

FROM URBAN RENEWAL AND DISPLACEMENT TO ECONOMIC INCLUSION: SAN FRANCISCO AFFORDABLE HOUSING POLICY 1978-2014

Marcia Rosen* & Wendy Sullivan**

INTRODUCTION	122
I. THE EVOLUTION OF SAN FRANCISCO’S AFFORDABLE HOUSING PROGRAMS AND POLICIES	125
A. <i>The Birth of the Affordable Housing Movement</i>	125
B. <i>1970s: Neighborhood Preservation and Tenant Protection</i>	127
1. Redevelopment and Urban Renewal	128
2. Residential Hotels	131
3. Rent Control and Condominium Conversions	133
4. Shifts in Development Perspectives and Funding Opportunities	134
C. <i>1980s: Equitable Development, Neighborhood Preservation, and New Financing</i>	136
1. Community Development Block Grant	137
2. Office Housing Production Program	138
3. Limiting New Office Construction	139
4. Protection of Downtown Housing and Residential Neighborhoods	141
5. New Resources: Federal, State, and Local Funding	141

* Executive Director, National Housing Law Project. Previously, Deputy Director of the Lawyers’ Committee for Civil Rights of the San Francisco Bay Area, Executive Director of the San Francisco Redevelopment Agency, and Director of the Mayor’s Office of Housing. She was an active participant-observer of the events described in this Article, first as an advocate representing the Council of Community Organizations and later as a public official designing and implementing the policies described herein. She has a B.A. from the University of Massachusetts, Amherst and a J.D. from the University of California, Hastings College of the Law. The opinions expressed herein are her own and do not reflect the views of the National Housing Law Project or any of its funders.

** J.D., University of Colorado; M.S. Washington State University; B.S. (cum laude) Colorado State University. Ms. Sullivan is an attorney and planning consultant with over ten years of experience and a particular expertise in the affordable housing issues throughout the western United States.

D. <i>1990s: Inclusive Redevelopment, the Dot-Com Boom, and Housing Preservation</i>	142
1. Inclusive Redevelopment Plans: South of Market, Mission Bay, and Hunters Point	143
2. Preserving Federally-Assisted Affordable Housing	145
3. Affordable Housing and Home Ownership Opportunity Bond	146
4. The Dot-Com Effect and Challenges for the Next Decade	147
E. <i>2000s: Increase Affordable Housing, Remedy Past Losses of Housing, and Address the Demise of the SFRA</i>	147
1. Jobs-Housing Linkage and Inclusionary Housing	148
2. Remedy Past Housing Losses	151
3. Demise of the SFRA and Birth of the Housing Trust Fund	152
F. <i>2013 to the Present: Re-Envisioning Public Housing, Responding to Decreased Affordability and Rising Displacement, Reinvigoration of the Tenants' Movement</i>	154
1. Re-Envisioning Public Housing	155
2. Condominium Conversions and TICs Yet Again	156
3. Stemming the Tide of Ellis Act Evictions	157
4. New Housing Plans and Agendas	159
5. Organizing Tenants and Community Organizations	160
CONCLUSION	161

INTRODUCTION

Once notorious for urban renewal that diminished housing affordability and displaced residents, the City of San Francisco is now renowned nationally for its best practices in housing and community development.¹ Since the 1970s, San Francisco's housing programs, laws, and policies have created more than 200,000 units of price-limited housing, constituting more than 53% of its existing housing stock. This includes at least 26,000 permanently affordable housing units for very low-income families and seniors; 170,000 market rate multi-family rental units with limits on yearly rent increases for existing tenants under the Rent Stabilization and Arbitration Ordinance; and more than 2600 units of permanently affordable ownership and rental housing for low- and moderate-income households created through inclusionary zoning and jobs-housing linkage programs.² How did San Francisco, which consistently has amongst the na-

1. This Article is derived from a longer report by the same authors, which may be referenced for more detail about San Francisco's housing programs. MARCIA ROSEN & WENDY SULLIVAN, POVERTY & RACE RES. ACTION COUNCIL, FROM URBAN RENEWAL AND DISPLACEMENT TO ECONOMIC INCLUSION: SAN FRANCISCO AFFORDABLE HOUSING POLICY 1978-2012 (2012), available at http://nhlp.org/files/SanFranAffHsing_0.pdf.

2. Such programs include new construction, acquisition, and rehabilitation of existing stock, residential hotel units, and federally assisted housing (public housing, Section 8 vouchers, project-based Section 8). See generally S.F. BUDGET & LEGIS. ANALYST, PERFORMANCE AUDIT OF SAN FRANCISCO'S AFFORDABLE HOUSING POLICIES AND PROGRAMS (2012), available at <http://www.sfbos.org/Modules/ShowDocument.aspx?documentid=40670>; S.F. PLANNING DEP'T, HOUSING ELEMENT: PART I: DATA AND NEEDS ANALYSIS

tion's highest housing costs,³ counteract destructive redevelopment practices and market interests to preserve and enhance housing opportunities for low-income families and create inclusive communities?

The answer is not simple. San Francisco's housing challenges are rooted in its severely constrained development potential. The city occupies about forty-seven square miles on the tip of a peninsula and is largely built out, with no ability to expand through bay infill or annexation. With minor exceptions, "new development in San Francisco, residential or commercial, means the demolition and displacement of what was there."⁴ With each proposed development in San Francisco being a battle between existing and new land uses, protecting low-income residents from displacement is paramount as urban renewal, private development, and market interests seek to transform and gentrify the city. In a city in which 65% of households are renters (the reverse of national trends), ensuring these households have a "voice" adds to the challenge.

Producing affordable housing in what is often the most expensive housing market in the nation also takes substantial financial resources. Spurred on by, and in partnership with, nonprofit developers and housing advocates, the city has implemented revenue strategies that have provided significant funding for the preservation, rehabilitation, and development of affordable housing.⁵ Between the 2002-2003 fiscal year and the 2010-2011 fiscal year, more than \$725 million was applied to affordable housing from city and locally-controlled funding sources, over \$356 million from state sources, and over \$829 million from federal sources, all totaling just under \$2 billion dollars.⁶ As state and

(2011), available at http://www.sfplanning.org/ftp/general_plan/Housing_Element_Part_I_Data_Needs_Assmt_CPC_Adopted.pdf; Calvin Welch, *The Fight to Stay: The Creation of the Community Housing Movement in San Francisco, 1968-1978*, in *TEN YEARS THAT SHOOK THE CITY: SAN FRANCISCO 1968-1978*, at 152, 154-68 (2011).

3. In June 2010, the median home price in San Francisco was \$670,000. This price is 115% higher than the State of California median (\$311,950) and 266% higher than the national average (\$183,000). *June 2010 Median Prices*, CAL. ASS'N OF REALTORS, <http://www.car.org/marketdata/historicalprices/2010medianprices/jun2010medianprices> (last visited Mar. 4, 2014). In June 2010, the average rent was \$2230, which is affordable to households earning over \$89,200 (or about 100% of the AMI for a three-person household). S. F. CAL., PLANNING CODE § 415.1 (2010). Rents increased another 10% in 2011 and 12% in 2012. Rental vacancy rates are consistently low—typically falling between 1% and 6%.

4. Interview by Wendy Sullivan and Derek Galey with Calvin Welch, former Co-Director, Council of Cmty. Hous. Orgs. (July 20, 2012) (on file with author).

5. In San Francisco, affordable housing is primarily produced by three sectors: (1) nonprofit housing developers who are funded in part by the (former) San Francisco Redevelopment Agency and the Mayor's Office of Housing; (2) the San Francisco Housing Authority (through the HOPE VI and HOPE SF programs); and (3) market-rate developers through the inclusionary housing program or the jobs-housing linkage program.

6. S.F. BUDGET & LEGIS. ANALYST, *supra* note 2, at ii.

federal sources of affordable housing financing shrink, local funding initiatives and resources become even more critical.⁷

Because of these multiple forces, one must look beyond the local codes and ordinances, policies, and development requirements to understand the successful evolution of affordable housing programs in San Francisco; the whole is greater than the sum of its parts. The overall success of San Francisco's housing programs and policies results from the interaction of three key factors: (1) dedicated community advocacy and strong coalitions; (2) development of and access to substantial funding sources; and (3) constantly evolving housing programs and policies that address new challenges and recognize opportunities. Combined, these factors have allowed the city to recognize and take advantage of ever-changing market and political forces to maintain and develop strong local communities.

This Article describes the development and interaction of these three components of housing program and policy development since the 1970s and how they have created the current dynamic affordable housing and community development system in San Francisco. We begin by discussing the birth of the community housing movement in San Francisco, followed by the policies and programs developed within the economic and political climate for each decade from the 1970s through the 2000s. These periods start with the formation of the San Francisco Redevelopment Agency (SFRA)⁸ and the influence that its early "blight removal" policies had on shaping the community housing movement. We discuss how this movement then helped refocus the SFRA, such that it became the largest local contributor to affordable housing production and preservation in the city, while also working within the context of market and political forces to develop programs and policies to preserve, produce, fund, and create inclusive neighborhoods. We then discuss the demise of the SFRA in 2012 and the birth of a new housing revenue source, marking a new era for housing and community development in San Francisco. Finally, we discuss how this history of strong advocacy has carried forward into current problems with quickly rising housing costs, increased tenant evictions and reinventing public housing to improve its housing stock, and services to very-low-income residents. We conclude with a call for San Francisco to continue rising to the shifting market, political, and economic challenges to address new housing needs and retain inclusive communities.

7. ROSEN & SULLIVAN, *supra* note 1, at 7; *see infra* Table 1: City, State and Federal Financing of San Francisco's Affordable Housing Projects: FY 2002-03 to FY 2010-11 for a summary of funding by source.

8. The San Francisco Redevelopment Agency (SFRA) was established in 1948, pursuant to the California Community Redevelopment Law. A separate entity from the city and County of San Francisco, the SFRA's powers, such as the right to condemn properties, use tax increment financing, and authorize land use within redevelopment project areas, derive from state law.

I. THE EVOLUTION OF SAN FRANCISCO'S AFFORDABLE HOUSING PROGRAMS AND POLICIES

San Francisco's community housing movement began in the 1970s and has since evolved in response to the predominant economic, demographic, and political forces affecting the city. Prior to 1970, San Francisco's dedicated affordable housing stock consisted of public housing and federally funded housing developed as part of the city's urban renewal program. The market-rate housing affordable to low-income families consisted of older homes, thousands of which were either lost to or threatened by "slum eradication" redevelopment practices of the city. No state or local funding sources were available for housing rehabilitation, preservation, or development, and no community-based infrastructure existed to support this work. This all changed once neighborhood residents and community housing advocates came together and brought community housing needs to the forefront of the city's development and redevelopment decisions. This Part describes the birth of the affordable housing movement and the more significant victories and unique sources of revenue that the movement has helped achieve within each decade, beginning with the 1970s.

A. *The Birth of the Affordable Housing Movement*

The community-based affordable housing movement in San Francisco developed roughly between 1968 and 1978, a time during which the city's economic base was substantially transformed.⁹ Office workers had displaced industrial workers, and residential real estate had climbed in price, propelling San Francisco from one of the cheapest places to live in the Bay Area to among the most expensive. Several significant events led to this transformation. First, containerization of the maritime industry between 1960 and 1966 contributed to the economic downfall of the Port of San Francisco, resulting in a significant loss of industrial jobs, particularly for the African-American community.¹⁰ Thousands of industrial jobs were again lost in 1974, when the Hunters Point Naval Shipyard was decommissioned and, with it, the economic base of the neighborhood.¹¹ Second, the Bay Area Rapid Transit (BART) system ran its

9. For more information on the development of the housing movement during this period, see Welch, *supra* note 2, at 154-62.

10. The number of jobs related to water-borne commerce in San Francisco decreased from 23,000 in 1964 to 11,000 in 1978. *Port of Oakland: Review and History*, WORLD PORT SOURCE, http://www.worldportsource.com/ports/review/USA_CA_Port_of_Oakland_231.php (last visited Mar. 4, 2014); Jasper Rubin, *The Decline of the Port*, SPUR (Nov. 1, 1999), <http://www.spur.org/publications/library/article/declineofport11011999>.

11. Daniel Jacobson & Chris Stallworth, *Bayview-Hunters Point: Urban Transformations and Community Cooptation*, 21ST CENTURY URB. SOLUTIONS 9-13 (June 8, 2009), <http://21stcenturyurbansolutions.files.wordpress.com/2009/06/hunters-point-essay1.pdf>. The Shipyard employed 18,235 workers at its peak in 1945; at closure in 1974, there were less

first train in 1972, linking much of the Bay Area with San Francisco and increasing the pool of suburban workers to fill jobs in the city. Third, as part of the plan to position San Francisco as the “corporate headquarters” of the Pacific Rim, explosive growth in commercial office buildings occurred. With BART bringing suburban workers from neighboring counties into San Francisco’s downtown, white-collar jobs in retail, office, and financial sectors became the driving force of the city’s economy.¹² Fourth, by 1978, ten neighborhoods were designated for urban renewal to revive blighted areas of the city, resulting in the SFRA’s demolition of 14,207 low-income housing units and the consequent displacement of residents.¹³ Finally, in 1974, gas prices rose to over one dollar per gallon, encouraging suburban office workers to return to the city in search of homes. This spurred a significant rise in housing prices, exacerbated by the focus, over preceding years, on commercial rather than residential development.¹⁴

The loss of affordable housing, displacement of residents, shifts in the local economy, and lack of permanent labor jobs during the early years of urban renewal rallied residents to fight against displacement, bringing housing and land use issues to the forefront of local community agendas. “[I]ndeed, the first wave of gentrification happened before we even knew what to call it.”¹⁵ By the late 1970s, a tenants’ movement had emerged, environmental issues had become part of development politics, and community organizations had formed to advocate for the specific issues and needs of residential neighborhoods. New community development corporations and nonprofit housing-development organizations¹⁶ helped promote community development needs. These interests coalesced into a citywide housing movement calling for, among other things:

than 7500 jobs. *Hunters Point Shipyard, A Community History*, S.F. OFF. CMTY. INV. & INFRASTRUCTURE D-13, D-30 (Feb. 1996), <http://www.sfdevelopment.org/modules/showdocument.aspx?documentid=307>.

12. From 1965 through 1980, thirty-six million square feet of office space was added, along with 166,000 new jobs. CHESTER HARTMAN, *THE TRANSFORMATION OF SAN FRANCISCO* 2, 3, 6-7, 262 (1984); S.F. PLANNING DEP’T, *25 YEARS: DOWNTOWN PLAN MONITORING REPORT 1985-2009*, 38 tbl.1 (2011).

