MINUTES OF THE SOUTH OGDEN CITY COUNCIL WORK SESSION AND CITY COUNCIL MEETING

TUESDAY, JULY 16, 2024
WORK SESSION – 5 PM IN EOC ROOM
COUNCIL MEETING – 6 PM IN COUNCIL ROOM

WORK SESSION MINUTES

COUNCIL MEMBERS PRESENT
Mayor Russell Porter, Council Members Susan Stewart, Mike Howard, and Doug Stephens

COUNCIL MEMBERS EXCUSED
Council Members Jeanette Smyth and Jeremy Howe

STAFF MEMBERS PRESENT
City Manager Matt Dixon, Retiring Assistant City Manager Doug Gailey, New Assistant City Manager Summer Palmer, Retiring Finance Director Steve Liebersbach, New Finance Director Peter Anjewierden, Parks and Public Works Director Jon Andersen, Police Lieutenant Todd Hardman, Fire Chief Cameron West, Deputy Fire Chief Brandon Storey, Communications and Events Specialist Danielle Bendinelli, and Recorder Leesa Kapetanov

OTHERS PRESENT
Zach Swenson

Note: The time stamps indicated in blue correspond to the audio recording of this meeting, which can be found by clicking the link:
https://cms7files.revize.com/southogden/document_center/Sound%20Files/2024/CC240716_1701.mp3
or by requesting a copy from the office of the South Ogden City Recorder.

I. CALL TO ORDER

- Mayor Porter called the work session to order at 5:02 pm and entertained a motion to begin 00:00:00

Council Member Howard so moved, followed by a second from Council Member Stewart. Council Members Stewart, Howard, and Stephens, all voted aye.

- Mayor Porter excused Council Members Smyth and Howe

00:00:11

II. REVIEW OF AGENDA

- There were no requests for review of agenda items

III. DISCUSSION ITEMS

A. FY2025 Budget

- Mr. Anjewierden gave an overview of things in the budget the council needed to be aware of, including:

  Capital Projects 00:00:45
  Water Rates 00:12:04
  Storm Drain Rates 00:33:16
  Road Improvement Fee
  00:40:18
  Transfer of Funds 00:43:23

- During his overview, Mr. Anjewierden referred to some charts, which can be viewed in Attachment A.

IV. ADJOURN

- At 5:54 pm, Mayor Porter called for a motion to adjourn the work session

00:51:17

Council Member Howard so moved, followed by a second from Council Member Stewart. All present voted aye.

COUNCIL MEETING MINUTES

COUNCIL MEMBERS PRESENT

Mayor Russell Porter, Council Members Susan Stewart, Mike Howard, and Doug Stephens

COUNCIL MEMBERS EXCUSED

Council Members Jeanette Smyth and Jeremy Howe

STAFF MEMBERS PRESENT

City Manager Matt Dixon, Retiring Assistant City Manager Doug Gailey, New Assistant City Manager Summer Palmer, Retiring Finance Director Steve Liebersbach, New Finance Director Peter Anjewierden, Parks and Public Works Director Jon Andersen, Police Lieutenant Todd Hardman, Fire Chief Cameron West, Deputy Fire Chief Brandon Storey, Communications and Events Specialist Danielle Bendinelli, and Recorder Leesa Kapetanov

MEMBERS OF THE PUBLIC PRESENT

Mike Hansen, Zach Swenson, Mitchell Burke, Jaiden Burke, Bruce & Joyce Hartman, Forest Pearce, Barry Bigler

Note: The time stamps indicated in blue correspond to the audio recording of this meeting, which can be found by clicking this link:
https://cms7files.revize.com/southogden/document_center/Sound%20Files/2024/CC240716_1758.mp3
or by requesting a copy from the office of the South Ogden City Recorder.

I. OPENING CEREMONY

A. Call To Order

- Mayor Porter called the meeting to order at 6:00 pm. He excused Council Members Smyth and Howe and then entertained a motion to begin

00:00:00

Council Member Howard so moved. The motion was seconded by Council Member Stephens. In a voice vote Council Members Stewart, Howard, and Stephens all voted aye.

B. Prayer/Moment of Silence

- The mayor led those present in a moment of silence

C. Pledge Of Allegiance

- Council Member Howard led everyone in the Pledge of Allegiance

II. RECOGNITION OF EMPLOYEES

A. Recognition of Chance Byers, Brian Macleod, and Mike Payne for a Special Delivery on December 25, 2023

- Fire Chief West and Deputy Fire Chief Storey recognized the members of A Shift for helping deliver a baby on December 25 and also one in June

00:04:38

III. PUBLIC COMMENT

There were no in-person comments from the public. The mayor then took the time to recognize two long-time employees, Steve Liebersbach and Doug Gailey, who would soon retire. He then gave them the opportunity to speak.

00:03:52

IV. RESPONSE TO PUBLIC COMMENT

Not applicable

V. CONSENT AGENDA

A. Approval of July 2, 2024 Council Minutes

B. Set Date for Public Hearing (August 6, 2024 at 6 pm) To Receive and Consider Comments on the Following Items:

1. Proposed Increase to South Ogden City's Portion of Property Taxes
2. FY2025 Budget

C. Advice and Consent of the Appointment of Summer Palmer as Assistant City Manager

- The mayor read the consent agenda and asked Ms. Palmer to come forward and introduce herself 00:08:04
- Mayor Porter called for a motion to approve the consent agenda including corrections to the minutes 00:12:38

Council Member Stephens so moved. The motion was seconded by Council Member Howard. The voice vote was unanimous in favor of the motion.

- Mayor Porter announced there had been no online public comments

00:13:17

VI. PUBLIC HEARINGS

To Receive and Consider Comments on the Following Items:

A. Proposed Vacation of Portions of Chimes View Circle

- The mayor called for a motion to open a public hearing for the proposed vacation of Chimes View Circle

  00:13:35

  Council Member Howard so moved. The motion was followed by a second from Council Member Stephens. The voice vote was unanimous in favor of the motion.

  - Overview by City Manager Dixon

    00:13:47
  - There were no public comments on this item

  The mayor announced they would next consider the proposed vacation of the alley between Porter and Jefferson accessed from 37th Street. City Manager Dixon gave an overview of this vacation.

  00:18:37
  - No one came forward to comment on this item

  Mayor Porter stated they would now consider items C and D, the City's intent not to charge itself for water, sewer, and storm drain used for normal city operations during FY2025 and proposed utility franchise fee transfers from the enterprise funds to the general fund. He invited City Finance Director Peter Anjewierden to come forward and explain about these public hearing items. 00:23:42
  - No one present came forward to speak to these items

- Mayor Porter asked and was told there had been no online comments made for the public hearings 00:26:27

- The mayor called for a motion to close the public hearings

  00:26:39

Council Member Howard so moved. Council Member Stewart seconded the motion. All present voted aye.

VII. DISCUSSION/ACTION ITEMS

A. Consideration of **Ordinance 24-06** – Vacating a Portion of Chimes View Circle

- Discussion 00:26:53
- Mayor Porter called for a motion to approve Ordinance 24-06

  00:28:09

Council Member Howard so moved. The motion was seconded by Council Member Stephens. The mayor made a roll call vote:

Council Member Howard - Yes
Council Member Stephens - Yes
Council Member Stewart - Yes

Ordinance 24-06 was approved.

B. Consideration of **Ordinance 24-07** – Vacating a Portion of the Alley Between Porter and Jefferson Accessed From 37th Street

- The mayor asked staff to confirm it was their recommendation to table this item. He then called for a motion to table Ordinance 24-07
00:28:21

Council Member Howard so moved, followed by a second from Council Member Stephens. There was further discussion and questions from the council about the vacation. **The mayor made a roll call vote:**

Council Member Stewart - Yes
Council Member Howard - Yes
Council Member Stephens - Yes

The motion stood. Ordinance 24-07 was tabled.

VIII. DISCUSSION ITEMS

A. Review/Discussion of Housing Preservation and Housing Loss Mitigation Funds Report

- City Manager Dixon gave a copy of the report (See Attachment B) to the Council and then reviewed it 00:30:37

B. Intersection of Madison Ave. and 40th Street

- City Manager Dixon explained the need for a crosswalk at the intersection and possible semaphore 00:53:00

IX. REPORTS/DIRECTION TO CITY MANAGER

A. City Council Members

- Council Member Stewart - Nothing to report
- Council Member Howard - 01:03:15
- Council Member Stephens - 01:03:33

B. City Manager- 01:08:48

C. Mayor- 01:09:28

VI. ADJOURN

- The mayor called for a motion to adjourn City Council meeting

01:10:58

Council Member Stephens so moved, followed by a second from Council Member Stewart. The voice vote was unanimous in favor of the motion.

The meeting concluded at 7:11 pm.

I hereby certify that the foregoing is a true, accurate and complete record of the South Ogden City Work Session and Council Meeting held Tuesday, July 16, 2024.

Leesa Kapetanov

Leesa Kapetanov, City Recorder

August 6, 2024

Date Approved by the City Council

ATTACHMENT A

Finance Charts

Draft Updated 07/16/24

Project requests provided by Jon:

					Current Budget	YTD Spent	$$ Needed For Completion	New Monies
Water:	$2,546,119.87 as of 7/31/2024							
	Ben Lomond & Sunset**	$768,597	51-40-709	Ben Lomond & Sunset	$1,120,000	($225,200)	$894,800	($274,543.30)
	Chimes (Riverdale East to 345 Chimes)**	$732,072	51-40-710	40th & Chimes	$963,240	($118,274)	$844,966	($157,960.80)
	Porter (42nd to 44th, Adams to Jefferson)**	$597,988	NEW				$597,988	$657,787
	44th to 46th & PRV	$591,560	NEW				$591,560	$591,560
	Radio Antennas for Water Meters	$115,000	NEW				$115,000	$115,000
	*Sub-Total	$2,805,217	51-40-711	Brier Point Loop	$1,120,000	($613,600)	$506,400	$0
			51-40-712	38th Grant & Kiesel Loop	$346,610	($669,111)	($322,501)	$322,501
							$3,228,213	**$1,254,344**
Sewer:	$2,413,127.51 as of 7/31/2024							
	1300 E Manhole	$25,200	52-40-650	Manhole Replacement	$45,200	$0	$45,200	$0
	40th & Burch Creek Lining	$246,731	52-40-704	Lining 40th to Country Club	$246,731	$0	$246,731	$0
	700 E relocation	$461,700	52-40-705	Replace 700 E/H Guy Child	$461,700	($20,843)	$440,857	$0
	Sub-Total	$733,631					$732,788	**$0**
Storm Drain:	$2,350,915.77 as of 7/31/2024							
	Burch Creek Re-line	$90,000	53-40-701	Burch Creek Hollow Re-line	$90,000	$0	$90,000	$0
	42nd Adams to 40th	$903,200	NEW				$903,200	$903,200
	42nd Liberty to Adams	$779,100	53-40-702	Replace 42nd St/Lib to Adams	$779,100	($10,862)	$768,238	$0
	Ben Lomond Research (Chambers to 875 E)	$100,000	53-40-703	Replace 40th/Wash & Burch Cr	$298,800	$0	$298,800	$0
	Sub-Total	$1,872,300					$2,060,238	**$903,200**
Gargage:	$251,376.02 as of 7/31/2024							
	Grand Totals	$5,411,148					$6,021,239	$2,157,544

*40th (Riverdale Road to Washington Blvd) $900,000 Reclassified as a new FY 2026 Project

**10% added to actual Contractor bids for Engineering costs

8/1/2024 12:26 PM C:\Users\lkapetanov\AppData\Local\Microsoft\Windows\INetCache\Content.Outlook\4HFPCSJL\Water Project Requests updated.xlsx Steve

