

2015

Regional Analysis of Impediments to Fair Housing for Montgomery County and the Cities of Dayton and Kettering, OH

Section 5 — Fair Housing in the Public Sector

*This PDF contains only a section of the AI.
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Section 5 — Fair Housing in the Public Sector

A. Affordable Housing and Community Services

Of the three primary entitlement programs—Community Development Block Grants (CDBG), the HOME Investment Partnership Program (HOME), and Emergency Solutions Grants (ESG)—managed by the Department of Housing and Urban Development (HUD), CDBG is the largest and most flexible. Montgomery County, the City of Dayton, and the City of Kettering all receive CDBG funds as independent entitlement jurisdictions. CDBG recipients may use funds for activities tailored to the needs and resources of their communities, and thus CDBG arguably has the widest impact of HUD’s entitlement programs.

Congress has set the primary objective of the CDBG program as “the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income (LMI).”¹ Federal regulations define LMI as being less than 80% of the area median income (AMI), as determined by HUD and adjusted by household size. Information about CDBG programs should be targeted to LMI households.

Montgomery County

Montgomery County administers CDBG funds on behalf of all communities within the county except for the cities of Dayton and Kettering. Montgomery County allows the following entities to apply for CDBG funds:

- Local governments—cities, villages and townships
- Private non-profit organizations, small business investment corporations, and community development corporations having specific community development or housing programs
- Institutions of higher education
- Public housing authorities

Montgomery County itself, local governments, and non-profit agencies have used CDBG funds to address the needs of LMI households by upgrading housing and infrastructure, making other public improvements, and eliminating slums and blight. Many activities occurred in thirty areas targeted by the county, but eligible activities also occurred in other neighborhoods. The county allocated funds to five main areas—housing, economic development, public improvements, and fair housing. The county also set aside funds for general administration; typically this amount was significantly less than the 20% allowed.

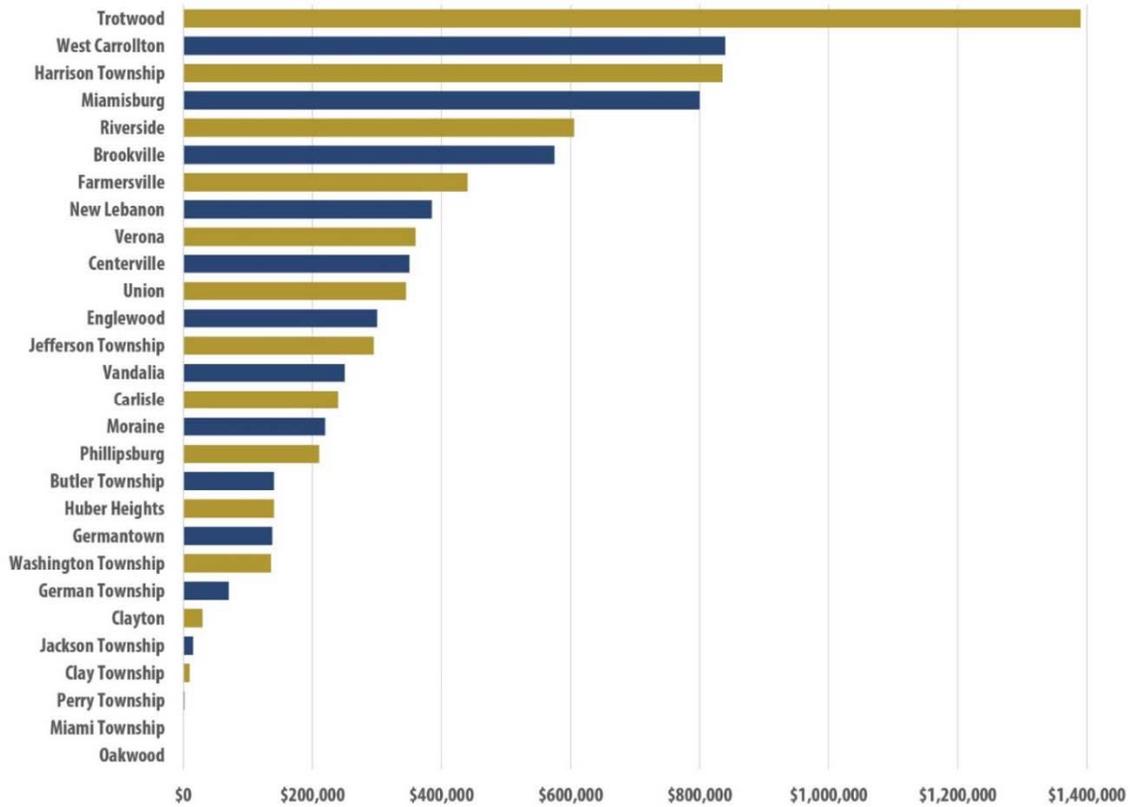
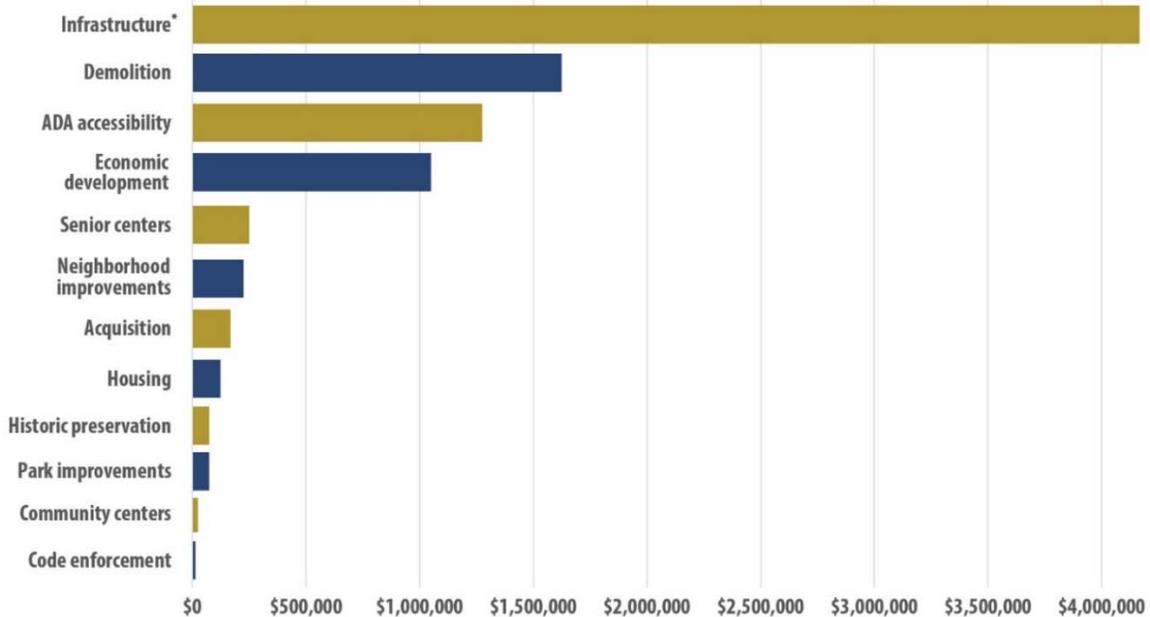


Chart 5.1 Montgomery County CDBG awards by jurisdiction, 2003–2013²



*Infrastructure includes improvements to roads, sidewalks, water/sanitary sewers, and storm drainage systems

Chart 5.2 CDBG awards by activity, 2003–2013³

As part of its annual CDBG funding selection process, Montgomery County convenes two advisory boards—the Community Development Advisory Committee (CDAC) and the Countywide Citizens Advisory Committee (CCAC). CDAC and CCAC include representatives from local jurisdictions, programmatic target areas and populations, civic organizations, and the business community. Both boards review CDBG funding applications and make recommendations.

Physical improvement projects proposed by local jurisdictions as part of their annual planning are reviewed initially by staff for eligibility and reasonableness of cost before being submitted to CDAC and CCAC.

Montgomery County’s County Commission gives final approval to the CDBG allocations that were vetted by staff and recommended by CDAD and CCAC.

Over the 2003–2013 period, Trotwood received the largest amount of CDBG funds, followed by West Carrollton, Harrison Township, and Miamisburg. Of the activities funded over that time period, the largest amount, near \$4.2 million, was spent on infrastructure projects (including improvements to roads, sidewalks, water/sanitary sewers, and storm drainage systems). The next greatest amount \$1.7 million (40% of the amount spent on infrastructure) was for demolition. Projects related directly to housing receive only a very small portion of the county’s CDBG funds.

However, the goals of the CDBG-funded programs are all connected. Montgomery County outlined its goals for the use of CDBG and other federal funds in its *FY2014 Annual Action Plan*:

- **“The provision of decent, safe and affordable housing** to preserve and/or increase the availability of decent, safe and affordable housing for low-to-moderate individuals in Montgomery County.
- **The provision of expanded economic opportunities** to retain existing jobs or aid in the creation of new jobs, for LMI individuals in Montgomery County, through the provision of loan funds by County Corp to companies, and through business façade improvements undertaken by several jurisdictions.
- **The provision of a suitable living environment** to enhance the quality of life and promote healthy neighborhoods for LMI persons through a variety of public services, infrastructure projects, and other activities that address specific community needs.”⁴

Each project funded by the county with CDBG funds addressed one of HUD’s three national objectives for the CDBG program:

- “Benefit low- and moderate-income persons;

- Aid in the prevention or elimination of slums or blight; and
- Meet a need having a particular urgency.”⁵

City of Dayton

The City of Dayton receives funds from all three of HUD’s main entitlement programs.

Source	CDBG	HOME*	ESG	Totals
Entitlement grants	\$4,685,394	\$220,000	\$1,066,790	\$5,972,184
Reprogrammed funds from prior years	\$400,000	-	-	\$400,000
Estimated program income—city	\$50,000	-	-	\$50,000
Estimated program income—sub-recipient	\$175,000	-	-	\$175,000
Totals	\$5,310,394	\$220,000	\$1,066,790	\$6,597,184

*HOME funding is received through a consortium of Dayton and Kettering

Table 5.3: FY2014 HUD funding, Dayton⁶

In the *Annual Action Plan 2014: City of Dayton, OH, and Dayton/Kettering HOME Consortium*, Dayton describes the procedures for allocating expenditures of these funds, and the procedures appear to address the statutory requirements.

