



**Testimony of the National Fair Housing Alliance  
on Council Bill 22-0195 – Inclusionary Housing for Baltimore City**

Committee of the Whole Hearing, November 15, 2022

This testimony on CB 22-0195, Inclusionary Housing for Baltimore City, is submitted on behalf of the National Fair Housing Alliance (NFHA). NFHA is the country's only national non-profit civil rights agency solely dedicated to eliminating all forms of housing discrimination and ensuring equitable housing opportunities for all. NFHA does this by providing leadership, education, outreach, advocacy, community development, enforcement, and services to our membership. NFHA is also the trade association for more than 170 fair housing organizations throughout the U.S. Two of these are located in Baltimore: the Fair Housing Action Center of Maryland, and the Baltimore City Office of Equity and Civil Rights.

**Inclusionary Housing and Fair Housing**

As the Council considers adoption of a new inclusionary housing ordinance, NFHA encourages you to keep in mind the fair housing implications of such an ordinance and to ensure that it is structured and implemented in a manner that will affirmatively further the City's fair housing goals. The obligation to affirmatively further fair housing (AFFH), which is articulated in the 1968 federal Fair Housing Act, applies to Baltimore and to all jurisdictions that receive federal funding for housing and community development activities.

The U.S. Department of Housing and Urban Development (HUD) is the federal agency in which Congress vested rulemaking and enforcement authority under the Fair Housing Act. Under that rulemaking authority, HUD has adopted the following definition of affirmatively furthering fair housing:

*Affirmatively furthering fair housing means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially or ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a program participant's activities and programs relating to housing and urban development.<sup>1</sup>*

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<sup>1</sup> See <https://www.regulations.gov/document/HUD-2021-0031-0001>.

Several elements of this definition are particularly relevant for the Council's current deliberations. First is the obligation to take **meaningful actions** to advance fair housing goals. This requires the Council and city agencies to evaluate the fair housing implications of its housing and community development programs and to structure them in a way that will maximize their impact. The experience under Baltimore's previous inclusionary housing bill was disappointing. Delivering only 37 units in a 15-year period, it failed to have a meaningful impact on the housing needs of the community. CB 22-0195 offers a more promising path.

Second is the obligation to **address significant disparities in housing needs and in access to opportunity**. This element of the definition recognizes that where a person lives has a tremendous impact on the resources and amenities available to them; that a home is much more than a roof over one's head, it is the key to many of the opportunities one has in life. It also recognizes that a host of discriminatory policies and practices – carried out by government at all levels and by the private sector, some of which continue to this day – have led to significant disparities in the way that resources and amenities have been allocated. The result is that people living in different neighborhoods do not always have access to similar resources and amenities, and therefore face inequities in the kinds of opportunities available to them. To create the kind of fair and equitable communities that enable all Baltimoreans to thrive, the city must take steps to eliminate disparities in housing needs and access to opportunity. A strong inclusionary housing program can be one such step.

The mandate to **replace segregated living patterns with truly integrated and balanced living patterns** is another element of the AFFH definition that is relevant to the Council's consideration of this inclusionary housing proposal. Like many cities in the US, and for the reasons described above, Baltimore must grapple with the fact that the city is highly segregated on the basis of race. This is evident in the somewhat notorious "Black butterfly" and "White L" residential patterns documented by Morgan State University professor Lawrence T. Brown. A well-designed and well-executed inclusionary housing program can be one element in an effective strategy to overcome the segregated living patterns so starkly evident in Baltimore and to facilitate more integrated and balanced living patterns.

It is also important to be mindful of the provision in HUD's AFFH definition that notes that **the duty to affirmatively further fair housing extends to all of a program participant's activities and programs relating to housing and urban development**. When Baltimore, or any other participant in HUD programs, accepts federal dollars for housing and urban development, it also assumes the obligation to affirmatively further fair housing. However, that obligation is not limited to those federal funds. It applies to all of Baltimore's housing and urban development activities and programs, including those funded through other sources and including those that are not funding programs at all, but that leverage the city's zoning, land use and other powers, city-owned property and other resources controlled by the city. This inclusionary housing proposal falls squarely within the bounds of activities and programs to which AFFH applies.

Finally, we note that all of HUD's program participants, including the City of Baltimore, must certify to HUD that they will affirmatively further fair housing as that term is defined in HUD's regulations. This certification is required in conjunction with the program participant's periodic (three- to five-year) Consolidated Plan, and it is required on an annual basis as a condition for receiving Community Development Block Grant and other HUD funds. Certification is not simply a bureaucratic, check-the-

box affair without consequence. Should HUD find that a program participant's AFFH certification is not valid, it has a range of tools it can apply to bring about compliance.

