



CITY OF OAKLAND

AGENDA REPORT

DATE: May 19, 2022
TO: Council Colleagues and Members of the Public
FROM: Councilmember Carroll Fife
SUBJECT: **Article 34 Authorization To Develop, Construct, Or Acquire Low Rent Social Housing**

RECOMMENDATION

I respectfully request that the City Council—to expand access to low rent housing in the City of Oakland—adopt a Resolution On The City Council’s Own Motion Submitting To The Voters At The General Municipal Election On November 8, 2022, A Proposed Ordinance To Authorize The City Of Oakland To Develop, Construct, Or Acquire Up To 13,000 Low Rent Social Housing Units In The City Under Article 34 Of The California Constitution, And Directing The City Clerk To Take Any And All Actions Necessary Under Law To Prepare For And Conduct The November 8, 2022, General Municipal Election

EXECUTIVE SUMMARY

The City of Oakland continues to experience an unprecedented housing crisis. A growing number of Oakland residents are facing difficulties meeting their housing needs due to economic insecurity, unemployment, and displacement, which has been further exacerbated by the COVID-19 pandemic. In a city where 60% of the residents are renters, a vast majority of whom are rent burdened, access to low-income and very low-income housing is critical to ensuring that more Oakland residents don’t face homelessness.

According to the City’s Housing Element Annual Progress Report for 2020, the City has only met 43% of its Regional Housing Needs Allocation (RHNA) goals for very low-income housing, and 25% of its RHNA goals for low-income housing. Additionally, the December 2021 RHNA allocation plan for the Bay Area for 2023-2031 concluded Oakland needs 6,511 units of very low-income housing, and 3,750 units of low income housing. In order to capture the deficit from Oakland’s current RHNA cycle allocation for low-income and very low-income housing and capture the allocations for the next cycle (2023-2031), approximately 13,000 such units are needed.

However, under Article 34 (XXXIV) of the California State Constitution, the City of Oakland cannot develop, construct, or acquire low rent social housing units, or assist such housing development, without voter authorization. Therefore, this proposal would submit to qualified voters in the City, at the November 8, 2022 General Municipal Election, an ordinance to authorize the City of Oakland to develop, construct, or acquire up to 13,000 low rent residential units in

social housing projects within the City for the purpose of providing affordable rental housing to households and individuals with low incomes or below.

BACKGROUND AND LEGISLATIVE HISTORY

Article 34 emerged from residents of Eureka, California opposing the local housing authority's efforts to secure federal funds to develop low-income housing in their City. The residents would eventually collaborate with the California Real Estate Association to place Proposition 10 on the November 1950 ballot and the approval of this measure added Article 34 to the California Constitution. Article 34 sought to maintain the status quo of housing segregation following the adoption of the Federal Housing Act in 1949, which banned explicit racial segregation in public housing.¹ Article 34 has since served as a barrier to the development of much needed publicly funded low-rent housing across our State as it stipulates that voter approval is needed before the development, construction, or acquisition of this particular form of housing.²

Article 34, Section 1 of the State Constitution states that a low rent housing project cannot be “developed, constructed, or acquired in any manner by any state public body until, a majority of the qualified electors of the city, town or county, as the case may be, in which it is proposed to develop, construct, or acquire the same, voting upon such issue, approve such project by voting in favor thereof at an election to be held for that purpose, or at any general or special election.”³

Additionally, low rent housing is defined as a “development composed of urban or rural dwellings, apartments or other living accommodations for persons of low income, financed in whole or in part by the Federal Government or a state public body or to which the Federal Government or a state public body extends assistance by supplying all or part of the labor, by guaranteeing the payment of liens, or otherwise.”⁴

Developments that are exempt from Article 34 and thus do not require voter approval, include projects that are:

- privately owned and do not receive public financing
- If less than 49% of the units are occupied by low-income persons
- If it is an owner-occupied development instead of rental

There is currently no other state constitution that requires voter approval for public housing and there have been several unsuccessful attempts to repeal or modify Article 34 via statewide referendum, including in 1974 with Proposition 15; in 1980 with Proposition 4; and in 1993 with Proposition 168. Currently, California State Senators Allen and Wiener have put forth legislation (Senate Constitutional Amendment 2 or SCA 2) that would place a ballot measure to repeal Article 34. SCA 2 has passed through its house of origin in the State Legislature and is currently in the Assembly Appropriations Committee.⁵

