

**Policy Recommendations  
of the  
Affirmatively Furthering  
Fair Housing Task Force**



**AFFIRMATIVELY FURTHERING FAIR HOUSING**

**April 2019**

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# **Fair Housing Criteria for the Assessment of Proposed Development Projects**

## **1. Synopsis of Recommendation:**

When assessing proposed development projects, all jurisdictions, commissions and authorities should require the developer to perform an analysis and demonstrate that the project will not perpetuate patterns of segregation, effectively exclude members of protected classes or disproportionately harm members of protected classes. This should include, at a minimum, an analysis of the correlation between the market characteristics of the proposed development (bedroom count, rent structure and marketing plan) and the demand characteristics of people in protected classes (the housing needs of people in protected classes in the relevant market area), as well as an analysis of the accessibility of the project and location. Jurisdictions, commissions and authorities should work with fair housing lawyers, advocates/members of protected classes, the Commission on Human Relations and the City-County AFFH Task Force to develop specific criteria for this assessment.

## **2. Statement of Need:**

Housing and housing-related opportunities in Pittsburgh and Allegheny County remain largely segregated on the basis of race, with persons of color, people with disabilities, families with children, and others protected by applicable Fair Housing laws generally having fewer choices and less access to opportunities. The impacts of this on affected families and individuals are myriad, from inferior access to educational and employment opportunities to poorer health outcomes. This is particularly egregious in the context of the “renaissance” that has been ongoing in Pittsburgh, as many folks of color and others protected by the Fair Housing laws find themselves excluded from the benefits of development in the City and living in neighborhoods that are falling further behind.

## **3. Reasons supporting recommendation:**

Pittsburgh and Allegheny County have a legal obligation to ensure that their policies, decisions and actions affecting housing and related development do not have the effect of perpetuating patterns of segregation or excluding members of protected classes. Furthermore, the City and County are required to Affirmatively Further Fair Housing by effectively assessing, planning and taking meaningful actions to overcome historic patterns of segregation, promote fair housing choice and foster inclusive communities that are free from discrimination. The duty to affirmatively further fair housing extends to all activities and programs relating to housing and development. This includes activities undertaken directly (e.g., the awarding of tax incentives and other subsidies for housing development), by their commissions (e.g., the Pittsburgh Planning Commission’s review of project development plans) and by their authorities (e.g., the Port Authority’s support for transit oriented development projects). Unfortunately, present decision-making processes lack meaningful criteria to assess and determine compliance with Fair Housing standards and the AFFH obligations. Not only are such criteria needed in order to ensure compliance with applicable Fair Housing requirements, they also are needed to ensure

that the environmental, social and economic impacts of planning and development decisions are fair and favorable for the City, the County and their residents.

#### **4. Research supporting recommendation:**

- **Legal and policy background:**

As previously stated, the City and County are required to Affirmatively Further Fair Housing by effectively assessing, planning and taking meaningful actions to overcome historic patterns of segregation, promote fair housing choice and foster inclusive communities that are free from discrimination, and this duty extends to all activities and programs relating to housing and development.

The City and County do not currently consider AFFH in their development and subsidy review processes. Pittsburgh's zoning code does require as a condition of zoning and land use approval of significant development projects that the project create a favorable social impact on the City and that it comply with plans and policy documents adopted by the City. Both of these criteria implicate AFFH. First, AFFH advances an important social policy - promoting fair housing choice and equal opportunity. Housing developments that perpetuate segregation or exclude members of protected classes cannot possibly be found to create a favorable social impact on the City. Second, the City's 2015-2019 Consolidated Plan and each of the City's Annual Action Plans contain certifications that the City will affirmatively further fair housing. A development project that fails to further AFFH therefore fails to comply with plans and policy documents adopted by the City.

- **Academic research, studies, data, theories, etc. on barriers and needs addressed by the recommendation and on the proposed recommendations and potential outcomes:**

Rutan, *The Legacies of Redlining in Pittsburgh* (Students for Urban Data Systems at Carnegie Mellon University, 2017), available online at <http://suds-cmu.org/2017/02/21/the-legacies-of-redlining-in-pittsburgh/>

University of Pittsburgh Center on Race and Social Problems, *Pittsburgh's Racial Demographics 2015: Differences and Disparities* (2015), available online at <http://www.crsp.pitt.edu/sites/default/files/Final%20version%20for%20publishing.pdf>

- **Real-world examples of the recommendation applied in other communities, including consideration of community comparability and policy outcomes:**

The Pittsburgh Zoning Code contains minimum environmental standards and requires, among other things, that a tree and vegetative survey be completed as part of the development review process for all development projects of ¼ acre or larger. Incorporating fair housing review criteria and requiring a fair housing assessment would be comparable.

Market studies are typically required by lenders and equity investors in housing development projects, and it is not uncommon for developers to include them in their preliminary land development plans as evidence of positive economic impact. Housing

market studies often contain highly detailed demographic characteristics of potential customers. See, for example, the Esri tapestry segmentation system, available online at <http://doc.arcgis.com/en/esri-demographics/data/tapestry-segmentation.htm>. Market analysts can identify the presence, range of income, and demand by people in these demographic segments with great precision. See, e.g., the Mellon Arena Site Redevelopment Strategy - Market Analysis by ERA/AECOM, February, 2010, available online at [www.civicarenaredevelopment.com/admin/uploads/aecom-economic-and-fiscal-impact.pdf](http://www.civicarenaredevelopment.com/admin/uploads/aecom-economic-and-fiscal-impact.pdf). Adding similar information about people in protected classes in the relevant market area would be easy by comparison.

**5. Reasons against recommendation:**

This puts a burden on developers to complete the assessment, and it puts a staff burden on the Planning Department and the City's Authorities to create a process for assisting developers to ensure compliance initially.

**Created by:**

Race & Ethnicity Committee of the AFFH Task Force

# Non-Discriminatory Tenant Screening Criteria with Justice Involvement

## 1. Synopsis of Recommendation:

The Pittsburgh Commission on Human Relations (PCHR) should (1) advocate for the prohibition of use of criminal records in housing admissions, (2) publicize the Department of Housing and Urban Development's (HUD) guidance on the use of criminal records in housing admissions, (3) educate landlords on the use of criminal records as screening criteria and (4) enforce violations of the HUD and PCHR guidance.

The City of Pittsburgh should review and adopt an ordinance similar to Seattle's Fair Chance Housing Act that will make it illegal to deny a prospective tenant housing based on their past criminal history. This ordinance should include only limited exceptions for offenses that require registration because of Megan's Law (Sex Crime) convictions and for accessory structures or homes in which an owner also occupies.

## 2. Statement of Need:

Criminal history is shown to have no correlation with good tenancy, yet it is one of the most common criteria landlords use to screen prospective tenants for their apartments. People of color are over-represented in the criminal justice system and, as a result, are screened out of housing at higher rates than white residents.

## 3. Reasons supporting recommendation:

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### *I. Racial Disparities*

About one in three adults in the United States has an arrest or conviction record, and nearly half of all U.S. children have a parent with a criminal record, according to the Department of Justice and the Center for American Progress. People of color are particularly affected by tenant screening based on criminal records as they are disproportionately represented in the criminal justice system. Nationally people of color make-up around 37% of the population yet they represent over 67% of the prison population. This is an important factor considering that 95% of all incarcerated people are eventually released and return to communities across the United States with criminal records in tow.

These disparities are found among those returning to the Pittsburgh region with criminal records. Over 1,000 people return to Allegheny County from the Pennsylvania Department of Corrections (PDOC) each year. Thousands more cycle through the county jail or are under some sort of community supervision. Still others return from federal prisons. Regardless of the punishment, thousands of people in Allegheny County are saddled with a criminal record each year. Of the 1,440 people released to Allegheny County from PDOC in 2016, 978 or 68% were people of color. In a county whose population is roughly 80% white that is a staggering disparity. Overall, 51% of the 19,824 people released by PDOC in 2016 were people of color while they make up only about 18% of the state's population. These numbers suggest that racial disparities and the

negative impacts of criminal justice system involvement, although problematic across the nation and Pennsylvania, are more intense in Allegheny County.

During the Obama administration, the federal government recognized the problematic nature of the disparities in the criminal justice system and their impact on the ability of people with criminal records to secure affordable housing. Notably, in 2016 HUD issued guidance to the over 3,600 public housing authorities (PHA) nationwide that the use of certain criminal records in making admission and eviction decisions is now considered a violation of the Fair Housing Act. PHA and private landlords now face fines and even criminal prosecution if they use *convictions* for drug possession, any arrests that did not lead to convictions, blanket bans for arrests or convictions, and criminal records older than three years as part of their tenant screening criteria. This policy shift, although predicated on the racial disparities found in the criminal justice system, also marked an acceptance that the restrictions for people with criminal records from housing, employment, and public aid ushered in during the 1980's and 90's "tough on crime" era have turned out to be largely counterproductive.

## *II. Housing, Restrictive Policy, and Recidivism*

Although these policies were supposedly introduced to deter crime and increase public safety, research suggests that they may serve as sources of increased criminal behavior, are needlessly long, and may actually be predicated on who gets access to scarce resources such as housing.

Researchers have used a variety of methods to assess the relationships between housing and criminal behavior. Their findings indicate that stable housing typically serves to reduce this behavior. In a review of reentry program studies published between 2000 and 2010, Wright et al. (2014) points out that programs that offer some sort of housing or a housing subsidy have significantly better outcomes. In a similar review of the literature on re-entry programs, O'Leary (2013) found that stable housing is an important factor for reentry programs aiming to reduce recidivism.

In one of the few randomized controlled trials assessing the impact of housing first programs on re-offending, researchers found that those in the treatment group receiving housing first had less than a third of the number of re-offenses than those without housing.

Lutze et al. (2014) evaluated the Washington State Housing Pilot Program which provides housing for three months' post release. They found that, compared to 208 participants released to standard parole supervision, the 208 parolees released to the program had significantly fewer new convictions and returns to prison. Furthermore, their findings suggest that any period of homelessness significantly increases the likelihood for recidivism through new arrests, convictions, and incarceration. This finding is consistent with many previous studies that indicate homelessness is associated with higher rates of recidivism and that previous incarceration is related to higher instances of homelessness.

Other research suggests that the scarcity of affordable housing may motivate much of the restrictive policy regarding access to housing for people with criminal records (Plassmeyer & Sliva, 2017). These researchers found that states with higher percentages of low income households who are housing cost burdened (more than 30% of their income goes to housing)

have harsher policies for people with criminal records. And in a review of the research on the impact of restrictive policies for people with criminal records on recidivism, Whittle (2016) found evidence that restrictive state housing policies and those that ban access to public aid such as TANF and SNAP are associated with increased recidivism.

Research also suggests that restrictive policies for people with criminal records may be based on flawed assumptions. Kurleycheck, Brame, and Bushway (2006) found that within seven years of one's last offense the likelihood of reoffending becomes statistically equivalent to the chances of someone who has never offended committing a crime. This suggests extreme policies like lifetime bans may be unreasonable and a hindrance to successful participation in society. Furthermore, it suggests that private market landlords who screen out people with criminal records may be contributing to recidivism and diminishing public safety in their communities.

### *III. Landlord Liability*

Another reason screening for criminal records for housing is unnecessary is that there is no precedent that suggests that landlords can be held liable for any criminal behavior committed by their renters. Ehman & Reosti (2015) make two prescient points in a recent brief on landlord liability. The first (1) is that there have been no instances of courts upholding landlord liability when it comes to actions of third party residents. They note one exception from Georgia, but are quick to stress that resident in question was also *employed* by the landlord in a security role and that employers are held to different standards. The second (2) point is that there are no laws that require landlords to screen for a criminal history. Furthermore, the courts have recognized that screening for criminal history may be counterproductive to the rehabilitative goals of the criminal justice system and may have a disproportionate impact on people of color and people with behavioral health diagnoses.

### *IV. Reform Across the Country*

Pittsburgh would not be alone in its efforts to reduce barriers to housing for people with criminal records. Seattle and Champaign/Urbana, Illinois have both passed ordinances that limit or flat out ban the use of criminal record screening for prospective tenants. The following provides a synopsis of the ordinances, some other examples of cities taking more incremental approaches, and an approach suggested by the National Apartment Association.

Seattle: Fair Chance Housing Legislation (Passed in August 2017) - Prohibits blanket exclusions for criminal records; prohibits considering arrests without conviction; prohibits considering pending charges; prohibits considering expunged, vacated or sealed charges, juvenile records (including sex offenses) and convictions two years or older. Puts burden on landlord to prove convictions less than 2 years old or sex offenses justify denial of housing. Prohibits promoting preferences for people without criminal records in advertisements.

Champaign, IL: Human Rights Ordinance - \$500 fine for discrimination against people with arrests or convictions (Excludes "forcible crimes" and drug crimes less than 5 years old) – Prohibits promoting preferences that exclude protected groups (people with criminal records) in advertisements.

Urbana, IL: Human Rights Ordinance - \$500 fine for discrimination against people with arrests or convictions (No exceptions) - Prohibits promoting preferences that exclude protected groups (people with criminal records) in advertisements.

Steps taken in other cities, counties, and states (Legal Action Center, 2016)

Locations	Housing Reform Focus
Chicago, King County, NYC, LA, Minneapolis, New Haven, Oakland	Family reunification for those exiting prisons and jails (Allows those with records to live places that would otherwise be unavailable)
New York State, NYC, New Orleans, Seattle (2016)	Individualized (case by case) decisions (e.g. no blanket bans)
Baltimore, Columbus, San Antonio, Minnesota, Massachusetts	Housing programs specifically for people involved the CJ system
California, Minnesota, Ohio, New York	Supportive housing for people involved in the CJ system
New Jersey, California	Tax credits to provide/build housing for people involved in the CJ system
San Francisco, Newark	Ban the box on applications
North Carolina, Texas	Reduce landlord liability (Certificates of relief) *
Tennessee, Washington, Georgia,	Certificates of relief in <b>employment</b> (Reduction of <b>employer liability</b> ) *

\* In North Carolina, Tennessee, Washington, and Georgia people are eligible for certificates of relief which document that the court believes they should not be subject to any employment, housing, public aid, education or other restrictions associated with a criminal conviction. North Carolina is the only state where the law states that landlords are free of liability if they rent to someone with a certificate. In the other states these certificates free employers of liability if they hire someone with a certificate. Other states have these certificates as well but no explicit language around landlord or employer liability.

Pennsylvania: Currently considering SB855 Uniformity of Collateral Consequences of Conviction Act - This bill allows for immediate relief from one or more sanctions (e.g. housing, employment, public benefits, etc.). After 5 years without criminal charges one would be eligible for forgiveness of all collateral consequences of conviction.

National Apartment Association: Recommends waiver of liability to landlords who are complying with any anti-discrimination laws.

## V. Summary

Affordable housing is becoming an increasingly scarce commodity across the country. The Pittsburgh area is no exception to this trend. People returning from prisons and jails often lack the resources to secure essential resources such as housing. Any limitation on their ability to secure housing imposed by landlords or other entities only serves to increase their chances of recidivism and, according to current research, may have a negative impact on public safety in general. Also, there is no current legal precedent that holds landlords liable for the actions of their tenants and no laws requiring landlords to screen prospective tenants for criminal histories.

Lastly, the federal government has recognized that the racial disparities in the criminal justice system have bled over into the ability of people with criminal records to obtain housing, employment and other essential resources necessary for full participation in society. By passing an ordinance restricting the use of criminal record screening by landlords Pittsburgh would be at the forefront of a growing national movement to remove the barriers to housing faced by people with criminal records and come into congruence with the most current research that suggests that stable housing helps reduce recidivism and increase public safety.

## 5. Research supporting recommendation:

Alexander, M. (2012). *The new Jim Crow: Mass incarceration in the age of colorblindness*. (Revised ed.) New York, NY: The New Press.

Baldry, E., McDonnell, D., & Maplestone, P. (2003). *Ex-prisoners & accommodation: What bearing do different forms of housing have on social reintegration?* Melbourne: Australian Housing and Urban Research Institute.

Center for American Progress, “Removing Barriers to Opportunity or Parents With Criminal Records and Their Children” (December 2015)

De Saxe Zerden, L., Lundgren, L. M., Chassler, D., Horowitz, A. C., Adorno, E., & Purington, T. (2013). Social and economic factors associated with recent and lifetime incarceration among Puerto Rican drug users. *Journal of Ethnicity in Substance Abuse, 12*(2), 179-195. doi:10.1080/15332640.2013.788921

Ehman, M., & Reosti, A. (2015). Tenant screening in an era of mass incarceration. *New York University Journal of Legislation and Public Policy Quorum, 1-27*.

