

Mandatory Inclusionary Housing Policies in Various Jurisdictions: Comparison of Control Periods and Equity Sharing

Jurisdiction:	Montgomery Co , Md Pt II, Ch 25A, "Housing, Moderately Priced" (1974)	Rockville, Md Ch 13 5 (2002)	Fairfax County, Va Zoning Ord's Art 2 (Gen Regs), Pt 8, §§ 2-801-821 (2002)	Burlington, Vt Zoning Ordinance, Art 14, "Inclusionary Housing/ Density Bonus" (1990)
Features:				
Enabling legislation			See Va Code Ann §§ 15 2-2283 2-2304, 2 2305 (2003)	24 V S A §4302 (mandating housing opportunities for Vt citizens of all incomes) 24 V S A §4406(4)(B) (prohibiting zoning regs from allowing municipalities to provide afidbl housing)
Duration (control periods)	Sale 30 yrs §25A-3(g) Rental 99 yrs §25A-3(g) If sale or rental is sold to eligible person w/ control period then control period starts over on date of new sale §25A-3(g)	Rental and Sale 30 years 13 5-9	Initial sale/rental post-1998 Sale 15 years Rental 20 years (If initial sale/rental pre-1998 50 years from initial sale/rental)	99 years in deed restriction Modification available if dev can't meet the req't 14 1 12
Resale provisions	Deed restriction must be in binding covenant, run with land, and apply until control period ends §25A-5(k), (l) Resale If control period is in effect, Dept then Comm n get first right of purchase for 60 days, plus right to try to sell to eligible buyers during property mktg period before unit is offered to general public §25A-9(b) Co excc can set admin req'ts re resale §25A-9(b) Can't sell during control periods for price > orig purchase price plus the following (§25A-9(a)) % of orig price equal to inflation as det'd by CPI - FMV of improvements - closing costs not paid by initial seller but will be paid for by initial buyer - Rbl real estate comm if not sole to eligible person during priority mktg period If control period has ended	Deed restriction runs with land and applies until control period ends 13 5-5 (l), (m) Resale If control period is in effect, city gets first right of purchase, plus right to try to sell to eligible buyers for 45 days before unit is offered to general public 13 5-9(b) Price can't exceed orig purchase price except by 13 5-9(a) - closing costs not paid by initial seller but will be paid for by initial buyer - Reasonable real estate comm if not sole to eligible person - FMV of improvements % of orig price equal to inflation as det'd by CPI If control period has ended, housing agency has right to match offer for 45 days Seller pays to housing fund 1/2 excess of total resale price over sum of below	Resale CONTROL PERIOD - First 60 days Only through FCHRA to people w/ Certificate of Qualification - After first 30 days FCHRA has right to acquire units not already committed close must occur w/in 30 days of expiration of first 60-day period After first 60 days Offer to general public meeting income eligibility requirements - Control Period Resale Price Max= original selling price + consumer-price index adjustment + fair mkt value of structural improvements + closing costs POST-CONTROL PERIOD - First-Right Offer to FCRHA for 30 days - Housing Trust Fund Pay at least 1/2 of difference between adjusted initial sale price and current sale price	Sale Formula for sale price determination cost of fixed-rate 30 yr mortgage down payment ≤ 10% purchase price property tax cost and homeowner ins / assoc fees 14 1 10 Resale Seller's realized appreciation can't exceed 25% increase in value det'd by diff in FMV at time of initial purchase and time of resale improvements and costs of sale as approved by Fund Fund/ designee has first right of purchase for 90 days 14 1 12 Rental Rent increases are limited to proportionate increase in AMI and must receive Fund approval 14 1 12 No subletting for a rent more than the cost that's afidbl for HH w/ 75% AMI 14 1 12

