June 17, 2009

Dear Commissioners:

Attached are various articles in support of inclusionary zoning to balance with the articles you received in the last distribution that were opposed to inclusionary zoning that were provided by Howard Handler of North Shore – Barrington Association of Realtors.

Jeff and Kathy

Zoning Practice
Dec. 2006

ZONING TOOLS

The pages that follow focus on three zoning tools for meeting the need for affordable homes. The sidebar on the left has a more exhaustive list of high-impact local and state strategies.

Rezoning. Communities can expand the supply of homes through rezonings that make more land available for residential use or increase allowable densities within residential zones. As noted above, one of the biggest challenges involved in building affordable homes in hot housing markets is finding reasonably priced sites for development. By determining what land is available for residential development, and the density with which homes may be built in areas zoned for residential use, zoning policies obviously have a direct bearing on the availability of sites for development. The more sites that are available, the lower the costs, and thus the greater likelihood of a well-functioning housing market capable of producing homes affordable to working families.

By revising zoning policies to make land available for residential development that is not currently zoned for that use, some localities have successfully increased the supply of land for new development. Localities also have expanded the supply of homes by increasing (in appropriate locations) the allowable densities within residential areas.

For example, Fairfax County, Virginia, recently approved a plan to rezone an area near the Vienna Metro stop to substantially increase densities. By combining an older low-density subdivision that contained approximately 65 single-family homes with five acres that had previously been used for surface parking, the MetroWest redevelopment plan will provide approximately 2,250 condominiums, apartments, and townhouses, along with two acres of structured parking, up to 300,000 square feet of office space, and up to 190,000 square feet of retail space. During negotiations over the proposed MetroWest development with developer Pulte Homes, Fairfax County secured a promise that approximately five percent of the homes would be affordable—almost double the number required under current Fairfax County requirements for developments of this density.

New York City took a similar approach in the comprehensive rezoning of Greenpoint-Williamsburg in May 2005. As described by the city, the rezoning "sets the stage for the renewal of a vacant and underutilized stretch of the Brooklyn waterfront. . . . It reclaims two miles of long-neglected East River waterfront to create over 50 acres of open space, including a continuous public esplanade and a new 28-acre park surrounding the Bushwick Inlet. The plan creates new opportunities for thousands of units of much-needed housing, including affordable housing, within a detailed urban design plan that addresses the scale of the existing neighborhoods."

The zoning plan includes a voluntary inclusionary housing program that provides a density bonus and tax abatements to developers that agree to certain affordability restrictions. Initial reports show a strong take-up of these incentives. According to Mayor Bloomberg's June 26, 2006, press release, "The plan will spur 10,800 new units of much-needed housing, and through a powerful combination of zoning incentives, housing programs, and city-owned land, 3,500 of those units will be affordable. One year after the rezoning was enacted there are already 1,000 affordable units in the pipeline for near-term construction on the waterfront alone. That's 64 percent of the rezoning estimate of 1,563 affordable units on the waterfront."

To yield meaningful benefits for home affordability, such strategies generally need to be implemented either on a broad enough scale to significantly increase the supply of homes or in a manner designed specifically to lead to the production of additional affordable homes, such as through inclusionary zoning requirements or incentives. The latter approach is discussed later in this article.

Zoning for a variety of housing types. Many communities have zoning policies that either directly restrict or have the effect of restricting (for example, through infeasible parking requirements) the construction of new multifamily homes, manufactured homes, or accessory dwelling units. Because each of these housing types can be used to construct homes that are less expensive than detached, single-family homes, such policies tend to make homes more expensive for working families.

Pulte Homes

A rendering of the proposed MetroWest development in Vienna, Virginia.

On the other hand, by adopting zoning policies that maximize the availability of these housing types, communities can both expand the supply of affordable homes and meet a wider range of their constituents' needs.

In recent years, tremendous advances have been made in the design of both multifamily and manufactured homes. When well designed, both types are of extremely high quality and fit in well into the community. Multifamily homes can add value to communities by helping to revitalize distressed neighborhoods, increasing the ridership for public transit, and providing homes for working families near where they work—cutting down on traffic congestion and improving job retention. Many of the higher-end manufactured homes can no longer be distinguished from stick-built homes, yet cost thousands less. Finally, accessory dwellings—smaller homes that are built next to or as part of a principal home—can be an excellent way to provide affordable homes for parents or caretakers of the principal residents or to provide opportunities to expand the supply of rental homes while generating income for the owners.

Auburn Court, in Cambridge, Massachusetts, is a good example of an attractive mixed income development that provides 137 homes in a multifamily setting spread out along three garden courtyard residential blocks. Established as part of the larger University Park development on land assembled by the Massachusetts Institute of Technology, Auburn Court consists of a mix of one-, two-, and three-bedroom rental homes distributed among flats and duplexes. Most buildings in the development are three stories, though several rise up to six stories to frame the entrance to University Park. With half the homes affordable to families with incomes below 50 percent of the area median, and other homes either at market rate or affordable to families at 90 percent of the area median income, Auburn Court was featured as part of a recent National Building Museum exhibit on affordable homes.

Many people are familiar with the use of manufactured homes in rural settings, but Oakland Community Housing Inc. [California] demonstrates that they also have a place in the city. As part of their infill homeownership initiative, they have produced both single-family detached homes (the "E" Street project) and multistory town homes (the Linden Terrace project).

Both Santa Rosa, California, and Mercer Island, Washington, use accessory dwelling units as a strategy for expanding the supply of affordable homes. In Santa Rosa, accessory dwelling units are typically incorporated into new developments, such as Courtside Village, a pedestrian-friendly mixed use development that includes 100 accessory units. In Mercer Island, officials have streamlined the permitting process and launched a public education

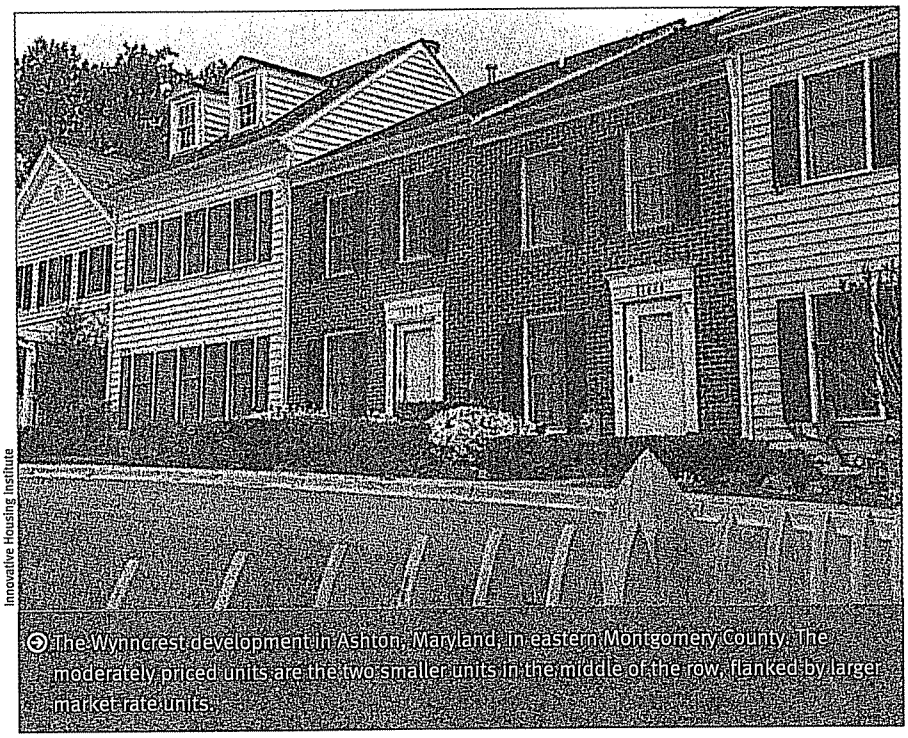
and information program to promote accessory units. The Transportation and Land Use Coalition reports that Santa Rosa's strategy produces about 39 to 47 new accessory units each year, while Mercer Island produced about 173 accessory units between 1995 and 2004.

