

LAKWOOD CITY COUNCIL
DEVELOPMENT DIALOGUE AD HOC COMMITTEE
VIRTUAL MEETING
To watch the meeting live, please visit Lakewoodspeaks.org

May 20, 2021
6:00-8:00 PM
AGENDA

1. Roll Call
2. Call to Order
3. Approval of Minutes
 - February, 23 2021
4. Inclusionary Zoning Discussion
 - Public Comment
 - **Lakewood Speaks** - Please visit Lakewoodspeaks.org to provide public comment during this meeting. You may submit public comment for tonight's discussion in the **Thursday 05/20/2021 Development Dialogue Committee Meeting**.
 - **Written Comment:** Go to **Inclusionary Zoning Discussion** and click on **Leave a Comment** to submit your written comment in the space provided.
 - **Phone-in Comment:** Please dial **720-706-9131** and enter **3274** to submit comment with your phone. Your call will be recorded as a voicemail and transcribed to text and both the audio recording and the text file will be submitted in the same way as leaving written comment.
 - Committee Discussion
5. Next Steps
6. Set Meeting Dates/Times
7. Adjournment

Due to COVID-19 and public health orders, the Committee Meeting will not be held in person. This meeting will be conducted using Zoom and the recording will be available after the meeting on the City of Lakewood YouTube account. The public is welcome to view the meeting live stream and provide comments online at lakewoodspeaks.org.

**LAKWOOD CITY COUNCIL
DEVELOPMENT DIALOGUE AD HOC COMMITTEE
MEETING
February 23, 2021**

MINUTES

Call to Order

Chairman Skilling called the meeting to order at 6:00 p.m.

Roll Call

Members present: Council members David Skilling, Charley Able, Mike Bieda, Dana Gutwein and Jacob LaBure

Absent: None

Others present: Mayor Adam Paul, Council member Ramey Johnson, Council member Anita Springsteen
Director of Planning Travis Parker, and Business Specialist Laura Pemberton

Discussion of Accessory Dwelling Units

Council Member Able provided background information about Accessory Dwelling Units (ADUs). This topic arose when the Planning Department sent a proposed list of items to adjust the Lakewood zoning ordinance. It was decided that both Planning Commission and City Council input were needed for this topic. The preliminary issue was the height limit of an ADU built above a garage or associated dwelling. City Council could not reach a conclusion on this issue. Planning Commission issued a report on ADUs and that report suggested that ADUs be around the size of the primary residence.

Planning Director Travis Parker responded that he did not find any firm recommendations from the Planning Commission meeting minutes. He stated there was a lot of discussion on the ADU topic but no clear recommendations for the Development Dialogue Committee.

Council Member Able stated he thought there were recommendations for the R-1-0 zone and allowing larger ADUs than in the past. ADUs are allowed on any lot in the City larger than 9,000 square feet and ADU's have height limits.

Planning Director Travis Parker stated ADUs are regulated based on the structures they are in. Accessory structures can be closer to the lot line than the primary structures if they are 12 feet or less. If an accessory unit is on top of a structure or garage, then it must meet the same setback as the house.

Council Member Able stated detached accessory dwelling units should be the size of a single level unit and not 30 feet. If the accessory dwelling unit is attached to another structure, then 30 feet is acceptable.

Council Member Skilling stated the committee should look at the height standards for ADUs. Currently, the maximum height of a detached ADU is 30 feet. The committee should also determine standards of ADUs on attached structures and standards for detached ADUs.

Planning Director Travis Parker responded that the Planning Department has heard from property owners and neighborhoods that lot size is an issue. Accessory dwelling units are not permitted on lots smaller than 9,000 square feet (the R-1-6 zone is excluded from allowing ADUs). Another issue for group homes is the current occupancy requirements. There is a trend towards elderly couples sharing bedrooms and due to the requirements bedrooms are left uninhabited.

Council Member Skilling asked if the maximum height of 30 feet for a detached ADU needs to be lowered.

Council Member Able responded that he has heard complaints about ADUs being built close to lot lines. Neighbor's views and sun exposure are disrupted by ADUs built 30 feet in height and close to lot lines. He stated that 18-20 feet in height would be more appropriate.

Planning Director Travis Parker noted that most ADUs are not built to 30 feet because of the 700 square feet limit.

Council Member Skilling moved to recommend the maximum height for a detached ADU to be 20 feet and the maximum height for an attached ADU on a structure to be 30 feet.

Council Member LaBure seconded the motion.

- Consensus, 5 ayes

Council Member LaBure noted he would like to see requirements and best practices that other jurisdictions have for ADUs.

Council Member Able asked for comparisons of maximum heights for ADUs in other jurisdictions before the City Council Study Session.

Council Member Skilling noted the current ordinance states accessory dwelling units are not permitted on lots smaller than 9,000 square feet. He asked if there is any desire to change the current lot size standards.

Council Member Gutwein asked Travis Parker how often the Planning Department receives requests or inquiries for ADUs on lots smaller than 9,000 square feet.

Planning Director Travis Parker responded the Planning Department receives requests for ADUs on lots smaller than 9,000 square feet in R-1-6 and other zones. In general, Lakewood has conservative standards and does not process a lot of ADUs.

Council Member Gutwein asked if the R-1-0 zone should be part of this conversation.

Planning Director Travis Parker responded that Planning Commission and Planning Staff recommended R-1-0 to accommodate the ability to build smaller housing, but R-1-0 is a separate discussion from ADUs.

Council Member Gutwein asked if there are other barriers to building ADUs on properties.

Planning Director Travis Parker stated the biggest barrier that has not been addressed in this conversation is tap fees put in place by water districts. The City does not have control over these fees.

Council Member Able noted that open space requirements may be a restraint for putting ADUs on properties and ADUs cannot be in front of the main dwelling.

Council Member Skilling moved to recommend that the Housing Commission reviews ADUs as part of their short-term rental discussion.

Council member Gutwein seconded the motion.

- Consensus, 5 ayes

Discussion of Group Homes

Planning Director Travis Parker noted the issue of couples versus singles occupying group homes. When a group home has eight bedrooms, but a couple moves into one shared bedroom, Lakewood's current standards require that the extra bedroom is left unoccupied. One request is if the City can measure occupancy in a different way, so bedrooms are not left unoccupied when couples move in.

Council Member Skilling stated twelve residents are allowed in group homes with an accommodation and eight without an accommodation. He asked if these numbers should be adjusted. Another issue is if group homes should be considered businesses and are paying appropriate taxes. The final issue is spacing. Under federal law, the City cannot limit spacing for homes occupied by a protected class. He recommended that the City Attorney's Office attend the study session to provide legal advice.

Council Member Able stated that the recommended number for group homes is eight occupants maximum, but the City allows 8 – 12 occupants with accommodation. He has heard complaints about group homes related to parking and trash. He believes that eight occupants should be the maximum number in group homes with or without special accommodation. He stated group homes should be treated as businesses. He suggested that special accommodation applications to be public documents and the hearings are public. Phone calls and complaints about certain group homes adds an administrative burden for the City. Many group homes operate without issues, but regulations should be considered for homes with frequent violations.

Council Member Skilling stated that the committee should discuss moving the current 8-12 occupant's standard to 5-8 occupants in group homes. Another option would be allowing 5-12 occupants depending on special accommodations and regulations.

Council Member Gutwein asked how the 5-8 occupant standards would work. What circumstances would allow eight occupants.

Council Member Skilling answered there are current City guidelines that allow special accommodations for group homes to go from eight to twelve occupants.

Council Member Gutwein asked if the City can have a standard that permits less than eight occupants due to Federal Government protections.

Council Member Skilling stated that regulations just need to be the same for everybody. Cities cannot impose occupant restrictions specifically on group homes and the standard needs to be the same for all homes in the City.

Council Member Gutwein asked how many group homes have twelve residents.

Planning Director Travis Parker responded there is a fair amount of homes with eight residents and twelve residents in Lakewood.

Council Member Springsteen stated she is not sure how the couples and empty bedroom issue should be addressed considering the limitations on occupants. She stated that the 750-foot spacing regulations should be addressed and consistently regulated. Group homes should fit into the character of the neighborhood. She understands that group homes cannot have different restrictions than neighboring homes. She is concerned that group homes are treated differently than neighboring homes and frequently park outside of their respective areas. Another concern is best practices for disposal of medical waste and regular waste. Alarm systems from group homes disrupt neighbors and do not align with the City's noise ordinances. She believes the number of occupants in group homes should be limited as much as possible while still complying with Federal Government regulations. She stated that they should reference the guidelines in the old zoning ordinance.

Council Member Skilling asked how the current process works for approving special accommodations for group homes.

Planning Director Travis Parker responded there currently are no hearings for special accommodations and the process is administrative. Before the 2012 zoning ordinance was adopted there were hearings, but hearings were removed because that did not comply with the Federal Government guidance that group homes cannot be treated differently than other homes in Lakewood.

Council Member Skilling asked about current parking regulations for group homes.

Planning Director Travis Parker responded that group homes are treated the like single-family homes and are not treated like businesses. City Council can make parking standards for single-family homes in Lakewood, but they cannot make specific standards that target group homes.

Council Member Skilling stated the City Attorney's Office should review what the City can enforce for parking.

Council Member Skilling asked if waste from group homes can be regulated.

Planning Director Travis Parker responded that group homes are licensed and approved by the State. The City is preempted from overruling the State with how they regulate waste and licensing.

Council Member Skilling asked if the Planning Department can research how group homes can be taxed.

Planning Director Travis Parker responded that he will research scenarios for taxing group homes.

Council Member Skilling asked Travis Parker to research potential regulations for alarm systems.

Planning Director Travis Parker responded there are strict rules in the City for lighting and similar rules can be enforced for alarm systems.

Council Member Skilling asked if the City's accommodations permitted to group homes can be retracted if necessary.

Travis Parker responded that he would like the City Attorney's Office to review that question.

The Development Dialogue Committee decided to move the issues related to group homes discussed at tonight's meeting forward to a City Council Study Session. The committee would like the City Attorney's Office to review the group homes issues discussed at tonight's meeting. The committee would like City staff to provide a brief on issues related to group homes for the Study Session.

Public Comment

Written public comment was provided during the meeting on www.Lakewoodspeaks.org. To view the public comment provided at the meeting please view Appendix A.

Approval of Minutes

- December 10, 2020
 - Consensus, 5 ayes

Adjournment

Chairman Skilling adjourned the meeting at 7:49 p.m.

Set Meeting Dates/Times

The committee will determine the next meeting date and time.

Next Steps

- Inclusionary Zoning

Appendix A

Online commenting on www.Lakewoodspeaks.org

Deborah Romero: ADUs should require ON SITE parking for the ADU residents. Do not allow primary dwelling unit owner to force parking onto the street.

Deborah Romero: I agree with no 2-story unit on detached ADUs. 20 Feet is too high!!! Keep attached ADUs within the profile of the house

Deborah Romero: Lot size for detached ADU should be GREATER THAN 9,000 sq.ft. lot. Attached could be on 9,000+. Allowing detached ADU to be closer to lot line is very concerning! I don't think people want others staring right into their windows. If you allow it, I would be concerned about fire. Forbid windows facing neighbors' houses. Windows/layout need to face primary dwelling unit.

Heather Han: My name is Heather Han and my husband Mark and I opened up a 12-bed residential assisted living facility off Morrison Rd & Kipling in 2020. Our group home is focused on memory care residents and we have specialized training in Alzheimer's and dementia related diagnoses that helps us provide customized care so each residents maintains a sense of purpose and they can have the best life possible as they progress through their journey.

2020 was hard enough on all of us, but the toll that it has taken on our elders has been heartbreaking. Many of our new residents have come to us from memory care units of larger facilities where the isolation from their loved ones has led to a severe decline in their cognitive ability and happiness. As a group home, we've had the luxury of being able to "cohort" and isolate our residents together as one family unit. We've had no positive cases of COVID to date and many of our residents have made dramatic improvements since joining our home. We still limited visitations from outside loved ones when needed, but our residents were never stuck alone in their rooms and they enjoyed more intimate care with our higher staff to resident ratio and home cooked meals that they didn't have to eat alone in their rooms from a styrofoam container. The peers that we know with smaller residential facilities provided amazing care throughout this crisis and we've proven that there is a great benefit of a group home to our residents. Memory care residents especially thrive in a more person-centered, higher staffed, smaller community where they don't stay in their rooms all day and can keep a sense of purpose by helping to fold laundry or bake a cake. I say this all because it's really important that you understand how valuable these residential assisted living facilities are and how much we contribute to the quality of life for so many of your citizens.

We're happy to discuss the following in more detail, but we wanted to quickly share with you what we're seeing as a changing (increasing) need in the demographics of the memory care population. First is how well these people do in these smaller group homes as discussed above, but second is that there seems to be an increasing need to accommodate couples in memory care. More and more of our elderly population is finding that both spouses may be struggling with some form of cognitive related issues, but staying together is of utmost importance. The memory care units at larger facilities don't have "couples rooms" so most couples will stay in assisted living or even worse at home or in independent living in a larger place, where they have little to no specialized cognitive care to help delay the progression of the disease. Our building was created with substantially larger rooms that can accommodate couples and we currently have two couples already in our facility. But, we've have had to

turn away additional prospects already specifically because they were couples since there's a room rent discount and it would have created 4 vacant rooms with no room rent.

We are in this business because we care and we want to make a difference in people's lives. It breaks our heart to have to close off to the growing couples' need, but we simply can't do it if it hurts our financial ability to keep our great staff or pay the mortgage.

So my ask of this Council as you discuss group homes is two fold: First, please think about the benefits and expanded options that these group homes offer to your constituents and second, that you consider the possibility for certain properties to go up to a capacity of 16 with a special accommodation. We understand the need to not set a precedent for every group home so even if you came up with some sort of 5-star certification based on criteria that you deemed reasonable, having the capacity for 16 would allow for places like ours that have plenty of space, direct access to a main thoroughfare, plenty of parking, proper fire mitigation and access, and specialized care training to further serve the growing needs of the community.

Thank you for reading these comments and thank you for your on-going hard work and support of the entire Lakewood community.

ZONING PRACTICE

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AMERICAN PLANNING ASSOCIATION



➔ ISSUE NUMBER THREE

PRACTICE HOUSING INCLUSION

A large, bold, black number '3' is centered on the page, partially overlapping the image of the house and the text 'PRACTICE HOUSING INCLUSION'. The house in the background is a two-story white house with a porch, a large arched window, and an American flag hanging on the porch.

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

ASK THE AUTHOR JOIN US ONLINE!

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

Nicholas Brunick is an attorney with Applegate & Thorne-Thompson in Chicago, representing developers, lenders, and investors who are building, rehabbing, or preserving affordable housing. He is the former director of affordable housing for Business and Professional People for the Public Interest, a nonprofit law and policy center based in Chicago. At BPI, he worked with community and other groups to draft and pass local and state ordinances and statutes aimed at creating, preserving, and rehabilitating more affordable housing; to design affordable housing plans; and to include affordable housing in new market-rate developments.

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





Inclusionary Housing

Creating and Maintaining Equitable Communities



RICK JACOBUS POLICY FOCUS REPORT

NATIONAL COMMUNITY LAND TRUST NETWORK

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LINCOLN INSTITUTE OF LAND POLICY

POLICY FOCUS REPORT SERIES

The Policy Focus Report series is published by the Lincoln Institute of Land Policy to address timely public policy issues relating to land use, land markets, and property taxation. Each report is designed to bridge the gap between theory and practice by combining research findings, case studies, and contributions from scholars in a variety of academic disciplines, and from professional practitioners, local officials, and citizens in diverse communities.

ABOUT THIS REPORT

After decades of disinvestment, American cities are rebounding, but new development is driving up housing costs and displacing lower-income residents. Roughly 500 communities in the United States have developed inclusionary housing policies, which require developers of new market-rate real estate to provide affordable housing. For cities struggling to maintain economic integration, inclusionary housing is one of the most promising strategies to ensure that the benefits of development are shared widely. But policies must be designed with care to suit local conditions and guarantee that requirements do not overburden development. Through a review of the literature and case studies, this report details how local governments are realizing the potential of inclusionary housing by building public support, using data to inform program design, establishing reasonable expectations for developers, and ensuring long-term program quality.



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Front Cover (clockwise from top left):

Inclusionary housing developments in
Chapel Hill, NC; San Francisco, CA;
Chapel Hill, NC; and Carrboro, NC.

*San Francisco photo is courtesy of
Tenderloin Neighborhood Development
Corporation; all North Carolina photos are
courtesy of Community Home Trust.*

Back Cover:

Pacifica Cohousing Community, Carrboro,
NC. *Courtesy of Community Home Trust.*

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Executive Summary



After decades of disinvestment, American cities are rebounding, but new development is often driving housing costs higher and displacing lower-income residents. For cities struggling to maintain economic integration, inclusionary housing is one of the most promising strategies available to ensure that the benefits of development are shared widely. More than 500 communities have developed inclusionary housing policies, which require developers of new market-rate real estate to provide affordable units as well. Economically diverse communities not only benefit low-income households; they enhance the lives of neighbors in market-rate housing as well. To realize the full benefit of this approach, however, policies must be designed with care.

Redevelopment of the former Mueller Airport in Austin, Texas, will include more than 4,600 new homes and apartments, 25 percent of which will be affordable to lower-income families.

Credit: Garreth Wilcock

Inclusionary housing is not a new idea. Successful programs have evolved over the years as policy makers and housing officials learned hard lessons about what works and what doesn't. This report draws from these lessons to highlight major challenges that inclusionary programs face and to outline the ways that communities address those problems.

Empirical research on the scale, scope, and structure of inclusionary programs and their impacts is limited. The valuable research that does exist is often inaccessible or lost in dense academic journals or consultant reports. This report captures and digests the lessons from these sources and makes them readily available to local policy makers. It also draws heavily on an empirical project conducted in 2014 by the National Housing Conference's Center for Housing Policy (CHP) and the National Community Land Trust Network, which resulted in the Lincoln Institute working paper "Achieving Lasting Affordability through Inclusionary Housing" (Hickey, Sturtevant, and Thaden 2014).

Policy makers are understandably concerned that affordable housing requirements will stand in the way of development. But a review of the literature on the economics of inclusionary housing suggests that well-designed programs can generate significant affordable housing resources without overburdening developers or landowners or negatively impacting the pace of development.

Nevertheless, inclusionary housing policies can be controversial and thus require broad local support. Several case studies describe the process through which communities have reached out to key stakeholders, including partners in the real estate community, to build endorsement for these programs.

Research into the very real benefits and limitations of mixed-income development suggests that the creation

and preservation of affordable homes in asset-rich neighborhoods is one of the few successful strategies for overcoming economic segregation. It also demonstrates that integration within each new market-rate development does not always make sense. Successful economic integration requires careful attention to a number of policy design choices.

Every community must consider key legal concerns as well. While cities must take care to develop policies that fit within standards outlined by the federal or state judiciary, courts have generally supported a community's right to require affordable housing. Ultimately, there is almost always a path to a legally defensible inclusionary policy.

Inclusionary housing programs also require significant staffing to oversee the development process and to steward units after they are built, to ensure long-term affordability. This report highlights essential roles for staff or third-party contractors, describes common mechanisms for funding this work, and explains ways that local stakeholders can monitor a program to ensure that it is having the intended impact.

Recommendations address the following questions:

- What can local governments do to maximize the impact of inclusionary housing?
- What can states do to support local inclusionary housing policies?
- What can the federal government do to support inclusionary housing policies?

In most cities, the need for affordable housing has never been more urgent. For many jurisdictions across the country, now is the time to consider adopting robust inclusionary housing policies that build permanently affordable housing stock and create inclusive communities.

CHAPTER 1

An Introduction to Inclusionary Housing



Brooklyn in the 1970s was a rough place. It would have been hard to imagine that one day it would be one of the most expensive communities in the country. Over the past 40 years, hundreds of thousands of people have worked very hard to make Brooklyn a better place: artists have painted murals, parents have volunteered at local schools, neighbors have patrolled streets to combat crime, and the City of New York has invested billions of dollars in housing and infrastructure projects to improve struggling neighborhoods. It has worked. As a result, however, many of those people who labored so hard to change Brooklyn could not afford to stay there. The cost of making Brooklyn what it is today was borne by the community at large and the City itself, but the economic *benefit* of this investment accrued primarily to a small number of property owners.

In Williamsburg, Brooklyn, the developer of this luxury tower called the Edge (background), where condos sell for \$400,000 to \$3 million, also built the Edge community apartments (foreground) where units rent for as little as \$886 per month. *Credit: NYC Department of City Planning*

When people work to make our cities better places, they indirectly contribute to higher housing costs. Public investment, in particular, makes a big difference. When we build new infrastructure or transit systems, we see dramatic and immediate increases in the price of surrounding properties because these areas become more attractive places to live. Ideally, everyone would benefit from improved cities, but in reality the costs and benefits of improvement are not shared equally.

Lower-income residents looking for a new home soon face a choice among several undesirable options:

The Chicago Community Land Trust maintains a reserve of permanently affordable homeownership options for working families. *Credit: Chicago Community Land Trust*

extreme commute times, overcrowding, substandard housing, or rents or mortgages that are so high they deplete resources for other essentials. Displaced families are not the only ones who suffer—everyone loses when economic diversity deteriorates. Unequal access to housing drives sprawling development patterns; worsens traffic congestion; pollutes air quality; increases taxpayer dollars spent on basic infrastructure; and decreases racial, cultural, and economic diversity (Ewing, Pendall, and Chen 2003).

Recognizing that this basic dynamic will not change naturally, more and more communities have been consciously seeking to promote mixed-income development. Instead of accepting the assumption that economic growth must automatically lead to economic exclusion, they have been developing local policies that seek to increase economic inclusion.



Inclusion Is Possible

The Washington, DC, area is home to some of the most prosperous and fastest-growing suburban communities in the country. In Fairfax County, Virginia, the expansion of the DC Metro created a once-in-a-lifetime opportunity to build a new transit-oriented community in Tysons Corner. In a suburban area that housed fewer than 20,000 people in 2010, the county has planned a 24-hour urban center that will be home to more than 100,000 people and 200,000 jobs. Fairfax County will work with developers to ensure that 20 percent of all residential units in Tysons Corner are affordable for people who earn between 50 and 120 percent of the area's median income. In addition, new commercial development projects will pay a fee to fund affordable housing units (Fairfax County Board of Supervisors 2010).

Across the Potomac River, Montgomery County, Maryland, has had a similar program in place since the early 1970s. It has created more than 14,000 homes for lower-income families that are integrated into some of the area's most expensive neighborhoods. A 2005 study found that this strategy had succeeded in promoting racial integration throughout the county (Orfield 2005). A later study found that the children living in affordable housing produced by the program were not only able to attend higher-quality schools than other children in lower-income families, but they also performed higher in school (Schwartz 2010).

These programs—and hundreds of others like them—show that, with concerted effort, it is possible for communities to grow in ways that create and maintain meaningful economic diversity.

A Definition

Inclusionary housing refers to a range of local policies that tap the economic gains from rising real estate values to create affordable housing—tying the

creation of homes for low- or moderate-income households to the construction of market-rate residential or commercial development. In its simplest form, an inclusionary housing program might require developers to sell or rent 10 to 30 percent of new residential units to lower-income residents. Inclusionary housing policies are sometimes referred to as “inclusionary zoning” because this type of requirement might be implemented through an area's zoning code; however, many programs impose similar requirements outside the zoning code.

Inclusionary housing refers to a range of local policies that tap the economic gains from rising real estate values to create affordable housing—tying the creation of homes for low- or moderate-income households to the construction of market-rate residential or commercial development.

Many programs partially offset the cost of providing affordable units by offering developers one or more incentives, such as tax abatements, parking reductions, or the right to build at higher densities. Most programs recognize that inclusion of affordable units on-site within market-rate projects may not always be feasible, so they allow developers to choose among alternatives, such as payment of an in-lieu fee or provision of affordable units off-site in another project.

While early inclusionary housing policies imposed mandatory requirements applicable to all new residential development in a city or county, more recent programs have developed a wider variety of structures in response to differing local conditions and needs. Some programs have taken a voluntary approach, requiring affordable units only when developers choose to utilize incentives. Other programs have been



The City of Santa Fe, New Mexico, requires that 20 percent of all new developments be affordable to buyers earning 80 percent or less of the area median income. *Credit: John Baker Photography*

designed to apply only to targeted neighborhoods, where zoning has been changed to encourage higher-density development.

Another trend has been to apply inclusionary policies to commercial real estate as well. Often called “commercial linkage” programs, “jobs housing” linkage programs, or affordable housing “impact fees,” these programs generally collect a fee per square foot from all new commercial development to fund new affordable housing production. Some jurisdictions have responded to legal obstacles by adopting linkage or impact fees that apply to new residential development as well. Whereas a traditional inclusionary zoning program would require on-site affordable units or allow payment of an in-lieu fee as an alternative to on-site development, these newer programs require every project to pay a fee, and some offer on-site development as an alternative to payment of the fee.

Because most inclusionary programs are at least partly motivated by a desire to create or preserve mixed-income communities, preservation of affordability is essential. Early inclusionary housing programs frequently imposed very short-term affordability requirements. As communities saw these units revert to the market rate, most have moved to require affordability periods of 30 years or longer. Inclusionary housing programs tend to create relatively small numbers of affordable units each year because they rely on new development. If these units remain affordable for long periods of time, however, a community can expect to gradually build a large enough stock of affordable homes to make a difference.

Prevalence of Programs

The 2014 Network-CHP Project identified 512 inclusionary housing programs in 487 local jurisdictions in 27 states and the District of Columbia. Concentrations in New Jersey and California account for 65 percent of all programs. Inclusionary housing programs were found in most parts of the country; Massachusetts, New York, Colorado, Rhode Island, and North Carolina have 10 or more local programs each (figure 1).

There is no national data on the rate at which inclusionary housing programs are producing new affordable units. A 2006 study found that California’s inclusionary programs produced 30,000 affordable units over a six-year period (Non-Profit Housing Association of Northern California 2007). The Innovative Housing Institute later surveyed 50 inclusionary programs distributed across the country and reported that they had produced more than 80,000 units since adoption (Innovative Housing Institute 2010). While these numbers are significant, inclusionary housing programs alone are not producing a sizable share of the national affordable housing stock. The Low Income Housing Tax Credit (LIHTC) program, by comparison, has produced two million units since 1987 (U.S. Department of Housing and Urban Development 2015).

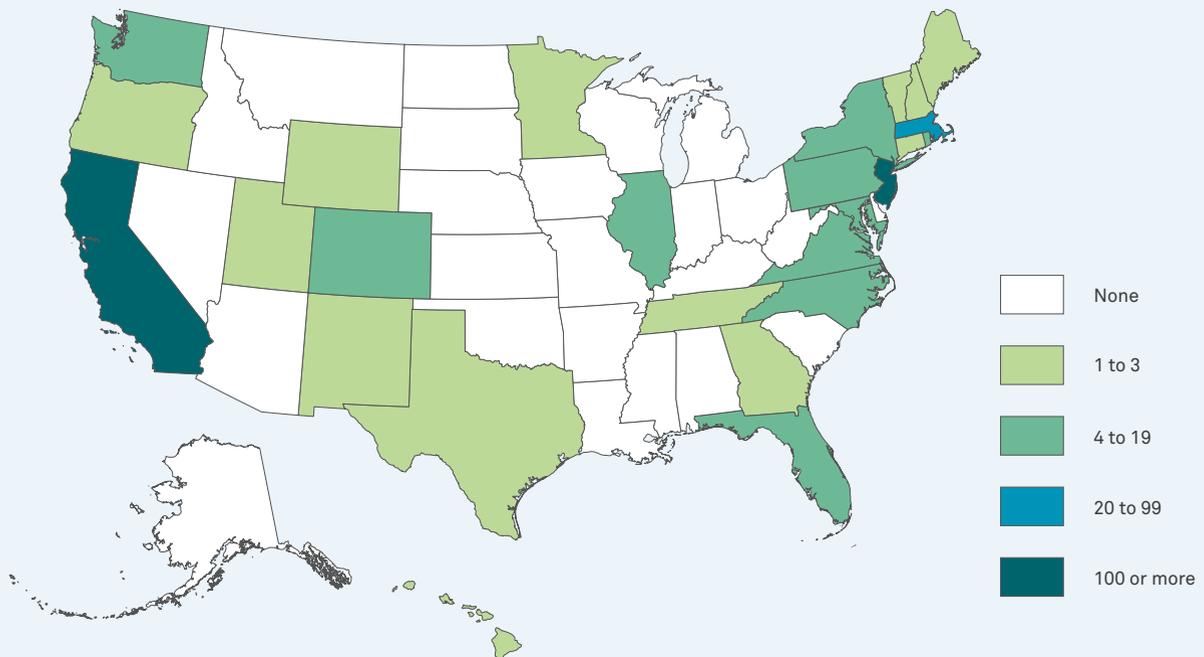
In most cities, inclusionary housing is just one tool in a suite of local policies intended to address the affordable housing challenge. A study of 13 large cities showed that nearly all those with inclusionary programs also manage the investment of federal housing funds and issue tax-exempt bonds to finance affordable housing. Most also used local tax resources to finance a housing trust fund, and many had supported land banks and community land trusts as well. About half those cities took advantage of tax increment financing, and a growing minority established tax abatement programs that exempt affordable housing projects from property taxes. While the exact mix of

programs differed from one city to the next, every city employed multiple strategies (OTAK and Penninger Consulting 2014).

In communities that have long-established and well-designed programs, however, inclusionary housing can be an important source of affordable units. Brown (2001) found that inclusionary housing accounted for half of the affordable housing production in Montgomery County, Maryland. And Mukhija and colleagues (2010) found that inclusionary programs in Southern California were producing about as many units annually as the LIHTC program was creating.

Figure 1

Concentration of Inclusionary Programs Throughout the United States



Source: Hickey, Sturtevant, and Thaden (2014). An online directory of these programs is available at <http://cltnetwork.org/topics/deed-restricted-or-inclusionary-housing-programs>.

Untapped Potential

The research summarized in this report clearly shows that inclusionary housing is a tried and tested strategy that can make a real impact on the affordable housing crisis, but it also shows that inclusionary housing has yet to reach its full potential. Most existing programs were adopted within the past 10 years, and many of the communities that could benefit from inclusionary policies have yet to implement them. Where inclusionary policies are in place, details in the design and implementation make a large difference in overall effectiveness. However, the evidence presented below suggests that inclusionary housing is likely to play a more significant role in our national housing strategy in the coming decade.

Faced with declining federal and state resources for affordable housing and growing populations within cities and urban cores, communities need to take full advantage of every potential tool. Inclusionary housing programs produce a modest yet steady supply of new affordable housing resources. Because these programs generally preserve long-term affordability, the pool of local inclusionary units can grow steadily into a significant share of the local housing

Equitable development benefits not only lower-income households; integrated, inclusive, and diverse communities enhance the lives and outcomes of all residents.

stock. As importantly, inclusionary housing is one of the few proven strategies for locating affordable housing in asset-rich neighborhoods where residents are likely to benefit from access to quality schools, public services, and better jobs. Communities across the country are increasingly investing in the creation of new transit-oriented urban neighborhoods, and inclusionary housing policies are one of the only ways to ensure that these places develop in an equitable manner. Equitable development benefits not only lower-income households; integrated, inclusive, and diverse communities enhance the lives and outcomes of all residents.

In San Mateo, California, six of the Amelia development's 63 town houses sell for below-market rates to lower-income residents. *Credit: Sandy Council*



CHAPTER 2

Understanding the Economics



The adoption of inclusionary housing has almost always been controversial. This type of intervention into the private market raises some real economic concerns that must be taken seriously and addressed with care. This chapter explains the economics of inclusionary housing requirements by addressing the most common questions about local inclusionary policies:

- Is it fair to ask one group (developers) to solve a broad social problem?
- Will developers pass on the cost to tenants and homebuyers?
- Will inclusionary policies prevent new development and make the housing problem worse?
- Can inclusionary housing work in every type of housing market?

Two blocks from the MIT subway stop in Cambridge, Massachusetts, the Third Square apartment complex offers 56 permanently affordable units. *Credit: City of Cambridge*

Fairness

Inclusionary housing policies should not make developers responsible for resolving all the affordable housing needs within a jurisdiction. What is fair is to ask them to compensate for the economic impacts of their developments and to share a portion of the profits they make on the public's investment in the places they develop.

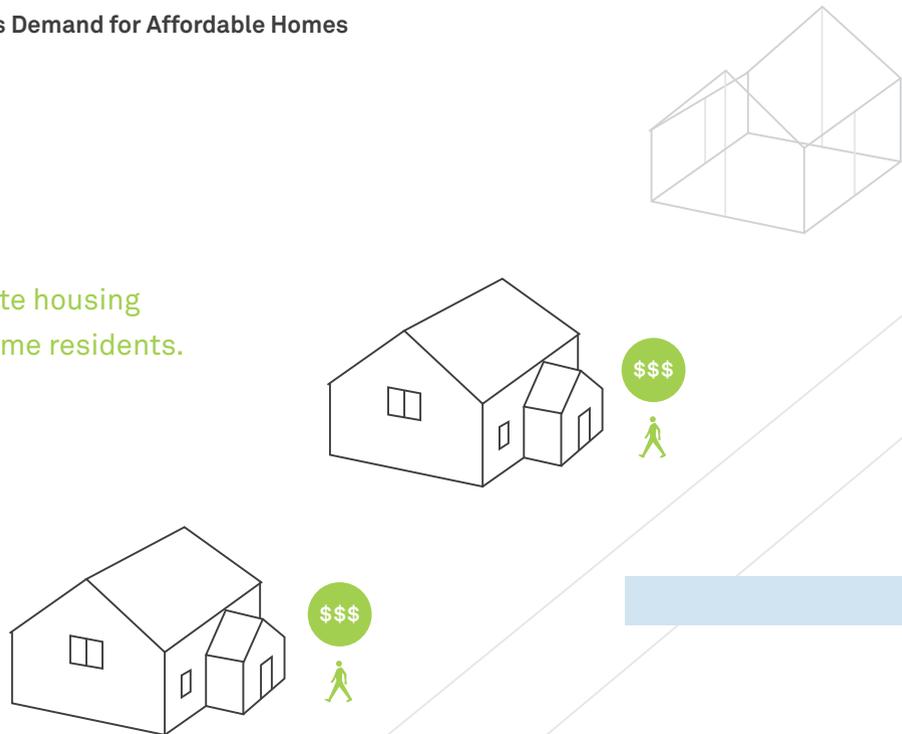
It might stand to reason that development of housing—any kind of housing—would lead to lower housing prices. In most urban areas, however, the opposite occurs. Construction of new residential real estate impacts the price or rent of existing homes in two different ways simultaneously. As the basic notion of supply and demand suggests, the addition of new units in a given market will inevitably put some downward pressure on the cost of existing units. But the larger

effect tends to be upward pressure on housing costs because new homes are primarily built for higher-income residents. A 2015 study commissioned by the *Wall Street Journal* found that 82 percent of new rental housing in the United States was luxury housing (Kusisto 2015). Not only do the new units command higher rents, but also the new residents who can afford them spend money in ways that create demand for more lower-wage workers in the area. This, in turn, creates more demand for housing and ultimately raises housing costs. Figure 2 illustrates this cycle.

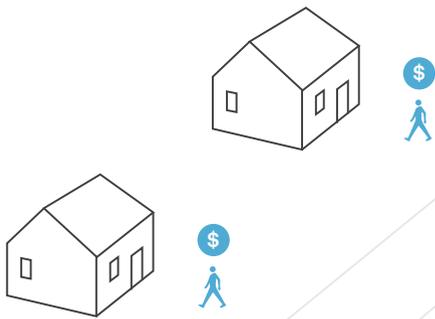
Modest price increases in a region can translate into very acute increases in specific neighborhoods. For example, new luxury housing may cause dramatic upswings in the price of residential real estate in formerly distressed central neighborhoods, but the lower costs resulting from increased supply may be apparent only at the suburban fringe of the region.

Figure 2
Market Development Increases Demand for Affordable Homes

New market-rate housing brings higher-income residents.



New lower-wage workers generate added demand for affordable housing.



Increased spending generates new jobs in the area.



Seattle's South Lake Union, Part One

In the mid-1990s, Microsoft cofounder Paul Allen made a \$20 million loan to finance a proposed park in a warehouse district known as South Lake Union in Seattle, Washington. When voters rejected the proposal, Allen was stuck with 11 acres of unimpressive real estate. But he saw potential and quietly began purchasing more land until his Vulcan Real Estate had amassed a portfolio of over 60 acres—more than one-third of all property in the area. Allen lobbied the city to invest in a fixed-rail streetcar line, which opened in 2007, to connect South Lake Union to Downtown Seattle. When Amazon decided to relocate its headquarters to South Lake Union, Vulcan developed the property and later sold it for \$1.2 billion (Jones 2012).

In 2013, the Seattle City Council considered rezoning South Lake Union, but it faced a dilemma. At that point, Vulcan had developed fewer than half its properties, and the company sought to change the zoning code to allow for construction of 40-story towers as part of a mixed-use urban development. However, the new towers would block views and strain public infrastructure citywide. The upzoning would create a massive financial windfall for one man, while its negative impacts would affect residents throughout the city.

One likely impact was particularly troubling to many Seattle residents: the project's potential to worsen the already acute challenge of rising housing costs. New office and laboratory space would allow for many new jobs that would inevitably translate to higher housing demand and costs.

South Lake Union provides a somewhat exaggerated example of the dynamic seen in most growing cities: private developers and landowners benefit disproportionately from public investments such as transit and other infrastructure. New development creates both costs and benefits, but both are unevenly distributed. Inclusionary housing programs recapture some share of the benefits to help the people who disproportionately bear the costs. While inclusionary housing won't solve the housing challenge, it is both fair and appropriate to expect new development to contribute to the solution.

These inclusionary homeowners in South Lawndale, Illinois, won prize money to redecorate their living room through the Chicago Community Land Trust's Extreme Makeover contest. *Credit: Chicago Community Land Trust*



Absorbing the Costs

Generally, developers do not pass on the costs of inclusionary housing to tenants and homebuyers. The local real estate market sets the prices of market-rate units, and developers of one project can't change the overall market price or rent. Therefore, the costs associated with construction of inclusionary housing are either absorbed by modest declines in land prices or reductions in developer profits, or some combination of the two.

To understand this process, we need to think about housing prices in the market in general. There are basically three elements to the price of any new house: (1) the land; (2) the cost of building the house (including fees, permits, construction, and everything else); and (3) the developer's profit.

Because buyers can choose to purchase existing homes, builders of new units are basically stuck with the market price or rent. When the market rises, builders don't sell for the same price that they had intended; rather, they charge the new market price and earn extra profits. When the market falls, things happen in reverse. In the short term, developer profits suffer. But in the long term, land prices will drop because developers avoid projects that won't earn profits.

Over time, builder profits will return to "normal" because land prices will rise to capture the higher prices. If builders can earn "extra" profits, landowners will have a lot of builders competing for their land and will be able to sell at higher prices to developers willing to settle for more modest profits.

When a city imposes inclusionary housing requirements, it may increase a developer's costs. But developers can't really pass those costs on to homebuyers or tenants, because new units must still be competitively priced in the overall market. Instead, over time, land prices will fall to absorb the costs of the inclusionary housing requirements. Any incentives offered by a community would reduce the degree of land price reductions.

Impacts on New Development

While we don't need to worry that developers will pass the costs of inclusionary housing requirements on to residents, there is still a risk that these policies could lead to higher prices. If the costs are great enough, they could push land prices so low that some landowners would choose not to sell at all. If this happened, less housing would be built and prices would rise.

There seems to be agreement that inclusionary programs could theoretically diminish the supply of housing and therefore increase prices, but there is no agreement about how often this happens or how significant the impact is. A study by the libertarian Reason Foundation concluded that the production rate of market-rate homes fell following the adoption of inclusionary housing policies (Powell and Stringham 2004). Basolo and Calavita (2004) critiqued this study, pointing out that jurisdictions are most likely to adopt inclusionary housing policies toward the peak of the economic cycle, weakening the argument that inclusionary housing causes production to fall. A follow-up study by researchers at the University of California, Los Angeles, carefully compared the data for communities with and without inclusionary housing in Southern California and concluded that the adoption

of inclusionary policies had no impact on the overall rate of production (Mukhija et al. 2010).

The most rigorous study to date was conducted by researchers at the Furman Center at New York University (Schuetz, Meltzer, and Been 2009), who studied inclusionary programs in the Boston and San Francisco metropolitan areas. In the towns around Boston, inclusionary requirements modestly decreased the rate of housing production relative to the rates in nearby towns, slightly raising the market price of residential real estate. But in the San Francisco area, inclusionary programs had no impact on production or prices, suggesting that it is possible to develop inclusionary programs that don't impact market prices. These same programs were also able to create more affordable units than their counterparts did in the Boston area.

Seattle's South Lake Union, Part Two

The Seattle City Council faced a major dilemma when it considered increasing the affordable housing requirements for South Lake Union. While Paul Allen's Vulcan Real Estate claimed to support the goal of creating affordable housing, it also contended that any increase in the city's requirements would be financially infeasible (Tangen 2008). Supporting this concern, a study by a local consultant concluded that more aggressive policies would likely depress land values by 8 to 17 percent (Fiori 2012). A different local consultant performed a similar analysis and concluded that—even with the more aggressive affordable housing requirements—the upzoning would increase land values to 13 times their current levels (Spectrum 2013). Unable to choose between dueling consultants, the city council enacted a very modest increase in the housing requirements even as they approved a dramatic increase in height limits.

This case illustrates that, even in a very strong market like Seattle, it is difficult for policy makers

to evaluate technical economic claims. In fact, the two South Lake Union studies painted a very similar picture of the economics of the proposed policy. But one failed to look at the *value* added by incentives for developers and focused only on the *cost* of providing affordable housing; the other considered both the cost and value that was being provided by increasing height limits.

Seattle's city council eventually commissioned a new, detailed economic feasibility study, which found, for example, that the increased density of a high-rise rental project in the city's downtown added \$4.5 million to the value of the land, while the affordable housing requirement recaptured only about \$3.2 million of that increase (David Paul Rosen & Associates 2014). Ultimately, the results of that study helped the council commit to a stronger housing requirement without concern that it would overly burden developers.

Inclusionary housing policies can create affordable units without decreasing development or increasing prices. But programs must be strategically designed and carefully run, or local policy makers will find themselves caught in the middle of a highly technical debate over real estate economics.

Offsetting Opportunity Costs

When incentives are offered, it is meaningless to talk about the cost of providing affordable housing in isolation. The whole economic picture must be taken into account. At the heart of this difference in approach is a concept known as “residual land value,” which is vital for designing policies that appropriately allow communities to share in the benefits of new construction without stifling development.

“Residual land value” refers to the idea that landowners end up capturing whatever is left over after the costs of development. When the cost of construction rises, it might impact developer profits in the short term, but higher costs will then cause all developers to bid less for development sites. As land prices fall, developer profits tend to return to “normal” levels.

When a city requires developers to provide affordable housing, developers are likely to earn less than they would have if they had been able to sell or rent the affected units at market value. This forgone revenue represents the “opportunity cost” of complying with the affordable housing requirements (figure 3). It is fairly easy to calculate this “cost” for any given mix of affordable housing units, and, if these requirements are predictable in advance, they should roughly translate into corresponding reductions in land value over the longer term.

However, most inclusionary housing programs don’t simply impose costs; rather, they also attempt to offset those costs (at least, in part) with various incentives for the developers. The most common incentive

is the right to build with increased density. When developers can build more units, the extra income can offset the costs of providing affordable units and the result will be a smaller (if any) reduction in land value.

Land values don’t change overnight, and some communities have carefully phased in inclusionary requirements with the expectation that, when developers can see changes coming, they will be in a better position to negotiate appropriate concessions from landowners before they commit to projects that will be impacted by the new requirements. Similarly, some program designs are likely to have a clearer and more predictable impact on land prices than others. More universal, widespread, and stable rules may translate into land price reductions more directly than complex and fluctuating requirements with many alternatives.

Suiting the Market

Inclusionary housing may not be suitable in every type of housing market, but it can work in more places than many people realize. Inclusionary programs are tools for sharing the benefits of rising real estate values, and, as a result, they are generally found in communities where prices are actually rising. In many parts of the United States, land prices are already very low, and rents and sales prices would often be too low to support affordable housing requirements even if the land were free. In these environments, policies that impose net costs on developers are unlikely to succeed (though some communities nonetheless require affordable housing in exchange for public subsidies).

The types of communities where rising housing prices are a real and growing problem are quite diverse, and many of them are not high-growth central cities like Seattle. In California, one-third of inclusionary programs are located in small towns or rural areas. Wiener and Bandy (2007) studied these smaller-town inclusionary programs and found that many were motivated

Figure 3

Market Development Increases Demand for Affordable Homes



by the influx of commuters or second-home buyers entering previously isolated housing markets.

While inclusionary policies are clearly relevant in a wide range of communities, the appropriate requirements can differ from one market to another. In communities where higher-density development is not practical, higher affordable housing requirements may not always be feasible, but lower requirements may still be effective. San Clemente, California, requires only 4 percent of new units to be affordable. But because the city was growing so rapidly, it produced more than 600 affordable homes between 1999 and 2006 (California Coalition for Rural Housing 2009). Wiener and Bandy (2007) also found that many smaller jurisdictions relied heavily on in-lieu fees, and some set fees at very modest levels.

Smaller communities with inclusionary housing programs must address unique considerations, such as limited staff capacity and administration costs. Outsourcing and multi-jurisdiction collaborations can make smaller programs easier to implement, but in some localities the benefits of an inclusionary housing policy will not adequately offset its costs.

Conclusion

It is entirely reasonable to ask real estate developers to help address the pressing need for more affordable housing, because developers and landowners benefit financially from the conditions that give rise to the shortage of decent, well-located homes for lower-income residents. But inclusionary programs need to be designed with care to ensure that their requirements are economically feasible. While developers are not able to pass on the cost of compliance to tenants and homebuyers, there is some risk that poorly designed inclusionary requirements could slow the rate of building and ultimately lead to higher housing costs. Policy makers can avoid this unintended consequence by offering developers flexibility in how they comply and by calibrating requirements and incentives so that the net economic impact on projects is not too great. At some level, inclusionary housing can be implemented in most housing markets, but the stronger the local real estate market, the greater the potential for inclusionary housing to make a meaningful difference.

CHAPTER 3

Building Support for Policy Adoption



A family gathers outside their inclusionary home in the Old Las Vegas Highway development in Santa Fe, New Mexico.

Credit: John Baker Photography

Winning broad public support for a new inclusionary housing ordinance is essential to both the short-term prospects of adopting a strong ordinance and the long-term success of the program. Inclusionary housing raises complex and sometimes controversial issues, so it is important to explain to local stakeholders why inclusionary housing is an appropriate response to real local housing challenges. Carefully studying the economics and engaging private real estate developers seem to help minimize opposition and improve the quality of the policy being proposed.

Understanding Housing Needs and Tools

Many local inclusionary ordinances appear to have grown out of much broader efforts to document housing needs and develop local affordable housing strategies. A broad-based community process that builds support for the goal of increasing the supply of affordable housing and considers the limitations of available tools often leads local stakeholders to conclude that inclusionary housing is one of the most promising options for addressing a growing problem.

