

The Failure of For-Profit Affordable Housing and How Tenants are Organizing for Change

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Executive Summary

Across the Bay Area, residents need abundant, affordable housing. But for decades, federal policymakers have stripped funding for affordable housing, leaving private market programs such as the Low-Income Housing Tax Credit (LIHTC) as one of the few options available. The consequences of relying on this market-driven approach to affordable housing are clear and concerning: scarce public resources going to investor profits; fewer dollars for capital-starved mission-driven organizations; and unaffordable, unstable, and unhealthy homes for our lowest income community members. As the state and the Bay Area are poised to commit billions in desperately-needed new funding for affordable housing, policymakers must act to rein in corporate profiteers by increasing accountability that ensures affordable housing with dignity for all.

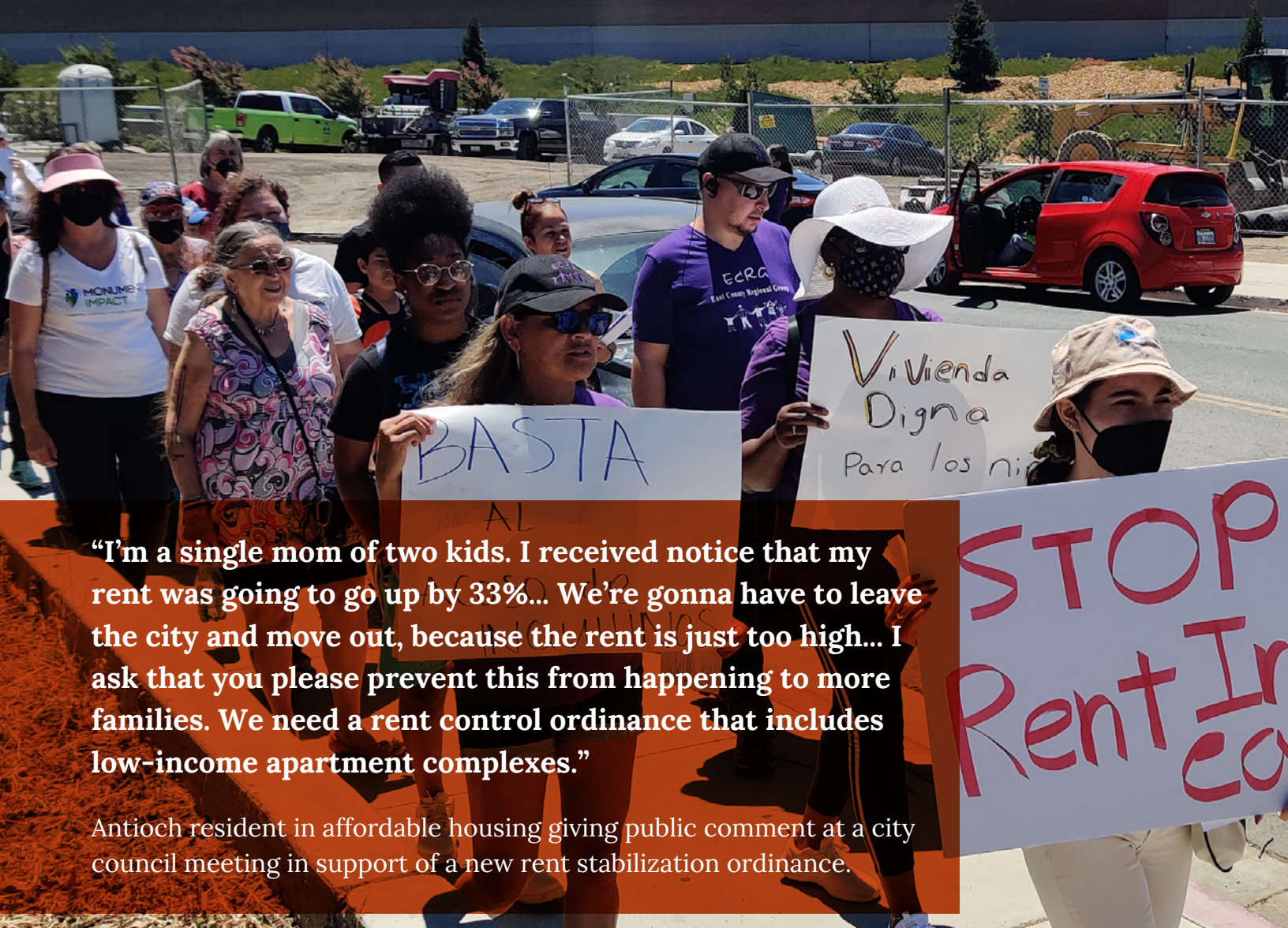
Report highlights

Many affordable housing residents have profit-seeking landlords. In the Bay Area, nearly half of homes that receive LIHTC allocations are owned by for-profit corporations or nonprofits with for-profit characteristics. Section One of this report describes how for-profit actors benefit from public programs to provide affordable housing, at the expense of the residents.

Low-income renters in affordable housing often have fewer rights and protections than renters who live in rent-regulated, unsubsidized housing, due to exemptions in local and state tenant protection laws, lack of regulations, and lax enforcement. Section Two of this report describes the experiences of tenants in terms of rents, evictions and management relations, maintenance and safety, and accessibility.

Tenants are organizing for change — and winning. Section Three of this report looks at three strategies tenants are using to take on their profit-seeking landlords: forming tenant unions, winning stronger tenant protections, and advancing community-controlled models of housing.

State and local policymakers can support tenants to ensure truly affordable housing with dignity. Section Four outlines policy recommendations at the state and local level to close loopholes in tenant protections, strengthen tenant organizing, and increase transparency. Additional recommendations include creating and enforcing stronger regulations, and redirecting scarce public dollars from greedy profiteers towards mission-driven affordable housing providers.



“I’m a single mom of two kids. I received notice that my rent was going to go up by 33%... We’re gonna have to leave the city and move out, because the rent is just too high... I ask that you please prevent this from happening to more families. We need a rent control ordinance that includes low-income apartment complexes.”

Antioch resident in affordable housing giving public comment at a city council meeting in support of a new rent stabilization ordinance.

Photo credit: Chris Schildt

Introduction

On August 25, 2022, over one hundred renters and supporters filled the Antioch city council chambers. Over the course of several hours, low-income renters living primarily in affordable housing complexes shared their stories of large rent increases, rodent infestations, mold and maintenance issues, harassment by management staff, and more. At the end of the evening, the city council narrowly approved a rent stabilization ordinance, on a 3-2 vote.¹ Affordable housing tenants finally had protections from exorbitant rent increases.

This victory was years in the making. In early 2021, the East County Regional Group (now Rising Juntos) launched *Antioch CHANGE: A Community Housing Assessment of Needs, Gaps, Equity* to uncover residents’ challenges and desires for

housing stability.² In just three months, community leaders interviewed over 1,000 Antioch residents to document their experiences and build power for housing stability. Their findings revealed extreme housing cost burden, instability, unhealthy conditions, and disparities among low-income Black and Latino families. Antioch residents needed tenant protections urgently. Led by residents most impacted by these housing insecurities, organizers with Rising Juntos, ACCE, Monument Impact, and Faith Alliance for a Moral Economy launched a campaign to pass citywide tenant protections, starting with rent stabilization.

Many of the resident leaders in the campaign lived in an affordable housing apartment complex called Casa Blanca. In early summer 2022, they received notices of rent increases of \$300-500 per month, to take effect in just 60 days. They quickly heard that many of their neighbors had received similar notices, as had residents in a second affordable housing apartment complex called Delta Pines. These two buildings had one thing in common — they were both owned by a Santa Monica-based, for-profit investor: Levy Affiliates.

Casa Blanca and Delta Pines apartment complexes are low-slung buildings built in the 1960s and 70s with a combined total of over 300 units. The apartments had been converted to

affordable housing in the late 1990s, when they were purchased using a federal program called Low-Income Housing Tax Credits, or LIHTC. In 2016, Levy Affiliates was awarded \$20 million in federal tax credits to purchase these properties and rehabilitate them. But the repairs never came. Tenants in both buildings have continued to experience mold, broken heaters, peeled floors, plumbing failures, and more.

In 2022, Levy Affiliates gave notice to raise rents by 30% or more to about 150 tenants across these two buildings.³ Because the new rents were below the maximum rents for LIHTC buildings, the increases were allowable according to the California Tax Credit Allocation Committee, which regulates LIHTC buildings in California.⁴ And because these are affordable housing units, they were exempt from the state rent cap law, AB 1482, which limits how much landlords can raise rents. Ironically, Levy Affiliates could raise the rent so dramatically in part because the tenants were living in affordable housing.

The tenants were able to beat back the rent increases through powerful organizing: tenant meetings, street rallies and protests, testimonies at city council, and telling their story to the media. But without a city-wide rent stabilization ordinance that applied to affordable housing, residents knew it

was just a matter of time before Levy Affiliates tried to raise their rents again. So they took their struggle to the city council and won city-wide rent control in the Fall of 2022.

The experience of these Antioch tenants raises two concerns that should be alarming for all who care about affordable housing in California. First, it reveals the reality that many low-income residents who live in affordable housing have landlords who are driven by profits and not by a social mission. Nearly half of Bay Area affordable housing units that receive LIHTC allocations — 48% — are owned by entities that do not meet criteria established by the California Housing Partnership for being stable and mission driven. This includes for-profit controlled entities and nonprofits without dedicated professional housing staff capacity to adequately maintain their portfolios or for whom providing affordable housing is not their primary mission.⁵

Profit-seeking actors use public programs such as LIHTC to generate profit for themselves and their investors at the expense of the tenants forced to live in poor housing conditions. A growing body of evidence shows that for-profit landlords use predatory practices to squeeze profits out of buildings

by underinvesting in maintenance, skimping on management, maximizing rents, and finding ways to charge new fees and penalties.⁶ In addition to Levy Affiliates, other for-profit corporations such as Blackstone Inc. and KDF Communities have received recent attention for rent increases, evictions, and maintenance complaints in their affordable housing developments.⁷

Profit-seeking entities are also much more likely to convert affordable housing to market rate at the end of their rent affordability terms.⁸

The second concern is that under California state law, low-income tenants living in subsidized housing often have fewer rights and protections than renters living in rent-regulated, unsubsidized housing. This is because many state and local governments exempt affordable housing from their regulations and ordinances, falsely assuming that existing federal regulations provide stronger protections for these tenants. But federal affordable housing laws protecting tenants are often vague, poorly understood, and inadequately enforced. The impact of this is that low-income tenants are under-protected, allowing predatory landlords to exploit these loopholes to maximize their profits at these tenants' expense.



Photo credit: Chris Schildt

This urgent issue impacts more than a million low-income residents across California, especially people of color, disabled people, and seniors. There are over 500,000 affordable housing units across the state, 80% of which have received LIHTC allocations.⁹ The median income for households living in LIHTC units is \$22,000, barely above the federal poverty line for a 2-person household. More than 11 percent of residents have a disability and 30 percent are over the age of 62. Nearly 20 percent of residents are Black, in a state where less than 6 percent of the population is Black.¹⁰

As the tenants in Antioch have demonstrated, tenants are organizing for change — and winning. This report centers the experiences of low-income renters living in affordable housing and their leadership in building a movement for housing justice. We hope this report will address the failures of profit-seeking actors and chart a path forward to provide affordable, dignified, accessible housing for all.



Photo credit: Chris Schildt

Section 1

Corporate Exploitation: How Corporations Profit from Public Affordable Housing Funds

Since 1974, the federal government has shifted away from directly funding public housing that is owned and operated by a Public Housing Authority, towards market-based affordable housing, owned and operated by private companies, both nonprofit and for-profit.¹¹ The LIHTC program is now the largest source of funding for affordable housing today, costing the government an average of \$13.5 billion each year in tax credits for acquisition, rehabilitation, and new construction of affordable rental housing.¹² LIHTC provides private companies with public subsidies in the form of a reduced tax burden in exchange for capital for rental housing where the rents are set below market rate (though oftentimes still far higher than what the renters can afford, as explained below).

In the Bay Area, 85% of all state and federally-subsidized affordable rental properties use LIHTC — over 105,000 homes in total.¹³

Proponents of low-income housing tax credits say they are premised on the idea of a win-win-win for investors, affordable housing developers, and low-income tenants alike. But recent trends in the sector have increasingly turned the tables against tenants.