This *Action Plan* specifically details funding decisions according to the long-term goals established in Dayton’s 2011–2015 Consolidated Plan (ConPlan). The ConPlan articulates three overarching goals:

- “To provide decent housing by preserving the affordable housing stock, increasing the availability of affordable housing, reducing discriminatory barriers, increasing the supply of supportive housing for those with special needs, and transitioning homeless persons and families into housing.
- To provide a suitable living environment through safer, more livable neighborhoods, greater integration of LMI residents throughout the City, and increased housing opportunities and reinvestment in deteriorating neighborhoods.
- To expand economic opportunities through more jobs paying self-sufficient wages, homeownership opportunities, and development activities that promote long-term community viability and the empowerment of low- and moderate-income persons to achieve self-sufficiency.”⁷

In its ConPlan Dayton focused primarily on the needs of LMI people (especially those with extremely low incomes, less than 30% of AMI) as well as special needs groups including elderly people, people with disabilities, large families, single parents, homeless

people, and residents of public housing. Dayton developed a strategic plan to address these needs in accordance with community priorities.

Dayton chose to have a high level of consultation with key stakeholders to identify priority needs. Stakeholders included public agencies and private non-profit organizations with missions focusing on affordable housing and human services for LMI people.

Stakeholders participated in focus group sessions and completed written questionnaires providing data about special needs groups. Dayton also engaged with the public through town hall meetings, by accepting written comments about the ConPlan, and by conducting an online survey. The cities provide the services of interpreters at these meetings when requested by people not proficient in English.

Through this process Dayton identified the following needs:

- “The provision and maintenance of affordable housing;
- Investment in community development activities in lower-income and deteriorating neighborhoods and in facilities that serve lower-income populations; and
- Supportive services to maintain independence.”⁷

and identified the following community concerns:

- “A need for suitable affordable housing to address the growing gap between housing costs and local incomes, which continues to lead to rising rates of overcrowding and overpayment for the lowest-income residents;
- Programs that improve community facilities and services, particularly in low-income areas;
- A network of shelter housing, support services to prevent homelessness, moving homeless to permanent housing and independence, and the elimination of chronic homelessness;
- Programs that promote economic development, create jobs, and increase the job skill levels of potential employees; and
- Support services that increase the ability of seniors, persons with disabilities, and others with special needs to live independently and avoid institutions.”⁷

Sharp drops in Dayton’s population combined with changes in other formula factors resulted in reductions in the HUD funding Dayton receives. The city has had to reduce or completely cut key programs including demolition, road resurfacing, and recreation and youth services. Dayton uses the largest portion of its entitlement funds to support housing

programs, projects, and services. Dayton’s second-largest portion of these funds is used for improvement to public facilities and infrastructure in LMI neighborhoods.

Kettering and Dayton receive their HOME funds through a joint consortium. HUD determines the funding by looking at the demographics of both communities.

In its ConPlan Dayton evaluated its past performance on its use of HUD funds by noting:

The City of Dayton’s past performance in the administration and implementation of the CDBG, HOME, and ESG programs has fulfilled the basic requirements of the federal legislation creating these programs. Through years of effective planning, partnership, and monitoring, the programs have facilitated affordability for decent housing, availability and accessibility to a suitable living environment, sustainability of a suitable living environment, and accessibility to economic opportunities in the greater-Dayton area.⁷

City of Kettering

The City of Kettering receives funds from HUD's CDBG) and HOME entitlement programs.

Source	CDBG	HOME*	Totals
Entitlement grants	\$477,554	\$150,000	\$627,554
Reprogrammed funds from prior years	\$483,237	-	\$483,237
Estimated program income—city	\$134,262	\$82,521	\$216,783
Totals	\$1,095,053	\$232,521	\$1,327,574

*HOME funding is received through a consortium of Dayton and Kettering

Table 5.4: FY2015 HUD funding, Kettering⁸

Kettering's Planning and Development Department administers most of the projects defined in the city's CDBG Annual Action Plan. The department focuses neighborhood revitalization through collaborative efforts with other city departments, government offices, and non-profit and private organizations.

Kettering strives to achieve broad citizen participation in the development of its Action Plan. City staff, area citizens, and housing and social service providers participate in the process. Kettering uses public meetings, televised on local cable channel 6, to obtain citizens’ views and to respond to proposals from citizens. Kettering also employs a Senior Services Coordinator, who regularly updates CDBG staff on the special needs of the city’s

frail, elderly, and disabled populations. To broaden public participation, Kettering publishes information on its website and also advertises in the *Dayton Daily News*.

In its 2012 Annual Action Plan update, Kettering notes that in order to maximize its relatively-small allocation of federal funds, it must invest CDBG and HOME dollars in projects resulting in substantial improvements in LMI neighborhoods.

Kettering uses part of its CDBG funding to subcontract with the HomeOwnership Center of Greater Dayton (HOCGD) for housing counseling services and underwriting services for Kettering's rehab and down payment assistance programs. HOCGD is part of St. Mary Development Corporation, a faith-based non-profit organization.⁹ Kettering also subcontracts with the Miami Valley Fair Housing Center (MVFHC) to provide comprehensive fair housing services.

Kettering's 2012 Annual Action Plan update provides insight into how the city manages its CDBG and HOME dollars. To accomplish the priority of ensuring decent and affordable housing, the plan sets out the following objectives:

- Serve ten households per year through the Housing Rehabilitation Program;
- Realize five units of affordable infill housing;
- Promote responsible homeownership through the provision of down payment assistance to ten households.¹⁰

Affirmatively Furthering Fair Housing in CDBG, HOME, and ESG programs

While the past performance of each of the entitlement jurisdictions in the administration and implementation of the CDBG, HOME, and ESG programs may have fulfilled the basic requirements of the programs, there remain serious challenges in each jurisdiction as demonstrated by the impediments identified in this AI. Some of these impediments have appeared in more than one of the previous AIs. As HUD puts renewed attention on the obligation to affirmatively further fair housing, Kettering, Dayton, and Montgomery County should each examine how they administer their CDBG, HOME, and ESG programs to ensure that future work fulfills this obligation.

Programs for privately-owned housing and community businesses

All three entitlement jurisdictions have programs for privately-owned housing, meeting HUD's requirements for such programs. These programs—funded through CDBG and/or

HOME funds—provide information to homeowners about the availability of financial assistance for modifications to make homes more accessible to people with disabilities.

Montgomery County

The majority of Montgomery County’s programs for privately-owned housing are administered by County Corp, a non-profit development corporation created by the county in 1979.¹¹ County Corp’s affordable housing program named “The Housing Source” offers services including foreclosure intervention, home repair and down payment assistance grants, and affordable housing tax credit developments.

Two key services of the Housing Source program—accessibility assistance¹² and emergency assistance¹³—are not available to residents of the cities of Dayton and Kettering and are only for LMI households. County Corp markets these programs to health care professionals, social workers, agencies serving LMI people, seniors, and people with disabilities by distributing flyers and brochures through postal mail, by email, and at festivals and other community events.

Whether entitlement jurisdictions promote business enterprises is an important fair housing concern. County Corp’s BizCap program provides loans to small businesses that invest in real estate and equipment.¹⁴

City of Dayton

Dayton’s Planning and Community Development Department oversees the city’s programs for privately-owned housing and community businesses. Dayton offers two main programs for homeowners: down-payment assistance and homebuyer classes and coaching. Both of these programs are managed by HOCGD under contract with the city.

HOCGD markets its services in various ways, including distributing flyers and brochures into the community and at organizations including the Access Center for Independent Living and the Wesley Community Center.

Dayton also has a neighborhood business assistance program, which is administered by CityWide Development Corporation, a non-profit agency created by the city in 1972.¹⁵

City of Kettering

Kettering’s Planning and Development Department oversees its programs for privately-owned housing. Kettering offers loans and/or grants to homeowners for rehabilitation of

their homes.¹⁶ The loans are low-interest (a rate of one percent in some cases) or, for LMI residents, zero-interest loans, the repayment of which is deferred until the residents move from their homes. Homeowners whose income is under 50% of AMI may qualify for grants along with or instead of loans.

Kettering also provides down-payment assistance and homebuyer classes and coaching through a contract with HOCGD. Kettering goes an extra step and offers homebuyer counseling with HOCGD staff once per week at the Kettering Government Center instead of at HOCGD's office in downtown Dayton.

Kettering markets its home rehabilitation program by having its housing inspectors leave flyers at residences, by distributing flyers at community locations such as the Lathrem Senior Center, and by advertising in the city newsletter.

Advisory Boards, Zoning Boards and Planning Commissions

Montgomery County's two CDBG advisory boards—CDAD and CCAC—are comprised of stakeholders representing many of the religious, ethnic, racial and disabled segments of the community. However, it is not clear if this is true in looking at the makeup of advisory groups at a more local level. Since Montgomery County is part of the Dayton MSA, it cannot be claimed this is true everywhere since the MSA is a hyper segregated community overall. In looking at some of the sub-jurisdictions in the county, the makeup of, for example, zoning boards mirrors the makeup of the particular community. As a best practice, local advisory board development in sub-jurisdictions need to proactively engage new and emerging communities within jurisdictions to join planning and zoning bodies as a way to affirmatively further fair housing. These sub-jurisdictions can look to the entitlement communities to do this. In addition to the practices of the County, Dayton and Kettering offer guidance through good examples. The City of Dayton, through its Welcome Dayton Plan, has developed a more inclusive atmosphere in the city. A good example of accomplishing this aim of inclusiveness was the election of a young resident from the Ahiska Turkish community to the Dayton School Board. The City of Kettering has the Board of Community Relations which oversees civil rights problems in the city. In addition to whites, which makeup the majority of residents in the city, the BCR has members from minority groups and members with disabilities.

Delivery System of Social Services

Montgomery County offers a broad range of social services, the majority of which are administered by its Human Services Planning and Development Department (formerly the

Office of Family and Children First). Human Services programs include those for alcohol, drug addiction, and mental health; children services; developmental disabilities; public health; and indigent health care.¹⁷ An increased population of elderly people and people with disabilities as well as increased poverty have increased the demand for services.

These programs are funded in part by the state and in part by a property tax (Montgomery County's human services levy). State funding has decreased, and lowered property values affected the amount of funds raised from the property tax. In 2014 county voters approved renewing the property tax at an increased rate of 8.2 mills.

B. Zoning and Land Use

A key issue affecting zoning as it relates to fair housing is “not in my back yard” (NIMBY) syndrome.

