IMPLEMENTING A COMMUNITY PREFERENCE POLICY FOR AFFORDABLE HOUSING IN BERKELEY

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CLIENT REPORT

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APPROVED

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Implementing a Community Preference Policy for Affordable Housing in Berkeley

Executive Summary
As Berkeley faces the related problems of increasingly unaffordable housing costs and declining racial and economic diversity, residents and policymakers are seeking solutions to enable economically vulnerable Berkeley households to remain in their community. Currently, both current and displaced Berkley residents are no more likely to obtain affordable housing in their city than a similar applicant with no connection to Berkeley. Local governments across the country have adopted preference policies that increase the likelihood that applicants meeting certain criteria obtain affordable housing. A preference policy has the potential to strengthen the City’s existing anti-displacement efforts by improving the ability for low-income Berkeley residents to access affordable housing and remain in their neighborhoods.

Legal Considerations for Cities that Implement Preference Policies
Cities implementing preference policies must be cognizant of the legal constraints posed by the Fair Housing Act and the Constitution as well as Department of Housing and Urban Development (HUD) regulations. These policies risk three types of legal challenges:

- Intentional discrimination claims under the Equal Protection Clause of the Fourteenth Amendment: Cities considering preference policies to mitigate the decline of communities of color in gentrifying neighborhoods cannot prioritize residents of color for affordable housing, as this preference would be considered intentionally discriminatory and in violation of the Constitution.
- Right-to-travel claims under the constitutional right to interstate travel and migration: Courts have ruled that policies based on the duration of a person’s residence in a location infringe on the right to travel. Cities interested in adopting preference policies to stem the displacement of longtime residents are limited in their ability to prioritize this population, as residency preferences cannot include duration requirements.
- Disparate impact claims under the Fair Housing Act: The disparate impact standard means policies that are not intentionally discriminatory may still violate the Fair Housing Act. A preference could be invalidated under a disparate impact claim if the policy constrains the housing choices of certain groups or results in primarily one racial group obtaining affordable housing in a city or neighborhood.

Case Studies of Preference Policies in Other Cities
This research seeks to help the City of Berkeley better understand the possibilities and constraints for a community preference policy. This report uses case studies to investigate how a community preference policy could be effectively implemented in Berkeley. The case studies explore current policies in Santa Monica, CA; Cambridge, MA; San Francisco, CA; Portland, OR; and Oakland, CA and examine the following aspects of each city’s policy:

- What preference categories are included in the policy?
• What types of affordable housing are affected by the policy?
• Are city agencies or housing developers responsible for verification of preferences?
• How does the policy affect the tenant selection process for affordable housing?
• What city resources are required for implementation?
• What has been the impact of the policy?
• Has the policy faced any challenges from courts or the federal government?

Key Takeaways from Research
Recurring themes within the case studies suggest lessons for the City of Berkeley to consider when creating a community preference policy for its affordable housing programs:

• The following preference categories are common across policies:
  o A general live/work preference for all city residents and non-residents who work in the city.
  o A preference related to displacement caused by government action, such as code enforcement or urban renewal activities.
  o A preference related to displacement caused by no-fault evictions.
• Cities with preferences for inclusionary units directly apply the preference policy for these units, and these city governments are responsible for tracking vacancies and processing applications for inclusionary units.
• City participation in verifying preference eligibility and applying the preference to the tenant selection process facilitates more consistent and accurate implementation as well as thorough data collection, but this level of involvement also requires more resources.
• Policies with a breadth of preference categories minimize the risk of lawsuits. None of the case study cities have faced lawsuits related to violating the Fair Housing Act, constitutional rights, or other aspects of the law. In all of these cities, preference is not limited solely to current residence in a city.
• The funding sources for affordable housing affect the risk of challenges from HUD. Financing projects with CBDG and HOME dollars does not require HUD to approve the preferences being used for a project, while other sources of federal funding result in more oversight from HUD.
• Cities should define policy goals, create metrics for effectiveness, and collect data to measure policy impact.

Constraints for Policy Implementation in Berkeley
Implementing a preference policy in Berkeley would require changes to the City’s existing affordable housing programs and processes. Several factors pose potential barriers to applying a preference policy to these programs:

• Diffuse management of the affordable housing application process in Berkeley: the City of Berkeley does not accept applications for affordable housing, track vacancies, or maintain waiting lists.
• Additional staffing and funding is needed for implementing new programs.
• Unintended consequences of community preferences: the current displacement crisis in the Bay Area is a regional issue, and a preference policy in Berkeley impacts the ability of the region’s low-income households to access affordable units in Berkeley.

Recommendations for Preference Policy Design
This report concludes by proposing preference categories and implementation processes for a preference policy in Berkeley. These recommendations focus on two timeframes for implementation: immediate next steps for the City and longer-term processes that would require more substantial changes to the City’s affordable housing systems.

• Preference category recommendations for initial implementation:
  o Live/work preference for affordable housing applicants who currently live in Berkeley and non-residents who work in Berkeley.
  o Displacement preference for current or former residents displaced from Berkeley residences by government action or no-fault eviction.

• Recommendations for processes to implement a preference policy within the City’s existing affordable housing systems:
  o Determine metrics for policy effectiveness.
  o Collect data to measure policy impact.
  o Adopt a preference policy with two initial preference categories, a live/work preference and a preference for current and former residents displaced by government action/no-fault evictions.
  o Create a certificate program for the displaced tenant preference.
  o Update relevant policies and procedures so that affordable housing providers for both inclusionary and nonprofit units incorporate the preference policy for all future affordable housing units built in Berkeley.
  o Explore whether the preference policy can be applied to the re-rental of existing inclusionary and nonprofit units.

• Longer-term recommendations for actions required to develop a preference category that can assist Berkeley residents displaced by rising housing costs and other economic factors:
  o Conduct outreach and engagement with community stakeholders and affordable developers to inform the development of new preference categories and refine existing preference categories.
  o Develop a preference category that incorporates generational ties to Berkeley and applies to current and former residents displaced by economic factors.
    - Potential preference category: preference for current or former residents with generational ties to redlined Berkeley neighborhoods.

• Longer-term recommendations for instituting centralized City administration of Berkeley’s affordable housing programs, which can result in more effective preference policy implementation:
  o Create a single application administered by the City for all inclusionary units in Berkeley.
  o Create a centralized City-administered lottery process and online application portal for all inclusionary and nonprofit units.
I. Introduction

Beginning with the Free Speech Movement and other student activism in the 1960s, Berkeley gained a national reputation as a city committed to civil rights and social justice.¹ This commitment to creating a more just and inclusive society extended beyond the University and its students to city residents and their civic institutions, evidenced by the Berkeley Unified School District creating the nation’s first desegregation busing program in 1968. At the time, Berkeley was nearly one-quarter Black, and its schools contained an even mix of Black and White students.² While many still consider Berkeley to be notable for its cultural diversity,³ in reality the City’s demographics have changed immensely in recent years. A city with a longstanding reputation for tolerance and inclusion finds itself becoming increasingly socially and racially exclusive.

As Berkeley faces the related problems of increasingly unaffordable housing costs and declining racial and economic diversity, residents and policymakers are seeking solutions to enable economically vulnerable Berkeley households to remain in their community. Community meetings related to the Planning Department’s Adeline Corridor Specific Plan indicated a strong desire for a policy that would give displaced Berkeley residents priority for new affordable housing built in the plan area.⁴ Similarly, the Berkeley City Council has directed the Department of Health, Housing and Community Services to research possibilities for an ordinance that would provide preference to Berkeley residents applying for affordable housing in the city.⁵ These proposed strategies fall within a broader category of affordable housing preference policies, which provide prioritized access to affordable units for applicants who meet specific criteria.

Generally speaking, everyone who qualifies for an affordable housing program based on income guidelines has an equal chance of receiving assistance. However, local governments across the country have adopted preference policies that increase the likelihood that applicants meeting certain criteria obtain affordable housing.⁶ More specifically, this report uses the term “community preference policy” to refer to preference policies that prioritize affordable housing applicants with some connection to an affordable housing unit’s location. For example, these policies might give preference to a resident of the city where the housing is located, someone

employed in the city, someone who has been displaced from the city under certain circumstances, or residents living in close proximity to the unit they are applying for.

The City of Berkeley does not currently have a community preference policy. As a result, both current and displaced residents are no more likely to obtain affordable housing in their community than a similar applicant with no connection to Berkeley. However, the City has implemented a variety of anti-displacement measures, including rent stabilization and a tenant protection ordinance. Additionally, the City supports the production of affordable housing through its inclusionary housing program and by providing funding to nonprofit developers through the Housing Trust Fund. A preference policy has the potential to strengthen the City’s existing anti-displacement efforts by improving the ability for vulnerable Berkeley residents to obtain affordable housing and remain in their neighborhoods.

The following report is in partnership with Berkeley’s Department of Health, Housing and Community Services, which is coordinating the response to the City Council’s directive to explore a community preference policy for affordable housing in Berkeley. This research seeks to contribute to local policy solutions that can stem the displacement of Berkeley residents and preserve and promote diversity in the city. Section II of this report begins by providing an overview of how government agencies use preference policies in both local and federal affordable housing programs. This section also discusses the legal framework that impacts how local governments design and implement community preference policies.

Next, Section III examines the local context shaping the interest in a community preference policy among Berkeley’s residents and policymakers. This section presents data analysis illustrating demographic changes in Berkeley as rents rise. This part of the report also describes how Berkeley’s affordable housing processes currently function in the absence of a community preference policy.

Section IV presents case studies of community preference policies that currently exist in five cities: Santa Monica, CA; Cambridge, MA; San Francisco, CA; Portland, OR; and Oakland, CA. These case studies explore the following aspects of each city’s policy:

- Policy origins
- Types of units included in the policy
- Preference categories included in the policy
- Eligibility for qualifying for different preference categories
- Policy rationale and goals
- Policy implementation by city agencies and/or housing developers
- City resources required for implementation

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8 Berkeley Municipal Code §23C.12 (2018); Housing Trust Fund Guidelines, prepared by the Health, Housing, and Community Services Department, City of Berkeley (Berkeley, CA, 2016), https://www.cityofberkeley.info/uploadedFiles/Housing/Level_3 - General/Revised%202016%20HTF%20GUIDELINES.pdf.
• Policy impact
• Compliance with the Fair Housing Act and other legal considerations

Based on findings from the case studies, the final section of the report makes recommendations for how the City could construct a community preference policy for Berkeley that is feasible to implement in the short-term. This section details the constraints that the City faces in creating and implementing this policy. The report concludes by proposing more substantial changes that the City of Berkeley could make to its affordable housing processes to enable a more effective community preference policy that can stem displacement and promote housing stability for Berkeley’s low-income households and communities of color.

Methodology
This report primarily uses case studies to investigate how a community preference policy could be effectively implemented in Berkeley. Case studies were researched by reviewing government documents and interviewing staff in each city who are involved in implementing preference policies. The types of government documents examined for this report included city ordinances, local government codes, administrative guidelines for city housing programs, regulatory agreements between cities and developers, annual reports on housing policies and programs, staff reports for city council meetings, and application forms for affordable housing programs. For a list of interview respondents for the case studies, see Appendix A.

This report supplements these case studies with quantitative data analysis. Housing price data from Zillow and rent data from Berkeley’s Rent Stabilization Board were used to examine the disappearance of housing options for lower-income renters in Berkeley’s rental market. Additionally, analysis of U.S. Census Bureau data from both the Census and the American Community Survey provided context for demographic changes in Berkeley. This data was also used to explore how a preference policy could help preserve diversity in Berkeley.

II. The Use of Preferences in Local and Federal Housing Policy
Local governments and public housing authorities face the continual challenge of allocating increasingly scarce affordable housing resources within the communities they serve. In recent years, the population of low-income renters has increased while the federal government has cut funding for both rental assistance and block grant programs. The demand for affordable housing is rising while cities and housing authorities have increasingly limited funds to provide housing for low-income renters. As a result, increasing numbers of cities and housing authorities are implementing preference policies to try to distribute the limited supply of affordable housing in a way that best responds to local needs.9

Defining Community Preferences
In the absence of a preference policy, everyone who qualifies for an affordable housing program based on income guidelines has an equal chance of receiving assistance. However, local governments and housing authorities across the country have adopted preference policies that increase the likelihood that applicants meeting certain criteria obtain affordable housing.\(^{10}\) Jurisdictions vary in their motivations for implementing these policies. A more general preference for city residents may stem from the notion that a local government’s primary responsibility is to serve its own residents.\(^{11}\) In recent years, cities grappling with rising housing costs, declining diversity, and other issues related to gentrification are increasingly interested in using geographically targeted community preference policies as a tool for preventing displacement in historically marginalized communities.\(^{12}\)

Types of Affordable Housing Impacted by Preferences
Cities’ preference policies typically impact two types of affordable housing units—nonprofit units and inclusionary units:

- **Nonprofit units:** For the purposes of this report, the term “nonprofit units” refers to affordable units located in buildings constructed by nonprofit affordable housing developers using some form of government subsidy. Typically, all of the units in these buildings have a below-market-rate rent and are only available to income-qualified households. Cities often provide funding to affordable housing developers for these projects, and cities with preference policies for nonprofit units include these preferences in the regulatory agreements they use to establish the terms of this funding.

- **Inclusionary units:** Inclusionary units describe below-market-rate units that a market-rate developer builds within a multifamily project as a result of a city’s inclusionary housing policy. In Bay Area cities with inclusionary housing ordinances, the below-market-rate units typically comprise 10% to 20% of a development.\(^{13}\) In California, market-rate projects may also include affordable units due to the California State Density Bonus Law, which allows up to a 35% increase in the density of a market-rate project if the developer also builds below-market-rate units.\(^{14}\) Cities with preference policies for inclusionary units describe these preferences in the legislation or administrative guidelines that govern their inclusionary housing programs. The

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\(^{10}\) Freund, “Perpetuating Segregation or Turning Discrimination on Its Head? Affordable Housing Residency Preferences as Anti-Displacement Measures.”

\(^{11}\) Norquist, “Local Preferences in Affordable Housing: Special Treatment for Those Who Live or Work in a Municipality.”

\(^{12}\) Freund, “Perpetuating Segregation or Turning Discrimination on Its Head? Affordable Housing Residency Preferences as Anti-Displacement Measures.”


regulatory agreements or deed restrictions that developers sign will also include these preferences.

Preferences in Housing Choice Voucher Programs
In addition to preference policies established by cities within their local housing programs, housing authorities also use preference policies when administering federal housing programs. Public housing authorities oversee federal housing assistance within a local jurisdiction, such as a city or county. Currently, the largest needs-based federal housing program is the Housing Choice Voucher program, which provides households with subsidies they can use to pay rent to landlords in the private market. A study by the Congressional Research Service found that 96% of the housing authorities it surveyed apply preferences to their Housing Choice Voucher waitlists. Across the country, housing authorities use upwards of 15 different preference categories, and the most common preferences are for applicants with disabilities, applicants who live or work in the jurisdiction, elderly applicants, and applicants displaced by government action.¹⁵ The widespread use of preferences by housing authorities illustrates the prevalence of these policies across a variety of housing programs.

While housing authorities’ preference policies can serve as a precedent for city policies, the purpose of this report is to explore cities’ use of preference policies that affect nonprofit and inclusionary affordable housing units. Therefore, the case studies and other research in the following sections of this report focus solely on city policies related to nonprofit and inclusionary units and do not delve further into preferences that housing authorities use for Housing Choice Vouchers.

Legal Considerations for Cities that Implement Preference Policies
Community preference policies have the potential to stabilize gentrifying areas and help residents vulnerable to displacement remain in their neighborhoods.¹⁶ While cities now commonly implement these policies with the intent of maintaining diversity, in the past, majority-White communities used preference policies for affordable housing to maintain the exclusion of people of color. Courts struck down these policies and ruled they were in violation of the Fair Housing Act.¹⁷ Even when contemporary community preference policies intend to promote diversity and assist residents of color, this legislation could still be found to be in violation of the Fair Housing Act or other federal laws. Cities must be cognizant of this legal and historical context when crafting affordable housing preference policies to ensure that these policies are compliant with applicable laws.

¹⁵ The Use of Discretionary Authority in the Housing Choice Voucher Program: A CRS Study, Congressional Research Service.
¹⁷ Freund, “Perpetuating Segregation or Turning Discrimination on Its Head? Affordable Housing Residency Preferences as Anti-Displacement Measures;” Norquist, “Local Preferences in Affordable Housing: Special Treatment for Those Who Live or Work in a Municipality;“
Regardless of a city’s motivations for creating a community preference policy, these policies risk three types of legal challenges:

- **Intentional discrimination claims under the Equal Protection Clause of the Fourteenth Amendment:** If an individual or organization believes that a preference policy intentionally discriminates against a particular group of people, they can bring a legal challenge against the policy under the Equal Protection Clause of the Fourteenth Amendment. The Equal Protection Clause guarantees that no person or class of people can be denied the same protections under the law that are enjoyed by others. As a result, laws that differentiate among people based on race are likely to be invalidated unless they are proved to be necessary to achieve a compelling governmental interest. Therefore, government entities cannot provide a preference for affordable housing to certain racial groups. 18 Cities considering preference policies to mitigate the decline of communities of color in gentrifying neighborhoods cannot prioritize residents of color for affordable housing, as this preference would likely be unconstitutional.

- **Right-to-travel claims under the constitutional right to interstate travel and migration:** The Constitution implies a right to interstate travel and migration, which the Supreme Court has repeatedly upheld. This right to interstate travel and migration influences how cities design and implement affordable housing preferences for residents. Courts have ruled that policies based on the duration of a person’s residence in a location infringe on the right to travel. Consequently, any preference policy that prioritizes residents based on how long they have lived somewhere will be subject to strict legal scrutiny and is likely to be invalidated. Courts have found that cities have a legitimate governmental interest in providing a preference to residents over nonresidents, but these preferences must prioritize all residents equally regardless of the amount of time they have been living in a city or neighborhood. 19 Cities interested in adopting preference policies in order to stem the displacement of longtime residents in gentrifying neighborhoods are limited in their ability to specifically prioritize this population, as residency preferences cannot include duration requirements.

- **Disparate impact claims under the Fair Housing Act:** Legal scholars note that the most common court cases related to affordable housing preference policies challenge these policies as violations of the Fair Housing Act. This legislation, enacted by Congress as part of the Civil Rights Act of 1968, prohibits intentional discrimination related to housing as well as actions that have a disparate impact. 20 This disparate impact standard means policies that are not intentionally discriminatory still violate the Fair Housing Act if the policy has discriminatory consequences that disproportionately

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18 Norquist, “Local Preferences in Affordable Housing: Special Treatment for Those Who Live or Work in a Municipality.”
19 Norquist, “Local Preferences in Affordable Housing: Special Treatment for Those Who Live or Work in a Municipality.”
impact a protected class. For example, a preference policy that sets aside units for neighborhood residents near affordable housing developments may intend to stem displacement in gentrifying neighborhoods and does not have an intentionally discriminatory purpose. However, the preference could be invalidated under a disparate impact claim if the policy constrains the housing choices of certain groups or results in primarily one racial group obtaining affordable housing in a neighborhood. New York City’s community preference policy, which sets aside 50% of affordable housing units for residents living near each affordable development, faces a federal lawsuit brought by three residents of color. The plaintiffs claim the preference policy violates the Fair Housing Act by restricting their affordable housing options to the segregated neighborhoods where they currently live and preventing them from moving to higher opportunity areas of the city.