None of these strategies would be possible without zoning policies that allow reasonable use of a diverse range of housing types to expand choices and ensure the availability of homes affordable to working families.

Inclusionary zoning requirements or incentives. Few housing policies have generated as much attention (and in many communities, controversy) in recent years as inclusionary zoning. Inclusionary zoning generally involves a requirement or an incentive for developers to include a modest percentage of affordable homes within newly created developments. This is one way of harnessing the power of the market to produce affordable homes.

The nation's first inclusionary zoning law was enacted in the 1970s in Montgomery County, Maryland. The law specified that in any new housing development including 50 or more homes, at least 12.5 to 15 percent must be made affordable to families with incomes at or below 65 percent of the area median income. In exchange for this requirement, developers received a density bonus allowing them to build up to 22 percent more homes than otherwise permitted. The affordable homes were required to remain affordable for 20 years. While the Montgomery County ordinance has been modified many times over the years, it has endured and produced more than 12,000 moderately priced homes through 2005, including 8,527 for-sale homes and 3,520 rental homes.

Since that time, numerous other jurisdictions have adopted inclusionary zoning, especially in high-cost markets such as California. According to a survey conducted by the California Coalition for Rural Housing and the Nonprofit Housing Association of Northern California, as of 2003, 107 cities and counties had adopted inclusionary zoning within the state, producing more than 34,000 affordable for-sale and rental homes. An updated survey was recently conducted and is presently in the process of being analyzed; it is expected to reveal numerous additional jurisdictions in California that have adopted inclusionary zoning and more complete totals of affordable homes produced.



Innovative Housing Institute

The Wyncrest development in Ashton, Maryland, in eastern Montgomery County. The moderately priced units are the two smaller units in the middle of the row, flanked by larger market-rate units.

Inclusionary zoning ordinances also have been passed in Washington D.C., Fairfax County, Virginia, and many communities in and around Boston. A number of states—notably Massachusetts and New Jersey—have enacted statewide laws that achieve similar effects.

While a complete analysis of this complicated subject is beyond the scope of this article, the following are some of the key issues for communities to consider:

- *Equity.* Advocates of inclusionary zoning argue that because land is in limited supply and the price of homes in high-cost markets are so out of reach of working families, inclusionary zoning is the only cost-effective way of ensuring the production of homes affordable to working families. Opponents, on the other hand, argue that it is unfair for the government to require one class of individuals (property owners) to subsidize the public good of affordable homes.
- *Incentives/Offsets.* Consensus around the adoption of inclusionary zoning is generally easier to achieve when well-crafted incentives (also known as offsets) are included to compensate property owners and developers for the foregone revenue associated with producing homes at below-market prices or rents. By ensuring that development continues to be an attractive financial proposition, well-crafted incentives are also likely to blunt the critique offered by some critics that inclusionary zoning policies may lead to an increase in the price of market-rate housing or a decrease in the supply of market-rate housing in the area (because developers do not want to build there). The most common and effective incentive/offset is a density bonus to allow the production of more homes than would normally be permitted under the jurisdiction's zoning rules. Another useful incentive is to provide developers proposing projects that meet specified affordability guidelines with a fast-track approval process or preapproval to build "as of right." When inclusionary zoning facilitates an increase in density in otherwise low-density areas, greater speed and certainty in the approvals process, and more affordable homes, all stakeholders benefit.
- *Process Matters.* Consensus is more likely to be achieved when the process for developing recommendations includes both developers and advocates. It also helps to "get into the numbers," examining the real-world impact of various proposed policies and offsets and the applicability of the proposed policies to local market conditions and housing needs.

DEVELOPING AND SUPPORTING A HOUSING STRATEGY FOR WORKING FAMILIES

- Assess housing needs and resources
- Know your market
- Be comprehensive
- Foster interagency collaboration
- Exercise leadership
- Set and track progress toward goals
- Proactively plan for future growth
- Build public support for affordable housing
- Create open lines of communication
- Involve the business community
- Insist on excellent design
- Promote a mix of incomes
- Continually evaluate and refine your strategies
- Think locally and regionally

- *Voluntary vs. Mandatory.* The consensus view of practitioners working in this area is that mandatory requirements work better than voluntary policies that rely entirely on incentives. On the other hand, New York City appears to have had significant take-up of its voluntary inclusionary housing incentives for Greenpoint-Williamsburg. Chicago has a cross between voluntary and mandatory policies, with the policy optional for those developments that do not seek financial assistance from the city, but mandatory for those that do. It remains to be seen whether the voluntary approach can be extended effectively to other contexts.
- *Target Income Levels.* In general, inclusionary zoning appears better suited to producing homes affordable to families with moderate income than families with very low incomes. This is due both to the economics—moderate income families can afford to pay more than very low-income families, meaning there is less foregone revenue associated with those homes—and the fact that inclusionary zoning is more feasible politically when focused on moderate income families.

To ensure that very low-income families have access to some of the for-sale or rental homes produced through inclusionary zoning policies, jurisdictions may want to authorize a local housing authority or other public entity to purchase a portion of the affordable homes, as is the case in both Montgomery and Fairfax Counties. After purchasing the homes, the housing authorities can combine them with other subsidies to make them affordable to lower income families.