Civil rights attorney Michael Allen summarized the effect of NIMBY policies on communities:

It’s a familiar scenario: A city or town demonstrably needs affordable housing. A sponsor comes forward to gain site control and secure financing. Once neighbors get wind of the news and express opposition, elected officials get cold feet and deny zoning or building permits that are necessary to move forward. The lost housing opportunities are most often felt by people of color and people with disabilities. Moreover, the loss of affordable units can also mean a lost opportunity for diversity in the communities affected. More and more frequently, the Fair Housing Act is being used to send the message that discrimination in zoning and land use decisions is illegal.¹⁸

Montgomery County

In addition to the cities of Dayton and Kettering, Montgomery County includes many other municipalities, all of whose zoning and land use policies are comparable. MVFHC in its *2010 Zoning Study for Montgomery County* (discussed in Section 2 on page 61) examined local zoning practices as they relate to people with disabilities. Another zoning issue related to fair housing is the willingness of smaller jurisdictions in the county to accept government-subsidized housing for LMI residents.

Local public opposition to such housing was demonstrated in 2007 when there was public outcry after a newspaper article reported that 79 families would be moving from public housing in Dayton to the Shroyer Road area of Kettering and Oakwood.¹⁹ The report was later found to be incorrect but not before complaints at public hearings and in letters to the editor of fears of crime and blight.

Other than for seniors, no significant subsidized housing has been sited in suburban Montgomery County. Public opposition could arise again if proposals are ever made to create such housing.

*The Cities of Kettering and Dayton's Zoning Codes: Exclusionary or Inclusionary?***Zoning impacts Fair Housing**

Affordable housing is closely related to fair housing and thus has become a proxy for fair housing.²⁰ Zoning directly affects housing choice and has a major influence on housing patterns and the availability of transportation, jobs, open space, and good schools.²¹ In particular, zoning determines where housing can be built, the type of housing that is allowed, and the form it takes.²² Regulations affect the cost of developing housing, thus accommodating or impeding the creation of affordable housing. Whether or not zoning regulations are inclusionary or exclusionary determines if they are impediments to fair housing.

Inclusionary Zoning versus Exclusionary Zoning

Inclusionary zoning ordinances promote the creation of affordable housing in order to foster mixed income communities. Exclusionary zoning policies, conversely, prevent certain types of people from living in a community, often by limiting the amount and pace of residential development or by prohibiting construction of multi-family housing.²⁰

Exclusionary zoning renders housing in a community unaffordable for low-income residents, families with children, and people with disabilities,²⁰ preventing them from moving into higher-opportunity areas better fitting their needs. Lack of affordable housing traps families with children in under-performing school districts. (This issue is discussed in more detail in the Property Assessment and Tax Policy section on page 133). By precluding multi-family housing, which is subject to federal requirements for accessibility, exclusionary zoning limits choices for people with disabilities.

Although both suburbs and urban cities use exclusionary zoning, its wide use by wealthy suburbs to keep out poor people is unlawful discrimination because poverty is being used as a proxy for race.²³ This use of exclusionary zoning is one of the vestiges of *de jure* residential segregation by race, as Anthony Kennedy said in his opinion in this year's landmark fair housing case *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*²⁴ In that case the Supreme Court specifically ruled that zoning laws that function unfairly to exclude minorities from certain neighborhoods without sufficient justification violate fair housing laws. Therefore, zoning regulations that fossilize suburban areas from inclusivity are a legal liability to the city promulgating them.

City of Kettering Zoning Regulations

This year the City of Kettering undertook the herculean task of overhauling its zoning regulations. In doing so, it threw out definitions that would limit living arrangements, instead focusing solely on a dwelling's use. For example, Kettering no longer defines family. The city's zoning code now allows for all types of groups of people to live in "a dwelling unit," altogether avoiding the term "family."²⁵

Kettering is much less racially diverse than Dayton or Montgomery County. Kettering is 92.6% white, more so than Montgomery County as a whole at 74.0% and much more so than Dayton at 51.7%.²⁶

City of Dayton Zoning Regulations

Dayton, unlike Kettering, still defines family in its zoning ordinances and also limits the combination of people allowed to live together. Dayton defines family as:

an individual or two or more persons, each related to the other by blood, marriage, or adoption, or foster children as defined in sub-section 150.200.2 and not more than two additional persons not related as set forth above, all living together as a single housekeeping unit and using common kitchen facilities.²⁷

This definition impedes housing choice for those wishing to live together. Limiting housing choice in this manner is overreaching and opens Dayton to legal liability.

Dayton restricts mixed used and multi-family housing in the city's suburban neighborhoods, restrictions that are similar to Kettering's and that perpetuate segregation.

Although the majority of Dayton residents still live in highly segregated neighborhoods, Dayton does have the distinction of having a population with almost equal numbers of white and black residents. A reason for this might be the lower cost of housing in Dayton than in the rest of Montgomery County. In 2012 the average home value in Dayton was \$67,400, while the average home value in Kettering was \$122,411.²⁸ Thirty-four percent of Dayton's population lives below the poverty line.²⁹ If Dayton would change its zoning to be more inclusive, its residents would have greater housing choice, allowing greater integration throughout the city as opposed to continued disparate impact on protected classes.

Impediments to Fair Housing

Kettering's and Dayton's restrictive zoning ordinances are impediments to fair housing, as is Dayton's restrictive definition of family. Continued restrictions on mixed use and siting of multi-family housing keeps people from choosing to live in areas of greater opportunity because those areas do not have the affordable housing they could otherwise have. Dayton and Kettering should update their zoning policies if for no other reason than to avoid potential legal liabilities.

C. Housing Rehabilitation and Land Banks

Housing Rehabilitation

Jurisdictions giving financial incentives such as grants, loans or loan guaranties for housing rehabilitation must consider all fair housing and fair lending obligations. For example, terms and conditions of grants or loans must be based on objective criteria and not on race, color, national origin, religion, gender, disability or familial status. Jurisdictions must also work to publicize such incentives, especially to those minority applicants that are historically least likely to apply.

Land Banks

Land banks—community-owned organizations that obtain, manage, and reuse abandoned, vacant and foreclosed houses and lots³⁰—affect housing rehabilitation on a larger scale in a way benefitting entire communities. Just as municipalities must consider fair housing obligations when assisting individuals with housing rehabilitation, so too must land banks be mindful to keep their activities and decisions from discriminating against or having a disparate impact on people or groups in protected classes.

Land banks should consider how rezoning or conditional permits for new uses of sites might affect existing or potential residential properties. For example, a new use of a site requiring changes in routine services such as water, trash and sewer, and decision makers should think about whether or how those changes affect neighbors. Buying or selling real property that has been or will be used as a residence has fair housing concerns. Land banks must also be cognizant of how they implement programs, ensuring programs are offered in minority and moderate-to-low income neighborhoods with the direst need and not just in the neighborhoods where easiest success can be realized in the quickest amount of time.

Land reuse, or acquiring and holding parcels of land to assist with community development, is not a new concept. County Corp and CityWide, the two largest non-profit community improvement corporations in the county, were founded in the 1970s by Montgomery County and by Dayton for this purpose. Both of these agencies have housing programs to create and maintain affordable housing options.

The residential foreclosure crisis prompted the state legislature to authorize local jurisdictions themselves to carry out land reuse activities (ending the restriction of this function to separate non-profit organizations). In 2011 the Montgomery County Commission created the Montgomery County Land Reutilization Corporation, more commonly referred to as the Land Bank. In February 2013, the county commissioners approved allotting 5% of the Delinquent Tax and Assessment Collections (DTAC) to the Land Bank for its programming.³¹ The Land Bank operated as a volunteer organization until its Executive Director was hired in November 2013.

One key function the Land Bank has undertaken is overseeing and coordinating significant demolition funds from programs including Moving Ohio Forward (MOF) and the Neighborhood Initiative Program (NIP). Ohio's attorney general set up the MOF demolition program's guidelines in 2012 requiring that funds provided to land banks beyond the first \$500,000 be matched from participating jurisdictions.³² The Land Bank received \$4.2 million in MOF funds, which it used in nine jurisdictions (Dayton, Englewood, Harrison Township, Kettering, Miamisburg, New Lebanon, Riverside, Trotwood, and West Carrollton) to remove 1,143 units on 631 properties.³³ In 2014 the Ohio Housing Finance Agency accepted applications from land banks for NIP funds for concentrated demolition in "tipping point" neighborhoods as an effort to halt further decline. A number of criteria including median home values were used to determine which neighborhoods were tipping point ones. Unlike MOF funds, no matching funds were required to receive NIP monies, although participating jurisdictions had to provide detailed plans for each target neighborhood. The Land Bank received \$5.11 million in NIP funding.

In addition to managing demolitions, the Land Bank has used the funds it receives locally from DTAC to create other programs to address blight within the community. In 2013 the Land Bank awarded grants in the amounts of \$160,000 to West Carrollton, \$136,600 to Harrison Township, \$100,000 to Dayton, and \$25,000 to Farmersville for activities proposed in the jurisdictions' strategic plans. Also in 2013 the Land Bank helped West Carrollton to rehabilitate a single family unit to reposition it for homeownership as a test for a new loan program. In 2014 the Land Bank transferred twenty-three tax-delinquent residential properties to new owners or to existing owners that the Land Bank deemed

worth giving a second chance. In 2015, the Land Bank established a similar tax foreclosure process for commercial properties.³²

The Land Bank is planning a new deed-in-escrow program in which qualified individuals can bid on properties to rehabilitate them for occupancy. The Land Bank also plans to expand its community residential rehabilitation loan program.³² However, the Land Bank does not expressly prioritize owner-occupancy in its residential program, which should be concerning to the jurisdictions, especially given the highly segregated nature of so many of the region's neighborhoods. The Land Bank and the City of Huber Heights are working together on a pilot strategic planning project aimed at supporting neighborhood stabilization strategies. The Land Bank is also working with County Corp on a program under which the Land Bank will hold and maintain parcels of land until County Corp is ready to develop them.³⁴

In April 2015 the Land Bank broadened its goals and decision-making criteria from fourteen priorities outlined in its 2012 *Priorities and Policies* document³⁵ to the simpler goals of “support[ing] the community’s plans, needs, and desires” and of “repositioning [...] properties for productive use and to responsible ownership.”³⁶ The Land Bank formerly ranked mixed-income development and homeownership as its top two priorities for use. As for those eligible to receive transfers, the Land Bank ranked non-profit developers as the top priority and qualified real estate investors as the lowest. In the April 21, 2015 board meeting approving the new goals of the Land Bank, its executive director explained that the revision creates guidelines rather than requirements in order to allow for creativity within Land Bank programs.³⁷

D. Subsidized Housing

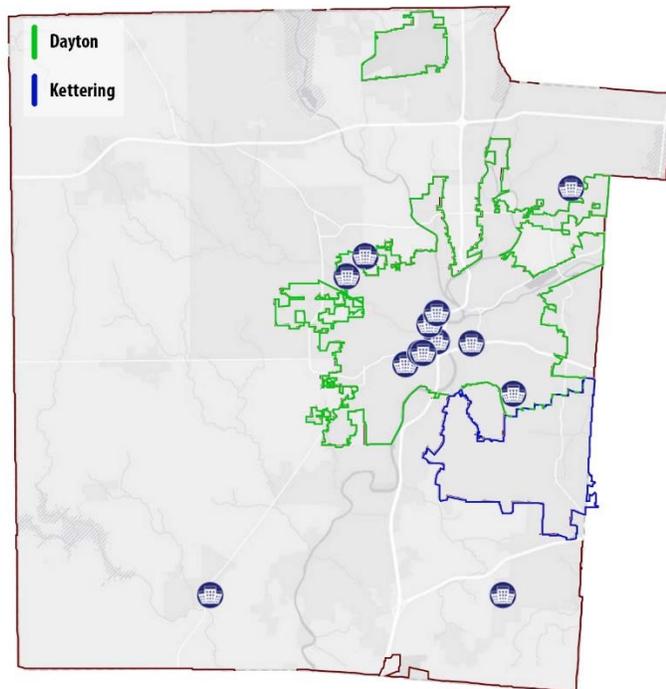
A variety of housing assistance programs through which governmental assistance makes housing available at below-market rates fall under the umbrella term of subsidized housing. Such assistance may be specific to a unit or a household, or it may serve certain sectors of the population.

