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200150D

TeCHNiCAL RePORT is inclusionary Zoning inclusionary?

A Guide for Practitioners

Heather L. Schwartz • Liisa Ecola • Kristin J. Leuschner • Aaron Kofner

200150D

Environment, Energy, and Economic Development

A RAND INFRASTRUCTURE, SAFETY, AND ENVIRONMENT PROGRAM

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Preface

Inclusionary zoning (IZ) has become an increasingly popular tool for providing affordable housing in an economically integrative manner. IZ policies typically require developers to set aside a proportion of units in market-rate residential developments to be made affordable for lower-income households in exchange for development rights or zoning variances. These policies are considered "inclusionary" because they are intended to allow lower- and moderate-income households to buy or rent property in middle- and upper-income communities. Although IZ policies have been implemented in many states and localities, little research has been conducted to determine whether these policies are having the intended inclusionary effect for IZ recipients.

This report examines IZ programs across 11 jurisdictions to determine whether IZ policies succeed in providing its recipients access to low-poverty neighborhoods and homes that are residentially assigned to high-performing schools. This would be notable, since a recent national study reveals that exclusionary zoning yielding low-density housing increases the likelihood that low-income households are priced out of homes that are located in neighborhoods with high-scoring schools (Rothwell, 2012). The purpose of this study is also to highlight the key features of IZ policies and the ways in which they might affect program success. Detailed summaries of each of the IZ programs and maps of IZ locations are provided in the appendixes.

The report should be of interest to city planners and municipal officials from housing and education departments as they consider policies to provide affordable housing within their jurisdictions and means to give children from families earning lower incomes access to lowpoverty or high-performing schools.

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Summary

Inclusionary zoning (IZ) is a land-use policy intended to enable some lower- and moderateincome households to live in middle- and upper-income communities. IZ policies either mandate or encourage real estate developers to incorporate into their market-rate developments a proportion of homes that are sold or rented at below-market prices in exchange for development rights or zoning variances.

IZ policies have been implemented in many states and localities within the United States and internationally. Most of the literature on IZ has attempted to assess how many IZ units have been produced and the effect of IZ on housing prices and on the production of market- and below-market-rate homes. However, little research has examined the socially inclusive aspect of these policies. Two factors in particular—the characteristics of neighborhoods in which IZ homes are located and the characteristics of schools to which IZ homes are assigned—presumably predetermine the potential for IZ programs to have their intended inclusionary effect. However, the simple adoption of an IZ policy within a high-cost housing market does not guarantee the production of IZ homes, the targeting of those homes to low-income recipients, or the location of IZ homes in high-cost neighborhoods or within catchment areas for highperforming schools.

To test the assumption that IZ policies inherently promote social inclusion, we examined 11 IZ programs across the United States to determine the extent to which these policies serve lower-income families and provide IZ recipients with access to low-poverty neighborhoods and residentially assign them to high-performing schools. We also considered ways in which IZ policies vary and how different design features might affect the success of the programs in promoting affordable housing and social inclusion.

Since exclusionary zoning increases the likelihood that low-income households are priced out of homes in neighborhoods with high-scoring schools (Rothwell, 2012), IZ programs could theoretically mitigate this trend by introducing affordable housing into jurisdictions that otherwise lack it, thereby promoting the academic achievement and educational attainment of children of IZ recipients. The long-standing and widening income achievement gap in the United States (Reardon, 2011) underscores the potential policy importance of IZ, since there is evidence that low-income students benefit from attending higher-scoring (often lower-poverty) schools (Rumberger and Palardy, 2005; Schwartz, 2012).

The study does not address whether IZ programs increase residents' access to low-poverty settings relative to the absence of IZ, improve children's and adults' outcomes such as academic achievement, or impact the overall production of housing within a jurisdiction. While these are highly important aspects of IZ to understand, the study addresses a question that precedes these outcomes: Do IZ policies have the potential to promote IZ recipients' social inclusion

through residential access to the amenities that many low-poverty neighborhoods and schools provide?

Success in Providing Lower-Income Families with Access to Low-Poverty Neighborhoods and Schools

Although the 11 programs studied vary considerably, overall, the IZ policies provide access to low-poverty schools and neighborhoods.

IZ homes tend to serve low-income people. Six of the 11 programs we studied serve only households making 80 percent or less of the Area Median Income (AMI), and three of the six target households earning as little as 30 percent of the AMI for rental IZ units. The other five programs reserve a portion of the IZ homes for households earning up to 100 or 120 percent of the AMI.

The programs tend to serve owners rather than renters. Seventy-eight percent of the IZ homes in this study were for sale, and only one of the IZ programs exclusively provided rentals. The vast majority of the for-sale homes were sold to low-income households that would otherwise qualify for federally subsidized rental housing on the basis of their income. The primacy of ownership partly reflects the fact that most IZ laws require that IZ units have the same tenure as non-IZ market-rate units, which in suburban locations are primarily intended for ownership. The ten jurisdictions selling IZ homes made them affordable to low-income households by selling them at substantially discounted prices or with subordinate financing (or both). For example, IZ homes in Burlington, Vermont; Chicago, Illinois; and Fairfax County, Virginia, were priced at an average of 39 percent, 26 percent, and 17 percent less than their assessed market prices.

IZ homes tend to be dispersed throughout jurisdictions. One concern about the provision of affordable housing is the clustering of low-income families in what can thereby become high-poverty neighborhoods zoned into high-poverty schools. In contrast to other supply-side affordable housing programs that tend to concentrate within a few neighborhoods in a municipality (e.g., public housing), IZ units were located in one out of every ten census block groups in the 11 localities and one out of every five census tracts as of 2005–2009. IZ homes were residentially assigned to one in four elementary schools in the neighborhoods.

IZ homes are located in low-poverty neighborhoods. Across the 11 localities, the typical IZ unit is located in a census block group (or tract) where 7 percent of households lived in poverty as of 2005–2009. This is lower than the average poverty rate among the block groups without IZ homes in the same jurisdictions (16 percent) and the typical U.S. census block group nationally for the same years (14 percent). Further, 75 percent of the IZ units examined in this study are located in a low-poverty census block group or tract, compared with estimates ranging from 8 to 34 percent for other forms of affordable housing (Ellen et al., 2009; Newman and Schnare, 1997). The typical IZ unit is located in a neighborhood where, as of 2005–2009, the vast majority of adults of working age were employed (94 percent), the majority of adults aged 25 and older had a college degree, and more than half of the neighborhood population (57 percent) was white. Very few IZ homes (2.5 percent) in the study were in high-poverty neighborhoods, defined as those where 30 percent or more of households are in poverty.

IZ homes are assigned to relatively low-poverty public schools. Across the 11 localities, the typical IZ unit is located within an elementary-school catchment area that had a lower

proportion of students that qualify for free or reduced-price meals than among elementary schools with no residentially assigned IZ homes (44 versus 64 percent) in school years 2006–2010. This also compares favorably to the average elementary school nationally, where nearly one out of every two students (49 percent) qualified in those school years. Forty-four percent of IZ dwelling units are assigned to low-poverty schools, defined here as elementary schools where less than one in five students qualifies for free or reduced-price meals.

IZ homes are assigned to schools performing better than schools in the same jurisdiction that do not serve IZ homes. Across the 11 localities, the typical IZ unit was located in a residential catchment area for an elementary school that ranked in the third quintile (i.e., the 40th to 60th percentile among all elementary schools in the state) on statewide tests in math and English Language Arts (ELA) over school years 2006–2010. Within the same jurisdictions, elementary schools without residentially assigned IZ homes ranked in the second quintile (i.e., the 20th to 40th percentile) among other elementary schools within their states.

Features of IZ Programs That Influence Their Potential to Provide Affordable Housing and Promote Social Inclusion

Based on the extensive information each of the 11 localities provided about their ordinances and program structures, we identified seven program-design aspects that shape the potential to meet the goals of providing affordable housing to low-income households and promoting social inclusion for IZ recipients:

- How the IZ policy defines eligibility for recipients;
- Whether the IZ policy includes rental and ownership opportunities;
- Whether developers are required to comply with IZ set-asides as a condition of permit approval;
- The size of developments to which the IZ policy applies and the proportion of homes that must be set aside as affordable;
- The types of cost offsets and opt-outs provided to developers;
- The continued affordability of the homes after initial resale or leasing; and
- The ability to monitor compliance with the IZ program regulations.

These aspects of IZ policies affect not only how many homes are built, but also who may live in them, how long they are available to income-eligible households, and their inclusion in market-rate neighborhoods. We found substantial variation in designs along each of these seven dimensions.

Conclusion

While IZ programs serve relatively more-advantaged families than other affordable housing programs generally do, the degree of access IZ provides to low-poverty places is still remarkable. However, in serving primarily homeowners, the IZ programs are not typically designed to serve households at the lowest income levels or those with extensive needs for support, for whom clustered affordable housing might be a more efficient means of disseminating social

services. There are exceptions, however, where IZ programs have explicitly built in means to house the lowest-income renters—for example, by allowing a locality's public housing authority to purchase and operate some IZ homes for occupancy by federally subsidized renters.

IZ policies offer something that other economically integrative housing programs largely do not—namely, to the extent that IZ policies include long-term affordability requirements, they have the potential to provide low-income recipients with extended exposure to low-poverty settings. This is important, since research indicates that a significant amount of time is required (in some cases, generations) for low-income populations to reap the benefits of lowpoverty settings. However, care should be taken in developing program features, because these features influence the degree to which IZ policies can increase the supply of affordable housing and include participating families in their communities.

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Abbreviations

ACS	American Community Survey
AMI	Area Median Income
CDBG	Community Development Block Grant
GIS	Geographic Information System
HOME	Home Investment Partnerships
HUD	Department of Housing and Urban Development
IZ	inclusionary zoning
LIHTC	Low-Income Housing Tax Credits

MSA Metropolitan Statistical Area NCES National Center for Education Statistics

CHAPTER ONE

Introduction

Inclusionary zoning (IZ) is a land use policy that is intended to make it possible for some lower- and moderate-income households to live in middle- and upper-income communities. These policies are termed "inclusionary" because they either mandate or encourage real estate developers to incorporate into their market-rate developments a proportion of homes that are sold or rented at below-market prices. In exchange, most U.S. IZ programs offer ways to cover the financial losses developers incur on the IZ homes, for example, by allowing developers to increase the overall size of a development or by providing other zoning variances (Calavita and Mallach, 2010).

IZ is a relatively recent policy for providing affordable housing; it first came into use in the United States during the 1970s (Calavita and Mallach, 2010). The oldest continuously running IZ program started in 1974 in Montgomery County, Maryland. It is also the largest IZ program, having led to the construction of more than 13,000 IZ homes (Department of Housing and Community Affairs, 2011). Data about IZ programs are generally scarce, but most of the programs are thought to be much smaller than the Montgomery County program, typically having produced dozens to hundreds of IZ homes per jurisdiction (Rusk, 2009). Over the past 40 years, IZ policies have spread, both in the United States and internationally; the best available estimates indicate that at least nine countries worldwide have IZ policies, while more than 500 localities in the United States have adopted IZ in some form (Calavita and Mallach, 2010).

Statutory authority for IZ can be provided at the state or local level. Thirteen states explicitly or implicitly authorize the use of IZ by local governments (Hollister, McKeen, and McGrath, 2007). Two states, Texas and Oregon, prohibit IZ. The remaining states offer no guidance to localities regarding the legality of IZ, although IZ programs exist in at least eight states (Hollister et al., 2007). IZ has been alternately characterized as an exaction (i.e., a requirement that part of the land being developed be dedicated to public use) and a land-use regulation (Mallach and Calavita, 2010). Mallach and Calavita (2010) note that the question of how IZ is defined according to state law is of pivotal importance, because it affects the level of scrutiny IZ programs must withstand in the courts if challenged.[1]

1

It is difficult to estimate how much affordable housing has been created in the United States as a result of IZ. Based on their review of the literature, Mallach and Calavita (2010) estimate that in the four decades IZ has been in existence, it may have resulted in the development of 129,000 to 150,000 affordable units, most of which are in three states and the Washington, D.C., metropolitan area.

IZ programs generally have two goals: (1) to increase the supply of affordable housing, often for the stated reason of housing lower-income workers in high-cost housing markets, and (2) to promote social inclusion and integration. In this study, we interpret the latter goal to mean offering low-income households the opportunity of social inclusion by providing affordable homes in low-poverty neighborhoods (i.e., where 10 percent or fewer of households live in poverty) with access to low-poverty schools where less than 20 percent of students qualify for free or reduced-price meals and high-performing schools (i.e., schools with average test scores at the 50th percentile or above among schools within the state). Little information is available about whether IZ programs actually achieve these goals. A largely untested assumption behind IZ is that communities that have adopted IZ programs gain or retain families that might otherwise be priced out of the local housing market, and that IZ recipients thereby benefit from the increased access to the resources and amenities found in higher-income neighborhoods, including better services, jobs, and schools.

IZ may not promote inclusion at all if the production of IZ homes increases market prices or reduces the number of homes built. However, the evidence points to mixed, weak effects of IZ policy adoption on housing production and prices (Knapp, Bento, and Lowe, 2008; Schuetz, Meltzer, and Been, 2011). Further, a number of features of IZ policies might diminish their ability to meet their goals even for direct beneficiaries. IZ policies may be voluntary; may include opt-out provisions allowing developers to build IZ homes off-site or to contribute land or money in lieu of IZ units; and may serve households above low- or moderate-income ranges. Some IZ policies do not require IZ homes to remain at below-market rates after the first occupants move out. Other program features, such as the

[1] If IZ is characterized as an exaction, federal and state laws require that it must pass a test of rough proportionality between the costs of development and the size of the impact fee or exaction. If IZ is characterized as a land-use regulation, the level of scrutiny is less strict, and a municipality defending an IZ ordinance defined as a land-use regulation must merely prove that the policy is grounded in a public purpose and is within a municipality's power to regulate. IZ has typically been defined by courts as a land-use regulation and, as such, has withstood scrutiny. The New Jersey Supreme Court came to this conclusion in its landmark Mount Laurel II case, as did California courts in *Homebuilders of Northern California vs. Napa* in 2002.

proportion of homes in a housing development that must be set aside, whether IZ units are to be rented or owned, and the type and size of developments to which IZ requirements apply, also affect the extent to which IZ programs succeed in increasing the supply of affordable housing and promoting social inclusion.

Although IZ typically is not designed for the most disadvantaged households and thus is not directly comparable to other affordable housing programs that do target these households, it would nevertheless be a substantial achievement if IZ households enjoyed access to lowpoverty neighborhoods and schools, since less than one-third of homes among the three largest U.S. affordable housing rental programs—Low-Income Housing Tax Credits (LIHTC), Housing Choice vouchers, and public housing—provide such access.

This study attempts to shed light on these issues by examining the following questions:

- To what extent do IZ policies serve low-income households and offer beneficiaries access to low-poverty neighborhoods and high-performing schools?
- How do IZ policies vary in design and how might these features affect the success of programs in meeting the goals of promoting affordable housing and social inclusion?

Approach of This Study

To answer these questions, we reviewed the available literature on IZs; selected 11 U.S. jurisdictions that operate IZ programs and collected data from each; supplemented the data with information about the characteristics of neighborhoods and schools in those jurisdictions; and analyzed the degree to which IZ homes provide low-income persons access to low-poverty neighborhoods and high-performing and low-poverty schools.

Table 1.1 lists the 11 locations from which we gathered IZ program data. Most of these locations operate a number of affordable housing programs, including IZ. We selected affordable housing programs that mandated developers to set aside a minimum proportion of newly constructed or renovated market-rate homes to be made affordable. The programs are relatively large and geographically diverse; at least one program was selected from each of the five regions in the United States. We also sought to include both well-established IZ programs such as those in Montgomery County and Fairfax County and newer programs in urban locations such as Denver and Chicago.

Although each of the selected locations is considered a high-cost housing market in the sense that a household earning the Area Median Income (AMI) as of 2006 could not incomequalify for a median-priced home in the market as of that year, the simple existence of an IZ policy does not guarantee that the program meets socially inclusive goals. Of central concern to this project is whether IZ programs provide low-income households access to low-poverty neighborhoods, low-poverty schools, and high-performing schools.

Table 1.1
IZ Program Locations in the Study

Location	Region	Year Current Version of IZ Policy Enacted	Number of IZ Homes Built (as of 2010)
Boulder, Colorado	West	2000	364

Burlington, Vermont	Northeast	1990	~ 200
Cambridge, Massachusetts	Northeast	1998	~ 460[a]
Chicago, Illinois	Midwest	ARO enacted in 2003 and revised substantially in 2007; CPAN enacted in 2001	1,235[a]
Davidson, North Carolina	Southeast	2001	54
Denver, Colorado	West	2002	77
Fairfax County, Virginia	Southeast	1990	2,338
Irvine, California	West	2003	183
Montgomery County, Maryland	Southeast	1973	13,133[a]
Santa Fe, New Mexico	Southwest	2005	602
Santa Monica, California	West	1990	862

SOURCES: Data obtained by authors from local administrators of IZ programs.

NOTE: The numbers of homes built are the city or county's best estimates. ARO = Affordable Requirements Ordinance; CPAN = Chicago Partnership for Affordable Neighborhoods.

[a] The number of addresses we obtained did not match city estimates. We obtained fewer addresses in cases where the data are incomplete, developments did not get built, or addresses were once IZ units but were converted out of the program by resale. In each case, we queried local officials about the discrepancies.

In Table 1.2, we provide definitions for these terms as well as others used in this report.

In our study, we performed the tasks described below. Additional detail about our methods is provided in Appendix A.

To determine whether IZ programs served low-income populations and provided access to both low-poverty neighborhoods and low-poverty, high-performing schools, we gathered the IZ household-income eligibility requirements from each of the 11 localities and, where available, incomes of households living in IZ homes. We then identified the geographic coordinates for each IZ address (i.e., geocoded the address) to assess the demographic characteristics of neighborhoods with and without IZ homes in each jurisdiction, as well as the academic performance and demographic characteristics of public schools that, by virtue of residential assignment to schools, would serve children living at those addresses. We obtained a total of 15,659 unique IZ addresses from the 11 localities, of which 15,626 (99.2 percent) were successfully geocoded. The geographic coordinates for each address allowed us to merge public information from the Census, local school districts, state departments of education, and the federal Department of Education to identify the demographic characteristics of the neighborhoods and schools associated with the addresses.

Table 1.2
Key Definitions Used in the Study

Term	Definition	Source
Extremely low-income household	A household earning up to 30 percent of the AMI	U.S. Department of Housing and Urban Development (HUD)

Very low-income household	A household earning up to 50 percent of the AMI	HUD
Low-income household	A household earning up to 80 percent of the AMI	HUD
Low-poverty neighborhood	A census block group with up to 10 percent of households in poverty	A conservative estimate based on the literature (e.g., Quercia and Galter, 2000)
Moderate-poverty neighborhood	A census block group with 10 to 30 percent of households in poverty	Defined by choice for low- and high-poverty definitions
High-poverty neighborhood	A census block group with 30 percent or more of households in poverty	Based on the literature (e.g., Galster, 2002; Kingsley and Pettit, 2003)
Low-poverty school	A school in which up to 20 percent of students qualify for free or reduced-price meals (income qualification standards are 130 percent of the federal poverty line for a free meal and 185 percent for reduced-price meals)	Based on Schwartz, 2012
High-performing school	Performance at the 50th percentile or higher among schools within the same state, as determined by withinstate rankings of schools on standardized math and English Language Arts (ELA) tests	Authors' choice
Promotion of social inclusion	Providing low-income households with the opportunity to access the amenities associated with low-poverty neighborhoods and high-performing schools through the provision of affordable homes	Authors' interpretation

To identify characteristics such as the poverty level of the neighborhoods with and without IZ homes in each of the 11 jurisdictions, we drew on the most current Census data available at the time, the 2005–2009 American Community Survey (ACS) 5-Year Estimates. Since our primary interest was the neighborhood in the immediate vicinity of an IZ address, we report neighborhood characteristics at the census block group level, which is the smallest geographic area at which key demographics (e.g., income, educational attainment, housing values) are publicly available. The five-year estimates represent the average characteristics of households in a given census block group in 2005–2009. Since these data are multiyear estimates rather than point-in-time estimates, they do not capture rapid changes in neighborhood characteristics; rather, they reflect longer-term trends within an area (U.S. Census Bureau, 2008).

To enable us to identify the specific schools to which IZ units were residentially assigned, the nine school districts with residential school attendance boundaries provided their school attendance zone boundary files.[2] Although we requested historical boundary files for 2000–2008, we could uniformly obtain attendance boundary files only as of school year 2007–2008. We used these files to identify the specific elementary, middle, and high schools to which the

[2] The Cambridge, Burlington, and Montgomery County school districts use systems of parental choice rather than residential assignment for a certain number of their schools. Since home addresses do not determine school assignment in these cases, we used districtwide school characteristics for the grade levels (i.e., elementary, middle, and high) at which school choice applies.

IZ units were assigned. We assumed for this study that residential school assignments in each of the 11 districts were constant during school years 2005–2006 through 2009–2010.[3]

Using data from the National Center for Education Statistics (NCES) Common Core of Data, we then linked schools to the characteristics of the student body, such as the percentage of students who qualify for free or reduced price meals and the racial and ethnic composition in each of school years 2005–2006 (hereafter referenced as 2006) through 2009–2010 (hereafter referenced as 2010). We selected these years to best align with the ACS's rolling, multiyear data-collection calendar of January 2005–December 2009.

Finally, we downloaded from each of the nine state education agency web sites publicly available school performance data to rank each school on statewide standardized tests in math and ELA in each of school years 2006–2010. We then developed a single ranking for each school that averaged its rank over the five school years considered.[4] Although standardized test scores were the best information available about the schools, a single metric like the weighted average of students who score proficient or above on math and ELA tests is a crude yardstick for school quality. Partly for that reason, we separated schools into five categories—bottom quintile up through the top quartile among elementary, middle, and high schools within a given state—to provide a proxy for the general performance of the schools without placing undue weight on a specific percentile rank.

To understand the design features used in IZ programs and the population(s) served, we asked each jurisdiction for information on IZ units, as well as demographic information about current and past IZ residents. For units, we requested information on the type of unit (singlefamily or multifamily, rental or ownership), date built, and appraised market price and belowmarket price (as applicable). To document the characteristics of the IZ dwellers, we requested such information as the number of adults and children per household, total household income, the date the household moved into the home, and the gender, age, race, and employment status of the head of household. For ownership units that had sold at least once, we requested the most recent resale price and the length of time the previous owner lived in the unit.

Organization of This Report

Chapter Two discusses the extent to which IZ policies in the jurisdictions studied have appeared to succeed in providing lower-income families with increased access to low-poverty neighborhoods and low-poverty, high-performing schools. Chapter Three considers the design options available for IZ programs and the ways in which different features might affect the success of the programs. Chapter Four concludes with some considerations for localities that may wish to develop IZ programs.

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[3] For approximately half of the districts, we were successful in directly contacting persons familiar with the generation of the district maps, and they confirmed that they were not aware of recent changes.

[4] To develop these rankings, we first derived the weighted average of the percentage of all students who scored proficient or above in math and the percentage scoring proficient or above in ELA on statewide standardized tests. (Unequal numbers of students may take the math and ELA tests within the same school, thus necessitating a weighted average.) These ranks are specific to each state and to each year. Within each state and school year, we separately ranked elementary, middle, and high schools, since we often found systematic discrepancies in proficiency rates across these school levels. For schools that include grades at multiple levels (e.g., K–8 or K–12 schools), we averaged the elementary, middle, and high-school ranking as applicable to come up with a single ranking for each school.

CHAPTER TWO

Benefits and Limitations of Inclusionary Zoning Policies and the Households They Serve

This chapter discusses the extent to which IZ policies succeed in providing lower-income families with increased access to low-poverty neighborhoods and their resources (e.g., high-performing schools). We first describe the potential limitations of IZ policies and benefits of IZ for program participants, based on prior research. Then we report the findings from our analysis of IZ homes in the 11 jurisdictions studied. To answer the question concerning whom IZ programs serve, we first catalogue the incomes of families living in IZ homes in the 11 cities and counties. To document whether those programs are socially inclusive, we describe the neighborhoods where IZ homes are located and the characteristics of the schools to which the IZ units are zoned. Maps showing the distribution of IZ homes throughout their communities and the levels of poverty in those neighborhoods are provided in Appendix C.

Potential Benefits and Limitations of IZ Policies

A recent national study reveals that exclusionary zoning that yields low-density housing increases the likelihood that low-income households are priced out of homes in neighborhoods with high-scoring schools (Rothwell, 2012). The author estimates that eliminating minimum lot size restrictions would reduce that gap in average scores of schools that low- and higherincome students attend. Since there is evidence that low-income students benefit from attending higher-scoring (which are often lower-poverty) schools (e.g., Schwartz, 2012, discussed below), reducing or mitigating exclusionary zoning practices could help to reduce the already large and growing income achievement gap within the United States (Reardon, 2011). Specifically, if inclusionary zoning programs introduced affordable housing into jurisdictions that otherwise largely lack it, IZ could promote the academic achievement and educational attainment of children of IZ recipients.

IZ policies are intended to add to the supply of affordable housing, but they tend to produce small numbers of homes, potentially at substantial cost. To date, IZ programs have played a relatively small role in meeting the nation's need for affordable housing. It is estimated that IZ programs nationwide have led to the creation of approximately 150,000 units over several decades (Calavita and Mallach, 2010). In contrast, HUD's largest rental assistance program—Housing Choice Vouchers—serves approximately two million households, while the LIHTC program has created more than two million affordable homes. Low production obviously limits the potential of IZ to promote social inclusion for low-income recipients.

Despite the relatively small numbers of IZ units, at least *within* some areas, IZ compares favorably to housing creation programs such as LIHTC, in which developers sell credits to investors to raise funds for affordable housing. Brown found that IZ played a large role in the construction of affordable units in the Washington, D.C., area, particularly in Montgomery County, where it accounted for more than half of all affordable housing construction between 1974 and 1999 (Brown, 2001). Similarly, a study of IZ programs in Los Angeles County and Orange County in California found that IZ compared favorably to LIHTC, in some cases outperforming it in terms of total units constructed (Mukhija et al., 2010).

Perhaps the most serious limitation of IZ policies is that the creation of IZ homes depends on the requirements of the policy in relation to local housing-market conditions. Some localities may have an IZ law on the books for years yet produce no IZ homes. The market-driven nature of IZ makes it unlike other affordable housing programs that provide direct subsidies to increase the supply of affordable housing, regardless of local housing-market conditions. Further, the presence of such policies can potentially reduce the production of housing overall or raise housing prices. However, the evidence points to mixed, weak effects of IZ policy adoption on housing production and prices (Bento et al., 2009; Schuetz, Meltzer, and Been, 2011).[5]

Precisely because IZ programs are intended to provide affordable housing within highcost housing markets, they can require large cost offsets to developers or direct subsidies to IZ dwellers (or both). The size of the price discount decreases as the income-eligibility of the target IZ population increases. This trade-off has direct implications for the potential of IZ programs to target low-income recipients and to promote social inclusion. Jurisdictions with high demand for market-rate housing may be able to offset the substantial loss a developer would incur on an IZ home that is sold at, say, 40 percent of market value to a low-income purchaser by offering a substantial benefit such as a large density bonus. Indeed, for IZ programs to produce homes, they must offset developers' potential losses or even enhance the overall profitability of the housing project (Calavita and Mallach, 2010).

The potential of IZ programs to promote social inclusion for direct beneficiaries is shaped largely by the design of a jurisdiction's IZ policy, an issue that is discussed further in Chapter Three. For example, lowering the income eligibility of IZ recipients to reach the most economically needy households lowers the prices of IZ homes, which could in turn require

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[5] We identified three studies that examine the effects of IZ on housing-market construction or prices, using a comparative design: Bento et al., 2009; Mukhija et al., 2010; and Schuetz et al., 2011. These studies yield mixed, limited evidence. On the number of housing starts, Schuetz et al. found a statistically significant negative effect of IZ policies on housing construction, but only in one of two cities studied. Mukhija et al. did not find a significant effect of IZ on the total number of new housing permits issued between 1980 and 2005 in either of two California localities, compared with the almost 100 cites without IZ programs. Bento et al. suggested that IZ may encourage developers to build more multifamily housing than single-family housing but had a statistically insignificant effect on total housing starts. The evidence on prices is a bit stronger; the studies that examined the effect of IZ on home prices (Bento et al., 2009; Schuetz et al., 2011) found statistically significant but small to moderate increases in prices associated with IZ. Bento et al. found that IZ increases the price of higher-priced homes but reduces the price of lower-priced homes, since the set-aside of otherwise market-rate homes decreases the supply of the former while concomitantly increasing the supply of the latter. But Schuetz et al. found that these price effects are not uniform and depend on market conditions. Finally, Bento et al. suggest that developers may attempt to recoup some of the cost of selling below market by decreasing the size of IZ units. For more discussion of the debate around the economic merits of IZ, see Mallach and Calavita (2010).

either creating fewer IZ homes (e.g., by reducing the proportion of homes that must be set aside in the development), offering developers lower-cost alternatives such as contributing to an affordable housing fund or building IZ homes off-site that are not necessarily included in market-rate developments, or offering subsidies directly to IZ recipients in the form of subordinate mortgages or rent subsidies such as Housing Choice Vouchers. A common requirement of IZ policies is that IZ homes must be visually compatible with their market-rate counterparts. But to maximize the supply of IZ homes, the laws can allow developers to lower the cost of construction by creating smaller IZ homes with less-expensive finishes inside (with the option for an IZ occupant to upgrade with a price increase). A requirement that IZ homes be physically indistinguishable from their market-rate counterparts both inside and out would raise the cost of IZ homes, which again could either reduce the supply, direct the supply into lower-cost alternatives, or require infusion of direct subsidies to IZ occupants. The precise nature of the trade-offs is determined by prevailing housing-market conditions, the amount of financing a municipality can offer to IZ recipients (such as through HOME Investment Partnerships or Community Development Block Grant [CDBG] dollars or through the direct purchase of IZ homes to operate with federal affordable housing subsidies), the political conditions within the locality, and the demographic needs for affordable housing (such as family versus elderly households).

Research about the effects of poverty in neighborhoods and schools suggests that IZ recipients have better life chances to the degree that IZ policies provide low-income persons access to low-poverty neighborhoods and high-performing schools. However, as Mallach and Calavita (2010) note, there is a dearth of research on the effects of IZ on occupants of housing constructed under these programs, mostly due to the lack of data with which to measure these effects. We are aware of only one study that examines the direct impacts of IZ on recipients.[6] Schwartz (2012) tracked the schooling outcomes of children living in public housing in Montgomery County, where approximately 700 out of 1,000 public-housing apartments were scattered among market-rate developments through a provision of the county's IZ program. The housing authority randomly assigned families to the public-housing apartments, which permitted an objective comparison of public-housing children's outcomes in low- and moderatepoverty schools within the county. By the end of elementary school, children living in public housing and attending low-poverty schools outperformed children living in public housing who attended schools where the incidence of poverty was higher, substantially in math and moderately in reading (however, for reading the difference was not statistically significantly at a 5-percent confidence level). The largest gains occurred among students living in public housing who attended schools where fewer than one in five students qualified for free or reduced-price meals relative to elementary schools with moderate poverty levels ranging up to 60 to as high as 80 percent.[7]

In the absence of a broader base of evidence about the effects of IZ on recipients, we can only recapitulate the expectations about how providing low-income IZ recipients the opportunity for social inclusion would promote their socioeconomic opportunities. Research about poverty in schools and neighborhoods indicates that residential context can have a large

[6] A few studies have examined the characteristics of residents served in particular IZ programs. Brown (2001) reports that programs in Montgomery and Fairfax counties served racially diverse and economically needy populations and that the affordable units constructed through IZ were dispersed. A survey of IZ programs in California found that the majority of affordable units created in the state served very low-income or low-income populations, with some units serving moderateincome or extremely low-income populations (California Coalition for Rural Housing and the Non-Profit Housing Association of Northern California, 2007).

[7] Children from families making less than 185 percent of the poverty line qualify for reduced-price meals, while those from families making less than 130 percent of the poverty line qualify for free meals.

effect over the long term on both children and adults. This suggests that if economically integrative housing policies such as IZ succeed in integrating families into low-poverty settings over a period of years, such policies would likely have positive and substantive impacts on academic achievement, cognitive ability, and health.

Of course, simply offering a family an affordable home within a low-poverty neighborhood served by a low-poverty school does not guarantee that the family will reap a benefit. Physical proximity does not dictate that non-poor neighbors include IZ dwellers in day-today social interactions, nor does it imply a change in the attitudes, beliefs, and experiences of either IZ recipients or their neighbors. Rather, research identifies strong correlations between low-poverty places and positive conditions that can promote one's life chances, such as lowered rates of crime, increased access to jobs, and increased access to high-performing schools (see, for example, Ellen and Turner, 1997, and Sastry, forthcoming).

The reasons most commonly proposed to explain how concentrated poverty in neighborhoods affects residents include greater stress, less access to employment opportunities, fewer neighborhood resources for children and adults, a contagion effect from antisocial behavior and low-attaining peers, harmful social norms (including punitive parenting styles and lower levels of communication and trust among neighbors, which can depress social cohesion), and a language environment that offers children less exposure to standard English. Not only might these factors affect a resident directly, they might also filter through his or her social network, which can, in turn, influence health, behavior, and educational outcomes (Anderson, 1999; Ellen and Turner, 1997; Fischer, 1982; Fu et al., 2007; Hardig et al., 2010; Luke and Harris, 2007; Sastry, forthcoming).

The neighborhood context is also believed to play a critical role in the quality of local schools. A contextual factor such as the poverty level of the student body can potentially affect the quality of schooling through five mechanisms:

- *Teacher quality*, since teachers are sensitive to the student composition of the school and are more likely to transfer or exit when placed in high-poverty schools (Boyd et al., 2005; Hanushek et al., 2004; Jacob, 2007; Scafidi et al., 2007).
- *School environment*, primarily because high-poverty schools experience greater turnover in staffing and students as well as higher levels of confrontation (Committee, 2010; Parr and Townsend, 2002; Rumberger and Larson, 1998).
- *Parent involvement*, since middle-class parents tend to establish a norm of parental oversight by customizing their children's school experiences (Horvat et al., 2003; Lareau and Horvat, 1999).
- *Teacher-student interactions*, since teachers calibrate their pedagogical practice to the perceived levels of student skills and preparedness (Hauser-Cram et al., 2003; Lareau, 1987; Lasky, 2000).
- *Peer interactions*, since peers form the reference group against which children compare themselves and they model behavior and norms (Chorzempa and Graham, 2006; Wilkinson, 2002).

While far from conclusive, research has generally found that the socioeconomic composition of the school has larger effects on children's academic achievement than the socioeconomic composition of the neighborhood (Jargowsky and El Komi, 2009; Orr et al., 2003). And some research suggests that the effects of the socioeconomic status of schools on student achievement might even be as large an influence as that of the student's own family income level, which is highly correlated with educational attainment and achievement (Ho and Willms, 1996; Rumberger and Palardy, 2005).

But recent evidence indicates that neighborhood poverty has a long-term influence on both adults' and children's mental and physical health and cognitive ability (e.g., Ludwig et al., 2011; Sampson et al., 2008; Sharkey and Elwert, 2011). There is some indication that the effects are lagged and cumulative for both schools and neighborhoods. For example, Sharkey and Elwert (2011) find continuity across generations in neighborhood conditions and provide evidence that the environments parents experienced can have a large impact on the cognitive ability of their children. Long-term results from Moving to Opportunity reveal statistically significant and large reductions in extreme obesity and diabetes in households that had moved to low-poverty census tracts ten to 16 years prior to the survey on which the study was based (Ludwig et al., 2011). The large and positive school achievement results for children living in public housing in Montgomery County accrued over five to seven years (Schwartz, 2012), as did the outcomes in Gautreaux.[8] These findings imply that sustained access to low-poverty places could have positive intergenerational effects.

Households the IZ Programs Serve

Several ways low-income families could benefit from programs like IZ have been proposed. We must first ask, however, whether IZ programs actually serve low-income families. As the initial step in our analysis of the 11 localities that provided us with IZ data, we investigated which populations are being served by the IZ programs.

Unlike other affordable housing programs such as Housing Choice Vouchers, public housing, and LIHTC, the 11 IZ programs predominately serve owners rather than renters. Seventy-eight percent of the IZ homes in this study were for sale, and only one of the IZ programs focused exclusively on rentals. The vast majority of the for-sale IZ homes were sold to low-income households that would otherwise qualify for certain federally subsidized rental housing on the basis of their income. The predominance of ownership is primarily due to many IZ programs' requirement that the IZ units share the tenure of the market-rate homes within the same subdivision.

The jurisdictions that sold IZ homes generally made them affordable to low-income households by first allowing them to be lower-cost than market-rate homes because they had less square footage or lower-cost interior finishes and then selling them at discounted prices or with subordinate financing (or both). For example, Burlington, Chicago, and Fairfax County's IZ homes sold for an average of 39 percent, 26 percent, and 17 percent less than their assessed market prices, respectively. Santa Fe, on the other hand, typically sold IZ homes at market prices but provided a majority of purchasers with subordinate financing. Qualifying

[8] The idea that adults and children derive substantial benefits from living and attending schools in economically integrated neighborhoods first gained credibility with the extremely positive results stemming from the 1970s Gautreaux court case, which caused the relocation of some Chicago public-housing families to affluent suburban settings (Ellen and Turner, 1997). Research on the Gautreaux families suggested that poor children typically required a period of one to six years to make gains, but after seven years there were substantial positive effects on the children's school outcomes and adult employment (Rosenbaum, 1991). Follow-up studies also found substantial employment benefits for the mothers who moved to low-poverty neighborhoods. The most recent follow-up surveys of these families, however, failed to confirm a suburban advantage in adults' economic independence (DeLuca et al., 2010).

households obtained, on average, an amount equal to 29 percent of the purchase price. Low-income purchasers of IZ homes in ten jurisdictions could seek to qualify for closing-cost or downpayment assistance through state or local programs, but in all cases, these programs were not specific to IZ.