13. The urban renewal plans developed prior to 1976 resulted in the demolition of 14,207 units, which were replaced with only 7498 units by 2000. Senate Bill 2113, passed in 2000, provides the city with funding to replace the 6709 units that were lost. ROSEN & SULLIVAN, *supra* note 1, at 4 n.11.

14. In 1965, the average San Francisco home was only \$3000 more on average than national home prices. By 1980, the average San Francisco home cost \$53,000 more. HARTMAN, *supra* note 12, at 262.

15. Interview with Welch, *supra* note 4.

16. Community Development Corporations (CDCs) are local nonprofit organizations focused on building or reviving neighborhoods by improving the housing stock, producing affordable housing, building economies, and encouraging resident leadership, among other strategies. There are an estimated 4600 CDCs throughout the United States, including about twenty in San Francisco. Housing Development Organizations are CDCs focused on affordable housing advocacy, preservation, and development.

rent control; anti-speculation measures;¹⁷ preserving residential hotel units;¹⁸ limiting condominium conversion; preserving downtown residential neighborhoods; developing “special needs housing”; maintaining diversity by combating discrimination in housing against people of color, families, people with disabilities, and seniors; integrating affordable housing into new mixed-use neighborhoods; and advocating that the city’s foremost housing policy be to preserve and expand housing opportunities for resident low-income families.

Understanding that resident needs required substantial funding to make them a reality, these organizations also helped procure local sources of revenue that could leverage the limited federal and state resources available. With the help of advocates, local sources have contributed almost 40% of the funding used to finance San Francisco’s affordable housing development and policies.¹⁹ By keeping resident needs at the forefront of city decision-making, community advocates were central to the development of San Francisco’s housing policies, programs, and funding over the coming decades.

B. 1970s: Neighborhood Preservation and Tenant Protection

From the late 1960s through the 1970s, San Francisco experienced significant gentrification pressure from urban renewal “slum eradication” policies, booming office- and tourism-focused development, and white collar high-wage workers returning to the city from the suburbs in the face of increased gas prices. Urban renewal and encroachment of office and tourism uses resulted in the

17. In late 1977, a citywide coalition of about fifty neighborhood and community organizations, the San Francisco Housing Coalition (SFHC), developed an anti-speculation ordinance to counteract the “gentrification” created by the return of the suburban office worker to the central city. The ordinance disincentivized rapid “flipping” of properties for higher resale values by scaling the city’s existing transfer tax for residential properties based on the length of time the owner held the property. Under the proposed formula, 80% of the profit of a resale made in less than one year would be taxed on transfer—decreased to no increase in the base transfer tax for a property held for at least ten years. The draft ordinance was introduced in mid-1978 by the newly elected District 5 Supervisor, Harvey Milk, and was supported by Mayor George Moscone. While the ordinance was pending Board approval in late November 1978, Moscone and Milk were assassinated. New Mayor Diane Feinstein then tabled the legislation. Welch, *supra* note 2, at 154-62.

18. Residential Hotels or “Single Room Occupancy hotels (SROs)” are a vital part of San Francisco’s housing stock and have been important in cities across the United States for more than two centuries. A typical SRO is a single eight-by-ten foot room with shared toilets and showers down the hallway. San Francisco still has hundreds of SRO hotels that are home to more than 30,000 tenants, or approximately 5% of the city. *SRO History in San Francisco*, CENT. CITY SRO COLLABORATIVE, <http://www.ccsro.org/pages/history.htm> (last visited Mar. 7, 2014) (citing PAUL GROTH, *LIVING DOWNTOWN: THE HISTORY OF RESIDENTIAL HOTELS IN THE UNITED STATES* (1989)). For more about the role of residential hotels in the contemporary San Francisco affordable housing movement, see *infra* Part B.1, “Residential Hotels.”

19. See *infra* Table 1. Local sources of funding include developer contributions from inclusionary and jobs-housing linkage fees, to the city’s general fund, to a hotel tax. All of these local sources were developed as a result of community advocacy.

net loss of 6709 affordable homes and 9000 residential hotel units, displacing at least as many low-income residents.²⁰ Apartments were also being converted to for-sale condominiums at an increased rate to meet demand from incoming workers. Facing a dismally low rental vacancy rate of 1.1% at the start of the decade,²¹ the loss of rentals and resulting impact on rents was of significant concern.²² With these issues as a backdrop, resident organizations affected significant housing policy changes, including:

- Restructuring of early urban renewal policies at the federal, state, and local level to favor resident relocation and low-income housing replacement over eradication of affordable housing and displacement of families;
- Adoption of a Residential Hotel Demolition and Conversion Ordinance to preserve remaining units from encroaching tourist hotels and office development; and
- Adoption of a Rent Stabilization and Arbitration Ordinance to protect existing tenants against excessive rent increases in market-rate multi-family units, a Condominium Conversion Ordinance to prevent wide-scale conversion of the rent-controlled apartments, and enhanced tenant protection laws.

1. Redevelopment and Urban Renewal

The San Francisco Redevelopment Agency (SFRA) was incorporated on August 10, 1948.²³ It was authorized under the California Community Redevelopment Act of 1945, which gave cities and counties the authority to establish redevelopment agencies to address urban decay and apply for grants and loans from the federal government.²⁴ California's Act was guided by federal urban renewal programs, which had as their purpose the elimination of unsafe

20. CENT. CITY SRO COLLABORATIVE, *supra* note 18; S.F. PLANNING DEP'T, *supra* note 2, at I.32.

21. ESTELLA HABAL, SAN FRANCISCO'S INTERNATIONAL HOTEL: MOBILIZING THE FILIPINO AMERICAN COMMUNITY IN THE ANTI-EVICTION MOVEMENT 48 (2007); S.F. PLANNING DEP'T, *supra* note 2.

22. Between 1970 and 2000, almost 9000 low-rent apartments were demolished or converted to condominiums. CENT. CITY SRO COLLABORATIVE, *supra* note 18.

23. Urban blight was then defined by economics, dilapidation of housing, and social conditions—including the size of the nonwhite population. Leslie Fulbright, *Sad Chapter in Western Addition History Ending*, SFGATE (July 21, 2008, 4:00 AM), <http://www.sfgate.com/bayarea/article/Sad-chapter-in-Western-Addition-history-ending-3203302.php#ixzz27W2D75WW>.

24. Among the powers granted to redevelopment agencies is the authority to: acquire real property, including through eminent domain (if necessary); develop the property; sell property without bidding; relocate persons who have interest in property acquired by the agency; borrow federal and state funds and issue bonds; and impose land use and development controls as part of the comprehensive plan of redevelopment. DAVID F. BEATTY ET AL., REDEVELOPMENT IN CALIFORNIA 2 (3d ed. 2004).

and unsanitary housing conditions and the eradication of slums.²⁵ Accordingly, the primary purpose of the SFRA was to create better urban living conditions through blight removal.²⁶

Perhaps the most important achievement for community advocates in shaping San Francisco's early housing policy occurred when they sued the SFRA and temporarily halted two redevelopment projects that demolished thousands of units of low-income housing, displaced families, and destroyed neighborhoods in the name of "blight removal." The first lawsuit was filed against the SFRA and HUD by the Western Addition Community Organization (WACO).²⁷ WACO formed after the SFRA displaced about 1350 families from a predominately poor African-American and Japanese-American neighborhood and threatened to displace more residents through continued implementation of the Western Addition redevelopment plan in the mid-1960s.²⁸ WACO demanded community participation in the redevelopment planning process and replacement housing and financial assistance for the displaced.²⁹ The court halted the project in December 1968, pending a relocation plan that could be approved by HUD.³⁰ This was the *first time* a court had enjoined a redevelopment project in the twenty-year history of urban renewal.³¹

25. See *id.* for more information on the state and federal programs.

26. Fulbright, *supra* note 23.

27. Plans for Western Addition A-2 were first presented to the public in 1964. *W. Addition Cmty. Org. v. Weaver*, 294 F. Supp. 433, 435 (N.D. Cal. 1968).

28. HARTMAN, *supra* note 12, at 24. The Agency received a loan of about \$16.2 million from the federal government, under the U.S. Department of Housing and Urban Development's (HUD) Loan and Grant Contract Program, to carry out all activities necessary to implement the Plan. By the completion of the project area: (1) 2009 units of new housing, of which 33% were federally subsidized for low- and moderate-income households; (2) 162 units of new housing constructed under Owner Participation Agreements; and (3) 226 units of rehabilitated housing were developed. However, 3208 units that were demolished were not replaced. *Western Addition A-1*, OFFICE CMTY. INV. & INFRASTRUCTURE, <http://www.sfdevelopment.org/index.aspx?page=64> (last visited Mar. 6, 2014).

29. WACO filed suit with the enlisted help of the San Francisco Neighborhood Legal Assistance Foundation (a federally funded legal services agency created in 1966, now part of Bay Area Legal Aid), seeking an injunction against relocation, demolition, and federal funding in Western Addition A-2 pending a valid relocation plan. HARTMAN, *supra* note 12, at 73.

30. *Western Addition*, 294 F. Supp. at 441. The court approved an injunction against continued displacement of residents from the project area by the SFRA, pending a relocation plan that could be approved as "satisfactory" by HUD under the Federal Housing Act § 1455(c)(2). *Id.* Per a 1965 amendment, this section expressly required the Secretary to obtain "satisfactory assurance" from the local agency within a reasonable time, prior to actual displacement of property owners and residents, that decent, safe and sanitary dwellings, as required by subsection (c) (1), were really available. *Id.* at 436. Subsection (c)(1) required grant contracts to include a "feasible method" for temporary relocation of individuals and families displaced from the urban renewal area, meaning, in part, decent, safe, and sanitary dwellings that are affordable to the displaced individuals and families are provided. *Id.* at 435-36. Further, the SFRA's own regulations, enacted pursuant to subsection (c)(1), such as Section 10-1 of the Urban Renewal Manual, provided that the local agency must "assure" the Secretary concerning the relocation situation. *Id.* at 437. When the decision was rendered,

The second lawsuit was filed against the SFRA by Tenants and Owners in Opposition to Redevelopment (TOOR),³² a coalition of residents in the South of Market neighborhood affected by a redevelopment called Yerba Buena in the mid-1960s. The original plan threatened about 4000 residents, mostly in residential hotels, and 700 small businesses. TOOR demanded an adequate relocation plan for residents and businesses in the redevelopment area.³³ The court halted all demolition and relocation activities.³⁴ A settlement was reached in 1973, giving TOOR and its development arm, Tenants and Owners Development Corporation (TODCO),³⁵ four sites in Yerba Buena Center to construct 400 units of affordable housing, along with city hotel tax funds to finance the development.³⁶ The SFRA also committed to provide 1500 units of low-income replacement housing.³⁷

These lawsuits changed the focus of state redevelopment policy from “blight removal” to low-income housing replacement, relocation benefits for residents and businesses, and neighborhood preservation and effected similar changes to federal redevelopment policies.³⁸ The state of California adopted a

the Secretary had only found the SFRA’s relocation plan “satisfactory” contingent upon certain future events and accomplishments, which had not been met. *Id.* at 437-39. The court clarified that it was not trying to administer the complexities of urban redevelopment by providing injunctive relief, but that its decision “simply means that the court can and should see to it that the Secretary complies with the requirements of the federal statute, and his own regulations, not merely in form but in substance, and that the administrative discretion vested in him by law is not arbitrarily abused.” *Id.* at 441.

31. HARTMAN, *supra* note 12, at 74; see Chester W. Hartman, *Relocation: Illusory Promises and No Relief*, 57 VA. L. REV. 756, 756-69 (1971). Although the preliminary injunction was lifted about four months later when the SFRA filed and HUD conditionally approved a revised relocation plan, it forced the SFRA to monitor displacement in this and future projects. RICHARD E. DELEON, *LEFT COAST CITY: PROGRESSIVE POLITICS IN SAN FRANCISCO, 1975-1991*, at 46 (1992).

32. TOOR was represented by the San Francisco Neighborhood Legal Assistance Foundation and the National Housing Law Project in the 1969 lawsuit.

33. Gayle Rubin, *The Miracle Mile, South of Market and Gay Male Leather 1962-1997*, in *RECLAIMING SAN FRANCISCO: HISTORY, POLITICS, CULTURE* (1998), available at <http://foundsf.org/index.php?title=Redevelopment>.

34. HARTMAN, *supra* note 12, at 78.

35. TODCO was incorporated by TOOR in 1971 to build replacement housing for residential hotels demolished by the Yerba Buena redevelopment project. TODCO was the second San Francisco “community-based housing development corporation”; the first was the Mission Housing Development Corporation. *Our Timeline*, TODCO, <http://www.todco.org/timeline.html> (last visited Mar. 6, 2014).

36. TODCO has also developed over 700 affordable senior housing units on its four Yerba Buena sites, which were initially intended for only 400 units. *Id.*; see also HARTMAN, *supra* note 12, at 113-15.

37. Out of the SFRA commitment to provide 1500 units of low-income housing, about 1661 replacement units were procured. HARTMAN, *supra* note 12, at 114.

38. At the federal level, the Western Addition lawsuit directly influenced formation of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, requiring federally funded projects to ensure adequate relocation assistance and other protections for displaced persons. OFF. CMTY. INV. & INFRASTRUCTURE, *supra* note 28.

statute in 1976 imposing relocation plan requirements on redevelopment agencies, mandating one-for-one replacement of any destroyed dwelling units occupied by low- and moderate-income families, giving occupancy preference in the low- and moderate-income units to displaced residents, and requiring 20% of the housing created in redevelopment areas to be affordable to low- and moderate-income people.³⁹ The state also required redevelopment agencies to allocate 20% of their tax increment revenues⁴⁰ for affordable housing to help fund these housing requirements, thus creating the Low and Moderate Income Housing Fund.⁴¹ By expanding the role of redevelopment agencies to provide affordable housing and stimulate economic growth for the betterment of local communities in addition to removing blight, the state revisions were intended to prevent the past mistakes of urban renewal.⁴²

2. Residential Hotels

Residential hotel units are a significant source of affordable housing for low-income elderly, disabled, and formerly homeless persons. At one time, these units comprised over 24,000 housing units in San Francisco. Redevelopment practices in the early 1970s, however, demolished at least 4000 units,⁴³ while private development interests threatened another 15,000 units in the downtown Tenderloin district with conversion to high-end condominiums or luxury rooms for tourists.⁴⁴ In addition, about 5000 units in Chinatown were in the path of the expanding financial district.⁴⁵ Between 1975 and 1981, San Francisco lost another approximately 5000 units, or an average of over 800 units per year, to

39. CAL. HEALTH & SAFETY CODE §§ 33410-18.

40. "Tax increment revenues" are the property tax increases stemming from growth in property value due to redevelopment. Redevelopment law permits redevelopment agencies to issue tax increment bonds.