Geller, A., & Curtis, M. A. (2011). A sort of homecoming: Incarceration and the housing security of urban men. *Social Science Research, 40*(4), 1196-1213. doi:10.1016/j.ssresearch.2011.03.008

Hamilton, Z., Kigerl, A., & Hays, Z. (2015). Removing release impediments and reducing correctional costs: Evaluation of Washington State’s housing voucher program. *JQ: Justice Quarterly, 32*(2), 255-287. doi:10.1080/07418825.2012.761720

Kanovsky, H. R. (2016). *Office of general counsel guidance on application of Fair Housing Act standards to the use of criminal records by providers of housing and real estate-related transactions*. Washington, D.C.: Department of Housing and Urban Development. [https://portal.hud.gov/hudportal/documents/huddoc?id=hud\\_ogcguidappfhastandcr.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=hud_ogcguidappfhastandcr.pdf)

Kurlychek, M. C.; Brame, R.; & Bushway, S. D. (2006). Scarlet letters and recidivism: Does an old criminal record predict future offending? *Criminology and Public Policy, 5*(3), 483-504.

Legal Action Center (2016). *Helping moms, dads, and kids to come home: Eliminating barriers to housing for people with criminal records*. Legal Action Center: New York, NY.

- Lutze, F. E., Rosky, J. W., & Hamilton, Z. K. (2014). Homelessness and reentry: A multisite outcome evaluation of Washington State's reentry housing program for high risk offenders. *Criminal Justice and Behavior*, 41(4), 471-491. doi:10.1177/0093854813510164
- Malone, D. (2009). Assessing criminal history as a predictor of future housing success for homeless adults with behavioral health disorders. *Psychiatric Services*, 60(2), 224-230. doi: 10.1176/appi.ps.60.2.224
- Manzoni, P., Brochu, S., Fischer, B., & Rehm, J. (2006). Determinants of property crime among illicit opiate users outside of treatment across Canada. *Deviant Behavior*, 27(3), 351-376. doi:10.1080/01639620600605705
- O'Leary, C. (2013). The role of stable accommodation in reducing recidivism: What does the evidence tell us? *Safer Communities*, 12(1), 5-12. doi:10.1108/17578041311293099
- Pettus-Davis, C. (2014). Social support among releasing men prisoners with lifetime trauma experiences. *International Journal of Law and Psychiatry*, 37, 512-523. doi: <http://dx.doi.org/10.1016/j.ijlp.2014.02.024>
- Plassmeyer, M., & Sliva, S. M. (2017) Social exclusion as a state-level predictor of changes in collateral sanctions. *Criminal Justice Review*. doi: 10.1177/0734016817721292
- U.S. Department of Justice Office of the Attorney General, "The Attorney General's Report on Criminal History Background Checks." (June 2006) at 51
- Walker, A., Hempel, L., Unnithan, N. P., & Pogrebin, M. R. (2014). Parole Reentry and social capital: The centrality of homelessness. *Journal of Poverty*, 18(3), 315-334. doi:10.1080/10875549.2014.923962
- Whittle, T. N. (2016). Felony collateral sanctions effects on recidivism: A literature review. *Criminal Justice Policy Review*. doi:10.1177/0887403415623328
- Wright, B. J., Zhang, S. X., Farabee, D., & Braatz, R. (2014). Prisoner reentry research from 2000 to 2010: Results of a narrative review. *Criminal Justice Review (Sage Publications)*, 39(1), 37-57. doi:10.1177/0734016813501192
- Fair Housing Choice Analysis: Barriers to Housing Faced By Previously Incarcerated Persons Created by the University of Pittsburgh Center for Metropolitan Studies in partnership with the City of Pittsburgh Commission on Human Relations August 2013
- Seattle Fair Chance Housing Ordinance:  
<http://seattle.legistar.com/View.ashx?M=F&ID=5305441&GUID=B959F462-C8C4-4DC3-9B12-1B0485B70EE6>

<http://seattle.legistar.com/View.ashx?M=F&ID=5329776&GUID=E7151472-6536-4135-A357-2D6EBD088039>

**6. Reasons against recommendation:**

Housing Authorities and landlords will likely oppose on the grounds that this may cause liability, unsafe conditions for their existing tenants, deprive them of property rights and the ability to choose the best tenants for their properties, cause them to lose money in unpaid rent citing a correlation between criminal history and good tenancy, and may cause them to be cited/fined by the City for violations of the Nuisance Property Ordinance.

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# Tenant Protections: Good Cause Requirement for Residential Lease Termination and Eviction Defense Legal Assistance

## 1. Synopsis of Recommendation:

The City of Pittsburgh should adopt effective measures to safeguard City renters against faultless evictions: 1) by enacting an ordinance requiring “good cause” for residential lease terminations, 2) by requiring housing providers who receive City assistance, including discretionary planning and zoning approvals, to incorporate a “good cause” requirement into their leases, and 3) by robustly funding eviction defense legal assistance for low-income renters by legal aid and *pro bono* attorneys and, perhaps, the law schools. The need for these measures in the City is very clear and growing, particularly for low-income renters protected by the Fair Housing Act, who are disproportionately at risk of homelessness or housing instability due to arbitrary, discriminatory, retaliatory, erroneous or otherwise faultless eviction from their homes.

## 2. Statement of Need:

Eviction from one’s home, like involuntary displacement, can be devastating to a low-income family. Major disruption of a child’s education or a parent’s employment, loss of access to public transportation and to one’s family, neighbors, doctors or church, homelessness, along with the very real risk of psychological injury are some of the common consequences of eviction. Of course, eviction is necessary or unavoidable in certain circumstances, such as when a tenant is not paying the rent. However, arbitrary, discriminatory, retaliatory and otherwise faultless evictions should be prevented whenever possible, in order to minimize the public and private costs of eviction, particularly for low-income renters, who will struggle and often fail to find affordable housing in their community or anywhere in the City following a no-fault lease termination.

The issue of no-fault lease termination or eviction is not just an issue affecting the poor and working poor; it is a Fair Housing issue. In Pittsburgh, persons of color are far more likely to live to rent, rather than own, their homes, and they are far more likely to struggle with poverty. Two-thirds of Pittsburgh’s African-American households, for instance, rent their homes while only 40.6% of White households rent. African-American households in Pittsburgh, for instance, are more than twice as likely to live in poverty as White households. African-Americans in Pittsburgh are far more likely than Whites to be housing cost burdened, and the disparity in severe housing cost burden is even greater. In Pittsburgh, as in many cities, the unfair and often devastating effects of no-fault eviction are suffered disproportionately by renters who are protected under the Fair Housing Act.

The injustice of this disparity is compounded in the context of formal eviction through legal proceedings, where renters are *far* less likely than their landlords to be represented by legal counsel. Except for a smattering of Legal Aid and *pro bono* attorneys, there are, essentially, no legal resources available for low-income renters who face eviction in the City. Correcting this fundamental imbalance in power and access to the courts would significantly reduce the risk of erroneous eviction, and it would greatly reduce the occurrence and fallout of eviction overall.

Therefore, it is incumbent upon the City, particularly now, when rents are quickly rising in neighborhoods throughout the City, to take feasible steps to minimize the disproportionate risk and negative impacts of no-fault lease terminations and erroneous evictions. A good cause requirement for lease termination should be legislated, as has been done in numerous municipalities and states around the Country, and the City should, at minimum, require this of housing providers to whom it provide financial and other discretionary assistance. The City also should follow the lead of those municipalities that have acted to reduce the societal and personal costs of eviction by providing funding for eviction defense legal assistance. Such measures have proven to be very effective in preventing erroneous evictions reducing the occurrence of eviction overall.

### **3. Reasons supporting recommendation:**

- a. A good cause requirement for residential lease terminations would safeguard protected class renters against arbitrary, discriminatory and retaliatory lease terminations. Eviction defense legal assistance would greatly help to prevent to erroneous evictions of vulnerable residents.
- b. A good cause requirement for residential lease terminations and eviction defense legal assistance would help to create housing stability for protected class renters, including seniors, persons with disabilities and persons of color, who disproportionately suffer the harms of no-fault or erroneous eviction.
- c. A good cause requirement for residential lease terminations and eviction defense legal assistance would encourage stable tenancies and responsible ownership practices.
- d. A good cause requirement for residential lease terminations and eviction defense legal assistance would reduce eviction rates, thereby reducing associated costs to the local government, such as lost property tax revenue, unpaid municipal utility bills and increased costs to address homelessness and hospitalization.
- e. A good cause requirement for residential lease terminations and eviction defense legal assistance would provide protection to landlords against unfounded accusations or litigation by tenants who may seek to challenge the justified termination of a lease and would help to reduce costs that result from eviction.
- f. A good cause requirement for residential lease terminations and eviction defense legal assistance are especially important in the present context of rapidly rising rental costs in neighborhoods throughout the City Pittsburgh, much of which is directly or indirectly attributable to City assisted development.
- g. A good cause requirement for residential lease terminations and eviction defense legal assistance are especially needed in housing that has received or will receive City assistance, in order to ensure due process to protected class resident who face termination of their legitimate interests in that housing.

### **4. Research supporting recommendation:**

- **Legal and policy background:**

“Good cause” protection from no-fault lease termination generally means that a renter’s lease cannot be terminated unless the tenant has committed a serious lease violation, such as nonpayment of rent, or has committed repeated lesser violations that are material. “Good Cause” protection also generally requires adequate notice and opportunity to dispute an allegation of lease breach. This protection is common in housing assistance programs, including the HOME Investment Partnerships Program administered by the City of Pittsburgh’s Urban Redevelopment Authority. In fact, virtually all federal housing programs have a “good cause” requirement. “Good cause” for lease termination also has been determined to be an element of the Constitution’s due process protections.

Many cities and states across America have recognized the need for good cause protection against lease termination and have enacted this basic protection for renters. This has been in recognition of the often extreme hardship borne by families who experience no-fault eviction and the disproportionate risk of this on low-income renters, those protected by the Fair Housing Act and renters in “hot” housing markets where the pace of rental prices has outstripped wage growth. For an excellent analysis exploring the hardships of eviction, please read Matthew Desmond’s Pulitzer Prize winning book, *Evicted: Poverty and Profit in the American City*. For a similarly eye-opening evaluation of the consequences to families and communities of involuntary displacement, see Mindy Fullilove’s book, *Root Shock: How Tearing Up City Neighborhoods Hurts America, And What We Can Do About It*.

Not only have elected officials begun to understand the destabilizing effects of eviction on families and communities. Some also have begun to recognize what scholars and housing advocates have long known: that evictions cost cities and landlords money, and that the legal eviction process is (very misguidedly) tilted in favor of eviction as the outcome. In eviction proceedings, the vast majority of landlords show up to court with a lawyer, while tenants are nearly never assisted by legal counsel. Any honest lawyer will tell you that meaningful access to the courts, and one’s chances of winning in Court—for instance by introducing evidence that establishes a legal defense or counter-claim—are largely dependent upon one’s access competent legal counsel. To address this problem, a number of municipalities have taken the very practical step of funding eviction defense legal assistance for lower-income renters, typically in partnership with the local Legal Aid program and *pro bono* attorneys. The City of Pittsburgh should follow their example.

- **Academic research, studies, data, theories, etc. on barriers and needs addressed by the recommendation and on the proposed recommendations and potential outcomes:**

The consequences of eviction are many and multidimensional. The body of research indicates that evictions result in both hard and soft costs to the public, including increased emergency shelter costs, emergency room costs, law enforcement costs, lost property tax revenue, lost municipal utility revenue, etc. Concentrated patterns of eviction in neighborhoods also have been shown to correlate with increases in neighborhood poverty and crime. Evictions cost landlords as well, through lost revenues and increased transactional costs. But by far the

harshest costs of no-fault lease termination and eviction are those suffered by the renters who lose their homes, and particularly low-income families.

Eviction is a leading cause of homelessness, especially for families with children. It is directly linked to high rates of housing instability, which often brings about other forms of instability—in the household, at school, at work—compromising the life chances of adults and children. Families displaced from their homes often end up in worse housing in worse neighborhoods. This has been shown to correlate with increased incidence of lead poisoning, asthma and other adverse health effects attributable to environmental factors. Eviction also is negatively associated with mental health, including increased rates of depression and suicide, and negatively impacts childhood development. Not only does poverty increase the risk of eviction; studies suggest that eviction is also a driver of poverty.

The issue of no-fault lease termination and eviction, however, is not just a poverty issue. It also is a Fair Housing issue. In America, working families headed by racial/ethnic minorities are twice as likely to be poor as White families—a gap that has increased since the onset of the Great Recession in 2007. The significant disparity in income/wealth among racial/ethnic groups presents a critical Fair Housing challenge to communities across the United States, including Pittsburgh. In the City of Pittsburgh, persons of color are far more likely to rent, rather than own, their homes. Two-thirds of Pittsburgh’s African-American households, for instance, rent their homes while only 40.6% of White households rent. Persons of color in Pittsburgh are far less likely to have sufficient income or assets to successfully relocate following after lease termination or eviction. For instance, African-American households are more than twice as likely to live in poverty as White households (33% vs. 14.9%). African-Americans in Pittsburgh are far more likely than Whites to be housing cost burdened: 46% of African-American households pay more than they can afford for housing, compared to 33% of White households. The disparity in *severe* cost burden is even greater: 25% of all African-American households in Pittsburgh pay over half of their income on housing cost, compared to 16% of White households. The same patterns are reflected in our local homeless population, where African-Americans constitute the majority of sheltered homeless in the County (56.6%). These patterns generally are similar for female-headed households with children, disabled renters and seniors. In Pittsburgh, as in many places, the unfair and often devastating effects of no-fault eviction are suffered disproportionately by renters who are protected under the Fair Housing Act.

The injustice of these disparities is made worse in the context of formal eviction proceedings, where landlords generally have legal counsel while low-income tenants lack even access to legal counsel. Studies around the Country have evidenced this pattern and its consequences.

Owing in significant part to Federal cutbacks to legal aid to the poor, in many housing courts around the country 90 percent of landlords have attorneys, and greater than 90 percent of tenants do not. The result is that legal eviction proceedings generally result in evictions of tenants, often simply because tenants do not understand the legal procedures, such as how to introduce evidence, assert a legal defense or counter-claim or file or properly draft an appeal. Beyond tenants’ lack of information and familiarity with the process, many face additional courtroom barriers on account of their language, lack of education or disabilities, or they succumb to

pressure from landlords' counsel to reach monetary agreements, which they may not owe and that they cannot afford to pay, in order to stay a little longer in their homes. Tenants who are represented by legal counsel in eviction proceedings, however, are *far* less likely to be evicted than their unrepresented counterparts. As described in Richard Engler's meta-study, "Connecting Self-Representation to Civil Gideon," *supra* note 24, pp. 46-49:

Courts that handle housing cases have been the focus of countless reports across the country over the past three decades. The titles capture the perilous fate awaiting unrepresented tenants: *Injustice In No Time, No Time for Justice, Judgment Landlord, Justice Evicted...* In addition, *Silence in the Court: Participation and Subordination of Poor Tenants' Voices in Legal Process* captures the powerlessness of tenants, while *Alone in the Hallway* speaks to the perils of hallway negotiations [without legal representation].

Despite some variation in details, the core features of the courts seem remarkably consistent.... Tenants rarely are represented by counsel, while the representation rate of landlords varies...to highs of 85-90%.... [T]he typical case pits a represented landlord against an unrepresented tenant. The demographics of the tenants reveal a vulnerable group of litigants, typically poor, often women, and disproportionately racial and ethnic minorities.

...Regardless of whether tenants appear or default, settle or go to trial, raise defenses or do not, the result invariably is a judgment for the landlord.... The unrepresented tenant faces swift eviction, and with minimal judicial involvement.

One variable that often can halt the swift judgment for the landlord is representation for the tenant, with the likelihood of eviction dropping precipitously. Some reports discuss winning generally, showing tenants three, six, ten, or even nineteen times as likely to win if they are represented by counsel, in comparison to unrepresented tenants. Others talk in terms of represented tenants faring better "[a]t every stage of the proceeding" or more generally in avoiding having judgments entered against them. Studies providing specific data show that represented tenants default less often, obtain better settlements, or win more often at trial.

