Sustainable Economies Law Center

A Proposal to Ban Land Grabs

Legal & Policy Report for Richmond

December 2025

Table of Contents

Introduction

For 15 years, the Sustainable Economies Law Center has heard from housing justice partners in the East Bay that corporate land grabs and real estate speculation are destabilizing neighborhoods and driving racialized displacement. We have learned with our Indigenous partners that neighborhood gentrification is a form of colonialism—building on the original theft of Indigenous land that California and its system of private property was founded upon.

In this report, we equip policymakers and organizers with model anti-housing speculation legislation to fight back against the crisis of corporate land grabs. After surveying corporate housing speculation and related proposals, we outline our proposal for Richmond, California to ban profit-seeking entities who would treat its homes and communities like an asset class. We then explain how our policy would address the current crisis and why it's on solid legal footing.

The Law Center's approach to grassroots policymaking strives to empower communities most impacted by gentrification and displacement to lead in creating solutions. This policy has been informed by our deep local partnerships with BIPOC housing justice organizers, Indigenous land sovereignty organizations, and unhoused mutual aid organizers. We focus on Richmond in this report because we heard interest in this topic from Richmond policymakers. However, the bulk of our research would apply to any U.S. city contemplating banning land grabs.

Policy Background

National and State Trends

The rise in corporate ownership of housing has exacerbated California's housing crisis. By late 2023, only 15 percent of California households could afford to purchase a median-priced single-family home at $843,600. The state's homeownership rates have declined due to high housing costs, dropping from 60 percent in 2006 to 55 percent in 2022. The decline is even more pronounced among Californians aged 35 to 45, with homeownership rates falling from nearly 49 percent to approximately 40 percent between 2000 and 2021.

Institutional investors contribute to rising home prices by making all-cash offers, often without inspections, giving them a competitive advantage in terms of closing timelines and deal certainty by waiving financial contingencies. In hot housing markets like Oakland and San Francisco, institutional investors purchased 13 to 18 percent of homes in late 2021, putting additional pressure on prospective homeowners.

Rather than focusing on preserving personal homeownership as a solution to this trend, our approach advocates for community stewardship of land, such as housing ownership by grassroots nonprofits that prioritize long-term affordability, stability, and collective benefit over profit. This shift away from private ownership offers a more sustainable, community-driven response to the housing crisis.

Corporate buyers have been explicitly targeting affordable homes in their purchasing sprees. A recent Redfin analysis found that real estate investors bought roughly 26 percent of the country's most affordable homes that sold in the final months of 2023. Corporate ownership of single-family homes surged after the Great Recession: the Urban Institute found that large institutional investors own over half a million single-family homes by June 2022. They also found investors disproportionately concentrate in Black and Latine neighborhoods, where entire blocks are sometimes purchased by investors. MetLife Investment Management predicts that institutional investors might own 40% of single-family rental houses in the United States by 2030. This increase has led to higher housing costs and reduced homeownership rates, particularly in vulnerable communities.

These investors treat homes as commodities to build wealth, pulling homes off the housing market and converting them into rental properties, in a trend analysts call "buy-to-rent." This rise in institutional ownership has led to higher eviction rates and speculative practices like packaging rental debt for sale to investors. Additionally, corporate ownership of single family homes has been associated with property mismanagement and rent hikes, exacerbating the levels of rent-burdened households. Over 25 percent of renters in California spend more than half their income on rent, and a recent Federal Reserve Bank study confirms that investor-owners raise rents at 60 percent higher rates than the average increase.

Both institutional investors and private homeowners, particularly "mom and pop landlords," often contribute to the housing crisis by treating homes as commodities. By organizing against local rent control ordinances, excessively raising rents beyond CPI, and sometimes engaging in speculative ownership, these smaller landlords may perpetuate (in aggregate) the same issues as institutional investors. Therefore, it is crucial to impose

limits on the number of units "mom and pop landlords" can own, as they too contribute to rising housing costs and instability. Nonprofit entities focused on permanently affordable housing can break this cycle, as they curb speculative ownership and promote community-controlled housing models that ensure long-term affordability and stability.

The Situation in Richmond

According to Census data, median home values in Richmond, California have increased by over 260% since 2000. While the S&P 500 and median gross rent in Richmond both rose by around 150% from 2000 to 2020, the 260% spike in the price of owner-occupied units reflects speculative interest in the housing market. It has become more profitable to speculate on the price of real estate rather than operating rental properties. This trend underscores the need for action to curb the most volatile aspect of the real estate market: the point of sale. This is the focus of our proposed solutions to address the housing crisis.

During this same period, Richmond's Black population, which comprised 36% of the city's residents in 2000, has been cut in half to 18% today—representing a decrease of 13,000 Black residents. Meanwhile, median rent has more than doubled, and nearly half of Richmond's households are now cost-burdened by housing costs, according to state estimates.

