



Preserving Austin's Multifamily Rental Housing

A Toolkit



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Introduction

“I am one of those residents who lives in Stoneridge. I work downtown. I enjoy downtown. But I’ve decided to move back to Houston. I find it ironic that Austin is a city that prides itself on diversity and new ideas. It is anything but these days. . . Even with a college degree and a graduate degree, I can’t make enough in Austin to afford the lifestyle the city seems to be moving towards.” Keith, Austin-American Statesman Blog, “Affordable Housing downtown,” November 19, 2006¹

This report was prepared at the request of HousingWorks Austin, a citywide affordable housing organization, to explore the policy tools being utilized by cities and states around the country to preserve affordable rental housing opportunities for low-income families.

Austin is at risk of losing its existing low-cost rental housing faster than it can build new affordable units. Last fall, the local paper told the story about the Stoneridge Apartments on South Lamar, where there are 141 units with rents starting at \$400 a month—rents that are affordable to very low-income workers, seniors, and families.² Because of new development sprouting up along South Lamar and escalating property values in this area close to downtown, Stoneridge Apartments will be torn down to give way to high-end apartments, with market rents for one-bedroom units starting at more than \$930 a month.³

The loss of the affordable apartments at Stoneridge is indicative of a larger trend happening in the city and around the country: The rising real estate market has resulted in thousands of affordable rental units being replaced with expensive lofts, condos, apartments, and homes. More than two million low-cost rental housing units were lost between 1993 and 2003, which accounted for a 13% decrease.⁴ And now, “hundreds of thousands of privately owned, unsubsidized units are at risk of loss from the affordable stock, whether through deterioration and removal or upgrading.”⁵

Thousands of additional subsidized units—which have been funded through federal programs such as the Low Income Housing Tax Credit, federally subsidized mortgages, and Section 8 project-based rental contracts—are likewise at risk, as the government contracts on these properties expire.⁶ As two housing experts have stated, the loss of these affordable housing units is “dramatic.”⁷

Appreciating land values, along with a host of other factors, are causing the losses of both subsidized and unsubsidized affordable units. The vast majority of these affordable housing units were built from 1965 to 1990 and now face physical deterioration from deferred maintenance and obsolete systems. Owners who seek to maintain and upkeep the properties

face difficulties in obtaining financing. For those owners who can obtain financing, the cost of renovations alone can make rents unaffordable, not to mention the increase in property taxes brought on by the renovation.⁸

The impacts of these losses are significant. Approximately two-thirds of the nation's lowest-income households live in unsubsidized rental housing.⁹ These lowest-income residents are being displaced with no viable housing alternatives that they can afford. For these residents, preserving affordable rental housing is becoming an urgent priority.¹⁰ In addition to displacing low-income residents and undermining their well-being, the loss of these housing units has broader social implications, from upheaval in neighborhoods to accelerating urban sprawl.

While tackling this issue can seem insurmountable, many cities and states around the country have developed innovative strategies to tackle the challenge of preserving affordable rental housing. One lesson from these cities and states is that stemming the loss of affordable rental housing depends on using tools and strategies appropriate for the local housing market. If the local real estate market is weak, a city generally needs to focus on strategies designed to improve the financial viability of at-risk rental properties as well as engage in intervention strategies to maintain the quality and viability of rental properties.¹¹ In cities with strong markets like Austin, Texas, the strategies are primarily two-fold: (1) preserving existing rental units as affordable housing; and (2) and replacing lost units with new affordable housing units.¹²

The purpose of this report is to identify and explore specific affordable rental preservation tools and strategies used in U.S. cities and states that could be implemented in Austin as part of a comprehensive preservation policy. The City of Austin currently does not have a comprehensive preservation policy. Without such a policy, the City of Austin risks displacing thousands of low-income tenants and permanently losing thousands of affordable rental housing units—at a pace much faster than those units can be replaced.

In this report, the policy tools are divided into six categories:

- **Tool #1: Public Funding:** This section examines the sources of public funding utilized by states and cities to fund rental housing preservation programs. States and cities across the country are relying on a broad range of dedicated and non-dedicated sources of funding for rental housing preservation.

- **Tool #2: Private Finance Tools:** This section examines some of the barriers to obtaining private financing to renovate and purchase affordable multifamily properties. Many cities and nonprofit organizations have set up alternative sources of financing to combat these barriers, such as government lending programs and nonprofit banks that provide below-market or market-rate acquisition and renovation loans for multifamily properties. One expert has also proposed the creation of an “S-REIT,” or Small Multifamily Housing Real Estate Investment Trust, which would raise capital from private investors for financing smaller multifamily properties.

▪ **Tool #3: Tax Tools:** This section explores several of the different local, state, and federal tax programs that fund and provide incentives for developers to preserve affordable multifamily housing. These tools include: (1) tax increment finance districts; (2) the federal Low Income Housing Tax Credit Program; (3) state housing tax credit programs; and (4) tax abatements and exemptions.

▪ **Tool #4: Zoning and Land Use Policies:** This Section examines zoning ordinances and other land use policies that have been utilized in cities to preserve existing affordable rental housing and to replace affordable housing units lost through condo conversions, demolitions, and renovations. These policies include: (1) affordable housing replacement ordinances, which require a developer whose actions result in the loss of affordable housing—through demolition or condominium conversions—to replace all or a percentage of the units lost; (2) housing impact policies, which require a city or property owner to review the impact that proposed land-use changes would have on the city’s stock of affordable housing and the current low-income residents; and (3) condominium conversion ordinances, which contain a set of policies aimed at discouraging conversions of rental housing to condominiums.

▪ **Tool #5: Regulatory Tools:** This section provides an overview of city and state regulations that limit the loss of affordable multifamily units and alleviate the impact on tenants when multifamily properties are sold. These regulations include: (1) requiring landlords to provide advanced notice to tenants when a property is being sold or an affordability restriction is being terminated; (2) providing tenants and other entities with a right of first refusal to purchase a property that is being sold or being converted to condominiums; and (3) providing tenants with relocation assistance when they are forced to move from a property that is being sold or converted to condominiums.

▪ **Tool #6: Other Strategies to Preserve Affordability:** This section examines other strategies used by cities and advocates to preserve affordability: (1) adopting a comprehensive preservation strategy; (2) reaching out to tenants and supporting tenant organizing; (3) conducting an on-going assessment of at-risk properties; (4) enforcing the Fair Housing Act; (5) providing technical assistance and outreach to owners and tenants; (6) building the organizational capacity of the nonprofit development community; and (7) creating cross-sector collaborations.

At the end of the report is a bibliography which contains references to the many different reports and studies that have been written on the topic of affordable housing preservation. The Community Development Clinic at the University of Texas School of Law has on file a copy of the articles referenced in the bibliography, along with many of the policies, ordinances, and statutes discussed in the report.

The Tools

Tool #1: Public Funding

Preserving affordable rental housing in a rising housing market requires significant amounts of public funding. While the other tools mentioned in this report are also important, a progressive preservation policy cannot be implemented without large amounts of public funding. **Cities around the country that have successfully preserved large numbers of rental housing units have done so only with the benefit of significant state or local funds designated for affordable rental housing preservation.**

There are essentially two different categories of public funding for housing preservation: (1) dedicated funds; and (2) one-time funding allocations such as general obligation bonds.

