



STRATEGY Inclusionary Housing

OVERVIEW

Inclusionary housing policies link market rate development to the creation of homes that are affordable for lower-income households. These policies, also referred to as inclusionary zoning, work through the local land use approvals process to either require or offer incentives for developers to make a share (generally 10 to 20 percent) of housing units available to low- or moderate-income households.

Inclusionary housing policies are an increasingly popular tool in strong housing markets for leveraging growth for affordability and broadly dispersing affordable homes. In an era of static or declining federal and state funding for affordable housing, localities have also found inclusionary housing appealing because it leads to the creation of homes affordable for lower-income households with less or no need for public subsidy.

HOW IT WORKS

Inclusionary housing policies are usually implemented as mandatory requirements, accompanied by various forms of regulatory relief or subsidies to help offset the costs of pricing units so that lower-income households can afford them.

Most inclusionary housing policies are part of the zoning code. But some inclusionary housing policies operate outside of a zoning ordinance—for example, in the general land use plan or through a neighborhood plan.

Policies are usually tailored to address local housing needs and market conditions, but follow a similar structure. Inclusionary housing policies commonly specify:

- whether participation is mandatory or voluntary;
- the geographic scope of the policy;
- the types of developments subject to the policy (e.g., rental housing, for-sale housing, commercial developments);
- the size of developments subject to the policy (e.g., 10 units or more);
- the share of units to be made affordable;
- the incomes served by the affordable units;
- the required affordability duration;
- whether density bonuses or other cost-reducing benefits are offered;
- the availability of alternative compliance options, such as building the affordable units off-site, paying a fee, dedicating land; and
- the process for appealing for a waiver.

Inclusionary housing is often best at helping to address the affordability needs of low- to middle-income households (e.g., 61 to 100 percent of median income) who earn too much to qualify for typical federal housing programs but are facing high cost burdens. Only with the help of substantial public subsidies are programs generally able to generate housing for extremely low-income families (30 percent or less of median income).

POLICY AND PROGRAM TOOLS

Inclusionary Upzoning

Mandatory inclusionary housing policies generally have a much better record of producing affordable homes than incentive-based, voluntary policies. However, some localities have adopted strong forms of voluntary inclusionary housing tied to developer requests for significant rezoning. These policies, sometimes referred to as “inclusionary upzoning,” are becoming more common and may be an easier fit than traditional, mandatory policies in places where legal, market or political barriers have historically impeded the adoption of inclusionary housing.

Inclusionary upzoning may apply in the instance of a request for a conditional use permit, as part of a comprehensive rezoning or as a condition of utilizing new development options made available through a specific area land use plan or zoning overlay.

CASE STUDIES

Inclusionary Development Policy (Boston)

In 2000, former Mayor Thomas Menino signed an executive order creating the city's Inclusionary Development Policy (IDP). The policy applies to any residential development of 10 or more units seeking zoning relief and requires the equivalent of 13 percent of total housing units to be affordable. The policy also applies to any residential development built on public land or with public financial assistance.

To create new housing, most Boston developers need some form of zoning relief, usually in the form of additional height or density, because the zoning code in most areas of the city has not been updated for decades and allows only small-scale buildings by right. For nearly all developers, then, the IDP policy is technically voluntary but functionally mandatory.

Developers may be asked to provide greater than 13 percent affordability when requesting a Planned Development Area (PDA) zoning change. PDAs are overlay districts that offer considerable zoning flexibility for large-scale, mixed-use developments, similar to Planned Unit Development (PUD) zones in other parts of the country. The new Fenway neighborhood PDA, for example, requires 20 percent affordability.

Developers have the option of building the affordable units within the proposed development, constructing them off-site or paying a “buyout fee.” As of early 2015, the Boston IDP has produced 1,718 affordable units and generated an additional \$32.3 million in buyout fees, according to Nick Martin of the Boston Redevelopment Authority.

Buyout fee revenues are deposited in a city fund that supports affordable housing citywide. A minimum of half of these funds must be spent in neighborhoods where the percentage of affordable housing is less than the citywide average.

Half of affordable units for sale must be affordable for households earning less than 80 percent of median income (AMI) and half for households earning between 80 and 100 percent of AMI. Rental inclusionary units must be affordable for households earning less than 70 percent of AMI. Rental units must remain affordable for 50 years, and for-sale homes must have a 30- to 50-year affordability term.

For More Info:

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Tyson's Plan (Fairfax County, Va.)

