

Inclusionary Housing

In addition to this 2018 QuickNotes, this collection consists of three issues of Zoning Practice from 2004 and a "Model" inclusionary zoning ordinance — all from the American Planning Association.

Providing citizens with opportunities for affordable and decent housing in a positive environment is an essential goal for every community. In the last couple of decades, affordable housing has become a significant issue throughout the country as housing costs have surpassed increases in earnings for not only very low-income families, but also for working-class and lower middle-income households. To remain competitive in a rapidly globalizing economy, communities must have a sufficient supply of affordable housing to meet the needs of a variety of people. Inclusionary housing allows for mixed income communities that provide people with options in housing type as individual lifestyles and incomes change over time.

INCLUSIONARY HOUSING BASICS

Inclusionary housing is not to be confused with inclusionary zoning. The term inclusionary housing refers to varying strategies for including affordable housing options in new and sometimes existing development. Inclusionary zoning, a type of inclusionary housing, refers to an ordinance binding creation of a percentage of affordable housing to the larger developmental process.

Who Needs Inclusionary Housing? Many workers in essential occupations, such as education and law enforcement, are finding they can no longer afford housing in the communities they serve. Meeting the housing needs of the elderly is increasingly difficult, not only due to dwindling municipal resources, but also because low-density zoning limits the supply of affordable housing. Additionally, a growing number of people earn too much to qualify for housing subsidies but not enough to afford a home or an apartment within a reasonable distance of their jobs. Cities across the nation are finding inclusionary housing policies to be a cost-effective way to produce homes for citizens who would otherwise be excluded from the housing market in their own city.

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How Does Inclusionary Housing Affect the Market? Some inclusionary housing critics argue that requiring the building of affordable housing adjacent to or within a development of market-rate units will drive up the cost of the market-rate units. However, a large body of research demonstrates that inclusionary housing does not negatively impact overall levels of housing production or consumption, and in some communities, overall housing production increases after passage of inclusionary programs.

PROGRAMS AND POLICIES

Some jurisdictions use inclusionary zoning ordinances that require developers to produce a certain number of affordable units in order to be granted approval for a market-rate project. Another approach is to designate a trust fund for city-administered affordable housing programs. For example, Sacramento, California, has financed a regional affordable housing trust fund by applying linkage fees to commercial development.

Voluntary vs. Mandatory.

Voluntary programs seek only to persuade developers in building affordable units by offering incentives such as density bonuses and fee waivers. The hope



Fairfax County Department of Housing and Community Development

The "Great House", seen here in Fairfax County, VA, is an innovative architectural design concept for affordable housing development. This design concept allows attached units blend in with surrounding detached housing units.

(Continued on back.)



City of Santa Fe, New Mexico

A large-scale condominium project in Santa Fe, New Mexico, called Zocalo, consisting of 310 units, of which 31 are Housing Opportunity Program (HOP) units.

it results in a taking. Some communities grant density bonuses to address the complaint that developers suffer economically by selling or renting nonmarket-rate units. Each unit of affordable housing provided grants a developer either an increase in the size or number of market-rate units that may be sold or rented. Other communities use fee waivers, reductions in site development standards, or expedited review processes to encourage or reward developers who produce new affordable housing.

Control Periods. An important concern for securing and maintaining an adequate supply of affordable housing is the length of time that housing is required to remain affordable. While the inclusionary housing policies of some jurisdictions require permanent affordability, others use control periods ranging from 10 years to 30 years. Tools for controlling resale of the unit as affordable housing include deed restrictions, contractual agreements, or covenants that run with land.

PUTTING INCLUSIONARY HOUSING INTO PRACTICE

Building Community Support. Opponents to inclusionary programs may attend public meetings and attempt to persuade officials to back away from mandatory affordable housing legislation. Including stakeholders in the process as early as possible can ease opposition from both neighborhood groups and the development community. A strategy for building broad support is to educate the public about all the reasons that affordable housing is important to the overall economic and social health of the community. A good first step is to help the community recognize that affordable housing is a critical component of a community's infrastructure.

Design Strategies. The potential to create diverse neighborhoods is reduced when inclusionary units are segregated from other units through appearance or location. Affordable units built within a market-rate development should be indistinguishable in appearance from market-rate units and should blend in with other housing types. Mandatory design guidelines for inclusionary units may be necessary. Such guidelines might call for minimum unit sizes as well as landscaping and building materials comparable to those used in market-rate units.

Benefits. When residents can afford to live near their jobs (a concept known as the "jobs-housing balance"), the community's roadways are likely to be less congested. Public transit systems will be under less pressure to transport people ever-increasing distances. The density bonuses granted to developers make for more compact neighborhoods and help to counterbalance less sustainable, low-density residential growth. Communities with inclusionary housing policies enable people to access decent, affordable housing while producing communities with more economic and racial integration. *Patrick C. Smith* ■

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is that these incentives are enticing enough for developers to include affordable units in new projects without making the provision of such units a requirement. Housing studies conducted in California, Massachusetts, and Washington, D.C., however, show that cities adopting mandatory programs in place of voluntary initiatives have produced more housing for low-income citizens.

Mandatory housing programs also set a level playing field for developers.

Under the guidelines of a mandatory housing policy, developers know what is required up front and how the community may help them offset the costs associated with building below market-rate units. Some mandatory policies let developers opt out of including affordable units on-site by allowing donations to a housing trust fund or dedications of land for affordable housing at another location. Affordable housing advocates often find these alternatives unacceptable because they do not meet the goal of creating mixed income neighborhoods throughout a community.

Developer Incentives. Developer incentives ease opposition to inclusionary policies, thereby reducing the likelihood that an affordable housing program will be opposed on the grounds that



Fairfax County Department of Housing and Community Development

Inclusionary housing projects should be designed, built and landscaped to look like market-rate housing. Doing so helps to remove the stigma associated with affordable housing as well as maintain community character.



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PRACTICE INCLUSIONARY HOUSING PART ONE

A large, white, sans-serif number '9' is centered in the lower half of the page, overlaid on a blue-tinted photograph of a residential street. The photograph shows several two-story houses with gabled roofs and porches, with trees and bushes in the foreground.

The Inclusionary Housing Debate: The Effectiveness of Mandatory Programs Over Voluntary Programs

By Nicholas J. Brunick

In response to the nationwide affordable housing crisis, many local governments are turning to inclusionary zoning as an effective tool for creating much needed affordable housing.

In crafting an inclusionary housing program, every community faces a major decision: should the inclusionary housing program be mandatory or voluntary?

This decision raises questions common to any policy debate involving markets and governmental regulation. Is a mandate needed to produce affordable housing or are incentives sufficient to spur developers to create affordable homes and apartments? Can a community provide enough incentives (through density bonuses, flexible zoning standards, fee waivers, etc.) to entice developers to build affordable housing without a mandate? Will mandates for affordability and the production of affordable housing, even when coupled with generous “cost offsets,” chill market activity and exacerbate affordability problems by restricting supply? Mandatory or voluntary—which approach will produce more housing and more affordable housing for the preferred populations?

Every community will engage in its own political debate and evaluate its own legal authority to determine its position on mandates and incentives. However, experience with inclusionary housing, both recent and long-standing, provides a number of insights on this important policy decision. Overall, mandatory programs produce more housing, including housing for lower-income populations. They also provide more predictability for developers and the community, and do not stifle development activity. As a result, more communities are choosing mandatory approaches. This issue of *Zoning Practice*, the

first in a two-part series on affordable housing, will examine inclusionary housing program experiences and studies from across the country.

MANDATORY PROGRAMS PRODUCE MORE HOUSING

Experience and research indicate mandatory inclusionary housing programs are more effective at generating a larger supply of affordable housing than voluntary programs. A 1994 study by the California Coalition for Rural Housing (CCRH) says, “Mandatory programs produce the most very-low- and low-income affordable units compared with voluntary programs, both in terms of absolute numbers and percentage of total development.”

A 2003 study by CCRH and the Nonprofit Housing Association of Northern California found similar results. The 15 most productive inclusionary housing programs in California are mandatory programs. In

fact, the report found that only six percent of the 107 communities reporting to have an inclusionary housing program said the pro-



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These two photos are of Claggett Farms in Montgomery County, Maryland, an extremely high-end subdivision development. Above: a large, market-rate single family home. Below: a moderately priced dwelling unit with two affordable townhomes. This is a classic example of how a mandatory inclusionary housing program stimulates innovation and creativity to produce high-quality affordable housing.



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ASK THE AUTHOR JOIN US ONLINE!

During October 18–29, go online to participate in our “Ask the Author” forum, an interactive feature of *Zoning Practice*. Nicholas J. Brunick will be available to answer questions about this article. Go to the APA website at www.planning.org and follow the links to the Ask the Author section. From there, just submit your questions about the article using an e-mail link. The author will reply, posting the answers cumulatively on the website for the benefit of all subscribers. This feature will be available for selected issues of *Zoning Practice* at announced times. After each online discussion is closed, the answers will be saved in an online archive available through the APA *Zoning Practice* web pages.

About the Author

Nicholas J. Brunick is an attorney and the Regional Affordable Housing Initiative Director at Business and Professional People for the Public Interest (BPI) in Chicago.

gram was voluntary. Two of those communities (Los Alamitos and Long Beach) “specifically blame the voluntary nature of their programs for stagnant production [of affordable housing] despite a market-rate boom.”

According to the National Housing Conference, a Washington, D.C.–based affordable housing advocacy organization, experience in Massachusetts shows that mandatory approaches were critical to the success of inclusionary zoning programs. In Cambridge, after ten years of voluntary inclusionary zoning districts that failed to produce any affordable housing, a mandatory inclusionary housing ordinance was adopted in 1999. As of June, the program had produced 135 affordable homes with 58 more in the development pipeline.

Finally, experience from the Washington, D.C., metropolitan area supports the same conclusion. Four mandatory countywide programs have worked effectively to create affordable housing in a mixed-income context in some of the nation’s most affluent counties. In Montgomery County, Maryland, over 13,000 housing units were produced during the past 30 years through a mandatory program requiring a 12.5–15 percent affordability component in large developments.

Voluntary inclusionary housing programs can be successful. First, it should be recognized that, theoretically, with enough of a subsidy any voluntary program could work extremely well. Realistically, however, housing subsidies are becoming scarcer. Nevertheless, voluntary programs can work well when they are implemented as if mandatory, or when a community’s broader planning policies (like mandated growth limitations) make the “vol-

untary” inclusionary housing component a highly attractive option. For example, in “Inclusionary Housing in California: The Experience of Two Decades,” authors Calavita and Grimes attribute the success of the volun-

without at least a 15 percent affordable housing component or plans to pay a fee in lieu of building affordable units. Planning staff in Chapel Hill explain that developers construe the inclusionary zoning expectation as



Courtesy of David Rusk

ⓘ This is a duplex with two affordably priced dwelling units in Fairfax County, Virginia. The home next door to this duplex looks almost identical, but is a large single-family home selling for \$600,000. The Fairfax County ordinance has produced over 2,300 affordable units since 1991.

tary inclusionary zoning program in Irvine to an “unusually sophisticated” and “particularly gutsy” staff committed to making the program work (*Journal of the American Planning Association*, 1998). Similarly, in Chapel Hill, North Carolina, the voluntary 15 percent affordable housing program for developments that require rezoning is also quite successful. The program is so rigorously marketed by town staff and the town council that no new residential developer, regardless of requiring a rezoning request, has approached the planning commission

mandatory because residential development proposals are difficult, more expensive, and less likely to win approval without an affordable housing component. Chapel Hill’s voluntary program has produced 162 affordable homes since 2000 and has collected approximately \$178,000 in fees.

Lexington, Massachusetts, followed a similar approach with the adoption of a firm policy related to affordability on all discretionary approvals. Consequently, the community succeeded in creating a significant amount of new affordable housing, joining

Chapel Hill as a model for communities that may lack the authority to implement a mandatory inclusionary zoning law.

The Morgan Hill, California, policy on limiting growth has enabled the success of its voluntary inclusionary housing program. Developers have a better chance of obtaining one of the limited number of development permits each year if they include affordable housing in their proposed development. Under this framework, a voluntary approach can ensure the production of some affordable units. However, even with an especially aggressive staff or broader policies, including growth limitations that make inclusionary housing more attractive, voluntary approaches are not likely to produce as much affordable housing.

