

February 24, 2014

John Swiecki
City of Brisbane
50 Park Place
Brisbane, CA 94005

RE: Housing Element Policy Best Practices

Dear John,

As jurisdictions across San Mateo County prepare their local Housing Elements for the latest cycle of the Regional Housing Needs Allocation (RHNA) process, a coalition of concerned community groups has formed to engage with these local processes and provide constructive input to the drafts that are submitted to HCD for consideration. Borne out of concern for the increasing inability of average people to live in the communities in which they work, the interest of this coalition is to serve as a resource to policy makers and housing staffs and to help ensure that the housing elements adequately reflect the community's urgent affordable housing need. Enclosed is a document that we hope will serve to inform staff and policymakers about options that are available to them to meet their community's escalating housing needs.

Given the gravity of our current housing situation, the loss of vital tools and funding sources for affordable housing creation, we maintain that it is time for our local jurisdictions to make a determined effort to address the affordable housing crisis in our communities. We encourage you to review the enclosed inventory of policies with an eye toward incorporating as many as possible in your housing element draft. The current housing element cycle is the last substantive opportunity jurisdictions will have to make a comprehensive review of affordable housing policies for another eight years. On behalf of a community in need, we ask you to take the greatest possible advantage of it.

For more information, please call Joshua Hugg, Program Manager at Housing Leadership Council of San Mateo County, at jshugg@hlcsmc.org or (650) 872-4444, 2#.

Sincerely,

*Housing Leadership Council of San Mateo County
San Francisco Organizing Project/Peninsula Interfaith Action
Greenbelt Alliance*

cc. Paul McDougall, California Department of Housing and Community Development

Housing Element Policy Best Practices

Version 1.0

Updated: February 21, 2014

Introduction:

Policies, programs, and parcels. Every eight years cities and counties across the Bay Area are charged with identifying policies, programs, and parcels that will help ensure their respective communities take stock of their current housing needs and identify how they will meet the challenges of changing demographics, new workers, and shifting funding sources in the future.

Given the changes that have taken place over the last several years, the need for robust housing policies in the Bay Area has reached critical levels. Cuts in local, state and federal funding sources; the continuing search to find an alternative to local inclusionary housing programs scuttled by the *Palmer v. City of Los Angeles* case; and the loss of local Redevelopment Agencies have created an environment in which the creation of inclusive communities that meet larger sustainability goals is becoming exceedingly difficult. In addition, while Plan Bay Area promotes greater sustainability and equity for the region in the long term, its emphasis on growth in Priority Development Areas has the potential to add to these challenges in the short term.

This compilation of policies is intended to serve as a resource for local government practitioners and housing stakeholders to help meet the community challenges that are felt so acutely here in the San Francisco Bay Area. The Bay Area is known across the globe for its innovation and dynamic culture and so this resource is also meant to be a living document that will help to capture policy innovations and best practices in the housing arena as they are identified and make them available to those who wish to make our region as livable, prosperous, and inclusive as possible.

If you have comments, questions or additions to make, please contact Joshua Hugg, Program Manager, Housing Leadership Council of San Mateo County - (650) 872-4444, 2# or jshugg@hlcsmc.org.

Acknowledgements

Thank you to the following organizations who contributed to the creation of this resource:

- Association of Bay Area Governments - www.abag.ca.gov
- East Bay Housing Organizations - www.ebho.org
- HIP Housing - www.hiphousing.org
- Law Foundation of Silicon Valley - www.lawfoundation.org
- Housing Leadership Council of San Mateo County - www.hlcsmc.org
- Northern California Land Trust - www.nclt.org

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Anti-Displacement Policies

Summary and Benefits:

More intensive development in Priority Development Areas and other transit-served locations carry with it the risk of displacement of existing low income populations. To ensure that Transit Oriented Development (TOD) serves all economic levels, provisions need to be in place to protect against such displacement. Local Housing Elements should address the risk of both direct and indirect displacement and should include anti-displacement policies in their implementation programs.

