

**REPORT OF THE  
CHIEF LEGISLATIVE ANALYST**

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DATE: November 9, 2018

TO: Honorable Members of the Rules, Elections, Intergovernmental Relations, and  
Neighborhoods Committee

FROM: Sharon M. Tso *Sto*  
Chief Legislative Analyst Assignment No: 18-10-0953

SUBJECT: 2019-2020 Housing State and Federal Legislative Programs

**CLA RECOMMENDATIONS**

1. Adopt the attached Resolutions to SUPPORT and/or SPONSOR the following proposals in the City's 2019-2020 State Legislative Program:
  - Ellis Act Reform
  - Eviction Data
  - Redevelopment Financing Tool
  - Article 34 Reform or Repeal
  
2. Instruct the Chief Legislative Analyst (CLA), with the assistance of the Housing and Community Investment Department, to monitor the following proposals and instruct the CLA to report and prepare Resolutions, if necessary, when additional details regarding related legislation are available:
  - Anti-Discrimination for Section 8 and Other Rental Assistance Vouchers
  - Cap and Trade Program
  - Upzoning / Streamlining
  
3. Adopt the attached Resolutions to SUPPORT and/or SPONSOR the following proposals in the City's 2019-2020 Federal Legislative Program:
  - Low Income Housing Tax Credit Program Reform
  - Affirmatively Furthering Fair Housing Rule
  - National Housing Trust Fund

**SUMMARY**

For the 2019-2020 State and federal Legislative Program, this Office reviewed several housing proposals from the Housing and Community Investment Department (HCID). Consistent with past actions to sponsor and support legislation to promote affordable housing, this Office recommends that Council support and/or sponsor State and federal legislation based on these proposals, and monitor others as described in this report.

## **BACKGROUND**

### **STATE LEGISLATION - SUPPORT/ SPONSOR**

HCID recommends support or sponsorship of proposals pertaining to Ellis Act reform, the City's ability to collect eviction data, a new redevelopment financing tool, and the reform or elimination of Article 34.

#### **Ellis Act Reform**

The California Ellis Act was intended to allow a property owner to exit the rental business and no longer be a landlord. However, HCID indicates that increasingly owners are using the law to evict rent control tenants and re-enter the rental market after the required waiting period.

HCID recommends that the City support a bill that would provide added local control, where the City could impose new regulations; close existing loopholes that limit the ability of tenants to return to the property; impose additional requirements on new owners, in effort to limit the ability of speculators and new owners to invoke the Ellis Act during their first few years of ownership; extend the notification period for all tenants; and offer relocation assistance to tenants facing eviction. In the past, the City has supported Ellis Act reform, and as such, this Office recommends that the City support this proposal.

#### **Eviction Data**

The City is currently unable to access local eviction data from the superior courts. Housing evictions may be a significant constraint on households seeking housing or result in households being evicted into homelessness. HCID reports that no data is currently available to allow for an analysis of these concerns. Such data could inform the design of a Right to Counsel program, which was recently requested by Council. HCID recommends that the City support any legislation that mandates superior courts to share annual eviction data with City or County housing agencies, particularly cities or counties with Rent Stabilization Ordinances, Right to Counsel programs, and/or similar initiatives to prevent displacement of tenants. HCID recommends that the data include information on all sealed and unsealed unlawful detainers, plaintiffs' names, addresses of the premises, the cause stated in the notice, if there are any stipulations, and the outcome of the case. HCID recommends that a Memorandum of Understanding between the Superior Court and a jurisdiction's housing department be required to ensure that the data is handled carefully and protects the privacy of both tenants and landlords.

#### **Redevelopment Financing Tool**

Following the elimination of redevelopment in the State in 2012, two new tax increment financing (TIF) tools, the Enhanced Infrastructure Financing District (EIFD) and Community Revitalization and Investment Authority (CRIA), were established to finance affordable housing, infrastructure improvements, and economic development in specified geographic areas. However, these tools remain different than the former redevelopment structure in several ways, such as restrictions on the sources of TIF available for use and the TIF's housing requirements. There is potential for new legislation that would bring back redevelopment in a structure closer to its prior form and it is anticipated that such proposals will be brought forth in the upcoming legislative session. HCID

recommends support for any redevelopment bill that: (1) requires that at least 30 percent of all tax revenue be set aside for affordable housing; (2) offers protections for existing Rent Stabilized housing stock; and (3) requires relocation assistance for tenants in non-RSO properties. This Office recommends support for HCID’s proposal, without the stipulation of an affordable housing set-aside percentage until the details of a redevelopment bill are available.