Dedicated funds are typically used in conjunction with a housing trust fund. Dedicated funds are funds available year after year through a revenue stream dedicated to affordable housing. A dedicated fund is typically much more reliable than general revenue funding for affordable housing, because a dedicated fund for affordable housing does not have to compete annually with schools, health care, and other community needs from a limited source of available general revenue funding. Throughout the country, many governments have realized that dedicating resources to a housing trust fund is an especially useful and appropriate mechanism for stemming the loss of affordable housing where the real estate market is strong. “As of July 2005, there were 293 city-operated housing trust funds, 76 county-operated housing trust funds, and 43 separate state-operated housing trust funds administered in 37 states.”¹³

The sources of funding used for housing trust funds vary across the country, and include the following:

- Real estate document recording fees and transfer taxes;¹⁴
- Interest from state-held funds (including but not limited to property funds, budget stabilization funds, among others);
- Interest from real estate escrow or mortgage accounts;¹⁵
- Developer fees, including impact, condominium conversion and demolition fees;¹⁶
- Real estate property taxes;¹⁷ and
- Hotel and motel taxes.¹⁸

One-time or annual appropriations by the legislature or city council can also be used to preserve affordable rental housing, though these funds are not as reliable as *dedicated* funding sources because of their discretionary nature. These discretionary sources can lay the groundwork for future dedicated funding.¹⁹ One common example of a discretionary type of government funding used by U.S. cities to preserve affordability is government obligation bonds.

Public funding can be used in many different ways to preserve housing. One way in which it is commonly used is in the form of a subsidy to provide equity for a nonprofit purchasing an affordable property for preservation. Nonprofit ownership of a multifamily property can provide for permanent affordability and therefore circumvent the risk of losing the property in 20 to 30 years when the affordability term expires.

Public funding can also be used to pay for long-term, multi-year contracts with property owners that require a percentage or all of the units in an apartment complex to have affordable rents.²⁰ Back in the 60s and 70s, the federal government commonly funded affordable housing by securing long-term contracts, also referred to as project-based vouchers. Many of these units, however, were concentrated in high poverty neighborhoods and in complexes that were poorly run.²¹ Given the problems with how the project-based voucher program was implemented, a city utilizing any new long-term contracts should aim to enter into multi-year leases in low-poverty, service-rich neighborhoods, and with very strong maintenance rules. Despite the inherent risks of potential operating cost increases, over time purchasing units outright or gaining control via long-term leases should not only reduce costs, it should also ensure that subsidized residents do not get squeezed out of the best housing inventory during times of rapid rent increases.²²

Cities and states that utilize housing trust funds for rental housing preservation include: Arizona; Alexandria, Virginia; Illinois; Maryland; Montana; Ohio; Utah; Massachusetts; Minnesota; Iowa; Oregon; King County, Washington; Seattle; Los Angeles; District of Columbia; Cambridge, Massachusetts; New York City; Washington, D.C.; Fairfax County, Virginia; and Chicago.²³ Cities and states that have utilized government obligation bonds for affordable housing include: Miami-Dade County (up to \$195 million of \$3 billion in general obligation bond proceeds for affordable housing);²⁴ California (\$2.1 billion in general obligation bonds for affordable housing activities statewide); and Phoenix, Arizona (\$33.7 million in general obligation bonds to develop affordable rental homes).²⁵

Examples of Public Funding for Housing Preservation

New York City

New York has made housing preservation one of its top city priorities. The City of New York is in the midst of implementing a ten-year, \$7.5 billion plan to create and preserve affordable housing. The City will preserve 73,000 units of affordable housing under the plan. Approximately half of these units were previously government-assisted units, and the other half are non-subsidized units. As part of its plan to preserve government-assisted units, the City plans to preserve 100% of its Federal Low Income Housing Tax Credit properties as affordable. The city has also hired a consultant to develop an ongoing risk assessment of affordable housing stock. The consultant will also evaluate the capacity of existing organizations in the city to support the city's preservation goals and make recommendations concerning the best organizational approach for preserving the affordable housing stock, including whether to form a new entity for a sustained preservation initiative.²⁶

☑ King County, Washington

An economic explosion in King County, Washington led to skyrocketing housing prices, massive condominium construction, and, inevitably, increased difficulty for the 52,000 lower income households—30,000 of whom relied on rent subsidies—to remain in King County.²⁷ A Regional Coalition of Housing (ARCH) is a regional, cross-jurisdictional effort funded by participating jurisdictions under a formula called “parity,” which relies primarily on population and employment projects.²⁸ Each participating jurisdiction contributes funds to the ARCH housing trust fund, but those contributed funds are not restricted to being spent within that jurisdiction.²⁹ Through this effort, ARCH closely monitors the privately-held properties subsidized under the federal project-based Section 8 program. When an owner does not plan to seek renewal of a Section 8 contract, ARCH arranges for a local nonprofit to purchase these properties, and with a variety of public subsidies, keep the properties in the federal program.³⁰ To date, ARCH has successfully preserved every expiring Section 8 property in east King County.³¹ Between 1993 and 2005 ARCH has also preserved affordable housing units in an additional 22 privately-owned properties.³²

☑ Fairfax County, Virginia

Fairfax County, Virginia, has adopted “one penny for housing” from a local real estate tax levy to generate \$18 million a year for its affordable housing preservation fund. The County is using these funds to preserve 2,000 affordable apartments by 2011.³³ In projects using the “Penny Fund,” a minimum of 50% of the units should be affordable to households earning 50% of the Area Median Income or below.³⁴ Fairfax County also has a preservation tax abatement incentive for owners of older (20-plus years) multifamily rental properties. Under this incentive, the tax increase on significant improvements will be abated for 10 years as long as the rental apartments remain affordable.

☑ Chicago Rental Subsidy Program

The City of Chicago’s Rental Subsidy Program, paid for from the City’s housing trust fund program, provides annual rental subsidies to owners of qualified buildings located in the City of Chicago. This program reduces rents on a specified number of units at a level that is affordable for families earning less than 30% of the area median income. Landlords accepted into the program receive a one-year, renewable grant and are paid on a quarterly basis in advance. Renewals are based on successful performance and funding availability. In addition, the Affordable Rents for Chicago program (ARC) supplies an interest-free forgivable loan to replace up to 50% of a developer’s private mortgage loan. The resulting savings are used by developers to reduce the rents of very low income tenants earning no more than 30% of the area median income.³⁵

Washington, D.C.

The 2007 budget for the District of Columbia includes \$78 million in funding for housing. A significant portion of this funding is being utilized for housing preservation. The funding is part of a comprehensive set of preservation policies, including a revolving loan program, tenant rights of first refusal, and technical assistance and funding for tenant groups.³⁶

Austin Implementation: For the first time in its history, the City of Austin voters approved \$55 million in bonds for affordable housing.³⁷ Because none of these funds are explicitly dedicated to preservation, it remains to be seen how much of this funding will be used for housing preservation. The City of Austin and State of Texas each administer a housing trust fund, but there are no dedicated funding sources for the jurisdictions' trust funds. As a result, annual funding for both of these trust funds is low. Funding for the State of Texas housing trust fund is less than \$4 million a year. Funding for the City of Austin housing trust fund is approximately \$1 million.

Tool #2: Private Finance Tools

The Problem

One of the major obstacles to preserving smaller multifamily properties is accessing capital for financing purchases and renovations of these properties. Financing for smaller multifamily properties is one of the most significant gaps in the mortgage industry.³⁸ Unlike large multifamily properties (50-plus units), which can access fixed rate, non-recourse, and intermediate to long-term financing (i.e., 10 to 30 years), smaller multifamily property financing of less than \$5 million is typically variable rate, recourse, and shorter-term maturity (5 years).³⁹ For example, Freddie Mac, one of the major investors in multifamily loans, has a lending model that was created to accommodate loans with an average size of \$10 to \$15 million to address the financing needs of larger rental properties. Freddie Mac currently does not have the infrastructure or technology to offer a delegated streamlined process for smaller loans.⁴⁰ As a result, there is a need to explore “new wholesale approaches to accessing capital” for these smaller properties.⁴¹

Smaller multifamily properties also face the problem of fragmented ownership and economies of scale. Many of these properties are owned by individuals who have limited experience in owning and operating a multifamily property. Moreover, the per unit transactional costs of a loan to purchase or renovate one of these properties is much higher than that of a larger complex. Other barriers to financing these smaller properties include deferred maintenance, outdated mechanical systems, and other outdated facilities, resulting in high maintenance costs and utility bills, which in turn make it difficult to charge rents that will cover operating costs.⁴² Of the most affordable small multifamily properties (those with average rents of \$400 or less), 12% of these properties reported negative net operating income.⁴³

Thus, although public subsidies can help cover financing gaps in preserving affordable rents, smaller multifamily properties will also usually need access to special financing.

