

## Sayers, Margery

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**From:** Liz Nudo <elizabeth\_nudo@yahoo.com>  
**Sent:** Thursday, September 19, 2019 9:34 AM  
**To:** CouncilMail  
**Cc:** Kittleman, Mary  
**Subject:** CR112 testimony

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Hello,

I am reaching out due to what seems to be an inevitable conflict between my in person testimony with the BOE and the testimony with the CC (CR112). My group is the first adult group, after the kids, to testify in the BOE testimony, which starts at 6PM vs the regular 7PM time, but I am registered as one of the last people for CR112. Is there anything that can be done to accommodate me at an earlier time?

~ Liz Nudo

**Sayers, Margery**

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**From:** Feiming Chen <feimingc@gmail.com>  
**Sent:** Thursday, September 19, 2019 9:09 AM  
**To:** CouncilMail  
**Subject:** Written Testimony for CR112  
**Attachments:** statement-for-howard-county-public-hearing.pdf

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Dear County Council,

I did not get to testify on CR112 yesterday, but I have submitted my paper copies of written testimony. I am now attaching the electronic copy of my testimony in case you need it. Thanks!

I do not plan to go to the Sept 26 hearing on CR112, so please cross out my name (Feiming Chen). Thank you very much!

Best regards,  
Feiming Chen



# CR112 Testimony

## For Howard County Public Hearing

Feiming Chen, Ph.D.

September 18, 2019

### The Distance Principle and Social-Economic Integration

**Social-economic balkanization** of the classrooms is a real problem and a *threat* to our democratic society, but the solutions (such as **CR112**<sup>1</sup>) should *not* include the *gerrymandering* of school districts.

Because in school redistricting, we should follow a basic principle: Do *not* unnecessarily increase the *distance* for a student to travel to a school. I call it the "distance principle" and it should be the *primary* consideration in the redistricting process: a longer distance is warranted only when there is a capacity utilization problem or other immediate concerns.

If we ignore the distance principle and generate gerrymandered school districts just for the sake of the social-economic integration "imperative", then we will bring undue *stress* to countless students and parents, a stress caused by extensive travel time to school. When a student could go to a nearby school, but instead have to go to a school further away, this means less sleep time, longer travel time, worse traffic congestion, elevated traffic-induced anxiety, and more environmental pollution. Therefore, we should respect the distance principle in the school redistricting process.

With regards to the social-economic integration, I believe there are better ways to achieve it<sup>2</sup>. For example, if we can design a better system that includes **ranked school choices** by parents, attractive **magnet school programs**, and **student exchange** programs, then we may achieve better social-economic integration in the classrooms more *efficiently*.

In summary, it is a *pitfall* to attempt the social-economic integration through the school redistricting and boundary review process, because it tends to violate the distance principle and results in gerrymandered school districts. Instead, we should promote **social-economic integration** through a well-designed, *incentivised* system and people's *free choices*.

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<sup>1</sup>CR112: Council Resolution 112-2019. Introduced by Christiana Mercer Rigby, Opel Jones and Deb Jung - A RESOLUTION requesting the Howard County Public School System to draft, approve, and implement a lawful multi-year Integration Plan to ensure that Howard County Public Schools are integrated by socioeconomic factors.

<sup>2</sup>Kahlenberg, Richard D., et al. "Socioeconomic Integration from an Equity Perspective." Center for Education Equity, Mid-Atlantic Equity Consortium (2017). <https://files.eric.ed.gov/fulltext/ED585403.pdf>

## Sayers, Margery

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**From:** Stephanie Mummert <skmummert@gmail.com>  
**Sent:** Thursday, September 19, 2019 1:27 AM  
**To:** CouncilMail  
**Subject:** CR-112

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

I am writing in opposition of CR-112. While I think we are all supportive of achieving equity for all students, when you start a resolution from the presumption that Columbia, Ellicott City or Howard county in general needs to be integrated and mention Plessy v Ferguson and Brown v Board of Education, while the resolution is actually about socioeconomic imbalance, I think it is natural for people to question the motive and the intent of the resolution and to have a negative reaction. That is why I am in opposition of this resolution. It is not the intent of closing the achievement gap that is the problem; it is the way the message was delivered.

The problem with saying the county needs to be integrated implies that it is currently segregated. It also implies, whether intended or not, that the segregation is intentional. If segregation exists, it is surely, in part, a by-product of the design of the villages of Columbia. As you know, each of Columbia's villages (except River Hill) include a diverse range of housing. From single family homes, townhouses and apartments and by design, families of all backgrounds and varied socioeconomic status live as neighbors. I see it every day where I live in Kings Contrivance. I have lived here for 16 years and I have never seen or felt segregation, either intentional or otherwise. I live in a very racially mixed neighborhood and our neighborhood is surrounded by apartment complexes, townhouses and single family homes. I live in Columbia FOR the diversity of lived experiences, different backgrounds as I see every day. I like it this way.

When you tell me Howard County has a need to be integrated, I look around and wonder where the integration needs to happen? In my neighborhood, in my daughter's school, in my experience living in Columbia and HoCo in general, I see nothing but integration, at least regarding race.

If this is really a problem of income inequality, perhaps instead of giving a lesson on the awful history of racial segregation in this country, the resolution could give examples of where segregation exists economically and how we should fix it.

If segregation exists at the socioeconomic level, it has been caused by prior county councils unwillingness to act to force (or even encourage) developers to build moderate, low income or affordable housing. Instead, the developers use the "fee in lieu" approach of "alternative compliance" to pay their way out of meeting existing regulations designed to create economic diversity. This concentrates economic "wealth" in places like River Hill, Maple Lawn or western Howard county. The council created this situation and yet the resolution reads as if the council is blaming the board of education for creating segregated schools. It may not be the intent of the resolution but it does read like passing the buck and passing blame.

If there is a problem with economic inequality in the county, the council needs to work on fixing it at the county level. Make tough choices to change the pattern of development in the county. Change the zoning laws, or the approval process for new developments to make waivers uncommon instead of the rubber stamp, automatic approval of waivers that currently occurs.

Do not pass the weight of an achievement gap onto a school board that is trying to support students, teachers and staff with an underfunded budget while dealing with overcrowding that was caused by unchecked development in the

county. All of these problems are fixable, but we will need more than poorly timed resolutions with shaky substance to them. Instead, we need action from the council.

Thank you,  
Stephanie Mummert

## Sayers, Margery

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**From:** Regan Mercer <reganmercerc@gmail.com>  
**Sent:** Wednesday, September 18, 2019 11:29 PM  
**To:** CouncilMail  
**Subject:** CR 112

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Council Members,

There are places in the US south that solved this problem very successfully - through federally forced regional school system integration. When the oversight went away, segregation returned and the problems returned. Howard County has a history of Jim Crow as well and that has led to some groups being represented in low SES areas. 80% of the county isn't the decedent's of Maryland slave owners. Anyone who reads this and feels guilty needs to sit down with themselves and ask why. Council Members included.

Regan Mercer

## Sayers, Margery

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**From:** Regan Mercer <reganmercerc@gmail.com>  
**Sent:** Wednesday, September 18, 2019 11:15 PM  
**To:** CouncilMail  
**Subject:** Resolution CR 112

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Council Members,

The board is redistricting now, why have them redistrict twice once for overcrowding and again for integration. Just ask them to do it all at once and then work on the county part.

Regan Mercer



**Sayers, Margery**

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**From:** J McCoy <jtm52480@gmail.com>  
**Sent:** Wednesday, September 18, 2019 11:12 PM  
**To:** CouncilMail  
**Subject:** Testimony in favor of CR112  
**Attachments:** CR112 Support Letter-Equity In Redistricting.pdf

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Dear Council Members,

My name is Jacquelin McCoy of District 2. I support Council Resolution 112.

Now is the time to begin the journey of addressing the discriminatory policies and practices that have gotten Howard County to where it is today. The reality is that at no point in the history of this county, state, or nation has there ever been equal access or equal opportunity for people to provide for their families. Therefore, there has never been equal access or equal opportunity for all children to be educated. Inequities have existed since the beginning of this nation.

Why do inequities exist in the first place?

Institutional and systemic practices as well as government policies created the great divide that we have today. For example:

- redlining,
- discriminatory banking practices,
- discriminatory zoning and planning practices, along with
- unexamined racial attitudes and
- the myopic telling of the history of this nation have all contributed to the condition of our society.

What I am hoping that this **county council will address are the inequitable planning and zoning practices** that have been complicit in creating the segregated housing in Howard County.

Planning and zoning policies and practices have allowed concentrated housing of specific types throughout the county. One only needs to survey the number and types of rental units throughout the county to notice the disparities in housing and zoning practices. As a result of the disproportionate planning and zoning practices, we have neighborhoods and schools that are siloed racially, ethnically, and socioeconomically.

Some say, just provide more resources for the schools and students in low performing schools and that will solve the problem. They may say there is no benefit to mixing students racially and socioeconomically. Has there been any effort to examine those ideas or evidence that would honestly back up those claims?

There is documented evidence of long term successes in integrated schools. Research done by Professor Rucker Johnson, of the University of California at Berkeley, and presented in his book, "Children of the Dream: Why School Integration Works," makes a compelling case where integration has had long-term benefits to students. However, these facts have been overshadowed by the lack of consistent efforts to address unexamined attitudes and beliefs that continue to seek division.

An article from The Century Foundation entitled, "The Benefits of Socioeconomically and Racially Integrated Schools and Classrooms" (April 2019), states that, "We know that diverse classrooms, in which students learn cooperatively alongside those whose perspectives and backgrounds are different from their own, are beneficial to all students including middle-class white students because these environments promote creativity, motivation, deeper learning, critical thinking, and problem-solving skills.

That article provides an example of how integration benefits students in Montgomery County, Maryland. This was studied by Heather Schwartz of the Century Foundation. Their "inclusionary zoning" policy, that was adopted in the early 1970s that impacted student outcomes. Developers of large subdivisions were required to set aside between 12 % and 15 % of units for low-income and working-class families. Then the housing authority purchases up to 1/3 of the "inclusionary-zoning" housing for public-housing apartments that were scattered throughout the county. This provided the opportunity for students to attend schools that were well resourced and more culturally, racially, ethnically and socio-economically diverse.

The result of the study showed "low-income students attending lower-poverty elementary schools (and living in lower-poverty neighborhoods) significantly outperform low-income elementary students who attend higher-poverty schools with state-of-the-art



educational interventions. By the end of elementary school, Schwartz finds, public-housing students in the lowest-poverty schools cut their initial, sizable math-achievement gap with non-poor students in the district by half.”

Comparing the benefit of school integration versus housing integration the result was that “roughly 2/3 of the benefit comes from the school, and 1/3 from the neighborhood. This suggests that there may be considerable value in programs that integrate at the school level **alone, though greater benefits clearly accrue from integration at both the neighborhood and school levels.**”

[https://www.edweek.org/ew/articles/2010/10/20/08kahlenberg\\_ep.h30.html](https://www.edweek.org/ew/articles/2010/10/20/08kahlenberg_ep.h30.html)

In another article, “How Racially Diverse Schools and Classrooms Can Benefit All Students,” by Amy Stuart Wells, Lauren Fox, and Diana Cordova-Cobo of Columbia University you will find four “Policy Recommendations for Fostering the Educational Benefits of Diversity in K–12 Public Schools.”

<https://tcf.org/content/report/how-racially-diverse-schools-and-classrooms-can-benefit-all-students/?session=1>

- Examine Student Assignment and Enrollment Policies that promote broad diverse school populations.
- Redefine “Good” Schools for the Twenty-first Century - examine and change the measures that determine “good” schools that include measures of diversity, intergroup relations, and intercultural understanding. (All skills needed for the increasingly diverse workforce. )
- Improve Teacher Education Programs that prepares teacher to “foster the educational benefits of diversity.”
- Incorporate Policy Changes from the Bottom Up - parents and local leaders need to work together to develop “more intercultural understanding.”

The bottom-line is this:

If there was equity and equal access in housing in society then there would be no need to redistrict schools to balance the demographics. Mixed income communities without racial discrimination would produce well-resourced neighborhood schools with broad diversity. The schools would become places where the diverse learning styles of children would be met by well trained and qualified educators who value the uniqueness of every child regardless of the child's background.

County Council, do your job to help create the kind of environment in which all people can thrive. A major part of the situation Howard County finds itself in is do the past policies and practices that you can correct. Please address the issues that come directly out of the Department of Zoning and Planning that continue to divide Howard County inequitably.

Thank you.

## Sayers, Margery

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**From:** Lauren Barnes <lobarnes1@gmail.com>  
**Sent:** Wednesday, September 18, 2019 10:43 PM  
**To:** CouncilMail  
**Cc:** Walsh, Elizabeth; Jones, Opel; Rigby, Christiana; Jung, Deb; Yungmann, David  
**Subject:** Second testimony night for CR-112

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Good Evening Council Members,

I am writing as I watch the public hearing this evening. I want to thank you for listening to hours of testimony on the bills before you right now...I'm not sure I could pay attention for as long as is required of you.

I realize as the night has dragged on, it was necessary to break up testimony for CR-112 and move many people to a second night. While I understand the limited available space and needed schedule coordination, I ask you to reconsider holding this testimony on the same night as a previously scheduled BoE meeting set to discuss the current redistricting proposal.

While I understand CR-112 is separate from the redistricting proposal and process, the two are clearly related. The very language of CR-112 charges the school system with creating a multi year plan to address segregation and educational inequity. As the redistricting proposal directly deals with this precise issue, you can see how many citizens who are heavily invested in both endeavors want their voices to be heard at both venues...which is not going to be possible.

If another reasonable date is unavailable, I encourage the County Council to think outside the box and allow citizens to sign up for time slots in order to enable those who are registered to speak at the BoE meeting the time to get there.

There is much contention, confusion, and anger in the county right now. It is my belief that a good will gesture on the part of the council to make constituents feel valued and heard would go a long way in healing some of the splintering and divide in our community.

I appreciate your time and consideration in this matter.

Respectfully,  
Lauren Barnes  
District 4

## Sayers, Margery

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**From:** Joe Love <josephlove@yahoo.com>  
**Sent:** Wednesday, September 18, 2019 9:46 PM  
**To:** Walsh, Elizabeth; Jones, Opel; Rigby, Christiana; Jung, Deb; Yungmann, David; CouncilMail  
**Subject:** Feedback on CR-112-2019

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Dear County Council Members,

I agree with many others who believe this resolution is an overstep of Council authority. I was disappointed by the racially-charged and inaccurate language to describe our schools. It references several unproven theories and unacceptable policies. I agree with those that believe that addressing the concentration of poverty in our county will require a broad-based solution that includes housing, land use, transportation and other policies, not simply the social engineering of schools and busing of our students.

I am deeply concerned about the degree to which CR-112-2019 will destroy communities and neighborhood stability. It will create chaos in this county. There are more than a dozen people I know who are in the market for new homes, and based on this proposal have stated they will likely no longer consider Howard County for fear of what this will do the the stability of the county and our communities.

Please vote no to CR-112-2019.

Sincerely,

Joseph Love

## Sayers, Margery

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**From:** Yongneng Yao <yaoyongn@gmail.com>  
**Sent:** Wednesday, September 18, 2019 9:05 PM  
**To:** CouncilMail  
**Subject:** Opposition to CR-112

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Dear Howard County Council Members and County Executive Calvin Ball.

I live in Clarksville in Howard County. My name is Frank Yao. I am writing to clearly state my opposition to CR-112. I strongly against the CR112 because of the following reasons.

1. It is inconsistent, at best, and hypocritical, at worst, to turn around and criticize the achievement gaps in our county schools when the County Council failed to fund the BOE's budget just last year by over \$70 million. Severe cuts to educational programs will inevitably result into the school achievement problem. The Council should fund more resources in the form of assistance programs to schools in need, ensuring that any such programs are accessible at every school in the county.
2. The Resolution uses unnecessary and troubling language of racial "segregation" to evoke emotional responses. Howard County schools are simply not racially segregated as seen by us as an minority Asian American family. Please do not conflate issues of race and class.
3. Disruptive Community division leads disastrous consequences to the family living in the communities. The proposed plan of forced busing the students into other schools is more like a number game than a real solution to the problem without any real beneficial outcomes for individual students.
4. The on-going problematic housing development throughout the county is the root cause of the overcrowding-school problem. The Zoning Board and the County Council have been failing to hold builders/developers accountable when builders make tremendous profits from housing projects in HoCo. No new housing development proposal should be approved by Howard County Zoning Board and County Council without adequate, local facilities to accommodate them.

In short, there simply must be better options to address poverty and the achievement gap in our county. Please reject and discard CR-112. You as elected representatives and officials and We the PEOPLE of Howard County must work together to do better for all county residents.

Thank you.

Regards,

Yours Sincerely,

Frank Yao

## Sayers, Margery

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**From:** Adam White <djadamwhite@gmail.com>  
**Sent:** Wednesday, September 18, 2019 8:46 PM  
**To:** CouncilMail  
**Subject:** River Hill Watershed Committee testimony for CR 112-2019  
**Attachments:** watershed letter.pdf

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Here is the letter of testimony from the River Hill Watershed Committee for CR 112-2019

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Sincerely,

**Adam White**  
[djadamwhite@gmail.com](mailto:djadamwhite@gmail.com)  
(410) 739 - 9972

To the Howard County Council members,

The purpose of this letter is to state that while the River Hill Watershed Committee does agree with the general mission of Council Resolution 112-2019 to promote socioeconomic integration, we are concerned about the redistricting of schools that has been proposed.

A redistricting of students to schools that are farther away will require more buses and longer routes. Every school day an increased number of buses will take students longer distances and create a considerably greater amount of fossil fuel emissions. Global warming has come to a critical point in our history and we must view all public decisions through the lens of climate change. At a time when we should be eliminating greenhouse gases in every way possible the last thing we should do is intensify the problem, especially when it is unnecessary. Howard County has an excellent reputation for environmental responsibility and the damage that would be created through the redistricting associated with Council Resolution 112-2019 goes against the County's ideals.

Furthermore, the village of River Hill has spent over two decades creating a system of walking and biking paths to interconnect the network of neighborhoods and community areas, including it's schools. Redistricting many students out of this network would have a devastating effect on the ability of students and parents to walk or bike to classes, athletic practices, and all school related events. It would in effect cancel out much of the hard work that has been done to create a community built for walking and biking, not just driving. Not only does this weaken the community but it puts more cars on the road thus increasing fossil fuel emissions, again unnecessarily.

To make it clear, the River Hill Watershed Committee is not against Council Resolution 112-2019 in principal, but we disapprove of any redistricting associated with it that will increase busing or redistrict students out of the network of walking/biking paths.

Sincerely,

River Hill Watershed Committee



## Sayers, Margery

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**From:** Allen Dyer <aldyer@lawlab.com>  
**Sent:** Wednesday, September 18, 2019 7:59 PM  
**To:** Sayers, Margery; CouncilMail  
**Cc:** Henry Taylor; Govoni, Lisa; Howard County Board of Education  
**Subject:** Allen Dyer testimony for public hearing on CR112-2019  
**Attachments:** 190918\_CR112\_2019\_Public Hearing\_w\_support.pdf

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

dear margery,

please accept my attached written testimony (and supporting documentation) for the public hearing on CR112-2019. also, please delete my name from tonight's queue.

thank you for your prompt help today!

warm regards,  
allen

/s/

Allen R. Dyer, Esq.  
13340 Hunt Ridge  
Ellicott City, MD 21042

[aldyer@lawlab.com](mailto:aldyer@lawlab.com)  
410-531-3965

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**From:** Sayers, Margery [mailto:msayers@howardcountymd.gov]  
**Sent:** Wednesday, September 18, 2019 10:47 AM  
**To:** Allen Dyer; CouncilMail  
**Subject:** RE: confirmation of sign-up for tonite's hearing on CR112-2019

Mr. Dyer

I do have you signed up to testify for CR112-2019.

Yes, you can send written testimony to [councilmail@howardcountymd.gov](mailto:councilmail@howardcountymd.gov). If you choose to bring it with you this evening, please bring 7 copies.

Sincerely,  
Margery

Margery Sayers  
Executive Assistant  
Howard County Council





## **Public Hearing: CR112-2019**

Howard County Council

Wednesday, September 18, 2019

7:00 pm – Dark Thirty

Allen R. Dyer, Esq.

Former Member – Howard County Board of Education

Written Testimony w/ Supporting Materials

As a former elected member of the Howard County Board of Education (2008–2012), I am decidedly intrigued by CR112.

### **Is CR112 All There Is??**

In my opinion, if CR112 is meant to be a “stand alone” with which the County Council decides to notify the Board of Education of its legal obligations, then, the current County Council incumbents reek of hypocrisy most foul and officeholders of little merit nor of long notice to history.

No one elected to the Howard County Council can rationally claim to be unaware of the failure of the Council to address the impact of housing policy on the schools since the 1954 Supreme Court holding in *Brown v. Board of Education of Topeka*.

Of particular concern is CR112, page 2, lines 22–23:

**WHEREAS, past development patterns in Howard County have lacked a diversity of housing types throughout the county, compounding socioeconomic inequities seen in the school system;**

I ask two (admittedly rhetorical) questions:

1. Did the Board of Education have statutory authority to make changes to the Howard County housing policies that **CREATED** the existing lack of diversity of housing types?

2. Which Local Entity Wasted 65 Years Without Facing And Addressing Systemic Racism In Howard County housing policies??

I hope the current members of the County Council can recognize, AND CONDEMN, the grievous harm of the greed driven housing policies of the last 65 years. If so, there is hope, but,

**FIRST —**

**The County Council MUST Take The Blame It Certainly Deserves**

As a start, I suggest the following amended text for CR112 at page 2, lines 22–23:

**WHEREAS, in the 65 years since *Brown v. Board of Education*, the County Council has allowed greed driven housing policies to deprive Howard County’s citizens, Howard County citizen’s children, and Howard County citizens children’s children of their constitutional rights to racial and socioeconomic diversity in every public school and in every Howard County community;**

**SECOND —**

**Follow The Local Jurisdictions That HAVE DONE THEIR JOBS**

It would be convenient for the Howard County local government if the county could claim it couldn’t do it’s job because the State government wouldn’t authorize drastic land use actions. Such is not the case, however, because MARYLAND LAND USE ARTICLE § 7-401 unabashedly states:

§ 7-401. Affordable housing.

(a) Powers. --To promote the creation of housing that is affordable by individuals and families with low or moderate incomes, a legislative body that exercises authority under this division may enact local laws:

(1 )imposing inclusionary zoning, and awarding density bonuses, to create affordable housing units; and

(2)restricting the use, cost, and resale of housing that is created under this subtitle to ensure that the purposes of this subtitle are carried out.

(b) Power additional. --The authority granted under this subtitle is in addition to any other zoning and planning powers.

### **Resources For The Willing**

Should the sitting members of the County Council properly discuss and vote to proceed with an aggressive approach to undoing some of the systemic racism which has flourished in Howard County for the more than six decades after *Brown v. Board of Education*, I am providing some supporting resources that might help in the quest to pick up the legitimate reins of local government along with a final reminder that:

## **Housing Policy Is School Policy**

Thank you for your service to the community,

/S/

Allen R. Dyer, Esq.  
13340 Hunt Ridge  
Ellicott City, MD 21042  
aldyer@lawlab.com  
410-531-3965

## Public Hearing: CR112-2019

Howard County Council

Wednesday, September 18, 2019

Allen R. Dyer, Esq.

### Testimony Supporting Materials

A	Jan 26, 2010	A Minority Report on CB 58 and CB 59 Educational Infrastructure Presented to Howard County Council ..... CR112-001
B	Jan 17, 1972	Mr. Justice DOUGLAS, dissenting in SPENCER <i>et al.</i> v. KUGLER <i>et al.</i> , 404 U.S. 1027 (1972). ..... CR112-003 “The right to education in the environment of a multi-racial community seems equally fundamental.”
C	February 2004	Excerpts from: Social Studies Office HCPSS. <i>The Integration of the Howard County Public School System: Equal Treatment Under the Law "With All Deliberate Speed"/ or Delay?</i> ..... CR112-005 <i>Nota Bene.</i> The Board of Education should be able to provide County Council members with individual hard copies and the public should have online access to a .pdf version.
D	November 2007	<i>Diversity and Social Equity Tools</i> from <i>The Florida Planning Toolbox</i> (available on-line) ..... CR112-009
E	Sep 25, 2017	Winkler, Elizabeth. <i>'Snob zoning' is racial housing segregation by another name</i> ..... CR112-020
F	July 5 2019	Wikipedia. <i>Inclusionary zoning</i> ..... CR112-025 Inclusionary zoning refers to municipal and county planning ordinances that require a given share of new construction to be affordable by people with low to moderate incomes.
G	June 2011	Eberle, Margaret, <i>et al.</i> <i>Municipal measures for housing affordability and diversity in Metro Vancouver</i> ..... CR112-035
H	October 2009	Chang, Nellie. <i>Inclusionary Zoning for the Provision of Affordable Housing: A Comparative analysis of Vancouver and San Francisco</i> ..... CR112-045

I	2016	Pinedo, Victor J. <i>Embracing the Excluded: Using Mandatory Inclusionary Zoning to Affirmatively Further Fair Housing in St. Louis</i> (excerpt) ..... CR112-058
J	Resource	Md. Land Use Art. § 7-401. Affordable housing ..... CR112-064
K	Resource	Govoni, Lisa <Lisa.Govoni@montgomeryplanning.org> Montgomery County Planning Department ..... CR112-065
L	Resource	Montgomery County Code – Chapter 25A deals with established and operating inclusionary zoning ..... CR112-066
M	Resource	Dr. Henry Louis Taylor, Jr. <htaylor@buffalo.edu> Founding Director, Center for Urban Studies ..... CR112-088

# HOWARD COUNTY

## PUBLIC SCHOOL SYSTEM

January 26, 2010



### Board of Education of Howard County

Ellen Flynn Giles  
*Chairman*

Janet Siddiqui, M.D.  
*Vice Chairman*

Frank J. Aquino, Esq.

Lawrence H. Cohen

Allen Dyer, Esq.

Sandra H. French

Patricia S. Gordon

Josh T. Manley  
*Student Member*

Sydney L. Cousin  
*Superintendent  
Secretary/Treasurer*

The Honorable Courtney Watson, Chairperson  
Howard County Council  
3430 Court House Drive  
Ellicott City, MD 21043

Re: A Minority Report on CB 58 and CB 59 Educational Infrastructure

Dear Chairperson Watson,

Thank you again for inviting the Howard County Board of Education to review and comment on the sufficiency of educational infrastructure in CB 58 and CB 59.

On January 14, 2010, the Board voted to support the Howard County Council's education amendment to CB58. As an individual member of the Board, however, I cannot support postponing the reservation of an elementary school site. I am most directly concerned that the construction of 5,500 new residences in the middle of Columbia will require the County either to build a new elementary school there or to bus the new students to existing schools. The public policy of Maryland, per the recently enacted High Performance Building Act,<sup>1</sup> strongly favors sustainable sites for all public buildings so as to save energy. Plainly, building a school in a new community would be far more sustainable than busing the new students to other neighborhoods; and the County and this Board would be remiss not to reserve a site now.

Moreover, local boards of education must try to reconcile the need to create sustainable schools with the duty to achieve the student diversity goals of the U.S. Supreme Court decision in *Brown v. Board of Education*. In an era of increasing social, economic, and environmental pressures, public schools can ill afford high density, school sized, enclaves of racial or economic uniformity and the associated transportation costs to bus students in and out of such enclaves.

Of special import, therefore, is the challenge/opportunity provided by high density housing such as the 5,500 residential units contemplated in CB 58 and CB 59.<sup>2</sup> As a member of the Board of Education of Howard County, I am concerned that CB 58 and CB 59 do not include tools to insure that the cultural, racial and economic mix of this new urban residential community will reflect countywide demographics.

<sup>1</sup> See: *LEED for Schools Rating System*, Sustainable Sites Prerequisites and Credits.

<sup>2</sup> The Howard County Public Schools System already has one school — Stevens Forest Elementary — that is "walkers only."

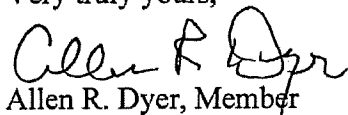
Accordingly, in my opinion the Board should recommend that the County Council anchor the planned new residential community with a new elementary school site without delay and use that prospective new public school as a catalyst for creation of a mixed community of families that accurately reflects the cultural, racial and economic diversity of Howard County. Specifically, the Board should recommend that the County Council:

1. Amend CB 58 to require the granting of a sustainable, walkable elementary school site to the Board of Education;
2. Amend CB 58 to restrict new residential units to locations within a safe walking distance the new town center school site;
3. Amend CB 58 to require new housing demographics to accurately reflect the overall racial and economic diversity of Howard County;
4. Amend CB 58 to include previously proposed provisions regarding checkpoints for determining whether additional schools are needed; and,
5. Having amended CB 58, postpone enactment of CB 59 so as to allow the Planning Board to create and incorporate the tools necessary to make the racial and economic goals of the amended CB 58 possible.

The problem is not whether a school site is needed and where it can be located: the Maryland Education Article delegates sufficient authority to the Board of Education to locate and condemn school sites. The challenge is crafting an enlightened land use policy and working with the developer of this new urban residential community to showcase the cultural, racial, and economic diversity that is Howard County. The Board of Education can build the schools and staff them with the best educators in the country, but only the County Council and the developer can surround that school with a microcosm of Howard County.

Such is the minority advice of this Board member, but, that advice is bundled with a promise to strive mightily to support the County Council and the developer if they choose to take the next step in fulfilling the promise of Brown v. Board of Education.

Very truly yours,



Allen R. Dyer, Member  
Board of Education of Howard County  
Speaking as an individual member

cc: Board Members  
Ms. Mary Kay Sigaty, Vice Chairman, Howard County Council  
Dr. Sydney Cousin, Superintendent

CR112-002



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404 U.S. 1027

92 S.Ct. 707

30 L.Ed.2d 723

Vivian SPENCER et al.

v.

George F. KUGLER et al.

No. 71-519.

## Supreme Court of the United States

January 17, 1972

The judgment is affirmed.

Mr. Justice DOUGLAS, dissenting.

- 1 The Black students in this case want nothing more than to receive the same quality of education from our public schools as is enjoyed by the Whites. To deny them that equality is to sanction the dispensation of public benefits according to the invidious classification of race.
- 2 Appellants sought to convene a three-judge District Court in order to challenge the constitutionality of New Jersey's statutory scheme establishing the boundaries of school districts. They argue that by establishing school district lines to coincide with the boundaries of the State's political subdivisions, cf. N.J.Stat. 18A:8-1, the State imposed upon the public schools patterns of racial imbalance in violation of the Civil Rights Act of 1871, 42 U.S.C. § 1983. It is said in reply that New Jersey only prescribes school district boundaries in conformity with municipal boundaries. There is, however, a showing that at times a Black has to walk further to his school than the White school in his neighborhood. The remedy is redistricting. We have sponsored that process to protect the right to vote. *Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506. The right to education in the environment of a multi-racial community seems equally fundamental.
- 3 The result, according to appellants, is an inferior education for students of minority races—something this Court has long condemned. *McLaurin v. Oklahoma State Regents*, 339 U.S. 637, 70 S.Ct. 851, 94 L.Ed. 1149; *Sweatt v. Painter*, 339 U.S. 629, 70 S.Ct. 848, 94 L.Ed. 1114; *Sipuel v. Board of Regents of University of Oklahoma*, 332 U.S. 631, 68 S.Ct. 299, 92 L.Ed. 247; *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337, 59 S.Ct. 232, 83 L.Ed. 208. See also *Plessy v. Ferguson*, 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256; *Yick Wo v. Hopkins*, 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220. Appellants sought either a redistricting or an appropriate racial balance in the public schools so that educational opportunity would not be determined by race, cf. *Gomperts v. Chase*, 404 U.S. 1237, 1240, 92 S.Ct. 16, 18, 30 L.Ed.2d 30 (1971), or compensatory educational programs to correct for the inferior schooling given minority students. The District Court rejected this approach, however, and dismissed the complaint, finding refuge in *de facto* segregation. 326 F.Supp. 1235.
- 4 If any form of state-imposed segregation is proved, then the racially homogeneous residential neighborhoods and the consequent racial imbalance in schools would seem to be the result of state action.<sup>1</sup> "It is a question of the power of the State as a whole," Justice Brandeis said. "[T]he powers of the several state officials must be treated as if merged in a single officer." *Iowa-Des Moines Nat'l Bank v. Bennett*, 284 U.S. 239, 244-245, 52 S.Ct. 133, 135, 76 L.Ed. 265 (1931). The Constitution condemns 'discrimination, whether accomplished ingeniously or ingenuously,' *Smith v. Texas*, 311 U.S. 128, 132, 61 S.Ct. 164, 166, 85 L.Ed. 84 (1940), and where there has been any such discrimination our 'objective [is] . . . to eliminate from the public schools *all vestiges* of state-imposed segregation.' *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 15, 91 S.Ct. 1267, 1275, 28 L.Ed.2d 554 (1971) (emphasis added).
- 5 There is, moreover, an ancient American doctrine that as, if, and when public facilities are separate for the races, they must be equal. *Plessy v. Ferguson*, *supra*, held that a State could maintain separate facilities for different races providing the facilities were equal. We have long since repudiated the notion that a State may maintain racially distinct facilities for the races because classifications based upon race are invidious and thus violative of the Fourteenth Amendment. But there can be *de facto* segregation without the State's being implicated in the creation of the dual system and it is in such situations that *Plessy's* mandate that separate facilities be equal has continuing force. Our conclusion in *Brown v. Board of Education*, 347 U.S. 483, 495, 74 S.Ct. 686, 692, 98 L.Ed. 873, that '[s]eparate educational facilities are inherently unequal,' has been convincingly borne out by scholarly studies. *E. g.*, J. Coleman, *Equality of Educational Opportunity* (1966); Harvard Educational Review, *Equal Educational Opportunity* (1969); Alexander & Campbell, *Peer Influences on Adolescent Educational Aspirations and Attainments*, 29 *Am.Socio.Rev.* 568 (1964). This inequality led Senator Mondale to conclude:
- 6 'In 1968, there were more than 43 million children in our public elementary and secondary schools. 9 million were from minority groups: 6.3 million were black; 2 million were of Spanish origin; 194,000 were from Oriental backgrounds; 178,000 were American Indian.
- 7 'Most of these children are from families living in poverty. The vast majority are deprived of a decent education throughout their lives. They go to schools which are inferior educationally, financially, and physically. They are years behind in achievement. Few go on to higher education.' *Cong. Rec. S.* 5067 (April 19, 1971).
- 8 Senator Javits recently summarized the problem: 'Whatever you call it, 'de facto segregation,' 'racial unbalance,' or 'the absence of intergroup activity,' it is a serious block to effective education for children of minority groups anywhere in the country, especially in the north and central part of the country where you don't have the established social order of segregation.' Hearings before the Subcommittee on Education of the Senate Committee on Labor and Public Welfare, 91st Cong., 2d Sess., at 21 (1970).
- 9 I would note probable jurisdiction and set the case for oral argument.

<sup>1</sup> In this case the white exodus to the suburbs and the resultant surrender of the inner-city to the blacks is evident. 'In 1910, 73 per cent of the Negro population of the United States were rural; in 1960, 73 per cent were urban.' K. Taeuber & A. Taeuber, *Negroes in Cities* 1 (1965). That shift in residential patterns has been both encouraged and facilitated by federal, state, and local actions. In a recent statement to the Senate Subcommittee on Education, the United States Commission on Civil Rights indicated how pervasive this governmental influence is:

'Even in those instances where school segregation is a result of housing patterns with no apparent complicity of school officials, government at all levels—local, State, or Federal invariably is heavily implicated. Historically, racial zoning ordinances imposed by local law were a

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formidable factor in creating and maintaining racially exclusive neighborhoods. Although such ordinances were held unconstitutional as early as 1917, some communities continued to enforce them, even as late as the 1950s.

Judicial enforcement by State courts of racially restrictive covenants has been another important factor. Although these covenants were private agreements to exclude members of designated minority groups, the fact that they were enforceable by the courts gave them maximum effectiveness. Not until 1948 was the judicial enforcement of such covenants held unconstitutional, and not until 1953 was their enforcement by way of money damages held unlawful. Racially restrictive covenants no longer are judicially enforceable, but they still appear in deeds and the residential patterns they helped to create still persist.

Various exercises of local governmental authority, such as decisions on building permits, the location of sewer and water facilities, building inspection standards, zoning and land use requirements, and the power of eminent domain have been used to exclude minority group members from designated neighborhoods and even from entire communities.

The Federal Government, principally through its public housing and FHA mortgage insurance programs, has been all too often a willing partner in the creation and perpetuation of racially segregated neighborhoods, even to the point of insisting upon them. Until the late 1940's, for example, FHA insisted on racially restrictive covenants to insure against integrated housing developments. Until 1962 when the Executive Order on Equal Opportunity on Housing was issued, the agency continued willingly to do business with discriminatory builders and developers. The Public Housing Administration permitted its funds to be used for the creation and perpetuation of segregated housing projects well after the courts had made it clear that such practices were in violation of the Constitution. Other Federal programs, such as the highway and urban renewal programs, which involve massive displacement and relocation, also have had the effect of intensifying residential segregation.

The point we are making is that the current situation we face, in which most minority group children attend school in isolation from children of the majority group, is *not* accidental or purely *de facto*. In many cases, it has resulted in whole or in substantial part from an accumulation of governmental actions. Thus the categorical distinction between *de jure* and *de facto* segregation is not as clear-cut as it would appear. Upon closer examination, there is probably little legal substance to the concept of *de facto* school segregation. Further, in the Commission's view, the Government has a moral as well as legal responsibility to undo the segregation it has helped to create and maintain. There is no statute of limitations by which government in its many forms can be exonerated from its past misdeeds or relieved of its current obligations.' Hearings before the Subcommittee on Education of the Senate Committee on Labor and Public Welfare, 91st Cong., 2d Sess., 352-354 (1970).



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# **The Integration of the Howard County Public School System**

*Equal Treatment Under the Law "With All Deliberate  
Speed" or Delay?*



*50th Anniversary Celebration*  
*of*

**Brown v. Board of Education  
of Topeka, Kansas, 1954**

Social Studies Office  
Howard County Public School System  
2004

# Foreword

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May 17, 2004 marks the 50<sup>th</sup> anniversary of the landmark Supreme Court decision ***Brown v Board of Education of Topeka, Kansas (1954)***. Along with desegregating public schools in the United States, this decision, in conjunction with the 14<sup>th</sup> amendment of the Constitution, has become the linchpin for ensuring "equal protection of the law" in all facets of American life. It overturned previous segregation policies of "separate but equal" established by the 1896 *Plessy v. Ferguson* decision, declaring that separate facilities, with the purpose of separating the races, are inherently unequal in the eyes of the law of the land. The decision set in motion the eradication of long standing social, political, economic, and legal inequities that were ignored or inadequately addressed by our political and legal systems nationally and locally. Although inequities still exist in various facets of American life today, the *Brown* decision continues to be the precedent used to justify equality and justice for all American citizens regardless of race, color, creed, sex, or disability.

It is the commitment of the Social Studies Office of the Howard County Public School System to provide a *fair and balanced* curriculum, promote social justice for all students, encourage civic efficacy, and prepare students to live in an equitable and diverse society. In presenting the lessons prepared for this celebration, we acknowledge the importance that our students understand how the democratic process works in dealing with changing societal values and times.

In commemoration of the 1954 *Brown v. Board of the Education of Topeka, Kansas* landmark Supreme Court decision, this project was completed under the direction of Mark J. Stout, Coordinator for Social Studies of the Howard County Public School System. The lessons were created by the following office staff:

Robert Coffman, Social Studies Resource Teacher  
Jeannette Lampron, Social Studies Mentor Teacher  
Arden V. Stara, Social Studies Resource Teacher

Respectfully submitted:  
Mark J. Stout, Coordinator for Social Studies  
Howard County Public School System  
February 2004

## Chronology of Events: Black Education in Howard County

- Feb 7, 1871: First mention of "colored" schools in Bd. of Ed minutes.
- Mar 6, 1878: Minutes indicate \$1,900.19 spent on white education; \$488.67 for "colored" schools.
- July 8, 1878: Five "colored" schools ordered closed and replaced with only one in each of the six election districts.
- Feb 2, 1887: Report indicates that salaries for white teachers total \$4,631.75 and of the Black teachers amounting to \$568.02 were approved.
- May 18, 1896: The Supreme Court decides *Plessy v Ferguson* maintaining the legality of segregation so long as facilities are "separate but equal."
- April 4, 1899: Miss Ida Waters, teacher at Pine Orchard (a Black school meeting in a private home rented by the Bd. of Ed.) sent a contribution of \$5 toward the securing of a slate blackboard. The Bd. Secretary was ordered to return it and notify the teacher that the Bd. would not put slate blackboards in private homes.
- Nov. 24, 1899: S. S. Oliver, a teacher at Dayton Colored School, notified the Bd. that he had raised \$5 for the purchase of a slate blackboard for the school. The Secretary ordered that as soon as the \$5 was secured, one would be ordered.
- Jan 1906: Jim Crow Laws passed by the General Assembly. (Remained for 40 years)
- Sept 5, 1916: Under a new law, Black schools restricted to seven month sessions. Schools to open Oct. 2 for Black students.
- May 18, 1920: A delegation of Black parents asked the Bd. to approve the building of a new two room school to be located centrally between Annapolis Junction and Guilford. They had raised \$700 for the erection of the school and had access to \$800 more from a fund (Rosenwald Fund). They requested that the Bd. and County Commissioners levy sufficient money to complete the school.
- Dec 1, 1925: The Superintendent reported that there were no toilets at the new colored school in Elkrige and the same would cost \$150 to be built. It was suggested that the old toilets at the Lisbon School might be moved to this school for the sum of \$12 which would make a considerable saving. The Superintendent was directed to inspect the toilets at Lisbon and order them moved.
- Oct 1, 1929: A petition was received from the Cooksville Colored School requesting the addition of an eighth grade. The Bd. voted unanimously against such a proposition. The Superintendent reported that he was endeavoring to give them all of the industrial education possible and that a great deal could be accomplished and learned if they continued to use seventh grade books.
- October 3, 1933: A request for help from the Bd. in the transporting of two little girls to a Black school. The Bd. refused stating that it did not feel that it was proper to establish a "precedence of hauling colored children to school."
- April 7, 1936: The addition of two years of high school approved for Cooksville Colored School after petitions and presentations. It was determined that there was an empty room and the only cost would be for one teacher and half of that cost would be paid for by the state.
- Mar 2, 1937: Bd. informed that legal action was being taken in Montgomery County requiring equal pay for all teachers and equal school terms because of *Gibbs v Broome et al.* It was felt that bills requiring MD to conform had little chance of passing.

Cornelius, Alice, Silas Craft, Sr., and Lillie Price (1986) History of Blacks in Howard County, Columbia, MD: NAACP.

- June 9, 1937: Bd. approves Superintendent's recommendation of adding two more years to Cooksville Colored and changing it from academic to vocational. Authorization was given to hire two teachers. One would teach English and home economics; the other agriculture, history and mathematics.
- Mar 3, 1938: Parent delegation requests bus service to the Cooksville High School.
- April 5, 1938: Bd. approves two buses for Cooksville. Routes planned to cover the entire county by these two buses. Most of the cost to be paid by a state "Equalization Fund."
- June 8, 1939: Cooksville High School graduates the first three African-American high school students in Howard County, MD.
- Jan. 7, 1941: State informs Bd. that the length of the school term would probably be lengthened from 11 years to 12.
- Mar 4, 1941: Bd informed that salaries for all teachers must be equalized. A two year phase in program approved.
- Feb 12, 1945: Approval for a Consolidated Negro school near Ellicott City.
- Sept 4, 1947: Meeting of all teachers held at Ellicott City, the white teachers at 9:30 and the "colored" at 12:30.
- June 17, 1949: Last Cooksville High School graduation in the new building, Atholton (Harriet Tubman) High School. The school was later inspected in July for completion.
- Dec 19, 1950: Bids approved for two new "Colored Schools" and an industrial arts shop at Harriet Tubman.
- May 17, 1954: Brown v Bd. of Ed. Topeka, KS upheld by the U.S Supreme Court.
- June 1, 1954: Official position of the MD State Bd. of Ed. read at Bd. meeting.
- Aug 16, 1955: The Bd. states that they would conform to the decision of the Supreme Court but that implementation for the current school year was impractical.
- April 19, 1956: A meeting was held to discuss a report on desegregation of schools. No decisions were made as to when or how the program of desegregation should be handled in the public schools of Howard County.
- May 1, 1956: Grades 1 through 5 officially desegregated for the fall term. Black students must apply in person. Transportation facilities remain the same. (Separate)
- During the period of transition the Bd. retains the right to postpone or deny the admission of any pupil to any school for any justifiable reason.
- Aug 8, 1958: Five students families retain lawyer to fight for non-segregated transportation to school.
- April 8, 1959: Grade 8 approved for desegregation in the fall. Grades 6 and 7 had been approved in 1957 and 1958 respectively.
- April 28, 1961: A fourth year of math, solid geometry and trigonometry added to the Harriet Tubman curriculum.
- May 10, 1960: Grade 9 to be desegregated in the fall.
- May 2, 1961: Grade 10 to be desegregated in the fall.
- May 10, 1962: Grade 11 to be desegregated in the fall.
- Mar 12, 1963: Grade 12 to be desegregated in the fall.
- Oct 29, 1963: Special meeting held at the Bd. of Ed. with the Interracial Commission of Howard County requesting the end of segregated schools in June, 1964.
- Feb. 9, 1965: Supt recommends that Harriet Tubman be closed at the end of the current school year.

