

Massachusetts Public Housing Redevelopment Residents' Bill of Rights June 2023

The Massachusetts Union of Public Housing Tenants has worked with its members and the Massachusetts Law Reform Institute to create this Public Housing Redevelopment Residents' Bill of Rights. It is a living document and its purpose is to articulate principles about how public housing should be preserved, protected, and expanded in Massachusetts. References to laws, programs, and redevelopment documents that residents, with their partners, have had input into are included in the endnotes.

Whereas:

There are currently 43,376 state **public** housing apartments and 31,131 federal **public** housing apartments in Massachusetts built with **public** dollars on **publicly** owned land;¹

With 136,570 individual applications on the state's public housing waiting list - every apartment is critical to preserve;²

To preserve state public housing, \$8.3 billion in capital repairs is needed; and to preserve federal public housing, at least \$70 billion in capital repairs is needed nationally;³

Public housing residents experience firsthand what is happening in their communities, stand up for safe and decent housing, and work to strengthen their neighborhoods;

While some housing authorities have the capacity to redevelop public housing and others do not, Regional Capital Assistance Teams were established by the state to work with small authorities to make capital repairs.

To preserve public housing and make needed capital repairs, redevelopment is happening in various ways, through partnerships between housing authorities and non-profit or for-profit entities, through use of tax credits by housing authority created affiliates, and through the conversion of subsidies from public housing subsidies to Section 8 programs.

Therefore:

Mass Union and Mass Law Reform and our partners urge policy makers and other stakeholders to put forth an ambitious plan to preserve and expand public housing for low-income people and to incorporate the principles in this Redevelopment Bill of Rights in programs, legislation, budgets, and as specific redevelopment projects emerge so that redevelopment results in housing that is permanently affordable to very low-income people.

Article 1

Preserve resident protections

As public housing is redeveloped, if the ownership of public housing transfers to a new owner, public housing protections must also be transferred. The Commonwealth's public investment and the rights that have been provided to public housing residents and applicants who need public housing must not be lost.

As public housing is redeveloped, a new owner – whether it is a non-profit or a for-profit organization or a housing authority affiliate - must be required to provide the same or substantially the same rights that residents and applicants had in units that were built with public dollars. These rights must provide rent, lease, relocation, right to return, grievance, transfer, resident participation, discrimination, preference in hiring, privacy, and tenant selection protections.⁴

There must be protections that this housing stays permanently affordable in **perpetuity** for low-income people.⁵ Affordable must mean affordable to low-income households as currently provided in public housing regulations.⁶ Affordable must also mean that the rent is capped as currently provided by public housing law.⁷

In short, the rights and protections currently applicable to federal and state public housing residents and applicants must continue after the redevelopment of public housing regardless of the ownership entity, except where certain redevelopment programs may require specific modification of these protections.⁸

Article 2

Enforcing resident protections

Residents must have the right to enforce tenant and affordability protections as a party to the contract.

These protections must be written into letters of assurance, which are legally binding documents, at the beginning of redevelopment to guide the housing authority, the developer, and the tenant association in decisions throughout the redevelopment process.⁹ These protections must also be set forth in plans and contracts, and especially in use agreements and ground leases, which are publicly recorded on the registry of deeds.¹⁰

There should also be clear timelines for the redevelopment process and clear consequences or penalties if terms of contracts and agreements are violated.

Residents of the redeveloped property must also be provided with the right to enforce agreements to ensure that affordable housing and tenant protections between a housing authority and developer remain in place for all current and future residents. These are referred to as “third-party beneficiary” rights and it is important that tenants be informed throughout the redevelopment process that they have third-party beneficiary rights.¹¹

If a new owner defaults on a loan, then protections should enable the state/federal housing agency to retain the authority to transfer the property and/or subsidy to another project or another owner after consulting with tenants in advance of any decisions to ensure that they retain their housing and their rights and that there is no loss of housing and protections for future tenants.¹²

As mixed-finance public housing programs and laws are established, the Massachusetts Executive Office of Housing and Livable Communities and the U.S. Department of Housing and Urban Development (HUD) should be required to issue regulations and guidance as needed and have the authority to enforce these regulations.

Article 3

Enforcing tenant participation requirements

Tenants in both current and redeveloped public housing need more effective paths to enforce tenant participation rights.

