



BUSINESS AND PROFESSIONAL PEOPLE
FOR THE PUBLIC INTEREST

Opening the Door to Inclusionary Housing

2003 Condensed Edition

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Acknowledgements

“Opening the Door to Inclusionary Housing” is a project of the Regional Affordable Housing Initiative of BPI. Authored by Mary Anderson.

BPI gratefully acknowledges Nicholas Brunick, Lauren Goldberg, Susannah Levine, and Jessica Webster for their work on the 2003 condensed edition of this workbook.

INTRODUCTION

Where we live has a significant effect on the quality of our lives. What community we live in affects our access to job opportunities, the quality of the schools our children attend, our use of public transportation, and the amount of involvement we have with our surrounding neighborhood. Many cities and municipalities around the country have started to see for themselves how rapidly rising real estate values can push out or keep out the working families and individuals that make their community diverse and robust: school teachers, police officers, and fire fighters, to name a few.

In an era of constricting state and federal resources, cities and municipalities have had to be creative in addressing the demand for affordable housing. Turning to their own local government policy tools, many cities and municipalities have used their zoning powers to create requirements and incentives to promote the development of affordable housing within the private market. The resulting Inclusionary Housing Programs have become models for other communities across the country.

What is Inclusionary Housing?

- Inclusionary Housing Programs promote the production of affordable housing by requiring residential developers to set aside a specified percentage of housing units in a proposed development and price them at a level that is affordable to low- and moderate-income households.
- The program can be either a mandatory requirement on developers to create a certain number of units, or a voluntary goal with built-in incentives to encourage developers to include affordable units in their developments. Inclusionary Housing Programs are usually citywide and apply to almost every new residential development.

The purpose of Inclusionary Housing Programs is to not only increase the supply of affordable housing in municipalities, but to disperse the affordable units throughout the community. Inclusionary Housing Programs enable low- and moderate-income families to live in homes indistinguishable from, and adjacent to, market-rate housing, and to live in communities with better access to employment and educational opportunities. Inclusionary Housing Programs produce benefits across communities:

- Businesses find it easier to hire and retain employees who are able to live within a reasonable commuting distance.
- Senior citizens have the choice to remain in the communities where they have raised their children.
- Younger parents and single-parent families can find homes in communities with good schools, parks and services.

The Basic Elements of an Inclusionary Housing Program

While Inclusionary Housing Programs vary from city to city and are created to meet the housing needs of each specific community, these programs share some common elements. The following are characteristics of nearly every Inclusionary Housing Program.

- **Set-Aside Requirement**

The set-aside requirement is the percentage of units within a proposed development that a developer is required to price as affordable. Cities have set-aside requirements that range from as low as five percent to as high as 35%.

- **Developer Incentives**

In exchange for setting aside a certain percentage of units as affordable, municipalities give developers certain benefits in order to compensate the developer for pricing some units below market rates. One of the most popular developer incentives used by municipalities is the density bonus, where the developer is permitted to construct additional market-rate units beyond what is allowed under the current zoning ordinance. Other incentives given are expedited permit processes, relaxed design standards, and waivers of certain municipal fees, all designed to decrease the developer's cost of construction.

- **Income Targeting**

Municipalities must decide what income range they want to target the affordable units. Most municipalities target the units based upon a percentage of the area median income. For example, a municipality might decide that affordable units must be priced affordable for families with an income between 50 and 80% of the area median income.

- **Period of Affordability(Control Period)**

Each municipality can decide how long the affordable units must be required to stay affordable—five years, 20 years, even for perpetuity. Certain legal mechanisms, such as deed restrictions and covenants, can be used to guarantee that the units stay affordable for that time period.

- **Monitoring and Enforcement**

Once a program is in place, a municipality must have an administrative system to make sure that the program is being followed and that eligible families are being housed in the affordable units. Some municipalities use their local housing authority to administer the program; others use community development departments or even create a separate administrative agency.

Most municipalities also conduct a housing market study to determine the affordable housing needs of the community. The study should examine the demand for housing in the community, the availability and cost of land, the number and type of development projects that are already in the pipeline, the present development opportunities, and the possible effects of an Inclusionary Housing Program on future development.¹

¹ Netter, Edith. "Inclusionary Zoning: Guidelines for Cities and Towns," prepared for the Massachusetts Housing Partnership Fund, September, 2000.

THE NUTS AND BOLTS: The Development Process

Is inclusionary housing voluntary or mandatory?

The current trend in inclusionary housing programs is toward mandatory inclusionary housing. Municipalities attracted to mandatory inclusionary housing are driven in large part by two forces (1) the effectiveness of mandatory programs at generating both low- and moderate-income housing, and (2) the uniform and predictable nature of a mandatory program.

What types of developments are covered?

The vast majority of Inclusionary Housing Programs apply to new construction. A municipality will also have to determine if it wants to treat for-sale and rental developments differently under an Inclusionary Housing Program. While some municipalities treat for-sale and rental units exactly the same under their programs, several municipalities have different periods of affordability for for-sale and rental units, different in-lieu of options, different density bonuses and other developer incentives, and different income targeting.

What is the threshold number of units to trigger the Inclusionary Housing Program?

Threshold unit numbers range across municipalities. Some trigger points are as low as five units in a development to as high as 50 unit subdivisions. In Boulder, Colorado, for example, the Inclusionary Housing Program applies to all developments, regardless of size. For developments of five units or more, the developer must set aside 20% of the units as affordable. For developments under five units, the developer can either set aside one unit as affordable on-site, one affordable unit off-site, dedicate land off-site for affordable housing development, or pay a cash in-lieu payment.

What is a “set-aside” and how high should it be?

A “set-aside” is the percentage of units in a development that an Inclusionary Housing Program requires the developer to price as affordable. For example, a “10% set-aside” means a developer is required to construct one affordable unit for every ten market-rate units. The percentage of housing units that a municipality decides to require a developer to set aside as affordable is a critical decision in developing an Inclusionary Housing Program. For example, the percentage set aside strongly affects the cost determinations of potential developments, negotiations over fee in-lieu payments and off-site development, the strength and type of developer incentives that may be offered, and the quantity of affordable units that will eventually be developed.

Should incentives be given to developers? If so, what kind?

The vast majority of municipalities provide some combination of incentives to developers as “carrots” to complement the “stick” of the Inclusionary Housing Program. Developer incentives have different benefits. The incentives can help soften the political opposition of developers to an Inclusionary Housing Program, especially if they address a specific concern of the developers. Incentives, such as relaxed development standards or decreased minimum lot size requirements, also ensure that an ordinance will not act as a disincentive to development. Some of these incentives include:

- Density bonuses
- Expedited permit processes
- Fee waivers
- Relaxed design standards and requirements

The table below outlines the different developer incentives used by 12 municipalities.