Public Housing Authority

Greater Dayton Premier Management (GDPM)—formerly the Dayton Metropolitan Housing Authority—is the public housing authority for all of Montgomery County. GDPM operates with funds from HUD’s Annual Contributions Contract. GDPM owns and operates 2,700 units of public housing ranging from small duplexes to high-rise senior apartments. As of June 2015, 4,877 people comprising 2,669 households live in GDPM’s public housing properties.³⁸

HUD has recently made key demographic data about public housing available through a new tool, the Affirmatively Further Fair Housing Data and Mapping Tool (AFFHT). MVFHC used data from AFFHT for many of the maps and charts in this subsection.³⁹

As shown on Map 5.5 to the right, GDPM’s public housing in Montgomery County is concentrated within the City of Dayton. Developing new sites throughout the rest of the county is one of GDPM’s stated goals.



Map 5.5 Public housing in Montgomery County³⁸

Race and Ethnicity in Public Housing

A sampling of AFFHT data on the racial composition of subsidized housing complexes is included in Table 5.6 below. The table also includes information about the size of the minority population in the census tracts in which the complexes are located and about the income level of those tracts. The complexes vary in size. For example, DeSoto Bass Courts has over 300 units while Windcliff Village has only 35.

Public housing location	Races/ethnicities	Minority population*	Income level*	
Windcliff Village 155 Windcliff Drive Germantown OH 45327	White	83%	3.42%	Middle
	Black	13%		
	Hispanic	4%		
	Asian	0%		
10 – 86 Westerfield Drive Centerville, OH 45458	White	20%	19.03%	Middle
	Black	80%		
	Hispanic	0%		
	Asian	0%		
Park Manor 220 Park Manor Drive Dayton OH 45410	White	35%	38.85%	Middle
	Black	62%		
	Hispanic	2%		
	Asian	1%		
Desoto Bass Courts 811 Oldfield Place Dayton OH 45417	White	6%	97.81%	Low
	Black	91%		
	Hispanic	3%		
	Asian	0%		

*Minority population and income level are for Census tracts in which housing is located.

Table 5.6: Racial composition of four public housing sites compared to census tracts

For a number of years GDPM has been in transition. In 2011 it rebranded itself and adopted a new name.⁴⁰ After the resignation of its CEO in June 2012,⁴¹ GDPM was led by several interim CEOs until the appointment in November 2014 of Jennifer Heapy as GDPM's new CEO.⁴²

Under the Public Housing Assessment System GDPM earned ratings of 86% in fiscal year 2009 and 91% in fiscal year 2010,⁴³ and in fiscal year 2013 GDPM was rated as a "High Performer" under the Section 8 Management Assessment program in fiscal year 2013.⁴⁴ GDPM faced scrutiny from HUD after the *Dayton Daily News* reported in March 2015 that participants in GDPM's housing voucher program accused the agency of not having

properly accommodated their disabilities.⁴⁵ However GDPM has worked to address those issues and HUD has now removed GDPM from the civil rights watch list.

GDPM provides information on its website about its compliance with Section 504 of the 1973 Rehabilitation Act.⁴⁶ Section 504 requires recipients of federal funds to provide individuals with disabilities an equal opportunity to receive program benefits and services. GDPM also has a reasonable accommodation policy⁴⁷ on its website along with a form for requesting reasonable accommodations. GDPM lists its legal counsel on its website as its 504 coordinator, listing GDPM's own main phone number as the means of contacting the 504 coordinator.⁴⁸ In 2010, GDPM entered into a voluntary compliance agreement to provide 138 fully-accessible units and 55 visually/hearing-impaired units by August 2017; GDPM reported in its 2012 Five Year Plan that 87 of the fully-accessible units and 20 of the visually/hearing-impaired units had been completed.⁴⁹ GDPM offers Google's translation service on its website, although the only language available is Spanish, and the service was unable to translate PDF items such as the reasonable accommodation request form and GDPM's newsletters.

GDPM's occupancy standards do not completely fulfill HUD's guidelines and therefore impede housing choice; we discuss this in detail in subsection F, Occupancy Standards for Residential Housing, on page 137.

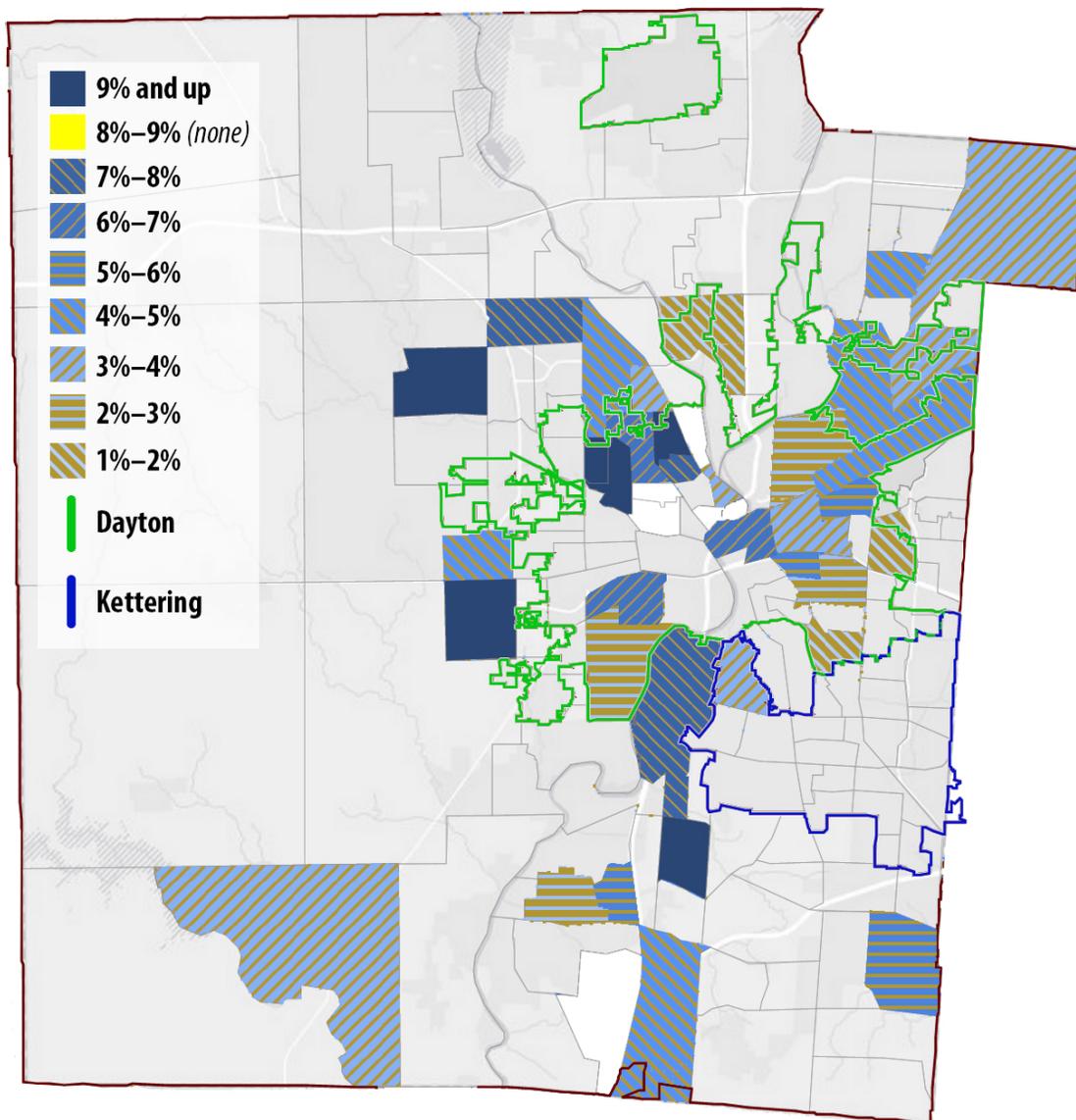
Housing Choice Vouchers

GDPM is also the administrator of the local Housing Choice Vouchers (HCV) program, formerly and more commonly known as Section 8, serving 8,000 people annually with 3,990 HCVs. Under the program, GDPM pays landlords the HCV amounts, and participants pay any additional rent required. However, families may not pay more than 40 percent of their adjusted monthly income towards rent and utilities. Through this program low-income families can live in units they would not otherwise be able to afford. HCVs may be used for units from any private housing provider that is willing and qualified to participate in the HCV program. Housing providers participating in the program must follow strict inspection standards and comply with all program regulations.⁵⁰

The waiting list for GDPM's HCV program was closed in June 2008 because of the number of people on the list.⁴⁷ In 2012 GDPM reported in its five-year plan that its HCV waiting list, still closed, had over 1,800 households. In January 2015 GDPM briefly opened the list to new applicants during a period of five business days. As of July 2015, 6,304 households are on the HCV waiting list, and GDPM estimates the wait time to be over

three years. During development of the ConPlan, GDPM reported the greatest unmet need of its HCV program was the insufficient supply of units meeting the Authority’s housing quality standards.

The use of HCVs is not evenly distributed in Montgomery County, as shown below in Map 5.7.



Map 5.7: Housing choice voucher households by census tract

In particular, the prevalence of HCVs in Dayton is significantly larger than in Kettering. One factor contributing to this could be the cost of the available housing stock. For

example, if the prevailing rental rate for a three-bedroom unit in Kettering is greater than the permitted HCV rate for such a unit, people using HCVs are effectively kept out of the Kettering market.