41. Act of Sept. 29, 1976, 1976 Cal. Stat. 6061 (amending and adding provisions to the California Health and Safety Code relating to redevelopment).

42. From 1989 through its repeal in 2012, the SFRA was the city's main provider of local funding for affordable housing subsidies.

43. About 3200 units were demolished in Yerba Buena. Act of Sept. 29, 1976, 1976 Cal. Stat. 6061.

44. HARTMAN, *supra* note 12, at 252. The organization of Tenderloin tenants, aside from spurring the ordinance, resulted in rezoning the area in 1985 to prohibit new tourist hotels, as well as a significant mitigation package from existing proposed hotel development, including: a fee of \$0.50 per hotel room rented, to be set aside for low-income housing development, amounting to approximately \$320,000 per year for twenty years; a contribution of \$200,000 from each hotel for community service projects; and hotel sponsorship of a \$4,000,000 grant for the acquisition and renovation of four low-cost residential hotels for the city, a total of 474 total units. CENT. CITY SRO COLLABORATIVE, *supra* note 18 (citing RANDY SHAW, *THE ACTIVIST'S HANDBOOK* 11 (1996)).

45. As of the early 1980s, almost one-half of the approximately 10,000 housing units in Chinatown were in residential hotels. HARTMAN, *supra* note 12, at 251.

demolition, fire, or conversion.⁴⁶ When residents of a 184-room residential hotel adjacent to Chinatown, called the International Hotel (I-Hotel), were evicted in 1977 to make way for a parking structure, community advocates citywide demanded that affordable housing be developed on the site, recognizing that the displaced residents had no comparable affordable housing options in the city.⁴⁷

Concerned about the I-Hotel eviction, the destruction of residential hotels in the Yerba Buena redevelopment, and the continuing threats to residential hotels in the Tenderloin and Chinatown, a coalition of community advocates pressed the city to impose a moratorium on residential hotel demolition and conversion in 1979, which was followed by adoption of the Residential Hotel Demolition and Conversion Ordinance in 1981.⁴⁸ The Ordinance banned demolition and conversion of residential hotel units absent one-for-one replacement of the units or payment of an in lieu fee to the city's affordable housing replacement fund.⁴⁹ Thanks to this policy and its replacement requirements, San Francisco now has about 500 residential hotels with 19,120 rooms, about one-fourth of which are maintained with a guaranteed level of affordability.⁵⁰

46. S.F. PLANNING DEP'T, *supra* note 2, at I.32. Nationally, over one million residential hotel units were lost during the 1970s through the mid-1980s. San Francisco fared better than many cities, losing about 38% of its stock before 1981, compared to a 60% loss of units in New York City; a respective 64% and 59% loss of residential hotels in Denver and Portland; and a loss of all comparable properties in Chicago by 1982. James D. Wright & Beth A. Rubin, *Is Homelessness a Housing Problem?*, in UNDERSTANDING HOMELESSNESS: NEW POLICY AND RESEARCH PERSPECTIVES (1997), available at http://content.knowledgeplex.org/kp2/kp/report/report/relfiles/homeless_1997_wright.pdf; Memorandum from Dan Kelly to the SF-HSA Managers/City Department Representatives on Fiscal and Policy Implications for Single Room Occupancy Hotels (1997), available at www.sf-planning.org.

47. Community activists battled for nearly thirty years to ensure that affordable housing would be built on the site, and finally, in 2005, low-income seniors, including two former residents of the I-Hotel, were welcomed to the new International Hotel Community developed by the nonprofit Chinatown Community Development Center. For more about the I-Hotel's role in the nascent housing movement, see the full report. For a comprehensive overview of the I-Hotel struggle, see HABAL, *supra* note 21, at 167-69.

48. This coalition of community advocates was led by the North of Market Planning Coalition and also included the Grey Panthers, Legal Assistance to the Elderly, and the newly-formed Tenderloin Housing Clinic, then a volunteer operation.

49. The 1981 ordinance required permits for conversion of residential hotel rooms to commercial use, imposing a strong replacement provision, and mandating that 80% of the replacement cost be provided to the city in the case of conversion or demolition. AIMÉE FRIBOURG, SAN FRANCISCO'S SINGLE-ROOM OCCUPANCY (SRO) HOTELS: A STRATEGIC ASSESSMENT OF RESIDENTS AND THEIR HUMAN SERVICE NEEDS 16-17 (2009), available at <http://www.sfhsa.org/asset/ReportsDataResources/SFSROHotelsAnalysis.pdf>. After winning amendments to strengthen the city's residential hotel ordinance in 1985 and 1987, the Tenderloin Housing Clinic won passage of a more restrictive ordinance in 1990 that increased the amount of the in-lieu fee and gave nonprofit groups the right of enforcement. The Clinic then obtained more than a dozen injunctions against illegal hotel conversions and successfully defended the constitutionality of the law in both state and federal court. 1990's, TENDERLOIN HOUSING CLINIC, <http://www.theclinic.org/1990s.php> (last visited Mar. 6, 2014).

50. S.F. PLANNING DEP'T, *supra* note 2, at I.32. After the Residential Hotel Demolition and Conversion Ordinance took effect, losses averaged only about fifty units per year

3. Rent Control and Condominium Conversions

Renters comprise 65% of San Francisco residents, and consequently, as an electorate, they have an enormous impact on policymakers' decisions and on outcomes at the ballot box. Tenant advocacy was responsible for the passage of two ordinances in 1979 to mitigate the decreasing supply and rising cost of apartments in the 1970s: the San Francisco Residential Rent Stabilization Ordinance (Rent Ordinance) and the Condominium Conversion Ordinance. These ordinances have filled a unique niche by retaining a large number of rental units affordable to low-, moderate-, and middle-income households in the city.

The Rent Ordinance protects existing tenants against excessive rent increases and prevents evictions without just cause.⁵¹ The ordinance applies to most multi-family rental units built before June 1979 and limits rent increases to typically no more than 2% per year for existing tenants. Landlords are unrestricted in the rent they can charge a new tenant (called "vacancy decontrol," which is mandated by the Costa-Hawkins Rental Housing Act), but must again adhere to the ordinance for the life of that tenancy. Approximately 170,000 rental units, or over 70% of the city's rental stock, are protected by rent control.⁵²

The Condominium Conversion Ordinance was adopted "[t]o preserve a reasonable balance of ownership and rental housing within the City and County of San Francisco."⁵³ The ordinance initially limited the number of rental unit conversions to no more than 1000 annually, but was soon changed to permit up to 200 conversions per year in buildings with between two and six units.⁵⁴ Restricting conversions to smaller properties preserves larger rental properties, subject to the Rent Ordinance, as rental units.⁵⁵ While this ordinance has pre-

through 1989. After the ordinance was strengthened in 1990, losses averaged about eighty-two units per year through 2007, primarily due to fire, some to demolition, but none due to conversion. All units lost since the year 2000 are slated to be replaced or have already been replaced by permanently affordable units. *Id.*

51. The Rent Ordinance has been amended twenty times, several times by ballot measures. Most of the amendments toughen the law and strengthen housing security for tenants. S.F., CAL., ADMIN. CODE ch. 37 (2013).

52. S.F. PLANNING DEP'T, *supra* note 2, at A.14. The Rent Ordinance was created in part to increase equity so fixed-income households (such as the elderly), struggling families, or minorities would not be forced to leave the city because of excessive rent increases.

53. S.F., CAL., SUBDIVISION CODE § 1.1302(c)(1); *see* *Leavenworth Properties v. City of San Francisco*, 189 Cal. App. 3d 986, 992 (1987).

54. S.F., CAL., SUBDIVISION CODE art. 9 (2008). Since its adoption, the ordinance, like the Rent Ordinance, has been the subject of much litigation and has been amended numerous times, each time strengthening the tenant protections. *See, e.g.*, Mary Gallagher, *Tenants in Common Disadvantages*, SFGATE, <http://homeguides.sfgate.com/tenants-common-disadvantages-6821.html> (last visited Mar. 6, 2014).

55. Analysis of total condominium units in the city as of the 1980 Census (6258 units) showed that about 50% were either renter-occupied (1863) or vacant (1064), indicating a high percentage were being retained for investment housing and not contributing to ownership opportunities in the city. The loss of rental units in a market where vacancy rates re-

vented the conversion of larger properties, about 2296 rental units were lost between 1999 and 2007 through the conversion of two-unit buildings, which are not regulated by the ordinance.⁵⁶

Since the Condominium Conversion Ordinance was adopted, there have been two significant side effects. First, the ordinance restricts only conversion of existing rental properties; it places no restriction on the development of new condominium units. As a result, the majority of new market-rate multifamily units constructed have been condominiums, even when the initial intent has been to operate the development as a rental complex. Second, owners of multi-unit buildings who are unable to convert the rental units to condominiums have sold these buildings to multiple owners as tenancy-in-common (TIC) units, removing these units from the rental pool. Because of certain ownership risks and stricter financing standards, TIC units demand lower sale prices than condominiums.⁵⁷ TIC owners are, therefore, provided with a financial incentive to seek conversion of their units. TIC owners, along with other real estate interest groups, have launched numerous attempts to modify the Condominium Conversion Ordinance over the years. With the majority renter electorate fearing further erosion of rent controlled housing, however, such legislative proposals and ballot measures have been mostly rejected.⁵⁸

4. Shifts in Development Perspectives and Funding Opportunities

In 1978, development priorities and funding needs shifted after California voters passed Proposition 13.⁵⁹ Proposition 13 was the culmination of a “tax-

mained below 3% to provide investment rather than resident purchase opportunities was seen as a detriment to housing objectives, supporting a change in the conversion ordinance. Martin Gellen et al., *Promoting Homeownership Through Condominium Conversion*, SPUR (July 21, 2004), http://www.spur.org/publications/library/report/promotinghomeownershipthroughcondominiumconversion_090704.

56. S.F. PLANNING DEP'T, *supra* note 2, at A.16.

57. Tenancy in common is a type of shared ownership of property. In a typical TIC, each owner has an equal right to possession and use of the entire property, despite their respective sizes of purchase; this is something that TIC “individual unit” owners must contract around. This is differentiated from condominiums, in which each owner has exclusive ownership and possession of a single unit and common ownership only for the common areas. TIC allows apartment property owners to sell “units” to separate owners, who then own the property in common with other buyers. These units then become owner-occupied, effectively removing purchased apartments, otherwise subject to the Rent Ordinance, from the rental pool. TIC ownership holds risks for purchasers and lenders that must be addressed through purchase contracts and affects the types of financing available and financing qualification requirements.

58. A change in 2013 was approved, though significantly modified from the original proposal from real estate interest groups. This is discussed in more detail, *infra*, in Part F, “2013 to the Present.”

59. When the California legislature adjourned in the fall of 1977 without passing any of the twenty-two proposed property tax reform plans, voters quickly signed the petitions to place the Jarvis-Gann proposition on the statewide ballot (Jarvis-Gann became known as

payer revolt,” fueled by over five years of rising home prices, leading to an increase in property taxes, coupled with legislative inaction. Marketed to the electorate by proponents as a simple property tax reform and a necessary constraint on the size of government, it passed with 65% of the vote. Proposition 13 limited the annual real estate tax on a parcel of property to 1% of its assessed value and limited annual increases in assessed value to 2% per year until the property has a change of ownership. No new *ad valorem* property taxes could be imposed and any special taxes (which were not defined) needed to be approved by two-thirds of the voters.⁶⁰ Proposition 13, therefore, resulted in a profound shift of power from the legislature to the voters.

The passage of Proposition 13 had several unintended consequences, not the least of which were related to the nearly 60% reduction in property tax revenues resulting from its implementation.⁶¹ First, it has been responsible for the “fiscalization” of land use in California, making the sales tax generation potential of new development a significant consideration to local governments in evaluating and competing for land use applications.⁶² Second, the formation of local redevelopment agencies doubled as localities turned to tax increment to fill the gap in financing for capital projects.⁶³ Finally, an array of complex local finance techniques were developed to make up for lost property tax revenues.⁶⁴

In San Francisco, Proposition 13 further encouraged commercial and retail over residential development due to the tax advantages of such development, adding to the scarcity of new housing downtown. It also indirectly led to the

Proposition 13 because of its number on the 1978 ballot). JEFFREY I. CHAPMAN, PROPOSITION 13: SOME UNINTENDED CONSEQUENCES 3 (1998), available at http://www.ppic.org/content/pubs/op/op_998jcop.pdf.

60. CAL. CONST. art. 13A.

61. See Carolyn Schuk, *California Redevelopment Agencies 101*, SANTA CLARA WEEKLY, <http://www.santaclaraweekly.com/2011/Issue-7/redevelopment.html> (last visited Mar. 30, 2014); see also BEATTY, *supra* note 24, at 7. Proposition 13 also fundamentally changed property tax rates and local government access to tax revenues. Prior to its adoption, local agencies established their own property tax rates and received all proceeds of the tax. After passage, the rate was defined by Proposition 13 and the state was put in charge of allocating the tax proceeds. See CHAPMAN, *supra* note 59, at 3-4.

62. Competition among redevelopment agencies, cities, and counties for the sales tax revenue resulting from retail development increased since Proposition 13 made sales tax, rather than property tax, a key component of a locality’s revenue. See CHAPMAN, *supra* note 59, at 11.

63. In 1980, there were 197 agencies with 300 project areas; by the end of 1996, there were 399 agencies with 744 project areas. The total increment generated by the projects was about \$1.4 billion. *Id.* at 12.

64. Creative financing methods to address property tax losses include continuous changes to the property tax allocation system at the state level, education finance allocation formulas, formation of assessments districts, and a focus on generating economic development. Local development fees were also increased to internalize the cost of new infrastructure and service needs. *Id.* at 13-20.

passage of the Rent Control ordinance, prompting tenants to organize in an effort to share in the property tax savings realized by their landlords.⁶⁵

Fortunately, by the end of the 1970s, San Francisco's housing movement had grown and matured. Tenant activists had forever changed the focus of redevelopment from slum clearance to neighborhood revitalization without displacement. Low-income neighborhoods began organizing to prevent commercialization and displacement, and community organizations began encouraging development of affordable housing in addition to its preservation. It also became apparent that services, such as childcare and senior facilities, were needed in addition to housing to meet changing resident needs and ensure thriving communities.

Coming into the 1980s, housing activists, therefore, turned their attention to two challenges: identifying funding sources for affordable housing and creating more equitable community preservation and development policies.

