

NOTES

Building Affordability: The Promises, Challenges, and Feasibility of Social Housing Models

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INTRODUCTION

With nearly half of American households burdened by the cost of rent,¹ housing affordability is an increasingly salient issue in the United States. Meanwhile, analysts have referred to current government policy as “an expensive band-aid over a gaping hole.”² This has driven a search for innovative models. One such model, social housing, has generated “excitement in US housing policy circles,”³ with policymakers claiming that it “successfully ended housing shortages in jurisdictions around the world.”⁴

However, there are two main challenges in assessing whether social housing is the right model for the United States. Firstly, what exactly constitutes “social housing” is unclear. There are a variety of approaches, with varying degrees of state, nonprofit, and market involvement. Secondly, for social housing to work, it needs to be financially feasible. This Note addresses these challenges in turn. To begin, Part I explores both domestic and non-domestic social housing programs to provide a clearer picture of what exactly social housing *is*—in theory and in practice. Subsequently, Part II presents various tools that policymakers can implement to close the model’s financing gap, particularly in the American context. Finally, Part III analyzes legal strategies that policymakers can use to address a key challenge in the provision of social housing—the cost of land.

I. DEFINING SOCIAL HOUSING

A. *International Survey*

1. Vienna, Austria

In the contemporary conversation, social housing has become almost synonymous with Vienna, with *The New York Times* describing the city as a “renters’ utopia.”⁵ Housing in Vienna generally falls under four categories: owner-occupied units, *Gemeindewohnungen* (municipally owned units), *Genossenschaftswohnungen* (also known as limited-profit housing associations (LPHAs)), and private market rental units.⁶

1. See generally Drew Desilver, *A Look at the State of Affordable Housing in the U.S.*, PEW RSCH. CTR. (Oct. 25, 2024), <https://www.pewresearch.org/short-reads/2024/10/25/a-look-at-the-state-of-affordable-housing-in-the-us/> [<https://perma.cc/D2PU-ZX6A>].

2. SAOIRSE GOWAN & RYAN COOPER, PEOPLE’S POL’Y. PROJECT, SOCIAL HOUSING IN THE UNITED STATES, (Apr. 2018), <https://www.peoplespolicyproject.org/wp-content/uploads/2018/04/SocialHousing.pdf> [<https://perma.cc/4P8Y-76GW>].

3. Alexander Von Hoffman, *Can Public Housing Play a Role in a New American Social Housing System?*, JOINT CTR. FOR HOUS. STUD. AT HARV. UNIV. (Oct. 24, 2024) <https://www.jchs.harvard.edu/blog/can-public-housing-play-role-new-american-social-housing-system>.

4. Alex Lee, *What We Can Learn From Social Housing in Singapore and Vienna*, COMMON DREAMS (Oct. 5, 2024), <https://www.commondreams.org/opinion/social-housing> [<https://perma.cc/VN5Y-R34L>].

5. Francesca Mari, *Imagine a Renters’ Utopia. It Might Look Like Vienna.*, N.Y. TIMES MAG., (May 23, 2023), <https://www.nytimes.com/2023/05/23/magazine/vienna-social-housing.html> [<https://perma.cc/C7ET-T2WY>].

6. See Tobias Peter, *Does Social Housing Actually Work? Setting the Record Straight on the Vienna Model 4*, (Am. Enter. Inst. Hous. Ctr., Working Paper, Aug. 2023), <https://www.aei.org/wp-content/uploads/2023/09/Setting-the-record-straight-on-the-Vienna-Social-Housing-Model-final.pdf?x85095> [<https://perma.cc/56AQ-W9AN>].

Approximately 31% of tenants in Vienna live in municipally-owned units, which are allocated through a waitlist.⁷ Rent may only be raised on these units in response to inflation.⁸ This leads to strikingly low rental costs; the *New York Times* article mentioned above profiled a family that spends 3.6% of their income on rent,⁹ and an article in *The Guardian* gave an example of a student who spends €596 per month on a two-bedroom downtown apartment.¹⁰

LPHAs, meanwhile, can be owned by a number of different organizations, including, for example, private companies, trade unions, or religious groups.¹¹ A similar system was very nearly set up in the United States, with an earlier draft of the Public Housing Act of 1937 containing a provision that allowed nonprofits and labor unions to serve as housing authorities.¹² In Vienna, one third of LPHA units are allocated by the city, while the rest are allocated at the discretion of the association.¹³ When compared with municipally-owned units, rents are slightly higher in LPHA-owned properties, as they are required to include maintenance costs.¹⁴ Because of this, however, LPHA-owned units are generally of higher quality.¹⁵

LPHAs are exempt from corporate income tax, but are also obligated to reinvest their profits into building new housing or refurbishing existing units.¹⁶ Because of this obligation, LPHAs build a lot of new units and are able to do so economically, as their share of the city's rental market—26% of renters live in LPHA units—gives them enhanced bargaining power with contractors and suppliers.¹⁷ This could be why some commentators say that Vienna is building housing “at a rate comparable to an American Sunbelt boomtown.”¹⁸

Vienna's housing system is characterized by significant state intervention, with an aim of promoting an “egalitarian ‘housing for all’ approach.”¹⁹ Commentators often note the city's nickname of “Red Vienna,” which was coined during the 1920s

7. *Id.* at 4.

8. *Id.*

9. Mari, *supra* note 5.

10. Philip Oltermann, *The Social Housing Secret: How Vienna Became the World's Most Livable City*, THE GUARDIAN (Jan 10 2024) <https://www.theguardian.com/lifeandstyle/2024/jan/10/the-social-housing-secret-how-vienna-became-the-worlds-most-livable-city> [<https://perma.cc/CLX3-5H5E>].

11. Susanne Marquardt & Daniel Glaser, *How Much State and How Much Market? Comparing Social Housing in Berlin and Vienna*, 32 GERMAN POL. 361, 366 (2023).

12. Alexander Von Hoffman, *Problems and Progress: Public Housing in an American Social Housing System*, JOINT CTR. FOR HOUS. STUD. AT HARV. UNIV. 6 (Oct. 2024), https://www.jchs.harvard.edu/sites/default/files/research/files/harvard_jchs_public_housing_von_hoffman_2024.pdf [<https://perma.cc/6X2D-TC2E>].

13. Peter, *supra* note 6, at 3.

14. *Id.* at 4.

15. Marquardt & Glaser, *supra* note 11, at 366.

16. *Id.*

17. *Id.*

18. Christian Britschgi, *The Hidden Failures of Social Housing in ‘Red Vienna’*, REASON MAG., (Sep. 21, 2023, 3:35 PM), <https://reason.com/2023/09/21/the-hidden-failures-of-social-housing-in-red-vienna/> [<https://perma.cc/G5HJ-GHNV>].

19. Michael Friesenecker & Yuri Kazepov, *Housing Vienna: The Socio-Spatial Effects of Inclusionary and Exclusionary Mechanisms of Housing Provision*, SOC. INCLUSION, 77–90 (2021), [<https://doi.org/10.17645/si.v9i2.3837>].

when the Social Democratic Party of Austria dominated the city's politics.²⁰ However, some researchers have noted that despite the "comparably great stability" of the city's housing policy, the state has gradually implemented market-friendly reforms since the 1980s.²¹ In the mid-1990s, the city stopped constructing additional municipally-owned units in favor of LPHAs.²² Furthermore, between 1984 and 1994, the government liberalized rent controls for those living in private-market units.²³ However, proposals to privatize the city's social housing stock have failed, which some attribute to "continued cross-party and cross-regional acceptance of the economic, employment and family welfare benefits of subsidized housing."²⁴

2. The Netherlands

In contrast with other systems, social housing in the Netherlands receives no direct support from the government.²⁵ Instead, the nation's 2.3 million units of social housing (around 30% of total housing stock) are owned by nonprofit housing associations.²⁶ These associations are similar to Real Estate Investment Trusts (REIT) in the United States in that they do not develop properties for resale.²⁷ However, unlike REITs, housing associations in the Netherlands are required by law to be nonprofit organizations.²⁸ In some cities (such as Groningen and Rotterdam), more than 50% of units are rented at below-market rates,²⁹ and 60% of new construction in the country is conducted by nonprofit organizations.³⁰

The first housing association in the Netherlands was founded in 1852, with state intervention peaking in the postwar period.³¹ Over time, however, housing associations became more independent.³² Prior to the 1990s, associations received direct aid from the government, including construction loans and subsidies through rental assistance.³³ However, politicians in the Netherlands became increasingly influenced by "neoliberal" ideas, taking inspiration from figures such as Ronald Reagan in the

20. See generally Justin Kadi, *Recommodifying Housing in Formerly "Red" Vienna?*, 32 HOUS., THEORY AND SOC'Y 247 (2015), [<http://dx.doi.org/10.1080/14036096.2015.1024885>].

