ROADBLOCKS AND POTENTIAL SOLUTIONS to Affordable Condo Ownership in Mixed-Income Developments in Austin

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ROADBLOCKS AND POTENTIAL SOLUTIONS

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Executive Summary

This report summarizes the findings of a study undertaken by law students in the Entrepreneurship and Community Development Clinic at The University of Texas School of Law under the supervision of Clinical Professor Heather K. Way. The study examined issues that low- and middle-income households face when purchasing affordable, below-market-rate units in market-rate developments including, in particular, the City of Austin's developer incentive programs such as Planned Use Developments.

After preliminary discussions with an Austin City Council office and staff with the City's Housing and Planning Department, we focused our attention on what we determined to be two of the most impactful roadblocks facing buyers of the affordable condominium units in market-rate developments:

- the risk of unaffordable condo assessment fees; and
- a higher first-year property tax burden as a result of the buyer's first-year property assessment not taking into the discounted purchase price.

To better understand the roadblocks and potential solutions regarding condominium fees and first-year property taxes, our research included (1) interviewing housing department staff in several other cities around the country with robust inclusionary housing programs about their policies and practices; (2) researching the viability of potential solutions under Texas condominium law; and (3) interviewing local experts and stakeholders. See Appendix A for the list of persons we interviewed.

The following is a summary of our recommendations for addressing these roadblocks:

1. **Ensure that restrictive covenants governing affordable housing requirements in the City's affordable housing programs are recorded before January 1st.** To ensure that affordable buyers are not charged market-rate property taxes in their first year of ownership, we recommend that the City update its policies affiliated with its developer incentive programs to facilitate, whenever possible, the filing of a master restrictive covenant and condo declaration for a development before January 1st of the year the first affordable units in the development are initially sold.

   Action Items: Administrative changes through the Housing and Planning Department

2. **Amend the City's Memoranda of Understanding (MOU) with the Travis Central Appraisal District to address units under construction as of January 1st.** One potential approach to pursue with TCAD is setting the assessed value at the lower of: (1) the unit's percentage of completion multiplied by its maximum restricted sales price (as defined in the restrictive covenant) as of January 1st; and (2) the unit's cost value as of January 1st, meaning the cost of the unit including the land purchase price apportioned to the unit.

   Action Items: Pursue MOU amendment with TCAD and, if necessary, legislative change

3. **Set a sales price cap for affordable units that adequately accounts for condo assessments and provides a stronger buffer for assessment increases.** We recommend the approach taken by the District of Columbia. The District conducts a survey of average assessments and incorporates that average into the District's maximum allowable sales price for homes in its inclusionary zoning program. If the budgeted fee for a specific unit is more than 10% higher than the average fee, the District reduces the sales price for that unit to account for the higher fee.

   Action Items: Administrative changes through the Housing and Planning Department, or as needed, City Council ordinance; additional staffing at Housing and Planning Department to administer

4. **Require or encourage the adoption of discounted condo assessments in large luxury condominium developments.** The primary way in which the condominium fees have been discounted locally for affordable condominium units is by reducing the percentage of the common expense liability that is allocated to the affordable units.

   Action Items: Administrative changes through the Housing and Planning Department, or City Council ordinance

5 **Create an emergency homeowner assistance fund to mitigate the impacts of increased condo assessments and property taxes in affordable homeownership programs.** These funds vary in structure but are typically in the form of no-interest loans and can be set up so that the City is repaid upon the home's sale.

Action Items: City Council resolution or ordinance and budget allocation; additional staffing at Housing and Planning Department to administer

6 **Increase Post-Purchase Stewardship of Affordable Homeownership Units through the following:** (1) requiring buyers of affordable units to participate in post-purchase education; (2) conducting an annual check-in with buyers of affordable units; (3) hiring a property tax firm or otherwise providing support for homebuyers who experience initial issues with their property tax appraisals.

Action Items: Administrative changes through the Housing and Planning Department; additional staffing at Housing and Planning Department to administer

7 **Create an enhanced roadmap for developers.** We recommend the roadmap include an explanation of the property tax implications of the filing dates for the affordability restrictive covenant and condo declarations; information about discounted condo assessment structures for affordable buyers; and encouragement to provide upfront education to prospective market-rate unit buyers about the presence of affordable housing units and any condo fee discounts being provided to the buyers of those units.

Action Items: Administrative changes through the Housing and Planning Department

Part One: Roadblocks for Affordable Condo Ownership in Mixed-Income Developments

Roadblock #1: Condo Fees

One of the primary issues that has been raised in regards to the inclusion of affordable units within a market-rate condominium development concerns the impact that condominium fees have on the income-qualified buyers, due to high initial fees and the unpredictability of future increases and special assessments, as well as the impact that the fees have on the long-term preservation of the affordable unit.