Researchers who have analyzed this issue have virtually uniformly concluded that enhancing publically funded legal assistance for low-income families in eviction cases can be a very effective tool for preventing the fallout that results from evictions. Moreover, this has been shown to be a *very* cost-effective mechanism. For instance, an independent Economic Impact Study commissioned by the Pennsylvania Interest on Lawyers Trust Account (IOLTA) Board found that for each dollar (\$1) spent on civil Legal Aid, there is an \$11 return to Pennsylvania taxpayers. Municipalities that have taken the very practical step of funding eviction defense legal assistance include New York, which plans to spend more than \$150 million each year on the program, Los Angeles, which will direct \$8.5 to address the issue, having had 56,000 eviction actions filed in 2016, Washington, D.C., which recently set aside \$4.5 million for this purpose, Boston and others. The City of Pittsburgh should follow their example.

- **Real-world examples of the recommendation applied in other communities, including consideration of community comparability and policy outcomes:**

The correlation between poverty and protected status and eviction is a strong one, and the Fair Housing Act obliges the City (and the County and other local municipalities) to analyze and take systematic actions to address the problem of no-fault lease termination and eviction. These actions should include providing “good cause” protection against lease termination for all City renters, or minimally for renters at properties facilitated by the City, and providing funds to make legal representation available for lower-income renters in formal eviction proceedings. As noted, the City can look to the example of other municipalities and states that have acted to address these problems in their jurisdictions. The following are just a few such examples:

City of Glendale Just Cause Eviction Ordinance:

<http://www.glendaleca.gov/government/departments/community-development/housing/other-resources/just-cause-eviction-ordinance>

Seattle Just Cause Eviction Ordinance:

<http://www.seattle.gov/dpd/codesrules/codes/justcauseordinance/default.htm>

City of Berkeley Rent Stabilization Board:

[https://www.cityofberkeley.info/uploadedFiles/Rent\\_Stabilization\\_Board/Level\\_3\\_-\\_General/AGA%20for%202012\\_Good%20Cause%20for%20Eviction%20list\\_Nov.%202011.pdf](https://www.cityofberkeley.info/uploadedFiles/Rent_Stabilization_Board/Level_3_-_General/AGA%20for%202012_Good%20Cause%20for%20Eviction%20list_Nov.%202011.pdf)

New Jersey State landlord and tenant law, *N.J. Stat. § 2A:18-61.1 - 2A: 18-61.3* (prohibiting eviction of residential tenants without a showing of good cause and setting forth procedural requirements.)

New York City Passes Bill to Provide Right to Counsel to Low-Income Tenants:

<http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1687978&GUID=29A4594B-9E8A-4C5E-A797-96BDC4F64F80>

## **6. Reasons against recommendation:**

This recommendation may place the City of Pittsburgh “in the crosshairs” of those who have acted in the past to stymie City efforts to provide tenant protections, such as the legal challenges that were raised against the City’s rental registration and source of income discrimination ordinances. This concern, however, could be reduced or perhaps offset by effective outreach and education to interested parties.

### **Created by:**

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Carol Hardeman and other staff and board members of the Hill District Consensus Group

# Increased and Equitable Investment in African-American Neighborhoods

## 1. Synopsis of Recommendation:

Provide and incentivize investment in predominantly African-American neighborhoods, in a way that is designed to benefit existing residents. Specifically:

- Create additional financing structures that generate dedicated revenue streams for targeted investment in predominantly African-American neighborhoods, along with meaningful community participation and oversight over the uses of that revenue, such as the Greater Hill District Neighborhood Reinvestment Fund.
- Ensure the equal distribution of non-CDBG capital funds among CDBG-eligible and non-CDBG-eligible areas, while making CDBG fully available to improve conditions and stimulate investment in disinvested neighborhoods. Ensure the transparent reporting of capital expenditures by geographic area.
- Adopt and implement equitable development strategies as outlined in *Equitable Development: The Path to an All-In Pittsburgh* to ensure that existing residents benefit from renewed investment in their neighborhoods.

## 2. Statement of Need:

Throughout the mid-20th century, the institutionalized practice of redlining accelerated the decline of African-American and mixed-race neighborhoods in Pittsburgh and throughout the country and drove private investment to newly developed White suburban communities. This disinvestment gave rise to urban renewal projects that demolished African-American commercial districts and physically separated African-American neighborhoods from centers of commercial activity. The resulting urban unrest exacerbated the problem. As a result, many African-American neighborhoods in the City of Pittsburgh continue to struggle with disinvestment, economic isolation, deteriorated infrastructure, unsafe living conditions, and lack of access to the range of amenities that are typically found in White neighborhoods.

The duty to affirmatively further fair housing includes the duty to take meaningful actions to transform racially and ethnically concentrated areas of poverty into inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. To accomplish that requires targeted investment accompanied by strategies designed to eliminate racial barriers to full economic and cultural participation in the revitalized neighborhood.

## 4. Reasons supporting recommendation:

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- a. Targeted investment in predominantly African-American neighborhoods in a way that is designed to benefit existing residents would help to remediate the effects of discriminatory housing and community development policies and would help reduce racial disparities in access to safe, healthy, culturally-enriching neighborhoods.
- b. The City already has a positive example of a financing structure that is designed to generate a significant dedicated revenue stream for targeted investment along with

meaningful community participation and oversight over the uses of those funds (the Greater Hill District Neighborhood Reinvestment Fund).

c. The City has identified the improper use of CDBG funds and the unequal allocation of other City capital funds as a serious problem. (Resulting in \$\$\$ being directed to ineligible communities). Since African-American neighborhoods tend to be CDBG-eligible, the supplanting of CDBG funds and the unequal allocation of other capital funds has the effect of perpetuating racially unequal living conditions.

d. A menu of equitable development strategies to ensure that existing residents benefit from renewed investment in their neighborhoods has already been created and enjoys broad support (PolicyLink, *Equitable Development: The Path to an All-In Pittsburgh*).

### **3. Research supporting recommendation:**

- **Legal and policy background:**

The principal resource that the federal government gives local jurisdictions to help them transform racially concentrated areas of poverty is the Community Development Block Grant (CDBG). In 2010, the City of Pittsburgh enacted the "Neighborhood First Capital Budget Reform Act" in an effort to ensure the equitable distribution of capital funds throughout the City. Unfortunately, the disproportionate allocation of City capital funds to non-CDBG eligible neighborhoods and the use of CDBG funds for routine public services has continued since that time.

The City and County have made some targeted investment in African-American neighborhoods and have had some success in stimulating private investment in those neighborhoods. In 1994, Allegheny County established the Sanders Task Force to help the County make targeted allocations of nearly \$30 million in CDBG funds in seven disinvested, predominantly African- American communities over a seven year period. This resulted in a total investment of over \$60 million in more than 100 development projects and services contracts in the seven Sanders communities, including the acquisition and redevelopment of more than 120 vacant and tax delinquent properties in one neighborhood alone. In the early 2000s, the City targeted much of its housing and community development resources into the revitalization of the East Liberty neighborhood. Unfortunately, that revitalization was accomplished without adequate safeguards to ensure that existing residents would benefit from the renewed investment. Hundreds of members of protected classes (African-Americans, seniors and people with disabilities) were relocated out of the neighborhood; members of protected classes continue to face displacement pressures due to increased rents and development activities; commercial enterprises that once served long-time residents and provided business opportunities for them (e.g., street vendors and low-cost retail) are being replaced by businesses that require higher start-up costs and serve a higher income clientele; and recreational assets that serve long-term residents (e.g., basketball courts) are at risk of being eliminated.

In 2014, the City negotiated a Community Collaboration and Implementation Plan with the Pittsburgh Penguins and Hill District neighborhood representatives, in an attempt to ensure that redevelopment of the Lower Hill District would benefit residents and businesses in the Greater Hill District. One element of this agreement was a commitment to reinvest 50% of the revenue to be generated by development tax subsidies (estimated to be \$25 million) into a Greater Hill District Neighborhood Reinvestment Fund designed to stimulate equitable development throughout the neighborhood. The Fund will have significant participation and oversight by community stakeholders.

In 2016, PolicyLink developed an equitable development agenda for the City of Pittsburgh in collaboration with a number of local stakeholders. *Equitable Development: Path to an All-in Pittsburgh* contains sixteen recommendations to help foster racial equity and inclusion.

- **Academic research, studies, data, theories, etc. on barriers and needs addressed by the recommendation and on the proposed recommendations and potential outcomes:**

Rutan, *The Legacies of Redlining in Pittsburgh* (Students for Urban Data Systems at Carnegie Mellon University, 2017), available online at <http://suds-cmu.org/2017/02/21/the-legacies-of-redlining-in-pittsburgh/>

University of Pittsburgh Center on Race and Social Problems, *Pittsburgh's Racial Demographics 2015: Differences and Disparities* (2015), available online at <http://www.crsp.pitt.edu/sites/default/files/Final%20version%20for%20publishing.pdf>

PolicyLink, *Equitable Development: Path to an All-in Pittsburgh* (2016), available online at: [http://www.policylink.org/sites/default/files/report\\_pittsburgh\\_FINAL\\_PDF\\_0.pdf](http://www.policylink.org/sites/default/files/report_pittsburgh_FINAL_PDF_0.pdf)

- **Real-world examples of the recommendation applied in other communities, including consideration of community comparability and policy outcomes:**

The Sanders Task Force and the East Liberty revitalization are both examples of targeted investment in predominantly African-American neighborhoods. *Equitable Development: Path to an All-in Pittsburgh* cites numerous examples of specific equitable development strategies that have been successfully implemented elsewhere. The Greater Hill District Neighborhood Reinvestment Fund is perhaps the only local example to combine targeted investment and equitable development strategies in the same initiative, but unfortunately no revenue has yet been made available for the Fund to allocate.

#### **Created by:**

Race & Ethnicity Committee of the AFFH Task Force

# **Robust Mandatory Inclusionary Zoning**

## **1. Synopsis of Recommendation:**

Adopt a robust mandatory inclusionary zoning ordinance to require that all development of new housing units (including the renovation or reconstruction of existing housing) include:

- For rental developments, a substantial number of units (10%-15% or more) that are affordable to very low-income residents (50% AMI and below). If a public rental subsidy is available, at least half of the affordable units should be reserved for extremely low-income residents (30% AMI and below).
- For for-sale developments, a substantial number of units (10%-15% or more) that are affordable to low-income residents (80% AMI and below). If a public development subsidy is available, at least half of the affordable units should be reserved for residents earning 60% AMI and below.

## **2. Statement of Need:**

In the City of Pittsburgh, like elsewhere in the country, racially discriminatory public policies, combined with private market discrimination, have effectively denied most African-Americans a realistic opportunity to live in high-opportunity neighborhoods (those with good access to jobs, high-quality schools, healthy homes, healthy food and safe living conditions). At the same time, African-American households have a disproportionately high housing cost burden, with over 25% (8,325 households) paying over half of their income on housing. In other words, African-Americans are paying a disproportionately high share of household income to live in disproportionately low-opportunity areas.

The private housing market in Pittsburgh is exacerbating these disparities. The City has lost more than three-fifths of its low-cost rental housing since 2000, while experiencing a six-fold increase in high-cost rentals. Private rental housing tends to be built in high-amenity areas. Market rate housing developers benefit from City investment in new infrastructure that gives their tenants access to neighborhood amenities and enables them to charge higher rents. New housing developments also receive significant City subsidies, yet are unaffordable to most African-American residents. The minimum income required to afford a new 1-bedroom apartment in the City of Pittsburgh is 2.4 times the median Black household income, and the minimum income needed to afford a new 2-bedroom apartment is 3.3 times the median Black household income. African-American taxpayers in Pittsburgh are subsidizing new housing developments from which they are effectively excluded, in areas that have access to opportunities to which they are effectively denied.

## **3. Reasons supporting recommendation:**

- a. An effective and robust inclusionary zoning (IZ) policy would produce affordable rental units thereby help to reduce racial disparities in housing cost burden and access to opportunities.
- b. Requiring that new market rate housing developments contain affordable units would promote economic inclusion and thereby has the potential to promote racial inclusion.

c. To be effective, the policy should be mandatory (both in the sense of requiring some level of affordability in all new market rate housing developments and requiring additional levels of affordability in all housing developments receiving City subsidies). Mandatory policies are far more effective at creating affordable units. Over 80% of all IZ policies in the U.S. are mandatory.

d. To be effective, the IZ policy should target households earning at or below 30% of area median income (AMI) to the greatest extent possible. The median African-American household income in the City of Pittsburgh (\$26,330) is roughly 36% of AMI, and the City’s greatest affordable housing gap (about 20,000 units) is at roughly that same income level. Setting an IZ affordability target at 30% AMI would directly address the need and this should be required in rental developments where there is a rental subsidy available to achieve that income target. In rental developments where there is no rental subsidy available, and in homeownership developments, the affordability targets should be as low as feasible so as to maximize access by people in protected classes.

e. To advance fair housing goals, the IZ policy should require that IZ units have the same amenities as market rate units and that IZ units be developed on the same site as market rate units. Alternative compliance options such as in-lieu fees and off-site development of IZ units should be available only where absolutely necessary and within strict geographic limitations.

f. An IZ Exploratory Committee convened by the Mayor to assess the feasibility of specific IZ policies has recommended that the City adopt a mandatory IZ policy, and financial modeling performed by a consultant to the City found that a 10%-15% set-aside of rental units at 50% AMI would be feasible in most cases with tax abatements. There is legislation pending before City Council that would attempt to incorporate equity considerations into the City’s tax abatement programs. Recommending a mandatory, robust IZ policy would help put a fair housing focus on both of these processes.

**4. Definition of terms:**

“Affordable” - According to most housing programs, housing is considered “affordable” if rent/mortgage payments, utilities and other housing costs do not exceed 30% of the occupant’s gross household income. Inclusionary zoning programs typically cap housing costs at a level that is affordable to households with incomes at a certain percentage of the area median income (AMI).

The 2018 maximum affordable rents (including utility costs) for typical housing programs are:

	1 bedroom	2 bedroom	3 bedroom	4 bedroom
50% AMI	713	855	988	1103
HACP payment standard	777	978	1213	1341
60% AMI	855	1026	1186	1323
80% AMI	1141	1369	1581	1764

Utility costs are deducted from these maximum rents based on a utility allowance published annually by a public agency, usually a local housing authority. The “HACP payment standard”

is the maximum rent and utilities that will be covered by a Housing Choice (Section 8) Voucher in the City of Pittsburgh.

“Area Median Income” or “AMI” - AMI is a measure published by HUD every year for specific geographic areas in order to determine eligibility for its housing programs. Most inclusionary zoning programs use AMI to determine both eligibility and maximum housing costs.

The 2018 HUD AMI Limits for the Pittsburgh Metropolitan Area are:

	1 person	2 person	3 person	4 person	5 person	6 person
30% AMI	16,000	18,250	20,780	25,100	29,420	33,740
50% AMI	26,600	30,400	34,200	38,000	41,050	44,100
80% AMI	42,600	48,650	54,750	60,800	65,700	70,550

“Inclusionary Zoning” or “IZ” - IZ policies require or encourage real estate developers to make a percentage of units in new housing developments affordable to low-income households in exchange for zoning and land use approval or other public benefits. The primary goals of IZ are to expand the supply of affordable housing and to promote social and economic integration.

**5. Legal and policy background:**

There are more than 800 IZ policies throughout the country. IZ, like other zoning and land use regulation, is an exercise of a municipality’s police power. Laws that are enacted pursuant to a municipality’s police power are legally enforceable if they are rationally related to the goal of promoting the general welfare of the community. IZ laws promote the general welfare by fostering the development of affordable housing and by promoting a healthy socio-economic balance.

Housing developers occasionally challenge IZ laws as an unconstitutional “taking” of private property or as an “exaction” (an unconstitutional condition placed upon the receipt of a routine public benefit, such as a building permit). Courts have consistently rejected such challenges.