For tenants to be strong partners throughout the development process it is important that local tenant organizations have by-laws that clearly state the organization's responsibilities to the tenant community.¹³

Tenant organizations should also have memorandum of understanding and resident participation policies with the housing authority and new owners that set out the terms of resident participation.¹⁴ Such terms should cover funding, office space, meeting space, and clearly state how housing authorities and new owners will encourage the formation of tenant organizations.¹⁵ Policies and memorandums should clarify how often tenant associations, housing authorities, and owners meet. Policies and memorandums should also provide dispute resolution procedures that provide clear paths to resolving conflicts between the tenant organization and the housing authority and new partners.¹⁶

A stronger uniform statewide system is needed to enforce tenant participation regulations in both public housing and redeveloped public housing. For this reason, we propose that the state have an Arbitrator which tenants can elect to use to hear disputes specifically about tenant participation. Such disputes may involve elections, community space, funding for local tenant organizations, and enforcing requirements that housing authorities and owners regularly meet with tenants and tenant groups on capital and yearly plans. An arbitrator should be independent and after hearing from tenants, housing authorities, developers, and other stakeholders, have the authority to make a written enforceable decision.¹⁷

Article 4

Tenant informed development

If the housing authority starts to contemplate redevelopment it should **immediately** start to educate all tenants and the local tenant organizations, where they exist, about the development's needs, the development process, and development options. Such meetings must include information about what happens to residents' current rights and inform tenants of the changes in occupancy rules and other policies they may face as a result of redevelopment.

During redevelopment, housing authorities must hold **multiple** open forums and briefings to allow tenants to discuss plans, provide input, and make decisions about the redevelopment process, especially about relocation planning. The housing authority should document the number of meetings it has held, the tenant input it has received, and its responses to the tenant input; and the Housing Authority should make this information publicly available for tenants. A memorandum of understanding and other development documents, including clear timelines, should make these types of tenant participation processes clear.

The housing authority and entity involved in the development must develop strategies to get input from a majority of the resident community and should document that tenants have been involved throughout the redevelopment process. The resident community must be involved in developing these outreach and education strategies because different strategies will be needed for different places.¹⁸ It is not acceptable that only a few tenants show up at a meeting and that this be considered resident input.

The housing authority and entity involved in redevelopment must consider residents' concerns regarding needs and priorities and incorporate some or all of these needs and priorities into plans if they are consistent with sound management and development.¹⁹

Discussions with tenants must continue throughout and after redevelopment and through all phases of redevelopment, especially as new partners come into the process.

Article 5

Access to information

Throughout the redevelopment process, housing authorities and developers must give advance and multiple notices to tenants, including tenants who have been relocated, about meetings so that they can participate. Notice must also be posted in visible locations, for example in entry ways, community rooms, near mailboxes, and laundry rooms. Notice must be at least 7 days in advance of a meeting; unless it is an emergency meeting, then at least 48 hours' notice shall be provided.²⁰

Notices and redevelopment documents and materials must be translated into languages spoken by residents and interpreters must be provided at meetings.²¹

All relevant documents and information must be made available to tenants and their advocates sufficiently before meetings so that documents can be reviewed.²²

Redevelopment can be complicated and confusing for residents and the process can involve uncertainty. Effective and frequent communication with residents must be required. In addition, after redevelopment, the ownership entity should operate similar to the housing authority governing board, at least in terms of access to meeting agendas and minutes and opportunity to attend and speak at governing board meetings.

Article 6

Notice of rights

After redevelopment, tenants' rights must be included in an Admissions and Continued Occupancy Policy (if applicable) or Administrative Plan and in leases and lease addendums, which should be written in clear readable terms that are in plain language and translated. Tenants' rights should also be posted online.

In developing occupancy policies and leases a housing authority and the new owner shall consult with residents and local tenant organizations and give them an opportunity to comment and provide input prior to a lease, lease addendum, or a policy being approved.²³ A summary of all substantive comments received by the housing authority and new owner with their responses to those comments should be posted and publicly available.²⁴

Every year the housing authority or new owner must give tenants a copy of the lease and all lease addendums within 7 days of a request – no questions asked. Addendums must include policy changes so that residents understand what policies have changed. This protects both tenants and the entity that owns or manages the property.

Every year, the entity owning or managing redeveloped public housing must provide all tenants in the redeveloped properties with information about their rights so that tenants' rights are not forgotten.

Finally, yearly rent recertification notices, inspections, and other processes should be conducted in ways that are not invasive and do not require residents to provide multiple and duplicative documentation.

Article 7

Tenant Technical Assistance Teams

Throughout a public housing redevelopment process tenants need technical assistance at key moments so that residents can participate in meaningful ways.²⁵ Every redevelopment is different depending upon the size and scope and the resources available. Different subsidy programs may mean that certain rules no longer apply. There could be multiple phases, owners, and management companies at the same site. Issues involving relocation and rehousing, financing and long-term affordability, tenant protections and policies, design and accessibility, are all complicated issues.

Regional Tenant Technical Assistance Response Teams that can provide tenants in Massachusetts with help throughout the redeveloped process are needed. Such teams should include an organizer, lawyer, relocation specialist, architect, and/or financial adviser to help tenants discuss proposals, goals, financing, and to review complicated tax credit requirements, options, and documents. Technical assistance builds the capacity of tenants to have meaningful input into redevelopment plans, including relocation, management, tenant selection, and marketing plans and builds the capacity of tenants to effectively support the public approval and financing processes.