That is what happened in Stamford, Connecticut. During the latter part of the 1990s, housing affordability became a growing concern for many residents. A local nonprofit, the Housing Development Fund, organized a conference on creating affordable housing in the summer of 2000. Stamford's mayor, Dan Malloy, later established an affordable housing task force of leaders representing the community, businesses, and government to explore new strategies. The city hired Alan Mallach, the former housing director in Trenton, New Jersey, to work with the task force and the city to create an affordable housing strategy. After many meetings, the group agreed on an ambitious strategy that was presented to the community during an Affordable Housing Summit in May 2001 and in a report published the following September (Mallach 2001). The task force agreed on the need to create more mixed-income development, and consultants recommended a citywide inclusionary housing policy as a key strategy for achieving this goal. During the next year, the zoning board worked to design the inclusionary housing policy and program, and in 2003 Stamford established a mandatory policy.

Appealing to the Public

Wherever housing costs are rising, the public is likely to be concerned and want to see local government

take action to preserve affordability. But it can be challenging for policy makers to connect the important technical details of any proposed inclusionary policy with broad public values. Many ordinances have been adopted without significant efforts to educate and engage the public, but it is harder to pass a strong policy if leaders focus only on the details. Appealing directly to the public helps to garner political will for reaching widely shared goals.

When officials in Arlington County, Virginia, conducted a poll of 1,700 local residents, they found that “requiring affordable housing units when developers build or renovate housing” was one of the most popular among several housing strategies. Seventy-two percent of county residents supported this strategy, and only 24 percent opposed it (Frederick 2014).

A nearly decade-long effort led by the Non-Profit Housing Association of Northern California (NPH) shows how broader public outreach can make a difference. NPH supported inclusionary housing campaigns in 20 jurisdictions and published a 77-page *Inclusionary Housing Advocacy Toolkit* designed to help local advocacy campaigns better communicate with the public (Non-Profit Housing Association of Northern California 2003). The toolkit helped local neighborhood and faith-based organizations engage with this complex issue and led to the successful adoption of 14 new inclusionary policies. These activities created a widespread sense that inclusionary housing is a normal part of the development landscape throughout the San Francisco Bay Area (Stivers 2014).

In Denver, Colorado, City Councilwoman Robin Kniech discovered the power of direct appeal when she led a yearlong process to update the city's inclusionary housing ordinance (IHO). Kniech lost a key committee vote after developers convinced some of her colleagues that the city should study the issue further. After the loss, Kniech appealed directly to voters through an op-ed in the *Denver Post* titled, “What Can

Wherever housing costs are rising, the public is likely to be concerned and want to see local government take action to preserve affordability. But it can be challenging for policy makers to connect the important technical details of any proposed inclusionary policy with broad public values.

Denver Do When a Hot Housing Market Hurts?” (Kniech 2014a). In a subsequent interview, she said, “Very few of my constituents understood the technical issues involved, but they were almost universally supportive of our goals. . . . We won in the media coverage because our city is changing in ways that most people are not comfortable with, and everyone liked the idea that the council was taking that seriously” (Kniech 2014b). After publication of her op-ed, Kniech won strong support from Denver’s mayor, and the new ordinance passed the city council by a safe margin.

Researching Market Feasibility

In a number of communities, economic feasibility analyses have been a useful technical tool to help policy makers get the details right. They have also been a vehicle for building public support for an inclusionary policy. Typically, this kind of analysis involves staff or consultants researching development economics and demonstrating that local projects can safely support the costs associated with provision of affordable housing without adversely affecting construction or housing values.

Salinas, California, is a farming town in one of America’s most productive agricultural regions. But the area is also located near the California coast, sandwiched between vacation communities such as Monterey and bedroom communities in Silicon Valley. It was no

surprise when, in the early 2000s, rising housing prices began displacing the town’s historic working class. Salinas had adopted a relatively weak inclusionary housing ordinance in 1992, but by 2002 rapidly rising prices convinced some local policy makers that a higher requirement might be appropriate. They wondered how high they could reasonably go.

Salinas hired Bay Area Economics (BAE) to evaluate the economic feasibility of inclusionary requirements for 15 to 40 percent of new residential units. BAE built a complex financial model that enabled the city to understand how changes in these requirements might impact the overall profitability of likely development projects. They modeled five different types of residential development, including single-family detached homes, town houses, and multifamily rentals. They chose prototypes that were similar to projects that had recently been completed and interviewed local developers to verify their assumptions.

BAE determined that a typical local project provided profit equal to roughly 10 percent of the total development cost. Then they evaluated the feasibility of various designs for the inclusionary housing requirements. Designs that yielded profits at or above 10 percent of development cost were considered “feasible.” Some project types were feasible with a 35 percent affordable housing requirement, and others could support only 20 percent. BAE concluded that an ordinance requiring 20 percent affordable units would be generally feasible for the vast majority of projects (Bay Area Economics 2003). This analysis gave the city the confidence it wanted to pass an update to their ordinance unanimously in 2005.

It is important to keep in mind that when a study like this one shows below-normal development profits, that result could imply only a short-term problem. Over time, developers should be able to negotiate lower prices from landowners. Therefore, some studies also evaluate the likely longer-term impact of proposed requirements (and incentives) on land values.

Any kind of feasibility study is necessarily somewhat imperfect, but the goal is to give policy makers a general sense of the likely impact of proposed housing requirements and incentives on land prices and development profits. Ultimately, a detailed feasibility study is the only way to address legitimate concerns about whether affordable housing requirements could do more harm than good.

to have accepted or become key advocates for more effective programs. A concerted effort to engage and listen to the real estate development community can make a program stronger and more effective, and it can also win support or neutralize opposition from a powerful set of stakeholders.

While it would be unrealistic to expect developers to champion policies that increase their costs or

Engaging Private Developers

In some communities, private developers, home-builders, and others in the real estate industry have been outspoken opponents of inclusionary housing programs. In other areas, these same parties appear

In North Cambridge, Massachusetts, four units are priced below market rate in the 7 Cameron Avenue development, connected by a greenway to bustling Davis Square in Somerville. *Credit: City of Cambridge*



administrative burdens, developers can be supportive of inclusionary housing for a number of reasons. First, public opposition to development is a key risk faced by developers and providing affordable housing can help win public support for development. Second, inclusionary housing requirements can also garner support for higher-density development, which is often more profitable. Third, in communities that sometimes demand affordable housing as a condition of approval for high-profile projects, a formal inclusionary ordinance can make requirements more predictable, thus reducing a developer's risks. Inclusionary requirements, when coupled with development-by-right rules or expedited processing, can also reduce delays and financial risk for developers.

In Chapel Hill, North Carolina, a college town of 60,000 people in the state's research triangle area, the town council passed a resolution in 2005 calling for formal consideration of an inclusionary housing program. A council-appointed task force included a range of stakeholders, including advocates for lower-income families and private real estate representatives, who helped develop the inclusionary ordinance and recommended its adoption. It was passed in June of 2010.

Prior to adoption of the mandatory policy, Chapel Hill began to negotiate routinely with developers to

secure commitments for affordable housing whenever projects requested zoning changes. The specific requirements varied from project to project, however, so reaching agreements became burdensome for the town and developers. Council member Sally Greene, who ran for office promising to enact inclusionary housing, reported that throughout the process "opposition from the development community wasn't substantial, and the chamber of commerce was supportive. Developers needed something that was standardized. They need to know what the rules are, but they are willing to work with us. They're willing to build upon what was accomplished in the past and give this a try" (Greene 2014).

Conclusion

Little has been written about the process through which local communities develop and adopt inclusionary housing policies. Nonetheless, many communities have created their policies through a similar process of (1) studying and understanding the housing need and the full spectrum of available tools; (2) educating and engaging the public; (3) researching the market economics; and (4) engaging with the real estate community.

The Veloce Apartments is a transit-oriented development with 64 affordable units in Redmond, Washington. *Credit: City of Redmond*



CHAPTER 4

Designing a Policy



Given that no two communities are exactly alike, no two inclusionary housing policies should be identical either. But, regardless of their location, policy makers must consider a number of standard questions in order to create a program that suits local conditions. While every policy should address each of these considerations, the answers will differ considerably from place to place.

Affordable homes for seasonal ski resort workers and others are made possible by the inclusionary housing ordinance in Park City, Utah. *Credit: ULI Terwilliger Center for Housing*

Key questions include:

- Should affordable housing units be required for all projects or only for projects that voluntarily elect to access certain benefits?
- What income group should the program serve?
- Should requirements apply across the whole jurisdiction or only to targeted neighborhoods?
- What is the set-aside requirement (i.e., the share of units that must be affordable)?
- Should builders be allowed to pay a fee in lieu of providing affordable units on-site, and, if so, how much should it be?
- Should developers be allowed to provide the required affordable units at off-site locations?
- Should developers receive any incentives or cost offsets to reduce the economic impact of providing affordable units?
- Do affordable units have to be comparable in design to market-rate units?
- How long must regulated units remain affordable?

Program Structure: Mandatory or Voluntary

Traditionally, most inclusionary housing programs mandate the provision of on-site affordable units in market-rate developments. A small number of voluntary programs are structured to offer incentives in exchange for affordable units.

Communities with a mandatory inclusionary housing program simply require that some percentage (usually 10 to 30 percent) of new units built be affordable for low- or moderate-income households. These communities may also offer developers incentives such as increased density to offset the cost of providing the affordable units, but the developer has no choice about *whether* to provide them.

Other communities offer developers a choice. Under these voluntary inclusionary housing programs (some-

times called “incentive zoning” programs), developers receive certain valuable bonuses, such as the right to build at higher density, in exchange for providing affordable homes.

Mandatory programs are more common: 83 percent of the 512 programs identified by the 2014 Network-CHP Project were mandatory (Hickey, Sturtevant, and Thaden 2014). The Non-Profit Housing Association (2007) found that voluntary programs in California produced significantly fewer homes than mandatory programs, in part because most California programs offered only fairly modest density bonuses. In communities where development density was a hot-button issue, elected officials were unwilling to increase heights significantly. However, voluntary programs have some notable political and legal advantages. In a few states where mandatory affordable housing requirements are prohibited by law, programs that offer bonus density or other incentives in exchange for voluntary production of affordable housing may be allowed. Even where state law allows mandatory requirements, the idea of trading density for affordable housing may be more acceptable politically than outright requirements.

The more recent trend toward urban infill and transit-oriented development has given rise to a new breed of voluntary programs that appear promising. A number of cities have adopted inclusionary requirements that apply only to targeted areas that benefit from significant upzoning. However, there is no guarantee that a voluntary program will produce a significant volume of affordable housing, even when the incentives are potentially significant.

A study of Seattle’s voluntary incentive zoning program found that, for many projects, lower-density alternatives were more economically attractive than higher-density options, due to the high cost of steel frame construction. Thus, even without any affordable housing requirements, most developers were unlikely to take advantage of the density bonus that Seattle offered (David Paul Rosen & Associates 2014). The les-

son seems to be that, for a voluntary program to work well, the incentives have to be very valuable.

Identifying Beneficiaries

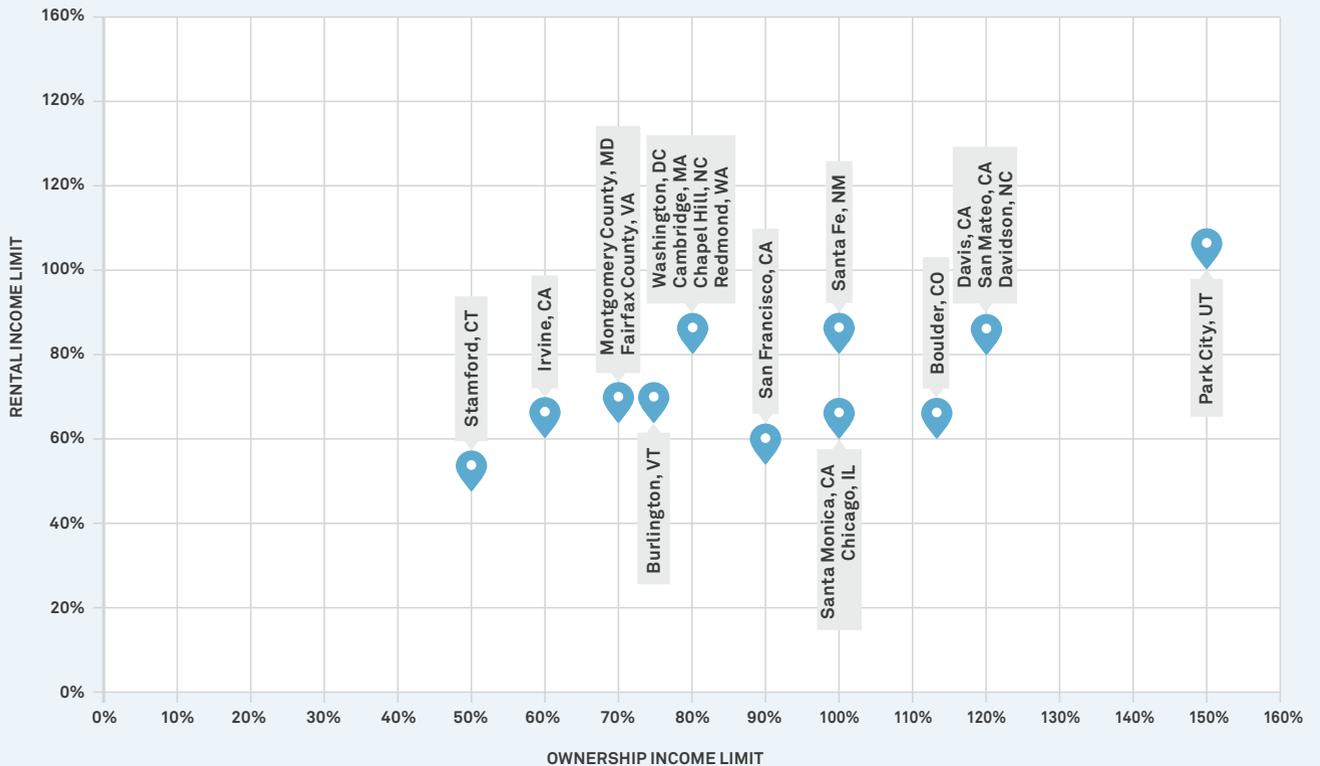
Because it is not possible for cities to meet all local housing needs, it is necessary to prioritize certain income groups or geographic areas. Some cities prefer to target one particular need that is not met by the market or other publicly funded programs, and other jurisdictions prefer to address some of the need across all incomes.

Income targets should be based on a clear analysis of local needs and should consider both supply and

demand for housing at different price points. Inclusionary housing programs tend to serve low- and moderate-income households (those that earn between 60 and 120 percent of the local median income). Many cities face more acute housing needs at lower incomes, and some choose to design their programs to generate at least some units affordable to very low- and extremely low-income residents (earning less than 50 or 30 percent of median income). Figure 4 documents how selected cities target different income groups.

Cities that want to create units for lower-income residents have a number of options. Common strategies are to (1) allow developers to provide fewer units with deeper affordability; (2) pay developers or give them additional incentives to deepen the affordability

Figure 4
Income Targeting in Selected Programs



Data Source: Hickey, Sturtevant, and Thaden (2014).

level; (3) add additional subsidy to rent or sell units at alternative affordability levels; and (4) accept in-lieu fees and partner with nonprofits to build housing with deeper affordability.

For example, Arlington County, Virginia, conducted a careful study of local housing needs that compared U.S. Census Bureau data on the distribution of local households by income with data on rents and home prices. Not surprisingly, the study found that the number of households earning less than 30 percent of the median income was three times greater than the number of affordable units available. It also found shortages of affordable housing for households earning up to 80 percent of median income, and an adequate supply of affordable homes for households earning above 80 percent of median income (Sturtevant and Chapman 2014). Based on this analysis, the county’s Affordable Housing Working Group recommended targeting their inclusionary program to serve households earning 60 percent of median income or less.

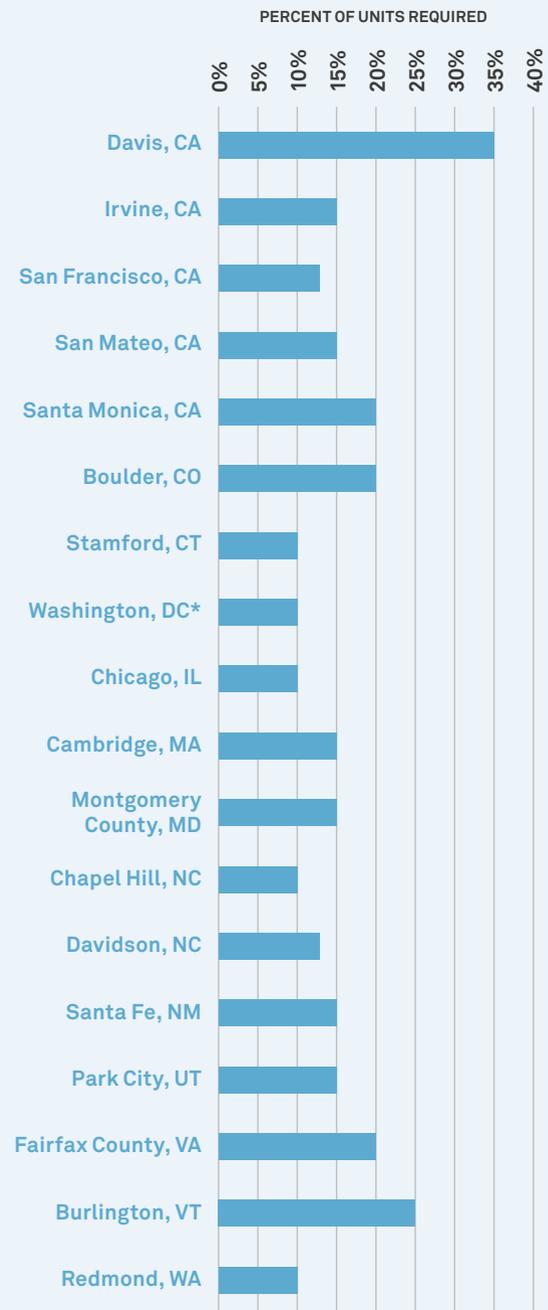
Geographic Targeting

Some inclusionary housing programs apply the same requirements uniformly across an entire jurisdiction, some programs apply requirements only to targeted neighborhoods expected to experience significant growth, and others vary requirements by neighborhood.

For instance, Burlington, Vermont, requires 15 percent affordable units citywide, but it requires 25 percent of units to be affordable in higher-cost waterfront areas. On the other hand, a few cities such as Chapel Hill, North Carolina, have done the opposite and lowered their requirements in the highest-density areas because higher-density construction can be significantly costlier. Using a different approach, Fairfax County, Virginia, varies requirements by construction type rather than by neighborhood. The requirements range from 5 percent in developments with structured parking

Figure 5

Set-Aside Requirements in Selected Programs



*Washington requires the greater of 8 to 10 percent floor area or 50 to 75 percent of the bonus density.

Source: Hickey, Sturtevant, and Thaden (2014).

to 12.5 percent in single-family and low-rise multifamily developments with a sliding-scale density bonus.

Geographically targeted programs such as these may be more complex to design and administer, and they still may fail to capture all the important fine-grained differences among projects. It is also worth noting that most citywide inclusionary requirements automatically compensate for some differences in neighborhood market conditions. For instance, it may be more expensive to build in high-cost neighborhoods, but a density bonus is worth more where the home prices or rents are higher.

The Set-Aside Requirement

Every inclusionary housing program should also consider how much of a city's affordable housing needs

developers should be expected to meet. Typically, cities establish this basic requirement as a percentage of the units or square footage area of each development that must be set aside to be rented or sold at affordable prices on-site (figure 5).

Many cities then allow developers to choose among one or more alternative methods of satisfying the requirement, such as paying a fee or producing off-site units. Some cities allow developers to build fewer units if they serve a higher-need population. In any case, the baseline performance option sets the economic bar against which other alternatives are evaluated, so it must be appropriate for local market conditions.

In a neighborhood of single-family homes, this duplex in Redmond, Washington, is affordable on the left side and market-rate on the right. *Credit: City of Redmond*



Increasingly, cities commission economic feasibility studies to bring real market data to bear on this essential question. Traditional inclusionary housing programs are designed around the assumption that units will be provided on-site even if the program allows payment of fees as an alternative. These programs generally evaluate the economic feasibility of their performance requirements and then set in-lieu fees so they are economically comparable to (or slightly more expensive than) the performance requirements. Alternatively, fee-first impact or linkage programs study the economic feasibility of the fee and then design a performance alternative requirement (i.e., on-site construction of affordable units) that is economically comparable.

In-Lieu Fees

It's a challenge to design requirements that work equally well for every potential real estate project, so most cities offer developers a menu of alternative ways to satisfy their affordable housing requirements. The most common alternative is to pay a fee in lieu of on-site production. In-lieu fees are generally paid into a housing trust fund and used (often along with other local funding sources) to finance affordable housing developed off-site.

Jurisdictions use multiple formulas to set fee levels (figure 6). A key factor that often shapes those decisions is whether a jurisdiction wants to encourage on-site performance or collect the revenue to leverage other sources of funding to build affordable units off-site. All other things being equal, the higher the fee, the higher the chance that developers will choose to build units on-site. A number of communities have made the mistake of setting in-lieu fees far below the cost of on-site performance, and this practice has resulted in poor overall performance of the affordable housing program.

Over time, a city's preference for fees relative to on-site units may evolve according to changes in the

market or other factors. Somerville, Massachusetts, created its inclusionary program at a time when local nonprofit developers did not have the capacity to build large quantities of affordable housing. Consequently, the city set its fees very high. According to the city's inclusionary administrator, "It was a very punitive formula aimed at discouraging developers from taking this option" (Center for Housing Policy 2009, p. 6). As the nonprofit development community matured and built capacity, the city decided that it preferred receiving trust fund revenue and lowered its fees. By adjusting its program approach in response to changing local conditions, Somerville was likely able to produce more units than would have been generated by either approach applied consistently.

Under the right circumstances, off-site production with in-lieu fees can result in more affordable homes than on-site production, but increased production

Figure 6
Approaches to Setting the In-Lieu Fee



Linkage Fee Programs

Linkage fees (sometimes called impact fees) are an alternative to traditional inclusionary zoning programs. Although the name is similar, linkage fees should not be confused with in-lieu fees. In some states, communities can charge developers a fee for each square foot of new market-rate construction and use the funds to pay for affordable housing. These programs are actually structured to require fees rather than units on-site. Initially, commercial linkage fees were developed to apply to commercial projects where an on-site housing performance requirement would be impractical or even undesirable. More recently, as state prohibitions on rent control have been interpreted to prohibit inclusionary programs that require affordable rents, a number of communities have converted traditional programs to those based on a housing linkage fee or impact fee.

A small number of “fee first” programs require payment of fees but offer as an alternative the provision of on-site units “in lieu” of paying the required fees. In these cases, the programs are almost identical to traditional inclusionary housing programs, but they are designed around a different legal rationale.

To enact an affordable housing linkage fee on commercial or residential development, cities generally conduct a “nexus” study, which evaluates the extent

to which new development projects contribute to the local need for affordable housing and estimates the maximum level of fees that would offset this impact of these projects.

There are a number of advantages to linkage fees. Like in-lieu fees, they offer flexibility and can leverage other sources of funding. However, because land is likely to be more affordable and easier to obtain in lower-income neighborhoods, a reliance on fees may further economic segregation. Another disadvantage is that linkage fee programs may generate fewer resources for affordable housing than traditional programs would.

An informal analysis by the Non-Profit Housing Association of Northern California found that among Bay Area jurisdictions that replaced traditional on-site performance-based programs with impact fees, all adopted impact fees were less than the in-lieu fees of their prior programs. The reason was that, while the in-lieu fees had been based on the cost of providing an affordable housing unit, the impact fees were based on a nexus study. Most cities chose to set their impact fees well below the maximum fee suggested by their nexus studies to avoid possible legal challenges.

is not automatic. Effective use of fees relies on the presence of a number of key resources, which are not necessarily available in every community. These include the availability of other locally controlled financing sources to leverage inclusionary housing funds, the capacity of public agency staff, the availability of local nonprofit or private partners with affordable housing development experience, and the availability of land for development of affordable housing. Even when all these elements are present, successful off-site strategies require careful attention to where units are located if a program aims to achieve some level of economic integration.

Many cities have written these fees as specific dollar amounts in their ordinances. Over time, a fixed fee will drop in relation to inflation and the cost of providing affordable housing. Some communities keep fixed fees current by enabling the city council to annually approve a change to the fee calculation, but these yearly approvals can be a challenging source of local controversy. In response, a number of communities have begun to index their fees to allow for regular increases (and potentially decreases) in response to market conditions. Santa Monica, California, annually increases its in-lieu fee according to an index that takes into account annual changes in the cost of construction and local land values.

This inclusionary home in the Sand River Cohousing community was developed through the Santa Fe Homes Program in New Mexico. *Credit: Pauline Sargent*

CAN FEES BE MORE EFFICIENT?

Through the incentive zoning program in Seattle, Washington, developers who provide on-site affordable units receive bonus density in certain targeted areas. In most zones, however, the program gives developers the option to pay an in-lieu fee instead. Between 2002 and 2013, in every case where developers had this choice, they chose to pay the fee because it was far less costly than producing on-site affordable units.

Cornerstone Partnership analyzed data from Seattle's Office of Housing to better understand the outcomes of these trade-offs (Jacobus and Abrams 2014). Consistent with earlier studies, Cornerstone found that the city took several years to spend the fees received. However, by investing this money in nonprofit projects, the city was able to leverage these funds with state and federal resources to produce significantly more units than would have been provided in on-site projects. Cornerstone found that the additional \$27 million of in-lieu fees enabled the city to finance 616 additional units that would not have been built without the inclusionary funds.

Additionally, this local money enabled the city to bring in \$97 million in federal and state funds that otherwise were unlikely to be invested in Seattle. Furthermore, Cornerstone's analysis found that Seattle invested the fees primarily in projects located downtown and in other higher-cost central neighborhoods—the same neighborhoods where the projects paying the fees were located (Jacobus and Abrams 2014).

Other cities may have a hard time matching Seattle's performance in this regard. Seattle has relatively high capacity both within its Office of Housing and among its network of nonprofits, without which lower rates of



leverage would be expected. Even in Seattle, limited land in central locations is likely to make it increasingly difficult over time to continue relying exclusively on fees to achieve meaningful economic integration.

The “opportunity cost” of providing units on-site (i.e., what the developer gives up by selling or renting for less than market value) is higher for higher-priced units, but the in-lieu fee is likely to be the same for all projects. As a result, when a single fee is set according to expected average costs, there will be a natural tendency for higher-end projects to prefer paying the fee and lower-end projects to prefer on-site production (figure 7).

In many communities, this tendency is not a problem, but some communities have found that it leads to further concentration of affordable housing in lower-income neighborhoods. Nevertheless, some jurisdictions have effectively designed programs so that fees advance economic integration, and others have found ways to create more affordable homes without increasing segregation.

Off-Site Development

Another common alternative to on-site housing performance is the right to build mandated affordable units on another site. Generally this is done by constructing

a dedicated project where all the units are affordable. A 2004 survey found that two-thirds of programs in California allowed developers to do off-site construction (California Coalition for Rural Housing 2004). When done well, off-site production can provide flexibility to developers and increase production. However, cities need to develop guidelines to ensure that off-site properties are located in appropriate neighborhoods, built to a high standard of quality, and well maintained over the long term.

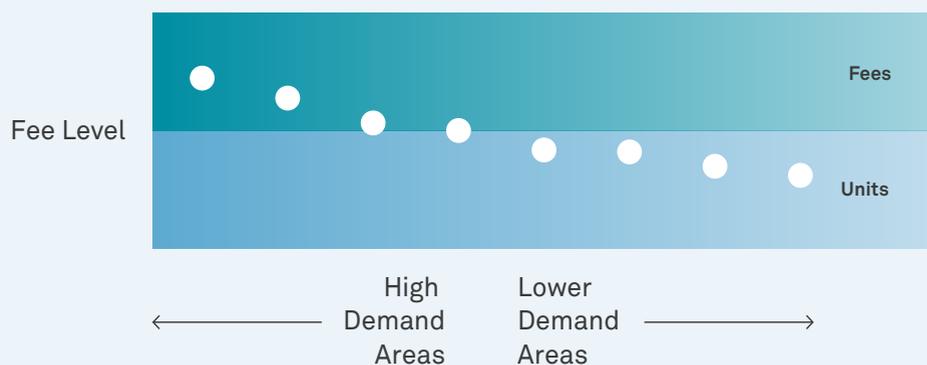
Santa Monica, California, has one of California’s older inclusionary housing programs. It allows developers the option of providing units off-site, but only when doing so will result in additional public benefit. Specifically, Santa Monica requires that builders provide 25 percent more affordable units in off-site projects than would have been required on-site. To promote economic integration throughout the community, off-site projects must be located within a quarter mile of a market-rate project, though projects up to one mile away are allowed if they will not result in overly concentrated affordable housing.

LEVERAGING OTHER AFFORDABLE HOUSING RESOURCES

Many jurisdictions prohibit developers from using scarce federal, state, and local affordable housing funds on the same affordable units as those required by the inclusionary program. A city could end up with no increase in affordable housing units as a result of such “double-dipping.”

In general, cities are more cautious about using funds that are highly limited. For example, many cities will allow developers to utilize tax abatements but prohibit the same projects from applying for housing grant funds. A second general guideline is that access to external funding should be balanced against the burdens required or requested of a developer. In many communities, developers are allowed to access affordable housing subsidies only when doing so enables them either to provide more affordable units or to serve more lower-income households than would otherwise be required.

Figure 7
In-Lieu Fees and Economic Integration



NONPROFIT PARTNERSHIPS AND LAND DEDICATION

While direct off-site development can be challenging for both cities and developers, a number of communities have found that encouraging off-site production through partnerships with nonprofit housing developers facilitates implementation and may produce more affordable housing. Nonprofit developers often have considerable expertise in both building and managing affordable housing. They are skilled at combining various funding sources to get the most possible units. A well-run nonprofit is also likely to be a good steward of the units, protecting the affordability in perpetuity and potentially reducing the monitoring and enforcement burden on city staff.

However, there are limits to the benefits of such partnerships. For example, nonprofits often do not have

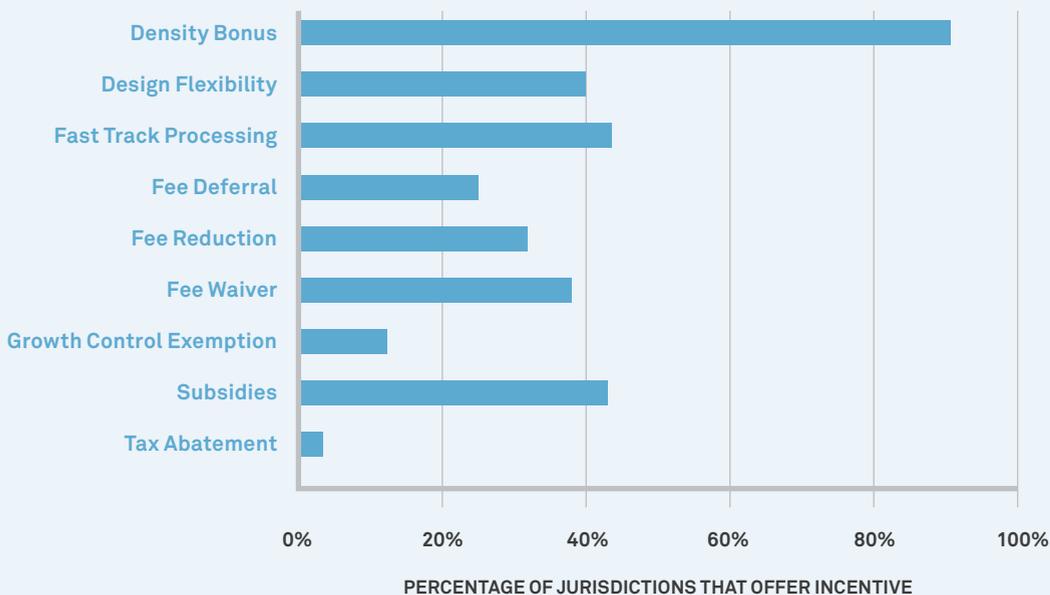
the seed funding to do predevelopment work or to purchase land. A number of cities have designed their off-site production rules to encourage these partnerships. A few, including New York City, allow off-site development only if there is a nonprofit partner that will own the off-site project.

Incentives

The Non-Profit Housing Association of Northern California (2007) and Hickey, Sturtevant, and Thaden (2014) found that most communities offer significant incentives to developers to offset the cost of providing affordable housing units. The most common incentive is the ability to build with increased density, but other common incentives include parking or design waivers, zoning variances, tax abatements, fee waivers, and

Figure 8

Developer Incentives



Source: Non-Profit Housing Association of Northern California (2007).



expedited permitting (figure 8). While a small number of communities seek to offer incentives to fully offset the cost of providing affordable units, incentives are seen as a way to reduce but not eliminate the economic impact on development in most programs.

These incentives are sometimes criticized as “give-aways” to developers. Calavita and Mallach (2009) point out that incentives generally come at a real cost to the public sector. If inclusionary housing requirements are modest enough to be absorbed by land prices, then any incentives merely move the cost from landowners back onto the public. Incentives such as tax abatements and fee waivers reduce revenues available to jurisdictions, just as cash subsidies would to development projects. Even planning incentives such as density bonuses, which appear free, result in increased infrastructure and other public costs.

When communities base inclusionary requirements on detailed feasibility studies, it becomes clear how incentives can play a role in maximizing the impact of

Park City, Utah, utilized in-lieu fees from its inclusionary zoning program to build the Snow Creek Cottages, which are deed restricted to maintain affordability. *Credit: Rhoda Stauffer*

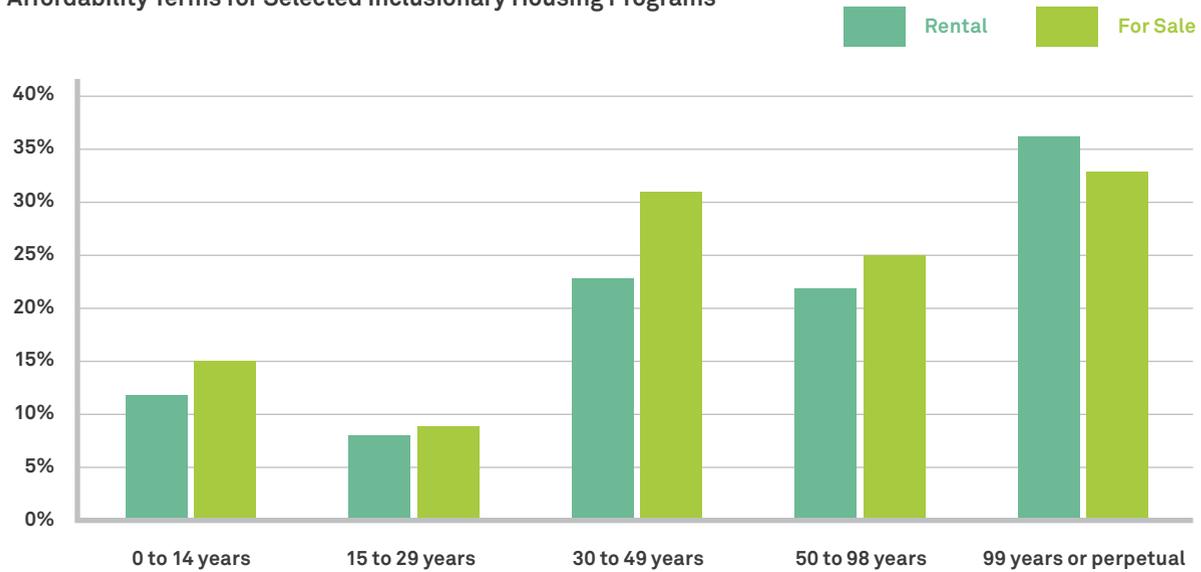
an inclusionary housing program. If the goal of an inclusionary requirement is to enable developers to earn “normal” profits while capturing some share of “excess profits” for public benefit, any incentive a city can offer to make development more profitable enables the imposition of an inclusionary requirement higher than would otherwise be feasible. However, communities have to carefully weigh the costs and benefits of each incentive and evaluate them relative to the cost of meeting specific affordable housing requirements.

Design Standards

It is difficult to design and implement inclusionary housing policies with appropriate standards to ensure quality affordable housing, given developers’ under-

Figure 9

Affordability Terms for Selected Inclusionary Housing Programs



Includes 330 inclusionary housing programs for which affordability term data is available. Source: Hickey, Sturtevant, and Thaden (2014).

standable desire to minimize costs. Some cities have insisted that affordable units be identical in every respect to market-rate units, but it can be hard to defend the public policy rationale behind requiring granite countertops and luxury ranges in affordable units. On the other hand, providing developers with no standards has its own risks. One California developer sold affordable units without any kitchen cabinets (Jacobus 2007a).

An additional concern is the location of affordable units in market-rate developments. There might not be a clear public benefit in requiring that a proportional share of units with waterfront views are affordable, but some standard regarding where affordable units can be located is clearly appropriate.

Many communities develop specific minimum standards. Some programs require that affordable homes be externally identical to market-rate units, but others provide developers with a list of specific requirements

regarding minimum unit size and amenities. So long as affordable units meet these standards, they can be different or less costly to build than market-rate homes.

Affordability Preservation

In booming housing markets, it would do little good to require affordable homes or apartments without providing a mechanism to ensure that the units remain affordable over time.

Between 1973 and 2005, Montgomery County, Maryland, created more than 12,000 affordable homes through its widely copied inclusionary program. Because the affordability of those homes was regulated for only 10 years, however, by 2005 only 3,000 of those units were still affordable (Brunick and Maier 2010). If inclusionary programs are to create and preserve mixed-income communities, long-term restrictions are vital for a program to have a lasting impact. After all,

if homes expire out of a program and return to market rate after a few decades, the program won't actually increase the stock of affordable housing.

Well-designed inclusionary housing programs are able to offer homebuyers meaningful and safe asset-building opportunities while concurrently preserving a sustainable stock of homes that remains affordable for future generations.

The overwhelming trend has been for inclusionary housing programs to adopt very long-term affordability periods (figure 9). In 2005, Montgomery County amended its program to require 30 years of affordability for new projects, and to administrate a new 30-year restriction each time a property is sold. A recent national study found that more than 80 percent of inclusionary housing programs require units to remain affordable for at least 30 years, and one-third of those require 99-year or perpetual affordability (Hickey, Sturtevant, and Thaden 2014). Even programs with 30-year affordability restrictions frequently aim to preserve affordability in perpetuity by “resetting the clock” on each transaction and by maintaining the preemptive option to buy back the unit upon transfer.

It is not entirely clear who benefits from shorter-term restrictions. For homeownership projects, a developer forced to sell units with 15-year restrictions faces the same economic cost as selling units with 99-year restrictions. For rental properties, the economics are a bit more complex. An investor might pay more for a property with rent restrictions that expire after 15 years than for one with 99-year restrictions, but the difference might be slight. In other words, the length of affordability makes a big difference to the long-term impact of the program but only a small difference on the front end.

Policy makers sometimes feel that they are forced to choose between preserving affordability and offering wealth-building opportunities to homeowners. However, research strongly suggests that well-designed inclusionary housing programs can achieve both goals.

A team from the Urban Institute studied economic outcomes for buyers in seven homeownership programs with long-term affordability restrictions and found that sellers were able to experience significant equity accumulation even when the resale prices were restricted to preserve affordability (Temkin, Theodos, and Price 2010). For example, the typical owner of an inclusionary unit in San Francisco, California, received \$70,000 when he sold the home. Even with the strict price restrictions on resale, the typical owner earned an 11.3 percent annual return on the home investment—far more than would have been earned through other investment options (Temkin, Theodos, and Price 2010).

Well-designed inclusionary housing programs are able to offer homebuyers meaningful and safe asset-building opportunities while concurrently preserving a sustainable stock of homes that remains affordable for future generations.

Conclusion

Communities that are developing inclusionary housing programs must take the time to consider carefully each of the issues described above. Because real and important political and market conditions differ from place to place, there is no single best approach that should be used everywhere. However, that does not mean that each jurisdiction has to reinvent the wheel. Inclusionary housing is a well-tested local policy, and much has been learned about how to make it work in a variety of contexts.

CHAPTER 5

The Challenges of Economic Integration



In San Francisco, 1400 Mission is a 100 percent affordable apartment complex built by the nonprofit Tenderloin Neighborhood Development Corporation. *Credit: Tenderloin Neighborhood Development Corporation*

The desire to create and sustain more mixed-income communities has been a key motivation behind many inclusionary housing programs. The evidence suggests that most inclusionary programs are able to deliver affordable housing efficiently and at the same time integrate those units into areas of economic opportunity that other affordable housing programs have difficulty reaching. At the extremes, however, communities are sometimes forced to choose between housing the greatest number of households and integrating that housing into the greatest range of environments.

Does support for this general goal of economic integration imply that we need to ensure integration into every project? To address the more extreme cases, it is important to look closely at the motivation for policies that promote economic integration, the research on the effectiveness of mixed-income housing, and the pros and cons of each approach (table 1). Recent experiences in San Francisco and New York City offer insights into the challenges of meeting broad goals and expectations with a single policy.

Mixed Income, Mixed Results

Since the mid-1980s, a broad consensus among scholars and urban planners has emerged in support of the idea that housing policies should encourage the creation of more mixed-income communities. The work of William J. Wilson (1987) highlighted the serious and compounding challenges that result from overconcentration of urban poverty and suggested that social isolation of people in high-poverty neighborhoods

Table 1
Comparison of On-Site and Off-Site Production

	ADVANTAGES	DISADVANTAGES
ON-SITE	<ul style="list-style-type: none"> • Ensures access to high-opportunity neighborhoods • Is easier to enforce design quality • Has low risk of ongoing maintenance problems • Provides integration in the same building, which can be symbolically important and help build public support 	<ul style="list-style-type: none"> • Can be difficult to monitor scattered units • May produce fewer family-sized units • May not be economically feasible for all project types • Is harder to incorporate very low-income or special needs residents
OFF-SITE	<ul style="list-style-type: none"> • Can be more cost-efficient (i.e., can often produce more total units) • Can leverage other affordable housing subsidies to produce additional units or serve lower-income residents • Can design and operate properties to meet the needs of the local population (e.g. family units, amenities, social services, etc.) 	<ul style="list-style-type: none"> • May concentrate affordable units in lower-income areas • May produce lower-quality buildings • May lead to lower-quality long-term maintenance • Presents risks of “double-dipping,” whereby developers reduce their costs by relying on scarce affordable housing subsidies

might lead to the creation of an “underclass” that is very hard to escape. While the supposed “culture of poverty” does not appear to explain the results, there is clear evidence that even better-off residents suffer significant social and economic disadvantages when they live in neighborhoods with very high concentrations of poverty.

In one example, the Pew Charitable Trusts’ Economic Mobility Project followed 5,000 families to determine

whether children moved up or down the income ladder relative to their parents. Surprisingly, the study found that the poverty rate in the neighborhood where children grew up strongly predicted their economic mobility as adults, even more strongly than differences in their parents’ education levels or occupations (Sharkey 2009).

It is easy to see that children who live in distressed communities face tougher odds. But what we haven’t

Case Study: San Francisco

San Francisco’s Central Market neighborhood has been changing. One of the most high-profile changes has been a new, 19-story luxury apartment building called NEMA, located directly across the street from Twitter’s new headquarters. NEMA is billed by its developer as not simply upscale but “inspirational” living because of the wide range of high-end amenities, from 24/7 spa treatments to dog walking services. Like other recent developments, NEMA was required to rent 12 percent of its 750 units to low-income residents at affordable prices.

To document this program, filmmaker Michael Epstein followed one of the lower-income families that moved into NEMA. After falling on hard times, the Ramirez family had been living in a van under the Golden Gate Bridge and then briefly in a homeless shelter before moving into the gleaming new NEMA tower. And yet Yesenia Ramirez describes her family’s new living situation as “awkward.” The building has no other children, but it does have a “doggie spa” (Epstein 2014).

Next door to San Francisco’s NEMA apartment tower, another residential tower is being built by the nonprofit Tenderloin Neighborhood Development Corporation (TNDC). Like the affordable units at NEMA, this project also resulted from San Francisco’s inclusionary housing program. But in the TNDC

project, all of the 190 apartments will be affordable to low- or moderate-income families. Where NEMA offers mostly studio and one-bedroom units, TNDC’s project has mostly two-bedroom and even some three-bedroom apartments. TNDC was able to build this project with financial support from the developer of a nearby 650-unit luxury condo project that elected to take advantage of the off-site production option under San Francisco’s inclusionary program (Conrad 2014). This off-site partnership will produce far more affordable units than the developer would have been required to provide on-site.

This kind of compromise has been controversial in San Francisco, where many housing advocates are understandably concerned that developers will see the off-site option as a loophole, allowing them to provide substandard housing in undesirable locations. On-site inclusion of affordable units within market-rate projects seems to work well most of the time, and it remains the city’s preferred outcome. Most of the city’s inclusionary residents comfortably blend into market-rate projects where the cost of affordable and market-rate units are not quite so far apart. Collecting fees or creating off-site projects might be less efficient in many of these cases. But luxury projects like NEMA, where the benefits of inclusion decline as the costs increase, make it clear that on-site units may not always be the best option.

been able to prove before is whether those underprivileged neighborhoods attract families who would face challenges anywhere, or whether it is something about the places themselves that negatively affects the kids.

A new study from Harvard University (Chetty and Hendren 2015) has added very strong new evidence to support the conclusion that the places themselves matter. Economists studied children who moved from “worse” to “better” neighborhoods and found that kids who grew up in better neighborhoods earned more as adults when compared to kids who didn’t move or who moved to a worse neighborhood. And the effect grew over time. The younger kids were when they moved, the greater the gains. Similarly, the researchers found that younger siblings in families that moved experienced better economic outcomes relative to their older brothers and sisters who spent less time in the better neighborhood before entering adulthood. This research suggests that housing policies encouraging greater economic integration will lead to better economic outcomes for lower-income children.

Concentrated poverty was clearly an outcome of the housing policies of the mid-twentieth century. But by the end of the century, many housing programs explicitly began seeking to create more mixed-income communities. A range of mixed-income housing programs and policies has been studied widely, and while the results are sometimes contradictory, the evidence paints a fairly consistent picture of both the potential and the limitations of mixed-income housing.

On the positive side, lower-income residents appear to benefit socially and economically from mixed-income communities. In a series of carefully designed experiments, inner-city public housing residents were offered housing vouchers that would enable them to rent market-rate apartments for no more than they had been paying in public housing. Families that moved to neighborhoods with low poverty levels saw

Case Study: New York

In 2009, New York City made a set of changes to its zoning rules—including one that would allow developers of inclusionary projects to concentrate their affordable units in separate buildings on the same lot. Separating the affordable units in this way was considered more economically efficient and enabled these developers to access additional tax benefits. While many cities prohibit this practice, New York’s inclusionary program is voluntary. After considering the alternative—developers opting out of the program—city leaders decided that the benefit of more voluntary units would outweigh any negative consequences.

