



FREE MARKET FOUNDATION

Johannesburg

PO Box 4056 | Cramerview 2060

Tel 011 884 0270 | Fax 011 884 5672

Email fmf@mweb.co.za

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**SUBMISSION TO THE
CITY OF JOHANNESBURG
ON THE
INCLUSIONARY HOUSING POLICY, 2018**

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The following articles have been referenced as sources throughout the submission. We strongly urge you to consult them as key evidence part of the FMF’s submission:

<https://fee.org/articles/want-more-affordable-housing-build-more-housing-and-dont-impose-government-rent-controls/>

<https://www.creators.com/read/thomas-sowell/09/15/the-affordable-housing-fraud/>

<https://www.oregister.com/2007/08/08/thomas-sowell-the-real-foes-of-affordable-housing/>

<https://fee.org/articles/free-markets-accomplish-progressives-housing-ideals/>

1. Executive summary

Affordable housing is a pressing issue in South Africa in general and in its metropolitan areas – such as Johannesburg – in particular. The metro areas are seen as places of opportunity and of recreation; alternatives to the depopulating (in terms of people and opportunities) rural areas. Opportunity seekers are, however, greeted with very expensive private housing, and opt to move into informal settlements while patiently waiting on a list for public housing. This is the problem which the City of Johannesburg’s inclusionary housing policy seeks to solve.

The policy will make it mandatory for new developments with ten or more residential units to allocate 20% of the total number of units to function as “inclusionary units”. On paper, this requirement seems reasonable, however the consequences may be devastating if the additional rent controls and lacklustre ‘incentives’ the policy provides for are factored into account. Taken as a whole, the policy disincentivises high-density developments and may in many circumstances cause housing prices to rise rather than fall.

There are better ways to secure affordable housing for low-income households than forcing private developers, who have not infringed on anyone’s rights, into unprofitable and risky ventures. These alternatives include, for instance, incentivising (rather than forcing) developers to build affordable housing and relaxing or abolishing onerous town planning laws that make it difficult for developers to cater to low-income households.

The housing crises facing many of the United States’ cities today is largely the result of decades of inclusionary housing policies that had the opposite effect of what they intended. Those policies led to fewer housing schemes as developers opted instead to build office or commercial spaces, or low-density housing for wealthy households. South Africa will do well to avoid making the same mistakes.

Prepared by:

Martin van Staden
Legal Researcher
Free Market Foundation

2. Free Market Foundation

The Free Market Foundation (FMF)¹ is an independent public benefit organisation founded in 1975 to promote and foster an open society, the Rule of Law, personal liberty, and economic and press freedom as fundamental components of its advocacy of human rights and democracy based on classical liberal principles. It is financed by membership subscriptions, donations, and sponsorships.

Most of the work of the FMF is devoted to promoting economic freedom as the empirically proven best policy for bringing about economic growth, wealth creation, employment, poverty reduction, and greater human welfare for all, especially the poor.

3. Introduction

On 28 February 2018, the City of Johannesburg published its inclusionary housing policy.² The policy would force new housing developers creating more than ten housing units to include so-called “inclusionary housing” consisting of 20% of the total. The City’s conception of inclusionary housing is, however, flawed. The City’s proposed incentives policy is also self-defeating. The FMF recommends that inclusionary housing be introduced in a way that respects property rights and the that City use incentives – not force – to spur these developments.

4. The nature of property rights

4.1 *Elementary principles of property rights*

Much emphasis in constitutional discourse is placed on freedom of expression, so much so that it is often regarded as the *basic* right which makes all other rights possible. The property right, on the other hand, is oftentimes seen as clinical or merely ancillary. Indeed, while the property right of individuals is arguably the most disregarded right³ and the right treated with the most scorn,⁴ it is the most fundamental right of all, and is the right on which all other rights depend.

Property rights are often misconstrued as the protection of ‘white privilege’. They should rather be appreciated as one of the rights for which the struggle was fought, as something black people lived and died for, as a fundamental right *for black South Africans* that should never again be compromised. The FMF is proud that this has been our position for 45 years. We are surprised how the legal means by which black land rights were violated can be so easily forgotten and Apartheid-style legislation be reconsidered.

¹ www.freemarketfoundation.com

² “City of Johannesburg Inclusionary Housing: Incentives, Regulations and Mechanisms”. (2018).