To enable residents to have technical assistance, the developer should agree to make a minimum of 3% of the developer's fee available for technical assistance for residents throughout the redevelopment process.²⁶

Article 8

Expand public housing in the public domain

When public housing is renovated, there must be 1-for-1 replacement and with permanently and deeply affordable hard units so that the subsidy is not lost. In general, units should be of like-kind, and 3 and 4 bedroom apartments should not be replaced with 1 and 2 bedroom apartments.²⁷

In addition, because of the great need for more housing for very low-income people, when public housing is redeveloped, all opportunities to expand it should be explored. Incentives should be provided to support the use of public housing authority surplus land and other public land to expand public housing that will stay in the public domain and remain permanently affordable for very low-income people.²⁸ Financial incentives should be provided to enable housing authorities to go beyond 1-for-1 replacement and include minimum requirements for expansion of units permanently affordable to low-income households at 27- 32% of their income.

Article 9

Employment opportunities for tenants

As public housing is redeveloped, housing authorities and developers should explore every avenue with existing and new partners to establish jobs, apprenticeships, and career-training programs that will lead to a sustainable income for tenants.²⁹ Employment opportunities must include tenant coordinators to expedite construction activities affecting residents.³⁰ Tenant coordinators can be a path to other employment opportunities.

Redevelopment plans should include strengthening or establishing support that includes access to childcare, health and well-being, financial management, and mentoring.³¹

Developers should have economic mobility components that include a combination of resident hiring, scholarships for people who want training and post-secondary education,³² and apprenticeships associated with construction, painting, maintenance, or other positions.³³

Developers and housing authorities must look for opportunities to negotiate jobs and training for residents with vendors and should discuss with tenants opportunities for tenants to start businesses that flow from redevelopment and also assist in providing access to start-up support.

Earned income rent protections must be transferred to tenants in redeveloped housing to help them get and keep work and to give them a chance to put money aside and increase their savings.³⁴

Article 10

Supportive programs

As public housing is redeveloped the process must offer an opportunity to enhance and create supportive services and programs. Access to health care, childcare, after-school programs, job training, tenant business incubators, in-home support for seniors and people with disabilities and other new supportive programs should be assessed by the developer with input from tenants.

For example, tenants in housing for seniors and people with disabilities have raised the need to have space on-site for medical exams where doctors can make “house calls” and nursing students from hospital programs can take blood pressure or administer other tests. Support is needed to allow seniors to age in place. Assistance should be provided to help people complete what can be a complicated array of forms to access Medicare and other services. Service coordinators are needed to connect tenants with support and empowerment activities. Coordinators can resolve problems in ways that prevent and reduce evictions.

Supportive services and programs should be included in redevelopment plans. The developer should also budget supportive services over a minimum of 20 years in a stand-alone budget line item and make at least an additional 3% of the developer’s fee available for services over time.

Article 11

Build and sustain tenant organizations

Public housing authorities contemplating redevelopment must financially support building and sustaining the capacity of local tenant organizations to represent tenants over the long-term. Tenant participation is a cornerstone to building a healthy community. Well supported, democratic, and informed tenant-led organizations play an essential role in educating the community, polling and surveying residents, facilitating meetings, gathering and relaying resident input and organizing tenants so that their voices can be heard.³⁵

Public housing authorities and private owners must be required to provide an additional percentage of the developers’ fee in a yearly operating budget to support democratically elected tenant organizations. They must also enter into memorandums of understanding and/or develop Resident Participation Policies to clarify the details of tenant participation rights and how tenant participation funds can be used, including paying for staffing support for the tenant organization.³⁶

Article 12

High quality redevelopment

Redevelopment should result in better housing with high quality, long lasting, energy efficient materials and construction. All public housing units should be intermixed with market-rate units to the maximum extent possible, except if affordable housing funding requires that a property be 100% affordable.³⁷ Market-rate units and public housing units must be the same quality.

Construction should be conducted in a way that causes minimal disruption for existing residents. Tenants should not be subjected to multiple and frequent inspections before, during, and after the redevelopment process.

Specific attention and input from tenants should be paid to accessibility of units, sound proofing, accessible parking, and creation or preservation of open space. Tenants should have input into designing and upgrading community meeting spaces and centers, community gardens, playgrounds, and other community spaces. New systems should include individual central air and climate and heat controls that each resident can control, Wi-Fi, and new technology and smart devices that allow older people and people with disabilities to age in place and feel secure in their homes.

Article 13

Trusted Partners

The housing authority must go through an open process when starting redevelopment to identify trusted and good development partners and allow for tenants to have input in selecting development and management partners. Good development partners must have a demonstrated capacity to be team-players, respect the housing authority, respect residents as true partners, and support the mission of public housing and the principles articulated in this Bill of Rights.

ENDNOTES

¹ **State Public Housing:** Executive Office of Housing and Livable Communities, formerly Department of Housing and Community Development (June 27, 2023).

