POLICY BRIEF NO. 16
JUNE 2023

Pritzker Briefs
PRITZKER ENVIRONMENTAL LAW AND POLICY BRIEFS

Tenant-Friendly Building Decarbonization in Los Angeles: Maximizing the Benefits and Minimizing the Harms

By Daniel Carpenter-Gold

Executive Summary

The City of Los Angeles is working toward a crucial climate target: eliminating greenhouse-gas emissions from all buildings in the city by 2050. While the City has taken important steps with regard to new construction, retrofitting existing buildings to eliminate fossil-fuel appliances and reducing buildings' energy use will be more impactful, and require more difficult policy choices.

Residential tenants deserve particular attention in this process, for several reasons: First, most people in Los Angeles rent their homes, and Black, Brown, and low-income Angelenos—people who have been historically mistreated by environmental and housing policy and bear the greatest pollution and climate burdens—are even more likely to be renters, so policies for decarbonizing rental housing will disproportionately affect them. Second, decarbonization retrofits could subject tenants to catastrophic rent hikes or even eviction, risks to which homeowners are not subject. Finally, some decarbonization measures can improve housing quality and reduce household energy costs—but since landlords, not tenants, have control over which measures are taken in rental housing, tenants may miss out on these co-benefits without affirmative efforts by the City to promote them.

In other words, a well-designed policy for existing buildings could create environmental, health, and equity co-benefits, while a poorly designed policy could worsen an already dire housing crisis. To that end, this brief makes the following recommendations for the City's building-decarbonization policy:

- Prohibit the owners of properties subject to the Rent Stabilization Ordinance from passing the costs of decarbonization retrofits on to their tenants;
- Eliminate provisions in the Los Angeles Municipal Code that allow landlords to evict tenants in order to renovate their properties;
- Strengthen enforcement and oversight of existing tenant-protection measures and, in particular, expand and make permanent the Eviction Defense Program and staff the Los Angeles Housing Department and City Attorney's Office sufficiently to enforce the Tenant Anti-Harassment Ordinance;

UCLA School of Law
Emmett Institute on Climate Change & the Environment

- If the City provides subsidies to landlords for building decarbonization, require enforceable agreements from those landlords to protect tenants from rent increases and evictions;
- Require that landlords subject to decarbonization mandates, or benefiting from decarbonization subsidies, prioritize retrofits that improve tenants' health and quality of life, such as appliance electrification and ventilation improvements;
- Ensure that an appropriate portion of energy savings from conservation or distributed-generation measures is credited to tenants' accounts;
- Create an oversight body with the power to affect the implementation and revision of the City's decarbonization policy, and ensure it benefits from real tenant representation and community input; and
- Promote housing models that better protect tenants, including publicly owned housing, deeply affordable deed-restricted housing, and community land trusts.

I. Introduction

Building decarbonization could directly improve tenants' quality of life by providing them with healthier living spaces and reducing their energy costs, or lead to higher rents or even evictions as landlords respond to new incentive structures.

The government of the City of Los Angeles (the City) has set ambitious climate goals for the next several decades. One element of the City's climate policy focuses on building decarbonization: eliminating greenhouse gas (GHG) emissions attributable to buildings. The City has set a target of reaching "zero net carbon" for buildings within Los Angeles City (LA) by 2050, while reducing LA buildings' energy usage to 44% below 2015 levels by 2050.

Decarbonizing LA's residential buildings will have an immense impact on the people living in them. This is particularly true for the roughly 2.3 million people in LA who rent, rather than own, their apartments, because of their relative lack of control over their homes. Tenants rarely have authority over home renovations or even a choice of the major appliances in their apartment. The work necessary to achieve building decarbonization could directly improve tenants' quality of life by providing them with healthier living spaces and reducing their energy costs. At the same time, building decarbonization could also lead to higher rents or even evictions as landlords respond to new incentive structures. The importance of these potential benefits and harms will be magnified for low-income, Black, and Latinx residents, who are more likely to be facing health, rent, or energy burdens.[1]

The City has already taken action on new buildings.[2] This is an important step forward, but addresses only a small portion of LA's building inventory.[3] Retrofitting existing buildings will be a

1 *See, e.g.,* Paul A. Simon, et al., *Prevalence of Childhood Asthma and Associated Morbidity in Los Angeles County: Impacts of Race/Ethnicity and Income,* 40 J. Asthma 535 (2003) (finding, in Los Angeles County, asthma prevalence for Black residents was more than double that of White residents, and, among White, Black, and English-speaking Latinx residents, prevalence was higher for lower-income groups than for higher-income groups); Yasmin Romitti, et al., *Inequality in the Availability of Residential Air Conditioning across 115 US Metropolitan Areas,* PNAS Nexus vol. 1, iss. 4 (2022) (finding, across US metro areas, including the Los Angeles metro area, modeled probability of household having air conditioning is lower in census tracts with higher share of Black, Latinx, or low-income households); Silvia R. González, et al., *Keeping the Lights and Water On: COVID-19 and Utility Debt in Los Angeles' Communities of Color* (2021), https://innovation.luskin.ucla.edu/wp-content/uploads/2021/04/Keeping-the-Lights-and-Water-On.pdf (finding that communities with the highest utility debt burden have disproportionately high shares of Black and Latinx residents and low average household income); Zillow Research, *Where the Rent Burden is Most Unequal across Racial Communities* (Oct. 12, 2021), https://www.zillow.com/research/rent-affordability-by-race-2021-30207/ (finding that Black, Latinx, and Asian renters in the Los Angeles metro area consistently spend a greater share of their income on rent than White renters).

2 *See* L.A. Mun. Code §§ 99.04.106.8, 99.05.106.14.

3 The share of buildings constructed to the new decarbonization code will, of course, grow over time. But they will likely still be a minority of residential buildings by 2050, which is the City's target for complete decarbonization. *See* Nat'l Renewable Energy Labs., *LA100: The Los Angeles 100% Renewable Energy Study* c.3, p.18, fig. 12 (2021), https://www.nrel.gov/docs/fy21osti/79444-3.pdf (projecting that share of residential building stock within the LA Department of Water and Power service area constructed 2020 or later will be minority of total residential stock).

Decarbonizing existing buildings will be much more difficult than new buildings, both because of the larger scope of the endeavor and because retrofits to existing buildings are likely to be more expensive and difficult.

much more difficult task, both because of the larger scope of the endeavor and because retrofits to existing buildings are likely to be more expensive and difficult than including decarbonization measures in new construction.[4] It is therefore crucial that the City's existing-building decarbonization policy be designed with careful consideration of its impact on LA residential tenants.

This is a timely policy discussion for another reason: City politics in Los Angeles have undergone a seismic shift in recent months when it comes to representation of renters at City Hall. Candidates who rent their own homes and advocate for renter protections won a significant number of local elections in 2022, from City Council members to the City Controller's Office. This dynamic, which is likely to grow as housing costs rise, coincides with the urgent timeline of LA's Green New Deal and could create a unique opportunity to reexamine housing policies while also addressing climate change and decarbonization.

To that end, this brief explores the specific benefits and risks to tenants that the City must consider as it chooses a policy path. The brief focuses particularly on the interaction between building decarbonization and the existing protections for LA tenants, including the Rent Stabilization Ordinance, the statewide Tenant Protection Act, and the recently passed ordinance requiring "just cause" for evictions in LA;[5] it also reviews elements of policies implemented by other major cities, including Boston, New York, St. Louis, and Washington, D.C. This analysis demonstrates that the City's decarbonization policy should close loopholes in existing tenant protections, take steps to ensure that tenants receive a fair share of the co-benefits of decarbonization, and create an oversight body with real power and representation, among other actions.

4 *See, e.g.,* Rocky Mountain Inst., *The Economics of Electrifying Buildings: How Electric Space and Water Heating Supports Decarbonization of Residential Buildings* 7 (2018), https://rmi.org/insight/the-economics-of-electrifying-buildings/ (finding cost of retrofitting buildings for electric space and water heating roughly twice that of including electric appliances in new construction, across four US cities).

5 This brief does not address deed-restricted or voucher-based affordable housing, which operates under principles that are not specific to LA and has been discussed elsewhere. *See, e.g.,* Nat. Res. Defense Council, *Los Angeles Affordable Housing Decarbonization Study Phase 2* (2021), https://www.nrdc.org/sites/default/files/la-affordable-housing-decarbonization-study-phase2-20211108.pdf (specific to LA housing); Pub. Health Law Ctr. et al., *Petition for Rulemaking to Electrify and Weatherize Public Housing and Housing under HTF, HOME, and CDBG* (2022), https://www.publichealthlawcenter.org/sites/default/files/resources/public-housing-petition.pdf (specific to federally supported housing); Dan York, et al., Am. Council for an Energy-Efficient Econ., *Building Decarbonization Solutions for the Affordable Housing Sector (2022),* https://www.aceee.org/sites/default/files/pdfs/u2204.pdf (focused on overcoming physical and financial barriers to retrofits).

II. Background: The Importance of Rental Housing in Building Decarbonization

A. Climate Change and Buildings

Any effective strategy to eliminate the GHG emissions that lead to climate change will need to include some level of building decarbonization.

Climate change is an existential threat. Increased levels of GHGs in the atmosphere are already causing death and suffering.[6] If not drastically reduced, continued GHG emissions will lead to catastrophe: hunger, thirst, extreme heat and weather, wildfires, and flooding, among other impacts.[7] Urban areas are particularly vulnerable, as are areas that have key infrastructure along the coast and which already experience high temperatures, drought, and poor air quality—as LA does.[8] And within those urban areas, people of color and poor people are the most likely to be harmed.[9]

Any effective strategy to eliminate the GHG emissions that lead to climate change will need to include some level of building decarbonization. Buildings are a substantial source of GHG emissions, accounting for over a third of emissions both nationwide and in LA.[10] There is also a set of well-understood, feasible options for reducing those emissions that can be applied even in existing buildings: transitioning from fossil-fuel to electric appliances; increasing the building's heating and cooling efficiency through improved insulation and air exchange; and installing on-site renewable generation, typically solar panels.[11] Therefore, building-decarbonization measures are frequently included in large-scale climate-mitigation plans.[12]

These building-decarbonization measures also create benefits beyond GHG reductions. These co-benefits include improved housing quality and reduced energy costs, which are discussed in Section V of this brief. Other important co-benefits exist, such as improved grid resiliency or job growth in relevant business sectors, but these are beyond the scope of this brief. Decarbonization retrofits also increase the sale and rental value of the building,[13] which is a co-benefit for landlords although, as discussed in Section IV below, it creates risks for tenants.

Like many other jurisdictions, the City has incorporated building decarbonization into its long-term climate strategy, called the "LA Green New Deal."[14] The LA Green New Deal has two related goals for building decarbonization: first, that all new buildings will be "net zero carbon"

6 *See, e.g.,* Int'l Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6): Longer Report* 14-17 & fig.2.3(c) (2023), https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_LongerReport.pdf [hereinafter *Synthesis Report*].

7 *See generally id.* 36-43, 62-66.

8 *Id.* at 16, 62-63; Int'l Panel on Climate Change, Working Gp. II, *Climate Change 2022: Impacts, Adaptation and Vulnerability* c.6, at 909, 938-39 (2022), https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_Chapter06.pdf.

9 *See, e.g., id.* at 958-60; *Synthesis Report supra* note 6, at 17, 28; Seth Shonkoff et al., *The Climate Gap: Environmental Health and Equity Implications of Climate Change and Mitigation Policies in California—A Review of the Literature,* 109 Climatic Change 485 (2011).

10 U.S. Envtl. Prot. Agency, *Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2021* ES-10 (2022), https://www.epa.gov/system/files/documents/2023-04/US-GHG-Inventory-2023-Main-Text.pdf (commercial and residential buildings combined accounted for the equivalent of 1,638 million metric tons of CO_2 ($MMTCO_2e$) in 2021, out of a total of 4,640 $MMTCO_2e$); L.A. San. & Envt., *City of Los Angeles: 2021 Community Greenhouse Gas Inventory* 7 (2023), https://www.lacitysan.org/cs/groups/public/documents/document/y250/mdg4/~edisp/cnt088358.pdf (commercial and residential buildings combined accounted for the equivalent of 9.745 $MMTCO_2e$ in 2021, out of a total of 27.73 $MMTCO_2e$). These measurements include emissions indirectly caused by buildings' electricity use, and exclude emissions from manufacturing or use of refrigerants, such as those used in refrigerators or air conditioners.

11 *See, e.g.,* Brennan D. Less et al., Lawrence Berkeley Nat'l Lab., *The Cost of Decarbonization and Energy Upgrade Retrofits for US Homes* 41-43 (2021), https://eta-publications.lbl.gov/sites/default/files/final_walker_-_the_cost_of_decarbonization_and_energy.pdf.

12 *See, e.g.,* Cal. Air Res. Bd., *2022 Scoping Plan for Achieving Carbon Neutrality* 75-76 (2022), https://ww2.arb.ca.gov/sites/default/files/2023-04/2022-sp.pdf; Nat'l Climate Task Force, *President Biden's Actions to Tackle the Climate Crisis,* https://www.whitehouse.gov/climate/; Intergovernmental Panel on Climate Change, *Climate Change 2022: Mitigation of Climate Change: Summary for Policy Makers* 35 (2022), https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_SPM.pdf; *Synthesis Report, supra* note 6, at *72.*

13 *See, e.g.,* Xingchi Shen et al., *Estimation of Change in House Sales Prices in the United States after Heat Pump Adoption,* 6 Nature Energy 30, 30 (2021).

14 *See generally* City of Los Angeles, *L.A.'s Green New Deal* 52-59 (2019), https://plan.lamayor.org/sites/default/files/pLAn_2019_final.pdf.

by 2030 and existing buildings will be "net zero carbon" by 2050; and second, that building energy use will be reduced by 22% by 2025, 34% by 2035, and 44% by 2050 (compared to average 2015 energy use).[15] As of this writing, the Los Angeles City Council (City Council) has begun implementing the first part of this goal.[16] The City has also begun a process to retrofit its own existing building stock;[17] however, the City has not yet instituted any requirements for existing buildings to become carbon-neutral.

B. Housing in Los Angeles

LA is a city of renters, and its housing market is dominated by multifamily apartments. Almost two-thirds of LA households rent their homes, rather than owning them.[18] A slight majority of homes in LA are now in multifamily buildings (buildings with at least 3 units), and most new housing created in the city in the last decade has been in multifamily buildings, particularly large multifamily buildings (buildings with at least 50 units).[19]

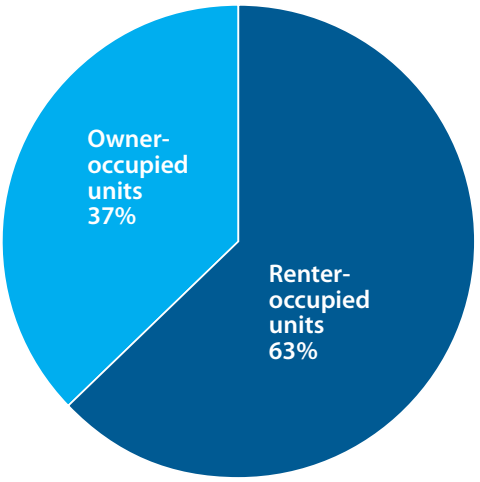


Figure 1: Share of occupied units in the City of Los Angeles occupied by owners versus renters. [20]

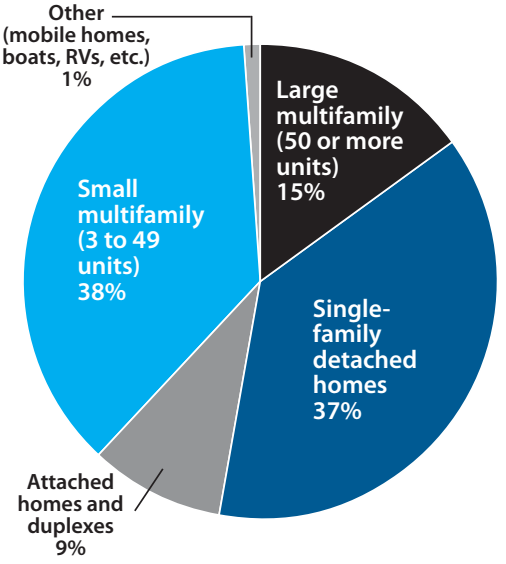


Figure 2: Share of housing units in the City of Los Angeles by size of building. [21]

15 *Id.* at 54, 57. The term "net zero carbon" is not defined in the City's plan, but the term is often used to refer to programs that allow for some sort of off-site emissions reduction to make up for on-site emissions. *See, e.g.,* Univ. of Oxford & Net Zero Climate, *What is Net Zero?,* https://netzeroclimate.org/what-is-net-zero/.

16 Motion of Nithya Raman et al., C.F. 22-0151 (adopted May 27, 2022), *available at* https://clkrep.lacity.org/onlinedocs/2022/22-0151_misc_2-9-22.pdf.

17 *See* L.A. Dept. of Pub. Works, Report to the Los Angeles City Council, C.F. 21-1039 (May 3, 2022), *available at* https://clkrep.lacity.org/onlinedocs/2021/21-1039_rpt_boe_5-03-22.pdf.

18 U.S. Census Bureau, *B25003: Tenure* (ACS 5-Year Estimate 2021), https://data.census.gov/table?tid=ACSDT5Y2021.B25003&g=1600000US0644000.

19 *Compare* U.S. Census Bureau, *B25024: Units in Structure* (ACS 5-Year Estimate 2021), https://data.census.gov/table?tid=ACSDT5Y2021.B25024&g=1600000US0644000, *with* U.S. Census Bureau, *B25024: Units in Structure* (ACS 5-Year Estimate 2011), https://data.census.gov/table?g=1600000US0644000&tid=ACSDT5Y2011.B25024.

20 Data from U.S. Census Bureau, *B25003: Tenure* (ACS 5-Year Estimate 2021), https://data.census.gov/table?tid=ACSDT5Y2021.B25003&g=1600000US0644000.

21 Data from U.S. Census Bureau, *B25024: Units in Structure* (ACS 5-Year Estimate 2021), https://data.census.gov/table?tid=ACSDT5Y2021.B25024&g=1600000US0644000.