SOUTH OGDEN CITY FY 2024 UTILITY RATES

		WATER USAGE PRICE RATE PER LEVEL	NEW USAGE RATES		SEWER USAGE PRICE RATE PER LEVEL	WATER BASE FEE	NEW WATER BASE FEE	SEWER BASE FEE	GARBAGE RATE PER CAN	RECYCLING RATE PER CAN	RESIDENTIAL STORM DRAIN FEE
	WATER USAGE LEVELS	Rate per 1000 Gallons	Rate per 1000 Gallons	SEWER USAGE LEVELS	Rate per 1000 Gallonos	$11.47	$14.33	$16.05	$11.56	$4.09	$11.93
1	0- 3,999 GALLONS	$1.43	$1.43	0- 3,999 GALLONS	$1.14						
2	4,000 - 7,999 GALLONS	$3.15	$3.50	4,000 - + GALLONS	$4.77						
3	8,000 - 10,999 GALLONS	$3.73	$4.14								
4	11,000 - 15,999 GALLONS	$4.29	$4.76								
5	16,000 - + GALLONS	$4.59	$5.09								

Water increase =

Base fee from $11.47 to $14.33
Tiers 2 - 5 have 11% increase

DUPLEX STORM DRAIN FEE	4- PLEX STORM DRAIN FEE	COMMERCIAL STORM DRAIN PER ERU
$17.88	$23.83	$11.93

7/16/2024 4:56 PM S:\Steve\Budget files\FY 2025\7-02-2024 cncl mtg Steve

ATTACHMENT B

Moderate Income Housing Accessibility Report

Benjamin Wall
University of Wyoming College of Law
Local Government Assistance Practicum

Meeting the Middle: A Policy Framework for Moderate-Income Housing Accessibility

TABLE OF CONTENTS

INTRODUCTION....2
LEGAL ISSUES SURROUNDING HOUSING SHORTAGES....3
LOCAL GOVERNMENT ACTIONS....6
A. LANDLORD INCENTIVE PROGRAMS....8
B. DEED RESTRICTED PROGRAMS....12
C. HOUSING LOSS MITIGATION FUNDS....14
COMMUNITY BENEFITS AGREEMENTS (CBA)....16
CHALLENGES AND CRITIQUES....20
RECOMMENDATIONS AND FUTURE DIRECTIONS....22
CONCLUSION....24
REFERENCES....26

University of Wyoming - Ben Wall Research Paper_Page_01

I. Introduction

America has long been known as the land of opportunity. Thoughts of America often conjure up images of success and prosperity, all of which can be synthesized into what has classically been referred to as the American Dream. The American Dream is a belief that all citizens can reach an ideal level of living through hard work, determination, and equal opportunity. The American Dream often represents the pursuit of personal happiness, financial success, and, most notably, homeownership. In recent years, however, this dream has slipped out of reach for many, including moderate-income households. First-time home buying has recently plummeted, partly due to severely rising interest rates that have significantly increased the cost of homeownership, even for those with moderate incomes.

Monthly payments on the U.S. median-priced home with taxes and insurance included, as of March of 2023, have risen to $3,000 with interest rates around 6.5 percent.[1] Millions of renter households were also priced out of homeownership with the price of homes and interest rates. Moreover, this pricing issue also affects renters. The average household in America dedicates 33.1% of its budget to housing costs, with an average rental payment of $1,326 per month.[2] With this crisis looming, Federal, state, and local governments must do their part to mitigate the effects of the housing crisis in the United States.

This paper will examine the affordable housing issue that currently exists in the United States as well as focus on the legal, policy, and community-based solutions that are available to

[1] *The State Of The Nation's Housing 2023*, (June 7, 2023), https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_The_State_of_the_Nations_Housing_2023.pdf.
[2] *Average Rent by State 2023*, https://worldpopulationreview.com/state-rankings/average-rent-by-state.

University of Wyoming - Ben Wall Research Paper_Page_02

address the issue. The moderate and low-income housing shortage is a serious issue in the United States. This paper will highlight the issues relating to moderate-income housing, offer potential solutions, and address potential policy concerns.

II. Legal Issues Surrounding Housing Shortages

The United States affordable housing shortage raises several constitutional considerations that impact individuals and families. Housing, which is often regarded as a basic human need, intersects with fundamental constitutional principles and rights afforded to all Americans. This section explores the constitutional elements that are associated with housing shortages, highlighting key considerations that shape housing policies and legal frameworks in the United States.

The Constitution of the United States, through its amendments and interpretations by the Supreme Court, plays a significant role in shaping housing rights and regulations. The Fifth and Fourteenth Amendments guarantee that no person shall be deprived of life, liberty, or property without due process of law.[3] This principle is relevant in housing cases where eviction or displacement may occur due to economic or regulatory factors.

Government policy aimed at addressing housing must also address the Fifth Amendment's Takings Clause. The Takings Clause addresses the government's power to take private property for public use.[4] In housing policy, the Takings Clause typically takes effect when a government uses eminent domain to acquire land for development, this is known as a physical taking.[5] On the other hand, a regulatory taking occurs when government restrictions on

[3] *Constitution.Congress.Gov*, https://constitution.congress.gov/browse/amendment-14/.
[4] *Fourth Amendment*, US Law https://www.law.cornell.edu/wex/fourth_amendment.
[5] Armstrong v. United States, 364 U.S. 40, 80 S. Ct. 1563, 4 L. Ed. 2d 1554 (1960)

3

University of Wyoming - Ben Wall Research Paper_Page_03

the permissible use of private property are so severe that they render the property effectively unusable by the owner.[6]

The policy goals surrounding compensation for regulatory takings are found in Armstrong v United States (1960), where the Supreme Court wrote that: "The Fifth Amendment's [Takings Clause] . . . was designed to bar government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole".[7] Specifically, when a government wants to create a program aimed at increasing moderate-income housing, this alone cannot fall on landlords and developers but the public as a whole to solve the issue.

Land use regulations imposed on developers are often called exactions or impact fees. "Exactions are conditions imposed by governmental entities on developers for the issuance of a building permit or subdivision plat approval.[8] Often, exactions come in the form of mandatory land dedications or monetary obligations forced on developers as a condition of development.[9]

The U.S. Supreme Court has held that development exactions must have an "essential nexus" with "rough proportionality" to the public burdens that the development will impose on government.[10] Moreover, requiring payment in exchange for a land-use permit is considered unconstitutional under the takings clause unless the government can demonstrate the essential nexus and rough proportionality between the requested money and the societal costs of the development.[11]

[6] *Id*
[7] *Id*
[8] *B.A.M. I*, 2006 UT 2, ¶ 34, 128 P.3d 1161.
[9] Alpine Homes, Inc. v. City of W. Jordan, 2017 UT 45, ¶ 19, 424 P.3d 95, 103
[10] *Alpine Homes, Inc. v. City of W. Jordan*, 2017 UT 45, ¶ 20, 424 P.3d 95, 103 citing *Nollan v. California Coastal Commission*, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994)
[11] Alpine Homes, Inc. v. City of W. Jordan, 2017 UT 45, ¶ 24, 424 P.3d 95, 104

4

University of Wyoming - Ben Wall Research Paper_Page_04

The Fair Housing Act (F.H.A.), a landmark piece of federal legislation, is a pivotal component of the legal framework governing housing rights and access in the United States. Enacted in 1968 as part of the Civil Rights Act, the F.H.A. aims to combat housing discrimination, promote housing opportunities, and provide safeguards for vulnerable populations, including low and middle-income individuals. [12]

Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended, "prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, because of race, color, religion, sex (including gender identity and sexual orientation), familial status, national origin, and disability".[13] Notably, the F.H.A. requires any federal programs relating to housing and urban development be administered in a manner consistent with those same principles of fairness.[14] This is further outlined in *42 U.S.C. § 5309*, which states in relevant part that "[n]o person in the United States shall on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this chapter."[15] This means that any program that is aimed at addressing shortages in housing opportunities for low- or middle-income households must comply with the fairness and anti-discriminatory principle as outlined in the F.H.A.

//

//

[12] *HUD.gov / U.S. Department of Housing and Urban Development (HUD)*, HUD.gov / U.S. Department of Housing and Urban Dev https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_act_overview..
[13] *42 U.S.C. §§ 3601-19*
[14] *Id*
[15] *42 U.S.C. §§ 5309*

III. Local Government Actions

Although the definition may vary by jurisdiction, moderate-income housing is defined as "housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross income for households of the same size in the county in which the City is located".[16] Local governments can play a key role in addressing the shortage of moderate-income housing opportunities for the residents of their communities. Local governments can plan for and direct housing projects that target and ensure that more people in an area can experience home ownership, including those who fall into moderate-income households.[17]

Housing shortages exist on every level, from homelessness to low-income housing shortages. In Utah, all cities have been charged with the goal of incorporating moderate-income elements into their general plans with the objective "to meet the needs of people of various income levels living, working, or desiring to live or work in the community."[18] Utah was recently ranked 45th out of the 50 states when it comes to affordable housing.[19] This stands in contrast to the State ranking 2nd for the lowest poverty rate. These numbers highlight the need for reform in the moderate-income housing sector.

The state laws that govern moderate-income housing in Utah are found in Utah Code Section 10-9a-535. Section 10-9a-535(1) dictates that a municipality can only mandate the inclusion of a specific number of moderate-income housing units as part of a land use application

[16] Amendment sections 17-27a-103(43).
https://jobs.utah.gov/housing/affordable/moderate/index.htmlhttps://le.utah.gov/xcode/Title17/Chapter27A/17-27a-S103.html
[17] *Planning*, https://jobs.utah.gov/housing/affordable/moderate/index.html.
[18] https://jobs.utah.gov/housing/affordable/moderate/index.htmlhttps://le.utah.gov/xcode/Title17/Chapter27A/17-27a-S103.html
[19] *Expert Advice On Improving Your Home*, Today's Homeowner (Nov. 8, 2023), https://todayshomeowner.com.

approval if one of the following conditions is met: (1) the municipality and the applicant reach a formal written agreement specifying the number of moderate-income housing units or (2) the municipality offers incentives to applicants who voluntarily choose to incorporate moderate-income housing units within their development.[20] Despite the State of Utah's call to encourage developers to participate in the goal of creating moderate-income housing opportunities, Section 10-9a-535(2) qualifies that if an applicant declines to engage in the creation of moderate-income housing units as outlined in Subsections (1)(a) or (b), the municipality is not permitted to factor the applicant's choice into their decision to grant or reject a land use application. This means that municipalities, not developers, must carry the burden of creating solutions that increase the abundance of moderate-income housing.

To encourage municipalities to engage in the moderate-income housing crisis, Utah adopted code section 10-9a-403. Section 10-9a-403 requires a municipality, in their general plan, to have a moderate-income housing element that "provides a realistic opportunity to meet the need for additional moderate-income housing within the municipality during the next five years."[21] Moreover, for towns, the plan may include "a recommendation to implement three or more of the moderate-income housing strategies described in Subsection (2)(b)(iii)".[22] Subsection (2)(b)(iii) of Utah code 10-9a-403 gives an extensive list of options that a town could adopt to be in alignment with the state directive. Rather than discuss all of the suggested strategies of Subsection (2)(b)(iii), this paper will focus on Subsection (2)(b)(iii)(K) which reads as follows:

[20] *Utah Code Section 10-9a-535*, https://le.utah.gov/xcode/Title10/Chapter9A/10-9a-S535.html?v=C10-9a-S535_2022050420220504.
[21] *Utah Code Section 10-9a-403*, https://le.utah.gov/xcode/Title10/Chapter9a/10-9a-S403.html.
[22] *Id*

> "[P]reserve existing and new moderate income housing and subsidized units by utilizing a landlord incentive program, providing for deed restricted units through a grant program, or, notwithstanding Section 10-9a-535, establishing a housing loss mitigation fund"[23]

In response to the urgent need for housing solutions that cater to individuals and families with moderate incomes, municipalities across the nation have been actively developing local programs to address the issue. These initiatives are dedicated to both the creation and preservation of housing units that are not only affordable but also sustainable in meeting the evolving housing needs of their residents. In this exploration of these initiatives, we will delve into (1) landlord incentive programs, (2) deed-restricted units through grant programs, and (3) housing loss mitigation funds.

A. Landlord Incentive Programs:

Landlord incentive programs are programs designed to increase affordable housing in an area by gaining the cooperation of landlords, as these programs are strictly voluntary. It is important for governments, both locally and nationally, to incentivize landlords to want to participate or, at the very least, be willing to participate in these programs.

