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Gentrification Response:

A Survey of Strategies to Maintain Neighborhood Economic Diversity





Executive Summary

In high-cost cities across the U.S., local governments are struggling with how to protect low-income households and the economic diversity of neighborhoods in the face of soaring housing costs. Where demand for housing outstrips supply, construction of more market-rate housing must be a part of the solution; but such construction is necessary but not necessarily sufficient to protect lower income households from displacement or the economic diversity of neighborhoods. In this report, we survey strategies that have been used both to create more affordable housing and assist low-income households at risk of displacement because of rising rents. It is important to note that we have not studied the effectiveness of these policies in practice. We also recognize that the effectiveness of a policy intervention will vary based on local conditions, which we also do not address. However, we hope that this overview of possible approaches is a helpful starting point for policymakers and practitioners interested in addressing these goals as part of a local housing strategy.

Executive Summary *(continued)*

I. GOAL: Creating and Preserving Affordable Housing in Gentrifying Areas

Protecting the existing affordable housing stock and using resources strategically to expand it in neighborhoods where rents are rising are important strategies for cities concerned with the future economic diversity of those neighborhoods. Government-subsidized affordable housing located in areas with rising rents can help foster diversity and stability in neighborhoods; but, depending on how much rents have risen, it can also come with a high price tag, resulting in fewer affordable units than if the resources were used in lower-cost areas of a city. With these considerations in mind, we explore the following strategies and tools aimed at creating and preserving affordable housing:

A. Strategy: Strategic Use of City-Owned Land

1. Ground Leases: long-term leases of city-owned land that include an affordability requirement.
2. Mechanisms to Restrict Use after Sale: deed restrictions or agreements that limit the use of formerly city-owned land to affordable housing.
3. Community Land Trusts: cooperatively owned entities that hold formerly city-owned land (and other land) in trust to maintain affordable homeownership or rental properties.

B. Strategy: Strategic Use of Other City Resources

1. Housing Subsidies: the prioritized use of subsidies for new construction and preservation of housing in gentrifying areas.
2. Property Tax Benefits: a property tax benefit for landlords who provide low-rent housing or for low-income homeowners facing sudden increases in property taxes.

C. Strategy: Harnessing the Market

1. Inclusionary Zoning: a zoning bonus or requirement that results in the inclusion of affordable units in newly developed multifamily properties.
2. Linkage Fees: a requirement for certain types of new development—often commercial—resulting in fees paid into an affordable housing trust fund.

Executive Summary *(continued)*

II. GOAL: Assisting Tenants at Risk of Displacement

As areas that have lacked significant private investment become the focus of development in cities, many existing residents increasingly worry that they will be pushed out of their neighborhoods. Cities have adopted a range of strategies to help low-income residents facing displacement pressures. Some of these strategies can add to the cost of private housing provision, and potentially reduce investment, which can further drive up rents. We explore the pros and cons of the following strategies and tools aimed at potentially helping households remain in place and helping households that have to move:

A. Strategy: Regulating the Landlord/ Tenant Relationship

1. Rent Regulation: caps on the amount rent can be raised in the privately owned, unsubsidized housing stock.
2. Other Regulations of Tenancy: strengthening tenants' rights, including limits on permissible eviction circumstances, requirement of longer-term leases, and/or creation of tenants' rights during sale of a unit.
3. Anti-Harassment Laws: laws prohibiting harassing behavior and creation of affirmative enforcement mechanisms.
4. Know and Enforce Your Rights Assistance: legal and organizing services for tenants, and wide and public dissemination of tenants' rights disclosures.

B. Strategy: Assistance for Households that Move

1. Preferences for Subsidized Housing: preferences for available subsidized units for individuals vulnerable to displacement.
2. Relocation Assistance and Regulation of Buy-outs: payments to displaced tenants (either legal requirement or regulation of informal "buyouts") and counseling services to help with apartment search and application process.
3. Unified Tenant Screening Report: common application and criteria for rental units negotiated with landlords and tenants' groups.

Introduction

Over the past twenty-five years, many cities in the United States have experienced striking economic change.¹ After decades of attempting to entice real estate and business investments, as well as a resident base with higher taxable income, officials in these cities now find themselves with a significant amount of all three. One of the most visible results of this shift has been soaring housing prices. As the demand for housing has grown to far exceed the existing supply, many urban neighborhoods that have long served as a home for mostly low- and moderate-income households are now seeing an influx of higher-income households; in other words, they are experiencing gentrification.²

The spread of investment into these areas presents both opportunities and challenges for policymakers in high-cost cities. Many residents, policymakers, and academics have celebrated reinvestment in areas long neglected by businesses and developers as well as the integration of people of different incomes and races moving in. Research shows that the presence of higher-income households in a neighborhood can bring with it more retail activity, which may bring employment opportunities, and an improvement in city services, including schools.³ There is more mixed evidence on the

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question of whether gentrification results in less segregation across neighborhoods and how gentrification affects (or is affected by) crime rates.⁴

An equally vocal (and sometimes overlapping) group has worried that rising housing prices that accompany these changes may result in displacement of low- and moderate-income residents. Evidence is mixed on the question of displacement (and what counts as displacement), but there is little question that increased demand for housing in an area can put upward pressure on housing prices and rents, making neighborhoods less affordable.⁵ This is especially true if the growing demand that drives gentrification is not met with an increase in supply.

¹ See, e.g., Baum-Snow, N. & Hartley, D. (2016). Causes and Consequences of Central Neighborhood Change, 1970-2010. Retrieved from <https://www.philadelphiafed.org/community-development/events/2016/research-symposium-on-gentrification>

² Gentrification is commonly used term, but it is often defined in different ways. For the purposes of this paper, we are defining gentrification as rapid rent growth in areas occupied by lower-income households.

³ See, e.g., Meltzer, R. & Schuetz, J. (2012). Bodegas or Bagel Shops? Neighborhood Differences in Retail and Household Services. *Economic Development Quarterly*, 26(21), 73–94. Retrieved from <http://edq.sagepub.com/content/26/1/73>; see also Zukin, S., Trujillo, V., Frase, P., Jackson, D., Recuber, T., Walker, A. (2009). New Retail Capital and Neighborhood Change: Boutiques and Gentrification in New York City. *City & Community*, 8(1), 47–64; Freeman, L. (2006). *There Goes the 'Hood: Views of Gentrification from the Ground Up*. Philadelphia: Temple University Press.

⁴ For a discussion of the evidence up to 2010, see Ellen, I. & O'Regan, K. (2011). Gentrification: Perspectives of Economists and Planners. In N. Brooks, K. Donaghy, & G. Knaap (Eds.), *The Oxford Handbook of Urban Economics and Planning*. Oxford: Oxford University Press, 2011.

⁵ A detailed review of the literature on these thorny issues was put together by researchers at the Federal Reserve Bank in San Francisco: Zuk, M., Bierbaum, A.H., Chapple, K., Gorska, K., Loukaitou-Sideris, A., Ong, P., Thomas, T. (2015). Gentrification, Displacement, and the Role of Public Investment: A Literature Review. Retrieved from http://iurd.berkeley.edu/uploads/Displacement_Lit_Review_Final.pdf.

Cities with rising housing costs need to promote—or at least not unduly impede—housing development if their goal is to promote housing affordability for low- and moderate-income households. That said, it takes time to construct new units; and, as they are created, a hot market without tenant protections is likely to leave low-income tenants vulnerable. Thus, while more housing development is necessary to address the affordable housing crises in high-cost cities, it is insufficient to ensure that these cities remain home to economically diverse neighborhoods. Cities interested in providing housing affordable to low- and moderate-income residents and maintaining diverse neighborhoods will want to supplement policies that encourage new development with those that promote preservation of affordable stock and protections for lower-income households.

In this report we explore policy tools that have been tried by cities to achieve these latter two goals⁶—in Section I, we highlight strategies to promote affordable housing development and

preservation in gentrifying neighborhoods; and in Section II, we consider strategies to assist incumbent residents at risk of displacement or who have to move because of gentrification.