Potential Policies:

- Establish a policy commitment and orientation to development without displacement.
- Consider displacement risks early in the development process. By the time displacement becomes apparent, the process may be too far gone to halt or reverse.
- Focus on both direct displacement (evictions, demolitions, etc.) and indirect displacement (rent increases, cultural displacement as existing retail/entertainment/services uses are replaced with uses serving higher income populations).
- Stabilize existing lower income residents/housing. Consider such policies as rent stabilization, just cause eviction ordinances, one-for-one replacement of any housing removed from the supply, condominium conversion controls.
- Make affordable housing a key component of development strategy from the beginning. It's far easier to include affordable housing early on than to try to incorporate after property values (and land costs) rise.

Specific policies/programs to consider:

- Rent Stabilization
- Just Cause Eviction Controls
- Relocation Benefits and First Right of Return
- Return Foreclosed Properties to the Lower Income Supply
- One-for-One Replacement Housing Requirements
- Preservation of Expiring Use Properties
- Small and Scattered Site Acquisition in PDAs and Other Transit-Served Locations
- Land Banking in PDA and Other Transit-Served Locations
- Infill Incentives Tied to Affordable Housing Provisions

Many of these policies are described in more detail elsewhere in this document.

Model Ordinances/Useful Sources:

- City of East Palo Alto, link: <http://www.ci.east-palo-alto.ca.us/index.aspx?NID=469>

Condo conversion requirements

Summary and Benefits:

Condominium conversions refer to the process of converting a multi-unit rental property held in single ownership into one in which the units may be individually bought or sold. Jurisdictions generally receive condominium conversion requests when selling housing becomes more profitable than renting or leasing. Under California law, tenants have certain protections such as the exclusive right to purchase the property under the same terms that the unit is being offered to the general public and 180 days' notice of intent to end the tenancy (§66452.19). Though tenants enjoy these protections, they often cannot afford the necessary down payment or the monthly mortgage to own their home. Hence, while condo conversions may offer a more affordable homeownership opportunity for some households seeking to buy, they can displace existing tenants and reduce a jurisdiction's rental housing stock without increasing housing supply. Through their zoning power, jurisdictions have the authority to put in place additional restrictions on condominium conversions. These ordinances may be justified due to jurisdictions' limited housing stock and their state mandate to maintain an adequate housing supply for all economic segments of the population.

As of May 2013, 55 of the Bay Area's 109 jurisdictions have some sort of condominium conversion ordinance. These ordinances greatly vary in the types of protections they offer to tenants and may or may not impose numerical limits on condo conversions.

Potential Policies:

- Stricter provisions for condominium conversions through additional tenant protections including: relocation assistance, lifetime leases, restrictions on rent increases, discounts for tenants on the sale price of the property
- Limitations on the number of units that can be converted in any given year
- Provide one for one replacement of converted units
- Require that a percentage of converted condos be sold at affordable prices
- Mandate payment of a fee into an affordable housing trust fund

Model Ordinances/Useful Sources:

- League of California Cities Primer on Condominium Conversions:
<http://www.cacities.org/UploadedFiles/LeagueInternet/c5/c5e504c3-e261-4986-b983-c964db35d7c0.pdf>
- City of Lafayette requires owners to pay tenants moving expenses and limits the number of conversions, link: <http://ci.lafayette.ca.us/Modules/ShowDocument.aspx?documentid=742>
- City of Larkspur imposes restrictions on rent increases, requires that some of the converted units be sold at below market rates, and limits the annual number of conversions, link: <http://www.codepublishing.com/ca/Larkspur/html/larkspur18/larkspur1838.html#18.38.030>
- City of San Carlos limits the number of annual conversions based on the vacancy rate and provides tenants with relocation assistance, link: <http://www.codepublishing.com/ca/sancarlos/html/sancarlos17/sancarlos1748.html#17.48.020>

Just Cause Eviction

Summary and Benefits:

Just cause eviction ordinances protect tenants from arbitrary, discriminatory or retaliatory evictions, while ensuring that landlords can lawfully evict tenants as long as they have a good reason. Just cause eviction ordinances are an important tool for promoting tenant stability, particularly in low-vacancy and expensive housing markets where landlords may be tempted to evict tenants in order to obtain higher rents. Benefits of just cause eviction ordinances include the following:

- limits the ability of landlords to evict existing tenants
- protects tenants who have short term (month-to-month) leases
- slows down rapid increases in rent
- stabilizes communities by slowing down evictions and decreasing turnover rates

Potential Policies:

- Partner with local non-profit to provide tenant rights education and mediation services
- Consider just cause eviction ordinances or provisions that:
 - Specify actions that can lead to a just cause eviction, such as:
 - Failure to pay rent
 - Use of premises for illegal purposes
 - Failure to follow rules and regulations the landlord has for the tenants of the building
 - Failure to meet obligations toward the property as required by state law
 - Landlord seeks to recover possession of the rental unit for landlord's own use as principal residence or for the use of landlord's family members as principal residence
 - Landlord seeks to permanently remove rental unit from the housing rental market
 - Require landlord to specify just cause in the notice of termination
 - Allow expedited review of unjust evictions

Model Ordinances/Useful Sources:

- City of East Palo Alto, link: <http://www.ci.east-palo-alto.ca.us/index.aspx?NID=469>
- City of Oakland:
<http://www2.oaklandnet.com/Government/o/hcd/o/RentAdjustment/DOWD008793>
- City of Berkeley: <http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=9284>
- PolicyLink - Just Cause Eviction Controls:
<http://www.policylink.org/site/pp.aspx?c=1kIXLbMNJrE&b=5138069>

Preservation of Existing Affordable Housing

Summary/Current Problem:

Preserving the supply of affordable rental housing, both subsidized and unsubsidized, enables people to stay in their homes and communities (part of the larger anti-displacement strategy). Under programs such as Section 8 and the Low-Income Housing Tax Credit program (LIHTC), owners agree to maintain affordable rents for a set period, usually 15-30 years, in exchange for federal subsidies. When those agreements expire, owners can re-enroll in the affordability programs or convert their properties to market-rate units. In some cases, private owners can leave subsidized programs before rent restrictions expire by prepaying their mortgages after a set number of years. Another reason for loss in affordable units is when owners are ineligible due to financial/physical problems or the property is located in an area with high vacancy rents and high contract rents.

Based on the National Housing Preservation Database, CHPC compiled a list of federally-assisted properties at-risk of conversion due to the expiration date of a rental assistance contract or the maturing of a HUD mortgage with affordability restrictions. For San Mateo County, 430 affordable units are at-risk within the next year and another 164 affordable units will be at-risk by 2016.

Benefits:

- Preservation typically costs about one-half to two-thirds as much as new construction (HUD). According to a 2013 study by the Center for Housing Policy on affordable multifamily rental housing, savings from rehabilitation are realized even when accounting for the full lifecycle of a property. Although costs such as maintenance expenses may be higher over the life of a rehabilitated property, rehabilitation is still more cost effective than new construction. According to the study, when controlling for location, project size, average unit size, building type, and year of development, new construction costs between \$40,000 and \$71,000 more than acquiring existing developments.¹
- Preservation has positive for the community. For example, in gentrifying neighborhoods, preserving affordable rental housing promotes economic diversity, creating/sustaining a mixed-income neighborhood. Helping residents stay in their neighborhoods allows them to take advantage of improvements such as increased access to transit, jobs, and services.

Potential Policies:

- Update inventory of at-risk and lost units/properties
 - Track changes in affordability levels, subsidy type, conversion status, building conditions, conditions that may cause loss of properties in 5, 10, 20, 30 years (tax-credit time limits, loan maturities, etc.)
- Require one-to-one replacement of any affordable units that are razed, removed from stock, or converted to condominiums
- Provide/require platform for public input (such as public hearings or comment period) during the 12 months when owner gives notice with intent to discontinue subsidies or expiration of rent restriction

¹ Maya Brennan, Amy Deora, Anker Heegaard, Albert Lee, Jeffrey Lubell, and Charlie Wilkins. 2013. "Comparing the Costs of New Construction and Acquisition-Rehab In Affordable Multifamily Rental Housing: Applying a New Methodology for Estimating Lifecycle Costs," Center for Housing Policy, 11.