SERVING LOW- AND VERY-LOW-INCOME HOUSEHOLDS

In general, mandatory programs are better suited to produce housing that is affordable to low- and very-low-income households (households below 80 percent and 50 percent of the area's median income respectively). The 15 most productive programs in California target low- and very-low-income populations at a much greater rate than the 92 other programs in the state, according to the California Coalition for Rural Housing and the Non-Profit Housing Association of Northern California in *Inclusionary Housing in California: 30 Years of Innovation*, published in 2003. The mandatory programs in Montgomery County and Fairfax County, Virginia, succeeded at producing affordable homes for extremely low-income households by allowing the local housing authority to purchase some of the newly created affordable units.

Without a mandatory requirement, communities will most likely have to provide an extremely high level of subsidy to entice developers to produce homes and apartments affordable to low- and very-low-income households. Voluntary inclusionary zoning programs that do succeed in generating affordable housing units for a range of low-income households must rely heavily on federal, state, and local subsidies in most cases. For example, Roseville, California, adopted its Affordable Housing Goal (AHG) program in 1988. The program encourages developers to



ⓘ This is a beautiful development for seniors in Montgomery County, Maryland, developed under mandatory inclusionary zoning. The development includes housing units for households receiving public housing assistance.

work with the city to voluntarily build affordable housing within residential developments. Since 1988, the AHG program produced 2,000 affordable units through significant federal, state, and local subsidies. However, nearly \$234 million in subsidies would be necessary to meet the city's goal of 5,944 affordable units by 2007—almost \$218 million more in funding than the city is expected to capture between 2002 and 2007. In the absence of expanded funding, it will be impossible for

WEB-BASED ENHANCEMENTS FOR ZONING PRACTICE

In order to provide better service to *Zoning Practice* subscribers, with this issue we offer the complete list of references for Nicholas J. Brunick's article and affordable housing web resources on the *Zoning Practice* web pages of APA's website. We invite you to check out this enhancement at www.planning.org/ZoningPractice/currentissue.htm. We will do this whenever we determine that we can use the Internet to heighten the informational value we are delivering to our subscribers.

Roseville to meet its regional affordable housing goal through its voluntary program. With a mandatory inclusionary zoning program, some of these affordable homes could be produced through a combination of density bonuses, flexible zoning standards or other offsets, and the market adjustments and developer creativity that result from a mandate to produce affordable housing.

PREDICTABILITY FOR COMMUNITIES AND DEVELOPERS

Mandatory programs offer reliability and predictability to generate results. Mandatory programs provide developers with predictability by setting uniform expectations and requirements and establishing a level playing field for all developers. Developers cannot price and value land appropriately and make informed investment decisions unless they know what the local community will allow them to build and what is required of them. The worst barrier to housing production and constricted supply is an unpredictable development atmosphere.

Under voluntary or ad hoc inclusionary housing programs, a developer may not know what he or she will be allowed to build or what will be required of them until they enter into and complete the negotiated development process with the community. Development decisions are usually fraught with community politics and can be applied unfairly to different developers depending upon their political connections.

Under a mandatory inclusionary housing program, developers will always know up front what is required of them. Hopefully, they also will know up front what cost offsets they will receive from the community with the affordable units. The highly successful inclusionary zoning programs in Montgomery and Fairfax Counties (over 13,000 and 2,300 affordable units produced, respectively) are two such examples. Like other zoning regulations, mandatory inclusionary housing programs with clear cost offsets provide key players in the housing market with the information needed to make efficient decisions about allocation of resources. In fact, developers in Irvine recently lobbied the city council to change the city's inclusionary housing ordinance from voluntary to mandatory enforce-

ment due to the confusion and uncertainty developers experienced in the development process under a voluntary program.

Of course, mandatory programs are less predictable if the cost offsets are uncertain and decided on a case-by-case basis. Similarly, voluntary programs, if applied consistently and aggressively, can be made clearer and less arbitrary. Overall, mandatory programs are better suited to establish predictable results for both the local community and private market actors.

ARRESTED DEVELOPMENT?

In addressing the need for more affordable housing no one wants a policy that will depress or stifle housing production. The best available evidence indicates that mandatory inclusionary housing programs have not done this.

One recent study by economists at the Los Angeles-based Reason Public Policy Institute entitled, *Housing Supply and Affordability: Do Affordable Housing Mandates Work?*, claims inclusionary zoning programs in the San Francisco Bay area led to a decline in housing production in those communities, contributing to rising housing prices overall. The study claims an analysis of building permit data from 45 communities with inclusionary zoning showed a decline in housing production in the “average city” the year after passage of the program. The study also claims that an analysis of building permit data for 33 communities with inclusionary zoning in the same region showed that less housing was produced in those cities in the seven years after passage of an inclusionary zoning ordinance than in the seven years prior to passage.

The study’s methodology exhibits a number of failings, including a failure to include communities without inclusionary zoning in the analysis and a failure to account for or hold constant other factors that could have an effect on levels of housing production, such as the unemployment rate, the prime interest rate, growth boundaries, lack of available land, vacancy rates, etc. As a result, the study’s conclusion that inclusionary zoning is the cause (or a significant cause) of decreased housing production in these communities remains wholly unsupported. One cannot tell whether other factors independent of inclusionary zoning are causing a decline in hous-

ing production or whether development also has declined in communities without inclusionary zoning.

A more diligent and reliable study of 28 California cities over 20 years by David Paul Rosen and Associates reaches the opposite conclusion. Like the Reason Institute study, Rosen analyzes residential building permit data obtained from the Construction Industry Research Board. Unlike the authors from the Reason Institute, the Rosen study accomplishes the following:

- Includes communities *with* and *without* inclusionary zoning programs in the sample of 28 California cities;
- Includes communities from a variety of locations in California (Orange, San Diego, San Francisco, Los Angeles, and Sacramento Counties) as opposed to just one region;
- Performs a regression analysis to determine the extent to which inclusionary zoning

impacts levels of production, and to what extent other independent variables impact housing production. The Rosen study measures the effect of indicators like the unemployment rate, changes in the prime rate, median price for new construction homes, the 30-year mortgage rate, and the 1986 Tax Reform Act, which eliminated many incentives in the U.S. Tax Code that had served to stimulate the production of rental housing.

The study concludes that the adoption of inclusionary zoning does not negatively impact overall levels of housing production. In fact, in a number of jurisdictions, including San Diego, Carlsbad, Irvine, Chula Vista, and Sacramento, he found that housing production increased (in some cases significantly) after passage of inclusionary housing programs. Only in Oceanside did housing production decrease. The drop was most likely caused by rising unemployment and

high rates of housing vacancy associated with the economic recession of the early 1990s and the Gulf War (Oceanside is near a military base). Overall, the study found that housing production was most heavily affected by unemployment levels, the median price of new construction homes, and the 1986 Tax Reform Act.

Rosen’s findings are more consistent with the balance of available evidence on this issue nationwide. Planning officials and local monitors of programs in San Diego, Sacramento, Boston, San Francisco, Denver, Chapel Hill, North Carolina, Cambridge, and Boulder claim not to have seen a decrease in development activity following the implementation of inclusionary housing programs.



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ⓘ Above: Fox Meadow development in Longmont, Colorado, includes 17 affordable townhomes. The Longmont ordinance has produced 545 new affordable homes since 1995 with over 400 more anticipated. Below: these two homes in Fairfax County, Virginia, each contain four affordable townhomes. The Carrington subdivision has million-dollar mansions that look like the townhomes. This is also a classic example of how mandatory programs stimulate the creativity and innovation needed to produce attractive affordable homes within highly affluent communities.



Courtesy of David Rusk

TABLE 1. SWITCHING FROM VOLUNTARY TO MANDATORY INCLUSIONARY ZONING

Municipality or County	Reason for Change	Result
Boulder, Colorado	Throughout the 1980s and 1990s, the city's voluntary ordinance proved ineffective at generating affordable housing.	Mandatory ordinance went into effect in 2000. As of June 2004, the program had created approximately 300 units of housing and had collected \$1.5 million in fees.
Cambridge, Massachusetts	Ten years of voluntary inclusionary zoning districts failed to generate any affordable housing.	In 1991, Cambridge switched to a mandatory program. As of June 2004, this mandatory program had produced 135 housing units with 58 more in the pipeline.
Irvine, California	Developers initiated a switch to a mandatory ordinance after more than 20 years of confusion and uncertainty under a voluntary program.	New mandatory ordinance (adopted in the spring of 2003) is a concise program with uniform expectations and rewards for developers. As of June 2004, the mandatory and voluntary programs together had created 3,400 affordable homes and apartments with 750 more in the pipeline. The program also had collected \$3.8 million in fees.
Pleasanton, California	A voluntary ordinance proved ineffective at creating affordable housing in the face of increasing housing costs and decreasing availability of land.	Passed mandatory ordinance in late 2000. As of June 2004, the program had created 408 affordable units with 154 more in the pipeline. The program also had collected \$14 million in fees.

THE MANDATORY TREND

The current trend in inclusionary housing programs is toward the mandatory end of the implementation spectrum. A survey for this article of available literature and existing programs around the country reveals only one situation where a community switched from a mandatory to a voluntary program: Orange County, California. According to a 1994 report produced by the California Coalition for Rural Housing, the switch led to a dramatic drop in

affordable housing. According to Orange County staff, the county no longer has a formal inclusionary housing program. The county does negotiate for affordable housing units on the few remaining vacant parcels that receive development proposals. Conversely, communities nationwide have switched to mandatory programs for additional affordable units and the benefit of greater predictability. Details for some of these communities are summarized in Tables 1 and 2.

TABLE 2. SWITCHING FROM MANDATORY TO VOLUNTARY INCLUSIONARY ZONING

Municipality or County	Reason for Change	Result
Orange County, California	Political environment	A decrease in the production of affordable housing units. The voluntary program produced 952 units in 11 years (1983–1994). The mandatory program produced 6,389 units of affordable housing in four years (1979–1983).

MANDATORY ORDINANCES IN LARGE CITIES

The five largest cities to adopt inclusionary zoning—Boston, Denver, Sacramento, San Diego, San Francisco—chose mandatory ordinances in the face of severe affordable housing shortages. This decision reflects both the perceived and documented effectiveness of requiring developers to set aside affordable units or pay a fee in lieu of building units on-site. Denver's mandatory ordinance is credited with the production of approximately 3,400 units of affordable housing (constructed or in the development pipeline) since the law was passed in 2002, reinforcing the argument that mandatory programs are more productive.

The October issue of *Zoning Practice* will feature a review of big-city inclusionary zoning programs.

THE MIDWEST SIGNS ON

Mandatory inclusionary zoning programs are no longer exclusive to high-cost housing markets on the Coasts. In August 2003, the first inclusionary housing ordinance in the Midwest became law when Highland Park, Illinois, an affluent North Shore suburb of Chicago, adopted a mandatory inclusionary zoning law requiring a 20 percent affordability component in any development with five or more units of housing (See "Affluent Community Sets Precedent with Inclusionary Zoning Ordinance," October 2003). In January 2004, Madison, Wisconsin, followed with its own mandatory program. The ordinance requires developers of projects with 10 or more units to price 15 percent of them as affordable.

THE BOTTOM LINE

With inclusionary zoning, the path most chosen appears to be the more desirable. The experience of municipalities and counties nationwide demonstrates that mandatory inclusionary zoning works as a practical and effective tool for creating affordable housing. While the success of voluntary programs is contingent on the availability of subsidies and aggressive staff implementation, mandatory programs have produced more affordable units overall, as well as more units for a wider range of income levels within the affordability spectrum—all without stifling development.

A selection of inclusionary housing ordinances featured in this article is available to *Zoning Practice* subscribers by contacting the Planning Advisory Service (PAS) at placeaninquiry@planning.org.

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NEWS BRIEFS

NEW JERSEY PASSES TRANSFER OF DEVELOPMENT RIGHTS LEGISLATION

By Rebecca Retzlaff, AICP

In March, New Jersey passed a transfer of development rights (TDR) law (SB 1287/AB 2480) enabling municipalities to adopt and implement TDR programs. Under the law, landowners in targeted conservation areas may sell their development rights and place a restrictive covenant on their land to preserve in perpetuity. Developers may purchase the TDR credits to build at higher densities in targeted development areas.