Developer Incentives in Various Municipalities

Boston, Massachusetts	--increased height or FAR ² allowance
Boulder, Colorado	--waiver of development excise taxes
Cambridge, Massachusetts	--30% density bonus (15% market-rate, 15% affordable) --increased FAR for affordable units ³ --decreased minimum lot area requirements --no variances required to construct affordable units
Davis, California	--25% density bonus (California state law) --one-for-one density bonus for on-site for-sale affordable units --15% density bonus for affordable rental units --relaxed development standards
Denver, Colorado	--10% density bonus --cash subsidy --reduced parking requirement --expedited permit process
Fairfax County, Virginia	--20% density bonus for single-family units --10% density bonus for multi-family units
Irvine, California	--25% density bonus (California state law) --reduced parking requirement --reduced fees --reduced park land set-aside requirement --expedited permit processing
Longmont, Colorado	--negotiated density bonus --expedited development review process --relaxed development standards --fee waivers --marketing assistance
Montgomery County, Maryland	--up to 22% density bonus --fee waivers --decreased minimum lot area requirements --10% compatibility allowance
Newton, Massachusetts	--up to 20% density bonus
Sacramento, California	--25% density bonus (California state law) --expedited permit process for affordable units --fee waivers --relaxed design guidelines --priority for subsidies
Santa Fe, New Mexico	--11–16% density bonus --fee waivers --relaxed development standards

² FAR is defined as Floor Area Ratio, the ratio of gross floor area (the sum, in square feet, of the gross horizontal areas of all floors in a building) to the total area of the lot.

³ By increasing the FAR for affordable units, developers are allowed to increase the density of the development.

When should the affordable units be constructed?

Under an Inclusionary Housing Program, the affordable set-aside units in a development should be constructed simultaneously with the market-rate units. By requiring simultaneous construction, not only will the affordable units be available for rental or purchase at the same time as market-rate units, but municipalities can prevent developers from abandoning projects prior to constructing the affordable units.

What should the affordable units look like?

In order to promote the goal of economic integration, most municipalities require that the affordable units be relatively similar in size and external appearance as the market-rate units. Similar look and size between the market-rate and affordable units not only avoids stigmatization of the households in the affordable units, it eases the fears of market-rate owners that the affordable units will affect property values.⁴

Should the affordable units be developed on or off-site?

If one of the goals of the Inclusionary Housing Program is not only to promote economic diversity within the municipality, but to create economically integrated neighborhoods, this goal can be attained only if the affordable housing is built throughout the market-rate development. This integration is achieved by requiring affordable units to be constructed on the same site as the market-rate units.

What is a Fee In-Lieu and how does it work?

A "fee in-lieu," also known as a "buyout," is when a municipality allows a developer to make a cash payment instead of constructing the required affordable units within the development. Usually these payments are deposited in an affordable housing trust fund or a similar instrument to fund the construction of other affordable units within the municipality.

Some municipalities like the flexibility of a fee in-lieu option because it allows municipalities to mold developments to the needs of the community. However, unless strictly administered, a significant amount of money in fees may be collected by a municipality, but affordable units may never be built, undermining the whole purpose of an Inclusionary Housing Program.⁵ Municipalities that do have fee in-lieu options create them to address specific issues. For example, fee in-lieu options may be beneficial for extremely small developments, such as three-flats, where the inclusion of an affordable unit may not be economically feasible.⁶ Many municipalities that have a fee in-lieu option only allow it in certain "exceptional circumstances," in order to make the use of this option more difficult and to provide a stronger incentive for the construction of affordable units within proposed developments.

⁴ See Siegel, Joyce. *The House Next Door*. Innovative Housing Institute, 1999, finding no significant difference in price trends between market-rate units in inclusionary developments and the market as a whole.

⁵ Ray, Ann. "Inclusionary Housing: A Discussion of Policy Issues," prepared for the Alachua County Department of Planning and Development, Gainesville, Florida. June 15, 2001.

⁶ Netter, Edith. "Inclusionary Zoning: Guidelines for Cities and Towns," prepared for the Massachusetts Housing Partnership Fund, September, 2000.

THE NUTS AND BOLTS: The Benefiting Families

At what income levels should affordable units be targeted?

Each municipality must decide who should be eligible to rent or own the set-aside affordable units. Some municipalities that want to target moderate-income households for its affordable units, such as municipal employees, have set higher income targeting for affordable units--such as 80% or 100% of area median income (AMI). Municipalities committed to creating affordable units for the poor have created lower income tiers, such as 50% of area median income and below.

How do municipalities structure the income targeting for affordable units?

Municipalities with Inclusionary Housing Programs have used two basic methods for setting the sale or rental price for the set-aside affordable units: income tiering and income averaging. The majority of municipalities with Inclusionary Housing Programs utilize the income tiering method. *Income tiering* is when a municipality creates categories of income levels for which affordable units must be appropriately priced (e.g. below 80% of the Area Median Income). *Income averaging* is when a municipality states that the affordable units in a development must be priced so that the **average** price of a unit is affordable to a certain predetermined income level (e.g. 65% of the Area Median Income).

How does a municipality determine if a household is income eligible for an affordable unit?

Once a municipality determines the qualifying household income levels for affordable units under an Inclusionary Housing Program—such as 0 to 50% of area median income (AMI) or incomes averaging 65% AMI—a process must be created to verify the incomes of families applying for the affordable units. Also, it must be determined who will collect income-eligibility information—the developer or the municipality. Most municipalities use the supporting regulations for their Inclusionary Housing Programs to outline the documentation required to determine income-eligibility for the affordable units.

How do municipalities set the initial prices for affordable units?

Virtually all municipalities price both the affordable for-sale and the rental units such that a household in the designated income category would spend no more than 30% of their monthly gross income towards the mortgage or rent, and other associated and designated costs. Municipalities differ in what additional costs to include in the calculation, and the formulas to create the final price. Monthly costs such as insurance and property taxes are included in the for-sale calculation for most municipalities. Rental prices for affordable units can take into account monthly costs such as utilities or insurance. Some municipalities also take into account one-time costs in for-sale units such as closing costs and brokerage fees.

How do municipalities determine the resale price of affordable units?

Most municipalities with Inclusionary Housing Programs calculate the resale price of an affordable unit through a formula that sets an affordable resale price plus the rate of inflation over time and other transaction costs. Some municipalities with Inclusionary Housing Programs not only want to keep units affordable for eligible buyers, but they also want the eligible sellers of the affordable units to be able to financially benefit from at least a portion of the market appreciation of their unit over the time they have lived there. Therefore, in calculating the resale price, these municipalities allow the sellers to retain some of the value of the appreciation of the unit.

THE NUTS AND BOLTS: The Long-term Impact of the Program

How long do the affordable units stay affordable?

The length of time a unit stays affordable under an Inclusionary Housing Program varies across the country. Some municipalities have affordability periods as short as ten years while others require the units to stay affordable in perpetuity. A significant lesson can be learned from municipalities that have had Inclusionary Housing Programs in place over many years: the longer the affordability period, the better.

How do you keep affordable units affordable over time?

The vast majority of inclusionary housing ordinances use some sort of resale restriction to preserve the affordability of the set-aside for-sale units over time. The purpose of these restrictions is to keep the units produced under the ordinance affordable for an extended period of time, thus promoting the goal of creating a continuing supply of affordable units in the housing market. Resale restrictions can take many forms: deed restrictions, covenants that run with the land, contractual agreements, and land trust arrangements. Another form of resale restriction used by municipalities to preserve the affordability of units is second mortgage liens on affordable units.

Who owns and manages the affordable rental units?

