

Developments in Affordable Housing Powers for Cities



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Overview

- Background
 - Overview
- Legal Framework
 - Legal Authority
 - Constitutional Framework
- Strategies
 - City Revenue Tools
 - Practical Considerations





Defining the Problem

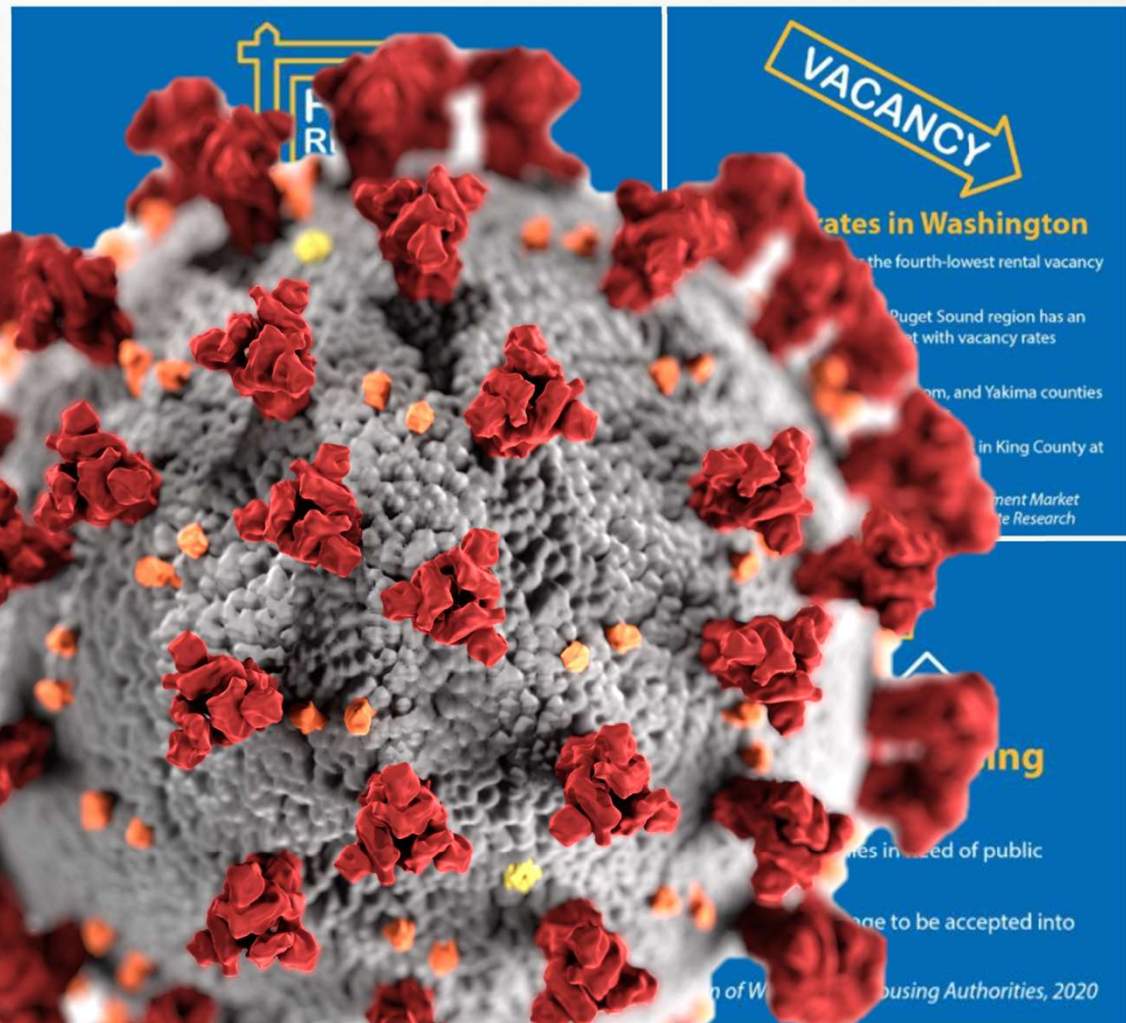
Affordable Housing Tools and Incentives

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The State of Affordable Housing in Washington