### Article 34 Reform or Repeal

In 1950, Article 34 “Public Housing Project Law” was added to the California Constitution. This law requires local jurisdictions to submit projects to voter referendum when public funds are allocated to low income rental housing developments. Through past propositions, the City has received Article 34 Authority to finance up to 52,500 affordable rental units, with a maximum of 3,500 units per Council District. The City is nearing its limit of units that can be funded Citywide, and even closer in reaching the ceiling in a number of Council Districts.

Recently, the State’s voters approved a number revenue sources for affordable housing, such as a new real estate document recording fee, a \$4 million bond for existing State programs (Proposition 1), and the use of up to \$2 billion in bond proceeds for the No Place Like Home Program (Proposition 2). Locally, City voters approved Proposition HHH, authorizing an additional \$1.2 billion in bond proceeds to fund supportive housing. The need to amend/repeal Article 34 limits is critical for the City to meet the voters’ intent in approving new funding for affordable housing. This Office recommends that Council support any proposal to amend or repeal Article 34 of the State Constitution.

## **STATE LEGISLATION – MONITOR**

The following proposals are still being developed and require additional analysis. Therefore, this Office recommends that they be monitored as there is insufficient information relative to their administration, enforcement, or fiscal impact. This Office will report and prepare Resolutions, if necessary, when additional details are available.

### Anti-Discrimination for Section 8 and Other Rental Assistance Vouchers

The current Fair Employment and Housing Act (FEHA) makes housing discrimination based on source of income illegal. However, according to HCID, it has been interpreted to exclude tenant vouchers as a protected class of income. HCID recommends supporting a bill that would make it illegal for a landlord to refuse to offer a unit for rent solely based on the fact that the applicant would pay with a rental assistance voucher. In 2018, the Legislature passed AB 2219 requiring landlords to accept third-party rent payments, but excluded Section 8 vouchers. Further, it allowed landlords to opt out if accepting a voucher required entering into a contract with the government or other regulatory entity, which would be required of nearly all voucher programs according to HCID.

### Cap and Trade Program

State law sets aside 20 percent of the Cap and Trade Program’s auction proceeds to be used to build affordable housing under the Affordable Housing and Sustainable Communities (AHSC) Program. HCID reports that since the AHSC Program’s inception in 2015, nearly \$119 million has been allocated to 17 projects in the City of Los Angeles. HCID recommends that Council monitor any

legislation that would threaten to divert any of the 20 percent set-aside for other purposes or eliminate any of the Cap and Trade Programs, which contribute to affordable housing.

### Upzoning / Streamlining

It is anticipated that new legislation to allow for upzoning/streamlining while limiting local control, similar to the unsuccessful SB 827 in the last legislative session, will be introduced. HCID supports planning and zoning measures that encourage affordable housing or mixed-use developments, limits the demolition of RSO buildings, and integrates relocation requirements for existing non-RSO tenants. HCID opposes any streamlining or rezoning bill that would not provide protections for tenants and affordable housing requirements.

Due to the uncertainty around what a future bill may entail and potential impacts, this Office recommends that upzoning/streamlining proposals be further monitored, and that this Office be instructed to report once a bill is introduced.

## **FEDERAL LEGISLATION – SUPPORT/ SPONSOR**

### Low Income Housing Tax Credit (LIHTC) Program Reform

The LIHTC Program provides federal tax credits that support the development of affordable housing. Several previously proposed federal measures, including the Affordable Housing Credit Improvement Act (H.R. 1661 and S. 458), include reforms to the Housing Credit and Housing Bonds. HCID supports similar improvements to expand and strengthen the LIHTC program, including expanding the program by 50 percent, setting a permanent 4 percent credit rate floor for acquisition and bond-financed projects, and income averaging to reach a wider range of households.

### Affirmatively Furthering Fair Housing (AFFH) Rule

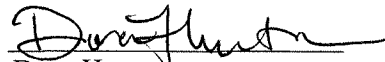
In July 2015, HUD, published its AFFH Rule implementing the 1968 Fair Housing Act's obligations for jurisdictions receiving federal housing funds to affirmatively further fair housing. The AFFH Rule instituted a process to analyze the fair housing environment and set priorities and goals through an Assessment of Fair Housing (AFH). The City submitted its AFH in November 2017, and was expecting HUD's determination of acceptance around the time that HUD decided to delay the implementation of the AFFH Rule. Currently, HUD is soliciting public comment of streamlining and enhancing the AFFH to make changes that would minimize regulatory burden, among other changes.