Demand for IZ homes well exceeds supply in virtually all of the jurisdictions. However, few of the jurisdictions operate centralized waiting lists or collect waiting-list information from property managers, which would allow for systematic documentation of demand. In most cases, IZ homes are first-come, first-serve. Often, they are administered by property managers, which means that a household wishing for an IZ home must apply directly to the property manager rather than to a central municipal office. As discussed in Chapter Three, a lack of clear procedures for data collection and reporting by property managers to municipalities about the IZ units stymies the collection of data about IZ recipients and applicants.

Six of the IZ programs in this study exclusively serve low-income households earning less than 80 percent of the AMI. The other five programs reserve only a minority of IZ units for households earning between 80 and 100 percent of the AMI or up to 120 percent (in Irvine and Davidson). Irvine, Cambridge, and Montgomery County also targeted a portion of their IZ rental programs to extremely low-income households. Table 2.1 shows the characteristics of the IZ units and the households served.

Table 2.1
Characteristics of IZ Units and Recipients

Location	Number of Geocoded IZ Addresses	Percentage of IZ Homes for Sale	Average Income of IZ Residents upon Moving In
Boulder	364	86	Max. income, owners: 81% of AMI (equivalent to $52,001) Max. income, renters: 71% of AMI (equivalent to $45,686)[a]
Burlington	199	50	63% of AMI (equivalent to $37,209)
Cambridge	385	45	$44,634 (equivalent to 49% of AMI, 2010)
Chicago	1,225	99[b]	$42,591 (equivalent to 57% of AMI, 2010)
Davidson	54	94	$38,459[c] Max. income: 50–120% of AMI (equivalent to $26,875–$64,500)
Denver	77	100	Max. income: 80% of AMI ($48,600)[a]
Fairfax County	2,318	56	Max. income: 70% of AMI (equivalent to $57,950)[a]
Irvine	183	7	$26,731 (equivalent to 31% of AMI, 2010)
Montgomery County	9,286	88	Max. income, renters: $55,000 (equivalent to 65% of AMI) Max. income, owners: $59,500 (equivalent to 70% of AMI)[a]
Santa Fe	575	100	$33,100 (equivalent to 49% of AMI, 2010)
Santa Monica	862	0	Max. income: 90% of AMI (equivalent to $59,625)[a]
Totals	15,528	77	30–120% of AMI

SOURCES: Data obtained by the authors from local administrators of IZ programs. Where possible, we obtained the actual incomes of IZ households at the time they first moved into the home. Where data were not provided for a household for each unit, we calculated the average based on available data. Where no household-level actual income data were available, we reported the minimum and maximum income levels from the IZ law.

[a] Actual incomes (or actual AMIs of recipients) were not provided. Instead, eligibility income caps are shown. Maximum household income is expressed as a percentage of the AMI, and then equivalent income for a twoperson household as of 2010 is shown. [b] The other IZ units are lease-to-own. [c] Data were available for only approximately half of the units.

As Table 2.1 indicates, these programs primarily serve low-income households, according to HUD's definition of that term. However, by serving homeowners rather than renters, the IZ programs target a generally less-disadvantaged segment of the low-income population. Further, several apply minimum income or asset criteria or apply income tests such as eligibility for first mortgages of a minimum amount.

Several IZ programs have built in ways for low-income families to rent IZ homes. Montgomery County, Cambridge, and (in the past) Fairfax County have explicitly targeted some of their IZ homes for occupancy by federally subsidized low-income renters. The IZ law in Montgomery County, for example, allows its housing authority the right to purchase up to one-third of the IZ homes in a subdivision. The housing authority has purchased approximately 700 IZ homes scattered within market-rate communities throughout the county and operates them as public-housing homes.

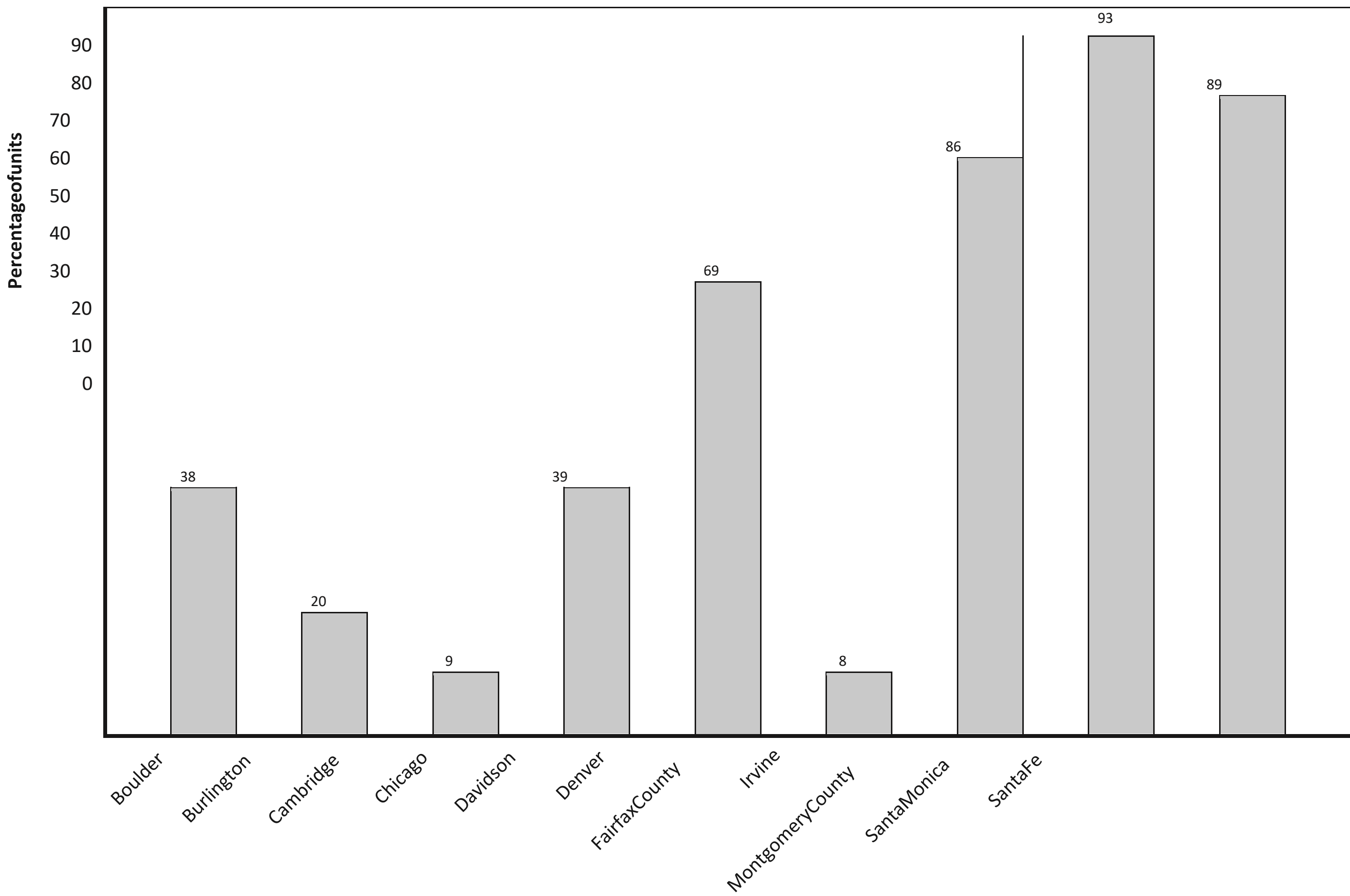
Characteristics of IZ Neighborhoods

We next investigated whether the IZ homes tended to be located in low-poverty neighborhoods and whether they were clustered within a small geographic part of a locality or widely dispersed throughout it.

As of 2005–2009, the majority of IZ homes—76 percent of the 15,526 units—were located in low-poverty neighborhoods. However, the percentage varied substantially by locality, as shown in Figure 2.1. In Davidson, Fairfax County, Irvine, and Montgomery County, the majority of IZ units were in low-poverty neighborhoods, while in several other cities such as Cambridge, Santa Fe, and Santa Monica, a large share of the IZ units were located in neighborhoods with moderate poverty rates (i.e., 10 to 30 percent).

Figure 2.1.
Percentage of IZ Units Located in Low-Poverty Neighborhoods, 2005–2009

100



NOTE: Neighborhood defined as census block group and low poverty defined as less than or equal to 10 percent of households living in poverty.
RAND *TR1231-2.1*

As expected, very few IZ homes (2.5 percent) were in *high-poverty* neighborhoods where 30 percent or more of the households were in poverty. This is notable since 17 percent of the block groups across the 11 jurisdictions were high-poverty neighborhoods. Half of the IZ homes in high-poverty neighborhoods were in Chicago, one-quarter were in Boulder, and the rest were spread across five other jurisdictions. Although the absolute number of IZ homes in high-poverty neighborhoods was small, their relative proportion was sometimes high in jurisdictions with small IZ programs. For example, in Denver, as many as 31 percent of the 77 IZ homes were located in high-poverty neighborhoods as of 2005–2009, while in Burlington and Boulder, 21 and 26 percent of the IZ units were in high-poverty block groups, respectively. The jurisdictions with IZ homes in high-poverty neighborhoods also had off-site provisions, meaning that IZ homes could be located in places separate from market-rate developments.

The typical IZ unit was located in a neighborhood where the vast majority of adults of working age were employed (94 percent), the majority of adults 25 years of age and older had a college degree, and more than half of the population was white (57 percent). Table 2.2 confirms that within all 11 jurisdictions, the household income and rates of college-educated households in the neighborhoods where IZ units were located exceeded national averages.[9]

[9] As of 2005–2009, in the average neighborhood nationally, 92 percent of adults 16 and older were employed, and 25 percent of adults 25 and older had a college degree.

The second row of Table 2.2 shows that in some locations, IZ units were clustered within a small number of neighborhoods (in cases where few developments had IZ units), while in other locations, IZ units were found in hundreds of neighborhoods. In the relatively new IZ programs in Denver, Irvine, and Chicago, IZ homes were located in less than 5 percent of neighborhoods, while in the majority of the programs, one-quarter to one-half of the neighborhoods housed at least one IZ unit.

Within the same jurisdiction, neighborhoods with IZ units tended not to differ systematically from neighborhoods with no IZ homes. As shown in Table 2.3, in seven of the jurisdictions, there is no statistically significant difference in the median household income for neighborhoods with and without IZ units. Median household income in IZ neighborhoods is lower in Fairfax County, Montgomery County, and Santa Monica relative to non-IZ neighborhoods. Only in Chicago are IZ neighborhoods more affluent (as measured by median household income) than non-IZ neighborhoods. In ten of the jurisdictions, residents of neighborhoods with one or more IZ homes tend to be more racially diverse than those in neighborhoods without IZ homes (although the differences between them are statistically significant in only four locations).

To test systematically whether IZ homes were placed in the less-advantaged neighborhoods within a given jurisdiction—a phenomenon that would lessen potential social inclusion—we performed statistical tests of whether the demographics of IZ neighborhoods systematically differed from those of non-IZ neighborhoods. We report the average values in median income, education level, and racial composition as of 2005–2009 in Table 2.3. Values that are statistically significantly different from one another are shown in boldface. In most instances, IZ neighborhoods did not differ from their non-IZ counterparts in terms of income, education levels, or race. However, there is evidence that the populations within IZ neighborhoods were less advantaged than those in non-IZ neighborhoods in Burlington, Fairfax County,

Table 2.2
Characteristics of Neighborhoods with IZ Units (2005–2009)

Characteristic	Boulder	Burlington	Cambridge	Chicago	Davidson	Denver	Fairfax County	Irvine	Montgomery County	Santa Fe	Santa Monica
Number of IZ units	364	199	385	1,225	54	77	2,318	183	9,286	575	860
Neighborhoods with 1+ IZ units	19	15	20	107	5	6	81	3	167	44	40
Percentage of all neighborhoods with 1+ IZ units	29	56	25	4	100	1	15	3	30	49	50
Median household income ($)	71,197 (27,923)	54,994 (19,582)	78,304 (20,645)	75,438 (47,313)	132,430 (45,578)	45,548 (13,933)	122,201 (42,065)	109,862 (6,277)	126,342 (41,905)	67,647 (21,583)	63,414 (32,031)
Percentage of heads of households with a BA or higher degree	54 (17)	45 (12)	62 (13)	50 (28)	72 (14)	46 (12)	62 (13)	60 (2)	56 (15)	34 (18)	54 (19)
Percentage of household heads who were white	88 (6)	92 (4)	69 (16)	46 (30)	89 (13)	81 (6)	57 (13)	46 (9)	54 (17)	76 (7)	70 (14)
Percentage of household heads who were black	1 (1)	2 (3)	10 (13)	35 (37)	8 (14)	10 (9)	11 (8)	0 (1)	20 (14)	1 (1)	6 (6)
Percentage of household heads who were Hispanic	19 (15)	2 (1)	8 (4)	15 (19)	2 (2)	23 (25)	10 (9)	22 (6)	12 (10)	61 (20)	20 (17)
Racial heterogeneity of households	0.28 (0.12)	0.14 (0.7)	0.46 (0.10)	0.41 (0.23)	0.18 (0.16)	0.38 (0.11)	0.58 (0.10)	0.64 (0.06)	0.59 (0.13)	0.40 (0.06)	0.48 (0.19)
Percentage of households employed (tract)	96 (2)	95 (2)	95 (3)	85 (17)	95 (71)	94 (2)	97 (2)	93 (1)	95 (2)	93 (2)	93 (2)
Percentage foreign-born (tract)	15 (7)	10 (2)	28 (6)	14 (11)	6 (1)	13 (7)	30 (6)	43 (3)	30 (9)	18 (11)	27 (4)

SOURCE: Authors' computations using IZ address data matched to 2005–2009 ACS 5-Year Estimates at the census block group level unless otherwise noted. Tract-level data are shown for areas where measures were not available at the block-group level.

NOTE: Standard deviations are shown in parentheses. Averages are weighted by IZ unit locations to represent the average neighborhood characteristics of a typical IZ occupant. About two-thirds of the IZ homes are in neighborhoods that fall within plus or minus the standard deviation.

Table 2.3

Comparison of Neighborhoods With and Without IZ Units (2005–2009)

Item	Boulder	Burlington	Cambridge	Chicago	Davidson	Denver	Fairfax County	Irvine	Montgomery County	Santa Fe	Santa Monica
Neighborhoods with 1+ IZ homes	19	15	20	107	5	6	81	3	167	44	40
Neighborhoods with no IZ homes	47	12	60	2,359	0	464	451	105	385	46	39
Total neighborhoods	66	27	80	2,466	5	470	532	108	552	90	79
Median household income ($)	69,666 85,470	**46,456** **69,195**	72,130 89,900	65,432 60,604	132,430	41,235 65,331	**129,986** **148,948**	103,126 113,391	**124,409** **139,352**	74,748 71,838	**83,852** **133,635**
Percentage of adults with a BA or higher degree	**61** **73**	**39** **58**	**65** **75**	**41** **26**	72	45 39	60 58	60 61	55 57	42 33	59 65
Percentage of residents who are white	88 91	92 94	67 74	**47** **37**	89	83 76	**58** **71**	54 62	**56** **66**	79 78	76 79
Racial heterogeneity of residents	**0.25** **0.15**	0.14 0.10	0.44 0.40	**0.38** **0.29**	0.18	0.34 0.36	**0.57** **0.45**	0.58 0.49	**0.56** **0.49**	0.37 0.33	.35 .34

SOURCE: Authors' computations using IZ address data matched to 2005–2009 ACS data at the census block group level (the smallest geographic unit for which these data are publicly available).

NOTE: Within each cell, the mean for neighborhoods *with* IZ units is reported on top, followed by the corresponding mean value among neighborhoods *without* IZ units. Mean statistics in bold are statistically significantly different from one another. Since IZ units are located in all five block groups within Davidson, only one value is reported in each cell for that jurisdiction. For the 40 comparisons shown here, the level of statistical significance has been adjusted using the Benjamin Hochberg step-up method to control at 0.05 the proportion of false positives identified among the total set of statistically significant differences.

Montgomery County, and Santa Monica, since the median household income in IZ neighborhoods in these locations was lower than that in non-IZ neighborhoods. Chicago was the only city in which we found that IZ neighborhoods had *more* markers of advantage than non-IZ neighborhoods—an indication that new residential development within the city (of which IZ units were a small share) was typically marketed to attract new households with higher incomes.

Finally, the maps in Appendix C show what the statistics confirm: within many localities, IZ units are widely dispersed throughout the locality. They were located in one out of every ten census block groups in the 11 localities and one out of every five census tracts as of 2005–2009.

Assignment of IZ Units to High-Performing Schools

Poverty rates within schools are highly correlated with the average performance of the schools' students. For example, in 2008–2009, more than one-half of fourth and eighth graders who attended high-poverty schools failed the national reading test, compared with fewer than one in five students from the same grade levels who attended low-poverty schools.[10] Given the strong correlation between school poverty and scores on standardized academic assessments, we present results for both as proxies for school quality. For this discussion, schools to which one or more IZ homes are residentially assigned is termed an "IZ school," while those schools to which no IZ homes are assigned is a "non-IZ school."

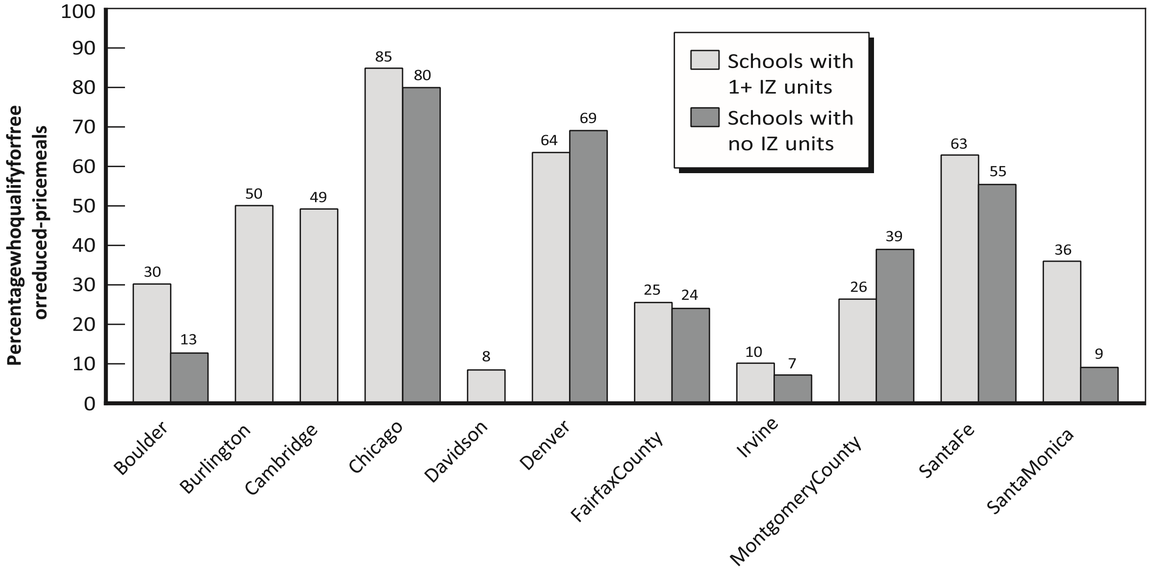
IZ units were residentially assigned to schools that had lower poverty rates and performed slightly above average within their state. They also had lower poverty rates than national norms. Across all 11 jurisdictions, the typical IZ unit was located within an elementary-school catchment area that had lower proportions of students who qualified for free or reduced-price meals than elementary schools with no residentially assigned IZ homes (44 versus 64 percent) in school years 2006–2010. This also compares favorably to the average elementary school nationally, where one out of every two students (49 percent) qualified over school years 2005–2006 to 2009–2010. Forty-four percent of IZ dwelling units are assigned to low-poverty schools, defined here as elementary schools where less than one in five students qualifies for free or reduced-price meals.

Figure 2.2 shows that the elementary-school poverty rates in IZ schools closely tracked those in non-IZ elementary schools within the same jurisdiction. This finding comports with the neighborhood demographic comparisons described above, which generally revealed parity among IZ and non-IZ neighborhoods. Nevertheless, there are differences within some of the 11 localities. In Santa Monica and Boulder, for example, IZ units were located in neighborhoods having schools with statistically significantly higher poverty rates. In Denver and Montgomery County, by contrast, IZ schools had slightly lower (but not statistically significantly different) poverty rates than non-IZ schools.

Figure 2.2

[10] High-poverty schools are defined as those with 75 percent or higher concentrations of students who qualify for free or reduced-price meals. Fifty-five percent of fourth graders and 47 percent of eighth graders in high-poverty schools scored "below basic" on the National Assessment of Educational Progress in 2009, whereas 17 percent of fourth graders and 13 percent of eighth graders from schools at which less than 20 percent of students qualified for free or reduced-price meals scored "below basic" (Aud et al., 2010).

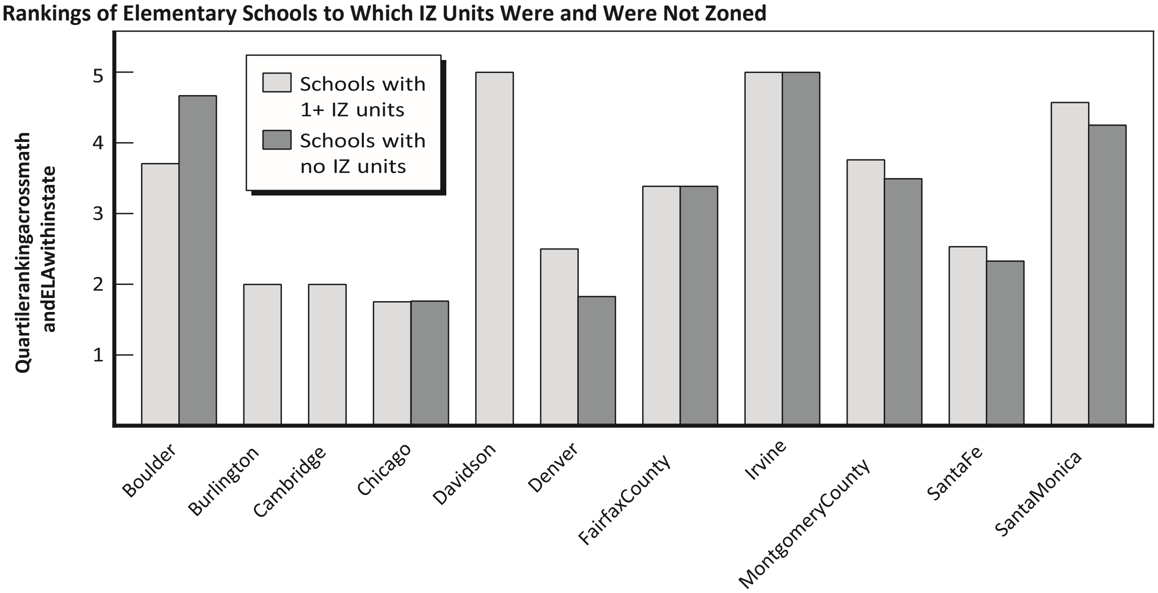
Poverty Rates in Elementary Schools With and Without IZ Units (2006–2010)



NOTE: Cambridge and Burlington have citywide controlled choice plans, so IZ and non-IZ rates are the same. In Davidson, IZ units are zoned into the one elementary school (additional charter school excluded).
RAND *TR1231-2.2*

To test whether IZ homes provide children access to high-performing (and not just lowpoverty) schools, we also examined the ranking of each school within its state on standardized math and ELA tests. These rankings are shown in Figure 2.3.

Figure 2.3
Rankings of Elementary Schools to Which IZ Units Were and Were Not Zoned



NOTE: Cambridge and Burlington have citywide controlled choice plans and Montgomery County has choice for middle schools, so IZ and non-IZ rates are the same.
RAND *TR1231-2.3*

On average, IZ units were located in attendance zones of public schools performing in the third quintile, or the 40th to 60th percentile in their state. This was slightly better than the average performance of schools to which no IZ units were assigned; non-IZ schools performed at an average of the 20th to 40th percentile within their state. Again, we found substantial variation among the 11 localities. In Chicago, IZ elementary schools (like most non-IZ elementary schools) were in the bottom quartile of Illinois elementary schools. This is not surprising, since school poverty highly correlates with school performance, and the large majority of students in any given year in Chicago qualify for free or reduced-price meals (e.g., 85 percent of students in 2007–2008, compared with 38 percent in the average public school in the rest of the state). In Irvine and Davidson, both of which are affluent, the IZ schools were in the top quartile within their states. On the whole, however, IZ and non-IZ schools' rankings were quite similar.

Summary

Although the 11 programs studied varied considerably in design, we found that, on the whole, the IZ homes

- *Serve low-income people*. Six of the programs exclusively serve households making 80 percent or less of the AMI, and three target households earning as little as 30 percent of the AMI for rental units. The other five reserve a portion of the IZ homes for households earning up to 100 or 120 percent of the AMI.
- *Predominately serve owners rather than renters*. Seventy-eight percent of the IZ homes in this study were for sale, and only one of the IZ programs exclusively operated a rental program. The vast majority of the for-sale homes were sold to low-income households that would otherwise qualify for federally subsidized rental housing on the basis of income.
- *Are widely dispersed throughout jurisdictions*. IZs were located in one out of every ten census block groups in the 11 localities and one out of every five census tracts as of 2005–2009. IZ units were also zoned into one out of every four schools across the 11 jurisdictions.
- *Are located in low-poverty neighborhoods*. The typical IZ unit is located in a census block group (or tract) where 7 percent of households lived in poverty as of 2005–2009. This is lower than the poverty rate in the typical U.S. census block group nationally in the same year (14 percent). Further, 75 percent of the IZ units in this study are located in a low-poverty census block group or tract compared with estimates ranging from 8 to 34 percent for other forms of affordable housing (Ellen et al., 2009; Newman and Schnare, 1997).
- *Are assigned to relatively low-poverty public schools*. The typical IZ unit is located within an elementary-school catchment area in which one out of every three students (34 percent) qualified for free or reduced-price meals compared with the average elementary school nationally, where one out of every two students (49 percent) qualified as of the 2006–2010 school years; 44 percent of IZ dwelling units are assigned to low-poverty schools, defined here as elementary schools where less than one in five students qualify for free or reduced-price meals.
- *Are assigned to schools performing slightly above average*. The typical IZ unit is located in an elementary-school catchment area that ranked at the 40th to 60th percentile on national tests in math and ELA among the elementary, middle, or high schools within the state.

Our findings indicate that, overall, the IZ policies studied provide access to low-poverty schools and neighborhoods—something other affordable housing policies have struggled to achieve (Deng, 2007; Newman and Schnare, 1997; Pfeiffer, 2009). On the whole, the IZ policies offer the potential, if not the promise, of social inclusion for recipients.

CHAPTER THREE

Design Options for Inclusionary Zoning Programs

Although many IZ programs have similar objectives, the programs examined in this study had large differences in outcomes, which are partly explained by differences in the way they are structured combined with local demand for new construction. This chapter highlights the breadth of design choices available for IZ policies and the impacts they might have on the programs. Details of the 11 programs' designs are given in Appendix B.

All IZ ordinances are predicated on two aspects of the local market: (1) there must be sufficient demand in the private market for market-rate housing and (2) the IZ requirements, which often include incentives to offset costs, must not be so onerous as to render a development unprofitable (Mallach and Calavita, 2010). As a consequence of the first condition, IZ policies tend to be found in high-cost housing markets. It is generally assumed, therefore, that IZ is indeed inclusionary. However, a number of program features can diminish the potential of IZ inclusiveness for its recipients—e.g., being voluntary, or requiring that a small proportion of homes be set aside for IZ, or having no continued affordability requirements upon occupant turnover. Thus, the simple existence of an ordinance does not guarantee the construction of IZ homes in the first place, let alone the inclusion of below-market-priced homes in affluent neighborhoods.

Seven design features appear to have the most substantial impact on the potential supply and inclusiveness of IZ homes in a jurisdiction:

- *Eligibility*—the populations eligible for participation in IZ programs;
- *Tenure*—whether IZ rentals or ownership is permitted;
- *Mandatory status*—whether the program is mandatory or voluntary for developers;
- *Supply*—the types of development within a jurisdiction that are covered by the IZ provisions and how many units must be set aside for below-market pricing;
- *Cost offsets and opt-outs*—whether developers can make use of in-lieu options such as payments into an affordable housing fund or cost offsets such as density bonuses or accelerated permit reviews;
- *Continued affordability*—whether the program contains long-term-affordability provisions for the IZ homes; and
- *A mechanism for collecting data and monitoring compliance*—whether the IZ ordinance provides for the ongoing collection of data and oversight of continued compliance.

Populations Eligible to Participate in IZ Programs

A key issue in designing an IZ program is determining who will be eligible to participate. This criterion, combined with the tenure (rental or sale) of homes, determines the degree to which an IZ program can meet the goal of supplying affordable housing for low-income populations. In general, IZ programs that include rental units can reach lower-income households than programs geared solely to homeowners. Some programs require units to be affordable by households at 100 to 120 percent of the AMI, others target those at 50 percent of the AMI, and others target households with incomes as low as 30 percent of the AMI (Mallach and Calavita, 2010). Many programs establish varied levels of affordability within a single IZ ordinance.

The programs in our study showed a wide range of eligibility requirements, as indicated in Table 2.1 above. The average income of IZ residents upon move-in ranged from 30 percent of the AMI in Irvine to 120 percent of the AMI in Davidson.

Usually, the income-eligibility criteria for recipients indirectly determine the amount of loss a developer incurs on a home, since the IZ ordinance sets the price of the home (whether in the form of rent or mortgage payments) equal to 30 to 40 percent of an eligible recipient's monthly income.

Program Focus on Rental or Ownership

Eligibility is also affected by whether the IZ program focuses on rentals or ownership. As shown in Table 2.1, one of the programs in this study exclusively serves renters, while others exclusively serve homeowners. Most of the programs make at least 50 percent of the IZ homes available for sale. Since many IZ laws stipulate that IZ homes have the same tenure as the market-rate homes in the development, both market demand and local zoning stipulations regarding multifamily dwellings and tenure determine whether IZ homes are for sale.

The degree of inclusion afforded by an IZ program depends on the extent to which lowincome households are able to take advantage of the program. While homeownership is desirable, programs that focus on ownership of IZ units generally target higher-income tenants than those that focus on rentals. An interesting hybrid is the program in Montgomery County, which offers both rental and ownership opportunities, and the county ensures affordability for extremely low-income families by allowing the public housing authority to purchase up to onethird of the IZ homes in a subdivision. The housing authority has exercised this right and has sold some of its IZ homes to low-income purchasers, but it rents the large majority to extremely low- and very low-income households using state and federal housing subsidies.

Mandatory or Voluntary Programs

Whether or not a program is mandatory can have the determining effect on the extent to which it is implemented. Voluntary programs may not be widely used, even if incentives are offered. For example, beginning in the 1980s, the City of Cambridge, Massachusetts, had a voluntary provision through which a developer could obtain a density bonus for a project that created affordable housing. However, over the course of a decade, the program failed to produce a single unit. In 1998, the city enacted a mandatory IZ ordinance, which had produced

385 affordable rental and for-sale homes as of 2010. The change to mandatory status has been cited as the reason for the current program's success (Brunick, Goldberg, and Levine, 2004). The ordinance does retain voluntary provisions for projects that do not trigger the mandatory IZ requirement.

At least three studies have concluded that mandatory programs generally yield more units than voluntary programs: Brunick, 2004a; California Coalition for Rural Housing and the Non-Profit Housing Association of Northern California, 2003; and Mukhija, et al., 2010.

Types of Development Covered by IZ Provisions and Numbers of Units Set Aside

The number of IZ units created depends in part on the types of development covered by IZ provisions and the required set-asides. Set-aside percentages in California range from 4 to 35 percent of the total homes in a development (California Coalition for Rural Housing and the Non-Profit Housing Association of Northern California 2007), and other examples in our study indicate a similar range. Some programs require that developments that exceed the minimum size threshold set aside as little as 10 percent of total homes built to be made affordable through IZ, while some require that as much as 30 percent be set aside. The IZ policies we studied applied to developments with as few as five homes or as many as 50 homes. A few programs required developments with fewer than five or ten homes to either provide one affordable unit or make an in-lieu payment.

In Chicago, projects that obtain financial assistance from the city must set aside 20 percent of units as affordable, while projects not requiring city assistance must set aside 10 percent. The City of Irvine requires at least 15 percent of units in all developments with more than 50 units to be made affordable. Montgomery County requires all new subdivisions with 20 or more dwelling units to set aside between 12.5 and 15 percent of the units as affordable.

In-Lieu Options and Cost Offsets Available to Developers

The types of incentives provided to developers can affect their willingness to participate in voluntary IZ programs, and some forms of incentives can affect the extent to which the programs succeed in promoting social integration. Schuetz et al. (2011) found that in the San Francisco metropolitan area, IZ programs that granted density bonuses and had larger minimum project sizes generated more units, suggesting that programs with incentives whose value equals or exceeds the loss a developer would incur on the IZ homes are more successful. Of course, the underlying housing-market conditions also drive developers' choices—strong housing markets with high demand for market-rate dwellings are much more conducive to acceptance of moredemanding IZ design criteria such as smaller incentives, fewer opt-outs, lower minimum project sizes, and higher set-aside provisions.

The most common form of incentive provided to developers is a density bonus, which allows them to build more square feet than would otherwise be permitted under zoning provisions. Other common incentives include fee waivers, reductions in parking spaces required by zoning and building codes, and expedited permitting (Mallach and Calavita, 2010). Two other types of incentives are the availability of alternative means of compliance (e.g., paying a fee rather than building IZ units) and the option to build the IZ units off-site. For example, the IZ ordinance in Boulder allows developers to pay in-lieu fees ($119,922 per unbuilt unit or $100 multiplied by 20 percent of the total floor area of market-rate units) rather than build IZ units. The goal is to have 50 percent of the ownership units built on-site, while affordable rental units can be constructed either on- or off-site, provided they meet size requirements.

The IZ ordinance of the City of Irvine provides a "menu" of alternative compliance options, including converting market-rate units or extending the affordability period on existing affordable units, in-lieu fees, transfer of existing units to a nonprofit housing agency, transfer of off-site credits for affordable units (i.e., a developer can provide more than the minimum number of units at one site and count those against another site), alternative housing (e.g., special needs, single-room occupancy, shelters), and land dedication for affordable housing. Developers can also fulfill affordable housing goals by trading credits with other building sites.

The types of opt-out offerings, if any, should be aligned with program goals. If the intent is to enforce the maximum degree of social inclusion, in-lieu options are less likely to be effective. If the intent is to maximize the supply of affordable housing in the jurisdiction, regardless of specific locations, opt-out provisions could be useful.

Long-Term-Affordability Provisions

The lasting effect of IZ programs may depend on whether they are required to provide affordable housing only for an initial set of tenants or will continue to do so for many years. One study found that the period of affordability (enforced through mechanisms such as deed restrictions) in programs in the San Francisco, Boston, and Washington, D.C., areas varied from less than 20 years to as many as 99 years (Schuetz et al., 2011). Municipalities may also require that a certain portion of the profit resulting from the resale of an affordable unit be absorbed into a local affordable housing trust fund (Brown 2001). To ensure long-term affordability of homeownership units, the future resale price of IZ homes is typically based on the original purchase price plus an annual return on equity based on the buyer's down payment and principal payments on the mortgage, as well as allowances for eligible capital improvements.

Some of the programs in our study set relatively short periods of affordability. For example, Denver's inclusionary housing ordinance requires for-sale units constructed under the program to be made affordable for 15 years. Chicago and Irvine have set the period of affordability for their programs at 30 years. Other locations, such as Davidson and Burlington, require units to remain affordable for 99 years. Cambridge requires homes constructed under its IZ ordinance to remain affordable for the life of the building.

The oldest continuously running IZ program in Montgomery County sheds some light on the loss of the supply of affordable homes over time resulting from limited affordability periods. Of the 13,133 IZ units constructed in the county since 1974, only 9,369 appear in the current roster of IZ homes. A county official explained that the primary reason for this discrepancy is that some properties have passed their period of required affordability and are thus no longer part of the IZ pool. Secondary reasons include the fact that early units were recorded on paper and were never transferred to computer databases and data were retained in several formats over the life of the program, making it difficult to compile a single list.

Procedures for Monitoring IZ Program Compliance

Perhaps the greatest commonality among the 11 localities in our study was a lack of funding for and clarity about the oversight of developers' and property managers' ongoing compliance with IZ stipulations and data collection. Several factors contributed to this, some of which could be remedied in future amendments and adoptions of IZ ordinances. These include the lack of dedicated funding within IZ policies for government administrators to collect data and the diffuse administrative structure whereby property managers (rather than a single city department) qualify IZ residents by income and send (or do not send) annual reports about the recipients to city officials, using their own report formats and with no expectation of audits, given a lack of staff within the city or county department to carry them out.

When requesting data for this study, we asked each jurisdiction for information on IZ units as well as demographic information about current and past IZ residents.[11] No jurisdiction had all of the information we requested, and none kept electronic historical data on each occupant of IZ homes; in other words, no jurisdiction regularly tracked demographic information and sales prices or rents across successive occupants of IZ units. All 11 jurisdictions kept address lists, but not all were complete.

Almost all jurisdictions faced data-tracking challenges. A majority of jurisdictions were able to provide the project names of the residential developments, the date or year a unit was built, its tenure, and, for ownership units, the most recent sales price. Fewer than half of the jurisdictions were able to provide market sales prices for units, and very few of those with rental units were able to provide the market or actual monthly rent to establish the difference between IZ rental prices and market-rate prices.

Information about IZ unit types and locations was more readily available than data about households occupying the IZ units. Four sites were unable to provide any demographic information about IZ occupants. A fifth was able to provide only aggregated information about the proportion of units occupied by resident category (e.g., 20 percent of the heads of households in a given IZ residential subdivision were between the ages of 20 and 30). The other six sites had some combination of data about the number of people in a household and their income when they moved in. For example, four had some information about the number of children, the gender and race of the primary householder, the household type (e.g., single, married couple with children), and the first mortgage or other types of financial assistance provided. However, a great deal of information was typically missing within each of these categories, rendering the summary information of limited use.