Government and Nonprofit Lending Programs

Several cities and nonprofits have set up their own lending programs to help multifamily property owners access affordable capital to modernize their properties and provide financing to nonprofit and for-profit developers acquiring and renovating multifamily properties.⁴⁴ These programs typically operate as revolving loan programs and provide more flexible terms and credit than traditional financing. The leaders in the nonprofit banking field are the Community Investment Corporation and Southshore Bank, both in Chicago, and the Community Preservation Corporation in the New York region. Many cities and states around the country have also created their own preservation loan programs.

Examples of Nonprofit and Government Preservation Loan Programs

Community Preservation Corporation

The Community Preservation Corporation (CPC) is a nonprofit organization serving nonprofit and for-profit developers in New York, New Jersey, and Connecticut seeking to build or rehabilitate properties. CPC provides construction, rehabilitation, and refinancing loans, along with technical assistance. CPC is sponsored by more than 80 banks and insurance companies. In its 32 years, CPC has financed more than 120,000 new or rehabilitated units.⁴⁵

Community Investment Corporation

The Community Investment Corporation (CIC) is a pooled-risk mortgage lender and nonprofit specializing in multifamily rehab in lower-income neighborhoods of Chicago. Since 1984, CIC has provided 1,352 loans for 39,000 units serving 110,000 Chicagoans. In 2006, 92% of CIC loans were for complexes with rents affordable to families at 50% or less of the area median family income. CIC also provides ongoing technical assistance.⁴⁶

Southshore Bank

Serving Chicago, Cleveland, and Detroit, the South Shore Bank has provided over \$500 million dollars in loans to borrowers seeking to buy or rehabilitate apartment buildings, or to refinance their existing mortgage debt.⁴⁷ South Shore Bank's investors include a wide range of entities including financial institutions, foundations, insurance companies, major corporations, and individuals.⁴⁸

Massachusetts Housing Agency

The Massachusetts Housing Agency provides first mortgage financing to preserve subsidized housing through its Section 8 preventative preservation loan program. The program targets 71 state-financed developments. Under the preservation program, borrowers may seek financing from the state within five years of the end of their origination term or government contract term. In return for extending the affordable restrictions and agreeing to seek a Section 8 contract renewal for as long a term as possible, the owners can take out the equity they have built up in their properties.⁴⁹

New York City Acquisition Fund

A major element of the City of New York's preservation strategy is the city's Acquisition Fund. The Fund is providing \$230 million in affordable financing for the acquisition of and preservation of affordable homes. The fund was capitalized with \$8 million in city funds, combined with \$32 million in loan guarantees from private philanthropic organizations, to leverage more than

\$192 million in private financing.⁵⁰ The fund, which provides bridge financing for the acquisition of properties, “will give developers the cash to preserve privately-owned buildings for affordable housing without having permanent financing commitments in hand.”⁵¹ The program “allows mission-oriented developers to compete in NY’s strong housing market and will spur the preservation of assisted rental apartments.”⁵² The fund will create and preserve up to 30,000 rental, homeownership, and supportive housing units over the next ten years.⁵³

☑ Washington, D.C.’s Site Acquisition Fund

The District of Columbia created the Site Acquisition Funding Initiative for Affordable Housing (SAFI) in 2005, as part of its Housing Production Trust Fund Program. The SAFI program provides quickly accessible revolving loans at below-market rates to cover acquisition and predevelopment costs of multifamily housing. The loans are available to nonprofits committed to the production, rehabilitation, and preservation of affordable housing. The program was initially capitalized with \$15 million in funding from the District in 2005. SAFI leverages additional funding from private lenders. The initiative provides site acquisition and predevelopment loans, purchase options, and technical assistance to nonprofit developers.⁵⁴ The city also provides loans to low-to-moderate tenants and tenant groups who are threatened with displacement because of the sale of their buildings. The loans assist the tenants in exercising their right of first refusal to purchase the apartment building and can be used for down payments, purchase money, predevelopment, and other related costs. As a related service, the District also provides technical assistance to tenant groups who are pursuing the purchase of their apartment buildings.⁵⁵

Small Multifamily Housing Real Estate Investment Trusts

One innovative idea that has yet to be tested as a tool to preserve affordable housing is an S-REIT, or Small Multifamily Housing Real Estate Investment Trust. A traditional REIT raises capital from private investors to make equity investments in large commercial and multifamily complexes. An S-REIT would similarly raise capital from private investors and, to further reduce the cost of capital, the trust could utilize subsidies from federal, state, and local resources. The idea behind an S-REIT is that the investment in a large number of projects through a REIT would reduce the costs associated with obtaining subsidies on a project-by-project basis. Further costs are saved because a REIT involves one single institutional investor instead of multiple individual owners, resulting in economies of scale including reductions in the cost of professional property management, repair, and maintenance.⁵⁶

Shekar Narasimhan, who developed the idea for the S-REIT, says that by becoming congressionally chartered, the S-REIT could work on a large scale, mingling private capital with local, state, and federal resources.⁵⁷ Ultimately, the S-REIT could enable the owners to exchange (tax free) their small multifamily properties for S-REIT partnership units.⁵⁸

The basic components of this proposed S-REIT would include:

- The ability to exchange partnership units for 5- to 49-unit properties tax-free.
- Exemption from recording taxes and SEC and state registration costs, and the ability to create a tax-exempt bond issuing capability.
- An assured cash flow to the existing owner along with potential equity appreciation rights.
- The best local professional management, whether for-profit or nonprofit.
- Local government tax abatement support for its activities so that the cash flow savings can be reinvested in the properties.
- Preference for other federal resources such as the Low Income Housing Tax Credit, HOME, and CDBG.
- Financing (as well as federal subsidy allocations) available at a corporate level so as to match assets and liabilities without the costs of single-asset financing.⁵⁹

Tool #3: Tax Tools

There are four primary tax policies that fund and provide incentives for property owners to preserve affordable multifamily rental housing: (1) tax increment finance districts; (2) the Federal Low Income Housing Tax Credit Program; (3) state housing tax credit programs; and (4) tax abatements and exemptions.

Tax Increment Financing (TIF)

“Tax increment financing is an increasingly popular approach to raise revenue for community redevelopment, including the production of affordable homes.”⁶⁰ Through a TIF, a city designates a geographic area as a TIF district and sets a baseline of current appraised values in the district. The taxes on the increase in property values above this baseline are the “tax increment” and can be used to pay for infrastructure and development in the district. Some jurisdictions borrow against expected tax increment revenues to finance infrastructure and development. Unlike government obligation bonds, TIFs typically do not require approval by the public via ballot.

Several cities and states require that a set percentage of revenues from a TIF be dedicated to affordable housing, either within the district or outside the district, including California; Portland, Oregon; Chicago, Illinois; and Houston, Texas.