The goal of landlord incentive programs is to encourage private property owners and landlords to offer their properties at affordable rental rates to meet the needs of their communities. Because it is not the duty of landlords to solve moderate-income housing shortages, it is important to offer incentives that make it worth a landlord's resources to participate. The incentives that these programs provide often come in the form of financial

[23] *Id*

incentives to landlords, such as rent subsidies, grants, or tax credits in exchange for keeping their units at an affordable rate for tenants.[24] When landlords are enticed to participate in these voluntary programs, there is an increase in affordable rental units in the market, thus bridging the gap between a municipality's desire to create more affordable housing and a landlord's private property rights.

Many landlords fail to participate in programs that impede on their private property rights, diminish the money they could be making, or receive financial harm from careless tenants who treat their property without care.

In Marin County, California, there has been an affordable housing crisis for many years. As of 2018, the monthly median rent for a one-bedroom apartment in the county was $2,940. There is a federal housing initiative that offers vouchers for families with low incomes. For individuals and families participating in the Housing Choice Voucher (HCV) program, the ability to secure housing in the area they desire is up to the willingness of landlords in the private market to accept vouchers. The issue in Marin County, California, is that under the voucher system, the tenants are often stigmatized as the types of tenants who would cause property damage to a landlord's property, thus disincentivizing voluntary participation in such a program.[25]

In response to the unwillingness of landlords to participate in this program, the Marin Housing Authority began partnering with landlords to better incentivize participation. The group was able to identify three barriers for landlords and tenants: "security deposits, burdens during tenant vacancy, and the perception that voucher holders will damage units. To reduce these

[24] HUD Exchange https://www.hudexchange.info/trainings/courses/ehv-landlord-engagement-webinars-landlord-incentives/.
[25] *PHAs Encourage Landlord Participation With Incentives*, HUD USER https://www.huduser.gov/portal/periodicals/em/winter19/highlight3.html.

University of Wyoming - Ben Wall Research Paper_Page_09

barriers, L.P.P. offers security deposits, damage protection, and vacancy loss coverage as well as a customer service hotline and workshops". With these incentives in place, Marin County saw a significant increase in the number of landlords who participated in the program, and the percentage of voucher holders who were actually able to use their vouchers increased from 30% to 59.52%.

Although the Marin County issue focused on a shortage of low-income housing options for people participating in the HCV program, landlords are likely to hold similar concerns in the application to moderate-income housing. Because finances are the biggest repellent to potential landlord participation, financial incentives can provide the greatest enticement to landlords. Some housing authorities cover security deposits or agree to pay for damages more than the security deposit amount if any damages exist.[26]

Most landlord incentive programs are directed at low-income households under the federal voucher system; however, the examples of incentives may be able to be tailored to moderate-income housing at a local level. The biggest drawback of these incentive programs is that there must be some level of governmental subsidy that covers things like property damage, rental prices, and vacancies.

There are also several low and no-cost incentives that can also be given to landlords. Some of these programs can include items such as:

- "Provide access to free one-on-one technical help with specific management or maintenance problems. The municipality can line up a small group of people, including property managers, lawyers, and the like, who agree to be available for a modest amount of time for this program.
- Designate a police officer as an ongoing liaison with landlords to assist not only in crime-free programs but also with specific problems or concerns.

[26] https://localhousingsolutions.org/housing-policy-library/landlord-recruitment-and-retention/

University of Wyoming - Ben Wall Research Paper_Page_10

- Regular (monthly or bi-monthly) forums between key municipal officials and landlords where both municipal and landlord concerns can be discussed informally and openly.
- Provide fast-track approval of permits for property improvements
- Offer free advertising of available rentals on the municipal website and in local newspapers, particularly free weekly merchandising papers.
- Negotiate discounts for good landlords on goods and services at local merchants or from local contractors.
- Provide free or low-cost equipment such as smoke or carbon monoxide detectors, security locks, etc. Municipalities may be able to acquire these in bulk from retailers either as a contribution or at a significantly discounted cost.
- Provide free radon testing.
- Offering good landlords reduced fees for fee-charged municipal services, such as building permit fees for property improvements, crime-free housing fees, or garbage removal fees, where feasible.
- Structuring fees associated with rental properties to function as incentives, by adjusting the fee in keeping with landlord performance as discussed below". [27]

The city of Glenwood, Colorado, has developed, by way of an ordinance, an incentive program for developers who take part in their inclusionary housing program. Glenwood Springs ordinance reads as follows:

(a) Any residential or mixed-use development proposing to create one (1) or more residential dwelling units may be eligible for the following incentives when providing deed restricted Community Housing in the form of Resident Occupied Community Housing, For Sale Community Housing and/or Rental Community Housing that is deed restricted in accordance with the City's Community Housing Standards and Guidelines.

(1) Density Bonus. As part of any new residential or mixed-use development, the City may offer a density bonus.

(2) Site Design Flexibility. Provided that the housing goals and eligibility requirements are met and provided that the intents and purposes of this Title are not compromised, the City may consider flexible application of design standards including, but not limited to minimum lot size, building height, lot coverage, impervious coverage, setbacks and landscaping.

(3) Public-Private Partnerships. The City may participate in, or facilitate participation with other governmental entities regarding financing or purchasing of Community Housing units directly from the applicant or by other means of subsidy or participation.

[27] https://mayorscaucus.org/wp-content/uploads/2016/01/SSMMA_landlord-incentives_how-to-guide_final-am-12-28-15.pdf

11

University of Wyoming - Ben Wall Research Paper_Page_11

(4) Tax Rebate or Reduction. The City Council may at its sole discretion waive, reduce or rebate property, construction use, or other tax applicable to the project.[28]

The density bonuses, site design flexibility, and tax rebates or reductions found in Glenwood's ordinance are incentives that could be easily adopted by many other municipalities around the country without adding any additional cost or need for any fund allocations.

B. Deed Restricted Programs

Deed-restricted homeownership is a means to guarantee home ownership affordability in a community. "A deed restriction is a provision in a deed that imposes a limitation, condition, or other restriction upon how the grantee may use the property being conveyed by the deed."[29] Deed restrictions can be used for new home developments that impose a restriction on either a portion or all of a new development to guarantee long-term affordability. Deed-restricted programs place legal restrictions or covenants on a property's deed, which ensures that the housing unit remains affordable for a specified period, even if the property changes ownership.[30] The benefit of deed-restricted programs is to create a constant supply of affordable housing units that remains affordable to moderate-income households, preventing issues in the future like gentrification and displacement.

Park City, Utah. is an example of a city that has adopted a deed restriction program. Park City is a world-class tourism destination with a median house price of $1.8 million.[31] In order to maintain the necessary workforce to keep the city functioning, it was necessary for the City to implement a program that kept the middle working class from being priced out of living in Park

[28] https://www.cogs.us/ArchiveCenter/ViewFile/Item/2133
[29] *Deed Restriction Program Housing North*, Housing North https://www.housingnorth.org/deed-restriction-program.
[30] *Id*
[31] https://www.redfin.com/city/15045/UT/Park-City/housing-market

12

University of Wyoming - Ben Wall Research Paper_Page_12

City. The deed-restricted properties in Park City are provided at a considerable discount to the market rate. Park City sets the following conditions for deed-restricted housing:

- Owners must live in the property full-time as their primary residence.
- There is a limit on annual appreciation of 3% with no guarantee that a seller will be able to garner that amount when they sell.
- Allowed capital improvements are limited to an approved list, and the maximum value that can be added to the resale value is limited to 5% of the purchase price.
- The City holds a first option to purchase when the owner chooses to sell.
- If the City doesn't exercise its option to purchase, the property must be sold to a qualified household, reviewed and approved by the City's Housing Office. The City's Housing Office will assist with the sale process.
- Property may not be transferred via inheritance or deed in any form.
- Property may not be incorporated into a Trust of any kind.
- Home may not be rented without prior consent of the City Housing Office, which occurs in very limited circumstances.
- Owners may rent an extra bedroom to a roommate with prior approval from the City Housing Office.
- Owners may not own other property while owning the Deed Restricted unit.
- Annual compliance reports are due to the City's Housing Office in late spring of each year (forms are provided by the City's Housing Office).[32]

To maintain a flow of deed-restricted properties, Park City holds the right of first refusal when deed-restricted properties are sold, mandating that the City processes any such sales.[33]

In Mountain Village, Colorado, another luxury tourist destination, the City cut development fees and building permit fees for deed-restricted developments to try and entice developers to participate in the process of creating moderate-income housing both now and into the future.[34] In this Colorado project, for example, a building permit for a property with a $1 million valuation would cost approximately $85,000, while under the program, a deed-restricted property would cost around $9,000.[35]

[32] *Owning a Deed Restricted Property*, Park City, UT https://www.parkcity.org/departments/find-affordable-housing/selection-process/deed-restrictions.
[33] *Community Housing Resources*, Park City, UT https://www.parkcity.org/departments/find-affordable-housing/resources.
[34] *Deed-Restricted Building Fee Waiver Incentive*, Town of Mountain Village https://townofmountainvillage.com/community/housing/deed-restricted-workforce-housing-incentive/.
[35] *Id*

Much like Park City, Utah, both Garfield County and the city of Glenwood Springs in Colorado face similar issues with affordable housing, specifically when it comes to keeping moderate-income employees living in the area. To address the needs of its residents. Garfield County every year calculates the Area Median Income (AMI) and creates four categories of people who can participate in their program. Much of the Garfield County and Glenwood Springs programs are centered around deed-restricted units.[36]

Glenwood Springs has a Community Housing Program that requires that new residential development provide 20% of the housing produced to be restricted to occupied by residents and at least 10% of the housing developed to be affordable to households earning up to 100% of the area median income as outlined in their guidelines. Moreover, the program is aimed at incentivizing and mitigating the cost of producing affordable housing. The deed-restricted properties are dispersed throughout the City of Glenwood Springs. To maintain the deed restriction status, these properties have a maximum resale price with a 3% annual appreciation based on the Consumer Price Index for Garfield County.[37]

C. Housing Loss Mitigation Funds:

Housing loss mitigation funds are funding programs that are aimed at addressing challenges related to affordable housing. The goal of housing loss mitigation funds is to offer financial assistance to cities or individual who are facing the challenge of obtaining or offering affordable housing. Housing mitigation funds are generally established by government agencies or non-profit organizations. The funds for these programs can come from a variety of sources,

[36] *Garfield County Community Housing*, http://garfieldhousing.com/garfield-county-guidelines/.
[37] *City of Glenwood Springs Community Housing Program*, http://garfieldhousing.com/city-of-glenwood-springs-community-housing-guidelines/.

such as government allocations or private investments. One of the biggest hurdles for housing mitigation funds is obtaining sufficient funding to meet the needs of the interested party.

In 2022, Colorado passed Proposition 123, which authorized the state to retain money from existing state tax revenue to support affordable housing endeavors.[38] The fund dedicates 40% of funds to the Affordable Housing Support Fund administered by the Department of Local Affairs (DOLA) and 60% to the Affordable Housing Financing Fund administered by the Office of Economic Development and International Trade (OEDIT) in partnership with the Colorado Housing and Finance Authority (CHFA). Non-profits, community land trusts, private entities, and local governments in Colorado may be eligible for either loans or grants from the affordable housing fund. To be eligible for the fund, interested municipalities must commit to increasing their existing affordable housing units by 3% per year and include an expedited review process for developments for affordable housing.[39]

There are many issues that arise when it comes to creating new taxes to fund programs aimed at creating and maintaining affordable housing. However, it is not always necessary to create new taxes; one alternative to new taxes is to reallocate the use of current tax dollars within a state. Colorado's State Affordable Housing Fund is drawn from 0.1% of all state income tax revenue.[40] Under Proposition 123, the State Affordable Housing Fund for 2022-2023 is estimated to collect $145 million from tax revenue, with the following year increasing to an estimated $290 million.[41]

[38] *Proposition 123 - Colorado Affordable Housing Financing Fund*, Proposition 123: Affordable Housing Financing Fund https://coloradoaffordablehousingfinancingfund.com.
[39] *Proposition 123*, Colorado Office of Economic Development and Intern https://oedit.colorado.gov/proposition-123-colorado-affordable-housing-financing-fund.
[40] *Proposition 123 - Colorado Affordable Housing Financing Fund*, Proposition 123: Affordable Housing Financing Fund https://coloradoaffordablehousingfinancingfund.com.
[41] https://www.coloradofiscal.org/proposition-123-affordable-housing/blog/

University of Wyoming - Ben Wall Research Paper_Page_15

On a smaller scale and in the context of a local government, Moab, Utah, in conjunction with Grand County, has met regularly to address the issue of housing shortages. With their constant work on the issue, Moab was recently able to allocate $150,000 to affordable housing. Although municipalities have access to fewer funds, it is still possible for them to reallocate current funds to prioritize moderate-income housing shortages.