Too often, the LIHTC program has allowed profit-seeking investors to enrich themselves at the expense of low-income tenants.¹⁴ Because LIHTC is premised on generating funds for housing development through the

sale of tax credits, investing in LIHTC properties has turned into a lucrative business. These tax credits, which investors use to offset their liabilities, coupled with a dearth of monitoring mechanisms, have effectively made the LIHTC program a corporate tax shelter that attracts exorbitantly wealthy and powerful corporations as partners.¹⁵ The primary goal of these for-profit developers, syndicators, and investors is to maximize their profit while limiting their costs.¹⁶ Consequently, tenants' rights and interests — including affordability, habitability, and accessibility — are subordinated and neglected.

How LIHTC works: a brief primer

Established in 1986, the Low-Income Housing Tax Credit program (LIHTC) offers tax benefits in exchange for capital to construct or rehabilitate affordable housing.¹⁷ These benefits include tax credits and other tax deductions for private investors. Unlike other subsidized housing programs, LIHTC is administered by the Internal Revenue Service, not by the Department of Housing and Urban Development (HUD). As such, the LIHTC program differs from HUD programs like Section 8, where rent is based on the tenant's income.¹⁸

Instead, the LIHTC program sets rents according to formulas based on specified percentages of the area median income (AMI), which is the average family income in a geographic area.¹⁹ Consequently, LIHTC housing may not be affordable to some low-income tenants, because their actual incomes may be less than the target income for their unit. For example, a unit with rents set to be affordable to those earning 50% of AMI will be relatively less affordable to a tenant who only earns 40% of AMI because the rent will be a larger share of their

actual household income. Using a formula that sets rents based on AMI also means that, unless supplemented with project-based Section 8 or other rent or operating subsidies, LIHTC alone does not provide enough subsidy to support more than a few extremely low income units in a property.

In California, the federal and state LIHTC programs are administered by The California Tax Credit Allocation Committee (CTCAC). CTCAC awards tax credits to private developers and oversees a project during the entire time the project must remain in the program, i.e., the “extended use period,” which is 55 years in California.²⁰ The private developers who receive the tax credits subsequently obtain funding to build or rehabilitate housing by selling these tax credits to private investors. The investors can then claim the tax credits over a ten year period. Credits claimed are then subject to recapture for another five years. This 15-year period is known as the “compliance period.”

Federal law requires state administering agencies to create a Qualified Allocation Plan (QAP) that

establishes eligibility criteria, priorities, and policies and procedures for awarding tax credits and monitoring/evaluating compliance during the extended use period.²¹ The QAP in California is the code of state regulations that CTCAC maintains and enforces.²² The QAP must set preferences for projects that serve the lowest income tenants for the longest period and those in certain priority areas, which is intended to create competition among prospective developers based on how well projects will perform on these characteristics.²³ This is why it is in developers’ best interest to structure projects and how they are financed to target the lowest income tenants possible.

Because the QAP also must set selection criteria based on local conditions and create procedures for monitoring noncompliance, CTCAC and other state administering agencies have broad discretion to set policies impacting LIHTC tenants.²⁴ The 55-year extended use period is one example of how CTCAC has used its authority to set policy in the QAP — under federal law, this period is only 30 years.²⁵



Photo credit: Matt Renfro

How developers profit from LIHTC

Nationally, roughly 80% of LIHTC developers are for-profit institutions.²⁶ In the Bay Area, roughly half of LIHTC homes are owned by profit-seeking actors, including for-profit corporations and nonprofits that demonstrate for-profit characteristics.²⁷

LIHTC investors benefit by receiving not only the tax credits themselves, but also depreciation deductions and other tax benefits that result from investing in low-income housing projects.²⁸ Although any accredited investor can purchase low-income housing tax credits, the share of individual investors who participate in LIHTC has been declining overall, as certain deductions for this passive investment

activity are limited for individuals.²⁹ Thus, corporations constitute a growing majority of investors. In particular, banks and other financial institutions are increasingly purchasing low-income housing tax credits, since they gain an additional benefit: investing in LIHTC contributes to their community investment and lending requirements under the Community Reinvestment Act.³⁰ As a result, LIHTC-related investments are competing with investments in other community needs targeted by the Community Reinvestment Act, such as countering redlining and addressing the credit needs of low-income communities.³¹

In recent years the number of low-income housing units in production

has decreased, despite an increase in the number of tax credits awarded.³² The inflation of hard costs such as construction, operating expenses, and resident services have contributed to this trend, but structural features of the LIHTC program have also created inefficiencies. For example, recent federal tax cuts have made LIHTC credits less valuable as a means to offset corporate tax liabilities, which means that each credit raises relatively less revenue than it could have under previous rates.³³

Additionally, tax credits are usually not enough to finance the entirety of a LIHTC project, so developers must seek funding from multiple sources, making projects more expensive, longer, and more unpredictable to complete due to increased soft costs. These “soft costs” (costs that are outside of land and construction) generally range from 25-33% and include developer fees.³⁴ There is a concern that these fees are ballooning, contributing to the growing inefficiency of the LIHTC program.³⁵

Some researchers and commentators have emphasized the role of profit-seeking actors in driving up these costs.³⁶ For example, several for-profit LIHTC developers have been convicted of fraudulently increasing soft costs, and at least one state Housing Finance Authority has been

accused of supporting these schemes.³⁷ These incidents have contributed to the increasing skepticism regarding program oversight and curtailing profit-seeking behavior.

There are additional for-profit actors in the LIHTC industry that may contribute to escalating costs. Syndicators act as middlemen in the LIHTC sector, earning a profit by marketing, packaging, and in some cases, buying and reselling tax credits from affordable housing developers to institutional investors.³⁸ Although many states have set limits on syndicator fees, a 2018 audit of the LIHTC program by the Government Accountability Office found that syndication expenses are not adequately tracked.³⁹

Aggregators are for-profit actors that acquire a financial interest in — or otherwise gain leverage over — a LIHTC partnership to either force the developer to buy them out at a much higher price or to force the developer out altogether so that they can sell the property.⁴⁰ In California, CTCAC has limited the opportunity for aggregators to disrupt LIHTC buildings by effectively prohibiting the types of contracts that they use to assume control of the buildings — an example of the powerful impact CTCAC can have through its regulatory authority.⁴¹



Photo credit: Lina Blanco Ogden/North Bay Organizing Project

Section 2

The Tenant Experience: Legal Loopholes and Lax Enforcement Are Harming Renters

Despite the enormous scope and significance of the LIHTC program, very little research has been dedicated to understanding the experience of tenants living in these buildings. Importantly, previous research does show that California tenants in LIHTC buildings are generally happier with their housing compared to where they were living before.⁴² However, in our conversations with more than two dozen tenants living in eight different LIHTC projects across the Bay Area, we found that many tenants are suffering from rent burdens, substandard living conditions, management challenges, and other issues.



Photo credit: Matt Renfro

These problems faced by LIHTC tenants are the result of gaps in existing LIHTC law, disparities between policy and practice, and general confusion arising from the complexity of the program. Profit-seeking actors have exploited these issues to enrich themselves and their investors, often at the expense of residents' best interests.

This section of the report sheds light on tenants' experiences living in LIHTC affordable housing, with a focus on four main areas: unaffordable rents and fees, lack of eviction protections and poor management relations, underfunded maintenance and security, and unmet accessibility needs.

Unaffordable rents and fees

“I moved in in 2016 paying a monthly rent of \$1,211 for a one bedroom. In the seven years I have lived [here] our rent has increased five times... I now pay nearly \$19,500 in annual rent compared to \$14,500 when I first moved in. For perspective, my gross annual income is approximately \$40,000. I recognize [this] is still below market rate for which I am grateful. Nevertheless, it is hard for seniors living on a fixed income to absorb these kinds of rent increases. Bottom line, affordable housing for seniors needs to remain affordable, but these types of rent increases are having the opposite effect.”

Resident, senior housing, Marin County

“It took me six and a half months of dealing with [this manager] to get them to put my rent back to where it was because they miscalculated... there was an abusive response telling me to go away to mind my own business when I was right.”

Resident, multifamily housing, Sonoma County

“There were all sorts of fees that we were charged... if you had a pet... if you wanted parking. We get charged a fee to pay rent, whether we paid it electronically. And then if you were late a day with the rent, you got hit with a \$200 fee... Most of those fees we’ve been able to get rolled back as a result of pushing back.”

Resident, senior housing, Marin County

“My rent was just changed by \$200. And I said, are you kidding me, is that illegal? That’s a big chunk out of my social security.”

Resident, multifamily housing, Sonoma County

Rents

Because the central purpose of the LIHTC program is to provide low-income housing, rent affordability is meant to be the main benefit for LIHTC tenants. The way that the LIHTC program tries to create affordability is by setting limits on how much rent can be charged for any given unit. This number, sometimes referred to as the “maximum gross rent limit,” depends on several factors, including the level of prosperity in the area (measured in terms of median income of households living in the region and referred to as Area Median Income or AMI), the size of the unit (measured in terms of number of bedrooms), and the affordability targets chosen by the LIHTC owner when applying for the program (which may depend on the availability of other forms of subsidy to further reduce rent limits).⁴³

This means that in general, tenants will pay less rent for a LIHTC unit than for a comparable non-LIHTC, market-rate unit in the same area. However, because LIHTC rents are based on the overall market and not on a tenant’s specific income, LIHTC units can still be unaffordable for many low-income tenants without additional subsidies, especially those with the lowest incomes in the region.⁴⁴

Table 1. LIHTC rents, by county

County	Rent for a 2-bedroom apartment at 60% AMI, 2023 (for projects placed into service after 2009)
Alameda	\$1,998
Contra Costa	\$1,998
Marin	\$2,517
Napa	\$1,803
San Francisco	\$2,517
San Mateo	\$2,517
Santa Clara	\$2,409
Solano	\$1,545
Sonoma	\$1,699

Rents are set based on a presumed household size that is calculated as the number of bedrooms times 1.5, but qualifying income limits are based on the household’s actual size.⁴⁵ For example, a 2-bedroom apartment targeted to a household of two at 50% of AMI will have its rent set at a rate that is approximately 30% of the income of a household earning 50% of AMI for a household of 3 persons (calculated as 2 bedrooms times 1.5 people per bedroom). A 4-person household that qualifies for this unit (whose actual income is higher than that of the presumed household size

because AMI increases with larger household size) will therefore pay less than 30% of their income for this unit, while a 2-person household with income at 50% AMI will pay more than 30% of their income.

In addition to rent, many residents in affordable housing are charged fees for parking, pets, access to facilities, and more. Sometimes these fees are illegal, but tenants are often unaware of the regulations and will pay them in order to keep their home.

The story of residents like those above – who are paying more for rent than they can afford – is not unique. Across California, 40% of LIHTC residents are housing cost-burdened, meaning they pay more than one-third of their income on rent.⁴⁶ This is possible because of the gap between incomes and maximum gross rent limits.

LIHTC rents are based on the overall AMI for a region, rather than the incomes of the low-income tenants actually occupying these units, which means that LIHTC rents tend to be significantly higher than what renters can afford. For example, in California, LIHTC residents' median household income was \$22,000 in 2021⁴⁷ – less than a third of the state-wide median household income of \$84,907.⁴⁸ In the Marin County building where the residents quoted above live, the



Photo credit: Chris Schildt

maximum rent limit for a 2-bedroom unit was as high as \$2,500 per month – totaling \$30,000 per year – in 2023.⁴⁹ Clearly there is a mismatch between the financial means of LIHTC tenants and how rents are set in LIHTC buildings.

Many tenants in LIHTC buildings rely on subsidies from other programs to make their rents truly affordable. Roughly 40% of all residents in LIHTC buildings receive additional rental assistance such as Section 8 Housing Choice Vouchers; for residents with extremely low-incomes (less than 30% AMI or roughly \$23,000 a year), nearly 70% rely on additional rental

assistance.⁵⁰ While these subsidies do reduce rent burdens for LIHTC tenants, conflicting policies can result in further confusion regarding tenants' rights and management compliance.⁵¹ Furthermore, many of these programs have long waiting lists and eligibility criteria that create additional hurdles for tenants in accessing truly affordable housing.