HCID supports improving the AFFH tools and technical assistance programs, HUD's review of fair housing planning documents, and strongly supports its continued requirement for grantees to affirmatively further fair housing. HCID opposes any actions to discontinue the AFH or to revert backwards to the use of the Analysis of Impediments to Fair Housing Choice, and strongly supports any proposal whereby HUD provides resources such as technical assistance and implementation guidance for the City to complete its AFH in future years.

National Housing Trust Fund (NHTF)

Pursuant to the Housing and Economic Recovery Act of 2008, HUD's interim regulations published in 2015 direct Fannie Mae and Freddie Mac to set aside funds for the NHTF. The NHTF provides grants to state governments to increase and preserve the supply of affordable rental housing for extremely low and very low income families, including homeless families; and increase homeownership opportunities for extremely low and very low income families. California's allocation in Fiscal Year 2018 is \$36.6 million. It is anticipated that the State will award these funds in December 2018.

In September 2018, the Bipartisan Housing Finance Reform Act was released as a discussion draft. HCID reports that the draft bill would wind down Fannie Mae and Freddie Mac, and create a mortgage insurance program under the Governmental National Mortgage Association (Ginnie Mae). Further, Ginnie Mae would no longer be part of HUD. HCID indicates that the bill may redirect funding away from the NHTF. HCID supports the protection and increase of the NHTF.



Dora Huerta

Analyst

- Attachments:
- Resolution Relative to Ellis Act Reform
  - Resolution Relative to Eviction Data
  - Resolution Relative to Redevelopment
  - Resolution Relative to Article 34
  - Resolution Relative to Low Income Housing Tax Credit Program Reform
  - Resolution Relative to the Affirmatively Further Fair Housing Rule
  - Resolution Relative to the National Housing Trust Fund



## RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations, or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, under the California Ellis Act, landlords are provided the statutory right to take units off the rental housing market should they no longer wish to offer the units to the rental market; and

WHEREAS, according to the Housing and Community Investment Department (HCID), from 2001 to 2018, approximately 24,000 units were removed from the rental market through the Ellis Act; and

WHEREAS, in order to protect the rights of tenants, all tenants should be given adequate notification of eviction so they may find adequate affordable housing; and

WHEREAS, HCID notes that owners are using the law to evict tenants and re-enter the rental market after the required waiting period; and

WHEREAS, it is also in the interest of the City of Los Angeles to ensure that when landlords re-rent Ellis properties, that the landlord be required to notify all former tenants;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2019-2020 State Legislative Program SUPPORT and/or SPONSORSHIP of legislation or administrative action relative to the Ellis Act that would allow for additional local control of regulations, close exiting loopholes that limit the ability of tenants to return to units, impose additional requirements on new owners, and extend notification for existing tenants facing evictions.





## RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations, or policies proposed to or pending before a local, state, or federal governmental body or agency must first have been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, the City seeks to protect tenants from displacement in its tight housing market; and

WHEREAS, HCID reports that several studies reveal that tenants who have experienced evictions have a higher rate of homelessness, negative health impacts, and their children have poorer educational outcomes; and

WHEREAS, Council is considering a Right to Counsel Ordinance and other initiatives to prevent tenant displacement; and

WHEREAS, data from superior courts can inform the City's efforts to create an eviction-defense program; and

WHEREAS, the City should support legislation that would mandate superior courts to share eviction data with city or county housing departments, including sealed and unsealed unlawful detainers, plaintiff information, among other information;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2019-2020 State Legislative Program SUPPORT and/or SPONSORSHIP of any legislation or administrative action that would mandate superior courts to share eviction information with local housing agencies.



## RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations, or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, due to the elimination of California's redevelopment agencies in 2012, there has been a sharp decline in resources to fund affordable housing, economic development, and infrastructure projects; and

WHEREAS, the former Community Redevelopment Agency of Los Angeles set aside approximately \$50 million annually for the development of affordable housing; and

WHEREAS, former redevelopment law required the allocation of 20 percent of tax increment revenue for affordable housing, mandated relocation assistance, and other protections for tenants facing displacement due to redevelopment-financed improvements; and

WHEREAS, the City should ensure that any new form of redevelopment require a percentage of tax increment revenue be dedicated to affordable housing and offer tenant protections to those who may be affected by redevelopment projects;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2019-2020 State Legislative Program SUPPORT and/or SPONSORSHIP of legislation or administrative action that would require a set aside of tax increment revenue for affordable housing, protections for the City's existing Rent Stabilized housing stock, and relocation assistance for tenants in non-RSO tenants facing displacement due to redevelopment improvements.