In Park City, Utah, the Park City Community Foundation, in conjunction with the Mountainlands Community Housing Trust, are working with philanthropists to support affordable housing. The foundation is using a $1 million matching grant program to fund a multimillion-dollar redevelopment project to increase the number of affordable apartments in Park City.[42]

Salt Lake City, Utah has also been addressing the need for more affordable housing. Salt Lake City has generated new revenue in the City's Housing Stability budget which will be used to help establish long-range funding mechanisms to increase the supply of affordable housing. The City's new Growing SLC plan identified strategies to provide low-interest loans to affordable housing developers, support down payment assistance strategies and provide case managers for those looking for affordable housing solutions. Some of these funds come from outside sources as well as some allocations from income tax.[43]

IV. Community Benefits Agreements (CBA)

A Community Benefits Agreement or CBA is a legally binding agreement contractually made between a developer and either a community or organization representing a community.

[42] https://parkcitycf.org/how-we-work/growing-community-initiatives/housing-fund/
[43] *Growing SLC*, Community and Neighborhoods https://www.slc.gov/can/growing-slc/.

University of Wyoming - Ben Wall Research Paper_Page_16

The contract made between the parties outlines the benefits that the community will receive in exchange for the development project occurring in their community.[44]

CBAs bring a wide range of benefits to the communities that the impact. The benefits that communities can expect to see are "guaranteed minimums for local hiring, inclusion of affordable units in new housing, and the development or improvement of parks or community facilities".[45] Moreover, in communities with rapid growth and development CBAs can create more opportunity for affordable housing.

Both members of the community and developers have important roles in effectively carrying out CBAs. Community members must educate themselves by researching both the intended development but also the potential benefits that could come from the project. Moreover, community members must organize themselves into coalition that will represent the community. Lastly, community members should engage regularly with the developer to create an environment of effective communication.[46]

Local governments also play a key role in these agreements. This can be done by local governments informing community members and groups of the proposed project, encouraging good-faith negotiations with community organizations, and honoring and respecting the decisions and agreements reached by members of their community.[47]

There are many examples of successful CBAs that have occurred around the Unites States. One of the largest CBA's was the Staples Center Development in Los Angeles California.

[44] https://www.lisc.org/our-resources/resource/community-benefits-agreements-toolkit/
[45] *Id*
[46] *Id*
[47] https://www.energy.gov/justice/articles/community-benefit-agreement-cba-resource-guide-faqs

University of Wyoming - Ben Wall Research Paper_Page_17

The most notable benefit of the Staples center CBA was that 20% of the housing in the development project was to be designated as affordable housing.[48]

Another successful CBA occurred in New York City, at the Kingsbridge Armory. At Kingsbridge, the old armory was converted into a hockey rink for the community. The benefit given to the community was that half of the jobs created by the project were given to local workers to stabilize and stimulate the local economy.[49]

In Wisconsin, a redevelopment project of an industrial zone was completed. There was a major focus on creating an environmentally friendly benefits like cleaner air as well as providing small business support.[50]

CBAs have become increasingly relevant due in part to the Inflation Reduction Act. The Inflation Reduction Act, established in 2022, is a federal investment-based program aimed at building a clean energy economy to combat the growing climate crisis.[51].The Act works to incentive clean energy jobs, by providing increased tax benefits to taxpayers who pay employers prevailing wages for certain jobs in clean energy projects.[52]The mechanism that moves this program forward is known as a Project Labor Agreement or PLA. Like a CBA, PLAs are collective bargaining agreements that are negotiated between construction employers and construction unions.[53] In the context of the Inflation Reduction Act, as stated above, PLAs can help taxpayers gain tax benefits by providing prevailing wage and apprenticeship requirements.

[48] La Risa Lynch, *Five community benefits agreements that worked*, The Chicago Reporter (May 24, 2016), https://www.chicagoreporter.com/how-neighborhoods-have-held-developers-accountable-to-their-needs/.
[49] *Id*
[50] *30 Street Corridor*, MMSD (Nov. 4, 2021), https://www.mmsd.com/what-we-do/flood-management/milwaukee-watershed-projects/30th-street-corridor.
[51] *The Inflation Reduction Act and Qualifying Project Labor Agreements*, U.S. Department of Labor https://www.dol.gov/general/inflation-reduction-act-tax-credit/project-labor-agreements.
[52] *Id*
[53] *Id*

University of Wyoming - Ben Wall Research Paper_Page_18

all while encouraging the construction of clean energy projects[54]. There are many benefits of PLAs including:

- Reducing costs by increasing efficiency and coordination;
- Reducing uncertainty in the contracting process;
- Supporting contractor access to skilled workers;
- Improving worker safety and health outcomes;
- Expanding workforce training pathways for clean energy jobs; and.
- Preventing labor disputes (and related delays) on projects.
- Incorporating objectives for hiring local community members.[55]

Another very important benefit of these community benefit programs is they can be tailored to the specific needs of the communities, and involved government entities. For example, on the topic of affordable housing, communities can get developers to agree to invest in affordable housing within the community through the use of these agreements[56].

The Department of Energy (DOE) requires that CBAs or PLAs are used in all Inflation Reduction Act fundings.[57] These programs operate off of a application system and "when an applicant is selected, their Community Benefits Plan will be part of the contractual obligation of the funding recipient".[58]

An added benefit of these programs is the engagement of local stakeholders such as labor unions, local governments, and other community-based organizations. When these stakeholders are properly engaged it can "lead to stronger project plans, increased transparency, and the reduction or elimination of certain associated risks".[59]

[54] *Id*
[55] *Id*
[56] https://rmi.org/community-benefits-plans-driving-equitable-clean-energy-development/.
[57] *About Community Benefits Plans,* Department of Energy https://www.energy.gov/infrastructure/about-community-benefits-plans.
[58] *Id*
[59] *Id*

Although there are many benefits to CBAs they are come with some drawbacks. CBAs take time to develop and with the use of attorneys to formalize the agreements the more time the agreements take the more expensive they become. Another issue with CBAs is that they can create unnecessary expenses for developers who might otherwise still be able to proceed with their development project in that area.[60]

V. Challenges and Critiques

Anytime a federal or local housing program is implemented, there will always be pushback and potential drawbacks and challenges. However, these programs play a fundamental role in addressing housing inequality and ensuring that all citizens, including low- and moderate-income households, have access to affordable housing. However, these programs are not without their drawbacks and challenges.

One of the primary challenges is the limited funding available for housing programs. Many local governments already run on tight budgets, and trying to implement new affordable housing policies can be an expensive process. Moreover, in Utah, under the general plan guidelines outlined above, "starting in 2024, a $250/day penalty fee will be applied to communities which are determined to be non-compliant" and "[a]t the beginning of a community's consecutive year of being ineligible for funds, the fee will double to $500/day."[61] Not only will local governments be pressed financially to implement the State's policies, but they will eventually be fined $500 per day, thus adding additional budgetary concerns.

It is worth noting that many of the cities with successful programs aimed at affordable housing in Utah and elsewhere around the county are in areas with high tourism and, therefore,

[60] https://www.epa.gov/system/files/documents/2023-04/Brownfields_CBA_FINAL.pdf
[61] *Planning*, https://jobs.utah.gov/housing/affordable/moderate/.

have higher budgets to allocate to programs designed to increase affordable housing. Moreover, there is also a bigger push for these cities to increase affordable housing because their working class is being priced out of the area, leaving many vacancies in essential jobs and services.

Another issue surrounding programs designed to increase the availably of affordable housing is bureaucracy and administrative issues. Government housing programs often suffer from administrative inefficiencies and bureaucratic red tape, which can slow down the process of obtaining assistance. In many cases, for local governments, a state may impose guidelines on ways to potentially increase affordable housing but fail to provide enough resources and explanations to assist these governments in carrying out the proposal.

It is important to note that in Utah, a municipality may only require a certain number of moderate-income housing units as a condition of approval of land use application if the applicant and the municipality agree in writing regarding the number of moderate-income housing units or the municipality provides incentives for an applicant who agrees to include moderate-income housing units in a development. If an applicant does not want to participate, their refusal to participate should not be a consideration in approving or denying a land use application.[62].

In some cases, housing programs may fail to keep pace with the demand for affordable housing. In areas where populations are experiencing large increases, local governments may struggle to keep pace with the amount of people in need of low- and moderate-income housing. Even for example, when deed-restricted units are perfectly executed, or ideal landlord incentive programs have been in place, it can still result in long waiting lists and a shortage of available units, making it difficult for people to access the assistance they need in a timely manner.

[62] *Utah Code Section 10-9a-535*. https://le.utah.gov/xcode/Title10/Chapter9A/10-9a-S535.html?v=C10-9a-S535_2022050420220504.

University of Wyoming - Ben Wall Research Paper_Page_21

Affordable housing shortages may not be evenly distributed across all regions, even in the same State. Some areas may have better access to housing assistance, while others face severe shortages or lack such programs altogether, exacerbating regional disparities. In addition, in states where they push local government action on their cities, not all cities will be affected to the same extent. Additionally, and as stated above, some cities might be in a place where they can afford, for example, a $500 fine for non-compliance where another city's budget is already stretched to the max.

As stated above, housing policies are a subject of ongoing legal and ethical debates, often reflecting the tensions between individual property rights, government intervention, and societal obligations.

There is an ongoing debate about the balance between an individual's property rights and the government's authority to regulate housing for the greater public interest. Critics argue that excessive regulation infringes on property rights, which typically affects property owners' and developers right to build without being impeded by conditions placed on them by municipalities. On the other hand, proponents stress the need for housing policies to address societal problems, including population growth and affordable housing.

Another ethical consideration is ensuring meaningful community engagement in housing policy decisions. Government, in general, should be for the people. There is a fine balance in the policymaking process, and incorporating diverse perspectives and needs into decisions that affect housing development in municipalities.

Lastly, as the world faces climate change challenges, housing policies must take into consideration things such as sustainable building, energy efficiency, and their impacts on the

University of Wyoming - Ben Wall Research Paper_Page_22

environment. While new developments can create additional housing units, they also take up wild undeveloped lands which can negatively affect an areas ecosystem.

VI. Recommendations and Future Directions

Because funding is the central issue in most programs aimed at creating affordable housing, states like Utah may want to follow the pattern set by Colorado and reallocate income tax funds to contribute to creating affordable housing funds. Utah's general housing plans' inclusion of local government initiatives is imperative to solving affordable housing shortages around the state: however, unless cities have a large tourism and recreation population, the funds to create any meaningful program probably don't exist. This is why a state fund can bridge the gap and create the fuel to make local government action a reality.

Another recommendation is targeted at local governments. When cities have too strict housing codes and ordinances, it bars the development of new affordable housing units. The city of Moab and Grand County in Utah created a commission to figure out the barriers that prevented new affordable housing units. The commission identified the following areas that could possibly be changed to encourage affordable housing:

- Lot size
- Lot width
- Density
- Densities in Planned Unit Development
- Densities in Master Planned Development
- Minimum home size
- Open space requirements for apartments
- Secondary dwelling regulations
- Excessive street widths
- Setbacks
- Height restrictions
- Inflexible sidewalk standards
- Value to community to have mixed economic levels in neighborhoods (lack of inclusionary zoning)

When local governments loosen some of their building requirements, it can create more of a market for affordable housing options to pop up. Changing these policies creates incentives for developers and individuals to build affordable housing units.

There exists in many communities the issue of NIMBY or Not in My Back Yard when it comes to the idea of creating more affordable housing options for many areas. people are in favor of these programs, however when it comes time to implement non-traditional housing development in their area many people push back and fight those developments. It is imperative that local governments are conscious of the larger issue at hand and focus less on the transformations that can come from these non-traditional housing options and more on their large-scale benefits.