# **The Florida Planning Toolbox**

*Prepared for the Florida Department of Community Affairs by the  
Center for Urban and Environmental Solutions at Florida Atlantic University in  
coordination with the Florida Conflict Resolution Consortium at  
Florida State University and the University of Central Florida*

*November 2007*

CR112-009

## CONTENTS

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Agricultural Land Conservation Tools .....	1
Benchmarking Tools .....	13
Climate Change Tools .....	17
Coastal Planning Tools .....	48
Diversity and Social Equity Tools .....	59
Economic Development Tools .....	68
Education and Health Tools .....	79
Fiscal Analysis and Financing Tools .....	89
Housing Tools .....	95
Infill and Redevelopment Tools .....	103
Land Use Planning and Development Tool .....	117
Military-Community Growth Planning Tools .....	132
Natural Systems Conservation Tools .....	138
Public Involvement and Education Tools .....	153
Transportation Planning Tools .....	168
Water Resource Planning Tools .....	178



## DIVERSITY AND SOCIAL EQUITY TOOLS

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▶ Community Asset Mapping	61
▶ Diversity and Human Rights Boards	62
▶ Environmental Justice	64
▶ Prosperity Campaigns	65
▶ Social Capital Surveys	66
▶ Undoing Racism™/Community Organizing Workshops	67

Illustrative of the way in which Florida's population is changing, by 2030 over 43 percent of the state's population is projected to be Black/African American and Hispanic/Latino, compared to 35 percent today. Reflecting that trend, Florida communities are using a variety of tools to involve a culturally diverse population in local planning processes and help ensure that new investments benefit all residents. Combined, the diversity and equity tools demonstrate that efforts have expanded from a focus on affirmative action in hiring and promotion practices and contractor selection to a broader focus aimed at improving access to education, economic opportunities, housing, public health, and transportation. A principal source of information on diversity and social equity tools is PolicyLink, a national research and action institute that works collaboratively to develop and implement local, state, and federal policies to achieve economic and social equity. PolicyLink, which provided much of the information for this chapter, offers the following steps to plan for a socially and economically equitable community.

### *Within a Neighborhood*

- Understand the economic, political, and social forces at work
- Assess, map, and analyze the potential for displacement
- Support resident participation in land use planning that envisions community-wide economic improvement
- Stabilize current residents in communities experiencing increases in property values
- Expand the range of housing not susceptible to the commercial market through permanent affordability mechanisms
- Promote diverse homeownership opportunities for existing residents
- Plan for newcomers to promote a diverse community mix and ensure affordability
- Target income and asset strategies to stabilize current residents
- Anchor culturally-rooted commercial, nonprofit, and arts organizations in mixed-income communities


### *Beyond the Neighborhood*

- Build public awareness of the issues and proposed solutions among key players
- Advocate mixed-income development at every turn and across jurisdictions
- Make environmental justice and social equity central components of regional development
- Integrate solutions to public transit, affordable housing, workforce development, and open space issues
- Connect planning for transit investment and affordable housing development. Utilize equity criteria to guide new investment
- Identify key incentives for jurisdictions to adopt mixed-income housing practices
- Secure valuable anti-discrimination practices to ensure fair housing
- Tie affordable housing production to commercial growth
- Strengthen regional cooperation in community and economic development planning
- Craft policies to engage local, regional, state, and federal governments in addressing gentrification pressures

Two other resource organizations are CEO (Clinical, Educational, and Organizational) Services and the Florida Human Rights Commission, the principal Florida resource organization on diversity and social equity.

CEO Services, which sponsors Cultural Competence Online Resources, provides information for organizations, businesses, and training institutions committed to transforming work and organization environments toward ones that are multicultural and culturally competent. CEO Services defines cultural competence as the willingness and ability of a system to value the importance of culture in the delivery of services to all segments of the population and the use of a systems perspective which values differences and is responsive to diversity at all levels of an organization (policy, governance, administrative, workforce, provider, and consumer/client).

Several tools are specific to involving and planning for a diverse population. These tools (described in more detail below) are Community Asset Mapping, Diversity and Human Rights Boards, Environmental Justice, Prosperity Campaigns, Social Capital Surveys, and Undoing Racism™ Workshops. Other tools—such as Technology Tools and the use of Study Circles—are included in the Public Involvement and Education chapter of the toolbox. Tools related to social and economic equity (for example, those addressing affordable housing, neighborhood reinvestment, health access, minority business and living wage, and transportation access) are included, respectively, in the Housing, Infill and Redevelopment, Education and Health, Economic Development, and Transportation chapters of the toolbox.

 *A wide variety of organizations are involved in ensuring that a diverse population is involved in the public decision-making process and in promoting social and economic equity. In addition to PolicyLink [www.policylink.org] and CEO Services [www.culturalcompetence2.com], resource organizations are the Center for Community Change [www.communitychange.org]; the Center for a New American Dream [www.newdream.org]; the Funders Network for Smart Growth and Livable Communities [www.fundersnetwork.org]; the Local Initiatives Support Organization [www.lisc.org]; the National Neighborhood Coalition [www.neighborhoodcoalition.org]; Smart Growth America [www.smartgrowthamerica.org/socialequity.html]; the Sustainable Communities Network [www.sustainable.org]; and Sustainable Measures [www.sustainablemeasures.com]. Other resource organizations are the Alliance for Non-Profit Management, which offers on-line resources on cultural competency [www.allianceonline.org]; Architects/Designers/Planners for Social Responsibility [www.adpsr-norcal.org], Patterns of a Conservation Economy [www.conservationeconomy.net], the Latino Issues Forum [www.lif.org], Sustainable Urban Neighborhoods [www.louisville.edu/org/sun], Urban Ecology [www.urbanecology.org], and the Urban Habitat Program [www.urbanhabitatprogram.org].*

## Community Asset Mapping

The name comes from the process used: the mapping of community assets. The process turns what is frequently the traditional way of planning for urban or rural neighborhoods on its head. Rather than beginning a planning process with identifying and assessing problems and deficiencies, community asset mapping begins with identifying community assets as the building block for planning. Asset mapping can focus on:

- Social assets (for example, the skills of local residents and the capacity of non-profit and civic organizations and institutions, governmental agencies, and informal networks and institutions)
- Physical and natural assets
- Educational assets
- Economic assets

In planning for a diverse population, community asset mapping can be used to understand cultural assets. Residents and planners can develop an understanding and appreciation of what are often the hidden intangible assets of a community – the skills and knowledge of the residents (regardless of age, race, gender, and ethnic background) and the organizations that make up a community. Typical start-up steps in asset mapping include involving the community in:

- Deciding on the goals and focus of the mapping project (for example, the specific geographic area or population groups)
- Deciding on how the results of the asset mapping will be used (for example, publishing an asset resource guide, creating an asset resource database, or building and strengthening networks)
- Determining what skills and assets are to be identified
- Identifying if there are other asset inventories and what type of information those inventories produced, who was involved, and the lessons learned
- Designing the inventory (survey questions) to fit the target group(s)
- Deciding on a timeline and how to keep lines of communication going throughout the process (for example, newsletters of neighborhood organizations and/or a project newsletter and a local newspaper or radio station)
- Developing a plan to collect the information (the resources, the who and how, and the when) and communicating the result of the inventory when it is completed




### IMAGINE MIAMI

An initiative hosted by the Human Services Coalition (HSC), Imagine Miami (IM) builds civic engagement and social capital by connecting people to each other, their neighborhoods, and a shared goal of a more just, inclusive, and sustainable county. Several programs focus on understanding and developing a greater pride and identity with community assets, one aspect of community mapping. For example, Community Visits enable residents and neighborhood civic leaders to identify, share and celebrate community assets (e.g., valued gathering places, unsung heroes, and civic projects) during neighborhood tours. Another program enables residents, business owners, and other stakeholders to adopt a block where they live or work. Participants evaluate local assets and challenges and create and implement an action plan for change. Other IM programs include the Pledge, which allows participants to promise to help their community (for example, by picking up trash on their block); ConnectMiami, a civic networking tool that enables people to find others with similar community goals; Soul of Miami (SoM), which connects people interested in using the arts to build civic engagement; and Community Dinners, which bring local networks together for a potluck dinner. Complementary HSC programs include the Prosperity Campaign (discussed below) and Civic Life Academy, which uses the Study Circle dialogue method (discussed in the Public Involvement and Education chapter). *(More information on Imagine Miami is available from [www.imagemiami.org](http://www.imagemiami.org).)*



The results of the inventory are then used to create an asset map that brings all the information together in a way that participants are able to understand the potential for interrelationships.

 One of the primary resource organizations on community asset mapping is the Asset-Based Community Development Institute (ABCD) at Northwestern University [[www.northwestern.edu/IPR/abcd.html](http://www.northwestern.edu/IPR/abcd.html)]. Other national and regional resource organizations are the Center for Collaborative Planning [[www.connectccp.org](http://www.connectccp.org)], the Center for Neighborhood Technology [[www.cnt.org](http://www.cnt.org)], and the Southern Rural Development Center [<http://ext.msstate.edu/srdc>]. In Florida, resource organizations include the Center for Urban Redevelopment and Education at Florida Atlantic University [[www.cure.fau.edu](http://www.cure.fau.edu)], the Florida Center for Community Design and Research at the University of South Florida [[www.ficus.usf.edu](http://www.ficus.usf.edu)], and EDIS [<http://edis.ifas.ufl.edu>], the Electronic Data Information Source of the University of Florida Institute of Food and Agricultural Sciences Extension.

## Diversity and Human Rights Boards

Diversity and human rights boards are created by local governments to ensure equal opportunity and fair treatment of their citizens; eliminate discriminatory practices; and create an environment that fosters mutual understanding of all racial, cultural, religious, and ethnic groups within a community. Typical activities of a diversity or human rights board include:

- Sponsoring programs that promote greater public awareness and appreciation of issues concerning diversity, tolerance, and racial sensitivity
- Identifying and addressing the needs of minority and ethnic communities
- Creating opportunities for residents to discuss issues related to diversity and tolerance; establishing network systems among various ethnic communities
- Publishing a directory of ethnic organizations
- Sponsoring events that feature and celebrate a community's different ethnic organizations
- Promoting minority participation in governmental contracts

A diversity or human rights board can also be charged (by local ordinance) with investigating and enforcing discrimination complaints at the city or county



### THE BROWARD COUNTY DIVERSITY ADVISORY COUNCIL

The Broward County Diversity Advisory Council identifies and focuses attention on the needs and issues of the county's ethnically and culturally diverse population, facilitates communication among elected officials and the ethnic and cultural groups they serve, and brings together and provides assistance to community, civic, religious, business, governmental, and professional groups that are willing to work toward positive community relations in the county. The Council's activities include disseminating reports on ethnic and cultural issues, developing recommendations on ethnic and cultural issues and problems affecting community relations in the county, and sponsoring conferences and other events designed to promote ethnic and cultural understanding at all levels. (More information about the Broward County Diversity Advisory Council is available from [www.broward.org/diversity/welcome.htm](http://www.broward.org/diversity/welcome.htm).)

level. In that case, such boards are often called a human rights or equal opportunity board or commission. Typical responsibilities include:

- Public education activities
- Investigating and mediating complaints about alleged discriminatory practices (for example, in housing, employment, and areas of public accommodation)
- Monitoring and enforcing applicable anti-discrimination laws
- Informing consumers and businesses about the steps required to comply with local, state, and federal anti-discrimination laws

Some boards are designated by a federal agency to investigate complaints (for example, for the U.S. Department of Housing and Urban Development ([www.hud.gov](http://www.hud.gov)) and the U.S. Equal Employment Opportunity Commission ([www.eeoc.gov](http://www.eeoc.gov))). Most discrimination laws address discrimination on the basis of race, color, religion, sex, national origin, age, disability, marital status, or familial status.

The principal Florida resource organization on diversity and social equity is the Florida Commission on Human Rights. The Commission has a two-part mission: to prevent unlawful discrimination by ensuring that people in Florida are treated fairly and given access to opportunities in employment, housing, and certain public accommodations, and to promote mutual respect among groups. Two of its initiatives are:

- The Community Relations Services (CRS) unit, which offers programs aimed at educating businesses and communities. Two specific CRS programs are Literacy, Learning and Leadership, an outreach program designed to empower middle school students to become socially conscious citizens and leaders, and Dining and Dialogue, a series of community events that provide local residents the opportunity to join together in a meal at which diversity is the topic of discussion, thereby connecting people in a dialogue about prejudices.
- Diversity and cultural competency workshops, which provide businesses an introduction to workplace diversity (what it is, why it is important, and how to foster a workplace environment that respects and embraces it).

The Commission on Human Rights also offers training on fair housing and discrimination laws.


#### TAMPA/HILLSBOROUGH COUNTY HUMAN RIGHTS COUNCIL (TCHRC)



The TCHRC brings together citizens of various backgrounds to promote the rights of all individuals through implementation of the city's Human Rights Ordinance. The Tampa Office of Human Rights (TOHR), which is located in the

Division of Community Affairs, coordinates the activities of the Council. It handles allegations of discrimination and conducts mediation conferences for new employment discrimination complaints prior to TOHR's investigation. The TCHRC sponsors an annual awards celebration. Community Awareness Action Teams (a project of the Division of Community Affairs) work with volunteers to maintain an awareness of situations and problems that might produce community tension or unrest and resolve issues or concerns as quickly and appropriately as possible. Tampa also has a Mayor's African American Advisory Council and a Hispanic Advisory Council, which serve as a liaison between the mayor and community groups. A Mayor's Hispanic Heritage Committee hosts an annual Hispanic celebration. *(More information on the Tampa/Hillsborough County Human Rights Council is available from [www.tampagov.net/dept\\_community\\_affairs](http://www.tampagov.net/dept_community_affairs).)*




 Additional information on diversity, human relations, and human rights boards is available from the Florida Commission on Human Rights [<http://fchr.state.fl.us>].

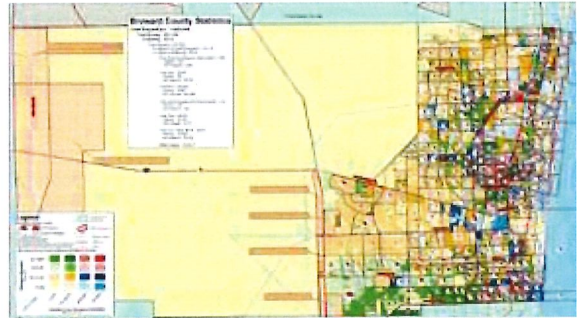
## Environmental Justice

The concept of environmental justice (often called EJ) goes back to the civil rights movement in the 1960s and concerns about public health dangers and the higher environmental risks for minority and low-income populations. Those concerns led to the creation of an Office of Environmental Equity (now the Office of Environmental Justice) in 1992 and, in 1994, to Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations). Executive Order 12898 directed every federal agency to make environmental justice a part of its mission by identifying and addressing the effects of all programs, policies, and activities on minority and low-income populations. The intent of environmental justice requirements is to:

- Avoid, minimize, or mitigate disproportionately high and adverse health, environmental, and social effects on minority and low-income populations.
- Ensure the full and fair participation by all potentially affected communities in the planning and decision-making process.
- Prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations.

The U.S. Environmental Protection Agency's (EPA) Office of Environmental Justice serves as a resource on environmental justice. The office provides technical assistance and grants for projects that address local environmental concerns. Its Environmental Justice Geographic Assessment Tool ([www.epa.gov/compliance/whereyoulive/ejtool.html](http://www.epa.gov/compliance/whereyoulive/ejtool.html)) provides a web-based technology that can be used to assess adverse health or environmental impacts.

 For more information on environmental justice, go to the U.S. Environmental Protection Agency [[www.epa.gov/compliance/environmentaljustice/index.html](http://www.epa.gov/compliance/environmentaljustice/index.html)]; the U.S. Department of Transportation Federal Highway Administration [[www.fhwa.dot.gov/environment/ej2.htm](http://www.fhwa.dot.gov/environment/ej2.htm)], which provides environmental justice information for transportation planners; and the Environmental Justice Resource Center at Clark Atlanta University, which serves as a research, policy, and information clearinghouse on a range of environmental, race, and civil rights issues, including those related



### COMPREHENSIVE EVERGLADES RESTORATION PLAN (CERP) ENVIRONMENTAL AND ECONOMIC EQUITY (EEE) PROGRAM MANAGEMENT PLAN

The EEE Plan was put in place in 2001 to avoid or minimize potential adverse social or economic impacts of CERP and ensure that CERP economic opportunities benefit all citizens. One of the plan's objectives is to provide relevant, timely, valid, and reliable socio-economic and environmental justice baseline data for system-wide and project-specific assessments. To that end, maps showing baseline demographic information were prepared for the 16 CERP service area counties. Using 2000 census data, the maps show the relationship between the minority and household income percentages in each census block and illustrate the diverse population in the project areas, the neighboring areas, and those areas downstream from restoration projects. Pie charts for each census tract show the percentage of Hispanic- and Creole-speaking populations within that area. Consistent with the requirements of the EPA, the maps were used to identify potential areas for environmental justice and prepare outreach materials and activities to ensure maximum public involvement in planning activities. The pie charts were used to develop specific outreach strategies for individuals with limited proficiency in English. (More information on the CERP EEE Program Management Plan is available from [www.evergladesplan.org/pm/progr\\_eee\\_plan.aspx](http://www.evergladesplan.org/pm/progr_eee_plan.aspx). A complete set of the 16 county maps is available from [www.evergladesplan.org/pm/progr\\_eee.aspx#epa](http://www.evergladesplan.org/pm/progr_eee.aspx#epa).)

to environmental justice [[www.ejrc.cau.edu](http://www.ejrc.cau.edu)]. Other resource organizations include the Sierra Club [[www.sierraclub.org/environmental\\_justice](http://www.sierraclub.org/environmental_justice)], the Center for Health, Environment & Justice [[www.chej.org](http://www.chej.org)], and the National Academy of Public Administration [[www.napawash.org](http://www.napawash.org)], which has a standing Panel on Social Equity in Governance.

### Prosperity Campaigns

Prosperity campaigns connect low-wage workers to economic benefits programs available to them, with the goal to help them gain greater economic stability through higher earnings. Prosperity campaign services typically include helping low income people apply for the Earned Income Tax Credit and the Child Tax Credit and providing free income tax preparation assistance. Some programs offer one-stop service centers where lower income people can participate in matched homeownership savings programs, obtain help in resolving credit issues, receive money management and job assistance, and learn how to set up Individual Development Accounts. Current (as of August 2007) Florida counties with prosperity campaigns are Alachua, Broward, Collier, Duvall, Flagler, Hillsborough, Manatee, Miami-Dade, Orange, Palm Beach, Pinellas, and Volusia.

The primary resource organizations in Florida are the Prosperity Campaign Office (housed in Workforce Florida, Inc.) and the Florida Prosperity Council. The Prosperity Campaign Office is responsible for educating citizens about economic benefit programs and the importance of wise financial decision-making. Its services include:

- Offering free tax preparation and economic benefits screening services
- Providing information to businesses to enable them to distribute economic benefit information to employees
- Coordinating existing prosperity campaigns in the state and establishing new campaigns in designated regional workforce areas
- Working with the federal Internal Revenue Service in providing programs for low-wage workers

The Florida Prosperity Council assists the campaign office with a number of duties, including working with businesses and agencies to develop a package of services for citizens participating in prosperity campaigns and coordinating financial literacy classes or programs within each campaign. The council also works with the Florida




### NORTHEAST FLORIDA PROSPERITY CAMPAIGN

Called the RealSense Prosperity Campaign, the Northeast Florida Prosperity Campaign is a United Way-led coalition of companies, agencies, and other organizations focused on increasing the prosperity of the community through changing the financial behavior of low-to-moderate income families. Services provided by the Campaign include free tax preparation by Internal Revenue Service-certified volunteer preparers at one of 12 different sites, as part of the Campaign's focus to bring a portion of the approximately \$10 million in unclaimed Earned Income Tax Credits (EITC) to Northeast Florida and the people who have earned them, and Matched Savings Accounts + IDA (Individual Development Accounts), which are special matched savings accounts that match every dollar saved with another two dollars up to a specified limit. Another campaign service is free financial literacy training focused on how to open or maximize bank accounts, build up a good credit rating, become first-time home owners, further an education, or start a small business. (For more information on the Northeast Florida Prosperity Campaign, go to [www.jaxprosperity.org](http://www.jaxprosperity.org).)

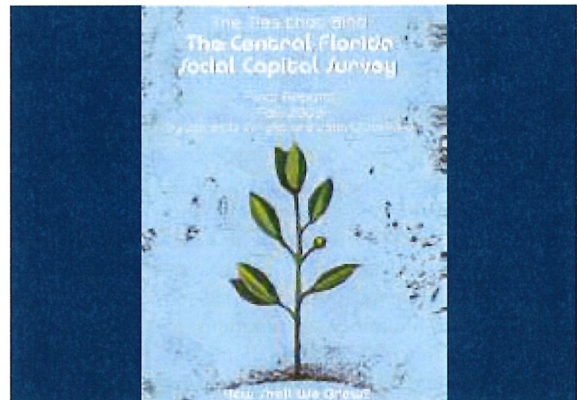


Department of Education in developing financial literacy instruction as a part of high school life management skills curricula. The Florida Jump Start Coalition, which is a nonprofit membership-based organization, complements the prosperity campaigns with its emphasis on personal financial literacy, particularly in kindergarten through young adults. The Florida Jump Start program is affiliated with the National Jump Start Coalition.

 More information on prosperity campaigns in Florida is available from [www.floridajob.org/eitc/index.html](http://www.floridajob.org/eitc/index.html) and from [www.flaprospersitycampaign.org](http://www.flaprospersitycampaign.org). Information on the state and national Jump Start programs is available, respectively, from [www.fjumpstart.org](http://www.fjumpstart.org) and [www.jumpstart.org](http://www.jumpstart.org).

### Social Capital Surveys

Social capital is a way of conceptualizing or measuring the health of a community's social fabric – how people connect to each other and to family, friends, neighbors, and civic institutions. It is viewed as important to creating the high degree of civic involvement that is important to creating and sustaining successful communities. When promoting social capital surveys, advocates point to Robert Putnam's book, *Bowling Alone: Collapse and Revival of the American Community*, which describes how civic ties in American society have weakened over the past several generations, resulting in the loss of social capital. The Kennedy School of Government at Harvard University Saguaro Seminar: Civic Engagement in America Initiative is a primary source of information on social capital and social capital surveys. It defines social capital as referring to the collective value of all social networks (who people know) and the inclinations that arise from these networks to do things for each other. The seminar focuses on understanding more about levels of trust and community engagement and on developing strategies and efforts to increase that engagement. Building on a five-year dialogue on how to build bonds of civic trust among Americans and their communities, the Saguaro Seminar is now focusing its research on the interrelationship of workplace policies and practices with social capital, both on- and off-the-job; on the relationship between social capital, diversity, and equality; and on religion and public life. Seminar resources include a Social Capital Blog, Social Capital Glossary, Social Capital Evaluation Guide, and a webpage, Organizations Building Social Capital.



### CENTRAL FLORIDA SOCIAL CAPITAL SURVEY

In 2005, six partners (the Central Florida YMCA, the Community Foundation of Central Florida, the Heart of Florida United Way, [myregion.org](http://myregion.org), the Orlando Regional Chamber of Commerce, and the University of Central Florida Metropolitan Center for Regional Studies) joined together to conduct a social capital survey of central Florida (Brevard, Lake, Orange, Osceola, Polk, Seminole and Volusia counties). One reason for the study was the number of new residents in the region and the need to understand how current residents viewed their community. The Institute for Social and Behavioral Science at the University of Central Florida conducted the survey, using the Social Capital Community Benchmark Survey created by the Kennedy School of Government at Harvard University. The partners plan to use survey results, which showed that Central Florida is a microcosm of the U.S., to strengthen Central Florida's social capital. (More information on the Central Florida Social Capital Survey is available from the University of Central Florida Metropolitan Center for Regional Studies [<http://metrocenter.ucf.edu>].)



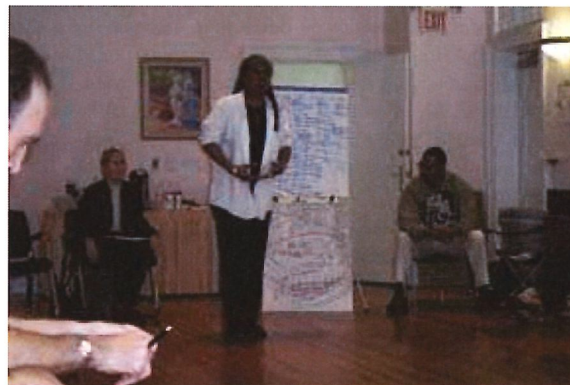
Additional information on social capital and social capital surveys is available from the Kennedy School of Government at Harvard University Saguaro Seminar: Civic Engagement in America Initiative [[www.ksg.harvard.edu/saguaro](http://www.ksg.harvard.edu/saguaro)].

### Undoing Racism™/Community Organizing Workshops

Undoing Racism™/Community Organizing Workshops are a project of the People's Institute for Survival and Beyond (PISAB), a national and international collective of anti-racist, multicultural community organizers and educators dedicated to building an effective movement for social transformation. The PISAB considers racism the primary barrier preventing communities from building effective coalitions and overcoming institutionalized oppression and inequities. PISAB helps individuals, communities, organizations, and institutions move beyond addressing the symptoms of racism to undoing the causes of racism through its Undoing Racism™/Community Organizing Workshops, technical assistance, and consultations. The workshops are designed to help participants move beyond focusing on the symptoms of racism to understanding what racism is, where it comes from, how it functions, why it persists, and how it can be undone. They emphasize:

- Learning from history
- Developing leadership
- Maintaining accountability to communities
- Creating networks
- Undoing internalized racial oppression
- Understanding the role of organizational gatekeeping as a mechanism for perpetuating racism

More information on PISAB and its Undoing Racism™/Community Organizing Workshops is available [www.pisab.org](http://www.pisab.org). Additional information is available from the Center for Urban and Environmental Solutions at Florida Atlantic University [[www.cuesfau.org](http://www.cuesfau.org)] and its regional partners, the Collins Center for Public Policy [[www.collinscenter.org](http://www.collinscenter.org)] and the South Florida and Treasure Coast Regional Planning Councils [[www.sfrpc.com](http://www.sfrpc.com) and [www.tcrpc.org](http://www.tcrpc.org)], which joined in regional Undoing Racism™/Community Organizing Workshops.



#### DELRAY BEACH UNDOING RACISM™ WORKSHOP

The Steering Committee charged with developing *Creating Inclusive Partnerships: Downtown Delray Beach Master Plan* took steps to focus on the city's social growth, particularly in the area of race relations. The committee engaged the People's Institute for Survival and Beyond to hold a three-day Undoing Racism™ Workshop for committee members, residents, city officials, and the Community Redevelopment Agency. The workshop explored the key concepts of racism and other forms of social oppression and how networking, leadership, and empowerment could begin to undo the impacts of racism on communities and persons of color and whites. Participants used their increased understanding and awareness of racism to create a plan that was fair for the businesses and neighborhoods of West Atlantic Avenue. (More information on the Delray Beach Undoing Racism™ Workshop and the resulting downtown master plan is available from the City of Delray Beach Community Redevelopment Agency [[www.delraycra.org](http://www.delraycra.org)].)

The Washington Post

**Economic Policy** Analysis

## ‘Snob zoning’ is racial housing segregation by another name

By Elizabeth Winkler

September 25, 2017

Skyscrapers in New York. (Mark Lennihan/AP)

It’s no secret that Americans live in divided spaces. The country’s cities and suburbs are segregated by race and socioeconomic status. These divides are often assumed to be a result of economics — as poor and rich families alike pick neighborhoods they can afford — and of personal choice, as Americans seek to live near people with whom they have more in common.

There’s a more sinister force at work, however. In many places, economic and racial segregation goes beyond market forces or personal choices. That segregation is buttressed by local laws and ordinances that effectively exclude or discourage poor and working-class people from moving into certain communities, keeping those areas primarily the domain of the white and wealthy.

Across the country, American communities employ “snob zoning” policies that forbid builders from constructing apartment buildings or impose minimum residential lot requirements. They are often presented as driven by concerns that building smaller units could change the character of a community. Some ordinances even exclude modest single-family homes in the name of preserving a neighborhood’s “aesthetic uniformity.” Such rules effectively impose a price floor for the cost of housing, making it impossible for people who live below a certain means to afford them, a recent [report](#) by the Century Foundation explains.

The policies are widespread in cities and suburbs across the country, the result of a century of social engineering by federal and local governments. But a survey by the Brookings Institution found they are particularly popular in the Northeast and Midwest. Towns with the most stringent rules tend to have lower density and be wealthier than those with less regulation, according to researchers at the Wharton School at the University of Pennsylvania.

The laws do not specifically mention race, but because African Americans and Latinos have on average far less wealth and income than white people, the laws do tend to drive people of color out and keep neighborhoods more uniformly white. That’s in keeping with the racist history of “snob zoning.”

As Richard Rothstein, a research associate at the Economic Policy Institute and the author of “The Color of Law,” explained, many of these rules cropped up in the 20th century just as court rulings made it more difficult to enact explicitly racist housing policies. In 1917’s *Buchanan v. Warley*, the Supreme Court held unanimously that a city ordinance prohibiting the sale of property to blacks in white-majority neighborhoods in Louisville, violated the 14th Amendment. Government-instituted racial zoning policies were thus declared unconstitutional (a ruling later codified in the Fair Housing Act of 1968).

In the wake of that Supreme Court decision, a flood of communities rushed to adopt zoning ordinances. In 1916, only eight cities in the country had zoning ordinances. By 1936, 1,246 cities had put such ordinances on the books.

Many were motivated by economic or safety concerns — ensuring that a factory cannot pop up in the middle of a residential neighborhood, for example. But as the report explains, exclusionary zoning went far beyond this “to the point where it effectively would designate the economic wherewithal of the families living in each residential neighborhood.”

The policies often achieve the same results as racial zoning rules. When 250 African Americans moved to Milpitas, Calif., in 1954 to work at an auto plant, the town adopted an ordinance permitting the banning of apartment buildings.

While courts struck down racial zoning policies, exclusionary economic zoning has been upheld. In the 1926 case of *Euclid v. Ambler*, the Supreme Court declared an apartment can be a “mere parasite, constructed in order to take advantage of the open spaces and attractive surroundings created by the residential character of the district.”

In 1959, the village of Arlington Heights, a Chicago suburb, barred the construction of multifamily units. The case was taken to the Supreme Court, which held that the ordinance was constitutional, saying it saw no evidence of racial motivation in the city council’s decision. “Yet they clearly passed the ordinance in response to the racial motivations of residents,” Rothstein said.



Further challenges, brought in the 1970s, continued to fail — with a few exceptions. The cases that succeeded did so by attacking exclusionary zoning as a threat to the liberty and property rights of landowners and as an injustice to those of modest means. In 1970, in *Appeal of Girsch*, the Pennsylvania Supreme Court ruled in favor of the property rights of landowners, invalidating an ordinance that prevented the construction of apartments. In 1975, the New Jersey Supreme Court ruled in *Southern Burlington County NAACP v. Mount Laurel* that zoning laws that have the effect of excluding low-income families violate the state constitution.

Yet in most of the country, it remains constitutional to exclude people from neighborhoods on the basis of income. There is no class-based version of the Fair Housing Act — that is, no federal legislation that says economic exclusion is improper. George Romney, President Richard Nixon’s secretary of housing and urban development and former governor of Michigan, came close: His program, Open Communities, proposed withholding federal infrastructure aid to jurisdictions that excluded the poor and minorities. Nixon killed the program.

“Housing remains the major unfinished business of the civil rights movement,” Rothstein said.

Increasingly, low-income whites are affected, too. Since 2000, there has been a 145 percent increase in whites living in neighborhoods of concentrated poverty.

Richard Kahlenberg, a senior fellow at the Century Foundation and author of the report, wants an “Economic Fair Housing Act” that ends exclusionary zoning. “Just as it is illegal to discriminate in housing based on race, it should be illegal for municipalities to employ exclusionary zoning policies ... that discriminate based on income,” he said in the report.

This doesn’t mean market forces wouldn’t still cause discrimination, he said, but government policies should not add to that. At the very least, Kahlenberg proposes municipalities engaging in exclusionary zoning should suffer a penalty — for instance, by being denied infrastructure funds (as Romney proposed), or limiting the tax deduction homeowners in such areas can take for mortgage interest.

Economists across the policy spectrum say exclusionary zoning contributes to the housing affordability crisis. Excessive regulations distort markets, artificially raising rents and house prices. Joseph Gyourko, a conservative economist at the Wharton School, has [found](#) these policies have pushed real house prices 56 percent above real construction costs.

CR112-022

Exclusionary zoning also creates a troubling cycle: Where people live determines many other aspects of their lives — access to transportation, good jobs, decent health care and, most critically, good schools. They make it more likely that children in poor neighborhoods will only be able to afford those same neighborhoods when they grow up.

In wealthy Bethesda, Md., for example, there is one pediatrician for every 400 children. In Southeast Washington, there is one for every 3,700 children. Commutes to and from high-poverty neighborhoods can take up to two hours, cutting into the time parents spend with children after work. And 75 percent of American children attend their neighborhood school — meaning zoning rules affect the quality of their education, economic opportunity and earning power later in life. Middle-class schools are 22 times as likely to be high achieving as schools in high-poverty neighborhoods. By fourth grade, low-income students in high-poverty schools are already two years behind low-income students in low-poverty schools on national assessments in math.

As the urban scholar David Rusk put it in a [report on public schools](#), “Housing policy is school policy.”

A few states, including New Jersey, Massachusetts, Maryland and California, have adopted “inclusionary zoning” policies. These mandate that developers make a portion of new housing units affordable for low-income residents. In exchange, developers receive a “density bonus” that allows them to develop more high-profit units than the area is zoned for. Eleven percent of Americans now live in areas with inclusionary zoning policies.

Opening up neighborhoods to low-income families has improved student achievement. Maryland's Montgomery County, which adopted inclusionary zoning in 1974, is exemplary: Between 2001 and 2007, low-income students attending good schools cut the math achievement gap with their middle-class peers in half, according to [research](#) by Heather Schwartz of the RAND Corporation.

But inclusionary and exclusionary zoning still exist simultaneously, with counties adopting broad policies of exclusion coupled with small efforts to be inclusive. “It’s like we skipped a step,” said Kahlenberg. “In employment, first we outlawed discrimination, then we took affirmative action steps. But in housing, we skipped over making exclusionary zoning illegal. I want to go after that fundamentally discriminatory policy.”

Kahlenberg isn’t holding his breath for an economic fair housing act. Indeed, it would be an unlikely piece of legislation under a president who built his name in luxury real estate. But for lawmakers who are serious about addressing inequality, there is a lot to like in the proposal: It appeals to liberal principles of justice and equity,

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as well as conservative arguments about liberty, property rights and excessive government regulation. State legislation is more likely in the short term. California, where the housing affordability crisis is particularly acute, is ripe for a fair housing act.

"The nation is more divided than it's been in a long time," Kahlenberg said. "We need to find ways to bring people of different backgrounds together."



The Washington Post

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# Inclusionary zoning

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**Inclusionary zoning** (IZ), also known as **inclusionary housing** refers to municipal and county planning ordinances that require a given share of new construction to be affordable by people with low to moderate incomes. The term *inclusionary zoning* indicates that these ordinances seek to counter exclusionary zoning practices, which aim to exclude low-cost housing from a municipality through the zoning code. There are variations among different inclusionary zoning programs. Firstly, they can be mandatory or voluntary.<sup>[1]</sup> There are also variations among the set-aside requirements, affordability levels coupled with the period of control.<sup>[1]</sup> In order to encourage engagements in these zoning programs, developers are awarded with incentives for engaging in these programs, such as density bonus, expedited approval and fee waivers.<sup>[1]</sup>

In practice, these policies involve placing deed restrictions on 10–30% of new houses or apartments in order to make the cost of the housing affordable to lower-income households. The mix of "affordable housing" and "market-rate" housing in the same neighborhood is seen as beneficial by city planners and sociologists.<sup>[2]</sup> Inclusionary zoning is a tool for local municipalities in the United States to allegedly help provide a wider range of housing options than a free market provides on its own. Many economists consider the program as a price control on a percentage of units, which negatively impacts the supply of housing.<sup>[3]</sup>

Most inclusionary zoning is enacted at the municipal or county level; when imposed by the state, as in Massachusetts, it has been argued that such laws usurp local control. In such cases, developers can use inclusionary zoning to avoid certain aspects of local zoning laws.

## Contents

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### Historical background

### Potential benefits and limitations of IZ Policies

- Potential benefits

- Potential limitations

### Differences in ordinances

### Alternative solutions

### Controversy

### Failure in improving social integration coupled with increasing social cost

### In practice

- Examples from the USA

- International Examples

- Johannesburg, South Africa

### The trend of going mandatory over voluntary

### See also

### Notes

### References

### External links

## Historical background

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During the mid- to late-20th century, new suburbs grew and expanded around American cities as middle-class house buyers, supported by federal loan programs such as Veterans Administration housing loan guarantees, left established neighborhoods and communities. These newly populated places were generally more economically homogeneous than the cities they encircled. Many suburban communities enacted local ordinances, often in zoning codes, to preserve the character of their municipality. One of the most commonly cited exclusionary practices is the stipulation that lots must be of a certain minimum size and houses must be set back from the street a certain minimum distance. In many cases, these housing ordinances prevented affordable housing from being built, because the large plots of land required to build within the code restrictions were cost-prohibitive for modestly priced houses. Communities have remained accessible to wealthier citizens because of these ordinances, effectively shutting the low income families out of desirable communities. Such zoning ordinances have not always been enacted with conscious intent to exclude lower income households, but it has been the unintended result of such policies.

By denying lower income families access to suburban communities, many feel that exclusionary zoning has contributed to the maintenance of inner city ghettos. Supporters of inclusionary zoning point out that low income households are more likely to become economically successful if they have middle class neighbors as peers and role models. When effective, inclusionary zoning reduces the concentration of poverty in slum districts where social norms may not provide adequate models of success. Education is one of the largest components in the effort to lift people out of poverty; access to high-quality public schools is another key benefit of reduced segregation. Statistically, a poor child in a school where 80% of the children are poor scores 13–15% lower compared to environments where the poor child's peers are 80% middle class.<sup>[4]</sup>

In many of the communities where inclusionary zoning has been put into practice, income requirements allow households that earn 80–120% of the median income to qualify for the "affordable" housing. This is because in many places high housing prices have prevented even median-income households from buying market-rate properties. This is especially prominent in California, where only 16% of the population could afford the median-priced home during 2005.<sup>[5]</sup>

## Potential benefits and limitations of IZ Policies

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### Potential benefits

- Poor and working families would have access to a range of opportunities, including good employment opportunities, good schools, comprehensive transportation system and safe streets <sup>[6]</sup>
- Alleviating the problem of inadequate supply of Affordable Housing
- Avoiding economic and racial segregation, which helps reducing crime rate, failing schools and improving social stability
- Relatively small amount of public subsidies required for adopting IZ as a market-based tool <sup>[7]</sup>

### Potential limitations

- Low production of affordable housings, which produced approximately 150,000 units over several decades nationwide,<sup>[8]</sup> comparing to other schemes, such as Housing Choice Vouchers that helps approximately two million households and the LIHTC program that has produced over two million affordable homes
- Unstable production of affordable housing that highly affected by local housing-market conditions <sup>[9]</sup>

## Differences in ordinances

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Inclusionary zoning ordinances vary substantially among municipalities. These variables can include:

- Mandatory or voluntary ordinance. While many cities require inclusionary housing, many more offer zoning bonuses, expedited permits, reduced fees, cash subsidies, or other incentives for developers who voluntarily build affordable housing.



- Percentage of units to be dedicated as inclusionary housing. This varies quite substantially among jurisdictions, but appears to range from 10–30%.
- Minimum size of development that the ordinance applies to. Most jurisdictions exempt smaller developments, but some require that even developments incurring only a fraction of an inclusionary housing unit pay a fee (see below).
- Whether inclusionary housing must be built on site. Some programs allow housing to be built nearby, in cases of hardship.
- Whether fees can be paid in lieu of building inclusionary housing. Fees-in-lieu allow a developer to "buy out" of an inclusionary housing obligation. This may seem to defeat the purpose of inclusionary zoning, but in some cases the cost of building one affordable unit on-site could purchase several affordable units off-site.
- Income level or price defined as "affordable," and buyer qualification methods. Most ordinances seem to target inclusionary units to low- or moderate-income households which earn approximately the regional median income or somewhat below. Inclusionary housing typically does not create housing for those with very low incomes.
- Whether inclusionary housing units are limited by price or by size (the City of Johannesburg for example provides for both options)<sup>[10]</sup>
- Appearance and integration of inclusionary housing units. Many jurisdictions require that inclusionary housing units be indistinguishable from market-rate units, but this can increase costs.
- Longevity of price restrictions attached to inclusionary housing units, and allowable appreciation. Ordinances that allow the "discount" to expire essentially grant a windfall profit to the inclusionary housing buyer, preventing that subsidy from being recycled to other needy households. On the other hand, preventing price appreciation removes a key incentive for home ownership. Many programs restrict annual price appreciation (by, for instance, enrolling inclusionary housing in community land trusts), often tying it to inflation plus market value of home improvements, striving to balance the community's interest in long-term affordability with the homeowner's interest in accruing equity over time.
- Whether housing rehabilitation counts as "construction," either of market-rate or affordable units. Some cities, like New York City, allow developers to count rehabilitation of off-site housing as an inclusionary contribution.
- Which types of housing construction the ordinance applies to. For example, high-rise housing costs more to build per square foot (thus raising compliance costs, perhaps prohibitively), so some ordinances exempt it from compliance.

## Alternative solutions

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While many suburban communities feature Section 8 for low income households, they are generally restricted to concentrated sections. In some cases, counties specify small districts where Section 8 properties are to be rented. In other cases, the market tends to self-segregate property by income. For instance, in Montgomery County, Pennsylvania, a wealthy suburban county bordering Philadelphia, only 5% of the county's population live in the borough of Norristown, yet 50% of the county's Section 8 properties are located there.<sup>[11]</sup> The large low income resident population burdens Norristown's local government and school district, while much of the county remains unburdened.

Inclusionary zoning aims to reduce residential economic segregation by mandating that a mix of incomes be represented in a single development.

## Controversy

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Inclusionary zoning remains a controversial issue. Some affordable housing advocates seek to promote the policies in order to ensure that housing is available for a variety of income levels in more places. These supporters hold that inclusionary zoning produces needed affordable housing and creates income-integrated communities.

Yet other Affordable Housing advocates state the reverse is true, that Inclusionary Zoning can have the opposite effect and actually reduce affordable housing in a community. For example, in Los Angeles, California, inclusionary zoning apparently accelerated gentrification, as older, unprofitable buildings were razed and replaced with mostly high-rent housing, and a small percentage of affordable housing; the net result was less affordable housing. In New York, NY, inclusionary zoning allows for up to a 400% increase in luxury housing for every unit of affordable housing and for an additional 400% luxury housing when combined with the liberal use of development rights. Critics have stated the affordable housing can be directed to those making

up to \$200,000 through the improper use of an Area Median Income, and used as political tools by organizations tied to various politicians. New York City communities such as Harlem, the Lower East Side, Williamsburg, Chelsea and Hell's Kitchen have experienced significant secondary displacement through the use of Inclusionary Zoning.