[11] For each unit, we requested the street address, type of unit (single-family or multifamily, rental or ownership), whether the unit was created on- or off-site, date built, date that the current resident moved in, market price and affordable price (for ownership or rental units), and the target AMI for the occupying household. Demographic information we requested about each occupying household within a home included the number of adults and children per household; their income; the date they moved into the home; the gender, age, race, and employment status of the head of household; and for ownership units, the amounts of their mortgage(s) and whether they received additional financial assistance. For ownership units that had sold at least once, we requested the most recent resale price and the length of time the previous owner lived in the unit. We asked for this information from as far back as the jurisdiction collected data.

There is a pressing need, both locally and nationally, for better information about the populations served by IZ and about how long residents remain in place. More-standardized forms of data collection across IZ programs would better enable national and even international analyses. One possible remedy would be the explicit inclusion of forms of data reporting and collection (and a financial mechanism for supporting these activities) within IZ statutes.

Summary

Using the information each of the 11 localities shared about its ordinances and program structure, we identified seven aspects of program design that affect the potential to meet the goals of providing affordable housing to low-income households and promoting social inclusion for IZ recipients: (1) how the IZ policy defines eligibility for recipients; (2) whether the policy includes rental and ownership opportunities; (3) whether developers are required to comply with set-asides as a condition of permit approval; (4) the size of developments to which the IZ policy applies and the proportion of homes that must be set aside as affordable; (5) the types of incentives and opt-outs provided to developers; (6) the continued affordability of the homes after initial resale or leasing; and (7) the ability to monitor compliance with the program.

The 11 IZ policies we examined varied greatly along each of these dimensions, since they have been tailored to meet local housing-market conditions and political contexts. Appendix B provides more detail on the range of options the programs have pursued. The key aspects of IZ policies affect not only how many homes are produced, but also who may live in them, how long they are available to income-eligible households, and whether or not they are included in market-rate neighborhoods. Thus, they should be of critical concern when municipal officials set out to design or modify an IZ policy to meet their goals.

Chapter FOUr

Conclusions

This report provides criteria to consider when designing an IZ policy and an overview of the available evidence about IZ program efficacy. The strength of the local housing market and the way an IZ program is designed and carried out determine the degree to which the program provides affordable homes in a manner that could promote social inclusion. The variety seen in the structures of the 11 IZ programs in this study illustrates how different policy choices affect program success.

On the whole, the 11 IZ programs have largely fulfilled the goal of supplying some affordable housing to low-income populations, although the number of units is small. The programs have also supplied some of the ingredients required to fulfill the goal of promoting social inclusion. Across, but not necessarily within, each locality, the typical IZ home is located in a low-poverty neighborhood and assigned to a school that has performed slightly above average within its state and where fewer students qualify for free or reduced-price meals than schools nationally.

IZ programs locate a far greater proportion of IZ units in low-poverty neighborhoods than other affordable housing programs in the United States. But IZ programs are not directly comparable to programs such as public housing, LIHTC, or Housing Choice Vouchers, which tend to serve more-disadvantaged households. The primacy of ownership over rental units in most IZ programs and the minimum-income requirements in some ordinances mean that IZ households are among the less-disadvantaged households served by affordable housing programs.

While IZ programs serve relatively more-advantaged families than other subsidized housing programs, the degree of access IZ provides to low-poverty neighborhoods is still remarkable. The typical IZ unit in the jurisdictions we studied is located in a neighborhood where 7 percent of the population was in poverty as of 2005–2009, compared with 19.5 percent for housing-voucher recipients in 2004 (Galvez, 2011) and 16-percent neighborhood poverty rates for poor households generally within the same metropolitan areas. Seventy-five percent of the IZ units we examined were located in neighborhoods where less than 10 percent of the population is below the poverty line, compared with 34 percent of LIHTC units (Ellen et al., 2009) and 8 percent of public-housing and 28 percent of housing-voucher recipients (Newman and Schnare, 1997, from 1990 Census data).

The characteristics of most of the IZ programs indicate that IZ is not likely to primarily serve either households at the lowest income levels or those with extensive needs for support, for whom clustered affordable housing may be a more efficient means of disseminating social services. However, the IZ policies offer something that other economically integrative housing programs largely have not offered: to the extent that IZ includes long-term affordability requirements (which IZ policies increasingly do, although some of those we studied do not), it has the potential to provide low-income families with *extended* exposure to low-poverty settings. This is important, since research indicates that a significant amount of time is required (in some cases, generations) for low-income populations to reap the benefits of low-poverty settings.

While there is significant potential for IZ programs to be an effective vehicle for improving low-income populations' lives, IZ policy design choices can mitigate that potential. In particular, provisions for the continued affordability of IZ homes and their inclusion within market-rate developments heavily influence the degree to which supply and inclusionary goals can be achieved. Those who design or revise IZ programs should carefully consider the effects their design choices can have on the ultimate outcomes of the beneficiaries of those programs.

APPENDIX A

Additional Information on Methods

We asked each jurisdiction for information on IZ units and on current and past IZ residents.[12] The 11 localities provided a total of 15,659 IZ addresses, of which 15,528 were successfully geocoded.[13]

To assess changes to IZ neighborhoods over time, we matched the geographic coordinates of the addresses to publicly available data about the employment, education, earnings, race, and ethnicity of households at the census-tract and census-block-group level from the 2000 decennial Census and from the 2005–2009 ACS 5-Year Estimates. The 5-year estimates provide the average characteristics of households in a given census block group over the period.

Although census tracts are commonly used as an operational definition of neighborhood in research on neighborhood effects, we define neighborhoods as census block groups, because our primary interest is in the immediate vicinities of IZ addresses, and census block groups are the smallest geographic area for which key demographics such as income, educational attainment, and housing values are publicly available. Census block groups vary in size and population. The typical block group in our study had approximately 3,000 households in 2005–2009, compared with approximately 7,700 per tract in the same years. The use of census block groups rather than tracts resulted in some missing data in cases where the Census Bureau suppressed statistics to protect the confidentiality of respondents. However, the reported results do not differ substantively when analyzed at the tract level.

To determine the schools with which IZ units were associated, we requested and obtained Geographic Information System (GIS) school attendance zone boundary files from the nine districts that have residential school attendance boundaries. The Cambridge, Burlington, and Montgomery County school districts operate systems of parental choice rather than residential assignment for a certain number of their schools. In Cambridge, all parents of children in grades K–8 (there is only one high school) must indicate their top three preferred schools, and the district then attempts to meet those preferences while retaining a balance of

[12] We requested each unit's street address, type (single-family or multifamily, rental or ownership), whether it was created on- or off-site, date built, date the current resident moved in, market price and affordable price (for ownership or rental units), and target AMI for the occupying household. We requested demographic information for as far back as the jurisdiction collected data about each occupying household within a home—the number of adults and children per household, their income, the date they moved into the home, the gender, age, race, and employment status of the head of household, and for ownership units, the amounts of mortgages and whether the household received additional financial assistance. For ownership units that had sold at least once, we requested the most recent resale price and the length of time the previous owner lived in the unit.

[13] The proportion of geocoded addresses ranged from 96 to 100 percent per locality.

student characteristics across schools. Burlington also has a controlled-choice program for its schools, while Montgomery County has a school-choice system for its middle schools. Since home addresses do not determine school assignment in these cases, we used districtwide school characteristics for the levels (i.e., elementary, middle, high) where school choice applies. This is a limitation of the data, because districtwide averages mask some school-level heterogeneity; however, these districts seek to limit segregation across schools through a controlled choice plan.

We next linked the schools to student characteristics such as the percentage who qualify for free or reduced-price meals and their racial and ethnic composition in each of the school years 2005–2006 to 2009–2010 (selected to align with ACS years), using data from the NCES Common Core of Data.

Publicly available school performance data from the departments of education in each of the nine states where the 11 jurisdictions are located provided the basis for ranking the schools on 2005–2006 through 2009–2010 statewide standardized tests in math and ELA.[14] Given the substantial variation in proficiency rates by levels of schools (elementary, middle, and high) and across states (each of which uses its own statewide standardized tests for accountability determinations), we created within-state and within-level (i.e., elementary, middle, and high school) rankings for schools. In most cases, states' school-level test data were disaggregated within a school by grade, subject, and student subgroup. After classifying schools into three non-exclusive categories based on their grade ranges (using NCES definitions), we developed a single weighted average of the percentage of students within each school who scored proficient or above in math and in ELA for the band of grades within the elementary, middle, and highschool levels. All schools with elementary-grade proficiency rates were ranked and categorized for reporting purposes as being within the bottom, second, third, or top quartile of elementary proficiency rates within its state. We employed the same process for middle and high-school levels.

These data have several important limitations. First, the analysis examines the *access* an IZ resident has to low-poverty neighborhoods and schools. In all but one case, data from IZ administrators do not indicate whether children live at the IZ addresses, and in no case did the IZ administrative entity track the schools IZ youth attend. If children of IZ households attend private schools or public schools (such as charter schools[15]) outside their residentially assigned zone, their place of residence does not accurately indicate the schools they attend. These scenarios, however, are likely to hold for only a minority of IZ occupants.

A second limitation is the failure of school districts to provide historical school attendance zone boundary files. We requested the attendance boundaries for 2000–2010, but in all nine cases (we did not request them for Cambridge and Burlington, because of their school choice policies), the districts either did not have this information or there had been no boundary changes. The working assumption in this report, then, is that the school to which an IZ unit was assigned as of 2007–2008 is the same as that for the 2005–2006 through 2009–2010 school years. Finally, underreporting of meal eligibility is chronic in middle and high

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[14] Maryland data are from the 2010–2011 school year, because the state redacted archived data to comply with the Family Educational Right to Privacy Act (FERPA) rules to prevent the identification of individual students in earlier years' files. As of the writing of this report, redacted versions of prior years of data had not been reposted.

[15] Charter schools are excluded from our analysis in cases where they were not included in school districts' geographic boundary files, which they rarely are, since they are generally not solely assigned students by neighborhood and may not be under the aegis of the local school district.

schools (see, for example, Pogash, 2008), and consequently we rely on that statistic for elementary schools only.

APPENDIX B

Profiles of the 11 Jurisdictions' Inclusionary Zoning Policies

Boulder, Colorado Overview

Boulder passed its first IZ ordinance in 1980, but it was a "loosely structured" program that produced virtually no units (Benson, 2010, p. 761). A 1991 change led to a voluntary ordinance, which was no more successful, and in 2000 the ordinance was made mandatory (Benson, 2010, pp. 760–761). The current ordinance authorizing the inclusionary housing program was adopted in February 2010. This ordinance changed the name to "inclusionary housing," set annual adjustments for in-lieu payments to developers, and clarified the land-dedication option but otherwise continued with the structure of the original inclusionary policy (City of Boulder, 2010).

Boulder's inclusionary housing ordinance requires that 20 percent of ownership and rental units be affordable (City of Boulder Land Use Code, Chapter 13, Section 9-13-3). As of December 2009, 364 units of affordable housing had been produced under the ordinance—50 rental and 314 ownership units. Of these, 224 were built directly by developers under the terms of the ordinance, and 140 were built on-site, with additional funding from the city, by developers who exceeded the minimum IZ requirements on their sites (Long, 2011).

In addition to the 364 units, the city produced 118 units under similar programs. Of these, 39 were rental units built before the ordinance passed, and 79 were ownership units produced through annexation agreements (see below) (Long, 2011).

In 2010, Boulder secured permanent-affordability covenants on an additional 62 units produced under the ordinance, although not all of these units had been built as of this writing. All of the covenants were for ownership units, but one project may be converted to rental (Long, spreadsheet, 2010c).

The City of Boulder administers all of the ownership units, while Boulder Housing Partners, the city's public housing authority, and several nonprofits administer the inclusionary rental units.

Applicability and Set-Aside Provisions

Under Boulder's current inclusionary housing ordinance, units are marketed under the HomeWorks program. The ordinance applies to both new construction and units that are demolished and rebuilt (with exceptions for units destroyed by a natural disaster or "other calamity," and a limited exception for properties with four or fewer units (9-13-3 (e))). The ordinance also applies in a limited form to persons building their own residences. If a lot

owner builds a house of less than 1,600 square feet and lives in it for at least one year, the ordinance does not apply.
However, larger houses or those sold within a year are subject to cash in-lieu contributions upon sale, or they must be made affordable upon sale (9-13-6).

The ordinance requires that 20 percent of units be affordable. For ownership developments of five or more units, the goal is to have at least 50 percent of the affordable units built on-site, although exceptions can be made. Developments of four or fewer units should provide one affordable unit (9-13-9). However, cash in-lieu payments are also allowed for them, and thus far all developers of such units have elected to make in-lieu payments (Long, interview, 2010b).

Affordable rental units can be constructed either on- or off-site, provided they meet the size requirements described below. Either a developer or a housing authority can build them, or the developer can make an in-lieu cash contribution (9-13-4 (b)).

Affordable units are provided in the same proportion as market-rate units (that is, if half the market-rate units are for sale, half the affordable units should be as well). If market-rate units are detached single-family homes, the affordable units should be as well (9-13-5 (a)). The proportion of affordable unit sizes should also be similar to that of market-rate units (9-13-5 (b)). For detached housing, the affordable units must be at least 48 percent the size of the market-rate units, up to a maximum average of 1,200 square feet. For attached housing, the ratio is 80 percent and 1,200 square feet. Limited exceptions can be granted if unfinished space that can easily be converted to finished space is included (9-13-5 (c)).

Alternative means of compliance include in-lieu cash fees, construction of off-site units, and land dedication (9-13-9). In-lieu fees for detached units are either $119,922 per unbuilt unit or $100 multiplied by 20 percent of the total floor area of the market-rate units, whichever is less. For attached units, the formulas are $100,178 or $92 multiplied by 20 percent of the floor area. In-lieu fees can be adjusted by the city manager by up to 7 percent per year, up to 75 percent of the "affordability gap" for developments of more than five units, or 50 percent for smaller developments. The affordability gap is defined as the difference between the market rate for a unit and the amount affordable for a household earning the Department of Housing and Urban Development (HUD) low-income limit for the Boulder Primary Metropolitan Statistical Area (PMSA). The city manager calculates this gap annually (9-13-9 (a)).

In addition to the inclusionary housing ordinance, any annexation agreement must provide for a certain percentage of affordable units to be constructed. The target for these developments is about 45 percent, but more of the units can be made available at higher income levels. Each annexation agreement is drafted individually, so percentages can vary (Long, interview, 2010b). **Eligibility**

Ownership Units. Maximum sales prices are set on a quarterly basis (9-13-3 (i)). The city manager sets the prices based on what would be affordable to a household earning "HUD plus 10 percent," currently defined as 80.7 percent of the AMI (City of Boulder, Overview, undated, and City of Boulder, AMI, undated). For 2010, the Boulder PSMA median family income was $89,600.

The formula that sets housing prices is based on this income limit, but it also assumes that a household will spend no more than 28 percent of its income on housing, receive a 30-

year mortgage, pay 18 percent in taxes and insurance, obtain an interest rate based on the market 18-month trailing average, and pay homeowner association dues. There is no minimum income requirement, but in assessing eligibility, the city does take the household's debt load into account (Long, interview, 2010b).

Assets are also taken into consideration for eligibility. The level of assets is set by the city manager (9-13-3 (l)). Allowable levels vary by household type (retired, disabled, recently divorced), size (an additional $15,000 per household member), and age (older applicants are allowed to have higher balances in a retirement account). Retirement assets such as 401(k) accounts are considered separately from other asset types (City of Boulder, 2010a).

Rental Units. Average rents are based on what is affordable for households earning 10 percent less than the HUD low-income limit for the Boulder PMSA. No single unit can exceed affordability at that limit, and tenants cannot earn more than that limit (9-13-8 (b)). For 2009, the HUD low-income limit was 70.7 percent (City of Boulder, AMI, undated). However, as rental units are all owned by nonprofits, they generally target households at 50 percent of the AMI (Long, interview, 2010b).

Long-Term Affordability Restrictions

Affordable units are permanently maintained as affordable (9-13-1 (f)). An owner who wishes to resell an ownership unit must sell it to another eligible household for the same purchase price. Higher purchase prices are allowed if they include closing costs and real estate commissions, property improvements, and an appreciation factor determined by the city manager (9-13-7 (c)). The annual appreciation factor varies between 1 and 3.5 percent, depending on the change in the AMI or the consumer price index (CPI), whichever is smaller (City of Boulder, 2010b).

It is difficult to create long-term affordable rental units under the program, because Colorado forbids mandating rent control under the state Supreme Court's "Telluride Decision" of 2000. To comply with the ordinance, developers building a rental project will either make a portion of the units ownership units or will sell them to the housing authority or a nonprofit that is willing to voluntarily maintain them as affordable (Long, interview, 2010b).

If rental units are later converted to for-sale units, the owner must enter an agreement with the city to continue providing affordable units (9-13-8 (a)). However, this provision was instituted with the February 2010 update of the ordinance and has not yet been applied (Long, interview, 2010b).

Cost Offsets

Developers can apply for a waiver of the development excise tax (3-8-7 (e)), but the ordinance does not provide for density bonuses or other incentives (Benson, 2010). The city does not offer density bonuses because the height of all buildings is limited to 55 feet (9-7-5).

Subordinate Financing and Down-Payment Assistance

The City of Boulder does not provide subordinate financing to homebuyers through the inclusionary housing ordinance. It has a program called the "3% Solution," which offers 3 percent of the purchase price to assist with closing costs for an inclusionary housing unit. However, funds are limited, and only 10 or 15 applicants use the program in a typical year. Boulder has several other down-payment assistance programs that do not apply to inclusionary units (Long, interview, 2010b).

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Burlington, Vermont

Overview

Since 1990, when Burlington first adopted IZ, its ordinance has led to the creation of about 200 inclusionary homes. The zoning restrictions apply to both for-sale and rental properties and have on- and off-site provisions. Developers are required to build the specified number of IZ units, with case-by-case exceptions in which developers can make a payment in lieu of construction.[16] The off-site option has been exercised four times, and today about 60 percent of IZ homes are in the subdivisions and about 15 percent are off-site (information on the remaining units was not available). Developers who exercise the off-site provision must construct 150 percent of the units they would have been required to build on-site.

The IZ program is administered by the City of Burlington, which ensures that developers set aside the appropriate number of IZ units at the time they obtain permits. Champlain Housing Trust, a community land trust that works throughout northwest Vermont, administers some of the for-sale units created under the program. It ensures that purchasing households have a qualifying income before moving into the IZ homes, and it also enforces the deed restriction for long-term affordability of the homes. However, no funds are set aside for the ongoing administration of the program.

Applicability and Set-Aside Provisions

The ordinance requires that all newly constructed market-rate developments with five or more units and any conversions of non-residential buildings that produce ten or more units make 15 to 25 percent of the units affordable. The more expensive the market-rate units in a given development, the higher the proportion of IZ units must be. For example, for subdivisions where the sale price is affordable only to households earning 180 percent of the AMI, developers must set aside the maximum share of IZ units (25 percent of the total). All properties located within a waterfront zoning district are also subject to a 25-percent IZ requirement, and there is no off-site or payment-in-lieu option. Units must meet minimum size requirements: a one-bedroom unit must be at least 750 square feet in area and a four-bedroom must be 1,200 square feet.

Eligibility

Income eligibility for Burlington's IZ for-sale program is set at 75 percent or less of the AMI (which equated to $55,350 for a family of four in 2010), and the rental program is set at 65 percent of the AMI. If eligible buyers at 75 percent cannot be found, units can be sold to households with 80 percent of the AMI. The average income of families moving into IZ homes is 63 percent of the AMI.

Long-Term Affordability Restrictions

Affordability controls must be kept in place for 99 years. In the case of for-sale units, equity appreciation for the original buyer is limited to 25 percent, adjusted for any homeowner improvements and closing costs. Rents can be increased only by the annual percentage changes in median household income. Very few homes have been resold since the inception of the program.

Cost Offsets

To compensate developers for losses realized on the IZ units, Burlington offers fee waivers and density and lot-coverage bonuses. The density bonus can be applied toward commercial

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[16] Following a 2008 revision to the ordinance, the city now requires $100,000 in-lieu payments per IZ units, and this payment is indexed for inflation.

space in mixed-use developments. Depending on the zoning district, new developments can build up to 25 percent more units on a site (for example, in low-density residential areas, density can increase from 7 to 8.75 units per acre; in high-density areas, from 40 to 46 units per acre). In some downtown areas, provision of each additional 5 percent of inclusionary units will allow an additional 10 feet of building height. In addition, the number of required parking spaces can be reduced by up to 50 percent, and impact fees can be decreased. The density bonus, however, is not by right, and consequently not all developments obtain it, even though the IZ set-asides still apply.

Subordinate Financing and Down-Payment Assistance

Subordinate financing is not provided to homebuyers. Down-payment assistance is on rare occasions provided to homebuyers by the Champlain Housing Trust, but not by the city.

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Cambridge, Massachusetts

Overview

The City of Cambridge approved in March 1998 a mandatory IZ ordinance, which had produced 385 affordable rental and for-sale homes as of 2010. Nearly 55 percent of the units are rentals and the balance are for sale.[17] The high ratio of rental IZ homes relative to other IZ programs in this study distinguishes the Cambridge program. The IZ homes comprise about 6 percent of the city's total stock of almost 7,000 affordable units (CDD, 2010).

In the decade preceding 1998, Cambridge had a voluntary provision in several zoning districts through which a developer could obtain a density bonus if the project created affordable housing. However, the program did not produce a single unit. The change to a mandatory program has been cited as the reason for the program's production of affordable homes (Brunick, Goldberg, and Levine, 2004). The IZ ordinance does, however, retain voluntary provisions for projects that do not trigger the mandatory IZ requirement.

The city's official goal, as stated in its Five-Year Strategic Plan, is to create an additional 400 affordable units between 2011 and 2015. It is anticipated that 150 of these units—75 rental and 75 for-sale—will be created as a result of IZ (CDD, 2010).

The City Community Development Department (CDD) administers the program. City staff work closely with developers to set up the inclusionary program for each project. CDD staff conduct the marketing and buyer/tenant screening for the inclusionary units. For rental units, CDD maintains a Rental Applicant Pool (RAP) of potential tenants. The staff determine applicant eligibility and refer eligible applicants to the developer for final approval. For

[17] These figures are based on data provided to the research team by the City of Cambridge. The Strategic Plan for Fiscal Years 2011–2015 states that "more than 459" IZ units have been permitted in the same time frame (CDD, 2010, p. 73). We were unable to resolve this discrepancy definitively; the difference may represent the distinction between permitted units and those actually built.

homeownership, new units are marketed and CDD administers a homeownership resale pool to match eligible households to resold IZ homes. In addition, an independent nine-member City board, the Cambridge Affordable Housing Trust, provides policy advice regarding affordable housing and approves policies for the inclusionary housing program (City of Cambridge, FY 2009).

Applicability and Set-Aside Provisions

Under the ordinance, any new or converted development of more than ten units must make 15 percent of the units affordable (CDD, 2010). In residential developments with fewer than ten units, affordable units must be provided if the total area exceeds 10,000 square feet (at a rate of one unit per 1,000 square feet). Affordable units may be sold or rented, depending on the development (CDD, 2010).

For both rental and homeownership projects, the inclusionary units must mirror the building as a whole, with IZ units located throughout the building. Aspects of unit location, size, type, amenities, and layout are thoroughly considered to ensure that the inclusionary units are representative of the building.

Units are to be provided on-site, but developers can request a hardship determination to be allowed to make a payment to the Affordable Housing Trust instead of providing units. However, the burden of proof is on the developer to show that providing affordable units onsite would be a hardship. The amount to be paid to the Affordable Housing Trust is equivalent to the value of providing a unit on-site (City of Cambridge, 2010). No developer has yet requested a hardship determination as of the date of this writing.

Eligibility

Affordable is defined as a rent or mortgage payment that does not exceed 30 percent of the income of the household that lives in the unit (City of Cambridge, 2010). Income eligibility is capped at households earning less than 80 percent of the AMI for both the rental and ownership portions of the IZ program. The rental program requires a minimum income of 50 percent of the AMI except for those renters who use a housing voucher, in which case the affordability of the inclusionary units can be deepened to accommodate very low-income households. The homeownership program establishes sales prices to be affordable to households with incomes at 65 percent of the AMI. Although there is no strict minimum income for homeownership, buyers must be able to qualify for financing for the purchase of the unit. The CDD screens both renters and purchasers for eligibility and gives preference to residents of Cambridge and to families with children. In the rental program, the CDD also gives preference to households with emergency housing needs.

Long-Term Affordability Restrictions

A permanent deed restriction ensures the long-term affordability of a development. The restriction is for the life of the building (CDD, 2010). To ensure long-term affordability of homeownership units, the future resale price of an IZ home is based on the original purchase price plus an annual return on equity based on the buyer's down payment and principal payments on the mortgage, as well as allowances for eligible capital improvements.

Cost Offsets

In exchange for the mandatory set-aside, developers can receive an increase in allowable density of up to 30 percent, as calculated by an increase in the allowable floor area ratio (FAR). At least half of the additional FAR must be used for the affordable units. In addition, the units created through the inclusionary bonus must equal one affordable unit for every market-rate unit created. In mixed-use developments, the additional FAR applies to the entire lot, but it can be used only for residential development (City of Cambridge, 2010).

Subordinate Financing and Down-Payment Assistance

The City of Cambridge provides financial assistance for buyers of affordable units, including units created through IZ. The funds may be used for closing costs and down payments. Buyers of inclusionary units are reviewed for participation in this program. The city also provides pre- and post-purchase education and counseling to homebuyers to guide them through the purchase process.

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Chicago, Illinois

Overview

Chicago has a number of affordable housing programs in place, two of which involve developers creating affordable units in new construction. The Affordable Requirements Ordinance (ARO) is mandatory in certain circumstances, and the Chicago Partnership for Affordable Neighborhoods (CPAN) is voluntary.

The Chicago City Council passed the ARO in 2003 and expanded it in 2007. The main change was expanding the ordinance to all residential developments of ten or more units that receive a zoning change, purchase land, or receive financial assistance from the city, rather than only units that received financial assistance from the city (DCD fact sheet, undated). As of the end of 2009, the ARO had created 815 units of affordable for-sale housing. (Several dozen of the units were created prior to the ARO but were subject to similar restrictions and continue to be monitored by the ARO program.) Most of these units have been sold, although because of the downturn in the housing market, some remain on the market and others have been foreclosed.

The CPAN was created in 2001 as the Planned Purchase Price Assistance Program. The original program did not address the creation of affordable units; rather, it provided financial assistance to low-income homebuyers (Committee on Housing and Real Estate, 2005). The City Council changed the program several times, most recently in November 2006, to create incentives for developers to build affordable for-sale units (Committee on Housing and Real Estate, 2006). In its current form, CPAN provides affordable condominiums within marketrate developments for first-time homebuyers. It also provides purchase-price assistance of up to $30,000 for income-qualified CPAN purchasers. CPAN had created about 420 units of affordable housing through the end of 2009.

While the ARO applies to both for-sale and rental housing, the city does not maintain information on the number of rental units produced. Additional units beyond the totals shown above have been mandated under both programs since 2009, but not all have been built.

Twelve ARO units and 27 CPAN units have been sold—and will continue to be monitored—by the Chicago Community Land Trust (CCLT), which was created in 2006. The CCLT is a nonprofit corporation but is staffed with Chicago Department of Housing and Economic Development personnel (Frantz and Smith, 2010).

The long-term affordability of the non-CCLT units is monitored through the use of a recapture/junior mortgage recorded against each unit. In most cases, the junior mortgage must be repaid—or the unit must be sold to another income-qualified buyer at an affordable price—when the original buyer wants to sell.

Applicability and Set-Aside Provisions

The ARO is mandatory for projects of ten units or more that involve the following:

- Any land purchase from the city
- Any zoning change that results in higher density or allows residential construction where it was not previously allowed
- Units that are part of a "planned development," unless they are not downtown
- Financial assistance from the City (DCD, undated-b).

In projects that obtain financial assistance from the city, 20 percent of units must be affordable; in the others, 10 percent is required (CHP and NHC, undated).

CPAN is a voluntary program that pertains only to for-sale developments. The goal is to make at least 10 percent of units in a participating development affordable, and those units must be sold for at least $25,000 less than comparable units in the same development (where the developer lowers the price in exchange for waived developer fees). The city's Housing & Economic Development Commissioner can approve a figure below 10 percent if affordability can be increased that way (for example, if units can be sold to households with less than 80 percent of the AMI) (Committee, 2006, pp. 89915–89916).

Eligibility

The ARO provides for some interplay between the number of units and affordability provisions. The percentage of affordable units can be reduced if for-sale units are targeted at households with less than 80 percent of the AMI. Otherwise, the target-household maximum income levels are 60 percent of the AMI for rental and 100 percent for ownership (CHP and NHC, undated). If Tax Increment Financing (TIF) funding is involved, the homeownership AMI may be 80 percent (DCD, undated a andb). Chicago's AMI for a family of four is $75,100; 60 percent of the AMI is $45,060, and 80 percent is $60,080.

Under CPAN, eligible homebuyers cannot earn more than 100 percent of the AMI (Committee, 2006, p. 89916). To be eligible for purchase-price assistance from the city, the homebuyer may not earn more than 80 percent of the AMI.

In-lieu fees are permitted under both the ARO and CPAN; the level was set at $100,000 per unbuilt unit in 2003. The expansion of the ARO in 2007 indexes this fee to inflation (CHP and NHC, undated, 2010), but the CPAN fee remains at $100,000 (Breems, 2011).

Long-Term Affordability Restrictions

Under the ARO and CPAN, for-sale and rental (ARO only) units must be maintained as affordable for 30 years (Ordinance 2-44-010.f). Sellers of both ARO and CPAN units may buy their way out of the affordability restrictions if they repay the recapture mortgage, which is filed at the time of closing in an amount that is the difference between the purchase price and the market price at the time of purchase, plus 3-percent interest (2-44-010.i.2).

Units in the CCLT are kept affordable via a 99-year restrictive covenant requiring the home to be sold to the CCLT (which has the right of first refusal) or to a low-income purchaser. There is also a maximum resale price, which is equal to the original purchase price plus a percentage of the market appreciation (Frantz and Smith, 2010).

Cost Offsets

Under the ARO, developer "incentives" such as city land or zoning changes trigger the affordability requirements (CHP and NHC, undated). Because CPAN is voluntary, incentives are used to encourage developers to participate. If a developer's CPAN application is approved, a number of fees can be waived by the city, including building-plan review and permit fees, water and sewer fees, and open-space impact fees. The total amount of all applicable fees is waived up to a limit of $10,000 per unit created. Developers can also request city reimbursement of up to 50 percent of third-party permit-review costs, up to $3,000 per unit or $50,000 total (Committee, 2006, pp. 89919–89921).

Developers who are subject to the ARO can apply for the CPAN fee waivers only if they meet both sets of affordability requirements. If developers must make 10 percent of their units affordable under the ARO, they must produce additional units to qualify for CPAN (Committee, 2006, pp. 89921–89922).

Subordinate Financing and Down-Payment Assistance

Under CPAN, the city can provide a purchase-price subsidy with funds from the federal HOME Investment Partnership Program. Homebuyers who earn less than 60 percent of the AMI can receive up to $30,000; those with incomes from 61 to 80 percent of the AMI can receive up to $20,000 (Committee, 2006, p. 89918). Down-payment assistance is not provided to homebuyers under either the ARO or CPAN, although eligible buyers in both programs can access down-payment assistance provided by the State of Illinois and administered by partner housing counseling agencies.

Purchasers of ARO or CPAN homes must complete homeownership counseling by a HUD-certified housing counseling agency, and purchasers of condominium units must receive condominium-specific homeownership training. The CCLT also requires and provides CCLTspecific homeownership counseling to all its homebuyers before they can purchase a CCLT home. The CCLT provides training and post-purchase support to educate homeowners on the responsibilities/opportunities that accompany homeownership, including foreclosure prevention, budgeting, home repair, and estate planning (Frantz and Smith, 2010).

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Davidson, North Carolina

Overview

The Davidson Town Board adopted an affordable housing ordinance in 2001, to which amendments were made in 2005, 2007, and 2008 to specify guidelines and standards (Town of Davidson, 2009). By May 2011, the ordinance had produced 54 units of affordable housing. Of these, three were rental units and the rest were ownership units (Reid, 2010).

As part of the master-plan approval process, developers are required to indicate how many residential units are included in a development. According to master plans that have been approved by the Town Board, more than 200 affordable units have been identified. However, approval does not mean that a project will go forward. Many projects have been indefinitely delayed or reduced in scope because of changed economic conditions. Developers are required to submit a detailed affordable housing plan prior to preliminary plat approval, and the final plat will indicate which lots or units are to be constructed as affordable units (Reid, 2011).

All of the units created are administered by the Town of Davidson's affordable housing coordinator. Applicants who wish to purchase or rent a home under the program must participate in an eligibility process provided by the Davidson Housing Coalition, a nonprofit housing agency (Reid, 2011).

Applicability and Set-Aside Provisions

Developments with seven or fewer units can either provide one affordable unit or make a prorated payment to the town's affordable housing fund (Town of Davidson, 2009; Planning Ordinance, 6.3.1). Developments with eight units or more must make 12.5 percent of the units affordable (Town of Davidson, 2009).

While it is preferable to have units built on-site, developers can make an in-lieu payment of $69,400 per unit to the town's affordable housing fund. The payment amount is based on the sales price of a unit that is affordable by a household of four whose income does not exceed 50 percent of the AMI (Planning Ordinance, 6.3.2).

Farmhouse clusters, low-impact subdivisions, and conservation-easement subdivisions are exempt from the affordability requirements (Planning Ordinance, 6.3).

Eligibility

Affordable units must be distributed among various income categories ranging from less than 50 percent of the AMI up to 120 percent.[18] In 2010, the AMI was $67,200 for a family of four, meaning that eligible household incomes could range from less than $33,500 to $75,265. A unit is considered affordable by a household if the annual principal and interest on a 30-year mortgage in the amount of 95 percent of the purchase price, with an interest rate equal to the prime rate, does not exceed 23 percent of household gross income. The monthly principal and interest plus the estimated annual payments of private mortgage insurance, homeowner-association dues, property taxes, and hazard insurance may not exceed 28 percent of the household gross income (Planning Ordinance, Section 23, Definitions).

At least 30 percent of the affordable units created must be available to households earning no more than 50 percent of the AMI (Planning Ordinance, 6.3). After meeting this criterion, only 20 percent of the remaining units can be made available to households earning 80 to 120 percent of the AMI. The rest should be affordable by households making between 50 and 80 percent of the AMI (Reid, 2011).

Long-Term Affordability Restrictions

Long-term affordability is maintained through a deed restriction containing resale and rental limitations. Affordability must continue for 99 years (Town of Davidson, 2009).

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[18] An eligibility category of 120 to 150 percent of the AMI was eliminated in November 2010 (Reid, 2011).

Cost Offsets

No cost offsets are provided to developers.

Subordinate Financing and Down-Payment Assistance

Subordinate financing is available to homebuyers through the North Carolina Housing Finance Agency and other programs offered by various lenders (Reid, 2011). Down-payment assistance is available from a variety of sources, including the North Carolina Housing Finance Agency, Federal Home Loan Bank, and a grant from the Town of Davidson.

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Denver Overview

Denver passed an inclusionary housing ordinance in August 2002 (Webster, 2005). Prior to this, developers who were rezoning land to residential use were generally required to provide affordable units, depending on the project (City and County of Denver, Affordable Housing History, undated). Since 2002, 77 for-sale units have been developed through the Moderately Priced Dwelling Unit (MPDU) program. Participation is voluntary for rental projects; it is required for for-sale projects. No affordable housing rental units have been built.

The Denver Office of Economic Development's Business and Housing Services (BHS) administers the inclusionary housing ordinance, working with developers to ensure compliance, verifying income-eligible households, calculating maximum resale prices, tracking compliance, and keeping records. Households deemed eligible by BHS may view available affordable units at www.coloradohousingsearch.com. Developers, in turn, must offer a fair process for household selection (either a lottery or first-come, first-serve basis) for households that wish to buy an MPDU home.

The ordinance is mandatory for ownership units, but alternative compliance options are available subject to the MPDU director's discretion. If the director deems the alternatives unacceptable, affordable units must be provided on-site. Options include

- Building more MPDUs in the same or an adjoining statistical neighborhood, as defined and approved by the director
- Building more MPDUs at one or more other sites within 0.5 mile of the light rail or commuter rail station, as approved by the director
- Contributing to the special revenue fund an amount equal to 50 percent of the price per MPDU not provided but required under the ordinance.

Applicability and Set-Aside Provisions

The ordinance requires for-sale projects of 30 or more units to make at least 10 percent of the units affordable (LivedowntownDenver.com), so the information below applies only to ownership units unless otherwise specified. Developers of smaller projects (fewer than 30 units) can choose to voluntarily comply with the MPDU program and thus gain access to its development incentives. The 10-percent set-aside is mandatory unless the developer can propose an alternative plan that would provide additional MPDUs at the same locations or a cash-in-lieu agreement for the units that would otherwise be required through the on-site provision.

Eligibility

Generally, households must earn a minimum of 50 percent of Denver's AMI ($37,950 for a household of four in 2010) and a maximum of 80 percent ($60,700 for a household of four as of 2010), depending on household size. If a household does not meet the minimum threshold, it may demonstrate that it has assets that make the MPDU home affordable, which means that the monthly payment (principal, interest, taxes, and insurance) and association dues do not exceed 40 percent of the owner's income. All buyers must demonstrate earned income and the ability to afford the unit. Developments with three or more stories, elevators, and structured parking units may be offered to households earning 95 percent of the AMI (LivedowntownDenver.com). For voluntary compliers, units may be made affordable by households with a slightly higher income cap (100 and 110 percent of the AMI) (IHO Rules, 2010).

Long-Term Affordability Restrictions

For-sale units constructed under the current program are made affordable for 15 years. During this period, units can be sold only to another income-eligible household. The maximum price for which a home can sell is established by the average home-sales price in the Denver metropolitan area, as published in Standard and Poor's Case-Shiller Index. After 15 years, the city has the right of first refusal on any affordable unit that is for sale. If the city does not purchase it, the unit can be sold on the open market. However, during the 10 years after the 15-year control period expires, half of the "excess profit" must be paid to the city's Housing Incentive Program Fund. The calculation of "excess profit" is as follows: one-half of the excess of the total resale price over the sum of the prior purchase price, a percentage of the prior purchase price equal to an increase in the Consumer Price Index for Urban Consumers (CPI-U), to adjust for inflation, eligible capital improvements, and a reasonable real estate commission. If the amount after the calculation is less than $20,000, the amount due to the special revenue fund must be adjusted in each case so that the seller will retain either $10,000 or the entire amount of the excess of the final MPDU sales price, whichever is less.