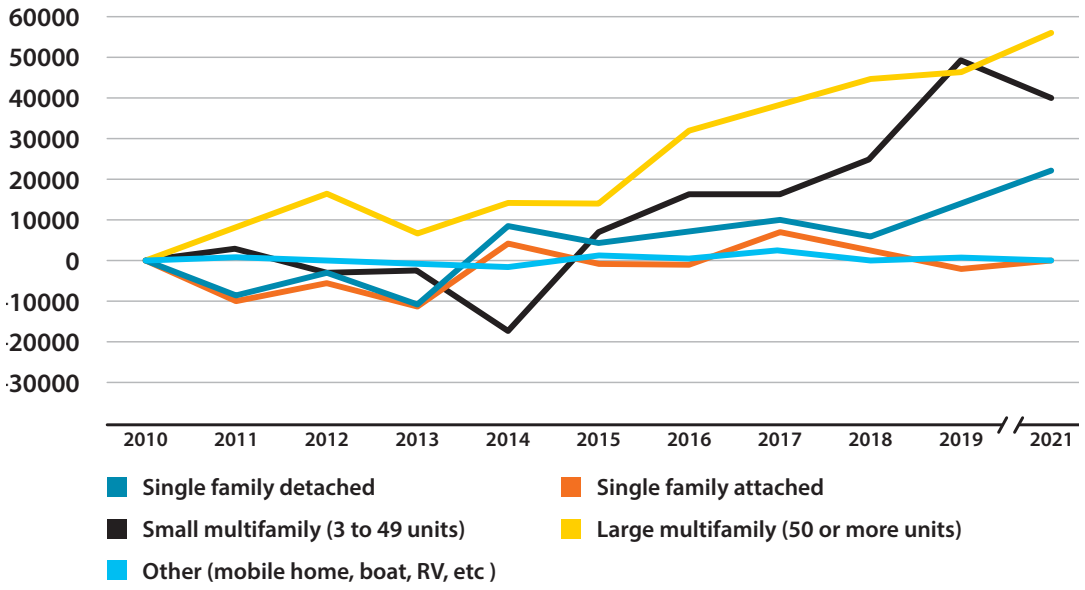


Figure 3: Net growth in units since 2010 by size of building. [22]

LA's residential housing stock is also quite old. Almost half of the units in LA were built before 1960, and one-fifth were built before 1940, a far higher share than for California or the United States as a whole. Older buildings tend to carry more potential health hazards for tenants, which may be addressed by retrofits to, for example, improve indoor air quality and ventilation.[23]

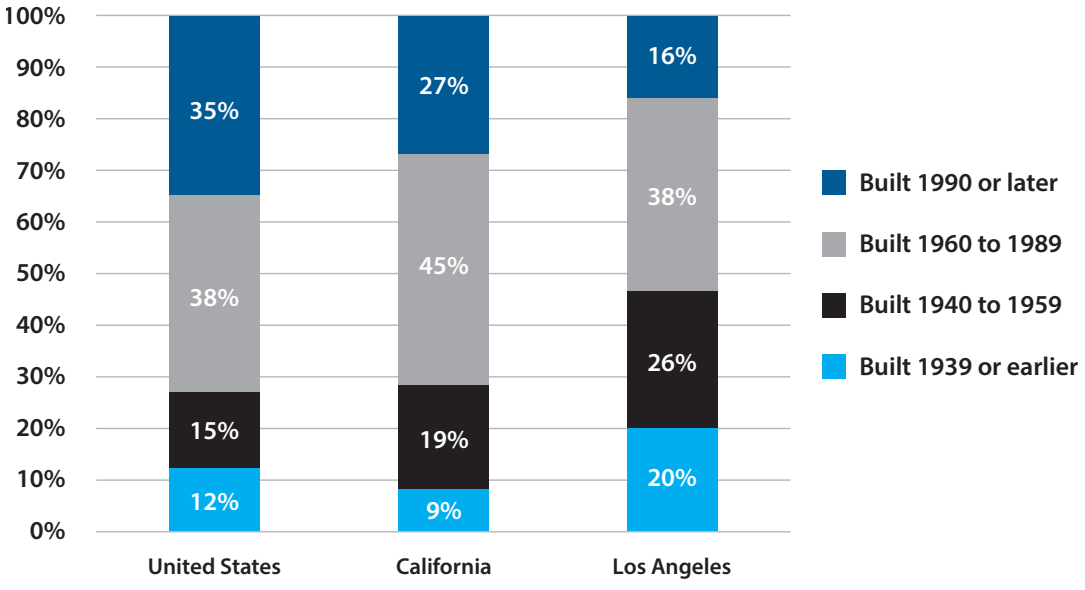


Figure 4: Age of housing stock [24]

22 Data from U.S. Census Bureau, *B25024: Units in Structure* (ACS 1-Year Estimates 2010 through 2021). Note that American Community Survey Data was not released for 2020, and is therefore excluded from this figure. Note also that individual year-to-year comparisons may not be significant because of margins of error; the figure is presented to give a sense of the general trend.

23 *See, e.g.*, U.S. Off. of the Surgeon Gen., *The Surgeon General's Call to Action to Promote Healthy Homes* c.2 (2009), https://www.ncbi.nlm.nih.gov/books/NBK44199/.

24 Data from U.S. Census Bureau, *B25034: Year Structure Built* (ACS 5-Year Estimate 2021), https://data.census.gov/table?g=0100000US_0400000US06_1600000US0644000&tid=ACSDT5Y2021.B25034.

Perhaps the problem of greatest concern is housing affordability.[25] The majority of LA households are "rent-burdened," meaning that their rent is greater than 30% of their gross household income. Almost a third of LA renters are "severely rent-burdened," meaning their rent is at least half of their gross household income. Lower-income households in LA are far more likely to be rent burdened than higher-income households: almost three-quarters of renting households that earn less than $35,000 are under severe rent burden, while almost no households earning $75,000 or more are. Meanwhile, far fewer apartments are renting at amounts that are affordable to low-income households: The City reported a net loss of 111,000 rental apartments with rents below $1,035 (adjusted for inflation) between 2010 and 2019, with an increase of about the same amount in apartments renting for more than $2,360.[26]

Almost a third of LA renters are "severely rent-burdened," meaning their rent is at least half of their gross household income.

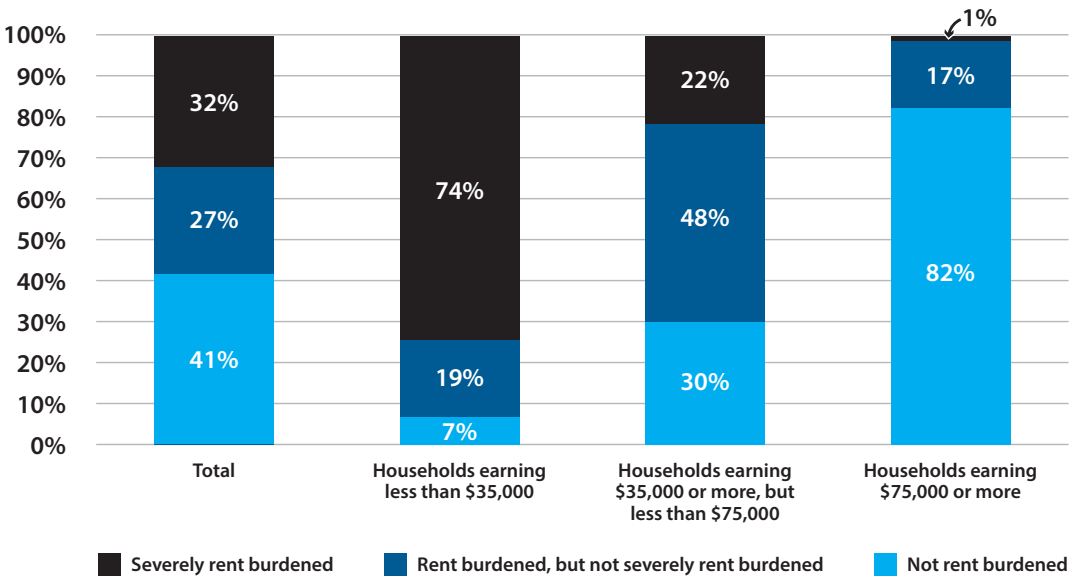


Figure 5: Rate of rent burden and severe rent burden by income. [27]

Rent burden is extremely harmful to LA households. Rent-burdened households in some areas of LA have been found to be more likely to cut back on food, clothing, and transportation than non-rent-burdened households; they also have less of a financial buffer to account for unexpected expenses.[28] Unaffordability may also lead to overcrowding, as families are forced to make do with smaller apartments than appropriate for their size, which itself has health and wellbeing impacts.[29] LA has the highest rate of renter overcrowding among major U.S. cities;

25 A recent workshop program run by the City's Climate Emergency Management Office (CEMO) found that housing-cost increases are the "most common concern voiced by residents" regarding decarbonization policy. *Report on Equitable Building Decarbonization: Equity Focused Policy Recommendations for the City of Los Angeles* 34 (2022), https://clkrep.lacity.org/onlinedocs/2021/21-1463_rpt_10-12-22.pdf.

26 L.A. City Planning, *Los Angeles Housing Element of the General Plan 2021-2029,* at 93 (2021, amended 2022), https://planning.lacity.org/odocument/1fb853cf-c80c-4b87-bf40-14975d1ae5f9/2021-2029_Housing_Element_Book_(Adopted)_-_High_Res.pdf [hereinafter LA Housing Element].

27 Data from U.S. Census Bureau, *B25074: Household Income by Gross Rent as Percentage of Income in the Past 12 Months* (ACS 5-Year Estimate, 2021), https://data.census.gov/table?g=1600000US0644000&tid=ACSDT5Y2021.B25074.

28 Jovanna Rosen et al., *How Do Renters Cope with Unaffordability?,* https://socialinnovation.usc.edu/rent-burden/; *see also* Sean Angst et al., *Housing Affordability in the Wake of COVID-19: Regional Solutions for Southern California* 2-3 (2021), https://belonging.berkeley.edu/sites/default/files/Angst%20et%20al%20Housing%20Affordability%20COVID%20SoCal%20Region.pdf (narrative description of study); Shomon Shamsuddin, *Housing Cost Burden, Material Hardship, and Well-Being,* 32 Housing Pol'y Debate 413 (2022), https://www.tandfonline.com/doi/full/10.1080/10511482.2021.1882532 (similar findings using nationwide survey data).

29 *See, e.g.,* Claudia D. Solari & Robert D. Mare, *Housing Crowding Effects on Children's Wellbeing,* 41 Soc. Sci. Res. 464 (2012) (finding that, in Los Angeles County, housing overcrowding had a negative impact on children's reading and math scores, behavior, and health even after controlling for socioeconomic variables).

about 17% of rented apartments in the city have more than one person per room, and in some areas of LA the overcrowding rate is much higher.[30]

A final area of concern, closely related to housing affordability, is displacement and gentrification. Renters in much of LA—and particularly low-income renters in Central LA, South and Southeast LA, Boyle Heights, and Lincoln Heights—are already at high risk of displacement.[31] The connection between displacement and gentrification is complex, but, generally speaking, gentrification is a factor in displacement, particularly displacement of low-income households.[32]

Both displacement and gentrification can be triggered by development policy, which can have the perverse impact of denying residents and communities access to the benefits that the policy is meant to provide to them.[33] Building decarbonization, specifically, will require a large investment in housing that could have the effect of increasing rents, housing prices, and the incentives for landlords to evict their tenants.[34] Especially in the areas of LA that have a high concentration of renters at risk of displacement, this additional pressure could have a substantial impact at both the household and community levels.

III. Building-Decarbonization Policies: What are the City's Options?

The impact building decarbonization has on LA tenants will depend partially on the specific policy choices the City makes. This section of the brief outlines policy elements that other jurisdictions have adopted, with a focus on understanding their potential impact on LA tenants. A comprehensive review of existing programs is beyond the scope of this brief;[35] instead, this section aims to highlight those choices that have strong implications for tenants.

A. Note on Federal Preemption

Shortly before publication of this brief, a Ninth Circuit panel published an opinion on the scope of federal preemption under the Energy Policy and Conservation Act (EPCA) with important implications for the City's building-decarbonization policy.[36] EPCA establishes energy-conservation standards for certain appliances, and grants the U.S. Department of Energy authority to create others.[37] EPCA also makes state and local governments regulations "concerning the energy efficiency, energy

30 LA Housing Element, *supra* note 26, at 96-97 (comparing overcrowding in LA to other major cities using 2018 data); U.S. Census Bureau, *B25014: Tenure by Occupants per Room* (ACS 5-Year Estimate, 2021), https://data.census.gov/table?g=160XX00US-0644000&tid=ACSDT5Y2021.B25014 (2021 data showing 149,024 of 874,191 renter households, or about 17%, overcrowded); Brittny Mejia et al., *L.A.'s Love of Sprawl Made It America's Most Overcrowded Place. Poor People Pay a Deadly Price,* L.A. Times (Oct. 19, 2022), https://www.latimes.com/california/story/2022-10-19/los-angeles-history-overcrowding-united-states (citing an overcrowding rate of 40% in the Pico-Union neighborhood).

31 Urban Displacement Project, *California Estimated Displacement Risk Model* (2022), https://www.urbandisplacement.org/maps/california-estimated-displacement-risk-model/.

32 *See* Miriam Zuk et al., *Gentrification, Displacement, and the Role of Public Investment,* 33 J. Planning Lit. 31, 36-39 (2018) (collecting sources).

33 *See, e.g., id.* at 39-40 (collecting sources on the impact of public transit on gentrification and displacement); SAJE, *Displacement Zones: How Opportunity Zones Turn Communities into Tax Shelters for the Rich* 10 (2020), https://www.saje.net/wp-content/uploads/2020/09/SAJE_DisplacementZones.pdf (noting that displacement caused by the "Opportunity Zones" program "contribut[es] to the erasure of the low income communities and communities of color they target").

34 *See infra* § IV.

35 Other organizations are compiling decarbonization policies as they are adopted. *See* Cal. Energy Codes & Stds., *2022 Code Cycle: Locally Adopted Energy Ordinances,* https://localenergycodes.com/content/adopted-ordinances (municipal adoption of reach codes in California); Building Decarbonization Coal., *Clean Building Compass,* https://buildingdecarb.org/resource-library?topic=existing-buildings&types=policies; Sabin Center for Climate Change Law, *Legal Pathways to Deep Decarbonization: 3.3 Existing Buildings (Ch. 11),* https://lpdd.org/pathway/existing-buildings/ (building-decarbonization policies for existing buildings across the U.S.).

36 *Cal. Restaurant Ass'n v. City of Berkeley,* 65 F.4th 1045 (9th Cir. 2023).

37 *See generally* 42 U.S.C. §§ 6291-6317.

use, or water use" of those appliances inoperative, "with respect to" those appliances.[38]

The plaintiffs in the case, an industry group, used EPCA's preemption provision to challenge a Berkeley ordinance that prohibits the installation of natural-gas piping in most new buildings.[39] The group argued that Berkeley's ordinance "concern[s] the . . . energy use" of several types of appliances that might be used in Berkeley buildings because it prevents those appliances from receiving natural gas.[40] The Ninth Circuit panel agreed with this argument, finding that "EPCA's preemption provision encompasses building codes that regulate natural gas *use* by covered products. And by preventing such appliances from *using* natural gas, the new Berkeley building code does exactly that."[41]

The impact building decarbonization has on LA tenants will depend partially on the specific policy choices the City makes.

The Ninth Circuit panel's opinion, if it stands, would restrict the scope of potential policies that the City could implement. Berkeley has petitioned the Ninth Circuit to rehear the case "en banc," meaning that it is asking a larger group of Ninth Circuit judges to rule on the issue.[42] If the Ninth Circuit grants its petition, the original ruling would effectively become defunct and the Ninth Circuit would issue a new ruling, which could reverse or alter the panel opinion.[43] Because of this uncertainty in the law, and because this section is intended only to sketch out possible decarbonization approaches and not provide a comprehensive review, this section takes a limited approach to addressing the implications of the Ninth Circuit's opinion.

B. Reach Codes

Local governments in California have the authority to adopt "reach codes," which are building or energy standards that go beyond the existing state codes.[44] Reach codes in California have two basic requirements: They must reduce energy consumption and they must be "cost effective." The CEC has authority to review only the energy-consumption element of this requirement, however, meaning that the local government can make its own determination of cost-effectiveness.[45] As a result, California cities have some discretion to shape their building and energy codes.

Reach codes passed in California have targeted three primary decarbonization measures: electrification,[46] energy-conservation retrofits,[47] and solar-panel installation.[48] They are sometimes made more flexible by the use of "compliance pathways" that allow owners to choose among several sets of regulatory requirements. These generally include "performance-based" regulations that require a certain level of performance, such as a minimum score on the Home Energy Rating

38 *Id.* § 6297(b)-(c); *see also id.* § 6316 (similar preemption applicable to industrial appliances).

39 City of Berkeley Mun. Code §§ 12.80.010-080.

40 *See generally* Plaintiff-Appellant's Opening Br., *Cal. Restaurant Ass'n, Dkt.* No. 13-1 (filed Nov. 3, 2021), *available at* http://climatecasechart.com/wp-content/uploads/sites/16/case-documents/2021/20211103_docket-21-16278_brief.pdf.

41 *Cal. Restaurant Ass'n,* 65 F.4th at 1048. Note that, while the Ninth Circuit panel characterized the Berkeley ordinance as a "building code," neither Berkeley nor the plaintiff industry group believed it to be a building-code standard. First Amended Compl., *Cal. Restaurant Ass'n v. City of Berkeley,* No. 4:19-cv-07668, Dkt. No. 46, ¶ 71 (N.D. Cal. filed Aug. 14, 2020), *available at* http://climatecasechart.com/wp-content/uploads/sites/16/case-documents/2020/20200814_docket-319-cv-07668_complaint.pdf; Mot. to Dismiss, *id.* Dkt. No. 47, at 22-23 (filed Sept. 14, 2020), *available at* http://climatecasechart.com/wp-content/uploads/sites/16/case-documents/2020/20200914_docket-319-cv-07668_motion-to-dismiss.pdf.

42 Def.-Appellee City of Berkeley's Pet. for Rehearing En Banc, *Cal. Restaurant Ass'n,* Dkt. No. 92 (filed May 31, 2023), *available at* https://legal-planet.org/wp-content/uploads/2023/05/Berkeley-petition.pdf.

43 9th Cir. Ct. of Apps., Circuit Advisory Committee Note to Rules 35-1 to 35-3, at (3) ("When the Court votes to rehear a matter en banc . . . [t]he three-judge panel opinion shall not be cited as precedent by or to this Court or any district court of the Ninth Circuit, except to the extent adopted by the en banc court.").

44 Cal. Pub. Res. Code § 25402.1(h)(2); *see also* 24 Cal. Code Regs. § 10-106(a).

45 Cal. Pub. Res. Code § 15402.1(h)(2); 24 Cal. Code Regs. 10-106(a)(2).

46 *See, e.g.,* San Mateo Mun. Code § 23.70.080(a) (requiring certain appliances to be electrified when replaced or upgraded, and requiring some measures to make installing new electric appliances easier).

47 *See, e.g.,* Piedmont City Code § 8.02.020(C) (requiring low-rise buildings with renovations valued at a specified amount to add one or two energy-conservation measures from a list including insulation, lighting, and installing heat pumps for space or water heating, or take other actions recommended by an energy audit).

48 *See, e.g.,* Santa Monica Mun. Code § 8.106.080 (requiring commercial and large residential buildings adding a new story or at least 50% increase in floor space to install 2 watts of solar capacity for every square foot of the addition).

System (HERS) index,[49] as well as a suite of "prescriptive" regulations, which include a menu of measures from which the owner may choose.[50]

There are a few potential downsides to using reach codes to achieve building decarbonization. First, the adopting jurisdiction must find the reach code to be cost-effective, which may eliminate some decarbonization requirements, depending on the cost-effectiveness model used by the City. Second, building and energy codes for existing buildings generally only apply when the owner is already making substantial changes to the building;[51] this could have the perverse incentive of disincentivizing landlords from undertaking badly needed renovations. Third, flexible reach codes allow landlords to use whatever decarbonization measures are cheapest, which could mean that decarbonization measures with important co-benefits are not installed, or even that decarbonization has a net negative impact on tenants, such as worsening air quality by increasing insulation without also upgrading an apartment's ventilation system, or even the use of decarbonization measures as cover for tenant harassment.[52]

Flexible policies allow landlords to use whatever decarbonization measures are cheapest, which could mean that decarbonization measures with important co-benefits are not installed.

EPCA preemption limits reach codes in some specific ways. Most obviously, EPCA does not permit cities to adopt efficiency standards for several types of appliances, such as HVAC systems, water heaters, and stoves.[53] Thus, a reach code generally cannot requires a specific level of efficiency for those appliances unless it meets certain flexibility requirements.[54] A concurring opinion in the *California Restaurant Association v. City of Berkeley* decision, discussed above,[55] also suggests that "building codes" may be subject to a wider scope of preemption.[56] Despite this, it appears likely that reach codes requiring some types of decarbonization measures, such as improvements to the building envelope or on-site generation, remain viable.

C. Building Performance Standards

Instead of mandating specific decarbonization measures in a building, a city may create a building performance standard (BPS). A BPS requires buildings to achieve a certain level of performance—typically a cap on energy use or GHG emissions—but allows the building owner to determine which measures are used to achieve that performance.[57] One important example of a BPS based on GHG emissions is New York City's Local Law 97. That ordinance, passed in 2019, requires most buildings in the city to limit their GHG emissions per square foot, with caps that vary depending on the building's use.[58] These caps are all set to decrease until 2050, when they will be set at the equivalent of 0.0014 tons of CO_2 emissions (tCO_2e) per square foot, per year.[59]

49 *See* RESNET HERS, *What is the HERS Index,* https://www.hersindex.com/hers-index/what-is-the-hers-index/.

50 *See, e.g.,* City of Boulder, Col. Mun. Code tit.10, c.2, appx.C, § C101.2.1-2 (requiring all rented apartments to either achieve a HERS rating of 120 or higher, or include measures from a menu of options with different point values, such that the total point value of all the measures adds up to 100).

51 *See, e.g.,* Encinitas Mun. Code § 23.12.080(D)-(E) (requiring energy-conservation measures whenever work requiring a permit and valued at least $50,000 is performed on certain building types); Carlsbad Mun. Code § 18.30.040 (requiring solar-panel installation for certain building types whenever work is done that would add 2,000 square feet or more of roof area or cost at least $1 million and affect at least 75% of the building).

52 This is further discussed *infra*, § IV.C.

53 42 U.S.C. § 6297(b)-(c) (preempting regulations covered by EPCA); *id. § 6295 (listing several categories of appliances covered by EPCA); see also* U.S. Dept. of Energy, *Standards and Test Procedures,* https://www.energy.gov/eere/buildings/standards-and-test-procedures (listing additional appliances covered by EPCA through rulemaking).

