

Testimony in Support of the Campaign for Inclusionary Zoning's Proposal, case number: 04-33, July 25, 2005.

To. Carol Mitten, Chair
DC Zoning Commission
441 4th Street, NW, Suite 210
Washington, DC 20001

I am Tim Stephens, Advisory Neighborhood Commissioner for the single member district 1B06 in Columbia Heights. The boundaries of this district are Belmont, Euclid, 14th and 15th streets NW. I am here as a citizen and an advisory neighborhood commissioner, but not as a representative of ANC1B. ANC1B has endorsed the principle of inclusionary zoning, but has not taken a position of specific proposals.

I cannot stress, underline or emphasize the necessity of the Zoning Commission to address the need for affordable housing. In the few short months since running for and being in office my single member district has lost more than 50 units of affordable housing, another 20 are under threat right now. This is a crucial time for the future prosperity and integrity of this city.

I believe you have in front of you the best proposal to support affordable housing through zoning. Mandatory inclusionary zoning can help assure a diverse, multi-ethnic and multi-income community. I commend the resolution to you for support.

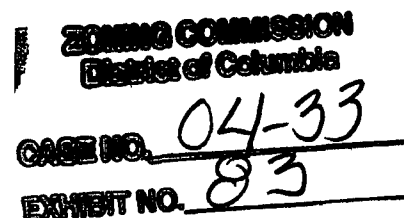
As I stated, affordable rental housing is departing rapidly from my sector of the city. This is happening at a time when there are multiple undeveloped and underdeveloped lots. Your actions can be crucial in assuring the longer term diversity of housing options where I live, and across the changing city.

The Campaign for Inclusionary Zoning has provided you substantial evidence about the success of these ordinances. We need your assistance to assure this community too will produce new housing for low and moderate income workers, and maintain a mixture of income-levels living in proximity to transit, jobs and services.

By allowing the creativity of the market to be harnessed and linking the wealth created in the recent expansion of real estate values, you are in the position of assuring essential workers (teachers, nurses, first responders) will be able to live *and* work in the communities they serve. Appropriate density bonuses will also mean that developers have the incentive to continue to re-invest in our city as we continue to address the inner-core housing deficit.

I commend to you need to address the need for the creation of affordable housing, and specifically this proposal because sufficient incentives while equally ambitious in its goal to ensure affordable, diverse housing options. Thank you for your attention.

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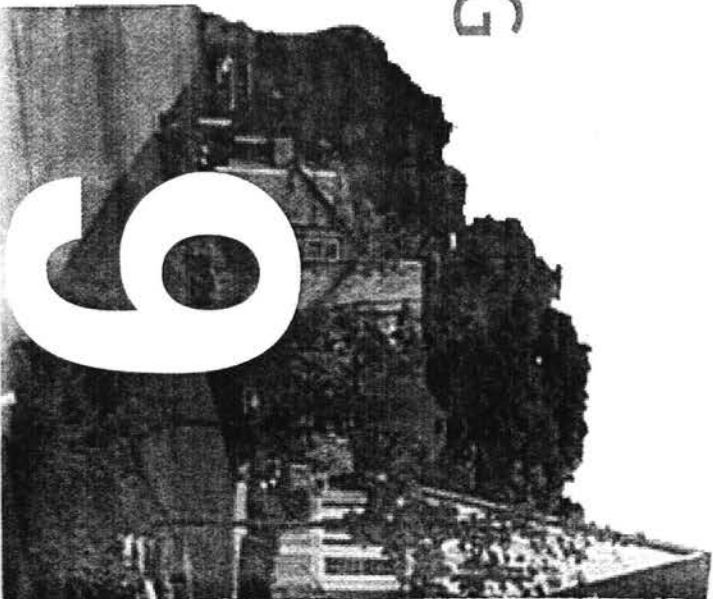
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ARE MANDATORY INCLUSIONARY HOUSING POLICIES EFFECTIVE?



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

The author thanks Lauren Goldberg, Jessica Webster, and Melissa Buenger for hours of research, interviewing, and writing that contributed to this article; Susannah Levine and Ellen Elias for their editing assistance; and special thanks to Bernie Tetreault and Patrick Maier at the Innovative Housing Institute and David Rusk for their assistance in providing many of the photographs for this article.



NEWS BRIEFS

NEW JERSEY PASSES TRANSFER OF DEVELOPMENT RIGHTS LEGISLATION

By Rebecca Retzlaff, AICP

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

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

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

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

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

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

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

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

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

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

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

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

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

VOL. 21, NO. 9

Zoning Practice (formerly *Zoning News*) is a monthly publication of the American Planning Association. Subscriptions are available for \$65 (U.S.) and \$90 (foreign). W. Paul Farmer, AICP, Executive Director; William R. Klein, AICP, Director of Research.

Zoning Practice (ISSN 1548-0135) is produced at APA. Jim Schwab, AICP, and Michael Davidson, Editors; Barry Bain, AICP, Fay Dolnick, Josh Edwards, Megan Lewis, AICP, Marya Morris, AICP, Rebecca Retzlaff, AICP, Lynn M. Ross, Reporters; Kathleen Quirsfeld, Assistant Editor; Lisa Barton, Design and Production.

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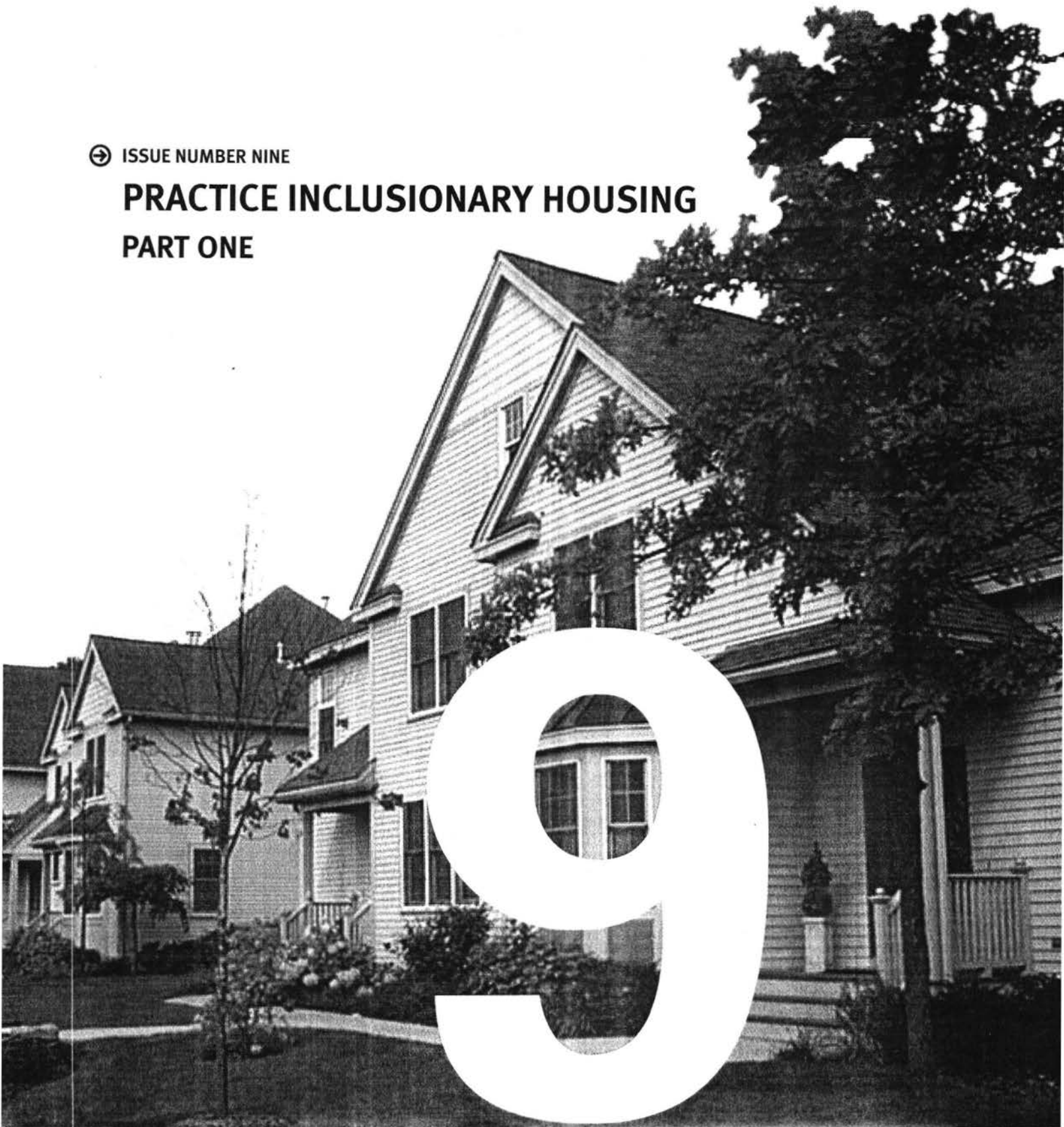
September 2004