Between 2005 and 2008 during the housing crisis, foreclosures in Richmond increased by more than 600 percent, leading to a sharp decrease in homeownership and turning many of the foreclosed homes into rental properties owned by external investors. In 2006 and 2007, absentee owners constituted roughly 10% of homebuyers in Richmond. By 2012, absentee owners represented 40% of buyers. Moreover, nearly half of all homes sold between 2009 and 2012 were purchased with cash—pointing to the disturbing and undemocratic prevalence of institutional investors in the City. Today, homeownership and homebuying rates are sharply racialized in Richmond: White families own their homes at almost twice the rate of Black families in Richmond, and are purchasing homes at nearly six times the rate of Black families.

Richmond landlords significantly hiked rent beginning in 2013, with a 9% increase that year and a 19% increase the next. From there, 2015 to 2019 saw a 25% increase and then a 35% jump in the next three years. There are areas in the central and southern portions of the city in which 80% of residents are renters. A significant portion of Richmond renters are at risk of displacement, particularly those in low-income and minoritized communities. The renter population in the City is also disproportionately Black and Latine: 60 percent

of Black households and 63 percent of Latine households rent, compared to 36 percent among White households and 29 percent of Asian households.

According to our analysis, one thousand homes in Richmond are already owned by corporations. This is corroborated by state-compiled data.

Richmond is at a turning point. Racialized gentrification in the city is accelerating, and displacement pressures are likely to intensify as the city continues to push back against extractive industries. As Richmond becomes greener in the fight against environmental racism, outside investor interests will increasingly be interested in the city's real estate. This is well documented as the "environmental gentrification" effect. To mitigate this, our focus must be on controlling the speculative sale of real estate, which is the most significant driver of these harmful dynamics.

Ongoing Policy Efforts

Legislation countering housing speculation has gained momentum in California: Assemblymember Lee's AB 2584 aims to ban corporations from owning more than 1,000 homes, and Senator Skinner's SB 1212 seeks to prevent investment entities from purchasing, acquiring, or leasing single-family homes or duplexes. In a similar vein, Assemblymember Ward's AB 1333 targets "build-to-rent" communities by prohibiting the sale of multiple single-family homes to institutional investors. On the federal level, Senator Jeff Merkley and Representative Adam Smith introduced the End Hedge Fund Control of American Homes Act of 2023 which would require corporations to sell all single-family homes they own over a 10-year period and ultimately prohibit corporate ownership in single-family housing.

Our present housing crisis is not only the result of investors treating homes and communities as an asset class for profit—it is fueled by laws and policies that actively encourage and reward real estate speculation. Zoning regulations, tax incentives, and lax restrictions on corporate ownership have created an environment where housing is treated as a commodity rather than a basic need. These laws have paved the way for the housing market to become highly speculative, driving up prices and exacerbating the crisis. To truly address this issue, we must focus on reforming these underlying legal frameworks that incentivize profit over people. For example, while median housing prices increased by just 40% in Jackson, Mississippi and 20% in Detroit, Michigan from 2000 to 2020, they skyrocketed by 260% in Richmond, California. This difference cannot be explained solely by population growth—Richmond's population increased by only 14% during this time.

While the Law Center has worked on policies like the Tenant Opportunity to Purchase Act in the past, we see these Ban Land Grabs policies as more direct and decisive steps to curb housing speculation at its source—by changing the laws that make speculation so profitable. As the climate crisis intensifies, vulnerable communities are at even greater risk of displacement. Speculation-driven housing markets will only exacerbate this, as they prioritize profit over resilience and stability. This proposed policy represents an essential first step in transforming our relationships with land and with each other, moving toward a horizon of housing for all where communities have the power to protect their homes and futures from predatory investment practices and displacement.

Given the worrying rise of institutional ownership and susceptibility of cities such as Richmond to a further entrenchment of corporate ownership in their housing markets, we advocate for Ban Land Grabs policies to address the issue at its root. Similar legislation limiting the ability of corporations to purchase single-family housing has been introduced in Nebraska, Minnesota, Indiana, North Carolina and Texas. Moreover, as a result of growing concern about the dwindling reach of locally-owned family farms, twenty-four states across the country have passed laws restricting to some degree foreign ownership and/or corporate ownership of agricultural lands.

Template Ordinance

WHEREAS housing is a human right, and the City of Richmond is committed to protecting the health, safety, and stability of its residents by ensuring equitable access to secure, dignified, and community-controlled housing; and

WHEREAS the rise of large corporate and institutional investors acquiring single-family homes across the nation has contributed to increased housing costs, displacement of long-term residents, and a decline in homeownership opportunities for working-class households and historically marginalized communities; and

WHEREAS nearly half of Richmond's households are cost-burdened by their housing, and corporations already own over one thousand homes in the City; and

WHEREAS the concentration of land ownership in the hands of for-profit investment entities undermines democratic control of land and housing, and accelerates racialized dispossession rooted in a long legacy of redlining, exclusion, and extraction; and

WHEREAS speculative land acquisition and absentee ownership have been linked to poorer housing conditions, reduced community engagement, and increased barriers to intergenerational wealth-building for local residents; and

WHEREAS municipalities across the country are exploring policies to curb the harmful effects of bulk property ownership by corporate landlords, and the City of Richmond has an opportunity to lead the state by enacting bold, preventative measures; and

A. Purpose

This policy helps the City of Richmond move toward the provision of housing as a human right by preventing corporate land grabs and curbing real estate speculation.