21. *Id.* at 253.

22. *Id.* at 253.

23. *Id.* at 255.

24. *Id.* at 251.

25. Hanneke Van Deursen, *The People's Housing: Woningcorporaties and the Dutch Social Housing System*, JOINT CTR. FOR HOUS. STUD. AT HARV. UNIV. 4 (June 2023), [https://www.jchs.harvard.edu/sites/default/files/research/files/harvard_jchs_the_peoples_housing_history_van_deursen_2023.pdf] [<https://perma.cc/YZ4S-P7AZ>].

26. *Id.*

27. See *REIT*, CORN. LEGAL INFO. INST. (July 2021), [<https://www.law.cornell.edu/wex/reit>] [<https://perma.cc/8HJJ-2GAT>].

28. Van Deursen, *supra* note 25, at 9.

29. *Id.* at 25–27.

30. AEDES, *DUTCH SOCIAL HOUSING IN A NUTSHELL* (July 2013), [<https://www.iut.nu/wp-content/uploads/2017/03/Dutch-Soical-Housing-in-a-Nutshell.pdf>] [<https://perma.cc/6F4M-8PWX>].

31. Van Deursen, *supra* note 25, at 6, 13.

32. *Id.* at 16.

33. *Id.* at 28.

United States and Margaret Thatcher in the United Kingdom.³⁴ This ideological turn culminated in the 1995 Balancing Act, where any outstanding loan obligations of housing associations to the government were cancelled in exchange for the remaining subsidy payments.³⁵ The Act cut off the last direct source of state support, but it also meant that the organizations owned their property “free and clear” and were fully independent from the government.³⁶

Although housing associations do not receive any direct support, there are still several indirect supports that the government uses to encourage social housing.³⁷ For example, the nonprofit status of housing associations allows them to pay fewer taxes.³⁸ They can also buy or lease land from the government at cheaper rates.³⁹ Housing associations also receive payments from rental assistance vouchers, although private landlords can also receive these payments.⁴⁰ Most importantly, housing associations work because they inherited assets built up prior to the termination of direct government support.⁴¹

Organizations in the Netherlands can draw on the Guarantee Fund for Social Housing (Waarborgfonds Sociale Woningbouw or WSW).⁴² With seed funding from the government, housing associations set up the WSW during the “neoliberal turn” of the 1980s.⁴³ With a AAA credit rating from Standard & Poor’s and Moody’s, the WSW enables associations to draw on international public capital markets for investment.⁴⁴ Most construction loans have an extended amortization period of 40–50 years and low interest rates.⁴⁵ They also prioritize among assets for repossession in the event of default.⁴⁶ Organizations are first expected to repay using their real estate portfolio.⁴⁷ If this is insufficient, associations can use the WSW’s security reserve, which is funded by payments from the association.⁴⁸ In 2023, the reserve totaled €584 million with an additional securities portfolio of €566 million.⁴⁹

34. *Id.* 16.

35. *Id.* at 18.

36. *Id.*

37. *Id.* at 20.

38. *Id.*

39. *Id.*

40. *Id.*

41. Kevin DeGood et al., *A New Vision for Social Housing in America*, CTR. FOR AM. PROGRESS 10 (Sep. 19, 2024), [https://www.americanprogress.org/article/a-new-vision-for-social-housing-in-america/\[https://perma.cc/D582-GBLP\]](https://www.americanprogress.org/article/a-new-vision-for-social-housing-in-america/[https://perma.cc/D582-GBLP]).

42. Van Deursen, *supra* note 25, at 20.

43. *Id.* at 15.

44. AEDES, *supra* note 30, at 9.

45. DeGood et al., *supra* note 41, at 10.

46. Van Deursen, *supra* note 25, at 15.

47. *Id.*

48. *Id.*

49. *Credit Opinion: Waarborgfonds Sociale Woningbouw (Netherlands)*, MOODY’S RATINGS (Jul. 24, 2024), https://zigbukcproduction.blob.core.windows.net/wsw-ksp-web-hupo-portal-p-pub/Credit_Opinion-Waarborgfonds-Sociale-24Jul2024-PBC_1407440.pdf [https://perma.cc/WR8D-C3K9].

3. Singapore

Singapore is distinct from most countries regarding the scale of state intervention in its housing system, with 75% of the housing stock classified as “public housing.”⁵⁰ The Housing and Development Board (HDB) manages public or social housing in Singapore.⁵¹ The HDB was founded in 1960, during the period after Singapore had been granted self-government but before its full independence.⁵² When the public housing system began, the majority of the population lived in slum-like conditions, such as wooden houses with roofs made of dried palm leaves.⁵³ Since then it has become “one of the few success stories in universal provision of housing around the world.”⁵⁴

Singapore’s muscular system of eminent domain laid the groundwork for the HDB’s success. The Land Acquisition Act, passed in 1966, allowed the government to acquire land “for any public purpose,” without the ability to appeal to the courts.⁵⁵ At the time, land ownership was highly concentrated, giving the government broad support for “a land reform policy in an urban setting.”⁵⁶ Landowners were compensated for the loss of their property at an amount that was initially set at the value of the property at the most recent tax assessment.⁵⁷ However, the economy of Singapore was growing considerably at the time, and the Prime Minister “saw no reason why private landowners should profit from an increase in land value brought about by economic development and the infrastructure paid for with public funds.”⁵⁸ Therefore, the law was changed to fix compensation at the property’s value in 1973, preventing property owners from receiving profits from economic development after that date. In 1987, Parliament began shifting the valuation date forward, and from 2007 onward, landowners are compensated at the current market value of the property.⁵⁹ Today, roughly 90% of land in Singapore is owned by the state.⁶⁰ Around half of the land acquired since 1966 has been used for housing development.⁶¹

At first, the HDB only constructed rental units.⁶² However, in 1964, the government began allowing the public to purchase 99-year leases as a form of quasi-homeownership.⁶³ This arrangement steadily grew in popularity. By 1970, a third

50. Sock-Yong Phang & Matthias Helble, *Housing Policies in Singapore*, (Asian Development Bank Institute Working Paper No. 559, 2016), <https://www.adb.org/publications/housing-policies-singapore> [<https://perma.cc/35E7-BKHF>].

51. *Id.* at 6.

52. *Id.* at 8.

53. Beng Huat Chua, *Navigating Between Limits: The Future of Public Housing in Singapore*, 29 HOUS. STUD. 520, 522 (2014), [<https://perma.cc/JCU3-8MCZ>].

54. *Id.* at 532.

55. Phang & Helble, *supra* note 50, at 6.

56. *Id.* at 7.

57. *New Changes in Land Bill*, THE STRAITS TIMES, Sep. 14, 1966, at 4.

58. Phang & Helble, *supra* note 50, at 6.

59. *Id.* at 6.

60. *Id.*

61. *Id.* at 7.

62. *Id.* at 8.