³ For instance, when new taxes are levied in order to fulfil certain welfare obligations, ministers of finance make scant reference to the fact that increasing taxes takes more property away from ordinary citizens. Similarly, when civil society organisations campaign for government programmes, they often omit to acknowledge that such programmes inevitably involve limiting the property rights of citizens. On the other hand, the same is not true for measures that violate, for example, the right to dignity or freedom of expression.

⁴ See variously: <http://www.sabc.co.za/news/a/ca61e500402f4d068001ebf8e0b8bbd7/EFF-calls-for-amendment-to-Property-Clause-20172402>; <https://www.pressreader.com/south-africa/business-day/20170306/281788513850731>.

The property right of the individual is not merely a superficial medium by which an individual is able to exercise control over objects. Instead, the property right is a right foundational to various other rights, such as human dignity,⁵ life,⁶ trade,⁷ and housing.⁸

The essence of 'property' lies in *ownership*. Ownership is what makes an 'object' or a 'thing' into property. When something is unowned or cannot be owned – like the Sun and Moon – we would have no reason to conceive of it as anything other than a thing or object. Therefore, in a world where only one person lives, without the possibility of there being others, the concept of 'property' will not exist, because there is nobody to challenge this person's exercising of the entitlements of ownership.

Various entitlements flow from ownership, some of which will be listed below. However, the essence of all of them is that the owner has the right to decide what to do or not to do with their property. This is why deprivation of ownership is treated as a serious matter; indeed, the deprivation of black South Africans of their property by the Apartheid government was widely condemned, and, to this day, is a painful reminder of an oppressive past. Some entitlements of ownership are:⁹

- The entitlement of control
- The entitlement of use
- The entitlement of enjoyment of the fruits of the property
- The entitlement of encumbrance¹⁰
- The entitlement of alienation¹¹
- The entitlement of vindication¹²
- The entitlement of defence¹³

These entitlements are the vehicles by which property rights can emancipate the poor and give them dignity in their ownership.

⁵ Section 10 of the Constitution. A dignified existence implies enjoying the fruits of one's labour and being able to leave a proprietary legacy for one's descendants, without the state micromanaging one's affairs as if one were a perpetual child.

⁶ Section 11 of the Constitution. Life is a logical impossibility without accepting the premise of private property. See Hoppe H-H. *The Economics and Ethics of Private Property*. (2006, 2nd edition). Auburn: Ludwig von Mises Institute. 339-346. Available online: https://mises.org/system/tdf/Economics%20and%20Ethics%20of%20Private%20Property%20Studies%20in%20Political%20Economy%20and%20Philosophy_3.pdf?file=1&type=document/.

⁷ Section 22 of the Constitution. Freedom of trade necessitates the ability to trade in one's own property.

⁸ Section 26 of the Constitution. Section 26(3) mentions South Africa's "homes". Ownership of the property of the home establishes a connection necessary for dignified living between the resident and the physical home. Being 'housed' on public property cannot create the 'homey' condition, and places the resident's security of tenure in permanent question.

⁹ Van Schalkwyk LN and Van der Spuy P. *General Principles of the Law of Things*. (2012, 8th edition). 96.

¹⁰ I.e. to encumber the property with limited real or personality rights, such as a bond.

¹¹ I.e. to sell, destroy, donate, or otherwise dispose of the property.

¹² I.e. to have the property returned to the true owner if someone else unlawfully controls it.

¹³ I.e. to defend the property against unlawful infringement.

4.2 Conflict avoidance

The most crucial function of the property right is to avoid conflict. Once a property right over a thing is established, there can be no question about that individual or community's rightful use, enjoyment, and alienation of the thing. In times past, this guarded against self-help whereby individuals would simply take what they wanted from each other, even if hurting one another was necessary. The property right was an inevitable consequence of human nature.

The French assemblyman and political and economic philosopher, Frederic Bastiat, considered the nature of law and property in his 1850 text, *The Law*.¹⁴ According to Bastiat, the law came about as a consequence of human nature. Writes Bastiat:¹⁵

“Existence, faculties, assimilation — in other words, personality, liberty, property — this is man.

It is of these three things that it may be said, apart from all demagogic subtlety, that they are anterior and superior to all human legislation.

It is not because men have made laws, that personality, liberty, and property exist. On the contrary, it is because personality, liberty, and property exist beforehand, that men make laws. What, then, is law? As I have said elsewhere, it is the collective organization of the individual right to lawful defense.”