- *Duration of Affordability.* One of the limitations of many inclusionary zoning ordinances is that they guarantee affordability for only a limited time period. While 15 or 20 years may seem like a long time, such affordability periods limit the effectiveness of inclusionary zoning policies in contributing to a lasting increase in affordable housing opportunities for moderate income families. They also make it harder to preserve mixed income communities over time. As discussed in greater detail in the analysis on which this article is based, a number of solutions exist to extend the affordability period indefinitely, while still ensuring opportunities for individual asset growth. Such solutions are generally preferable to more limited affordability periods.
- *On-site vs. Off-site.* Some advocates of inclusionary zoning insist that each development include a percentage of affordable homes. Others believe it is sensible to allow developers to provide an equivalent number of homes off-site or pay a fee in lieu of providing on-site affordable homes, with funds to be used to develop affordable homes elsewhere in the community. In general, it appears easier to gain consensus around inclusionary policies that permit off-site affordability or in-lieu fees. This approach also may increase the number of affordable homes constructed by shifting the production of affordable homes to sites with lower land and production costs.
- *Market variations.* It is important to be sensitive to market realities. Inclusionary zoning mandates probably do not make a lot of sense for declining neighborhoods struggling to attract any development whatsoever. While inclusionary zoning is likely to be more effective in hot markets, it will likely be most effective if enacted while there is still a significant number of developable parcels. Interested communities should try to anticipate areas of future growth.
- *Relation to other housing strategies.* While inclusionary zoning is a promising tool for harnessing strong markets to produce affordable homes, it is not a panacea. Inclusionary housing policies will ultimately be most effective if they are part of a larger and more comprehensive approach to solving a community's housing challenges.

STRATEGY DEVELOPMENT AND SUPPORT

The three policies outlined here demonstrate the potential of the zoning process to expand (or restrict) the availability of affordable homes. Each of these individual approaches is likely to yield improvement, but the benefits would be maximized by adopting all three at once—ideally as part of a comprehensive and strategic approach to meeting a community's need for affordable homes.

While space does not permit a thorough discussion of the process of developing and supporting a housing strategy for working families, the list at the left provides a brief list of many of the key elements. To the extent that communities can initiative a broad and comprehensive process for examining their needs, and bring the full array of resources and agencies to the table to meet those needs, they are more likely to gain support for needed changes and more likely to develop effective strategies for increasing the availability of homes affordable to working families.

Cover photo: www.istockimages.com
A row of San Francisco Victorian homes.

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Sep. 2004

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

By Nicholas J. Brunick

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

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

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

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

MANDATORY PROGRAMS PRODUCE MORE HOUSING

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

A 2003 study by CCRH and the Nonprofit Housing Association of Northern California found similar results. The 15 most productive inclusionary housing programs in California are mandatory programs. In fact, the report found that only six percent of the 107 communities reporting to have an inclusionary housing program said the pro-

Innovative Housing Institute

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

ASK THE AUTHOR JOIN US ONLINE!

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

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

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

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

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

Voluntary inclusionary housing programs can be successful. First, it should be recognized that, theoretically, with enough of a subsidy any voluntary program could work extremely well. Realistically, however, housing subsidies are becoming scarcer. Nevertheless, voluntary programs can work well when they are implemented as if mandatory, or when a community's broader planning policies (like mandated growth limitations) make the "voluntary" inclusionary housing component a highly attractive option. For example, in "Inclusionary Housing in California: The Experience of Two Decades," authors Calavita and Grimes attribute the success of the voluntary inclusionary zoning program in Irvine to an "unusually sophisticated" and "particularly gutsy" staff committed to making the program work (*Journal of the American Planning Association*, 1998). Similarly, in Chapel Hill, North Carolina, the voluntary 15 percent affordable housing program for developments that require rezoning is also quite successful. The program is so rigorously marketed by town staff and the town council that no new residential developer, regardless of requiring a rezoning request, has approached the planning commission without at least a 15 percent affordable housing component or plans to pay a fee in lieu of building affordable units. Planning staff in Chapel Hill explain that developers construe the inclusionary zoning expectation as mandatory because residential development proposals are difficult, more expensive, and less likely to win approval without an affordable housing component. Chapel Hill's voluntary program has produced 162 affordable homes since 2000 and has collected approximately $178,000 in fees.

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

Courtesy of David Rusk

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

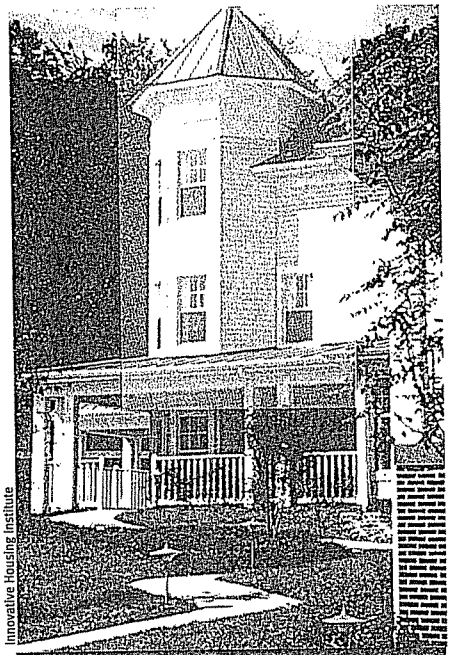
Chapel Hill as a model for communities that may lack the authority to implement a mandatory inclusionary zoning law.

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

SERVING LOW- AND VERY-LOW-INCOME HOUSEHOLDS

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

Without a mandatory requirement, communities will most likely have to provide an extremely high level of subsidy to entice developers to produce homes and apartments affordable to low- and very-low-income households. Voluntary inclusionary zoning programs that do succeed in generating affordable housing units for a range of low-income households must rely heavily on federal, state, and local subsidies in most cases. For example, Roseville, California, adopted its Affordable Housing Goal (AHG) program in 1988. The program encourages developers to work with the city to voluntarily build affordable housing within residential developments. Since 1988, the AHG program produced 2,000 affordable units through significant federal, state, and local subsidies. However, nearly $234 million in subsidies would be necessary to meet the city's goal of 5,944 affordable units by 2007—almost $218 million more in funding than the city is expected to capture between 2002 and 2007. In the absence of expanded funding, it will be impossible for Roseville to meet its regional affordable housing goal through its voluntary program. With a mandatory inclusionary zoning program, some of these affordable homes could be produced through a combination of density bonuses, flexible zoning standards or other offsets, and the market adjustments and developer creativity that result from a mandate to produce affordable housing.



Innovative Housing Institute

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

PREDICTABILITY FOR COMMUNITIES AND DEVELOPERS

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

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

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

WEB-BASED ENHANCEMENTS FOR *ZONING PRACTICE*

In order to provide better service to *Zoning Practice* subscribers, with this issue we offer the complete list of references for Nicholas J. Brunick's article and affordable housing web resources on the *Zoning Practice* web pages of APA's website. We invite you to check out this enhancement at **www.planning.org/ZoningPractice/currentissue.htm.** We will do this whenever we determine that we can use the Internet to heighten the informational value we are delivering to our subscribers.

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

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

ARRESTED DEVELOPMENT?