- Provide funding for rehabilitation and/or purchase of at-risk properties
 - Prioritize and utilize funds from HOME and CDBG for preservation (South San Francisco, Housing Element Policy 3-2, 3-3)
 - Early coordination to identify sources of financing to enable non-profit ownership
- Waive permit fees for affordable housing rehabilitation conducted through CDBG or other San Mateo County programs (San Bruno, Housing Element Program 1-1)

Model Ordinances/Useful Sources:

- California Housing Partnership Corporation, "Local Preservation Strategies":
<http://chpc.net/dnld/LocalPresStrat012512.pdf>
- City of South San Francisco, Housing Element Policy 3-2, 3-3
- City of San Bruno, Housing Element Program 1-1

Preservation of Mobile Home Park Housing

Summary and Benefits:

Mobile home parks are a hybrid of rental housing and ownership housing; in most parks, residents own their homes and rent the spaces where the homes are located. Mobile home parks represent one of the few remaining sources of unsubsidized affordable housing in California, and they also provide opportunities for homeownership to individuals and families who might not be able to afford other housing purchase options.

As the economy continues to rebound and development picks up, mobile home parks are particularly at risk for closure. Park owners, eager to profit off of rising land costs, seek to close parks so that the land can be sold and converted to other uses. Current examples from Santa Clara County include Buena Vista Mobile Home Park in Palo Alto¹ and Winchester Ranch Mobile Home Park in San Jose². In both cases, owners have indicated their intention to close the parks and sell the land to real estate development companies who, in turn, will construct luxury apartments in their place.

Displacement of mobile home park residents due to rent increases, eviction, or closure of the park can have very serious consequences for the park residents and the community. Despite the terminology, mobile homes are generally not mobile—it is difficult to move a mobile home once it is installed in a park, and older mobile homes generally cannot be moved. As such, if a mobile home park resident is evicted, or if her park closes, she is likely to lose her investment in the mobile home in addition to losing the right to continue living in her community.

Pursuant to Government Code section 65583(a), which requires cities to analyze their existing housing stock, cities should do an assessment of their existing mobile home parks and identify mobile home parks that are at risk of closure during the planning period. Government Code section 65583 (c)(4), which requires housing elements to include programs to preserve and improve the jurisdiction's existing affordable housing stock, requires jurisdictions to develop and implement programs to prevent the conversion or closure of mobile home parks.

¹ See, e.g., <http://www.npr.org/2013/10/15/227807022/silicon-valley-trailer-park-residents-fight-to-stay>

² See, e.g., http://www.mercurynews.com/opinion/ci_24927008/mobile-home-parks-san-jose-needs-retain-this.

Potential Policies:

Every city that has one or more mobile home parks should have the following types of local policies to preserve this important source of affordable housing:

- **Mobile home park rent control/rent stabilization protections**—the California Mobile Home Residency law provides mobile home park residents with certain protections above those afforded other tenants under California law, including protections against eviction without good cause. However, the state does not regulate rent increases by mobile home parks. Cities can and do impose local mobile home park rent control regulations—over 100 cities in California have rent control or rent stabilization for mobile home parks. Typical ordinances limit rent increases

to in-place residents to a certain percentage, although some may provide a procedure for larger increases where a park owner is seeking to recoup expenses of capital improvements to the property.

- **A stand-alone zoning category for mobile home parks**—zoning that makes mobile home parks the sole allowable by-right use for a particular parcel or area creates extra protection against the conversion or closure of mobile home parks to other uses.
- **An ordinance regulating the conversion of mobile home parks to cooperative/condominium ownership**—subdivision of mobile home parks to convert to resident ownership (similar to condominiums) is an increasingly common phenomenon. While some conversions may be initiated by residents as a means of preserving the park from sale or closure, others are initiated by the owner against the majority of residents' wishes. SB 510, passed in 2013, makes clear that local governments have the authority to block such conversions where they are opposed by park's residents. Cities should have local ordinances governing the subdivision of mobile home parks, and these ordinances should specify that the city will deny approval of the subdivision of the park where it has not been demonstrated that a majority of park residents support the subdivision.
- **An ordinance regulating mobile home park closures**—cities may place conditions on mobile home park owners' ability to close the park, including requiring substantial relocation benefits and assistance to park residents who are facing displacement. Every city that has a mobile home park or parks should have an ordinance that has strong protections for mobile home park residents, including requirements that a park owner who is seeking to close the park must provide financial and logistical assistance that will allow residents to access homeownership opportunities that are as good as or better than the housing that they are being forced to leave. The ordinance should take into consideration community amenities like schools, access to public transit, parks, jobs, and infrastructure. The ordinance should also lay out a clear process and procedure for how the city will determine whether or not to approve a park closure, and the process should be protective of residents' rights.