In other words, positive law – what Bastiat calls “human legislation” – is a result of the pre-existing attributes of humanity, as a mechanism to protect those attributes and their exercise. Bastiat further discusses the origin of the property right:¹⁶

“Man can only derive life and enjoyment from a perpetual search and appropriation; that is, from a perpetual application of his faculties to objects, or from labor. This is the origin of property.

But also he may live and enjoy, by seizing and appropriating the productions of the faculties of his fellow men. This is the origin of plunder.”

The people enter into an ‘agreement’ with the state to avoid this ‘plunder’. In exchange for protection of their persons and property, the people agree to adhere to the law which does the protecting, and, therefore, not resort to self-help. This agreement is known as the ‘social contract’, and the social contract is the framework within which governance must take place. Bastiat sets out this framework thus:¹⁷

“When law and force keep a man within the bounds of justice, they impose nothing upon him but a mere negation. They only oblige him to abstain from doing harm. They violate neither his personality, his liberty, nor his property. They only guard the personality, the liberty, the property of others. They hold themselves on the defensive; they defend the equal right of all.”

¹⁴ Frederic Bastiat. *The Law*. (2007 edition). Auburn: Ludwig von Mises Institute. Available online: <https://mises.org/system/tdf/thelaw.pdf?file=1&type=document/>.

¹⁵ Bastiat (footnote 14 above) 2.

¹⁶ Bastiat (footnote 14 above) 5.

¹⁷ Bastiat (footnote 14 above) 19.

This social contract, however, has not been adhered to, according to Bastiat. He writes:¹⁸

“[The law] has acted in direct opposition to its proper end; it has destroyed its own object; it has been employed in annihilating that justice which it ought to have established, in effacing amongst Rights, that limit which it was its true mission to respect; it has placed the collective force in the service of those who wish to traffic, without risk and without scruple, in the persons, the liberty, and the property of others; it has converted plunder into a right, that it may protect it, and lawful defense into a crime, that it may punish it.”

What Bastiat is referring to here is the law being used as a tool for ‘redistribution’ of property, which evidently violates private property.

‘Redistribution’, in this context, is a rejection of the social contract. ‘Restitution’, however, is not. This submission should therefore not be construed as an argument against restitution. Where a true owner has had his property deprived from him by someone else, be it a criminal or government, he does not lose ownership.¹⁹ Government must restore the property to its rightful owner. This principle applies to the descendants of true owners as well, which is a relevant consideration in post-colonial and post-Apartheid South Africa.

5. The constitutional right to property

In the case of *S v Makwanyane*, Chaskalson J held for a majority of the Constitutional Court, that a provision of the Constitution “must not be construed in isolation, but in its context, which includes the history and background to the adoption of the Constitution, other provisions of the Constitution itself and, in particular” other provisions in the chapter of which it is a part.²⁰ This supports the construction that the Constitution must be read holistically, bearing in mind the values and purpose of the entire text as well as the particular provisions.

Section 25 – the property rights provision – must therefore be construed holistically. Section 25(1), which provides that no person’s property will be unreasonably deprived without compensation, cannot therefore be disregarded or treated as an afterthought.

Section 25(1) provides:

“No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.”

This is a ‘negative’ right in that it protects the people from government interference in their proprietary affairs. Sections 25(2) to 25(9) are mostly ‘positive’ in nature, meaning that they oblige the government to do something, rather than refrain from doing something. By these latter sections’ nature, however, they depend upon section 25(1). Without the first subsection, none of the others would make sense or be enforceable. Thus, 25(1) cannot be extinguished by the application of 25(2) to 25(9).

¹⁸ Bastiat (footnote 14 above) 4.

¹⁹ This is true even for expropriation. The Apartheid government used its lawful expropriation powers liberally during the previous era, and this is considered illegitimate, rightly, under our current constitutional dispensation. Expropriation must be just – not merely legal – to qualify as a valid transfer of property.

²⁰ *S v Makwanyane* 1995 (3) SA 391 (CC) at par 10.

The 'general limitations' provision found in section 36 empowers the state to limit any right in the Bill of Rights if the limitation adheres to the criteria set out in that section. Section 36 provides as follows:

“36. (1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including —

- (a) the nature of the right;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the relation between the limitation and its purpose; and
- (e) less restrictive means to achieve the purpose.

(2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.”

While the courts may take into account factors other than those listed in section 36(1)(a) to 36(1)(e), it has been customary for the courts to limit themselves to these five factors which appear in the text.

Laws which limit rights must be “reasonable and justifiable in an open and democratic society”.