Federal Public Housing: Slide 2 of HUD Dashboard

https://www.hud.gov/program_offices/public_indian_housing/programs/ph/PH_Dashboard

² The state's waiting list for public housing, CHAMP, was recently updated to remove applicants who have not interacted with their application or a housing authority in over 2 years and failed to respond to an email and mailing. As of 6/30/23, of the total 136,570 individual applications on the waiting list, 87,363 applicants applied to family public housing, 33,135 applicants applied to elder/disabled public housing, and 16,072 applied to for both family and elderly/non-elderly disabled housing. (Executive Office of Housing and Livable Communities, June 30, 2023). CHAMP does not include applications for federal public housing programs.

³ **State Public Housing:** The Capital Planning System of the Executive Office of Housing and Livable Communities catalogs the condition of the public housing portfolio and shows over \$3.9 billion in 2020 to replace items that have expired. Soft costs, such as tenant relocation, architectural, engineering, legal fees, and remediation of hazardous materials are not included in this estimate. Typically, these increase costs by at least 30%, an additional \$1.2 billion. In addition, sprinklers, fire alarm systems, ADA requirements, proper ventilation as well as stormwater management and green community initiatives must be addressed. Housing Authority Executive Directors estimate these would cost an additional \$3.4 billion in today's dollars. The total is an estimated \$8.5 billion.

Federal Public Housing see: *Public Housing: Where Do We Stand?* (Oct 17, 2019) at

<https://nlihc.org/resource/public-housing-where-do-we-stand>

⁴ **DHCD Public Housing Notice 2019-14** (May 15, 2019), updated by [Addendum 11](#) (March 2, 2020). See *Attachment E - Draft Developer Request for Proposal for Partnership to Expand Housing Opportunities Program* for mixed-income redevelopment which provides in Section II(1)(a) that: "...**state-aided public housing units shall remain subject to the requirements of M.G.L. c. 121B and any applicable regulations or administrative guidance** issued by DHCD" (page 3). Download at mass.gov/doc/draft-developer-rfp-for-partnership-to-expand-housing-opportunities-program-0/download.

See also *Cambridge Housing Authority Annual Plan 2019* (Approved by HUD December 10, 2018), which provides that the Cambridge Housing Authority "is committed to keeping all residents in place under the **same tenant protections that exist in the public housing program regardless of the ownership entity** (except where the low-income housing tax credit program requires a different rule)." (page A32)

State Public Housing:

See *Disposition and Regulatory Agreement for Capen Court* (December 1, 2008) which provides that the definition of "Public Housing Requirements" means the Act and its **implementing regulations in 760 C.M.R. §§ 4.00 et seq., 6.00 et seq., 27.00 et seq. and 47.00 et seq., and DHCD-issued notices, guidelines, handbooks and other official policies** related to the Act or the regulations referenced herein."

Federal Public Housing:

See *Newtowne Court Resident Relocation and Unit Assignment Policies and Procedures Agreement* (Approved Plan April 8, 2015) which provides that the Cambridge Housing Authority "will operate the RAD PBV apartments at Newtowne Court as family public housing with the **same tenant protections as currently in place for federal public housing....**"

See *Mildred C. Hailey Apartments Relocation and Rehousing Rights Letter of Assurance* (September 13, 2021) which provides: 1) “All Current Mildred C. Hailey Apartments residents who are required to relocate temporarily for the Redevelopment Project have the **right to return and to be rehoused** in newly deeply affordable replacement units...”; 2) that residents “**will retain substantially all the rights they have currently as federally-assisted public housing tenants of BHA**, including during any temporary relocation and after being rehoused at the new Mildred C. Hailey Apartments”; 3) “Relocation benefits will be provided in accordance with the policies and procedures set forth in a Relocation Plan and Rehousing Agreement ... that will be collectively drafted and approved by BHA, the Developer, and the MCHTO **with opportunity for resident review and comment prior to submission for approval** by the Massachusetts Department of Housing and Community Development.”

See *Relocation and Rehousing Rights Letter of Assurance* signed by the Boston Housing Authority, Bunker Hill Redevelopment Company LLC, and Charlestown Resident Alliance (September 12, 2019). Translated into Spanish and Chinese.

⁵ **DHCD**: Public Housing Notice 2019-14 (May 15, 2019), *Draft Developer Request for Proposal for Partnership to Expand Housing Opportunities Program* for mixed-income redevelopment provides in Section IV that: “The completed Redevelopment Project must provide the same number of public housing units in **perpetuity** as currently exists on the site, serve households of comparable sizes and income levels and those units must remain subject to M.G.L. c. 121B and the state public housing regulations at 760 CMR 4.00 et seq.” (page 5).

Federal Public Housing:

See *Mildred C. Hailey Apartments Relocation and Rehousing Rights Letter of Assurance* (September 13, 2021) which provides: “All 253 new Replacement Units will be operated in **perpetuity** as deeply affordable housing subject to all applicable federal and state housing programs rules, and this affordability restriction will be guaranteed in publicly available and enforceable documents.”

⁶ **State Public Housing**: See 760 C.M.R. § 4.01 definitions for:

- “Affordable Housing,” which is housing restricted to occupancy by low or moderate income households and for which the sales prices or rents are affordable to such households;
- “Low or Moderate Income Household,” which is a household with gross income at or less than 80% of area median household income as recently determined by the U.S. Department of Housing and Urban Development.