VII. Conclusion

In conclusion, there remain extensive challenges for local, state, and federal governments who want to develop programs aimed at moderate-income housing shortages. The issues surrounding moderate-income housing shortage covers legal, policy and community-based elements. Moreover, many of the initiatives taken by governments if improperly executed can run into various constitutional concerns.

While there are no easy solutions to addressing the housing shortage, local governments can implement tactics like landlord incentive programs, deed-restricted units, and housing loss mitigation funds to help fill the need for more moderate-income housing options in their communities. While there are many free or more affordable options for addressing the shortage, unfortunately, many successful programs that have addressed housing shortages have required the use of additional funds to create more affordable housing. Because of this local and state governments must work together to find or reallocate money to support these initiatives.

25

University of Wyoming - Ben Wall Research Paper_Page_25

VIII. References

1. **30 Street Corridor, MMSD (Nov. 4, 2021)**
   - https://www.mmsd.com/what-we-do/flood-management/milwaukee-watershed-projects/30th-street-corridor
2. **42 U.S.C. §§ 3601-19**
   - https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_act_overview
3. **42 U.S.C. §§ 5309**
   - [No specific link provided]
4. **Alpine Homes, Inc. v. City of W. Jordan, 2017 UT 45, ¶ 19, 424 P.3d 95, 103**
   - [No specific link provided]
5. **Alpine Homes, Inc. v. City of W. Jordan, 2017 UT 45, ¶ 20, 424 P.3d 95, 103 citing Nollan v. California Coastal Commission, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987), and Dolan v. City of Tigard, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994)**
   - [No specific link provided]
6. **Alpine Homes, Inc. v. City of W. Jordan, 2017 UT 45, ¶ 24, 424 P.3d 95, 104**
   - [No specific link provided]
7. **Amendment sections 17-27a-103(43).**
   - https://le.utah.gov/xcode/Title17/Chapter27A/17-27a-S103.html
8. **Armstrong v. United States, 364 U.S. 40, 80 S. Ct. 1563, 4 L. Ed. 2d 1554 (1960)**
   - [No specific link provided]
9. **Average Rent by State 2023**

26

University of Wyoming - Ben Wall Research Paper_Page_26

- https://worldpopulationreview.com/state-rankings/average-rent-by-state

10. B.A.M. I, 2006 UT 2, ¶ 34, 128 P.3d 1161.
    - [No specific link provided]
11. City of Glenwood Springs Community Housing Program
    - http://garfieldhousing.com/city-of-glenwood-springs-community-housing-guidelines/
12. Community Housing Resources, Park City, UT
    - https://www.parkcity.org/departments/find-affordable-housing/resources
13. Constitution.Congress.Gov
    - https://constitution.congress.gov/browse/amendment-14/
14. Deed Restriction Program — Housing North, Housing North
    - https://www.housingnorth.org/deed-restriction-program
15. Deed-Restricted Building Fee Waiver Incentive, Town of Mountain Village
    - https://townofmountainvillage.com/community/housing/deed-restricted-workforce-housing-incentive/
16. Expert Advice On Improving Your Home, Today's Homeowner (Nov. 8, 2023)
    - https://todayshomeowner.com
17. Fourteenth Amendment, US Law
    - https://www.law.cornell.edu/wex/fourth_amendment
18. Garfield County Community Housing
    - http://garfieldhousing.com/garfield-county-guidelines/
19. HUD Exchange

University of Wyoming - Ben Wall Research Paper_Page_27

- https://www.hudexchange.info/trainings/courses/ehv-landlord-engagement-webinars-landlord-incentives/

20. HUD.gov / U.S. Department of Housing and Urban Development (HUD)
    - https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_act_overview
21. Inflation Reduction Act and Qualifying Project Labor Agreements, U.S. Department of Labor
    - https://www.dol.gov/general/inflation-reduction-act-tax-credit/project-labor-agreements
22. La Risa Lynch, Five community benefits agreements that worked, The Chicago Reporter (May 24, 2016)
    - https://www.chicagoreporter.com/how-neighborhoods-have-held-developers-accountable-to-their-needs/
23. Owning a Deed Restricted Property, Park City, UT
    - https://www.parkcity.org/departments/find-affordable-housing/selection-process/deed-restrictions
24. PHAs Encourage Landlord Participation With Incentives, HUD USER
    - https://www.huduser.gov/portal/periodicals/em/winter19/highlight3.html
25. Planning
    - https://jobs.utah.gov/housing/affordable/moderate/index.html
26. Proposition 123 - Colorado Affordable Housing Financing Fund
    - https://coloradoaffordablehousingfinancingfund.com
27. Proposition 123, Colorado Office of Economic Development and Intern

University of Wyoming - Ben Wall Research Paper_Page_28

- https://oedit.colorado.gov/proposition-123-colorado-affordable-housing-financing-fund

28. **Proposition 123 - Colorado Affordable Housing Financing Fund**
    - https://coloradoaffordablehousingfinancingfund.com
29. **Redfin - Park City, UT Housing Market**
    - https://www.redfin.com/city/15045/UT/Park-City/housing-market
30. **The Inflation Reduction Act and Qualifying Project Labor Agreements, U.S. Department of Labor**
    - https://www.dol.gov/general/inflation-reduction-act-tax-credit/project-labor-agreements
31. **The State Of The Nation's Housing 2023, (June 7, 2023)**
    - https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_The_State_of_the_Nations_Housing_2023.pdf
32. **Today's Homeowner - Expert Advice On Improving Your Home (Nov. 8, 2023)**
    - https://todayshomeowner.com
33. **Town of Mountain Village Community Housing**
    - http://garfieldhousing.com/garfield-county-guidelines/
34. **Utah Code Section 10-9a-403**
    - https://le.utah.gov/xcode/Title10/Chapter9a/10-9a-S403.html
35. **Utah Code Section 10-9a-535**
    - https://le.utah.gov/xcode/Title10/Chapter9A/10-9a-S535.html?v=C10-9a-S535_2022050420220504
36. **U.S. Department of Energy - About Community Benefits Plans**

University of Wyoming - Ben Wall Research Paper_Page_29

Benjamin Wall
University of Wyoming College of Law
Local Government Assistance Practicum

Meeting the Middle: A Policy Framework for Moderate-Income Housing Accessibility

TABLE OF CONTENTS

INTRODUCTION......2
LEGAL ISSUES SURROUNDING HOUSING SHORTAGES......3
LOCAL GOVERNMENT ACTIONS......6
A. LANDLORD INCENTIVE PROGRAMS......8
B. DEED RESTRICTED PROGRAMS......12
C. HOUSING LOSS MITIGATION FUNDS......14
COMMUNITY BENEFITS AGREEMENTS (CBA)......16
CHALLENGES AND CRITIQUES......20
RECOMMENDATIONS AND FUTURE DIRECTIONS......22
CONCLUSION......24
REFERENCES......26

University of Wyoming - Ben Wall Research Paper_Page_01

I. Introduction

America has long been known as the land of opportunity. Thoughts of America often conjure up images of success and prosperity, all of which can be synthesized into what has classically been referred to as the American Dream. The American Dream is a belief that all citizens can reach an ideal level of living through hard work, determination, and equal opportunity. The American Dream often represents the pursuit of personal happiness, financial success, and, most notably, homeownership. In recent years, however, this dream has slipped out of reach for many, including moderate-income households. First-time home buying has recently plummeted, partly due to severely rising interest rates that have significantly increased the cost of homeownership, even for those with moderate incomes.

Monthly payments on the U.S. median-priced home with taxes and insurance included, as of March of 2023, have risen to $3,000 with interest rates around 6.5 percent.[1] Millions of renter households were also priced out of homeownership with the price of homes and interest rates. Moreover, this pricing issue also affects renters. The average household in America dedicates 33.1% of its budget to housing costs, with an average rental payment of $1,326 per month.[2] With this crisis looming, Federal, state, and local governments must do their part to mitigate the effects of the housing crisis in the United States.

This paper will examine the affordable housing issue that currently exists in the United States as well as focus on the legal, policy, and community-based solutions that are available to

[1] *The State Of The Nation's Housing 2023*, (June 7, 2023), https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_The_State_of_the_Nations_Housing_2023.pdf.
[2] *Average Rent by State 2023*, https://worldpopulationreview.com/state-rankings/average-rent-by-state.

University of Wyoming - Ben Wall Research Paper_Page_02

address the issue. The moderate and low-income housing shortage is a serious issue in the United States. This paper will highlight the issues relating to moderate-income housing, offer potential solutions, and address potential policy concerns.

II. Legal Issues Surrounding Housing Shortages

The United States affordable housing shortage raises several constitutional considerations that impact individuals and families. Housing, which is often regarded as a basic human need, intersects with fundamental constitutional principles and rights afforded to all Americans. This section explores the constitutional elements that are associated with housing shortages, highlighting key considerations that shape housing policies and legal frameworks in the United States.

The Constitution of the United States, through its amendments and interpretations by the Supreme Court, plays a significant role in shaping housing rights and regulations. The Fifth and Fourteenth Amendments guarantee that no person shall be deprived of life, liberty, or property without due process of law.[3] This principle is relevant in housing cases where eviction or displacement may occur due to economic or regulatory factors.

Government policy aimed at addressing housing must also address the Fifth Amendment's Takings Clause. The Takings Clause addresses the government's power to take private property for public use.[4] In housing policy, the Takings Clause typically takes effect when a government uses eminent domain to acquire land for development, this is known as a physical taking.[5] On the other hand, a regulatory taking occurs when government restrictions on

[3] *Constitution.Congress.Gov*, https://constitution.congress.gov/browse/amendment-14/.
[4] *Fourth Amendment*, US Law https://www.law.cornell.edu/wex/fourth_amendment.
[5] Armstrong v. United States, 364 U.S. 40, 80 S. Ct. 1563, 4 L. Ed. 2d 1554 (1960)

University of Wyoming - Ben Wall Research Paper_Page_03

the permissible use of private property are so severe that they render the property effectively unusable by the owner.[6]

The policy goals surrounding compensation for regulatory takings are found in Armstrong v United States (1960), where the Supreme Court wrote that: "The Fifth Amendment's [Takings Clause] . . . was designed to bar government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole".[7] Specifically, when a government wants to create a program aimed at increasing moderate-income housing, this alone cannot fall on landlords and developers but the public as a whole to solve the issue.

Land use regulations imposed on developers are often called exactions or impact fees. "Exactions are conditions imposed by governmental entities on developers for the issuance of a building permit or subdivision plat approval.[8] Often, exactions come in the form of mandatory land dedications or monetary obligations forced on developers as a condition of development.[9]

The U.S. Supreme Court has held that development exactions must have an "essential nexus" with "rough proportionality" to the public burdens that the development will impose on government.[10] Moreover, requiring payment in exchange for a land-use permit is considered unconstitutional under the takings clause unless the government can demonstrate the essential nexus and rough proportionality between the requested money and the societal costs of the development.[11]

[6] *Id*
[7] *Id*
[8] *B.A.M. I*, 2006 UT 2, ¶ 34, 128 P.3d 1161.
[9] Alpine Homes, Inc. v. City of W. Jordan, 2017 UT 45, ¶ 19, 424 P.3d 95, 103
[10] *Alpine Homes, Inc. v. City of W. Jordan*, 2017 UT 45, ¶ 20, 424 P.3d 95, 103 citing *Nollan v. California Coastal Commission*, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994)
[11] Alpine Homes, Inc. v. City of W. Jordan, 2017 UT 45, ¶ 24, 424 P.3d 95, 104

4

University of Wyoming - Ben Wall Research Paper_Page_04

The Fair Housing Act (F.H.A.), a landmark piece of federal legislation, is a pivotal component of the legal framework governing housing rights and access in the United States. Enacted in 1968 as part of the Civil Rights Act, the F.H.A. aims to combat housing discrimination, promote housing opportunities, and provide safeguards for vulnerable populations, including low and middle-income individuals. [12]

Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended, "prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, because of race, color, religion, sex (including gender identity and sexual orientation), familial status, national origin, and disability".[13] Notably, the F.H.A. requires any federal programs relating to housing and urban development be administered in a manner consistent with those same principles of fairness.[14] This is further outlined in *42 U.S.C. § 5309*, which states in relevant part that "[n]o person in the United States shall on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this chapter."[15] This means that any program that is aimed at addressing shortages in housing opportunities for low- or middle-income households must comply with the fairness and anti-discriminatory principle as outlined in the F.H.A.