Federal Regulations Related to Preferences
In addition to the previously mentioned legal constraints posed by the Fair Housing Act and the Constitution, rules issued by the Department of Housing and Urban Development (HUD) also influence the design and implementation of community preference policies. HUD Handbook 4350.3 details the occupancy requirements and procedures that govern multifamily properties receiving subsidies from certain HUD programs. Specifically, the following programs are subject to the rules of this handbook:

- Section 221
- Section 236
- Rental Assistance Payment
- Rent Supplement
- Section 8 Project-Based Assistance
- Section 202
- Section 811

If an affordable housing development receives funding from any of the above programs, then HUD Handbook 4350.3 regulates the tenant selection plan, marketing, and waitlist management for this project. Additionally, any preferences related to tenant selection must be approved by HUD prior to being used. HUD Handbook 4350.3 notes the following conditions for approval of these preferences:

- The preference is consistent with civil rights requirements and does not result in discrimination.

21 The Fair Housing Act defines the following aspects of a person’s identity as protected classes: race, color, national origin, religion, sex, familial status, and disability.
22 Freund, “Perpetuating Segregation or Turning Discrimination on Its Head? Affordable Housing Residency Preferences as Anti-Displacement Measures.”
• Residency preferences must consider residents to be those who either live or work in the jurisdiction.
• Residency preferences cannot be based on the length of time an applicant has lived or worked in the jurisdiction.\(^{25}\)

Cities also use federal funds to support affordable housing that are not subject to the requirements of HUD Handbook 4350.3. The HOME Investment Partnerships Program (HOME) and Community Development Block Grant (CDBG) are the two main federal funding sources that local governments use to facilitate affordable housing development.\(^{26}\) The regulations in HUD Handbook 4350.3 do not apply to either HOME or CDBG. Therefore, affordable developers that receive HOME or CDBG funds do not necessarily need HUD’s approval of their processes for tenant selection, marketing, or waitlist management. For example, the City of Berkeley pools funds from HOME, CDBG, and locally-generated revenue into a Housing Trust Fund used to provide loans or grants to affordable housing developers.\(^{27}\) Five recent projects in Berkeley by the developer Satellite Affordable Housing Associates received funding from the City’s Housing Trust Fund, and HUD did not need to review the tenant selection, marketing, and waitlist management plans for these projects.\(^{28}\)

III. Local Context: Demographic Change, Rising Rents, and Existing Affordable Housing Policies

Berkeley has a long history as a racially diverse community. Prior to World War Two, many Japanese Americans lived and worked in South and West Berkeley. During the war, the population of Black residents in Berkeley increased greatly as many Black families migrated from the South to work in wartime industries such as shipbuilding. Most Black residents settled in South Berkeley due to racist housing policies such as redlining and racially restrictive housing covenants that constrained where people of color could live in Berkeley.\(^{29}\) From the 1960s through 1990, the area south of Dwight Way and west of Martin Luther King Jr. Way was predominantly Black,\(^{30}\) a demographic pattern that reflected the legacy of redlining.\(^{31}\) In recent years, however, Berkeley’s demographics have shifted dramatically, and current trends illustrate the impacts of gentrification and displacement on Berkeley’s Black community and low-income households.

\(^{25}\) \textit{HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs}, HUD.
\(^{27}\) \textit{Housing Trust Fund Guidelines}, City of Berkeley.
\(^{29}\) Natalie Orenstein, “A radical decision, an unfinished legacy,” \textit{Berkeleyside}, October 16, 2018, \url{https://www.berkeleyside.com/2018/10/16/a-radical-decision-anunfinished-legacy}.
\(^{30}\) Data from U.S. Census Bureau, prepared by Social Explorer, accessed May 2, 2019, \url{https://www.socialexplorer.com}.
Demographic Change in Berkeley

At community meetings related to the Adeline Corridor Plan, South Berkeley residents have raised concerns about declining diversity in their community.\(^{32}\) Demographic data from the Census Bureau supports these residents’ observations. Though Berkeley was approximately 23% Black in 1970,\(^{33}\) the proportion of Black residents in the city had nearly halved by 2000.\(^{34}\) The most recent estimates from the U.S. Census Bureau indicate Berkeley was only 8% Black as of 2017.\(^{35}\) Corresponding to Berkeley’s decrease in racial diversity, there has been a shift in the socioeconomic makeup of many Berkeley neighborhoods. Analysis of U.S. Census Bureau data by UC Berkeley’s Urban Displacement Project indicates nearly every Berkeley census tract lost low-income households and gained high-income households between 2000 and 2015.\(^{36}\) The same research project found that hundreds of low-income Black households left the city’s most diverse and integrated neighborhoods in South and West Berkeley while these areas gained high-income White households between 2000 and 2015. Existing research does not link the decrease in Berkeley’s population of Black and low-income residents to a single policy or event, but these changes are indicative of the interlinked forces of gentrification and displacement.\(^{37}\)

Berkeley’s Rising Housing Costs

Drastic increases in the cost of housing have occurred alongside changes in Berkeley’s demographics. According to data from Zillow, the median rent price among all rental units in Berkeley has increased by 38% since 2010 (after adjusting for inflation).\(^{38}\) The Zillow Rent Index states that the current median rent in Berkeley is $3,536 per month. Similarly, the Zillow Home Value Index shows a dramatic increase in home prices. The median home value in Berkeley is currently $1,225,700, an increase of 59% since 2010.\(^{39}\)

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\(^{38}\) Rents adjusted for inflation using the Consumer Price Index from the Bureau of Labor Statistics and reflect dollar values in February 2019.

Decreasing Affordability in Rent-Controlled Units

There are approximately 25,998 renter-occupied housing units in Berkeley, and about 75% of these rentals are rent-controlled. The Rent Stabilization Ordinance requires that every rent-controlled unit has an annual rent ceiling, and the ordinance limits annual rent increases to 65% of the percentage increase in the Consumer Price Index from the previous year. As a result, rents are likely to only be raised by a few percentage points each year, and the largest annual increase allowed is 7%. Since the California State Assembly passed the Costa-Hawkins Rental Housing Act in 1995, all rent-controlled units in Berkeley and throughout the state are subject to “vacancy decontrol,” meaning that landlords can raise the rent in a rent-controlled unit to market rate when the unit becomes vacant and a new tenant moves in. The unit is still rent-controlled, but this new tenant may be paying a much higher rent than the previous tenant.

Rental units covered by Berkeley’s Rental Stabilization Ordinance have not been immune from the overall price increases in the city’s housing market, as shown in Figure 1 below. Figure 1 was created by dividing each rent-controlled unit’s 2018 rent ceiling by the number of bedrooms in the unit, units were then grouped based on the year that their tenancy began, and then the median value for rent per bedroom within each tenancy start year was calculated. Figure 1 demonstrates that the rents being charged to new tenants in rent-controlled units were fairly stable from 2005 to 2011. Accordingly, someone who began renting a rent-controlled unit in 2011 likely paid a similar rent in 2018 as someone who began renting a comparable unit in 2005. Since 2011, there has been a substantial increase in the rents being charged to new tenants in rent-controlled units. In 2018, the median rent per bedroom for tenancies beginning in 2017 was 67% higher than the median rent per bedroom for tenancies that began in 2011.

44 For the purposes of this calculation, studio apartments and one-bedroom units were both considered to have one bedroom.
45 This figure comes from a dataset sent to the author in November 2018 by the City of Berkeley’s Rent Stabilization board.
Data from the Rent Stabilization Board also indicates that a large portion of rent-controlled tenants are subject to these higher rents, as seen in Table 1 below. In 2018, nearly 50% of all rent-controlled tenants began their tenancy within the previous three years, and more than one-fifth of tenants began their tenancy in 2017. The large number of student renters in Berkeley likely influences this trend. According to data from UC Berkeley, 75% of the 30,853 undergraduates live off-campus.\textsuperscript{46} Analysis from the University indicates that 88% of undergraduates live within two miles of campus.\textsuperscript{47} These statistics suggest there are upwards of 10,000 student renters in Berkeley, and the rental units they occupy are likely to turnover frequently. Though student renters have been a sizable presence in Berkeley’s rental market since vacancy decontrol began in 1995, the rents being charged in Berkeley’s rent-controlled units remained fairly stable in the past (see Figure 1). In recent years, however, landlords are setting much higher market-rate rents when new rent-controlled tenants move in.

\textsuperscript{46} 2018-2019 Annual Common Data Set Report, prepared by the Office of Planning and Analysis, UC Berkeley (Berkeley, CA, 2019), \url{https://opa.berkeley.edu/campus-data/common-data-set}.

\textsuperscript{47} Where Berkeley students live, prepared by the Office of Planning and Analysis, UC Berkeley (Berkeley, CA, 2016), \url{https://opa.berkeley.edu/sites/default/files/where_berkeley_students_live_0.pdf}.
Table 1. Variations in 2018 Rent Ceiling by Tenancy Start Year for Rent-Controlled Units

<table>
<thead>
<tr>
<th>Tenancy Start Year</th>
<th>Number of Units</th>
<th>Percent of All Rent-Controlled Units</th>
<th>Median Rent per Bedroom in 2018</th>
<th>Median Rent in 2018</th>
</tr>
</thead>
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<td>Pre-2010</td>
<td>4,898</td>
<td>25%</td>
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<td>$989</td>
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<td>2010</td>
<td>699</td>
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<td>882</td>
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<td>994</td>
<td>5%</td>
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</tr>
<tr>
<td>2017</td>
<td>4,157</td>
<td>21%</td>
<td>$1,700</td>
<td>$2,195</td>
</tr>
<tr>
<td>All units</td>
<td>19,571</td>
<td>100%</td>
<td>$1,250</td>
<td>$1,679</td>
</tr>
</tbody>
</table>


Notably, only 25% of tenants in rent-controlled units began their tenancy prior to 2010, and the median rent these tenants paid in 2018 is less than half of the median rent paid by tenants who moved in to a rent-controlled unit in 2017. Due to vacancy decontrol, as these longer-term tenants leave their units, landlords are likely to charge a far higher rent to their new tenants in the same units.

Table 2 further explores the 2018 rents charged to rent-controlled tenants whose tenancies began in 2017. The median 2018 rent ceiling for rent-controlled tenants who began their tenancies in 2017 was $2,195. A household would need to make $87,800 annually to afford this rent and not be cost-burdened, which HUD defines as spending more than 30% of a household’s income on housing costs. According to estimates from the Census Bureau, less than one-third of Berkeley’s renter households had incomes high enough to afford the median rent in rent-controlled units that were leased in 2017. Table 2 also reveals the lack of affordability in rental units for families or larger households. A household would need an income of $155,796 to afford the median rent in a three-bedroom unit and not be cost-burdened. Only 11% of Berkeley’s renter households had incomes high enough in 2017 to afford the median rent for a three-bedroom rent-controlled unit. Thus, the income required for the market-rate rents in rent-controlled units that experience vacancy decontrol is outpacing the incomes of local renter households.

Table 2. Variations in 2018 Rent Ceiling by Unit Size for Tenancies Beginning in 2017

<table>
<thead>
<tr>
<th>Number of Bedrooms</th>
<th>Number of Units</th>
<th>Median Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Studio</td>
<td>1,047</td>
<td>$1,725</td>
</tr>
<tr>
<td>1</td>
<td>1,659</td>
<td>$2,000</td>
</tr>
<tr>
<td>2</td>
<td>1,154</td>
<td>$2,800</td>
</tr>
<tr>
<td>3</td>
<td>214</td>
<td>$3,895</td>
</tr>
<tr>
<td>4+</td>
<td>83</td>
<td>$5,195</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>4,157</strong></td>
<td><strong>$2,195</strong></td>
</tr>
</tbody>
</table>


**Berkeley’s Residents and Policymakers Express Interest in a Preference Policy**

As Berkeley becomes increasingly unaffordable and experiences significant demographic changes, community members and policymakers are seeking solutions that can stem displacement and preserve the city’s diversity. Rising housing costs may be contributing to the decline in the population of Black and lower-income households, and once lower-income residents are displaced there are few housing options enabling them to return to Berkeley. As a result, Berkeley’s nonprofit and inclusionary affordable housing units are essential for providing low-income households an opportunity to live in Berkeley. However, Berkeley’s affordable housing stock currently comprises 1,596 nonprofit and inclusionary units, while there are over 16,000 low-income renter households in the city. The scarcity of affordable housing in Berkeley has prompted interest in a preference policy that can help current and displaced low-income Berkeley residents obtain affordable housing in their community.

The Berkeley City Council first discussed a community preference policy as a potential anti-displacement strategy on April 5, 2016. At this meeting, the City Council made a referral to the City Manager and the Department of Health, Housing and Community Services to develop an ordinance that would establish an affordable housing preference policy for people living or working in Berkeley. The City Council referral also noted an interest in giving preference to Berkeley tenants displaced by no fault-evictions and applicants living within a half-mile of the unit they are applying for. Similarly, at its April 30, 2019 meeting, the City Council made a referral to the Planning Commission and Housing Advisory Commission to research policies to prevent the displacement of Berkeley residents of color. This referral specifically mentions developing a policy to provide an opportunity for displaced Berkeley residents to return to the community. The City Council’s interest in exploring a community preference policy reflects concerns expressed by Berkeley residents. In 2016, Friends of Adeline, a South Berkeley

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51 This figure comes from a dataset sent to the author in February 2019 by the City of Berkeley’s Department of Health, Housing, and Community Services.
53 *Meeting Minutes*, prepared by the City Council, City of Berkeley, (Berkeley, CA, 2016), [https://www.cityofberkeley.info/Clerk/City_Council/2016/04_Apr/Documents/04-05_Annotated.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2016/04_Apr/Documents/04-05_Annotated.aspx).
neighborhood organization, petitioned a new market-rate development to prioritize rehousing displaced South Berkeley residents.55 Similarly, during the public engagement process for the Adeline Corridor Specific Plan in Spring 2018, residents voiced support for an anti-displacement strategy that would provide displaced residents with an opportunity to return to the neighborhood.56 Additionally, public comments at an August 2018 community meeting related to future development in the Ashby BART station area expressed a desire for a neighborhood preference for any affordable housing units developed on the BART site.57 Both residents and policymakers appear to support a preference policy that would help low-income Berkeley residents remain in or return to their community.

Current Affordable Housing Programs and Processes in Berkeley
Adopting a preference policy in Berkeley represents a change to the City’s existing affordable housing programs and processes. Though Berkeley lacks a preference policy, the City’s current policies support the ongoing production of inclusionary and nonprofit units in Berkeley. As a result of these efforts, the City has a portfolio of 425 inclusionary affordable units located in 35 market-rate multifamily rental properties and 1,171 nonprofit affordable units located across 46 affordable housing developments.58

Inclusionary Units and the Below Market Rate Rental Program
The City of Berkeley refers to inclusionary units as “BMR units,” which stands for below-market-rate.59 Not all cities use this terminology for affordable units located in market-rate properties, so this report uses the phrase “inclusionary units” as a more general description for this type of affordable housing.

In 1986, the City Council passed an Inclusionary Housing Ordinance requiring new market-rate rental projects with five or more units to make 20% of the units affordable to low-income households, or the developer could pay a fee in lieu of providing affordable units.60 However, a 2009 decision by the California Court of Appeal ruled that cities cannot limit rents in developments unless they provide financial assistance to the project. In response, the City Council passed an ordinance in 2011 creating the Affordable Housing Mitigation Fee.61 The

58 This figure comes from a dataset sent to the author in February 2019 by the City of Berkeley’s Department of Health, Housing, and Community Services.
61 Below Market Rate Rental Program Guidelines and Operational Manual, prepared by the Department of Health, Housing & Community Services, City of Berkeley (Berkeley, CA, 2018),
ordinance requires developers to pay a fee based on the number of rental units in a project, or the project can avoid paying the fee by providing 20% of the units in the development to income-qualified tenants at below-market-rate rents. These affordable units may also qualify the project for a density bonus under California state law. The current Affordable Housing Mitigation Fee is set at $37,962 per new unit of market-rate rental housing.62

Program Implementation and Tenant Selection Process
The City publishes guidelines that describe the requirements for the owners of inclusionary units. These guidelines apply to all below-market-rate units in market-rate projects, whether the units were produced under the Inclusionary Housing Ordinance or included by developers in lieu of paying the Affordable Housing Mitigation Fee. In addition to these guidelines, the City also signs a regulatory agreement with developers who build inclusionary units in their market-rate projects. The duration of the regulatory agreements and the affordability requirements for inclusionary units is for the life of the project.63

The City’s guidelines note that developers are responsible for all aspects of marketing, lease-up, and ongoing management of applications for inclusionary units. Developers must submit a marketing plan for their inclusionary units to the City for review and approval at least 45 days prior to beginning initial lease-up. Material required for the marketing plan includes information on where and how the inclusionary units will be advertised, a proposal for how the developer will ensure random selection of applicants, criteria that will be used to evaluate applicants, and procedures for placing applicants on the waiting list after initial lease-up. The developer is required to refer to the marketing plan when advertising vacant units or adding to the waiting list.64

When a project with inclusionary units is first leasing up, the developer must submit complete documentation of applicants’ income qualifications to the City. A new inclusionary unit cannot be rented to a tenant until the City provides final approval. The owners of inclusionary units are not required to submit documentation to the City for new tenants after the initial lease-up. However, the City conducts regular monitoring to ensure compliance with regulatory agreements: owners are responsible for certifying the incomes of new tenants and doing annual recertification for existing tenants, and owners submit an annual compliance report to the City documenting the rents and incomes for inclusionary tenants.65

https://www.cityofberkeley.info/uploadedFiles/Housing/Level_3_-_General/2018-02-22%20BMR%20RENTAL%20PROGRAM%20GUIDELINES_FINAL.pdf
63 Below Market Rate Rental Program Guidelines and Operational Manual, City of Berkeley.
64 Below Market Rate Rental Program Guidelines and Operational Manual, City of Berkeley.
65 Below Market Rate Rental Program Guidelines and Operational Manual, City of Berkeley.
Nonprofit Units and the Housing Trust Fund
The City promotes the construction of nonprofit affordable housing in Berkeley by providing loans to affordable housing developers through the Housing Trust Fund, which the City established in 1990. The Housing Trust Fund pools money from different sources, mainly City funds and federal dollars from HUD. Federal funding comes from two block grant programs, HOME and CDBG, while local sources of funding include the City’s General Fund as well as fees like the Affordable Housing Mitigation Fee.66

Program Implementation and Tenant Selection Process
Affordable housing developers interested in receiving a development loan from the Housing Trust Fund apply through the City’s Request for Proposals process, and the City accepts predevelopment loan applications on a rolling basis. Affordable housing developers who are awarded funding sign regulatory agreements with the City, which typically have a duration of 55 years. These regulatory agreements generally include the affordability levels of units as well as the developer’s requirements for marketing, tenant selection, and ongoing compliance monitoring.67

The City reviews and approves the marketing plans for any developments that use Housing Trust Fund monies. The marketing procedures and tenant selection processes could vary across different affordable housing developers that own nonprofit units in Berkeley.68 However, two Berkeley-based nonprofit affordable housing providers, Resources for Community Development and Satellite Affordable Housing Associates, own over 80% of the City’s nonprofit units,69 and these organizations use standardized application processes and tenant selection procedures across their portfolios.70

Typically, applicants interested in a nonprofit unit in Berkeley need to apply individually to each property, even if multiple properties are owned by the same developer. When a project is first leasing up, a developer conducts a lottery among all of the applicants. This lottery determines who receives units and the order of the waitlist for the property. If the developer reopens the waitlist in the future, they conduct another lottery to determine the order in which new applicants are added to the waitlist.71 The City conducts regular monitoring and requires affordable housing developers to provide annual reports to ensure compliance with the affordability and occupancy requirements for their properties.72

66 City of Berkeley’s Housing Trust Fund Guidelines, prepared by the Department of Health, Housing & Community Services, City of Berkeley (Berkeley, CA, 2016), https://www.cityofberkeley.info/uploadedFiles/Housing/Level_3_-_General/Revised%202016%20HTF%20GUIDELINES.pdf.
67 Below Market Rate Rental Program Guidelines and Operational Manual, City of Berkeley.
68 City of Berkeley’s Housing Trust Fund Guidelines, City of Berkeley.
69 This figure comes from a dataset sent to the author in February 2019 by the City of Berkeley’s Department of Health, Housing, and Community Services.
70 Funge, interview.
71 Funge, interview.
72 City of Berkeley’s Housing Trust Fund Guidelines, City of Berkeley.
Small Sites Program
In February 2017, the Berkeley City Council approved a Small Sites Program, a funding program that enables nonprofit housing providers to acquire market-rate multifamily properties that are less than 25 units and convert these buildings to affordable housing. Recipients of funding from the Small Sites Program sign a 55-year regulatory agreement that governs the income limits for tenants and rents that can be charged. In January 2019, the City began a Notice of Funding Availability process to award the first $950,000 in funds available through the Small Sites Program.73

Resources Required for Implementing Affordable Housing Programs
Five full-time equivalent (FTE) employees from the Department of Health, Housing and Community Services manage the City of Berkeley’s affordable housing programs. Among other tasks, this work includes supporting market-rate developers who are building inclusionary units in their projects, processing applications for funding from the Housing Trust Fund, and ongoing compliance monitoring for both inclusionary and nonprofit affordable housing units. Currently, one FTE is responsible for compliance monitoring for all inclusionary and nonprofit units, though the City is in the process of hiring a new staff member who will be dedicated to monitoring the inclusionary housing program.