Five years later, this obscure change of policy made national headlines because of the placement of a single door on one property. Several developers had already taken advantage of the new policy without apparent controversy. But an approved development on Riverside Boulevard came under intense public scrutiny because it featured two doors—one on Riverside Boulevard for buyers of the luxury condos selling for up to \$25 million, and one on 62nd Street for the tenants paying as little as \$850 a month.

The *New York Times* referred to the second door as a “poor door” and called the practice “distasteful” (Bellafante 2014). A state assemblywoman said, “It looks and smells like discrimination” (Navarro 2014). Somehow, in a city that had long allowed off-site development, the idea of separating affordable residents within a site had seemed like an acceptable compromise. But the *image* of mixed-income buildings with two different doors touched a raw nerve with the public.

physical and mental health improvements and increased self-esteem and motivation. The studies also showed that those who moved to higher-income areas were more likely to be employed, although their wages were no higher than those of residents who relocated in low-income neighborhoods (Levy, McDade, and Dumlao 2011).

Integration of lower-income residents into middle- and upper-income neighborhoods can be very valuable, but integration in the same building may offer few additional benefits.

Many policy makers pursued mixed-income housing policies in the hope that social interactions between lower-income and higher-income residents would lead to better access to jobs or other resources for lower-income residents. The research clearly suggests that these hopes are not realistic. Explaining her opposition to “poor doors,” Manhattan Borough President Gale Brewer described her aspirations for inclusionary housing to the *Wall Street Journal*: “I’m hoping that as time goes on, people will share play dates, and I hope that they’ll do BBQs together” (Kusisto 2014).

The Urban Institute reviewed dozens of studies of housing programs that promoted mixed-income communities and found little evidence of any meaningful social interaction between lower-income and higher-income neighbors in mixed-income developments. It also found no evidence that lower-income residents reliably benefitted from the employment connections or other “social capital” of their higher-income neighbors (Levy, McDade, and Dumlao 2011). Even among members of the same income and racial groups, this kind of social interaction among neighbors appears to be rarer than is often imagined.

Integration of lower-income residents into middle- and upper-income neighborhoods can be very valuable, but integration in the same building may offer few additional benefits.

Ensuring Access to Opportunity

This research result does not mean that on-site performance is not a key way to achieve the real benefits that economic integration does offer. Inclusionary housing programs with on-site performance requirements may be one of the very few successful strategies available for integrating lower-income housing into high-opportunity neighborhoods at all.

Recent research has shown just how hard it is to achieve economic integration through traditional affordable housing strategies. A 2012 New York University study found that the vast majority of subsidized affordable housing was located in neighborhoods with poor performing schools. The schools nearest to public housing projects had a median state test score ranking in the 19th percentile (81 percent of schools performed better). Low Income Housing Tax Credit projects did slightly better; their nearest schools ranked in the 30th percentile. But even families with portable housing choice vouchers ended up in locations where the nearest school had a median rank in the 26th percentile. For a variety of reasons, these families who should have been able to rent anywhere ended up in neighborhoods where 75 percent of kids qualified for free lunch at school (Ellen and Horn 2012). Decades after embracing “deconcentration of poverty” as a federal housing policy goal, most federal programs don’t appear to be achieving meaningful economic integration.

By contrast, the results of another 2012 study suggest that inclusionary housing programs have been more successful in achieving this goal. Heather Schwartz and her colleagues at the RAND Corporation mapped the locations of affordable units created by inclusion-

ary policies in 11 cities. They found that the typical inclusionary unit was in a neighborhood where only 7 percent of the population lived in poverty (half the national average for all neighborhoods). Children in these inclusionary units were assigned to schools with state test scores ranking in the 40th to 60th percentile and with lower-than-average numbers of students eligible for free lunches. Noting the stark contrast with other affordable housing programs, the authors concluded that “while [inclusionary housing] programs serve relatively more-advantaged families than other subsidized housing programs, the degree of access [inclusionary housing] provides to low-poverty neighborhoods is still remarkable” (Schwartz et al. 2012, p. 15).

Local policy makers have to struggle with how much importance to place on integrating lower-income

households into higher-income neighborhoods. While we should be careful not to expect significant social mixing, the real economic and health benefits from living in higher-opportunity locations are sufficient to justify policies that promote integration. But for a variety of reasons it is very difficult to build affordable housing in higher-opportunity neighborhoods. Inclusionary housing is one of the only housing strategies that effectively integrates lower-income households into higher-income, higher-opportunity locations.

Frazer Court in Redmond, Washington, offers six affordable units to families making 80 percent of the area’s median income.

Credit: City of Redmond



CHAPTER 6

Addressing Legal Concerns

by Ben Beach



A father and daughter anticipate construction of their affordable home in the Old Las Vegas Highway development in Santa Fe, New Mexico. *Credit: John Baker Photography*

State and Federal courts have repeatedly upheld inclusionary housing measures, which have been adopted by hundreds of jurisdictions across the country. While some state laws have substantially limited the options available to local policy makers, in any jurisdiction there is almost always a path to an effective, legally defensible inclusionary policy. This chapter addresses four of the most important legal considerations for inclusionary housing programs: (1) takings standards; (2) on-site performance requirements; (3) linkage or impact fees; and (4) fees collected in lieu of providing required units on-site. It also looks at policy and priority differences among states.

Takings Standards

The legal issue most commonly implicated by inclusionary housing measures is known as “takings,” derived from the prohibition in the U.S. Constitution against taking private property without just compensation. Courts confronted with a takings challenge to an inclusionary housing measure may apply one of two quite different standards. One standard, set forth by the U.S. Supreme Court in the *Penn Central* case, should apply to generally applicable land use controls, such as a simple mandatory inclusionary housing ordinance that merely requires on-site inclusion or off-site production of affordable units. To be considered a taking under the *Penn Central* precedent, a local ordinance would have to be so drastic in its effect that it is functionally equivalent to a “classic taking,” in which the government directly appropriates private property.

In a pair of cases known as *Nollan* and *Dolan*, the Supreme Court outlined a stricter standard for exactions—development conditions imposed ad hoc or through negotiation as part of the land use approval process. These cases center on the “unconstitutional conditions” doctrine, which limits the government’s authority to condition the grant of a privilege or benefit (such as a building permit) when a proposed condition contains a mandate (such as a requirement to dedicate land to the public) to give up or refrain from exercising a constitutional right. Under the *Nollan/Dolan* standard, such a requirement must (1) have an “essential nexus” to the impact of the development that is being mitigated by the condition (i.e., there must be a clear relationship between the impact of the development and the required mitigation); and (2) the condition must be “roughly proportional” to the impact that the development is likely to have on the problem that the condition is intended to mitigate. The Court recently clarified that the *Nollan/Dolan* analysis applies to conditions imposed in the development approval process that take the form of monetary fees (*Koontz v. St. Johns River Water Management District*).

While a number of cases have established some clear guidelines, the exact treatment of various inclusionary housing policies is still being considered by courts across the country, and it may be some time before all the relevant issues are resolved. Two important questions can help make sense of the confusion: (1) Is the measure in question imposed ad hoc or is it generally applicable? and (2) Is the purpose of the measure to mitigate a project’s impact or instead to accomplish a legitimate regulatory goal under the jurisdiction’s police power?

It is clear that generally applicable on-site affordable housing requirements can be structured as expressions of a jurisdiction’s police power to regulate land use. If so, they should be evaluated under the *Penn Central* standard when subject to a federal takings challenge. To date, no court has used the *Nollan/Dolan* standard to review a generally applicable mandatory inclusionary zoning ordinance.

It is also clear that measures imposed ad hoc should be evaluated under *Nollan/Dolan*. And it is somewhat likely that linkage fees or impact fees designed as mitigations will be evaluated under *Nollan/Dolan*, or some other standard examining the relationship between the cost of compliance and the impact of the project on the problem. What is less clear is how the courts should treat fees charged in lieu of on-site performance, which seem to be quite different from traditional land use regulations.

Which of these standards a court chooses to apply in evaluating a challenge to an inclusionary housing measure has significant implications for policy making. First, the *Nollan/Dolan* standard requires extensive documentation to establish the appropriateness of the measure in question. Second, the proportionality requirement places an upper limit on the level of fees charged, which is almost certainly well below any upper limit imposed by the *Penn Central* standard. Under *Penn Central*, a land use regulation can significantly constrain the potential uses of a property

regardless of whether or how much a given development would contribute to a social problem—as long as the regulation advances a legitimate government purpose and leaves the property owner with *some* profitable use of the property.

Recently, the California Supreme Court addressed several of these issues in a case involving a takings challenge to the City of San Jose’s inclusionary housing ordinance, *Cal. Bldg. Indus. Assn. v. City of San Jose*, 61 Cal. 4th 435 (2015). The ordinance required that developers of residential projects with 20 or more new, additional, or modified dwelling units set aside 15 percent of on-site for-sale units as affordable, or meet one of the alternative performance requirements, such as providing affordable housing off-site or paying an in-lieu fee. The court concluded that the ordinance should be treated as a traditional land use control, not as an exaction, and should be reviewed under the deferential standard reserved for such controls. The court observed that the city’s legitimate purposes in adopting the ordinance were to increase the supply of affordable housing and to distribute affordable housing across economically diverse neighborhoods. The court clarified that the “unconstitutional conditions” doctrine applies only in cases where the condition at issue, if imposed directly by the government, would amount to a taking because it required conveyance of a property interest. San Jose’s inclusionary housing ordinance, the court determined, did not require the subject developer to convey property to the public, but instead operated as a *price control* on housing reviewable under *Penn Central*.

On-Site Performance Requirements

Citywide or neighborhood-wide inclusionary requirements, where properly drafted, should be entitled to great judicial deference as generally applicable exercises of the local government’s authority to regulate land use under its police powers (*Euclid v. Amber*

Realty Company; Village of Belle Terre v. Boraas). The legitimate purposes of inclusionary housing ordinances may include accommodating a community’s projected needs for affordable housing, addressing the effects of prior exclusionary zoning, providing equal opportunity to all income levels, providing housing for the workforce, addressing the dwindling supply of land, and affirmatively advancing integration and other fair housing goals (California Affordable Housing Law Project/Public Interest Law Project 2010). Unlike a housing impact fee, for example, inclusionary housing ordinances are not principally intended to mitigate the impact of particular development projects and should not be described as such.

It is sometimes argued that inclusionary housing requirements should be evaluated under the *Nollan/Dolan* standard instead. The California Supreme Court’s approach to the question of which standard to apply has been widely used in other states. Under that approach, generally applicable land use controls, even when applied to development through the mechanism of the land use approvals process, are considered police power legislation. The more rigorous *Nollan/Dolan* review is reserved for measures imposed on individual development projects on an ad-hoc basis (*Ehrlich v. City of Culver City*). It is thus advisable for local jurisdictions to adopt citywide or neighborhood-wide inclusionary requirements that are generally applicable, rather than those imposed ad hoc during the land use approval process.

A jurisdiction may want to undertake an economic feasibility study to support any contemplated inclusionary housing requirement. Such a study should aim to satisfy the *Penn Central* test by showing that the proposed requirements do not completely disrupt economic returns from the project in question. A feasibility study should factor in any subsidy or other economic value contributed by the local government to the projects through upzoning or other regulatory relief. Jurisdictions should not rely on a nexus study to support generally applicable on-site performance

requirements, because doing so might imply that the inclusionary requirements were intended to mitigate project impacts rather than advance legitimate police power objectives.

Local jurisdictions can take these additional steps to help strengthen the legal defensibility of their inclusionary housing requirements: (1) include a goal in the community's comprehensive or general plan that future growth of the community must include a specified percentage of affordable housing; (2) make clear that any on-site performance requirement is an exercise of the city's police power, advances a legitimate government interest, and is not intended to mitigate the impact of development; (3) make administrative waivers available; and (4) consider including a periodic review of the on-site performance affordable housing percentage in light of market conditions.

Linkage and Impact Fees

In general, federal and state courts have repeatedly upheld impact fees (and other similar development fees) against challenges maintaining that they are takings. However, courts are likely to apply the *Nollan/Dolan* standard in evaluating such fees.

In *Commercial Builders of Northern California v. City of Sacramento*, the ninth circuit court upheld Sacramento's commercial linkage fee ordinance against a takings challenge. The challengers argued that Sacramento failed to show that the nonresidential development on which the fee was imposed generated a need for affordable housing proportionate to the burden created by the fee. The court rejected this argument, reasoning that the ordinance "was implemented only after a detailed study revealed a substantial connection between development and the problem to be addressed" (*Id.* at 875).

Local jurisdictions contemplating adoption of linkage or impact fees would be well-advised to commission

a nexus study, which demonstrates the relationship between a contemplated fee and the impact of the development that the fee is intended to mitigate. Commonly, these studies use well-established industry methodologies to calculate the contribution of a set of projects (residential or commercial) to worker in-migration and the ensuing need for new affordable housing. Such studies are designed to help localities meet the *Nollan/Dolan* test by establishing both the "essential nexus" and "rough proportionality" required by the court in those cases.

In-Lieu Fees

Is an in-lieu fee the kind of fee imposed in the development approval process that is subject to *Nollan/Dolan*? In development fee cases, courts have followed the California approach of distinguishing between legislative measures and those imposed on an ad hoc basis. "With near uniformity, lower courts applying *Dolan* . . . have expressly declined to use *Dolan*'s heightened scrutiny in testing development or impact fees imposed on broad classes of property pursuant to legislatively adopted fee schemes" (*Rogers Mach. v. Wash. County*). As long as the in-lieu fee requirement is structured to allow for negligible discretion in calculation and application, the fee should not be subject to *Nollan/Dolan*, because it is not ad hoc or negotiated (*San Remo Hotel v. City and County of San Francisco*).

However, California courts have further determined that even a generally applicable formulaic development impact fee must still bear a "reasonable relationship" to the impacts the fee is intended to mitigate (*Ehrlich v. City of Culver City*), a standard somewhere between *Penn Central* and *Nollan/Dolan* in its deference to local authority. In the event that a court views an in-lieu fee as an impact fee (rather than as a land use control) and applies such a standard, the local government still has a strong defense available. An inclusionary in-lieu fee is customarily structured to cover the cost of developing affordable units that

would otherwise have been included on-site in the project. That “loss” of on-site units is precisely the impact the fee is intended to mitigate. Thus, where they follow conventional design, such fees are likely to be seen as meeting the California courts’ “reasonable relationship” standard.

In *City of San Jose*, the court quickly dismissed the challengers’ contention that the presence of an in-lieu fee option meant that the ordinance as a whole should be reviewed under a heightened standard appropriate for measures designed to mitigate impact. The court noted that no developer was required to pay the in-lieu fee and that a developer could always opt to satisfy the ordinance by providing on-site affordable housing units (61 Cal. 4th at 476).

There is every reason to believe that courts will continue to uphold the basic right of local governments to promote the welfare of their residents by ensuring the availability of housing that is affordable to lower-income households.

Variations Among State Laws

It is no coincidence that inclusionary housing programs are heavily concentrated in a few states. California, New Jersey, and Massachusetts all have (or had) state laws that strongly encourage or even require local inclusionary housing policies. Adopting inclusionary policies in other states often requires significant research into any special state constitutional provisions or statutes that might limit local authority.

In California, Colorado, and Wisconsin, state courts have interpreted laws relating to rent control to bar localities from using inclusionary housing measures to regulate rents, but not the price of ownership units.

Local jurisdictions in all these states have, despite these legal limitations, successfully implemented at least one of the inclusionary housing strategies discussed in this report.

The National Association of Home Builders produced a summary of state laws that either support or impede local inclusionary housing ordinances. They found that 13 states (Connecticut, Florida, Illinois, Louisiana, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, Rhode Island, Vermont, and Virginia) have statutes that either explicitly or implicitly authorize local inclusionary policies. Two states (Texas and Oregon) have explicit prohibitions against inclusionary housing. In many of the remaining states, key state policy concerns shape the design of local inclusionary policies (Hollister, McKeen, and McGrath 2007).

In some cases, changes or clarifications to state law can help promote local adoption of inclusionary housing policies. Florida housing advocates managed a decade-long campaign that resulted in the passage of more than a dozen inclusionary ordinances. This campaign succeeded in large part due to a sustained legislative effort to pass two laws: one to ensure that price and rent control provisions in mandatory inclusionary programs were legal under state law, and one to support the creation of local community land trusts to manage inclusionary and other housing units (Ross 2014).

Conclusion

It is important for jurisdictions adopting inclusionary housing programs to pay close attention to the evolving case law on this issue. But there is every reason to believe that courts will continue to uphold the basic right of local governments to promote the welfare of their residents by ensuring the availability of housing that is affordable to lower-income households.

CHAPTER 7

Planning for Successful Implementation



The success of an inclusionary housing ordinance rests on the jurisdiction's ability to appropriately staff and fund ongoing program administration. Staff must have specialized skills to engage successfully with developers of complex real estate projects. Once inclusionary units are completed, monitoring and stewardship of rental units and especially homeownership units require dedicated staffing on an ongoing basis to ensure that units remain affordable and that the program is meeting its stated goals. The cost of this staffing is small relative to the value of the affordable housing being managed, but jurisdictions have to plan for this ongoing expense.

Affordable homes at Mueller Austin are interspersed throughout various neighborhoods built by different developers. *Credit: Catellus Development*

Case Study: Denver, Colorado

The case of Denver, Colorado, illustrates how staffing differences in two types of inclusionary housing programs made a big difference in preventing foreclosures.

In 2012, the city's 10-year-old inclusionary housing ordinance (IHO) faced an unprecedented challenge. Staff reported to the city council that the IHO had created 1,155 affordable homeownership units, but that 185 of those homes had been lost to foreclosures (Denver Office of Economic Development 2012). This news created enormous political pressure to reform or even repeal the program. Some were tempted to conclude that inclusionary housing could not work in Denver.

At the same time that Denver was developing a citywide inclusionary program in the early 2000s, the commission overseeing the reuse of Denver's Lowry Air Force Base established its own inclusionary housing policy. Developers at Lowry were required to make roughly 900 homes affordable to lower-income families (Webster 2005). Over the same period of time that 185 of the city's inclusionary units went into foreclosure, there were zero foreclosures at Lowry. What caused this difference?

Lowry had created a community land trust (CLT) to monitor and manage its affordable homes. While the city had a single staff person managing more than 1,000 affordable units, Lowry's CLT had two to three people working closely with only 186 homeowners. The CLT pushed for more affordable prices, prevented buyers from taking out adjustable-rate mortgages, and stepped in when homeowners got into trouble (Harrington 2013). In 2013, Denver established emergency measures that helped avoid further foreclosures. In 2014, the city council passed a comprehensive redesign of the program that included provisions to increase the staffing for administration and to outsource some capacities.

Roles for Program Staff and Contractors

Successful implementation of an inclusionary housing program requires staff with specialized skills necessary to coordinate and oversee complex real estate developments, screen buyers and tenants, and then monitor units over time. Table 2 summarizes some of the functions that staff or contractors typically perform.

SUPPORTING THE PRODUCTION OF AFFORDABLE UNITS

No matter how detailed and well-conceived an inclusionary housing ordinance is, some situations will call for human judgment to implement the program fairly and act in the best interest of the community. It is not sufficient to simply publish rules and expect developers to implement them successfully. City staff, or staff of some partner agency, must help developers interpret and apply the inclusionary policies. In many communities, staff has some discretion to waive certain requirements, approve alternatives, or bring additional resources such as fee waivers or housing funds to the table for projects to achieve high levels of public benefit.

However, achieving flexibility is no simple task. Staff has to work closely with developers to evaluate the impact of inclusionary requirements on a project's financial performance and to develop alternative proposals that benefit the developer and the community. This requires some level of technical skill, and cities sometimes struggle to find staff with the necessary experience. Occasionally, cities turn to outside consultants or other partners to perform these tasks.

Mammoth Lakes, California, is a ski resort town with very high housing costs. The town adopted affordable housing mitigation regulations that require developers of new housing, hotels, resorts, or commercial real

Table 2

Key Functions to Be Performed by Staff or Contractors

1 | Supporting the Production of Affordable Units

- Communicating program requirements to developers and property managers
- Reviewing development proposals for compliance with rules
- Negotiating certain requirements to maximize production (in some communities)
- Ensuring that affordable units meet appropriate design and location standards
- Ensuring timely payment of fees (if any)
- Planning and implementing reinvestment of fee revenue to produce affordable units

2 | Monitoring and Stewarding Rental Units

- Setting affordable rents
- Working with property managers to ensure fair marketing of units
- Monitoring eligibility screening for new tenants
- Recertifying annual incomes of tenants
- Enforcing requirements (as necessary)

3 | Monitoring and Stewarding Homeownership Units

- Setting initial prices at an affordable level
- Marketing homes to eligible buyers
- Ensuring that potential buyers receive homebuyer education
- Verifying that applicants understand program requirements and resale restrictions
- Screening applicants against eligibility requirements
- Working with lenders to ensure access to appropriate financing
- Monitoring homes for owner occupancy over time
- Managing resales to future income-eligible buyers at formula price
- Enforcing program requirements when necessary

estate to develop new affordable housing units as part of these projects. However, town leaders recognized that the community lacked the capacity to manage detailed negotiations with developers. They turned to a local nonprofit, Mammoth Lakes Housing (MLH), for assistance. The town contracts with MLH to provide a number of services, such as monitoring their entire portfolio of resale-restricted housing, collecting data on housing needs, working with private developers to ensure compliance with the housing mitigation ordinance, and assisting the town to address its housing goals (Hennarty 2013).

MONITORING AND STEWARDING RENTAL UNITS

The majority of inclusionary programs rely heavily on property management companies to ensure ongoing compliance of inclusionary rental units, but many administrators report significant challenges resulting from this approach (Hickey, Sturtevant, and Thaden 2014).

Programs frequently expect managers of rental properties with inclusionary units to market available

units, screen applicants for program eligibility, document and annually recertify tenant incomes, and take action to address noncompliance. Many cities provide ongoing training for property managers to help them understand the rules they are charged with enforcing, and most undertake some level of monitoring to ensure that managers are applying the rules appropriately and equitably. However, problems are still common.

Programs must plan ahead to cover administrative costs adequately in both high-growth and low-growth periods.

Most property management companies have no experience with affordable housing programs, and it can be challenging to rely on them to enforce potentially complex public agency rules. As a result, a growing number of programs are centralizing some of these responsibilities, often in-house. Hickey, Sturtevant, and Thaden (2014) describe how the City of San Mateo, California, centralized waiting lists and screening due to the high turnover of property managers. Now the city manages a single applicant pool and sends prescreened tenants to property managers to fill vacancies.

MONITORING AND STEWARDING HOMEOWNERSHIP UNITS

Ensuring long-term affordability for homeownership units is more challenging than it is for rentals and requires attention to a wider range of issues. Cornerstone Partnership and the National Community Land Trust Network led a yearlong process that engaged dozens of practitioners and several national homeownership organizations to create a set of “Stewardship Standards” to preserve long-term affordability. The standards include more than 41 independent program elements and policies that participants believed were essential for successfully preserving long-term

affordability as well as resources such as sample documents and templates to facilitate the adoption of best practices (Cornerstone Partnership 2014a).

Ownership units require more active involvement, and property management companies do not offer the needed expertise for these activities. As a result, most cities with portfolios of inclusionary homeownership units have significant staffing dedicated to managing and monitoring those units.

NeighborWorks America and NCB Capital Impact reviewed the staffing levels among a wide range of affordable homeownership programs with long-term restrictions, including many inclusionary housing programs. They found that staffing levels varied significantly, with small programs managing fewer than 100 units per employee and some larger programs overseeing 500 or more units per employee. Their report said, “It seems prudent to plan on staffing at the level of one full-time staff person (or equivalent) focused exclusively on post-purchase monitoring and resale administration for every 150 to 300 affordable homeownership units” (Jacobus 2007b).

Many cities have turned to third-party administrators to assist with the tasks of monitoring and enforcing deed restrictions on homeownership units. These third-party partners are most often nonprofit organizations, but a number of private firms provide administrative services to dozens of local jurisdictions in New Jersey. One type of partnership showing particular promise is when jurisdictions work with community land trusts (CLTs) to implement inclusionary programs. For example, Community Home Trust, a CLT in Chapel Hill, North Carolina, plays a key role in the administration of the city’s inclusionary housing program.

Funding Administrative Costs

Programs must plan ahead to cover administrative costs adequately in both high-growth and low-growth periods. PolicyLink documented the many sources



that inclusionary housing programs rely on to fund ongoing administration (Jacobus 2007a). The most common sources were local government general funds and federal housing block grant funds. However, many communities use a portion of inclusionary housing fee revenue to pay for program administration. A number of communities have developed fee structures that grow over time as administrative demands grow. A few charge tenants or homebuyers application fees, and a growing number charge significant fees when inclusionary homeowners resell or refinance their homes. In cases where the inclusionary program staff manages significant aspects of the resale, fees as high as 3 percent of the resale price may be appropriate.

Community land trusts typically charge homeowners a monthly ground lease fee to help defray administration costs, and a small number of cities including Chicago have included similar administration fees in deed covenants. Salinas, California, charges owners of inclusionary rental units an annual monitoring fee as well.

The Arbor Rose development in San Mateo, California, offers seven affordable town houses with either one or two bedrooms.
Credit: Sandy Council

Measuring Impact

Too often, a lack of external compliance requirements results in literally no system for tracking outcomes of inclusionary housing programs. Schwartz and her colleagues at the RAND Corporation evaluated whether inclusionary programs were achieving significant economic inclusion. She reported that “no jurisdiction had all the information we requested, and . . . no jurisdiction regularly tracked demographic information and sales prices or rents across successive occupants of units” (Schwartz et al. 2012).

While it is not uncommon for academic researchers to conclude that more data is necessary to answer important questions, the question that Schwartz was

HomeKeeper Tracking System

Recognizing the need for better outcome tracking, Cornerstone Partnership brought together practitioners from multiple communities to develop a data system called HomeKeeper, which several inclusionary programs are using to monitor program outcomes. The City of Cambridge, Massachusetts, recently adopted HomeKeeper, and housing manager Anna Dolmatch reported that “it has eliminated multiple spreadsheets, and we no longer have to search through paper files for information” (Eng 2014, p. 1).

HomeKeeper captures demographic and income data from households at the time they are applying, enables management of waiting lists and lotteries, and automates screening for eligibility. Once units are occupied, HomeKeeper helps staff monitor ongoing activities. For homeownership units, HomeKeeper tracks all the financial data related to the sale and financing of a home, helps staff manage resales, and ensures ongoing affordability. As a by-product of automating these administrative systems, HomeKeeper captures the key data necessary to understand a program’s impact.

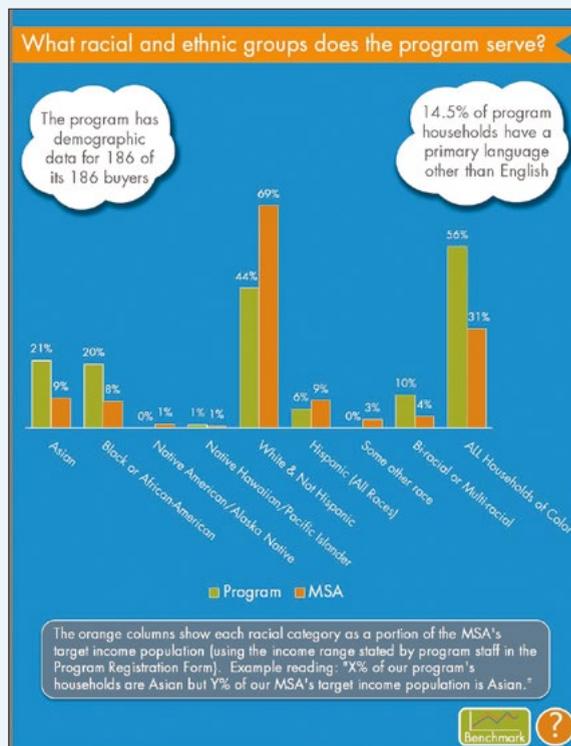
HomeKeeper users receive an annual “Social Impact Report” that summarizes program performance and includes an overview of the type and location of units produced and the demographic and income characteristics of residents. The report also shows trends over time, such as how resident income compares with program income limits, the ongoing affordability of units, the difference between below-market-rate prices and market prices, the amount of equity earned by home buyers, and their annualized rate of return. Because more than 60 programs participate in the HomeKeeper project, these reports can not only present each program’s outcomes, but they can also benchmark those outcomes against the performance of a national peer group (Cornerstone Partnership 2014b).

Figure 10 presents an example of the kind of information available from a HomeKeeper report. The chart compares the racial demographics

of a program’s buyers to a pool of income-eligible households in the local area. This particular program is reaching African American and Asian families but underserving Hispanic households. Without this benchmarking data, these trends would be hard to track.

Figure 10

Sample Metrics from a HomeKeeper Social Impact Report



Source: Cornerstone Partnership



researching was the very issue that most likely motivated the creation of many of these programs. In fact, the data she needed was exactly the same kind of data that the staff routinely provide for federally funded housing projects.

Some communities have begun to require annual reporting on program activities. Sacramento County, California, for example, includes inclusionary reporting as part of a broader biennial report. It must include the number of units produced, the amount of land dedicated and purchased, the amount of funds collected, and the levels of affordability among the units created.

These annual reports are not as common as they should be, but those that exist do not seem to address policy makers' need for analysis of program performance. One exception is Monterey County, California, where the inclusionary zoning policy requires both an annual report and a more in-depth five-year report. The annual report is a brief summary of the program's accomplishments over the previous years. The five-year report includes the number of

The Sand River Cohousing development in Santa Fe, New Mexico, provides homes at below-market rates for senior citizens. *Credit: Angela Werneke*

units produced and households served, the amount of in-lieu fees collected and how those fees are used, and recommendations for policy revisions. This report is presented for public comment. Ultimately, all inclusionary housing programs—both individually and collectively—would benefit from significantly improving and standardizing data collection and performance metrics.

Conclusion

Inclusionary housing programs cannot be successful unless they are well run and adequately staffed, and they must secure sufficient funding for ongoing administrative costs. Communities also need to be able to track program data in order to evaluate outcomes and make needed changes over time.

CHAPTER 8

Conclusions and Recommendations



The Pacifica Cohousing Community maintains seven energy-efficient, permanently affordable units on its eight-acre property in Carrboro, North Carolina. *Credit: Community Home Trust*

The evidence summarized in this report strongly supports the idea that local inclusionary housing policies can fairly and effectively tie production of affordable housing to the construction of new market-rate real estate development.

Inclusionary housing offers a way to expand and preserve a supply of housing that is affordable to lower-income people. The responsibility for affordable housing is increasingly being devolved to states and localities as federal resources become scarce, and inclusionary housing programs offer an effective way for private-public partnerships to address this ongoing need.

Growing communities can implement inclusionary policies to generate significant amounts of affordable housing without negatively affecting market-rate development. Ultimately, inclusionary programs can impose meaningful costs on developers, but when they are coupled with incentives, the net impact on development is typically modest, neutral, or even occasionally positive. The affordable housing requirements that can be supported without overburdening development, however, differ from one community to another. Hence, effective policy design and program implementation are crucial for successful results.

Most importantly, inclusionary housing offers one of the only effective strategies for overcoming economic segregation and building sustainable mixed-income communities. The evidence suggests that economic integration is an important way to combat the negative effects of generational poverty. It also suggests that residents across all income levels benefit from (1) reducing sprawl (and the associated costs for taxpayers); (2) living in more sustainable cities; and (3) experiencing cultural, racial, and economic diversity.

While building-by-building integration is not always necessary, traditional publicly subsidized affordable housing programs have struggled and largely failed to achieve neighborhood-level economic integration. Ultimately, tying provisions of affordable housing directly to market-rate development removes the biggest obstacle to creating inclusive communities: access to desirable land for development.

What Can Local Governments Do to Maximize the Impact of Inclusionary Housing?

Research supports the premise that inclusionary housing programs must be designed with care. In order to maximize the impact of inclusionary programs, local sponsoring agencies should:

BUILD PUBLIC SUPPORT

1. Build consensus around the need for greater investment in affordable housing and the desirability of a housing strategy that emphasizes mixed-income communities.
2. Engage community stakeholders, including real estate developers, in the process of designing an inclusionary program.
3. Share program results with the public on a regular basis to build ongoing support.

USE DATA TO INFORM PROGRAM DESIGN

4. Conduct an economic feasibility study prior to implementation to ensure that proposed performance requirements or fees can be reasonably absorbed by development profits and land values.
5. For programs that rely on linkage or impact fees, conduct a nexus study prior to implementation to ensure that required fees are roughly proportional to the impact of new development on the need for affordable housing.
6. Track program activity to enable policy makers to understand the program's impact and make incremental improvements.

ESTABLISH FAIR, REASONABLE EXPECTATIONS FOR DEVELOPERS

7. Provide flexibility to developers to improve the rate of production.
8. Ensure that alternatives to on-site production are economically comparable.
9. Require developers to provide increased public benefits when they build off-site units.
10. Regularly adjust incentives and requirements to ensure that the number and types of units produced align more closely with local housing needs.

ENSURE PROGRAM QUALITY

11. Pay close attention to the geographic location of units to ensure economic integration.
12. Develop design standards to ensure that the affordable units are of appropriate size and quality.
13. Plan and budget for stewardship and monitoring to protect long-term affordability.

Affordable housing puts minds and hearts at ease. *Credit: John Baker Photography*

What Can States Do to Support Local Inclusionary Housing Policies?

State legislative leadership has been essential to the growth of inclusionary housing. New Jersey effectively mandates local inclusionary housing policies, and Massachusetts and California have developed statewide policy frameworks that grant real powers to overcome exclusionary zoning policies and encourage local cities and towns to adopt inclusionary housing ordinances.

States that want to encourage but not require local inclusionary housing policies could adopt legislation that makes the legality of local inclusionary housing explicit. Just as important, states can establish clear statewide planning frameworks that (1) explicitly allow local governments to implement inclusionary housing policies, just as they have the authority to regulate other land uses; (2) prohibit local exclusionary housing practices; and (3) require local communities to proactively plan for and build affordable housing.



Without specifically mandating the strategy each community will use, policies like these create an expectation that each community will manage its growth in a way that ensures that some portion of new housing is affordable to lower-income residents.

In most cities, the need for affordable housing has never been more urgent. For many jurisdictions across the country, now is the time to consider adopting robust inclusionary housing policies that build affordable housing stock and create inclusive communities.

What Can the Federal Government Do to Support Inclusionary Housing Policies?

Inclusionary housing is not and should not be a central part of the federal government's affordable housing strategy. Local inclusionary housing programs are not a substitute for a robust federal role in the production and preservation of affordable housing. In order to make a dent in the national housing problem, federal investment in public housing, block grant programs like HOME Investment Partnerships Program and Community Development Block Grants (CDBG), and the Low Income Housing Tax Credit program must continue and expand. Local inclusionary programs can offer a way to supplement and leverage the impact of that federal investment, particularly in areas that are experiencing growth.

The federal government could take the following steps to encourage and support local inclusionary housing:

1. Remove barriers for accessing FHA-insured mortgages and the secondary mortgage market for buyers of inclusionary homes.
2. Provide incentives or preferences for the allocation of federal transportation funding to communities that develop affordable housing in concert with new transit infrastructure.
3. Educate state and local housing agencies on why inclusionary housing can be an effective tool for their comprehensive affordable housing strategies.
4. Develop a platform for tracking and monitoring the location of affordable units created through local policies (including but not limited to inclusionary policies) and combining that information with public data on the locations of federally subsidized housing to enable comparison of the performance of various programs.
5. Allow local jurisdictions to use HOME and CDBG funds to support stewardship of affordable units with long-term affordability controls.

In most cities, the need for affordable housing has never been more urgent. For many jurisdictions across the country, now is the time to consider adopting robust inclusionary housing policies that build affordable housing stock and create inclusive communities.

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2. Providing training, conferences, technical assistance, and capacity building resources for nonprofits and government organizations,
3. Researching best practices, innovations, and outcomes of membership organizations,
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Inclusionary Housing

Creating and Maintaining Equitable Communities

Roughly 500 communities in the United States have developed inclusionary housing policies, which require developers of new market-rate real estate to provide some units that are affordable to low- and moderate-income residents. For cities struggling to maintain economic integration, inclusionary housing is one of the most promising strategies available to ensure that the benefits of development are shared widely. However, policies must be designed with care to suit local conditions and guarantee that requirements do not overburden development. Through a review of the literature and case studies, this report details how local governments are realizing the potential of inclusionary housing by building public support, using data to inform program design, establishing reasonable expectations for developers, and ensuring long-term program quality.

Inclusionary housing is likely to play a more significant role in our national housing strategy in the coming decade. Faced with declining federal and state resources for affordable housing and growing populations, communities need to take full advantage of every potential tool. The evidence summarized here suggests that inclusionary housing programs produce a modest yet steady supply of new affordable housing resources. Because programs generally preserve long-term affordability, the pool of local inclusionary units can grow steadily into a significant share of an area's housing stock.

As importantly, the data suggests that inclusionary housing is one of the few proven strategies for locating affordable housing in asset-rich neighborhoods where residents are likely to benefit from access to quality schools, public services, and better jobs. Increasingly, communities across the country are investing in the creation of new transit-oriented urban neighborhoods, and inclusionary housing policies are one of the only ways to ensure that these places develop in an equitable manner. Ultimately, equitable development benefits not only lower-income households; integrated, inclusive, and diverse communities enhance the lives and outcomes of all residents.



The Economics of Inclusionary Development



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- Exploring issues of urbanization, conservation, regeneration, land use, capital formation, and sustainable development;
- Advancing land use policies and design practices that respect the uniqueness of both the built and natural environments;
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Preface

Even as home mortgage interest rates remain at near-historic lows and multifamily apartment construction reaches near-record highs, millions of working Americans are dealing with serious housing affordability challenges. Nearly 10 million low- and moderate-income working households—one in four working renters and 16 percent of working homeowners—pay more than half their income for housing.¹

High housing costs are not only detrimental for families: they are also bad for business and local competitiveness. They make it harder for companies to attract and retain workers or force employers to pay higher wages, which may be passed along to consumers in the form of higher prices. Workers forced to make unduly long commutes between their jobs and where they can afford to live may be less productive and spend less of their income in the community of their employment. Some research even suggests that housing shortages in highly productive cities have reduced the national gross domestic product.²

A growing number of cities are using their zoning authority to increase the development of new workforce housing units. The most widely used zoning approach is inclusionary zoning (IZ). Through IZ, cities require or encourage developers to create below-market rental apartments or for-sale homes in connection with the local zoning approval of a proposed market-rate development project.

Interest in IZ approaches is surging. New York City recently enacted the nation's most far-reaching policy, which is projected to drive development of 12,000 new below-market units over the next several years—substantially more if a recently lapsed tax incentive expected to accompany the program is revived.³ San Francisco voters in June of this year endorsed a major expansion of the city's existing IZ policy. Proposals to put IZ in place are advancing in Atlanta, Detroit, Los Angeles, Nashville, Pittsburgh, Portland, and Seattle, among a number of other cities. Across America's northern border, the provincial government of Ontario announced in March 2016 its intent to pass legislation that would enable its cities to enact IZ.⁴

IZ can be a complicated and controversial policy approach. Complicated because it aspires to harness the ever-changing dynamics of market-rate real estate development to achieve a fixed policy objective. Controversial because it aims to balance often opposing points of view in communities regarding the roles and responsibilities of the private sector to help meet a public need within a free-market economic system.

IZ's complexity and controversy come together around the extent to which the policies are mandatory, voluntary, or somewhere in between—i.e., applying only in certain situations, such as when local zoning is changed for a neighborhood or development project. Wherever a city lands along this continuum, almost all cities offer various types of development incentives that attempt to mitigate or offset the economic impacts the inclusionary policy has on land values and real estate development.

Understanding those effects is important. By definition, IZ is intended to generate a below-market real estate end use—workforce housing units—that the private market on its own would not produce at a given location. IZ may make that site less valuable than it would be if developed to its highest and best use.

The positive news is that cities have at their disposal a variety of tools to make inclusionary development more favorable from the landowner's and developer's perspectives. Using those tools to optimize private developer participation—and spur the desired development of new workforce housing units—is challenging for most cities. Many have asked ULI District Councils and members for their advice on the best way to do it.

This study provides such advice on what incentives work best in which development scenarios. The study's purpose is to enable policy makers to better understand how an IZ policy affects real estate development and how to use the necessary development incentives for IZ to be most effective.

We approached this study with no preconceived point of view about IZ. We believe that for at least as long as real estate development remains robust in the current economic cycle and housing affordability for the workforce remains a priority for business and political leaders, IZ concepts will be part of local land use policy making. The question then becomes: How can an IZ policy be best designed to work in the context of the local real estate development market? We hope this study will be useful to any community seeking practical answers to that question.

Stockton Williams

Executive Director

ULI Terwilliger Center for Housing

Introduction

About This Study

The study focuses on multifamily rental development, which is a priority in many current and emerging IZ policies. The implications of IZ on mixed-use and for-sale housing development are outside the scope of the study.

The study has four main sections:

- **Introduction**

This section details the focus of the study, defines key terms and development prototypes, and describes the technical methodology and modeling assumptions.

- **Section I: Understanding the Economics of Development**

This section provides an overview of real estate development economics and key drivers of real estate development feasibility from a developer's perspective.

- **Section II: Assessing the Impacts of Inclusionary Zoning on Development**

This section summarizes relevant research on IZ policies and performance and assesses how key IZ policy features—share of below-market housing units and income targeting of those units—affect development feasibility.

- **Section III: Optimizing the Effectiveness of Incentives for Inclusionary Development**

This section explores how and when the principal development incentives available to cities—direct subsidies, tax abatements, density bonuses, and reduced parking requirements—can be most effective as part of an IZ policy.

Key Takeaways

- **A growing number of cities in the United States and Canada are turning to their zoning authority as a means to generate new development of workforce housing units, which are in short and decreasing supply in many communities.**
- **The most common zoning approach is inclusionary zoning.** Through IZ, cities require or encourage developers to create below-market rental apartments or for-sale homes in connection with the local zoning approval of a proposed market-rate development project.
- **The single most important factor for an IZ policy to achieve its goals is a significant and sustained level of market-rate development in the local market.** If a community is not currently experiencing a material amount of new development, an IZ policy will not generate a meaningful number of new workforce housing units.
- **In most cases, jurisdictions will need to provide development incentives to ensure the feasibility of development projects affected by an IZ policy.** The principal incentives are direct subsidies, density bonuses, tax abatements, and reduced parking requirements. Individually and in combination these incentives can substantially enhance the feasibility of development projects affected by an IZ policy. Each incentive has strengths and limitations that derive from the local real estate development environment.
- **In the right market conditions and with the optimal availability of development incentives, IZ policies can generate development of new workforce housing units that would not otherwise be built.** Even in such situations where the stars align, IZ at its most effective is only one tool in what must be a broad-based toolbox available to local governments to meet their workforce housing needs.

Methodology and Modeling Assumptions

The study relies on several analytic approaches.

Literature review and expert review

We reviewed 17 major studies and reports on IZ reflecting a wide range of perspectives and methodologies (listed in Sources) and received input on the study approach and content from an advisory group of developers, consultants, and public officials who have worked directly with IZ programs. (The members of the advisory group are listed in the Acknowledgments section.)

Spreadsheet pro formas

Pro forma cash flow models are common decision-making tools used by real estate developers and local policy makers. In interviews with developers and other experts and a comprehensive literature review of IZ policy and performance, we found that pro formas are the most widely used tool for evaluating IZ policy criteria and development incentives.

To assess the feasibility of development using land residual calculations, we produced spreadsheet pro formas for three prototypical multifamily development types: stacked flats, four over one, and residential towers. These are described on page XI.

The pro forma inputs (i.e., analytic assumptions) are broadly illustrative of an average U.S. region as of June 2016. These assumptions may or may not be accurate for a specific market within the United States. The inputs are as follows:

- Soft cost: 30 percent of hard costs;
- Developer fee: 4 percent of hard and soft costs;
- Operating cost (as a percent of revenue): 30 percent;
- Vacancy rate: 10 percent;
- Cap rate: 4.5;
- Return on cost cap yield spread: 1.5 percent;
- Return on cost feasibility target: 6 percent; and
- Area median income (AMI): \$74,000.

Rapid pro forma prototyping

To better understand the sensitivity of development feasibility to IZ policy criteria and development incentives, we carried out a rapid testing algorithm that modified multiple pro forma inputs simultaneously. We calculated residual land values and other outputs that resulted from hundreds of thousands of distinct pro forma inputs. These metrics helped the team better understand the behavior of pro formas with varied IZ requirements and offsetting incentives.

Machine-learning segmentation

To inform our feasibility analysis, we used machine-learning algorithms to cluster U.S. regional markets based on factors that play a role in real estate development feasibility. We clustered U.S. metropolitan markets based on mean construction costs, median incomes, and mean apartment rents.

Residual land value analysis

We used residual land value analysis to assess and compare development feasibility under various scenarios. Residual land value is a measure of what a developer would be able to pay for the land, given a set of assumptions regarding capital and operating costs and revenue. Residual land value, in essence, represents the developer's land budget. A higher residual land value means that a proposed development project is likely to be more feasible. A negative residual land value—a land budget below \$0—means that a proposed development project is not feasible absent offsetting incentives.

Residual land value analysis is a common metric used by developers to evaluate development feasibility. It is also a useful metric for assessing IZ and accompanying development incentives because IZ policies principally affect land value, especially in the short run.

Prototypes Used

This analysis uses three development prototypes throughout. The table below provides a summary.