Impact on income-qualified buyers

Each condominium development has a condominium owners' association, which has wide authority to assess fees to the condominium unit owners to cover the maintenance and operation of the common elements at the property, such as grounds, lobbies, elevators, pools, insurance, and the roof of the complex. These fees come primarily in the form of regular assessments — a monthly or quarterly fee to cover ongoing budgeted expenses and contributions to the reserves — and special assessments, which cover unexpected expenses or shortfalls. Community Wheelhouse, which works with a lot of private developers participating in the City's developer incentive programs, reports that the initial regular assessments they see in these developments, both single-family and multi-family, typically range from $75 to $300 a month. The fees at luxury developments, particularly in large buildings with stacked units (vs single-family and townhome condominium developments) are typically higher.

In 2022, the City's Housing and Planning Department began establishing a maximum sales price for affordable units that are initially sold through one of the City's developer incentive programs. The Department plans to adjust the maximum sales price annually. The pricing varies according to the number of bedrooms and maximum median family income level required under the relevant developer incentive program. We were unable to determine with city staff which developer incentive programs the pricing cap applies to versus which projects are subject to negotiations with developers regarding the maximum sales price. The City utilizes a separate maximum sales price formula for affordable units that receive City funding, such as through the City's Ownership Housing Development Assistance Program.

City of Austin: Developer Incentive Programs' Maximum Sales Prices (Effective June 15, 2022)

Median Family Income	Efficiency/One Bedroom	Two Bedroom	Three Bedroom	Four Bedroom
80%	$202,000	$227,000	$252,800	$278,100
100%	$229,000	$259,100	$287,600	$318,300

An issue with the City's sales price caps for all of its affordable homeownership programs is that they do not adequately take into account condo assessments, particularly at luxury developments. For new developments that have budgeted for high regular condo assessments, developers will have a hard time finding income-qualified buyers who qualify for a mortgage to purchase the affordable units unless the condo fee structure is set up in a way so that the buyers of the affordable units pay a lower level of fees (see further discussion of this approach under Part 2, Recommendations). Without this adjustment to the condo fees — or a decrease in the sales price — there is a high risk that those buyers who do qualify for the affordable condo will end up cost burdened, without an adequate buffer for emergencies or unexpected expenses, such as future increases in the condo fees.

For developer incentive projects such as Planned Use Developments (PUDs) approved by the City prior to the City's new maximum sales price policy, developers are still able to set the initial sales price. As with all affordable units, the developer's sales price is ultimately restricted by the market in terms of what the lender will underwrite for the income-qualified buyer's mortgage, but these pricing levels can similarly place financial strain on lower-income buyers, without an adequate buffer for emergencies or unexpected

expenses. The pricing also limits the pool of potential qualified buyers of the affordable units.

An even larger issue with both the City's maximum sales price and the sales prices set by developers is that they do not provide adequate accommodations for significant increases in regular condo assessments or high special assessments after the purchase. For an income-restricted buyer, the impact of these increased expenses can be quite significant and may cause some families to fall into foreclosure. Large special assessments and increases in regular assessments are of particular concern for affordable units in the following types of condominium projects:

"An even larger issue with both the City's maximum sales price and the sales prices set by developers is that they do not provide adequate accommodations for significant increases in regular condo assessments or high special assessments after the purchase. For an income-restricted buyer, the impact of these increased expenses can be quite significant and may cause some families to fall into foreclosure."

1. **Luxury developments**, which already have higher than average condo fees and expensive amenities; the market-rate owners in these developments likely have a significantly higher threshold for increased assessments and the addition of luxury amenities or upgrades.
2. **Older or poorly-built and poorly-managed developments** that require extensive repairs and maintenance and have not built up an adequate reserve to cover these expenses.
3. **New condo developments in which the developer has underestimated or "low-balled" the initial condo fees.** Several of the stakeholders we spoke to reported that the initial budgeted assessments at new condominium developments are often set lower by the developer than what will be needed to cover operating costs. These issues are particularly problematic in stacked condo developments, which typically require higher operational expenses for the common elements compared to a single-family condominium development.

Impact on the long-term preservation of affordable units

An increase in the regular condo assessments also threatens the ability of the initial income-restricted buyer to resell the unit to an income-qualified buyer and thus threatens the long-term affordability of the condo unit. The affordable homeownership units in the City's developer incentive programs include a restrictive covenant that restricts the future resale of the unit to the initial sales price plus an annual appreciation rate of two percent. The restrictive covenant also includes ongoing income restrictions.

For example, if a low-income household purchases a unit restricted to buyers making 80% of the area median family income (MFI), the unit must be resold at the restricted sales price to another household making no more than 80% MFI. But if the regular condo assessment fees rise significantly, the total payments will end up exceeding what households making up to 80% MFI can afford, or at best, will squeeze out a large pool of prospective buyers. This in turn makes it very difficult, if not impossible, to resell the unit to an income-qualified purchaser as required by the restrictive covenant.

Road Block #2: Property Taxes

There are several interrelated issues regarding the first year of property taxes on affordable units in a new condominium development in Texas.

