Affordable Housing

Solutions for creating and maintaining housing options for all income levels

Business License Tax Helps Housing

Increase the business license tax for owners of residential rental units in order to prevent displacement and fund affordable housing

The Impact

An increase in the business license tax on gross receipts for owners of residential rental properties in Berkeley is estimated to raise $2.98 million to $3.45 million dollars for affordable housing and homelessness prevention in the city.

Description

Both Measure U1 and Measure O apply to landlords with more than five residential units and increase the business license tax by 1.5 to 1.8 percent of the gross receipts. These are general taxes with funds committed to preventing homelessness and funding affordable housing developments. These taxes cannot be passed on to tenants.

Where It's Been Implemented

Voters in the City of Berkeley passed Measure U1 in 2016 with a 75 percent approval rate, raising the business license tax on residential rental properties by 1.8 percent of gross receipts, from 1.081 to 2.88 percent. This measure generates about $3.5 million yearly.

Despite having significantly fewer rental properties and a much smaller population than Berkeley, East Palo Alto passed Measure O in 2016 that raised the business license tax on residential rental properties by 1.5 percent of gross receipts. It is estimated to generate $600,000 per year.

Key Drivers

In San Mateo County, as of June 2020, the average rent for a one-bedroom apartment was $2,863 per month, compared to $1,250 in 2011, a significant increase for tenants. The rising value of housing was due primarily to a shortage of units in comparison to the number of new jobs, not improvements made by owners and landlords.

Taxing these windfall profits is a way to create funding for affordable housing without discrediting any of the hard work of the property owner. The tax increase acknowledges that it is the members of the community and their contributions that help make the location desirable to live in, and puts some of the profit toward building lasting, diverse communities.

Key Factors for Success

Raising the business license tax in California requires a simple majority vote by local voters, or a two-thirds majority vote if it is deemed a "special tax." In Berkeley, a committee of affordable housing and homelessness prevention experts was appointed to advise the city on how to spend the tax, which allowed it to not be deemed a special tax and ensured the money was used correctly by fiscally tracking how much went into different programs

Measure U1 in Berkeley exempts small landlords with less than five units, units with historically low rents and units for low-income tenants. New construction is exempt from the tax for 12 years after construction is completed in order encourage new building.

Key Obstacles

Cities can expect strong opposition from business and property owners to an increase in the business license tax. It might even result in a countermeasure like Measure DD in Berkeley. Some people have expressed concern about the tax being passed on to residents, but rents can be raised without a tax increase as long as there is local demand for housing. The tax does not change California's rent stabilization law, which limits rent increases to 5 percent each year.

Timeline to Implementation

In July 2015, the idea to raise the business license tax was introduced by the Measure U1 campaign in Berkeley City Council. In March-May 2016, the campaign did community research to gauge what the community thought and valued. The public approved the measure on November 8, 2016.

History

The idea of taxing windfall profits, which are circumstantial gains in profit, is not new. In Adam Smith's "The Wealth of Nations," often called the "Bible of Capitalism" and the foundation of market economics, he distinguishes between "building rent" and "ground rent." Building rent is the amount necessary to operate the building and still turn a profit. The amount above this amount is ground rent, which is driven by the desirability of the location. Smith suggests that ground rent be taxed for the benefit of the community that made the location valuable in the first place. An increase in the business license tax does so.

References and Resources

Dr. Stephen Barton, retired Berkeley Housing Director and Co-Chair of the Measure U1 campaign, stephenbarton@live.com, 510-215-9773

East Palo Alto Measure O

Berkeley Measure U1

Economic & Policy Analysis of Tax

Campaign Contribution Regulation

Restrict or ban campaign contributions from real estate developers to elected officials

The Impact

Restricting campaign contributions from real estate developers will ensure that elected officials are fair in their support for or opposition to housing issues. Affordable housing solutions will be considered more equitably, and wealthy real estate stakeholders will present less of a barrier to affordable housing.

Description

In California, and the Bay Area in particular, real estate is incredibly valuable, and developers are some of the wealthiest and most influential stakeholders in the political realm. They are the largest source of political income, and this influence has significantly impeded the progress of affordable housing measures. Heavy campaign contributions by real estate interests have reduced trust in elected officials.

Restricting contributions and donations from stakeholders with a vested interest, such as real estate developers, will ensure that City Council members are making decisions for the good of the public. It will build trust in local government, accelerate affordable housing initiatives and even the playing field for candidates during campaigns and elections.