The act follows a 1989 bill that established a pilot TDR program in Burlington County. According to the new TDR act, “The Burlington County pilot program has been a success and should now be expanded to the remainder of the state of New Jersey.”

The law allows jurisdictions to shift development from environmentally sensitive, historic, and agricultural areas to receiving zones more appropriate for development. According to the law, designation of the receiving zones will occur after infrastructure availability; zoning issues, such as density and lot size; and market conditions are considered.

According to E.J. Miranda, spokesperson for the New Jersey Department of Community Affairs, the new TDR law will benefit developers, farmers, municipalities, and smart growth advocates. “TDR presents an opportunity to preserve open space by using private-sector

dollars to acquire development rights and cluster new development in a much smaller land area. The result is that municipalities have more control over where growth occurs, landowners are compensated fairly for their land, developers have a clear picture of where they can build, and less of our limited public funds at the local and state levels have to be spent on land acquisition.”

Before a municipality adopts a TDR ordinance, it must prepare a development transfer plan, which includes the location and cost of infrastructure improvements, infrastructure cost-sharing methods, growth projections, planning objectives, and design standards for the receiving zone. The municipality also must prepare a utility service plan and a real estate market analysis. To assist municipalities with preparing these documents, the law established a planning assistance grant program for the development of utility service elements, development transfer elements, real estate market analyses, and capital improvement programs.

Susan Burrows, assistant executive director for external affairs with New Jersey Future, a smart growth advocacy organization that helped develop the new law, says one of the major hurdles to its passage was concern from farmers that the value of TDR credits would be priced fairly and that there would be a market for the credits. To that end, economic analyses of TDR ordinances are to be completed by outside consultants under the new law.

The bill requires review and approval or recommendation of a jurisdiction’s TDR ordinance by the county agricultural development board, the county planning board, and the New Jersey Office of Smart Growth. Furthermore, jurisdictions passing a TDR ordinance must also receive endorsement from the Office of Smart Growth for compliance with the state plan.

Burrows says there is already high interest in creating TDR ordinances throughout the state, although no municipality has passed a TDR ordinance yet. According to Miranda, “The Office of Smart Growth receives calls everyday from municipal officials, planners, and developers interested in hearing more about how TDR works.” Furthermore, more than 80 people attended a recent training session co-sponsored by the New Jersey Department of

Community Affairs (which houses the Office of Smart Growth) and the New Jersey League of Municipalities.

Burrows says the new law is a step in the right direction. “It is one more tool that can be used to manage growth and development,” she says. The TDR law in New Jersey has important implications for smart growth and development in the state. “Growth management is a serious issue here,” Burrows says. “We see the point where the state will reach build-out.”

The New Jersey transfer of development rights law and program information featured in this article is available to *Zoning Practice* subscribers by contacting the Planning Advisory Service (PAS) at placeaninquiry@planning.org. *Rebecca Retzlaff, AICP, is a researcher with the American Planning Association and a PhD student in urban planning and policy at the University of Illinois–Chicago.*

Cover photo of Beacon development in Newton, Massachusetts. This is an example of a successful inclusionary development. Photo provided by the Innovative Housing Institute.

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PRACTICE INCLUSIONARY HOUSING PART TWO

10

Inclusionary Housing: Proven Success in Large Cities

By Nicholas J. Brunick

For nearly three decades, inclusionary housing served locally as an effective tool for medium-sized cities and wealthy suburban counties to address the need for affordable housing.

In a climate of decreased federal support, local governments in affluent communities found inclusionary zoning to be a cost-effective way to produce homes and apartments for valued citizens, including seniors, public employees, and working-poor households, who would otherwise be excluded from the housing market.

Until recently, no large U.S. city had adopted an inclusionary housing program. With the 1990s resurgence of many urban centers as vibrant locations for new investment, inclusionary zoning has surfaced as a policy solution to rising housing costs in big cities.

This issue of *Zoning Practice*—the second in a two-part series on inclusionary housing—discusses why large urban centers are examining and adopting inclusionary housing strategies. The article also presents five case studies of recently enacted inclusionary housing programs in Boston, Denver, Sacramento, San Diego, and San Francisco. Finally, lessons that other local governments (large or small) can draw from the large-city inclusionary housing experience will be proposed and examined.

WHY LARGE CITIES?

It is clear that inclusionary zoning is no longer a policy tool used exclusively in affluent suburbs and small cities. Why are large cities now beginning to adopt and implement inclusionary housing programs? Though the reasons are varied, they all stem from the need to preserve the livability and attractiveness of cities for capital investment and people.

For more than the poor. Large cities are adopting inclusionary housing programs because of their proven effectiveness in addressing the dearth of affordable housing. In the 1990s, housing costs outpaced income

growth for low- and moderate-income households. The extension of the affordable housing crisis to working-class and lower-middle income households has heightened the urgency to address the problem.

No funding. Inclusionary zoning is the market-based tool cities need for producing affordable housing without using tax dollars. Public revenues remain tight despite the urban resurgence, and the fiscal capacity of large cities has been severely hamstrung by the 30-year retrenchment in federal spending on cities and housing in general, the poor economic conditions of the past three years, and the recent federal tax cuts and other federal policies that dismiss any significant level of federal revenue sharing to aid states and cities during these historically tough times.

Through the use of creative cost offsets such as density bonuses, flexible zoning standards, and expedited permitting processes, large cities can create affordable housing while preserving the federal and state housing dollars they receive for more vulnerable popu-

lations (extremely low-income, disabled, homeless, etc.) and preserving more of the local tax base for other pressing public needs.

The global economy. To be competitive in a global economy, urban communities need a sufficient supply of affordable housing for every level of the workforce, a basic level of economic equality, and a healthy consumer class. Inclusionary zoning provides large cities with a multipurpose policy tool to help maintain a strong economic environment by creating affordable housing for entry-level occupations in key industries, by strengthening the economic security of low- and moderate-income households, and by integrating affordable housing into market-rate developments and traditionally market-rate neighborhoods.

Racial and economic segregation. Inclusionary housing can mitigate the symptoms of racial and economic segregation plaguing many American cities today, including crime, failing schools, and social instability, all of which deter human and capital investment. By producing low- and moderate-income housing in an attractive, mixed-income fashion within market-rate developments, inclusionary zoning programs help to reverse exclusionary development patterns, which discourage companies and moderate-income households from choosing to locate or remain in the city.

Sprawl and disinvestment. Sprawl pulls public and private investment away from the urban core. If affordable housing cannot be found in the city, developers and citizens will look where land costs are lowest for investment—usually on the fringe of the metropolitan region. Inclusionary zoning programs allow large cities to use density bonuses and other cost offsets to produce and maintain a sufficient supply of affordable housing within

WEB-BASED ENHANCEMENTS FOR ZONING PRACTICE

In order to provide better service to *Zoning Practice* subscribers, with this issue we offer the complete list of references for Nicholas J. Brunick's article and affordable housing web resources on the *Zoning Practice* web pages of APA's website. We invite you to check out this enhancement at www.planning.org/ZoningPractice/currentissue.htm. We will do this whenever we determine that we can use the Internet to heighten the informational value we are delivering to our subscribers.

ASK THE AUTHOR JOIN US ONLINE!

During November 15–26, go online to participate in our “Ask the Author” forum, an interactive feature of *Zoning Practice*. Nicholas J. Brunick will be available to answer questions about this article. Go to the APA website at www.planning.org and follow the links to the Ask the Author section. From there, just submit your questions about the article using an e-mail link. The author will reply, posting the answers cumulatively on the website for the benefit of all subscribers. This feature will be available for selected issues of *Zoning Practice* at announced times. After each online discussion is closed, the answers will be saved in an online archive available through the APA *Zoning Practice* web pages.

About the Author

Nicholas J. Brunick is an attorney and the Regional Affordable Housing Initiative Director at Business and Professional People for the Public Interest (BPI) in Chicago.

the city core, thereby reducing the economic pressures that send people, employers, and investment away from the city.

Large cities face housing shortages that threaten the economic and social well-being of their communities. In the absence of a coherent federal urban policy and significant federal funding for affordable housing, inclusionary zoning provides large cities with a market-based tool to address the need for a wide range of housing options.

LARGE-CITY CASE STUDIES

Since 2000, five major U.S. cities with populations exceeding 400,000 people have adopted inclusionary housing programs. Boston has an executive order requiring developers to build affordable housing in new developments, and Denver, San Francisco, San Diego, and Sacramento have inclusionary housing ordinances that require affordable homes and apartments in new developments. These programs provide trail-blazing examples that other urban centers can follow.

Boston

Background. The economic boom of the 1990s raised income levels for Boston area residents, but housing prices went even higher, soaring at a double-digit pace. As construction and land costs increased, gentrification spread from the central downtown areas to surrounding neighborhoods, displacing moderate-income families. In addition, affordable-housing advocates said the city’s unofficial inclusionary housing program was failing to produce affordable units, pointing to two high-profile developments devoid of affordable housing. Boston’s tight housing market, and pressure from community-based organizations and housing advocates, led Mayor

Thomas Menino to sign an executive order in February 2000 creating an inclusionary housing policy.

The program. Under Boston’s policy, any residential project that contains ten or more units and, 1) is financed by the City of Boston or the Boston Redevelopment Authority (BRA), 2) is to be developed on property owned by the city or BRA, or 3) requires zoning relief, triggers the requirements of the program. Due to the antiquity of the city’s zoning code, nearly all residential developments over nine units are covered by the executive order.

The Boston policy states that in all qualifying developments, 10 percent of the housing units must be affordable. While the policy provides for off-site development of affordable units, a developer who exercises this option must include a 15 percent (rather than 10 percent) affordable component. This requirement creates an incentive for developers to construct the affordable units on-site. Boston’s program also allows for a fee-in-lieu payment to BRA.

The results. In the initial year of implementation, eight privately financed high-end housing developments were subject to the policy requirements. As a result, approximately 246 affordable units were constructed with many more in the pipeline. A total of \$1.8 million in fees were collected, with millions more committed. New housing development continues to boom in Boston, and development projects remain lucrative, even with the affordable unit set-aside requirement. Pleased with the results thus far, the city is now conducting a demonstration project to see how a 15 percent affordability requirement would work.

Denver

Background. Denver has one of the newest inclusionary housing programs in the country.

The ordinance, passed by the city council in 2002 in response to the city’s workforce housing needs, was an amendment of the housing and zoning codes to create a moderately priced dwelling unit (MPDU) program.

The program. Unlike many local inclusionary zoning ordinances, the Denver program covers new construction and existing buildings that are being remodeled to provide dwelling units. Most programs cover new construction only. Existing developments that are for-sale must include a 10 percent affordable component. Because of a state statute and a Colorado Supreme Court ruling prohibiting local ordinances from limiting rent levels,



⊕ The redeveloped Denver Dry Goods Building, which includes a mix of affordable and market-rate housing, retail, and office space. Built in 1888, this 350,000-square-foot building is located in downtown Denver near the city’s light rail system.

Susanah Levine

rental developments can voluntarily choose to price 10 percent of the units as affordable.

In addition to density bonuses, reduced parking, and an expedited review process, Denver also provides a cash subsidy to developers for the affordable units (state law does not allow the city to provide fee waivers). The Denver ordinance permits the developer to build the required affordable units off-site but within the “same general” area. Instead of constructing the affordable units, developers also may contribute an in-lieu fee to the special revenue fund in an amount equal to 50 percent of the price per affordable unit not provided.

The results. Denver’s program stands out as the most successful to date for a city this size. Since its passage in 2002, the program has produced (or is in the process of producing) 3,395 affordable units. To the surprise of city staff, no fee-in-lieu money has been collected thus far. Though Denver is considering a few minor changes to the program’s implementation, it is deemed a tremendous success. Furthermore, the program has not had a negative effect on development levels in the city.