Examples of TIFs used for Housing Preservation

☑ California

In California, 20% of revenue from tax increment districts must be dedicated for low- and moderate-income housing. In the 2004-2005 fiscal year, this policy generated more than \$1.2 billion for low- and moderate-income housing, helping some 20,493 households secure affordable homes.⁶¹

☑ Portland, Oregon

Portland adopted a policy in 2006 requiring 30% of all TIF funding for urban renewal districts be utilized for affordable housing.⁶²

☑ Chicago, Illinois

In Chicago, a total of \$179.7 million of TIF money has been devoted to housing development projects, resulting in 1,832 affordable units and \$549.4 million of additional investment.⁶³ The City has also provided \$9.1 million in direct rehab grants through its TIF Neighborhood Improvement Program (referred to as the TIF-NID), which provides TIF proceeds for smaller renovation loans and grants to homeowners and owners of rental properties.⁶⁴ Illinois law allows for TIF funds to be used for the “brick and mortar” costs of affordable housing construction as well as the interest costs of financing an affordable housing development.⁶⁵

☑ Houston, Texas

In Houston, pursuant to state mandate, one-third of all tax increment in a TIF created by petition must be used to provide affordable housing during the term of the zone. The funds can be spent inside or outside of the TIF.⁶⁶ As of 2003, this special set aside had generated more than \$14 million in revenue for affordable housing. TIF funding is being used in Houston to preserve affordable housing in the Third Ward, a gentrifying neighborhood close to downtown.

☑ Other Examples

Other jurisdictions that utilize TIF funding for affordable housing include Maine and Minnesota. Minneapolis has pooled its “TIF proceeds to create a Common Fund to support neighborhood planning and revitalization efforts, which led to allocation of \$20 million per year to those efforts between 1990 and 2000.”⁶⁷ Maine’s TIF program allows municipalities to create an “Affordable Housing Development District,” whereby the tax increment in the district is utilized to fund affordable housing in the district or expenses in the community related to affordable housing. At least 33% of the dwelling units in the district must be affordable. A community may set aside up to 2% of its land in an Affordable Housing Development District.⁶⁸

Austin Implementation: Under Texas law, a TIF can be used to fund affordable housing, but only Houston is required by state law to dedicate revenue from a TIF to affordable housing.⁶⁹ In 2005, however, the Texas Legislature gave the City of Austin the power to create a special “homestead preservation TIF” for Central East Austin, which must be used for affordable housing creation and preservation.⁷⁰ The Homestead Preservation TIF is only applicable to a certain geographic section of Central East Austin, as part of a Homestead Preservation District. The Homestead Preservation TIF and has not yet been adopted by the City.

Even though state law does not mandate that a TIF be utilized for affordable housing, the City of Austin could adopt a dedication policy for TIFs in the City, similar to Houston. This could be done via local ordinance or via the project plan for an individual TIF, such as the proposed Waller Creek TIF. The City of Austin has adopted a TIF for the Mueller Airport redevelopment, where 25% of all residential units will be affordable for families earning less than 60% of the median family income. The Mueller TIF is using the tax increment revenue for infrastructure, which is helping facilitate the 25% affordable housing set aside.

The City also has an unofficial TIF for former city surplus land which is sold for private development. As per City Council resolution, 40% of the tax increment from these surplus lots is dedicated to affordable housing, although none of these funds are specifically dedicated to housing preservation.⁷¹ Unlike TIFs, which can secure a reliable, long-term stream of revenue for housing preservation, the City Council’s “unofficial TIF” resolution is not binding on future city councils.

Another way the City could utilize TIFs for preservation is to adopt a TIF for affordable multifamily properties which are being redeveloped as higher-end housing—for an individual multifamily property such as the Stoneridge Apartments, or for an area containing a cluster of affordable properties being redeveloped, such as the East Riverside area. The City could then dedicate the tax increment from these TIFs to replace affordable units in the new developments. The City would need to explore first what is the administrative burden of setting up a small TIF, and at what point do the administrative costs of a smaller TIF make it infeasible.

Federal Low Income Housing Tax Credit Program

The Federal Low Income Housing Tax Credit (LIHTC) Program is currently the federal government’s largest affordable housing program. The tax credits come in two forms: a 9 percent credit which is equal to approximately 9 percent of the development costs of rental units (not including land) for each of 10 years; and a 4 percent credit which is equal to approximately 4 percent of these costs for 10 years. In Texas, the credits are allocated by the Texas Department of Housing and Community Affairs. Texas allocates a fixed number of 9 percent credits once each year in a competitive process, but there is no cap on amount of 4 percent tax credits that can be awarded. Credits can be awarded to for-profit and nonprofit developers. The affordability terms on the initial rounds of properties funded under this program have started to expire, and over the years thousands of LIHTC units across the state could be lost.

There are three primary policy tools for preservation under the LIHTC program. First, many cities and states, including Texas, have established priorities in their LIHTC programs for preservation of at-risk federally subsidized housing.⁷² A state can give priority to preservation projects by giving additional points to such projects when they apply for credits, thereby increasing the likelihood that these projects will be awarded tax credits. A state can also require that a certain percentage of tax credits be dedicated to preserving affordable properties at risk of losing federal subsidies. The Texas Department of Housing and Community Affairs has a preservation set-aside requiring that 15% of tax credits go to preserve at-risk properties, defined as currently subsidized properties whose subsidy will expire within the next two years.⁷³

Second, the 4 percent LIHTC—an underutilized resource—could be used more frequently with tax-exempt bonds for housing preservation projects. According to the Center of Housing Policy: “By working to increase utilization of 4 percent credits, states and localities can expand substantially the amount of federal resources available for affordable homes. . . . [T]he consequence of not doing so is to relinquish a substantial amount of federal funding for affordable homes. For example, in one renovation of an older, federally insured complex, the equity from 4 percent tax credits contributed \$3.1 million toward total project costs of \$8.2 million. In some states, 4 percent credits are used primarily for rehabilitation of older rental homes and the preservation of subsidized rental developments—activities that tend to have lower development costs than new construction.”⁷⁴

The third preservation policy related to the LIHTC program requires owners of tax credit properties with expiring affordability restrictions to provide at least 12 months notice to tenants before the restrictions expire, and to provide tenants with a right of first refusal to pur-

chase the property. Illinois, for example requires 12 months advanced notice to tenants and an opportunity for tenants or the local jurisdiction to purchase the property.⁷⁵ Under federal law, at the end of the 14th year of a tax credit property's affordability term, an owner can submit a request to the state agency to sell a project or convert it to market rate. The state agency then has one year to find a buyer willing to maintain the rent restrictions for another 15 years (some states require an affordability term of longer than 15 years). If the state agency does not find a "preservation purchaser," then the owner's obligation to maintain rent-restricted units is terminated.⁷⁶ Notice requirements are discussed in more detail under Tool #5.

Examples of States Utilizing the Federal LIHTC Program for Preservation

Massachusetts

Massachusetts sets aside 40% of its federal low income housing tax credits for rental housing preservation. Existing unsubsidized properties as well as federally-subsidized housing developments are eligible for the credits.⁷⁷ In 2005, \$4 million of federal credits, and an additional \$200,000 in state credits were allocated to 5 preservation properties with 498 apartments.⁷⁸

Illinois

Illinois requires a \$2 million set aside for rehabilitation of at-risk properties—affordable developments whose conversion to market-rate housing is likely to occur within two to three years, or developments that are otherwise in danger of being lost as a result of substantial rehabilitation.⁷⁹ In 2004, the state preserved 7 properties (733 apartments) with more than \$3.8 million in tax credits, or 21% of the total tax credits allocated by the state. In 2003, the state preserved 5 properties (924 apartments) with almost \$3 million in tax credits.⁸⁰

State Housing Tax Credits

States have created their own innovative affordable housing tax credits which can be used for rental housing preservation. These states use the housing tax credits to offset state income taxes, but a state housing tax credit program could in theory be used to offset any type of state or local tax.