Real Estate industry detractors note that inclusionary zoning levies an indirect tax on developers, so as to discourage them from building in areas that face supply shortages. Furthermore, to ensure that the affordable units are not resold for profit, deed restrictions generally fix a long-term resale price ceiling, eliminating a potential benefit of home ownership.

Free market advocates oppose attempts to fix given social outcomes by government intervention in markets. They argue inclusionary zoning constitutes an onerous land use regulation that exacerbates housing shortages.

Homeowners sometimes note that their property values will be reduced if low income families move into their community. Others counter consider their concerns thinly-concealed classism and racism.

Some of the most widely publicized inclusionary zoning battles have involved the REIT AvalonBay Communities. According to the company's website (<http://www.avalonbay.com/Template.cfm?Section=CompanyProfile>), AvalonBay seeks to develop properties in "high barrier-to-entry markets" across the United States. In practice, AvalonBay uses inclusionary zoning laws, such as the Massachusetts Comprehensive Permit Act: Chapter 40B, to bypass local zoning laws and build large apartment complexes. In some cases, local residents fight back with a lawsuit.<sup>[2]</sup> ([http://www.boston.com/news/local/massachusetts/articles/2004/01/29/developer\\_aims\\_to\\_turn\\_tables\\_on\\_opponents/](http://www.boston.com/news/local/massachusetts/articles/2004/01/29/developer_aims_to_turn_tables_on_opponents/)) In Connecticut, similar developments by AvalonBay have resulted in attempts to condemn the land or reclaim it by eminent domain.<sup>[12]</sup> In most cases AvalonBay has won these disputes and built extremely profitable apartments or condominiums.

Other legal battles have occurred in California, where many cities have implemented inclusionary zoning policies that typically require 10 percent to 15 percent of units to be affordable housing.<sup>[13]</sup> The definition of affordable housing includes both low-income housing and moderate-income housing. In California, low-income housing is typically designed for households making 51 percent to 80 percent of the median income, and moderate-income housing is typically for households making 81 percent to 120 percent of the median income.<sup>[13]</sup> Developers have attempted to fight back these requirements by challenging local inclusionary zoning ordinances through the court legal system. In the case *Home Builders Association of Northern California v. City of Napa*, the California First District Court of Appeal upheld the inclusionary zoning ordinances of City of Napa that require 10 percent of units of the new development project to be moderate income housing against the Home Builders Association that challenged the City of Napa.<sup>[14]</sup> Cities have also attempted to impose inclusionary requirements on rental units. However, the Costa-Hawkins Rental Housing Act prohibits cities in California from imposing limitation on rental rates on vacant units.<sup>[15]</sup> Subsequently, developers have won cases, such as *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles (2009)*, against cities that imposed inclusionary requirements on rental units, as the state law supersedes local ordinances.<sup>[16]</sup>

Citizen groups and developers have also sought other ways to strengthen or defeat inclusionary zoning laws. For example, the initiative and referendum process in California allows citizen groups or developers to change local ordinances on affordable housing by popular vote. Any citizens or interest groups can participate in this process by gathering at least the required number of signatures so that the measure proposed can qualify to be on the ballot; once enough signatures are submitted and the ballot measure is cleared by election officials, the ballot measure is typically placed on the ballot for the upcoming election.<sup>[17]</sup> One recent case is Proposition C in San Francisco. This ballot measure was placed on the ballot for the June 2016 California primary election. Passed in June 2016, this proposition amends the City's Charter to increase the requirement for affordable housing for development projects of 25 units or more.<sup>[18]</sup>

The clash between these various interests is reflected in this study ([http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1676277](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1676277)) published by the libertarian-leaning Reason Foundation's public policy think tank, and the response of a peer review ([http://www.nonprohousing.org/actioncenter/campaigns/download/IH\\_countering\\_critics.pdf](http://www.nonprohousing.org/actioncenter/campaigns/download/IH_countering_critics.pdf)) of that research. Local governments reflect

and in some cases balance these competing interests. In California, the League of Cities has created a [guide](http://www.cacities.org/index.jsp?zone=ilsg&previewStory=2230) (<http://www.cacities.org/index.jsp?zone=ilsg&previewStory=2230>) to inclusionary zoning which includes a section on the pros and cons ([http://www.cacities.org/resource\\_files/20555.Part%20III.pdf](http://www.cacities.org/resource_files/20555.Part%20III.pdf)) of the policies.

## Failure in improving social integration coupled with increasing social cost

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It is suggested that IZ policies may not effectively disperse low-income units throughout the region, which actually contradicts the aim of the policy itself.<sup>[19]</sup> For instances in Suffolk County, it is found that there is a spatial concentration of IZ units in poor neighbourhood coupled with higher proportions of Black and Hispanic, which are considered the minorities.<sup>[19]</sup> Furthermore, 97.7% of the IZ units were built in only 10% of the census tract from 1980 to 2000, which is area with the lowest-income neighbourhood coupled with clustering of minorities.<sup>[19]</sup> It is indispensable to notice that housing policies is controlled by local government rather than regional government in Suffolk County, therefore without regional coordinations of housing policy, it fails to consider the inter-municipality distribution of low-income household within the county.<sup>[19]</sup> Besides, density bonuses given to property developers for the provision of IZ units have intensified the concentration of affordable units in poor neighborhood (Ryan & Enderle as cited in Mukhija, Das, Regus et al., 2012).<sup>[20]</sup> This shows that IZ policies may fail to disperse the low-income distributions when it is carried out without taking regional coordination into account,

Moreover, with density bonuses allocated to property developers for the provision of IZ units, it implies the community would be bearing the cost of increasing population density and sharing existing infrastructure.<sup>[20]</sup>

## In practice

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### Examples from the USA

More than 200 communities in the United States have some sort of inclusionary zoning provision.<sup>[21]</sup>

Montgomery County, Maryland, is often held to be a pioneer in establishing inclusionary zoning policies. It is the sixth wealthiest county in the United States, yet it has built more than 10,000 units of affordable housing since 1974, many units door-to-door with market-rate housing.<sup>[22]</sup>

All municipalities in the state of Massachusetts are subject to that state's General Laws Chapter 40B, which allows developers to bypass certain municipal zoning restrictions in those municipalities which have fewer than the statutorily defined 10% affordable housing units. Developers taking advantage of Chapter 40B must construct 20% affordable units as defined under the statute.<sup>[23]</sup>

All municipalities in the state of New Jersey are subject to judicially imposed inclusionary zoning as a result of the New Jersey Supreme Court's Mount Laurel Decision and subsequent acts of the New Jersey state legislature.<sup>[24]</sup>

A 2006 study, found that 170 jurisdictions in California had some form of inclusionary housing.<sup>[25]</sup> This was a 59% increase from 2003, when only 107 jurisdictions had inclusionary housing.<sup>[26]</sup> In addition, state law requires that 15% of the housing units produced in redevelopment project areas must be affordable. At least 20% of revenue generated from a redevelopment project must be contributed to low-income and moderate-income housing.<sup>[13]</sup> However, Governor Jerry Brown passed AB 1X 26 that dissolved all redevelopment agencies on February 1, 2012.

However, Los Angeles, California's inclusionary zoning ordinance for rental housing was invalidated in 2009 by the California Court of Appeal for the Second Appellate District because it directly conflicted with a provision of the state's Costa-Hawkins Rental Housing Act of 1996 which specifically gave all landlords the right to set the "initial rental rate" for new housing units.<sup>[27]</sup>

Madison, Wisconsin's inclusionary zoning ordinance respecting rental housing was struck down by Wisconsin's 4th District Court of Appeals in 2006 because that appellate court construed inclusionary zoning to be rent control, which is prohibited by state statute. The Wisconsin Supreme Court declined the City's request to review the case. The ordinance was structured with a sunset in February 2009, unless extended by the Common Council. The Common Council did not extend the inclusionary zoning ordinance and therefore it expired and is no longer in effect.

Other communities with inclusionary zoning ordinances on the books include:

- Burlington, Vermont<sup>[28]</sup>
- Barnstable County, Massachusetts, which includes Cape Cod<sup>[29]</sup>
- Princeton, New Jersey<sup>[30]</sup>
- Frederick County, Maryland<sup>[31]</sup>
- Fairfax County, Virginia, the wealthiest county in the USA (<http://www.policylink.org/pdfs/EDTK/IZ/InZon-Fairfax.pdf>)
- Chapel Hill, North Carolina<sup>[32]</sup>
- Davidson, North Carolina<sup>[33]</sup>
- Tallahassee, Florida<sup>[34]</sup>
- Boulder, Colorado<sup>[35]</sup>
- Santa Fe, New Mexico<sup>[36]</sup>
- San Francisco, California<sup>[37]</sup>
- Palo Alto, California<sup>[38]</sup>
- San Mateo County, California<sup>[39]</sup>
- Sacramento, California<sup>[40]</sup>
- West Hollywood, California<sup>[41]</sup>
- Huntington Beach, California<sup>[42]</sup>
- San Diego, California<sup>[43]</sup>
- New York, New York New York City housing ([https://web.archive.org/web/20080408171610/http://www.nyc.gov/html/dcp/pdf/greenpointwill/incl\\_housing\\_web.pdf](https://web.archive.org/web/20080408171610/http://www.nyc.gov/html/dcp/pdf/greenpointwill/incl_housing_web.pdf))
- Montclair, New Jersey<sup>[44]</sup>

## International Examples

### Johannesburg, South Africa

On 21 Feb 2019, the City of Johannesburg Council approved its "Inclusionary Housing Incentives, Regulations and Mechanisms 2019".<sup>[10]</sup> The policy is the first of its kind in South Africa and provides four options for inclusionary housing (including price limited, size limited or negotiated options) where at least 30% of dwelling units in new developments of 20 units or more, must be inclusionary housing.<sup>[45]</sup>

## The trend of going mandatory over voluntary

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While inclusionary zoning can be either mandatory or voluntary, some studies have shown that mandatory approaches would be crucial to the success of inclusionary zoning programs in terms of providing a larger number of affordable housing.<sup>[46]</sup> Below are some examples showing the greater effect of mandatory practice over voluntary practice.<sup>[47]</sup>

Municipality or County	Under voluntary practice	Under mandatory practice
Cambridge, MA	Cannot generate any affordable housing within 10 years	Switching to a mandatory program in 1999, 135 housing units were produced and 58 more were in production as of June 2004.
Irvine, CA	Confusion and uncertainty were found under a voluntary program that motivated developers to initiate a switch to a mandatory ordinance.	A new mandatory ordinance, enforced in 2003 with uniform expectations and rewards for developers, led to the creation of 3,400 affordable housings, with 750 more planned in June 2004.
Orange County, CA	952 units were built over eleven years (1983–1994).	6,389 units of affordable housing were built within four years (1979–1983)

By 2002, Denver's mandatory ordinance law contributed approximately 3,400 units of affordable housing, including those constructed and planned, providing evidence that the law was necessary and successful.

In 2019, the Oregon Legislature passed HB 2001, which would prohibit single-family zoning in cities above 10,000 in population, as well as legalize the construction of both duplexes in cities above 10,000 in population and multiple forms of multi-family units in the Portland metropolitan area.

## See also

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- Visitability - Social Integration Beyond Independent Living
- Affordable housing
- Residential segregation
- Exclusionary zoning
- Office of Fair Housing and Equal Opportunity
- Woodward's building
- Gregory Henriquez, architect who specializes in the use of inclusionary zoning to create affordable housing

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# **Municipal measures for housing affordability and diversity in Metro Vancouver**

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**SUBMITTED TO CMHC EXTERNAL RESEARCH PROGRAM**

**BY MARGARET EBERLE, JIM WOODWARD, MATT THOMSON AND DEBORAH KRAUS**

June 2011

## Abstract

There is growing recognition that municipalities influence housing affordability and diversity. In 2007 Metro Vancouver adopted an *Affordable Housing Strategy (AHS)*. For the first time at the regional level, it laid out a framework for municipal action to address housing affordability. This study documents the extent to which the 15 largest Metro Vancouver municipalities have adopted 35 measures referenced in the strategy and the perceived influence of the strategy. Using a web search and interviews with municipal staff, the study found that over 250 zoning, fiscal, planning, approval process, rental loss prevention and education/advocacy measures were in place and another 30 were pending adoption. Zoning and regulatory measures were the most common type of measure adopted, followed by fiscal measures involving contributions of land or cash. There has been a range of responses, with municipalities adopting between 23% and 80% of the 35 measures considered. The City of Vancouver, the largest by population and with the most costly housing has adopted the most measures, at 80%. Many of the measures had been adopted in the last two decades, and 22% of all measures had been introduced since the AHS was adopted in November 2007. In over fifty percent of municipalities a homeless plan was in place, and two thirds participated on a homeless task force or committee or had facilitated housing or shelter for homeless persons. Overall, the Metro AHS (2007) was perceived to have had little influence on municipal activity to date, however it was felt to offer significant indirect benefits in setting a common policy direction for the region. It is clear these Metro municipalities are responding to growing concern about housing affordability and diversity. This research has served as an indicator of current activity and can serve as a baseline against which future efforts and changes can be assessed.

## TABLE OF CONTENTS

Executive Summary.....	i
1. Introduction .....	1
1.1. Purpose and objectives .....	1
1.2. Context.....	1
1.3. Background .....	2
1.4. Scope.....	3
1.5. Method .....	3
1.6. Limitations .....	4
1.7. Report organization .....	4
2. Municipal housing measures in Metro Vancouver .....	5
2.1. Frequency of measures.....	5
2.2. Categories of measures.....	8
2.3. Ten most common measures.....	8
2.4. Least common measures .....	9
2.5. Measures adopted by municipality.....	9
2.6. Pending measures.....	10
2.7. Measures by city size .....	11
2.8. Measures by decade and year introduced.....	12
2.9. Actions on homelessness .....	13
2.10. Influence of Metro Affordable Housing Strategy.....	13
2.11. Findings.....	15
2.12. Conclusions .....	17
3. Municipal profiles .....	18
Burnaby.....	19
Coquitlam .....	22
Delta .....	24
Langley City.....	26
Langley Township .....	28
Maple Ridge .....	30
New Westminster .....	32
North Vancouver City .....	35
North Vancouver District .....	38
Port Coquitlam.....	40
Port Moody.....	42
Richmond.....	44
Surrey.....	47
Vancouver.....	49
West Vancouver.....	52
Appendix A - Interview Guide.....	54

## Executive Summary

### Background and context

There is growing recognition among housing stakeholders that municipalities influence housing affordability and diversity. There are distinct measures they can implement that play a critical role in facilitating the creation and retention of housing that is affordable and diverse, through both the private market and the use of non-market approaches. In 2007 Metro Vancouver (formerly Greater Vancouver Regional District) adopted an *Affordable Housing Strategy (AHS)*. For the first time at the regional level, it laid out a framework for municipal action to address housing affordability. This project documents the extent to which the 15 largest municipalities in Metro Vancouver have adopted and implemented 35 measures referenced in the 2007 Metro Vancouver *Affordable Housing Strategy (AHS)* to address issues of housing affordability and diversity. It creates a baseline resource that can be used by Metro Vancouver municipalities and others to measure progress in the years ahead and the situation in Metro Vancouver in relation to other large Metro areas in Canada.

### Objectives

The objectives of this study are to:

- a. Develop a snapshot of each municipality describing relative housing affordability and availability of rental and ownership housing, as well as diversity of the housing stock;
- b. Conduct research to document current municipal activity addressing housing affordability and diversity, using as a framework the municipal actions set out by the Metro Vancouver *Affordable Housing Strategy (2007)*; and
- c. Discuss the findings in terms of recent trends in municipal housing measures, gaps with respect to the Metro Vancouver Affordable Housing Strategy recommendations and measures that municipalities are considering.

This research represents an assessment of municipal *effort* in terms of providing the enabling tools and measures that influence the affordability and diversity of the housing stock, but not a measure of the *extent of use* of the tools or *outcomes* produced by the measures. For example, although a municipality may have a number of measures in place, they may have been used infrequently or indeed not at all.

### Methods

The work was carried out in three phases. Phase 1 consisted of preparing municipal profiles using pertinent demographic and housing information to set the context for understanding the nature and extent of housing measures that have been adopted in different municipalities. Phase 2 consisted of data collection using a list of 35 discrete housing measures identified in the Metro AHS, populated first through a web search and then through a survey of municipal staff to collect descriptive information about the measures in place in each municipality. This included date adopted, type of measure, a brief description, adopted via policy, plan or bylaw, if it has been used, the intended type of housing it addresses, and the measure's perceived effectiveness. A secondary aim was to establish the influence of the Metro AHS on municipal housing policies and practices. Phase 3 consisted of municipal level reporting and analysis of the combined responses.

## Findings

Municipalities in Metro Vancouver have in their “toolkits” a range of measures that promote affordability and diversity. The 15 municipalities included in this study had adopted over 250 measures, an average of 17 measure each out of the 35 measures considered in this study. An additional 30 measures are pending adoption. On average, each measure was adopted by seven municipalities, just under half those included in the study.

Of the 35 municipal measures considered, only two measures had been adopted by all municipalities - *Official Community Plan policies showing commitment to a range of housing choices* and *Increased density in areas appropriate for affordable housing*. The Local Government Act requires the former. Five measures had been adopted by at least 80% of municipalities. In terms of specific measures, only seven of the fifteen municipalities indicated that they had an affordable housing strategy or action plan in place. This is of interest as the Metro Vancouver Regional Growth Strategy (Draft 2011) requires municipalities to adopt these plans to demonstrate how they will meet affordable housing demand going forward.

Municipalities appear to favour zoning measures that affect affordability through densification and diversity, such as permitting secondary suites in all single family residential areas, and smaller lots. Of the 253 measures adopted, 46% were zoning/regulatory measures and 18% were categorized as fiscal measures. Somewhat surprisingly given municipal resource constraints, one fiscal measure, leasing city owned sites to non-profits, is among the ten most common measures. Only 4% of all measures adopted were education and advocacy.

There was a wide range among municipalities in terms of the share of the 35 measures adopted - from 23% to 80%. Not unexpectedly given its size and high housing costs, the City of Vancouver has adopted the most measures, 28 out of the 35 considered, or 80% of them. Other municipalities such as the District and City of North Vancouver closely follow, however, the District of North Vancouver emphasized that most measures have rarely been used, and in fact will be rescinded upon adoption of its new OCP. This suggests that the adoption of a measure is a limited metric, as it does not reflect the extent or frequency of use nor the magnitude of outcomes in terms of units created or preserved.

The relationship between the number of measures adopted and city population size appears to be positive, but weak. Some small and moderate sized municipalities have a higher frequency of measures than some larger ones. Other factors, such as type and age of housing stock, play a role.

The study shows there has been much municipal activity in the last two decades, arguably since the withdrawal by the federal government of funding for new non-profit housing in the early 1990s and in the 2000's, when high and rising homeownership costs became a growing concern. In addition, 22% of all measures had been introduced since the AHS was adopted in November 2007.

In the last few years, municipalities have been quite active in the homelessness area, the second goal of the AHS. This is not unexpected given the growing magnitude and visibility of the issue, and the fact that several senior government funding programs were introduced to support these efforts. In over fifty percent of municipalities a homeless plan was in place, and two thirds participated on a homeless task force or committee or had facilitated some form of emergency shelter or transitional/supportive housing for homeless persons.

More than half the interviewees reported that the Metro AHS (2007) had not directly influenced municipal adoption of housing affordability and diversity measures despite the fact that 22% of all measures had been adopted since 2007. There may be several reasons for this. Firstly, the Metro AHS has been in place for a short period of time in terms of the time needed to pass bylaws, develop plans and policies, and indeed housing. It too may have been adopted in response to some of the same pressures

## Municipal measures for housing affordability and diversity in Metro Vancouver

that led municipalities to adopt affordability and diversity measures. Nonetheless, respondents reported significant indirect benefits of the AHS, including setting a common policy direction for the region. Going forward, it may be seen to have more of a direct influence on municipal activity, particularly with adoption of the Regional Growth Strategy. In fact, several municipalities indicated pending adoption of an affordable housing plan or strategy.

Of the ten most common measures adopted by municipalities, four were strongly suited to addressing entry-level homeownership including increased density in areas appropriate for affordable housing, infill housing, neighbourhood plans and smaller lots. Only one of the ten most common measures was considered well suited to address either non-market rental or special needs housing. Many of the ten most common measures, including secondary suites, condo/strata conversion policies and density bonus provisions, were intended to address market and low-end market rental housing.

Broad policy measures such as OCPs and neighbourhood/area plans are perceived as moderately effective. Other measures tend to be effective for a particular housing type or types. For example leasing city owned sites and housing agreements were viewed as most effective for special needs housing such as transitional and supportive housing.

### Conclusions

The study provides information on municipal measures adopted to promote housing affordability and diversity in the regional context, specifically Metro Vancouver, an area experiencing tremendous housing price increases and low rental vacancy rates. Framed in the context of the newly adopted Metro Vancouver Affordable Housing Strategy (2007), the data shows a longstanding municipal role, beginning in the 1970s. It also shows increasing municipal activity, with a particular focus in the 2000s, not unexpected given the withdrawal of senior levels of government from programs creating new affordable housing in the 1990s, and the mounting homelessness crisis with a federal response that required community-based planning. The study also shows the relative difference in the extent of adoption of municipal measures among Metro Vancouver municipalities and although some of the larger cities have adopted many measures, city size alone does not explain the variations. In terms of the type of measures municipalities are adopting, the data not surprisingly reveals a focus on regulatory measures to facilitate housing affordability and diversity. The large number of pending measures suggests that municipal activity in this area will continue to grow.

Many of the most common measures address entry-level homeownership or market and low-end market rental housing. Only one of the ten most common measures was considered well suited to address either non-market rental or special needs housing - leasing city owned land to non-profits. This likely reflects the traditional municipal focus on regulation as well as relative paucity of funding for this type of housing. The study attempted to assess the influence of the 2007 Regional AHS on municipal activity, and noted that while municipal staff feels the influence has been limited to date, there are some clear benefits in terms of a regional focus on housing affordability and diversity.

This study will provide a baseline with which to compare municipal activity in the future, and perhaps in relation to other large Canadian metropolitan areas. This research documents municipal *effort* in terms of providing the enabling tools and measures that influence the affordability and diversity of the housing stock, but not a measure of the *extent of use* of the tools or *outcomes* (number of units) produced by the measures. Further research in this area is warranted

# 1. Introduction

## 1.1. Purpose and objectives

There is growing recognition among housing stakeholders that municipalities can and do influence housing affordability and diversity. There are distinct measures they can implement that play a critical role in facilitating the creation and retention of housing that is affordable and diverse, through both the private market and the use of non-market approaches. This project documents the extent to which the 15 largest municipalities in Metro Vancouver have adopted and implemented measures laid out in the Metro Vancouver *Affordable Housing Strategy* (2007) to address issues of housing affordability and diversity. It creates a baseline resource that can be used by Metro Vancouver municipalities and others to measure progress in the years ahead and the situation in Metro Vancouver in relation to other large metropolitan areas in Canada.

The objectives of this study are to:

- Develop a snapshot of each municipality describing relative housing affordability and availability of rental and ownership housing, as well as diversity of the housing stock;
- Conduct research to document current municipal activity addressing housing affordability and diversity, using as a framework the municipal actions set out by the Metro Vancouver *Affordable Housing Strategy* (2007); and
- Discuss the findings in terms of recent trends in municipal housing measures and gaps with respect to the Metro Vancouver Affordable Housing Strategy recommendations.

## 1.2. Context

In 2007 Metro Vancouver (formerly Greater Vancouver Regional District) adopted the *Regional Affordable Housing Strategy* (AHS). For the first time at the regional level, it laid out a framework for municipal action to address housing affordability. The strategy aimed to improve the housing supply across the housing continuum, from transitional and supportive housing, non-market rental, market rental and entry-level homeownership. It set out specific actions to be taken by the Region, Municipalities and other agencies. The Strategy has three objectives:

1. To increase the supply and diversity of modest cost housing;
2. To eliminate homelessness across the region; and
3. To meet the needs of low-income renters.

## Municipal measures for housing affordability and diversity in Metro Vancouver

Although three major types of actions were envisaged in the Strategy, Metro has since disaggregated them in the following way:

- **Fiscal actions** designed to improve the economics of housing production and/or create a source of equity for generating additional affordable housing units. This could include the use of municipal assets or financial incentives to leverage funds from other sources to expand the supply of affordable housing.
- **Planning measures** such as Official Community Plan housing policies, neighbourhood/area planning, and identifying suitable affordable housing sites in neighbourhood and area planning processes.
- **Zoning/regulatory actions** rely on municipal development control processes to encourage an increase in the supply and diversity of housing at key points along the continuum.
- **Approval process measures** such as fast tracking affordable housing projects and providing staff assistance throughout the process.
- **Rental housing loss prevention measures** including demolition policies, replacement policies for loss of rental housing stock and standards of maintenance bylaws.
- **Education and advocacy** designed to build community awareness and support for affordable housing and to advocate for solutions to respond to needs that are not currently being met through existing government programs.

The *Metro Vancouver Regional Growth Strategy* (Draft 2011) likewise requires municipalities to develop housing action plans and sets out municipal targets for different types of housing in keeping with the *Affordable Housing Strategy*. While the *Affordable Housing Strategy* (AHS) outlines a number of measures municipalities may use to implement their housing action plans, the region has no authority to mandate them.

Three years after implementation of the AHS, this study sought to shed light on the progress municipalities have made in adopting 35 distinct measures referenced in the AHS that may assist in improving housing affordability and diversity.

### 1.3. Background

Beginning in 1992, the government of British Columbia introduced changes to the *Municipal Act* (now the *Local Government Act*), giving municipalities authority to adopt a variety of tools designed to increase their ability to support the creation of affordable housing or to preserve the existing rental stock. These tools include density bonuses, standards of maintenance bylaws to preserve existing rental stock, and alternate building codes for secondary suites. Several reports have noted municipal take-up of these measures province-wide.<sup>1</sup>

This issue is an important one as the federal government has reduced its expenditures on new non-market housing and the provincial government in BC has focused on meeting the housing needs of the most vulnerable, including people who are homeless and at risk of homelessness, people with complex needs including mental illness and/or addictions, and low income families and seniors. The price of homeownership is soaring, and there is little private construction of new purpose built rental housing. In a growing region like Metro Vancouver, this is of significant concern. The *Draft Regional Growth Strategy* estimates that the population of Metro Vancouver will increase by 300,000 people or 185,600 households by 2021.<sup>2</sup> The Growth Strategy includes demand estimates for affordable housing and requires

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<sup>1</sup> BC Ministry of Community Aboriginal and Women's Services. 2004. *Planning for Housing. An Overview of Local Government Initiatives in BC*.

<sup>2</sup> Metro Vancouver. *Regional Growth Strategy*. Bylaw No. 1136, 2010. Second reading Jan 14, 2011.



municipalities to demonstrate how they will meet the estimated demand. A diverse and affordable housing supply will be required.

#### **1.4. Scope**

The research included 15 municipalities in Metro Vancouver with a population of over 20,000 as of the 2006 Census. The survey was completed in all municipalities by December 31, 2010, and is current up to that point.

While one municipality may have leased many sites to non-profit providers over the years and another may have done so only once, this difference would not be reflected in the tables below. For example among all fifteen municipalities studied, 27 measures had not been used, although implemented by bylaw or policy. This might occur for instance if a municipality has created an affordable housing reserve fund but there have been few or no contributions and therefore no monies disbursed. Most municipalities had some measures like this.

This research represents an assessment of municipal *effort* in terms of providing the enabling tools and measures that influence housing affordability and diversity, but not a measure of the *extent of use* of the tools or *outcomes* produced by the measures. For example, although a municipality may have a number of measures in place, they may have been used infrequently or indeed only once.

There are challenges involved in measuring outcomes of these measures. Most municipalities do not track units built by price or affordability level and thus do not have ready access to the number of entry-level homeownership units built or approved. Furthermore, most affordable housing initiatives involve the use of several municipal concessions, such as incentives or relaxations, so it is difficult to gauge the impact of a single type of measure. Finally, in some municipalities like the City of Vancouver with a long history of affordable housing initiatives, this would be time prohibitive. The research did attempt to gauge the number of units produced since Nov 2007 when the AHS was adopted for each of four housing types but this was only partially successful.

#### **1.5. Method**

The research team collaborated with Metro Vancouver staff and the Technical Advisory Committee, Housing Subcommittee to collect the data for this project, as Metro required similar information for their own reporting purposes.

The work was carried out in three phases:

Phase 1 consisted of preparing municipal profiles using pertinent demographic and housing information from Metro Vancouver, CMHC, Statistics Canada, and BC Housing. The purpose was to set the context for understanding the nature and extent of housing measures that have been adopted in different municipalities, as the 15 municipalities represent a diverse range of urban, suburban and partially rural areas with different housing stock and affordability issues.

Phase 2 consisted of data collection. Metro Vancouver staff prepared a list of 35 discrete affordable housing measures based on those identified in the Metro AHS. Metro staff carried out a preliminary Web search to populate the matrix, using Official Community Plans (OCPs) and other policy documents available on the Web. Metro Vancouver's Technical Advisory Committee, Housing Sub-committee membership reviewed this for accuracy. The research team then developed an interview guide containing questions pertaining to the 35 measures and other questions related to the AHS (see Appendix A). It was designed to collect descriptive information about each measure such as date introduced, type of measure, a brief description, whether it is policy or practice, if it has been used, the housing target group, and the measure's effectiveness. A secondary aim was to establish the influence of the Metro AHS on

## Municipal measures for housing affordability and diversity in Metro Vancouver

municipal housing policies and practices and whether the AHS influenced the creation or retention of an affordable and diverse housing stock since its inception. The interviews were carried out by telephone or in-person with municipal staff.

Phase 3 consisted of municipal level reporting and analysis of the combined responses. The researchers prepared a synopsis of municipal affordability and diversity measures in a two-page fact sheet for each municipality. The fact sheets include a brief description of the municipal context, consisting of a demographic and housing profile, and describe the affordability and diversity measures in place, including number of measures adopted, significant housing initiatives, recent initiatives, homelessness actions, planning for future needs and the influence of the Metro AHS. It also contains a table showing all measures adopted in that municipality.

The survey response information was entered into a database for analysis. This municipal measures database was analyzed to determine the number and type of measures adopted and pending, by incidence of use, type of measure, municipal distribution, ten most common measures, ten least common measures and date introduced. To reflect the diversity of city sizes and types, the municipalities were grouped by city size and shown with the ranking of measures.

### **1.6. Limitations**

The research has a number of limitations.

1. Firstly, there may be a lack of clarity around definitions of some measures, and indeed some overlap of measures. For example, “increasing density in areas appropriate for affordable housing”, and “broadening duplex and townhouse zoning” might be viewed as one and the same, and therefore counted twice.
2. Secondly, there is a grey area in terms of what constitutes a measure. For the purposes of this study, the measure must have been adopted in a plan; policy or bylaw and not represent a “one-off” decision, i.e. spot rezoning. “Support” for a measure in an OCP is not included if it has not been implemented through a bylaw or other policy.
3. Thirdly, the interviewers relied on municipal staff for their views. In some cases, municipal staff could not recall if or when a measure was introduced, as it may have preceded their tenure by many years.
4. Finally, the Metro Vancouver AHS had been in place for approximately three years at the time of the survey, so it is relatively early to be gauging its influence.

### **1.7. Report organization**

The report has three sections: Introduction, Analysis of Municipal Housing Measures in Metro Vancouver, and Municipal Profiles and Summaries.

**Inclusionary Zoning  
for the Provision of Affordable Housing:**  
A Comparative analysis of Vancouver and San Francisco



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# Inclusionary Zoning for the Provision of Affordable Housing: A Comparative analysis of Vancouver and San Francisco

By Nellie Chang

## 1. Introduction

The latest addition to the spectrum of municipal housing strategies in Canada is inclusionary zoning. This strategy, as expressed through policy and regulatory framework, requires that a portion of multi-unit residential development be dedicated towards affordable housing. Apart from this core objective, the rules and criteria are as diverse as the municipalities that use this strategy. Inclusionary zoning is more widely adopted in the United States, where it was first introduced in the 1970s. A historical analysis by Calavita (2006) indicates that inclusionary housing programs emerged at the intersection of four national trends at the time: racial discrimination of housing through exclusionary zoning practices, growth controls that increased land values, increasing housing affordability problems, and government deregulation that led to scaling back of public subsidies in housing. Perhaps with the exception of the first, these trends are also observed in Canadian cities. As communities cope with increasing demand for affordable housing and shrinking public investment in housing, inclusionary zoning peaks the interests of researchers and policymakers alike.

The City of Vancouver is one of the few municipalities in Canada with an inclusionary housing policy.<sup>1</sup> First adopted in 1988, the policy requires 20% of all units in new neighbourhoods created as a result of rezoning to be 'affordable'. This paper will compare Vancouver's "20 percent policy" with the Inclusionary Affordable Housing Program<sup>2</sup> of the City and County of San Francisco. The purpose of the comparison is to understand the differences in two similar cities. Vancouver is the main investigative subject, while San Francisco is the 'lens' through which Vancouver's policy is illuminated and challenged. This method will help identify the elements that are important to producing better policy outcomes. The comparative analysis is then followed by an economic feasibility analysis, where the stability of the inclusionary model akin to San Francisco is tested in Vancouver.

Vancouver and San Francisco share many similarities that make them ideal for comparison. Both are attractive places to live, with the Pacific Ocean on the west, a mild climate, a diverse population, and an economy buoyed by real estate and tourism. The city limits are constrained on three sides by water bodies, thus creating a natural urban

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<sup>1</sup> The term 'Inclusionary housing policy' is more general and perhaps more appropriate than 'inclusionary zoning' as it may not have direct reference to zoning in the policy. However, municipality may require inclusion of affordable housing as a condition of rezoning, and not just for development permit. Calavita (2009) argues that linking inclusionary policy to rezoning is more appropriate than incentives based policy.

<sup>2</sup> This report mainly focuses on affordable ownership, but the overall Below Market Rate (BMR) Inclusionary Housing Program includes both for-sale and for-rent units.

growth boundary. Urban density is high for both cities by North American standards.<sup>3</sup> They are also frequently cited as one of the most expensive cities to live in their respective countries. In addition, both cities have implemented inclusionary housing policies long enough to extract data and analyze its implications. Table 1 in Appendix A shows the population, density and housing costs in Vancouver and San Francisco.

## **Research Question & Methodology**

This paper attempts to address the following research questions:

1. How are inclusionary zoning policies implemented in Vancouver and San Francisco?
2. How successful are they in producing affordable housing units, and what can we learn from their experiences?

The first question compares the relevant legislation, policy specifications, and implementation procedure, while the second question compares the affordable housing supply outcome through estimates provided by municipal sources. Information for implementation in San Francisco is obtained from the inclusionary housing ordinance and program guidelines. Details for Vancouver are found in the Official Development Plans and reports to council. It is important to note that these sources are insufficient to understand the intricacies of policy implementation. Thus, the analysis is augmented by key informant interviews in both cities.

This paper recognizes that political systems and land markets in Vancouver and San Francisco are different. Where possible, this paper will explain the local context that set the stage for inclusionary housing policies, although it does not offer a comprehensive historical, political or market analysis. Future studies on these issues may deepen the understanding of inclusionary zoning in respective cities.

Following the comparative analysis, this paper presents an economic feasibility analysis. The analysis is used to anticipate the financial impact of the policy on development projects. This paper will adopt two existing models with a suggested set of assumptions for a project in Vancouver. It will identify the inclusion threshold that the project can bear without reducing the developer's profit margins to levels that would deem the project unfeasible.

## **2. Concepts & Definitions**

The term 'affordable housing' is highly subjective, as it begs the question, 'to whom is it affordable?' While this paper does not engage in an extensive debate on the meaning of affordability, it will explain some operational definitions as it applies to inclusionary zoning in the subject cities. It will then identify two important goals of inclusionary zoning and the rationale for their adoption from a planning perspective. These concepts and rationale provide a point of reference and a framework for the study.

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<sup>3</sup> According to Demographia (2000), San Francisco is the second most dense city in the U.S. after New York. "2000 Census: US Municipalities over 50,000: ranked by 2000 population", <http://www.demographia.com/db-uscity98.htm>, retrieved on April 22, 2009.

## Defining 'Affordable Housing'

There is no universal definition of affordable housing.<sup>4</sup> However, many jurisdictions use the following operational definition to set affordability targets in their housing programs: a dwelling unit whose annual accommodation costs (rent or mortgage, plus property tax and utility expenses) does not exceed 30% of its occupants' gross (i.e. before tax) annual household income.<sup>5</sup> This study will use this operating definition to model an economic feasibility analysis of inclusionary zoning in Vancouver in the second section of this paper.

Affordable housing is not defined in the Vancouver Charter, which is the provincial legislation that authorizes the City of Vancouver to govern its jurisdiction. Instead, the Charter allows Vancouver to consider affordability in the context of a particular development plan or zoning application (City of Vancouver, 2003). Therefore, affordability components such as income thresholds and maximum shelter costs may be calculated differently for each development projects. The city considers this appropriate given the changing context of provincial and federal housing programs and their relative housing affordability standards.<sup>6</sup>

Affordable housing in San Francisco is defined as shelter costs that do not exceed 33% of net household income, or rent that does not exceed 30% of net household income (City and County of San Francisco, 2008). Different housing programs have various qualifying incomes and household size. In the city's Inclusionary Affordable Housing Program, affordable housing is referred to as below market rate (BMR) units for either ownership or rental. The price of BMR units is designed to be affordable for households that earn up to 80% of the city's median income. The program will be examined in more detail later.

## The Goals of Inclusionary Zoning

Inclusionary zoning can serve two important community goals. First, it creates mixed-income neighbourhoods, where residents of diverse socio-economic backgrounds can meet, interact, and potentially gain culturally and economically from that interaction.<sup>7</sup> However, whether income-mix as a policy can achieve a set of socio-economic objectives such as the reduction of crime or unemployment, or even the improvement of health and

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<sup>4</sup> Throughout this report the term 'affordable housing' will be used interchangeably with non-market housing, below-market rate housing, and social housing. In British Columbia, social housing includes both public and non-profit housing, which are owned and operated by governments and non-profit societies, respectively. Social housing may have modest design criteria and restricted operating budgets. BC Housing, "Glossary" <http://www.bchousing.org/glossary>.

<sup>5</sup> A household in British Columbia that meets this definition is referred to as *core-need households*. BC Housing, "Glossary" <http://www.bchousing.org/glossary>, retrieved on April 22, 2009.

<sup>6</sup> The term non-market housing in Vancouver is frequently used in city reports, although the term itself is never used in the Official Development Plans. The city has formally replaced the term with 'affordable housing' in 2003, but the meaning still remains the same.

<sup>7</sup> For example, Rusk (2006) argued that low-income students who are integrated into schools with middle and upper income students perform better in school. Smith (2002) also argues that by dispersing social housing through mixed-income neighbourhoods, communities could avoid 'pockets of poverty', which is associated with various social ills like crime and unemployment.



education is highly contested.<sup>8</sup> It would therefore be unwise to pursue mixed-income housing or inclusionary zoning as a remedy to social problems. A more promising benefit of income-mix is the opportunity to share the same community amenities, voice neighbourhood concerns, and participate in planning as equal citizens. It also represents an opportunity to educate the general public, who may otherwise have misinformation or preconceptions of residents of subsidized housing. Inclusion may not directly solve social or economic ills of society, but the removal of segregation can be conducive to social progress.

The second goal of inclusionary zoning is to produce affordable units through private development projects. Landowners often enjoy large capital gains from appreciating real estate values. Thus, local authorities can use inclusionary zoning as a means to access private capital and resources towards a public objective, such as affordable housing. In response, the development community have challenged inclusionary zoning as illegal taking of the land (Rusk, 2006). In the state of New Jersey however, the Supreme Court ruled against this position in the 1983 landmark decision, *Mount Laurel II*, and required all local authorities to use affirmative measures including mandatory set-asides (National Housing Conference, 2004). For all other jurisdictions in U.S. and Canada, the legal question on inclusionary zoning has never fully settled.

There is another compelling argument for inclusionary zoning that is centred on land use planning. The argument posits that good land use decisions generate both higher social welfare and higher land values, because a better organized urban system increases the demand for land (Whitehead, 2007). In another words, good planning made cities and towns attractive to newcomers, which then stimulated the local real estate market. Therefore, local governments claim the right to capture some of the increase in property values and reinvest in the community. In the United Kingdom, this position is referred to as the ‘planning gain’.<sup>9</sup> Local authorities in the U.K. use a negotiated approach via Section 106 of the Town and Planning Act, 1990, to exact affordable housing and other public amenities from developers (Monk, 2006). Other European communities also take the position that the increase in land value is not simply the result of the owner’s efforts, but a culmination of public investment and government decisions (Calavita, 2006). This argument may open doors to more legal questions on the rights of private property. Nonetheless, it provides an interesting framework for rationalizing inclusionary zoning as a legitimate planning tool.

### **3. Inclusionary Zoning In San Francisco**

The comparative analysis begins with the study of inclusionary zoning in San Francisco, followed by Vancouver, then a synthesis of the two local experiences. San Francisco first introduced voluntary inclusionary zoning in 1992, where the City used incentives to encouraged developers to include affordable units in their residential

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<sup>8</sup> This paper does not discuss the various perspectives on mixed-income housing. For a literature review, see (Thibert, 2007).

<sup>9</sup> The concept was almost made into a national policy in the United Kingdom where the government proposed (but later rescinded) a Planning Gain Supplement on all development application to capture a portion of the land value uplift accruing from development permit (Monk et al., 2008).

projects. The policy worked on a case-by-case basis and produced few affordable units. In 2002, after ten years of experimenting with the voluntary system, the Board of Supervisors revised the policy and enacted an ordinance, where mandatory inclusion became the rule. In 2006, the ordinance was amended to expand the scope of inclusion in the city.

### **Enabling Legislation in San Francisco**

The City adopted the inclusionary zoning ordinance in accordance to three important government documents: California Government Code, the General Plan, and the Planning Code. The California Government Code is the highest order of law that gives a city the authority to pursue inclusionary zoning. The Code requires local governments to adopt a comprehensive, long-term general plan for the physical development of the city through seven plan elements (State of California, 2009). The Housing Element, Article 10.6, in the Government Code declares:

The availability of housing is of vital state-wide importance, and the early attainment of decent housing and a suitable living environment for every Californian...is a priority of the highest order. (Section 65580-65589.8)

The Government Code recognizes that local authorities are better suited to address the housing needs of its communities, and it supports local ordinances that allow density bonus to projects that provide affordable housing for moderate to low-income groups (S. 65915-65918). Currently, San Francisco's planning department considers density bonus on a case-by-case basis.<sup>10</sup>

The City and County of San Francisco adopted the housing element as a series of policy statements in the San Francisco General Plan. Policy 4.2 of the General Plan expresses the key components of the San Francisco's inclusionary zoning policy. They include a program threshold or 'trigger' for inclusion, the proportion of BMR units that are required for each project, and the level of their affordability (City and County of San Francisco, 1996). The policy also states that if the housing projects are built on city-owned land, the percentage of affordable housing units should be increased.

The City may offer several incentives for developers to build affordable units. For example, Policy 5.1 of the General Plan instructs the planning department to expedite the planning approval process to streamline affordable housing projects and to keep project costs low. Also, through the Citywide Action Plan, the planning department may increase densities in areas well served by transit, reduce parking requirements, authorize floor-to-area ratio (FAR) exemptions, remove density caps or height limits in certain areas, and utilize air-rights for housing (City and County of San Francisco, 2006a).

### **Current Inclusionary Zoning Ordinance**

In 2002, the Board of Supervisors approved Section 315 of the Planning Code to enact a mandatory inclusionary zoning ordinance and established the Inclusionary

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<sup>10</sup> For additional details, see Policy 4.4 of San Francisco General Plan, Housing Element, [http://www.sfgov.org/site/planning\\_index.asp?id=41412](http://www.sfgov.org/site/planning_index.asp?id=41412).

Affordable Housing Program. (City and County of San Francisco, 2005). The program is preceded by the condominium conversion BMR program, which requires the setting aside of converted condominiums as price-restricted BMR units.<sup>11</sup> The inclusionary ordinance adopted in 2002 required projects of ten units or more to include 10% affordable units on-site or 15% off-site, or to pay in-lieu fees. Units must be affordable to renters with less than 60% of the Area Median Income (AMI) and homeowners with less than 100% of the AMI.