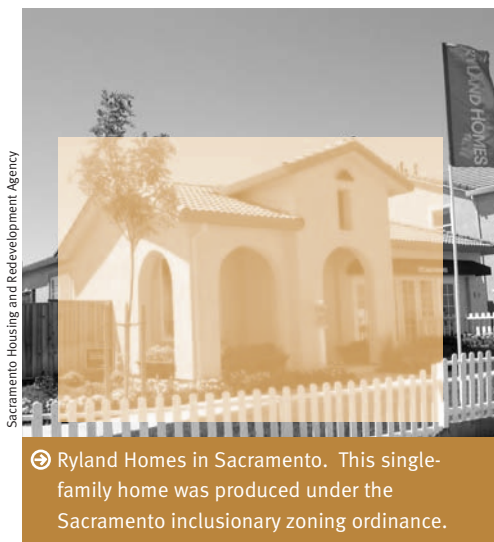
Sacramento

Background. In the 1990s, Sacramento experienced significant growth in residential and commercial development on its periphery. The commercial development created new jobs for a variety of income levels, but the majority of residential development was upscale. To provide housing to low- and moderate-income families near or within these job-rich areas, the city council explored an inclusionary housing program. Through the work of a broad coalition of affordable-housing advocates, labor unions, neighborhood associations, environmental groups, minority-led efforts, faith-based organizations, and the local chamber of commerce, the city council passed the Mixed-Income Housing Ordinance in 2000.

The program. The ordinance applies to all residential development over nine units in “new growth areas,” including large undeveloped areas at the city’s margins, newly annexed areas, and large interior redevelopment areas. The affordable requirement under the ordinance is 15 percent of all units, which can be single or multifamily. Flexibility in unit type helps developers determine a cost-effective way to construct the affordable units.

Sacramento provides a density bonus of 25 percent, which follows the density bonus required under California law for certain types of affordable developments. In addition to the den-

LARGE-CITY INCLUSIONARY HOUSING PROGRAM MODEL				
City/Implementation Date/Population	Affordable Units Produced	Threshold Number of Units/ Income Target	Affordable Requirement	Control Period
Boston, Massachusetts 2000 589,141	246 inclusionary units completed since 2000; \$1.8 million in fees	<i>Threshold:</i> ten or more units <i>Income Target:</i> at least one-half of affordable units for households earning less than 80 percent of the AMI; remaining affordable units for households earning 80-120 percent of the AMI, with an average of 100 percent of the AMI	10 percent	“Maximum allowable by law”
Denver, Colorado 2002 554,636	3,395 units completed since 2002	<i>Threshold:</i> 30 units or more <i>Income Target:</i> 65 percent of the AMI for rental units and less than 80 percent of the AMI for for-sale units	10 percent of for-sale units or a voluntary 10 percent for rental units	15 years
Sacramento, California 2000 407,075	649 units completed since 2000; more in the pipeline	<i>Threshold:</i> any development over 9 units <i>Income Target:</i> 15 percent of the units must be set aside as affordable. One-third of households making 50-80 percent of the AMI. Two-thirds of households making less than 50 percent of the AMI	15 percent	30 years
San Diego, California 1992, expanded in 2003 1,223,341	1,200 units completed between 1992 and 2003; 200 units in the pipeline; \$300,000 in fees	<i>Threshold:</i> ten or more units <i>Income Target:</i> rental units are set aside for households earning at or below 65 percent of the AMI; for-sale units are set aside for households earning at or below 100 percent of the AMI	10 percent	55 years for rental and for-sale units
San Francisco, California 1992, expanded in 2002 776,733	128 units completed between 1992 and 2000; 450 units completed since 2002; 440 units in the pipeline	<i>Threshold:</i> ten or more units <i>Income Target:</i> for rental units, households earning 80 percent or less of the AMI; for for-sale units, households earning 120 percent of the AMI	10 percent	50 years for rental and for-sale units



➔ Ryland Homes in Sacramento. This single-family home was produced under the Sacramento inclusionary zoning ordinance.

sity bonus, developers also may receive expedited permit processing for the affordable units, fee waivers, relaxed design guidelines, and priority status for available local, state, and federal housing funds.

The results. The Sacramento ordinance is responsible for the creation of 649 units to date with more to come; this ordinance has not had a negative effect on development.

San Diego

Background. In 1992, San Diego voters imposed an inclusionary housing requirement in the North City Future Urbanizing Area (FUA), a developing section of the city with no rental or affordable housing. The requirement reserves

In-Lieu-Fee Payment/ Off-Site Development	Density Bonus	Other Developer Incentives
<p><i>Fee:</i> must be equal to 15 percent of the total number of market-rate units times an affordable housing cost factor</p> <p><i>Off-site:</i> may build off-site, but set-aside requirement increases to 15 percent</p>	None	No citywide developer incentives, but increased height and FAR allowances permitted in the financial district
<p><i>Fee:</i> 50 percent of the price per affordable unit not built</p> <p><i>Off-site:</i> allowed if developer builds the same number of affordable units in the "same general" area</p>	Up to 20 percent for single family units; up to 10 percent for multifamily units	\$5,000 reimbursement for each for-sale unit, up to 50 percent of the total units in the development; \$10,000 reimbursement for each affordable rental unit if unit is priced for households at 50 percent of the AMI or below; expedited permit process; parking reductions
<p>Can dedicate land off-site or build off-site if:</p> <ul style="list-style-type: none"> there is insufficient land zoned as multifamily on-site alternative land or units must be in "new growth" areas 	25 percent	Expedited permit process for affordable units; fee waivers; relaxed design guidelines; may receive priority for subsidy funding
<p><i>Fee:</i> calculated based on the square footage of an affordable unit. Fee increases between 2003 and 2006 from \$1.00 per square foot to \$2.50 per square foot</p> <p><i>Off-site:</i> developers can opt to build off-site (set-aside does not increase)</p>	None	None
<p><i>Fee:</i> determined by several factors including the projected value of on-site affordable units; in-lieu payments are made to the Citywide Affordable Housing Fund</p> <p><i>Off-site:</i> developers can elect to build affordable units off-site, but the set-aside requirement increases to 15 percent</p>	None	Refunds available on the environmental review and building permit fees that apply to the affordable units

20 percent of all new rental and for-sale dwelling units for households earning 65 percent of the area median income (AMI). Developers must build affordable units because payment of a fee-in-lieu is not an option. According to San Diego planner Bill Levin, the FUA's inclusionary zoning program produced 1,200 affordable units over the last decade. Development has continued rapidly in the FUA. The city estimates that 1,200 additional affordable units will be produced before the FUA is completely built out.

In July 2003, San Diego adopted a citywide inclusionary zoning ordinance. The effort to pass the ordinance was based on the success of the FUA program, the rising demand for affordable housing for many groups, and the recommendation of an inclusionary zoning working group

that included formerly skeptical developers. A detailed economic analysis of the potential impact of a citywide ordinance convinced developers that they would be able to do business under the new law.

The program. The ordinance requires all residential developments of ten or more units to include a 10 percent affordable housing component. The FUA is exempt from the citywide ordinance and will continue to adhere to the 1992 FUA inclusionary zoning framework.

Neither the 1992 FUA inclusionary zoning ordinance or the 2003 citywide ordinance provides developers with incentives or cost offsets for building affordable units. The city opted to not

market, the architects of the law were concerned that it might generate substantial fees and little affordable housing, but city staff are thus far pleased with the performance of the ordinance and say it has not stifled development.

San Francisco

Background. In 1992, San Francisco adopted a limited inclusionary housing program to address the shortage of affordable housing for very-low- and low-income residents. The 1992 ordinance applied only to planned unit developments (PUDs) and projects requiring a conditional use permit, neither of which affected a substantial amount of residential development in the city.



San Diego Housing Commission

➔ Windwood Village in San Diego includes 92 one-, two-, and three-bedroom apartments. The development allows working families and low-income households to live closer to work.

offer cost offsets, such as fee waivers or density bonuses, because developers can easily cover the cost of affordable units through the sale of market-rate units, according to an economic analysis conducted for the housing commission.

Developers can opt to make a fee-in-lieu payment, which is based on the square footage of an affordable unit compared to the gross square footage of the entire project. Upon approval from the plan commission and the city council, the inclusionary housing requirements also can be satisfied by providing the same number of units at another site within the same community planning area.

The results. Under the citywide law, 200 affordable units are in the development pipeline, and \$300,000 in fees has been collected. Because of the robust San Diego housing

In January 2002, the inclusionary zoning ordinance was expanded to include all residential projects of ten units or more, including live-work units. The program's expansion came in response to the ongoing affordable housing crisis and political pressure from community groups concerned about the displacement of low-income households as a consequence to rising property values and unattainable live-work units. Live-work units starting at \$300,000 in the mid-1990s had reached \$700,000 by the end of the decade.

The program. Under the new ordinance, 10 percent of the units in a residential development of ten or more units must be affordable. The affordable requirement jumps to 15 percent if the units are provided off-site. PUDs

and developments that require a conditional use permit are subject to a 12 percent affordable component, increasing to 17 percent if the affordable units are built off-site.

San Francisco offers minimal developer incentives. Incentives are limited to refunds on the environmental review and building permit fees for the portion of the housing project that is priced affordably. Developers can make fee-in-lieu payments to the Citywide Affordable Housing Fund instead of building the units. The amount of the fee is determined by several factors, including the projected value of the affordable units if the developer constructed them on-site.

The results. Since the adoption of comprehensive inclusionary zoning in 2002, the program has generated 450 affordable homes and apartments with approximately 440 more units in the development pipeline. Planning staff report an increase in development activity since passage of the ordinance.

BENEFITS

Though large cities are newcomers to inclusionary zoning, three valuable benefits can be seen from the experience thus far. First, inclusionary zoning is a highly versatile policy tool that can be used effectively in large cities, affluent suburbs, and smaller communities. Second, inclusionary housing programs, when properly designed, will not chill development in large urban centers. Third, inclusionary zoning can successfully serve a broad range of income levels and populations in need of affordable housing in urban centers.

Versatility. Given both the poor prospects for a renewed federal commitment to affordable housing and the proven success of inclusionary zoning programs around the country, more cities with higher-cost housing markets should feel emboldened to explore inclusionary housing programs. The cities profiled in this article have successfully created many new units of affordable housing (or collected comparable fees-in-lieu) using a variety of approaches with cost offsets, income levels, and administration, demonstrating a highly versatile tool that can be tailored to meet the specific needs of cities large and small.

Effect on development and cost offsets. Large-city administrators must not buy into the misconception that inclusionary housing will only work in large-tract, suburban subdivisions, and that inclusionary zoning requirements will drive development out of urban

centers, encouraging sprawl and exacerbating affordability problems. Evidence from the five cities profiled in this article, including interviews with planning staff, shows this to be unlikely. City staff in San Francisco report that the overall pace of development has actually accelerated since passage of the mandatory inclusionary housing ordinance—not surprising considering the broad experience of inclusionary housing programs across the country. In fact, analytical studies, anecdotal evidence, and developer and community reaction from communities nationwide indicate that inclusionary housing programs have not caused overall levels of development to slow.

Large-city administrators must not buy into the misconception that inclusionary housing will . . . drive development out of urban centers.

Three of the cities profiled provide little in the way of cost offsets to developers. Most inclusionary housing programs include density bonuses, flexible zoning, fee waivers, an expedited permitting process, or other benefits to help developers offset the cost of producing affordable homes. The San Diego, San Francisco, and Boston programs appear to be working quite well despite offering little or no cost offsets. Denver and Sacramento provide a generous list of offsets, and on balance, have created more affordable units (which could be attributed to many factors independent of the inclusionary ordinance) than their counterparts. This fact demonstrates the importance of carefully examining and understanding the local housing market when designing a program.

Who is being served? Inclusionary housing programs in large cities can be a flexible tool serving a wide variety of income levels. A large-city program need not serve only households at or near 100 percent of the median income. Denver, the most productive of the large-city programs, provides for the “deepest” income targeting, primarily serving households at 65 percent of the AMI in rental units and 80 percent of the AMI for owner-occupied units. Similarly, Sacramento targets

its program so that two-thirds of the housing units produced will serve very-low-income households (households below 50 percent of the AMI). One-third of the housing units produced serve households at or below 80 percent of the AMI.

Denver and Sacramento provide developers with some flexibility in complying with these eligibility requirements. Denver developments that are taller than three stories, equipped with elevators, and where over 60 percent of the parking is in a parking structure may have affordable for-sale units priced up to 95 percent of the AMI and rental units up to 80 percent of the AMI. In Sacramento, on small projects (less than 5 acres), a developer may meet the inclusionary obligation by pricing all of the affordable homes at or below 80 percent of the AMI if all the homes are for-sale units and on-site. In addition, with special approval, small condominium developers may price two-thirds of the affordable units below 80 percent of the AMI and one-third of the affordable units below 50 percent of the AMI.