In 2010, Fairfax County adopted the 20-year comprehensive Tyson's Plan to guide major changes to the county's sprawling commercial center known as Tyson's Corner. The plan envisions significantly greater development intensity within walking distance of four new Metrorail stations, which opened in 2014, along with mixed-use development, a walkable street grid and other physical changes that support transit use.

To access the lucrative redevelopment options outlined in the plan, developers are expected to make 20 percent of residential development units affordable to low- and moderate-income households, or contribute \$3 per square foot to the county's affordable housing trust fund if building commercial or hotel space. By adhering to these guidelines, developers can build to an unlimited floor area ratio (FAR) within a quarter-mile of each Metro station, or up to a FAR of 2.4 or 3.0 elsewhere in each transit district.

As of early 2015, the policy had produced 120 affordable units. County staff estimates that if existing development proposals are fully built out they will include a total of nearly 2,300 affordable units for households earning between 81 and 120 percent of area median income (AMI) and another 1,500 affordable units for households at less than 70 percent of AMI. These housing units will be required to stay affordable for 50 years if rented and 30 years if owner-occupied.

The 17 million square feet of commercial and hotel space under construction or in the pipeline in Tysons Corner is expected to also generate tens of millions of dollars in contributions to the county's affordable housing trust fund, all of which must be spent in the Tysons Plan area.

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Cornfield Arroyo Seco Specific Plan (Los Angeles)

In 2013, Los Angeles incorporated a voluntary approach to inclusionary housing in its new, transit-oriented land use plan for an up-and-coming industrial area of the city where the Los Angeles River and Arroyo Seco converge. The Cornfield Arroyo Seco Specific Plan (CASP) offers significantly higher density for predominantly residential developments that include a percentage of affordable rentals or for-sale housing.

The CASP sets baseline floor area ratio (FAR) limits at 1.5 for predominantly residential developments with more than 15 units, but increases the maximum FAR in most areas to 3.0 or 3.15 (depending on the district), if the developer reserves five percent of the units for households earning less than 30 percent of AMI, 11 percent for households earning less than 50 percent of AMI or 20 percent for households up to 80 percent of AMI.

This decision to set baseline FAR limits at 1.5 was motivated by a third-party pro-forma analysis that found that density incentives applied to higher baseline FARs would be unappealing for developers.

As of January 2015, no new developments had been built under the CASP, a year and a half into its implementation, but senior city planner Claire Bowin reported that two mixed-income projects were moving forward with plans that included affordable housing.

For More Info:

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Long-Term Affordability

The duration of affordability that inclusionary housing programs require ranges widely (from five years to in-perpetuity), but most programs require affordability periods of 30 years or greater. Approximately one-third nationwide require affordability for the life of the building, 99 years or in-perpetuity. Programs that require lasting affordability are generally preferable, as short restrictions can quickly result in a windfall for the first homebuyer and the loss of an affordable unit. In all cases, some form of oversight is required to ensure that homes remain affordable upon resale or when leased to a new family.

Localities use a variety of means to ensure that inclusionary properties continue to be sold or rented at affordable prices over the life of the affordability term and are not lost due to illegal sales, foreclosure or lax rental management practices. These include requiring developers to record a deed of trust, proactive monitoring programs, pre-purchase and post-purchase workshops, shared equity homeownership programs with carefully designed resale restrictions and placing inclusionary housing units with community land trusts or local nonprofit managers.

CASE STUDY

Below Market Rate Program (San Mateo, Calif.)

The city of San Mateo (population 99,670) adopted its mandatory Below Market Rate Program in 1998. The ordinance requires that 10 to 15 percent of rental and for-sale homes be priced affordably for households earning 50 to 120 percent of median income, depending on tenure and incomes targeted. As of 2014, the city has 325 total inclusionary homes—196 rental units and 129 for sale.

Affordable rental units must remain affordable for the life of the building. The for-sale affordability term is 45 years, with the term restarting for the next homebuyer if the home is resold within the 45-year control period. City staff believes this will have the practical effect of perpetual affordability because most homes tend to be sold within 30 years.

San Mateo uses many innovative practices to hold onto its inclusionary homes over time. The city adds a promissory note and deed of trust to inclusionary for-sale homes at the point of initial sale to establish a "security interest" in the property that helps the city stay better notified of attempts to improperly refinance or sell homes. The city also exercises a preemptive right of purchase (right of first refusal) at the point of resale to gain control and oversight over the resale process. Rather than actually taking ownership of the home, however, the city assigns its preemptive option to purchase to an income-qualified homebuyer, who then purchases the home from the previous homeowner at the designated affordable price.