C. 1980s: Equitable Development, Neighborhood Preservation, and New Financing

The 1980s began with neighborhood-based nonprofit developers winning a significant victory in redirecting the city's Community Development Block Grant (CDBG) funding. Also, in 1981, the city adopted its first redevelopment plan in more than a decade, the Rincon-Point South Beach Plan, incorporating the new state redevelopment standards.⁶⁶ With office development still booming, activists borrowed from environmental and land use law practices and won exactions from office development for affordable housing needed by new

65. Angered that landlords were not required to pass on their significant property tax savings to their tenants, tenant organizers quickly put a measure entitled the Renters Rebate Initiative on the local ballot in June 1978, but it was soundly defeated by a richly funded campaign by real estate interests. A broad, fifty-member coalition, San Franciscans for Affordable Housing, brought forth a much stricter measure for the June 1979 ballot (Proposition R), leading the Board of Supervisors to enact a much weaker version, a successful preemptive strike that helped fuel the opposition and ultimate defeat of Proposition R at the polls. See HARTMAN, *supra* note 12, at 236-45. This "weaker version" was the beginning of the Rent Ordinance, which has been amended and strengthened over time.

66. Rincon Point-South Beach is a 115-acre redevelopment project composed of two non-contiguous geographic areas along San Francisco's northeastern waterfront. Demonstrating the city's economic transformation, much of the area was formerly characterized by dilapidated warehouses, open cargo storage yards, abandoned or underutilized buildings, several piers in unsound condition, and an extensive network of underutilized street rights-of-way. Since 1981, the area has been transformed into a new mixed-use waterfront development. More than 2800 residential units have been developed, with 24% of the units set aside for low- and moderate-income households, over 1.2 million square feet of commercial space has been constructed, and historic rehabilitation and commercial reuse of five buildings a 700-berth harbor, two public parks, and a waterfront baseball park occurred. No housing was demolished in this project area. *Rincon Point*, OFF. COMMUNITY, INV. & INFRASTRUCTURE, <http://www.sfdevelopment.org/index.aspx?page=62> (last visited Mar. 30, 2014).

workers. The community-centered policies implemented during this decade included:

- Reallocation of a portion of CDBG funds for site acquisition, housing rehabilitation, and support of nonprofit community-based development corporations;
- Adoption of the Office Housing Production Program, requiring developers of large office buildings to develop affordable housing or pay an in lieu fee to mitigate the housing demand generated by new workers, along with legislation requiring linkage fees for other resident services, such as child care;
- Passage by voters of a groundbreaking ballot measure, capping the amount of office development approved each year and establishing the development and preservation of affordable housing in the city's downtown area as a planning priority;⁶⁷ and
- Adoption of community plans and planning code amendments to protect housing units in the downtown area and neighboring communities from demolition or conversion.

1. Community Development Block Grant

Since the Community Development Block Grant (CDBG) was established in 1974,⁶⁸ San Francisco had used the bulk of its CDBG money to fund social service organizations, with its housing dollars going to government agencies rather than community development organizations or affordable housing development. Regulatory changes to CDBG mandated that at least 70% of the

67. *Downtown Area Plan*, S.F. PLANNING DEP'T, http://www.sf-planning.org/ftp/General_Plan/Downtown.htm (last visited Mar. 30, 2014); *see also*, S.F., CAL., PLANNING CODE § 101.1(c) (1986).

68. The Housing and Community Development Act of 1974 established the Community Development Block Grant (CDBG) program, which provides formula-based entitlement grants to states and local governments to develop viable urban communities by providing decent housing and a suitable living environment, and expanding economic opportunities, primarily for low and moderate income people. Unlike the urban renewal program, CDBG, "a categorical grant" program, is a flexible program enabling grantees to fund a wide range of activities. One of the longest continuously run programs at HUD, the CDBG program works to ensure decent affordable housing, to provide services to the most vulnerable in our communities, and to create jobs through the expansion and retention of businesses. CDBG grantees must develop and follow a detailed plan that provides for and encourages a citizen participation process that emphasizes participation by residents of predominantly low- and moderate-income neighborhoods, slum or blighted areas, and areas in which the grantee proposes to use CDBG funds. *Community Development Block Grant Program*, U.S. DEP'T OF HOUSING & URB. DEV., http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs (last visited Mar. 30, 2014).

CDBG award benefit low- and moderate-income households, providing grounds for a legal challenge for failure to meet this requirement.⁶⁹

Believing that the city was misallocating CDBG funds that should instead be used to fund new affordable housing, local housing advocates formed a coalition and filed an administrative complaint with HUD in 1980.⁷⁰ As a result, HUD placed conditions on the city's subsequent receipt of \$30 million of CDBG funds, tying the award to changes in San Francisco's use of the funds. The coalition negotiated an annual commitment of \$5 million for site acquisition and housing rehabilitation, plus additional funds for administrative support of nonprofit community-based development corporations. This allocation became a staple of the city's CDBG program, helping these entities establish themselves as invaluable developers and managers of affordable housing in San Francisco that ultimately assisted in the production and rehabilitation of 26,000 units in the city.⁷¹ This funding also served to elevate the political presence and effectiveness of these organizations in the policy advocacy arena.

2. Office Housing Production Program

In 1981, using the concept of "mitigation" from environmental law, housing and environmental advocates persuaded the Department of City Planning to adopt the Office Housing Production Program to mitigate the housing demand generated by new office development.⁷² This was the *first program of its kind*

69. CDBG citizen participation rules also provided significant access to information and opportunities for public input. Community groups used information collected though this process to amass evidence in support of their administrative complaint. *Id.*

70. This coalition, which consisted primarily of community groups established during Model Cities years and during the earlier urban renewal and I-Hotel struggles, grew into the Council of Community Housing Organizations (CCHO), a major player in the development of affordable housing policy ever since. CCHO's membership presently consists of twenty community-based nonprofit housing organizations and faith-based groups. *See generally*, COUNCIL COMMUNITY HOUSING ORGS., <http://www.sfccho.org> (last visited Mar. 30, 2014).

71. *See* Interview with Calvin Welch, *supra* note 4. It has been noted that "CDBG money . . . was instrumental in keeping doors open for community based organizations . . . [W]ithout them being there to actually apply for the funds [that would come], the City of San Francisco would not be as competitive. . . . They were community organizations before they became housing developers. Some of them then became successful housing developers in addition to the community development activities." Interview with Olson Lee, Director, Mayor's Office of Housing (July 25, 2012) (on file with authors). Mr. Lee, now Director of the Mayor's Office of Housing, has a long history of involvement in the city's affordable housing policies and programs. He was Chief Financial Officer at the Mayor's Office of Housing (MOH) at the time of the "grand bargain," *see infra* text accompanying note 94, later became the Deputy Director for Housing of the SFRA, and has returned to lead MOH upon the demise of the SFRA.

72. Under the California Environmental Quality Act of 1970, government agencies are mandated to analyze the environmental impacts of projects requiring government action or approval. If impacts are found to be significant, mitigation measures must be adopted to eliminate or reduce the adverse impacts. Savvy environmental advocates such as attorney Sue Hestor and members of a loosely formed "slow growth" coalition known as San Fran-

in the United States. The program became an ordinance in 1985 and required developers of large office buildings to build affordable housing, contribute land, or pay an in-lieu fee based on the number of new employees generated by the office development.⁷³ In 2001, the ordinance was expanded to include all types of commercial development and was renamed the Jobs-Housing Linkage Program.⁷⁴ More than \$72 million in affordable housing fees have been collected through this program since 1985, contributing to the development of more than 1100 affordable housing units.⁷⁵

3. Limiting New Office Construction

After a contentious campaign, bitterly fought by business interests and commercial developers, Proposition M prevailed at the polls.⁷⁶ Proposition M⁷⁷ was adopted by the voters in 1986 to combat the high rate of office development (averaging 1.7 million feet per year),⁷⁸ high office vacancy rates,⁷⁹ the

ciscans for Reasonable Growth, as well as affordable housing advocates, began appearing at City Planning Commission hearings on the environmental impacts of downtown office developments urging mitigation of the impact of the new employees that would inhabit these office developments on the availability of affordable housing. Many of these same advocates had participated in prior “slow growth” ballot campaigns and would go on to organize and win Proposition M on the 1986 ballot. *See infra* notes 76-83 and accompanying text.

73. DELEON, *supra* note 31, at 60. The original OHPP affected buildings 50,000 square feet or larger. The Planning Department began receiving applications for buildings 49,999 square feet, nicknamed “the Forty-Niners” by activists. In response, the OHPP was amended to cover buildings 25,000 square feet or larger. In conjunction with this program, legislation was adopted instituting office linkage fees for other resident services, including childcare, open space, parks, transportation, and public art. Edward H. Starkie, Office Development Linkage in San Francisco: Exacting the Social Costs of Growth 44 (July 31, 1991) (unpublished M.S. thesis, Massachusetts Institute of Technology), available at <http://dspace.mit.edu/bitstream/handle/1721.1/70208/26136811.pdf?sequence=1>.

74. *See* S.F. PLANNING DEP’T, *supra* note 2, at A.5.

75. S.F. PLANNING DEP’T, DOWNTOWN PLAN: ANNUAL MONITORING REPORT 2011, at 10 (2012). Units produced are affordable to low and moderate-income households (60% through 100% AMI) and are to be affordable for at least fifty years. S.F. PLANNING DEP’T, DOWNTOWN PLAN: ANNUAL MONITORING REPORT 2004, at 25, app. C at A-6 (2004).

76. For a thorough look at the background of and the campaign for Proposition M, see DELEON, *supra* note 31, ch. 4; *see also* STEPHEN J. MCGOVERN, THE POLITICS OF DOWNTOWN DEVELOPMENT: DYNAMIC POLITICAL CULTURES IN SAN FRANCISCO AND WASHINGTON, D.C. ch. 6 (1998).

77. Proposition M was the culmination of the growth control movement’s attempts to control downtown development through ballot initiative campaigns fought in 1971, 1972, 1979, and 1983 (when that year’s Proposition M lost by only 1% of the vote). In January 1986, leaders of the growth control coalition, including environmentalists, housing advocates, job training groups, neighborhood organizations, and historic preservation advocates, formed an organizing committee and christened the new campaign as the Campaign for Accountable Planning (CAP).

78. New office development averaged about 1.7 million square feet per year between 1965 and 1985. S.F. PLANNING DEP’T, *supra* note 12, at 38 tbl.1.

adverse impact of commercial development on local communities,⁸⁰ and the failure of the Planning Department's Downtown Plan to adequately address these issues. Proposition M was a path-breaking measure that limited the amount of office development that could be approved each year and created a competitive process among developers seeking to construct office projects.⁸¹ The annual competition, known as the "Beauty Contest," caused developers to "sweeten the deal" to engender support, putting activists in the enviable position of leveraging better designs, stronger job training, and disadvantaged contractor commitments, and, of course, more affordable housing. Proposition M also established several priority policies to be incorporated into the city's General Plan,⁸² including preserving and enhancing neighborhood retail uses and opportunities for resident employment and ownership; preserving neighborhood character and affordable housing; and maintaining a diverse economic base.⁸³

The passage of Proposition M was a major turning point in San Francisco politics: "not merely a change *in* the system but a change *of* the system."⁸⁴ After Proposition M, community groups, neighborhoods, environmentalists, and housing advocates had a stronger voice in land-use decisions and housing policies. In future years, this resulted in additional progressive legislative, regulatory, and electoral victories in the housing arena.⁸⁵

79. Office vacancy rates were near 15% on average and 18% for Class A space in the 1980s. DELEON, *supra* note 31, at 54; S.F. PLANNING DEP'T, *supra* note 12, at 16.

80. Not the least of which was related to the displacement of housing downtown to make way for new office development and/or proposed office projects in lieu of new residences.

81. S.F. PLANNING DEP'T, ANNUAL MONITORING REPORT 2004, *supra* note 75, at 10. The Downtown Plan limited approvals to no more than 950,000 square feet per year. To mitigate past approvals to this limit (and make the limit retroactive to developments approved between 1984 and 1986), Proposition M permitted only 475,000 square feet in new approvals through about 1998 or 1999. Office development is presently limited by the Downtown Plan to 950,000 square feet. S.F. PLANNING DEP'T, *supra* note 12, at 8.

82. Adopted by the Planning Commission and approved by the Board of Supervisors, the General Plan is San Francisco's guiding document for development and embodies the community's vision for the future of San Francisco. *Introduction*, S.F. PLANNING DEP'T (June 26, 1996), http://www.sf-planning.org/ftp/General_Plan/index.htm.

83. *Id.* The Plan also sought to build between 1000 and 1500 new housing units each year to help meet the demand from new office jobs. Housing production in San Francisco averaged over 1670 units annually between 1985 and 2009, exceeding the Downtown Plan's goal for new housing construction. Of the over 21,680 units produced in downtown during this period, 39% were in redevelopment areas and 18% were affordable. S.F. PLANNING DEP'T, *supra* note 12, at 12.

84. DELEON, *supra* note 31, at 82.

85. *See generally id.* ch. 4. For a discussion of the meaning and impact of Proposition M, see MCGOVERN, *supra* note 76, at 300 n.55. For a discussion of these victories, see *infra* Parts I.D-F.

4. Protection of Downtown Housing and Residential Neighborhoods

In the mid-1980s, residents of the South of Market, Chinatown/North Beach, and the Tenderloin, also called “ring neighborhoods,” organized to combat the “blowing out [of] existing residential neighborhoods in the concentric circles around downtown.”⁸⁶ Their advocacy led to the adoption of a policy and planning code amendment to the Downtown Plan prohibiting the demolition of housing units in the downtown absent conditional use approval.⁸⁷ The Plan also permits residential uses in certain downtown districts to exceed the base Floor Area Ratio (FAR) limit, provided units exceeding the zoned limit are affordable for twenty years.⁸⁸ Through the neighborhood planning efforts and effective advocacy by such groups as the North of Market Planning Coalition (the Tenderloin) and the Chinatown Community Resource Center (now the Chinatown Community Development Center), community-based neighborhood plans were also developed for the “ring neighborhoods,” protecting existing housing from demolition or conversion and maintaining the residential quality of the neighborhoods.⁸⁹

5. New Resources: Federal, State, and Local Funding

Near the end of the 1980s, changes at the federal and state level increased financing opportunities for affordable housing. In 1986, Congress adopted Section 42 of the Internal Revenue Code, creating the Low Income Housing Tax Credit (LIHTC) program, providing private owners with an incentive to create and maintain affordable housing. The LIHTC quickly became the largest source of funds for San Francisco’s nonprofit developers and the largest national source for affordable rental development.⁹⁰ In 1988, the state passed Proposition 77, a \$150 million bond for earthquake safety and housing rehabilitation, and Proposition 84, a \$285 million housing bond for homeless, home purchase, rental, and rehabilitation programs.⁹¹

86. Interview with Calvin Welch, *supra* note 4.

87. S.F. CAL., PLANNING CODE § 212(e) (2013). This provision was part of the Downtown Plan text amendments, S.F., Cal., Ordinance 414-85 (Oct. 17, 1985). In 2008, Planning Code Section 317 added additional requirements and findings that the Planning Commission must make when considering any permit that involves the removal of a dwelling unit. S.F., Cal., Ordinance 69-08 (Apr. 17, 2008).