Programs in large cities also can create a mix of income levels, with some units going to moderate-income households and others to low-income households, as is done in Boston and San Diego. Finally, a large city can successfully use an inclusionary housing ordinance for moderate- to middle-income residents, as in San Francisco, which sets the highest income targets of the five cities profiled.

NOT JUST FOR SUBURBS AND SMALL CITIES ANYMORE

After decades of decline, American cities are on the rebound. But continued success cannot be taken for granted. Ensuring the future growth and vitality of large urban centers



Photos by Michael Davidson

requires deliberate policies and significant political will. Census data for 2003 show that cities such as Chicago, which saw population gains from 1990 to 2000, have again begun losing population to suburbs with better housing options for working-class households. Large U.S. cities must preserve affordability for a broad range of income levels if they wish to maintain and enhance their place in the global economy and provide a desirable environment for moderate-income households.

Inclusionary housing is working in the cities profiled in this article and elsewhere. Though a versatile tool in the creation of affordable housing without having to use major public subsidies, inclusionary housing programs cannot be the only answer to housing needs. Until there is a more effective option, inclusionary zoning does offer U.S. cities a market-based policy tool that can help with this critical effort.

A selection of inclusionary housing ordinances featured in this article is available to *Zoning Practice* subscribers by contacting the Planning Advisory Service (PAS) at placeaninquiry@planning.org.

The author thanks Lauren Goldberg and Jessica Webster for hours of research, interviewing, and writing that contributed to this article; Susannah Levine and Ellen Elias for editing assistance; David Rusk and Teresa Ojeda at the City of San Francisco; and Beverly Fretz-Brown and Emily Hottle at the City of Sacramento for assistance in providing photographs for this article.



NEWS BRIEFS

AFFORDABLE HOUSING GETS HUGE BOOST ON LONG ISLAND

By Josh Edwards

In August, Southold, New York, passed an ordinance requiring developers to set aside 25 percent of the new units as affordable housing for every subdivision over five units. The ordinance passed unanimously with strong support from both residents and developers. Lacking any loopholes, the ordinance will require the highest percentage of affordable units on Long Island, a measure intended to help stem the alarming affordable housing shortage in this mostly affluent eastern section of the island.

After months of refinement, the board agreed on the details: one quarter of all units must be affordable to individuals or families earning at or below 80 percent of the median income for the county, which is \$68,250. In May, Southold approved a housing fund to accompany the ordinance. Funds will be distributed in the form of grants and low- and no-interest loans for income-eligible residents for affordable units and will also be used directly for the creation of affordable housing. Developers who choose not to meet the 25 percent requirement must pay a fee toward the housing fund to subsidize affordable units elsewhere in town. Southold is using the fund to ensure that affordable units remain permanently affordable. Affordable units are resold to the housing fund at market-rate prices. Buyers then purchase the units from the housing fund at the lower subsidized price.

County Supervisor Joshua Horton describes the affordable housing ordinance as “a giant step forward” and notes that Southold and other nearby communities have reached a crisis point as home prices escalate beyond the reach of most prospective residents. The average home price in Southold surpassed \$500,000 in 2003. Not surpris-

ingly, vacation homes of wealthy New Yorkers inflate area home values, and encroaching sprawl from the metro area exacerbates the problem. Though development translates into property tax revenues for the affected Long Island towns, it also forces many people to live elsewhere. Town officials say the affordable housing shortage is a threat to the local economy, as workers in lower-paying jobs simply cannot afford to live in the area. Even Horton commutes to work from a nearby town because Southold is too expensive. Officials hope the ordinance will combat gentrification and attract young professionals and families who may not otherwise be able to afford a home in Southold.

Copies of the Southold, New York, affordable housing ordinance, and the ordinance establishing the affordable housing fund, are available to *Zoning Practice* subscribers by contacting the Planning Advisory Service (PAS) at placeaninquiry@planning.org. Josh Edwards is a researcher with the American Planning Association in Chicago.

Cover photo: A 345-unit luxury condominium development in San Francisco. Thirty-three units are affordable under the San Francisco ordinance. Photo provided by the City of San Francisco Planning Department.

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Some of the country's largest, most expensive cities are still without mandatory inclusionary housing programs and must rely on other approaches to offer low- and moderate-income residents respectable housing. In these two historic buildings in Chicago's gentrifying Edgewater neighborhood, resident income levels are 50 - 60 percent of the AMI. Federal low-income housing tax credits and an extended-use agreement secure the affordability of the units for 30 years. Without the diligence of neighborhood advocates, the local alderman, and a supportive developer, the projects would not have happened.

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(from *Inclusionary Housing, Part Two*, by Nicholas J. Brunick; October 2004)

BUSINESS AND PROFESSIONAL PEOPLE FOR THE PUBLIC INTEREST (BPI)

BPI is a Chicago-based citizen advocacy organization that uses a variety of approaches, including community organizing, litigation, policy advocacy, and collaborations with civic, business, and community organizations to address issues that affect the equity and quality of life in the Chicago region. For more information visit www.bpichicago.org.

KNOWLEDGEPLEX

KnowledgePlex is a web resource implemented by the Fannie Mae Foundation. The site is designed to support the efforts of practitioners, grantors, policy makers, scholars, investors, and others involved or interested in the fields of affordable housing and community development. Visitors to the site will find documents, news items, discussion forums, and much more. For more information visit www.knowledgeplex.org.

NATIONAL ASSOCIATION OF HOUSING AND REDEVELOPMENT OFFICIALS (NAHRO)

NAHRO is a leading housing and community development advocate for the provision of adequate and affordable housing and strong, viable communities for all Americans-particularly those with low and moderate incomes. NAHRO members administer HUD programs such as Public Housing, Section 8, CDBG, and HOME. For more information visit www.nahro.org.

NATIONAL HOUSING CONFERENCE

The National Housing Conference is a coalition of housing leaders from the private and public sectors. For more information visit www.nhc.org.

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3

Case Studies in Inclusionary Housing

By Nicholas Brunick

The City of Chicago has long been known as “the city that works.”

Recent articles in *The Economist* and elsewhere have trumpeted Chicago’s relative social and fiscal health compared to other Rust Belt cities such as Detroit, Cleveland, and St. Louis. Even though vacant land and disinvestment remain huge challenges in many of Chicago’s neighborhoods, the city’s relative health is envied by other cities.

However, Chicago’s heralded “come-back” has given birth to a new and daunting challenge: a high-cost housing market that threatens to rob the city of working and middle-class families. Without them the city lacks the tax base, social capital, and workforce it needs to stay competitive and livable. To be viable and attractive for living, working, and playing, U.S. cities must find more ways to create and preserve affordable housing for every rung on the economic ladder. One way to do this is through inclusionary housing policies that zone for affordability, which is the focus of this issue of *Zoning Practice*.

Cities can use zoning codes and development approval processes to require, encourage, or negotiate a specified percentage of affordable units in certain types of developments. Often, a developer can pay money or donate land in lieu of including affordable housing in a development.

Unlike other large cities—notably San Diego, San Francisco, and Denver—Chicago has chosen not to pass a citywide inclusionary housing ordinance, but rather implement a package of inclusionary housing policies that use zoning authority selectively in different parts of the city. The city has a policy for developers who receive city assistance (the affordable requirements ordinance (ARO)); a policy for the neighborhoods (the CPAN program); and a policy for downtown development (the downtown density bonus program).

Do these policies represent a savvy approach by the city that recognizes the diversity of its neighborhoods and housing markets and the impossibility of crafting a one-size-fits-all approach, or do these poli-

cies create unpredictability and unfairness in the housing market and leave the city without the necessary policies and resources to adequately address its housing crisis? Is this good planning and smart politics or inadequate policy and cleverly disguised injustice? This article will attempt to answer these questions using national examples for comparison and featuring the lessons common to all communities struggling with the need for affordable housing.

During the last decade, many cities and local governments around the country saw unprecedented development activity with historic increases in housing and land prices. Consequently, the need for affordable housing has grown, impacting a broader and growing segment of the population: poor residents, working-class households, and even the middle class; employers who are unable to recruit employees nearby; everyday citizens choking on polluted air and stuck in traffic jams caused in part by workers traveling ever-longer distances for work; and, of course, elected officials who feel the heat from all of these constituencies and thus feel the need to respond.

Solutions to the crisis remain elusive when land and housing costs are so high, when federal funding for housing is at a 30-year low, when state funding for housing has failed to make up the difference, and when local funds are limited. In this environment, zoning for affordability quickly becomes a popular and immediate option. Local governments in California, Colorado, Florida, Illinois, Massachusetts, New Jersey, New Mexico, New York, North Carolina, Vermont, Wisconsin, and even Wyoming have employed inclusionary housing strategies. Many elected officials, like New York City Mayor Michael Bloomberg (a recent convert to inclusionary zoning), have become bullish on inclusionary zoning.

Chicago is no different. Due to a growing housing crisis and the organizing work of smart, sophisticated advocacy groups, Mayor Richard M. Daley and the city council have an inclusion-

ary housing strategy. However, instead of passing an across-the-board policy (e.g., a 15 percent inclusionary housing requirement in all developments of 10 or more units), the city has chosen a three-pronged approach:

Prong #1: Quid Pro Quo—The Affordable Requirements Ordinance

In 2003, the Chicago city council passed the affordable housing requirements ordinance, which applies to developments of 10 or more units, and requires that: 1) If a development receives a write-down on city-owned land it must include 10 percent affordable housing and 2) If a development receives financial assistance from the city (which usually means tax



All photos courtesy of Nicholas Brunick

increment financing (TIF) dollars) it must include 20 percent affordable housing.

Under this program affordable housing is defined for an ownership project as housing where a household earning 100 percent of the area median income (AMI) (adjusted for household size) will not have to spend more than 30 percent of its household income on a mortgage. In a rental project affordable housing is defined as an apartment where a household earning 60 percent of the AMI (adjusted for household size) will not have to spend more than 30 percent of its household income on rent. Under this program, a developer can satisfy the obligation to include affordable housing by paying \$100,000

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Go online from from April 16 to 27 to participate in our “Ask the Author” forum, an interactive feature of Zoning Practice. Nicholas Brunick will be available to answer questions about this article. Go to the APA website at www.planning.org and follow the links to the Ask the Author section. From there, just submit your questions about the article using an e-mail link. The author will reply, and Zoning Practice will post the answers cumulatively on the website for the benefit of all subscribers. This feature will be available for selected issues of Zoning Practice at announced times. After each online discussion is closed, the answers will be saved in an online archive available through the APA Zoning Practice web pages.

About the Author

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per affordable unit (adjusted each year for inflation). The funds paid by the developer go to the city’s Affordable Housing Opportunities Fund. By ordinance, 60 percent of these funds must be used for the construction or rehabilitation of affordable housing. Forty percent of the funds go to the Chicago Low Income Housing Trust Fund (CLIHTF), which primarily provides funding for a highly successful rental subsidy program that partners with landlords across the city.

Since 2003, the ARO, according to the city, has produced 763 affordable housing units—

Chicago, and the ordinance ensures the promise of affordable housing when that happens. The principle behind the ARO is simple: If you want the city’s land or money you will do *something* for affordable housing.

Prong #2: Let the Neighborhoods Decide—The Chicago Partnerships for Affordable Neighborhoods Program (CPAN)

The city created the CPAN program to create affordable housing in private developments in city neighborhoods. Under this program, if an

from Cubs fans. According to the city, 16 of 50 aldermen have participated in the CPAN program, resulting in the creation of 461 affordable housing units since 2002.

The city advertises this program as purely voluntary. In practice, though, CPAN can also be mandatory or nonexistent, depending on the alderman. If an alderman is a strong affordable housing advocate, the CPAN program may, in effect, operate as a mandatory policy for that ward. If it used on a purely voluntary basis, CPAN might only be used when a developer needs a zoning change and is amenable to doing some affordable housing.

However, if an alderman does not support affordable housing, has a ward with little development, or simply lacks the energy or political will to negotiate tooth-and-nail with developers on specific developments, then it may not be used at all. The program requires development activity and a tremendous commitment of time, energy, and political will from aldermen and community groups. Indeed, each of the 451 affordable units produced by the program is the result of significant effort from both. Unfortunately, only 16 aldermen have used the program.