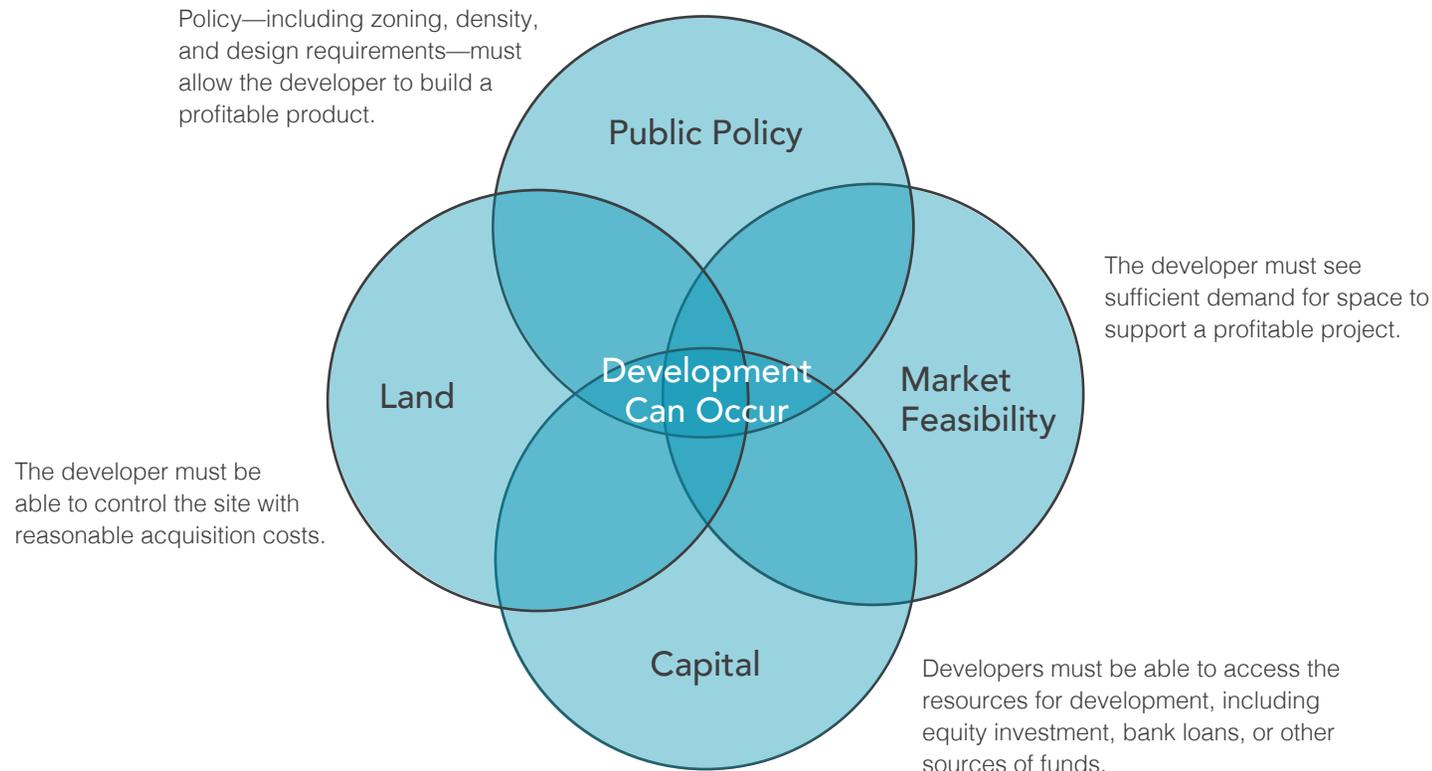
	Stacked flats 	4 over 1 	Residential tower 
Stories	3	5 (+ one level underground)	17
Units	61	177	15 wrap units around garage 239 tower units
Unit mix	30% studio 40% one bedroom 30% two bedroom	30% studio 40% one bedroom 30% two bedroom	25% studio 35% one bedroom 25% two bedroom 15% three bedroom
Average unit size (gross square feet)	805	805	1,430 (wrap units) 805 (tower units)
Residential efficiency (% leasable area)	90%	90%	100% in wrap units 90% in tower units
Parking	61 surface spaces	102 podium stalls 75 underground stalls	254 integrated parking stalls
Primary construction costs (hard costs)	Residential: \$125/sq ft Surface parking: \$7,000/stall	Residential: \$165/sq ft Podium parking: \$30,000/stall Underground parking: \$40,000/stall	Wrap residential: \$153/sq ft Tower residential: \$210/sq ft Integrated deck parking: \$33,000/stall

Section I: Understanding the Economics of Development

Four Factors Determine Development Feasibility

The goal of an IZ policy is to leverage new market-rate development to provide new workforce housing units. Because IZ depends on market-rate development, IZ works only when new development is occurring. For that reason, understanding how market-rate development occurs is an optimal starting place for understanding how IZ policies can be structured to work with the market to increase the supply of workforce housing.

The diagram below illustrates in a highly schematic manner the principal factors that intersect to determine development feasibility: public policy (allowable density, required use mix), market feasibility (achievable pricing relative to production cost), capital (cost and availability), and land (cost and availability). IZ principally intersects with land and market feasibility.



Developers Fund Construction Costs Using a Variety of Sources

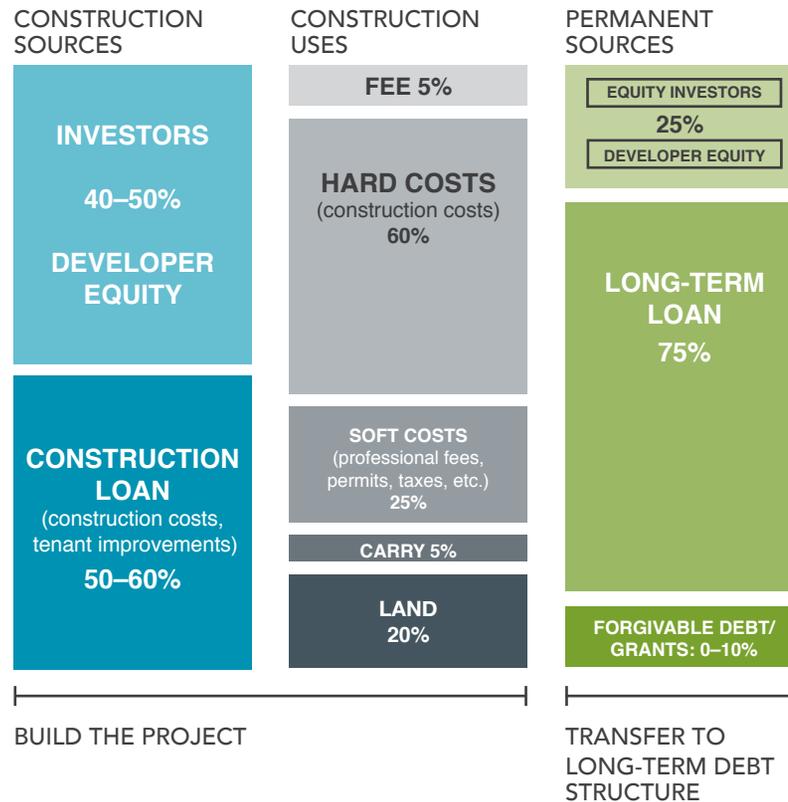
Feasibility is based on a set of calculations that assess whether the project (a) has sufficient demand (measured in market rents or sales) to cover its construction and operating costs and (b) can provide financial returns for the effort and risk undertaken by the developer and its sources of funding. Public policies affect feasibility in various ways throughout the development process. Some may increase upfront costs (e.g., requiring higher-quality design), while others may reduce ongoing operating costs (e.g., tax abatements).

Feasibility calculations have two major components. The first is **sources and uses**, which reflects the costs of building and financing a development project. Uses reflect the costs of creating a development project. Sources describe the various sources of capital available. For a project to be built, the sources must meet or exceed the uses. The following percentages are broadly illustrative of the breakdown of sources and uses for a multifamily development project.

The **construction sources** provide funding to build the project. The developer and outside investors typically provide equity. Most projects also have a construction loan that accounts for at least half the sources. Some projects have mezzanine debt (a hybrid of equity and debt).

The **uses** are the costs of the project, including the costs to acquire the site, construct the project, pay for architectural, engineering, and other services, and pay interest on financing the construction loan (carry). In addition, developers must cover overhead costs for staff and other expenses and often choose a fee for their time and expenses.

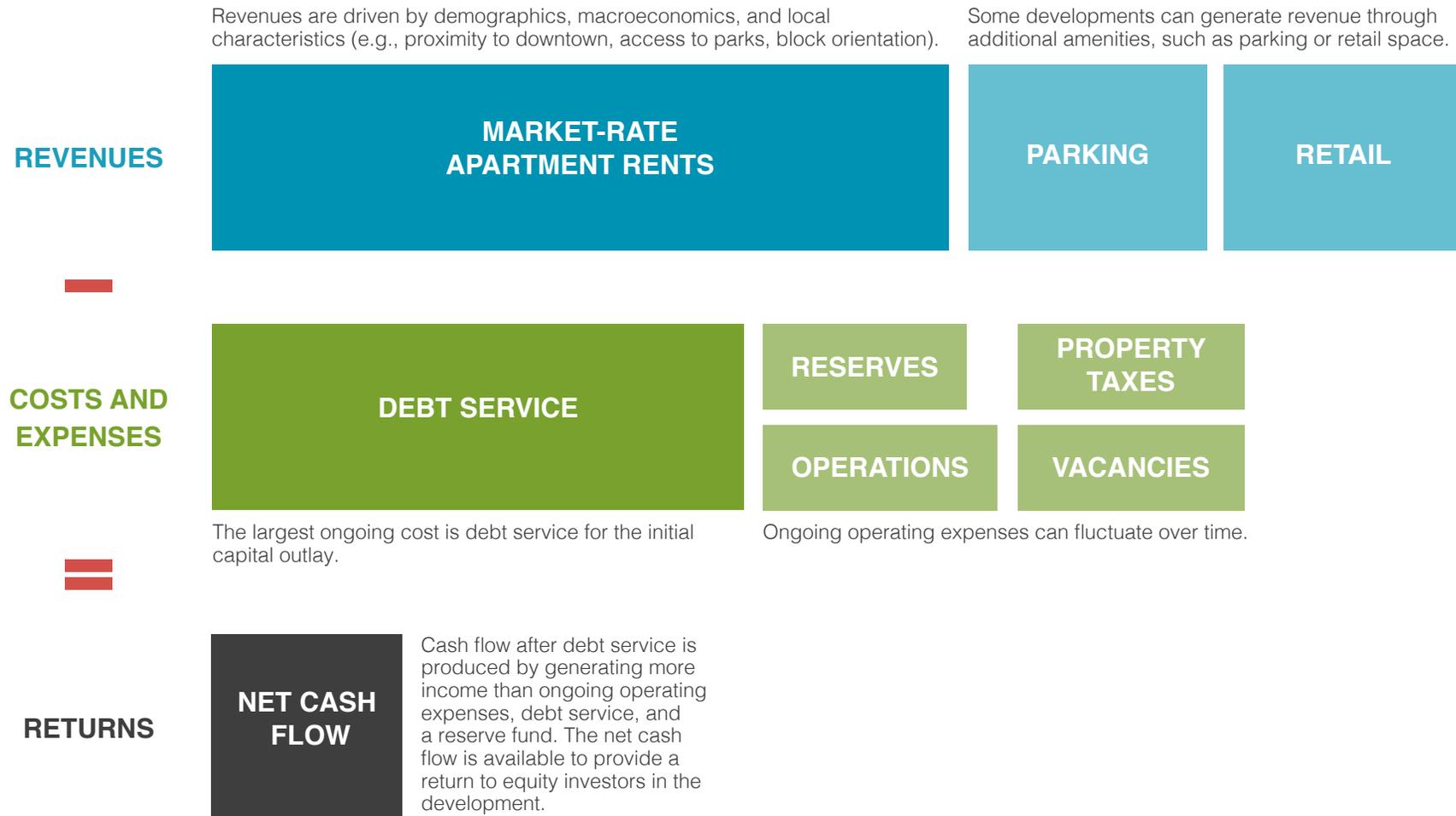
The **permanent sources** pay off the construction loan when the project is operational. Some construction loans are "convertible" into permanent loans while other developers arrange for separate long-term financing that repays the construction lender once construction is complete.



Project Operating Revenues Must Exceed Costs to Generate Investment Returns

The second major component of development feasibility is **costs and revenues**, which are reflected in a development pro forma or a cash flow statement. A pro forma compares a set of ongoing operating costs to a set of ongoing operating revenues derived from rents. Revenues minus costs equal net operating income (NOI). Out of NOI, property owners pay

debt service and set aside capital reserves. Investors and lenders must be confident that the resulting net cash flow (after debt service and reserves) is sufficient to cover all operating costs and compensate them for their capital commitments. The graphic below shows broad illustrative cost and revenue categories for a typical multifamily project.



Development Feasibility Varies by Submarket

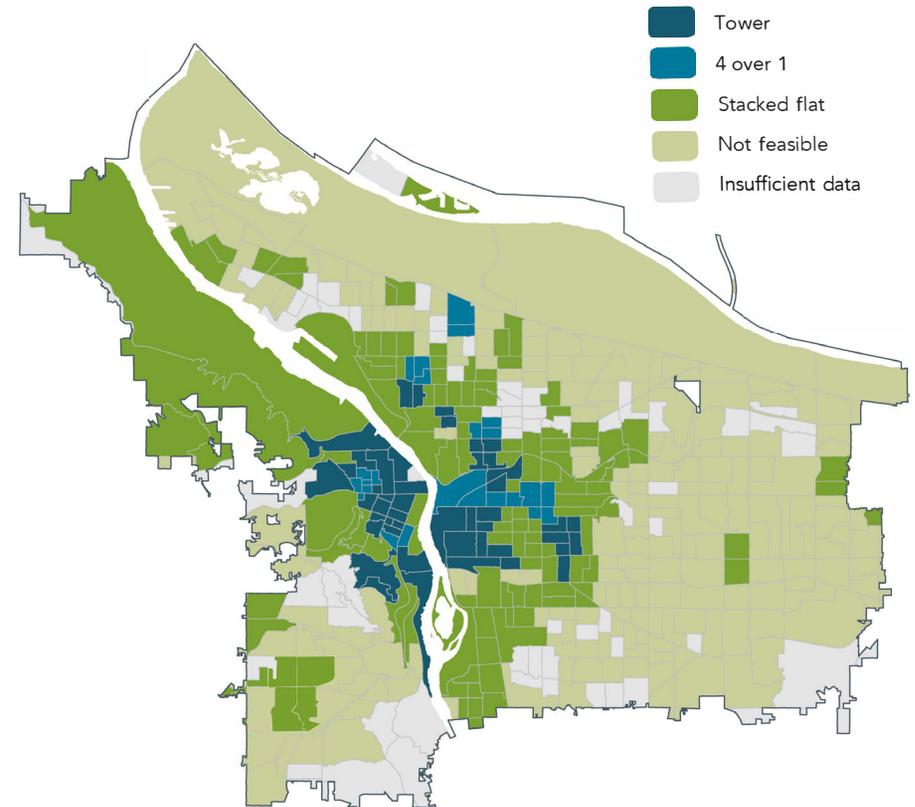
Every city and region have development submarkets that are “hot” or “cold” areas for new development. Although the development equation is complex, this relative temperature is, at any point in time, driven largely by three variables: market rents, construction costs, and the availability and price of land.

In some parts of a city (or region), the rents and prices are high enough to cover the cost of constructing a new higher-density building. In other areas, they are not. Even in areas where prices are sufficient to cover construction costs, developers must also find land that is available and affordable. In highly built-out areas of a city where rents and prices are quite high, little development may occur because any available land is too costly to support new development. In general, developers of higher-density buildings will be willing to pay more per square foot for land.

These variables are influenced by zoning policy. In most jurisdictions, local zoning limits the size and shape of buildings and the types of tenants that can occupy them. Sometimes those restrictions preclude developers from building projects that are financially feasible. For example, a city may allow only a four-story building to be built on a particular parcel, but the revenues from a four-story building may be too low to justify the purchase and demolition of a two-story building. In such cases, sites are likely to be repositioned in the market or adaptively used.

The map at right illustrates how development feasibility varies by development typology and by submarket in a single city. Using current data compiled at the U.S. census block group level and a pro forma model, the map shows where development at different densities would be feasible within Portland, Oregon. Zoning policies, including IZ, thus will have varying impacts and efficacy in different areas of a city or region. Portland has a cost index that is at the U.S. average. (See page XI for a description of the development typologies.)

Case Example



Note: This map displays the feasibility of any of the three development types (stacked flats, 4 over 1, residential tower) based on an assumed land value of \$0. Because it is unlikely that land will be available at a price of \$0, this map is more representative of where market-rate development is not likely to occur than where it will occur.

This analysis measures development feasibility in terms of residual land value—a measure of what a developer would be able to pay for the land, given a set of capital and operating cost and revenue assumptions. Residual land value, in essence, represents the developer’s land budget. A higher residual land value means that a proposed development project is likely to be more feasible. A negative residual land value—a land budget below \$0—means that a proposed development project is not feasible absent offsetting incentives.

Section II: Assessing the Impacts of Inclusionary Zoning on Development

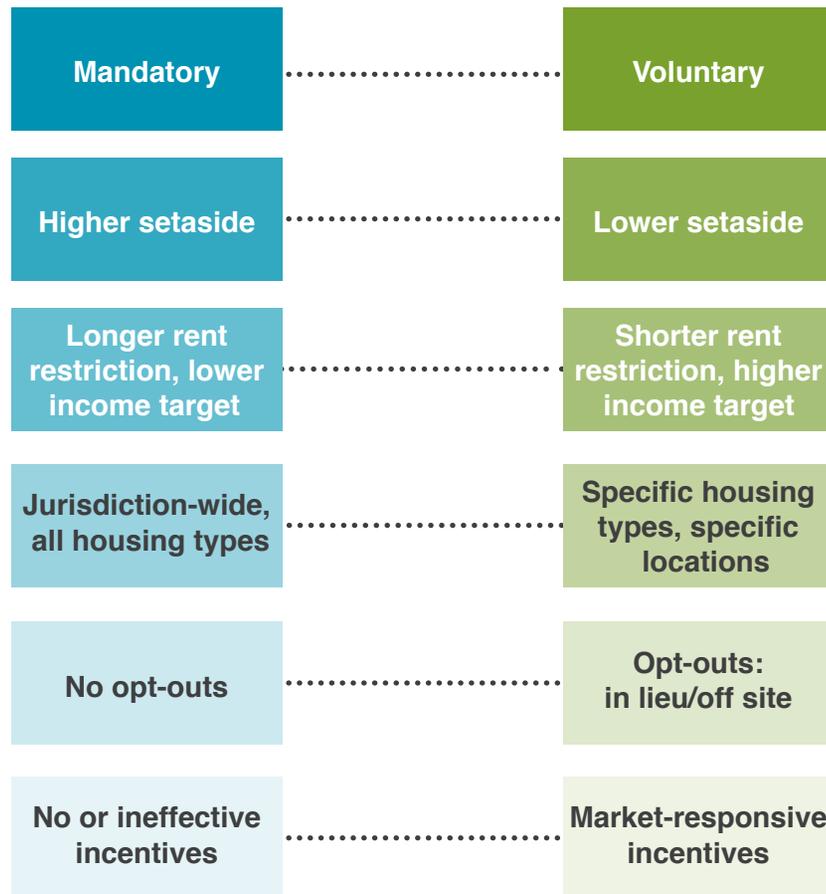
Inclusionary Zoning Policies Vary Widely in Many Respects

More than 500 cities and counties in 27 states and the District of Columbia have adopted an IZ policy. Although all share the common approach of using zoning authority to encourage or require development of below-market workforce housing units in connection with approval of a proposed

market-rate project, they reflect considerable diversity in design and implementation. Major aspects about which IZ policies differ from place to place are summarized below.

Less Flexible

More Flexible



a. Mandatory vs. voluntary status. Most programs are mandatory, with wide variety in where and when the requirements apply. For example, some mandatory programs apply only in the context of a zoning change.

b. Setaside amount. Most setasides are between 10 and 20 percent, but some places have much higher requirements or sliding requirements.

c. Eligibility and term. Most policies set income eligibility requirements aimed at households that earn between 60 and 120 percent of the area median income. Many policies also define the length of time for which affordability must be maintained and include compliance and monitoring requirements.

d. Types and locations of development. Some policies exempt projects based on project size (number of units) or type (condominium, redevelopment, or adaptive use). Some policies have specific requirements by neighborhood.

e. Opt-outs. Some policies allow developers to make use of in lieu payments into a local housing fund or provide the below-market units off site.

f. Incentives. Most policies provide incentives to encourage developer participation or to offset the impacts of mandatory policies. Common incentives include some combination of direct subsidies, tax abatements, density bonuses, and reduced parking requirements.

Inclusionary Zoning Has Had Significant Impact in Some Areas

The most comprehensive assessment of new housing units generated by IZ programs suggests a seemingly modest total of roughly 150,000 units across 500 programs, some of which are several decades old.⁵ This figure probably substantially understates IZ production for two reasons. First, the assessment was released in 2010 and most of its data was from 2008 and 2009, so it does not account for IZ-induced development over the past several years when market-rate multifamily development boomed. Second, reliable data are not available on the amount of funding raised and units produced through fee in lieu payments from developers as part of IZ policies.

A closer examination indicates that IZ approaches have achieved significant new below-market-rate production in some markets, such as Fairfax County, Virginia; Montgomery County, Maryland; Palm Beach County, Florida; and throughout southern California. In addition, in cities such as Boston, Chicago, and San Francisco, IZ's relatively small impact compared with overall development may mask its benefits in creating workforce housing in high-cost environments that otherwise would not have occurred.

Nevertheless, IZ has fallen short of its promise in any number of places, probably for one or more of the following reasons:

- **Insufficient levels of new market-rate development:** A number of cities and counties with IZ policies on the books are relatively small or weaker development markets. Moreover, policies in many cities were likely stymied by the Great Recession.
- **Shortcomings in program design and administration:** Even though research suggests that more than 80 percent of policies are mandatory, anecdotal evidences suggests that many have been crafted loosely, administered inconsistently, or enforced weakly.
- **Lack of adequate development incentives:** In many communities, the costs (in reduced land value or economic return) of developing in accordance with the IZ policy outweigh the benefits, so developers do not participate. The otherwise large body of research on IZ has paid scant attention to this issue.

“Whereas a considerable amount of research has dealt with IZ effects on house values, little work has focused on builders themselves and how ordinances might affect their activities. Little is known . . . about which incentives are most effective in garnering policy participation among builders and developers.” (Urban Institute. *Expanding Housing Opportunities through Inclusionary Zoning: Lessons from Two Counties*. Washington, DC: U.S. Department of Housing and Urban Development, 2012.)

Three Key Findings Emerge from the Research on Inclusionary Zoning

IZ policies depend on market-rate development. In general, IZ policies generate the most below-market units in areas where the most market-rate development is occurring. Conversely, as New York City’s feasibility analysis of its policy as designed concluded: “Rental projects in moderate and weak markets do not achieve sufficient returns to achieve feasibility without subsidies, even before incorporating an inclusionary requirement. This reflects the reality that few market-rate rental projects are being built in markets with relatively low rents, as they are unable to support current construction costs and land prices.”⁶

IZ policies must be carefully crafted to avoid adverse effects. Some studies have shown that IZ policies in some areas have contributed to higher housing prices or rents or depressed or delayed market rate development. Other studies have not found these effects. A recent review of the leading IZ research from across the ideological spectrum concluded that “the most highly regarded empirical evidence suggests that inclusionary housing programs can produce affordable housing and do not lead to significant declines in overall housing production or to increases in market-rate prices.”⁷ The study cautioned, however, that careful attention to the design details and the structuring of incentives is critical to avoid adverse effects.

IZ policies usually target moderate-income households. Most IZ policies primarily focus on households earning between 60 percent and 120 percent of AMI (the standard housing industry income range that defines “workforce housing”). Cities have options for serving lower-income families through IZ, such as allowing developers to “trade” targeting lower-income households in exchange for developing fewer below-market units. Cities can also increase the subsidies and incentives to enhance the feasibility of lower-income units. And cities can allow developers to pay a fee to the city in lieu of developing IZ units, which the city can use to support construction for lower-income households directly.

Housing Market Impacts Associated with Local Inclusionary Housing Programs: Results from Key Evaluation Studies

Jurisdiction	Period	Impacts on overall housing supply	Impacts on home prices/rents
California (28 programs) ⁸	1981–2001	No negative effect on housing starts	Not available
California (65 programs) ⁹	1988–2005	No decline in single-family starts Increase in multifamily starts	Increase in single-family home prices of 2.2 percent
California (125 programs) ¹⁰	2007–2013	Not available	Stricter programs associated with 1.9 percent decline in rents
San Francisco (55 programs) ¹¹	1987–2004	No negative effect on housing starts	No effect on home prices
Los Angeles and Orange counties (17 programs) ¹²	1998–2005	No negative effect on housing starts	Not available
Boston area (99 programs) ¹³	1987–2004	Up to a 10 percent decline in housing starts	Increase in single-family home prices of 1 percent

Source: Lisa Sturtevant, “Separating Fact from Fiction to Design Effective Inclusionary Housing Programs,” Center for Housing Policy brief, National Housing Conference, Washington, D.C., 2016.

Inclusionary Zoning Affects Development Feasibility

At the most fundamental level, IZ policies reduce the economic value of a development site by driving part of its use to a below-market purpose: the provision of units affordable to households that otherwise would not be able to afford the maximum achievable rent in the property. This has the effect of lowering NOI, which reduces the value of the development project.

When faced with such a situation, developers typically have three options:

- Decline to proceed with the proposed market-rate development project at the desired location (and possibly develop a similar project in another nearby jurisdiction without IZ).
- Persuade the owner of the development site to sell it for a below-market price, which most private landowners are unwilling to do.
- Accept a lower return on the proposed market-rate project, which most developers have limited (if any) ability to do.

However, development can move forward under IZ without experiencing any of these outcomes under the following two scenarios:

The first is the rare instance in which the rents for the market-rate units are high enough to “cross subsidize” the lost value associated with rents for the below-market units.

The second scenario is when the local jurisdiction provides development incentives to sufficiently mitigate the impact of the below-market units on overall development feasibility. That subject, which is relevant in any city with an IZ policy, is the focus of section III of this study.

First, though, we must understand how the two primary policy features of IZ policies affect development feasibility:

- **Setaside percentage** (the share of units that are below market); and
- **Depth of affordability requirements** (the average or maximum income level of households who are eligible for the setaside units).



Emerald Vista, Dublin, California. (© 2013 Jeff Peters, Vantage Point Photography Inc.)

Assessing the Impacts of Below-Market-Unit Setasides

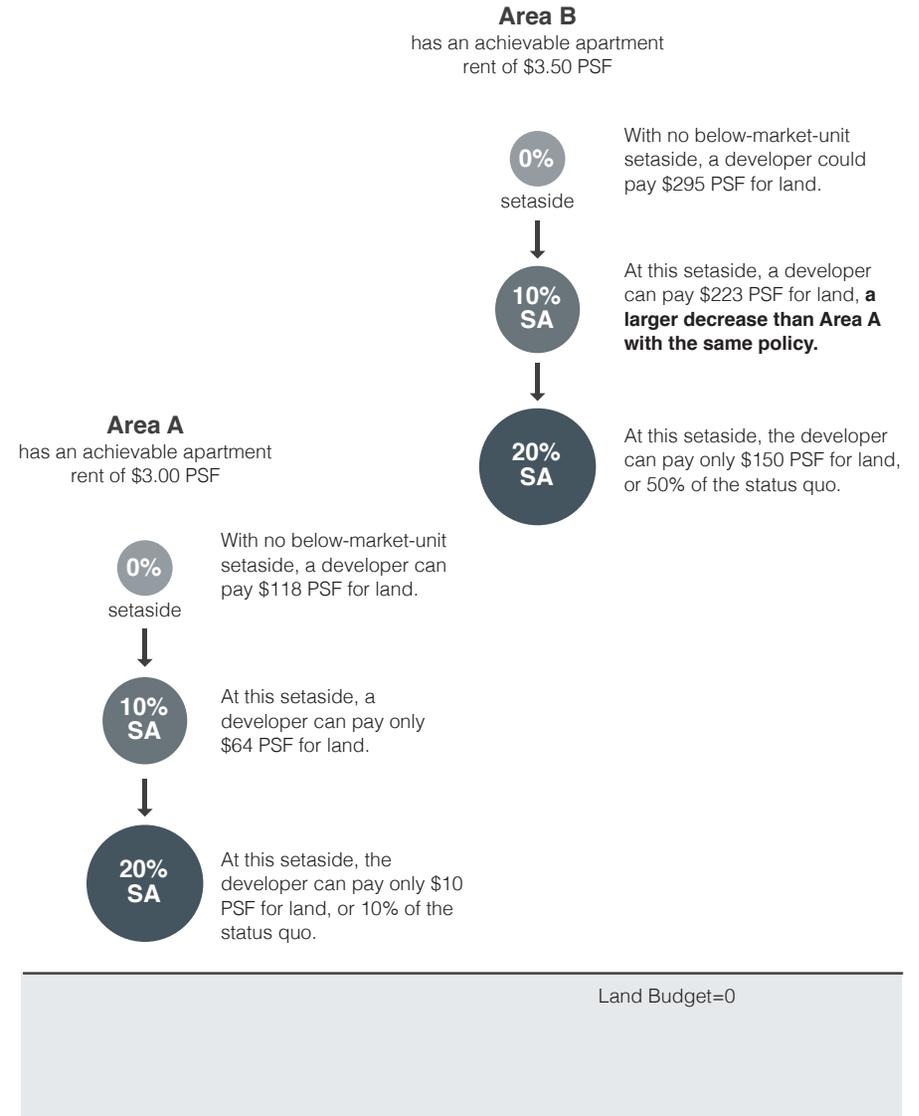
What it is: Most IZ policies establish a setaside of below-market units at between 10 percent and 20 percent of the total number of units in a proposed development project.

How it affects the pro forma: As the setaside percentage increases, the average per-unit revenue of a development declines. In general, the revenue loss associated with increasing the setaside percentage is greater for projects that can generate higher market-rate rents.

Key takeaway: The setaside (or percentage of units required to rent below market) can significantly affect development feasibility.

Assessing the impacts of depth of affordability targets: This graphic shows the impact of different setaside levels at 80 percent of AMI within two different areas of a city: Area A with rents at \$3.00 per square foot and Area B with rents at \$3.50 per square foot.

Land residual of a 4 over 1 podium building at different setaside levels:



Note: PSF=per square foot, SA=setaside.

Assessing the Impacts of Below-Market-Unit Income Levels

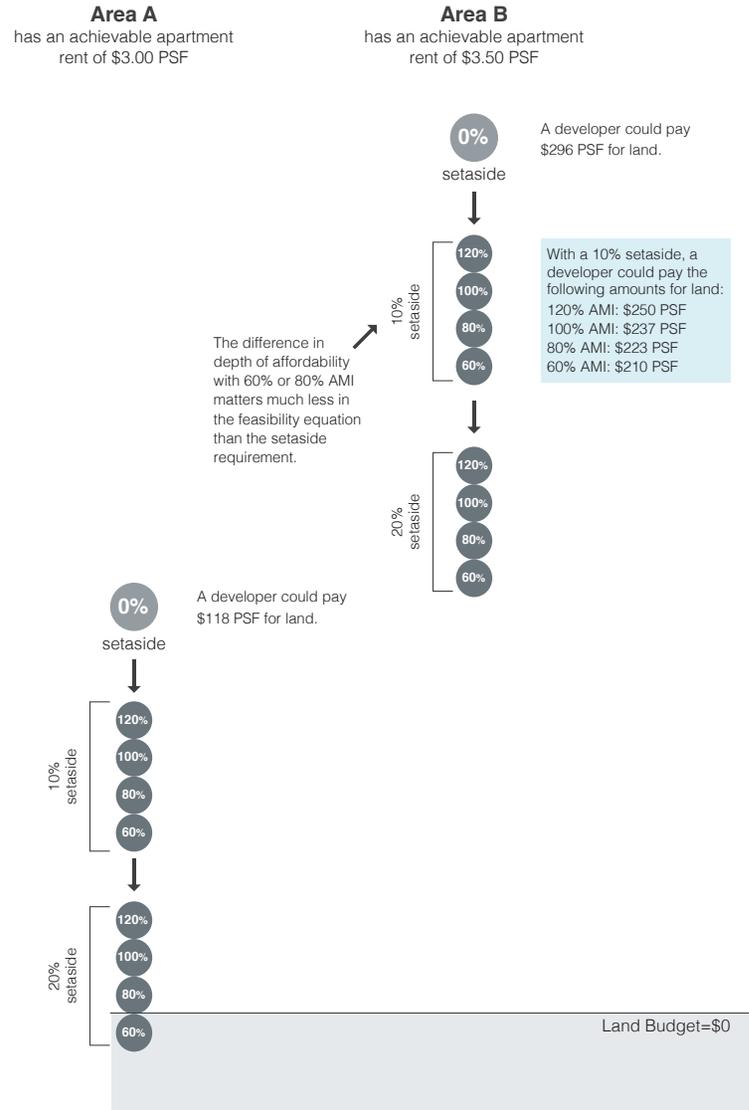
What it is: Most IZ policies target below-market units to households earning between 60 percent and 120 percent of AMI. Many programs also specify narrow income bands within these ranges.

How it affects the pro forma: Lowering the income levels of the below-market units in the IZ policy has the same effect as the setaside percentage. It reduces project income and prospective investor returns relative to the status quo.

Key takeaway: The required level of affordability can have a significant impact on development feasibility.

Assessing the impacts of depth of affordability targets: This graphic shows the impact of different setaside levels and depth of affordability targets within two different submarkets in a city: Area A with rents at \$3.00 per square foot and Area B with rents at \$3.50 per square foot.

Land residual of a 4 over 1 podium building at different rent targets:



Policy Tradeoffs Exist from the Developer's Perspective

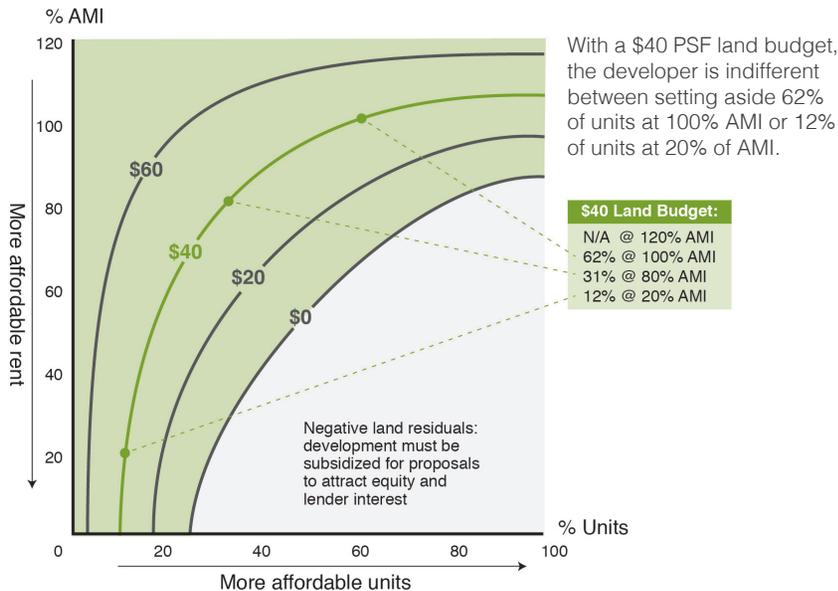
Policy makers can make tradeoffs between the percentage of units set aside for below-market housing and the depth of affordability of units. Because of the varying sensitivity of land residuals in different contexts, policy makers may experience resistance from the development community about the effects of different IZ policies. Policy makers should be aware of the context-specific tradeoffs of IZ requirements and consider policies that vary by context or policies that allow flexibility between affordability targets and the percentage of below-market units.

Scenario 1: Land Residuals (Stacked Flats)

Where market rents and below-market rent targets are relatively close, development impacts may be relatively small if only a small percentage of units is required. However, in such instances, developments may yield similar land residuals when a high percentage of units is required at a higher level of affordability. For that reason, developers that focus on low-rise apartments in suburban locations may argue against deeper levels of affordability.

Market situation within the region: Market-rate rents (\$2.25) at or close to below-market rent targets.

Impact: The developer may be able to accommodate a high percentage of below-market units in a development project at higher AMI-based affordability targets and still expect an adequate land budget.

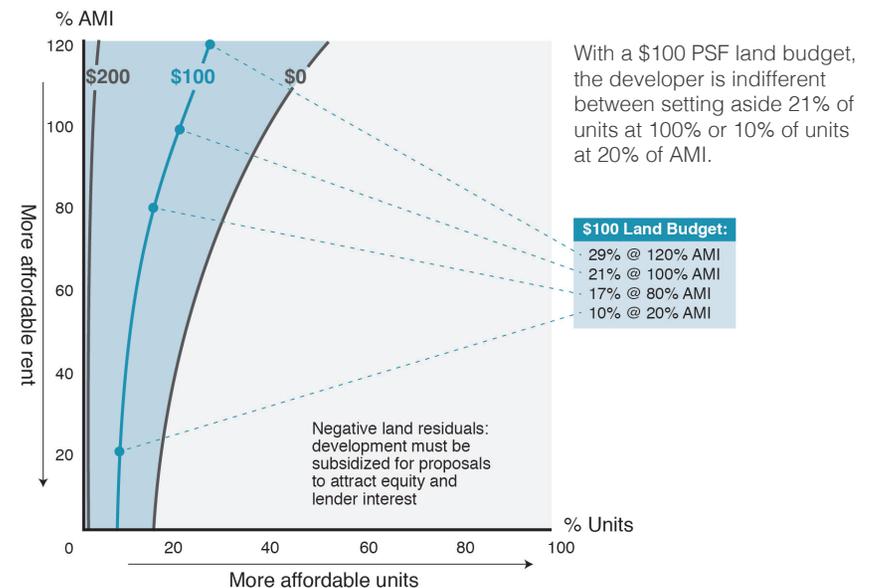


Scenario 2: Land Residuals (4 over 1)

Where market rents are high relative to below-market rent targets, developers are relatively indifferent to below-market rent targets. In such circumstances, projects may yield similar land residuals with either high or relatively deep below-market rent targets as long as only a small percentage of units is required. For this reason, developers that focus on mid-rise and high-rise projects in high-rent submarkets may argue against requiring higher percentages of below-market units.

Market situation within region: High market rents (\$3.25) relative to below-market rent targets.

Impact: The depth of affordability has less impact on the developer's ability to acquire the site than the unit setasides.



Section III: Optimizing the Effectiveness of Incentives for Inclusionary Development

Development incentives are often required to encourage and enable the private sector to produce the desired amount of new workforce housing units as part of an IZ policy. The question is: What type and mix of incentives make most sense?

The answer is that it depends on local market (and submarket) conditions and development product type, as summarized in section I. Unless market-rate rents are high enough to cross subsidize the below-market units, the value of development incentives in most cases will need to substantially mitigate, if not fully offset, the costs (in lost economic value) of the below-market setaside and income targeting, as discussed in Section II.

Local communities have an array of options for providing inclusionary development incentives. This section assesses the utility and limitations of four types: direct subsidies, tax abatements, density bonuses, and reduced parking requirements. (Some jurisdictions reduce or waive fees as an inclusionary development incentive; while often helpful and worth doing in general, fees are generally not a primary determinant of feasibility.)

Local governments can also give developers the ability to opt out of an inclusionary commitment by making a payment to the jurisdiction in lieu of meeting the IZ requirement to provide below-market units on site. This option is also discussed in this section.

To understand how developers would likely respond to these incentives in the context of an IZ policy given a particular construction type (stacked flat, four over one, and residential tower) and local market conditions (rent/purchase price, construction costs, land prices, etc.), we used building prototypes and pro formas to standardize the financial analysis. To aid in the evaluation of the effectiveness of different policy approaches, we used computer algorithms to run multiple pro forma permutations. Thus, although our modeling and examples may not precisely reflect costs and impact in some markets, they are broadly illustrative of national development variables.



1400 Mission Street, San Francisco, California. (Tishman Speyer)

Direct Construction Subsidies Can Enhance Feasibility but Can Be Expensive

Takeaways: Direct construction subsidies provide an offset to the costs of development and can be used to incentivize development in locations where it might not otherwise be feasible. Construction subsidies are very effective and efficient from a developer's perspective.

What it is: One-time infusion of funding that reduces construction costs.

Examples: Forgivable zero-interest loans and grants; low-interest equity loans; tax increment investments; sales tax exemptions; prevailing wage exemptions; land writedowns if land is publicly owned; fee waivers, etc.

How it affects the pro forma: Subsidies reduce the required equity or debt needed to fund construction. When hard construction and financing costs are reduced enough to offset the lost economic value associated with the below-market units, developers can afford to pay the market price for land.

Key considerations: Direct subsidies can be relatively expensive, especially in high-cost markets. Using public subsidies to support IZ by

definition diverts public resources from other priorities and may engender community opposition on these grounds. Direct subsidies may also come with local requirements that increase development costs, such as prevailing-wage and local-hiring mandates.

Direct construction subsidies required to offset IZ requirements vary by market strength. The higher the submarket rents, the greater the subsidy required to fill the gap between achievable submarket rents/prices and AMI restricted rates.

The chart below shows the amount of capital subsidy required to offset IZ setaside requirements for three development typologies with varied rent inputs. The subsidies are measured per building. Not surprisingly, the total subsidy required is greater at higher setaside amounts for all development typologies, and the highest-density development types require the largest subsidies (as much as \$14 million for one residential tower building when 20 percent of the units are required to be set aside as below market).

Capital Subsidy to Offset IZ Impacts at 80% AMI

Lighter bars denote 10% setaside; darker bars denote 20% setaside.



Tax Abatements Can Incentivize Development in Otherwise Infeasible Locations

Takeaways: By reducing annual operating costs, tax abatements can help offset the negative economic impact of IZ. Relatively few cities to date have used tax abatements in connection with IZ, suggesting an opportunity for wider use.

How it works: Tax abatements provide a temporary (or, less frequently, permanent) reduction in recurring taxes associated with real property or tenants of real property.

Examples: Property tax assessment freeze; property tax rate reductions; sales, import, or income tax-free zones.

How it affects the pro forma: Tax abatements can enhance development feasibility by allowing operators to reduce their operating costs. Either yields higher NOI and a higher property value.

Key considerations: Tax abatements divert resources from other local priorities and their establishment may be politically infeasible. In fact, some jurisdictions limit or preclude tax abatements and similar tax relief approaches. In addition, tax abatements may conflict with other tax-based urban development incentive programs. For example, tax increment financing (TIF) is a tool used by jurisdictions to provide capital subsidies to development projects. However, TIF relies on property tax revenues, some of which may be forgone with property tax abatements.

Finally, the scale of the tax abatement is limited by a jurisdiction's tax formulas. For example, some development proposals may require subsidies greater than the project's total tax burden. Therefore, tax abatements may be insufficient incentives to fully offset the impacts of IZ. The chart below describes the level of tax abatement required to fully offset the impacts of IZ for a set of hypothetical circumstances.

Tax Rate Abatement Required to Offset IZ Impact at 80% AMI

Lighter bars denote 10% setback; darker bars denote 20% setback.



Density Bonuses Can Enhance Feasibility Where Development Is Already Occurring

Takeaway: Working with the local development community to craft sensible bulk and height policies is one way to address housing affordability irrespective of inclusionary zoning. Density bonuses are by far the most common form of incentive that accompanies IZ policies and are used in both voluntary and mandatory programs.

How it works: Density bonuses allow developers to build larger buildings (in terms of height or floor/area ratio) on a site as an incentive or offset for providing below-market units.

How it affects the pro forma: Density bonuses can enhance development feasibility—and mitigate negative economic impacts associated with below-market units—by increasing a property’s gross rents, which can generate more rent and yield a higher land value.

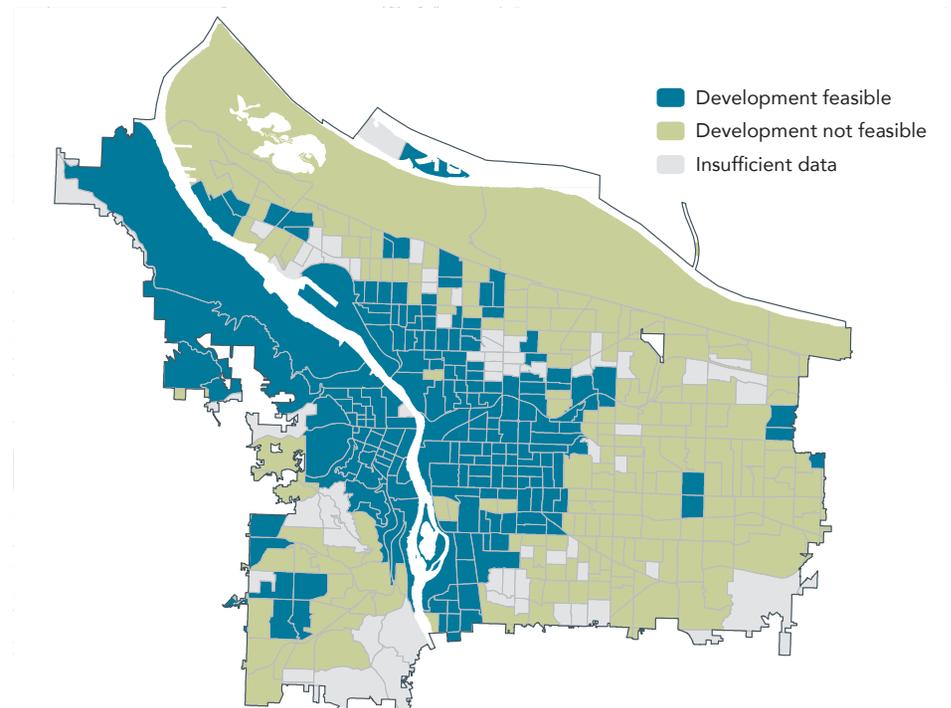
Key considerations: The effects of density bonuses vary substantially based on market conditions. In general, density bonuses are attractive only in markets where developing additional square feet of new development is profitable. Density bonuses by definition will not provide an incentive in areas where market-rate development is not already occurring and will offer only a modest incentive in areas where development is happening on a limited basis.

Increasing density, height, or both can put properties into another construction cost category. For example, a building can change from a podium construction type (maximum of six or seven stories) to a steel and concrete construction (more than seven stories) and actually make a denser project less feasible. It can also interact with parking requirements in ways that create development challenges. If each additional unit carries with it the burden of additional parking, this “incentive” can both add upfront costs and make for a less efficient building configuration—for example, requiring parking underground to accommodate additional stalls.

Adding density to a site may reduce the efficiency of the layout or generate layouts that are less attractive. For example, if the only way to take advantage of a density bonus would be to reduce the widths of light wells, courtyards, and open spaces, it may reduce the achievable rents of the project and yield a less profitable building than a lower-density alternative.

Case Example

This map illustrates the results of financial feasibility modeling, based on the achievable rents in U.S. census block groups in Portland, Oregon. It shows that development at any density is feasible only in certain parts of the city. Any policies that seek to leverage private development would have power only in these areas.



Note: This map displays the feasibility of any of the three development types (stacked flats, 4 over 1, residential tower) based on an assumed land value of \$0. Because it is unlikely that land will be available at a price of \$0, this map is more representative of where market-rate development is not likely to occur than where it will occur.

Reduced Parking Requirements Can Enhance Feasibility in Certain Scenarios

Takeaway: Development incentives that reduce parking requirements are valuable only where the policies require more parking than a developer would optimally provide.

How it works: This approach allows developers to reduce the amount of parking required to be built as part of a development.

How it affects the pro forma: Parking requirements can have a material impact on development costs, because parking is expensive to build (\$30,000–\$50,000 per underground space in many urban markets) and often does not produce revenue. By decreasing construction costs, reducing parking requirements can enhance development feasibility and mitigate negative economic impacts associated with below-market units. The value of parking incentives is related to the optimal parking configuration for a project as well as to the required amount of parking.

Key considerations: Parking reductions may be valuable in some locations and have little or no value in other contexts (for example, immediately adjacent to a high-capacity transit line). A reduction in required parking is beneficial only where requirements are set higher than market demand.

The value of a parking reduction will vary based on the optimal building form, given the parking requirements. For example, a parking reduction may allow a developer to use more of a parcel's area for building footprint and therefore provide more housing units. Given the higher planned use of the land, the developer can offer to pay more and is more likely to strike a development deal with the landowner.

Parking capital costs vary considerably based on the type of stalls. For example, a project with surface parking may see only a modest reduction in project cost by reducing the number of stalls. In contrast, a central-city tower with underground parking may save tens of thousands of dollars per unit by reducing the number of stalls provided.

A reduction in parking may have negative effects in some development situations. For example, reducing the amount of parking in an upscale condominium tower may lead to lower sales prices because potential homeowners must pay for off-site parking. Reducing the amount of parking in a suburban garden apartment complex may lead to lower rental rates because of the difficulties tenants may face when seeking a parking spot near their unit. Thus, developers may not take advantage of lower parking requirements in many cases. For these types of reasons, lenders may object to reductions in the parking provided in a given development.