**6. Academic research, studies, data, theories, etc. on barriers and needs addressed by the recommendation and on the proposed recommendations and potential outcomes:**

Rutan, *The Legacies of Redlining in Pittsburgh* (Students for Urban Data Systems at Carnegie Mellon University, 2017), available online at <http://suds-cmu.org/2017/02/21/the-legacies-of-redlining-in-pittsburgh/>

University of Pittsburgh Center on Race and Social Problems, *Pittsburgh's Racial Demographics 2015: Differences and Disparities* (2015), available online at <http://www.crsp.pitt.edu/sites/default/files/Final%20version%20for%20publishing.pdf>

Grounded Solutions Network memo to Ray Gastil, Director of City Planning (October 30, 2017) - Outlines options and recommendations for an “incentivized mandatory” IZ policy for the City of Pittsburgh

Mullin & Lonergan, *City of Pittsburgh Housing Needs Assessment* (2016) - Contains data on Pittsburgh’s housing market and affordability needs

Dickinson, *Affordable housing in Pittsburgh: The importance of framing a legally sound inclusionary zoning proposal* (PublicSource, 2017) - Provides a recommended framework for a legally defensible IZ policy for Pittsburgh

Jacobus, *Delivering on the Promise of Inclusionary Housing: Best Practices in Administration and Monitoring* (PolicyLink, 2007) - Has good practical information on how other cities staff and monitor their IZ programs

Schwartz, et al., *Is Inclusionary Zoning Inclusionary?* (RAND, 2012) - Compares IZ case studies based on how well they achieve inclusiveness

Thaden, *Developing an Inclusionary Housing Program: Key Considerations for Policy & Regulations* (Grounded Solutions Network, 2016) - Good outline of the various decision points in the design of an IZ policy

## **7. Real-world examples of the recommendation applied in other communities, including consideration of community comparability and policy outcomes:**

The 2012 RAND IZ report studied eleven IZ programs across the country found that IZ units tend to be located in low-poverty areas and are assigned to low-poverty schools. Specifically, RAND found that 75% of the IZ units were located in low-poverty neighborhoods (those with less than 10% of the population below the poverty line). By comparison, only 34% of LIHTC units, 8% of public housing units, and 28% of housing choice voucher recipients are in low-poverty neighborhoods. RAND also found that schools with IZ units in their attendance zones had slightly better academic outcomes than non-IZ schools in the same jurisdiction. A 2010 study of the academic performance of public housing students in Montgomery County, MD, found that those who were randomly assigned to IZ units performed substantially better in math and moderately better in reading than public housing students who were not assigned to IZ units.

## **8. Reasons against recommendation:**

In order for IZ policies to be effective, there must be a sufficient demand for market rate housing and the IZ requirements must not be so onerous as to render development unprofitable. For that reason, IZ laws tend to be found in so-called “hot” real estate markets. Pittsburgh is a so-called “mixed” market, with a mix of strong neighborhoods that can support market rate development and weaker neighborhoods that cannot. Designing a one-size-fits-all IZ policy for a mixed market city can be a challenge.

A related issue is that, according to a financial analysis performed by Grounded Solutions, most market rate housing development in the City of Pittsburgh is not feasible without some amount of tax subsidy. As a result, most market rate developments in Pittsburgh cannot internally

support the inclusion of affordable units, and an IZ policy is only viable if a public subsidy is provided.

**Created by:**

Race & Ethnicity Committee of the AFFH Task Force

# **Prioritize Public Support for Community Land Trusts, Which Support Housing Choice and Access to Critical Amenities and Opportunities for Protected Classes**

## **1. Synopsis of Recommendation:**

The City of Pittsburgh and Allegheny County, and City and County departments, programs, commissions, and Authorities should prioritize support for Community Land Trusts (CLTs) with a 99- year renewable ground leases that promote multi-generational housing affordability, access to critical amenities, and community stability for protected classes. The work of CLTs should be supported throughout the region in various market contexts. To promote integration within mixed- income neighborhoods and housing choice for protected classes, a range of CLT models should be supported, including single-family home ownership, deeply affordable multi-family rental units, limited equity cooperatives, and tenant cooperatives. Such forms of support include but should not be limited to:

- The Housing Authority of the City of Pittsburgh (HACP), the Urban Redevelopment Authority (URA), and the Housing Opportunity Fund (HOF), as well as the Allegheny County Housing Trust Fund and Allegheny County Economic Development (ACED), should prioritize the use of affordable housing funding to support CLTs.
- The URA, the Tri-Cog Land Bank, and the Pittsburgh Land Bank (PLB) should provide a similar priority for CLTs to acquire URA-owned and City-owned properties.
- The City of Pittsburgh, Allegheny County, the URA, the Pittsburgh Land Bank, the Pittsburgh Planning Department, Pittsburgh Planning Commission, Port Authority, and City and County Housing Authorities should make every effort to promote CLTs through:
  - a) Community Development Block Grant, HOME Investment Partnership, and other public subsidy sources
  - b) Flexible, patient, and below-market debt sources,
  - c) discounted property purchase rates,
  - d) and grant funding to match local bank loans

## **2. Statement of Need**

Due to decades of actively discriminatory housing and employment policies both nationally and locally, Pittsburgh’s rapidly rising housing costs have disproportionately affected protected classes within our communities, often resulting in multiple displacements for seniors, persons with disabilities, households with children, black residents, LGBTQIA+ persons, etc. These displacements have not only resulted in clearly documented barriers for protected classes to access critical amenities such as health care, healthy food, public transit, social services, etc, with clearly correlated increases in disease, disability, and mortality rates. Such displacements have also negatively impacted community stability and social networks that have been shown to increase access to educational and employment opportunities, as well as supporting both physical and mental health and well-being.

Disparate impacts and displacements of black residents of our communities are especially glaring. Red-lining, racial steering, discriminatory lending, and other practices have created racially segregated neighborhoods in Pittsburgh and denied home ownership opportunities to Black and other minority and protected class households. Neighborhood demographics and home ownership patterns in Pittsburgh today reflect that history. Although the African-American population of Pittsburgh is 26.1% of the population, it only represents 16.4% of the total homeowners according to the 2010 census. Only one-third of Pittsburgh's African-American households own their home, while nearly 60% of our White households do.

Low homeownership rates have made African-American households particularly susceptible to eviction and mass displacement, as well as preventing them from building the generational wealth and community stability enjoyed by white homeowners. There is a high correlation between owner-occupancy and residential segregation. To provide housing choice for members of protected classes, it is essential that we both increase affordable homeownership opportunities in and preserve deeply affordable models of multifamily housing.

### **3. Reasons Supporting Recommendation**

In their five decades of existence, CLTs have proven themselves to be effective stewards of limited public resources that are able to both revitalize and stabilize neighborhoods and promote social, economic and racial integration by creating permanently affordable housing. Research on long-term outcomes of CLT housing for protected classes shows that:

- Housing stability is a critical foundation of individual and community health, preserving vital community relationships between individuals as well as with supportive services-- such as social service agencies, churches, healthcare facilities, etc--for generations.
- Because CLTs separate the values of the homes from the value of the land, these CLT units are protected from market booms as well as from speculative land development. During market decline, CLT organizations can provide services and funding that can help homeowners prevent foreclosure.
- CLTs maintain and improve the inclusivity of our neighborhoods while also preserving their unique nature and ameliorating the displacement effects of gentrification.
- CLTs have a proven track record of serving as a stable vehicle for first-time homeownership. Foreclosure rates are lower for CLT homes than in the private market, and most people who leave CLT housing go on to purchase another home. During the 2009 housing bust, foreclosure rates at CLTs actually decreased (Lincolnist.edu). CLTs accomplish this by offering pre- purchase counseling and ongoing homeowner support. This protects public investment by reducing delinquencies and foreclosures.
- Land banks and CLTs are complementary forms of land policy that, when developed in partnership are mutually reinforcing, leading to better housing outcomes. A land bank, as a government entity, can acquire abandoned, blighted or tax-delinquent properties which can be put to use by CLTs; and a CLT, as a permanent steward for the lands and buildings under its care, can protect affordability and condition well after the development is complete. Working in complementary ways, they can also act as an ideal nexus point between government agencies (through the land bank) and local residents (through the CLT).

- When properly supported early on, CLTs can go on to become fully self-sustaining and produce enough return to pay for maintenance, project management, and expansion.
- CLTs can be adapted to fit the needs of individual communities and to address different barriers to integration and access to opportunity for protected. CLTs can both provide rare affordable home purchase opportunities in neighborhoods with few rental opportunities as well as expanding the available of deeply affordable multifamily units through limited equity cooperative models.

#### 4. Research Supporting Recommendation

- **Definition of terms**

**Community Land Trust (CLT)** - A model of community-owned and operated land with significant history across the US and all over the world. Typically, CLTs are non-profit entities that own a plot of land with a 99-year ground lease and are led by a board composed of CLT residents and other vested community stakeholders. Often, they feature both single-family homes for purchase (with limits on resale values to maintain affordability) and multi-family units for rental. Toward the aim of maintaining affordability, CLTs are frequently paired with other fair-housing forms such as Limited Equity Cooperatives and Tenant Cooperatives, and through those institutions provide stewardship activities such as development of land, training of residents, and anticipation of potential foreclosures. *Examples of successful CLTs in the US: Dudley Street Neighborhood Initiative in Boston, MA; Champlain Housing Trust in Burlington, VT; and Cano Martin Pena Community Land Trust in San Juan, PR.*

**Limited Equity Cooperative (LEC)** - A form of resident controlled housing in which member-residents own their building through the purchase of shares in a cooperative corporation. This grants them democratic control of the property and long-term rights to occupancy. It can preserve affordability for lower- income households by establishing income limits for new member and restricting resale values. *Examples of successful LEC's in the US: The Amalgamated Housing Cooperative in New York, NY; Cooper Square Mutual Housing Association in New York, NY; and the San Francisco CLT in San Francisco, CA.*

**Tenant Cooperatives** - Any form of housing that allows for direct democratic decision making on the part of residents in the development and sustainability of their homes.

**Affordable** - According to most housing programs, housing is considered “deeply affordable” if rent/ mortgage payments, utilities, and other housing costs do not exceed 30% of the occupant’s gross household income. Inclusionary zoning programs typically cap housing costs at a level that is affordable to households with incomes at a certain percentage of the area median income (AMI).

The 2018 maximum affordable rents (including utility costs) for typical housing programs are:

	1 bedroom	2 bedroom	3 bedroom	4 bedroom
50% AMI	681	818	944	1054
HACP payment standard	777	978	1213	1341
60% AMI	817	981	1133	1265
80% AMI	1090	1308	1511	1685

Utility costs are deducted from these maximum rents based on a utility allowance published annually by a public agency, usually a local housing authority. The “HACP payment standard” is the maximum rent and utilities that will be covered by a Housing Choice (Section 8) Voucher in the City of Pittsburgh.

**Area Median Income (AMI)** - AMI is a measure published by HUD every year for specific geographic areas in order to determine eligibility for its housing programs. Most inclusionary zoning programs use AMI to determine both eligibility and maximum housing costs.

The 2018 HUD AMI Limits for the Pittsburgh Metropolitan Area are:

	1 person	2 person	3 person	4 person	5 person	6 person
30% AMI	\$16,000	\$18,250	\$20,780	\$25,100	\$29,420	\$33,740
50% AMI	\$26,600	\$30,400	\$34,200	\$38,000	\$41,050	\$44,100
80% AMI	\$42,600	\$48,650	\$54,750	\$60,800	\$65,700	\$70,550

**Academic research, studies, data, theories, etc. on barriers and needs addressed by the recommendation, on existing CLT impacts and outcomes, and on the proposed recommendations and potential outcomes:**

Angotti, Tom, with the assistance of Cecilia Jagu Hunter College/City University of New York. [“Community Land Trusts and Low-Income Multifamily Rental Housing: The Case of Cooper Square, New York City.”](#) Prepared for the Lincoln Institute of Land Policy, January 2007.

Baiocchi, Gianpaolo, et al. Communities Over Commodities: People-Driven Alternatives to an Unjust Housing System. A report by Homes for All Campaign of Right To The City Alliance. March 2018. - analyzes current housing trends in market-driven housing and compares it with 4 actually-existing models of community-driven housing that have better real-world results, including CLTs. Provides a valuable overview of the CLT model and a look at the Champlain Housing Trust in Burlington, VT.

Burlington Associate in Community Land Development, LLC (2012) “The Partnership Potential of Municipal Land Banks and Community Land Trusts.” - an outline of how land trusts and land banks may work together to make both entities more responsive and effective.

Champlain Housing Trust. “Champlain Housing Trust Strategic Plan: 2017-2019.” - discusses several of the Champlain CLT’s main areas of strength and how the CLT plans its continued growth.

Dudley Street Neighborhood Initiative: [Dudley Residents Explore Links Between Health, Housing, and Self-Determination](#), June 20, 2017

[Dwyer, Lee. "Mapping Impact: An Analysis of the Dudley Street Neighborhood Initiative Land Trust." Masters Thesis. MIT Department of Urban Studies and Planning. 2015.](#)

Fujii, Yasuyuki. “Putting the pieces together: how collaboration between land banks and community land trusts can promote affordable housing in distressed neighborhoods” from *Cities* (v)56, July 2016. - Describes the way in which land banks and CLTs are complementary, and analyzes various combinations of land banks and CLTs in both weak and stable markets. In most US cities, land banks and CLTs are not working in concert--that needs to be rectified.

[Harding, Ashley E. and James Jennings. "The Dudley Village Campus: Select Social and Demographic Profile -- 2010 Decennial Census". DSNI Research Brief. April 2013.](#)

“Housing Needs Assessment.” Presented to the AFFH Task Force, May 2016 - consulted for basic demographic info and city housing needs.

[Jennings, James. "DVC and Sub-Neighborhoods of Dudley Square, Dudley Triangle, and Grove Hall: Select Social, Demographic, and Economic Comparisons". DSNI Research Brief. July 2013.](#)

[Jennings, James. "Development without Displacement: The Spatial Face of Potential Gentrification in Boston, Massachusetts". DSNI Research Brief. June 2014.](#)

[Jennings, James. "Select Profile of Poverty -- Dudley Village Campus, Dudley Square, Dudley Triangle, and Grove Hall \[in\] Boston, Massachusetts". DSNI Research Brief. April 2014.](#)

Lowe, Jeffrey S. & Thaden, Emily. “Deepening stewardship: resident engagement in community land trusts.” from *Urban Geography*, (v)37, (i)4, (2016) e- Examines six well-established CLTs to gain an understanding of how their resident engagement practices reproduce stewardship and contribute to success. Finds three important objectives to pursue: resident betterment, community control of land, and asset preservation.

Miller, Stephen R. “Community Land Trusts: Why Now is the Time to Integrate This Housing Activists’ Tool into Local Government Affordable Housing Policies” from *Journal of Affordable Housing & Community Development Law*, (v) 23, (i) 3/4. -- provides a detailed outline of standard CLT structure and operations. Also takes a deep dive into the structure and funding mechanisms for CLTs in Chicago, IL and Irvine, CA. It also includes a synopsis of the legal and policy issues concerning City CLTs.

Myungshik, Choi, et al. “Can community land trusts slow gentrification?” from *Journal of Urban Affairs*, (v) 40, (i) 3 (2018). - The statistical analysis concludes that CLTs can be an appropriate tool for stabilizing neighborhoods at risk of gentrification.

Rugh, Jacob S., and Douglas S. Massey. "Racial Segregation and the American Foreclosure Crisis." *American Sociological Review* 75, no. 5 (October 1, 2010): 629–51. doi:10.1177/0003122410380868.

Sandel, Megan; et al. "[Neighborhood-Level Interventions to Improve Childhood Opportunity and Lift Children Out of Poverty.](#)" *Academic Pediatrics*. Volume 16. Issue 3. April 2016.

Serna, Rhea. "Tenants Plus Land Trust Beat Gentrification." *Race, Poverty & the Environment* 15, no. 1 (2008): 36

Sullivan, Laura et al. *The Racial Wealth Gap: Why Policy Matters*. Brandeis University, Institute for Assets & Social Policy; Demos, 2015. [http://www.demos.org/sites/default/files/publications/RacialWealthGap\\_1.pdf](http://www.demos.org/sites/default/files/publications/RacialWealthGap_1.pdf)

Sungu-Eryilmaz, Yesim & Greenstein, Rosalind. "A National Study of Community Land Trusts" from the Lincoln Institute of Land Policy. - a report on the results of a survey carried out in 2006 of all 187 CLTs that existed at the time, highlighting activities and practices of CLTs around the country. This was the first, and is one of the few, bodies of systematic empirical information about the work of CLTs and includes information such as how CLTs were established, the size of their staffs and operating budgets, their sources of revenue, their target communities, their governance structures, and their resale processes.

Thaden, Emily, & Davis, John. "Stewardship Works: Community land trusts succeed in curbing delinquencies and preventing foreclosures, and the numbers show it." from the *Journal of Affordable Housing and Community Building*, fall 2010. - describes the success of CLTs at keeping residents in their homes even throughout the foreclosure crisis, which CLTs weathered at much better rates than traditional market-driven housing. They achieve this through stewardship activities, such as pre-purchase education, prevention of high-risk loans, ongoing support for homeowners after purchase, and early detection of (and intervention in) delinquency and foreclosure filings.