AMERICAN PLANNING ASSOCIATION



➔ ISSUE NUMBER NINE

PRACTICE INCLUSIONARY HOUSING PART ONE



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

By Nicholas J. Brunick

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

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

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

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

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

MANDATORY PROGRAMS PRODUCE MORE HOUSING

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

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

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



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



ASK THE AUTHOR JOIN US ONLINE!

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

About the Author

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

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

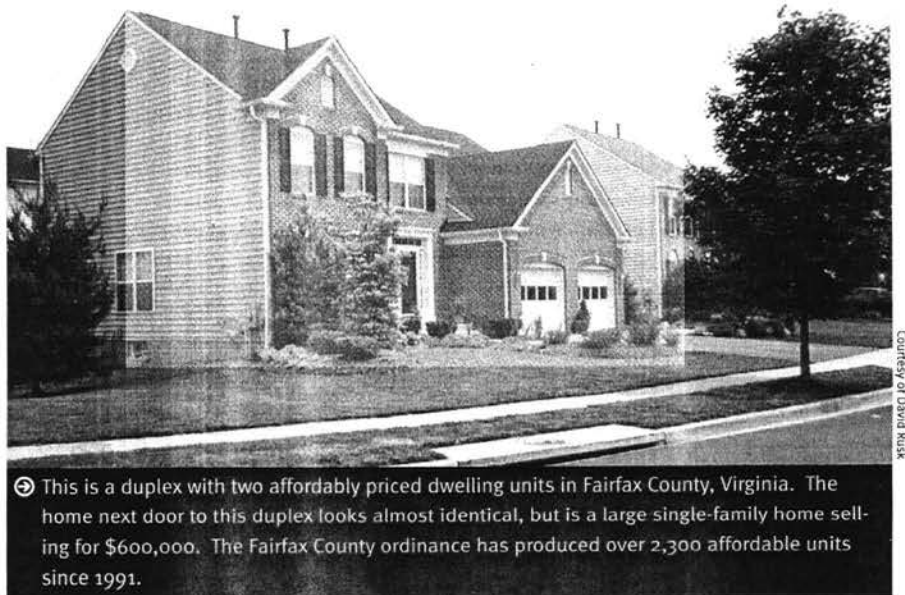
According to the National Housing Conference, a Washington, D.C.–based affordable housing advocacy organization, experience in Massachusetts shows that mandatory approaches were critical to the success of inclusionary zoning programs. In Cambridge, after ten years of voluntary inclusionary zoning districts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

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

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

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

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



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

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

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

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

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

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

SERVING LOW- AND VERY-LOW-INCOME HOUSEHOLDS

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

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



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

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

WEB-BASED ENHANCEMENTS FOR ZONING PRACTICE

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

PREDICTABILITY FOR COMMUNITIES AND DEVELOPERS

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

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

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

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

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

ARRESTED DEVELOPMENT?

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

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

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

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

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

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

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

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

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

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



Innovative Housing Institute

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



Courtesy of David Rusk

TABLE 1. SWITCHING FROM VOLUNTARY TO MANDATORY INCLUSIONARY ZONING

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

THE MANDATORY TREND

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

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

TABLE 2. SWITCHING FROM MANDATORY TO VOLUNTARY INCLUSIONARY ZONING

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

MANDATORY ORDINANCES IN LARGE CITIES

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

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

THE MIDWEST SIGNS ON

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

THE BOTTOM LINE

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

ZONINGPRACTICE

October 2004

AMERICAN PLANNING ASSOCIATION



➔ ISSUE NUMBER TEN

PRACTICE INCLUSIONARY HOUSING PART TWO

10



Inclusionary Housing: Proven Success in Large Cities

By Nicholas J. Brunick

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

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

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

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

WHY LARGE CITIES?

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

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

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

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

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

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

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

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

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

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About the Author

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

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

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

LARGE-CITY CASE STUDIES

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

Boston

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

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

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

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

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

Denver

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

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

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



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

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

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

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

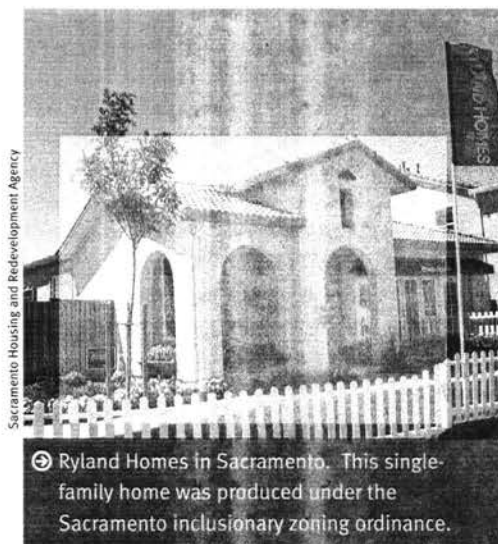
Sacramento

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

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

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

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



Sacramento Housing and Redevelopment Agency

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

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

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

San Diego

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

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

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

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

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

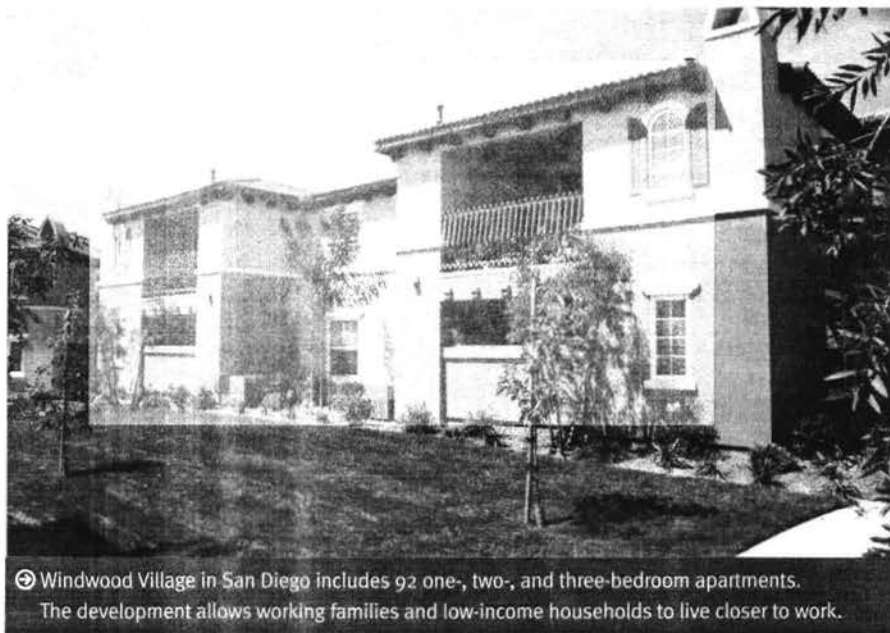
The program. The ordinance requires all residential developments of ten or more units to include a 10 percent affordable housing component. The FUA is exempt from the citywide ordinance and will continue to adhere to the 1992 FUA inclusionary zoning framework.