Although the Chicago approach of project-specific land-use decisions has unique qualities, many cities and towns across the country can draw parallels with it. Local governments and special interest groups have long been known to use community input and opposition to stall, scale back, or prevent developments—especially those that include affordable housing. In the past three decades, community residents and elected officials in local governments from Massachusetts and New Jersey to California have reversed this historical trend by using the development approval process to secure affordable housing in market-rate developments, and the CPAN program is an example of just that.

approximately 220 affordable housing units each year. Some of these 763 affordable housing units were created as part of the Chicago Housing Authority’s (CHA) Plan for Transformation developments, which are mixed-income developments containing roughly a third public housing, a third affordable housing, and a third market-rate housing as replacement housing for the demolished public housing high rises. Federal and state housing subsidies, including HOPE VI dollars and Low Income Housing Tax Credits, are already involved in these deals, which means the affordable units were guaranteed even without the city’s ARO ordinance. Nevertheless, TIF dollars are often used for residential developments in

alderman—Chicago is governed by 50 locally elected aldermen who, as such, are the gatekeepers for local development—and a developer agree to include some affordable housing in an otherwise private development, the city will provide incentives such as fee waivers and marketing assistance to the developer. The success of the program is attributed to the city council’s nearly certain deference to the wishes of the alderman on local land-use matters. For example, a developer’s request for a zoning change needs the alderman’s support for city council approval. This Chicago tradition of “aldermanic prerogative” is as predictable and as accepted as a summertime refrain of “Wait ’til next year!”



Ⓜ (Left) The Phoenix at Uptown Square mixed use redevelopment project in Chicago’s rapidly gentrifying Uptown area. CPAN and the ARO ensured that eight of the 37 condos were affordable. (Right) A mixed income development in the University Village/Little Italy/University of Illinois at Chicago neighborhood. It contains 20 percent affordable housing because of the ARO.

Prong #3: Where Density is a Good Word—The Downtown Affordable Housing Zoning Bonus

A few years ago, the city underwent a rewrite of its antiquated zoning code. As part of the project, it instituted a number of density bonus provisions that apply to the downtown district, which, under the new code, is an expansive area that reaches beyond the city's famed Loop district. Under these provisions developers can obtain additional density in return for providing community amenities. Under the downtown affordable housing zoning bonus, developers can obtain additional floor area ratio (FAR) if they include affordable housing in their development or if they pay a fee-in-lieu to the city's Affordable Housing Opportunities Fund.

The program is slightly different for developers obtaining additional density within an existing zoning designation versus those seeking a zoning change to a different designation with a higher FAR density level. But, as a general rule, a developer that wishes to access additional FAR must dedicate 25 percent of the bonus floor area achieved through the affordable housing zoning bonus to affordable units. For example, the developer would receive four additional square feet for market-rate housing for every additional square foot dedicated to affordable housing. This provides a significant benefit to the developer.

If the developer chooses to pay a fee in lieu of affordable units, the fee is calculated on the basis of multiplying the additional FAR by the median price of land in the area of downtown with the development. The fee is calculated by multiplying 80 percent of the additional FAR achieved through the affordable housing zoning bonus by the median cost of land per buildable square foot for that section of downtown. The city publishes a schedule of land values for different parts of the downtown district.

The effort is a classic example of a voluntary inclusionary housing program. Developers can choose to build as of right under the baseline zoning requirements. However, if they want additional density (either through a rezoning or a bonus within the existing zoning) they must include affordable units in their project or pay for the additional density.

Applying for the density bonus requires the developer to sign an agreement with the city to produce the affordable units as part of the development or to pay the fee, and to provide the city with cash, a bond, or other security in the amount of the fees that would be paid in lieu of building the affordable units. The builder of the affordable units must also sign an affordable housing agreement with the Chicago Department



ⓘ (Top) The Trump Organization is constructing Trump International Tower in Chicago—the country's tallest building (90 stories when complete) since the Sears Tower, also in Chicago. With at least 470 residential condominiums and 286 condominium-hotel units, the development was not required to contribute either affordable units or funds. Indeed, fee-in-lieu payments from the development would have doubled the city's rental support program in one fell swoop. (Below) One of many condominium conversions in Chicago's Loop, where the number of new residents since 1990 has grown to the tens of thousands. It remains unclear how many of the 8,000 planned pipeline units will be covered by the city's "voluntary" policies.



of Housing and provide a detailed description of the project, including the affordable units. The affordable units must be ready for occupancy before or at the same time as market-rate units. The bond or cash is released after the building inspection and after confirmation by the zoning administrator of the construction of the affordable units. If the developer is paying the fee in lieu, the fees are collected when the city issues building permits for the development.

Chicago has received \$24 million in "commitments" for the Affordable Housing Opportunities Fund to date, and 34 units are in the pipeline to be created as part of market-rate developments. In 2007, the city anticipates that it will collect \$13 million of these commitments. Forty percent (\$5.2 million) will go to the city's Low Income Housing Trust Fund to expand the highly successful rental support program and to subsidize rental units for extremely low-income households and 60 percent (\$7.8 million) will help to subsidize the rehabilitation or construction of affordable housing.

THE CHICAGO WAY

In the classic Chicago film, *The Untouchables*, about Eliot Ness and his efforts to bring down Al Capone, Jimmy Malone (played by Sean Connery) explains to Ness (played by Kevin Costner) that if he wants to "get Capone" he needs to do it "the Chicago way." *Untouchables* fans will recall that the Chicago way accurately reflected the realities of life in the city at that time.

Though less sensational than a gangster classic, the three-pronged approach described in this article reflects the Chicago way. Indeed, when it comes to inclusionary housing, it reflects the goals and philosophies of the Daley administration. First, the administration believes in voluntary approaches using incentives—not mandates—to harness private-market activity and create affordable housing. The administration is careful to not stifle or chill development, which is why the three policies are voluntary. If you want city land at a discount, TIF funds, aldermanic assistance, or a density bonus, you must include affordable housing or pay a fee. Forgoing such benefits means you need not produce affordable housing. Furthermore, the policies offer incentives to developers who agree to produce affordable housing. One could argue that under CPAN the program (in certain wards) is neither voluntary nor laden with strong incentives for the developers, and that it really depends on the alderman. However, developers must go through the aldermen whether the project is an affordable

house, a doghouse, outhouse, luxury house, or pancake house. CPAN will not change that.

Second, the Daley administration is resistant to a citywide inclusionary housing program, either because it believes that some neighborhoods need *any* kind of development right now or because aldermanic allies of the administration believe that affordable housing does not belong in their wards. Consequently, the density bonus program is currently limited to downtown. The ARO kicks in when city land is sold at a discount or involves city dollars (both of which are influenced by the local alderman), and CPAN lets the alderman and community groups determine whether affordable housing will be part of new developments in particular wards.

Finally, the administration is loathe to “force” density on city neighborhoods (although they have floated the idea of expanding the downtown density bonus program along certain transit lines and nodes). Thus, density is used as a generous bonus downtown (where it is more acceptable) and CPAN is used in the neighborhoods, typically without a density bonus. Such is the Chicago way. According to the city’s Department of Housing, the Chicago way has produced over 1,200 affordable homes and commitments for \$34 million in-lieu payments between 2002 and 2006.

COMPARISONS TO OTHER CITIES

The Chicago way is unique, characterized by policies that are largely voluntary, incentive-based, and targeted for selective use in different parts of the city. Other large cities have: 1) mandatory, citywide approaches; 2) mandatory but targeted approaches; and 3) “voluntary,” targeted approaches.

Citywide, Mandatory Inclusionary Housing Ordinances

The Denver, San Diego, and San Francisco inclusionary housing programs require any development of a specified size to include 10 percent affordable housing, regardless of whether city financing, city land, or a zoning change is involved. Denver requires 10 percent affordable housing in all developments with 30 or more units. For ownership developments, the 10 percent component is mandatory. For rental developments (due to a Colorado state law and a Colorado State Supreme Court ruling that prohibits local ordinances that place limitations on rents) the 10 percent component is voluntary. Denver’s program has produced over 3,000 affordable units. San Diego and San Francisco both

require a 10 percent affordable housing component in any development with 10 or more units. Both San Francisco and San Diego adopted “limited” inclusionary housing policies in the early 1990s and went citywide in 2002 and 2003 respectively. The programs provide a clear, relatively predictable policy for the development community and a housing policy geared to harness and benefit from all developments of 10 or more units.

Mandatory Ordinance with Specific Applications

Boston has a mandatory inclusionary development policy that requires 15 percent affordable housing in any development of 10 or more units that 1) receives assistance from the Boston Redevelopment Authority; 2) uses city-owned land; or 3) receives a zoning change. Boston’s policy exists by way of an executive order issued by Mayor Thomas Menino in 2000. The policy originally required 10 percent affordable housing. Due to the success of the program, the city raised the affordable requirement to 15 percent.

Developers can pay a fee in lieu of including the affordable housing. The fee is paid to the Inclusionary Development Fund. The fee is \$200,000 per affordable unit (up from \$97,000 per unit) for rental developments. For ownership developments, the fee is \$200,000 per affordable unit or one half of the difference between the average market-rate price in the development and the affordable price, whichever is greater. According to the Boston Municipal Research Bureau, the policy produced 715 units of affordable housing and millions of dollars in affordable housing funds as of May 2006. Although the city’s policy does not apply to all developments over a certain number of units (as in Denver, San Francisco, or San Diego), program administrators assert that a significant percentage of new development falls under the purview of the Boston program due to the city’s antiquated zoning ordinance.

Targeted Inclusionary Zoning for Large Rezoning

In the mid 1980s, New York City controlled over 10,000 city-owned vacant parcels or properties. Today, fewer than 800 vacant lots of

properties remain and over 200,000 homes have been created—the overwhelming majority of them affordable. The city’s success at using city-owned property to rebuild neighborhoods, shore up its tax base, and create much-needed affordable housing has precipitated a need for viable new strategies for private land and in private developments. Inclusionary zoning is one housing tool, among many, now considered by the city.

New York’s inclusionary housing policy is determined by neither ordinance nor executive order, but rather the strategic employment of inclusionary housing policies on rezonings of specified sizes. For example, as the city rezones large parcels of industrial land to residential use at Hudson Yard (in Manhattan) and at Greenspoint–Williamsburg (in Brooklyn), developers are encouraged to include affordable housing. If they do, they receive a generous package of benefits: a 33 percent density bonus, a 20- to 25-year property tax exemption (previously available to market-rate developers but is now restricted to those who include affordable hous-

The Daley administration believes in voluntary approaches using incentives to harness private-market activity and create affordable housing.

ing on the rezonings), and access to public subsidies to help pay for the affordable units. According to the Pratt Center for Community Development, the rezonings will create more than 7,000 affordable housing units over the next decade.

Many areas of New York City may be subject to large rezonings in the near future (including sections of Jamaica, Sherman Creek, South Park Slope, Bedford-Stuyvesant, and Flushing), and community groups are committed to using Hudson Yard and Greenspoint–Williamsburg as precedent. Furthermore, Mayor Michael Bloomberg has inclusionary zoning (in targeted rezonings) in parts of the city’s touted 10-Year Housing Plan. It remains to be seen whether the city will use inclusionary policies (and how aggressively it will do so) in these other areas.

DOES “THE CHICAGO WAY” MEASURE UP?

Chicago’s downtown density bonus program and the affordable requirements ordinance are clear and predictable programs that appear to work for the development community. The downtown density bonus represents an innova-

tive and highly successful effort by Chicago to navigate the difficult shoals of density, development, and affordable housing. Proponents of affordable housing should applaud the city for its efforts, which will likely be imitated by other cities. In fact, Seattle has followed Chicago's lead with the adoption of its downtown density bonus program. Similar to New York City, Chicago employs voluntary, targeted approaches to secure the creation of affordable housing. CPAN produces units in a way that meets the variety of housing needs and political desires of the city's diverse neighborhoods and wards.

However, Chicago's programs suffer two major shortcomings. First, the voluntary nature of the programs can create unpredictability for developers and unfairness for neighborhoods and communities. This problem is most evident with CPAN—some neighborhoods participate while others abstain. Some developers have to participate; others do not. When purchasing land, developers may be unaware of whether compliance with CPAN will be required.