While some municipalities actually purchase or rent affordable units and then manage the affordable rental units themselves, others leave the ownership and the management of the affordable rental units to the developers and the property managers. Some of the larger and older Inclusionary Housing Programs are structured so that the municipal housing authority purchases or leases the affordable units, and then leases the units to eligible families, thus administering the program themselves. Other municipalities choose not to purchase and manage affordable units and instead require the developers, owners and landlords of the affordable units to report on a regular basis to the municipality the number of affordable units and the income levels of the owners or renters.

How are affordable units treated within a condominium complex?

Condominium complexes usually charge a monthly assessment fee to unit owners to cover the costs of common elements in the building, such as lighting in the hallways, trash pick-up, building insurance, etc. When determining the sale price for the affordable unit, the proposed condominium assessment fee is taken into account in the pricing formula, along with the other factors of pricing (mortgage payment, utilities, etc). One rationale for considering the condominium assessment fee in the pricing of the affordable unit is to avoid stigmatizing the households within the affordable units. Another issue with affordable units in condominium complexes is that of special assessments; advocates recommend that owners of affordable units not be required to pay for capital improvements they cannot afford.

What enforcement mechanisms do municipalities have under Inclusionary Housing Programs?

Municipalities take advantage of several enforcement mechanisms, ranging from revoking building permits or plan approvals to fines and legal action. Penalties can be either civil or criminal. Municipalities also use different methods when addressing the actions of developers versus landlords versus families attempting to become eligible for affordable units. Mechanisms such as the denial of building permits and site plan approval are popular “sticks” used to make sure developers are involved before the development even starts.

THE NUTS AND BOLTS: The Legal Issues

What is a “nexus study”?

A nexus study is an analysis done by a municipality to show the connection between the municipality’s interest in providing affordable housing for its residents and the Inclusionary Housing Ordinance. Specifically, the nexus study provides data to show how the continued construction of market-rate housing creates a need for affordable housing in the municipality and how the Inclusionary Housing Ordinance will meet this need. A municipality will usually compile the study as part of its effort to implement the Ordinance, and will usually publish its findings in an attached memo or an appendix to the Ordinance or the comprehensive plan of the municipality. The nexus study should highlight the specific needs of the municipality and should take into account the diverse reasons why a community would want an Inclusionary Housing Ordinance, with emphasis on the particular goals the municipality wishes to achieve through the Ordinance itself.

What is a “taking” and what effect does it have on Inclusionary Housing?

The Fifth Amendment of the Constitution provides that no private property can be taken for public use without just compensation; this provision is known as the “Takings Clause.” Opponents to Inclusionary Housing Programs sometimes argue that the application of an Inclusionary Zoning Ordinance can result in a regulatory taking.

Challenging the Takings Argument

There are three takings arguments that objectors to inclusionary zoning could use to challenge an Inclusionary Housing Program. The first argument focuses on economic viability of the land, specifically that the set-asides required under inclusionary zoning ordinances diminish the economic value of private land to such an extent that it constitutes a taking. The second argument is that the set-asides do not have the required “nexus” in that they do not substantially advance a legitimate state interest. The third argument focuses on the “rough proportionality” test in *Dolan*, arguing that the required set-aside is not roughly proportionate to the impact of the development. This claim reasons that the lack of affordable housing was an already existing problem and not a need created by the planned development.

What legal challenges have there been to Inclusionary Zoning Ordinances?

Since 1973, four different Inclusionary Zoning Ordinances have been challenged in different state courts – Virginia, New Jersey, Massachusetts, and California. Two of the cases held the statutes invalid, and two of the cases held the statutes valid. Each of these cases was strongly influenced by the particular state’s enabling statute. A municipality should examine the law in its state and confer with legal counsel when drafting an Inclusionary Zoning Ordinance. First, the inclusion – or lack – of incentives or cost offsets for developers who comply with the ordinance played an important part in the courts’ determination of the validity of each ordinance. Second, these cases illustrate how important it is that a municipality demonstrate the connection between the need for affordable housing and the set-aside requirement; the findings of a municipality’s “nexus study” can be used for this purpose. Finally, the cases show that it is important that an Inclusionary Zoning Ordinance be applied across the board, so that the burden of affordable housing is not shouldered by only one developer or only a group of developers.

THE CASE STUDIES: Boston, Massachusetts

Political Landscape and Policy

In response to critical changes in the housing market of Boston and pressure from community-based organizations and housing advocates, Mayor Thomas Menino signed an Executive Order in February 2000 that created an inclusionary development policy.

Highlights of the Program

Under Boston's policy, any residential project that contains 10 or more units and is either financed by the City of Boston or the Boston Redevelopment Authority (BRA), is to be developed on property owned by the City or the BRA, or requires zoning relief, triggers the requirements of the program. Due to the antiquity of the Boston Zoning Code, practically all residential development over nine units is covered by the Executive Order.

The Boston policy requires qualifying developments to set aside 10% of the units as affordable. While Boston does provide for off-site development of the affordable units, a developer who exercises this option must provide even more affordable units—five percent more for a total of 15% of the total number of market-rate units. Boston also allows for a fee in-lieu option, where the developer is required to make a payment to the BRA equal to 15% of the total number of market-rate units times an affordable housing cost factor. The affordable housing cost factor, initially established at \$52,000, is derived from the average subsidy needed to develop a unit of affordable housing and is adjusted annually.⁷ The funds collected from the fee in-lieu option are used to subsidize other affordable housing developments in Boston. Unlike the vast majority of other municipalities, Boston does not provide a density bonus for developers. However, developers do qualify for increased height and FAR allowances.

Boston has a higher income-target than most municipalities with an Inclusionary Housing Program. At least one-half of the set-aside units must be priced affordable for households making less than 80% of area median income (AMI) for the Boston MSA. The remaining set-aside units are priced affordable for households making between 80 and 120% of AMI, provided that on average these higher-tier units are affordable to households earning 100% of AMI.

The affordable units are required to remain affordable for at least 30 years, with the ability to extend the affordability period for an additional 20 years, for a total of 50 years.⁸

Impact

In the initial year of implementation of the Executive Order, eight privately financed housing developments – mostly luxury developments – fell under the requirements of the policy. As of January of 2002, developers have contracted to contribute over \$4 million for affordable housing construction and over 177 affordable units have been constructed as a result of the policy, with many more in the pipeline.⁹

⁷ For the process for the annual determination, see City of Boston, Department of Neighborhood Development web site, <http://cityofboston.gov/dnd>.

⁸ Kiely, Meg. "Boston's Policy Gives Developers Choice," *Inclusionary Zoning: Lessons Learned in Massachusetts*, NHC Affordable Housing Policy Review, VI, 2, Issue 1, January, 2002.

THE CASE STUDIES: Boulder, Colorado

Political Landscape and Policy

During the 1980's and 1990's, Boulder, a city of almost 95,000, had a voluntary inclusionary housing ordinance in effect. In the late 1990's, in response to growing housing costs and the ineffectiveness of the voluntary program, Boulder began to explore other policy options to address the affordable housing issue through a public planning process.