//

//

[12] *HUD.gov / U.S. Department of Housing and Urban Development (HUD)*, HUD.gov / U.S. Department of Housing and Urban Dev https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_act_overview..
[13] *42 U.S.C. §§ 3601-19*
[14] *Id*
[15] *42 U.S.C. §§ 5309*

5

University of Wyoming - Ben Wall Research Paper_Page_05

III. Local Government Actions

Although the definition may vary by jurisdiction, moderate-income housing is defined as "housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross income for households of the same size in the county in which the City is located".[16] Local governments can play a key role in addressing the shortage of moderate-income housing opportunities for the residents of their communities. Local governments can plan for and direct housing projects that target and ensure that more people in an area can experience home ownership, including those who fall into moderate-income households.[17]

Housing shortages exist on every level, from homelessness to low-income housing shortages. In Utah, all cities have been charged with the goal of incorporating moderate-income elements into their general plans with the objective "to meet the needs of people of various income levels living, working, or desiring to live or work in the community."[18] Utah was recently ranked 45th out of the 50 states when it comes to affordable housing.[19] This stands in contrast to the State ranking 2nd for the lowest poverty rate. These numbers highlight the need for reform in the moderate-income housing sector.

The state laws that govern moderate-income housing in Utah are found in Utah Code Section 10-9a-535. Section 10-9a-535(1) dictates that a municipality can only mandate the inclusion of a specific number of moderate-income housing units as part of a land use application

[16] Amendment sections 17-27a-103(43). https://jobs.utah.gov/housing/affordable/moderate/index.htmlhttps://le.utah.gov/xcode/Title17/Chapter27A/17-27a-S103.html
[17] *Planning*, https://jobs.utah.gov/housing/affordable/moderate/index.html.
[18]https://jobs.utah.gov/housing/affordable/moderate/index.htmlhttps://le.utah.gov/xcode/Title17/Chapter27A/17-27a-S103.html
[19] *Expert Advice On Improving Your Home*, Today's Homeowner (Nov. 8, 2023), https://todayshomeowner.com.

University of Wyoming - Ben Wall Research Paper_Page_06

approval if one of the following conditions is met: (1) the municipality and the applicant reach a formal written agreement specifying the number of moderate-income housing units or (2) the municipality offers incentives to applicants who voluntarily choose to incorporate moderate-income housing units within their development.[20] Despite the State of Utah's call to encourage developers to participate in the goal of creating moderate-income housing opportunities, Section 10-9a-535(2) qualifies that if an applicant declines to engage in the creation of moderate-income housing units as outlined in Subsections (1)(a) or (b), the municipality is not permitted to factor the applicant's choice into their decision to grant or reject a land use application. This means that municipalities, not developers, must carry the burden of creating solutions that increase the abundance of moderate-income housing.

To encourage municipalities to engage in the moderate-income housing crisis, Utah adopted code section 10-9a-403. Section 10-9a-403 requires a municipality, in their general plan, to have a moderate-income housing element that "provides a realistic opportunity to meet the need for additional moderate-income housing within the municipality during the next five years."[21] Moreover, for towns, the plan may include "a recommendation to implement three or more of the moderate-income housing strategies described in Subsection (2)(b)(iii)".[22] Subsection (2)(b)(iii) of Utah code 10-9a-403 gives an extensive list of options that a town could adopt to be in alignment with the state directive. Rather than discuss all of the suggested strategies of Subsection (2)(b)(iii), this paper will focus on Subsection (2)(b)(iii)(K) which reads as follows:

[20] *Utah Code Section 10-9a-535*, https://le.utah.gov/xcode/Title10/Chapter9A/10-9a-S535.html?v=C10-9a-S535_2022050420220504.
[21] *Utah Code Section 10-9a-403*, https://le.utah.gov/xcode/Title10/Chapter9a/10-9a-S403.html.
[22] *Id*

University of Wyoming - Ben Wall Research Paper_Page_07

> "[P]reserve existing and new moderate income housing and subsidized units by utilizing a landlord incentive program, providing for deed restricted units through a grant program, or, notwithstanding Section 10-9a-535, establishing a housing loss mitigation fund"[23]

In response to the urgent need for housing solutions that cater to individuals and families with moderate incomes, municipalities across the nation have been actively developing local programs to address the issue. These initiatives are dedicated to both the creation and preservation of housing units that are not only affordable but also sustainable in meeting the evolving housing needs of their residents. In this exploration of these initiatives, we will delve into (1) landlord incentive programs, (2) deed-restricted units through grant programs, and (3) housing loss mitigation funds.

A. Landlord Incentive Programs:

Landlord incentive programs are programs designed to increase affordable housing in an area by gaining the cooperation of landlords, as these programs are strictly voluntary. It is important for governments, both locally and nationally, to incentivize landlords to want to participate or, at the very least, be willing to participate in these programs.

The goal of landlord incentive programs is to encourage private property owners and landlords to offer their properties at affordable rental rates to meet the needs of their communities. Because it is not the duty of landlords to solve moderate-income housing shortages, it is important to offer incentives that make it worth a landlord's resources to participate. The incentives that these programs provide often come in the form of financial

[23] *Id*

incentives to landlords, such as rent subsidies, grants, or tax credits in exchange for keeping their units at an affordable rate for tenants.[24] When landlords are enticed to participate in these voluntary programs, there is an increase in affordable rental units in the market, thus bridging the gap between a municipality's desire to create more affordable housing and a landlord's private property rights.

Many landlords fail to participate in programs that impede on their private property rights, diminish the money they could be making, or receive financial harm from careless tenants who treat their property without care.

In Marin County, California, there has been an affordable housing crisis for many years. As of 2018, the monthly median rent for a one-bedroom apartment in the county was $2,940. There is a federal housing initiative that offers vouchers for families with low incomes. For individuals and families participating in the Housing Choice Voucher (HCV) program, the ability to secure housing in the area they desire is up to the willingness of landlords in the private market to accept vouchers. The issue in Marin County, California, is that under the voucher system, the tenants are often stigmatized as the types of tenants who would cause property damage to a landlord's property, thus disincentivizing voluntary participation in such a program.[25]

In response to the unwillingness of landlords to participate in this program, the Marin Housing Authority began partnering with landlords to better incentivize participation. The group was able to identify three barriers for landlords and tenants: "security deposits, burdens during tenant vacancy, and the perception that voucher holders will damage units. To reduce these

[24] HUD Exchange https://www.hudexchange.info/trainings/courses/ehv-landlord-engagement-webinars-landlord-incentives/.
[25] *PHAs Encourage Landlord Participation With Incentives*, HUD USER https://www.huduser.gov/portal/periodicals/em/winter19/highlight3.html.

barriers, L.P.P. offers security deposits, damage protection, and vacancy loss coverage as well as a customer service hotline and workshops". With these incentives in place, Marin County saw a significant increase in the number of landlords who participated in the program. and the percentage of voucher holders who were actually able to use their vouchers increased from 30% to 59.52%.

Although the Marin County issue focused on a shortage of low-income housing options for people participating in the HCV program, landlords are likely to hold similar concerns in the application to moderate-income housing. Because finances are the biggest repellent to potential landlord participation. financial incentives can provide the greatest enticement to landlords. Some housing authorities cover security deposits or agree to pay for damages more than the security deposit amount if any damages exist.[26]

Most landlord incentive programs are directed at low-income households under the federal voucher system; however, the examples of incentives may be able to be tailored to moderate-income housing at a local level. The biggest drawback of these incentive programs is that there must be some level of governmental subsidy that covers things like property damage. rental prices, and vacancies.

There are also several low and no-cost incentives that can also be given to landlords. Some of these programs can include items such as:

- "Provide access to free one-on-one technical help with specific management or maintenance problems. The municipality can line up a small group of people, including property managers, lawyers, and the like, who agree to be available for a modest amount of time for this program.
- Designate a police officer as an ongoing liaison with landlords to assist not only in crime-free programs but also with specific problems or concerns.

[26] https://localhousingsolutions.org/housing-policy-library/landlord-recruitment-and-retention/

- Regular (monthly or bi-monthly) forums between key municipal officials and landlords where both municipal and landlord concerns can be discussed informally and openly.
- Provide fast-track approval of permits for property improvements
- Offer free advertising of available rentals on the municipal website and in local newspapers, particularly free weekly merchandising papers.
- Negotiate discounts for good landlords on goods and services at local merchants or from local contractors.
- Provide free or low-cost equipment such as smoke or carbon monoxide detectors, security locks, etc. Municipalities may be able to acquire these in bulk from retailers either as a contribution or at a significantly discounted cost.
- Provide free radon testing.
- Offering good landlords reduced fees for fee-charged municipal services, such as building permit fees for property improvements, crime-free housing fees, or garbage removal fees, where feasible.
- Structuring fees associated with rental properties to function as incentives, by adjusting the fee in keeping with landlord performance as discussed below". [27]

The city of Glenwood, Colorado, has developed, by way of an ordinance, an incentive program for developers who take part in their inclusionary housing program. Glenwood Springs ordinance reads as follows:

(a) Any residential or mixed-use development proposing to create one (1) or more residential dwelling units may be eligible for the following incentives when providing deed restricted Community Housing in the form of Resident Occupied Community Housing, For Sale Community Housing and/or Rental Community Housing that is deed restricted in accordance with the City's Community Housing Standards and Guidelines.

> (1) Density Bonus. As part of any new residential or mixed-use development, the City may offer a density bonus.
>
> (2) Site Design Flexibility. Provided that the housing goals and eligibility requirements are met and provided that the intents and purposes of this Title are not compromised. the City may consider flexible application of design standards including. but not limited to minimum lot size, building height, lot coverage, impervious coverage, setbacks and landscaping.
>
> (3) Public-Private Partnerships. The City may participate in, or facilitate participation with other governmental entities regarding financing or purchasing of Community Housing units directly from the applicant or by other means of subsidy or participation.

[27] https://mayorscaucus.org/wp-content/uploads/2016/01/SSMMA_landlord-incentives_how-to-guide_final-am-12-28-15.pdf

(4) Tax Rebate or Reduction. The City Council may at its sole discretion waive, reduce or rebate property, construction use, or other tax applicable to the project.[28]

The density bonuses, site design flexibility, and tax rebates or reductions found in Glenwood's ordinance are incentives that could be easily adopted by many other municipalities around the country without adding any additional cost or need for any fund allocations.

B. Deed Restricted Programs

Deed-restricted homeownership is a means to guarantee home ownership affordability in a community. "A deed restriction is a provision in a deed that imposes a limitation, condition, or other restriction upon how the grantee may use the property being conveyed by the deed."[29] Deed restrictions can be used for new home developments that impose a restriction on either a portion or all of a new development to guarantee long-term affordability. Deed-restricted programs place legal restrictions or covenants on a property's deed, which ensures that the housing unit remains affordable for a specified period, even if the property changes ownership.[30] The benefit of deed-restricted programs is to create a constant supply of affordable housing units that remains affordable to moderate-income households, preventing issues in the future like gentrification and displacement.

