Mandatory Inclusionary Housing Policies in Various Jurisdictions: Comparison of Standards for Alternatives and Exemptions

Jurisdiction: **Features:**	Loudoun County, Va Zoning Ordinances, Art VII, §7-100-§7-1100 (1993)	Montgomery Co , Md Pt II, Ch 25A, "Housing, Moderately Priced" (1974)	Rockville, Md Ch 13 5 (2002)	Fairfax County, Va Zoning Ords Art 2 (Gen Regs), Pt 8, §§ 2-801-821 (2002)
Enabling legislation	• See Va Code Ann §§ 15 2-2283, 2-2304, 2-2305 (2003) • Codified Ordinance of Loudoun County governs administration regulations, determinations and structure of Affordable Dwelling Unit Advisory Board 7-107			• See Va Code Ann §§ 15 2-2283 2-2304 2 2305 (2003)
Alternatives/ exemptions	**In-lieu fee** available instead of density bonus if request is for rezoning, special exception, or subdivision with only single family detached units Decision must be made at time of permit approval Cash must be paid before issuance of permit 7-103(A)(3) • In-lieu fee calculation = (construction price of prototypical ADU divided by .75 of contribution), multiplied by .25 multiplied by # of ADU lots req'd 7-108(E) Payments must be adjusted by CPI for time of Cty receipt & paid before permit is issued 7-108(F) **Modifications** Allowed only if alternative will provide a broad range of housing opportunities throughout Loudoun County Modification must have at least certain ratio of affdbl units to the amount of density increase, and total affdbl units be at least 2 5% total units 7-108(A) **Combination of affdbl units, land, or contributions** equivalent to providing req'd number of affdbl units 7-108(C) (Cash	Alternatives allowed in exceptional circumstances if they create 'significantly more MPDUs Alternatives include (from §25A-5(e)(1)) • **build units off-site** but in same or adjoining planning area • **convey land** in same or adjoining planning area suitable for building more units, • **contribute** to Housing Fund or • **combination** Alternatives allowed if services to be provided are indivisible and too costly for eligible tenants and public benefits are greater w/ housing opportunities elsewhere Preference for building off-site §25A(5)(e)(2) Procedure for considering alternatives must be in regs §25A(5)(e)(3) Conveying land before applying for building permit may satisfy the MPDU req't See details in §25A-5(f)	Alts available if residential services would make MPDUs unaffordable to eligible households alt will provide sign more MPDUs or in extraordinary circumstances 13 5-5-(f)(2) **Off-Site** Dev can build sign more units off-site 13 5-5-(f) **Land dedication to city** If land is suitable and will produce more MPDUs 13 5-5-(f) (g) **In-Lieu fees** To housing fund, an amount that will produce significantly more MPDUs ' 13 5-5-(f)	**Exempt** • Elderly Structure With 4 or more stories and an elevator • Applications approved pre 1990 Including applications for condo conversion • Fed/State Program Compliance Developments that provide same or more affordable units under another program and meet ADU rent requirements(if they provide fewer, they can make up the difference) • Added Land Area Certain exemptions if land was added post 1998 to a property that was previously exempt • Mobile Homes To encourage redevelopment of mobile home parks, Board of Supervisors may grant 50% density bonus and waive other regulations • Other Exemptions Related to issues of building relocation ingress/egress storm water drainage or other engineering or public facilities issues historic preservation Child care facilities or changes of units size

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	payment formula is above) **Factors for allowing alternatives** (7-108(B)) • # of affdbl units, • low-cost housing, • manufactured housing that exist or will be provided with 2 miles of site and w/i Loudoun Cty • public facilities already developed to accommodate increased density for affdbl units • existing unique site constraints, i e environmental resources soil conditions • unusual associated costs • public health, safety and welfare • whether Concept Dev Plan amt would reduce impact on public facilities and impact on capital facility guidelines in the Plan Request must be submitted with application & justification Board must review within 60 days 7-108(D) Submission of modification request under 7-108 suspends time limits of Va Code §§ 15 2-2259 and 15 2-2260			**Waiver** Must apply for modification to the requirements showing why the requirements can t be met on property **Convey Land** Convey amount necessary to provide required number of ADUs * **In-Lieu Fees** Contribute to Housing Trust Fund the fair mkt value of the lot on which ADUs would have been constructed * **Combination** Contribute a mixture of ADUs land fees * *Note Only allowed in exceptional cases not favored Must show that (1) provision of ADUs is ' physically or economically infeasible (2) public benefit of alternative outweighs public benefit of regular compliance and (3) that alternative will help provide a broad range of housing throughout County Advisory board decides w/in 90 days

