Chapter 17.92 MVMC	X					
Transfer of Development Rights – Certificate of Available Rights	X					
Transfer of Development Rights – Approval to Utilize	X					
Transportation Concurrency when > 75 PM Peak Hour Trips Are Generated				X		
Variances			X			
Waivers per MVMC 14.10.110, Chapter 16.20 MVMC, and MVMC 17.84.130				X		
Zoning Boundary Determination per MVMC 17.09.040			X			
Zoning Variances Not Exceeding 20 Percent of Lot Width, Setbacks, Lot Coverage, Building Height, Parking, and Landscape Buffers		X				

SECTION FIFTY-FOUR. Section 14.05.150, Notice requirements, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

14.05.150 Notice requirements.

A. Notice of Application.

1. Applicability. A notice of application is not required for actions that are classified as Type I permits per MVMC 14.05.060; or actions specifically exempted under MVMC 14.05.040, but is required for all other development permit applications subject to notice requirements, except for binding site plans.

2. Content. Within 30 days of issuing a letter stating that an application is technically complete per MVMC 14.05.110(D), and as long as CEDD staff has not requested additional or corrected information per MVMC 14.05.110(D), the city shall issue a notice of application (NOA). The notice shall, at minimum, include the following:

- a. Owner, applicant and contact name;
- b. Project name and city file number;
- c. Date of counter completeness and technical completeness;
- d. A nonlegal project location description;
- e. Project description;
- f. A listing of all permits/approvals requested;
- g. The date the 14-day public comment period expires;
- h. The date, time, and place of a public hearing if one has been scheduled; and
- i. The following, or equivalent, statements: “To receive additional information regarding this project, contact the community and economic development department and request to be made a party of record” and “To become a party of record or to obtain further information regarding this project, contact the city of Mount Vernon community and economic development department at 910 Cleveland Avenue, Mount Vernon, WA 98273, (360) 336-6214.”

3. Distribution. Notices of application shall be made as follows:

- a. By publication in the newspaper of record, except for the following permits:

- i. Administrative conditional use;
- ii. Fill and grade II;
- iii. Exterior alteration of a historic structure;
- iv. Type II home occupation;
- v. Short plat;
- ~~vi. Special use permit for an accessory dwelling unit;~~
- vi. Zoning variance not exceeding 20 percent of the lot width, setbacks, lot coverage, building height, parking and landscape buffers;
- b. By posting of a land use notice board placed by the applicant in a conspicuous location on each public street frontage bordering the subject property and visible by members of the public; and
- c. By mail as follows:
 - i. For administrative conditional use permits, notice shall be mailed to adjacent and abutting property owners.
 - ii. For planned unit developments, notice shall be mailed to property owners within 500 feet of the project.
 - iii. For ~~special use permits for accessory dwelling units (ADU) or~~ variances not exceeding 20 percent of the zoning requirements, notice shall be mailed to all property owners within 100 feet of the property.
 - iv. For all other applications, including annexations and short plats, notice to all owners located within the boundaries of a project and within 300 feet of the boundary of the development permit. If the applicant owns property abutting or adjacent to the boundary of the development permit, notice shall be sent to the owners of real property within 300 feet of any portion of the boundaries of abutting or adjacent properties owned by the applicant.
 - v. In addition, the notice shall be mailed to all city departments and agencies with jurisdiction as well as any other person who requests such notice in writing.
 - vi. With the submittal of a development permit that requires notice be sent via mail, the applicant shall provide mailing labels to the CEDD for their use in sending out notices. The applicant shall obtain the names and address of all property owners within the notification areas, specified above, from the Skagit County assessor's office. The list of property owners must be no older than 30 days. The applicant shall be responsible for updating the property owner list and the associated labels as their project is processed by the CEDD.
- 4. Optional Additional Public Notice. If the city deems additional notice necessary for a particular project application, the city may require additional public notice. The director shall make the sole determination if optional public notice is necessary, in addition to the notice requirements of this chapter. The city may require the applicant to provide any or all of the following additional forms of notice:
 - a. Mailed notice to owners and/or occupants of real property beyond the notification radius outlined above;
 - b. Mailed notice to public or private groups with known interest in a certain proposal or in the type of proposal being considered;
 - c. Mailed or published notice to the news media; and/or
 - d. Publication of additional notices in regional, neighborhood, or trade publications.
- B. Notice of Administrative Decisions. The CEDD shall notify all parties of record, the project proponent, and affected government agencies of any Type II administrative decisions. Notification must be made by mail and shall include:
 - 1. A description of the decision(s), including any conditions of approval;
 - 2. A statement explaining where further information may be obtained;
 - 3. Any threshold environmental determination issued for the project, if an application subject to an administrative approval requires an environmental threshold determination; and
 - 4. The decision and a statement that the decision will be final unless an appeal to the hearing examiner is filed with the CEDD within 14 days of the date of the decision.
- C. Notice of Public Hearing. Notice of a public hearing for all development applications subject to notification requirements including all open and closed record appeals shall be given as follows:

1. For applications where an open record hearing is required, the notice of public hearing will be sent to the applicant, owner, those property owners within the notification distances noted in subsection (A)(3) of this section, and all parties of record.
2. For Type IV and VI applications a notice of public hearing will be distributed for the open record hearing as outlined above; however, only the applicant, owner, and parties of record will receive an individual notice advising them of the date/time of the city council hearing where the final decision will be made.
3. Timing. Except as otherwise required, public notification of meetings, hearings, and pending actions shall be made by:
 - a. Publication at least 14 days before the date of a public meeting, hearing, or pending action in the newspaper of record, if one has been designated, or a newspaper of general circulation in the city; and
 - b. Mailing at least 14 days before the date of a public meeting, hearing, or pending action to all parties of record, the project proponent, and affected government agencies.
 - c. The day of the hearing can be counted as one of the required 14 days.
 - d. For Type IV and VI applications the notice of the city council hearing is not required to be published or posted on the subject site.
4. Content of Notice. The public notice shall include a general description of the proposed project, the action to be taken, a nonlegal description of the property, the time, date and place of the public hearing, and where further information may be obtained.
- D. Notice of Final Plat. For Type V final plat approvals a notice will be distributed to the applicant, owner, and parties of record no less than five days prior to the city council meeting informing them that the city council will be taking action on the final plat at a closed record meeting where testimony will not be taken.
- E. Notice of Examiner or Commission Decision. Notice of hearing examiner and planning commission decisions shall be made to all parties of record, the project proponent, and affected government agencies. Notification shall be made by mail and must include:
 1. A description of the decision(s), including any conditional approval;
 2. A statement explaining where further information may be obtained;
 3. The decision date and a statement that the decision will be final unless an appeal to the city council is filed with the CEDD within 14 days of the date of the decision.
- F. Notice of Council Decision. Notice of city council decisions subject to notice requirements shall be made to all parties of record, the project proponent, and affected government agencies. Notification shall be made by mail and must include:
 1. A description of the decision(s), including any conditions of approval;
 2. A statement explaining where further information may be obtained;
 3. The decision date and a statement that the decision will be final unless the appropriate land use appeal, writ of review or appeal from the decision of the city council is filed.
- G. Notice of Appeal. Notice of appeals subject to notice requirements shall be made to all parties of record, the project proponent, and affected government agencies. Notification shall be made by mail and must include:
 1. A description of the decision(s) being appealed;
 2. A statement explaining where further information may be obtained; and
 3. A statement of when and where the appeal will be heard.
- H. Failure to Receive Notice. Failure to receive such mailed notification, or posting of the land use notice board, as may be required in subsections A to G of this section shall have no effect upon the proposed action or application. (Ord. 3560 § 3, 2012).

SECTION FIFTY-FIVE. Section 14.05.210(B), of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

(insert full table here)

The column labeled as “Special Permit for Accessory Dwelling Unit” shall be renamed “Accessory Dwelling Unit” and the following submittals shall be removed:

- Affidavits for Labels and Verifying Posting of Public Information Sign
- Justification for Proposal
- List of Site and Surrounding Property Owners and Mailing Labels for Same
- Neighborhood Detail Map
- Public Works Approval Letter

SECTION FIFTY-SIX. Exhibit A, referenced within Mount Vernon Municipal Code 14.15.010, Established, shall include a new fees as follows:

Applications using Chapter 17.73 MVMC shall pay the following fee that is in addition to all other applicable fees:

- \$1,000.00 plus \$50.00 per dwelling unit being created
- 100% of Consultant Cost

Applications using Chapter 16.34 MVMC shall pay the following fee that is in addition to all other applicable fees:

- \$1,000.00 plus \$50.00 per dwelling unit being created
- 100% of Consultant Cost
- Monitoring Fees. Housing Owner shall pay to the City an annual monitoring fee, due on January 1st of each year, intended to cover the cost of City staff time to receive, review, document, and record compliance of each affordable housing unit with the terms of this Covenant and Agreement. The City estimates the cost to complete the described monitoring tasks will be \$75.00 for each Restricted Unit in 2019. Should City staff time needed to complete the required yearly monitoring tasks be less than \$75.00 per Restricted Unit the City will assess a reduced fee that covers only the required City staff time. Every year starting in 2020 the \$75.00 Restricted Unit monitoring fee shall be adjusted every year on January 1st to account for inflation. The Consumer Price Index (CPI) published by the Bureau of Labor Statistics that is part of the United States Department of Labor shall be used to account for inflation to increase or decrease the monitoring fees assessed by the City over time.

SECTION FIFTY-SEVEN. SEVERABILITY. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

SECTION FIFTY-EIGHT. SAVINGS CLAUSE. All previous ordinances which may be repealed in part or their entirety by this ordinance, shall remain in full force and effect until the effective date of this ordinance.

SECTION FIFTY-NINE. This ordinance shall be in full force and effect five days after its passage, approval, and publication as provided by law.

PASSED AND ADOPTED this ____ day of November, 2019.

SIGNED AND APPROVED this ____ day of _____, 2019.

Doug Volesky, Finance Director

Jill Boudreau, Mayor

Approved as to form:

Kevin Rogerson, City Attorney

Published _____

APPENDIX A
AFFORDABLE HOUSING AND ADU COVENANTS

ATTACHMENT 5: PC STAFF REPORT

After Recording Return to:
City of Mount Vernon
Development Services Department
910 Cleveland Ave.
Mount Vernon, WA 98273

Document Title: **AFFORDABLE HOUSING RESTRICTIVE COVENANT
AND AGREEMENT FOR RENTED DWELLING UNITS**

Grantor(s): (INSERT HERE)

Grantee: City of Mount Vernon, a Municipal Corporation

Abbreviated Legal Description: (INSERT HERE)

Full Legal Description: Full legal description of subject property is contained in Exhibit
“A”

Assessor’s Tax Parcel No: (INSERT HERE)

**AFFORDABLE HOUSING RESTRICTIVE COVENANT
AND AGREEMENT FOR RENTED DWELLING UNITS**

THIS AFFORDABLE HOUSING RESTRICTIVE COVENANT AND AGREEMENT (“Covenant and Agreement”) is entered into as of the (INSERT DAY) day of (INSERT MONTH), (INSERT YEAR), by and between (INSERT GRANTOR’S NAME), a (FILL IN FORM OF CORPORATION AS APPLICABLE) (THE “HOUSING OWNER”), and **THE CITY OF MOUNT VERNON**, a political subdivision of the State of Washington (the “City”). The City and Housing Owner are individually referred to as “Party” and collectively referred to as the “Parties”.

I. RECITALS

Chapter 17.73 of the Mount Vernon Municipal Code (MVMC) permits additional dwelling units and allows deviations to a variety of development regulations in exchange for the creation of dwelling units rented to low income households; and

This covenant and agreement applies to certain real property identified as Skagit County Assessor Parcel Number(s): (FILL IN), addressed as: (FILL IN), located in the City of Mount Vernon, Skagit County, WA, which is fully described in the legal description in **Exhibit A** attached and incorporated herein by this reference (“Subject Property”); and

The Housing Owner proposes to develop the Subject Property with (# of SFR units) and/or (# of MF units) and/or (other description – as applicable) permitted under the Development Services Department Project number (FILL IN PROJECT #) (the “Project,” which term shall include any modified development of the Property under the identified permit number); and

As a condition of the Project, the City has required the Housing Owner to construct (INSERT #) low income housing units, which are more particularly described in **Exhibit B** attached and incorporated herein by this reference (“Restricted Units”); and

It is the intent of the Parties that the Restricted Units be rented in accordance with this Covenant and Agreement and any affordable housing program which may be adopted and implemented by the City at any time to ensure that the Restricted Units remain rented to low income households for the term of this Covenant and Agreement; and

It is the intent of the Parties that this Covenant and Agreement will place rental amount restrictions on the Restricted Units and maximum income restrictions on potential renters of the Restricted Units; and

The purpose of this Covenant and Agreement is to ensure that the Restricted Units remain affordable for low income households for the term of this Covenant; and

NOW THEREFORE, in consideration of foregoing and the mutual promises herein, the Housing Owner agrees as follows for the benefit of the City, and hereby grants and conveys to the City and imposes on the Property the covenants and restrictions set forth below.

II. DEFINITIONS

Definitions. Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the terms defined above shall have the meanings set forth above, and the following terms shall have the respective meanings set forth below for the purposes hereof:

- A. “Area Median Income” or “AMI” means an income estimate developed with U.S. Census data and an inflation factor based on the Congressional Budget Office (CBO) forecast of the national Consumer Price Index (CPI). The U.S. Department of Housing and Urban Development (HUD) calculates and releases this data on a yearly basis.
- B. “Director” means the Director of the City’s Development Services Department or his or her designee.
- C. “Eligible Renter” means a Low Income Household that receives a Certificate of Eligibility certifying that the potential renter complies with the conditions of this Covenant and Agreement.
- D. “Family” means Family as defined in 24 CFR Section 5.403 or successor provision. Family includes an individual person.
- E. “Intent to Reside Statement” means a statement in the Application for Eligibility stating that the potential renter intends to occupy the Restricted Unit in compliance with the Owner occupancy requirement upon becoming the Renter of the Restricted Unit.
- F. “Low Income Household” means a household whose annual income does not exceed eighty percent of the Mount Vernon-Anacortes MSA median household income, adjusted for household size, as determined by HUD, with no more than 30 percent of the monthly household income being paid for monthly housing expenses (rent and utility allowance).
- G. “Low-Income Housing” means housing rented and occupied by a Low Income Household.
- H. “Maximum Rental Price” means the rental price for a dwelling unit that is not in excess of the maximum monthly rental price calculated as being no more than 30 percent of the monthly household income paid for monthly housing expenses (rent and utility allowance) for households whose annual median income does not exceed eighty percent of the AMI. **Appendix C** contains worksheets outlining how the maximum rental price shall be established for Restricted Units.
- I. “Median Income” means annual median Family income for the Mount Vernon-Anacortes, WA Metropolitan Statistical Area (MSA), as published by HUD, with adjustment to be made according to a household size in a manner determined by the Director, which adjustments shall be based upon a method used by HUD to adjust income limits for subsidized housing, and which adjustments for purposes of determining affordability of rents shall be based on the average size of household considered to correspond to the size of the housing unit.
- J. “Principal Place of Residence” means the place where a person or persons reside on a full-time basis for a minimum of ten (10) months out of each twelve (12) month period.

- K. "Rent" shall include all amounts paid directly or indirectly for the use or occupancy of a Designated Unit and of common areas of the Housing Development.
- L. "Unit" means a dwelling unit in the Project.
- M. "Utility Allowance" means an allowance approved by the City for basic utilities such as water, sewer, electricity, and gas payable by the renter, which unless otherwise approved in writing by the City, shall be equal to the utility allowance published from time to time by the Skagit County Housing Authority for the type of Unit, or, if the City determines that no reasonably comparable figures are available from the Skagit County Housing Authority, the utility allowance shall be such an amount as the City determines is an adequate allowance for basic utilities, to the extent that such items are not paid by the Housing Owner. The Utility Allowance shall not include telephone, internet/wireless, or cable TV services.

III. TERM AND TRANSFERS

- A. Term of Covenant and Agreement. This Covenant and Agreement shall be perpetual and is binding upon and enforceable against the Owners of the Restricted Units for the benefit of and enforceable by the City.
- B. Covenant and Agreement to Run with the Restricted Units. Each Restricted unit is held (and shall be held), transferred, and occupied subject to the covenants, conditions, restrictions and limitations in this Covenant and Agreement. This Covenant and Agreement is intended to constitute both an equitable servitude, covenant, and agreement running with the Subject Property.
- C. Housing Owner hereby grants to the City, and subjects the Property to, the conditions, covenants, and restrictions set forth herein, which are covenants running with the land, binding on Housing Owner and its successors and assigns, benefiting the City.
- D. Housing Owner hereby declares its express intent that this Covenant and Agreement shall pass to and be binding upon the Housing Owner's successors in title including any purchaser, grantee, owner or lessee of any portion of the Property (other than residential renters of individual units) and of any purchaser, grantee, owner or lessee of any portion of the Property and any other person or entity having any right, title or interest therein.
- E. Housing Owner agrees not to transfer the Property or any portion thereof or interest therein (other than residential tenancies in the Project consistent with this Agreement) to any successor unless the successor agrees in writing to be bound by the provisions of this Covenant and Agreement and Housing Owner provides the Director with a copy of such agreement prior to the transfer.
- F. Transfers of membership interests or changes of members in an entity whose members do not have an interest in specific property of the entity, pursuant to RCW 25.15.245 or other applicable laws, are not considered to be transfers of an interest in the Property or Project for purposes of this Agreement.

IV. OWNER OBLIGATIONS, AUTHORIZATIONS & RENTAL REQUIREMENTS

- A. **Income Requirements.** All Restricted Units identified in Exhibit A shall be used as housing solely for Low-Income Households, based on the Household Annual Income.
- B. For the purpose of this Agreement, Household Annual Income means the aggregate annual income of all persons over eighteen (18) years of age residing within the same household for a period of at least one month and shall be calculated for prospective tenants by projecting the income anticipated to be received over the twelve-month period following the date of initial occupancy, based on the prevailing rate of income of each person at the time of income verification, which shall be no more than six (6) months prior to the date of initial occupancy.
- C. **Maximum Monthly Rent.** The monthly Rent for each of the Designated Units, together with a Utility Allowance, shall not exceed one-twelfth (1/12) of thirty (30) percent of eighty (80) percent of Annual Median Income. There shall be no additional charges imposed by the Housing Owner for occupancy of Designated Units other than Rent.
- D. **Maintenance.** The Restricted Units and the structure in which they are located shall be maintained in decent and habitable condition, including the provision of adequate basic appliances, for the duration of this Agreement.
- E. **Initial and Annual Income Certifications.** Housing Owner shall obtain from each new tenant in a Restricted Unit a certification of Family size and income in form acceptable to the City. Housing Owner shall also so examine the income and Family size of any tenant Family at any time when the Housing Owner receives notice that the tenant's certification of Family size and/or income was not complete or accurate. Housing Owner shall obtain such certifications and/or examine incomes and Family sizes no less frequently than annually. Housing Owner shall maintain all certifications and documentation obtained under this subsection on file for at least five (5) years after such certifications and documentation are obtained, and Housing Owner shall make the certifications and documentation available to the City for inspection and copying promptly upon request.
- F. **Reporting.** For so long as this Agreement remains in effect, the Housing Owner shall submit to the City, by January 1 of the following year, or at other such times as may be authorized by the Director, a written report stating the monthly Rents charged for each Restricted Unit during the prior calendar year and the income and Family size of each Designated Unit, as of their respective beginning of occupancy. The Director may require documentation of Rents, copies of tenant certifications, and documentation supporting determinations of tenant income (e.g., employer's verification or check stubs).
- G. **Subleases/Assignments.** Tenants renting Designated Units shall not be permitted to sublease or otherwise assign their Designated Units.