IV. Case Studies of Preference Policies in Other Cities
This section of the report examines existing community preference policies in five cities: Santa Monica, CA; Cambridge, MA; San Francisco, CA; Portland, OR; and Oakland, CA. The case studies are organized in chronological order based on when each city first began implementing its preference policy. This report uses these cities as case studies because aspects of each city or its preference policy make the policy an especially useful example for Berkeley. For example, Cambridge’s population size, demographic makeup, and housing costs are comparable to Berkeley’s. The housing policy contexts in Santa Monica, San Francisco, and Oakland are similar to Berkeley as these municipalities are also high-cost coastal California cities. Portland’s policy provides preferences for generational ties to specific neighborhoods, which could be a useful model for Berkeley given the local interest in preventing displacement in the city’s historic communities of color and providing opportunities for displaced residents to return.

General Characteristics of Community Preference Policies
The characteristics described below represent the main aspects of each city’s preference policy. The summary of each case study city describes these policy components in greater detail.

- **Types of preferences:** Preference policies vary in terms of what qualifies an applicant for prioritized access to affordable housing units. The policies examined in this report give preference to applicants who meet one or more of the following criteria:
  - Current city residents

Individuals employed in the city
- Residents of a specific geography within the city
- Current or former residents who have experienced displacement within the city under specific circumstances

- **Type of affordable housing affected by the policy:** Some preference policies apply only to a city’s nonprofit units, some policies apply only to inclusionary units, and some policies apply to both types of affordable housing.

- **Time period in which the preference is applied:** For some cities, aspects of the preference policy only impact affordable housing units when a project is first built and goes through the initial lease-up. In these cases, certain components of the policy do not apply when a unit becomes vacant and is leased again to a new tenant. Other cities’ policies are fully in effect both during the initial lease-up and whenever there is a subsequent re-rental of the unit.

- **Institution responsible for screening and verification:** City agencies may directly implement a policy, screening residents for eligibility in a preference program and verifying their documentation. In some cities, this responsibility falls on the developer of the unit. In these cases, cities use regulatory agreements to require developers to comply with preference policies.

- **How preference functions in the tenant selection process:** Preference systems vary in how they interact with the tenant selection process in different cities. In some cities, applicants receive points based on the number of preference criteria they qualify for. Other jurisdictions use a tiered system, where some types of preferences give applicants greater priority than others. How a preference is implemented also depends on a city’s processes for allocating affordable housing units. For example, a preference may impact an applicant’s place in a centralized waitlist for affordable units, while jurisdictions that use lotteries might re-sort the lottery results based on whether an applicant qualifies for a preference.
Policy Origins and Types of Units Included
Local legislation related to affordable housing production in Santa Monica does not discuss a preference policy. Though the legislation itself does not establish preference categories, the administrative guidelines for the City’s affordable housing programs prioritize certain applicants for both inclusionary and nonprofit units. James Kemper, Housing Program Manager for the
City’s Housing Division, noted that the preferences have likely been in effect since the programs began in 1998.74

**Inclusionary Units**

In 1998, the Santa Monica City Council passed an ordinance creating an inclusionary housing program that is codified in the Santa Monica Municipal Code. This law dictates the affordability requirements for developers of market-rate multifamily housing as well as the City’s responsibility for monitoring the production of affordable units in these developments.75

**Nonprofit Units**

In 1998, Santa Monica voters also passed Proposition I, providing the City with the authority to finance the development, construction, and acquisition of affordable housing. As a result, the City now provides loans and grants to developers of nonprofit units from a Housing Trust Fund, which draws from a variety of local funding sources in addition to HOME and CDBG funds.76

**Preference Categories and Eligibility**

The City of Santa Monica’s Housing Division provides administrative guidelines for its inclusionary housing requirements in market-rate projects as well as guidelines for nonprofit developers receiving Housing Trust Fund dollars. According to both guidelines documents, developers of nonprofit and inclusionary units must give preference in the following order of priority: 77

1. First priority is given to those who have been permanently displaced or face permanent displacement from housing in Santa Monica for any of the following reasons:
   - No-fault evictions, such as Ellis Act or owner move-in evictions78
   - Natural disasters, such as fire, flood, or earthquake
   - Funding reductions in housing voucher assistance programs or cancellation of Section 8 contract by property owner
   - Government action, such as code enforcement

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74 James Kemper, Housing Program Manager for the Housing Division, City of Santa Monica, in discussion with the author, November 6, 2018.
75 *Annual Affordable Housing Reports on Propositions R and I*, prepared by the Housing Division, City of Santa Monica (Santa Monica, CA, 2018), [https://www.smgov.net/WorkArea/DownloadAsset.aspx?id=53687101938](https://www.smgov.net/WorkArea/DownloadAsset.aspx?id=53687101938).
76 *Housing Trust Fund Guidelines*, prepared by the Housing Division, City of Santa Monica (Santa Monica, CA, 2017), [https://www.smgov.net/uploadedFiles/Departments/HED/Housing_and_Redevelopment/Housing/Housing_Commission_Agendas/Housing%20Trust%20Guidelines%20v%202014-02-25.pdf](https://www.smgov.net/uploadedFiles/Departments/HED/Housing_and_Redevelopment/Housing/Housing_Commission_Agendas/Housing%20Trust%20Guidelines%20v%202014-02-25.pdf).
77 *Affordable Housing Production Program Administrative Guidelines*, prepared by the Housing Division, City of Santa Monica (Santa Monica, CA, 2016), [https://www.smgov.net/uploadedFiles/Departments/HED/Housing_and_Redevelopment/Housing/Production_Program_(Inclusionary)/AHPP_Administrative_Guidelines_2016-04-12.pdf](https://www.smgov.net/uploadedFiles/Departments/HED/Housing_and_Redevelopment/Housing/Production_Program_(Inclusionary)/AHPP_Administrative_Guidelines_2016-04-12.pdf); *Housing Trust Fund Guidelines*, City of Santa Monica.
78 Article 23 of the Santa Monica City Charter establishes just causes required for eviction. This law allows landlords to evict tenants who are not in breach of the lease if the landlord or a close relative intends to move into the unit. This type of no-fault eviction is commonly referred to as an “owner move-in eviction.” Additionally, the California State Legislature enacted the Ellis Act in 1986, which enables landlords to evict tenants in order to remove a property from the rental market. This type of no-fault eviction is commonly referred to as an “Ellis Act eviction.”
2. Second priority is given if a person is either a resident of Santa Monica or works in Santa Monica at least 36 hours per week.

Neither administrative guidelines document states whether the displacement needs to have occurred within a specific timeframe. City documents also do not mention what documentation tenants need to provide to prove their eligibility for the preference. Mr. Kemper noted that the Housing Division can verify eligibility for the displacement preference using documents from the Santa Monica Rent Control Board, Code Enforcement, or other city agencies. Examples of documents used to verify the live/work preference include utility bills, phone bills, driver’s licenses, or bank statements. 79

Policy Rationale and Goals
Mr. Kemper stated that the reason for prioritizing current and displaced residents is that the City’s mission is to serve its own residents and not the residents of other jurisdictions. He also notes that increased development in Santa Monica most impacts Santa Monica residents, and so the City wants to prioritize its residents for the affordable units that development produces. Reasons for prioritizing those who work in Santa Monica center on promoting diversity and inclusivity as well as environmental sustainability. While Santa Monica’s population is 65% non-Hispanic White, 80 Mr. Kemper stated the local workforce is considerably more diverse and lives throughout the Los Angeles metropolitan area. Accordingly, giving equal preference to Santa Monica residents and non-residents who work in the city can create a more diverse applicant pool for affordable housing than if only residents received priority. Furthermore, enabling workers to live closer to their jobs can reduce the environmental impacts of traffic and increased automobile use.81 Mr. Kemper stated that the preference for tenants displaced by no-fault evictions stems from the City’s concern regarding the proportion of evictions occurring due to the Ellis Act and owner move-ins.82 Additionally, state law provides precedent for the preference for current or former residents displaced by government action.83

Policy Implementation
The way in which the preference policy is implemented varies greatly between inclusionary and nonprofit units.

Inclusionary Units
The Santa Monica Municipal Code requires that market-rate developers who construct inclusionary units must select their tenants from a City-maintained list of income-qualified

79 Kemper, interview.
81 Kemper, interview.
8282 2018 Annual Report, prepared by the Santa Monica Rent Control Board, City of Santa Monica (Santa Monica, CA, 2019), https://www.smgov.net/uploadedFiles/Departments/Rent_Control/Reports/Annual_Reports/2018%20Annual%20Report%20FINAL.pdf.
The developer and the City also sign a deed restriction noting that only tenants selected from this City-maintained list can occupy the affordable units, whether at the initial leasing or at subsequent re-rental when a unit becomes vacant. These deed restriction agreements also mandate the affordability terms of the inclusionary units, and the agreements typically have a duration of 55 years.85

The Housing Division applies the preference policy for inclusionary units when it creates the list of potential tenants for these units, which is known as the Eligibility List. Anyone seeking to live in an inclusionary unit in Santa Monica needs to submit an application to the Housing Division for a place on the Eligibility List. In addition to questions about an applicant’s income and assets, this application asks whether a person qualifies for the displacement or live/work preferences. At this stage, Housing Division staff review whether information on the applications meets income qualifications and live/work preference eligibility, but staff do not verify this information using supporting documentation. The City requires developers to verify the income qualifications and live/work preference status of potential inclusionary tenants before renting to them. However, the Housing Division does verify whether applicants qualify for the displacement preference by reviewing documents from the Santa Monica Rent Control Board, Code Enforcement, or the former Redevelopment Agency.86

Anyone meeting the displacement preference is put at the top of the Eligibility List, followed by applicants who indicated they qualify for the live/work preference, and then all remaining applicants. The list is then sorted based on the date of the person’s application.87 The Housing Division closed the Eligibility List in January 2017 due to receiving a sufficient number of applications. 88 However, applicants qualifying for the displacement preference can be added to the waitlist even when it is closed. The City maintains full control of the list and is responsible for contacting applicants every two years to update their information.89

Tenants are selected from the Eligibility List when owners of market-rate buildings notify the Housing Division that they have inclusionary units available. For a new development, this notification must occur at least 90 days before the City issues the Certificate of Occupancy, and for existing units the owner must notify the City within five days after a tenant gives notice of their intent to vacate. Within 20 days of receiving notice from the owner, the Housing Division provides the owner with at least five potential tenants from the Eligibility List for each unit available. The Housing Division selects these applicants based on their place on the Eligibility List as well as the size and affordability level of the vacant unit. After receiving the list of names from the Eligibility List, the owner is responsible for screening applicants, verifying documents related to income and live/work preference qualifications, and selecting tenants. Candidates

85 Affordable Housing Production Program Administrative Guidelines, City of Santa Monica.
86 Kemper, interview.
87 Affordable Housing Production Program Administrative Guidelines, City of Santa Monica.
89 Affordable Housing Production Program Administrative Guidelines, City of Santa Monica.
may be referred from the Eligibility List up to five times, and after the fifth unsuccessful referral the Housing Division removes the applicant from the list.90

Nonprofit Units
While the Housing Division directly applies the preference policy to the waitlist it maintains for inclusionary units, the affordable housing developers that receive financial assistance from the Housing Trust Fund maintain responsibility for the waitlist and tenant selection processes for nonprofit units. The Housing Trust Fund guidelines state that a project’s proposed marketing plan and tenant selection procedures must specify how these processes will prioritize Santa Monica residents and workers. Additionally, the regulatory agreement signed by the developer and the City includes the preference for leasing to displaced households and local residents/workers. These agreements have a duration of 55 years.91

The Housing Division provides approval for a projects’ waitlist management and tenant selection processes, but the City’s regulations do not have specific requirements for how developers incorporate the preference in these processes. Nonprofit developers are also responsible for verifying that tenants qualify for preferences.92 The specific implementation of the preference, such as whether it is used in a lottery or how it affects the order of a waitlist, could vary among nonprofit developers.

City Resources Required for Implementation
The Housing Division is much more directly involved in implementing the preference policy for inclusionary units than it is for nonprofit units. As a result, policy implementation for inclusionary units requires more staff time. Currently, one FTE staff member is responsible for implementing the preference policy on an ongoing basis. They devote most of their time to compliance monitoring for inclusionary and nonprofit units. A smaller percentage of their workload is for ongoing waitlist management and tenant referrals for inclusionary units. Responsibilities also include verifying whether applicants qualify for the displacement preference. Displacement preference verification represents a small amount of staff time as there are not large of numbers households who qualify for this preference. Whenever the Eligibility List for inclusionary units is reopened, processing applications requires additional staff time. 93

Compliance Monitoring for Inclusionary Units
Owners submit an annual report to the Housing Division that describes the rent levels, income, and assets for their inclusionary tenants as well as documentation used to determine this information. As noted above, one FTE completes annual compliance monitoring for 1,077 inclusionary units to ensure that the owners’ reports comply with the properties’ deed restrictions. Housing Division Staff prepare an annual report for City Council that provides

90 Affordable Housing Production Program Administrative Guidelines, City of Santa Monica.
91 Housing Trust Fund Guidelines, City of Santa Monica.
92 Kemper, interview.
93 Kemper, interview.
information on the occupancy and affordability of Santa Monica’s inclusionary units, but the report does not include any data on the impact of the preference policy. To offset the staff costs for compliance monitoring of inclusionary units, the City charges property owners a monitoring fee based upon the number of inclusionary units on the property. Current annual fees are approximately $147.64 per deed-restricted inclusionary unit.

**Compliance Monitoring for Nonprofit Units**

Currently, there are 2,370 nonprofit units in Santa Monica that the City has supported financially. However, the City does not have precise records on how many of the units are subject to the preference policy. The Housing Division’s monitoring of nonprofit units is less extensive than it is for inclusionary units. While the Housing Division does an annual review of all tenants in inclusionary units, the staff member in charge of compliance does spot auditing of a percentage of nonprofit properties each year.

**Policy Impact**

The City’s current data collection practices prevent a clear assessment of the impact of Santa Monica’s preference policy. The Housing Division does not collect data on how many inclusionary units are occupied by tenants who qualified for the preference categories. Mr. Kemper noted that when the Housing Division last opened the waitlist for inclusionary units they received approximately 33,000 applications, and about 10% of applicants either lived or worked in Santa Monica. Since there were over 3,000 applicants with the live/work preference and Santa Monica has 1,077 inclusionary units, it is possible a large number of current inclusionary tenants qualified for the live/work preference when they applied to the program. However, without more precise data, the impact of the policy on Santa Monica’s inclusionary units is fairly uncertain.

The preference policy’s effect on nonprofit units is also largely unknown. The City does not directly implement the preference policy, and the Housing Division’s compliance monitoring for these units does not involve data collection related to the preference. As a result, the Housing Division does not have any data on how many nonprofit applicants qualified for a preference or on how many current nonprofit tenants qualified for a preference.

**Compliance with the Fair Housing Act and Other Legal Considerations**

Santa Monica has not faced any legal challenges related to its affordable housing preference policies. Since inclusionary units are in market-rate projects that do not receive federal funding,
the Housing Division does not need HUD’s approval to use the preference for inclusionary units in Santa Monica. The only federal funding sources for Santa Monica’s Housing Trust Fund are HOME and CDBG, which do not require HUD review of the tenant selection plan, waitlist processes, or any preferences being used. Therefore, Santa Monica’s preferences are unlikely to risk challenges from HUD.

Santa Monica’s preference policy could still be challenged by a lawsuit if a group or individual felt that the preferences violated the Fair Housing Act, constitutional rights, or other aspects of the law. However, the design of Santa Monica’s preference policy and its equal treatment of residents and workers mitigates the risks of being invalidated by the courts. Legal scholars note that broadening a residency preference by combining it with a preference for workers makes the preference less likely to face a disparate impact challenge. Mr. Kemper echoed this idea, noting that the City seeks to alleviate any potential fair housing issues by giving equal priority to both residents and workers in Santa Monica, which should create a more diverse pool of potential tenants for affordable housing units than a preference solely for residents.

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99 Housing Trust Fund Guidelines, City of Santa Monica.
100 HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs, HUD.
101 Norquist, “Local Preferences in Affordable Housing: Special Treatment for Those Who Live or Work in a Municipality.”
### Cambridge’s Rental Applicant Pool

<table>
<thead>
<tr>
<th>City Population</th>
<th>Agency that Administers Preference</th>
<th>Agency Budget</th>
<th>FTE Staffing for Agency</th>
<th>FTE Staffing for Program</th>
<th>Units in Portfolio Subject to Preference</th>
</tr>
</thead>
<tbody>
<tr>
<td>113,631</td>
<td>Community Development Department’s Housing Division</td>
<td>$1.6 million</td>
<td>11</td>
<td>2.5</td>
<td>891</td>
</tr>
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</table>

### Preference Categories and Points Awarded for Each Category

<table>
<thead>
<tr>
<th>Types of Units Affected</th>
<th>Time Period of Applicability</th>
<th>Institution Responsible for Screening for Preference</th>
<th>Function in the Tenant Selection Process</th>
<th>Institution Responsible for Waitlists</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inclusionary</td>
<td>Lease-up and ongoing for most preference categories, only lease-up for emergency need preference</td>
<td>City</td>
<td>Each applicant’s points are totaled. Those with the most points are first in the waiting pool for available units.</td>
<td>City</td>
</tr>
</tbody>
</table>

### Policy Origins and Types of Units Included

The community preference policy in Cambridge is a part of the City’s Inclusionary Housing Program, which began in 1998. The preference policy has always been a component of the Inclusionary Housing Program. The Cambridge Zoning Ordinance codifies the Inclusionary Housing Program and establishes the City’s preference policy, noting that preference will be given to Cambridge residents for affordable units created through inclusionary housing. Current City staff and publicly available documents do not have information on the process the City of Cambridge used to develop the preference policy and whether public engagement was

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involved. The City is currently reevaluating the preference system and will engage in a public process before making any changes.  