Association of Washington Cities:
State of the Cities Housing Report
(2020)



Home sales market

Available homes for sale declined by **45% in 2019** and demand now exceeds supply



The statewide median home **price has doubled** in the last eight years

ASSOCIATION OF WASHINGTON CITIES

Source: UW Center for Real Estate Research, Housing Market Highlights, Q2 2020

34% of cities are offering housing assistance during COVID-19



82% of cities rate lack of affordable housing as a problem in their community




72% of cities lack low-income housing



Source: AWC 2020 City Conditions Survey

80% of cities need state funding to support affordable housing programs and local planning efforts



Top 3 Housing ranked as one of the top 3 major problems facing cities

Impact of COVID-19 on Housing Affordability



- Current Emphasis on
 - Eviction Prevention
 - Eviction Moratorium
 - Moratorium on Utility Shutoffs
 - How to exit the Moratoria?
- Effect on Housing Affordability
 - Home Prices/Ownership?
 - Rental Market?
 - Will the pandemic have lasting effects on where and how people live?



City Roles in Housing Affordability

Indirect Participation

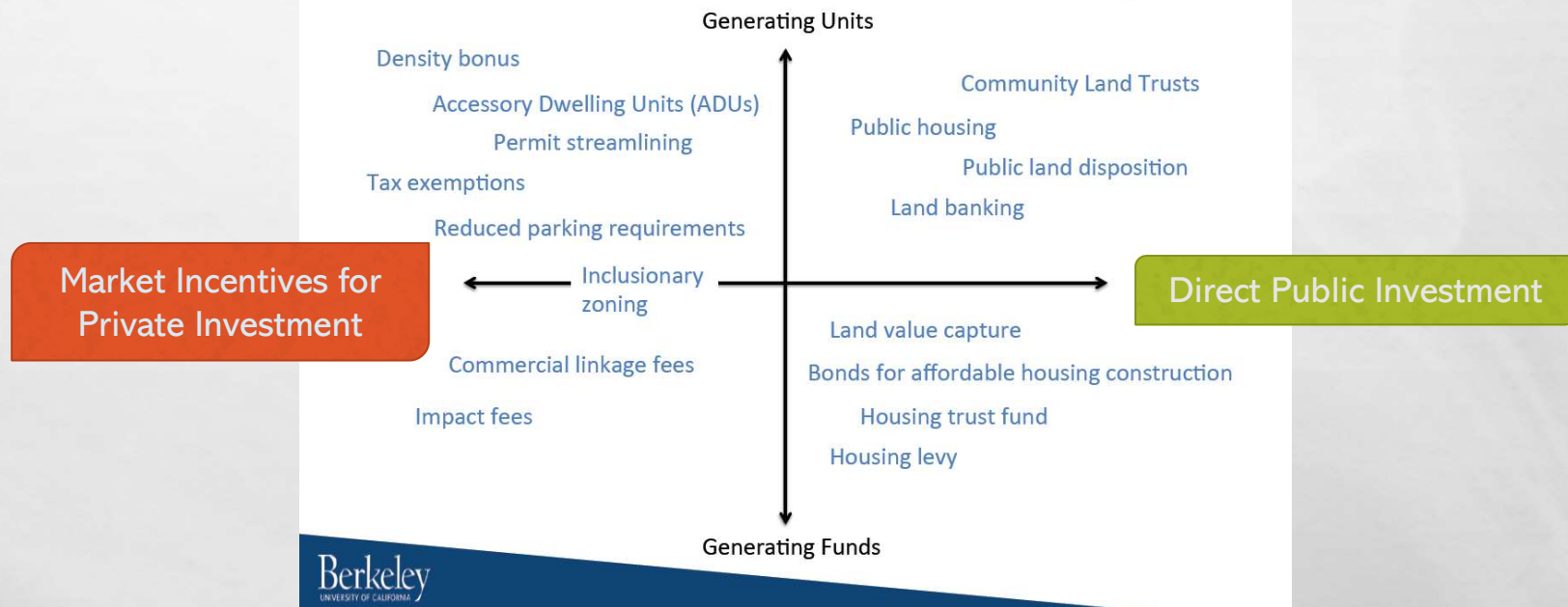
- Land Use Regulator & Permitting Authority
- Market \$ Incentives
 - Tax Exemptions & Deferrals
- Homelessness Prevention
 - Utility Discount Programs

