

# Community Controlled Housing for Massachusetts: Securing Affordability for the Long Term



An Action for Regional Equity Case Statement  
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*PolicyLink is a national nonprofit research, communications, capacity building, and advocacy organization dedicated to advancing policies to achieve economic and social equity based on the wisdom, voice, and experience of local constituencies.*

*Action for Regional Equity (Action!) is a coalition of 20 Massachusetts organizations united to advocate for economic and social equity and working to address critical development challenges facing the Commonwealth.*

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# Community Controlled Housing for Massachusetts: Securing Affordability for the Long Term

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## Introduction

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Massachusetts is one of the most expensive places to live in the United States. In recent years, the state government has asked each community in the Commonwealth to examine its ability to serve its lower income members, and generally to increase production of housing for people at or below 80 percent of median income (for Massachusetts, \$60,560 for a family of four), particularly in communities that lagged in maintaining their share of affordable units. But these efforts have not been enough to reduce the housing crisis in the state. People of low, moderate, and even middle incomes are threatened by displacement every day, as the buildings they live in are bought and converted to condominiums or luxury rentals. Neighborhoods and communities that were once categorized as "working class" or "less desirable" are experiencing intense market pressures, as new transit stops and other improvements attract people to these communities. For people of color and new immigrants displaced by these housing trends, discrimination adds an additional challenge to accessing housing opportunities.

Action for Regional Equity (Action!) seeks strategies to protect and provide affordable housing and catalyze neighborhood improvement and economic development to benefit all members of Massachusetts communities, now and into the foreseeable future.

This study examines the means by which long-term affordable housing is currently being preserved in Massachusetts, and especially in Greater Boston. It highlights some current and past efforts to acquire unregulated or market-rate housing and land for community control. Researchers spoke with more than 25 diverse experts on affordable housing development in Massachusetts and reviewed a sample of the available literature. It draws on experiences in other states, and identifies a range of advocacy, educational, financial, and other tools to build the inventory of community controlled housing in Massachusetts. The focus of the research was on strategies that meet the needs of people at or below 80 percent of median income (\$60,560 for a family of four), with a particular interest in strategies that achieve affordability for people at or below 50 percent of median income (\$37,850 for a family of four).

Action! recommends immediate efforts in three arenas to advance the creation of community controlled housing.

### **I. Move 10,000 units of unregulated or expiring-subsidy housing into nonprofit or cooperative tenant ownership by 2015.**

Research reveals growing support from advocates and

**Community Controlled Housing:** Action! has adopted the term "community controlled housing" to mean housing that is owned by nonprofit organizations, tenants' cooperatives, or a combination of the two. In community controlled housing, affordability is ensured for the long term: developer fees and overhead are limited; sales prices on the ownership units are restricted; and community members are involved in the ownership or regulation of the housing. Action! adopted this term to encapsulate the goals of increasing the supply of affordable housing in Massachusetts communities, ensuring that housing will remain affordable as development pressures continue to drive up real estate costs in our communities.

elected officials for nonprofit and tenant acquisitions strategies. This level of commitment from the Commonwealth will allow Massachusetts to compete with other states in the region and elsewhere that offer comparable quality of life with much greater affordability. Numerous effective strategies are detailed in this report that will allow the state to pursue this goal aggressively. No single strategy will solve this crisis.

## **II. Advance the conversion goal through a broad-based community education campaign focused on the benefits of community controlled housing.**

Massachusetts has a history of organizing and advocacy for community or tenant controlled housing, but there has not been a recent broad-based campaign that specifically focuses on the mounting public need and opportunities to promote community controlled housing. A larger, more coordinated campaign can strengthen and expand current effective efforts.

## **III. Structure support to enable tenant and nonprofit ownership.**

Successful community controlled housing examples exist in many local communities, but structures that support the finance and operation of community controlled housing are currently limited. Action! will work with state and local government to structure financial and legal resources, and build the base of supporters who can effectively advance community controlled housing, including residents of such housing, tenants at risk, and their allies.

## The Housing Crisis in Massachusetts

**High Cost.** In 2004, Greater Boston had the highest cost of living of any metropolitan area. Monthly housing costs are one of the biggest factors (rivaled only by child care) in a Boston family's total monthly budget. Other parts of Massachusetts are not far behind. Average monthly housing costs for a family of four in the Boston, Lowell, and Brockton areas exceed monthly housing costs in New York City, Minneapolis, and Chicago.<sup>1</sup>

Massachusetts was the only state in the nation to lose population in 2004, particularly among those ages 20–24. Housing costs are a factor in attracting and retaining employees. These costs have continued to climb, eroding affordability for both renters and homeowners. The *Greater Boston Housing Report Card* documents that, overall, Boston area renters fared worse in 2004 than at the "peak of the market" in 2001. In 18 out of 20 Boston area cities and towns, median advertised rents for two-bedroom apartments exceeded the recommended federal standard of 30 percent of the median renter income. In the lowest income communities (Revere, Boston, and Chelsea), families earning the median renter income had to pay 47, 50, and 54 percent of their earnings, respectively, to afford the median advertised rents. In eight out of 15 Boston neighborhoods, tenants earning the median renter income needed to

pay at least half of that income for the median rent. The number of communities where the median single family home was affordable to a family earning that community's median household income dropped from 92 percent in 1998 to 17 percent in 2004. Boston area home prices increased more than 37 percent between 2001 and 2004. Simply put, rents and home prices increased faster than incomes.<sup>2</sup>

**Limited Production.** *The Housing Report Card* notes that the slight overall housing production increases in 2004 are below what is needed to bring housing costs in line with household incomes.<sup>3</sup> This suggests that the slow pace of construction in Massachusetts will most likely result in only a modest decline in overall rents and a leveling off of housing price appreciation.