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

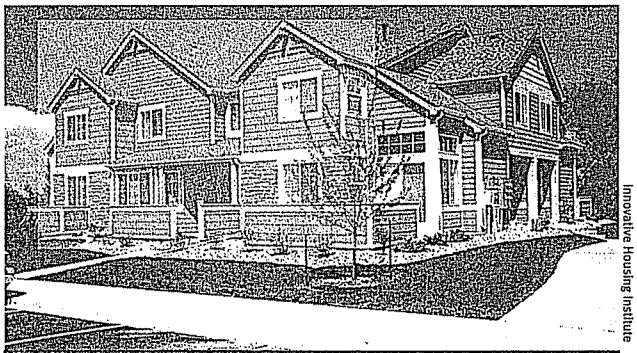
One recent study by economists at the Los Angeles-based Reason Public Policy Institute entitled, *Housing Supply and Affordability: Do Affordable Housing Mandates Work?*, claims inclusionary zoning programs in the San Francisco Bay area led to a decline in housing production in those communities, contributing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

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

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

- Includes communities *with* and *without* inclusionary zoning programs in the sample of 28 California cities;
- Includes communities from a variety of locations in California (Orange, San Diego, San Francisco, Los Angeles, and Sacramento Counties) as opposed to just one region;
- Performs a regression analysis to determine the extent to which inclusionary zoning impacts levels of production, and to what extent other independent variables impact housing production. The Rosen study measures the effect of indicators like the unemployment rate, changes in the prime rate, median price for new construction homes, the 30-year mortgage rate, and the 1986 Tax Reform Act, which eliminated many incentives in the U.S. Tax Code that had served to stimulate the production of rental housing.

The study concludes that the adoption of inclusionary zoning does not negatively impact overall levels of housing production. In fact, in a number of jurisdictions, including San Diego, Carlsbad, Irvine, Chula Vista, and Sacramento, he found that housing production increased (in some cases significantly) after passage of inclusionary housing programs. Only in Oceanside did housing production decrease. The drop was most likely caused by rising unemployment and high rates of housing vacancy associated with the economic recession of the early 1990s and the Gulf War (Oceanside is near a military base). Overall, the study found that housing production was most heavily affected by unemployment levels, the median price of new construction homes, and the 1986 Tax Reform Act.



Innovative Housing Institute

Courtesy of David Rusk

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

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

TABLE 1. SWITCHING FROM VOLUNTARY TO MANDATORY INCLUSIONARY ZONING

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

THE MANDATORY TREND

The current trend in inclusionary housing programs is toward the mandatory end of the implementation spectrum. A survey for this article of available literature and existing programs around the country reveals only one situation where a community switched from a mandatory to a voluntary program: Orange County, California. According to a 1994 report produced by the California Coalition for Rural Housing, the switch led to a dramatic drop in affordable housing. According to Orange County staff, the county no longer has a formal inclusionary housing program. The county does negotiate for affordable housing units on the few remaining vacant parcels that receive development proposals. Conversely, communities nationwide have switched to mandatory programs for additional affordable units and the benefit of greater predictability. Details for some of these communities are summarized in Tables 1 and 2.

TABLE 2. SWITCHING FROM MANDATORY TO VOLUNTARY INCLUSIONARY ZONING

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

MANDATORY ORDINANCES IN LARGE CITIES

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

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

THE MIDWEST SIGNS ON

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

THE BOTTOM LINE

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

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

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

NEWS BRIEFS

NEW JERSEY PASSES TRANSFER OF DEVELOPMENT RIGHTS LEGISLATION

By Rebecca Retzlaff, AICP

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

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

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

According to E.J. Miranda, spokesperson for the New Jersey Department of Community Affairs, the new TDR law will benefit developers, farmers, municipalities, and smart growth advocates. "TDR presents an opportunity to preserve open space by using private-sector dollars to acquire development rights and cluster new development in a much smaller land area. The result is that municipalities have more control over where growth occurs, landowners are compensated fairly for their land, developers have a clear picture of where they can build, and less of our limited public funds at the local and state levels have to be spent on land acquisition."

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

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

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

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

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

The New Jersey transfer of development rights law and program information featured in this article is available to *Zoning Practice* subscribers by contacting the Planning Advisory Service (PAS) at placeaninquiry@planning.org.

Rebecca Retzlaff, AICP, is a researcher with the American Planning Association and a PhD. student in urban planning and policy at the University of Illinois–Chicago.

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

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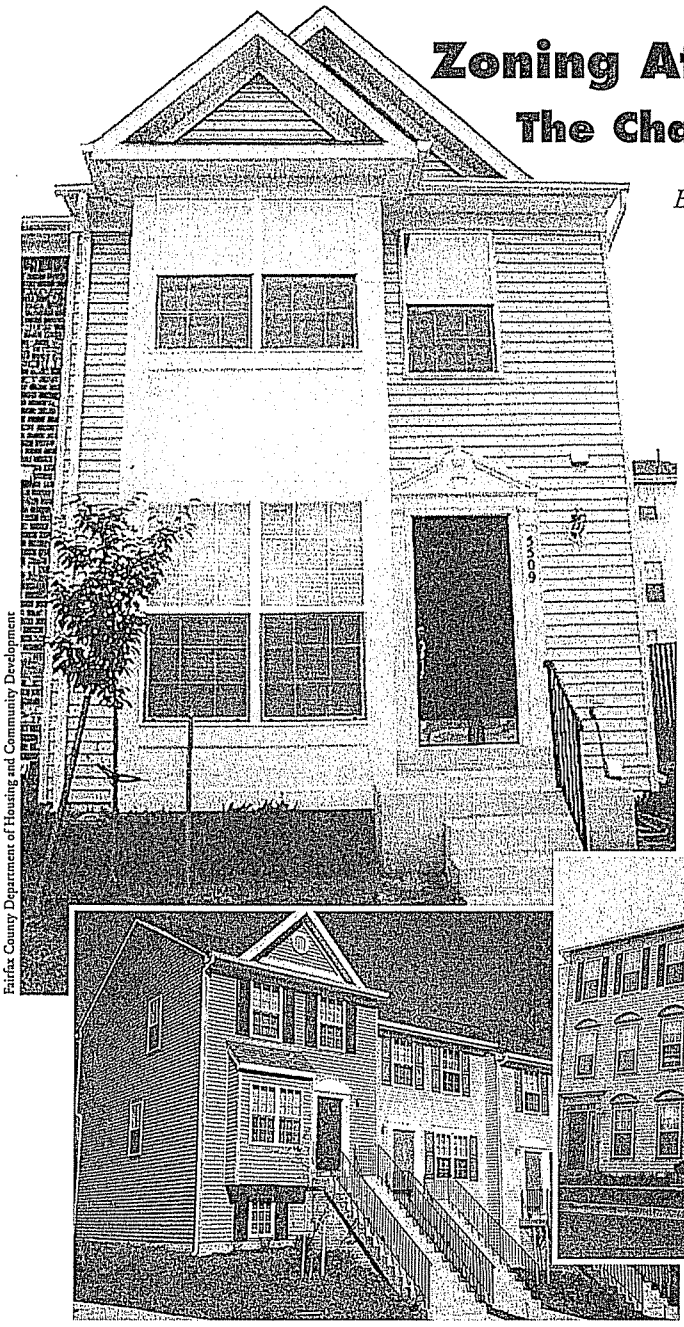
ZONING News