The Cambridge Zoning Ordinance states that the Community Development Department determines the standards and procedures for tenant selection. Accordingly, the Housing Division of Cambridge’s Community Development Department is heavily involved in the tenant selection process for the City’s inclusionary units and implements the preference policy. However, the Housing Division does not directly oversee units in nonprofit affordable developments and does not consider these units a part of its portfolio. As a result, the preference policy in Cambridge does not apply to nonprofit units.

Preference Categories and Eligibility
The City established a priority point system for giving preference to applicants. The City’s published guidelines for applying to the inclusionary housing rental program note the following preference categories and points awarded for each category:

- Current Cambridge resident (Four points)
- Household with at least one child under 18 (One point)
- Household with at least one child under 6 (One point)
- Household with emergency housing need (One point)
- Applicants who are not presently living in Cambridge but are employed in Cambridge (applicants do not receive points for being a non-resident working in Cambridge, but these applicants are ranked above non-residents who do not work in Cambridge)

The application guidelines specify that an emergency housing need can be any of the following situations (having multiple needs does not result in more than one point):

- Facing a no-fault eviction
- Living in a property that has been cited by the City's Inspectional Services Department for outstanding code violations
- Paying more than 50% of monthly gross income for rent
- Applicant is living in an overcrowded situation, defined as having more than two individuals per bedroom
- Homeless

See Appendix B for a list of documents that applicants submit with their applications to prove eligibility for the different preference point categories.

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104 Emily Salomon, Associate Housing Planner for the Community Development Department, City of Cambridge, in discussion with the author, November 6, 2018.
106 Salomon, interview.
107 Inclusionary Housing Rental Program Preliminary Application Guidelines, prepared by the Housing Division, Community Development Department, City of Cambridge (Cambridge, MA, 2019),
https://www.cambridgema.gov/~media/Files/CDD/Housing/ForApplicants/hsg_rental_applic_and_info_20190417.pdf
108 Inclusionary Housing Rental Program Preliminary Application Guidelines, City of Cambridge.
Policy Rationale and Goals
City documents do not provide explicit goals for the preference policy. The Cambridge Zoning Ordinance states more general objectives for the Inclusionary Housing Program, noting that the program’s purpose is to further the City’s “goal of preserving diversity by mitigating the impacts of commercial and residential development” on low- and moderate-income households.109 Emily Salomon, Associate Housing Planner for Cambridge’s Community Development Department, indicated that the basic goal of the preference policy is to give Cambridge residents and families with children priority access to affordable housing in Cambridge.110

Policy Implementation
Market-rate developers building in Cambridge sign an Inclusionary Housing Covenant specifying that the developer must follow a tenant selection plan and other procedures established by the Community Development Department. The terms of these agreements last for the life of the project. In order to obtain an inclusionary unit, a potential tenant first completes a preliminary application to the City’s Rental Applicant Pool. Since the beginning of the Inclusionary Housing Program, the Rental Applicant Pool has remained open and the Housing Division has never stopped accepting applications.111

The preliminary application for the Rental Applicant Pool asks for information about the household and its income, as well as whether the household qualifies for any of the preference categories. This application describes the priority point system, preference categories, and the documentation that an applicant is required to submit if claiming any of the preference categories or emergency housing situations.112 The Housing Division reviews applicants’ preference documentation and sorts eligible households into pools based on their point scores (which can range from zero to seven) and the unit size they are applying for (which ranges from studio apartments to three-bedroom units and is determined by the applicant’s household size). See Figure 2 below for a visual representation of the preference pools. Within each pool’s point group, applicants are sorted by the date they applied to the program.113

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110 Salomon, interview.
111 Salomon, interview.
112 Inclusionary Housing Rental Program Preliminary Application Guidelines, City of Cambridge.
113 Inclusionary Housing Rental Program Preliminary Application Guidelines, City of Cambridge.
The Housing Division works closely with market-rate developers to identify when new projects are nearing lease-up or when existing properties have vacancies in their inclusionary units. City policy does not give property owners specific time constraints for notifying the Housing Division of vacancies. Once the Housing Division receives notice of a vacancy, staff review the waiting pool that corresponds to the size of the vacant unit to determine which applicants have the most preference points and have been in the system the longest. These applicants then submit final applications with documentation verifying their income qualifications or Section 8 voucher status. Housing Division staff review final applications and documentation and then make referrals to property owners. Property owners can screen the referrals for credit, criminal background, and landlord references, and the owners then make the final tenant selection. If the property owner denies a potential tenant during this final stage, the tenant has the opportunity to appeal. Tenants can be denied at up to four properties, after which the Housing Division removes the applicant from the Rental Applicant Pool.114

City Resources Required for Implementation
Cambridge's Inclusionary Housing Program has a portfolio of 891 rental units. The staffing for this program includes 2.5 FTEs. These staff members work with applicants applying to the Rental Applicant Pool, screen applications against the priority point system, fill vacancies across the portfolio, certify applicants’ income during the final application stage, and re-certify tenant incomes annually once they move in to an inclusionary unit.115

Policy Impact
The Community Development Department issues an annual report that presents information on the production of inclusionary units as well as data on the preference qualifications of inclusionary housing applicants and tenants. The 2018 report indicates that the preference policy achieves its objective, as the vast majority of tenants recently placed in inclusionary units were Cambridge residents. Of the 77 new tenants housed in Cambridge’s inclusionary units in

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114 Salomon, interview.
115 Salomon, interview.
2018, 69 (90%) were Cambridge residents.\textsuperscript{116} Ms. Salomon noted that one-, two-, and three-bedroom units almost exclusively serve Cambridge residents due to high demand, but non-residents who work in Cambridge are occasionally placed in studio apartments.\textsuperscript{117} Additionally, 63% of the 3,075 applicants currently in the Rental Applicant Pool are non-residents. These statistics suggest that Cambridge residents are much more likely than non-residents to move out of the waiting pool and into an inclusionary unit.

**Compliance with the Fair Housing Act and Other Legal Considerations**

Cambridge has not faced any legal challenges related to its affordable housing preference policy. The design of the preference policy appears to mitigate the risks of a lawsuit related to violating the Fair Housing Act, constitutional rights, or other aspects of the law. Courts have found that cities have a legitimate governmental interest in providing a preference for affordable housing to residents over nonresidents. Additionally, Cambridge’s policy does not solely prioritize residents, which increases its defensibility against legal challenges.\textsuperscript{118} Legal scholars argue that broadening a resident preference policy by adding additional factors that qualify applicants for preference makes it more difficult to prove that a preference is discriminatory in intent or impact or that it impedes the right to migration.\textsuperscript{119} Though Cambridge residents receive the highest priority, preference is also given to families with children, non-residents who work in Cambridge, and households with emergency housing needs. Accordingly, the priority point system for Cambridge’s Rental Applicant pool appears to have a broad structure that would reduce the likelihood of a legal challenge.


\textsuperscript{117} Salomon, interview.

\textsuperscript{118} Freund, “Perpetuating Segregation or Turning Discrimination on Its Head? Affordable Housing Residency Preferences as Anti-Displacement Measures;” Norquist, “Local Preferences in Affordable Housing: Special Treatment for Those Who Live or Work in a Municipality.”

\textsuperscript{119} Freund, “Perpetuating Segregation or Turning Discrimination on Its Head? Affordable Housing Residency Preferences as Anti-Displacement Measures;” Norquist, “Local Preferences in Affordable Housing: Special Treatment for Those Who Live or Work in a Municipality.”
San Francisco’s Lottery Preference Programs

<table>
<thead>
<tr>
<th>City Population</th>
<th>Agency that Administers Preference</th>
<th>Agency Budget</th>
<th>FTE Staffing for Agency</th>
<th>FTE Staffing for Program</th>
<th>Units in Portfolio Subject to Preference</th>
</tr>
</thead>
<tbody>
<tr>
<td>884,363</td>
<td>Mayor’s Office of Housing and Community Development</td>
<td>$275 million</td>
<td>95</td>
<td>5.25</td>
<td>22,500</td>
</tr>
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</table>

Preferenc Categories

<table>
<thead>
<tr>
<th>Types of Units Affected</th>
<th>Time Period of Applicability</th>
<th>Institution Responsible for Screening for Preference</th>
<th>Function in the Tenant Selection Process</th>
<th>Institution Responsible for Waitlists and/or Lotteries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inclusionary and Nonprofit</td>
<td>Lease-up and ongoing for most preference categories, only lease-up for the neighborhood preference</td>
<td>City</td>
<td>Tiered system (list in the “Preference Categories” column is in order of rank). Initial lottery results resorted based on applicants’ preference criteria.</td>
<td>City conducts the lottery and developers maintain waitlists</td>
</tr>
</tbody>
</table>

Policy Origins and Types of Units Included

San Francisco uses one centralized lottery system for both inclusionary and nonprofit affordable housing units, and there are four separate preference programs that impact the results of these lotteries. The Mayor’s Office of Housing and Community Development (MOHCD) administers both the preference programs and the lotteries for inclusionary and nonprofit units. Legislation passed by the Board of Supervisors between 2008 and 2016 created these preference programs, each of which seeks to address different aspects of displacement in San Francisco.

Certificate of Preference (Urban Renewal Preference)

A 2008 City Council ordinance established the first preference policy for the City’s affordable housing programs. The Certificate of Preference is a document that the San Francisco Redevelopment Agency began issuing in the 1960s to households it displaced for federally-funded urban renewal. The certificate gave displacees priority access to housing funded by the Redevelopment Agency, and the 2008 ordinance clarified that certificate holders receive

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120 San Francisco Administrative Code §47 (2016).
preference in any affordable housing program operated by the City. For clarity, this report refers to the Certificate of Preference as the “urban renewal preference.”

Displaced Tenant Housing Preference
In 2013, the Board of Supervisors enacted legislation providing a preference for anyone evicted from a San Francisco residence under the Ellis Act. This ordinance was responding to a rapid rise in eviction notices being filed with the Rent Board, with Ellis Act evictions especially prevalent in certain neighborhoods. Rent Board data later revealed that some neighborhoods had few Ellis Act evictions but larger numbers of owner move-in evictions, which prompted a 2015 ordinance expanding the preference to also cover those displaced by owner move-in evictions. A 2016 ordinance extended the Displaced Tenant Housing Preference to cover tenants displaced by fire.

Neighborhood Resident Housing Preference
A 2015 ordinance created the Neighborhood Resident Housing Preference, which applies to San Francisco residents who currently live in the same Supervisorial District as the property they are applying to or within a half-mile radius. Community input largely motivated this preference, particularly activists in communities of color who felt they had advocated for affordable housing in their neighborhoods but that these developments were not serving neighborhood residents. Mayor London Breed echoed this sentiment in a San Francisco Chronicle article about the Neighborhood Resident Housing Preference, stating that in her Western Addition neighborhood “so many people like myself grew up in the neighborhood, get asked to support affordable housing and when the housing is finished, there’s not one person from the community even living in the new places.” In response to resident advocacy for an

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123 San Francisco Administrative Code §47.1 (2016).
124 Charles MacNulty, Program Development and Data Specialist for the Mayor’s Office of Housing and Community Development, City of San Francisco, in discussion with the author, October 26, 2018.
neighborhood preference, MOHCD conducted a fair housing analysis that indicated such a preference would be possible.\footnote{128}{MacNulty, interview.}

**Live/Work Preference**

A 2016 ordinance established a live/work preference, giving priority to all applicants who either live or work in San Francisco. The City added this preference largely in response to rapidly rising rents. The legislation paired a preference for residents with a preference for non-resident workers based on the legal argument that a preference for residents should be accompanied by a broadening qualification.\footnote{129}{MacNulty, interview.} Without this broadening qualification, a preference solely for residents could be viewed by courts as violating low-income non-residents’ right to travel and migration, as they will be unable to move to San Francisco without access to affordable housing.\footnote{130}{Norquist, “Local Preferences in Affordable Housing: Special Treatment for Those Who Live or Work in a Municipality.”}

**Preference Categories and Eligibility**

The preference policy is codified in the San Francisco Administrative Code, which describes the purpose of each preference program, defines the different preference categories, and outlines the implementation of the policy. Additionally, MOHCD publishes a manual that provides information on its lottery procedures and informs the public about the application process and eligibility for each preference. See Appendix C for a list of the documents that applicants can use to prove their eligibility for each preference program.

**Certificate of Preference (Urban Renewal Preference)**

The Certificate of Preference is available to anyone who was displaced from a residence acquired by the San Francisco Redevelopment Agency during urban renewal in the 1960s and 70s, even if the displaced person was a child at the time or an adult who was not head of the household. Applicants do not need to currently live in San Francisco to benefit from this preference. Eligible applicants can obtain a preference certificate by applying to MOHCD.\footnote{131}{“Certificate of Preference,” Mayor’s Office of Housing and Community Development, City and County of San Francisco, accessed April 19, 2019, \url{https://sfmohcd.org/certificate-preference}.} MOHCD has a list of all addresses that can qualify for Certificate of Preference, and applicants must prove they lived at an affected address during the time of displacement (see Appendix C for documents used to prove eligibility). The Certificate of Preference applies to all inclusionary and nonprofit units in MOHCD’s portfolio during both initial lease-up and subsequent leasing. Certificate holders can use the certificate one time for receiving preference for an affordable rental unit.\footnote{132}{“Certificate of Preference,” Mayor’s Office of Housing and Community Development, City and County of San Francisco, accessed April 19, 2019, \url{https://sfmohcd.org/certificate-preference}.}

Under the original terms of the program established by the San Francisco Redevelopment Agency, the program expires in 2021, though it can be renewed until 2026.\footnote{133}{Housing Preferences and Lottery Procedures Manual, City and County of San Francisco.} When the
program expires, new certificates may no longer be issued. However, as long as the San Francisco Administrative Code continues to mention the Certificate of Preference, those who already possess the certificates will still receive preference in MOHCD’s housing lotteries.134

**Displaced Tenant Housing Preference**
The Displaced Tenant Housing Preference applies to tenants displaced by Ellis Act evictions, owner move-in evictions, or fires. This preference is available regardless of whether the applicant currently lives in San Francisco. To receive this preference, displaced tenants submit an application to MOHCD. The San Francisco Rent Board sends MOHCD regularly updated information on units that have received Ellis Act or owner move-in eviction notices, and so applicants typically do not need to provide any documentation to prove a no-fault eviction occurred. MOHCD specifies the documentation that applicants can submit to prove their occupancy of a unit that experienced a no-fault eviction or their displacement due to fire (see Appendix C).135 Successful applicants receive a certificate that can be used one time to receive preference for an affordable rental unit. Certificate holders need to use their preference within six years of an eviction notice being filed or within three years of the date of a displacing fire. The City does not have documentation that supports why these time limits were originally set. The Displaced Tenant Housing Preference applies during both initial lease-up and subsequent leasing for any project with five or more nonprofit or inclusionary affordable units, but the preference can only be used in up to 20% of the units in a project.136

**Neighborhood Resident Housing Preference**
The Neighborhood Resident Housing Preference benefits households currently living in the same neighborhood as the project they are applying for. For the purposes of the preference policy, the San Francisco Administrative Code defines neighborhood as the Supervisorial District where the project is located or within a half-mile radius of the project. MOHCD uses mapping software to determine eligibility for this preference. The Neighborhood Resident Housing Preference applies only during the initial lease-up for new projects with five or more inclusionary or nonprofit units. Additionally, the preference can only be used in up to 40% of the units in a project.137

**Live/Work Preference**
The live/work preference is available to anyone who currently lives in San Francisco or who works more than 75% of their working hours in San Francisco. The live/work preference applies to all nonprofit and inclusionary units during both initial lease-up and all subsequent leasing.138

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134 MacNulty, interview.
136 *Housing Preferences and Lottery Procedures Manual*, City and County of San Francisco.
137 *Housing Preferences and Lottery Procedures Manual*, City and County of San Francisco.
138 *Housing Preferences and Lottery Procedures Manual*, City and County of San Francisco.
Policy Rationale and Goals

The procedures manual for the urban renewal preference explains that this program stems from the “unique social and individual losses associated with urban renewal” as well as the “wide-spread social, economic, cultural, political, and emotional upheaval that has been documented in the affected communities.” Additionally, the San Francisco Administrative Code discusses the need for the Displaced Tenant Housing Preference, noting the rapid rise in no-fault evictions and the inability for most of those displaced to pay market-rate rents in San Francisco. The legislation also describes the City’s interest in providing the Neighborhood Resident Housing Preference, indicating that this policy can help preserve community-based support networks that low-income residents establish in their neighborhoods. Lastly, the ordinance creating the live/work preference notes that market-rate rents are unaffordable for all low-income San Francisco households. The general goal of the preference policy is to increase opportunities to live in San Francisco for those who qualify for a preference.

Policy Implementation

The City directly implements all aspects of the preference policy. MOHCD processes the applications for the urban renewal and displaced tenant preferences and issues the corresponding certificates. Additionally, MOHCD conducts the lotteries for all nonprofit and inclusionary units in San Francisco and sorts the lottery results according to the four preference categories.

Prospective affordable housing tenants can apply for any inclusionary or nonprofit housing unit in San Francisco through the City’s online housing portal, known as DAHLIA (Database of Affordable Housing Listings, Information, and Applications). The application system automatically applies the neighborhood resident preference and live/work preference based on information the applicant provides. Proof-of-address and/or employment documentation can be uploaded to DAHLIA to verify the applicant’s preference status. If an applicant has a certificate for the urban renewal or displaced tenant preferences, they can enter their certificate number in DAHLIA.

Inclusionary Units

The official guidelines for the inclusionary housing program require property owners to list all vacant inclusionary units on DAHLIA and allow MOHCD to conduct the applicant lottery. MOHCD conducts a lottery for every inclusionary unit vacancy, whether the unit is new and

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139 Property Owner and Occupant Preference Program (Certificate of Preference Program), City and County of San Francisco.
140 San Francisco Administrative Code §47.1 (2016).
141 San Francisco Administrative Code §47.1 (2016).
being leased for the first time or an existing unit that has become vacant. There are no waitlists for inclusionary units, as MOHCD uses a new lottery for tenant selection each time the unit becomes vacant. The regulatory agreements attached to inclusionary units last for the life of the project.\textsuperscript{144}

After MOHCD runs the lottery, the results are sorted based on the preference category. All applicants with the urban renewal preference are ranked first, followed by the displacement preference, then the neighborhood preference, then the live/work preference, and then all applicants with no preference. Within each category, the applicants are ranked in order of their lottery numbers.\textsuperscript{145} For example, if an applicant with the urban renewal preference ranked fifth initially and is ranked higher than all other applicants with the urban renewal preference, this applicant will now be the highest ranked overall after the lottery results are sorted by preference. See Figure 3 below for a graphic representation of how MOHCD filters the lottery results by preference category.

**Figure 3. San Francisco’s Method for Sorting Lottery Results by Preference Category**

<table>
<thead>
<tr>
<th>Right after lottery</th>
<th>After filtering</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unfiltered lottery list</td>
<td>Preference List A</td>
</tr>
<tr>
<td>1 Julia</td>
<td>Maria</td>
</tr>
<tr>
<td>2 Lee</td>
<td>Robert</td>
</tr>
<tr>
<td>3 George</td>
<td>George</td>
</tr>
<tr>
<td>4 Shawn</td>
<td>Shondra</td>
</tr>
<tr>
<td>5 Maria</td>
<td>Dan</td>
</tr>
<tr>
<td>6 Tyler</td>
<td>Dan</td>
</tr>
<tr>
<td>7 Shondra</td>
<td>Dan</td>
</tr>
<tr>
<td>8 Robert</td>
<td>Dan</td>
</tr>
<tr>
<td>9 Stephanie</td>
<td>Dan</td>
</tr>
<tr>
<td>10 Dan</td>
<td>Dan</td>
</tr>
</tbody>
</table>

Source: Mayor’s Office of Housing and Community Development, City and County of San Francisco

**Nonprofit Units**

The application process for prospective tenants is identical in DAHLIA for both inclusionary and nonprofit units. Additionally, the lottery results for nonprofit units are filtered by preferences in the same way as inclusionary units (see Figure 3 above). The affordable housing developer uses the sorted lottery results to determine who receives a nonprofit unit. These sorted results also create the waitlist for the property, which is composed of lottery participants who did not receive a unit. The affordable housing developer is then responsible for maintaining the waitlist and using the list to fill future vacancies. If the developer wishes to reopen the waitlist in the future, the property must be listed on DAHLIA again. MOHCD will run a new lottery and apply the preferences to the results in order to create the new waitlist for the property. Even if a nonprofit affordable property was built before the City created DAHLIA and implemented the

\textsuperscript{144} MacNulty, interview.