Building permits issued in Greater Boston communities increased by 12 percent overall from 2003 to 2004, but more than half of those 13,556 permits were for single-family homes. New single-family production is increasing at the edges of the region, with age-restricted housing (i.e., for people 55 or over) contributing significantly to that inventory. Multifamily housing production continues to be concentrated in Boston and in the other cities in the region.

2 Parents / 2 children	Boston	Washington	Lowell	Brockton	New York City	San Francisco
Monthly Housing Cost	\$1266	\$1187	\$1102	\$1086	\$1075	\$1539
Monthly Total Cost	\$5388	\$5120	\$5103	\$5076	\$4888	\$4802

Note that San Francisco's monthly housing costs exceed all, including Boston, but San Francisco's total monthly costs are lower, due to considerably lower childcare and tax costs. *Source: Economic Policy Institute Family Budget Calculator*

While federal funding for housing in Massachusetts increased from 1989 to 2002, it declined by nearly four percent from FY2004 to FY2005. Total state spending on affordable housing remains 10 percent below 2002 levels, and at roughly half of what it was in 1989. While nearly 2,000 affordable units were added in 2004 (a six percent increase over 2003), much of this production targets those earning 70 to 80 percent of median income, failing to reach the lowest-income households.<sup>4</sup>

**Loss of affordable units.** People find affordable housing in Massachusetts in subsidized and non-subsidized units, in rental properties, in homeownership opportunities, and in the limited pool of community controlled housing. Some affordable units are lost when subsidies used to support the housing expire. Advocacy and financing efforts have helped to preserve some "expiring use" properties—sites where subsidies and affordability restrictions are ending—as affordable housing. There are also properties where unsubsidized rents have been relatively low (in some cases, with poor conditions and "benevolent neglect" allowing for overcrowding, and fear of eviction preventing people from speaking up about habitability problems). Affordability is also lost when owners of affordable properties take advantage of a rising real estate market or as elderly owners of unsubsidized affordable units pass away.

Condominium conversion, particularly in older properties, is a concern in cities like Boston and Cambridge. The city of Boston reports nearly 1,000 two- to four- family properties converted to condominiums from 1999 to 2004.<sup>5</sup> Investor-owned condominiums have dramatically increased in recent years in places like Boston and Cambridge, with units reportedly being rented out to students or young professionals paying high rents. Experts interviewed for this report hypothesize that 50 percent or more of Boston and Cambridge condominiums are investor-owned.



**Long-Term Affordable Housing Controlled by Nonprofit Interests.**

Wheatland Street Condominiums involved the adaptive reuse and expansion of a piano factory, and includes eight affordable homeownership units ranging from one to three bedrooms. *Source: Somerville Community Development Corporation*

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**Ownership Changes Trigger Rent Hikes and Displacement:**

*Gardencrest, a 696-unit rental development went up for sale in Waltham in 2001. Roughly one-third of the residents responded to a survey by the nonprofit developer, Waltham Alliance to Create Housing (WATCH). The survey showed that 70 percent of the households had incomes below \$50,000; 46 percent had incomes below \$35,000. The average tenancy was 10 years and the average rent was \$958 per month. When Gardencrest's elderly owner passed away, his children sought a price of approximately \$175,000 per unit at sale. WATCH offered \$100,000 per unit, plus the*

*value of a "bargain sale" in which the owners would claim a percentage of the property's sales value as a tax-exempt donation to the nonprofit. WATCH staff estimate that the value of their offer including the tax break, was closer to \$117,000 per unit. The realtor chastised WATCH for effectively slowing down the process and quite possibly discouraging other bidders with their organizing and purchase efforts. The owners refused WATCH's offer. The property was eventually sold for \$122,000 per unit, to a large out-of-town entity. WATCH staff report that rents rose significantly, vacancies increased, conditions deteriorated and a very cohesive community was lost. To deter the displacement, WATCH began organizing anew at Gardencrest and negotiated a cap on rent increases of no more than five percent a year for four years.<sup>6</sup>*

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Stories of rising prices and missed opportunities raise several critical questions: What is being done in Massachusetts and elsewhere to protect or recoup the loss of units through sales and removal of restrictions? What else can be done to preserve affordable homes? If there is some softening in the overall real estate market, is now a good time to capture some of this market shift for those most in need? Interviews conducted for this study revealed a number of efforts to capture unregulated housing and produce affordable community controlled housing, as summarized in the next section.

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## Potential Actions

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### Preserve and Develop Affordable Housing for the Long Term

Several steps will be required to move more housing into nonprofit and community control. It will require renewed cooperation of the public, private, and nonprofit sectors.

#### 1. Organize for Affordability

Across the state, tenants have organized against displacement and for affordable housing. In the Boston area, City Life/Vida Urbana has helped tenants employ a collective bargaining strategy on a building-by-building basis to negotiate specific agreements with landlords who have proposed large rent increases. A similar model has been followed by several community development corporations (CDCs). In a number of cases, CDCs worked to acquire buildings and were outbid, but ultimately helped the tenants negotiate caps on rent increases for limited time periods. In general, these agreements are providing relief, but they are typically short term (three to five years), and do not remove the threat of future increases.