Issue #1: Timing of recording the sales price restrictions on the affordable units

As with other types of properties, when a condominium unit is purchased in Texas, the property taxes levied on the unit are based on the unit's market value as of January 1st. For condominiums, the property tax assessment also incorporates the condo unit's percentage interest in the "common" elements of the condominium. According to the Travis Central Appraisal District (TCAD), in order for TCAD's assessed value of a new condominium unit to take into account any affordability restrictions on the unit in the year the unit is purchased, two documents need to have been recorded in the deed records before January 1st of the purchase year: (1) the condominium declaration for the project; and (2) a restrictive covenant setting forth sales price restrictions on the unit.

For example, if the sales price restriction for an affordable condominium unit sold in May 2022 is set at $200,000 in a restrictive covenant recorded before January 1st, 2022, and the market value of the condo unit is $300,000, the unit will be assessed by TCAD at $200,000 for 2022 as long as the condominium declaration was also recorded by January 1st. If these two documents have not been recorded before January 1st, TCAD will assess the affordable unit at $300,000 for 2022.

> The first-year property tax bill on an affordable unit at the Grove was **$3,500 higher** than it would have been if the sales price restrictions had been recorded before January 1st.

The recording date of the sales price restrictions was an issue at the Grove development, where the restrictions on 12 affordable units were not recorded until April 2021. Income-restricted buyers who purchased their affordable units in 2021 had to pay property taxes on assessed values that were significantly higher than the restricted sales price for their condominium unit. For example, as Figure 1 depicts, one of the income-restricted buyers purchased an affordable unit at the Grove in August with a restricted sales price of $209,000. Because the sales price restriction was not recorded before January 1st, TCAD assessed the unit based on its market value on January 1st of $328,000, rather than the $209,000 sales price restriction. This higher assessed value resulted in a property tax bill on the unit for 2021 of $7,146, which was approximately $3,500 higher than the property tax bill would have been if the sales price restriction had been recorded before January 1st.

Figure 1: Initial Property Tax Impacts on Affordable Condominium Units at the Grove

Issue #2: Taxation of partially constructed condominium units in higher-end developments

Even if the condo declaration and affordability restrictions have been recorded before January 1st, an additional issue arises for affordable condominium units in higher end developments where the construction has not been completed as of January 1st. For units that are still under construction as of January 1st, TCAD's assessed value for property taxes is typically based on the cost approach. Under the cost approach, the land purchase price for the condo project and the construction costs for the development as of January 1st are apportioned among all the units. For example, according to TCAD, if the land for a 5-unit stacked condo development was purchased by the developer for $1 million and the condominium declaration states that each of the units has a 20% interest in the common elements, then TCAD will allocate each unit a land valuation of $200,000 ($1 million x 20%), along with an allocation of the construction costs as of January 1st.

In higher-end condominium developments, under the cost valuation methodology for units that are partially constructed as of January 1st, the cost valuation of an affordable unit could exceed the sales price restrictions on the unit. For example, if the cost valuation for the affordable unit as of January 1, 2022, is $300,000, but the restricted sales price recorded as of January 1st is $200,000, the 2022 assessed value under the cost valuation methodology could end up $100,000 higher than the restricted sales price valuation.

TCAD reports that its Memorandums of Understanding (MOUs) with affordable housing developers do not address how a situation like this should be handled. At Mueller, where TCAD's MOU with the Mueller Foundation does at least include a cost valuation approach (see discussion in Part 2, Recommendations), TCAD reported that the issue of the cost valuation exceeding the restricted sales price has not arisen yet.

Issue #3: Mortgage company escrows for property taxes

An additional roadblock arises from the way some mortgage lenders estimate the property taxes on affordable homes for purposes of their escrow requirements. Staff from the City's Housing and Development Department shared with us an example of this issue at the Grove — in the case discussed above and depicted in Figure 1.

In the settlement at the August 2021 closing of the affordable unit at the Grove, the mortgage company for the buyer calculated the property taxes for 2021 based on the restricted sales price of $209,000, rather than the assessed value of $328,000 issued by TCAD in May 2021. The mortgage company's 11-month escrow requirement at the closing for property taxes was also based on the restricted sales price.

It was not until a year after the purchase, in August 2022, that the mortgage company notified the buyer of the shortfall in the property tax payment, which resulted in insufficient funds in the homebuyer's escrow account. To address the shortfall, the mortgage company added on an escrow shortage charge to the homebuyer's monthly payment to the lender.

Even more problematic to the homebuyer, in August 2022 the mortgage company set the next 12 months of escrow payments based on the property's October 2021 tax bill of $7,146, which was based on the higher assessed value of the property from 2021 of $328,291 (the market value as of January 2021). Absent additional advocacy and the mortgage company's willingness to address this discrepancy, the low-income homebuyer will be stuck with paying $207 more into escrow a month than they would be required to if the property's assessed value had been set by TCAD at the restricted sales price from the get go. According to City of Austin staff, owners of income-restricted homes have been told by their lenders that they are unwilling or unable to adjust the mortgage calculations based on the notice of appraisal values sent out by TCAD in the spring.

Contributing Factors

Several additional factors contribute to the roadblocks relating to condo fees and property taxes for buyers who purchase affordable units through the City of Austin's developer incentive programs.