\textsuperscript{145} MacNulty, interview.
centralized lottery, the regulatory agreement signed by the developer still requires MOHCD to approve the tenant selection and marketing plan each time a waitlist is reopened. These regulatory agreements typically have a 55 year duration, and complying with the agreement results in all open waitlists being posted on DAHLIA and MOHCD conducting a preference-influenced lottery for these reopened waitlists.\textsuperscript{146}

\textbf{City Resources Required for Implementation}

MOHCD dedicates the equivalent of 5.25 FTEs to implement San Francisco’s preference policy. The urban renewal preference and displaced tenant preference each have one staff member responsible for managing these programs. An additional staff member is responsible for both the neighborhood preference and live/work preference. The two staff members who work on the urban renewal and displaced tenant preference programs spend a fair amount of their time on tasks required for administering these certificate programs, such as processing applications and managing the database of certificate holders. Administering the neighborhood and live/work preferences requires verifying documentation related to residency or employment and using mapping software to establish eligibility for neighborhood preference. The responsibilities of the 5.25 FTEs also include lottery administration, marketing vacant nonprofit and inclusionary units, annual reporting related to the preference program, and reviewing applicants’ documentation related to preference eligibility during the lottery and lease-up processes.\textsuperscript{147}

In addition to the 5.25 FTEs who manage and implement the preference programs, three staff from MOHCD’s digital services team work on web development and software engineering to build out the DAHLIA application system and online affordable housing databases. Additional MOHCD staff conduct audits to ensure inclusionary and nonprofit units comply with their regulatory agreements, but this compliance work is separate from the 5.25 FTEs required for preference policy implementation.\textsuperscript{148}

\textbf{Policy Impact}

Since the 2015-2016 fiscal year, MOHCD has been able to collect robust data for all inclusionary and nonprofit projects as a result of centralizing all application and lottery processes. MOHCD uses this data to evaluate the impact of the lottery preference programs. The agency publishes an annual report for the Board of Supervisors discussing the preference programs’ effectiveness for addressing displacement and improving access to affordable housing for the groups that receive preference.\textsuperscript{149}

MOHCD’s reporting suggests that the preference policy achieves its objectives. In the 2017-2018 fiscal year, there were 106,894 applicants for inclusionary and nonprofit units in San Francisco. 1,012 of these applicants received housing, which is approximately 1%. However,

\textsuperscript{146} MacNulty, interview.
\textsuperscript{147} MacNulty, interview.
\textsuperscript{148} MacNulty, interview.
\textsuperscript{149} MacNulty, interview.
15% of the 321 applicants with the urban renewal preference received housing, indicating that this preference greatly improves access to affordable housing. Similarly, about 12% of applicants with the displaced tenant preference received housing. Only 30 of the 22,783 applicants with no preference received a unit, and 97% of applicants who were housed had some form of preference. This data illustrates that the policy is effective at providing housing for the targeted preference groups. \(^{150}\)

**Compliance with the Fair Housing Act and Other Legal Considerations**

Though San Francisco has not faced any lawsuits related to the lottery preference program, HUD prohibited the City from using the Neighborhood Resident Housing Preference in 2016 for the Willie B. Kennedy Apartments. This project received Section 202 funding from HUD, which is one of the subsidy programs governed by the HUD occupancy requirements discussed in Section II of this report. HUD needed to approve this project’s tenant selection and marketing plans as well as any preferences that would impact tenant selection. \(^{151}\) Though the neighborhood resident preference would only apply to 40% of the units in the Willie B. Kennedy Apartments, HUD refused to approve the use of this preference due to concerns that prioritizing neighborhood residents could limit equal access to housing and perpetuate segregation. \(^{152}\)

The City later received approval for a different preference for this project. MOHCD used research from UC Berkeley to determine census tracts throughout San Francisco that face the highest displacement pressures, and HUD allowed a preference for residents from these tracts for 40% of the units in the Willie B. Kennedy Apartments. \(^{153}\) Since the City’s revised preference was no longer tied to a single geography, HUD determined that prioritizing these residents did not raise fair housing issues. However, HUD did not approve the use of a general live/work preference for this project. \(^{154}\)

No nonprofit affordable units built in San Francisco since the Willie B. Kennedy Apartments have been financed with federal funds that are governed by HUD’s occupancy requirements. The HOME program is the only HUD funding source MOHCD has used to finance nonprofit units during this time, and this program does not require HUD to review the tenant selection and marketing plans for the projects it funds. Thus, MOHCD has been able to continue to use the

\(^{150}\) *Addressing Displacement and Improving Access to Affordable Housing Through Lottery Preference Programs*, prepared by the Mayor’s Office of Housing and Community Development, City and County of San Francisco (San Francisco, CA, 2019).

\(^{151}\) *HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs*, HUD.

\(^{152}\) Gustavo Velasquez, Assistant HUD Secretary for Fair Housing and Opportunity, to Olson Lee, Director of Mayor’s Office of Housing and Community Development, August 3, 2016.

\(^{153}\) MacNulty, interview.

\(^{154}\) Gustavo Velasquez, Assistant HUD Secretary for Fair Housing and Opportunity, to Edwin Lee, Mayor of San Francisco, September 21, 2016.
neighborhood resident preference in lotteries for new nonprofit units despite HUD’s previous rejection of this preference.\textsuperscript{155}

The design of the lottery preference programs also mitigates the risk of legal challenges to the preference policy. MOHCD reduces possible fair housing issues by using the neighborhood resident preference in a more limited application than other preferences: this preference only applies during the initial lease-up in projects with more than five affordable units, and only 40% of the units in a development can be occupied by tenants who qualify for neighborhood preference.\textsuperscript{156} Legal scholars have noted that limiting the number of units affected by a neighborhood preference can reduce the likelihood of a legal challenge to the policy.\textsuperscript{157} Furthermore, San Francisco’s preference policy comprises multiple programs that are based on more factors than just residency. Non-residents who experienced displacement due to urban renewal or no-fault evictions receive preference, as do non-residents who work in San Francisco. San Francisco’s preference policy encompasses a variety of factors that are broader than the city’s geography, and legal research suggests that this breadth of qualifications for preference makes the policy less likely to be viewed by a court as having a discriminatory impact or interfering with the right to migration.\textsuperscript{158}

Notably, the urban renewal preference has never been subject to a fair housing-related challenge. San Francisco’s urban renewal activities mainly displaced African American residents, so the urban renewal preference primarily benefits one racial group. However, the City has statutory obligations under state law to give preference for affordable housing units to residents it displaces.\textsuperscript{159} Moreover, the City has demonstrated its legitimate governmental interest in addressing the social and economic harms caused by urban renewal.\textsuperscript{160} Furthering this governmental interest justifies the use of the urban renewal preference, even though the policy disproportionately benefits the members of a protected class.\textsuperscript{161}

\textsuperscript{155} Since MOHCD is now able to use the neighborhood resident preference in its projects, the anti-displacement preference developed for the Willie B. Kennedy Apartments is no longer used. The anti-displacement preference was not incorporated in the broader preference programs because it was not legislated by the Board of Supervisors, unlike the other preference categories. The anti-displacement preference was administratively adopted to overcome the implementation challenges with the neighborhood preference. As there are no longer implementation challenges for the neighborhood preference, there is no longer a need to seek formal adoption for the anti-displacement preference.
\textsuperscript{156} \textit{Housing Preferences and Lottery Procedures Manual}, City and County of San Francisco.
\textsuperscript{157} Freund, “Perpetuating Segregation or Turning Discrimination on Its Head? Affordable Housing Residency Preferences as Anti-Displacement Measures;” Schwenn, \textit{The Community Preference Policy: An Unnecessary Barrier to Minorities’ Housing Rights}.
\textsuperscript{159} California Health and Safety Code §33411.3 (2002).
\textsuperscript{160} \textit{Property Owner and Occupant Preference Program (Certificate of Preference Program)}, City and County of San Francisco.
\textsuperscript{161} MacNulty, interview.
Portland’s North/Northeast Preference Policy

<table>
<thead>
<tr>
<th>City Population</th>
<th>Agency that Administers Preference</th>
<th>Agency Budget</th>
<th>FTE Staffing for Agency</th>
<th>FTE Staffing for Program</th>
<th>Units in Portfolio Subject to Preference</th>
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</thead>
<tbody>
<tr>
<td>648,121</td>
<td>Portland Housing Bureau</td>
<td>$197 million</td>
<td>70</td>
<td>1.5 (up to 4 during leasing)</td>
<td>82</td>
</tr>
</tbody>
</table>

**Types of Preferences**

<table>
<thead>
<tr>
<th>Types of Preferences</th>
<th>Types of Units Affected</th>
<th>Time Period of Applicability</th>
<th>Institution Responsible for Screening for Preference</th>
<th>Function in the Tenant Selection Process</th>
<th>Institution Responsible for Waitlists and/or Lotteries</th>
</tr>
</thead>
<tbody>
<tr>
<td>-Applicants who had a home in the Interstate Corridor Urban Renewal Area seized by the City or who have family members’ whose property was taken.</td>
<td>Nonprofit developments in the Interstate Corridor Urban Renewal Area</td>
<td>Lease-up and ongoing</td>
<td>City</td>
<td>Applicant receives up to 6 points: 0 to 3 points depending on location of their current or former address, and 0 to 3 points for ancestor’s current or former address depending on its location. A lottery is first conducted among those who have had property seized by the City and successive lotteries are then conducted within each point group.</td>
<td>City</td>
</tr>
<tr>
<td>-Applicants with a current or former address in the Interstate Corridor Urban Renewal Area</td>
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<tr>
<td>-Applicants with a parent, guardian, or grandparent whose current or former address is in the Interstate Corridor Urban Renewal Area</td>
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**Policy Origins and Types of Units Included**

Portland’s North/Northeast Preference Policy has a specific focus, seeking to mitigate displacement issues in a particular neighborhood and address historic wrongs experienced by the community. This policy originated from community activism in the North/Northeast area of Portland, the longtime center of the city’s Black community that has seen rapid gentrification and demographic change in recent years. From the 1950s through the 70s, the City of Portland seized and demolished hundreds of homes in North/Northeast Portland for urban renewal projects. In 2000, the Portland City Council established the Interstate Corridor Urban

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Renewal Area within North/Northeast Portland in order to use Tax Increment Financing (TIF) to fund capital improvements and spur economic development in the area. In 2014, in response to community concerns about ongoing displacement, the Mayor of Portland dedicated $20 million of TIF dollars from the Interstate Corridor Urban Renewal Area to neighborhood affordable housing efforts. The Portland Housing Bureau hosted community forums in the neighborhood to evaluate how best to use the funding, and ideas generated at these meetings led to the 2015 development of the preference policy for nonprofit affordable housing units in the Interstate Corridor Urban Renewal Area.

The Portland Housing Bureau applies the policy by including it in the 99-year regulatory agreements signed by affordable housing developers who use the City’s TIF funds to finance their projects in the Interstate Corridor Urban Renewal Area. The City does not provide funding to market-rate housing developments in the Interstate Corridor Urban Renewal Area, so the preference policy does not apply to inclusionary units.

Preference Categories and Eligibility

The part of the city where addresses receive preference under the policy is approximately 20 square miles in area, and the Portland Housing Bureau only applies the preference to nonprofit units in the six square-mile Interstate Corridor Urban Renewal Area. If an applicant’s current or former address falls within the preference zone, the applicant can receive between one and three points, depending on the address’s location. The applicant is eligible to receive an additional one to three points if a parent, guardian, or grandparent lives or has lived in the preference zone. For both their own address and their family member’s address, applicants receive more points if the location of the address is in a neighborhood that has experienced more intense and repeated urban renewal activity since the 1950s. An applicant can qualify for the preference points regardless of whether they currently live in Portland. See Appendix D for a list of documents that applicants can use to verify that their current/former address or ancestor’s current/former address qualifies for preference points, and see Figure 4 below for a map of the preference point zones.

Applicants also receive preference if they ever had property in the preference zone that was seized by the City for urban renewal, or if they have a parent, guardian, or grandparent whose property in the area was taken by the City. Applicants who have had their own property or a

164 Victoria James, Senior Management Analyst for the Portland Housing Bureau, City of Portland, in discussion with the author, November 2, 2018.
166 Matthew Tschabold, Policy and Planning Manager for the Portland Housing Bureau, City of Portland, in discussion with the author, March 25, 2019.
167 Tschabold, interview.
168 *Portland: Restorative Justice & Preference Policy* prepared by the Portland Housing Bureau, City of San Portland.
close relative’s property seized by the City receive the highest priority in Portland’s preference policy program. The Portland Housing Bureau has records of all properties seized by the City for urban renewal, and City staff use these records to verify that a property was taken.169

Figure 4. Map of Preference Point Zones in North/Northeast Portland

Source: Portland Housing Bureau, City of Portland

Policy Rationale and Goals
The motivation for adopting this policy stems from the history of urban renewal and other City government actions in North/Northeast Portland that contributed to the displacement of neighborhood residents. Accordingly, the intent of the preference policy is to redress the harmful impacts of the City’s past actions by prioritizing households with generational ties to the community for nonprofit affordable housing in the area.170 The City’s short-term objective is to maximize the number of households with generational community ties that stay or return to North/Northeast Portland as a result of the preference policy. The Portland Housing Bureau is working with Portland State University to determine the best framework for long-term evaluation of the policy.171

Policy Implementation
When nonprofit affordable housing developers build in the Interstate Corridor Urban Renewal Area and use TIF funding from the city, the 99-year regulatory agreement they sign states that

171 Tschabold, interview.
the developer must select tenants from a list of eligible applicants provided by the Portland Housing Bureau. This requirement applies both during the initial lease-up of units and for the subsequent re-rental of vacant units.\textsuperscript{172} The Portland Housing Bureau implements the preference policy when it generates the waitlists that are used to refer prospective tenants to nonprofit units in the Interstate Corridor Urban Renewal Area.

Typically, prospective tenants applying for nonprofit units in Portland submit applications directly to the affordable housing developer. However, for nonprofit units in the Interstate Corridor Urban Renewal Area that are subject to the preference policy, a prospective tenant first submits a preliminary application to the Portland Housing Bureau. For this part of the application process, City staff verify the applicant’s eligibility for the preference policy, but they do not review other standard screening criteria for housing such as the applicant’s income qualifications, credit score, or rental history.\textsuperscript{173} After reviewing the preliminary applications, City staff assign applicants a score between zero and six. The Portland Housing Bureau then conducts a lottery within each preference group. The first lottery is held among those whose families had property seized by the City. The results of this lottery determine the order at the top of the waiting list. The next lottery is held among applicants with six points, and these names are then added to the waiting list. This process continues successively through the point groups. When affordable housing developers have vacancies in nonprofit units, the Portland Housing Bureau refers applicants from the top of the sorted waiting list to the property manager. Property managers then complete income verification, credit checks, and background checks for prospective tenants. The Portland Housing Bureau maintains a separate waitlist for each nonprofit development in the Interstate Corridor Urban Renewal Area.\textsuperscript{174}

Since the City intends for the preference policy to benefit longtime residents of North/Northeast who were displaced from the area, a key part of the policy’s implementation is outreach to encourage displaced residents to apply. When the Portland Housing Bureau recently opened the preference policy waitlist for a nonprofit development, the City partnered with community-based organizations to establish 11 application sites throughout Portland. The City provided on-site staff and operated an applicant help hotline to assist with applications. The City worked with a total of 120 community-based organizations, libraries, and schools throughout Portland and in adjacent suburbs to provide outreach to prospective applicants.\textsuperscript{175}

\textbf{City Resources Required for Implementation}

Ongoing management of the preference policy waitlists for nonprofit developments in the Interstate Corridor Urban Renewal Area requires the equivalent of 1.5 FTEs. During the two to four week marketing and lease-up period for a new nonprofit development, four to five FTEs

\textsuperscript{172} “N/NE Preference Policy Obligations,” City of Portland.
\textsuperscript{173} James, interview.
\textsuperscript{174} James, interview.
\textsuperscript{175} \textit{Portland: Restorative Justice & Preference Policy}, City of Portland.
are needed to conduct outreach, assist applicants, process applications, verify preference qualifications, and refer prospective tenants to property managers.\textsuperscript{176}

\textbf{Policy Impact}

The preference policy has been implemented in two nonprofit rental developments totaling 82 units. The limited geographic application of the policy inherently constrains its potential impact. The Portland Housing Bureau estimates that the preference policy will be implemented in approximately 500 nonprofit units built in the Interstate Corridor Urban Renewal Area,\textsuperscript{177} which represents less than 4\% of the City’s current portfolio of over 13,000 units.\textsuperscript{178}

While the Portland Housing Bureau has only applied the preference policy to 82 units, the policy seems to be achieving the City’s goal of prioritizing households with generational ties to North/Northeast Portland for these units. Data from the Portland Housing Bureau indicates that over 80\% of tenants in the two completed projects qualify for four or more preference points. Since only applicants who have both lived in the neighborhood and have a direct ancestor who has lived in the neighborhood can score more than four points, the preference policy seems to be effective at prioritizing those with generational ties to the community. In both projects about one-third of tenants scored the maximum six preference points, suggesting generational ties to the parts of Portland most impacted by urban renewal activities.\textsuperscript{179} However, since preference policies based on residency cannot have a durational requirement, applicants receive preference regardless of how long they or their family member(s) lived in the preference zone.\textsuperscript{180} As a result, it is difficult to know the extent to which applicants are long-term community members and truly have “generational ties,” as one could conceivably score the maximum number of points even if they and their family members lived in the neighborhood briefly. Notably, approximately 15\% of all tenants housed so far have had family property in North/Northeast Portland seized by the City for urban renewal.\textsuperscript{181} This statistic suggests that the effects of the policy appear to align with the City’s objective of addressing the harmful impacts of its urban renewal policies in this community.

\textbf{Compliance with the Fair Housing Act and Other Legal Considerations}

The North/Northeast Preference Policy has neither been challenged by HUD nor faced any lawsuits. Neither of the projects where the Portland Housing Bureau has used the policy received funding from federal programs that are governed by HUD’s occupancy requirements. Accordingly, the tenant selection procedures, marketing plans, and preference policy for these projects did not require HUD’s approval. Portland Housing Bureau staff did not indicate whether the agency might suspend the use of the preference policy if a project in the Interstate

\textsuperscript{176} James, interview.
\textsuperscript{177} James, interview.
\textsuperscript{178} “Housing Pipeline,” City of Portland, accessed May 12, 2019, \url{https://www.portlandoregon.gov/phb/74263}.
\textsuperscript{179} Tschabold, interview.
\textsuperscript{180} Norquist, “Local Preferences in Affordable Housing: Special Treatment for Those Who Live or Work in a Municipality.”
\textsuperscript{181} Tschabold, interview.
Corridor Urban Renewal Area did receive federal funding that would subject the preference to HUD’s approval.