### **Housing needs and disparities in access to opportunity: Baltimore's 2020 Analysis of Impediments**

In 2020, Baltimore City participated in a regional fair housing planning process with other jurisdictions in the metropolitan area. The resulting Analysis of Impediments to Fair Housing Choice (AI)<sup>2</sup> provides an extensive analysis of residential patterns, housing costs and supply, and various factors associated with access to opportunity throughout the region and for each of the participating jurisdictions. Among other things, the AI analyzed the number, geographic distribution and demographic characteristics of households experiencing severe housing cost burdens (meaning that these households spend 50 percent or more of their incomes on housing) in the region. Of the nearly 150,000 households with severe housing cost burdens in the region, the largest share – some 52,000 – reside in Baltimore City. As the report notes, “From an economic perspective, the region and jurisdictions will want to mitigate cost burden to allow households to invest in the local economy—through direct spending on goods and services, as well as investments in education, health, and well-being of their families. These investments bolster local revenues, increase job readiness, help renters become homeowners, lower the public costs of eviction and foreclosure, and, most importantly, increase the economic opportunity for children.”<sup>3</sup>

Looking more closely at the demographic characteristics of the severely cost burdened households in the Baltimore City, the report found that households of color, and Black households in particular, bear this burden disproportionately when compared to their White counterparts. 16 percent of White households in Baltimore City are severely cost burdened. For both Hispanic and Asian or Pacific Islander households the share is 20 percent. Black households have the largest share who are severely cost burdened: 25 percent. The degree to which households in Baltimore bear severe housing cost burdens and the disproportionate extent to which that burden falls on households of color, especially Black households, underscores the urgency of increasing the supply of affordable housing in the City. This should be an important element of Baltimore's strategy to affirmatively further fair housing.

The AI's analysis of the factors associated with access to opportunity also flagged a number of areas in which there are notable racial disparities in the region, including in Baltimore City.<sup>4</sup> These included factors related to access to quality schools, exposure to environmental hazards such as poor air quality and lead, and residents' ability to access quality jobs, among others. Based on the disparities identified in the report, it is clear that Baltimore's fair housing strategy must not only include expanding the supply of affordable housing units, but the importance of creating those units in areas that have well-performing schools, good access to well-paying jobs, a healthy environment, and similar characteristics that enable residents to thrive.

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<sup>2</sup> Root Policy Research, “2020 Analysis of Impediments to Fair Housing Choice in the Baltimore Region.” Created 6/22/20 for the City of Annapolis and the Housing Authority of the City of Annapolis; Anne Arundel County and the Housing Commission of Anne Arundel County; **City of Baltimore and the Housing Authority of Baltimore City**; Baltimore County; Baltimore Metropolitan Council (BMC); Harford County and the Havre de Grace Housing Authority; and Howard County and the Howard County Housing Commission (emphasis added). Available at [https://www.baltometro.org/sites/default/files/bmc\\_documents/general/community/analysis-to-impediments/2020\\_RegionalAI\\_final.pdf](https://www.baltometro.org/sites/default/files/bmc_documents/general/community/analysis-to-impediments/2020_RegionalAI_final.pdf).

<sup>3</sup> Id., Section V. pp. 3-4.

<sup>4</sup> Id., Section IV

### **Importance of inclusionary housing as a strategy to advance fair housing goals**

It is clear that Baltimore needs more affordable housing, and it needs more affordable housing located in neighborhoods with plentiful resources and amenities. The question, then, is how to achieve this goal? There is no single solution, but a strong, effective inclusionary housing program can be an important element in a strategy to address this need. An inclusionary housing program uses tools at the city's disposal – such as zoning and land use controls – to leverage the resources in the private market and create new affordable housing in resource-rich areas. To the extent that these new affordable units are made available to people who would not otherwise have access, that is, to members of protected classes under the Fair Housing Act, an inclusionary housing program can be an important tool to advance the city's fair housing goals. An inclusionary housing program can help alleviate severe housing cost burdens for households who gain access to the new units, and administered properly, it can help replace segregated living patterns with balanced, integrated living patterns – two elements of the definition of affirmatively furthering fair housing.

It is not surprising then, that one of the goals included in the City's 2020 AI was to “reform the Inclusionary Housing Law (IHL) so that it more effectively produces affordable housing opportunities.”<sup>5</sup> Recognizing the flaws that undermined the success of the earlier IHL and its impending sunset date, the AI further sets out the need to stop the sunset of the law, evaluate its effectiveness, make recommendations for legislative improvements and revise program guidelines and processes by which the law is implemented.<sup>6</sup> Unfortunately, it is too late to fulfill the AI's goal of making these changes and adopting a new IHL before the previous version expired. However, the City now has the opportunity to adopt and begin implementing an improved inclusionary housing law, and NFHA urges it to do so.

### **Key elements of successful inclusionary housing ordinances**

The proposed ordinance currently under consideration has several key elements. It applies to housing developments that receive a special, local tax credit, the High Performance Tax Credit, or other substantial public subsidy from the City. In any such developments with 20 or more units, the developer would be required to set aside ten percent of the units and make them affordable to households at or below 60 percent of the area median income. The City would have the opportunity to provide additional subsidy funds, and in cases where those funds are applied, the development would make another five percent of the units available to households at or below 30 percent of area median income.