AUGUST 2003

AMERICAN PLANNING ASSOCIATION

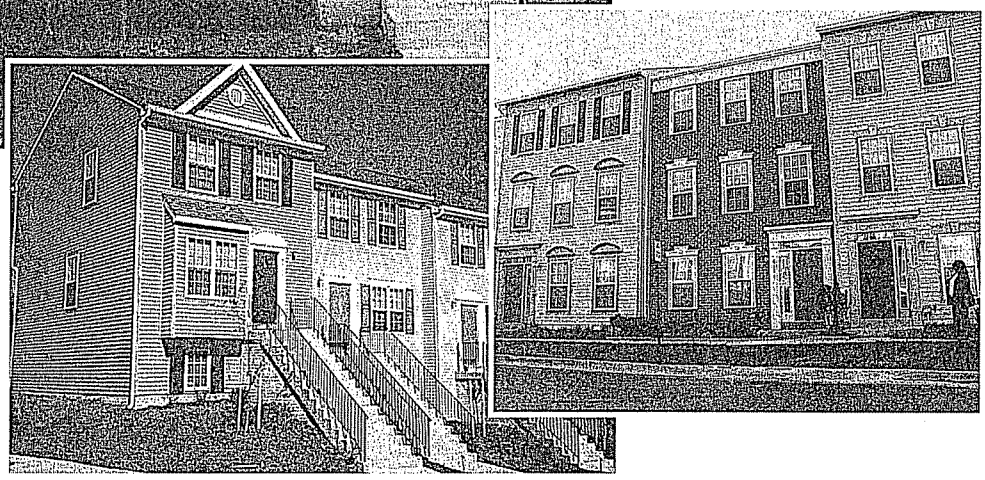
Zoning Affordability:
The Challenges of Inclusionary Housing

By Lynn M. Ross



Fairfax County Department of Housing and Community Development

In this era of federal cutbacks, municipalities have been forced to do more with less. The provision of affordable housing is no exception. Localities are relying on a number of tools and programs to ensure that the national epidemic of inadequate affordable housing does not overwhelm their communities. Among them is inclusionary zoning. Inclusionary zoning is not a new tool in the provision of affordable housing—the first such ordinances appeared in the early 1970s in California, Maryland, and Virginia. However, in recent years inclusionary zoning has gained popularity across the nation. Boston, San Francisco, Boulder, San Diego and Santa Fe, New Mexico have adopted programs within the last five years. Although no definitive survey of these programs exists, available literature suggests that today there are between 50 and 100 jurisdictions nationwide with some type of inclusionary housing program. Even in the absence of a comprehensive survey, one point is clear about these programs: they are not without challenges.



(Above) Characteristic rowhouses in Fairfax County, Virginia, available through a first-time homebuyers program. (Right) Founders Ridge, in Fairfax County, Virginia, is a unique public/private effort to provide a model of high-quality, affordable housing to moderate-income residents of Fairfax County. Founders Ridge was conceived through a partnership of Fairfax County and the Northern Virginia Building Industry Association focusing on an available piece of land and an idea to provide first-time home ownership opportunities for families. The development is by one of the area's premier builders, and was built at below-market cost. The project consists of 80 three-level, three-bedroom, 2½ bath, garage townhomes ranging in price from $106,990 to $119,990. These homes were marketed to first-time homebuyers who either live or work in Fairfax County and have moderate incomes with a minimum income of $30,000. (Top) An affordable home in Fairfax County, Virginia, available through a first-time homebuyers program.

Challenge 1: Surviving a Takings Claim

The Fifth Amendment to the U.S. Constitution prohibits the taking of private property without just compensation. Although the takings clause generally refers to the use of eminent domain, the U.S. Supreme Court has identified other types of taking that do not involve the physical appropriation of private property. Certain types of regulation, including inclusionary zoning, can be deemed regulatory takings. Opponents of inclusionary programs have long argued that these ordinances fall into the regulatory takings category because the regulations deprive owners of the most economically viable use their land. In a workbook developed for the Chicago-based Business and Professional People for the Public Interest, author Mary

SURVEY OF SELECTED INCLUSIONARY HOUSING PROGRAMS

Municipality	Year	Units Produced to Date	Applicability	Set-aside	Control Period	Density Bonus	Additional Developer Incentives	In-Lieu-of Payment/Offsite Development	Population (2000)	Median Household Income (2000)	Median Home Value (2000)	Median Rent (2000)
Boulder, Colorado	2000: Amended March 2002	70 units	No threshold; applicable to all residential development	20 percent	Permanent affordability by deed restriction	Not offered	• Waiver of excise tax • Eligible for local housing subsidy grants • Waiver of development review application fees	• Fees in lieu and offsite allowed for developments four units and less • Half of owner units; many to be constructed offsite; more flexibility for rental units	94,673	$44,748	$304,700	$818
Fairfax County, Virginia	1990: Amended July 2002	759 rental units; 971 owner units	Developments greater than 50 units	12.5 percent minimum for owner units; 6.25 percent minimum for multifamily units	15 years for owner units; 20 years for rental units	Sliding scale of up to 20 percent for owner units; up to10 percent for rental units	Reduced bulk regulations	• May request fees in lieu based on design feasibility • Offsite not permitted	969,749	$81,050	$233,300	$998
Irvine, California	1995: Amended 2003	390 units	No threshold; applicable to all residential development	15 percent	30–40 years	25 percent for 20 percent low income or 10 percent very low income	• Reduction in fees • Eligibility fo CDBG and HOME funds • Expedited processing	Offsite and fees in lieu allowed	143,072	$72,057	$316,800	$1,272
Longmont, Colorado	1992: Amended July 2001	528 rental units; 102 owner units	No threshold; applicable to all residential development	10 percent per phase of development	20 years for rental units; 10 years via deed restriction for owner units	Up to 20 percent for developments that exceed the required amount of affordable units	• Fee reductions of up to 75 percent • Expedited plan review • Variances from land development requirements • Reduction of water/wastewater fees	• Offsite allowed on a case-by-case basis • Fees in lieu allowed	71,093	$51,174	$177,900	$769
Monterey County, California	1980: Amended May 2003	230 rental units; 270 owner units	No threshold; applicable to all residential development	20 percent	Permanent affordability by deed restriction	Not currently offered	None currently offered	Fees in lieu and offsite allowed for special circumstances	401,762	$48,305	$265,800	$776
Montgomery County, Maryland	1974: Amended 2003	3,174 rental units; 8,036 owner units	New construction of 35 units or more	12.5–15 percent	10 years for owner units; 20 years for rental units	Up to 22 percent	• Smaller lot sizes • Ability to build attached units on detached zoned property	Fees in lieu and offsite allowed only in "exceptional cases" at the discretion of the director	873,341	$71,551	$221,800	$914
Santa Fe, New Mexico	1998: Amended March 2003	12 units	No threshold	11–16 percent depending on target income levels for development	30 years; 30-year period start over withy each new occupant	11–16 percent; bonus is equal to the set-aside percentage	• Fee waivers for plan submittal • Waiver of building fees for affordable units	Not permitted	62,203	$40,392	$182,800	$707

Table researched and assembled by Lynn Ross. Demographic information source: U.S. Census Bureau, *Census 2000 Summary File 3.* Accessed July 9, 2003, through American Fact Finder available at factfinder.census.gov/servlet/Basic FactsServlet.