- H. Lease Agreement and Information to Tenants. Housing Owner shall prepare a lease or rental agreement (hereafter known as the “Lease”) for all tenants who occupy Restricted Units in accordance with the requirements contained in this Agreement. The Lease shall: (1) specify the maximum monthly Rent that may be charged for the Restricted Unit; (2) state that information regarding the housing bonus program may be obtained from the City; and (3) in all other respects comply with the requirements contained in this Agreement. To the extent that other agreements or restrictions on the Property or Project require Rents lower than those permitted hereunder, the Lease shall state the maximum monthly Rent under those agreements or restrictions in lieu of the maximum monthly Rents allowed by this Agreement.
- I. Insurance; Loss or Damage to Designated Units; Condemnation. Housing Owner shall keep the Project insured by an insurance company licensed to do business in the state of Washington and reasonably acceptable to the City, against loss by fire and other hazards included with “broad form coverage,” in the amount of one hundred (100) percent of the replacement value of the Project for the entire term of this Agreement, unless otherwise agreed to in writing by the City and Housing Owner. Housing Owner shall provide to the City evidence satisfactory to the City of compliance with this insurance requirement promptly upon request of the City. If any Designated Unit is destroyed or rendered unfit for occupancy by casualty or otherwise and is not replaced or restored within 30 days thereafter, the Housing Owner shall substitute another unit in the Project of at least equal size and number of bedrooms for that Restricted Unit, as soon as such a unit becomes vacant. If the Project is substantially destroyed, any new development on the Property shall include new Restricted Units satisfying the terms of this Agreement, and Housing Owner shall designate by notice to the City new Restricted Units, at least equal in number, size and numbers of bedrooms as the original Restricted Units, no later than the date a certificate of occupancy is issued for the new units.
- J. Segregation of Ownership. Housing Owner, its successors or assigns, may segregate ownership of any portion of the Project in any manner permitted by law, provided that such segregation does not restrict Housing Owner’s ability to comply with this Agreement.
- K. Other Agreements. If a lower Rent or income eligibility limit, or both, than that permitted within this Agreement, is required by any other agreement applicable to any of the Restricted Units, then that lower Rent requirement of income eligibility limit, or both as applicable, shall apply to the Restricted Units.
- L. Monitoring Fees. Housing Owner shall pay to the City an annual monitoring fee, due on January 1st of each year, intended to cover the cost of City staff time to receive, review, document, and record compliance of each affordable housing unit with the terms of this Covenant and Agreement. The City estimates the cost to complete the described monitoring tasks will be \$75.00 for each Restricted Unit in 2019. Should the City staff time needed to complete the required yearly monitoring tasks be less than \$75.00 per Restricted Unit the City will assess a reduced fee that covers only the required City staff time. Every year starting in 2020 the \$75.00 Restricted Unit monitoring fee shall be adjusted every year on January 1st to account for inflation. The Consumer Price Index (CPI) published by the Bureau of Labor Statistics that is part of the United States

Department of Labor shall be used to account for inflation to increase or decrease the monitoring fees assessed by the City over time.

- M. Inspection of the Restricted Units, Access License. Housing Owner hereby grants to the City a license, subject to existing laws, rules, regulations, matters of record, and the rights of residential tenants in occupancy, to enter the Project during normal business hours (upon not less than seventy-two (72) hours' prior notice to Housing Owner) in order to inspect the Project and to inspect such records as are necessary to determine compliance with this Agreement, and to exercise any other rights or remedies that the City may have hereunder.

V. ENFORCEMENT, DEFAULT AND REMEDIES

- A. Notice of Default or Violation. In the event of any default under or violation of this Covenant and Agreement, City shall provide the Owner thirty (30) days written notice of such default, which notice shall state the nature of the default or violation. If the default or violation is not cured to the satisfaction of City within thirty (30) days from receipt of such notice, City may pursue any or all remedies available to it as set forth in this Section.
- B. Providing False or Misleading Information. All Owners shall be held liable for the accuracy of all information and documentation provided in and/or in connection with the Application for Eligibility and any audits. If it is determined that false or misleading information was supplied to City, the Rental of the Restricted Unit shall be wholly null and void and City may pursue any or all remedies available to it as set forth in this Section.
- C. City Enforcement. City hereby reserves the right to enforce this Covenant and Agreement by pursuing any and all remedies provided by law or in equity. City's remedies shall include, by way of example and not limitation, the right to specific performance of this Covenant and Agreement, the right to a mandatory injunction requiring the rent of a Restricted Unit in conformance with this Covenant, the disgorgement of profits received from any Transfer conducted in violation of this Covenant and Agreement, and damages and injunctive relieve for breach of this Covenant and Agreement.
- D. Excess Rents. If Rent for any Designated Unit is charged in excess of the limits in this Agreement, the Housing Owner agrees to make refund of those Rents charged in excess, with interest at twelve (12) percent per annum, to those tenants overcharged. Such refund shall be made promptly upon receiving notice of the overcharge from the City.
- E. Other Violations. In the event of any other violation by Housing Owner of any of the provisions of this Agreement, the City may notify Housing Owner in writing of the violation. Housing Owner shall have thirty (30) days from the date of receipt of such notice to cure such violation. Failure by the Housing Owner to cure within thirty (30) days shall constitute default by Housing Owner under this Agreement. Notwithstanding the foregoing in this subsection, if the violation is of such a nature that it may not be practicably cured within thirty (30) days by Housing Owner, the City may not be entitled to exercise its remedies under this Agreement so long as Housing Owner commences cure of such violation within the thirty (30) day period and diligently pursues the cure to completion.

- F. Remedies. If Housing Owner is found to be in default of this Agreement, the City's remedies shall include, without limitation, specific performance, preliminary and permanent injunctive relief, appointment of a receiver on an interim and/or permanent basis, monetary damages, restitution, and recovery of all costs and attorneys' fees incurred by the City in enforcing this Agreement, including the reasonable value of services provided by attorneys who are City employees and including the reasonable value of any other services provided by City employees.
- G. No Waiver. No waiver of any breach or violation of this Agreement shall be binding unless made in writing by the City and no waiver or delay in enforcing the provisions of this Agreement as to any breach or violation shall impair, damage, or waive the right of the City to obtain relief or recover for the continuation or repetition of such breach or violation or any similar breach or violation of the Agreement at any later time.
- H. Nothing herein limits the authority of the City to take enforcement action under the Code.

VI. OTHER TERMS, CONDITIONS AND REQUIREMENTS

- A. Priority. Housing Owner represents and warrants that there are no monetary liens on the Property or Project with priority over this Agreement.
- B. Representations and Warranties, and No Conflict with other Documents. Housing Owner represents and warrants that it has the full power and authority to enter into and perform this Agreement, that this Agreement represents the valid, binding obligation of Housing Owner and is enforceable in accordance with its terms, and that Housing Owner has not executed and will not execute any other agreement with provisions contradictory to, or in opposition to the provisions of this Agreement.
- C. Attorneys' Fees. If legal action is commenced involving any provision of this Agreement, including without limitation arbitration, bankruptcy, trial or appellate proceedings, reasonable attorneys' fees and costs shall be awarded to the substantially prevailing party.
- D. Choice of Law, Jurisdiction, and Venue. This Agreement shall be construed and enforced in accordance with and governed by the laws of the state of Washington. Housing Owner and the City consent to the jurisdiction of the courts of the state of Washington and agree that venue of any action arising hereunder shall be exclusively in Skagit County, Washington.
- E. Captions. The section and subsection captions used in this Agreement are for convenience only and shall not control or affect the meaning or construction of any of the provisions in this Agreement.
- F. Genders. The use of any gender herein shall be deemed to include the other gender, and the use of the singular in this Agreement shall be deemed to include the plural and vice versa, wherever appropriate.

- G. Counterparts, Effectiveness, Recordation, Amendments. This Agreement may be executed in two or more counterparts, each of which shall constitute an original. This Agreement shall be effective upon recording. The provisions hereof shall not be amended, revised or terminated, other than pursuant to the express terms hereof, except by an instrument in writing duly executed by the Director and Housing Owner or their successors and assigns, and duly recorded.
- H. Severability. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.
- I. Entire Agreement. This Agreement, including any exhibits, attachments and references to documents herein, contains the entire agreement and understanding between Housing Owner and the City with respect to the subject matter of this Agreement.
- J. Delivery of Notice. Any notice or other document required or permitted by this Agreement to be delivered to a party shall be deemed delivered on the day personally delivered, or shall be deemed delivered three (3) days after mailing. If the delivery day after mailing falls on a Saturday, Sunday, or City of Seattle holiday, or if personal delivery is made after normal working hours, then the delivery day shall be determined to be the next day that is not a Saturday, Sunday, or City of Seattle holiday.

Delivery to the City shall be made to:

City of Mount Vernon
Attention: City Attorney
910 Cleveland Ave
Mount Vernon, WA 98273

Or to such other address/department as is later specified to the City by written notice to the Housing Owner.

Delivery to Housing Owner shall be made to:

FILL IN c/o Contact name
Contact title Company
name Address
City, State Zip

Or to other such address as is later specified by Housing Owner by written notice to the City.

SIGNED AND APPROVED this [Click here to enter text.](#) day of [Click here to enter text.](#), 20[Click here to enter text.](#)

OWNER

OWNER

Signature of Property Owner

Signature of Property Owner

CITY OF MOUNT VERNON

Mayor

(insert Mayor's name)

Signature of Development Services Director
or Designee

Approved as to form:

City Attorney

Exhibit A: Legal Description
Exhibit B: Project Units, including Designated Units, by Unit Type and Floor Area
Exhibit C: Maximum Rental Calculations

STATE OF WASHINGTON }
COUNTY OF SKAGIT } ss.

I certify that I know or have satisfactory evidence that [Click here to enter text.](#) is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the [Click here to enter text.](#) to be the free and voluntary act and deed of said [Click here to enter text.](#), for the uses and purposes therein mentioned.

Given under my hand and official seal this [Click here to enter text.](#) day [Click here to enter text.](#) of, 20[Click here to enter text.](#)

(SEAL)

Notary Public
Residing at _____
My appointment expires _____

STATE OF WASHINGTON }
COUNTY OF SKAGIT } ss.

I certify that I know or have satisfactory evidence that [Click here to enter text.](#) is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the [Click here to enter text.](#) to be the free and voluntary act and deed of said [Click here to enter text.](#), for the uses and purposes therein mentioned.

Given under my hand and official seal this [Click here to enter text.](#) day [Click here to enter text.](#) of, 20[Click here to enter text.](#)

(SEAL)

Notary Public
Residing at _____
My appointment expires _____

EXHIBIT A
LEGAL DESCRIPTION

FILL IN full legal description (not abbreviated)

SITE PARCEL NUMBER(S): _____

[illegible]

EXHIBIT C

MAXIMUM RENTAL CALCULATIONS

The formula for calculating Income-Based Rent is set by the U.S. Department of Housing and Urban Development (“HUD”), and is equal to 30% of the household’s “adjusted monthly income” less a utility allowance that is described in detail in this Exhibit. The City follows the rules, regulations, and procedures that HUD has adopted to calculate maximum rental calculations that are currently found in Chapter 5 of the HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs. A copy of Chapter 5 is attached to this Exhibit.

At such time the above-referenced HUD Handbook is updated or changed the City shall use the updated and/or changed version. Additionally, the Development Services Director has the authority to promulgate rules and procedures to calculate maximum rents.

STEP 1: DETERMINE INCOME ELIGIBILITY.

- A. Calculate Annual Income. The total income of the household (Annual Gross Income) is from all sources anticipated to be received in the 12-month period following the effective date of the income certification. This means income must be annualized, i.e. payment amounts multiplied by the number of payment period per year for all income sources.
- B. Determine Allowed Deductions and Exclusions from the Annual Income. Deductions and exclusions from annual income need to be made as per HUD regulations 24 CFR 5.611(a) as it is currently written and as it may be amended in the future.
- C. Calculate the Adjusted Income (Annual Income less Allowable Deductions = Adjusted Income). The adjusted income is required to be 80% or less of the Mount Vernon-Anacortes MSA median household income, adjusted for household size, as determined by HUD, to be able to rent the restricted dwelling units identified in this Covenant and Agreement.

Following is the Income Limits Information from FY 2019 that is obtained from HUD. This same data is required to be generated using the fiscal year within which the initial eligibility is determined and must be updated for the required yearly income verifications.

INCOME LIMITS	
Family Size	Income Limits to be Eligible to Live in Affordable Housing Units
1	\$42,600
2	\$48,650
3	\$54,750
4	\$60,800
5	\$65,700
6	\$70,550
7	\$75,400
8	\$80,300

STEP 2: CALCULATE THE YEARLY RENT AND UTILITY PAYMENTS REQUIRED

- A. Take the Adjusted Income calculated in Step 1 (above) and multiply it by 30%.
- B. Calculate the monthly utility allowance and multiply it by 12 for a yearly utility allowance. The monthly utility allowance can be determine in one of two ways:
 - a. If the Skagit County Housing Authority has an accurate utility allowance it can used.
 - b. Alternatively, the City can create estimates of the typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and utility responsibility in Mount Vernon. These estimates are not intended to be based on an individual families actual energy consumption and do not include non-essential utility costs such as telephone or cable.
- C. Subtract the yearly utility allowance from the Adjusted Yearly Income calculated under Step 2(A).

STEP 3: DETERMINE THE MONTHLY HOUSING PAYMENT

- A. Take the Yearly Rent Minus the Yearly Utility Payments calculated under Step 2(C) and divide this number by 12 to calculate the maximum monthly housing payment.
- B. Should the monthly housing payment be more than the market rate monthly housing payment the monthly housing payment shall be reduced to be equal to the market rate monthly housing payment.

STEP 4: VERIFICATION

- A. All information provided by Applicants and Tenants related to their eligibility is required to be verified.

CHAPTER 5. DETERMINING INCOME AND CALCULATING RENT

5-1 Introduction

- A. Owners must determine the amount of a family's income before the family is allowed to move into assisted housing and at least annually thereafter. The amount of assistance paid on behalf of the family is calculated using the family's annual income less allowable deductions. HUD program regulations specify the types and amounts of income and deductions to be included in the calculation of annual and adjusted income.
- B. Although the definitions of annual and adjusted income used for the programs covered in this handbook have some similarities with rules used by the U.S. Internal Revenue Service (IRS), the tax rules are different from the HUD program rules.
- C. The most frequent errors encountered in reviews of annual and adjusted income determinations in tenant files fall in three categories:
 - 1. Applicants and tenants failing to fully disclose income information;
 - 2. Errors in identifying required income exclusions; and
 - 3. Incorrect calculations of deductions often resulting from failure to obtain third-party verification.

Careful interviewing and thorough verification can minimize the occurrence of these errors.

- D. Chapter 5 is organized as follows:
 - **Section 1: Determining Annual Income** discusses the requirements regarding annual income and the procedure for calculating a family's annual income when determining eligibility. This section also includes guidance on determining income from assets.
 - **Section 2: Determining Adjusted Income** describes the procedures and requirements for determining adjusted income based on allowable deductions.
 - **Section 3: Verification** presents the requirements for verifying information provided by applicants and tenants related to their eligibility.
 - **Section 4: Calculating Tenant Rent** discusses the methods for calculating the tenant's portion of rent under the different programs covered by this handbook.

5-2 Key Terms

- A. There are a number of technical terms used in this chapter that have very specific definitions established by federal statute or regulations, or by HUD. These terms are listed in Figure 5-1 and their definitions can be found in the Glossary to this handbook. It is important to be familiar with these definitions when reading this chapter.
- B. The terms “disability” and “persons with disabilities” are used in two contexts – for civil rights protections, and for program eligibility purposes. Each use has specific definitions.
1. When used in context of protection from discrimination or improving the accessibility of housing, the civil rights-related definitions apply.
 2. When used in the context of eligibility under multifamily subsidized housing programs, the program eligibility definitions apply.

NOTE: See the Glossary for specific definitions and paragraph 2-23 for an explanation of this difference.

Figure 5-1: Key Terms

• Adjusted income • Annual income • Assets • Assistance payment • Assisted rent • Assisted tenant • Basic rent • Co-head of household • Contract rent • Dependent • Extremely low-income family • Foster adult • Foster children • Full-time student • Gross rent • Hardship exemption • Head of household • Housing assistance payment (HAP) • Income limit	• Live-in aide • Low-income family • Market rent • Minimum rent • Operating rent • Project Assistance Contract (PAC) • PRAC Operating Rent • Project Rental Assistance Contract (PRAC) • Project assistance payment • Project rental assistance payment • Tenant rent • Total tenant payment • Unearned income • Utility allowance • Utility reimbursement • Very low-income family • Welfare assistance • Welfare rent

Section 1: Determining Annual Income

5-3 Key Regulations

This paragraph identifies the key regulatory citation pertaining to Section 1: Determining Annual Income. The citation and its title are listed below.

- 24 CFR 5.609 Annual Income

5-4 Key Requirements

- A. Annual income is the amount of income that is used to determine a family's eligibility for assistance. Annual income is defined as follows:
 1. All amounts, monetary or not, that go to or are received on behalf of the family head, spouse or co-head (even if the family member is temporarily absent), or any other family member; or
 2. All amounts anticipated to be received from a source outside the family during the 12-month period following admission or annual recertification effective date.
- B. Annual income includes all amounts that are not specifically excluded by regulation. Exhibit 5-1, Income Inclusions and Exclusions, provides the complete list of income inclusions and exclusions published in the regulations and *Federal Register* notices.
- C. Annual income includes amounts derived (during the 12-month period) from assets to which any member of the family has access.

5-5 Methods for Projecting and Calculating Annual Income

- A. The requirements for determining whether a family is eligible for assistance, and the amount of rent the family will pay, require the owner to project or estimate the annual income that the family expects to receive. There are several ways to make this projection. The following are two acceptable methods for calculating the annual income anticipated for the coming year:
 1. Generally the owner must use current circumstances to anticipate income. The owner calculates projected annual income by annualizing *current* income. Income that may not last for a full 12 months (e.g., unemployment compensation) should be calculated assuming current circumstances will last a full 12 months. If changes occur later in the year, an interim recertification can be conducted to change the family's rent.
 2. If information is available on changes expected to occur during the year, use that information to determine the total *anticipated* income from all known sources during the year**. For example, if a verification source reports that a union contract calls for a 2% pay increase midway through

the year, the owner may add the total income for the months before, and the total for the months after the increase**.

Example – Calculating Anticipated Annual Income

A teacher's assistant works nine months annually and receives \$1,300 per month. During the summer recess, the teacher's assistant works for the Parks and Recreation Department for \$600 per month. The owner may calculate the family's income using either of the following two methods:

1. Calculate annual income based on current income: \$15,600 (\$1,300 x 12 months).

The owner would then conduct an interim recertification at the end of the school year to recalculate the family's income during the summer months at reduced annualized amount of \$7,200 (\$600 x 12 months). The owner would conduct another interim recertification when the tenant returns to the nine-month job.

2. Calculate annual income based on anticipated changes through the year:

\$11,700 (\$1,300 x 9 months)

+ 1,800 (\$ 600 x 3 months)

\$13,500

Using the second method, the owner would not conduct an interim re-examination at the end of the school year. In order to use this method effectively, history of income from all sources in prior years should be available.

- B. Once all sources of income are known and verified, owners must convert reported income to an annual figure. Convert periodic wages to annual income by multiplying:

1. Hourly wages by the number of hours worked per year (2,080 hours for full-time employment with a 40-hour week and no overtime);
2. Weekly wages by 52;
3. Bi-weekly wages (paid every other week) by 26;
4. Semi-monthly wages (paid twice each month) by 24; and
5. Monthly wages by 12.

To annualize other than full-time income, multiply the wages by the actual number of hours or weeks the person is expected to work.

Example – Anticipated Increase in Hourly Rate

February 1 Certification effective date
 \$7.50/hour Current hourly rate
 \$8.00/hour New rate to be effective March 15

(40 hours per week x 52 weeks = 2,080 hours per year)

February 1 through March 15 =	6 weeks
6 weeks x 40 hours =	240 hours
2,080 hours minus 240 hours =	1,840 hours

(check: 240 hours + 1,840 hours = 2,080 hours)

Annual Income is calculated as follows:

240 hours x \$7.50 =	\$1,800
\$1,840 hours x \$8.00 =	\$14,720
Annual Income	\$16,520

(See **Appendix 8** for an explanation of the correct approach to rounding numbers.)

- C. Some circumstances present more than the usual challenges to estimating anticipated income. Examples of challenging situations include a family that has sporadic work or seasonal income or a tenant who is self-employed. In all instances, owners are expected to make a reasonable judgment as to the most reliable approach to estimating what the tenant will receive during the year. In many of these challenging situations, midyear or interim recertifications may be required to reflect changing circumstances. Some examples of approaches to more complex situations are provided below.

Examples – Irregular Employment Income

Seasonal work. Clyde Kunkel is a roofer. He works from April through September. He does not work in rain or windstorms. His employer is able to provide information showing the total number of regular and overtime hours Clyde worked during the past three years. To calculate Clyde's anticipated income, use the average number of regular hours over the past three years times his current regular pay rate, and the average overtime hours times his current overtime rate.

Sporadic work. Justine Cowan is not always well enough to work full-time. When she is well, she works as a typist with a temporary agency. Last year was a good year and she worked a total of nearly six months. This year, however, she has more medical problems and does not know when or how much she will be able to work. Because she is not working at the time of her recertification, it will be best to exclude her employment income and remind her that she must return for an interim recertification when she resumes work.

Examples – Irregular Employment Income

Sporadic work. Sam Daniels receives social security disability. He reports that he works as a handyman periodically. He cannot remember when or how often he worked last year: he says it was a couple of times. Sam's earnings appear to fit into the category of nonrecurring, sporadic income that is not included in annual income. Tell Sam that his earnings are not being included in annual income this year, but he must report to the owner any regular work or steady jobs he takes.

Self-employment income. Mary James sells beauty products door-to-door on consignment. She makes most of her money in the months prior to Christmas but has some income throughout the year. She has no formal records of her income other than a copy of the IRS Form 1040 she files each year. With no other information available, the owner will use the income reflected on Mary's copy of her form 1040 as her annual income.

5-6 Calculating Income—Elements of Annual Income

A. Income of Adults and Dependents

1. Figure 5-2 summarizes whose income is counted.
2. Adults. Count the annual income of the head, spouse or co-head, and other adult members of the family. In addition, persons under the age of 18 who have entered into a lease under state law are treated as adults, and their annual income must also be counted. These persons will be either the head, spouse, or co-head; they are sometimes referred to as emancipated minors.