Another factor, discussed previously in Section 4 on page 93, is the willingness of market-rate housing providers to accept HCVs. MVFHC examined this willingness, discovering after contacting twenty housing providers with units of varying sizes that only two were willing to accept HCVs. One willing landlord was in Dayton, and one was in the suburbs. The ability of HCVs to expand housing choice and to offer access to higher-opportunity neighborhoods is hampered not only by a lack of affordable housing but also by the unwillingness of the majority of housing providers to accept HCVs.

HCV users wanting to find a housing provider can use the website GoSection8.com, an online rental listing service for the housing voucher market that is free of charge to renters and landlords.⁵¹ The website lists only properties belonging to landlords who actively choose to be listed there. GDPM includes a link to GoSection8.com on its website. The properties in Montgomery County on GoSection8.com correlate with the areas on Map 5.7 on the previous page. The one Dayton landlord accepting HCV who MVFHC found in its testing has a listing on GoSection8.com.

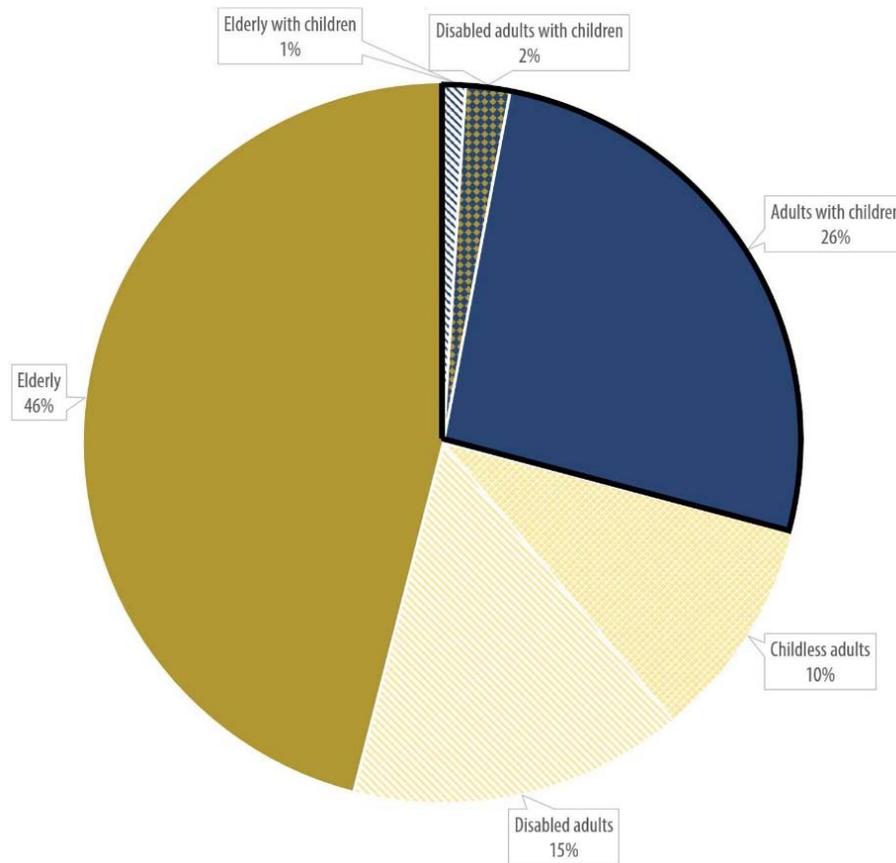
Project-Based Rental Assistance

Public housing authorities may allocate up to twenty percent of their voucher assistance monies to Project-Based Rental Assistance (PBRA).⁵² PBRA subsidies, instead of going to individual tenants, go to private property owners who agree to set aside some or all of the units in their housing developments for low-income families.⁵³ Most participants are for-profit entities, but non-profits own a significant share of PBRA properties. These projects offset, to a degree, the problems in the HCV program caused by the lack of affordable housing and of willing landlords.

Units set aside in PBRA properties are reserved either for low-income households, with income no more than 80% of AMI, or for extremely low-income households, with income no greater than 30% of AMI. Tenants pay thirty percent of their income, after deductions for items such as medical expenses, for rent and utilities.

As with other subsidized housing, households qualify for assistance by meeting certain income criteria, such as “extremely low income”, or no more than 30 percent of local median income and “low income”, no more than 80 percent of local median income.

Tenants pay 30 percent of their income, after deductions such as medical expenses are taken out, for rent and utilities, or a minimum of \$25 per month. The gap between the tenant contribution and the cost of maintaining and operating the apartment is filled by a monthly Section 8 PBRA payment to the private owner of the building. Chart 5.8 on the next page shows the types of households living in PBRA units.



Childless adults are households headed by a person under 62 without disabilities and without children in the home. Disabled adults are younger than 62. Elderly households are headed by a person age 62 or old.

Chart 5.8: Types of tenants in Project-Based Rental Assistance (PBRA) units⁵⁴

Low-Income Housing Tax Credit

A third subsidy program providing affordable housing is the Low-Income Housing Tax Credit (LIHTC), which is financed by the federal government but administered by states. LIHTC subsidizes the acquisition, construction, and/or rehabilitation of rental property by private developers, allocating tax credits to developers on a competitive basis. Developers receiving the tax credits can sell to investors and use the capital to provide affordable rental homes.⁵⁵ To be eligible for LIHTC, rental properties must either have at least 20% of their

units occupied by households with income under 50% of AMI or 40% of their units occupied by households with income under 60% of AMI. Rent for these units may not exceed thirty percent of household income.

Montgomery County has 106 LIHTC projects with 8,239 units. Of these, 78 projects comprised of 5,425 units are in Dayton, three projects with 284 units are in Kettering, and the remaining 25 projects comprising 2,530 units are in other jurisdictions around the county.⁵⁶

One of LIHTC's primary benefits is that it encourages the wider distribution of affordable housing. Those making decisions about LIHTC funding should be mindful of avoiding centralization of housing in order to maximize housing choice.

Other Subsidized Housing Programs

Other federal programs, named for the sections of regulations providing for their existence, provide housing assistance to specific populations who have had difficulty in affording decent housing. These programs include Section 202 housing for seniors, Section 811 housing for persons with disabilities, and Section 515 rural development housing.

Section 202 expands the supply of affordable housing with supportive services for elderly people, including the frail elderly. Elderly people with very low incomes get options allowing them to live independently in environments providing support for activities such as cleaning, cooking, and transportation. HUD provides capital advances to finance the construction, rehabilitation, or acquisition of the housing and provides rent subsidies for the projects to help make them affordable. Occupancy in Section 202 housing is open to any very low-income household comprised of at least one person who is at least 62 years old at the time of initial occupancy.⁵⁷ Montgomery County has 17 Section 202 housing sites with 361 housing units.⁵⁸

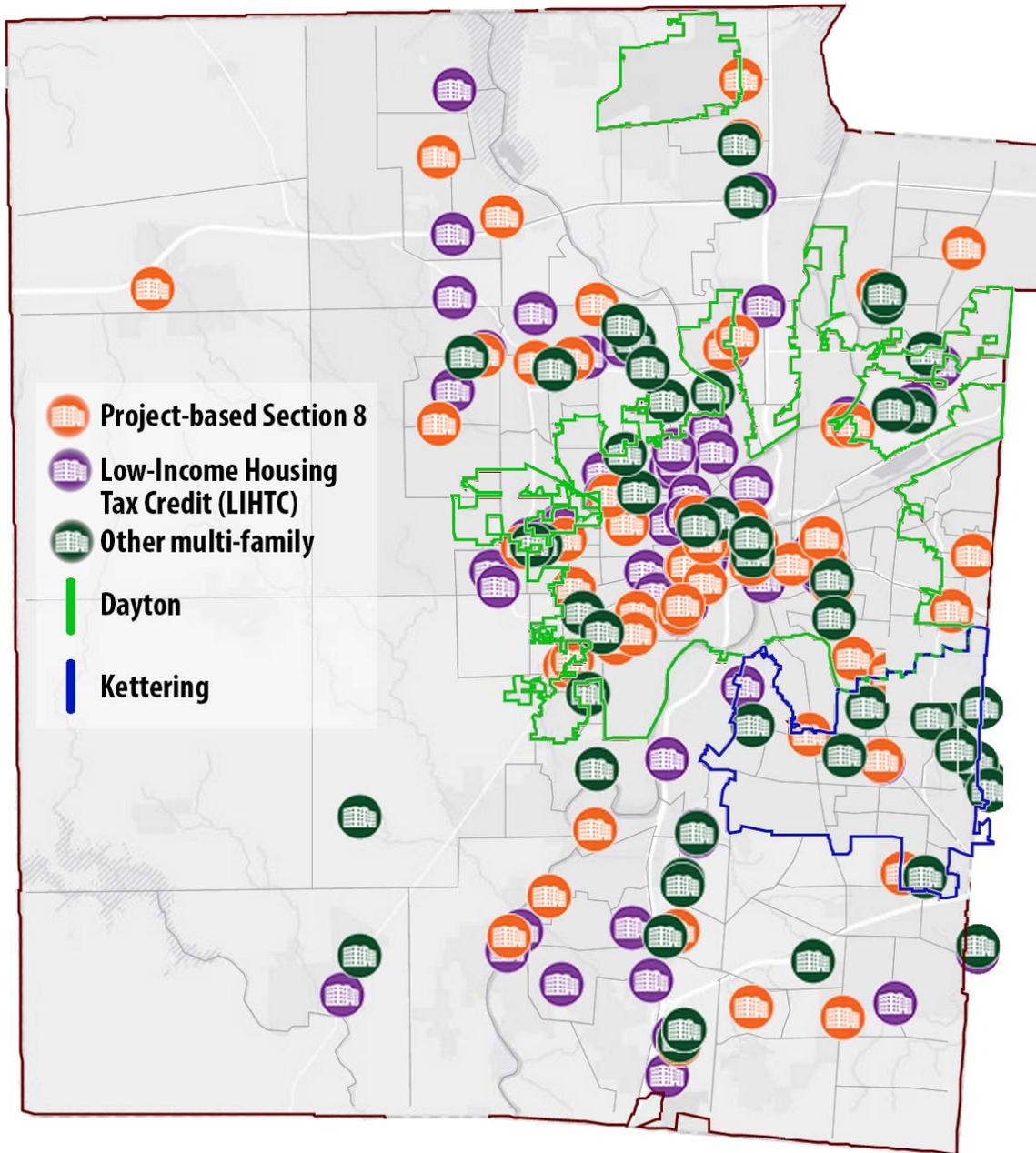
Section 811 provides funding to develop and subsidize rental housing with support services for very low- and extremely low-income adults with disabilities.⁵⁹ Section 811 funds are provided either as traditional interest-free capital advances and operating subsidies for non-profit developers or as project rental assistance to state housing agencies. The last appropriation for traditional 811 funds was made in fiscal year 2011. State agencies receiving 811 funds may apply them to new or existing multi-family housing complexes funded through other sources, including LIHTC. Section 811 projects must have supportive services plans providing, for example, case management, training in

independent living skills, or assistance in obtaining employment. Residents cannot be required to accept any supportive services as a condition of occupancy. Montgomery County only has five sites with Section 811 funding with a total of 51 subsidized units.⁶⁰