Anderson identifies three possible takings challenges to inclusionary zoning.

Anderson's first argument is that the required affordable housing set-asides so severely diminish the economic value of the land that they result in a taking. She next agrees that inclusionary zoning lacks a rational nexus to legitimate government purposes. Finally, she says inclusionary zoning forces the landowner to bear the cost of what is essentially a public burden. Each argument poses a serious threat to inclusionary zoning ordinances. Still, a municipality can take steps to address them prior to the implementation of its regulations.

Arguments over diminished economic value can be addressed with developer incentives. This is often done with a density bonus. In 1971, Fairfax County, Virginia, became one of the first places in the nation to implement inclusionary zoning. The original ordinance did not include a density bonus. A 1973 Virginia Supreme Court ruling found the ordinance unconstitutional in part because it resulted in a taking. When Fairfax County introduced a new inclusionary zoning ordinance in 1990, the regulations included a sliding-scale density bonus of up to 20 percent. The 1990 ordinance has never been challenged in court.

The municipality can circumvent Anderson's second takings argument by performing a nexus study to demonstrate the connection between an inclusionary ordinance and the municipality's desire to provide affordable housing. Anderson says that because the nexus study relies on data analysis it can assist the locality in articulating objective reasons for inclusionary zoning. For example, prior to implementing a 1998 inclusionary zoning ordinance, Santa Fe conducted such a study. By focusing on service employees, the study tied the need for the ordinance to the creation of market-rate housing units. The city's rationale was that new market-rate housing attracted new residents who in turn increased demand on the local service industry. This demand would lead to a greater need for service employees, most of whom could not afford market-rate housing.

The Santa Fe example illustrates the importance of such studies in defining the specific needs and goals of the community and how inclusionary ordinances will address them. Quite simply, the nexus study should provide the program justification a municipality can point to in the event of a legal challenge.

Anderson's final argument—that inclusionary zoning unfairly burdens the landowner with the provision of affordable housing—also can be addressed through the nexus study. The municipality must demonstrate that the required set-aside is roughly proportional to the impact of new development. The municipality should not only draw the connection between the required set-asides and the creation of new market-rate housing but also illustrate the necessity of the set-aside in advancing legitimate state interests (i.e. the provision of affordable housing). Using a strong analytical rationale, the municipality can argue that inclusionary zoning set-asides are equivalent to the dedications and fees developers already pay for public goods such as infrastructure, schools, and recreational facilities.

Challenge 2: Fostering Stakeholder Support

To say that community support for inclusionary zoning is key to the success of the program is a gross understatement. Elected officials, developers, and community residents are among the groups that municipalities must court to move forward with a program. If any of these groups does not agree to the policy, implementation will be difficult if not impossible. Include stakeholders in the process as early as possible or elected officials could refuse to adopt the regulations, developers could build within communities without inclusionary regulations, or residents could mount an aggressive NIMBY campaign.

Boulder, Colorado, conducted public hearings and generated reports on the need for affordable housing for two years prior to the passage of its ordinance in 2000. The Longmont, Colorado, city council formed a task force of community representatives to review affordable housing strategies and advocate for inclusionary housing. Santa Fe staff met with local developers for one year before moving to implement their ordinance. An earlier attempt at an ordinance was thwarted by a takings claim from the development community. Learning from this experience, staff used a series of meetings to educate developers about the ordinance and its benefits.

In addition to creating an open process, a municipality also can garner stakeholder support by framing the issue effectively. In a 2002 report published in *New Century Housing*, Barbara Lipman found that some 14.4 million families faced "critical housing needs"—they used more than half of their household's income for housing or lived in substandard conditions. Over one-third of these families were low- to moderate-income working families and often included, as heads-of-household, teachers, police officers, and service workers.

Inclusionary zoning makes it possible for such groups to afford decent housing in the communities where they work. Other benefits include the creation of mixed-income communities (by de-concentrating poverty) and reduced sprawl. The latter occurs by using density bonuses to build more homes closer to job centers.

Lynn Ross is a research associate for APA.

ASK THE AUTHOR

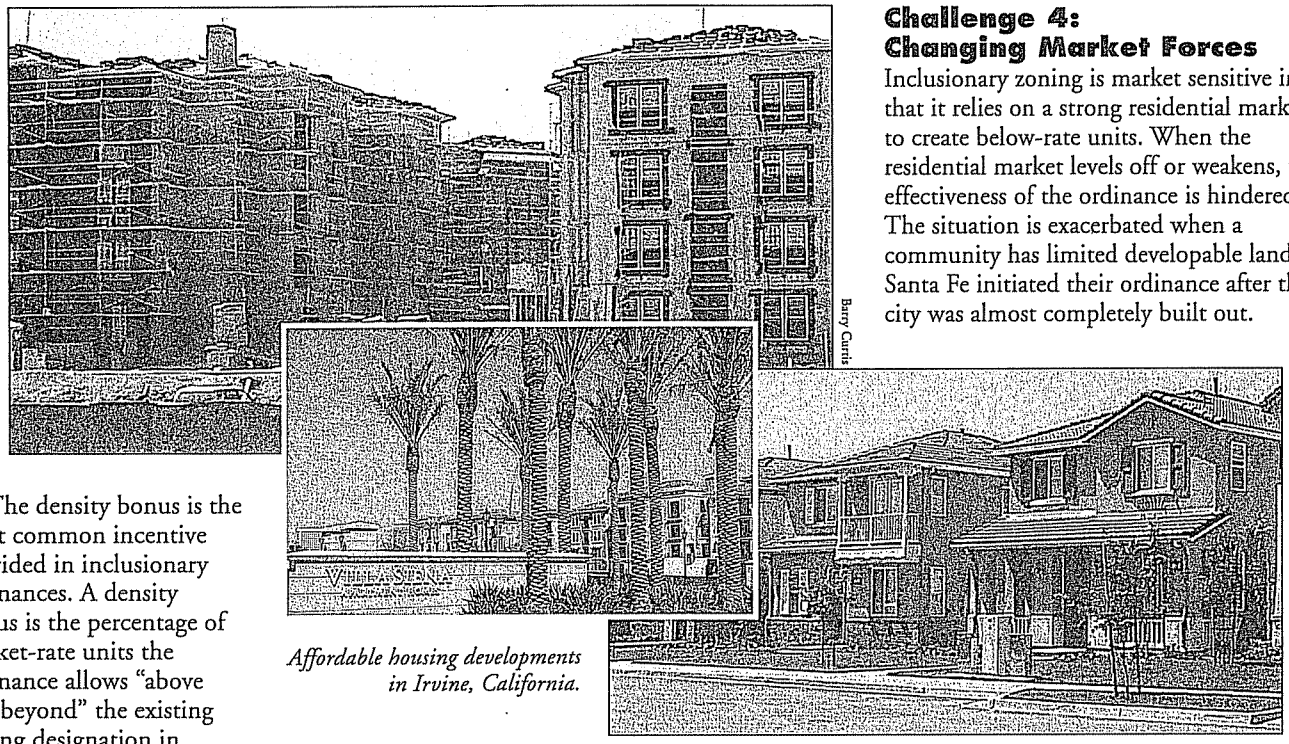
. . . about this article. Join us online!