63. Chua, *supra* note 53, at 522.

of Singapore residents were homeowners, and by 2015 that number rose to over 90% of the population.⁶⁴

Part of why homeownership grew so quickly was the intimate connection between Singapore's housing system and its retirement system. In 1968, the government began allowing residents to withdraw from their Central Provident Fund (CPF) accounts (mandatory and tax-exempt retirement funds) to cover down payments and monthly mortgage charges for 99-year lease units.⁶⁵ This created a "closed-loop" system without the use of third-party commercial financial institutions.⁶⁶ First, mandatory contributions from employers and employees are deposited in CPF accounts.⁶⁷ The homeowner then uses those CPF funds to cover mortgage payments; typically, the CPF funds cover the full cost so homeowners do not need to spend any additional funds.⁶⁸ These payments then go to the HDB. As of 2014, nearly 40% of withdrawals from CPF accounts were for HDB housing.⁶⁹ Former Prime Minister Lee Hsien Loong referred to this dual homeownership-retirement system as "a major way for us to level up the less successful, and to give them a valuable asset and a retirement nest egg."⁷⁰

B. Domestic Survey

Social housing initiatives were proposed in the United States in the years following World War I, with support from organized labor.⁷¹ In fact, advocates back then explicitly drew inspiration from places like Vienna and the Netherlands, as social housing advocates do today.⁷² However, their efforts were unsuccessful, and thus far, social housing has only been implemented at the local level.

1. Montgomery County, Maryland

In Montgomery County, Maryland, the Housing Opportunities Commission (HOC) is unique in that it operates as a "public housing authority, a housing finance agency and a public developer."⁷³ With regard to the first mission, the HOC operates like a typical housing authority, administering federal programs such as Housing Choice Vouchers.⁷⁴ The County began expanding its mission into housing finance in 1974, when state and local laws enabled the HOC to begin issuing tax-exempt mortgage revenue bonds.⁷⁵

64. Phang & Helble, *supra* note 50, at 9.

65. Chua, *supra* note 53, at 520.

66. *Id.*

67. *Id.* at 523.

68. *Id.* at 521.

69. Phang & Helble, *supra* note 50, at 11.

70. Chua, *supra* note 53, at 524.

71. DeGood et al., *supra* note 41, at 5.

72. See Von Hoffman, *supra* note 12, at 3.

73. *About HOC*, HOUS. OPPORTUNITIES COMM'N OF MONTGOMERY CNTY., MD., <https://www.hocmc.org/about-us/about-hoc/> [https://perma.cc/CFY5-F92R] (last visited Mar. 31, 2025).

74. *Id.*

75. *Id.*

The first major housing finance program that the HOC implemented was the Moderately Priced Dwelling Unit (MPDU) initiative, which laid the groundwork for the County's later social housing initiatives.⁷⁶ It began in 1973 with the passage of Bill 3-72, which introduced a system of inclusionary zoning.⁷⁷ Today, between 12% and 15% of units in a proposed building must be affordable to those making around 65–70% of the Area Median Income (AMI).⁷⁸ There are a number of alternative ways that developers can comply with the law, including by building MPDU units in an alternative location or by making a payment to the County's Housing Initiative Fund.⁷⁹ Developers can also transfer land to the County in lieu of constructing MPDUs.⁸⁰ In total, 16,400 units have been constructed since the program was adopted.⁸¹

Unlike typical inclusionary zoning, the MPDU law allows the HOC to purchase or lease affordable units.⁸² As of 2024, the HOC owns 1,282 units that it rents out to tenants.⁸³ This developed the HOC's ability to allocate affordable units as well as verify income for prospective tenants.⁸⁴ More importantly, it built up the HOC's experience in coordinating public-private partnerships between the HOC and contractors.⁸⁵

In 2015, the HOC decided to develop a property that it owned for multifamily housing.⁸⁶ For financing, the HOC partnered with a private equity investor.⁸⁷ This proved to be deleterious to the HOC's goals. The investor required a significant ownership stake and a high rate of return, which reduced the number of affordable units in the development.⁸⁸ In March 2021, the County Council passed Resolution 19-774, which established the Housing Production Fund (HPF) to

76. Memorandum from Assem Migam, Director, Department of Housing and Community Affairs to Tom Hucker, President, Montgomery County Council (Mar. 29, 2021), https://www.montgomerycountymd.gov/DHCA/Resources/Files/housing/affordable/publications/mpdu/annual_report_mpdu-2020.pdf [<https://perma.cc/SJ2P-M474>] [hereinafter Migam Memorandum].

77. Mari, *supra* note 5.

78. Migam Memorandum, *supra* note 76.

79. MONTGOMERY CNTY. MD., EXEC. REGUL. NO. 11-18AM, REQUIREMENTS AND PROCS. FOR THE MODERATELY PRICED DWELLING UNIT PROGRAM (2018), [<https://perma.cc/UC9Y-29U5>].

80. *Id.*

81. Migam Memorandum, *supra* note 76.

82. *Id.* at 3–7.

83. Memorandum from Mark Elrich, County Executive, and Kate Stewart, Council President to Scott Bruton, Director, Department of Housing and Community Affairs, (Mar. 15, 2025), (https://www.montgomerycountymd.gov/DHCA/Resources/Files/housing/affordable/publications/mpdu/annual_report_mpdu_2024.pdf) [<https://perma.cc/L3A7-5A9Y>].

84. CLAUDIA AIKEN, ET AL., NYU FURMAN CTR., PUBLICLY DRIVEN DEVELOPMENT AND OWNERSHIP OF HOUSING: A FEASIBILITY STUDY FOR RHODE ISLAND (Aug. 22, 2024), [https://furmancenter.org/files/NYUFumanCenter_PublicDevelopment_FinalDraft_8-22-24_\(1\).pdf](https://furmancenter.org/files/NYUFumanCenter_PublicDevelopment_FinalDraft_8-22-24_(1).pdf) [<https://perma.cc/A82B-GAQG>] [hereinafter RHODE ISLAND REPORT].

85. *Id.* at 51.

86. Paul E. Williams, *The Basic Logistics of Public Development*, CTR. FOR PUB. ENTER., (May 31, 2023) <https://publicenterprise.org/the-basic-logistics-of-public-development/> [<https://perma.cc/V2JZ-6P97>].

87. *Id.*

88. *Id.*

create an independent source of financing.⁸⁹ This resolution appropriated \$50 million in bonds, creating a revolving fund for housing construction.⁹⁰ The County later appropriated an additional \$50 million.⁹¹ The HPF does not participate in the Low Income Housing Tax Credit (LIHTC) program or Project-Based Housing Choice Vouchers, allowing these funds to be reserved for individuals with more significant housing needs.⁹²

The HPF issued a loan for their first property in December 2021.⁹³ This property, known as “the Laureate,” is a 268-unit mixed-use apartment complex in Rockville, Maryland, located near a Washington, D.C. Metro and Transit Authority station.⁹⁴ The Laureate opened in June 2023. Currently, there are three projects in development. “Hillandale Gateway” will be built on the site of a former public-housing complex, and construction is expected to be completed in 2027.⁹⁵ The project will have 155 age-restricted residential units, 308 multifamily apartments, and some retail establishments.⁹⁶ The building with the age-restricted units will be Maryland’s first net-zero-energy passive house residential building.⁹⁷ Construction on the “Wheaton Gateway,” located in Wheaton, Maryland, will begin in the first quarter of 2027.⁹⁸ The building will have 435 units.⁹⁹ Finally, the HOC will expand the Laureate by an additional 415 units, 125 of which will be affordable.¹⁰⁰

2. Atlanta, Georgia

Referring to public corporation-led housing development as an “internationally proven model,” Council Resolution 23-O-1385 in 2023 established the Atlanta Urban Development Corporation (AUDC) as a nonprofit subsidiary of

89. MONTGOMERY CNTY., MD., RESOL. 19-774, SPECIAL APPROPRIATION TO THE FISCAL YEAR 2021 OPERATING BUDGET (2021), https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=9986_1_14313_Resolution_19-774_Adopted_20210323.pdf [<https://perma.cc/8XKH-93UW>].

90. *About the Housing Production Fund*, HOUS. OPPORTUNITIES COMM’N, <https://www.hocmc.org/about-us/innovations/housing-production-fund/> [<https://perma.cc/9F2K-7J9R>] (last visited Sept. 15, 2025).

91. MONTGOMERY CNTY., MD., COUNCIL RESOL. 19-1285, APPROVAL OF AND APPROPRIATION FOR THE FY 2023 OPERATING BUDGET OF THE MONTGOMERY CNTY. GOV’T (2022), https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=11491_1_21248_Resolution_19-1285_Adopted_20220526.pdf [<https://perma.cc/S7TA-LX87>].