It is important to emphasize that we have not performed an empirical evaluation of the policies we discuss (although we do cite empirical evaluations of others where available), and do not mean to suggest that these policies will always, in practice, be successful in achieving their stated goals. More work is needed to rigorously evaluate the impact of these policies and to pinpoint the conditions under which they are able to help cities foster economic diversity citywide and in wide range of neighborhoods. Nonetheless, we hope this overview of approaches is a useful catalogue of options available to local policymakers.

⁶ Strategies that facilitate the development of more market-rate housing are also critically important in addressing housing needs in high-cost cities, but they are not the focus of this paper.



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I. GOAL: Creating and Pre- serving Affordable Housing in Gentrifying Areas

Rising rents can pose a threat to both subsidized and unsubsidized affordable housing. The latter threat is obvious: unsubsidized units are only affordable if market rents are affordable. In subsidized units where affordability restrictions expire after a period of time, the potential threat arises from the fact that higher prices make landlords less likely to seek out new subsidy to keep the units affordable. This threat to affordability in gentrifying neighborhoods requires special attention if economic diversity is to be preserved. In areas where rents are on the rise, strategic use of city subsidies, land use regulations, and city-owned land can help create and preserve affordable units. Below we explore ways that localities can deploy these different tools to create long-term affordable housing in the face of gentrification.

A. Strategy: Strategic Use of City-Owned Land

Municipalities that still own land in their boundaries have a head start in creating new affordable units. The price of land accounts for a substantial amount of the cost of building new housing in high-demand areas. Providing land at no or reduced cost can be a subsidy for housing development. City-owned land need not be vacant to be useful: government-owned buildings might be redeveloped into affordable units or have affordable units added on top of them. When cities use their land resources this way, they have a number of ways to structure deals to promote the long-term affordability of the housing on the site.

1. Ground Leases

With a ground lease, a city maintains ownership of a piece of land while renting it out on a long-term basis (often 75 to 99 years) to a developer. Where the city wishes to use its land to facilitate the development of affordable housing, it can lease the land at a discount, and the lease it signs with a developer can establish the terms of the affordability requirements. An example is the leasing by the New York City Housing Authority of some of its property to raise revenue for public housing while also creating affordable units.⁷ In the last decade, Washington D.C. has also been in the process of leasing surplus city property to private developers to create affordable housing, as well as other community facilities.⁸

The benefit of leasing, rather than selling, city-owned land for development is that the land remains within the city's control once the lease is over, which is one way to ensure that the land is used for the provision of below-market housing indefinitely. Ground leases, however, typically result in less revenue than a sale. And another disadvantage is that by retaining ownership, the city, as landlord, retains some legal obligations to the property.

If a below-market or no-cost ground lease provides insufficient subsidy to create the amount of affordable housing at the rent levels the city seeks, it can be paired with other housing subsidies.

⁷ NYU Furman Center. (2015, May). *Building New or Preserving the Old? The Affordable Housing Tradeoffs of Developing on NYCHA Land*. Retrieved from http://furmancenter.org/files/NYUFurmanCenter_NYCHABrief_13MAY2015.pdf; NYC Housing Preservation and Development. (2016). NextGeneration NYCHA RFP. Retrieved from <https://www1.nyc.gov/site/hpd/developers/request-for-proposals/NextGeneration-NYCHA-RFP.page>.

⁸ Hickey, R. & Sturtevant, L. (2015, February). *Public Land & Affordable Housing in the Washington DC Region: Best Practices and Recommendation*. Retrieved from http://washington.uli.org/wp-content/uploads/sites/56/2015/02/ULI_PublicLandReport_Final020215.pdf.

2. Mechanisms to Restrict Use after Sale

Even when a city does not maintain ownership of a piece of land, it can secure the long-term affordability of the units developed on that land through a number of mechanisms.

One tool available to a city is a restrictive covenant. A restrictive covenant is a deed restriction limiting land uses that “run with the land.” This means that it must be honored by all subsequent owners for all time unless the original owner that created the covenant—here, the city—agrees to remove it. A city can include a restrictive covenant in the deed whether it donates or sells the land to a private developer. Covenants can include a provision that specifies who can enforce them.⁹ Cities may wish to use such a provision creatively: allowing both city enforcement officials and certain private parties (such as residents) the ability to enforce affordability requirements.

Cities can also impose restrictions through a restrictive declaration, which is an agreement between a government actor and a private party that is recorded against the property and runs with the land, binding future owners—just as restrictive covenant does.

Restrictive covenants and restrictive declarations can ensure permanent affordability as long as subsequent city officials do not remove the requirement, and as long as they are enforced.¹⁰ If officials remove the requirement (or fail to enforce it), then the land is entirely outside the city’s control absent another regulatory tool to ensure affordability.

⁹ Kazis, N. (2015). Public Actors, Private Law: Local Governments’ Use of Covenants to Regulate Land Use. *Yale Law Journal*, 124(5), 1792–1824.

¹⁰ The DeBlasio administration in New York City has come under fire recently for removing deed restrictions. Goodman, J.D. (2016, March 24). New York City Turns Over Files on Building Sale Subpoenaed by Comptroller. *The New York Times*. Retrieved from <http://www.nytimes.com/2016/03/25/nyregion/new-york-city-turns-over-files-on-building-sale-subpoenaed-by-comptroller.html>.

There are a number of mechanisms available to jurisdictions to achieve some control over the activity on the lot either in perpetuity or for a significant length of time.

Cities can also have control over what happens to formerly city-owned land by providing subsidy or a mortgage to the new owner. In that case, the new owner would be subject to the terms of a regulatory agreement or a mortgage that can impose affordability restrictions. While these tools are generally time limited, they are often of long-term duration.

In short, there are a number of mechanisms available to jurisdictions to achieve some control over the activity on the lot either in perpetuity or for a significant length of time. Of course, each of these mechanisms is only as good as the monitoring and enforcement that accompany them over time. When a city transfers its land to private ownership for the creation of affordable housing, it can ensure the long-term affordability of units on that property through one of these mechanisms.

3. Community Land Trusts

A city can also transfer its land to mission-driven organizations that use ground leases in a different way to create permanent affordability. A community land trust (CLT) for affordable housing is a non-profit entity that owns land that it stewards to ensure the long-term affordability of the properties on the land. The CLT sells the buildings on the land, or the right to develop the land, to a homeowner or a developer. By removing the cost of land, a CLT allows the units on the land to be sold or rented for more affordable prices. The CLT then provides a long-term lease to the building owner to ensure the affordability of the housing. While the city gives up control of the land to the trust, it can provide a stipulation that should the CLT dissolve the land reverts back to city ownership.

For ownership units, the CLT generally regulates sales via resale formulas that govern the price at which a dwelling unit may be resold. Residents can build equity by paying down a mortgage and, under most resale formulas, they receive a share of their home's appreciating value (if any) upon resale. At the same time, resale price is limited, allowing only for a "fair return" to keep the units affordable.¹¹ Members of a CLT may also be limited in to whom they are allowed to sell: CLTs often restrict themselves to low- to middle-income residents. In the South Atlanta Land Trust in Georgia, for example, this has resulted in housing for low-income single women, predominantly of color.¹² A CLT run by ACORN in Englewood Chicago makes units even more affordable by offering a lease-with-an-option-to-buy product, with all of

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the payments during the three-year lease going to paying down a mortgage if the option is exercised.¹³ Resale formulas and other rules governing CLTs are created by a board that consists of the homeowners themselves, members of the surrounding community, and, perhaps, other stakeholders.

Transferring city-owned land into a CLT can help ensure its long-term affordability and insulate it from a city's changing political priorities over time. By relinquishing city-owned land, to a CLT or any other entity, the city loses the ability to determine that the land is better suited for a different use in the future. This can protect affordable housing on the land from changes in political will; but it can also deprive the city of the ability to repurpose the land in ways that may make sense in the future. Transfer of land into a CLT also passes responsibility for maintenance and enforcement from the city to the CLT—whether this is a benefit will depend on the long-term capacity and resources of both the city and the CLT to perform those functions well.

¹¹ Sungu-Eryilmaz, Y., & Greenstein R. (2007). *A National Study of Community Land Trusts* (Working Paper). Retrieved from <http://clt-network.org/wp-content/uploads/2014/01/2007-A-National-Study-of-CLTs.pdf>. (Lincoln Institute Product Code: WP07YS1).