Cities that do not have one or more of these policies should incorporate programs for adoption of such policies into their housing elements.

Additionally, if a city has identified a mobile home park that is at risk of closure during the planning period, the housing element should include concrete programs for assisting in the preservation of that park. Cities may consider helping to facilitate a resident purchase of the park (if the residents are amenable), helping to facilitate a non-profit purchase of the park, and/or using city funds (e.g., CDBG) to help preserve the park.

Model Ordinances/Useful Sources:

- HCD's Building Blocks website has a sample housing element program here:
http://www.hcd.ca.gov/hpd/housing_element2/PRO_conserve.php
- **Sample Ordinances:**
 - City of Sunnyvale Conversion Ordinance
<http://sunnyvale.ca.gov/Portals/0/Sunnyvale/CDD/Housing/Mobile%20Home%20Parks/2983-12.pdf>
 - Santa Cruz County,

- § Conversion Ordinance:
<http://www.codepublishing.com/ca/santacruzcounty/html/SantaCruzCounty13/SantaCruzCounty1330.html>
- § Rent Ordinance:
<http://www.codepublishing.com/ca/santacruzcounty/html/SantaCruzCounty13/SantaCruzCounty1332.html>
- City of San Jose Mobile Home Rent Ordinance:
<http://www.sanjoseca.gov/DocumentCenter/View/2096>
- City of Goleta Rent Control Ordinance: <http://qcode.us/codes/goleta/> (Ch. 8.14)
- City of Escondido Rent Control Ordinance:
<http://www.escondido.org/Data/Sites/1/media/pdfs/MobilehomeRentControlArticle5.pdf>
- Resources for helpful input on policy options:
 - California Housing and Community Development Department (HCD), Housing Elements and Regional Housing Need Allocation, Link: <http://www.hcd.ca.gov/hpd/hrc/plan/he/>
 - Local legal services programs:
 - Residents' association as mobile home parks:
 - Golden State Manufactured-Home Owners League (GSMOL) <http://www.gsmol.org/>

RDA protections – Continue compliance with RDA protection

Summary and Benefits:

Although redevelopment agencies were dissolved in early 2012, most of the State Community Redevelopment Law was not repealed. Of particular importance is making sure that existing redevelopment-assisted housing remains in compliance with long-term restrictions on rents and tenant incomes. Some advocates have argued that obligations for affordable housing production and provision of replacement housing are also still in effect.

Potential Policies:

- Housing elements should describe policies and procedures for ongoing monitoring of redevelopment-assisted units
- Noticing rules for eviction – 90 day vs. 30 day
- Continue to require one-for-one housing replacement in redevelopment areas, with displaced households having first priority for occupancy in replacement units and new affordable units.

Model Ordinances/Useful Sources:

- California Health & Safety Code § 33410 et seq. governing Redevelopment Agency relocation assistance, Link: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=hsc&group=33001-34000&file=33410-33418>
- City of Mountain View, Tenant Relocation Assistance: https://library.municode.com/HTML/16508/level3/PTIITHCO_CH36ZO_ARTIXTEREAS.html
- Cornerstone Partnerships, Strengths, Challenges & Opportunities: An Assessment of Affordable Homeownership Programs in San Mateo County, Link: <http://affordableownership.org/publications/smc-assessment/>

Relocation Benefits, Replacement Housing, and First Right of Return

Summary and Benefits:

Projects assisted with Federal and State funds are subject to requirements to provide relocation assistance to households displaced by those projects. And lower income housing units removed from the supply by such projects generally have to be replaced with new units that are comparable in size and affordability. Similar requirements also applied to redevelopment projects. However, privately financed development projects are often exempt from such requirements. As PDAs are developed with higher density housing, there is a risk that existing housing occupied by lower income households will be demolished and the tenants displaced.

Relocation benefits ensure that displaced households are able to find comparable housing that they can afford. One-for-one replacement ensures that new development doesn't come at the expense of the affordable housing supply.

Potential Policies:

- Require relocation benefits at the same level as required by the Uniform Relocation Act for households displaced by new housing development, particularly in PDAs. These requirements should apply equally to publicly financed projects and private projects.
- Require that when units affordable to lower income households are removed from the supply, they must be replaced with comparable units on a one-for-one basis, within 3-4 years of demolition.
- Provide displaced tenants with the first right to return to replacement housing units and to affordable housing units in PDAs.