92. Williams, *supra* note 86.

93. *About the Housing Production Fund*, *supra* note 90.

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. MONTGOMERY CNTY. PLAN. BD., WHEATON GATEWAY SKETCH PLAN No. 320210060 9, 22 (2022), <https://montgomeryplanningboard.org/wp-content/uploads/2022/05/320210060-Wheaton-Gateway-220516-Publication.pdf> [<https://perma.cc/W48S-GAQL>].

100. *New Construction: The Laureate*, HOUS. OPPORTUNITIES COMM’N, <https://www.hocmc.org/portfolio/the-laureate-2/> [<https://perma.cc/METQ-NFG7>].

the Atlanta Housing Authority (AHA).¹⁰¹ Under the Atlanta City Charter and Sections 2-243 and 6-306 of the City Code, the Council was permitted to finance housing and development projects and to appropriate funds to nonprofits for these purposes.¹⁰² Furthermore, under state law, the City was empowered to transfer city-owned land to the AUDC.¹⁰³ Because the AUDC is a subsidiary of the AHA, it may issue bonds, but relies on the City or other third parties to act as a guarantor.¹⁰⁴ Similarly, state law exempts AUDC properties from property taxes.¹⁰⁵ The AHA, and the AUDC by extension, are also allowed to enter into agreements with private developers that can make privately developed affordable housing tax-exempt.¹⁰⁶ Finally, the City had directly appropriated \$4 million for affordable housing through the Affordable Housing Trust Fund,¹⁰⁷ and additional funding was provided from the \$38 million Housing Opportunity Fund.¹⁰⁸

Atlanta is using a number of tactics to close the financing gap for the proposed developments, as the City does not intend to use Low Income Housing Tax Credit (LIHTC) program funds.¹⁰⁹ The use of city-owned surplus land and full-property tax exemptions will provide some equity.¹¹⁰ Corporation developments will also be mixed-income.¹¹¹ Although the exact affordability breakdown varies from project to project, these provisions will enable the more expensive units to cross-subsidize the affordable units.¹¹² Finally, the corporation is also using a revolving fund, seeded with capital from the City and other third parties, to provide financing at lower rates.¹¹³

C. Proposed Legislation

1. California

California Assembly Bill 2881 (“The Social Housing Act”) would create the California Housing Authority as an independent state body.¹¹⁴ The Authority would develop rental housing, but it would also offer 99-year leases that can be passed down to the owner’s heirs.¹¹⁵ The bill specifies that the Authority should seek “to cover its costs over the long term in accordance with the principle of revenue neutrality.”¹¹⁶ Financing for projects would come from a revolving fund,

101. ATLANTA CITY COUNCIL, GA., ORDINANCE 23-O-1385 (2023).

102. *Id.*

103. *Id.*

104. RHODE ISLAND REPORT, *supra* note 84, at 53.

105. *Id.* at 51.

106. *Id.* at 36–37.

107. *See* ATLANTA CITY COUNCIL, GA., ORDINANCE 21-O-0777 (2021); ATLANTA CITY COUNCIL, GA., ORDINANCE 23-O-1385 (2023).

108. RHODE ISLAND REPORT, *supra* note 84, at 53.

109. *Id.* at 54.

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.* at 14.

114. A.B. 2881, 2023–2024 Leg., (Cal. 2024).

115. *Id.*

116. *Id.*

which would be granted seed funding by the Legislature and would issue zero-interest loans.¹¹⁷ The Authority would also have the ability to issue bonds.¹¹⁸

2. Massachusetts

Massachusetts House Bill 1478 would not create a new body, but would instead create a revolving fund within the Massachusetts Housing Finance Authority (MHFA),¹¹⁹ which is an “independent, quasi-public agency created in 1966 and charged with providing financing for affordable housing in Massachusetts.”¹²⁰ The Bill would allocate \$100 million to the fund,¹²¹ financed by state-issued taxable bonds.¹²² The fund would be used to construct mixed-income developments, with the ratio of affordable to market-rate units to be determined by the MHFA.¹²³ Although the Bill has not been passed, the Governor has approved a smaller pilot program.¹²⁴

3. New York

In New York, Senate Bill S8494 would create the New York State Social Housing Development Authority, a statewide public benefit corporation.¹²⁵ The Authority would have the power to issue bonds,¹²⁶ make mortgage loans,¹²⁷ and exercise eminent domain for vacant properties.¹²⁸

D. Regulation in the Domestic and International Context

One key aspect of different social housing models is how they regulate who can participate. In Montgomery County, both MPDUs and HPF properties have some income limits. To purchase an MPDU, the potential buyer must be a “first-time homebuyer,” secure their own financing, and provide documentation that shows their ability to pay the mortgage.¹²⁹ The minimum annual income is \$40,000, regardless of household size.¹³⁰ The maximum annual income depends on household size, ranging from \$80,500 for a household of one, to \$113,000 for

117. *Id.*

118. *Id.*

119. H.B 1478, 194th Sess. (Mass. 2025).

120. *About MassHousing*, MASSHOUSING, <https://www.masshousing.com/en/about> [<https://perma.cc/4KJ9-NA95>].

121. H.B. 1478, *supra* note 119.

122. *Id.*

123. *Id.*

124. Mike Connolly, *Healey-Driscoll Administration includes a Social Housing Pilot in Housing Bond Bill Filing* (Oct. 18, 2023), https://www.repmikeconnolly.org/healey_driscoll_administration_includes_social_housing_pilot_in_their_bond_bill_filing.

125. S.B. 8494 (N.Y. 2024).

126. *Id.*

127. *Id.*

128. *Id.*

129. *MPDU Purchase Applicants*, MONTGOMERY CNTY., MD., DEP’T OF HOUS. AND CMTY. AFFS., <https://www.montgomerycountymd.gov/DHCA/MPDU/mpdu-purchase-applicants.html> [<https://perma.cc/ZDP3-VWBL>] (last visited Sept. 6, 2025).

130. *Id.*

a household of six.¹³¹ When an MPDU is first sold, it is subject through a covenant to a “control period” of thirty years.¹³² During the control period, the homeowner can only sell the property for up to a maximum price, which is determined on a case-by-case basis by the Department of Housing and Community Affairs.¹³³ If the owner dies before the control period expires, their heir must move in to the MPDU or sell it.¹³⁴ After the control period, the owner may sell the MPDU at market rate, but the owner is required to share half of the “excess profits” (also determined on a case-by-case basis) with the county.¹³⁵

On the rental side, the income required varies by property. For example, the maximum income is 65% of the Area Median Income (AMI) for a garden apartment, and 70% of the AMI for a high-rise apartment.¹³⁶ For context, in 2025, the AMI in Montgomery County is \$152,000.¹³⁷ Tenants renewing their leases may earn up to 130% of the initial income limits.¹³⁸ For example, a new tenant with a household size of one is only eligible for a garden-style apartment if they make less than \$74,500.¹³⁹ But if their income increases to \$96,850, they can still renew their lease.¹⁴⁰ However, if the tenant’s income exceeds these limits, they are given ninety days to vacate their unit.¹⁴¹

Generally, HPF developments are expected to have 20% of their units set aside for tenants making 50% or less of the AMI, and an additional 10% must be set aside for tenants that are eligible for a MPDU.¹⁴² However, this can vary from project to project. For example, the Laureate has 25% of its units reserved for those making less than 50% of the AMI, and only 10% for those eligible for an MPDU.¹⁴³

In Vienna, there are several requirements to participate in social housing (either municipal or through an LPHA). Tenants must be Austrian citizens;¹⁴⁴ they

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. MD. DEP’T OF HOUS. AND CMTY. DEV.: MD. MORTGAGE PROGRAM, 2025 AREA MEDIAN INCOME LIMITS FOR BORROWER’S INCOME (TOTAL QUALIFYING INCOME) (May 18, 2025), <https://mmp.maryland.gov/Lenders/Documents/Area-Median-Income-Limits.pdf> [https://perma.cc/ECK5-C42C].

138. *MPDU Rentals*, MONTGOMERY CTNY., MD., DEP’T OF HOUS. AND CMTY. AFFS., <https://www.montgomerycountymd.gov/DHCA/MPDU/mpdu-purchase-applicants.html> [https://perma.cc/9AJA-JJG9] (last visited Sept. 6, 2025).