B. Definitions

For purposes of this ordinance, the following definitions apply:

"Effective Date" means thirty (30) days after this ordinance is adopted.

"City" means the City of Richmond in Contra Costa County, California.

"Covered Transactions" mean all transactions occurring after Effective Date in which Residential Property in the City is bought, sold, transferred, or otherwise conveyed.

"Closing Agent" means an escrow holder, title insurer, underwritten title company, attorney, or other settlement agent that handles closing documents or funds for a Covered Transaction. Closing Agent does not include a real estate broker unless the broker is acting in that settlement role.

"Eligible Purchasers" means the following types of entities:

a. a natural person who does not own Interests in Residential Properties that exceed the Natural Person Limit;

b. a nonprofit 501(c)(3) entity that has a history of affordable housing development and/or has the primary purposes of creating, preserving, or stewarding permanently affordable and community-controlled housing;
c. a limited equity housing cooperative as defined by California Civil Code Section 817;
d. a cooperative organization that is (i) democratically governed by all of its members or owners, (ii) limits appreciation of any ownership or member interests at 5% annually, and (iii) has its primary purposes of creating, preserving, or stewarding permanently affordable and community-controlled housing; or
e. a governmental entity.

"Interest" means any ownership interest, including a fee title; life estate; remainder; tenancy in common; beneficial interest including being a beneficiary of a trust; a business ownership interest including membership or partnership of a business entity. "Interest" does not include a security interest held solely as a collateral by a regulated lender or deed of trust beneficiary without present right of possession.

"Residential Property" means (i) a parcel improved with a single family residence, accessory dwelling unit, duplex, triplex, or fourplex or (ii) if improved real property is held in a common interest development as defined in Cal. Civ. Code § 4100, a parcel associated with a separate interest as defined in Cal. Civ. Code § 4185 within that common interest development.

"Natural Person Limit" means that a natural person may hold (a) 50% or greater Interest in up to four (4) Residential Properties within the City; or (b) a less than 50% Interest in up to eight (8) Residential Properties within the City. Percentage Interest is measured in this instance by a person's right to sale proceeds in the event of liquidation.

C. Eligibility to Acquire; Cap

1. In any Covered Transaction, only Eligible Purchasers—individually or jointly with other Eligible Purchasers—may acquire an Interest in Residential Property in the City.

2. A business entity, partnership, or trust may acquire an Interest in Residential Property in the City only if all members, owners, partners, or beneficiaries are themselves Eligible Purchasers, and the acquisition does not cause any natural person to exceed the Natural Person Limit.

D. Limitations

Interests lawfully held prior to the Effective Date are not required to be sold at any point and may be sold at whatever price they can garner in the market. However, Covered Transactions occurring on or after the Effective Date must comply with this ordinance.

E. Exempt Transfers

This ordinance does not apply to:

1. Transfers that do not change the owner(s) of record;
2. Lender acquisition following foreclosure or deed-in-lieu;
3. Transfers to or from a governmental entity;

A lender or homeowner association acquiring title under this section shall dispose of the property to an Eligible Purchaser within twelve (12) months.

F. Eligibility Affidavit; Processing; Notice

1. In any Covered Transaction, all purchasers must complete and sign the City-approved Eligibility Affidavit certifying compliance with this Ordinance.

2. The City may provide the Contra Costa County Clerk-Recorder with a copy of the Eligibility Affidavit form and a sample Affidavit Receipt. Nothing here directs or alters the Clerk-Recorder's ministerial duties under state law.

3. If a Closing Agent is used, the Closing Agent shall record the executed Eligibility Affidavit(s) to the County Clerk-Recorder prior to close of escrow or disbursement of funds. A Closing Agent who, in good faith, collects and transmits a facially valid Eligibility Affidavit as required is not liable under this Ordinance absent actual knowledge of a violation.

4. A real estate broker or other licensed professional not acting as a Closing Agent and who, in good faith, relies on a facially valid Eligibility Affidavit is not liable under this Ordinance absent actual knowledge of a violation.

5. If no Closing Agent is used, the acquirer(s) must record the Affidavit(s) directly with the County Clerk-Recorder before close of escrow.

G. Enforcement; Remedies; Penalties; Cure

1. A Covered Transaction completed in violation of this Ordinance is voidable in a civil action brought by the City Attorney. Remedies may include rescission, injunctive relief, disgorgement, declaratory relief, and any other relief authorized by law or equity.

2. Prior to filing a civil action to void a transfer, the City shall provide written notice to the acquiring party and an opportunity to cure within ninety (90) days by divesting to an Eligible Entity or otherwise demonstrating compliance.

3. Closing Agents operating in the City must not cause any non-conforming deeds which violate this ordinance to be recorded.