In 2006, San Francisco adopted an amendment to increase the inclusionary requirement to 15% for on-site and 20% for off-site developments. The requirement is even higher for developments requiring conditional uses or live-work projects. The amendment is in response to the growing gap between the demand and supply of BMR units, as reported by the Association of Bay Area Governments. The Association found that, in the past ten years, less than 25% of the housing need was fulfilled in the city (City and County of San Francisco, 2006b). The amendment also reduced the unit threshold, thus requiring all projects involving five or more units to meet inclusion targets.

The City accepts the construction of affordable units off-site if it generates more units, but off-site units must be located within 1 mile of the principal project. Under the previous ordinance, off-site housing was allowed in either 'high need areas' or within 'close proximity' to the principal project (City and County of San Francisco, 2006b). This posed a dilemma where housing authorities build social housing in low-income neighbourhoods, where the need is the greatest, but such practice in the long run may intensify the concentration of the poor and preserve class-division throughout the city.

### **Implementation of the Inclusionary Affordable Housing Program**

The regulatory parameters of the Inclusionary Affordable Housing Program is well defined in Section 315 of the Planning Code and regularly updated by the Mayor's Office of Housing. Given the clear direction of the MOH, implementation of the ordinance is predictable, transparent and streamlined. Although all steps in the procedure are important, a close coordination between the planning department and the MOH is most critical. Effective communication between the two agencies can ensure that all residential developments in the development pipeline meet the inclusion requirements. The general process from development application to occupancy of affordable units is as below:

1. The developer submits an application to the City for project approval – the developer must fill out a Declaration of Intent, stating whether to go on-site, off-site or pay in-lieu fees when applying for a development permit
2. The Planning Department approves project and notifies the MOH

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<sup>11</sup> Under San Francisco Subdivision Code Sections 1341 and 1385, building owners who converted their properties from apartments to condominiums were required by the City to set aside certain condominiums as below market rate units. The program is currently running independent of the Inclusionary Affordable Housing Program but jointly managed by the Mayor's Office of Housing. See "Implementation of Ordinance #320-08 Overview" City and County of San Francisco, 2009, [http://www.sfgov.org/site/moh\\_page.asp?id=102790](http://www.sfgov.org/site/moh_page.asp?id=102790).

3. The MOH serves notice to the developer the number of BMR units required within 30 days of development approval – developer can appeal the requirement and present a case for exemption
4. Once the project is approved by the City, the developer builds and markets all (market-rate and BMR) units
5. Residents apply for BMR units directly through the developer
6. The developer forwards applications to MOH
7. The MOH qualifies the applicants
8. Successful applicants are invited to a public lottery for the BMR units
9. Winners of the lottery sign a purchase or rent agreement with the property owner

The MOH calculates the in-lieu fees as the difference between the inclusionary unit price and the cost of developing a comparable housing unit.<sup>12</sup> The fee schedule is updated annually and broken down by unit type, which helps the developer decide which option – to build on-site, off-site or pay in-lieu fees – makes greatest sense for the project. The city's treasury department collects the in-lieu payments and deposits them into a Citywide Affordable Housing Fund, which is used to increase affordable housing supply and to administer the Inclusionary Affordable Housing Program.

All BMR units maintain their affordability for 50 years (City and County of San Francisco, 2007). Affordability is ensured on title by a deed of trust and a grant of right of first refusal to the City. The City can then exercise the right to substitute a qualified buyer. When a BMR owner sells the unit, the owner may claim capital improvements, but the sale price is determined by a methodology approved by the MOH in order to maintain affordability to the next owner. Upon resale, the affordability clock also resets to zero. Therefore, new owners must also wait 50 years before the property can be sold at market rate.

The MOH regulates housing qualities such as unit size, number of bedrooms and external appearances. This ensures diversity of housing, plus makes BMR units as attractive as market units or, at minimum, prevent them from standing out as an inferior product. The City requires that the overall construction quality of BMR units is the same as market units, although the internal finishing can be different.

Table 1 illustrates that since 1992, San Francisco's inclusionary housing program has produced 1,140 BMR units, with the majority being on-site. The number of units jumped from single-digit to double-digit in 2003 as a result of the adoption of a mandatory policy in 2002. An increasing number of projects also opted for in-lieu payments since 2004. The proportion of the off-site units was also high in 2006 and 2007, with 40% and 61%, respectively. Without specific details for each project, it is difficult to know the reason for this trend. However, it does signal that the goal of creating mixed-income neighbourhoods could potentially be stymied as the result of in-lieu and off-site option.

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<sup>12</sup> It is also referred to as the affordability gap. The inclusionary unit price is determined by AMI and the interest rate. The cost of the comparable unit is indexed to the Construction Cost Index for San Francisco as published by Engineering News-Record. In-lieu fee is variable by unit size and evaluated annually by the Mayor's Office of Housing. See "Notice of New Inclusionary Housing Fees" July 15, 2008, [http://www.sfgov.org/site/planning\\_index.asp?id=25143](http://www.sfgov.org/site/planning_index.asp?id=25143).

**Table 1.** San Francisco's Inclusionary Affordable Housing Program: Production Summary, 1992-2007

Year	Number of Projects	Projects paid in-lieu	On-site units	Off-site units
1992	2		8	
1993	2		34	
1994	1		6	
1995	2		6	
1996	5		35	
1997	1		4	
1998	2		7	
1999	5		37	
2000	5	1	11	
2001	3		15	
2002	4		55	
2003	18	1	110	2
2004	17	1	64	
2005	12	5	48	
2006	23	6	155	62
2007	16	5	255	156
2007 (anticipated)			70	
<b>Total</b>	<b>118</b>	<b>19</b>	<b>920</b>	<b>220</b>

Source: Mayor's Office of Housing, City and County of San Francisco, 2009

A range of enforcement measures are expressed in Section 176 of the Planning Code. The MOH monitors the BMR units by checking the occupancy certifications and income levels of tenants annually. If a developer fails to comply with the ordinance, or does not complete the construction and marketing of the BMR units, then the City may apply a lien on title equal to the in-lieu fee. The City may also impose a penalty or revoke the certificate of occupancy and all other permits if the rules of the program have been violated.

Monitoring and evaluation is mandated by the ordinance. The MOH conducts a study every five years to update the program and ordinance, similar to updating an official plan. All recommendations are made to the Board of Supervisors and the Planning Commission. The Planning Commission reports to the Board of Supervisors on the results of the program as part of the annual Housing Inventory Report (City and County of San Francisco, 2007).

Implementation of the Inclusionary Affordable Housing Program in San Francisco is a detailed and elaborate process involving many agencies within the city. For this reason, close collaboration between the agencies is key to the program's success. The program may also require some flexibility in the future. A backgrounder to the Planning Code (s. 315.2.) stated that the city is largely built out, with very few large open tracts of land to develop. A relatively small number of affordable units created in San Francisco

given the size of the city may be due to a lack of developable land, particularly for large scale condominiums which has the highest potential for generating inclusionary units.<sup>13</sup> The City may choose to offer higher density allowances or other incentives to offset the costs, but there are also limits to this strategy. For now, stability seems to be the key to San Francisco's inclusionary policy. A clear set of regulations where the outcome is predictable may be sound. Vancouver, on the other hand, has taken a different approach. As the next chapter shows, the key to the inclusionary housing strategy in Vancouver is the opposite of San Francisco – to have less certainty and more room for negotiations.

#### **4. Inclusionary Zoning In Vancouver**

The City of Vancouver adopted the inclusionary housing policy in 1988 as part of the general plan for the development of the Expo lands in False Creek. The 20 percent policy was first mentioned in the False Creek Policy Broadsheets, which called for diversity of household types and incomes, dispersed non-market housing in each neighbourhoods, and an adequate number of dwellings suitable for households with children (City of Vancouver, 1988). At the time, 20% of the households in Vancouver were in core need, meaning spending more than 30% of the household income on housing (Gray & Ramsay, 2002). Thus, 20% of developable land from rezoning was required to be set-aside for affordable housing (City of Vancouver, 2002). Aside from this general rule, the pursuit of the 20 percent policy has been on a case-by-case basis, perhaps reflecting an earlier model in San Francisco prior to the introduction of the ordinance that brought mandatory inclusion. Rather than a more streamlined procedure however, the provision of affordable housing in Vancouver relies on negotiations and partnerships between the city, the province, and the development community, including the non-profit housing providers.

##### **Enabling Legislation in Vancouver**

Legislation relevant to land use and housing policy in Vancouver include the Vancouver Charter, the area-specific Official Development Plans (ODP) and accompanying Comprehensive District “CD-1” bylaws. The Vancouver Charter is the highest rule of law for the city. It sets out the capacity in which the city may pursue land use and housing policies, while the inclusionary rules are contained in the ODPs and bylaws.

The Vancouver Charter governs the City of Vancouver, while the Local Government Act applies to all other municipalities in the Province. The Local Government Act gives municipalities the authority to rezone land as the basis of negotiation for land development (s.903) and grant density bonuses for the purpose of building affordable housing (s.904). This enables municipalities like Richmond, Whistler and Langford to adopt inclusionary housing policies. Likewise, the Vancouver Charter

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<sup>13</sup> Further research on land markets and condominium development may shed light on this issue. For example, South of Market (SOMA) and Mission Bay are two major redevelopment areas with large volume of housing. This paper lacks the information to complete an analysis of the condominium development in these neighbourhoods.



allows the City of Vancouver to grant higher density to developers that provide affordable and/or special needs housing (s.565.1). The City can mandate that land be set aside for affordable housing as a condition of rezoning former industrial lands into residential neighbourhoods. However, the City also requires the consent of the property owner in the process. The developer must enter into a housing agreement with the City, as a precondition to obtaining a building permit (s.565.1(3)). This often results in negotiations between the City and the developer to strike an appropriate balance between increased density and affordable housing.

Vancouver is a city of planned neighbourhoods. Each neighbourhood carries its own vision and community plans. For all new neighbourhoods created as result of rezoning, the City develops an Official Development Plan and CD-1 Bylaw. Each neighbourhood ODP requires that 20% of all residential units be available for affordable housing, and typically 50% of those units must be suitable for families. These requirements are codified in each CD-1 Bylaws, rather than in a single ordinance, as is the case in San Francisco.

### **Implementation of the 20 Percent Policy**

The key aspect of the 20 percent policy in Vancouver is flexibility. Unlike the San Francisco ordinance, which has a fixed implementation process, Vancouver's approach to inclusionary housing is more discretionary. While the inclusion may be 20%, the actual construction and occupation procedure is developed on a case-by-case basis. The following steps depict the general application of the 20 percent policy.<sup>14</sup>

1. The developer of a large project (usually 200 or more units) applies for rezoning from non-residential use to residential.
2. The City engages the developer to identify sites suitable for non-market housing. A legal agreement is signed between the City and the developer to include affordable units usually equal to 20% of the base density (excluding density bonus).
3. The non-market site is submitted to the provincial government for funding and the developer chooses, upon recommendation from the City and/or Province, a non-profit housing organization as a partner for the project.
4. If the Province accepts the proposal, it supplies 75% of the funds to the City to buy the site at a non-market rate (City pays 25%). BC Housing also usually provides pre-development financing to the non-profit housing developer.
5. BC Housing determines a budget for affordable housing development (cost ceiling for land and construction cost). The developer gets paid the difference between the cost ceiling and the cost of design/construction, including the land.
6. The City leases the site to a non-profit housing agency for at least 60 years. The developer then completes the construction and transfers the property to the non-profit partner.

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<sup>14</sup> Adopted from CMHC "Income mix zoning: Vancouver, British Columbia".

Unlike in San Francisco where the developer constructs and markets the affordable units, the developer in Vancouver only needs to set aside some land at non-market value. The land becomes city-optional site for affordable housing, which will be built as development funding becomes available from senior levels of government, typically the province or BC Housing. The City must examine the suitability of the designated land for affordable housing. If the City and developer cannot agree on a site for affordable housing, or if construction funding from the provincial government is not forthcoming, the City may accept a payment in-lieu from the developer.

Table 2 below shows the market and non-market units approved through rezoning in Vancouver. It shows that none of the sites actually met the 20% target, with some sites resulting in payment in-lieu of affordable units. Note that the numbers reflect units that were either approved by the city or reported in policy documents. They do not represent the actual units that were built. Also, the estimates for False Creek North and East Fraserlands are subject to change, as many sites are still in their planning stages.

**Table 2.** Inclusion Estimates in Vancouver's Rezoned Neighbourhoods

	Non-Market Units	Market Units	Total	Inclusion Percentage
Coal Harbour, Bayshore Gardens	111	880	991	11%
Coal Harbour, Marathon Lands	423	2,300	2,723	16%
False Creek North	1,380	6,908	8,288	17%
International Village	120	1,290	1,410	9%
Citygate	176	1,000	1,176	15%
Arbutus Neighbourhood*	53	-	-	-
Pacific GMC	34	-	-	-
East Fraserlands	481	2,821	3,302	15%
Tugboat Landing	42	304	346	12%
Olympic Village, SE False Creek	250	1,100	1,350	19%

\*The City reported that only 53 units were actually built in Arbutus; the rest of the non-market capacity may have been converted to market.

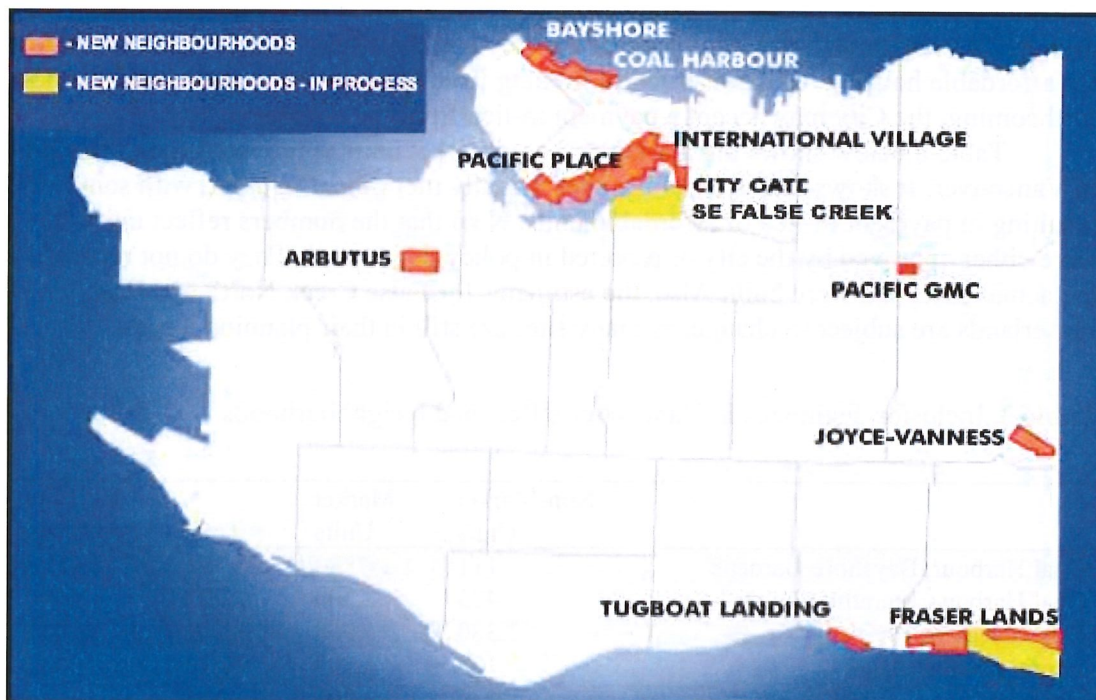
Sources:

- City of Vancouver, 2008, <http://www.city.vancouver.bc.ca/commsvcs/housing/MajorQA.htm>
- Intracorp, 2009, market unit for Tugboat Landing: <http://www.intracorp.ca/vancouver/completed-projects.php>
- City of Vancouver, 2005, for International Village:  
<http://www.vancouver.ca/ctyclerk/cclerk/20050719/documents/p9.pdf>
- for Coal Harbour, Citygate, Arbutus: <http://vancouver.ca/commsvcs/currentplanning/urbandesign/>
- City of Vancouver, False Creek North Official Development Plan, 2009; and East Fraserlands Official Development Plan, 2008

After twenty years since adopting the 20 percent policy, the City secured sites for 2,533 affordable units, yet only 1,427 were built (City of Vancouver, 2002). An additional 220 units are under construction in the Olympic Village, although the City is currently facing major cost overruns on the project (City of Vancouver, 2009). The remaining 886 units are waiting for funding from the Province. Much of the unfunded sites are in the Concord Pacific site in False Creek North. If the Province does not

provide the necessary funding, the City may choose to proceed with alternate uses for the sites.

**Figure 1.** Vancouver's Rezoned New Neighbourhoods



Source: City of Vancouver

The number and type of affordable units allocated through the 20% policy is always in flux. It is variable upon the agreement that the City is able to reach with the developer in regards to land use, density and amenities. It also depends on the housing priorities of the City and the Province. With the current focus on homelessness and addiction, funding decisions tends to favour supportive units or singles units to replace the old Single Room Occupancy (SRO) hotels.<sup>15</sup> In addition, the development process of non-market units must also be coordinated with the non-profit housing agencies that operate the units. Subsequently, it is not unusual for the City to constantly adjust the type, tenure and number of affordable units in order to meet the requirements of various stakeholders. This may explain why Vancouver's inclusionary housing policy is far less structured than in San Francisco.

<sup>15</sup> See for example, the Memorandum of Understanding (MOU) between the City and the Province on 14 sites for supportive housing from City of Vancouver, 2009, <http://vancouver.ca/commssvcs/housing/supportivehousingstrategy/reservedsites.htm>, retrieved on May 15, 2009.

## NOTE

### EMBRACING THE EXCLUDED: USING MANDATORY INCLUSIONARY ZONING TO AFFIRMATIVELY FURTHER FAIR HOUSING IN ST. LOUIS

Victor J. Pinedo\*

INTRODUCTION .....	420
I. BACKGROUND .....	422
A. <i>History of Segregation in St. Louis</i> .....	422
1. Early Roots .....	422
2. Modern Practices and Further Entrenchment .....	423
3. Government Fragmentation—A Compounding Factor .....	424
B. <i>The Fair Housing Act and HUD's Final Rule</i> .....	425
II. HOW TO ADOPT INCLUSIONARY ZONING .....	428
A. <i>Inclusionary Zoning—Why a Mandatory Inclusionary         Zoning Policy is Compelling</i> .....	428
1. Voluntary Inclusionary Zoning—Lacking the Incentives .....	429
2. Mandatory Inclusionary Zoning—Providing the Necessary Push .....	430
B. <i>Important Considerations for Implementing         Mandatory Inclusionary Zoning</i> .....	432
III. IMPLEMENTING INCLUSIONARY ZONING IN ST. LOUIS TO SATISFY AFFH .....	433
A. <i>The Regional Framework</i> .....	433
B. <i>Two Goals, One Policy: Social and Economic         Integration Though AFFH Compliance</i> .....	435
1. Targeted Investment in Neighborhood Revitalization and Stabilization .....	436

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2. Preservation or Rehabilitation of Existing Affordable Housing .....	437
3. Greater Housing Choice and Access to Opportunities Away from Concentrated Poverty .	438
4. Improving Community Assets Such as Quality Schools, Employment, and Transportation .....	439
a. Increase Community Development—Access to Quality Schools and Increased Education .	439
b. Develop Economic Growth Through Bolstered Job Opportunities.....	440
C. <i>Alternative Approaches and Why Mandatory Inclusionary Zoning Remains Most Viable</i> .....	442
D. <i>Inclusionary Zoning in Real Life—Successes and Challenges</i> .....	445
1. Montgomery County, Maryland—An Example of Success .....	445
2. Nassau County, New York—An Example of the Challenges .....	446
CONCLUSION.....	447

## INTRODUCTION

You decide to take a walk, heading north out the door. As you begin your journey, you walk through large, gated neighborhoods with multi-story brick homes, green, luscious lawns, and streets shaded by tall white oaks and maple sugar trees. Continuing on, you notice a drastic change. Facing you are dilapidated houses, a plethora of vacant lots, and deteriorating, minimally maintained streets and infrastructure. The contrast is striking and you cannot help but wonder how long these conditions have existed and whether they will persist. No, this is not a scene from *A Tale of Two Cities*. Welcome to St. Louis, Missouri.<sup>1</sup>

This scene is nothing unique for St. Louis.<sup>2</sup> The city, one with a rich history and vibrant culture, has been plagued by a troubling history of segregation and racial inequality.<sup>3</sup> At the heart of this inequality is an

<sup>1</sup> See Chico Harlan, *In St. Louis, Delmar Boulevard is the Line That Divides a City by Race and Perspective*, WASH. POST (Aug. 22, 2014), [https://www.washingtonpost.com/national/in-st-louis-delmar-boulevard-is-the-line-that-divides-a-city-by-race-and-perspective/2014/08/22/de692962-a2ba-4f53-8bc3-54f88f848fdb\\_story.html](https://www.washingtonpost.com/national/in-st-louis-delmar-boulevard-is-the-line-that-divides-a-city-by-race-and-perspective/2014/08/22/de692962-a2ba-4f53-8bc3-54f88f848fdb_story.html).

<sup>2</sup> See Kevin McDermott, *St. Louis Region Still Among Worst In Nation for Black-White Economic Disparity, Says Report*, ST. LOUIS POST-DISPATCH (July 29, 2015), [http://www.stltoday.com/news/local/crime-and-courts/st-louis-region-still-among-worst-in-nation-for-black/article\\_815c05d5-38bc-5271-ad45-79ef9b0c96e5.html](http://www.stltoday.com/news/local/crime-and-courts/st-louis-region-still-among-worst-in-nation-for-black/article_815c05d5-38bc-5271-ad45-79ef9b0c96e5.html).

<sup>3</sup> Cultural Resources Office, *A Preservation Plan for St. Louis Part I: Historic Contexts 8—The African-American Experience*, STLOUIS-MO.GOV, <https://www.stlouis-mo.gov/government/departments/planning/cultural-resources/preservation-plan/Part-I-African-American-Experience.cfm> (last visited Mar. 12, 2016) [hereinafter Preservation Plan for STL].

overall trend of segregative housing patterns and zoning policies in the St. Louis metropolitan area—a trend that has bred significant outrage amongst the St. Louisan minority population.<sup>4</sup> This disparity—particularly between the North and South—is evident in the makeup of the city and counties, and Delmar Boulevard serves as a symbol of this jarring inequality in St. Louis.<sup>5</sup> According to a recent joint study by Washington University and St. Louis University, to the south of Delmar, home values average \$330,000, median incomes are at \$47,000, and the population is 70% white, while to the north, home values average \$78,000, median incomes are at \$22,000, and the population is 99% African American.<sup>6</sup> The city and counties of St. Louis have attempted to mitigate these racial disparities, but even with the implementation of Fair Housing initiatives, the disparities endure.<sup>7</sup> As tensions have risen over the decades, so too has the exodus of citizens from the region.<sup>8</sup>

Given the issues of segregation in St. Louis, city and county officials must effectuate changes to zoning practices that will overcome the city's long history of segregation. The U.S. Department of Housing and Urban Development's ("HUD") recent "Final Rule on Affirmatively Furthering Fair Housing" makes the need for implementing new zoning practices in St. Louis even more imperative.<sup>9</sup> By mandating affordable housing production as a prerequisite for development, mandatory inclusionary zoning may be the answer to "affirmatively further" fair housing and facilitate integration in St. Louis.<sup>10</sup>

This Note will consider both St. Louis's history of segregation and the policies underlying the Fair Housing Act ("FHA"). The Note will then explain how the facilitation of mixed-income communities through mandatory inclusionary zoning will establish "meaningful actions" to end segregation and foster the inclusive communities envisioned by

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<sup>4</sup> Richard Rothstein, *The Making of Ferguson*, AM. PROSPECT (Oct. 15, 2014), <http://prospect.org/article/making-ferguson-how-decades-hostile-policy-created-powder-keg>.

<sup>5</sup> See WASHINGTON UNIV. IN ST. LOUIS & SAINT LOUIS UNIV., FOR THE SAKE OF ALL: A REPORT ON THE HEALTH AND WELL-BEING OF AFRICAN AMERICANS IN ST. LOUIS AND WHY IT MATTERS FOR EVERYONE 29–30 (2014) [hereinafter FOR THE SAKE OF ALL].

<sup>6</sup> *Id.* at 29 (noting that Delmar Boulevard is the "example of modern-day segregation in St. Louis").

<sup>7</sup> See Rebecca Rivas, *Housing Conference Focuses on Needed Policy Changes*, ST. LOUIS AM.: LOC. BUS. (Feb. 11, 2016), [http://www.stlamerican.com/business/local\\_business/article\\_372ea42a-d041-11e5-8667-7f3fa1ed79ef.html](http://www.stlamerican.com/business/local_business/article_372ea42a-d041-11e5-8667-7f3fa1ed79ef.html) (noting that current affordable housing programs in St. Louis create gentrification and segregation and that the Affirmatively Furthering Fair Housing final rule would help to breakdown segregation that is "maintained . . . by design").

<sup>8</sup> Colin Gordon, *St. Louis Blues: The Urban Crisis in the Gateway City*, 33 ST. LOUIS U. PUB. L. REV. 81, 82 (2013) (discussing how St. Louis has fallen from the eighth largest city in the United States to the fifty-third largest).

<sup>9</sup> 80 Fed. Reg. 42,272 (Aug. 17, 2015) (to be codified at 24 C.F.R. pt. 5).

<sup>10</sup> Tim Iglesias, *Maximizing Inclusionary Zoning's Contributions to Both Affordable Housing and Residential Integration*, 54 WASHBURN L.J. 585, 587 (2015).



HUD's Final Rule.<sup>11</sup> Using this policy framework, this Note will argue that mandatory inclusionary zoning is a more compelling solution to reverse the detrimental effects of St. Louis's past zoning practices.<sup>12</sup> Accordingly, this Note will proceed in three parts. Part I will set forth the history of St. Louis's zoning practices and the FHA's "Affirmatively Furthering Fair Housing" mandate. Part II will explore the different forms of inclusionary zoning and will make the argument that mandatory inclusionary zoning is the more compelling choice. Part III will discuss how region-wide mandatory inclusionary zoning will best facilitate integration and establish compliance with HUD's Final Rule.

## I. BACKGROUND

### A. *History of Segregation in St. Louis*

#### 1. Early Roots

The racial and economic disparities of St. Louis are a product of land-use policies conducive to regional segregation and suburban "White Flight."<sup>13</sup> The earliest discriminatory zoning practices emerged in 1916 in the form of racial-segregation ordinances that prevented homebuyers from purchasing housing in neighborhoods that were composed of a population made up of 75% of another race.<sup>14</sup> Although the Supreme Court's ruling in *Buchanan v. Warley* outlawed this form of segregation,<sup>15</sup> the trend of segregationist policies continued.<sup>16</sup> Undeterred by *Warley*, local communities and neighborhood associations created restrictive covenants blocking ownership and occupation of houses by African Americans,<sup>17</sup> subsidized exclusionary suburban developments, and passed spot zoning policies to prevent African Americans from living and integrating within white neighborhoods.<sup>18</sup>

<sup>11</sup> 24 C.F.R. § 5.150 (2015).

<sup>12</sup> See, e.g., Rigel C. Oliveri, *Fair Housing and Ferguson: How the Stage Was Set*, 80 MO. L. REV. 1053, 1067–69 (2015) (discussing the implications of discriminatory housing practices on the Michael Brown shooting and subsequent Ferguson riots).

<sup>13</sup> See, e.g., RICHARD ROTHSTEIN, ECON. POLICY INST., *THE MAKING OF FERGUSON: PUBLIC POLICIES AT THE ROOT OF ITS TROUBLES* 5 (2014) (describing the intents of federal, state, and local governments to segregate cities).

<sup>14</sup> Preservation Plan for STL, *supra* note 3; ROTHSTEIN, *supra* note 13 at 7 (describing details of the St. Louis Real Estate Exchange's referendum which lead to the passing of the 1916 ordinance).

<sup>15</sup> 245 U.S. 60 (1917).

<sup>16</sup> Preservation Plan for STL, *supra* note 3. Indeed, city officials relied on "race-neutral" initiatives to create segregation in residential areas. See ROTHSTEIN, *supra* note 13, at 7.

<sup>17</sup> The Supreme Court would eventually outlaw the use of racial covenants in its landmark case, *Shelley v. Kraemer*, 334 U.S. 1 (1948).

<sup>18</sup> See ROTHSTEIN, *supra* note 13, at 6 (listing the various federal, state, and local policies used to segregate the St. Louis metropolitan area).

Louis, as well as the legitimate historical limitations of housing voucher programs, one can see how mandatory inclusionary zoning stands out as the most appealing option to comply with AFFH. By requiring developers to set aside affordable housing options during development, mandatory inclusionary zoning does what voucher programs often fail to do—it creates an opportunity to integrate that goes on to facilitate the various AFFH requirements.

*D. Inclusionary Zoning in Real Life—Successes and Challenges*

Mandatory inclusionary zoning provides both enticing policy benefits and a legitimate method to establish AFFH Final Rule compliance. Although the benefits are certainly enticing in theory, one need not look far to see the real-life effects of inclusionary zoning policies. The zoning ordinances created by Montgomery County, Maryland, and Nassau County, New York, exemplify the successes and challenges, respectively, of implementing an inclusionary zoning program.

1. Montgomery County, Maryland—An Example of Success

Montgomery County, a suburb of Washington, D.C., is one of the pioneers of inclusionary zoning.<sup>157</sup> The County developed their program in 1974 to address the lack of affordability of housing through the development of moderately priced, affordable housing.<sup>158</sup> The need for affordability resulted from Montgomery County's affluence—the County was (and is) one of the twenty richest counties in the United States.<sup>159</sup>

The program, titled the “Moderately Priced Dwelling Unit” Program, is straightforward but comprehensive, requiring that up to 15% of new developments of twenty units or more be moderately priced and that 40% of new developments be offered through public housing agencies and non-profit housing providers.<sup>160</sup> Although deemed “administratively complex” and subjected to several modifications over time,<sup>161</sup> Montgomery County's program experienced impressive success. Over thirty years, the program has produced a total of 13,000 affordable units.<sup>162</sup>

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<sup>157</sup> URBAN INST., EXPANDING HOUSING OPPORTUNITIES THROUGH INCLUSIONARY ZONING: LESSONS FROM TWO COUNTIES 8–9 (2012).

<sup>158</sup> EDWARD A. TOMBARI, NAT'L ASS'N OF HOME BUILDERS, SMART GROWTH, SMART CHOICES SERIES: THE BUILDER'S PERSPECTIVE ON INCLUSIONARY ZONING 3 (2005).

<sup>159</sup> Alexandra Holmqvist, The Effect of Inclusionary Zoning on Racial Integration, Economic Integration, and Access to Social Services: A Davis Case Study 11 (2011) (unpublished master's thesis, University of California, Santa Cruz) (on file with University of California, Santa Cruz Office of Graduate Studies).

<sup>160</sup> Nat'l Low Income Hous. Coal., *40 Years Ago: Montgomery County, Maryland Pioneers Inclusionary Zoning*, NLIHC.ORG (May 16, 2014), <http://nlihc.org/article/40-years-ago-montgomery-county-maryland-pioneers-inclusionary-zoning>.

<sup>161</sup> URBAN INST., *supra* note 157, at 53.

<sup>162</sup> *Id.* at 5.

And despite critics' initial concerns of potentially declining development, Montgomery County's program has generated a total of \$477.4 million of private sector investment in affordable housing programs across the county.<sup>163</sup> More importantly, the program integrated a traditionally homogenous county through increased racial and economic diversity.<sup>164</sup> Such success, even in the face of the program's complexity, is encouraging for those hoping to replicate similar results in St. Louis.<sup>165</sup>

## 2. Nassau County, New York—An Example of the Challenges

Nassau County, New York, a more recent addition to the inclusionary zoning game, has had its fair share of prevalent racial and economic disparity throughout the area.<sup>166</sup> This disparity was tied to a dearth of affordable housing in the region, an issue that state officials have sought to mitigate.<sup>167</sup> In response, the New York State Legislature passed the Long Island Workforce Housing Act ("LIWHA") in 2008, mandating that new developments set aside 10% of the units to affordable housing in return for at least a 10% density bonus.<sup>168</sup> However, the implementation of this inclusionary zoning policy has been a challenge for Nassau County. Part of the issue is a lack of direction at the regional level that has led to disagreement amongst municipalities over the proper implementation of the LIWHA. Some municipalities view the bill as optional and only a complement to local inclusionary zoning laws—both volun-

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<sup>163</sup> BRUNICK, *supra* note 111, at 6. Despite some economists' fears that inclusionary zoning would decrease development by making development more costly, developers working in Montgomery County have characterized inclusionary programs as "part of the cost of doing business." URBAN INST., *supra* note 157, at 25.

<sup>164</sup> See KAREN DESTOREL BROWN, BROOKINGS INST., EXPANDING AFFORDABLE HOUSING THROUGH INCLUSIONARY ZONING: LESSONS FROM THE WASHINGTON METROPOLITAN AREA 16, 27 (2001); Henry G. Cisneros, *Regionalism: The New Geography of Opportunity*, CITYSCAPE: A COLLECTION OF ESSAYS 46–47 (1996) (explaining how inclusionary zoning helped Montgomery County look "more like a 'rainbow'" by integrating the county with increased population diversity).

<sup>165</sup> Of course, the program is not immune from challenges. As one study has noted, expiring price regulations have led to a decrease in affordable units in Montgomery County, a decline in construction will lead to a decline in the number of affordable units created, and the public sentiment remains a barrier to future construction of affordable housing units. See BROWN, *supra* note 164, at 17–21. Even so, these are issues that can likely be mitigated through a mix of mandatory inclusionary zoning and longer mandated affordability periods for the newly developed housing.

<sup>166</sup> See INST. ON RACE & POVERTY, RACISM AND THE OPPORTUNITY DIVIDE ON LONG ISLAND 10 (2002) (explaining the large gap in household poverty rates between black and white residents in Nassau County and Suffolk County).

<sup>167</sup> See *id.* at 11 ("Nassau-Suffolk is among the most racially segregated residential areas in the country.").

<sup>168</sup> POPULAR CTR. FOR DEMOCRACY, THE CRISIS OF FAIR, AFFORDABLE HOUSING ON LONG ISLAND 7 (2015).

## Md. LAND USE Code Ann. § 7-401

Current through chapters effective July 1, 2019, of the 2019 Regular Session of the General Assembly.

*MD - Annotated Code of Maryland > LAND USE > DIVISION I. SINGLE-JURISDICTION PLANNING AND ZONING. > TITLE 7. OTHER DEVELOPMENT MANAGEMENT TOOLS. > SUBTITLE 4. INCLUSIONARY ZONING.*

### § 7-401. Affordable housing.

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**(a) Powers.** --To promote the creation of housing that is affordable by individuals and families with low or moderate incomes, a legislative body that exercises authority under this division may enact local laws:

- (1) imposing inclusionary zoning, and awarding density bonuses, to create affordable housing units; and
- (2) restricting the use, cost, and resale of housing that is created under this subtitle to ensure that the purposes of this subtitle are carried out.

**(b) Power additional.** --The authority granted under this subtitle is in addition to any other zoning and planning powers.

### History

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An. Code 1957, art. 66B, § 12.01; 2012, ch. 426, § 2.

Annotations

### Notes

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#### REVISOR'S NOTE

This section is new language derived without substantive change from former Art. 66B, § 12.01.

In the introductory language to subsection (a) of this section, the reference to "individuals" is substituted for the former reference to "persons" to reflect that the affordable housing created is intended to benefit human beings and not the other entities included in the definition of "person".

Also in the introductory language to subsection (a) of this section, the defined term "local law[s]" is substituted for the former reference to "ordinances or laws" for consistency within this division.

#### DEFINED TERMS:

From: Govoni, Lisa <Lisa.Govoni@montgomeryplanning.org>  
Sent: Monday, September 16, 2019 9:28 AM  
To: Allen Dyer

....  
Subject: RE: montgomery county code inclusionary zoning provisions

Hi Allen,

[http://library.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:montgomeryco\\_md\\_mc](http://library.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:montgomeryco_md_mc) – Chapter 25A (click down part 2) deals with established and operating inclusionary zoning.

All references to the bonus density are located in Chapter 59 (the zoning code), though.

Lisa

From: Allen Dyer <aldyer@lawlab.com>  
Sent: Sunday, September 15, 2019 3:31 PM  
To: Govoni, Lisa <Lisa.Govoni@montgomeryplanning.org>  
Cc: Abe Dyer <abedyer@gmail.com>  
Subject: montgomery county code inclusionary zoning provisions

hello ms. govoni,

i am doing research on inclusionary zoning to support testimony which i will be presenting to the howard county council at a public hearing this wednesday. during my research, i was surprised, PLEASANTLY SURPRISED, to find positive references to the 1973 decision by montgomery county to embrace inclusionary zoning.

could you please tell me which portions of the montgomery county code provide for establishing & operating the inclusionary zoning operation in montgomery county?

THANK YOU,  
allen

/s/

Allen R. Dyer, Esq.  
13340 Hunt Ridge  
Ellicott City, MD 21042  
aldyer@lawlab.com  
410-531-3965

....

[Print](#)

## Montgomery County Code

**Chapter 25A. Housing, Moderately Priced. [Note]**

§ 25A-1. Legislative findings.

§ 25A-2. Declaration of public policy.

§ 25A-3. Definitions.

§ 25A-4. Household income and eligibility standards.

§ 25A-5. Requirement to build MPDUs; payment to Housing Initiative Fund; agreements.

§ 25A-5A. Alternative payment agreement.

§ 25A-5B. Alternative location agreement.

§ 25A-6. Optional zoning provisions.

§ 25A-7. Maximum prices and rents.

§ 25A-8. Sale or rental of MPDUs.

§ 25A-9. Control of rents and resale prices; foreclosures.

§ 25A-10. Executive regulations; enforcement.

§ 25A-11. Appeals.

§ 25A-12. Annual report.

§ 25A-13. Applicability.

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**\*Editor's note**—See County Attorney Opinion dated [4/5/06](#) discussing the effect of the Maryland Condominium Act on moderately priced dwelling units and the rights and responsibilities created by both programs. See County Attorney Opinion dated [4/5/06](#), concerning the application of Chapter 25A to condominium conversions, which discussed Chapter 25A.

2004 L.M.C., ch. 29, § 2, states in part: "The amendments to Chapter 25A made by Section 1 of this Act which extend the control period for sale and rental MPDUs do not apply to any MPDU for which a sale contract or rental agreement was signed before April 1, 2005."

**Cross references**—Consumer protection, ch. 11; condominiums, ch. 11A; cooperative housing, ch. 11C; moderate-income multifamily rental housing facilities real property tax deferral, § 52-18B; residential real property tax deferral, § 52-18C.

**Sec. 25A-1. Legislative findings.**

(a) The County enacted the Moderately Priced Dwelling Unit (MPDU) law in 1973 to:

CR112-066



(1) help meet the goal of providing a full range of housing choices for all incomes, ages and household sizes;

(2) meet the existing and anticipated need for low and moderate-income housing;

(3) ensure that moderately priced housing is dispersed throughout the County consistent with the General Plan and area master plans; and

(4) encourage the construction of moderately priced housing by allowing optional increases in density including the MPDU density bonus to offset the cost of construction.

(b) In 2004, the County Council amended the MPDU program to:

(1) Reduce the loss of MPDUs by extending the control period for for-sale MPDUs from 10 years to 30 years and for rental MPDUs from 20 years to 99 years;

(2) Allow different income eligibility standards in recognition of the higher cost of construction of certain types of housing;

(3) Increase the number of developments required to provide MPDUs by lowering the base requirement from any development with 35 or more units to 20 or more units; and

(4) Place additional requirements and structure on the approval of an alternative payment made to the Housing Initiative Fund in place of providing MPDUs.

(c) In 2018, the County Council finds that:

(1) The availability of affordable housing continues to be a problem for low and moderate-income households.

(2) The 2015 report “The Greater Washington Region’s Housing Needs 2023” projects that Montgomery County will need 14,960 new housing units for households earning less than 80% of area median income.

(3) The 2017 Montgomery County Rental Housing Study reports that 68% of households with incomes between 50% and 80% of area median income report paying more than 30% of income for rent and 15% report being extremely rent burdened, paying more than 50% of income for rent.

(4) The creation of income-restricted affordable housing through construction and preservation is critical as market rents continue to increase. The American Community Survey reports that there were 9,189 fewer rental units with rents between \$750 and \$1,499 from 2010 to 2014.

(5) MPDUs are one important element for providing income-restricted affordable housing. There were 664 new MPDUs offered for sale or rent in 2015 and 2016. As of 2017 there are about 5,300 MPDUs county-wide.

(6) Additional density can offset the cost of constructing MPDUs. It is appropriate to consider different base requirements for MPDUs in conjunction with the approval of different densities and heights in master plans and sector plans.

(7) There is unmet demand for MPDUs with two, three, and four bedrooms. Providing flexibility that allows MPDU agreements based on floor area or square footage, rather than requirements based on the number of bedrooms in market rate units, can help to address this need.

(8) Appropriate alternative payments to the Housing Initiative Fund can, in certain circumstances, be used to create more MPDUs in the same Planning Area than providing the MPDUs on site.

(9) Montgomery County is committed to its policy of providing affordable housing in all areas of

CR112-067

the County to provide opportunity to households of all incomes in each Planning Area.

(10) MPDUs can be used in partnership with other housing supports to provide affordable housing to households with very low incomes such as those with incomes below 50% or 30% of area median income. (1974 L.M.C., ch. 17, § 1; 1979 L.M.C., ch. 21, § 1; 1989 L.M.C., ch. 27, § 1; [2018 L.M.C., ch. 20, § 1.](#))

### **Sec. 25A-2. Declaration of public policy.**

The County Council hereby declares it to be the public policy of the County to:

- (1) encourage and maintain a wide choice of housing types and neighborhoods for people of all incomes, ages, lifestyles, and physical capabilities at appropriate locations and densities and to implement policies to bridge housing affordability gaps;
- (2) make housing that is affordable to low, moderate, and middle-income households a priority in all parts of the County;
- (3) ensure that all master plan and sector plan amendments address the need for housing for low, moderate, and middle-income households and promote specific strategies to meet that need including height and density incentives and flexibility;
- (4) implement policies that increase the long-term supply of rental housing affordable to low and moderate-income households, particularly in areas that are easily accessible to transit;
- (5) require that all subdivisions of 20 or more dwelling units include a minimum number of moderately priced dwelling units on-site, or under certain specified circumstances, provide appropriate units off-site or make a payment to the Housing Initiative Fund;
- (6) allow the Department of Housing and Community Affairs and developers flexibility to enter into affordable housing agreements that address the needs for housing units of different sizes and bedroom counts to better meet the needs of low and moderate-income households; and
- (7) allow developers of residential units more opportunity to comply with this Chapter and meet the County's objective of building housing affordable to low and moderate-income households by contributing to the Housing Initiative Fund, alternative location agreements, and flexible development standards that promote production and diversity of housing units. (1974 L.M.C., ch. 17, § 1; 1989 L.M.C., ch. 27, § 1; [2003 L.M.C., ch. 1, § 1](#); [2016 L.M.C., ch. 8, § 1](#); [2018 L.M.C., ch. 20, § 1.](#))

### **Sec. 25A-3. Definitions.**

The following words and phrases, as used in this Chapter, have the following meanings:

*Age-restricted unit* means a dwelling unit, the occupancy of which is conditioned on at least one resident being age 55 or older.

*Area median income* means the median household income for the Washington, DC metropolitan area as estimated by the U.S. Department of Housing and Urban Development.

*Applicant* means any person, firm, partnership, association, joint venture, business entity, or any other entity or combination of entities, and any transferee of all or part of the land at one location.

*At one location* means all adjacent land of the applicant if:

- (1) The property lines are contiguous or nearly contiguous at any point; or
- (2) The property lines are separated only by a public or private street, road, highway or utility right-of-way, or other public or private right-of-way at any point; or
- (3) The property lines are separated only by other land of the applicant which is not subject to this Chapter at the time of any permit, site plan, development or subdivision application by the applicant.

*Available for building development* means all land:

- (1) Owned by, or under contract to, the applicant;
- (2) Zoned for any type of residential development to which an optional density bonus provision applies;
- (3) Which will use public water and sewerage; and
- (4) Which is already subdivided or is ready to be subdivided for construction or development.