139. *Id.*

140. *Id.*

141. *Notice to Vacate—Over-Income*, MONTGOMERY CTNY., MD., DEP’T OF HOUS. AND CMTY. AFFS. (Jan. 2016), https://www.montgomerycountymd.gov/DHCA/Resources/Files/housing/singlefamily/mpdu/notice_to_vacate_mpdu_over-income.pdf [https://perma.cc/L2VP-DGB6].

142. MONTGOMERY CTNY., MD., COUNCIL RES. 19-774, SPECIAL APPROPRIATION TO THE FISCAL YEAR 2021 OPERATING BUDGET (2021), https://apps.montgomerycountymd.gov/cellims/DownloadFilePage?FileName=9986_1_14313_Resolution_19-774_Adopted_20210323.pdf [https://perma.cc/X6CY-AWMK].

143. *About the Housing Production Fund*, HOUS. OPPORTUNITIES COMM’N, <https://www.hocmc.org/about-us/innovations/housing-production-fund/> [https://perma.cc/XR8Q-C78N] (last visited Sept. 11, 2025).

144. RHODE ISLAND REPORT, *supra* note 84, at 65.

must have lived at their current address in Vienna for more than two years, a measure that was introduced “as a response to rising international migration;”¹⁴⁵ and their income must also fall under a cap.¹⁴⁶ As of 2025, the cap for a single individual was €59,320, and €111,660 for a family of four.¹⁴⁷ These caps are comparatively high, as 75% of the city’s population earns less than the maximum.¹⁴⁸ However, income is only verified when the tenant moves into the property, and they are allowed to stay even if their income increases beyond the limit.¹⁴⁹

Vienna’s system is also distinct in that it allows tenants to transfer their unit to other people if they pass away or move out.¹⁵⁰ This can be especially valuable to heirs, since rent rates are determined by how long the original tenant lived there and the new tenant inherits the same rate.¹⁵¹ Units can be bequeathed to relatives, including children and grandchildren.¹⁵² Supporters of this policy say that it prevents displacement,¹⁵³ while critics note that it can lead to distortions, with wealthy professionals who were bequeathed a unit paying less in rent than working families who are entering the program for the first time.¹⁵⁴

While international systems diverge widely, social housing programs in the United States—both existing and proposed—have converged around several key features: (1) mixed-income developments that enable cross-subsidization; (2) state-led financing; and (3) a goal of long-term fiscal independence. These features create a niche for social housing in the broader policy ecosystem. Increasingly, housing is becoming unaffordable for the lower middle class, i.e., those who earn too much to qualify for housing assistance but earn too little to get a satisfactory unit on the private market.¹⁵⁵ Creating and strengthening social housing models would serve this group, enabling other programs like LIHTC and Housing Choice Vouchers to prioritize those with more significant needs.¹⁵⁶

II. FEASIBILITY

By far the most comprehensive feasibility study of social housing in the American context is “Public Development and Ownership of Housing: A

145. *Id.* at 65.

146. *Id.*

147. *Flat Allocation Criteria: 2025*, CITY OF VIENNA, <https://socialhousing.wien/tools/flat-allocation-criteria> [https://perma.cc/2GRA-XFN8] (last visited Sept. 6, 2025).

148. *Id.*

149. L.A. CNTY., *GPLA VIENNA SOCIAL HOUSING FIELD STUDY, HOW VIENNA IMPLEMENTS THE 5 PILLARS OF HOUSING: PRODUCE, PRESERVE, PROTECT, PREVENT, PROMOTE*, <https://file.lacounty.gov/SDSInter/bos/supdocs/189707.pdf> [https://perma.cc/K3TS-2R2H] (hereinafter 5 PILLARS OF HOUSING).

150. Peter, *supra* note 6, at 7.

151. *Id.*

152. *Id.*

153. 5 PILLARS OF HOUSING, *supra* note 149.

154. Peter, *supra* note 6, at 7.

155. DeGood at al., *supra* note 41, at 3.

156. Paul E. Williams, *The Basic Logistics of Public Development*, CTR. FOR PUB. ENTER. (May 31, 2023) <https://publicenterprise.org/the-basic-logistics-of-public-development/> [https://perma.cc/5255-JRWBJ].

Feasibility Study for Rhode Island.” RIHousing (Rhode Island’s mortgage finance authority) commissioned the study, and the NYU Furman Center and the Rhode Island Department of Housing jointly conducted it.¹⁵⁷ In the report, the authors create a model for a publicly developed housing project in Rhode Island.¹⁵⁸ The mixed-income development has 100 units, each 800 square feet with two bedrooms.¹⁵⁹ Seventy percent of the units would be rented out at the fairly high rate of \$3,000 per month, while 20% would be rented out to people earning 60% of the AMI in Rhode Island at a rate of \$1,686 per month.¹⁶⁰ Finally, the remaining 10% of units would go to “very low income” tenants who earn 40% of the AMI, at a rate of \$1,124 per month.¹⁶¹ There would be no commercial units within the property.¹⁶²

In terms of expenses, the authors assume a total of \$325,000 per unit in “hard” construction costs, along with \$97,500 per unit in “soft” construction costs (e.g., engineering and legal fees, environmental assessments, and similar expenses).¹⁶³ Operating expenses include \$9,150 per year to cover building maintenance, insurance, and other annual expenses.¹⁶⁴ An 8% property tax rate pursuant to a Rhode Island law that caps property taxes for low-income housing developments is also assumed.¹⁶⁵ Importantly, because the authors assume that the project would be on government-owned land, there would be no land-acquisition costs.¹⁶⁶

Even with all of these assumptions, the project would still have a financing gap of \$12 million, or \$120,000 per unit.¹⁶⁷ The authors employ a number of strategies to close the gap, emphasizing that “there is no one single way to close a gap of this magnitude.”¹⁶⁸ To begin, they fully exempt the development from property taxes, which reduces the gap by \$3.1 million.¹⁶⁹ The authors then apply federal project-based housing choice vouchers.¹⁷⁰ However, they note that to receive this funding, developers would have to pay prevailing wages under the Davis-Bacon Act, and they did not account for the increased construction costs in their initial estimate.¹⁷¹

Next, the authors apply “soft” (i.e., below market rate) loans from state or local authorities,¹⁷² identifying the HOME Investment Partnerships Program (HOME) as a potential source.¹⁷³ HOME is a federal block grant that can be used

157. RHODE ISLAND REPORT, *supra* note 84, at 1.

158. *Id.* at 23.

159. *Id.*

160. *Id.* at 23–24.

161. *Id.* at 24.

162. *Id.* at 26.

163. *Id.* at 25.

164. *Id.*

165. *Id.* at 26.

166. *Id.* at 24.

167. *Id.* at 27.

168. *Id.*

169. *Id.*

170. *Id.* at 28.

171. *Id.*

172. *Id.* at 29.

173. *Id.*

by state and local governments to provide loans.¹⁷⁴ Providing soft loans would close the financing gap by \$1.5 million, but it would also lead to increased amortization expenses of \$120,000 per unit overall, and around \$400,000 per affordable unit¹⁷⁵

The authors then extend the terms of the loan to forty years, noting that governments would have to issue bonds to raise the necessary capital.¹⁷⁶ Finally, they raise the assumed rent for market rates to \$3,500 per month.¹⁷⁷ Overall, it is only when these interventions are combined that the project becomes financially feasible.¹⁷⁸

A. Section 542(c) of the Housing and Community Development Act of 1992

In addition to the strategies described above, the authors discuss numerous additional tools that public developers can apply to increase the financial feasibility of these projects. Local Housing Finance Authorities (HFAs) could apply for the Section 542(c) Housing Finance Agency Risk-Sharing Initiative.¹⁷⁹ This would enable HFAs to share the risk of default with the federal Department of Housing and Urban Development (HUD), enabling the HFAs to take on additional credit for the loans.¹⁸⁰ It would also provide mortgage insurance from the Federal Housing Administration (FHA), which raises the quality of HFA bonds to “investment grade.”¹⁸¹ Finally, the loans have lower interest rates than Fannie Mae and Freddie Mac, and can be extended to up to forty years.¹⁸² The Housing Opportunities Commission of Montgomery County uses Section 542(c) loans to finance their projects.¹⁸³

However, there are several caveats that developers must keep in mind in considering the use of Section 542(c) loans. HFAs must have certain qualifications in order to apply, including a “top tier” designation from a credit rating agency, and five years of experience in multifamily housing lending.¹⁸⁴ There are also income limits for the project: either 20% of units must be set aside for families with incomes at or below 50% of the AMI, or 40% of units must be set aside for families at or below 60% of the AMI.¹⁸⁵ Finally, Section-542(c)-financed projects

174. *HOME Overview*, DEP’T OF HOUS. AND URB. DEV., [https://www.hudexchange.info/programs/home/home-overview/\[https://perma.cc/M5UY-78EQ\]](https://www.hudexchange.info/programs/home/home-overview/[https://perma.cc/M5UY-78EQ]) (last visited Oct. 25, 2025).