Post-Purchase Stewardship

After an income-qualified buyer purchases an affordable home through the City's developer incentive programs, the City has not had the staffing capacity to proactively support the homebuyers with their new purchase — such as by monitoring TCAD's property tax assessments on the affordable units to ensure they accurately reflect the sales price restrictions in place as of January 1st or making sure the homebuyer has a homestead exemption in place. For example, we came across a couple of purchases at the Grove where the affordable buyers did not have a homestead exemption in place for the first year after purchase. We also learned of instances where developers have improperly denied buyers of the affordable condominium units access to common amenities such as parking garages or where the affordable condominium units have been resold at market price in violation of the City's restrictive covenant.

"After an income-qualified buyer purchases an affordable home through the City's developer incentive programs, the City has not had the staffing capacity to proactively support the homebuyers with their new purchase."

While lack of stewardship has been an issue, the Housing and Planning Department is in the process of hiring additional staff to improve its support of homebuyers who purchase the affordable units, such as through post-closing trainings and regular check-ins with the buyers.

Lack of Clarity for Developers Regarding Requirements for the Affordable Units and Best Practices

Developer-side advocates reported to us the need for a more robust roadmap from the City for developers participating in the City's developer incentive programs. For example, guidance would be helpful on best practices for developers on reducing the negative impact of condo fees on affordable buyers and the importance of recording the condo declaration and restrictive covenants by January 1st where possible. While developers value flexibility, they also desire guidance on what actions they must or must not take and where they can tailor options as appropriate for a given development.

Additional Roadblocks

Additional issues that city leaders, city staff, and other stakeholders raised regarding affordable condominium units, but that this report does not address, include the following matters. While these issues are beyond the scope of our report, we believe they deserve a closer examination:

1. the lack of appropriately designed units for families with children and the related challenge of marketing affordable condominium units to families with children;
2. reports of buyers of affordable condo units being blocked from amenities at some of the condominium complexes in the City's development incentive programs;
3. additional difficulties qualifying eligible buyers for the income-restricted condo units upon resale, driven in part by most condo developments not being FHA-approved; as a result, buyers cannot qualify for FHA mortgage financing and must instead utilize conventional financing, which comes with higher credit standards and down payment requirements;
4. the recent resale of affordable homes subsidized by the City without complying with the City's restrictive covenant terms, and the subsequent loss of these homes from the City's affordable housing inventory (these concerns are not unique to condominiums).

Part Two: Recommendations

Recommendation 1: Ensure that restrictive covenants governing affordable housing requirements are recorded before January 1st

As discussed in Part One, the property taxes assessed on any given property are determined by the value of the property on January 1st of the given tax year. To ensure that affordable buyers are not charged market-rate property taxes in their first year of ownership, every effort must be made to ensure that condo declarations and affordable housing restrictions are recorded before January 1st of the purchase year.

We recommend that the City update its policies affiliated with its developer incentive programs to facilitate, whenever possible, the filing of a master restrictive covenant and condo declaration for a development before January 1st of the year the first affordable units in the development are initially sold. To satisfy TCAD's requirements, the restrictive covenant must designate the affordable units and the restricted sales prices for those units. For developments subject to the City's new maximum sales price policy, recording the restrictive covenant prior to January 1st will depend on the City making its annual adjustments to the maximum sales price well in advance of January 1st. Developers also have a direct financial interest to record the restrictive covenant before January 1st, since they will see property tax benefits for their pro rata share of the tax bill.

For developments not subject to the City's maximum sales price policy, if the sales prices for specific units are not pinned down before January 1st, a restrictive covenant could still be recorded with an estimate of the maximum sales prices, as long as the estimate is on the higher end and below the market valuation without the sales restriction. This would ensure that the first-year property taxes are at least less than the market value. If the actual restricted sales price ends up being lower, an amended restrictive covenant could be recorded after January 1st, resulting in a lower property tax assessment and property tax bill in the following year that reflects the actual sales price.

Recommendation 2: Ensure MOUs with TCAD address partially complete units

We recommend the City of Austin pursue an amendment to the City's Memorandum of Understanding (MOU) with TCAD to address the property tax assessment issues that can arise with condominium units in its affordable housing programs that are still under construction on January 1st, as discussed in Part One. One potential approach that the City of Austin (as well as other affordable housing providers) could pursue with TCAD is setting the assessed value at the lower of: (1) the unit's percentage of completion multiplied by its

RECOMMENDATION 2 CASE STUDY

The **Mueller Foundation**'s MOU with TCAD stipulates that partially complete homes in Mueller's affordable housing program are assessed based on the builder's cost for the home as of January 1st. The specific language reads: "TCAD also agrees to set the market value for affordable lots and partially complete homes in the Affordable Program at the builder cost with inventory discount and to reflect the correct percentage complete as of January 1st." In contrast, the City's MOU does not address the valuation of partially completed affordable units.