*Closing costs* means statutory charges for transferring title, fees for obtaining necessary financing, title examination fees, title insurance premiums, house location survey charges and fees for preparation of loan documents and deed of conveyance.

*Commission* means the Housing Opportunities Commission of Montgomery County.

*Consumer Price Index* means the latest published version of the Consumer Price Index for All Urban Consumers (CPI-U) for the Washington-Arlington-Alexandria Core Based Statistical Area (CBSA), as published by the United States Department of Labor, Bureau of Labor Statistics, or any similar index selected by the County Executive.

*Control period* means the time an MPDU is subject to either resale price controls and owner occupancy requirements or maximum rental limits, as provided in Sections 25A-8 and 25A-9. The control period is 30 years for sale MPDUs and 99 years for rental MPDUs, and begins on the date of original sale or rental. If a sale MPDU is sold within 30 years after its original sale, and if (in the case of a sale MPDU that is not bought and resold by a government agency) the MPDU was originally offered for sale after March 1, 2002, the MPDU must be treated as a new sale MPDU and a new control period must begin on the date of the sale.

*Date of original sale* means the date of settlement for purchase of an MPDU.

*Date of original rental* means the date that MPDU rental covenants are recorded on the property.

*Department* means the Department of Housing and Community Affairs.

*Designated agency* means a non-governmental housing development agency or nonprofit business entity designated by the County Executive as eligible to purchase or lease MPDUs under Section 25A-8, following standards established in Executive regulation.

*Director*, except as otherwise indicated, means the head of the Department of Housing and Community Affairs, or the Director's designee.

*Dwelling unit* means a building or part of a building that provides complete living facilities for one household, including at a minimum, facilities for cooking, sanitation and sleeping.

*Eligible household* means a household whose income qualifies the household to participate in the MPDU program, and who is eligible to buy or rent an MPDU during the priority marketing period.

*Housing Initiative Fund* means a fund established by the County Executive to achieve the purposes of

CR112-069



## Section 25B-9.

*Low income* means levels of income within the income range for “very-low income families” established from time to time by the U.S. Department of Housing and Urban Development for the Washington metropolitan area, under federal law, or as defined by executive regulations.

*Moderate income* means those levels of income, established in executive regulations, which prohibit or severely limit the financial ability of households to buy or rent housing in Montgomery County. *Moderate income* levels must not exceed the “low income” limits set by the U.S. Department of Housing and Urban Development to determine eligibility for assisted housing programs.

*Moderately priced dwelling unit* or *MPDU* means a dwelling unit which is:

(1) offered for sale or rent to eligible households through the Department, and sold or rented under this Chapter; or

(2) sold or rented under a government program designed to assist the construction or occupancy of housing for households of low or moderate income, and designated by the Director as an MPDU. When such a dwelling unit is designated as an MPDU, the income limits and other requirements of that particular housing program must apply during the compliance period for that program rather than the requirements set forth herein. If the compliance period for that program is shorter than the MPDU control period, the MPDU requirements must apply for the balance of the MPDU control period, unless the Director determines that the affordability term of the other program is equivalent to the MPDU requirement.

*Multi-family dwelling unit* means a dwelling unit in an apartment, condominium, or mixed-use building type.

*Optional density bonus provision* means any increase in density under Chapter 59, in a zoning classification that allows residential development, above the amount permitted in the base or standard method of development, whether by exercise of the optional provisions of Chapter 59 or by any special exception or conditional use.

*Planning Area* means one of 37 subareas of the County defined in the earliest planning documents by the Maryland-National Capital Park and Planning Commission and whose boundaries have not changed over time.

*Planning Board* means the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission.

*Priority marketing period* is the period an MPDU must be offered exclusively for sale or rent to eligible households, as provided in Section 25A-8.

*Single-family dwelling unit* means a single-family detached dwelling unit or single-family attached dwelling unit, such as a townhouse or duplex. (1974 L.M.C., ch. 17, § 1; 1976 L.M.C., ch. 12, § 1; 1976 L.M.C., ch. 35, § 2; 1978 L.M.C., ch. 31, § 1; 1979 L.M.C., ch. 21, § 2; 1980 L.M.C., ch. 63, § 1; 1982 L.M.C., ch. 6, § 11; 1984 L.M.C., ch. 24, § 28; 1984 L.M.C., ch. 27, § 19; 1989 L.M.C., ch. 27, § 1; 1994 L.M.C., ch. 29; 1996 L.M.C., ch. 13, § 1; 1996 L.M.C., ch. 20, § 1; 1998 L.M.C., ch. 12, § 1; [2001 L.M.C., ch. 14](#), § 1; [2001 L.M.C., ch. 25](#), § 1; 2002 L.M.C., ch. 16, § 2; [2002 L.M.C., ch. 27](#), § 1; [2004 L.M.C., ch. 29](#), § 1; [2016 L.M.C., ch. 8](#), § 1; [2018 L.M.C., ch. 3](#), § 1; [2018 L.M.C., ch. 20](#), § 1.)

**Editor's note**—2004 L.M.C., ch. 29, § 2, states in part: "The amendments to Chapter 25A made by Section 1 of this Act which extend the control period for sale and rental MPDUs do not apply to any MPDU for which a sale contract or rental agreement was signed before April 1, 2005."

2002 L.M.C., ch. 27, § 2, states: Applicability. The requirements of Chapter 25A, as amended by

CR112-070

Section 1 of this Act, do not apply to any subdivision with more than 34 but fewer than 50 units at one location if the applicant applied for a preliminary plan of subdivision before this Act took effect [January 9, 2003], unless the applicant agrees that the requirements of Chapter 25A as amended should apply to that subdivision.

#### **Sec. 25A-4. Household income and eligibility standards.**

(a) The County Executive must set and annually revise standards of eligibility for the MPDU program by regulation. These standards must specify moderate-income levels for varying sizes of households which will qualify a person or household to buy or rent an MPDU. The Executive must set different income eligibility standards for buyers and renters. The Executive may set different income eligibility standards for buyers and renters of higher-cost or age-restricted MPDUs, as defined by regulation.

(b) In establishing standards of eligibility and moderate-income levels, the Executive must consider:

- (1) income levels relative to area median income; and
- (2) household size and number of dependents.

(c) A household that rents an MPDU and lawfully occupies it when the MPDU is offered for sale may buy the MPDU, regardless of the household's income at the time of sale, if the household met all eligibility standards when the household first rented the MPDU.

(d) A household that rents an MPDU after meeting all eligibility standards may continue to occupy the MPDU for the term of the lease even if the household ceases to meet the income eligibility standards.

(e) A household that buys an MPDU after meeting all eligibility standards may retain ownership of the MPDU even if the household ceases to meet income eligibility standards during the time that the household owns the MPDU.

(f) To be eligible to buy or rent an MPDU other than an age-restricted unit, members of a household must not have owned any residential property during the previous five years. The Director may waive this restriction for good cause. (1989 L.M.C., ch. 27, § 1; 1994 L.M.C., ch. 29; [2004 L.M.C., ch. 29](#), § 1; [2005 L.M.C., ch. 4](#), § 1; [2018 L.M.C., ch. 20](#), § 1.)

**Editor's note**—2004 L.M.C., ch. 29, § 2, states in part: "The amendments to Chapter 25A made by Section 1 of this Act which extend the control period for sale and rental MPDUs do not apply to any MPDU for which a sale contract or rental agreement was signed before April 1, 2005."

#### **Sec. 25A-5. Requirement to build MPDUs; payment to Housing Initiative Fund; agreements.**

(a) The requirements of this Chapter to provide MPDUs apply to any applicant who:

(1) submits for approval or extension of approval a preliminary plan of subdivision under Chapter 50 which proposes the development of a total of 20 or more dwelling units at one location in one or more subdivisions, parts of subdivisions, resubdivisions, or stages of development, regardless of whether any part of the land has been transferred to another party;

(2) submits to the Planning Board or to the Director of Permitting Services a plan of housing development for any type of site review or development approval required by law, which proposes construction or development of 20 or more dwelling units at one location;

(3) submits to the Planning Board or to the Director of Permitting Services a plan to convert an

CR112-071



existing property from non-residential use to residential use for any type of site review or development approval required by law, which results in the development of 20 or more dwelling units at one location; or

(4) with respect to land in a zone not subject to subdivision approval or site plan review, applies for a building permit to construct a total of 20 or more dwelling units at one location, including a conversion from non-residential to residential use.

(b) An applicant for an approval or permit identified in subsection (a) who proposes development of between 11 and 19 dwelling units is not required to provide MPDUs, but must make a payment to the Housing Initiative Fund, as provided by regulation.

(c) In calculating whether a development contains a total of 20 or more dwelling units for the purposes of this Chapter, the development includes all land at one location in the County available for building development under common ownership or control by an applicant, including land owned or controlled by separate business entities in which any stockholder or family of the stockholder owns 10 percent or more of the stock. An applicant must not avoid this Chapter by submitting piecemeal applications or approval requests for subdivision plats, site or development plans, floating zone plans, or building permits. Any applicant may apply for a preliminary plan of subdivision, site or development plan, floating zone plan, record plat, or building permit for fewer than 20 dwelling units at any time; but the applicant must agree in writing that the applicant will comply with this Chapter when the total number of dwelling units at one location reaches 20 or more.

(d) The minimum number of MPDUs required under this Chapter, as a percentage of the total number of dwelling units at that location, not counting any workforce housing units built under Chapter 25B, is:

(1) for development in a Planning Area designated by the Planning Board in which at least 45 percent of the United States Census Tracts have a median household income of at least 150 percent of the County-wide median household income, at the time the Planning Board accepts as complete the applicant's application or plan under subsection (a), 15 percent; or

(2) for any other development subject to this Chapter, 12.5 percent. The Planning Board must update the Planning Area designations under this subsection at least annually.

(e) Any applicant subject to subsection (a), in order to obtain a building permit, must submit to the Department of Permitting Services a written MPDU agreement approved by the Director and the County Attorney. Each agreement must require that:

(1) a specific number of MPDUs must be constructed on an approved time schedule;

(2) in subdivisions with single-family dwelling units, each MPDU must have three or more bedrooms, unless this requirement is waived by the Director in a subdivision with only two-bedroom market rate units;

(3) in subdivisions with multi-family dwelling units, the bedroom mix of the MPDUs must match the bedroom mix of the market-rate units in the subdivision unless the Director approves an MPDU agreement that does not increase the number of MPDUs required, but approximates the total floor area for the MPDUs required, and alters the bedroom mix of the MPDUs or the number of MPDUs; and

(4) in subdivisions with both single-family and multi-family dwelling units, the ratio of single-family MPDUs to total MPDUs must not be less than the ratio of market-rate single-family units to total market-rate units in the subdivision, unless the Director finds that:

(A) offering more multi-family MPDUs in that subdivision would advance the purpose of the County housing policy and the objectives of any applicable land use plan, be consistent with local



housing market conditions, and avoid excessive mandatory condominium or homeowners' association fees or other costs that would reduce the affordability of sale MPDUs; and

(B) if rental MPDUs are proposed, the applicant has demonstrated that it is qualified to manage rental housing.

(f) When a development of 20 units or more at one location is in a zone where a density bonus is allowed under Chapter 59; and

- (1) is covered by a plan of subdivision;
- (2) is covered by a plan of development, site plan, or floating zone plan; or
- (3) requires a building permit to be issued for construction,

the required number or residential floor area of MPDUs is a variable percentage that is not less than a base requirement of 12.5 percent or the higher base requirement under subsection (d), of the total number of dwelling units or residential floor area at that location, not counting any workforce housing units built under Chapter 25B. The Council may establish a higher base requirement, up to 15 percent of the total number of dwelling units or residential floor area at a location, as part of a master plan approval. The required number or residential floor area of MPDUs must vary according to the amount by which the approved development exceeds the normal or standard density for the zone in which it is located. Chapter 59 may permit bonus densities over the presumed base density where MPDUs are provided.

(g) The Director may determine whether an MPDU requirement may be satisfied by an alternative payment or location agreement, and may approve an MPDU agreement that:

(1) allows an applicant to reduce the number of MPDUs in a subdivision only if the agreement meets all requirements of Section 25A-5A for an alternative payment agreement; or

(2) allows an applicant to build the MPDUs at another location only if the agreement meets all requirements of Section 25A-5B for an alternative location agreement.

(h) (1) An applicant may satisfy this Section by obtaining approval from the Director to transfer land to the County before applying for a building permit.

(2) The Director may only approve a transfer of land under this subsection after making a written determination that the value of the land transferred is at least equal to the value of the MPDUs not constructed by the applicant.

(3) The Executive must establish procedures for transferring land under this subsection by method (1) regulation.

(4) When land is transferred to the County under this Section:

(A) the land must be used to produce or preserve MPDUs; or

(B) if sold, proceeds from the sale must be allocated to the Affordable Housing Acquisition and Preservation CIP portion of the Housing Initiative Fund; and

(C) the Director must notify the Council within 30 days of approving a land transfer under this subsection.

(i) The MPDU agreements must be signed by the applicant and all other parties whose signatures are required by law for the effective and binding execution of contracts conveying real property. If the applicant is a business entity, the agreements must be signed by the authorized signatories of the business entity individually and on behalf of the business entity. Partnerships, associations or business entities

CR112-073

must not evade this Chapter through voluntary dissolution. The agreements may be assigned if the County approves, and if the assignees agree to fulfill the requirements of this Chapter.

(j) The Department of Permitting Services must not issue a building permit in any subdivision or housing development in which MPDUs are required until the applicant submits a valid MPDU agreement which applies to the entire preliminary plan or site plan, unless the property within the preliminary plan or site plan has multiple owners, in which case the development may have more than one MPDU agreement. The applicant must also file with the first application for a building permit a statement of all land the applicant owns in the County that is available for building development. In later applications, the applicant need only show additions and deletions to the original landholdings available for building development.

(k) The MPDU agreement must include the number, type, location, and plan for staging construction of all dwelling units and such other information as the Department requires to determine the applicant's compliance with this Chapter. MPDUs must be reasonably dispersed throughout the development, and the MPDU staging plan must be consistent with any applicable land use plan, subdivision plan, or site plan. The staging plan included in the MPDU agreement for all dwelling units must be sequenced so that:

- (1) MPDUs are built along with or before other dwelling units;
- (2) no or few market rate dwelling units are built before any MPDUs are built;
- (3) the pace of MPDU production must reasonably coincide with the construction of market rate units; and
- (4) the last building built must not contain only MPDUs.

This subsection applies to all developments, including any development covered by multiple preliminary plans of subdivision.

(l) The MPDU agreement must provide for any requirement of age-restricted MPDUs to be offered for sale to be satisfied by a payment to the Housing Initiative Fund under Section 25A-5A(b).

(m) If an applicant does not build the MPDUs contained in the staging plan along with or before other dwelling units, the Director of Permitting Services must withhold any later building permit to that applicant until the MPDUs contained in the staging plan are built.

(n) The applicant must execute and provide to the Department in recordable form, covenants assuring that:

- (1) The restrictions of this Chapter run with the land for the entire period of control;
- (2) The County may create a lien to collect:
  - (A) that portion of the sale price of an MPDU which exceeds the approved resale price; and
  - (B) that portion of the foreclosure sale price of an MPDU which exceeds the approved resale price; and
- (3) The covenants will bind the applicant, any assignee, mortgagee, or buyer, and all other parties that receive title to the property. These covenants must be senior to all instruments securing permanent financing.

(o) An applicant must not establish a condominium or homeowners' association consisting solely of MPDUs.

(p) (1) In any purchase and sale agreement and any deed or instrument conveying title to an MPDU, the grantor must clearly and conspicuously state, and the grantee must clearly and conspicuously acknowledge, that:

(A) the conveyed property is an MPDU and is subject to the restrictions contained in the covenants required under this Chapter during the control period until the restrictions are released; and

(B) any MPDU owner, other than an applicant, must not sell the MPDU until:

(i) the owner has notified the Department under Section 25A-8 or 25A-9, as applicable, that the MPDU is for sale;

(ii) the Department and, where applicable, the Commission, have notified the owner that they do not intend to buy the MPDU; and

(iii) The Department has notified the owner of the MPDU's maximum resale price.

(2) Any deed or other instrument conveying title to an MPDU during the control period must be signed by both the grantor and grantee.

(3) When a deed or other instrument conveying title to an MPDU is recorded in the land records, the grantor must cause to be filed in the land records a notice of sale for the benefit of the County in the form provided by state law.

(q) Nothing in this Chapter prohibits an applicant from voluntarily building MPDUs, as calculated under subsection (f), in a development with fewer than 20 dwelling units at one location, and in so doing from qualifying for an optional method of development under Chapter 59. A development with fewer than 20 dwelling units where an applicant voluntarily builds MPDUs must comply with any procedures and development standards that apply to a larger development under this Chapter and Chapter 59. Sections 25A-5A and 25A-5B do not apply to an applicant who voluntarily builds MPDUs under this subsection and in so doing qualifies for an optional method of development.

(r) Upon request by the applicant, the Director may provide an applicant and the Planning Board with a letter indicating the Director's preliminary agreement on how the applicant will meet its MPDU requirements, including:

(1) the conditions of the agreement; and

(2) the time period that the agreement is valid. (1974 L.M.C., ch. 17, § 1; 1974 L.M.C., ch. 40, § 1; 1976 L.M.C., ch. 34, § 1; 1976 L.M.C., ch. 35, § 3; 1978 L.M.C., ch. 31, § 2; 1979 L.M.C., ch. 21, § 3; 1982 L.M.C., ch. 6, § 1; 1989 L.M.C., ch. 27, § 1; 1994 L.M.C., ch. 29; 1996 L.M.C., ch. 20, § 1; 1998 L.M.C., ch. 12, § 1; [2001 L.M.C., ch. 14, § 1](#); [2001 L.M.C., ch. 8, § 1](#); [2002 L.M.C., ch. 2, § 1](#); 2002 L.M.C., ch. 16, § 2; [2002 L.M.C., ch. 27, § 1](#); [2003 L.M.C., ch. 1, § 1](#); [2004 L.M.C., ch. 29, § 1](#); [2005 L.M.C., ch. 4, § 1](#); [2006 L.M.C., ch. 23, § 2](#); [2010 L.M.C., ch. 11, § 1](#); [2016 L.M.C., ch. 8, § 1](#); [2018 L.M.C., ch. 20, § 1](#); [2018 L.M.C., ch. 21, § 1](#).)

**Editor's note**—2018 L.M.C., ch. 21, § 2, states: Effective Date.

(a) This Act takes effect on October 31, 2018, and except for an applicant who has submitted a sketch plan that the Planning Board has accepted as complete before October 31, 2018, applies to any submission or application under Section 25A-5(a) accepted as complete on or after that date.

(b) Unless an applicant elects to be reviewed under the standards and procedures of Chapter 25A in effect on or after October 31, 2018, any such application accepted as complete or approved before October 31, 2018 and any sketch plan accepted as complete before October 31, 2018, must be approved or amended in a manner that satisfies Chapter 25A as it existed on October 30, 2018. The approval of

CR112-075



any of these applications, or amendments to these applications, will allow the applicant to proceed through any other required application or step in the process within the time allowed by law or plan approval, under the standards and procedures of Chapter 25A in effect on October 30, 2018.

2018 L.M.C., ch. 20, § 2, states: Regulations. The County Executive must submit the regulations required by Sections 25A-5, 25A-7, 25A-8, and 25A-9, as amended by this Act, to the Council for approval not later than October 15, 2018.

2018 L.M.C., ch. 20, § 3, states: Effective Date.

(a) This Act takes effect on October 31, 2018, and except for an applicant who has submitted a sketch plan that the Planning Board has accepted as complete before October 31, 2018, applies to any submission or application under Section 25A-5(a) accepted as complete on or after that date.

(b) Unless an applicant elects to be reviewed under the standards and procedures of Chapter 25A in effect on or after October 31, 2018, any such application accepted as complete or approved before October 31, 2018, and any sketch plan accepted as complete before October 31, 2018, must be approved or amended in a manner that satisfies Chapter 25A as it existed on October 30, 2018. The approval of any of these applications, or amendments to these applications, will allow the applicant to proceed through any other required application or step in the process within the time allowed by law or plan approval, under the standards and procedures of Chapter 25A in effect on October 30, 2018.

2006 L.M.C., ch. 23, § 3, amended by 2010 L.M.C., ch. 11, § 3, states: Effective date; Applicability; Expiration.

(a) This Act takes effect on December 1, 2006. The County Executive must submit all regulations necessary to implement Article V of Chapter 25B, inserted by Section 1 of this Act, to the Council by October 11, 2006.

(b) Article V of Chapter 25B, as inserted by Section 1 of this Act, does not apply to any development for which an application for a local map amendment, development plan, project plan, site plan, or preliminary plan of subdivision was filed before December 1, 2006, unless the applicant voluntarily includes workforce housing units in that development.

2004 L.M.C., ch. 29, § 2, states in part: "The amendments to Chapter 25A made by Section 1 of this Act which extend the control period for sale and rental MPDUs do not apply to any MPDU for which a sale contract or rental agreement was signed before April 1, 2005. The amendments to Section 25A-5 made by Section 1 of this Act which reduced the minimum size of a development where MPDUs must be located do not apply to any development for which a preliminary plan of subdivision was approved before April 1, 2005."

2002 L.M.C., ch. 27, § 2, states: Applicability. The requirements of Chapter 25A, as amended by Section 1 of this Act, do not apply to any subdivision with more than 34 but fewer than 50 units at one location if the applicant applied for a preliminary plan of subdivision before this Act took effect [January 9, 2003], unless the applicant agrees that the requirements of Chapter 25A as amended should apply to that subdivision.

Section 25A-5, formerly § 25A-4, was renumbered and amended pursuant to 1989 L.M.C., ch. 27, § 1.

The requirement of providing for moderately priced dwelling units contained in § 25A-5 is mentioned in connection with Montgomery County's growth policy in P. J. Tierney, *Maryland's Growing Pains: The Need for State Regulation*, 16 U. of Balt. L. Rev. 201 (1987) at pp. 236, 237.

#### **Sec. 25A-5A. Alternative payment agreement.**

(a) The Director may approve an MPDU agreement that allows an applicant, instead of building some or all of the required for-sale MPDUs in a proposed subdivision or conversion of existing property from non-residential use to residential use, to pay to the Housing Initiative Fund an amount computed under subsection (b) upon a finding that:

(1) either:

(A) an indivisible package of services and facilities available to all residents of the proposed subdivision would cost MPDU buyers so much that it is likely to make the MPDUs effectively unaffordable by eligible buyers;

(B) regulatory development constraints at a particular site would render the building of approved density and all required MPDUs at that site infeasible; or

(C) the public benefit of providing affordable housing throughout the County outweighs the value of locating MPDUs in each subdivision throughout the County; and

(2) accepting the payment will further the objective of providing a broad range of housing opportunities throughout the County.

(b) A payment under this section in full satisfaction of MPDU requirements must be three percent of the sale price of each market rate unit in the development. A payment made in partial satisfaction of MPDU requirements must be adjusted based on the percentage of required MPDUs provided.

(c) A payment to the Housing Initiative Fund under this Section:

(1) must not be used to reduce the annual County payment to the Fund;

(2) must be deposited in to the Affordable Housing Acquisition and Preservation CIP project; and

(3) must be used only to buy, build, or preserve more MPDUs, or more bedrooms in the same number or fewer MPDUs, in the same Planning Area as the development for which the payment was made unless:

(A) the payment is used in a Planning Area designated by the Planning Board in which at least 45% of the United States Census Tracts have a median household income of at least 150% of the County-wide median household income; or

(B) the Director first provides the Council with:

(i) notice of the intent to use the payment in a different Planning Area that does not meet the requirement in subparagraph (A);

(ii) good cause for the use of the payment in the different Planning Area; and

(iii) at least 30 days to comment.

(d) The Director must notify the Council in writing within ten days of approving an alternative payment agreement under this Section. ([2004 L.M.C., ch. 29, § 1](#); [2005 L.M.C., ch. 4, § 1](#); [2018 L.M.C., ch. 20, § 1.](#))

**Editor's note**—2004 L.M.C., ch. 29, § 2, states in part: "The amendments to Chapter 25A made by Section 1 of this Act which extend the control period for sale and rental MPDUs do not apply to any MPDU for which a sale contract or rental agreement was signed before April 1, 2005." 2004 L.M.C., ch. 29, § 3, states: "Executive proposal. By April 1, 2006, the County Executive, after consulting the Planning Board and Housing Opportunities Commission, must propose to the Council legislation or a regulation to limit alternative payment agreements under Section 25A-5A, inserted by Section 1 of this

CR112-077



Act, to: (a) senior citizens and special needs housing with unaffordable services and facilities; and (b) environmental constraints that would render the building of required MPDUs at a site economically infeasible."

**Sec. 25A-5B. Alternative location agreement.**

(a) The Director may approve an MPDU agreement that allows an applicant for development of a high-rise residential building, instead of building some or all of the required number of MPDUs on-site, to provide MPDUs at another location, only if the Director finds that:

(1) the public benefit of locating MPDUs at the proposed alternative location outweighs the value of locating MPDUs in each subdivision throughout the County;

(2) building the MPDUs at the proposed alternative location will further the objective of providing a broad range of housing opportunities throughout the County; and

(3) the alternative location agreement will increase:

(A) the number of MPDUs; or

(B) the number of bedrooms in the same number or fewer MPDUs, provided as a result of the development.

(b) The alternative location must be in the same Planning Area unless:

(1) the alternative location is in a Planning Area designated by the Planning Board in which at least 45% of the United States Census Tracts have a median household income of at least 150% of the County-wide median household income; or

(2) the Director first provides the Council with:

(A) notice of the intended alternative location in a different Planning Area that does not meet the requirement in paragraph (b);

(B) good cause for the alternative location in the different Planning Area; and

(C) at least 30 days to comment.

(c) To satisfy the requirements of this Section, an applicant may:

(1) build, or convert from non-residential use, the required number or percentage of residential floor area of new MPDUs at a site approved by the Director;

(2) buy, encumber, or transfer, and rehabilitate as necessary, existing market rate housing units that meet all standards for use as MPDUs; or

(3) return to MPDU use, and rehabilitate as necessary, existing MPDUs for which price or rent controls have expired.

(d) Each agreement under this Section must include a schedule, binding on the applicant, for timely completion or acquisition of the required number of MPDUs.

(e) The Director must notify the Council in writing within ten days of approving an alternative location agreement under this Section. ([2004 L.M.C., ch. 29](#), § 1; [2018 L.M.C., ch. 20](#), § 1.)

**Editor's note**—2004 L.M.C., ch. 29, § 2, states in part: "The amendments to Chapter 25A made by Section 1 of this Act which extend the control period for sale and rental MPDUs do not apply to any

CR112-078



MPDU for which a sale contract or rental agreement was signed before April 1, 2005."

### **Sec. 25A-6. Optional zoning provisions.**

The County Council, sitting as a District Council for the Maryland-Washington Regional District within the County, to assist in providing moderately priced housing has enacted zoning standards in Chapter 59, establishing in certain zones optional density bonus provisions which increase the allowable residential density above the maximum base density of the zoning classification and permit alternative dwelling unit types other than those allowed under the standard method of development. Land upon which the applicant must build MPDUs may, at the applicant's election, be subject to optional zoning provisions. If the applicant elects the optional density provisions, permitting the construction of an increased number of dwelling units or increased percentage of residential floor area, the MPDU requirement must apply to the total number of dwelling units or percentage of residential floor area as increased by application of the optional density provisions or by the approval of a special exception that increases the density above the otherwise permitted density of the zoning classification in which the property is situated. (1974 L.M.C., ch. 17, § 1; 1976 L.M.C., ch. 35, § 4; 1978 L.M.C., ch. 31, § 4; 1979 L.M.C., ch. 21, § 4; 1980 L.M.C., ch. 28, § 1; 1982 L.M.C., ch. 6, § 1; 1989 L.M.C., ch. 27, § 1; 1996 L.M.C., ch. 13, § 1; 1996 L.M.C., ch. 20, § 1; 1998 L.M.C., ch. 12, § 1; [2001 L.M.C., ch. 14](#), § 1; 2002 L.M.C., ch. 16, § 2; [2018 L.M.C., ch. 20](#), § 1.)

**Editor's note**—Section 25A-6, formerly § 25A-5, was renumbered and amended pursuant to 1989 L.M.C., ch. 27, § 1.

### **Sec. 25A-7. Maximum prices and rents.**

MPDUs must not be sold or rented at prices or rents that exceed the maximum prices or rents established under this Section.

#### *(a) Sales.*

(1) The sale price of any MPDU, including closing costs and brokerage fees, must not exceed an applicable maximum sale price established from time to time by the County Executive in regulations adopted under method (1).

(2) The regulations adopted to implement this Section must allow the Director to:

(A) restrict those conditions of the design, construction, pricing, or amenity package of an MPDU project that will impose excessive mandatory homeowner or condominium fees or other costs that reduce the affordability of the MPDUs; and

(B) approve an increase of up to 10 percent over the base sale price of an MPDU upon a finding that the increase is justified to cover the cost of a modification of the external design of the MPDU necessary to reduce excessive marketing impact of the MPDU on the market rate units in the subdivision.

*(b) Rents.* The rent, including surface parking but excluding utilities when they are paid by the tenant, for any MPDU must not exceed a maximum rent for the MPDU set by Executive regulations. Different rents must be set for MPDUs when utility costs are paid by the owner and included in the rent. Different rents may be set for age-restricted MPDUs. Different rents also may be set for high-rise rental MPDUs. (1989 L.M.C., ch. 27, § 1; [2004 L.M.C., ch. 29](#), § 1; [2005 L.M.C., ch. 4](#), § 1; [2018 L.M.C., ch. 20](#), § 1.)

**Editor's note**—2018 L.M.C., ch. 20, § 2, states: Regulations. The County Executive must submit the regulations required by Sections 25A-5, 25A-7, 25A-8, and 25A-9, as amended by this Act, to the

CR112-079

Council for approval not later than October 15, 2018.

2004 L.M.C., ch. 29, § 2, states in part: "The amendments to Chapter 25A made by Section 1 of this Act which extend the control period for sale and rental MPDUs do not apply to any MPDU for which a sale contract or rental agreement was signed before April 1, 2005."

### **Sec. 25A-8. Sale or rental of MPDUs.**

(a) *Sale or rental to government agencies or designated agencies.*

(1) The Department, the Commission, or any other government agency or designated agency may buy or lease, for its own programs or programs administered by it, up to 40 percent of all MPDUs which are not sold or rented under any other federal, state, or local program.

(2) The Department or Commission may buy or lease up to 33.3 percent of the MPDUs not sold or rented under any other federal, state, or local program.

(3) Any other government agency or designated agency may buy or lease:

(A) any MPDU in the first 33.3 percent that the Department or Commission has not bought or leased; and

(B) the remainder of the 40 percent specified in subsection (a)(1).

This option may be assigned to households that are clients of the Department of Health and Human Services or to low or moderate-income households who are eligible for assistance under any federal, state, or local program identified in Executive regulation.

(4) The Executive must, by regulation, adopt standards and priorities to approve designated agencies under this subsection. These standards must require the agency to demonstrate its ability to operate and maintain MPDUs satisfactorily on a long-term basis.

(5) The Department must notify the Commission, other government agency, or designated agency promptly after receiving notice from the applicant under subsection (b) of the availability of MPDUs. If the Department, the Commission, or any other designated agency exercises its option, it must submit to the applicant, within 21 calendar days after the Department notifies the Commission under this subsection, a notice of intent to exercise its option for specific MPDUs covered by this option. Any MPDUs not bought or leased under this subsection must be sold or rented only to eligible households under subsection (b) during the priority marketing period for eligible households to buy or lease.

(6) In exercising this option, the Department, the Commission, and any government agency or designated agency must reserve the MPDU by reference to number, type, size and amenities of the units selected if the designation does not result in any type of unit exceeding by more than 40 percent the total units of that type which are sold or rented under this Section, unless the Department and the applicant agree to a different selection. The notice required under subsection (a)(5) must state which MPDUs are to be offered for sale and which are to be offered for rent, and the Department, the Commission, and any government agency or designated agency may buy only units which are offered for sale and may lease only units which are offered for rent. The Department, the Commission, and any government agency or designated agency must decide whether it will exercise its option within 45 days of the date of the notice provided under subsection (a)(5).

(7) If more than one government agency or designated agency files a notice of intent under subsection (a)(5) with respect to a particular MPDU:



- (A) the Department prevails over any other buyer or renter;
- (B) The Commission prevails over any buyer or renter other than the Department;
- (C) any other government agency prevails over any designated agency;
- (D) the first government agency to file a notice prevails over any later agency; and
- (E) the first designated agency to file a notice prevails over any later designated agency.

(8) Any MPDU purchased by the Commission, a government agency, or a designated agency under this subsection that is offered for resale within five years after original purchase must first be offered for sale to the Department at the purchase price paid by the Commission, government agency, or designated agency in accordance with Executive regulation. The Department may assign its right to purchase the MPDU to an eligible household or to a designated agency.

(b) *Sale or rental to eligible households.*

(1) Every MPDU unit required under this Chapter must be offered to eligible households for sale or rental to a good-faith purchaser or renter to be used for his or her own residence, except MPDUs sold or rented under subsection (a) or offered for sale or rent with the assistance of, and subject to the conditions of, a subsidy under a federal, state or local government program, identified in Executive regulation, whose purpose is to provide housing for low or moderate income households.

(2) Before offering any MPDUs for sale or rent, the applicant must submit and receive approval of an agreement notifying the Department of the proposed offering and the date on which the applicant will be ready to begin the marketing to eligible households. The agreement must set forth the number of MPDUs offered, the bedroom mix, the floor area for each MPDU type, a description of the amenities offered in each MPDU and a statement of the availability of each MPDU for sale or rent, including information regarding any mortgage financing available to buyers of the designated MPDU. The applicant must also give the Department a vicinity map of the offering, a copy of the approved development, subdivision or site plan, as appropriate, and such other information or documents as the Director finds necessary. The Department must maintain a list of eligible households for sale MPDUs and, in accordance with procedures established by the County Executive, must notify eligible households of sale or rental offerings.

(3) After approving the offering agreement, the Department must notify the Commission of the offering. The Department must notify the applicant of the method by which the MPDUs will be offered and when the 90-day priority marketing period for the MPDUs may begin.

(4) The Executive may by regulation establish a buyer and renter selection system which considers household size, County residency, employment in the County, and length of time since the household was certified for the MPDU program. Eligible households will be notified when MPDUs are available for sale or rent and will be given an opportunity to buy or rent an MPDU during the priority marketing period in the order of their selection priority ranking.

(5) The priority marketing period for new MPDUs ends not less than 90 days after the initial offering date approved by the Department. The priority marketing period for resold or rerented MPDUs ends not less than 60 days after the Department notifies the seller of the approved resale price or vacancy of the rental unit. The Department may extend a priority marketing period when eligible households are interested in buying or renting a unit, or may reduce the priority marketing period for resold MPDUs for good cause.

(6) Applicants must make a good-faith effort to enter into contracts with eligible households during the priority marketing period and for an additional period necessary to negotiate with eligible households

who indicate a desire to buy or rent an MPDU during that period.

(7) Every buyer or renter of an MPDU must occupy the MPDU as his or her primary residence during the control period. Each buyer and renter must certify before taking occupancy that he or she will occupy the MPDU as his or her primary residence during the control period. The Director may require an owner who does not occupy the MPDU as his or her primary residence to offer the MPDU for resale to an eligible household under the resale provisions of Section 25A-9.

(8) An owner of an MPDU, except the Commission or a government agency or designated agency, must not rent the MPDU to another party unless the Director finds sufficient cause to allow temporary rental of the MPDU under applicable regulations, which may include maximum rental levels.

(9) Any rent obtained for an MPDU that is rented without the Director's authorization must be paid into the Housing Initiative Fund by the owner within 90 days after the Director notifies the owner of the rental violation. Any amount unpaid after 90 days is grounds for a lien against the MPDU. The Director may obtain a judgment and record the lien or may reduce the resale price of the MPDU by the amount owed to the Housing Initiative Fund, or pursue other remedies provided by law.

(10) An applicant must not sell or lease any MPDU without first obtaining a certificate of eligibility from the prospective buyer or verifying the eligibility of the prospective lessee. For sale MPDUs, a copy of each certificate must be furnished to the Department and maintained on file by the Department. Before the sale by an applicant or by the Commission, a government agency, or a designated agency to any buyer of any MPDU who does not possess a certificate of eligibility, the applicant, the Commission, or the agency, must determine whether the proposed buyer had previously owned another MPDU. The proposed buyer must not participate in the MPDU program a second time unless the proposed buyer meets the household income criteria and no longer owns an MPDU, and there is no first-time buyer qualified to buy that MPDU. The Director may waive this restriction for good cause.

(11) If an MPDU owner dies, at least one heir, legatee, or other person taking title by will or by operation of law must occupy the MPDU during the control period under this Section, or the owner of record must sell the MPDU as provided in Section 25A-9. (1974 L.M.C., ch. 17, § 1; 1976 L.M.C., ch. 35, § 4; 1978 L.M.C., ch. 31, § 4; 1979 L.M.C., ch. 21, § 4; 1980 L.M.C., ch. 28, § 1; 1982 L.M.C., ch. 6, § 1; 1984 L.M.C., ch. 24, § 28; 1989 L.M.C., ch. 27, § 1; 1994 L.M.C., ch. 29, 2001 L.M.C., ch. 25, § 1; 2002 L.M.C., ch. 27, § 1; 2004 L.M.C., ch. 29, § 1; 2018 L.M.C., ch. 20, § 1.) (1974 L.M.C., ch. 17, § 1; 1976 L.M.C., ch. 35, § 4; 1978 L.M.C., ch. 31, § 4; 1979 L.M.C., ch. 21, § 4; 1980 L.M.C., ch. 28, § 1; 1982 L.M.C., ch. 6, § 1; 1984 L.M.C., ch. 24, § 28; 1989 L.M.C., ch. 27, § 1; 1994 L.M.C., ch. 29, [2001 L.M.C., ch. 25](#), § 1; [2002 L.M.C., ch. 27](#), § 1; [2004 L.M.C., ch. 29](#), § 1; [2018 L.M.C., ch. 20](#), § 1.)

**Editor's note**—2018 L.M.C., ch. 20, § 2, states: Regulations. The County Executive must submit the regulations required by Sections 25A-5, 25A-7, 25A-8, and 25A-9, as amended by this Act, to the Council for approval not later than October 15, 2018.

2004 L.M.C., ch. 29, § 2, states in part: "The amendments to Chapter 25A made by Section 1 of this Act which extend the control period for sale and rental MPDUs do not apply to any MPDU for which a sale contract or rental agreement was signed before April 1, 2005."

2002 L.M.C., ch. 27, § 2, states: Applicability. The requirements of Chapter 25A, as amended by Section 1 of this Act, do not apply to any subdivision with more than 34 but fewer than 50 units at one location if the applicant applied for a preliminary plan of subdivision before this Act took effect [January 9, 2003], unless the applicant agrees that the requirements of Chapter 25A as amended should apply to that subdivision.

Section 25A-8, formerly § 25A-6, was renumbered and amended pursuant to 1989 L.M.C., ch. 27, § 1.

**Sec. 25A-9. Control of rents and resale prices; foreclosures.**

(a) *Resale price and terms.* Except for foreclosure proceedings, any MPDU constructed or offered for sale or rent under this Chapter must not be resold or refinanced during the control period for a price greater than the original selling price plus:

(1) a percentage of the MPDU's original selling price equal to the increase in the cost of living since the MPDU was first sold, as determined by the Consumer Price Index or other index as identified in Executive regulation;

(2) an allowance for capital improvements made to the MPDU between the date of original sale and the date of resale;

(3) if approved by the Director, an allowance for closing costs which were not paid by the original seller, but which will be paid by the original buyer for the benefit of the later buyer; and

(4) a reasonable sales commission.

In determining the amount of the allowance for improvements under paragraph (2), the Director may disallow the value of costs attributable solely to the maintenance and upkeep of the MPDU, or for luxury items. The resale price of an MPDU may be reduced if the physical condition of the unit reflects abnormal wear and tear because of neglect, abuse, or insufficient maintenance. Any personal property transferred in connection with the resale of an MPDU must not be included in the resale price of the MPDU. The Executive must establish procedures for calculating the allowable resale price of an MPDU under this subsection by method (1) regulation.

(b) *Resale requirements during the control period.*

(1) Any MPDU offered for resale during the control period must first be offered exclusively for up to 60 days to the Department and the Commission, in that order. The Department or the Commission may buy an MPDU when funds are available. The Department may buy an MPDU, or may assign its right to buy an MPDU to a designated agency, when the Director finds that the Department's or a designated agency's buying and reselling the MPDU will increase opportunities for eligible households to buy the MPDU. If the Department or the Commission does not buy the MPDU, the Department must notify eligible households of the availability of a resale MPDU. The MPDU may be sold through either of the following methods:

(A) The Department may establish a priority order under which eligible households who express interest in buying the MPDU may buy it at the approved resale price.

(B) The Department may notify the MPDU owner that the owner may sell the MPDU directly to any eligible household under the resale provisions of this Chapter.

(2) The Commission may purchase resale MPDUs in a particular development only if it did not previously purchase its full allotment of units at the initial offering. In no case may the Commission own more than 33.3 percent of the MPDUs in a particular development.

(3) A resale MPDU may be offered for sale to non-eligible households only after:

(A) the priority marketing period expires; and

(B) all eligible households who express an interest in buying it have been given an opportunity to do so.

(4) The Executive by regulation may adopt requirements for reselling MPDUs. The regulations may require a seller to submit to the Department for approval:

CR112-083

- (A) a copy of the proposed sales contract;
- (B) a signed copy of the settlement sheet; and
- (C) an affidavit signed by the seller and buyer attesting to the accuracy of all documents and conditions of the sale.

(5) A transfer of an MPDU does not comply with this Chapter until all required documents and affidavits have been submitted to and approved by the Department.

(c) *Payments to HIF during the control period.* During the control period, if the Department determines that the design of the MPDU offered for resale would no longer comply with requirements for construction of a new MPDU or that the allowable resale price and fees associated with a multi-family condominium offered for resale would result in a monthly payment that is estimated to be at least 20% more than would be affordable to the maximum size MPDU household, the Director may permit the owner of the MPDU to sell the MPDU at market price, and the procedures for resale, including termination of the MPDU controls and release of restrictive covenants will be the same as for resale of an MPDU after the control period, as described in subsection (d).

(d) *First sale after control period ends.*

(1) If an MPDU originally offered for sale or rent after March 21, 1989, is sold or resold after its control period ends, upon the first sale of the MPDU the seller must pay to the Housing Initiative Fund one-half of the excess of the total resale price over the sum of the following:

- (A) the original selling price;
- (B) a percentage of the MPDU's original selling price equal to the increase in the cost of living since the MPDU was first sold, as determined by the Consumer Price Index or other index as identified in Executive Regulation;
- (C) an allowance for capital improvements made to the MPDU between the date of original sale and the date of resale; and
- (D) a reasonable sales commission.

The Director must adjust the amount paid into the fund in each case so that the seller retains at least \$10,000 of the excess of the resale price over the sum of the items in (A)--(D).

(2) The Director must find that the price and terms of a sale covered by subsection (d)(1) are bona fide and accurately reflect the entire transaction between the parties so that the full amount required under subsection (d)(1) is paid to the fund. When the Director finds that the amount due the fund is accurate and the Department of Finance receives the amount due, the Department must terminate the MPDU controls and execute a release of the restrictive covenants.

(3) The Department and the Commission, in that order, may buy an MPDU at any time during the control period, and may resell the MPDU to an eligible household. A resale by the Department or Commission starts a new control period.

(e) *Original and later rent controls.* Unless previously sold under subsection (d)(1), MPDUs built or offered for rent under this Chapter must not be rented for 99 years after the original rental at a rent greater than that established by Executive regulations. Procedures for original rentals of MPDUs are described in Section 25A-8. After the original rental, any MPDU (other than those built, sold, or rented under any federal, state, or local program offered by the Commission) offered for rent during the control period must be offered exclusively for 60 days to one or more eligible households, as determined by the Department, for use as that household's residence. After the original rental, the Commission may lease



MPDUs in a particular development only if it did not previously lease its full allotment of MPDUs at the initial offering. In no case may the Commission lease more than 33.3 percent of the MPDUs in a particular development. The Commission may assign its right to rent such MPDUs to low or moderate income households who are eligible for assistance under any federal, state, or local program identified in Executive regulations.