Highlights of the Program

The Boulder Inclusionary Zoning Ordinance is extremely comprehensive. The Ordinance applies to all residential development in the city, regardless of type or number of units. If the proposed development has four or fewer units, the developer has to create either one affordable unit on-site, one affordable unit off-site, dedicate land for one affordable unit, or pay a cash in-lieu payment. The money generated from these cash in-lieu payments fund the Affordable Housing Fund for the city. If the developer proposes five or more units in the development, the developer must set aside 20% of the units as affordable.

If a developer wants to construct the affordable units off the site of the market-rate development and has met the above standard, the developer has three options: (1) the developer can take a unit that he or she already owns at another site and convert that unit to an affordable unit, (2) the developer may contribute a cash in-lieu payment to the Affordable Housing Fund, or (3) the developer may provide land that is equivalent in value to the cash in-lieu payment plus an additional 50% to cover transaction costs.

The only incentive Boulder provides developers is a waiver of development excise taxes. Boulder also has a minimum unit size.

In order to determine the “average” price for the affordable units in a development, the developer submits the following information to the City Manager for each affordable unit: the legal description; the total square footage; the number of bedrooms and bathrooms; the price; the targeted income; the estimated construction schedule; and the title commitment within 30 days of the restrictive covenant. Prices for the for-sale affordable units are calculated on a quarterly basis to take into account interest rate changes, while rental prices are calculated annually when HUD publishes new area median income (AMI) figures.

Boulder requires the following for each affordable unit: the record of a deed restriction or covenant against the property that includes the qualifying household income to purchase or rent the unit, the method to determine the maximum affordable price for the units, the amount the resale or rent price can increase each year, the affirmative marketing requirements, and the enforcement remedies.

Impact

The City Council drafted and enacted an Inclusionary Zoning Ordinance that went into effect in the year 2000. To date, this ordinance has led to the creation of 150 units of affordable housing, with a much larger number in the construction pipeline.¹⁰

⁹ Kiely, Meg. “Boston’s Policy Gives Developers Choice,” *Inclusionary Zoning: Lessons Learned in Massachusetts*, NHC Affordable Housing Policy Review, VI. 2, Issue 1, January, 2002.

¹⁰ City of Boulder, HHS Department, November, 2002.

THE CASE STUDIES: Cambridge, Massachusetts

Political Landscape and Policy

Housing prices have increased drastically in Cambridge over time, outpacing increases in income. Advocates and residents grew concerned that Cambridge would become a community of only wealthy homeowners, thus decreasing the diversity of this dynamic municipality. To address this growing affordability crisis, the Cambridge City Council created an Inclusionary Housing Program in 1999.

Highlights of the Program

The Cambridge program applies to developments that contain ten or more units. The city's ordinance mandates that for-sale developments above ten units automatically receive a 15 percent market-rate density bonus contingent upon a 15 percent affordable unit set-aside. The same 15% density bonus applies to rental developments. Cambridge's zoning ordinance applies only to new construction and conversions.

From the outset, Cambridge pressured developers to build affordable units on-site.¹¹ The ordinance generally does not permit off-site construction. Cambridge also provides a variety of other incentives besides the density bonus. The minimum lot area requirement may be decreased for affordable units in order to permit up to two additional units on the lot for every affordable unit, which significantly decreases land costs. Also, the FAR may be increased by up to 30% for the affordable units and the developer does not need to seek a variance for the construction of the affordable units.

Cambridge targets the affordable units to moderate-income families. The total income for a family seeking an affordable unit cannot exceed 80% of the area median income (AMI) for the Boston MSA. Cambridge uses the income-averaging method to determine income targets for affordable units within developments. In order to create an incentive for a range of incomes and to not have all the affordable units priced at the 80% AMI income limit, Cambridge requires that the price points for the affordable units within a development must be affordable, *on average*, to a household making 65% AMI. The affordable rental units that are constructed under the program are made affordable for 50 years, while the affordable for-sale units are permanently affordable through a deed restriction and a second mortgage on the property held by the city.

Impact

Developers have exerted little opposition to the ordinance, due to the desirability of development in Cambridge and the city's efforts to minimize developers' burden in complying with the ordinance. Some homeowners have identified the inclusion of affordable units in their development as an incentive for purchasing a unit, due to their commitment to living in a diverse community. The Cambridge program can be credited with the creation of 131 units of affordable housing as of 1999.¹²

¹¹ Herzog, Roger and Darcy Jameson. "Cambridge Law Came After End of Rent Control," in *Inclusionary Zoning: Lessons Learned in Massachusetts*, NHC Affordable Housing Policy Review, VI. 2, Issue 1, January, 2002.

¹² Telephone Interview with Chris Cotter, Cambridge Community Development Department, November, 2002.

THE CASE STUDIES: Davis, California

Political Landscape and Policy

Davis, California is a city of only 62,200 people. Its Inclusionary Housing Program was implemented in 1990 and has been very successful.

Highlights of the Program

The Davis Ordinance applies to both for-sale and rental developments with five or more units. The set-aside requirements in Davis are some of the highest percentages in the country.¹³ Developers also have flexibility under the program, where they can meet the set-aside requirement through a combination of on-site development, off-site development, fee in-lieu payments, and land dedication.

In rental developments with 20 or more units, 35% of the units must be set aside as affordable. Income-tiering occurs in rental units as well, for that 35% is split between units priced for low-income households¹⁴ and units priced for very-low-income households.¹⁵ At least 25% of the market-rate units must be set aside to be priced affordable for low-income households, and at least 10% of the market-rate units must be set aside to be priced affordable for very-low-income households. In for-sale developments, 25% of the units must be set aside as affordable.

For rental developments, all affordable units must be constructed on-site. For-sale developments have a bit more flexibility. Also, fee in-lieu payments are allowed in Davis for developments that have under 30 units or if the developer can demonstrate a “unique hardship.” Davis gives developers a one-for-one density bonus in for-sale developments. For rental developments, developers receive a 15% density bonus.

In determining a price for an affordable for-sale or rental unit, Davis uses specific formulas. The sale price of an affordable for-sale unit is determined by a mortgage payment that would be 30% of the gross monthly income of an eligible family, less insurance and property taxes, adjusted for family size. While there is not an affordability control period for affordable for-sale units, the rental units are permanently affordable, creating a permanent supply of affordable rental housing.

Impact

Davis has created **over 1500 units of affordable housing** since the implementation of its Inclusionary Housing Program in 1990. A combination of Davis’ income-averaging scheme for the pricing of affordable units, plus the significant percentage of set-aside units required, has resulted in a significant percentage of affordable units priced for very-low-income households, a phenomenon not seen in other municipalities. Over 70% of the multi-family affordable units created in Davis are affordable to very-low-income households.¹⁶

¹³ California Coalition for Rural Housing Project, “Creating Affordable Communities: Inclusionary Housing Programs in California,” November, 1994.

¹⁴ Davis defines low income as 50-80% of area median income.

¹⁵ Davis defines very-low income as 50% of area median income or below.

¹⁶ California Coalition for Rural Housing Project, “Creating Affordable Communities: Inclusionary Housing Programs in California,” November, 1994.

THE CASE STUDIES: Denver, Colorado

Political Landscape and Policy

Denver, a city of 554,636 people, has one of the newest Inclusionary Housing Programs in the country. The City Council passed the ordinance in August of 2002.¹⁷ While regulations are yet to be drafted, and the program has not yet been implemented, the Ordinance itself is detailed in its requirements and incentives.