ZONING COMMISSION
 CASE No. 04-33
 EXHIBIT No. 127

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Features:	housing agency has right to match offer for 45 days (city doesn't pay into fund) Seller pays to housing fund 1/2 excess of total resale price over sum of below (seller nets at least \$10k of excess) §25A-8(c) • orig selling price • % of orig price equal to inflation as det'd by CPI • FMV of cap improvements Rbl sales comm Rental Must meet affdbl rent stds and offered to eligibl persons and to Comm n for 60 days §25A-8(d) Also has foreclosure provisions, see §25A-8(c), waiver availability, §25A-8(f) and bulk transfer provision, §25A-8(g)	(seller nets at least \$10k of excess) 13 5-9(c) • orig selling price • % of orig price equal to inflation as det'd by CPI • FMV of cap improvements • Rbl sales comm Also has foreclosure provisions	Rental • Notice of Availability and ADU Rental Offering Agreement Submit before issuance of Residential Use Permit for any unit in building • Gov't Rental FCRHA has exclusive right to rent up to 1/3 of ADUs within 30 days of notice For multi-family dwellings FCRHA rents to certified households w/ incomes up to 50% Remaining units rented to any individuals meeting established income criteria • Lease Term 6 mo-1 yr • Monthly Statement for all units not leased to FCHRA stating vacant ADUs, new tenant info etc	

Jurisdiction:	Portland, Ore Ch 30.01 (1998)	Boulder, Colo Title 9, Ch 6.5 (1999)	Denver, Colo Ch 27, Art IV (Affordable Housing), §§ 27-101-119 (2002)	Mt Laurel, NJ Pt II, Ch 154, Art XVI (1976, last amended 1997)
Features:				
Enabling legislation	State requirement to create higher-density development to offset housing costs and thus provide available numbers of affordable units. Ore. Statewide Planning Goal 10. See also Regional Affordable Housing Strategy (Portland Metro Area). 50% of new housing must be multifamily.	Comprehensive plan		Fair Housing Act (1985). Mt Laurel doctrine: that local communities must provide regional fair share of housing needs, specifically permitting mandatory inclusionary zoning.
Duration (control periods)	60 years	Applies to all residential developments. Permanent only by deed restriction.	Sale Units: 15 years, beginning on the day of the initial sale.	Rent and Sale: 30 years. 154- 131.12(C)(5).
Resale provisions	Rental or resale: City gets first right to purchase or coordinate a purchase. 30.01.080.	Rental: 9-6.5-9(f). Owners of PAU can't lease unit more than 1 of 7 yrs in aggregate + notice. other restrictions. Resale: 9-6.5-9(g). Purchaser must be low-income, and deed restriction is required. Price can't exceed orig. purchase price, except: • customary closing costs and costs of sale. • customary-rate real estate comm. • perm. cap. improvements. • inflation/ appreciation rate applied by city mgmt.	During Control Period -Sale only to eligible households who will use according to restrictions. -Notify w/in 10 days prior to offer of intent to sell. - <i>Maximum Sales Price:</i> Max. sales price = prior purchase price + owner's share of appreciation in mkt value (must not exceed being affordable to eligible households). (a) Seller pays for appraisal. (b) Owner's share of appreciation = shared appreciation factor x appreciation in mkt value. (c) Shared appreciation factor = 0- 40% (increases 5% each yr during the first five years, equals 35% after 5 yrs, equals 40% after 10 yrs). - <i>Lottery:</i> Used if more than one eligible buyer. - <i>Application:</i> Buyer submits to CPDA w/in 3 days after contract acceptance. - <i>Memo of Acceptance:</i> Recorded by City clerk along w/ deed upon	• If developer can't sell or rent units w/in 6 mos of completion and offer, dev. can apply for relief not to include exempting the units from afford. sale or rent levels. 154- 131.10. • Units must be resold or rented to same type of previous tenant (low or mod income). 154-131.12 (C)(3). • Dev. must try to sell to person on town's list for 30 days, then to any other qualified low/mod. income buyer. Can increase price by set formula if can't sell. 154- 131.12(C)(1). Price can't exceed sum of: • orig. sales price. • orig. sales price times % incr. in CPI. • costs of sale incl. real estate commission. • cost of reasonable improvements as det'd by