54 *See* 42 U.S.C. § 6297(f).

55 *Supra* § III.A.

56 *Cal. Restaurant Ass'n,* 65 F.4th at 1067 (concurring opinion of Baker, J.) (in explaining the limits of the decision, assuming that the ordinance in question is "a building code" and finding that relevant to whether it is preempted by EPCA). Note, however, that the ordinance was not considered a building-code standard by the parties in the case, making the import of this portion of the opinion unclear. *See supra* note 41.

57 *See, e.g.,* Inst. for Market Transformation, *Model Ordinance for a Building Performance Standard* (2021), *available at* https://www.imt.org/resources/model-ordinance-for-building-performance-standards/.

58 *See generally* N.Y.C. Local Law 97 of 2019, § 5 (codified as amended at N.Y.C. Admin. Code §§ 28-320.3 to 28-320.3.5).

59 N.Y.C. Admin. Code § 28-320.3.5.

Local Law 97 also allows for additional flexibility for owners. Owners can use "renewable energy credits" (RECs) purchased from renewable generation connected to the New York City grid to reduce their buildings' reported emissions, although these cannot be used to offset on-site emissions, such as those from gas stoves or boilers.[60] The ordinance also included a requirement to study the feasibility of a market-based mechanism (similar to California's Cap and Trade regulation for reducing GHGs in other sectors), under which building owners that decreased emissions beyond the applicable standard would earn credits that they could sell to noncompliant building owners, who could surrender the credits in lieu of reducing their emissions.[61] However, New York City officials are reportedly not pursuing this Cap and Trade-style approach.[62]

While the BPS approach is more convenient, and theoretically cheaper, for building owners, there are some downsides. As with flexible compliance pathways in reach codes, landlords will have little incentive to implement the measures with the greatest co-benefits for their buildings' inhabitants. REC and emissions-trading options further degrade the potential for co-benefits, since they could allow individual buildings to avoid taking any onsite actions at all. In combination with the ability of many LA landlords to pass on the costs of building improvements to their tenants, discussed *infra* at § IV.A.1, emissions-trading options could allow landlords to double-dip: A landlord could invest in decarbonization measures that over-comply with the BPS for their building, pass the costs of those investments on to their tenants, and then sell the resultant credits to other landlords (who could then avoid compliance with the BPS caps).

Second, a BPS approach requires some means of measuring the overall GHG emissions (or energy use) of each covered building. New York City's approach to this is to have building owners self-report and require the reports to be certified by a "registered design professional," that is, a state-licensed engineer or architect.[63] The specific reporting requirements have not yet been issued, but the process appears similar to New York City's current "self-certification" approach to code compliance, under which design professionals can, in many cases, certify that their own projects comply with applicable requirements rather than being inspected by the city government.[64] The "self-certification" process has been abused by some design professionals in New York City,[65] raising the possibility that similar tactics could be used to avoid compliance with Local Law 97.

Other municipalities have BPS programs that regulate building energy usage instead of GHG emissions. For example, St. Louis requires buildings to hit certain targets for "energy use intensity," that is, the energy use per square foot of gross floor area.[66] St. Louis sets the initial

60 *Id.* § 28-320.3.6 (authorizing REC option); 1 R.C.N.Y. § 103-14(e)(1) (restricting REC use to offsetting emissions imputed to buildings because of their electricity use).

61 Specifically, Local Law 97 required the New York City government to conduct a study to identify models for such a program. Local Law 97 of 2019, § 5 (originally codified at N.Y.C. Admin. Code § 28-320.11). That study has since been published. Guarini Center on Envtl., Energy & Land Use Law, NYU Law, et al., *Carbon Trading for New York City's Building Sector: Report of the Local Law 97 Carbon Trading Study Group to the New York City Mayor's Office of Climate & Sustainability* (2021), https://drive.google.com/file/d/1Kmx-tRlDUBkYwrHl4q85vMSty7F4OpOs/view.

62 *See, e.g.,* Jane Margolies, *New York Developers Rush to Reduce Emissions as Hefty Fines Loom,* N.Y. Times (Aug. 16, 2022), https://www.nytimes.com/2022/08/16/business/new-york-real-estate-climate-change.html ("City officials say carbon trading . . . is off the table.").

63 *See* N.Y.C. Admin. Code §§ 28-320.3.7, 28-101.5.

64 N.Y.C. Dept. of Bldgs., *Code Notes: Directive 14 of 1975 Alterations* (2016), https://www1.nyc.gov/assets/buildings/pdf/code_notes_directive-14of1975-alterations.pdf (formal description of process); *see also, e.g.,* Dennis Hevesi, *When Buildings are Inspectors,* N.Y. Times (Dec. 3, 2000), https://www.nytimes.com/2000/12/03/realestate/when-builders-are-inspectors.html (informal description of process as "self-certification," noting some problems with the process).

65 *See, e.g.,* Ted Smalley Bowen, *Should Architects Self-Certify Building Plans?,* Architectural Record (Oct. 18, 2007), https://www.architecturalrecord.com/articles/4019-should-architects-self-certify-building-plans.

66 St. Louis, Mo. Code of Ords. § 25.71.040(A); *see also* City of St. Louis, *St. Louis Building Energy Performance Standard (BEPS): BEPS Compliance Pathways Fact Sheet* (2022), https://www.stlouis-mo.gov/government/departments/public-safety/building/building-energy-improvement-board/documents/upload/STL-BEPS-Fact-Sheet-2022-02-08.pdf (describing program).

intensity target for each category of building at the "65th percentile" of that category's existing energy use intensity; in other words, each category's target will be set such that 65 percent of buildings in that category will have a higher intensity, and will therefore need to reduce their energy use.[67] This is a similar approach to the GHG performance standards used in New York City, and many of the same benefits and drawbacks of providing owners with compliance flexibility apply. The major difference with St. Louis's approach is that building owners will have more incentive to increase their buildings' energy efficiency, but less incentive to switch from gas to electric appliances. From the tenants' point of view, this increases the chances of reducing energy burden but decreases the chances of reducing indoor air pollution.

D. Restrictions on Fossil-Fuel Distribution

The City may also be able to restrict the scope of fossil-fuel infrastructure within its boundaries. This would have several advantages: in addition to decreasing direct GHG emissions, it would also protect health and safety and make LA residents less vulnerable to potential increases in the price of fossil fuels.[68]

The decision in *California Restaurant Association v. Berkeley*, if it stands, could restrict the City's options here. Under that decision, the City likely cannot cut off the flow of natural gas to buildings, at least not if the cutoff takes place on the building side of the natural-gas meter.[69] The City may still be able to pare back natural-gas infrastructure at some other point in the distribution network, such as by refusing to allow extensions of distribution mains or refusing to renew a natural-gas franchise in a given area.[70] Such restrictions may be limited by the City's recent franchise agreement with the Southern California Gas Company (SoCalGas), the initial term of which expires in 2034.[71] But even during that period, the City retains its regulatory authority, including control over the siting and permitting of natural-gas infrastructure.[72] The City also has the option to buy out SoCalGas, creating a municipally owned gas utility similar to the existing Department of Water and Power (LADWP), over which the City would have even more control.[73]

There is also some possibility of regulation by the state or by air districts that would affect the sale or installation of gas appliances, which both the California Air Resources Board (CARB) and the South Coast Air Quality Management District (SCAQMD) have said they plan to do.[74] Specifically, they plan to require space and water heaters to be free of oxides of nitrogen (NO_x) emissions, and SCAQMD plans to require cooking appliances to either eliminate or drastically reduce NO_x emissions.[75] The *California Restaurant Association* opinion's effect on such approaches by

67 St. Louis, Mo. Code of Ords. § 25.71.040(A)(2).

68 *See infra,* § V.

69 *Cal. Restaurant Ass'n,* 65 F.4th at 1055-56.

70 *See id.* at 1055 ("Berkeley finally contends that preemption here would mean that the City must affirmatively make natural gas available everywhere. That does not follow from our decision today. We only hold that EPCA prevents Berkeley from banning new-building owners from 'extending' fuel gas piping within their buildings 'from the point of delivery at the gas meter.' See [Berkeley Mun. Code] § 12.80.030(E). Our holding doesn't touch on whether the City has any obligation to maintain or expand the availability of a utility's delivery of gas to meters."); *id.* at 1065-67 (concurring opinion of Judge Baker) (suggesting that a regulation cutting off gas distribution at some other point "likely" would not be preempted by EPCA).

71 *See* L.A. Mun. Ord. No. 187,354, § 2.4 (eff. Feb. 28, 2022), *available at* https://clkrep.lacity.org/onlinedocs/2021/21-1267_ord_187354_2-28-22.pdf. That agreement grants SoCalGas the right to use public property everywhere in LA except for the Harbor District. *Id.* § 2.1(a) (scope covers all "City Streets"); *id.* § 1.1 (definition of "Street" excludes Harbor).

72 *See id.* §§ 3.1(e), 3.4(b) (confirming that SoCalGas remains subject to regulation by the City).

73 *See id.* § 2.4(d)(iv); City of L.A. Charter § 390(d)(2).

74 CARB, *Proposed 2022 State SIP Strategy* 101-03 (2022), https://ww2.arb.ca.gov/sites/default/files/2022-08/2022_State_SIP_Strategy.pdf; SCAQMD, *2022 Air Quality Management Plan* c.4, 4-14 to 4-16 (2022), http://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/2022-air-quality-management-plan/final-2022-aqmp/07-ch4.pdf?sfvrsn=6. SCAQMD's plan was approved by the California Air Resources Board in January 2023. Cal. Air Res. Bd., *2022 Air Quality Management Plan for the 20 Parts per Billion 8-Hour Ozone Standard in the South Coast Air Basin and Coachella Valley: Resolution 23-4* (2023), https://ww2.arb.ca.gov/sites/default/files/barcu/board/res/2023/res23-4.pdf.

75 *Id.*

state and local governments is not yet clear.[76] However, CARB's and SCAQMD's actions would be undertaken in order to meet the requirements of the federal Clean Air Act, which might insulate the program from EPCA preemption.[77] Thus, restrictions on major categories of gas appliances may be forthcoming in the LA area regardless of the *California Restaurant Association* decision.

E. Course-Correction and Governance

Any policy on the scale of citywide building decarbonization will have unanticipated impacts which may require adjustments, for tenants, building owners, or communities. Therefore, some local governments—particularly those that are using a BPS approach—have created additional oversight bodies that allow for review of their decarbonization policies.[78]

One question regarding these oversight bodies is the extent of their responsibility. The level of involvement of oversight bodies in the policy process ranges in existing programs: New York City's Local Law 97 Advisory Board is an example of a relatively limited role; it was responsible only for observing the first few years of implementation and drafting a report with any recommendations for changes (city law requires it to be reconvened again in 2029 and 2039, but not to be active in the intervening years).[79] Washington, DC's Building Energy Performance Standards Task Force is more directly involved, as it was responsible for advising on the initial rulemaking that implemented the District's decarbonization program and has an ongoing role in recommending amendments or additions to the program.[80] Perhaps the most influential such body is Boston's Building Emissions Reduction and Disclosure Review Board, which has direct decision-making authority with regard to individual buildings, building portfolios, and funding applications.[81]

Any policy on the scale of citywide building decarbonization will have unanticipated impacts which may require adjustments.

Another equally important question is the composition of the oversight body. Again, Boston's Review Board stands out. Six of its nine members will be nominated by community-based organizations, and two additional members will be nominated by other "[m]embers of the public."[82] Additionally, members who are not otherwise paid for their work on the Review Board "may request compensation" for their service;[83] besides being fundamentally fairer, providing compensation to board members is crucial for achieving true representation, since otherwise the board would be biased toward representatives of well-resourced organizations who could afford to provide independent compensation.

76 *See, e.g., Cal. Restaurant Ass'n*, 65 F.4th at 1056 ("EPCA would no doubt preempt an ordinance that directly prohibits the use of covered natural gas appliances in new buildings.").

77 *See Ass'n of Am. Rrs. v. S. Coast Air Qual. Mgmt. Dist.*, 622 F3d 1094, 1098 (9th Cir. 2010) (suggesting that, if a state or locality enacted a regulation pursuant to the federal Clean Air Act that would ordinarily be preempted by federal railway law, a court would need to "harmonize" the regulation and the railway law rather than preempt the regulation).

78 The Institute for Market Transformation, for example, specifically recommends that jurisdictions adopting a BPS also create a "Community Accountability Board" which would monitor the efficacy and the equity of the BPS as it is implemented. *See* Inst. for Market Transformation, *Model Ordinance for a Building Performance Standard* § 5.1 (2021), *available at* https://www.imt.org/resources/model-ordinance-for-building-performance-standards/; Inst. for Market Transformation, *Putting Policy in Action: Building Performance Standard Implementation Guide* 10-13 (2022), *available at* https://www.imt.org/resources/building-performance-standard-implementation-guide/.

79 N.Y.C. Admin. Code § 28-320.2; *see also* N.Y.C. Dept. of Bldgs., *Local Law 97: Advisory Board Report* (2022), https://www.nyc.gov/assets/sustainablebuildings/downloads/pdfs/ll97_ab_report.pdf.

80 Code of the Dist. of Columbia § 6-1451.09(h).

81 City of Boston Mun. Code § 7-2.2(s) (creating Review Board and authorizing it to draft revisions to implementing regulations and "issue guidance" to the implementing agency); *see also, e.g., id.* § 7-2.2(c) (Review Board authorized to require changes to building owners' plans for emissions reductions across building portfolios); *id.* § 7-2.2(g) (Review Board responsible for reviewing funding requests); *id.* § 7-2.2(k) (Review Board responsible for approving requests from owners to permit compliance flexibility).

82 City of Boston Mun. Code § 7-2.2(s) (two-thirds of Review Board nominated by community-based organizations); City of Boston Bldg. Emissions Reduction & Disclosure Ord. Regs. § XIII(b)(iv)-(vii), *available at* https://www.boston.gov/sites/default/files/file/2023/01/BERDO%20Adopted%20Regulations%2001.25.2023.pdf. The Mayor of Boston retains authority to select appointees from among the nominees and the Boston City Council may veto appointees. *Id.*

83 City of Boston Mun. Code § 7-2.2(s).

F. Subsidies and Funding Sources

The above sections primarily discuss regulations that would require building owners to decarbonize. The City could also subsidize building decarbonization, as a means of encouraging specific types of actions (for example, decarbonization measures that have health or economic co-benefits) and to ease the transition for certain types of owners (for example, small landlords). Building-decarbonization subsidies take many forms, including energy-conservation and weatherization measures that predate the contemporary focus on GHG emissions. Subsidies can also be targeted to support particular co-benefits, protect smaller landlords, and potentially to prevent evictions. This section discusses the structure of existing subsidies and their targeted elements, then highlights potential sources of funding.

1. *Existing Decarbonization Subsidies*

The City could also subsidize building decarbonization, as a means of encouraging specific types of actions (for example, decarbonization measures that have health or economic co-benefits) and to ease the transition for certain types of owners (for example, small landlords).

Though not originally conceived of as decarbonization subsidies, there already exist a range of programs that are designed to reduce energy usage inside homes. The federal Weatherization Assistance Program (WAP) is the most prominent of these: The program, implemented through state and local agencies and, often, non-governmental organizations, funds retrofits that are essentially identical to decarbonization retrofits, as well as certain safety measures.[84]

The California Energy Commission (CEC) and California Public Utilities Commission (CPUC) also run decarbonization-subsidy programs. The Technology and Equipment for Clean Heating program (TECH), which is run by CPUC using funds from California's Cap and Trade program and general tax revenue, incentivizes installation of heat pumps for hot-water and HVAC systems, including for multifamily buildings.[85] It also runs the Solar on Multifamily Affordable Housing program (SOMAH), which uses the same funding source to pay a substantial portion of the costs of installing solar panels on deed-restricted buildings.[86] The CEC is now developing an income-targeted Equitable Building Decarbonization Program, created by the California Legislature to provide both free or low-cost direct installation of building-decarbonization measures, as well as incentives for building owners to install high-efficiency electric appliances on their own.[87] Also at the state level, the Low Income Weatherization Program (LIWP), funded by proceeds from California's Cap and Trade allowance auctions, provides subsidies for projects based on the amount of GHG reductions they would achieve or the amount of solar generation installed.[88]

Some subsidy programs also exist at the local level in LA. A highlight here is LADWP's Comprehensive Affordable Multifamily Retrofits Program (CAMR). CAMR is similar to LIWP in that it

84 *See* U.S. Dept. of Energy, *Weatherization Assistance Program Fact Sheet* (2022), https://www.energy.gov/sites/default/files/2022-06/wap-fact-sheet_0622.pdf.

85 *See* TECH Clean California, *Multifamily Incentives,* https://techcleanca.com/incentives/multifamily-information/; 2018 Cal. Leg. Serv. c.378, § 5 (S.B. 1477) (codified at Cal. Pub. Util. Code § 922) (creating program); 2022 Cal. Leg. Serv. c.249, § 196(2) (A.B. 179) (budget bill expanding funding and scope of program).

86 *See* SOMAH, *Program Funding,* https://calsomah.org/program-funding; 2015 Cal. Leg. Serv. c.582, § 3 (A.B. 693) (codified at Cal. Pub. Util. Code § 2870) (creating program).

87 *See* 2022 Cal. Leg. Serv. c. 251, § 12 (A.B. 209) (codified at Cal. Pub. Res. Code §§ 25665-25665.6). The Equitable Building Decarbonization Program will provide direct-install support to households earning 120% of the area median income or less and living in an "under-resourced community," meaning an area with an average median household income of 80% or less of the statewide average, or an area identified as a "disadvantaged community" by CalEPA. Cal. Pub. Res. Code §§ 25665(e), (i), 25665.3(a)(1); Cal. Health & Safety Code §§ 39711, 50093 (definitions); Cal. Pub. Res. Code §§ 71130(g), 75005(g) (definitions). The incentives for building owners' own installation of low-carbon technologies will not be so targeted, but at least 50% of the program's funding go to under-resourced communities. Cal. Pub. Res. Code § 25665.5(d). The program has a $922 million budget over four years, with the bulk of the funding likely to go to the direct-install program. Cal. Energy Comm'n, *Equitable Building Decarbonization Direct Install Program: Draft Guidelines,* Dkt. No. 22-DECARB-03, TN # 250196 (May 17, 2023), https://efiling.energy.ca.gov/GetDocument.aspx?tn=250196&DocumentContentId=84922.

88 Cal. Dept. of Community Servs. & Devt. et al., *Service Delivery Plan: Low-Income Weatherization Program – Multi-Family* 16-19 (2019), https://camultifamilyenergyefficiencydotorg.files.wordpress.com/2019/07/liwp-service-delivery-plan-v3.pdf.

provides funding based on the amount of GHG reductions that a retrofit would achieve or the amount of solar generation installed.[89] The program is funded with $75 million from LADWP revenues for five years, starting in 2022.[90]

2. Using Subsidies to Achieve Tenant Protection and Co-Benefits

The City could use building-decarbonization subsidies to provide additional protections to tenants and to encourage decarbonization measures that produce co-benefits for tenants. Many existing decarbonization subsidies already target low-income housing, an important subcategory because of the relatively high rent burden of low-income tenants.[91] These include California's implementation of the federal WAP, which targets households with an income of 200% of the federal poverty level or lower;[92] the TECH program, which is aimed at "low-income and disadvantaged communities";[93] and SOMAH, which requires participating buildings to have affordability covenants.[94]

Subsidizing low-income rented housing may, on its own, protect tenants. For housing subject to the LA Rent-Stabilization Ordinance, subsidies directly prevent rent increases because subsidized work cannot be the basis of a rent pass-through.[95] In other housing types, subsidies may indirectly protect tenants in two ways: by alleviating the pressure on landlords to recoup the cost of building-decarbonization retrofits (although the retrofits themselves might still increase an apartment's rental value, and therefore the incentive to raise rents), and by supporting tenant-friendly landlords so that they do not sell their properties or lose them in foreclosure. Funding for small landlords, who may have less access to the capital necessary for large retrofit projects and who may be more likely to protect their tenants than large corporate landlords,[96] could be particularly beneficial—such subsidies could be paired with the recently proposed "relief assistance program" for small landlords.[97]

Subsidies could also directly protect tenants by requiring landlords to agree not to raise rents or evict their tenants as a condition of receiving the subsidy. For example, California's implementation of WAP requires landlords to agree not to use the work funded by WAP as a

89 *See* LADWP, *Comprehensive Affordable Multifamily Retrofits Program,* https://ladwpcamr.com/.