Examples of State Housing Tax Credit Programs

Illinois

Illinois has “Illinois Affordable Housing Tax Credits,” which allow individuals or organizations to give donations to participating nonprofit housing developers in exchange for receiving a state tax credit. The typical donors include corporations, banks, foundations, and individuals. Both federal and state credits can be awarded to the same project. The donation can be used to pay costs “associated with purchasing, rehabilitating, constructing, providing financing, technical assistance or general operating support for an approved affordable housing project.”⁸¹

Missouri

Missouri offers an income-tax credit for any eligible organization or individual who donates cash, equity, professional services, and real or personal property to a nonprofit community-based organization. The credit is equal to 55% of the value of the contribution.⁸² The AHAP credit may be sold or transferred. The credit may be used in the first year or carried forward for ten years. “This tool was recently used to facilitate a large portfolio sale of subsidized properties by a private owner to a national nonprofit entity.”⁸³ The credit is currently being used in conjunction with the transfer of several federally-subsidized properties.⁸⁴

North Carolina

North Carolina’s state housing tax credit program was created in 1999 to be used in combination with federal housing tax credits to create affordable apartments for lower income families and seniors. The program targets households at 30-50% of the median income, whereas the federal tax credits generally target households at 60% of the median income. The North Carolina credit was originally modeled on the federal credit and sold (syndicated) to provide additional equity for new developments. In 2002, the North Carolina Legislature converted the state credit into a refundable credit providing funds that can be invested directly in federal LIHTC properties through the North Carolina Housing Finance Agency.⁸⁵ Developers may elect to receive the funds from the state tax credit as a zero-interest loan for a percentage of the rental property’s rental cost. No separate application is needed for the State Housing Credits.⁸⁶ The North Carolina state housing credit has helped finance 245 properties with 11,566 units and has leveraged \$6.48 of affordable rental housing for every \$1 of the refundable credit.⁸⁷

Tax Abatements

“High property taxes relative to the cash flow on affordable multifamily properties represent a disproportionately large part of operating costs, placing an undue burden on the viability of the property and making it difficult to maintain multifamily properties at affordable rent levels.”⁸⁸ High property taxes also discourage property owners to engage in extensive property renovations because the owners will be hit with an even higher tax bill as a result of the improvements.⁸⁹ To address the problem, states and cities offer a variety of tax abatement and tax exemption programs for affordable multifamily properties.⁹⁰ These programs provide important incentives for owners to repair and renovate their properties without raising rents, and to preserve their properties as affordable housing for the long term.

Property tax exemptions are annual exemptions that exempt classes of properties from a certain percentage of property taxes. In contrast, property tax abatements work for a set term, typically 5 to 15 years, to either freeze the property’s assessed value at the current level or to tax the property at a lower rate during that time period.⁹¹ With a tax abatement, a city can also enact a formula that provides for a “gradual ‘step-up’ of property taxes to the full tax level over a number of years.”⁹² Unlike property tax exemptions, which can be changed subject to the whim of the legislature or local jurisdiction, a tax abatement is typically enacted through a contract and therefore cannot be rescinded during its term.

Examples of Tax Abatement Programs

☑ Portland, Oregon

Portland has several different tax abatement programs, including a rental rehab abatement. Under this abatement program, the property owner does not pay taxes for 10 years on any increase in the assessed value due to rehab work. The property must dedicate at least 20% of its units to households earning 60% or less of the median family income.⁹³

☑ Chicago, Illinois

Cook County, Illinois, which includes Chicago, offers tax abatements to stimulate the preservation and renovation of affordable rental housing. One program, the Class 9 classification, offers properties a 16% tax assessment level for a period of 10 years. The abatements are available to developers who complete major rehab on multifamily buildings and rent at least 35% of the units to low- and moderate-income households. Owners may apply to renew the abatement for additional 10-year periods.⁹⁴

☑ New York City

For-profit and nonprofit property owners in New York City are eligible to receive a J-51 property tax abatement and a J-51 tax exemption after doing certain types of rehabilitation work on their residential buildings. For affordable housing projects, the owner receives an abatement (called an exemption) on 100% of the value of the improvements for 30 years (with an additional 4-year phase-in), and an abatement of existing real estate taxes by 6% of the cost of the work for 12 years.⁹⁵ A J-51 property tax exemption effectively freezes a building's assessed value for tax purposes, so the owner does not have to pay property taxes on the increase in value resulting from the rehabilitation work. For example, if a building is worth \$1 million, receives \$1 million worth of rehabilitation work and is then valued at \$2 million, the building is taxed based on the valuation of \$2 million—in the absence of an exemption. The building owner with a J-51 exemption, however, pays taxes only on the initial \$1 million assessed value (e.g., \$125,000), less an additional 6% abatement of the cost of the work done (\$60,000), for a total of \$65,000 in taxes. “Despite the complex nature of the J-51 laws, it is a major program—representing almost half the city’s annual tax expenditures for housing development—that provides benefits to more than 600,000 units annually.”⁹⁶

Austin Implementation: Under Texas law, affordable apartments owned and operated by certain classes of nonprofit organizations in Austin and most other cities are eligible for a 50% property tax exemption (the exemption is no longer available in certain cities, including Dallas and Houston).⁹⁷ The Texas exemption does not apply to properties owned by for-profit developers, and the exemption is subject to change by the Texas Legislature.

Tax abatements for affordable housing can be utilized in Texas in a municipal reinvestment zone (Chapter 312 of the Tax Code) and in a tax increment finance district (Chapter 311 of the Tax Code).⁹⁸ Thus, for example, in the Mueller TIF, the proposed Waller Creek TIF, or the proposed East Austin homestead preservation TIF, the city and county could abate taxes on the increased value of a renovated or new residential building in exchange for the owner agreeing to set aside a percentage of the units as affordable housing. It is also fairly simple to set up a municipal reinvestment zone. The authors are unaware of tax abatements currently being used in Texas for rental housing preservation.

Tool #4: Zoning and Land Use Policies

In appreciating neighborhoods like Austin’s, market pressures lead to the disappearance of affordable housing from the city through demolition, conversion to other uses, and increases in rents, resulting in the displacement of low-income tenants. These changes can be accelerated by zoning changes such as large up-zonings for multifamily properties and increases in development entitlements such as height restrictions and FARs. Cities have combated some of the negative impacts of zoning changes by enacting replacement housing ordinances, housing impact policies, and condominium conversion ordinances.

Affordable Housing Replacement Ordinances

Affordable housing replacement ordinances require a developer whose actions result in the loss of affordable housing—through demolition or condominium conversions—to replace all or a percentage of the affordable units lost. The ordinances can require the units to be replaced onsite or offsite, or can permit an in-lieu-of payment into a housing trust fund to be used for housing preservation projects.⁹⁹ Replacement ordinances can “further replacement of affordable housing or discourage inappropriate demolitions or conversions,” but, if not crafted appropriately, “may also act to discourage needed investment in upgrading or replacing the local housing stock.”¹⁰⁰

Examples of Affordable Housing Replacement Laws

☑ California

Under California law, cities are limited from authorizing the demolition of conversion of an affordable unit along the Coastal Zone (a strip of land running the length of the state’s coast) unless the person has a replacement unit within the city. Cities must adopt ordinances requiring that affordable replacement units be built within the new development or within three miles of original location, or if not feasible, the city can require an in lieu of fee. Cities are supposed to offer density bonuses and other incentives to assist in the development of the replacement units.¹⁰¹

☑ Arlington, Virginia

Arlington has a one-for-one replacement housing zoning overlay in the Rosslyn-Ballston Metro Corridor, as part of a “Special Affordable Housing Protection District.”¹⁰² Affordable housing lost in this district as a result of redevelopment for higher density projects must be replaced one for one (based on bedrooms vs. units).¹⁰³ One example of the program’s results is a redevelopment of a 55-unit complex with a 314-unit development, the Gallery. As a result of the Special Affordable Housing Protection District, the new development included 38 affordable two-bedroom units (76 bedrooms), replacing 55 affordable units (primarily one-bedrooms).¹⁰⁴

☑ St. Paul, Minnesota

Saint Paul requires the replacement of affordable rental housing if a city-assisted project contributes to the loss of affordable units. The city first conducts an affordable rental housing analysis, and then requires replacement housing in the following circumstances: “(1) If the affordable rental housing analysis shows that there has been a net loss of affordable rental housing units; or (2) If (i) the type of affordable rental housing units related to the proposed city-assisted project are currently the type of units which the city has determined, through its housing production and preservation goals, to be needed in the city, and (ii) the number of units to be lost due to the proposed city-assisted project equals or exceeds twenty (20) units”¹⁰⁵

Housing Impact Policies

Housing impact policies require a city or property owner to review the impact that proposed zoning changes or other land-use changes would have on existing affordable housing and the current low-income residents. Before a land-use or zoning change is enacted, the city first conducts an analysis to determine whether the change will have a detrimental impact on low-income tenants or owners. Some cities require under their housing impact policy that a city or developer provide relocation benefits to any tenants displaced as a result of the zoning and other land-use changes. This latter requirement is discussed further in Tool #5.