175. RHODE ISLAND REPORT, *supra* note 84, at 29.

176. *Id.* at 30.

177. *HOME Overview*, *supra* note 174.

178. RHODE ISLAND REPORT, *supra* note 84, at 32.

179. *HOME Overview*, *supra* note 174.

180. 24 C.F.R. § 266 (2020).

181. *Housing Finance Agency Risk-Sharing Pilot Program Handbook (4590.1)*, DEP’T OF HOUS. AND URB. DEV., <https://www.hud.gov/hudclips/handbooks/housing-4590-1> [<https://perma.cc/3WSN-JK7L>] (last visited Nov. 9, 2025).

182. RHODE ISLAND REPORT, *supra* note 84, at 34.

183. *Id.* at 33–34.

184. *Housing Finance Agency Risk-Sharing Pilot Program Handbook (4590.1)*, *supra* note 181, at 8.

185. RHODE ISLAND REPORT, *supra* note 84, at 33.

must pay prevailing wages under the Davis-Bacon Act, which leads to a further increase in construction costs.¹⁸⁶

B. Tax Exempt Bonds

The authors of the Rhode Island Report also discuss the use of tax-exempt bonds.¹⁸⁷ Pursuant to the Internal Revenue Code, interest income on bonds that finance “governmental activity” are excluded from the bondholder’s income.¹⁸⁸ Furthermore, using qualified bonds enables the issuer to obtain 4% tax credits to finance construction through LIHTC.¹⁸⁹ Although the Internal Revenue Service (IRS) sets a “volume cap” on the number of tax-exempt bonds that states can disburse, the Housing and Economic Recovery Act of 2008 (HERA) enables HFAs to reuse repaid tax-exempt bonds for other projects without the new bonds going toward the volume cap, a process known as “bond recycling.”¹⁹⁰

Although tax-exempt bonds have the potential to provide much-needed financing, jurisdictions should think carefully about whether to use them, as well as whether to use bond recycling. For example, HFAs must use tax-exempt bonds exclusively for residential property.¹⁹¹ This may limit the ability of HFAs to supplement their income streams by making projects mixed-use. Non-exempt bonds also have higher interest rates, which are then passed on to tenants.¹⁹² With regard to bond recycling, recycled bonds are not eligible for LIHTC. Moreover, it may not even be necessary for HFAs to engage in bond recycling if the jurisdiction has not reached its volume cap.¹⁹³

C. Property Tax Exemptions

As discussed above, a full property tax exemption would close the financing gap for a hypothetical development by \$3.1 million.¹⁹⁴ Tax exemption for affordable housing projects has been adopted by numerous jurisdictions. In Provincetown, Massachusetts, the portion of a property that is used for affordable housing is exempt from property taxes.¹⁹⁵ For example, suppose a property owner has a duplex with a

186. *Id.* at 34.

187. *Id.*

188. *Tax-Exempt Governmental Bonds*, INTERNAL REVENUE SERV., <https://www.irs.gov/pub/irs-pdf/p4079.pdf> [<https://perma.cc/2G2L-3UJD>].

189. *About the LIHTC*, NOVOGRADAC, <https://www.novoco.com/resource-centers/affordable-housing-tax-credits/about-lihtc> (last visited Sept. 27, 2025).

190. RHODE ISLAND REPORT, *supra* note 84, at 34–35.

191. Beth Mullen, *How to Use Bonds in LIHTC Deals*, AFFORDABLE HOUS. FIN. (May 1, 2006), https://www.housingfinance.com/finance/how-to-use-bonds-in-lihtc-deals_o [<https://perma.cc/F525-LR72>].

192. Justin Cooper, *Multifamily Rental Housing: Financing with Tax-Exempt Bonds*, ORRICK, HERRINGTON & SURCLIFFE, LLP (2019).

193. RHODE ISLAND REPORT, *supra* note 84, at 35.

194. *Id.* at 27.

195. TOWN OF PROVINCETOWN, BD. OF ASSESSORS, FY 2026 AFFORDABLE HOUSING PROPERTY TAX EXEMPTION FOR OWNERS OF AFFORDABLE YEAR-ROUND RENTAL HOUSING, at 1. <https://www.provincetown-ma.gov/DocumentCenter/View/303/AH-Exemption-Brochure> [<https://perma.cc/MLB8-6J5J>].

total property tax bill of \$4,000.¹⁹⁶ If they were to rent out one of the units as affordable housing, their tax bill would be reduced to \$2,000.¹⁹⁷ Portland, Oregon has a program called the Multiple-Unit Limited Tax Exemption Program (MULTE), which was created by Portland City Code 3.103 and Oregon Revised Statutes 307.600 through 307.637.¹⁹⁸ In contrast to Provincetown’s program, under MULTE the entire property is exempted from property taxes.¹⁹⁹ However, there is a cap of \$500,000 in foregone revenue and the exemption lasts for only ten years.²⁰⁰

III. SOLVING THE LAND PROBLEM: EMINENT DOMAIN AND DISPOSITION

A key variable in whether a social housing project is financially feasible is the cost of land. In Vienna, for example, a major component of the city’s social housing system is Wohnfonds Wien, a public land bank that has been acquiring land since 1984.²⁰¹ Domestically, an analysis conducted in the Washington, D.C. region suggested that the price of land could comprise up to 35% of the total cost of development.²⁰² And the price of land is increasing: nationwide, the price of an average quarter-acre lot has grown by 55% since 2019, and by 13% in 2022 alone.²⁰³ However, eliminating land-acquisition costs can be a powerful force multiplier, especially for mixed-income developments. Because demand is a key determinant of land costs, a market-rate unit in a high-demand area can cross-subsidize more affordable units if the land is provided for free.²⁰⁴ Luckily, municipalities have two major tools in their toolbox to provide land: the taking of land through eminent domain and the granting of land through disposition.

A. *The Mount Laurel Doctrine*

The *Mount Laurel* doctrine is a “groundbreaking” legal doctrine that held that exclusionary zoning policies violated the New Jersey Constitution.²⁰⁵ The doctrine began in 1975 with the landmark case *Southern Burlington County NAACP v. Township of Mount Laurel (Mount Laurel I)*.²⁰⁶ In *Mount Laurel I*, the court held that a municipality “cannot foreclose the opportunity . . . for low and

196. *Id.* at 4.

197. *Id.*

198. OR. ADMIN. R. HOU-3.02 (Interim Admin. Rule, Effective 2024), 5.

199. *Id.* at 6.

200. *Id.*

201. RHODE ISLAND REPORT, *supra* note 84, at 64.

202. Robert Hickey & Lisa Sturtevant, *Public Land & Affordable Housing in the Region: Best Practices and Recommendations*, 3, NAT’L. HOUS. CONF. (Feb. 2015), <https://nhc.org/wp-content/uploads/2017/10/Public-Land-Affordable-Housing.pdf> [<https://perma.cc/7PGF-L2NK>].

203. JOINT CTR. FOR HOUS. STUD. AT HARV. UNIV., THE STATE OF THE NATION’S HOUSING 2024, 15 (2024), https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_The_State_of_the_Nations_Housing_2024.pdf [<https://perma.cc/W2W2-4W77>].