The layering of subsidies, which is often necessary to achieve deep

affordability in high-cost areas, is not a problem in itself – the issue is that the scarcity of these additional resources contributes to the unaffordability of LIHTC buildings. The consistent need for layered subsidies in LIHTC buildings also underscores the inefficiency of the program's current structure: LIHTC cannot achieve its primary goal of producing affordable housing without being propped up by significant additional resources.

Rent increases

California's Tenant Protection Act of 2019 (TPA) created a statewide rent cap that bars landlords from raising the rent by more than 10% total or 5% plus inflation – whichever is lower – over a 12-month period.⁵² However, the TPA specifically exempts all affordable housing, including LIHTC buildings.⁵³ This means that as long as the rent stays below the maximum gross rent limit, owners can raise it by as much as they want.⁵⁴ This can be especially problematic in situations where an area's median income skyrockets, such as in Marin County where the median income rose over 35% from 2017 to 2022,⁵⁵ since the gross rent limit is tied to AMI.

CTCAC's Section 42 LIHTC Lease Rider, which LIHTC owners are required to attach to all leases, even enshrines the

right of owners to increase the rent in accordance with increases to the LIHTC program's maximum gross rent limits.⁵⁶ LIHTC landlords can issue rent increases as frequently as they want (even multiple times per year), as long as they follow the proper rules for notifying tenants ahead of time.

Although local jurisdictions can legally pass rent control laws that cover LIHTC buildings, the reality is that most follow the lead of state law and categorically exempt all affordable housing.⁵⁷ A notable exception is Antioch's rent stabilization ordinance, described in this report's introduction, which was passed due to a major community-wide mobilization.



Photo credit: Gloria Matuszewski

Fighting Back Against Unaffordable Rents in Novato, California

The Villas at Hamilton Senior Apartments is a 128-unit community for residents 55 years and older that has been experiencing steep rent increases. Over the span of 19 years, from 2003 to 2022, residents experienced 14 rent increases.

Adam, a spokesperson for the Hamilton Tenants Association, shares that a new tenant today would pay upwards of \$1,750 per month for a studio apartment. This unaffordable rent poses a significant threat for low-income seniors who rely on a fixed income. Adam explains how “the problem is that the rents keep going up. And people on a fixed income have to keep cutting back on the basics. In a lot of cases people

are paying 50% of their income on rent, easily, in some cases higher. Housing becomes unaffordable, it becomes a hardship, and people are driven out... they have to start giving up very basic things. Transportation, medical appointments, grocery buying — it’s the fundamental things that start to go.”

Adam points to the LIHTC rent calculation formula as a point for major reform: “because the LIHTC formula is based on the median county income, and Marin is one of the most expensive median incomes in the country... that ends up making the formula and the rent increase prohibitively expensive.” Adam sympathizes with LIHTC’s goal of producing affordable housing.

“What they’re doing is they’re trying to incentivize developers to build affordable housing. Okay, great. I’m all for that.” However, Adam notes that the program does not guarantee long-term affordability. “They’re addressing half the problem — if affordable housing becomes unaffordable, then it doesn’t work to anybody’s advantage. And in this case, I think the benefit is going to end in 2032. So then what happens to us? Do we immediately go back to market rate? Well, then we’ll all be out of here.”

In 2016, tenants connected with Legal Aid of Marin, a local legal services organization. Together, they reviewed 2014 and 2015 rent increases, took the landlord to court, and won rent rollbacks for those increases. The court found that the landlord violated rent calculation policies and illegally raised rents. This was a major victory for tenants and organizers who would later start the building’s tenant association.

In 2019, the Hamilton Tenants Association, Marin Legal Aid, and the Marin Organizing Committee organized protests against another series of drastic rent increases. Tenants held demonstrations outside of Novato City Hall and secured meetings with elected officials in efforts to push the city to adopt substantive rent stabilization that covers LIHTC properties. While Novato

did not pass a strong rent stabilization ordinance that includes LIHTC properties, the Hamilton Tenants Association was successful in securing monthly meetings with building owner AHA and property manager VPM management. However, these meetings ceased once the pandemic hit.

Tenants in the Villas at Hamilton continue to fight the steep rent increases. However, Adam mentions how this has become increasingly difficult because he and other tenants must work multiple jobs to keep up with the rent increases, leaving little time for organizing.

In addition to the rent increases, Adam says that residents living in “affordable housing” for seniors have unique needs. “What we really need is a Geriatric Care Manager on staff who can help steer services to our residents, many of whom are disabled, cognitively impaired, shut-ins due to their medical condition, or too frail to care for themselves. But that’s not how the building is managed. It’s managed like any normal rental property — which clearly it isn’t. When our residents need help, they go to the property manager. But the property manager’s job description does not include providing this kind of care to tenants. As a result, many of our residents don’t know what to do or who to go to for help and are left floundering.”

Lack of eviction protections and poor management relations

“[all the notices] amount to harassment. It almost amounts to intimidation, something to bug you every day. And if you don’t do this, you might get put out – you know, evicted.”

Resident, senior housing, Alameda County

“I think everybody should be treated fairly. Because of the fact that it is mostly Black people in here, it seems like they just didn’t care.”

Resident, multifamily housing, Solano County

“They were trying to evict me, they were saying there was back rent that was over a year old, past due. This was during the pandemic... they don’t know what they’re doing. It’s so stressful living here. It’s a blessing, but it’s also just a high stress situation to always be on edge, to always have people in that office that never know what they’re doing completely and having to go back to their manager when my life is completely falling apart. This is further adding to my trauma.”

Resident, senior housing, Alameda County

“Being an elder these days is not an easy thing. When you get treated badly, it’s distressing. Their actions are punitive. There’s no recourse. I tried to follow their grievance procedure. Nothing.”

Resident, senior housing, Sonoma County

Evictions

Evictions are devastating for families and communities, causing worsening health outcomes, interrupted employment, and more. Evictions are not just caused by poverty, but are a primary driver of poverty.⁵⁸ For these reasons and many more, it would seem affordable housing programs would strive to reduce evictions for their residents. However, several national studies have found that residents in LIHTC buildings do not necessarily experience lower eviction rates, suggesting that existing protections are not sufficiently effective at preventing evictions.⁵⁹

Landlords of LIHTC units are required by the IRS to have “good cause” to evict a tenant.⁶⁰ “Good cause” for eviction means that landlords must provide a reason if they are attempting to evict a tenant.⁶¹ However, the specific reasons that are considered “good cause” are not well defined by the IRS. Instead, the agency has passed the buck, stating that “good cause” is defined by state and local laws.⁶²

In California, CTCAC’s Qualified Allocation Plan also fails to provide a clear definition of “good cause.” The state agency’s Compliance Manual, which is non-binding, defines good cause as “serious or repeated violations of a material term of the lease, as

that definition is applied with respect to federal public housing.”⁶³ Based on this definition, good cause will generally exist for: nonpayment of rent, serious violations of the lease or rental agreement, interference with other tenants, use of the property for unlawful purposes, and destruction or damage to the property.⁶⁴ However, CTCAC will generally not intervene in landlord/tenant disputes or eviction proceedings unless the landlord improperly notified the tenant by not providing a reason for the eviction. In these situations, CTCAC may require the landlord to reissue the eviction notice with a reason.⁶⁵

Since 2005, CTCAC has required that LIHTC owners attach a “good cause eviction rider” to leases so that LIHTC tenants are aware of their rights.⁶⁶ Failure to attach the eviction rider to leases can result in property owners receiving a finding of noncompliance with LIHTC program requirements.⁶⁷ However, our review of public documents revealed several instances in which the Good Cause Eviction Lease Rider was not provided to tenants. The report from one inspection details how a large number of tenant files reviewed were marked as non-compliant because they were missing, the Good Cause Eviction Lease Rider, among other documents.

Management relations

There are few specific requirements for how LIHTC properties are managed with respect to tenant engagement and communications. Federal regulations and the CTCAC Compliance Manual generally require that a property manager be available on-site and that they be properly trained to comply with all LIHTC-related regulations.⁶⁸

In addition to these LIHTC-specific requirements, all California tenants have a right to “quiet enjoyment” under the California Civil Code⁶⁹ and the implied covenant of quiet enjoyment.⁷⁰ This right prohibits landlords from taking actions that cause substantial interference to the tenant’s use and enjoyment of the rental unit for residential purposes.⁷¹ The interference must be more than a minor inconvenience or annoyance to be actionable, and harassment that includes threats or use of force that create apprehension of harm may carry a penalty of up to \$2,000

per violation.⁷² Other examples of actions that are considered tenant harassment under state law include forcing a tenant to leave through threats or menacing conduct, threatening to call immigration authorities or disclosing immigration information about the tenant, unlawfully entering the tenant’s unit without their consent, and removing the tenant’s property from the rental unit without their permission.⁷³

These rules and tenant protections, while important, leave a lot of discretion to management. As the interviews in this report illustrate, the dearth of specific obligations around tenant-management relations has a big impact on residents’ abilities to address concerns about the property or engage in productive dialogue with management. Too often, tenants’ voices are ignored or they are retaliated against by managers who face little to no consequences.

Underfunded maintenance and security

“Those children right there were playing at the basketball court, and somebody came by and started shooting. So you got a violent place, and you have security walking around wanting to tag people, cars and stuff. But they’re not taking care of the tenant’s safety”

Resident, multifamily housing, Solano County

“It’s false advertising talking about newly renovated, ain’t nothing newly renovated about these apartments because if it was you wouldn’t have all these cockroaches, beetle bugs, and fly roaches. You just wouldn’t have that.”

Resident, multifamily housing, Contra Costa County

“There was a toxic chemical leak in [my apartment]. I have six members of the fire department and two members from PG&E who came out with their gauges. The fire department said themselves, if it had not been for me having an air purifier in my bedroom, I probably would’ve been dead.”

Resident, senior housing, Alameda County

“Now we’re having trouble having coverage at night with maintenance emergencies. There was an instance when I heard water running from a hot water heater, in a room next to mine. It was about 10 o’clock at night. I called maintenance, he came around seven or eight in the morning. The guy that lives below me was really mad because it flooded down there and made a big mess because they wouldn’t come out.”

Resident, multifamily housing, Sonoma County

Habitability standards

Landlords are legally required to keep their rental units “habitable,” meaning that the units must be safe, sanitary, and generally fit to live in.⁷⁴ Habitability standards are essential for good health outcomes for residents by ensuring their homes are free of pests, rodents, mold, and other hazards. However, proper maintenance costs money. As for-profit actors buy up LIHTC properties, tenants we spoke with have experienced an increase in pests, flooding, and other hazardous conditions.

California has statewide laws that describe habitability requirements, and

many cities and towns within California have their own local ordinances that also regulate habitability. Federal LIHTC law allows each state agency to impose its own set of habitability standards for LIHTC buildings in that state.⁷⁵ For California, CTCAC has chosen to use HUD’s Uniform Physical Condition Standards (UPCS).⁷⁶ Although tenants have reported that property managers have some confusion around this issue, LIHTC buildings are required to follow both the habitability standards established by the state agency and the habitability laws of state and local governments.⁷⁷

Compliance monitoring

As part of its general duties to monitor compliance of LIHTC projects, CTCAC does periodic physical inspections of each LIHTC building.⁷⁸

Currently, CTCAC is supposed to inspect a portion of LIHTC units every three years.⁷⁹ In practice, only 10–20% of the units are inspected, depending on overall project size.⁸⁰ For new projects, inspections must be held by the end of the second calendar year following the year the last building in the project is placed in service. Inspections cover common areas,

grounds, and building exteriors in addition to the selected units.

Inspection results are sent to owners in a findings letter by CTCAC within 30 days of the inspection. Findings letters include an itemized list of noncompliance issues, as well as the date by which the owner must correct these issues. The owners must submit a response letter to CTCAC detailing how any instances of noncompliance will be resolved and set a timeframe to remedy issues — typically 30 days. Tenants are supposed to sign off on

documentation attesting that the issue has been corrected. There have been a few high-profile cases across the country of LIHTC owners being prosecuted for falsifying compliance.⁸¹

In addition, LIHTC property owners submit an annual owner certification to CTCAC. This documentation includes financial data and information determining if buildings and units are suitable for occupancy. If any violations or notices were issued, the owner must attach a statement summarizing the violation and state whether the issues have been corrected.