The FMF was instrumental in having this portion of section 36 added to the Constitution, and thus we write with confidence when we say that the ‘open society’ is a concept developed by Karl Popper in his work *The Open Society and Its Enemies*.²¹ The ‘open society’, according to Dr Alan Haworth, “is a society characterised by institutions which make it possible to exercise the same virtues in the pragmatic pursuit of solutions to social and political problems”. These ‘virtues’ which must be possible to exercise are “creativity and imagination in the formulation of theories and hypotheses, as well as in devising experiments with which to test them; critical rationality in the assessment of theories and other claims; the toleration required to recognise that other peoples’ theories could be rivals to your own”.²² The FMF’s Michael O’Dowd wrote that the essence of the open society concept “is that each individual should to the greatest extent possible be free to make his or her own decision on the basis of his or her own judgement”.²³

Therefore, for a limitation to be justifiable in an open society, the limitation must *still* allow individuals to exercise these aforementioned virtues in their daily lives. In other words, they must have the freedom to express themselves and manifest their own ‘experiments’ to arrive at certain conclusions.

The Constitution’s provision could have stopped at “open and democratic society”, but it goes further, and says “an open and democratic society based on human dignity, equality and freedom”. These values of dignity, equality, and freedom also appear in section 1 of the Constitution, meaning these are founding values for South Africa, and not simply filler text. These values also complement one another, in that no individual’s dignity is truly being respected if he has no substantive freedom. A dignified existence implies enjoying the fruits of one’s labour and being able to leave a proprietary

²¹ Popper K. *The Open Society and Its Enemies*. (1945). Oxfordshire: Routledge.

²² Haworth A. “The Open Society Revisited”. (2002). Available online: https://philosophynow.org/issues/38/The_Open_Society_Revisited/.

²³ O’Dowd MC. *South Africa as an “Open Society”?* (1998). Available online: <https://www.freemarketfoundation.com/publications-view/south-africa-as-an-open-society/>.

legacy for one's descendants, without the state micromanaging one's affairs as if one were a perpetual child.

Furthermore, the factors listed in section 36(1)(a) to 36(1)(e) further narrow the scope of the limitation of rights and allow the courts to take other, unlisted factors into account, to decide whether or not the limitation is justifiable in an open and democratic society which is committed to the values of human dignity, equality, and freedom.

We will briefly discuss this right in relation to each of the factors listed in section 36(1)(a) to 36(1)(e):

(a) The nature of right.

The various elements of property rights constitute its nature. These elements were briefly considered above. Ownership and conflict avoidance form the basis of property rights, but these have various implications. One of these implications is that property rights are *exclusionary*, i.e. in its effort to avoid conflict between individuals and groups, it must, of necessity, exclude non-owners from the use, enjoyment, and alienation of the property without the wilful consent of the owner.

(b) The importance of the purpose of the limitation.

This question relates directly to the notion of a *legitimate government purpose*. This means "that there must be a rational relationship between the scheme [government] adopts and the achievement of a legitimate governmental purpose" and that schemes cannot be "capriciously or arbitrarily".²⁴ Legitimate government purposes are determined by the mandate of government as specified within the various provisions of the Constitution, especially those of the Bill of Rights.

The limitation of a right in the Bill of Rights must thus be justified by some other thing that government is obliged to do in the Constitution. And courts will then consider the *importance* of that particular government purpose as compared to the importance of the right to be limited. Where there is no discernible constitutional basis for the government purpose being exercised, or that the government conduct in question is too far removed from the legitimate government purpose found in the Constitution, this leg of the test would be failed, and the limitation of the right would not be justified.

(c) The nature and extent of the limitation.

The extent of the limitation has an undeniable effect on its justifiability. Limitations that, in reality, extinguish, rather than limit, the right, are never justified. The more severe the nature and extent of the limitation, the greater the chances of it being unjustifiable.

(d) The relation between the limitation and its purpose.²⁵

This is simply the requirement of rationality restated in constitutional terms.

Rationality is one of the two legs of reasonableness. Reasonableness, in this context, means that a reasonable person will come to the conclusion that the limitation will achieve its purpose. As we already know, a limitation must be "reasonable and justifiable" to persist, in terms of the Constitution.

For the limitation to be justifiable, thus, it must be rational, meaning the limitation must be objectively capable of achieving the purpose. In other words, evidence must support the notion that the limitation

²⁴ *New National Party v Government of the Republic of South Africa and Others* 1999 (3) SA 191 (CC) at par 19.