204. Hickey & Sturtevant, *supra* note 202, at 8.

205. *S. Burlington Cnty. NAACP v. Twp. of Mt. Laurel*, 336 A.2d 713, 730 (N.J. 1975); *see generally* Paula Franzese, *The Evolution of Inclusion: The Mount Laurel Doctrine at Fifty*, 48 NOVA L. REV. 3, 264 (2024).

206. *Mt. Laurel*, 336 A.2d 713.

moderate income housing and in its regulations must affirmatively afford that opportunity, at least to the extent of the municipality's fair share of the present and prospective regional need therefor."²⁰⁷ The court reached this holding solely on state constitutional grounds.²⁰⁸ The court reasoned that, since zoning was a police power, it was subject to substantive due process and equal protection requirements.²⁰⁹ Furthermore, these provisions of the New Jersey Constitution are "more demanding" than the equivalent provisions in the Federal Constitution, so zoning requirements under the state constitution must *affirmatively* "promote public health, safety, morals or the general welfare."²¹⁰ Thus, there is a "presumptive obligation" for municipalities to "at least . . . afford the opportunity by land use regulations for appropriate housing for all."²¹¹

This obligation has procedural and substantive components.²¹² With regard to the former, if plaintiffs can show that a municipality, through zoning laws, has "not made realistically possible a variety and choice of housing," then "a facial showing of violation of substantive due process or equal protection under the state constitution has been made out."²¹³ This shifts the burden to the municipality to establish a valid basis for their regulations.²¹⁴

However, there was significant resistance to the doctrine, which required further intervention from the court in the 1980 decision *Southern Burlington County NAACP v. Township of Mount Laurel (Mount Laurel II)*.²¹⁵ In *Mount Laurel II*, the court recognized "the enormous difficulty of achieving a political consensus that might lead to significant legislation enforcing the constitutional mandate" and thus concluded that a judicial remedy was more appropriate.²¹⁶ In response to *Mount Laurel II*, the state legislature enacted the New Jersey Fair Housing Act.²¹⁷ The Act created the Council on Affordable Housing (COAH), which was tasked with determining each municipality's obligations.²¹⁸ Municipalities had the option to create Regional Contribution Agreements (RCAs) with other cities, where they could transfer 50% of their affordable housing obligation to that city.²¹⁹ Finally, the Act funneled *Mount Laurel* litigation through an administrative process facilitated by the Council.²²⁰ The Council's

207. *Id.* at 724.

208. *Id.* at 725.

209. *Id.*

210. *Id.*

211. *Id.* at 728.

212. *Id.*

213. *Id.*

214. *Id.*

215. *S. Burlington Cnty. NAACP v. Twp. of Mt. Laurel*, 456 A.2d 390 (N.J. 1980).

216. *S. Burlington Cnty. NAACP v. Twp. of Mt. Laurel*, 456 A.2d 390, 416 (N.J. 1983).

217. N.J. STAT. ANN. § 52:27D-301 (West 1985).

218. *Id.*

219. Paula Franzese, *An Inflection Point for Affordable Housing: The Promise of Inclusionary Mixed-Use Redevelopment*, 52 UIC J. MARSHALL L. REV. 581, 591 (2019).

220. *Id.* at 590–91.

constitutionality was upheld in *Hills Development Company v. Bernards (Mount Laurel III)*.²²¹

However, attempts at legislative reform proved insufficient. In 2015, the court held in *In re N.J.A.C (Mount Laurel IV)* that after the Council failed to promulgate regulations, the “administrative process has become nonfunctioning,” and that “due to COAH’s inaction . . . there no longer exists a legitimate basis to block access to the courts.”²²² As a result, New Jersey Superior Court judges were tasked with enforcing the *Mount Laurel* doctrine.²²³ Under this system, municipalities have reached a number of agreements to meet their obligations, including converting office and commercial space, implementing deed restrictions on existing housing, and rehabilitating existing housing.²²⁴ This regime has had significant positive consequences, with one report attributing the construction of nearly 70,000 multifamily units to the *Mount Laurel IV* decision.²²⁵

B. Inclusive Eminent Domain

Scholars have applied the principles from the *Mount Laurel* doctrine to address a separate (but no less controversial) issue: eminent domain. In his article in the Supreme Court Economic Review, Professor David Dana proposes creating “exclusionary eminent domain” as a state constitutional law doctrine in response to the Supreme Court’s decision in *Kelo v. City of New London*.²²⁶ Under this doctrine, an exercise of eminent domain which has the effect of excluding low-income individuals from a jurisdiction would be considered exclusionary and subject to heightened scrutiny.²²⁷ Dana explicitly borrows features from the *Mount Laurel* doctrine, including the “use of fair share as a doctrinal boundary device and the flexibility provided for by the use of a rebuttable presumption rather than a total or near total bar on exclusionary decisions.”²²⁸

In response, Professor Gerald Dickinson, writing in the Loyola Law Journal, proposed a doctrine of “inclusionary eminent domain.”²²⁹ Dickinson believes that the exclusionary eminent domain model, although “thoughtful,” is “unlikely to fix the exclusionary problem” and “do[es] not move us further through the takings muddle.”²³⁰ Unlike the exclusionary eminent domain model or some post-*Kelo* legislative proposals, inclusionary eminent domain would not be a restriction on future

221. *Hills Dev. Co. v. Bernards*, 510 A.2d 621 (N.J. 1986).

222. *In re N.J.A.C.* 5:96 & 5:97, 110 A.3d 31 (N.J. 2015).

223. Franzese, *supra* note 205, at 264.

224. See Peter Buchsbaum, *Affordable Housing and the Mount Laurel Doctrine: Lessons Learned*, 57 WILLAMETTE L. REV. 201, 214 (2021).

225. Vanita Kalra et al., *Dismantling Exclusionary Zoning: New Jersey’s Blueprint for Overcoming Segregation*, FAIR SHARE HOUS. CTR., 1, 18 (April 2023), [https://perma.cc/W4VF-3EPQ].

226. David Dana, *Exclusionary Eminent Domain*, 17 SUP. CT. ECON. REV. 1, 3 (2009); see also *Kelo v. City of New London*, 545 U.S. 469 (2005).

227. *Id.* at 17.

228. *Id.* at 18.

229. Gerald S. Dickinson, *Inclusionary Eminent Domain*, 45 LOY. U. CHI. L.J. 845 (2014).

230. *Id.* at 881–82.

condemnation proceedings, but rather “an organic ex ante and ex post remedy with little, if any, imposition of the courts or legislation.”²³¹ Conceptually, Dickinson identifies a number of core elements that make up inclusionary eminent domain: “inclusionary housing, meaningful engagement, community participation, collective action and public approval.”²³² In other words, developers, policymakers, and the community would work together to ensure that affordable housing is created or preserved after condemnation.²³³

Practically, Dickinson presents a few tools that policymakers could use to effectuate inclusive eminent domain. He emphasizes that there is no one-size-fits-all solution, noting that “legislation in most states enables to some degree—but does not *require* or *mandate*—communities, municipalities, and private developers to utilize the[se] . . . tools for economic redevelopment purposes.”²³⁴ Dickinson provides several examples of tools that policymakers could use. Developers could negotiate a Community Benefits Agreement (CBA), where they agree to build or preserve affordable housing in exchange for support for an economic development project.²³⁵ Dickinson also proposes that policymakers could transfer land within an area subject to eminent domain to a Community Land Trust.²³⁶

Although both concepts are fraught with controversy, the *Mount Laurel* doctrine and inclusive eminent domain also represent broader principles that challenge traditional land-use doctrine and could promote more inclusive development. By grounding its reasoning in the state constitution’s due process and equal protection clauses, the court in *Mount Laurel* and its progeny recognized that exclusionary housing practices have much deeper implications than what has been traditionally recognized by courts. Furthermore, rather than focusing on how the government’s takings power can be limited in a post-*Kelo* world, inclusive eminent domain reframes it as a tool that policymakers can use to promote housing equity.