Rhode Island Row, Washington, D.C. (Urban Atlantic and A&R Development)

Opt-Out Options Payments Can Provide Flexibility but Come with Tradeoffs

Many IZ policies provide developers the option of buying out of the requirement to directly produce below-market units within their proposed market-rate development projects. Three opt-out options are discussed most prominently in the literature: in lieu payments, off-site provision, and donating off-site land. Developer payments made in lieu of delivering below-market units off site are typically used by cities to directly support the development of workforce housing units elsewhere. Though less common, some IZ policies give developers the opportunity to provide workforce housing off site rather than delivering the units within the same physical structure. In rare instances, developers may donate buildable land to a housing agency in lieu of providing the below-market units required by the IZ policy.

Each of these opt-out options is an alternative that developers can weigh against building below-market units within their market-rate developments, and all of the options can advance the policy goals of IZ. Policy makers must understand how these options might be perceived by developers to understand their efficacy and the policy tradeoffs that exist.

Setting the in lieu payment amount affects IZ outcomes. If the payment amount is set high, developers may not be able to feasibly support the in lieu payments and will either be able to deliver the below-market units within a project or not build at all. If the payment is set low, the local jurisdiction may realize less workforce housing development than might have been achievable through the IZ policy.

Several typical approaches exist to setting an IZ in lieu payment amount. The amount can be set as (a) the difference in development costs between market-rate and below-market units; (b) the difference between the value of the market-rate and below-market-rate units; or (c) the average amount of subsidy per unit that the local government currently provides for development of similar units. Fees may be set based on the total square footage of the market-rate development project or the number of units.

In both cases (a) and (b), the in lieu fee amount would depend on the submarket and the highest and best use of particular development sites. Because IZ policies are typically formulated as standard one-size-fits-all requirements across entire jurisdictions, the resulting in lieu fees may be set high or low relative to most submarkets. Context-oriented in lieu fees can yield better results for both developers and policy makers. Whatever the policy formulation, indexing or otherwise enabling IZ in lieu fees to fluctuate with inflation or local development costs can prevent their erosion as a resource over time.

An important policy consideration in establishing an IZ off-site option is defining the off-site location of new below-market units. Should the off-site location be required to be at another site in the vicinity of the market-rate project or at any location? On the one hand, requiring the units nearby may ensure that workforce housing units have access to the same assets and amenities as market-rate housing units.

On the other hand, allowing workforce units to be located far from developers' original projects, specifically in areas where land is less expensive, may allow off-site policies to generate a higher number of new workforce units. In either case, jurisdictions must carefully structure and closely assess the outcomes of IZ off-site provisions.

Likewise, jurisdictions must be careful in formulating land donation policies as an IZ opt-out option. Portions of the property being developed for market-rate housing could be donated to an affordable housing developer, a nearby parcel could be donated, or a distant location could be donated. Workforce housing units built near the market-rate units give both sets of housing units access to the same amenities.

Jurisdictions must consider the difficulty of delivering units in various locations, including the cost of doing so, and the timing of delivery. Site donation often shifts the burden—including all the risks—of developing workforce housing to the jurisdiction, its housing development partners, or both. Further, depending on the capacity of the jurisdiction, this may lead to a delay in delivering the workforce units relative to the timing of on-site and off-site requirements.

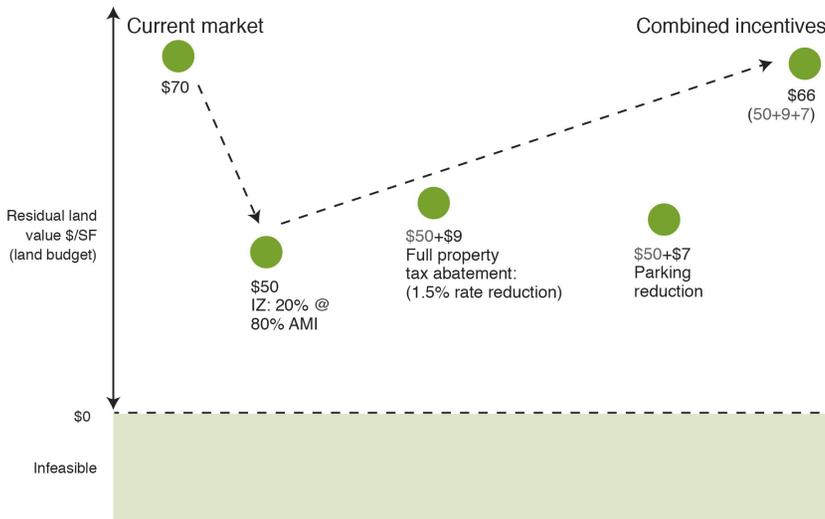
Like the other IZ design elements, the efficacy of opt-out provisions varies with market conditions, developers' capacities, and the availability of incentives that can make on-site provision of below-market units more attractive than opt-out policy options.

Putting It All Together

In some areas, cities will likely need to provide multiple incentives to optimize private sector participation in an IZ policy to offset the costs of producing ambitious inclusionary housing goals. The following two scenarios demonstrate the impact of a 20 percent setaside, targeting 80 percent of AMI, on land value. We then display the effect of two different policy incentives—a property tax abatement and a parking requirement reduction. The property tax incentive is modeled as a full abatement assuming a rate of 1.5 percent of market value. The parking ratio incentive reduces the required parking ratio from one per unit to 0.5 per unit.

Scenario 1: Stacked-flat building with market rents at \$2.25 PSF

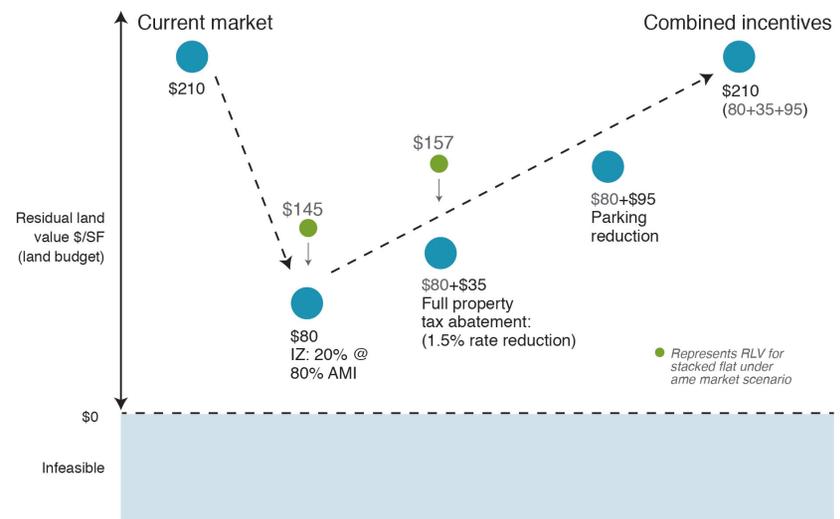
A developer proposes a three-story building in an area with rents of \$2.25 per square foot. With no incentives to offset an IZ policy, the development is feasible only if the developer is able to acquire the land at a price of about 70 percent of its pre-IZ policy market value—\$50 per square foot compared with \$70 per square foot. The developer will also consider uses other than apartments with land values greater than \$50 per square foot. When combined, incentives allow a developer to pay up to \$66 per square foot for land, which is slightly lower than the minimum land cost the developer can afford to pay before the IZ policy. The incentive would increase the likelihood of development occurring absent an incentive.



Scenario 2: 4 over 1 podium building with market rents at \$3.25 PSF

A developer proposes a mid-rise, five-story building in an area with achievable rents of \$3.25 per square foot. With no incentives, the development is feasible only if the developer is able to acquire the land at a price of about 40 percent of its pre-IZ policy market value—\$80 per square foot compared with \$210 per square foot. The developer will consider alternative uses with land values greater than \$80 per square foot.

When combined, these incentives allow a developer to pay up to \$210 per square foot for land, which completely offsets the impact of the IZ policy and allows the developer to pay the same amount for land prior to the IZ policy.



● The green dots represent residual land value (RLV) for stacked-flat building under same market scenario. Under these policy regimes, the stacked-flat prototype yields a higher RLV than the 4 over 1 prototype, suggesting a developer may choose to build at a lower density.

Conclusion

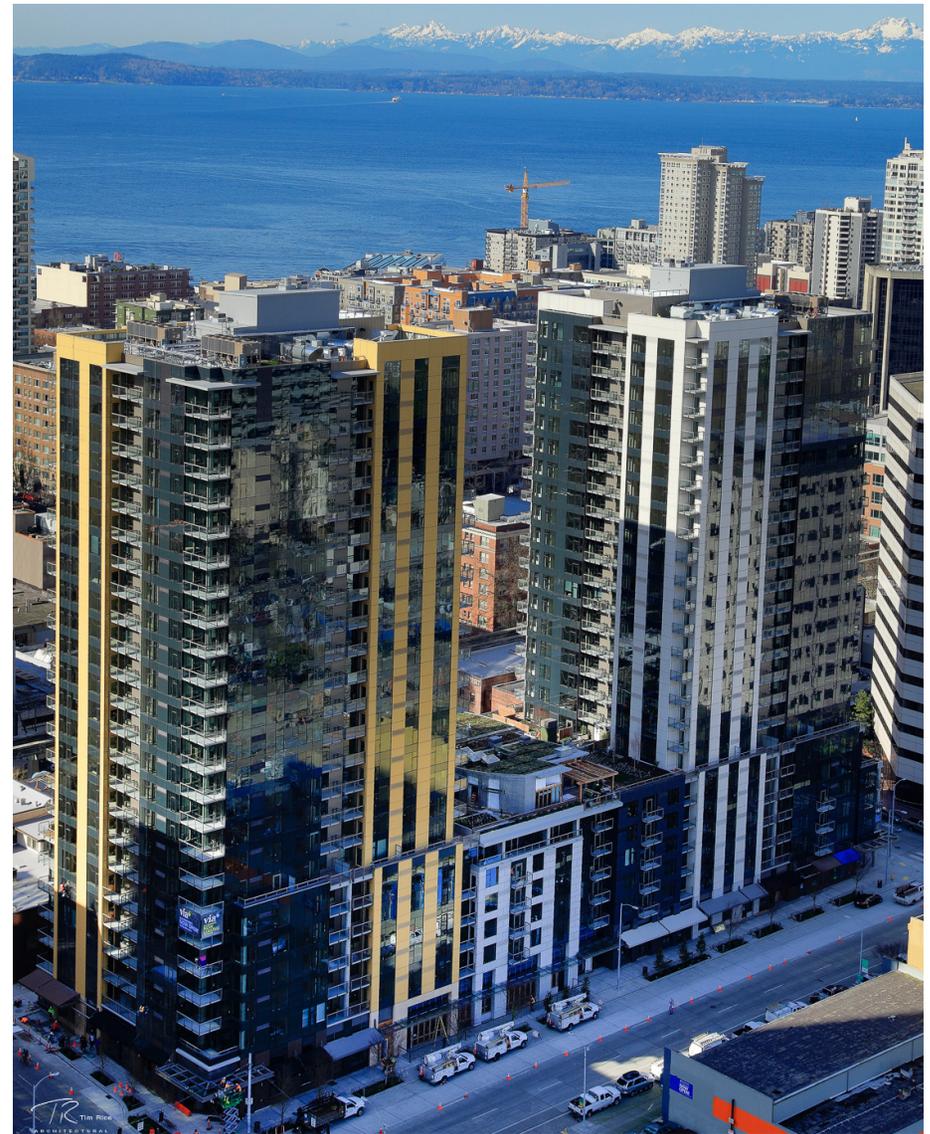
IZ policies can be an effective tool for harnessing local real estate market dynamics to generate development of new workforce housing units under certain conditions. Most important, IZ policies depend on market-rate development to be successful; areas not experiencing any or much market-rate development will likely not generate significant results from an IZ policy.

In very strong development environments (substantial amounts of new construction and rehabilitation, steady rent and price growth, low vacancy rates), IZ policies can yield development of new workforce housing units without subsidy or other development incentive from the local jurisdiction. In some moderately strong development environments, IZ policies can achieve their goals as well, provided the city or county contributes the optimal levels and combinations of development incentives.

For a site to be developable, landowners must be willing to part with their land and any occupied or operating asset on the site for a price that developers can afford. The price that developers are willing to pay is determined by the financial viability of a proposed development project on that site. Because IZ policies may reduce what a developer can pay for land, the best-case scenario is that the reduced land value is still the highest and best use for that site at that moment in the market cycle, and absent any price adjustment for the landowner, the development outcome will still be the same. However, that is not always the case. In many instances, incentives are required for development to be feasible.

To the extent that IZ policies remain in place over a sustained period of time, land prices may adjust and the IZ requirements may be absorbed as a “cost of doing business” in the jurisdiction. The challenge is that the most effective IZ policies need to have the ability to adapt in response to changing market conditions. Both these somewhat opposing values—policy consistency and policy flexibility—have value to developers and contribute to the success of an IZ policy. Balancing them appropriately in design and administration of IZ is perhaps the central challenge for cities seeking to make best use of this particular policy tool.

In the right market conditions and with the optimal availability of development incentives, IZ policies can generate development of new workforce housing units that would not otherwise be built. Even in such situations where the “stars align,” IZ at its most effective is only one tool in what must be a broad-based toolbox available to local governments to meet their workforce housing needs.



Via6, Seattle, Washington. (Tim Rice Architectural Photography)

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Inclusionary Housing in the United States: Prevalence, Impact, and Practices

Working Paper WP17ET1

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Abstract

Inclusionary housing refers to any programs or policies that require or incentivize the creation of affordable housing when new development occurs, including impact or linkage fees that generate revenue for affordable housing. Through the most comprehensive investigation on inclusionary housing conducted to date, this study identifies 886 jurisdictions with inclusionary housing programs located in 25 states and the District of Columbia at the end of 2016. The vast majority of jurisdictions with inclusionary housing are located in New Jersey (45 percent), Massachusetts (27 percent), and California (17 percent). These places have state-wide inclusionary housing policies or state policies that promote the local adoption of inclusionary housing policies. Many jurisdictions reported having more than one inclusionary housing policy; a total of 1,379 were identified in 791 jurisdictions on which this information was available.

Although comprehensive data on impact and program characteristics was not available for the majority of programs, the study did find that 373 jurisdictions reported a total of \$1.7 billion in impact or in-lieu fees for the creation of affordable housing. Jurisdictions also reported creating a total of 173,707 units of affordable housing, which predominantly excludes additional units created with the \$1.7 billion in fees:

- 443 jurisdictions reported creating 49,287 affordable homeownership units;
- 581 jurisdictions reported creating 122,320 affordable rental units; and
- 164 jurisdictions reported an additional 2,100 affordable homes.

Due to missing data, these numbers substantially underestimate the total fees and units created by the entire inclusionary housing field.

Of the 273 inclusionary housing programs for which information on program characteristics was gathered, over 70 percent were developed after 2000, and 71 percent of programs applied to the entire jurisdiction. The most common program type was mandatory, and policies applied to both rental and for-sale development in 61 percent of programs. Approximately, 90 percent of all programs reported affordability terms of at least 30 years. The most common ways that developers could provide affordable housing was through on-site development in 90 percent of programs or through paying in-lieu fees or providing off-site affordable housing in roughly half of all programs. The most common incentives offered to developers were density bonuses (78 percent), other zoning variances (44 percent), or fee reductions or waivers (37 percent).

This study supports that inclusionary housing programs are an increasingly prevalent tool for producing affordable housing. Additionally, local inclusionary housing programs are: (1) prioritizing on-site affordable housing development, which may be an effective strategy to place affordable housing in neighborhoods of opportunity; and (2) ensuring long-term affordability, which is an effective way to maintain community assets and the affordable housing stock.

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About Grounded Solutions Network

Grounded Solutions Network supports strong communities from the ground up. We are a national nonprofit membership organization consisting of community land trusts, inclusionary housing programs, and nonprofits that support affordable housing that lasts. We provide our members and cities with training, technical assistance, program design and management resources, research, and advocacy opportunities. Grounded Solutions Network champions evidence-based policies and strategies that work. We promote housing solutions that will stay affordable for generations so communities can stabilize and strengthen their foundation, for good. We help our members, partners and elected officials use them to establish inclusive communities that have diverse housing options for a variety of incomes, offering choice and opportunity for all residents – both today and for future generations.

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Inclusionary Housing in the United States: Prevalence, Impact, and Practices

Introduction

As the affordability crisis has worsened across a substantial portion of the country, more and more cities are utilizing inclusionary housing policies as one way to create affordable housing. Traditionally, these land use policies incentivize or require developers to produce affordable housing or to pay a fee that will be used to create affordable housing when new development is built.

These policies hold promise as an effective local strategy for fostering inclusive communities, as affordable housing is often built on-site of the new development in areas that are rich—or quickly becoming rich—in opportunity (Jacobus 2015; Schwartz et al. 2012). However, less is known about this affordable housing tool than arguably any other affordable housing program or policy. The consequence is that policymakers, city staff, and stakeholders are uncertain about adopting the tool, or they are “reinventing the wheel” as they design inclusionary housing policies and implement them. While policies do need to be designed to fit the local environment, ample learning could occur from existing programs in order to bolster the efficiency and impact of policy design and implementation.

This study aims to significantly address gaps in knowledge on inclusionary housing programs in order to help inform the field, future public policy, and prospective research. The study built upon existing research (Hickey, Sturtevant, and Thaden 2014) by updating an inclusionary housing directory and conducting surveys and secondary data collection that aimed to answer the following questions:

- (1) How many inclusionary housing programs exist and where are they located?
- (2) What have these programs produced?
- (3) What are the trends in program characteristics of inclusionary housing programs?

Background

Typically, the primary objectives of inclusionary housing programs are to increase the supply of affordable housing and to promote social and economic integration (Jacobus 2015; Schwartz 2012). The first inclusionary housing policies emerged outside of Washington, DC and San Francisco in the mid-1970s. As housing markets heated up in late 1990s and early 2000s, a growing number of local governments adopted policies in order to have developers help mitigate the consequences of their new development on the need for affordable housing (Calavita and Mallach 2009). Previous research, on which this study builds, identified 512 inclusionary housing programs in 487 jurisdictions throughout 27 states and the District of Columbia (Hickey, Sturtevant, and Thaden 2014). According to this directory, inclusionary housing programs are heavily concentrated in three states: New Jersey, California, and Massachusetts, accounting for nearly 80 percent of all programs.

Studies do support that inclusionary programs achieve the goal of promoting socioeconomic integration. Participants living in affordable inclusionary housing units tend to be in neighborhoods with higher opportunity, as measured by poverty rate, school performance, and racial diversity (Ellen and Horn 2012; Holmqvist 2009; Orfield 2005; Schwartz 2010). While inclusionary housing programs often serve higher income levels than many federal housing programs, the placement of affordable housing in opportunity-rich neighborhoods is a meaningful outcome of well-designed inclusionary housing programs (Schwartz et al. 2012).

Research on the production outcomes of inclusionary housing policies is fragmented and outdated. Researchers reviewing inclusionary housing policies internationally in 2010 had estimated between 129,000 and 150,000 affordable housing units in the United States, although this was not based upon a systematic empirical investigation (Mallach and Calavita 2010). Based upon a database of 145 inclusionary housing programs in California, it was estimated that all inclusionary housing programs in the state produced roughly 29,000 affordable housing units between 1999 and 2006 (Non-profit Housing Association of Northern California 2007). A survey of 52 inclusionary housing programs across the country—which heavily relied upon the same database in the aforementioned study of California—found that 60,000 affordable units had been produced over the lifetime of these programs (Rusk, Shirey, and Abel 2010).

Further research, predominantly conducted in the mid-2000s, has documented unit counts around various metropolitan areas. A total of 9,154 affordable units were documented in 55 jurisdictions around San Francisco from inception to the early 2000s (Schuetz, Meltzer, and Been 2009). Powell and Stringham (2008) estimated 6,379 affordable units within 13 cities in Los Angeles and Orange County in 2004. In five counties within the Washington DC region, 15,252 affordable units were produced up until 2008 (Schuetz, Meltzer, and Been 2009). Of those, 13,000 units were attributed to a Montgomery County, MD program (Department of Housing and Community Affairs 2011). Notably, many of these units were not preserved due to short-term affordability restrictions in the early decades of the program (Hickey, Sturtevant, and Thaden 2014).

Some additional research has documented the program characteristics of specific or small samples of inclusionary housing programs. A clear “take-away” from this body of work is the tremendous variation in policy and program design that is inherent to inclusionary housing (Hickey, Sturtevant, and Thaden 2014). Ultimately, inclusionary housing programs must consider local market conditions and balance the economic impacts of a policy against the desire to create affordable housing (Hollingshead 2015; Schuetz, Meltzer, and Been 2011). Many places opt to provide incentives to developers to help off-set the costs of affordable housing units (Jacobus 2015). Inclusionary housing programs also vary in their enforcement mechanism (mandatory or voluntary), targeted income groups, proportion of affordable housing needed to meet program requirements, applicable development type (e.g. rental or for-sale), and geographic application (e.g. county, city, certain neighborhoods). Some of the variation in local inclusionary housing programs is related to state policy, as the ability for local municipalities to implement an inclusionary housing policy rests with the authority granted (or at least not expressly prohibited) by the state (Hollister et al. 2007).

A limited number of studies have identified characteristics of impactful inclusionary housing programs. In terms of production, studies support that inclusionary housing programs that are mandatory, have greater local political will, and are in stronger markets, are likely to produce more affordable housing units (Brunick 2003; Levy et al. 2012; Mintz-Roth 2008; Mukhija et al. 2010). Additionally, a study of 20 inclusionary housing programs across the country identified a set of policy and program characteristics that are more likely to ensure that affordable housing created by inclusionary housing programs is retained over time as affordable housing (Hickey, Sturtevant, and Thaden 2014). Long-term affordability terms, shared equity homeownership models, and well-designed post-purchase stewardship of units are some critical components to ensure lasting affordability. Out of over 300 inclusionary housing programs, the study found that 80 percent of inclusionary housing policies that apply to rental and about 75 percent that apply to owner-occupied housing required at least 30-year affordability controls. Hence, local governments are opting to require longer periods of affordability than federal affordable housing programs. (For additional trends in inclusionary housing policy and program design, see Jacobus 2015.)

Ultimately, inclusionary housing programs are relatively complex and tailored to local conditions; however, very little is known about the prevalence of various program characteristics. Furthermore, previous research on the production and impact of inclusionary programs have been fragmented and based upon small samples. This study addresses these gaps by undertaking the largest study of inclusionary housing that has been conducted to date in order to explore the geographic and programmatic landscape and outcomes of inclusionary housing policies across the United States.

Methods

In this section, we first review the definition of “inclusionary housing” used in this study. Next, we summarize the original population of jurisdictions with inclusionary housing, followed by an explanation of survey design, survey administration, and secondary data collection. Lastly, we define the samples identified and utilized for this study.

Definition of Inclusionary Housing

In this study, we defined inclusionary housing broadly to capture any land use policies that result in the creation of affordable housing when development occurs. In particular, we wanted to capture information not only on inclusionary zoning policies, but also on fee-based policies (in-lieu fees and impact fees)¹. The following definition was shared with survey responders twice before completing the survey:

¹ The rationale for impact fees, sometimes referred to as linkage fees, is that they mitigate the impact of commercial and/or residential development on the increased demand for affordable housing that will result from the development. The rationale for in-lieu fees is that a jurisdiction has a right to have affordable housing goals and require or incentivize developers to contribute to those goals, and a fee may be assessed in-lieu of providing affordable units.

Your jurisdiction has been identified as having one or more inclusionary zoning or impact fee programs. For simplicity's sake, we will refer to both types of programs as "inclusionary housing programs," which include any programs or policies that require or incentivize the creation of affordable housing when new development occurs, including impact or linkage fees that generate revenue for affordable housing. Please include:

- policies that are mandatory or voluntary;*
- policies with or without incentives;*
- policies that apply to particular geographic areas or zoning categories;*
- policies that yield affordable units on site within market-rate buildings, affordable housing units off site in a different location, or payments in-lieu of development;*
- policies that generate fees from commercial development, residential development, or both;*
- policies that are fee-based programs that offer developers the option to build units.*

Notably and accurately, the survey results illustrate that survey responders did not report project-by-project, ad-hoc negotiations with developers for the inclusion of affordable housing, as these are not formal land use policies or programs.

Original Population

In July 2014, the National Community Land Trust Network (which became Grounded Solutions Network in 2016) and the National Housing Conference published a directory of inclusionary housing programs. This was part of a joint research project, which also produced a working paper on how roughly 20 inclusionary housing programs preserved the affordability of homes they created (Hickey, Sturtevant, and Thaden 2014). The directory identified 512 inclusionary housing programs in 487 jurisdictions throughout 27 states and the District of Columbia. This information was pulled from previous research, secondary databases, and word of mouth. Consequently, a part of this project was to validate and update the database.

During 2015, the National Community Land Trust Network and Cornerstone Partnership identified and updated contact information for jurisdictions in the original database to administer the inclusionary housing survey in this study. During that time, an additional four jurisdictions with inclusionary housing programs were identified for a total of 516 jurisdictions. We gathered email addresses for primary contacts in 494 jurisdictions and for secondary contacts in 279 jurisdictions. In total, 498 of the 516 jurisdictions had at least one contact (96.5 percent of the population). Almost all the jurisdictions missing a contact were in New Jersey. Contact information was amended during data collection through survey responses and internet research to update the database.

After closer examination of the original database, however, we identified 26 jurisdictions that were redundant and one jurisdiction that did not exist. Consequently, we will refer to the original

database minus duplicates and the erroneous locale (n = 489) as the “original population,” which is presented in table 1.²

Table 1: Original Population of Jurisdictions with Inclusionary Housing

State	Original Population
Alabama	
Alaska	
Arizona	
Arkansas	
California	150
Colorado	12
Connecticut	2
Delaware	1
Florida	4
Georgia	2
Hawaii	1
Idaho	
Illinois	6
Indiana	
Iowa	
Kansas	
Kentucky	
Louisiana	
Maine	1
Maryland	5
Massachusetts	57
Michigan	
Minnesota	1
Mississippi	
Missouri	
Montana	
Nebraska	
Nevada	
New Hampshire	1
New Jersey	180
New Mexico	1
New York	16
North Carolina	10
North Dakota	
Ohio	
Oklahoma	
Oregon	1
Pennsylvania	6
Rhode Island	11
South Carolina	
South Dakota	
Tennessee	2
Texas	1
Utah	1
Vermont	2
Virginia	5
Washington	8
Washington DC	1
West Virginia	
Wisconsin	
Wyoming	1
TOTAL	489

Survey Design and Administration

During the second part of 2015, staff at the National Community Land Trust Network and Cornerstone Partnership³ designed the survey, piloted it with practitioners, and built the infrastructure for online administration.

The survey objective was to gather the following for each jurisdiction: (1) contact information for inclusionary housing practitioners; (2) the name and number of current inclusionary housing programs/policies; (3) the program characteristics of the two highest-producing programs; and (4) the total fees and unit counts for all programs since their inception.

² While we will refer to these 489 jurisdictions as the “original population” of jurisdictions with inclusionary housing programs, it is inevitable that previous and current research efforts overlooked some jurisdictions that should have been included in the population and counted a small number of jurisdictions that do not have inclusionary housing programs. One purpose of this project was to verify and update this information when possible.

³ At the start of 2016, the National Community Land Trust Network and Cornerstone Partnership integrated to form Grounded Solutions Network, which is a national nonprofit membership organization of community land trusts, inclusionary housing programs, and other shared equity homeownership programs. Grounded Solutions Network’s mission is to cultivate communities—equitable, inclusive and rich in opportunity—by advancing affordable housing solutions that last for generations.

Survey administration took place from March 3, 2016 to January 10, 2017. Survey administration was phased, whereby two requests to complete the survey were sent electronically to the primary contacts in our database. When emails were returned or automatic replies noted that an individual was no longer working for the jurisdiction, we identified new contacts for the jurisdiction and sent the request again. Then, we sent two email requests to complete the survey to the secondary contact and once again identified new staff when emails bounced back or staff had departed. At this juncture, researchers broke data collection into two assignments: (1) continue alternative strategies for survey administration; and (2) pursue missing data for incomplete surveys.

For the former, we sent out a personalized email appeal to jurisdictions that had not completed the survey. Then, we reviewed the missing data and identified anyone within our networks who might have connections to any of the jurisdictions. For instance, we connected with staff at some associations of governments or nonprofits that support multiple inclusionary housing programs, and we asked them to make an appeal to the jurisdictions with whom they worked. Some form of personalized outreach was conducted for every outstanding jurisdiction except those located in New Jersey.⁴

For the latter, researchers individually emailed or called the survey responder and/or associated contacts identified in the jurisdiction with specific information requests to address missing data. This was a rolling process that continued as additional surveys were submitted. Most frequently, survey responders could not or did not answer the total amount of fees and the total number of rental and homeownership units that were produced by their inclusionary housing programs⁵.

In total, 143 jurisdictions submitted complete or partially complete surveys.

Secondary Data Collection

Beyond survey administration to program staff, researchers sought state-level secondary databases for states that were known to have enabling policies to promote the use of inclusionary housing policies. To increase the sample size, researchers also used online resources to gather information on the survey for additional jurisdictions.

⁴ Over the course of survey administration, we realized that contacts within the database and online research was not yielding current contacts for New Jersey. We suspended data collection for these jurisdictions and decided to pursue secondary data collection for that state.

⁵ A finding of this research was that many inclusionary housing programs do not comprehensively track the fees and units that have been produced by their inclusionary housing policies over time. HomeKeeper is a cloud-based app built on the Salesforce platform that some cities use to track their affordable housing portfolios and manage their inclusionary housing programs. In addition to centralizing data tracking efforts, HomeKeeper standardizes the way affordable housing programs measure outcomes, simplifies program reporting, and encourages effective home and homeowner stewardship practices. HomeKeeper is a program of Grounded Solutions Network.

State-level Data

Three states were known to have statewide policies that enable jurisdictions to use inclusionary housing policies⁶: California, Massachusetts, and New Jersey. The state policies are described in the Results section. Researchers contacted the appropriate offices in Massachusetts and New Jersey to request existing data and additional information on jurisdictions and to determine if they have utilized inclusionary housing policies to generate fees or affordable units. Unfortunately, there was no statewide data available for California.

New Jersey

For New Jersey, we made a public records request to the Department of Community Affairs. The New Jersey Department of Community Affairs provided two databases from the Council on Affordable Housing (COAH) Tracking and Monitoring System (CTM). One was a report pulled August 10, 2016 on the fees that each jurisdiction's housing trust fund (HTF) had collected since its inception (hereinafter "HTF database"). The second was a report pulled August 10, 2016 on each jurisdiction's affordable housing units produced by various programs/mechanisms (hereinafter "unit database").

There are some unknown factors related to the HTF database. First, the state authorized housing trust funds in 1992 to allow jurisdictions to gather fees from developers who: (1) did not produce units to meet inclusionary zoning obligations on development projects (in-lieu fees); or (2) were assessed impact fees to mitigate the impact of residential and/or commercial development (linkage or impact fees). Both of these fees meet the definition of inclusionary housing fees used in this study. However, a minority of jurisdictions (five to ten) may have contributed additional funds to the HTF from their general budgets or from a dedicated revenue source, which would not meet the definition of inclusionary housing.⁷ Hence, the data may slightly overestimate fees from inclusionary housing policies.

Next, it is unknown when each jurisdiction established its HTF; therefore, it is difficult to discern the relative magnitude of the fee-based policies by jurisdictions and over time. Lastly, it is possible that many jurisdictions stopped reporting additional HTF fees collected after December 2014. This was the last required reporting time by COAH for jurisdictions prior to the court taking over for COAH in 2015.

The unit database is comprised of jurisdiction, project title, project status, affordable housing mechanism or program, unit counts by rental and homeownership, and area median income (AMI) levels. Unfortunately, the affordable housing mechanism or program categories in CTM are not consistent with the definition of inclusionary housing used for the survey. To decipher what mechanism or programs should be included, we interviewed staff from the Department of Community Affairs. We opted to include "inclusionary development," which is a category used

⁶ Notably, after data collection was closed, Connecticut was identified as a state with an inclusionary housing policy that provides automatic approvals for projects, including 30 percent of affordable units for a minimum of 40 years within communities where less than 10 percent of housing is affordable (Zahalak 2017).

⁷ Keith Henderson, Director of Policy and Planning, New Jersey Department of Community Affairs, personal communication, Sept 9, 2016.

to describe affordable housing produced on-site within new construction. We also include “accessory dwelling units” because this mechanism allowed lots to have zoning variances in return for the production of affordable housing. We also included “redevelopment” projects, which included projects where the underlying zoning for a project was changed in return for including some affordable housing units.

The unit database also has additional challenges to discern accurate unit counts by jurisdiction. Similar to the HTF database, it is unclear how many jurisdictions have continued to enter information in CTM after December 2014. It is also unknown when jurisdictions adopted inclusionary housing ordinances and when they started entering their data into CTM. Therefore, relative unit production by jurisdiction over time cannot be explored. Even before 2014, a significant amount of data is missing on unit production, especially by housing type and AMI level served. This is a result of municipal self-reporting that was not always as diligent as it could have been. Furthermore, we have no way of knowing whether there are additional projects, completed before or after 2015, that may be missing from the database.

Lastly, we are including projects with any project status (such as proposed/zoned, preliminary approval, final approval, or completed) only if units were reported. In most instances, these projects have likely been finished since the time they were entered. We exclude projects that were entered with no unit counts.

While this database does not precisely reflect our definition for inclusionary housing, and it undoubtedly has missing data, especially after 2015, it generally estimates the results of inclusionary housing policies in New Jersey. Out of the 565 jurisdictions in New Jersey, 401 jurisdictions had an inclusionary housing program (71 percent).

Massachusetts

After contacting the principal planner and program specialists in the Massachusetts Department of Housing and Community Development (DHCD), we received three datasets in December 2016. The first dataset is Chapter 40B subsidized housing inventory (SHI) listing all subsidized properties with affordable housing in the state. The second is a list of units generated through both the Local Action Unit (LAU) program and the Local Initiative Program (LIP). The third includes a list of Chapter 40R properties developed under the state’s Smart Growth Zoning Overlay District Act. A supplementary dataset containing comprehensive permit projects was provided by Ann Verrilli from Citizens’ Housing and Planning Association (CHAPA).

The SHI tracks the local stock of affordable housing for Chapter 40B monitoring and compliance, which is a state statute designed to increase affordable housing units in municipalities where less than 10 percent of the housing stock is affordable. The statute enables developers building housing with an affordable component to apply for a single comprehensive permit (that is, a more streamlined review process) from the local zoning authority. Through the comprehensive permitting process, a developer can override local zoning bylaws as needed for economic feasibility of the proposed development.

The SHI tracks a municipality's status relative to the 10 percent goal and includes all developments that meet the state's definition of "subsidized housing," including developments built without a comprehensive permit (that is, developments built prior to enactment of Chapter 40B, built in cities such as Boston with fewer barriers to affordable development, or involving the rehabilitation of existing housing).

To use the comprehensive permit process, a developer must propose a housing project that will have at least 20–25 percent of units in the development "subsidized" (priced and reserved for households with incomes at or below 80 percent of AMI under a program approved by the state), have long-term affordability restrictions, and meet affirmative marketing requirements. Developers must also agree to limit profits. For this study, developments with a comprehensive permit in SHI are considered inclusionary units because the affordable housing is voluntarily created in exchange for expedited review and waivers of land use restrictions, including density, which meets the study's definition of inclusionary housing. It is worth noting that the age of data varies in the SHI. Although DHCD requires updates from jurisdictions about every two years (the last update request was in 2014), communities submit updates in between as qualifying projects are approved, and some do not submit updates at all. Hence, unit counts from SHI are likely underestimates.

The SHI dataset contains information about whether a development used a comprehensive permit; therefore, we were able to identify comprehensive permit units from SHI. There are 220 local jurisdictions in Massachusetts with at least one comprehensive permit development.

The SHI dataset also contains information on the number of units that count toward the 10 percent goal per development, but in the case of mixed-income rental developments, it is not possible to know exactly how many of those units are affordable (income restricted) units. This is because both market-rate and affordable rental units count toward the 10 percent goal if at least 20–25 percent of the units in the development are "subsidized," while only affordable units in homeownership projects count toward that goal. The challenge of accurately counting inclusionary housing units in the SHI dataset is further exacerbated by missing data by tenure type, as some developments are reported to be mixed tenure without further breakdown of rental and homeownership units, and some do not identify tenure type.

This challenge was overcome by a supplementary dataset provided by CHAPA, which was built on a SHI dataset obtained from DHCD in January 2016. The supplementary dataset estimates the number of affordable rental and homeownership units in each development by checking comprehensive permit decisions and the affordable housing restrictions for each project. This dataset contains information about total units that are included in SHI, the number of affordable rental units, and the number of affordable homeownership units for each jurisdiction. To accurately estimate the number of affordable units with a comprehensive permit, we applied the percentages of affordable rental units and affordable homeownership units, derived from this dataset, to the comprehensive permit unit list we received from DHCD in December 2016.

The SHI also includes units developed under the LAU program, which is for affordable units developed without conventional state or federal subsidies, as well as without a comprehensive permit. The program allows eligible units to be counted even if they comprise less than 20–25

percent of a development. It is important to know that developments in LAU can be the result of local inclusionary housing policies, or they can be the result of just project-by-project, ad-hoc negotiations with developers for the inclusion of affordable housing. The LAU list, however, does not specify through which mechanism the units were created. In this regard, not all jurisdictions with LAUs necessarily have a local inclusionary program or policy; nor should all LAUs be counted as inclusionary housing units per this study's definition. On the other hand, some municipalities in Massachusetts have local inclusionary zoning programs that produce units, but they may not be included in the SHI because they do not meet affirmative marketing, income mix or long-term restriction requirements.

The combined LAU and LIP list we obtained from the state includes 1,993 affordable units in 144 localities. Since there is no information in the dataset that allows us to differentiate LAU from LIP, we removed LIP projects because they are already counted in the list of comprehensive permit developments in the SHI. This was accomplished by removing LIP projects from the LAU and LIP list with the same project name and town name as in the comprehensive permit list. As a result, 801 units were removed. There were 122 jurisdictions with LAU units included in this study.

Finally, affordable units produced through Chapter 40R are also counted toward inclusionary housing units because this state statute requires at least 20 percent of units in projects of 12 units or more within certain areas known as smart growth overlay districts to be affordable.

Taken together, of 351 municipalities in Massachusetts, 233 have at least one inclusionary housing unit that is generated by either a local or a state-level inclusionary housing policy.

Researcher-completed Surveys

Next, the researchers gathered secondary information from government websites and ordinances in order to fill in as much survey information as possible for any jurisdictions except for those in Massachusetts and New Jersey, since secondary data was gathered instead. Researcher-reported surveys were completed or partially completed for an additional 37 jurisdictions. Researchers also reached out to existing or newly identified contacts in these jurisdictions to request missing information.

Sample

In all, 143 jurisdictions submitted complete or partially completed surveys, and researchers completed or partially completed surveys for an additional 37 jurisdictions, for a total sample of 180 jurisdictions. Of those 180 jurisdictions, 12 reported that they do not currently have an inclusionary housing program, but seven reported their jurisdictions had a program in the past (see table 2).

Table 2: Survey Responders Reporting Jurisdiction Did Not Have an Inclusionary Housing Program at Time of Response

Never Had a Program	Used to Have a Program
Antioch, CA	Burlingame, CA*
Sherborn, MA	El Cerrito, CA*
Long Beach, NY	Mono County, CA*
Mount Joy, PA	Vista, CA*
Fauquier County, VA	Milton, GA
	Franklin, TN*
	Jackson, WY

* Reported that the programs did produce affordable homes.

Therefore, the final survey sample of jurisdictions with inclusionary housing programs in place at the time of data collection was 168 programs (hereinafter “survey sample”). In addition to the survey information are the jurisdictions in New Jersey (n = 401) and Massachusetts (n = 233) that were documented to have inclusionary housing programs. Of those, 11 jurisdictions in Massachusetts completed the survey for their inclusionary housing program(s). No jurisdictions in New Jersey completed the survey.

After removing duplicates in Massachusetts, the total sample of jurisdictions with inclusionary housing programs included in survey data or state-level secondary data is 791 (hereinafter referred to as “final sample”).

Results

In this section, we will first review findings on the prevalence of inclusionary housing programs and the representativeness of the samples used for analyses. Next, we will review state-level policies to shed light on the prevalence of jurisdictions with inclusionary housing in California, Massachusetts, and New Jersey. Then, we will present the impact of inclusionary housing programs on the production of affordable housing units and fees, followed by program characteristics, including trends and comparisons.

Prevalence of Inclusionary Housing Programs and Representativeness of Samples

We will first review findings on the locations of jurisdictions with inclusionary housing programs. Then, we will present the number of programs by jurisdictions.

Jurisdictions

Based upon the original population, secondary data, and survey information, we estimate there are 886 jurisdictions located in 25 states and the District of Columbia with inclusionary housing programs (hereinafter “new population”). We did not find evidence of jurisdictions with inclusionary housing in New Hampshire or Wyoming, as listed in the original population. According to the new population, the vast majority of jurisdictions with inclusionary housing are

located in New Jersey (45.26 percent), Massachusetts (26.75 percent), and California (16.8 percent). There are 100 (11.17 percent) jurisdictions with inclusionary housing located outside of these three states.

We acknowledge that the total number of jurisdictions may be an overestimate. It is likely that more inclusionary housing programs were shut down or misidentified than the 12 jurisdictions noted in table 2. In particular, we expect that fewer programs exist in California because many jurisdictions rolled back mandatory policies that apply to rental development after the 2009 *Palmer* decision.⁸ Due to the political, legal, and administrative turmoil in the state of New Jersey related to the Fair Housing Act and COAH, it is also possible that fewer jurisdictions in New Jersey are continuing to enforce inclusionary housing policies.⁹ Due to the economic recession from 2007 to 2009, there is anecdotal evidence that some jurisdictions suspended or eliminated their inclusionary housing policies to promote real estate development, such as in Florida.

Alternatively, we are aware of at least a dozen jurisdictions that are currently exploring or recently adopted inclusionary housing policies, which would increase the number since data collection.¹⁰ Based upon personal communication¹¹ or secondary sources (Zahalak 2017), we also suspect that jurisdictions with inclusionary housing in Connecticut and New York are underrepresented in the new population and both samples. In table 3, we present the original population of jurisdictions with inclusionary housing programs modified from Hickey, Sturtevant, and Thaden's research (2014); the new population based upon updated data collection from this study; the final sample of represented jurisdiction in this study's results; and the study's sample with survey data.

⁸ Since 2009, California municipalities have suspended enforcement of their inclusionary zoning ordinances for rental housing development based on the Appellate Court ruling in *Palmer/Sixth Street Properties v. City of Los Angeles* (175 Cal. App. 4th. 1396). Technically, however, every jurisdiction in California has a voluntary inclusionary housing program per state law, which is reviewed below. Since there was no state-level data available to understand how many jurisdictions are implementing or yielding affordable housing from the state law, we opted to only count jurisdictions in California that are in the survey sample to establish the "New Population" presented in table 3.

⁹ In 2011, New Jersey Governor Chris Christie set forth orders to eliminate the Council on Affordable Housing, which supported, monitored, and enforced jurisdictions to meet their obligations under the Fair Housing Act. In 2015, the court ruled to take over COAH for being out of compliance. Now, the only recourse is to litigate jurisdictions if they are not meeting their obligations.

¹⁰ E.g. Miami Dade County, FL; New Orleans, LA; Baltimore, MD; Detroit, MI; Golden Valley, MN; Rochester, MN; St. Paul, MN; Shoreview, MN; Buffalo, NY; Philadelphia, PA; Pittsburgh, PA;

¹¹ Elkowitz, Peter, President and CEO of Long Island Housing Partnership, Inc., personal communication, September 19, 2017.

Table 3: Original Population, New Population, Final Sample, Survey Sample

State	Original Population	New Population	% of New Population	Final Sample	% of Final Sample	Survey Sample	% of Survey Sample
Alabama							
Alaska							
Arizona							
Arkansas							
California	150	149	16.82%	83	10.49%	83	49.40%
Colorado	12	12	1.35%	8	1.01%	8	4.76%
Connecticut	2	2	0.23%	2	0.25%	2	1.19%
Delaware	1	1	0.11%	1	0.13%	1	0.60%
Florida	4	4	0.45%	2	0.25%	2	1.19%
Georgia	2	1	0.11%	1	0.13%	1	0.60%
Hawaii	1	1	0.11%	1	0.13%	1	0.60%
Idaho							
Illinois	6	6	0.68%	6	0.76%	6	3.57%
Indiana							
Iowa							
Kansas							
Kentucky							
Louisiana							
Maine	1	1	0.11%	1	0.13%	1	0.60%
Maryland	5	5	0.56%	5	0.63%	5	2.98%
Massachusetts	57	237	26.75%	233	29.46%	11	6.55%
Michigan							
Minnesota	1	1	0.11%				
Mississippi							
Missouri							
Montana							
Nebraska							
Nevada							
New Hampshire	1						
New Jersey	180	401	45.26%	401	50.70%		
New Mexico	1	1	0.11%	1	0.13%	1	0.60%
New York	16	18	2.03%	4	0.51%	4	2.38%
North Carolina	10	10	1.13%	9	1.14%	9	5.36%
North Dakota							
Ohio							
Oklahoma							
Oregon	1	1	0.11%	1	0.13%	1	0.60%

Pennsylvania	6	5	0.56%	4	0.51%	4	2.38%
Rhode Island	11	11	1.24%	9	1.14%	9	5.36%
South Carolina							
South Dakota							
Tennessee	2	1	0.11%	1	0.13%	1	0.60%
Texas	1	1	0.11%	1	0.13%	1	0.60%
Utah	1	1	0.11%	1	0.13%	1	0.60%
Vermont	2	2	0.23%	2	0.25%	2	1.19%
Virginia	5	4	0.45%	4	0.51%	4	2.38%
Washington	8	9	1.02%	9	1.14%	9	5.36%
Washington DC	1	1	0.11%	1	0.13%	1	0.60%
West Virginia							
Wisconsin							
Wyoming	1						
TOTAL	489	886	100.00%	791	100.00%	168	100.00%

* California has a state law stipulating a voluntary density bonus law for every county and municipality, which equals 540 jurisdictions. Unless we have survey data illustrating the application of the density bonus or other inclusionary housing policies, we have chosen to not include California jurisdictions in the new population because we do not know whether the jurisdiction is actively applying the law or whether the law has resulted in production of affordable housing. For more information, see the Results section on California.

As table 3 illustrates, New Jersey and Massachusetts are underrepresented in the survey sample due to bias introduced by relying upon state-level data, while California is substantially overrepresented. However, the final sample, which includes primary and secondary data for 791 jurisdictions, generally has good representation by state when compared to the New Population. The final sample has jurisdictions located in 24 states and the District of Columbia. The only state not represented in the final sample is Minnesota.¹² Additionally, the final sample underrepresents jurisdictions that were identified to have inclusionary housing programs in California and New York.