NOTE: If an emancipated minor is residing with a family as a member other than the head, spouse, or co-head, the individual would be considered a dependent and his or her income handled in accordance with subparagraph 3 below.

3. Dependents. A dependent is a family member who is under 18 years of age, is disabled, or is a full-time student

The head of the family, spouse, co-head, foster child, or live-in aide are never dependents. Some income received on behalf of family dependents is counted and some is not.

- a. *Earned* income of minors (family members under 18) is not counted.
- b. Benefits or other *unearned* income of minors is counted.

Figure 5-2: Whose Income is Counted?

Members	Employment Income	Other Income (including income from assets)
Head	Yes	Yes
Spouse	Yes	Yes
Co-head	Yes	Yes
Other adult *(including foster adult)*	Yes	Yes
Dependents		
-Child under 18	No	Yes
Full-time student over 18	See Note	Yes
Foster child under 18	No	Yes
Nonmembers		
Live-in aide	No	No

NOTE: The earned income of a full-time student 18 years old or older who is a dependent is excluded to the extent that it exceeds \$480.

- c. When more than one family shares custody of a child and both families live in assisted housing, only one family at a time can claim the dependent deduction. The family that counts the dependent deduction also counts the unearned income of the child. The other family claims neither the dependent deduction nor the unearned income of the child.
- d. When full-time students who are 18 years of age or older are dependents, a small amount of their earned income will be counted. Count only earned income up to a maximum of \$480 per year for full-time students, age 18 or older, who are not the head of the family or spouse or co-head. If the income is less than \$480 annually, count all the income. If the annual income exceeds \$480, count \$480 and exclude the amount that exceeds \$480.
- e. The income of full-time students 18 years of age or older who are members of the household but away at school is counted the same as the income for other full-time students. The income of minors who are members of the household but away at school is counted as the income for other minors.
- f. All income of a full-time student, 18 years of age or older, is counted if that person is the head of the family, spouse, or co-head.
- g. Payments received by the family for the care of foster children or foster adults are *not* counted. This rule applies only to payments

made through the official foster care relationships with local welfare agencies.

- h. Adoption assistance payments in excess of \$480 are not counted.

B. Income of Temporarily Absent Family Members

1. Owners must count all income of family members approved to reside in the unit, even if some members are temporarily absent.
2. If the owner determines that an absent person is no longer a family member, the individual must be removed from the lease and the HUD-50059.
3. A temporarily absent individual on active military duty must be removed from the family, and his or her income must not be counted unless that person is the head of the family, spouse, or co-head.
 - a. However, if the spouse or a dependent of the person on active military duty resides in the unit, that person's income must be counted in full, even if the military member is not the head, or spouse of the head of the family.
 - b. The income of the head, spouse, or co-head will be counted even if that person is temporarily absent for active military duty.

Examples – Income of Temporarily Absent Family Members

- John Chouse works as an accountant. However, he suffers from a disability that periodically requires lengthy stays at a rehabilitation center. When he is confined to the rehabilitation center, he receives disability payments equaling 80% of his usual income.

During the time he is not in the unit, he will continue to be considered a family member. The owner will conduct an interim recertification. Even though he is not currently in the unit, his total disability income will be counted as part of the family's annual income.
- Mirna Martinez accepts temporary employment in another location and needs a portion of her income to cover living expenses in the new location. The full amount of the income must be included in annual income.
- Charlotte Paul is on active military duty. Her permanent residence is her parents' assisted unit where her husband and children live. Charlotte is not currently exposed to hostile fire. Therefore, because her spouse and children are in the assisted unit, her military pay must be included in annual income. (If her dependents or spouse were not in the unit, she would not be considered a family member and her income would not be included in annual income.)

C. *Deployment of Military Personnel to Active Duty

Owners are encouraged to be as lenient as responsibly possible to support affected households in situation where persons are called to active duty in the Armed Forces. Specific actions that owners should undertake to support military households include, but are not limited to:*

1. *Allow a guardian to move into the assisted unit on a temporary basis to provide care for any dependents the military person leaves in the unit. Income of the guardian temporarily living in the unit for this purpose is not counted as income.
2. Allow a tenant living in an assisted unit to provide care for any dependents of persons called to active duty in the Armed Forces on a temporary basis, as long as the head and/or co-head of household continues to serve in active duty. Income of the child (e.g., SSI benefits, military benefits) is not counted as income of the person providing the care.
3. Exclude from annual income special pay received by a household member serving in the Armed Services who is exposed to hostile fire (see Exhibit 5-1).
4. Give consideration for any case involving delayed payment of tenant rent. Determine whether it is appropriate to accept a late payment.
5. Allow the assistance payment and the lease to remain in effect for a reasonable period of time (depending on the length of deployment) beyond that required by the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. §§ 501-591, even though the adult members of the military family are temporarily absent from the assisted unit.*

D. Income of Permanently Confined Family Members

1. An individual permanently confined to a nursing home or hospital may not be named as family head, spouse, or co-head but may continue as a family member at the family's discretion. The family's decision on whether or not to include the permanently confined family member as a family member determines if that person's income will be counted.
 - a. *Include* the individual as a family member and the income and allowable deductions related to the medical care of the permanently confined individual are counted; or
 - b. *Exclude* the individual as a family member and the income and allowances based on the medical care of the permanently confined individual are not counted.
2. If the family elects to include the permanently confined member, the individual is listed on the HUD-50059 as an adult who is not the head, spouse, or co-head, even when the permanently confined family member is married to the person who is or will become the head of the family. The owner should consider extenuating circumstances that may prevent the confined member from being able to sign the HUD-50059. If the owner determines the confined member is unable to sign the HUD-50059,

the owner must document the file why the signature was not obtained. If the family elects not to include the permanently confined member, the individual would not be listed on the HUD-50059.**

E. Educational Scholarships or Grants

All forms of student financial assistance (grants, scholarships, educational entitlements, work study programs, and financial aid packages) are excluded from annual income **except for students receiving Section 8 assistance.** This is true whether the assistance is paid to the student or directly to the educational institution

For students receiving Section 8 assistance, all financial assistance a student receives (1) under the Higher Education Act of 1965, (2) from private sources, or (3) from an institution of higher education that is in excess of amounts received for tuition is included in annual income except if the student is over the age of 23 with dependent children or the student is living with his or her parents who are receiving Section 8 assistance. See Paragraph 3-13 for further information on eligibility of students to receive Section 8 assistance and the Glossary for the definition of Student Financial Assistance.

F. Alimony or Child Support

Owners must count alimony or child support amounts awarded by the court unless the applicant certifies that payments are not being made *and* that he or she has taken all reasonable legal actions to collect amounts due, including filing with the appropriate courts or agencies responsible for enforcing payment.

1. The owner may accept printouts from the court or agency responsible for enforcing support payments, or other evidence indicating the frequency and amount of support payments actually received.
2. Child support paid to the custodial parent through a state child support enforcement or welfare agency may be included in the family's monthly welfare check and may be designated in different ways. In some states these payments are not identified as separate from the welfare grant. In these states, it is important to determine which portion is child support and not to count it twice. In other states, the payment may be listed as child support or as "pass-through" payments. These amounts must be counted as annual income.
3. When no documentation of child support, divorce, or separation is available, either because there was no marriage or for another reason, the owner may require the family to sign a certification stating the amount of child support received.

G. Regular Cash Contributions and Gifts

1. Owners must count as income any regular contributions and gifts from persons not living in the unit. These sources may include rent and utility

payments paid on behalf of the family, and other cash or noncash contributions provided on a regular basis.

Examples – Regular Cash Contributions

- The father of a young single parent pays her monthly utility bills. On average he provides \$100 each month. The \$100 per month must be included in the family's annual income.
- The daughter of an elderly tenant pays her mother's \$175 share of rent each month. The \$175 value must be included in the tenant's annual income.

2. Groceries and/or contributions paid directly to the childcare provider by persons not living in the unit are excluded from annual income.
3. Temporary, nonrecurring, or sporadic income (including gifts) is not counted.

H. Income from a Business

When calculating annual income, owners must include the net income from operation of a business or profession including self-employment income. Net income is gross income less business expenses, interest on loans, and depreciation computed on a straight-line basis.

1. In addition to net income, owners must count any salaries or other amounts distributed to family members from the business, and cash or assets withdrawn by family members, except when the withdrawal is a reimbursement of cash or assets invested in the business.
2. When calculating net income, owners must not deduct principal payments on loans, interest on loans for business expansion or capital improvements, other expenses for business expansion, or outlays for capital improvements.
3. If the net income from a business is negative, it must be counted as zero income. A negative amount must not be used to offset other family income.

I. **Periodic Social Security Payments

Count the gross amount, before deductions for Medicare, etc., of periodic Social Security payments. Include payments received by adults on behalf of individuals under the age of 18 or by individuals under the age of 18 for their own support.**

J. Adjustments for Prior Overpayment of Benefits

If an agency is reducing a family's benefits to adjust for a prior overpayment (e.g., social security, SSI, TANF, or unemployment benefits), count the amount that is actually provided after the adjustment.

Example – Adjustment for Prior Overpayment of Benefits

Lee Park's social security payment of \$250 per month is being reduced by \$25 per month for a period of six months to make up for a prior overpayment. Count his social security income as \$225 per month for the next six months and as \$250 per month for the remaining six months.

K. Public Assistance Income in As-Paid Localities

1. Special calculations of public assistance income are required for “as-paid” state, county, or local public assistance programs. An “as-paid” system is one:
 - a. In which the family receives an amount from a public agency specifically for shelter and utilities; and
 - b. In which the amount is adjusted based upon the actual amount the family pays for shelter and utilities.
2. The public assistance amount specifically designated for rent and utilities is called the “welfare rent.”
3. To determine annual income for public assistance recipients in “as-paid” localities, include the following:
 - a. The amount of the family's grant for other than shelter and utilities; and
 - b. The maximum amount the welfare department can pay for shelter and utilities for a family of that size (i.e., the welfare rent). This may be different from the amount the family is actually receiving.
4. Each as-paid locality works somewhat differently, and many are subject to court-ordered modifications to the basic policy. Owners should discuss how the rules are applied with the HUD Field Office.

Example – Welfare Income in “As Paid” Localities

At application, a family's welfare grant is \$300, which includes \$125 for basic needs and \$175 for shelter and utilities (based upon where the family is now living). However, the maximum the welfare agency could allow for shelter and utilities for this size family is \$190.

Count the following as income:

\$125 Amount family receives for basic needs

\$190 Maximum for shelter and utilities

\$315 Monthly public assistance income

L. Periodic Payments from Long-Term Care Insurance, Pensions, Annuities, and Disability or Death Benefits

1. The full amount of periodic payments from annuities, insurance policies, retirement funds, pensions, and disability or death benefits is included in annual income. (See subparagraph O below for information on the withdrawal of cash or assets from an investment.) Payments such as Black Lung Sick Benefits, Veterans Disability, and Dependent Indemnity Compensation for the Widow of a Killed in Action Serviceman are examples of such periodic payments.
2. Withdrawals from retirement savings accounts such as Individual Retirement Accounts and 401K accounts that are not periodic payments do not fall in this category and are not counted in annual income (see paragraph 5.7 G.4).

Example – Withdrawals from IRAs or 401K Accounts

Isaac Freeman retired recently. He has an IRA account but is not receiving periodic payments from it because his pension is adequate for his routine expenses. However, he has withdrawn \$2,000 for a trip with his children. The withdrawal is not a periodic payment and is not counted as income.

3. If the tenant is receiving long-term care insurance payments, any payments in excess of \$180 per day must be counted toward the gross annual income. (**NOTE:** Payment of long-term care insurance premiums are an eligible medical expense – see paragraph 5-10 D.8.k.)
4. *Federal Government/Uniformed Services pension funds paid to a former spouse.*

Federal Government/Uniformed Services pension funds paid directly to an applicant's/tenant's former spouse pursuant to the terms of a court decree of divorce, annulment, or legal separation are not counted as annual income. The state court has, in the settlement of the parties' marital assets, determined the extent to which each party shares in the ownership of the pension. That portion of the pension that is ordered by the court (and authorized by the Office of Personnel Management (OPM), to be paid to the applicant's/tenant's former spouse is no longer an asset of the applicant/tenant and therefore is not counted as income. However, any pension funds authorized by OPM, pursuant to a court order, to be paid to the former spouse of a Federal government employee is counted as income for a tenant/applicant receiving such funds.

Example: Joan Carson is a retired Federal government employee receiving a retirement pension. She is also the recipient of Section 8 housing assistance and involved in a divorce proceeding. In settling the assets of the marriage between Mrs. Carson and her former husband, the court ordered that one half of her pension be paid directly to her former husband in the amount of \$20,000. The court provided OPM with clear, specific and express instructions acceptable for OPM to process the payment to Mrs. Carson's former husband. OPM authorized the payment of pension benefits to Mrs. Carson's former husband in the amount of \$20,000. The \$20,000 represents an asset disposed of as a result of a court decree. At the interim reexamination of her income, Mrs. Carson indicated a change in her income due to the court ordered payment of pension benefits to her former husband. The PHA requested that Mrs. Carson provide a copy of her statement from OPM evidencing the payment of pension benefits to her (her statement reflected the line item payment to her former husband due to the court order). That portion of the pension paid to her former husband no longer belongs to Mrs. Carson and is not counted as income.

The OPM is responsible for handling court orders (any judgments or property settlements issued by or approved by any court of any state, the

District of Columbia, the Commonwealth of Puerto Rico, Guam, The Northern Mariana Islands, or the Virgin Islands in connection with the divorce, annulment of marriage, or legal separation of a Federal government employee or retiree) affecting current and retired Federal government employees. See 5 C.F.R. § 838.103. OPM must comply with court orders, decrees, or court-approved property settlement agreements in connection with divorces, annulments of marriage, or legal separations of employees that award a portion of the former Federal government employee's retirement benefits. Id. at § 838.101(a)(1). State courts ordering a judgment or property settlement in connection with divorce, annulment of marriage, or legal separation have the responsibility of issuing clear, specific, and express instructions to OPM with regards to providing benefits to former spouses. Id. at § 838.122. In response to instructions from state courts, OPM will authorize payments to the former spouses. Id. at § 838.121. Once the payments have been

authorized by OPM, the reduced pension amount paid to the retired Federal employee (the tenant/applicant) will be reflected in the tenant's/applicant's statement from OPM. Former spouses of Federal government employees receiving court ordered pension benefits are provided a Form-1099 reflecting pension benefits received from the retired Federal government employee. In verifying the income of tenants/applicants, owners should require that tenants/applicants provide any copies of statements from OPM verifying pension benefits (including any reductions pursuant to a court order, decree or court-approved property settlement agreement), and any evidence of survivor benefits, pensions or annuities received from retired Federal government employees including, but not limited to, a Form-1099. (See Paragraph 5-7.G.5 for more information on the treatment of income from Federal government pensions.)

5. *Other State, local government, social security or private pensions paid to a former spouse.

Other state, local government, social security or private pension funds paid directly to an applicant's/tenant's former spouse pursuant to the terms of a court decree of divorce, annulment, or legal separation are also not counted as annual income and should be handled in the same manner as 4, above. The decree and copies of statements should be obtained in order to verify the net amount of the pension that should be applied in order to determine eligibility and calculate rent.*

M. Income from Training Programs

1. Amounts received under HUD-funded training programs are excluded from annual income.
2. Incremental earnings and benefits received by any family member due to participation in qualifying state or local employment training programs are excluded. Income from training programs not affiliated with a local government, and income from the training of a family member resident to serve on the management staff, is also excluded.
 - a. Excluded income must be received under employment training programs with clearly defined goals and objectives and for a specific, limited time period. The initial enrollment must not exceed one year, although income earned during extensions for additional specific time periods may also be eligible for exclusion
 - b. Training income may be excluded only for the period during which the family member participates in the employment training program.
 - c. Exclusions include stipends, wages, transportation or child care payments, or reimbursements.

- d. Income received as compensation for employment is excluded only if the employment is a component of a job training program. Once training is completed, the employment income becomes income that is counted.
 - e. Amounts received during the training period from sources that are unrelated to the job training program, such as welfare benefits, social security payments, or other employment, are not excluded.
2. Owners may ask to use project funds or funds from the Residual Receipts account to underwrite all or a portion of the cost of developing, maintaining, and managing a job training program for project residents if funds are available.
 - a. The Field Office will make the determination if the job training program may be approved, and if project funds are sufficient to fund the job training program and maintain the physical and financial integrity of the project. Job training programs may be either on-site at the project or off-site. For example, job training programs that have partnerships with local colleges, community based organizations, or local business, may have in-house job training programs designed for project residents.
 - b. Funds that an owner may choose to use to underwrite a job training program may include Section 8 funds, Community Development Block Grant funds, or housing authority funds. These funds may be used to cover the costs of various components of a job training program, including course materials, computer software, computer hardware, or personnel costs. Also, contractors and subcontractors, in connection with work performed under a Flexible Subsidy contract, may elect to hire project residents to perform certain skills required under the contract. If the employment of the project residents was pursuant to an apprenticeship program, this could constitute a training program using HUD funds, and income received by the tenants in the apprenticeship program will qualify as an exclusion from income.

N. Resident Services Stipends

Resident services stipends are generally modest amounts of money received by residents for performing services such as hall monitoring, fire patrol, lawn maintenance, and resident management.

1. If the resident stipend exceeds \$200 per month, owners must include the entire amount in annual income.
2. If the resident stipend is \$200 or less per month, owners must exclude the resident services stipend from annual income.

O. Income Received by a Resident of an Intermediate Care Facility for the Mentally Retarded or for the Developmentally Disabled (ICF/MR or ICF/DD) and Assisted Living Units in Elderly Projects

1. An intermediate care facility is a group home for mentally retarded or developmentally disabled individuals (ICF/MR or ICF/DD). The term "intermediate care facility" is one used by state mental health departments for group homes serving these residents.
2. Assisted living units are units in projects developed for elderly residents with project-based assistance that have been converted to assisted living units.
3. The local agency responsible for Medicaid provides funds directly to group home operators and assisted living providers for services.
4. Annual income at an ICF/MR, ICF/DD, or assisted living unit must include:
 - a. The SSI payment a tenant receives or the facility receives on behalf of the tenant; plus
 - b. All other income the tenant receives from sources other than SSI that are not excluded from income by HUD regulations (see Exhibit 5-1). Examples of other sources of income include wages, pensions, income from sheltered workshops, income from a trust, or other interest income.
 - c. The personal allowance of an individual residing in an ICF/MR or ICF/DD is not included in annual income. If the owner is unable to determine the actual amount of the personal allowance, use \$30.
5. Annual income does not include the enhanced benefit portion of the SSI that is provided to pay for services. In some instances, a resident's SSI income may be reduced between annual recertifications if the resident's earnings exceed a specified amount. If this happens, the resident may request an interim recertification.

P. Withdrawal of Cash or Assets from an Investment

The withdrawal of cash or assets from an investment received as periodic payments should be counted as income. **Lump sum receipts from pension and retirement funds are counted as assets. If benefits are received through periodic payments, do not count any remaining amounts in the account as an asset. See Paragraph 5-7 G.2 for guidance on calculating income from an asset.**

Q. Lump Sum Payments Counted as Income

1. Generally, lump sum amounts received by a family, such as inheritances, insurance settlements, or proceeds from sale of property are considered assets, not income.

2. When social security or SSI benefit income is paid in a lump sum as a result of deferred periodic payments, that amount is *excluded* from annual income.
3. Settlement payments from claim disputes over welfare, unemployment, or similar benefits may be counted as assets, but lump sum payments caused by *delays in processing* periodic payments for unemployment or welfare assistance are included as income.

How lump sum payments for delayed start of benefits are counted depends upon the following:

- a. When the family reports the change;
- b. When an interim re-examination is conducted; and
- c. Whether the family's income increases or decreases as a result.

A lump sum payment resulting from delayed benefit income may be treated in either of the two ways illustrated in the example shown in Figure 5-3.

4. Lottery winnings paid in one payment are treated as assets. Lottery winnings *paid in periodic payments* must be counted as income.

Figure 5-3: Treatment of Delayed Benefit Payments Received in a Lump Sum

Family member loses his/her job on October 19 and applies for unemployment benefits. The family receives a lump sum payment of \$700 in December to cover the period from 10/20 to 12/5 and begins to receive \$100 a week effective 12/6.

Option A: The owner processes one interim re-examination immediately effective 11/1 and a second interim after unemployment benefits are known.

	<u>10/1</u>	<u>11/1</u>	<u>12/1</u>	<u>1/1</u>	<u>2/1</u>
Monthly gross income	800	*0	*0	492**	492**
Monthly allowances (three minors x 480 / 12 months)	120	-	-	120	120
Monthly adjusted income	680	0	0	372	372
Total tenant payment (TTP)	204	25	25	25***	112***

* The family's income is calculated at \$0/month beginning November 1, continuing until benefits actually begin and new income is calculated. TTP is set at the minimum rent.