During September 15-26, go online to participate in our "Ask the Author" forum, an interactive feature of *Zoning News.* Lynn Ross will be available to answer questions about this article. Go to the APA website at www.planning.org and follow the links to the "Ask the Author" section. From there, just submit your questions about the article using an e-mail link. The author will reply, posting the answers cumulatively on the website for the benefit of all subscribers. This feature will be available for selected issues of *Zoning News* at announced times. After each online discussion is closed, the answers will be saved in an online archive available through the APA *Zoning News* webpages.

Challenge 3: Compensating Developers

Most communities with inclusionary zoning offer incentives to participating developers. The provision of these incentives is important for two reasons: 1) incentives reduce developer opposition and encourage participation, 2) incentives reduce the likelihood that an ordinance will be challenged on the grounds that it results in a taking. Well-designed developer incentives reduce the financial burden of providing affordable units and may even increase the developer's ability to profit from market-rate units.

Of course, not all communities offer a density bonus incentive. Boulder offers a menu of other incentives to developers, including a waiver of excise taxes and development review application fees, and eligibility for city housing subsidy grants. Other communities offer a combination of incentives that include a density bonus. For instance, in addition to a density bonus of up to 20 percent, Fairfax County also offers a reduction in bulk regulations. Montgomery County, Maryland, combines a density bonus with smaller lot sizes and the ability to build attached units in detached housing zones.



Barry Curtis

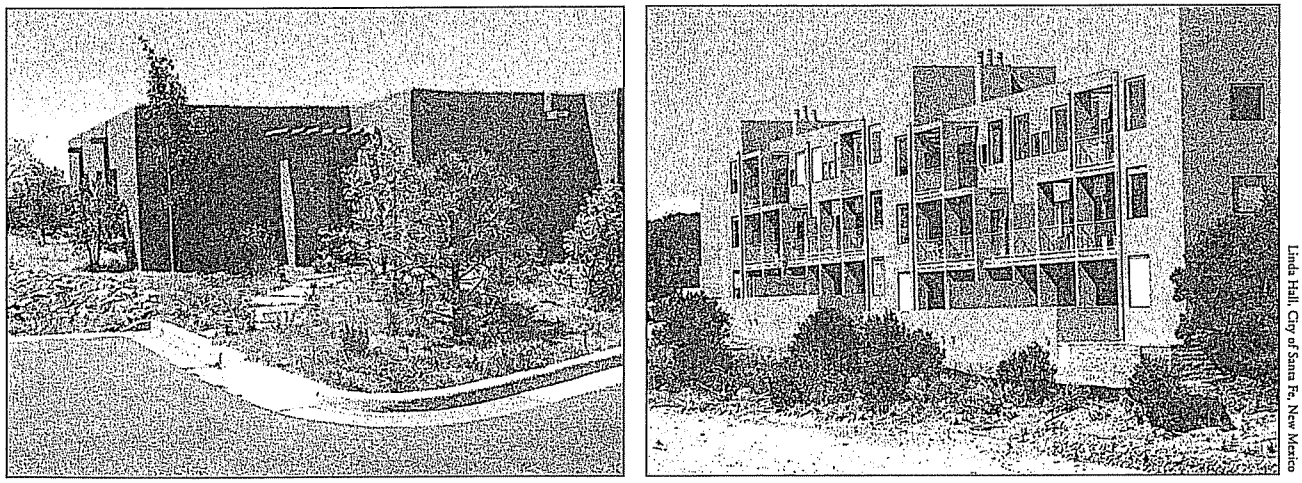
Affordable housing developments in Irvine, California.

Challenge 4: Changing Market Forces

Inclusionary zoning is market sensitive in that it relies on a strong residential market to create below-rate units. When the residential market levels off or weakens, the effectiveness of the ordinance is hindered. The situation is exacerbated when a community has limited developable land. Santa Fe initiated their ordinance after the city was almost completely built out.

The density bonus is the most common incentive provided in inclusionary ordinances. A density bonus is the percentage of market-rate units the ordinance allows "above and beyond" the existing zoning designation in exchange for the provision of affordable housing. The Santa Fe ordinance allows a density bonus equal to the set-aside percentage (11 percent or 16 percent). The Irvine, California, ordinance provides a 25 percent density bonus as mandated by state law.

Consequently, the city may have difficulty generating a significant amount of affordable housing. During its five-year existence, the ordinance has produced only a dozen owner-occupied units. Fifty additional units are currently pledged for development.



Linda Hall, City of Santa Fe, New Mexico

(Left) A single-family home in a small-scale affordable housing development in Santa Fe, New Mexico. (Right) A large-scale condominium project in Santa Fe, New Mexico, called Zocalo, consisting of 310 units, of which 31 are Housing Opportunity Program (HOP) units.

Some communities are able to mitigate the effect of limited developable land by structuring or amending their regulations to be applicable beyond new subdivision developments. For example, Fairfax County requires condominium conversions to provide affordable units. The Boulder ordinance applies to existing construction undergoing significant rehabilitation. PolicyLink, a national nonprofit research and advocacy organization, suggests that landlocked communities consider applying their ordinance to small-scale infill developments that are typically not covered.

One way to promote the integration of affordable units with market-rate units is to make them aesthetically comparable.

Even successful inclusionary zoning programs must adapt to market conditions. The Montgomery County Moderately Priced Dwelling Unit Program (MPDU) is widely regarded as the most successful inclusionary housing program in the country. Initiated in 1974, the MPDU program has produced over 11,000 affordable housing units. However, the conditions that helped make the program a success have recently changed. The county is now 75 percent developed, construction costs have risen sharply, and fewer large developments are being proposed. Consequently, the number of new MPDUs has decreased. Montgomery County addressed this challenge by reducing the applicability threshold from 50 to 35 units. The county also implemented an expedited development review process for affordable housing called the Green Tape Process for Affordable Housing. The process includes modified applications, expedited review and permitting, improved review agency communications, and a GIS map overlay to easily identify affordable housing projects.

Challenge 5: Integrating Inclusionary Units into the Community

One of the key benefits of inclusionary zoning is that it helps to create diverse, mixed-income communities. However, this benefit can be negated when inclusionary units are segregated—either through appearance or location—from market-rate units. The success of an inclusionary housing program hinges on its ability to seamlessly incorporate inclusionary units with market-rate units. Within the ordinance this issue can be addressed through appearance controls and off-site construction rules.

One way to promote the integration of affordable units with market-rate units is to make them aesthetically comparable. Anderson says requiring a similar look and size eliminates the stigmatizing of families in the below-rate units. Generally, these aesthetic controls apply only to the exterior of the units such as in Monterey County, California, where the regulations state that interiors may differ in the affordable units. The Santa Fe ordinance requires both "architectural and landscaping integration" of affordable units with market-rate units.