The restrictions on units produced under the previous rezoning program vary from project to project. That program produced both rental and for-sale affordable units, many of which remain available as affordable housing but under varying restrictions (City and County of Denver, Affordable Housing History, undated). Those units' period of affordability can range from five to 20 years (City and County of Denver, FAQ, undated).

Cost Offsets

Developers receive a $5,550 rebate for each MPDU they provide (which is increased to a $10,000 rebate for for-sale MPDUs sold to households earning less than 60 percent of the

AMI or rented to households earning less than 50 percent of the AMI). In addition to the cash incentive, developers can apply for one or more of the following: up to a 10-percent density bonus, up to a 20-percent decrease in parking maximums, and a 180-day expedited review process (IHO Rules, 2010).

Subordinate Financing and Down-Payment Assistance

Subordinate financing is not provided to homebuyers ("Housing FAQs," undated). Several nonprofit housing organizations that receive awards from the city provide down-payment assistance. Seller-financed down-payment assistance is prohibited (City and County of Denver, FAQ, undated).

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Fairfax County, Virginia

Overview

Fairfax County, a suburb of Washington, D.C., has had its current IZ ordinance in place since 1990. It was established to serve households whose income is 70 percent or less of the AMI for the Washington Standard Metropolitan Statistical Area (SMSA). Known as the Affordable Dwelling Unit (ADU) program, it had created 2,361 affordable units by the end of 2010, and there are approximately 850 additional affordable units in the pipeline (units that have been committed to as part of rezoning but have not been delivered). The ADU program, as established through the zoning ordinance, is intended to create affordable dwelling units that are integrated, as much as is reasonable, within each residential development. The units are required to mirror the tenure of the market-rate units within the development.

Of the 2,361 affordable units created through 2010, 1,320 (or 55.9 percent) were for-sale units. By ordinance, the Fairfax County Redevelopment and Housing Authority (FCRHA) can purchase up to one-third of the for-sale units at the established affordable-dwelling-unit price. To date, the FCRHA has purchased 147 units, or 11.1 percent of the for-sale units. All but 24 of these were placed into either the county's Magnet Housing program or the Fairfax County Rental Program (FCRP), both of which serve low- to moderate-income households whose income may not exceed 70 percent of the AMI. In addition, nonprofit housing providers purchased eight of the units, which also serve low- to moderate-income households. The 24 remaining units were removed from the ADU program and placed into the federal Public Housing program.

The other 1,165 for-sale units were placed into the First-Time Home Buyers (FTHB) program and were sold to qualified households whose income did not exceed 70 percent of the AMI. These households are required to meet a number of requirements, including procurement of a mortgage.

In addition to the for-sale units, the ADU program created 1,041 rental units. As provided for in Section 2-800 of the county's zoning ordinance, the rents are set as follows: onethird of the units have rents based on households earning up to 50 percent of the AMI, and the remaining two-thirds have rents based on households earning up to 65 percent of the AMI. All of these units are in privately owned rental properties and are managed by the property owner, not the FCRHA. The owners of the units are, however, responsible for filing monthly reports and annual income certification of the ADU tenants to the FCRHA to ensure compliance with the parameters of the program as provided for in Section 2-800 of the zoning ordinance.

The first for-sale units produced under Fairfax County's IZ program became available in 1992. The 24 units all went into the FTHB program. In 1993, 27 more for-sale IZ ADU units came online, 18 of which went into the FTHB program and nine of which were purchased by the FCRHA.

When the FCRHA exercises its right to purchase up to one-third of the for-sale units produced under the ADU program, it generally uses county funds, private financing, and/or federal grants. The county does a pro forma check at the time of purchase to ensure that the rents cover the operating and maintenance costs. The rents and county funds are also used to pay for any condominium- and homeowner-association fees for the properties. The units are generally placed into the county's Magnet Housing Program and the FCRP programs and will remain as affordable units.

The for-sale portion of the ADU program is administered by the FCRHA, which, in its administration of the FTHB program, certifies purchasers' eligibility and oversees affordable housing purchases created by the ordinance.

A nine-member Affordable Dwelling Unit Advisory Board (ADUAB), made up of engineers, architects, land-use planners, lending institutions, builders, and county staff, represents the FCRHA and the Fairfax County Department of Planning and Zoning (DPZ). ADUAB's role is to review applications in which the owner has requested a modification of the ADU program requirements. Requests typically concern whether additional fees may be charged for ADUs that are provided in independent living/senior housing. The ADUAB's powers do not allow it to modify the provisions of the zoning district or the number of ADUs required. The ADUAB also serves as an advisory body to the County Executive (Fairfax County Zoning Ordinance, Section 2-815).

Fairfax County passed one of the country's first IZ ordinances in 1971; it required 15 percent of units to be affordable in all projects with more than 50 units. However, it was struck down by the Virginia Supreme Court, which deemed that it was an unconstitutional taking and, because Virginia is a "Dillon's Rule" state (meaning that local government can undertake actions only expressly allowed by the state), the county acted without state approval. A 1989 amendment to the Virginia state code allows local jurisdictions to adopt IZ (Center for Housing Policy and National Housing Conference, undated).

The 1990 Fairfax County zoning ordinance required a fixed proportion of ADUs, depending on the type of unit being constructed (i.e., single-family detached, single-family attached, garden style, or low-rise multifamily), and in exchange, it provided for bonus density to remunerate developers for the mandatory set-aside. Whether or not the builder used all of the bonus density, the builder was required to provide the fixed number of ADUs in accordance with the provisions of the ordinance at that time.

On March 30, 1998, the ADU provisions in the zoning ordinance were amended, and a sliding scale of density bonuses to remunerate developers for the provision of ADUs was adopted. Under the sliding scale, the builder of single-family detached, single-family attached, and low-rise multifamily units is required to provide 12.5 percent of the units as ADUs in return for a 20-percent bonus. The builder of midrise multifamily developments with at least 50-percent surface parking is required to provide 6.25-percent of the units as ADUs and receives a bonus of 17 percent. In midrise multifamily developments where the parking is mostly structured, the developer is required to provide 5 percent of the units as ADUs in exchange for a 17-percent bonus.

Applicability and Set-Aside Provisions

The ADU ordinance generally applies to developments with 50 or more units that are stickbuilt or partially stick-built. High-rise developments of building construction Types 1, 2, 3, and 4 are exempt from the ordinance; however, during the rezoning process, ADUs may be proffered (voluntary agreements between the builder and the county, which then become a condition of the rezoning). In addition, there remain a few areas in the county where the allowed development density is less than one unit per acre or that are not within an approved sewer-service area. In these cases, the ordinance does not apply.

As stated above, the ADU program requires developers of single-family detached, singlefamily attached and low-rise multifamily units to provide 12.5 percent of the units as affordable housing. For midrise multifamily with at least 50-percent surface parking, the requirement is 6.25 percent. Where the parking is mainly structured, the requirement is 5 percent. In exchange for these units, the developer is granted additional density at the time the development is built.

In "exceptional cases," such as demonstrated economic hardship, the ADU Advisory Board can allow a land donation, a payment to the Housing Trust Fund (determined by the fair market value of the lot that the affordable unit would have been built on), or a combination of the two instead of providing units. However, the Board cannot change eligibility requirements or modify the number of affordable units to be built in a development.

Eligibility

Ownership Units. To be eligible to purchase for-sale units, households can earn no more than 70 percent of the AMI. In 2010, the AMI for a family of four was $103,500. As shown in the table below, the maximum income allowed under the program for a family of four is $72,450. In addition to a maximum income, the household must have a minimum income of $25,000, irrespective of family size, to participate in the program.

Household Size	2010 Income Limits at 70 Percent of AMI (Rounded) ($)
1 person	50,700
2 persons	57,950
3 persons	65,200
4 persons	72,450

Purchasers of affordable units must be first-time homebuyers and must have completed an approved homeownership class (Fairfax County Redevelopment and Housing Authority, 2009).

The developer works with the FCRHA to price the unit, and the final sales price is approved by the County Executive. The formula for determining the sales price is based on adjusted construction costs and financing costs. Adjustments for amenities, such as additional bedrooms or bathrooms, end-unit location, and roughed-in plumbing, are taken into account when pricing the units. There are also minimum requirements that the builder must meet. Worksheets and minimum standards are provided at http://www.fairfaxcounty.gov/rha/adu/ aduprogram.htm.

Rental Units. Rents for units built under the ADU program are set by a formula that results in one-third of the units having rents based on households earning up to 50 percent of the AMI and the remaining two-thirds have rents based on households earning up to 65 percent of the AMI. In addition, rents are adjusted on the basis of unit size.

Long-Term Affordability Restrictions

All affordable units created prior to March 1998 were subject to a control period of 50 years. However, when the county amended the ordinance in April 1998, the majority of the first-time homebuyers converted to the new 15-year control period. The control period for for-sale units created between April 1998 and February 2006 is 15 years, and the period for rental units is 20 years, with a buyout provision after 10 years. All units created since March 2006 are controlled for 30 years.

The program provides for shared equity in for-sale units by the owner and the county when the units are sold. If a unit is sold during the control period, it stays in the county's pool of affordable units and is resold to another eligible buyer. If the control period has expired, half of the difference between the purchase price and the sales price (as may be adjusted) goes to the Fairfax County Housing Trust Fund.

The units purchased by the FCRHA are placed into the county's Magnet Housing program and the FCRP programs and will remain as affordable units.

In addition to the county's ADU program, a significant number of units throughout the county that the FCRHA owns and operates are part of the federal public housing program.

Cost Offsets

The zoning ordinance currently provides for a sliding scale of density bonuses to remunerate developers for the provision of ADUs. The builders of single-family detached, single-family attached, and low-rise multifamily developments are required to provide 12.5 percent of the units as ADUs in return for a 20-percent bonus. The builders of midrise multifamily developments with at least 50-percent surface parking are required to provide 6.25 percent of the units as ADUs, with a bonus of 17 percent. In midrise multifamily developments where the parking is mostly structured, the developer is required to provide 5 percent of the units as ADUs in exchange for a 17 percent bonus.

Subordinate Financing and Down-Payment Assistance

The county does not arrange for subordinate financing for ADU homebuyers. First-time homebuyers have been able to access first-trust mortgages through the Virginia Development and Housing authority when funds have been available. Down-payment and closing-cost assistance has also been provided to homebuyers when funds have been available. For new developments, the control price includes a contribution by the builder of up to three percent of the sales price, which goes toward closing costs.

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Irvine, California Overview

Irvine was one of the early adopters of an IZ ordinance. The ordinance resulted from a lawsuit in the 1970s alleging that new office development would create a severe jobs-housing imbalance, especially for moderate-income households (Jacobus and Brown, 2007). However, the ordinance had no resale controls, and few of the 1,600 units created have remained affordable (Calavita and Grimes, 1998).

In 2003, Irvine adopted the current version of its affordable housing requirements (Brunick et al., 2004), which has some stricter requirements than the original ordinance, such as a 30-year affordability restriction. The current ordinance is mandatory for all newly constructed developments in Irvine having 50 or more units (Irvine Zoning Ordinance, 2.3.2). This requirement produced 183 affordable units between 2003 and 2010 (Mullay, 2011; City of Irvine, Finding Affordable Housing, 2011), the vast majority of which (93 percent) are for rent; the other units are for sale. Individual property managers, not the City of Irvine, administer the rental-unit affordability restrictions.

Applicability and Set-Aside Provisions

Irvine requires that at least 15 percent of units in all developments with more than 50 units be made affordable. Developments with fewer than 50 units are allowed to use alternative means (described below) to fulfill their affordable housing obligations (Irvine Zoning Ordinance, 2.3.2). If developers of 50-unit projects cannot assemble sufficient financing—some of which may be provided by the city—they are also allowed to use alternative means to fulfill their commitments (2.3.3.C). Other exceptions include developments in certain areas of the city (e.g., where the terrain is hilly, which raises development costs), developments with proposed downzoning, and areas with less than 25 percent developable land (and that also have no approved affordable housing plan and are zoned at lower densities) (2.3.5.B.2).

Alternative means of compliance with the zoning ordinance, known as the "menu option alternatives," include converting market-rate units or extending existing affordable units, inlieu fees, transferring existing units to a nonprofit housing agency, transferring off-site credits for affordable units (i.e., a developer can provide more than the minimum units at one site and count those against another site), alternative housing (such as special-needs housing, singleroom occupancy, or shelters), and land dedication for affordable housing (2.3.5.B.3). The perunit in-lieu fee is roughly 11 percent of the average value of the land needed for one affordable unit (the value of an acre of land divided by the average density of affordable housing). The 11 percent assumes that nine market-rate units support one affordable unit. Currently, the fee is about $16,700 per unit (City of Irvine, "In-Lieu Fee for Affordable Housing," undated).

Developers can fulfill their affordable housing requirements by trading credits between building sites. Credits are not one-to-one; they are granted in a series of categories based on income levels, unit size, and rental versus for-sale. Credits are kept separate across income levels (details are given in the section of the ordinance on Eligibility Rules). For example, 1.4 credits are granted in the income level II and III categories for three-bedroom rental units, while 5.12 income level I and II credits are granted for four-bedroom units sold to eligible level I buyers (2.3.6).

Eligibility

A minimum of 15 percent of units must be affordable at a mix of income levels, as defined in the Housing Element of the General Plan and shown in the following table.

Targeted Income Bracket	Assigned Tier Number	Percent of AMI	Annual Income for a TwoPerson Household ($)
Extremely low income	I	0–30	0–20,460
Very low income	II	31–50	20,460–34,100

Low income	III	51–80	34,100–54,560
Moderate income	IV	81–120	54,560–81,840

SOURCE: Housing Element, p. C-33.

Of the 15 percent, 5 percent must be affordable as rental or for-sale units to income levels I and II, 5 percent to level III, and 5 percent to level IV. As an alternative, 10 percent of the units can be affordable at the 60 percent of AMI level, and the remaining 5 percent can be available to households at income level IV. The Planning Commission can also accept different ratios if they meet the city's general goals.

Long-Term Affordability Restrictions

Newly built units are required to remain affordable for 30 years. The City of Irvine enforces this through regulatory agreements and covenants (Mullay, 2011), which must be specified in the developer's affordable housing plan (2.3.3.B). For-sale units have a restrictive covenant that runs with the land. Rental affordability is enforced through annual monitoring and annual compliance reports made by the individual property managers (2.3.8).

Units maintained by the Irvine Land Trust have a 99-year ground lease (Irvine Community Land Trust, undated).

Cost Offsets

Developers must submit a written request to the city for financial and processing incentives to cover the cost of providing affordable homes (2.3.3.C). The incentives include density bonuses, which are negotiated with the developer based on a financial pro forma report showing the financial impacts of providing affordable units (2.3.10.D). Other incentives include marketing of for-sale units, financial assistance for excess affordable units, and reductions in overall inclusionary requirements if a large number of lower-income units are provided (City of Irvine, "IZO Fact Sheet," undated). They also include development-fee waivers and HUD funds
(Sec. 2.3.7).

Subordinate Financing and Down-Payment Assistance

Subordinate financing is provided to homebuyers through the Irvine Community Land Trust, but not through the city (Mullay, 2011). Down-payment assistance is available through several nonprofit groups and the Irvine Community Land Trust (City of Irvine, "Finding Affordable Housing," 2011). The City of Irvine previously offered down-payment assistance but does not do so presently and is not expected to begin again (City of Irvine, First Time Homebuyers, web site, 2011).

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Montgomery County, Maryland

Overview

Montgomery County operates the oldest continuously running and largest IZ program in the United States. In 1973, the Montgomery County Council adopted a Moderately Priced Dwelling Unit (MPDU) ordinance, one of the first such ordinances in the country. From 1974 through 2010, the MPDU program created 13,133 units of affordable housing (Montgomery County, undated). Of these, approximately 70 percent were for sale and the rest were rentals.

A singular aspect of the program is that the county's public housing authority and certain nonprofit entities have the first right to purchase or master-lease up to 40 percent of the IZ homes in a subdivision (Ordinance, 25A-8 (b)). (The housing authority may purchase or master-lease up to one-third of the homes for itself.) This has resulted in income tiers such that the IZ units are priced or rented at levels affordable by moderate-income households through the general program, and some recipients receive layers of subsidy (such as through the Housing Choice Voucher program) that provide affordability for very low-income households.

The Department of Housing and Community Affairs (DHCA) is primarily responsible for the administration of the MPDU program. It certifies eligible purchasers and monitors income certification by rental complexes, conducts mandatory homeowner training classes, maintains a waiting list, hosts random-selection drawings for certified MPDU participants to enter online to purchase a home in a given subdivision, and monitors the program. The public housing authority performs these functions for the approximately 1,500 IZ homes it has purchased, and the nonprofit entities do the same for theirs.

Applicability and Set-Aside Provisions

The MPDU ordinance requires that all new subdivisions in Montgomery County with 20 or more dwelling units set aside between 12.5 percent and 15 percent of them (whether rental or for-sale) as affordable. The actual percentage depends on the density bonus provided; with no density bonus, the minimum affordable percentage is still 12.5 percent. At the maximum, if a developer makes 15 percent of the units affordable, the applicable density bonus can reach 22 percent (Ordinance, 25A-5 (c)). The original 1973 ordinance covered all developments with more than 50 units. In 2005, the threshold was changed to 20 units.

The affordable units must be provided at certain ratios. For example, in multifamily projects, the ratio of affordable studio and one-bedroom units to larger units is required to be the same as the ratio of the market-rate units. In addition, for single-family-house developments, all affordable units must have at least three bedrooms (Ordinance, 25A-5(b)).

The county does allow land donation to fulfill the affordable unit requirements (Ordinance, 25A-5 (f)). In-lieu fees can also be approved if the facilities provided at the site or environmental remediation are so expensive as to make the affordable units unaffordable at the specified rates (Ordinance, 25A-5A). Off-site units can be approved for high-rise buildings, provided they are built in the same planning policy area of Montgomery County (Ordinance, 25A-5B).

Eligibility

The maximum incomes a participant can earn and still qualify for the MPDU ownership and rental programs are 70 percent and 65 percent of the AMI, respectively (the caps are adjusted by household size). The 2011 minimum income was set at $30,000 for renters and $35,000 for owners, regardless of household size (Montgomery County, undated). MPDU purchasers must not have owned a home within the last 5 years.

The prices of for-sale units are based on a formula established by the county that takes into consideration the cost of lot development, construction costs per square foot, other extras that may be provided, and various fees. If the construction costs are too high for the units to be affordable by households with specified income levels, the builders may use various approved techniques to make them less expensive. For example, the units can be smaller, have lessexpensive interior finishes, be attached even when the market-rate units are detached, and be partially unfinished (Montgomery County, undated).

While the sale prices for homes vary, they generally range from $115,000 to $200,000, and all eligible MPDU purchasers must obtain a prequalification letter from a lender for a mortgage of at least $120,000. Garden-apartment rental units must be affordable by households that have 65 percent of the AMI for the Washington, D.C., Metropolitan Statistical Area (MSA) that includes Montgomery County, and high-rise rental units must be affordable by households with 70 percent of the AMI. The current AMI for a four-person household is $103,500; 65 percent of the AMI is $67,500, and 70 percent of the AMI is $72,500. Unit affordability is based on 25 percent of income (not including utilities), and this ratio is used by the county to set allowable rents (Executive Regulation, 25A.00.05.2).

Long-Term Affordability Restrictions

The control period for MPDUs first sold or rented after 2005 is 30 years for ownership units and 99 years for rentals (Ordinance, 25A-3 (g)). The number of years for price restrictions has increased from former iterations of the MPDU policy. If an ownership MPDU is sold at any time within the control period, the control period is extended such that the 30-year period starts anew. Units can be sold only at prices established by the county, which are adjusted based on the CPI for the Washington, D.C., region. When units are put up for sale during the control period, the county has a 60-day right-of-first-refusal period (25A-9(b)). If the owner sells after the control period ends, the seller has to pay into the county's affordable housing fund one-half of the excess proceeds, defined as the sales price minus the purchase price, with adjustments for inflation, home improvements, and closing costs (Ordinance, 25A-9(c)). If after 60 days of marketing, the home has not sold to DHCA or to an eligible certificate holder on the random selection drawing list, it may be marketed to the general public.

Cost Offsets

In addition to density bonuses, developers can request expedited processing and waivers of some development fees. As part of the development process, the developer must identify all land under its control in the county, to ensure that the MPDU set-aside requirement is not circumvented by breaking projects into 19-unit components in multiple, non-contiguous locations (Montgomery County, undated).

Subordinate Financing and Down-Payment Assistance

Subordinate financing is not provided to homebuyers through the MPDU program. Downpayment assistance is provided by nonprofits, but not by the county (Montgomery County, undated).

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Santa Fe, New Mexico

Overview

Since the inception of its IZ affordable housing program in the late 1990s, Santa Fe has created 593 affordable homes. The current ordinance, the Santa Fe Homes Program (SFHP), was adopted in late 2005. Prior to 2005, the city ran the Housing Opportunity Program, which mandated inclusionary housing. The program was changed primarily to simplify the structure—the Housing Opportunity Program allowed four different ways to meet the affordability requirements—and to correct for the need for greater oversight over the creation and ongoing administration of housing units (Dailey, 2010b).

All of the 593 homes are for sale, although rentals are permissible in the SFHP. The ordinance includes both conventional housing units and manufactured homes (both for sale and rental). While Santa Fe County has its own IZ program for areas outside the city of Santa Fe, the SFHP produces units only within the city (Geisler, 2011).

Creation of the units is overseen by the city's Office of Affordable Housing, with support from the Land Use Department in cases that involve density bonuses or other development incentives. Program administration is carried out by two nonprofit organizations, Homewise and the Housing Trust. These organizations certify purchasers and renters, market affordable housing, and conduct homebuyer training courses (Dailey, 2010b). A nonprofit that is involved in the development of IZ units will generally administer them afterward, but there is no hard and fast rule about which nonprofit will be involved (Geisler, 2011).

Applicability and Set-Aside Provisions

All developments with ten or more residential units are subject to the SFHP ordinance. The regulation covers a wide variety of development types, including new development, annexation, rezoning, subdivision plats, increases in density, conversions from rental to ownership, and vacation timeshares (Resolution 2010-49, Admin Procedures, 5.1).

In ownership projects, 30 percent of the units must be affordable. However, to provide economic stimulus, this provision has been temporarily reduced to 20 percent. The 20-percent requirement is in effect from June 2011 through June 2014. For rental units, the requirement is 15 percent (unchanged) (SFHP fact sheet, 2011).

If applying these percentages results in a fraction, the whole number of units is required and the remainder is accounted for with a "fractional unit fee." The fraction remaining is multiplied by 50 percent of the price of a three-bedroom unit for which eligibility requires a household income of 50 percent of the AMI or less. The fractional unit fees are deposited in a housing trust fund (Admin Procedures, 8.9).

Units are subject to minimum-square-footage requirements ranging from 750 square feet for a studio to 1,250 square feet for a four-bedroom unit, as well as a minimum number of bathrooms. Exceptions are made for rental conversions or in cases where the market-rate homes are smaller than these minimums (Admin Procedures, 8.10.1). At least 25 percent of the total units must be four-bedroom and 50 percent must be three-bedroom, but the city can grant exceptions based on demand (Admin Procedures, 8.11).

Developers can apply for a waiver from the requirements if other means would also fulfill the spirit of the ordinance. Such other means include off-site construction, dedication of land on which more units could be constructed, and in-lieu cash payments. In-lieu cash payments vary with the city quadrant; they currently range from $160,000 per unit in the southwest to

$240,000 in the northeast and southeast (Admin Procedures, 11). However, the in-lieu provisions are rarely used, and to date no other waivers have been granted (Dailey, 2010b).

Eligibility

Affordability is defined as income ranges in four tiers, based on the HUD AMI for the Santa Fe MSA ($66,900 in 2010). If the HUD AMI and the HUD Program Income Limits are not the same, the AMI will be the higher of the two (Ordinance, 6). The income ranges are shown in the table below.

Income Range	Percentage of AMI	Annual Household Income ($)
1	50 or less	33,450
2	50–65	33,450–43,485
3	65–80	43,485–53,520
4	80–100	53,520–66,900

Sales prices and rental rates for housing units and for manufactured-housing lots are updated annually, based on changes in the AMI (Admin Procedures, 8.3.1). The formulas that determine the prices can be adjusted every two years, if needed (Admin Procedures, 8.3.3). Prices were adjusted in 2010 based on the decrease in mortgage interest rates (Dailey, 2010b).

Ownership Units. One-third of the 30 percent of affordable units under the program are affordable at income ranges 2, 3, and 4 (10 percent each) (Admin Procedures, 8.8). With the temporary reduction to 20 percent, half are affordable to income range 2 and half are affordable to income range 3 (SFHP Information Sheet, undated).

Eligibility within these income ranges is determined by income as well as liquid assets. If a prospective homebuyer has more than $25,000 in cash or cash equivalents (including stocks, bonds, or real estate, but not retirement accounts or personal property), 20 percent of the amount exceeding $25,000 is counted as income (10 percent for homebuyers over 65 who are purchasing manufactured-home lots) (Admin Procedures, 8.1). Minimum household sizes also apply to housing units—three-bedroom units can be sold or rented only to households of two persons or more (Admin Procedures, 8.1 and 9.1). No household size requirements apply to manufactured homes.

Homebuyer training courses are required for eligibility (Admin Procedures, 6). Certain types of employees—primarily in public safety, education, and nursing—can be declared eligible to purchase houses that are affordable to income range 4 if their income is between 100 and 120 percent of the AMI (Admin Procedures, 8.1.5). Until 2010, purchasers had to be firsttime homebuyers, but this requirement was eliminated in the recent changes to the program. However, homebuyers cannot own more than one house (SFHP fact sheet, undated).

In 2010, the price of housing units ranged from $84,750 (a studio in income range 1) to $210,250 (a four-bedroom unit in income range 4) (Admin Procedures, 8.2.1). Manufactured homes ranged from $29,563 (income range 2) to $47,313 (income range 4) (Admin Procedures, 8.7.2). Prices must be adjusted downward if the development requires additional monthly fees (Admin Procedures, 8.2.2). Prices can also be adjusted upward if buyers request upgraded features or energy-efficient features (Admin Procedures, 8.2.5 and 8.2.6).

Rental Units. One-third of the 15 percent of affordable rental units are affordable at income ranges 1, 2, and 3 (5 percent each) (Admin Procedures, 8.8). In 2010, rental rates ranged from $346/month (for a studio or one-bedroom in income range 1) to $1,073 (for a four-bedroom unit in income range 3). The units must include utilities, and renters cannot be required to pay additional fees (Admin Procedures, 9.2). Minimum unit sizes are the same as those for ownership housing (Admin Procedures, 9.10.1). Rents for manufactured homes range from $134/month (income range 1) to $290/month (income range 3) (Admin Procedures,
9.7.2). **Long-Term Affordability**

Restrictions

To retain long-term affordability of the IZ homes, the city or its agent has a right of first refusal and a requirement that the seller share a portion of the appreciation on the home (if any) to the liens it provides to purchasers. When a purchaser chooses to sell the home, which triggers the requirement to repay the loan, the city or its agents have the right of first refusal to repurchase the home for a sales price set by a formula (Ordinance, Section 12.2). In most cases, the city facilitates the sale to another eligible buyer, giving the seller the allowable share of the profit. The city also retains a second mortgage and a shared-appreciation requirement. However, in some circumstances, the city may allow the unit to convert to the market rate. Generally, this would occur if the unit had appreciated in value so much that it would be difficult for the city to absorb the cost of providing a large lien for the next buyer (Dailey, 2010b).

Rental units must remain affordable for 20 years (Admin Procedures, 9-16).

Cost Offsets

Developers can apply for impact-fee waivers and density bonuses on affordable units, unless the units are outside the city limits and the developers are requesting extension of utilities. The maximum density bonus is 15 percent more than the number of units allowed in the zoning district, rounded to the nearest unit (Admin Procedures, 13.2). Development, building- permit, and impact fees can be waived or reduced by the Office of Affordable Housing (Admin Procedures, 13.1).

Subordinate Financing and Down-Payment Assistance

To retain ownership units and lots as affordable, the city holds a second mortgage lien on IZ for-sale homes. The amount of the lien is the difference between the initial sales price and 95 percent of the appraised value. The difference between the lien and the sales price divided by the amount of the lien results in the city's share of the appreciation if the unit is sold at a higher price. Owners can deduct the cost of improvements from the appreciation (Admin Procedures, 12.2).

Down-payment assistance is provided by nonprofits but not by the city. However, the city brokers many other types of financial assistance for homebuyers, including cash subsidies, amortizing loans, and reverse mortgages.

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Santa Monica, California

Overview

Since 1990, Santa Monica has operated an IZ program called the Affordable Housing Production Program. As of the end of fiscal year 2009, the program had created 862 units of affordable housing (Khajadourian, 2010), which is 27 percent of all units created in the city during that period (Agle, 2010). A distinguishing feature of the program is that fewer than a half-dozen are ownership units; the vast majority are rental units (Khajadourian, 2011). At least half of the affordable units were built on-site, but information was not available on the locations of all units.

Once created, affordable units are managed by the property owner, who is required to certify applicants for income eligibility and submit annual reports to the Santa Monica Housing Division, which monitors compliance (Khajadourian, 2011).

Applicability and Set-Aside Provisions

Since 2006, Santa Monica's affordable housing program has applied to all newly constructed condominiums with two or more units and to all newly constructed apartment buildings. The percentage of units that must be set aside and the affordability requirements for those units depend on the size and type of the project. The set-asides are more strict for ownership units, whereas developers of apartment buildings have more ways to comply with the law.

Ownership Units. The affordability restrictions apply only to newly constructed condominiums of at least two units that are built in multifamily zones. Condominiums with only two or three units can pay an affordable housing fee (currently $31.69 per square foot); 4- to 15-unit projects must sell 20 percent of the units at established affordable prices; and projects with more than 16 units must set aside 25 percent of the units to be sold at those prices. The affordable units may be created either on- or off-site, but the number of units provided off-site must be 25 percent greater than the number provided on-site (City of Santa Monica, 2010). If the formula results in a fractional number under 0.75, the developer may pay into an affordable housing fund at a current rate of $284,802 per unit instead of building that fractional unit. This rate can be adjusted annually based on changes in construction and land costs (City of Santa Monica, 2009).

Rental Units. The set of options for complying with the ordinance for rental units is larger than that for condominiums. However, the ordinance applies to all newly constructed apartment buildings regardless of zoning. Units can be provided on- or off-site, or developers can pay an in-lieu fee or donate land. If units are provided, whether on- or off-site, 30 percent must be affordable. However, the ordinance factors in more-stringent criteria for most off-site options to create an incentive for developers to provide affordable units on-site. Rental units must be two-bedroom unless at least 95 percent of the project consists of one-bedroom or studio apartments (City of Santa Monica, undated).

If rental developers opt to pay an in-lieu fee, the calculation depends on the zoning district. For multifamily residential districts, the fee is the base fee ($27.14 per square foot) times the floor area of the residential portion. On vacant parcels in those districts, the fee is 75 percent of the multifamily-district calculation. For projects in industrial or commercial districts, the fee is half of the calculation. The base fee was set in 2006 and can be adjusted every five years (City of Santa Monica, undated).

Eligibility

For condominiums, affordability provisions are capped at prices affordable by families earning 100 percent of the AMI for ownership units. In 2010, the Santa Monica AMI for a family of four was $82,800.[19] The IZ affordable units can be sold only at prices that result in the owner's total monthly housing costs (principal and interest payments, taxes, insurance, and condominium fees) being between $2,163 and $2,491 for a two-bedroom home (City of Santa Monica, undated).

For-sale IZ homes are set at prices affordable by very low up to moderate-income households (100 percent of AMI), whereas rent limits are established to reach very low and lowincome households (i.e., those with up to 60 percent of the AMI).[20] The rent limits are set according to the number of bedrooms and can equal no more than one-third of a family's income. Developers can choose to rent at least 10 percent of the apartments to very low-income households (charging $983/month for a two-bedroom apartment to those who earn no more than 50 percent of the AMI) or at least 20 percent of the apartments to low-income households (charging $1,180/month to households that earn no more than 60 percent of the AMI) (City of Santa Monica, undated).

Long-Term Affordability Restrictions

Regardless of whether the IZ home is for sale or for rent, it must remain affordable for 55 years. The developer is responsible for retaining the units as affordable for this period of time (City of Santa Monica, 2008, 9.56.130). For the ownership units, the deed restriction is applied to the unit, but in a few cases, only the original occupant has the deed restriction. Owners of affordable rental units report annually to the city on the income certification of their tenants (Khajadourian, 2011).

Cost Offsets

Compliance with the inclusionary housing code on- or off-site (depending on the tenure of the homes) provides developers with an automatic qualification for a density bonus. The amount of the allowable bonus varies depending on the percentage of units made affordable at various levels. For very low (50 percent of the AMI) and low-income units (60 percent of the AMI), the bonus ranges from a 20- to 35-percent increase in the allowable number of units. For moderate-income units (100 percent of the AMI), the bonus ranges from a 5- to 35-percent increase in the number of units. Developers can also receive a density bonus for donating land, but the combined density bonus is capped at 35 percent (City of Santa Monica Density Bonus Table, 2007).

Developers with density-bonus projects can request additional incentives, including reductions in the number of parking spaces, which vary with the size of the units; deviations from side- and back-yard setbacks and parcel-coverage requirements; FAR discounts; and elimination of restrictions on the number of stories and private open space (within the allowable FAR) (City of Santa Monica, 2008).

Subordinate Financing and Down-Payment Assistance

Neither subordinate financing nor down-payment assistance is provided to homebuyers or renters.

[19] Generally, the AMI is calculated for an MSA, and Santa Monica is part of the Los Angeles MSA. However, the AMI for the Los Angeles MSA is $68,200, so Santa Monica has a considerably higher baseline.

[20] The exception is rental buildings in non-residential zones, where all the units must have rent limits and must serve households earning no more than 100 percent of the AMI.