** Family's actual income for 1/1 is \$100/week x 52 weeks = \$5,200 / 12 = \$433.

However, because the family's TTP was calculated at zero income for the months of November and December (the period eventually covered by the \$700 lump sum payment), the annual income to be used in calculating monthly gross income should be as follows:

\$100/week benefit x 52 weeks = \$5,200 + \$700 lump sum payment = \$5,900 annual gross income / 12 = \$492.

*** Increased rent does not start until 2/1 in order to give the family notice of rent increase.

Option B: The owner processes one interim re-examination after unemployment benefits are known.

	<u>10/1</u>	<u>11/1</u>	<u>12/1</u>	<u>1/1</u>	<u>2/1</u>
Monthly gross income	800	0/800*	0/800*	433*	433*
Monthly allowances (three minors x 480 / 12 Months)	120	120	120	120	120
Monthly adjusted income	680	0/680	0/680	313	313
Total tenant payment	204	204*	204*	94	94
Recalculated TTP	-	94***	94*	94	94
Rent credit (204 – 94=)	-	110	110	-	-

* Family's actual income for 11/1 and 12/1 is zero, but because the owner does not process an interim re-examination, the family's TTP continues to be calculated using \$800 as monthly gross income. Beginning 1/1, monthly gross income is known to be \$100/week, or \$433/month.

** The lump sum payment is taken into account by making the recertification retroactive to 11/1. Annual income is calculated as \$5,200 / 12 = \$433 monthly gross income.

*** TTP for November and December recalculated as \$433 monthly gross income and \$313 monthly adjusted income x .30 = 94 with credit or refund to family of \$110/month for each of these two months for difference between TTP paid of \$204 and recalculated TTP of \$94.

R. Exclusions from Income

1. Regulations for the multifamily subsidized housing programs covered by this handbook specifically exclude certain types of income from annual income. However, many of the items listed as exclusions from annual income under HUD requirements are items that the IRS includes as taxable income. Therefore, it is important for owners to focus specifically on the HUD program requirements regarding annual income.
2. Among the items that are excluded from annual income are the value of food provided through:
 - a. The Meals on Wheels program, food stamps, or other programs that provide food for the needy;
 - b. Groceries provided by persons not living in the household; and
 - c. Amounts received under the School Lunch Act and the Child Nutrition Act of 1966, including reduced lunches and food under the Special Supplemental Food Program for Women, Infants and Children (WIC).

Examples – Income Exclusions

- The Value of Food Provided through the Meals on Wheels Program or Other Programs Providing Food for the Needy. Jack Love receives a hot lunch each day during the week in the community room and an evening meal in his apartment. One meal is provided through the Meals on Wheels program. A local church provides the other. The value of the meals he receives is not counted as income.
- Groceries provided by persons not living in the household. Carrie Sue Colby's mother purchases and delivers groceries each week for Carrie Sue and her two year old. The value of these groceries is not counted as income despite the fact that these are a regular contribution or gift.
- Amounts Received Under WIC or the School Lunch Act. Lydia Jeffries' two children receive a free breakfast and reduced priced lunches at school every day through the Special Supplemental Food Program for Women, Infants and Children (WIC). The value of this food is not counted as income.

**

3. Some additional examples of income that is excluded from the calculation of annual income follow.

Examples – Income Exclusions

- Resident service stipends. Rich Fuller receives \$50 a month for distributing flyers for management. This amount is excluded from annual income.
- Deferred periodic payments of social security benefits. Germain Johnson received \$32,000 in deferred social security benefits following a lengthy eligibility dispute. This delayed payment of social security benefits is treated as an asset, not as income.
- Income from training programs. Jennifer Jones is participating in a qualified state-supported employment training program every afternoon to learn improved computer skills. Each morning, she continues her regular job as a typist. The \$250 a week she receives as a part-time typist is included in annual income. The \$150 a week she receives for participation in the training program is excluded in annual income.
- Earned Income Tax Credit refund payments. Mary Frances Jackson is eligible for an earned income tax credit. She receives payments from her employer each quarter because of the tax credit. These payments are excluded in annual income.

**

5-7 Calculating Income from Assets

Annual income includes amounts derived from assets to which family members have access.

A. What is Considered to Be an Asset?

1. Assets are items of value that may be turned into cash. A savings account is a cash asset. The bank pays interest on the asset. The interest is the *income* from that asset.
2. Some tenants have assets that are not earning interest. A quantity of money under a mattress is an asset: it is a thing of value that could be used to the benefit of the tenant, but under the mattress it is not producing income.
3. Some belongings of value are not considered assets. Necessary personal property is not counted as an asset. Exhibit 5-2 summarizes the items that are considered assets and those that are not.

B. Determining Income from Assets

Note: For families receiving only BMIR assistance, it is not necessary to determine whether family assets exceed \$5,000. The rule for imputing income from assets does not apply to the BMIR program.

1. The calculation to determine the amount of income from assets to include in annual income considers both of the following:
 - a. The total cash value of the family's assets; and
 - b. The amount of income those assets are earning or could earn.
2. The rule for calculating income from assets differs depending on whether the total cash value of family assets is \$5,000 or less, or is more than \$5,000.

C. Determining the Total Cash Value of Family Assets

1. To comply with the rule for determining the amount of income from assets, it is necessary to first determine whether the total "cash value" of family assets exceeds \$5,000.
 - a. The "cash value" of an asset is the market value less reasonable expenses that would be incurred in selling or converting the asset to cash, such as the following:
 - (1) Penalties for premature withdrawal;
 - (2) Broker and legal fees; and
 - (3) Settlement costs for real estate transactions.

The cash value is the amount the family could actually receive in cash, if the family converted an asset to cash.

Example – Calculating the Cash Value of an Asset

A family has a certificate of deposit (CD) in the amount of \$5,000 paying interest at 4%. The penalty for early withdrawal is three months of interest.

$$\$5,000 \times 0.04 = \$200 \text{ in annual income}$$

$$\$200 / 12 \text{ months} = \$16.67 \text{ interest per month}$$

$$\$16.67 \times 3 \text{ months} = \$50.01$$

$$\$5,000 - \$50 = \$4,950 \text{ cash value of CD}$$

- b. It is essential to note that a family is not required to convert an asset to cash. Determining the cash value of the asset is done simply as a calculation by the owner because it is a required step when determining income from assets under program requirements.

D. Assets Owned Jointly

1. If assets are owned by more than one person, prorate the assets according to the percentage of ownership. If no percentage is specified or provided by a state or local law, prorate the assets evenly among all owners.
2. If an asset is not effectively owned by an individual, do not count it as an asset. An asset is not effectively owned when the asset is held in an individual's name, but (a) the asset and any income it earns accrue to the benefit of someone else who is not a member of the family, and (b) that other person is responsible for income taxes incurred on income generated by the assets.
3. Determining which individuals have ownership of an asset requires collecting as much information as is available and making the best judgment possible based on that information.

Example – Determining the Cash Value of an Asset

The “cash value” of an asset is the amount a family would receive if the family turned a noncash asset into cash.

The cash value is the market value—or the amount another person would pay to acquire the asset—less the cost to turn the asset into cash.

If a family owns real estate, it may be necessary to consider the family’s equity in the property as well as the expense to sell the property.

To determine the family’s equity, subtract amounts owed on the property from its market value:

$$\begin{array}{r} \text{Market value} \\ - \text{Mortgage amount owed} \\ \hline \text{Equity in the property} \end{array}$$

Calculate the cash value by subtracting the expense of selling the property:

$$\begin{array}{r} \text{Equity} \\ - \text{Expense of selling} \\ \hline \text{Cash Value} \end{array}$$

Juanita Player owns a rental house. The market value is \$100,000. She owes \$60,000. The cost to dispose of this house would be \$8,000. The owner would determine the cash value as follows:

$$\begin{array}{r} \text{Market Value} \qquad \qquad \qquad \$100,000 \\ \text{Mortgage amount} \qquad \qquad \qquad - \$60,000 \\ \hline \qquad \qquad \qquad \qquad \qquad \qquad 40,000 \end{array}$$

$$\begin{array}{r} \text{Cost of disposing of the asset} \\ \text{(real estate commission, and} \\ \text{other costs of sale)} \qquad \qquad \qquad - \$8,000 \\ \hline \text{Cash Value} \qquad \qquad \qquad \qquad \qquad \qquad \text{\$32,000} \end{array}$$

- a. In some instances, but not all, knowing whose social security number is connected with the asset may help in identifying ownership. Owners should be aware that there are many situations in which a social security number connected with an asset does not indicate ownership and other situations where there is ownership without connection to a social security number.
- b. Determining who has contributed to an asset or who is paying taxes on the asset may assist in identifying ownership.

Examples – Jointly Owned Assets

- Helen Wright is an assisted-housing tenant. She and her daughter, Elsie Duncan, have a joint savings account. Mother and daughter both contribute to the account. They have used the account for trips together and to cover emergency needs for either of them. Assume in this example that state law does not specify ownership. Even though either Helen Wright or Elsie Duncan could withdraw the entire asset for her own use, count Helen's ownership as 50% of the account.
- Jean Boucher's name is on her mother's savings account to ensure that she can access the funds for her mother's care. The account is not effectively owned by Jean and should not be counted as her asset.

E. Calculating Income from Assets When Assets Total \$5,000 or Less

If the total cash value of all the family's assets is \$5,000 or less, the actual income the family receives from assets is the amount that is included in annual income as income from assets.

F. Calculating Income from Assets When Assets Exceed \$5,000

1. When net family assets are more than \$5,000, annual income includes the greater of the following:
 - a. Actual income from assets; or
 - b. A percentage of the value of family assets based upon the current passbook savings rate as established by HUD. This is called *imputed* income from assets. The passbook rate is currently set at 2%.
2. To begin this calculation, first add the cash value of all assets. Multiply the total cash value of all assets by .02. The product is the "imputed income" from assets. Then, add the actual income from all assets. The greater of the imputed income from assets or the actual income from assets is included in the calculation of annual income.

**Example – Use Actual Income from Assets When
Total Net Family Assets are \$5,000 or Less**

Type of Asset	Cash Value	Actual Yearly Income
<i>Certificate of Deposit</i> \$1,000 withdrawal fee \$50 interest @ 4%	\$950	\$40
<i>Savings Account</i> \$500 interest @ 2.5%	\$500	\$13
<i>Stock</i> \$300 Not paying dividends	\$300	\$0
Total	\$1,750	\$53

The total cash value of the family's assets is \$1,750. Therefore, the amount that is added to annual income as income from assets is the actual income earned or \$53.

Example – Imputed Income from Assets

“Imputed” means “attributed” or “assigned.” Imputing income from assets is “assigning” an amount of income solely for the sake of the annual income calculation. The imputed income is not real income.

For example, money under a mattress is not earning income. If the money were put in a savings account it would earn interest. Imputed income from such an asset is the interest the money would earn if it were put in a savings account.

A family with cash under a mattress is not required to put the cash in a savings account; but when the owner is calculating income for a family with more than \$5,000 in assets, the owner must assign an amount that cash would earn if it were in a savings account.

**Example – Determining Income from Assets
When Net Family Assets Exceed \$5,000**

Type of Asset	Cash Value	Actual Yearly Income
<i>Checking Account</i> (non-interest bearing)	\$455	\$0
<i>Savings Account</i> (interest at 2.5%)	\$6,000	\$150
<i>Stocks</i> (not paying dividends this year)	\$3,000	\$0
Total	\$9,455	\$150

Total cash value of assets is greater than \$5,000. Therefore, it is necessary to compare the actual income from assets to the imputed income from assets.

The total cash value of assets (\$9,455) is multiplied by 2% to determine the imputed income from assets.

$$.02 \times \$9,455 = \$189$$

\$189 is greater than the actual income from assets (\$150).

In this case, therefore, the owner will add \$189 to the annual income calculation as income from assets.

G. Calculating Income from Assets - Specific Types of Assets

1. Trusts.

a. Explanation of trusts.

- (1) A trust is a legal arrangement generally regulated by state law in which one party (the creator or grantor) transfers property to a second party (the trustee) who holds the property for the benefit of one or more third parties (the beneficiaries). A trust can contain cash or other liquid assets or real or personal property that could be turned into cash. Generally, the assets are invested for the benefit of the beneficiaries.
- (2) Trusts may be revocable or nonrevocable. A revocable trust is a trust that the creator of the trust may amend or end (revoke). When there is a revocable trust, the creator has access to the funds in the trust account. When the creator sets up a nonrevocable trust, the creator has no access to the funds in the account.
- (3) The beneficiary frequently will be unable to touch any of the trust funds until a specified date or event (e.g., the

beneficiary's 21st birthday or the grantor's death). In some instances, the beneficiary may receive the regular investment income from the trust but not be able to withdraw any of the principal.

- (4) The beneficiary and the grantor may be members of the same family. A parent or grandparent may have placed funds in trust to a child. If the trust is revocable, the funds may be accessible to the parent or grandparent but not to the child.

b. How to treat trusts.

- (1) The basis for determining how to treat trusts relies on information about who has access to either the principal in the account or the income from the account.
- (2) Revocable trusts. If any member of the tenant family has the right to withdraw the funds in the account, the trust is considered to be an asset and is treated as any other asset. The cash value of the trust (the amount the family member would receive if he or she withdrew all that could be withdrawn) is added to total net assets. The actual income received is added to actual income from assets.

Example – A Trust Accessible to Family Members

Assez Charaf lives alone. He has placed \$20,000 in trust to his grandson to be available to the grandson upon the death of Assez. The trust is revocable, that is, Assez has control of the principal and interest in the account and can amend the trust or remove the funds at any time. In calculating Assez's income, the owner will add the \$20,000 to Assez's net family assets and the actual income received on the trust to actual income from assets.

- (3) Nonrevocable trusts. If no family member has access to either the principal or income of the trust at the current time, the trust is not included in the calculation of income from assets or in annual income.

If only the income (and none of the principal) from the trust is currently available to a family member, the income is counted in annual income, but the trust is not included in the calculation of income from assets.

- (4) Nonrevocable trust as an asset disposed of for less than fair market value. If a tenant sets up a nonrevocable trust for the benefit of another person while residing in assisted

housing, the trust is considered an asset disposed of for less than fair market value (see subparagraph G.6 below).

- If the trust has been set up so income from the trust is regularly reinvested in the trust and is not paid back to the creator, the trust is calculated as any other asset disposed of for less than fair market value for two years and not taken into consideration thereafter.

Example – Nonrevocable Trust As an Asset Disposed of for Less Than Fair Market Value

Sarah Gordy placed \$100,000 in a nonrevocable trust for her grandson. Last year, the trust produced \$8,000, which was reinvested into the trust.

The trust is treated as an asset disposed of for less than fair market value for two years. (See paragraph 5.7 G.6.) No actual income from the trust is included in Sarah's annual income, but the value of the asset when it was given away, \$100,000, is included in net family assets for two years from the date the trust was established.

- Nonrevocable trust distributing income. When a tenant places an asset in a nonrevocable trust but continues to receive income from the trust, the income is added to annual income *and* the trust is counted as an asset disposed of for less than market value for two years. Following the two-year period, the owner will count only the actual income distributed from the trust to the tenant.

Example – Nonrevocable Trust Distributing Income to the Creator/Tenant

Reggie Bouchard has established a nonrevocable trust in the amount of \$35,000 that no one in the tenant family controls. Income from the trust is paid to Reggie. Last year, he received \$3,500.

The owner will count Reggie's actual anticipated income from the trust in next year's annual income.

Because the asset was disposed of for less than fair market value (see paragraph 5.7 G.6), the value of the asset given away, \$35,000, is counted as an asset disposed of for less than fair market value for two years.

- (5) Payment of principal from a trust. The beneficiary of a trust may receive funds from the trust in different ways. A beneficiary may receive the full value of a trust at one time. In that instance the funds would be considered a lump sum receipt and would be treated as an asset. A trust set up to provide support for a person with disabilities may pay only income from the trust on a periodic basis. Occasionally, however, a beneficiary may be given a portion of the trust principal on a periodic basis. When the principal is paid out on a periodic basis, those payments are considered regular income or gifts and are counted in annual income.

Example – Payment of Principal Amounts from a Trust

Jared Leland receives funds from a nonrevocable trust established by his parents for his support. Last year he received \$18,000 from the trust. The attorney managing the trust reported that \$3,500 of the funds distributed was interest income and \$14,500 was from principal. Jared receives a payment of \$1,500 each month (an amount that includes both principal and interest from the trust).

The owner will count the entire \$18,000 Jared received as annual income.

c. Special needs trusts.

A special needs trust is a trust that may be created under some state laws, often by family members for disabled persons who are not able to make financial decisions for themselves. Generally, the assets within the trust are not accessible to the beneficiary.

- (1) If the beneficiary does not have access to income from the trust, then it is not counted as part of income.
- (2) If income from the trust is paid to the beneficiary regularly, those payments are counted as income.

Example – Special Needs Trust

Daryl Rockland is a 55-year-old person with disabilities, living with his elderly parents. The parents have established a special-needs trust to provide income for their son after they are gone. The trust is not revocable; neither the parents nor the son currently have access to the principal or interest. In calculating the income of the Rocklands, the owner will disregard the trust.

2. Annuities.

a. Annuity facts and terms.

- (1) An annuity is a contract sold by an insurance company designed to provide payments, usually to a retired person, at specified intervals. Fixed annuities guarantee a certain payment amount, while variable annuities do not, but have the potential for greater returns.
 - A hybrid annuity (also called a combination annuity) combines the features of a fixed annuity and a variable annuity.
 - A deferred annuity is an annuity that delays income payments until the holder chooses to receive them. An immediate annuity is one that begins payments immediately upon purchase.
 - A life annuity continues to pay out as long as the owner is alive. A single-life annuity provides income benefits for only one person. A joint life annuity is issued on two individuals, and payments continue in whole or in part as long as either individual is alive.
- (2) Generally, a person who holds an annuity from which he or she is not yet receiving payments will also be earning income. In most instances, a fixed annuity will be earning interest at a specified fixed rate similar to interest earned by a CD. A variable annuity will earn (or lose) based on market fluctuations, as in a mutual fund.
- (3) Most annuities charge surrender or withdrawal fees. In addition, early withdrawal usually results in tax penalties.
- (4) Depending on the type of annuity and the current status of the annuity, the owner will need to ask different questions of the verification source, which will normally be the applicant or tenant's insurance broker.

b. Income after the holder begins receiving payments.

- (1) When verifying an annuity, owners should ask the verification source whether the holder of the annuity has the right to withdraw the balance of the annuity. For annuities without this right, the annuity is not treated as an asset.

- (2) Generally, when the holder has begun receiving annuity payments, the holder can no longer convert it to a lump sum of cash. In this situation, the holder will receive regular payments from the annuity that will be treated as regular income, and no calculations of income from assets will be made. **

c. Calculations when an annuity is considered an asset.

- (1) When an applicant or tenant has the option of withdrawing the balance in an annuity, the annuity will be treated like any other asset. **It will be necessary to determine the cash value of the annuity in addition to determining the actual income earned.
- (2) In most instances, an annuity from which payments have not yet been made is earning income on the balance in the annuity. A fixed annuity will earn income at a fixed rate in the same manner that a CD earns income. A variable annuity will earn (or lose) based on current market conditions, as with a mutual fund.
- (3) The owner will need to verify with the insurance agent or other appropriate source:
- The right of the holder to withdraw the balance (even if penalties are involved).
 - The basis on which the annuity may be expected to grow during the coming year.
 - The surrender or early withdrawal penalty fee.
 - The tax rate and the tax penalty that would apply if the family withdrew the annuity.
- (4) The cash value will be the full value of the annuity, less the surrender (or withdrawal) penalty, and less any taxes and tax penalties that would be due.
- (5) The actual income is the balance in the annuity times the percentage (either fixed or variable) at which the annuity is expected to grow over the coming year. (This money will be reinvested into the annuity, but it is still considered actual income.)
- (6) The imputed income from the asset is calculated only after the cash value of all family assets has been determined.

imputed income from assets is calculated on the total cash value of all family assets.

3. Lump sum receipts counted as assets.

- a. Commonly, when a family receives a large amount of money, a lump sum payment, the family will put the money in a checking or savings account, or will purchase stocks or bonds or a CD. Owners must count lump sum payments received by a tenant as assets. Examples of lump sum payments include the following:

- (1) Inheritances;
- (2) Capital gains;
- (3) Lottery winnings paid in one payment;
- (4) Cash from the sale of assets;
- (5) Insurance settlements (including health and accident insurance, workers compensation, and personal and property losses); and
- (6) Any other amounts that are received in one-time lump sum payments.

Example – Calculating the Cash Value of an Annuity

Rodrigo Ramirez, site manager at Fernwood Forrest, has interviewed Barbara Barstow, an applicant who reports holding an annuity from which she will not receive payments for another 15 years when she turns 65. The applicant could not provide any more detail on the annuity but did report the name, address, and phone number of her insurance agent.

Rodrigo called the insurance agent and faxed a copy of the applicant's approval for release of information. As a result, Rodrigo learned that the annuity is a fixed annuity, with a current value of \$20,400 earning interest at an annual rate of 4.5%. The applicant could withdraw the current balance in the account but would pay a surrender penalty of \$3,000. If the annuity is withdrawn, then the applicant will owe \$1,200 in tax penalties.