When developing this policy, the Portland Housing Bureau had concerns about the potential fair housing implications of a preference policy that focuses on a particular geography, as HUD had challenged such preferences in the past. City staff worked with the City Attorney to tailor the policy’s design to address these concerns. The policy’s design appears to reduce the likelihood that a lawsuit or federal regulator would claim that the North/Northeast Preference Policy has discriminatory motivations or impacts. Though the motivation for the policy largely stemmed from concerns about the displacement of Black residents, the goals of the policy are not framed around race. Instead, City documents describing the policy focus more generally on addressing a legacy of displacement caused by government action. Since the preference is not race-based, the policy is unlikely to be accused of intentional discrimination in violation of the Constitution and the Fair Housing Act. Furthermore, the policy gives preference to qualifying applicants regardless of where they currently live, and so preference is not tied as directly to a specific geography as other policies that HUD or courts have invalidated. Also, the policy applies to a broad swath of the population, as anyone who has ever lived in the preference zone and income qualifies for affordable housing would receive preference. This broadness makes it difficult to prove a disparate impact claim under the Fair Housing Act. Additionally, this preference program gives the highest priority to families whose property was taken directly by the City, and prioritizing urban renewal displacees has legal precedent as a legitimate governmental interest. Thus, the qualifications for receiving preference under Portland’s policy seem unlikely to face a legal challenge.

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182 James, interview.
184 Norquist, “Local Preferences in Affordable Housing: Special Treatment for Those Who Live or Work in a Municipality;” Freund, “Perpetuating Segregation or Turning Discrimination on Its Head? Affordable Housing Residency Preferences as Anti-Displacement Measures.”
185 Property Owner and Occupant Preference Program (Certificate of Preference Program), City and County of San Francisco.
Oakland’s Preferences in Multifamily Affordable Housing Projects

<table>
<thead>
<tr>
<th>City Population</th>
<th>Agency that Administers Preference</th>
<th>Agency Budget</th>
<th>FTE Staffing for Agency</th>
<th>FTE Staffing for Program</th>
<th>Units in Portfolio (not all are subject to current policy)</th>
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<tr>
<td>417,442</td>
<td>Housing and Community Development Department</td>
<td>$17 million</td>
<td>66.5</td>
<td>.5</td>
<td>9,166</td>
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Preference Categories

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<th>Types of Units Affected</th>
<th>Time Period of Applicability</th>
<th>Institution Responsible for Screening for Preference</th>
<th>Function in the Tenant Selection Process</th>
<th>Institution Responsible for Waitlists and/or Lotteries</th>
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</thead>
<tbody>
<tr>
<td>-Current and former residents displaced by City of Oakland/Oakland Redevelopment Agency’s projects, Oakland’s code enforcement, or a no-fault eviction</td>
<td>Lease-up and ongoing for most preference categories, only lease-up for the neighborhood preference</td>
<td>Developer</td>
<td>Tiered system (list in the “Preference Categories” column is in order of rank). Lottery conducted among each preference group.</td>
<td>Developer</td>
</tr>
<tr>
<td>- Residents who currently live in the same Council District as, or one-mile from, the property</td>
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<tr>
<td>- Applicants who currently live or work in Oakland</td>
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Policy Origins and Types of Units Included

Oakland’s current preference policy stems from legislation enacted in 2016. Historically, Oakland provided a preference to affordable housing applicants who had been displaced as a result of the City’s code enforcement activities or City-sponsored development. In 2008, the Oakland City Council passed a resolution expanding the preference policy to also include affordable housing applicants who currently live or work in Oakland. The ongoing displacement of low-income households, a sharp decline in Oakland’s African American population, and growing numbers of evictions led the City to develop A Roadmap Toward Equity, a policy framework created in 2015 to address

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186 Oakland City Council Ordinance No. 13379 (2016).
188 Oakland City Council Resolution No. 81322 (2008).
gentrification and displacement. Findings and recommendations from this policy framework prompted reforms to the preference policy. The City Council President's Office worked with an informal group of policy advisors and community stakeholders, leading to a 2016 ordinance updating the affordable housing preference policy.

The 2016 ordinance repealed the 2008 resolution and replaced it with the current preference policy. The updated preference policy preserves the original preference categories and adds two new criteria for preference: neighborhood residents living near an affordable development and tenants displaced by no-fault evictions. The 2016 ordinance also codified the preference policy in the Oakland Municipal Code. The law states that the preference policy applies to multifamily affordable housing projects with five or more units that receive funding from the City, which would not include market-rate rental projects with inclusionary units. Therefore, the policy only applies to nonprofit units. However, the City may still include preferences in the regulatory agreements that it signs with market-rate developers whose rental projects include inclusionary affordable units. For example, a 2017 regulatory agreement for a 234-unit project with 34 inclusionary units included a preference for neighborhood residents and Oakland Unified School District employees.

Preference Categories and Eligibility
The Oakland Municipal Code defines three categories of applicants who receive preference for nonprofit affordable housing units affected by the policy: displaced households, neighborhood residents, and Oakland residents/workers. Additionally, Oakland’s Department of Housing and Community Development publishes guidelines that provide affordable housing developers with additional information about the preference policy. See Appendix E for a list of the documents required to verify eligibility for each preference category.

Displaced Household
An applicant qualifies as a displaced household if an adult member of the household has been displaced from a residence in Oakland due to any of the following circumstances:

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191 Alex Marqusee, Legislative Analyst for Councilmember McElhaney, email message to author, April 2, 2019.
193 Regulatory Agreement between the City of Oakland and TDP-Webster LLC, July 13, 2017.
195 Notice of Funding Availability for New Construction of Affordable Rental and Ownership Housing, City of Oakland.
196 Notice of Funding Availability for New Construction of Affordable Rental and Ownership Housing, City of Oakland.
• City code enforcement activities that resulted in a notice to vacate or declared conditions on the property to be substandard or life-threatening.
• A development project that the City sponsored or provided assistance to.
• A no-fault eviction, which is evidenced by an eviction notice that states the cause as owner move-in, owner repairs, or removing the unit from the rental market (Ellis Act eviction).

To qualify for this preference category, displacement due to code enforcement or City-sponsored development needs to have occurred within one year of the application for affordable housing. A no-fault eviction needs to have occurred within eight years of applying for affordable housing in order to qualify for this preference. City documents do not provide an explanation for the length of these time constraints.197

The displaced household preference provides applicants with the best odds of success in a housing lottery. The preference applies to every unit in a property during both the initial lease-up and all subsequent re-rentals. Both current and former Oakland residents are eligible for this preference.198

*Neighborhood Resident*

The neighborhood resident preference applies to applicants who currently live in Oakland in the same Council District as the project they are applying for or within a one-mile radius of the project. This preference category ranks second in order of priority. This preference only applies during the initial lease-up of a development and can only be used for up to 30% of the units in the development.199

*Oakland Resident/Worker*

Applicants qualify for this preference if they currently live in Oakland or if they work in Oakland at least 20 hours per week. Applicants are also eligible if they have been hired to work in Oakland or participate in a job training program located in Oakland. This preference ranks lowest in priority among the preference categories but is prioritized above all applicants without a preference. The resident/worker preference applies to every unit in a property during both the initial lease-up and all subsequent re-rentals.200

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197 Notice of Funding Availability for New Construction of Affordable Rental and Ownership Housing, City of Oakland.
198 Notice of Funding Availability for New Construction of Affordable Rental and Ownership Housing, City of Oakland.
199 Notice of Funding Availability for New Construction of Affordable Rental and Ownership Housing, City of Oakland.
200 Notice of Funding Availability for New Construction of Affordable Rental and Ownership Housing, City of Oakland.
Policy Rationale and Goals

According to City documents, the preference for displaced residents seeks to create opportunities to move back to Oakland for former residents who have been forced to leave their community. The 2016 ordinance expanding the preference to cover no-fault evictions intends to mitigate the effects of gentrification and enable evictees to return to Oakland despite increasingly scarce affordable housing. The purpose of the preference for current Oakland residents is to prevent the displacement of low-income households by enabling these residents to live in affordable housing funded by the City. The neighborhood resident preference specifically seeks to improve community stability in the face of increasing housing prices and preserve neighborhood residents’ local support networks. Prioritizing non-residents who currently work in Oakland has both economic and environmental goals. The City hopes this preference will improve the ability to attract businesses and retain employees if workers are able to live closer to their jobs. Additionally, the City believes the preference can help reduce traffic, congestion, and carbon emissions by shortening commutes for low-income workers, who often need to live far from Oakland to afford housing.

Policy Implementation

The Oakland Municipal Code requires affordable housing developers to implement the preference policy and states that the regulatory agreement between the City and the developer must include the preferences. The City requires developers to submit a plan prior to completing construction that details the proposed marketing and management processes, including how the developer will incorporate the preference policy in tenant selection. The City works with developers to ensure that their marketing plan and tenant selection criteria are in compliance with local and federal laws. City staff also help developers understand how to apply the preferences.

Though the 2016 ordinance established a standard set of preferences, the implementation of preferences could vary across Oakland’s portfolio of affordable rental units depending on when a project was constructed. Regulatory agreements signed since the 2016 ordinance likely reflect the current policy. Projects built before the 2016 ordinance would not be affected by the preference for neighborhood residents and those displaced by no-fault evictions, and projects constructed before the 2008 ordinance would also lack the preference for Oakland residents and workers. The specific processes through which each developer implements the preference in their marketing, tenant selection, and waitlist management could also vary.

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201 Oakland City Council Ordinance No. 13379 (2016).
203 Amending Oakland’s Preference Policy for Affordable Housing, City of Oakland.
206 Brian Warwick, Housing Development Coordinator for the Department of Housing and Community Development, City of Oakland, email message to author, April 15, 2019.
207 Notice of Funding Availability for New Construction of Affordable Rental and Ownership Housing, City of Oakland.
The current guidelines for Oakland’s Notice of Funding Availability process direct developers to complete the initial lease-up of a property by conducting successive lotteries among the applicant preference groups. Therefore, developers will first hold a lottery for the displacee preference group, followed by a lottery for the neighborhood preference group (for up to 30% of the project’s units), followed by the Oakland residents/workers group, followed by all other applicants. Developers use this initial lottery process to allocate units and create the waitlist for a property. Though developers conduct the lottery, the City observes the lottery drawing and may conduct an audit of the waitlist if the need arises. When a developer re-opens a waitlist in the future, the manual for City funding recipients directs developers to follow the same lottery process, except there is no preference for neighborhood residents. 208

The City requires developers to verify that applicants qualify for a preference and review the required documentation before leasing units to prospective tenants (see Appendix E for a list of documents for each preference category). For applicants claiming a preference due to being displaced by code enforcement or City-sponsored projects, the City will provide developers with documentation verifying the applicant’s eligibility for the preference. A report detailing compliance with the preference policy must be submitted to the City at completion of initial-lease up. 209 If applicants raise concerns about the integrity of the process, the City can conduct a waitlist audit to ensure compliance with the preference policy and other City regulations. In the past year, the City has audited one waitlist due to applicant concerns. 210

Each property submits annual reporting documents as part of ongoing compliance monitoring. This reporting includes information on rents and tenant incomes as well as preference qualifications for new tenants. Owners must retain documentation for each tenant for five years from the date of initial occupancy. 211

City Resources Required for Implementation
Since affordable housing developers oversee most aspects of implementing Oakland’s preference policy, ongoing implementation of the policy does not require significant City staff time. City staff are most directly involved with implementing the policy when a project is first leasing up units. Brian Warwick, Housing Development Coordinator for the Department of Housing and Community Development, estimated that the staff time required for this entire lease-up process is equivalent to one week of work, or 37.5 hours per project. 212

Multiple staff share the workload for ongoing compliance monitoring of Oakland’s portfolio of 9,166 nonprofit units. Monitoring annual reporting from rental projects in the City’s portfolio

208 Notice of Funding Availability for New Construction of Affordable Rental and Ownership Housing, City of Oakland.
209 Notice of Funding Availability for New Construction of Affordable Rental and Ownership Housing, City of Oakland.
210 Warwick, email.
211 Notice of Funding Availability for New Construction of Affordable Rental and Ownership Housing, City of Oakland.
212 Warwick, email.
mostly involves reviewing tenant rents and income, but staff may also review the preference qualifications of new tenants. The staff time devoted to these processes is approximately .5 FTE. However, the City is currently planning to hire an additional FTE for compliance monitoring and asset management.  

Policy Impact
The current preference policy has been in effect since July 2016, so it would not apply to a large portion of Oakland’s portfolio. Similarly, the preference for Oakland residents/workers only applies to nonprofit units constructed since 2008. The City’s data collection practices also prevent a clear assessment of the impact of both Oakland’s current preference policy and its previous iterations. Since developers process the applications for nonprofit units, the City does not have data on how many applicants qualified for different preference categories. City staff have a general sense of how frequently applicants are utilizing different preference categories due to the City’s involvement in the lease-up process. Mr. Warwick estimated that few applicants qualify for the displacee preference but a large number of applicants qualify for the Oakland resident/worker preference. Without more precise data, however, the impact of the policy on Oakland’s nonprofit units is fairly uncertain. Additionally, Mr. Warwick noted that the neighborhood preference is too new to even have anecdotal information about.

Compliance with the Fair Housing Act and Other Legal Considerations
Information from public documents and City staff does not provide evidence of any legal challenges to Oakland’s current preference policy or previous versions of the policy. The City funding for nonprofit units does not contain any federal sources that are subject to HUD’s occupancy requirements, and so developers receiving funding from Oakland are not required to have HUD approve their tenant selection and marketing plans. However, it is unclear whether any nonprofit developments that have received City funding since the 2016 policy began also used additional federal funding sources that would require HUD to approve the preference policy for the project. The Oakland Municipal Code addresses the possibility that other funding sources for an affordable housing project could limit the application of the preference policy, stating that the preference policy will be applied only to the extent that other funding sources for the project do not prohibit the preference. Since HUD rejected a similar neighborhood resident preference policy in San Francisco in 2016, it appears likely that this component of Oakland’s policy may be prohibited by HUD for any project receiving federal funds governed by HUD’s occupancy requirements.

The City considered potential fair housing issues when developing both the 2008 preference policy and the current policy. The City Council resolution establishing the 2008 policy notes that

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213 Warwick, email.
214 Warwick, email.
the preference will not have a disparate impact on any protected classes.\textsuperscript{217} Similarly, multiple aspects of the current preference policy appear to mitigate the risk of any legal challenges. As mentioned previously, the neighborhood preference has a more limited application than the other categories. This preference only applies during the initial lease-up and can only be used in up to 30\% of the units in a project. The City Council set this percentage based on a statistical analysis that concluded that limiting the neighborhood preference to 30\% of a project’s units would not cause a disparate impact to any ethnic or racial group in any of the Council Districts.\textsuperscript{218} Additionally, the preference policy contains a range of preference categories that are not tied solely to geography. Applicants can qualify for the displacee preference regardless of where they currently live. Furthermore, non-residents who work in Oakland receive the same preference as Oakland residents. This range of preference categories aligns with legal research that finds that having a breadth of qualifications for preference makes a policy less likely to be viewed by a court as interfering with the right to migration or having a discriminatory impact.\textsuperscript{219}

V. Lessons Learned and Policy Recommendations for Berkeley

The case studies in the previous section reveal that preference policies in different cities vary in their design and implementation. However, commonalities across the different policies suggest some general lessons for the City of Berkeley to consider when creating a community preference policy for its affordable housing programs.

Key Takeaways from Research

1. Some preference categories are common across policies, which suggests that these categories have significant legal precedent and are typically feasible to implement.

   The following categories were most prevalent:
   
   - **General live/work preference**: Four out of five case study cities included a preference for all city residents and non-residents who work in the city. Only Portland’s policy was limited to living in a specific portion of the city and did not include non-resident workers.
   
   - **Displacement caused by government action**: Four out of five case study cities included a preference for current or former residents displaced by specific government actions, which were typically related to code enforcement or urban renewal activities.
   
   - **Displacement caused by no-fault eviction**: Every case study city included a preference for current or former city residents displaced by no-fault evictions.

2. Cities with preferences for inclusionary units directly apply the preference policy for these units, and these city governments are responsible for tracking vacancies and processing applications for inclusionary units.

\textsuperscript{217} Oakland City Council Resolution No. 81322 (2008).
\textsuperscript{218} Amending Oakland’s Preference Policy for Affordable Housing, City of Oakland.
Both Santa Monica and Cambridge maintain a centralized waitlist for inclusionary units. Applicants for inclusionary units submit applications directly to each city’s housing department, and City staff apply the preference policy when determining the order of the waitlist. Developers notify City staff of vacancies, and staff make referrals from the waiting list to developers. In San Francisco, developers also notify the City of all inclusionary vacancies, and the City posts these vacancies on its online affordable housing application portal. The City conducts a lottery for each inclusionary vacancy and applies the preference to the lottery results.

3. City participation in verifying preference eligibility and applying the preference to the tenant selection process facilitates more consistent and accurate implementation as well as thorough data collection, but this level of involvement also requires more resources. Cambridge, Portland, and San Francisco have full control over verifying preference eligibility and applying the preference to the tenant selection process. As a result, these cities know with certainty whether affordable housing tenants qualified for a preference, and city governments can easily measure the impact of their policies. These programs require between 2.5 and 5 FTEs to administer. Santa Monica applies the preference to its inclusionary waitlist but relies on developers to verify inclusionary applicants’ preference documentation. For nonprofit units in both Oakland and Santa Monica, developers are entirely responsible for verifying preferences and applying them to tenant selection processes. Consequently, neither Oakland nor Santa Monica can be completely certain whether preferences are being applied correctly, nor do they have data on how many affordable housing applicants or tenants qualified for a preference. However, these preference programs require one FTE or less.

4. Policies with a breadth of preference categories minimize the risk of lawsuits. None of the case study cities have faced lawsuits related to violating the Fair Housing Act, constitutional rights, or other aspects of the law. In all of these cities, preference is not limited solely to current residence in a city.

5. The funding sources for affordable housing affect the risk of HUD challenging a preference. Preferences for inclusionary units do not need approval from HUD because these units are in market-rate projects, which do not have federal subsidies. Financing projects with CBDG and HOME dollars also does not require HUD to approve the preferences being used for a project, while other sources of federal funding result in more oversight from HUD. Among all of the case study cities, there was only one example of HUD denying the use of a preference policy: a 2016 San Francisco project financed with Section 202 funding from HUD. However, San Francisco has continued to apply its policy in the years since as no projects have used funding subject to HUD’s review of preferences.

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220 HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs, HUD.
6. Cities should define policy goals, create metrics for effectiveness, and collect data to measure policy impact.

The goals for a preference policy determine the specifics of the preference categories, and so cities should be thoughtful about what they intend to achieve with a policy. Additionally, data collection is essential for understanding policy impact. Data from San Francisco and Cambridge indicates that these policies are impactful and achieving their goals, while a lack of data in Oakland and Santa Monica prevents a clear assessment of these policies’ effects.

Constraints for Policy Implementation in Berkeley

Implementing a preference policy in Berkeley would require changes to the City’s existing affordable housing programs and processes. Several factors pose potential barriers to applying a preference policy to these programs:

1. **Diffuse management of the affordable housing application process in Berkeley.**

   The City of Berkeley does not accept applications for affordable housing, track vacancies, or maintain waiting lists. If the City adopts a preference policy, existing systems would need to be updated to ensure that developers incorporate the preferences when selecting tenants for inclusionary and nonprofit units. The new system might involve the City of Berkeley working with developers during lease-up to make sure that developers understand the preference categories and apply them correctly. Alternatively, the City may want to centralize affordable housing application processes and assume responsibility for tracking vacancies, processing applications, conducting lotteries, and directly implementing the preferences, similar to some of the case study cities examined for this report.