4. Violations of this ordinance may result in fines pursuant to the Richmond Municipal Code, not exceeding $10,000 per violation per month, in addition to any other remedies available under law.

5. It is unlawful to willfully structure, split interests, use straw purchasers, serial options, or interposed entities for the purpose of evading the Natural Person Limit.

H. Severability

If any provision of this ordinance is held invalid, the remainder of this ordinance shall remain in effect.

Policy Explanation

This sample ordinance would immediately help stabilize neighborhoods in Richmond by curbing profit-seeking housing speculation. Specifically, the ordinance accomplishes the following:

- Restricts acquisition of residential property to **Eligible Purchasers**, including natural persons under a defined ownership cap, affordable-housing nonprofits, limited-equity housing cooperatives, community-controlled housing cooperatives, and governmental agencies.

- Defines **Residential Properties** as single family homes, duplexes, triplexes, or fourplexes; or separately deeded units such as condominiums or townhouses.

- Establish a **Natural Person Limit**, capping ownership at up to four Residential Properties when holding majority interest; or up to eight Residential Properties when holding minority interest.

- Allowing individuals eligible under the Natural Person Limit to form trusts, LLCs, or similar entities to acquire housing.

- Require the use of an **Eligibility Affidavit** at the time of property transfer.

- Provide enforcement tools for the City Attorney, including the ability to void non-compliant transactions, issue fines, and require divestiture.

- Allows existing corporate owners to retain current holdings, while preventing future acquisitions beyond the effective date.

If the City Council passes this ordinance, corporate-owned entities would no longer be able to purchase single-family homes (up to fourplexes) in Richmond. This change reflects the commonsense notion that housing should not exist to line the pockets of big investors—it should exist instead to provide safe, dignified homes for our deeply rooted communities.

Meanwhile, nonprofit organizations and limited equity cooperatives can continue to purchase housing in Richmond. Since we want to move away from a housing system organized around profit maximization—which leaves many without affordable shelter—we include organizations who are themselves not organized around profit.

Finally, individuals who already own many residential properties in Richmond cannot purchase more. This closes an essential loophole to this legislation in which a wealthy outside investor could directly purchase dozens of homes in the city. While we believe that each person should not be entitled to more than one home, we recognize the reality that some mom-and-pop landlords operate in the city not out of greed, but out of necessity.

The ordinance applies to future transactions of residential properties. This means that current corporate owners of housing can own their properties for as long as they want and sell for whatever price they can get. But, for corporate-owned entities looking to buy homes in Richmond in the future, these restrictions would apply.

Legal Analysis

We have conducted a detailed legal analysis of our proposed policy. Our local government law analysis first shows that Richmond has the authority to enact an ordinance of this kind. Then, we assess this policy under several provisions of the federal constitution: (a) the takings clause, (b) the commerce clause, (c) due process, and (d) equal protection. As a note to readers outside of Richmond: the local government law analysis would be the same for any charter city in California, and the constitutional arguments would apply similarly for any city, county, or state across the U.S. contemplating this policy.

Local Government Law

Richmond is a charter city. According to the home rule doctrine enshrined in California Constitution Art. XI, §5, "Charter cities have the power to make and enforce all ordinances and regulations about municipal affairs, including those relating to the creation and regulation of a police force and sub-government within the city." Charter cities are granted authority to enact ordinances like this Ban Land Grabs policy as long as conflicting provisions in state or federal constitutions don't overrule and state law doesn't preempt the matter.

Richmond's City Charter grants it the ability to "exercise police powers and make all necessary police and sanitary regulations." The Supreme Court has held that the broad scope of 'police powers' encompasses "regulations designed to promote the public convenience or the general prosperity, as well as regulations designed to promote the public health, the public morals, or the public safety." *Chicago, B. & Q. Ry. Co. v Illinois* (1906)

200 US 561, 592. Given our arguments above about the purposes of this Ban Land Grabs policy, it is clearly designed to promote general prosperity in Richmond—and would have benefits for public health and public morals.

State law does not preempt this policy. California Constitution Art. XI, §7 mandates that local law may not conflict with "general" or state laws. Contradiction occurs when a local law's purpose is inimical to the purpose of state law. *Ex parte Daniels* (1920) 183 C 636, 642. However, this policy only furthers the goals of California's suite of state housing laws designed to secure affordable housing. Since it is easily possible for landowners to comply with both this policy and prevailing state law, this policy does not contradict state law. See *Big Creek Lumber Co. v County of Santa Cruz* (2006) 38 C4th 1139, 1161. Because no conflict exists, a court would not reach the question of whether this policy concerns "municipal affairs" versus "statewide concerns." See *Johnson v Bradley* (1992) 4 C4th 389, 399. As such, there is no issue of conflict preemption.