⁷ **State Public Housing**: In state elderly/disabled public housing, rent is capped at 30% of net income or 25% if a tenant pays some or all of their utilities. G.L. c. 121B, § 40(e), 760 C.M.R. § 6.04(1)(a). In state family public housing, rent is capped at 32% of net income if a tenant pays not utilities, 30% if a tenant pays some utilities, and 27% if a tenant pays all utilities. G.L. c. 121B, § 32, 760 C.M.R. § 6.04(1)(b).

Federal Public Housing: In federal public housing, tenants generally pay whichever is more: 30% of adjusted income or 10% of annual income. Most tenants pay 30% of adjusted income. 42 U.S.C. § 1437a(a)(1), 24 C.F.R. § 5.628(a).

⁸ If the Low Income Housing Tax Credit program (LIHTC) or a Section 8 program is being used to finance and redevelop a property, it may require specific modifications to resident policies and rights. For example, if LIHTC were used, certain eligibility restrictions where everyone in the household is a full-time student could be applied, which do not currently apply in public housing. Similarly, if the redevelopment involved a conversion from public housing to Section 8 Project-Based Voucher

program, federal public housing flat rent rules would not apply, nor would the federal public housing over-income rules. Legal Services advocates have worked to find solutions to prevent the displacement of families in these situations.

⁹ **State Public Housing:**

Letter of Assurance signed by Chelsea Housing Authority, Joseph M. Corcoran Company LLC and the Innes Residents Association (February 12, 2019), made available in English and Spanish.

Clarendon Hill Relocation Plan And Agreement (April 5, 2022) which describes relocation procedures, rights, and benefits applicable to affected residents and also includes provisions on tenant and applicant rights after the re-development such as grievance and tenant participation.

Federal Public Housing: *Relocation and Rehousing Rights Letter of Assurance* signed by the Boston Housing Authority, Bunker Hill Redevelopment Company LLC, and Charlestown Resident Alliance (September 12, 2019). Translated into Spanish and Chinese.

¹⁰ Protections must be set forth in relocation, rehousing and other plans, contracts, development agreements, publicly recorded land use agreements, ground leases, tenant leases, admissions and continued occupancy plans, Section 8 or MRVP administrative plan, and other regulatory or operating agreements.

State Public Housing: In Chelsea, see General Information Notice (GIN) (July 30, 2019). In Somerville, see *Clarendon Hill Relocation Plan And Agreement* (April 5, 2022).

Federal Public Housing: In Charlestown, see the Request for Proposals for Resident Relocation and Rehousing Services for the Charlestown Development, BHA Job No. 1193-06 (August 2019). The Relocation General Information Notice (GIN), the relocation survey, the ground lease and the Relocation and Rehousing Plan and Agreement are currently being developed for the Bunker Hill Redevelopment Project (federal family) and will be forthcoming when available.

¹¹ **State Public Housing:**

See *Disposition and Regulatory Agreement for Capen Court* in Somerville (December 1, 2008) provides:

- In 8.3 that “If an Event of Default remains uncured after expiration of the period of time referenced above, **DHCD, at its option (without liability to any party for failure to do so), may apply to any court, state or federal, for specific performance of this Agreement or an injunction** against any violation of this Agreement, or for such other relief as may be appropriate....” (page 10)
- In 9.2 that “during the Development’s fifteen year (15) year ‘Compliance Period’ as established under Section 42 [of the internal Revenue Code] **any resident of the Development shall be deemed a third party beneficiary of this Agreement with a right to enforce its terms** against the owner and/or the Authority.” (page 10)
- (ii) which allows individuals who meet the income limitation applicable to the building under subsection (g) (**whether prospective, present, or former occupants of the building**) **the right to enforce in any State court** the requirement and prohibitions of clause (i). (page 10)

See *Affordable Housing Use Agreement, 69 Sciarappa Street (a.k.a. 86 Otis Street), Cambridge Massachusetts* (known as Putnam School apartment) (December 16, 2021) which provides: “The benefits of this Agreement shall insure to any past, present or future applicants of the Premises, who shall have the right to enforce the same as **third-party beneficiaries.**”

Federal Public Housing:

See also *Rental Assistance Demonstration (RAD) First Component Use Agreement (HUD 52625)* which sets out: "Enforcement. In the event of a breach of any of the provisions of this Agreement, **any eligible tenant or applicant** for occupancy within the Project, or the Secretary or his or her successors or delegates, shall provide the Owner written notice of the breach. Upon failure to cure such breach... the enforcing party may declare an event of default and may institute proper legal action to enforce performance of such provisions, to enjoin any acts in violation of such provisions, to recover whatever damages can be proven, and/or to obtain whatever other relief may be appropriate." Available on HUD's website at: hud.gov/RAD/library/RADNoticePRA.