#### Collective Bargaining as an Organizing Strategy:

Steve Meacham of City Life/Vida Urbana, cites collective bargaining as an "immediate, organizing, movement-building response to the threat of displacement that arises from the demand for profit. Collective bargaining can hold the line while other options for maintaining housing have time to take effect. The increase in the value of such housing results from public investments to improve neighborhoods. Community controlled housing is an effective option to ensure that communities benefit from that investment. Those who did the work to improve the neighborhood should benefit. It's a sound policy option."<sup>7</sup>

Successful city or neighborhood-wide campaigns can win more resources for affordable housing, against displacement, and for tenant protections. Key components of strong campaigns include an ability to bring together a broad coalition of participants, and specific agreed-upon goals (e.g., for more public land dedicated to affordable housing, protections against unfair evictions and speculation in a strong market, and/or the ability to put together capital to make credible offers on land acquisition).

#### 2. Acquire Buildings and Land

Nonprofit developers in the Boston area are competing with private developers to acquire properties at market or close to market prices. Lacking the deep pockets of for-profit developers, the nonprofits must cobble together resources from a range of public and private sources to win the purchase. They then hold and operate properties,<sup>8</sup> often with existing tenants in place, while they wait in line for the scarce permanent financing resources needed to redevelop the housing (mostly as rentals owned by a subsidiary of the nonprofit, but in some cases as limited equity cooperatives or condominiums), to secure it for the long term. Operating and short-term repair issues in properties that may not have been well cared for, in combination with the cost and complexity of assembling financing for major rehabilitation work, necessitate that these

developers bring both expertise and an appetite for risk, backed by some financial strength, to the table.

In the redevelopment of unregulated properties, rents may need to be raised to "affordable" levels (i.e., 30 percent of income) that are higher than what people

#### **Organizing Campaigns:**

City Life/Vida Urbana and JPNDC began their Campaign of Conscience in Jamaica Plain in 1998. City Life has organized "Anti-Displacement Zones" in several Boston neighborhoods. Somerville Community Corporation has begun a "public buildings for community benefits" campaign and also staffs the Somerville Affordable Housing Organizing Committee (AHOC), which successfully advocated to increase Somerville's contribution to affordable housing development, raising the city linkage fee on every square foot developed over 30 from \$2.30 per square foot to \$3.90 per square foot.

funding source(s) willing to put in early funds with extremely flexible terms; existing residents who hold rental subsidies; limited renovation needs; and short-term tenancies (e.g., students paying market rents that help support operating costs).

Like WATCH's attempt to secure a bargain sale of Gardencrest in Waltham, others have sought to educate sellers about bargain sales. These transactions require a sophisticated owner who is willing to examine the analysis and has the ability to take advantage of the charitable tax breaks. To date, few groups have succeeded in carrying out a bargain sale. Owners want the full cash payment. Like the low-income housing tax credit syndication industry

were previously paying. Some existing tenants may not meet subsidy or financing criteria, and may therefore require relocation and relocation payments. In addition, obtaining permanent financing for preservation of existing housing is not easy, with the current state administration's clear preference for new housing production. Despite these barriers, nonprofit leaders suggest that such acquisitions can be completed at a lower cost than new construction. Elements that drive success in these acquisitions include: a friendly investor, local bank, or other

that has evolved to translate tax credits into both for-profit and nonprofit housing development capital, similar advising and institutional brokering of bargain sale tax deductions could make these transactions more standard capital practice.

Timing and institutional ownership can play important roles in the acquisition of buildings at below-market rates. Through organizing at particular buildings or community-wide campaigns, groups have had some success in acquiring buildings for less than market value. Religious institutions have sometimes been willing to forego market price in the sales of their surplus buildings. Nonprofits were able to purchase properties from banks and from the Resolution Trust Corporation in the 1990s, when there were large foreclosures on investor owners. Advocates and nonprofits report success negotiating below-market prices during that time from banks that did not want the negative publicity of evicting low-income tenants or being seen as slum landlords. With another rise in foreclosures, there may be an increase in opportunities for nonprofit acquisition of multifamily properties owned by investor owners.

An increasing number of nonprofit, for-profit, and even public housing developers are taking advantage of the market by structuring housing developments in which the sale of market-rate units helps to cover the costs of the low-to moderate-income units.<sup>9</sup> Boston Redevelopment Authority's inclusionary housing requirement exemplifies this (in other high cost markets (e.g., the Montgomery County (MD) Housing Authority near Washington, D.C.) market-rate housing helps to finance affordable housing development.)

#### **Below Market Acquisitions:**

Two religious school buildings were purchased from the Catholic Archdiocese by the Coalition for a Better Acre in Lowell. These buildings, acquired for \$10,000, serve as renovated office and community space, and will include 15 affordable housing units. Some towns and cities have sold their buildings or land for less than market value. The Town of Belmont sold two lots that it owned for a nominal amount, in order to create the town's first three long-term affordable condominiums.<sup>10</sup>



The Walnut Street Apartments are a 12-unit affordable rental building with one- and two-bedroom units. The rehabilitation project was completed in 2004. *Source: Somerville Community Development Corporation*

### 3. Create and Sustain Community Controlled Housing

In the mid- to late 1980s, there was a push by Massachusetts affordable housing advocates to create limited equity cooperatives.<sup>11</sup> The Cooperative Housing Task Force (later renamed Association for Resident Control of Housing, or ARCH) provided support and training to co-ops and to people developing co-ops. ARCH succeeded in expanding several state rental financing programs to encompass co-ops.

As affordable housing became increasingly dependent on structuring partnerships with investors, there was a shift from co-ops owned solely by the residents to limited partnerships, where the resident cooperative corporation became one of the general partners and/or had the potential of buying out the

partnership after 15 years. ARCH expanded to provide information about and support to a range of resident-controlled housing models, including co-ops, limited equity condominiums, and resident and community partnerships. Later, with scarce resources that challenged sustainability of its operations, ARCH restructured from an independent, staffed organization to a committee at Citizens' Housing and Planning Association (CHAPA), which has focused primarily on organizing an annual training conference. CHAPA has continued to support the annual training, though it has been unable to obtain financial support for additional trainings, research, and advocacy activities that could structure more financing capital to expand these types of ownerships.<sup>12</sup> Co-op residents and advocates have bemoaned the loss of ARCH.