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

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

San Francisco

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



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

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

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

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

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

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

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

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

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

BENEFITS

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

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

Effect on development and cost offsets.

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

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

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

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

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

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

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

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

NOT JUST FOR SUBURBS AND SMALL CITIES ANYMORE

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



Photos by Michael Davidson

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

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

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

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



NEWS BRIEFS

AFFORDABLE HOUSING GETS HUGE BOOST ON LONG ISLAND

By Josh Edwards

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

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

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

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

Copies of the Southold, New York, affordable housing ordinance, and the ordinance establishing the affordable housing fund, are available to *Zoning Practice* subscribers by contacting the Planning Advisory Service (PAS) at placeinquiry@planning.org.

Josh Edwards is a researcher with the American Planning Association in Chicago.

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

VOL. 21, NO. 10

Zoning Practice (formerly *Zoning News*) is a monthly publication of the American Planning Association. Subscriptions are available for \$65 (U.S.) and \$90 (foreign). W. Paul Farmer, AICP, Executive Director; William R. Klein, AICP, Director of Research.

Zoning Practice (ISSN 1548-0135) is produced at APA. Jim Schwab, AICP, and Michael Davidson, Editors; Barry Bain, AICP, Fay Dolnick, Josh Edwards, Megan Lewis, AICP, Marya Morris, AICP, Rebecca Retzlaff, AICP, Lynn M. Ross, Sarah K. Wiebenson, Reporters; Kathleen Quirsfeld, Assistant Editor; Lisa Barton, Design and Production.

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

ZONING PRACTICE

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HOW HAVE BIG CITIES
FARED WITH INCLUSIONARY
HOUSING?

10





**BUSINESS AND PROFESSIONAL PEOPLE
FOR THE PUBLIC INTEREST**

Large Cities and Inclusionary Zoning

November 2003

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Introduction

Inclusionary zoning has often been viewed as a policy tool for medium-sized cities or relatively affluent east coast counties. The nation's oldest and most celebrated inclusionary zoning law exists in Montgomery County, Maryland.¹ For nearly three decades, inclusionary zoning grew in popularity across the country, including over 100 communities in both California and Massachusetts. However, until the late 1990s, no large major U.S. city had adopted a mandatory citywide inclusionary zoning law.²

Recently, that reality has changed. Large cities such as Boston, Massachusetts, Denver, Colorado, Sacramento, California, San Diego, California, and San Francisco, California, have all adopted mandatory inclusionary zoning laws (see Appendix). This policy brief provides: 1) a summary of the major benefits of inclusionary zoning; 2) a description of some of the unique aspects of the various programs adopted by large cities thus far, and 3) case studies of five large U.S. cities with inclusionary zoning programs.

Benefits to Large Cities from Inclusionary Zoning

Large cities are beginning to realize the many benefits of inclusionary housing:

- 1) **Addressing the Shortage of Affordable Housing.** Inclusionary zoning produces affordable housing. Most major U.S. cities lack sufficient affordable housing for moderate- to low-income families and individuals, seniors, and special needs populations. Inclusionary zoning stands as a proven tool to help address this need.
- 2) **Market-Based Tool Requiring Less in the Way of Public Subsidies.** Inclusionary zoning provides a proven market-driven tool to create affordable housing without large amounts of public subsidy. Large urban centers, despite their relative resurgence in the 1990s, still have difficulty raising sufficient public revenues to serve the extensive needs of their diverse populations. The fiscal capacity of large cities has been hamstrung by the thirty-year retrenchment in federal spending on cities and on housing in general. Poor economic conditions since 2000 and the recent rounds of federal tax cuts have left large urban centers with an even tougher challenge in raising sufficient public revenues to meet all their local needs. Inclusionary zoning provides large cities with a proven tool for producing affordable housing for their working families while using fewer public dollars. This allows large cities to preserve the federal and state housing dollars that they do receive for more vulnerable populations and to preserve more of their own local tax base for other pressing public needs.

¹ Nearby counties of Fairfax County, Virginia, and Loudon County, Virginia, (also affluent) also have inclusionary zoning programs.

² The City of San Diego, California, adopted an inclusionary zoning requirement for a specific part of the city in 1992, requiring a 20% affordable housing set-aside on all developments occurring in that area of the city. In 2003, the city adopted an inclusionary zoning ordinance for the entire city, requiring a 10% set-aside on all developments of 10 or more units. Boston, Massachusetts, adopted an inclusionary zoning program by Executive Order in 2000 with a 10% set-aside. San Francisco adopted an inclusionary zoning ordinance in January of 2002 with a 10% set-aside on developments of 10 or more units. Sacramento adopted an inclusionary zoning ordinance in 2000, requiring 15% affordable units on developments of 9 or more units. Denver adopted an inclusionary zoning ordinance in 2002, requiring a 10% set-aside.

- 3) **Meeting Economic Development and Workforce Housing Needs** Inclusionary zoning boosts local economic development by creating more workforce housing and by increasing the disposable income of moderate- and low-income households. Many cities lack enough affordable housing for key populations: teachers, firefighters, policemen, child care workers, janitors, entry-level manufacturing workers and technical workers, etc. Without affordable homes for people in these occupations, large cities risk their competitiveness in a global economy that requires a skilled and accessible workforce near jobs. In addition, more affordable housing means that working households spend less of their monthly income on their housing costs, leaving more disposable income to spend on goods and services in the local economy. Inclusionary zoning thus provides a “one-two” punch to aid large cities in their efforts to maintain a strong economic environment.
- 4) **Positively Impacting Patterns of Economic and Racial Segregation** Inclusionary housing can positively impact the pattern of racial and economic segregation that plagues so many of our nation’s large urban centers. Racial and economic segregation have contributed to increased crime rates, failing schools, and a lack of social stability. Inclusionary housing can mitigate racial and economic segregation by producing low- and moderate-income housing in a healthy, mixed-income fashion with market-rate development.
- 5) **Helping to Prevent Sprawl and Disinvestment.** A lack of affordable housing in large urban centers provides one of the strongest incentives for increased sprawl. If affordable housing cannot be found in the city, developers and citizens will look to the fringe of the metropolitan region, where land costs are lowest, in order to develop and buy housing that is more affordable. Increased sprawl in a large metropolitan region can mean reduced public and private investment in large urban cores. Through an inclusionary zoning program, large cities can use density bonuses and other cost offsets to produce a stock of affordable housing within the city core, thereby helping to reduce the pressure to continually sprawl outward in order to produce affordable housing on the fringe.