Where It's Been Implemented

The Los Angeles City Council was the first jurisdiction in the nation to approve campaign contribution regulation. In January of 2020, the final ordinance was enacted that amended the city's laws regarding developer campaign contributions.

Key Drivers

Affordable housing is one of the most pressing issues in the Bay Area. Housing prices and rental rates are increasing at unprecedented rates, and the average income is on the decline. Workers are being forced to leave their areas and commute greater distances, contributing to more traffic congestion and greenhouse gas emissions. Younger people are also leaving the area as they cannot afford Bay Area rental prices at their early career stages. Passing new laws that increase the amount of affordable housing has proven to be extremely difficult.

Real estate developers are perhaps the greatest barrier to updating legislation, as they do not profit as much from affordable housing. A study done by the Action Center on Race and the Economy (ACRE) found that between 2008 and 2018 the California Association of Realtors, the California Apartment Association and the California Building Industry Association collectively spent $10.7 million to help elect state officials and $44.7 million to support the legislation they wanted. Their steady contributions to elected officials have progress on addressing the housing crisis and reduced trust in local government.

Key Factors for Success

Campaign contribution regulation should have strong support from all council members. Alternative forms of contributions or donations from developers should be restricted and regulated as well. The Los Angeles ordinance regulates campaign contributions from developers, but does not limit behested payments, fundraising contribution, or bundled contributions, which means developers can still have others contribute on their behalf or contribute directly to organizations that a candidate supports.

Public support is essential to drive adoption of a campaign contribution ordinance. While financial contributors are important to campaigns, the support of constituents and the public is more important to most elected officials.

After an ordinance is approved, a key factor to success is a strong, comprehensive, easily searchable database that will protect candidates receiving donations and will allow for enforcement. In Los Angeles, the city’s ethics and planning departments are developing their own database.

Key Obstacles

Real estate developers will likely pose the largest obstacle to this ordinance because the adoption of an ordinance like this will reduce their future profits.

To be fair, the ordinance should apply to all developers. Unfortunately, the Los Angeles ordinance does not apply to major subcontractors on development projects due to tracking issues.

Timeline to Implementation

In Los Angeles, the ordinance to limit developer donations was passed in December 2019. It will take effect by the general election of 2022, which allows time for an accessible database to be developed.

Next Steps

A city could switch to a complete public campaign financing system like in Arizona, or a system similar to one in San Diego, where contributions from nonindividual entities are banned.

References and Resources

Nicholas Greif, Chief of Staff for Los Angeles Councilmember David Ryu, nicholas.greif@lacity.org

Sean McMorris, California Common Cause, mcmorris23@gmail.com, 626-382-6994

LA Ordinance on developer contribution restrictions

LA City Council motion

Housing Impact Fees

Establish housing impact fees for developers undergoing new construction projects

The Impact

Housing impact fees incentivize developers and landlords to offer affordable housing and contribute to government funds for affordable housing developments.

Description

Housing impact fees are collected on new developments to help address the "jobs-housing fit," meaning the range of housing affordability needs that fits the range of community incomes. These fees are a per-square foot or per-unit fee assessed and are then used to fund affordable housing.

Where it's been implemented

A number of jurisdictions throughout San Mateo County have already enacted housing impact fees on residential and/or commercial developments, including Belmont, Brisbane, Burlingame, Colma, Daly City, East Palo Alto, Foster City, Menlo Park, Portola Valley, Redwood City, San Bruno, San Carlos, San Mateo City, San Mateo County and South San Francisco. Many other cities throughout the Bay Area and California have taken similar measures. However, there are still some jurisdictions in San Mateo County that have yet to enact housing impact fees, and others that may choose to adjust them.

A "Grand Nexus Study" was done in 2014 with 15 San Mateo County jurisdictions, along with Palo Alto. By partnering to do a collaborative study, consulting costs were cut by 75 percent. The Grand Nexus Study also quantified the revenue if every jurisdiction within the county participated in this adoption and estimated that $470 million could be generated in impact fees from all developments proposed at that time in the county.

Key Drivers

The housing crisis has been getting worse throughout California and the Bay Area. According to a 2020 report from the California Housing Partnership, there has been an 8 percent decline in California renters' income since 2000, and there has been a 40 percent increase in median rent prices, making it harder for renters to stay here. A family of four in San Francisco needs to make 197 percent of the area's median income in order to afford a median-priced home, according to a 2019 study from the City of San Francisco's budget and legislative analyst.