There are many reasons to doubt that CTCAC's compliance program effectively ensures LIHTC units are habitable. To start, one physical inspection of a LIHTC project every three years is far too infrequent. Furthermore, during these inspections, CTCAC inspects too few of the units (10-20% depending on building size, as explained above). For the units that go uninspected, CTCAC relies on the LIHTC owner to self-report housing code violations for CTCAC to even be aware of habitability issues.⁸²

In general, housing and habitability code violations are only filed in the most egregious cases; even if owners are accurately self-reporting, these reports are unlikely to capture the full extent of subpar habitability in a building.⁸³ Our review of CTCAC

inspection records throughout the Bay Area found that six of the nine buildings surveyed had not had an on-site inspection in the past four years.

Once CTCAC finds evidence of noncompliance, the agency gives LIHTC owners the opportunity to cure the noncompliance before issuing any consequences.⁸⁴ However, CTCAC has accepted statements from LIHTC owners that habitability issues were cured without verifying them via physical inspection. Additionally, during the first nine months of the COVID-19 pandemic, CTCAC exempted LIHTC properties from physical inspections monitoring habitability compliance, which threatened to further exacerbate pandemic-era conditions that made low-income communities especially vulnerable to poor living standards.

CTCAC's inspection program is even more suspect for buildings that have exited the initial 15-year compliance period. For buildings in the 40-year extended use period, CTCAC will only inspect projects once every five years, and it is only required to inspect 10% of the units in each.⁸⁵ Not only are LIHTC projects in the extended use period subject to less compliance monitoring, but also the owners have less incentive to care about compliance because the threat of withdrawing tax credits is gone, although TCAC still maintains the ability to fine owners for non-compliance.



Photo credit: Chris Schildt

Living with Flooding and Pests in Antioch, California

Before moving to Delta View apartments in Antioch, Celeste had been living in a homeless shelter while recovering from a car crash from which she was told she would never walk again. Celeste has been living in her current apartment for the past six years. For a majority of that time, she

has been forced to live in an apartment with severe habitability issues. When Celeste first moved into Delta View her bedroom flooded after a rainstorm that impacted all of her belongings in the room. However, management did little to repair the problem and prevent future damage. The next time it rained,

it flooded even more, drenching her entire apartment and impacting everything inside. In response, maintenance put down sandbags, which did little to prevent a third flood from damaging Celeste's apartment all over again.

But Celeste's apartment was not the only one to be flooded repeatedly. Last year, rains filled half of April's front room and her entire bedroom with water. When management finally decided to examine plumbing and drainage in the buildings, they did little to assist residents. Residents were forced to stay days in their flooded apartments as maintenance ripped out pipes, or seek refuge in a hotel paid for out of their own pockets. When April reported the damage to her renter's insurance company, management falsely claimed they repaired the damage within 24 hours, and the insurance company denied her any reimbursement.

Although April employs a strict cleaning regime, cockroaches, beetles, and other types of bugs infest the apartment complex and infiltrate her home. She does the best she can to prevent insects from coming into her home. She uses bleach to clean her cabinets and uses putty to plug up any crevices. She currently does not use her cabinets, keeping her dishes and

utensils in sealed crates. April stores paper plates and plastic utensils in the refrigerator to prevent them from being contaminated by insects. She describes how Delta View's grounds are poorly maintained, leaving them ripe for insects and other pests.

When Celeste and April have reached out to management to find a solution to the flooding and pest issues, they have been ignored, talked over, and dismissed. Celeste explains how most residents do not want to speak out, for fear of retaliation. However, both Celeste and April have been vocal advocates for tenants at Delta View and joined the community-based organization, Monument Impact, to fight for rent stabilization and anti-harassment policies.

April explains how Monument Impact helped create spaces where residents could share and discuss their issues. This organizing effort prompted April and other residents to write letters to the property management company FPI Management. April joined with other Delta View tenants and Monument Impact to speak in favor of a rent stabilization ordinance in the fall of 2022 that covered LIHTC properties. The ordinance passed, marking a major victory, due to the leadership of tenants such as April and Celeste.

Unmet accessibility needs

“Since the renovation, I can’t get into the bathroom. Because I am a disabled person, I feel that I’m just totally being neglected... any time if I misjudge using my hands as a lever of which I’m transferring, I’ve got another major fall on my hands.”

Resident, senior housing, Alameda County

“If the property’s going to be advertised to people 55 plus and bring in a lot of people of that age or much older, or even Section 8 people who could have disabilities, then you got to do more than just warehouse them. Got to be some kind of understanding or monitoring. We had a blackout here a couple years ago. We had people on the third floor, no elevators, second floor, no elevators, couldn’t get out, none of the doors could lock because the electronic system was off...I think the building needs to be managed to reflect the type of tenants it’s attracting rather than ignoring that aspect and just collecting the rent.”

Resident, senior housing, Marin County

“They made up all these rules about us doing certain things. Like they took the handicap ramps off... then, when something happened, a man was having a heart attack and the fire department couldn’t get in there because of that. I have friends who are on walkers, they can’t get in and out of this place.”

Resident, multifamily housing, Solano County

Many people with a disability qualify for LIHTC housing. Supplemental Security Income for seniors and people living with a disability is extremely low – a maximum of \$1,100 per month – keeping many people who rely on this assistance in desperate poverty. More than 11% of LIHTC households report at least one household member

with a disability. Additionally, roughly 30% of all LIHTC residents are older than 62. However, even though people with a disability and seniors make up a significant number of LIHTC residents, many struggle to have basic accommodation needs met in order to live independent, dignified lives.

A reasonable accommodation is a change to the building's rules, policies, services, or procedures that is necessary for someone with a disabling condition to enjoy equal opportunity to use and enjoy their housing.⁸⁶ A reasonable modification is a physical change to the building, grounds, or unit that is likewise necessary.⁸⁷ Reasonable accommodation and modification requests may be requested orally or in writing at any time before, during, and sometimes even after the tenancy.

A housing provider has a duty to respond to all requests for an accommodation and/or modification (even if the tenant does not explicitly identify their request as a reasonable accommodation or modification), and must engage in a good faith interactive process to meet the tenant's needs. However, as shown by the tenants' experiences quoted above, requests are not always honored in this way.

Under the Fair Employment and Housing Act, a housing provider who receives a request for a reasonable accommodation must determine whether granting the accommodation would result in an undue financial and administrative burden, a fundamental alteration of the housing provider's services, or a direct threat to the safety of others. If it does not, the landlord must grant the request. If it does, the landlord must engage in an interactive

process (a back-and-forth dialogue) with the tenant to find an alternative accommodation that would work for both parties. Failure to adequately address a reasonable accommodation request may subject the landlord to legal action and liability.

Many people with disabilities also need reasonable modifications to make their homes accessible, but the cost of those modifications can be cost-prohibitive. In public housing and most other forms of subsidized housing, the owner must cover the cost of reasonable modifications.⁸⁸ But LIHTC owners do not have to pay for physical modifications unless the building also receives certain other sources of federal funding. CTCAC has the authority to require all LIHTC owners to pay for those modifications, but it does not exercise that authority.

As a result, many people with disabilities cannot live in LIHTC properties because they cannot afford to pay for the modifications they would need to make the housing accessible. This contributes to a larger housing affordability crisis for people with disabilities in California that is also fueled by the fact that new buildings, which are most likely to have accessible units, are also exempt from the statewide rent cap in the Tenant Protection Act.⁸⁹

Taking on Corporate Management in Vallejo, California

Before moving to Longshore Cove Apartments, Betty had been a hairstylist for over 40 years and owned her own salon in Richmond before passing the business to her sons. She went to New York and upon returning to California, had difficulty finding a place that fit her income. She initially felt very fortunate to get an apartment in Longshore Cove, then known as Marina Vista. However, after she moved in, Betty quickly realized that there were severe security issues at the apartment complex, managed by John Stewart Company. Betty describes how the old brick walls that stretched around apartment buildings were riddled with bullet holes.

Gun violence has been a prevalent issue at Longshore Cove throughout Betty's stay at her apartment. A few years ago, her boyfriend at the time was walking back to their apartment from the grocery store when he was shot across the street from their home. When Betty asked the manager to enhance security at the apartment complex, "she told me, well, there's nothing we could do because it was outside of the apartment," even though there's evidence of bullet holes inside the complex.

Betty mentions that their experience was not unique — there have been many violent shootings on and off the property. She specifically points to the apartment's entrance gates as areas for improvement which the management clearly does control, explaining "If those gates weren't open, people wouldn't be able to drive through because this is the main entrance on this gate. People wouldn't be able to drive through and do drive-through shootings and killings. I mean, what about the safety of our community and these children?"

In addition to gun violence, residents faced a painful renovation process a few years ago in which many residents' personal items went missing. Tenants said they were given about 30 minutes to pack their entire apartment, and then turn over their belongings to San Francisco-based Pedro's Moving Company. When residents returned to their apartments, many found their personal belongings missing or broken. While the moving company was able to locate and return some items, residents were ignored and dismissed when they tried to address these issues further with management. As the residents have shared, this type of

neglect is a common problem with the John Stewart Company.

When management does act, it does so to harass tenants. Residents share how management removed ramps from several units, leaving those tenants without proper accommodations, raising concerns that “if something happens, and I have friends that are on walkers and so forth, they can’t get in and out of this place.” The fire department also noted that the building lacked required emergency access points.

Angela, another longtime resident, explains how a few years ago, the manager turned a curb for emergency services access into a parking area and removed several entrance gates. Taken altogether, these changes proved deadly: Angela shares how a man who relied on his wheelchair died because the fire department and emergency services could not access his unit and transport him to an ambulance quickly enough.

Angela also shares how there used to be significantly more services provided at the apartment complex. They previously had a computer room, a community garden for residents, a playground, and an afterschool program for children. The playground has since been replaced with a smaller structure for toddlers, with

nothing for the older children, and the afterschool program has also been cut. Additionally, Angela shares how mismanagement of the parking areas has made it unclear who is assigned to each parking spot, causing confusion and frustration amongst residents.

Betty adds that management has been harassing tenants with threatening lease violation letters: “they said I did a violation and I wasn’t even here that time.” These notices, left on residents’ doors, often include detailed personal information. Shirley, another resident at Longshore Cove, explains that this can be particularly dangerous for domestic violence survivors. “I can have a DV case, and guess what? You leave my name, my address on that door. Somebody can go right to my door and can see a verification saying I live there. You just put my life in danger.” She places blame on the corporate nature of John Stewart Company, explaining how management is “just the messenger.”

Shirley shares how she wants to organize with other tenants living in buildings managed by John Stewart to shed light on the mismanagement, harassment, and security issues: “That needs to be a conversation because this is not something (new) that just happened. This has been going on with John Stewart for many, many, many years.”

When discussing her next steps, Betty explains that she feels trapped, “I have a real concern because I am on a limited income, I’m kind of forced to stay here. Where can you find an apartment with my income?” She points to the anti-Black racism that perpetuates the mistreatment,

exploitation, and dangerous living conditions for tenants. “I think everybody should be treated fairly. Because of the fact that it is mostly Black people in here, it seems like they just don’t care.”



In California, tenants have a legal right to organize and form tenant associations, and landlords cannot retaliate against them for forming an association.

Photo credit: Matt Renfro

Section 3

Tenant Power: How Tenants Are Organizing for Change

In the interviews conducted for this report, tenants shared their stories of both the terrible housing conditions they face when profit trumps renters' well-being, and also the ways in which they have come together to organize and win material improvements for themselves and their neighbors. Ultimately, change comes from the strength and courage of residents who stand together in pursuit of housing that is affordable and dignified. This section outlines three tenant power strategies that have generated real change through tenant unions, changing local policies, and creating community-controlled land and housing.



Photo credit: Chris Schildt

Tenant unions and associations

Tenant unions and associations are important spaces for tenants to come together to discuss common issues, develop solutions, and bring these concerns to management. When tenants come together to form a union or association, they can collectively apply pressure on their landlord to make needed repairs, provide services, and stop harassing behavior. They can write letters, request a meeting with management, demand documentation and accountability for promises made, and file complaints with public agencies. Tenants can apply increasing pressure, up to and including rent strikes, to make sure their needs are met.

In California, tenants have a legal right to organize and form tenant associations, and landlords cannot retaliate against them for forming

an association.⁹⁰ In the Bay Area, the Regional Tenant Organizing Network has provided support and training for tenants across the region to form unions and associations, including in LIHTC buildings. In San Jose, the KDF Tenants Association represents over 1,000 renters living in LIHTC apartments across four properties owned by the real estate development and investment company KDF Communities. In 2022, tenants successfully organized against an attempt by KDF to raise rents by as much as 20% in one property, Valley Palms. The tenants association continues to organize rallies and protests against additional rent increases, as well as pushing for necessary repairs, a formal complaint policy, and improved security.