Large cities face housing shortages that threaten the economic and social well-being of their communities. Inclusionary zoning provides them with one market-based tool to address the need for a wide range of housing options.

Fewer Cost Offsets in Large Cities

Unlike many of the smaller or medium-sized communities that have pointed the way for nearly three decades, three of the five large cities profiled in this policy brief have chosen to provide little or nothing in the way of “cost offsets” to help the developer pay for the cost of producing the affordable “set-aside” units.³ City staff interviewed in these cities indicated that “cost offsets” were not necessary because the strength of the local housing market and the ongoing demand from people

³ Most inclusionary zoning programs around the country include density bonuses, fee waivers, relaxed development standards, an expedited permitting process, or in some cases, outright subsidies that aid the developer in paying for the production of the affordable units.

to live and build housing in those cities allowed developers to build the “set-aside” units and still make their project work economically. Thus far, city officials in San Diego, San Francisco, and Boston indicate that development has continued apace since passage of inclusionary zoning.⁴ In fact, development has increased since passage of the ordinance in San Francisco

⁴ Interviews with Teresa Ojeda, San Francisco City Planner, August 2003, Interview of Bill Levin, San Diego Senior Planner, August 2003, Interview of Susan Tinsky, Chief Policy Officer Adviser for the City of San Diego Housing Commission, August 2003, Kiely, Meg “Boston’s Policy Gives Developers Choice,” In Inclusionary Zoning: Lessons Learned from Massachusetts, NHC Affordable Housing Policy Review, January 2002

Case Studies from Five Large U.S. Cities

Case Study: Boston, Massachusetts

Background

Boston, a city of over half a million people, benefited significantly during the economic boom of the 1990s.⁵ However, while area incomes increased, they failed to keep pace with housing prices, which soared at a double-digit pace. As construction and land costs increased, gentrification spread from the central downtown areas to surrounding neighborhoods, causing the displacement of moderate-income families. In response to these changes in Boston's housing market and pressure from community-based organizations and housing advocates, Mayor Thomas Menino signed an Executive Order in February 2000 that created an inclusionary housing policy.

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 the Boston policy does provide for off-site development of the affordable units, a developer who exercises this option must set aside 15% of the units as affordable instead of just 10%. This creates an incentive for developers to construct the affordable units on-site. Boston's program also allows for a fee in-lieu option, in which the developer is required to make a payment to the BRA equal to 15% of the total number of market-rate units multiplied by 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.⁶ 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, the Boston policy does not provide a general density bonus for developers. However, developers do qualify for increased height and FAR allowances in the central financial district.

Boston has a higher income-target than most municipalities with an Inclusionary Housing Program. At least 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.

⁵ U.S. Census Bureau, 2000 Census.

⁶ For the process for the annual determination, see City of Boston, Department of Neighborhood Development web site, <http://cityofboston.gov/dnd>

The units must remain affordable for at least 30 years, with the possibility of extending the affordability period for an additional 20 years, for a total of 50 years ⁷ The resale price of the affordable units is also restricted to a maximum increase of approximately five percent per year, adjusted for approved improvements and other miscellaneous fees

The Political Landscape

Prior to Mayor Menino's Executive Order, Boston had an informal inclusionary housing requirement In 1999, affordable housing advocates investigated the enforcement of this requirement and discovered that two high-profile luxury developments had been approved that year without any affordable housing set-asides Housing advocates pressured the Mayor to implement and enforce a formal inclusionary zoning policy Soon thereafter, Mayor Menino issued his Executive Order ⁸

The Executive Order's off-site construction and fee in-lieu payment options reflect the policy preferences of many affordable housing advocates in Boston. Many advocates are more concerned about the quantity of affordable housing in Boston than the dispersal of the units among market-rate homes In fact, many advocates expressed a preference for having the units in neighborhoods, rather than downtown, where much of the new residential development is occurring Since many advocates were more concerned about the quantity of affordable units, there was a push for strong off-site and fee payment options, as these options could produce a larger number of units ⁹

Boston benefited from a receptive Mayor, a supportive City Council, positive media, a lack of an organized effort by developers, and the examples of nearby towns that already had successful inclusionary housing policies. These factors created the positive political environment for the creation of an inclusionary housing program.

The Impact of the Executive Order

In the initial year of implementation of the Executive Order, eight privately financed housing developments fell under the requirements of the policy These developments were predominantly high-end luxury developments As of January of 2002, developers have contracted to contribute over \$4 million for affordable housing construction Over 200 affordable units have been constructed as a result of the policy, with many more in the pipeline ¹⁰ At the same time, new housing development continues to boom in Boston, and development projects continue to be quite lucrative, even with the affordable unit set-aside requirement. ¹¹

⁷ 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

⁸ Interview of Tom Callahan, Director of the Massachusetts Affordable Housing Alliance (MAHA), April, 2002

⁹ Interview of Tom Callahan, Director of the Massachusetts Affordable Housing Alliance (MAHA), April, 2002

¹⁰ 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

¹¹ Interview of Tom Callahan, Director of the Massachusetts Affordable Housing Alliance (MAHA), April, 2002, Interview of Tim McGurthy, Special Assistant to the Director of the Boston Redevelopment Authority (BRA), March, 2001

Case Study: Denver, Colorado

Background

Denver, a city of 554,636 people, has one of the newest inclusionary housing programs in the country.¹² Passed by the City Council in 2002, the ordinance is quite detailed in its requirements and incentives. The Housing and Zoning codes were amended to create a “moderately priced dwelling unit” (MPDU) program.

The MPDU Program

Unlike many local inclusionary zoning ordinances that do not cover rehabilitation work, 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. “Substantial” is defined as the rehabilitation or remodeling of more than 50% of the existing building. The program is mandatory for for-sale developments of 30 or more units but is voluntary for rental developments, since limitations on rent levels on private residential property is not permitted under Colorado state law.¹³

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

The Incentives

In addition to the usual incentives provided by municipalities, Denver also provides a cash subsidy to developers for the affordable units.¹⁴ Developers of for-sale units can receive a \$5,000 reimbursement for each affordable unit produced, up to 50% of the total units in the development. Developers of rental units can receive a \$10,000 reimbursement per affordable unit if the units are priced for households making 50% AMI or below, less a utility allowance. However, only developments that provide at least the minimum number of affordable units required by the ordinance can receive the cash subsidies. Further, these cash subsidies are only available if funding exists in the “special revenue fund.” This special revenue fund is funded by fee in-lieu payments and allocations by the City Council.

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

¹² U S Census Bureau, 2000 Census

¹³ The Local Control of Rents Prohibited Statute, Section 38-12-301, 10 C.R.S. (1999), precludes Colorado municipalities from “enact[ing] any ordinance which would control rents on private residential property.” The Colorado Supreme Court struck down a municipal ordinance that required economic developers to mitigate the effects of that development by generating affordable rental housing units for 40% of the new employees created by the development. The Supreme Court found that the ordinance violated Section 38-12-301. *Town of Telluride v. Lot Thirty-Four Venture, L.L.C.*, 3 P.3d 30 (2000).

¹⁴ Denver provides cash subsidies for affordable units because the law does not permit the city to provide fee waivers to developers.

Community Planning and Development Agency completed within 180 days. Finally, Denver provides a density bonus of 10% to developers

Off-Site Development

The Denver ordinance permits off-site development, though the standard is somewhat vague. The ordinance states that the Director of Denver's Community Planning and Development Agency (CPDA) may allow a developer to build the affordable units off-site if the developer builds "more" affordable units than originally required. However, "more" is not defined in the ordinance.