(f) *Foreclosure or other court-ordered sales.* If an MPDU is sold through a foreclosure or other court-ordered sale, all MPDU covenants must be released, and a payment must be made to the Housing Initiative Fund as follows:

(1) If the sale occurs during the control period, any amount of the foreclosure sale price which exceeds the total of the approved resale price under subsection (a), reasonable foreclosure costs, and liens recorded against the MPDU among the land records, must be paid to the Housing Initiative Fund.

(2) If the sale occurs after the control period, and the MPDU was originally offered for sale or rent after March 20, 1989, the payment to the Fund must be calculated under subsection (d), less reasonable foreclosure costs and liens recorded against the MPDU among the land records.

(3) If the MPDU is a rental unit, the resale price under subsections (a) and (d) must be calculated as provided in regulation.

(g) *Waivers.* The Director may waive the restrictions on the resale and re-rental prices for MPDUs if the Director finds that the restrictions conflict with regulations of federal or state housing programs and thus prevent eligible households from buying or renting MPDUs.

(h) *Bulk transfers.* This section does not prohibit the bulk transfer or sale of all or some of the sale or rental MPDUs in a subdivision within 30 years after the original rental or offering for sale if the buyer is bound by all covenants and controls on the MPDUs.

(i) *Compliance.* The County Executive must adopt regulations to promote compliance with this section and prevent practices that evade controls on rents and sales of MPDUs. (1974 L.M.C., ch. 17, § 1; 1978 L.M.C., ch. 31, § 5; 1979 L.M.C., ch. 21, § 5; 1982 L.M.C., ch. 6, § 1; 1984 L.M.C., ch. 24, § 28; 1989 L.M.C., ch. 27, § 1; 1990 L.M.C., ch. 46, § 1; 1994 L.M.C., ch. 29; [2001 L.M.C., ch. 25](#), § 1; [2004 L.M.C., ch. 29](#), § 1; [2018 L.M.C., ch. 20](#), § 1.)

**Editor's note**—2018 L.M.C., ch. 20, § 2, states: Regulations. The County Executive must submit the regulations required by Sections 25A-5, 25A-7, 25A-8, and 25A-9, as amended by this Act, to the Council for approval not later than October 15, 2018.

2004 L.M.C., ch. 29, § 2, states in part: "The amendments to Chapter 25A made by Section 1 of this Act which extend the control period for sale and rental MPDUs do not apply to any MPDU for which a sale contract or rental agreement was signed before April 1, 2005."

Section 25A-9(e) is interpreted in *May Department Stores v. Montgomery County*, 118 Md.App. 441, 702 A.2d 988 (1977), *affirmed*, 352 Md. 183, 721 A.2d 249 (1998), wherein this section is declared to be preempted by State law due to a conflict; the State provides for the priority of liens and the County may not change that priority.

Section 25A-9, formerly § 25A-7, was renumbered, retitled and amended pursuant to 1989 L.M.C., ch. 27, § 1.

## **Sec. 25A-10. Executive regulations; enforcement.**

(a) The Department must maintain a list of all moderately priced dwelling units constructed, sold or

CR112-085

rented under this Chapter; and the County Executive may, from time to time, adopt regulations under method (1) necessary to administer this Chapter.

(b) This Chapter applies to all agents, successors and assigns of an applicant. A building permit must not be issued, and a preliminary plan of subdivision, development plan, floating zone plan, or site plan must not be approved unless it meets the requirements of this Chapter. The Director of Permitting Services may deny, suspend or revoke any building or occupancy permit upon finding a violation of this Chapter. Any prior approval of a preliminary plan of subdivision, development plan, floating zone plan, or site plan may be suspended or revoked upon the failure to meet any requirement of this Chapter. An occupancy permit must not be issued for any building to any applicant, or a successor or assign of any applicant, for any construction which does not comply with this Chapter.

(c) Any violation of this Chapter or regulations adopted under it is a class A violation.

(d) The Director may take legal action to stop or cancel any transfer of an MPDU if any party to the transfer does not comply with all requirements of this Chapter. The Director may recover any funds improperly obtained from any sale or rental of an MPDU in violation of this Chapter, plus costs and interest at the rate prescribed by law from the date a violation occurred.

(e) In addition to or instead of any other available remedy, the Director may take legal action to:

(1) enjoin an MPDU owner who violates this Chapter, or any covenant signed or order issued under this Chapter, from continuing the violation; or

(2) require an owner to sell an MPDU owned or occupied in violation of this Chapter to the County, the Commission, or an eligible person. (1974 L.M.C., ch. 17, § 1; 1980 L.M.C., ch. 28, § 1; 1983 L.M.C., ch. 22, § 30; 1984 L.M.C., ch. 24, § 28; 1989 L.M.C., ch. 27, § 1; 1994 L.M.C., ch. 29; 1996 L.M.C., ch. 20, § 1 1998 L.M.C., ch. 12, § 1; [2001 L.M.C., ch. 14](#), § 1; 2002 L.M.C., ch. 16, § 2; [2004 L.M.C., ch. 29](#), § 1; [2016 L.M.C., ch. 8](#), § 1; [2017 L.M.C., ch. 12](#), §1.)

**Editor's note**—2004 L.M.C., ch. 29, § 2, states in part: "The amendments to Chapter 25A made by Section 1 of this Act which extend the control period for sale and rental MPDUs do not apply to any MPDU for which a sale contract or rental agreement was signed before April 1, 2005."

Section 25A-10, formerly § 25A-8, was renumbered and amended pursuant to 1989 L.M.C., ch. 27, § 1.

### **Sec. 25A-11. Appeals.**

(a) Any person aggrieved by any denial, suspension, or revocation of a building or occupancy permit or denial, suspension, or revocation of approval of a preliminary plan of subdivision, development plan, floating zone plan, or site plan may appeal to the official, agency, board, Commission, or other entity designated by law to hear such appeal.

(b) Any person aggrieved by a final administrative action or decision under this Chapter may appeal to the Circuit Court for the County in accordance with the Maryland Rules of Procedure for a review of such action or decision. (1974 L.M.C., ch. 17; 1989 L.M.C., ch. 27, § 1; [2016 L.M.C., ch. 8](#), § 1.)

**Editor's note**—Section 25A-11, formerly § 25A-9, was renumbered and amended pursuant to 1989 L.M.C., ch. 27, § 1.

### **Sec. 25A-12. Annual report.**



Each year by March 15 the Director must report to the Executive and Council, for the previous calendar year:

- (a) the number of MPDUs approved and built;
- (b) each alternative payment agreement approved under Section 25A-5A or alternative location agreement approved under Section 25A-5B, and the location and number of MPDUs that were involved in each agreement;
- (c) each land transfer completed under Section 25A-5(h); and
- (d) the use of all funds in the Housing Initiative Fund that were received as a payment under Section 25A-5A. ([2004 L.M.C., ch. 29](#), § 1; [2018 L.M.C., ch. 20](#), § 1; [2018 L.M.C., ch. 21](#), § 1.)

**Editor's note**—2004 L.M.C., ch. 29, § 2, states in part: "The amendments to Chapter 25A made by Section 1 of this Act which extend the control period for sale and rental MPDUs do not apply to any MPDU for which a sale contract or rental agreement was signed before April 1, 2005."

### **Sec. 25A-13. Applicability.**

- (a) This Chapter applies to all applicants and housing units developed by applicants, regardless of when an MPDU was originally offered for sale or rent, except as provided in subsections (b) and (c).
- (b) Section 25A-9(c) does not apply to any MPDU originally offered for sale or rent on or before March 21, 1989.
- (c) Section 25A-9(e) does not apply to any MPDU owned or transferred by the Commission directly or through a partnership and originally offered for sale or rent on or before March 21, 1989. (1982 L.M.C., ch. 6, § 1; 1984 L.M.C., ch. 24, § 28; 1984 L.M.C., ch. 27, § 19; 1989 L.M.C., ch. 27, § 1; 1994 L.M.C., ch. 29; [2004 L.M.C., ch. 29](#), § 1.)

**Editor's note**—2004 L.M.C., ch. 29, § 2, states in part: "The amendments to Chapter 25A made by Section 1 of this Act which extend the control period for sale and rental MPDUs do not apply to any MPDU for which a sale contract or rental agreement was signed before April 1, 2005."

Section 25A-13, formerly § 25A-12, was renumbered pursuant to 2004 L.M.C., ch. 29, § 1. Prior to that, Section 25A-12, formerly § 25A-10, was renumbered and amended pursuant to 1989 L.M.C., ch. 27, § 1.

Notes

[Note] -----

**\*Editor's note**—See County Attorney Opinion dated [4/5/06](#), concerning the application of Chapter 25A to condominium conversions, which discussed Chapter 25A.

2004 L.M.C., ch. 29, § 2, states in part: "The amendments to Chapter 25A made by Section 1 of this Act which extend the control period for sale and rental MPDUs do not apply to any MPDU for which a sale contract or rental agreement was signed before April 1, 2005."

**Cross references**—Consumer protection, ch. 11; condominiums, ch. 11A; cooperative housing, ch. 11C; moderate-income multifamily residential housing facilities real property tax deferral, § 52-18B; residential real property tax deferral, § 52-18C.

## Henry Louis Taylor, Jr.

Professor

Department of Urban and Regional Planning

Founding Director, Center for Urban Studies

Dr. Henry Louis Taylor, Jr. research focuses on a historical and contemporary analysis of distressed urban neighborhoods, social isolation and race and class issues among people of color, especially African Americans and Latinos.

Within this framework, Taylor's research also focuses on these issues in Cuba, the Caribbean Islands and Latin America. Lastly, Taylor is concerned with the redevelopment of shrinking cities and metropolitan cities, with a focus on social, economic and racial justice.

B.S. (Speech Pathology) Tennessee A&I State University

M.S. (Audiology) University of Tennessee

M.A. (Urban History) University at Buffalo

Ph.D. (Urban History) University at Buffalo

Dr. Taylor coordinates the Neighborhood Planning and Community Development Specialization and teaches courses in *central city revitalization*, *urban management*, and *race, class and gender and the city*. Taylor also coordinates the Center for Urban Studies' *Urban Internship Program*, which creates opportunities for graduate and undergraduate students to become involved in neighborhood redevelopment initiatives and in research projects.

Dr. Taylor is a member of the Steering Committee of the Anchor Institutions Task Force, a national organization that develops and disseminates knowledge to help create and advance democratic, mutually beneficial anchor institution-community partnerships. Also, he is a member of the Board of Overseers of The Nelson A. Rockefeller Institute of Government of the State University of New York. Taylor has serviced on the governing boards of the Urban Affairs Association and the Urban History Association. He is on the Board of the Editors of *Universities and Community Schools*, published by Netter Center for Community Partnerships at the University of Pennsylvania, and is the planning coordination for the Buffalo Municipal Housing Authority's Perry Choice Neighborhood Initiative and the founder of the Perry Choice Neighborhood History Project. He created the Cyberhood ([theycyberhood.net](http://theycyberhood.net)) on behalf of the Urban Affairs Association.

"Neighborhoods Matter: The Role of Universities in the School Reform Neighborhood Development Movement, *Peabody Journal of Education*, 88(5), 541-563, 2013. (With Linda McGlynn and Gavin Luter).

"Beyond the Poverty Paradigm: The Neoliberal City and the Low-income Worker. The Buffalo, New York experience," with Linda McGlynn and Gavin Luter. In Barbara Wejnert (ed.) *Voices of Globalization (Research in Political Sociology, 21)*, Emerald Group Publishing Limited, pp.161-180. 2013.

"Back to the Future: Public Schools as Neighborhood Anchors Institutions—The Choice Neighborhood Initiative in Buffalo, New York," with Linda McGlynn and

CR112-088

Gavin Luter. In Kelly L. Patterson, Robert Mark Silverman (eds.), *Schools and Urban Revitalization: Rethinking Institutions and Community Development*, New York and London, Routledge, pp. 109-135. 2013.

Editor, Special Edition, Eugenie Birch and David C. Perry. *Journal of Higher Education Outreach & Engagement*, 17, (3). (2013); "Universities as Anchor Institutions," *Journal of Higher Education Outreach & Engagement* 17 (3), pp. 7 -15. 2013. (with Eugenie Birch and David C. Perry).

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Henry Louis Taylor, Jr., The Historic Roots of the Crisis in Housing Affordability: The Case of Buffalo, New York, 1920-1950 (2011), in Robert Mark Silverman, Kelly L. Patterson (eds.), *Fair and Affordable Housing in the U.S.: Trends, Outcomes and Future Directions*. Boston: Brill, 2011 and Chicago: Haymarket Books, 2012.

"Including Voices of the Excluded: Lessons from Buffalo, NY" with Kelly Patterson and Robert Silverman. In J. Peter Rothe, Linda J. Carroll, Dejan Ozegovic (eds.) *Deliberations in Community Development: Balancing on the Edge*, Hauppauge, NY: Nova Publishers, 2011.

"Cincinnati in the Gilded Age, 1877-1896," in *Cities in American Political History*, ed. Richardson Dilworth, Thousand Oaks, California: Sage: CQ Press. pp. 331-336. 2011.

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*Inside El Barrio: A Bottom-Up View of Neighborhood Life in Castro's Cub*. Bloomfield, CT: Kumarian Press, 2009 and Korean edition, Seoul: Samcheolli Publishing Company, 2010.

"The connection: Schooling, youth development, and community building---The Futures Academy case," *New Directions for Youth Development* No. 122. Summer 2009, pp. 19-41. (with Linda McGlynn).

"Solving the Dewey Problem: Where Do We Go From Here?" *The Good Society*, 17(2), 52-56. 2009. With Linda McGlynn.

"Using Capitalism to Save Socialism: International Tourism in Havana, Cuba," doi:10.1016/J.Futures.11.012, 2008. With Linda McGlynn.

"The Role of Citizen Participation and Action Research Principles in Main Street Revitalization: An Analysis of a Local Planning Project," *Action Research*, 6 (1): 69-93. 2008. With Robert Mark Silverman and Christopher G. Crawford.

"Connecting Community Development and Urban School Reform. In *Urban Education with an Attitude: Linking Theory, Practice, and Community*, ed. Lauri Johnson, Mary E. Finn, and Rebecca Lewis. Albany: SUNY Press, pp. 41-57. 2005.

*Historical Roots of the Urban Crisis: African Americans in the Industrial City, 1900-1950*. New York: Garland Publishers, 2000. With Walter Hill, eds..

CR112-089

**2012 Lee Benson Activist Scholar Award, the Netter Center for Community Partnerships, University of Pennsylvania, November 12, 2012;**  
**2009 U.S. Small Business Administration—Buffalo District Minority Small Business Advocate of the Year.** The award is based on Taylor's role in founding and developing the Allstate Minority & Women Emerging Entrepreneurs Program, one of the top minority & women business support programs in the United States; **2008. Outstanding Program Award—East Side Neighborhood Transformation Partnership (ESNTP).** The Community Development Society; **2008 Time Magazine Quote of the Week on how Americans have lost sight of Martin Luther King, Jr.'s message, January 21;** **2005 Distinguished Leadership, Michael J. Krasner Professional Planner Award,** American Planning Association, New York Upstate Chapter and Western New York Section; **2005 Outstanding Planning Award, Planning Implementation, Conceptual Transit-Orientated Development Plan for the Allen-Medical Campus and Summer-Best Stations, Buffalo New York** (David Gamble, Chan Krieger & Associates, Michael Pratt, Watts Engineers, Henry L. Taylor, Daniel Hess, Peter Lombardi, and Jane Humphreys, Center for Urban Studies, UB); **2001 The Fannie Mae Foundation Award for the Best Action Research Paper in Housing and Community Development at the 2001 Associate of Collegiate Schools of Planning National Conference;** **2000 YMCA Toast to Buffalo Award for Distinguished Leadership.**



## Sayers, Margery

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**From:** Elaine Bonner-Tompkins <elainebonnertompkins@msn.com>  
**Sent:** Wednesday, September 18, 2019 6:44 PM  
**To:** CouncilMail  
**Subject:** Testimony Supporting Bill CR112-2019

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Good Evening Howard County Council Members:

I apologize for being unable to deliver my testimony in person tonight.

I am sending this email to offer my full endorsement for CR112-2019 - a County Council resolution encouraging the Board of Education to develop an Integration and Equity Plan for Howard County Public Schools.

HCPSS is currently organized to deliver the results that it does: high levels of performance among its White, Asian, multi-racial, and affluent students and low levels of performance among Black, Latinx, English learning, and low-income students. The concentration of student wealth and resources among a subset of schools due to racial and socioeconomic segregation, the lack of diversity among school personnel and within the school curriculum, and other biases within the school system create and foster the gaps that are evident by race, ethnicity, and income in County.

Countering systemic biases require systemic solutions and the political will to make decisions that advance the common good over the complaints of those who benefit from the school system's current inequities. In turn, advancing the common good is a political risk since those with political power are undoubtedly the most vocal in their dissent.

The opposition will contend that the parents of children that suffer under the achievement gap do not care about their children's educations. That is untrue and merely blames the victim. They will contend that integration/forced busing does not work - that is also not true as research shows that the black/white achievement gap narrowed the most when school integration and busing were at its height. They will argue that dedicating more resources to high-poverty schools is the best way to improve achievement. Another myth, as the research of the Century Foundation proves. They may also whine that this redistricting unfairly puts their children's educations or their property values at risk. Please understand that this privilege rearing its ugly head to distract elected leaders from the fundamental goals of the County and the school system to provide equitable opportunities for all children, not just those with the loudest voices.

With the proposed resolution, the Howard County Council will remain on the right side of history by providing the political cover that the Board of Education needs to support Dr. Martirano's school restricting proposal and to hopefully expand upon it to create more opportunities for school integration and achievement for all students. We proponents of the CR 112-2019 understand the sacrifice that will be made with advancing and passing this resolution. In turn, I applaud the leadership of Councilmembers Opel, Rigsby, and Mercer in introducing the resolution and I hope that a unanimous Council ultimately passes it.

Sincerely,

Elaine Bonner-Tompkins  
Fulton, MD

## Sayers, Margery

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**From:** David Dempster <dempsterdave@gmail.com>  
**Sent:** Wednesday, September 18, 2019 5:49 PM  
**To:** Walsh, Elizabeth; CouncilMail  
**Subject:** Please Table or Vote NO on CR112  
**Attachments:** County Council NO ON CR112.odt

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Please see my attached Testimony

--

David Dempster

I urge the Howard County Council to Reject CR112

This resolution begins with 13 Whereas statements that seek to frame a real debate about Affordable Housing and School Funding into a deceptive incendiary debate about racial issues.

The Resolution then Resolves to, and I quote “.... support the Howard County Board of Education and Howard County Public School System in their lawful efforts to integrate Howard County Public Schools through the redistricting and boundary review process....”

The Howard County Council Members will have to justify their vote on CR112 to the many thousands of parents who are opposed to the redistricting plan and the false narratives supporting it. How often has Howard County seen thousands of parents take to the streets with protest signs?

Communities love their Local Schools. Local Schools are the hubs around which communities form. Parental involvement is critical to a child's education. A child's involvement in extracurricular activities is one of the keys to scholastic achievement. Denying parents the right to access their local schools, denies children their opportunities.

The Preface of this resolution is disingenuous the resolution itself Dictates Redistricting as the solution.

The lack of Affordable Housing is a result of the actions the County has taken.

The County has maintained developer impact fees that are shamefully low. Then made up for the shortfall with high property taxes that are passed along to renters, and consumers making Howard County Less Affordable and Less Socioeconomically Diverse.

To make matters worse Our County has a long history of allowing Developers to pay fees-in-lieu of complying with our requirements to provide Affordable Housing as part of their developments.

The Council has created a real problem of lack of affordability in Howard County by their sweetheart deals with developers. The Council is now seeking to falsely recast the problem they helped create as a racial issue and, to add insult to injury, Dictates a so called solution that is tearing our communities apart.

I urge the County Council to stay out of this issue between the parents and the school system. I urge the County Council to Table This Resolution indefinitely or vote it down now.

Thank you.

**Sayers, Margery**

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**From:** Joanne Dewey <jdewey9395@aol.com>  
**Sent:** Wednesday, September 18, 2019 5:31 PM  
**To:** CouncilMail  
**Subject:** 112-2019

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

As a voting citizen of Howard County for many years I strongly disagree with this resolution!  
Sincerely  
Joanne and Mark Dewey

Sent from my iPhone



Allensworth  
12191 Rilland Ct  
Ellicott City, MD 21042

September 18, 2019

Howard County Council  
3430 Court House Dr.  
Ellicott City, MD 21043

RE: CR-112-2019

Dear Howard County Council Members:

I am writing to express my strong opposition to CR-112-2019. It is an honorable and worthy pursuit to bring more economic diversity to areas of Howard County, however, this should be a mission undertaken by our elected officials - the adults whose job it is to better our county. It is unacceptable to push this great responsibility down to the level of our children and educators. Shame on you for even considering burdening the education system with this mountainous task before exhausting all other avenues of provoking the change you want to see. Please vote NO on CR-112-2019.

Sincerely,  
Samantha Allensworth

## Sayers, Margery

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**From:** Lisa Hostetler <5hosses@gmail.com>  
**Sent:** Wednesday, September 18, 2019 4:53 PM  
**To:** Walsh, Elizabeth; Jones, Opel; Rigby, Christiana; Jung, Deb; Yungmann, David  
**Cc:** CouncilMail  
**Subject:** In regards to CR-112-2019

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Dear County Council Members,

Howard County is among the top areas of diversity in the whole country and the whole world. There is no segregation issue. Also, we voted in County Council, Board of Education and County Executive to do their own jobs, to serve tax payers and all residents. This resolution is an overreach of County Council to put your hands into education. If you sponsored the resolution, please withdraw. If you didn't sponsor, thank you! And please vote NO.

Sincerely,  
Todd & Lisa Hostetler  
Ellicott City, MD 21042

## Sayers, Margery

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**From:** qianlee2011@gmail.com  
**Sent:** Wednesday, September 18, 2019 4:49 PM  
**To:** Jones, Opel; Rigby, Christiana; Jung, Deb; Yungmann, David; CouncilMail  
**Subject:** CR-112 is insulting to people throughout Howard County it is insulting to our school system

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

CR-112-2019

Dear Howard County Council Members:

There are some in the Howard County community (most notably the Superintendent, several County Council members, and the County Executive) that subscribe to the notion that the county is segregated, and that clearly this is having an adverse effect on the education of the county's children. Their solution is to further divide communities and play musical chairs with 1 in every 7 county school children. From the other side of the Howard County management's collective mouths, we are told at every opportunity (particularly campaign stops) that EVERY school in Howard County is a great school.

So which is it? The only thing blatantly clear is that we, the taxpayers that all of these officials supposedly represent, are collectively confused by their mixed messaging.

If the collective political body is truly interested in equity, then the FAIR and EQUITABLE course of action is to determine what the actual situation of education in the county is. If Howard County management wants to mitigate any inequities in the system, they must first understand what level of equity they are starting from. There is only one way to do that, and it has nothing to do with FARM percentages.

Before any redistricting is enacted, the baseline must be understood by all; particularly the population that Howard County management works for and is ultimately accountable to. This includes EVERYONE, not just select segment of the population. After all, that is the basis for equity, fairness, diversity and inclusion - isn't it?

It's time for the Howard County Public School System budget to be independently audited. The audit firm must be selected by an independent (preferably the Governor), and should be tasked to deliver a full report on the Howard

County school system. Most importantly, the full report with supporting detail must be made available to the public. Among other things, there are two key pieces of data that must be reported:

- An accounting of all the funding sources of the Howard County education budget. It should be visible to all where the dollars are coming from, and who is providing them. Any demographic discriminators that will be used to determine potential changes must also be represented as discriminators in this accounting.
- An accounting of the distribution of those funds across the school system, BY SCHOOL. It should be visible to all where and how these (OUR) dollars are getting spent. The budget summary that is currently made public to the taxpayers is woefully inadequate in this regard. Any demographic discriminators that will be used to determine potential changes must also be represented as discriminators in this accounting.

Along with this information, we need answers to some key questions:

- Is the curriculum in high % FARM schools different than low % FARM schools?
- Are the teachers in high % FARM schools less qualified?
- Are the staff in high % FARM schools working off a different pay scale?
- Are the opportunities in high % FARM schools somehow less?
- Do extra-curricular opportunities vary across the county?
- Is the grading structure different? Does a 4.0 at one high school not equal another?
- Are SAT and ACT scores from certain county high schools somehow de-rated on college applications?
- Do high % FARM schools have an asterisk next to them somewhere with a caveat that reads "this is not really a Howard County school"

If the answer to all of these questions is "NO", then I ask our elected officials to explicitly detail how we currently deviate from the professed HCPSS Definition of Equity: "Providing the access, opportunities and supports needed to help students, families and staff reach their full potential by removing barriers to success that individuals face. It does not mean equal or giving everyone the same thing."

If the answer to any of those questions was "YES", then that would lead me to believe that there is indeed inequity in our school system. Since Howard County taxpayers are all treated equally, (ie: percentage of property taxes we pay) then this inequity can only be created by the operators of the school system themselves. If this is the case, then we should be addressing this as our collective problem, and require our elected officials to do their jobs as opposed to obfuscating the issue by gerrymandering the school districts of the constituents they are supposed to

serve.

For starters, one could imagine a useful portion of the \$43M transportation budget required to bus our children past the schools in their neighborhoods could instead be utilized to directly support the teachers and the schools that demonstrate a need for it.

As I read thru CR-112-2019 and the superintendent's proposal, there are just many red flags. I strongly urge you to reject CR-112 and deter the Howard County School Board from proceeding with the proposed redistricting plan.

Sincerely,

Qian Li

Ellicott City

Sent from my iPhone



## Sayers, Margery

---

**From:** Barbara Zektick <bzektick@alexander-cleaver.com>  
**Sent:** Wednesday, September 18, 2019 4:42 PM  
**To:** CouncilMail  
**Subject:** FEI Testimony and Affidavit  
**Attachments:** FEI Affidavit.pdf; Council CR112 Testimony - FEI.pdf

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Dear Council,

Please find attached my affidavit to speak on behalf of the Families for Education Improvement this evening, as well as the organization's written testimony.

I can also fill out this affidavit this evening, should my signature be required.

Barbara Zektick  
Government Relations Director & Attorney  
Alexander & Cleaver  
Cell: 443-415-7640  
[bzektick@alexander-cleaver.com](mailto:bzektick@alexander-cleaver.com)  
[About Me](#)

Annapolis Office: 410-974-9000  
Baltimore Office: 443-759-3070

54 State Circle  
Annapolis, MD 21401

400 East Pratt Street, 8<sup>th</sup> Floor  
Baltimore, MD 21202

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**Testimony in Opposition to CR 112-2019**

Wednesday, September 14, 2019, 7 pm

Howard County Council

George Howard Building, 3430 Court House Drive, Ellicott City, MD 21043

Address: P.O. Box 203, Glenelg, MD 21737

Contact: Barbara Zektick, Government Relations Director, Alexander & Cleaver

[BZektick@alexander-cleaver.com](mailto:BZektick@alexander-cleaver.com) / 443-415-7640 (cell)

**The Howard County Families for Education Improvement (FEI) respectfully request that the Howard County Council vote against Resolution CR-112-2019.** FEI is a diverse, broad-based community coalition aligned around the core belief that every student in this County deserves an outstanding education.

Superintendent Martirano's existing redistricting proposal is flawed, fails to adequately address the achievement gaps, and was not inclusive. Process is as important as outcome and Martirano was not transparent when creating his Adjustment Plan. Furthermore, the school system and County should cooperate to conduct additional research in a community-inclusive, transparent manner to find an evidenced-based solution to close Howard County's achievement gap. We must get it right the first time – our children's future depends on it.

Howard County has long held a reputation in this state and nationally as a place where families of diverse backgrounds choose civility. The Howard County Library System maintains the domain [www.choosecivility.org](http://www.choosecivility.org). Years before Congress passed the Fair Housing Act of 1968, James Rouse created the "truly open city" of Columbia with the explicit intent of welcoming families of all racial and socioeconomic backgrounds. In March 2017, the Maryland Equity Project of the University of Maryland determined that Howard County has the most integrated school district in the region. Howard's identity thrives on inclusivity, and no one should question that – least of all, Howard County.

We agree that we should work collaboratively to quickly identify, target, and address any achievement gaps demonstrated by our students – especially those gaps pointing to students of specific race or socioeconomic backgrounds. FEI stands strongly behind addressing these achievement gaps as comprehensively and inclusively as possible. Long after this particular debate comes to a close, the families gathered as FEI are committed to continuing to



participate in the broader dialogue about addressing achievement gaps and inequities in Howard's youth. FEI wants to be a part of the solution.

Unfortunately, Superintendent Michael Martirano's plan will not likely accomplish this. To the contrary, decades of research suggests that integration in the abrupt, proposed manner may well not close achievement gaps associated with African Americans, Hispanics or those of lesser socioeconomic means. In fact, research associates socioeconomic integration of this nature with worse academic and psychosocial outcomes, particularly for African American and Latino students.

FEI recognizes the need for redistricting in Howard County to address overcrowding in schools. This organization does not oppose redistricting as a means to address school capacity issues. In fact, many of FEI's members have engaged in the school system's prior efforts to examine this issue and identify targeted solutions – and many of those families support solutions derived from prior open and transparent processes seeking community input.

Nor does FEI refute the need to address achievement gaps demonstrated by African American and Hispanic students, or those students participating in FARM. FEI simply wants to ensure that the efforts taken to address these issues do, in fact, resolve these disparities – and ensure that every student in this County receives an outstanding education. Not one child deserves anything less.

For the reasons stated above, FEI respectfully requests that this Council vote "no" on CR 112-2019.

## Sayers, Margery

---

**From:** Courtney Lombard Greer <courtneylombard@yahoo.com>  
**Sent:** Wednesday, September 18, 2019 4:31 PM  
**To:** Walsh, Elizabeth; Jones, Opel; Rigby, Christiana; Jung, Deb; Yungmann, David  
**Cc:** CouncilMail  
**Subject:** Opposition of CR 112-2019  
**Attachments:** Opposition of CR-112-2019.docx

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Hello,  
Please read my attached opposition of CR 112-2019.

Thank you, Courtney Greer  
Ellicott City, MD 21042

Dear Howard County Council Members:

There are some in the Howard County community (most notably the Superintendent, several County Council members, and the County Executive) that subscribe to the notion that the county is segregated, and that clearly this is having an adverse effect on the education of the county's children. Their solution is to further divide communities and play musical chairs with 1 in every 7 county school children. From the other side of the Howard County management's collective mouths, we are told at every opportunity (particularly campaign stops) that EVERY school in Howard County is a great school.

So which is it? The only thing blatantly clear is that we, the taxpayers that all of these officials supposedly represent, are collectively confused by their mixed messaging.

If the collective political body is truly interested in equity, then the FAIR and EQUITABLE course of action is to determine what the actual situation of education in the county is. If Howard County management wants to mitigate any inequities in the system, they must first understand what level of equity they are starting from. There is only one way to do that, and it has nothing to do with FARM percentages.

Before any redistricting is enacted, the baseline must be understood by all; particularly the population that Howard County management works for and is ultimately accountable to. This includes EVERYONE, not just select segment of the population. After all, that is the basis for equity, fairness, diversity and inclusion - isn't it?

It's time for the Howard County Public School System budget to be independently audited. The audit firm must be selected by an independent (preferably the Governor), and should be tasked to deliver a full report on the Howard County school system. Most importantly, the full report with supporting detail must be made available to the public. Among other things, there are two key pieces of data that must be reported:

- An accounting of all the funding sources of the Howard County education budget. It should be visible to all where the dollars are coming from, and who is providing them. Any demographic discriminators that will be used to determine potential changes must also be represented as discriminators in this accounting.
- An accounting of the distribution of those funds across the school system, BY SCHOOL. It should be visible to all where and how these (OUR) dollars are getting spent. The budget summary that is currently made public to the taxpayers is woefully inadequate in this regard. Any demographic discriminators that will be used to determine potential changes must also be represented as discriminators in this accounting.



Along with this information, we need answers to some key questions:

- Is the curriculum in high % FARM schools different than low % FARM schools?
- Are the teachers in high % FARM schools less qualified?
- Are the staff in high % FARM schools working off a different pay scale?
- Are the opportunities in high % FARM schools somehow less?
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- Do high % FARM schools have an asterisk next to them somewhere with a caveat that reads "this is not really a Howard County school"

If the answer to all of these questions is "NO", then I ask our elected officials to explicitly detail how we currently deviate from the professed HCPSS Definition of Equity: *"Providing the access, opportunities and supports needed to help students, families and staff reach their full potential by removing barriers to success that individuals face. It does not mean equal or giving everyone the same thing."*

If the answer to any of those questions was "YES", then that would lead me to believe that there is indeed inequity in our school system. Since Howard County taxpayers are all treated equally, (ie: percentage of property taxes we pay) then this inequity can only be created by the operators of the school system themselves. If this is the case, then we should be addressing this as our collective problem, and require our elected officials to do their jobs as opposed to obfuscating the issue by gerrymandering the school districts of the constituents they are supposed to serve.

For starters, one could imagine a useful portion of the \$43M transportation budget required to bus our children past the schools in their neighborhoods could instead be utilized to directly support the teachers and the schools that demonstrate a need for it.

As I read thru CR-112-2019 and the superintendent's proposal, there are just many red flags. I strongly urge you to reject CR-112 and deter the Howard County School Board from proceeding with the proposed redistricting plan.

Sincerely,

Courtney Greer  
Ellicott City, MD

**Sayers, Margery**

---

**From:** Shahmeel Naseem <shahmeel101@gmail.com>  
**Sent:** Wednesday, September 18, 2019 3:59 PM  
**To:** CouncilMail  
**Subject:** Wilde Lake redistricting

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Hi,

I am Shahmeel Naseem, student in polygon 176 and I oppose this redistricting plan.

Sincerely,

Shahmeel Naseem

## Sayers, Margery

---

**From:** Patricia Williams <pwilliamsmd@verizon.net>  
**Sent:** Wednesday, September 18, 2019 3:41 PM  
**To:** CouncilMail  
**Subject:** Cr112-2019

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Vote no on CR112-2019. If this is for equalizing educational opportunities then you are diluting what the very smart children are currently receiving where they are now. Their opportunities for higher success will be less and they will be held back from being the best they can be by redistricting.

I urge the County Council members to give this some very deep thought and do the sensible, ethical thing. Vote NO on this resolution. Great leaders come from great schools, not from a diluted and homogenous curriculum.

Pat Williams  
District 5

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# Proposed hike on fee to help pay Howard

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BALTIMORE SUN MEDIA | SEP 19, 2019



A proposal that would raise a fee builders pay toward Howard County school construction costs drew tense opposition Wednesday from developers, affordable housing advocates and businesses, all of whom described the bill as regressive.

The measure, which is poised to pass the County Council, would hike the one-time fee assessed on new homes from \$1.32 per square foot to \$6.80 per square foot, a 415% increase. The fee is charged to developers who build new homes.

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Opponents say this cost will be passed on to the consumer, thus increasing the cost of homes countywide.

But the revenue — lawmakers expect to generate \$150 million over 10 years — would help pay for the school system's renovation, maintenance and construction costs. As of late June 2018, the school system still has \$54.3 million in debt service, according to a state analysis.



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The school system last week announced a much-needed replacement of the 46-year-old, one-story Talbott Springs Elementary School will be **delayed by at least three years because of anticipated low budgeting from the county**, schools Superintendent Michael Martirano previously said.

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This delay was cited by school board chairwoman Mavis Ellis who Wednesday evening testified officials "cannot keep promising school improvements to our local families only to continually defer them when funding looks bleak."

Her sentiment was echoed by dozens of community members and Howard County Education Association President Colleen Morris. But the significant proposed cost increase would be a detriment to affordable housing in the area, said Peter Engel, director of the Howard County Housing Commission.

Engel implored lawmakers to exempt affordable housing from being subject to the proposed increase. The director said he recognizes the needs of the school system but it "needs to be balanced with other county needs." He also said passing the bill

as-is would exacerbating Howard's housing crisis.

The current fee in Howard is noticeably lower than surrounding counties, and the method by which the fee is calculated varies. In Prince George's County, developers are charged \$9,550 per unit on new structures within the Beltway or near mass transit. Most buildings outside the Beltway are charged \$16,371 per unit. In Anne Arundel, single-family detached homes are charged a flat rate of \$12,177 per unit while apartments are charged \$6,651 per unit.

Angelica Bailey, a spokeswoman for the Maryland Building Industry Association, described the proposal as a "regressive tax."

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"If such an increase is implemented," Bailey said, "the cost of homebuilding will increase, which will be passed on to homebuyers."

"Buyers at the highest price points will have the easiest time absorbing the cost, so builders will be incentivized to build larger homes in the West instead of more affordable homes in more urbanized and walkable areas," she added.

In western Howard County, the average single-family detached unit size is 6,923 square feet. For a house that size, developers would pay \$47,076 under the proposed fee increase, up from \$9,138 now, according to an analysis of figures provided by Councilwoman Deb Jung, the bill's primary sponsor.

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SEP 18, 2019

The measure has formal support from the four Democrats on the five-member County Council: Deb Jung, Opel Jones, Christiana Mercer Rigby and Liz Walsh. The County Council will host a work session on this bill and others Friday morning in the George Howard Building.

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Erin B. Logan



9/19/2019

Proposed hike on fee to help pay Howard school costs draws opposition from developers - Baltimore Sun

Erin B. Logan covers flooding, business and government in Howard County for Baltimore Sun Media. Her work has been featured in the Washington Post, National Public Radio and Nashville Public Radio. She contributed reporting to a series that was a finalist for a Pulitzer Prize.

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Baltimore Sun

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Baltimore Sun

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## Sayers, Margery

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**From:** Rachel Jean-Baptiste <r8chelj@gmail.com>  
**Sent:** Wednesday, September 18, 2019 3:28 PM  
**To:** Walsh, Elizabeth; Jones, Opel; Rigby, Christiana; Jung, Deb; Yungmann, David  
**Cc:** CouncilMail  
**Subject:** Concerning CR-112-2019  
**Attachments:** CR\_112\_2019\_JeanBaptisteComments.docx

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Attached for your consideration are my concerns about CR-112-2019.

Thank you,  
Rachel Jean-Baptiste  
Ellicott City, MD 21042

Dear Howard County Council Members:

I am writing to express my deep concern about CR-112. While I understand the importance of redistricting to remedy capacity issues and ensure adequate resources, the latest recommendation causes irreparable harm on multiple fronts to achieve a level of data uniformity that appallingly masks weak performances and detracts from the need for substantive changes to improve all schools (especially those that are underperforming).

There are many issues that need to be addressed in HCPSS that CR-112 does not account for.

- Neglects the root causes of underperforming schools /students: Moving kids based on socioeconomic reasons only shuffles them. It does not fix the problem. Adding resources to underperforming schools or offering programs to help parents and kids see the future benefits of their kids' education give those kids a better chance than shuffling them.
- Education Budget Shortfalls: The cost of forcing CR-112 on the Howard County Public School System shows how out of touch you are with the cost of education and the most urgent needs for our kids' education.
- HCPSS unrealistic financial expectations for families: Due to the lack of textbooks, kids must read online textbooks in order to complete homework. This requires a computer and internet service. Furthermore, according to the school supply lists, "students are best served to purchase" their own TI-84 Plus Silver Edition calculator. Why is it acceptable to throw money away to shuffle kids for socioeconomic reasons when kids need resources that cannot be provided at home? There is a mindset that needs to be changed by the County Council, BOE and HCPSS. They need to understand the people they are supposed to represent and ask themselves if those expectations are what got them here in this position.

CR-112 will have deep felt consequences that cannot be underestimated. The negative effects change focus of the real issues within HCPSS.

- Rip apart the community fabric: Howard County is an area of amazing multi-cultural communities. Trying to force the Board of Education to implement an integration plan will divide communities. For example:
  - After school activities such as sports rely on team relationships built over time starting from summer Booster Camps in the early years, to game attendance, to tryouts and then participation in high school.
  - Teachers and students build relationships that may matriculate into college recommendations, particularly high school students entering their junior year.
  - Many families prefer to live close enough to walk to school so that their children can participate in afterschool activities.
  - Friendships are developed over time and provide a security to the kids
  - Parents rely on trust networks for carpools.
- Blatant disregard for the deliberate choices that were made by families: In many cases, these sweeping changes will have an intensely negative impact on a segment of the population. It is

incumbent to demonstrate concrete proof that an overall positive outcome would be achieved in order to justify this drastic reorganization.

- High school is a period of transition fraught with anxiety, high stress and sleep deprivation. The deleterious effects of these changes (longer commutes, weakened social supports) and the correlation with increased depression and anxiety.
- Environmental Pollution: This will worsen with increased commute times and longer bus routes. An incremental approach would allow a judicious assessment of the consequences of each change and lead to modifications that would be more readily accepted over time. Incorporating flexibility in planning would also bring more parents and students to buy-in to this decision.
- Expense: The HCPSS budget is stretched already. CR-112 has far reaching negative economic effects on transportation. Furthermore, it will significantly hit individual families as they would have to travel further for rides, PTSA meetings, parent teacher meetings, concerts, drama performances, dance recitals, afterschool activities, games, dances, and other school events.

The Howard County School System and by association the City Council must be held accountable for the proposed changes and the potential aftermath which directly affect our quality of life in Howard County. For education, as in other fields that offer a valuable service (hospitals, health care, government programs), there should be clearly defined metrics besides just socioeconomic status and test scores that evaluate its performance in the delivery of our children's education. Only this level of transparency and nuanced assessment can truly bolster our commitment to quality.

Let's support all of our students and not assume that they will "be fine" with these changes (my daughter is extremely stressed about the possibility of being moved to a new high school next year – her junior year). Many progressive school systems nationwide recognize the importance of students's well-being (physical, psychological, and social) and have implemented changes accordingly. But I believe CR-112 runs counter to these priorities.

In summary, we entrust you as elected members of the Council and our elected members of the School Board to protect our community. Please reject CR-112 and deter the Howard County School Board from proceeding with the proposed redistricting plan (I will be sending them my concerns about the redistricting plan separately).

Sincerely,

Rachel Jean-Baptiste  
12120 Carroll Mill Road  
Ellicott City, MD 21042

## Sayers, Margery

---

**From:** Francesca Galbani <frankiegalbani@netscape.net>  
**Sent:** Wednesday, September 18, 2019 3:15 PM  
**To:** CouncilMail  
**Subject:** Support CR112-2019

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

To whom it may concern,  
I support CR 112 to help the desegregation of our Public School, but it does not do enough, because it is not fixing the cause of the problem: according to Howard County Land development regulations, every major development in the county needs to have 10% of the houses slated for affordable housing with the loop-hole that the developer can get out of this requirement by paying a in-lieu fee. Last time I checked, this fee was ridiculous low - as of 2017 \$2.09 per square foot - meaning that for a 4,000 square feet house selling for \$800K, developers will pay a mere \$8,360 dollars to avoid the affordable housing requirement. This has effectively created segregation within the county.

Please address this issue in the future,

Sincerely,  
Francesca Galbani

## Sayers, Margery

---

**From:** Beth Kunkoski <elfrank@gmail.com>  
**Sent:** Wednesday, September 18, 2019 3:04 PM  
**To:** Walsh, Elizabeth; Jones, Opel; Rigby, Christiana; Jung, Deb; Yungmann, David  
**Cc:** CouncilMail  
**Subject:** In regards to CR-112-2019  
**Attachments:** Opposition of CR-112-2019 - Kunkoski.docx

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Please see the attached opposing CR-122-2019. Thank you,

Elizabeth Kunkoski  
Ellicott City MD 21042

Dear Howard County Council Members:

There are some in the Howard County community (most notably the Superintendent, several County Council members, and the County Executive) that subscribe to the notion that the county is segregated, and that clearly this is having an adverse effect on the education of the county's children. Their solution is to further divide communities and play musical chairs with 1 in every 7 county school children. From the other side of the Howard County management's collective mouths, we are told at every opportunity (particularly campaign stops) that EVERY school in Howard County is a great school.

So which is it? The only thing blatantly clear is that we, the taxpayers that all of these officials supposedly represent, are collectively confused by their mixed messaging.

If the collective political body is truly interested in equity, then the FAIR and EQUITABLE course of action is to determine what the actual situation of education in the county is. If Howard County management wants to mitigate any inequities in the system, they must first understand what level of equity they are starting from. There is only one way to do that, and it has nothing to do with FARM percentages.