88. S.F. CAL., PLANNING CODE § 124(f) (2013). This provision was part of the Downtown Plan text amendments. S.F., Cal., Ordinance 414-85 (Sept. 17, 1985).

89. See S.F., CAL., PLANNING CODE § 249.5 (2013); S.F., CAL., PLANNING CODE §§ 714 (2013), 722 (2012); *Chinatown Area Plan*, S.F. PLANNING DEP’T, http://www.sf-planning.org/ftp/General_Plan/Chinatown.htm (last visited Mar. 30, 2014).

90. See *infra* Table 1.

91. *California Housing Bonds*, CAL. DEP’T HOUSING & COMMUNITY DEV., <http://business.ca.gov/LinkClick.aspx?fileticket=5BBQA-xO19w%3D&tabid=247> (last visited Mar. 30, 2014).

Two new local sources also added significant funding for the development and preservation of affordable housing: a tax increment requirement and a permanent hotel tax. The state had imposed a requirement in 1976 that redevelopment agencies contribute 20% of their tax increment revenues for affordable housing.⁹² In 1989, however, at the urging of CCHO and other housing advocates, Mayor Agnos and the Board of Supervisors of San Francisco required that the SFRA adopt a new Housing Participation Policy dedicating 50% of tax increment revenue to affordable housing as a condition of approving the Agency's budget.⁹³ This "grand bargain" was the city's "great[est] stimulus for affordable housing production."⁹⁴ Since 1990, over \$600 million of tax increment financing has contributed to the development of over 10,000 units of affordable housing for low- and moderate-income families and individuals throughout San Francisco.⁹⁵ Tax increment revenues have comprised over 50% of city and local sources for affordable housing since 2002. As a sole source of funding, only the federal Low Income Housing Tax Credit (LIHTC) program has provided more affordable housing financing.

Finally, the temporary City Hotel Tax won as part of the Yerba Buena settlement in the 1970s was made permanent through continuing advocacy by TODCO. This tax has since provided almost \$50 million for affordable housing development for seniors and persons with disabilities throughout San Francisco.⁹⁶

These new resources made the affordable housing development boom of the 1990s possible. The CDBG funding in particular enabled the city's nonprofit developers to plan new projects and "really [take] advantage of the [state's] early general obligation bond financing and tax credit allocation."⁹⁷

D. 1990s: Inclusive Redevelopment, the Dot-Com Boom, and Housing Preservation

The 1990s began with the housing development organizations helping the city rehabilitate its affordable housing stock damaged by the 1989 Loma Prieta

92. Act of Sept. 29, 1976, 1976 Cal. Stat. 6061.

93. In addition to dedicating 50% of tax increment revenue to affordable housing, the SFRA set much deeper affordability levels (at or below 50% of AMI as opposed to at or below 120% of AMI) and longer duration of affordability restrictions than the state required.

94. Interview with Olson Lee, *supra* note 71.

95. Every dollar the Agency has invested has resulted in over \$3.71 in additional investment from other sources, including federal tax credit equity, banks, foundations, and other public programs. *Former SFRA Housing Programs*, MAYOR'S OFF. HOUSING & COMMUNITY DEV., <http://www.sf-moh.org/index.aspx?page=952> (last visited Mar. 30, 2014).

96. TODCO, *supra* note 35. This tax was incorporated into the Housing Trust Fund that was adopted by city voters in November 2012. *See infra* note 113.

97. Interview with Olson Lee, *supra* note 71.

earthquake.⁹⁸ Tax increment revenues gained through the “grand bargain” between the city and the SFRA increased the city’s competitiveness for federal and state affordable housing resources. Pressure from the rising dot-com boom increased the demand for housing and office space, drastically reducing rental and office vacancy rates and increasing rents and housing costs. Finally, budget and policy changes in Washington threatened the future of San Francisco’s HUD-financed affordable housing stock and sent advocates scrambling to find additional resources. Significant programs and policies that arose in the face of these challenges included:

- Adoption of new redevelopment plans in collaboration with community residents, small business owners, and organizations for the South of Market, Mission Bay, and Hunters Point Shipyard areas, each with affordable housing as a key component;
- Adoption of a Housing Preservation Program to prevent the conversion of HUD-assisted housing developments to market-rate units following changes in federal budget and policy priorities;⁹⁹ and
- Passage of Proposition A by city voters, authorizing the city to issue \$100 million in general obligation bonds for affordable housing—the first general obligation bond measure in the country and the largest such issue for affordable housing ever in California.

1. Inclusive Redevelopment Plans: South of Market, Mission Bay, and Hunters Point

In sharp contrast to the adjacent Yerba Buena Project described in Part I.B.1 above, the South of Market Redevelopment Project was developed in partnership with community residents, small business owners, and organizations. After the neighborhood was substantially damaged by the Loma Prieta earthquake, the South of Market Earthquake Recovery Redevelopment Plan was adopted in 1990, enabling the SFRA to repair, restore, and replace buildings and physical infrastructure damaged by the earthquake and to provide eco-

98. In 1989, the Loma Prieta earthquake created havoc in downtown, with particular damage in the South of Market, Tenderloin, and Chinatown areas. The earthquake measured 7.1 on the Richter scale and lasted only fifteen seconds. One article estimates 6300 of rental and affordable housing units were destroyed or significantly damaged, most of which were downtown. Mary C. Comerio, *Housing Repair and Reconstruction After Loma Prieta*, NAT’L INFO. SERV. FOR EARTHQUAKE ENGINEERING (Dec. 9, 1997), http://nisee.berkeley.edu/loma_prieta/comerio.html.

99. Brian Galle, *Preserving Federally Assisted Housing at the State and Local Level: A Legislative Tool Kit*, 29 HOUS. L. BULL. 183 (1999); Memorandum from James B. Morales, General Counsel of the SFRA, to Agency Commissioners (Jan. 31, 2001) (on file with authors); *Case Studies*, POLICY LINK, http://www.policylink.org/site/c.lkIXLbMNJrE/b.5136999/k.7DA7/Case_Studies.htm (last visited Mar. 30, 2014).

conomic development assistance to neighborhood-serving businesses.¹⁰⁰ The plan was amended in 2005 and converted to a traditional redevelopment under the SFRA, leading to SFRA's investment of \$37 million dollars for affordable housing, including ownership housing by Habitat for Humanity, family rental housing, rehabilitation of residential hotels, and the award-winning Plaza Apartments, containing 100 studio units for formerly homeless people with on-site medical and psychiatric services in a LEED Silver, sustainable building.¹⁰¹

After years of community controversy, coalition building, and negotiations, the 302-acre Mission Bay mixed-use project on former railroad yards was adopted in 1991, with no redevelopment agency involvement. The owner soon terminated the agreement, however, during the severe real estate recession in the early 1990s. Newly elected Mayor Brown brought the project under the jurisdiction of the SFRA so that tax increment financing could be used to finance the project's significant infrastructure needs. The plan included a 43-acre University of California, San Francisco medical campus; 6000 housing units, 1700 of which would be permanently affordable; 5 million square feet of commercial space; and 43 acres of public space, among other features. Approximately one-third of the housing units will be permanently affordable, and the new mixed-use neighborhoods will include childcare, health and social services, and neighborhood-serving retail, parks, libraries, and schools. The plan was adopted in 1998 and set the standard for affordable housing and public benefits in large-scale development that has since been followed in the Hunters Point Shipyard, Treasure Island, and Transbay Plans.¹⁰²

The Hunters Point Shipyard consists of 500 acres along the southeastern waterfront and was on the Department of Defense's 1991 Base Realignment and Closure (BRAC) list. The Hunters Point Naval Shipyard Redevelopment Plan was adopted in 1997 and amended in 2010 to integrate another 280 acres owned by the city.¹⁰³ The project will generate hundreds of new construction jobs each year and create more than 10,000 permanent jobs over the next twenty to twenty-five years. The completed development will include 12,100 housing units, 32% of which will be affordable; about 352 acres of open space; 100,000 square feet of community facility space; job training and contracting programs for community residents; 885,000 square feet of retail; and approximately 3 million square feet of "clean" technology research and development

100. The Plan was adopted in accordance with new state Community Redevelopment Financial Assistance and Disaster Project provisions. Since 1990, the SFRA has provided earthquake recovery assistance to residents and businesses and has improved housing opportunities by funding the construction or rehabilitation of more than 1000 new affordable housing units.

101. *South of Market*, OFF. COMMUNITY INV. & INFRASTRUCTURE, <http://www.sfdevelopment.org/index.aspx?page=63> (last visited Mar. 30, 2014).

102. *See, e.g., Mission Bay*, OFF. COMMUNITY INV. & INFRASTRUCTURE, <http://www.sfdevelopment.org/index.aspx?page=61> (last visited Mar. 30, 2014).

103. Specifically, the site of the Candlestick Park football stadium, called Candlestick Point, was integrated under the Plan.

space, including the headquarters for the UN Global Compact Sustainability Center, among other amenities. The development is subject to a Community Benefits Agreement that includes affordable housing commitments and funding for down payment assistance, workforce development, a first source hiring agreement, and \$1 million for community benefits.¹⁰⁴ The development will also include rebuilding the Alice Griffith public housing development consistent with the city's HOPE SF Program¹⁰⁵ and a federal Choice Neighborhoods Initiative grant. The Project will be a transformative project for the community and the city and a true test of inclusive gentrification.¹⁰⁶

2. Preserving Federally-Assisted Affordable Housing

Beginning in 1996, federal policy changes meant 8000 units in 88 HUD-assisted housing developments were at risk of converting to market-rate housing.¹⁰⁷ In 1997, the city created a Housing Preservation Program to preserve this housing.¹⁰⁸ The program has three primary components: education and outreach to tenants; regulatory and legislative advocacy, including amendments to the Rent Control Ordinance;¹⁰⁹ and facilitation of private property ownership to

104. The agreement also included the signatories' commitment to support the developer-supported ballot measure, Proposition G, on the June 2008 ballot that was deemed necessary for the project to proceed and to oppose a competing initiative, Proposition F, that the developer claimed would doom the project. Proposition G prevailed at the polls and Proposition F failed. Lennar Communities et al., Core Community Benefits Agreement: Hunters Point/Candlestick Point Integrated Development Project 13 (May 30, 2008) (unpublished agreement), available at http://www.juliangross.net/docs/CBA/Hunters_Point_Agreement.pdf.

105. HOPE SF is San Francisco's transformative plan to revitalize eight of San Francisco's severely distressed public housing sites by creating thriving, mixed-income communities without displacing current residents. See generally HOPE SF, <http://hope-sf.org> (last visited Mar. 30, 2014). The city also adopted an ordinance guaranteeing public housing residents the right to return to revitalized redeveloped public housing developments without additional rescreening. S.F., Cal., Ordinance 227-12, (Nov. 7, 2012).

106. An enormous amount of material, including all plans, disposition agreements, community benefit agreements, and much more can be found at *Hunters Point Shipyard*, OFF. COMMUNITY INV. & INFRASTRUCTURE, <http://www.sfdevelopment.org/index.aspx?page=57> (last visited Mar. 30, 2014).

107. Proposals in Washington would have converted all project-based Section 8 contracts to tenant-based vouchers. At the same time, HUD restored an owner's right to prepay the underlying FHA-insured mortgage and cancel the project-based Section 8 contract, threatening conversion of these properties to market-rate units.

108. The SFRA and the Mayor's Office of Housing worked with residents, owners, nonprofit organizations (including NHP), state and federal agencies, and financial institutions to develop the Housing Preservation Program. Galle, *supra* note 99, at 183; Memorandum from James B. Morales, *supra* note 99; POLICY LINK, *supra* note 99.

109. The Rent Control Ordinance was amended to apply to any formerly HUD-assisted property occupied before 1979 that emerges from the federal program, ensuring that the affordable subsidized rents remain the base rents for the now unrestricted property, and discrimination based on source of income is prohibited, preventing owners from refusing to accept rent vouchers. S.F., CAL., ADMIN. CODE § 37.2(a)(2); Galle, *supra* note 99, at 186 n.13.

nonprofits or cooperatives, with assistance from tax increment funds grants, to preserve long-term affordability.¹¹⁰ At a time when the nation lost over 100,000 units of federally assisted housing, San Francisco did not lose one.¹¹¹

3. Affordable Housing and Home Ownership Opportunity Bond

In 1996, the Council of Community Housing Organizations (CCHO) planned and coordinated the \$100 million, Proposition A, Affordable Housing Bond Campaign in the city. In the face of federal budget cuts and other threats to local revenue sources, advocates got Proposition A on the ballot. CCHO orchestrated the campaign and achieved the necessary two-thirds majority for passage. This was no small feat, especially since a “yes” vote meant increased property taxes.¹¹²

Proposition A authorized the city to issue \$100 million in general obligation bonds to pay for the construction of rental housing for households with annual incomes at or below 60% of the AMI (\$85 million) and down payment assistance for first-time home buyers with incomes up to 100% of the AMI (\$15 million). The bonds leveraged other financing to develop 2125 affordable rental units and 249 loans to first-time homebuyers. Loan repayments then became a source of funds for other projects.¹¹³

110. Tax increment funds grants and below-market loans are provided for nonprofit purchasers and pre-development assistance. A public land trust model has been used in most cases, whereby the land is purchased by the Redevelopment Agency and leased to the owners of the improvements for use as affordable housing for up to ninety-nine years. Galle, *supra* note 99, at 188 n.32; POLICY LINK, *supra* note 99. According to Olson Lee, the Director of the Mayor’s Office of Housing and former SFRA Deputy Director for Housing, the public land trust “avoid[s] ever having to do it again, since we had to do it once This will always be afford[able] housing and [will] always serve San Francisco in that way.” Interview with Olson Lee, *supra* note 71.

111. POLICY LINK, *supra* note 99. Of thirty-five properties that were privately owned and at risk of conversion in 1997, by 2001, eleven had been transferred into nonprofit or cooperative ownership, ensuring permanent affordability.

112. Increased property taxes were necessary to pay the principle and interest on the general obligation bonds. DEP’T OF ELECTIONS, SAN FRANCISCO VOTER INFORMATION PAMPHLET & SAMPLE BALLOT (1996), available at http://sfpl.org/pdf/main/gic/elections/November5_1996short.pdf.