Instead of constructing the affordable units, developers may also contribute an in-lieu fee to the "special revenue fund" in an amount equal to 50% of the price per affordable unit not provided. The price of the affordable unit is the maximum sales price provided by the CPDA without homeowners' association fees.

Income Verification

Households interested in the affordable units must provide documentation of income eligibility to the CPDA. Households must provide a copy of the proposed sales contract, a copy of the proposed settlement cost document, "all documentation necessary for CPDA to determine eligibility of the buyer", and affidavits from the buyer and the seller on the truth of the documents, as well as a signed memo of acceptance of the affordability covenants. The CPDA then reviews these documents and verifies the income levels of the household and their eligibility for an affordable unit.

Period of Affordability

The set aside for-sale and rental units must remain affordable for 15 years. The ordinance requires that a covenant be recorded against the property that binds the owners and all other parties with interest to the property for the entire control period. The CPDA still has a right to purchase at the fair market rate if the unit is placed on the market within ten years of the end of the control period.

The Denver Ordinance also creates a formula for the city to receive some of the market proceeds from the affordable unit once it is sold on the open market at the end of the control period. When an owner of an affordable unit sells it after the end of the control period, the owner must pay the special revenue fund one-half of the excess of the total resale price over the sum of: the prior maximum sales price, a percentage of the affordable unit's prior purchase price with the cost of living increase since last sold; the fair market value of documented capital improvements, and a reasonable sales commission. If the amount remaining is less than \$20,000, the amount due to the special revenue fund will be adjusted so the seller receives \$10,000. If the amount is less than \$10,000, the seller will receive the entire amount.

Enforcement

Denver has several tools for enforcement for the various stages of development. If the developer violates the ordinance in any way, including not constructing the required affordable units, the city may deny, suspend, or revoke any and all building or occupancy permits. The city can also withhold any additional building permits until the affordable units are built. If the ordinance is violated by the 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.

Case Study: Sacramento, California

Background

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 city¹⁵ 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

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 units¹⁶

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 law¹⁷ 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.

¹⁵ U S Census Bureau, 2000 Census

¹⁶ Interview with David Jones, Sacramento City Council Member, March, 2001

¹⁷ 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

Case Study: San Diego, California

Background

In 1992, voters in the City of San Diego imposed an inclusionary housing requirement in the North City Future Urbanizing Area (FUA), a developing section of the city with no rental or affordable housing. The requirement reserves 20% of all new rental and for-sale dwelling units for households earning 65% of the Area Median Income (AMI). The FUA's inclusionary zoning program, which does not offer developers the option to pay an in-lieu fee, generated 1,200 affordable units in the last decade. City planners estimate that the inclusionary zoning ordinance will result in a total of 2,400 affordable units by the time the FUA is built out.¹⁸

The political process to pass a citywide inclusionary zoning ordinance started in 2000 when the city began updating its Housing Element as required by state law. The Plan Commission, interested in adopting an inclusionary zoning ordinance, recommended the creation of a working group to explore the potential of a citywide ordinance. Initially, developers adamantly opposed an inclusionary zoning ordinance, but they became more cooperative as the two-year process unfolded. Developers ultimately worked closely with the city's Housing Commission on certain provisions, meeting on a weekly basis for several months. A detailed economic analysis of the potential impact of inclusionary zoning proved to be the most effective tool in convincing developers to support the ordinance.¹⁹

San Diego, now a city of over 1.2 million people, adopted a citywide inclusionary zoning ordinance in July 2003. The effort to pass the ordinance was based on the FUA program's success, the rising demand for affordable housing, and the recommendation of the inclusionary zoning working group. Inclusionary zoning is one tool the city is promoting to address a lack of affordable housing that forces employees "to live in less than adequate housing within the city, pay a disproportionate share of their incomes to live in adequate housing within the city, or commute ever-increasing distances to their jobs from housing located outside the city."²⁰ Unlike the FUA ordinance, the citywide ordinance offers developers the option to pay a fee in lieu of building affordable units on-site. Prime housing market conditions in San Diego create a financial incentive to pay a fee in lieu of building units on-site. Thus, it remains uncertain whether the new inclusionary zoning law will generate a large supply of integrated affordable housing.

The Program

Set-Aside Requirements

San Diego's city-wide inclusionary zoning ordinance requires all residential developments of ten or more units to set aside 10% of the units as affordable to households at or below 65% of the area median income (AMI) for rental units and at or below 100% of the AMI for owner-occupied units. The FUA is exempt from the citywide ordinance and will continue to adhere to the 1992 FUA inclusionary zoning framework, which has a higher developer set-aside requirement of 20%.

¹⁸ Interview of Bill Levin, San Diego Senior Planner

¹⁹ Interview of Susan Tinsky, Chief Policy Officer Advisor for the City of San Diego Housing Commission, August, 2003

²⁰ San Diego Ordinance Number O-2003-135, page 3

Developer Incentives

Neither the 1992 FUA inclusionary zoning ordinance nor the 2003 citywide ordinance provides developers with incentives or cost off-sets for building affordable units. The city opted not to offer cost off-sets, such as fee waivers or density bonuses, because developers can easily cover the cost of affordable units through the sale of market-rate units, according to an economic analysis conducted by a private firm for the Housing Commission.²¹

On-site Construction

The ordinance requires that on-site affordable units be comparable to the market-rate units in bedroom mix, design, and overall quality of construction with the exception that the affordable units do not have to exceed three bedrooms. Allowances are also made for the interior features and square footage of the affordable units.

Income Targets

San Diego's inclusionary zoning ordinance targets households at or below 65% of the Area Median Income (AMI) for rental units and at or below 100% of the AMI for owner-occupied units. The new inclusionary zoning ordinance exempts a residential development or a portion of a residential development that is sold to households earning less than 150% of the AMI.²² The City Council insisted on this provision to encourage the development of condominiums within this price range.²³

Period of Affordability

The new citywide ordinance requires rents to remain affordable for 55 years. For-sale units do not have a required period of affordability, but the ordinance states that equity from the sale of the affordable unit should be split between the city and the homeowner. The city devised an incremental system by which equity is shared. A homeowner is entitled to a larger share of the equity for each year of ownership. For example, if a unit is sold after two years, the owner is entitled to 21% of the equity, whereas a unit sold after ten years entitles an owner to 69% of the equity. All funds collected by the city from the shared equity agreement are deposited in the Inclusionary Housing Fund to support affordable housing projects. The city is also entitled to first right of refusal on any affordable for-sale unit.

In-Lieu Options

Developers can opt to make a fee in-lieu payment, which is calculated based on the square footage of an affordable unit compared to the gross square footage of the entire project. The fee is phased in over a three-year period and rises from \$1.00 per square foot the first year to \$2.50 per square foot the third year.²⁴ Unlike the citywide ordinance, the FUA ordinance does not offer any fee in-lieu option. The large number of on-site affordable units created under the FUA ordinance is attributable to the absence of any in-lieu fee option.²⁵

²¹Interview of Bill Levin, San Diego Senior Planner, August 2003.

²²San Diego Ordinance Number O-2003-135, 142 303, c2.

²³Interview of Susan Tinsky, Chief Policy Advisor for the City of San Diego Housing Commission, August 2003.

²⁴San Diego Ordinance Number O-2003-135, 142 1310 d.