¹² Chicago Rehab Network. (1995, June). Development without Displacement Task Force Background Paper. Retrieved from http://www.urbancenter.utoronto.ca/pdfs/curp/Chicago_Dev-without-Displac.pdf.

¹³ Mironova, O. (2014, April 29). The Value of Land: How Community Land Trusts Maintain Housing Affordability. *Urban Omnibus*. Retrieved from <http://urbanomnibus.net/2014/04/the-value-of-land-how-community-land-trusts-maintain-housing-affordability/>.

CLTs have been used in several cities around the United States. The biggest CLT in the country, in Burlington, Vermont, includes both homeownership (via ground lease) and rental units, potentially providing a model for a higher-density CLT.¹⁴

B. Strategy: Strategic Use of Other City Resources

In addition to employing city-owned land in the service of affordable housing, local governments may also want to think about how to use subsidy dollars strategically to promote affordability in gentrifying and high-cost areas. But, there is also a cost associated with focusing housing resources in areas with rising rents, namely that it is more costly than focusing in areas where government resources may stretch farther to serve more households. Given the overwhelming demand for housing subsidies from eligible households, local governments should carefully weigh this tradeoff. But, if cities are able to identify neighborhoods relatively early in the gentrification process, they may be able to lock-in affordability in areas where it will be much more costly to preserve affordability later.

1. Housing Subsidies

As a practical matter, cities can do this as they make their discretionary decisions about where to invest their subsidy dollars. The Low Income Housing Tax Credit (LIHTC)—the nation's most-used tool to create new affordable housing—provides a mechanism through which administering jurisdictions (typically states but also some cities) can direct the siting of development. State and local allocating agencies issue Qualified Allocation Plans (QAPs) that specify their priorities in selecting projects to receive credits. A recent study

¹⁴ Blumgart, J. (2016, January 19). How Bernie Sanders Made Burlington Affordable. *Slate*. Retrieved from http://www.slate.com/articles/business/metropolis/2016/01/bernie_sanders_made_burlington_s_land_trust_possible_it_s_still_an_innovative.html.



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found that changes in QAPs that prioritized development in higher-opportunity areas resulted in more development in low poverty areas.¹⁵ Tailoring of QAPs to achieve strategic goals can be an effective tool, like development in high-opportunity areas. While it differs from the question studied in this research, it may also be possible to use QAPs to encourage the development and preservation of affordable housing in areas that were formerly low-income and have seen dramatic rent growth. However, because of limited available data on current rents and the process involved in updating QAPs, this tool might not be particularly nimble.

2. Property Tax Breaks

As the value of real estate in a neighborhood increases, property taxes typically rise as well. The burden that this creates for property owners presents an opportunity for cities to use property tax relief to support affordable housing. When

¹⁵ Ellen, I. G., Horn, K., Kuai, Y., Pazuniak, R., & Williams, M.D. (2015). *Effect of QAP Incentives on the Location of LIHTC Properties*. U.S. Department of Housing and Urban Development, Office of Policy Development and Research. Retrieved from https://www.huduser.gov/portal/publications/mdrt/QAP_Incentives.html.

targeted towards rental properties, such a tax benefit can be used to preserve affordable units. When targeted towards owner-occupied units, it can serve as a way to prevent the displacement of vulnerable homeowners.¹⁶

To preserve affordable units, a property tax benefit can come with rules that require owners to maintain a certain portion of their units at affordable rents for some period of time. Chicago, Seattle, and New York City all have programs that allow for tax reductions or exemptions for owners of multifamily buildings who undertake substantial renovations in exchange for reserving a certain number of affordable units.¹⁷ Affordability can be defined in terms of a percentage of area median income or units benefiting from the tax break can enter into a rent stabilization program that slows their rent growth.¹⁸ Either way, a bottom-line-minded owner will only be interested in trading off a tax break for affordability if the tax break is sufficient to make it worthwhile to forgo raising the rents to market. Thus, in a neighborhood where rents are high or expected to rise, the city will likely have to forego substantial tax revenue to entice owners into keeping units affordable for any significant length of time.

Rapidly rising prices can also create distress for homeowners with low and/or fixed incomes as property taxes rise. Although homeowners benefit from rising prices, homeowners generally have to move or refinance their homes to reap those benefits. To provide low-income senior or



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long-term homeowners with the ability to stay in their homes if they choose, several cities provide them property tax relief.¹⁹

C. Strategy: Harnessing the Market

Some policies also look to developers of new construction to bear some of the cost of providing new affordable housing. Regulations that require new development to support the creation of new affordable housing—such as inclusionary zoning or linkage fees—help local governments foster diversity alongside development; they also harness the market to pay for new affordable units. Like any regulation that increases the cost of development, though, the risk is that these policies may suppress development—undermining the goal of the policy and resulting in less housing overall.

¹⁶ Part II of this brief deals with anti-displacement policies, but because the structure of these tax breaks is so similar, we keep them together in this Part.

¹⁷ Albee, A., Johnson, R., & Lubell, J. (2015). *Preserving, Protecting, and Expanding Affordable Housing: A Polity Toolkit for Public Health*. ChangeLab Solutions. Retrieved from http://www.changelabsolutions.org/sites/default/files/Preserving_Affordable_Housing-POLICY-TOOLKIT_FINAL_20150401.pdf.

¹⁸ NYU Furman Center. (2015, June). *The Challenge of Rising Rents: Exploring Whether a New Tax Benefit Could Help Keep Unsubsidized Rental Units Affordable*. Retrieved from furmancenter.org/files/NYU-FurmanCenter_ChallengeofRisingRents_10JUN2015.pdf.

¹⁹ Philadelphia has a long-term owner occupants program (LOOP) that provides a property tax break for those who have owned since 2003, are paying in good standing, and meet income requirements. City of Philadelphia. Longtime Owner Occupants Program (LOOP). Retrieved from <http://www.phila.gov/loop/Pages/default.aspx>. Washington D.C. provides a property tax credit to low-income homeowners who have occupied their homes for at least seven years. Office of Tax and Revenue. Lower Income, Long-Term Homeowners Tax Credit. Retrieved from <http://otr.cfo.dc.gov/page/other-credits-and-deductions>. New York City also provides a property tax exemption to eligible senior homeowners. NYC Department of Finance. Senior Citizen Homeowners' Exemption (SCHE). Retrieved from <http://www1.nyc.gov/site/finance/benefits/landlords-sche.page>.

1. Inclusionary Zoning

Inclusionary zoning (IZ), sometimes called inclusionary housing, leverages market-rate development to create housing affordable to low-, moderate- or middle-income households.²⁰ IZ can incentivize or require the creation of affordable housing along with new market-rate housing without direct expenditure of public dollars. Such programs are designed so that the rents or sale prices from market-rate units cross-subsidize the creation (and potentially the operation, if necessary) of the lower income housing units. IZ can have many variations. It can be voluntary or mandatory; it can require affordable units on site or off site or allow for a payment in lieu; it can involve new construction or preservation of affordable units; it can target different incomes and provide different ratios of market-rate to affordable units; it can require that affordable units be permanently affordable or permit affordability to expire.²¹ For instance, in Washington DC, affordable housing created through inclusionary zoning serves households with income up to 80 percent of area median income, does not allow for an in-lieu fee, and requires that affordable units be income restricted in perpetuity. By contrast,

Mandatory IZ will be most effective at generating new affordable units where market-rate rents are sufficient to cross-subsidize the construction and operation of the affordable units.

in Boston, affordable units can serve households with income up to 100 percent of area median income, developers have the option of paying an in-lieu fee, and units only need to be affordable for 50 years.²²

The difference between mandatory and voluntary is important to understand. Voluntary IZ is optional and comes with a benefit or incentive. Local zoning regulations set a base amount of density and then offer a developer greater density if he/she includes a certain amount of affordable housing in the development.²³ Because the developer retains the option of building without the bonus, the value of the added density must more than offset the cost of providing affordable units in order to entice developers to participate.