2. **Additional staffing and funding is needed for implementing new programs.**

   Incorporating a preference policy in the City of Berkeley’s affordable programs would require additional staff time. Applying the preference policy within the existing diffuse system may be possible without additional hiring, but these efforts would still necessitate additional work for current City staff during lease-up and ongoing monitoring. Creating a more centralized affordable housing application system, similar to Cambridge’s system for inclusionary units or San Francisco’s DAHLIA affordable housing portal, is more resource intensive and would likely require hiring additional FTEs as well as additional funding to support new technology infrastructure and software development.

3. **Unintended consequences of community preferences.**

   The current displacement crisis in the Bay Area is a regional issue, and a preference policy in Berkeley impacts the ability of the region’s low-income households to access affordable units in Berkeley. A low-income person living nearby may have never lived in Berkeley nor be employed here, but they may still have family here or be interested in moving here to improve their opportunities. Affordable housing options for these applicants may be increasingly constrained as a result of a preference policy in Berkeley. Similarly, the effects of a preference policy have potential legal implications. As discussed earlier in this report, cities may be sued if a preference policy has a disparate impact on a protected class or if a policy violates the
constitutional right to travel and migration. Consequently, preference categories require thoughtful and intentional design that takes these potential consequences into account.

**Recommendations for Preference Policy Design**

Based on findings from the case studies and other research, this report proposes recommendations for a preference policy in Berkeley. These recommendations have two components:

1. The preference categories that would receive priority for affordable housing in Berkeley.
2. The processes and procedures the City would use to incorporate these preferences in its affordable housing programs.

Additionally, these recommendations focus on two timeframes for implementation:

1. Preference categories and implementation processes that represent immediate next steps for the City of Berkeley.
2. Preference categories and implementation processes that would require more time and resources for adoption due to more substantial changes required to the City’s existing affordable housing systems.

**Preference Category Recommendations for Initial Implementation**

This report recommends two types of preference categories for the initial implementation of a preference policy in Berkeley: a live/work preference and a preference for current or former residents displaced by government action or no-fault eviction. The research in the previous sections of this report suggests that these preference categories have minimal legal risk, are feasible to implement without intensive resources, and respond to the concerns of Berkeley’s residents and policymakers that prompted interest in a preference policy.

**Preference Category Recommendation 1: Live/work preference**

**Eligibility for preference:**

The live/work preference would apply to affordable housing applicants who currently live in Berkeley and non-residents who work in Berkeley. Non-residents who work in Berkeley would qualify for the preference if they work in Berkeley more than 20 hours per week or if they have accepted a job in Berkeley that is more than 20 hours per week. Berkeley residents and non-resident workers would be prioritized equally under this policy. See Appendixes B, C, and E, for examples of documents used to prove eligibility for preference as a resident and/or non-resident worker in Cambridge, San Francisco, and Oakland.

**Rationale and goals:**

The basic goal of a preference for Berkeley residents is to give low-income Berkeley households priority access to affordable housing in Berkeley, which can increase opportunities for low-income Berkeley households to continue to live in their community. Berkeley’s nonprofit and inclusionary affordable housing units are essential for providing low-income households an opportunity to live in Berkeley. However, only 1,596 nonprofit and inclusionary affordable
housing units are located in Berkeley, while there are over 16,000 low-income renter households in the city. The intent of this preference category is also to maintain racial and socioeconomic diversity by stemming the displacement of Berkeley’s low-income residents and residents of color. This policy goal helps to address concerns about gentrification and declining diversity expressed by Berkeley’s residents and City Council. Lastly, the development that produces inclusionary and nonprofit affordable housing directly impacts Berkeley’s residents and neighborhoods, which is further justification for prioritizing Berkeley residents for the benefits produced by this development.

Prioritizing non-residents who work in Berkeley has environmental and economic goals. This preference can help reduce traffic, congestion, and carbon emissions by shortening commutes for low-income workers, who may need to live far from Berkeley to afford housing. This preference may also improve the ability to attract businesses and retain employees if workers are able to live closer to their jobs. Additionally, this preference could provide displaced residents who still work in Berkeley with an opportunity to return to the city. The rationale for needing to work in Berkeley at least 20 hours per week to qualify for the preference stems from precedents in the case study cities, and this threshold would appear to capture workers who commute frequently to Berkeley for their jobs.

Though the City Council’s April 2016 referral expressed interest in a preference for Berkeley residents living with a half-mile of new development, this report concludes that a general live/work preference is preferable to a more targeted preference for neighborhood residents currently living near a development. As noted previously, live/work preferences that apply to all city residents and non-resident workers are prevalent among the case study cities and have not been subject to lawsuits or challenges from HUD in these cities. However, New York’s neighborhood-based policy currently faces a federal lawsuit, while San Francisco’s neighborhood preference policy was denied by HUD for a 2016 project. An affordable housing preference policy is vulnerable to legal challenges if a city lacks strong justification for providing the preference. This report provides a strong rationale for a general preference for Berkeley residents, as this preference will enable an economically and racially diverse group of Berkeley residents to remain in the city (see Figures 5 and 6 below for more detail). Ultimately, a neighborhood-based preference does not seem to merit the legal risks in a geographically small city like Berkeley: the city’s land area is approximately 10 square miles and less than one-quarter the size of San Francisco.

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221 This figure comes from a dataset sent to the author in February 2019 by the City of Berkeley’s Department of Health, Housing, and Community Services.
Potential impact:
Data from the Census Bureau suggests Berkeley residents applying for affordable housing represent a racially diverse segment of the city’s population. Berkeley residents applying for affordable rental housing are likely to be renters, and Figure 5 indicates high rates of renting among Berkeley’s residents of color. Additionally, Figure 6 illustrates variations in median income by race in Berkeley. Generally, a person needs to have an income below 80% of AMI to qualify for Berkeley’s inclusionary units, while nonprofit units require an income below 60% of AMI. The data shown in Figure 6 suggests that residents of color in Berkeley are much more likely to have incomes that qualify them for affordable housing, which supports the argument that a preference policy for Berkeley residents would help maintain diversity in Berkeley.

Figure 5. Differences in Rates of Renting by Race/Ethnicity in Berkeley, 2017

Source: 2013-2017 ACS 5-Year Estimates, Table B25003
Note: The White, Black, and Asian populations reported in this graph are of non-Hispanic ethnic origin.
Figure 6. Differences in Median Income by Race/Ethnicity in Berkeley, 2017

Sources: 2013-2017 ACS 5-Year Estimates, Table S1903; FY 2017 HUD Metropolitan Area Income Limits
Note: The White, Black, and Asian populations reported in this graph are of non-Hispanic ethnic origin. AMI based on a household of 3 people in the Oakland-Fremont Metro Area for Fiscal Year 2017. The average household size in Berkeley in 2017 was 2.36.

Compliance with the Fair Housing Act and other legal considerations:
A preference for Berkeley residents and non-residents who work in Berkeley seems unlikely to face a legal challenge or be denied by HUD in projects requiring HUD’s approval for preferences. Part of the rationale for equally prioritizing residents and non-resident workers is to mitigate these risks. Preferences that equally prioritize the residents and workers of a jurisdiction have precedent in HUD’s own regulations. Additionally, legal scholars argue that broadening a resident preference policy by adding additional qualifying factors makes it more difficult to prove that a preference is discriminatory or impedes the right to migration. Furthermore, courts have found that cities have a legitimate governmental interest in providing a preference for affordable housing to residents over nonresidents.

Preference Category Recommendation 2: Displacement by government action/no-fault eviction
Eligibility for preference:
Current or former residents of Berkeley would be eligible for this preference if they have been displaced from a Berkeley residence under any of the following circumstances:

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226 HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs, HUD.
227 Norquist, “Local Preferences in Affordable Housing: Special Treatment for Those Who Live or Work in a Municipality.”
• No-fault evictions, such as Ellis Act or owner move-in evictions
• Berkeley’s Housing Code Enforcement issued a notice to vacate or declared conditions on the property to be substandard or life-threatening
• Development project that was carried out by a City agency or that received City funding, which would include all Berkeley Redevelopment Agency projects as well as BART construction

The City can verify displacement due to no-fault eviction using records from the Berkeley Rent Stabilization Board. Other cities with a similar policy place time constraints on qualifying for this preference. In San Francisco, a no-fault eviction needs to have occurred within the last six years, while Oakland uses an eight-year time limit.

The City can verify displacement as a result of its Housing Code Enforcement by using records from the Building and Safety Division. In Oakland, displacement due to code enforcement activities needs have occurred within one year of an applicant’s application for affordable housing.

The City can verify displacement caused by development projects that were carried out by City agencies or received City funding using records from the former Berkeley Redevelopment Agency, BART, or other government authorities that would have record of eminent domain for development purposes. Anyone who was living in a residence that was demolished by the Berkeley Redevelopment Agency, BART, or other government authorities is eligible for the preference, even if they were a child at the time or an adult who was not head of the household. Applicants must prove they lived at an affected address during the time of displacement by using an official document that includes their name, the date, and the address in question. See Appendix C for a list of documents used by San Francisco to verify eligibility for its urban renewal preference.

Rationale and goals:
A preference for displaced residents seeks to create housing stability for current or former Berkeley residents who have been forced to leave their homes. Moreover, if a low-income household has left Berkeley as a result of displacement, they are unlikely to be able to return to Berkeley due to the high cost of housing. Therefore, a goal of this preference is to provide former residents who moved involuntarily with opportunities to return to Berkeley. Both Berkeley residents and the City Council have expressed an interest in this goal. State law also establishes government’s responsibility for helping to secure housing for those displaced by government-sponsored development projects.228

Potential impact:
Estimating the potential impact of this preference requires further investigation of government records related to displacement due to code enforcement activities and City-sponsored redevelopment. The Berkeley Rent Stabilization Board shared records of Ellis Act and owner

move-in evictions between 2000 and 2017. During this time period, there were a total of 352 no-fault evictions, an average of approximately 20 evictions per year. The rate of evictions increased somewhat in recent years, with an average of 27 evictions per year between 2014 and 2017.229

Compliance with the Fair Housing Act and other legal considerations:
A preference for current and former residents displaced by no-fault evictions or government action seems unlikely to be invalidated by the courts. Similar preferences in other cities have not faced legal challenges. Additionally, cities have statutory obligations under state law to help house residents they displace.230 Furthermore, this preference category has a broad set of qualifications that are not tied to an applicant’s current place of residence, as applicants can qualify for the displacee preference regardless of where they currently live. The variety of qualifications for this preference category aligns with legal research that finds that having a breadth of qualifications for preference makes a policy less likely to be viewed by a court as interfering with the right to migration or having a discriminatory impact.231

Preference Category Recommendations for Long-term Implementation
A preference category requiring a longer timeframe and more resources for implementation is a preference for residents whose displacement from Berkeley was not caused by a no-fault eviction or specific government action. Both Berkeley residents and City Councilmembers have requested that the City implement a “right of return” policy for displaced Berkeley residents, particularly Berkeley’s communities of color. The City received six communications related to the March 6, 2019 Planning Commission meeting that called for the Adeline Corridor Plan to include “a right to return for African Americans and low-income people who have been pushed out of our neighborhood.”232 Similarly, a City Council referral made to the Planning Commission and Housing Advisory Commission on April 30, 2019 recommends that the commissions develop “a ‘right to return’ for Berkeleyans, especially People of Color.”233

Addressing this concern proves difficult. First, the City cannot confer a “right” to an affordable housing unit for displaced residents, as the City cannot guarantee that someone who is displaced receives an affordable unit. While the City can try to provide an opportunity to return through a preference policy, preference policies in the case study cities examined in this report

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229 These figures come from a dataset sent to the author in November 2018 by the City of Berkeley’s rent Stabilization Board.
typically prioritized households displaced by no-fault evictions or specific government actions. A more general preference for former Berkeley residents displaced by high housing costs or other economic factors would be harder to implement than a preference for those displaced by government action/no-fault evictions due to difficulty verifying displacement that is not recorded in official documents. Moreover, Berkeley cannot provide a preference specifically for Black residents or residents of color, as a preference tied to race would be invalidated by courts as intentionally discriminatory under both the Fair Housing Act and the Equal Protection Clause of the Fourteenth Amendment.  

This report recommends that the City of Berkeley explores a preference for current or former Berkeley residents with generational ties to Berkeley neighborhoods that experienced redlining. This preference would be modeled after the City of Portland’s North/Northeast Preference Policy, which prioritizes applicants with generational ties to a neighborhood that was impacted by urban renewal and other City-led actions that caused displacement. A preference category prioritizing current or former Berkeley residents with generational ties to redlined Berkeley neighborhoods has the potential to provide an opportunity to return for low-income residents and communities of color displaced by rising rents and other social and economic factors. Additionally, this policy could still be broad enough to avoid legal action and invalidation by the courts.

Preference Category Recommendation 3: Generational ties to redlined neighborhoods

Eligibility for preference:
The area of Berkeley where addresses would receive preference corresponds to the sections of the city that were redlined in the 1930s by the Home Owners' Loan Corporation, a federal agency created to evaluate mortgage lending risk in neighborhoods across the county. This agency created maps to illustrate its risk assessments, and areas deemed to be high risk for investment were rated “hazardous” and outlined in red on maps. Figure 7 shows the Home Owners' Loan Corporation map of the East Bay. Berkeley’s redlined neighborhoods are bounded roughly by University Avenue on the north, Martin Luther King Junior Way on the east, and the Berkeley city limits to the west and south.

234 Freund, “Perpetuating Segregation or Turning Discrimination on Its Head? Affordable Housing Residency Preferences as Anti-Displacement Measures;” Norquist, “Local Preferences in Affordable Housing: Special Treatment for Those Who Live or Work in a Municipality.”

 Applicants receive preference if their current or former address falls within the preference zone. Applicants are also eligible to receive preference if a parent/guardian or grandparent lives or has lived in the preference zone. Applicants receive the highest priority if they have a current or former address in the preference zone and if their parent/guardian or grandparent has a current or former address in the preference zone. This ranking of priority could be incorporated into a point-based system, like in Cambridge and Portland, or in a system of tiered preferences, like in San Francisco. See Appendix D for a list of documents the City of Portland uses to verify eligibility for its preference policy related to generational neighborhood ties.

Rationale and goals:
This preference seeks to enable households to remain in or return to Berkeley if they have generational community ties to historically marginalized Berkeley neighborhoods. The motivation for adopting this preference stems from the ongoing displacement of low-income households and residents of color from these neighborhoods. This preference category also represents an attempt to remedy the harm caused by banks and the federal government, whose actions prevented homeownership and led to long-term disinvestment in Berkeley’s redlined neighborhoods. Notably, research suggests a relationship between redlined neighborhoods and where gentrification occurs in cities, as redlining caused decades of depressed home values that made neighborhoods susceptible to speculative investment in recent years.236

236 Bruce Mitchell and Juan Franco, HOLC “Redlining” Maps: The persistent structure of segregation and economic inequality.
**Potential impact:**
This policy has the potential to enable large numbers of displaced residents to return to Berkeley. Between 2000 and 2017, the Black population in Berkeley decreased by nearly 4,000 residents while the city gained over 17,000 residents. These population losses were heavily concentrated in census tracts that correspond to Berkeley’s redlined neighborhoods. Because the proposed preference category relies solely on having a current or former address in a specific area, those who have been displaced from these neighborhoods due to economic forces can receive preference. This preference category is not tied to race, but the design of the preference can still benefit current and displaced Black residents with historic ties to Berkeley.

**Compliance with the Fair Housing Act and other legal considerations:**
This preference category’s design appears to reduce the likelihood that a lawsuit or federal regulator would claim that the preference has discriminatory intent or impact. Though the motivation for the preference stems from concerns about the displacement of Black residents, the goals for this policy focus more generally on addressing displacement caused by government policy and systemic disinvestment. Policies that specifically benefit displaced Black residents or residents of color would be considered intentionally discriminatory and in violation of the Constitution and the Fair Housing Act. Consequently, the proposed preference category is not race-based. Furthermore, the policy gives preference to qualifying applicants regardless of where they currently live, and so preference is not tied as directly to a specific geography as other policies that HUD or the courts have invalidated. Also, the policy applies to a broad swath of the population, as anyone who has ever lived in the preference zone and income qualifies for affordable housing would receive preference. This broadness makes it difficult to prove a disparate impact claim under the Fair Housing Act. Furthermore, this preference is similar to Portland’s policy, which has not faced any lawsuits or challenges from HUD.

**Process Recommendations for Initial Implementation**
The following recommendations are suggestions for how the City of Berkeley can effectively implement a preference policy within the City’s existing affordable housing systems.

**Process Recommendation 1: Determine metrics for policy effectiveness**
- The City should define clear goals for its preference policy and determine the metrics that will measure whether the City is achieving these goals.
- As this policy intends to stem the displacement of low-income households from Berkeley, an appropriate metric could be the number of current or displaced Berkeley residents who remain in or return to the city.

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237 U.S. Census Bureau, American Community Survey 2017 5-Year Estimates, Table DP05, accessed May 9, 2019, [https://factfinder.census.gov](https://factfinder.census.gov); U.S. Census Bureau, Census 2000, Table DP-1, accessed May 9, 2019, [https://factfinder.census.gov](https://factfinder.census.gov).
Process Recommendation 2: Collect data to measure policy impact

- The City of Berkeley currently has no data on how many applicants for affordable housing in Berkeley are city residents. The City also lacks data on whether current affordable housing tenants were previously Berkeley residents. Thus, the City cannot assess the extent to which its affordable housing programs are enabling low-income Berkeley households to remain in the city.

- When the City implements its preference policy, all future regulatory agreements with the developers of inclusionary and nonprofit units should require data collection related to measuring the effectiveness of the preference policy.
  - Regulatory agreements should note that developers need to share data with the City that indicates how many affordable housing applicants are Berkeley residents and how many applicants qualified for different preference categories.
  - Regulatory agreements should also state that developers must share lottery results with the City to enable data collection on whether those receiving affordable housing units qualified for preferences.

- The City should update applicable ordinances and administrative guidelines to ensure that these data collection requirements are included in regulatory agreements with developers.

- The Department of Health, Housing, and Community Services should incorporate data collection related to preference policy effectiveness into its ongoing compliance monitoring of inclusionary and nonprofit units.

- Any ordinance passed by City Council to implement the preference policy should require the Department of Health, Housing, and Community Services to issue an annual report on policy effectiveness.

Process Recommendation 3: The City adopts a preference policy with two initial preference categories, a live/work preference and a preference for current and former residents displaced by government action/no-fault evictions

- The City Council should pass an ordinance adding a chapter to the Berkeley Municipal Code that codifies the preference policy.

- The Berkeley Municipal Code chapter should define these two preference categories and state the criteria for eligibility for each category.

- The municipal code should note that applicants with the displacement preference are prioritized first, applicants with the live/work preference are prioritized second, and all other applicants are prioritized third.

- The municipal code should state that the policy applies to all nonprofit units that receive City funding as well as all inclusionary units.