The language in the Mueller Foundation's MOU does not address what happens if the cost value of an affordable home exceeds the restricted sales prices. But so far this has not been an issue at Mueller, where the cost values as of January 1st have not yet exceeded the restricted sales prices. The lower cost values at Mueller are likely due in part to the way Mueller handles land discounts for the affordable units.

maximum restricted sales price (as defined in the restrictive covenant) as of January 1st; and (2) the unit's cost value as of January 1st, meaning the cost of the unit including the land purchase price apportioned to the unit.

As an example under this approach, take an affordable condominium unit where the restricted sales price recorded for the unit by January 1st is set at $200,000. If the unit was 50% complete on January 1, 2022, and the cost value of the unit was $300,000 as of January 1, 2022, the property tax assessment for 2022 would be set at $100,000 (i.e., 50% of the $200,000 restricted sales price).

While this valuation approach needs further vetting, TCAD expressed a potential openness to this approach, which would require certain documentation including builder cost sheets, condominium declarations and restricted sales prices recorded by January 1st, and reports listing units' percentage of completion as of January 1st. TCAD says it would need an actual case to analyze before committing to this approach. If TCAD determines it is unable under state law to utilize this approach, this solution could be implemented through legislative change.

Recommendation 3: Set a sales price cap for affordable units that adequately accounts for condo assessments and provides a stronger buffer for assessment increases

In setting the sales price cap for affordable units in condominium developments, we recommend the City of Austin follow an approach similar to that taken by the District of Columbia. The District conducts a survey of average condominium and homeowners' association assessments per square foot and then incorporates that average (2022: $.075 a square foot for condo fees and $.013 for single-family homeowners' association fees) into the District's maximum allowable sales price for homes in its inclusionary zoning program. If the budgeted fee for a specific unit is more than 10% higher than the average fee, the District reduces the sales price for that unit to account for the higher fee. If these adjustments to the sales price are not feasible, the City of Austin's assumptions about any condominium fees that are built into the City's price caps should, at a minimum, be reviewed regularly to make sure they are comparable to recent average rates in development projects.

We also recommend the City incorporate a larger buffer into its sales price cap for affordable units in the City's developer incentive programs to better account for increases in condominium assessment fees after the purchase of a unit. For example, the sales price cap could be modified so that a buyer at the applicable MFI level in the incentive program does not pay more than 25% of their income on housing costs. These pricing changes will increase the pool of qualified affordable buyers while mitigating the negative impacts of rising condominium fees and special assessments on lower-income buyers. In an era of rising interest rates, the larger buffer will also help mitigate the greater financial pressures new buyers are under when they purchase under a sales price cap that does not incorporate higher interest rates.

RECOMMENDATION 3 CASE STUDIES

When the **District of Columbia** sets the sales price caps in its affordable housing programs, the District incorporates average condo assessment fees into those price caps, based on a regular survey the District conducts of condo fees per square foot across the District. The District then builds a cushion on top of that average, anticipating that the condo fees will rise over time. Additionally, for any development that charges condo fees on an affordable unit that are 10% higher than the districtwide average, the District's housing department reduces the sales price for that unit.

The **City of San Francisco** incorporates condo fees into the city's maximum sales prices for affordable units. The seller must submit a pricing request to the Office of Housing and Community Development, which then sets the sales price of the unit — including condo fees — in its considerations. The maximum prices are also calculated to include a buffer for most purchasers: households earning up to 100% MFI are eligible to purchase homes, while the sales price is based on 80% of the San Francisco area's median income (AMI).

Special considerations: Depending on the developer incentive program, ordinance changes may be necessary to create a sales price caps with the structure recommended here. Conducting regular surveys of area condo fees will require additional city resources in terms of staffing. In calculating a sales price cap, another factor to consider is how any changes may financially impact developers and their participation in the City's incentive programs.

Recommendation 4: Require or encourage the adoption of discounted condo assessments in certain types of condominium developments

Discounted condominium fees for lower-income buyers can be a powerful tool to alleviate the financial burden of rising regular assessments and special assessments. It is legal in Texas to "discount" condo fees for affordable units, such that the buyers of affordable units pay lower assessments than market-rate unit buyers, as long as the discount is built into the condominium's organizational documents. This model has been employed in Austin by several developers.

The primary way in which the condominium fees have been discounted locally for affordable condo units in mixed-income developments is by reducing the percentage of the common expense liability that is allocated to the affordable units. The common expenses are the expenditures and financial liabilities of the condominium association, in addition to contributions to reserves. The amount of the discount for the affordable units depends on the development, with local discounts typically ranging from 30% to 60%. The discount level applies to both the regular assessments and special assessments.

For example, take the case of a 10-unit stacked condominium development in which the common expense allocation is based on the relative size of each unit and one of the units is affordable with a 50% discount on the common expense allocation. If the affordable condominium would ordinarily be responsible for $400 a month in regular assessments, with a 50% discount the affordable condominium would be responsible for $200 a month in regular assessments. The remaining $200 a month in regular assessments is then redistributed among the other condo owners, on top of each of those owners' $400 monthly assessment. The same 50% discount would be applied to special assessments.