¹ [Lawmakers Push to Repeal Anti-Black Housing Law in California Constitution-KQED](#)

² [Why it's been so hard to kill Article 34, California's 'racist' barrier to affordable housing - Los Angeles Times \(latimes.com\)](#)

³ [Article XXXIV Public Housing Project Law](#)

⁴ Ibid

⁵ [SCA-2 Public Housing Projects](#)

POLICY ANALYSIS

This is a straight forward proposal that seeks to secure the necessary authorization under Article 34 to develop low rent social housing to meet the housing needs in our City. As stated above, Oakland is not developing very low-income and low-income housing at the rate needed to meet the level of demand. The table below from the 2020 Housing Element Progress Report shows that the City has only met 43% of its RHNA goals for very low-income housing, and 25% of its RHNA goals for low-income housing.⁶

PROGRESS ON MEETING OAKLAND'S REGIONAL HOUSING NEEDS ALLOCATION (RHNA)										
Income Level	RHNA 2015-2023	Permitted Units by Year						Total Units	Total Units Remaining in RHNA by Income Level	% of RHNA met by total units
		2015	2016	2017	2018	2019*	2020			
Very low-	2,059	98	26	247	204	120	193	888	1,171	43%
Low-	2,075	30	13	66	85	307	40	541	1,534	26%
Moderate-	2,815	0	0	11	48	9	9	77	2,738	3%
Sub-total Affordable	6,949	128	39	324	337	436	242	1,506	5,443	22%
Above Moderate	7,816	643	2,082	4,019	4,280	1,727	865	13,616	0	174%
TOTAL	14,765	771	2,121	4,343	4,617	2,163	1,107	15,122		

In addition to the shortfall from the current RHNA cycle, Oakland’s cycle 6 RHNA allocation is approximately 10,000 units. Thus, the City needs 13,000 units of affordable rental housing for households and individuals with low incomes and below by the end of this decade (2031). Approving this legislation is the first step to ensuring the City meets its RHNA goals and keeps more Oaklanders housed.

This proposal is not asking the electors to approve any form of funding nor does it impose any new taxes on Oaklanders. Additionally, the approval of this legislation is not an approval of specific housing projects but instead securing the authorization required under Article 34 of the California State Constitution.

Moreover, for the purposes of this proposal, social housing describes housing units that would accommodate extremely low-income, very low-income, and low-income residents, and that are owned and managed by the City or by an affordable housing provider with development or acquisition assistance from the City.

COORDINATION

This legislation was drafted with community support and in collaboration with the City Attorney’s Office. The District 3 office also sought and received input from the Department of

⁶ https://cao-94612.s3.amazonaws.com/documents/Director-Rpt_FINAL-Presentation_Summary-of-Major-Accomplishments_2020APR_05192021.pdf

Housing and Community Development (HCD).

RACE AND EQUITY CONSIDERATIONS

Created to maintain segregated neighborhoods, Article 34 is an exclusionary and discriminatory statute that continues to limit affordable housing for low income persons in our state. California is currently the only state that requires voter approval of low rent public housing and until there is a successful repeal of Article 34, we must secure the necessary approvals to meet Oakland's housing needs and curtail additional displacement and homelessness.

ACTION REQUESTED OF THE CITY COUNCIL

I respectfully request that the City Council adopt a Resolution On The City Council's Own Motion Submitting To The Voters At The General Municipal Election On November 8, 2022, A Proposed Ordinance To Authorize The City Of Oakland To Develop, Construct, Or Acquire Up To 13,000 Low Rent Social Housing Units In The City Under Article 34 Of The California Constitution, And Directing The City Clerk To Take Any And All Actions Necessary Under Law To Prepare For And Conduct The November 8, 2022, General Municipal Election

For questions regarding this report, please contact Rediat Bayeh, Policy Analyst to Councilmember Carroll Fife, at RBayeh@oaklandca.gov.

Respectfully Submitted,



Carroll Fife
Councilmember, District 3