Before any redistricting is enacted, the baseline must be understood by all; particularly the population that Howard County management works for and is ultimately accountable to. This includes EVERYONE, not just select segment of the population. After all, that is the basis for equity, fairness, diversity and inclusion - isn't it?

It's time for the Howard County Public School System budget to be independently audited. The audit firm must be selected by an independent (preferably the Governor), and should be tasked to deliver a full report on the Howard County school system. Most importantly, the full report with supporting detail must be made available to the public. Among other things, there are two key pieces of data that must be reported:

- An accounting of all the funding sources of the Howard County education budget. It should be visible to all where the dollars are coming from, and who is providing them. Any demographic discriminators that will be used to determine potential changes must also be represented as discriminators in this accounting.
- An accounting of the distribution of those funds across the school system, BY SCHOOL. It should be visible to all where and how these (OUR) dollars are getting spent. The budget summary that is currently made public to the taxpayers is woefully inadequate in this regard. Any demographic discriminators that will be used to determine potential changes must also be represented as discriminators in this accounting.



Along with this information, we need answers to some key questions:

- Is the curriculum in high % FARM schools different than low % FARM schools?
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If the answer to all of these questions is "NO", then I ask our elected officials to explicitly detail how we currently deviate from the professed HCPSS Definition of Equity: *"Providing the access, opportunities and supports needed to help students, families and staff reach their full potential by removing barriers to success that individuals face. It does not mean equal or giving everyone the same thing."*

If the answer to any of those questions was "YES", then that would lead me to believe that there is indeed inequity in our school system. Since Howard County taxpayers are all treated equally, (ie: percentage of property taxes we pay) then this inequity can only be created by the operators of the school system themselves. If this is the case, then we should be addressing this as our collective problem, and require our elected officials to do their jobs as opposed to obfuscating the issue by gerrymandering the school districts of the constituents they are supposed to serve.

For starters, one could imagine a useful portion of the \$43M transportation budget required to bus our children past the schools in their neighborhoods could instead be utilized to directly support the teachers and the schools that demonstrate a need for it.

As I read thru CR-112-2019 and the superintendent's proposal, there are just many red flags. I strongly urge you to reject CR-112 and deter the Howard County School Board from proceeding with the proposed redistricting plan.

Sincerely,

Elizabeth Kunkoski  
12209 Mount Albert Road  
Ellicott City MD 21042



**Sayers, Margery**

---

**From:** (null) (null) <Naseem7@yahoo.com>  
**Sent:** Wednesday, September 18, 2019 2:53 PM  
**To:** CouncilMail  
**Subject:** Redistricting polygon 176

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Hi,

I am Mohammad Naseem, parent of students in polygon 176 and I oppose this redistricting plan.

Sincerely.

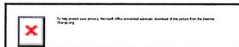
Mohammad Naseem

## Sayers, Margery

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**From:** mail@changemail.org  
**Sent:** Wednesday, September 18, 2019 2:55 PM  
**To:** CouncilMail  
**Subject:** 10 more people signed "Support Howard County Council Integration in Redistricting Resolution"

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

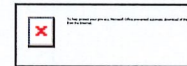


New signatures

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Support Howard County Council Integration in  
Redistricting Resolution

Petition by IndivisibleHoCo Education Team · 10 supporters



**10 more people signed  
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**Sayers, Margery**

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**From:** Tanya Juley <tjuley04@yahoo.com>  
**Sent:** Wednesday, September 18, 2019 2:51 PM  
**To:** Walsh, Elizabeth; CouncilMail; Jung, Deb; Jones, Opel; Yungmann, David; drigby@howardcountymd.gov; Ball, Calvin B  
**Subject:** resolution CR112-2019  
**Attachments:** Letter in Opposition to CR.pdf

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Please see the file attached for my testimony against resolution CR112-2019.

Sincerely,  
Tanya Lopez,  
3717 Valley rd,  
Ellicott City MD 21042



## Letter in Opposition to CR-112

Dear County Council Members and County Executive Calvin Ball:

My name is Tanya Lopez, and I live in the neighborhood of Ellicott City in Howard County. I am writing to voice my opposition to CR-112.

This Resolution is an overstep of the County Council's authority, uses racially charged and inaccurate language to describe our schools, and promotes several unproven theories and unacceptable policies. The concentration of poverty in our county is rooted in complex social and economic issues and will require level-headed, evidence-based, and cost-efficient solutions to provide real help to our most vulnerable county families so they can improve their lives.

I am an immigrant from Ukraine. I came to the US for its education system and economic promise. I work hard to succeed. I'm confident all families want what is best for their families, like I do.

However, there are several flaws with this Resolution and the Superintendent's Plan:

1. HCPSS should be challenged for an explanation and solutions to reduce achievement gaps in Howard County Schools. There is no data to confirm a link between achievement gaps and increased socioeconomic segregation. There may be a logical link, but that link is not demonstrated.
2. It is inconsistent, at best, and hypocritical, at worst, to turn around and criticize the achievement gaps in our county schools when the County Council failed to fund the BOE's budget just last year by over \$70 million. Severe cuts to educational programs, including cutting large numbers of paraeducators and technology education, was the result. It is not reasonable to force classroom cuts and then demand measures to close the achievement gap.
3. The Resolution itself uses unnecessary incendiary language of racial "segregation" to evoke emotional responses. Howard County schools are simply not racially segregated. Please do not conflate issues of race and class.
4. Public transportation within Columbia may be well-established, but it is not available throughout the County. If this council was genuinely concerned about poverty, there would be plans to bring jobs to those concentrated areas of poverty, and to expand public transportation options to bring county residents to places of employment in our region.
5. Community cohesion is important to the success of our county and our students. Community division is disruptive and causes adverse impacts to communities of any socioeconomic status. Any resolution involving school redistricting should urge the Board to consider reasonable contiguous neighborhood and village boundaries that do not separate neighborhoods, while also taking into account school feeds and travel times.

6. The Council should take action to provide other means of adding resources in the form of assistance programs to schools in need, ensuring that any such programs are accessible at every school in the county.
7. Involuntary busing has been used in other jurisdictions around the US for decades, and it has not worked to increase integration of either racial or economic groups.
8. Housing distribution throughout the county is the source of this problem, and the schools are being asked to bear the burden of fixing decades of mismanagement by this County Council and other elected officials.
9. Overcrowding at certain schools, the original impetus for the redistricting plan, is not fixed under this Plan, and only worsens with time, even after accounting for building HS13.
10. The Zoning board and this County Council continues to bend to every whim of any developer and does not hold them accountable for unrealistic new student estimates or charge necessary fees for infrastructure improvements due to building their development. The county needs to step it up and build school capacity to match the need. New developments should not be approved without adequate, local facilities to accommodate them.
11. Longer commute times, by distance and by bus, increasing traffic on county roads, is a 20<sup>th</sup> century answer to a 21<sup>st</sup> century problem. We should be focused on solutions that do not add to our climate crisis or increase stress to our families and students.
12. The proposed plan only reshuffles the students into different schools so that school-wide averages appear more similar but does not improve educational outcomes for individual students.
13. Where is the money for all of this coming from? The community has not been presented with any serious cost estimates for this proposal, nor has there been an analysis of alternatives.
14. Not one dollar has been proposed to provide incremental educational resources or opportunities directly to students to improve their performance at any school under this Plan.

In short, there simply must be better options to address poverty and the achievement gap in our county. Please reject CR-112. Please reject the Superintendent's Plan. We can and must do better for all county residents.

Thank you.

Tanya Lopez

## Sayers, Margery

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**From:** rpollard79 <rpollard79@gmail.com>  
**Sent:** Wednesday, September 18, 2019 2:50 PM  
**To:** CouncilMail  
**Subject:** Equal Dignity: Opposition Testimony to Resolution No. 112-2019  
**Attachments:** Council Testimony 112-2019 - Equitl Dignity.pdf

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Dear Members of the County Council of Howard County, Maryland:

My name is Ryan Pollard and I am slated to speak this evening in opposition to Resolution No. 112-2019. Attached please find me and my wife's written testimony – A Call for Equal Dignity and a Measured Approach to Socioeconomic Integration II. I thank you in advance for your time and consideration in reviewing the letter.

Sincerely,

Ryan Pollard

September 18, 2019

## **A Call for Equal Dignity and a Measured Approach to Socioeconomic Integration II**

Dear Members of the County Council of Howard County, Maryland:

Our names are Ryan Pollard and Jennifer Pollard. We are writing this letter to oppose Resolution No. 112 – 2019 (“Resolution”). We deliver this letter to you, the Members of the County Council of Howard County, Maryland (“Council”), with the support of our fellow community members. We thank you in advance for your time and consideration in reviewing this letter.

***By calling upon the Howard County Board of Education (“BOE”) to adopt a multi-year Integration Plan (“Plan”), the Council ignores that the Council largely created achievement gaps and socioeconomic disparities in Howard County students and has the tools to fix such issues.***

The Council’s policies largely created achievement gaps and socioeconomic disparities in Howard County students and has the tools to fix such issues. As noted in our attached letter to the BOE, titled A Call for Equal Dignity and a Measured Approach to Socioeconomic Integration (“Letter”), socioeconomic balancing or integration has undeniable positive and substantial effects with little-to-no measurable downside when carried out properly. In fact, socioeconomic integration has been shown to help Black or African American students academically and into adulthood, and, more specifically, causes high school dropout rates to be reduced by up to nearly 15% and decreases the likelihood of living in poverty after graduation by up to 11%.<sup>1</sup> Additionally, socioeconomic balancing has been shown to extend past simply improving graduation rates; it leads to students receiving Free and Reduced-Price Meals (“FARM”) meeting or exceeding the academic performance of the applicable county, with improvements in one study, being up to 32% improvement on test scores.<sup>2</sup>

As a community, we have no desire to ignore or prevent the improvements that can be gained from socioeconomic integration, and in the Letter we suggest the best approach to effect meaningful socioeconomic integration. We, however, oppose the Council’s involvement in this effort, and believe that the Council should lead by example rather than request that the BOE fix the issues created by the Council. It is well recognized that socioeconomic integration, and, as a result, narrowing achievement gaps, is best achieved through socioeconomic integration of housing.<sup>3</sup> In fact one leading study in this area from Montgomery County, Maryland, found that

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<sup>1</sup> Johnson, R.C. (August 2015). Long-Run Impacts of School Desegregation & School Quality on Adult Attainments, retrieved at [https://gsppi.berkeley.edu/~ruckerj/johnson\\_schooldesegregation\\_NBERw16664.pdf](https://gsppi.berkeley.edu/~ruckerj/johnson_schooldesegregation_NBERw16664.pdf).

<sup>2</sup> Hanover Research (February 2013). Impact of Free/Reduced Lunch School Composition on Student Achievement, retrieved at <https://www.gssaweb.org/wp-content/uploads/2015/04/Impact-of-Free-Reduced-Lunch-School-Composition-on-Student-Achievement-1.pdf?fbclid=IwAR2GGH9AqirlzOz-SI0yReZJSLIt5hhTZQqMFasH2nRxxe5AeULLOj7W4R4>.

<sup>3</sup> Schwartz, H. (Oct. 16, 2010). Housing Policy is School Policy: Economically Integrative Housing Promotes Academic Success in Montgomery County, Maryland, retrieved from <https://tcf.org/content/commentary/housing-policy-is-school-policy/?agreed=1>; Chetty, R. & Hendren, N. (May 2015). The Impacts of Neighborhoods on Intergenerational Mobility: Childhood Exposure Effects and County-Level Estimates, retrieved from [https://scholar.harvard.edu/files/hendren/files/nbhd\\_paper.pdf](https://scholar.harvard.edu/files/hendren/files/nbhd_paper.pdf); Ihlanfeldt, Keith (June 26, 2018). Affordable Housing and the Socioeconomic Integration of Elementary Schools, retrieved at <https://link.springer.com/article/10.1007/s11146-018-9665-0>; U.S. Department of Housing and Urban Development



FARM students living in mixed-housing communities, which have schools with 20% or less FARM students overall, perform equally as well as their more affluent peers. It is within the Council's purview to create housing policies and initiatives that lead to such balanced communities.<sup>4</sup>

The Council's current plans, however, only exacerbate the issue as evinced in the PlanHoward 2030 adopted by the Council ("2030 Plan"). The 2030 Plan provides that diverse housing locations are directed inside the Howard County's growth boundary, referred to as the "Priority Funding Area."<sup>5</sup> The Priority Funding Area is limited to the eastern 40% of Howard County,<sup>6</sup> which contains the high schools with the highest percentage of FARM students and the largest achievement gaps in Howard County.<sup>7</sup> Further, the Council's current plan is to increase the affordable housing options in these school districts heavily-concentrated with FARM students. In fact, the Council justifies this approach because these heavily concentrated school districts are "location efficient."<sup>8</sup> More specifically, the Council believes that these areas provide "convenient access to employment, *schools*, services, and public transit and/or other low cost transportation alternatives to the automobiles such as walking, biking, or carpooling, etc." (emphasis added).<sup>9</sup> In calling upon the BOE to prioritize socioeconomic integration, this may cause significantly longer bus rides, including some one way trips in excess of one hour,<sup>10</sup> and defeat the model of efficiency that the Council is attempting to achieve.

The side effect of having a "location efficient" approach is that it necessarily concentrates affordable housing options to a limited number of areas. This is at least recognized by the Council. One recital in the Resolution provides that "past developments in Howard County have lacked diversity of housing types ... compounding socioeconomic inequalities ...." But, the 2030 Plan, which was amended as recently as February 5, 2018, does not demonstrate any change. The Council in the 2030 Plan highlights sample affordable housing projects as models for the future.<sup>11</sup> Among these projects, the Ellicott Gardens, Guilford Gardens, and Hilltop and Ellicott Terrace projects are slated to provide a total of 479 affordable housing units<sup>12</sup> in the Howard High School, Hammond High School, and Centennial High School districts. These three high school districts are among the most overcrowded high schools in Howard County, with capacity utilization rates of 136%, 116%, and 120%, respectively.<sup>13</sup> Further, Hammond High School is one of the most concentrated FARM schools in Howard County with 40% FARM students.<sup>14</sup> Adding FARM students to overcrowded Howard High School and Centennial High School, makes it difficult for these schools to absorb FARM students from neighboring schools such as Long Reach High School and Oakland Mills High School, which have 47% and 45% FARM

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Office of Policy Development and Research (n.d.). How Housing Mobility Affects Education Outcomes for Low-Income Children, retrieved at <https://www.huduser.gov/portal/periodicals/em/fall14/highlight2.html>.

<sup>4</sup>Schwartz, *supra*.

<sup>5</sup> See Page 125 of the Plan.

<sup>6</sup> Id.

<sup>7</sup> See Superintendent Michael Martirano's Attendance Area Adjustment Plan, dated August 20, 2019.

<sup>8</sup> See Page 125 of the 2030 Plan.

<sup>9</sup> Id.

<sup>10</sup> See Letter.

<sup>11</sup> See Page 124 of the 2030 Plan.

<sup>12</sup> Id.

<sup>13</sup> See Superintendent Michael Martirano's Attendance Area Adjustment Plan, dated August 20, 2019.

<sup>14</sup> See Superintendent Michael Martirano's Attendance Area Adjustment Plan, dated August 20, 2019.

students, respectively. Because the schools in the eastern part of Howard County have overcrowding issues and excessively high percentage of FARM students, the BOE has limited options to address the issue. One option is to bus students from the western schools east and students from the eastern schools west, which is the approach taken in Superintendent Michael Martirano's Attendance Area Adjustment Plan, dated August 20, 2019. This approach will harm the residents of Howard County and has been shown to lead to excessive bus rides as well as:<sup>15</sup>

- Lowered academic performance;
- Drowsiness;
- Hyperactive, impulsive, and oppositional behaviors;
- Profoundly impacted ADHD symptoms;
- Increased sports injury in student athletes;
- Symptoms of depression;
- Limited ability to participate in extracurricular activities; and
- Increased driving accidents.

The BOE can only balance socioeconomics in Howard County schools to a limited extent if the Council will continue to exacerbate the problem. If the Council desires to balance socioeconomics and limit achievement gaps in Howard County, rather than continuing to permit affordable housing in a limited number of areas and compounding the issue in the name of "location efficiency," it can lead by example and take a more balanced approach to affordable housing in Howard County. The Resolution, however, simply pushes the problem to the BOE, a state agency that has less tools available to solve the issue.

***The power to establish the attendance area of schools in Howard County is a Maryland State power retained through the BOE, and in the Resolution, the Council inappropriately attempts to exercise the power of the State of Maryland.***

In attempting to pass the Resolution, the Council is inappropriately trying to exercise powers reserved to the State of Maryland. The BOE is empowered by the State of Maryland to determine the education policies of the Howard County school system and the attendance area for each school.<sup>16</sup> In fact, in upholding the sovereign immunity of the county boards of education, Maryland courts have long recognized that county boards of education as agencies of the State and not the county.<sup>17</sup> More specifically, courts have found that the "mission [of county boards of education] is to carry out a State, not a county, function."<sup>18</sup> Accordingly, it is inappropriate for the Resolution to call upon the BOE to carry out the Council's county-desired function of integration.

The Council's attempt to pass the Resolution violates the separation of powers established in the State of Maryland. When looked at a national level, separation of powers is

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<sup>15</sup> See Letter.

<sup>16</sup> See the Annotated Code of Maryland, Education Article, Sections 4-108 and 4-109.

<sup>17</sup> Board of Educ. of Prince George's County v. Prince George's County Educators' Ass'n, Inc., 309 Md. 85, 95-96 n. 3, 522 A.2d 931 (1987); State v. Bd. of Educ. of Montgomery County, 346 Md. 633, 635 n. 1, 697 A.2d 1334 (1997); Board of Educ. of Prince George's County v. Town of Riverdale, 320 Md. 384, 387 n. 3, 578 A.2d 207; Board of Educ. of Prince George's County v. Secretary of Personnel, 317 Md. 34, 44, 44 n. 5, 562 A.2d 700 (1989).

<sup>18</sup> Hornbeck v. Somerset Co. Bd. of Educ., 295 Md. 597, 458 A.2d 758 (1983).



one of the founding principles in the United States. In fact, separation of powers is what allowed the Supreme Court to find segregation laws unconstitutional and desegregate our nation in *Brown v. Board of Education* and other hallmark cases. Ironically, the Council is attempting to erode this very principle by passing the Resolution. This approach can lead to significant negative impacts.

The BOE already factors socioeconomic integration into its school area adjustment analysis. Specifically, the BOE's Policy 6010(IV)(B)(3)(b) requires the BOE to consider "the socioeconomic composition of the school population as measured by participation in the FARMs program." Accordingly, integration is already taken into account by the BOE, but the Council wants greater emphasis on integration. An over emphasis on socioeconomic integration in Howard County's school system as opposed to a balanced approach leads to harms to our students generally (including those outlined above), vitiating Howard County's communities, and providing little net value, all as outlined in the Letter.<sup>19</sup> The Council conveniently does not contend with these negative impacts in the Resolution. Fortunately, however, the BOE, and not the Council, is charged with providing quality education and equal educational opportunities for *all* children,<sup>20</sup> further exemplifying the importance of the Council allowing the BOE to maintain its independence. The Council should nonetheless be well aware of the side effects of focusing on one or a few items without balance, because things like "location efficiency" have given rise to the achievement gap disparities and socioeconomic issues in Howard County.

#### ***The Resolution creates constitutional issues.***

While the Council in the Resolution calls upon the BOE to "lawfully" implement a multi-year Integration Plan, the foundations for its request are unconstitutional. The United States Supreme Court in *Parents Involved in Community Schools v. Seattle School District No. 1*<sup>21</sup> found that it is unconstitutional to rely upon race classifications in making school assignments. In its recitals, which provide the foundation for the request to implement an Integration Plan, the Resolution focuses on, among other things – the troubling history of "separate but equal," *Plessy v. Ferguson*, *Brown v. Board of Education*, the percentage of segregated schools, the decline of diversity in Howard County schools – and *all* of these factors focus on race. Said another way, the recitals in the Resolution focus heavily on race and only on FARM students to a limited degree. Accordingly, the Resolution asks that the BOE satisfy an unconstitutional motive under the veil of a "lawful multi-year Integration Plan." Such an approach is questionable at best, and does not exemplify good leadership to the students of Howard County.

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<sup>19</sup> See the Letter.

<sup>20</sup> BOE Policy 2000 (IV)(B)(2)(e).

<sup>21</sup> Retrievable at 551 U.S. 701.

In closing, we are proponents of a socioeconomic integration plan that takes a balanced approach and accounts for the interests of *all* students in Howard County. For the reasons outlined above, however, we ask that the Council vote against the Resolution, lead by example through better housing policy, and allow the BOE to effect attendance area adjustments through its own policies and the powers granted to it by the State of Maryland as intended by the State.

Sincerely,

Signature: 

Name: Ryan Pollard

Street: Twelve Hills Rd.

Signature: 

Name: Jennifer Pollard

Street: Twelve Hills Rd.

**Attachment**

The Letter is attached hereto and begins on the following page.

September 11, 2019

## **A Call for Equal Dignity and a Measured Approach to Socioeconomic Integration**

Dear Members of the Howard County Board of Education:

Our names are Ryan Pollard and Jennifer Pollard. We are writing this letter to oppose Superintendent Michael Martirano's ("Superintendent") Attendance Area Adjustment Plan, dated August 20, 2019 ("Superintendent's Plan"). We live in Polygon 1200 and deliver this letter to you, the Members of the Howard County Board of Education ("BOE"), with the support of our fellow community members set forth at the end of this letter. We thank you in advance for your time and consideration in reviewing this letter and reviewing the Superintendent's Plan.

### ***Summary of letter discussion points.***

While the Superintendent is well-intentioned, the Superintendent's Plan fails to achieve meaningful results in light of the substantial changes required, causes a number of significant negative impacts on our students, ignores the conditions established by the BOE to develop and adopt attendance area adjustments, and, as a result of the foregoing, strains the trust of the community. The Superintendent's Plan calls for redistricting 7,396 students and generally increases commuting times and distances, including more than doubling the school commuting travel times and distances for the students of Polygon 1200. The effects of this are shown to have a detrimental impact to students both mentally and physically.

We oppose the Superintendent's Plan as a whole and ask the BOE to take a more balanced approach to the attendance area adjustment plan, keeping the students of Polygon 1200 at River Hill High School ("RHHS"). Using "Option 1" in the 2019 Feasibility Study—An Annual Review of Long-Term Capital Planning and Attendance Area Adjustment Options (the "Feasibility Study") as a starting point is better because it presents a more balanced approach. Under the Superintendent's Plan, however, Polygon 1200 has no connecting roads with the neighboring polygons also being redistricted to Wilde Lake High School ("WLHS"), resulting in longer commute times for Polygon 1200 students and an inefficient use of the County's resources. Additionally, it is the only polygon from its elementary school that will be sent to WLHS.

If, however, the BOE is determined to proceed with the Superintendent's Plan with limited modification, Polygon 1200 should be redistricted from RHHS to Glenelg High School ("GHS") instead of Wilde Lake High School ("WLHS"). The Superintendent's Plan turns Polygon 1200 into a land island in that it clumps Polygon 1200 with polygons that do not have directly connecting roadways despite being geographic neighbors with Polygon 1200. By the same token, the Superintendent's Plan segregates Polygon 1200 from geographically-neighboring polygons that do have directly-connecting roads. This approach further exacerbates the travel times and distances for Polygon 1200 students in attending high school. The negative impacts can be limited by redistricting Polygon 1200 under the Superintendent's Plan to GHS. Further, because there is limited benefit in redistricting students in the near term, and because changing schools is associated with lower academic performance, we ask that the BOE exclude Polygon 1200 students currently attending RHHS from the Superintendent's Plan.

A focus on Policy 6010 of the BOE shows that the three primary factors used to review or develop any attendance area plan—(1) Facility Utilization, (2) Community Stability, and (3) Demographic Characteristics of Student Population—are largely ignored in the Superintendent’s Plan and that, as a result, the Superintendent’s Plan produces significant adverse impact, such as disruption to the community, with little positive benefit. “Equity” is used to justify the adverse effects to many students caused by the approach taken in the Superintendent’s Plan, but this equity is primarily focused on balancing students receiving Free and Reduced-Price Meals (“FARM”) across schools. A core responsibility of the BOE, however, is providing quality education and equal educational opportunities for *all* children. It is in this vein that we ask that the BOE maintain equal dignity for all students in Howard County.

Lastly, we focus on the driving force for the Superintendent’s Plan—FARM balancing. While we welcome FARM students to our community to achieve the many positive impacts it provides to them, the forced-busing approach adopted under the Superintendent’s Plan will not achieve those results but will negatively impact our students. A choice-based approach to socioeconomic balancing is a more measured approach and has been shown to achieve positive results with little downside impact. It is in this vein that we ask for a measured approach to socioeconomic integration.

***The Superintendent’s Plan will have a significant negative impact on students.***

The Superintendent’s Plan will create significant adverse effects on the students of Polygon 1200, which is in direct contradiction to one of the BOE’s core responsibilities—providing quality education and equal educational opportunities for *all* children.<sup>1</sup>

According to Google Maps,<sup>2</sup> the approximate average distance from Polygon 1200 to RHHS is 4.1 miles using highways and 4.7 miles without using highways. HCPSS provides that the current bus route from Polygon 1200 to RHHS is 38 minutes, with the bus slated to arrive at the first stop of Polygon 1200 at 6:27 a.m. and at RHHS at 7:05 a.m. A transition from RHHS to WLHS will more than double the travel distance. If it is assumed that the bus goes directly from Polygon 1200 to WLHS, which is admittedly an unrealistic assumption for reasons discussed later, the approximate average distance from Polygon 1200 to WLHS is 9.8 miles using highways and 9.9 miles without using highways.<sup>3</sup> The additional distance translates to an increased bus time of between 49 minutes and 68 minutes.<sup>4</sup> The figures in Attachment A at the end of this letter provide an illustration of the information presented in this paragraph.

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<sup>1</sup> BOE Policy 2000 (IV)(B)(2)(e).

<sup>2</sup> Unless otherwise noted, all distances, travel times, and routes in this letter are determined using Google Maps.

<sup>3</sup> This is likely an underestimate because it assumes using the most efficient routes which cannot occur given the land-locked nature of Polygon 1200. See discussion in next section.

<sup>4</sup> The low-end estimate adds the additional time using the most efficient route, which underestimates the total bus ride. The high-end time extrapolates the total time using a conversion factor determined by dividing the current mileage to RHHS by the current bus route time and applying that factor to the added distance to WLHS. The high-end time is also likely an underestimate due to the landlocked nature of Polygon 1200. See the discussion in the next two sections.

Increasing the distance and commuting time for the students of Polygon 1200 has specific and measurable adverse impacts on the students. A one-way commute time of 49 to 68 minutes well exceeds the general United States average commute time of 26.1 minutes as set forth by the United States Census Bureau<sup>5</sup> and the approximate average commute time of students 15 to 19 years of age of 18 minutes.<sup>6</sup> Further, studies show that increased student commute times have a profoundly negative impact on sleep and exercise. Students with commutes under 30 minutes have been shown to exercise an hour and 15 minutes more than those with commutes over 30 minutes.<sup>7</sup> The Superintendent's Plan causes the Polygon 1200 students to well exceed this 30-minute threshold. In fact, one study found that each additional minute of commuting correlates to a 1.3 minute loss of sleep.<sup>8</sup> To put this in perspective, redistricting Polygon 1200 students to WLHS can cause a loss of sleep of 14.3 to 39 minutes,<sup>9</sup> with the actual loss of sleep likely being toward or in excess of the higher end of the spectrum due to the unique land island nature of Polygon 1200 discussed below. This loss of sleep is exacerbated by the fact that general sleep trends show that inadequate sleep begins as young as age 6 and increases as children age without the additional stressor of significant commute times.<sup>10</sup>

Inadequate sleep among school-age children can lead to significant harm to our children. Inadequate sleep has been linked to the following, among other things:

- Lowered academic performance;<sup>11</sup>
- Drowsiness;<sup>12</sup>
- Hyperactive, impulsive, and oppositional behaviors;<sup>13</sup>
- Profoundly impacted ADHD symptoms;<sup>14</sup>
- Increased sports injury in student athletes;<sup>15</sup> and

<sup>5</sup> U.S. Census Bureau (Dec. 7, 2017). Average One-Way Commuting Time by Metropolitan Area, retrieved from <https://www.census.gov/library/visualizations/interactive/travel-time.html>.

<sup>6</sup> Voulgaris, C.T., et. Al (Aug. 23, 2017). Tired of Commuting? Relationships among Journeys to School, Sleep, and Exercise among American Teenagers; Florida, R. (May 7, 2019). Long School Commutes Are Terrible for Kids, retrieved from <https://www.citylab.com/life/2019/05/high-school-commute-drive-sleep-exercise-children-teens/588850/>.

<sup>7</sup> Florida, *supra*.

<sup>8</sup> *Id.*

<sup>9</sup> Extrapolated by using the time range of 49 and 68 minutes over the current 38-minute commute and multiplying by 1.3.

<sup>10</sup> Hawkins, S.S. & Takeuchi, D.T. (May 17, 2016). Social determinants of inadequate sleep in US children and adolescents, retrieved at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5012907/>.

<sup>11</sup> Pagel, J.F. & Kwiatkowski, C.F. (Nov. 16, 2010). Sleep Complaints Affecting School Performance at Different Educational Levels, retrieved at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2995620/>; Bugueno, M, et al. (Sept. 14, 2017). Quality of sleep and academic performance in high school students, retrieved at <https://www.ncbi.nlm.nih.gov/pubmed/29424396>; Hangouche, A., et al. (Sept. 7, 2018). Relationship between poor quality sleep, excessive daytime sleepiness and low academic performance in medical students, retrieved at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6135210/>.

<sup>12</sup> American Sleep Association (n.d.). Drowsiness: Causes, Treatments, and Prevention, retrieved at <https://www.sleepassociation.org/sleep-disorders/more-sleep-disorders/drowsiness-causes-treatments-prevention/>.

<sup>13</sup> National Sleep Foundation (n.d.). ADHD and Sleep [article], retrieved at <https://www.sleepfoundation.org/articles/adhd-and-sleep>.

<sup>14</sup> *Id.*

<sup>15</sup> Minnesota Sleep Society (n.d.). Sports Related Injury and Performance [article], retrieved at <https://www.mnsleep.net/school-start-time-toolkit/why-improve-sleep-for-teenage-students/evidence-confirms-link-between-teen-sleep-biology-and-improved-outcomes/sports-related-injury-and-performance/>; Milewski, et al.,



- Symptoms of depression.<sup>16</sup>

Increasing commuting distances and reducing sleep also exacerbates the risks associated with teenage driving. According to the Centers for Disease Control and Prevention (“CDC”), driving accidents are the leading cause of death among teenagers. The fatal crash rate per mile driven is nearly twice as high for 16 and 17 year-olds (i.e., new drivers in high school) compared with 18 and 19 year-olds.<sup>17</sup> In addition to inexperienced drivers, the CDC lists drowsiness among the leading causes of teen crashes.<sup>18</sup> This concern is only compounded when extracurricular activities, many of which can have students involved well into the evening hours, are taken into account. Accordingly, the current Superintendent’s Plan, which more than doubles driving distances and significantly increases commute times, can cause serious and permanent physical harm, including death, to the new teenage drivers of Polygon 1200.

Moreover, the longer commute time essentially precludes some students from being able to participate in extracurricular activities. It is well proven that participation in extracurricular activities has a positive impact on high school academic achievement;<sup>19</sup> it prevents dropping out of high school<sup>20</sup> and increases the incidence of college admission<sup>21</sup> and success.<sup>22</sup> Increasing our students’ school commute times to up to over two hours per day effectively limits, at best, and cuts off, at worst, their ability to participate in these important, enriching activities.

The harms that the Superintendent’s Plan places on our students is too great and is unnecessary when other viable options are readily available.

***Polygon 1200 becomes a land island with the Superintendent’s Plan and therefore should remain at RHHS for community stability, resource efficiency, and positive FARM impact reasons.***

As described in detail below, Polygon 1200 should remain at RHHS to maintain community stability, avoid excessively long bus rides, and efficiently use county resources. In the Superintendent’s Plan, as well as each of the options set forth in the Feasibility Study,

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(Mar. 2014). Chronic lack of sleep is associated with increased sports injuries in adolescent athletes, retrieved at <https://www.ncbi.nlm.nih.gov/pubmed/25028798>.

<sup>16</sup> Barahona-Correa, J.E., et. Al (Jul.-Aug. 2018). Sleep disturbances, academic performance, depressive symptoms and substance use among medical students in Bogota, Colombia, retrieved at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6361310/>; Yasutaka, O, et. Al (Aug. 1, 2016). Sleep Duration Associated with the Lowest Risk of Depression/Anxiety in Adolescents, retrieved at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4945315/>.

<sup>17</sup> Centers for Disease Control (n.d.). Motor Vehicle Safety Get the Facts [Fact Sheet], retrieved at [https://www.cdc.gov/motorvehiclesafety/teen\\_drivers/teendrivers\\_factsheet.html](https://www.cdc.gov/motorvehiclesafety/teen_drivers/teendrivers_factsheet.html).

<sup>18</sup> *Id.*

<sup>19</sup> Eccles, J.S., and Templeton, “Chapter 4: Extracurricular and other after-school activities for youth.” *Review of research in education* 26.1 (2002): 113-180, retrieved at <https://journals.sagepub.com/doi/10.3102/0091732X026001113>.

<sup>20</sup> McNeal Jr, R. “Extracurricular activities and high school dropouts.” *Sociology of education* 68.1 (1995): 62, retrieved at <https://search.proquest.com/docview/216485750?accountid=11752>.

<sup>21</sup> Bound, J., et al. “Playing the admissions game: Student reactions to increasing college competition.” *Journal of Economic Perspectives* 23.4 (2009): 119-46.

<sup>22</sup> Sciarra, D.T., et al. “High School Predictors of College Persistence: The Significance of Engagement and Teacher Interaction.” *Professional Counselor* 6.2 (2016): 189-202, retrieved at <https://eric.ed.gov/?id=EJ1114072>.

Polygon 1200 is assigned to remain in its current elementary school district, Dayton Oaks Elementary School (“DOES”). Polygon 1200, however, is the only DOES polygon slated to go to WLHS. As a result of this, DOES is one of the few elementary schools slated to feed to 3 different high schools under the Superintendent’s Plan, leaving the DOES community to suffer great community instability. This is in direct contravention of BOE’s Policy 6010(IV)(B)(2) – Community Stability. As you are aware, pursuant to BOE Policy 6010, the BOE must consider Facility Utilization, Community Stability, and Demographic Characteristics of Student Population in its redistricting efforts. When considering the Community Stability factor, there are three subfactors to measure, two of which—“[k]eeping feeds of students together ...” and “[m]aintaining contiguous communities ...,”—received, by a large margin, the highest number of votes from the Howard County community in prioritizing all of the Policy 6010 subfactors, as set forth in the Superintendent’s Plan itself.<sup>23</sup> Accordingly, the public data collected by the Superintendent shows that Community Stability is the most important factor to the residents of Howard County in regard to redistricting. Moving Polygon 1200 to WLHS and making it the only DOES polygon to do so certainly does not maintain feeds of students together.

Polygon 1200 has no direct access to its neighboring polygons slated to attend WLHS under the Superintendent’s Plan. Thus, the Superintendent’s Plan turns Polygon 1200 into a land island. Despite being physically next to Polygons 2183, 1183, 183, 176, and 3176, which are North and East of Polygon 1200 and slated to go to WLHS under the Superintendent’s Plan, there are no roads directly connecting Polygon 1200 to these neighboring polygons. Because of this, the Superintendent’s Plan does not maintain a contiguous community and subjects Polygon 1200 to even longer bus rides and inefficiently uses resources. The travel times from Polygon 1200 to WLHS discussed earlier are further worsened by the fact that Polygon 1200 does not fill even half of a standard school bus, and thus will need to travel to one or more neighboring polygons districted to WLHS before proceeding to WLHS. Due to the limited roads leading out of Polygon 1200, picking up additional children from neighboring polygons significantly increases the travel time that children in Polygon 1200 will have to endure. Under the Superintendent’s Plan, the polygons that are most likely to share a bus with Polygon 1200 are Polygons 2183, 1183, 183, 176, or 3176. Polygon 2183, though, is approximately 7.7 miles and 12 minutes<sup>24</sup> in the opposite direction from WLHS. A bus traveling from Polygon 1200 to 2183 would likely continue past Polygons 1183, 183, 176, and finally 3176 before travelling to WLHS. Alternatively, the bus could travel from Polygon 1200 to Polygon 3176, a distance of 5.9 miles and 11 minutes, that would take the bus just shy of RHHS, to reach the Polygons to the East to attempt to fill the bus. This route, though, would necessitate that the bus double back on its route in order to head to WLHS. Because of the lack of internal roads from Polygon 1200 to the polygons to its North and East, the additional stops and mileage necessary to include Polygon 1200 on a WLHS bus creates major inefficiencies in bus usage and travel, exacerbating the County’s budget issues and depleting the children of Polygon 1200 of their most precious resource—time.

The figures in Attachment A at the end of this letter provide an illustration of the information presented in the foregoing paragraph.

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<sup>23</sup> Page 7 of the Superintendent’s Plan.

<sup>24</sup> This route involves using Highway 32 because the non-highway route requires using the Triadelphia Bridge, which is currently closed due to the dualization on Highway 32.

Additionally, transportation resources are not the only school system resource optimized by not redistricting students out of RHHS. Without any redistricting, RHHS is at 98% utilization and therefore has the capacity to receive students. Similarly, WLHS is at 95% utilization. In fact, three of the high schools that are currently above 110% utilization, Centennial High School, Hammond High School, and Howard High School, border WLHS. Rather than moving 478 students out of RHHS, and 741 students to RHHS, to achieve only a net increase of 263 students at RHHS, as the Superintendent's Plan suggests, expanding RHHS eastward to include some of the WLHS polygons opens WLHS to receive students from these over-utilized schools. This more sensible approach is utilized in Option 1 of the Feasibility Study. Moreover, with RHHS having the capacity to take on additional students, we propose that a portion of the WLHS students participating in FARM be moved into RHHS. As discussed in greater detail later, the optimal percentage of FARM students in a school to see a positive impact on academic performance is less than 30%. Moving WLHS FARM students to RHHS helps WLHS move toward this goal while increasing the number of FARM students at RHHS.

Furthermore, the Superintendent's Plan creates minimal change to the number of students receiving FARM at RHHS. Thus, keeping Polygon 1200 and, for efficiency sake, its neighbor, Polygon 200, which shares all external roads with Polygon 1200, at RHHS will have minimal measurable change in the FARM percentages at RHHS, and therefore, still permit the BOE to implement a choice-based approach to socioeconomic balancing, as discussed in detail below, a more favorable approach with a greater likelihood of success.

Keeping the children of Polygon 1200 and 200 at RHHS maintains the most efficient use of the transportation system and high school buildings and minimizes the amount of time Polygon 1200 children must commute to and from school by almost half the time. Furthermore, it maintains community stability by keeping Polygon 1200 from being the only members of the DOES community to attend WLHS.

***If the BOE is determined to use the Superintendent's Plan as its starting point and foreclose Polygon 1200 from attending RHHS, Polygon 1200 better fits with the Glenelg High School District than WLHS.***

Although the best solution overall is for Polygon 1200 to remain in the RHHS district (as we discussed above and in more detail below), if the BOE determines that the Superintendent's Plan should be implemented, Polygon 1200 fits more appropriately within the GHS zone than within the WLHS zone. Among the current RHHS polygons being redistricted to WLHS under the Superintendent's Plan, Polygon 1200 suffers the greatest burden and much of this burden is alleviated by redistricting Polygon 1200 to GHS with no substantive impact to the Superintendent's Plan overall. Redistricting Polygon 1200 to GHS would largely prevent the previously discussed issue of splitting the DOES community and avoid feeding DOES students into 3 different high schools.

Furthermore, under the Superintendent's Plan, moving Polygon 1200 to GHS instead of WLHS makes sense geographically and from an efficiency perspective. As discussed, there are

no roadways directly connecting Polygon 1200 to the polygons to the North and East. There are, however, roadways directly connecting Polygon 1200, to neighboring polygons to the West and South, Polygons 208, 203, 202, and 200, all of which are slated to feed to GHS. These roadways are Linden Church Road, Greenberry Lane, Broadwater Lane, and Ten Oaks Road. In fact, to travel to the neighboring Polygon 2183 (slated to attend WLHS) by road, residents of Polygon 1200 need to drive past Polygons 208, 203, 202, 200, 1208, 209, and 182. To get to neighboring Polygon 3176 (slated to attend WLHS) by road, residents of Polygon 1200 need to travel past Polygons 202, 1202, and 201, which route runs approximately 0.1 miles from the RHHS entrance. Further, to get to other polygons slated to go to WLHS under the Superintendent's Plan, including neighboring Polygons 1183, 183, and 176, residents of Polygon 1200 must generally drive through or past Polygons 2183 and 3176. Accordingly, as previously discussed, as constructed, Polygon 1200 sits on a land island when districted to attend WLHS. Additionally, Polygon 1200 students, using the most efficient route, will have to commute past or through 3 other high school districts, including RHHS, to get to WLHS.

Districting Polygon 1200 to feed into GHS instead of WLHS largely eliminates the land island effect. The approximate distance and travel times from Polygon 1200 to GHS-districted Polygons 208, 203, 202 and 200 are approximately 2.2 miles and 5 minutes, 1.1 miles and 3 minutes, 0.6 miles and 2 minutes, and 0.4 miles and 1 minute, respectively. In fact, the current RHHS bus route for Polygon 1200, accounts for the efficiency of grouping Polygon 1200 with these polygons because all the aforementioned polygons are currently districted for RHHS, and the current bus makes stops at Chamblis Drive in Polygon 200, Harris Farm Lane in Polygon 202, and Highland Road in Polygon 1202, all of which are slated to attend GHS under the Superintendent's Plan. Further, Polygon 1200 is approximately 4.9 miles and 7 minutes away from GHS using highways and 4.7 miles and 8 minutes away from GHS not using highways. Under the current Superintendent's Plan, moving Polygon 1200 to GHS instead of WLHS is clearly the best alternative to RHHS from a geographic perspective and a bus efficiency perspective. Additionally, the lessened travel time and distance will reduce a number of the negative impacts set forth above.

The figures in Attachment A at the end of this letter provide an illustration of the information presented in the two foregoing paragraphs.

Shifting Polygon 1200 to GHS under the Superintendent's Plan will reduce the negative impact and will also slightly improve the balance of facility utilization at the high school level. There are expected to be 31 high school students in Polygon 1200. The net effect to each of GHS and WLHS is roughly 2%.<sup>25</sup> That is, the anticipated utilization of GHS in the Superintendent's Plan for the 2020-21 school year will be increased from 102% to 104%, leaving GHS among the lowest utilized high schools in Howard County. Further, a relocation of Polygon 1200 to GHS will reduce the utilization of WLHS from 110% to 108%, further balancing the utilization of WLHS and removing WLHS from the edge of the undesired utilization thresholds in excess of 110%. With reduced downside and significant numerous positive benefits, if our students cannot stay at RHHS, moving Polygon 1200 to GHS is the clear better alternative approach within the current Superintendent's Plan.

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<sup>25</sup> This is calculated using 31 high school students in Polygon 1200 and the capacities of 1,449 and 1,567 for GHS and WLHS, respectively, as set forth on Page 14 of the Superintendent's Plan.



Further, if the BOE is determined to proceed with the Superintendent's Plan with limited modification, the students currently attending RHHS should not be redistricted; the redistricting should occur in phases. As discussed, the driving force for the Superintendent's Plan is equity in balancing FARM students across schools. It has been shown that the positive academic effects gained through socioeconomic integration, however, do not appear in the first two years following integration, and that meaningful results appear in years 5 and 7.<sup>26</sup> While this supports socioeconomic integration in the elementary and middle schools, it also demonstrates that redistricting high school students next year or the year after will have little effect on the academic success of FARM students. Further, simply moving students has downside effects in and of itself. According to the United States Government Accountability Office, lower performance on math and reading tests have been shown to be associated with students changing high schools,<sup>27</sup> which is a critical period for students looking to continue their education at universities. Therefore, redistricting high school students in the near term on the basis of socioeconomic balancing will have limited upside with meaningful downside for high school students.

***There are broader issues with the Superintendent's Plan.***

We request that the BOE vote against adopting the Superintendent's Plan and revisit researching a plan, such as Option 1 under the Feasibility Study, that reasonably takes into account all of the Policy 6010 factors and takes a measured approach to socioeconomic integration. Doing so will provide equal dignity to all students by balancing the educational interests of all Howard County students and will provide FARM students with the best long-term opportunities for educational success.