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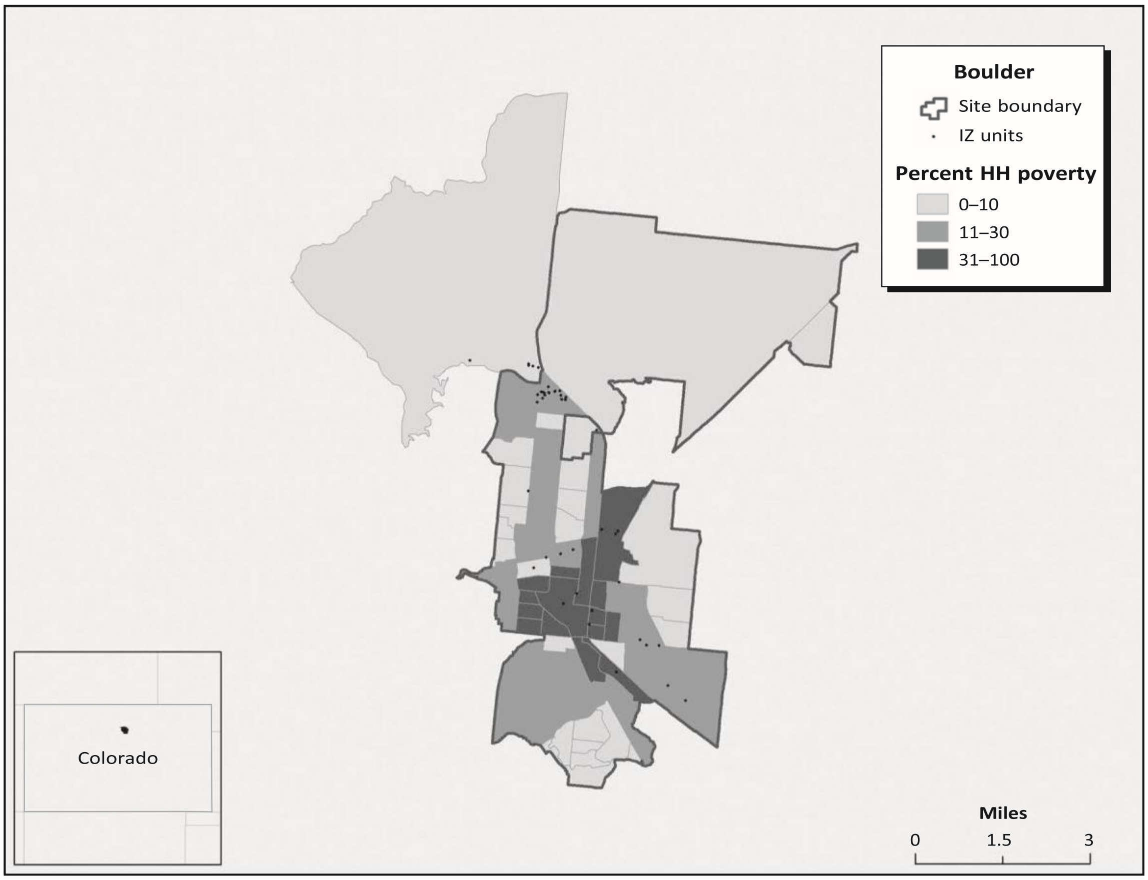
APPENDIX C

Maps of the 11 Jurisdictions' Inclusionary Zoning Units

Figure C.1
Boulder, Colorado: Poverty Level of Census Tracts and Locations of IZ Units

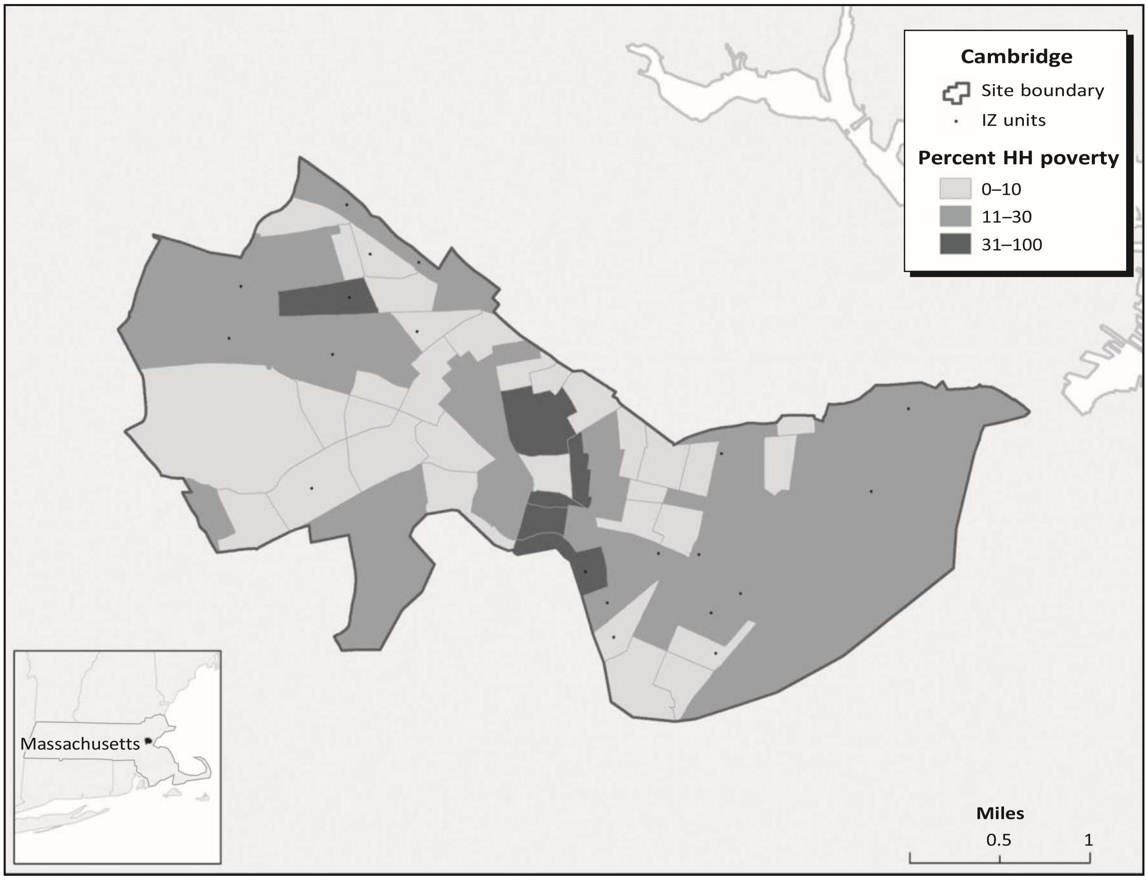


RAND *TR1231-C.1*

Figure C.2
Burlington, Vermont: Poverty Level of Census Tracts and Locations of IZ Units

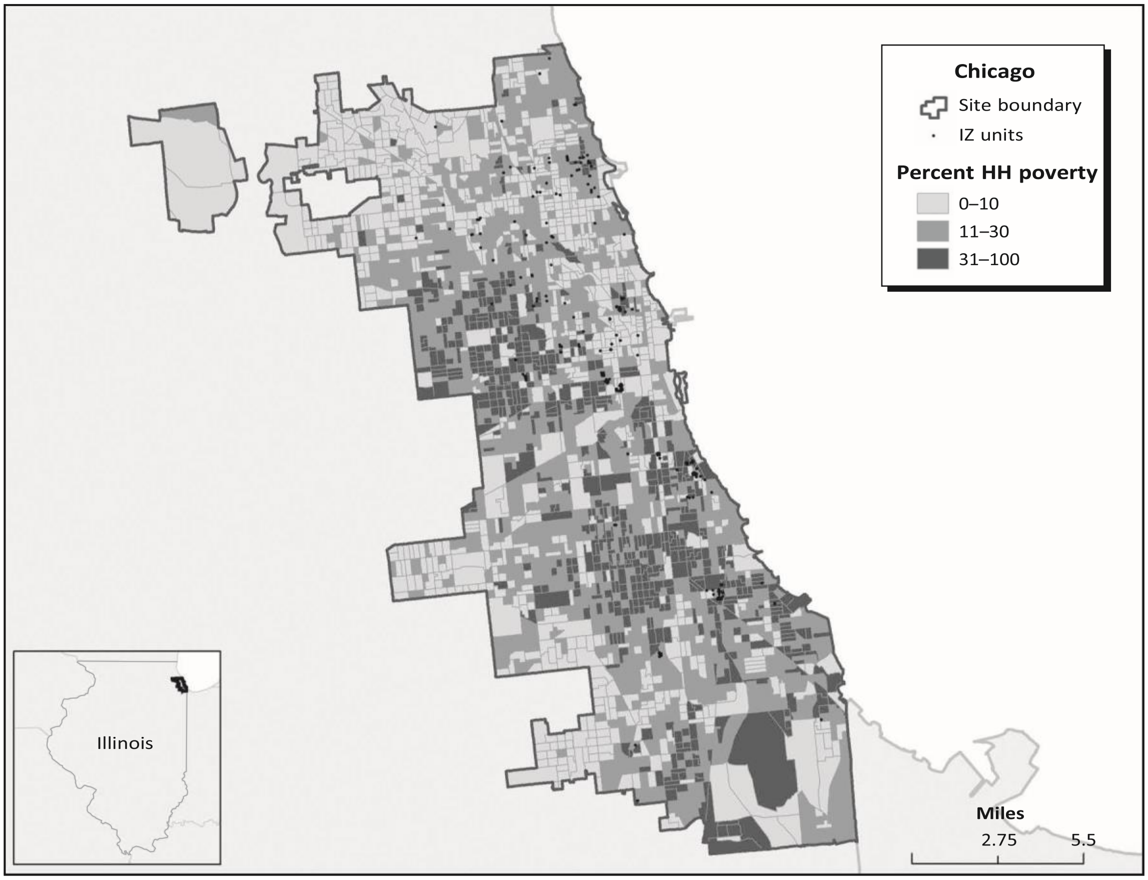
TR1231-C.2

Figure C.3
Cambridge, Massachusetts: Poverty Level of Census Tracts and Locations of IZ Units



TR1231-C.3

Figure C.4
Chicago, Illinois: Poverty Level of Census Tracts and Locations of IZ Units

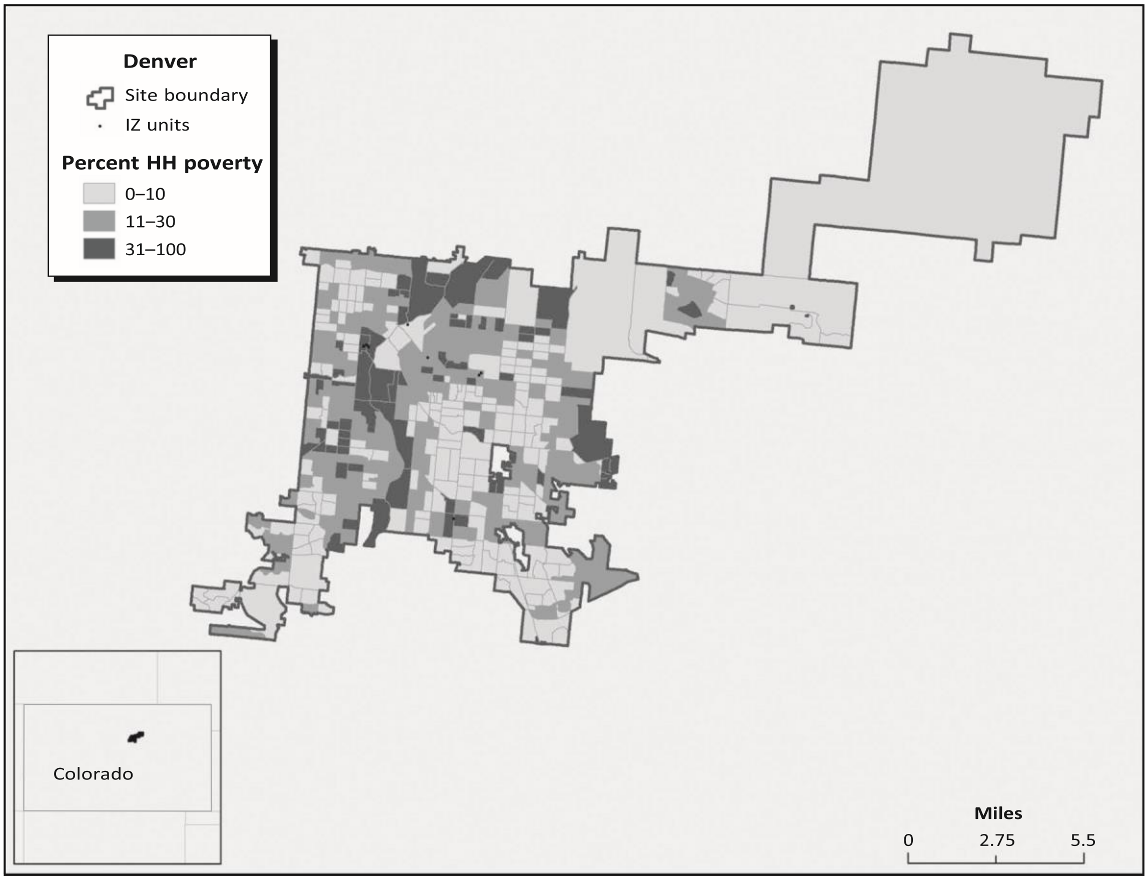

Chicago
Site boundary
IZ units
Percent HH poverty
0–10
11–30
31–100
Illinois
Miles
2.75
5.5

TR1231-C.4

Figure C.5
Davidson, North Carolina: Poverty Level of Census Tracts and Locations of IZ Units

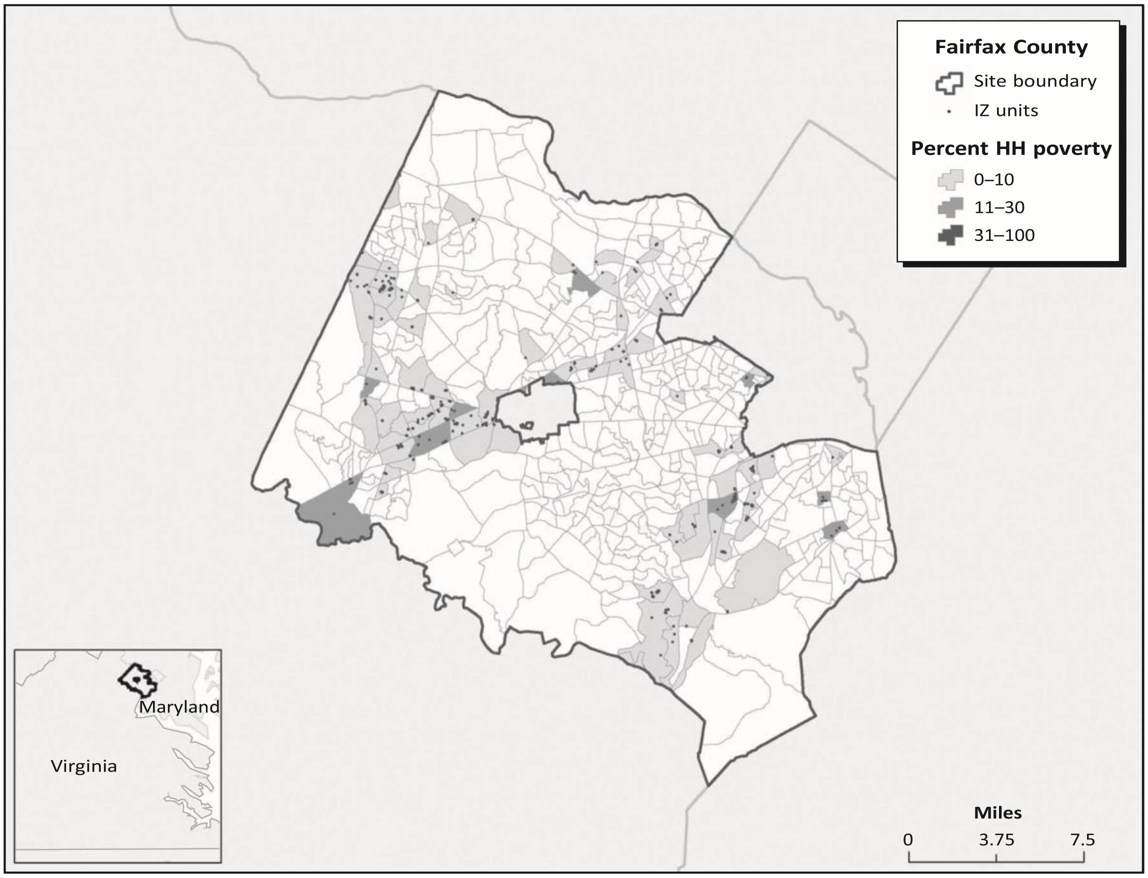
TR1231-C.5
RAND

Figure C.6
Denver, Colorado: Poverty Level of Census Tracts and Locations of IZ Units



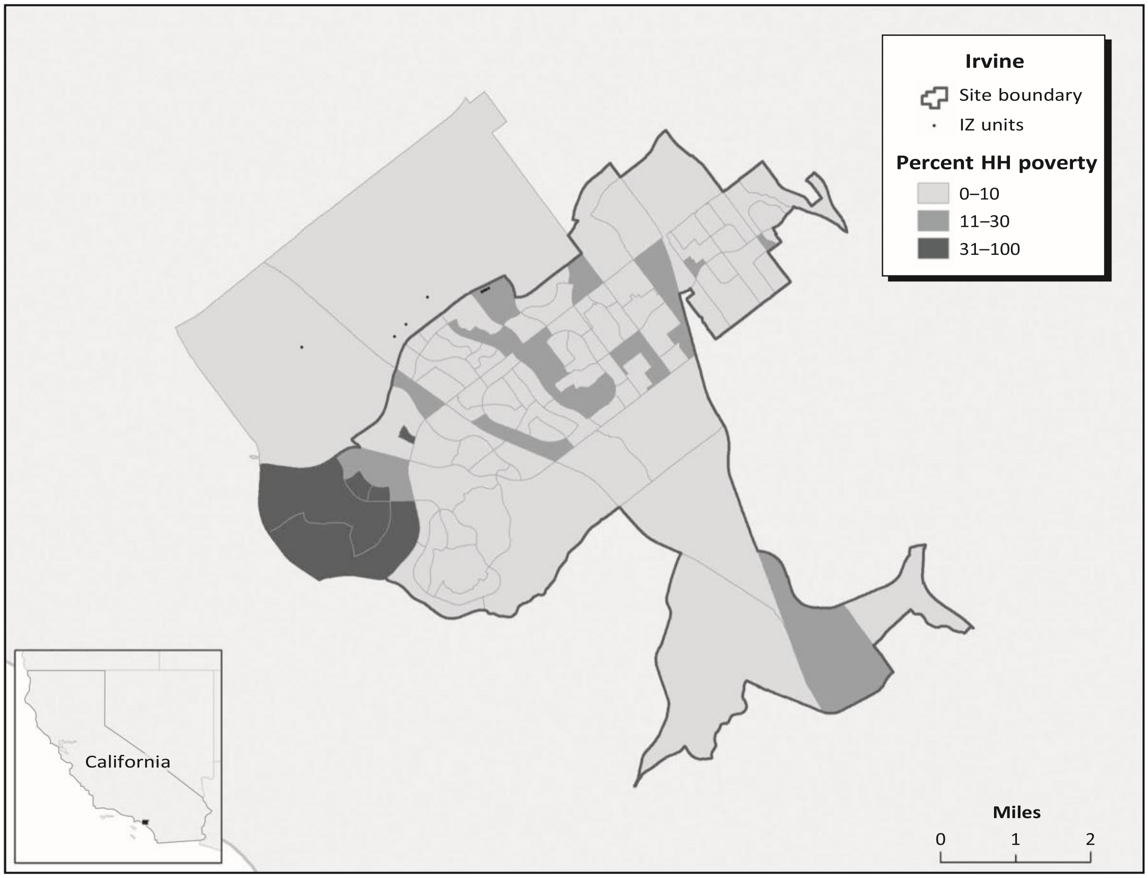
TR1231-C.6
RAND

Figure C.7
Fairfax County, Virginia: Poverty Level of Census Tracts and Locations of IZ Units



TR1231-C.7
RAND

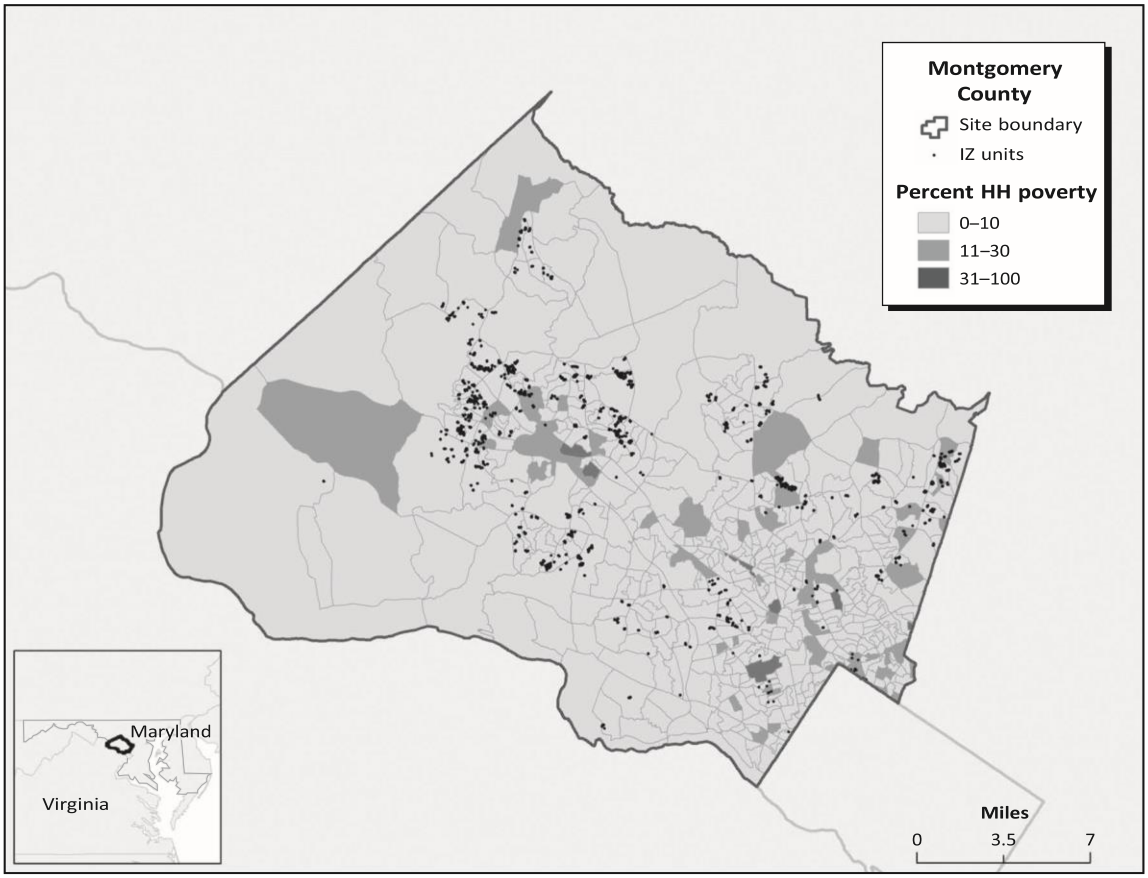
Figure C.8
Irvine, California: Poverty Level of Census Tracts and Locations of IZ Units



TR1231-C.8
RAND

200150D

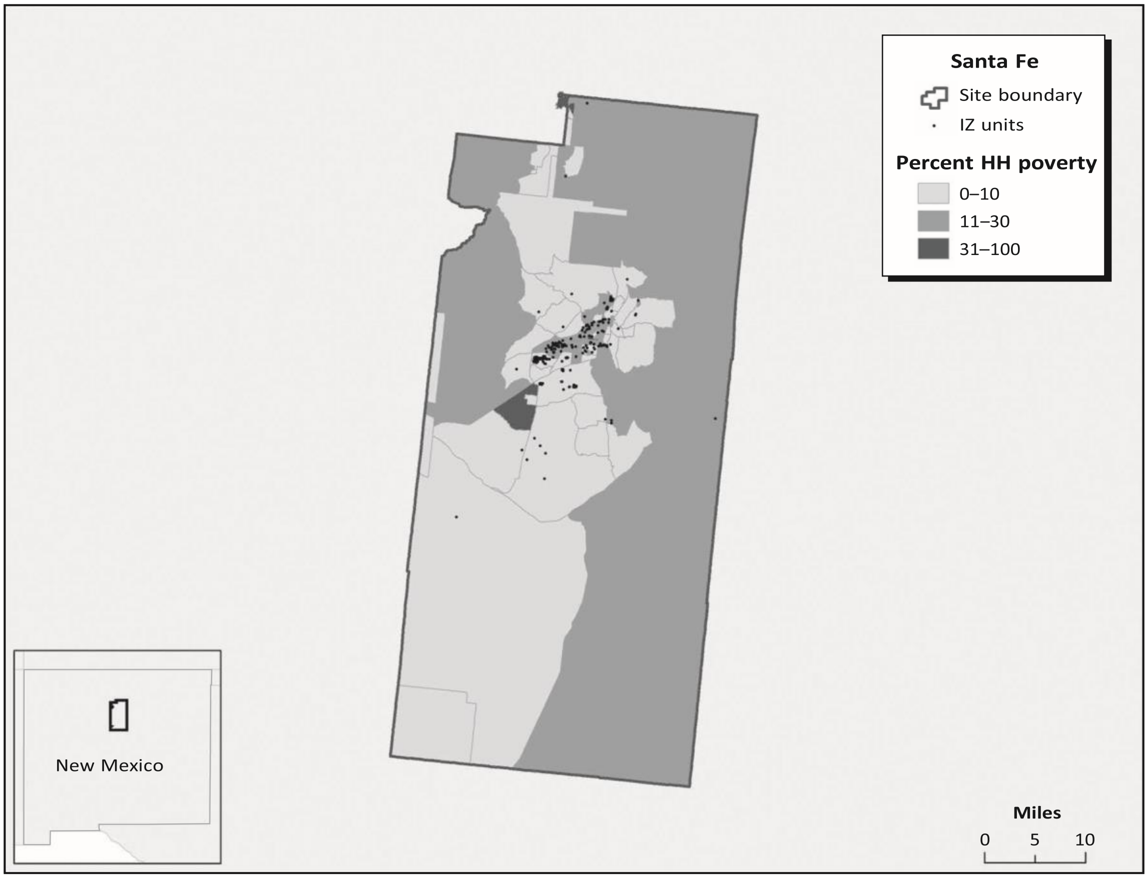
Figure C.9
Montgomery County, Maryland: Poverty Level of Census Tracts and Locations of IZ Units



TR1231-C.9

RAND

Figure C.10
Santa Fe, New Mexico: Poverty Level of Census Tracts and Locations of IZ Units



TR1231-C.10
RAND

Figure C.11
Santa Monica, California: Poverty Level of Census Tracts and Locations of IZ Units

TR1231-C.11
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Inclusionary Housing

Creating and Maintaining Equitable Communities

RICK JACOBUS POLICY FOCUS REPORT

NATIONAL COMMUNITY LAND TRUST NETWORK CORNERSTONE PARTNERSHIP LINCOLN INSTITUTE OF LAND POLICY

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POLICY FOCUS REPORT SERIES

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

ABOUT THIS REPORT

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

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Front Cover (clockwise from top left):
Inclusionary housing developments in Chapel Hill, NC; San Francisco, CA; Chapel Hill, NC; and Carrboro, NC.
San Francisco photo is courtesy of Tenderloin Neighborhood Development Corporation; all North Carolina photos are courtesy of Community Home Trust.

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

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Executive Summary

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

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

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

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

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

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

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

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

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

Recommendations address the following questions:

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

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

CHAPTER 1

An Introduction to Inclusionary Housing

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

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

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

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

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

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

Inclusion Is Possible

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

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

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

A Definition

Inclusionary housing refers to a range of local policies that tap the economic gains from rising real estate values to create affordable housing—tying the creation of homes for low- or moderate-income households to the construction of market-rate residential or commercial development. In its simplest form, an inclusionary housing program might require developers to sell or rent 10 to 30 percent of new residential units to lower-income residents. Inclusionary housing policies are sometimes referred to as "inclusionary zoning" because this type of requirement might be implemented through an area's zoning code; however, many programs impose similar requirements outside the zoning code.

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

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

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

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

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

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

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

Prevalence of Programs

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

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

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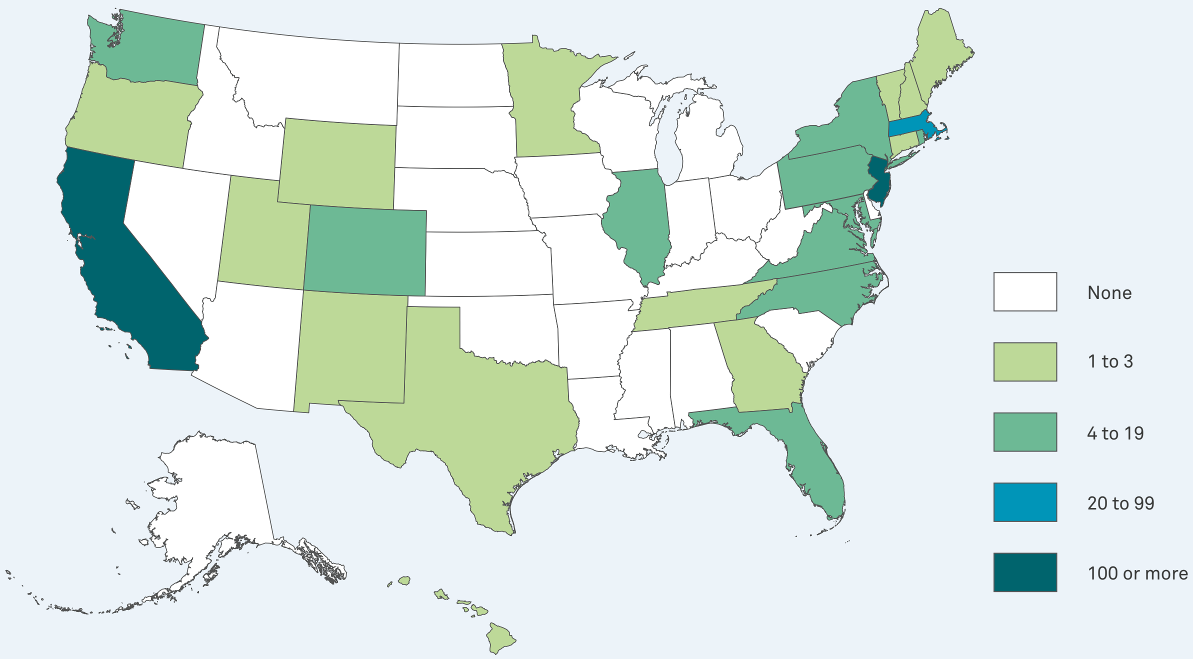
In most cities, inclusionary housing is just one tool in a suite of local policies intended to address the affordable housing challenge. A study of 13 large cities showed that nearly all those with inclusionary programs also manage the investment of federal housing funds and issue tax-exempt bonds to finance affordable housing. Most also used local tax resources to finance a housing trust fund, and many had supported land banks and community land trusts as well. About half those cities took advantage of tax increment financing, and a growing minority established tax abatement programs that exempt affordable housing projects from property taxes. While the exact mix of programs differed from one city to the next, every city employed multiple strategies (OTAK and Penninger Consulting 2014).

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

Figure 1

Concentration of Inclusionary Programs Throughout the United States



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

Untapped Potential

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

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

Faced with declining federal and state resources for affordable housing and growing populations within cities and urban cores, communities need to take full advantage of every potential tool. Inclusionary housing programs produce a modest yet steady supply of new affordable housing resources. Because these programs generally preserve long-term affordability, the pool of local inclusionary units can grow steadily into a significant share of the local housing stock. As importantly, inclusionary housing is one of the few proven strategies for locating affordable housing in asset-rich neighborhoods where residents are likely to benefit from access to quality schools, public services, and better jobs. Communities across the country are increasingly investing in the creation of new transit-oriented urban neighborhoods, and inclusionary housing policies are one of the only ways to ensure that these places develop in an equitable manner. Equitable development benefits not only lower-income households; integrated, inclusive, and diverse communities enhance the lives and outcomes of all residents.

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

CHAPTER 2

Understanding the Economics

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

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

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

Fairness

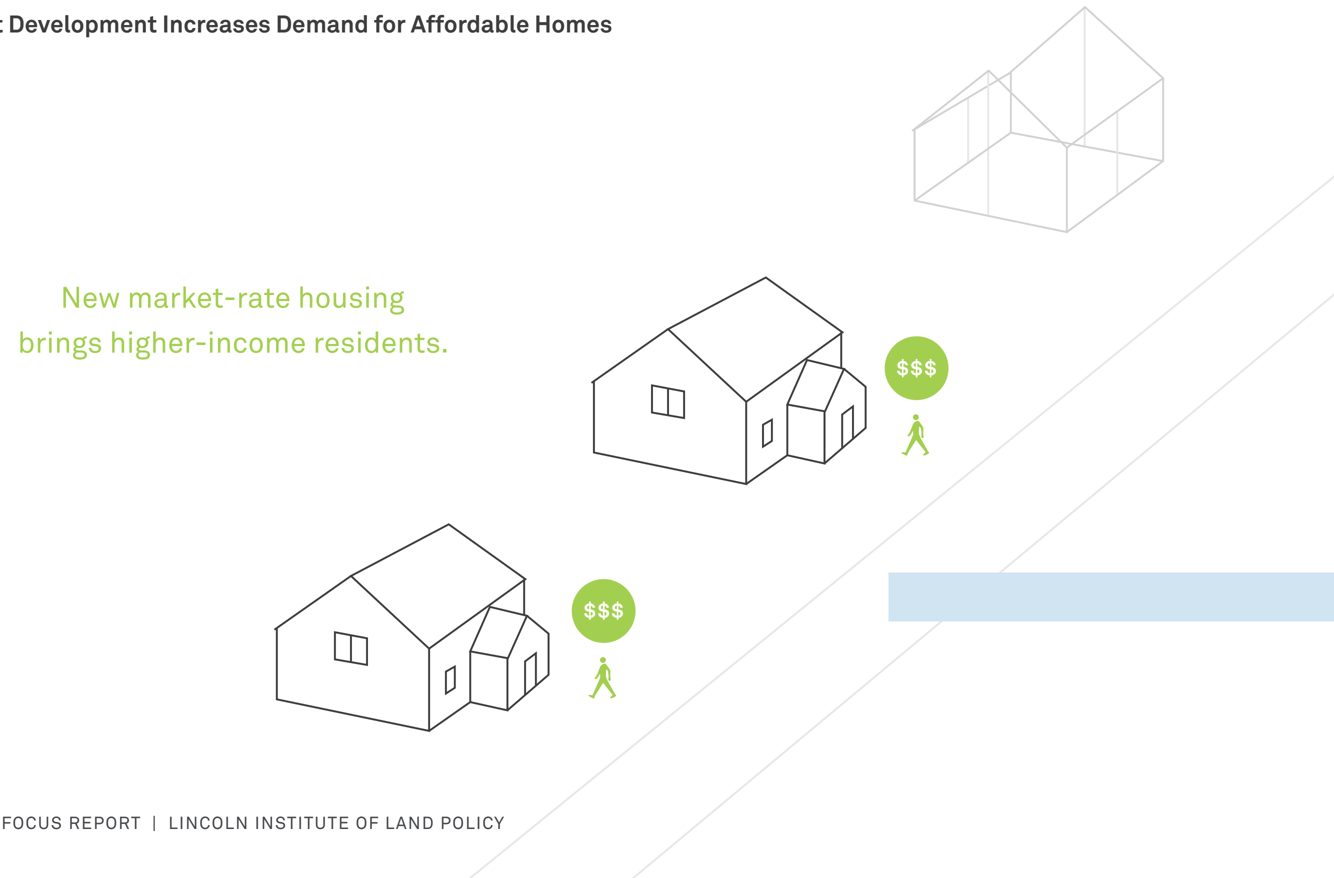
Inclusionary housing policies should not make developers responsible for resolving all the affordable housing needs within a jurisdiction. What is fair is to ask them to compensate for the economic impacts of their developments and to share a portion of the profits they make on the public's investment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

It might stand to reason that development of housing—any kind of housing—would lead to lower housing prices. In most urban areas, however, the opposite occurs. Construction of new residential real estate impacts the price or rent of existing homes in two different ways simultaneously. As the basic notion of supply and demand suggests, the addition of new units in a given market will inevitably put some downward pressure on the cost of existing units. But the larger effect tends to be upward pressure on housing costs because new homes are primarily built for higher-income residents. A 2015 study commissioned by the *Wall Street Journal* found that 82 percent of new rental housing in the United States was luxury housing (Kusisto 2015). Not only do the new units command higher rents, but also the new residents who can afford them spend money in ways that create demand for more lower-wage workers in the area. This, in turn, creates more demand for housing and ultimately raises housing costs. Figure 2 illustrates this cycle.

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

Figure 2

Market Development Increases Demand for Affordable Homes



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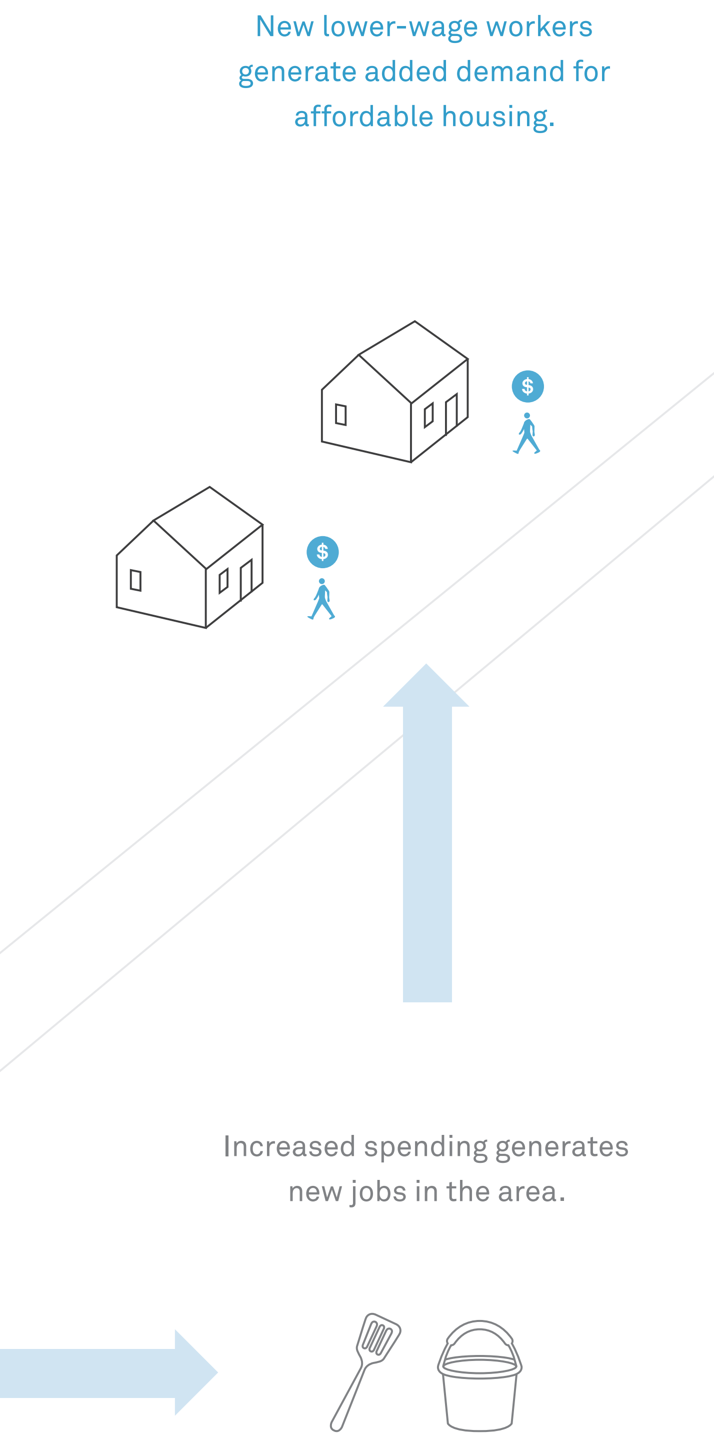


Seattle's South Lake Union, Part One

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

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

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

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

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

Absorbing the Costs

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

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

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

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

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

Impacts on New Development

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

There seems to be agreement that inclusionary programs could theoretically diminish the supply of housing and therefore increase prices, but there is no agreement about how often this happens or how significant the impact is. A study by the libertarian Reason Foundation concluded that the production rate of market-rate homes fell following the adoption of inclusionary housing policies (Powell and Stringham 2004). Basolo and Calavita (2004) critiqued this study, pointing out that jurisdictions are most likely to adopt inclusionary housing policies toward the peak of the economic cycle, weakening the argument that inclusionary housing causes production to fall. A follow-up study by researchers at the University of California, Los Angeles, carefully compared the data for communities with and without inclusionary housing in Southern California and concluded that the adoption of inclusionary policies had no impact on the overall rate of production (Mukhija et al. 2010).

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

Seattle's South Lake Union, Part Two

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

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

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

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

Offsetting Opportunity Costs

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

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

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

However, most inclusionary housing programs don’t simply impose costs; rather, they also attempt to offset those costs (at least, in part) with various incentives for the developers. The most common incentive is the right to build with increased density. When developers can build more units, the extra income can offset the costs of providing affordable units and the result will be a smaller (if any) reduction in land value.

