

**Testimony of
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**to the
House Committee on Financial Services
Subcommittee on Housing, Community Development, and Insurance**

**“Zoned Out: Examining the Impact of Exclusionary Zoning on
People, Resources, and Opportunity”
Virtual – October 15, 2021**

Introduction

Mr. Chair and members of the Committee, thank you for this opportunity to provide testimony to the Subcommittee on Housing, Community Development, and Insurance on the impact of zoning practices on people, resources and opportunity.

My name is Dora Leong Gallo and I am the President and Chief Executive Officer of A Community of Friends, a nonprofit affordable housing development corporation with the specific mission of ending homelessness for individuals and families affected by mental illness. Established in 1988, our organization (also known as ACOF) develops what is now called ‘permanent supportive housing’, combining affordable rental housing with on-site services for the most vulnerable in our community. In the past 33 years, we have completed 51 apartment buildings throughout Los Angeles and Orange County, including two buildings in San Diego County. Currently, we operate 43 communities, housing over 2,500 adults, including over 600 children.

As a nonprofit organization serving people with disabilities, I have seen firsthand how government regulation and control of land use, called zoning, can be used to either stimulate or slow down development in communities and/or used exclude certain people and populations from living in certain communities. In my testimony today, I will discuss A Community of Friends’ experience of being “zoned-out,” how exclusionary and restrictive zoning have impacted affordable housing development (making it impossible to address the housing needs for people who are homeless) and our struggle to fight against allegations that our housing does not fit the “neighborhood character” of communities, which is often coded language for discrimination for people experiencing homelessness with mental health disabilities.

Effects of Restrictive and Exclusionary Zoning (on housing stability and racial equity)

The affordable housing crisis we talk about today is not an accident. Rather, it is a predictable result of a decades-long set of housing policies that perpetuated segregation and racial inequality by preventing the development of affordable housing.

A century ago, institutions such as banks, realtors, and insurance companies enforced Federal discriminatory housing policies that ensured Black people and people of color could not reside in certain neighborhoods. Although the 1917 Supreme Court decision in *Buchanan v. Warley* prohibited race-based zoning, and subsequently the passage of the Fair Housing Act of 1968 made housing discrimination based on race, color, sex, religion, national origin, disability and familial status illegal, many municipalities continued to implement land use planning tools like zoning to determine where people can live and in what types of neighborhoods. These practices have led to substantial wealth gaps, unequal opportunities, and high rental costs burdens, as well as overcrowding and homelessness.

For instance, single-family zones are prevalent in many communities. Designating large swaths of land as single-family neighborhoods limits where multifamily developments can be built, making land costs higher. In the City of Los Angeles, residential development is permitted on approximately 56.2% of the City's land area. Of the residential land area, more than 70% of residential land is reserved for single-family housing, 12.3% is reserved for lower density multi-family, and only 17.3% permits higher density multi-family developments.¹

Within these multifamily zones, cities and counties continued to include seemingly benign requirements such as density allowances, setbacks, and floor area ratios with the intent of protecting “neighborhood character”, which is often code for excluding certain groups of people from living in a particular area, such as low-income people, people of color, and/or people experiencing homelessness. Other expensive and inefficient zoning practices that limit the feasibility of rental housing production include minimum parking requirements (even when developing for groups of people who are less likely to have cars, such as older adults or people with disabilities) and the and lack of by-right approval of housing proposals which leads to lengthy discretionary review processes by planning departments because no objective standards exist.

These restrictive and exclusionary zoning laws and practices further exacerbate the opportunities for people who are homeless to get back on their feet by limiting access and availability of affordable housing. As people of color are disproportionately represented among people who were homeless (more than half of the 580,000 people nationwide who were homeless in January 2020 were people of color)², these practices perpetuate racial inequities and reinforce racial segregation.

Trends in Zoning Policies and Development Processes

Although local governments' authority to regulate land use is granted by State governments, the development of affordable housing has always been an inherently local process. For decades zoning was controlled at the neighborhood level, but this trend has been changing given the crisis many communities face with the lack of affordable housing. While many communities impacted by the imbalance of supply and demand are increasingly seeking out solutions that point to zoning and other regulatory barriers as impediments to housing construction, when communities

¹ City of Los Angeles Housing Element. Draft 2021-2029.