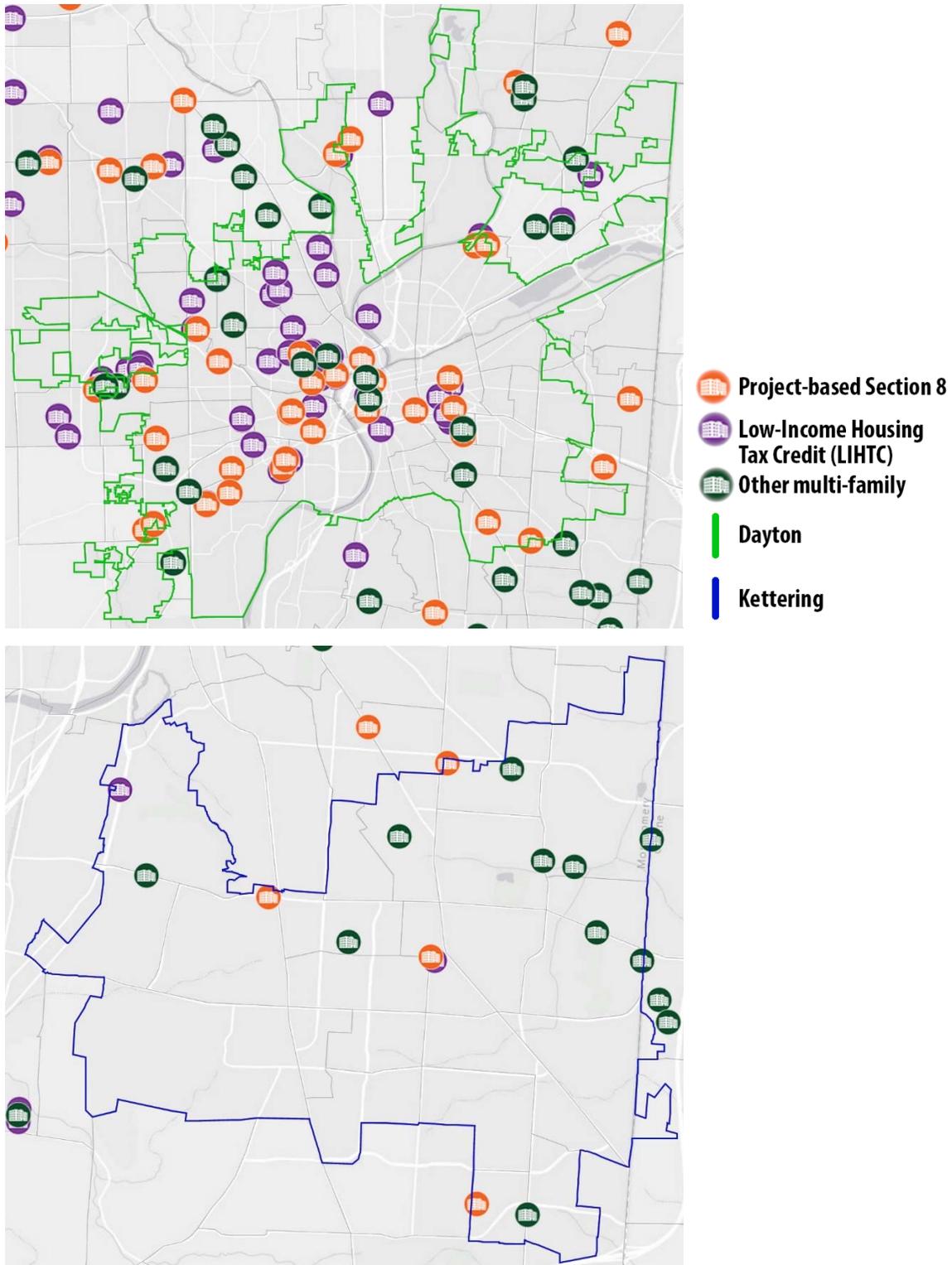
The Department of Agriculture's Rural Development and Community Facilities Program Office administers Section 515, making loans to provide affordable rental housing for very low-, low-, and moderate-income families, for elderly people, and for people with disabilities.⁶¹ Developers receive loans for up to 30 years at an effective interest rate of one percent amortized over 50 years. Tenants pay up to 30% of their adjusted income for rent and may receive rent subsidies from other sources, such as HCVs, as well. Montgomery County has four Section 515 housing projects containing a total of 114 subsidized units.⁶²

Distribution and Access to Employment, Education and Amenities

As shown in Map 5.9 on the next page, a variety of housing in the various programs we've described is available throughout Montgomery County. Housing for specific programs occurs at different frequencies in the three entitlement jurisdictions. For example, more PBRA projects are in central and west Dayton than in Kettering. More LIHTC properties are in northern Dayton than in Kettering. Maps 5.10 and 5.11 on page 128 show the locations of subsidized housing in Dayton and in Kettering.



Map 5.9 Project-based Section 8, Low-Income Housing Tax Credit, and other HUD-assisted multifamily housing in Montgomery County



Maps 5.10 and 5.11: Project-based Section 8, Low-Income Housing Tax Credit, and other HUD-assisted multifamily housing in Dayton (upper) and Kettering (lower)

The siting of subsidized housing in its various forms can be a contentious political issues with a significant and long-lasting impact on households in poverty. The Poverty and Race Research Council (PRRAC) studied the performance ratings of schools in locations with subsidized units large enough for families (units with two or more bedrooms).⁶³ PRRAC ranked the Dayton MSA as 52nd in the 100 largest MSAs, with its schools closest to subsidized housing units having a median percentile ranking of 14.⁶⁴ Chart 5.12 below shows how the distribution of all 100 largest MSAs by the median percentile ranking of their schools nearest to public housing tenants.

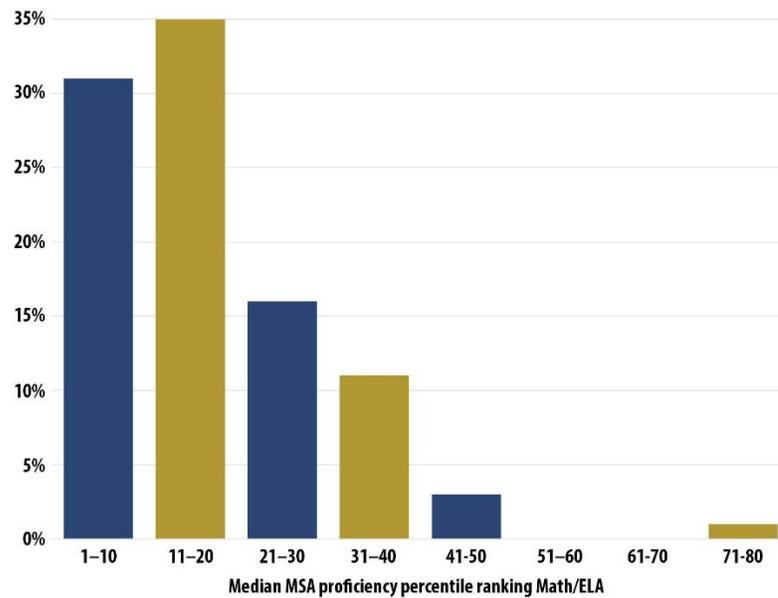


Chart 5.12: Distribution of MSAs by median percentile rank of schools closest to public housing tenants⁹⁶

In addition to units in public housing, PRRAC also looked at units available through HCV, PBRA, and LIHTC. Among the 100 largest MSAs, the Dayton MSA ranked 32nd for HCV, 34th for PBRA, and 21st for LIHTC. PRRAC notes in its study that they see “significant variation across metropolitan areas for recipients of all four types of housing assistance,” which matches our observation of the situation in Dayton.

An obstacle to fair housing in the Dayton MSA is that families living in public housing are less likely to live in proximity to high-performing schools than are families living in housing subsidized under the other programs.

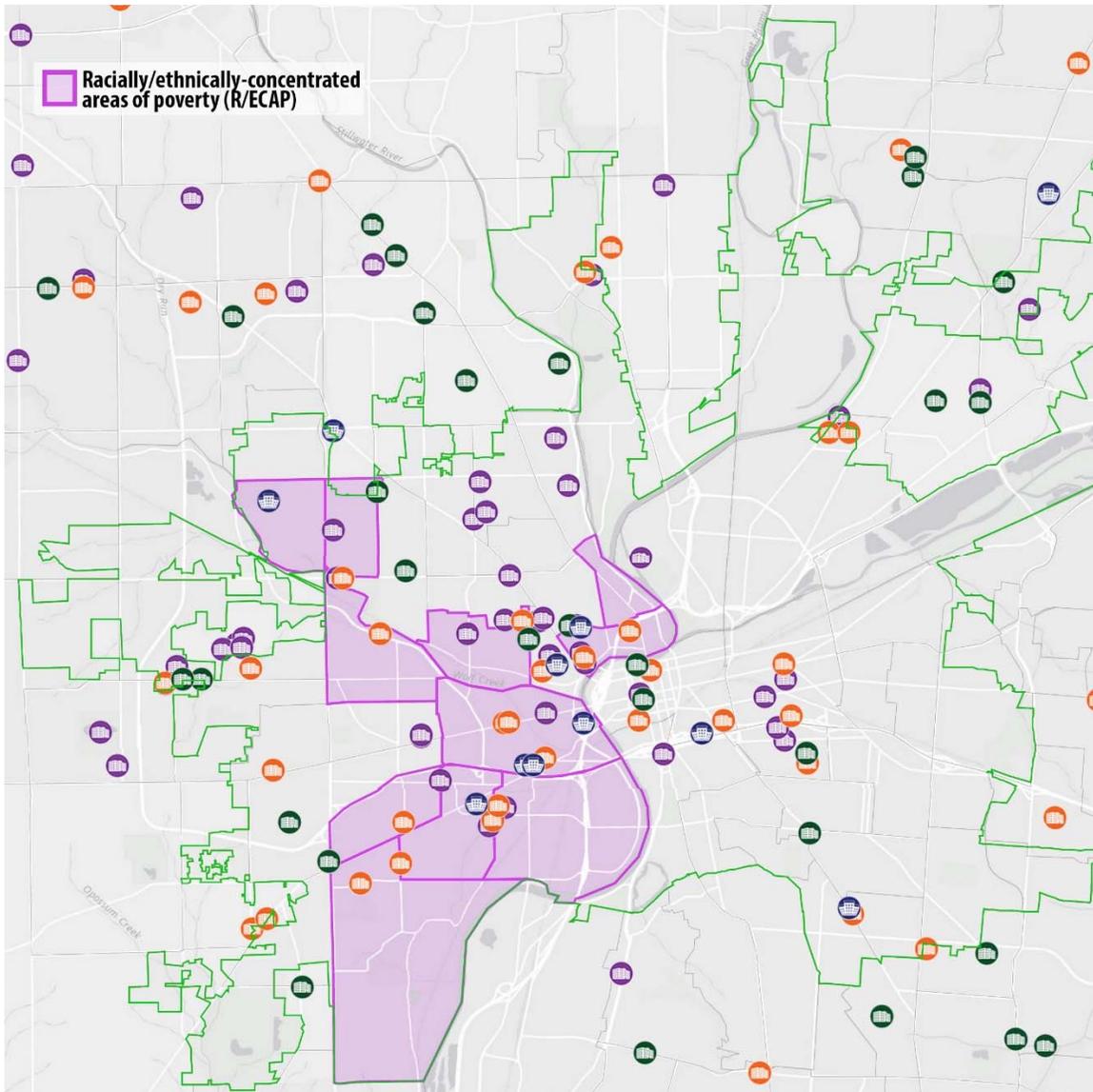
Racially/Ethnically Concentrated Areas of Poverty