²⁵Interview of Bill Levin, San Diego Senior Planner, August 2003.

Off-site Development

The inclusionary housing requirements can also be satisfied by providing the same number of units at another site within the same Community Planning Area. In contrast to most ordinances in the nation, San Diego's ordinance does not require a higher affordable housing set-aside for units constructed off-site. Developers may provide affordable units through a combination of on-site and/or off-site construction and a fee in-lieu payment.

Developers must seek a variance from the Planning Commission to build affordable units off-site within a different Community Planning Area. Variance requests only exempt developers from adhering to portions of the ordinance and are subject to a Plan Commission decision with appeal to the City Council. To acquire a variance, a developer must demonstrate a special circumstance unique to that development, that the development would be infeasible without a modification, or that a substantial financial hardship would result from adherence to the ordinance.²⁶

The City Council may exempt a developer from the ordinance through a waiver. Requests for a waiver must satisfy the same criteria as an application for a variance, but a waiver request is subject to a higher degree of scrutiny than a variance. The San Diego Housing Commission processes all waivers, but final approval must come from the City Council.

Administration

The Inclusionary Housing Program is administered by two city agencies: the Development Services Department and the San Diego Housing Commission. The Chief Executive Officer of the San Diego Housing Commission is responsible for determining targeted rental and ownership affordability, resident qualifications, and monitoring the program.

The Impact of Inclusionary Zoning

The ability of inclusionary zoning to produce 1,200 affordable units in the FUA was a key factor in the decision to adopt a citywide ordinance. According to San Diego senior planner Bill Levin, the pace of development in the FUA did not slow after passage of an inclusionary zoning requirement.²⁷ This provided the development community with tangible assurance that inclusionary zoning does not have a negative impact on their industry. San Diego's Planning Department does not anticipate that the citywide ordinance will produce as many on-site affordable units as the FUA ordinance because the citywide ordinance provides developers with the option to pay an in-lieu fee. Due to the strong housing market in San Diego, planners project that the in-lieu fee will not be able to keep pace with the price of building on-site. Thus paying an in-lieu fee will be a less expensive option than building units on-site.

²⁶San Diego Ordinance Number O-2003-135, 142 1304 d

²⁷ Interview with Bill Levin, San Diego Senior Planner

Case Study: San Francisco, California

Background

In 1992, San Francisco, a city of almost 800,000 people, adopted a limited inclusionary housing program to address the shortage of affordable housing for very-low- and low-income residents. The California State Legislature requires all local governments to develop a comprehensive, long-term general plan that encourages the development of a variety of housing types for all income levels. Inclusionary zoning is a popular policy tool in California, where it has been adopted in over 100 municipalities. The 1992 ordinance only applied to planned unit developments (PUDs) and projects requiring a conditional use permit, neither of which affected a substantial amount of residential development in the city.²⁸ Most of San Francisco is built out, and the city lacks vacant lots that are large enough for PUDs. In addition, most projects in San Francisco do not require a conditional use permit.

The majority of housing built in the mid- to late 1990s consisted of live/work units. According to city planner Teresa Ojeda, live/work units were initially anticipated to provide cheap or relatively inexpensive housing for artists by allowing them to work in the same complex where they live. By the mid-1990s, live/work units were in high demand for vocations other than artists. This increased demand drove up housing costs in working-class neighborhoods.²⁹ Live/work units that started at about \$300,000 in the mid-1990s reached \$700,000 by the end of the decade.³⁰ During the 1990s, live/work units were zoned as commercial development and were exempt from the inclusionary housing requirement, as well as other building standards and fees normally imposed on residential development.

In January 2002, the inclusionary zoning ordinance was expanded from applying only to PUDs and projects requiring conditional use permits to all residential projects of ten units or more, including live/work units. The program's expansion came in response to the continuing affordable housing crisis and opposition from community groups to the displacement of low-income households as a consequence of rising property values and the increase in unattainable live/work units.

The Program

Set-Aside Requirements

Under the new ordinance, 10% of the units in a residential development of ten or more units must be set aside as affordable. The set-aside requirement jumps to 15% if the units are provided off-site. PUDs and developments that require a conditional use permit are subject to a 12% set-aside requirement, which increases to 17% if the affordable units are built off-site.

Developer Incentives

San Francisco offers minimal developer incentives. Such incentives are limited to receiving refunds on the environmental review and on the building permit fees for the portion of the housing project that is set aside as affordable.

²⁸Interview of Teresa Ojeda, San Francisco City Planner, August 2003.

²⁹Ibid.

³⁰Ibid.

On-site Construction

The affordable units must be comparable in number of bedrooms, size, exterior appearance, and overall quality to market-rate units³¹ The ordinance makes allowances for square footage and interior features, which do not have to meet the same standards as the market-rate units.

Income Targets

For rental units, the inclusionary zoning ordinance targets households earning 80% of the area median income (AMI) For owner-occupied units, the ordinance applies to households earning up to 120% of the area median income San Francisco's area median income calculation includes the wealthy counties of San Mateo and Marin As a result, the AMI is substantially higher than other US cities The AMI for a family of four is \$91,500, and the AMI for a single-person household is \$62,050 Therefore, a household of four at 80% of the AMI earns a maximum annual salary of \$73,200, and a household of four at 120% of the AMI earns a maximum annual income of \$109,800³²

Off-site and In-Lieu Options

Developers can elect to construct affordable units off-site but are discouraged from doing so by a requirement that increases the affordable unit set-aside to one and one half more affordable units than are required for on-site construction In-lieu fee payments are made to the Citywide Affordable Housing Fund and are appropriated for affordable housing The amount of the fee is determined by several factors including the projected value of the affordable units had the developer constructed them on-site

Period of Affordability

San Francisco's inclusionary zoning ordinance requires that both rental and for-sale units remain affordable for 50 years.³³ All housing projects must record a Notice of Special Restriction with the Recorder of the City and County of San Francisco that incorporates affordability restrictions If an affordable rental unit is converted to an ownership unit, the ordinance requires that it remain affordable and continue to adhere to the affordability control period The San Francisco Planning Commission and Planning Department monitor affordability controls

Administration

The Mayor's Office of Housing and the Plan Commission administer the inclusionary zoning program The ordinance requires that the Mayor's Office of Housing conduct a study every five years to determine the relationship "in nature and amount between the production of market-rate residential housing and the availability and demand for affordable housing in San Francisco"³⁴ The studies will be used to determine whether to increase affordability levels

The Impact of Inclusionary Zoning

Since the adoption of comprehensive inclusionary zoning in 2002, the program has generated 90 affordable units through projects totaling 920 units. Currently, proposed housing projects under planning review total about 7,485 units, which could result in approximately 745 affordable units³⁵

³¹San Francisco Zoning Ordinance, section 315.4 c

³²Interview of Teresa Ojeda, San Francisco City Planner, August 2003

³³San Francisco Zoning Ordinance, section 315.7 (a)

³⁴San Francisco Zoning Ordinance, section 315.8 e.