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

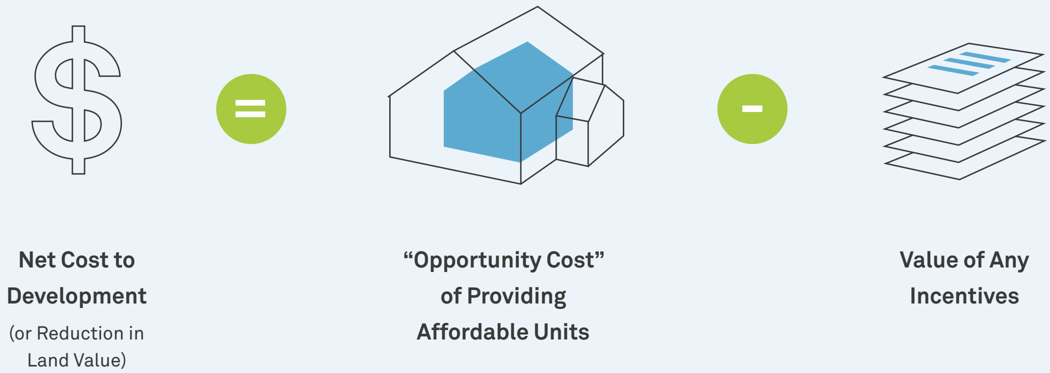
Suiting the Market

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

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

Figure 3

Market Development Increases Demand for Affordable Homes



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

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

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

Conclusion

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

CHAPTER 3

Building Support for Policy Adoption

A family gathers outside their inclusionary home in the Old Las Vegas Highway development in Santa Fe, New Mexico. *Credit: John Baker Photography*

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

Understanding Housing Needs and Tools

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

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

Appealing to the Public

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

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

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

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

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

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

Researching Market Feasibility

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

Salinas, California, is a farming town in one of America's most productive agricultural regions. But the area is also located near the California coast, sandwiched between vacation communities such as Monterey and bedroom communities in Silicon Valley. It was no surprise when, in the early 2000s, rising housing prices began displacing the town's historic working class. Salinas had adopted a relatively weak inclusionary housing ordinance in 1992, but by 2002 rapidly rising prices convinced some local policy makers that a higher requirement might be appropriate. They wondered how high they could reasonably go.

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

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

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

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

Engaging Private Developers

In some communities, private developers, homebuilders, and others in the real estate industry have been outspoken opponents of inclusionary housing programs. In other areas, these same parties appear to have accepted or become key advocates for more effective programs. A concerted effort to engage and listen to the real estate development community can make a program stronger and more effective, and it can also win support or neutralize opposition from a powerful set of stakeholders.

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

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

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

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

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

Conclusion

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

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

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CHAPTER 4

Designing a Policy

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

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

Key questions include:

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

Program Structure: Mandatory or Voluntary

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

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

Other communities offer developers a choice. Under these voluntary inclusionary housing programs (sometimes called "incentive zoning" programs), developers receive certain valuable bonuses, such as the right to build at higher density, in exchange for providing affordable homes.

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

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

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

Identifying Beneficiaries

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

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

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

Figure 4

Income Targeting in Selected Programs

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

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

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

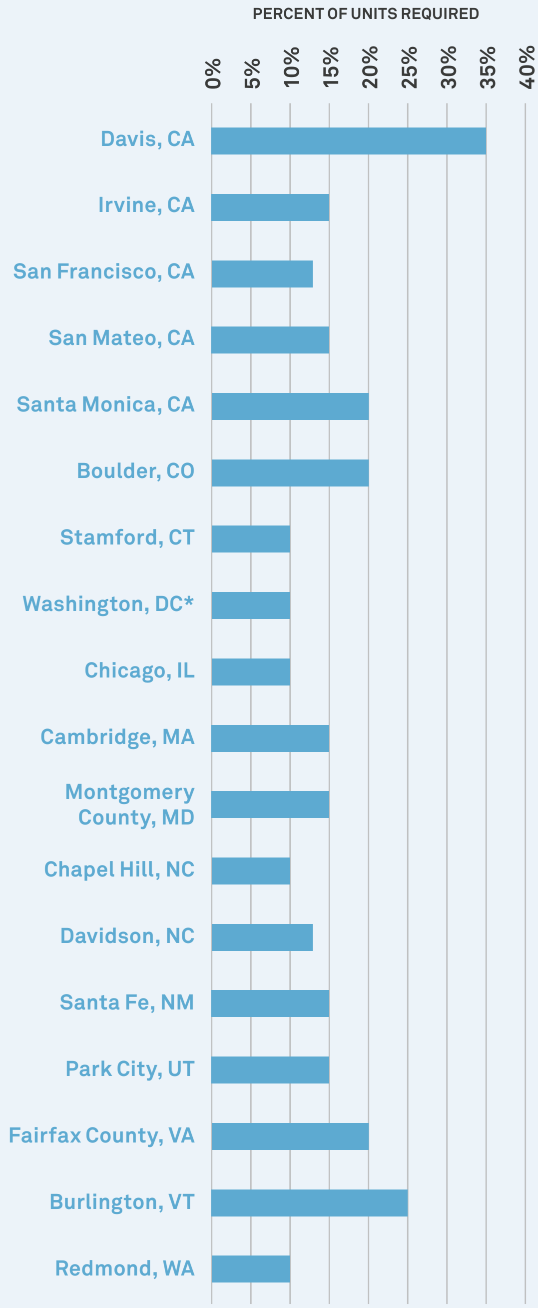
Geographic Targeting

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

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

Figure 5

Set-Aside Requirements in Selected Programs



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

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

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

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

The Set-Aside Requirement

Every inclusionary housing program should also consider how much of a city's affordable housing needs developers should be expected to meet. Typically, cities establish this basic requirement as a percentage of the units or square footage area of each development that must be set aside to be rented or sold at affordable prices on-site (figure 5).

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

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

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

In-Lieu Fees

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

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

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

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

Figure 6

Approaches to Setting the In-Lieu Fee

1 — Affordability Gap

The in-lieu fee is based on the typical difference in price between market rate and affordable units.

2 — Production Cost

The in-lieu fee is based on the average amount that the public has historically invested to actually produce each additional off-site affordable unit.

Linkage Fee Programs

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

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

To enact an affordable housing linkage fee on commercial or residential development, cities generally conduct a “nexus” study, which evaluates the extent to which new development projects contribute to the local need for affordable housing and estimates the maximum level of fees that would offset this impact of these projects.

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

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

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

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

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

CAN FEES BE MORE EFFICIENT?

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

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

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

Other cities may have a hard time matching Seattle's performance in this regard. Seattle has relatively high capacity both within its Office of Housing and among its network of nonprofits, without which lower rates of leverage would be expected. Even in Seattle, limited land in central locations is likely to make it increasingly difficult over time to continue relying exclusively on fees to achieve meaningful economic integration.

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

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

Off-Site Development

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

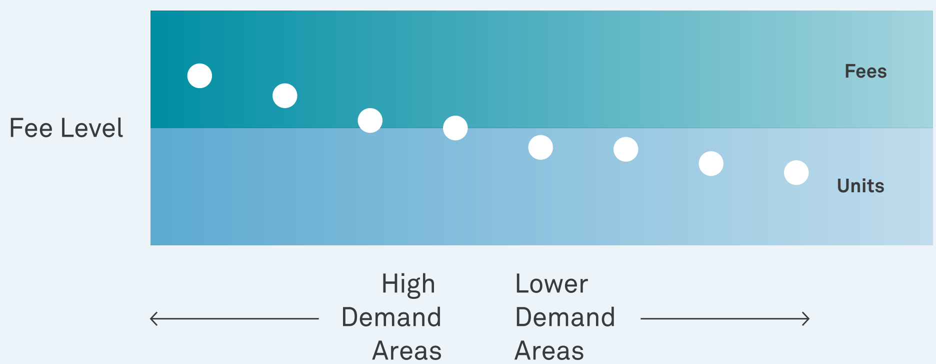
Santa Monica, California, has one of California's older inclusionary housing programs. It allows developers the option of providing units off-site, but only when doing so will result in additional public benefit. Specifically, Santa Monica requires that builders provide 25 percent more affordable units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

LEVERAGING OTHER AFFORDABLE HOUSING RESOURCES

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

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

Figure 7
In-Lieu Fees and Economic Integration



NONPROFIT PARTNERSHIPS AND LAND DEDICATION

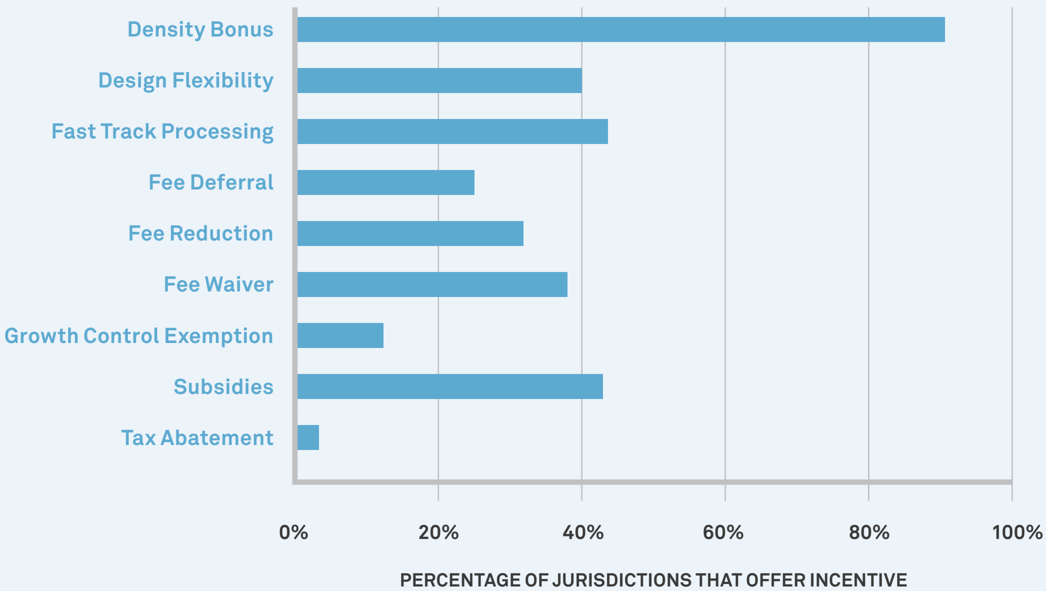
While direct off-site development can be challenging for both cities and developers, a number of communities have found that encouraging off-site production through partnerships with nonprofit housing developers facilitates implementation and may produce more affordable housing. Nonprofit developers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

However, there are limits to the benefits of such partnerships. For example, nonprofits often do not have the seed funding to do predevelopment work or to purchase land. A number of cities have designed their off-site production rules to encourage these partnerships. A few, including New York City, allow off-site development only if there is a nonprofit partner that will own the off-site project.

Incentives

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

Figure 8
Developer Incentives



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

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

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

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

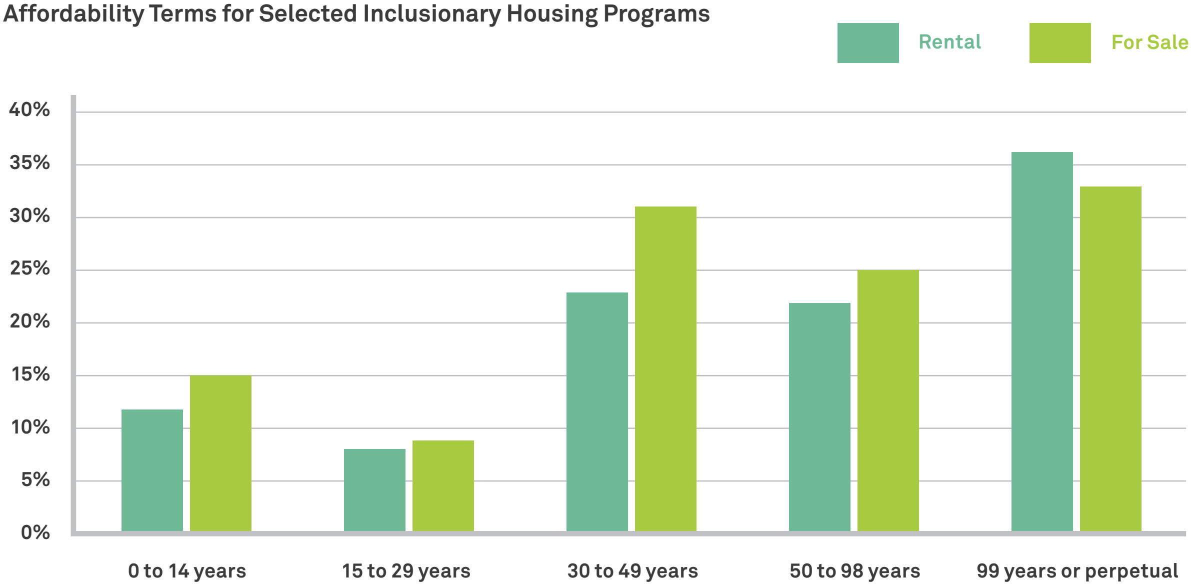
When communities base inclusionary requirements on detailed feasibility studies, it becomes clear how incentives can play a role in maximizing the impact of an inclusionary housing program. If the goal of an inclusionary requirement is to enable developers to earn "normal" profits while capturing some share of "excess profits" for public benefit, any incentive a city can offer to make development more profitable enables the imposition of an inclusionary requirement higher than would otherwise be feasible. However, communities have to carefully weigh the costs and benefits of each incentive and evaluate them relative to the cost of meeting specific affordable housing requirements.

Design Standards

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

Figure 9

Affordability Terms for Selected Inclusionary Housing Programs



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

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

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

Many communities develop specific minimum standards. Some programs require that affordable homes be externally identical to market-rate units, but others provide developers with a list of specific requirements regarding minimum unit size and amenities. So long as affordable units meet these standards, they can be different or less costly to build than market-rate homes.

Affordability Preservation

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

Between 1973 and 2005, Montgomery County, Maryland, created more than 12,000 affordable homes through its widely copied inclusionary program. Because the affordability of those homes was regulated for only 10 years, however, by 2005 only 3,000 of those units were still affordable (Brunick and Maier 2010). If inclusionary programs are to create and preserve mixed-income communities, long-term restrictions are vital for a program to have a lasting impact. After all, if homes expire out of a program and return to market rate after a few decades, the program won't actually increase the stock of affordable housing.

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

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

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

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

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

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

Conclusion

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

CHAPTER 5

The Challenges of Economic Integration

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

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

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

Mixed Income, Mixed Results

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

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

	ADVANTAGES	DISADVANTAGES
ON-SITE	• Ensures access to high-opportunity neighborhoods • Is easier to enforce design quality • Has low risk of ongoing maintenance problems • Provides integration in the same building, which can be symbolically important and help build public support	• Can be difficult to monitor scattered units • May produce fewer family-sized units • May not be economically feasible for all project types • Is harder to incorporate very low-income or special needs residents
OFF-SITE	• Can be more cost-efficient (i.e., can often produce more total units) • Can leverage other affordable housing subsidies to produce additional units or serve lower-income residents • Can design and operate properties to meet the needs of the local population (e.g. family units, amenities, social services, etc.)	• May concentrate affordable units in lower-income areas • May produce lower-quality buildings • May lead to lower-quality long-term maintenance • Presents risks of “double-dipping,” whereby developers reduce their costs by relying on scarce affordable housing subsidies

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

In one example, the Pew Charitable Trusts' Economic Mobility Project followed 5,000 families to determine whether children moved up or down the income ladder relative to their parents. Surprisingly, the study found that the poverty rate in the neighborhood where children grew up strongly predicted their economic mobility as adults, even more strongly than differences in their parents' education levels or occupations (Sharkey 2009).

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

Case Study: San Francisco

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

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

Next door to San Francisco's NEMA apartment tower, another residential tower is being built by the nonprofit Tenderloin Neighborhood Development Corporation (TNDC). Like the affordable units at NEMA, this project also resulted from San Francisco's inclusionary housing program. But in the TNDC project, all of the 190 apartments will be affordable to low- or moderate-income families. Where NEMA offers mostly studio and one-bedroom units, TNDC's project has mostly two-bedroom and even some three-bedroom apartments. TNDC was able to build this project with financial support from the developer of a nearby 650-unit luxury condo project that elected to take advantage of the off-site production option under San Francisco's inclusionary program (Conrad 2014). This off-site partnership will produce far more affordable units than the developer would have been required to provide on-site.

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

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

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

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

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

Case Study: New York

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

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

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

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

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

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

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

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

Ensuring Access to Opportunity

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

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

By contrast, the results of another 2012 study suggest that inclusionary housing programs have been more successful in achieving this goal. Heather Schwartz and her colleagues at the RAND Corporation mapped the locations of affordable units created by inclusionary policies in 11 cities. They found that the typical inclusionary unit was in a neighborhood where only 7 percent of the population lived in poverty (half the national average for all neighborhoods). Children in these inclusionary units were assigned to schools with state test scores ranking in the 40th to 60th percentile and with lower-than-average numbers of students eligible for free lunches. Noting the stark contrast with other affordable housing programs, the authors concluded that "while [inclusionary housing] programs serve relatively more-advantaged families than other subsidized housing programs, the degree of access [inclusionary housing] provides to low-poverty neighborhoods is still remarkable" (Schwartz et al. 2012, p. 15).

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

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

CHAPTER 6

Addressing Legal Concerns

by Ben Beach

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

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

Takings Standards

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

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

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

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

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

Which of these standards a court chooses to apply in evaluating a challenge to an inclusionary housing measure has significant implications for policy making. First, the *Nollan/Dolan* standard requires extensive documentation to establish the appropriateness of the measure in question. Second, the proportionality requirement places an upper limit on the level of fees charged, which is almost certainly well below any upper limit imposed by the *Penn Central* standard. Under *Penn Central*, a land use regulation can significantly constrain the potential uses of a property regardless of whether or how much a given development would contribute to a social problem—as long as the regulation advances a legitimate government purpose and leaves the property owner with *some* profitable use of the property.

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

On-Site Performance Requirements

Citywide or neighborhood-wide inclusionary requirements, where properly drafted, should be entitled to great judicial deference as generally applicable exercises of the local government's authority to regulate land use under its police powers (*Euclid v. Amber Realty Company; Village of Belle Terre v. Boraas*). The legitimate purposes of inclusionary housing ordinances may include accommodating a community's projected needs for affordable housing, addressing the effects of prior exclusionary zoning, providing equal opportunity to all income levels, providing housing for the workforce, addressing the dwindling supply of land, and affirmatively advancing integration and other fair housing goals (California Affordable Housing Law Project/Public Interest Law Project 2010). Unlike a housing impact fee, for example, inclusionary housing ordinances are not principally intended to mitigate the impact of particular development projects and should not be described as such.

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

A jurisdiction may want to undertake an economic feasibility study to support any contemplated inclusionary housing requirement. Such a study should aim to satisfy the *Penn Central* test by showing that the proposed requirements do not completely disrupt economic returns from the project in question. A feasibility study should factor in any subsidy or other economic value contributed by the local government to the projects through upzoning or other regulatory relief. Jurisdictions should not rely on a nexus study to support generally applicable on-site performance requirements, because doing so might imply that the inclusionary requirements were intended to mitigate project impacts rather than advance legitimate police power objectives.

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

Linkage and Impact Fees

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

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

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

In-Lieu Fees

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

However, California courts have further determined that even a generally applicable formulaic development impact fee must still bear a "reasonable relationship" to the impacts the fee is intended to mitigate (*Ehrlich v. City of Culver City*), a standard somewhere between *Penn Central* and *Nollan/Dolan* in its deference to local authority. In the event that a court views an in-lieu fee as an impact fee (rather than as a land use control) and applies such a standard, the local government still has a strong defense available. An inclusionary in-lieu fee is customarily structured to cover the cost of developing affordable units that would otherwise have been included on-site in the project. That "loss" of on-site units is precisely the impact the fee is intended to mitigate. Thus, where they follow conventional design, such fees are likely to be seen as meeting the California courts' "reasonable relationship" standard.

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

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

Variations Among State Laws

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

In California, Colorado, and Wisconsin, state courts have interpreted laws relating to rent control to bar localities from using inclusionary housing measures to regulate rents, but not the price of ownership units. Local jurisdictions in all these states have, despite these legal limitations, successfully implemented at least one of the inclusionary housing strategies discussed in this report.

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

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

Conclusion

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

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CHAPTER 7

Planning for Successful Implementation

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

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

Case Study: Denver, Colorado

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

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

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

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

Roles for Program Staff and Contractors

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

SUPPORTING THE PRODUCTION OF AFFORDABLE UNITS

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

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

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

Table 2

Key Functions to Be Performed by Staff or Contractors

1 | Supporting the Production of Affordable Units

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

2 | Monitoring and Stewarding Rental Units

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

3 | Monitoring and Stewarding Homeownership Units

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

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

MONITORING AND STEWARDING RENTAL UNITS

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

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

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

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

MONITORING AND STEWARDING HOMEOWNERSHIP UNITS

Ensuring long-term affordability for homeownership units is more challenging than it is for rentals and requires attention to a wider range of issues. Cornerstone Partnership and the National Community Land Trust Network led a yearlong process that engaged dozens of practitioners and several national homeownership organizations to create a set of "Stewardship Standards" to preserve long-term affordability. The standards include more than 41 independent program elements and policies that participants believed were essential for successfully preserving long-term affordability as well as resources such as sample documents and templates to facilitate the adoption of best practices (Cornerstone Partnership 2014a).

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

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

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

Funding Administrative Costs

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

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

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

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

Measuring Impact

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

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

HomeKeeper Tracking System

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

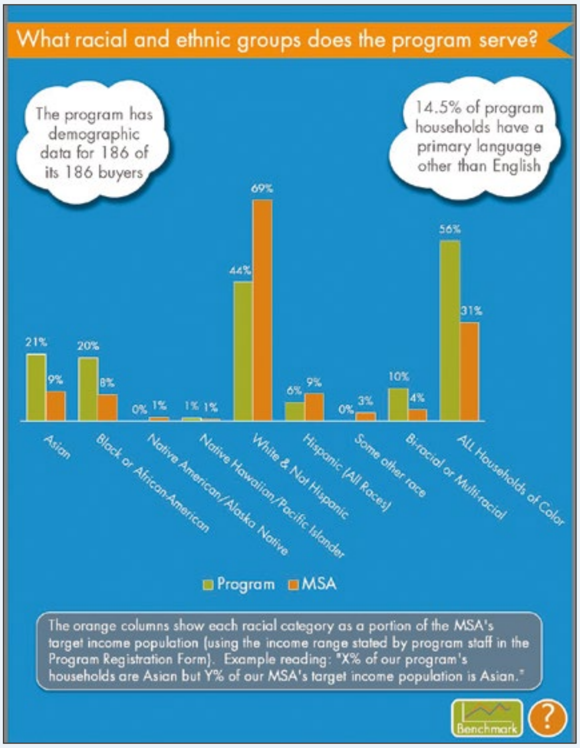
HomeKeeper captures demographic and income data from households at the time they are applying, enables management of waiting lists and lotteries, and automates screening for eligibility. Once units are occupied, HomeKeeper helps staff monitor ongoing activities. For homeownership units, HomeKeeper tracks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

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

Figure 10 presents an example of the kind of information available from a HomeKeeper report. The chart compares the racial demographics of a program’s buyers to a pool of income-eligible households in the local area. This particular program is reaching African American and Asian families but underserving Hispanic households. Without this benchmarking data, these trends would be hard to track.

Figure 10

Sample Metrics from a HomeKeeper Social Impact Report



Source: Cornerstone Partnership

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

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

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

These annual reports are not as common as they should be, but those that exist do not seem to address policy makers' need for analysis of program performance. One exception is Monterey County, California, where the inclusionary zoning policy requires both an annual report and a more in-depth five-year report. The annual report is a brief summary of the program's accomplishments over the previous years. The five-year report includes the number of units produced and households served, the amount of in-lieu fees collected and how those fees are used, and recommendations for policy revisions. This report is presented for public comment. Ultimately, all inclusionary housing programs—both individually and collectively—would benefit from significantly improving and standardizing data collection and performance metrics.

Conclusion

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

CHAPTER 8

Conclusions and Recommendations

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

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

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

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

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

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

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

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

BUILD PUBLIC SUPPORT

1. Build consensus around the need for greater investment in affordable housing and the desirability of a housing strategy that emphasizes mixed-income communities.

2. Engage community stakeholders, including real estate developers, in the process of designing an inclusionary program.

3. Share program results with the public on a regular basis to build ongoing support.

USE DATA TO INFORM PROGRAM DESIGN

4. Conduct an economic feasibility study prior to implementation to ensure that proposed performance requirements or fees can be reasonably absorbed by development profits and land values.

5. For programs that rely on linkage or impact fees, conduct a nexus study prior to implementation to ensure that required fees are roughly proportional to the impact of new development on the need for affordable housing.

6. Track program activity to enable policy makers to understand the program's impact and make incremental improvements.

ESTABLISH FAIR, REASONABLE EXPECTATIONS FOR DEVELOPERS

7. Provide flexibility to developers to improve the rate of production.

8. Ensure that alternatives to on-site production are economically comparable.

9. Require developers to provide increased public benefits when they build off-site units.

10. Regularly adjust incentives and requirements to ensure that the number and types of units produced align more closely with local housing needs.

ENSURE PROGRAM QUALITY

11. Pay close attention to the geographic location of units to ensure economic integration.

12. Develop design standards to ensure that the affordable units are of appropriate size and quality.

13. Plan and budget for stewardship and monitoring to protect long-term affordability.

What Can States Do to Support Local Inclusionary Housing Policies?

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

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

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

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

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

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

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

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

1. Remove barriers for accessing FHA-insured mortgages and the secondary mortgage market for buyers of inclusionary homes.

2. Provide incentives or preferences for the allocation of federal transportation funding to communities that develop affordable housing in concert with new transit infrastructure.

3. Educate state and local housing agencies on why inclusionary housing can be an effective tool for their comprehensive affordable housing strategies.

4. Develop a platform for tracking and monitoring the location of affordable units created through local policies (including but not limited to inclusionary policies) and combining that information with public data on the locations of federally subsidized housing to enable comparison of the performance of various programs.

5. Allow local jurisdictions to use HOME and CDBG funds to support stewardship of affordable units with long-term affordability controls.

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

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ABOUT CORNERSTONE PARTNERSHIP

www.affordableownership.org

Cornerstone Partnership (Cornerstone) promotes strong, inclusive communities where all people can afford a decent place to live and thrive. Cornerstone is a national peer network for homeownership and inclusionary housing programs that preserve long-term affordability and community stability. Cornerstone provides expertise on policy and practice, offers technical assistance, tools, and resources to help its members build capacity and strengthen impact, and builds connections that help programs learn from each other and share what works. Cornerstone's work supports practitioners, advocates, elected officials, consultants, and other housing professionals dedicated to helping individuals and families access equity and opportunity.

ABOUT THE NATIONAL COMMUNITY LAND TRUST NETWORK

www.cltnetwork.org

The Network is a national nonprofit membership organization of community land trusts (CLT) and other organizations that promote strategic community development and permanently affordable housing to benefit lower income families throughout the United States. The Network supports our members by:

1. Raising public awareness of CLTs and permanently affordable housing,
2. Providing training, conferences, technical assistance, and capacity building resources for nonprofits and government organizations,
3. Researching best practices, innovations, and outcomes of membership organizations,
4. Promoting public policies and partnerships that enable growth and expansion, and
5. Developing the industry to advance its impact on families and communities.

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Inclusionary Housing

Creating and Maintaining Equitable Communities

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

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

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

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Inclusionary Zoning

What Does the Research Tell Us about the Effectiveness of Local Action?

Kriti Ramakrishnan, Mark Treskon, and Solomon Greene

January 2019

As real wages stagnate, racial disparities grow, and housing prices soar in cities across the US, local governments are increasingly adopting laws and regulations that aim to reduce inequalities and improve access to economic opportunity for their residents (Berube et al. 2018; Greene et al. 2016). These new local laws span a broad range of areas, from protections against discrimination to proactive steps to reduce housing costs or raise incomes. At the same time, states are increasingly enacting laws that limit or preempt local action in these areas, often relying on a thin or nonexistent evidence base to suggest that local regulation is inefficient or overly burdensome (Briffault et al. 2018; Einstein and Glick 2017). In these four briefs, we explore and summarize the research on the effectiveness of local action in four areas: minimum wages, paid sick days, rent control, and inclusionary zoning. We also discuss general trends in state and local laws as well as opportunities to fill research gaps and improve evidence-based policymaking in each area.

Local inclusionary zoning (IZ) laws create affordable housing by encouraging or requiring developers to set aside a percentage of housing units to be sold or rented at below-market prices. These laws aim to provide housing to low-income residents who would otherwise be unable to afford it. IZ laws have been growing in popularity, and a recent estimate listed 866 jurisdictions with some form of IZ policy (Thaden and Wang 2017).[1] These laws are also increasingly subject to state preemption: as of 2017, 11 states had adopted laws that prevent localities from enacting mandatory IZ or limit their discretion in designing voluntary IZ policies (Schragger 2017). Proponents of state preemption of IZ often cite concerns about its impacts on private development and prices. Those advocating against preemption argue that affordable housing is most effectively approached at the local level because policy efforts can best be tailored to local market characteristics and needs.[2] But the evidence on IZ's effects on the private market is mixed, and a consensus has not been reached on whether these policies restrict development or raise prices. Some evidence suggests that IZ is effective at increasing the affordable housing supply and encouraging economic opportunity, but overall research findings remain mixed. This indicates that the effects of IZ policies may be particularly sensitive to policy design considerations and market characteristics. In this brief, we synthesize the evidence on the effectiveness of local IZ laws and suggest areas in which further research could help policymakers, advocates, and the public improve state and local laws regarding IZ.

State and Local Trends

The first IZ policy, which is still active, began in Fairfax County, Virginia, in 1971.[3] Although these policies have existed for decades, they have been growing in popularity over the past decade: over 70 percent of local IZ laws and policies were adopted after 2000 (Thaden and Wang 2017). Most IZ policies are local (adopted by cities and counties), although some state policies also encourage fair siting of affordable housing across diverse communities, such as New Jersey's Council on Affordable Housing and the Massachusetts Chapter 40B requirement.[4] The Grounded Solutions Network keeps a database of IZ policies and has identified 866 jurisdictions within 25 states with some type of inclusionary housing policy (Thaden and Wang 2017).[5] Most programs are concentrated in Massachusetts, New Jersey, and California, but they exist throughout the country.

IZ laws are not identical, and some key differences in their design and implementation may influence their outcomes. Some laws require affordable units to be constructed at the same location as the market units, or "on-site"; others allow off-site affordable construction. Most IZ laws are mandatory, typically requiring developers to set aside affordable units; some other programs are voluntary but provide incentives for inclusionary development. IZ policies can apply to rental or for-sale units and specify varying terms of affordability. Jurisdictions can also offer different incentives to developers in return for building affordable units, such as density bonuses, zoning variances, or fee reductions. According to a recent overview (Williams et al. 2016), varying features include

- whether the law is mandatory or voluntary,
- the set-aside amount (required share of affordable housing; often between 10 and 20 percent),
- whether the law applies to rental or sale properties,
- how the law defines eligibility (such as by household income),
- term limits,
- whether the law applies to the entire jurisdiction or to specific housing types or locations,
- opt-outs (in lieu payments or ability to provide units off-site), and
- incentives.

As of 2017, 11 states had adopted laws that prevent localities from enacting mandatory IZ or that limit localities' discretion in designing voluntary IZ policies (Schragger 2017). In some cases, such as Tennessee, the state legislature acted in reaction to newly adopted local IZ laws, citing costs to developers for compliance.[6] Oregon recently lifted a blanket ban on mandatory IZ laws and replaced it with restrictions on how local governments can design IZ policies.[7]

Research on Impacts

General Effectiveness of Inclusionary Zoning Laws

IZ laws are intended to create affordable, below-market housing that would otherwise not be created by private developers. IZ policies' effectiveness can be measured in different ways, such as the number of affordable units produced, how long units remain affordable, and who benefits from IZ laws. However, evaluating the effectiveness of IZ programs can be difficult because of variations in the design and implementation of each program that may affect outcomes. For example, mandatory IZ laws may have a different effect on housing construction than voluntary ones. Programs with varying cost offsets, such as density bonuses or fee waivers, may also have different impacts on housing production and other measures of effectiveness. With these limitations in mind, the evidence on the effectiveness of IZ has been mixed and is often dependent on location and policy type.

Estimating the exact number of affordable units created nationwide through IZ is difficult because of a lack of consistent data. Recent studies have claimed total counts of 150,000 to 173,000 (Sturtevant 2016; Thaden and Wang 2017). These estimates can be difficult to interpret because of missing data and variation between programs, but they generally indicate IZ programs are successfully creating affordable housing. However, these estimates represent the total number of units created over decades, since the earliest programs in the mid-1970s, and the number of units varies significantly across regions and jurisdictions.

Most of the units produced are in counties in Virginia, Maryland, Massachusetts, New Jersey, and California. Although IZ policies appear to be successful in producing units, other jurisdictions with IZ laws have produced very few or even no units (Stockton et al. 2016). The lack of effectiveness in some areas has been attributed to weak housing markets, a lack of enforcement, or a lack of development incentives for builders (Stockton et al. 2016). Another challenge is local capacity—some localities may not have sufficient staff available to work with developers to implement IZ requirements (Freeman and Schuetz 2016). Program design also appears to affect the production of affordable housing. For example, one study of programs in California found that mandatory programs produced more housing than voluntary programs (Mukhija et al. 2010). Further, the length of time a policy has been in place has been a significant predictor of the amount of housing produced in suburban Boston, San Francisco, and the Washington, DC, area (Schuetz, Meltzer, and Been 2007).

Another measure of effectiveness is the length of time that IZ can ensure affordability: long affordability windows allow these programs to continue to serve low-income families over time. A survey of 273 IZ programs found that around 90 percent of IZ laws had affordability terms of at least 30 years (Thaden and Wang 2017). Further, 25 percent of programs had perpetual affordability terms, meaning they apply for the life of the building. Another study of 307 IZ programs found that around 80 percent of both homeownership and rental programs had affordability terms of at least 30 years and that 33 percent of programs required perpetual affordability (Hickey, Sturtevant, and Thaden 2014). The evidence suggests that IZ policies are capable of ensuring lasting affordability for these units.

Finally, homes constructed through IZ tend to serve residents with moderately low incomes, although they are generally not targeted to be affordable to the lowest-income households. Most IZ policies target families that earn 60 to 120 percent of the area median income, or AMI (Stockton et al. 2016). A recent survey of 185 IZ rental programs found that 42 percent of programs served families earning several percentages of the AMI. Thirty-seven percent of programs served families with a maximum income between 50 and 80 percent of AMI (Thaden and Wang 2017). That target population is different than those served by IZ homeownership programs, where a significant number of programs (21 percent) target people with incomes from 101 to 160 percent of AMI. A smaller case study of 11 IZ programs, mostly focused on homeownership, found that more than half serve households making 80 percent or less of AMI; other programs serve households making as little as 30 percent of AMI (Schwartz et al. 2012). Inclusionary homeownership programs appear to target a population with generally higher income than renters served by federal assisted-housing programs such as public housing, the low-income housing tax credit, or housing choice vouchers.

Effects of Inclusionary Zoning Laws on Developers

By requiring developers to sell or rent a percentage of their units at below-market level, IZ policies may drive up costs for market-rate units or reduce the production of new units. This potential for an adverse effect on the private market has been the main basis for state preemption of local IZ laws (Silverstein 2017). However, the evidence on the private-market effects of IZ is mixed. A starting point for recent debates were several 2004 studies conducted by the Reason Public Policy Institute, which concluded that IZ was an ineffective and expensive way to provide affordable housing. These studies examined the effects of IZ laws on cities in California and found that the policies produced few units, increased the cost of market-rate homes, and reduced the construction of new homes (Powell and Stringham 2004a, 2004b). These findings, however, were promptly challenged by researchers who criticized the study's methodology and warned against drawing causality, citing the study's data limitations and its weak, nonrigorous design (Basolo and Calavita 2004). Other studies have since found some evidence that IZ laws are correlated with increasing housing prices: studies of laws in California have found that cities with IZ laws had comparatively higher market-rate housing prices (Bento et al. 2009) and had fewer new homes than cities without IZ laws (Means and Stringham 2012).

However, other research has found no negative impact of IZ policies on housing prices or production. One evaluation of the market effects of IZ found that IZ in San Francisco had no statistically significant effect on housing production (Schuetz, Meltzer, and Been 2011). Another study of mandatory IZ policies in California also did not find any statistically significant effects of IZ laws on housing supply in these cities (Mukhija et al. 2010). These studies appear to contradict some of the research to support preemption and demonstrate that IZ policies may not affect housing supply.

Overall, evidence that IZ laws negatively affect private market prices and development is mixed. The type of impact these laws have appears dependent on the design of the policy, the neighborhood location, and the housing market in the area. For example, a study analyzing the private-market effects of IZ in suburban Boston found that the policies increased prices and decreased housing production when the housing market was strong, but they did not have an effect when the housing market was weak (Schuetz, Meltzer, and Been 2011). Similarly, in the Bay Area, IZ policies appeared to increase housing prices in appreciating markets but lowered prices when the market depreciated (Schuetz, Meltzer, and Been 2011). Different studies have also found mixed effects in the same study areas, such as cities in California. Further, most studies focus on just a few cities and states, limiting broader applicability of their findings. Many researchers acknowledge the lack of rigorous evidence on the effect of IZ policies on the private market and call for additional research into how these laws truly affect home prices and production.

How Effective Is Inclusionary Zoning at Improving Economic Opportunity?

Most research on IZ has focused on its private-market impacts, but a smaller body of work explores its impact on economic opportunity. IZ can increase economic opportunity and equity by reducing rent burdens for low-income residents, building wealth through homeownership, and creating or preserving mixed-income neighborhoods. IZ laws generally target low-income households, though income requirements vary. A study of 185 IZ policies for rental homes found that 37 percent of these programs set a maximum income between 50 and 80 percent of AMI (Thaden and Wang 2017). However, some research has found that IZ does not effectively target very low-income households, especially compared with other affordable-housing programs (Schwartz et al. 2012).

Although most IZ programs involve rental units, programs that develop below-market homes for sale provide low-income families an opportunity to build wealth through homeownership. An analysis of an IZ homeownership program in Maryland found that the program produced 9,561 for-sale affordable condominiums and townhomes since its inception (Dawkins, Jeon, and Knaap 2017). These units also realized significant gains in equity: despite the price controls, IZ units appreciated at a higher rate than similar market-rate units and were more insulated from price declines during the housing crisis (Dawkins, Jeon, and Knaap 2017). This suggests that IZ can increase economic opportunity through access to home equity for low-income households.