In this example, the important information for calculating cash value is the current value, \$20,400; the surrender fee, \$3,000; and the tax penalties, \$1,200. If the applicant withdrew the cash from the annuity, after paying the surrender fee and tax penalty, then the amount of cash received would be \$16,200.

The cash value, \$16,200, is recorded as an asset.

Rodrigo will also calculate the actual anticipated income on this asset: $\$20,400 \times .045 = \$918$.

- b. A lump sum payment is counted as an asset only as long as the family continues to possess it. If the family uses the money for something that is not an asset—a car or a vacation or education—the lump sum must not be counted.
- c. It is possible that a lump sum or an asset purchased with a lump sum payment may result in enough income to require the family to report the increased income before the next regularly scheduled annual recertification. But this requirement to report an increase in income before the next annual recertification would not apply if the income from the asset was not measurable by the tenant (e.g., gems, stamp collection).

**Examples – Lump Sum Additions to
Family Assets (One-Time Payment)**

- JoAnne Wettig won \$500 in the lottery and received it in one payment. Do not count the \$500 as income. At JoAnne's next annual recertification, she will report all of her assets.
- Mia LaRue, a tenant in a Section 8 property, won \$75,000 in one payment in the lottery. She buys a car with some of the money, and puts the remaining amount of \$24,000 in the bank. Mia receives her first bank statement and notices that the income on this asset is \$205 per month. She must report this increase in income because the family has experienced a cumulative increase in income of more than \$200 per month. (See paragraph 7-10 A.4 on rules for reporting interim increases in income.) The owner must perform an interim recertification and count the greater of the actual or imputed income on this asset (since the net family assets are greater than \$5,000).

4. Balances held in retirement accounts.
 - a. Balances held in retirement accounts are counted as assets if the money is accessible to the family member. For individuals still employed, accessible amounts are counted even if withdrawal would result in a penalty. However, amounts that would be accessible only if the person retired are not counted.
 - b. IRA, Keogh, and similar retirement savings accounts are counted as assets, even though withdrawal would result in a penalty.
 - c. Include contributions to company retirement/pension funds:
 - (1) While an individual is employed, count only amounts the family can withdraw without retiring or terminating employment.

(2) After retiring or terminating employment, count as an asset any amount the employee elects to receive as a lump sum.

d. Include in *annual income* any retirement benefits received through periodic payments.

Examples – Balances Held in an IRA or 401K Retirement Account

- Jed Dozier's 401K account balance is \$35,000. He is able to terminate his participation in the retirement plan without quitting his job, but if he did so he would lose a part of his employer's contribution and would pay a penalty fee. The total cash he could withdraw, \$18,000, is the amount that is counted as an asset.

5. *Federal Government/Uniformed Services Pensions

In instances where the applicant/tenant is a retired Federal Government/Uniformed Services employee receiving a pension that is* determined by a state court in a divorce, annulment of marriage, or legal separation proceeding to be a marital asset and the court provides OPM with the appropriate instructions to authorize OPM to provide payment of a portion of the retiree's pension to a former spouse, that portion to be paid directly to the former spouse is not counted as income for the applicant/tenant. However, where the tenant/applicant is the former spouse of a retired Federal Government/Uniformed Services employee, any amounts received pursuant to a court ordered settlement in connection with a divorce, annulment of marriage, or legal separation are reflected on a Form-1099 and is counted as income for the applicant/tenant. (See Paragraph 5-6.K.4 for more information on Federal Government/Uniformed Services pension funds paid to a former spouse.)

6. *Other state, local government, social security or private pensions.

Other state, local government, social security or private pensions where pensions are reduced due to a court ordered settlement in connection with a divorce, annulment of marriage, or legal separation and paid directly to the former spouse are not counted as income for the applicant/tenant and should be handled in the same manner as 5, above.*

7. Mortgage or deed of trust.

a. Occasionally, when an individual sells a piece of real estate, the seller may loan money to the purchaser through a mortgage or deed of trust. This may be referred to as a "contract sale."

- b. A mortgage or deed of trust held by a family member is included as an asset. Payments on this type of asset are often received as one combined payment that includes interest and principal. The value of the asset is the unpaid principal as of the effective date of the certification. Each year this balance will decline as more principal is paid off. The interest portion of the payment is counted as actual income from an asset.
8. Assets disposed of for less than fair market value. Applicants and tenants must declare whether an asset has been disposed of for less than fair market value at each certification and recertification. Owners must count assets disposed of for less than fair market value during the two years preceding certification or recertification. The amount counted as an asset is the difference between the cash value and the amount actually received. (This provision does not apply to families receiving only BMIR assistance.)
- a. Any asset that is disposed of for less than its full value is counted, including cash gifts as well as property. To determine the amount that has been given away, owners must compare the cash value of the asset to any amount received in compensation.
- b. However, the rule applies only when the fair market value of all assets given away during the past two years exceeds the gross amount received by more than \$1,000.

Examples – Assets of More or Less Than \$1,000 Disposed of for Less Than Fair Market Value

- During the past two years, Alexis Turner donated \$300 to the local food bank, \$150 to a camp program, and \$200 to her church. The total amount she disposed of for less than fair market value is \$650. Since the total is less than \$1,000, the donations are not treated as assets disposed of for less than fair market value.
- Jackson Jones gave each of his three children \$500. Because the total exceeds \$1,000, the gifts are treated as assets disposed of for less than fair market value.

- c. When the two-year period expires, the income assigned to the disposed asset also expires. If the two-year period ends in the middle of a recertification year, the tenant may request an interim recertification to remove the disposed asset(s). * However, if the owner elects to only include the income for a partial remaining year as shown in the example below, an interim recertification should not be conducted.*

**Example – Asset Disposed of
for Less Than Fair Market Value**

Margot Lundberg's recertification will be effective January 1. On that date, it will be 18 months since she sold her house to her daughter for \$60,000 less than its value. The owner will count income on the \$60,000 for only six months. (After six months, the two-year limit on assets disposed of for less than fair market value will have expired.)

- d. Assets disposed of for less than fair market value as a result of foreclosure, bankruptcy, divorce, or separation are *not* counted.
- e. Assets placed in nonrevocable trusts are considered as assets disposed of for less than fair market value except when the assets placed in trust were received through settlements or judgements.
- f. Applicants and tenants must sign a self-verification form at their initial certification and each annual recertification identifying all assets that have been disposed of for less than fair market value or certifying that no assets have been disposed of for less than fair market value.
- g. Owners need to verify the tenant self certification only if the information does not appear to agree with other information reported by the tenant/applicant.

Examples – Asset Disposed of for Less Than Market Value

- (1) An applicant “sold” her home to her daughter for \$10,000. The home was valued at \$89,000 and had no loans secured against it. Broker fees and settlement costs are estimated at \$1,800.

\$89,000	Market value
<u>- 1,800</u>	Fees
\$87,200	Cash value
<u>- 10,000</u>	Sales price to daughter
\$77,200	Asset disposed of for less than fair market value

In this example, the asset disposed of for less than fair market value is \$77,200. That amount is counted as the resident’s asset for two years from the date the sale took place.

(The \$10,000 received from the daughter may currently be in a savings account or other asset or may have been spent. The \$10,000 will be counted as an asset if the applicant has not spent the money.)

- (2) A resident contributed \$10,000 to her grandson’s college tuition and gave her two granddaughters \$4,000 each to save for college.

\$10,000	College tuition gift
<u>+ 8,000</u>	Gift to granddaughters
\$18,000	Asset disposed of for less than fair market value

The \$18,000 disposed of for less than fair market value is counted as the tenant’s asset for two years from the date each asset was given away.

Section 2: Determining Adjusted Income

Section 2 does not apply to families applying for or occupying 221(d)(3) BMIR units without additional subsidy.

5-8 Key Regulations

This paragraph identifies the key regulatory citation pertaining to Section 2: Determining Adjusted Income. The citation and its topic are listed below.

- 24 CFR 5.611 Adjusted Income

5-9 Key Requirements for Determining Adjusted Income

- A. There are five possible deductions that may be subtracted from annual income based on allowable family expenses and family characteristics. The remainder, after these deductions are subtracted, is called adjusted income. Adjusted income is generally the amount upon which rent is based. See Section 4 of this chapter for information about specific rent calculation methods. This section focuses on the calculation of annual adjusted income. Before rent is calculated, annual adjusted income is converted to monthly adjusted income.
- B. Of the five possible deductions, three are available to any assisted family, and two are permitted only for elderly or disabled families.
 1. The three types of deductions available to any assisted family are:
 - a. A deduction for dependents;
 - b. A child care deduction; and
 - c. A disability assistance deduction.
 2. The two types of deductions permitted only for families in which the head, spouse, or co-head is elderly or disabled are:
 - a. An elderly/disabled family deduction; and
 - b. A deduction for unreimbursed medical expenses.

NOTE: A family may not designate a family member as head or co-head solely to become eligible for these additional benefits. The remaining member of a family listed in paragraph 5-9 B.2 who is not 62 or older or a person with disabilities is not eligible for these allowances.

5-10 Calculating Adjusted Income

A. Dependent Deduction

1. A family receives a deduction of \$480 for each family member who is:
 - a. Under 18 years of age;
 - b. A person with disabilities; or
 - c. A full-time student of any age.
2. Some family members may never qualify as dependents regardless of age, disability, or student status.
 - a. The head of the family, the spouse, and the co-head may never qualify as dependents.
 - b. A foster child, an unborn child, a child who has not yet joined the family, or a live-in aide may never be counted as a dependent.

3. A full-time student is one who is carrying a full-time subject load at an institution with a degree or certificate program. A full-time load is defined by the institution where the student is enrolled.
4. When more than one family shares custody of a child and both live in assisted housing, only one family at a time can claim the dependent deduction for that child. The family with primary custody or with custody at the time of the initial certification or annual recertification receives the deduction. If there is a dispute about which family should claim the dependent deduction, the ****owner**** should refer to available documents such as copies of court orders or an IRS return showing which family has claimed the child for income tax purposes.

B. Child Care Deduction

1. Anticipated expenses for the care of children under age 13 (including foster children) may be deducted from annual income if all of the following are true:
 - a. The care is necessary to enable a family member to work, seek employment, or further his/her education (academic or vocational).
 - b. The family has determined there is no adult family member capable of providing care during the hours care is needed.
 - c. The expenses are not paid to a family member living in the unit.
 - d. The amount deducted reflects reasonable charges for child care.
 - e. The expense is not reimbursed by an agency or individual outside the family.
 - f. Child care expenses incurred to permit a family member to work must not exceed the amount earned by the family member made available to work during the hours for which child care is paid.
2. When child care enables a family member to work or go to school, the rule limiting the deduction to the amount earned by the family member made available to work applies only to child care expenses incurred while the individual is at work. The expense for child care while that family member is at school or looking for work is not limited.

Example – Child Care Deduction Separate Expenses for Time at Work and Time at School

Bernice and Ernest have two children. Both parents work, but Bernice works only part-time and goes to school half time. She pays \$4.00 an hour for eight hours of child care a day. For four of those hours, she is at work; for four of them she attends school. She receives no reimbursement for her child care expense.

Her annual expense for child care during the hours she works is \$4,000. Her annual expense for the hours she is at school is also \$4,000. She earns \$6,000 a year. Ernest earns \$18,000.

The rule requires that Bernice's child care expense while she is working not exceed the amount she is earning while at work. In this case, that is not a problem. Bernice earns \$6,000 during the time she is paying \$4,000. Therefore, her deduction for the hours while she is working is \$4,000.

Bernice's expense while she is at school is not compared to her earnings. Her expense during those hours is \$4,000, and her deduction for those hours will also be \$4,000.

Bernice's total child care deduction is \$8,000 (\$4,000 + \$4,000). The total deduction exceeds the amount of Bernice's total earnings, but the amount she pays during the hours she works does not exceed her earnings.

If Bernice's child care costs for the hours while she works were greater than her earnings, she would not be able to deduct all of her child care costs.

Bernice is paying a total of \$8,000 in child care expenses. Of that expense, payments of \$4,000 cover the hours while she is in school; payments of \$4,000 cover the hours she works. If Bernice were earning \$3,500, her total child care deduction for the hours she works would be capped at the amount of money she earns. In this case, the total deduction would be \$7,500 (\$4,000 for expenses while she is in school plus \$3,500 of the amount she pays while she is working.)

3. Child care attributable to the work of a full-time student (except for head, spouse, co-head) is limited to not more than \$480, since the employment income of full-time students in excess of \$480 is not counted in the annual income calculation. Child care payments on behalf of a minor who is not living in the applicant's household cannot be deducted.
4. Child care expenses incurred by two assisted households with split custody can be split between the two households when the custody and expense is documented for each household and the documentation demonstrates that the total expense claimed by the two households does not exceed the cost for the actual time the child spends in care.

C. Deduction for Disability Assistance Expense

1. Families are entitled to a deduction for unreimbursed, anticipated costs for attendant care and “auxiliary apparatus” for each family member who is a person with disabilities, to the extent these expenses are reasonable and necessary to enable any family member 18 years of age or older who may or may not be the member who is a person with disabilities to be employed.

Examples – Eligible Disability Assistance Expenses

The payments made on a motorized wheelchair for the 42-year-old son of the head of the family enable the son to leave the house and go to work each day on his own. Prior to the purchase of the motorized wheelchair, the son was unable to make the commute to work. These payments are an eligible disability assistance expense.

Payments to a care attendant to stay with a disabled 16-year-old child allow the child's mother to go to work every day. These payments are an eligible disability assistance expense.

2. This deduction is equal to the amount by which the cost of the care attendant or auxiliary apparatus exceeds 3% of the family's annual income. However, the deduction may not exceed the earned income received by the family member or members who are enabled to work by the attendant care or auxiliary apparatus.
3. If the disability assistance enables more than one person to be employed, the owner must consider the combined incomes of those persons. For example, if an auxiliary apparatus enables a person with a disability to be employed and frees another person to be employed, the allowance cannot exceed the combined incomes of those two people.

Example – Calculating a Deduction for Disability Assistance Expenses

Head's earned income	\$14,500
Spouse's earned income	+ <u>\$12,700</u>
Total income	\$27,200

Care expenses for disabled 15-year-old	\$3,850

Calculation:	\$3,850

(3% of annual income)	- <u>\$816</u>

Allowable disability assistance expenses	\$3,034

(**NOTE:** \$3,034 is not greater than amount earned by spouse, who is enabled to work.)

4. Auxiliary apparatus includes items such as wheelchairs, ramps, adaptations to vehicles, or special equipment to enable a sight-impaired person to read or type, but only if these items are directly related to permitting the disabled person or other family member to work.
 - a. Include payments on a specially-equipped van to the extent they exceed the payments that would be required on a car purchased for transportation of a person who does not have a disability.
 - b. The cost of maintenance and upkeep of an auxiliary apparatus is considered a disability assistance expense (e.g., the veterinarian costs and food costs of a service animal; the cost of maintaining the equipment that is added to a car, but not the cost of maintaining the car).
 - c. If the apparatus is not used exclusively by the person with a disability, the owner must prorate the total cost and allow a specific amount for disability assistance.
5. In addition to anticipated, ongoing expenses, one-time nonrecurring expenses of a current resident for auxiliary apparatus may be included in the calculation of the disability assistance expense deduction after the expense is incurred. These expenses may be added to the family's total disability assistance expense either at the time the expense occurs through an interim recertification or in the rent calculation during the following annual recertification.
6. Attendant care includes but is not limited to reasonable expenses for home medical care, nursing services, housekeeping and errand services, interpreters for hearing-impaired, and readers for persons with visual disabilities.

Example – Calculating a Deduction When Disability Assistance Expenses Exceed Related Earnings

Kenisha Prior, an individual with disabilities, lives with her mother Grace Prior. Her mother works full time. Kenisha works part time at the library. She requires a motorized wheelchair and special transportation to get to her job.

Grace Prior's Income	\$24,000
Kenisha Prior's Income	+ <u>5,000</u>
Total income	\$29,000

Disability Assistance Expense	\$8,000
(3% of annual income)	- <u>\$870</u>
	\$7,130

The \$7,130 exceeds the amount Kenisha earns. The disability assistance deduction, therefore, is limited to the amount earned by the person made available to work or, in this case, \$5,000.

7. When the same provider takes care of children and a disabled person over age 12, the owner must prorate the total cost and allocate a specific cost to attendant care. The sum of both child care and disability assistance expenses cannot exceed the employment income of the family member enabled to work.

Example – Calculating Child Care and Disability Assistance Deductions

Head's earned income	\$8,300
Spouse's earned income	+ <u>\$6,700</u>
Total income	\$15,000

The family has two children: a 10-year-old son and a 15-year-old son who is disabled. One care provider, who charges \$120 per week, cares for both sons. The care provider reports that the cost for caring for the 10-year-old is \$50 a week and the cost of care for the child with disabilities is \$70 a week.

Child care expense $50 \times 52 = \$2,600$

Total disability assistance expense $70 \times 52 = \$3,640$

Total disability assistance expense (\$3,640) less 3% of annual income (\$450) = \$3,190

Child care deduction	\$2,600
Disability assistance deduction	+ <u>\$3,190</u>
Total deductions	\$5,790

Total deductions when compared to earnings must not exceed employment earnings of \$6,700.

D. Medical Expense Deduction

1. The medical expense deduction is permitted only for families in which the head, spouse, or co-head is at least 62 years old or is a person with disabilities (elderly or disabled families).
2. If the family is eligible for a medical expense deduction, owners must include the unreimbursed medical expenses of all family members, including the expenses of nonelderly adults or children living in the family.
3. Medical expenses include all expenses the family anticipates to incur during the 12 months following certification/recertification that are not reimbursed by an outside source, such as insurance.
4. The owner may use the ongoing expenses the family paid in the 12 months preceding the certification/recertification to estimate anticipated medical expenses.
5. The medical expense deduction is that portion of total medical expenses that exceeds 3% of annual income.

Example – Calculating the Medical Expense Deduction

Age of head	64	Annual income	\$12,000
Age of spouse	58	Total medical expenses	\$1,500
<u>Sample Calculation</u>			
		Annual income	\$12,000
			x .03
		3% of annual income	\$ 360
		Total medical expenses	\$1,500
			- \$360
		Allowable medical expenses	\$ 1,140

6. In addition to anticipated expenses, past one-time nonrecurring medical expenses that have been paid in full may be included in the calculation of the medical expense deduction **for current tenants at an initial, interim or annual recertification. Past one-time nonrecurring medical expenses that have been paid in full are not applicable when calculating anticipated medical expenses at move-in.** If the tenant is under a payment plan, the expense would be counted as anticipated
 - a. There are two options for addressing one-time medical expenses. These expenses may be added to the family's total medical expenses either: (1) at the time the expense occurs, through an interim recertification, or (2) at the upcoming annual recertification

NOTE: If the one-time expense is added at an interim recertification, it cannot be added to expenses at the annual recertification.

- b. The following example illustrates the two options. Tenants may use either option.

The following example illustrates the two options. Tenants may use either option. Example – One-Time, Nonrecurring Medical Expenses

Maria and Gustav Crumpler had a total of \$2,932 in medical expenses last year (Year 1). Of this amount, \$932 covered Gustav's gall bladder surgery; \$2,000 was for routine costs that are expected to re-occur in the coming year. The entire amount may be included in the Crumpler's medical costs for the coming year (Year 2) despite the fact that the gall bladder surgery is a past event that is not likely to re-occur.

If, during the coming year (Year 2), the Crumplers experience additional one-time medical costs not anticipated at the annual recertification, they may request an interim recertification or wait for their next annual recertification (during Year 3) and ask for the unanticipated expenses to be included in the medical expense calculation for the following year.

The owner may wish to explain to residents that including past one-time medical expenses in an annual recertification rather than in an interim recertification will result in a rent reduction for a larger number of months.

For example, let us assume Maria has unanticipated dental surgery during Year 2 at a cost of \$3,550 six months after the annual recertification. The Crumpler's current TTP is \$560; their annual income is \$25,000.

Annual income	\$25,000
Less elderly household deduction	- \$400
Less allowable medical deduction (\$2,932 less 3% of \$25,000)	- <u>\$2,182</u>
Adjusted annual income	\$22,418
Adjusted monthly income	\$1,868
TTP	\$560

If the Crumplers request an interim recertification, the \$3,550 additional cost will lower their rent for 6 months; if they wait for their annual recertification, the cost of the dental surgery will affect their rent for 12 months.

Annual income	\$25,000
Less elderly household deduction	- \$400
Less allowable medical deduction* (\$6,482 less 3% of \$25,000)	- <u>\$5,732</u>
Adjusted annual income	\$18,868
Adjusted monthly income	\$1,572
TTP	\$472

At the Crumplers' current annual income, the large dental bill reduces rent by \$88.

OPTION #1: If the Year 2 rent is adjusted through an interim recertification, the Crumplers will save 6 months times \$88 or \$528.

OPTION #2: If the Crumplers wait until their annual recertification, the large bill will affect their rent for the 12 months of Year 3, and they will save twice as much, or \$1,056.