Local city governments are trying to implement a number of different solutions to increase affordable housing, and impact fees have gained traction. Government intervention is one of the only ways to maintain affordable housing options in today's market economy.

Key Factors for Success

In order for impact fees to be successful, the housing market in the jurisdiction should be healthy enough to generate a profit that can help fund affordable housing. Ideally, cities within a county or other designated area will work together and conduct a collaborative nexus study to accelerate adoption. The Grand Nexus Study in San Mateo County should simplify the process for the remaining jurisdictions because much of the analysis can be adapted to those cities, which share similarities with the ones in the original study.

Key Obstacles

Having remaining jurisdictions without impact fees agree to fund an initial nexus study together may be difficult because cities work on different timelines and have varying budgets. The impact fee ordinance will be adopted most easily if a collective nexus study is done to share the cost. Developers are likely to oppose impact fees due to the extra costs they present.

Timeline to Implementation

First, jurisdictions need to complete a nexus study demonstrating the relationship between new housing, jobs and the need for affordable housing. Next, a feasibility study is required to determine the impact of proposed fee options on developer profit. The implementation strategy needs to be determined for each city, including how annual adjustments will be made, alternatives to payment and details on appropriate government use of the fees. Finally, a housing ordinance needs to be written or updated to include the housing impact fee.

Public information from the nexus study can be used to accelerate studies of the specific jurisdictions, and pursuing a collaborative study can reduce cost and time spent.

The cities participating in the Grand Nexus Study in 2014 received a final report in March 2016 from 21 Elements, a group working on San Mateo County housing needs. Subsequently, participating cities operated on their own timelines to adopt impact fees. After implementation, reviews of the impact fees were done by 21 Elements to measure their efficacy and to determine whether adjustments to the fees needed to be made.

References and Resources

Joshua Abrams, Grand Nexus Study Project Manager, abrams@bdplanning.com, (510) 658-2827

List of 21 Elements primary contacts for each jurisdiction in San Mateo County
Guide to Housing Impact Fees in San Mateo County
Grand Nexus Study of San Mateo County
Association of Bay Area Governments Affordable Housing Toolkits
San Carlos affordable housing ordinance

Limited Equity Housing Cooperatives

Provide subsidies or other public financing to help lower-income families own their own homes

The Impact

Limited Equity Housing Cooperatives (LEHCs) offer an opportunity for lower-income families to own their homes and establishes a communal responsibility that isn’t present in most multifamily developments. Because of the limit of equity that can be earned on resale of a member’s unit or share, the LEHC preserves the same number of affordable housing units over time.

Description

A limited equity housing cooperative is a multifamily development in which tenants buy a share instead of renting, with restrictions to resell that unit at a certain price so equity is essentially limited and affordability is preserved. LEHCs are operated and owned by groups like tenant associations and nonprofits. They have bylaws created by tenants in order to foster a sense of community responsibility. Tenants purchase a unit and pay a monthly membership fee that contributes to communal costs like building maintenance and reserves.

Cities play a role in LEHC development by offering property tax breaks and low- or no-interest loans for purchasing and constructing a development; by supporting local nonprofits that are willing to help develop LEHCs; and through right-of-first-refusal laws that allow the creators of LEHCs the opportunity to purchase subsidized rental properties when they are no longer subsidized.

Where It's Been Implemented

Washington, D.C., has some of the most successful LEHCs in the nation. While the LEHCs themselves are developed by tenant associations and nonprofits, the local government supports the initiative through the Tenant Opportunity to Purchase Act and Tenant Opportunity to Purchase Assistance.

Key Drivers

Currently, most affordable housing models are rentals with strict lease terms, and oftentimes the affordability of the units is not preserved after the original development contract expires. In Foster City, 74 units are set to become market-rate properties or begin to transition to market rate at the end of 2020 because the developer's agreement with the city will sunset, meaning some tenants could face rent increases of almost $3,000. While Foster City officials moved all of the tenants facing displacement up on the affordable housing waiting list, there is no guarantee there will be enough affordable housing units or housing units with rents comparable to the previous development.

LEHCs, by comparison, recognize that the need for affordable housing is not transitory. While initial affordability comes from government assistance, that affordability is maintained through the tenants themselves, who agree to a certain level of resale restriction that balances individual economic prosperity with community affordability.