90 LADWP Bd. of Water & Pwr. Comm'rs, Presentation Regarding CAMR/HEIP Update (June 14, 2022), *recording available at* https://ladwp.granicus.com/MediaPlayer.php?view_id=3&clip_id=1934&meta_id=86920#.

91 *See supra* § II.B.

92 Cal. Dept. of Community Servs. and Devt., *2022 State Plan and Application to the U.S. Department of Energy* 20 (2022), https://www.csd.ca.gov/Shared%20Documents/2022-DOE-WAP-State-Plan-FINAL.pdf. This figure is adjusted by family size, such that smaller families have a lower maximum income to qualify, and larger families have a higher maximum income. *Id.* at 20-21.

93 TECH Clean California, *About,* https://techcleanca.com/about/.

94 SOMAH, *SOMAH Program Handbook* § 2.2.1(3) (2023), https://calsomah.org/somah-program-handbook#Group2Sub2. Specifically, the building must have a deed restriction or regulatory agreement restricting rents pursuant to targeted financing programs and either have 80% of its residents at or below 60% of the "Area Median Income," defined by HUD, or be in a "disadvantaged community," defined for SOMAH as a census tract that is either in the top 25% of census tracts in the state for combined pollution burden and population vulnerability or in the top 5% for pollution burden alone, as measured by the California Environmental Protection Agency's CalEnviroScreen metrics. *Id.*

95 L.A. Rent Adj. Comm'n Rs. 211.09, 223.02(2), 251.06. For further discussion of pass-throughs under the Rent Stabilization Ordinance, see *infra* § IV.A.1.

96 Tenant advocates and scholars have pointed to the consolidation of rental housing under large corporate landlords as a source of evictions, rent gouging, and harassment. *See generally, e.g.,* SAJE, *Beyond Wall Street Landlords: How Private Equity in the Rental Market Makes Housing Unaffordable, Unstable, and Unhealthy* (2021), https://www.saje.net/wp-content/uploads/2021/03/Final_A-Just-Recovery-Series_Beyond_Wall_Street.pdf; Nathaniel Decker, *How Landlords of Small Rental Properties Decide Who Gets Housed and Who Gets Evicted,* 59 Urb. Affs. Rev. 170 (2023); Elora L. Raymond et al., *Gentrifying Atlanta: Investor Purchases of Rental Housing, Evictions, and the Displacement of Black Residents,* 31 Hous. Pol'y Debate 818 (2021).

97 Motion of Nithya Raman No. 1B, C.F. 21-0042-S3 (adopted Jan. 20, 2023), *available at* https://clkrep.lacity.org/onlineDocs/2021/21-0042-S3_misc_mo_1b_ram_blu_1-20-23.pdf. The program would apply to "mom and pop" landlords, *id.,* which in the context of LA housing typically refers to landlords that own four or fewer rental properties and no more than one single-family home. *See, e.g.,* LAHD, *Relocation Assistance Information* (Nov. 15, 2022), https://housing.lacity.org/rental-property-owners/relocation-assistance-information.

basis for a rent increase for two years.[98] LIWP actually requires landlords that benefit from the program to keep their housing affordable for ten years after the work is performed.[99] Any subsidies the City puts in place to implement its building-decarbonization plan could include similar requirements to protect tenants from rent increases and evictions and to ensure that they get a fair share of the co-benefits. In addition, care should be taken to ensure that such protections are explicit, clearly stated, and enforceable by tenants as well as by the City, to increase the likelihood that they will actually prevent a rent increase or eviction.[100]

In addition to providing tenant protection, subsidy programs could be leveraged to encourage retrofits with the most co-benefits for tenants. For example, SOMAH requires the majority of the power from solar-panel installations it subsidizes to be used to reduce tenant energy costs, and provides higher subsidies when landlords dedicate the generation to tenants than when the power is used to reduce energy costs borne by the landlord.[101] Similarly, the TECH program provides a larger incentive for heat-pump installations in individual apartments, where the energy-cost savings are more likely to accrue to tenants, than for installations in common areas, which are more likely to save the landlord money.[102] A similar approach could be used to encourage improved ventilation, in-home appliance electrification, or other measures that would have health co-benefits.

3. Potential Funding Sources

Of course, subsidies require funding.

Of course, subsidies require funding. This section briefly reviews possible funding sources at the state and federal level, as well as discussing the potential for raising revenue through taxes or fees. This overview is meant only to demonstrate the existence of funding sources for subsidy programs, not to be a comprehensive list of such sources. Note also that some of the funding listed below is provided directly to building owners, and therefore the City will have limited ability to influence those programs, though they will still be impactful for tenants.

Federal funding sources: As discussed above, the federal WAP has been a persistent source of funding for the sort of activity required for decarbonization, although the funding levels have been low compared to the cost of fully decarbonizing multifamily buildings.[103] The Bipartisan Infrastructure Law dramatically increased the level of funding available for the program: California was allocated about $125 million of that funding, of which the state plans to allocate about $16.7 million to organizations operating in LA, allowing weatherization of an estimated 1,231 units.[104]

98 Nat'l Housing Law Proj., *Survey of State Tenant Protection Policies for the Weatherization Assistance Program* Appx. A at 1 (2018), https://www.nhlp.org/wp-content/uploads/2019.02.14-WAP-Tenant-Protection-Memo-with-Appendices.pdf; *see also* Cal. Dept. of Comm'y Servs. & Devt., *Energy Service Agreement for Rental Property Owner,* CSD 515B, ¶ 10 (last revised 2016), *available at* https://www.sjchsa.org/Portals/0/PDF/LIHEAP%20FORMS/CSD%20515B%20Energy%20Serv%20Agreemt%20-%20Prop%20Owner.pdf.

99 Cal. Dept. of Community Servs. & Devt., *Assembly Bill 1232 Report & Action Plan 15* (2021), https://www.csd.ca.gov/Shared%20Documents/AB1232-Report.pdf.

100 *Cf., e.g.,* Rachel Schten et al., UC Berkeley Ctr. for Community Innovation, *California's Low-Income Weatherization Multi-Family Program: Successes, Challenges, and Implications for Housing Justice* 7-8 (2022), https://www.urbandisplacement.org/wp-content/uploads/2022/03/LIWP.pdf (noting enforcement concerns for the LIWP program's 10-year affordability requirement because of limited funding for state enforcement).

101 SOMAH, *SOMAH Program Handbook* §§ 1.1.3, 2.7, 3.2 tbl.4 (2023), https://calsomah.org/resources/program-handbook.

102 *See* TECH Clean California, *Multifamily Incentives for Heat Pump Water Heaters and Heat Pump HVAC (2023), available at* https://techcleanca.com/incentives/multifamily-information/ (click "guide to multifamily incentives").

103 California's WAP allocation was about $8 million in 2021, and LA weatherization providers were allocated just under $1 million. Cal. Dept. of Community Servs. & Devt., *Weatherization Assistance Program for Low-Income Persons: 2021 State Plan and Application to the U.S. Department of Energy* 4, 12 (2021), https://www.csd.ca.gov/Shared%20Documents/Revised-2021-DOE-State-Plan-FINAL.pdf (Maravilla Foundation and Pacific Asian Consortium in Employment both operate in LA, though some of these funds may also go to areas of LA County outside of LA).

104 Cal. Dept. of Community Servs. & Devt., *Weatherization Assistance Program for Low-Income Persons: DRAFT Bipartisan Infrastructure Law State Plan and Application to the U.S. Department of Energy* 4, 13-14 (2022), https://www.csd.ca.gov/Shared%20Documents/2022-Draft-BIL-DOE-WAP-State-Plan.pdf (totals from Maravilla Foundation and Pacific Asian Consortium in Employment figures).

The just-passed Inflation Reduction Act (IRA) has also created several new sources of federal funding. One highlight of the IRA is a new rebate program called "HOMES," which will pay for residential energy-efficiency retrofits.[105] HOMES rebates will depend on both the income of the people living in retrofitted buildings and the extent of the energy savings achieved, with a maximum available rebate of $8,000 per unit or 80% of costs, whichever is lower.[106] The IRA also created a Greenhouse Gas Reduction Fund, making $27 billion available for various GHG-reduction projects, for which building decarbonization and solar generation will be a priority.[107]

Renewable-energy tax credits may also help to support on-site generation. For example, under the IRA, "Section 48" energy credits allow for a credit of 30% of the cost of installing new small renewable-generation projects, and 50% for some solar or wind facilities installed in affordable-housing projects.[108] Likewise, businesses can receive up to $0.015/kWh in production tax credits for small generation projects, with bonuses for using material manufactured in the United States and for projects located in "energy communities" (the greater LA area currently appears to meet this definition).[109]

State funding sources: California's TECH and SOMAH programs, discussed above, fund appliance replacement and renewable energy for multifamily buildings. TECH provides up to $1,800 per unit for installing heat pumps for water heaters, up to $2,000 per unit for HVAC heat pumps, and up to $1,400 per unit for electrical upgrades.[110] SOMAH will currently provide up to $2.97 per watt of installed solar capacity, which may well pay for the full cost of some new installations.[111]

State funding for building decarbonization is also available through California Climate Investments (CCI), which is funded by the sale of carbon allowances to emitters as part of California's Cap and Trade program. The primary CCI-funded program for existing-building decar-

105 Pub. L. 117-169, § 50121, 136 Stat. 1818, 2033-36 (2022) (codified at 42 U.S.C. § 18795).

106 42 U.S.C. § 18795(c)(2)(C), (c)(3) (80%/$8,000 rebate applicable to buildings where at least half of the apartments have residents below 80% of the "area median income" and achieving at least 35% energy savings). The HOMES rebates will also be limited by the amount appropriated for them; the IRA appropriated $4.3 billion nationwide. *Id.* § 18795(a)(1).

107 42 U.S.C. § 7434; Envtl. Protection Agency, *EPA's Implementation Framework for the Greenhouse Gas Reduction Fund* 16, 31, 41 (listing distributed solar and decarbonization retrofits as "priority project categories" for the $14 billion "National Clean Investment Fund" and the $6 billion "Clean Communities Investment Accelerator," and assigning the remaining $7 billion "to expand the number of low-income and disadvantaged communities that are primed for investment in residential and community solar").

108 Pub. L. 117-169, § 13103(a), 136 Stat. at 1922 (codified at 26 U.S.C. § 48(a)(2)(A)(i), (e)(1)(A)(ii), (e)(2)(B)). Note that the IRA allows these enhanced credits to be claimed for no more than 1.8GW in 2023 and 1.8GW in 2024. *Id.,* 136 Stat. at 1923 (codified at 26 U.S.C. § 48(e)(4)(C)).

109 Pub. L. 117-169, § 13101(b), (f), (g)(2), 136 Stat. at 1906, 1907, 1910-12 (codified at 26 U.S.C. § 45(a)(1), (b)(6), (b)(9), (b)(11)). "Energy communities" include any metropolitan statistical area which meet two criteria: (1) the area had at least 0.17% of its workforce directly employed in the oil-and-gas sector at any point since 2010; and (2) the area currently has an unemployment rate higher than the national unemployment rate. 26 U.S.C. § 45(b)(11)(B)(ii). The federal government has confirmed that LA satisfies the first criterion. Interagency Working Grp. on Coal & Power Plant Communities & Econ. Revitalization, *Energy Community Tax Credit Bonus,* https://energycommunities.gov/energy-community-tax-credit-bonus/. LA also appears to satisfy the unemployment criterion, for now. *See U.S. Dept. of Labor, Bureau of Labor Stats., Labor Force Data by County, 2022 Annual Averages* (2023), https://www.bls.gov/lau/laucnty22.xlsx (LA County had 4.9% unemployment rate in 2022, whereas unemployment rate for all counties in 2022 was 3.8%); *see also* U.S. Dept. of the Treasury, *Energy Community Bonus Credit Amounts under the Inflation Reduction Act of 2022,* Notice 2023-29, at 7-8, https://www.irs.gov/pub/irs-drop/n-23-29.pdf (unemployment criterion will be based on the previous year's county-level data from the Bureau of Labor Statistics' Local Area Unemployment Statistics).

110 *See* TECH Clean California, *Multifamily Incentives for Heat Pump Water Heaters and Heat Pump HVAC* (2023), *available at* https://techcleanca.com/incentives/multifamily-information/ (click "guide to multifamily incentives").

111 SOMAH, *Incentive Step-Down Analysis: 2021-2022,* at 1 (2022), https://calsomah.org/sites/default/files/docs/SOMAH_Incentive_Step-Down_Analysis_%202021-2022.pdf. By design, this exceeds the average cost of solar installation, which was about $2.71 per watt in 2020, and it decreases each year as those costs decline. *Id.*; *see also* CPUC D.17-12-002, at 41-43 (2019), https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M201/K940/201940057.pdf (basing the initial incentive amount on the average per-watt cost of solar installations in 2019). However, this rate only applies to solar capacity that is serving tenant load; that portion of a solar installation designated to serve common-area load is currently eligible for $1.02 per watt in incentives. SOMAH, *Incentive Step-Down Analysis: 2021-2022,* at 1. In addition, incentives are reduced by about 30% if the project benefits from the federal energy investment tax credit or the federal low-income housing tax credit (or 50% if the project receives both). *Id.* Essentially, SOMAH will fund the cost of a typical solar-panel installation sufficient for the in-apartment load of a building, and about 30% of the installation serving the remainder of the building, minus the incentives already provided by federal tax credits.

bonization has been LIWP, also discussed above, which, in its last round of funding, incentivized appliance replacement and energy-conservation retrofits with up to $4,500 per metric ton of CO_2e reduced and funded solar installations with up to $3.30 per watt of capacity.[112]

Revenue from local taxes: The most straightforward means of raising new revenue for local decarbonization subsidies would be a tax. Cities in California operate under tight restrictions when it comes to raising taxes, particularly taxes that relate to property. Any tax increase passed by the City Council would need to be approved by local referendum, and if the revenue were designated specifically for decarbonization subsidies—making the tax a "special tax"—the increase would need to be approved by a two-thirds majority in that referendum.[113]

Notably, special taxes that are created through the initiative process, rather than originating in the City Council, do not have this two-thirds majority requirement.[114] Instead, they can be approved by a simple majority of voters.[115] A recent example of a special tax created by citizen initiative is Measure ULA, a tax on sales of high-value properties meant to fund affordable-housing programs and protect tenants at risk of losing their homes.[116] A similar ballot initiative could theoretically be used to raise revenues for decarbonization subsidies.

Cities in California operate under tight restrictions when it comes to raising revenue through taxation or fees.

Revenue from compliance charges: In addition to taxation, compliance charges from building-decarbonization mandates could be a source of funding. For example, the City of Boston allows building owners that do not comply with its BPS to make "alternative compliance payments," which are used to undertake building-decarbonization projects.[117] However, such an approach would be more complicated in LA.

California state law limits local governments' authority to raise revenue through fees or charges as well as through taxation. Generally speaking, California municipalities can charge for specific services, benefits, or regulatory actions, but those charges must not exceed the relevant costs to the municipality.[118] When such charges are imposed solely based on property ownership, they are considered "special assessments" and subject to additional requirements.[119] However, if a charge is required because of how the owner *uses* their property—such

112 Cal. Dept. of Community Servs. & Devt. et al., *Service Delivery Plan: Low-Income Weatherization Program – Multi-Family* 16, 19 (2019), https://camultifamilyenergyefficiencydotorg.files.wordpress.com/2019/07/liwp-service-delivery-plan-v3.pdf. As with SOMAH, the LIWP incentive depends on whether the measures benefit apartments or common areas, and the solar-panel incentives are reduced if the project benefits from other incentive programs. *Id.* Additionally, the solar-panel incentives for LIWP are reduced for installations with generating capacity higher than 100 kW. *Id.* at 20.

113 Cal. Const. art. XIII C § 2(b), (d).

114 *Howard Jarvis Taxpayers Ass'n v. City and County of San Francisco,* 60 Cal. App. 5th 227 (1st Dist. 2021); *City and County of San Francisco v. All Persons Interested in Matter of Prop. C,* 51 Cal. App. 5th 703 (1st Dist. 2020); *City of Fresno v. Fresno Bldg. Healthy Communities,* 59 Cal. App. 5th 220 (5th. Dist. 2020).

115 In the absence of a constitutional requirement, special taxes raised by voter initiatives are subject to a simple-majority requirement. Cal. Elec. Code § 9217.

116 L.A. County, Registrar-Recorder/County Clerk, *LA County Election Results* (2022), https://results.lavote.gov/#year=2022&election=4300. Measure ULA has been challenged as contrary to Proposition 13's restrictions on transfer taxes. Complaint ¶¶ 16-19, *Howard Jarvis Taxpayers Ass'n v. City of Los Angeles,* Dkt. No. 22STCV39662 (filed Dec. 21, 2022) (citing Cal. Const. Art. XIIIA, § 4). However, the same reasoning that prevents Proposition 13's supermajority requirement from applying to citizen initiatives likely also protects initiatives that apply special transfer taxes. *See, e.g., All Persons Interested in Matter of Prop. C,* 51 Cal. App. 5th at 721 ("Article XIII A, section 4 . . . does not repeal or otherwise abridge by implication the people›s power to raise taxes by initiative . . . . Any such partial repeal by implication is not favored by the law, which imposes a duty on courts to jealously guard, liberally construe and resolve all doubts in favor of the exercise of the initiative power.").

117 City of Boston Mun. Code § 7-2.2(g), (m)(d).

118 Additional requirements apply, depending on the type of action. *See generally* Cal. Const. art. XIII C, § 1(e)(1)-(4), (7) (general charges and fees); *id.* art. XIII D, §§ 4, 6 (charges, fees, and assessments related to property); *Jacks v. City of Santa Barbara,* 3 Cal. 5th 248, 258-62 (2017) (tracing history of constitutional restrictions on municipal revenue collection and concluding that "restricting allowable fees to the reasonable cost or value of the activity with which the charges are associated serves Proposition 13's purpose of limiting taxes").

119 *See generally* Cal. Const. art. XIII D.

as renting it out—the charge is not subject to these requirements.[120] These authorities therefore could allow the City to recoup the direct costs of its decarbonization program, such as inspections or auditing, for rented properties. However, a policy that used fee revenue from some building owners to subsidize decarbonization work in unrelated buildings, as Boston does, may be interpreted as a tax rather than a regulatory charge or fee.

California cities may also impose charges for the privilege of developing property.[121] These development fees must be voluntary in nature (although they can be paid in lieu of meeting otherwise compulsory requirements) and related to the cost born by the municipality as a result of the development.[122] And, of course, they must be imposed on *development*, not the continued use of a property for the same purpose. One option for the City here could be to allow for exemptions to electrification requirements, as it does in some cases already,[123] in exchange for an "in lieu" fee that could fund subsidies in other areas.

120 *Apt. Ass'n of L.A. v. City of Los Angeles,* 24 Cal. 4th 830 (2001) (upholding fee for inspection of rental units charged to landlords, because it was a fee for using property in a certain way rather than owning it).

121 Cal. Const. art. XIII C, § 1(e)(6) (excluding such charges from the definition of "tax"); *see also 616 Croft Ave., LLC v. City of West Hollywood,* 3 Cal. App. 5th 621, 630-31 (2d Dist. 2016) (finding that development fee paid to fund for affordable housing is not a "special tax"). However, such fees may be subject to the Mitigation Fee Act. Cal. Govt. Code § 66001(a); *but see 616 Croft Ave.,* 3 Cal. App. 5th at 628-29 (finding that a fee paid in lieu of setting aside affordable-housing units was not subject to Mitigation Fee Act); *Cal. Bldg. Ind. Ass'n v. San Joaquin Valley Air Pollution Ctrl. Dist.*, 178 Cal. App. 4th 120, 131-35 (5th Dist. 2009) (finding district rules, allowing developers to pay to cover the cost of off-site mitigation by the air district rather than take mitigation actions, not subject to Mitigation Fee Act).

122 Cal. Govt. Code § 66001; *see also Cal. Bldg. Ind. Ass'n*, 178 Cal. App. 4th at 131-35; *616 Croft Ave.,* 3 Cal. App. 5th at 628-29.

123 *See, e.g.,* L.A. Mun. Code § 99.05.106.14(2) (permitting natural-gas appliances in restaurants and other kitchens serving the public).

IV. Protecting LA Tenants from Rent Hikes, Evictions, and Harassment

If not done carefully, large-scale building decarbonization could weaken important tenant protections by giving landlords legal means to increase rent, evict their tenants, or carry out disruptive renovation projects.