Example of Housing Impact Policies

☑ Illinois

The State of Illinois requires a city to conduct a “housing impact study” before the city adopts a TIF. The purpose of the study is to identify the effect of a TIF on existing housing and to require the city to submit a plan for relocating affected residents. The study must contain information about the physical characteristics of the properties to be affected, as well as the race and ethnicity breakdown of the residents of the properties. The City must provide money to help the occupants relocate to a new home and identify available, affordable replacement housing for the people who are displaced.¹⁰⁶

Condominium Conversion Ordinances

One area of concern for cities over the years has been the high rate of conversions of rental housing into condominiums through renovation or demolition and redevelopment. To combat the loss of affordable rental housing inherent in the conversions, dozens of cities and states all across the country have adopted condominium conversion ordinances, including: Seattle, Boston, California, Los Angeles, San Francisco, Massachusetts, Virginia, Washington, Nevada, Maryland, New York, and Florida.¹⁰⁷

These ordinances typically contain a variety of policies aimed at discouraging conversions of rental housing to condominiums. Most conversion ordinances contain variations of the following three elements: (1) tenant relocation fees; (2) advanced notice to tenants; and (3) a right of first refusal for tenants to purchase their units (these three requirements are discussed under Tool #5).¹⁰⁸ Condominium conversion ordinances can also include the following:

- a cap on the number of condominium conversions that can take place during a year
- approval by the local planning commission or city council; and
- payment of a housing mitigation fee to the city's housing trust fund to offset the impact of the tenants being displaced.

A condominium conversion ordinance can apply to conversions through renovations of multifamily housing units as well conversions done through demolition and redevelopment of a multifamily housing site.

Examples of Condominium Conversion Ordinances

☑ Boston, Massachusetts

When rental property is being converted to condominiums, Boston requires a five-year notice period for elderly, disabled, and low or moderate-income tenants. All other tenants are entitled to a one-year notice. Tenants have a right of first refusal to purchase their unit, along with a relocation benefit of \$5,000 for elderly, disabled, and low or moderate-income tenants, and \$2,000 for all other tenants.¹⁰⁹

☑ San Diego, California

Under San Diego law, all condominium conversions are subdivisions of land triggering the city's subdivision map act and requiring approval of the planning commission after a public hearing. The city requires 180-day notice to tenants and a 90-day right of first refusal to purchase the unit at the price offered to the general public. Whenever the citywide vacancy rate is 7% or less, the landlord must provide tenant relocation benefits of three months rent to tenants at or below 100% median family income, which can be used as down payment assistance on the converted unit. Ten percent of the converted units must be affordable at 100% median family income unless the developer pays an in-lieu-of fee.¹¹⁰

☑ Berkeley, California

In Berkeley, rental housing owners seeking to convert apartments into condominiums must obtain approval from the City after the planning commission holds a hearing on the proposed conversion. The City of Berkeley limits condominium conversions to 100 a year. Owners must pay a housing mitigation fee to the city's housing trust fund in the amount of 12.5% of the sales price. The city also gives tenants significant rights: tenants cannot be evicted from their units except for good cause (and condo conversion is not a good cause), tenants must receive advance notice, and tenants have a right of first refusal to purchase their unit.¹¹¹

Application to Austin: Section 214 of the Local Government Code bars a city from setting a sales price for a home unless certain statutory exceptions are met.¹¹² This state bar does not apply to rental housing, and it does not apply to property in a homestead preservation district. The state bar also does not apply to voluntary programs, such as density bonus programs. If an owner does not have a legal right to convert an apartment to a condominium, then a voluntary program arguably could be set up within the confines of Section 214 whereby an owner could convert to a condominium only on the condition that a certain percentage of the affordable units are replaced in the condominium development.

There are no state laws that explicitly bar the City of Austin from requiring the following through its zoning and land use ordinances: housing impact studies and housing replacement plans, mitigation fees, landlord reimbursement for tenant relocation costs, caps on condominium conversions, or advanced city approval for condominium conversions.

Tool #5: Regulatory Tools to Preserve Affordable Housing

A variety of regulatory tools have been implemented at the local and state levels to preserve affordable housing. Regulatory tools alone, however, are rarely adequate to preserve affordable housing. These tools are most effective when utilized with funding and other incentives.¹¹³ Three of the most common regulatory tools to preserve affordable multifamily housing are laws that require: (1) advanced notice to tenants; (2) a “right of first refusal” for tenants, a nonprofit, or the city to purchase the property; and (3) tenant relocation reimbursements. Some jurisdictions utilize these tools only for government-subsidized properties that are opting out of their affordability restrictions. Other jurisdictions utilize these tools for non-subsidized properties as well—for rental units being torn down or otherwise converted into condominiums, and even for rental properties that are being torn down for new higher end rental housing.

Notice and Rights of First Refusal Requirements

States and cities have adopted a variety of measures to provide advanced notice and to increase the negotiating power and ability of localities, tenants, and nonprofits to purchase an affordable property when it is sold or otherwise converted to a non-affordable use. These laws differ in many respects including: (1) what kinds of properties are covered; (2) what event triggers their application; (3) the nature of the purchase opportunity provided; and which entities can take advantage of the purchase opportunity.¹¹⁴

Notice laws require a property owner to give tenants and other designated entities written advanced notice prior to opting out of an affordability agreement or prior to the sale of the units. One of the primary purposes of notice requirements is to provide parties impacted by the loss of affordable housing units (e.g., tenants and the city) with sufficient time to formulate a strategy to minimize the impact—for example, securing funding for tenants to purchase their units and locating alternative housing for the tenants.

Notice provisions are often contained within right of first refusal ordinances, but can also stand alone. Notice requirements range from 90 days to 5 years. Some jurisdictions require longer notice for certain classes of tenants, such as persons with disabilities, seniors, and low-income families with children who may have a harder time finding replacement rental housing.

For some types of federally subsidized properties, there are already federal laws requiring notice when an affordable housing restriction is expiring.¹¹⁵ For example, federal law requires a landlord terminating a project-based Section 8 contract to give one-year advance notice to tenants and the U.S. Department of Housing and Urban Development.¹¹⁶ A number of states and cities have laws that supplement these federal notice requirements, such as requiring longer notice periods, more detailed information about the property from the owner, and broader distribution of the notice. At least two states require the owners to file a detailed tenant impact statement.¹¹⁷

Under a “right of first refusal” law, a tenant or governmental entity is given the right to match a private offer to purchase a property during the notice period. States and cities can also require “a right to make an offer,” which are similar to rights of first refusal, but give tenants

or governmental entity an exclusive window of opportunity to make an offer rather than matching an offer, with no obligation on the owner to sell.¹¹⁸ Finally, a state or city can require a “right to purchase,” requiring the owner to sell to a designated purchase at market value in lieu of converting a subsidized property to market rate.¹¹⁹ Some laws allow tenants to transfer their right of first refusal to another entity, such as a nonprofit organization.