Programs

Within the final sample of 791 jurisdictions, 1,379 inclusionary housing programs were identified within 24 states and the District of Columbia (see table 4). For jurisdictions in Massachusetts, programs were operationalized as 40R, 40B, and LAU, and each was counted as a program if at least one unit was produced locally under these state policies. This fails to capture other local inclusionary housing programs that would fit the definition used within this study, and it treats state policies as local policies if they have yielded affordable units in a particular jurisdiction. Massachusetts accounts for 26.11 percent of all programs.

For jurisdictions in New Jersey, programs were operationalized as “inclusionary housing,” “accessory dwelling unit,” “redevelopment,” and “housing trust fund,” and each was counted as

¹² At the time of survey administration, Minneapolis, Minnesota was exploring the development of more robust inclusionary housing policies; therefore, they did not want their current program presented in this study.

a program if at least one unit or \$.01 was reported by the jurisdiction. This overestimates the number of inclusionary housing policies in New Jersey, especially since the HTF may be funded by impact fees or in-lieu fees associated with one or more local policies. New Jersey accounts for 55.11 percent of all programs. If we only counted one program per jurisdiction in Massachusetts (n = 233) and New Jersey (n = 401), a conservative count of inclusionary housing programs would be 893 for the final sample.

For the survey sample, a total of 276 programs was reported for 168 jurisdictions; 17 of these programs were reported by Massachusetts jurisdictions that completed the survey (see asterisks in table 4 below), but table 4 presents data on those jurisdictions per the operationalization of programs explained above for secondary data on Massachusetts jurisdictions.

Approximately, one-third of the 168 jurisdictions (57.74 percent) in the survey sample reported having one inclusionary housing program; 26.19 percent had two programs; 9.52 percent had three programs; 3.57 percent had four programs, and 2.98 percent had five or more. Austin, Texas; Aspen, Colorado; and San Francisco, California, reported having more than five programs. These were operationalized as five programs in table 4 and to calculate the mean number of programs, which was 1.68.

Table 4: Number of Inclusionary Housing Programs by State and Jurisdiction (n = 791)

State & Jurisdiction	# of Programs	% of All Programs
California	144	10.44%
Alameda	3	0.22%
Albany	2	0.15%
Avalon	1	0.07%
Berkeley	3	0.22%
Brea	1	0.07%
Campbell	2	0.15%
Capitola	1	0.07%
Carlsbad	1	0.07%
Chula Vista	1	0.07%
Colma	1	0.07%
Concord	2	0.15%
Contra Costa County	1	0.07%
Cupertino	2	0.15%
Danville	1	0.07%
Davis	1	0.07%
Dublin	2	0.15%
East Palo Alto	3	0.22%
Elk Grove	1	0.07%
Emeryville	2	0.15%
Encinitas	1	0.07%
Fort Bragg	2	0.15%
Fremont	3	0.22%
Half Moon Bay	4	0.29%
Hayward	1	0.07%
Huntington Beach	2	0.15%
Irvine	2	0.15%
Lafayette	1	0.07%
Livermore	2	0.15%
Los Altos	2	0.15%
Marin County	1	0.07%
Menlo Park	2	0.15%
Mill Valley	3	0.22%
Milpitas	1	0.07%
Monterey	1	0.07%
Morgan Hill	2	0.15%
Mountain View	3	0.22%
Napa	1	0.07%
Napa County	3	0.22%
Nevada County	1	0.07%
Newark	1	0.07%
Oakland	2	0.15%

Oxnard	3	0.22%
Pacifica	2	0.15%
Palo Alto	1	0.07%
Pasadena	1	0.07%
Petaluma	2	0.15%
Pittsburg	3	0.22%
Pleasanton	3	0.22%
Redwood City	1	0.07%
Rohnert Park	1	0.07%
Roseville	1	0.07%
Sacramento	1	0.07%
Sacramento County	2	0.15%
Salinas	1	0.07%
San Bruno	2	0.15%
San Carlos	2	0.15%
San Diego	4	0.29%
San Francisco	5	0.36%
San Jose	1	0.07%
San Juan Bautista	1	0.07%
San Juan Capistrano	1	0.07%
San Leandro	1	0.07%
San Luis Obispo	1	0.07%
San Marcos	2	0.15%
San Mateo	1	0.07%
San Mateo County	1	0.07%
San Rafael	3	0.22%
Santa Barbara	1	0.07%
Santa Clara	1	0.07%
Santa Monica	2	0.15%
Santa Rosa	1	0.07%
Solana Beach	2	0.15%
Sonoma	1	0.07%
Sonoma County	2	0.15%
South San Francisco	2	0.15%
Sunnyvale	2	0.15%
Tiburon	1	0.07%
Tracy	1	0.07%
Truckee	3	0.22%
Tuolumne County	1	0.07%
Union City	1	0.07%

West Hollywood	3	0.22%
West Sacramento	1	0.07%
Colorado	17	1.23%
Aspen	5	0.36%
Boulder	2	0.15%
Denver	1	0.07%
Durango	1	0.07%
Eagle County	1	0.07%
Glenwood Springs	1	0.07%
Mt. Crested Butte	2	0.15%
Vail	4	0.29%
Connecticut	2	0.15%
Norwalk	1	0.07%
Stamford	1	0.07%
Delaware	2	0.15%
Sussex County	2	0.15%
Florida	2	0.15%
Palm Beach County	1	0.07%
Tallahassee	1	0.07%
Georgia	1	0.07%
Johns Creek	1	0.07%
Hawaii	2	0.15%
Maui County	2	0.15%
Illinois	7	0.51%
Arlington Heights	2	0.15%
Chicago	1	0.07%
Evanston	1	0.07%
Highland Park	1	0.07%
Lake Forest	1	0.07%
St. Charles	1	0.07%
Maine	1	0.07%
Portland	1	0.07%
Maryland	7	0.51%
Annapolis	1	0.07%
Frederick County	2	0.15%
Gaithersburg	1	0.07%
Montgomery County	2	0.15%
Rockville	1	0.07%

Massachusetts	360	26.11%
Abington	1	0.07%
Acton*	2	0.15%
Acushnet	1	0.07%
Adams	1	0.07%
Agawam	1	0.07%
Amherst	2	0.15%
Andover	2	0.15%
Aquinnah	1	0.07%
Arlington*	2	0.15%
Ashburnham	1	0.07%
Ashland	2	0.15%
Attleboro	2	0.15%
Auburn	1	0.07%
Ayer	2	0.15%
Barnstable	2	0.15%
Bedford*	2	0.15%
Bellingham	2	0.15%
Belmont*	1	0.07%
Berkley	1	0.07%
Berlin	1	0.07%
Beverly*	2	0.15%
Billerica	2	0.15%
Blackstone	1	0.07%
Bolton	1	0.07%
Bourne	2	0.15%
Boxborough	2	0.15%
Boxford	1	0.07%
Boylston	1	0.07%
Braintree	2	0.15%
Brewster	2	0.15%
Bridgewater	2	0.15%
Brockton	1	0.07%
Brookline	2	0.15%
Burlington	2	0.15%
Cambridge*	1	0.07%
Canton	2	0.15%
Carlisle	1	0.07%
Carver	2	0.15%
Centerville	1	0.07%

Charlton	1	0.07%
Chatham	2	0.15%
Chelmsford	2	0.15%
Chelsea	2	0.15%
Cohasset	1	0.07%
Concord	2	0.15%
Danvers	2	0.15%
Dartmouth	1	0.07%
Dedham	1	0.07%
Deerfield	1	0.07%
Dennis	2	0.15%
Dighton	2	0.15%
Douglas	1	0.07%
Dover	1	0.07%
Dracut	2	0.15%
Duxbury	2	0.15%
East Bridgewater	1	0.07%
East Longmeadow	1	0.07%
Eastham	2	0.15%
Easthampton	2	0.15%
Easton	3	0.22%
Edgartown	1	0.07%
Falmouth	2	0.15%
Fitchburg	2	0.15%
Foxborough	1	0.07%
Framingham	2	0.15%
Franklin	2	0.15%
Freetown	1	0.07%
Gardner	1	0.07%
Georgetown	2	0.15%
Gloucester	1	0.07%
Grafton	2	0.15%
Great Barrington	1	0.07%
Greenfield	1	0.07%
Groton	2	0.15%
Groveland	1	0.07%
Hadley*	1	0.07%
Hamilton*	2	0.15%
Hanover	2	0.15%
Hanson	1	0.07%

Harvard	1	0.07%
Harwich	2	0.15%
Haverhill	2	0.15%
Hingham	2	0.15%
Holbrook	1	0.07%
Holden	2	0.15%
Holliston	2	0.15%
Holyoke	1	0.07%
Hopkinton	2	0.15%
Hudson	2	0.15%
Hyannis	1	0.07%
Ipswich	2	0.15%
Kingston	2	0.15%
Lakeville	2	0.15%
Lancaster	2	0.15%
Lawrence	2	0.15%
Lee	1	0.07%
Leominster	1	0.07%
Lexington	2	0.15%
Lincoln	1	0.07%
Littleton	2	0.15%
Longmeadow	1	0.07%
Lowell	2	0.15%
Lunenburg	1	0.07%
Lynnfield	3	0.22%
Manchester	1	0.07%
Mansfield	2	0.15%
Marblehead	1	0.07%
Marion	1	0.07%
Marlborough	2	0.15%
Marshfield	2	0.15%
Mashpee	2	0.15%
Maynard	1	0.07%
Medfield	1	0.07%
Medford	2	0.15%
Medway	2	0.15%
Melrose	2	0.15%
Mendon	1	0.07%
Merrimac	1	0.07%
Methuen	1	0.07%

Middleborough	2	0.15%
Middleton	2	0.15%
Milford	1	0.07%
Millbury	2	0.15%
Millis	1	0.07%
Millville	1	0.07%
Milton	1	0.07%
Montague	2	0.15%
Nantucket	1	0.07%
Natick	3	0.22%
Needham	1	0.07%
New Bedford	1	0.07%
Newburyport	2	0.15%
Newton	2	0.15%
Norfolk	2	0.15%
North Andover	1	0.07%
North Attleborough	1	0.07%
North Brookfield	1	0.07%
North Reading	3	0.22%
Northampton	2	0.15%
Northborough	2	0.15%
Northbridge	1	0.07%
Norton	2	0.15%
Norwell	2	0.15%
Norwood	3	0.22%
Oak Bluffs	1	0.07%
Orleans	2	0.15%
Osterville	1	0.07%
Oxford	1	0.07%
Palmer	1	0.07%
Peabody	2	0.15%
Pembroke	1	0.07%
Pepperell	2	0.15%
Pittsfield	2	0.15%
Plainville	2	0.15%
Plymouth	2	0.15%
Plympton	1	0.07%
Princeton	1	0.07%
Provincetown	2	0.15%
Randolph	1	0.07%

Raynham	1	0.07%
Reading	3	0.22%
Revere	1	0.07%
Rockland	1	0.07%
Rockport	1	0.07%
Rowley	2	0.15%
Rutland	1	0.07%
Salem	1	0.07%
Salisbury	2	0.15%
Sandwich	2	0.15%
Saugus	2	0.15%
Scituate	2	0.15%
Seekonk	2	0.15%
Sharon	2	0.15%
Sheffield	1	0.07%
Shrewsbury	2	0.15%
Somerville	1	0.07%
South Hadley	1	0.07%
Southborough	2	0.15%
Southbridge	1	0.07%
Spencer	1	0.07%
Sterling	1	0.07%
Stockbridge	1	0.07%
Stoneham	1	0.07%
Stoughton	1	0.07%
Stow*	2	0.15%
Sturbridge	2	0.15%
Sudbury	2	0.15%
Sutton	2	0.15%
Swampscott	1	0.07%
Swansea	1	0.07%
Taunton	1	0.07%
Templeton	1	0.07%
Tewksbury*	2	0.15%
Tisbury	2	0.15%
Topsfield	1	0.07%
Townsend	2	0.15%
Truro	2	0.15%
Tyngsborough	1	0.07%
Upton	1	0.07%

Uxbridge	2	0.15%
Wakefield	2	0.15%
Walpole	1	0.07%
Waltham	2	0.15%
Ware	1	0.07%
Wareham	2	0.15%
Watertown*	2	0.15%
Wayland	2	0.15%
Wellesley	2	0.15%
Wellfleet	2	0.15%
Wenham	2	0.15%
West Boylston	2	0.15%
West Bridgewater	1	0.07%
West Newbury	1	0.07%
West Tisbury	1	0.07%
Westborough	1	0.07%
Westfield	1	0.07%
Westford	2	0.15%
Westhampton	1	0.07%
Westminster	1	0.07%
Weston	2	0.15%
Westport	2	0.15%
Westwood	1	0.07%
Weymouth	1	0.07%
Whately	1	0.07%
Wilbraham	1	0.07%
Williamsburg	1	0.07%
Williamstown	1	0.07%
Wilmington	2	0.15%
Winchester	2	0.15%
Woburn	2	0.15%
Worthington	1	0.07%
Wrentham	1	0.07%
Yarmouth	2	0.15%
New Jersey	760	55.11%
Aberdeen Twp	3	0.22%
Alexandria Twp	2	0.15%
Allamuchy Twp	2	0.15%
Allendale Boro	2	0.15%
Alpha Boro	1	0.07%

Alpine Boro	2	0.15%
Andover Boro	2	0.15%
Andover Twp	2	0.15%
Atlantic Highlands Boro	2	0.15%
Avalon Boro	1	0.07%
Barnegat Light Boro	2	0.15%
Barnegat Twp	1	0.07%
Bay Head Boro	1	0.07%
Bayonne City	2	0.15%
Beach Haven Boro	1	0.07%
Bedminster Twp	2	0.15%
Belleville Twp	2	0.15%
Belmar Boro	2	0.15%
Berkeley Heights Twp	2	0.15%
Berkeley Twp	2	0.15%
Berlin Boro	2	0.15%
Berlin Twp	1	0.07%
Bernards Twp	2	0.15%
Bernardsville Boro	3	0.22%
Bethlehem Twp	2	0.15%
Beverly City	1	0.07%
Blairstown Twp	2	0.15%
Bloomington Boro	1	0.07%
Bloomsbury Boro	1	0.07%
Bogota Boro	1	0.07%
Boonton Town	2	0.15%
Boonton Twp	1	0.07%
Bordentown City	1	0.07%
Bordentown Twp	1	0.07%
Branchburg Twp	2	0.15%
Branchville Boro	1	0.07%
Brick Twp	2	0.15%
Bridgewater Twp	3	0.22%
Brigantine City	1	0.07%
Burlington City	2	0.15%
Burlington Twp	2	0.15%
Byram Twp	2	0.15%
Califon Boro	1	0.07%

Camden City	1	0.07%
Cape May City	3	0.22%
Cape May Point Boro	2	0.15%
Carlstadt Boro	2	0.15%
Carneys Point Twp	2	0.15%
Cedar Grove Twp	1	0.07%
Chatham Boro	2	0.15%
Chatham Twp	2	0.15%
Cherry Hill Twp	2	0.15%
Chester Boro	3	0.22%
Chester Twp	2	0.15%
Chesterfield Twp	2	0.15%
Cinnaminson Twp	2	0.15%
Clark Twp	1	0.07%
Clayton Boro	2	0.15%
Clifton City	1	0.07%
Clinton Town	3	0.22%
Clinton Twp	2	0.15%
Closter Boro	2	0.15%
Collingswood Boro	1	0.07%
Colts Neck Township	4	0.29%
Commercial Twp	1	0.07%
Cranbury Twp	1	0.07%
Cranford Twp	2	0.15%
Cresskill Boro	4	0.29%
Delanco Twp	3	0.22%
Delaware Twp	3	0.22%
Delran Twp	3	0.22%
Demarest Boro	3	0.22%
Denville Twp	2	0.15%
Deptford Twp	2	0.15%
Dover Town	3	0.22%
Dumont Boro	1	0.07%
Dunellen Boro	1	0.07%
Eagleswood Twp	2	0.15%
East Amwell Twp	2	0.15%
East Brunswick Twp	2	0.15%
East Greenwich Twp	2	0.15%
East Hanover Twp	2	0.15%
East Orange City	1	0.07%

East Rutherford Boro	1	0.07%
East Windsor Twp	2	0.15%
Eatontown Boro	2	0.15%
Edgewater Boro	2	0.15%
Edgewater Park Twp	2	0.15%
Edison Twp	2	0.15%
Egg Harbor City	2	0.15%
Egg Harbor Twp	3	0.22%
Elk Twp	2	0.15%
Emerson Boro	2	0.15%
Englewood City	1	0.07%
Englewood Cliffs Boro	1	0.07%
Englishtown Boro	2	0.15%
Essex Fells Boro	1	0.07%
Evesham Twp	2	0.15%
Ewing Twp	2	0.15%
Fair Lawn Boro	2	0.15%
Fairfield Twp, Essex County	3	0.22%
Fanwood Boro	2	0.15%
Far Hills Boro	3	0.22%
Farmingdale Boro	1	0.07%
Flemington Boro	2	0.15%
Florence Twp	2	0.15%
Florham Park Boro	2	0.15%
Fort Lee Boro	4	0.29%
Frankford Twp	2	0.15%
Franklin Boro	1	0.07%
Franklin Lakes Boro	3	0.22%
Franklin Twp, Hunterdon County	2	0.15%
Franklin Twp, Somerset County	3	0.22%
Franklin Twp, Warren County	3	0.22%
Fredon Twp	1	0.07%
Freehold Boro	1	0.07%
Freehold Twp	1	0.07%
Frelinghuysen Twp	1	0.07%
Frenchtown Boro	3	0.22%

Galloway Twp	3	0.22%
Garwood Boro	1	0.07%
Gibbsboro Boro	1	0.07%
Glassboro Boro	2	0.15%
Glen Gardner Boro	1	0.07%
Glen Rock Boro	2	0.15%
Gloucester City	2	0.15%
Gloucester Twp	3	0.22%
Green Brook Twp	2	0.15%
Green Twp	3	0.22%
Greenwich Twp, Warren County	2	0.15%
Hackettstown Town	3	0.22%
Haddon Heights Boro	3	0.22%
Haddon Twp	1	0.07%
Haddonfield Boro	3	0.22%
Hainesport Twp	2	0.15%
Hamilton Twp, Atlantic County	2	0.15%
Hamilton Twp, Mercer County	2	0.15%
Hammonton Town	1	0.07%
Hampton Boro	1	0.07%
Hampton Twp	3	0.22%
Hanover Twp	2	0.15%
Harding Twp	2	0.15%
Hardwick Twp	1	0.07%
Hardyston Twp	2	0.15%
Harmony Twp	1	0.07%
Harrington Park Boro	2	0.15%
Harrison Town	2	0.15%
Harrison Twp	2	0.15%
Haworth Boro	1	0.07%
Hawthorne Boro	2	0.15%
Helmetta Boro	3	0.22%
High Bridge Boro	2	0.15%
Hightstown Boro	2	0.15%
Hillsborough Twp	2	0.15%
Hillsdale Boro	2	0.15%
Hoboken City	1	0.07%

Ho-Ho-Kus Boro	2	0.15%
Holland Twp	3	0.22%
Holmdel Twp	2	0.15%
Hopatcong Boro	2	0.15%
Hope Twp	1	0.07%
Hopewell Boro	2	0.15%
Hopewell Twp, Cumberland County	2	0.15%
Hopewell Twp, Mercer County	3	0.22%
Howell Twp	2	0.15%
Jackson Twp	3	0.22%
Jefferson Twp	1	0.07%
Jersey City	1	0.07%
Kearny Town	1	0.07%
Kingwood Twp	3	0.22%
Kinnelon Boro	2	0.15%
Knowlton Twp	2	0.15%
Lacey Twp	2	0.15%
Lafayette Twp	3	0.22%
Lambertville City	1	0.07%
Lawnside Boro	1	0.07%
Lawrence Twp, Mercer County	2	0.15%
Lebanon Boro	2	0.15%
Lebanon Twp	2	0.15%
Leonia Boro	1	0.07%
Lincoln Park Boro	2	0.15%
Linwood City	2	0.15%
Little Egg Harbor Twp	1	0.07%
Little Falls Twp	2	0.15%
Little Ferry Boro	2	0.15%
Little Silver Boro	3	0.22%
Livingston Twp	2	0.15%
Logan Twp	1	0.07%
Long Branch City	3	0.22%
Long Hill Twp	3	0.22%
Lopatcong Twp	2	0.15%
Lower Twp	1	0.07%

Lumberton Twp	2	0.15%
Lyndhurst Twp	1	0.07%
Madison Boro	1	0.07%
Mahwah Twp	2	0.15%
Manalapan Twp	2	0.15%
Manasquan Boro	1	0.07%
Manchester Twp	2	0.15%
Mansfield Twp, Burlington County	2	0.15%
Mansfield Twp, Warren County	2	0.15%
Mantua Twp	3	0.22%
Manville Boro	3	0.22%
Maple Shade Twp	1	0.07%
Maplewood Twp	3	0.22%
Marlboro Twp	3	0.22%
Medford Twp	2	0.15%
Mendham Boro	2	0.15%
Mendham Twp	1	0.07%
Merchantville Boro	1	0.07%
Metuchen Boro	2	0.15%
Middle Twp	2	0.15%
Middletown Twp	3	0.22%
Midland Park Boro	2	0.15%
Milford Boro	1	0.07%
Millstone Boro	1	0.07%
Millstone Twp	2	0.15%
Millville City	3	0.22%
Monmouth Beach Boro	1	0.07%
Monroe Twp, Gloucester County	2	0.15%
Monroe Twp, Middlesex County	3	0.22%
Montague Twp	2	0.15%
Montclair Twp	2	0.15%
Montgomery Twp	2	0.15%
Montvale Boro	2	0.15%
Montville Twp	2	0.15%
Moonachie Boro	1	0.07%
Moorestown Twp	2	0.15%

Morris Plains Boro	1	0.07%
Morris Twp	2	0.15%
Morristown Town	3	0.22%
Mount Arlington Boro	1	0.07%
Mount Ephraim Boro	1	0.07%
Mount Holly Twp	1	0.07%
Mount Laurel Twp	2	0.15%
Mount Olive Twp	4	0.29%
Mountain Lakes Boro	2	0.15%
Neptune City Boro	1	0.07%
Neptune Twp	3	0.22%
Netcong Boro	2	0.15%
New Brunswick City	1	0.07%
New Hanover Twp	2	0.15%
New Milford Boro	1	0.07%
New Providence Boro	2	0.15%
Newark City	1	0.07%
Newton Town	3	0.22%
North Arlington Boro	2	0.15%
North Brunswick Twp	2	0.15%
North Caldwell Boro	1	0.07%
North Haledon Boro	2	0.15%
North Hanover Twp	1	0.07%
North Plainfield Boro	1	0.07%
North Wildwood City	2	0.15%
Northvale Boro	2	0.15%
Norwood Boro	2	0.15%
Nutley Twp	1	0.07%
Oakland Boro	2	0.15%
Ocean City	1	0.07%
Ocean Twp, Monmouth County	1	0.07%
Ocean Twp, Ocean County	4	0.29%
Oceanport Boro	3	0.22%
Old Bridge Twp	2	0.15%
Old Tappan Boro	2	0.15%

Oldmans Twp	2	0.15%
Oradell Boro	2	0.15%
Orange City	1	0.07%
Oxford Twp	1	0.07%
Palmyra Boro	1	0.07%
Paramus Boro	2	0.15%
Park Ridge Boro	2	0.15%
Parsippany-Troy Hills Twp	2	0.15%
Paterson City	1	0.07%
Peapack-Gladstone Boro	1	0.07%
Pemberton Boro	2	0.15%
Pemberton Twp	2	0.15%
Pennington Boro	3	0.22%
Pennsauken Twp	1	0.07%
Pennsville Twp	2	0.15%
Pequannock Twp	2	0.15%
Perth Amboy City	1	0.07%
Pilesgrove Twp	1	0.07%
Pine Beach Boro	2	0.15%
Pine Hill Boro	1	0.07%
Piscataway Twp	2	0.15%
Pitman Boro	1	0.07%
Pittsgrove Twp	3	0.22%
Plainsboro Twp	2	0.15%
Pohatcong Twp	2	0.15%
Point Pleasant Boro	1	0.07%
Pompton Lakes Boro	1	0.07%
Princeton	3	0.22%
Ramsey Boro	2	0.15%
Randolph Twp	2	0.15%
Raritan Boro	2	0.15%
Raritan Twp	2	0.15%
Readington Twp	2	0.15%
Red Bank Boro	2	0.15%
Ridgefield Boro	1	0.07%
Ridgefield Park Village	2	0.15%
Ridgewood Village	1	0.07%

Ringwood Boro	2	0.15%
River Vale Twp	2	0.15%
Riverdale Boro	3	0.22%
Riverside Twp	1	0.07%
Riverton Boro	3	0.22%
Robbinsville Twp	2	0.15%
Rochelle Park Twp	3	0.22%
Rockaway Boro	1	0.07%
Rockaway Twp	2	0.15%
Rockleigh Boro	1	0.07%
Rocky Hill Boro	2	0.15%
Roseland Boro	2	0.15%
Roselle Park Boro	1	0.07%
Roxbury Twp	2	0.15%
Rumson Boro	3	0.22%
Rutherford Boro	2	0.15%
Saddle Brook Twp	2	0.15%
Saddle River Boro	1	0.07%
Sandyston Twp	2	0.15%
Scotch Plains Twp	2	0.15%
Sea Isle City	1	0.07%
Secaucus Town	2	0.15%
Shrewsbury Boro	2	0.15%
Somers Point City	2	0.15%
Somerville Boro	1	0.07%
South Brunswick Twp	2	0.15%
South Hackensack Twp	2	0.15%
South Harrison Twp	1	0.07%
South Orange Village Twp	2	0.15%
South Plainfield Boro	2	0.15%
Southampton Twp	2	0.15%
Sparta Twp	2	0.15%
Spring Lake Boro	1	0.07%
Spring Lake Heights Boro	1	0.07%
Springfield Twp, Burlington County	2	0.15%

Springfield Twp, Union County	4	0.29%
Stafford Twp	3	0.22%
Stanhope Boro	1	0.07%
Stillwater Twp	3	0.22%
Stockton Boro	1	0.07%
Stone Harbor Boro	2	0.15%
Stratford Boro	1	0.07%
Summit City	2	0.15%
Swedesboro Boro	3	0.22%
Teaneck Twp	2	0.15%
Tenaflly Boro	3	0.22%
Teterboro Boro	1	0.07%
Tewksbury Twp	3	0.22%
Tinton Falls Boro	2	0.15%
Toms River Township	3	0.22%
Totowa Boro	1	0.07%
Trenton City	1	0.07%
Tuckerton Boro	2	0.15%
Union City	1	0.07%
Union Twp, Hunterdon County	2	0.15%
Union Twp, Union County	2	0.15%
Upper Freehold Twp	3	0.22%
Upper Pittsgrove Twp	3	0.22%
Upper Saddle River Boro	2	0.15%
Upper Twp	3	0.22%
Vernon Twp	1	0.07%
Verona Twp	1	0.07%
Vineland City	2	0.15%
Voorhees Twp	3	0.22%
Waldwick Boro	2	0.15%
Wall Twp	2	0.15%
Wallington Boro	2	0.15%
Wanaque Boro	3	0.22%
Wantage Twp	2	0.15%
Warren Twp	2	0.15%

Washington Boro	3	0.22%
Washington Twp, Bergen County	1	0.07%
Washington Twp, Gloucester County	2	0.15%
Washington Twp, Morris County	2	0.15%
Washington Twp, Warren County	2	0.15%
Watchung Boro	3	0.22%
Wayne Twp	2	0.15%
Weehawken Twp	2	0.15%
Wenonah Boro	2	0.15%
West Amwell Twp	2	0.15%
West Cape May Boro	2	0.15%
West Deptford Twp	1	0.07%
West Milford Twp	3	0.22%
West New York Town	1	0.07%
West Orange Twp	3	0.22%
West Windsor Twp	2	0.15%
Westampton Twp	2	0.15%
Westfield Town	1	0.07%
Westwood Boro	1	0.07%
Wharton Boro	2	0.15%
Wildwood Crest Boro	1	0.07%
Willingboro Twp	2	0.15%
Winslow Twp	2	0.15%
Woodbridge Twp	2	0.15%
Woodbury Heights Boro	1	0.07%
Woodcliff Lake Boro	2	0.15%
Woodland Park Borough	2	0.15%
Wood-Ridge Boro	2	0.15%
Woolwich Twp	2	0.15%
Wrightstown Boro	1	0.07%
Wyckoff Twp	2	0.15%
New Mexico	1	0.07%
Santa Fe	1	0.07%

New York	8	0.58%
Brookhaven	1	0.07%
Great Neck Plaza	2	0.15%
New York City	2	0.15%
Tarrytown	3	0.22%
North Carolina	11	0.80%
Asheville	2	0.15%
Black Mountain	1	0.07%
Carrboro	1	0.07%
Chapel Hill	1	0.07%
Charlotte	1	0.07%
Davidson	2	0.15%
Durham	1	0.07%
Manteo	1	0.07%
Winston-Salem	1	0.07%
Oregon	4	0.29%
Ashland	4	0.29%
Pennsylvania	4	0.29%
College Township	1	0.07%
Ferguson	1	0.07%
Harris	1	0.07%
Patton	1	0.07%
Rhode Island	9	0.65%
Barrington	1	0.07%
Bristol	1	0.07%
East Greenwich	1	0.07%
Exeter	1	0.07%
Hopkinton	1	0.07%
Jamestown	1	0.07%
Narragansett	1	0.07%
North Kingstown	1	0.07%
Richmond	1	0.07%
Tennessee	2	0.15%
Nashville	2	0.15%
Texas	5	0.36%
Austin	5	0.36%
Utah	1	0.07%
Park City	1	0.07%
Vermont	3	0.22%
Burlington	2	0.15%

Hinesburg	1	0.07%
Virginia	7	0.51%
Arlington County	3	0.22%
Fairfax County	2	0.15%
Loudoun County	1	0.07%
Virginia Beach	1	0.07%
Washington	17	1.23%
Bellevue	1	0.07%
Issaquah	1	0.07%
Kenmore	4	0.29%

King County	1	0.07%
Kirkland	1	0.07%
Mercer Island	2	0.15%
Redmond	1	0.07%
Sammamish	1	0.07%
Seattle	5	0.36%
Washington DC	2	0.15%
District of Columbia	2	0.15%
TOTAL	1379	100.00%

State-Level Policies

The design and application of state-level policies that require or enable inclusionary housing are described below for California, New Jersey, and Massachusetts.

California

California has two state laws that influence the adoption and implementation of inclusionary housing. The housing element law is not and does not require inclusionary housing programs, but this state-level planning and reporting requirement promotes transparency and local housing policies and programs that advance housing for all residents.

The density bonus law meets the definition of inclusionary housing used in this study, so technically every county and municipality in California has (or should have) an inclusionary housing program (CA Government Code 1979). It is unknown how many jurisdictions do not comply with the law and do not have a local ordinance. There are 58 counties and 482 municipalities. However, few survey responders reported the state density bonus law as one of their inclusionary housing programs, even if they had a local ordinance for its implementation. Subsequently, California's density bonus is only discussed here and presented in survey results for responders who opted to list it as an established policy.

Worth noting, California also has laws that have hindered the implementation and scope of inclusionary housing policies. In *Palmer/Sixth Street Properties v. City of Los Angeles* in 2009, the Appellate Court ruled that California municipalities cannot have mandatory inclusionary zoning ordinances for rental housing development, which was deemed an illegal form of rent control.

Housing Element Law

Since 1969, California has required that all local governments, including cities and counties, plan to meet the housing needs of everyone in the community. Local governments meet this requirement by adopting housing plans as part of their general plan, which is required by the state. General plans act as the roadmap for how the city and/or county will develop on seven

elements: land use, transportation, conservation, noise, open space, safety, and housing. The law mandating housing as an element of each jurisdiction's general plan is known as the housing-element law (CA Government Code 1967).

The California Department of Housing and Community Development (HCD) reviews and approves local government's housing element, which must be updated every five or eight years. With the input of each region's Council of Governments (COG), HCD conducts the regional housing needs assessment by income levels to decide the amount of housing that must be planned for in the housing elements, and COG allocates the housing needs for which each local government will be responsible in a Regional Housing Need Allocation Plan. Annual progress reports are submitted to HCD by each local government.

Density Bonus Law

The state of California passed a density bonus law (CA Government Code 1979) in 1979. Jurisdictions are required to adopt an ordinance specifying how the local government will comply with this law. The law requires local governments to provide density bonuses and other incentives to developers of: (1) affordable housing for very low-, low-, and moderate-income households; (2) senior housing; (3) transitional housing for youth from foster care, veterans, or the homeless; (4) developments that include child care centers, and (5) particular land donations. The density bonus applies to residential projects of five or more units.

Very low- or low-income affordable rental units must be kept affordable for at least 55 years. Moderate-income units must be for-sale homes in order to comply with the density bonus law. Owner-occupied units must use an equity-sharing agreement. The difference between the affordable purchase price and the fair market value of the property (that is, the local government's initial subsidy) shall be recaptured upon resale, along with part of the appreciation, which will be proportional to the local government's initial subsidy relative to the fair market value.

A jurisdiction must provide a density bonus and concessions or incentives will be granted at the applicant's request based on specific criteria. Concessions or incentives include: (1) a reduction in site development standards or a modification of zoning code requirements or architectural design requirements (for example, reduction in setbacks or parking); (2) approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development; and (3) other regulatory incentives or concessions that reduce cost to provide for affordable housing costs.

Table 5: Target Group, Required Affordable Units for Density Bonus, and Number of Concessions or Incentives to Be Granted

Target Group*	Target Units	Density Bonus	# of Concessions or Incentives
Very Low Income ⁽¹⁾	5%	20%	1
	10%	33%	2
	15% or above	35%	3
Lower Income ⁽²⁾	10%	20%	1
	20%	35%	2
	30% or above	35%	3
Moderate Income ⁽³⁾ (condominium or planned development)	10%	5%	1
	20%	15%	2
	30% or above	25%	3

* California Civil Code Section 65915 applies only to proposed developments of five (5) or more units.

⁽¹⁾ For each 1 percent increase over 5 percent of the Target Units the Density Bonus shall be increased by 2.5 percent up to a maximum of 35 percent

⁽²⁾ For each 1 percent increase over 10 percent of the Target Units the Density Bonus shall be increased by 1.5 percent up to a maximum of 35 percent

⁽³⁾ For each 1 percent increase over 10 percent of the Target Units the Density Bonus shall be increased by 1 percent up to a maximum of 35 percent

[Reproduced from 21 Elements (June 18, 2013) State Density Bonus Law. San Mateo: San Mateo County Department of Housing and the City/County Association of Governments of San Mateo County]

For senior housing or transitional housing, the density bonus shall be 20 percent of the number of those units within the development. Transitional housing must be affordable at very low-income levels. Developers may also donate land and be granted a 15 percent density bonus so long as the land is within a quarter mile of the proposed development. The land must be zoned appropriately to produce at least 10 percent of the developable units as very low-income units and the acreage must allow for at least 40 units. For each 1 percent increase over the 10 percent of the affordable units to very low-income households, the density bonus shall increase by 1 percent up to a maximum of 35 percent. Deed restrictions shall restrict the affordability of units for at least 55 years.

For child care facilities within residential or mixed-use developments, the density bonus shall be equal to or greater than the square footage of the child care facility within the development or the jurisdiction may grant an additional concession or incentive that contributes to the economic feasibility of the child care facility.

Unfortunately, the state of California does not require local governments to report on the use and impact of the density bonus law. Only 20 out of the 83 California jurisdictions in the Survey Sample listed a density bonus program. Three of those jurisdictions reported only having a density bonus program: Milpitas, Santa Clara, and Tracy. It is possible that many other jurisdictions do have a density bonus policy in accordance with state law but did not report it on their surveys. This most likely occurred because respondents were thinking only of local policies or because the state density bonus policy is not producing affordable housing. The jurisdictions

that reported on the density bonus are included in the survey findings (See Program Characteristics section).

New Jersey

The New Jersey Supreme Court declared in *Southern Burlington County N.A.A.C.P. v. Mount Laurel Township* (commonly called *Mount Laurel I*), 67 N.J. 151 (1975), and *Southern Burlington County N.A.A.C.P. v. Mount Laurel Township* (commonly called *Mount Laurel II*), 456 N.J. A.2d 390 (1983), that municipal land use regulations that prevent affordable housing for lower income individuals and families are unconstitutional. Not only did the court prohibit exclusionary zoning, but it mandated that municipalities take affirmative action to provide the locality's fair share of affordable housing for low- and moderate-income households. The Mount Laurel doctrine is widely regarded as one of the most significant civil rights cases in the United States since *Brown v. Board of Education* in 1954.

Following the Mount Laurel decisions, the state legislature enacted the Fair Housing Act in 1985, which established the Council on Affordable Housing (COAH) to evaluate the statewide need for affordable housing, allocate that need and fair share targets for municipalities, review and approve municipal housing plans for meeting fair share obligations, and support municipalities during planning and implementation.

In 2010, Governor Chris Christie suspended COAH and began the process to dissolve it and move its functions to the executive branch, which would make the implementation of the Fair Housing Act more vulnerable to political winds and conflict of interest. The state Supreme Court ruled that this was not within his power and ordered COAH to develop their third round of regulations for developing affordable housing and fair share requirements. In 2014, COAH failed to meet the deadline for the regulations set forth by the court. In the absence of action by the state, the court ruled in March 2015 that determination of affordable housing obligations would be administered by the court. At the end of 2014, COAH required jurisdictions—for the last time under their authority—to update all of their data in the system.

While the Mount Laurel doctrine and Fair Housing Act in New Jersey do not require inclusionary housing policies or programs in local municipalities, the fair share requirement has prompted the vast majority of jurisdictions to adopt one or more inclusionary housing programs as defined within this study (see Impact section).

Massachusetts

Chapter 40B is a Massachusetts law (M.G.L. c. 40B, §§ 20-23) enacted in 1969 to address exclusionary zoning statewide that prevented the development of low- and moderate-income housing, which was subsidized under federal or state programs. The goal of this state statute is to make at least 10 percent of housing stock in each community affordable for moderate-income households. As of 2014, 48 out of 351 communities had met this goal.

Chapter 40B allows developers to apply to the municipal zoning authority for a comprehensive permit on a for-sale development, as long as 25 percent of the units or more will be affordable to

households at 80 percent of AMI; or on a rental development, as long as 20 percent of units or more are affordable to households at 50 percent of AMI. The proposed development must first receive a project eligibility letter from a subsidizing agency. Then, the project is reviewed by the local Zoning Board of Appeals (ZBA) through a comprehensive permit. For example, under Chapter 40B, the ZBA can approve a project with greater density to make it financially feasible to develop affordable housing.

In municipalities where less than 10 percent of the municipality's year-round housing meets the state definition of subsidized (and alternative standards are not met), developers can appeal an unfavorable local decision (denials or the imposition of economically infeasible requirements) to the State Housing Appeals Committee (HAC), and the HAC can order issuance of the permit. Developers can use the comprehensive permit process in municipalities above 10 percent but cannot appeal unfavorable decisions to the HAC.

Department of Housing and Community Development (DHCD) maintains Subsidized Housing Inventory (SHI) to determine if a community meets the affordable housing goal under Chapter 40B. The statutory definition of low- and moderate-income housing is "any housing subsidized by the federal or state government under any program to assist the construction of low- or moderate-income housing." This definition effectively dis-incentivized communities to undertake local housing initiatives that did not require any financial subsidy from federal or state sources. In response, the legislature directed DHCD to create the Local Initiative Program (LIP) in 1990.

LIP allows DHCD to provide technical assistance that qualifies as a subsidy, thereby allowing developers access to comprehensive permits without using federal and state subsidies. In other words, LIP allows developers to apply for comprehensive permits for projects developed solely with local resources (for example, a density bonus granted under the comprehensive permit). Unlike other subsidy programs, however, LIP can only be used for a comprehensive permit if municipal officials approve the concept in advance. Under LIP, DHCD provides technical support to both the local government and the developer, and it reviews certain aspects of the project such as income limits, fair marketing, return-on-investment limitations, and long-term affordability for the units. In addition, DHCD is responsible for issuing the project eligibility letter for a project.

Local Action Units (LAUs) are an offshoot of the LIP that gives communities the opportunity to include housing units in the SHI that were built without a comprehensive permit. Thus, LAUs meet LIP criteria except for one aspect: while LIP projects use comprehensive permitting, LAU projects do not.

In 2004, the legislature passed the Smart Growth Zoning Overlay District Act (M.G.L. c. 40R), which encourages communities to create smart growth districts. These districts shall include at least 20 percent of affordable housing units to households at or below 80 percent of area median income, and be located in areas where the combined housing and transportation costs are relatively low. Known as the Chapter 40R program, this state statute requires that affordable housing is placed in all smart growth zoning districts with affordability periods that are no less than 30 years. DHCD is the regulatory agency and administers the program. Chapter 40

regulations were updated in 2013. A major update is the definition of area of concentrated development, which is used to guide the creation of smart growth zoning districts.

All three state policies—Chapter 40B, LIP, and Chapter 40R—require participating projects to set aside a portion of units with long-term affordability. They all meet the definition of inclusionary housing program in this study.

Impact

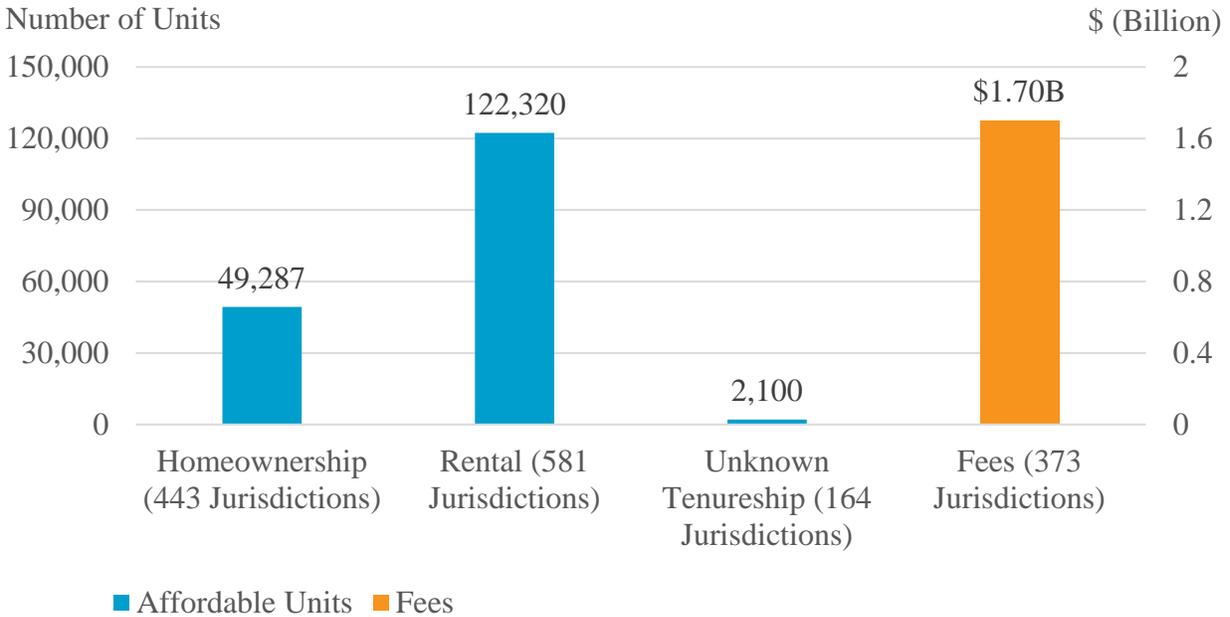
Information on the impact of inclusionary housing programs was collected from both the survey and secondary data sources. Survey questions about fees collected and units produced were often left unanswered, as responders did not know the answers, and it would have been a lengthy process to track down estimates or the jurisdiction had not adequately tracked production. This is an inherent problem in the field, which warrants attention by practitioners and policy makers. After all, it is impossible to assess the use of a policy if basic outcome data is not being tracked.

Despite the challenges with missing data, 373 jurisdictions reported a total of \$1.7 billion in impact or in-lieu fees for the creation of affordable housing. Appendix A presents fees and unit counts by jurisdiction for the survey sample. Appendix B presents this information for New Jersey jurisdictions. Appendix C presents this information for Massachusetts jurisdictions. Jurisdictions also reported creating a total of 173,707 units of affordable housing, which almost entirely excludes additional units created with the \$1.7 billion in fees:

- 443 jurisdictions reported creating 49,287 affordable homeownership units;
- 581 jurisdictions reported creating 122,320 affordable rental units; and
- 164 jurisdictions reported an additional 2,100 affordable homes.

These numbers substantially underestimate the total fees and units created by the entire inclusionary housing field, since only a proportion of the programs are represented. For information that varies by data source (for example, survey versus state-level databases), we present additional information on fees and unit counts by various subsamples.

Figure 1: Fees, Rentals, and Homeownership Units Produced by Inclusionary Housing Programs



Survey Sample

To establish the various fees and units reported amongst survey responders and secondary data sources, we removed the responses of 11 jurisdictions in Massachusetts to prevent duplicating state-level data. This resulted in a potential sample of 157 jurisdictions; but as previously mentioned, ample data was missing. Of those, 83 jurisdictions (or 53 percent) were in California. Table 6 presents the total fees, rental units, and homeownership units and the number of respective jurisdictions that reported greater than zero for each variable.

Table 6: Total Inclusionary Housing Fees and Units Among Survey Sample Reporting Greater than Zero Units or Fees (n = 158)

Production	# Jurisdictions	Total Units or Fees	Mean	Median	Minimum	Maximum
Rental Units	81	77,788	960	410	1	14,731
Homeownership Units	81	29,094	359	87	3	9,561
Total Units	95	106,882	1,125	380	1	15,038
HTF \$	58	\$1,002,764,305	\$17,289,040	\$2,062,685	\$26,550	\$141,533,538

Of the 157 jurisdictions, 63 jurisdictions did not provide information on fees collected, and 36 reported that no fees had been collected. Only 58 jurisdictions accounted for \$1 billion in fees

collected, and 34 of those jurisdictions were in California and accounted for 61 percent of all collected fees reported in the survey sample. The largest producer of fees was San Diego, California.

Of the 157 jurisdictions, 46 did not provide information on rental units created, and 30 jurisdictions reported no rental units had been created. Only 81 jurisdictions produced the 77,788 affordable rentals; of those, 67 percent of units were in 42 jurisdictions in California. The largest producer of affordable rental units was San Diego, California.

Of the 157 jurisdictions, 45 did not provide information on homeownership units created, and 31 jurisdictions reported no homeownership units had been created. Only 81 jurisdictions produced the 29,094 affordable ownership units; of those, 26 percent of units were in 45 jurisdictions in California. The largest producer of affordable homeownership units was Montgomery County, Maryland.

New Jersey

Of the 565 jurisdictions in the state of New Jersey, 401 reported money within a housing trust fund or units produced from inclusionary housing policies (see Appendix B). As explained in the Methods section, housing trust funds in New Jersey have been predominantly funded by in-lieu fees and impact fees from inclusionary housing policies. For housing trust funds, 315 jurisdictions reported a total of \$697,450,002 collected. For inclusionary housing units, 347 jurisdictions reported a total of 34,631 units. Of the 401 jurisdictions with either inclusionary housing units or fees, 251 jurisdictions reported having both. Table 7 presents descriptive statistics of fees and units by type of unit for jurisdictions that reported greater than zero units or fees.