Several Boston area land trusts, including the Boston Citywide Land Trust and Dudley Neighbors Inc., were created to act as nonprofit community developers and holders of ground leases. More recently, nonprofit ownership and resident-community partnerships have increased in popularity in Massachusetts. Partnerships between residents and community controlled nonprofit developers often provide a healthy infrastructure and allow residents increased authority in their housing options while providing solid technical expertise. All of these ownership structures are premised on resale restrictions that limit equity to maintain housing affordability for subsequent owners. While some maintain that the resale restrictions in limited equity housing keep people from building assets to "move up" into market-rate housing, the restrictions are generally seen as providing more stability and higher quality housing to lower-income households who would otherwise be vulnerable to the unregulated rental market.

A variety of financing sources and eligibility requirements, combined with the lack of a centralized

**Why aren't co-ops and land trusts more utilized in Massachusetts?** Co-ops are much more popular in New York City than they are in Massachusetts. Contributing factors may be the strong history of co-ops in New York started by unions in the 1920s, the prevalent multi-unit housing structure of New York city building types, and more local financing resources for co-ops in New York. Land trusts are more widely utilized in Vermont. Some hypothesize that co-ops and land trusts never achieved critical mass in the Commonwealth, in part because nonprofit community development corporations became so strong. One interviewee asked whether both co-ops and CDCs are needed in the same market. Others thought that nonprofits should provide the catalyst to get housing started, with resident or community ownership following.

**Comprehensive Community Controlled Housing:** The Anti-Displacement Project (A-DP), serving Springfield and surrounding Pioneer Valley communities, has developed bold initiatives to integrate housing, social services, community building, and economic development to build collective power and move people out of poverty. The organization has mobilized residents to preserve housing and create community-owned businesses. During the last dozen years, A-DP has secured more than \$60 million in federal, state, and local funds to purchase and rehabilitate 1,400 units of at-risk housing and convert them to tenant-owned, permanently affordable cooperatives.

A-DP members are racially diverse, low-wage workers with little job security, often single parents pushed off welfare, or senior citizens on fixed incomes. One notable complement to the organization's community controlled housing strategy has been the creation of locally owned businesses, such as United Landscaping and Painting, LLC, a worker-owned cooperative with profit sharing, minority-led contracting, and a share in a real estate venture. Members currently are negotiating with Springfield political leadership in a campaign to stem the destabilizing rash of single family homes flipping ownership. More than 500 trained leaders have helped to shape tenant control over their housing and their lives.

source of information and referral (since ARCH transitioned out of this role), have made the climate for developing and operating resident-controlled housing challenging. Still, there are an estimated 20,000 or more units in co-ops and other resident controlled housing in Boston, Cambridge, and elsewhere across the state.<sup>13</sup> The Jamaica Plain Neighborhood Development Corporation (JPND) developed three limited equity cooperatives totaling 75 units and has another 49 units in development. Kate Casa, asset manager at JPND, acts as an advisor to the Co-op Umbrella Network, which the corporation helped organize this past year for the leaders of the co-ops it has developed.

Co-op advocates maintain that well-operated co-ops offer an attractive form of housing that is more about shared control and equity than unregulated ownership or rentals. Kate Casa believes that ongoing leadership development and training plus adequate funding, including asset management support, are key to making co-ops work.<sup>14</sup> Resident leaders often begin their efforts organizing against a problem landlord. Then, as co-op leaders, they may organize their members to participate in efforts to sustain key subsidy programs that help make their co-op work. They become responsible for working closely with the nonprofit developer in overseeing property management and managing day-to-day issues, including parking and managing fee increases to cover operating costs. The nonprofit developer in turn has to support resident decision making, while also providing valuable expertise.

#### 4. Attach Affordability and Resale Restrictions and Options to Purchase.

Many tools exist to capitalize community controlled housing and maintain the affordability of the finance stream. Long-term affordability restrictions are required by many of the state affordable housing programs. For example, use of state Housing Stabilization Fund resources comes with a requirement of 40 years of affordability for people at or below 80 percent of median income, followed by 10 years of affordability for people at 100 percent of median income or below.

Specific resale restrictions may be attached to a unit deed rider in an affordable condominium or to a sale of shares of stock in a limited equity cooperative. There is often a right of first refusal, allowing the subsidizing entity (i.e., a city agency) or the co-op to buy back the unit or shares of stock, and then sell it to a qualified buyer at the restricted price.

Ground leases also maintain affordability. The ownership of the housing is separated from the ownership of the land, with a local land trust or other entity maintaining the ownership of the land. The ground leaseholder may collect a fee for monitoring sales and ensuring compliance with resale restrictions, and for marketing the units. The landowner usually has an option to purchase units on resale.

Ground leases have also been used as a tool to help buy out investors in limited partnerships, where co-ops were one of the partners but not the sole owner. For example, in Fensgate, a mixed-income co-op, the

**Holding Ground:** Dudley Street Neighborhood Initiative (DSNI) has led the revitalization of Boston's poor but diverse Dudley neighborhood through the use of a community land trust. In 1984, residents formed DSNI as they grew concerned about a plan to redevelop the Dudley Triangle, a move they feared could gentrify the community and displace its residents.

When the planning process for the redevelopment area became public, the community came out in large numbers to voice its opinion about the planning process, the need to ensure the community's input in all pertinent planning decisions, and the importance of protecting current residents from displacement.