Tax Credit:

See also the federal Low Income Housing Tax Credit (LIHTC) at 26 U.S.C. Section 42(h)(6)(B)(ii) which provides prospective, present or former occupants of affordable housing the right to enforce, in state court, long-term commitments to provide low-income housing. Pursuant to [760 C.M.R. 54.15](#) the Massachusetts LIHTC must be administered and allocated in accordance with the standards and requirements applicable to the federal LIHTC. One example of this provision being applied is in a Tax Credit Regulatory Agreement and Declaration of Restrictive Covenants between DHCD and the Briston Arms Preservation Associates Limited Partnership (Cambridge) (June 26, 2015) in Section 3.2 which states that the covenants and restrictions set forth "shall bind the Grantor (and the benefits shall insure to DHCD and any past, present or prospective tenant of the Project)...."

¹² See for reference Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, div L, tit. II, General Provisions, § 212, 136 Stat. 4459 (2022) which provides: "Sec. 212. Notwithstanding any other provision of law, in fiscal year 2023, in managing and disposing of any multifamily property that is owned or has a mortgage held by the Secretary of Housing and Urban Development, and during the process of foreclosure on any property with a contract for rental assistance payments under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) or any other Federal programs, the Secretary shall maintain any rental assistance payments under section 8 of the United States Housing Act of 1937 and other programs that are attached to any dwelling units in the property. To the extent the Secretary determines, in consultation with the tenants and the local government that such a multifamily property owned or having a mortgage held by the Secretary is not feasible for continued rental assistance payments under such section 8 or other programs, based on consideration of (1) the costs of rehabilitating and operating the property and all available Federal, State, and local resources, including rent adjustments under section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 ..., the Secretary may, in consultation with the tenants of that property, contract for project-based rental assistance payments with an owner or owners of other existing housing properties, or provide other rental assistance. The Secretary shall also take appropriate steps to ensure that project-based contracts remain in effect prior to foreclosure, subject to the exercise of contractual abatement remedies to assist relocation of tenants for imminent major threats to health and safety after written notice to and informed consent of the affected tenants and use of other available remedies, such as partial abatements or receivership." Available at: congress.gov/bill/117th-congress/house-bill/2617/text. See also Consolidated Appropriations Act, 2019, Pub. L. No. 116-6, div G, tit. II, General Provisions, § 213, 133 Stat. 13, 459 (2019) which provides (referred to as the Schumer Amendment¹³): "That the Secretary may provide section 8 rental assistance from amounts made available under this paragraph for units assisted under a project-based subsidy contract funded under the "Project-Based Rental Assistance" heading under this title where the owner has received a Notice of Default and the units pose an imminent health and safety risk to residents: Provided further, That to the extent that the Secretary determines that such units are not feasible for continued rental assistance payments or transfer of the subsidy contract associated with such units to another project or projects and owner or owners any remaining amounts associated with such units under such contract shall be recaptured and used to reimburse amounts used under this paragraph for rental assistance under the preceding proviso;..." at congress.gov/116/plaws/publ6/PLAW-116publ6.htm.

¹³ Sample By-Laws for State Public Housing developed by Mass Union at massunion.org/wp-content/uploads/2019/07/Sample-Bylaws-for-local-tenant-organization.pdf. One issue that tenants in properties being redeveloped should consider including in their by-laws is providing that residents who are temporarily relocated off site because of redevelopment remain voting members.

¹⁴ **Federal Mixed Finance Public Housing Memorandum of Understanding:** Old Colony Amended and Restated Memorandum of Agreement for Resident Participation in Boston Housing authority-Affiliated Mixed Finance Development.

State Public Housing: Sample state public housing memorandum of understanding (MOU) in *Creating a Memorandum of Understanding: A Know Your Rights Guide for Public Housing Tenants in Massachusetts* at page 29. <https://massunion.org/wp-content/uploads/2018/10/Creating-a-Memorandum-of-Understanding.pdf>. See recent MOU between the Gloucester Housing Authority and the McPherson Park Tenant Association signed in 2019 at www.ghama.com/default.aspx?action=open&id=563. In *Fall River Housing Joint Tenants Council, Inc. v. Fall River Housing Authority, et al.*, 15 Mass. App. Ct. 992, 448 N.E. 2d 70 (1983) the court found that a memorandum of agreement or understanding between the tenant council and the housing authority was written in a way that made it an enforceable agreement or contract.

¹⁵ Pursuant to [760 C.M.R. § 6.09\(2\)](#), “The LHA shall **encourage and assist** public housing tenants ...to form one or more Resident Associations with democratically elected officers to represent the residents in dealing with the LHA on matters which affect their rights, status, duties, welfare, or other interests.”

¹⁶ **State and Federal Public Housing:** *Boston Housing Authority Resident Participation Policy*, revised as of May 31, 2023, which provides that the policy applies to mixed-finance developments owned by entities unrelated to the BHA where such developments were originally owned and operated by the BHA, the BHA owns the land subject to ground leases, and the low-income residents are subsidized by the BHA. BHA’s Resident Participation Policy also includes a section on dispute resolution to resolve matters involving resident participation.