Moreover, this policy does not enter a field of law that has been 'fully occupied' by state law. State law can occupy a field of law either expressly or by implication. *Candid Enters., Inc. v Grossmont Union High Sch. Dist.* (1985) 39 C3d 878, 886. Here, since California has not enacted similar laws pertaining to the regulation of corporate entities in the housing market, neither express nor implied preemption can be found. Thus, the Ban Land Grabs policy is not preempted under the doctrine of field preemption.

Below, we assess our proposed policy against the state and federal constitution—we focus our analysis on federal constitutional arguments since they tend to pose a bigger challenge, although some claims may have weaker state constitutional analogs.

Takings Clause[1]

Our proposed policy may be challenged under the takings clause. Challenged regulations that do not fall under per se takings categories[2] require the court to apply the three *Penn Central* factors: (1) the economic impact of the regulation on the claimant, (2) the extent to which the regulation has interfered with distinct investment-backed expectations, and (3) the character of the government action (which considers whether the policy causes a

[1] *Much of the following analysis is adapted from Julie Gilgoff, Opportunity to Purchase Policies: Preserving the Affordability of Manufactured Home Communities, 68 Vill. L. Rev. 405 (2023), supplemented by case law.*

[2] Policies are deemed per se takings if they fall under one of two categories: 1. Physical invasion of property, or 2. Deprivation of land from *all* economically beneficial use of the property.

physical invasion to the property or whether it bears greater resemblance to a public program designed to protect the public from harm by adjusting the benefits and burdens of the economy, promoting the common good). *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 124 (1978).[3]

In any takings challenge, the court should consider the public interest that justifies the regulation. A line of precedent leading up to *Penn Central* stands for the proposition that regulations that promote "the health, safety, morals, or general welfare," even if they "destroyed or adversely affected recognized real property interests," would be upheld. *Penn Central*, 438 U.S. 104, at 125. For example, in *Goldblatt v. Hempstead*, 369 U.S. 590 (1962), the Court upheld an ordinance against a taking challenge where the ordinance banned any excavations below the water table. This effectively shut down a sand and gravel mining business, and severely affected a particular owner, but the Court reasoned that the restriction served a substantial public purpose. The creation of affordable housing for low- and moderate-income families is widely considered a legitimate state interest under the state police power to regulate the health and safety of their residents. *Nordlinger v. Hahn*, 505 U.S. 1, 12 (1992); *Santa Monica Beach, Ltd. v. Superior Ct.*, 968 P.2d 993, 1004-05 (Cal. 1999).

"While property may be regulated to a certain extent, if regulation goes too far it will be considered as a taking." *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1979). The court is meant to determine how far is too far, or, put another way, when a governmental action amounts to the functional equivalent of eminent domain.

Regulatory Takings Analysis

The court will likely apply the three factors from *Penn Central* to our policy: (1) the economic impact of the regulation on the claimant, (2) the extent to which the regulation has interfered with distinct investment-backed expectations, and (3) the character of the government action.

Under the first factor, current owners will argue that the economic impact of our policy will be significant. We will argue that Supreme Court precedent shows that a diminution in value rarely constitutes a taking. In *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926), the regulation resulting in a seventy-five percent loss in value was upheld. In *Hadacheck v. Sebastian*, 239 U.S. 394 (1915), there was nearly a ninety percent loss in the

[3] In *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, the Supreme Court declared that the first two factors are considered more important than the third.

value of the land because of the regulation in question, and still no taking. More recently, in *Laurel Park Community, LLC v. City of Tumwater*, 698 F.3d 1180 (9th Cir. 2012), an economic loss of less than fifteen percent did not lead to a taking determination. Likely, property values will not decrease by a double-digit percent due to this policy.

Under the second factor, courts have considered whether, when the owners bought the properties, they had the expectation that they could sell it for profit when they desired or when market conditions made it attractive. Here, current owners will argue that the restriction of sale to specific entities or natural persons deprives them of their reasonable expectations of sale for profit. In the leading case illustrating the second factor, *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922), the claimant sold the surface rights to their property, but retained the right to remove the coal underneath. A statute, enacted after the transactions, forbade coal mining that caused the subsidence of any house. Because the statute made it commercially impracticable to mine the coal, and destroyed the subjacent rights of the owner, the Court held the statute was invalid as effecting a taking without just compensation. Current owners will argue that they purchased their property for speculative purposes, not residential purposes, and thus like the coal owner in *Mahon*, their distinct investment-backed expectations have been destroyed by our policy, thus amounting to a taking.

We will argue that owners here did not specifically reserve rights that will be destroyed by our policy. Owners may still reasonably use their property for the purpose in which it was zoned—housing. Moreover, even if owners expect some equity from ownership, they can still profit by rental. The substantial public purpose served by our policy overrides the owners' expectation for unrestrained profiting when the city is experiencing a housing shortage.