Photo credit: Lina Blanco Ogden/North Bay Organizing Project

Forming a Tenants Union in Sebastopol, California

In early 2023, residents of Burbank Heights and Burbank Orchards came together to form the Burbank Heights and Orchards Tenants Union (BHOTU) with help from the North Bay Organizing Project and the Sonoma County Tenants Union (SCTU). Residents created the union in response to the property management company's removal of residents' private gardens. Tenants felt it was important

to separate community organizing duties amongst different groups; thus the new Burbank Heights and Orchards Tenants Union focuses on ongoing issues that take a lot of research and time, while the Residents Forum focuses on day-to-day activities and social events.

When the management company began removing exit stairs from

residents' porches, the union was successful in reversing this policy and reinstating the stairs. They educated and organized residents about their right to live in housing that meets their access needs. Currently, the union is advocating for exercise equipment that is appropriate to residents' sizes and ages.

Mildred explained how management staff have been harassing residents with warning notices. The management company has a written grievance procedure that outlines how management is to respond to a potential violation, starting with an informal meeting to discuss the grievance. However, staff have not been following their own policy.

Earlier this year, Christine requested that the maintenance staff not trim the bush in front of her house, and soon after she received a lease violation warning letter on her doorstep. Christine explains: there was "no discussion. No, 'come into the office, let's talk about this.' And the lease violation is written up really scary, it's got red letters, red warning, and of course it goes into your file." She tried reaching out to the property management company to learn more about the warning letter and their

grievance policies, however, her inquiries have been ignored. Now, Christine, Mildred, and fellow residents are hoping the new tenants union will be successful in ensuring management adheres to the stated grievance policies – policies that the company wrote themselves.

Mildred explains how the tenants union has become a collaborative space where "we have genuinely listened to one another and can work together." She commends the Sonoma County Tenants Union (SCTU) for helping them start their tenants union. Mildred explains how representatives from the SCTU meet with residents before union meetings to prepare agendas, discuss logistical concerns, and ensure folks are on the same page. North Bay Organizing Project representatives then meet with residents before the official tenant union meeting to help facilitate productive meetings.

Ava explains how forming the tenants union has helped alleviate pressure for community leaders by creating a space where residents feel comfortable speaking out. She explains how "Finally, we feel that some of the residents are willing to 'step up' and help with expressing and obtaining our rights."



Photo credit: Chris Schildt

Campaigns for better tenant protections and enforcement

Heightened tenant organizing over the last several years has contributed to a surge in new tenant protections at the state and local level. The passage of California's Tenant Protection Act in 2019 and over a dozen local ordinances have created or strengthened rent stabilization, just cause for eviction, tenant anti-harassment policies, and other tenant protections. However, exemptions of affordable housing from these laws and lax enforcement has left many low-income renters vulnerable. In response, tenants in

LIHTC buildings and housing justice advocates across the region have organized to end these exemptions and create new protections for vulnerable, low-income renters. In recent years, Antioch, Concord, and Petaluma have all passed ordinances that include renters in affordable housing. In Berkeley, tenants at Harriet Tubman Terrace won city funding to hire a tenant advocate to represent them in addressing concerns related to recent building renovations, safety and security, and other critical issues.



Photo credit: Matt Renfro

Organizing for Dignified Housing in Berkeley, California

In fall of 2021, Foundation Housing and FPI Management began renovations on Harriet Tubman Terrace, a low-income senior housing apartment complex with 90 units. Renovations were extensive, including flooring, bathrooms, bedrooms, kitchens, and living rooms. However, one resident describes how “they were thinking about the budget more than us.” Tenants blame poor design and the low quality of the renovations for causing a host of problems including plumbing issues, drafts, accessibility issues, and poor living conditions.

Heating concerns are a central issue for many tenants. One resident

explains how “the heater doesn’t work hardly at all. And they say they’ve fixed it and they haven’t. And they say they replaced it and they only put a new covering on it.” Some residents resorted to opening their electric ovens to warm their homes. The new kitchens were dangerously designed for seniors and residents with accessibility needs: microwaves were placed on top of refrigerators and the low-quality flooring has already begun to bubble up, creating trip hazards.

On top of a botched renovation, many residents suffered through a grueling relocation process. For one tenant, what was supposed to be an eight day

relocation turned into six months. John explained how he refused to return to his original apartment after a toxic chemical leak was found inside. The Berkeley Fire Department told him he would have probably died if he had not had an air purifier in the room.

Once John returned to Harriet Tubman, Foundation Housing and FPI failed to provide the accessibility features he relies on. He submitted the proper paperwork to request accessibility features, however, his requests have been partially met or ignored completely. John explains “because I am a disabled person, I feel that I’m just totally being neglected, especially when they have been given all that they asked for.”

John had to pay out of his own pocket to install features to make his shower accessible, including a swivel chair and accessible shower head. FPI did install a raised toilet seat in the apartment, however, it is not wheelchair accessible and he cannot bring his wheelchair into the bathroom. John must slide himself from his wheelchair to the sink to reach other parts of the bathroom. He explains how these risky maneuvers “means that at any time, if I misjudge using my hands as a leverage, I’ve got another major fall on my hands.”

Security concerns are also top of mind for many residents. For instance,

when one tenant’s husband parked his car in front of the building, it was stolen within an hour. Other residents shared how they do not feel safe at night due to a string of burglaries and violent crimes that have plagued the surrounding area.

When residents bring their concerns to management, they have been consistently ignored, harassed, and stymied with bureaucracy. One resident notes how “they treat us like we are animals. They don’t respect senior people.” Another resident explains how “we get too much paperwork from the management that doesn’t mean anything.” This bombardment of frivolous noticing “amounts to harassment. It almost amounts to just, you know, intimidation - something to bug you everyday. And if you don’t do this, you might get evicted.”

Other residents place blame squarely on the owners of Harriet Tubman Terrace, Foundation Housing. One resident notes that “It’s easy [for them] to push [you] away by saying, you got a manager, deal with your manager. They’re giving [them] no support. So they set up a confrontation right away. And that’s no way to live because the manager can only do what she or he is allowed to do. They give them no power.” Another resident also sympathizes with management staff:

“they need more consistent help with things because I could see where she would get overwhelmed. Especially when the turnover rate with the workers and how it seems like there’s only one person with her at the office at any given time, if that. I can see how it’d be overwhelming.”

Taken all together, renovation-related issues, security concerns, and a strained relationship with management, have combined to take a toll on residents. One resident mentions how “a lot of days I don’t feel well. All during this renovation, a lot of the neighbors don’t feel well. It’s taking a toll on me.”

Despite these obstacles, tenants at Harriet Tubman Terrace have achieved several wins through their organizing. Tenants worked with the grassroots community group Friends of Adeline to create a video that showcased the conditions tenants were forced to live in. The video revealed the terrible living conditions a tenant endured when he returned to his unit upon the completion of the renovation. While recovering from a stroke, the tenant returned to his unit to find his belongings scattered and piled throughout the space. Transfer bars that were critical accessibility elements were removed and thrown on top of the piles of his belongings. Replacement transfer bars were not

installed. His unit had no overhead lighting and his lamp was taken, leaving the tenant in the dark.

This video, along with strong tenant organizing, pushed Berkeley’s city council to address the issue. Community members recommended creating the Harriet Tubman Terrace Tenant Advocate — a position that would be paid for by the city. Tenant organizing efforts successfully compelled the City of Berkeley to approve the contract and formally establish the position of Harriet Tubman Terrace Tenant Advocate. The advocate serves as a liaison between the tenants, property management company FPI Management, and investment owners led by Foundation Housing. The tenant advocate will monitor living conditions at the apartment building and is responsible for addressing tenant concerns.

This position is a major victory for tenants and is a testament to the multiyear organizing efforts led by low-income seniors of Harriet Tubman Terrace and Friends of Adeline. In a press release about the victory, Darinxoso Oyamasela from the Harriet Tubman Terrace Tenant Counsel explains how “we have won round one, but the struggle continues.”

Community-controlled affordable housing

Tenant organizing and stronger protections are critical mechanisms to build tenant power and address immediate harms and needs that tenants face. Ultimately, however, tenants in these properties are still dependent on the behavior and priorities of profit-seeking investors, their designated management personnel, and understaffed public agencies.

Community-controlled housing ownership models provide much more robust support for residents' dignity, safety, and self-determination. These models include community land trusts, housing co-operatives, mission-driven community development organizations, and other similar models. They share several important characteristics: homes are permanently affordable and there is a significant degree of democratic decision-making and co-governance for the residents who live in the homes. These models view housing as a human right, not as a commodity for speculation and profit; many also center environmental sustainability, indigenous sovereignty,

and stewardship of the land.

Statewide, over 3,500 residents live in community land trusts; 60% of the residents are low-income (earning less than \$40,000 a year), and 80% are people of color.⁹¹ There are nearly a dozen community land trusts in the Bay Area working with tenants to buy their homes and convert them into permanently affordable, community-controlled housing.

Practically speaking, LIHTC is not well-suited for community-ownership models, since IRS regulations require LIHTC investors to own a sizable stake in the projects. There are a few examples of community land trusts creating joint partnerships and using LIHTC tax credits to develop new, affordable homes, but most community land trusts use a combination of bank loans and local subsidy programs to fund their projects.⁹² Public investment in community-controlled models of housing will require investment in and expansion of affordable housing programs beyond LIHTC.



Photo credit: Chris Schildt

Section 4

Policy Recommendations: Towards Affordable, Accessible, and Dignified Housing

As the largest source of funds for affordable housing in the United States, the Low-Income Housing Tax Credit program warrants scrutiny to ensure it promotes the stated goals of facilitating accessible and dignified housing. The following sections outline policy recommendations for state and local governments. Recommendations include policy changes to prioritize tenant protections in affordable housing, reforms to the LIHTC program itself, and other policy opportunities to promote affordable and dignified housing.

State action

While LIHTC is a federal program, California has substantial opportunities to enact reforms that can benefit tenants living in LIHTC properties. The state can take action through the legislative process and administratively through CTCAC.

1) Close state loopholes on renter protections

In 2019, California passed AB 1482, a landmark piece of legislation that caps annual rent increases at 5% plus the rate of inflation or 10%, whichever is less. The law also includes just cause for eviction protections for renters. However, AB 1482 does not apply to units with restrictions limiting the affordability to low or moderate-income households, such as units under the LIHTC program. The California legislature can close this loophole to extend these renter protections to include tenants living in affordable housing, or pass independent legislation limiting rent increases in affordable housing.

CTCAC can also play a role in expanding protections to tenants living in LIHTC properties. They can impose limits on annual rent increases as a condition of providing tax credits, to avoid the kinds of massive rent increases some renters have experienced (e.g. Antioch). Additionally, though the LIHTC

program rules state that owners cannot evict a tenant without a good cause, this is poorly defined and leaves interpretation up to local judges and courts. CTCAC should clarify and strengthen the definition of good cause and update the lease rider for tenants to include this information.⁹³

2) Strengthen tenants' right to organize and anti-retaliation provisions

Renter organizing and tenant unions are a proven, effective strategy to improve housing conditions for residents. California legislators can do more to empower tenants to pass stronger local protections, stop illegal and unscrupulous behavior by profit-driven landlords, and create good communications and relationships for renters and management to work together to solve common problems.

Currently, tenants have the legal right to organize under California law. They can form tenant unions or associations that allow tenants to collectively bargain or sue a landlord. California law also prohibits landlords from retaliation against tenants for legal organizing.⁹⁴ However, the state can improve significantly upon its legal protections for tenants.

In 2022, San Francisco passed an ordinance to enhance tenants' rights to

organize.⁹⁵ The state should establish similar protections:

- Require landlords to meet and confer with tenant unions/ associations upon request.
- Create a framework for forming a tenants association.⁹⁶
- Explicitly allow tenants to canvass other tenants and hold meetings on the property in common spaces.
- Provide broad protections against retaliation and specify the range of retaliatory actions barred, including filing or threatening to file for eviction, decreasing services, threatening lease non-renewals, and increasing the tenant's rent.
- Allow third party organizers to canvas without invitation

An improved state law should include strong enforcement mechanisms and outline penalties for landlords that violate legal protections. A “Tenant Bill of Rights” should be attached to rental agreements and posted prominently onsite, outlining tenants protections and their recourse for violations.