Park City, Utah, is an example of a city that has adopted a deed restriction program. Park City is a world-class tourism destination with a median house price of $1.8 million.[31] In order to maintain the necessary workforce to keep the city functioning, it was necessary for the City to implement a program that kept the middle working class from being priced out of living in Park

[28] https://www.cogs.us/ArchiveCenter/ViewFile/Item/2133
[29] *Deed Restriction Program Housing North*, Housing North https://www.housingnorth.org/deed-restriction-program.
[30] *Id*
[31] https://www.redfin.com/city/15045/UT/Park-City/housing-market

University of Wyoming - Ben Wall Research Paper_Page_12

City. The deed-restricted properties in Park City are provided at a considerable discount to the market rate. Park City sets the following conditions for deed-restricted housing:

- Owners must live in the property full-time as their primary residence.
- There is a limit on annual appreciation of 3% with no guarantee that a seller will be able to garner that amount when they sell.
- Allowed capital improvements are limited to an approved list, and the maximum value that can be added to the resale value is limited to 5% of the purchase price.
- The City holds a first option to purchase when the owner chooses to sell.
- If the City doesn't exercise its option to purchase, the property must be sold to a qualified household, reviewed and approved by the City's Housing Office. The City's Housing Office will assist with the sale process.
- Property may not be transferred via inheritance or deed in any form.
- Property may not be incorporated into a Trust of any kind.
- Home may not be rented without prior consent of the City Housing Office, which occurs in very limited circumstances.
- Owners may rent an extra bedroom to a roommate with prior approval from the City Housing Office.
- Owners may not own other property while owning the Deed Restricted unit.
- Annual compliance reports are due to the City's Housing Office in late spring of each year (forms are provided by the City's Housing Office).[32]

To maintain a flow of deed-restricted properties, Park City holds the right of first refusal when deed-restricted properties are sold, mandating that the City processes any such sales.[33]

In Mountain Village, Colorado, another luxury tourist destination, the City cut development fees and building permit fees for deed-restricted developments to try and entice developers to participate in the process of creating moderate-income housing both now and into the future.[34] In this Colorado project, for example, a building permit for a property with a $1 million valuation would cost approximately $85,000, while under the program, a deed-restricted property would cost around $9,000.[35]

[32] *Owning a Deed Restricted Property*, Park City, UT https://www.parkcity.org/departments/find-affordable-housing/selection-process/deed-restrictions.
[33] *Community Housing Resources*, Park City, UT https://www.parkcity.org/departments/find-affordable-housing/resources.
[34] *Deed-Restricted Building Fee Waiver Incentive*, Town of Mountain Village https://townofmountainvillage.com/community/housing/deed-restricted-workforce-housing-incentive/.
[35] *Id*

University of Wyoming - Ben Wall Research Paper_Page_13

Much like Park City, Utah, both Garfield County and the city of Glenwood Springs in Colorado face similar issues with affordable housing, specifically when it comes to keeping moderate-income employees living in the area. To address the needs of its residents, Garfield County every year calculates the Area Median Income (AMI) and creates four categories of people who can participate in their program. Much of the Garfield County and Glenwood Springs programs are centered around deed-restricted units.[36]

Glenwood Springs has a Community Housing Program that requires that new residential development provide 20% of the housing produced to be restricted to occupied by residents and at least 10% of the housing developed to be affordable to households earning up to 100% of the area median income as outlined in their guidelines. Moreover, the program is aimed at incentivizing and mitigating the cost of producing affordable housing. The deed-restricted properties are dispersed throughout the City of Glenwood Springs. To maintain the deed restriction status, these properties have a maximum resale price with a 3% annual appreciation based on the Consumer Price Index for Garfield County.[37]

C. Housing Loss Mitigation Funds:

Housing loss mitigation funds are funding programs that are aimed at addressing challenges related to affordable housing. The goal of housing loss mitigation funds is to offer financial assistance to cities or individual who are facing the challenge of obtaining or offering affordable housing. Housing mitigation funds are generally established by government agencies or non-profit organizations. The funds for these programs can come from a variety of sources,

[36] *Garfield County Community Housing*, http://garfieldhousing.com/garfield-county-guidelines/.
[37] *City of Glenwood Springs Community Housing Program*, http://garfieldhousing.com/city-of-glenwood-springs-community-housing-guidelines/.

such as government allocations or private investments. One of the biggest hurdles for housing mitigation funds is obtaining sufficient funding to meet the needs of the interested party.

In 2022, Colorado passed Proposition 123, which authorized the state to retain money from existing state tax revenue to support affordable housing endeavors.[38] The fund dedicates 40% of funds to the Affordable Housing Support Fund administered by the Department of Local Affairs (DOLA) and 60% to the Affordable Housing Financing Fund administered by the Office of Economic Development and International Trade (OEDIT) in partnership with the Colorado Housing and Finance Authority (CHFA). Non-profits, community land trusts, private entities, and local governments in Colorado may be eligible for either loans or grants from the affordable housing fund. To be eligible for the fund, interested municipalities must commit to increasing their existing affordable housing units by 3% per year and include an expedited review process for developments for affordable housing.[39]

There are many issues that arise when it comes to creating new taxes to fund programs aimed at creating and maintaining affordable housing. However, it is not always necessary to create new taxes; one alternative to new taxes is to reallocate the use of current tax dollars within a state. Colorado's State Affordable Housing Fund is drawn from 0.1% of all state income tax revenue.[40] Under Proposition 123, the State Affordable Housing Fund for 2022-2023 is estimated to collect $145 million from tax revenue, with the following year increasing to an estimated $290 million.[41]

[38] *Proposition 123 - Colorado Affordable Housing Financing Fund*, Proposition 123: Affordable Housing Financing Fund https://coloradoaffordablehousingfinancingfund.com.
[39] *Proposition 123*, Colorado Office of Economic Development and Intern https://oedit.colorado.gov/proposition-123-colorado-affordable-housing-financing-fund.
[40] *Proposition 123 - Colorado Affordable Housing Financing Fund*, Proposition 123: Affordable Housing Financing Fund https://coloradoaffordablehousingfinancingfund.com.
[41] https://www.coloradofiscal.org/proposition-123-affordable-housing/blog/

On a smaller scale and in the context of a local government, Moab, Utah, in conjunction with Grand County, has met regularly to address the issue of housing shortages. With their constant work on the issue, Moab was recently able to allocate $150,000 to affordable housing. Although municipalities have access to fewer funds, it is still possible for them to reallocate current funds to prioritize moderate-income housing shortages.

In Park City, Utah, the Park City Community Foundation, in conjunction with the Mountainlands Community Housing Trust, are working with philanthropists to support affordable housing. The foundation is using a $1 million matching grant program to fund a multimillion-dollar redevelopment project to increase the number of affordable apartments in Park City.[42]

Salt Lake City, Utah has also been addressing the need for more affordable housing. Salt Lake City has generated new revenue in the City's Housing Stability budget which will be used to help establish long-range funding mechanisms to increase the supply of affordable housing. The City's new Growing SLC plan identified strategies to provide low-interest loans to affordable housing developers, support down payment assistance strategies and provide case managers for those looking for affordable housing solutions. Some of these funds come from outside sources as well as some allocations from income tax.[43]

IV. Community Benefits Agreements (CBA)

A Community Benefits Agreement or CBA is a legally binding agreement contractually made between a developer and either a community or organization representing a community.

[42] https://parkcitycf.org/how-we-work/growing-community-initiatives/housing-fund/
[43] *Growing SLC*, Community and Neighborhoods https://www.slc.gov/can/growing-slc/.

16

University of Wyoming - Ben Wall Research Paper_Page_16

The contract made between the parties outlines the benefits that the community will receive in exchange for the development project occurring in their community.[44]

CBAs bring a wide range of benefits to the communities that the impact. The benefits that communities can expect to see are "guaranteed minimums for local hiring, inclusion of affordable units in new housing, and the development or improvement of parks or community facilities".[45] Moreover, in communities with rapid growth and development CBAs can create more opportunity for affordable housing.

Both members of the community and developers have important roles in effectively carrying out CBAs. Community members must educate themselves by researching both the intended development but also the potential benefits that could come from the project. Moreover, community members must organize themselves into coalition that will represent the community. Lastly, community members should engage regularly with the developer to create an environment of effective communication.[46]

Local governments also play a key role in these agreements. This can be done by local governments informing community members and groups of the proposed project, encouraging good-faith negotiations with community organizations, and honoring and respecting the decisions and agreements reached by members of their community.[47]

There are many examples of successful CBAs that have occurred around the Unites States. One of the largest CBA's was the Staples Center Development in Los Angeles California.

[44] https://www.lisc.org/our-resources/resource/community-benefits-agreements-toolkit/
[45] *Id*
[46] *Id*
[47] https://www.energy.gov/justice/articles/community-benefit-agreement-cba-resource-guide-faqs

17

University of Wyoming - Ben Wall Research Paper_Page_17

The most notable benefit of the Staples center CBA was that 20% of the housing in the development project was to be designated as affordable housing.[48]

Another successful CBA occurred in New York City, at the Kingsbridge Armory. At Kingsbridge, the old armory was converted into a hockey rink for the community. The benefit given to the community was that half of the jobs created by the project were given to local workers to stabilize and stimulate the local economy.[49]

In Wisconsin, a redevelopment project of an industrial zone was completed. There was a major focus on creating an environmentally friendly benefits like cleaner air as well as providing small business support.[50]

CBAs have become increasingly relevant due in part to the Inflation Reduction Act. The Inflation Reduction Act, established in 2022, is a federal investment-based program aimed at building a clean energy economy to combat the growing climate crisis.[51].The Act works to incentive clean energy jobs, by providing increased tax benefits to taxpayers who pay employers prevailing wages for certain jobs in clean energy projects.[52]The mechanism that moves this program forward is known as a Project Labor Agreement or PLA. Like a CBA, PLAs are collective bargaining agreements that are negotiated between construction employers and construction unions.[53] In the context of the Inflation Reduction Act, as stated above, PLAs can help taxpayers gain tax benefits by providing prevailing wage and apprenticeship requirements,

[48] La Risa Lynch, *Five community benefits agreements that worked*, The Chicago Reporter (May 24, 2016), https://www.chicagoreporter.com/how-neighborhoods-have-held-developers-accountable-to-their-needs/.
[49] *Id*
[50] *30 Street Corridor*, MMSD (Nov. 4, 2021), https://www.mmsd.com/what-we-do/flood-management/milwaukee-watershed-projects/30th-street-corridor.
[51] *The Inflation Reduction Act and Qualifying Project Labor Agreements*, U.S. Department of Labor https://www.dol.gov/general/inflation-reduction-act-tax-credit/project-labor-agreements.
[52] *Id*
[53] *Id*

all while encouraging the construction of clean energy projects[54]. There are many benefits of PLAs including:

- Reducing costs by increasing efficiency and coordination;
- Reducing uncertainty in the contracting process;
- Supporting contractor access to skilled workers;
- Improving worker safety and health outcomes;
- Expanding workforce training pathways for clean energy jobs; and.
- Preventing labor disputes (and related delays) on projects.
- Incorporating objectives for hiring local community members.[55]

Another very important benefit of these community benefit programs is they can be tailored to the specific needs of the communities, and involved government entities. For example, on the topic of affordable housing, communities can get developers to agree to invest in affordable housing within the community through the use of these agreements[56].

The Department of Energy (DOE) requires that CBAs or PLAs are used in all Inflation Reduction Act fundings.[57] These programs operate off of a application system and "when an applicant is selected, their Community Benefits Plan will be part of the contractual obligation of the funding recipient".[58]

An added benefit of these programs is the engagement of local stakeholders such as labor unions, local governments, and other community-based organizations. When these stakeholders are properly engaged it can "lead to stronger project plans, increased transparency, and the reduction or elimination of certain associated risks".[59]

[54] *Id*
[55] *Id*
[56] https://rmi.org/community-benefits-plans-driving-equitable-clean-energy-development/.
[57] *About Community Benefits Plans*, Department of Energy https://www.energy.gov/infrastructure/about-community-benefits-plans.
[58] *Id*
[59] *Id*

Although there are many benefits to CBAs they are come with some drawbacks. CBAs take time to develop and with the use of attorneys to formalize the agreements the more time the agreements take the more expensive they become. Another issue with CBAs is that they can create unnecessary expenses for developers who might otherwise still be able to proceed with their development project in that area.[60]

V. Challenges and Critiques

Anytime a federal or local housing program is implemented, there will always be pushback and potential drawbacks and challenges. However, these programs play a fundamental role in addressing housing inequality and ensuring that all citizens, including low- and moderate-income households, have access to affordable housing. However, these programs are not without their drawbacks and challenges.