Finally, the third factor—the character of the governmental action—analyzes whether the regulation more closely resembles "a physical invasion or instead merely affects property interests through 'some public program adjusting the benefits and burdens of economic life to promote the common good.'" *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 539 (2005) (quoting *Penn Cent. Transp. Co.*, 438 U.S. at 124). Moreover, under the *Armstrong* Principle, the court would further analyze if an individual owner bears a burden to preserve affordable housing to their detriment, which should be more fairly borne by society as a whole. *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

The character of our policy resembles a mechanism for preserving access to homeownership rather than a physical invasion of property. Our policy adjusts the

benefits and burdens of the economy, namely the lack of access to affordable housing or homeownership. The character of the policy is less like laws that condone physical invasion or occupation of private property and more like a policy that confers public benefits.

Current owners may argue that under the *Armstrong* principle, they are forced to bear a disproportionate burden that should be borne by the public as a whole. Owners might further argue that there are no reciprocal benefits they receive, another consideration when the Court analyzes the third factor. We will again argue that owners can still profit through rentals or capped sales. Moreover, owners can still engage in reasonable use of their property, to wit, housing; considering this use is consistent with zoning designations. Our policy should not be deemed a regulatory taking because the public interest served is substantial and outweighs the comparatively minimal harm to owners.

Conclusion

Ultimately, our policy proposal will likely survive a per se takings challenge, as our policy neither deprives current owners of all economically beneficial use of the land nor amounts to a physical invasion of their property. Indeed, the policy does not require any current owner to divest their holdings. Thus, the case will turn on how a court weighs the substantial public purpose against the harms to the current property owners under the *Penn Central* test. We have a strong public interest argument, and affordable housing is a recognized legitimate state interest; moreover, we have precedential support for why the infringement of some property rights and expectations do not amount to a taking.

Because the Supreme Court has recently expanded the per se takings doctrine,[4] as Gilgoff puts it, much will be determined by the political orientation of the analyzing court: if our policy "were tried by a conservative court, it may consider any infringement on what they

[4] Despite the Supreme Court in *Penn Central* holding that the per se taking doctrine would not be further expanded, per se takings jurisprudence is being expanded under the current activist Supreme Court. The Supreme Court decision *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063 (2021) used an "essentialist" view of property to uphold individual strands of the bundle of property rights as fundamental, striking down any policy that even minimally infringes on, specifically, the owner's right to exclude, regardless of whether that infringement is of limited duration, purpose, or impact. A future Supreme Court may further expand the per se takings jurisprudence to put regulations like ROFR policies in a vulnerable position—if ROFR policies are interpreted as regulations limiting the landowner's ability to exclude tenants at the conclusion of their leases.

may call a fundamental property right (the right to dispose) as outweighing the public benefit, therefore justifying compensation paid to the landowner." Gilgoff, at 452.

Finally, our current policy curtails current owners' ability to sell their land to many corporations, and thus, the strongest case for current owners would be citing any reduction of their distinct investment-backed expectations. Fortunately, this is a weak argument.

Dormant Commerce Clause

Our proposed policy can be challenged as violating the Commerce Clause of the federal constitution, but we have drafted our policy to withstand such challenges.

The Supreme Court has held that the Constitution's Commerce Clause both grants powers to Congress and restricts the power of the States. *Rosenblatt v. City of Santa Monica*, 940 F.3d 439, 444 (9th Cir. 2019). States and their local governments are not allowed to "unjustifiably [] discriminate against or burden the interstate flow of articles of commerce.'" *Id.* (quoting *Or. Waste Sys., Inc. v. Dep't of Envtl. Quality*, 511 U.S. 93, 98 (1994)). This restrictive aspect of the Commerce Clause is referred to as the Dormant Commerce Clause. *Id.*

In assessing whether a State or local law violates the Dormant Commerce Clause, the Ninth Circuit follows a two-tiered approach: (1) does the law discriminate against interstate commerce, and (2) if the law does not discriminate, then does it impose an undue burden on interstate commerce? *Id.*

The Policy Does Not Discriminate Against Interstate Commerce.

Courts have identified three prohibited forms of discrimination in the context of Dormant Commerce Clause analysis: discriminatory purpose, discriminatory effect, and facially discriminatory laws. *S. Lake Tahoe Prop. Owners Grp. v. City of S. Lake Tahoe*, 92 Cal. App. 5th 735, 760 (2023). However, "the Supreme Court has been careful to distinguish discrimination through purpose or effect—which may violate the dormant Commerce Clause—from the nondiscriminatory, incidental effects of a law." *Rosenblatt*, 940 F.3d 439, 448 (9th Cir. 2019). By "'discrimination' [the Court] simply means differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." *HomeAway Inc. v. City & Cnty. of San Francisco*, No. 14-CV-04859-JCS, 2015 WL 367121, at *5 (N.D. Cal. Jan. 27, 2015) (quoting *United*

Haulers Ass'n, Inc. v. Oneida–Herkimer Solid Waste Mgmt. Auth., 550 U.S. 330, 338 (2007)).