LA has some important tenant protections in place which partially offset the serious unaffordability and displacement problems in the city. These protections come primarily in the form of limits on the amount that landlords can increase their rent, when landlords can evict their tenants, and rights of tenants against landlord harassment. If not done carefully, large-scale building decarbonization could weaken these important protections by giving landlords legal means to increase rent, evict their tenants, or carry out disruptive renovation projects. One of the foremost concerns with designing a building-decarbonization policy for LA, therefore, should be its interactions with existing tenant-protection laws. To that end, this section describes some of the core legal protections LA tenants have and highlights key conflicts with potential building-decarbonization policies.

A. Rent Stabilization

Perhaps the best-known protection for LA tenants is the Rent Stabilization Ordinance (RSO).[124] However, a newer statewide program, the Tenant Protection Act (TPA), also protects some tenants in LA.[125] The TPA is less protective than the RSO, but covers some apartments that the RSO does not, and therefore both are relevant to LA decarbonization policy.

1. The RSO

The RSO applies to apartments in use before October 1978, as well as to certain apartments built to replace RSO-covered apartments that have been taken out of service.[126] This includes about 650,000 apartments, or nearly three-quarters of all rental units in LA.[127] The RSO caps rent increases on tenants in a covered apartment building to between 3% and 10% each year: The base rate is equal to the inflation rate but with a minimum of 3% and a maximum of 8%, and if electricity or gas is included in the rent, landlords may add an additional percentage point for each utility.[128] Importantly, this only applies to tenants that occupy the same apartment from one year to the next; if an apartment becomes vacant and is then rented out to a new tenant, the landlord can charge the new tenant as much as they like for their initial rent.[129]

Landlords can exceed the ordinary RSO rent increases in order to recoup the cost of certain investments in buildings they own. There are three such "pass-through" programs relevant to building decarbonization: Primary Renovation, which applies to work done on building systems and hazard abatement; Capital Improvement, which applies to the purchase of new appliances and some building-wide investments; and Rehabilitation Work, which applies to work required by a change in the building code or to recover from a natural disaster.[130]

Primary Renovation is typically the most impactful, because it allows an increase of up to

124 *See generally* L.A. Mun. Code. c.XV.
125 2019 Cal. Leg. Serv. c.597 (A.B. 1482).
126 L.A. Mun. Code § 151.02 (definition of "Rental Units" exempts units receiving a certificate of occupancy after October 1, 1978); *id.* § 151.28 (process for replacing RSO-covered units removed from rental market).
127 L.A. Housing Dept., *Report Dashboard for RSO,* https://housing.lacity.org/rso (reporting 653,389 units covered by RSO in 2021); U.S. Census Bureau, *B25032: Tenure* (ACS 1-Year Estimate, 2021), https://data.census.gov/table?g=160XX00US0644000&tid=ACSDT1Y2021.B25003 (reporting 889,109 total occupied rental units in LA in 2021).
128 L.A. Mun. Code §§ 151.06(D), 151.07(A)(6).
129 *Id.* § 151.06(C)(1).
130 *See generally* L.A. Mun. Code §§ 151.02, 151.07(A)(1)(a)-(c).

	RSO	TPA
Coverage	Apartments in use before October 1978 (and some replacement apartments)	Apartments that are at least 15 years old
Range of maximum rent increase	3-10% (equal to inflation, with a minimum of 3% and maximum of 8%, plus 1 percentage point each if gas or electricity paid for by landlord)	Up to 10% (equal to inflation plus 5 percentage points, with a maximum of 10%)
Additional rent increases available for work performed?	Yes	No
Sunset date	None	January 1, 2030

Landlords can exceed the ordinary RSO rent increases in order to recoup the cost of certain investments in buildings they own.

10% of current rent (although spread out over two years) and is permanent.[131] One important check on the use of Primary Renovation to recoup costs is the requirement that landlords create and adhere to a Tenant Habitability Plan (THP), which is meant to ensure that the work performed does not harm tenants living in the building.[132] If necessary to protect tenants' health, the THP must include temporarily relocating tenants.[133] The initial cost of relocation is borne by the landlord, but since it is recoverable as part of the Primary Renovation pass-through program, the cost may ultimately be borne by the tenant.[134]

Capital Improvement rent-increase applications are more common,[135] but generally lead to lower increases. A Capital Improvement pass-through is permitted for fixed improvements, beyond routine maintenance, that primarily benefit the tenants and will last for at least five years.[136] Landlords may pass on half of the cost of covered improvements, with a maximum monthly rent increase of $55. Unlike Primary Renovation increases, Capital Improvement increases only last until the owner has recouped half of their initial costs—by default, the costs are spread out over six years, but that period can be extended if necessary to remain under the $55 per month cap.[137] Nevertheless, even a $55 monthly increase can be a substantial disruption to a family budget, particularly for low- and fixed-income tenants with an already high rent burden.[138]

131 *Id.* § 151.07(A)(1)(c); *see also* L.A. Rent Adjustment Comm'n Rule 223.05 (describing the process for calculating Primary Renovation rent increases). Note that, if a tenant household has an income at or below 80% of the "Area Median Income" defined for the Los Angeles metro area, the landlord can only increase that household's rent by 10% over the course of the tenancy; otherwise, the landlord can typically use the Primary Renovation program once every five years. L.A. Mun. Code § 151.07(A)(1)(c); L.A. Rent Adjustment Comm'n Rule 223.06.2, .076.1.

132 L.A. Mun. Code § 151.07(A)(1)(c); *see also generally id.* §§ 152.00-152.08.

133 *Id.* § 152.06(A), (F).

134 *Id.* § 151.07(A)(1)(c).

135 LAHD has responded to hundreds of Capital Improvement requests each year from 2020 through September 2022, but only 36 Primary Renovation requests during that entire period, and did not respond to any Rehabilitation Work requests during that period. LAHD, communication with author (Oct. 3, 2022), *available at* https://perma.cc/V7PB-PFTF.

136 L.A. Mun. Code §§ 151.02, 151.07(A)(1)(a).

137 *Id.* § 151.07(A)(1)(a); *see also* L.A. Rent Adjustment Comm'n Rule 212.06(c), .08. For example, if a landlord installed solar panels at an initial cost of $6,000 per apartment, they could recoup one-half ($3,000) of that cost by raising rents $41.67 per month for 6 years. If the solar panels instead cost $10,000 per apartment, the landlord would be eligible to recoup $5,000 per apartment, but would need to spread that additional rent out over 7 years and 7 months to keep the rent increase less than $55 per month.

138 For example, organizers in LA's Chinatown have found that "many of [Chinatown's seniors] literally can't afford a $4 monthly rent increase." Michael Kimmelman, *Remaking the River that Remade L.A.*, N.Y. Times Mag. (Nov. 10, 2022), https://www.nytimes.com/interactive/2022/11/10/magazine/la-river-redesign.html (quoting Sissy Trinh, Executive Director of the Southeast Asian Community Alliance).

Finally, LA landlords can also pass on the cost of Rehabilitation Work. The Rehabilitation Work pass-through program appears to be rarely used.[139] However, it is designed to allow landlords to recoup the cost of adapting to changes in the City's housing code.[140] Thus, if the City adds a mandatory building-decarbonization program to the housing code, landlords may be able to use Rehabilitation Work rent increases to recover the cost of any work done pursuant to that program. Like Capital Improvement increases, Rehabilitation Work increases are temporary, although they have a higher cap ($75 monthly or 10% of rent) and allow for recovery of the landlord's full costs, rather than the 50% that the Capital Improvement program allows.[141]

These programs, and the RSO itself, are in flux. The City Council forbade any new rent increases during the period of the City's COVID-19 emergency declaration, and for one year afterward.[142] Since the City Council has recently voted to end that emergency declaration on February 1, 2023,[143] rent increases are set to resume on February 1, 2024. At that point, there is likely to be a backlog of pass-through rent increases and, if inflation remains high, a relatively high permissible rent increase. Additionally, the City Council has requested a report from the Los Angeles Housing Department (LAHD) on potential changes to the RSO rent-increase formula, referencing as potential models several other cities with lower rent caps than the RSO.[144] If the City reformed the RSO to reduce base rent increases, that would make pass-throughs all the more impactful.

2. The TPA

Since 2020, and until 2030, another group of LA tenants are protected by the California Tenant Protection Act of 2019 (TPA).[145] The TPA is a statewide rent restriction that applies to most properties that are at least 15 years old and do not already have more protective rent regulation.[146] The TPA allows rent increases of 5% plus inflation, to a maximum of 10%, annually, and is therefore less protective than the RSO.[147] However, it has a broader scope than the RSO, which applies mostly to units built in 1978 or earlier: There may be as many as 170,000 apartments in LA that are covered by the TPA but not the RSO,[148] and that number will grow as apartments age into the scope of the TPA.

139 Communication with LAHD (on file with author) (reporting, in response to state Public Records Act request, no Rehabilitation Work applications that had received LAHD determinations between January 1, 2020, and October 3, 2022).

140 *See* L.A. Mun. Code § 151.02 (definition of "Rehabilitation Work" includes "[a]ny rehabilitation or repair work . . . done in order to comply with an order issued by the Department of Building and Safety, the Health Department, or the Fire Department due to changes in the housing code since January 1, 1979");

141 L.A. Mun. Code § 151.07(A)(1)(b); *see also* L.A. Rent Adjustment Comm'n Rule 251.01-.03.

142 L.A. Mun. Code § 151.32.

143 Motion of Paul Krekorian, No. 32A, C.F. 20-0291 (adopted Dec. 7, 2022).

144 L.A. City Council, *Journal/Council Proceeding: Tuesday, October 4, 2022* Item 13, § B.6, *available at* https://ens.lacity.org/clk/oldactions/clkcouncilactions2165682_10062022.pdf. The item specifically references recent amendments in Oakland, Bell Gardens, Antioch, Pomona, Santa Ana, and Oxnard. These cities have generally adopted rent-stabilization ordinances designed to be lower than inflation, with Oakland and Antioch capping annual rent increases at 60% of inflation or 3%, whichever is lower. *See* Judith Prieve, *Antioch Approves Rent Stabilization with Rollback Date, New Tenant Protections,* Mercury News (Sept. 28, 2022), https://www.mercurynews.com/2022/09/28/antioch-approves-rent-stabilization-with-rollback-date-new-tenant-protections/. Bell Gardens set caps at 50% of inflation or 4%, whichever is less. Bell Gardens City Council, Mun. Ord. No. 925 § 2 (codified at Bell Gardens Mun. Code § 5.62.040(A)). Pomona has temporarily capped rent increases at the inflation rate or 4%, whichever is lower. Pomona City Council, Urgency Ord. No. 4320, § 5(a). Santa Ana has capped rent increases at 3% or 80% of inflation, whichever is lower. Santa Ana City Council Ordinance No. NS-3027, § 3 (codified at Santa Ana Mun. Code § 8-3140(a)). Oxnard has capped rent increases at 4%. Oxnard City Council Ord. No. 3013, § 3 (codified at Oxnard City Code § 27-21).

145 Codified at Cal. Civ. Code §§ 1946.2, 1947.12, 1947.13.

146 Cal. Civ. Code § 1946.2(e)(7).

147 Cal. Civ. Code § 1947.12(a)(1), (b).

148 The American Community Survey estimated that, for the period 2017-2021, 825,290 of LA's rental units were in structures built in 2009 or earlier. U.S. Census Bureau, *B25036: Tenure by Year Structure Built* (ACS 5-Year Estimates, 2021), https://data.census.gov/table?g=160XX00US0644000&tid=ACSDT5Y2021.B25036. This is an overcount of the units currently covered by TPA, both because the TPA has exemptions for some types of apartments (such as the second unit in an owner-occupied duplex), and because buildings built in late 2008 or 2009 are still exempt under the TPA's exception for buildings less than 15 years old. 653,389 apartments were covered by the RSO in 2021; almost all of these were built before 2010, because no new RSO buildings were added until July 2007. L.A. Housing Dept., *Report Dashboard for RSO,* https://housing.lacity.org/rso. Subtracting the number of RSO apartments from the estimated number of TPA apartments gives a rough estimate of 171,901 apartments covered by the TPA but not the RSO.

Unlike the RSO, the TPA does not allow landlords to pass through investment costs to tenants in the form of higher-than-normal rent increases. However, because the TPA allows for relatively high rent increases—substantially higher than inflation in most cases—the market, rather than the TPA, may end up determining the amount of rent that landlords charge for these properties.[149] In those cases, the increase in an apartment's market-rate rental value as the result of decarbonization, rather than a formal pass-through program, may be the factor that allows landlords to raise tenants' rent. Notably, this would allow landlords that receive decarbonization subsidies to "double dip" in a way that the RSO's formal pass-through programs generally do not allow: The landlord could use government funds to make a decarbonization investment that also increases the rental value of the property, such as an energy-conservation measure, and then raise rents on their tenants to match the now-higher rental value, thereby increasing rents beyond the cost of the initial investment.

Unlike the RSO, the TPA does not allow landlords to pass through investment costs to tenants in the form of higher-than-normal rent increases. However, the TPA allows for relatively high rent increases.

It is worth noting that the TPA may also change or even disappear during LA's decarbonization process. The law has only been in place since 2019, so most of its existence has been overshadowed by the COVID-19 pandemic and the many accompanying emergency tenant protections that local governments have passed.[150] It is therefore relatively untested and may be subject to further changes as COVID-19 protections lapse and tenants in major urban areas rely more heavily on the TPA. Perhaps more importantly, the TPA includes a ten-year sunset provision: Unless the California Legislature extends the law, it will be automatically repealed on January 1, 2030.[151]

B. Formal Eviction Protections

In early 2023, the City restricted evictions of LA tenants to specific, enumerated circumstances, called "just cause" evictions.[152] (Similar protections have also been available through the RSO and the TPA.[153]) These are generally classified as "at fault" evictions, which are based on the actions of the tenant or their guests, and "no fault" evictions, which are based on the needs or wishes of the landlord.[154] A full discussion of the types of evictions available to landlords is beyond the scope of this report, but this section will highlight several that are relevant to potential building-decarbonization policies.

Repairs and improvements: One "at fault" provision allows landlords to evict tenants if they refuse to allow the landlord "reasonable access" to their home to perform "repairs or improvements."[155] A program that requires or encourages retrofits within an apartment, such as replacing appliances or upgrading windows or ductwork, could create a situation in which a landlord

149 Data limitations and variance make it difficult to tell what the increase in market-rate rents for TPA properties would be in the absence of the law, but there are signs that the market could now be a more substantial constraint than the TPA. For example, one rental site found that LA rents increased by about 9% from August 2021 to August 2022. Apartment List, *Los Angeles, CA Renter Market Trends* (June 2023), https://www.apartmentlist.com/rent-report/ca/los-angeles. Meanwhile, inflation in the Los Angeles metro area was 7.9% from April 2021 to April 2022, U.S. Bureau of Labor Statistics, *Consumer Price Index, Los Angeles Area* (May 10, 2023), https://www.bls.gov/regions/west/news-release/consumerpriceindex_losangeles.htm, meaning that landlords subject to the TPA could have raised rents by the 10% maximum between August 2021 and August 2022, Cal. Civ. Code § 1947.12(g)(3)(B) (setting August-to-August rent increases based on April-to-April inflation). Assuming that the rental site's observed rent increases are the same as the rent increases in TPA properties, specifically (which may not be the case), then the market appears to have kept rents from rising the full amount allowed by the TPA.

150 This also means that the law is relatively untested, and particularly so in is interactions with local rent control like the RSO. One apparently open question is whether the TPA would apply in cases where the RSO rent pass-through programs would make the RSO's maximum rent increase temporarily higher than the TPA's.

151 Cal. Civ. Code § 1947.12(*l*).

152 L.A. Mun. Code § 165.03.

153 *Id.* § 151.09; Cal. Civ. Code § 1946.2(a). These protections have not been eliminated, but some will likely be made obsolete by the new ordinance. See L.A. Mun. Code § 165.01 (specifically finding that the new just-cause ordinance is more protective than the TPA).

154 *See, e.g.,* Cal. Civ. Code § 1946.2(1), (2) (dividing "just cause" evictions into "[a]t-fault just cause" and "[n]o-fault just cause").

155 L.A. Mun. Code §§ 151.09(a)(6), 165.03(F).

demands entry and the tenant refuses. This may be more likely in cases where the tenant does not stand to gain from the improvements or has not received adequate explanation as to how the improvements are beneficial—for example, it is not difficult to imagine a tenant refusing to allow their landlord to replace their gas stove with an electric one, even if that were required by a decarbonization mandate. It will also be easier for landlords to argue that their demand for apartment access is "reasonable" if it is required by a decarbonization mandate.

In early 2023, the City restricted evictions of LA tenants to specific, enumerated circumstances, called "just cause" evictions, expanding on similar protections available through the RSO and the TPA.

Substantial remodels (non-RSO only): A related "no fault" provision, only applicable to non-RSO homes, allows the landlord to evict tenants in order to "substantially remodel" the apartment.[156] This remodeling must involve "the replacement or substantial modification" of a building system or work to abate hazardous materials such as lead or asbestos.[157] It must also pose sufficient risk to building occupants that the tenants cannot safely remain in the building, and that risk must continue for at least 30 days.[158] But when those conditions are met, landlords can circumvent the just-cause protections and evict their tenants.

The whole-building renovation necessary for decarbonizing buildings and maximizing their energy efficiency may enable landlords to generate the conditions for a substantial-remodel eviction. Many decarbonization renovations, such as the installation of electric stoves or heating systems, will require upgrades to buildings' electrical systems; similarly, energy-conservation renovations such as hot-water upgrades or changes to ventilation or insulation could require either major changes to building systems or, in older buildings, hazardous-material abatement. How often these retrofits would ordinarily require tenants to leave their homes for 30 days is less clear, but it is likely to happen in at least some circumstances—particularly since landlords that wish to evict their tenants will have an incentive to assert the need for such long-term vacancies.

Primary Renovations (RSO only): Since 2003, RSO properties have not been subject to eviction for long-term renovation projects; instead, the Primary Renovation program discussed above applies.[159] RSO landlords may temporarily displace tenants from their homes while performing Primary Renovation work—if they have an LAHD-approved Tenant Habitability Plan that requires the tenants to leave—but they must allow the tenants to return to their apartments when the work is done.[160] Tenants are still subject to eviction, however, if they refuse to leave their homes when the THP requires.[161]

THPs are created by the landlord and reviewed by LAHD.[162] That review is focused on ensuring that the THP "adequately mitigate[s] the impact" of renovation work, and there is no explicit instruction for the Department to ensure that the THP does not unnecessarily require tenant relocation, or require relocation for an excessive length of time.[163] The relocation is mandatory and tenants are subject to eviction if they attempt to remain in their homes.[164] This could raise

156 *Id.* § 165.03(I)(2).
157 *Id.* (defining "substantially remodel" by reference to the TPA); Cal. Civ. Code § 1946.2(b)(2)(D)(ii) (definition of "substantially remodel").
158 *Id.*
159 *See* L.A. City Attorney, *Report Re: An Ordinance Establishing a New Cost Recovery Program for "Primary Renovation Work" and Creating a Tenant Habitability Program* 1-2 (2005), https://clkrep.lacity.org/onlinedocs/2001/01-0593-s2_rpt_atty.pdf (explaining that the Primary Renovation program was intended to replace the "major rehabilitation" program, which was similar to the "substantially remodel" ground for eviction).
160 L.A. Mun. Code §§ 152.03(B)(5) 152.05(B), (G).
161 *Id.* § 151.09(A)(9)(a).
162 *Id.* § 152.03(B)-(C).
163 *Id.* § 152.03(C)(1).
164 *Id.* § 151.09(A)(9)(a).

a risk similar to that of "reasonable access" evictions discussed above: Miscommunication, mistrust, or landlord abuse of the relocation process may result in tenants refusing to follow THP requirements, giving their landlords "just cause" to evict them instead.

Government order: Certain orders from government agencies can give rise to a "no fault" cause for eviction if they require the building to be vacant.[165] This can be an order to vacate the building or any other order based on a violation of law that "necessitates" removing all people from the building.[166] Ironically, this empowers landlords to evict their tenants when they fail to meet legal requirements, creating a perverse incentive. A building-decarbonization might risk providing a ground for eviction under this provision if, for example, it allowed the City to issue orders to undertake decarbonization retrofits: If the retrofit is intrusive enough, there is a possibility that it might allow the landlord to claim that the order "necessitates" vacating the building in order to complete the work.