How much subsidized housing is located in racially/ethnically concentrated areas of poverty (RECAP) has fair housing ramifications because of limits such locations may place on access to high-performing schools, employment, and the ability of households to exit poverty. According to HUD, an area is a RECAP if 50% or more of its population is non-white and 40% or more of its population lives below the poverty line.³⁸ All of the RECAPs in Montgomery County are in the northern and western quadrants of the City of Dayton, as shown below in Map 5.13. Dayton's RECAPs have a significant amount of subsidized housing.

Two approaches are commonly used to address poverty. The first is improving conditions in areas of poverty by providing quality education, employment opportunities, and amenities in these areas. The second approach is increasing housing choice for lower income people who want to live in areas which already have higher opportunity.

People and organizations who oppose housing discrimination disagree about how and whether to use these two approaches. For example, in this year's Supreme Court case on the use of disparate impact theory in placement of subsidized housing, *Texas Department of Housing and Community Affairs, et al. v. The Inclusive Communities Project, Inc.*,²² a group including the National Association of Housing and Redevelopment Officials, the Public Housing Authorities Directors Association, the National Affordable Housing Management Association, and the Council for Affordable and Rural Housing signed an amicus brief arguing against disparate impact and at the same time describing themselves as organizations that work to prevent housing discrimination.⁶¹

Within Montgomery County, MVFHC staff have heard off-the-record conversations among some planners and developers about certain neighborhoods' continued suitability for future investment given the lack of employment opportunities and amenities in those neighborhoods.



Map 5.13 Subsidized housing in relation to racially/ethnically-concentrated areas of poverty (R/ECAP) in Dayton

In preparing this analysis, we noticed the lack of current, comprehensive, and consistent information about subsidized housing. For example, the first result in a web search for “subsidized housing in Montgomery County Ohio”⁶⁵ is an Assisted and Public Housing Directory from 2005.⁶⁶ This directory has information on 2,078 LIHTC units while HUD’s online LIHTC database lists 8,239 units.⁵⁴ Although the 2005 directory is incomplete, we could find no other single directory that was more complete.

Providing a more comprehensive directory in a format that is more user-friendly would help the three entitlement jurisdictions and GDMA to fulfill their statutory obligations to

affirmatively further fair housing and to be accessible to people with disabilities. Any updated directory should also be available in languages other than English in common use by minorities in the area.

E. Property Assessment and Tax Policy

Valuation by the county of property for tax purposes may seem facially neutral but in fact can cause impediments to fair housing.

Facially neutral processes, like county property tax valuation processes, can play an integral role in causing impediments to fair housing. Below is an evaluation of Montgomery County's property tax evaluation authority, the process, and its impact on fair housing.

Property Tax Valuation Laws

Article XII Section 2 of the Ohio Constitution: “No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes.”

Ohio Revised Code Section 5713.01: “Each county shall be the unit for assessing real estate for taxation purposes.”

Ohio Revised Code Section 5713.03: “The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of the fee simple estate [...] for tax purposes [...] at least once in each six-year period. [...] [T]he auditor shall revalue and assess at any time all or any part of the real estate [...] where the auditor finds that the true or taxable values thereof have changed.”

Ohio Revised Code Section 5715.24: “The tax commissioner, annually, shall determine whether the real property [...] which have completed a sexennial reappraisal in the current year [...] have been assessed as required by law, and whether the values set forth correctly reflect the true [...] values [...] and in so doing the commissioner has the authority to increase or decrease the valuation.”

Ohio Revised Code Section 5715.01: “The tax commissioner shall direct and supervise the assessment for taxation of all real property. The commissioner shall, adopt, prescribe, and promulgate rules for the determination of true value and taxable value of real property by uniform rule.”

Ohio Revised Code Section 5713.31: “At any time after the first Monday in January and prior to the first Monday in March of any year, an owner of agricultural land may file an

application with the county auditor of the county in which such land is located requesting the auditor to value the land for real property tax purposes [...] in accordance with rules adopted by the commissioner.”

Ohio Revised Code Section 5715.19: This section authorizes an owner of agricultural land to file a complaint against the valuation of the property on or before the thirty-first day of March of the ensuing tax year or the date of closing of the collection for the first half of real and public utility property taxes for the current year, whichever is later. This section also requires the auditor to inform each board of education whose school district may be affected by the complaint if the alleged incorrect difference in value is at least \$17,500. The school district is provided thirty days to file a complaint objecting to allegation of overvaluation.

Montgomery County Tax Commissioner Prescribed Valuation Process

The county auditor is charged with the responsibility of determining the taxable value of each separate tract, lot or parcel of real property, building or structure. Every three years, each county in the State of Ohio goes through a valuation analysis of property located within the county. The valuations are characterized as either a reappraisal year or an update year. A reappraisal year requires a physical review of all properties within the county. Those physical reviews occur every six years and are often referred to as a “sexennial reappraisal.” In the interim period, between the six-year-reappraisal, the auditor will conduct an update, which is often referred to as a “triennial update”. The update is typically done by reviewing the overall percentage changes in certain areas of the county and making an overall percentage adjustment for such areas as opposed to an individual adjustment for each parcel.⁶⁷

The property tax valuation process has six major steps:⁶⁸

- 1) Collection: Over a two-year period, appraisers go to each building in the county to get current information about each property.
- 2) Analysis: The county auditor’s office reviews all the property information for correctness and fairness. The office also looks at historic trends and actual sales to determine the fair market value of each property.
- 3) Setting: The county auditor’s office sets the appraisal for each property, using estimated fair market value as a gauge.
- 4) Feedback: The county sends notices to all property owners of the new valuations and makes all the records available for public inspection. Owners may meet with

- county representatives to ask questions, raise concerns or request changes (with proper documentation).
- 5) Review: The state does a final review and validation of the valuations and may request the county to modify valuations.
 - 6) Finalization: The county auditor announces the completion of property valuations.

Contesting Property Tax Value

Between January 2nd and March 31st of every year, owners of property can contest the tax assessed value of their property by filing a complaint⁶⁹ with the Board of Revision (BOR), a three-person quasi-judicial board comprised of members from the offices of the County Auditor, the County Treasurer, and the County Commissioners.⁷⁰ On complaints claiming a difference in valuation of at least \$17,500, the school district in which the property is located is given 30 days to submit a counter-complaint. Complaints are heard before the BOR, which issues decisions within 90 days. Decisions may be appealed within 30 days to the Board of Tax Appeals or to the Montgomery County Common Pleas Court.

The Impact of Constitutional Failure on Fair Housing in Montgomery County

School funding in Ohio is a shared responsibility between the state and local school systems.⁷¹ Excluding federal dollars, slightly more than half of all funding statewide is locally generated, with virtually all of the local money coming from property taxes. In 1997 the Ohio Supreme Court ruled in *DeRolph v. Ohio* that funding schools predominantly from local property taxes violated the Ohio Constitution. The court found “that wide disparities are caused by the funding system’s overreliance on the tax base of individual school districts” and that “poor districts simply cannot raise as much money even with identical tax effort.”⁷² Legal challenges to enforce *DeRolph’s* holding have continued over the years, with the court each time directing Ohio to fulfill its obligation under the Ohio Constitution “to provide a thorough and efficient system of public schools.”⁷³ Students living in poor districts continue to be the casualties of Ohio’s failure to act.⁷⁴

Where students live determines the quality of education available to them. One of HUD’s goals in enforcing the Fair Housing Act is providing equal access to quality education, noting that Congress, in passing the Act, recognized that ‘where a family lives, where it is allowed to live, is inextricably bound up with better education, better jobs, economic motivation, and good living conditions.’⁷⁵

Of the major metropolitan cities in Ohio, the City of Dayton has the third highest poverty rate, a rate higher than that of Montgomery County as a whole.⁷⁶ A majority of African American and Hispanic students in Montgomery County live within the Dayton public school district^{77 78} and accordingly do not have access to consistent quality education. In its review of Dayton Public Schools (DPS) conducted in January 2015, the Ohio Department of Education found that the DPS was in “High Support Status” meaning that the district was performing in the lowest 5% in the state; as of fall of 2014.

Poor school districts in Montgomery County have fewer resources and fewer accessible buildings for disabled students than do wealthier school districts.⁷⁹ Ohio’s continued reliance upon an unconstitutional school funding scheme that is dependent upon local property taxes, while facially neutral, in practice has a detrimental disparate impact on the quality of education available to minority and disabled students in Montgomery County, in violation of fair housing laws as well as the United States and Ohio Constitutions.

