

**June 21, 2021**

**President Joe Biden**

1600 Pennsylvania Ave.,  
Washington, DC 94801

**The Honorable Marcia Fudge**

Secretary of Housing & Urban Development  
Washington, DC 20410

**The Honorable Nancy Pelosi**

Speaker of the House  
U.S. House of Representatives  
Washington, DC 20515

**The Honorable Chuck Schumer**

Majority Leader  
United States Senate  
Washington, D.C. 20510

**The Honorable Maxine Waters**

Chair, Financial Services Committee  
U.S. House of Representatives  
Washington, DC 20515

**The Honorable Sherrod Brown**

Chair, Banking Housing & Urban Affairs  
Committee  
U.S. Senate, Washington, D.C. 20510

**The Honorable David Price**

Chair, Subcommittee on Transportation,  
Housing & Urban Development  
House Appropriations Committee  
U.S. House of Representatives  
Washington, DC 20515

**The Honorable Brian Schatz**

Chair, Subcommittee on Transportation,  
Housing & Urban Development  
Appropriations Committee  
U.S. Senate  
Washington, DC 20510

**To:** President Biden, Secretary Fudge, Speaker Pelosi, Majority Leader Schumer, Chair Waters, Chair Brown, Chair Price and Chair Schatz:

We are writing on behalf of the undersigned civil rights, community organizing, and affordable housing advocacy organizations with regard to the American Jobs Plan's proposal to create a competitive grant program that would incentivize municipalities to change local zoning and land use policies. The undersigned organizations have been at the forefront of efforts to challenge exclusionary zoning through litigation, legislative reform, and advocacy for affordable housing. We are also committed to fighting the displacement of residents of low-income communities of color facing development pressures, which is an equally pressing racial and economic justice issue — but one that requires different tools.

There is a long history of local governments using restrictive zoning practices, from the explicit racial zoning outlawed by the U.S. Supreme Court in 1917 in *Buchanan v. Warley* to large minimum lot sizes and apartment bans, to exclude people of color and reinforce residential racial segregation. Accordingly, federal action to eliminate exclusionary zoning has the potential to significantly advance racial and economic justice. But, if improperly targeted, there is a risk that a new grant program could have unintended consequences, including increased displacement. This letter outlines the core principles that should inform the drafting of any federal legislation concerning exclusionary zoning. In brief, federal action should (1) focus on areas that are actually “exclusionary,” (2) require an equity analysis to increase impact and avoid unintended consequences, (3) prioritize the development of deed-restricted affordable housing (including units for extremely low-income households), (4) evaluate municipalities’ zoning and land use actions holistically, (5) protect tenants from displacement, (6) ensure that historical disinvested low-income communities of color have equitable access to federal funds, (7) identify funding sources that will actually incentivize meaningful change; and (8) obligate municipalities to maintain data and report on their progress.

### I. Focus on Areas That Are Actually Exclusionary

The first key consideration for any legislative proposal is that it target zoning and land use regulations that actually exclude low-income people of color in practice. Exclusionary zoning is about the exclusion of people, not the exclusion of types of buildings or housing types. Answering whether single-family zoning in a particular neighborhood excludes low-income people of color requires knowing who lives in single-family homes in that neighborhood and how housing costs compare to costs regionally. In many predominantly Black and Latinx neighborhoods, there is no shortage of homes available for rents or monthly mortgage payments below subsidized rents under the Low-Income Housing Tax Credit program. In such neighborhoods, reducing barriers to higher density development is unlikely to increase access for low-income families and, instead, has the potential to fuel real estate speculation and displacement.

Zoning reforms that increase density must target higher-cost municipalities and neighborhoods, where the ability to build different housing types would make affordable housing feasible where it currently is not. In some places, entire municipalities may fit this bill—those that lack racially and socioeconomically diverse neighborhoods. In other areas, particularly in larger cities, there may be a mix of diverse neighborhoods where the effect of zoning changes will differ based on the make-up of the specific neighborhood; zoning reform could risk fueling profit-motivated development and displacement in some areas, while leading to meaningful inclusion in other, disproportionately white, neighborhoods. Areas targeted for higher density zoning should have high income levels, low poverty rates, and low levels of racial diversity.