San Mateo's Below Market Rate Program also sets underwriting standards for loans assumed by homeowners and has found it helpful to require its homeowners to complete annual certification forms affirming that they are in compliance with permissible types of home loans and the underwriting standards required for refinancing.

To ensure inclusionary rental units are leased in keeping with the program's selection and income qualification rules, the city manages a master waitlist for all inclusionary rental units in the city.

For More Info:

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Density Bonuses and Other Cost Offsets

Over time, land prices adjust to inclusionary housing requirements, helping to make the affordability requirements financially more feasible for market rate developers. To further offset the foregone revenue associated with inclusionary zoning requirements, many inclusionary zoning policies offer density bonuses, zoning flexibility or direct cost reductions to the developer.

The most common incentives are density bonuses, which permit the construction of additional units above the amount ordinarily allowed by the underlying zoning code.

Density bonuses are often coupled with other incentives, such as:

- flexible zoning standards that allow developers to build multifamily dwellings in single-family zones or reduce parking requirements;
- fee waivers and tax abatements;
- expedited permitting and review processes, which can lower developers' soft costs; and
- permission to make the affordable units slightly smaller or less well-appointed than neighboring market rate units.

Finally, localities may make some subsidy available to help reduce affordability costs. A 2006 study found that close to half of all California jurisdictions with inclusionary zoning offered local housing funds to help subsidize inclusionary projects. Many of these jurisdictions use these funds strategically to generate projects that exceed the minimum affordability requirement, lower the cost to the developer and help the jurisdiction get its money into housing more quickly.

Well-designed offsets help to facilitate political acceptance of inclusionary zoning policies, lessen the chances of successful legal challenges and reduce the likelihood that inclusionary zoning policies will create disincentives for new development, which could reduce the supply, and thus increase the price, of market rate homes. Policies that are effective offsets may also be useful as incentives for voluntary inclusionary zoning policies.

CASE STUDIES

Affordable Housing Set-Aside Program (Emeryville, Calif.)

Emeryville's Affordable Housing Set-Aside Program requires 15 percent affordability for rental developments (nine percent for moderate-income households and six percent for very low-income households) and 20 percent moderate-income affordability for ownership developments. Homes must remain affordable for 55 and 45 years, respectively. The small city (population 10,777) has produced more than 400 below market rate units through this program since its adoption in 1990.

Emeryville's program offers various zoning benefits and cost offsets to participating developers. In addition to density bonuses of up to 25 percent, the city is authorized to subsidize the cost of traffic impact fees, building fees and any other city fees subject to the affordable units. It also provides technical assistance to help developers access local, state or federal sources of subsidy funding to help them meet their affordability obligations.

For More Info:

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Designated Areas Program (New York City)

New York City's voluntary inclusionary housing program, known as the Designated Areas Program, offers 33 percent greater density for properties that contribute 20 percent affordable units. Developers may also access the city's property tax exemption program, city and state loan programs, tax-exempt bonds and low-income housing tax credits to finance the development of the inclusionary units. As of early 2015, the city's property tax exemption program exempted property taxes on the net value created through new construction for 20 to 25 years, and applied this exemption to all the units in

the building, including the market rate units. If this or other forms of public assistance are used, the inclusionary units must be built on-site. Otherwise developers have the option of meeting their 20 percent affordability obligation off-site. The Designated Areas Program offers no in-lieu fee alternative.

Since 2005, the program has produced more than 4,240 affordable units. Homes must be permanently affordable for households with incomes up to 80 percent of median income.

For More Info:

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Sliding-Scale Affordability Requirements

Communities considering the adoption of an inclusionary housing program balance the goal of creating affordable units against the potential that onerous set-aside requirements will cool the housing market and slow home construction. Typically, programs require that between 10 and 20 percent of units be set aside for low- and moderate-income households, depending on the strength of the market. Getting the balance right is often a difficult process, and one that is aided by inviting feedback from a broad array of stakeholders, including builders and developers, as well as advocates, when creating or modifying the regulations.

Programs vary widely in the income level at which below market units are targeted. Most inclusionary housing programs serve families earning 50 to 120 percent of area median income (AMI), targeting the lower end of the income spectrum with new rental units and higher-income households with homeowner units.