¹⁷ An Arbitrator is different from a mediator because an arbitrator has the authority to make a decision about the dispute while a mediator helps facilitate the parties arriving at an agreement. We recommend that a special commission be established, with experts on arbitration, to more fully develop a proposal including where independent arbitrators should be based, what skills are needed, and what procedures and policies should be developed so that disputes can be quickly and cost-effectively resolved, while ensuring that all parties are treated fairly.

¹⁸ Tenant outreach is a very challenging aspect of development and we recommend that the Executive Office of Housing and Livable Communities, with key partners, develop a best-practices guide to capture the ideas and lessons that housing authorities, developers, and residents have learned. For example, in developing this Bill of Rights residents said that good outreach involves multiple forums and different types of forums (meetings, yard sales, cake sales); that transportation to and from the event may be needed, that the time of the meeting or event is critical (weekends, nights, etc.); that an independent facilitator can be important to provide a safe space to speak; that having food or a meal helps with turnout; and that small group discussions, surveys, and cell phone announcements can be good ways to get input or the word out about outreach events.

¹⁹ [760 C.M.R. § 6.09\(3\)\(h\)](#) provides a basis for this standard: “The LHA shall consider the LTO’s concerns regarding **needs and priorities** and incorporate some or all of such needs and priorities in the draft plan if deemed by the LHA to be **consistent with sound management**....”

See *Cambridge Housing Authority Annual Plan 2019* (Approved by HUD December 10, 2018), which provides that “In accordance with its standard practice, CHA will continue to **engage residents during the design and construction planning process**.” (page A32)

²⁰ This mirrors current notice regulations at [760 C.M.R. § 6.09\(4\)\(b\)](#): “Notice and Comments. Unless other applicable notice requirements are specified elsewhere in regulations, notice to residents under 760 C.M.R. § 6.09(4) shall be sufficient if given at least seven calendar days before the event and posted on the LHA's website, in prominent locations in development lobbies or community centers or rooms, and in the LHA's office(s). More notice, including notices delivered by mail, flyers or email, is encouraged. The LHA's notices shall inform residents of the items upon which their comments are sought, how to obtain documents that provide details about those items, and how resident comments will be accepted by the LHA. Notice of meetings to accept oral comments from residents will specify the time, date and location of the meetings.”

²¹ Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, et seq.; Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” 65 Fed. Reg. 50,121 (Aug. 16, 2000); Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,” 72 Fed. Reg. 2732 (Jan. 22, 2007). Pursuant to [760 CMR 4.02\(1\)\(e\)](#), local housing authorities are required to adopt and enforce anti-discrimination policies, including Language Access Plans.

²² **Federal Public Housing:** See *Newtowne Court Resident Relocation and Unit Assignment Policies and Procedures Agreement* (April 8, 2015) which requires the Cambridge Housing Authority (CHA) and/or the owner of the Newtowne Court to provide tenant council officers, legal services, the Alliance of Cambridge Tenants with copies of the proposed management agreement and all attachments and the proposed RAD Use Agreement “with **sufficient time** to enable the named parties to meet with CHA, and to submit comments prior to the execution of the Management Agreement and RAD Use Agreement.” (page 27)

²³ **State public housing:** The Executive Office of Housing and Livable Communities (EOHLC) must approve the lease. Before submitting a lease for approval, a housing authority must consult with tenant organizations. If there is any disagreement between the tenant organization and the housing authority about what is in the lease, the tenant organization may present its position to EOHLC. [760 C.M.R. § 6.06\(1\)](#).

Federal public housing: If a housing authority wants to make a change in the lease, it must provide at least 30 days’ notice to tenants and resident organizations. The notice must explain the changes and the reasons for them and provide an opportunity to tenants to present written comments. The housing authority must review any comments before adopting a new lease form. [24 C.F.R. § 966.3](#).

²⁴ **State Public Housing:** The state’s public housing annual plan process provides that: “A summary of all substantive comments received by the LHA about the Annual Plan and the LHA's responses to those comments.” 760 C.M.R. § 4.16(2)(g). This policy should be adopted for leases and policies developed during and after redevelopment to provide accountability and transparency during the public comment process.

Federal Public Housing: The federal public housing plan process provides: “The PHA must consider the recommendations of Resident Advisory Boards in preparing the final Annual Plan, and any significant amendment or modification to the Annual Plan, as provided in § 903.21....(1) In submitting the final plan to HUD for approval, or any significant amendment or modification to the plan to HUD for approval, the PHA must include a copy of the recommendations made by the Resident Advisory Board or Boards and a description of the manner in which the PHA addressed these recommendations.” 24 C.F.R. § 903.13(c) at ecfr.gov/current/title-24/subtitle-B/chapter-IX/part-903/subpart-B/section-903.13.