² U.S. Department of Housing and Urban Development's (HUD) 2020 Annual Homeless Assessment Report (AHAR) to Congress (Part 1)

do not act, the State has begun stepping in and asserting their pre-emption authority. This is happening nationwide in states as diverse as Arkansas, Oregon, Utah, Texas, and California.

Over the past five years, the California State legislature passed several laws to enable the construction of backyard units in single-family neighborhoods. Just this year, SB 9 was signed into law, which allowed homeowners to split their lot into two and build a duplex on each lot.

Other actions California has taken include legislation that approves housing projects in cities and counties that do not have approved Housing Elements, a planning document that addresses how localities will meet numeric targets for housing production determined by a regional housing needs assessment (SB35).

Effectiveness of Efforts to Reform Zoning Policies and Limitations of Reform

California for the past half-dozen years has effectively undertaken multiple efforts to reform zoning policies. Legislation like SB 35 signed into law in September 2017 created and required a streamlined, ministerial approval process for infill developments in localities that have failed to meet their regional housing needs assessment allocation.

Efforts like SB9 mentioned above and signed into law just last month that allows duplexes in single-family zones begin to knock down exclusionary walls, as well as efforts in Minneapolis, Denver, and the State of Oregon that completely do away with single family zoning. But if not fully vetted by policymakers, these reforms have the potential of not addressing the harm caused by exclusionary practices and instead fuel displacement and gentrification. For instance, while there are some guardrails in place under SB9, the protections in the bill to protect current tenants disappear after three years, and there are no requirements to ensure that rents will be affordable in the subsequent duplexes that are built.

The goal in zoning reform should not only be about doing no harm, but also to remedy past injustices. Reform must ensure that the class of people who were previously harmed will now benefit via more access and opportunity, and that investment (such as through increasing land value by increasing density) benefits the people in communities that have historically been disenfranchised.

In the context of building supportive housing to end homelessness, ACOF often encounters communities using zoning and discretionary approvals to block housing for people experiencing homeless, who are disproportionately people of color. In Los Angeles, 40% of those who were homeless were Black, yet Black people make up only 9% of Los Angeles County's population.

Discrimination against people with mental illness are repeatedly couched in land use terms – the housing project is “too dense”, too “out of character with the neighborhood”, has insufficient parking, and will generate traffic. Cities frequently bow to the pressure to preserve the status quo, leading to continued discriminatory practices and continued racial inequities in housing.

Further challenging supportive housing projects is California's environmental review process. California's Environmental Quality Act (CEQA), intended to analyze and mitigate environmental harm of public projects, has been weaponized over the past decade to delay and/or stop affordable and supportive housing projects that require government approvals. Twice in

2018, ACOF faced legal challenges on environmental grounds for two supportive housing projects that we proposed, even when only 49 units were proposed on a site zoned for over 100 units.

ACOF prevailed in both lawsuits, but the result was almost a four-year delay on each project, a significant increase in costs as funding commitments were de-obligated and construction costs increased, and dozens of homeless individuals and families, including veterans, who were not able to access the affordable housing with onsite supportive services that the two projects would have provided.

Federal Government's Role In Zoning Reform and Recommendations for Legislation

Today, there is a much better recognition and acknowledgement among policymakers and the community that zoning is a government-sponsored tool that continues to exclude certain groups of people which prevents them from accumulating intergenerational wealth. As such, the Federal government has a role to play in zoning reform. In particular, the U.S. Department of Housing & Urban Development (HUD) has a long history of sponsoring research on regulatory barriers, and this research should continue. Its Regulatory Barriers Clearinghouse remain a valuable resource for identification of barriers and solutions to housing production and preservation.

HUD should also continue its implementation of Affirmatively Further Fair Housing (AFFH) regulation and develop programs using a carrot-and-stick approach to ensure compliance with this provision of the Fair Housing Act of 1968.

Congress has a pivotal role to play as well. Excitingly, the Build Back Better Plan pending before Congress includes the "Unlocking Possibilities" Zoning Program. This grant program will incentivize local government to improve housing strategies, reform zoning practices, and streamline local regulations. It is particularly useful to small communities that may lack the resources and capacity to conduct housing needs assessments and develop concrete steps to eliminate barriers to produce affordable housing and advance fair housing. I would like to present three other strategies for your consideration:

Link Federal funding to AFFH

In addition to grants, I urge Congress to propose legislation or regulations that link federal funding to Affirmatively Furthering Fair Housing rules. Offering housing funds to entice communities to eliminate exclusionary zoning and reduce barriers are ineffective for communities who have no desire to supportive affordable housing in their neighborhoods. Instead, I urge Congress to link transportation, economic development, parks, and school funding, as examples, to reducing barriers to creating affordable housing and ending discriminatory impacts of zoning rules.