Model Ordinances/Useful Sources:

- California Health & Safety Code § 33410 et seq. governing Redevelopment Agency relocation assistance, Link: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=hsc&group=33001-34000&file=33410-33418>
- California Uniform Relocation Act, Government Code § 7260 et seq., Link: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=07001-08000&file=7260-7277>

Rent stabilization

Summary and Benefits:

Deed restricted affordable housing properties offer protections from market vacillations and provide stability for families. In contrast, market-rate units fluctuate with changes in the housing market. With the Bay Area housing market bouncing back, rent increases have exceeded 20% per year in some municipalities. These rapid rent increases have made homes that were previously affordable to lower-income families and households on a fixed income too expensive.

Rent stabilization ordinances limit the amount that rents are allowed to increase as market values increase. Landlords continue to obtain ever higher returns on their rental properties while tenants have the certainty that their rents will not increase more than a certain amount each year. Once a tenant moves out vacancy decontrol takes effect, that is, rents “reset” to market rate values for new occupants. While the Costa-Hawkins Act of 1995 limits the use of rent stabilization for new construction, these rules can apply to units built prior to February 1, 1995.

Below are a few examples of the diverse approaches to rent stabilization undertaken by Bay Area jurisdictions:

Jurisdiction	Applicability	Maximum Allowable Rent Increase
East Palo Alto	Most Rental Properties	80% of the increase in the Consumer Price Index
Hayward	All rental properties	5% annual increase
Los Gatos	Properties with three or more rental units	Cannot exceed annual increase of 5% or 70% of the increase in the Consumer Price Index
San Rafael	Mobile Homes	75% of the increase in the Consumer Price Index
San Jose	Applies to triplex or larger units built before 1979. Does not apply to condominiums, single family homes, or properties paid by federal subsidies.	8% annual increase If rent is increasing for first time in 24 months limited to 21%

Potential Policies:

- Consider implementing controls on the rate of rent increases - note the distinction between rent *control* and rent *stabilization*. Rent control generally applies to setting the price of rent, while rent stabilization speaks to the rate of rent increase. New York City has both.
- Consider implementation of Just Cause provision for tenant evictions

Model Ordinances/Useful Sources:

- City of East Palo Alto, link: <http://www.ci.east-palo-alto.ca.us/index.aspx?NID=469>
- City of Hayward Rent Stabilization Ordinance, link:
<http://www.echofairhousing.org/images/ResidentialRentOrdinance-1.pdf>
- Town of Los Gatos, link <http://www.losgatosca.gov/faq.aspx?tid=31>
- San Rafael municipal code, link:
<http://library.municode.com/index.aspx?clientId=16610&stateId=5&stateName=California>
- City of Berkeley Guide to Rent Control, link:
http://www.ci.berkeley.ca.us/Rent_Stabilization_Board/Home/Guide_to_Rent_Control.aspx
- San Jose, link: <http://www.sanjoseca.gov/index.aspx?NID=2313>

Housing Overlay Zone (HOZ)

Summary and Benefits:

Using a “carrot,” rather than a “stick,” approach to encourage the creation of additional affordable housing, Housing Overlay Zones (HOZ) provide a flexible tool that sits on top of conventional zoning designations. These areas offer developers incentives to provide the community with specific amenities and community benefits in exchange for specific concessions by the city. On sites where land is not zoned for residential use but a city would like to see affordable housing built, a housing overlay district may eliminate the time consuming process of amending a general plan to construct such housing.

Public Advocates, a Bay Area law firm specializing in social justice issues, points out:

To achieve these goals, HOZ policies are centered around four basic parameters that can be customized to best fit local needs:

1. Geographic scope of applicability;
2. Baseline affordability qualifications for developments to access HOZ incentives;
3. Incentives given to qualified developments; and
4. The extent of exemptions from discretionary project-level approvals.

Determining the most effective balance of these factors will depend on work by local communities; however, in general, more effective HOZs will have broad geographic applicability including in lower-density or commercial zones, meaningful affordability qualifications, valuable incentives, and reliable exemptions from discretionary approvals.