³⁵Interview of Teresa Ojeda, San Francisco City Planner, July 2003 Calculations based on the 2003 San Francisco affordable rental housing guidelines

Large Cities with Inclusionary Housing Programs

	Affordable Units Produced	Threshold Number of Units/ Income Target	Set-Aside Requirement	Control Period	In lieu-fee Payment/ Off-site Development	Density Bonus	Other Developer Incentives
Boston, MA (2000) Population 589,141	200 inclusionary units since 2000	<i>Threshold</i> 10 or more units <i>Income Target</i> at least one-half of affordable units for households earning less than 80% of the AMI, remaining affordable units for households earning between 80-120% of the AMI, with an average of 100% of the AMI	10% set-aside	"Maximum allowable by law"	<i>Fee</i> must be equal to 15% of the total number of market-rate units times an affordable housing cost factor <i>Off-site</i> , may build off- site, but set-aside requirement increases to 15%	None	No citywide developer incentives, but increased height and FAR allowances permitted in the financial district
San Francisco, CA (1992, expand in 2002) Population 776,733	128 units completed between 1992 and 2000, 90 units since 2002, 745 units in the pipeline	<i>Threshold</i> 10 or more units <i>Income Target</i> for rental units, households earning 80% or less of the AMI, for for-sale units, households earning 120% of the AMI	10% set-aside	50 years for rental and for-sale units	<i>Fee</i> determined by several factors including the projected value of on-site affordable units, in-lieu payments are made to the Citywide Affordable Housing Fund <i>Off-site</i> Developers can elect to build affordable units off-site, but the set-aside requirement increases to 15%	None	Refunds available on the environmental review and building permit fees that apply to the affordable units

	Affordable Units Produced	Threshold Number of Units/ Income Target	Set-Aside Requirement	Control Period	In lieu-fee Payment/ Off-site Development	Density Bonus	Other Developer Incentives
Denver, CO (2002) Population 554,636	804 planned units since 2002	<i>Threshold</i> 30 units or more <i>Income Target</i> 65% of the AMI for rental units and less than 80% of the AMI for for-sale units	10% of for-sale units or a voluntary set-aside of 10% for rental units	15 years	<i>Fee</i> 50% of the price per affordable unit not built <i>Off-site</i> allowed if developer builds "more" affordable units than required on-site	Up to 20% for single-family units, up to 10% for multi-family units	\$5,000 reimbursement for each for-sale unit, up to 50% of the total units in the development, \$10,000 reimbursement for each affordable rental unit if unit is priced for households at 50% of the AMI or below
San Diego, CA (1992, expanded in 2003) Population 1,223,341	1,200 units completed between 1992 and 2003	<i>Threshold</i> 10 or more units <i>Income Target</i> rental units are set aside for households earning at or below 65% of the AMI, for-sale units are set aside for households earning at or below 100% of the AMI	10% set-aside	55 years for rental and for-sale units	<i>Fee</i> calculated based on the square footage of an affordable unit Fee increases between 2003 and 2006 from \$1 00 per square foot to \$2 50 per square foot <i>Off-site</i> Developers can opt to build off-site (set-aside does not increase)	None	None
Sacramento, CA (2000) Population 407,075	465 units completed, hundreds more in the pipeline	<i>Threshold</i> Any development over 9 units <i>Income Target</i> 15% of the units must be set aside as affordable Of the affordable units that are produced in the development, one-third of the units must be priced for households making between 5 0% and 80% of the AMI Remaining two-thirds must be priced for households making less than 50% of the AMI	15% set-aside	30 years	Can dedicate land off-site or build off-site if • there is insufficient land zoned as multi-family on-site • Alternative land or units must be in "new growth" areas	25%	Expedited permit process for affordable units, fee waivers, relaxed design guidelines, may receive priority for subsidy funding



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Voluntary or Mandatory Inclusionary Housing? Production, Predictability, and Enforcement

November 2003

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Summary

In response to the nationwide affordable housing crisis, many municipalities are turning to inclusionary zoning programs as an effective tool for generating much needed affordable housing. Research shows that local governments increasingly favor mandatory inclusionary zoning programs rather than voluntary programs for three reasons:

- 1) **Mandatory programs produce more affordable units.** The lack of affordable housing, particularly in job-rich communities around the country, harms vulnerable households and hinders local economic development. Mandatory inclusionary zoning programs generate more units of affordable housing. This means more workforce housing near jobs, reduced sprawl, and less traffic congestion and air pollution.
- 2) **Mandatory programs produce more affordable units for a wider range of income levels within the affordable spectrum.** While voluntary programs may produce upper-range moderate-income housing, mandatory programs more effectively generate housing for low-income entry-level workers, who help drive local economies.
- 3) **Mandatory programs offer uniformity and predictability in their implementation and enforcement.** Developers benefit from uniform expectations and certainty throughout the development process, and municipalities benefit from a more predictable level of affordable housing production.

With all the benefits of mandatory programs, it is not surprising to find that more municipalities around the country are adopting mandatory, rather than voluntary, inclusionary zoning programs.

Comparing Mandatory and Voluntary Inclusionary Zoning Programs

1. Mandatory programs produce more affordable housing units.

Experts agree that mandatory, rather than voluntary, inclusionary zoning programs are more effective at generating a larger supply of affordable housing. A 1994 study conducted on inclusionary zoning programs in California found that “mandatory programs produce the most very-low- and low-income affordable units compared with voluntary programs, both in terms of absolute numbers and percentage of total development.”¹ The report concluded that the effectiveness of inclusionary programs in California was closely correlated with their mandatory nature, in fact, nine of the top fourteen most productive inclusionary housing programs in California are mandatory.² Two counties cited in another California study “specifically blame the voluntary nature of their programs for stagnant production [of affordable housing].”

¹ *Creating Affordable Communities*, Prepared by the California Coalition for Rural Housing Project, November 1994 42

² *Creating Affordable Communities*, Prepared by the California Coalition for Rural Housing Project, November 1994 48

despite a market-rate boom.”³ A Massachusetts study regarding inclusionary zoning programs reached similar conclusions. The report stated that the “greatest potential” for inclusionary zoning lies in mandatory, rather than voluntary, inclusionary zoning programs.⁴

2. Voluntary programs fail to produce enough housing affordable to low- and very-low-income households.

While voluntary inclusionary zoning programs can generate upper-range moderate-income housing (with a significant number of developer incentives), they generally fail to produce affordable housing for low- and very-low-income households in the absence of subsidies. For example, Austin, Texas, adopted a voluntary program called the S M A R T (Safe, Mixed-Income, Accessible, Reasonably-priced, Transit-oriented) Housing Initiative in April 2000. While the program has created a substantial number of units for moderate-income households (through aggressive program implementation and an agreement to waive 100% of the building fees if a 40% set-aside is included⁵), it has only produced a small percentage of housing for low- and very-low-income households. While 62% of the total units in the program to date are affordable to families at or below the median family income (MFI), only 2% of the total units are affordable to low-income households earning at or below 40% of the MFI.⁶

Voluntary inclusionary zoning programs that succeed in generating affordable housing units for a range of low-income households must rely heavily on federal, state, and local subsidies in most cases. The City of Roseville, California adopted an “Affordable Housing Goal” (AHG) program in 1988, which encourages developers to work with the city to voluntarily build affordable housing within residential developments. Since 1988, the program has produced 2000 affordable units through significant federal, state, and local subsidies. However, \$233,708,554 in subsidies would be necessary to meet the city’s goal of 5,944 affordable units by 2007—that is \$217,608,554 more in funding than the city is expected to capture between 2002 and 2007.⁷ In the absence of expanded funding, it will be impossible for Roseville to meet its regional affordable housing goal through its voluntary program.

³ *Inclusionary Housing in California: 30 Years of Innovation*, prepared by the California Coalition for Rural Housing and the Non-Profit Association of Northern California, 2003.

⁴ Ziegler, Clark. *Inclusionary Zoning: Lessons Learned in Massachusetts*, National Housing Conference Affordable Housing Policy Review, VI 2, Issue 1, January 2002.