²⁰ Transferrable development rights (TDR) programs present another opportunity for a city to link new development with the creation of new affordable units. A TDR program allows a property owner to transfer unused development rights granted under zoning (at, say, a single-story church on land zoned for a multistory residential building) to another location, known as the “receiving site.” With affordability requirements attached, a TDR program could have the same practical effect as a voluntary inclusionary zoning program—allowing a developer to obtain additional density in exchange for providing support (either in the form of units or a fee in lieu) for affordable housing. NYU Furman Center. (2015, March). *Creating Affordable Housing Out of Thin Air: The Economics of Mandatory Inclusionary Zoning in New York City*. Retrieved from http://furmancenter.org/files/NYUFurmanCenter_CreatingAffHousing_March2015.pdf

²¹ Schetz, J., Meltzer, R. & Been, V. (2009). 31 Flavors of Inclusionary Zoning: Comparing Policies from San Francisco, Washington, D.C., and Suburban Boston. *Journal of the American Planning Association*, 75, 441-456.

²² BAE Urban Economics, Inc. et al. (September 2015). Market and Financial Study: NYC Mandatory Inclusionary Housing (Appendix A). Retrieved from http://media.wix.com/ugd/7796e8_6e036224870e4e5e8e1c5ed1f8988508.pdf

²³ NYC Department of City Planning. Inclusionary Housing Program. Retrieved from <http://www1.nyc.gov/site/planning/zoning/districts-tools/inclusionary-housing.page>.

By contrast, mandatory IZ requires that a specified share of a subject market-rate development be set-aside for affordable housing. In a mandatory program, the developer typically does not have the option of building housing without the mandated affordability; but if the required affordability is too costly, a developer may choose to forgo development altogether or may choose to build something other than housing on the site, if that's an option.

Mandatory IZ will be most effective at generating new affordable units where market-rate rents are sufficient to cross-subsidize the construction and operation of the affordable units.²⁴ In neighborhoods where market-rate development is currently not profitable, neither mandatory nor voluntary IZ requirements will result in new affordable housing production without government subsidy. In areas where market-rate development may be just marginally viable today, a mandatory IZ requirement may render development infeasible in the short-term. However, cities can craft a program that ameliorates these harms in borderline markets by either providing subsidy in those areas to support development, by permitting higher rents in the affordable units for the period of time that they are needed to help maintain the development pipeline, or by allowing for a waiver of the requirements based on the economics of a specific deal. For example, in its

²⁴ NYU Furman Center (2015, March). *Creating Affordable Housing Out of Thin Air: The Economics of Mandatory Inclusionary Zoning in New York City*. http://furmancenter.org/files/NYUFurmanCenter_CreatingAffHousing_March2015.pdf

Mandatory Inclusionary Housing Program, New York City has a “Workforce Option” that permits rents in the affordable units to be as high as 115 percent of area median income, but that option will only be available for ten years in any of the areas where the city decides to impose it.²⁵ In addition to these economic feasibility questions, there are also legal constraints that local governments should keep in mind when designing inclusionary zoning programs.²⁶

All major cities that have adopted IZ—whether mandatory or voluntary—have seen it generate new affordable units and most have generated in lieu fees, but the pace of new unit creation has varied. For example, Seattle’s program created 56 units in 13 years while San Francisco’s generated 1,560 in 12 years.²⁷

2. Linkage Fees

Linkage fee programs impose a requirement on developers, typically of commercial space, to help meet a need that their new development will generate, in exchange for the necessary permissions

²⁵ NYC Department of City Planning. Mandatory Inclusionary Housing. Update: March 22, 2016. Retrieved from <http://www1.nyc.gov/site/planning/plans/mih/mandatory-inclusionary-housing.page>.

²⁶ See generally Tim Iglesias, *Framing Inclusionary Zoning: Exploring the Legality of Local Inclusionary Zoning and Its Potential to Meet Affordable Housing Needs*, 36 No. 4 Zoning & Plan. L. Report 1 (2013).

²⁷ BAE Urban Economics, Inc., supra, note 21. See also Mukhija, V., Regus, L., Slovin, S., & Das, A. (2010, May). Can Inclusionary Zoning Be an Effective and Efficient Housing Policy? Evidence from Los Angeles and Orange Counties. *Journal of Urban Affairs* 32(2), 229–252. Retrieved from <http://onlinelibrary.wiley.com/doi/10.1111/j.1467-9906.2010.00495.x/full>.

to develop.²⁸ Although linkage fees have been used to address a range of civic needs, they are often used to support the development of affordable housing, where they are justified by showing that the new development will result in increased demand for housing by people who will work in the new development.²⁹ Among other jurisdiction, San Francisco, Sacramento, Boston, and Seattle all have mandatory linkage fee programs that generate funds for affordable housing.³⁰

Linkage fee programs are typically rooted in detailed studies of development patterns in a locality, and feature uniform standards for calculating a

fee obligation (typically a price set per square foot of new development). As a result, they safeguard both developers and local governments from the uncertainty and transaction costs associated with ad hoc fee negotiations, though they still carry a risk of inaccurately assessing the extent of a development's secondary effects due to insufficient context sensitivity.³¹

Linkage fees have raised substantial sums for housing. Between 1986 and 2012, Boston's fee raised over \$133 million.³² Seattle projects that it will raise over \$195 million over the next decade.³³ However, by making it more costly to develop, linkage fees run the risk of discouraging commercial development and possibly costing a neighborhood or a city (depending on the geographic boundaries of the requirement) jobs.

²⁸ Been, V. (2005). Impact Fees and Housing Affordability, *Cityscape* 8(1), 139–185, 143. Retrieved from <https://www.huduser.gov/periodicals/cityscape/vol8num1/ch4.pdf>.

²⁹ For discussion of legal authority and possible legal challenges to linkage fees, see Schukoske, J. E. (1991). Housing Linkage: Regulating Development Impact on Housing Costs. *Iowa Law Review* 76(5), 1011–1066, 1038–62.

³⁰ City and County of San Francisco. (December 1, 2015). San Francisco Citywide Development Impact Fee Register. Retrieved from http://default.sfplanning.org/administration/Master_Impact_Fee_Schedule_2016_DBI_Register-071416.pdf; City of Sacramento. Housing Trust Fund. Retrieved from <http://www.cityofsacramento.org/Community-Development/Planning/Long-Range/Housing-Programs/Housing-Trust-Fund>; Boston Redevelopment Authority, Glossary: Linkage. Retrieved from <http://www.bostonredevelopmentauthority.org/about-us/glossary>; Stephen, F. (November 10, 2015). Toward Affordable Housing: Seattle Adopts A Commercial Linkage Fee. *The Urbanist*. Retrieved from <https://www.theurbanist.org/2015/11/10/toward-affordable-housing-seattle-adopts-a-commercial-linkage-fee/>; City of Boston. (2015). Neighborhood Housing Trust. Retrieved from http://dnd.cityofboston.gov/portal/v1/contentRepository/Public/dnd%20pdfs/HousingDevelopment/NHT_Report_2014_160622_1110.pdf.

³¹ Schukoske, J. E. (1991). Housing Linkage: Regulating Development Impact on Housing Costs. *Iowa Law Review* 76(5), 1011–1066, 1023–24.

³² City of Boston. *supra*, note 29.

³³ Letter from Edward B. Murray, Mayor of Seattle, to Honorable Tim Burgess, President Seattle City Council. (2015, August 25). Retrieved from <https://seattle.legistar.com/View.ashx?M=F&ID=4006991&GUID=FF26387E-AE10-44C9-9300-8709C6BAE51D>

II. GOAL: Assisting Tenants at Risk of Displacement

Another concern for residents and policymakers in high-cost cities is the threats and harms of displacement faced by lower income residents in areas where rents are on the rise. There is a wide range of circumstances that are cited as displacement; and like the term “gentrification,” displacement can mean different things to different people. Direct displacement can occur when a market-rate unit becomes unaffordable to an existing tenant; it can also occur through landlord harassment. There can also be indirect or secondary displacement when existing community members are forced to look elsewhere for housing because the price of available units has become unaffordable. In different places, some or all of these experiences of displacement may be the focus of policy intervention.