CPAN creates unpredictability in the development process, fails to establish a level playing field for developers and neighborhoods, and creates the potential for differential treatment for developers based on political clout. In San Diego, San Francisco, Denver, or even Boston, the inclusionary zoning requirement is clear, predictable, and applied across the board to all developments that meet broad criteria.

Second, the voluntary nature and limited coverage of CPAN, ARO, and the downtown bonus create "missed opportunities." With an inclusive or mandatory program applying to a wider variety of developments, Chicago could generate many more affordable units and more money for successful programs like the city's Low Income Housing Trust Fund.

If Chicago expanded its CPAN program and ARO ordinance to be more of a mandatory, across-the-board policy such as the programs in Denver, San Francisco, San Diego, and Boston (covering all zoning changes, etc.), the city would benefit from increased production and increased predictability in the development process. Under its current voluntary programs, Chicago must be savvy and generous with its incentives to secure participation by developers. And yet, despite being savvy, there are still large and overt missed opportunities. With a mandatory, citywide ordinance in place from 1998 to 2003, the city would have created over 7,000 affordable homes and apartments.

WHERE DOES CHICAGO GO FROM HERE?

Census figures reveal that from 2000 to 2005 the number of home owners in the City of Chicago paying more than 35 percent of their income for housing increased from about one in every five home owners to a whopping one in every three home owners and the percentage of renters paying more than 35 percent of their income on rent increased from 30 to 46 percent. The data also reveal that the city lost 71,000 rental units after enjoying a slight gain in population from 1990 to 2000. The city is



ⓘ A residential development in the affluent Sheridan Park district of Chicago's Uptown neighborhood. The development includes 10 percent affordable condominiums as a result of the CPAN program, Alderman Helen Schiller's leadership, and work by the Organization of the Northeast.

once again losing population to the suburbs as 190,000 people left the city for other locales since 2000. And the out-migration is no doubt due at least in part to the affordable housing crunch. Chicago cannot continue a rebirth, nor cement its place as a world-class city in the global economy, until it deals sufficiently with the problem of providing enough affordable housing for middle- and working-class and poor households. So, what next?

MAYOR RICHARD M. DALEY'S PROPOSAL

In November 2006, Mayor Daley introduced an ordinance to expand the city's affordable requirements ordinance to cover all zoning

changes where the city grants an increase in residential density or allows a residential use not previously allowed, to cover all developments constructed on city land (not just developments that get a discount on the sale of city land), and to cover all developments that go through the planned unit development process (PUD). If passed, the new ordinance would require 10 percent affordable housing (at or below 100 percent of AMI for ownership units; at or below 60 percent of AMI for rental units) in developments of 10 or more units that fit the criteria listed above. This would be a significant expansion consistent with the current Chicago approach and one that city officials believe would create 1,000 affordable units each year. Passing the ordinance would make Chicago similar to Boston (which covers all developments that receive a zoning change).

THE ADVOCATES' PROPOSAL

For the past five years, a coalition of community groups has worked to pass a citywide inclusionary housing ordinance in Chicago that would require 15 percent affordable housing in all new construction, substantial rehabs, and condo conversions of 10 or more units. Under the proposed ordinance, developers would receive cost offsets from a possible menu of benefits (including density bonuses, fee waivers, and reduced parking requirements).

Passing the ordinance would make Chicago the largest city in the nation with a citywide, mandatory inclusionary housing policy (surpassing San Diego). The city has come a long way towards the advocates' suggestion (by passing the three policies described in this article), but remains short of the advocates' ideal. Similar to the Denver, San Diego, San Francisco, and Boston ordinances, a citywide approach would provide developers with greater predictability than they currently have under the CPAN program (where they are subject to the desires of the local aldermen and the community); it would establish a level playing field for all development; and it has tremendous production potential (as demonstrated earlier).

The Daley administration and the development community oppose such a measure. Thus, advocacy groups are calling for strengthening of the mayor's ordinance by proposing three amendments: 1) Similar to Boston, increase the percentage from 10 to 15 percent on all city-owned parcels of land and all PUDs; 2) Similar to the city's existing requirement for TIF funds, increase the per-

centage from 10 to 20 percent on developments where a zoning change that increases residential density is granted; and 3) Diversify the income targeting to reach more working-class people in Chicago. Rather than targeting the affordable homes to households at or below 100 percent of AMI target a third of the homes to households at or below 100 percent of AMI, one-third to households at or below 80 percent of AMI, and one-third to households at or below 60 percent of AMI.

Boston recently began using city median income figures instead of the metro median income figures to accomplish the same objective of making the affordable units “more affordable.”

Whatever the outcome, it appears likely that Chicago’s inclusionary housing programs will expand to cover more development types. With the passage of the mayor’s ordinance as proposed, the Chicago way would now entail an expanded ARO (including city land, increased density, financial assistance, or access to the PUD

crafted with the genuine input and involvement of all stakeholders (developers and advocates alike), everyone pays a little bit and no one pays too much.

In determining who pays, the politics of development, density, and community control provide the final determination. Of course, no group wants to be the sole payer—not developers, not the community, not landowners, not home buyers. How inclusionary housing programs are designed depends on the level of interest, organization, and relative political clout of the interest groups listed above.

Under a mandatory approach with well-crafted cost offsets, the risk can be born fairly equally. Under a mandatory approach without generous or guaranteed cost offsets, it is the development community, the landowners, and the market-rate homebuyers who assume the risk of paying for the cost of the affordable units. Under a voluntary approach, it is the broader community that will most likely foot the bill (either through overly generous cost offsets or

Memorialize your policies. Negotiated and ad hoc policies will no doubt serve a positive role in many local governments. However, an ordinance, executive order, or even public regulations that provide a clear, predictable policy for the development community is essential. Without them, developers cannot appropriately price land or buildings and incorporate the cost of affordable housing into their pro formas. In addition, the application of one’s housing policy may become even more the result of political clout than is already the case in our complicated world. Establishing clear, public, and predictable programs is good government and good development policy.

Do more than zone for affordability. Inclusionary housing or zoning for affordability is not a panacea for the housing crisis or for community and economic development, but it is a very important tool. Cities must look to other tools: securing more federal, state, and city dollars for affordable housing and using city-owned vacant land for affordable housing. Zoning for affordability cannot solve the housing crisis alone, but it can play a very important role.

In determining who pays, the politics of development, density, and community control provide the final determination.

process); a neighborhood-based program in CPAN; and a downtown density bonus program.

THE LESSONS

The Chicago way and the experience of other large cities provide key lessons about inclusionary housing programs.

No free lunch. With affordable housing, this is universally true—someone must foot the bill. In general, under traditional affordable housing programs or initiatives, it is the taxpayer. They provide the public financing or publicly owned property to subsidize the cost of making housing more affordable.

Under an inclusionary housing program, who pays may be unclear at first. When a city zones for affordability, developers might have to pay through reduced profits; landowners might have to pay through reduced selling prices for land or buildings that now must include some affordable housing; market-rate home buyers might have to pay through increased prices; or the community might have to pay through cost offsets that increase density, waive fees, or reduce off-street parking.

Under a well-crafted ordinance that takes into account local market conditions and is

through missed opportunities that fail to produce much-needed affordable housing). In Chicago and New York City, the risk is assumed by the broader community; in Denver, San Diego, Boston, and San Francisco, it shades towards the development community.

Be creative. Chicago, New York, and Boston have not embraced a citywide, mandatory approach, but all use some form of inclusionary housing policy. Chicago’s downtown density bonus program is a creative response to the political and policy thicket of how to make inclusionary housing work in a diverse city with competing political forces. Chicago should be applauded for this innovation. Cities need to find all viable ways to harness the marketplace for affordable housing.

Be aggressive. Building booms are fleeting. Cities need to be nimble and ready to act fast with prudent policies that will allow them to reap the benefits of the next building boom. Chicago has missed many opportunities for creating and preserving affordable housing. Cities should not be afraid to employ mandatory approaches in a prudent manner to capture as much development as possible.

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WHICH INCLUSIONARY HOUSING PROGRAMS ACTUALLY WORK?

3



4.4 MODEL AFFORDABLE HOUSING DENSITY BONUS ORDINANCE

Many communities today are adopting inclusionary zoning ordinances with the intent of increasing the supply of affordable housing. These ordinances either require or encourage the provision of affordable housing in market-rate development, typically by the provision of density bonuses and other incentives. The ordinances include:

- ◆ Definitions, including those defining “affordable housing” and “low- and moderate-income households”;
- ◆ Procedures for the review of affordable housing developments;
- ◆ A requirement that the developer of housing enter into development agreements that will ensure that the affordable housing, whether for sale or for rent, remains affordable;
- ◆ Designation of an officer or body to review and approve applications for developments that include affordable housing; and
- ◆ Provisions for enforcement.

Some communities with such ordinances have made a political commitment to such housing, recognizing that, in some real estate markets, affordable housing would not be produced without governmental intervention, and others have adopted such ordinances to respond to state-established housing goals. In addition, such ordinances ensure that critical governmental service workers (e.g., teachers, firefighters, and police officers) can afford to live in communities where they work despite their low pay. Numerous monographs and studies have described the operation and success of such programs in both suburban areas and central cities. For a good overview, see Morris (2000), Ross (2003), and Brunick (2004a and 2004b).

The following model ordinance for affordable housing provides two alternatives: (1) a mandatory alternative in which affordable housing is required, in some manner, in all development that produces new residential units, either through new construction or through rehabilitation and conversion of existing units or commercial space; (2) an incentive-based approach in which a density bonus of one market-rate unit for each affordable unit is offered as of right. In either case, the affordable housing density bonus is offered for all types of residential construction. The model ordinance uses the U.S. Department of Housing and Urban Development definitions of low- and moderate-income to establish eligibility criteria for purchase or rental of affordable units.

An applicant for an Affordable Housing Development would be required to submit an Affordable Housing Development Plan and enter into a development agreement with the local government. The development agreement would fix the responsibilities of the respective parties with regard to the provision of affordable housing. Under this model, affordable housing units need not only be those subsidized by the federal or state government. Rather, they can be subject to private deed restrictions to ensure they remain affordable for a period of time, typically for 30 years. In the case of for-sale affordable units, purchasers would have to be income-qualified, and appreciation of the dwelling unit would be calculated on the basis of certain listed factors to ensure that the unit remains affordable in the case of resale. In the case of for-rent affordable units, the development agreement would establish an income-qualification process to ensure that the affordable units are rented to

eligible households. The model ordinance also describes the creation of an affordable housing trust fund that can be used for a variety of purposes, including waivers of permit and tap-in fees.

Primary Smart Growth Principle Addressed: Range of housing choices.

Secondary Smart Growth Principle Addressed: Not applicable

101. Purpose

The purposes of this ordinance are to:

(a) Require the construction of affordable housing [or payment of fees-in-lieu] as a portion of new development within the community;

[Or]

(a) Create incentives for the provision of affordable housing as a portion of certain new development within the community;

(b) Implement the affordable housing goals, policies, and objectives contained in the [insert name of local government's] comprehensive plan;

(c) Ensure the opportunity of affordable housing for employees of businesses that are located in or will be located in the community; [and]

(d) Maintain a balanced community that provides housing for people of all income levels [; and]

[(e) Implement planning for affordable housing as required by [cite to applicable state statutes]].

102. Definitions

As used in this ordinance, the following words and terms shall have the meanings specified herein:

“Affordable Housing” means housing with a sales price or rental amount within the means of a household that may occupy moderate- and low-income housing. In the case of dwelling units for sale, affordable means housing in which mortgage, amortization, taxes, insurance, and condominium or association fees, if any, constitute no more than [30] percent of such gross annual household income for a household of the size that may occupy the unit in question. In the case of dwelling units for rent, affordable means housing for which the rent and utilities constitute no more than [30] percent of such gross annual household income for a household of the size that may occupy the unit in question.

“Affordable Housing Development Agreement” means a written agreement between an applicant for a development and the [name of local government] containing specific requirements to ensure the continuing affordability of housing included in the development.

“Affordable Housing Dwelling Unit” means any affordable housing subject to covenants or restrictions requiring such dwelling units to be sold or rented at prices preserving them as affordable housing for a period of at least [30] years.