## II. Require Equity Analysis to Increase Impact and Avoid Unintended Consequences

Building off of core Fair Housing Act principles, any federal legislation should mandate that local governments undertaking zoning changes carefully analyze the anticipated effects of zoning changes on communities of color through a process informed by robust community input. Such a requirement would serve several important purposes. First, it is essential to surface a community's particular needs, such as for units that are affordable to extremely low- or very low-income households among communities of color or for units with three or more bedrooms to accommodate large families without overcrowding. Without such an analysis, zoning and land use reform might result in the production of units that do not actually address patterns of exclusion, such as only one-bedroom apartments, below-market units that are still too expensive for those in need, or units that are not accessible to persons with disabilities. Second, an equity analysis would document that zoning changes actually target genuinely exclusionary areas, while not destructively intervening in non-exclusionary areas. Third, it would reduce the risk that changes would be based on outdated assumptions or conditions. For example, a historically exclusionary community may be experiencing "white flight" and the early stages of disinvestment while still being perceived as the homogeneous place it once was. Fourth, an equity analysis may identify policies that would undermine the efficacy of zoning changes. These might include policies that tie rezoning to residency preferences for affordable housing in exclusionary areas, thereby limiting access for people of color from outside of those areas, or disingenuous inclusionary zoning requirements that serve to make all development infeasible. Lastly, robust community input can help avoid the adoption of policies that are based on incomplete or outdated data that lacks local context and can help ensure that adopted policies are consistent with the needs of low-income communities of color. All of these challenges can and should be averted through careful planning.

## III. Prioritize the Development of Deed-Restricted Affordable Housing, Including Units for Extremely Low-Income Households

To combat exclusion, a central purpose of zoning reform must be to facilitate the development of deed-restricted affordable housing. Deed restrictions protect long-term affordability by imposing income eligibility requirements and restricting future rent levels or sale prices. In light of persistent correlations between race, ethnicity, and socioeconomic status, many people of color will benefit more from increased affordable housing development in exclusionary areas than from market-rate housing. This becomes even more evident when considering the housing needs of extremely low-income households (i.e., households whose income does not exceed the higher of the federal poverty guideline or 30% of the area median income). Moreover, in high-cost areas, new market-rate multi-family housing is generally still very expensive, even if it is slightly less expensive than single-family homes in the area. Therefore, zoning changes that broadly allow multifamily development without any requirements that they include a percentage of affordable units, even if appropriately targeted at exclusionary areas, will miss the mark.

Zoning reform will only be an effective tool for advancing racial and economic justice if reform focuses on affordable housing. Any efforts to increase the availability of “missing-middle” housing should be paired with homebuyer-assistance programs that are affirmatively marketed to moderate- and middle-income people of color who have been denied the wealth-building potential of homeownership, and “missing-middle” housing efforts must not be adopted at the expense of robust programs to increase the number of more deeply affordable homes.

There is a range of policy tools that can be used to pair zoning changes with affordable housing development. One option is the creation of affordable “overlay districts,” which apply across a broad geographic area and allow increased density only for development proposals that meet certain affordable or social housing requirements. Another option is well-designed inclusionary zoning requirements that mandate at least some of the housing in each new building is affordable. This approach is most effective in places where there is high demand and high prices for market-rate multifamily housing, a common feature of many exclusionary neighborhoods, which make it financially feasible to produce units for extremely low-income households without government subsidy. Lastly, zoning changes could target publicly-owned land that government agencies commit to lease or sell for free or at a below-market price to subsidize development of affordable housing. Local governments can also enact a policy of prioritizing lease or sale of public land to non-profit developers of affordable or social housing, including community land trusts and public housing authorities.

#### IV. Evaluate Municipalities’ Zoning and Land Use Policies Holistically, Rather Than in Isolation

Municipalities should be evaluated holistically to ensure that municipalities are not able to identify some beneficial actions to access a generous new funding source while simultaneously using their zoning powers to undermine the goals of the federal program in other ways. For example, a city that upzones ten acres of land in an exclusive neighborhood while downzoning 20 acres nearby is, on balance, exacerbating exclusion rather than combatting it. Likewise, if a large city that includes both exclusive and inclusive neighborhoods adopts zoning changes that fuel displacement in diverse neighborhoods, no amount of upzoning in exclusionary neighborhoods can right that wrong. It would radically undermine the intent of federal zoning reform to only focus on the positive steps that municipalities take in response while ignoring actions that may circumvent the underlying purpose of the new incentive program. Likewise, actions that may superficially appear to increase opportunities for the development of affordable housing but that would either be fruitless in practice – such as selectively upzoning parcels that are unlikely to be redeveloped due to existing land uses – or that would result in the siting of affordable housing in isolated or environmentally unhealthy areas should not qualify municipalities for funds. Lastly, zoning and land use policies should also be evaluated in tandem with other housing and community development policies,

such local funding streams (or the lack thereof) for affordable housing and barriers to affordable housing development like requirements for the approval of a city council member in whose district a development would be located. Equitable zoning and land use policies are unlikely to lead to meaningful affordable housing production unless other necessary policies are in place, as well.