There are a number of reasons why policymakers may make anti-displacement a policy goal. Having to move is stressful and costly, and being forced to can make the situation even worse. Changing neighborhoods means leaving a local community, disrupting social connections that can play an essential role in both life outcomes and well-being. Research shows particularly strong negative effects for children.³⁴ There may be costs to mobility at a neighborhood level too. Lower mobility may mean greater social cohesion, which can make neighborhoods safer, more supportive, and more pleasant to live in. The negative impacts of moving can be exacerbated when the factors

that lead to a move are outside a tenant’s control. Landlord harassment and arbitrary eviction are especially difficult experiences for tenants and may be in violation of legal rights.

Even just the possibility of housing instability can understandably lead many residents to fear direct displacement as gentrification takes effect. Those fears may lead to opposition to new residential development, even when such changes would absorb some of the demand that creates price pressures. Protecting residents from displacement can alleviate the fear of being forced to move from one’s home and should help move the political discussion past a pro- vs. anti-development binary towards one about how neighborhood change can benefit the current community.

For tenants for whom moving becomes inevitable, tight rental markets can make finding a new home very difficult and time-consuming and even increase the risk of homelessness. As such, it may make sense to supplement anti-displacement policies with those that help low-income households navigate finding a new place to live.

Anti-displacement policies do have potential downsides. Perhaps most fundamentally, if cities are segregated, policies that help keep households in place can reinforce existing racial and economic segregation. Moreover, programs designed to prevent moving may reduce beneficial mobility—leading residents to favor staying in place even when a move might increase their wellbeing or might be a better outcome for affordability in the city overall (if those moves then pave the way for higher-density development or better use/allocation of the existing stock). Such programs may also reduce revenues for landlords, which may run the risk of discouraging investment to maintain existing housing and investment to create new housing.

³⁴ See, e.g., Jelleman, T. & Spencer, N. (2008). Residential Mobility in Childhood and Health Outcomes: A Systematic Review. *Journal of Epidemiology and Community Health*, 62(7), 584–592.

Nevertheless, many cities are grappling with the question of how to address displacement risks. In this section, we consider strategies cities might adopt to prevent displacement and assist households facing displacement—both anti-displacement measures and policies aimed at helping households who must move.

A. Strategy: Regulating the Landlord/Tenant Relationship

Regulating the relationship between tenants and landlords, and ensuring that tenants have the resources to enforce their rights, is one way in which local governments help protect tenants in cities where rents are on the rise. Unlike some of the other tools we discuss that can be targeted at gentrifying neighborhoods specifically, these are primarily citywide, not neighborhood-based, interventions (though New York City's current Certificate of No Harassment policy, discussed below, is an exception).

1. Rent Regulation

Rent regulation laws (sometimes called rent stabilization or rent control) limit the amount by which landlords can raise rents.³⁵ Rather than setting an absolute cap on rents, regulations often allow for regular but modest increases set—at the city or neighborhood level³⁶—by a predetermined

formula or by a body of experts.³⁷ Once an existing tenant vacates, landlords can typically raise the rent for a new tenant by a greater degree than would be allowed during the course of a lease or even reset the rent to market rate.³⁸

Many argue that, by failing to allocate rent-regulated units according to need, rent regulation is an unfair policy. It results in a transfer of money from a landlord to a tenant who may not be in need of that *de facto* subsidy. And, it may in fact hurt lower-income households by undermining investment in housing and discouraging long-term tenants to vacate units—both of which could constrain housing supply.³⁹ Although rent regulation is ill-targeted if viewed as a purely redistributive program, as a program to promote longer-term lower-rent tenancies for the tenants who benefit from it, even in hot rental markets, it seems to succeed.⁴⁰

³⁷ Some municipalities allow yearly rent increases based on a fixed percentage, or tie increases to inflation plus additional criteria. In Washington, D.C., landlords can raise rents each year to adjust for inflation plus an additional two percent increase. (though the total increase cannot exceed 10%). DC.gov. Rent Control Fact Sheet rev. 2-2014. Retrieved from <http://dhcd.dc.gov/publication/rent-control-fact-sheet-rev-2-2014>. In New York City, increases for one- or two-year contracts are set annually by a Rent Guidelines Board. In addition, even for an existing tenant, landlords in many jurisdictions can seek rent increases above the standard allowable amount if there are additional factors, such as construction, improvements, or hardship. New York City Rent Guidelines Board. Rents and Rent Increases FAQ. Retrieved from <http://www.nycrgb.org/html/resources/faq/rents.html>

³⁸ San Francisco allows owners to raise rent to market level upon vacancy. Rent Board Fact Sheet 1. Retrieved from <http://sfrb.org/fact-sheet-1-general-information>. In Washington, D.C., upon vacancy, rents may be raised by 10 percent or up the amount charged for a similar unit (but not exceeding 30%). DC.gov. Rent Control Fact Sheet rev. 2-2014; retrieved from <http://dhcd.dc.gov/publication/rent-control-fact-sheet-rev-2-2014>. In New York City, state law sets increase levels for new tenants signing leases following a vacancy, which is up to 20 percent for two-year leases. New York City Rent Guidelines Board. Vacancy Leases. Retrieved from <http://www.nycrgb.org/html/guidelines/vacancy.html>

³⁹ For a summary of the economics literature, theoretical and empirical, on rent control, see Jenkins, B. (2009). Rent Control: Do Economists Agree? *Econ Journal Watch*, 6(1), 73–112.

⁴⁰ As of 2008, for example, stabilized tenants in New York City had lived in their units for an average of 12 years, compared to six years for households in market-rate units. This difference was especially pronounced in Manhattan below 96th Street, where 35 percent of households in rent-stabilized apartments had lived in their units for 20 years or more, compared to just 2.7 percent of households in market-rate apartments. NYU Furman Center. (2011). *Rent Stabilization in New York City*. Retrieved from http://furmancenter.org/files/publications/HVS_Rent_Stabilization_fact_sheet_FINAL_4.pdf

³⁵ Four states (plus Washington, D.C.) currently have cities with rent regulation laws—California, New York, New Jersey, and Maryland. Most states ban localities from passing such laws. National Multifamily Housing Council. Rent Control Laws by State. Retrieved from <https://nmhc.org/Research-Insight/Rent-Control-Laws-by-State/>.

³⁶ For instance, Berlin's *mietpreisbremse* law allows for standard median rents (and allowable increases) to be fixed at the city district level. O'Sullivan, F. (2015, July 9). Berlin's New Rent Control Laws are Already Working. *Citylab*. Retrieved from <http://www.citylab.com/housing/2015/07/berlins-brand-new-rent-control-laws-are-already-working/398087/>.



Photo credit: Shutterstock / Brooklyn Scribe

Jurisdictions that have adopted rent regulation attempt to temper its potentially damaging effects by limiting the number of units that enter into regulation (new units are usually exempt), by allowing larger rent increases at vacancy, and by allowing for deregulation of units over time.

2. Other Regulations of Tenancy

Regulation of leases unrelated to the price of rent is another tool used to protect tenants from pressures to move out. These protections need not be tied to price regulations, though they often are. In some jurisdictions, they apply even to market-rate units as an independent form of tenant protection.

Just-cause eviction requirements restrict landlords' ability to evict tenants—even at the end of a lease-term—other than for a specific cause enumerated by statute.⁴¹ In Washington, D.C., Oakland, San Francisco, and all cities in New Jersey,

⁴¹ In addition to legislative efforts, some have called for a renewed litigation effort to establish a common law implied covenant of security of tenure for residential leases. See Roisman, F.W. (2008). *The Right to Remain: Common Law Protections for Security of Tenure*. *North Carolina Law Review* 86(3), 817–858.

acceptable causes for eviction include nonpayment of rent, violation of a lease obligation, an illegal act, a landlord's personal use of the property, sale or conversion of the unit, rehabilitation or renovation, or discontinued housing use.⁴² Connecticut extends just-cause eviction protections to elderly, disabled, or blind tenants living in developments with five or more units.⁴³ Seattle applies just-cause eviction requirements to month-to-month tenancies.⁴⁴ Landlords must also typically give notice before moving to evict a tenant for cause.

Jurisdiction-wide good-cause eviction standards can help establish a security of tenure that would be useful for preventing displacement in gentrifying neighborhoods. As an added layer of security,

⁴² Anti-Eviction Act, N.J. Stat. Ann. §§ 2A:18–61.1 (Lexis 2016); D.C. Code § 42-3505.01 (Lexis 2016); Just Cause for Eviction Ordinance, Oakland, California Code of Ordinances § 8.22.300 to 8.22.390 (Lexis 2016); San Francisco, Ca. Admin. Code § 37.9 (Lexis 2016).