The limited literature evaluating IZ policies' effects on integration suggests that they do generally improve economic integration and provide low-income residents access to high-opportunity neighborhoods. A RAND Corporation study found that 76 percent of homes in Boulder, CO; Burlington, CT; Cambridge, MA; Chicago, IL; Davidson, NC; Denver, CO; Fairfax County, VA; Irvine, CA; Montgomery County, MD; Santa Monica, CA; and Santa Fe, NM, developed through IZ were located in low-poverty neighborhoods that had higher rates of employment and college attainment, although this did vary across jurisdictions (Schwartz et al. 2012). However, the level of economic integration appears to be dependent on location. One study of the spatial distribution of IZ housing in counties in Maryland and New York found different results in the distribution of IZ units for areas studied. Units in Montgomery County, MD, were dispersed more evenly and sited in high-opportunity areas, while units in Suffolk County, NY, were clustered in predominantly low-income and minority neighborhoods (Kontokosta 2015). Part of the explanation could come down to differences in the specific policies—Montgomery County requires that a certain share of units be provided in affluent neighborhoods and strongly encourages on-site provision of inclusionary units. In Burlington, Fairfax County, Montgomery County, and Santa Monica, neighborhoods with IZ units were found to have a lower AMI than neighborhoods without affordable units (Schwartz et al. 2012).

IZ may also increase economic opportunity by providing access to low-poverty schools and improving educational outcomes for children. One study found that elementary schools serving IZ units had lower proportions of students eligible for free or reduced-price meals than schools without IZ homes assigned to them (Schwartz et al. 2012). Additionally, IZ units were mostly located in attendance zones of slightly better-performing schools than schools with no assigned IZ units. IZ can also affect the school performance of children assigned to these low-poverty schools. Another study evaluated the educational outcomes of students benefiting from Montgomery County's IZ program, which allows the local public housing authority to purchase IZ units and operate them as public housing (Schwartz 2010). The study found that elementary school students in public housing assigned to low-poverty schools performed better in reading and math than students in public housing assigned to moderate-poverty elementary schools. Further, children living in IZ units remained in low-poverty neighborhoods and schools for an average of eight years, providing them residential stability and the benefit of attending low-poverty schools. Although the research to support IZ's effect on educational opportunity is limited and highly dependent on location, the evidence does appear promising.

How Effective Is Inclusionary Zoning at Reducing Racial Disparities?

IZ has also been discussed as a way to reduce racial disparities by distributing affordable units to residents of color as well as creating more racially integrated communities (Sturtevant 2016). The evidence to support this is limited, though there has been some research on the spatial distribution of affordable units created through IZ. Another study of units built in Montgomery County, MD, and Suffolk County, NY, focused on whether the units contributed to racial integration. It found that on average, tracts where IZ units were built became more racially integrated than neighborhoods without IZ units (Kontokosta 2014). As with economic integration, the level of racial integration differed: In Montgomery County, racial integration increased significantly without a notable decline in the white population. In Suffolk County, the neighborhoods with IZ units had more African American and Hispanic residents than the county average and experienced greater declines in the white population after the IZ policies were implemented.[8] This may suggest, as the authors note, "a continued pattern of spatial segregation by race," and it may be based in part on the realities of the social and economic geography of Suffolk County itself, which vary widely.

Research Gaps

Although local IZ laws are growing in popularity, rigorous research on the social and economic effects of IZ laws is still limited, and significant knowledge gaps remain. Most of the extant research focuses on the private housing market effects of these policies, not all the studies use rigorous methods, and their results are mixed. These studies also tend to focus on a small set of jurisdictions whose programs have been in place for a long time, such as cities in California, Maryland, Massachusetts, and New Jersey. Although these states include a large share of the total number of local IZ policies, they may not be representative of IZ laws around the country, which all have different local contexts. Further research should be done on the private-market impacts of IZ in communities nationwide to create a more representative sample.

Market type also plays a large role in the development of IZ: profitable housing markets can make it easier for developers to set aside below-market units. However, slower housing markets may face barriers in implementing IZ policies because of the potential loss of profit. Most research has looked at the impacts of IZ policies in strong housing markets, and research is sparse on the features of local laws designs that may be more effective across market types. Housing advocates have discussed how IZ can be beneficial for communities in soft or mixed housing markets.[9] But if IZ is to be more widely applicable as a tool to promote affordable housing, additional research must be conducted on how to design IZ policies that work across a range of market types.

Studies need to consider how different features of IZ policies can have different effects in different locations, and they need to evaluate what components of policy design may be driving impacts (both positive and negative) across jurisdictions. Ignoring distinctions in comparative studies may lead to misleading conclusions, because what works in one setting may not work in another.

As discussed, IZ policies are a promising way to encourage economic opportunity by reducing rent burdens for low-income families, although the types of families served are dependent on program design and eligibility. The range of eligible income levels vary by program, but few programs appear to target very and extremely low–income families to the extent that publicly assisted housing programs do (Schwartz et al. 2012). If IZ policies are to reach more families, more research is needed on how to design programs to ensure deeper affordability. Further exploration of eligibility terms can help policymakers and advocates design programs that meet the housing needs of very low–income families not currently served by most IZ policies.

There are also significant gaps in knowledge of how IZ affects racial and economic equity. Although a few studies have discussed the spatial distribution of units built by IZ, rigorous research has not been conducted that supports whether these laws have a direct impact on reducing racial disparities or improving economic outcomes for residents. IZ may also have an impact on other social outcomes such as crime, health, and access to social services, but these outcomes have generally not yet been studied (Mukhija et al. 2015). Further research should be conducted to determine the specific effects that IZ has on improving equity and other social outcomes.

Conclusion

In many communities, IZ has provided affordable housing to low-income families and provided them with more access to economic opportunity. However, concerns of the potential private-market impacts of these laws have led several states to preempt IZ policies. The evidence that IZ increases housing prices or decreases production is mixed, and outcomes can be affected by differences in program design or the housing market. Existing research points to the benefits of IZ and its ability to create affordable housing, encourage integration, and improve equity. As policymakers consider IZ as a tool to increase affordable housing, additional research should be conducted on how to make IZ policies more effective, equitable, and widely applicable.

Notes

[1] Benjamin Schneider, "CityLab University: Inclusionary Zoning," *CityLab*, July 17, 2018, https://www.citylab.com/equity/2018/07/citylab-university-inclusionary-zoning/565181/.

[2] Teresa Wiltz, "Once Seen as a Local Issue, Affordable Housing Is Becoming a State Focus," *Governing*, October 16, 2018, http://www.governing.com/topics/urban/sl-affordable-housing-state-legislation.html.

[3] David Tuller, "Housing and Health: The Role of Inclusionary Zoning," Health Affairs, June 7, 2018, https://www.healthaffairs.org/do/10.1377/hpb20180313.668759/full/.

[4] For background on the Mount Laurel court decisions and subsequent creation of the Council on Affordable Housing, see http://fairsharehousing.org/mount-laurel-doctrine/.

[5] Grounded Solutions Network, Inclusionary Housing Database, 2018, https://gsn.maps.arcgis.com/apps/webappviewer/index.html?id=331f8a985a244e8fb6e6a2ad23731179

[6] James Brasuell, "Tennessee Legislature Blocks Nashville's 2016 Inclusionary Zoning Policy," *Planetizen*, April 2, 2018, https://www.planetizen.com/news/2018/04/97998-tennessee-legislature-blocks-nashvilles-2016-inclusionary-zoning-policy.

[7] Jeff Mapes, "Oregon Legislators Reach Deal On Affordable Housing Legislation," *OPB*, February 23, 2016, https://www.opb.org/news/article/oregon-legislators-reach-deal-on-affordable-housing-legislation/.

[8] After significant thought and deliberation, the authors have decided to use the term "Hispanic" to refer to people of Latin American origin living in the United States. We have decided to employ this term to align with the language used by research sources throughout the brief. However, we recognize that the term "Latinx" is more inclusive of way this group may self-identify. We strive to avoid language that is exclusive and will always attempt to explain the editorial rationale behind the labeling of certain groups.

[9] Stephanie Reyes, "Inclusionary Housing in Soft or Mixed Markets," *ShelterForce*, May 7, 2018, https://shelterforce.org/2018/05/07/inclusionary-housing-in-soft-or-mixed-markets/.

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florida community land trust INSTITUTE

Inclusionary Zoning and Community Land Trusts
Preserving Subsidy and Affordability with a CLT

By: Jaimie Ross, President/CEO, Florida Housing Coalition

Backdrop

Housing choice is increased and community schools become more diverse as affordable housing is included in new development, redevelopment, and growth areas. Every local government receiving federal dollars, such as Community Development Block Grant funds, has a legal obligation to affirmatively further fair housing within its jurisdiction[1]. Inclusionary housing policies:

1. Affirmatively further fair housing and avoid disparate impact liability from exclusionary housing practices;
2. Assist local government in meeting its legal responsibilities under the local government comprehensive plan housing element law[2]; and
3. Mitigate the effects of traditional zoning, which allows exclusionary land use practices such as large minimum lot sizes in suburban areas.

The term "Inclusionary zoning", while commonly used, is a misnomer; it is not zoning in the traditional sense of dividing allowable land uses into different districts. It is a land use ordinance or land development policy that requires developers of market rate units to include some percentage of affordable, lower-cost units, within their development. They may be homeownership units, rental units, or some combination of the two. Concurrent objectives for an inclusionary land use ordinance are: (1) to increase the supply of affordable housing in general; and (2) to create housing in areas of opportunity.

Montgomery County, MD, is known as the "granddaddy" of inclusionary zoning, since it enacted its ordinance in the 1970s and has produced over 14,000 affordable homes, known as "moderately priced dwelling units".

Inclusionary housing ordinances and policies can be found throughout the United States, from the Northeast to the Southwest. California has the greatest number of inclusionary zoning ordinances in the nation. It is estimated that there are approximately 400 such ordinances in the United States. The oldest inclusionary zoning ordinance in Florida is in the City of Key West and the oldest linkage fee ordinance in Florida is in the City of Winter Park[3,4,5.] In Florida, inclusionary ordinances have been adopted primarily in South Florida cities and in counties, but can also be found in slower growth areas, including the City of Tallahassee.

The Basics about an Inclusionary Land Use Ordinance

Inclusionary land use ordinances vary a great deal from one jurisdiction to another, but tend to have several elements in common:

- A threshold number of market-rate units that activates the inclusionary requirement for a corresponding percentage of affordable units;
- A requirement that the affordable units are comparable in quality and aesthetics to the market-rate units, so that even if they are smaller or of a different type, they will blend into the community;
- Incentives to assist the private sector in providing the affordable units, such as an increase in allowable density[6]; or financial subsidy to the housing developer or the affordable homebuyer; and
- Requirement for long term affordability.

How Does a Community Land Trust Help?

1. Ensuring Long Term or Perpetual Affordability.

First, and foremost, there is no point in adopting an inclusionary land use ordinance unless there is a requirement for long term affordability. If the term of affordability is short, for instance five or ten years, the consequence will be a windfall to the lucky family who happens to own the unit at the time the price restriction expires. In this case, an affordable property that would not have existed within a market-rate development, but for the inclusionary requirement, could be sold at a price that is not affordable to a family having the same income characteristics of the family that currently owns the home. The public benefit created by the inclusionary land use ordinance and any public subsidy which may have been put into the unit will be lost.

If the affordable units required under the inclusionary land use policy are deeded or leased to the Community Land Trust, the public benefit which was the foundation of the policy or ordinance will be retained, since the Community Land Trust will ensure continued affordability under the terms of the 99 year ground lease.

2. Administration of the Program.

Whether the affordable units are "for-sale" or "for lease", someone will have to income qualify the potential homebuyers or renters. Income qualification, homebuyer pre and post counseling, and maintaining a pipeline of income qualified homebuyers is the business of a Community Land Trust. Even if the property is not going to be placed under a 99 year ground lease, the Community Land Trust has the skills to provide the income qualification services needed for the developer and the local government, ensuring that residents living in the units produced pursuant to the inclusionary land use ordinance are income eligible. Relieving the market rate developer from the obligation to ensure that the units remain in compliance with resale restrictions and income eligibility requirements is a substantial benefit to the market rate developer and greatly assists the local government.

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[1] In addition to the affirmative duty to provide for adequate housing for their present and future residents under the Housing Element requirements of Chapter 163 Part II, Florida Statutes, all entitlement communities have an affirmative duty to further fair housing under the Federal and state Fair Housing Act. See 42 U.S.C. Sections 3601-3631, and F.S. 760.20-760.37.

[2] The Housing Element requirements of the 1985 Growth Management Act include that every local government have adequate sites for affordable housing and provide for housing all its current and future anticipated populations, including special needs populations. See Chapter 163.3177 (6)(f), Florida Statutes.

[3] Florida has broad local home rule powers. Florida statutes give all counties the power to adopt comprehensive plans, establish zoning regulations, establish housing programs and perform any other acts not inconsistent with law Section 125.01 (1), Florida Statutes.

[4] In response to a concern that inclusionary zoning ordinances might be challenged under Florida's state statute prohibiting price and rent control, the 2001 Florida Legislature carved out an exception to the price and rent control statutes for land use mechanisms used to increase the supply of affordable housing, specifically citing "inclusionary housing ordinances".

- Section 166.0415 Affordable housing.–Notwithstanding any other provision of law, a municipality may adopt and maintain in effect any law, ordinance, rule, or other measure that is adopted for the purpose of increasing the supply of affordable housing using land use mechanisms such as inclusionary housing ordinances.
- Section 125.01055 Affordable housing.–Notwithstanding any other provision of law, a county may adopt and maintain in effect any law, ordinance, rule, or other measure that is adopted for the purpose of increasing the supply of affordable housing using land use mechanisms such as inclusionary housing ordinances.

[5] Linkage fees are a means for local governments to collect monies to help support affordable housing construction. These fees, collected from nonresidential and (in some cases) market-rate residential development, are placed in a trust fund for others to use in building the lower-cost homes. Linkage fees are a recognition that the low-wage workers employed in the nonresidential development and serving the residents of the market rate and upper-end residential homes need adequate housing within the community that they can afford; it a recognition that affordable housing an essential basic necessity for a healthy community. In Winter Park Florida linkage fees have supported the development of affordable housing, including housing produced by the Hannibal Square Community Land Trust in Winter Park.

[6] Expedited permitting is another type of developer incentive. Florida provides funds to every local government through the collection and distribution of documentary stamp revenue, and requires, in turn, that those local governments expedite all permits for affordable housing.

Florida also requires, through the Development of Regional Impact (DRI) process (Chapter 380, Florida Statutes), that large commercial developments ensure affordable housing for the employees they generate, especially when the community lacks adequate affordable housing for those workers. This DRI statute operates as a combination linkage fee and inclusionary zoning ordinance. Unfortunately, the DRI statute has been largely ineffective at producing affordable housing, since the DRP process is time consuming, costly, and arduous. By contrast, inclusionary housing ordinances require no expensive studies from the developers, and can be easily and equitably applied in a routine fashion. Furthermore, they can be drafted to apply to both residential and commercial developments.

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Inclusionary Zoning Primer

NAHB Land Use and Design Department

Updated September 2015

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EXECUTIVE SUMMARY AND INTRODUCTION

Millions of American families struggle to find housing that meets their needs at a price they can afford, as the gap between family incomes and the cost of housing grows larger every year. Many families are forced to commute long distances, pay a disproportionate share of their incomes on housing, or live in housing that simply does not meet their needs.

The reasons for this gap are many. Local governments have developed plans that foster job growth but do not provide for sufficient housing for the workers filling those jobs, and some still discourage or limit multifamily housing. Ever more elaborate planning and zoning schemes, or outdated ones, make it difficult to develop land and a range and mix of housing types, especially lower-cost housing, that is needed to keep up with demand. Complex, lengthy, and uncertain development approval processes and environmental requirements constrain the availability of developable land and drive up the cost of housing, and an ever-growing number of fees imposed on new housing add to that. NIMBY groups resisting higher density development have become more sophisticated and organized over time and deter growth and development.

Thus, the housing affordability gap continues to be a multi-dimensional problem. As a result, it demands the use of many different tools and a comprehensive strategy to successfully meet the varied needs of people on different steps of the income ladder, from very low income even to above median income in many markets today It calls for a combination of approaches that either increase income, reduce costs, or both. The reality is that different market segments may require different tools for improving affordability, from direct or indirect subsidies at the low end of the income bracket, to better planning for housing and regulatory barriers removal strategies that allow the market to work better at the upper end of the income range. The underlying causes of the affordability shortfall and the nature of the local market will dictate the strategies that will work best under various circumstances. There is no silver bullet strategy that can fundamentally address it all, and no single strategy works in every market.

However, many communities have come to rely on inclusionary zoning (IZ) as a simple, expedient requirement they can adopt to show they are addressing the affordability problem, without examining the causes of the problem locally and without having to understand the complexities and diversity of housing needs and the market. IZ involves shifting the public and community burden for the affordability problem to the private sector, by requiring developers to subsidize a certain percentage of affordable units within market-rate developments. Percentages range from 10 to 25 percent of total units, with price controls established for the subsidized units based on income levels.

There is currently renewed interest in IZ as communities are once again becoming concerned about affordability after building and development have resumed after the Great Recession. During the Recession, little land development took place as lenders tightened credit requirements, which resulted in a lot shortage and corresponding land and home price increases.

The renewed focus on IZ has also been spurred by Sustainable Communities planning grants to local communities from HUD and EPA beginning in 2009, which recommend IZ as a local tool that can be used to spur affordable housing units. All indications are that HUD's final rule on Affirmatively Furthering Fair Housing, which took effect on August 7, 2015, will apply further pressure on local communities to adopt "quick fix" strategies such as IZ to satisfy HUD's new requirements that local governments submit their plans to HUD for review, with an emphasis on actions to deconcentrate poverty.

IZ has been used for several years in California, Montgomery County, Maryland, and scattered communities across the nation, and so does have a legacy as a planning tool. Until rather recently, however, there has been anecdotal but little empirical research on its effectiveness, best practices or its effect on housing supply and prices. NAHB obtained three credentialed consultant research reports on inclusionary zoning to help fill this information gap; all are available at www.nahb.org by searching on the report titles noted in this paper.

The economic study for NAHB that examined price and production effects on IZ based on a robust data set from California did not find an increased in overall housing production from IZ and concluded that IZ acts like a tax on housing. It also found a drop in single family housing production, with a shift to multifamily. Based on NAHB's experience, this is a problem, because the building industry is still fairly specialized—it is not easy for a builder or developer to be able to do both types of products because the construction involved in horizontal versus vertical development is so different.

The legal study conducted for NAHB concluded that IZ is a complex undertaking, one with many more moving parts and practical considerations than most communities realize or are equipped to administer.

Based on NAHB's substantial experience reviewing ordinances from across the country and access to builders and developers, we also know that, while most IZ ordinances offer incentives such as density bonuses, parking reductions, expedited review procedures, and on, in an effort to avoid a takings claim and also allow the developer to recoup some of his subsidy to the lower priced units. But implementing these incentives is not always achievable in today's development approval process that includes heavy citizen input, and they don't begin to make up for the subsidized costs. It is difficult enough to obtain the density theoretically already allowed by zoning, and so the IZ density bonuses end up only restoring part of what should have been allowed originally.

Further, the workforce, service sector middle class gets squeezed out under IZ, as they are no longer able to afford the market-priced units--whose price has now increased to cover the subsidized IZ units--but they are not eligible for the subsidized ones. Thus, IZ simply shifts the problem without solving it.

Part of the appeal of IZ is that it presumably gives lower income households access to better neighborhoods and services by intermingling subsidized units with market-rate ones. However, the effect of IZ is to put renters into homes without allowing them to gain equity in most cases, essentially making them no better off. And many neighbors still resist the mixed income/housing concept.

There has been increasing difficulty in IZ programs finding qualified buyers for it, and increasing evidence of homebuyer resistance to lengthy resale price controls. There have been challenges with property maintenance issues as well as the ability of the IZ unit families to afford HOA or condo fees.

In addition, IZ tends to work best only in hot urbanized markets, where pressure on both land and housing prices are more intense. Also, like impact fees, IZ is reliant on the pace of construction and so is not a very reliable affordable housing strategy. As the recent recession showed, when construction falls off, few affordable units are built. IZ is also not very flexible and adaptable as the market changes and can lock people into what becomes a bad deal. IZ requires ongoing administration by municipal staff who understand development economics and market conditions.

Other nationally recognized researchers have begun to release credible, empirical reviews of inclusionary zoning. This primer also discusses the findings of this research; goes on to detail communities where inclusionary zoning has been discontinued because it was too complex and did not achieve the hoped-for results; and highlights “best practices” of implementing an inclusionary zoning program.

The intent of this paper is to acknowledge the instances where inclusionary zoning may be feasible if the right incentives are built into it and pointing out the areas and circumstances where it has mostly failed as a policy tool. The “Statutory, Implementation, and Effectiveness Issues” section addresses the many details that should be included in any inclusionary zoning ordinance and operating program and the incentives necessary to make it work for the developer.

The paper concludes with a summary of alternative affordable housing solutions for state and local governments based on extensive research conducted for NAHB by Abt Associates, which showcases a comprehensive array of approaches to addressing housing affordability through a variety of innovative non-federal techniques and programs. The Abt report is extensive but user friendly, with tools organized by land use strategies, financial ones, and “other initiatives”, such as state-level affordability mandates or appeals processes. It explains how the various strategies work, how they have been funded, where they are used, and key pros and cons of each. It features thirty case studies of communities that have successfully used these tools, often in combination.

Given the mixed results on IZ, it is clear that the strategies that get the most press are not necessarily the most effective. Less flashy approaches such as planning and zoning changes to assess development capacity and encourage affordable housing, expedited permitting processes, and advocacy efforts to reduce NIMBYism can have broad effects on housing affordability. Housing trusts that are broadly funded by a percentage of the property tax, which is paid by both existing and new residents, combined with land trusts acting as an intermediary between the private and public sectors both to assemble land and manage homes once they are built, appear to hold particular promise as an equitable and successful combination strategy.

Abt Associates is currently researching development process efficiency strategies for NAHB, which will be a useful addition to this prior research. That report will be available in early 2016. NAHB staff is available to work with local HBAs as well as jurisdictions looking to address their housing affordability issues, with balanced information on inclusionary zoning as well as resources on comprehensive and appropriate strategies for achieving housing affordability in ever changing economic times.

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RESEARCH ON INCLUSIONARY ZONING

Earlier studies on IZ have failed to be persuasive. One reason for the failure is that these studies did not use formal statistical methods to control for changing housing market conditions, leaving skeptics room to argue that the studies were not truly isolating the effect of Inclusionary Zoning.

Therefore, NAHB funded research into the impacts of inclusionary zoning in two key areas: Economic effects and legal and regulatory aspects. The latter research report, prepared for NAHB by attorney Tim Hollister of Shipman and Goodwin, will be discussed in the IZ Best Practices section of this paper. NAHB also retained Abt Associates to explore state and local alternatives to IZ, which is discussed in the section **"Alternatives to Providing Affordable Housing: State and Local Strategies and Solutions."**

Price and Production Effects

Economic effects research, titled **Housing Market Impacts of Inclusionary Zoning**, was conducted in 2008 by Gerrit Knaap, Antonio Bento, and Scott Lowe at the University of Maryland (UMD) Center for Smart Growth. The report compiled considerable data on a large number of jurisdictions in California between 1988 and 2005.

"Just like other taxes, the burdens of inclusionary zoning are passed on to housing consumers, housing producers, and landowners." - National Center for Smart Growth Research and Education

Having data for multiple jurisdictions over an extended period of time allowed UMD to investigate the impact of inclusionary zoning on housing production and prices controlling for differences in market conditions even if the conditions were not directly observed or measured. The final models showing the impact of inclusionary zoning on total housing starts and the single family/multifamily breakdown of starts controlled for:

- Recent changes in housing starts in each California jurisdiction;
- Any factor that was different about a particular jurisdiction (e.g., incomes of residents or attitudes toward growth) whether observed in the data or not; and
- Any factor that was different in a particular year (e.g., state of the overall economy or demand for housing) whether observed in the data or not.

The final models showing the impact of inclusionary zoning on the price and size of new single family homes controlled for:

- Basic characteristics of the house such as number of bedrooms and bathrooms;

- Lot size; any factor that was different about a particular block group (containing on average about 500 homes) whether observed in the data or not;

- Any factor that was different about a particular school district, whether observed in the data or not;

- Any factor that was different in a particular year whether observed in the data or not;

- Any factor that was different in a particular quarter, to control for possible seasonal effects. The effect of these controls is to reduce the estimated impacts of inclusionary zoning, but the impacts that remain after the controls are imposed are difficult to dispute.

The study concluded that, in California between 1988 and 2005, there was a failure to increase the total supply of new housing. The results of the University of Maryland study showed measurable effects of inclusionary zoning on a variety of market factors:

- Increasing a city's multifamily housing starts by 7 percent, essentially shifting production to multifamily from single family product;

- This effect increased to as much as 12 percent as inclusionary zoning requirements also increased;

- Raising the price of new homes by 2 – 3 percent, and by as much as 5 percent for more expensive homes, compared to communities without inclusionary zoning;

- Reducing the size of new homes by 48 square feet.[1]

These four results all pass strong tests for statistical significance and are consistent with economic theory suggesting that such programs act like a tax on housing construction. Just as with other taxes, the burdens of inclusionary zoning are passed on to housing consumers, producers, and landowners, and so such policies do not come without a cost. Given that more of the units built are multifamily, that the new homes sold are both smaller and more costly, the impacts show that inclusionary zoning means consumers of new housing pay more to get less.

Some may argue that the price increases and size reductions seem relatively small, but to policymakers in areas where affordability is already a concern, a policy that moves at all in the direction of exacerbating a problem it is intended to solve would seem undesirable and ineffective. And there are certainly easier means of getting smaller

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[1] Knaap, Bento, and Lowe, Prepared by the National Center for Smart Growth Research, University of Maryland, February 2008.

multifamily units built, if that should be a community's express goal, than by using this complex market intervention.

A policy brief released in the Journal of the American Planning Association did indicate that, while there is a wide variation in how inclusionary zoning programs are crafted and implemented, there is some correlation between programs that offer greater density bonuses and exempt smaller developments and producing greater number of units.[2]

However, the full study "**Silver Bullet or Trojan Horse: The Effects of Inclusionary Zoning on Local Housing Markets**", 2009, which controlled for 27 variables in the San Francisco Bay region and 24 variables in the Boston area, a detailed regression analysis indicated that in both the Boston and San Francisco areas, there is evidence that inclusionary zoning constrains new development, particularly during periods of regional price appreciate. There is also strong evidence that implantation of region-wide inclusionary zoning was put upward pressure on single-family home prices in the Boston-area suburbs between 1987 and 2008.[3]

Another interesting finding of this study, particularly in the San Francisco Bay region, is that older inclusionary zoning programs are associated with a decline in local home prices during times of regional price depreciation.[4] So, while making markets more expensive during times of rapid price appreciation, there is also evidence that IZ policies can actually make home prices decline faster in periods of depreciation, as both regions have experienced in the past five years.

The study also indicated that the region-wide programs had failed to produce a substantial number of affordable housing units compared to other programs. For instance, during the control period of 24 years (1979-2003), only 9,154 units of affordable housing through inclusionary zoning were produced in the San Francisco Bay area, while 29,636 units of affordable housing units were produced through the federal Low Income Tax Credit program.[5]

There is also research about the economic effects of inclusionary zoning that has focused on the San Francisco Bay and Metropolitan Boston regions because 1) these are largely fragmented regions politically where numerous jurisdictions have adopted IZ policies, and 2) These regions have some of the least affordable area-wide housing. In the study "**Diffusion of Inclusionary Zoning Across San Francisco Bay Area Governments**", 2009, an empirical conclusion was made that the decision to adopt inclusionary zoning does not reflect a response to an identifiable need for more affordable housing. Rather, it reflects a variety of political characteristics, including the

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[2] 31 Flavors of Inclusionary Zoning, Schuetz, Meltzer and Been, Journal of American Planning Association, Chicago, IL Autumn, 2009, Page 453

[3] "Silver Bullet or Trojan Horse? The Effects of Inclusionary Zoning on Local Housing Markets in the United States," Schuetz, Meitzer, and Been, Furman Center, New York University, June 2010, Page 22

[4] Ibid, Page 23

[5] Ibid, Page 25

political bent of residents, a stronger regulatory culture, and places with more affordable housing non-profits.[6]

A number of examples also can be cited to show that the total number of affordable units produced by particular inclusionary zoning programs has, by some standards, not been very large, one such instance was during a brief period in the 1970s and 1980s in Montgomery County.

In this instance, a community experiencing rapid growth can provide for the sudden addition of higher density, multifamily projects in a predominantly single-family community to offset the cost of being required to provide below market rate housing. However as the community becomes denser and less land is available, and as NIMBY resistance grows to added density, growth becomes more restricted and inclusionary zoning units trail off. Therefore this model is not sustainable.

Statutory, Implementation, and Effectiveness Issues

Inclusionary zoning is a complex market intervention, and other recent research, as well as NAHB's legal research by attorney Tim Hollister with Shipman and Goodwin that is discussed later in this paper, reveal this. The most recent research on the variety and effectiveness of different programs across the country comes from the Lincoln Institute of Land Policy's report from 2014 titled "**Achieving Lasting Affordability through Inclusionary Housing**", by Robert Hickey, Lisa Sturevant, and Emily Thaden. The paper pulled data from 307 programs across the country and focused on case studies for 20 of those programs.

The case studies revealed that achieving lasting affordability requires more than simply setting long affordability periods, which has been a hallmark restriction in IZ programs. "Strong legal mechanisms, carefully designed resale restrictions, pre-purchase and post-purchase stewardship practices, and strategic partnerships are important for ensuring that inclusionary properties continue to be sold or rented at affordable prices, and are not lost due to illegal sales, foreclosure, or lax rental management practices. Despite the acknowledged importance of stewardship, most jurisdictions report having insufficient resources for comprehensive stewardship and many have not adequately planned for long-term monitoring and stewardship of inclusionary housing units."

The Lincoln Land report found that while IZ can create large numbers of affordable units in some communities, overall they have had a relatively small impact on the supply of affordable housing nationwide. While differences in retention levels can be partially explained by program stewardship, differences in the production levels can be partially explained by local housing market conditions. Strong demand for market-rate housing has produced more affordable units compared to weaker housing markets.

[6] "The Most Popular Kid in the Class: Diffusion of Inclusionary Zoning across San Francisco Bay Area Governments", Schuetz and Meltzer, Furman Center, NYU, February 2, 2009

The results of the case study analysis suggested the following conclusions about successful and innovative strategies to help ensure lasting affordability:

- Inclusionary housing programs can only be successful in meeting affordable housing needs if they are both producing and preserving units.

- Without the upfront commitment to long-term affordability, inclusionary housing programs will not be able to meeting ongoing affordability challenges.

- Long affordability periods that reset offer a compelling alternative to “perpetual” affordability periods and go a long way towards achieving lasting affordability.

- Supplemental legal tools beyond deed restrictions will be needed to improve notification of defaults, potential illegal resales and burdens encumbered by homebuyers through second mortgages and refinancing. Inclusionary housing programs should also have in place legal mechanisms that strengthen the program’s ability to cure or purchase homes in foreclosure. The preemptive right of purchase can help strengthen a program’s control of the resale process and proactively keep inclusionary units in the affordable inventory. It can also be a helpful tool for increasing the affordability periods of units built under previous, shorter-term requirements.

- Local jurisdictions need to be responsive to local housing market conditions and household demographics when designing resale formulas and should evaluate the efficacy of their design over time to ensure affordability is being preserved.

- Inclusionary housing programs must actively monitor and steward inclusionary units, either in-house or through external partnerships. The programs highlighted in the case study analysis often made good decisions about setting up affordability periods and legal mechanisms with the goal of promoting lasting affordability. However, critical activities around monitoring and stewardship are often inadequately implemented. Successful programs should look to develop partnerships with organizations that have strong stewardship practices—including Community Land Trusts—in order to ensure that the affordable housing created through a well-designed inclusionary housing programs remains affordable to future owners and renters.

- Tapping local housing trust funds, which can be supported through in-lieu fees, is a practical way to support repair and crucial ongoing maintenance of inclusionary housing units.

Throughout its history of implementation, inclusionary zoning has generally received “good press.” Programs such as the one in Montgomery County, Maryland, have been touted, particularly in planning and community development circles, as an affordable housing panacea that can be replicated in any community that has public officials so inclined to create affordable housing. This line of thinking is naïve, however, and most jurisdictions in the United States likely lack the financial resources, staff capacity or expertise needed to implement such complex programs. In addition to the administrative burden added to a community, the tendrils of an inclusionary zoning program reach out and affect a huge array of parties, including the construction industry, lenders, legal industry, affordable housing providers, non-profits, sales and marketing, and the homebuyer. Large and wealthy jurisdictions such as Montgomery County may have the resources to continually run these cumbersome programs, but most local jurisdictions are not Montgomery Counties.

If a community is considering inclusionary zoning despite these caveats, it must not take this on as a whim or consider it a silver bullet or a panacea.

A body of research conducted for NAHB by attorney Tim Hollister of Shipman and Goodwin in Hartford, CT, provides a national perspective on inclusionary zoning ordinances based on a review of state statutes and ordinances across the country: **National Survey of Statutory Authority and Practical Considerations for the Implementation of Inclusionary Zoning**, June 2007.

Not surprisingly, states vary in how they authorize the use of inclusionary zoning at the local level, ranging from implicit to express enabling authority. Seven states have no express authority; two states prohibit mandatory inclusionary zoning (Oregon and Texas); in two states inclusionary zoning ordinances have been invalidated as conflicting with statewide rent control laws; and 26 states have no express or implied authorization in their enabling statutes, so the authority is dependent on home rule powers.

The Resource Manual includes an extensive list of 45 components that communities should consider before adopting and implementing an inclusionary zoning ordinance. These elements fall within these broad categories:

- General practical issues;
- Defining applicability;
- Resident eligibility;
- Financial information and management

<u>Sections 1-7 Practical Consideration and Challenges</u>

- Factual Justification
- Voluntary vs. Mandatory
- Link to General or Housing Plan
- Construction Incentives
- Financial Incentives
- In-lieu of Fees
- Waivers and Exemptions

Sections 8-11 Defining applicability

- Geographic Applicability
- Minimum Applicability Requirements
- Type of Developments Included and Excluded
- Type of Construction Covered

Sections 12 – 23 Resident eligibility and selection

- Purchaser and Tenant Eligibility: Local Resident Preference
- Purchaser/Tenant Eligibility: Families vs. Age Restricted
- Required Set Aside Percentages
- Duration of Set Aside Requirements
- Selection of Purchasers/Tenants
- Lotteries
- Marketing and Outreach Requirements
- Renewal and Re-verifications
- Definition of Household Incomes
- Family Size Adjustments
- Down Payment Assumptions
- Minimum Occupancy Requirements

Sections 24 and 25 Construction Issues

- Sequencing of Construction Set Asides versus Market Rate Units
- Administration of Limitations

Section 26 – 40 Financial information and management

- Comparability of market versus affordable units
- Compliance Reporting
- Confidentiality of Income Data
- Sale/resale process and documentation
- Lender documentation
- Required versus Optional Fees
- Utility Allowances
- Government Enforcement
- Real Property taxation
- Use of Percentage of Income in Price Formulas
- Consumer Price Index/ Escalation Formulas
- Capital Improvements to Restricted Price Units
- Principal Residence
- Subletting
- Disposition of Restrictions at the End of Set Aside Period

Sections 41- 45 Procedural and Substantive Legal Challenges

- Procedural Compliance
- Authority to Enact
- Preemption
- Rent Control
- Illegal Exaction/Regulatory Taking

The number of considerations clearly shows that inclusionary zoning is a complex market intervention that should not be taken lightly or simply copied from another community. It must be considered carefully before adoption.

Another analysis of the complexities and challenges involved in implementing an inclusionary zoning program was conducted by Rick Jacobus of the Burlington (VT) Associates in Community Development add title of report here. This analysis includes a thorough review of the history of Inclusionary Zoning, as well as case studies from several programs across the country and the challenges these communities have faced trying to implement these complex, market intervention programs. Most critical about this report is that it addresses how the perils unleashed by the housing crash negatively impact these programs. Jacobus concedes that inclusionary zoning can work in the cases that sufficient compensation is afforded the builder for providing an inclusionary zoning unit, typically in the form of density. Also, some multifamily builder members have routinely secured multifamily building permits only on the basis that they provide some amount of Inclusionary Zoning.

However, the most intriguing part of the Jacobus report is that it reveals the “dark side” of these programs that are prevalent and present tremendous challenges yet are seldom discussed by inclusionary zoning advocates.

Such increasing problems as mortgage default bedevil many programs and challenge the notion of a clean turnover of an affordable unit from one owner to another. Also, the burdensome legal costs associated with keeping a home deed restricted can cost an agency anywhere from $500 to $20,000, per unit, per sale.[7]

Jacobus continues to highlight what it would take to implement an ordinance in order to produce affordable housing at a level of any significant impact. A jurisdiction implementing an ordinance would have to focus their administration logistics on eight primary areas:

1. Production

Home builders forced to produce affordable housing will try to find ways to reduce costs

[7] “Delivering the Promise of Inclusionary Zoning: Best Practices in Administering and Monitoring, Rick Jacobus, Policy Link, 2007

when constructing a home in order to offset the cost. One builder in California even offered inclusionary zoning units without kitchen cabinets or appliances. Another way to save money on these units is to cluster them in the least desirable location of a project or to use lower cost materials on the exterior of the project. It is up to the administrator of the program to ensure that the affordable units are comparable in external appearance and that the interior size, quality of finishes and amenities are appropriate.

Figure 1

At the Capitol Quarter development in Washington, DC, by builder/developer EYA, inclusionary zoning units are offered as row houses or condominium units disguised as row houses.

In the photo, it is hard to determine which unit is the inclusionary zoning unit. In fact it is the corner unit with three affordable units disguised as a row house. In the same project, row houses were offered as an inclusionary zoning unit, but with a width of 14 feet, as opposed to a width of 16 feet for the market rate units.

2. Pricing

The definition of "affordable" will vary from program to program, but will often be based on a formula that takes into account percentage of median household/family income, household family/income, percentage of income spent on housing costs, household size and median home prices. Depending on income levels of a certain region, the percentage of median income thresholds to qualify for these programs may vary.

