

MEMORANDUM
LLC TRANSPARENCY ORDINANCE JUSTIFICATION

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Question Presented: How can the City of Newark, New Jersey, better regulate or discourage corporate, institutional investors from buying up small residential properties in Newark neighborhoods?

Proposed Solution: The Newark City Council can pass an ordinance mandating every Limited Liability Company selling and/or purchasing one- to four-unit residential properties in Newark to record a new LLC Disclosure Form with the Essex County Register of Deeds and Mortgages, disclosing limited information on all members, managers, shareholders, and beneficial owners of the LLC. Not only will this provide further public transparency and insight into the powers and people directly and indirectly reshaping Newark neighborhoods, but it may also discourage potential investors who do not want to be publicly associated with the predatory nature of such investment schemes.

Introduction & Roadmap

The Rutgers Law School Center for Law, Inequality, and Metropolitan Equity (“CLiME”) published a report in May 2022, *Who Owns Newark? Transferring Wealth from Newark Homeowners to Corporate Buyers* (the “Report” or “CLiME Report”). The Report details the predatory nature of large-scale investor buying—a national trend¹ of corporations and other legal entities² buying one- to four-unit homes in low income, predominantly Black and increasingly Latinx neighborhoods.³ The Report found that “roughly 47 percent of arms-length residential sales (44 percent of all residential sales) of 1-4 unit properties in the City were to institutional investor buyers between 2017 and

¹ See, e.g., Lambie-Hanson, Li and Slonkosky, Federal Reserve Bank of Philadelphia, *Leaving Households Behind: Institutional Investors and the U.S. Housing Recovery*; (2019).

Fields, et al., Federal Reserve Bank of San Francisco, ; (January 2016).

Sophie Kasakove, New York Times, *Why the Road Is Getting Even Rockier for First-Time Home Buyers*;

<https://www.nytimes.com/2022/04/23/us/corporate-real-estate-investors-housing-market.html> (Updated April 25, 2022).

² For the purposes of this memorandum and as defined in the proposed Ordinance, “Legal Entity” shall mean a corporation, limited liability company, partnership, or other similar business entity, whether formed under the laws of the State of New Jersey, or of the United States, or a foreign jurisdiction.

³ David Troutt, Katherine Nelson, Rutgers Center for Law, Inequality, and Metropolitan Equity, *Who Owns Newark?*

Transferring Wealth from Newark Homeowners to Corporate Buyers; p. 4;

<https://static1.squarespace.com/static/5b996f553917ee5e584ba742/t/626fd98bb8357d201cb8dcb5/1651497359130/Who+Owns+Newark+Final+1.pdf> (May 2022).



2020Q1.”⁴ This new industry of corporate entities⁵ converting single family (one to four unit) homes⁶ into multi-unit rental properties accelerated after the 2007-2009 Great Recession and the succeeding foreclosure crisis.⁷ Institutional investors, seeking passive returns from rental income, most heavily target Newark, New Jersey (“Newark” or “the City”) neighborhoods where significant middle-class wealth was wiped out during the foreclosure crisis.⁸ These new landlords, largely anonymous outside companies, duty-bound to their investors, now set neighborhood housing markets on terms that benefit their investors and prioritize profit.⁹

While CLiME detected no illegal activity, the threats to Newarkers and government policy goals are significant. They include rapidly rising rents, decreased homeownership, higher barriers to affordable housing production goals, renter displacement and less stable communities.¹⁰

This memorandum will proceed in five parts, outlining the provisions of the proposed LLC Transparency Ordinance (“Ordinance”) and providing context and justification for each. Section I lays out the background, intent, and rationale of the Ordinance as well as the policies that informed its writing. Section II enumerates the parties subject to this Ordinance, explains how the language of the Ordinance coopts the beneficial ownership terminology, and addresses potential criticisms. Section III discusses the required disclosure information, outlines the mechanism to acquire such information and make it publicly accessible, and explains why this information is not too much to ask. Section IV explains how this Ordinance will be actively and retroactively enforced by Newark without burdening City officials or budgets. Finally, Section V briefly explores two alternatives to the Ordinance should it face insurmountable resistance. In the Appendix is a copy of the model Ordinance.

⁴ *Id.* at 16-19.

⁵ Used interchangeably with “institutional investors,” this group is predominantly Limited Liability Companies (“LLCs”).

⁶ Homes that were traditionally owner-occupied or rented by local homeowners.

⁷ Katherine Nelson, Rutgers Center on Law, Inequality, and Metropolitan Equity, *Investor Buyers, A Brief Primer*; <https://static1.squarespace.com/static/5b996f553917ee5e584ba742/t/6202d435ddf7cd506ababf92/1644352565467/Primer+on+Investor+Buyers.pdf> (February 8, 2022). This phenomenon took off in Newark in around 2013.

⁸ CLiME, *Who Owns Newark?* at 11.

⁹ *Id.* at 4.

¹⁰ *Ibid.*

I. The “WHEREAS” clauses of the proposed Ordinance establish the background, intent, and rationale of its provisions.

The introductory “Whereas” clauses of this Ordinance originate from other Newark City ordinances, the CLiME Report, and federal and legislation concerning beneficial ownership and LLC disclosure in the real estate market.¹¹ These clauses illustrate the concerning growth of institutional investor buying and how these buyers have monopolized local Newark real estate markets, as well as how their rental practices are problematic, predatory, and sometimes illegal. The information contained in this section must convincingly demonstrate why such real estate practices are so harmful to Newark citizens, that government intervention is necessary.

Background – Why LLC Transparency?

In order for Newark to achieve its affordable housing goals, protect homeownership rates, and support community welfare in Newark neighborhoods, the Report identifies four objectives to mitigate the harm caused by institutional investor buying: To maintain affordability of rents and homeownership, to discourage speculation, to promote a balance of community stability factors, and to demand transparency of ownership.¹²

Since the Report’s publication, Newark has already take multiple steps to actualize its objectives and recommendations. In June 2023, Newark passed an ordinance that will fine landlords who unconscionably increase rent over five percent year over year (for properties not already subject to rent control).¹³ The City also increased the fees associated with vacant property registration as a means of discouraging speculation.¹⁴ Seeing as community stability measures may better be addressed through existing programs or through administrative means, it was most appropriate for this project to address the lack of transparency in ownership of the entities buying up Newark real estate.

¹¹ See, e.g., Newark Ord. No. 6PSF-A; <https://docs.google.com/document/d/1bOIUZ3HSKuDkYOcwhuIP4xISOb5p7M9mqdNZTGIXCoE/edit> (October 19, 2022).

¹² CLiME, *Who Owns Newark?* at 6.

¹³ Newark Municipal Ord. No. 6PSF-C, 06-07-2023

¹⁴ Newark Municipal Ord. No. 6PSF-A, 10-19-2022



The Report highlights that Limited Liability Companies (“LLCs”) are a particularly popular vehicle for these real estate transactions because LLC ownership and incorporation structure allows individuals to fund and profit from the LLC’s activities while their identities remain hidden.¹⁵ These LLC landlords statistically are less likely to attend to habitability issues on their properties,¹⁶ more likely to charge higher rents, and more likely to evict tenants.¹⁷

Because such investments are both passively and actively damaging Newark communities, it is a municipal public policy priority to discourage and regulate, where possible, corporate monopolization of one- to four-unit residential properties. One way to achieve this goal is by requiring the disclosure of all beneficial owners and individuals with financial interest in the LLCs that purchase, flip, and rent small residential properties that have historically been owner-occupied homes.

Such investor disclosure is already a priority at the federal level as a means of tracking and identifying financial crimes. Thus, a local ordinance seeking similar information can repurpose existing federal processes to serve an additional public welfare need that may not be achievable on a state level. The proposed Newark LLC Disclosure Ordinance (“Ordinance”) synthesizes the findings of the CLiME Report and existing beneficial ownership disclosure bills and regulations, detailed below, to demonstrate that public access to LLC ownership information in small residential property transactions is a measure to protect public welfare in Newark. Transparency creates accountability for private and individual investors otherwise unburdened by the realities of how their investments negatively impact marginalized communities in Newark. This Ordinance also seeks better balance the unequal legal power dynamic between corporate landlords and Newark tenants.

¹⁵ CLiME, *Who Owns Newark?* at 31-32.

¹⁶ And often use habitability issues to force lower-rent paying tenants to vacate the property, which then allows the landlord to renovate the home and charge new tenants much higher rents. CLiME, *Who Owns Newark?* at 26-27.

¹⁷ CLiME, *Investor Buyers, A Brief Primer* at 1.

See also, Adam Travis, *American Sociological Review, The Organization of Neglect: Limited Liability Companies and Housing Disinvestment*; 84:1, 2019.