Because the discount applied to affordable units is redistributed across the market-rate units in a development, this bifurcated approach for condo assessments is best suited to higher-end developments with only a small percentage (up to 20%) of affordable units. In contrast, this approach is less viable in developments where the percentage of affordable units in the development is high or there are a small number of units overall. This approach is also less viable in developments where the market-rate units are occupied primarily by low- and moderate-income households who cannot easily absorb the redistributed fees.

RECOMMENDATION 4 CASE STUDIES

Several years ago, the **City of Austin** implemented a discounted assessment structure for an 11-unit condo development with two affordable units on East 11th Street. The condominium documents imposed a 50% discount on the condominium assessments for the affordable units. A group of market-rate owners were upset by the unequal treatment, and the condo association's board ultimately voted to significantly reduce the discount.

In **Washington, D.C.**, developers have discretion to adopt a discounted condominium fee structure for affordable units. However, the District decided against requiring discounted condo fees out of concern about animosity from market-rate residents, especially those in smaller developments where all the residents know each other.

Whichever approach is utilized, upfront disclosure to all the buyers is very important. Developers must also incorporate the structure up front into the condominium declaration documents. The developer will not have authority to adjust how the condo fees are allocated after governance is transferred over to the condominium association and the units are sold. Having the structure outlined in the declaration also helps ensure that all residents receive notice up front about the discounts.

A limitation of providing affordable buyers with discounted assessments is that the discount structure is not set in stone. Once governance of the condominium is in the hands of the residents through the condominium association, the residents have the authority to amend the condominium documents to reduce or eliminate the assessment discount for the residents of the affordable units. As discussed in the case studies below, this is precisely what happened several years ago at a condominium development in Austin. The risk of a similar change to a discounted fee structure happening again is likely higher in smaller developments and developments where residents in market-rate units experience significant financial pressure from the redistributed assessments. City legal staff also raised a concern that, once market-rate owners vote to remove assessment discounts for affordable units, they could be more likely to remove other protections in place for affordable units, such as provisions in the condo documents requiring advanced notice to the City of an affordable unit's resale.

Recommendation 5: Create an emergency homeowner assistance fund

Several jurisdictions across the country have created an emergency homeowner assistance fund to mitigate the impacts of increased condo assessments and property taxes in affordable homeownership programs. These funds vary in structure but are typically in the form of no-interest loans and can be set up so that the City is repaid upon the home's sale. This is one of the few potential solutions we have found that will offer relief to homeowners who have previously purchased affordable units through the City's affordability programs.

RECOMMENDATION 5 CASE STUDIES

The **Mueller Foundation** has provided financial assistance to homeowners of affordable homes in the Mueller neighborhood to help reduce the burden of special assessments. The assistance is in the form of a loan that is repayable upon resale.

San Francisco's Homeowner Emergency Loan Program (HELP) provides deferred, zero-interest loans of $5,000 to $50,000 to help homebuyers facing financial hardship with delinquent property taxes, homeowners' association (HOA) assessments, and mortgage payments. To be eligible, a homeowner must make less than 120% MFI. The loan is repayable upon resale of the home or after 30 years, whichever is earlier. Additionally, San Francisco allows the resale price of income-restricted units to be adjusted upwards to reflect pre-approved costs associated with capital improvements, repairs, and special assessments, which may offset the equity loss incurred by a homeowner who receives a HELP loan.

In order for the City of Austin to set up a homeowner assistance fund, additional staffing capacity would be needed to handle intake and other aspects of fund implementation. The City will also need to ensure compliance with article III, section 52(a) of the Texas Constitution, regarding the expenditure of public funds. This provision of the state constitution allows payment to individuals as long as the City not abuse its discretion in determining that (1) the fund's predominant purpose is to accomplish a public purpose of the City, not to benefit private parties; (2) the City will exercise control over the funds to ensure the public purpose is accomplished; and (3) the City will receive a return public benefit. See Tex. Mun. League Intergov'tl Risk Pool v. Tex. Workers' Comp. Comm'n, 74 S.W.3d 377, 384 (Tex. 2002).

Given that the homeowner assistance fund would be targeted to households participating in the City's affordable housing programs and would help safeguard the City's investments in affordable housing and increase housing stability in the city, we believe these criteria could easily be meet. An assistance program for homeowners that is set up as a loan will face an even lower hurdle under the state constitution.

Special considerations: Operating an emergency homeowner assistance fund will require funding and additional staffing

RECOMMENDATION 5 CASE STUDY

The **City of Boulder** recently created a Special Assessment Grant Program, which pays special assessments for owners in Boulder's Permanently Affordable Homeownership Program who are under financial duress. The funds are paid directly to HOAs on behalf of the owner. The resale price of an owner's home is decreased to reflect the grant amount. The assessment grant is paid from Boulder's general affordable housing fund. Requests for assistance are already outstripping the program's funds.

Recommendation 6: Increase post-purchase stewardship of affordable homeownership units

We recommend the following best practices in regards to providing stewardship of affordable homeownership units after they are sold through the City's developer incentive programs. According to Grounded Solutions, "post-purchase support can make all the difference between success and failure for the homeowner, and between preservation and loss of affordable units for the program." (Stewardship Standards for Homeownership Programs, at p. 45).