In *Rosenblatt v. City of Santa Monica*, the Ninth Circuit found that a local law prohibiting certain vacation rentals of Santa Monica homes was not facially discriminatory because the "ban on vacation rentals applies in the same manner to persons nationwide." 940 F.3d 439, 449 (9th Cir. 2019). The court distinguished this facially neutral law from the facially discriminatory law in *City of Philadelphia v. New Jersey* which "'prohibit[ed] the importation of most solid or liquid waste which originated or was collected outside the territorial limits" of the state.'" *Id*. (quoting *City of Philadelphia v. New Jersey*, 437 U.S. 617 (1978)). While "the state would have been free to ban the flow of waste into its landfills altogether, even if such a measure affected interstate commerce," the Supreme Court found that it violated the Dormant Commerce Clause because it applied only to out-of-state waste. *Id*. (citing *City of Philadelphia*, 437 U.S. 617 (1978)). Whereas, the Santa Monica rental ban applied equally to persons nationwide, the Philadelphia law applied differently to in-state versus out-of-state waste.

Here, like in *Rosenblatt*, the proposed policy is not facially discriminatory because it does not treat in-state parties differently from out-of-state parties. The restrictions on purchasing and resale of properties applies equally to all parties, no matter where they reside. Unlike the law in *City of Philadelphia* which limited the import of waste from outside the state, here the limitations apply equally to in-state and out-of-state commerce; there is no differentiation based on whether the potential buyer is from in or out of state.

Similarly, a recent California case that struck down a vacation rental ban as facially discriminatory is easily distinguished from our policy. See *South Lake Tahoe Property Owners Group v. City of South Lake Tahoe*, 92 Cal.App.5th 735 (2023). While the vacation rental ban in *South Lake Tahoe* created an exception for permanent residents of South Lake Tahoe, our policy contains no distinctions whatsoever on a party's residency: Corporate entities no matter where they reside are forbidden from purchasing residential property unless they are building affordable housing, and likewise a natural person, regardless of residency, can purchase only a certain number of residential properties.

A state or local law may violate the Dormant Commerce Clause if it was enacted to serve an "economic protectionist purpose." *Arrow Highway Steel, Inc. v. Dubin*, 56 Cal. App. 5th 876, 888 (2020). Here, the purpose of the proposed policy is to promote affordability of local homes. This aim is not evidence of economic protectionism because it is not intended to benefit in-state actors at the expense of out-of-state actors. The limitations on purchasing and resale benefit are intended to apply to in-state and out-of-state actors alike. Similarly, the benefit of affordability can be accessed by any qualified buyer whether they be in or out-of-state.

Even if a local law is not discriminatory facially or in its purpose, it may still run afoul of the Dormant Commerce Clause if it "imposes costs on out-of-staters that in-state residents would not have to bear" such that it has a discriminatory effect. *Rosenblatt*, 940 F.3d 439, 448–49 (9th Cir. 2019). However, "nondiscriminatory, incidental effects of a law" are distinguishable and do not violate the Dormant Commerce Clause. *Id*.

In *Rosenblatt*, the Ninth Circuit found that an ordinance which limited certain vacation rentals in Santa Monica was not discriminatory in effect because "it visits its effects equally upon both interstate and local business." *Id*. (internal quotation marks omitted). While a law may have incidental effects on interstate commerce, these incidental effects do not constitute a violation of the Dormant Commerce Clause if they are nondiscriminatory. *Id*. A law is nondiscriminatory if the incidental effect it has on interstate commerce does not increase the relative market share of in-state businesses. *Id*. at 450. Here, as in *Rosenblatt*, the proposed policy would not have a discriminatory effect because its restrictions apply, in equal measure, to entities both in and out of the state. There are no exclusions or leniencies for in-state parties or extra burdens imposed on entities outside of the state.

In *Exxon Corp. v. Governor of Maryland*, a Maryland law that prohibited petroleum producers from operating gas stations in the state was held constitutional despite negatively affecting some companies engaged in interstate commerce. 437 U.S. 117, 125 (1978). The fact that the burden of Maryland's regulation falls on some interstate companies does not, by itself, establish a claim of discrimination against interstate commerce." *Id*. at 126. Similarly, our policy will likely have an incidental effect on interstate commerce insofar as certain out-of-state entities which would previously buy property will be excluded from doing so. However, this effect is not discriminatory because the same types of entities in-state will also face those same prohibitions.

In summary, the proposed policy is not discriminatory in any of the possible three forms: facially, discriminatory in purpose, or discriminatory in effect. Therefore, the next step in the analysis is to assess whether the law poses an undue burden on interstate commerce.

The Policy Does Not Pose An Undue Burden on Interstate Commerce.

Even non-discriminatory laws may violate the Dormant Commerce Clause if their effects impose a burden on "[interstate] commerce [that] is clearly excessive in relation to the putative local benefits." *Rosenblatt*, 940 F.3d 439, 451 (9th Cir. 2019) (quoting *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970)) (internal quotation marks removed). This is referred to as the *Pike* test. *Id*. However, subsequent Supreme Court decisions following *Pike* have found that "several cases that have purported to apply [*Pike*,] including *Pike* itself, have turned in whole or in part on the discriminatory character of the challenged state regulations. In other words, if some of our cases focus on whether a state law discriminates on its face, the *Pike* line serves as an important reminder that a law's practical effects may also disclose the presence of a discriminatory purpose." *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 377 (2023) (internal quotation marks removed). Therefore, the undue burden or *Pike* test can be understood as another form of the discriminatory effects test, which the prior section addressed.