113. *Proposition A - Supportive and Affordable Rental Housing and Homeownership Bond*, SPUR, <http://www.spur.org/goodgovernment/ballotanalysis/Nov2004/propa> (last visited Mar. 30, 2014); S.F. BUDGET & LEGIS. ANALYST, *supra* note 2, at 10. Despite the bond program’s success, the city’s voters have not passed a similar affordable housing measure since. Lessons from two failed measures, one in 2002 and another in 2006, have been examined in the effort to bring together the development and housing communities to craft and garner support for the thirty-year Housing Trust Fund on the November 2012 ballot. John Coté, *Lee Looks to Expand Housing with Prop. C*, SFGATE (Sept. 30, 2012, 9:18 PM), <http://www.sfgate.com/politics/article/Lee-looks-to-expand-housing-with-Prop-C-3907574.php>; Noah Arroyo, *Housing Trust Fund Goes to Voters*, MISSION LOCAL (July 25, 2012, 3:00 PM), <http://missionlocal.org/2012/07/housing-trust-fund-left-in-the-hands-of-voters>.

4. The Dot-Com Effect and Challenges for the Next Decade

By the end of the 1990s, development shifted from a focus on office and commercial projects to housing. Between 1996 and 1997, San Francisco's core industries experienced significant growth, attracting more businesses and employees due to the rise of the dot-com companies. Not only were new employees in San Francisco searching for housing, but the city was also increasingly becoming a "bedroom community" for the dot-com employees in nearby Silicon Valley. The result was a significant rise in housing costs—both ownership and rental—along with increased housing production in the late 1990s.¹¹⁴ Growth in jobs, however, outpaced housing development at a ratio of 6.5 new jobs for each new home built during this period, significantly higher than the generally healthy balance of one new residence for every 1.5 jobs created.¹¹⁵ Therefore, even with the increase in housing development, between 1994 and 2000 the average rent for a two-bedroom apartment increased 115%¹¹⁶ and the median price of a three-bedroom home rose 70%.¹¹⁷

In his 1999 State of the City address, Mayor Brown lamented that nothing threatens the city's diversity more than the growing scarcity of decent affordable housing for low- and moderate-income people.¹¹⁸ Calling the housing crisis the city's most critical issue, the Mayor stressed the need for regional solutions and a renewed financial commitment from the state and federal governments.¹¹⁹

E. 2000s: Increase Affordable Housing, Remedy Past Losses of Housing, and Address the Demise of the SFRA

The housing crisis was statewide. State voters responded by passing Proposition 46, a \$2.1 billion housing bond, and Proposition 1C, a \$2.8 billion meas-

114. Little market-rate housing development had occurred in the early and mid-1990s. In fact, in 1994, affordable housing units financed by the public sector comprised 63% (776 units) of all housing constructed that year. Housing development picked up in 1997 and housing unit approvals peaked in 1999 at 3400 units.

115. Nico Calavita et al., *Inclusionary Zoning: The California Experience*, 3 NHC AFFORDABLE HOUSING POL'Y REV. 6 (2004).

116. In constant 2000 dollars, an average two-bedroom apartment rented for \$1274 in 1994 and \$2750 in 2000. S.F. PLANNING DEP'T, ANNUAL MONITORING REPORT 2004, *supra* note 75, at 24.

117. In constant 2000 dollars, the median price of a three-bedroom home was \$274,690 in 1994 and \$543,059 in 2000. *Id.*

118. By this time, rents had skyrocketed, the number of evictions had tripled over the previous five years, and the number of applicants for new affordable housing units exceeded production by a factor of ten.

119. San Francisco has recently been experiencing an eerie echo of the first dot-com boom. Today's tech boom has resulted in skyrocketing housing costs and displacement of long-time residents, as activists and public officials scramble for a policy response. Mayor Lee's 2014 State of the City likewise called for a renewed commitment to solving the housing crisis. *See infra* note 169 and accompanying text.

ure, in 2002 and 2006, respectively, adding significant resources for affordable housing development.¹²⁰ The city improved partnerships with health and social service agencies to produce service-enriched housing for frail seniors, people with disabilities, persons with substance abuse or mental health challenges, and homeless and near-homeless persons. Advocates worked to remedy exclusionary housing policies and increase private sector contribution to affordable housing. Finally, advocates scrambled to address the greatest blow to affordable housing financing when the State dissolved all redevelopment agencies to redirect tax increment revenues to cover budget shortfalls. The city responded to these challenges by:

- Broadening the city's Jobs-Housing Linkage program to apply to more than just office development;
- Adopting an inclusionary zoning ordinance and amending the SFRA's Housing Participation Policy to adopt inclusionary requirements similar to those adopted by the city;¹²¹
- Adopting SB 2113 and SB 211 in 2000 and 2001, extending the ability to collect tax increment funding to replace the net loss of 6709 affordable units during the early urban renewal period; and
- Passing, by 65% of city voters, a 30-year, \$1.5 billion Housing Trust Fund to replace tax-increment revenues that were lost with the demise of the SFRA.

1. Jobs-Housing Linkage and Inclusionary Housing

At the start of the 2000s, housing was in severe shortage and new commercial development remained strong. As a result, the Jobs-Housing Linkage Program was amended in 2001, applying housing requirements to all types of commercial development, not just office development.

As residential development increased, community advocates sought to link affordable housing requirements with market-rate development. In 2001, a landmark court decision in California verified that inclusionary housing¹²² was

120. See *infra* Table 1.

121. S.F. PLANNING DEP'T, *supra* note 2, at A.5.

122. Inclusionary housing refers to municipal and county planning ordinances that require a certain proportion of new construction to be affordable by people with low to moderate incomes. These ordinances generally seek to counter exclusionary zoning practices, which, as an effect of their design (for example requiring large lot, single-family homes; not allowing multi-family development; etc.), exclude the development of more affordable housing options. In practice, these policies involve placing affordability restrictions on a certain percentage (10-30%) of new housing units to make the housing affordable to lower income households. It is one tool through which jurisdictions can help promote a wider range of housing options than would be developed by the free market alone and promote mixed-income neighborhoods—a significant goal of San Francisco's policy.

a constitutionally valid extension of a jurisdiction's zoning powers.¹²³ Although the SFRA had been implementing its Housing Participation Policy since 1990 and the city had an informal inclusionary housing policy since 1992,¹²⁴ the city's Inclusionary Affordable Housing Ordinance was not formally adopted until 2002.¹²⁵ In 2006, the program was amended to apply to residential developments of five units or more and required a 15% affordable set-aside for units built on-site and a 20% set-aside for units built off-site or if in-lieu fees were paid.¹²⁶

The program has helped provide much-needed, affordable homes for middle-income households in San Francisco. Between 1992 and 2010, more than 1500 units were developed through the inclusionary program. Developers constructed most of the units, the SFRA developed about 236 units, and inclusionary fees contributed to the construction of 154 units by the city between 2002 and 2010.¹²⁷ The units are priced to be affordable for households earning between 50% and 120% of the San Francisco Area Median Income.¹²⁸ These

123. Calavita, *supra* note 115, at 6. The landmark case was *Home Builders Association v. City of Napa*, 90 Cal. App. 4th 188 (2001). A facial challenge to the City of Napa's Inclusionary Zoning Ordinance was brought, alleging the ordinance violated (1) the takings clauses of the federal and state constitutions, (2) the Mitigation Fee Act, (3) the Due Process Clause of the Federal Constitution, and (4) Proposition 218. *Id.* at 193. The appellate court agreed with the trial court and sustained the city's demurrer without leave to amend, entering judgment in favor of the city. *Id.* The court found that the ordinance was a generally applicable legislative enactment which "substantially advanced" the important state interest of providing affordable housing for low and moderate-income families, *id.* at 194-97, and that the city could enact an inclusionary zoning ordinance even if its prior policies contributed to a scarcity of available land and a shortage of affordable housing, *id.* at 198. Per the ordinance, the city has the authority to completely waive a developer's obligations, meaning a facial challenge under the due process clause must fail. *Id.* at 199. The city was supported by a group of interveners in this case, including Napa Valley Community Housing, Non-Profit Housing Association of Northern California, Housing California, among others. *Id.* at 200 n.4. Several recent cases, discussed below in this Part, have caused many communities to alter their inclusionary zoning ordinances; a pending California Supreme Court case may further define the parameters of permissible inclusionary zoning ordinances.

124. The city's 1992 inclusionary housing policy applied to certain developments outside of the SFRA's redevelopment areas. The policy required 10% of units to be set-aside as affordable for planned unit developments or projects seeking conditional use permits. S.F. BUDGET & LEGISLATIVE ANALYST, *supra* note 2, at 4.

125. The 2002 Ordinance applied to development of ten units or more and encouraged on-site development of affordable units to increase social and economic integration. S.F. BUDGET & LEGIS. ANALYST, *supra* note 2, at v.

126. Affordability standards limited ownership units to be affordable to households earning no more than 90% of the area median income (AMI) and rental units for households earning no more than 55% of AMI. Off-site units were required to be built within one-mile of the project site.

127. S.F. BUDGET & LEGIS. ANALYST, *supra* note 2, at 46; S.F. PLANNING DEP'T, *supra* note 2, at I.95.

128. The affordability of inclusionary units are set according to the City of San Francisco's Area Median Income (SFAMI) rather than the median income of the San Francisco Metropolitan Statistical Area, the latter being much higher because it includes Marin and San

units represented about 18% of the 8081 total affordable units completed by the Mayor's Office of Housing or the SFRA between 2002 and 2010.¹²⁹

Recent California court decisions have led to modifications in many inclusionary programs throughout the state, including San Francisco.¹³⁰ First, the court in *Palmer v. Los Angeles* held that the rent control provisions of California's Costa-Hawkins Rental Housing Act, which allows residential landlords to set the initial rent levels at the start of a tenancy, preempted a Los Angeles inclusionary housing law which required developers of new rental housing to rent some of the units at restricted rents.¹³¹ Second, the court in *Building Industry Association of Central California v. City of Patterson* held that an affordable housing in-lieu fee imposed upon the developer failed to show a "reasonable relationship" between the amount of the fee and the "deleterious public impact of the development."¹³²

In response to these decisions, some jurisdictions have removed mandatory rent restrictions on inclusionary units in new rental housing developments from their inclusionary zoning regulations. Others have undertaken studies to justify a "reasonable relationship" between their inclusionary requirements and its impacts through an expansive reading of *Patterson*.¹³³ The City of San Francisco made revisions in 2010, largely in response to the *Palmer* decision,¹³⁴ favoring payment of fees over building units.¹³⁵ Prior to 2010, about 75% of developers

Mateo counties. This ensures that the inclusionary units built are within the financial reach of a greater number of resident households. S.F. PLANNING DEP'T, *supra* note 2, at L42.

129. S.F. BUDGET & LEGIS. ANALYST, *supra* note 2, at 46.

130. *See Palmer v. City of Los Angeles*, 175 Cal. App. 4th 1396 (2009); *Bldg. Indus. Ass'n of Cent. Cal. v. City of Patterson*, 171 Cal. App. 4th 886 (2009).

131. Also, the inclusion of an in-lieu fee in the ordinance did not save the inclusionary requirement because the fee was "inextricably intertwined" with the rent restriction mandate. *Palmer*, 175 Cal. App. 4th at 1412.

132. 171 Cal. App. 4th 886, 897 (2009).

133. The City of San Jose is still facing court challenges attacking the city's inclusionary ordinance and in-lieu fees based in part on an expansive reading of the court's ruling in *Patterson*. *See infra* note 134.

134. Assembly Bill 1229, state legislation co-sponsored by the Non-Profit Housing Association of Northern California and Housing California, was approved by the Legislature in September 2013 but was vetoed by the governor. Assemb. B. 1229, 2013-2014 Reg. Sess. (Cal. 2013). Called the "Palmer Fix" bill, Assembly Bill 1229 clarified that local inclusionary zoning ordinances do not conflict with the Costa Hawkins Rental Housing Act. *Id.* Until another court or the legislature acts, jurisdictions will not be able to mandate rent restrictions on inclusionary units in new rental housing developments. Existing inclusionary units are likely safe because they are covered by recorded agreements and statutes of limitations have run. THE CAL. AFFORDABLE HOUS. LAW PROJECT OF THE PUB. INTEREST LAW PROJECT, INCLUSIONARY ZONING AFTER PALMER & PATTERSON 32 (2010), available at <http://pilpca.org/wp-content/uploads/2010/10/Inclusionary-Zoning-After-Palmer-Patterson-7-11-10.pdf>.

135. Additional changes were made upon the adoption of the city's Housing Trust Fund, Proposition C, in 2012. *See infra* text accompanying notes 144-151. To increase support from development interests, under Proposition C, projects that are subject to the city's

constructed inclusionary housing and only 25% paid fees. Since the change in 2010, about 55% of developers have paid fees, reducing the development of much needed homes affordable to middle-income households.¹³⁶ The California Supreme Court has accepted review of a case in which the California Building Industry Association seeks to invalidate the City of San Jose's Inclusionary Ordinance based in part on the ruling in *Patterson*, the outcome of which should provide additional direction for municipalities regarding inclusionary practices.¹³⁷

2. Remedy Past Housing Losses

Prior to the state-imposed one-for-one replacement requirement in redevelopment areas, the SFRA demolished 14,207 housing units and replaced them with only 7498 units, resulting in a net loss of 6709 units. In 2000 and 2001, the California Legislature adopted Senate Bill 2113 and Senate Bill 211, respectively, to redress the loss of homes affordable to very low-, low-, and moderate-income households during this period. These bills allow the SFRA to incur indebtedness from otherwise expired project areas exclusively for very low-, low-, and moderate-income housing until all 6709 units have been replaced.¹³⁸ About 900 such units have been provided, meaning about 5800 housing units still need to be replaced.

inclusionary housing ordinance had their affordable housing obligations reduced by approximately 20%, and such obligations were capped and not subject to future adjustments.

136. Inclusionary units built by developers primarily serve low- to moderate-income ownership households earning between 55% and 90% of San Francisco's area median income (SFAMI), whereas projects built with affordable housing fees by the city primarily serve households earning below 50% SFAMI. In an area in which the market rate product is largely unaffordable for households earning between 55% and 120% SFAMI, inclusionary units built by developers fill a needed gap in housing. S.F. BUDGET & LEGIS. ANALYST, *supra* note 2, at v-vi, 50.