## **RESOLUTION**

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations, or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, in 1950, Article 34 was added to the State Constitution, requiring voter approval for the expenditure of public funds on affordable rental housing; and

WHEREAS, to date, the City has received voter approval, or Article 34 Authority, to finance up to 52,500 affordable rental units; and

WHEREAS, the City's Article 34 Authority is close to being exhausted in certain areas of the City, and it is timely to revisit the practicality of this law at a time when there is a critical need for affordable housing; and

WHEREAS, the voters of California recently approved over \$2 billion in funding for the production of affordable housing throughout the State and locally, voters overwhelmingly approved an additional \$1.2 billion in Proposition HHH bond proceeds for the development of permanent supportive housing in the City of Los Angeles; and

WHEREAS, the City should ensure that Article 34 does not prohibit the City from meeting the intent of the voters to build affordable housing in local jurisdictions;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2019-2020 State Legislative Program SUPPORT and/or SPONSORSHIP of legislation or administrative action that would amend and/or repeal Article 34 of the California Constitution to allow for the expenditure of public funds for affordable housing.



## RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations, or policies proposed to or pending before a local, state, or federal governmental body or agency must first have been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, leveraging public and private investment is essential to addressing the affordable housing crisis in our State; and

WHEREAS, the federal Low Income Housing Tax Credit (LIHTC) Program, created under the Tax Reform Act of 1986, provides the private market an incentive to invest in affordable and sustainable housing; and

WHEREAS, an increase in LIHTC would finance critically needed affordable units and fixing the four percent tax credit's floor would generate additional private equity in a deal, lessening the gap that must be filled by public sources; and

WHEREAS, there are several ways to strengthen the LIHTC Program, including increasing the tax credit cap; adjusting the popular four percent tax credit's floating rate to a permanently fixed four percent to avoid uncertainty in deals and leverage additional funds; and averaging income levels so that a wider population can access affordable housing; and

WHEREAS, due to the increase in the demand for affordable housing, it is critical that the LIHTC be expanded and strengthened to facilitate additional housing production in the City;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2019-2020 Federal Legislative Program SUPPORT and/or SPONSORSHIP of any legislation or administrative action that would expand or strengthen the Low Income Housing Tax Credit, including expanding the program by 50 percent, establishing a permanent four percent credit rate floor, and authorizing income averaging to reach a wider population.





## RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations, or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, in 2015 the federal Department of Housing and Urban Development (HUD) published its Affirmatively Furthering Fair Housing (AFFH) final rule implementing the Fair Housing Act of 1968; and

WHEREAS, the Fair Housing Act makes it illegal for jurisdictions to discriminate and requires jurisdictions to take meaningful actions to undo historic patterns of discrimination; and

WHEREAS, AFFH Rule obligates jurisdictions receiving federal funds for housing and urban development to affirmatively further fair housing; and

WHEREAS, in response to the AFFH Rule, the City submitted its Assessment of Fair Housing (AFH) in November 2017; and

WHEREAS, at the time the City was expecting HUD's determination of approval, HUD decided to delay the implementation of the AFFH Rule and suspended responses of acceptance for AFH submissions; and

WHEREAS, the City should support the continuation of the AFFH Rule and technical assistance to ensure that grantees continue to affirmatively further fair housing;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2019-2020 Federal Legislative Program SUPPORT and/or SPONSORSHIP of legislation or administrative action that would support the continuation of the Department of Housing and Urban Development's Affirmatively Furthering Fair Housing Rule, including improvements and technical assistance for grantees to continue to affirmatively further fair housing.



## RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations, or policies proposed to or pending before a local, state, or federal governmental body or agency must first have been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, there is a need for federal resources to address the increased demand for affordable housing in the City; and

WHEREAS, the National Housing Trust Fund (NHTF) was established by the Housing and Economic Recovery Act of 2008 (HERA); and

WHEREAS, in July 2015, the Department of Housing and Urban Development (HUD) published interim guidelines for the NHTF; and

WHEREAS, the NHTF, capitalized with a set-aside from Fannie Mae and Freddie Mac, supports the development of rental and homeownership housing for extremely low and very low income households; and

WHEREAS, California's Department of Housing and Community Development administers the State's NHTF allocation, and is expected to award over \$30 million statewide by December 2018; and

WHEREAS, federal proposals to reform the housing finance system, and potentially dismantle Freddie Mae and Fannie Mac, could divert funds from the National Housing Trust Fund; and

WHEREAS, the City should take action to protect and increase federal resources that facilitate the supply of rental and homeownership housing for its lowest income households;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2019-2020 Federal Legislative Program SUPPORT and/or SPONSORSHIP of any legislation or administrative action that would preserve and expand the National Housing Trust Fund.