⁴³ Conn. Gen. Stat. § 47a-23c (Lexis 2016).

⁴⁴ Seattle, Wa. Municipal Code § 22.206.160(C) (Lexis 2016); see also Seattle Department of Construction & Inspections. Just Cause Eviction Ordinance. Retrieved from <http://www.seattle.gov/dPd/codes-rules/codes/justcauseordinance/default.htm>

Connecticut and New Jersey have also enacted statutory protections that prevent landlords from raising rent as a means of circumventing just-cause eviction protections. These regulations are not the same as rent stabilization—rather than setting a process or a schedule for raising rents, they allow tenants to contest rent increases as unduly burdensome.⁴⁵

Similar to just-cause eviction standards, requiring landlords to offer longer-term leases can help prevent displacement by producing more stable tenancies. Some European countries as well as U.S. rent stabilization regimes feature minimum lease durations of two or more years. Even in the absence of explicit price restrictions, longer-term leases can serve as a form of rent-stabilization because prices will have to be set for subsequent years, either by fiat or formula, in the initial agreement rather than by the market.⁴⁶

Finally, many cities also provide tenants protections when landlords seek to sell a property. Examples of substantive protections include requiring approval of a majority of residents;⁴⁷ providing for a long notice period before a conversion/sale;⁴⁸ giving tenants (or the jurisdiction itself) a right to purchase units before they can be offered to

outside buyers;⁴⁹ and/or giving tenants a right to remain as a renter or renew a tenancy following a conversion or sale.⁵⁰

3. Anti-Harassment Laws

As rents rise, the incentive to encourage lower-income households to vacate units rises accordingly, and thus, where tenant protections exist, incidents of tenant harassment can also rise. Some cities have enacted anti-harassment ordinances to address this risk. These laws both extend existing substantive protections by prohibiting certain pressure tactics used by some landlords and provide resources for affirmative enforcement of these laws.

Some jurisdictions have adopted laws directly aimed at addressing landlord harassment. Oakland and New York City have defined “tenant harassment” broadly enough to outlaw tactics such as tampering with doors and locks, unreasonably slow repair timelines, frivolous eviction proceedings, threatening to report tenants to immigration enforcement, removing tenant’s possessions from an apartment, repeatedly calling or knocking even after being asked to stop, etc.⁵¹ Both cities include a catchall clause as well, which prevents their lists of prohibited behaviors from being read as closed universes. Of course, banning too broad a swath of behavior may have unintended consequences such as encouraging quickly performed but shoddy repairs.

Giving tenants a right to sue for such harassment, especially when combined with a multiple

⁴⁵ Conn. Gen. Stat. § 47a-23c (Lexis 2016); N.J. Stat. § 2A:18–61.1 (2016).

⁴⁶ France, for instance, allows for rent to be revised once a year during a three- to six-year lease, but only if a clause in the lease-contract has a term specifying the authority to raise the rent. Moreover, a landlord may never raise the rent above a quarterly average of the index of construction costs. Global Property Guide. (2006, May 25). France: Tenant Protection Laws are Onerous. Retrieved from <http://www.globalpropertyguide.com/Europe/france/Landlord-and-Tenant>.

⁴⁷ D.C. Code Ann. §§ 42-3402.02 - 42-3402.03 (West); District of Columbia Office of the Tenant Advocate. District of Columbia Tenant Bill of Rights. Retrieved from <http://ota.dc.gov/sites/default/files/dc/sites/ota/publication/attachments/2015%2007%2003%20OTA%20DC%20Tenant%20Bill%20of%20Rights%20ODAI-OTA%20FINAL.pdf>.

⁴⁸ See, e.g., City of Chicago, Department of Business Affairs and Consumer Protection. Notice of Condo Conversion and Your Rights as a Tenant. Retrieved from <http://www.cityofchicago.org/content/dam/city/depts/bacp/Consumer%20Information/condominiumordtenantsrightsnotice012012.pdf>; City of Boston. Municipal Code Ch. 10-2.10(2).

⁴⁹ See, e.g., Baltimore City Code Art. 13, Subtitle 6-1. Retrieved from <https://law.resource.org/pub/us/code/md/baltimore.code.article.13.pdf>.

⁵⁰ See, e.g., New York City allows this for condo or co-op conversions that involve rent-stabilized units. NYC Rent Guidelines Board. Rent Stabilization FAQs. Retrieved from <http://www.nycrgb.org/html/resources/faq/rentstab.html>.

⁵¹ Oakland, Ca. Code of Ordinances Sec. 8.22.640 (2015). Tenant Protection Act, N.Y.C. Local Law No. 7 (2008). N.Y. Admin. Sec. 27.2093.

damages provision, can be a powerful tool.⁵² However, the low-income tenants may lack the resources to press these claims. Expanding resources for lawyers and organizers and encouraging tenants' rights disclosures can help. Permitting government enforcement of the law may also help ensure enforcement.

Oakland provides one model. The City Attorney has civil enforcement powers when there is a "pattern and practice" of harassment by a given landlord or at a given property.⁵³ Although such enforcement power would likely require tips from tenants, the burden of reporting to the City Attorney is significantly lower than filing a case and the City Attorney can identify patterns of harassment that may be hard for individual tenants to uncover.

In addition to anti-harassment laws, New York City has a geographically focused model designed to prevent harassment. In certain "anti-harassment zones", to obtain a permit for any significant alteration or construction project, an owner of a qualifying rental property must first obtain a "certificate of no harassment" (or a waiver) from the city's housing agency.⁵⁴ To obtain this certificate, the owner must pay a fee and submit a form containing information about the work to be performed, past applications, and, if an LLC, all members of the company. The owner must submit a list of all tenants and rent paid going back three years; but the full inquiry period for the city's investigation

is over a decade.⁵⁵ The agency that receives these documents then reaches out to local community organizations and local elected officials and publishes notice. It then does an investigation, including taking any written or oral testimony tenants may wish to provide, to determine whether harassment has taken place. If harassment is found, the case is reviewed in an administrative court to determine if the agency may refuse to issue the certification of no harassment.⁵⁶ The City Council is considering extending the program citywide.⁵⁷

The main concern with this provision is that it is likely to slow development and make it more expensive for all property owners even for the majority of landlords who do not harass their tenants, thereby preventing the development needed to absorb new demand. Programs like this might reach a compromise by developing a fast-track option for owners that have a good track-record for observing tenants' rights or by targeting owners with bad track-records for heightened scrutiny. Focusing on construction also may be too narrow a target: tenants, especially rent-regulated tenants, may be just as likely to face harassment absent any significant construction activity.

⁵² New York City allows tenants to sue for harassment as a violation of the housing code. Fernandez, M. (2008, March 14). New Law Lets Tenants Sue Over Harassment. *The New York Times*. Retrieved from http://www.nytimes.com/2008/03/14/nyregion/14tenants.html?_r=0.

⁵³ Oakland, Ca. Code of Ordinances Sec. 8.22.670(2).

⁵⁴ These rules are contained in zoning resolutions: § 23-013 *et seq.*; § 93-90 *et seq.*; § 96-00 *et seq.*; § 98-80 *et seq.*

⁵⁵ New York City Application for Certificate of No Harassment. Retrieved from <https://www1.nyc.gov/assets/hpd/downloads/pdf/certification-of-no-harassment-and-exemption.pdf>. New York City's law requires a look-back period going back to 2004 or 15 years, whichever is later. But, this period can be extended by the city at its discretion. New York City Zoning Resolution § 93-90(a)(11), (15).

⁵⁶ New York City Zoning Resolution § 93-90(c)(7)(ii). There is also a cure provision that, in certain cases, allows the landlord to set aside a significant portion of new construction for permanent affordable housing without subsidy. New York City Zoning Resolution § 93-90(a)(5).