Jurisdiction: **Features:**	Santa Fe, NM Art 14, § 8 11, Art 26 (1998)	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)
Enabling legislation	• N M Stat Ann §3-17-6A(8) (auth to enact housing code) • N M Stat Ann §3-17-1B) (police power to enact ordinances) • N M Stat Ann §3-21-1A (auth to enact zoning ordinances, generally) • N M Stat Ann §3-21-1B(2) (auth to enact zoning ord re construction & alteration of land and structures) • Adopted under city power from NMSA Municipal Charter Act and NM Const	State requirement to create higher-density development to offset housing costs and thus provide available numbers of affdbl units Ore Statewide Planning Goal 10 See also Regional Affordable Housing Strategy (Portland Metro Area) 50% of new housing must be multifamily	Comprehensive plan	
Alternatives/ exemptions	On-site preferred unless 'extreme hardship Dev then can propose cash or in-kind payment (land, labor, materials or other), as approved by city Amt must be equal to value of each unit plus 2% city processing fee 26-1 30		**In-Lieu fees** Formulas provided for attached (share a wall(s)) and detached (independent) units waiver for primary residence discretion of city mgr to accept alt forms of compensation 9-6 5 6 **Off-Site** 1/2 units must be on-site unless greater benefits off-site or legal restrictions (city mgr's discretion) 9 6 5-7 **Land or unit dedication** Dev can satisfy by dedicating land or dedicating existing units 9-6 5-7	**Authorization granted by director upon proper showing** **Off-Site** Build more MPDUs at one or more other sites in same or adjoining statistical neighborhood **In-Lieu Fee** Contribute to special revenue fund 50% of the price per MPDU not provided but required using maximum price allowed not including homeowners fees

Jurisdiction: **Features:**	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)	Mt Laurel, NJ Pt II, Ch 154, Art XVI (1976, last amended 1997)
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)	Waiver available 154-131 15
Alternatives/ exemptions	• In-lieu fee to BRA for housing Amount must be equal to 15% of mkt rate units times affdbl housing cost factor (derived from avg subsidy to dev affdbl unit and readjusted each year) • Off-site units Dev must provide number of units equal to 15% of mkt rate units Same income eligibility for on-site units applies	Only allowed for exceptional circumstances Owner must show significant hardship to provide on-site units i e [physical characteristics of property Affordable Housing trust reviews requests and passes them to Planning Board, who can use other info to decide as well 11 203 2(c) If incentive project options are Contribute to Trust Fund if project is 30K or more sqft gross floor area build units only for eligible income tenants or donate land Must be equivalent to benefit community would receive if affdbl units were provided 11 203 1	**In-lieu fee** if less than 10 units are authorized by the special permit 30-24(f)(5) Amt = avg sales price of all dwelling units in arms-length sales and recorded deeds (for rental, avg FMV det'd by assessing dept) multiplied by (fraction resulting from number of units more than number that could be constructed without the permit) divided by (difference of 10 minus number of units that could be constructed without the permit) multiplies by 15 Payment must be made before issuance of permit 30-24(f)(6)	

Jurisdiction: **Features:**	Burlington, Vt Zoning Ordinance, Art 14, "Inclusionary Housing/ Density Bonus" (1990)	Sacramento, CA Title 17 Chapter 17 190	San Francisco, CA San Francisco Planning Code Title 3	San Diego, CA San Diego Municipal Code Chapter 14, Article 2
Alternatives/ exemptions	**Off-site** available if original dev is not in waterfront district # of units must be 1 25 times those that would have been provided Bonus provisions do not apply to off-site units 14 1 15 **Hardship waiver** available 14 1 17	Developer may propose to meet requirements by dedicating land to Sacramento Housing Redevelopment Agency or by building off-site when original project is in Exclusive Single Family zone Planning director may approve proposal 'only if provides a more cost-efficient solution to the Inclusionary Housing Component than the standard [set-aside] approach or if the location of Off-Site development would be superior to on-site development from the perspective of access to transportation or other applicable residential planning criteria in the City General Plan **See 17 190 060**	Developer may appeal to Board of Supervisors for waiver reduction or adjustment of affordable housing requirements or fees based on the absence of any reasonable relationship or nexus between the impact of the development and either the amount of the fee charged or the inclusionary requirement 315 3(c)(1) Appellant bears the burden of presenting substantial evidence to support the appeal including comparable technical information 315 3(c)(3)	Application for a waiver or variance from requirements shall include financial and other information deemed by City Manager to be necessary to perform an independent evaluation of the applicant s basis for the variance to be part of the public record No variance or waiver shall be issued unless 1) Special circumstances unique to that development justify the granting of the variance, 2) The development would not be feasible without the modification 3) A specific and substantial financial hardship would occur if the variance were not granted and 4) No alternative means of compliance are available which would be more effective in attaining the purposes of this Division than the relief requested If the project proposes to provide affordable housing off-site and outside community planning area it may be approved only upon a supplementary finding that 1) The portion of the proposed development outside of the community planning area will assist in meeting the goal of providing economically-balanced communities and 2) The portion of the

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				proposed development outside of the community planning area will assist in meeting the goal of providing transit oriented development