²⁵ We rely in large part on the following book for the following two sections:
Hoexter C. *Administrative Law in South Africa*. (2012, 2nd edition). Cape Town: Juta. 340.

will effectively combat the problem identified. The limitation cannot be a ‘shot in the dark’ or capricious.

(e) Less restrictive means to achieve the purpose.

This is the second leg of reasonableness and is a constitutional restatement of the requirement of proportionality. In *S v Manamela*²⁶ the Constitutional Court described proportionality as the notion that one ought not to use a sledgehammer to crack a nut.

If less restrictive means are available to the government to achieve the purpose, then it must exhaust those means before resorting to harsh action. In other words, the government intervention (i.e. the limitation of the right) must only solve the problem government has identified – it must do no more. For the purposes of the Johannesburg inclusionary housing policy, less restrictive means to achieve the purpose of inclusionary housing are certainly available.

6. Johannesburg inclusionary housing policy

6.1 Definition of “inclusionary housing”

The policy defines “inclusionary housing” as:

“A housing programme that requires private developers to dedicate a certain percentage of new housing developments to low income and low middle income households at affordable housing cost. This document includes only rental housing as inclusionary housing.”

This definition of inclusionary housing is inherently flawed. It assumes that government, law, and State force are synonymous with the concept of inclusion. This is evident from use of the word “requires”. The policy further assumes that the provision of affordable housing can only come about at the hands of government, and not as a result of private initiative by firms or communities. This would be a factual error, given that much of the low-income housing in South Africa today has been provided by private developers without government forcing them to do so.

A far more appropriate definition of the concept would be along the lines of “housing developments that cater for low- and low middle-income consumers”.

6.2 Disincentives masquerading as incentives

The policy provides that:

“Inclusionary housing will be mandatory for any development in the city that includes 10 dwelling units or more. A minimum of 20% inclusionary housing units is required (as a percentage of all dwelling units across the development).”

And:

“The City may take action against developers/owners who do not comply with the conditions for inclusionary housing outlined in land use/development approvals.”

This is a disincentive for property development, and amounts to an arbitrary deprivation of property rights.

²⁶ *S v Manamela* 2000 (3) SA 1 (CC).

Developers should rather be incentivised to provide affordable dwellings, rather than forced to follow some ideological line unrelated to their businesses. Thus, it should not be mandatory to include “inclusionary housing units”, but should rather be incentivised.

The policy further provides that:

“The incentives below will apply to a maximum of 50% of total dwelling units in a development, township establishment or on a property. Thus, even if the building may be defined as 100% inclusionary units, the incentives will only apply to 50% of those units.”

This portion of the policy also limits the incentive to half of the units – even if all are inclusionary – in a development. This arbitrary limitation of the advantageousness of including inclusionary housing units in a development does not serve any reasonable purpose. It follows that if the incentive covers all inclusionary units, the chances of developers constructing more inclusionary units increases.

6.3 Rent control

The policy provides:

“Rentals, including lev[i]es but excluding utility bills, may not exceed R2100 a month (for 2018).”

However, as Mark J Perry of the American Enterprise Institute writes, artificially restricting the amount of rent a landlord can charge for a unit creates another problem in the form of developers refusing to supply more rental housing in the future. “... the supply of rental housing in markets with rent control is guaranteed to decline”, writes Perry.²⁷

Writing a review of Dr Thomas Sowell’s book, *Basic Economics*, Walter Williams wrote that “Rent control laws are enacted to provide ‘affordable housing.’ They provide incentives for landlords to convert apartments to condominiums, create black markets and reduce housing construction in rent-controlled areas”.²⁸

Perverse cross-subsidisation will also result from the rent control provision of this policy, and will lead to less affordable housing. Developers who are already in the process of providing affordable housing, or intend to provide affordable housing in the future, will now be forced to raise the rent of the 80% non-inclusionary housing units in order to subsidise the 20% inclusionary units. For instance, if a developer sought to build ten units that would have been rented out at an affordable R3,500 per month, but now two of those units must be rented out at R2,100 per month, the other eight units’ rent will have to increase to R3,850 to cover the shortfall. This will make the majority of the units in a development unaffordable to those who could only afford the initial R3,500.

In order to ensure more affordable housing, more housing *per se* must be built. This cannot happen while a disincentive such as rent control is in operation. Instead, as suggested below, incentives for the provision of affordable rental units must be pursued as an alternative.