²⁵ **State Public Housing:** The state’s Public Housing Innovations Program under 760 C.M.R. § 64.04(1)(f) currently provides that: “Applicants shall describe how residents in State-aided Public Housing will be provided with **independent technical assistance** sufficient to allow them meaningful and informed input in the application and, if selected, in the program implementation process.”

²⁶ A developer's fee is a developer's return on the project and usually a percentage of the total development cost.

²⁷ See *Mildred C. Hailey Apartments Relocation and Rehousing Rights Letter of Assurance* (September 13, 2021) which provides that: "All 253 public housing units at Mildred C. Hailey Apartments Phase One will be replaced...."

²⁸ While more information is needed about the extent to which housing authorities have vacant land or properties that are buildable, according to a survey conducted by the Regional Capital Assistance Teams (RCATs) in November 2017 of 154 RCAT housing authorities, many small housing authorities have expressed interest in developing vacant properties. In some cases, the housing authority felt that the development potential was strong and in many of these cases the land has access to gas, water, sewer, and electrical service. In some cases, land has been donated to the housing authority. There are likely more vacant parcels at non-RCAT housing authorities and more potential for land and property to be donated to housing authorities.

See *DHCD Public Housing Notice 2019-13 Technical Assistance for Vacant Land Development*. mass.gov/doc/2019-13-technical-assistance-for-vacant-land-development/download. This notice was updated on September 12, 2022 to increase the grant amount available for technical assistance and updated on March 30, 2023 to allow LHA's to retain the proceeds from disposition of vacant land.

²⁹ While there are state and federal laws that provide public housing tenants with preferences to housing authority jobs, these are not enforced and outcomes have been sporadic. Massachusetts needs a more intentional statewide apprenticeship program for public housing that is not a work requirement bill, but a work opportunity bill to good paying jobs. A bill currently before the Massachusetts Legislature, H.1330, *An Act to establish an apprenticeship program to ready vacant public housing apartments for occupancy*, provides for such a model and would make sure that public housing capital and operating funds translate into training and jobs for tenants. H.1330 would also support the three Regional Capital Assistance Programs with tenant painting and vacant unit preparation crews.

³⁰ See 760 C.M.R. § 11.09 which in part provides: "The Department may require that an LHA engage the services of one or more tenant coordinators to expedite construction activities affecting residents for construction projects that involve substantial resident relocation or otherwise have a significant impact on residents for an extended period of time." 760 C.M.R. § 11.09 (b) also requires that tenant coordinators be paid "at the rate of one and a half times the highest minimum wage (State or Federal) then applicable in the Commonwealth."

³¹ See Massachusetts Learning, Employment and Asset Program (Mass LEAP) which provided residents of state-aided public housing developments and/or Massachusetts Rental Voucher Program (MRVP) participants with a set of services needed to support meaningful and sustainable earned income growth mass.gov/doc/mass-leap-findings/download. See also EMPATH's Bridge to Self-Sufficiency Program. <https://www.empathways.org/approach/bridge-to-self-sufficiency>.

³² For example, MassNAHRO has a certification training.

³³ See **DHCD** Public Housing Notice 2019-14 (May 15, 2019), *Draft Developer Request for Proposal for Partnership to Expand Housing Opportunities Program* for mixed-income redevelopment provides in Section IV(1)(a) *Economic Mobility and Supplier Diversity*: "Projects that include a service component for public housing residents will be scored more competitively in this RFP. A services component should include some combination of **resident hiring and apprenticeships** associate with the construction project as well as ongoing service provisions to residents." (page 6)

³⁴ **State Public Housing**: 760 C.M.R. § 6.05(3)(i).

³⁵ **Federal Public Housing**: The redevelopment of Mission Main under the federal HOPE VI program, which is comprised of 535 units of rental housing with a mixture of 83% public housing units and 17% market rent, resulted in the tenant task force receiving 10% of the initial developer fee of \$8,000,000.

The task force still receives 10% of the cash flow from the market rate units to sustain the tenant organization. This was part of the Project Agreement and the Regulatory and Operating Agreement.

³⁶ See *Boston Housing Authority Resident Participation Policy*, revised as of May 31, 2023, which provides that the resident participation policy applies to mixed-finance developments. See also Memorandum of Agreement for Resident Participation in Boston Housing Authority-Affiliated Mixed Finance Developments developed collaboratively by residents and owners to clarify tenant participation protections in mixed finance properties.

³⁷ Public Housing Notice 2019-14 (May 15, 2019), *Draft Developer Request for Proposal for Partnership to Expand Housing Opportunities Program* for mixed-income redevelopment provides in Section IV that “Public housing and market rate units must be integrated within the development. “See also *Relocation and Rehousing Rights Letter of Assurance* signed by the Boston Housing Authority, Bunker Hill Redevelopment Company LLC, and Charlestown Resident Alliance (September 12, 2019) which provides that “Most new building will include a mix of market and affordable units, although there will be 2-3 buildings with all affordable units. All new units at the Bunker Hill site ..., whether affordable replacement or market rate units, will have the same finishes, fixtures, appliances, whether rebuilt on- or off-site....”