Highlights of the Program

Denver's new program covers not only new residential construction, but also existing buildings that are being substantially rehabilitated or remodeled to provide dwelling units. The program is mandatory for for-sale developments of 30 or more units but is voluntary for rental developments.

For-sale developments are required to set aside 10% of the units in the development to be priced affordable for households earning 80% of Area Median Income (AMI) or below. However, if the development is to be greater than three stories, has an elevator, and has over 60% of its parking as structured, the affordable units are to be priced affordable for households earning 95% of AMI or below. Rental developments can voluntarily set aside 10% of the units as affordable to households earning 65% AMI, less a utility allowance.

In addition to the usual incentives provided by municipalities, Denver also provides a cash subsidy to developers for the rental and for-sale affordable units. Denver also reduces the parking requirements up to 20% of the required zoned parking if the developer produces at least one additional affordable unit for every 10 parking spaces reduced. Denver provides an expedited review process, allowing developers to have their review by the Community Planning and Development Agency (CPDA) completed within 180 days. Finally, Denver provides a density bonus of 10% to developers.

Both the affordable for-sale and rental units are required to stay affordable for 15 years. The Denver Ordinance also creates a formula for the City to receive some of the market proceeds from the affordable unit, after the end of the control period, once the unit is sold on the open market.

Denver has several tools for enforcement for the various stages of development. If the developer violates the ordinance in any way, including failure to construct the required affordable units, the city may deny, suspend or revoke any and all building or occupancy permits. The city can also withhold subsequent building permits until the affordable units are built. If the ordinance is violated by the unauthorized sale of an affordable unit, the Director of the CPDA can enjoin or void any transfer of the affordable unit and require the owner to sell the unit to an eligible household.

Impact

The Denver program is responsible for 804 planned units.

¹⁷ U.S. Census Bureau, 2000 Census.

THE CASE STUDIES: Fairfax County, Virginia

Political Landscape and Policy

Fairfax County is a wealthy, fast-growing county. As of 2000, Fairfax County was the wealthiest county in the country, with a median household income of almost \$91,000. Fairfax County is also the most populous county in the Greater Washington, D.C. area, growing over 18% in the last ten years to over 900,000 people.¹⁸

Highlights of the Program

The program applies to new residential construction and condominium conversions that are developments of 50 units or more and are subject to a rezoning, special exemption, site plan, or subdivision plat application. However, multi-family buildings of four stories or more with at least one elevator are exempt from the Program.

In single-family detached or attached developments, the developer must reserve up to 12.5% of all units as affordable. In non-elevator multi-family developments or elevator multi-family developments under three stories, a developer must reserve up to 6.25% of all units as affordable. The affordable units are priced for households making 70% of area median income (AMI) or below. The period of affordability is 15 years for for-sale units and 20 years for rental units.

In multi-family developments, the affordable units must be comparable in bedroom number and amenities to the market-rate units. However, in single-family developments, the affordable units do not have to be comparable.

Developers can request a fee in-lieu of constructing the affordable units in “exceptional cases.” In order to be granted a fee in-lieu, the developer must show that the construction of the affordable units on-site are physically and/or economically infeasible; the overall public benefit from not constructing the units outweighs the benefit of the developer actually constructing the affordable units on-site; and the fee in-lieu will still achieve the objective of providing a broad range of housing opportunities in Fairfax County.

Developers of single-family units may receive up to a 20% density bonus, while developers of multi-family units may receive up to a 10% density bonus. No other incentives are provided.

The sales price for the for-sale affordable units is set by the Fairfax County Executive. The prices are set such that the developer will not suffer an “economic loss” as a result of building the affordable units.

Impact

Fairfax County implemented its inclusionary housing program in 1990. Since that time, this program has produced 1,746 units of affordable housing with 2,000 more anticipated.

¹⁸ U.S. Census Bureau, 2000 Census.

THE CASE STUDIES: Irvine, California

Political Landscape and Policy

In the spring of 2003, Irvine's voluntary inclusionary housing policy changed to a mandatory inclusionary housing ordinance. Irvine is one of the nation's largest planned urban communities with a population of over 143,000.¹⁹ Since its adoption in the late 1970s, the City of Irvine had treated its Housing Element Goal, which outlined the voluntary inclusionary zoning policy, as a requirement. The Irvine Company, which owns 90% of the land in Irvine, was willing to meet the city's goal. According to Irvine City Planner Barry Curtis, the city ran into problems with compliance to voluntary inclusionary housing in recent years when developers other than the Irvine Company brought forth proposals.

Developers initiated the change to a mandatory inclusionary zoning ordinance to clarify the city's expectations and to establish uniform requirements across the board for all developers. A mandatory ordinance provides predictability in the zoning process and allows developers to determine a project's fiscal feasibility early in the development process.²⁰

Highlights of the Program

Irvine's new mandatory inclusionary zoning ordinance requires proposals for residential developments of five or more units to set aside a minimum of 15% of the units as affordable. The ordinance targets 5% of the units for households earning less than 50% of the County Median Income (CMI); 5% of the units must be affordable for households earning 51-80% of the CMI; and 5% of the units must be affordable to households earning 80-120% of the CMI.²¹ The tri-level income targeting is to promote economic integration within the development. Projects of less than five units are required to pay a fee in-lieu of providing affordable units.

In Irvine, the city provides the developer with a "menu" of options as cost offsets for meeting the city's affordable housing requirement. This menu includes both financial and processing incentives, such as modifications for setbacks or building heights, fee waivers, density bonuses, and expedited permit processing.²²

Impact

From the late 1970s to the late 1990s, the voluntary program produced 3,400 units of low- and moderate-income housing under a 15% set-aside goal for affordable units in new developments. Although California passed a density bonus law in 1979 that required municipalities to provide developers of affordable housing a 25% density bonus, developers in Irvine have relied more on local incentives such as fee waivers and expedited permitting.

19 U.S. Census Bureau, 2000 Census.

20 Interview of Barry Curtis, Associate Planner for the City of Irvine, June 16, 2003.

21 Chapter 2 -3, Section 4, "Affordable Housing Requirements Defined," Affordable Housing Implementation Procedure for the City of Irvine.

22 Chapter 2 -3, Section 6, "Role of Financial and Processing Incentives," Affordable Housing Implementation Procedure for the City of Irvine.

THE CASE STUDIES: Longmont, Colorado

Political Landscape and Policy

Longmont, a city of 71,093 people, experienced a tremendous population boom between 1960 and 1980. In the 1990s, the town began to grapple with the problems of an increasingly expensive housing market that was putting housing out of reach for long-time residents and workers at local facilities. In 1995, the City Council passed the Annexation Program, Longmont's inclusionary housing program.

Highlights of the Program

The Annexation Program requires that all for-sale and rental residential development on land annexed by the city, regardless of the number of units in the development, set aside 10% of the developed units as affordable. The Program also requires that all new for-sale residential development of five or more units anywhere in Longmont must set aside 10% of the developed units as affordable.