3) Move LIHTC properties into mission-driven ownership and permanent affordability

California places 55-year affordability restrictions on all housing that receives state assistance; at the end of that period, however, there is a

risk that those homes could lose their affordability. Research shows that profit-seeking actors are more than twice as likely to convert their housing to market rate at the end of the regulatory period compared to stable, mission-driven nonprofits.⁹⁷

State policymakers can take action to ensure affordable homes stay permanently affordable. For existing properties, the state can strengthen the Preservation Notice Law. Currently, the law requires owners seeking to convert affordable housing to market rate to first give notice of the opportunity to purchase to potential buyers interested in preserving affordability. This law could be strengthened to require the owners to either accept an offer or re-restrict the units as affordable housing.

For new housing, the state can ensure permanent affordability on projects that receive state assistance by requiring the underlying land to be placed in public ownership. A public entity, likely either the local government or the state, would own the land, and guarantee permanent affordability on the site through lease agreements with the affordable housing developer or owner.

4) Provide tenants with clear information on rents

There is a need for greater transparency on key information

regarding rent and affordability for each LIHTC unit. Each year the California Tax Credit Allocation Committee updates income and rent limits by unit size, Area Median Income (AMI), the year the building went into service, and other factors. Tenants in LIHTC properties also receive utility allowances in the form of rent deductions. These utility allowances are set by cities and counties and vary by household size and types of appliances. When developers apply for tax credits, they must show CTCAC the rent breakdown (including utility allowances) of their project by unit size and income threshold. However, there is no requirement to make this information – or the annual changes – available to the tenants.

CTCAC should provide residents a way to look up their maximum allowable rent each year, which would provide greater transparency for tenants. Information about each unit’s maximum gross rent limit and how it’s calculated should be readily available on each lease. A LIHTC building’s regulatory agreement should be given to tenants, who should also have the right to view their own files upon request and make corrections or additions if they disagree with what is in the file. Greater transparency will allow tenants, advocates, and tenant unions to play a more active role in keeping LIHTC owners in compliance.

5) Strengthen CTCAC compliance monitoring and publish building inspection records online

In order to address the issue of subpar habitability in LIHTC buildings, CTCAC must make the compliance monitoring program much stricter by inspecting more units and inspecting them more often. CTCAC must also enact policies that allow LIHTC tenants to play a more active role in monitoring and ensuring compliance. The improvements should start with making tenants aware of their rights: although the mandatory Section 42 LIHTC Lease Rider is supposed to describe “the rights and obligations of the parties,”⁹⁸ it makes no mention of required habitability standards. CTCAC should establish a formal and streamlined process for LIHTC tenants to report habitability violations directly to CTCAC, and it should increase data accessibility and transparency of all LIHTC records.⁹⁹

Inspection reports, owners’ responses, and annual certification documentation relating to violations and corrections should be published and made available both onsite and online in an accessible manner to all tenants and stakeholders. CTCAC should publish information determining Uniform Physical Condition Standards noncompliance in an accessible manner, which would empower tenants to monitor potential violations that affect habitability, report potential violations, and request

inspections. Providing this information would allow tenants and community organizations to monitor corrections and help enforce compliance.

Currently, noncompliance is reported to the IRS, who then determines whether to recapture credits. This is a very drawn out process with little accountability or transparency. The state's housing agencies can and should fill this gap in enforcement by imposing higher fees and stronger penalties, both during and after the compliance period. They should develop a transparent, coordinated, and effective process of compliance monitoring that ensures all projects meet all applicable requirements and that tenants know how to hold housing providers accountable for not meeting those requirements.

6) Strengthen tenants' relationship with CTCAC

Currently, CTCAC does not maintain a strong tenant connection role. It states that its monitoring responsibilities are limited to "audit[ing] the owner's records, which include - the tenant files for income eligibility, verifying that the correct rents are being charged for the units as determined by the Regulatory Agreement on the property, and to making sure the units are safe, sanitary and in good repair."¹⁰⁰ CTCAC also asserts that it does not have any monitoring authority over day-to-day operations,

construction, or rehabilitation work. This lack of authority excludes tenants from LIHTC program information and leaves tenants' voices out of LIHTC implementation. The annual monitoring reports should include a summary of any tenant complaints and how they were resolved.

Building off of the successful programs in Washington, D.C. and Berkeley, California, CTCAC could establish an advocate's office that serves as a single point of contact for tenants and community organizations. This office can provide a range of tenant services, including responding to questions about regulations, providing documentation relating to their building, and assisting tenants in reporting any issues regarding habitability, accessibility, maintenance, and harassment.

7) Support tenants in obtaining reasonable accommodations and modifications

People with disabilities make up a significant proportion of LIHTC tenants; in 2021, 12% of LIHTC households in California reported that at least one tenant in their home identified as disabled.¹⁰¹ Consequently, LIHTC tenants must be made aware of their rights to reasonable accommodations and modifications. The Section 42 Lease Addendum, for instance, is supposed to inform all LIHTC tenants of their rights,

but it makes no mention of the right to reasonable accommodations or modifications.¹⁰² CTCAC must therefore require property management companies to affirmatively communicate tenants' rights in regard to reasonable accommodation/modification requests. LIHTC properties must adopt and follow fair housing-compliant policies for providing applicants and residents with reasonable accommodations, reasonable modifications, and auxiliary aids and services. Additionally, LIHTC applicants and residents must have clear and effective avenues for redress if property management does not fulfill their legal duties.

8) Empower local jurisdictions to enforce federal accessibility standards

California Attorney General Opinion 92-203 states that “local building departments are not responsible for enforcing the access requirements of the Americans with Disabilities Act.”¹⁰³ The opinion also states that local building departments “are required to enforce state and local building codes which have incorporated the federal requirements” but that “local building departments are not authorized to elect to enforce the federal access requirements.”

The state should revise and clarify the opinion to ensure that local building departments can (and should) enforce

access requirements of the American with Disabilities Act, and emphasize that local building departments can enforce state and local building codes that incorporate the federal requirements. The state should also provide clear guidance that local governments have jurisdiction over LIHTC buildings and can enforce local codes and habitability standards at these properties, and that CTCAC is responsible for ensuring compliance with those requirements.

9) Increase funding for mission-driven developers and community-controlled models

To support the growth of mission-driven developers, the state should adopt new rules and regulations in the LIHTC allocation process and provide them a competitive advantage over profit-driven actors. CTCAC's Qualified Allocation Plan (QAP) sets the guidelines for how projects are scored in competing for tax credits in the LIHTC program. The QAP currently has a 10% set-aside for nonprofits.¹⁰⁴ The nonprofit set-aside could be increased to promote mission-driven actors in the LIHTC allocation process, along with a clear and strong definition of what constitutes a mission-driven nonprofit. CTCAC can also favor projects that provide prevailing wages and other important community benefits.

LIHTC's tax credit programs are not suitably structured as funding sources

for community land trusts or other community-controlled models. New funding streams are needed from the state that are compatible with

community ownership structures, democratic governance, tenants' rights, and permanent affordability.

Local action

Local jurisdictions do not have to wait to begin implementing equitable tenant protections. Here are actions cities and counties can take now.

1) **Ensure local tenant protection laws cover low-income housing**

Local jurisdictions can and should pass local tenant protections that respond to local needs and conditions, beyond what is covered in state laws such as AB 1482. Local ordinances can ensure low-income renters have the same level of protection as renters who can afford to pay market rate by including LIHTC units and other affordable housing. Examples of strong local protections that cover affordable housing units, include:

- Anti-harassment — Richmond's anti-harassment ordinance covers all rental units including LIHTC properties, single family homes, and condominiums.¹⁰⁵ The ordinance includes protections from management failing or threatening to fail to perform repairs and maintenance. It also includes protections against intimidation, retaliation, refusal to accept or acknowledge receipt

of a tenant's lawful rent payment, refusal to cash a rent check or money order for more than 30 days, and interference with a tenant's right to privacy.

- Just Cause for Eviction — In 2023, Petaluma's Residential Tenancy Protections ordinance came into effect.¹⁰⁶ This ordinance prohibits evictions without a just cause, including affordable housing properties, and requires landlords to provide tenants notices of their rights. Just causes are enumerated in the ordinance and organized by at-fault just causes and no-fault just causes. At-fault just causes include failure to pay rent, breach of rental agreement, tenant illegal activity, and other similar activities. No-fault just causes include permanent withdrawal from the rental market, owner or relative move-in to the unit, intent to demolish or substantially remodel, and government order. Landlords that terminate tenancies for no-fault just causes are required to provide relocation assistance to tenants. Importantly, the ordinance includes penalties for landlords that fail to comply

with the ordinance. The ordinance also affirms the City's authority and right to enforce the protections through injunctive relief, administrative fines, and citations.

- Rent Stabilization — In 2022, Antioch's city council passed a rent stabilization ordinance.¹⁰⁷ This ordinance was a crucial victory for tenants and includes LIHTC properties and other affordable housing in its protections. The ordinance allows one rent increase in 12 months and caps increases at 3% of current rent or 60% of consumer price index for the San Francisco-Oakland-Hayward area, whichever is less.

It is important to note that inadequate public investment in affordable housing operations has forced many nonprofit affordable housing developers to rely on rent increases to cover increases in operating costs. Governmental rent subsidies such as vouchers, rental assistance, and shallow subsidies are critical to ensure nonprofit operators are able to continue to provide quality homes without relying on unaffordable rent increases.

Just as important as passing local ordinances is ensuring strong enforcement. Rent boards are tasked with overseeing a local jurisdiction's rental housing market and serve as an important point of community oversight. They can regulate rents and oversee programs to implement

various ordinances such as rent stabilization and just cause for eviction ordinances. Importantly, rent boards must be invested with adequate authority and enforcement capabilities.

2) Support tenant associations and tenant organizing

Cities can enact their own policies that affirm and expand tenants' rights to organize and anti-harassment protections. San Francisco's 2022 Tenant Right-To-Organize ordinance serves as an example of strong legislation that expands tenant organizing protections.¹⁰⁸ Provisions in the ordinance:

- Create a framework for forming a tenants association.¹⁰⁹
- Require landlords to meet and confer with tenant unions/associations upon request.
- Explicitly allow tenants to canvass other tenants and hold meetings on the property in common spaces.
- Provide broad protection against retaliation and specify the range of retaliatory actions barred, including filing or threatening to file for eviction, decreasing services, threatening lease non-renewals, and increasing the tenant's rent.
- Provide tenants with the right to invite third party organizers to assist with organizing activities.

In 2023, Antioch passed an ordinance that protects tenants from retaliation by housing providers. The ordinance includes protections from verbal and psychological abuse, requires landlords to provide materials in a tenant’s spoken language, and raises penalties for landlords who violate these protections. The ordinance also includes specific protections from retaliation and threats of rent increases or eviction when tenants request repairs. The ordinance also expands protections for tenant organizing by categorizing as harassment any acts that “Prohibit, interfere with, retaliate against, or threaten retaliation against tenant organizing activities or engaging in other political activities.” Importantly, the ordinance also includes enforcement mechanisms such as fines, penalties, and injunctive relief for violations.¹¹⁰

3) Establish tenant advocate positions with enforcement capabilities

A tenant advocate provides a one-stop resource for tenants. Washington D.C.’s Office of the Tenant Advocate (OTA) is an independent agency that was established in 2006 that provides renters with legal, policy advocacy, emergency housing, educational, and outreach services.¹¹¹ The OTA offers legal services and, in some cases, provides representation for tenants. The legal branch also provides a hotline where tenants can address issues relating to evictions, rent

increases, leases, habitability and housing code violations, security deposits, and tenants’ rights. The OTA’s education and outreach team provides accessible information, including how to create tenant unions and associations, and how tenants can file a complaint to enforce the housing code. The overall success of tenant advocate positions depends on the availability of long-term funding and tools to ensure compliance.

After years of organizing, tenants at Berkeley’s Harriet Tubman Terrace recently won a tenant advocate position funded by the city. The tenant advocate serves as a liaison between Harriet Tubman Terrace tenants, the property management company, and building owners. The tenant advocate will monitor living conditions at the apartment building and is responsible for addressing tenant concerns.