#### V. Protect Tenants from Displacement, Even in Exclusive Areas

Targeting zoning reform at exclusionary areas is critical to reducing the likelihood that zoning changes will result in wholesale displacement of vulnerable communities, but it is also important to protect individual low-income households from displacement pressures that may result from zoning or land-use decisions. Even areas that are exclusionary overall may nonetheless have small pockets of racial and socioeconomic diversity, perhaps as a result of past fair housing litigation or because a small landlord has decided to keep rents low to maintain long-term tenants. A variety of policy tools may be helpful in preventing the displacement of low-income tenants living in exclusionary areas. Such tools may include prohibitions on demolition of existing, occupied multifamily properties; prohibition or strict limitations on land use conversions of manufactured home communities; anti-harassment and retaliation protections; just cause eviction requirements; rent stabilization; right to counsel; source of income protections; and a tenant's opportunity to purchase. In the event that displacement does occur, tenants should have access to generous relocation assistance benefits, both in the form of financial payments and help locating and securing a new home in the community.

#### VI. Ensure Equitable Access to Federal Funds in Historically Disinvested Low-Income Communities of Color

Pursuing federal zoning reform through the exercise of Congress's Spending Clause power would raise significant equity concerns if it directed new resources only towards communities that currently have exclusionary zoning, without a way for historically disinvested communities to access funding. Areas with exclusionary zoning are generally highly resourced communities, supported by high property values and a robust tax base. Because, as discussed above, zoning reform should target areas that are actually exclusionary in order to avoid contributing to displacement, lower income communities could be ineligible for a funding stream that is specifically targeted at ending exclusionary zoning. To avoid this potential inequity of increasing funding only in areas that are already well-funded, Congress should create parallel grant programs that support neighborhood investments in low-income communities of color to build or replace infrastructure and to counter displacement pressures.

As an alternative approach, federal preemption of genuinely exclusionary zoning would not exacerbate resource disparities between highly resourced communities and historically disinvested low-income communities of color. Moreover, federal preemption of local zoning and land use regulation falls squarely

within Congress's Commerce Clause powers, and Congress has a proprietary interest in stopping the application of certain local zoning regulations to federally programs like the Low-Income Housing Tax Credit program.

#### VII. Identify Funding Sources that Will Actually Incentivize Meaningful Change

For an incentive program to succeed, careful consideration must be given to the types of funding that are used to motivate local actions. At a basic level, local jurisdictions must be sufficiently interested in the incentive funding to take actions that may be politically difficult. One key lesson our organizations have learned through work on local and state programs is that attempts to use affordable housing dollars to incentivize breaking down of exclusionary zoning and land use practices have failed. Exclusive municipalities are generally not interested in such funding, and it is also important to ensure that affordable housing is developed in these communities, whether or not a local jurisdiction chooses to participate in an incentive-based program. On the other hand, funding for local road maintenance, other local infrastructure, or local discretionary funding have proven to be much more effective in motivating local actions. Conditioning funding for states on meaningful state law exclusionary zoning reform, consistent with the principles articulated in this letter, would also be an important avenue for Congress to consider.

#### VIII. Obligate Municipalities to Maintain Data and Report on Their Progress

In exchange for valuable federal funds, municipalities must be expected to maintain data and report on their progress in implementing reforms. Some municipalities that have adopted inclusionary zoning have neglected to incorporate oversight and compliance monitoring into their programs, leading to significant questions about whether those programs are delivering on their promise. In addition to demonstrating to the federal government that local governments are truly eligible for funding, good data collection and reporting requirements should better position municipalities to enforce regulatory agreements for inclusionary developments.

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The federal government has historically played a significant role in promoting exclusionary zoning policies, and the federal government has an obligation to help end this practice. From supporting widespread adoption of the Standard Zoning Enabling Act by states in the early 1920s to the developing single-family zoning federal mortgage insurance underwriting guides that encouraged racially restrictive covenants, zoning has never been an exclusively local issue. The federal government has also played a significant role in past policies that have contributed to mass displacement of communities of color, most notably urban renewal under Title I of the Housing Act of 1949 and the construction of the interstate

highway system, which carved up many thriving urban neighborhoods. The federal government has an obligation to actively reverse this legacy.

By designing federal intervention around exclusionary zoning in adherence with the eight principles articulated in this letter, Congress can ensure that any reform efforts effectively address structural racism in federal housing policy. The undersigned groups would welcome the opportunity to engage with you regarding the development of legislation that embodies these principles.