²⁷ Perry MJ. “Want More Affordable Housing? Build More Housing, and Don’t Impose Government Rent Controls”. (2018). *Foundation for Economic Education*. Available online: <https://fee.org/articles/want-more-affordable-housing-build-more-housing-and-dont-impose-government-rent-controls/>.

²⁸ Williams WE. “Basic Economics”. (2015). *Creators Syndicate*. Available online: <https://www.creators.com/read/walter-williams/01/15/basic-economics/>.

6.4 *No new developments*

Sowell has written on the problems surrounding the notion of affordable housing in the United States. His key insight – which is a basic principle of economics – is that when “a growing population creates a growing demand for housing, and the government blocks housing from being built, the price of existing housing goes up”. This happened in San Francisco, because local government ordinances restricted the building of new developments because the local government sought to preserve so-called “open spaces”.²⁹

The equivalent of this problem in South Africa are town planning laws and zoning regulations. Johannesburg’s Municipal Planning By-Law, 2016, provides extensively for open spaces and other planning regulations, which make the provision of affordable housing by the private sector more onerous than it needs to be.

Elsewhere, Sowell writes, “Attractive and heady phrases like ‘open space,’ ‘smart growth’ and the like have accompanied land-use restrictions that made the cost of land rise in many places to the point where it greatly exceeded the cost of the homes built on the land”.³⁰ With this policy, smaller developers will be the ones hit hardest. This will drive the price of existing housing up. The vacuum left in the industry will put more pressure on government housing (because there will be less private housing), in the form of informal settlements or RDP houses. It may, conceivably, also lead to a greater propensity to illegally occupy inner city buildings as affordable housing becomes more unobtainable.

It is conceivable that low-density housing will become more popular in the wake of this policy, with small developers building nine expensive free-standing houses rather than ten or more dense units. This will increase urban sprawl and thus create new infrastructure obligations for government, not to mention the fact that it goes against Johannesburg’s policy of favouring high-density developments.

7. Alternatives to State-centric “inclusionary housing”

7.1 Sell hijacked buildings with an affordable housing condition

The City of Johannesburg is in the process of acquiring abandoned and hijacked buildings in the inner city as part of its laudable rejuvenation project. Already the City intends to use many of these buildings for affordable housing. When abandoned and hijacked buildings are sold on the open market, the City could also make it a condition of purchase that a significant percentage (potentially all) of the floor space be used for affordable housing.

This is a far better method than what is proposed in the inclusionary housing policy, as it does not infringe property rights or negatively affect the free enterprise of Johannesburg’s residential developers’ industry.

7.2 Provide attractive incentives to build affordable housing

As alluded to above, the policy’s incentives are inadequate and, indeed, intellectually dishonest. The City should rework the policy away from mandatory inclusionary housing toward offering attractive incentives for developers to build affordable housing. Significant tax relief, negotiated with the

²⁹ Sowell T. “The ‘Affordable Housing’ Fraud”. (2015). *Creators Syndicate*. Available online: <https://www.creators.com/read/thomas-sowell/09/15/the-affordable-housing-fraud/>.

³⁰ Sowell T. “The real foes of affordable housing”. (2007). *The Orange County Register*. Available online: <https://www.ocregister.com/2007/08/08/thomas-sowell-the-real-foes-of-affordable-housing/>.

provincial and national governments, and significant local rate relief for developers' entire businesses would be a good place to start.

As a last resort, the City can also offer subsidies for private developers to provide affordable housing.

7.3 *Reduce red tape and unnecessary obligations on developers*

The town planning laws should be changed to make it easier for developers to provide affordable housing. The Johannesburg government should make it easier for developers to rezone plots for high-density developments, or at least facilitate this process and take the burden off the developers.

Furthermore, at the moment a private developer may not provide houses at the same substandard quality of public housing. Government does not impose its own laws on itself; it can build cheap substandard buildings but private developers cannot.

8. Conclusion

There can be no doubt that inclusionary housing – understood not as a political programme, but as affordable housing for low-income households – is crucial in South Africa. This policy, however, will result in developers being discouraged from providing residential units and instead focusing on other developments, like offices or commercial units, meaning Johannesburg will end up with less housing and an increase in the cost of existing housing.

History has shown that a free market with voluntarily-interacting people is the best way to produce affordable housing, and government interference in this process simply distorts market signals and leads to easily-avoidable problems.³¹

³¹ Phillips S. "Free Markets Accomplish Progressives' Housing Ideals". (2017). *Foundation for Economic Education*. Available online: <https://fee.org/articles/free-markets-accomplish-progressives-housing-ideals/>.