7. When a family is making regular payments over time on a bill for a past one-time medical expense, those payments are included in anticipated medical expenses. However, if a family has received a deduction for the full amount of a medical bill it is paying over time, the family cannot continue to count that bill even if the bill has not yet been paid.

Example – Medical Expense Paid over a Period of Time

Ursula and Sebastian Grant did not have insurance to cover Sebastian's operation four years ago. They have been paying \$105 a month toward the \$5,040 debt. Each year that amount (\$105 x 12 months or \$1,260) has been included in their total medical expenses. A review of their file indicates that a total of \$5,040 has been added to total medical expenses over the four-year period. However, the Grants bring a current invoice to their annual recertification interview. Over the four-year period they have missed five payments and still owe \$525. Although they still owe this amount, the bill cannot be included in their current medical expenses because the expense has already been deducted.

8. Not all elderly or disabled applicants or participants are aware that their unreimbursed expenses for medical care are included in the calculation of adjusted income for elderly or disabled families. For that reason, it is important for owners to ask enough questions to obtain complete information about allowable medical expenses. The following list highlights some of the most common expenses that may be deducted. A list of examples of eligible medical expenses may be found in Exhibit 5-3.
- a. Services of doctors and health care professionals;
 - b. Services of health care facilities;
 - c. Medical insurance premiums or costs of an HMO;
 - d. Prescription/nonprescription medicines that have been prescribed by a physician;
 - e. Transportation to treatment;
 - f. Dental expenses;
 - g. Eyeglasses, hearing aids, batteries;
 - h. Live-in or periodic medical assistance such as nursing services, or costs for an assistance animal and its upkeep;
 - i. Monthly payments on accumulated medical bills;
 - j. Medical care of a permanently institutionalized family member *if* his or her income is included in annual income; and

- k. Long-term care insurance premiums. The family member paying a long-term care insurance premium must sign a certification (**see Sample Certification for Qualified Long-Term Care Insurance Expenses in Exhibit 5-4**) that states the insurance is guaranteed renewable, does not provide a cash surrender value, will not cover expenses covered under Medicare, and restricts the use of refunds. The certification must be maintained in the family's occupancy file. (Paragraph 5-6 J.3 describes situations in which long-term care insurance payments must be included in annual income.)
9. Special calculation for families eligible for disability assistance and medical expense deductions. If an elderly family has both unreimbursed medical expenses and disability assistance expenses, a special calculation is required to ensure that the family's 3% of income expenditure is applied only one time. Because the deduction for disability assistance expenses is limited by the amount earned by the person enabled to work, the disability deduction must be calculated before the medical deduction is calculated.
- a. When a family has unreimbursed disability assistance expenses that are less than 3% of annual income, the family will receive no deduction for disability assistance expense. However, the deduction for medical expenses will be equal to the amount by which the sum of both disability and medical expenses exceeds 3% of annual income.
 - b. If the disability assistance expense exceeds the amount earned by the person who was enabled to work, the deduction for disability assistance will be capped at the amount earned by that individual. When the family is also eligible for a medical expense deduction, however, the 3% may have been exhausted in the first calculation, and it then will not be applied to medical expenses.
 - c. When a family has both disability assistance expenses and medical expenses, it is important to review the collected expenses to be sure no expense has been inadvertently included in both categories.

E. Elderly Family Deduction

An elderly or disabled family is any family in which the head, spouse, or co-head (or the sole member) is at least 62 years of age or a person with disabilities. Each elderly or disabled family receives a \$400 family deduction. Because this is a "family deduction" each family receives only one deduction, even if both the head and spouse are elderly or disabled.

Example – Special Calculation for Families Who Are Eligible for Disability Assistance and Medical Expense Deductions

The following is basic information on the family:

Head (retired/disabled)—SS/pension income	\$16,000
Spouse (employed)—employment income	+ <u>\$4,000</u>
Total Annual Income	\$20,000
Total disability assistance expenses	\$500
Total medical expenses	\$1,000

Step 1: Determine if the disability assistance expenses exceed 3% of the family's total annual income.

Total disability assistance expenses	\$500
Minus 3% of total annual income	<u>-\$600</u>
	(\$100)

No portion of the disability expenses exceeds 3% of the annual income; therefore, the disability assistance deduction is \$0.

Step 2: Calculate if the medical expenses exceed the balance of 3% of the family's total annual income.

Total medical expenses	\$1,000
Minus the balance of 3% of total annual income	- <u>\$100</u>
Allowable medical expenses deduction	\$900

F. No Deduction for Alimony or Child Support Paid to a Person outside the Assisted Family

There is no deduction for an amount paid to a person outside the assisted family for alimony or child support. Even if the amount is garnished from the wages of a family member, it must be included in annual income.

Example – Child Support Garnished from Wages

George Graevette pays \$150 per month in child support. It is garnished from his monthly wages of \$950. After the child support is deducted from his salary, he receives \$800. The owner must count \$950 as George's monthly income.

Section 3: Verification

5-11 Key Regulations

This paragraph identifies key regulatory citations pertaining to Section 3: Verification. The citations and their titles (or topics) are listed below.

- A. 24 CFR part 5, subpart B – Disclosure and Verification of Social Security Numbers and Employer Identification Numbers; Procedures for Obtaining Income Information
- B. 24 CFR 5.659 Family Information and Verification
- C. 24 CFR 8.24, 8.32, 100.204 (Reasonable accommodation)

5-12 Verification Requirements

A. Key Requirements

- 1. Owners must verify all income, assets, expenses, deductions, family characteristics, and circumstances that affect family eligibility or level of assistance.
- 2. Applicants and adult family members must sign consent forms to authorize the owner to collect information to verify eligibility, income, assets, expenses, and deductions. Applicants and tenants who do not sign required consent forms will not receive assistance.
- 3. Family members 6 years of age and older must provide the owner with a complete and accurate social security number. For any members of the family who do not have a social security number, the applicant or family member must certify that the individual has never received a social security number. This requirement is described in paragraphs 3-9 and 3-****31**** of this handbook.
- 4. The owner must handle any information obtained to verify eligibility or income in accordance with the Privacy Act.

Figure 5-4: Privacy Act Notice

The Department of Housing and Urban Development (HUD) is authorized to collect this information by the U.S. Housing Act of 1937 (42 U.S.C. 1437 et. seq.), by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), and by the Fair Housing Act (42 U.S.C. 3601-19). The Housing and Community Development Act of 1987 (42 U.S.C. 3543) requires applicants and participants to submit the social security number of each household member who is 6 years old or older.

Purpose: Your income and other information are being collected by HUD to determine your eligibility, the appropriate bedroom size, and the amount your family will pay toward rent and utilities.

Other Uses: HUD uses your family income and other information to assist in managing and monitoring HUD-assisted housing programs, to protect the Government's financial interest, and to verify the accuracy of the information you provide. This information may be released to appropriate federal, state, and local agencies, when relevant, and to civil, criminal, or regulatory investigators and prosecutors. However, the information will not be otherwise disclosed or released outside of HUD, except as permitted or required by law.

Penalty: You must provide all of the information requested by the owner, including all social security numbers you, and all other household members age 6 years and older, have and use. Giving the social security numbers of all household members 6 years of age and older is mandatory, and not providing the social security numbers will affect your eligibility. Failure to provide any of the requested information may result in a delay or rejection of your eligibility approval.

B. Timeframe for Conducting Verifications

Owners conduct verifications at the following three times.

1. Owners must verify income, assets, expenses, and deductions and all eligibility requirements prior to move-in.
2. Owners must verify each family's income, assets, expenses, and deductions as part of the annual recertification process. Refer to Chapter 7, Section 1 for information on annual recertifications.
3. Owners must verify changes in income, allowances, or family characteristics reported between annual recertifications. Refer to Chapter 7, Section 2 for information on interim recertifications.

5-13 Acceptable Verification Methods

A. Methods of Verification

Owners must use verification methods that are acceptable to HUD. The owner is responsible for determining if the verification documentation is adequate and credible. HUD accepts three methods of verification. These are, in order of acceptability, third-party verification, review of documents, and family certification. If third-party verification is not available, owners must document the tenant file to explain why third-party verification was not available. **Appendix 3** provides a detailed list of acceptable forms of verification by type of information.

B. Third-Party Verification

The following describes ways in which third-party verification may be obtained.

1. Written. Written documentation sent directly by a third-party source is the preferred method of verification. It is assumed that third-party sources will send written verification to the owner through the mail. (For information about electronic documentation, see subparagraph B3 below.)

The applicant or tenant should not hand-carry the verification to or from the third-party source. If the verification does not contain an original signature or is delivered by the applicant or tenant, the owner should examine the document for evidence of tampering. In these situations, the owner may, but does not have to, accept the document as acceptable verification.

2. Oral. Oral verification, by telephone, from a reliable third-party source is an acceptable verification method. Owners frequently use this method when the third party does not respond to the written verification request. When verifying information over the telephone, it is important to be certain that the person on the telephone is the party he or she claims to be. Generally, it is best to telephone the verification source rather than to accept verification from a source calling the property management office. Oral verification must be documented in the file, as described in paragraph 5-19 C.

NOTE: Appendix 3 includes selected phone numbers of verification sources for employment and income records. However, they do not take the place of third party verification. The phone numbers contained in **Appendix 3** are not toll free but such calls are valid project expenses.

3. Electronic. The owner may obtain accurate third-party written verification by facsimile, e-mail, or Internet, if adequate effort is made to ensure that the sender is a valid third-party source.

- a. Facsimile. Information sent by fax is most reliable if the owner and the verification source agree to use this method in advance during a telephone conversation. The fax should include the company name and fax number of the verification source.
- b. E-mail. Similar to faxed information, information verified by e-mail is more reliable when preceded by a telephone conversation and/or when the e-mail address includes the name of an appropriate individual and firm.
- c. Internet. Information verified on the Internet is considered third party verification if the owner is able to view web-based information from a reputable source on the computer screen. Use of a printout from the Internet may also be adequate verification in many instances. Refer to subparagraph C. Review of Documents below.

Example – Verification by Internet Printout

Jose Perez maintains a portfolio of stocks and bonds through an Internet-based stockbroker. The broker only provides electronic account statements and will not respond to a written verification request. The owner may accept a printout of Jose's most recent statement if it includes the relevant information required for a third-party verification and an Internet address and header or footer that identifies the company issuing the statement. If the owner has reason to question the authenticity of a document, the owner may require Jose to access the electronic file via the Internet in the owner's office, without providing the owner with username or password information.

C. Review of Documents

1. An owner may review documents submitted by the applicant or tenant in one of the following situations:
 - a. Third-party verification is not possible or is not required. For example, verifying that a family member is over 62 years old is more appropriately accomplished by examining a birth certificate than through third-party verification. **When third party verification is not possible, refer to paragraph 5-19 E for documenting the file.**
 - b. Third-party verification is delayed. If information from a third party is not received within two weeks of its request, owners may consider original documents submitted by the tenant.**

Examples – Appropriate Occasions to Verify Information through a Review of Documents

- The owner sent a verification request to the tenant's employer but did not receive a response. The owner then made several calls to the employer but has not received a return call. The owner may use a review of documents (pay stubs) for verification. The owner should insist on a series of consecutive, recent pay stubs and should have a standard policy indicating the number of consecutive pay stubs required.
- The tenant's bank charges the bank account a fee for completing verification requests. The owner allows the resident to provide a current savings account statement or checking account statements for the past six months.
- The tenant's employer uses a 900 phone number, which results in a charge to the owner's phone to provide income verification. (In this case, the owner will accept the most recent consecutive eight pay stubs to verify earned income.)
- In cases where there is no third party available, a review of documents will always be appropriate. To verify a person's age, a birth certificate may be used. A social security card is the best verification of a social security number.

2. An owner must place copies of the reviewed documents in the applicant's or tenant's file. If copies cannot be made, the person reviewing the original documents must list the reviewed documents and the information provided on the documents, and must initial and date the notation.
3. Obtaining accurate verification through a review of documents requires the owner to consider the following:
 - a. Is the document current? Documentation of public assistance may be inaccurate if it is not recent and does not show any changes in the family's benefits or work and training activities.
 - b. Is the documentation complete? Owners may not accept pay stubs to document employment income unless the applicant or tenant provides the most recent ****four to six**** pay stubs to illustrate variations in hours worked. Actual paychecks or copies of paychecks should never be used to document income because deductions are not shown on the paycheck.

- c. Is the document an unaltered original? The greatest shortcoming of documents as a verification source is their susceptibility to undetectable change through the use of high-quality copying equipment. Documents with original signatures are the most reliable. Photocopied documents generally cannot be assumed to be reliable.

D. Family Certification

An owner may accept a tenant's notarized statement or signed affidavit regarding the veracity of information submitted if the information cannot be verified by another acceptable verification method.

5-14 Identifying Appropriate Verification Sources

An owner must only collect information that is necessary to determine the applicant's or tenant's eligibility for assistance or level of assistance. **Appendix 3** provides a list of acceptable forms of third-party verification.

5-15 Required Verification and Consent Forms

A. Consent and Verification Forms

Adult members of assisted families must authorize owners to request independent verification of data required for program participation. To provide owners with this authorization, adult family members must sign two HUD-required consent forms plus the owner's specialized verification forms. Owners must create their own verification forms to request information from employers, child care providers, medical professionals, and others. Families sign these and the two HUD consent forms at the time of move-in certification and annual recertification. All adults in each assisted family must sign the required consent forms or the family must be denied assistance. Owners must give the family a copy of each form the family signed, a HUD Fact Sheet, and the Resident Rights and Responsibilities brochure.

B. HUD-Required Consent and Release Forms

Applicants and tenants must sign two HUD-required consent forms.

1. Form HUD-9887, Notice and Consent to the Release of Information to HUD and to a PHA. Each adult member must sign the form regardless of whether he or she has income. *Each family member who is at least 18 years of age and the head, spouse or co-head, regardless of age, must sign this form at move-in, initial and at each annual recertification. The form must also be signed when a new adult member joins the household.* The form is valid for 15 months from the date of signature. The consent allows HUD or a public housing agency to verify information with the Internal Revenue Service, the Social Security Administration, and with state agencies that maintain wage and unemployment claim information. Owners must keep the original signed form in the tenant's

file and provide a copy to the family. Exhibit 5-5 contains a copy of form HUD-9887.

2. Form HUD 9887-A, Applicant's/Tenant's Consent to the Release of Information – Verification by Owners of Information Supplied by Individuals Who Apply for Housing Assistance. Owners and the head of household, spouse, co-head and each family member who is at least 18 years of age must sign **a HUD-9887-A** form **at move-in and at each annual recertification**. Each adult member must sign a form regardless of whether he or she has income. The consent allows owners to request and receive information from third-party sources about the applicant or tenant. Owners keep the original form in the tenant's file and provide a copy to the family. Exhibit 5-6 contains a copy of form HUD 9887-A.

C. Information to Tenants

Owners must provide applicants and tenants with the HUD Fact Sheet and a copy of the Resident Rights and Responsibilities brochure.

1. HUD-9887 Fact Sheet. When applicants and tenants sign form HUD-9887 and form HUD 9887-A, owners must provide each family with a copy of the HUD Fact Sheet. This Fact Sheet describes the verification requirements for applicants and tenants and the tenant protections that are part of the verification process. Exhibit 5-7 contains a copy of the HUD Fact Sheet.
2. Resident Rights and Responsibilities Brochure. In addition, owners must provide applicants and tenants with a copy of the Resident Rights and Responsibilities brochure at move-in and annually at recertification. Copies of the brochure may be obtained by calling the HUD National Multifamily Clearinghouse at 800-685-8470.

D. Owner-Created Verification Forms

1. Owners must create verification forms for specific verification needs and must include the language required by HUD as shown in Figure 5-5. **Appendix **6**** contains instructions, a sample verification consent, and guidance about the types of information to request when verifying income and eligibility.
2. It is important that the applicant or tenant know whom owners will ask to provide information and to whom the completed form will be returned. Therefore, verification forms must clearly state in a prominent location that the applicant or tenant may not sign the consent if the form does not clearly indicate who will provide the requested information and who will receive the information. When sending a request for verification to a third party, owners send the verification form with the applicant's or tenant's original signature to the third-party source. Owners must retain a copy of the verification form and provide a copy to the applicant or tenant upon request.

Figure 5-5: Language Required in all Consent Forms

The following statement must appear on all consent forms developed by owners:

"Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government. HUD and any owner (or any employee of HUD or the owner) may be subject to penalties for unauthorized disclosures or improper use of information collected based on the consent form. Use of the information collected based on this verification form is restricted to the purposes cited above. Any person who knowingly or willingly requests, obtains or discloses any information under false pretenses concerning an applicant or participant may be subject to a misdemeanor and fined not more than \$5,000. Any applicant or participant affected by negligent disclosure of information may bring civil action for damages, and seek other relief, as may be appropriate, against the officer or employee of HUD or the owner responsible for the unauthorized disclosure or improper use. Penalty provisions for misusing the social security number are contained in the **Social Security Act at 208 (a) (6), (7) and (8). Violation of these provisions are cited as violations of 42 U.S.C. 408 (a) (6), (7) and (8).**

5-16 Social Security and Supplemental Security Income Data Match

- A. Owners verify social security income and supplemental security income electronically through TRACS. If there is a discrepancy between income reported by the tenant or applicant and income provided by the Social Security Administration (SSA), TRACS will automatically generate a message that is sent to the owner. The owner must attempt to contact the applicant or tenant to disclose the discrepancy. **
- B. Additional information is available on HUD's website page describing the tenant assessment system (for tenant income verification) (TASS):

www.hud.gov/offices/reac/products/prodtass.cfm

TASS is a computer-based tool to assist owners in verifying tenant incomes by comparing tenant-reported information to information in other HUD systems from the Social Security Administration and the Internal Revenue Service.

5-17 Effective Term of Verifications

Signed verification and consent forms must be used within a reasonable time after the applicant or tenant has signed if the tenant's signature is to represent a valid and current authorization by the family. Therefore, HUD has set specific limits on the duration of verification consents. In addition, verified information must be used in a timely manner since family circumstances are subject to change. HUD places several other limits on the information that may be requested and when and how it may be used.

A. Duration of Verification Authorization

Owner-created verification forms and the forms HUD 9887 and 9887-A expire 15 months after they are signed. Owners must ensure that the forms HUD 9887 and 9887-A have not expired when processing verifications. However, there are differences between the duration of form HUD-9887 and that of the individual verification forms.

1. The form HUD 9887-A and individual verification forms can be used during the 120 days before the certification period. During the certification period, however, these forms may be used only in cases where the owner receives information indicating that the information the tenant has provided may be incorrect. Other uses are prohibited.
2. Owners may verify anticipated income using individual verification forms to gather prospective information when necessary (e.g., verifying seasonal employment). Historical information that owners may request using individual verification forms is restricted as follows:
 - a. Information requested by individual verification forms is restricted to data that is no more than 12 months old.
 - b. However, if the owner receives inconsistent information and has reason to believe that the information the applicant or tenant has supplied is incorrect, the owner may obtain information from any time in the last five years when the individual was receiving assistance, as provided by the form HUD 9887-A.
3. The form HUD-9887 may be used at any time during the entire 15 month period. The information covered by the form HUD-9887 is restricted as follows:
 - a. State Wage Information Collection Agency (SWICA). Information received from SWICA is limited to wages and unemployment compensation the applicant or tenant received during the last five years she/he received housing assistance.
 - b. Internal Revenue Service and Social Security Administration. form HUD-9887 authorizes release by IRS and SSA of data from only the current income tax return and IRS W-2 form.

If the IRS or SSA matches reveal that the tenant may have supplied inconsistent information, HUD may request that the tenant consent to the owner acquiring information on the last five years during the periods in which the tenant was receiving assistance.

B. Effective Term of Verifications

1. Verifications are valid for ****120**** days from the date of receipt by the owner.

**

2. If verifications are more than 120 days old, the owner must obtain new verifications.
3. Time limits do not apply to information that does not need to be reverified, such as:
 - a. Age;
 - b. Disability status;
 - c. Family membership; or
 - d. Citizenship status.
4. Time limits also do not apply to the verification of social security numbers; however, at each recertification any family member who has previously reported having never received a social security number, must be asked:
 - a. To supply verification of a social security number if one has been received; or
 - b. To certify, again, that he/she has never received a social security number.

5-18 Inconsistent Information Obtained Through Verifications

An owner may not take any action to reduce, suspend, deny, or terminate assistance based on inconsistent information received during the verification process until the owner has independently investigated the information. The owner should follow procedures for addressing errors and fraud and for terminating assistance in accordance with Chapter 8.

5-19 Documenting Verifications

A. Key Requirement

Owners must include verification documentation in the tenant file.

B. Documenting Third-Party Verification

Third-party verification received through the mail or by facsimile transmission must be put in the tenant file.

C. Documenting Telephone Verification

When verifying information by phone, the owner must record and include in the tenant's file the following information:

1. Third-party's name, position, and contact information;

2. Information reported by the third party;
3. Name of the person who conducted the telephone interview; and
4. Date and time of the telephone call.