Among other goals, the Dudley Street community hoped to promote homeownership for lower-income residents. In 1988, DSNI became the only community group in the nation to win eminent domain power to acquire vacant land for development. DSNI formed a community land trust, Dudley Neighbors Incorporated (DNI), to hold the land, and involved the neighborhood members in the process of planning critical land uses.

Together with other local nonprofits, DSNI has developed half of the 1,300 vacant lots it acquired at market-rate prices with 300 new homes, 300 rehabilitated homes, a Town Common, gardens, urban agriculture, a commercial greenhouse, and parks and playgrounds. Neighborhood residents purchase the homes and lease the land from DNI on 99-year leases. The homes have a cap on resale prices so that they remain affordable to future resident-owners.

Fenway Community Trust held the land to maintain affordability and held an option to buy the property for an agreed-upon price.

Lender familiarity and acceptability has sometimes been an issue with deed restrictions and ground leases. Some banks will not lend on restricted housing. More typically, lenders have made the restrictions subordinate to their loan. These loans

usually have not been able to sell on the secondary mortgage market. CHAPA has been working with Mass Housing and Fannie Mae to come up with a standard deed rider that could make it possible to sell these loans on the secondary mortgage market. Effective May 1, 2006, Fannie Mae issued new provisions in their Lenders Guide regarding purchasing loans with long-term affordability restrictions.<sup>15</sup>

**Partnerships Meet Affordability and Tenant Marketing Objectives:** Chapter 40B is the state's comprehensive planning tool to increase housing affordability across the Commonwealth. It requires communities throughout the state to make progress toward making 10 percent of all housing available to low-income residents. CHAPA has served as a monitoring agent for Chapter 40B projects since 2000, reviewing marketing plans, overseeing lotteries for units, and conducting income certification. They also counsel people who are purchasing affordable units, and review unit sales and refinancing to make sure that resale restrictions are being complied with. CHAPA collects an upfront monitoring services fee and gets a fee on sales. They have received requests to monitor non-40B projects but are not currently doing that work. The Massachusetts Nonprofit Housing Association and some of its member organizations are monitoring affordable homeownership units under their Homes for Good program.

A real concern in maintaining affordability lies with the effectiveness of the monitoring of sales and marketing of units. One nonprofit leader interviewed for the study questioned the commitment of the local government agency to maintain resale restrictions after the government entity's representative said that he could not find a buyer for a limited equity condominium unit. In that case, the unit's restrictions could be lifted. Another agency's representative reported discovering side agreements among buyers and sellers to circumvent its restrictions. That agency endeavored to prevent further side agreements through education and penalties. Many agree that resale restrictions are still not well understood by buyers and sellers.

## Finance Long-Term Affordable Housing

### 1. Increase Financial Resources

Nonprofit developers report challenges in making the finances work for long-term affordable rental or ownership housing, with particular concern for meeting the needs of the lowest-income residents. Competition is fierce for the Commonwealth's pool of tax credit financing, in which limited partnerships are structured between developers and investors to produce the housing. Debt financing is available from an array of sources, but the amount available from any one source, the cost of capital, and the

#### Examples of Taxation Tools:

In Cook County, Illinois, there is a program that reduces tax liability for properties with at least 35 percent of the units affordable for 10 years. One person noted that there were unsuccessful efforts by national housing advocates some years ago to have capital gains taxes waived for sales to nonprofit or cooperative owners. There was also evidence of a demolition tax on tear downs in suburban Highland Park, Illinois, with funds for the local housing trust fund.

Program (MRVP) operating subsidy program and in the Affordable Housing Trust Fund, as well as to increase the state bonding cap for affordable housing.

The Community Preservation Act (CPA) has provided an important new funding mechanism in some communities. A city or town must adopt a property tax surcharge that can be used for affordable housing and for preservation of open space or historic sites. A minimum of 10 percent of the funds collected through this property tax surcharge must be dedicated to affordable housing financing. The state has been providing a 100 percent match to these

complexity of assembling multiple resources represent significant costs for project developers.

CHAPA, Action! and many other local groups are advocating to increase the resource pool in critical programs at the state level, particularly in the Massachusetts Rental Voucher

funds. To date, more than 100 Massachusetts communities have adopted CPA, and some other states have followed suit. Although cities overall have increased their CPA funding since FY2002, including that for housing, the proportion of funding that goes towards housing has consistently declined, from around 49 percent in FY2003 to just over 32 percent in FY2006.

HOME Funders is a unique effort by local foundations to pool resources to target financing for housing people at 30 percent of median income or below. Foundations make grants and very low interest loans to a pool of resources that are operated by Community Economic Development Assistance Corporation (CEDAC) for project acquisition and construction financing and by Massachusetts Housing Partnership (MHP) for permanent financing. HOME Funders has raised more than \$15 million and begun program investments, but has not reached its target of \$26 million. Few dollars are available at this point, due to longer project acquisition and holding periods than anticipated. A more robust capital pool would help make the revolving funds more consistently available.

Some intermediaries (Neighborworks America, Local Initiatives Support Corporation) have provided working capital to capable nonprofit developers. A number of the local funding resources have been looking at their products and trying to come up with more flexible tools (e.g., MHIC and city of Boston property acquisition product, CEDAC "gold card," Boston Community Capital).