1. **Require buyers of affordable units to participate in post-purchase education.** Post-purchase education helps homebuyers navigate the array of complex issues that can arise during the first year of homeownership. For example, counseling could help a homebuyer learn how to navigate any disparities that arise between a homebuyer's property tax bills and mortgage company escrow requirements and help the homebuyer plan out how to stay on top of their escrow obligations. In addition to post-purchase education, Grounded Solutions recommends that post-purchase support for homebuyers of affordable homes include financial counseling, home maintenance and repair workshops, loss mitigation, and home repair programs (Stewardship Standards for Homeownership Programs, at p. 49).

2. **Conduct an annual check-in with homebuyers.** Ongoing check-ins provide an opportunity to identify issues the homebuyer is having and support them with those issues, check property tax appraisals to ensure a homestead exemption is in place and that the appraisals reflect the resale restrictions, and monitor for any non-compliance issues such as homes being used for short-term rentals.

3. **Hire a property tax firm or otherwise provide support for homebuyers who experience initial issues with their property tax appraisals.** According to stakeholders who work with affordable homebuyers in Austin, issues with the property tax appraisals of affordable units, particularly those in condominiums, arise fairly frequently. The Mueller Foundation has reported success with hiring a property tax firm on retainer to help its affordable homebuyers navigate these challenging issues, including making sure appraisals reflect the affordability restrictions on units.

RECOMMENDATION 6 CASE STUDY

The Mueller Foundation has a property tax company on retainer to help the buyers of Mueller's affordable homes with any property tax appraisal or exemption issues that arise; their services include making sure TCAD's tax appraisals reflect homes' restricted sales prices. The Foundation reports success with this model, given the high frequency with which the affordable buyers in Mueller encounter property tax appraisal issues.

Austin's Housing and Planning Department is in the process of hiring additional staff to help support post-purchase stewardship. Additional stewardship functions could also potentially be outsourced through partnerships with local organizations.

RECOMMENDATION 6 CASE STUDIES

The City of Boulder conducts a survey every 7–9 years of homeowners in the City's affordable programs, asking about homeowners' relationships with their condo or homeowners' association, any special assessments that have been levied, and homeowners' feedback on the affordable housing program. City staff noted that these surveys have helped them understand the significance and pervasiveness of problems and recommended this approach to other cities.

San Francisco has adopted robust post-purchase education requirements for homebuyers of affordable units. At closing, the city collects a fee from the homebuyer, which is refunded upon the homebuyer's completion of 6 hours of post-purchase education within 24 months of purchase. The post-purchase education covers topics such as HOA rights and responsibilities and home maintenance. City staff has found that the educational requirements are both successful and appreciated by the buyers.

Additionally, as part of the City's ongoing monitoring process, San Francisco requires that all affordable homeowners complete a yearly, online certification. Homeowners must certify that everyone on their title is living in the home, that the home is their primary residence, that the home is not being used as a short-term rental, and that the homeowner carries adequate insurance coverage.

Recommendation 7: Create an enhanced roadmap for developers

As discussed in Part One, developer-side advocates reported to us the need for a more robust roadmap from the City of Austin for developers participating in the City's developer incentive programs. Developers seek additional information about the programs' compliance requirements and best practices the developer can follow to help ensure the successful sale and long-term preservation of affordable units. We recommend the roadmap include:

1. An explanation of the negative property-tax implications to both developers and buyers of affordable units when the affordability restrictive covenant and condo declarations are not filed before January 1st of the year the first affordable units are sold.
2. A recommendation to developers of larger, higher-end condominium projects to include a discounted condo assessment structure for affordable buyers in their condominium documents, along with education about the benefits of a discounted structure.
3. Encouragement to provide upfront education to prospective market-rate unit buyers on the presence of affordable housing within the development and any condo fee discounts being provided to the buyers of those units.

Summary of Potential Action Items

Administrative

- Facilitate timely filings of restrictive covenant and condo declaration
- Update MOU with TCAD
- Require or encourage discounted condo assessments
- Adjust sales price caps
- Increase post-purchase stewardship
- Create developer roadmap

Ordinance

- Create a homeowner assistance fund
- Adjust sales price caps

Legislative

- Adjust property tax assessments of partially complete affordable units

Part Three: Additional Policies to Explore

In addition to the above recommendations, we identified the following additional policies that are worth exploring further to help support affordable homeownership in mixed-income condominium developments:

Protections to mitigate the impact of high condominium assessments

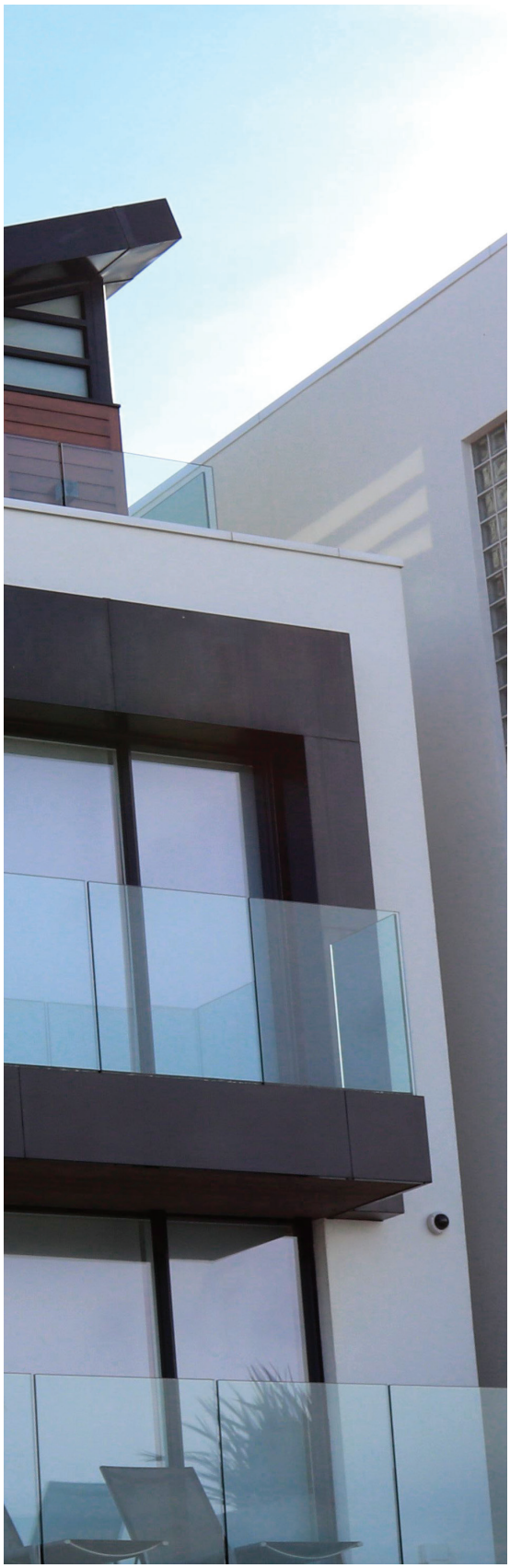
If a condominium association significantly raises regular assessments or levies high special assessments, the following measures could help mitigate the impacts on homebuyers of affordable units:

1. Require no-interest or low-interest payment plans for homebuyers of affordable units who cannot afford additional assessments. Section 209.0062 of the Texas Property Code currently requires homeowners' associations of more than 14 lots, but not condo associations, to allow for payment plans — although the duration for the mandated homeowners' association payment plans (a minimum of 3 months and maximum 18 months) is limited in scope.
2. Prohibit condominium associations from foreclosing on liens while a payment plan is in place for late assessment payments.
3. Require condominium associations to provide at least 30 days' notice to the City before the association forecloses on any liens on affordable units for assessment defaults.

These policies have been recommended by Grounded Solutions Network. Additional research is needed on the feasibility of these policies locally, including which policies could be adopted by city ordinance or would require state legislation.

Partner with lenders who will hold mortgages on affordable homes within their portfolios

We recommend the City pursue partnerships with lenders who will hold the mortgages on affordable homes created through City housing programs within their portfolios rather than selling the mortgages to investors. Through these partnerships, the City could encourage lenders to structure and update their escrow requirements for affordable units to better reflect the property taxes assessed on the affordable units. Austin Habitat for Humanity reports that its partnerships with banks who hold loans in their portfolios has made a difference with regards to creating escrow requirements that more accurately reflect a homebuyer's actual tax liability.



Appendix A: Experts, Stakeholders, and Jurisdictions Interviewed

Gene Bulmash, Inclusionary Zoning Program Manager, Department of Housing and Community Development, Washington, D.C.

Bob Burton, Shareholder, Co-Chair of the Real Estate Development & Investments Practice Group and Co-Chair of the Planned Community, Mixed-Use & Condominium Practice Group, Winstead PC (Austin, Texas)

Marya Crigler, Chief Appraiser, Travis Central Appraisal District

Zachary Dye, Residential Manager, Travis Central Appraisal District

Frances Ferguson, Executive Director, Mueller Foundation (Austin, Texas)

Wayne Gerami, Chief Operating Officer, Austin Habitat for Humanity

Kait Kuzmickas, Assistant City Attorney (Austin, Texas)

Russell Ledbetter, Assistant Director of Residential Appraisal, Travis Central Appraisal District

Patricia Link, Assistant City Attorney (Austin, Texas)

Danilo Pelletiere, Affordable Housing Preservation Officer, Department of Housing and Community Development, Washington, D.C.

Jay Sugnet, Senior Housing Manager and Staff Liaison, Housing Advisory Board, Boulder, Colorado

Kelly Weiss, Chief Executive Officer, Community Wheelhouse (Austin, Texas)

Cissy Yin, BMR Homeownership Program Manager, Mayor's Office of Housing & Community Development, San Francisco, California