Potential Policies:

- Consider the implementation of a Housing Overlay Zone over locally designated Priority Development Areas (PDAs), and transit-accessible areas, to incentivize affordable housing inclusion in areas close to amenities and transit alternatives.
- Among the potential incentives it could include:
 - Enhanced density bonuses - possibly to encourage parcel assembly as well
 - Reduced parking ratios
 - Expedited permit processing
 - Increased allowable heights
 - By-right zoning or administrative approval of projects
 - In-lieu fees
 - Impact fee waivers

Model Ordinances/Useful Sources:

- **City of Menlo Park**, link:
http://www.menlopark.org/departments/pln/he/amendments/993_HE_Affordable_Housing_Overlay.pdf, <http://www.codepublishing.com/CA/menlopark/?MenloPark16/MenloPark1698.html>
- **City of Alameda**, link:
http://alameda.granicus.com/MapView.php?meta_id=37217&view=&showpdf=1
- **King County, Washington**, link
<http://www.kingcounty.gov/socialservices/Housing/ServicesAndPrograms/Programs/HousingDe>

velopment/Incentives.aspx

- **Orange County**, Affordable housing incentive withing commercially zoned properties, Llink:
[http://library.municode.com/HTML/11378/level3/TIT7LAUSBURE_DIV9PL_ART2THCOZO
CO.html#TIT7LAUSBURE_DIV9PL_ART2THCOZOCO_S7-9-148.1PUIN](http://library.municode.com/HTML/11378/level3/TIT7LAUSBURE_DIV9PL_ART2THCOZO_CO.html#TIT7LAUSBURE_DIV9PL_ART2THCOZOCO_S7-9-148.1PUIN)
- **Public Advocates**, *Factsheet: Housing Overlay Zones*,
[http://www.publicadvocates.org/sites/default/files/library/affordable_housing_overlay_zone fact
_sheet_7-27-10.pdf](http://www.publicadvocates.org/sites/default/files/library/affordable_housing_overlay_zone_fact_sheet_7-27-10.pdf)

Incentive Zoning/Density Bonus and Public Benefit Zoning

Summary and Benefits:

Incentive Zoning/Density Bonus and Public Benefit Zoning are two “market-based strategies” that confer property rights (such as additional density) to a developer in exchange for public benefits to the community. Incentive Zoning, also known as “Density Bonus,” grants developers the right to build additional space in exchange for providing community amenities. This will work if the developer calculates that the value of the incentive provided is greater than the cost of providing the amenity. It is, therefore, voluntary. In addition to higher densities, other incentives commonly include reduced parking or modifications to height and setback requirements. Benefits range from affordable housing to accessible roof gardens, ground level public plazas, public art, miniparks and other desired amenities.

Public benefit zoning (PBZ) – also known as Land Value Recapture - is based on the premise that land use changes and enhancement enacted by a public agency contribute to increased real estate values. It is reasonable to expect that if a private landowner benefits from public action that benefits are extended towards the community as well.. In addition to the value created by the upzoning for the developer (as under incentive zoning) additional value is extracted from the landowner and dedicated to community benefits.

Both PBZ and Incentive Zoning can be based on negotiations, adjudicative and discretionary approvals, and ministerial entitlement based on compliance determination. But for PBZ, development agreements – in the case of significant developments - and areawide application, as in specific plans, work best. The tool of “tiers” of additional density/height has been utilized, with additional requirements for each additional tier. The benefits for PBZ are very similar to those of incentive zoning. In both cases, these benefits are in addition to existing Development Impact Fees, Inclusionary Housing, and Commercial Linkage Fees.

Potential Policies:

- For localities with Inclusionary Housing and/or Commercial Linkage Fees, both mechanisms can lead to additional units or fees required over existing regulations, either on a case-by-case basis or on the basis of a plan.
- For localities without, PBZ can lessen political opposition to Inclusionary Housing and/or Commercial Linkage Fees by tying those programs to increased densities and plan changes that increase the value of the land.