Thaden, Emily, Andrew Greer, and Susan Saegert. "Shared Equity Homeownership: A Welcomed Tenure Alternative Among Lower Income Households." *Housing Studies* 28, no. 8 (August 8, 2013): 1175–96.

Voith, Richard P., and Susan M. Wachter. "The Affordability Challenge: Inclusionary Housing and Community Land Trusts in a Federal System." *Value Capture and Land Policies*, Gregory K. Ingram and Yu-Hung Hong, Eds., Lincoln Institute of Land Policy, 2012. <http://realestate.wharton.upenn.edu/research/papers/full/722.pdf>.

Yelen, James: "Community Land Trusts as Neighborhood Stabilization: A Case Study of Oakland and Beyond." Professional report submitted in partial satisfaction of the requirements for the degree of Master of City Planning MASTER OF CITY PLANNING in the Department of City and Regional Planning of the University of California, Berkely. 2017

- **Real world examples of the recommendation applied in other communities, including considerations of community comparability and policy outcomes:**

With roots in the 1960's Civil Rights Movement, CLTs were originally developed as a model to provide homes and workable land to African American farmers who had been evicted from their homes, either because of the whims of the market or because of their activism for civil rights. Today, CLTs exist in 45 states and the District of Columbia, to varying degrees.

Government-backed CLTs are still a nascent phenomenon, with the Burlington, VT-based **Champlain Housing Trust** still acting as the largest and most successful in the country. This nonprofit was brought together and developed, in part, through support from Bernie Sanders as mayor of Burlington, who provided \$200,000 in seed money through Burlington's municipal budget and staffing support from his municipal bureaucracy. Sanders passed a law that required all city-controlled housing funds from federal, state and local sources be spent on permanently-affordable housing. This idea proved popular among a wide swath of political representatives, from progressive allies of Sanders all the way over to conservative Republicans, who felt that the CLT model was more cost effective and productive for the city. Later, the city made a significant loan to the community land trust from the city's pension fund, with matching funds from a local bank. Finally, a small tax increase was made locally to maintain a fund, offering the housing trust a more predictable level of support. Today the housing trust has a \$10 million dollar operating budget, but it also produces \$100 million in development capital, which goes into managing properties, making loans and developing new housing and commercial uses.

It owns approximately 7.6% of Burlington's housing stock, serves renters and owners, and has a diverse set of constituents. Its business lines include Homeownership Promotion and Preservation; Multi-family Housing and Property Management; Real Estate Development; Community Relations; Finance; Human Resources, Administration, and Management; and Governance. The CLT has its highest concentration of housing in Burlington's Old North End, an area that has historically suffered from poor housing stock (now very old housing stock) and periods of neglect and disinvestment. Its portfolio in the neighborhood includes historic renovations and new constructions. Non-housing facilities provide much-needed services, including a pocket park, properties housing daycare, and senior services, a food shelf, and offices for Legal Aid. It has also brought significant resources to bear to tend to Vermont's homelessness crisis, bringing at-risk people into homes where they have easy access to health and security support systems. Because of its flexibility, diverse funding streams, and ethical development systems, it has the capability to meet a wide range of housing needs and to change with the times.

**Examples of community land trusts that have prioritized deeply affordable housing and Fair Housing goals, including racially equitable distribution of community benefit in urban areas:**

- [Cooper Square: New York City](#)
- [Dudley Street Neighborhood Initiative](#): Boston
- City of Lakes Community Land Trust: Minneapolis, MN
- Oakland CLT: Oakland, CA

- Homestead CLT: Seattle, WA
- Proud Ground: Portland, OR

## **5. Reasons Against Recommendation**

- Unless other sources of support can be identified, the city may need to rely more heavily on statewide monetary support to enact a widespread CLT program that could help solve the ELI housing crisis;
- Supporting the long-term and wide-spread growth of CLTs would be a challenging and time-consuming process, requiring public buy-in and training of potential residents.

### **Created by:**

Pittsburgh DSA Housing Working Group

# **Maximizing the Use of the Section 8 Home Ownership Program as a Mechanism to Affirmatively Further Fair Housing Goals**

## **1. Synopsis of Recommendation:**

Our nation's primary tool for increasing the ability of low to moderate income households to afford safe, sanitary and decent housing is the Section 8 Housing Choice Voucher Program. Section 8 vouchers have typically been used as rental vouchers. However, Section 8 funds can also be used for home purchase.

Locally, the Section 8 rental program is in crisis. Today, most families lucky enough to receive a voucher in Pittsburgh are forced to return it unused. Because of significant rent increases, over 70% of people with a voucher are unable to find a suitable apartment within the rent limitations.

In order to address our housing crisis and to promote Fair Housing objectives, Pittsburgh and Allegheny County should promote the Section 8 Home Ownership program, in order to:

- increase home ownership opportunities for racial minority and protected class members;
- increase integration and erase segregation patterns by opening housing opportunities in neighborhoods with limited numbers of rental units;
- increase the availability of additional affordable housing units by opening the market of affordable houses for-sale to voucher holders;
- make available the proven asset-building function of home ownership to protected class members
- avoid the “not-in-my-backyard” (NIMY) capacity of home owner majority neighborhoods to block development of affordable rental housing.

The Section 8 Home Ownership program is a practical and sustainable way to promote and support home ownership for low income families. In fact, families who are considered incapable of affording the responsibilities of home ownership can purchase and maintain a home on this program.

Pittsburgh and Allegheny County have a significant number of affordable houses for sale. The Section 8 Home Ownership program provides a mechanism to make these affordable homes available to a significant number of protected class members.

A robust Section 8 Home Ownership program could be funded primarily through the annual allotments received from the Federal government. Pittsburgh, Allegheny County and McKeesport, each receive yearly funding allocations from the federal Department of Housing and Urban Development (HUD) for Housing Choice Vouchers. All three local Housing Authorities offer the Section 8 Homeownership Program. However, there's been very little local promotion of this program.

In addition to the lack of promotion, small barriers prevent a significant number of potential home buyers. Most of these barriers could easily be addressed through local resources –

- no credit / poor credit counseling;

- working with knowledgeable realtors;
- down payment and closing cost assistance;
- educating lenders around the Section 8 Homeownership Program and establishing relationships with partnering lenders;
- educate and train first-time homeowners on repair and self-help skills; avoidance of predatory lending schemes;
- counseling families receiving public benefits coordination of benefits rules (such as the asset limit of SSI / MEDICAID benefits) and home maintenance accounts.

## **2. Statement of Need:**

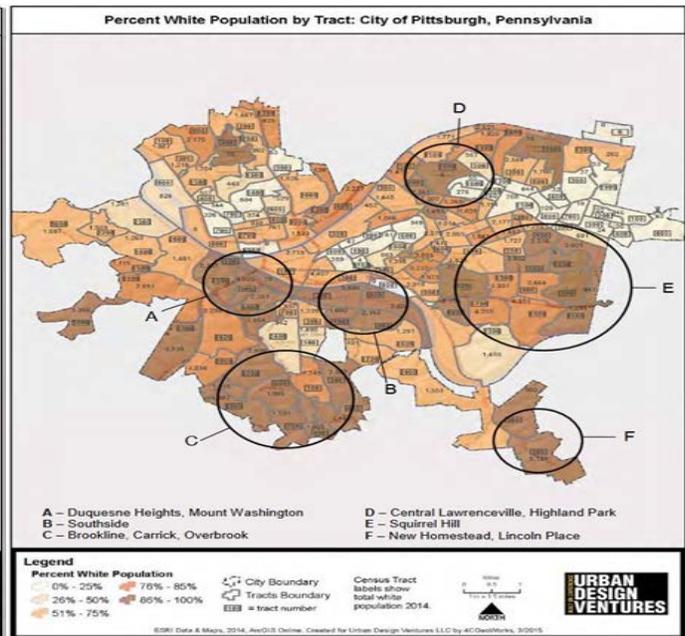
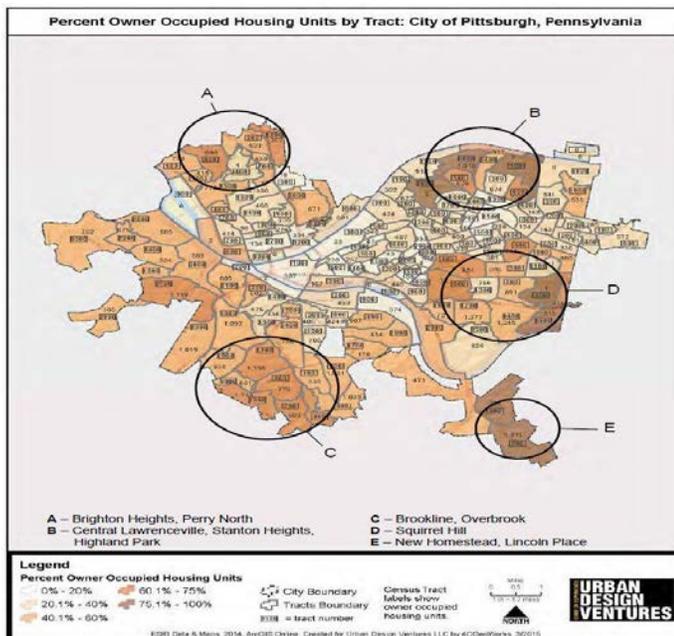
Red-lining, racial steering, discriminatory lending and other practices have created racially segregated neighborhoods in Pittsburgh and denied home ownership opportunities to Black/African American and other minority and protected class households. Neighborhood demographic and home ownership patterns in Pittsburgh today reflect that history.

The degree of segregation can be measured by a community’s “dissimilarity index.” The dissimilarity index measures whether one particular group is distributed across census tracts in the metropolitan area in the same way as another group. A high value indicates that the two groups tend to live in different tracts. The dissimilarity index compares the integration of racial groups with the White population of the City, or MSA, on a scale from 0 to 100, with 0 being completely integrated and 100 being completely separate. A value of 60 (or above) is considered very high. It means that 60% (or more) of the members of one group would need to move to a different tract in order for the two groups to be equally distributed. Values of 40 or 50 are usually considered a moderate level of segregation, and values of 30 or below are considered to be fairly low.

The Black/African American population is the largest minority group in the City, making up approximately 26.1% of the population and with a dissimilarity index of 56.6 [a value of 60 is considered “very high”]. The Asian population has a dissimilarity index of 45.5 and the Hispanic Population has a dissimilarity index of 23.3.

Our history of red-lining, steering and discrimination in lending practices have created patterns of single-family home ownership which prevail in most of Pittsburgh’s heavily White neighborhoods. Consequently, promoting affordable rental programs will not be an effective way to integrate these neighborhoods.

Although the Black/African American population of Pittsburgh is 26.1% of the population, it only represents 16.4% of the total homeowners according to the 2010 census. We can see in the maps below that this disparity of home ownership rates among Black/African American households exacerbates the racial segregation of our neighborhoods.



With respect to home ownership patterns we see:

Owner-Occupied units are scattered across the City, with the highest concentrations being located closest to the outer edges, particularly in the neighborhoods of Brighton Heights and Perry North, Central Lawrenceville, Stanton Heights, and Highland Park, Brookline and Overbrook, Squirrel Hill, and New Homestead and Lincoln Place.

With respect to racial patterns we see:

The White population is primarily concentrated in the southern and southeastern parts of the City, as well as some areas in the northern part of the City, in neighborhoods such as Duquesne Heights and Mount Washington, Southside, Brookline, Carrick, and Overbrook, Central Lawrenceville and Highland Park, Squirrel Hill, and New Homestead and Lincoln Place.

Households in Pittsburgh who are “cost overburdened” also reflects patterns associated with protected classes. Cost burdened households are suffering from a decreasing supply of affordable housing options and are increasingly being forced to relocate out of the area to find a place to live. Increasing opportunities for home ownership would be one additional step we could take to address this crisis.

A total of 8,325 Black/African American households were considered cost overburdened by greater than 50%, which is 32.78% of the total number of households that were considered cost overburdened by greater than 50%. This number is higher the 24.39% of the total number of households that the Black/African American category comprises. A total of 590 Hispanic households were considered cost overburdened by greater than 50%, which is 2.32% of the total number of households that were considered cost overburdened by greater than 50%. This number

is slightly higher than the 2.02% of the total number of households that the Hispanic category comprises.

Cost burden and lack of home ownership opportunities have many causes, but chief among them is insufficient income. Median gross rent in Pittsburgh increased by 59% since 2000, but median renter income remained flat in that time. For those households cost burdened by more than 30%, renters are more highly affected; there are many more renters who are cost overburdened than owners.

Our nation's primary tool for increasing the ability of low to moderate income households to afford safe, sanitary and decent housing is the Section 8 Housing Choice Voucher Program. Section 8 vouchers have typically been used as rental vouchers. However, due to the local factors described above, the capacity of rental vouchers to address the housing crisis in Pittsburgh and Allegheny County have been severely limited.

The number of Section 8 vouchers which the Department of Housing and Urban Development (HUD) makes available to local housing authorities is grossly inadequate to meet the demand. Families fortunate enough to be awarded a Section 8 voucher have an extremely difficult time finding a suitable apartment. HUD requires the family to find an apartment that rents for less than average, which passes a rigorous inspection – and the family has a 120 day (4 months) time limit to do this. If the family fails to locate a suitable, affordable apartment within that time limit, they lose the voucher and go back to the end of the long waiting list line. The family loses all the potential benefits of the voucher. ***Approximately 75% of City of Pittsburgh residents with vouchers lose their vouchers in this process. Over 50% of Allegheny County voucher holders also lose their vouchers this way.***

As a consequence of all the factors mentioned above, we have a growing number of poor families with extremely high housing insecurity. A high percentage of these families are protected class members. These families often face or experience eviction, homelessness, and a growing number are forced to move out of area to find housing. The consequences are profound – for the City, for the region, but especially for the families and the children.

Pittsburgh and the local region have experienced a steadily declining public investment in affordable housing. As an example, the Housing Authority of the City of Pittsburgh has less than one-half of the number of units it had 25 years ago. The rental market has gotten tighter. Rents have gone up around 30% in just the last five (5) years! The rental costs of newly constructed apartment are far in excess of the affordability of the median household income of Pittsburgh renters. It is obvious that Pittsburgh and Allegheny cannot solve these problems by building more market-rate rental housing.

### **3. Reasons supporting recommendation:**

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Pittsburgh and Allegheny County suffer from a housing crisis caused by an insufficient supply of affordable rental units for our population. According to a study by the Housing Alliance of Pennsylvania, Pittsburgh has a shortage of 21,000 homes that are affordable enough for families of four whose income is \$24,000 (which is 30 percent of the area's median income for that size household).

We lack a funding source that could, in a timely manner, construct, renovate and make affordable 21,000 rental units. Pittsburgh's recent decision to fund the Housing Opportunity Fund is a step in the right direction, but it's not yet clear how much of the need it can address.

The local housing market has many affordable homes that are for sale, rather than for rent. The Section 8 Housing Choice Voucher Program is a federally-funded program that is available to support home ownership and can provide nearly all the support needed by a family whose income is 30% or less of area median income to pay the expenses necessary for owning a modestly priced home. By supporting the Section 8 Home Ownership program, we provide poor families with the option of owning in addition to renting, and thus make available an additional pool of affordable housing.

In addition to opening new markets for affordable housing units, home ownership opens neighborhoods to protected class members who would otherwise be excluded due to the absence of rental units in many predominantly White neighborhoods. Because home owners experience less stigma than Section 8 renters, NIMBYism and community resistance is less of a barrier to expanding opportunities to protected class members for home ownership in those neighborhoods.

Home ownership also has distinct asset-building advantages over renting. *This asset-building function is available to Section 8 home owners, but in the rental context, it is only available to the landlord.* Home ownership by poor families – so long as it is adequately supported and sustainable - is one way to combat the persistence of poverty in our society. However, most poorer families require some financial help to pay all the necessary expenses of home ownership. The Section 8 Home Ownership provides the kind of help they need.

It is likely that poor families may need limited additional support in the form of down payment and closing costs. But these expenses are small compared to the ongoing support offered by Home Ownership Vouchers. Pittsburgh's recently-passed Housing Opportunity Fund would be a viable source of funding for down payment and closing costs.