If tenants or nonprofit organizations exercise the right of first refusal, they will typically need substantial subsidies to afford the purchase. The City of Santa Monica provides loans of up to \$110,000 to assist tenants in purchasing their condominiums.¹²⁰ When a group of tenants purchase their building, the tenants often create a limited equity cooperative to allow for joint ownership of the property by the tenants. The limited equity cooperative can provide for permanent affordability, but can also allow for the tenants to build up equity in the property, similar to a community land trust. New York City, for example, has more than 60,000 limited equity cooperative units.¹²¹

The right of first refusal laws vary in the length of time that a tenant is required to make an offer to purchase, ranging typically from 30 to 90 days. To ensure that a private offer is bona fide, the Uniform Condominium Act, which has been adopted in several states (including Nevada, Washington, and Virginia), bars a developer from offering the unit to another potential purchaser at a lower price or on better terms for 180 days.¹²²

Many of the states and cities with notice and rights of first refusal laws also require landlords to give tenants with expiring leases an extension of their leases for the duration of the notice term (tenants can still be evicted for good cause). Otherwise, developers can more easily evade the right of first refusal law by switching to month-to-month leases and emptying their buildings of tenants.

“Nonprofits, which are heavily dependent upon public funding, often have difficulty matching the timeframe of private buyers that have cash on hand for due diligence and ready access to financing.”¹²³ Therefore, successful rights of first refusal programs are heavily dependent on tenant organizing, a strong set of nonprofit housing developers, ready access to financing, and technical assistance programs.

States with notice and rights of first refusal requirements for non-subsidized properties include:

- **Florida:** 180- to 270-day notice to tenants, depending on how long a tenant has lived in the unit. Right of first refusal for tenants who have lived in the building for longer than 180 days.¹²⁴
- **Maryland:** Notice to tenants required after condo conversion plan filed with the state. Tenants may extend their leases for 180 days from the date of the conversion notice. Up to 20% of low-income households can extend their leases for 3 years. Right of first refusal for tenants.¹²⁵
- **Massachusetts:** One-year notice to tenants. Two-year notice for seniors, disabled and low-to-moderate income tenants. Right of first refusal for tenants.¹²⁶

- **Nevada:** 120-day notice to tenants. Expiring leases must be extended for notice period. Right of first refusal for tenants.¹²⁷
- **New York:** Three-year notice to tenants. Tenants cannot be evicted due to conversion. Leases for eligible seniors and persons with disabilities must be extended indefinitely. Right of first refusal for tenants.¹²⁸
- **Virginia:** 120-day notice to tenants. Expiring leases must be extended for notice period. Local governments can require up to 3 years in lease extensions for seniors and persons with disabilities, for up to 20% of units. Right of first refusal for tenants.¹²⁹
- **Washington:** 90-day notice to tenants. Right of first refusal for tenants.¹³⁰

Examples of Cities with Notice and Rights of First Refusal Requirements for Non-Subsidized Properties¹³¹

Boston

Before converting a rental unit to condominiums, Boston requires developers and property owners to give a five-year notice to seniors, disabled and low-to-moderate income tenants. If the lease expires within the notice period, the lease must be extended to allow the tenant to stay for the entire notice period. The City also requires that tenants have a right of first refusal to purchase their units.¹³²

Chicago

Before converting a rental unit to condominiums, Chicago requires developers and property owners to give a 120-day notice to tenants. Expiring leases must be extended for the notice period. Tenants who are over 65 years old, blind, or unable to walk without assistance must be given a 180-day notice. Tenants have a right of first refusal to purchase their units.¹³³

Washington, D.C.

Washington, D.C. has one of the most successful rental housing preservation programs, the Tenant Opportunity to Purchase Act (TOPA). The Act has been a “catalyst for preserving thousands of affordable homes.”¹³⁴ Before any rental housing unit in the city may be sold, the owner must give notice to each tenant and to the mayor. The tenants then have a right of first refusal to purchase the property. The tenants may assign this right to a third party. The tenants have at least 120 days to negotiate a sale. This time period can be extended for another 120 days if a lending institution provides written notice that the tenant association has applied for financing.¹³⁵

States with notice and rights of first refusal requirements for subsidized properties include:

- **Illinois:** Six-month notice to tenants and to the state housing authority. Tenant association has right of first refusal and can transfer right to a nonprofit or for-profit developer. Tenants have access to certain financial information regarding the property. State law sets up a mechanism for appraising the property.
- **Maryland:** One- to two-year notice to tenant association, local jurisdiction, and the state. State law sets up a mechanism for appraising the property. Right of first refusal for the local housing authority, groups representing tenants, and nonprofits. Owner must file a detailed tenant impact statement.
- **California:** One-year notice to tenants, state, local housing authority, and local government. Tenants have access to certain information regarding the property. Tenant association, nonprofits, some for profits, and public agencies can make a purchase offer. Certain types of entities have a right of first refusal to match any private offer.
- **Maine:** 90-day notice to state and local housing authority. Right of first refusal.
- **Minnesota:** 12-month notice to tenants and local jurisdiction. Owner must file a detailed tenant impact statement.
- **Rhode Island:** Two-year notice to tenant association, state, and local jurisdiction. Tenants have access to certain information regarding the property. Right of first refusal for tenant association, state housing authority, local housing authority, and local jurisdiction.

Examples of Cities with Notice Requirements and Rights of First Refusal for Subsidized Properties¹³⁶

☑ Denver

Denver requires the owners of certain federally-subsidized properties provide anywhere from a 210-day to 1-year notice to the city and tenants.

☑ San Francisco

San Francisco requires 12- to 18-month notice to tenants. Tenants have access to certain information regarding the property, a fair price analysis, and public hearings. The city, tenant associations, and nonprofits have a right of first refusal. The San Francisco Redevelopment Agency has a program where it purchases the subsidized properties and executes a 99-year lease to the new owners, ensuring that the property will remain affordable for as long as the City requires. The City also guarantees lenders, owners, and purchasers of federally-assisted housing that it will “make up the difference” between restricted rents and market rents if the federal government fails to provide project-based Section 8 subsidies.

☑ Portland

Portland requires one-year notice to tenants and the City. The City has an option to purchase the property. Using a Preservation Line of Credit (PLOC), tax increment financing, and federal resources, the City has partnered with non-profits and the Housing Authority to preserve or replace 418 federally-subsidized units, but estimates that an additional \$2 million a year in on-going city resources is needed for this preservation.¹³⁷ The Portland ordinance formerly required a replacement housing payment of \$30,000 per unit if an owner rejected the city's offer to purchase at the appraised fair market value, to be paid into an affordable housing fund. This provision was preempted by the state in exchange for a longer notice requirement and authorization of local eminent domain powers.¹³⁸

Application to Austin: Texas requires notice requirements for certain types of federally subsidized properties. These properties must provide 90-day notice to the tenants and to the Texas Department of Housing and Community Affairs of their intent to terminate their affordable housing subsidy program. ¹³⁹ In some instances, Texas law requires that certain types of federally subsidized properties provide 12-month notice to TDHCA, but there is no right of first refusal.¹⁴⁰ Texas does not have any notice or right of first refusal laws governing non-subsidized properties. As a home rule city, Austin would presumably have the power to enact such requirements as part of its expansive powers of local self government granted by the Texas Constitution and Texas Legislature.