Table 7: Inclusionary Housing Fees and Units for New Jersey Jurisdictions Reporting Greater than Zero Units or Fees

Production	# Jurisdictions	Total Units or Fees	Mean	Median	Minimum	Maximum
Rental Units	296	18,193	61	29	1	571
Homeownership Units	204	15,623	77	39	1	556
Unknown Units	40	821	21	10	1	120
Total Units	347	34,631	100	50	1	1,087
HTF \$	315	\$697,450,002	\$2,214,127	\$650,166	\$1	\$22,065,028

The inclusionary housing policies include three categories in the state database: (1) “inclusionary development,” which is a category used to describe affordable housing produced on-site within new construction; (2) “accessory dwelling units” because this mechanism allowed lots to have zoning variances in return for the production of affordable housing; and (3) “redevelopment” projects, which included projects where the underlying zoning for a project was changed in return for including some affordable housing units. Table 8 presents the number of units

produced for each category and descriptive statistics for jurisdictions that had at least one unit in the category.

Table 8: Inclusionary Housing Units by Policy Category in New Jersey Jurisdictions Reporting Greater than Zero Units

Category	# Jurisdictions	# Units	Mean	Median	Minimum	Maximum
Inclusionary Development	287	30,008	105	54	1	942
Redevelopment Accessory Dwelling	59	3,597	61	41	3	276
Dwelling	99	1,026	10	10	1	52
Total Units	347	34,631	100	50	1	1,087

The database with unit information was organized by development. The 34,631 units in 347 jurisdictions existed within 1,165 development projects.

Massachusetts

Of 351 municipalities in Massachusetts, 233 had at least one inclusionary housing unit that was generated by either a local or a state-level inclusionary housing policy (see Appendix C). We were not able to gather state-level data on fees. These 233 jurisdictions in total produced 32,188 units, of which 26,339 (82 percent) were rental units, 4,570 (14 percent) were homeownership units, and 1,279 (4 percent) units that were either rental or homeownership. Table 9 presents descriptive statistics for units by tenure.

Table 9: Inclusionary Housing Units for Massachusetts Jurisdictions Reporting Greater than Zero Units

Tenure	# Jurisdictions	# Units	Mean	Median	Minimum	Maximum
Rental Units	204	26,339	129	98	1	634
Homeownership Units	158	4,570	29	16	1	316
Unknown Units	124	1,279	10	6	1	61
Total Units	233	32,188	138	100	1	657

Table 10 presents descriptive statistics for units by policy category. Four categories were identified: (1) “40B CP Units,” which include comprehensive permit developments in SHI with federal and/or state subsidies; (2) “40R Units,” which contain all affordable units developed under Chapter 40R; (3) “LAUs,” which include affordable units generated through the LAU program; and (4) “LIP Units,” which include units in developments with only local subsidies generated through the LIP program that uses the comprehensive permit process.

Although LAUs are known as a program component of LIP, they are grouped into separate categories here because, as mentioned earlier, while LIP projects use comprehensive permitting, LAU projects do not. There were 29,107 40B comprehensive permit units in 219 jurisdictions.

The Chapter 40R project list contained 25 developments in 18 jurisdictions, totaling 1,088 affordable units. For LAUs, 1,192 units were located in 69 jurisdictions. A total of 801 LIP units were found in 69 jurisdictions.

Table 10: Inclusionary Housing Units by Policy Category in Massachusetts Jurisdictions Reporting Greater than Zero Units

Category	# Jurisdictions	# Units	Mean	Median	Minimum	Maximum
40B CP Units	219	29,107	133	100	1	657
40R Units	18	1,088	60	53	3	148
LAUs	122	1,192	10	6	1	61
LIP Units	69	801	12	9	1	46
Total Units	233	32,188	138	100	1	657

Note: Not all LAUs are inclusionary housing units as described in the Method section. The total number of inclusionary housing units is therefore slightly overestimated. CP: Comprehensive permit.

Program Characteristics

To explore inclusionary housing program characteristics, we analyzed the survey sample, which included information submitted by practitioners and surveys completed by researchers. The sample includes 273 programs in 24 states and District of Columbia (see table 11). This varies from the number of programs identified in the survey data because three inclusionary housing programs in Austin, Texas were missing information on program characteristics. This data significantly underrepresents Massachusetts and New Jersey since almost all the information for these states came from public data sets that did not capture program characteristics.

Table 11: Number of Inclusionary Housing Programs with Survey Data by State

State	Number of Programs	% of Programs
California	144	52.75%
Colorado	17	6.23%
Connecticut	2	0.73%
Delaware	2	0.73%
Florida	2	0.73%
Georgia	1	0.37%
Hawaii	2	0.73%
Illinois	7	2.56%
Maine	1	0.37%
Maryland	7	2.56%
Massachusetts	17	6.23%
New Jersey	0	0%
New Mexico	1	0.37%
New York	8	2.93%

North Carolina	11	4.03%
Oregon	4	1.47%
Pennsylvania	4	1.47%
Rhode Island	9	3.30%
Tennessee	2	0.73%
Texas	2	0.73%
Utah	1	0.37%
Vermont	3	1.10%
Virginia	7	2.56%
Washington	17	6.23%
Washington DC	2	0.73%
Total	273	100.00%

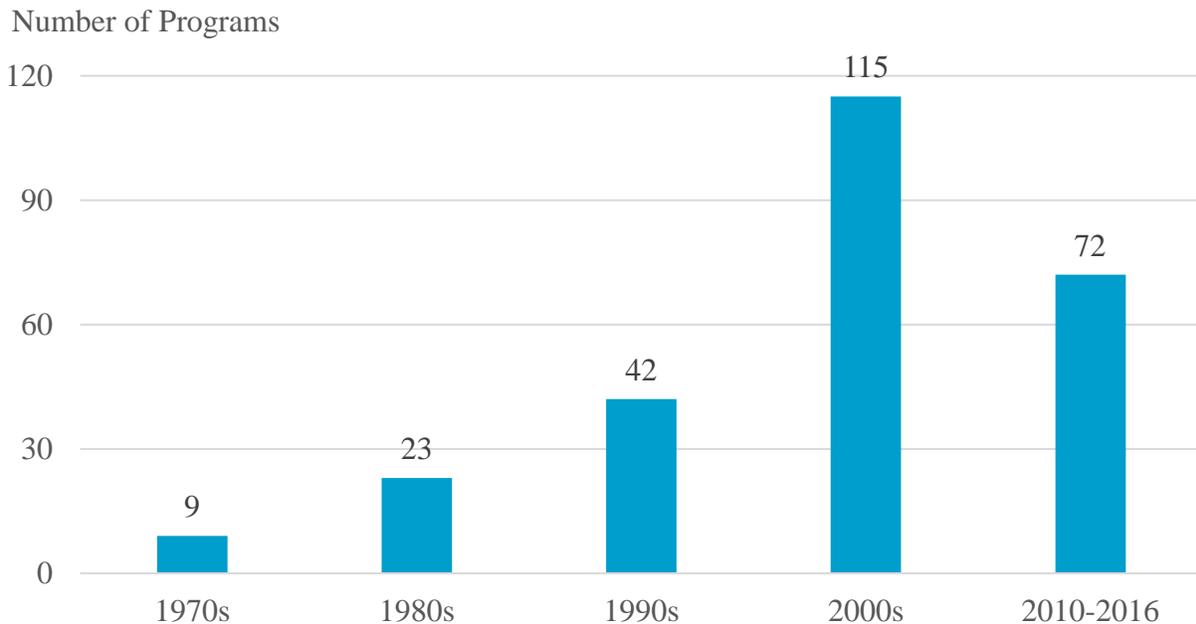
Table 12 summarizes the program characteristics for all inclusionary housing programs in the sample. Sample sizes vary by factor due to: (1) missing data; (2) responders not knowing the answer to certain questions; or (3) questions not applying to the program. See Appendix A for program information by jurisdiction.

Year of Inclusionary Housing Policy Adoption and Geographic Application

Inclusionary housing policies have existed for nearly half a century. Fairfax County, Virginia, which has the oldest policy in the U.S., passed its first inclusionary zoning ordinance in 1971. Montgomery County, Maryland, established the Moderately Priced Dwelling Unit program in 1974. Barring the survey’s potential inaccuracy about the year in which an inclusionary housing program was adopted,¹³ the number of inclusionary housing programs has grown steadily in the past four decades. Within this sample, the number of programs roughly doubled each decade with over 70 percent of programs being adopted after 2000.

¹³ The survey asked the year in which an inclusionary housing program was adopted. However, it appears that survey responders interpreted this question inconsistently. Some respondents appeared to report the original year that the program was adopted, while others reported the year when a policy was updated or modified.

Figure 2: Number of Inclusionary Housing Programs by Year Adopted (n = 261)



Seventy-one percent of inclusionary housing programs apply to the entire jurisdiction (that is, town, city, or county), and an additional 7 percent apply to the entire jurisdiction, but program requirements vary by geography. The remaining 22 percent of programs only cover certain zones, neighborhoods, or districts within the jurisdiction.

Policy Type

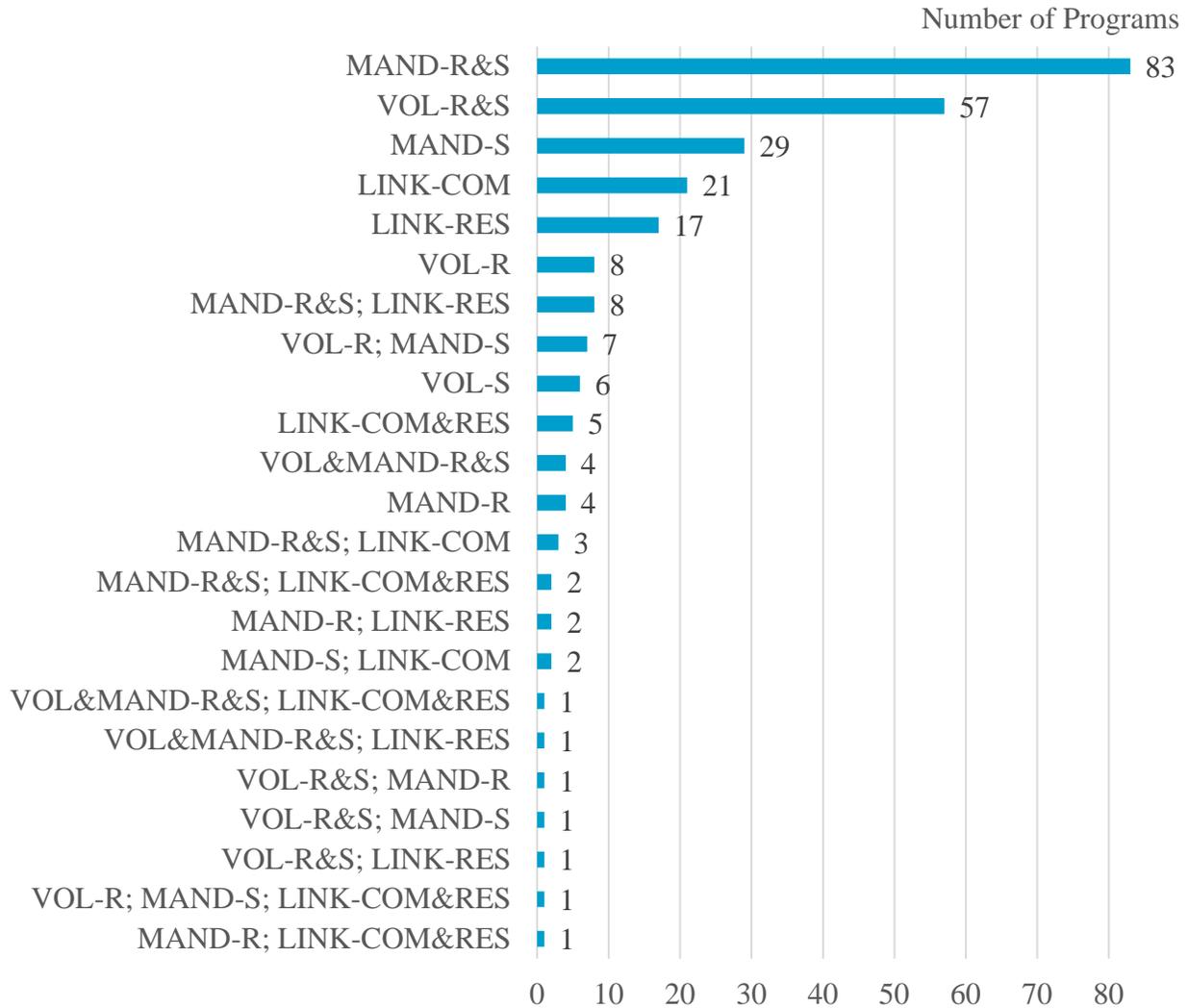
In the survey, responders were asked to classify their inclusionary housing program(s) in one or more of these six policy types: (1) voluntary program with rental development; (2) voluntary program with for-sale development; (3) mandatory program with rental development; (4) mandatory program with for-sale development; (5) linkage/impact fee program with commercial development; and (6) linkage/impact fee program with residential development.

A policy is defined as voluntary if developers can opt out of the program; whereas mandatory means they cannot. This question asked the responder to check all that applies by each program because some jurisdictions may collapse various policy types under one program, while other jurisdictions may design various ordinances or policies for each type of policy. The question’s design ensured we understood what each inclusionary housing program included.

Out of 265 sample programs that reported policy type, mandatory programs applying to for-sale development was the most prevalent type (142, or 54 percent). The next most common type was a mandatory program applying to rental development (110, or 43 percent). Voluntary programs applying to rental and for-sale development consisted of slightly less than one-third of the survey sample (31 percent and 27 percent, respectively). Only a small portion of policies were linkage or impact fees (41, or 15 percent of the sample programs applied to residential development; and 34, or 13 percent applied to commercial development). A total of 12 percent of sample programs

reported more than one type, most of which were either mandatory and linkage or impact fee programs, or mandatory and voluntary programs.

Figure 3: Number of Inclusionary Housing Program by Type of Policy (n = 265)



Notes:

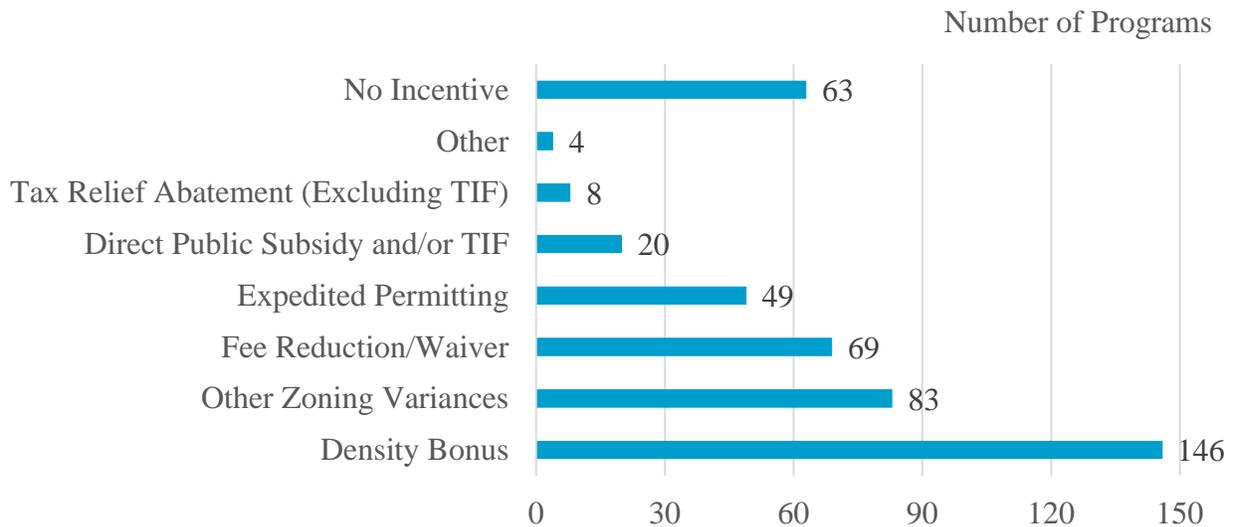
MAND: mandatory; VOL: voluntary; LINK: linkage/impact fee; R: rental; S: for-sale; COM: commercial; RES: residential

Incentives

Many programs provide incentives to developers in order to: (1) entice them to participate in the inclusionary housing program (as is the case in voluntary programs); or (2) influence them to make a stronger impact, such as providing more units or deeper affordability (which can be seen in both voluntary and mandatory policies).

Of 187 programs that reported at least one incentive, many programs offer more than one kind of incentive; therefore, responders were asked to check incentives offered in each program. A density bonus was the most frequent incentive offered to developers (146 programs, or 78 percent). A substantial share of programs (44 percent) reported allowing zoning variances other than density bonus (for example, reduction of parking standards). Other common incentives included fee reduction or waiver (69 programs, or 37 percent) and expedited permitting (49 programs, or 26 percent). In contrast, only a small portion of programs (11 percent) incentivized developers to participate in the inclusionary housing program through direct public subsidy and/or tax incremental financing or other tax relief abatement approaches (4 percent). Other incentives reported through open-ended responses included: (1) concessions for inclusionary units such as size and cost of finishes; (2) technical/process assistance from the city; and (3) negotiation between inclusionary housing program administrative agency and the developer for incentives that the developer proposes.

Figure 4: Number of Inclusionary Housing Programs by the Incentives They Offer to Developers (n = 250)



Of the 250 programs that provided a response to this question, one-fourth of them did not have any incentive. There were 81 programs (32 percent) that only reported one incentive; and density bonus was the most prevalent incentive. In addition, there were 48 programs (19 percent) with two incentives, 36 programs (14 percent) with three incentives, and 15 programs (6 percent) with four incentives. Only seven programs (3 percent) reported as many as five incentives.

Table 12: Inclusionary Housing Program Characteristics Reported by Survey Sample (n = 273)

Profile	Count	Percentage	Profile	Count	Percentage	
<i>Year Adopted (n = 261)</i>			<i>Number of Contribution Options (n = 258)</i>			
	1970s	9	3%	One	79	31%
	1980s	23	9%	Two	60	23%
	1990s	42	16%	Three	54	21%
	2000s	115	44%	Four	34	13%
	2010s	72	28%	Five	26	10%
				Six	5	2%
<i>Geographic Area (n = 259)</i>			<i>Minimum Project Size for the Program to Apply</i>			
	Entire jurisdiction	185	71%	<i>Rental (n = 242)</i>		
	Certain zones, neighborhoods, or districts	57	22%	Not applicable	128	53%
	Entire jurisdiction but requirements vary	17	7%	2–5 units	57	24%
<i>Policy Type* (n = 265)</i>				6–10 units	34	14%
	Mandatory: for-sale development	142	54%	11–50 units	17	7%
	Mandatory: rental development	110	42%	Don't know	6	2%
	Voluntary: rental development	82	31%	<i>Homeownership (n = 251)</i>		
	Voluntary: for-sale development	72	27%	Not applicable	113	45%
	Linkage/impact fee: residential development	41	15%	2–5 units	73	29%
	Linkage/impact fee: commercial development	34	13%	6–10 units	40	16%
<i>Type of Incentive* (n = 187)</i>				11–50 units	19	8%
	Density bonus	146	78%	Don't know	6	2%
	Other zoning variances	83	44%	<i>Affordability Term</i>		
	Fee reduction or waiver	69	37%	<i>Rental (n = 238)</i>		
	Expedited permitting	49	26%	Less than 30 years	17	7%
	Direct public subsidy and/or TIF	20	11%	30–99 years	109	46%
	Tax relief abatement (excluding TIF)	8	4%	Life of building	12	5%
	Other	4	2%	In perpetuity	48	20%
<i>Number of Incentives (n = 250)</i>				Not applicable	42	18%
	None/Not applicable	63	25%	Don't know	10	4%
	One	81	32%			

Options for Developers to Contribute to Affordable Housing

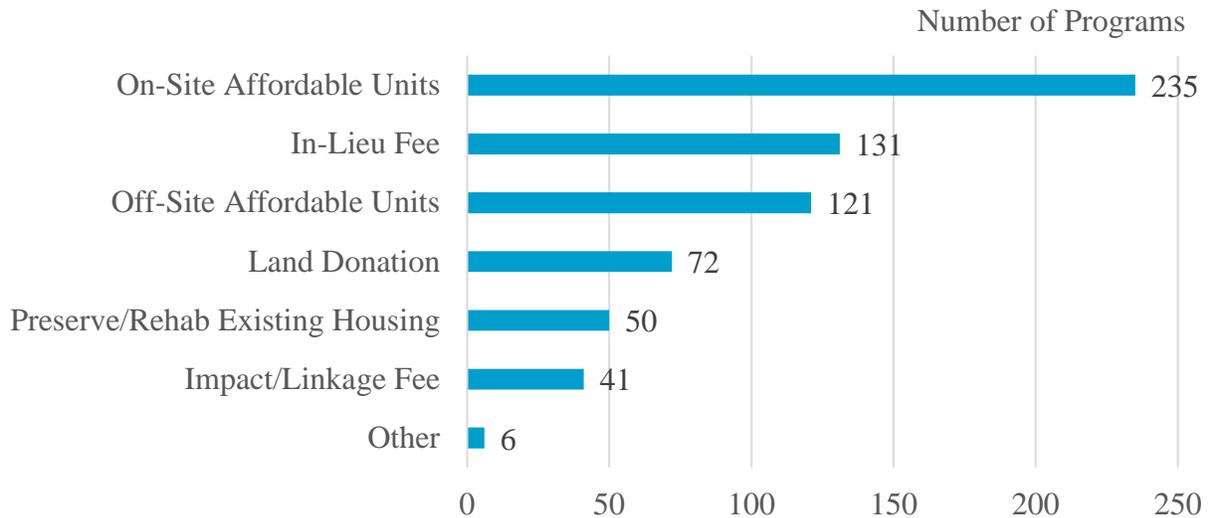
In order for developers to be eligible for incentives or to fulfill their obligations under a policy they can be given options for how to contribute to the creation of affordable housing. Survey participants were asked to select one or more of six contribution options in addition to the “other” selection.

Unsurprisingly, of programs that had information on developer contribution options (n = 258), providing on-site affordable units was the dominant way developers were asked or required to contribute to affordable housing. Ninety-one percent of programs included the provision of on-site affordable housing units as the sole way (57 programs, or 22 percent) or as one option among others (178 programs, or 69 percent) for developers. Two other options, in-lieu fee and providing off-site affordable housing, were included in about half of the inclusionary housing programs (51 percent and 47 percent, respectively). Additionally, 28 percent of programs allowed for land donation, 19 percent allowed for preservation or rehabilitation of existing affordable housing, and 16 percent allowed for the payment of an impact or linkage fee.

Notably, there were 28 impact or linkage fee programs that did not pick impact or linkage fee as a contribution option; and another three programs did the opposite. We believe that this was largely an oversight in reporting by responders; however, it is also possible that impact or linkage fee was not selected because neither affordable units nor fees had been generated by the program.

Three additional options were listed: (1) provision of senior housing, housing for people with disabilities, and childcare facilities, which are required by the California Density Bonus program; (2) credit transfer, which allows developers to request inclusionary unit credits in the event a project exceeds the total number of inclusionary units required on a site; they can use these credits to meet the inclusionary requirement for another project; and (3) any other creative concepts from applicants, which are subject to approval.

Figure 5: Number of Inclusionary Housing Programs by Developer Options to Contribute to Affordable Housing (n = 258)



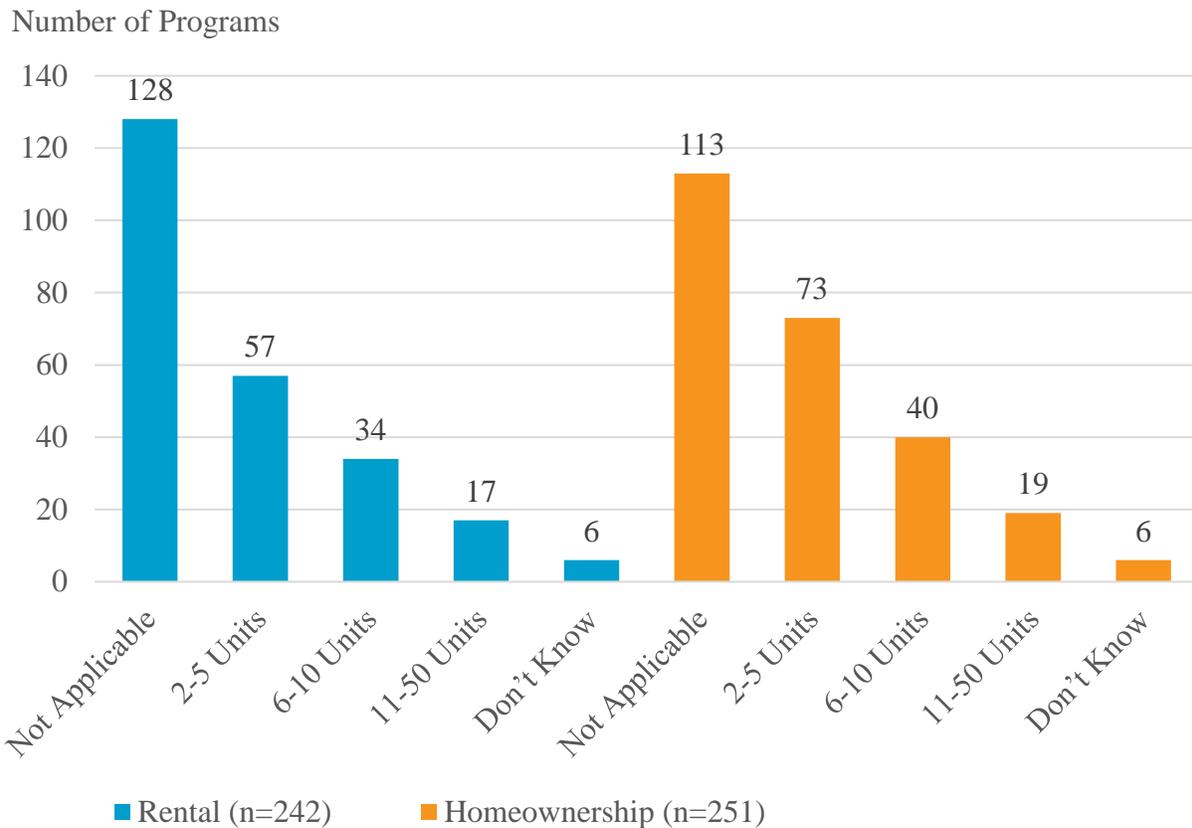
Of programs that had information on developer contribution options (n = 258), nearly one-third (n = 79) provided developers with one option; the dominant option was providing on-site affordable units (n = 57), followed by paying an impact or linkage fee (n = 12) and paying an in-lieu fee (n = 9). Twenty-three percent of programs (n = 60) offered developers two options; and another 21 percent (n = 54) offered three options. Five programs (2 percent) used as many as six approaches.

Application of Program Based upon Development Size

In many inclusionary housing policies, there is a minimum size requirement for a new development that triggers the application of the policy. For example, a new residential development might need at least 10 units, or a commercial project might need to be a minimum number of square feet. Over half (53 percent) of inclusionary housing programs applying to rental development did not report a required development size to trigger the policy. For programs applying to rental development, 24 percent of programs had a minimum project size between two and five units; 14 percent had a minimum project size between six and 10 units; and 7 percent had a minimum project size between 11 and 50 units.

The largest minimum project size to trigger the inclusionary housing policy for any program was 50 units, which applied to both rental and homeownership projects. Distribution trends are similar for inclusionary housing programs applying to for-sale units, except a smaller proportion (45 percent) reported no minimum size of developments for the policy to apply, and more policies (29 percent) had a minimum project size between two and five units.

Figure 6: Number of Inclusionary Housing Programs by Applicable Development Size



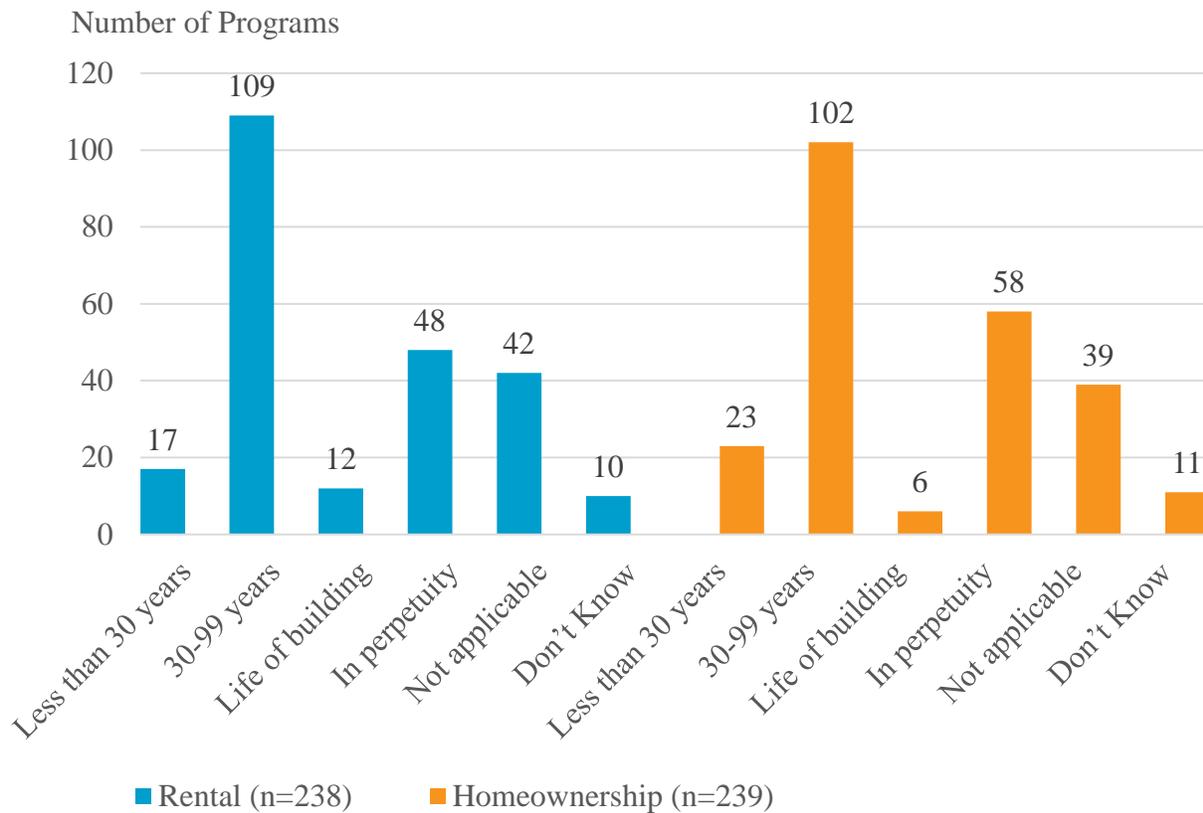
Affordability Terms

The vast majority of inclusionary housing programs require that the affordable housing units have long-term or lasting affordability restrictions, which are beyond the five- to thirty-year affordability requirements in federal programs. Of 238 programs with rental projects and 239 programs with homeownership projects that reported affordability terms, only a very minor proportion of programs reported affordability periods shorter than 30 years (10 percent of programs applying to homeownership projects and 7 percent of programs applying to rental projects). Over half of programs had affordability terms that were 30 years or longer (43 percent of programs applying to for-sale projects and 46 percent of programs applying to rental projects). Lastly, 27 percent of programs applying to for-sale project and 25 percent of programs applying to rentals defined affordability terms as “life of building” or “in perpetuity.”

As previously supported (Hickey, Sturtevant, and Thaden 2014), most inclusionary housing policies that apply to homeownership programs utilize shared equity homeownership models to ensure that owner-occupied homes remain affordable to low- and moderate-income households, resale after resale in perpetuity. The most common shared equity homeownership model utilized by inclusionary housing programs is a resale-restricted homeownership program that applies deed restrictions to sell and resell homes at below market rate to income-eligible buyers. Notably, that is why many inclusionary housing programs have “below market rate” or “BMR” in their names. Oftentimes, the deed-restricted covenant used by these programs have 30-year

affordability terms; however, due to restrictions on the resale price and income eligibility, as well as requirements stipulating that a new deed restriction is signed upon transfers, these programs are effectively delivering permanent affordability terms.

Figure 7: Number of Inclusionary Housing Programs by Affordability Terms



Additional Characteristics of On-site Affordable Units

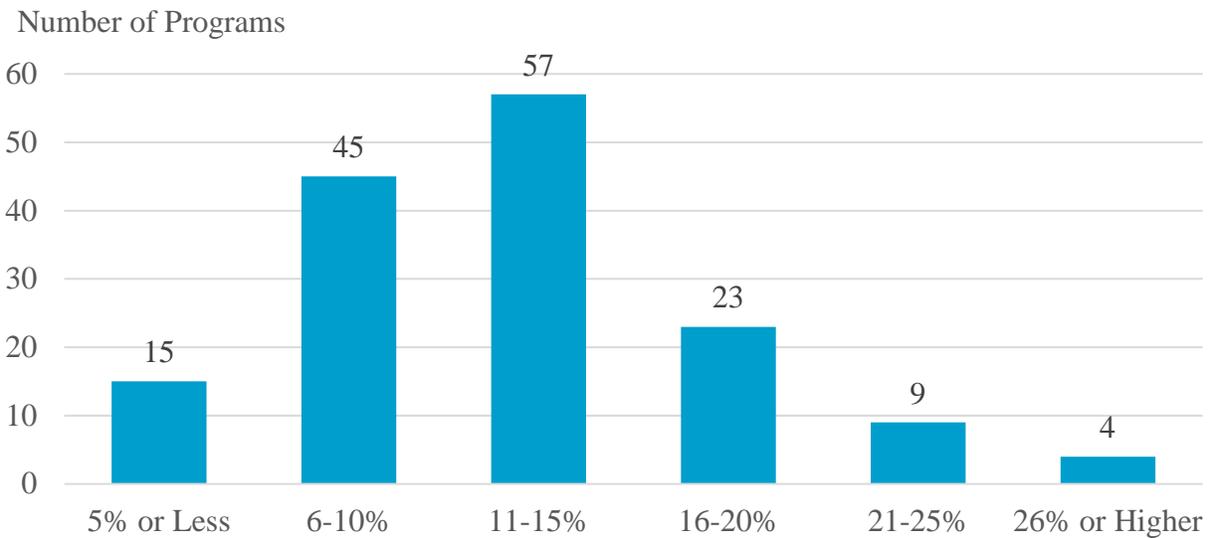
For programs that allowed developers to build on-site affordable housing units as an option to meet the policy (n = 235), the survey collected additional information on the proportion of on-site units that are required to be affordable and the targeted area median income (AMI) for households eligible for the affordable units. Findings are shown in table 13.

Proportion of Units Required to be Affordable on Site

Most programs (77 percent) established that a minimum number of units (or, less frequently, minimum square feet) of a new development shall be used for affordable housing under the inclusionary housing policy. The survey asked about the minimum because programs may vary the proportion of affordable units that is required by various incentives or the AMI level that the affordable units serve. Of 223 programs that reported having a requirement, 27 percent (n = 60) reported the minimum number of affordable units that are required is between 1 percent and 10 percent of housing units in a new development; 36 percent (n = 80) reported between 11 percent and 20 percent of housing units; and only 6 percent (n = 13) reported 21 percent or higher of

housing units. Another 7 percent (n = 16) of programs reported using a different measure as the requirement. There were 49 programs (21 percent) reporting no requirement for the minimum number of affordable units; and a small portion (five programs, or 2 percent) answered “don’t know.”

Figure 8: Number of Inclusionary Housing Programs with a Minimum Percentage of Units in a New Development that are Required to Be Affordable by the Percentage (n = 153)



For those 16 programs with a different measure, units of measure included: (1) floor area ratio; (2) tract/land parcel/lot area; (3) a combination of unit and floor area in some manner; and (4) the number of employees generated (for commercial linkage fee programs only). The use of floor area may give the program greater flexibility to negotiate with the developer on the size and number of bedrooms in affordable housing units. This would allow them to accommodate the needs of lower-income families who would not otherwise be served by the types of units most common in new construction.

Thirty-five percent (n = 82) of the 231 programs reported the proportion of affordable units that was required varied by developments. The variations were based on a range of factors, including: (1) level of affordability; (2) project size or density; (3) geographic location; (4) project type; (5) tenure; (7) percentage of open space; (8) any combination of above-mentioned mechanisms (28 percent); and (9) case-by-case negotiations with the developer.

Income Served by On-site Affordable Units

Many inclusionary housing programs have a range of income levels that are served by affordable units, and the maximum percentage of the area median income (AMI) for affordable units may vary by project size, incentives, and the proportion of required affordable housing units. These variations are often established to enable developers to serve lower income levels. Consequently, the survey asked respondents to identify whether there was a maximum AMI that the program served or whether there were multiple AMI tiers served. Of 185 rental programs that provided an

answer, 42 percent (n = 78) reported multiple AMI tiers. Twelve percent (n = 22) of programs reported having a maximum AMI (without multiple AMI tiers) that was between 50 percent and 60 percent of the AMI; 25 percent (n = 47) reported between 61 percent and 80 percent of the AMI; 5 percent (n = 9) reported between 81 percent and 100 percent of the AMI; and 9 percent (n = 16) reported between 101 percent and 150 percent of the AMI. In addition, a few programs (3 percent, n = 5) did not use AMI as the unit of measure for household income, and slightly more programs (4 percent, n = 8) reported “don’t know.”

The findings were generally similar for programs applicable to for-sale units. Of 201 homeownership programs that provided an answer, 40 percent (n = 81) reported multiple AMI tiers; 2 percent (n = 4) did not use AMI as the unit of measure for household income, and 4 percent (n = 8) reported “don’t know.” One notable difference was that the affordable homeownership units served households at higher income levels than the affordable rentals. An eligible household could earn as much as 160 percent of the AMI across all homeownership projects, as opposed to 150 percent of AMI in rental projects. In addition, a smaller portion of programs fell within the ranges of 50–60 percent of the AMI (3 percent in homeownership versus 12 percent in rental) and 61–80 percent of the AMI (22 percent in homeownership versus 25 percent in rental). Whereas a higher portion fell within the higher ranges, 81–100 percent of the AMI (8 percent in homeownership versus 5 percent in rental) and 101 percent of the AMI or higher (21 percent in homeownership versus 9 percent in rental).

Figure 9: Number of Inclusionary Housing Programs by Income Level Served

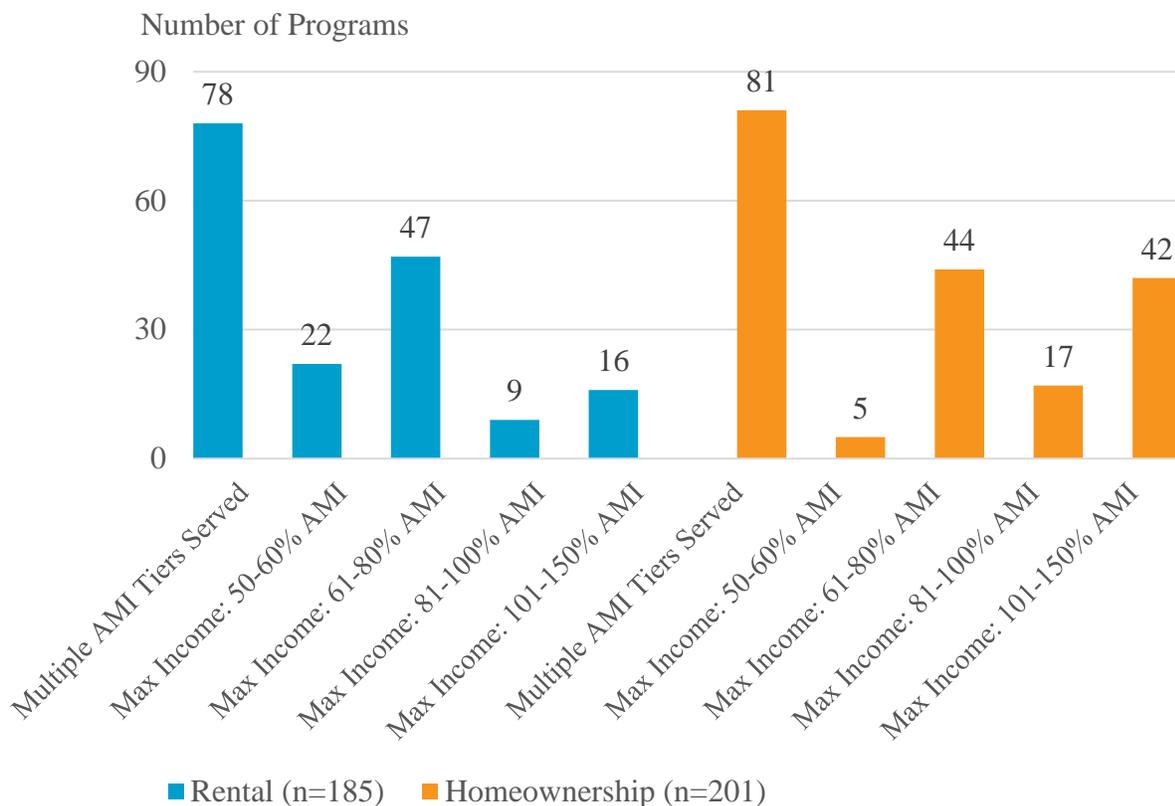


Table 13: Additional Inclusionary Housing Program Characteristics for On-site Affordable Units (n = 235)

Profile	Count	Percentage	Profile	Count	Percentage
<i>Proportion of Required On-site Affordable Units (n = 223)</i>			<i>Income Served by On-Site Affordable Units</i>		
1–10% of the housing units	60	27%	<i>Rental (n = 185)</i>		
11–20% of the housing units	80	36%	Multiple AMI tiers served	78	42%
21% of the housing units or higher	13	6%	Single Tier:		
Other unit of measure	16	7%	Max income: 50–60% AMI	22	12%
No requirement	49	22%	Max income: 61–80% AMI	47	25%
Don't know	5	2%	Max income: 81–100% AMI	9	5%
			Max income: 101–150% AMI	16	9%
			Does not use AMI	5	3%
			Don't know	8	4%
<i>Minimum Requirement Varies by Developments (n = 231)</i>			<i>Homeownership (n = 201)</i>		
Yes	82	35%	Multiple AMI tiers served	81	40%
No	141	61%	Single Tier:		
Don't know	8	3%	Max income: 50–60% AMI	5	3%
			Max income: 61–80% AMI	44	22%
			Max income: 81–100% AMI	17	8%
			Max income: 101–160% AMI	42	21%
			Does not use AMI	4	2%
			Don't know	8	4%

Program Characteristics by Year of Inclusionary Housing Policy Adoption

In table 14, we compare the trends in inclusionary housing program characteristics among programs that were adopted during or before 2006 and those that were adopted in the past decade (2007–present). We selected the year 2007 as the division between “older” and “newer” groups because it divided the sample into roughly equal groups. Additionally, in 2007, the onslaught of the economic crisis brought substantial changes to local housing markets that could have affected the adoption and design of inclusionary housing policies.

In general, there were relatively few differences between older and newer inclusionary housing programs. Only four factors were significantly different. Compared to older programs, newer programs were: (1) more likely to apply to certain zones, neighborhoods, or districts; (2) less likely to use expedited permitting as an incentive; (3) less likely to use in-lieu fee as an option for developers to fulfill the program; and (4) more likely to allow developers to preserve/rehab existing housing.

While not statistically significant, new programs tended to be: (1) less likely to apply to entire jurisdiction (65 percent versus 75 percent); (2) less likely to be mandatory (50 percent versus 59 percent); (3) more likely to offer fewer incentives (1.28 incentives versus 1.45 incentives); and (4) more likely to have affordability terms for programs with rental properties (46 years versus 43 years in rentals; 44 years versus 39 years in homeownership units).

Table 14: Older (n = 145) and Newer (n = 102) Inclusionary Housing Programs by Program Characteristics

	2006 or Prior	2007 or Later
<i>Geographic Area</i>	<i>n = 145</i>	<i>n = 102</i>
Entire jurisdiction	109 (75%)	66 (65%)
Certain zones, neighborhoods, or districts	27 (19%)	30 (29%)
Entire jurisdiction but requirements vary	9 (6%)	6 (6%)
<i>Policy Type</i>	<i>n = 153</i>	<i>n = 108</i>
Mandatory	91 (59%)	54 (50%)
Voluntary	46 (30%)	34 (31%)
Linkage/impact fee	34 (22%)	23 (21%)
<i>Type of Development to Which Program Applies</i>	<i>n = 129</i>	<i>n = 85</i>
Both	97 (75%)	61 (72%)
For-sale only	23 (18%)	13 (15%)
Rental only	6 (5%)	9 (11%)
<i>Incentive</i>	<i>n = 153</i>	<i>n = 108</i>
Density bonus	79 (52%)	57 (53%)
Other zoning variances	44 (29%)	32 (30%)
Fee reduction or waiver	43 (28%)	24 (22%)
Expedited permitting	34 (22%)	12 (11%)
<i>Average number of incentives</i>	<i>1.45</i>	<i>1.28</i>
<i>Contribution Options for Developers</i>	<i>n = 153</i>	<i>n = 108</i>
On-site affordable units	129 (84%)	97 (90%)
In-lieu fee	84 (55%)	43 (40%)
Off-site affordable units	66 (43%)	52 (48%)
Donate land	44 (29%)	25 (23%)
Preserve/Rehab existing housing	22 (14%)	26 (24%)
<i>Average number of options</i>	<i>2.42</i>	<i>2.44</i>
<i>Affordability Term: Rental</i>	<i>n = 152</i>	<i>n = 107</i>
Life of building/In perpetuity	34 (22%)	25 (23%)
<i>Average number of years</i>	<i>43.33</i>	<i>45.98</i>
<i>Affordability Term: Homeownership</i>	<i>n = 153</i>	<i>n = 107</i>
Life of building/In perpetuity	39 (25%)	24 (22%)
<i>Average number of years</i>	<i>38.99</i>	<i>44.08</i>
<i>Proportion of Affordable Required On-Site Varies</i>	<i>n = 123</i>	<i>n = 91</i>
Program Count	45 (37%)	28 (31%)

Program Characteristics by Location

California is a significant producer of inclusionary housing programs in the country (in terms of both the number of programs and the impacts). Since programs located in California comprised a substantial portion of the survey sample, it is important to explore in what aspects and to what extent the inclusionary housing programs in California were different in programmatic characteristics than those in the rest of the country. Table 15 shows the comparisons between programs in California and those in other states.

A noticeable difference was the type of geographic area the program covered. A vast majority (85 percent) of programs in California (n = 140) had uniform requirements across the entire jurisdiction, compared to only 55 percent of programs in other states (n = 119). In contrast, the percentage of programs that covered certain zones, neighborhoods, or districts was significantly higher in other states than in California (38 percent versus 9 percent). Such differences may be explained by the existence of state laws in California that influence the adoption and implementation of inclusionary housing.

