

I. One-for-One Affordable Housing Replacement Ordinances

In researching one for one affordable housing replacement ordinances, MAPC came across a number of instances in which the legality of the ordinances has been contested. We found one case – highlighted below – as well as others that are currently being debated at the local level, which have not yet made it to court.

We also found that several states have passed enabling legislation and/or policies that support these ordinances. The state of California has enabling legislation that allows for the creation of one-for-one affordable housing replacement ordinances. The City of Portland, Oregon has passed a “No Net Loss” Policy¹.

Case Example: Affordable Housing Replacement Ordinances and Policies

Portland, Oregon’s Central City No Net Loss Policy. “On August 29, 2001 City Council adopted Resolution No. 36021 calling for a No Net Loss policy for affordable housing in the Central City. This Resolution stated the Council’s intention to seek financial resources and/or regulatory tools adequate for the creation, preservation and rehabilitation of affordable housing in the Central City.” The Portland City Council passed another ordinance requested that the Housing Authority of Portland, the Oregon Department of Housing and Community Services, Multnomah County, and the Association of Portland Progress to join in a five year collaboration with the City of Portland to develop and implement a No Net Loss Funding Plan².

The City’s goal in implementing the policy was to “cost effectively gain control of affordable housing assets, and stabilize market value of residential real estate (avoiding commercial reuse value speculation) to facilitate the acquisition/development of additional affordable housing assets...A successful preservation intervention at an individual project level will be a clearly defined track toward stabilizing rents and achieving housing quality standards in a specific building in accordance with the City’s 60-year affordability policy.” (Portland Development Commission, 2001)

San Telmo Associates et al v City of Seattle (Appellant), 1987. City enacted a code that attempted to stem the conversion of low-income housing to non-residential uses. Trial court invalidated the ordinance and the appellate court affirmed, holding that the ordinance was a tax the city had no right to impose. The city was shifting its burden of providing low income housing to the property owners. The cost of providing low-income housing could have been constitutionally passed on to the property owners, but was to have been shared by the whole city (Lexis Nexis, 2011).

¹ City of Portland 2001 Resolution no. 36021 creating the No Net Loss Policy: http://www.pdc.us/pdf/housing_services/resolution36021_10-01.pdf

² City of Portland 2001 Resolution on No Net Loss Funding: http://www.pdc.us/pdf/housing_services/resolution-cc-no-net-loss-funding.pdf