Key Factors for Success

The support of local government is crucial to the success of limited equity housing cooperatives. Without substantial governmental support through public housing subsidies, low-interest loans and right-of-first-refusal laws that allow tenants the opportunity to purchase subsidized rental properties, it can be difficult to bypass the initial affordability issue when purchasing and constructing a development. Zoning laws can also make it difficult to turn certain former single-family homes into multifamily LEHCs, like condominiums or duplexes. The Linden Street Homes project built by the Northern California Land Trust in Oakland is a great example of a building that fits in a single-family home neighborhood but is actually a multifamily LEHC.

Since nonprofit organizations are typically the most common developers of LEHCs, it is also key to have not only a strong nonprofit presence, but also a strong partnership between local government and nonprofit affordable housing developers.

Key Obstacles

Because LEHCs are democratically governed by the tenants themselves or a nonprofit, there is always a risk of affordability measures being voted out by the tenants themselves if they are frustrated by the limited equity. A way to avoid this is by adopting a shared appreciation model so individual wealth can be built while affordability is still maintained.

Timeline to Implementation

In Washington, D.C., the Tenant Opportunity to Purchase Act that allows for tenants to organize, purchase their buildings and create limited equity housing cooperatives has been in place since 1980 and was amended in 2018 to no longer include single-family homes. City First Homes in D.C. is a nonprofit organization that is focused on tenant ownership and long-term affordability. It helps establish limited equity and shared equity cooperatives.

References and Resources

Ian Winters, Executive Director, Northern California Land Trust, ian.winters@nclt.org
Limited Equity Housing Cooperatives info by Local Housing Solutions
City First Enterprises Affordable Housing Examples

Mandatory Rent Registry

Establish an annual reporting requirement for property owners/managers regarding rents and other information during the annual business license renewal process

The Impact

This registry informs the City Council about the rental market, housing trends and housing stock throughout the city, allowing transparency within the housing market to increase.

Description

A rent registry requires property owners/managers or landlords to annually report data regarding residential rents and other relevant information to a citywide database. All residential rental properties, including single-family homes and accessory dwelling units are required to report. This information will allow the city to collect, monitor and analyze actual rents throughout the city in order to make fair and well-informed decisions regarding affordable housing.

In El Cerrito, Calif., property owners are required to join the registry when their business license renewal forms are due, ensuring that there is one, clear deadline for all landlords. Failure to comply with the policy will result in legal enforcement and fines.

Once a City Council approves an ordinance requiring a registry, all landlords will be required to keep an up-to-date and accurate account of their properties and tenants. This information will be compiled by the city, and a community manager will report on it every year to the City Council.

Where It's Been Implemented

The El Cerrito City Council adopted an ordinance in May 2019 that requires an up-to-date rent registry. Cities such as Los Angeles and San Jose have adopted similar ordinances, but no jurisdictions in San Mateo County have taken this step.

Key Drivers

Wrongful eviction, although illegal, is still a significant problem in California, particularly in the Bay Area. Landlords are often eager to get rid of tenants with reduced rents due to rent stabilization so they can increase profits. One of the fraudulent methods to wrongfully evict tenants is the "owner move-in eviction." In this case, landlords can evict tenants if they, or a close relative, plan to move into the property and stay for at least three years. However, after evicting the current tenant, the landlords often rent to a new tenant at a much higher price.

Oakland, Calif., is one city that has tried to combat this practice. In 2017 city officials noticed a strong spike in owner move-in evictions. They amended their housing laws to require the signing of paperwork confirming the move-in. However, in 2019, an investigative team at the NBC Bay Area obtained Oakland's eviction records under the California Public Records Act and found that only 16 landlords submitted the required paperwork following an owner move-in eviction, despite 71 owner move-in evictions occurring. The city's lack of cohesive enforcement did not provide enough data to make the rent registry useful.

Key Factors for Success

In order for a City Council to support an ordinance requiring a registry, there should be strong renter support. Automated processing systems that are integrated across government branches make the rent registry process easier and require fewer staff hours. In addition, there must be good communication between program administrators and developers of the tracking system.

Key Obstacles

Landlords and owners of rental properties are likely to argue against a registry because of the program fees. There also is added expense for staff who compile the information, monitor the registry and report it to the City Council each year. Enforcing the ordinance requires labor, too. In a large city like San Francisco, establishing and maintaining a rent registry is estimated to cost $1.7 million to $3.6 million annually, according to a report from the city's budget and legislative analyst.