D. Recording Inspection of Original Documents

Original documents should be photocopied, and the photocopy should be placed in the tenant file. If the original document cannot be copied, a clear note to the file must describe the type of document, the information contained in the document, the name of the person who reviewed the document, and the date of that review.

NOTE: It is not mandatory that social security cards be copied. See **Appendix 3** for alternate methods.

E. Documenting Why Third-Party Verification Is Not Available

When third-party verification is not available, owners must document in the file efforts made to obtain the required verification and the reason the verification was not obtained. The owner must include the following documents in the applicant's or tenant's file:

1. A written note to the file explaining why third-party verification is not possible; or
2. A copy of the date-stamped original request that was sent to the third party;
3. Written notes or documentation indicating follow-up efforts to reach the third party to obtain verification; and
4. A written note to the file indicating that the request has been outstanding without a response from the third party.

F. Reasonable Accommodation

If an applicant or tenant cannot read or sign a consent form because of a disability, the owner must provide a reasonable accommodation. See Chapter 2, Section 3, Subsection 4 for a description of the requirements regarding reasonable accommodations.

Examples – Reasonable Accommodation

- Provide forms in large print.
- Provide readers for persons with visual disabilities.
- Allow the use of a designated signatory.

- Visit the person's home if the applicant or tenant cannot travel to the office to complete the forms.

5-20 Confidentiality of Applicant and Tenant Information

- A. Federal law limits the information owners can collect about an applicant or tenant to only information that is necessary to determine eligibility and level of assistance.
- B. Federal privacy requirements also establish the responsibility of owners and their employees to use information provided by applicants and tenants only for specified program purposes and to prevent the use or disclosure of this information for other purposes.
 1. To help ensure the privacy of applicant and tenant information, owners and their employees are subject to penalties for unauthorized disclosure of applicant/tenant information. In addition, applicants and tenants may initiate civil action against an owner for unauthorized disclosure or improper use of the information they provided. Language on the HUD-required consent forms, the verification forms developed by owners, and the **HUD-50059** clearly describes owners' responsibility regarding the privacy of this information and the possible penalties.
 2. HUD encourages owners to develop their own procedures and internal controls to prevent the improper use or unauthorized disclosure of information about applicants and tenants. Adequate procedures and controls protect not only applicants and tenants, but also owners.
- C. Owners must also comply with state privacy laws concerning the information they receive from third-party sources about applicants and tenants. These laws generally require confidentiality and restrict the uses of this information.

5-21 Refusal to Sign Consent Forms

- A. If an applicant refuses to sign forms HUD 9887 or 9887-A or the owner's verification forms, the owner must deny assistance.
- B. If a tenant refuses to sign the required verification and consent forms, the owner must terminate assistance. If the owner intends to terminate assistance for this reason, the owner must follow procedures established in the lease that require the tenant to pay the HUD-approved market rent for the unit. In a Section 202 PRAC or Section 811 PRAC project, the tenant may be evicted if the tenant refuses to sign the required verification and consent forms.
- C. If a tenant is unable to sign the forms on time due to extenuating circumstances, the owner must document the reasons for the delay in the tenant file and indicate how and when the tenant will provide the proper signature.

**Examples – Tenant Failure to Sign Consent Forms
Due to Extenuating Circumstances**

- Jonas and Joycelyn Hardwick were to have forms HUD 9887 and 9887-A signed by their adult son. However, he was in an automobile accident and has been in a coma.
- Lydia Bailey's husband has been temporarily assigned to overseas duty as part of a missionary hunger-relief program. She has signed consent forms, and the forms have been mailed to him but have not been returned. She reports that mail has recently been taking five or six weeks.

5-22 Interim Recertifications

When processing an interim recertification, the owner must ask the tenant to identify all changes in income, expenses, or family composition since the last recertification. Owners only need verify those items that have changed. For example, if the head of household was laid off from his or her job and asks the owner to prepare an interim recertification, the owner does not need to reverify the spouse's employment income unless that has also changed. When the tenant signs the certification she or he certifies that the information on the report is accurate and current. Additional information about the procedures for conducting interim recertifications is discussed in Chapter 7, Section 2.

5-23 Record-Keeping Procedures

- A. Owners must keep the following documents in the tenant's file at the project site:
 1. All original, signed forms HUD 9887 and HUD 9887-A;
 2. A copy of signed individual consent forms; and
 3. Third-party verifications.
- B. Owners must maintain documentation of all verification efforts throughout the term of each tenancy and for at least three years after the tenant moves out
- C. **The tenant's file should be available for review by the tenant upon request or by a third party who provides signed authorization for access from the tenant.**
- D. Owners must maintain applicant and tenant information in a way to ensure confidentiality. Any applicant or tenant affected by negligent disclosure or improper use of information may bring civil action for damages and seek other relief, as appropriate, against the employee. Forms HUD 9887 and 9887-A describe the penalties for the improper use of consent forms.

- E. **Owners must dispose of tenant files and records in a manner that will prevent any unauthorized access to personal information, e.g., burn, pulverize, shred, etc.**

Section 4: Calculating Tenant Rent

5-24 Key Regulations

This paragraph identifies key regulatory citations pertaining to Section 4: Calculating Tenant Rent. The citations and their titles or (topics) are listed below.

- A. 24 CFR 5.628 Total Tenant Payment
- B. 24 CFR 5.630 Minimum Rent
- C. 24 CFR 236.735 Rental Assistance Payments and Rental Charges
- D. 24 CFR 891.105, 891.410, 891.520, 891.640, 891.655, 891.705 (Project rental assistance payment, project assistance payment, tenant rent, total tenant payment, and rent for unassisted units)
- E. **24 CFR 5.661 Section 8 project-based assistance programs: Approval for police or other security personnel to live in project**

5-25 Calculating the Tenant Contribution for Section 8, PAC, PRAC, RAP, and Rent Supplement Properties

A. Total Tenant Payment (TTP)

The Total Tenant Payment (TTP) is the amount a tenant is expected to contribute for rent and utilities. TTP for Section 8, PAC, PRAC, RAP, and Rent Supplement properties is based on the family's income. The formulas for calculating TTP are shown in Figure 5-6. ** Exhibit 5-8** also shows the formulas for calculating tenant contributions for all assisted-housing programs.

B. Unit Rent

1. The contract rent (basic rent in the Section 236 program) represents the amount of rent an owner is entitled to collect to operate and maintain the property. It is HUD-approved. For Section 202 and 811 PRACS, the contract rent is the operating rent minus the utility allowance.
2. Projects in which the tenant pays all or some utilities have HUD-approved utility allowances that reflect an estimated average amount tenants will pay for utilities assuming normal consumption.

C. Timeframe for Calculating Rent

Owners calculate rent at three points in time.

1. Owners must calculate rent prior to occupancy by an applicant.
2. Owners must calculate rent as part of an annual recertification. Refer to Chapter 7, Section 1 for information on annual recertification of income.
3. When assistance is provided through Section 8, PAC, PRAC, RAP, or Rent Supplement, owners must recalculate rent if a tenant reports a change in income, allowances, or family composition. Refer to Chapter 7, Section 2 for information on interim recertifications of income.

Figure 5-6: Total Tenant Payment Formulas

Section 8, PAC, PRAC, and RAP

- TTP is the greater of the following:
 - ◆ 30% of monthly adjusted income;
 - ◆ 10% of monthly gross income;
 - ◆ Welfare rent (welfare recipients in as-paid localities only); or
 - ◆ The \$25 minimum rent (Section 8 only).
- Section 8, RAP, and PAC programs may admit an applicant only if the TTP is less than the gross rent.
- In PRAC properties, the TTP may exceed the PRAC operating rent.

Rent Supplement

- TTP is the greater of the following:
 - ◆ 30% of monthly adjusted income; or
 - ◆ 30% of gross rent.
- At move-in or initial certification, the amount of Rent Supplement assistance may be no less than 10% of the gross rent or the tenant is not eligible.

5-26 Procedures for Determining Tenant Contribution for Section 8, PAC, PRAC, RAP, and Rent Supplement Properties

A. Tenant Rent

Tenant rent is the portion of the TTP the tenant pays each month to the owner for rent. Tenant rent is calculated by subtracting the utility allowance from the TTP.

It is possible for tenant rent to be \$0 if the utility allowance is greater than the TTP. (See paragraph 9-13 for more information on utility reimbursements when the utility allowance is greater than the TTP.)

Example – Calculating Tenant Rent

TTP:	\$225
Utility allowance:	<u>-\$ 75</u>
Tenant rent:	\$150

B. Assistance Payments

The assistance payment is the amount the owner bills HUD every month on behalf of the tenant. The assistance payment covers the difference between the TTP and the gross rent. It is the subsidy that HUD pays to the owner.

1. Housing Assistance Payment (HAP) is the assistance payment made by HUD to owners with units receiving assistance from the Section 8 program.

Example – Calculating HAP

Gross rent	\$564
TTP	<u>-\$175</u>
HAP	\$389

2. Rental Assistance Payment (RAP) is the assistance payment made by HUD to owners for units receiving assistance through the RAP program.
3. Rent Supplement payment is the assistance payment made by HUD to owners for units receiving assistance through the Rent Supplement program.
4. Project Assistance Payment (PAC) is the assistance payment made by HUD for assisted units in a Section 202 project for nonelderly disabled families and individuals (also referred to as Project Assistance Contract [PAC] projects).
5. Project Rental Assistance Payment (PRAC) is the assistance payment made by HUD for assisted units in Section 202 or Section 811 properties with a Project Rental Assistance Contract (PRAC).

C. Utility Reimbursement

When the TTP is less than the utility allowance, the tenant receives a utility reimbursement to assist in meeting utility costs. The tenant will pay no tenant rent. The utility reimbursement is calculated by subtracting the TTP from the utility allowance. Refer to paragraph 9-13 for more information on utility reimbursements.

D. Section 8 Minimum Rent

Tenants in properties subsidized through the Section 8 program must pay a minimum TTP of \$25.

***NOTE:** Minimum rent does not apply to Section 202 PAC, Section 202 PRAC, Section 811 PRAC, RAP, Rent Supplement, Section 221(d)(3) BMIR or Section 236 programs.*

1. The minimum rent is used when 30% of adjusted monthly income and 10% of gross monthly income, and the welfare rent where applicable, are all below \$25.
2. The minimum rent includes the tenant's contribution for rent and utilities. In any property in which the utility allowance is greater than \$25, the full TTP is applied toward the utility allowance. The tenant will receive a utility reimbursement in the amount by which the utility allowance exceeds \$25.

Example – Utility Reimbursement for a Tenant Paying Minimum Rent

The Nguyen family qualifies for the minimum total tenant payment of \$25. The family pays its own utility bills. The utility allowance for the unit is \$75 a month. The owner sends the Nguyen family a check each month for \$50 (\$75-\$25) as a utility reimbursement. The Nguyen family does not pay any tenant rent to the owner.

3. Financial hardship exemptions.
 - a. Owners must waive the minimum rent for any family unable to pay due to a long-term financial hardship, including the following:
 - The family has lost federal, state, or local government assistance or is waiting for an eligibility determination.
 - The family would be evicted if the minimum rent requirement was imposed.

-
- The family income has decreased due to a change in circumstances, including but not limited to loss of employment.
 - A death in the family has occurred.
 - Other applicable situations, as determined by HUD, have occurred.
- b. Implementing an exemption request. When a tenant requests a financial hardship exemption, the owner must waive the minimum \$25 rent charge beginning the month immediately following the tenant's request and implement the TTP calculated at the higher of 30% of adjusted monthly income or 10% of gross monthly income (or the welfare rent). The TTP will not drop to zero unless those calculations all result in zero.
- (1) The owner may request reasonable documentation of the hardship in order to determine whether there is a hardship and whether it is temporary or long term in nature. The owner should make a determination within one week of receiving the documentation.
 - (2) If the owner determines there is no hardship as covered by the statute, the owner must immediately reinstate the minimum rent requirements. The tenant is responsible for paying any minimum rent that was not paid from the date rent was suspended. The owner may not evict the tenant for nonpayment of rent during the time in which the owner was making the determination. The owner and tenant should reach a reasonable repayment agreement for any back payment of rent.
 - (3) If the owner determines that the hardship is temporary, the owner may not impose the minimum rent requirement until 90 days after the date of the suspension. At the end of the 90-day period, the tenant is responsible for paying the minimum rent, retroactive to the initial date of the suspension. The owner may not evict the tenant for nonpayment of rent during the time in which the owner was making the determination or during the 90-day suspension period. The owner and tenant should reach a reasonable repayment agreement for any back payment of rent.

Example – Temporary Hardship Schedule

Due to the death of his wife, Yung Kim took a six-week leave of absence from his part-time job. He requests a financial hardship exception. The owner, Oak Knoll Management, reviews his request and determines that the hardship is not long term. Yung Kim and Oak Knoll Management implement the following schedule:

- Current TTP \$25
- Hardship request received July 15
- Owner grants temporary hardship July 20
- August TTP \$0
- September TTP \$0
- October TTP \$0
- 90-day period ends October 15
- Total balance due 3 x \$25 \$75
- Tenant agrees to pay \$10 extra per month for seven months and \$5 extra on the eighth month.
- Monthly payment for seven months
November – May TTP \$25 + \$10 \$35
- June TTP \$25 + \$5 \$30
- July TTP \$25

- (4) If the hardship is determined to be long term, the owner must exempt the tenant from the minimum rent requirement from the date the owner granted the suspension. The suspension may be effective until such time that the hardship no longer exists. However, the owner must recertify the tenant every 90 days while the suspension lasts to verify that circumstances have not changed. The length of the hardship exemption may vary from one family to another depending on the circumstances of each family. The owner must process an interim recertification to implement a long-term exemption. Owners must maintain documentation on all requests and determinations regarding hardship exemptions.

E. Welfare Rent

1. The term “welfare rent” applies only in states that have “as-paid” public benefit programs. A welfare program is considered “as-paid” if the welfare agency does the following:
 - a. Designates a specific amount for shelter and utilities; and

- b. Adjusts that amount based upon the actual amount the family pays for shelter and utilities.
2. The maximum amount that may be specifically designated for rent and utilities is called the “welfare rent.” See below for an example.

Example – Calculating Welfare Rent

Published maximum for shelter and utilities:	\$200
Amount of welfare assistance for other needs:	\$220
Other income:	\$100
Monthly income =	\$520
“Welfare rent”=	\$200

5-27 Calculating Assistance Payments for Authorized Police/Security Personnel

- A. The amount of the monthly assistance payment to the owner is equal to the contract rent minus the monthly amount paid by the police officer or security personnel. HUD will not increase the assistance payment due to nonpayment of rent by the police officer or security personnel.

NOTE: The owner is not entitled to vacancy payments for the period following occupancy by a police officer or security personnel.

- B. For police/security personnel whose income exceeds the income limit for the property, the rent is set by the owner.
 1. The determination of the rent amount in such circumstances should take into consideration the income of the officer, the location of the property, and rents for comparable unassisted units in the area.
 2. Owners should establish a rent that is attractive to the officer, but not less than what the officer would pay as an eligible Section 8 tenant.
 3. Owners are expected to use a consistent methodology for each property when establishing the rents for officers in these circumstances.

5-28 Calculating Tenant Contribution for “Double Occupancy” in Group Homes

A. Double Occupancy

Some group homes for disabled residents provide units that may be shared by unrelated single tenants. The calculations for tenant contribution and for the assistance payment vary depending on whether the project is a Section 202/8 or a Section 811.

B. Total Tenant Payment

In both Section 202/8 and Section 811 group homes, each tenant in a double occupancy room is treated as a separate family in the calculation of TTP. Each resident is entitled to any deductions he or she would receive if occupying a single room, including the \$400 elderly/disabled family deduction.

Example – TTP Calculation for Double OccupancyResident A:

Annual income	\$5,200
Elderly family deduction	- \$400
Medical expense deduction	- \$900
Annual adjusted income	\$3,900
Monthly adjusted income	\$325
	(\$3,900/12 months)
30% of monthly adjusted income	\$98
10% of monthly gross income	\$43
Minimum rent	\$25
<i>TTP for Resident A =</i>	\$98

Resident B:

Annual income	\$3,600
Elderly family deduction	- \$400
Medical expense deduction	- \$2,480
Annual adjusted income	\$720
Monthly adjusted income	\$60
	(\$720/12 months)
30% of monthly adjusted income	\$18
10% of monthly gross income	\$30
Minimum rent	\$25
<i>TTP for Resident B =</i>	\$30

C. Contract Rent and Assistance Payment in Section 202/8 Group Homes

1. In Section 202/8 group homes, the contract rent for a room shared by two occupants is split between the two tenants.
2. The assistance payment for the Section 202/8 double occupancy room is calculated separately for each tenant based on half of the contract rent for the unit.

Example – Assistance Payment, Section 202/8 Double Occupancy

Contract rent for the unit	\$800
Half of the contract rent for the unit	\$400
TTP for Tenant A =	**\$98**
Assistance payment for Tenant A is \$400 less **\$98 =	\$302**
TTP for Tenant B =	\$30
Assistance payment for Tenant B is \$400 less \$30 =	\$370

3. If the tenant rent for either tenant exceeds half of the contract rent, that tenant's rent will be capped at half of the contract rent. In the Section 202/8 double occupancy room, half of the contract rent is the maximum rent one occupant can pay.

Example – Section 202/8 Double Occupancy

Tenant A has an increase in income changing the monthly adjusted income to \$1,500. 30% of \$1,500 equals \$450. Tenant A is no longer eligible for assistance. Tenant A's rent is capped at \$400, which represents the maximum Tenant A will pay.

Gross rent for unit	\$800
Half the contract rent for the unit	\$400
**TTP for Tenant A	\$450
Assistance Payment for Tenant A	-0-
Rent Tenant A will pay	\$400**

4. Owner's rent-calculation software must reflect the split-unit rent and contain unit numbers that provide a distinction between tenants (e.g., unit 101A, 101B).

D. **Operating Cost and Assistance Payment in Section 811 Group Homes**

1. **In a Section 811 group home, the operating cost for a room shared by two occupants is split between the two tenants.

2. The assistance payment for the Section 811 double occupancy room is calculated separately for each tenant based on half of the operating cost for the unit.**
3. In a Section 811 property, each tenant is certified separately and pays the greater of 30% of monthly adjusted income, 10% of monthly annual income, or the welfare rent.
4. In the Section 811 double occupancy unit, both occupants will pay the calculated TTP amount **even if it exceeds their portion of** the operating **cost** for the unit.

Example – Calculating the Assistance Payment for a Double Occupancy Unit in a Section 811 Group Home

Operating **cost** for unit	\$310
Half of the operating cost for the unit	\$155
TTP Tenant A =	\$160
Assistance Payment for Tenant A	\$(5)
TTP Tenant B =	\$75
**Assistance Payment for Tenant B	\$80

Although the Assistance Payment for Tenant A is zero, the voucher must indicate that \$5 over the operating cost was collected for rent. This is indicated by bracketing the \$(5.)**

5. **Owner's rent-calculation software must reflect the split-unit operating cost and contain unit numbers that provide a distinction between tenants (e.g., unit 101A, 101B).**

Example – Section 811 Total Tenant Payments

Operating **cost** for the unit	\$310
One half of operating cost	\$155 **
TTP Tenant A =	\$330
**Assistance Payment for Tenant A	(\$175) **
TTP Tenant B =	\$240
Assistance payment **for Tenant B	(\$85)

E. Calculating Rent at Change in Occupancy

1. If there is a change in the number of individuals occupying the double occupancy unit, the assistance payment for the whole unit may change.
2. In a Section 202/8 ****or a Section 811 PRAC**** double-occupancy room, the rent and assistance payments are calculated as if each tenant occupied a separate unit each with a rent equaling half of the contract rent ****or operating cost**** for the unit. If one resident moves out, the TTP and assistance payment calculations for the remaining resident remain the same. The other half of the unit is treated like a vacant unit: there is no ****assistance**** payment but the owner may be eligible for vacancy loss claims for the vacated half of the unit.

Example – Section 202/8 Calculation at a Change in Occupancy

Contract Rent	\$800
Half of the contract rent	\$400
Tenant A Tenant Rent	**\$98**
Tenant B Tenant Rent	\$30

Tenant A moves out.

Assistance Payment for Tenant B is calculated using half of the contract rent = \$400 less the Tenant Rent for Tenant B \$30 = \$370 housing assistance payment.

There is no HAP payment for the half of the unit vacated by Tenant A. It is vacant. But, the owner may request a vacancy loss payment if appropriate.

Example – Section 811 Calculation at a Change in Occupancy

Operating Cost	\$310
Half of the operating cost	\$155
Tenant A Tenant Rent	\$160
Tenant B Tenant Rent	\$75

Tenant A moves out.

Assistance Payment for Tenant B is calculated using half of the operating cost = \$155 less the Tenant Rent for Tenant B \$75 = \$80 housing assistance payment.

There is no Assistance Payment for the half of the unit vacated by Tenant A. It is vacant. Even though Tenant A was paying more than half of the operating cost for the unit at move-out, the owner may request a vacancy loss payment if all other vacancy claim requirements have been met.