For instance, in a jurisdiction with very high median incomes, such as San Francisco County, Montgomery County, MD; or Fairfield County, CT, income levels up to 120 percent of median income may still qualify persons to participate in an inclusionary zoning program. Generally, programs expect that an owner or renter of an inclusionary zoning unit will not pay more than 30 to 35 percent of their monthly gross income on associated housing costs, which almost always include mortgage, property taxes and insurance, and increasingly, homeowners association (HOA) fees.

HOA fees have received relatively scant attention. However, they are quickly becoming of paramount importance. Particularly in this extended period where homeowners face multiple challenges of falling home values, lower incomes and rising foreclosure costs, HOA fees for those who pay on time are increasing.[8] Oftentimes these increases can be quite high. The reason is that HOAs are under increasing pressure due to defaults and

[8] PolicyLink – Understanding the Neighborhood Stabilization Program

non-payment and therefore raise the dues on those that are paying to cover the shortfall. There is some anecdotal evidence that in some situations, taxes and HOA fees combined are now more than mortgages.[9]

These escalating fees due to the financial crises are becoming a greater concern to low and moderate income homeowners who may not have the resources or the pay increases to adjust to increasing HOA fees. Whether or not jurisdictions and non-profits are going to be able to access additional funds to help residents offset these increases or to pay fees in arrears has yet to be seen. However, it appears to be increasingly difficult in these times where funds are scarce within all sectors.

3. Marketing

Some communities rely on marketplace mechanisms to market inclusionary zoning programs. Fairfax County, VA relies on property owners and rental offices to staff the marketing of their portfolio of rental units. The County maintains standards and offers voluntary training to leasing staff who market the units along with market-rate units.

Generally, a jurisdiction marketing their for-sale inclusionary zoning units must engage in a myriad of activities, including performing general outreach to buyers on an ongoing basis; managing a waiting list or interest list of eligible applicants who understand the tradeoffs involved in affordable homeownership; marketing the new development projects both to the existing waiting list and the general public; marketing individual units at the time of resale; and educating the real estate community about the nature of the program and the available units.

4. Homebuyer Education

Homebuyer education is a common requirement for participants in any affordable housing program. Participants in inclusionary zoning housing programs can be included in general homebuyer education programs that may be run by the jurisdiction or run by local housing non-profits contracted to the jurisdiction. Such programs typically focus on such issues as basic household finance, the home-buying process, credit repair, understanding mortgages, and basic home maintenance and repair.

5. Selection and Screening

Selection is a labor-intensive process that requires all applicants be screened for such factors as income, age, household size and credit history, as well as level of non-household debt, the ability to qualify for a mortgage, and first-time homebuyer status. Some programs impose different income limits and household size criteria to different units, adding to the complexity.

In addition, the selection process can be time-consuming, particularly when programs have a high demand. In a situation where waiting lists occur, some communities rely on

[9] 2010 Semi-Annual Foreclosures in Minnesota August 9, 2010

a lottery system; others use a first-come first serve system based on those who are qualified; and yet other systems give priority to municipal employees such as fire, police or schoolteachers. Because Fair Housing laws prohibit certain types of restrictions to housing, all programs should be scrutinized by municipal legal staff to ensure that Fair Housing laws are being followed.[10]

6. Financing and Refinancing

Given the recent problems with the mortgage industry, it has become common knowledge that the lending industry has severely tightened their underwriting standards. Although there is no empirical evidence that this has reduced the number of inclusionary zoning units the banks are willing to underwrite, what is often forgotten is that these units generally are underwritten by conventional lenders. Therefore one can assume that banks may now have more reservations about underwriting units to be sold to low and moderate income buyers who may have fewer resources in place than higher income buyers.

At the same time, these lenders must take on the additional complexities that run with an inclusionary zoning unit and understand the additional restrictions on the deed in order to preserve the unit as affordable. Staff must work with the local and national mortgage lending community to ensure that there is an adequate pool of mortgages available to service the number of units anticipated to be produced.

7. Resale Management

Jacobus points out in his report that one of the most time consuming tasks in running an inclusionary zoning program is re-sale management. Resale management consists of a number of complex tasks and functions, including responding to homeowner’s questions, maintaining regular communication with all homeowners in the program, as well as brokers, and title companies. Staff must also coordinate and review home inspections for every sale and re-sale, and work with outgoing homeowners to determine any credits for improvements or deductions for damage and deferred maintenance.

8. Enforcement and Monitoring

To underscore the problem with enforcing these equity-restricted units, Jacobus points out that in Santa Barbara County, several commissioners called for the end of the 25-year-old inclusionary zoning program after an unscheduled audit found that as many of a quarter of the 400 units were being used illegally for rental income; 9 homes had been lost to foreclosure, and several owners were able to take out second mortgages on the properties far in excess of what the deed restricted value was.[11]

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[10] Inclusionary Zoning: Legal Issues, California Affordable Housing Law Project and Western Center on Law and Poverty, December 2002

[11] “Delivering the Promise of Inclusionary Zoning: Best Practices in Administering and Monitoring, Rick Jacobus, Policy Link, Page 2

Although the Commission ultimately decided to keep the inclusionary zoning program and addressed some of the problems with a restructuring, only one staff person[12] remains in position to carry out all the required functions to maintain the County's portfolio of inclusionary zoning housing.

Jacobus points out that, while most owners of an inclusionary zoning unit will comply with the requirements of the program, inevitably some will take advantage of the program and break the rules. A 2004 survey by the City of Palo Alto found that nearly 30 percent of their 179 units of inclusionary zoning had compliance problems of one sort or another.[13] Perhaps the greatest temptation is to rent out the units at market rate, while still paying a below-market rate mortgage payment. If gone undetected, owners can reap high monthly profits, especially in regions with high monthly rental rates. Therefore, there is additional pressure on staff to enforce the requirements to prevent this sort of abuse of the system. Affordable housing programs that do not have these kinds of deed restrictions are therefore easier to manage in the long run.

Given the recent financial crises, more and more homeowners are defaulting on their mortgages, and owners of deed-restricted, affordable units are certainly not immune. Mortgage defaults are forcing staff to divert their valuable time away from managing existing units to take action to either avoid foreclosure of the property by the lender or to take extra steps to ensure that the unit remains affordable after the lender has taken back the unit.

Latest Reports

In 2015, Robert Hickey at the Center for Housing Policy published a paper called "**Making Inclusionary Housing More Flexible: Four Ideas for Urban Settings**," which outlines best practices for working with developers in urban areas. Hickey recognizes the need for balance between addressing affordable housing needs and making the requirements feasible for developers. He says that post-recession IZ policies are most necessary in cities where rents are rising faster than incomes, impacting the middle class in addition to low income households. Middle class residents have high rent burdens but do not qualify for federal housing assistance.

Hickey says that flexible IZ policies help improve feasibility by offering developers various ways to meet affordability obligations. This is especially important in urban areas where building materials and methods are more expensive and land costs are high. All of these factors, as well as high HOA fees and NIMBY mentalities, sometimes make it hard to meet affordability requirements in same building as the market rate units. Historically, one of the most popular options in these situations was to build off-

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[12] Santa Barbara County Government, Department of Housing and Community Development, Residential Property Management Division

[13] "Delivering the Promise of Inclusionary Zoning: Best Practices in Administering and Monitoring, Rick Jacobus, Policy Link , Page 8

site units or pay a fee-in-lieu. The issue municipalities' face when offering these options is they do not further the goal of creating mixed income communities.

How do you lower costs for developers in these high cost cities while still promoting mixed income neighborhoods? Hickey offers four suggestions:

1. **Permit off-site development in multiple low-income neighborhoods.** If this option is chosen, the municipality could require a greater number of affordable units and mix of bedroom sizes that may not have been available if the units were built on-site. Many municipalities require these units to be built nearby, but the scarcity of affordable land in urban areas makes that a problem. Hickey suggests that municipalities broaden the geographic realm of off-site locations to any low-poverty neighborhood with access to core amenities such as transit service, jobs, and above average schools.

2. **Offer options to preserve or increase the affordability of existing housing.** This is a fairly new alternative to providing on-site units and it gives developers the option to preserve existing housing that is at risk of being lost due to rent spikes. This is done by converting existing market rate housing to deed restricted housing and requires the developer to make minimum level investment in rehabilitation and energy efficiency upgrades. Some programs also allow developers the opportunity to provide direct financial assistance to low income homeowners for home renovations. This is a good option for developers that own existing market rate units in low cost buildings or are building projects with high HOA fees. It should be noted that the cities that currently offer this option haven't had much interest from developers but it may become more popular as land prices increase.

3. **Restrict Fee-Revenue Spending to Broad, Designated Areas.** The option to pay a fee-in-lieu is really good for developers, especially developers of small projects. Both San Diego and Seattle are fee first programs where units may be built in-lieu of paying a fee. In San Diego the fees are collected and distributed by community planning area.

4. **Provide flexibility on the incomes served.** Allowing a developer to select from a menu of income targets gives them greater flexibility to make sure the mix is right for the project there are building as well as their bottom line. For example, instead of requiring that 10 percent of the units be made available to 80 percent AMI, a developer could be given leeway to provide a percentage of units to 50 percent AMI and a percentage to 100 percent AMI.

Hickey points out that not all of these policies will work in all places, but in general, all cities can benefit from giving developers more pathways to affordability. He also notes that new IZ policies are showing up in locations where IZ has been historically rare, such as Nashville, Atlanta, and Pittsburgh, reminding us that housing affordability is a constant issue that policymakers are being pressured to address by both regulators and stakeholders.

STORIES FROM THE FIELD: Communities that have Discontinued or Reshaped Inclusionary Zoning

Because of its complexities and the effort required to administer it, there are a growing number of communities that have discontinued the use of IZ or reshaped it to incorporate other tools for achieving lasting affordability.

Madison, WI

Since the program's inception in February 2004, 48 developments were approved in the City of Madison with a total of 2075 homes, of which 173 (8.3 percent of total) were affordable under the inclusionary zoning guidelines, and 33 (19 percent of affordable and 1.6 percent of all homes) have been sold to date.[14]

An article written by Terrence Wall of Smart Growth Madison and published in the Madison Isthmus Weekly pointed out that:

> "Inclusionary zoning, Madison's well-meaning program to increase the supply of affordable housing, has had a starkly perverse impact on the local housing market: Vacancy rates have declined and rental rates have increased, producing exactly the opposite effect that IZ advocates wanted."[15]

His article includes research that indicates that in the period 2001 to 2003, developers built 3,257 housing units (of all types) in Madison, compared to only 1,954 units from 2004 to 2006, a 40 percent decrease after the IZ ordinance was passed in early 2004.

In 2006, Madison issued only 143 permits for market-rate apartment units, down from 660 in 2003. That 143 number is incredibly low when one considers that the city has on the average issued permits for 807 units annually since 1993, the vast majority of which were market-rate units.

The dramatic downturn in new construction caused vacancy rates to decline in existing units and net rents to increase, thereby achieving the opposite effect of what the city intended, overall higher costs of housing for everyone.

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[14] Inclusionary ZoningAnnual Report, Inclusionary ZoningAdvisory Oversight Committee, September 2008
[15] "How Inclusionary Zoning Backfired on Madison", Terrence Wall, Madison Isthmus Weekly, March 15, 2007

Kent Disch, former Community Affairs Director of the Madison Area Home Builders Association, indicated that the ordinance was constantly under amendment due to the complex nature of the policy.

Even advocates for workforce housing had to concede that the program was not effective when only 15 inclusionary zoning homes were sold in 15 years. Disch stated that “The program just didn’t make sense, our inclusionary zoning lots sat empty because the market was flooded with existing homes listed below the inclusionary zoning unit price, and prospective home buyers just were not interested in purchasing an equity restricted house with a more complicated financing and closing process.” Another helpful amendment was that after 270 days without selling, the inclusionary zoning lots could return to the market rate price. Disch added “Many builders simply waited out the required time period before aggressively marketing those lots.”

The City suffered additional blows to their faltering program. In 2006 the Wisconsin Supreme Court struck down the entire ordinance as a form of rent control, which is banned by Wisconsin state statute. The City therefore had to revise the ordinance to remove the rental component of the ordinance. Given the low number of units generated by the program in the four years since its inception (only 1.9 percent of all new dwelling units), and the ongoing controversy that the program had created in the community, the City Council decided not to renew the program when its sunset provision came up for renewal in 2009.

<u>St. Cloud, MN</u>

St. Cloud, population 66,000, is the primary city of a half-dozen cities clustered around the Mississippi River in central Minnesota, about 60 miles northwest of Minneapolis. One might think that in such a location affordable housing would hardly be a major policy issue. However, by 2001 there was a concern in the community that more and more residents of central Minnesota were being priced out of quality housing and homeownership opportunities. It was estimated that during 2001, the price of housing rose by about 16 percent in the area, due to increased demand and lack of supply.

The Central Minnesota Task Force on Affordable Housing was created to address the issue. One of the many proposals considered was recommending that the six cities in the region adopt inclusionary zoning ordinances for what was referred to as “Life-Cycle Housing.”

The premise in St. Cloud and other central Minnesota cities is that minimum lot sizes required by area zoning laws are now so large that they are impeding the ability to provide for affordable single-family homes.[16] If local governments were to provide density bonuses by allowing for smaller lot sizes, in exchange for providing 15 percent below- market rate housing units, the theory goes, it would be a “win-win” for all parties involved.

However, this was not to be the case. As this case study demonstrates, inclusionary zoning is often an ill-suited fit for a community. Similar to the Madison example, there was just little interest by the home buying public in purchasing equity-restricted new home, when similar homes nearby could be purchased at lower prices with no restrictions. At its April 2007 meeting, the “Life Cycle Housing” Board voted to terminate the inclusionary zoning program, which was adopted in 2004, and replace it with a standing committee on affordable housing under the St. Cloud Area Joint Planning District Board. The five city councils voted to ratify that action, which means that the inclusionary zoning program no longer exists.

In 2006 and into 2007, the Life Cycle Housing Board considered reducing the percentage (15 percent to 5 percent) of inclusionary zoning housing lots because of the high number of vacant lots (several hundred in St. Cloud alone); the fact that funding sources were no longer awarding funds to proposals submitted for inclusionary zoning housing; and because the City of St. Cloud’s housing efforts, through its Housing and Redevelopment Authority (HRA), directed at existing housing in existing or core neighborhoods, which appeared to be effectively addressing the affordable housing problem in the region.

Under the various funding mechanisms for lifecycle housing, including Inclusionary Zoning, there were a total of 28 homes (or 40 depending on the source) built and sold since the program’s inception in 2002. During the same time, the St. Cloud HRA acted independently of the inclusionary zoning program and sold more than 83 single family detached homes and townhomes, all without the equity restrictions. (inclusionary zoning units were sold to households with annual incomes of less than 80 percent of the state median income, and resold with 50 percent equity restriction in years 1- 10, declining to no equity restriction after year 20).

The existing inclusionary zoning homes went into a 90-year community land lease. The developer/builder holding life-cycle lots will individually negotiate with the respective city.

The unintended consequence of the inclusionary zoning program and the St. Cloud HRA efforts was that first-time home buyers were not purchasing

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[16] “Affordable Housing and Sprawling Regulations, A View from St. Cloud,” King Bannanian, American Experiment Quarterly, Summer 2002

existing homes in existing neighborhoods, fixing them up, and using that equity to purchase their next home. With existing homes not selling, interest rates dropping, and being in a large college community; these homes were purchased by investors for rentals. (St. Cloud is a regional center on the Mississippi River with older neighborhoods and a 15,000 student university located in one of those neighborhoods).

As St. Cloud city leaders and citizens of the area viewed their changing neighborhoods and causes, they became adamant that existing homes be the primary focus of the housing affordability efforts, not new housing attained through an inclusionary zoning program, and that financing assistance be available to potential buyers. This action became the reason for the termination of the inclusionary zoning program as the City of St. Cloud began to concentrate on the existing housing in its core neighborhoods, and felt it could not commit resources (funds and personnel) to a program with emphasis on new housing.

In lieu of an inclusionary zoning program, the St. Cloud HRA established the boundaries for the core neighborhoods and then pooled existing funds to launch this program – almost an “urban pioneer” program:

- revised the existing CDBG homeowner rehabilitation program to a zero interest deferred loan of up to $15,000 for repairs to existing homes, payable at time of sale, refinance, or move-out;
- separate funds were set aside to assist households that had incomes below 70 percent of area median income, or 70 percent to 100 percent, or more than l00 percent;
- provided gap financing of zero interest, no payment deferred loan, payable at time of sale, refinance, or move-out; to households with dependents, and not exceeding 80percent of state median income; and
- created a homestead incentive program of five year forgivable loan, prorated forgiveness each year. This funding was exhausted in a few months by providing 40 loans totaling $200,000. This equals 40 new owner-occupied existing homes in core neighborhoods.

The St. Cloud HRA is seeking additional funding because, within a few months, the program was so successful that the HRA was able to rehabilitate 40 existing homes for low and moderate income buyers that will be owner-occupied in those core neighborhoods with no equity restrictions.

<u>Tallahassee, FL</u>

The City of Tallahassee is the state capital of Florida, with a population of around 250,000. The city enacted an inclusionary zoning ordinance in 2005, with a revision to the program in 2008. The basic requirements of the program are a 10 percent set aside for affordable units, with a 25 percent density bonus and a minimum threshold of 50 units to be applicable to the program.[17]

To date, no units of affordable housing have been created through the program.[18] As stated in the City's Consolidated Plan, the City recognizes that the recent downturn in the state's housing market has hampered the City's ability to generating housing using this method.

The production of new units is still a viable option for the City of Tallahassee; however the weak new construction market combined with a 12-month surplus of housing available for sale and a high foreclosure rate in the city means that in the next 2 to 3 years the City will likely focus on rehabilitation and reconstruction rather than new construction.

The fact that the City has not built one unit of affordable housing through their inclusionary zoning program underscores how susceptible these programs can be to recessionary cycles, particularly in smaller communities.

In contrast, the city also implements an affordable housing program utilizing formula grants from the U.S. Department of Housing and Urban Development's HOME and CDBG programs and the Low Income Tax Credit. Currently there are approximately 4,037 affordable rental units made available in the city by the Low Income Tax Credit. CDBG funding and the state's State Housing Initiatives Partnership Act (SHIP) program are also used to provide for 420 down-payment assistance programs as well as 50 deep subsidy loans for homeownership for households 50percent below the median household average. Additionally, the Community Housing Development Organization, a non-profit affordable housing program will use grants to rehabilitate 25 existing homes in the next four years into workforce housing home-buying opportunities.[19]

In addition to the failure to produce even one unit of affordable housing in six years, the City also had to go through a costly lawsuit. In Florida HBA, Tallahassee BA, Hermitage Ventures and Sue Boynton vs. City of Tallahassee, the plaintiffs filed suit against the City claiming a violation of due process because the ordinance was "arbitrary and capricious," in terms of who in the public the program would benefit; that it was an unlawful taking because the ordinance targeted only a small group of the citizenry to provide a public good without just compensation; and that it was an unlawful state tax because municipalities in Florida are barred from levying real estate or personal property taxes.[20] Although the Circuit Court ruled in favor of the City in the case, the City had to spend tax dollars and manpower to defend a program that has yet to produce any units.

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[17] City of Tallahassee Inclusionary Zoning Ordinance, Adopted April 13, 2005, Amended August 20, 2008
[18] City of Tallahassee, Economic and Community Development Department
[19] City of Tallahassee, Consolidated Plan, 2010 – 2015
[20] "Battle Lines Drawn", Steve Zurier, Builder Magazine, May 2006

Palm Beach County, FL

Similarly, in Palm Beach County, during the height of Florida's frenzied housing boom, an alarmed County Commission decided to "take action" on housing affordability and, with the reluctant collaboration of the local HBA, enacted an inclusionary zoning ordinance in early 2006. Then the bottom fell out of the market. In 2000, the median house price in Palm Beach County was $135,200[21], by the First Quarter of 2006 that price had escalated to $393,000[22], but by 2009 had plunged to $244,500 and fallen even further by Third Quarter 2010 to $226,600.[23]

Chris Roog, former Executive Officer of the Gold Coast Builders Association and Government Affairs Director, indicated that since the ordinance passed in 2006, not one inclusionary zoning unit has been constructed in the county of more than 1.3 million people. "The demand simply isn't there. The industry has been so hard hit that there literally have been no projects approved in the last four years. If projects have received approval, none have broken ground." With no development projects approved there is no way to create the associated percentage of affordable housing. "Plus, with the huge number of foreclosures in the County, people can purchase a single-family home for as little as $50,000."

Based on the formula for inclusionary zoning units set in the ordinance, which are based on average annual income for the county, inclusionary zoning units would have to be marketed at around $150,000. Roog noted "why would anyone pay more for an "affordable" unit when the market is providing units at lower prices, with none of the equity restrictions attached. If the County were really interested in promoting affordable housing they would be scooping up the huge overhang of foreclosures we have weighing down housing prices and assisting moderate income buyers with financing and down payment assistance so they can buy these homes."

Doing so would not only provide affordable housing but also prop up home values and boost the construction industry by taking foreclosed properties off market. "The County would rather just keep the phantom IZ ordinance on the books because they don't know what else to do…"

Fortunately for Roog and the south Florida home builders, the County reviews the ordinance once a year. If the program continues to produce no units, there may be a chance for eventual repeal of the in the future.

McCall, Idaho

In 2008, the Fourth Judicial Court of Idaho struck down an ordinance enacted by the city of McCall mandating private builders and developers to build and deed-restrict properties for "workforce housing." In 2007 the local REALTORS association had filed a

[21] United States Census Data, 2009
[22] 2010 Survey by Florida Associations of Realtors
[23] 2010 Florida Realtors Report

lawsuit against the city of McCall seeking a declaratory ruling that McCall's ordinance was an unconstitutional taking of private property rights, an illegal taxing scheme, and that the city exceeded its jurisdiction and authority in passing the ordinances. The court's overturning of the ordinance highlights the perils faced by local jurisdictions considering adoption of an inclusionary zoning ordinance.

Among other things, the ordinances required that developers and builders set aside, build and deed-restrict 20 percent of a development for "workforce housing." Under the ordinances, the deed-restricted properties were reserved for people making 100percent to 160percent of the median wage in Valley County in central Idaho. The local government would award priority points to certain types of jobs that would qualify for the housing. Such homes would be permanently price-restricted. The ordinances mandated an equivalent "in lieu of" fee as an option to building such homes.

The 4th Judicial District Court included the following points in the Memorandum Decision:

- "These restrictions go much further than merely regulating the use of property; instead, they essentially regulate ownership of the property by dictating to whom a unit may be sold or rented."

- "This Court concludes such 'regulation' is arbitrary and unreasonable as a land use provision."

- "This Court is convinced that the imposition of the subsidy or fee required under Ordinance Nos. 819 and 820 are, in reality, a tax, and not a regulation."

Idaho Association of Realtors Chief Executive Kevin Price was quoted on the court's decision, stating "The City simply went too far and exceeded its authority. The imposition of this burden on the landowners or developers amounts to an unlawful tax. In addition, the ordinances go much further than the City's authority to regulate the use of property. By dictating to whom a housing unit may be sold or rented, the City has improperly attempted to regulate property ownership. We certainly agree with the Court's determination that this "regulation" is arbitrary and unreasonable. There are developments in Valley County constructed under the ordinances. When the market softened, consumers had a choice between purchasing deed-restricted lots that can't appreciate in price, or unencumbered lots for the same price. Naturally, buyers chose to purchase homes with no free-market restrictions. Some of these "affordable workforce housing units" have been lying vacant for months. The people who were forced to build them are really taking a bath.[24]"

Bozeman, MT

In yet another example of how inclusionary zoning is very susceptible to downturns in

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[24] February 2008 Idaho Association of REALTORS Press Release

the housing market, two years after the city of Bozeman's Workforce Housing Ordinance went into effect, no homes were built under the program. While the city points out that all home building has slowed with the economic downturn, many within the building community have called for it to be repealed.

The workforce housing program requires developers of some subdivisions to price a portion of their homes or condominiums under $200,000 and trains Bozeman residents for homeownership. The Bozeman City Commission adopted the ordinance in July of 2007 in hopes of giving working class families who makes less than $70,000 a year wider options for owning a home in Bozeman.

In its original approval of the ordinance, the city commission stipulated that its effectiveness be reviewed in two years. They looked at an update on the program compiled by staff, but did not discuss it during their meeting. Instead, they voted to review the program again in another year, hopeful that the market will improve and give the program a chance to work.[25]

Davie, FL

South Florida is one of the epicenters of the current housing price crash and foreclosure crisis. The Town of Davie, until recently, was a fast growing bedroom community with a population of approximately 90,000 located immediately west of Fort Lauderdale. Since 2000, the population increased by 14,609 people or by approximately 5,555 dwelling units.[26] In response to rapidly escalating prices during the housing bubble years, Davie finalized adoption an inclusionary zoning policy in early 2008. To date, not only have no affordable units been created through the program, hardly any residential building units have been constructed at all, relative to the boom years earlier in the decade. In 2007, 274 residential units were constructed in the city; in 2010, that number was reduced to 72 units.[27]

The Town's Vice-Mayor stated that "I have been told that this (ordinance) is prohibiting a lot of people from building in our town."[28] A local realtor recently informed the Town Council that a developer who wanted to build a 50-unit housing development in the town decided not to after reading the inclusionary zoning ordinance.[29]

In a time of budgetary crisis, stagnant home building and shrinking tax bases, communities desperate for new development do not need burdensome regulations such as inclusionary zoning hampering their ability to resolve their fiscal problems. The Town Council has subsequently voted to suspend the Ordinance for two years.

[25] Ricker, Amanda, Bozeman Daily Chronicle, September 1, 2009
[26] 2000 and 2010 U.S. Census Data
[27] Town of Davie, Florida Building Department
[28] "Davie Questions Old Push for Affordable Housing", Susannah Bryan, South Florida Sun- Sentinel, May 5, 2011
[29] Ibid

Longmont, Colorado

In August 2011, the City of Longmont, Colorado voted to end its inclusionary zoning program after a year-long debate within the community. Longmont is located about 29 miles northwest of Denver and has a population of 86,000.

Although the program managed to produce some units, the City realized that having an inclusionary zoning ordinance was an impediment to bringing jobs and businesses to the community in a challenging economy. The repeal did not just take effect for future housing units, but also lifted all re-sale deed restrictions for housing built under the inclusionary zoning ordinance. This was seen as an added benefit to existing residents in the community, akin to a tax break and would provide for an added shot in the arm for the local community.

In lieu of the repealed ordinance, a stakeholder group was established by the Council to re-examine the state of housing affordability in the community given the falling real estate prices. Denver is the only other jurisdiction in the metropolitan Denver area that has an inclusionary zoning ordinance, and two council members in that city are seeking to revisit the ordinance.

Montgomery County, Md.

In Montgomery County, only 77 inclusionary zoning units were produced in 2007, an all-time low in the 36-year history of the program; this after 400 units were produced in 2005, at the height of the building boom.[30] This reinforces the notion that inclusionary zoning programs are highly susceptible to market and economic fluctuations and cycles, and when affordable housing production is mandated on the backs of the market-price housing industry.

Santa Fe, N.M.

Santa Fe's experience with IZ is further evidence that this tool is best suited for the strongest markets during the best times. In 2005, the city started enforcing an IZ ordinance that required at least 30 percent of all new developments be affordable. However, only 27 out of 181 proposed affordable units have been built and sold over the last nine years. Meanwhile, the local housing trust says they have 200 – 300 people waiting to buy an affordable home.

The ordinance was developed during the housing boom without developer input and when the recession began, it made meeting the requirements of the ordinance impossible. The 30 percent number was modeled after similar ordinances in more expensive, higher density areas like San Francisco and Chicago, where incomes are also higher than in Santa Fe.

[30] Montgomery County, MD Department of Housing and Community Services

In order to reduce the onerous requirements, the city has reduced the required percentage from 30 percent affordable to 20 percent affordable. Santa Fe also reduced the affordability term for rental units from 20 years to 10 years. According to staff, this decision was driven primarily by the city's interest in encouraging more market-rate rental housing in the city. The city has also changed the resale requirements. For example, if a homeowner originally bought a house worth $175,000 for $125,000, and its value jumped to $250,000 by the time of sale, they would owe the city $75,000 instead of $50,000. The new ordinance allows homeowners to repay only the dollar amount of subsidy they received when they first bought the house.

New York, N.Y.

In 2014, New York City's Mayor De Blasio unveiled his plan for an overhaul of the city's existing IZ program. Former Mayor Bloomberg's model allowed developers to build 20 percent bigger if they set aside 20 percent of the new apartments at below-market rates. While the program under Mayor Bloomberg remained voluntary, the new program will be mandatory when building in a targeted neighborhood that has been upzoned for higher densities. The new program will require developers in those areas to build projects that are a 20 percent low-income, 30 percent middle-income, and 50 percent market-rate split.

Opponents still do not believe the changes in the program will produce positive outcomes. IZ units only accounted for 1.7 percent of housing growth between 2005 and 2013, and the new program isn't that different from the old program. Additionally, the inclusionary rents are based on Area Median Income (AMI), which is calculated over an area that includes both the city and its wealthy suburbs. In 2013, AMI for an average household in the New York metro area was $77,310; in the city alone, however, the average family made $50,711.

IZ programs also receive a lot of criticism from the residents they are meant to serve due to fears of gentrification. Tom Angotti, the director of the Hunter College Center for Community Planning and Development, argues that inclusionary zoning's proponents "deal with housing as if it existed in a free market — as if it were just a matter of individual apartments combined. But it exists in a land market, where values are determined largely by location and zoning capacity. In areas with high land values, the new inclusionary development will just feed the fire of gentrification."

In New York City, inclusionary zoning could actually incentivize the destruction of existing affordable housing. Many New York City neighborhoods are filled with rent-control apartments, often at lower densities than the new inclusionary zoning rules would allow. The average income for rent-stabilized tenants is $37,000; for rent controlled tenants it is $29,000. Both are significantly lower than the income targets for many inclusionary apartments.

Seattle, Wash.

The city of Seattle has turned the fee-in-lieu concept on its head and instead adopted a "fee-first" ordinance that gives residential and commercial developers the option to create onsite or offsite units in lieu of paying the fee. Between 2002 and 2013, in every case where developers had the choice, they chose to pay the fee.

Cornerstone Partnership analyzed data from Seattle's Office of Housing and found that $27 million of fee revenue the city generated from 2000 to 2013 enabled it to bring in $97 million in federal and state housing funds that would not have been invested in Seattle otherwise.

This allowed Seattle to produce an affordable home for each $50,000 in fee revenue it received. A typical downtown high-rise rental project paid a fee of about $150,000 for each home that would have been required onsite, a lower cost than actually producing the affordable unit. For these downtown projects, Seattle could use the fee revenue to produce three times more affordable homes than would have been built onsite.

PROMISING STATE AND LOCAL ALTERNATIVES TO PROVIDING AFFORDABLE HOUSING

Different markets and different income segments require different tools for improving affordability. At the lower end of the income spectrum this may be multiple direct subsidies. For families higher on the income range this may be better planning for housing and removal of some regulatory barriers to allow the market to function more efficiently.

Unfortunately, an increasing number of communities today are adopting and imposing inclusionary zoning in the belief that this approach alone will close this gap. It has become a politically expedient means for communities to show they are addressing the affordability problem instead of taking a more comprehensive approach to understanding and resolving this complex issue.

Most inclusionary zoning programs impose controls that limit the resale prices of such units for a period of 5 to as long as 20 or even 30 years. The purpose of this is to keep the housing units affordable, but the result is that owners in these units are barred from building equity. In an effort to avoid takings challenges and enhance participation in these programs, such programs also typically offer developers density bonuses and other incentives such as waivers/reduced requirements and expedited permitting, yet on-the-ground experience shows that such incentives are increasingly difficult to achieve in the development approval process today.

Inclusionary zoning should only be implemented with sufficient compensation to developers and builders and should only be considered as part of a "broad and comprehensive strategy to address housing affordability at the state and local level that closely examines the causes of that problem and relies on a variety of targeted approaches to address those causes, including direct income and housing subsidies, removal of zoning and regulatory barriers to provide for sufficient number of housing units to meet projected growth, rather than relying primarily on mandatory Inclusionary Zoning." This is language found in NAHB's current policy on Inclusionary Zoning.

In order to focus on a more comprehensive approach to funding affordable housing, NAHB hired Abt Associates to research other non- federal approaches to housing affordability. Abt provided a 350-page compilation of state and local affordability strategies entitled "**Research on State and Local Means of Increasing Affordable Housing**" (2008) that also includes how these programs are funded, where they've been used, and the advantages and disadvantages of each. Many communities have enjoyed significant success with innovative programs designed to address the housing affordability challenge, and many of the most innovative and successful approaches are detailed in this extensive but user friendly report.

The report includes 30 detailed case studies that explain how local governments used these strategies to address their housing affordability needs. These case studies represent the most comprehensive report ever compiled on the subject of non-federal solutions. Most of them highlight new examples not previously described in other reports by such organizations as HUD, the Center for Housing Policy, and the Urban Land Institute.

The Abt Associates report focuses on three types of strategies:

- Land use strategies, such as planning, zoning, and novel development strategies;
- Financial strategies, including property taxes, other taxes, state tax credits, impact fee waivers, regional financing approaches, and other sources of financing;
- Other initiatives, such as informational strategies, organizational strategies, reforms to zoning and development codes, and state legislation.

The Abt Associates study also found that the most successful places rely on an array of strategies to encourage affordable housing, and that the strategies that get the most press are not necessarily the most effective.

A good example is a case study of North Kingstown, RI, which used a variety of strategies, including state mandates and guidance for local planning and a significant density bonus and streamlined permitting program for developers.

Emeryville, CA established zoning codes and development regulations to encourage infill and brownfields development, high-density housing and mixed-use development. Among the successes is Emeryville Warehouse Lofts, which includes 140 lofts, 129 other residential units, 7,000 square feet of retail space, a 4,500 square-foot landscaped courtyard and a renovated parking structure.

Since the report was published in 2008, there have been other interesting developments. The HOME Connecticut statute, officially known as the Housing Program for Economic Growth, was created by the state in June 2007 to provide incentives to municipalities that voluntarily choose to expand their array of mixed-income housing options, as well as financing to developers of affordable housing. Under the law, municipalities may qualify for planning and technical assistance grants of up to $50,000 to determine what housing options are needed and whether suitable locations can be found. Municipalities that agree to create housing in responsible growth locations (near town centers, transportation facilities, or existing or planned infrastructure) must meet two criteria: (1) to create Incentive Housing overlay Zones (IHZs) with minimum densities of 6 single-family, 10 duplex or townhouse, or 20 multifamily units per acre; and (2) ensure that at least 20 percent of the units in the zone are affordable to residents earning 80 percent of the area median income or less.

In return, municipalities that meet those two criteria receive from the state (1) zoning incentive payments of $2,000/unit that could be built in the designated IHZ (e.g. 100 units in the zone = $200,000; payments are for both market-rate and affordable units); and (2) building incentive payments of $2,000/multi-family unit or $5,000/single-family unit at the time that building permits are issued in the IHZ.

The statewide funding is combined with local and federal resources to help buy down the cost of affordable housing units. Local non-profits and non-profit builders are crucial as the builders of these homes. Community banks, such as Liberty Bank, the United Way, and federal sources such as Federal Home Loan Bank of Boston provided low-interest financing to developers.

Municipalities may create as many IHZs as they want, but no single zone can be larger than 10 percent of the municipality’s land area, and all zones can total no more than 20 percent of the municipality’s land area. To date 55 municipalities have either received or are in the process of applying for grant funding to help implement an Inclusionary Housing Overlay Zone.

In Charlotte, North Carolina, the city and building community worked together in unprecedented fashion to establish affordable housing strategies that both worked for the building industry and addressed Charlotte’s problems with concentrated low-income housing. Housing Charlotte 2007 was a combined city and community task force recommending that the city explore giving a developer conventional financial incentives to include low-income units, such as density bonuses and expedited permitting processes.

More innovative approaches suggested would be to use money from the city's Housing Trust Fund to help builders comply with regulations that increase the cost of building, such as the city's tree ordinance and Urban Street Design Guidelines; subtle re-zoning techniques, such as re- introducing duplex zoning in single family communities, to allow for affordable higher density re-zoning in stable neighborhoods; and other locally financing sources and tax credits to assist developers building affordable housing.

The city of Boulder, Colorado has some of the most expensive housing in the state and scarce land available for new construction. In order to provide an affordable, single-family option for residents, Thistle Communities and Allison Management partnered to develop Yarmouth Way, a 25unit development featuring 10 affordable units and 15 modestly priced market-rate units.

Approximately three-quarters of the city's permanently affordable homes are one- or two-bedroom units, and less than 10 percent of these affordable properties are single-family detached units. This project includes a mix of attached townhomes, duplexes, and single-family detached homes. The non-profit and for-profit development team partnered to acquire a vacant parcel and the ratio of market-rate to affordable units allowed the sales of market-rate homes to offset the losses associated with the deed-restricted units. The project's 10 deed-restricted units constitute 40 percent of the development, double the number of affordable units required under Boulder's ordinance.

The lesson to be learned from this model is through the development of offsite units that is required by the city of units cannot be build onsite. The developers coordinated directly with another developer to meet their 5-unit obligation at Yarmouth Way, with the Yarmouth Way developers receiving a $100,000 in-lieu payment for each additional affordable unit provided. In addition to the transfer of in-lieu fees, the project benefitted from financial assistance in the form of an interest-free loan for predevelopment costs provided by NeighborWorks America.

CONCLUSION

Households continue to struggle to find housing that meets their needs at a price they can afford. Many are still forced to commute long distances, pay a disproportionate share of their incomes on housing, or live in housing that simply does not meet their needs.

The reality is that inclusionary zoning may not work at all in some markets, and may actually worsen the shortage of affordable housing in others. In fact, as pointed out through the case studies described in this paper, inclusionary zoning often provides far less affordable housing and in a far more cumbersome way than many of the traditional affordable housing programs such as HOME, CDBG, non-profits and the low income housing tax credit have been able to provide for.

An interesting phenomenon related to the recession is the impact it had on inclusionary zoning programs. Inclusionary zoning units that are repossessed by the bank need to be resold to below market rate incomes, but often this can be difficult to ensure in the public auction process. It added yet another layer of complexity and challenge to an already tedious affordable housing program.

The research by Abt Associates demonstrates that there are successful alternatives to inclusionary zoning that can have a far greater impact in meeting the housing needs of low- and moderate-income families.