Model Ordinances/Useful Sources:

- Nico Calavita & Alan Mallach. 2009. Inclusionary Housing, Incentives and Land Value Recapture,” in *Land Lines*, January 2009 (Available in the Lincoln Institute of Land Policy Website)
- Dyett & Bathia. 2012. “Santa Monica Zoning Ordinance Update. Community Benefits and Incentives: Issues, Options, and Case Studies,” Prepared for the City of Santa Monica, August 2012.
- Patrick J Rohan & Eric Damian Kelly. 2013, *Incentive & Bonus Zoning*. Matthew Bender & Co Inc.
- <http://affordableownership.org/events/webinar-12613-using-upzoning-to-increase-affordability/>
It includes a presentation on the differences and similarities between Incentive Zoning and LVR

Additionally, a White Paper on the Theory, Economics and Practice of Land Value Recapture is being finalized for publication in March 2014. The paper, authored by Nico Calavita and Marian Wolfe, is being prepared for the East Bay Housing Organizations and the Metropolitan Transportation Commission.

Inclusionary Housing

Summary and Benefits:

With the emphasis on Priority Development Areas under SB 375, the difficulty of eliciting any appreciable “natural affordability” in these targeted growth locations increases substantially. Dedicating a percentage of housing units produced to deed-restricted affordability ensures that lower income households have access to transit and helps increase transit ridership, since lower income households are more likely to use transit. The ability of jurisdictions to mandate inclusionary housing was severely restricted in 2009 with the California Appellate Court ruling *Palmer v. City of Los Angeles*, which determined that inclusionary requirements on rental units conflicted with the 1995 Costa-Hawkins Act, which regulates rent control. Ownership units are not constrained. The recent surge in construction of for-rent units, many of which, are being approved with “condo maps,” may be an opportunity to ensure a degree of affordability should they convert to ownership units.

From Nonprofit Housing Association of Northern California’s (NPH) *Inclusionary Housing Advocacy Toolkit*:

- [Inclusionary Housing] creates housing choices in communities: IH policies ensure that every community provides homes affordable to a range of income levels. By providing these housing options, a community’s labor force—hospital workers, retail clerks, and childcare workers—can afford to live in the communities they serve. Hardworking families can have access to good schools and safe neighborhoods. Moreover, typical NIMBY opposition is often mitigated by creating both market-rate and affordable homes in a single development.
- [Inclusionary Housing] creates new affordable homes without needing new government funding: IH policies have broad appeal to local governments because these policies help provide affordable housing needs with little extra cost to governments. Furthermore, IH policies complement other affordable housing programs, like bond financing, rent and development subsidy programs, and tax credits.
- [Inclusionary Housing] levels playing field for all developers: By adopting IH policies, local governments remove uncertainty from the development process. It gives a clear message to landowners and developers so that all can make informed financial decisions before building.

Potential Policies:

- City adopts an inclusionary housing ordinance for ownership units with no less than 20% of affordable units in new construction. Tiered income policies should also be considered with a smaller percentage of affordable units required for deeper affordability, or a range of affordability levels that equate to 20%. Affordability should be maintained for a minimum of 55 years with an ideal of permanent affordability. Consider inclusion of an in-lieu fee sufficient to exceed the number of units that would have been built on-site. Consider affordable units specially set aside for seniors.
- City adopts a development impact fee that includes an option to build units in-lieu of paying the fee.
- City leverages Land Value Recapture concepts as part of a larger Community Benefits Program within Priority Development Areas or other areas targeted for growth.

Model Ordinances/Useful Sources:

- Nonprofit Housing Association of Northern California (NPH), *Inclusionary Housing Advocacy Toolkit*, http://www.nonprohousing.org/pdf_toolkits/InclusionaryTool.pdf

- California Rural Housing Association, *Inclusionary Housing Database*: http://www.calruralhousing.org/?page_id=110
- Institute for Local Government (ILG), *California Inclusionary Housing Reader*: http://www.ca-ilg.org/sites/main/files/file-attachments/resources_California_Inclusionary_Housing_Reader.pdf
- Nonprofit Housing Association of Northern California (NPH), *Protecting Inclusionary Housing Requirements*, December 5, 2013, Link: <http://www.21elements.com/Download-document/603-Protecting-Inclusionary-Requirements.html>
- Goldfarb and Lipman Attorneys, *Presentation: Inclusionary Housing - Current Legal Issues*, January 23, 2014, Link: <http://www.21elements.com/Download-document/653-The-Current-State-of-Inclusionary-Housing-1/22/13.html>
- San Mateo County 21 Elements, Development Impact Fee 21 Jurisdiction Grand Nexus Study, Link: *To be added in 2014 to www.21elements.com.*