Inclusionary Zoning

In approximately 866 cities throughout the country, “inclusionary zoning” has been adopted to require the inclusion of affordable units in a market rate housing development.³ In return, developers receive incentives to assist or encourage participation, such as a density bonus to allow the building of more units than zoning would allow. These programs vary tremendously depending on the local community, with some programs voluntary and others mandatory. Some programs require the affordable units to be located within the market-rate development and others allow the affordable units to be located off-site. Another feature of some programs is the ability to make an in-lieu fee payment instead of developing an actual affordable unit in the same building. All have different definitions of affordability based on median income level as well as different time periods for how long the unit must remain affordable.

While inclusionary programs have grown in popularity, as of 2017 eleven (11) states have adopted laws to pre-empt local governments from adopting mandatory inclusionary zoning programs or limit their discretion in designing such policies.⁴ As Inclusionary Zoning is a tool to reverse discriminatory actions of the past in excluding people from certain neighborhoods and communities, such programs should be supported and not prohibited.

It is understood that local control over land use is a strong, long-standing principle in state–federal relations. However, the Federal government provides billions of dollars in subsidies through the low-income housing tax credit program and it should have a strong policy against state and local governments putting roadblocks in the way of increasing affordable housing and fostering inclusive communities. Congress should consider federal legislation to end this type of pre-emption.

Expand Rental Subsidies and Ban Source of Income Discrimination

Lastly, exclusionary zoning has limited mobility of people of color and limited opportunities to build generational wealth. To encourage mobility and access to opportunities, I join with many others who call for Congress to provide Housing Choice Vouchers to everyone who qualifies, and to prohibit landlords from rejecting applicants who use vouchers to pay their rent.

Currently, due to inadequate funding, just 1 in 4 eligible households receives rental assistance. According to the Center for Budget and Policy Priorities (CBPP), this investment would “do more good than any other housing policy in the legislation to reduce homelessness and other hardships for people who struggle most to afford a home. It is estimated that making vouchers to everyone who is rent burdened would help roughly 1.7 million people, and some 71 percent of those assisted would be people of color.”

CBPP also states, “Expanding rental assistance would also sharply reduce racial disparities in poverty rates that lead to homelessness. For example, one study estimated that providing vouchers to all eligible households would reduce the number of people in poverty by 9.3 million. Poverty rates would drop for all racial and ethnic groups, but most sharply for Black and Latino households, reducing the gap in poverty rates between Black and white households by a third and

³ Kriti Ramakrishnan, Mark Treskon, and Solomon Greene, “*Inclusionary Zoning: What does the Research Tell Us About the Effectiveness of Local Action?*”, Urban Institute, January 2019

⁴ Ibid

that between Latino and white households by nearly half. Vouchers can also give people of color, particularly Black and Indigenous people — whose housing choices have long been limited by segregation, redlining, and other structural racism — the option to live in a broader range of communities.”⁵

Closing Comments

Thank you again for the invitation to provide testimony on the homelessness crisis in Los Angeles. A Community of Friends applauds all of you for your leadership and focus on addressing the persistent inequities in the housing market.

I recently spoke to a colleague about my opportunity to attend this hearing today and would like to end with his quote: *“Just as the affordable housing crisis is the predictable consequence of policy decisions made over decades, ending the crisis means unraveling these discriminatory policies. It will require peeling back zoning and land use policies that created and perpetuated segregation. It will require massive public investment in affordable housing production. It will require for-profit private developers to produce their fair share of affordable housing. It will require change in policy to ensure that every community is a community of choice, and it will require new laws to prevent obstructions from the past to continue.”*⁶ I could not have said it any better. Thank you, Chairman Cleaver, for holding this hearing.

⁵ CBPP, “House Build Back Better Legislation Advances Racial Equity,” September 27, 2021

⁶ Greg Spiegel, Inner City Law Center, October 8, 2021