4) Ensure local code enforcement personnel understand their authority to regulate low-income buildings

Local code enforcement and building inspectors often do not know or act on their authority to enforce local building codes and health and safety standards on federally-funded projects such as LIHTC. Local jurisdictions should issue clear guidance that local building inspectors can inspect LIHTC properties and enforce local and state codes. Tenants should

also have direct access to request inspections. Richmond's residential inspection program allows tenants to request inspections, however, the program exempts rental housing units subsidized by federal, state, or local government, as well as newly constructed residential rental units for a period of five (5) years from the date of construction.¹¹² These kinds of exemptions should be rescinded in order to empower all renters to request inspections to ensure safety and habitability.

5) Require landlord licensing, and enforce it

Cities and counties can require landlord rental licensing and make the data publicly available to increase accountability with housing laws.¹¹³ These processes are crucial to monitoring changes in tenancy and rents, and can provide better transparency about who actually owns rental properties. In Minneapolis' rental licensing program, properties owned by a corporation or LLC are required to list "an associated natural person" and a copy of the Articles of Organization listing the shareholders of the corporation or LLC must be submitted with the application.¹¹⁴

Minneapolis' rental licensing program also collects data regarding:

- Owner information (including name, address, and contact

information)

- Number and kind of units within the dwelling
- Unit's status as a short-term rental

Importantly, these data are made publicly available via an accessible online portal, which tenants can use to search their address and retrieve license information.

Landlord licensing also provides a key leverage point for cities and organizers in oversight and enforcement. Tenants in five buildings in Minneapolis' Corcoran neighborhood successfully used rental licensing data to document their landlord Steven Frenz's illegal behavior and pressure him to sell the properties to them.¹¹⁵ One of the main strategies the tenants used to push Frenz to the bargaining table was to call for the city to revoke his landlord license, which Minneapolis did in 2017, removing his legal ability to collect rent. This policy lever opened organizing opportunities for the tenants, such as a successful rent strike, which ultimately convinced Frenz to sell the properties in 2020.

Financial support was provided to the tenants from the city and nonprofits Local Initiatives Support Center and Land Bank Twin Cities (LBTC).¹¹⁶ LBTC is the current noteholder as it resells the buildings to tenants with zero interest. The buildings are now known as the Sky Without Limits Cooperative,

with plans to operate as a tenant-owned cooperative once the transition is completed.

6) Prioritize public dollars for mission-driven developers

Cities and counties can optimize existing funding sources to prioritize community land trusts (CLTs) and other forms of mission-driven, permanently affordable housing. Programs such as local affordable housing preservation funds can use permanent affordability as a heavily weighted scoring criteria to uplift CLTs in the competitive allocation processes. Under its Acquisition and Conversion to Affordable Housing Program, the city of Oakland offers an application pool dedicated to CLTs and limited equity coops known as the Permanent Affordability Program for Community Land Trusts/Limited Equity Housing Cooperatives.¹¹⁷ The program is designed to provide loans to eligible borrowers to acquire and rehabilitate

market rate rental properties, and then convert the properties to permanently affordable housing. By providing a specific application pool for CLTs and limited equity co-ops, Oakland is able to prioritize community-controlled uses of these funds. The city also uses the scoring process to prioritize projects that include anti-displacement provisions.

Cities and counties can also make use of emergency funding to support CLTs. To provide funding for the Eden Community Land Trust, Alameda County used local funding streams along with emergency funding through the American Rescue Plan Act of 2021, also known as the COVID-19 Stimulus Package.

Local governments can also generate new revenue streams for affordable housing, such as anti-speculation taxes, vacancy taxes, and landlord gross receipts tax.



Photo credit: Lina Blanco Ogden/North Bay Organizing Project

Conclusion

For decades, federal policymakers have stripped funding for affordable housing, leaving private market programs such as the Low-Income Housing Tax Credit as one of the few resources available.

Our research documents the clear and concerning consequences of relying on a market-driven approach: scarce public resources going to investor profits; fewer dollars for capital-starved mission-driven organizations; and unaffordable, unstable, and unhealthy homes for our lowest income community members.

Ultimately, our housing system must be transformed in order to provide truly affordable housing with dignity for all.

Local, state, and federal policymakers need to commit to new forms of stable, predictable, and abundant funding for community-controlled, permanently affordable housing. In the long run, this will require creating new funding sources that are not reliant on private, for-profit investors. In the near term, existing affordable housing projects financed with investor-driven programs such as LIHTC must better center tenants' needs.

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Note: All errors, omissions, and opinions expressed in this report are solely those of the authors.

Endnotes

- 1 Judith Prieve, “East Bay Tenants, Advocates Celebrate Signing of Historic Rent Protections,” San Jose Mercury News, October 18, 2022, <https://www.mercurynews.com/2022/10/18/east-bay-tenants-advocates-celebrate-signing-of-historic-rent-protections/>.
- 2 East County Regional Group et al. “Antioch CHANGE: A Community Housing Assessment of Needs, Gaps, and Equity,” 2022. <https://urbanhabitat.org/resource/antioch-change/>.
- 3 Kiley Russell, “Antioch tenants appeal to city leaders for protections ahead of looming rent increases,” Bay City News, July 25, 2022, <https://localnewsmatters.org/2022/07/25/antioch-tenants-appeal-to-city-leaders-for-protections-ahead-of-looming-rent-increases/>.
- 4 Generally, maximum rents are calculated based on Area Median Income (AMI). AMI increases are usually not significant enough to create a financial incentive to increase LIHTC rents, so some LIHTC owners keep rents slightly below the max rent allowed. However, in 2022, AMI increased significantly, allowing owners to increase rent by an equally significant amount. AMI and maximum rent calculations are discussed in more detail on page 16.
- 5 Specifically, California Housing Partnership has defined three criteria for a nonprofit to meet the definition of “stable, mission-driven:” (1) employ (not contract with) an adequate number of staff qualified to perform the development and asset management functions that are essential to long-term preservation of affordability; (2) their board membership are not paid and cannot contain a significant number of (a) representatives of for-profit organizations who could have a financial interest in the nonprofit’s business operations, or (b) people who are related to each other by family or business ties; and (3) salaries paid to top employees are commensurate with comparable nonprofit salaries.
- 6 Alexander Ferrer, “The Real Problem with Corporate Landlords,” The Atlantic, June 21, 2021, <https://www.theatlantic.com/ideas/archive/2021/06/real-problem-corporate-landlords/619244/>.
- 7 For more about Blackstone, Inc., see: Private Equity Stakeholder Project, “Blackstone Comes to Collect: How America’s Largest Landlord and Wall Street’s Highest Paid CEO Are Jacking Up Rents and Ramping Up Evictions,” March 2023. <https://pestakeholder.org/reports/blackstone-comes-to-collect-how-americas-largest-landlord-and-wall-streets-highest-paid-ceo-are-jacking-up-rents-and-ramping-up-evictions/>. For more about KDF Communities, see: Joseph Geha, “‘Cockroaches, mold, fraying carpets’: San Jose tenants protect living conditions,” San Jose Spotlight, July 15, 2023, <https://sanjosespotlight.com/cockroaches-mold-fraying-carpets-san-jose-tenants-protest-living-conditions/>.
- 8 California Housing Partnership, “The Tax Credit Turns 30,” December 2017, <https://chpc.net/wp-content/uploads/2017/12/TCT30-Final1.pdf>.
- 9 California Housing Partnership, “Affordable Homes At Risk,” April 2023, <https://chpc.net/wp-content/uploads/2023/04/At-Risk-2023-Subsidized-Report-final.pdf>.
- 10 Department of Housing and Urban Development, “Tenants in LIHTC Units as of December 31, 2021,” <https://huduser.gov/portal/Datasets/lihtc/2021-LIHTC-Tenant-Tables.pdf>.

- 11 See National Low-Income Housing Coalition’s “Public Housing History” for an overview of federal public housing programs, <https://nlihc.org/resource/public-housing-history>.
- 12 Congressional Research Service, “An Introduction to the Low-Income Housing Tax Credit,” April 2023, <https://sgp.fas.org/crs/misc/RS22389.pdf>.
- 13 Calculation based on an analysis of the California Affordable Housing Map and Benefits Calculator provided by the California Housing Partnership Corporation. Note that this dataset does not include affordable units that are only locally funded or regulated (such as units created through local inclusionary housing programs), <https://chpc.net/datatools/affordablehomes/>.
- 14 Blaine G. Saito, “Collaborative Governance and the Low-Income Housing Tax Credit,” *Virginia Tax Review* 39, no. 451 (2020): 462.
- 15 Desiree Hensley, “Out in the Cold: The Failure of Tenant Enforcement of the Low-Income Housing Tax Credit,” *University of Cincinnati Law Review* 82 (September 2014): 1091.
- 16 Saito, “Collaborative Governance,” 476.
- 17 Corianne Payton Scally, Amanda Gold, and Nicole DuBois, “The Low-Income Housing Tax Credit: How It Works and Who It Serves,” Urban Institute, July 2018, https://www.urban.org/sites/default/files/publication/98758/lihc_how_it_works_and_who_it_serves_final_0.pdf.
- 18 California Tax Credit Allocation Committee, “Low-Income Housing Tax Credit (LIHTC) Rent Requirement: Frequently Asked Questions (FAQ).” California State Treasurer’s Office. <https://www.treasurer.ca.gov/ctcac/2022/compliance.pdf>.
- 19 While this report focuses on the LIHTC program, there are also state and local affordable housing programs in California that set rents according to a formula tied to area median income that suffer from the same shortcomings described here. There are a number of issues with how exactly AMI is calculated that are beyond the scope of this report, but merit further investigation — there are some findings that suggest that AMI is artificially high, which means affordable rents calculated based on it may be less affordable than projected. See, for example, Daniel Teles et al., “Calculating AMI: How Calculation of Area Median Income Affects Housing Policy,” Urban Institute (September 7, 2023), https://www.urban.org/sites/default/files/2023-09/Calculating%20AMI_0.pdf.
- 20 California Tax Credit Allocation Committee, “Low-Income Housing Tax Credit (LIHTC) Rent Requirement: Frequently Asked Questions (FAQ),” December 5, 2022, <https://www.treasurer.ca.gov/ctcac/cuac/faq.pdf>.
- 21 26 U.S.C. § 42(m)(1).
- 22 California Code of Regulations Title 4, Division 17, Chapter 1, available at https://www.treasurer.ca.gov/ctcac/programreg/regulations_committee.pdf.
- 23 26 U.S.C. § 42(m)(1)(B).
- 24 Ibid.
- 25 26 U.S.C. § 42(h)(6)(D).
- 26 Katherine O’Regan and Keren Horn, “What Can We Learn about the Low-Income Housing Tax Credit Program by Looking at the Tenants?” Moelis Institute for Affordable Housing Policy Brief, July, 2012, https://furmancenter.org/files/publications/LIHTC_Final_Policy_Brief_v2.pdf.
- 27 See page XX for more on how profit-seeking actors are defined in this report.
- 28 Saito, “Collaborative Governance,” 462.
- 29 Ibid.