Elora L Raymond, Richard Duckworth, Benjamin Miller, Michael Lucas, and Shiraj Pokharel, *Corporate Landlords, Institutional Investors, and Displacement: Eviction Rates in Singlefamily Rentals* (December 1, 2016). Available at SSRN: <https://ssrn.com/abstract=2893552>. See also: <https://www.businessinsider.com/how-corporate-landlords-helped-drive-the-covid-evictions-crisis-2021-3>

Newark Municipal Authority & Intent

The context underpinning this Ordinance must be so compelling that Newark's passage of the Ordinance would reasonably fall within its municipal authority. In N.J., such authority derives from the State's delegation of police powers to local governing bodies.¹⁸ There is no statute in N.J. delegating specific authority to municipalities to enact corporate transparency measure in private, residential property transactions.¹⁹

The last "Whereas" closely models the intent expressed by the California legislature in its 2021 State Assembly Bill AB-1199, "Homes for Families and Corporate Monopoly Transparency Excise Tax." Explicitly stating the intent to discourage institutional investors from buying homes in Newark is again meant to emphasize the public welfare necessity of such regulation. It must be clear before reading the requirements of the Ordinance that the information collected and made publicly available is meant to protect Newark inhabitants' property and welfare.

This Ordinance must differentiate its intent to provide public access, transparency and accountability through LLC ownership disclosures—not to aid in law enforcement activities, but to make sure that Newark neighborhoods and cities are not being dominated by anonymous legal entities interested in profit more than community welfare. As stated in the CLiME Report, "ordinary investors are profiting from business activity in areas in which most American neighborhoods promote homeownership, a sense of community cohesion and household wealth."²⁰ It is not unreasonable to say that discouraging this practice is a measure concerning public health and welfare. While perhaps lengthy, the "Whereas" clauses are meant to provide plenty of legal justification

¹⁸ New Jersey is a "Home Rule" state. State law grants municipal governments broad authorities to enact ordinances and regulations providing for public welfare and order, and stands as one of the major sources of authorization for local autonomy in the State.

N.J. Stat. Ann. 40:42-4 (2017): Municipalities given fullest powers. ["Home Rule Act"]: In construing the provisions of this subtitle, all courts shall construe the same most favorably to municipalities, it being the intention to give all municipalities to which this subtitle applies the fullest and most complete powers possible over the internal affairs of such municipalities for local self-government.

¹⁹ There is also no law prohibiting such disclosure.

²⁰ CLiME, *Who Owns Newark?* at 63.



for the Ordinance mandates, which differ from FinCEN and other beneficial ownership disclosure policies and practices.

Varying Policies & Rationales

Law Enforcement: The federal government is also working to address these information gaps in corporate entity ownership through the Corporate Transparency Act²¹ and Geographic Targeting Orders.²² These federal regulations, however, serve primarily as a law enforcement tool to uncover money laundering practices. While such financial misdeeds are often carried out through real estate transactions, current federal measures do not address the concurrent problem of how market corruption by a particular class of investor can use the same shadow system to avoid public accountability for their unsavory, predatory, and disparate practices in historically disenfranchised Newark neighborhoods.²³

The United States Fiscal Year 2021 National Defense Authorization Act²⁴ includes the Anti-Money Laundering Act of 2020, within which the Corporate Transparency Act (“CTA”) established new beneficial ownership reporting requirements.²⁵ In September 2022, FinCEN published in its Rules and Regulations, “Beneficial Ownership Information Reporting Requirements,”²⁶ which outlines how FinCEN may only disclose the

²¹ Financial Crimes Enforcement Network; *Rules and Regulations: Beneficial Ownership Information Reporting Requirements*; 31 CFR Part 1010, RIN 1506–AB49; Federal Register Vol. 87, No. 189; <https://www.govinfo.gov/content/pkg/FR-2022-09-30/pdf/2022-21020.pdf> (September 30, 2022).

²² Geographic Targeting Order Covering TITLE INSURANCE COMPANY, https://www.fincen.gov/sites/default/files/shared/Real%20Estate%20GTO_Order_4.29.22_for%20Press%20Release.pdf (April 29, 2022).

²³ See, e.g., Alex Jonlin, NYU Journal of Legislation and Public Policy, *LLCs, Luxury Real Estate and Secrecy: A Survey of Efforts to Increase Shell Company Transparency*, <https://nyujlpp.org/quorum/jonlin-llcs-luxury-real-estate-secrecy/#:~:text=The%20act%20amended%20the%20state,their%20members%20to%20the%20state>. (December 6, 2022).

²⁴ William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116-283, 116th Congress; <https://www.govinfo.gov/content/pkg/PLAW-116publ283/html/PLAW-116publ283.htm>

See also, FinCEN, *Anti-Money Laundering Act of 2020 One-Pager*, https://www.fincen.gov/sites/default/files/shared/20210615%20AMLA%20FinCEN%20One%20Pager_FINAL.pdf (June 15, 2021).

²⁵ The CTA specifically directed FinCEN to create and enforce uniform rules and regulations surrounding beneficial ownership information that would help prevent and combat money laundering, terrorist financing, corruption, tax fraud, and other illicit activities, while limiting the burden on legal entities conducting business in the United States. Pub. L. No. 116-283 (Jan. 1, 2021) #6403; 31 USC #5336; FinCEN; 31 CFR Part 1010, (2022).

See also, Andrew James Lom, Rachael Browndorf, Thomas J. Delaney; Norton Rose Fulbright; *What the CTA means for private investment funds and family offices*, <https://www.nortonrosefulbright.com/en-us/knowledge/publications/0cb09a2f/what-the-cta-means-for-private-investment-funds-and-family-offices> (March 2023).

²⁶ Under these new rules, for every beneficial owner of a reporting company, the company must disclose in its initial report each beneficial owner’s (1) full legal name; (2) date of birth (3) residential street address; (4) a unique identifying number

confidential information collected to authorized federal, state, or local government authorities under limited circumstances, solely for the purpose of law enforcement investigations.²⁷ These requirements go into effect beginning January 1, 2024.

Federal policy also dictates that FinCEN may establish new recordkeeping and reporting requirements in its efforts to prevent money laundering and other financial crimes carried out through corporate transactions.²⁸ Keenly aware of financial crimes rampant in real estate purchases in major U.S. cities, FinCEN established “geographic targeting orders” (“GTOs”) in 2016.²⁹ The six-month orders, applicable in certain major U.S. cities with large corporate capture of the real estate market and/or limited affordable housing, require title insurance agents to collect beneficial ownership information from legal entities purchasing residential property above \$300,000.³⁰

At the state level, the New York Legislature recently passed a bill requiring all LLCs conducting business in New York to submit the same beneficial ownership information required by FinCEN to the State, which will be compiled in a public database.³¹ If executed by Governor Hochul, the bill is set to take effect next year.³²

Some critics of the bill argue that the bill’s disclosure requirements and corresponding database pose potential privacy concerns for law-abiding LLC business owners.³³ New York real estate attorney John Dolgetta authored an article criticizing the

(which may be a non-expired U.S. passport, a non-expired identification document, such as a driver’s license, issued by a state, local government or Indian tribe, or a non-expired passport issued by a foreign government if the individual does not possess any of the other document types listed), and (5) an image file of the document that provides the unique identifying number. 31 C.F.R. § 1010.380(b)(ii).

²⁷ 31 C.F.R. § 1010 (2022).

²⁸ See, e.g., 31 U.S.C. § 5326(a); 31 C.F.R. § 1010.370; Treasury Order 180-01.

²⁹ Geographic Targeting Order Covering TITLE INSURANCE COMPANY, https://www.fincen.gov/sites/default/files/shared/Real%20Estate%20GTO_Order_4.29.22_for%20Press%20Release.pdf (April 29, 2022).

³⁰ *Id.* The GTOs have been so successful that FinCEN has renewed them nearly 10 more times, expanded ad hoc to new cities, and repurposed their successes in disclosure and transparency to better regulate all legal entities and beneficial owners

See also, National Association of Realtors; Geographic Targeting Orders Educational Brochure;

<https://www.nar.realtor/sites/default/files/documents/Geographic-Targeting-Orders-Educational-Brochure-04-30-2021.pdf> (April 30, 2021).

³¹ See LLC Transparency Act, A. 3484, 2023 N.Y. Assemb., Reg. Sess. (N.Y. 2023), and LLC Transparency Act, S.B. 8439B, 2023 N.Y. Sess. (N.Y. 2023).

³² Michael Mulia, Ingram Yuzek Gainen Carroll & Bertolotti, LLP, JD Supra, *Senate Bill S8439B - proposed requirements for LLC’s*; <https://www.jdsupra.com/legalnews/senate-bill-s8439b-proposed-2901365/> (August 2, 2023).

³³ Michael Mulia, Ingram Yuzek Gainen Carroll & Bertolotti, LLP, JD Supra, *Senate Bill S8439B - proposed requirements for LLC’s*; <https://www.jdsupra.com/legalnews/senate-bill-s8439b-proposed-2901365/> (August 2, 2023).



public access to beneficial ownership information in New York's LLC Transparency Act.³⁴

Dolgetta stated:

New York's Act goes too far in disclosing this information in a public database for all to view and access. Using the language cited in New York's Act itself, disclosure of this information to the public serves "no public interest." If there are illicit or criminal activities, it is sufficient that the governmental agencies have this information and utilize it only when needed for a legitimate purpose in order to curtail or stop such activities, and making private information available to the public is not necessary to achieve those objectives.³⁵

A law enforcement objective alone may not be sufficient to justify public access to LLC ownership information. The proposed Newark Ordinance, therefore, must include both the disclosure requirements that closely mirror those in New York's bill, as well as the substantive proof as to why public disclosure is not only appropriate, but necessary.