137. San Jose's ordinance was invalidated by the trial court for failure to demonstrate a nexus between the challenged ordinance and the "deleterious public impacts of new residential development." Cal. Bldg. Indus. Ass'n v. City of San Jose, 216 Cal. App. 4th 1373, 1376 (2013). The city and several intervening nonprofit entities successfully appealed this decision. The Court of Appeals reversed the judgment and remanded for further consideration, finding that because the ordinance at issue was not enacted for the purpose of mitigating housing loss *caused by* new residential development, but rather to "enhance the public welfare," whether the ordinance was "reasonably related to the deleterious impact of market-rate residential development in San Jose" is the wrong question to ask; instead, the ordinance should be reviewed as an exercise of the city's police power. *Id.* at 1384, 1387-88. The Supreme Court has granted review of this decision. Cal. Bldg. Indus. Ass'n v. City of San Jose, 307 P.3d 878 (Cal. 2013).

138. Prior to enactment of these bills, the ability to collect tax increment revenues from the Western Addition A-2 Project Area would have ended in 2009. Instead, tax increment may continue to flow as long as all subsequent tax increment funds generated in the project area (other than amounts needed to repay previous bond issues or required by law to be passed through to other taxing entities) are used solely to finance affordable housing and re-

When these bills were enacted, the abrupt demise of the redevelopment agencies in California (discussed below) could not be predicted. Whether Senate Bill 2113 ensures the city will continue to receive tax increment to fulfill the Bill's goals is unknown. As of August 2013, the city had received state approval for expenditures under Senate Bill 2113 for specified projects, although this does not guarantee future expenditures will be approved. The city has submitted a Request for a Final and Conclusive Determination from the Department of Finance that replacement housing under Senate Bill 2113 is an enforceable obligation, allowing it to continue until the city replaces the housing that was lost during the early urban renewal period, but as of February 7, 2014, no such determination has been made by the Department of Finance.¹³⁹

3. Demise of the SFRA and Birth of the Housing Trust Fund

In a major blow to affordable housing financing, all 400 redevelopment agencies in California were dissolved in February 2012 as part of the Governor's plan to redirect redevelopment revenues away from housing and toward the state's \$25 billion budget deficit.¹⁴⁰ Since 1990, over \$600 million of tax increment financing has helped develop more than 10,000 units of affordable housing for low- and moderate-income households throughout San Francisco.¹⁴¹ Tax increment revenues have comprised almost one-fourth of the total funding for affordable housing in San Francisco since 2002.

In a special legislative session in June 2011, the dissolution of all redevelopment agencies was approved, but cities were permitted to keep their agencies in place by committing to substantial "community remittances" to be paid to the state. A coalition in favor of redevelopment filed suit to fight the dissolution. The California Supreme Court upheld Assembly Bill 26, which eliminated redevelopment agencies, but struck down Assembly Bill 27, which would have allowed cities to make community remittance payments to the state to keep their redevelopment agencies in place.¹⁴² Under Assembly Bill 26, the city be-

lated administrative costs. *Senate Bill 2113*, OFF. COMMUNITY INV. & INFRASTRUCTURE, <http://www.sfdevelopment.org/index.aspx?page=187> (last visited Mar. 30, 2014).

139. Email from James Morales, Deputy Dir. of the Successor Agency to the SFRA, to Marcia Rosen (Aug. 7, 2013) (on file with authors). Interview with James Morales, Interim Gen. Counsel of the Successor Agency (Feb. 7, 2014). A bill currently pending in the California Legislature (Senate Bill 1404) would grant the authority under *Senate Bill 2113* to the Successor Agency. See *SB-1404 San Francisco Redevelopment: Successor Agencies: Housing*, CAL. LEGISLATIVE INFORMATION, http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=sb_1404&sess=CUR&house=B&author=leno_<leno> (last visited May 27, 2014).

140. Redevelopment agencies in California were dissolved by order of the California Supreme Court in *California Redevelopment Association v. Matosantos*, 267 P.3d 580 (Cal. 2011).

141. Every dollar the Agency has invested has resulted in over \$3.71 in additional investment from other sources, including federal tax credit equity, banks, foundations, and other public programs. MAYOR'S OFF. HOUSING & COMMUNITY DEV., *supra* note 95.

142. *Matosantos*, 267 P. 3d at 588.

came the successor to the Redevelopment Agency, and can continue to implement “enforceable obligations” which were in place prior to the suspension—including among other items, existing contracts, bonds, and leases.¹⁴³

Affordable housing advocates wasted no time in devising a new revenue plan. Led by CCHO and Mayor Lee, housing activists, members of the real estate industry, and small property owners quickly came together to negotiate and promote a plan for a thirty-year, \$1.5 billion Housing Trust Fund to (1) create, acquire, and rehabilitate affordable rental housing and promote affordable home ownership programs in the city; (2) lower and stabilize the impacts of affordable housing regulatory impositions on private residential projects; and (3) authorize the development of up to 30,000 affordable rental units in the city.¹⁴⁴ The measure was passed in November 2012 by 65% of city voters and “more than doubles what redevelopment gave to affordable housing developers over the past 20 years.”¹⁴⁵

The Housing Trust Fund will capture revenue from former Redevelopment Agency Tax Increment funds (called “boomerang” funds), a portion of the City Hotel Tax, plus \$13 million from an increase in business license fees. The Housing Trust Fund begins in the 2013-2014 fiscal year with a general fund revenue transfer of \$20 million and increases to \$50 million over time.¹⁴⁶

The first affordable housing project to be considered for funding from the Housing Trust Fund is a 110-unit senior housing apartment project that has been on hold for eight years due to lack of funding.¹⁴⁷ Over its lifetime, the Housing Trust Fund will:

- Develop more than 9000 units of permanently affordable housing for households earning 60% of AMI and below;¹⁴⁸
- Allocate \$15 million to the Mayor’s Office of Housing Down Payment Assistance program to help households earning between 80% and 120% of AMI to purchase homes;¹⁴⁹

143. In San Francisco, the city as successor to the SFRA authorized the Mayor’s Office of Housing (MOH) to manage the former SFRA’s affordable housing assets, exercise its housing functions, and continue its “enforceable obligations.” S.F., Cal., Board Resolution No. 11-12 (Jan. 2012). Three major redevelopment project areas constitute enforceable obligations that will continue under the Successor Agency: the Mission Bay, Hunters Point Shipyard, and Transbay redevelopment projects. *See City Administrator*, OFF. CITY ADMIN., <http://sfgsa.org> (last visited Mar. 31, 2014). SB 2113 is under review as an enforceable obligation. *See supra* text accompanying note 138.

144. Housing Trust Fund Project, *San Francisco Announces First Investment from New Housing Trust Fund*, CENTER FOR COMMUNITY CHANGE, <http://housingtrustfundproject.org/san-francisco-announces-first-investment-from-new-housing-trust-fund> (last visited Mar. 30, 2013).

145. Interview with Olson Lee, *supra* note 71.

146. Housing Trust Fund Project, *supra* note 144.

147. The project, 55 Laguna Senior Housing Project, is a joint venture of Mercy Housing California and Openhouse, which will request \$6.1 million. *Id.*

148. *Id.*

- Allocate \$15 million to a Housing Stabilization Program to help current occupants maintain their housing, provide foreclosure relief, and “make their homes safer, more accessible, more energy efficient, and more sustainable”;¹⁵⁰ and
- Allocate up to 10% of the Fund’s appropriations each year to the Complete Neighborhoods Infrastructure Grant program “to accelerate the build-out of the public realm infrastructure needed to support increased residential density in the city’s neighborhoods.”¹⁵¹

F. *2013 to the Present: Re-Envisioning Public Housing, Responding to Decreased Affordability and Rising Displacement, Reinvention of the Tenants’ Movement*

Advocates did not have long to celebrate the passage of the Housing Trust Fund. The second tech boom, which brought 1800 tech companies with 42,000 workers to San Francisco, increased the competition for housing, causing rents and home sale prices to skyrocket.¹⁵² Evictions increased, raising concerns over the displacement of many long-time residents due to buyouts¹⁵³ and Ellis Act evictions, as well as the impact of condominium conversions and tenancy in common (TIC) ownership on the erosion of the city’s rent controlled units. “Techies,” symbolized by those who commuted to Silicon Valley by private, employer-supported luxury buses, collectively known as “Google Buses,” became the scourge of activists protesting the lack of affordability and the chang-

149. MAYOR’S OFF. HOUSING ET AL., HOUSING FOR SAN FRANCISCO RESIDENTS (2012), available at <http://sf-moh.org/modules/showdocument.aspx?documentid=5808>.

150. S.F., CAL., CHARTER § 16.110(d)(3).

151. *Id.* § 16.110(e).

152. Edwin Lee, Mayor Lee’s 2013 State of the City Address (Jan. 28, 2013), available at <http://www.sfmayor.org/index.aspx?page=921>. In November 2013, Forbes, relying on Trulia data, reported that San Francisco not only had the steepest year-over-year rent increase (10.1%), but also had the highest median rent (\$3250/month) for two-bedroom units in the country. *San Francisco Rents Skyrocket, Up 10.1% From Last Year*, FORBES (Nov. 5, 2013, 12:59 PM), <http://www.forbes.com/sites/trulia/2013/11/05/trulia-rent-monitor-oct-2013>. According to Zillow, by the end of 2013, the median sales price was \$883,600, an astonishing 16.3% increase in just one year. *San Francisco Home Prices and Values*, ZILLOW, <http://www.zillow.com/san-francisco-ca/home-values/on> (last visited Mar. 31, 2014); see also Erica Goode & Claire C. Miller, *Backlash by the Bay: Tech Riches Alter a City*, N.Y. TIMES (Nov. 24, 2013), http://www.nytimes.com/2013/11/25/us/backlash-by-the-bay-tech-riches-alter-a-city.html?_r=0; David Talbot, *How Much Tech Can One City Take?*, S.F. MAG. (Oct. 2, 2012), <http://www.modernluxury.com/san-francisco/story/how-much-tech-can-one-city-take>.

153. “Buyout” refers to the practice of landlords paying tenants who are not in breach of their lease to vacate the rental unit. Because there is no way to accurately track these buyouts, evictions statistics do not reflect all displaced tenants nor all units taken out of the rent controlled housing stock. Supervisor Campos is preparing legislation to regulate these transactions to make them more transparent. John Coté & Marisa Lagos, *S.F. Politicians: Restrict Ellis Act Evictions*, SFGATE (Nov. 14, 2013, 10:13 AM), <http://www.sfgate.com/bayarea/article/S-F-politicians-Restrict-Ellis-Act-evictions-4981974.php>.

es that were wrecking San Francisco neighborhoods. Although the federal and state governments recognized this historic affordability crisis, no new federal or state affordable housing funding was made available.¹⁵⁴ Adding to the troubles, the San Francisco Housing Authority, responsible for over 6000 units of public housing and about 7000 housing vouchers serving extremely low-income families, people with disabilities, and seniors, was near collapse and much of its housing stock was badly deteriorated.

The community and the city began responding to these crises by:

- Replacing the Housing Authority Commissioners, convening a “Re-envisioning Public Housing” planning process, and developing a radical new plan for public housing that would involve nonprofit housing developers and engage tenant advocates;
- Imposing a ten-year moratorium on condominium conversions and exploring regulation of TIC ownership;
- Advocating for repeal or amendment of the state Ellis Act, which enables landlords to evict tenants if they want to leave the rental business, and for greater compensation for displaced tenants;
- Devising a range of affordable housing agendas, proposed new legislation, and potential ballot measures; and
- Ramping up tenant and community organizing to tackle these challenges.

1. Re-Envisioning Public Housing

In December 2012, HUD gave the San Francisco Housing Authority (SFHA) a failing score, its Inspector General issued a scathing audit, and HUD put it on the “troubled agency” list, making it ineligible to apply for competitive grants and risking receivership if drastic improvement were not made. At the same time, its Executive Director was under attack for his poor leadership, facing lawsuits for alleged discrimination and retaliation against SFHA employees, and being blamed for terrible living conditions and unresponsive management by tenants.

In his 2013 State of the City Address, Mayor Lee pledged to tackle the city’s public housing problems by appointing the Director of the Mayor’s Office of Housing and the City Administrator to partner with HUD and Housing

154. See CAL. HOUS. P’SHIP CORP., *HOW CALIFORNIA’S HOUSING MARKET IS FAILING TO MEET THE NEEDS OF LOW-INCOME FAMILIES: RECOMMENDATIONS TO THE LEADERS OF THE STATE OF CALIFORNIA* (2014), available at <http://www.chpc.net/dnld/CHPCHousingNeedReport020814FINAL.pdf>; JOINT CTR. FOR HOUS. STUDIES HARVARD UNIVERSITY, *THE STATE OF THE NATION’S HOUSING 2013* (2013), available at <http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/son2013.pdf>; NAT’L LOW INCOME HOUS. COAL., *OUT OF REACH 2013* (2013), available at http://nlihc.org/sites/default/files/oor/2013_OOR.pdf; U.S. DEP’T OF HOUS. & URBAN DEV., *WORST CASE HOUSING NEEDS 2011: REPORT TO CONGRESS* (2013), available at http://www.huduser.org/portal/publications/affhsg/wc_HsgNeeds11_report.html.

Authority staff. He also proposed to create a task force of engaged residents, community leaders, nonprofit housing partners, and private sector development experts to develop recommendations to re-envision public housing by expanding on the model of HOPE SF.¹⁵⁵ The task force issued a report in September 2013, recommending an innovative public-private-nonprofit approach to refinancing, rehabilitating and managing public housing, using new tools provided by the federal Rental Assistance Demonstration program. In early January 2014, HUD approved SFHA's proposed new approach. Currently, nonprofit developers are preparing responses to a Request for Qualifications to become developers and owners of almost all of SFHA's portfolio.¹⁵⁶

2. Condominium Conversions and TICs Yet Again

Recent attacks to the Condominium Conversion Ordinance have come from TIC owners who can more easily sell, refinance, and demand a higher price on the market if units are sold as condominiums. Responding to this pressure, in late 2012, Supervisors Scott Wiener and Mark Farrell introduced an ordinance that would have allowed over 2000 rent-controlled units to automatically become condominiums, bypassing the annual lottery, by paying a per unit fee. Tenants, community organizations, affordable housing advocates, and labor organizations mobilized in opposition, fearing the proposed ordinance would lead to the removal of conversion limits and spur a new wave of evictions and buyouts. Advocates negotiated for significant changes, compromising some near-term conversions in return for a ten-year moratorium on additional conversions.¹⁵⁷ The amendment that was approved by the Board of Supervisors in June 2013 allowed about 2200 TIC units for which conversion was sought but not received in 2012 or 2013 to pay up to \$20,000 per unit toward an affordable housing fund to convert, with conversions to occur over a seven-year period. The legislation prevents the conversion lottery from resuming until 2024, at which time conversions will be limited to buildings with four-units or fewer, with limited exceptions.¹⁵⁸

155. See discussion *supra* Part I.D.1.

156. NAOMI KELLY & OLSON LEE, SFHA RE-ENVISIONING (2013), available at <http://www.sfgsa.org/modules/showdocument.aspx?documentid=10842>. For information about the implementation process and the Request for Qualifications, see S.F. HOUS. AUTH., RAD IMPLEMENTATION: SF HOUSING AUTHORITY COMMISSION (2014), available at http://www.sfha.org/CHAP_Presentation_011514.pdf.