- 30 The Community Reinvestment Act, 12 U.S.C. §§ 2901-2906 (2022), requires banks and other financial institutions to invest in their local communities, particularly within low-income areas. Whether or not an institution has met this obligation involves a subjective evaluation and investments in LIHTC programs count heavily in the analysis which makes them an attractive investment. Mihir Desai et al., “Tax Incentives for Affordable Housing: The Low Income Housing Tax Credit,” *Tax Policy and The Economy* 24, no. 181 (Jeffrey R. Brown ed., 2010): 191.
- 31 Michelle D. Layser, “The Pro-Gentrification Origins of Place-Based Investment Tax Incentives and A Path Toward Community Oriented Reform,” *Wisconsin Law Review* 2019, no. 745 (2019): 796.
- 32 Saito, “Collaborative Governance,” 466.
- 33 Corianne Payton Scally et al., “How the Tax Cuts and Jobs Act Puts Affordable Housing Production at Risk,” *Urban Institute*, July 28, 2018, <https://www.urban.org/urban-wire/how-tax-cuts-and-jobs-act-puts-affordable-housing-production-risk>.
- 34 Saito, “Collaborative Governance,” 466.
- 35 Ibid.
- 36 Ibid, 462.
- 37 Ibid.
- 38 Cassandra Jones Havard, “The Community Reinvestment Act, Banks, and the Low Income Housing Tax Credit Investment,” *Journal of Affordable Housing & Community Development Law* 26, no. 2 (2017): 425.
- 39 U.S. Government Accountability Office, “Low-Income Housing Tax Credit: Improved Data and Oversight Would Strengthen Cost Assessment and Fraud Risk Management,” September 18, 2018, <https://www.gao.gov/assets/gao-18-637.pdf>.
- 40 Ibid.
- 41 Cal. Code Regs., tit. 4, § 10320(e).
- 42 Carolina Reid, “The Links Between Affordable Housing and Economic Mobility: The Experiences of Residents Living in Low-Income Housing Tax Credit Properties,” *The Turner Center for Housing Innovation*, May 10, 2018, https://turnercenter.berkeley.edu/wp-content/uploads/2020/08/Links_Between_Affordable_Housing_and_Economic_Mobility_.pdf.
- 43 National Housing Law Project, “LIHTC Admissions, Rents, and Grievance Procedures,” *National Housing Law Project*, April 27, 2018, <https://www.nhlp.org/resources/lihtc-admissions-rents-grievance-procedures/>.
- 44 Scally, *The Low-Income Housing Tax Credit*, 13.
- 45 26 U.S.C. § 42(g).
- 46 Ted Rohrlich, “Even ‘Affordable Housing’ in LA Isn’t Affordable. Why A Key Program Is Falling Short,” *LAist*, March 14, 2023, <https://laist.com/news/housing-homelessness/affordable-housing-unaffordable-rents-tax-credits-rent-hikes-lihtc-buildings-developers>.
- 47 Department of Housing and Urban Development, “Tenants in LIHTC Units as of December 31, 2021,” <https://huduser.gov/portal/Datasets/lihtc/2021-LIHTC-Tenant-Tables.pdf>.
- 48 U.S. Census Bureau; American Community Survey, 2021 American Community Survey 1-Year Estimates: Table S1901; <https://data.census.gov/table/ACSST1Y2021.S1901?g=040XX00US06> (12 December 2023).
- 49 California Tax Credit Allocation Committee 2023 Maximum Multi-Family Tax Subsidy Project (MFTSP) Rents. <https://www.treasurer.ca.gov/ctcac/rentincome/23/>

- rent/rent-limits-from-010109-051423.pdf.
- 50 O'Regan, "What Can We Learn about the Low-Income Housing Tax Credit Program," 6.
- 51 Ibid, 7.
- 52 California Department of Real Estate, "California Tenants: A Guide to Residential Tenants' and Landlords' Rights and Responsibilities" February 1, 2022, 41, <https://www.courts.ca.gov/documents/California-Tenants-Guide.pdf>.
- 53 California Tax Credit Allocation Committee, "Low Income Housing Tax Credit Program (LIHTC) Compliance Monitoring Manual," <https://www.treasurer.ca.gov/ctcac/compliance/manual/manual.pdf>.
- 54 California Tax Credit Allocation Committee, "Low-Income Housing Tax Credit (LIHTC) Rent Requirement: Frequently Asked Questions (FAQ)," 3.
- 55 U.S. Census Bureau; American Community Survey 5-Year Estimates: Table S1901; <https://data.census.gov/table/ACSST1Y2021.S1901?g=040XX00US06> (15 December 2023).
- 56 See a copy of the lease rider at: "CTCAC Section 42 Low Income Housing Tax Credit (LIHTC) Addendum," July 2022, <https://www.treasurer.ca.gov/ctcac/compliance/Section-42.pdf>.
- 57 National Housing Law Project, "An Advocate's Guide to Tenants' Rights in the Low-Income Housing Tax Credit Program," August, 2021, <https://www.nhlp.org/wp-content/uploads/LIHTC-2021.pdf>.
- 58 Matthew Desmond, *Evicted: Poverty and Profit in the American City*, (Harlow, England: Penguin, 2017).
- 59 See Michael C. Lens et al., "The Neighborhood Context of Eviction in Southern California," *City & Community* 19, no. 4 (March 2021), <https://doi.org/10.1111/cico.12487>. See also Austin Harrison et al., "Housing Stability, Evictions, and Subsidized Rental Properties: Evidence From Metro Atlanta, Georgia," *Housing Policy Debate* 31, no. 3-5 (September 2021): 411-24, <https://doi.org/10.1080/10511482.2020.1798487>. See also Benjamin F. Teresa and Kathryn L. Howell, "Eviction and Segmented Housing Markets in Richmond, Virginia," *Housing Policy Debate* 31, no. 3-5 (September 2021): 627-46, <https://doi.org/10.1080/10511482.2020.1839937>.
- 60 California Tax Credit Allocation Committee, "Low Income Housing Tax Credit Program (LIHTC) Compliance Monitoring Manual," 12.
- 61 Ibid.
- 62 Segura, "Tenants' Rights in the Low-Income Housing Tax Credit (LIHTC) Program," 20.
- 63 California Tax Credit Allocation Committee, "Low Income Housing Tax Credit Program (LIHTC) Compliance Monitoring Manual," 12.
- 64 Segura, "Tenants' Rights in the Low-Income Housing Tax Credit (LIHTC) Program," 20.
- 65 Ibid.
- 66 Ibid, 53. CTCAC Good Cause Eviction Lease Rider (April 2022), https://www.treasurer.ca.gov/ctcac/compliance/eviction_docs.pdf.
- 67 California Tax Credit Allocation Committee - Compliance Section, "Monitoring Guidance for 2022" (official memorandum, Sacramento, CA: California State Treasurer's Office, February 3, 2022). <https://www.treasurer.ca.gov/ctcac/compliance/memos/compliance-monitoring-2022.pdf>.
- 68 California Tax Credit Allocation Committee, "Low Income Housing Tax

- Credit Program (LIHTC) Compliance Monitoring Manual,” 17.
- 69 California Civil Code § 1927.
- 70 *Andrews v. Mobile Aire Estates* (2005) 125 Cal.App.4th 578, 588 (“In the absence of language to the contrary, every lease contains an implied covenant of quiet enjoyment, whereby the landlord impliedly covenants that the tenant shall have quiet enjoyment and possession of the premises.”).
- 71 *Ibid* at 589.
- 72 California Civil Code § 1940.2.
- 73 California Civil Code § 1940.35.
- 74 “Landlord-Tenant Issues,” State of California Department of Justice, accessed September 29, 2023, <https://oag.ca.gov/consumers/general/landlord-tenant-issues#who>.
- 75 Hensley, “Out in the Cold,” 1104.
- 76 California Tax Credit Allocation Committee, “Low Income Housing Tax Credit Program (LIHTC) Compliance Monitoring Manual,” 110.
- 77 Code of Federal Regulations, “Monitoring compliance with low-income housing credit requirements,” 26 CFR 1.42-5(d)(2).
- 78 California Tax Credit Allocation Committee, “Low Income Housing Tax Credit Program (LIHTC) Compliance Monitoring Manual,” 110.
- 79 *Ibid*, 7.
- 80 *Ibid*.
- 81 *Ibid*.
- 82 *Ibid*, 15.
- 83 Hensley, “Out in the Cold,” 1099.
- 84 California Tax Credit Allocation Committee, “Low Income Housing Tax Credit Program (LIHTC) Compliance Monitoring Manual,” 97.
- 85 *Ibid*, 7.
- 86 Cal. Code Regs., tit. 2, § 12176(a).
- 87 Cal. Code Regs., tit. 2, § 12176(b).
- 88 Department of Housing and Urban Development and Department of Justice, “Reasonable Modifications under the Fair Housing Act,” March 5, 2008, 16. https://www.hud.gov/sites/documents/reasonable_modifications_mar08.pdf.
- 89 Cal. Civ. Code § 1946.2(e)(7).
- 90 California Civil Code §§ 1942.5-1942.6.
- 91 California Community Land Trust Network, “Key Findings from the California Community Trust Network Survey,” 2022, https://www.cacltnetwork.org/wp-content/uploads/2022/10/CLT_SurveyFindings_WEB-2.pdf.
- 92 California Community Land Trust Network, “Key Findings from the California Community Land Trust Network Survey,” 2022. https://www.cacltnetwork.org/wp-content/uploads/2022/10/CLT_SurveyFindings_WEB-2.pdf.
- 93 Marcos Segura et al. to Nancee Robles, June 9, 2021, National Housing Law Project, <https://www.nhlp.org/wp-content/uploads/TCAC-Letter-Re-LIHTC-Tenant-Bill-of-Right-06.09.2021.pdf>. See the current leaserider language provided by CTCAC at: https://www.treasurer.ca.gov/ctcac/compliance/eviction_docs.pdf.
- 94 California Civil Code 1942.5.
- 95 San Francisco’s Tenant Organizing ordinance is available at: <https://sfgov.legistar.com/View.ashx?M=F&ID=10514976&GUID=1E551549-F00F-493B-B2DB-4C5CFBB8880C>.
- 96 See an example of a framework from San Francisco: <https://sf.gov/news/new-legislation-tenant-organizing-and-tenant-associations>.
- 97 California Housing Partnership, “The Tax

- Credit Turns 30,” December 2017, <https://chpc.net/wp-content/uploads/2017/12/TCT30-Final1.pdf>.
- 98 California Tax Credit Allocation Committee, “Low Income Housing Tax Credit Program (LIHTC) Compliance Monitoring Manual,” 53.
- 99 Hensley, “Out in the Cold,” 1109.
- 100 California Tax Credit Allocation Committee, “Low Income Housing Tax Credit Program (LIHTC) Compliance Monitoring Manual,” 94.
- 101 Department of Housing and Urban Development, “Tenants in LIHTC Units as of December 31, 2021,” <https://huduser.gov/portal/Datasets/lihtc/2021-LIHTC-Tenant-Tables.pdf>.
- 102 California Tax Credit Allocation Committee, “CTCAC Section 42 Low Income Housing Tax Credit (LIHTC) Addendum,” July 2022, <https://www.treasurer.ca.gov/ctcac/compliance/Section-42.pdf>.
- 103 Opinion No 93-203. <https://oag.ca.gov/system/files/opinions/pdfs/93-203.pdf>.
- 104 Cal. Code Regs., tit. 4, § 10315(a), available at https://www.treasurer.ca.gov/ctcac/programreg/regulations_committee.pdf.
- 105 See Richmond Municipal Code 11.103 https://library.municode.com/ca/richmond/codes/code_of_ordinances?nodeId=ARTXIPUSAWE_CH11.103TEANRA.
- 106 The Petaluma ordinance is available at: <https://cityofpetaluma.org/documents/residential-tenancy-protections-ordinance-no-2848-n-c-s/>.
- 107 The Antioch ordinance is available at: https://codelibrary.amlegal.com/codes/antioch/latest/antioch_ca/0-0-0-40097.
- 108 See <https://sfgov.legistar.com/View.ashx?M=F&ID=10514976&GUID=1E551549-F00F-493B-B2DB-4C5CFBB8880C>.
- 109 See <https://sf.gov/news/new-legislation-tenant-organizing-and-tenant-associations>.
- 110 See the Antioch ordinance at: <https://www.antiochca.gov/fc/government/agendas/CityCouncil/2023/agendas/072523/072523.pdf>.
- 111 See <https://ota.dc.gov/>.
- 112 See <https://www.ci.richmond.ca.us/2101/Rental-Inspection-Program>.
- 113 See Brian Mykulyn and Elora Raymond, “When Landlords Hide Behind LLCs,” Shelterforce, August 23, 2022, <https://shelterforce.org/2022/08/23/when-landlords-hide-behind-llcs/>.
- 114 See the rental license application at: <https://www2.minneapolismn.gov/media/content-assets/www2-documents/business/RLIC---Rental-License-Application.pdf>.
- 115 Matthew Desmond, “The Tenants Who Evicted Their Landlord,” New York Times, October 13, 2023. <https://www.nytimes.com/2020/10/13/magazine/rental-housing-crisis-minneapolis.html>.
- 116 LISC, “Social Housing Brings Stability and Self-Determination to Residents,” <https://www.lisc.org/our-resources/resource/social-housing-brings-stability-and-self-determination-residents/>.
- 117 See City of Oakland Notice of Funding Availability: https://cao-94612.s3.amazonaws.com/documents/ACAH-2022-CLT-LEHC-NOFA_Dec-2022-FINAL-rev-1-4-23.pdf.



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