Community Welfare: In September 2019, former New York Governor Cuomo signed another statewide law requiring any LLC involved in the purchase or sale of a one- to four-unit residential property in New York State to disclose the names and contact information for all individuals financially associated with the LLC.³⁶ Specifically, the Combined Real Estate Transfer Tax Return³⁷ must contain a schedule identifying the names and business addresses of members, managers and authorized persons acting on behalf of the LLC, thus facilitating the disclosure of all natural persons associated with the transaction, which information is kept confidential by the state.³⁸

The intent of this law is to address code compliance issues with abandoned homes and properties throughout the state, where local governments struggle to reach the

³⁴ John Dolgetta, Real Estate In-Depth, *LEGAL CORNER: New York's LLC Transparency Act: Yet Another Attack on Privacy Rights and Real Estate Owners*, <https://www.realestateindepth.com/legal-advocacy/legal-corner-new-yorks-llc-transparency-act-yet-another-attack-on-privacy-rights-and-real-estate-owners/> (July 12, 2023).

³⁵ *Ibid.*

³⁶ N.Y. Tax Law § 1409; <https://bit.ly/3PPwhdy>; N.Y.C. Administrative Code § 11-2105(h); <https://www.hklaw.com/-/media/files/insights/publications/2019/09/nycadministrativecode112105.pdf?la=en&rev=82440f3a11604984a218db4a1e847989>

³⁷ The method of collecting beneficial ownership information.

³⁸ Harris Beach PLLC, *Disclosures for LLC Entities Now Required for 1- to 4- Family Residential Real Estate Transactions*; <https://www.harrisbeach.com/insights/disclosures-for-llc-entities-now-required-for-1-to-4-family-residential-real-estate-transactions/> (September 19, 2019).

It is important to note that the Combined Real Estate Transfer Tax Return form is *filed* with government officials, rather than recorded, and information contained therein is not accessible in any public land records or database.

individuals responsible for the property due to LLC ownership structure.³⁹ These disclosure requirements originated in New York City, where corporate purchasing of single family homes has had similarly harmful effects in previously affordable neighborhoods.⁴⁰ In New York City, these practices worsen gentrification, degrade the quality and availability of housing, and jeopardize the safety of some tenants in their own home.⁴¹

The State of California has also seen multiple bills introduced in the last two years to address the same issues of gentrification and corporate monopoly of the housing market.⁴² While none of these bills have made it out of committee, bill AB 1199, the “Homes for Families and Corporate Monopoly Transparency Excise Tax” comes closest to sufficiently supporting its provisions with the public purpose that Newark shares in drafting this Ordinance. For this reason, portions of this bill have been incorporated into the introductory clauses of the Ordinance proposed here.

In January of 2020, the District of Columbia enacted its Department of Consumer and Regulatory Affairs Omnibus Amendment Act of 2018, which requires ownership

³⁹ Stacey C. Tyler, Lowenstein Sandler, *Changes to New York Disclosure Requirements for LLCs Buying or Selling Residential Property*; <https://www.lowenstein.com/news-insights/publications/client-alerts/changes-to-new-york-disclosure-requirements-for-llcs-buying-or-selling-residential-property-real-estate#:~:text=As%20of%20September%2013%2C%202019,with%20the%20deed%20transferring%20ownership> (October 30, 2019).

⁴⁰ See, e.g., Leo Goldberg and John Baker, Center for NYC Neighborhoods, *How Real Estate Speculators are Targeting New York City's Most Affordable Neighborhoods*; (April 2018).

⁴¹ *Id.* See also, Alex Gibney, Netflix, *Dirty Money: Slumlord Millionaire*, Season 2, Episode 3 (2020).

⁴² SB 738: In March 2023, California State Senator Melissa Hurtado reintroduced her bill, SB 738, renamed the Corporate Transparency Act, which “would require a foreign corporation to additionally disclose certain information with respect to any beneficial owner, as defined, of the foreign corporation, including the owner’s full legal name,” personal or business address, and email address, if applicable, prior to obtaining a certificate of qualification from the California Secretary of State that allows foreign corporations to transact intrastate business. Corporate Transparency Act, SB 738, 2023-2024 C.A. Sen. Reg. Sess. (C.A. 2023).

SB 594: One month before Sen. Hurtado reintroduced SB 738, State Senator María Elena Durazo introduced another bill, SB 594, involving beneficial ownership information. California General Corporation Law requires domestic and foreign corporations to file an annual statement with the California Secretary of State, containing information such as the names and business or residential addresses of its executive officers and secretary, and the California Revised Uniform Limited Liability Act requires similar biennial reports from domestic and foreign LLCs. SB 594, 2023-2024 C.A. Sen. Reg. Sess. (C.A. 2023). SB 738 adds beneficial owners to the groups whose information must be included in their statements to the Secretary of State. *Id.*

AB 1199: State Assembly Member Mike Gipson introduced bill AB 1199 in February 2021, called the “Homes for Families and Corporate Monopoly Transparency Excise Tax.” A.B. 1199, 2021-2022 C.A. Assemb. Reg. Sess. (C.A. 2021). This bill would require a corporation, LLC, LLP, trust, or similar legal entity that owns a rented single- or multifamily dwelling—where less than 50 percent of the units are affordable housing—to report annually to the California Secretary of State 1) the identity of the beneficial owner of each qualified property owned by the qualified entity in the previous calendar year, and 2) the number of units that were offered for rent or lease at these properties. *Id.* The bill also imposes an annual excise tax on any person or entity that owns 10 or more single family residential properties or 25 or more multifamily properties in the state during the calendar year, at a rate of 25 percent of the taxpayer’s gross receipts derived from rental income. *Id.* The bill died in committee a year later.



disclosure from any legal entity conducting any business in the District.⁴³ These requirements are the most successful and wide-reaching regulations over LLC ownership disclosure, and were passed for very similar reasons as those in the New York and California bills, but unfortunately cannot serve as a model for this Ordinance, given the unique legal position of Washington, D.C. as a pseudo-city-state.

Landlord-Tenant Equity: Distinct from the law enforcement rationale, and beyond the purpose of stymieing gentrification and landlord abuse, this Ordinance aims to improve the landlord-tenant equity dynamics in Newark. With increasing corporate ownership of homes that used to be owned by families, owner-occupied landlords or local property owners, corporate buyers succeed in remaking the very market in which they've invested. Their growing market share raises both the costs of entry to buy homes—challenging homeownership efforts and local wealth building—while increasing rents—leading to more housing instability and displacement of renters with fewer alternative places to go in the city.⁴⁴

Documented in the CLiME report “Homes Beyond Reach: An Assessment & Gap Analysis of Newark’s Affordable Rental Stock,” Newark needs over 16,000 units to meet the needs of residents whose median incomes can afford a rent of no more than \$765 per month without being rent burdened.⁴⁵ This problem is only made worse by corporate control of the market, where investors are so prevalent that they can set rents at whatever level they so choose, which is going to be in the interest of more profit.⁴⁶

⁴³ D.C. Law § 22-287 (formerly Real Estate LLC Transparency Amendment Act of 2018, B22-0905 (D.C. 2018)), D.C. Code § 29-102.01, Entity filing requirements, and § 29-102.11: Biennial report for Mayor

⁴⁴ CLiME, *Who Owns Newark?* at 11.

⁴⁵ Katherine L. Nelson, David D. Troutt, CLiME, *Homes Beyond Reach: An Assessment & Gap Analysis of Newark’s Affordable Rental Stock*;

<https://static1.squarespace.com/static/5b996f553917ee5e584ba742/t/602ee8e07a067a5f21fbd453/1613687010432/CLiME+Report+2021-02+v20210218+FINAL.pdf> (February 2021).

⁴⁶ CLiME, *Who Owns Newark?* at 29.

See also, Public Advocates et al, *Wall Street Landlords Turn American Dream into a Nightmare*; p. 17-21; <https://drive.google.com/file/d/0B50M0aXe7016UUJIR19iRkFTYzg/view?resourcekey=0-YZNGr89EW7kdITZkV7qN7A>.

Such affordability constraints have direct implications for the increasing unhoused population in Newark and the hundreds of thousands of families at risk of displacement.⁴⁷ There is a direct connection between decreased housing security in Newark and the increases in rents, driven by investors.⁴⁸ Researchers are not witnessing traditional gentrification in Newark, where more affluent entrants drive up rental and housing prices with a greater ability to pay.⁴⁹ Instead, upward pressure on rents and home prices is being driven by institutional home buying.