Timeline to Implementation

In El Cerrito, the ordinance was adopted in May 2019. One month later, the policy went into effect. Ideally, the rent registry should be developed months ahead of time and then rolled out to be on the same schedule as the business license renewal program.

References and Resources

Aissia Ashoori, Affordable Housing Analyst for the City of El Cerrito, aashoori@ci.el-cerrito.ca.us, 510-215-4361

Jennifer Kauffman, Rent Program Management Analyst for the Housing Authority of the City of Alameda, JKauffman@AlamedaHsg.org

El Cerrito Ordinance No. 2019-03

Alameda Rent Ordinance Regulation 20-01

Missing Middle Housing

Shifting from usage-based codes to form-based zoning codes allows for the integration of multi-unit housing types in walkable neighborhoods

The Impact

Missing middle housing increases the affordability and availability of housing, reducing the stress of the worsening housing crisis on moderate-income buyers. It does so while maintaining the "small town feel" that current residents hope to preserve.

Description

Missing middle housing addresses the shortage of housing options for moderate-income buyers by offering duplexes, triplexes, fourplexes, bungalow courts, townhomes, etc. in neighborhoods. These types of housing support walkable cities, local retail and public transportation services. They are low-rise, reducing the impact on current neighborhoods in terms of view and atmosphere. They are offered at a price level between single-family houses and mid- to high-rise apartment buildings.

Where It's Been Implemented

Minneapolis, Minnesota, approved the Minneapolis 2040 Comprehensive Plan in December 2018 which rezones parts of Minneapolis to allow for more “middle” housing to be built instead of the previous single-family requirement. After this policy was implemented, the Missing Middle Housing Pilot Program began taking requests for proposals (RFPs) for middle housing developments to be financed through the city.

Key Drivers

As the middle class grows, especially with a younger generation looking for first homes, the high cost of housing often puts home ownership out or reach. Increasing the diversity of housing types is essential when considering the diversity of occupations, backgrounds and incomes today. In addition, many people are looking to live in walkable neighborhoods without the stress of purchasing and maintaining a single-family house.

An increase in the availability of middle housing also allows for shorter commutes for some workers who are forced to live outside the city due to increased housing costs. Housing closer to jobs lowers carbon emissions.

Key Factors for Success

Missing middle housing needs the support of current residents. As single-family homes continue to escalate in value, a significant portion of the population has fewer housing options, and many workers are forced into longer commutes. Over time, if enough workers move away from a city, the business employing them may leave, too.

This initiative needs the support of a city in order to properly finance middle housing developments. The good of the community is served because many people in jobs that are essential to the functioning of a city (such as education, service and retail) make moderate incomes and cannot afford single-family homes.

Key Obstacles

Conventional zoning is a principal obstacle to the integration of middle housing. It is regulated primarily by land use, distinguishing single-family from multi-family and commercial. Zones are also defined and controlled by certain numeric values, such as floor area ratio and density. This makes mixed middle housing in neighborhoods noncompliant with many zoning laws. Low-rise residential neighborhoods are typically zoned as single-family zones, which prevents structures from being converted to duplexes, triplexes, etc., in these neighborhoods.

Current homeowners and residents in single-family neighborhoods will likely pose the greatest obstacle. They are comfortable in their current neighborhoods and may fear any change in density or the number of cars on their street.

Solution to Obstacles

Form-based coding is an alternative to conventional zoning that prevents the integration of middle housing. It uses the physical form of structures to determine the zoning laws rather than the usage.

Timeline to Implementation

In Minneapolis, the city did studies that demonstrated the need for middle housing and more affordable housing in general. The Minneapolis 2040 Plan included policies that gave alternatives to conventional zoning, allowing the Missing Middle Housing program to be created. It was based on the Minneapolis Homes program, which finances developments with one to two units. The Missing Middle Housing program finances developments with up to 20 units.

After the RFP application was released, the city held informational sessions so that developers were aware of what was needed to apply for the program. Community feedback sessions also were held on proposals for program changes so the community could highlight what they believed was most important.

Return on Investment

As of June 2020, the program in Minneapolis has three developments underway and planned to open another RFP application by the end of summer 2020. The city was also moving toward combining its Missing Middle Housing with the Minneapolis Homes project in order to increase overall funding available for one-to-20-unit developments.