Tenant Relocation Assistance Laws

A tenant relocation ordinance requires landlords converting or otherwise selling a rental property that would displace tenants to reimburse eligible tenants for all or part of the cost for the tenant to relocate to a new rental unit. Relocation assistance can include reimbursement for moving, security deposits, transportation to look at replacement units, and money to help supplement the difference in rent at the replacement unit. In the states and cities highlighted below, the relocation assistance benefits range from \$375 to \$5000. Relocation assistance laws may restrict benefits or require higher benefits to certain classes of tenants, such as low-income tenants, seniors, tenants with children, or persons with disabilities. Some relocation assistance laws are not triggered unless the city rental vacancy rate is below a specified level.

Examples of Relocation Assistance Laws¹⁴¹

Seattle

The city (versus the landlord) provides up to \$1071 in relocation assistance to low-income tenants (50% median family income). If tenants can document that they had to pay more than \$1,071 to relocate, however, the city will pay them up to \$500 extra. The ordinance applies to any property undergoing: (1) demolition, (2) substantial rehab, (3) change of use, or (4) removal of government restrictions. Landlords are also required under the ordinance to provide 90-day notice of the pending eviction to tenants.¹⁴²

Los Angeles

Landlords must provide relocation assistance of \$2,000 per unit—\$5,000 per unit for tenants with children, seniors, and persons with disabilities.¹⁴³ Low-income tenants and tenants who have lived in their units for at least three years receive \$9,040 each or \$17,080 if they are also disabled, elderly, or parents of minor children. Tenants who have lived in their units for less than three years receive \$6,810, or \$14,850 if they are also disabled, elderly, or parents of minor children.¹⁴⁴

Florida

Landlords must provide relocation assistance of one month's rent if landlords do not provide a lease extension for tenants with expiring leases.¹⁴⁵

Maryland

Landlords must pay tenants \$375 and actual moving expenses up to \$750 if reasonably incurred.¹⁴⁶

Massachusetts

Landlords must pay for actual moving expenses up to \$750, and up to \$1,000 for seniors, persons with disabilities, and low- to moderate-income tenants. In Boston, tenants are eligible for a flat sum of \$3000, and \$5000 for seniors, persons with disabilities, and low- to moderate-income tenants.¹⁴⁷

Virginia

Local governments may require landlords to reimburse relocation costs. There is no cap on the amount.¹⁴⁸

Washington

Local governments may require landlord reimbursement of relocation costs for up to \$500 per unit.¹⁴⁹

Los Angeles

Landlords must pay a relocation fee of \$5,000 to seniors, persons with disabilities, and families with children, and a fee of \$2,000 for all other tenants. Landlords must provide a list of vacant comparable apartments and, for tenants with disabilities, free transportation to inspect potential apartments.¹⁵⁰

Tool #6: Other Strategies to Preserve Affordability

Adopt a Comprehensive Preservation Strategy

The tools listed in this report are most effective when utilized together with a broad set of tools as part of a comprehensive preservation policy. Cities with comprehensive preservation programs include New York, Los Angeles, Denver, Washington, D.C., Boston, and Chicago, and San Francisco. New York, for example, has made it a city priority to preserve 73,000 units over a 10-year period and is doing so by using a comprehensive set of tools. For federally-subsidized properties, these tools include: (1) requiring properties to provide notice when their subsidies are set to terminate; (2) assisting the properties in restructuring their mortgages and procuring funds for capital improvements, in exchange for extending their affordability term for fifteen years; and (3) offering tax abatements. The City also provides millions in city subsidies to assist with preservation of these properties.¹⁵¹

Reach Out to Tenants and Support Tenant Organizing

Tenants need to be educated and organized in order to have a voice in city policies that impact their future—and in order to be in a position to purchase their properties. In San Francisco, the city provides resident capacity grants to 18 tenant groups and does direct outreach to all tenants of every at-risk subsidized property.¹⁵² This outreach is the key to the success of the city’s preservation program. Since August 2002, the city has preserved 17 subsidized developments, for a total of 1,745 units.¹⁵³

Conduct an On-Going Assessment of At-Risk Properties

Cities need to assess, on an on-going basis, all of their at-risk properties and the amount needed for financing these properties. Los Angeles has created a Preservation Coordinator position to implement and manage the city’s Preservation Program. The program will identify all affordable housing in Los Angeles, including units at risk of converting to market rent.¹⁵⁴ Statewide in California, all localities are required to prepare a 10-year analysis of at-risk subsidized properties. The analysis must include the locality’s preservation goals and provide a 5-year action plan that identifies available financing and subsidies.¹⁵⁵ In Chicago, the Rehab Network, a local 501(c)(3) nonprofit, tracks subsidized multifamily properties at risk of terminating their affordability contracts through a statewide database of the properties, which includes information on when their affordability term expires. The nonprofit also assists in lining up purchasers for the properties.¹⁵⁶

Enforce the Fair Housing Act

Because many affordable housing complexes in Austin are disproportionately occupied by minority residents, actions by the city or owner that lead to displacement of the residents could potentially result in liability under the Fair Housing Act. Cities have a legal obligation to affirmatively further fair housing opportunities in the city under the Fair Housing Act. In Minnesota, for example, tenants have relied on the Fair Housing Act to bring owners to the negotiating table and preserve hundreds of federally-subsidized-housing units.¹⁵⁷

Provide Technical Assistance and Outreach to Owners and Tenants

Both owners and tenants of multifamily properties need education about their options for preservation, and then need technical assistance in moving forward with a preservation plan. Washington, D.C.'s preservation program is successful only because the city has a broad group of technical assistance providers who assist tenants and nonprofit organizations acquiring properties for preservation.¹⁵⁸ This cadre of professionals includes pro bono lawyers, technical assistance providers, trained tenant organizers, and development consultants.¹⁵⁹

Build the Organizational Capacity of the Nonprofit Development Community

Affordable rental housing owned and managed by nonprofit organizations can result in a reliable stock of affordable rental housing that is permanently affordable. Otherwise, without nonprofit ownership, units built in appreciating markets may not remain affordable after the affordability restrictions expire.¹⁶⁰ In order for nonprofit organizations to play a long-term role in housing preservation, however, they need “substantial organizational stability and management capability.”¹⁶¹ At this time, Austin has very few nonprofits with the organizational capacity to purchase, renovate, and manage larger multifamily complexes.

Create Cross-Sector Collaborations

A successful preservation policy will require participation from the public, nonprofit, and for-profit sectors, in addition to collaboration amongst owners, potential buyers, advocacy groups, lenders, community groups and other stakeholders. In Chicago, the Urban Land Institute has worked in partnership with its Chicago District Council to create the Preservation Compact. The Preservation Compact is a cross-sector partnership with the region's housing experts that has been developing an action plan of tools and strategies to preserve affordable rental housing and gain the political commitment to implement them.¹⁶²

Endnotes

¹ *Talk of Austin*, Austin American-Statesman blog, November 19, 2006,

http://www.statesman.com/blogs/content/shared-gen/blogs/austin/talk/2006/11/19/affordable_housing_downtown.html#comment-818889

² Sarah Coppola, *Plan to raze apartments gets airing*, *Austin American-Statesman* (November 17, 2006), at B01.

³ *Id.*

⁴ The Joint Center for Housing Studies of Harvard University, *America's Rental Housing: Homes for a Diverse Nation* (2006), at 2.

⁵ *Id.* at 20.

⁶ Cushing N. Dolbeare and Sharon S. McGowan, *Affordable Rental Housing and the American Dream: The Role for Foundations*, Neighborhood Funders Group, (Spring 2003), at 12.

⁷ *Id.* at 12. Texas leads the nation with the number of project-based Section 8 properties opting out of their affordability agreements. As of 2002, 53 properties with 8,671 units had opted out—more than four times the second leading state. Emily P. Achtenberg, *Stemming the Tide: A Handbook on Preserving Subsidized Multi-family Housing*, Local Initiatives Support Commission (2002), at Exhibit 3, p. 51.

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