The affordable for-sale units must be priced affordable for households making 80% of Area Median Income (AMI) for the Boulder-Longmont area, adjusted for household size. The affordable rental units must be priced affordable for households making 60% AMI, adjusted for household size. Prices and rents are set by the Colorado Housing and Finance Authority. The affordable for-sale units must stay affordable for at least 10 years and the affordable rental units must stay affordable for at least 20 years. Longmont also has requirements for developers as to the type and phasing of the affordable units. The 10% set-aside requirement applies across housing types.

Longmont does allow for developers to construct the affordable units off the site of the market-rate units, but only on a case-by-case basis. The off-site location must be approved by City Council, and the affordable units must be constructed concurrently with the development of the market-rate units on the other site.

On a case-by-case basis, a developer may be able to pay a fee in-lieu of constructing the affordable units. The fee funds Longmont's Affordable Housing Fund. Longmont sets fee amounts based upon the type of market-rate units in the development.

If a developer constructs more than the required 10% set-aside for affordable units, or if the developer targets the units to households making lower than the 80% and 60% AMI income-targets, a developer may receive expedited development review processing; modified development standards (such as reduced lot size requirements, setback requirements, etc.); increased fee waivers; assistance in marketing; and a negotiated density bonus. However, the amount of each of these incentives is negotiated on a case-by-case basis.

Impact

To date, 545 affordable units have been created under the program, with 444 more units proposed.²³

²³ Interview with Kathy Fedler, Affordable Housing Programs Manager & Community Development Block Grant Coordinator for Longmont, November, 2002.

THE CASE STUDIES: Montgomery County, Maryland

Political Landscape and Policy

Montgomery County, with more than 800,000 residents, is the most populous county in Maryland.²⁴ During the 1970s and 1980s, Montgomery County grew from a Washington, D.C. bedroom community to the region's second largest employment center. Now more than 60% of residents work and live in the County.

Highlights of the Program

Montgomery County's inclusionary housing program, implemented in 1974, applies to every new subdivision or high-rise with 50 or more housing units. At least 12.5% of the units in these developments must be set aside as affordable, but up to 15% can be set aside with a sliding-scale density bonus given as an incentive. The affordable units are targeted toward households making under 65% of area median income (AMI). The county's public housing authority, the Housing Opportunities Commission (HOC), has a right to purchase one-third of the affordable housing units.

Montgomery County has a sliding-scale density bonus connected to the set-aside in order to create an economic incentive for developers to construct more affordable units. For every tenth of a percentage point increase in the set-aside by the developer, the density bonus increases by one percent, to a maximum density bonus of 22%. Also, in order to promote the integration of the affordable units in the market-rate development, Montgomery County allows for a 10% compatibility allowance.

In "exceptional cases," a developer has three alternatives to constructing the affordable units on the site of the market-rate development: (1) the developer can either build significantly more affordable units at one or more other sites in the same or an adjoining planning area; (2) convey land in the same or adjoining area that is suitable in size, location, and physical condition and that can contain significantly more affordable units than the market-rate site; or (3) contribute to the Housing Initiative Fund an amount that will produce "significantly" more affordable units than would have been developed at the market-rate site.

The period of affordability is ten years for for-sale units and 20 years for rental units. However, if the home is sold before the 10-year control period is over, it begins anew with the new owner.

The price of for-sale units must be affordable to households making 65% of the area median income, including closing costs and brokerage fees. For rental units, the resulting rent must be affordable to households making 65% AMI and must include the cost of parking, but excludes utilities when they are paid by the tenant. Prices for the affordable units are set every five years and are increased in the intervening years by the Consumer Price Index.

Impact

Montgomery County's ordinance – the first major inclusionary zoning program in the country – is responsible for creating integrated neighborhoods by racial and ethnic group, and by income. Over 11,500 affordable units have been developed since the program was implemented.

²⁴ U.S. Census Bureau, 2000 Census.

THE CASE STUDIES: Newton, Massachusetts

Political Landscape and Policy

Newton is an upper-income suburb of Boston with a population of about 83,000 people.²⁵ Most of Newton has been built up and is of a single-family character. In fact, only 12.5% of the land in Newton is zoned as multi-family. However, at the same time, Newton is known for its liberal politics and began an informal inclusionary housing policy as early as the 1960s. This policy was formalized in an ordinance in 1977.²⁶

Highlights of the Program

The Newton Ordinance applies to all residential new construction and rehab that requires a special permit. Under Newton's zoning ordinance, all developments with greater than two units require a special permit. The developer must set aside 25% of the units as affordable, and under this process, a developer can receive up to a 20% density bonus.

All the affordable units created under the program are rental units, regardless of whether or not the market-rate units are rental or for-sale. The affordable units are leased through the Newton Housing Authority, who then leases the units to eligible households. If the Housing Authority does not have adequate funds to lease the units, the Board of Aldermen for the City of Newton may purchase the affordable units or ask the developer to pay a fee. The affordable units are required to be equal in size, quality and characteristics to the market-rate units.

If a development is below 10 units, a developer can make a fee in-lieu payment. However, since the payment level is low and is not indexed to inflation, the fee is less burdensome than building the affordable units on-site. The result of this policy is many nine-units-and-under developments, and only \$600,000 in funds over the 26 years of the program.²⁷

The period of affordability is 40 years, and discussions are currently underway to expand that period of affordability again. To date, 50 of the 225 units created have aged out of the system and have been sold on the open market.

The affordable units created under the program are priced for households making at or below 50% of the area median income, one of the lowest income-targeting guidelines in the country. Newton used the Section 8/Housing Choice Voucher rent guidelines to determine rents for eligible families.

Impact

To date, the Newton Ordinance is responsible for the creation of 225 affordable units.

²⁵ U.S. Census Bureau, 2000 Census.

²⁶ Engler, Robert. "An Inclusionary Housing Case Study: Newton, Massachusetts," *Inclusionary Zoning: Lessons Learned in Massachusetts*, NHC Affordable Housing Policy Review, vl. 2, Issue 1, January, 2002.

²⁷ Engler, Robert. "An Inclusionary Housing Case Study: Newton, Massachusetts," *Inclusionary Zoning: Lessons Learned in Massachusetts*, NHC Affordable Housing Policy Review, vl. 2, Issue 1, January, 2002.

THE CASE STUDIES: Sacramento, California

Political Landscape and Policy

Sacramento, a city of over 400,000, saw significant growth in the 90's in residential and commercial development on the outer-edges of the city.²⁸ While the commercial development created new jobs at a variety of income levels, the majority of the residential development was geared towards upper-income households. In order to provide housing affordable to low- and moderate-income families near or within these job-rich areas, the City Council explored an inclusionary housing program. Eventually, through the work of a broad coalition of affordable housing advocates, labor unions, neighborhood associations, environmental groups, minority communities, the faith community, and the Chamber of Commerce, the Sacramento City Council passed the Mixed-Income Housing Ordinance in the year 2000.

Highlights of the Program

The Mixed-Income Housing Ordinance applies to all residential development over nine units in "new growth areas," i.e. large undeveloped areas of land at the city's margins, newly annexed area, and large interior redevelopment project areas. The set-aside requirement under the Mixed-Income Housing Ordinance is 15% of all units. However, the affordable units can be single-family or multi-unit. This flexibility in the type of units helps developers determine a cost-effective way to construct the affordable units.²⁹

The Mixed-Income Housing Ordinance specifically tiers the affordable units to create more units targeted to the lowest-income families. Of the affordable units that are produced within the development, one-third of the units must be priced for households making between 50 and 80% of area median income (AMI), while the remaining two-thirds of the units must be priced for households making less than 50% AMI. The affordable units must remain affordable for 30 years.