Other eviction risks: In addition to evictions directly triggered by decarbonization retrofits, there is a serious risk that spurring high-value investments in rented apartments will increase the likelihood of facially unrelated evictions. Decarbonization retrofits will, in many cases, simultaneously increase the cost of the building to the landlord and the rental or sale value of the building. This will incentivize landlords to either sell the building or increase rent, which in either case could lead to more evictions. Landlords may be required to pay relocation costs for their tenants in some such cases.[167]

One particular threat is the Ellis Act, which allows landlords to evict tenants in order to remove a building from the rental market—by, for example, demolishing it or dividing it into condos and selling them off.[168] Landlords of rent-stabilized property, who cannot recoup decarbonization costs through rent increases, may take advantage of the Ellis Act to stop renting the property entirely—either demolishing it to make room for new housing or selling it to owner-occupants. This would allow them to either avoid performing decarbonization retrofits at all, or to realize the value that the retrofits add through the sale price.

Ellis Act evictions may also be being used by landlords to complete large-scale retrofits, even when the buildings remain on the rental market. At publication, an instance of using Ellis Act evictions to clear a building in order to accomplish a large retrofit project is playing out at an apartment complex in Westside: The owner of the complex reportedly plans to evict tenants from 577 apartments there in order to complete a city-mandated retrofit the buildings' sprinkler system.[169] The landlord reportedly plans to put the building back on the rental market once the

165 *Id.* §§ 151.09(A)(11), 165.03(J).

166 *Id.*

167 Generally speaking, if a landlord (or a buyer) demolishes the building or converts it to some other use, they will need to provide relocation assistance; these amounts are regularly adjusted, and are currently between $8,850 and $22,950 depending on the situation. L.A. Mun. Code § 151.09(G); *see also* L.A. Housing Dept., *Relocation Assistance Bulletin* (2023), https://housing.lacity.org/wp-content/uploads/2020/06/Relocation-Assistance-English.pdf (current rates). Additionally, if a landlord raises rent beyond 10%, or beyond 5% plus the rate of inflation if that is lower (the same as the TPA rent cap) and their tenant leaves, this is considered "economic displacement" and the landlord must pay relocation assistance equal to three months' "fair market rent," as determined by HUD, plus $1,411. L.A. Mun. Code § 165.09(A), (C). The fair market rent varies by apartment size, location, and year; for the Los Angeles metro area, the fair market rent for a two-bedroom unit is currently $2,222, HUD. *The FY 2023 Los Angeles-Long Beach-Glendale, CA HUD Metro FMR Area FMRs for All Bedroom Sizes,* https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2023_code/2023summary.odn?&year=2023&fmrtype=Final&cbsasub=METRO31080MM4480. This means that relocation assistance for economic displacement from a two-bedroom LA apartment is currently $8,077 ($2,222 times three plus $1,411).

168 Cal. Govt. Code § 7060(a); *see also* L.A. Mun. Code § 151.09(A)(10).

169 Roger Vincent, *Fire-Plagued Apartments to Evict Tenants to Add Sprinklers,* L.A. Times (May 8, 2023), https://www.latimes.com/california/story/2023-05-08/fire-plagued-apartment-complex-to-remove-tenants-for-sprinkler-retrofit.

work is complete,[170] an apparent violation of the City's Ellis Act eviction requirements.[171]

For rent-stabilized landlords who do not take their property off the rental market, building decarbonization will still increase the incentive to find some other means to evict their tenants. This is because both the RSO and the TPA generally allow landlords to set whatever rent they want when renting to a new tenant, a process called "vacancy decontrol."[172] Thus, if a landlord wants to increase rents for an apartment beyond that permitted by the RSO or the TPA, one way to do so is to evict the current occupant. Like Ellis Act evictions, vacancy decontrol is set by a state law (the Costa-Hawkins Act) that was not altered by the TPA, and therefore cannot be eliminated absent action at the state level.[173]

Like the RSO's rent-stabilization provisions, LA's eviction protections are in flux. The City Council's previous moratoria on most evictions, a response to the COVID-19 emergency, have mostly been eliminated.[174] The just-cause ordinance is promising in its scope, but still includes substantial loopholes and is untested. In this environment, mandatory retrofit programs may be especially likely to trigger mass evictions. Therefore, extreme caution is necessary when taking any additional steps that would put too much weight on this brand-new regime of tenant protections.

Perhaps even more important than the threat of formal evictions are "informal" evictions—that is, harassment, threats, and negotiations (often under some form of duress) that lead tenants to leave their homes without a formal court case.

C. Tenant Harassment and Informal Evictions

Perhaps even more important than the threat of formal evictions is the extent to which LA tenants are protected from "informal" evictions—that is, harassment, threats, and negotiations (often under some form of duress) that lead tenants to leave their homes without a formal court case. Informal evictions are by definition difficult to measure, but are likely several times as prevalent as formal evictions and may have become more common during the COVID-19 pandemic.[175] They are also more difficult to protect against than formal evictions, requiring both strong harassment protections and a dedicated effort to ensure that tenants facing eviction have sound legal advice.[176]

Tenant harassment statistics for LA reveal extreme racial and economic inequities. A recent report from LAHD found that 34% of residents receiving legal assistance from the City to prevent tenant harassment were Black, despite the fact that Black residents make up only about 12% of LA's renters.[177] Additionally, households making less than 30% of LA's "area median income" (less than $35,750 for a family of four in 2022) have made up the majority of self-reported harassment cases,

170 *Id.* ("The complex . . . will be returned to the rental market when the upgrades are complete, the landlord said."); David Wagner, *Hundreds of Renters in This West LA Apartment Complex are being Evicted as COVID Protections Expire,* LAist (May 9, 2023), https://laist.com/news/housing-homelessness/barrington-plaza-fire-sprinklers-eviction-ellis-act-los-angeles-housing-relocation ("Barrington Plaza's owners said they plan to put the property back on the rental market following the repairs."); .

171 *See* L.A. Mun. Code § 151.09(A)(10) (requiring "good faith" intent "to demolish the rental unit" or "to remove the rental unit permanently from rental housing use").

172 *Id.* § 1947.12(b); L.A. Mun. Code § 151.06(C)(1).

173 *See generally* Cal. Civ. Code § 1954.53.

174 *See generally* L.A. City Council Ord. No. 187,736 (approved Jan. 25, 2023).

175 *See* Ashley Gromis and Matthew Desmond, *Estimating the Prevalence of Eviction in the United States: New Data from the 2017 American Housing Survey* 23 Cityscape 279, 281-82 (reporting U.S. Census data finding that informal evictions were about 5.5 times more common than formal evictions nationwide in 2017, but noting that formal evictions may be underrepresented in that dataset); Matthew Fowle and Rachel Fyall, University of Washington, Evans School of Public Policy & Governance, *The Impact of the COVID-19 Pandemic on Low-Income Tenants' Housing Security in Washington State* 11-12 (2021), https://evans.uw.edu/wp-content/uploads/2020/09/Tenants-Union_Research-Report-Formatted-Fowle-Fyall-v7.19.21.pdf (finding that, among low-income tenants served by the Tenant Union of Washington, landlords used substantially more informal-eviction tactics during the pandemic than before the pandemic).

176 For example, a tenant who receives legal representation is far more likely to be able to resist eviction than one who negotiates without counsel or represents themselves in the event of an eviction, including in cases that do not ultimately end in a judgment. *See* Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal about When Counsel is Most Needed,* 27 Fordham Urban L.J. 37, 48-51 & nn.48-60 (2010) (collecting studies); *see also* Kathryn A. Sabbeth, *Housing Defense as the New Gideon,* 41 Harvard J. Law & Govt. 55, 100-01 (2021) (arguing for need to expand housing counsel to protect against informal evictions).

177 LA Hous. Dept., *Los Angeles Housing Department Report Back on Implementation of the Tenant Anti-Harassment Ordinance* 5 (2022), https://clkrep.lacity.org/onlinedocs/2021/21-0716_misc_11-30.pdf [hereinafter TAHO report] (34% of tenants receiving legal assistance were Black in July 2021 through October 2022); U.S. Census Bureau, *S2502: Demographic Characteristics for Occupied Housing Units* (ACS 1-Year Estimates 2021), https://data.census.gov/table?g=1600000US0644000&tid=ACSST1Y2021.S2502 (in 2021, estimated 106,941 LA renters were Black, out of 889,109 total renters, or about 12%).

and 84% of the households that receive legal representation.[178] Data issues make it difficult to assess to what extent these households are overrepresented, but the disparity appears to be very high.[179]

Many of the decarbonization-related drivers of formal evictions are also likely to drive informal ones. The same incentive structures that encourage landlords to evict their tenants will encourage them to push tenants out informally. Mandatory decarbonization retrofits could give landlords an excuse to engage in "harassment by construction": conducting intrusive or even dangerous work, under the guise of necessary repairs or improvements, in order to convince tenants to leave their apartment.[180]

The City Council recently took an important step toward curbing informal evictions: passing the Tenant Anti-Harassment Ordinance (TAHO).[181] TAHO specifically prohibits some landlord practices used to push out tenants, including the "[a]buse" of a landlord's right to enter an apartment for repairs or improvements and any "repeated acts or omissions" that "substantially interfere with or disturb the comfort, repose, peace or quiet" of an apartment and may force the tenant out.[182] TAHO is enforceable by tenants themselves or by the City, including by disallowing a rent increase after a tenant has been forced out in violation of the ordinance.[183]

There is reason to think that many of LA's tenant protections have not been adequately enforced, a concern that is only likely to grow as the COVID-19 emergency protections disappear.

D. Enforcement

Tenant protections must be enforced in order to be effective. There is reason to think that many of LA's tenant protections have not been adequately enforced, a concern that is only likely to grow as COVID-19 emergency protections disappear.

There are indications that some landlords are evading the RSO, possibly because tenants do not have the resources necessary to enforce their rights under the ordinance. The last review of the RSO, conducted in 2007, indicated that a substantial portion of landlords had increased rents beyond the allowed amount for a given year, and that this was more likely to happen in apartments with lower-income tenants.[184] The study included a survey of LA tenants' awareness of the RSO, which showed troubling discrepancies: Lower-income tenants were less likely than higher-income tenants to be aware of tenants' rights under the RSO, as were respondents that preferred speaking Spanish or Korean (the two non-English languages in which the survey was offered) to speaking English.[185] Since this study, the City has enacted

178 TAHO report, *supra* note 177, at 6 (rate of self-reported harassment cases from households earning less than 30% area median income); LA Hous. Dept., *2022 Major Projects/NPP/EQ, HHH Income Schedule* (income threshold for 30% of area median income is currently $35,750 for family of four), https://lahousing.lacity.org/AAHR/Documents/AMI%20Income%20and%20Rent%20Limits.pdf.

179 Specifically, area median income is calculated by household size, and statistics on income by household size are limited, so that determining the percentage of renters earning less than the 30% threshold is difficult. However, the disparity is likely very high: about 36% of renters in LA earned less than $35,000 in 2021, whereas the Housing Department's report indicates that 55% of harassment reports were from households earning less than 30% area median income in each month for which this was measured. TAHO report, *supra* note 177, at 5; U.S. Census Bureau, *B25118: Tenure by Household Income in the Past 12 Months* (ACS 1-Year Estimates 2021), https://data.census.gov/table?g=1600000US0644000&tid=ACSDT1Y2021.B25118.

180 *See, e.g.,* Jack Ross & Bobbi Murray, *While an Industry Feeds on the Destruction of Rent Control, Help is on the Way,* Capital & Main (Apr. 11, 2022), https://capitalandmain.com/while-an-industry-feeds-on-the-destruction-of-rent-control-help-is-on-the-way (describing construction harassment in LA). Darwin BondGraham, Berkeleyside, *Oakland Tenants Go on Strike to Protest High Rents and Construction during the COVID-19 Pandemic* (May 8, 2020), https://www.berkeleyside.org/2020/05/08/oakland-tenants-go-on-strike-to-protest-high-rents-and-construction-during-the-covid-19-pandemic (collecting complaints regarding the Mosser Company's practice of continuous and disruptive construction); Caroline Spivack, Curbed, *Lower East Side Building Tested for Lead Levels 37 Times Health Standards* (Jan. 31, 2019), https://ny.curbed.com/2019/1/31/18205003/lower-east-side-lead-dust-contamination (noting concerns that landlords used construction and particularly the dust it creates, which can sometimes be contaminated with lead, to harass tenants into leaving their homes).

181 L.A. Mun. Ord. 187109 (passed June 23, 2021, effective Aug. 6, 2021) (codified at L.A. Mun. Code §§ 45.30-39.1, 151.10(B), 151.33).

182 L.A. Mun. Code § 45.33(3), (16).

183 *Id.* §§ 45.35-45.38.

184 LAHD, *Report on Economic Study of the Rent Stabilization (RSO) Ordinance and the Local Housing Market* 11-12, 125 (2009), http://clkrep.lacity.org/onlinedocs/2007/07-0883_rpt_lahd_6-25-2009-1.pdf (finding that "[t]wenty-seven percent of tenants in RSO units reported current rents that were *above the projected allowable increase* permitted by the RSO" and attributing "a portion" of that percentage to "unauthorized rent increases").

185 *Id.* at 101-03.

a new rent-registration program that seeks to resolve this problem,[186] although it is unclear whether that has been successful.

Similarly, eviction protections are not universally available to tenants who qualify for them because of a lack of resources and outreach. This is a problem throughout the country, as evidenced by the fact that tenants that have attorneys are much more likely to avoid evictions than those that do not.[187] A similar trend appears in LA, where three-quarters of tenants who are threatened with eviction by their landlord, and receive legal representation through the City's Stay Housed LA program, are not ultimately evicted.[188] The City took important steps toward providing legal counsel to tenants before and the COVID-19 pandemic, and ultimately launched the Eviction Defense Program (EDP) in 2021, which has provided assistance with over 4,000 cases since.[189] However, the EDP has been temporary and funded through the federal CARES Act.[190] The City Council has begun the process for making an EDP-like program permanent, using funds raised by Measure ULA, but it is not yet clear that it will do so.[191]

Finally, LA's TAHO appears to have seen almost no use since it has been enacted, despite reported instances of landlord harassment. As of late 2022, no landlord had been charged by the City with a violation of the ordinance.[192] Indeed, the City did not allocate any funding to enforce the program in its 2021-2022 budget, although the 2022-2023 budget did include funding for four positions at the Housing Department and one at the City Attorney's Office for TAHO enforcement.[193] It also appears that the private-action provision of TAHO has seen limited use.[194]

V. Maximizing Decarbonization Co-Benefits

Although the risks to tenants of building decarbonization are real, there will also be real benefits to LA tenants from a large-scale decarbonization program, even beyond the benefits from climate-change mitigation. The City's building-decarbonization policy should take these "co-benefits" into consideration in order to maximize them and to ensure that landlords do not capture them in their entirety. While there are a wide range of potential co-benefits, from the new jobs created by a citywide retrofit program[195] to the potential for rooftop solar to increase

186 L.A. Mun. Ord. No. 184529, § 4 (Sept. 27, 2016) (codified at L.A. Mun. Code § 151.05(J)).

187 *See* Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal about When Counsel is Most Needed,* 27 Fordham Urban L.J. 37, 49 (2010) (collecting studies); *see also* Kathryn A. Sabbeth, *Housing Defense as the New Gideon,* 41 Harvard J. Law & Govt. 55, 100-01 (2021) (arguing for need to expand housing counsel to protect against informal evictions).

188 TAHO report, *supra* note 177, at 5.

189 Memorandum from Ann Sewill, General Manager, L.A. Hous. & Comm'y Invest. Dept. (now L.A. Hous. Dept.), to Eric Garcetti, Mayor of L.A., and the L.A. City Council (Sept. 8, 2020), https://clkrep.lacity.org/onlinedocs/2020/20-1084_rpt_HCI_09-09-2020.pdf; TAHO report, *supra* note 177, at 5.

190 *Id.*

191 *See* Motion of Nury Martinez, C.F. 20-1084-S2 (adopted Oct. 21, 2022), *available at* https://clkrep.lacity.org/onlinedocs/2020/20-1084-s2_misc_09-13-22.pdf; Motion of Nithya Raman et al., C.F. 18-0610-S3 (approved by committee Mar. 1, 2023), *available at* https://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=18-0610-S3.

192 Jack Ross, *A Year into New Los Angeles Law to Protect Renters, City Has Taken Zero Landlords to Court,* LAist (Dept. 28, 2022), https://laist.com/news/housing-homelessness/a-year-into-new-los-angeles-law-to-protect-renters-city-has-taken-zero-landlords-to-court. A recent report on TAHO implementation likewise implied that no criminal prosecutions have been filed under the ordinance. *See* TAHO report, *supra* note 177, at 8 (noting LAHD "will report back" on prosecution data "after the Office of the City Attorney has conducted hearings and/or criminal filings").

193 TAHO report, *supra* note 177, at 6-7.

194 Jack Ross, *A Year into New Los Angeles Law to Protect Renters, City Has Taken Zero Landlords to Court,* LAist (Sept. 28, 2022), https://laist.com/news/housing-homelessness/a-year-into-new-los-angeles-law-to-protect-renters-city-has-taken-zero-landlords-to-court (noting tenants' difficulties in obtaining private counsel for TAHO cases). However, at least some TAHO cases have been brought. *See, e.g., Baker v. Spinks,* No. 22STCV15838, 2022 Cal. Super. LEXIS 47388, at *5-6, 9-10 (Aug. 9, 2022) (overruling demurrer to TAHO action and denying motion to strike request for attorney fees under TAHO). In its report on TAHO implementation, LAHD said that it is unable to provide the number of private actions filed pursuant to TAHO, but also recognized "the ineffectiveness of the ordinance in attaining compliance through the filing of private actions." TAHO report, *supra* note 177, at 6, 8.

195 *See, e.g.,* Betony Jones et al., UCLA Luskin Center for Innovation, *California Building Decarbonization: Workforce Needs and Recommendations* ES-iv to ES-vii (2019), https://innovation.luskin.ucla.edu/wp-content/uploads/2019/11/California_Building_Decarbonization.pdf.

resilience against grid problems,[196] this brief will focus on two categories of particular interest to tenants: health benefits and energy savings.

A. Health Benefits

Although the risks to tenants of building decarbonization are real, there will also be real benefits to LA tenants from a large-scale decarbonization program, even beyond the benefits from climate-change mitigation.

Natural-gas and other fossil-fuel appliances release harmful air pollutants that electric appliances do not.[197] Burning natural gas in stoves can create indoor concentrations of NO_x that exceed federal outdoor health standards, and increase children's risk of suffering asthma symptoms and developing asthma in the first place.[198] Gas stoves also leak hazardous air pollutants, particularly benzene, in quantities that can exceed state health standards.[199] Space and water heaters pose a lesser risk when they are properly vented to the outside (as is mandatory in California), but in cases where venting fails because of improper installation or maintenance, can produce even higher concentrations of air pollutants.[200]

Most LA tenants stand to gain from the reduction in air pollution from electrifying appliances in the home. Natural gas is by far the most prevalent type of energy used for both heating and cooking in LA rental units. The majority of rental units in the LA area are heated primarily with fossil fuels (almost entirely natural gas),[201] almost three-quarters use natural gas as the primary fuel for their hot-water heater,[202] and almost two-thirds use natural-gas ranges for cooking.[203]

It is likely that apartments using these appliances, and particularly gas stoves, will regularly have concentrations of air pollutants high enough to harm tenants' health.[204] Gas stoves are particularly likely to worsen indoor air quality, because their emissions are much more likely to stay in the home than those of space or water heaters.[205] Modern induction stoves also give off substantially less waste heat,[206] which make them safer for children and could make it easier to keep apartments at a comfortable temperature, particularly for apartments that lack air conditioning. And despite the relative unfamiliarity of induction ranges, there is reason to think that

196 *See, e.g.,* Siddharth Patel et al., *The Disaster Resilience Value of Shared Rooftop Solar Systems in Residential Communities,* 37 Earthquake Spectra 2638 (2021).

197 *See generally* Brady Seals, Rocky Mountain Inst., et al., *Health Effects from Gas Stove Pollution* (2020), *available at* https://rmi.org/insight/gas-stoves-pollution-health (health impacts of gas stoves, specifically); Yu Ann Tan & Bomee Jung, Rocky Mountain Inst., *Decarbonizing Homes: Improving Health in Low-Income Communities through Beneficial Electrification* 16, 42-46 nn.15-40 (2021), *available at* https://rmi.org/insight/decarbonizing-homes/ (collecting sources on health impacts of fossil-fuel appliances and associated pollutants).

198 Talor Gruenwald et al., *Population Attributable Fraction of Gas Stoves and Childhood Asthma in the United States,* Int. J. Envtl. Res. & Pub. Health, Jan.-1 2023, art. 75, at 3 fig.1 (finding that 20.1% "of childhood asthma [cases] could be theoretically prevented if gas stove use was not present"); *see also generally* Heather Dadashi, et al., *How Air Districts Can End NOx Pollution from Household Appliances* 2-4 (2022), https://law.ucla.edu/sites/default/files/PDFs/Publications/Emmett%20Institute/PritzkerBrief_NOx.pdf.