At a February 2006 convening by the Hyams Foundation, CDCs advocated for increases in patient capital, streamlined processing, and pooled risk sharing by lenders. They cited a recent New York City model of a \$200 million acquisition funding pool started to help nonprofit developers acquire private sites and buildings for affordable housing.<sup>16</sup>

Alternatively, housing that is built through large upfront capital grants and then owned and managed by a community-based nonprofit, such as a mutual housing organization, allows for less complexity and promotes long-term affordability.<sup>17</sup>

## 2. Use Local Regulation and Taxation

Localities can utilize regulatory and tax tools to facilitate building conversion to tenant ownership, slow condominium conversions, and sustain affordability in low-cost housing. In the "post-rent control" era in cities like Boston, Cambridge, and Somerville, advocates point to failed efforts in the 1980s to implement "right of first refusal" legislation, which would allow tenants a certain notice period and time to purchase their properties, should the owner wish to sell. Absent that policy, most tenants had no time to respond to the demise of rent control in 1994. This type of legislation has produced a number of resident-owned properties and partnerships among residents and nonprofits in Washington, D.C.

Eviction protections attached to Boston rent control allowed advocates in the 1990s to identify illegal evictions, particularly in foreclosure situations, and to get some units into nonprofit hands at lower prices.<sup>18</sup> Before the end of rent control in Cambridge, there was a pilot program that allowed rent control tenants an opportunity to purchase their buildings with city support, at a price that was less than what the unregulated price would have been. Various estimates suggest that the pilot produced up to 100 units of co-op housing. Had rent control not subsequently been voted down, and additional resources been made available, this number would have climbed considerably.

A number of cities and towns have implemented condominium conversion ordinances. For example, Somerville's ordinance provides a one-year notice period to tenants and two years notice to low- and



The Bow Street Apartments include 18 affordable rental units with two to four bedrooms on the upper floors and retail space on the first floor, currently used by the Mt. Auburn Hospital Clinic. This project was a substantial rehab of a historic building constructed in the late 1800s. *Source: Somerville Community Development Corporation*

moderate-income, elderly, and handicapped tenants. Tenants have the right to relocation benefits and the right to purchase their units, but not at more favorable terms than the general public.

Collective bargaining legislation could formalize the process of rent increases. A law proposed in Boston would guarantee tenant associations the right to organize and bargain around rent increases, unjust evictions, and poor living conditions with local government providing convening and enforcement. Like the previously proposed but unsuccessful Boston Community Stabilization Act, this effort could dampen unchecked and speculative rent increases, and at the very least would contain rent increases for

**Inclusionary Zoning Ordinances and Updates:** Newton's IZ ordinance went into affect in 1977, but it was begun as an informal policy under which 10 percent of the units in rental developments of ten units or more had to be affordable for 15 years. Cash payments to an affordable housing fund were allowed instead of units, for developments with less than 10 units. The affordability term was increased to 40 years in 1987. The percentage of affordable units required was also subsequently increased to 15 percent, and the ordinance now applies to rental and homeownership housing. Units are deed restricted in perpetuity. The city of Boston recently doubled the cash contribution that developers of rental housing must pay into their affordable housing fund, if they are not providing units. Funds collected under the new Boston Inclusionary Development Policy can be used for either new affordable housing production or preservation of affordable housing. Burlington, Vermont places its inclusionary-provided units into its community land trust for perpetual affordability, and San Francisco Bay Area developers enter into partnerships with nonprofit developers to produce and manage affordable portions of development.

a certain period of time.

Some limited equity cooperatives, such as Frankie O'Day Cooperative in Boston, have used 121A/6A tax agreements, which allowed them to pay an excise tax in lieu of real estate taxes, at considerable savings.<sup>19</sup> ARCH lobbied (unsuccessfully) the Boston Assessors' office for limited equity co-ops to receive favorable tax treatment on a consistent basis. Some have also raised the possibility of a real estate transfer tax on investors who flip buildings within a short time.

### 3. Leverage Zoning and Related Market Incentives

Zoning is one of the most powerful tools to deliver affordable housing, allowing lower cost multifamily development, and requiring certain affordability set-asides for the right to build. Under Chapter 40B of Massachusetts law, a developer may apply for a comprehensive permit that overrides local zoning to produce rental or ownership housing in any jurisdiction in which fewer than 10 percent of housing units are designated affordable. Twenty-five percent of the units built under the waiver must be affordable and allocated to people at 80 percent of median income or below, or 20 percent must be affordable to people earning no more than 50 percent of median income. Chapter 40B has produced long-term affordable units in a number of communities that previously had little affordable housing. These units must be affordable for at least 30 years; many towns and developers agree to an in-perpetuity standard. Developer overhead and fees are limited through the program. The developer has an incentive to develop affordable units, in order to create the other non-regulated units that s/he wants to produce. The town has an opportunity through negotiations to sometimes achieve greater affordability or other concessions (road or school payments) from the developer. Towns that have already met the 10 percent standard can still elect to work with developers on 40B comprehensive permit projects.



The Linden Street Apartments include seven buildings and 42 affordable rental units. The project used Low-Income Housing Tax Credits and was built on a brownfields site. It has won green building awards and has been recognized nationally for its sustainability efforts. There is a common green and tot lot in the center of the development, and each unit has a private porch that overlooks the common areas. Source: Somerville Community Development Corporation

Through local inclusionary zoning ordinances, individual cities and towns require developers to set aside a percentage of the units in any development that they are building (typically in developments over a certain threshold number of units) for affordable housing. Some provide density bonuses (allowing developers to build housing with some affordable units at a greater density than local zoning permits); some allow cash payments into an affordable housing fund as a substitute for the provision of affordable units. Long-term affordability restrictions are typically attached to the units produced.