Sacramento provides a density bonus of 25%, which tracks the density bonus required under California state law.³⁰ Besides the density bonus, developers may also receive expedited permit processing for the affordable units, fee waivers, and relaxed design guidelines. Also, developers of inclusionary projects may apply and receive priority for all available subsidy funding, including funds from the city's housing trust fund, tax increment funds from redevelopment areas, and federal and state subsidies.

If the proposed development is an exclusively single-family development, the developer can dedicate land off-site or build the affordable units off-site only if there is insufficient land zoned multi-family at the development site. However, the alternative land or placement of the affordable units must be within the "new growth" area.

Impact

The Sacramento ordinance is responsible for the creation of 254 units, with hundreds more in the pipeline.

²⁸ U.S. Census Bureau, 2000 Census.

²⁹ Interview with David Jones, Sacramento City Council Member, March, 2001.

³⁰ California state law entitles developers to a 25% density bonus if 20% or more of the total units of a housing development are affordable to lower income households or 10% are affordable to very low-income households.

THE CASE STUDIES: Santa Fe, New Mexico

Political Landscape and Policy

Santa Fe is a city of 62,000 people that is feeling the growth effect of being designated a hot tourist destination and retirement location.³¹ The Santa Fe City Council adopted an inclusionary housing program, the Housing Opportunities Program (HOP) in 1998.

Highlights of the Program

While the HOP Program applies to all new developments, the level of obligation on the development to produce affordable units is based upon the “type” of development proposed. Santa Fe divides new developments into four categories: Types A, B, C, D.

“**Type A**” developments already have at least 75% of the proposed units priced affordable to households with incomes below 80% of Area Median Income (AMI). Type A developments have no mandatory set-aside requirements. The developments only have to verify that they sold the units to income-eligible households. Type A developments receive a 16% density bonus.

“**Type B**” developments have all of their units priced affordable to households with incomes under 120% AMI. Type B developments do not receive a density bonus.

“**Type C**” developments have one or more of the units priced for households with incomes greater than 120% AMI, and the average price of an affordable unit is for households that are less than 200% AMI. Type C developments must set aside 11% of the units in the development as affordable for households with incomes at or below 80% AMI. Type C developments will receive an 11% density bonus if they provide the required set-aside units and designate all affordable units for-sale.

“**Type D**” developments have an average price for a unit priced for households with incomes above 200% AMI. Type D developments must set aside 16% of the units in the development as affordable to incomes at or below 80% AMI. Type D developments receive a 16% density bonus if they provide the required set-aside units and have all affordable units for-sale.

The HOP Program only imposes affordable housing obligations on Type C and D developments. The HOP Program imposes a 30 year period of affordability. However, the effect of the affordability period is permanent because the 30-year period starts anew with each new occupant of the unit.

Developers receive either an 11% or a 16% density bonus, based upon the type of development. The density bonus is directly proportional to the set-aside requirement. Developers may also request waivers of Plan Submittal Fees for annexation, rezoning or subdivision fees, or building permit fees for the affordable units, though these are relatively minor fees. Developers may request variances to decrease their obligations to provide minimum setbacks, landscaping, and other similar requirements.

Impact

12 affordable units have been created, and another 100 units are in the pipeline.

³¹ U.S. Census Bureau, 2000 Census.

GLOSSARY

Affordability Controls

Affordability controls are mechanisms used by municipalities to ensure that the for-sale or rental prices of the set-aside units stay affordable to households making a certain percentage of area median income. These controls remain in effect for a specified period of time. Examples of affordability controls include deed restrictions and covenants.

Affordable Housing

Under an Inclusionary Housing Program, a municipality determines what it considers to be “affordable housing.” Most municipalities define affordable housing as units that are affordable to households earning a certain percentage of area median income. For example, a municipality may define “affordable housing” as units that are affordable to households making at or below 80% of the area median income (AMI).

Area Median Income (AMI)

The Area Median Income is the median income level for the Metropolitan Statistical Area (MSA) or the Primary Metropolitan Statistical Area (PMSA) as defined by the U.S. Department of Housing and Urban Development (HUD). HUD lists each U.S. municipality’s MSA or PMSA in the Income Limit Area Definitions tables located at the HUD website at www.huduser.org.

Condominium Conversion

A condominium conversion is a change from a rental building with one owner to individually owned condominium units. Most municipalities have ordinances that directly address the steps a developer must take in order to change a building from a rental building to a condominium building.

Covenant

A covenant is an agreement or promise in writing that is recorded with the deed of the property. It applies to all future owners of the property or for a specified time period. Municipalities use covenants to enforce affordability controls. These covenants require that a property only be sold or rented to households that meet the income eligibility criteria of the municipality’s Inclusionary Housing Program. Covenants should “run with the land,” or follow each successive owner of the land.

Deed

A deed is a legal document signed by the seller of the property that transfers the title of the property from the seller to the buyer.

Deed Restriction

A deed restriction is a restriction or requirement that must be met by both the buyer *and* the seller before the property can be transferred to the buyer. Municipalities use deed restrictions to enforce affordability controls. These deed restrictions say that the property can only be rented or sold to households that meet the income eligibility criteria of the municipality’s Inclusionary Housing Program.

Density Bonus

A density bonus is a developer incentive. It is the percentage of units that the municipality permits the developer to construct above and beyond what the zoning designation for that piece of property would otherwise allow.

Design Standard

Design standards are standards within a municipality's zoning code that control appearance. Examples of design standards include landscaping requirements, requirements for the distance a building must be from the street, and minimum side yard requirements.

Developer Incentives

Developer incentives, such as bonuses, waivers, and cash subsidies, are given to developers to either entice them to build affordable units within their development, or to compensate them for selling the set-aside units for below market price. Examples of developer incentives include density bonuses, expedited permit processes, fee waivers, and relaxed design standards and requirements.

Executive Order

An executive order is a directive by the mayor of a municipality made within the governing powers of that mayor. An executive order is in contrast to an ordinance that is voted on and passed by a city council or a similar legislative body, then signed into law by the mayor.

Expedited Permit Process

An expedited permit process allows a municipality to review and process a developer's application for building permits, zoning permits, etc., on a faster time schedule than usual. A municipality may offer an expedited permit process to a developer if that developer includes affordable units within their development.

Fee in-lieu

Municipalities may permit a developer to make a fee in-lieu, or cash payment, instead of constructing the required set-aside affordable units within the proposed development. Usually these payments are deposited in an affordable housing trust fund or a similar instrument to fund the construction of other affordable units within the municipality.

Fee Waiver

Municipalities may waive certain municipal fees for developers, such as fees for infrastructure development, municipal services, etc., in exchange for the construction of a certain number of affordable units as part of the proposed development.

Floor-to-Area Ratio (FAR)

The FAR is the ratio of gross floor area of a building (the sum, in square feet, of the gross horizontal areas of all floors of a building) to the total area of the lot. The FAR is used to measure the density of a project.

For-sale Unit

A for-sale unit is a unit that a household can purchase to own and be the sole name on the deed and title.