199 Eric D. Lebel et al., *Composition, Emissions and Air Quality Impacts of Hazardous Air Pollutants in Unburned Natural Gas from Residential Stoves in California,* 56 Envtl. Sci. & Tech. 15,828 (2022).

200 Yifang Zhu, et al., UCLA Fielding Sch. of Pub. Health, *Effects of Residential Gas Appliances on Indoor and Outdoor Air Quality and Public Health in California* 14-15 (2020), https://coeh.ph.ucla.edu/wp-content/uploads/2023/01/Effects-of-Residential-Gas-Appliances-on-Indoor-and-Outdoor-Air-Quality-and-Public-Health-in-California.pdf [hereinafter Fielding Study].

201 Cal. Energy Comm'n, *Residential Appliance Saturation Study: Banner Subset – LADWP,* group 2 sheet "Clean primary heat fuel - IM" (2021), *available at* https://webtools.dnv.com/CA_RASS/ (in 2019, 54% of rental apartments in the LADWP service area reported heating primarily with natural gas, and another 3% with propane; 34% reported heating with electricity and 9% did not respond).

202 *Id.* group 3 sheet "Primary water heater fuel" (natural gas reported as primary hot-water fuel for 73% of those surveyed, with 7% reporting electricity as the primary fuel and 20% not responding).

203 *Id.* group 4 sheet "F1-Fuel for cooktop" (natural gas reported as cooking fuel for 62% of rental apartments and electricity for 35%, with 3% not responding).

204 Fielding Study, *supra* note 200, at 19-22 (reporting modeling results indicating that, among other findings, using a gas stove results in an exceedance of the acute air standards for nitrogen dioxide up to 80% of the time, and using both a gas stove and oven simultaneously results in an exceedance almost all of the time).

205 *See generally id.* at 11-30.

206 *See, e.g.,* Frontier Energy, *Residential Cooktop Performance and Energy Comparison Study* 25-26 (2019) (finding that induction ranges produce about half the waste heat of gas ranges), https://cao-94612.s3.amazonaws.com/documents/Induction-Range-Final-Report-July-2019.pdf.

they can easily adopted if paired with appropriate outreach and resources.[207]

Appliance electrification would also improve the outdoor air quality in the LA area, with significant health benefits for all LA residents. Fossil-fuel appliances in Los Angeles County emit an estimated 3,883 tons per year of NOx—far more than appliances in any other California county, and even more than the *total* NOx emissions of several counties.[208] A 2020 UCLA study estimated that switching residential appliances in the county to electricity would save almost a hundred lives every year due to reductions in outdoor environmental pollution alone.[209]

Most LA tenants stand to gain from the reduction in air pollution from electrifying appliances in the home.

There are additional health co-benefits from many of the building-envelope and building-systems improvements that typically accompany decarbonization retrofits. Weatherization improvements—improving an apartment's insulation, heating, and cooling—have a number of positive health benefits: They help prevent incursion of outdoor air pollution, pest and mold infestations, and drastic changes in temperature.[210] In LA, the ability to keep a house cool is extremely important to reduce associated health impacts and maintain comfort, and will only become more important as the climate continues to warm.[211] On the other hand, reinsulating an apartment without also improving the ventilation could lead to drastically reduce airflow, trapping indoor air pollutants inside the home and potentially increasing mold and moisture problems.[212]

We can see, therefore, that not all decarbonization measures are equal when it comes to health benefits: Appliance electrification—particularly switching gas stoves for electric stoves—and some weatherization measures will lead to a greater improvement in tenant health and comfort than other measures, such as electrifying appliances in common areas or adding on-site renewable generation (though on-site generation could provide economic co-benefits if the power generated is credited against tenants' bills).

The choice of which decarbonization measures to adopt presents a twist on the classic "split incentive" problem: Tenants benefit from health-protective measures like appliance switching and effective weatherization, while landlords do not; but it is typically landlords, not tenants, who decide whether to take those actions. In fact, a landlord who prioritizes retrofits that save energy or reduce emissions over those that protect tenant health could even leave tenants worse off.

The specifics of landlord-tenant relationships suggest that a holistic and mandatory building-decarbonization policy will be more likely to achieve health benefits than an incentives-based and piecemeal one. The typical tenant will not have enough control over their home to take advantage of incentive programs, and landlords may not be proactive enough to seek out them out and incur the administrative costs and initial investments necessary to benefit from them (at least, not without some requirement to do so). It would be better to require or encourage "whole home retrofits," which combine holistic decarbonization with additional health and safety retrofits and upgrades, which are in any case often required for weatherization-assistance funding.[213]

207 *See, e.g.,* WE ACT for Environmental Justice, *Out of Gas, In with Justice* 36-38 (2023), https://www.weact.org/wp-content/uploads/2023/02/Out-of-Gas-Report-FINAL.pdf (pilot study of induction-range adoption noting participants' preference for induction stoves, but stressing the importance of culturally relevant education in the recipients' primary language, respect for tenants' schedules, and provision of cookware that can function with induction ranges).

208 *Id.* at 37, 50.

209 Fielding Study, *supra* note 200, at 38-40, 57.

210 *See generally* Oak Ridge Nat'l Lab., *Weatherization Works – Summary of Findings from the Retrospective Evaluation of the U.S. Department of Energy's Weatherization Assistance Program* 22-28 (2014), https://weatherization.ornl.gov/wp-content/uploads/pdf/WAPRetroEvalFinalReports/ORNL_TM-2014_338.pdf.

211 *See, e.g., Report on Equitable Building Decarbonization: Equity Focused Policy Recommendations for the City of Los Angeles* 25-26 (2022), https://clkrep.lacity.org/onlinedocs/2021/21-1463_rpt_10-12-22.pdf.

212 *See generally* Lindsay J. Underhill et al., *Simulation of Indoor and Outdoor Air Quality and Health Impacts Following Installation of Energy-Efficient Retrofits in a Multifamily Housing Unit,* Bldg. & Envt. vol. 170 art. 106507 (2020) (finding that retrofits to improve insulation and reduce air leakage in a home without adequate ventilation or air filtration could substantially increase the concentration of fine particulate matter inside the home).

213 For an example of a whole-home retrofit proposal, see Ashita Gona, Rocky Mount. Inst., et al., *Charting a Pathway to Maryland's Equitable Clean Energy Future: Electrification and Building Upgrades for Low-Income Residences* (2023), https://earthjustice.org/sites/default/files/files/20230123_marylandreport.pdf. For a list of similar existing programs, see *id.* Appx. D.

Even a mandatory decarbonization requirement could miss out on tenant-health co-benefits if it gives landlords leeway to choose what measures they take (such as would be the case for BPS programs or score-based retrofit requirements), since landlords would have no reason to decarbonize through health-protective measures rather than, for example, renovating common spaces. Insulation and ventilation are a particular concern. On the one hand, a decarbonization retrofit is an excellent opportunity to protect tenant health, by insulating pipes, sealing off any access points for pests, and ensuring adequate ventilation for any areas of the apartment that are too hot or too moist. On the other hand, an incomplete retrofit could leave tenants worse off than before. The line between benefiting and harming a tenant, therefore, depends on the holistic nature of the decarbonization retrofit; policies that allow landlords to pick and choose which decarbonization measures to take create the risk that tenants' health will suffer.

B. Energy Savings

The specifics of landlord-tenant relationships suggest that a holistic and mandatory building-decarbonization policy will be more likely to achieve health benefits than an incentives-based and piecemeal one.

Another key co-benefit of building decarbonization is reduced energy costs. One source of energy savings is appliance replacement. New, high-efficiency HVAC and water-heating systems generally cost less to operate than gas systems for multifamily buildings in Southern California, despite the relatively high price of electricity, according to a 2019 study.[214] However, that same study found that replacing gas stoves with electric ones can increase rather than decrease energy costs.[215]

Improvements to a building's "envelope"—the building's walls, windows, roof, and foundation—and efficiency improvements are a more certain source of energy savings in decarbonization retrofits. The U.S. Department of Energy estimates that its Weatherization Assistance Program saves an average home $283 a year in energy costs.[216] California's own Low-Income Weatherization Program for Multifamily Properties reportedly led to a 38% reduction in energy use for the properties it served.[217] (Both programs sometimes involve replacing building systems as well as making envelope improvements,[218] so it is possible that not all of these savings will be achievable through envelope improvements alone.)

On-site generation, usually achieved by solar-panel installation, can also be a source of energy savings. LIWP includes solar-panel installations and reports that 6% of the pre-retrofit energy use of its projects were served by that addition.[219] California's more recent Solar on Multifamily Affordable Housing (SOMAH) program reports greater savings—about $50 per unit, per month—on two of its projects.[220] These savings are likely to vary depending on the space avail-

214 Energy & Envtl. Econ., *Residential Building Electrification in California* 56-61 (2019), https://www.smud.org/-/media/Documents/Corporate/About-Us/Energy-Research-and-Development/E3-Residential-Building-Electrification-in-California-April-2019.ashx [hereinafter E3 Cost Study].

215 *Id.* at 63-64. The same is also true of clothes dryers, *id.* at 64-65, but electric clothes dryers are already more common in rental units in the LADWP service area than gas dryers, Cal. Energy Comm'n, *Residential Appliance Saturation Study: Banner Subset – LADWP,* group 3 sheet "E5-Type of clothes dryer" (2021), *available at* https://webtools.dnv.com/CA_RASS/. Additionally, about two-thirds of renters share a common dryer or do not use a dryer in their building, *id.* sheet "E1-Laundry equipment in home", and therefore likely do not pay directly for the energy their dryer uses.

216 U.S. Dept. of Energy, *Weatherization Works!* 1 (2019), https://www.energy.gov/sites/prod/files/2019/07/f64/WAP-Fact-Sheet-2019.pdf.

217 Am. Council for an Energy-Efficient Econ., *Closing the Gap in Energy Efficiency Programs for Affordable Multifamily Housing* 17 (2019), https://www.aceee.org/sites/default/files/publications/researchreports/u1903.pdf.

218 Cal. Dept. of Comm'y Servs. & Devt., *Reimbursements for Weatherization Activities (2022 DOE WAP)* (2022), *available at* https://perma.cc/A449-D4UM (permitting reimbursement through WAP for replacement of air-conditioning, heating, and ventilation systems, among others); Cal. Dept. of Comm'y Servs. & Devt., *Low-Income Weatherization Program Guidelines: Multi-Family (MF) Energy Efficiency and Renewables* Exh. A (2022), https://www.csd.ca.gov/Shared%20Documents/LIWP-2022-Multi-Family-2.0-Draft-Program-Guidelines.pdf (permitting various appliance and building-system replacement).

219 Am. Council for an Energy-Efficient Econ., *Closing the Gap in Energy Efficiency Programs for Affordable Multifamily Housing* 17 (2019), https://www.aceee.org/sites/default/files/publications/researchreports/u1903.pdf.

220 Cal. Pub. Util. Comm'n, *Financial Benefits of Solar Power Achieved at Sand Creek Community* 1 (2022), https://calsomah.org/education-resources/financial-benefits-solar-power-achieved-sand-creek-community; Cal. Pub. Util. Comm'n, *Suisun City SOMAH Project Offers Much-Needed Relief to Families* 1 (2022), https://calsomah.org/education-resources/cottonwood-creek-solar-project-offers-much-needed-relief-families.

able for solar-panel installations and the number of occupants; a high-rise apartment building, for example, will be able to install less solar capacity per unit than a low-rise with the same roof space but fewer tenants.

These savings will become even more important as natural-gas prices increase. Because natural-gas customers pay for the infrastructure that supports the gas system as well as their individual usage, a decline in the number of households using natural gas will lead to a substantial—possibly severalfold—increase in costs for who still use the fuel.[221] And, since tenants typically do not get to choose the major appliances used in their buildings, they will be less able to respond to these price incentives by switching appliances than residents that own their homes. Thus, energy conservation in general, and appliance electrification in particular, will be crucial for insulating tenants against increases in gas costs.

However, attention should also be paid to the possibility of increasing energy burden as the result of electrification of in-unit appliances, primarily stoves. Even though induction ranges are roughly twice as efficient as gas ranges, electricity in the Los Angeles area is typically several times more expensive than gas for the same amount of energy, meaning that operating an induction range could cost more than a gas range.[222] The absolute cost increase from switching to an electric stove will likely be low—less than $80 per year[223]—but such additional expenses can still be impactful for cost-burdened households, and therefore the City may want to consider additional utility-cost relief for low-income renters that are moved from gas to electric stoves.

As with health co-benefits, landlords may not be incentivized to take decarbonization measures that maximize energy savings for their tenants. If a landlord does not pay for gas heat, for example, they may ignore rising natural gas prices and instead focus on electricity use in common areas. And since tenants are rarely able to electrify their own homes, they will be stuck with whatever decarbonization measures their landlord decides to take.[224]

In addition to this "split incentive" problem, decarbonization policy should address the question of how to ensure an equitable sharing of energy benefits.

In addition to this "split incentive" problem, decarbonization policy should address the question of how to ensure an equitable sharing of energy benefits. Unlike health co-benefits, energy co-benefits are mostly economic, and are therefore more vulnerable to capture by landlords. Building owners may, for example, sell the energy generated by onsite solar generation rather than crediting it against their tenants' energy bills. Landlords may even use their relatively strong bargaining position to change utility payment structures in their favor: If utility costs decrease, RSO landlords may take over their renters' utility payments in order to take advantage of the higher rent-increase caps;[225] if they increase (for example, because of a natural-gas cost spiral), landlords that already pay for utilities may try to foist those payments off on their tenants.

221 A study commissioned by the California Energy Commission found that meeting California's GHG-reduction goals, even without extensive building electrification, could increase residential natural-gas prices by several times by 2050. Dan Aas, Energy & Envtl. Econ., et al., *The Challenge of Retail Gas in California's Low-Carbon Future* 52 (2020), https://www.ethree.com/wp-content/uploads/2021/06/CEC-500-2019-055-F.pdf. Under widescale building electrification, prices could increase even more rapidly. *Id.* at 51, 55-56.

222 *See, e.g.,* Micah Sweeney et al., Elec. Pwr. Research Inst., *Induction Cooking Technology Design and Assessment* 9-373, tbl.2 (2014), https://www.aceee.org/files/proceedings/2014/data/papers/9-702.pdf (finding induction range transferred 75-78% of energy used to food, while gas range transferred 30-42%); U.S. Bur. of Labor Stats., *Average Energy Prices, Los Angeles-Long Beach-Anaheim—April 2023* (last modified May 12, 2023), https://www.bls.gov/regions/west/news-release/averageenergyprices_losangeles.htm (in April 2023, electricity in LA area cost $0.269/kWh, equivalent to about $7.88/therm on an energy basis, while natural gas cost $1.58/therm); E3 Cost Study, supra note 214, at 63-64 (comparing consumer utility-bill impacts from cookstove electrification).

223 *See, e.g.,* E3 Cost Study, *supra* note 214, at 63-64.

224 *See, e.g.,* Ted Lamm & Ethan Elkind, Berkeley Law, Ctr. for Law, Energy, and the Envt., *Building toward Decarbonization: Policy Solutions to Accelerate Building Electrification in High-Priority Communities* 12 (2021), http://www.climatepolicysolutions.org/wp-content/uploads/2021/06/Building-toward-Decarbonization-January-2021.pdf (discussing regressive impact of stranding natural-gas assets in the absence of sound policy.

225 *See supra* § IV.A.1.

VI. Recommendations

As this brief has detailed, the massive overhaul of LA's housing required to meet the City's climate goals holds promise and peril for LA tenants. The following eight recommendations seek to maximize the benefits and minimize the risk.

Prohibit Cost Pass-Throughs for Decarbonization Retrofits in RSO Properties

Achieving the building-decarbonization goals of LA's Green New Deal will require investing billions—possibly tens of billions—of dollars in rental properties.[226] Without a massive subsidization program, most landlords will bear the initial cost of these investments. In order to recoup those costs, including financing costs, those landlords will likely raise the rents they charge their tenants. Across-the-board rent increases could be disastrous for housing affordability in LA, where almost a third of renters—over 260,000 households—are already severely rent burdened (that is, paying more than half of their income in rent).[227]

The RSO ordinarily protects tenants against large rent increases. Building-decarbonization costs, however, will probably be eligible for one of several RSO provisions that allow landlords to charge additional rent in order to recoup upfront investment costs.

The RSO ordinarily protects tenants against large rent increases. Building-decarbonization costs, however, will probably be eligible for one of several RSO provisions that allow landlords to charge additional rent in order to recoup upfront investment costs.[228] These "pass-through" provisions allow rent increases of up to 10% (phased in over two years), which can be permanent. This could easily lead to tenants paying the full cost of building-decarbonization mandates—in fact, they are designed to do so.

The most straightforward way to prevent tenants bearing these costs is to simply exempt the actions taken pursuant to a building-decarbonization program from the RSO pass-through provisions. Crafting such an exemption will be easier if the City adopts a building-decarbonization policy that specifies the actions that landlords must take, or allows landlords to select from a slate of decarbonization measures.[229] In that case, the City could disallow work counted toward a landlord's building-decarbonization mandate as the basis for an RSO rent increase, and vice-versa. A more flexible approach to building-decarbonization mandates may require broader restrictions on rent pass-throughs: For example, if the City institutes a BPS program, the most tenant-protective approach may be to disallow all rent increases from measures that would reduce GHG emissions in a building until the building is below the relevant cap (or, if the City institutes a Cap and Trade-style carbon-trading program, until the building-decarbonization program is completed citywide).

Close Loopholes in Eviction Protections

Along with the increased rent burden, city-wide building decarbonization could also incentivize and enable evictions. Mandatory decarbonization will impose costs on landlords, but also likely increase the rental or sale value of their properties. Landlords will therefore be incentivized to either sell the building before they are required to retrofit it, or to convert the increased

226 *See, e.g.,* Betony Jones, Inclusive Economics, *Los Angeles Building Decarbonization: Community Concerns, Employment Impacts, and Opportunities* 2 (2021), *available at* https://www.nrdc.org/sites/default/files/los-angeles-building-decarbonization-jobs-impacts-report-20211208.pdf (estimating that retrofitting LA's multifamily buildings to the point of full electrification and at least a 30% reduction in energy use will have an up-front cost of $19-33 billion).

227 *See* U.S. Census Bureau, *B25070: Gross Rent as Percentage of Income in the Past 12 Months* (ACS 5-Year Estimate, 2021), https://data.census.gov/table?g=1600000US0644000&tid=ACSDT5Y2021.B25070.

228 *See supra* § IV.A.1.

229 *See supra* § III.

value of the property resulting from the retrofits into economic gain by selling or raising rents after the retrofits are complete. Recent studies of other retrofits around the county indicate that the sale or deep renovation of a building increases the likelihood of eviction.[230]

To mitigate this risk, the City should close some of the loopholes in LA's eviction protections. First, the City could eliminate the provisions in the RSO and the just-cause ordinance allowing tenants to be evicted for refusing to allow "reasonable" work to be performed in their homes, or in cases where a government order requires vacating the premises.[231] Leaving the provision as-is during a massive retrofit campaign, such as that implied by the Green New Deal, runs the risk that decarbonization measures will directly cause evictions. If landlords undertake retrofit work responsibly, so that tenants are aware of its necessity and its benefits, temporary relocation will be sufficient; and if they do not, their tenants should not be punished with losing their home, and landlords should not be rewarded with the opportunity to raise their rents.

Second, the City should review the process for tenant relocation during renovation work to ensure that such relocation, and any resultant evictions, are minimized. In RSO properties, temporary tenant relocation is permitted if a landlord is undertaking Primary Renovation and submits a Tenant Habitability Plan indicating that relocation is necessary to protect tenant safety—and if the tenants refuse to relocate, their landlord may evict them.[232] While THPs are reviewed by LAHD, the review is focused on ensuring the THP sufficiently protects tenant health, and there is no explicit instruction for LAHD to ensure that tenant displacement is minimized.[233] The City could instruct LAHD to review THPs for unnecessary relocations.