If you have any questions or for additional information, please contact Liz Ryan Murray at Alliance for Housing Justice (LRyanMurray@PublicAdvocates.org)

Sincerely,

### National Organizations

A Community Voice	NAACP Legal Defense and Educational Fund, Inc. (LDF)
Action Center on Race and the Economy	National Alliance for Safe Housing
Alliance for Housing Justice	National Coalition for Asian Pacific American Community Development
Americans for Financial Reform	National Fair Housing Alliance
Building Healthy Places Network	National Housing Law Project
Center for Popular Democracy	National Low Income Housing Coalition
Center for Responsible Lending	People's Action
Equal Rights Center	Planners Network
Housing Justice Center	PolicyLink
Housing Rights Initiative	Poverty and Race Research Action Council
Lawyers' Committee for Civil Rights Under Law	Public Advocates
Liberation in a Generation	RESULTS
Manufactured Housing Action (MHAction)	
Mi Familia Vota	
Right to the City Alliance	
Root and Rebound	

## State & Local Organizations

Affordable Housing Network of Santa Clara County

Alabaster Box Collective

Alliance of Californians for Community Empowerment

American Constitution Society, ASU Student Chapter

Anthropocene Alliance

Beyond Inclusion Group

CAUSE

California Housing Partnership

Catholic Migration Services

Center for Fair Housing, Inc

Change on the Inside

Chicago Lawyers' Committee for Civil Rights

Chicago United for Equity

Chinatown Community Development Center

City Heights Community Development Corporation

Citizens Committee for Flood Relief

CNY Fair Housing

Collective Medicine

Community Health Councils

Congregations Organized for Prophetic Engagement

Cooper Square Committee

East Bay Housing Organizations

Eastside People's Intercultural Center

Eperanza Community Housing Corporation

Fair Housing Center of Central Indiana, Inc.

Fair Housing Partnership of Greater Pittsburgh

Fair Share Housing Center

FreshWater Accountability Project

Georgetown Open Space Committee

Hill District Consensus Group

HomeStart, Inc

Horizon Home Buyers, Inc..

Housing Action Illinois

Housing California

Housing Justice for All (New York State)

Housing Now! CA

Just Cities

Kheprw Institute

La Raza Community Resource Center

Law Foundation of Silicon Valley

Leadership Counsel for Justice and Accountability

Legal Aid Justice Center

Little Tokyo Service Center

Long Island Housing Services, Inc.

Louisiana Fair Housing Action Center

Make the Road Nevada



Malach Consulting  
Massachusetts Fair Housing Center, Inc.  
Massachusetts Law Reform Institute  
Metropolitan St. Louis Equal Housing and Opportunity Council  
Mississippi Center for Justice  
Mississippi Communities United for Prosperity (MCUP)  
MZ Strategies, LLC  
National Lawyers Guild — ASU Chapter  
Nobody Leaves Mid-Hudson  
Northwest Bronx Community & Clergy Coalition  
Oakland Tenants Union  
Parable of the Sower Intentional Community Cooperative  
Partnership for Working Families  
Port Arthur Community Action Network (PACAN)  
Portland Harbor Community Coalition  
Pratt Institute, graduate program in City and Regional Planning  
Public Counsel  
Public Engagement Associates

Public Interest Law Center  
Public Justice Center  
RENA (Riverside Edgcombe Neighborhood Association)  
Sacramento Housing Alliance  
Save James Island  
Schultz Family Foundation  
South Bay Community Land Trust (SBCLT)  
Southwest Fair Housing Council  
Strategic Actions for a Just Economy (SAJE)  
T.R.U.S.T. South LA  
The Fair Housing Center of Southwest Michigan  
The Public Interest Law Project  
ThinkBox  
Todco/Build Affordable Faster CA  
United Way Bay Area  
Utah Center for Civic Improvement  
Venice Community Housing  
Vermont Legal Aid  
Virginia Housing Alliance  
Washington Lawyers' Committee for Civil Rights and Urban Affairs  
West Boulevard Neighborhood Coalition  
Western Center on Law and Poverty

### Individuals

Anna Kramer, Assistant Professor,  
Urban Planning Planners Network

David Smiley, Assistant Director,  
Urban Design Program Urban Design, GSAPP,  
Columbia University

Dr. Jackie Augustine, BluePrint Geneva

Emily Benfer, Visiting Professor of Law, Wake  
Forest University School of Law

Heather R. Abraham, Associate Professor of  
Law, State University of New York (SUNY) at  
Buffalo School of Law

Janevette Cole, Trustee,  
Alameda County Board of Education

Margaretta Lin, Lecturer, UC Berkeley Goldman  
School of Public Policy

Prescott Reavis, Founding Director, Kulima

Victoria Washington, District 3 Representative,  
Charlotte City Council