In terms of policy type, one-third of programs in California (n = 142) were linkage or impact fee programs, whereas only 15 percent of programs in other areas (n = 123) belonged to this type. Lower percentages of programs in California were based upon mandatory policies (51 percent versus 63 percent) or voluntary policies (31 percent versus 36 percent) than programs outside of the state. This pattern may explain why in California a lower portion of programs (44 percent, n = 144) than those in other areas (64 percent, n = 129) had density bonus as either the sole incentive or one type of incentives, despite the state density bonus law that requires counties and cities to provide density bonus to eligible developments.

Also, on average, a lower number of incentives per program was provided in California than in other areas (1.29 incentives versus 1.50 incentives). Similarly, since on-site affordable unit provision is not necessarily a contribution option for developers in linkage or impact fee programs, the portion of this option in California was lower than in other areas (82 percent vs 91 percent), even though this option was prevalent in both groups. Nevertheless, a higher percentage of programs in California had expedited permitting as an incentive (22 percent versus 14 percent) and land donation as a contribution option for developers (33 percent versus 19 percent) than those in other states.

Programs in California had longer affordability terms for both affordable rental (48.67 years versus 40.17 years) and homeownership units (44.08 years versus 37.26 years). This may be partially explained by the state density bonus law, which requires low- and moderate-income units to remain affordable for at least 55 years. On the other hand, a smaller percentage of programs in California had affordability terms set as either life of building or in perpetuity than programs in other areas; this pattern applied to both rental (15 percent versus 36 percent) and homeownership (15 percent versus 39 percent) projects. Finally, inclusionary housing programs in California and other areas did not differ in terms of the type of development to which the programs applied, or in how the proportion of affordable units required on-site varied.

Table 15: Inclusionary Housing Programs in California and Other States by Program Characteristics

	Programs in CA	Other Programs
<i>Geographic Area</i>	<i>n = 140</i>	<i>n = 119</i>
Entire jurisdiction	119 (85%)	66 (55%)
Certain zones, neighborhoods, or districts	12 (9%)	45 (38%)
Entire jurisdiction but requirements vary	9 (6%)	8 (7%)
<i>Policy Type</i>	<i>n = 142</i>	<i>n = 123</i>
Mandatory	72 (51%)	78 (63%)
Voluntary	44 (31%)	44 (36%)
Linkage/impact fee	47 (33%)	18 (15%)
<i>Type of Development to Which Program Applies</i>	<i>n = 108</i>	<i>n = 114</i>
Both	80 (74%)	90 (79%)
For-sale only	21 (19%)	16 (14%)
Rental only	7 (6%)	8 (7%)
<i>Incentive</i>	<i>n = 144</i>	<i>n = 129</i>
Density bonus	64 (44%)	82 (64%)
Other zoning variances	45 (31%)	38 (29%)
Fee reduction or waiver	31 (22%)	38 (29%)
Expedited permitting	31 (22%)	18 (14%)
<i>Average number of incentives</i>	<i>1.29</i>	<i>1.50</i>
<i>Contribution Options for Developers</i>	<i>n = 144</i>	<i>n = 129</i>
On-site affordable units	118 (82%)	117 (91%)
In-lieu fee	66 (46%)	65 (50%)
Off-site affordable units	59 (41%)	62 (48%)
Donate land	47 (33%)	25 (19%)
Preserve/Rehab existing housing	27 (19%)	23 (18%)
<i>Average number of options</i>	<i>2.45</i>	<i>2.36</i>
<i>Affordability Term: Rental</i>	<i>n = 124</i>	<i>n = 116</i>
Life of building/In perpetuity	18 (15%)	42 (36%)
<i>Average number of years</i>	<i>48.67</i>	<i>40.17</i>
<i>Affordability Term: Homeownership</i>	<i>N = 122</i>	<i>N = 118</i>
Life of building/In perpetuity	18 (15%)	46 (39%)
<i>Average number of years</i>	<i>44.08</i>	<i>37.26</i>
<i>Proportion of Affordable Required On-Site Varies</i>	<i>n = 114</i>	<i>n = 117</i>
Program Count	36 (32%)	40 (34%)

Program Characteristics by Policy Type

Next, we compared inclusionary housing program characteristics by policy type (table 16). In general, voluntary programs are distinct from mandatory programs in many aspects. A lower proportion of voluntary programs (n = 72) applied solely to for-sale developments as compared to mandatory programs (n = 134) (respectively 8 percent versus 23 percent). Compared to mandatory programs, a higher proportion of voluntary programs applied solely to rental projects (81 percent versus 72 percent), as well as to both rental and for-sale projects (11 percent versus 5 percent).

Voluntary programs also had a higher average number of incentives (1.92 incentives versus 1.51 incentives) and were more likely to offer various incentives to developers than mandatory programs, including density bonus (72 percent versus 60 percent), other zoning variances (46 percent versus 33 percent), fee reduction or waiver (31 percent versus 26 percent), and expedited permitting (25 percent versus 21 percent). Twenty-one percent of mandatory programs (n = 28) had no incentive, compared to only 3 percent (n = 2) in voluntary programs.

On average, voluntary programs had a lower number of contribution options than mandatory programs (1.61 options versus 2.99 options) and lower proportions of offering various options for developers to contribute to affordable housing, including on-site affordable units (93 percent versus 97 percent), in-lieu fees (21 percent versus 69 percent), off-site affordable units (21 percent versus 61 percent), land donations (17 percent versus 33 percent), and preserving or rehabbing housing (6 percent vs 26 percent).

In addition, voluntary programs were less likely than mandatory programs to have affordability terms that were life of building or in perpetuity, which applied to both rental projects (17 percent versus 31 percent) and for-sale projects (13 percent versus 36 percent). For programs with affordability terms set in a definite number of years, the average number of years was shorter for voluntary programs than mandatory programs in both rental properties (38.80 years versus 46.90 years) and for-sale properties (31.57 years versus 44.13 years).

The average minimum project size for inclusionary housing policies to apply was smaller in voluntary programs than in mandatory programs; and this applies to both rental projects (7.04 units versus 10.00 units) and homeownership projects (7.55 units versus 9.20 units). In addition, voluntary programs were more likely than mandatory programs to have an unspecified minimum project size for both rental projects (67 percent versus 41 percent) and homeownership projects (68 percent versus 30 percent). Finally, voluntary and mandatory programs did not differ on the average project size for the policy to apply or on the maximum household income served for on-site developments.

There were only 16 inclusionary housing programs that had both mandatory and voluntary aspects. Although the figures were less reliable for comparison due to small sample size, in general, the pattern of programmatic characteristics for these programs was closer to mandatory than voluntary programs.

Table 16: Inclusionary Housing Program Characteristics by Policy Type

	Mandatory Programs	Voluntary Programs	Mandatory & Voluntary
Type of Development to Which Program Applies	n = 134	n = 72	n = 16
Both	96 (72%)	58 (81%)	16 (100%)
For-sale only	31 (23%)	6 (8%)	0 (0%)
Rental only	7 (5%)	8 (11%)	0 (0%)
Incentive	n = 134	n = 72	n = 16
None/Not applicable	28 (21%)	2 (3%)	2 (13%)
Density bonus	80 (60%)	52 (72%)	10 (63%)
Other zoning variances	44 (33%)	33 (46%)	6 (38%)
Fee reduction or waiver	35 (26%)	22 (31%)	9 (56%)
Expedited permitting	28 (21%)	18 (25%)	3 (19%)
Average number of incentives	1.51	1.92	2.06
Contribution Options for Developers	n = 134	n = 72	n = 16
On-site affordable units	130 (97%)	67 (93%)	15 (94%)
In-lieu fee	92 (69%)	15 (21%)	10 (63%)
Off-site affordable units	82 (61%)	15 (21%)	9 (56%)
Donate land	44 (33%)	12 (17%)	7 (44%)
Preserve/Rehab existing housing	35 (26%)	4 (6%)	6 (38%)
Average number of options	2.99	1.61	3.06
Affordability Term: Rental	n = 124	n = 64	n = 10
Life of building/In perpetuity	39 (31%)	11 (17%)	3 (30%)
Average number of years	46.90	38.80	41.43
Affordability Term: Homeownership	n = 128	n = 60	n = 12
Life of building/In perpetuity	46 (36%)	8 (13%)	3 (25%)
Average number of years	44.13	31.57	38.33
Minimum Project Size for Project to Apply: Rental	n = 123	n = 67	n = 15
Average Minimum Project Size	10.00	7.04	12.67
Not applicable/Don't Know	50 (41%)	45 (67%)	9 (60%)
Minimum Project Size for Project to Apply: Homeownership	n = 132	n = 68	n = 16
Average Minimum Project Size	9.20	7.55	13

	Not applicable/Don't Know	40 (30%)	46 (68%)	4 (25%)
<i>Maximum Income Served: Rental</i>		<i>n = 98</i>	<i>n = 55</i>	<i>n = 11</i>
	Tiers applied	49 (50%)	21 (38%)	6 (55%)
	<i>Average percent of AMI</i>	83.23	82.29	60.00
<i>Maximum Income Served: Homeownership</i>		<i>n = 118</i>	<i>n = 51</i>	<i>n = 12</i>
	Tiers applied	54 (46%)	18 (35%)	6 (50%)
	<i>Average percent of AMI</i>	98.43	97.88	75.00

Conclusion

This study marks the largest national investigation of inclusionary housing policies in the United States that has been conducted to date. With 886 jurisdictions identified, the prevalence of inclusionary housing across the country was found to be larger than the previous report (Hickey, Sturtevant, and Thaden 2014). While a large part of this project was verifying and updating inclusionary housing programs and the jurisdictions where they are located, future research is needed to continue to assess the accuracy of identified jurisdictions and update this information as a greater number of inclusionary housing policies are adopted (or terminated).

The study also conducted a more in-depth and systematic identification of the number of inclusionary housing programs located in jurisdictions, finding 1,379 programs in 791 jurisdictions for which information was gathered. This number should be interpreted as an estimate that is significantly determined per the operationalization of “programs” described in the Results section for places with state-wide policies. Nevertheless, over 40 percent of the 168 jurisdictions in the survey sample reported having more than one inclusionary housing program with the most common combinations being: (1) mandatory and impact fee programs; and (2) mandatory and voluntary programs. This would make sense as mandatory inclusionary housing policies could apply to residential development and impact fee programs could be applied to commercial development in order to maximize affordable housing production in many local markets. Additionally, for states with laws against rent control (for example, California, Colorado, Minnesota, Tennessee, and Texas), it is often not legally possible to apply a mandatory policy on rental development; therefore, these jurisdictions may have opted for a voluntary rental program coupled with a mandatory homeownership program (for further discussion, see Jacobus 2015).

It is unknown what bias exists amongst the sample for which information on program characteristics was collected ($n = 273$). Hence, this is not a representative sample so results cannot be generalized. Speaking only to trends in program characteristics for the sample, inclusionary housing policies slowly grew during the 1970s until 2000 and then a boom of adoption occurred since that time with over 70 percent of programs being adopted after 2000. With 72 programs adopted in the last six years and at least a dozen additional jurisdictions pursuing adoption presently, inclusionary housing policies appear to be growing in popularity as a local affordable housing tool.

The most prevalent type of inclusionary housing policy was mandatory policies applying to all types of residential development followed by voluntary policies on residential development. Notably, a substantial portion of linkage or impact fee policies are in California ($n = 47$) versus other places ($n = 18$) with roughly equal numbers applying to residential or commercial development. Interestingly, there was not a difference amongst mandatory and voluntary programs in terms of the maximum income levels served by affordable housing. Unsurprisingly, mandatory policies tend to offer fewer types of incentives to developers than voluntary programs. While it would be extremely challenging, it would be beneficial for future research to examine the relationship between the monetized value of incentives and the production of affordable housing, especially in voluntary programs where incentives must adequately influence developers to opt in to contributing to affordable housing.

In terms of the options developers were provided for fulfilling their contribution to affordable housing under the inclusionary housing policies, 235 out of 273 programs offered developers the option to build on site, while the second most prevalent option was paying an in-lieu fee (n =131). Interestingly, the share of programs offering the option to pay a fee in-lieu of on-site or off-site development was 15 percent less in programs established after 2006. It would be interesting for future research to explore whether this trend is generalizable and potentially indicates a desire for local governments to optimize the impact of their programs, especially in terms of building inclusive communities. Ultimately, in-lieu fees are often set lower than the cost of producing an affordable unit in an area where the new development is located; hence, minimizing in-lieu fee options (or ensuring fees are priced correctly) may be an effective shift to promote affordable housing in asset-rich neighborhoods.

Roughly half of all programs reported that a minimum development size was not applicable. Due to poor survey design and no clear patterns in responses, we are uncertain how to interpret this result. One possibility may be that voluntary programs do not set up minimum development sizes since developers have the choice to participate in the program. Another possibility is that mandatory programs provide an in-lieu option for when development projects are too small to require the development to include on-site affordable housing, rendering the policy effective to all sizes of development.

For on-site development, survey responders were asked to report the proportion of housing that was required to be affordable in the new development. For those that reported a minimum development size for the program to be triggered, 37 percent reported that between 11 and 15 percent of units were required to be affordable and 30 percent reported between 6 and 10 percent of units must be affordable. Fifteen out of 153 programs required more than 20 percent of the newly developed units to be affordable. The proportion of affordable housing that is required largely depends upon the economic feasibility of an inclusionary housing policy and local political will.

This study found that at least 90 percent of inclusionary housing programs had affordability requirements that lasted for 30 years or longer. This trend in local inclusionary housing programs differs from the relatively short-term affordability requirements in federal housing programs, which range from five to 30 years. The embrace of long-term and lasting affordability requirements by local governments illustrates their commitment to preserve the affordable housing stock in their communities as well as the more prudent use of public and private investment in affordable housing. Ultimately, this strategy to retain affordability substantially increases impact, as more families can be served over time by these affordable homes. However, lasting affordability requirements are only as good as the asset management and stewardship provided by these programs. Jurisdictions (or their partners) must effectively design and implement their programs to ensure compliance, property upkeep, ongoing income verification, and that for-sale homes are priced and resold to remain affordable (for additional information on best practices, see Hickey, Sturtevant, and Thaden 2014).

Notably, not every jurisdiction reported in the survey sample also had accompanying program characteristic data, as we asked respondents to complete questions about characteristics on their two highest performing programs. There is ample opportunity for future research to gather

characteristics on more programs, especially in New Jersey, Massachusetts, and New York, which were underrepresented in the sample. Furthermore, a host of additional information could be gathered to better understand how programs operate, such as affordable housing design standards, assessments of homeownership association dues (which can threaten affordability), income certification and property management practices, and ways programs are evaluated or have been modified over time.

The largest challenge in this study was that many inclusionary housing practitioners could not provide information on the total affordable housing units and fees produced by their program(s). A surprising number of staff did not know this information (or an estimate) and could not track it down when asked in follow-up communications. We believe this is a major problem for inclusionary housing programs that should be rectified. Ultimately, inclusionary housing programs must track the units they produce and effectively steward them to preserve affordable housing opportunities for members of their community. Systems like HomeKeeper should be adopted to promote better program management and evaluation. HomeKeeper is a workflow management system developed and maintained by Grounded Solutions Network—a national nonprofit membership organization of programs and organizations committed to housing with lasting affordability—that helps program staff track properties, households, and transactions, which compiles information into performance metrics and programmatic outcomes.

Ultimately, this study documented that 76 percent ($n = 675$) of known jurisdictions with inclusionary housing programs created 173,707 affordable housing units, and 42 percent ($n = 373$) of known jurisdictions with inclusionary housing programs reported \$1.7 billion in fees. These numbers should only be considered estimates due to dated, incomplete, or inaccurate data sources, and the methods for identifying jurisdictions with inclusionary housing policies and secondary state-level data inevitably introduced known and unknown bias. Roughly 45,000 affordable units reported by approximately 40 jurisdictions and \$400,000,000 reported by 24 jurisdictions were produced outside of California, New Jersey, and Massachusetts. A critical factor related to the existence of programs and production of inclusionary housing fees and units is whether states have state-wide inclusionary housing policies or policies that promote local adoption. To reduce survey administration burden, respondents were only asked to report on the outcomes of their inclusionary housing programs in totality; therefore, it is not possible to decipher which programs (or their characteristics) are associated with higher rates of production. However, future research should study these relationships.

While some may interpret the outcomes of inclusionary housing programs to be relatively modest, it is important to acknowledge that this is one tool in the state and local affordable housing “toolbox.” Furthermore, the impacts of these policies can become more substantial when housing has lasting affordability so that a greater number of households benefit over time and when that housing is located in neighborhoods of opportunity.

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Zoning for Affordable Housing in the U.S.: Case Studies and Resources

Montgomery County, Maryland & Fairfax County, VA:

Montgomery County, MD is located in the Washington, D.C. metropolitan area and has used inclusionary housing policies since 1974 when the County Council passed the Moderately Priced Housing (MPH) Law. The law requires that between 12.5 and 15 percent of houses in new subdivisions of 20 units or more must be moderately priced. Of the moderately priced units, 40 percent must be offered to the Housing Opportunities Commission (HOC) and other non-profit housing agencies for use by low- and moderate-income families.

Fairfax County, VA is also located in the D.C. Metro area. Fairfax County adopted the Affordable Dwelling Unit (ADU) Ordinance in 1990 to provide low- and moderate-income households an opportunity to live in new market-rate apartment communities at a reduced rent.¹ New programming has also begun to include workforce housing in the program with the Workforce Dwelling Unit (WDU) rental program. Under the ADU policy, a percentage of units in new residential developments must be available at below-market sale or rents, with 2/3 of those units reserved for households with incomes up to 70 percent of the Area Median Income (AMI), and 1/3 of units reserved for households with incomes up to 50% of the AMI.

A 2012 study conducted by the U.S. Department of Housing and Urban Development (HUD) looked into the effectiveness of both the Montgomery County and Fairfax County programs since their adoption. According to the findings, Montgomery County's program produced 13,000 affordable units between 1976 and 2011 and Fairfax County's program produced 2,448 units between 1992 and 2011. The study authors also interviewed key players and developers in both counties, which led to a number of useful findings, including information about administrative requirements, program complexity, ordinance changes, and developer preferences and patterns.

More Montgomery and Fairfax Resources:

- *Exploring Inclusionary Zoning's Effect on Affordable Housing* (webpage) – https://www.huduser.gov/portal/pdredge/pdr_edge_research_012513.html
- *Expanding Housing Opportunities Through Inclusionary Zoning: Lessons from Two Counties* (Study conducted by U.S. Department of Housing and Urban Development, 2012). https://www.huduser.gov/portal/Publications/pdf/HUD-496_new.pdf
- *Montgomery County Moderately Priced Dwelling Unit (MPDU) Program* (webpage) - <https://www.montgomerycountymd.gov/DHCA/housing/singlefamily/mpdu/index.html>
- *Fairfax County Affordable Dwelling Unit Rental Program* (pdf brochure) - <https://www.fairfaxcounty.gov/housing/sites/housing/files/assets/documents/adu/adubrochure.pdf>
- *Fairfax County Workforce Dwelling Unit Program* (pdf brochure) - <https://www.fairfaxcounty.gov/housing/sites/housing/files/assets/documents/wdu/wdubrochure.pdf>

¹ Affordable Dwelling Unit (ADU) not to be confused with Accessory Dwelling Units (ADU)

Kirkland, Washington:

Kirkland, Washington, a suburban community in King County outside of Seattle, has seen its population almost double since 2000, while average household size has decreased. To address growing housing needs, Kirkland adopted an *Innovative Housing Demonstration Project* ordinance, which allowed development of a limited number of novel projects to evaluate their community support and effectiveness at increasing affordable options.

Under the demonstration ordinance, Kirkland allowed cottage housing development which was intended to promote new housing types for the city's lower to moderate-income and single-person households. These developments included small 1–3-bedroom homes situated on a private lot with access to common outdoor space. The projects were successful and supported by residents, city focus groups, and the development community.

Kirkland chose to adopt a final ordinance allowing cottage, carriage, and two/three-unit homes into law in November 2007, with goals to increase smaller, more affordable homes and housing options that are compatible with existing single-family communities. To help with affordability, the ordinance mandates that a portion of the units within a project must be affordable to households earning between 82-100 percent of the county median income.

More Kirkland Resources:

- *Danielson Grove – Kirkland, WA* (webpage) - <http://www.cottagecompany.com/Communities/Danielson-Grove/Danielson-Grove-Photo-Gallery.aspx>
- *Chapter 113 – Cottage, Carriage and Two/Three-Unit Homes* - <https://www.codepublishing.com/WA/Kirkland/html/KirklandZ113/KirklandZ113.html>
- *Kirkland, Washington: Cottage Housing Ordinance* (webpage) - https://www.huduser.gov/portal/casestudies/study_102011_2.html#:~:text=Kirkland%20requirements%20that%20cottages%20have,a%20maximum%20of%2024%20units.



Examples of Kirkland, WA Cottage Homes (huduser.org)

Additional Inclusionary Zoning Resources:

Case Studies in Inclusionary Housing

APA Zoning Practice: Housing Inclusion (2007) edition looking at inclusionary zoning in Chicago compared to other cities) - <https://planning-org-uploaded-media.s3.amazonaws.com/document/Zoning-Practice-2007-03.pdf>

CityLab University: Inclusionary Zoning

Bloomberg article giving an overview of Inclusionary Zoning viewpoints, data, and a Washington D.C. case study - <https://www.bloomberg.com/news/articles/2018-07-17/inclusionary-zoning-everything-you-need-to-know>

Case Studies: Zoning for Affordable Housing

Web resource from HUD - https://www.huduser.gov/portal/casestudies/Zon_AfforHousing.html

Inclusionary Housing

2019 Report from the Urban Institute summarizing research and effectiveness of local inclusionary zoning policy -

https://www.urban.org/sites/default/files/publication/99647/inclusionary_zoning._what_does_the_research_tell_us_about_the_effectiveness_of_local_action_2.pdf

Techniques and Incentives for Encouraging Affordable Housing

MRSC.org webpage looking into Washington State - <https://mrsc.org/Home/Explore-Topics/Planning/Housing/Affordable-Housing-Techniques-and-Incentives.aspx>

MEMORANDUM

To: Travis Parker, Director of Planning; Paul Rice, Development Assistance Planning Manager

From: Paige Johnson, Development Assistance Planning Intern

RE: Inclusionary Zoning Overview

Date: April 30, 2021

Background

Inclusionary zoning policies require, and sometimes incentivize, developers to include affordable housing units in their building plans in order to obtain zoning and development approvals. It is a popular tool being used by cities experiencing affordable housing shortages in the U.S. and Canada, but it is almost always used in combination with other affordable housing strategies such as issuing tax-exempt bonds, levying property taxes, supporting land banks and land trusts, using tax increment financing (TIF) to raise funds to finance affordable housing.¹

Who Uses Inclusionary Zoning Policies?

Over 500 cities across the U.S. use some form of inclusionary zoning.² In Colorado, inclusionary programs that mandate construction of a minimum number of affordable units in developments have been prohibited since the Colorado Supreme Court “Telluride Decision” in 2000.³ Since then, some Colorado municipalities have developed alternatives to required affordable unit construction, such as impact fees, cash-in-lieu payments, and on-site or off-site dedication requirements.

- **Boulder, CO:** All new residential developments must fulfill the adopted inclusionary housing program requirements or: dedicate off-site units as permanently affordable, dedicate vacant land for affordable unit development, or pay cash-in-lieu to the Boulder Affordable Housing Fund. Single family home construction may fulfill these requirements by providing cash-in-lieu payments as part of the development process.⁴
- **Denver, CO:** Denver’s Inclusionary Housing Ordinance (IHO) requires that new, for-sale developments of 30 units or more must provide 10% affordable units. Prices must be made affordable to 80-95% of the area median income (AMI). The program voluntary participation incentives for smaller projects and rentals, and a cash-in-lieu option.⁵ Additionally, Denver voters approved a property tax of 0.5 mills (\$12/year on a median home priced at \$300,000) and the City applied a per square foot affordable housing impact fee on development that breaks down into the following:⁶
 - Single Family/Duplex: \$0.60/square foot
 - Multi-Family: \$1.50/square foot
 - Hotel/Office/Retail/Other: \$1.70/square foot
 - Industrial/Agricultural: \$0.40/square foot
- **Longmont, CO:** A minimum of 12% of new residential units must be affordable for sale up to 80% and for rent up to 60% of the AMI. The requirement can be satisfied on-site, off-site, through cash-in-lieu payment, land donation, redemption of credits from past projects that provided more than the minimum affordable housing, or a combination of the choices. Administrative approval can be granted to for-sale projects for on-site or cash-in-lieu options and rental projects for cash-in-lieu, but all other options require Council approval, and all units must be permanently affordable.⁷

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Summary of Inclusionary Zoning Practices in Colorado Communities

Basalt	Glenwood Springs
Boulder	Longmont
Carbondale	Pitkin County & Aspen
Denver	San Miguel County
Eagle County	Telluride

Basalt Inclusionary Zoning

Required or voluntary participation of new developments:

Required for all new residential and nonresidential developments (Section 16-411).

Minimum project size (# of units):

All new developments must submit a plan for location, mixture of affordable unit type and size, and number of units to the town council for review and approval. The Town Council will determine how much mitigation is needed according to the impact of the development and the current housing needs of the town of Basalt. As decided by the town council the requirement to provide affordable housing may be solely or partially fulfilled by a dedication of land to the Town or affordable housing provider, or a payment-in-lieu (Section 16-415).

The basic requirements state that at least 20% of the dwelling units and 15% of the bedrooms of all new residential developments over 5 units must be dedicated as affordable (Section 16-416).

All new commercial development must pay the Town a mitigation fee of \$.50 cents per sq. ft. and also must provide affordable housing for a maximum of 20% of the full-time employees generated by the development (Section 16-417).

Guidelines for location and design of affordable housing within market-rate developments:

Affordable housing units should be transit-friendly and should work towards being a “zero energy footprint,” or energy efficient (Section 16-411). The affordable housing requirement may be fulfilled either on-site or off-site.

Limits to determine household eligibility for affordable units (AMI range):

Guidelines are set for lower and median incomes, making it possible for them to acquire housing for not more than 28-36% of their total household income (Section 16-411).

Period of controlled resale or rental prices (to maintain supply of affordable housing):

NA

Agency or entity responsible for managing or monitoring the program:

Basalt Town Council

For more information:

This ordinance can be found on the [Basalt Planning Department Web site](#)

Once at the web site, follow this path for the ordinance.

Basalt Municipal Code > "Zoning" > Article XIX "Housing Mitigation", pages 121-126

Boulder Inclusionary Zoning

Required or Voluntary participation of new developments:

All new developments are required to participate unless they fulfill the requirement through cash-in-lieu, land dedication, or off-site dedication.

Cash-in-Lieu requirements: For each unrestricted detached unit the contribution will be the lesser of \$13,200.00 or \$55.00 multiplied by 20% of the total floor area of the unit. For each attached unrestricted unit the contribution will be the lesser of \$12,000.00 or \$50.00 multiplied by 20% of the total floor area of the unit. These rates can be adjusted annually by the city manager to reflect changes in the median sale price for detached and attached housing. An affordable housing fund established by the city manager will receive and manage all money collected by cash-in-lieu contributions. This money will be used solely for the construction, purchase, and maintenance of affordable housing and for the costs of administering programs related to Inclusionary Zoning codes (Boulder Revised Code, Chapter 9-6.5-6).

Minimum project size (# of Units):

Developments of 5 or more units are required to include at least 20% of the total number of units as permanently affordable units. Developments of four or less may include one permanently affordable unit by dedicating an off-site affordable unit, dedicating land that meets requirements set forth in "Off-Site Inclusionary Zoning Option" Section 9-6.5-7, or by providing a **cash-in-lieu** contribution to the city's affordable housing fund. (Boulder Revised Code, Chapter 9-6.5-5).

Guidelines for location and design of affordable housing within market-rate developments :

Off-site vs. on-site: In developments that require more than one affordable unit, there must be a minimum of half affordable units built on-site, unless the city manager determines that building these units off-site would provide additional benefits for the city or if zoning, environmental, or legal restrictions make on-site compliance unfeasible. The off-site obligation may be fulfilled through a cash-in-lieu contribution, land dedication, or dedication of existing units.

Minimum sizes for permanently affordable units: The average floor area of detached affordable units is a minimum of 48% of the average floor area of the units that are part of the same development (up to a max. average size of 1,200 sq. ft.). The average floor area of attached affordable units is a minimum of 80% the average floor area of the units that are part of the same development (up to a max. average size of 1,200 sq. ft.).

Design Flexibility: There is a permit for the decrease in size of finished floor area by the city manager if the unit is increased in size by 2 sq. ft. of unfinished, potentially habitable space for each finished sq. ft. of floor area that is decreased (up to a max. of 400 unfinished sq. ft.). This potentially habitable space will be

determined in consideration of an adequate foundation, sound structural components, floor to ceiling heights, weather resistant roofs, appropriate exits, and window placement. (Boulder Revised Code, Chapter 9-6.5-5)

Limits to determine household eligibility for affordable units (AMI range):

Very low, low, and moderate incomes determined by the asset limitations in the Boulder Revised Code.

Period of controlled resale or rental prices (to maintain supply of affordable housing) :

No unit can sell, lease, or rent an affordable unit to people above the eligible income level. Those qualified to rent or purchase permanently affordable units must have a fair chance to become informed about the availability and the owner or seller must submit a public advertising plan, "Good Faith Marketing", to the city manager for approval. (Boulder Revised Code, 9-6.5-10).

Agency or entity responsible for managing or monitoring the program:

City Manager and City Council members.

For more information:

Text of the ordinance can be found on the [Boulder web site](#).

In order to access the text click the link and follow the following path.

Go to Quick Links, scroll down to "Codes and Regulations" > Boulder Revised Code, 1981 > Title 9 "Land Use Regulation" > Chapter 9-6.5 "Inclusionary Zoning"

Carbondale Inclusionary Zoning

Required or voluntary participation of new developments:

Required as a condition of approval for all residential development and any building permit application for a development with 5 or more units (Section 15.25.030).

The Board of Trustees has the authority to grant variances to the affordable housing ordinance, but only if the variance is in the best interest of the community and furthers the overall goal of promoting affordable housing for Carbondale citizens. These variances include incentives provided by the developer instead of required units, or voluntary restrictions on housing units by the developer (Section 15.25.100).

Minimum project size (#of units):

Developments of 5-20 units must set-aside 15% of all lots to be deed-restricted as affordable and available to families within 150% of AMI. For developments of 20 or more units, 15% must be deed-restricted, and available to families within 65% to 150% AMI. Developments resulting in a fraction of a required unit must pay a cash-in-lieu fee (Section 15.25.050).

Community housing must be deed-restricted to people that live and work in Carbondale or the project developer (Section 15.25.070).

Guidelines for location and design of affordable housing within market-rate developments:

On-site housing is preferred, but off-site housing within the town of Carbondale and outside of the Town limits, but within the Town's Urban Growth Boundary are given consideration with regard to proximity of the units to schools, public transportation, and shopping. Otherwise, cash-in-lieu fee required (Section 15.25.060).

Units must be developed in accordance to the size, design, and occupancy standards established in the Carbondale Community Housing Guidelines. Occupancy of affordable units must be available at the same time as market-rate units (Section 15.25.070).

Limits to determine household eligibility for affordable units (AMI range):

Must be in the low to moderate income level, with 65% to 150% of AMI (Section 15.25.050).

Period of controlled resale or rental prices (to maintain supply of affordable housing):

Follows according to the deed restriction (Section 15.25.070).

Agency or entity responsible for managing and monitoring the program:

The Carbondale Planning Director, local Housing Authorities, and the Board of Trustees of the Town of Carbondale

For more information:

Carbondale Ordinance No. 27, hardcopy only.

Denver Inclusionary Zoning

Required or voluntary participation of new developments:

Required participation of all new developments and also existing buildings that are being substantially rehabilitated or remodeled to provide dwelling units (Section 27-104). Applications for building permits must include a Moderately Priced Dwelling Unit (MPDU) plan otherwise they will not be approved by the City and County of Denver Community Planning and Development Agency (CPDA) (Section 27-106).

Alternatives to providing MPDUs include building more MPDUs at one or more other sites in the same or adjoining statistical neighborhood, or a contribution to the special revenue fund that is equal to 50% of the price per MPDU that is not provided. The prices are determined by CPDA and their table of current maximum sales prices (Section 27-106).

Developers also receive incentives for building MPDUs as a reimbursement of \$5,000 per unit built, up to 50% of the total units in a development, and \$10,000 per MPDU built that is affordable for households earning no more than 60% AMI, up to 50% total units built. However, the reimbursement amount is limited to the amount available in the special revenue fund, and is awarded by the director of CPDA (Section 27-107).

Supplemental incentives include density bonuses of up to 10% if one unit is MPDU, parking requirement reduction of up to 20% if one MPDU is built for every 10 spaces reduced, and expedited processing of building plans if all MPDU requirements are met in plan (Section 27-108).

Minimum project size (#of units):

Developments with a total of 30 or more units are required to provide 10% MPDUs, which are affordable to households earning no more than 80% of AMI. Developments with 3 or more stories, elevators, and 60% structured parking, must also provide 10% of total units as MPDUs, which are affordable for households

earning no more than 95% AMI. Maximum purchase prices for MPDUs is determined by the CPDA and is adjusted according to number of bedrooms with a maximum down payment of 5% (Section 27-105).

Guidelines for location and design of affordable housing within market-rate developments:

MPDUs are required to be indistinguishable from market-rate units and depending on the size of the development they must be dispersed in two or more locations throughout the development. In single-family developments MPDUs must have 2 or more bedrooms, and in multi-family dwelling units the ratio of one bedroom units must not exceed that of the market-rate units (Section 27-106).

Limits to determine household eligibility for affordable units (AMI range):

Eligibility is determined by AMI calculation adjusted for household size, low and moderate household income are targeted with incomes no more than 80% or 95% AMI depending on the development. Unit must also be the primary residence of eligible household (Section 27-110).

Period of controlled resale or rental prices (to maintain supply of affordable housing):

Governmental agencies or non-profit organizations designated by the director of CPDA are eligible buyers of for sale MPDUs as well as households with low or moderate incomes. CPDA must be notified 30 days before an initial offering of and MPDU and then the unit must be marketed to eligible households. Eligible households must be verified by CPDA before sale of unit (Section 27-110).

Agency or entity responsible for managing and monitoring the program:

City and County of Denver Community Planning and Development Agency

For more information:

Text of the ordinance can be found on the [Denver Municipal Code Web site](#)

In order to access the text click the link and follow the following path Go to Chapter 27 “Preservation of Affordable Housing”, Article III “Preservation of Affordable Housing” and IV “Affordable Housing”.

Eagle County Inclusionary Zoning

Required or voluntary participation of new developments:

All new residential developments are required to participate with either Inclusionary Housing or Employee/Housing Linkage (each defined in “Limits”) (Section 3-100).

Minimum project size (#of Units):

All Inclusionary Housing developments of 4 or more units within Eagle County must include up to 20% of total housing unit need generated by the particular development’s employees for qualified moderate to low income units developed as affordable housing (Section 3-110). All Employee/Housing Linkage should provide 20% of the total housing unit need generated by the development’s employee that are qualified low income and very low income (Section 3-120).

Developers may choose to satisfy their requirement with a payment in-lieu fee at 30% mitigation rate to the Eagle County Housing Fund or other qualified Local Resident Housing Developer (Section 3-140).

Guidelines for location and design of affordable housing within market-rate developments:

If the developer is only required to develop one affordable housing unit it must be designated as a two-bedroom unit. If the developer is required to develop more than one unit, the units should be distributed as one, two, and three bedroom units (Section 3-110).

Other requirements include:

- Location outside of potential geologic hazards associated with development (high flood risk, etc.),
- Site is a slope of less than 20%,
- public infrastructure is available to site,
- Housing conforms to the County Master Plan and Sub-Area Community Plans,
- Has suitable drainage and soils, not adjacent to nuisances, located within an appropriate zone district (Section 3-130).
- Unit should meet all building codes and built in a standard to enhance durability over time (Section 3-170).

Limits to determine household eligibility for affordable housing units (AMI range):

Two Types of requirements: Inclusionary Housing targeted for development of moderate income housing with 80% and 100% of AMI or Employee/Housing Linkage targeted for development of low income housing with 60% and 80% of AMI (Section 3-100). The residence must be the primary residence and the applicant must be a qualified employee, working at least 30 hours a week for 8 of the past 12 months in Eagle County (Section 4-100).

Period of controlled resale or rental prices (to maintain supply of affordable housing):

The initial maximum purchase price shall not exceed 30% of the targeted income group (Section 3-160). The unit may only be sold to qualified purchasers and cannot exceed the maximum purchase price, which is the owner's purchase price plus the percentage increase for each year of the average wage for Eagle County as determined by the Colorado Department of Labor and Employment, not exceeding 6% (Section 5-100).

Agency or entity responsible for managing and monitoring the program:

Eagle County

For more information :

[Eagle County Housing Ordinance](#)

Scroll down and go to "Local Resident Housing Guidelines"

Glenwood Springs Inclusionary Zoning

Required or voluntary participation of new developments:

Applicants for all new residential development permits are subject to the inclusionary requirements.

Minimum project size (# of units):

All residential developments of 3 or more units must provide at least 15% as affordable housing units. New developments of single-family lots and multi-family housing projects must be deed restricted for the average sales price of 80% AMI as determined by HUD for Garfield County (Section IV).

Guidelines for location and design of affordable housing within market-rate developments:

All units must be on-site, distributed within the development, unless approved otherwise. Off-site housing is approved only if the developer can demonstrate that off-site housing would be of greater benefit to the community. A cash-in-lieu fee can be collected only if the development is small and results in a fraction (Section IV, A).

Units must also meet minimum square footage guidelines for studios, one-bedroom, two-bedroom, three-bedroom, and single family detached (Section IV, C).

Limits to determine household eligibility for affordable units (AMI range):

Eligible households must be employed full-time in Glenwood Springs, a retired person who has been a full-time employee in Glenwood Springs for a minimum of 4 years prior to retirement, or a disabled person also employed in Glenwood Springs for 2 years prior to their disability (Section III, A). They must also meet income guidelines of low (category 1, 60% of AMI), moderate (category 2 & 3, 80 to 100% AMI), or middle income (category 4, 100 to 120% AMI) and also they must be certified in these categories by the Garfield County Housing Authority (Section III, D).

Period of controlled resale or rental prices (to maintain supply of affordable housing):

All affordable housing units are deed restricted with resale restrictions and future buyers are bound by the restrictions as well. There is also an appreciation cap on all deed restricted affordable housing of 3% annually (Section III, H). Maximum sales price is determined by the program administrator, and a lottery is held for eligible buyers (Section III, J).

Agency or entity responsible for managing and monitoring the program:

Garfield County Housing Authority

For more information:

Ordinance No. 24, hardcopy only and Resolution No. 2001-16, Glenwood Springs Community Housing Guidelines, hardcopy only.

Longmont Inclusionary Zoning

Required or voluntary participation of new developments:

Every residential development is required to participate through an annexation agreement and can meet the affordable housing requirement by constructing affordable units or paying an in-lieu fee (Section C).

Payment in-lieu must pay for the number of affordable units, or partial units, that are required. For single-family detached housing, \$108,423 for each unit, for multi-family rental housing, \$48,797 for each high-density unit or \$63,188 for each medium density unit, and for owner-occupied town homes or condos, \$62,312 per unit (Section C, 3).

Depending on the amount of affordable housing provided, the duration of the deed restrictions, the potential demand for affordable housing and the design and quality of affordable housing, density bonuses may be granted to the developers (Section F).

Minimum project size (# of units):

At least 10% of the total units developed must be affordable units. These units can be on-site or off-site if determined acceptable by City Council (Section C, 2).

Guidelines for location and design of affordable housing within market-rate developments:

Affordable housing in a residential development must be mixed-in and not segregated from market-rate units in any way (Section E, 4). Affordable units must also be similar in exterior appearance to market-rate units and they must comply with applicable dimensional standards (Section E, 5& 6).

Limits to determine household eligibility for affordable units (AMI range):

The City Manager is in charge of determining rules and regulations for eligibility, including household size, makeup, and income and must be compatible with HUD's Section 8 Program Income Eligibility Determination Guidelines, or CHFA's rent limits (Section E, 3).

Period of controlled resale or rental prices (to maintain supply of affordable housing):

Affordable rental housing units must be rented for a period of at least 20 years to eligible income groups unless otherwise approved by City Council. Affordable homes for sale must be deed-restricted to assure affordability for at least 10 years unless otherwise approved by City Council (Section E, 2).

Agency or entity responsible for managing and monitoring the program:

City Council and the City Manager

For more information:

Land Development Code, Chapter 15.05 Development Standards, 15.05.220 Affordable Housing, hardcopy only.

Pitkin County and Aspen Inclusionary Zoning

Pitkin County Inclusionary Zoning:

All new developments and redevelopments requiring a building permit, within unincorporated Pitkin County, are subject to "Fair Share Requirements", which are the requirements put on developments to pay for a share of the impacts generated by the development, unless somehow exempt under requirements (Section 11-100). Right now, the code includes requirements for public roads, but does not yet include affordable housing requirements. Section 10-120 is reserved for affordable housing requirements.

[Go to Title 8, Article 10 "Fair Share Requirements"](#)

Aspen Inclusionary Zoning:

At this time, Aspen's Land Use Code includes a section for affordable housing. As determined by Aspen City Council, if a proposed development constitutes an affordable housing project, the City Council can exempt

the development from the required impact fees. The impact fees include park development impact and school land dedication (Title 26, part 600).

Go to: Departments, “Zoning Information” > Land Use Code > Title 26, part 600 “Impact Fees and Dedications”

However, the Aspen/Pitkin County Housing Authority puts out guidelines for development of, admission to, and occupancy of deed restricted employee-housing units in Aspen and Pitkin County. These guidelines do not overrule the county or city’s Land Use Codes, but are annually reviewed and approved by the Housing Board and City Council.

For more information:

Aspen Housing Office

San Miguel County Inclusionary Zoning

Required or voluntary participation of new developments:

Impact mitigation, or inclusionary zoning, is required as a condition of approval for new developments of office, restaurant, and retail, hotel, ski-area, and residential (San Miguel County Land Use Code, Section 5-1303). Deed restriction is imposed on each real property designated as Affordable Housing (Section 5-1304).

Minimum project size (# of units):

An office, restaurant or retail development has been found to generate 3 employees per 1,000 gross square feet, and therefore must mitigate 15% of this impact by building deed-restricted housing for one employee for every 2,250 gross sq. ft. (Section 5-1303 A.) Hotel and residential developments are also required to mitigate 15% of impact. Hotel developments must provide mitigation for .225 employees per unit created (Section 5-1303 B.). Residential mitigation is required for all developments larger than seven lots/units with one of every 7 lots/units being deed-restricted (Section 5-1303 C.). Each ski area development that creates new facilities must provide housing for 15% of employees during all seasons, and for each new ski lift added, the ski are must provide housing for 2 employees (Section 5-1303 D.).

Limits to determine household eligibility for affordable units (AMI range):

Must be a qualified employee who’s primary and sole residence is in San Miguel, Montrose, Ouray, or Dolores Counties (Section 5-1304).

Period of controlled resale or rental prices (to maintain supply of affordable housing):

Properties must be sold, transferred and/or conveyed in compliance with guidelines for the San Miguel Land Use Code. The restrictions on ownership, use, and occupancy runs for 50 years from the date of recordation, and can be extended another period of 50 years by the Board of County Commissioners after public hearing (Section 5-1304). No affordable housing can be sold or rented without submission of written notice to the Housing Authority, and it can only be sold to qualified employees of the county (Section 5-1305 F.). Further restrictions are extensively laid out in the Land Use Code, Section 5-1305.

Agency or entity responsible for managing or monitoring the program:

San Miguel County Board of Commissioners and the Housing Authority

For more information:

www.sanmiguelcounty.org

Telluride Inclusionary Zoning

Required or voluntary participation of new developments:

Affordable Housing Requirements apply to all residential and non-residential new developments, with exception to those that are determined to be exempt (laid out in Section 7-730) (Affordable Housing Requirements, Section 3-720).

Minimum project size (# of units):

Developers are required to provide a minimum square footage of affordable housing based upon the impact of their development. This minimum is determined by the number of employees generated by the proposed development multiplied by 40%. For commercial/public developments the minimum is 4.5 employees per 1,000 sq. ft.; hotels and residential developments the minimum is .33 employees per lodging unit

Pending the Telluride Housing Authorities approval, alternate forms of providing required affordable housing include purchasing a unit on the open market and placing a deed restriction on it or construction of dormitory/shared family units to provide square footage to meet affordable housing requirement (Affordable Housing Guidelines, Section 11).

Additionally, a payment in lieu will be accepted based on per-square foot rate of \$90.00, but not exceeding 15% of the total minimum affordable housing requirement. This money is only to be used for planning, subsidizing or developing affordable and employee housing. Fees collected may be returned to the present owner if they have not been spent within 7 years of collection (Telluride Affordable Housing Requirements, Section 3-750.C.).

Guidelines for location and design of affordable housing within market-rate developments:

Location: Construction of affordable housing units can be within or outside of the town of Telluride (but within San Miguel County) provided that such development has not previously been deed-restricted to affordable housing or employees.

The Developer must provide Telluride Housing Authority with a Housing Mitigation Plan as part of the development application for approval. The Unit Size Standards for the affordable housing requirement are defined in the Guidelines and are as follows:

- One bedroom units have a min. sq. ft. of 350 and max. of 550;
- Two bedroom units have a min. sq. ft. of 650 and max. of 875;
- Three bedroom units have a min. sq. ft. of 850 and max. of 1,200.
- Units larger than the 3-bedroom maximum will still be credited against the affordable housing requirement the same as a 3-bedroom unit.
- All newly constructed deed restricted units must comply with the Uniform Building Code, and must have a fully equipped kitchen and full bathroom, areas for living and sleeping, and designated areas for storage (Affordable Housing Guidelines, Section 9).

Limits to determine household eligibility for affordable units (AMI range):

Units created under the Affordable Housing Guidelines are targeted for people of middle income based upon affordability at the 45th percentile of individual income for employees within the town of Telluride, upper limit

equal to the 90 th percentile individual income. Affordability Standard: \$2,083 per month per bedroom, Upper Limit: \$5,000 per month per bedroom. The monthly household income limits are adjusted annually pursuant to the average annual wage in San Miguel County. The eligibility of employees must be approved by the Telluride Housing Authority (Affordable Housing Guidelines, Section 5). Income, asset, rental, and ownership qualifications are further laid out in Section 5 of Affordable Housing Guidelines.

Period of controlled resale or rental prices (to maintain supply of affordable housing):

All affordable housing units are required to be deed restricted to rental or sales terms and occupancy limitations that comply with the Telluride Affordable Housing Guidelines (Telluride Affordable Housing Requirements, Section 3-750.A.).

Agency or entity responsible for managing and monitoring the program:

Telluride Housing Authority, the housing authority reviews the Affordable Housing Guidelines at least every two years and reports back to the Town Council regarding their effectiveness.

For more information, [Go to the Town of Telluride web site](#)

and follow this path:

Your Government > Planning and Building Department > Planning Division > Land Use Code > Article 3: Zone District Regulations, Division 7 Affordable Housing Requirements

and

[The San Miguel Regional Housing Authority](#)

Follow this path:

Programs > Telluride Affordable Housing > Telluride Affordable Housing Guidelines

Hat tip to the Division of Housing's Summer intern, Tayler Canjar for her research on these ordinances.