Direct Participation

- Investment in Supportive Public Infrastructure
- Direct Financing Participant
 - Loans
 - Grants
- Public Owners/Operators of Low-Income Housing

City Roles in Housing Affordability

Creating New Affordable Housing



Developing City Policy Actions

- WA Dept of Commerce 2019 recommendations:
 - Plan for Housing Regionally
 - Coordinate with other local governments and local nonprofits
 - Shape Development Regulations to Encourage Affordability
 - Comprehensive Plan Housing Element
 - Housing Needs Assessment
 - Streamline Development Review Systems, Fees and Processes
 - Invest in Public Infrastructure Supportive of Affordable Housing
 - Support Retaining and Developing “Workforce” Housing

Source: Washington State Department of Commerce, Housing Memorandum: Issues Affecting Housing Availability and Affordability (pursuant to Senate Bill 5254) (June 2019)

Legal Framework

- Constitutional Framework
- Defining “Affordability” and Income Thresholds
- City Powers



Constitutional Framework: Aid to the “Poor and Infirm”

- Issues:
 - Poor “*and*” Infirm?
 - In this case, “and” means “or”
 - How to define “poor”?
 - 50% AMI? 80%?
 - How to ensure funds are used appropriately?
 - Regulatory Agreement
 - Recorded covenants
 - Enforceability/remedies?
 - How long?

Washington State Constitution Article VII, Section 7 CREDIT NOT TO BE LOANED.

No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, **except for the necessary support of the poor and infirm**, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.

Defining Affordability

“Affordable” Housing

Housing cost < 30% of household income
(>50% severely burdened)

Defining Income Thresholds

Moderate / “Workforce”: 80% - 115% of AMI

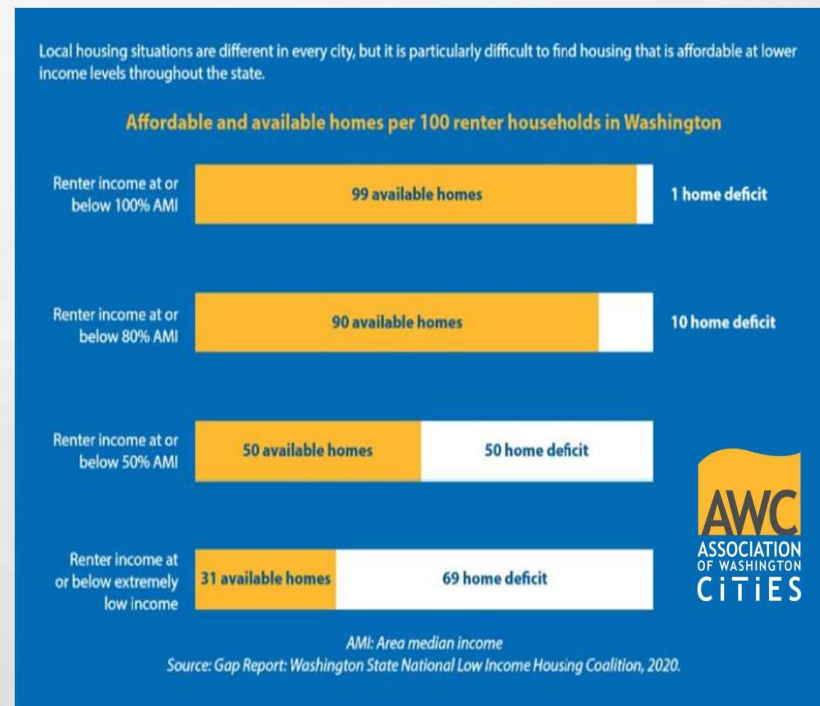
Low-Income: <80% of AMI, size adj.