Non-RSO properties require even greater scrutiny, and potentially a revision to the law. LA's just-cause eviction requirements allow landlords to evict their tenants in order to "substantially remodel" the building, if the remodeling requires tenants to leave the apartment for at least 30 days.[234] A similar provision in the statewide Tenant Protection Act has already led to reports of "renovictions," the practice of landlords claiming that extensive retrofits are necessary in order to evict their tenants.[235] Decarbonization retrofits will create cover for landlords to use the substantial-remodel provision to evict their tenants. Therefore, the City should ensure that the work that is the basis for substantial-remodel evictions is strictly necessary, and consider either removing the provision entirely, or else specifically disallowing evictions based on decarbonization retrofits.

Widescale building decarbonization will put additional pressure on tenant protections as landlords' incentives to evict their tenants—formally or informally—grow.

Strengthen Enforcement and Oversight of Tenant Protections

Eviction protections are only as good as their enforcement. Widescale building decarbonization will put additional pressure on tenant protections as landlords' incentives to evict their tenants—formally or informally—grow. The past difficulties of the City's eviction- and harassment-protection programs indicate that more must be done to implement and enforce tenants' rights.[236]

230 *See* Alex Ramiller, *Displacement through Development? Property Turnover and Eviction Risk in Seattle,* 59 Urb. Stud. 1148 (2022) (finding increased eviction rates around the time of property sales, large-scale renovation, and demolition in Seattle, WA); Elora L. Raymond et al., *Gentrifying Atlanta: Investor Purchases of Rental Housing, Evictions, and the Displacement of Black Residents,* 31 Hous. Pol'y Debate 818 (2021) (finding relationship between evictions, as well as gentrification and racial transition, and purchasing of buildings by large landlords in Atlanta, GA).

231 *See* L.A. Mun. Code §§ 151.09(A)(6), (11), 165.03(F), (J).

232 *See supra,* § IV.B.

233 *See* L.A. Mun. Code § 152.03(A)(2)(a), (B)-(C); L.A. Rent Adj. Comm'n Rule 716.07.

234 *See supra,* § IV.B.

235 *See, e.g.,* Roxana Popescu, *What Happens when Only Engineers, Lawyers Can Afford San Diego?,* S.D. Union-Tribune (Oct. 30, 2022), https://www.sandiegouniontribune.com/business/story/2022-10-30/part-two-who-gets-to-live-on-bermuda-avenue-the-moneyed-newcomer-or-long-time-low-income-local; Steven Felschundneff, *Longtime Tenants Blindsided by Threat of Mass Evictions,* Claremont Courier (Aug. 11, 2022), https://claremont-courier.com/latest-news/longtime-tenants-blindsided-by-threat-of-mass-evictions-67391/; Stephen Wyer, *Leucadia Tenants Speak Out against Controversial 'Renoviction' Practice,* The Coast News (Apr. 6, 2022), https://thecoastnews.com/leucadia-tenants-speak-out-against-controversial-renoviction-practice/. Perhaps the largest recent instance of a "renoviction" is the mass eviction at Barrington Plaza in Westside, on the ground that the complex must be vacated to install sprinklers; however, the landlord there appears to be relying on the Ellis Act. *See supra* notes 169-171 and accompanying text.

236 *See supra* § IV.D.

First, the City should make its Eviction Defense Program, or a similar program, permanent and ensure that it is adequately resourced and covers all at-risk tenants. The EDP has been very beneficial for those tenants that it is able to reach, with 75% of tenants that received EDP assistance remaining in their homes. But that program only supported 4,000 legal cases in total,[237] while LAHD estimates that 30,000 evictions are filed in LA each year.[238] Furthermore, EDP funding comes from federal COVID-19 relief, which is now disappearing.[239] As building decarbonization puts additional pressure on landlords to raise rent, eviction defense should be expanded and made permanent to prevent unlawful evictions.

Second, the City should strengthen enforcement and implementation of the Tenant Anti-Harassment Ordinance. While the EDP or a successor program will be helpful in preventing formal evictions, a large number of evictions occur informally, often as a result of landlords intimidating tenants into "voluntarily" leaving their home without ever beginning a judicial process—and therefore without allowing their tenants to benefit from the EDP. Only through persistent advertisement of tenants' rights, and close partnership with tenant organizers, will the City be able to prevent these informal evictions. Therefore, the City must ensure that LAHD and the City Attorney's Office have sufficient resources to partner with community organizations, make tenants aware of their rights, and investigate and prosecute allegations of tenant harassment. The City should also enhance tenants' ability to enforce their own rights by guaranteeing that they will receive attorneys' fees when they are the prevailing party in private TAHO cases.[240]

Subsidy programs are an opportunity to expand and shape protections more freely than through writing new ordinances. Requirements placed on them could also ensure that City funding is used in a manner that is consistent with the City's values and responsibilities toward its tenants.

Require Landlords Receiving Decarbonization Subsidies to Agree to Tenant Protections

To the extent that the City decides to subsidize building-decarbonization measures by landlords, it should build tenant protections into the subsidy agreement. Subsidy programs are an opportunity to expand and shape protections more freely than through writing new ordinances. Requirements placed on them could also ensure that City funding is used in a manner that is consistent with the City's values and responsibilities toward its tenants, and that it is directed toward landlords who themselves are willing to commit to protecting tenants.

Existing subsidy programs at the state level impose this sort of requirement on landlords, and could serve as a model, but the City should carefully consider how it would be enforced.[241] The simplest approach would be to simply include in the subsidy agreement a commitment not to evict tenants and (for non-RSO properties) not to raise rents beyond a specified rate. However, this would require the City to monitor the agreements and enforce any breaches, which could be difficult. It would likely be preferable to either make tenants a party to the subsidy agreement or to amend the tenants' leases directly, thus allowing the tenant to enforce the agreement directly or use it as a defense against an eviction action. As a second-best option, the City could consider a post-hoc approach, with subsidies provided as a loan that would be forgivable only after the landlord demonstrated that it had met the requirements of subsidy program; this approach has been tried recently in Pennsylvania.[242]

237 TAHO report, *supra* note 177, at 5.

238 LAHD, *Eviction Defense Program* (July 19, 2022), https://housing.lacity.org/residents/eviction-defense-program.

239 *See* Memorandum from Ann Sewill, General Manager, L.A. Hous. & Comm'y Invest. Dept. (now L.A. Hous. Dept.), to Eric Garcetti, Mayor of L.A., and the L.A. City Council 10 (Sept. 8, 2020), https://clkrep.lacity.org/onlinedocs/2020/20-1084_rpt_HCI_09-09-2020.pdf ($8 million of about $10.4 million for program came from CARES Act funds).

240 This was also the recommendation of LAHD upon review of the TAHO program. TAHO report, *supra* note 177, at 8.

241 *See supra* § III.F.2.

242 2022 Pa. Laws 54, § 4 (enacted July 11, 2022); *see also Roshan Abraham, A Pennsylvania Program Will Provide Free Repairs—So Long As Landlords Don't Hike Rents,* Next City (Oct. 6, 2022), https://nextcity.org/urbanist-news/a-pennsylvania-program-will-provide-free-repairs-so-long-as-landlords-dont (overview of program).

Require Landlords to Take Decarbonization Measures that Provide Health Co-Benefits

Building decarbonization is not all downside risk for tenants; the retrofits necessary to reduce GHG emissions are also an opportunity to improve tenants' living conditions. These co-benefits can include improvements in indoor air quality—by removing sources of indoor air pollution or by improving ventilation—and better protection from extreme heat and cold, through improved insulation and HVAC systems.[243] But achieving these improvements is not guaranteed. Some decarbonization measures, such as energy-conservation upgrades for shared appliances, may not provide any direct health benefits to tenants. Poorly planned retrofits can even harm tenants by, for example, reducing interchange with outdoor air and therefore trapping indoor air pollutants in the home.

To take advantage of this opportunity, the City will need to look beyond the quantity of a building's emissions reductions, and address the specific measures used to achieve those reductions. The City should begin by identifying the measures that will be most beneficial for tenants' health, such as replacing in-home gas appliances with electric equivalents, improving ventilation, and installing more effective air-conditioning units. Once identified, these measures should be prioritized in the building-decarbonization program that the City implements. The specifics will depend on how the City plans to achieve decarbonization: If the City uses a prescriptive approach, then it can simply include health-beneficial measures as part of the programs requirements; if the City uses a more flexible approach, such as a points-based system or a BPS, then it could encourage measures with health co-benefits by valuing them higher or allowing landlords credit toward their compliance targets for implementing them.

An additional level of improvements could be achieved by requiring or encouraging landlords to conduct separate work for the benefit of tenants' health alongside decarbonization retrofits. Many health hazards will be easier to identify and resolve while conducting other work on a building systems and envelope: Examples include sources of moisture that could encourage mold growth, points of access for pests, faulty equipment, lead, and asbestos. The federal WAP and state LIWP already include some "health and safety" measures in their weatherization retrofits;[244] the City should consider adding mandates or subsidies to encourage building owners to undertake other such measures at the same time as decarbonization retrofits.

Guarantee that Energy Savings and On-Site Generation Benefit Tenants

Another co-benefit to building decarbonization will be decreased energy costs, both from energy-conservation retrofits and from on-site energy production, such as rooftop solar. These savings could substantially reduce energy burden among LA renters. As with health co-benefits, landlords are not strongly incentivized to take measures that reduce tenants' energy bills, and tenants do not have the option to decide what decarbonization measures are installed in their buildings. Additionally, the energy savings from installing new renewable-energy generation could flow entirely to landlords. The City should therefore consider taking steps to ensure that tenants receive at least some energy savings from decarbonization.

243 *See supra* § V.A.

244 *See* Dept. of Energy, *Weatherization Health and Safety Guidance,* Weatherization Prog. Not. 11-6 (2011), *available at* https://www.energy.gov/sites/prod/files/2015/12/f27/WAP-WPN-11-6.pdf; Cal. Dept. of Comm'y Servs. & Devt., *Low-Income Weatherization Program Guidelines* 17 (2022), https://www.csd.ca.gov/Shared%20Documents/LIWP-2022-Multi-Family-2.0-Draft-Program-Guidelines.pdf.

Where the City mandates or subsidizes energy conservation or on-site renewable generation, it should require that tenants receive a guaranteed share of the energy savings. LADWP's existing Virtual Net Energy Metering program requires 40% of subsidized energy generation to be credited to tenants, thereby reducing their bills.[245] This is a good model, but other programs, such as the statewide SOMAH, require at least 51% of generation be credited to tenants,[246] and the City should consider increasing LADWP's program to match that rate. For energy-conservation measures, the City should similarly require that at least some work is done that will reduce tenants' energy costs, such as installing new appliances in apartments or improving window sealing and insulation.

For RSO properties, the City could additionally eliminate landlords' option to pay for their tenants' gas and electric in exchange for an additional 1 to 2 percentage points in rent increases.[247] The tradeoff—landlords bearing the responsibility for volatile energy prices in exchange for a consistent increase in rent—may have been fair at one point, but as energy costs decrease it will become more biased toward landlords.[248]

Finally, because these co-benefits involve direct savings to tenants, the City should make sure that they do not decrease any need-based housing subsidies that tenants have. While the City has only a limited ability to affect most affordable-housing arrangements, it should try to structure any net-metering credits or credits that it requires to be assigned to tenants in such a way as to ensure their exclusion from annual-income and utility-allowance calculations.[249]

Create an Oversight Body with Real Power and Representation

Retrofitting LA's building inventory is an enormous undertaking, one which will almost certainly have unforeseen repercussions and involve difficult policy decisions. For this reason, whatever approach the City takes on building decarbonization, it will need to have an effective means of reviewing its strategy and revising it to limit the impact of unintended consequences. And because tenants—especially low-income tenants and tenants of color—are among the groups that have the most at stake in the process, they should have a powerful role in that oversight process.[250]

Boston's Building Emissions Reduction and Disclosure Review Board is a good model for this oversight board: It requires that two-thirds of the seats are held by people nominated by local community-based organization, ensuring that a majority of the board's membership have the support of the community and that the policymaking process has the advantage of direct input from the people who have the deepest knowledge of tenants' needs and experiences. The City should likewise guarantee substantial compensation to members of its oversight body to enable representation from organizations that do not have the resources to pay their nominees and ensure that members can devote the time and attention necessary to their work.

245 LADWP, *Virtual Net Energy Metering Pilot Program Guidelines* 5 (2020), *available at* https://www.ladwp.com/ladwp/faces/ladwp/residential/r-gogreen/r-gg-ressolar/r-gg-rs-vnem.

246 Cal. Pub. Util. Comm'n, *SOMAH Program Handbook* § 2.2.1(5), https://calsomah.org/resources/program-handbook.

247 *See* L.A. Mun. Code § 151.06(D).

248 Energy prices could increase, rather than decrease, for some buildings. For example, as discussed *supra,* § V.B, buildings that continue to use natural gas as the rest of LA switches to electric will bear an increased share of fixed costs of maintaining natural-gas infrastructure. But since it is generally up to landlords whether to pay for utilities and whether to install electric appliances, they could simply decline to take on their tenants' gas utilities in that scenario.

249 The easiest means to do so would likely be to duplicate the SOMAH approach of requiring credits to be distributed to tenants on a per-unit basis, rather than on the basis of tenants' electricity usage. *See* Brian A. Murray, U.S. Dept. of Housing & Urban Devt., Memo. re Treatment of Solar Virtual Net Energy Metering Credits on Tenant Utility Bills (July 8, 2019), *available at* https://calsomah.org/sites/default/files/docs/SOMAH_HUD_Solar_VNEM_Credits_memo_2019-07-08.pdf (determining that SOMAH credits are not included in tenants' income calculations for purposes of various federal housing programs).

250 *See supra* § III.E.

The oversight body that the City creates should have real authority to shape decarbonization policy. To the extent that rulemaking is necessary, the City should consider giving the oversight body authority to promulgate the rules itself, as the City's Rent Adjustment Commission does for RSO rules.[251] Similarly, the City should consider granting the oversight body authority to make decisions as to individual properties that could, in the aggregate, create policy changes; the Rent Adjustment Commission's appeals authority or the Boston Review Board's authority to review flexibility requests could be used as a model here.

The City should also ensure that there is a process for meaningful community input throughout the development and implementation of the decarbonization program. This process should include listening sessions held at various times of day and days of the week in order to allow for maximum attendance. During and before these sessions, any policies that the City is considering should be made available to the public in both written and audiovisual form, so that input can be directed specifically at those policies. Needless to say, translation and interpretation for any such materials and for the listening sessions themselves must be provided to ensure language access. The oversight board that the City creates, once it is active, may be a good candidate for running these sessions. But community input should be begun immediately, building on the successful work of the City's Climate Emergency Management Office and Commission in engaging advocates on the question of how to design an effective and equitable decarbonization program.

The threat of mass displacement as a result of a renovation program only exists because of the precarity of many LA tenants' living situations. Social-housing programs provide stability and protection for tenants in the face of change, including the change that will be created by building decarbonization.

Strengthen Social-Housing Alternatives

The threat of mass displacement as a result of a renovation program only exists because of the precarity of many LA tenants' living situations. Social-housing programs, such as publicly owned housing, deeply affordable covenanted housing, limited-equity cooperatives, and community land trusts (CLTs) provide more stability and protection for tenants in the face of change, including the change that will be created by building decarbonization. The City should look for opportunities to support and improve its social housing in a long-term and sustainable manner.

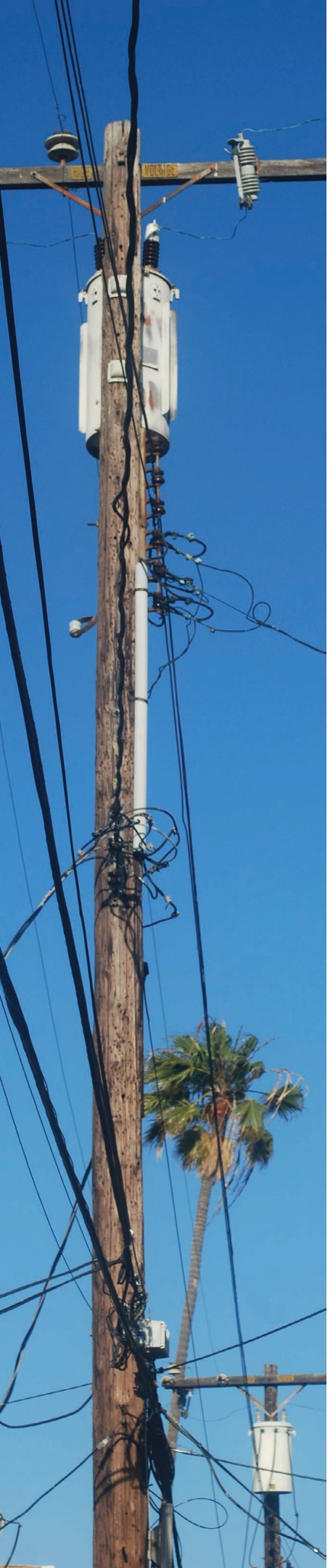
Although beyond the scope of this brief, the City may want to consider ways to combine decarbonization retrofits with the renovation of distressed properties to be used as social housing, particularly CLTs. Recent state- and countywide programs have created funding opportunities for such renovations,[252] and that funding might be usefully layered with weatherization, solar-generation, or other decarbonization funding. The resulting CLT-owned building, if properly structured, could guarantee affordable and climate-friendly housing for generations to come.

251 *See* L.A. Mun. Code § 151.03(B).

252 *See* Natalie Donlin-Zappella et al., LeSar Devt. Consultants, *Preventing Tenant Displacement through Community Ownership Pathways: The Los Angeles County Community Land Trust Partnership Program* (2022), https://libertyhill-assets.s3-us-west-2.amazonaws.com/media/documents/FY23_CLT_Report_Lesar_FINAL.pdf (recommending expansion of a pilot program supporting community land trusts in LA); Cal. Dept. of Housing & Comm'y Devt., *Foreclosure Intervention Housing Preservation Program,* https://www.hcd.ca.gov/grants-and-funding/programs-active/foreclosure-intervention-housing-preservation-program (program to fund acquisition of properties in or at risk of foreclosure to preserve as affordable or resident-owned housing).

VII. Conclusion

Whatever form the City's building-decarbonization program ends up taking, it will revolutionize LA's building stock. That creates immense threats and opportunities for the majority of people in LA that rent their homes—particularly Black, Brown, and poor people, who are disproportionately likely to be vulnerable to displacement and to the impacts of climate change. With careful policy design, a willingness to adapt to new developments, and the deep and meaningful involvement of affected tenants, especially tenants of color and low-income tenants, the City's building-decarbonization program could not only be an important step forward for climate action, but also for housing and energy justice.



Pritzker Briefs

PRITZKER ENVIRONMENTAL LAW AND POLICY BRIEFS

POLICY BRIEF NO. 16 | JUNE 2023

This policy paper is the sixteenth of the Pritzker Environmental Law and Policy Briefs. The Pritzker Briefs are published by UCLA School of Law and the Emmett Institute on Climate Change and the Environment in conjunction with researchers from a wide range of academic disciplines and the broader environmental law community. They are intended to provide expert analysis to further public dialogue on important issues impacting the environment.

ABOUT THE AUTHOR

Daniel Carpenter-Gold is a Shapiro Fellow in Environmental Law and Policy at the UCLA School of Law's Emmett Institute on Climate Change and the Environment and a staff attorney at the Public Health Law Center. Previously, he was a staff attorney at TakeRoot Justice, which provides legal, research, and policy support to community-based organizations in New York City to dismantle racial, economic, and social oppression.

ACKNOWLEDGMENTS

This brief is inspired by, and draws on, the work of Chelsea Kirk at Strategic Actions for a Just Economy (SAJE) and her report, Los Angeles Building Decarbonization: Tenant Impact and Recommendations, *and work by Esme Levy and Matt Connor through the UCLA School of Law's Environmental Law Clinic, which represented SAJE as a client. The author thanks Esme and Matt for their work providing the foundation for this brief; Chelsea and Fernando Gaytan, at Earthjustice, for generously sharing their time and insights; his colleagues Cara Horowitz, Julia Stein, and Evan George for their review and input on this brief; and Beth Escott Newcomer for graphic design and layout. Any errors are the author's.*

For more information, please contact carpenter@law.ucla.edu.

ABOUT THE EMMETT INSTITUTE ON CLIMATE CHANGE AND THE ENVIRONMENT

http://www.law.ucla.edu/emmett

The Emmett Institute on Climate Change and the Environment is the leading law school center focused on climate change and other critical environmental issues. Founded in 2008 with a generous gift from Dan A. Emmett and his family, the Institute works across disciplines to develop and promote research and policy tools useful to decision makers locally, statewide, nationally, and beyond. Our Institute serves as a premier source of environmental legal scholarship, nonpartisan expertise, policy analysis and training.

UCLA School of Law
Emmett Institute on Climate Change & the Environment