- The City Attorney should conduct a disparate impact analysis to ensure that the preference policy does not violate the Fair Housing Act. City staff in San Francisco, Oakland, Portland, and Seattle have conducted similar analyses, which can serve as a model for Berkeley.
Process Recommendation 4: The Department of Health, Housing, and Community Services creates a certificate program for the displaced tenant preference

- The Department of Health, Housing, and Community Services should establish a process similar to San Francisco where applicants displaced by government action or no-fault evictions apply to the City to receive a preference certificate.
- The Department of Health, Housing, and Community Services should examine records from BART and the Berkeley Redevelopment Agency to determine which addresses qualify for a preference due to publicly-sponsored development activity.
- The Department of Health, Housing, and Community Services should work with the Berkeley Rent Stabilization Board and the Building and Safety Division to maintain an ongoing inventory of recent displacements due to no-fault evictions and code enforcement activities.
- The Department of Health, Housing, and Community Services should publish guidelines for the certificate program that describe eligibility for the preference, documentation required to apply, and time constraints for receiving preference for displacement due to code enforcement and no-fault evictions.

Process Recommendation 5: The City should update relevant policies and procedures so that affordable housing providers for both inclusionary and nonprofit units incorporate the preference policy for all future affordable housing units built in Berkeley

- The City should update the guidelines for its inclusionary housing program to state that all market-rate developers with inclusionary units in their projects need to apply the preference categories to lottery results both for initial lease-up and when waitlists are reopened.
- The City should update the guidelines for the Small Sites Program and Housing Trust Fund to state that nonprofit affordable developments that receive funding from the City need to apply the preference categories to lottery results both for initial lease-up and when waitlists are reopened.
- Before approving the marketing plans for inclusionary and nonprofit units, the City should ensure that these plans specify how the developers will incorporate the preference policy in initial lease-up, waitlist management, and ongoing re-rental of units.
- All future regulatory agreements that the City signs for inclusionary and nonprofit units should specify the preference categories, the order of preference, and the requirement to apply the preference to lottery results for both lease-up and when waitlists are reopened.
- The Department of Health, Housing, and Community Services’ compliance monitoring processes should verify that developers are applying the preference policy correctly.
Process Recommendation 6: The City should explore whether the preference policy can be applied to the re-rental of existing inclusionary and nonprofit units

- Though the preference policy will be incorporated into the marketing plans and regulatory agreements for future inclusionary and nonprofit units, the marketing plans and regulatory agreements for existing units do not contain the preference policy.
- The City Attorney, City Council, and relevant City departments should investigate whether an ordinance or other City action can update existing marketing plans and/or regulatory agreements so that the preference policy can affect affordable units built prior to the policy’s creation.
- These efforts can maximize the impact of the preference policy by ensuring that it applies to all inclusionary and nonprofit units in Berkeley, regardless of whether the units predate the policy.

Process Recommendations for Longer-Term Implementation

The previous recommendations describe immediate next steps the City can take to create a preference policy and incorporate this policy into Berkeley’s existing affordable housing systems. Recommendations 7 and 8 discuss longer-term actions required to develop a preference category that can assist households displaced from Berkeley by rising housing costs and other economic factors. Recommendations 9a and 9b propose more centralized City administration of Berkeley’s affordable housing programs, which represents significant changes to existing systems. The case studies for this report illustrate that centralized affordable housing systems can result in more effective preference policy implementation by simplifying the application process for populations that preferences intend to support, ensuring consistent and correct use of preferences across housing developments, and facilitating data collection that enables the City to understand who its programs serve and whether preferences are effective.

Recommendation 9a suggests creating a single application process that the City administers for Berkeley’s inclusionary units, and the City would incorporate the preference policy in this process. In this scenario, application processes for nonprofit units remain unchanged, and nonprofit developers would implement the preference policy. Recommendation 9b proposes a centralized City-administered system for application and lottery processes for all inclusionary and nonprofit units in Berkeley, similar to San Francisco’s current system. The system created by Recommendation 9b would replace the processes established by Recommendation 9a. This report concludes that the City could first adopt Recommendation 9a while working toward implementing the system described in Recommendation 9b. Alternatively, the City could instead seek to accomplish Recommendation 9b without first implementing Recommendation 9a. However, Recommendation 9a is likely more feasible than Recommendation 9b, as it requires less time and resources to implement, and the changes proposed by Recommendation 9a could still provide significant advantages over Berkeley’s current systems.
Process Recommendation 7: Conduct outreach and engagement with community stakeholders and affordable developers to inform the development of new preference categories and refine existing preference categories

- The City should speak with community-based organizations, current residents, and displaced community members to better understand what is causing displacement and where displaced households are moving to. This outreach process can also gather feedback on the preference policy and collect input on what the community’s vision is for an ideal preference policy. Portland’s community engagement process for its preference policy can serve as a model for Berkeley.
- The City should convene nonprofit developers who build in Berkeley to gather feedback on implementing the preference policy. This input can also inform whether changes or additions to the policy seem feasible. For example, Seattle’s Office of Housing sought guidance from local nonprofit developers when designing a community preference policy.240

Process Recommendation 8: Develop a preference category that incorporates generational ties to Berkeley and applies to current and former residents displaced by economic factors

- The City should update the preference policy based on feedback from community members and affordable housing developers. This update could include a preference category related to generational ties to redlined neighborhoods (as recommended earlier in this report) or other preference categories that best reflect the interests of the community.
- If the City adopts a broader preference for displaced residents, the City should explore an affirmative marketing strategy that can reach these displacees and assist them with applying for affordable housing in Berkeley. For example, the City of Portland recently worked with a total of 120 community-based organizations, libraries, and schools throughout Portland and in adjacent suburbs to provide outreach to prospective applicants.241

Process Recommendation 9a: Create a single application administered by the City for all inclusionary units in Berkeley

- Currently, applicants need to contact property owners in Berkeley to inquire about inclusionary vacancies and then submit individual applications to each property. Instead, the City should adopt a centralized inclusionary application process similar to the systems in Santa Monica and Cambridge discussed earlier in this report.
  - All applicants interested in inclusionary units will apply to the City.
  - The City will process applications, verify applicants’ income and preference qualifications, and develop a list of eligible households. The preference policy will affect the order of this list.

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240 Jessica Gomez, Strategic Advisor of Housing Policy for Equitable Development, City of Seattle, in discussion with the author, May 1, 2019.
o When inclusionary unit owners have vacancies, they will contact the City and the City will refer prospective tenants from the City-maintained list.

• Adopting a single application for all inclusionary units will reduce the time and effort needed to apply to affordable housing in Berkeley, which benefits the low-income Berkeley households and displaced residents the preference policy intends to assist.

• This new system would also ensure the preference policy is applied correctly in inclusionary housing, as all aspects of the policy would be directly administered by the City. Centralized administration also facilitates data collection to measure preference policy effectiveness and understand who the City’s housing is serving.

• This proposed system aligns with the recommendation made by the City Council in its referral to the City Manager in April 2016.242

• Implementing this new system would likely require additional staffing. The City of Cambridge’s inclusionary housing program requires 2.5 FTEs. These staff members work with developers building inclusionary units, assist applicants applying for housing, screen applications against the priority point system, fill vacancies across the portfolio, certify applicants’ income during the final application stage, and re-certify tenant incomes annually once they move in to an inclusionary unit. City of Berkeley staff already assist developers building inclusionary units and certify new tenants’ incomes, but City staff do not process tenant applications or help fill vacancies.

  o However, the proposed system would also save staff time by eliminating the time currently spent approving market-rate developers’ marketing plans and training market-rate development property managers on the City’s processes for inclusionary units.

• Resources would also be needed to create the software and other IT infrastructure required for this new application system.

• Existing application and leasing processes for nonprofit units would be maintained and nonprofit housing providers would implement Berkeley’s preference policy. The two main affordable housing providers in Berkeley, Resources for Community Development and Satellite Affordable Housing Associates, have prior experience implementing preferences in Oakland and other cities.

Process Recommendation #9b: Create a centralized City-administered lottery process and online application portal for all inclusionary and nonprofit units

• The City should create an online affordable housing portal similar to San Francisco’s DAHLIA system that would list available units and waitlist openings for inclusionary and nonprofit projects.

• Applicants will also be able to create a profile in the portal and use the same application to apply to all available inclusionary and nonprofit units.

• This system will allow low-income Berkeley households and displaced residents to easily submit rental applications with less time and effort, which can increase the opportunity

242 Berkeley City Council Meeting Minutes, April 5, 2016,
to fill affordable housing vacancies with the low-income Berkeley households and displaced residents the preference policy intends to assist.

- The City will screen all applications submitted to the system and verify all preferences.
- The City will conduct all lotteries, apply preferences to re-sort lottery results, and then refer potential tenants to inclusionary and nonprofit developers as needed.
- Developers will be responsible for ongoing waitlist management. Developers will notify the City when they wish to reopen a waitlist. Waitlist openings will be posted on the portal, and the City will screen applications and conduct the lottery.
- This direct involvement in tenant selection facilitates collecting data on applicants and tenants for all of Berkeley’s affordable units.
- The City’s control over preference screening and lotteries would ensure consistent and correct application of the preference policy for all affordable units.
- These changes to Berkeley’s affordable housing system would require significant staff capacity and resources. In San Francisco, three FTEs work on web development and software engineering to build out the application system and online affordable housing databases. An additional 5.25 FTEs manage and implement the preference programs, which involves lottery administration, marketing vacant nonprofit and inclusionary units, annual reporting related to the preference program, and reviewing applicants’ documentation related to preference eligibility during the lottery and lease-up processes.
Appendix A. List of Interviewees

City Government Staff
Jessica Gomez – Strategic Advisor of Housing Policy for Equitable Development, City of Seattle
Victoria James – Senior Management Analyst, City of Portland
James Kemper – Housing Program Manager, City of Santa Monica
Charles MacNulty – Program Development and Data Specialist, City of San Francisco,
Alex Marqusee – Legislative Analyst, City of Oakland
Emily Salomon – Associate Housing Planner, City of Cambridge
Matthew Tschabold – Policy and Planning Manager, City of Portland
Brian Warwick – Housing Development Coordinator, City of Oakland

Affordable Housing Developers
Emilie Funge – Occupancy and Compliance Coordinator, Satellite Affordable Housing Associates
Rosa Yee-Phinith – Compliance Manager, Satellite Affordable Housing Associates

Legal Experts
Justin Bigelow – Associate Attorney, Goldfarb & Lipman LLP
Sam Tepperman-Gelfant – Deputy Managing Attorney, Public Advocates
Appendix B. Documents Used for Preference Eligibility in Cambridge

Cambridge Resident Preference
Residents currently living in Cambridge must provide evidence of residency with two of the following options:

• A current rental lease signed and dated within the last year or a Section 8 Agreement.
• A utility bill: original gas or electric bill dated within last thirty days.
• A car registration or driver’s license or Massachusetts I.D. with the current address listed on preference application.
• A current Cambridge Public School registration record for child/children (under 18 years of age) with current address.

Household with Children Preference
Households must provide two of the following options:

• A rental lease signed and dated within the last year in applicant’s name and listing members of applicant’s household.
• A copy of applicant’s signed current federal tax return with W2s indicating current household size.
• A copy of birth certificates for all household members.

Emergency Need Preference
Applicants must provide a copy of the evidence supporting one or more of the following emergency situations:

• Applicant is currently facing a no-fault eviction: provide a copy of court order.
• Applicant is living in a property that has been cited by the City for outstanding code violations: provide report from Inspectional Services Department.
• Applicant is paying more than 50% of their monthly gross income on rent: submit documentation of current pay stubs and lease agreement.
• Applicant is living in an overcrowded situation defined as having more than two individuals per bedroom: provide a signed lease which states bedroom size and all household members.
• Applicant is homeless: provide a letter from shelter.
Appendix C. Documents Used for Preference Eligibility in San Francisco

Certificate of Preference (Urban Renewal Preference)
Applicants will need to provide the following information:

- A current phone number and address.
- The address from which the family was displaced.
- The name(s) of the head(s) of Household at the time of displacement.

Applicants may be asked to submit additional documentation, such as a copy of their birth certificate and driver’s license.

Displaced Tenant Housing Preference
Documents for no-fault evictions:

- The Rent Board provides MOHCD with a regularly updated list of all tenants whose units have been subject to Ellis Act or Owner Move-in Evictions. If an applicant was listed on the Notice of Intent to Withdraw (NOI) or Eviction Notice, no further documentation will be required to establish occupancy at the time of the eviction.
- If the applicant was not listed on the NOI or Eviction Notice, the applicant must establish that he or she was a resident of the withdrawn unit at the time of the eviction by providing any two of the following items (all documentation must list the applicant’s name and the address of the withdrawn unit and be dated within 45 days of the date that the NOI was filed with the Rent Board or served on the Tenants.):
  - The Eviction Notice for the withdrawn unit
  - Telephone bill (land line only)
  - Cable or internet bill
  - Gas bill
  - Electric bill
  - Garbage bill
  - Water Bill
  - Paystub
  - Public benefits records
  - School records

Documents for tenants displaced by fire (all documentation must list the applicant’s name and the address of the effected unit and be dated within 45 days of the date of the qualifying fire):

- An applicant must establish displacement by providing either of the following signed by a public safety official:
  - An order to vacate for the unit in question
  - Fire Displacement Verification form.
- An applicant must establish that he or she was a resident of the effected unit at the time of the qualifying fire by providing any of the following:
  - A copy of the order to vacate
  - A copy of a lease for the unit in question
Any two of the following items:
- Telephone bill (land line only)
- Cable or internet bill
- Gas bill
- Electric bill
- Garbage bill
- Water Bill
- Paystub
- Public benefits records
- School records

Neighborhood Resident Housing Preference
In order to benefit from the Neighborhood Resident Housing Preference an applicant household must provide documentation at the time of its lottery application sufficient to establish that at least one member of the household resided at the listed eligible address at the time of the application. Acceptable documentation includes any one of the following (all documentation must list the applicant’s name and current address and be dated within 45 days of the date of the application):
- Telephone bill (land line only)
- Cable or internet bill
- Gas bill
- Electric bill
- Garbage bill
- Water Bill
- Paystub
- Public benefits records (e.g. SSI/SSP, MediCal, GA, Unemployment Insurance, CalFresh)
- School records

Applicants who are homeless at the time of application may demonstrate eligibility by providing a letter from a case manager or homeless shelter attesting to the fact that the applicant is homeless and identifying where they are currently staying. Letters must be signed, dated and on official letterhead from an agency that provides health, mental health or housing services to the homeless.

Live/Work Preference
To be considered a household that lives or works in San Francisco, at least one member of the household must provide the following proof of either residency or employment:
- To establish residency, the household member must provide supporting documentation verifying that he or she lives in San Francisco, including at least one of the following (all documentation must list the household member’s name and current address and be dated within 45 days of the date of the application):
  - Telephone bill (land line only)
  - Cable or internet bill
Applicants who are homeless at the time of application may demonstrate eligibility for the live/work preference by providing a letter from a case manager or homeless shelter attesting to the fact that the applicant is homeless and identifying where they are currently staying. Letters must be signed, dated and on official letterhead from an agency that provides health, mental health or housing services to the homeless.

- To establish that a household member is employed in San Francisco, applicant must provide paystubs. If the member’s employer is not based in San Francisco, or if the paystubs do not reflect a San Francisco work address, the Household member must supply a letter from the employer stating that the person works primarily in San Francisco and that at least 75% of their working hours are in San Francisco.
Proof of applicant’s current or former address or proof of parent/guardian or grandparent’s current or former address requires one of the following documents showing the listed person’s name and the address given to establish preference:

- Real estate records from the Multnomah County Assessment & Taxation Department
- Vehicle registration from the DMV
- Court documents from Multnomah County Courts
- Electricity or gas bill
- Property tax records
- Public school transcripts from Portland Public Schools
- Private school record
- Internet or cable bill
- Renter’s insurance
- Lease agreements
- Mortgage documents
- Bank documents
- Credit card documents
- Credit reports
- Insurance documents
- Phone bills
- Pay stubs
Appendix E. Documents Used for Preference Eligibility in Oakland

Displaced Household Preference

Displacement due City-sponsored development or code enforcement:
• The City shall provide the leasing agent with information verifying former residency and displacement as a result of City public projects, or by City code enforcement activities.

Displacement due to no-fault eviction:
• Applicants displaced due to a “no fault” eviction shall provide the leasing agent with a copy of an eviction notice providing 30 days or longer notice to vacate the unit. The eviction notice must:
  o Be dated within eight years of the date of application
  o Name at least one of the household members applying for housing
  o Not state cause for the eviction, or state the cause for eviction as:
    ▪ Owner move-in,
    ▪ Owner repairs, or
    ▪ Owner removal of the unit from the rental market
• In lieu of the eviction notice, the applicant may provide a copy of a court order or judgment in an unlawful detainer proceeding or other official records documenting the eviction as long as it includes the required information listed above.

Neighborhood Resident Preference

In order to verify residency, the applicant must provide copies of two of the following documents showing the applicant’s name and address in the neighborhood (“recent” means a document dated within 60 days of submission):
• Driver’s License or State Identification
• Recent utility bill
• Applicant’s current rental/lease agreement
• Verification of Residence form sent and received by property management company, leasing agent or lender
• Applicant’s insurance policy (automobile, renters, or homeowners)
• Voter Registration
• Recent pay stub
• Recent medical records
• Recent school records
• Recent documentation from a service provider
• Recent court documents
• Recent documentation from another government agency

For homeless applicants:
• Third party verification such a letter written on company letterhead from a service provider such as a drop-in center or outreach services including an emergency shelter,
transitional housing, medical institution, mental health institution, correctional facility, substance abuse facility, social service agency providing case management or outreach to encampments

• Homelessness self-verification designating the shelter address, post office, park or cross street closest to where the applicant resides.

Oakland Resident/Worker Preference

Oakland resident:

• To qualify as an applicant who is a resident of the City of Oakland, the applicant’s household must include at least one adult member whose principal place of residence is within the City of Oakland as of the date of application. In order to verify residency, the applicant must provide a copy of two of the following showing the applicant’s name and address in Oakland (“recent” means a document dated within 60 days of submission):
  o Driver’s License or State Identification
  o Recent utility bill
  o Applicant’s current rental/lease agreement
  o Verification of Residence form sent and received by property management company, leasing agent or lender
  o Applicant’s insurance policy (automobile, renters, or homeowners)
  o Voter Registration
  o Recent pay stub
  o Recent medical records
  o Recent school records
  o Recent documentation from a service provider
  o Recent court documents
  o Recent documentation from another government agency

• For homeless applicants:
  o Third party verification such a letter written on company letterhead from a service provider such as a drop-in center or outreach services including an emergency shelter, transitional housing, medical institution, mental health institution, correctional facility, substance abuse facility, social service agency providing case management or outreach to encampments
  o Homelessness self-verification designating the shelter address, post office, park or cross street closest to where the applicant resides.

Oakland worker:

• To qualify as an applicant who is employed within the City of Oakland, the applicant responsible for renting or purchasing the affordable housing unit must demonstrate that both of the following criteria have been met:
  1. Location of work: at least one adult family member in the household must either
    a. Already work in Oakland, or
    b. Have been notified that they are hired to work in Oakland, or
c. Be an active participant in an education or job training program located in Oakland.

2. Hours of work/education/training: the family member must be employed, hired to be employed, or actively participating in an education or job training program within the City of Oakland an average of at least 20 hours per week.

- In order to verify eligibility for this preference the applicant must provide a copy of two of the following showing the applicant’s name:
  - Most current pay stub with the name and address of the employer printed on them
  - W-2 forms
  - Employer certification of employment on company letterhead
  - Verification of employment form sent and received by the property management company, leasing agent or lender
  - Job offer letter on company letterhead
  - Other evidence as proof of employment at a business location within the City of Oakland
  - Current enrollment records in an education or job training program within the City of Oakland
  - Letter on school or training program letterhead from academic advisor or other school official documenting participation in education or training program
  - For applicants who are self-employed, provide one of the following:
    - Tax returns
    - City of Oakland business tax license
    - Copy of a commercial lease for the business
    - Link to a website for the business.