⁵⁷ New York City Council, Legislative Research Center. Requiring a Certificate of No Harassment for the Demolition or Material Alteration of Residential Buildings. Retrieved from <http://legistar.council.nyc.gov/MeetingDetail.aspx?ID=458975&GUID=A4F32C2C-519F-4987-9A1E-CF0D66CA008B&Options=info&Search=>

4. Know and Enforce Your Rights Assistance

Access to information and representation helps tenants enforce existing legal protections, like the ones discussed above. Information about rights and access to assistance in asserting them are necessary in order to make the existence of those legal protections meaningful.

The availability of lawyers may help tenants avoid eviction by helping tenants negotiate more favorable settlements and by discouraging frivolous eviction suits. Preliminary studies and pilot programs in New York and Boston provide support for the notion that legal representation improves outcomes for tenants.⁵⁸ New York City, San Francisco, Washington, D.C. and Massachusetts are all considering some form of expanded access to legal services for low-income tenants.⁵⁹

The main challenge of this strategy is fiscal – providing legal assistance is expensive. To manage costs, funding can be targeted geographically to high-displacement-risk neighborhoods, but this presents potentially insurmountable problems of

measurement as well as disadvantaging individuals who may benefit from legal assistance but live in lower-risk neighborhoods. It may be cheaper to fund “unbundled” legal services, where a lawyer helps with a portion of a case rather than providing full representation. One recent study from Boston has indicated outcomes for tenants were similar whether services are for a portion or the entirety of a case, while a more informal study of the pilot program in San Francisco indicated the opposite.⁶⁰

Tenant organizers and rights disclosures are also important tools for protecting tenants’ rights. Widespread dissemination of information about tenants’ rights and available resources can raise awareness of legal protections and pursuit of legal remedies. Provision of tenant-rights resources at convenient locations and times can also make a significant difference in terms of ensuring access to available resources.

B. Strategy: Assistance for Households that Move

Some jurisdictions have implemented policies that address the challenges of finding a new place to live in a high-cost city.

1. Preferences for Subsidized Housing

In high-cost markets, subsidized housing units are in especially high demand. If a jurisdiction wants to assist households that are displaced, it could create a preference for such households in the selection process for housing it subsidizes, a strategy that has been employed by some cities.

For example, Portland, Oregon has provided a preference for subsidized housing in a specific area

⁵⁸ Some studies have focused on full scope legal representation and some on “unbundled” (i.e. limited scope) legal advice. Seron, C., Frankel, M., Van Ryzin, G., Kovath, J. (2001). The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City’s Housing Court: Results of a Randomized Experiment. *Law & Society Review*, 35(2), 419–434; Fisher, F.A. & Newton J.B. (2008, February). *Volunteer Lawyer for a Day Project Report: A Test of Unbundled Legal Services in the NYC Housing Court*. Retrieved from https://www.nycourts.gov/courts/nyc/housing/pdfs/vlfdreport_0208.pdf; Greiner, D.J., Pattanayak, C.W., Hennessy, J. (2012, March 12). How Effective Are Limited Legal Assistance Programs? A Randomized Experiment in Massachusetts Housing Court. Retrieved from <http://www.law.uchicago.edu/files/files/Greiner%20Paper.pdf>.

⁵⁹ Bekiempis, V. (2014, December 11). Housing: The Other Civil Rights Movement. *Newsweek*. Retrieved from <http://www.newsweek.com/should-there-be-free-lawyers-housing-court-289660>. New York City Council, Legislative Research Center. (2016). Providing Legal Counsel for Low-Income Eligible Tenants Who Are Subject to Eviction, Ejectment or Foreclosure Proceedings. Retrieved from [https://malegislature.gov/Bills/189/House/H1560](http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1687978&GUID=29A4594B-9E8A-4CSE-A797-96BDC4F64F80&Options=ID%7CText%7C&Search=%22covered+proceeding%22;The 189th General Court of the Commonwealth of Massachusetts. (2015). Bill H. 1560: An Act Establishing a Right to Counsel in Certain Eviction Cases. Retrieved from <a href=). Washington, D.C. is currently funding a study on the issue.

⁶⁰ John and Terry Levin Center for Public Service and Public Interest, Stanford Law School. (2014, May). San Francisco Right to Civil Counsel Pilot Program Documentation Report. Retrieved from <http://www.sfbos.org/Modules/ShowDocument.aspx?documentid=49157>.

of the city for residents or their descendants who were displaced or residents at risk of displacement from the area due to city urban renewal policies.⁶¹ New York City and San Francisco have policies that give preference for a share of new subsidized units to households who live nearby.⁶² Policies that give a preference for new housing based on a geographical link between the existing residency of a household and the newly available unit are seen as ways to combat gentrification because they can help households stay more permanently in a neighborhood (i.e., in rent-restricted subsidized housing) where they might otherwise be priced out.

While they may be seen as ways to maintain diversity in the long-run in neighborhoods undergoing change, these policies can run the risk of reinforcing segregation in the short-term (or in the long-term if the expected demographic shifts do not materialize). New York City's policy is currently being challenged in court on fair housing grounds;⁶³ and numerous suburban jurisdictions have faced challenges based on tenant selection policies (typically tenant selection policies that provide preference for local residents over people

seeking to move from other jurisdictions).⁶⁴ In August of this year, the U.S. Department of Housing and Urban Renewal rejected a marketing plan for a HUD-subsidized development in San Francisco that included application of that city's preference; according to news reports, it is unclear what this action will mean for the future of San Francisco's policy.⁶⁵ Of course, the existence of a legal challenge (like in New York) or a concern about application in a particular instance (as appears to be the case in San Francisco) does not mean that community-based preferences will be impermissible in all instances.

Cities might also consider a preference for available subsidized units based on displacement risk without limiting the preference to households already living in the same community as the new housing. Indeed, HUD just agreed to allow San Francisco to impose such a preference in the federally subsidized development where it earlier rejected application of the city's geographically-based preference.⁶⁶ A preference for at-risk households may be an effective strategy for assisting some of the households likely to be displaced in gentrifying neighborhoods. But if targeted to

⁶¹ Portland Housing Bureau. N/NE Homeownership Application for Preference. Retrieved from <https://www.portlandoregon.gov/phb/70384>.

⁶² New York City Housing Development Corporation & New York City Department of Housing Preservation & Development. (Updated March 2012). *Marketing Guidelines* at 27. Retrieved from <http://www1.nyc.gov/assets/hpd/downloads/pdf/developers/marketing-guidelines.pdf>; City and County of San Francisco. Neighborhood Resident Housing Preference. Retrieved from <http://sfmohcd.org/neighborhood-resident-housing-preference>.

⁶³ The pending challenge alleges that the city's community preference policy discriminates based on race because of the high levels of neighborhood racial segregation in New York City. First Amended Complaint, *Winfield v. City of New York*, 15-cv-05236 (S.D.N.Y. 2015).

⁶⁴ In recent years, several municipalities have been sued by the United States Department of Justice or by fair housing organizations, alleging that the use of particular residency preferences in overwhelmingly white non-Hispanic communities has functioned to make housing unavailable on the basis of race. For instance, *Yorktown*, in Westchester County, and *Smithtown*, in Suffolk County, both recently settled suits by fair housing organizations alleging that the use of residency preferences in their Housing Choice Voucher programs allowed them to accept a much greater proportion of white applicants than were on the waiting list, thus making housing unavailable on the basis of race. *Vargas v. Town of Smithtown*, 07-CV-5202 (E.D.N.Y. 2007); *Fair Housing Justice Center v. Town of Yorktown*, 10-CV-9337 (S.D.N.Y. 2010). More recently, the United States Attorney for the Eastern District of New York sued the town of *Oyster Bay*, in Nassau County, for civil rights violations related to the use of residency preferences in its housing programs. *United States of America v. Town of Oyster Bay*, 14-CV-2317 (E.D.N.Y. 2014).

⁶⁵ Dineen, J. K. (2016, August 17). Feds reject housing plan meant to help minorities stay in SF. *San Francisco Chronicle*. Retrieved from <http://www.sfchronicle.com/politics/article/Feds-reject-housing-plan-meant-to-help-minorities-9146987.php?b0de125679>.