Another important justification for public disclosure is a simple fairness argument. Renters are often required to disclose to potential landlords a host of information about their financial and personal history. There are onerous mandates on and screening tests required from individuals applying for public housing.⁵⁰ Landlords can take advantage of publicly available personal information on any and every applicant for rental occupancy, and banks have even more access to any individual seeking to purchase a home with a mortgage.⁵¹ Basic tenets of market equity demand that measures of truth in lending, which protects borrowers from inaccurate and unfair credit billing and practices, should logically be extended to truth in owning and renting in order to protect renters from unfair landlord and rental practices.⁵² This inequality is exacerbated when the landlord is a legal entity allowed to operate in ways unlike an individual.

⁴⁷ CLIME, *Losing Ground: The 2020 Displacement Risk Indicators Matrix (D.R.I.M.) Update for Newark*, <https://static1.squarespace.com/static/5b996f553917ee5e584ba742/t/6345734c770fa2249bf7f1e/1665495884597/CLIME+-+DRIM+2020+Update+Final.pdf> (October 2022).

This kind of displacement risk implicates many other components of housing security, particularly for the elderly, children, and those recently released from a state institution. Public health, educational opportunities, and incarceration reentry rates.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ See, e.g., <https://www.nj.gov/dca/divisions/dlgs/resources/fds.html>

Affordable Homes New Jersey, *What documents will I be required to submit when I am invited to submit a full affordable housing application?*; <https://www.affordablehomesnewjersey.com/knowledge-article/what-documents-will-i-be-required-to-submit-when-i-am-invited-to-submit-a-full-affordable-housing-application/>

⁵¹ See, e.g., Wei Li, Laurie Goodman, Denise Bonsu, Urban Institute, *The Lasting Impact of Foreclosures and Negative Public Records*; https://www.urban.org/sites/default/files/publication/85356/the-lasting-impact-of-foreclosures-and-negative-public-records_0.pdf (November 2016).

⁵² Office of the Comptroller of Currency, *Truth in Lending*; <https://www.occ.treas.gov/topics/consumers-and-communities/consumer-protection/truth-in-lending/index-truth-in-lending.html#:~:text=The%20Truth%20in%20Lending%20Act,for%20certain%20types%20of%20loans.>



LLC ownership transparency is a matter of protecting democratic ideals of equality and fairness. It is with this conviction and assertion that Newark should pass the proposed Ordinance.

II. The parties directly and indirectly subject to this Ordinance are enumerated in the “Definitions” and in § 18:18-2.

LLCs Buying & Selling 1- to 4-Unit Residential Properties

Outlined in §18:18-2.1(a), this Ordinance requires any LLC acting as grantor or grantee of a deed conveyance on any one- to four-unit residential property within the City of Newark to record an LLC Disclosure Form identifying all beneficial owners of and parties with membership interest in or control over the LLC. The terms “grantor” and “grantee” are used in place of “buying” and “selling” because these LLCs often transfer subject properties amongst affiliated LLCs with little to no consideration, for reasons that remain unclear.⁵³ As identified in the CLiME Report, LLCs make up the majority of institutional investors in Newark real estate, and Newark’s inhabitants most affected by these predatory practices live in one- to four-unit apartments.

Defining “Beneficial Ownership”

The proposed Ordinance enumerates all possible stakeholders and profiteers of an LLC required to disclose their identity §18:18-2.1. These individuals include:

- All members, managers, beneficial owners, and any other authorized persons of an LLC acting as grantor or grantee of a deed or title transfer of one-to-four-unit properties in Newark
- All shareholders, directors, officers, members, managers, partners, beneficial owners, and REITs⁵⁴ of any legal entity that are to be the members, managers, beneficial owners or authorized persons of such LLC.

⁵³ CLiME, *Who Owns Newark?* at 31-42.

⁵⁴ Real Estate Investment Trusts. Roger Wohlner, NJ Personal Finance; NJ.com, *Real Estate Investment Trust Guide*; <https://www.nj.com/personal-finance/article/real-estate-investment-trust-reit-guide> (Updated August 28, 2023).

While this Ordinance defines and incorporates beneficial ownership vocabulary, it is not limited by varying interpretations. The list of implicated individuals and entities is meant to be exhaustive. Combining language from federal,⁵⁵ N.Y.,⁵⁶ C.A.,⁵⁷ and D.C.⁵⁸ bills in §18:18-2.1 is meant to prevent any relevant, authorized persons from evading these public disclosure measures.⁵⁹

In all proposed and/or passed legislation regarding beneficial ownership disclosure, except for D.C., beneficial owners have been defined as having a 25 or 50 percent share/interest in an LLC. The CLiME Report, however, specifically suggests that any individual with over 10 percent share/interest in an LLC be required to disclose pertinent personal information.⁶⁰ While New Jersey has not codified any beneficial ownership definition, there are statutes that require a company to disclose the names and addresses of individuals holding 10 percent of stock in a legal entity. Specifically, the N.J. Public Bidders Disclosure Statute states:

No corporation, partnership, or limited liability company shall be awarded any contract... for the performance of any work,... the cost of which is to be paid with or out of any public funds... by any authority, board, or commission which exercises governmental functions, unless prior to the receipt of the bid or accompanying the bid, of said corporation, said partnership, or said limited liability company there is submitted a statement setting forth the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class, or of all individual partners in the partnership who own a 10 percent or greater interest

⁵⁵ Under the CTA, a “beneficial owner” is any individual who, directly or indirectly, (i) exercises substantial control over a reporting company or (ii) owns or controls at least 25 percent of the ownership interests of a reporting company. 31 C.F.R. § 1010 (2022).

⁵⁶ Adopting FinCEN standards, beneficial ownership also defined at 25% interest. See LLC Transparency Act, A. 3484, 2023 N.Y. Assemb., Reg. Sess. (N.Y. 2023), *and* LLC Transparency Act, S.B. 8439B, 2023 N.Y. Sess. (N.Y. 2023).

⁵⁷ Different bills define beneficial ownership at 50% interest (Corporate Transparency Act, SB 738, 2023-2024 C.A. Sen. Reg. Sess. (C.A. 2023).) and at 25% (SB 594, 2023-2024 C.A. Sen. Reg. Sess. (C.A. 2023).)

⁵⁸ Beneficial ownership defined at 10%. D.C. Law § 22-287 (formerly Real Estate LLC Transparency Amendment Act of 2018, B22-0905 (D.C. 2018)), D.C. Code § 29–102.01, Entity filing requirements, and § 29–102.11: Biennial report for Mayor

⁵⁹ Another option taken into consideration when writing this Ordinance was to include, in addition to LLCs buying and selling one to four unit properties, any LLC or legal entity that owns over a certain number of residential properties in Newark, no matter the size of such properties. Inspired by the California Bill A.B. 1199 (2021), increasing the pool of LLCs subject to ownership disclosure, Newark residents and officials would not only gain insight into the individuals and entities changing the face of neighborhoods at the homeowner level, but also would be presented with a larger picture of who the power players are in Newark real estate. This would significantly expand the reach of the Ordinance and open it up to a greater degree of public scrutiny, but it remains an option should the Ordinance ever be passed and amended. The Ordinance could also be further extended to include any legal entity purchasing property in Newark, in cash, over \$300,000, inspired by FinCEN’s GTOs.

⁶⁰ CLiME, *Who Owns Newark?* at 63.



therein, or of all members in the limited liability company who own a 10 percent or greater interest therein...⁶¹

This New Jersey Statute and its interpretation can be used to both support and undermine the 10 percent threshold for beneficial owners. Writing the provisions of the Ordinance to complement State law lends greater legitimacy and authority to its requirements. The legislative history of the Public Bidders Statute, however, highlights the importance of such disclosure specifically because the contract is awarded by a public entity. As discussed in Waste Mgmt. of N.J., Inc. v. Mercer County Improvement Auth.:

...[I]n enacting N.J.S.A. 52:25-24.2, the Legislature expressed its clear purpose to ensure that all members of a governing body and the public be made aware of the real parties in interest with whom they are asked to contract. Thus, the public, as well as public officials, can identify any real or potential conflicts of interest arising out of the awarding of public contracts, or can identify those bidders who lack the requisite responsibility. [(Citing Assembly Bill 22, Statement of Purpose (1976).]⁶²

The New Jersey Legislature determined that such ownership transparency is necessary for accountability because of the degree of influence and control held by individuals with as little as 10 percent stake in a legal entity. This Ordinance, however, does not involve public contracts. The public interest in knowing the beneficial owners⁶³ of relevant LLCs is not to identify conflicts of interest, but rather to unveil power dynamics and players who profit⁶⁴ from investment activities which often ‘lack the requisite responsibility’ that these institutional investors have assumed by purchasing and renting formerly owner-occupied Newark homes. While not a public contract, the consequences of such business activity and insufficient rental property management are so vast that addressing landlord mismanagement and abuse has become a widespread public initiative in Newark. Thus, the new Ordinance appropriately reflects technicalities in the N.J. Bidders Disclosure Statute.