5-29 Calculating Tenant Contribution for Section 236 and Section 221(d)(3) Below Market Interest Rate (BMIR)

A. Tenant's Rent Contribution

The tenant's contribution to rent in the Section 236 and Section 221(d)(3) BMIR programs is based on the cost to operate the property and the income of the family. Figure 5-7 presents the rules for determining the tenant rent in these two programs.

1. Section 236 property. Every Section 236 property has a HUD-approved basic rent and market rent. Basic rent is the minimum rent all Section 236 tenants must pay. It represents the cost to operate the property after HUD has provided mortgage assistance to reduce the mortgage interest expense. The market rent represents the amount of rent the owner would have to charge, if the mortgage were not subsidized. Tenants pay a

percentage of their income towards rent, but never pay less than the basic rent or more than the market rent for the property.

When a tenant pays more than basic rent, the difference between the tenant's rent and basic rent is called "excess income." Excess income is an amount that exceeds what the owner needs to operate the property and is subject to specific requirements. Refer to HUD Handbook 4350.1, *Multifamily Asset Management and Project Servicing*, and other current HUD notices for guidance on handling excess income. Although a tenant may pay more than basic rent, no tenant in a Section 236 property will pay more than the market rent for the property.

Example – Calculating Excess Income

Rent for Tenant A (30% of Tenant A's income):	\$350
Basic rent	<u>-\$300</u>
Excess Income	\$50

2. Section 221(d)(3) BMIR property. There is no rent calculation for tenants in a Section 221(d)(3) BMIR property. HUD approves a BMIR rent that all of the tenants must pay. The federal assistance in the BMIR property is provided through a below market interest rate for the mortgage loan. Applicants must meet income eligibility standards to be admitted to a BMIR property. After move-in, if a tenant's annual income goes above 110% of the BMIR income limit, the tenant must pay 110% the BMIR rent.
3. BMIR cooperative. If a BMIR cooperative member's annual income exceeds 110% of the BMIR income limit at the time of recertification, the cooperative must levy a surcharge to the member. See the definition of market rent in the Glossary for an explanation of the market carrying charge for over-income cooperative members.

B. Timeframe for Calculating Rent

Owners calculate rent at three points in time.

1. Owners must calculate rent prior to occupancy by an applicant.
2. Owners must calculate rent as part of an annual recertification. Refer to Chapter 7, Section 1 for information on annual recertification of income.
3. Owners of Section 236 properties must calculate rent if a tenant reports a change in income, allowances, or family composition. Refer to Chapter 7, Section 2 for information on interim recertifications of income.

Figure 5-7: Tenant Contributions for the Section 236 and Section 221(d)(3) BMIR

Section 236	
Section 236 without Utility Allowance	Section 236 with Utility Allowance
• Tenant rent is the greater of: ♦ 30% of monthly adjusted income; or ♦ Section 236 basic rent. • Tenant rent may not be more than the Section 236 market rent.	• Tenant rent is the greater of: ♦ 30% of monthly adjusted income less the utility allowance; or ♦ 25% of monthly adjusted income; or ♦ Basic rent. • Tenant rent may not be more than the Section 236 market rent.
Section 221(d)(3) BMIR	
• At initial certification, the tenant pays the BMIR rent. • At recertification, the tenant's annual income is compared to the BMIR income limits. If the tenant's annual income is: ♦ Less than or equal to 110% of the BMIR income limit, the tenant pays the BMIR rent; ♦ Greater than 110% of the BMIR income limit, the tenant pays 110% of the BMIR rent.	

5-30 Determining Tenant Contribution at Properties with Multiple Forms of Subsidy

- A. At many multifamily properties different kinds of subsidies have been combined. For many years, tenant-based Section 8 subsidies have been added to properties built with Section 202 loans or financed with Section 236 and Section 221(d)(3) mortgage subsidies. Recently, the Low Income Housing Tax Credit program has been combined with a wide range of programs, from Section 202 projects with Section 8 already in place (Section 202/8) to housing choice voucher assistance.

- B. Although each of the programs combined within one property may have a different formula for determining tenant payments, it is generally possible to determine the correct rent for a family by identifying the available program for which that family is eligible that will provide the best option—or the lowest rent—for the tenant. The one exception to this can be at the recertification of a Section 8 or Rent Supplement family in a property with Low Income Housing Tax Credits. If the family's income has increased since move-in to a point that the assisted rent exceeds the Low Income Housing Tax Credit rent, that family will have to make a choice between the lower tax credit rent and the security of continuing on the rental assistance program.
- C. The tenant rent at properties assisted under more than one program is generally the lowest rent available for which the tenant is eligible.
1. Section 202/Section 8. In a Section 202 property with Section 8 tenant-based assistance, a tenant eligible for Section 8 will pay the tenant rent based on the Section 8 rent formula. If that tenant's income increases to the point that its TTP equals or exceeds the Section 8 contract rent, the family would no longer be eligible for the tenant based assistance.
 2. Section 236/Section 8. A family with a Section 8 subsidy in a Section 236 property will pay the Section 8 tenant rent unless, at recertification, the family's TTP equals or exceeds the Section 8 contract rent. Thereafter, the family will pay the tenant rent based on the Section 236 rent formula. A family living in a Section 236 property receiving Rent Supplement assistance would also stop receiving Rent Supplement assistance at the point the family's TTP increased to the level of the rent supplement contract rent. Thereafter the family will pay the tenant rent based on the Section 236 rent formula.
 3. Section 221(d)(3) BMIR with Section 8. A family receiving Section 8 assistance at a BMIR project would continue to pay the tenant rent based on the Section 8 rent formula until the TTP equaled or exceeded the BMIR rent. Thereafter, the family would pay rent based on the BMIR rent formula.
- D. In some instances, a tenant will not be eligible for the program offering the lowest rent, or a subsidy under that program will not be available for every unit or every tenant.

Sometimes, Section 8 subsidies are not available for the unit size the family needs, and the family must wait for a subsidy for the appropriate unit size. The owner's contract with HUD for the Section 8 assistance allocates Section 8 funding by unit size, and the owner is required to subsidize families based on the unit sizes allocated. If the owner was allocated 10 two-bedroom subsidies and has assigned those subsidies to 10 two-bedroom families, the owner cannot use an available three-bedroom subsidy to assist an 11th two-bedroom family. If the owner has determined that the bedroom distribution in its contract does not match the need in the project, the owner can ask HUD for a contract amendment to revise the unit size designations of the subsidy awarded.

- E. In some instances, a family will not be eligible for a lower rent program available at the property.

For example, a family in a BMIR project with Section 8 may be financially stretched when paying the BMIR rent but may not be income-eligible for the lower-rent Section 8 program.

5-31 Procedures for Calculating Rent

- A. Owners must calculate tenant rent payments electronically using on-site software or a service provider. Data used to determine the rent are based on information certified as accurate by the family and independently verified.
- B. The owner's computer software calculates rent based on the appropriate formulas for the tenant's unit and produces a printed copy of the **HUD-50059** to be signed by the tenant and the owner. The owner must produce a printed report in an easily read and understood format that contains all of the information used to calculate the tenant's rent.
- C. The tenant and the owner sign a copy of the report containing a statement certifying the accuracy of the information. The certification statements are provided on the **form HUD-50059 in Appendix 7-B.** Additional information on the **HUD-50059** and the certifications can be found in Chapter 9.
- D. The owner must give a copy of the printed **HUD-50059** with the required signatures to the tenant and place another copy in the tenant file.
- E. The **HUD-50059 is** then transmitted electronically to TRACS either directly or through the Contract Administrator. Refer to Chapter 9 for information on **the HUD-50059** requirements.
- F. **In all cases, the computer generated HUD-50059 must include the required tenant signatures and owner signatures prior to submitting the data to the Contract Administrator or HUD. The owner may consider extenuating circumstances when an adult family member is not available to sign the HUD-50059, for example, an adult serving in the military, students away at college, adults who are hospitalized for an extended period of time, or a family member who is permanently confined to a nursing home or hospital. The owner must document the file why the signature(s) was not obtained and, if applicable, when the signature(s) will be obtained.**

Chapter 5 Exhibits

5-1. Income Inclusions and Exclusions

<http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/43503e5-1HSGH.pdf>

5-2. Assets

<http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/43503e5-2HSGH.pdf>

5-3. **Examples** of Medical Expenses That Are Deductible and Nondeductible

<http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/43503e5-3HSGH.pdf>

5-4. **Sample** Certification for Qualified Long-Term Care Insurance Expenses

<http://www.hud.gov/offices/adm/hudclips/forms/files/90101.pdf>

5-5. Form HUD-9887, *Notice and Consent for the Release of Information to HUD and to a PHA*

<http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/43503e5HSGH.pdf>

5-6. Form HUD-9887-A, *Applicant's/Tenant's Consent to the Release of Information – Verification by Owners of Information Supplied by Individuals Who Apply for Housing Assistance*

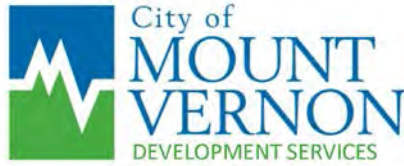
See 5-5 above.

5-7. HUD Fact Sheet – Verification of Information Provided by Applicants and Tenants of Assisted Housing

See 5-5 above.

5-8. Tenant Rent Formulas

<http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/43503e5-8HSGH.pdf>



**DETERMINATION OF NON-SIGNIFICANCE
& NOTICE OF PUBLIC HEARINGS - FILE NO: CA17-0008**

DESCRIPTION OF PROPOSED ACTION: The City of Mount Vernon is considering code amendments to many chapters of the Mount Vernon Municipal Code (MVMC). The main focus of the code amendments is to create new zoning and subdivision regulations to encourage the creation of affordable housing. Following is a summary of the proposed code amendments:

Adoption of a new Chapter of the MVMC to be named Chapter 17.73, Regulations to Encourage Affordable Housing. This new chapter of the MVMC will: allow 50% increase in density in single-family zones, allow the existing density to be doubled in Duplex/Townhouse, Multi-Family zones, and for projects using the Planned Unit Development process. Increased building height and reductions in parking are also allowed in the C-1, C-3 and C-4 zones. All of these increases in density, building height, and reductions in parking are all predicated upon developers taking approximately one-third of the dwelling units they would otherwise be able to create and reserve these units for those earning 80% of the Area Median Income (AMI) and below.

Adoption of another new Chapter of the MVMC to be named Chapter 16.34, Platting of Duplex and Townhouse Structures is also proposed. This new chapter of the MVMC will allow zero lot line townhomes and duplexes to be individually platted and sold.

Other code amendments include: 1) amendments that remove notification requirements, increase the allowable square footage from 900 to 1,000 s.f., and remove the requirement that utilities be shared for Accessory Dwelling Units; 2) amendments that allow additional duplexes in single-family zones and allow reduced setbacks for infill lots; 3) amendments that clarify what accessory structures can be used for; 4) amendments that reclassify certain Administrative Conditional Uses and a few Special Uses such that the uses are outright permitted: in Chapter 17.15 duplexes, day nurseries, room rentals, in Chapter 17.18 day nurseries, in Chapter 17.24 professional offices, specialized housing for the elderly, and day nursery, in Chapter 17.27 professional office, specialized housing for the elderly, and day nursery, in Chapter 17.51 shopping centers, drive-in banks and eating establishments, gasoline service stations and automobile repair garages, and in Chapter 17.54 day nurseries.

LOCATION: this is a non-project action that would apply city-wide.

APPLICANT & LEAD AGENCY: City of Mount Vernon, Development Services Department

The lead agency for this proposal has determined that the proposed amendments will not have a probable adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public upon request.

PUBLIC HEARINGS: Public hearings to consider the above-described proposed changes to the referenced MVMC sections are scheduled before the Mount Vernon Planning Commission at 6 p.m. on **Tuesday, November 5, 2019**; and before the City Council at 7 p.m. on **Wednesday, November 20, 2019**. Both hearings will be held at the Police and Court Campus, 1805 Continental Place, Mount Vernon.

ATTACHMENT 6: PC STAFF REPORT

Environmental Determination Comment Process: Comments on the environmental determination must be received in writing on or before 4:30 PM **October 21, 2019** (14 days from the date of issuance). Comments received within the 14 days will be reviewed and considered by the Development Services Department. Those persons wishing to submit comments will receive a response from the Responsible Official prior to the end of the SEPA appeal period.

Environmental Determination Appeal Process: Appeals of the environmental determination must be filed in writing on or before 4:30 PM **October 31, 2019** (10 days following the 14 day comment period).

Appeals must be filed in writing together with the required \$100.00 application fee with: Hearing Examiner, City of Mount Vernon, P.O. Box 809, Mount Vernon, WA 98273. Appeals to the Examiner are governed by City of Mount Vernon Municipal Code Section 15.06.215. Additional information regarding the appeal process may be obtained from the City of Mount Vernon Development Services Department, (360) 336-6214.

CONTACT PERSON: Rebecca Lowell, Principal Planner
Development Services Department
910 Cleveland Avenue
Mount Vernon WA 98273
Telephone - 360-336-6214

The application and supporting documentation are available for review at the Development Services Department located at City Hall. Copies will be provided upon request at the cost of reproduction. If you wish to comment on the proposed amendments, you may provide verbal or written comment at the public hearings. **PUBLIC COMMENTS ARE NOT ACCEPTED BY THE DEPARTMENT THROUGH EMAIL.** Comments submitted on paper are required to be mailed or delivered to the Development Services Department at the address listed above. Comments not meeting the requirements of this section are considered as not being received by the city.

Any person may comment on the application, receive notice and request a copy of the decision once it is made. To receive additional information regarding this project contact the Development Services Department and ask to become a party of record.

City staff has created a page on the City's website where the site plans, technical reports, and other pertinent information can be viewed. This webpage can be viewed as follows: navigate to: www.mountvernonwa.gov; once here click on 'Departments' then 'Development Services' then then 'News Notices' then scroll down the page to find the project name/number.

SEPA RESPONSIBLE OFFICIAL: Rebecca Lowell, Principal Planner

Issued: October 3, 2019
Published: October 7, 2019

SENT TO: CORPS OF ENGINEERS, WA AGRICULTURE, DAHP, WA COMMERCE, WA CORRECTIONS, WA EFSEC, WDFW, WA HEALTH, DNR, STATE PARKS, PARKS COMMISSION, PSP, PSRC, WA DOT, DOE, DSHS, NW CLEAN AIR, SEPA REGISTER, SEPA UNIT, SKAT, COUNTY PDS, COUNTY ASSESSOR, DIKE AND DRAINAGE DISTRICT, SCOG, PORT OF SKAGIT, MVSD, SVC, SKAGIT COOP, SWINOMISH, UPPER SKAGIT, SAMISH, SAUK-SUIATTLE, TULALIP, AND STILLAGUAMISH TRIBES



STATE OF WASHINGTON
DEPARTMENT OF COMMERCE
1011 Plum Street SE • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000
www.commerce.wa.gov

10/02/2019

Ms. Rebecca Lowell
Principal Planner
City of Mount Vernon
8405 S Main Street
Post Office Box 1248
Lyman, WA 98263

Sent Via Electronic Mail

Re: City of Mount Vernon--2019-S-732--Request for Expedited Review / Notice of Intent to Adopt Amendment

Dear Ms. Lowell:

Thank you for sending the Washington State Department of Commerce (Commerce) the Request for Expedited Review / Notice of Intent to Adopt Amendment as required under [RCW 36.70A.106](#). We received your submittal with the following description.

Proposed adoption of two new codes: Chapter 17.73 Regulations to Encourage Affordable Housing and Chapter 16.34 Platting of Duplex and Townhouse Structures. Chapter 17.73 offers 50% to doubling of densities, additional building height, and reduced parking in exchange for the creation of specified numbers of dwelling units reserved for those earning 80% AMI and below in perpetuity.

We received your submittal on 10/01/2019 and processed it with the Submittal ID 2019-S-732. Please keep this letter as documentation that you have met this procedural requirement. Your 60-day notice period ends on 11/30/2019.

You requested expedited review under [RCW 36.70A.106\(3\)\(b\)](#). We have forwarded a copy of this notice to other state agencies for expedited review and comment. If one or more state agencies indicate that they will be commenting, then Commerce will deny expedited review and the standard 60-day review period (from date received) will apply. Commerce will notify you by e-mail regarding of approval or denial of your expedited review request. If approved for expedited review, then final adoption may occur no earlier than fifteen calendar days after the original date of receipt by Commerce.

If you have any questions, please contact Growth Management Services at reviewteam@commerce.wa.gov, or call Valerie Smith, (360) 725-3062.

Sincerely,

Review Team

ATTACHMENT G: PC STAFF REPORT

Growth Management Services

SKAGIT PUBLISHING
C/O ISJ PAYMENT PROCESSING CENTER
PO BOX 1570
POCATELLO ID 83204-1570
(360)424-3251
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ORDER CONFIRMATION

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CITY OF MOUNT VERNON - LEGALS
910 CLEVELAND AVE
MOUNT VERNON WA 98273

Start: 10/07/2019 Stop: 10/07/2019
Times Ord: 1 Times Run: ***
STDS 1.00 X 32.78 Words: 865
Total STDS 33.00
Class: 0001 LEGAL NOTICES
Rate: LACR Cost: 355.08
Affidavits: 1

Contact:

Phone: (360)336-6214

Fax#: (360)336-6283

Email: sandy@mountvernonwa.gov

Agency:

Ad Descrpt: CSVH-1952479

Given by: *

P.O. #:

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Last Changed: jka30 10/03/19 11:14

PUB	ZONE	EDT	TP	START	INS	STOP	SMTWTFSS
SVH	A	97	W	Mon 10/07/19	1	Mon 10/07/19	SMTWTFSS
SVWN	A	97	W	Mon 10/07/19	1	Mon 10/07/19	SMTWTFSS

AUTHORIZATION

Under this agreement rates are subject to change with 30 days notice. In the event of a cancellation before schedule completion, I understand that the rate charged will be based upon the rate for the number of insertions used.

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(CONTINUED ON NEXT PAGE)

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**CITY OF
MOUNT VERNON
DETERMINATION OF
NON-SIGNIFICANCE
& NOTICE OF
PUBLIC HEARINGS -
FILE NO: CA17-0008**

DESCRIPTION OF PROPOSED ACTION:

The City of Mount Vernon is considering code amendments to many chapters of the Mount Vernon Municipal Code (MVMC). The main focus of the code amendments is to create new zoning and subdivision regulations to encourage the creation of affordable housing. Following is a summary of the proposed code amendments:

Adoption of a new Chapter of the MVMC to be named Chapter 17.73, Regulations to Encourage Affordable Housing. This new chapter of the MVMC will: allow 50% increase in density in single-family zones, allow the existing density to be doubled in Duplex/Townhouse, Multi-Family zones, and for projects using the Planned Unit Development process. Increased building height and reductions in parking are also allowed in the C-1, C-3 and C-4 zones. All of these increases in density, building height, and reductions in parking are all predicated upon developers taking approximately one-third of the dwelling units they would otherwise be able to create and reserve these units for those earning 80% of the Area Median Income (AMI) and below.

gle-family zones and allow reduced setbacks for infill lots; 3) amendments that clarify what accessory structures can be used for; 4) amendments that reclassify certain Administrative Conditional Uses and a few Special Uses such that the uses are outright permitted in Chapter 17.15 duplexes, day nurseries, room rentals, in Chapter 17.18 day nurseries, in Chapter 17.24 professional offices, specialized housing for the elderly, and day nursery, in Chapter 17.27 professional office, specialized housing for the elderly, and day nursery, in Chapter 17.51 shopping centers, drive-in banks and eating establishments, gasoline service stations and automobile repair garages, and in Chapter 17.54 day nurseries.

Appeals must be filed in writing together with the required \$100.00 application fee with: Hearing Examiner, City of Mount Vernon, P.O. Box 809, Mount Vernon, WA 98273. Appeals to the Examiner are governed by City of Mount Vernon Municipal Code Section 15.06.215. Additional information regarding the appeal process may be obtained from the City of Mount Vernon Development Services Department, (360) 336-6214.

SEPA RESPONSIBLE OFFICIAL:

Rebecca Lowell, Principal Planner

Issued: October 3, 2019

Published: October 7, 2019

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October 7, 2019
SVH-1952479**

LOCATION: this is a non-project action that would apply city-wide.

CONTACT PERSON:

Rebecca Lowell,
Principal Planner
Development Services Department
910 Cleveland Avenue
Mount Vernon WA 98273
Telephone - 360-336-6214

APPLICANT & LEAD

AGENCY: City of Mount Vernon, Development Services Department

The lead agency for this proposal has determined

that the proposed amendments will not have a probable adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public upon request.

PUBLIC HEARINGS: ACCEPTED BY THE DEPARTMENT THROUGH EMAIL.

Comments submitted on paper are required to be mailed or delivered to the Development Services Department at the address listed above. Comments not meeting the requirements of this section are considered as not being received by the city.

Wednesday, November 20, 2019.

Both hearings Any person may comment on the application, receive notice and request a copy of the decision once it is made. To receive additional information regarding this project contact the Development Services Department and ask to become a party of record.

Other code amendments will be held at the Police and Court Campus, 1805 Continental Place, Mount Vernon. To receive additional information regarding this project contact the Development Services Department and ask to become a party of record.