#### **4. Research supporting recommendation:**

##### **Definition of terms**

The Section 8 Home Ownership program, also known as the Voucher Home Ownership (VHO) program, is an "optional" program under the HUD-financed Section 8 program. As an "optional" program, local Public Housing Authorities (PHAs) are not required to offer it to voucher holders. However, the City of Pittsburgh, Allegheny County and McKeesport Housing Authorities all offer the VHO program.

The Voucher Home Ownership Program provides the family the same level of assistance as the rental voucher program. In both programs the family is required to pay at least 30% of their adjusted gross income on housing related costs. The VHO program allows the assistance to be spent on mortgage, utilities, taxes, insurance, maintenance, and all conceivable home owner expenses. However, as with the rental program, assistance is capped at the "payment standard" for that particular family size.

Pittsburgh's VHO program, however, does not follow the usual rules of the federal regulations. Pittsburgh's VHO program is primarily geared toward residents in their public housing communities and participants in their self-sufficiency program. The program Pittsburgh operates is very different from the one required by the federal regulations (and so, very different from the programs offered by Allegheny County and McKeesport Housing Authorities).

### **Legal and policy background**

The Voucher Home Ownership (VHO) program has been around since 1999. The Regulations are found in [24 CFR Part 982](#) (particularly see sections 625-642). As mentioned above, Pittsburgh offers a VHO program that differs significantly from what is required by the Federal Regulations. Pittsburgh can do this because it is a Moving to Work (MTW) Housing Authority, which gives it added flexibility from the constraints of the federal regulations.

There are advantages and disadvantages to the VHO program which Pittsburgh offers. Criticism of the Pittsburgh VHO program include:

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- The regulations provide a minimum of 15 years of home ownership assistance; Pittsburgh pays a lump-sum at closing equal to only 10 years of assistance (this is particularly egregious for elderly or disabled families who can receive unlimited assistance – just like rental vouchers);
  - The regulations provide that assistance may increase (but not decrease) during the term of assistance if the family income decreases or the family size increases. Pittsburgh's one-time method fails to provide this potential increase;
  - All the assistance under the Pittsburgh program comes at the time of purchase, raising concerns of sustainability for families;
  - It imposes a "minimum income" requirement for the family which is approximately double the federal standards;
  - In addition, Pittsburgh has indicated it will impose a limit on the number of participants (since assistance is provided in a lump sum, the concern is that an unlimited number of participants could outstrip their budget authority). There is no such limit in the federal regulations.
  - **Academic research, studies, data, theories, etc. on barriers and needs addressed by the recommendation and on the proposed recommendations and potential outcomes**
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The U.S. Department of Housing and Urban Development (HUD), which funds the voucher program, has conducted no "best practices" study, but instead it has funded two studies of 10 – 12 programs (picked on the basis of being representative of national location and size variations). HUD also funded the production of a *Housing Choice Voucher Homeownership Program Guidebook*. These documents identify barriers confronted by these programs, as well as efforts to eliminate those barriers. The HUD documents, together with interviews with over a dozen selected programs, form the basis for the observations here.

- **Real-world examples of recommendation applied in other communities, including consideration of:**

There are more than 960 different Public Housing Authorities (PHAs) or other state entities that operate voucher home ownership programs.

Identifying “top performers” is challenging since the success of programs (if measured, for example, by the number of closings under the program) often depends on a mixture of unique, external factors such as -

- The size of the city / program;
- The availability and affordability within the local housing stock;
- The availability of local partners to provide related services, such as homeownership counseling, and down payment assistance;
- Lender support for the program; and
- The income and credit characteristics of the pool of program applicants.

The Voucher Home Ownership (VHO) Program has been around since 1999. As of 2012, there were 15,239 homes purchased through voucher subsidy programs. The largest cities tend to have the largest number of closings. New York City (349) and Chicago (303) lead the nation with most closings through 2012. Los Angeles (63) has much smaller numbers, apparently due to the extremely high price of housing there. Pittsburgh’s numbers are on the low side.

- **Comparability of communities with Pittsburgh and Allegheny County in terms of:**

#### **Legal Authority**

As mentioned above, Allegheny County and McKeesport Housing Authorities have the same legal authority as all other housing authorities. Pittsburgh, however, has even greater legal authority (discretion) to tailor the VHO program as a result of its MTW status.

#### **Size**

Cincinnati, Ohio and Louisville, Kentucky are slightly smaller cities than Pittsburgh, but who have had more success in promoting their Voucher Home Ownership programs. Louisville credits the support of community players and the Mayor as being critical to their success.

#### **Market Conditions**

Although the average income of purchasers and the prices of units purchased vary across the country, 80 percent of the voucher homeownership program participants sampled in a study bought houses for less than \$100,000. The percentage of the housing stock valued at less than \$100,000 is, therefore, an important indicator of housing affordability across the study sites. By those standards, Pittsburgh is a housing market where a VHO participant could find affordable homes for purchase.

#### **Interagency and Inter-Organizational Cooperation**

All three local housing authorities have cooperative arrangements with a variety of HUD-approved agencies which provide pre-purchase housing counseling services. HUD requires participants in VHO programs to participate in such a homeownership counseling program.

However, contrasted with programs in other cities, our local housing authorities do not have cooperative agreements with (1) realtors, or (2) lenders. Furthermore, although down payment and closing cost barriers are likely, none of our local housing authorities provide or have cooperative agreements with agencies of funders who could provide such assistance. There are, however, some agencies which provide support mechanisms that accelerate savings. ACTION Housing's Individual Development Account Program (IDA), which is a matching savings program, would support a person on a limited income to save the funds necessary for a down payment. But laudable programs like these would still result in a painfully slow process.

- **Outcomes**

Previous programs which promoted low income home ownership have a troubled history. Programs in the past did not provide ongoing assistance, and failed to reflect the reality of the low-income worker – who typically are the first fired, last hired, and experience unpredictable adjustments in hours per pay period. The “genius” of the VHO program is the flexibility of assistance. When the income of the family goes up, the assistance goes down. When the income goes down, the assistance goes up.

Nationally, participants in the Voucher Home Ownership program have experienced a very low incidence of default. Local experience also reflects this low incidence of default.

Another measure of success is satisfaction reported by participants in the VHO program. Participants in the VHO program describe the anxiety they felt as renters—never knowing when the landlord may choose not to renew the lease and whether they would be able to find housing that met their needs.

Most voucher home ownership program participants tend to purchase in neighborhoods with slightly higher incomes and greater residential stability than the neighborhoods where they had been renting (neighborhoods with slightly higher homeownership rates and more single-family detached housing than existed in the pre-purchase neighborhood). In addition, the average poverty rate in the neighborhoods where participants purchased is slightly lower than in the pre-purchase neighborhoods.

## **5. Reasons against recommendation:**

Some housing authorities report a reluctance to promote the voucher home ownership program because of a concern of “tying up their voucher money” and limiting their ability to issue new vouchers. This is a very curious argument given that it reflects the success and low default rate of participants in the VHO program. Our local experience, where extremely high percentages of voucher holders fail to secure units before their time expires, does result in larger numbers of applicants cycling through the program. But this process obscures the suffering and tragedy of families in desperate need of housing assistance who have a voucher, but find that it gives them no help.

## **6. Other Considerations:**

The severe housing crisis in Pittsburgh and Allegheny County has received extensive news coverage, and certainly has the attention of local political leaders. There is good reason to believe that if presented with a viable, albeit partial solution, local leaders would embrace and support this program.

**Created by:**

Paul W. O'Hanlon, Allegheny County / City of Pittsburgh Task Force on Disabilities

# **Neighborhood Amenity Accessibility: Address the persistent accessibility barriers in our neighborhood business districts**

## **1. Synopsis of Recommendation:**

A person using a wheelchair is just as effectively excluded from the opportunity to live in a particular dwelling by the lack of access into a unit and by too narrow doorways as by a posted sign saying, 'No Handicapped People Allowed'.

-- Congressional Record, Fair Housing Act Amendments of 1988

Accessibility barriers in our neighborhood business districts must be removed.

Most of our neighborhood business districts contain older commercial properties which lack accessible entrances. Often the barrier is a single step up to the front door. The Americans with Disabilities Act (ADA) required the removal of barriers to the entrances of public accommodations decades ago.

Local governments have overlapping and reinforcing responsibilities under the ADA and the Fair Housing Act: The ADA sets the standards for accessibility and the responsibilities; it determines what is “inaccessible.” The Fair Housing Act focuses on fair housing choice for classes of people protected under the law. Both laws, in tandem, require local government to review and modify its permits, licensing and inspection process to affirmatively further the purpose of providing equal access to civic life by people with disabilities.

Accessibility barriers in our neighborhood business districts are effectively excluding people with disabilities from community activities and amenities. The Fair Housing Act identified lack of equal access to community amenities as an “impediment” to fair housing choice. The conclusion is inescapable that inaccessible neighborhood business districts are an impediment to fair housing choice for people with disabilities in our community.

We cannot continue to refer to neighborhood business districts as the “gem” of a community and yet tolerate barriers which exclude members of protected classes.

Local governments have licensing and inspection authority over public accommodations. There are already various “triggering events” in the law which require extensive governmental oversight; e.g., building permits, changes of use, food preparation and handling, structural modifications, etc. All of this has happened over and over without accessibility improvements made to the entrance. Local governments continue licensing and approving modifications which fall below the requirements of the ADA and the Fair Housing Amendments Act.

We recommend:

- Municipal and County governments review, modify and revise their building inspection process to fulfill their duty to affirmatively further fair housing opportunity for persons with disabilities.
- City and County planners, building inspectors, and other related professionals be trained on accessibility obligations and Universal Design principles by an architect or related professional.

## **2. Statement of Need:**

The Pittsburgh region is characterized by strong, distinct neighborhoods anchored by business corridors containing a variety of commercial buildings (“public accommodations”). Neighborhood business districts serve as the focus of a neighborhood. Typically, this is where you’ll find establishments selling food, pharmaceuticals, as well as restaurants and professional offices. Not only are these facilities sources of goods and services, they’re also socializing and employment opportunities.

Most of our neighborhood business districts were built around the turn of the last century. Few buildings from that era have zero-step entrances. As a result, inaccessible public accommodations are a dominant feature in the business districts of most of our neighborhoods.

People with disabilities are a protected class under the Fair Housing Amendments Act. State and local governments have a duty to identify and eliminate barriers and impediments to fair housing opportunity experienced by protected classes like people with disabilities. Inaccessible neighborhood business districts exclude people with disabilities from critical amenities and benefits of the community. Exclusion of people with disabilities leads to and exacerbates social isolation. Social isolation impacts individual and public health and adds to the cost of providing social services.

When discussing the impact of inaccessible neighborhood amenities on people with disabilities, it’s important to consider factors of age and employment:

- *Rates of disability increase with age.* In the US in 2015, less than 1.0% of the under 5 years old population had a disability. For those ages 5-17, the rate was 5.4%. For ages 18-64, the rate was 10.5%. For people ages 65 and older, 35.4% had a disability.
- In 2015, of the US population with disabilities, over half (51.1%) were people in the working-ages of 18-64, while 41.2% were 65 and older. Disability in children and youth accounted for only 7.2% (ages 5-17) and 0.4% (under 5 years old).
- All disability types (hearing, vision, cognitive, ambulatory, self-care, and independent living) have increases in disability percentages with age; cognitive disabilities show the least change between age groups.
- In 2015, 34.9% of people with disabilities in the US ages 18-64 living in the community were employed compared to 76.0% for people without disabilities - a gap of 41.1 percentage points.
- The employment gap between those with a disability and those without has widened steadily over the past 8 years from 38.8 to 41.1 percentage points.

Equal access to community amenities by all protected classes is an essential element of Fair Housing choice.

## **3. Reasons supporting recommendation:**

Many of our neighborhood business districts appear caught in a “time warp” – looking like scenes from 1890. Neighborhood business districts often have stores, restaurants, offices,

(“public accommodations) with inaccessible entrances. Frequently, the barrier is one step up to the front door – acting like a sign saying, “No Handicapped People Allowed.”

These “one-step barriers” are not difficult to remove.

The Americans with Disabilities Act (ADA) identified “one-step barrier” removal as the “low hanging fruit” of accessibility modifications, classifying them as “readily achievable.” The ADA created a timeline for barrier removal. Barrier removal identified by the ADA as “readily achievable” was required to be done within two years – meaning it was required to be done in 1992! In addition, the ADA established barrier removal at entrances to be the highest priority. A public accommodation’s first priority in barrier removal is to create an accessible entrance on an accessible route.

Those deadlines have long passed. By the standards of the ADA, our neighborhood business districts are inaccessible to people with disabilities. Inaccessible public accommodations prevent equal access to community amenities; they are an ongoing act of discrimination against a protected class. People with disabilities are denied fair housing choice when communities exclude them from community amenities.

Local government has a duty to remove impediments to fair housing choice. Two ways local government can address the persistence of these barriers is by:

1. Code enforcement; and
2. Public investment.

*We recommend that local government review and modify their policies and practices to promote the elimination of illegal architectural barriers in public accommodations.*

Nearly all neighborhood business districts have received significant public investment in building renovations, façade improvements, new sidewalks, etc. However, accessibility is rarely a condition of those public funds. For example, public programs that fund building façade improvements, don’t always require elimination of one-step barriers at that property.

Since removal of the one-step barrier is the first priority, public funds should be conditioned on this priority being fulfilled.

Code enforcement is more complex.

Public accommodations that conduct renovation work are already required by the state building code to dedicate 20% of all renovation work to barrier removal. Local code officials enforce this duty. Since 1992, most neighborhood business districts have experienced changes of owners, changes of businesses, and changes of use. Renovation often occurs when businesses change.

Parties going through a renovation enter a very complex process, involving building permits and inspections. Typically, parties renovating public accommodations have extensive interactions with municipal permits and inspection personnel. Often, parties discover that additional renovations are necessary (beyond what was contemplated) in order to pass inspection and be licensed to operate.

Parties completing this process – after permits, inspections and licensing are all complete – understandably believe they’ve fulfilled all obligations. But, they haven’t. Local building

inspectors ignore the requirements of the ADA, and ignore their own duties under the ADA and Fair Housing Act.

Parties can be licensed one day and receive a federal discrimination complaint the next day.

State law establishes no priority as to which barrier must be removed first. Pittsburgh's Department of Permits, Licensing and Inspection (PLI) enforcement of the state building code has the effect of stripping away the immediacy and priority requirements of the ADA. PLI approves plans, issue permits and ultimately approves renovations which fail to remove "one-step" barriers at the entrances of public accommodations.

Local governments have been tolerating and accommodating businesses that have failed to remove these barriers.

In the City of Pittsburgh Analysis of Impediments to Fair Housing Choice it says, "In regard to local zoning ordinances, the Fair Housing Act prohibits local government from making zoning or land use decisions or implementing land use policies that exclude or discriminate against persons of a protected class." p. 13. Furthermore, as a Title II entity under the ADA, municipalities are prohibited from discriminating against individuals with disabilities in the operation or implementation of all services, programs, and activities.

This does not fulfill local governments' duty to affirmatively further fair housing objectives.

Building Inspection professionals, as well as community development professionals, operate on policies which have not been reviewed and revised to comply with the duties the City and County have to affirmatively further fair housing objectives and the accessibility mandate of the ADA and related laws. This duty should be reflected in public investments in buildings and commercial areas, as well as the exercise of professional judgment in "change of use" and other inspection triggering events. Municipal building inspection and related professionals exercise judgment on issues related to entrance accessibility and path of travel. However, they are not trained on the requirements of the ADA and the principles of Universal Design.

As a positive contrast, we recommend considering the example of the Oakland neighborhood in Pittsburgh. Thanks to the community effort being spearheaded by Oakland Business Improvement District and its "Oakland for All" campaign, Oakland has begun an accessibility transformation. This experience shows that some local entity bringing focus and attention to the problem of community inaccessibility can promote the marshalling of community resources and spur actions to begin the transformation of business districts caught in this "time warp."

The City and County, in partial fulfillment of their duties to affirmatively further the accessibility mandate of the Fair Housing Amendments Act and the ADA, must amend decision-making protocols and actions related to building inspection and community development investments. Local governments must modify their processes of building inspections and community development plans and investments such that every professional and administrative exercise of discretion is informed by local governments' affirmative duty to further Fair Housing and this accessibility mandate.

#### **4. Research supporting recommendation:**

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The 2007-2011 American Community Survey estimate shows the City of Pittsburgh total population five (5) years of age and over is 283,466 and the disabled population is 41,732, or 14.7%. Individuals with disabilities “are mainly low- and moderate-income.”