⁶¹ *N.J. Stat. § 52:25-24.2*

⁶² Waste Mgmt. of N.J., Inc. v. Mercer County Improvement Auth., 2014 N.J. Super. Unpub. LEXIS 2714, *12

⁶³ “Beneficial owners” for the purposes of this memorandum shall include all implicated individuals with ownership interests in an LLC subject to the proposed Ordinance.

⁶⁴ Knowingly or unknowingly. This memorandum makes no assumptions as to the level of understanding individual investors have of the ramifications of their investments.

While 10 percent makes sense in the context of New Jersey law, requiring disclosure from a wider pool of individuals than FinCEN mandates could cause confusion and complicate the disclosure and recording process. LLCs will be providing 25 percent beneficial ownership information to the federal government next year, so recording that same with the Essex County Register requires little additional work for the LLC. Further delineating ownership to 10 percent is going to place a greater burden on these LLCs, and the City will likely face greater resistance to the Ordinance and need to provide more clarification and guidance on recording the LLC Disclosure Form if asking for 10 percent-level interests.

Exemption Process

In addition to the beneficial ownership exceptions outlined in the “Definitions” of the Ordinance, there is one overarching exemption outlined in §18:18-2.2. The request for an exemption process was taken from New York’s recently passed LLC Transparency Act.⁶⁵ This exemption requires the Deputy Mayor (or another appropriate city official) to create a process for beneficial owners to apply for a disclosure waiver, should they have significant and specific privacy concerns.⁶⁶

LLCs subject to this ordinance may reference the New Jersey Revised Uniform Limited Liability Company Act to argue that information on its members and managers do not have to be disclosed, or that its members and managers should be granted an exemption. Per N.J.S.A. § 42:2C-30 (2018):

Section: 42:2C-30: Liability of members and managers.

30. Liability of Members and Managers.

a. The debts, **obligations**, or other liabilities of a limited liability company, whether arising in contract, tort, or otherwise:

(1) are solely the debts, obligations, or other liabilities of the company;
and

(2) **do not become the debts, obligations, or other liabilities of a member or manager solely by reason of the member acting as a member or manager acting as a manager.**

⁶⁵ LLC Transparency Act § 100-b.2.(b).

⁶⁶ *Id.* The one enumerated exception, though not exclusive, is the instance of a beneficial owner participating in witness protection. By providing this example, however unlikely its occurrence, the privacy threshold for individuals looking to receive a waiver is set high enough that no city office will be inundated with exemption requests.



b. The failure of a limited liability company to observe any particular formalities relating to the exercise of its powers or management of its activities is not a ground for imposing liability on the members or managers for the debts, obligations, or other liabilities of the company.⁶⁷

While compliance with the proposed Ordinance and LLC Disclosure Form is not a liability incurred by members and managers, providing personal beneficial ownership information could be argued is an obligation of the LLC. Some of this information may also already be collected through landlord registration, so one possible alternative would be removing “member” and “manager” from the list of individuals required to be disclosed. New Jersey does not have any law regarding beneficial ownership, so this statute should not apply to any other enumerated persons.

III. The Ordinance narrowly tailors the disclosure information required, which will be accessible to the public, as outlined in Sec. 18:18-2.1(a).

Required Disclosures

This Ordinance asks for three pieces of information from all relevant individuals: their full legal name, a business address, and a telephone number or email address. The three fields required from each individual are meant to provide sufficient information to establish the identity of all LLC authorized persons as well as a legitimate means of contacting the person, without requiring so much personal information that public access to such would amount to an invasion of privacy or pose safety and security risks.

Public Access to Ownership Information

Recording the LLC Disclosure Form with the Essex County Register of Deeds and Mortgages, required in §18:18-2.1(a), guarantees public access to beneficial ownership information, without generating the controversy associated with a public database. For the Essex County Register to accept the LLC Disclosure Form, it must qualify as a “document affecting real property entitled to recording,” as outlined in N.J.S.A. § 46:26A-2.

⁶⁷ L.2012, c.50, s.30.

The City can argue that the LLC Disclosure Form is either a “document that affects title to any interest in real property in any way or contains any agreement in relation to real property, or grants any right or interest in real property or grants any lien on real property” or a “document relating to real property that is directed to be recorded by any statute or court order,” both of which satisfy state qualification.⁶⁸

According to their website, the Essex County Register’s Office records and archives, for public viewing and inspection, documents that record the transfer of real property within the county. In recent years, the Register’s office has implemented many changes to its records management practices; taking advantage of new technology and innovations to better meet the needs of its public. As of May 13, 2019, all property transactions from May 1, 2001, to the present are available electronically in the Public Vault *and* are searchable online via Essex County’s Public Records Electronic Search System (PRESS).⁶⁹

The biggest critique of the pending New York 2023 LLC Transparency Act is its creation of a public, searchable business entity database containing certain fields of beneficial ownership information.⁷⁰ The 2019 New York residential real estate law, on the other hand, has not faced the same level of criticism, since all tax information collected under this legislation is kept confidential. Thus, the success of this Ordinance will depend, in part, on how aggressive measures are to make beneficial ownership information available to the public, and how efficiently this information can be recorded without further burdening City officials. By requiring LLCs to record the LLC Disclosure Form at or before the conveyance of a deed or the transfer of title, the City facilitates public access to beneficial ownership information without the need for a new public database.

In Burnett v. Cty. of Bergen, the New Jersey Supreme Court evaluated the legality of compiling over 20 years' worth of real estate records in light of the individual’s reasonable expectation of privacy to the information contained therein.⁷¹ The opinion states:

⁶⁸ N.J. Stat. § 46:26A-2 (p) and (q).

⁶⁹ The Register also houses 17,741 books of records, not all of which are available via the internet. Due to the volume of property transactions, the Register is unable to provide electronic images of all of these records, but the Public Vault is open for public viewing of property transactions dating back to the early 1700’s.

<https://press.essexregister.com/ProdPRESS/clerk/ClerkHome.aspx?op=basic>

⁷⁰ Dolgetta, *supra*.

⁷¹ Burnett, *supra* at 1164.



As the Supreme Court has observed, "there is a vast difference between the public records that might be found after a diligent search of courthouse files, county archives, and local police stations throughout the country and a computerized summary located in a single clearinghouse of information." U.S. Dep't of Justice v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 764, 109 S. Ct. 1468, 1477, 103 L. Ed. 2d 774, 790 (1989). For that reason, the "compilation of otherwise hard-to-obtain information alters the privacy interest implicated by disclosure of that information." *Ibid.*⁷²

This interpretation, were it in a New York court, would have serious implications for the New York 2023 LLC Transparency Act. Recording beneficial ownership information with the Essex County Register achieves the same end result of beneficial ownership transparency through less inflammatory means.

Reasonable Expectation of Privacy

Given the upcoming FinCEN reporting requirements, LLCs may challenge the proposed Newark Ordinance for the lack of confidentiality in public land records. But the differentiating factor between this Ordinance and the CTA is that the purpose of the Ordinance is *public* transparency, whereas the purpose of federal requirements is law enforcement transparency. Additionally, FinCEN requires more personal identification information than the three fields that Newark is requiring. The candidate pool of LLCs is also far smaller in Newark, narrowed not only by the type of legal entity, but also by the sale of residential property and the size of said property.⁷³

Issues of public access to private information are often litigated under the N.J. Open Public Records Act ("OPRA").⁷⁴ While not written under the authority of OPRA, the Ordinance creates a new public record that implicates the same issues of disclosure of a citizen's personal information and the boundaries of a reasonable expectation of privacy. In Brennan v. Bergen Cty. Prosecutor's Office, 185 A.3d 202, 203 (N.J. 2018), the New Jersey Supreme Court decided whether or not OPRA requires the "disclosure of the names and addresses of successful bidders at a public auction of government property." N.J.S.A. 47:1A-

⁷² *Ibid.*

⁷³ Beneficial owners who invest in LLCs with the purpose of keeping their identity private will still likely argue that the information required in the LLC Disclosure Form falls within the individual's reasonable expectation of privacy.

⁷⁴ N.J. Stat. § 47:1A.

1, a subsection of OPRA that concerns personal information, provides that "a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy..."⁷⁵

N.J.S.A. 47:1A-1.1 lists over twenty exceptions to OPRA requirements. As highlighted in Brennan:

None... provide an overarching exception for the disclosure of names or home addresses. One exception specifically prevents public access to the following personal information: "that portion of any document which discloses the social security number, credit card number, unlisted telephone number or driver license number of any person." N.J.S.A. 47:1A-1.1.⁷⁶

The court in Brennan also cites to Burnett v. Cty. of Bergen, 968 A.2d 1151, 1171 (2009) (where the Court found that the defendant's broad request for detailed personal information from 20 years of land records implicated OPRA's privacy provision.)⁷⁷ In Burnett, the court adopted factors outlined in Doe v. Poritz, 662 A.2d 367 (N.J. 1995), to weigh the competing interests of public access and personal privacy, in order to determine if there was a reasonable expectation of privacy to the information contained in the land records.⁷⁸ The only field that the court in Burnett identified as needing redaction amongst the millions of land realty records requested was an individual's social security number.⁷⁹

While the court's main concern in Burnett is the redaction of social security numbers, their discussion of real estate records is also particularly relevant here. The plaintiff in Burnett sought copies of mortgages, deeds, discharges/satisfactions of

⁷⁵ See also, Brooks v. Kennedy, No. A-3769-20, 2023 N.J. Super. Unpub. LEXIS 468 (Super. Ct. App. Div. Mar. 29, 2023).