While every jurisdiction's inclusionary housing program may be unique, the basic elements of Baltimore's proposed new inclusionary housing program are consistent with those that have been implemented successfully elsewhere. According to the Grounded Solutions Network, which has collected information on 1,019 inclusionary housing programs in 174 jurisdictions, “The most productive programs share certain features: they are mandatory, offer incentives, allow developers flexibility with multiple options for compliance, and require long-term affordability.”<sup>7</sup> The proposed bill before the Council hits these marks. It is mandatory for a defined set of housing developments (those receiving the High Performance Tax Credit or other substantial public subsidy), the tax credit or other substantial

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<sup>5</sup> Id., Section X, p. 19.

<sup>6</sup> Id.

<sup>7</sup> Reyes, Stephanie and Ruoniu Wang, “Inclusionary Housing: Secrets to Success,” *Shelterforce*, March 10, 2021. Available at <https://shelterforce.org/2021/03/10/inclusionary-housing-secrets-to-success/>.

public subsidy constitute an important incentive, and it requires long-term affordability. Grounded Solutions' research found that the most successful inclusionary housing programs target households with incomes between 51 and 80 percent of area median, as appropriate for the particular jurisdiction, and that they provide subsidy for serving households with lower incomes. Baltimore's proposed ordinance does both, setting an upper income limit for the affordable units at 60 percent of area median and providing additional subsidy for units available and affordable to those at or below 30 percent of area median income. Grounded Solutions also noted that while some jurisdictions provide developers flexibility with respect to compliance, such as payment of fees in lieu of units on-site, such an approach may be at odds with efforts to ensure the new affordable units are actually located in well-resourced neighborhoods. Given the importance of such efforts in Baltimore, it makes sense to exclude that kind of alternative means of compliance from the Baltimore City ordinance. Based on these considerations, NFHA recommends that the Council pass CB 22-1095, Inclusionary Housing for Baltimore City, with amendments offered by Council Member Ramos.

### **Recommendations for maximizing impact of Baltimore's inclusionary housing program**

CB 22-1095, with the amendments offered by Council Member Ramos, holds promise for helping to reduce severe housing cost burden for Baltimore families and for mitigating the city's segregated housing patterns. Council must act further, however, to ensure that the program can achieve its full potential. These additional steps include the following:

1. **Preserve a strong affordability requirement – no rental units above 60% AMI.** The 60% AMI limit (\$55,740 for a family of two) contained in the bill is based on a *regional* assessment of income. Average incomes in Baltimore City are already much lower than those in the region. 60% AMI allows frontline workers and people who use vouchers to access the affordable units. Raising this threshold to 80% AMI would place those units beyond the reach of voucher holders and many frontline workers.
2. **Maintain strong oversight and accountability.** The bill's provisions for an inclusionary housing board should be preserved. Baltimore's prior inclusionary law, which failed to produce the number of affordable units desired, suffered from weak oversight and implementation. This bill provides an opportunity to correct the earlier flaws, and a robust board is needed to maintain transparency and accountability.
3. **Require units to be provided on-site.** CB 22-0195 creates affordable housing opportunities that are integrated into amenity-rich communities. Allowing developers to opt out of the law by paying into a fund would facilitate the creation of affordable units that are not well integrated into communities – thereby repeating the mistakes of the City's prior history of subsidizing segregated affordable housing.
4. **Maintain strong affirmative marketing requirements.** Creating new affordable housing in neighborhoods with abundant amenities and resources will not help further the city's fair housing goals, including the goals of reducing segregation and creating balanced and integrated communities, if people who have historically been excluded from such opportunities do not know about and have the chance to access the new units. This requires affirmative outreach to those residents who might not otherwise be able or likely to apply. Affirmative marketing is a standard requirement of federally supported housing, and done correctly, is consistent with the non-discrimination requirements of the federal Fair Housing act. Sponsor amendments will

ensure that developers affirmatively market the affordable units to groups that have historically been excluded from the benefits of new development and then hold the developers accountable for doing so.

Through its High Performance Tax Credit program and other substantial public subsidies, Baltimore devotes considerable resources to spur the development of new housing in the city: \$73 million through the tax credit alone between 2014 and 2023. It makes sense for the City to maximize the impact of these dollars and ensure that they help address its goals of reducing housing costs for over-burdened residents and creating a more equitable city, one where all residents can thrive. CB 22-0195, with the amendments offered by Council Member Ramos, offers one way to accomplish these multiple, mutually-reinforcing goals, and **NFHA urges the Council to issue a favorable report on the bill as amended.**

Thank you for the opportunity to submit these comments. If you have questions or need more information about any of our recommendations, please contact Debby Goldberg, NFHA's Vice President for Housing Policy and Special Projects at [dgoldberg@nationalfairhousing.org](mailto:dgoldberg@nationalfairhousing.org).