Very Low-Income: <50% of AMI

Extremely Low-Income: <30% of AMI

Other terminology:

HUD Income Limits
Area Median Income (AMI)
Median Family Income (MFI)



General City Legal Authority

- RCW 35.21.685 – Direct Grants and Loans for Affordable Housing
 - “A city or town may assist in the development or preservation of publicly or privately owned housing for persons of low income by providing loans or grants of general municipal funds to the owners or developers of the housing...” [1986 c 248 § 1.]
 - To finance “construction, acquisition, rehabilitation...”
 - Residents < 80% AMI in MSA
 - Not “public works” (no competitive bidding, no prohibition against advance payment for services)
- Ch. 35.83 RCW – Housing Cooperation Law
 - Very broad powers authorizing cooperation between Housing Authorities & Cities
 - Authorizes land donations, land swaps, guarantees of Housing Authority debt
- RCW 39.33.015 - Transfer, Lease, Disposal of Public Property for Affordable Housing
 - Permits transfer of surplus property (with or without payment) to public, private or nongovernmental bodies for “public benefit” purposes to provide low- and very low-income housing
- Various other statutory declarations that affordable housing purposes are proper “public purposes”
- And don’t forget “home rule” powers!

City Revenue Tools: Raising Money for Affordable Housing

- Local Resources Available for Direct Assistance:
 - Affordable Housing Sales Tax – RCW 82.14.530 **Voter failed in 2019 (49/51), new councilmanic option**
 - HB 1406 Affordable Housing Sales Tax Credit – RCW 82.14.540 **Adopted in 2020**
 - Affordable Housing Property Tax Levy – RCW 84.52.105
 - Real Estate Excise Taxes – RCW 82.46.035 (REET 2) **Not available for Stevenson**
 - Lodging Taxes – (workforce housing) RCW 67.28.150 and .180
 - Multi-Family Tax Exemption (MFTE) – ch. 84.14 RCW **Not available for Stevenson**
 - **NEW* Tax Increment Financing Bill – passed April 20!*
- Other City Tools Available for Indirect Support of Affordable Housing:
 - Public infrastructure supportive of affordable housing development
 - Utility discount programs – Automatic enrollment?

Affordable Housing Sales Tax

RCW 82.14.530

Voter failed in 2019 (49/51), new councilmanic option



- **Who:** Cities, Counties
 - Voter approval was originally required, but effective June 11, 2020, no vote is required
 - City barred if County imposes first; if City imposes first, County must credit back to the City
- **What:** 0.1% Sales Tax
- **Use:** At least 60% of funds must be used: *(reflects amendments effective April 14, 2021)*
 - To construct or acquire affordable housing (including emergency, transitional, and supportive housing, new units of affordable housing or acquiring land for these purposes; facilities for housing-related services; constructing or acquiring behavioral health facilities or acquiring land for this purpose) or to fund operations/maintenance for above or for “newly constructed” evaluation and treatment centers
 - Must serve persons at or below 60% of County AMI, certain populations (persons with disabilities (incl, behavioral health), veterans, seniors, persons who are homeless or at at-risk of homelessness (including families w/ children), youth, DV survivors)

Remainder to be used for:

- “Operation, delivery, or evaluation” of “mental/behavioral health treatment programs “ & “housing-related services”

No more than 10% may “supplant” existing funds

State Sales Tax Credit (HB 1406)

RCW 82.14.540

Adopted in 2020

- **Who:** Cities, Counties who opted in before July 2020
 - Must have declared intent and enacted tax before July 2020 deadline
- **What:** A share (0.0146% or 0.0073%) of State Sales Tax, annually for 20 years
 - Full share available if other “qualifying local tax” was in place; actual amount to be received is capped for each State fiscal year, based on actual sales tax collections in State FY 2019
- **Use:** Funds must be used:
 - To acquire, rehabilitate, or construct affordable housing (may include new units within an existing structure or facilities providing supportive housing services (behavioral health organizations) or operations and maintenance costs of new units of affordable or supportive housing (includes admin costs related to affordable or supportive housing)
 - Cities under 100,000 (counties under 400,000) may use to provide rental assistance to persons <60% County AMI

May be used to repay bonds issued to make loans/grants to nonprofits & housing authorities

Affordable Housing Property Tax Levy

RCW 84.52.105

- **Who:** Cities, Counties
- **What:** Additional \$0.50/\$1,000 regular property tax levy, for up to 10 years
 - Requires voter approval by a simple majority of voters
- **Use:** Funds must be used to finance affordable housing for very low-income households (<50% of County AMI)