More practically, however, the *Mount Laurel* doctrine and inclusive eminent domain provide valuable legal tools that policymakers could use to promote social housing and solve “the land question.” Policymakers on the state level could implement a *Mount Laurel*-style “fair share” requirement for affordable housing, with social housing being one method that municipalities could use to reach their target. Eminent domain is a much more aggressive tool, but if it is going to be used anyway, states could require that developers negotiate with the community to allocate part of the project to social housing in exchange for community support.

C. Disposition

Unlike eminent domain, the disposition of land by municipalities is “marked by immense legislative and administrative discretion, with limited judicial

231. *Id.* at 883.

232. *Id.*

233. *Id.* at 884.

234. *Id.* at 888.

235. *Id.* at 889, 890.

236. *Id.* at 902–03.

review.²³⁷ For one thing, disposition decisions are not subject to the takings clauses.²³⁸ Municipalities also have the ability to use covenants to regulate the use of the land after it is sold.²³⁹ In a 2015 Note published in the *Yale Law Journal*, Noah Kazis notes that unlike zoning, covenants cannot be unilaterally imposed. Rather, the covenantor “must have some power over the property that allows the consensual negotiation of a covenant with the property owner.”²⁴⁰ As a result, covenants are utilized more when municipalities are “selling, transferring or otherwise conveying publicly owned land to private developers.”²⁴¹ Covenants are also used more frequently in situations where the municipality is seeking “to regulate projects they support, on sites where they want to promote development,” as there are other tools available to block disfavored projects.²⁴²

In the zoning context, aggrieved neighbors and other third parties are generally more able to bring a challenge to enforce the laws.²⁴³ For example, in Maryland, neighbors are assumed *prima facie* to be able to sue, and in New Jersey, plaintiffs can sue as taxpayers without showing a special injury.²⁴⁴ In contrast, covenants are generally only enforceable by the landowner and the municipality.²⁴⁵ Thus, in Kazis’s view, in choosing whether to use zoning or covenants to regulate land, the “principal consideration” is the ability “to use covenants to limit citizen enforcement.”²⁴⁶

The vast discretion granted to cities in disposition decisions is open to critique. In a 2015 article published in the *Yale Law Journal*, Professors Max Schanzenbach and Nadav Shoked note that municipalities are generally exempt from fiduciary requirements as they, unlike corporations, have long been considered “public” entities.²⁴⁷ However, the authors argue that this distinction no longer makes sense, as “the twenty-first century U.S. city turns to the private market in many ways that would have been unimaginable for its twentieth century predecessor.”²⁴⁸ They give several examples of unwise disposition decisions by governments, such as Bolingbrook, Illinois selling a city ice rink for a price deemed by an economist to be so low that it was “hilarious,” or Orange County, California spending hundreds of millions of dollars to buy back a highway that it had sold under an erroneous contract.²⁴⁹

237. Ann Sarnak, *When Public Land Leaves Public Hands: Values Embedded in Municipal Land Disposition Law*, 42 *YALE L. & POL’Y REV.* 626, 632 (2024).

238. *Id.* at 840.

239. Noah Kazis, *Public Actors, Private Law: Local Governments’ Use of Covenants To Regulate Land Use*, 124 *YALE L.J.* 1790, 1797 (2015).

240. *Id.* at 1796–97.

241. *Id.*

242. *Id.* at 1798.

243. *Id.* at 1796–97.

244. *Id.* at 1807.

245. *Id.*

246. *Id.*

247. Max Schanzenbach & Nadav Shoked, *Reclaiming Fiduciary Law for the City*, 70 *STAN. L. REV.* 565, 565 (2018).

248. *Id.* at 570.

249. *Id.* at 571–72.

1. Municipal Disposition Policies

Many major cities in the U.S. have enacted policies that encourage land disposition for affordable housing. One common policy is an explicit requirement to prioritize affordable housing. In Seattle, Washington, the City Council has resolved to “prioritize use of available City Property for development of Affordable Housing, including mixed-use development projects,” and explicitly allows the possibility of selling land at less than fair market value for this purpose.²⁵⁰ Frequently, cities allow the sale of surplus land at below market value. In Los Angeles, California, if the City Council determines that the sale of city property will serve a “public purpose,” including the development of affordable housing, then it may be sold below fair market value.²⁵¹

Cities sell surplus land through a variety of mechanisms. In Jacksonville, Florida, surplus land may be donated outright or sold by the City’s Real Estate Division.²⁵² In San Francisco, California, before a city agency can sell property it must notify the Executive Director of the Mayor’s Office of Housing.²⁵³ If the Director determines that the land is suitable for affordable housing, it must negotiate with the agency to acquire the property, and if that is unsuccessful, it must notify affordable housing development groups.²⁵⁴ In Philadelphia, Pennsylvania, land-disposition deals must go through a competitive process; however, in certain council districts, developments with 51% or more affordable housing are exempt from this process.²⁵⁵ Furthermore, qualifying properties may be sold at less than fair market value.²⁵⁶ In Dallas, Texas, the City Council may sell tax-foreclosed or seized land to nonprofits to develop affordable housing.²⁵⁷ If the nonprofit fails to build the housing, the city has the ability to take the property back.²⁵⁸ Finally, in Charlotte, North Carolina, city-owned properties are reviewed regularly by the city’s Engineering & Property Management-Real Estate Department to determine their feasibility for affordable housing development.²⁵⁹

2. Statewide Disposition Policies

There are comparatively fewer policies on the state level that encourage surplus land sales. In Washington, state agencies and municipalities may transfer

250. Res. 31837, Seattle City Council, (Wash. 2018).

251. L.A., Cal., Admin. Code § 7.27.3.

252. JACK., FLA., CODE § 122.423.

253. S.F., CAL., ADMIN. CODE § 23A.10.(b).

254. *Id.*

255. PHILA., PA., CODE § 16-404(2)(d)(1)(d).

256. PHILA., PA., CODE § 16-404(3)(b)(2).

257. DALL., TEX., CITY CODE § 2-26.6.

258. *Id.*

259. CITY OF CHARLOTTE, GUIDELINES FOR EVALUATION AND DISPOSITION OF CITY OWNED LAND FOR AFFORDABLE HOUS. (2019), <https://www.charlottenc.gov/files/sharedassets/city/v/1/streets-and-neighborhoods/housing/documents/guidelines-for-evaluation-and-disposition-of-city-owned-land-for-affordable-housing.pdf> [<https://perma.cc/AD3S-6L3J>].

land at no cost for affordable housing purposes.²⁶⁰ In Florida, all municipalities must develop a list of all city-owned properties that could be used for affordable housing.²⁶¹ Cities may sell the land at no cost and may impose deed restrictions to ensure that the land is affordable in perpetuity.²⁶² In California, the Surplus Land Act requires local agencies to notify affordable housing developers prior to the sale of surplus land.²⁶³ In 2019, the law was amended to clarify that local governments may sell land for affordable housing at below fair market value.²⁶⁴

CONCLUSION

Social housing has a long pedigree in a variety of contexts around the world as a policy tool that can provide truly affordable housing to the general public. Outside of the United States, social housing programs diverge widely. In some systems, such as in the Netherlands, the state is minimally involved, while in other systems, such as Singapore, the state controls nearly every aspect of the process. However, the few systems that have started to crop up in the United States have a lot more in common. In Montgomery County, Maryland and Atlanta, Georgia, the government plays a leading role in acquiring and developing the land while it collaborates with the private sector to actually build the units.

One of the key promises of social housing is long-term sustainability. While significant initial support and long-term indirect assistance from the government are often still needed, social housing systems are touted as having the ability to stand on their own two feet without direct subsidies. There is no one tool that can accomplish this, but cross-subsidization through mixed-income housing and elimination of land-acquisition costs (either through disposition or through a process of inclusive eminent domain) are two powerful tools that jurisdictions can use. Overall, by taking the best of social housing models both in the United States and abroad, policymakers can build an innovative new system that better reflects housing as a fundamental right rather than a market-driven privilege.

260. WASH. REV. CODE §§ 39.33.015.

261. FLA. STAT. § 166.0451 (2024).

262. *Id.*

263. CAL. GOV'T CODE § 54222 (Deering 2025).

264. Assemb. B. 1486, 2019 Assemb., Reg. Sess. (Cal. 2019).