⁵ Interview of Regina Copic, S M A R T Housing Program Director, July 2003.

⁶ A reasonable priced housing unit in Austin is defined as being affordable for a family that earns 80% of the MFI and spends no more than 30% of the gross income on housing. To qualify for the program, a family of four that lives in Austin must earn no more than \$56,500 a year.

⁷ Roseville General Plan, *Revisions to Draft Update to Housing Element 2002 for HCD Review*, August 23, 2002. 12.

3. Mandatory programs are more predictable in enforcement and results.

Mandatory programs offer reliability and predictability in their ability to create integrated affordable units and/or generate fee in-lieu payments, depending on how the program is structured. Developers also benefit from mandatory programs because they offer uniform expectations and provide more certainty throughout the development process. Mandatory programs create a level playing field for developers, ensuring that all developers must adhere to the same guidelines throughout the development process. Developers in Irvine, California recently lobbied the city council to change the city's inclusionary housing ordinance from voluntary to mandatory enforcement due to the confusion and uncertainty developers experienced in the development process under a voluntary program.⁸

The most successful voluntary programs are treated in practice as mandatory requirements.

A dedicated city staff is critical to the success of any inclusionary zoning program, voluntary or mandatory. However, for a voluntary program to succeed, it is particularly important to have a dedicated city staff willing to aggressively implement such a program. Calavita and Grimes, for example, have attributed the success of the voluntary inclusionary zoning program in Irvine, California to an "unusually sophisticated" and "particularly gutsy" staff committed to making the program work.⁹ (In fact, Irvine's voluntary inclusionary housing policy changed to a mandatory inclusionary housing ordinance in the spring of 2003.)

In Chapel Hill, North Carolina, the city's voluntary ordinance is aggressively enforced in a mandatory fashion.¹⁰ The policy began as an "expectation" for developers with residential rezoning requests to include at least a 15% affordable housing set-aside. However, the voluntary program is so rigorously enforced by town staff and the Town Council that no new residential developer, regardless of requiring a rezoning request, has approached the Planning Commission without at least a 15% affordable housing set-aside or plans to pay a fee in lieu of building affordable units.¹¹ In practice, developers construe the inclusionary zoning expectation as mandatory because residential development proposals are difficult, more expensive, and less likely to win approval without an affordable housing component.¹² However, because the program is voluntary, developers do not have the benefit of a policy that is uniform and predictable.

The trend in inclusionary zoning is towards the adoption of mandatory, rather than voluntary, inclusionary zoning programs.

⁸ Interview of Barry Curtis, Associate Planner for the City of Irvine, June 16, 2003.

⁹ Calavito, Nico and Kenneth Grimes. "Inclusionary Housing in California: The experience of two decades," *Journal of the American Planning Association*. Chicago Spring 1998, Vol. 64, Is. 2 150-170.

¹⁰ The State of North Carolina has not legally enable municipalities to pass mandatory inclusionary zoning ordinances.

¹¹ Interview of Phil Mason, Senior Planner for the Town of Chapel Hill, June 2003.

¹² Ibid.

The current trend in inclusionary housing programs is towards the mandatory end of the implementation spectrum. BPI's research has so far identified only one municipality in the country that has changed from a mandatory to a voluntary program: Orange County, California. This switch in enforcement led to a dramatic drop in the production of affordable housing.¹³ Meanwhile, as the table below demonstrates, other communities around the country have recently switched to a mandatory status in order to gain the benefits of additional affordable units and greater predictability.

A. Switching from Voluntary to Mandatory Inclusionary Zoning

Municipality or County	Reason for Change	Result
Cambridge, MA	10 years of voluntary inclusionary zoning districts failed to generate any affordable housing	In 1999 Cambridge switched to a mandatory program that has since produced over 100 affordable units
Irvine, CA	Developers initiated a switch to a mandatory ordinance after over two decades of confusion and uncertainty under a voluntary program. ¹⁴	New mandatory ordinance (adopted in the spring of 2003) is a concise program with uniform expectations and rewards for developers
Pleasanton, CA	Voluntary ordinance proved ineffective at creating affordable housing in the face of increasing housing costs and decreasing availability of land	Passed mandatory ordinance in late 2000. ¹⁵
Boulder, CO	Throughout the 1980s and 1990s, the city's voluntary ordinance proved an ineffective tool to generate affordable housing	Mandatory ordinance went into effect in 2000 and has generated 56 units of affordable housing, with more in the pipeline

B. Switching from Mandatory to Voluntary Inclusionary Zoning

Municipality or County	Reason for Change	Result
Orange County, CA	Local political reasons	A decrease in the production of affordable housing units: the mandatory program produced 6,389 units of affordable housing in four years (1979-1983), while the voluntary program has produced just 952 units over eleven years (1983-1994). ¹⁶

¹³ *Creating Affordable Communities*, Prepared by the California Coalition for Rural Housing Project, November 1994. 45

¹⁴ Interview of Barry Curtis, Associate Planner for the City of Irvine, June 2003

¹⁵ Statistics on the number of units generated under the new mandatory ordinance are not yet available

¹⁶ *Creating Affordable Communities*, Prepared by the California Coalition for Rural Housing Project, November 1994

C. Recent trend in large cities adopting mandatory ordinances

Inclusionary zoning is quickly becoming a mainstream policy tool for increasing the supply of affordable housing. In most cases, municipalities are adopting mandatory inclusionary zoning programs to increase the supply of workforce housing. The five largest cities to adopt inclusionary zoning, Boston, Denver, Sacramento, San Diego, and San Francisco, chose mandatory ordinances in the face of severe affordable housing shortages¹⁷ This decision reflects both the perceived and documented effectiveness of requiring developers to set aside affordable units or pay a fee in lieu of building units on-site

Inclusionary zoning programs can fall between mandatory and voluntary enforcement based on nuances in the ordinances.

Not all inclusionary zoning ordinances fit neatly into the categories of mandatory or voluntary enforcement. Policies may fall between mandatory and voluntary compliance if applied to certain districts or types of developments, such as a revitalizing business district or a PUD. Policies might also fall between if they apply only to projects with a rezoning request, or only affect projects proposed after the adoption of the ordinance

For practical reasons, some municipalities design ordinances that are mandatory but include voluntary provisions. For example, Cambridge, Massachusetts adopted an inclusionary zoning ordinance that exempts rehab projects because one of the city's main developer incentives is a density bonus, which is difficult to accommodate in rehabs. Boston, Massachusetts currently has an effective mandatory inclusionary zoning policy that applies to any residential project of 10 or more units that requires zoning relief or is financed by or developed on property owned by the City of Boston or the Boston Redevelopment Authority (BRA). Due to the nature of Boston's zoning code, practically every new residential development over nine units is subject to zoning relief, and thus the policy

The Bottom Line

The experience of municipalities and counties nationwide demonstrates that mandatory inclusionary zoning works as a practical and successful tool for generating affordable housing. While the success of voluntary programs is contingent on the availability of subsidies and aggressive staff implementation, mandatory programs have produced more affordable units overall, and more units for a wider range of income levels within the affordable spectrum. Not only are more municipalities establishing mandatory inclusionary zoning programs, many municipalities with experience implementing voluntary ordinances are switching to mandatory ordinances. Their uniform and predictable nature, coupled with their documented effectiveness at producing more affordable units, has made mandatory programs overwhelmingly more popular

¹⁷ All five cities have a population exceeding 400,000 people