Gentrification

Gentrification occurs when a municipality, or an area of a municipality, experiences a sudden increase in construction and rehabilitation of residential units. This increase causes a substantial rise in housing prices and property values beyond normal market conditions. Gentrification can also result in the displacement of families currently living in the area due to a decrease in the amount of rental housing and an increase in home ownership.

Inclusionary Housing

Inclusionary housing programs require residential developers to set aside a certain percentage of the housing units in a proposed development to be priced affordable to low- and moderate-income households. An Inclusionary Housing Program can be either a mandatory requirement on developers to create a certain number of units, or a voluntary goal with built-in incentives to encourage developers to include affordable units in their developments.

Income-Averaging

Income-averaging is a tool used to determine affordable prices. Affordable units within a development are priced so that the average price of a unit is affordable to a certain income level; for example, to a household earning 65% of area median income.

Income-Targeting

The income target is the household income level targeted to benefit from the pricing of the affordable units. Most municipalities determine the income level target by looking at the needs and demands within the community. For example, a municipality may determine there is a need for housing for moderate-income level households, such as municipal employees, and thus income target the affordable units to households that make 80% of area median income.

Income-Tiering

Income-tiering occurs when a municipality creates *categories* of income levels for which affordable units must be appropriately priced. For example, a municipality may decide that the set-aside affordable units in a development must be priced affordable for households that earn between 50% and 80% of area median income.

Market Rate

The “market rate” is the price that a residential unit would sell for on the open real estate market without any subsidies or price restrictions.

Off-site Construction

Off-site construction is the construction of affordable units at a different physical location than the market-rate residential units in a proposed development.

On-site Construction

On-site construction is the construction of affordable units at the same physical location as the market-rate residential units in a proposed development.

Period of Affordability

The period of affordability is the length of time a set-aside affordable unit is required to be sold or rented at a price affordable to the income level determined by the municipality. Periods of affordability are usually outlined and enforced through affordability controls, such as deed restrictions or covenants.

Price Point

The price point is the price, or range of prices, a developer determines a unit would sell for on the open real estate market, based on design, location and size.

Rehab / Gut Rehab

Rehab or gut rehab occurs when a developer purchases an existing residential building and updates the interior aspects of the building, such as the electricity, water, lighting, and appliances, then resells the units in the building for a higher price.

Rental Unit

A rental unit is a unit owned by an entity and then leased to a household.

Resale Restriction

A resale restriction is a requirement on the title of the property that must be met before the property is sold to another owner. Resale restrictions are used as an affordability control tool; for example, the sale of a unit might be restricted unless the new owner meets certain requirements outlined in the municipality's Inclusionary Housing Program.

Right of First Refusal

The "right of first refusal" prevents the sale of a residential property until a designated party has been offered the opportunity to purchase the property first. For example, if a municipality has the right of first refusal, then an affordable unit cannot be sold unless the municipality has been offered the opportunity to purchase the property first.

Second Mortgage Lien

A second mortgage lien is a claim or charge on a property for payment on a debt that is second in priority to the first mortgage. Some municipalities use second mortgages to enforce affordability controls, so if the owner attempts to sell the affordable unit to ineligible households, the municipality can enforce the lien and recapture the property.

Set-Aside Requirement

A set-aside requirement in an Inclusionary Housing Program calls for a developer to "set aside" a percentage of units in a development to be priced as "affordable." For example, a "10% set-aside" means a developer is required to construct one affordable unit for every ten market-rate units within a proposed development.

Taking

A "taking" occurs when private property is taken away from a private owner for public use without just compensation from the public entity.

Variance

A variance is permission from the municipality to depart from the literal requirements of a zoning ordinance.

Zoning Ordinance

A zoning ordinance divides a municipality into districts and outlines a set of enforceable regulations regarding the structure, design, and use of buildings within each district.

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Examples of Inclusionary Housing Program Characteristics

	Affordable Units Produced	Threshold Number of Units	Set-aside Requirement	Control Period	"In lieu of" payment/ Off-site Development	Density Bonus	Other Developer Incentives
Boston, Massachusetts (2000)	177	Development exceeding 10 units	10% of on-site units	"Maximum allowable by law"	May build off-site if 15% of all units affordable In lieu of payment permitted	None	Increased height and FAR allowances
Boulder, Colorado (1999)	150	No threshold #-- applicable to all residential development	20% low-income in for-sale and rental developments	Permanent affordability by deed restriction	Fee permitted for smaller developments; Half of for-sale units may be built off-site; Developers have flexibility with rental unit obligation	None	Waiver of development excise taxes
Davis, California (1990)	1502	Development exceeding 5 units	25% in for-sale developments 25-35% in rental developments	Permanent affordability for rental units No control period for for-sale units	In lieu of payment permitted for developments under 30 units, or other demonstration of "unique hardship"	One-for-one in for-sale developments 15% in rental developments	Relaxed development standards
Denver, Colorado (2002)	804 anticipated	For-sale exceeding 30 units. Voluntary for rental.	10% for-sale at 80% AMI or below. 10% rental at 65% AMI or below	15 years	Off-site development allowed. A fee in -lieu of 50% of the price per affordable unit is permissible.	10%	Cash subsidy, reduced parking requirements, expedited review process
Fairfax County, Virginia (1991)	1746 produced 2000 anticipated	Development exceeding 50 units	Sliding scale requirement-- cannot exceed 12.5% for single family developments; 6.25% for multi-family	15 years for for-sale housing 20 years for rental housing PHA may purchase 1/3 of all units to keep affordable	May request approval to make in lieu of payment based on design infeasibility	20% for single family units 10% for multi-family units	None
Irvine, California (1978)	3415	No threshold #-- applicable to all residential development	Mandatory; 15% of all units	30-40 years; determined case-by-case depending on financing	In lieu of payments and other alternatives to on-site units permissible	25%	None currently offered
Longmont, Colorado (1995)	450 of 934 anticipated	No threshold #	10% of all units in annexation areas	10 years for for-sale units 20 years for rental units	May make in lieu of payment to Affordable Housing Fund Case-by-case consideration of off-site construction	Yes	Relaxed regulatory requirements
Montgomery County, Maryland (1974)	Over 11,500	Development exceeding 35 units	12.5-15% of all units Of these, PHA may purchase 33%, and qualified not-for-profits may purchase 7%	10 years for for-sale units 20 years for rental units	May request approval to make in lieu of payment or build affordable units off-site in contiguous planning area if low and moderate income residents will not be able to pay expected housing costs	Up to 22%	Waiver of water, sewer charge and impact fees. Offer 10% compatibility allowance and other incentives
Sacramento, California (2000)	465	Development exceeding 9 units	15% of all units. 1/3 priced affordable to households between 50-80% of AMI.	30 years	May build single-family development off-site if there is insufficient land zoned multi-family.	25%	Expedited permit process, fee waivers, relaxed design standards.
Santa Fe, New Mexico (1998)	12 produced 100 anticipated	No threshold #	11% in developments targeted over 120% AMI 16% in developments targeted over 200% AMI	30 years for all units; 30 year period starts over with each new occupant	Not permitted, except in case of economic hardship	Bonus equals set-aside %. 16% in developments targeted under 80% of AMI	Waiver of building fees