⁶⁶ Gaiser, S. (2016, September 21). Deal prioritizes affordable housing for at-risk residents. *SF Bay*. Retrieved from <https://sfbay.ca/2016/09/21/deal-prioritizes-affordable-housing-for-at-risk-residents/>

gentrifying neighborhoods, the policy could hasten gentrification by facilitating moves of lower-income residents out of the neighborhood.

In addition, in order for such a policy to be meaningful, there needs to be a reliable measure of displacement risk—either individual indicators (possibly residence in market-rate housing; substandard living conditions; severe rent burden) or neighborhood-based indicators (possibly residence in a neighborhood that has high housing costs or in a neighborhood where rents are on the rise)—that also reduces the number of eligible households. In a high-cost city, many or most of the income-eligible households may have characteristics indicating risk of displacement.

2. Relocation Assistance & Regulation of “Buyouts”

Providing assistants—both financial assistance and relocation assistance—to residents who are facing a move because of displacement is another strategy high-cost cities might take.

In some cases of direct displacement, some cities mandate that landlords pay the relocation costs for tenants in some circumstances. In Washington, D.C., tenants are eligible to receive relocation assistance when their building is demolished or substantially rehabilitated, no longer used, or converted into condominiums.⁶⁷ San Francisco requires that owners of rent stabilized units pay relocation payments to tenants in a number of no-fault eviction circumstances.⁶⁸ New York City’s rent stabilization rules similarly require that a



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landlord pay relocation expenses or find alternative housing for a tenant evicted from a rent stabilized unit because of the owner’s intention to demolish the building.⁶⁹

Even when relocation payments are not mandated, in cities where tenants have the right to remain in their units, they often occur in practice. Cities interested in assisting tenants at risk of displacement, and interested in protecting the efficacy of their rent regulation laws, may be interested in regulating these more informal “buy-out” transactions. Recently, New York City,⁷⁰ San

⁶⁷ Washington, D.C. Office of Tenant Advocate (2006, December). *Tenant Survival Guide*. Retrieved from http://ota.dc.gov/sites/default/files/dc/sites/ota/publication/attachments/Tenant_Survival_Guide.pdf.

⁶⁸ Tenants Rights to Relocation for No-Fault Evictions, San Francisco Admin. Code § 37.9C (2006). Retrieved from <http://sfrb.org/section-379c-tenants-rights-relocation-no-fault-evictions>.

⁶⁹ N.Y. Comp. Codes R. & Regs. tit. 9, § 2524.5(a)(2).

⁷⁰ New York City passed three laws addressing buyouts, which established that (i) an owner must wait 180 days to make a new offer after a tenant rejects a buyout offer; (ii) in connection with a buyout offer, an owner may not threaten a tenant, contact a tenant at odd hours, or provide false information to a tenant; and (iii) when making a buyout offer, an owner must inform a tenant of “their right to stay in their apartment, to seek an attorney’s advice, and to decline any future contact on a buyout offer for 180 days.” City of New York. (2015, September 3). Mayor de Blasio Signs Three New Laws Protecting Tenants from Harassment. Retrieved from <http://www1.nyc.gov/office-of-the-mayor/news/590-15/mayor-de-blasio-signs-three-new-laws-protecting-tenants-harassment>.

San Francisco,⁷¹ Berkeley,⁷² and Santa Monica⁷³ passed laws to regulate buyout negotiations and agreements between rent-regulated tenants and landlord—requiring rights disclosures to tenants and other tenant protections in the negotiation and agreement processes. San Francisco, Santa Monica, and Berkeley will make some information about buyout agreements publicly available.

Cities can also help displaced tenants by providing access to housing counseling services to help tenants find new homes and/or prepare for the rental search process, drawing on existing models of counseling programs that target homeowners⁷⁴ and voucher recipients⁷⁵. For example, such a program could help with search assistance, education and information about how to assess the quality and characteristics of a new unit, and information about schools and other services in neighborhoods

across the city. It could also help tenants prepare financially to go on the rental market—providing assistance with credit counseling or repair and help pulling together the materials for a rental application. Finally, they can provide one-time financial assistance that can be extremely valuable to a low-income household looking for a new unit: help with moving expenses and help with a security deposit.

3. Unified Tenant Screening Report

Cities can also consider ways to make the apartment search process more efficient for landlords and tenants. Whether in market-rate or subsidized housing, tight rental markets mean that landlords can be extremely selective regarding tenant selection. To guide their decision, landlords might require credit checks, court records, proof of income, letters of reference, records of rental history, or any combination thereof. Tenants with checkered histories on any of these records—who are disproportionately low-income and people of color—are likely to be rejected multiple times, having paid for multiple screening reports. Moreover, since different landlords look for different indicators, tenants may not have a clear idea of what is required of them.

Seattle is considering one way to alleviate these obstacles for tenants by creating a portable unified tenant screening report.⁷⁶ To develop such a report, city officials would convene relevant stakeholders to negotiate over the proper information to include in a report. To ensure its use, the city could broker an agreement—whether legally enforceable or not—among landlords to only use the standard report, prohibit the use of any other report, or provide benefits to landlords

⁷¹ San Francisco's ordinance requires that, prior to any buyout negotiation, landlords must provide tenants with a disclosure form approved by the city's Rent Board and file a notification form with the Rent Board. In addition, the law requires that buyout agreement must be in writing, and must disclose that tenants have the "right to rescind the agreement within 45 days of execution," in addition to other required disclosures. The Rent Board will make both the notification forms publicly available and will include the agreements in a publicly available searchable database. City and County of San Francisco Rent Board. New Ordinance Amendment Regulating Buyout Agreements. Retrieved from <http://sfrb.org/new-ordinance-amendment-regulating-buyout-agreements>.

⁷² Berkeley's requires that landlords provide notice of rights and establishes a right to rescind the buyout agreement within 30 days. It also states that landlords must file agreements with the city, and the city will make data about them public. City of Berkeley. Rent Stabilization Board: New Tenant Buyout Ordinance. Retrieved from http://www.ci.berkeley.ca.us/Rent_Stabilization_Board/Home/Tenant_Buyout_Ordinance.aspx

⁷³ Santa Monica's law requires that landlords provide tenants with notice of their rights, and requires that the buyout agreement must be in writing and also include statement of the tenant's rights. The agreements must be filed with the city, which will make information available upon request. City of Santa Monica. (Revised 2016, July 1). Buyout Notice and Information. Retrieved from https://www.smgov.net/uploadedFiles/Departments/Rent_Control/Forms_and_Petitions/Buyout_Rights_Disclosure_Form.pdf.

⁷⁴ See, e.g., Neighborhood Housing Services of New York City. First Time Homebuyer Program. Retrieved from http://www.nhsnyc.org/index.php?option=com_content&view=article&id=54:first-time-homebuyer-program&catid=117&Itemid=121&showall=&limitstart=&lang=en.

⁷⁵ See, e.g., Baltimore Regional Housing Partnership. Baltimore Housing Mobility Program. Retrieved from <http://www.brhp.org/>.

⁷⁶ Seattle Housing Affordability and Livability Agenda Advisory Committee. (2015, July 13). *Final Advisory Committee Recommendations to Mayor Edward B. Murray and the Seattle City Council*. Retrieved from http://murray.seattle.gov/wp-content/uploads/2015/07/HALA_Report_2015.pdf.

who use the document. To prevent tenants from being charged multiple times, the report could be provided to tenants rather than landlords. Tenants could then bring it with them in their apartment search. Once a unified report were agreed to, it would provide the baseline for study about which factors best predict rent payment, as well as for negotiation about which factors should and should not be included.

If designed well, a unified screening report could benefit both landlords and tenants. Landlords would have the benefit of uniformity and potentially cost savings, as well as a report that contains information that, based on the collective wisdom landlords and possibly other evidence, is most indicative of likelihood to pay rent. Tenants would benefit from more predictability and lower cost, as well as having a voice in what should be included in the report.

Conclusion

One of the most significant challenges facing many cities today is how to maintain affordability and diversity in the face of dramatic increases in housing demand and housing prices. In this policy brief, we have explored policy tools that have been used to address the challenges of rapidly rising rents, including both strategies to increase housing supply and approaches to provide protections for existing tenants. Much work remains to be done to determine whether, in what conditions, and in what combination, the above explored possibilities have the largest impact with the fewest unintended consequences.

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