⁷⁶ Brennan, *supra* at 206.

⁷⁷ Brennan, *supra* at 207.

⁷⁸ Burnett, *supra* at 1154.

To determine whether state interest justifies disclosure, the court in Doe examined the following factors: (1) the type of record requested; (2) the information it does or might contain; (3) the potential for harm in any subsequent nonconsensual disclosure; (4) the injury from disclosure to the relationship in which the record was generated; (5) the adequacy of safeguards to prevent unauthorized disclosure; (6) the degree of need for access; and (7) whether there is an express statutory mandate, articulated public policy, or other recognized public interest militating toward access. Doe, 662 A.2d at 411-412.

⁷⁹ Burnett, *supra* at 1167.

The court in Brennan further narrows this decision by finding that "before an extended analysis of the Doe factors is required, a custodian must present a colorable claim that public access to the records requested would invade a person's objectively reasonable expectation of privacy." Brennan, *supra* at 209.



mortgages, lis pendens, releases of mortgages, vacations, construction liens, federal liens, inheritance tax waivers, and releases of judgment from 1984 through 2006, all of which contained details about ownership of various properties and personal information about the owners.⁸⁰ The court went on to add:

To be sure, a number of points favor disclosure of the records without first redacting them. They are public records, required to be accepted for recording, maintained and kept. See generally N.J.S.A. 46:18, :19, 47:1, :2, :3. The very purpose of recording and filing them "is to place the world on notice of their contents." Dugan v. Camden County Clerk's Office, 376 N.J. Super. 271, 279, 870 A.2d 624 (App.Div.2005). ... In addition, individual realty records are available, and will remain available, for copying and inspection at clerks' offices.⁸¹

Once an LLC files an LLC Disclosure Form with the Essex County Register of Deeds and Mortgages, any argument of a reasonable expectation of privacy loses viability.

IV. The LLC Disclosure Form will be recorded with the Essex County Register for Deeds and Mortgages, and enforcement achieved through Newark Housing Code.

Once the proposed Ordinance identifies the method of obtaining LLC beneficial ownership data, it then must detail how such requirements will be enforced, and by whom. In theory, the Essex County Register could refuse to record a new deed or title transfer for specific Newark properties without an LLC Disclosure Form. However, activities of the County Register are prescribed by State law, which also allows for some property transfers to remain unrecorded.⁸² Because of this, the Essex County Register of Deeds and Mortgages might not be able to effectively enforce the recording of LLC Disclosure Forms.

⁸⁰ Burnett, *supra* at 1162.

⁸¹ Burnett, *supra* at 1163.

⁸² According to H.K. v. State, 877 A.2d 1218 (2005) (citing In re Estate of Lillis, 302 A.2d 539 (App. Div. 1973)), the transfer or conveyance of an interest in real property is "complete upon execution and delivery of the deed by the grantor, and acceptance of the deed by the grantee." However, as discussed in Sizes & Shapes, Inc. v. Borough, 2017 N.J. Tax Unpub. LEXIS 43, "the "deed does not need to be recorded. . . in order to pass title." H.K., *supra*, 877 A.2d at 1233 (citing Tobar Constr. Co., *supra*, 293 N.J. Super. at 413). Thus, an unrecorded deed "is perfectly efficacious in passing title from grantor to grantee. . ." Siligato v. State, 632 A.2d 837 (N.J. App. Div. 1993)."

Conditioning Housing Certificates on Deed Recording

Without any enforcement mechanism, there is no incentive to record an LLC Disclosure Form with the County Register. The proposed Ordinance thus creates an enforcement mechanism that would not be preempted by State law. Specifically, local legislation around real property sale or transfer cannot be interpreted as a form of realty transfer fee or a property sales tax.⁸³ Any fines imposed for failing to record the LLC Disclosure Form could be interpreted as a retroactive point-of-sale property tax, which municipalities have no provision to enact.⁸⁴

The federal and state measures discussed at the beginning of this memorandum use an LLC's and individual's financial disclosures and tax returns as the mechanism through which to both collect information, enforce compliance, and penalize violations. While Newark does not have access to or regulatory authority over such financial documents, this Ordinance attempts to avoid some state legislated processes while still using existing administrative processes in order to collect the information the city seeks.

The enforcement mechanism of the proposed LLC Disclosure Ordinance, outlined in §18:18-3.1, mirrors Newark Municipal Code §2:10-9.4, which conditions the granting of Certifications of Occupancy and Code Compliance on the City's receipt of a fully executed copy of a specific Deed Restriction.⁸⁵

The proposed Ordinance borrows language from this ordinance and designates the Director of the Department of Engineering, the city official responsible for issuing such certificates, as the individual to receive or review the executed disclosure form.⁸⁶ Adopting this enforcement mechanism will also hopefully make the administration of this

⁸³ See, e.g., New Jersey Tax Guide: Buying or Selling a Home in New Jersey, <https://www.state.nj.us/treasury/taxation/documents/pdf/guides/Buying-or-Selling-a-Home-in-New-Jersey.pdf> Realty transfer fees are outlined in N.J.S.A. § 46:15-7, and recording fees collected by County Registers in N.J.S.A. § 22A:4-4.1, both of which are state and county level provisions.

⁸⁴ *Id.*

⁸⁵ Newark Municipal Code, Ordinance 6PSF-d, § 2:10-9.4, April 5, 2023. <https://ecode360.com/NE4043/laws/LF1818951.pdf> The relevant provision states: A. Deed Restriction

1. The Purchaser ... subject to this Ordinance must execute and deliver an original fully executed copy of a Deed Restriction on the City of Newark's standard form at the time of closing on the sale... The Deed Restriction and any amendments thereto must be recorded in the property records of Essex County Register of Deeds and Mortgages. A Purchaser ... will not receive a Certification of Occupancy (CO) and/or a Certificate of Code Compliance (CCO), until the City has received a fully executed copy of a Deed Restriction.

⁸⁶ See, e.g., Newark Municipal Code § 41:18-2-3 et seq.



Ordinance easier, as all accountability/enforcement measures are already in place, and city officials would only need to be notified of one additional document required from certain parties.⁸⁷

This method of enforcement, while effective and economical, is passive. One way to increase the penalty for noncompliance would be, included in the Ordinance, to impose a fine on any LLC that applies for a relevant Housing Code Certificate without an executed copy of the LLC Disclosure Form. This fine is justifiable, as the review of an incomplete application constitutes a waste of Newark officials' time and City resources. Further research would be necessary, however, to determine the appropriate dollar amount and where the money collected would go.

Retroactive Application

One of the challenges in effectuating this Ordinance is how to compel current LLCs that own one- to four-unit residential properties to proactively record an LLC Disclosure Form without a property sale or title transfer to trigger the process. Because of this, §18:18-3.2 of the proposed Ordinance establishes a one-time requirement on all LLCs that own one- to four-unit residential properties in Newark to submit a fully executed copy of an LLC Disclosure Form to the Department of Economic and Housing Development for Newark's newly established landlord and vacant property registrations.

While not a perfect solution guaranteed to capture the entirety of LLC property ownership in Newark, the property registration programs are the best existing vehicle to reach as many LLC small residential property owners as possible. By conditioning the Certificate of Habitability on proof of record execution, Newark should be able to retroactively enforce the provisions of this Ordinance without establishing any new city-wide program. This measure would be limited to one year so as to not overburden EHD city officials, and LLC Disclosure Forms from any remaining LLC property owners would need to be captured through traditional enforcement mechanisms over time. This is

⁸⁷ The Ordinance conditions Certificates of Occupancy, Code Compliance, and Habitability on proof of an executed deed recording. Because these certificates are issued by inspectors in the Department of Engineering, the Ordinance should be codified within Newark Housing Code, as opposed to a directive under the Department of Economic and Housing Development ("EHD").

another place where a noncompliance fine can be enforced and collected, and the potential revenue generation for the city and tenant services would be significant. LLCs would be provided with ample advanced notice for this additional, one-time requirement, and notification is also facilitated through the registration process itself and the contact information collected. Thus, incomplete registration or renewal would be sent back to the affected LLCs with a noncompliance fine.