“Affordable Housing Development” means any housing subsidized by the federal or state government, or any housing development in which at least [20] percent of the housing units are affordable dwelling units.

“Affordable Housing Development Plan” means that plan prepared by an applicant for an Affordable Housing Development under this ordinance that outlines and specifies the development’s compliance with the applicable requirements of this ordinance.

“Affordable Housing Trust Fund” means the fund created by the [name of local government] pursuant to Section 109 of this ordinance.

“Affordable Housing Unit” means either a housing unit subsidized by the federal or state government or an affordable dwelling unit.

Comment: Note that an “Affordable Housing Unit” can either be federally or state subsidized or subject to covenants and deed restrictions that ensure its continued affordability.

“Conversion” means a change in a residential rental development or a mixed-use development that includes rental dwelling units to a development that contains only owner-occupied individual dwelling units or a change in a development that contains owner-occupied individual units to a residential rental development or mixed-use development.

“Density Bonus” means an increase in the number of market-rate units on the site in order to provide an incentive for the construction of affordable housing pursuant to this ordinance.

“Development” means the entire proposal to construct or place one or more dwelling units on a particular lot or contiguous lots including, without limitation, a planned unit development, site plan, or subdivision.

“Lot” means either: (a) the basic development unit for determination of area, width, depth, and other dimensional variations; or (b) a parcel of land whose boundaries have been

established by some legal instrument, such as a recorded deed or recorded map, and is recognized as a separate legal entity for purposes of transfer of title.

“Low-Income Housing” means housing that is affordable, according to the U.S. Department of Housing and Urban Development, for either home ownership or rental, and that is occupied, reserved, or marketed for occupancy by households with a gross household income that does not exceed 50 percent of the median gross household income for households of the same size within the [*insert name of housing region or county*] in which the housing is located.

“Median Gross Household Income” means the median income level for the [*insert name of housing region or county*], as established and defined in the annual schedule published by the Secretary of the U.S. Department of Housing and Urban Development, adjusted for household size.

“Moderate-Income Housing” means housing that is affordable, according to the federal Department of Housing and Urban Development, for either home ownership or rental, and that is occupied, reserved, or marketed for occupancy by households with a gross household income that is greater than 50 percent but does not exceed 80 percent of the median gross household income for households of the same size within the [*insert name of housing region or county*] in which the housing is located.

“Renovation” means physical improvement that adds to the value of real property, but that excludes painting, ordinary repairs, and normal maintenance.

103. Scope of Application; Density Bonus

[Alternative 1: Mandatory Affordable Units]

(1) All of the following developments that result in or contain five or more residential dwelling units shall include sufficient numbers of affordable housing units in order to constitute an Affordable Housing Development as determined by the calculation in paragraph (2) below:

- (a) New residential construction, regardless of the type of dwelling unit
- (b) New mixed-use development with a residential component
- (c) Renovation of a multiple-family residential structure that increases the number of residential units from the number of units in the original structure
- (d) Conversion of an existing single-family residential structure to a multiple-family residential structure

- (e) Development that will change the use of an existing building from nonresidential to residential
- (f) Development that includes the conversion of rental residential property to condominium property

Developments subject to this paragraph include projects undertaken in phases, stages, or otherwise developed in distinct sections.

(2) To calculate the minimum number of affordable housing units required in any development listed in paragraph (1) above, the total number of proposed units shall be multiplied by 20 percent. If the product includes a fraction, a fraction of 0.5 or more shall be rounded up to the next higher whole number, and a fraction of less than 0.5 shall be rounded down to the next lower whole number.

(3) Any development providing affordable housing pursuant to paragraph (1) above shall receive a density bonus of one market-rate unit for each affordable housing unit provided. All market-rate units shall be provided on site, except that, in a development undertaken in phases, stages, or otherwise developed in distinct sections, such units may be located in other phases, stages, or sections, subject to the terms of the Affordable Housing Development Plan.

(4) Any development containing four dwelling units or fewer shall comply with the requirement to include at least 20 percent of all units in a development as affordable housing by:

- (a) Including one additional affordable housing dwelling unit in the development, which shall constitute a density bonus;
- (b) Providing one affordable housing dwelling unit off site; or
- (c) Providing a cash-in-lieu payment to the [name of local government's] affordable housing trust fund proportional to the number of market-rate dwelling units proposed.

Comment: *Under (3)(c), the proportion of the in-lieu fee would be computed as follows. Assume an affordable unit in-lieu fee of \$120,000. In a four-unit development, the fee would be 4/5s of the \$120,000, or \$96,000, in a three-unit development, the fee would be 3/5s, or \$72,000, and so on.*

[Alternative 2: Incentives for Affordable Units]

Any Affordable Housing Development or any development that otherwise includes one affordable housing dwelling unit for each four market-rate dwelling units shall receive a density bonus of one market-rate unit for each affordable housing dwelling unit provided on-site.

104. Cash Payment in Lieu of Housing Units

Comment: *This section would be required only under a mandatory affordable housing alternative.*

(1) The applicant may make a cash payment in lieu of constructing some or all of the required housing units only if the development is a single-family detached development that has no more than [10] dwelling units. In the case of an in-lieu payment, the applicant shall not be entitled to a density bonus.

(2) The [legislative body] shall establish the in-lieu per-unit cash payment on written recommendation by the [*planning director or city or county manager*] and adopt it as part of the [local government's] schedule of fees. The per-unit amount shall be based on an estimate of the actual cost of providing an affordable housing unit using actual construction cost data from current developments within the [local government] and from adjoining jurisdictions. At least once every three years, the [legislative body] shall, with the written recommendation of the [*planning director or city or county manager*], review the per-unit payment and amend the schedule of fees.

(3) All in-lieu cash payments received pursuant to this ordinance shall be deposited directly into the affordable housing trust fund established by Section 109 below.

(4) For the purposes of determining the total in-lieu payment, the per-unit amount established by the [legislative body] pursuant to paragraph (1) above shall be multiplied by 20 percent of the number of units proposed in the development. For the purposes of such calculation, if 20 percent of the number of proposed units results in a fraction, the fraction shall not be rounded up or down. If the cash payment is in lieu of providing one or more of the required units, the calculation shall be prorated as appropriate.

105. Application and Affordable Housing Development Plan

(1) For all developments [in which affordable housing is required to be provided *or* in which the applicant proposes to include affordable housing], the applicant shall complete and file an application on a form required by the [local government] with the [*name of local government department responsible for reviewing applications*]. The application shall require, and the applicant shall provide, among other things, general information on the nature and the scope of the development as the [local government] may determine is necessary to properly evaluate the proposed development.

(2) As part of the application required under paragraph (1) above, the applicant shall provide to the [local government] an Affordable Housing Development Plan. The plan shall be subject to approval by the [local government] and shall be incorporated into the Affordable Housing Development Agreement pursuant to Section 106 below. An Affordable Housing Development Plan is not required for developments in which the affordable housing obligation is satisfied by a cash payment in lieu of construction of affordable housing units. The Affordable Housing Development Plan shall contain, at a minimum, the following information concerning the development:

- (a) A general description of the development, including whether the development will contain units for rent or for sale
- (b) The total number of market-rate units and affordable housing units
- (c) The number of bedrooms in each market-rate unit and each affordable unit
- (d) The square footage of each market-rate unit and of each affordable unit measured from the interior walls of the unit and including heated and unheated areas
- (e) The location in the development of each market-rate and affordable housing unit
- (f) If construction of dwelling units is to be phased, a phasing plan stating the number of market-rate and affordable housing units in each phase
- (g) The estimated sale price or monthly rent of each market-rate unit and each affordable housing unit
- (h) Documentation and plans regarding the exterior appearances, materials, and finishes of the Affordable Housing Development and each of its individual units
- (i) A marketing plan the applicant proposes to implement to promote the sale or rental of the affordable units within the development to eligible households

106. Criteria for Location, Integration, Character of Affordable Housing Units

An Affordable Housing Development shall comply with the following criteria:

- (a) Affordable housing units in an Affordable Housing Development shall be mixed with, and not clustered together or segregated in any way from, market-rate units.

(b) If the Affordable Housing Development Plan contains a phasing plan, the phasing plan shall provide for the development of affordable housing units concurrently with the market-rate units. No phasing plan shall provide that the affordable housing units built are the last units in an Affordable Housing Development.

(c) The exterior appearance of affordable housing units in an Affordable Housing Development shall be made similar to market-rate units by the provision of exterior building materials and finishes substantially the same in type and quality.

Comment: Some of the affordable housing ordinances reviewed by APA contained minimum-square-footage requirements for dwelling units or suggested that there be a mix of units with different numbers of bedrooms, especially to ensure that for-rent projects contain sufficient numbers of bedrooms for larger families. While minimum-square-footage requirements, especially for bedroom sizes, are customarily found in housing codes, rather than zoning codes, it is possible to amend this model to include such minimums.

107. Affordable Housing Development Agreement

Comment: A development agreement between the local government and the developer of the affordable housing project is necessary to reduce to writing the commitments of both parties, thus eliminating ambiguity over what is required regarding maintaining the affordability of the units and establishing and monitoring the eligibility of those who purchase or rent them.

(1) Prior to the issuance of a building permit for any units in an Affordable Housing Development or any development in which an affordable unit is required, the applicant shall have entered into an Affordable Housing Development Agreement with the [local government]. The development agreement shall set forth the commitments and obligations of the [local government] and the applicant, including, as necessary, cash in-lieu payments, and shall incorporate, among other things, the Affordable Housing Plan.

(2) The applicant shall execute any and all documents deemed necessary by the [local government] in a form to be established by the [law director], including, without limitation, restrictive covenants, deed restrictions, and related instruments (including requirements for income qualification for tenants of for-rent units) to ensure the continued affordability of the affordable housing units in accordance with this ordinance.

(3) Restrictive covenants or deed restrictions required for affordable units shall specify that the title to the subject property shall only be transferred with prior written approval by the [local government].

108. Enforcement of Affordable Housing Development Agreement; Affordability Controls

(1) The director of [*name of responsible local government department*] shall promulgate rules as necessary to implement this ordinance. On an annual basis, the director shall publish or make available copies of the U.S. Department of Housing and Urban Development household income limits and rental limits applicable to affordable units within the local government's jurisdiction, and determine an inflation factor to establish a resale price of an affordable unit.

(2) The resale price of any affordable unit shall not exceed the purchase price paid by the owner of that unit with the following exceptions:

(a) Customary closing costs and costs of sale

(b) Costs of real estate commissions paid by the seller if a licensed real estate salesperson is employed

(c) Consideration of permanent capital improvements installed by the seller

(d) An inflation factor to be applied to the original sale price of a for-sale unit pursuant to rules established pursuant to paragraph (1) above

(3) The applicant or his or her agent shall manage and operate affordable units and shall submit an annual report to the [local government] identifying which units are affordable units in an Affordable Housing Development, the monthly rent for each unit, vacancy information for each year for the prior year, monthly income for tenants of each affordable units, and other information as required by the [local government], while ensuring the privacy of the tenants. The annual report shall contain information sufficient to determine whether tenants of for-rent units qualify as low- or moderate-income households.

(4) For all sales of for-sale affordable housing units, the parties to the transaction shall execute and record such documentation as required by the Affordable Housing Development Agreement. Such documentation shall include the provisions of this ordinance and shall provide, at a minimum, each of the following:

(a) The affordable housing unit shall be sold to and occupied by eligible households for a period of 30 years from the date of the initial certificate of occupancy.

(b) The affordable housing unit shall be conveyed subject to restrictions that shall maintain the affordability of such affordable housing units for eligible households.

(5) In the case of for-rent affordable housing units, the owner of the Affordable Housing Development shall execute and record such document as required by the Affordable Housing Development Agreement. Such documentation shall include the provisions of this ordinance and shall provide, at a minimum, each of the following:

(a) The affordable housing units shall be leased to and occupied by eligible households.

(b) The affordable housing units shall be leased at rent levels affordable to eligible households for a period of 30 years from the date of the initial certificate of occupancy.

(c) Subleasing of affordable housing units shall not be permitted without the express written consent of the director of [*name of responsible local government department*].

109. Affordable Housing Trust Fund

[This section establishes a housing trust fund into which monies from cash in-lieu payments and other sources of revenues will be deposited. Because of the variation as to how such funds could be established and the differences in state law, no model language is provided.]

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