One of the primary challenges is the limited funding available for housing programs. Many local governments already run on tight budgets, and trying to implement new affordable housing policies can be an expensive process. Moreover, in Utah, under the general plan guidelines outlined above, "starting in 2024, a $250/day penalty fee will be applied to communities which are determined to be non-compliant" and "[a]t the beginning of a community's consecutive year of being ineligible for funds, the fee will double to $500/day."[61] Not only will local governments be pressed financially to implement the State's policies, but they will eventually be fined $500 per day, thus adding additional budgetary concerns.

It is worth noting that many of the cities with successful programs aimed at affordable housing in Utah and elsewhere around the county are in areas with high tourism and, therefore,

[60] https://www.epa.gov/system/files/documents/2023-04/Brownfields_CBA_FINAL.pdf
[61] *Planning*, https://jobs.utah.gov/housing/affordable/moderate/.

20

University of Wyoming - Ben Wall Research Paper_Page_20

have higher budgets to allocate to programs designed to increase affordable housing. Moreover, there is also a bigger push for these cities to increase affordable housing because their working class is being priced out of the area, leaving many vacancies in essential jobs and services.

Another issue surrounding programs designed to increase the availably of affordable housing is bureaucracy and administrative issues. Government housing programs often suffer from administrative inefficiencies and bureaucratic red tape, which can slow down the process of obtaining assistance. In many cases, for local governments, a state may impose guidelines on ways to potentially increase affordable housing but fail to provide enough resources and explanations to assist these governments in carrying out the proposal.

It is important to note that in Utah, a municipality may only require a certain number of moderate-income housing units as a condition of approval of land use application if the applicant and the municipality agree in writing regarding the number of moderate-income housing units or the municipality provides incentives for an applicant who agrees to include moderate-income housing units in a development. If an applicant does not want to participate, their refusal to participate should not be a consideration in approving or denying a land use application.[62].

In some cases, housing programs may fail to keep pace with the demand for affordable housing. In areas where populations are experiencing large increases, local governments may struggle to keep pace with the amount of people in need of low- and moderate-income housing. Even for example, when deed-restricted units are perfectly executed, or ideal landlord incentive programs have been in place, it can still result in long waiting lists and a shortage of available units, making it difficult for people to access the assistance they need in a timely manner.

[62] *Utah Code Section 10-9a-535*, https://le.utah.gov/xcode/Title10/Chapter9A/10-9a-S535.html?v=C10-9a-S535_2022050420220504.

21

University of Wyoming - Ben Wall Research Paper_Page_21

Affordable housing shortages may not be evenly distributed across all regions, even in the same State. Some areas may have better access to housing assistance, while others face severe shortages or lack such programs altogether, exacerbating regional disparities. In addition, in states where they push local government action on their cities, not all cities will be affected to the same extent. Additionally, and as stated above, some cities might be in a place where they can afford, for example, a $500 fine for non-compliance where another city's budget is already stretched to the max.

As stated above, housing policies are a subject of ongoing legal and ethical debates, often reflecting the tensions between individual property rights, government intervention, and societal obligations.

There is an ongoing debate about the balance between an individual's property rights and the government's authority to regulate housing for the greater public interest. Critics argue that excessive regulation infringes on property rights, which typically affects property owners' and developers right to build without being impeded by conditions placed on them by municipalities. On the other hand, proponents stress the need for housing policies to address societal problems, including population growth and affordable housing.

Another ethical consideration is ensuring meaningful community engagement in housing policy decisions. Government, in general, should be for the people. There is a fine balance in the policymaking process, and incorporating diverse perspectives and needs into decisions that affect housing development in municipalities.

Lastly, as the world faces climate change challenges, housing policies must take into consideration things such as sustainable building, energy efficiency, and their impacts on the

environment. While new developments can create additional housing units, they also take up wild undeveloped lands which can negatively affect an areas ecosystem.

VI. Recommendations and Future Directions

Because funding is the central issue in most programs aimed at creating affordable housing, states like Utah may want to follow the pattern set by Colorado and reallocate income tax funds to contribute to creating affordable housing funds. Utah's general housing plans' inclusion of local government initiatives is imperative to solving affordable housing shortages around the state; however, unless cities have a large tourism and recreation population, the funds to create any meaningful program probably don't exist. This is why a state fund can bridge the gap and create the fuel to make local government action a reality.

Another recommendation is targeted at local governments. When cities have too strict housing codes and ordinances, it bars the development of new affordable housing units. The city of Moab and Grand County in Utah created a commission to figure out the barriers that prevented new affordable housing units. The commission identified the following areas that could possibly be changed to encourage affordable housing:

- Lot size
- Lot width
- Density
- Densities in Planned Unit Development
- Densities in Master Planned Development
- Minimum home size
- Open space requirements for apartments
- Secondary dwelling regulations
- Excessive street widths
- Setbacks
- Height restrictions
- Inflexible sidewalk standards
- Value to community to have mixed economic levels in neighborhoods (lack of inclusionary zoning)

When local governments loosen some of their building requirements, it can create more of a market for affordable housing options to pop up. Changing these policies creates incentives for developers and individuals to build affordable housing units.

There exists in many communities the issue of NIMBY or Not in My Back Yard when it comes to the idea of creating more affordable housing options for many areas. people are in favor of these programs, however when it comes time to implement non-traditional housing development in their area many people push back and fight those developments. It is imperative that local governments are conscious of the larger issue at hand and focus less on the transformations that can come from these non-traditional housing options and more on their large-scale benefits.

VII. Conclusion

In conclusion, there remain extensive challenges for local, state, and federal governments who want to develop programs aimed at moderate-income housing shortages. The issues surrounding moderate-income housing shortage covers legal, policy and community-based elements. Moreover, many of the initiatives taken by governments if improperly executed can run into various constitutional concerns.

While there are no easy solutions to addressing the housing shortage, local governments can implement tactics like landlord incentive programs, deed-restricted units, and housing loss mitigation funds to help fill the need for more moderate-income housing options in their communities. While there are many free or more affordable options for addressing the shortage, unfortunately, many successful programs that have addressed housing shortages have required

University of Wyoming - Ben Wall Research Paper_Page_24

the use of additional funds to create more affordable housing. Because of this local and state governments must work together to find or reallocate money to support these initiatives.

University of Wyoming - Ben Wall Research Paper_Page_25

VIII. References

1. **30 Street Corridor, MMSD (Nov. 4, 2021)**
   - https://www.mmsd.com/what-we-do/flood-management/milwaukee-watershed-projects/30th-street-corridor
2. **42 U.S.C. §§ 3601-19**
   - https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_act_overview
3. **42 U.S.C. §§ 5309**
   - [No specific link provided]
4. **Alpine Homes, Inc. v. City of W. Jordan, 2017 UT 45, ¶ 19, 424 P.3d 95, 103**
   - [No specific link provided]
5. **Alpine Homes, Inc. v. City of W. Jordan, 2017 UT 45, ¶ 20, 424 P.3d 95, 103 citing Nollan v. California Coastal Commission, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987), and Dolan v. City of Tigard, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994)**
   - [No specific link provided]
6. **Alpine Homes, Inc. v. City of W. Jordan, 2017 UT 45, ¶ 24, 424 P.3d 95, 104**
   - [No specific link provided]
7. **Amendment sections 17-27a-103(43).**
   - https://le.utah.gov/xcode/Title17/Chapter27A/17-27a-S103.html
8. **Armstrong v. United States, 364 U.S. 40, 80 S. Ct. 1563, 4 L. Ed. 2d 1554 (1960)**
   - [No specific link provided]
9. **Average Rent by State 2023**

   - https://worldpopulationreview.com/state-rankings/average-rent-by-state
10. **B.A.M. I, 2006 UT 2, ¶ 34, 128 P.3d 1161.**
    - [No specific link provided]
11. **City of Glenwood Springs Community Housing Program**
    - http://garfieldhousing.com/city-of-glenwood-springs-community-housing-guidelines/
12. **Community Housing Resources, Park City, UT**
    - https://www.parkcity.org/departments/find-affordable-housing/resources
13. **Constitution.Congress.Gov**
    - https://constitution.congress.gov/browse/amendment-14/
14. **Deed Restriction Program — Housing North, Housing North**
    - https://www.housingnorth.org/deed-restriction-program
15. **Deed-Restricted Building Fee Waiver Incentive, Town of Mountain Village**
    - https://townofmountainvillage.com/community/housing/deed-restricted-workforce-housing-incentive/
16. **Expert Advice On Improving Your Home, Today's Homeowner (Nov. 8, 2023)**
    - https://todayshomeowner.com
17. **Fourteenth Amendment, US Law**
    - https://www.law.cornell.edu/wex/fourth_amendment
18. **Garfield County Community Housing**
    - http://garfieldhousing.com/garfield-county-guidelines/
19. **HUD Exchange**

University of Wyoming - Ben Wall Research Paper_Page_26

University of Wyoming - Ben Wall Research Paper_Page_27

- https://www.hudexchange.info/trainings/courses/chv-landlord-engagement-webinars-landlord-incentives/

20. **HUD.gov / U.S. Department of Housing and Urban Development (HUD)**
    - https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_act_overview
21. **Inflation Reduction Act and Qualifying Project Labor Agreements, U.S. Department of Labor**
    - https://www.dol.gov/general/inflation-reduction-act-tax-credit/project-labor-agreements
22. **La Risa Lynch, Five community benefits agreements that worked, The Chicago Reporter (May 24, 2016)**
    - https://www.chicagoreporter.com/how-neighborhoods-have-held-developers-accountable-to-their-needs/
23. **Owning a Deed Restricted Property, Park City, UT**
    - https://www.parkcity.org/departments/find-affordable-housing/selection-process/deed-restrictions
24. **PHAs Encourage Landlord Participation With Incentives, HUD USER**
    - https://www.huduser.gov/portal/periodicals/em/winter19/highlight3.html
25. **Planning**
    - https://jobs.utah.gov/housing/affordable/moderate/index.html
26. **Proposition 123 - Colorado Affordable Housing Financing Fund**
    - https://coloradoaffordablehousingfinancingfund.com
27. **Proposition 123, Colorado Office of Economic Development and Intern**

- https://oedit.colorado.gov/proposition-123-colorado-affordable-housing-financing-fund

28. **Proposition 123 - Colorado Affordable Housing Financing Fund**
    - https://coloradoaffordablehousingfinancingfund.com
29. **Redfin - Park City, UT Housing Market**
    - https://www.redfin.com/city/15045/UT/Park-City/housing-market
30. **The Inflation Reduction Act and Qualifying Project Labor Agreements, U.S. Department of Labor**
    - https://www.dol.gov/general/inflation-reduction-act-tax-credit/project-labor-agreements
31. **The State Of The Nation's Housing 2023, (June 7, 2023)**
    - https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_The_State_of_the_Nations_Housing_2023.pdf
32. **Today's Homeowner - Expert Advice On Improving Your Home (Nov. 8, 2023)**
    - https://todayshomeowner.com
33. **Town of Mountain Village Community Housing**
    - http://garfieldhousing.com/garfield-county-guidelines/
34. **Utah Code Section 10-9a-403**
    - https://le.utah.gov/xcode/Title10/Chapter9a/10-9a-S403.html
35. **Utah Code Section 10-9a-535**
    - https://le.utah.gov/xcode/Title10/Chapter9A/10-9a-S535.html?v=C10-9a-S535_2022050420220504
36. **U.S. Department of Energy - About Community Benefits Plans**

- https://www.energy.gov/infrastructure/about-community-benefits-plans

37. **U.S. Department of Labor - Inflation Reduction Act and Qualifying Project Labor Agreements**
    - https://www.dol.gov/general/inflation-reduction-act-tax-credit/project-labor-agreements
38. **U.S. Environmental Protection Agency - Brownfields CBA Resource Guide**
    - https://www.epa.gov/system/files/documents/2023-04/Brownfields_CBA_FINAL.pdf
39. **U.S. Government Accountability Office - Community Benefit Agreements Toolkit**
    - https://www.lisc.org/our-resources/resource/community-benefits-agreements-toolkit/
40. **World Population Review - Average Rent by State 2023**
    - https://worldpopulationreview.com/state-rankings/average-rent-by-state

University of Wyoming - Ben Wall Research Paper_Page_30

University of Wyoming - Ben Wall Research Paper_Page_30