Effective October 1, 2020, may also be used to finance affordable homeownership, owner-occupied home repair, and foreclosure prevention programs for low-income (<80% County AMI) households:

- Legislative Body must declare emergency with regard to to availability of affordable housing for persons <80% County AMI and <50% County AMI
- Must adopt Affordable Housing Finance Plan consistent with local or State housing affordability strategy adopted under Cranston-Gonzales National Affordable Housing Act (42 USC Sec. 12701)

Real Estate Excise Tax (REET 2)

RCW 82.46.035

Not available for Stevenson

Change in
2021!

- Who: Cities, Counties
- What: 0.25% excise tax on sale of real estate
- Use: If in a jurisdiction that is fully planning under the Growth Management Act:
 - Until January 1, 2026, may use the greater of \$100,000 or 25% of available funds up to \$1 million, for planning, acquisition, construction, reconstruction, repair, replacement, rehabilitation, or improvement of facilities for those experiencing homelessness and affordable housing projects.

Lodging Taxes

RCW 67.28.150, .160 and .180

Change in
2021!

See attached map for estimated area of application

- Who: Cities and counties that collect lodging taxes under ch. 67.28 RCW
- What: Authority to use certain lodging taxes for “workforce” housing purposes
- Use: Lodging taxes must be used to repay bonds issued:
 - To finance contracts, loans or grants to nonprofits or housing authorities for “affordable workforce housing” located within 0.5 miles of a “transit station” or
 - For housing, facilities or services for homeless youth (*effective April 14, 2021*)
 - “Affordable workforce housing” means affordable at or below 80% of County AMI
 - “Transit station” means all passenger facilities, structures, stops, shelters, bus zones, properties, and rights-of-way of all kinds that are owned, leased, held, or used by a transit authority for the purpose of providing public transportation services

Incentive: Multi-Family Tax Exemption

ch. 84.14 RCW

Not available for Stevenson

Change in
2021!

- Who: Cities w/ population over 15,000 (some smaller cities may also qualify)
- What: Developer Incentive - property tax exemption for eligible housing improvements
 - Provides property tax exemption for 8-12 years for the value of the eligible housing improvements.
 - Exemption does not apply to the value of the land, existing improvements, and non-residential improvements
- Other: To be eligible for the 12-year exemption, a multifamily project must:
 - Owner must rent or sell at least 20% of the units to low- (<80% AMI) and moderate-income (80% -115% AMI) households.

NEW Tax Increment Financing

ESHB 1189, passed April 20, 2021 (not yet signed)

Change in
2021!

- Who: City, Town, County, Port
- What: Property tax increases within an Increment Area designated by the local gov't
 - Enables the local gov't that creates the Increment Area to receive “tax allocation revenues” from property taxes imposed by the overlapping jurisdictions; lifts the “101% levy lid” to hold overlapping jurisdictions harmless for any tax revenues that are distributed to the Increment Area
- Use: To pay “public improvement costs” within or serving the Increment Area, including:
 - Traditional infrastructure improvements and
 - Among other things, expenditures for:
 - Purchasing, rehabilitating, retrofitting for energy efficiency, and constructing housing for the purpose of creating or preserving long-term affordable housing
 - Purchasing, rehabilitating, retrofitting for energy efficiency, and constructing child care facilities serving children and youth that are low-income, homeless, or in foster care

Practical Considerations

- Utilize knowledgeable and experienced partners
 - Work regionally, use Housing Authorities, where appropriate
 - Don't reinvent the wheel
- Be aware of your private partners' incentives
 - Like other public-private partnerships, housing developers do not operate on "public sector" capital project schedules
- Factor in flexibility, but protect your City's public funds investment in the affordable housing

Practical Considerations

- Determine your City's role:
 - Do you plan to own/operate the housing or housing-supportive facilities?
 - If not, consider who you might contract with
 - Do you plan to provide funding to a third party development?
- Consider how to monitor/administer the program
 - Will you run a loan/grant application process?
 - Do you want to pool your available funds with other jurisdictions?
 - Will there be a regulatory agreement? Will you record restrictive covenants?

Discussion?

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