References and Resources

Kevin Knase, Minneapolis Senior Project Coordinator for Residential and Real Estate Development, kevin.knase@minneapolismn.gov, 612-357-1505

What Is Missing Middle Housing?

Information for regulating middle housing and form-based codes

Searchable library of form-based codes from around the U.S.

Minneapolis zoning code and ordinances

Tenant Opportunity to Purchase Act

Establish the first right of refusal for tenants when their home or building is being sold

The Impact

A Tenant Opportunity to Purchase Act (TOPA) empowers tenants to purchase their building and control maintenance of the building. TOPA preserves the affordability of housing and prevents displacement of low-income households.

Description

TOPA gives tenants the first right of refusal when their building is being sold, so they have the opportunity to organize a tenant association and collectively purchase the building or assign their rights to a nonprofit developer. The act provides a timeline for tenants and advance notice that the building will be sold, thus allowing time to form an association, secure funding and make an offer to the developer.

Cities must either dedicate adequate support to TOPA or rely on significant nonprofit interest and support to assure its success. Funding from cities can be used for tenant outreach and education, enforcement, legal counsel and acquisition assistance. In Washington, D.C., the TOPA program funds staff at community organizations that assist tenants in navigating their TOPA rights and helps finance developments with a processsimilar to financing affordable housing developments. The D.C. Tenant Purchase Assistance program also offers low-interest loans to tenants looking to purchase.

Where It's Been Implemented

Washington, D.C., has the oldest and most comprehensive Tenant Opportunity to Purchase Act, enacted in 1980. It was amended in 2018 to no longer include single-family homes. The East Bay Community Law Center has drafted a model TOPA for Bay Area cities adapted from the Washington, D.C. act, and it began the process of working with organizations in Berkeley and Oakland in 2019. On March 5, 2020, the policy was introduced in a meeting of Berkeley's Policy Committee on Land Use, Housing and Economic Development, and was supposed to be voted on in June 2020, but the vote was delayed due to COVID-19.

San Francisco has a similar policy called the Community Opportunity to Purchase Act (COPA), which applies to residential buildings with more than three units and land that could fit more than three units. Unlike TOPA, COPA gives the first right of refusal to qualified nonprofit developers, with mandates to preserve affordability. The COPA program works in conjunction with San Francisco's Small Sites program, which gives loans to nonprofits for affordable housing development.

Key Drivers

In San Mateo County in 2020, the area median annual household income (AMI) for a family of four was $174,000. For a family of four to be in the extremely low-income bracket (0 to 30 percent of AMI), the household had to make less than $52,200. With such a high median income, market rate housing is unattainable and housing for those with low, very low and extremely low incomes is extremely limited.

The Tenant Opportunity to Purchase Act empowers tenants to own their homes, even in a multifamily development. It is an especially attractive option because it provides stability and long-term affordability, so tenants do not risk being priced out of the area and forced to relocate. Owners of affordable housing units who choose not to renew their contracts with the city after they end have their units offered to other tenants first before the units are offered at market rate.

Stability in housing is essential not only for shelter, but also for family health. A report published by the Bay Area Regional Housing Inequities Initiative (BARHII) in 2020 states that more than one-third of children in the Bay Area live in families that spend more than they can afford on housing and found that these families cannot afford quality child care, food and activities that create health and opportunity for children. It says displacement tends to push working class families toward areas with less access to public resources, services and jobs.

Key Factors for Success

A main goal of TOPA is to preserve affordability of units, so there may be resale limits as with San Francisco COPA. Some TOPA policies only apply to subsidized properties and some apply to both subsidized and unsubsidized, and the eligibility of tenants varies by individual policy as well, so cities will have to decide what works best for them. In D.C., the policy applies to both subsidized and unsubsidized buildings, but does not apply to single-family homes.

The three crucial components to a Tenant Opportunity to Purchase Act are the bill itself, which establishes the right of first refusal for tenants; assisting with funding for tenants; and outreach and education. TOPA is flexible for cities' needs in that it the latter two components can be provided by nonprofits and private interests, although a city investment in these components helps to make the act robust and successful.

Key Obstacles

A Tenant Opportunity to Purchase Act can be as simple as establishing the first right of refusal for tenants. Opposition is likely from developers who want to make as big a profit as possible by selling at market rate. There have been some legal arguments about the appreciation caps planned in Berkeley and Oakland's TOPAs, because they essentially limit the property value of the building. Another legal issue is the extended timeline required to go through the TOPA process, which some think places too much of a burden on owners.