Architectural barriers result in the exclusion of people with disabilities and an increase in social separation and isolation. Research suggests social separation is bad for us. Individuals with less social connection have disrupted [sleep patterns](#), altered [immune systems](#), more [inflammation](#) and higher levels of [stress hormones](#). [One recent study](#) found that isolation increases the risk of heart disease by 29 percent and stroke by 32 percent. [Another analysis](#) that pooled data from 70 studies and 3.4 million people found that socially isolated individuals had a 30 percent higher risk of dying in the next seven years, and that this effect was largest in middle age.

Loneliness can [accelerate cognitive decline](#) in older adults, and isolated individuals are [twice as likely](#) to die prematurely as those with more robust social interactions. These effects start early: [Socially isolated children](#) have significantly poorer health 20 years later, even after controlling for other factors. All told, loneliness is as important a risk factor for early death as obesity and smoking.

In addition to social isolation, access to public accommodations is critical to connecting individuals with disabilities to employment opportunities. Given the high rate of poverty, barriers to employment related to architectural barriers must be addressed.

#### **5. Reasons against recommendation:**

Accessibility modifications can be costly and occasionally come at the exclusion of other investments in updating neighborhood amenities. However, accessibility modifications are often required by federal law, and not optional.

#### **6. Other Considerations:**

Municipal inspection departments contend that their duties are limited to enforcing Pennsylvania’s Uniform Construction Code. However, as Title II entities under the Americans with Disabilities Act, they clearly have duties under the ADA. It appears that current training of inspectors is deficient on requirements under Federal law including the ADA. Therefore, additional training will be necessary.

#### **Created by:**

Paul W. O’Hanlon, City of Pittsburgh / Allegheny County Task Force on Disabilities

# **Adopt Appropriate Zoning Standards and Enforcement Practices to Protect Equal Access to Accessible Sidewalks**

## **1. Synopsis of Recommendation:**

Livable communities are “walkable” communities. Critical elements of a neighborhood street are accessible sidewalks. Accessible sidewalks are a necessary element of an accessible community. Accessibility barriers in our neighborhoods exclude people with disabilities (and families with young children) from community activities and amenities. The Fair Housing Act identified lack of equal access to community amenities as an “impediment” to fair housing choice.

What makes a sidewalk accessible to all people, particularly people in the protected classes of individuals with disabilities and families with children (strollers), is a complex array of physical attributes (texture, smoothness, wheelchair ramps, width, etc.) and sidewalk use and maintenance standards (free of obstructing fixtures, parked automobiles, PennDOT and commercial signboards, as well as free of ice and snow in the winter).

However, the best requirements and highest standards are of little use if they aren’t enforced. Local government must also have adequate enforcement personnel and the political will to enforce their standards.

Accessible sidewalks require appropriate standards, policies, personnel and plans to enforce those standards. Pittsburgh should (1) adopt clear and appropriate policies to guarantee the public’s access to sidewalks (the public does own a right-of-way); and (2) implement appropriate plans and practices to enforce those standards.

## **2. Statement of Need:**

Accessible sidewalks are critical to the mobility of people with disabilities and families with children – protected class members under the Fair Housing Amendments Act. Inaccessible sidewalks, or those so poorly maintained as to make them inaccessible, create a serious risk of falls resulting in broken hips and other serious injuries. Inaccessible sidewalks impair the ability of a person with a disability to enjoy the benefits of the community and lead to social isolation. Many local residents experience seasonal isolation due to our community’s poor performance of snow and ice removal responsibilities in the winter.

Accessible sidewalks are also a critical component of connecting public transit and transit stops to the traveler’s ultimate destination. A trip to watch the Pirates at PNC Park might include the walk to the bus, a bus ride to Downtown, a transfer to the T – all connected by sidewalks. None of these amenities are truly accessible if all people can’t get to them.

We have seen isolated community efforts supported by local government to address sidewalk hazards (for example, Pittsburgh’s “Snow Angels” program which matches volunteers with elderly and disabled homeowners for help with snow removal). But local government has been slow to “own” the issue of sidewalk accessibility and maintenance. For example, regarding snow removal, local enforcement officials have expressed a reluctance to cite non-compliant property owners.

We can see the critical need for enforcement with the growing number of physical obstructions on our sidewalks. Recently, urban areas have experienced a social renaissance. We see a growing number of sidewalk cafes and expansions of public accommodations into the public right-of-way. Related to this private commercialization of public space is the growth of sidewalk signboards, PennDOT detour and road construction signs, and advertising kiosks obstructing the public's right of way. Maintaining and enforcing accessibility standards becomes even more critical and necessary as we experience this competition for, and private appropriation of the public right-of-way.

Finally, sidewalks are the community's pedestrian arteries, providing access to community amenities and public accommodations. In addition to access to goods and services, accessible sidewalks connect people with disabilities to employment opportunities. Unemployment and underemployment are serious and persistent problems for people with disabilities in our region.

Local zoning laws place the onus on the property owner to have and maintain accessible sidewalks – but local government has inspection and enforcement responsibilities. This complicated relationship of property owner and local government can be further blurred around large developments. For example, the Penn Avenue renovation in Garfield included replacement of entire blocks of sidewalks (this was a joint City/PennDOT project that included the renovation of the street). Commercial property owners in the project area were given the choice of having the sidewalk graded up to eliminate the step into their property. Some property owners gave permission, but others didn't give permission or didn't respond. In those cases where no permission was granted, the sidewalk was graded to re-create the one-step barrier into the property!

The City of Pittsburgh must protect the public's right of way and enforce sidewalk standards that ensures access to the protected class of individuals with disabilities. Local government has a duty to affirmatively further Fair Housing objectives by eliminating barriers to local amenities for members of protected classes. Recreating old accessibility barriers would not seem to be in furtherance of that duty.

All plans to improve sidewalks, must place a high priority on improving access into the buildings and public accommodations served by that sidewalk, for example (where possible) to adjust the level of the sidewalk to eliminate one-step barriers. Local government must make clear to property owners that improving access to the structure served by effected sidewalks is a duty of the local government and the property owner – and not an elective activity.

### **3. Reasons supporting recommendation:**

Inaccessible communities have barriers which exclude people with disabilities and physical challenges. This exclusion of people with disabilities leads to and exacerbates social isolation. Social isolation impacts individual and public health and adds to the cost of providing social services. It is imperative that we make our communities more accessible and inviting to all. Accessible sidewalks are also critical to public transit, access to goods and services, inclusion in local amenities, and opportunities for employment.

#### **4. Research supporting recommendation:**

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The 2007-2011 American Community Survey estimate shows the City of Pittsburgh total population five (5) years and over is 283,466 and the disabled population is 41,732, or 14.7%. Individuals with disabilities “are mainly low- and moderate-income.”

When discussing the impact of inaccessible neighborhood amenities on people with disabilities, it’s important to consider factors of age and employment:

- Rates of disability increase with age. In the US in 2015, less than 1.0% of the under 5 years old population had a disability. For those ages 5-17, the rate was 5.4%. For ages 18-64, the rate was 10.5%. For people ages 65 and older, 35.4% had a disability.
- In 2015, of the US population with disabilities, over half (51.1%) were people in the working-ages of 18-64, while 41.2% were 65 and older. Disability in children and youth accounted for only 7.2% (ages 5-17) and 0.4% (under 5 years old).
- All disability types (hearing, vision, cognitive, ambulatory, self-care, and independent living) have increases in disability percentages with age; cognitive disabilities show the least change between age groups.
- In 2015, 34.9% of people with disabilities in the US ages 18-64 living in the community were employed compared to 76.0% for people without disabilities - a gap of 41.1 percentage points.
- The employment gap between those with a disability and those without has widened steadily over the past 8 years from 38.8 to 41.1 percentage points.

Research suggests social separation is bad for us. Individuals with less social connection have disrupted [sleep patterns](#), altered [immune systems](#), more [inflammation](#) and higher levels of [stress hormones](#). [One recent study](#) found that isolation increases the risk of heart disease by 29 percent and stroke by 32 percent. [Another analysis](#) that pooled data from 70 studies and 3.4 million people found that socially isolated individuals had a 30 percent higher risk of dying in the next seven years, and that this effect was largest in middle age.

Loneliness can [accelerate cognitive decline](#) in older adults, and isolated individuals are [twice as likely](#) to die prematurely as those with more robust social interactions. These effects start early: [Socially isolated children](#) have significantly poorer health 20 years later, even after controlling for other factors. All told, loneliness is as important a risk factor for early death as obesity and smoking.

In addition to social isolation, access to public accommodations is critical to connecting individuals with disabilities to employment opportunities. Given the high rate of poverty, barriers to employment related to sidewalk maintenance and access must be addressed.

#### **5. Reasons against recommendation:**

Sidewalk maintenance and enforcement comes at a cost. Property owners have the primary responsibility to perform maintenance activities - at the property owner’s expense. However, this task is often ignored absent enforcement by the municipality. Sidewalk inspection and

enforcement may not be popular with property owners, however that doesn't excuse municipalities from duties which are clear under the law.

## **6. Other Considerations:**

Local governments (locally and nationally) play a wide variety of roles around maintenance / enforcement of accessible sidewalk standards. In Canada, cities like Montreal, Winnipeg and Quebec City make snow and ice removal from neighborhood sidewalks a municipal service. Even within Pennsylvania (working within the limits of existing state law), some municipalities offer fee for service programs for sidewalk repairs and maintenance, and some are more likely to trigger the use of cleanup orders and send in private contractors.

However, enforcement alone, even when effective, is retroactive. By the time officers approach an offending property owner, their sidewalk has been dangerous and inaccessible for unconscionable amounts of time.

### **Created by:**

Paul W. O'Hanlon, City of Pittsburgh / Allegheny County Task Force on Disabilities

# Reasonable Accommodation Clause in Lease/Rental Agreements

## 1. Synopsis of Recommendation:

Local government should require landlords and real estate agents, as well as entities that make sample leases available like the Bar Association and the Realtor Association, to plainly state the rights and duties regarding reasonable accommodations.

One type of disability discrimination prohibited by the Fair Housing Act is the landlord's refusal to make reasonable accommodations in rules, policies, practices, or services – when such accommodations are necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling (including, for example, the use of a service animal and waiving fees that typically apply to pets). This requirement has very little public awareness, and non-compliance is a persistent problem.

The Fair Housing Act's protection against disability discrimination covers not only tenants and home seekers with disabilities but also buyers and renters without disabilities who live or are associated with individuals with disabilities. The Act also prohibits housing providers from refusing residency to persons with disabilities, or placing conditions on their residency, because they require reasonable accommodations. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on others, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling.

Local government has a duty imposed by Congress to affirmatively further the requirements of the Fair Housing Act.

Local governments have found methods to require landlords and sellers to inform applicants of a wide-variety of issues – from the inclusion or exclusion of mineral rights, notice of mine subsidence, or the presence of lead paint. To the extent practical, local government should exercise power and discretion to require landlords and sellers to add a lease addendum advising parties about the Fair Housing Act's requirements regarding reasonable accommodations in appropriate cases and the mechanism the landlord / seller wishes to establish for the acceptance of reasonable accommodation requests.

## 2. Statement of Need:

Fair Housing Complaints received by Allegheny County Fair Housing enforcement agencies indicate that disability discrimination complaints rank #1 in frequency. This failure to make a reasonable accommodation represents a significant portion of those complaints. Finding safe, decent, affordable and accessible housing in this County is a difficult task for anyone. It can be particularly hard for individuals and families with disabilities.

Local government, because it has a duty to affirmatively further the Fair Housing Act, must exercise its powers and discretion to reduce the instances of discrimination in private lease and sale situations.

### **3. Reasons supporting recommendation:**

Inaccessible communities have barriers which exclude people with disabilities. This exclusion of people with disabilities is illegal under the Fair Housing Act, and leads to, and exacerbates social isolation. Social isolation impacts individual and public health and adds to the cost of providing social services. It is imperative that we make our communities more accessible and inviting to all.

### **4. Research supporting recommendation:**

In a test conducted by the Fair Housing Partnership of Greater Pittsburgh, researchers found 28 percent of landlords contacted by deaf people either hung up the phone, gave false information or used some other illegal means to deny the deaf person a place to live. “Most of the discrimination cases revolved around one of three kinds of illegal actions: denying the deaf person from living with a service dog or charging the deaf person a higher fee for using a service dog; repeatedly hanging up on the deaf person, indicating a refusal to give them an opportunity; and denying the availability of a vacant unit when the deaf person called, yet offering the rental to the non-hearing impaired person who called shortly afterward.” FHP indicates that this is the highest rate of discrimination they have ever documented. NOTE: disability-based housing complaints have far surpassed race-based complaints both locally and nationally.

#### **Created by:**

Paul W. O’Hanlon, City of Pittsburgh / Allegheny County Task Force on Disabilities

# **Non-Discriminatory Tenant Screening Criteria for Applicants with Past Evictions**

## **1. Synopsis of Recommendation:**

The Pittsburgh Commission on Human Relations (PCHR) should issue and publicize its own guidance on the use of eviction history in housing admissions, educate landlords on the use of eviction history as screening criteria and enforce violations of the PCHR guidance. The PCHR guidance on eviction history should state that a landlord's denial of admission to a member of a protected class due to an applicant's eviction court record will be considered prima facie evidence of discrimination if the court action was appealed, dismissed or withdrawn before the submission of the rental application, if judgment was entered in favor of the applicant before the submission of the application, or if judgment was entered against the applicant five or more years before the application was submitted. To assist rental applicants in determining whether a denial of admission was based on inappropriate screening criteria, the City of Pittsburgh should require landlords to share their screening criteria with applicants in advance and inform them of the specific reason or reasons for adverse decisions.

## **2. Reasons supporting recommendation:**

In the wake the Great Recession of 2007, there has been huge demand in rental housing. The National Low Income Housing Coalition reports that we are seeing record low vacancy. The demand for rental housing has spurred development of more rental housing but the vast majority of which is luxury market rate. All of this activity in the market has resulted in rents increasing across the board all the way to the lower end of the market where naturally affordable rental units fall-in. A thing to note about the naturally affordable units is that typically, these units are occupied by low-income households. In addition these are the units that are being occupied by tenants that have tenant based rental assistance such as Housing Choice Vouchers (HCV) or are living on a fixed income such as SSI/SSDI. As the pressure on the market increase and vacancy drops we are seeing two things happen:

1. Units that were affordable to low-income households are now becoming more expensive driving up rates of eviction due to non-payment; and
2. Landlords are able to use stricter screening criteria because demand for units even at the lower end of the market has become so high. This criteria can include past criminal history, credit scores, and past evictions.

Overall study of eviction rates is limited and looking at eviction among protected classes even more so. Currently, evaluation of trends in eviction in Pittsburgh specifically has only begun without substantive conclusions yet made public. What we do know is that other cities are seeing a disparate impact of eviction especially for women, especially women with children, and people of color and that there has been evidence of this disparate impact going back decades. Hartman and Robinson (2003) found patterns of disparate impact going back to the early 90s:

- In 1992 in Baltimore the vast majority of evictions were low-income African American women;
- In 1993 in New York City 83% of people facing eviction were African American and Latino;
- In 1996 in Chicago 72% of people facing eviction were African American and 62% were women;
- In 2001 in Philadelphia 83% of people facing eviction were non-white and 70% were non-white women; and
- In 2002 in Oakland 78% percent of 30-day no cause evictions were for minority households.

There is also reason to believe that just the mere record of a landlord tenant action is sufficient for many landlords to screen a person out of housing. Case in point is the first fair housing challenge to applicants being denied housing for past eviction currently taking place. In the case of *Smith V. Wasatch Property Management*, Ms. Smith had a record of an eviction case filed against her. However, she was never actually evicted because she and the landlord who filed against her were able to come to an agreement. In addition, Ms. Smith does not have any other landlord tenant actions in her history for the next 5 years when she applied and was denied to lease an apartment with Wasatch Property Management. Since the lawsuit was filed in March of 2017, the ACLU has been researching racial and gender disparities in eviction cases in King County, WA where the case was filed. What has been found is that African-Americans are nearly four times more likely to have an eviction case filed against them than Whites and African-American women specifically are five times more likely to have a filing against them than White men.