Inclusionary zoning has produced a relatively small number of units in Massachusetts, in part because of its relatively short tenure (while some communities have had IZ since the 1980s, many others have had it less than a decade) and in part because the mostly urban jurisdictions that have

adopted it generate a limited number of large developments. However, inclusionary zoning in combination with linkage payments (paid by developers producing commercial developments) into housing funds have been important in jurisdictions like Boston, where developers accept the policy as part of the cost of doing business.<sup>20</sup>

Chapter 40R of Massachusetts law now sets up a process for cities and towns to establish "smart growth zoning districts," where density can exceed local zoning (up to 20 units per acre for condominiums and apartments), and in which 20 percent of the units must be affordable. These districts are intended to be in town centers, near transit stops, or in other areas that the town deems suitable for higher density housing. State grants of between \$10,000 and \$600,000, plus \$3,000 for each new home being created, will be made available to these new districts.<sup>21</sup>

Under Chapter 40S, additional state funds will be allocated to cities and towns establishing a 40R district to cover a portion of the school costs

associated with school-age children moving into these districts.

There have been numerous efforts to update Massachusetts land use laws to benefit affordable housing. One current positive effort, the Community Planning Act, proposes to add new sections to the State Zoning Act to allow development impact fees, as many other states do. Impact fees could provide a standardized way for towns to receive payment for schools or services, or another source of revenue for affordable housing development. Affordable housing development would be exempted from payment of fees.

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## Opportunities for Action!

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Action for Regional Equity, its nonprofit and community-based allies, legislators, the governor, and state administrators can work together for a comprehensive strategy to increase the supply of community controlled housing in Massachusetts. By educating policymakers and others about the tools that are available and those that are needed, a combination of funding resources, incentives, and supports can be structured to grow this housing sector. There is a ready opportunity for a committed coalition of advocates, developers, and funders to pursue these recommendations and achieve impact. Everyone has a role to play, and Action! is prepared to mobilize diverse constituencies to protect and create affordable housing.

### **I. Move 10,000 units of unregulated or expiring-subsidy housing into nonprofit or cooperative tenant ownership by 2015.**

#### *Build funding and support for acquisitions:*

- Join with local CDCs and funders to expand acquisition efforts in progress, including pilot collaborations among more and less experienced groups, to facilitate acquisitions for affordable rental or homeownership on a broad scale.
- Develop local and national philanthropic support for an acquisitions funding pool, modeled after the New York City program and local leadership efforts such as HOME Funders.
- Facilitate Community Reinvestment Act investments to Massachusetts Housing Partnership as a pivotal source for the acquisition pool.

- Identify ways to draw more social investors with patient capital into a nonprofit acquisition and long-term affordability financing program.
- Encourage public and private affordable housing lenders to adopt streamlined processing requirements (a simplified "One Stop for Acquisitions" application), risk sharing, and priority for funding in acquisition projects that meet long-term affordability goals.
- Convene nonprofit developers, housing advocates, and funders to discuss the challenges of holding properties, and examine cases where partnerships or third party holding is needed.
- Increase rental operating subsidies (MRVP and Section 8) and longer terms for subsidies in acquisitions for community controlled housing.
- Identify and build capacity of nonprofits to "speculate for good," including purchasing mortgages in default and buying foreclosed buildings.
- Identify banks that have been lending to speculators and negotiate for financial capital contributions to an acquisitions pool.

#### *Lay the groundwork through advocacy:*

- Document the inventory of housing that is potentially available for purchase in Boston and other communities.
- Develop case studies that document how acquisition can be cheaper and provide more stability to the community fabric than new construction.

- Develop tools to educate owners and brokers about successful bargain sales.
- Define and communicate broadly the concept of a "reasonable return" on sales.
- Highlight the efforts of funders and nonprofit developers that have addressed acquisition challenges, and commend local banks and financial institutions that have supported acquisition.
- Develop and distribute case studies of public buildings or land used for long-term affordable housing, building on the guide developed by Massachusetts Housing Partnership to encourage municipalities to develop affordable housing on public land.

*Boost incentives for sales to residents and nonprofits for community controlled housing:*

- Promote tenant right of first refusal legislation in at least two Massachusetts communities.
- Propose set-asides of state and city housing funds for acquisition by tenant or nonprofit owners.
- Negotiate a community controlled housing priority and below-market sales in the disposition of religious and educational institutions' properties (including supporting and expanding on Massachusetts Association of Community Development Corporations' efforts to facilitate Archdiocese property sales).

*Provide transitional support to those living in properties that are preserved:*

- Require budget counseling and gradual step-ups for those residents who have been paying less than 30 percent of their income for housing.
- Explain relocation options and payments to those who are above income ceilings.

**II. Advance the conversion goal through a broad-based community education campaign about the benefits of community controlled housing.**

*Ensure crucial policy supports:*

- Engage a broad-based campaign to direct housing resources to community control.
- Work with the Community Preservation Coalition to win passage of the Community Preservation Act (CPA) in multiple communities.
- Pass and implement inclusionary zoning in all Massachusetts communities.
- Encourage flexibility in inclusionary zoning to allow developer payments and/or partnerships that involve nonprofits in the production and/or ownership of units.
- Encourage all cities and towns to strengthen inclusionary zoning provisions (following Boston's recent lead), raise linkage rates and the monetary value of off-site contributions, and allow the use of the funds for production or preservation.
- Set aside CPA resources, linkage funds and local trust funds for conversion of public properties or land to community controlled housing.
- Win increases in crucial state resources including the Affordable Housing Trust Fund and MRVP and in the state bond cap for housing, with specific set-asides for community controlled housing.
- Negotiate local and state surplus property sales for community controlled housing. Support the MACDC and CHAPA push for disposition of affordable housing within the Massachusetts Area Planning Council-led coalition that has been working on surplus land legislation.

*Expand the inventory of regulatory tools:*

- Highlight the use of impact fees and windfall taxes in other states and propose similar action for Massachusetts.
- Analyze tax breaks provided to nonprofit and community controlled housing to date in

Massachusetts in more detail, and propose opportunities for systematic tax relief for community controlled affordable housing.