Funding a program that assists tenants to exercise this right will definitely be difficult if the budget is limited, but in both D.C. and San Francisco there has been a strong response from nonprofits willing to help with technical assistance.

Timeline to Implementation

Washington, D.C., has had a TOPA policy since 1980, when it was originally called the Rental Housing Conversion and Sale Act of 1980. In 2018 the D.C. City Council passed a bill that made single-family homes largely exempt from TOPA, although it still applies to multifamily homes. In making this change, they cited the issue of tenants demanding compensation for releasing their TOPA rights. Currently, TOPA in D.C. is enforced and monitored mostly through title companies, because the developers' title becomes clouded if they do not follow the TOPA process.

References and Resources

Danilo Pelletiere, Senior Policy Advisor, D.C. Department of Housing and Community development, danilo.pelletiere@dc.gov, 202-579-8367

Fernando Echeverria, Project Manager, East Bay Community Law Center, fecheverria@ebclc.org, 909-319-0498

Seema Rupani, Clinical Supervisor, East Bay Community Law Center, srupani@ebclc.org

San Francisco COPA Rules

San Francisco COPA Ordinance

D.C. TOPA Process Chart

D.C. 1980 TOPA

Other Solutions to Explore

Exemplary Inclusionary Housing

Almost all cities in San Mateo County have some form of inclusionary housing. However, these inclusionary housing ordinances vary in strength and extensiveness. One issue with some policies is that they opt for housing impact fees that often don't bring in as much money as inclusionary housing, and cities have trouble finding affordable housing developers with the money that they do bring in. Inclusionary housing, in contrast, usually raises more money through in-lieu fees or develops affordable housing through market-rate developers.

If in-lieu fees are too low, most developers will choose to pay them instead of opting to create affordable housing units. Grounded Solutions Network, an organization that has done significant research on inclusionary housing, recommends that cities set in-lieu fees by evaluating how much it will cost developers in profits to have affordable housing units instead of all market-rate units, and charging that amount as the in-lieu fee.

Other keys to success are incentives like density bonuses and expedited processing for project approval. It is crucial that the program is mandatory, which most programs in San Mateo County are. One of the biggest keys to success is reviewing the number of affordable units being built each year because of the program and being open to adapting the policy.

Grounded Solutions Network offers an entire website of resources, including data on ways to strengthen existing inclusionary housing policies. Contact Stephanie Reyes, State and Local Policy Manager at Grounded Solutions Network at sreyes@groundedsolutions.org or 650-740-0670 for more information.

Minimum Lease Terms

Establishing a policy that mandates that landlords offer a minimum lease term of 12 months to prospective tenants, with the amount of rent locked in, ensures housing stability. After the lease term ends, if the lease is to be renewed, landlords must again offer a minimum lease term of 12 months. Longevity in rental housing is essential to forming lasting communities, preventing displacement and creating a stronger sense of place for tenants. Tenants are still able to enter into a shorter lease term if they choose to do so, either in an oral or written agreement with the landlord.

As of August 2020, the cities in San Mateo County that enacted this ordinance are Burlingame, Foster City, Menlo Park and Redwood City. Redwood City's ordinance excludes single family homes, duplexes, accessory dwelling units and several other exceptions related to transient rental housing, so as not to put barriers on property owners with these kinds of rental units.

Tiny Homes

Tiny homes are a type of accessory dwelling unit (ADU) that can be affordable and applicable for emergency housing, transitional housing and eventually ownership. ACCESS Tiny Homes, established by the Cordelia RV Company based in Cordelia, Calif., has simplified and expedited the tiny home development process. Because of its expertise in RVs and partnership with the same manufacturer that provided emergency housing after Hurricane Katrina, ACCESS Tiny Homes was able to develop about 1,000 units in only six to eight weeks.

The company's more luxurious homes cost about $54,900, while its more basic units reach the high $40,000 range. The units themselves are fully furnished with necessary appliances and accessories, and they provide the space and comfort that those facing housing insecurity need. ACCESS Tiny Homes started at the beginning of 2020 and is still in the process of meeting with jurisdictions about how to incorporate tiny home ADUs to provide emergency and transitional housing at a low cost. For more information about ACCESS Tiny Homes, contact Nancy Filippi at nancy@cordeliarv.com or 510-529-9737.