In recent years, programs have begun adding flexibility into their affordability requirements, allowing developers to select from a menu of affordability targets. For instance, a program that normally asks a developer to make 15 percent of total units affordable for households at 80 percent of AMI might also allow the developer to meet their obligation by making a smaller share of apartments affordable for households at 50 percent of AMI, or a greater share affordable at 100 percent of AMI.

CASE STUDY

Affordable Housing Production Program (Santa Monica, Calif.)

Santa Monica's Affordable Housing Production Program (AHPP) is a mandatory inclusionary housing program adopted in 1998. The program employs a variable affordability requirement for rental properties, depending on the income bracket served. If the affordable units are priced for low-income households (earning 80 percent of AMI), 20 percent must be affordable. The affordability percentage drops to 10 percent if units are priced for very low-income households (earning 50 percent of AMI), and to five percent if units are affordable for extremely low-income households (earning 30 percent of AMI). To date, the program has generated approximately 1,000 affordable apartments. Developers frequently choose the option of providing fewer units at a deeper level of affordability.

For More Info:

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Alternatives to On-site Affordable Units

Most policies favor developers meeting their affordability obligations by building affordable units in the same building as the market rate units. But localities also frequently offer alternative compliance options. Jurisdictions commonly allow:

- building a greater number of affordable units off-site, generally in the same community or in other growing and accessible neighborhoods;
- dedicating land that can support a greater number of affordable housing units; or
- paying a fee to support affordable housing elsewhere in the jurisdiction.

To the extent a jurisdiction seeks to maximize the overall number of affordable housing opportunities, it may want to consider allowing affordability requirements to be met through off-site construction. In some cases, production of affordable housing units may be less expensive in off-site locations, increasing the number of units that can be built or reducing the amount of offsets the communities may need to provide. Allowing off-site construction also may lessen opposition to the ordinance among developers and landowners. Communities that permit off-site construction may wish to consider the amenities offered by the off-site location to ensure that the affordable housing opportunities are provided in opportunity-rich neighborhoods near public transit and jobs.

Most inclusionary housing programs also allow developers to pay a fee in lieu of constructing affordable units. The fee is often based on the cost to develop an affordable housing unit. Fee revenue is normally allocated to a local affordable housing trust fund that is used to finance other affordable housing initiatives.

The option to pay an in-lieu fee provides greater flexibility, particularly for developers of small projects; however, in areas with high land costs, few buildable lots, or where the fee is set too low to support new development, the trade-off may be fewer affordable units built. In areas with these constraints, some communities require proof that development of affordable units will create an insurmountable burden, economic or otherwise, before granting permission to pay an in-lieu fee.

CASE STUDIES

Affordable Housing Ordinance (Davis, Calif.)

The small, suburban city of Davis has had an inclusionary zoning ordinance since 1987. The Affordable Housing Ordinance requires 25 to 35 percent affordability for rental housing and 10 to 25 percent affordability for homeownership developments. To date, the program has produced approximately 2,000 affordable homes for low-income renters and moderate-income homeowners. These homes must remain permanently affordable.

For most of the policy's history, the ordinance offered developers two alternatives to developing affordable units on-site: land dedication or paying an in-lieu fee. Many of the affordable homes produced by developers to date have been through exercise of one of these two alternatives. Land dedication, in particular, has allowed for a variety of affordable housing types, including a domestic violence shelter, senior housing, family housing, housing for individuals leaving homelessness, transitional housing and housing for those with developmental disabilities.

In January of 2015, the city added a third alternative: acquiring and placing permanent affordability restrictions on existing housing units. Use of this option is subject to discretionary approval by the City Council based on consideration of such factors as the condition of the units and potential displacement of existing residents.

For More Info:

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Moderately Priced Dwelling Unit Program (Montgomery County, Md.)

Montgomery County is home to the nation's longest-running inclusionary housing program. The county recently added a compliance option under which developers of high-rise buildings can meet their affordability obligations by converting market rate homes to deed-restricted affordable homes, subject to administrative approval. While no conversions had been completed as of mid-2015, a few recently approved developments were utilizing this option.

One example is Hampden Row in downtown Bethesda. Toll Brothers, the developer of a seven-story, 55-unit condominium development is buying down the affordability of 12 market rate rentals in a mixed-income property located within the same Bethesda planning policy area, but approximately three miles northwest of Hampden Row.

The on-site obligation for Hampden Row would have been nine affordable condominiums. Toll Brothers will make a payment of \$1.434 million to make 12 off-site market rate rentals affordable to low-income households.