***The Superintendent's Plan largely ignores Policy 6010 and, as a result, does not produce clear, positive benefits.***

The Superintendent's Plan largely ignores Policy 6010 and, as a result, it does not produce clear positive benefits within the standards set forth by the BOE. Each BOE Policy guides the development and implementation of educational programs and system operations.<sup>28</sup> As set forth in Policy 6010, the purpose of Policy 6010 is to define the conditions and process by which school attendance area adjustments will be developed and adopted. In Section IV(A), Policy 6010 sets forth the factors that permit the BOE to consider school attendance area adjustments, including school attendance area projections being outside of the target utilization and a new school being scheduled to open. In Section IV(B), Policy 6010 sets forth three primary factors to be considered in any school attendance area adjustment plan. As stated previously, those factors are: (1) Facility Utilization, (2) Community Stability, and (3)

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<sup>26</sup> Schwartz, H. (Oct. 16, 2010). Housing Policy is School Policy: Economically Integrative Housing Promotes Academic Success in Montgomery County, Maryland, retrieved from <https://tcf.org/content/commentary/housing-policy-is-school-policy/?agreed=1>.

<sup>27</sup> U.S. Government Accountability Office (November 2010). Many Challenges Arise in Educating Students Who Change Schools Frequently, retrieved from <https://www.gao.gov/assets/320/312480.pdf>.

<sup>28</sup> BOE Policy 2020.

Demographic Characteristics of Student Population. Each of these factors include additional subfactors to help guide and quantify the factors.

The Superintendent's Plan inappropriately focuses on one subfactor in the name of equity, largely to the exclusion of other primary factors. As set forth in the Superintendent's Plan, the driving priorities for the plan are:

- (1) Balancing capacity utilization among schools throughout HCPSS, cost effectively;
- (2) Advancing equity by addressing the distribution of FARM students to the extent feasible; and
- (3) Planning ahead for the High School #13 redistricting by minimizing double moves as much as possible.

Items (1) and (3) largely restate factors that permit the BOE to consider school attendance area adjustments. Item (2) essentially restates one subfactor in Policy 6010, specifically 6010(IV)(B)(3)(b)—the socioeconomic composition of the school population as measured by participation in the FARMs program. In support of providing recommendations to the BOE that were significantly different from the Feasibility Study, the Superintendent in his presentation to the BOE and in his letter to the HCPSS Community<sup>29</sup> indicated that equity is the driving force and guides all decisions and strategies. The equity to which the Superintendent is referring is the equity achieved by focusing on subfactor (3)—the socioeconomic composition of the school population as measured by participation in the FARMs program. More specifically, the Superintendent states that the Superintendent's Plan "advances equity by making progress towards leveling FARM proportions across schools."<sup>30</sup>

Before focusing on more specific issues, it is important to note that the Superintendent's view of equity does not fit with one of the BOE's core responsibilities: "to provide quality education and equal educational opportunities for *all* children" (emphasis added).<sup>31</sup> While balancing FARM participation among schools is important, using that as the guiding principle above all other factors leads to limited benefits with significant adverse consequences, as is the case with the Superintendent's Plan.

***The Superintendent's Plan does not achieve success with Facility Utilization.***

On balance, the Superintendent's Plan does not achieve successful Facility Utilization, one of the primary considerations under Policy 6010 to be considered in any school attendance area adjustment plan. Under the Superintendent's Plan, there would be 5 schools with less than 90% capacity utilization, 53 schools with 90% to 100% capacity utilization, and 16 schools in excess of 110% capacity utilization. By way of comparison, Option 1 under the Feasibility Study provides for 11 schools with less than 90% capacity utilization, 45 schools with 90% to 100% capacity utilization, and 18 schools in excess of 110% capacity utilization. Note that the Superintendent's Plan has three schools exactly at 110% of capacity utilization, Hollifield Station Elementary School, WLHS, and Marriotts Ridge High School. This means that any

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<sup>29</sup> Letter by the Superintendent, titled My Recommended Attendance Area Adjustment Plan, dated August 22, 2019.

<sup>30</sup> *Id.*

<sup>31</sup> BOE Policy 2000(IV)(B)(2)(e).



growth at these schools will push them into the category of schools having in excess of 110% of capacity utilization, and, in such case, the Superintendent's Plan would have 50 schools with 90% to 100% capacity utilization and 19 schools in excess of 110% capacity. Despite having an astronomical 7,396 reassignments, the Superintendent's Plan provides at best a marginal, if any, benefit as compared to the Feasibility Study, which moves approximately less than half the number of students depending on the elementary school option(s) utilized.

The failure of the Superintendent's Plan to achieve successful Facility Utilization is exacerbated by the required substantial increase in transportation costs.<sup>32</sup> In June 2019, Howard County Public School System had a nearly \$38 million dollar shortfall in its Fiscal Year 2020 Operating Budget.<sup>33</sup> Such a shortfall resulted in, among other things, the loss of certain teaching and paraprofessional positions, as well as transfers of funds, freezing of salaries, holding open unfilled positions, and delaying technology and instructional materials investments.<sup>34</sup> If transportation costs are expected to increase a substantial amount, and an operating budget without the Superintendent's Plan's degree of busing fell well short of what was needed to provide the ongoing level of support for the County's students, it is clear that the Superintendent's Plan cannot go forward without significant and unreasonable strain on the resources of the county schools. Should the Superintendent's Plan go forward, this could likely lead to additional cuts of educational professionals; it is difficult to see how losing more talented professionals can improve the education of all students, let alone maintain the same quality education Howard County currently provides. Rather, any additional room in the student transportation budget can be used to bring FARM students to high schools such as RHHS through a choice-based socioeconomic integration model, which is the better approach as discussed below.

We also note that, in respect of Policy 6010(IV)(B)(1)(e), up to 574 walkers are reassigned to buses with no students moving in the reverse direction, further increasing the negative impact of Facility Utilization. Accordingly, by all known measures, after reasonable inquiry, the Superintendent's Plan causes a downgrade in Facility Utilization.<sup>35</sup>

***The Superintendent's Plan creates significant community instability.***

The next primary factor in determining any attendance area adjustment plan under Policy 6010 is Community Stability.<sup>36</sup> The Superintendent's Plan shows no positive benefit to Community Stability, but rather varying degrees of community instability.

Community stability is an important factor to the educational and general success of students. The value of the community in education and general student growth is well

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<sup>32</sup> Superintendent's presentation of the Superintendent's Plan to the BOE on Aug. 22, 2019.

<sup>33</sup> Howard County Public School System (June 10, 2019). Board of Education Adopts FY 2020 Operating and Capital Budgets [news release], retrieved at <https://news.hcpss.org/news-posts/>.

<sup>34</sup> *Id.*

<sup>35</sup> We do not discuss the other subfactors of Facility Utilization because the Superintendent's Plan does not provide any information that shows any improvement on such subfactors.

<sup>36</sup> BOE Policy 6010.

recognized.<sup>37</sup> It is difficult to see how redistricting 7,396 students can have any positive impact on Community Stability.

Generally speaking, residents of the current RHHS district spend time shopping, dining, exercising, and socializing in Clarksville, with local grocery stores, farmers' markets, hardware stores, pools, dining establishments, churches, practice fields, and other establishments on or near Route 108. Within a mile or two of most of these establishments is RHHS. This network of people, establishments, and schools form the basis of the Clarksville/River Hill community, which supports the RHHS students and lends to the current academic achievement and success of RHHS as a whole. The Superintendent's Plan proposes to redistrict 478 students from RHHS to GHS and WLHS and to redistrict 741 students to RHHS from Reservoir High School ("RHS"), WLHS, and Atholton High School ("AHS").<sup>38</sup> This is a net movement of 1,219 students. To put this in perspective, this number comprises 81.9% of the RHHS student capacity of 1488 students. Said another way, this changes the RHHS community by a factor of nearly 82%, increasing distance to school and commute times for a substantial number of students currently districted for RHHS, RHS, and AHS. Accordingly, the Superintendent's Plan tears apart not only the fabric of the RHHS community, but also neighboring communities in RHS and AHS. Many of the other communities in the Superintendent's Plan experience the same negative result.

Additionally, the community issues presented toward the beginning of this letter, including Polygon 1200 being the only DOES polygon to go to WLHS, serve as further examples of the significant detriments to Community Stability caused by the Superintendent's Plan.

The Superintendent's Plan also fails under another subfactor for Community Stability – frequency with which any one student is reassigned.<sup>39</sup> The Superintendent's Plan does not clearly identify how many double moves will be necessary with the opening of High School #13, but surely at least some will be necessary, especially if FARM participation is going to continue to drive school attendance decisions. By negative implication, the Superintendent makes clear that the Superintendent's Plan will not actually balance the FARM proportions across high schools. Rather, the Superintendent states that the Superintendent's Plan makes "progress towards leveling FARM proportions across schools ... and all high schools would be [comprised of] 42% [or less FARM students]." Notably, one study involving Montgomery County, Maryland, finds that optimal results are achieved when there are 20% or less FARM students attending a school, with positive but diminishing returns with up to 30% FARM students. Once the percentage of FARM students reaches or exceeds 35%, there is no improvement.<sup>40</sup>

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<sup>37</sup> Jacobson, R., et al (December 2013). The Growing Convergence of Community Schools and Expanded Learning Opportunities, retrieved at [http://www.communityschools.org/assets/1/AssetManager/ELORReport\\_TheGrowingConvergenceofCommunitySchoolsandExpandedLearningOpportunities.pdf](http://www.communityschools.org/assets/1/AssetManager/ELORReport_TheGrowingConvergenceofCommunitySchoolsandExpandedLearningOpportunities.pdf); Blank, M., et. Al (January 2012). Achieving Results Through Community School Partnerships: How District and Community Leaders Are Building Effective, Sustainable Relationships, retrieved at [https://cdn.americanprogress.org/wp-content/uploads/issues/2012/01/pdf/community\\_schools.pdf](https://cdn.americanprogress.org/wp-content/uploads/issues/2012/01/pdf/community_schools.pdf)

<sup>38</sup> Page 12 of the Superintendent's Plan.

<sup>39</sup> BOE Policy 6010(IV)(B)(2)(c).

<sup>40</sup> Schwartz, *supra*.



Currently, there are 4 high schools in Howard County that are above 35%. The Superintendent's Plan does not reduce those high schools' FARM numbers to below 35%.

Additionally, under the Superintendent's Plan at the high school level, there will be 4 high schools with 38% or higher FARM students, 2 high schools between 25% and 28% (inclusive) FARM students, 3 high schools between 12% and 15% (inclusive) FARM students, and 3 high schools at or below 8% FARM students.<sup>41</sup> Further, in redistricting 7,396 students, the net change in FARM students is only a 5% or less change for 10 of the 12 Howard County high schools, with 2 schools experiencing no measurable change and another 3 schools experiencing only 1% change.<sup>42</sup> Given that the FARM numbers may not be entirely accurate and used for planning purposes only,<sup>43</sup> the net change in FARM students may be even more negligible. Accordingly, there is significantly more redistricting to be done if the driving force in determining attendance area adjustment plans continues to be balancing FARM students among schools. Such efforts will require moving even more than 7,396 students to achieve more balanced results, further vitiating our communities. With such negligible net changes, the driving force of equity in the Superintendent's Plan fails in its essential purpose. Moreover, the Superintendent's Plan places more barriers in front of students than it removes, violating the definition of equity set forth under the Strategic Call to Action—"providing the access, opportunities and supports needed to help students ... by removing barriers to success...."<sup>44</sup>

***Outside of FARM, the Superintendent's Plan has limited effect on the Demographic Characteristics of Howard County students.***

The final primary factor in determining any attendance area adjustment plan under Policy 6010 is Demographic Characteristics of Student Population.<sup>45</sup> While balancing FARM participation among schools is indeed an important subfactor under Demographic Characteristics of Student Population, we will first address the other subfactors at the high school level before focusing in depth on FARM balancing.<sup>46</sup> In viewing the Superintendent's Plan through the other subfactors, there is limited effect, especially in light of the large number of students redistricted to generate such results:

- (1) The racial/ethnic composition of the student population<sup>47</sup>—When evaluating the impact of the Superintendent's Plan, it is seen that racial composition for each race measured at each high school generally remains within 3% of the base, with the exception being "Asian" at AHS, RHHS and WLHS, "Black or African American" at AHS, Long Reach High School, and WLHS, and "White" at AHS and Oakland Mills High School.

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<sup>41</sup> Page 14 of the Superintendent's Plan.

<sup>42</sup> Page 14 of the Superintendent's Plan.

<sup>43</sup> Page 5 of the Superintendent's Plan.

<sup>44</sup> Howard County Public School System (n.d.). Strategic Call to Action, retrieved at <https://www.hcpss.org/scta>.

<sup>45</sup> BOE Policy 6010(IV)(B)(3).

<sup>46</sup> We do not address BOE Policy 6010(IV)(B)(3)(f) because the Superintendent's Plan does not provide substantive information or data on this subfactor.

<sup>47</sup> BOE Policy 6010(IV)(B)(3)(a)

- (2) Academic performance of students in both the sending and receiving schools as measured by current standardized testing results<sup>48</sup>—When evaluating the impact of the Superintendent's Plan, it is seen that Reading and Math PSATs measured at each high school generally remain within 3% of the base, with the exception of AHS, RHHS and WLHS, with AHS dropping 13% and 16%, respectively, RHHS dropping 6% and 9%, respectively, and WLHS increasing 7% and 9% respectively, indicating that the net substantive drop negatively outweighs the net substantive gain among these three schools.
- (3) The level of English learners as measured by enrollment in the English for Speakers of Other Languages (ESOL) program<sup>49</sup>—All proposed percentages measured at each high school show no change from the base.
- (4) Number of students moved, taking into account the correlation between the number of students moved, the outcomes of other standards achieved in Section IV.B. and the length of time those results are expected to be maintained<sup>50</sup>—We do not focus on this subfactor in detail here because the entire focus on Policy 6010 in this letter supports the proposition that the number of students moved does not justify the results, and because the length of time positive results can be maintained is relatively uncertain due to the need for additional redistricting if FARM balancing remains a driving factor.

***While FARM balancing can provide positive benefits, those benefits are tempered by the characteristics of Howard County Public Schools and not likely to be achieved with a forced-busing approach.***

In turning to the FARM balancing subfactor,<sup>51</sup> we want to stress that balancing FARM students among schools (i.e., socioeconomic balancing) is extremely important and can lead to many significant and positive results. The approach taken in the Superintendent's Plan, however, negates those positive results.

When done under the optimal factors, socioeconomic balancing or integration has undeniable positive and substantial effects with little to no measurable downside. In fact socioeconomic integration has been shown to help Black or African American students academically and into adulthood, and, more specifically, causes high school dropout rates to be reduced by up to nearly 15% and decreases the likelihood of living in poverty after graduation by up to 11%.<sup>52</sup> Additionally, socioeconomic balancing has been shown to extend past simply improving graduation rates; it leads to FARM students meeting or exceeding the academic performance of the applicable county, with improvements, in one study, being up to 32%

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<sup>48</sup> BOE Policy 6010(IV)(B)(3)(c)

<sup>49</sup> BOE Policy 6010(IV)(B)(3)(d)

<sup>50</sup> BOE Policy 6010(IV)(B)(3)(e)

<sup>51</sup> BOE Policy 6010(IV)(B)(3)(b).

<sup>52</sup> Johnson, R.C. (August 2015). Long-Run Impacts of School Desegregation & School Quality on Adult Attainments, retrieved at [https://gsppi.berkeley.edu/~ruckerj/johnson\\_schooldesegregation\\_NBERw16664.pdf](https://gsppi.berkeley.edu/~ruckerj/johnson_schooldesegregation_NBERw16664.pdf).



improvement on test scores.<sup>53</sup> As a community, Polygon 1200 has no desire to ignore or prevent the improvements that can be gained from socioeconomic integration.

The forced-busing approach proposed through the Superintendent's Plan, however, will not achieve the optimal or desired results of socioeconomic integration. Accordingly, the BOE must adopt a more measured approach to socioeconomic integration if it truly desires to effect positive change with limited negative impact. Studies showing such positive benefits from socioeconomic balancing attribute such success to better quality teachers and resourced schools with smaller class sizes.<sup>54</sup> All schools in Howard County, however, are excellent, including those having higher FARM rates, as noted by the Superintendent, and all schools have highly, dedicated teachers, comparable opportunities, small class sizes, and excellent rankings.<sup>55</sup> Further, WLHS, one of the lowest performing high schools in Howard County, has a low student to teacher ratio of 13:1,<sup>56</sup> which is better than the student to teacher ratio of 16:1 at RHHS, one of the highest performing high schools in Howard County.<sup>57</sup> Therefore, the high end results of socioeconomic integration will be tempered in the case of Howard County. This is also an important factor for keeping the RHHS community whole and allowing FARM students to join our community.

Forced busing has significant consequences. The beginning of this letter addresses the increased adverse impacts to students associated with longer commute times. While affluent families being redistricted long distances will suffer these effects, so too will FARM students being bused away from community schools in the name of equity. Additionally, the community instability caused by additional travel distances and commute times will further temper positive results. Additional distances and commute times will create a strain on parental involvement; parental involvement has been shown to be a key factor to successful socioeconomic integration.<sup>58</sup> Further, forced integration causes more affluent families to send their children to private schools and move to other neighborhoods,<sup>59</sup> further negatively impacting the community and balance of FARM students across high schools.

Recent case studies in La Crosse, Wisconsin and Wake County, North Carolina show that both districts took a forced-busing approach that led to significant controversy within those

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<sup>53</sup> Hanover Research (February 2013). Impact of Free/Reduced Lunch School Composition on Student Achievement, retrieved at <https://www.gssaweb.org/wp-content/uploads/2015/04/Impact-of-Free-Reduced-Lunch-School-Composition-on-Student-Achievement-1.pdf?fbclid=IwAR2GGH9AqrlzOz-SI0yReZJSLt5hhTZOqMFasH2nRxxe5AeULLOj7W4R4>.

<sup>54</sup> Johnson, *supra*; Hanover Research, *supra*; Reber, S. (June 2007). School Desegregation and Educational Attainment for Blacks [working paper], retrieved at <https://www.nber.org/papers/w13193>

<sup>55</sup> Superintendent Presentation to the BOE on Aug. 22, 2019.

<sup>56</sup> Best High Schools Rankings: River Hill High School, retrieved at <https://www.usnews.com/education/best-high-schools/maryland/districts/howard-county-public-schools/river-hill-high-9131>.

<sup>57</sup> Best High Schools Rankings: Wilde Lake High School, retrieved at <https://www.usnews.com/education/best-high-schools/maryland/districts/howard-county-public-schools/wilde-lake-high-9130>.

<sup>58</sup> Kahlenberg, R. et al (2017). Socioeconomic Integration from an Equity Perspective, retrieved at <https://files.eric.ed.gov/fulltext/ED585403.pdf>.

<sup>59</sup> Clotfelter, C.T. (August 1999). "Are White Still 'Fleeing'? Racial Patterns and Enrollment Shifts in Urban Public Schools, 1987-1996, retrieved at <https://www.nber.org/papers/w7290>; Rossell, C.H., Applied Social Science Research: What Does It Say About the Effectiveness of School Desegregation Plans?, 12 J. Legal Stud. 69, 81 (1983).

communities.<sup>60</sup> While Wake County ultimately failed to achieve an integration plan, La Crosse was ultimately successful after significant community turmoil. La Crosse, however, was limited to redistricting just two high schools, and, therefore, cannot be a guiding light for Howard County and its 12 high schools. Accordingly, the forced-busing approach proposed by the Superintendent's Plan stands to cause significant turmoil to our community. Equal dignity for all Howard County students demands that the BOE take meaningful steps to limit this downside. Further, based on the community opposition we have seen from Polygon 1200 and other neighboring or nearby polygons to the Superintendent's Plan, it is a safe assumption that forced busing to achieve socioeconomic balancing will cause significant community and political unrest in Howard County.

***Choice-based FARM balancing will yield the optimal results while limiting downside risk and supports keeping Polygon 1200 at RHHS.***

Choice-based FARM integration, a more measured approach, gives the FARM students of Howard County the best path to achieving the positive benefits with limited downside. Including FARM students in more affluent communities on a choice basis, without busing children away from those communities, has been shown to achieve the positive results of socioeconomic integration without the downside.<sup>61</sup> More specifically, the Cambridge Public School Board of Education found<sup>62</sup> that choice:

- Promotes academic excellence in all schools;
- Does not limit parents to their neighborhood school, and provides parents with the ability to seek out a location, structure, schedule, and teaching approach that fits with the needs of their students;
- Eliminates the need to redraw boundaries due to changes in housing and demographic patterns;
- Offers parents and students an assurance that if they move to another residence, they will not need to switch schools; and
- Allows the district to monitor class size at each building.

Since its adoption of the "controlled choice" plan, Cambridge has achieved significant improvement in racial balance (84% of students attending racially-balanced schools as of the 2011-2012 school year, an increase from 66%), and strong student achievement (including 90.5% and 88.7% graduation rates for Black or African American students and Hispanic students, respectively).<sup>63</sup> Moreover, Cambridge has seen an increased enrollment in public schools from the private school population,<sup>64</sup> negating the risk of affluent families moving away. Numerous other case studies support the approach taken with Cambridge and show a smooth path to positive socioeconomic integration with little political turmoil through choice-based integration.<sup>65</sup> Additionally, one study done in Montgomery County, Maryland, illustrates that

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<sup>60</sup> Hanover Research, *supra*.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> Learned-Miller, C. (Oct. 14, 2016). Cambridge Public Schools: Pioneers of Equitable Choice, retrieved at <https://tcf.org/content/report/cambridge-public-schools/?agreed=1>.

<sup>64</sup> *Id.*

<sup>65</sup> Kahlenberg, R.D. (Oct. 14, 2016). School Integration in Practice: Lessons from Nine Districts, retrieved at <https://tcf.org/content/report/school-integration-practice-lessons-nine-districts/>.



success generated from socioeconomic integration is achieved through placing FARM students in stable and well-performing communities.<sup>66</sup> The foregoing clearly demonstrates that the best socioeconomic balancing results are achieved by FARM students from high percentage FARM school districts joining strong intact schools and communities with lower FARM percentages, such as RHHS, and not by breaking up communities to give the appearance of balancing on the surface. Accordingly, the desired results of socioeconomic integration start with keeping communities whole and, therefore, keeping Polygon 1200 at RHHS.

Given the benefits of socioeconomic integration through a choice-based model without the downside impact of forced busing, we ask that the BOE reject the Superintendent's Plan, and re-review boundary area adjustments with a more measured approach. Recognizing the benefit of integrating FARM students, we welcome such students into our community and at RHHS with open arms.

***A review of Policy 6010 shows that the Superintendent's Plan does more harm than good, and the BOE should make clear its approach to school attendance area adjustments in order to rebuild community trust.***

As a review of Policy 6010 demonstrates, the Superintendent's Plan largely fails to achieve its goals and creates significant negative effects to the students of Howard County; it is this net effect that vitiates the community's trust in the Superintendent. The Superintendent claims that trust, as well as equity, are two of the four overriding themes of the boundary review process.<sup>67</sup> Trust is earned and maintained through an open process that is based on clear goals. Policy 6010 clearly sets forth the factors to be considered in school attendance area adjustments. As shown in this letter and as indicated by the Superintendent, the Superintendent's Plan is driven by so-called equity to FARM students. According to Policy 6010, this equity is but one subfactor among 14 other subfactors; each subfactor is only to be considered "[w]here reasonable."<sup>68</sup> First, this approach is an effective rewrite of Policy 6010 without going through the public and transparent process of amending Policy 6010 in line with Policy 2020—Development and Adoption. There cannot be trust from the community without transparency. Second, the focus on FARM balancing as done in the Superintendent's Plan is anything but reasonable given the numerous and significant negative impacts that are created and the failure to achieve a meaningful FARM balance. There cannot be trust from the community without reasonableness. Lastly, the Superintendent's version of equity focuses on FARM students and not providing quality education and equal educational opportunities for all children.<sup>69</sup> There cannot be trust from the community without equal dignity for all children.

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<sup>66</sup> Schwartz, *supra*. Note that in this case socioeconomic integration for the students studied was achieved through housing. We do not spend time discussing the positive benefits of socioeconomic integration through housing as it is outside of the BOE's purview. This study is nonetheless relevant because it shows the benefits of placing FARM students in a stable community. Further given the positive effects of community stability, it cannot be assumed that recreating communities through statistics can yield the same results.

<sup>67</sup> Boundary Review Overview Transcript, available at <https://www.hcpss.org/videos/boundary-review-overview/>.

<sup>68</sup> BOE Policy 6010(IV)(B).

<sup>69</sup> BOE Policy 2000 (IV)(B)(2)(e).

We ask that the BOE reject the Superintendent's Plan, restore the trust of the community, take a reasonable and measured approach in the boundary review process in line with the stated BOE Policies, and maintain equal dignity for all Howard County students.

Signed by the following residents of Polygon 1200:

Signature: 

Name: Ryan Pollard

Street: Twelve Hills Rd.

Signature: 

Name: Jennifer Pollard

Street: Twelve Hills Rd.

*[Additional Signatures Follow]*

Signature: Ruy Garcia-Zamor  
Name: Ruy Garcia-Zamor  
Linden Church Rd.  
Street: Clarksville, MD 21029

Signature: Diane Levy  
Name: Diane Levy  
Twelve Trees Ct.  
Street: Clarksville, MD 21029

Signature: Michelle Reuster  
Name: MICHELLE REUSTER  
LINDEN CHURCH RD  
Street: CLARKSVILLE, MD 21029

Signature: Li Feng Pu  
Name: Lifeng Pu  
Twelve Hills Rd  
Street: Clarksville, MD 21029

Signature: Wen Jie Bai  
Name: Wen Jie Bai  
Twelve Hills Rd  
Street: Clarksville, MD 21029

Signature: Sandra S. August  
Name: Sandra S. August  
Street: Linden Church

Signature: Barry T. August  
Name: Barry August  
Street: Linden Church

Signature: Debbie McHale  
Name: DEBBIE MCHALE  
TWELVE HILLS RD  
Street: CLARKSVILLE MD 21029

Signature: Pat McHale  
Name: PAT MCHALE  
TWELVE HILLS RD  
Street: CLARKSVILLE, MD 21029

Signature: Jolene Williams  
Name: Jolene Williams  
Street: Greenberry Lane  
Clarksville, MD 21029



Signature: Melissa Lala

Name: Melissa Lala

Street: Twelve Trees Ct.

Signature: Jennifer Johnson

Name: JJ

Street: Twelve Trees Ct.

Signature: Denise L. Marcotte

Name: Denise L. Marcotte

Street: Linden Church Rd.

Signature: Frank J. Marcotte

Name: Frank J. Marcotte

Street: Linden Church Rd.

Signature: Naina Patel nypatel

Name: Naina PATEL

Street: Twelve Hills Rd

Signature: Bohne Silber

Name: Bohne Silber

Street: Twelve Hills Rd.

Signature: Glenn M. Silber

Name: Glenn M. Silber

Street: Twelve Hills Rd.

Signature: JN Patel

Name: Jigish Patel

Street: Twelve Hills Rd.

Signature: Thach Tran

Name: Thach Tran

Street: Twelve Hills Rd.

Signature: Bichloan Nguyen

Name: Bichloan Nguyen

Street: Twelve Hills Rd.

Signature: E. J. Chapin  
Name: Edward J. Chapin  
Street: Linden Church

Signature: Thu Nguyen  
Name: Thu Nguyen  
Street: Linden Church Rd.

Signature: Tim Drayson  
Name: Tim Drayson  
Street: 12 OAKS CT

Signature: Kathryn Radmer  
Name: Kathryn Radmer  
Street: Twelve Oaks Ct

Signature: Sharon Aehrlein  
Name: Sharon Aehrlein  
Street: 12 Oaks Ct

Signature: Anne Marcotte  
Name: ANNE MARCOTTE  
Street: LINDEN CHURCH

Signature: Tishna Dhalwal  
Name: Tishna Dhalwal  
Street: Twelve Oaks Ct.

Signature: David E. Barlow  
Name: DAVID E BARLOW  
Street: 12 OAKS CT

Signature: Richard Radmer  
Name: RICHARD RADMER  
Street: TWELVE OAKS CT

Signature: Emmanuel Agormedo  
Name: Emmanuel Agormedo  
Street: Altogether Way

Signature: [Signature]

Name: Kristi Sawicki

Street: Northern Bell Way

Signature: [Signature]

Name: Geanie Poek

Street: Catherine Close Rd.

Signature: [Signature]

Name: David Kim

Street: Northern Bell Way

Signature: [Signature]

Name: Mark Mishra

Street: Northern Bell Way

Signature: [Signature]

Name: Jonathan T. Weiner

Street: Altogether Way

Signature: [Signature]

Name: Edward Sawicki

Street: Northern Bell Way

Signature: [Signature]

Name: MARK LEE

Street: CATHERINE CLOSE

Signature: [Signature]

Name: Julia Kim

Street: Northern Bell Way

Signature: [Signature]

Name: DEEPIKA SHUKLA

Street: NORTHERN BELL WAY

Signature: [Signature]

Name: Kate Benjamin

Street: Altogether Way



Signature: [Signature]

Name: Vivica Williams

Street: Greenberry Lane

Signature: [Signature]

Name: ERIC Lupinski

Street: Greenberry Lane

Signature: [Signature]

Name: Sherry Slade

Street: Northern Bell Way  
CLARKSVILLE MD 21029

Signature: [Signature]

Name: William Slad

Street: Northern Bell Way  
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Signature: [Signature]

Name: Robert B. Williams

Street: Greenberry  
CLARKSVILLE 21029

Signature: [Signature]

Name: Burnsly Williams

Street: Greenberry Lane

Signature: [Signature]

Name: Carol Myers

Street: Greenberry Ln.  
21029

Signature: [Signature]

Name: MICHAEL E. SACK  
GREENBERRY, MD  
Street: CLARKSVILLE, MD 21029

Signature: [Signature]

Name: Elin Bahen

Street: Greenberry Lane  
CLARKSVILLE, MD 21029

Signature: [Signature]

Name: Jeffrey Bahen

Street: Greenberry Ln

CLARKSVILLE, MD 21029

Signature: [Signature]

Name: Joe A. Levy

Street: Twelve Trees Ct.

Signature: [Signature]

Name: Kevin McLaughlin

Street: Twelve Trees Ct

Signature: Penny McLaughlin

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Name: Kevin McLaughlin

Street: Twelve Trees Ct

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Name: Justin Rosenberg

Street: Twelve Trees Ct.

Signature: [Signature]

Name: Chris Lee

Street: Twelve Trees Ct

Signature: [Signature]

Name: Jennifer Rodell

Street: Twelve Hills Rd.

Signature: [Signature]

Name: Matthew Rodell

Street: Twelve Hills Rd.

Signature: [Signature]

Name: Robert Flack

Street: Linden Church Rd,

Signature: [Signature]

Name: Nora Flack

Street: Linden Church Road

Signature: [Signature]

Name: Brandy Naecker

Street: Linden Church Rd  
Clarksville MD 21029

Signature: [Signature]

Name: Rachel Skolnick

Street: Red Maple Way

Signature: [Signature]

Name: Aaron Skolnick

Street: Red Maple Way

Signature: [Signature]

Name: James Reuster

Street: Linden Church Rd  
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Signature: [Signature]

Name: MINA STEDMAN

Street: Twelve Oaks Ct.  
Clarksville, MD 21029

Signature: [Signature]

Name: C. Douglas White

Street: Linden Church Rd  
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Signature: [Signature]

Name: Carol S. White

Street: Linden Church Rd.  
Clarksville, MD 21029

Signature: [Signature]

Name: Ramankir Dhaliwal

Street: Twelve Oaks Ct.  
Clarksville, MD 21029

Signature: [Signature]

Name: KHEZIR AHMED

Street: LINDEN CHURCH RD, CLARKSVILLE MD  
21029

Signature: [Signature]

Name: Edward Lee

Street: Northern Bell Way  
Clarksville MD 21029



Signature: Lynne W. Trench

Name: Lynne W. Trench

Street: Linden Church Rd

Signature: Anna Trench

Name: Annalyn Trench

Street: Linden Church Road

Signature: Joanna Benedict

Name: Joanna Benedict

Street: Red Maple Way

Signature: Robert Williams

Name: Robert Williams

Street: Greenberry Ln

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Name: DOUGLAS FREESLAND

Street: 12 HILLS RD

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Name: DAMIAN DOUGAND

Street: Greenberry Road

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Name: GARNET E. PAXSON

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Signature: George L. Divil

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Signature: Wendy Wang

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Signature: Will Slade

Name: Will Slade, Sr.

Street: Greenberry Ln

Signature: Megan

Name: Megan Preisinger

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21029

Signature: Douglas G. Preisinger

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Street: Greenberry Lane

Signature: Zita Slade

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Signature: Joanna Benedict

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Street: Red Maple Way

Signature: Rachel Skolnick

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Signature: Jonathon L. Murrell

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Name: Jeffrey S. Gesell  
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Name: Kadie Derby  
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Name: Crystal Jenkins  
Street: Chapel Chase Dr

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Name: MATTIEU DERBY  
Street: CHAPEL CHASE DR

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Name: Erkan Hassan  
Street: chapel chase Dr

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Name: Christopher Gesell  
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Name: Cynthia Sambataro  
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Name: Alan Weiner  
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Name: Eugene A. Sambataro  
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Name: FRANCIS BURNS

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Signature: Stephanie Burns

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Signature: Jim Kaberle

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Signature: Anna Fink

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Signature: Harry Fink

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Signature: Michael J. Mantua

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Signature: B. Hlasko

Name: BLANDYNA HLASKO

Street: Red Maple Way

Signature: Jeffrey Regis

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Street: CHAPEL CHASE DR

Signature: Kathleen G. Rogers

Name: KATHLEEN ROGERS

Street: CHAPEL CHASE DR

Signature: A. Emerald

Name: ASHKAN EMADI

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Name: Brandy Naecker

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Clarksville MD 21029

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Name: Marius Julian Neflin  
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Signature: mbromy  
Name: Maggie A. Bromy  
Street: Twelve Hills Rd.

Signature: MA  
Name: MARCELA NEFLIU  
Street: LINDEN CHURCH Rd.

Signature: SB  
Name: Sally Bromy  
Street: Twelve Hills Rd

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Signature: Mr Mt

Signature: \_\_\_\_\_

Name: BRUCE BRYANT

Name: \_\_\_\_\_

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Signature: \_\_\_\_\_

Name: Robert Zatkowski

Street: Chapel Chase Drive

Signature: \_\_\_\_\_

Name: Jennifer Zatkowski

Street: Chapel Chase Dr

Signature: \_\_\_\_\_

Name: Kathy Deibler

Street: Chapel Chase

Signature: \_\_\_\_\_

Name: Kenneth Deibler

Street: \_\_\_\_\_

Chapel Drive

Signature: \_\_\_\_\_

Name: Dr. Kika Ndu

Street: \_\_\_\_\_

Chapel Chase Drive

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

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Street: \_\_\_\_\_

Chapel Chase Drive

Signature: \_\_\_\_\_

Name: SHANKAR KUPPUSWAMY

Street: \_\_\_\_\_

CHAPEL CHASE DR

Signature: \_\_\_\_\_

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## **Attachment A**

There are four Figures following this Attachment A. Each Figure utilizes a section of the Superintendent's proposed boundary area map and Polygon 1200 is outlined in red. A summary of the Figures is as follows:

- Figure 1 – Depicts the fastest route using highways from Polygon 1200 to WLHS. This route requires the students of Polygon 1200 to drive through three other school districts to get to WLHS, and requires a driving distance of 9.8 miles and an estimated bus time of over one hour.
- Figure 2 – Depicts the fastest route without using highways from Polygon 1200 to WLHS. This route requires the students of Polygon 1200 to drive directly in front of the entrance to RHHS, and requires a driving distance of 9.9 miles and an estimated bus time of over one hour.
- Figure 3 – Depicts the land island effect on Polygon 1200 under the Superintendent's Plan. Driving to neighboring Polygons 1183 or 2183, which are to the North of Polygon 1200 and slated to go to WLHS, using the fastest route requires using highways, and requires a driving distance of 7.7 miles and estimated drive time of 12 minutes. Driving to neighboring Polygon 3176, which is to the South East of Polygon 1200 and slated to go to WLHS, using the fastest route requires using highways, and requires a driving distance of 5.9 miles and estimated drive time of 11 minutes.
- Figure 4 – Depicts the land island effect on Polygon 1200 under the Superintendent's Plan. Driving to neighboring Polygons 208, 203, 202 and 200, which are to the West of Polygon 1200 and slated to go to GHS, requires using directly connecting roads, and requires driving distances and times of approximately 2.2 miles and 5 minutes, 1.1 miles and 3 minutes, 0.6 miles and 2 minutes, and 0.4 miles and 1 minute, respectively.



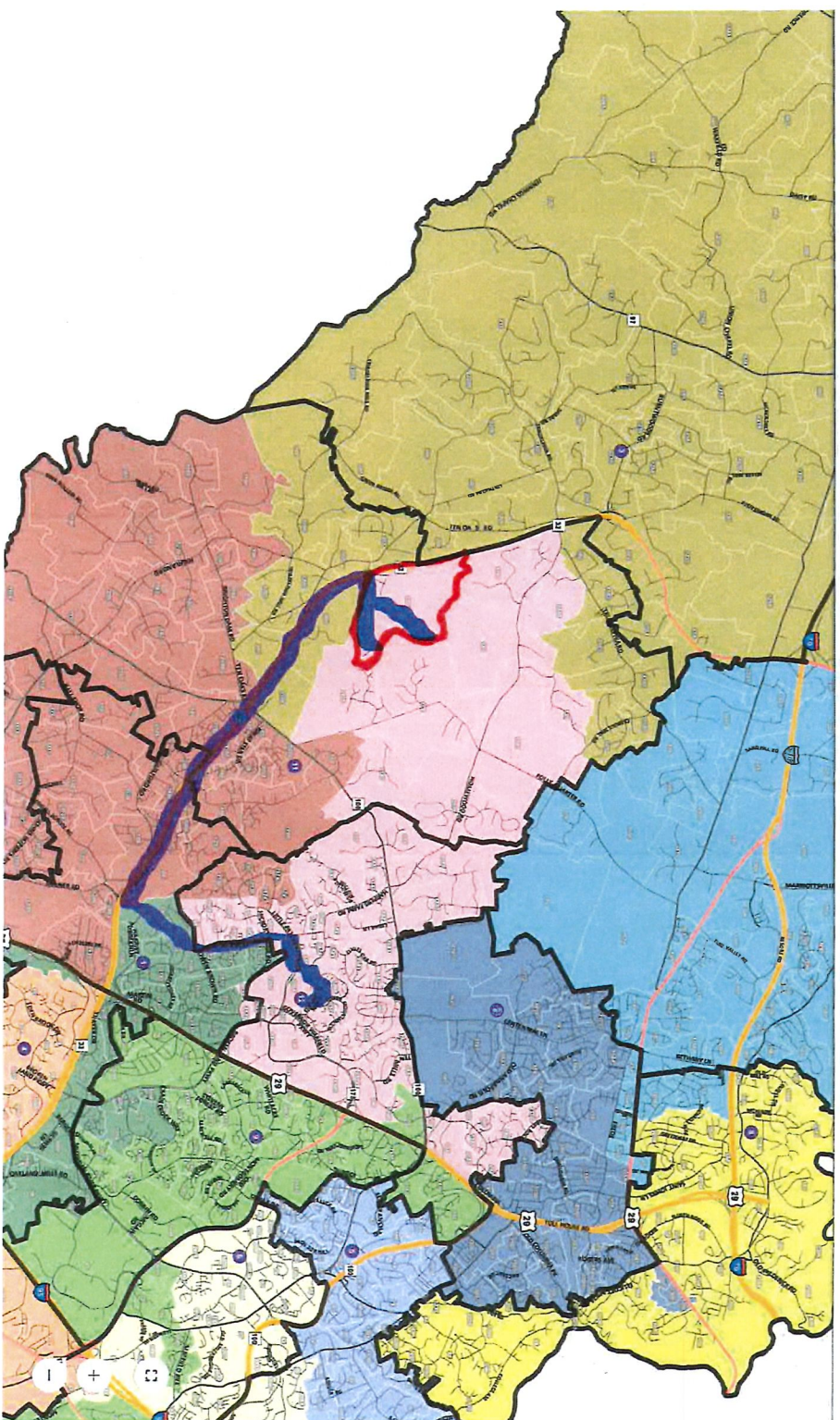


Figure 1







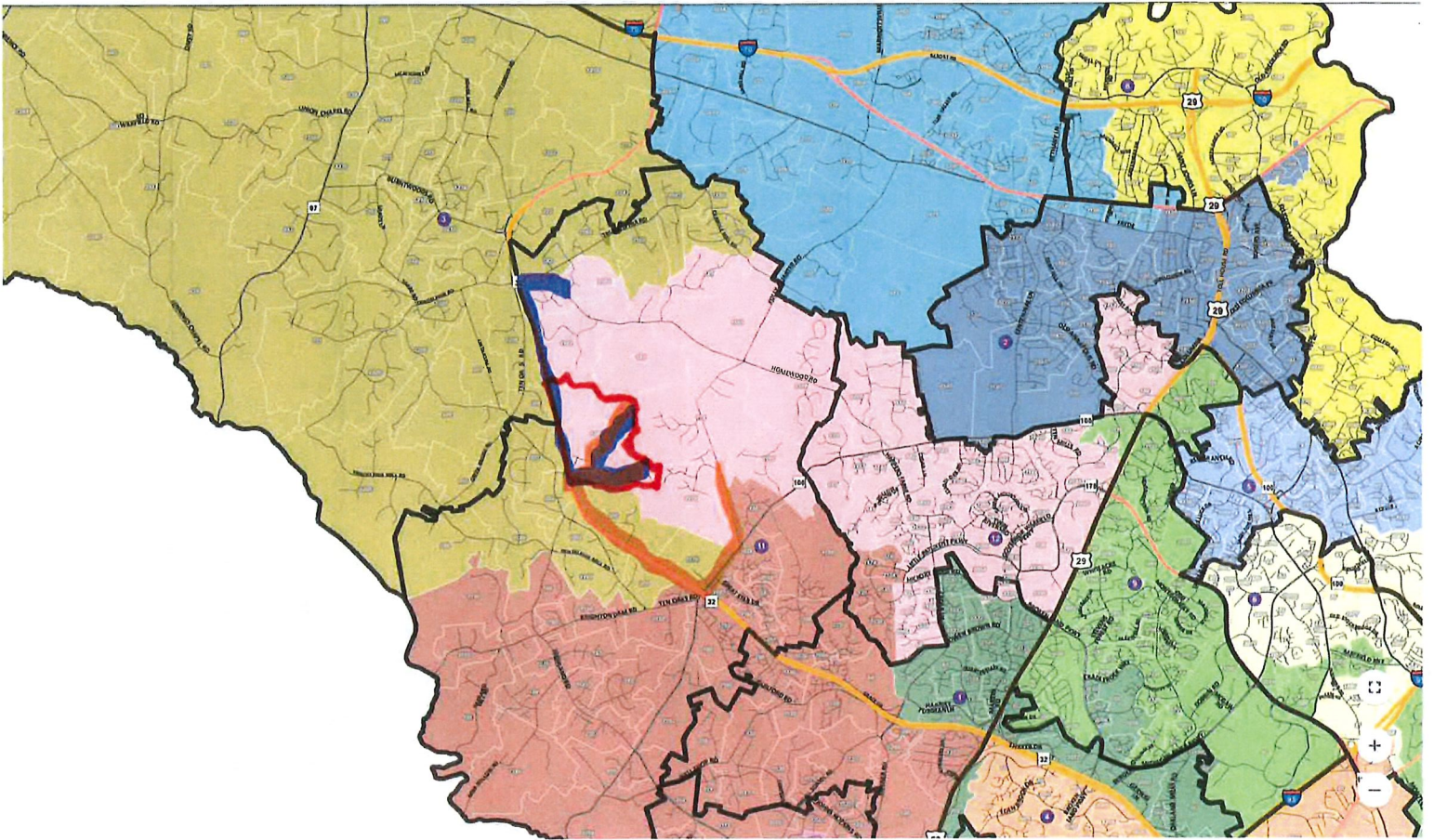


Figure 3



Figure 4