157. For a fascinating description of this campaign, see Fernando Martí and Sara Shortt, *Renters Rising*, SHELTERFORCE, http://www.shelterforce.org/article/3263/renters_rising (last visited Mar. 31, 2014).

158. S.F., Cal., Ordinance 117-13 (June 11, 2013); Neal J. Riley, *Condo Conversion Law OK'd by S.F. Board*, SFGATE (June 11, 2013, 8:23 PM), <http://www.sfgate.com/bayarea/article/Condo-conversion-law-OKd-by-S-F-board-4594985.php>.

In January 2014, local legislation was also proposed¹⁵⁹ to regulate the conversion of rental units to fractional TIC ownership, driven by concerns over the contribution of TICs to evictions and buyouts and the removal of rent controlled units from the rental pool. Because TICs are unregulated, it is unknown how many buildings and units have been converted from rental to ownership. The legislation proposes to amend the Planning Code to create a definition of “fractional ownership” of buildings with two or more dwelling units (TICs) and require Planning Department approval of conversions from single to fractionalized ownership. The measure is now pending before the Land Use and Economic Development Committee of the Board of Supervisors.

3. Stemming the Tide of Ellis Act Evictions

The Ellis Act, California Government Code Section 7060, was enacted in 1985, to reverse a 1984 California Supreme Court case, *Nash v. City of Santa Monica*, which held that wanting to go out of the rental housing business was not just cause for the landlord to evict his tenants and demolish the rental housing building. The Ellis Act allows evictions when landlords elect to take their rental properties off the market.¹⁶⁰ Between March 1, 1997, and February 28, 2013, 2893 tenants were evicted under the Ellis Act. This comprised about 10% of all evictions (28,571 tenants) during this period.¹⁶¹

Of concern is the recent increase in Ellis Act evictions.¹⁶² Ellis Act evictions often go up during periods when home sales increase. Such was the case during the dot-com boom that ended in 2000, the housing bubble that peaked in 2005, and presently with the current housing market recovery.¹⁶³ In response,

159. The legislation was introduced by Supervisors Mar, Avalos, Campos, and Kim.

160. *Nash v. City of Santa Monica*, 37 Cal. 3d 97 (1984). If the landlord re-rents units within five years of evicting the tenants, the landlord must first offer the units to the evicted tenants at the same rent the tenants paid prior to being evicted. Tenants that have resided in a unit for at least one year are entitled to a relocation payment of between \$5210.91 per tenant, with a maximum payment of \$15,632.69 per unit. In addition, each elderly or disabled tenant and each household with one or more minor children is entitled to an additional payment of \$3473.93. These payments are adjusted for inflation on March 1st of each year. Memorandum from S.F. Budget & Legislative Analyst to Supervisor Campos, Analysis of Tenant Displacement in San Francisco (Oct. 30, 2013), available at <http://www.sfbos.org/Modules/ShowDocument.aspx?documentid=47040>.

161. *Id.* Recent data demonstrates an accelerating trend with a doubling of units withdrawn under the Ellis Act from 2012 to 2013 and about 300 Ellis Act evictions anticipated in 2014.

162. In San Francisco, Ellis Act evictions increased from forty-three in 2010 to 116 in 2013. Matthew Green, *Meet the Ellis Act, the Law Driving Many San Francisco Evictions*, KQED (Nov. 8, 2013), <http://blogs.kqed.org/newsfix/2013/11/07/117540/Priced-Out-Ellis-Act-San-Francisco-eviction>.

163. *See id.* Between 2009 and 2013, home sale prices increased about 22% (from \$735,828 to \$897,338); rental vacancy rates plummeted from 6.2% in 2009 to 2.8% in 2012; and evicted renters in 2013 faced median market rents of \$3414 per month—an 8.2% in-

tenant advocates in San Francisco and across the state are pushing for reform of the Ellis Act. The Mayor of San Francisco approved a resolution on January 17, 2014, supporting amendments to state law to return the Ellis Act to local control.¹⁶⁴ Among concerns to be addressed include preventing abuse by real estate speculators; reducing the loss of rent controlled units from the market, each unit of which then needs to be replaced through local subsidy or new development; and granting municipalities the ability to address the negative consequences of the evictions, including relocation assistance, buy-outs and tenant harassment. On February 21, 2014, Assemblyman Tom Ammiano introduced AB 2405, which would allow local jurisdictions to enact a moratorium on Ellis Act evictions and would shield no-fault evictions from tenants' rental histories or credit checks,¹⁶⁵ and on February 24, Senator Mark Leno introduced SB 1439, which authorizes the city to prohibit new property owners from invoking the Ellis Act to evict tenants for five years after the acquisition of property, ensures that landlords can only activate their Ellis Act rights once, and creates penalties for those who violate the law. "Speculators have been buying up properties in San Francisco with no intention to become landlords but to instead . . . evict longtime residents just to turn a profit," Leno said.¹⁶⁶

In addition, San Francisco adopted legislation amending the Planning Code to impose stricter standards for residential demolition, conversion, and merger and to prohibit such actions where certain evictions (namely Ellis Act evictions) have occurred. The city also approved an ordinance amending the Administrative and Planning Codes to provide a preference for persons evicted under the Ellis Act to gain access to housing or assistance under the city's affordable housing programs. On February 4, 2014, Supervisor Campos introduced legislation to require landlords who invoke the Ellis Act to pay evicted tenants a relocation fee equal to two years of the difference between the tenants' rent at the time of the eviction and the market rent for that unit. The legislation should, in effect, compensate the tenant in an amount closer to the actual

crease over median rents in 2012 (\$3156). S.F. BUDGET & LEGISLATIVE ANALYST, *supra* note 160.

164. The resolution was introduced by San Francisco Mayor Ed Lee, along with Supervisors David Chiu, David Campos, and Malia Cohen, and adopted by the Board of Supervisors on January 7, 2014.

165. See Assemb. B. 2405, 2013-2014 Reg. Sess. (Cal. 2013); see also John Coté, 2 *S.F. Lawmakers Push Bills to Slow Ellis Act Evictions*, SFGATE (Feb. 24, 2014), <http://www.sfgate.com/bayarea/article/2-S-F-lawmakers-push-bills-to-slow-Ellis-Act-5261383.php>.

166. Coté, *supra* note 165; see also Press Release, Mayor Ed Lee, Mayor Lee & Senator Leno Announce Legislation to Amend State Ellis Act Law to Protect Long-Time Tenants (Feb. 24, 2014), available at <http://www.sfmayor.org/index.aspx?page=846&recordid=523&returnURL=%2Findex.aspx%3Fpage%3D1>.

relocation costs and create a disincentive to speculators, but has a primary goal of keeping evicted tenants in the city.¹⁶⁷

4. New Housing Plans and Agendas

In response to the current housing crisis in San Francisco, a range of solutions are being proposed by community activists, including an anti-speculation tax, a moratorium on no-fault evictions, a new rent control enforcement department, relocation assistance for all no-fault evictions, and an “excessive rents” tax.¹⁶⁸ In addition to regulatory and legislative action, new housing agendas are also being promoted by various groups, focusing, for example, on protecting existing rent controlled stock, reinvestment in public housing, increasing the amount of housing affordable to middle-income households and below, and equitable transit and infrastructure improvements.

Mayor Lee laid out an ambitious challenge in his 2014 State of the City Address: to complete at least 30,000 new and rehabilitated homes by 2020, with one-third or more to be permanently affordable to low and moderate income families. His seven-point plan calls for:

- Protecting residents from eviction and displacement;
- Stabilizing and protecting at-risk rent-controlled units;
- Revitalizing and rebuilding public housing;
- Doubling the down payment loan programs and creating more middle-income homeownership opportunities;
- Building more affordable housing and increasing its rate of development;
- Continuing to build market rate, and especially rental, units; and
- Making it easier to construct new housing.¹⁶⁹

167. Marisa Lagos, *Campos Proposal Aims to Help Evicted Stay in S.F.*, SFGATE (Feb. 3, 2014), <http://www.sfgate.com/bayarea/article/Campos-proposal-aims-to-help-evicted-stay-in-S-F-5199084.php>.

168. Rebecca Bowe, *Staying Power: San Francisco Tenants' Movement Rises Up and Sets the Agenda*, S.F. BAY GUARDIAN (Feb. 11, 2014, 4:47 PM), <http://www.sfbg.com/2014/02/11/staying-power>.

169. Edwin M. Lee, Mayor of S.F., State of the City Address 2014 (Jan. 17, 2014), available at <http://sfmayor.org/index.aspx?page=983>. The Mayor had previously issued an Executive Order mandating the formation of yet another working group led by the Planning Director and the Director of the Building Inspection Department to make recommendations to him on ways to accomplish this seventh goal, and on February 6, 2014, the mayor issued a press release vowing to implement those recommendations, including prioritizing housing approvals based on the amount of affordable housing the projects propose, better coordination amongst departments, simultaneous, rather than chronological processing of certain permits, and other measures designed for better efficiency. Press Release, Mayor Ed Lee, Mayor Lee Announces Acceleration of Housing Production & Protection of Existing Housing Stock (Feb. 6, 2014), available at <http://sfmayor.org/index.aspx?recordid=515&page=846>; see also Tom C. Hui & John S. Rahaim, Memorandum Response to Executive Directive 13-01: Housing Production & Preservation of Rental Stock (Feb. 3, 2014), available at <http://sfmayor.org/modules/showdocument.aspx?documentid=376>.

A couple of organizations have responded to the Mayor's plan with ideas of their own. Warning that "the devil is in the details," CCHO responded with a six-point plan, focusing on how to achieve some of the goals of the Mayor's plan, including finding dedicated resources to rebuild public housing, locating public sites for affordable housing development, reclaiming rent controlled buildings from speculators, building mixed-income communities, equalizing transit and neighborhood services, and tracking residential development and the affordable housing mix.¹⁷⁰ SPUR, a moderate urbanism organization, also offered its prescription for addressing the housing crisis, combining many components of the Mayor's and CCHO's plans.¹⁷¹

5. Organizing Tenants and Community Organizations

The vibrancy of the housing and tenants' movement has been growing since the Housing Trust Fund campaign, and the severity of the affordability crisis is motivating many others to participate in organizing and advocacy—both at the state and local levels. More than six hundred tenants from diverse neighborhoods¹⁷² participated in a citywide tenants' convention on February 6, 2014; a movement which had been gathering steam since the victory on the condo conversion ordinance in June 2013. The convention followed a series of smaller neighborhood gatherings to solicit ideas and generate proposals for a November 2014 ballot initiative and for other legislation.¹⁷³ "This is the beginning of a movement today. . . . We are shaking things up in our city," noted a member of a participating organization.¹⁷⁴

Tenant organizing is also taking place at the state level. On February 18, 2014, hundreds of tenants and allies, led by Tenants Together, a statewide tenants' rights group headquartered in San Francisco, organized the California Renters' Day of Action march and rally. Busloads of renters descended on the Capitol demanding:

- Reform of the Ellis Act to protect against evictions;
- Passage of SB 391, the California Jobs & Housing Act, to create a permanent source of funding for affordable housing; and

170. *CCHO's Housing Plan for 2014*, COUNCIL COMMUNITY HOUSING ORGANIZATIONS (Jan. 27, 2014), <http://www.sfccho.org/cchos-housing-plan-for-2014>.

171. *See How to Make S.F. Affordable Again*, SPUR (Feb. 11, 2014), <http://www.spur.org/publications/article/2014-02-11/how-make-san-francisco-affordable-again>.

172. The organizers were the founding members of the Anti Displacement Coalition.

173. *See supra* Part I.F.5 "New Housing Plans and Agendas." Some of these ideas may be proposed as legislation; others may end up in a ballot measure. *See also* Bowe, *supra* note 168.

174. *Id.* (quoting Gen Fujioka of the Chinatown Community Development Center, one of the organizations involved).

- Restoration of the renters' tax credit to offset the rent burden.¹⁷⁵

San Francisco is once again poised for significant advances in housing policy.

CONCLUSION

The interaction of dedicated community advocacy, development, and availability of substantial funding sources, and housing programs that are responsive to community needs and market changes have resulted in the successful evolution of affordable housing programs in San Francisco. It is evident that San Francisco will continue to need to be inventive and its housing advocates strong to meet the challenges ahead. San Francisco must continue to evolve its policy to fill in the gaps in its housing needs, find creative and substantial sources of funding to develop and maintain affordable housing, and develop additional strategies to ensure continued diversity and inclusive communities. By also ensuring that the needs of local residents are heard, San Francisco is demonstrating that the early urban renewal and displacement days are gone and have been replaced with a vision of creating the housing, jobs, and services required to maintain and rebuild vibrant, diverse, and thriving communities within the City.

175. See *Renters' Day of Action*, TENANTS TOGETHER, <http://www.tenantstogether.org/article.php?id=2982> (last visited Mar. 31, 2014).

TABLE 1: City, State and Federal Financing of San Francisco's Affordable Housing Projects: FY 2002-03 to FY 2010-11¹⁷⁶

Source of Financing	Total Financing FY 2002-03 to FY 2010-11	Percent of Total
Tax Increment Revenues and Bond Proceeds	\$460,130,116	24%
City Affordable Housing Fund	\$95,961,640	5%
Developer Contributions and Housing Income	\$73,371,353	4%
City Hotel Tax or Contributions in Lieu of Tax	\$47,623,208	2%
City General Fund	\$30,000,000	2%
Proposition A Affordable Housing Bonds	\$18,053,081	1%
City and Local Sources	\$725,139,398	38%
State Propositions 46 and 1C Affordable Housing Bonds	\$286,129,994	15%
State Tax Credits	\$57,654,092	3%
California Dept. of Housing and Community Development	\$8,190,000	0%
California Housing Finance Agency	\$4,100,000	0%
State Sources	\$356,074,086	38%
Federal Tax Credits	\$634,609,090	33%
Federal CDBG, HOME and HOPWA Grants	\$194,768,626	10%
Federal sources	\$829,377,716	43%
TOTAL	\$1,910,591,200	100%

176. S.F. BUDGET & LEGIS. ANALYST, *supra* note 2.