Accuracy of Disclosed Information

Confirming the veracity of LLC beneficial ownership information creates another enforcement hurdle in the proposed Ordinance. Disclosure is not linked to any tax filings, so fact-checking the truthfulness and extent of beneficial ownership structure is going to be difficult. This concern was raised to FinCEN during a period of public comment, when attorneys and organizations like the ABA and Transparency International emphasized that “the beneficial ownership registry must be a reliable and authoritative source of information. The federal government must make sure the information in the registry is accurate...if the accuracy of the registry’s information is in doubt, the banks may not be able to use the database at all.”⁸⁸

FinCEN went to great lengths to incorporate all feedback into their 2022 Rules and Regulations surrounding beneficial ownership information. Thus, there is a reasonable assumption that concerns of data reliability and information accuracy have been addressed, and FinCEN will maintain a definitive database of all legal entities and their beneficial owners. One way to potentially leverage this database, though not presently included in the proposed Ordinance, is to include a provision that states that information provided on the LLC Disclosure Form will be subject at random to verification with the FinCEN database.⁸⁹

⁸⁸ The FACT Coalition (Financial Accountability & Corporate Transparency; *House Hearing Puts Beneficial Ownership Implementation on Center Stage: Just the FACTs*; <https://thefactcoalition.org/house-hearing-puts-beneficial-ownership-implementation-on-center-stage-just-the-facts-7-20-23/>) (July 20, 2023)

⁸⁹ Newark could possibly generate a report to send to FinCEN, asking for the organization to confirm the validity of the information included. Such a process would require a greater investment from City officials and confirmation that FinCEN would be willing to participate.



V. Alternative policies can achieve LLC ownership transparency, though each pose unique challenges in drafting and enforcement.

Vacant and Rental Property Registration

The mechanisms of vacant and rental property registration have already been developed and codified in Newark. Therefore, it may be possible to collect beneficial ownership information through this recurring process, though this method would pose different challenges. The ability to create a rental, or landlord registration program is specifically authorized in NJ law.⁹⁰ There are multiple fields of information in Newark Municipal Code § 18:17-4; “Registration Forms; Filing; Contents,” but whether beneficial ownership information would fall within the boundaries of acceptable rental unit registration information is not readily clear. Additionally, including the LLC Disclosure Form within landlord registration would not capture LLCs that engage in real estate speculation; Newark’s Vacant Property Registration would also need to be amended to require beneficial ownership disclosure in order to capture a larger portion of the market. Both of these measures still would not easily make the information contained in the LLC Disclosure Form centrally and publicly accessible. Leveraging land records forces the LLC to do the work as opposed to a Newark city official, who would have to process this information from 2 different property registration programs, determine what LLCs are noncompliant, parse out what should be public and what should not, and create a new platform to access the information.

The proposed Ordinance is still the preferred means of achieving transparency of ownership. Newark’s property registration programs have slightly different goals than the Ordinance. Landlord rental registration aims to ensure tenant access to a landlord, superintendent, or agent designated to help maintain property habitability.⁹¹ Vacant

⁹⁰ N.J.S.A. § 46:8-28.

⁹¹ City of Newark News, *NEWARK TO REQUIRE REGISTRATION OF ALL RENTAL PROPERTIES*; <https://www.newarknj.gov/news/newark-to-require-registration-of-all-rental-properties> (April 6, 2023).

property registration aims to penalize property owners who are keeping viable Newark properties out of the hands of Newark citizens and potential homeowners.⁹²

By contrast, the proposed Ordinance aims to achieve more abstract goals through ownership transparency. Not only is there an individual, property, and community welfare interest in making information about who actually and literally owns Newark available to the public, but there is also a social pressure created by requiring such disclosure. If institutional investors must disclose their identities, public accountability could hopefully force them to reevaluate the ethics of their investments. Beyond publishing LLC beneficial ownership information for the purpose of correcting or penalizing illegal or damaging housing practices, this Ordinance should also discourage institutional investment all together by educating about and/or shaming investors for profiting off of the dismantling of the “American Dream” of homeownership in Newark neighborhoods.

New State Law

The only definitive way to confirm that this Ordinance does not violate any existing New Jersey statute is to rewrite the Ordinance as a State bill. Unfortunately, the New Jersey Legislature has made clear in many statutes that housing regulations in the state should be construed in a light most favorable to developers and the creation of housing in New Jersey.⁹³ So, if CLiME or any other group were to pursue beneficial ownership transparency at the state level, the bill would need to be much more extensive, rigorous, and robust. Fortunately, there are plenty of bills⁹⁴ that can be used as inspiration to build a new corporate transparency regime in New Jersey, not so narrowly tailored to LLCs and a subsection of residential properties. Passage of this Ordinance would certainly not preclude such efforts, and it is the hope that benefits derived from this Ordinance’s requirements might inspire other local and state governments to hold legal entities to account in their jurisdiction.

⁹² City of Newark News, *NEWARK PASSES TWO MAJOR MEASURES TO MITIGATE VACANT, ABANDONED, DETERIORATED, AND FORECLOSED PROPERTIES*; <https://www.newarknj.gov/news/newark-passes-two-major-measures-to-mitigate-vacant-abandoned-deteriorated-and-foreclosed-properties> (October 21, 2022).

⁹³ See, e.g. N.J. Stat. § 2A:42-84.5.

⁹⁴ In particular, California AB 1199, “Homes for Families and Corporate Monopolies Transparency Excise Tax,” and the Washington, D.C. Department of Consumer and Regulatory Affairs Omnibus Amendment Act of 2018.



Appendix

Beneficial Landowner Transparency Model Ordinance

..Title

AN ORDINANCE AMENDING TITLE XVIII, HOUSING CODE, OF THE REVISED GENERAL ORDINANCES OF THE CITY OF NEWARK, NEW JERSEY, 2000, BY CREATING CHAPTER 18:18, LLC PUBLIC DISCLOSURE TO REQUIRE LIMITED LIABILITY CORPORATIONS SELLING AND BUYING 1- TO 4-DWELLING UNIT RESIDENCES RECORD BENEFICIAL OWNERSHIP INFORMATION WITH DEED OR TRANSFER OF TITLE.

..body

WHEREAS, the City of Newark desires to protect the public health, safety, and welfare of the citizens of the City of Newark and maintain a high quality of life for the citizens of the City through the maintenance of structures and properties in the City; and

WHEREAS, the City finds that the proximity to other high-cost areas and the pending development throughout the City, along with future projects in the City, have the potential to attract increased investment and development in the community, creating increases in housing costs, loss of housing affordability and displacement of low and moderate income residents; and

WHEREAS, a Newark housing study conducted by the Center for Law, Inequality, and Metropolitan Equity at Rutgers Law School - “Who Owns Newark - Transferring Wealth from Newark Homeowners to Corporate Buyers” (the “Report”) found that 79% of Newark residents are renters, an unusually high rate, and that 45% of residents live in small apartment buildings of two (2) to four (4) units; and

WHEREAS, accelerating in 2013 in the wake of the Great Recession and foreclosure crisis, purchases of single family (one to four units) residential properties in Newark by limited liability companies, often backed by largescale equity investment, has caused rents to rise and owner-occupancy to fall, according to the Report; and

WHEREAS, according to the Report, 47% of properties in the City of Newark were sold to institutional investor buyers from 2017-2020, and from 2017 through 2019, only 36% of residential sales transactions were to individual buyers with a Newark mailing address; and

WHEREAS, the rapid purchasing of smaller residential properties by institutional investors increases the ratio of renters over owners in neighborhoods of smaller homes, and increases the likelihood of higher rents, which in turn price out traditional homebuyers; and

WHEREAS, corporate buying activity in Newark neighborhoods is particularly detrimental given that:

- a) the rate and amount of corporate buying is greater than the national average,



- b) the affordability gap is greater than most other cities,
- c) the local homeownership rate was already lower than average,
- d) the neighborhoods most affected by this activity have historically been the target of predatory corporate real estate practices, and
- e) the convergence of these factors reduces homeownership opportunities, leaving neighborhoods to struggle to maintain cohesion, public safety and sustainable social networks along with the institutions they nurture; and

WHEREAS, the Report recommends that in order for Newark to maintain affordable rents and homeownership, the City should impose equitable constraints on real estate markets to promote the general welfare of households and individuals; and

WHEREAS, according to the Report, nearly three-quarters of all institutional purchases in Newark are in the South and West Wards in predominantly Black neighborhoods, where the share of residents who are extremely cost burdened is higher than anywhere else in the city, and where homeownership declined between 6-7% between 2010 and 2020; and

WHEREAS, the City finds that housing insecurity and displacement exacerbate historic patterns of racial and economic segregation, deepen concentrations of poverty and wealth, and widen disparities in access to good schools, jobs, healthcare and other amenities; and

WHEREAS, property records and ownership have been historically transparent in America for the good of the public, but, as evidenced by residential property transactions outlined in the Report, LLCs manipulate their ownership structure to keep their investors' identities concealed from public scrutiny; and

WHEREAS, the Report finds that these largely anonymous outside companies set neighborhood housing market prices on terms that aim to produce stable returns to their investors, who thus are profiting from business activity in areas in which most American neighborhoods promote homeownership, a sense of community cohesion and household wealth; and

WHEREAS, the City recognizes that, in a city that is 79% renters, coordinating activities as appropriate to promote equity and fairness in the landlord-tenant power dynamic—where renters are subject to much higher levels of personal and financial transparency and scrutiny, and have more at stake when a dispute arises, than the legal entities operating as their landlords—is a measure to preserve the welfare of the municipality and its inhabitants; and

WHEREAS, pursuant to N.J.S.A 40:48-2, the City of Newark is authorized to make, amend, repeal and enforce such other ordinances, regulations, rules and by-laws not contrary to the laws of this state or of the United States, as it may deem necessary and proper for the good government, order and protection of persons and property,

and for the preservation of the public health, safety and welfare of the municipality and its inhabitants; and

WHEREAS, pursuant to N.J.S.A 40A:61-5, the Newark City Council may pass, adopt, amend and repeal any ordinance for any purpose required for the government of the municipality or for the accomplishment of any public purpose for which the municipality is authorized to act under general law; and

WHEREAS, through public transparency measures, it is the intent of the Newark City Council to discourage corporate real estate investors from:

- a) denying working class families and first-time homebuyers the option to buy homes,
- b) unnecessarily inflating rental prices and gouging tenants with high and unnecessary fees,
- c) employing abusive practices by acquiring available homes, raising rents, evicting tenants, and operating rental units with habitability issues, and
- d) hiding behind limited liability corporations and similarly opaque legal structures.

NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:

Section 1: The foregoing whereas clause is incorporated herein by reference and made a part hereof.

Section 2: Title XVIII, Housing Code, is amended to add the following new chapter entitled LLC Public Disclosure requiring any and all Limited Liability Corporations to record beneficial ownership information document with a deed or transfer of title with the Essex County Register of Deeds and Mortgages when buying and/or selling 1- to 4-dwelling unit residences.

18:18 LLC PUBLIC DISCLOSURE.

18:18-1 Definitions.

“Residential Property” shall mean any real property and the improvements, buildings, structures or house thereon, within the City of Newark, whether single or multi-family, used for residential purposes.

“Grantee” shall include every person and/or legal entity to whom an estate or interest in real property passes, in or by a deed.

“Grantor” shall include every person and/or legal entity from or by whom an estate or interest in real property passes, in or by a deed.



“Beneficial Owner” shall mean a natural person who, directly or indirectly,
(A) holds a membership interest in a limited liability company,
(B) exercises substantial control over the decisions of a membership interest in a limited liability company, or
(C) has been assigned membership interest in a 10% or more of the equity interests of the limited liability company.

The term “Beneficial Owner” shall *not* include:

- (A) a minor child;
- (B) a person acting as a nominee, intermediary, custodian, or agent on behalf of another person;
- (C) a person acting solely as an employee of a limited liability company and whose control over or economic benefits from the limited liability company derives solely from the employment status of the person;
- (D) a person whose only interest in a limited liability company is through a right of inheritance, unless the person also meets the requirements of the above paragraph of this definition;
- (E) a creditor of a limited liability company, unless the creditor also meets the requirements of the above paragraph of this definition;
- (F) any natural person whose membership interest in a limited liability company derives solely from his or her employment by such limited liability company, and such limited liability company’s organization as an employee-owned business or worker cooperative, as evidenced by such limited liability company’s by-laws or articles of organization.

“Legal Entity” shall mean a corporation, limited liability company, partnership or other similar business entity, whether formed under the laws of the State of New Jersey, or of the United States, or a foreign jurisdiction.

"Deed" shall be any document or writing, executed or delivered, whereby any real property or interest therein is created, vested, granted, bargained, sold, transferred, assigned or otherwise conveyed, including any such document or writing whereby any leasehold interest in real property is granted, assigned or surrendered.

“Certificate Of Habitability” shall be the certificate issued by EHD or Designee attesting that the rental unit is in compliance with all State and Local Laws and regulations including, but not limited to, the City’s Zoning and Land Use Regulations Ordinance, Health Laws and Regulations, Property Maintenance Code, Uniform Construction Code, Housing Code, Building Code and/or Uniform Fire Safety Act.

“REIT” shall be an acronym for Real Estate Investment Trust, a company that invests in income-generating real estate and is held by shareholders, who receive dividends from the various diversified real estate asset holdings and investments that the company makes

without the need to invest in particular real estate assets. “UPREIT” shall refer to an Umbrella Partnership REIT,

18:18-2 Requirements of Limited Liability Company Disclosure; Exemptions.

18:18-2.1 Required Information from LLC

- a. Effective **DATE**, when the grantor or grantee of a deed or transfer of title of residential property in the City of Newark containing one- to four- units is a limited liability company, the deed or title transfer or conveyance delivered and/or recorded must be accompanied by the recording of a disclosure document (“LLC Disclosure Form”) with the Essex County Register of Deeds and Mortgages and in compliance with N.J. Stat. § 46:26A-3, identifying the full legal names, business addresses, and email addresses or telephone numbers of all members, managers, beneficial owners, and any other authorized persons, if any, of such limited liability company.
- b. If any such member, manager, beneficial owner or authorized person of the limited liability company is itself a legal entity, the full legal names, business addresses, and email addresses or telephone numbers of the shareholders, directors, officers, members, managers, partners, and beneficial owners of the legal entity shall also be disclosed. This section shall apply until full disclosure of ultimate ownership by natural persons is achieved.
- c. Beneficial owners shall identify each and every entity or person linking such beneficial owner to the limited liability company, including by identifying every intermediary by name and explaining the nature of the legal or economic relationship of the beneficial owner to every other intermediary and to the limited liability company. The beneficial owner may be permitted or required to provide a diagram or organizational chart to meet this disclosure requirement.
- d. If indirect beneficial ownership is exercised through a publicly traded entity, a REIT, a UPREIT, or a mutual fund, the requirements of this paragraph shall only apply to beneficial owners holding or controlling 10% or more of the equity in such limited liability company.
- e. The LLC Disclosure Form shall be deemed prima facie proof of the statements therein contained in any administrative enforcement proceeding or court proceeding instituted by the City against the owner or owners of the building.



18:18-2.2 Exemptions

a. The Deputy Mayor/Director of Economic and Housing Development, through regulations, shall establish procedures to allow beneficial owners of limited liability companies who cite significant privacy interests to apply for a waiver to withhold the name and/or business address associated with a beneficial owner. Significant privacy interests shall include, but will not be limited to, where a beneficial owner is a natural person participating in an address confidentiality program.

b. The Deputy Mayor/Director of Economic and Housing Development shall issue a waiver to a beneficial owner upon a demonstration that a significant privacy interest exists and shall provide guidance on its website indicating what documentation is acceptable as proof for issuance of a waiver.

18:18-3 Enforcement; Retroactive Application

18:18-3.1 Proof of Disclosure Required to Pass Housing Inspections

a. The grantor and/or grantee of any residential property that is subject to this Ordinance must execute and deliver a fully executed copy of an LLC Disclosure Form and/or any amendments thereto, at the time of application for a Certification of Occupancy (CO) and/or a Certificate of Code Compliance (CCC). The LLC Disclosure Form and any amendments thereto must be recorded in compliance with N.J. Stat. § 46:26A-3 in the property records of Essex County Register of Deeds and Mortgages. The grantor and/or grantee of the Property shall not receive a Certification of Occupancy (CO) and/or a Certificate of Code Compliance (CCC) until the appropriate Newark city official, the Director of the Department of Engineering, has received a fully executed copy of the LLC Disclosure Form.

b. This will take effect beginning **MONTH, 202_**.

18:18-3.2 Disclosure Recording For Properties Not Currently For Sale

a. All current landlords and vacant property owners of one- to four- unit residential properties in the City of Newark shall provide a fully executed copy of the LLC Disclosure Form to the Newark Department of Economic and Housing Development in their **202_** landlord and/or vacant property registration application in order for a Certificate of Habitability to be issued and registration to be renewed.

b. This ordinance supplements Newark Municipal Codes 18:17 et seq. and 2:10-1.4 et seq. for one year to add one additional required document.

c. Accordingly, per Newark Municipal Code § 2:10-1.4E.9, the City of Newark may contract with and set the compensation of a private entity to assist the municipality in the implementation and administration of the property registration program AND a one-time confirmation of LLC Disclosure Recordation.

Section 3: SAMPLE DISCLOSURE FORM

FULL LEGAL NAME	BUSINESS ADDRESS	TELEPHONE OR EMAIL	NATURE OF OWNERSHIP

LLC Disclosure Forms may also include organizational charts and informational attachments to clarify chains of ownership through natural persons and other legal entities.

Section 4: Any prior ordinances or parts thereof inconsistent herewith are hereby repealed.

Section 5: If any part of this Ordinance is declared unconstitutional or illegal, the remaining provisions shall continue in full force and effect.

Section 6: This Ordinance shall take effect upon final passage and publication in accordance with the laws of the State of New Jersey.

STATEMENT

This Ordinance amends Title 2, Administration, Chapter 10, Department of Economic and Housing Development, to add a disclosure requirement for all LLCs buying and selling 1 to 4 unit residences in the City of Newark and to collect beneficial ownership information through an new required form to be submitted when recording a deed or transfer of title.