While the *Pike* test has been found to ultimately track discrimination, a "small number of [Supreme Court] cases have invalidated state laws under the dormant Commerce Clause that appear to have been genuinely nondiscriminatory. . . where such laws undermined a compelling need for national uniformity in regulation." *Gen. Motors Corp. v. Tracy*, 519 U.S. 278, 299 (1997). This has typically arisen in the case of regulation of interstate transportation. *Rosenblatt*, 940 F.3d 439, 452 (9th Cir. 2019); see e.g. *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520 (1959) (finding truck mud flaps regulation burdened interstate commerce).

In *Rosenblatt*, the court assessed whether the vacation rental prohibition could constitute a violation of the Dormant Commerce Clause as an interference with needed national uniformity. *Rosenblatt*, 940 F.3d 439, 446 (9th Cir. 2019). The court concluded that "uniformity is not necessary to the vacation rental market. Even if numerous municipalities nationwide adopted ordinances like Santa Monica's, the national market for vacation rental bookings and payments would not be stifled." *Id*. Additionally, it noted that "[l]and use regulations are inherently local." *Id*. at 452. Here, as in *Rosenblatt*, a court would likely conclude that the policy does not interfere with a

need for a national uniformity in the market. While vacation rentals and home sales are distinct markets, both likely can operate without national uniformity and both would fall under the category of land use regulations. Therefore, the limitations on property sales would not unduly burden interstate commerce by interfering with a need for national uniformity.

The proposed policy is not discriminatory, nor does it unduly burden interstate commerce. Therefore, the policy does not violate the Dormant Commerce Clause.

Due Process

The constitution protects against deprivations of life, liberty, and property without due process of law.

No Protected Property Interest Violated

To bring a substantive due process claim challenging this ordinance, parties would have to show that they have been deprived of a protected property interest. *American Mfrs. Mut. Ins. Co. v Sullivan* (1999) 526 US 40, 59. Courts look to state law to determine whether a protected property interest exists. *Board of Regents v Roth* (1972) 408 US 564. A California court has explained that the bounds of a protected property interest are derived from existing rules and understandings within state, federal, or common law. In this vein, courts have determined that certain licenses or permits held by a landowner may qualify as a property interest if sufficiently guaranteed under state law. *Bronco Wine Co. v Jolly* (2005) 129 CA4th 988, 1031.

However, prospective purchasers who this policy bans from purchasing homes are not being deprived of any existing property rights—rather, it is restricting their commercial right to participate in the housing market. Meanwhile, for existing landowners who are forbidden from selling their land to certain entities, this does not infringe on any of their protected property interests. This would be akin to arguing that the variety of laws that restrict foreign purchasers of rural land deprive existing landowners of a protected property right to sell to whomever they please. Rather, there is no codified or recognized right so capacious as a property owner's right to sell their land to whatever entity they want—including entities that the public has deemed contrary to the public interest.

This Policy Would Pass Rational Basis Review

Second, even if this policy were found to violate a protected property interest, challengers would still need to show that this policy was "clearly arbitrary and unreasonable, having

no substantial relation to the public health, safety, morals, or general welfare." *Village of Euclid v Ambler Realty Co.* (1926) 272 US 365, 395.

Section 1983 provides a cause of action for violated substantive due process. Under section 1983, the actionable fundamental rights are a right to (1) privacy, (2) interstate travel, (3) marriage, (4) procreation, (5) and child rearing. These five fundamental rights are reviewed under strict scrutiny. Meanwhile, the right of business entities to purchase homes in Richmond is not an enumerated fundamental right. Thus, it would be reviewed under a rational basis test.

A plaintiff corporation bringing a substantive due process claim would have to show that there is no 'rational basis' for our proposed legislation and the government interest. Since this policy directly addresses the local governments interest to promote its citizens' abilities to purchase single family residences, a corporation's arguments that its substantive due process rights have been infringed by this legislation would fail.

Equal Protection

The equal protection clause of the Fourteenth Amendment protects against discriminatory governmental actions. However, similar to the Due Process analysis, no higher level of scrutiny is triggered under this ordinance, since it does not differentiate based on protected characteristics such as race, national origin, gender, or religion. The number of homes a person owns does not trigger higher scrutiny, since income or wealth are not protected classes. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973). Thus, the rational basis test applies. This ordinance will pass rational basis review, as discussed in the previous section.

Conclusion

A ban on corporate land grabs is vital to protect and preserve communities in Richmond. Our proposals aim to address a core failure of our current housing system: the fact that corporations and other actors are freely able to extract profits from our homes and communities. This results in the violent process of gentrification and displacement that impacts so many working-class neighborhoods in California. **By shaping the contours of our housing market to recenter more values-aligned actors, Richmond can take this bold step to address the housing crisis.**