The county agreed to an Alternative Location Agreement with Toll Brothers after finding that the monthly condominium fees of the property would have made the total ownership costs of the below market rate homes unaffordable to the program's targeted households, who earn up to 70 percent of area median income (AMI). It was also significant for the county that the developer agreed to provide a greater number of affordable units off-site.

For More Info:

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RESOURCES

Research and WebTools

- Making Inclusionary Housing More Flexible: Four Ideas for Urban Settings (Center for Housing Policy, NHC, 2015)
- “California Supreme Court Upholds Inclusionary Zoning” (Public Interest Law Project, 2015)
- Creating Affordable Housing Out of Thin Air: The Economics of Mandatory Inclusionary Zoning in New York City (NYU Furman Center for Real Estate and Urban Policy, 2015)
- Inclusionary Housing Sample Documents Library (National Community Land Trust Network, 2014)
- Inclusionary Upzoning: Tying Growth to Affordability (Center for Housing Policy, 2014)
- Achieving Lasting Affordability through Inclusionary Housing (Robert Hickey, Lisa Sturtevant and Emily Thaden, 2014)
- After the Downturn: New Challenges and Opportunities for Inclusionary Housing (Center for Housing Policy, 2013)
- Expanding Housing Opportunities through Inclusionary Zoning: Lessons from Two Counties (U.S. Department of Housing and Urban Development, Office of Policy Development and Research, 2012)
- Is Inclusionary Zoning Inclusionary? A Guide for Practitioners (RAND Corporation, 2012)
- Inclusionary Housing in International Perspective: Affordable Housing, Social Inclusion, and Land Value Recapture (Nico Calavita and Alan Mallach, 2010)
- “Inclusionary Housing, Incentives, and Land Value Recapture” (Land Lines, January 2009)
- The Effects of Inclusionary Zoning on Local Housing Markets: Lessons from the San Francisco, Washington DC and Suburban Boston Areas (NYU Furman Center for Real Estate and Urban Policy, Center for Housing Policy, 2008)
- Housing Market Impacts of Inclusionary Zoning (National Center for Smart Growth Research and Education, 2008)
- Affordable by Choice: Trends in California Inclusionary Housing Programs (Non-Profit Housing Association of Northern California, 2007)
- Delivering on the Promise of Inclusionary Housing: Best Practices in Administration and Monitoring (Rick Jacobus, 2007)
- National Survey of Statutory Authority and Practical Considerations for the Implementation of Inclusionary Zoning Ordinances (National Association of Home Builders, 2007)
- On Common Ground: Joint Principles on Inclusionary Housing Policies (Non-Profit Housing Association of Northern California, Home Builders Association of Northern California, 2005)
- Strengthening the Moderately Priced Dwelling Unit Program: A 30-Year Review (Montgomery County Council Staff, 2004)
- Voluntary or Mandatory Inclusionary Housing? Production, Predictability, and Enforcement (Business and Professional People for the Public Interest, 2004)
- Opening the Door to Inclusionary Housing (Business and Professional People for the Public Interest, 2003)
- Inclusionary Zoning: Legal Issues (California Affordable Housing Law Project of the Public Interest Law Project, Western Center on Law & Poverty, 2002)
- Issues to Consider When Creating an Inclusionary Housing Ordinance (Business and Professional People for the Public Interest, 20xx)

Organizations

- **California Affordable Housing Law Project of the Public Interest Law Project.** A nonprofit legal center closely involved in two California Supreme Court decisions that upheld inclusionary zoning (San Jose, 2015; Napa, 1999). Provides trainings and online resources.
- **Citizens' Housing and Planning Association (CHAPA).** A nonprofit umbrella organization for affordable housing and community development activities in Massachusetts, with expertise in the practice of inclusionary housing in the state.
- **Cornerstone Partnership.** A leading adviser on designing and implementing inclusionary housing programs, offering direct technical assistance, webinars and other resources.
- **Innovative Housing Institute.** An experienced nonprofit with an active board of national experts that provide technical assistance in planning for and implementing inclusionary housing.
- **National Community Land Trust Network.** Provides research, advocacy, education and support for its member organizations as well as localities seeking to foster long-term affordability.
- **Non-Profit Housing Association of Northern California.** Extensive history of statewide research and successful advocacy for the adoption of new inclusionary housing policies in the San Francisco Bay Area.
- **NYU Furman Center.** Joint center of the New York University School of Law and the Robert F. Wagner Graduate School of Public Service providing academic and empirical research on a wide range of housing issues, including inclusionary housing.