When there are blanket bans of any eviction or unlawful detainer on a tenant's credit report without reviewing the outcomes it is quite like screening a tenant out for an arrest record. The blacklisting of eviction records then becomes an issue of fair housing where it disproportionality affects protected racial and gender classes and increases racial and economic segregation. When we look to a fellow Rust Belt City Milwaukee, there is some startling evidence of disparate impact when it comes to eviction. Matthew Desmond (2013) reports, "Women from black neighborhoods in Milwaukee represented only 9.6 percent of the population, but 30 percent of the evictions. In high-poverty black neighborhoods, one male renter in 33 and one woman in 17 is evicted. In high-poverty white neighborhoods, in contrast, the ratio is 134:1 for men and 150:1 for women."

In addition, many applicants for housing in Pennsylvania shown an eviction on their rental history when, in fact, they have never been formally evicted. In Pennsylvania, records are kept on landlord/tenant filings and not necessarily on actual evictions. This means that the state tracks landlord/tenant filings, but not the outcomes of those filings. In cases of "pay and stay" where a tenant has a landlord/tenant complaint filed against him in a local magisterial district court, but agrees to pay either before, during, or after the case is heard, the state database still lists this case as an eviction, even though the tenant satisfied the balance and was never evicted from the unit. Thus, tenants can have records of evictions even though they have never had an actual eviction in their rental history because the state does not distinguish filings from outcomes in landlord/tenant complaints.

### **3. Research supporting recommendation:**

Desmond, M. "Poor Black Women are evicted at an alarming rate, setting off a chain of hardship." Mac Arthur Foundation: How Housing Matters- Policy Research Brief, March 2014.

[https://www.macfound.org/media/files/HHM\\_Research\\_Brief\\_-\\_Poor\\_Black\\_Women\\_Are\\_Evicted\\_at\\_Alarming\\_Rates.pdf](https://www.macfound.org/media/files/HHM_Research_Brief_-_Poor_Black_Women_Are_Evicted_at_Alarming_Rates.pdf)

Hartman, C. & Robinson, D. Evictions: The Hidden Housing Problem. Fannie Mae Foundation: Housing Policy Debate, Vol. 14, No. 4, 2003, pg 7.

<https://www.innovations.harvard.edu/sites/default/files/10950.pdf>

Dunn, E. & Grabchuk, M. 'Background Checks and Social Effects: Contemporary Residential Tenant-Screening Problems in Washington State'. Seattle Journal For Social Justice. Vol. 9, No. 1, 2010, 345

Caramello, E. & Mahlberg, N. *Combating Tenant Blacklisting Based on Housing Court Records A Survey of Approaches*. Advancing Justice and Opportunity Article Series: September 2017. Shriver National Center on Poverty Law: Clearinghouse Community

<http://povertylaw.org/clearinghouse/article/blacklisting>

Slide 26: examples of statistical racial disparities and protected classes for evictions In King County, WA; Milwaukee, WI; Oakland, CA;

[http://wliha.org/sites/default/files/A16%20Overcoming%20Rental%20Housing%20Rejections%20in%20Washington\\_0.pdf](http://wliha.org/sites/default/files/A16%20Overcoming%20Rental%20Housing%20Rejections%20in%20Washington_0.pdf)

City of Portland. Landlord Training Program: Keeping Rental Property Safe and Free of Illegal Activity. 18<sup>th</sup> Edition. 2017. <https://www.portlandoregon.gov/bds/article/96790>

### **4. Reasons against recommendation:**

The most viable indicator of whether or not a tenant will be a good tenant is his/her rental history. And it is absolutely a legitimate business reason to review a person's background including whether or not s/he had been evicted when evaluating him/her for tenancy. And for this reason, we can expect there to be significant opposition from landlords of both private and subsidized rental housing owners and operators.

When looking at individuals who have a criminal history there is a significant body of research demonstrating that after seven years, a person convicted of a felony has the same likelihood as a person with no criminal history of committing a crime. That is not the case when it comes to eviction, there is not a body of evidence to provide guidance when a person who has experienced eviction is no longer a riskier than a person who has never been evicted. This is a complex issue and that complexity is further exasperated by the lack of significant research into the long term impacts of eviction and predictors of eviction recidivism.

This recommendation also exclusively focuses on how a landlord should evaluate information regarding past evictions when screening for future tenancy. What this recommendation does not do is address the need for intervention to prevent the high rate of eviction for members of protected classes in the first place.

## **5. Other Considerations:**

A natural next step for the AFFH Task Force is to look at strategies to prevent housing crisis for members of protected classes before any legal action is taken by a landlord. It is recommended for the AFFH Task Force to work collaboratively with entities that are already researching and pursuing such strategies. These entities include but are not limited to the Allegheny County Department of Human Services, The Homeless Advisory Board, and the Local Housing Options Team.

### **Created by:**

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# **Improving the Health and Safety of Rental Housing as a Mechanism to Affirmatively Further Fair Housing Goals**

## **1. Synopsis of Recommendation:**

Pittsburgh and Allegheny County should adopt effective measures to improve the health and safety of rental housing, by 1) creating a “Repair and Collect” program, which would allow the City or County to alleviate unsafe and unhealthy living conditions at rental properties and collect the cost of needed repairs from ongoing rent payments, while protecting tenants from retaliatory eviction, and 2) creating a “Receivership Support” program to incentivize the use of receivers to take control of rental properties with serious or chronic health and safety problems and restore them to habitable condition. Unsafe and unhealthy rental properties are a serious problem, particularly for African-Americans, female-headed households with children and people with disabilities, who disproportionately rent and are disproportionately subjected to poor housing conditions and the resulting health problems and housing instability, but who lack the legal and financial resources to remedy the situation.

## **2. Statement of Need:**

Red-lining, racially restrictive deed covenants and discriminatory lending practices have denied homeownership opportunities to African Americans and created persistent racial disparities in rates of homeownership regardless of household income. Low household incomes have added to these racial disparities. It is also believed that low household incomes result in significantly lower rates of homeownership for female-headed households with children and for people with disabilities, and that all three of these protected classes are disproportionately subject to unsafe and unhealthy housing conditions.

Although the African American population of Pittsburgh is 26.1% of the population, it only represents 16.4% of the total homeowners according to the 2010 census. Only one-third of Pittsburgh’s African-American households own their homes, while nearly 60% of our White households do. According to Allegheny County's Analysis of Impediments to Fair Housing (AI), less than one-third of Black households in Allegheny County (excluding Pittsburgh, McKeesport and Penn Hills) own their homes, compared to more than three-quarters of White households.

Neither the Pittsburgh AI nor the Allegheny County AI provide homeownership data for people with disabilities or female-headed households with children. The Allegheny County AI does state that over 1 in 5 disabled households and nearly 1 in 4 female-headed households with children live in poverty in Allegheny County, and the City AI states that nearly half of all female-headed households with children in the City live in poverty. These income disparities would make people with disabilities and female-headed households much less likely to own their homes.

According to the City’s AI, renters are over 3 times more likely than homeowners to report housing problems (which can include substandard housing, severe overcrowding or severe cost burdens), and low-income African-American households are disproportionately affected. The Pittsburgh AI did not provide information on substandard housing alone, and does not report housing problems experienced by other protected classes, and the Allegheny County AI does not analyze housing quality at all. But in the experience of the authors of this recommendation

(public interest housing attorneys with roughly 70 years of combined experience in the field), there seems to be a high correlation between membership in one of these three protected classes and poor housing quality, and this conclusion is supported by the little data that is available.

The mechanisms that are currently in place to ensure that rental property is safe and healthy are inadequate. The primary tools available to the City of Pittsburgh are building code enforcement and condemnation. Traditionally that involves issuing citations to property owners and then, if the violations are not corrected, taking them to court to impose fines. If a property is sold (even if it is sold to a different company owned by the same principals), the process starts all over again. If conditions deteriorate to the point that there is an imminent threat to public health and safety, the City can condemn the property, order the residents to vacate, and demolish it at the City's expense. This process is often ineffective and time consuming, is harmful to residents, and often results in the loss of affordable rental housing. The main tool available to Allegheny County is health code enforcement and condemnation. That process is similar to the City's building code enforcement, and suffers from similar inadequacies.

Tenants have a legal right to a habitable dwelling, but that right can be difficult to enforce. Under state law, tenants living in uninhabitable housing have the right to (1) withhold some or all of their rent (depending on the severity of the conditions), (2) make repairs and deduct the cost from the rent or (3) terminate the lease without penalty. The main problem with all of these remedies is that exercising them places the tenant at risk of eviction. A second problem is that they rarely result in improved living conditions. Rent withholding and lease termination may allow tenants to save up money to move, but there is a severe shortage of decent, safe and sanitary low-rent housing to move to. The "repair and deduct" remedy is largely ineffective due to the fact that many health and safety problems cost more than tenants can afford to correct, and that habitability problems affecting multifamily rental properties require concerted tenant action, which is extremely difficult to organize. Tenants are often unable to get contractors to work on property they don't own, and owners sometimes refuse to grant permission to tenant-paid contractors. Finally, even if these legal rights were more effective, the serious power imbalance in the typical landlord-tenant relationship would discourage many tenants from exercising them.

The Pennsylvania Rent Withholding Act offers *City* residents an additional set of options. When a *County* agency (the Health Department) declares a rental dwelling within the *City* of Pittsburgh unfit for human habitation, the tenant may escrow their rent in an escrow account controlled by the Health Department. If, after six months of the unit being declared uninhabitable, the tenant has paid rent into escrow each month, and if the landlord has failed to make sufficient repairs to render the premises habitable, then the rent is returned to the tenant. The positive features of the Rent Withholding Act are a strong protection against retaliatory eviction and an ability of tenants or the landlord to withdraw rent from the escrow account in order to make repairs. There are a variety of weaknesses to the Pennsylvania Rent Withholding Act – (1) a tenant can suffer horrible conditions and faithfully pay into escrow, only to have the landlord make the repairs days before the six month deadline, and receive zero compensation for their loss of habitable living conditions that they contracted for; (2) tenants paying into escrow get "trapped" in uninhabitable conditions and are unable to withdraw their funds to move to another unit; (3) a significant number of tenants and landlords lack the sophistication to exercise the option to withdraw funds to make repairs; (4) the Health Department often succumbs to informal pressure to return money to the landlord even though the conditions have not been fully corrected (it is a

rare occasion that tenants actually get money back at the end of six months); and (5) the primary weakness is the same as rent withholding - the cost of bringing a rental property to habitable condition is often much more than an individual household can afford, so even in the rare instances where tenants are able to access the escrow tenants to make repairs, they are forced to live in unhealthy and unsafe living conditions in the meantime. Another problem is that the law offers no protection to tenants who live outside of the City.

For protected class members who are tenants, the process of decline, disinvestment, disintegration and eviction/condemnation of affordable rental housing compounds the critical shortage of affordable rental housing. All of the currently available options listed above are plainly weak at protecting innocent tenants and weak at promoting the preservation of decent housing. What is needed are tools to correct uninhabitable conditions as they arise, preserve our existing low-rent housing stock and ensure that tenants are living in safe and healthy housing.

### **3. Reasons supporting recommendation:**

Both a Repair and Collect program and a Receivership Support program would alleviate unsafe and unhealthy living conditions that disproportionately affect African-Americans, female-headed households with children and people with disabilities, while preserving our existing low-rent housing stock.

A Repair and Collect program would make funds available up front to correct unhealthy and unsafe living conditions as they arise. As with the existing code enforcement system, landlords would be given a reasonable to correct defective conditions. But if they are unable or unwilling to do so, instead of resorting to a lengthy and often ineffective enforcement process to secure compliance, the City or County would obtain the tenants' permission to make repairs on their behalf, on the condition that they pay their rent to the repairing agency instead of the landlord until the cost of repairs is fully reimbursed.

Under a Receivership Support program, the County Health Department, the City Department of Permits, Licensing and Inspections, or the affected tenants, could use their existing rights to petition the Court of Common Pleas for the appointment of a receiver to assume management and control of a multifamily rental property that has serious or chronic uncorrected health and safety problems. The City and County would establish a fund that could be used by the receiver to make necessary repairs. Under state law, the receiver's compensation and the administrative cost of restoring the property to habitable condition are entitled to be placed as a priority lien on the rental property. Once the defective conditions are alleviated, the Court could return control of the property to the landlord upon payment of the receiver's compensation and administrative expenses, or the City or County could foreclose on its priority lien position and sell the property to a responsible owner. Either way, the City or County would be fully reimbursed.

Both of these programs would make funds available to restore rental properties to decent, safe and sanitary condition before the problems become uncorrectable. This would improve living conditions for members of protected classes and prevent the loss of low rent properties from the City's and County's inventory.

#### 4. Research supporting recommendation:

- **Legal and policy background:**

Tenants' legal right to "repair and deduct" can be found in *Pugh v. Holmes*, 405 A.2d 897 (Pa., 1979) (The tenant's obligation to pay rent is dependent on the landlord's obligation to maintain the premises, and the tenant may make repairs and deduct the cost from the rent). For the legal protection against eviction in retaliation for withholding rent payments, see, generally, *Pugh v. Holmes* (Tenants have a legal right to withhold rent payments and to repair and deduct); *Wofford v. Vavreck*, 22 Pa. D&C 3d 444 (Crawford C.P. 1981) (Self-help eviction is illegal as a matter of public policy, in part because its use would nullify tenant's legal rights under *Pugh*); *Edwards v. Habib*, 397 F.2d 687 (D.C. Cir. 1968) (Courts will not participate in an eviction in retaliation for a tenant's exercise of a legal right to complain to code enforcement); and the Pennsylvania Rent Withholding Act, 35 P.S. § 1700-1 (A tenant within the City of Philadelphia or the City of Pittsburgh who escrows rent under the act cannot be evicted for any reason while rent is in escrow).

For the right of a code enforcement agency to request appointment of a receiver to take control of an occupied rental property and alleviate health and safety issues, see *Borough of Kennett Square v. Lal*, 645 A.2d 474 (Pa. Cmwlth., 1994) (Where code enforcement efforts have been ineffective and the health and welfare of the tenants residing in an apartment complex are endangered, the appointment of a receiver to manage the property is appropriate). For the entitlement to priority lien position for a receiver's compensation and administrative expenses incurred in managing the property and alleviating adverse conditions, see *Randolph v. Scranton M.&B.R. Co.*, 10 F.Supp. 699 (M.D. Pa. 1935) (Receiver compensation and administrative expenses are preferred claims and take priority over existing liens) and *In re: Harmar Coal Company*, 548 A.2d 1224 (Pa. Super., 1988) (Receiver expenses incurred in the abatement of unlawful nuisances and hazards to the public health and safety are entitled to priority lien position).

- **Academic research, studies, data, theories, etc. on barriers and needs addressed by the recommendation and on the proposed recommendations and potential outcomes:**

Rutan, *The Legacies of Redlining in Pittsburgh* (Students for Urban Data Systems at Carnegie Mellon University, 2017), available online at <http://suds-cmu.org/2017/02/21/the-legacies-of-redlining-in-pittsburgh/>

University of Pittsburgh Center on Race and Social Problems, *Pittsburgh's Racial Demographics 2015: Differences and Disparities* (2015), available online at <http://www.crsp.pitt.edu/sites/default/files/Final%20version%20for%20publishing.pdf>

- **Real-world examples of the recommendation applied in other communities, including consideration of community comparability and policy outcomes:**

We are unaware of any examples of a "Repair and Collect" program.

An approach very similar to Receivership Support was used by the Pennsylvania Housing Finance Agency ("PHFA") in 2013-15 to preserve and improve a 90-lot manufactured home community in Crawford County now called "Hardwood Estates." The PA Department of

Environmental Protection (“DEP”) filed an enforcement action against the owner for failure to keep the community’s water system in compliance with PA water testing requirements and for illegal dumping. Rather than comply, the owner abandoned the community. The residents formed a resident association (“HERA”), negotiated a restoration of utility services and assumed operation of the community water system. DEP asked the Court of Common Pleas to appoint a receiver. PHFA provided HERA with a \$35,000 forgivable loan commitment to cover emergency health and safety issues and perform due diligence, and HERA agreed to serve as receiver. HERA used the PHFA forgivable loan to become current on water testing, improve the pump house, repair broken sewer lines, clean up the illegal dumping, and conduct a capital needs assessment. The cost of repairs and the value of HERA’s volunteer time were recorded as a priority lien against the property. In less than two years HERA was able to use that priority lien position to acquire ownership of the community.

**5. Reasons against recommendation:**

A source of funds would need to be identified, but those funds would either be repaid (in the case of Repair and Collect or upon redemption or sale of a property in receivership) or would be used to finance the acquisition and preservation of so-called naturally occurring affordable housing.

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