### III. Structure support to enable tenant and nonprofit ownership.

#### *Gather and share important information:*

- Revive or reinvent the support and information structure that existed through ARCH, including strategic discussions at the 2007 ARCH conference and build a public finance stream to sustain its operations.
- Structure ongoing training of tenant owners in their leadership and ownership responsibilities in cooperative and other forms of resident-controlled housing.
- Develop a centralized listing and resale monitoring operation for all community controlled housing statewide, building on the work of *weown.net* and *homesforgood.org*, so that consumers can find community controlled housing easily and move within the sector when they need to relocate.

#### *Build public awareness:*

- Highlight successful resident ownership models, including effective buyouts of limited partners.
- Prioritize organizing of current residents and tenants at risk, while also introducing community controlled housing models and opportunities to people who want to buy homes but have not been able to do so.

## Next Steps

Action! can play a key role in educating, advocating, and building bridges among groups to carry out these strategies. This report serves as a roadmap for subsequent Action! initiatives. The group will form task forces focused on: acquisitions, public and community resources for community controlled housing, and support for tenant and community ownership. Action! will work with its allies to begin progress towards the 2015 objective.

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## Notes

<sup>1</sup> See Bonnie Heudorfer et al., *The Greater Boston Housing Report Card 2004* (Boston, MA: Center for Urban and Regional Policy, Northeastern University, 2005), p.4 and Appendix A.

<sup>2</sup> Ibid, p.4-6, 31.

<sup>3</sup> Ibid, p.4-6.

<sup>4</sup> Ibid, p.7, p.47-48. This figure was determined before adjusting for inflation.

<sup>5</sup> Ibid, p.23-27. Boston leads in both building permits issued for new housing (1,079 units), and in affordable units produced (517) in 2004.

<sup>6</sup> Erica Schwartz, Waltham Alliance to Create Housing former director of community organizing, Waltham, MA; Steve Meacham, City Life/Vida Urbana tenant organizing coordinator, Jamaica Plain, MA. Interviewed by PolicyLink, March 2006.

<sup>7</sup> Steve Meacham, City Life/Vida Urbana, Jamaica Plain, MA. Interviewed by PolicyLink, April 2006; Email from Steve Meacham, City Life/Vida Urbana, to PolicyLink, May 2006.

<sup>8</sup> The Boston Citywide Land Trust (now Commonwealth Land Trust) was set up by CDCs in part to buy and hold properties. CLT did hold and operate some property in the 1990s while Jamaica Plain Neighborhood Development Corporation assembled project financing. CLT today is a nonprofit developer and property manager, and holds ground leases on a small number of properties.

<sup>9</sup> In Belmont, the market rate unit in the 4-unit B Street project helped subsidize the cost of the three affordable condominiums. Sixty percent of the units at Somerville Community Corporation's condominium project at the former St. Polycarp's School are market rate condominiums.

<sup>10</sup> Massachusetts Housing Partnership, *Developing Affordable Housing on Public Land: A Guide for Communities* (Boston, MA: Massachusetts Housing

Partnership, 2005).

<sup>11</sup> Limited equity cooperatives are housing owned by a corporation in which residents own shares of stock. Share ownership entitles people to long-term leases on units. Resale prices of shares are limited by a formula designed to maintain affordability, and the co-op typically has an option to buy back shares on resale.

<sup>12</sup> Email from Aaron Gornstein, Citizens Housing and Planning Association, to PolicyLink, April 13, 2006; see Fannie Mae, *Announcement 06-03*, March 22, 2006.

<sup>13</sup> The most recent listing of resident controlled housing in Massachusetts, produced by ARCH, can be found at [weown.net](http://weown.net). It was last updated in the fall of 2003, and shows more than 20,000 units existing and in development in resident controlled housing. This list is in need of further updating.

<sup>14</sup> Kate Casa, Jamaica Plain Neighborhood Development Corporation asset manager, Jamaica Plain, MA. Interviewed by PolicyLink, March 2006.

<sup>15</sup> Email from Aaron Gornstein, Citizens Housing and Planning Association to PolicyLink, April 13, 2006; Fannie Mae, *Announcement 06-03*, March 22, 2006.

<sup>16</sup> In 2005, national foundations and intermediaries announced a \$200 million acquisition pool to help nonprofit developers acquire private sites and buildings for affordable housing in New York City. See City of New York, *Mayor Bloomberg Announced Historic Collaboration With National Charities and Financial Institutions For the Building and Preservation of Affordable Housing*, October 14, 2005.

<sup>17</sup> Michael E. Stone et al., *A Right to Housing: Foundation for a New Social Agenda* (Philadelphia, PA: Temple University Press, draft manuscript), Ch.11. Neighborworks America had a pilot mutual housing demonstration program in the 1980s and 90s, which

helped to produce units in Connecticut, Texas, and elsewhere. However, this model of financing community controlled housing with upfront capital grants and no debt has not been widely adopted in the U.S.

<sup>18</sup> Kathy Brown, Boston Tenants Coalition director, Boston, MA. Interviewed by PolicyLink, March 2006.

<sup>19</sup> Frankie O'Day Co-op's excise tax was about \$30,000 per year as compared to an estimated \$75,000 per year in real estate taxes without the agreement, according to Dan Violi, consultant to that co-op.

<sup>20</sup> Zoning experts suggest that the effectiveness of particular inclusionary zoning strategies depends on knowing the local marketplace and taking advantage of the interest in developing there vis à vis the reluctance by some to take on "added costs."

<sup>21</sup> State funds for this come at least in part from the sale of surplus state properties.

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## Appendices

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### Appendix A.

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