F. Occupancy Standards for Residential Housing

Federal, State, and Local Fair Housing Acts and Occupancy Requirements

The federal Fair Housing Act as well as Ohio's and Dayton's fair housing laws specifically exempt "reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy" a dwelling.⁸⁰ Kettering's fair housing law does not contain this exemption.⁸¹ However, occupancy restrictions still may be found to violate fair housing laws if the restrictions are found to be unreasonable.

U.S. Department of Housing and Urban Development (HUD) and Occupancy Standards

On December 22, 1998, HUD adopted as its policy on occupancy standards for enforcement actions under the Fair Housing Act: 1) Section 589 of the Quality Housing and Work Responsibility Act of 1998 (QHWRA); and 2) the March 20, 1991 Memorandum of General Counsel Frank Keating (the Keating Memorandum).⁸²

Section 589 of QHWRA

QHWRA governs public housing and public agencies that administer Section 8 assistance programs. Section 589 of QHWRA provides:

HUD must publish a Federal Register notice[,]within 60 days of enactment, that specifies that the standards provided in a 3-20-91 HUD "Keating" memorandum must be the HUD policy with respect to familial status discrimination complaints which involve an occupancy standard established by a housing provider. HUD must not directly or indirectly establish a national occupancy standard.⁸³

Accordingly, HUD does not provide guidance on occupancy standards outside of the Keating Memorandum.

The Keating Memorandum

In the Keating Memorandum HUD explains that it does not have an occupancy policy that it would consider reasonable in any fair housing case; instead HUD provides guidance on the evaluation of evidence in familial status cases involving occupancy policies. HUD's guidance is that "an occupancy policy of two persons in a bedroom, as a general rule, is reasonable under the Fair Housing Act."⁸⁰ HUD clarifies that "the reasonableness of any occupancy policy is rebuttable" and that HUD will not "determine compliance with the Fair Housing Act based solely on the number of people permitted in each bedroom."⁸⁰ The

memo then sets out six considerations that HUD will consider, on a case-by-case basis when it investigates to make a determination as to whether a specific occupancy standard or policy effectively unreasonably limits or excludes families with children.

HUD's Affirmatively Furthering Fair Housing 2015 Rule on Promoting Housing Choice

On July 16, 2015, HUD issued an Affirmatively Furthering Fair Housing Rule to provide HUD program participants with an approach to more effectively and efficiently incorporate into their planning processes the duty to affirmatively further the purposes and policies of the Fair Housing Act. In doing so, this rule directs HUD's program participants "to take significant actions to [...] promote fair housing choice."⁷³ Therefore, in reviewing the reasonableness of occupancy standards, not only should HUD's guidance as shown through the Keating Memorandum be taken into consideration, the reasonableness review should be viewed through the lens of the duty to not discourage fair housing choice as well.

State and Local Laws

The State of Ohio and Montgomery County have not enacted occupancy standards for residential dwelling units. Ohio's residential code focuses on building structure and providing means of egress and does not dictate occupancy based on the number of bedrooms or floor space.⁸⁴ Dayton and Kettering, however, have enacted ordinances governing the occupancy of residential dwellings based on floor space.⁸⁵ Greater Dayton Premier Management (GDPM)—formerly known as Dayton Metropolitan Housing Authority—has also issued its own occupancy standards based purely on the number of bedrooms.⁸⁶

Dayton Occupancy Standards

Dayton's occupancy standards are found in Chapter 93 of its Housing code. This Chapter contains multiple regulations on habitability, but has two specific sections that dictate the number of people per floor space.⁸⁷

Kettering Occupancy Standards

Kettering's occupancy standards are found in Title V of the City's Building Code, Chapter 1324—Light, Ventilation and Occupancy Limitations. This Chapter has two specific sections that dictate the number of people per floor space.

GDPM Occupancy Standards

Greater Dayton Premier Management provides that its occupancy standards are designed to enable GDPM to ensure that all of its units are occupied by families of the appropriate size to maximize the unit's usefulness without subjecting them either to underutilization or excessive wear and tear. GDPM also provides that its occupancy standards are designed to comply with fair housing requirements. GDPM's occupancy standards are contain specific provisions on the process for; and circumstances under which exemptions to the standards may be granted.

Review of Standards for Reasonableness

Dayton and Kettering require a certain amount of square footage for one person, but then go on to allow less square footage per person if occupied by two or more people. Furthermore, Dayton requires 150 square living feet per person, while Kettering requires 110 square living feet per person. Kettering and Dayton's two-or-more-person bedroom square footage also is different. Kettering allows for 40 square feet per person, while Dayton requires 60 square feet per person. Dayton and Kettering's matter of fact reduction in required square footage based on more than one person and the fact that each provides different standards suggests that the standards are not based on a reasonable measure. Also, neither Dayton nor Kettering distinguish occupancy based on the age of the person. The requirements cover all age ranges, even infants and young children. The broad coverage again suggests that the standards have not been well thought out and do not take into consideration HUD's guidance through the Keating Memorandum and result in limiting fair housing choice.

GDPM's blanket occupancy rule purely based on the number of bedrooms does not take into consideration the Keating Memorandum and also results in limiting fair housing choice. GDPM does state that there can be exceptions, but the burden is placed on the potential occupant. Furthermore, the fact that there can be exceptions shows that the pure numbers game standard really is not imperative to GDPM's operation, but allows the opportunity for delay or denial of housing to families with children based on the family size and the lack of "large enough" units.

Rigid Occupancy Standards Unreasonably Impact Fair Housing Choice

The rigid occupancy standards pronounced by Dayton, Kettering, and GDPM unreasonably impact fair housing choice and fail to follow the Keating Memorandum's fact specific review. Ohio and Montgomery have chosen not to dictate occupancy, but instead

to focus on health and safety concerns through establishing egress and structural laws. Dayton and Kettering should follow suit. As a housing provider, GDPM's stated concern regarding wear and tear of units based on possible overcrowding is legitimate. But creating rigid occupancy rules solely based on the number of bedrooms and placing the burden on the potential occupant to prove that an exception is warranted is unreasonable. As HUD has stated through the Keating Memorandum, the number of occupants that would be reasonable for a particular residential dwelling is fact specific. Blanket occupancy standards allow housing providers to blind themselves to potential occupants' fact specific situations. Without this fact specific screening, housing choice is inevitably denied. Therefore, Dayton's, Kettering's, and GDPM's occupancy standards are an impediment to fair housing.

G. Code Enforcement Policies

Every municipality should consider code enforcement in its fair housing planning. Housing codes may not be enforced in such a way that would discriminate against any person or have a disparate impact on any group based on race, color, national origin, religion, gender, disability, familial status or any state or local protected class. While there have been no claims of FHA code enforcement violations in the three entitlement jurisdictions, they should be mindful of their statutory obligation to affirmatively further fair housing as they enforce their housing codes.

The Fair Housing Act has been used to allay fair housing violations in the area of code enforcement. In one seminal case, the city of Elgin, Illinois, had to pay \$500,000.00 to settle a complaint.⁸⁸ The complaint against Elgin accused city inspectors of entering the homes of Spanish speakers without interpreters, doing inspections without warrants, and applying occupancy rules differently to Hispanic residents. The city argued it was responding to housing code violations that endangered residents' health and safety. Although only eight percent of Elgin residents were Hispanic, 64 percent of all code enforcement citations from 1995 to 1998 were to Hispanic homeowners, and 80 percent of the citations were in predominantly Hispanic neighborhoods. To settle the case Elgin agreed to create a fund to compensate the victims, to change the way it enforced its housing code, to have city inspectors take lessons in Spanish, and to translate city documents into Spanish.

We reviewed each jurisdiction's web pages on housing inspection and code enforcement. All three jurisdictions do not mention on their websites any efforts to affirmatively further fair housing as they implement their housing inspection and code enforcement policies. Dayton, Kettering and Montgomery County should each undertake the work of examining their policies to ensure that they do not discriminate against people based on any of the classes protected under federal, state and local laws.

H. Permitting Processes

In 2010 MVFHC thoroughly researched how local jurisdictions' zoning codes affect people with disabilities (see the description of this report in Section 2 on page 61).

One issue MVFHC documented in the report was the obstacles faced by Miami Valley In-Ovations (MVIO) in setting up supported living homes because the homes were incorrectly categorized as group homes and because restrictive definitions of family applied to occupancy rules for the homes. MVIO proposed homes that would each house and provide support services for up to four people with disabilities, giving people with disabilities more housing choice. MVIO incurred additional costs because it was required to apply for conditional use permits and special licensing, none of which is required under Ohio law for the housing MVIO proposed.

After releasing its report, MVFHC has continued to contact local jurisdictions about amending their zoning regulations to clarify acceptance of supported living homes. Despite this, 13 jurisdictions have failed to take action. Permits and zoning remain obstacles to housing choice for people with disabilities.

¹ 42 U.S. Code § 5301 - Congressional Findings and Declaration of Purpose. Retrieved from <https://www.law.cornell.edu/uscode/text/42/5301>.

² CDBG Award by Jurisdiction (1974–2013). Montgomery County Community Development Office. Retrieved from http://www.mcohio.org/services/commdev/docs/CDBG_Award_By_Jurisdiction_74_13.pdf.

³ CDBG Awards by Activity Type (2003–2013). Montgomery County Community Development Office. Retrieved from http://www.mcohio.org/services/commdev/docs/CDBG_Award_by_Activity_Type_03_13.pdf.

⁴ Executive Summary, p. 1. *FY2014 Action Plan*. Montgomery County. Retrieved from http://www.mcohio.org/services/commdev/docs/FY14_Action_Plan.docx.

⁵ National Objectives, p. 3-1. *Basically CDBG for States*. (2012). U.S. Department of Housing and Urban Development, Office of Block Grant Assistance. Retrieved from https://portal.hud.gov/hudportal/documents/huddoc?id=cdbg_bas_03.pdf.

⁶ *Annual Action Plan 2014*, p. 10. City of Dayton, OH, and Dayton/Kettering HOME Consortium. Retrieved from <http://www.cityofdayton.org/departments/pcd/Documents/ActionPlans/2014ActionPlan.pdf>.

⁷ 2011–2015 Five-Year HUD Strategic Plan for Housing and Community Development: Cities of Dayton and Kettering, Ohio, pp. 1–3, 8. City of Dayton and City of Kettering. Retrieved from <http://www.cityofdayton.org/departments/pcd/Documents/ConPlanActionPlans/Consolidated%20Plan%202011-2015.pdf>.

⁸ 2015 Budget Document. (2014, December 16). City of Kettering. Retrieved from http://www.ketteringoh.org/wp-content/uploads/2013/03/2015-Budget-Book_web-copy.pdf.

⁹ About Us. Homeownership Center of Greater Dayton. Retrieved from http://www.homeownershipdayton.org/home/about_us.html.

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