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Features:			transfer states that buyer will comply with covenants -<i>Waiver</i> Director may waive price restrictions if they conflict with fed or state housing programs thus preventing purchase by eligible households -Upon owner's death, person taking title must either occupy as primary residence or resell according to provisions for resale during control period First Resale w/ 10 years of Control Pd. Expiration -Notify CPDA 30 days before final sale -Offer at fair mkt value w/ no extraordinary terms -CPDA has 30 days to notify of City's intent to purchase sale must close w/in 60 days of this notice -Upon final sale Seller pays to City's affordable housing fund 1/2 of the excess of the total resale price over the sum of (i) prior purchase price (ii) percentage of prior purchase price equal to increase in CPI since last sold, (iii) fair mkt value of capital improvements since last sale, (iv) reasonable sales commission UNLESS sum of (i) through (vi) is less than \$20K in which case seller retains the lesser of \$10K or the excess of the final sales price Eligibility Approval Before closing seller and buyer submit completed eligibility application form to CPDA CPDA determines w/in 10 days of	town official • 75% incr from CPI goes to seller, 25% incr from CPI goes to town Fund • First sale after control period ends 25% of diff. of the greater of the sales price or FMV minus sales price obtainable just before control period ended goes to town for housing assistance efforts 154-131-12(C)(5) • Housing Dept. must certify all resales by specific procedures 154-131-12(C)(6) • Also has foreclosure provisions 154-131-12(D) • Covenants for controls run with the land 154-131-12(E) • Exemptions for restrictions on resales (estate transfers, judicially ordered transfers) 154-131-12(F) • Conversion to condos allowed after 10 yrs. available to same type of tenants 154-131-12(G)

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Features:			receipt Failure to determine by closing is deemed an approval	

Jurisdiction:	Boston, Mass Mayor's Executive Order (2000)	Cambridge, Mass Art 11 200, "Affordable Housing Requirements, Incentive Zoning Provisions and Inclusionary Housing Provisions"	Newton, Mass. Art IV, §30-24(f)(1), Special Permits, "Ten Percent Ordinance" (1977, last amended 1991)	San Francisco San Francisco Planning Code Title 3
Features:				
Enabling legislation	Mass Gen Laws Ch 184, §31-33, 40A, § 9, ¶2 and 40B (Comprehensive Permit Law which allows town or zoning board to give permit to developer to override other regs in order to build affordable housing)	Mass Gen Laws Ch 184 §31-33, 40A § 9 ¶2 and 40B (Comprehensive Permit Law which allows town or zoning board to give permit to developer to override other regs in order to build affordable housing)	Mass Gen Laws Ch 184 §31-33 40A § 9, ¶2 and 40B (Comprehensive Permit Law which allows town or zoning board to give permit to developer to override other regs in order to build affordable housing)	
Duration (control periods)	No less than 30 yrs, with 20 yr extension allowed Affordability must be in deed restriction	50 yrs for rentals 11 204(d)(2)	Lease is for eight 5-yr automatically renewable terms (40 yrs) Must be recorded in deed 30-24(f)(3) If no rental subsidy program exists dev must lease for remainder of current 5 yr term + one addl 5 yr term at 30% resident's gross income 30- 24(f)(3)	Rental and Sale 50 years from the date of issuance of first certificate of occupancy
Resale provisions	Resale Must be sold to HH in same income category as seller Price is restricted to 5% increase max per year, adjusted for improvements and other fees	Affdbl units must have deed restrictions that convey with land requiring that they are occupied by eligible tenants 11 204(d)	Sale - City gets first right of purchase at price det'd by or consistent with city's funding source or by formula - If city doesn't purchase city determines one of 2 results 1) dev pays cash for use for affdbl housing in the city, or 2) makes units available for 40-yr leases to eligible low- income residents through rent subsidy program - Cash payment = sales price received for unit minus usual brokerage fees minus amt provided by Mass 705 program if city had bought the unit Sales price cannot be less than avg sales price of comparable units in the	

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Features:			development 30-24(f)(2) Rental • If city leases affdl units dev must lease to person on city's list for no more than 30% person's gross income 30-24(f)(2) • Lease is for eight 5-yr automatically renewable terms (40 yrs) Must be recorded in deed 30-24(f)(3) • If no rental subsidy program exists dev must lease for remainder of of current 5 yr term + one addl 5 yr term at 30% resident's gross income 3-24(f)(3) Conversion to condos/coops • City gets first right of purchase at price det'd by or consistent with city's funding source If city doesn't purchase dev pays cash for use for affdl housing in the city and remainder of 40-yr lease term continues • Cash payment = sales price received for unit, minus usual brokerage fees minus amt provided by Mass 705 program if city had bought the unit Sales price cannot be less than avg sales price of comparable units in the development 30-24(f)(3)	

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Features:			Deeds Must provide clear record and marketable title with no financial encumbrances Sale contracts, conveyances and leases must be entered into or executed prior to issuance of special permits for the density bonus 30-24(f)(4)	