Of course, the aesthetic regulations only come into play if the affordable units are built on-site. However, some communities allow the construction of affordable units outside of the developments. The majority of ordinances state whether developers have the option to build affordable units off-site. In Fairfax County and Santa Fe, developers are not allowed to construct units off-site. Communities that allow off-site development typically attach special requirements to the option. For example, Boulder only allows off-site development for projects of four or less units. Montgomery County allows off-site development only in "exceptional cases," as determined by the planning director.

In short, requiring affordable units on-site ensures a mixed-income community. Allowing developers to construct units off-site is sometimes necessary, particularly in land-challenged communities, but the option should be used with discretion. If the goal of an income-integrated community is to be met, then it is imperative that affordable units be required on-site with market-rate units.

Some critics argue that inclusionary housing units lower the value of market-rate units in the same development. A recent study by the Baltimore-based Innovative Housing Institute found no significant difference between the resale price of market-rate units in inclusionary developments and the market

RESOURCES

Anderson, Mary. Unknown. *Opening the Door to Inclusionary Housing.* Chicago, IL: Business and Professional People for the Public Interest.

Boulder, City of. 2002. *Inclusionary Zoning Ordinance.* [Accessed July 11, 2003]. Available at www.ci.boulder.co.us/cao/brc/965.html

Fairfax, County of. 2002. *Zoning Ordinance.* [Accessed July 11, 2003]. Available at www.fairfaxcounty.gov/dpz/PDF_files/Ordinance/art02.pdf

Innovative Housing Institute. [Accessed July 11, 2003]. Available at www.inhousing.org/

Irvine, City of. 2003. *Zoning Ordinance.* [Accessed July 11, 2003]. Available at www.ci.irvine.ca.us/depts/cd/planningactivities/zoning_ordinance.asp

Lipman, Barbara J. 2002. "America's Working Families and the Housing Landscape." *New Century Housing* 3, no. 2 (November): 7-35.

Longmont, City of. 2001. *Land Development Code* [Accessed July 11, 2003]. Available at bpc.iserver.net/codes/longmont/index.htm

Monterey, County of. 2003. *Office of Housing and Redevelopment Publications.* Web page [Accessed July 11, 2003]. Available at www.co.monterey.ca.us/housing/Documents.asp

Montgomery, County of. 2003. *Zoning Ordinance.* [Accessed July 11, 2003]. Available at www.amlegal.com/montgomery_county_md/

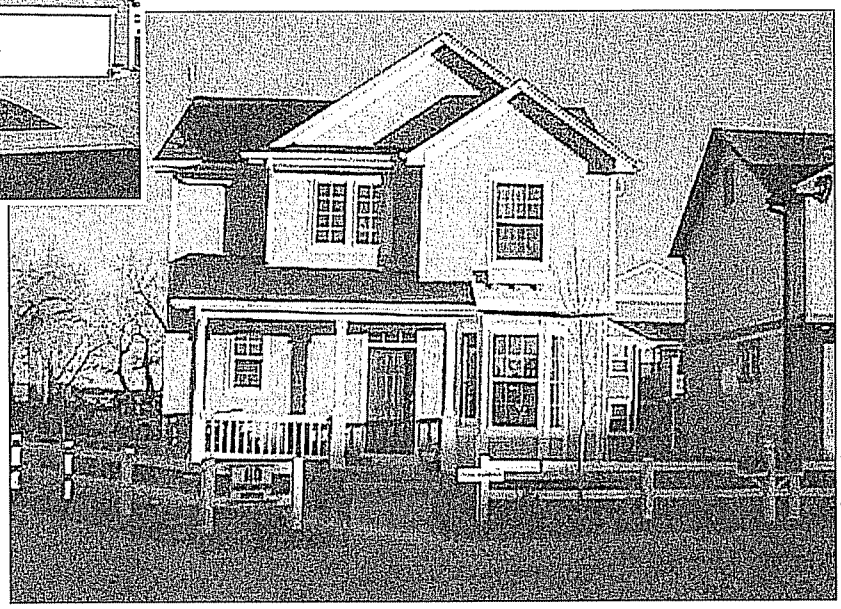
Netter, Edith M. 2000. "Inclusionary Zoning: A Guideline for Cities and Towns." Massachusetts Housing Partnership Fund.

PolicyLink. 2003. "Equitable Development Toolkit: Inclusionary Zoning." Web page [Accessed July 11, 2003]. Available at www.policylink.org/EquitableDevelopment/

Santa Fe, City of. 2003. *Land Development Code.* [Accessed July 11, 2003]. Available at

sfweb.ci.santa-fe.nm.us/planning-land-use/Chapter14-new.pdf

The Sundial development in Longmont, Colorado, consisting entirely of single-family, detached homes. Nineteen affordable homes were completed, the last of which closed in July. Each of the four-bedroom homes sold for $174,750.



Single family homes in a mixed-unit development in Longmont, Colorado. The developer was required to build two single-family units and 12 condominiums. Both three-bedroom single-family homes sold for $158,325. Four condominiums have been sold.

Rick Damian, City of Longmont, Colorado

as a whole, a fact that is particularly true in communities where regulations have been carefully crafted to ensure maximum affordable unit integration and compatibility within the larger community.

Challenge 6: Maintaining the Affordability of Inclusionary Units

The purpose for inclusionary zoning is the provision of affordable housing. Typically, the ordinance will include information on unit prices and marketing procedures, and details on what income levels will be required for eligibility. The goal in setting this type of criteria is to ensure that newly created units are affordable for the jurisdiction's target income levels. Income levels and pricing are determined upfront, but how is affordability maintained over time?

One way that municipalities manage long-term affordability is through the control period set forth in the regulations. Control periods run the gamut and should be carefully considered by each jurisdiction because they have a direct impact on the effectiveness of the program. For example, Boulder and Monterey County require permanent affordability. Montgomery County requires only 10 years of affordability, which it acknowledges may not be enough. Less than half of the affordable units created by the MPDU program since 1974 remain affordable today. Consequently, the county has granted itself the authority to purchase MPDU units during and after the initial control period to control the resale with new 10-year price controls in place.

Controlling the resale also can be an effective tool for the municipality. Resale controls are especially important when the control period is less than permanent. These controls may take the form of deed restrictions, contractual agreements, land trusts, or covenants that run with the land. Resale controls are particularly effective in preventing homeowners of affordable units from selling them at market-rate prices or to families that do not meet the required income levels. Fairfax County recently discovered that owners of affordable units were selling their units to non-qualifying buyers during the control period or renting them at market-rate prices. So the county stepped up enforcement and is in the process of developing a more detailed monitoring mechanism to track sales and rentals of affordable units.

Conclusion

Creating, implementing, and administering an inclusionary housing program is no easy task. The challenges outlined herein scarcely touch on the many issues generated by regulations. Municipalities considering the adoption of inclusionary housing can learn from the communities discussed in this article—the need for adequate study, an open process, regulatory flexibility, and continued evaluation. As stated earlier, even in the absence of a comprehensive study of inclusionary zoning programs we know that these programs are not without challenges, but we can now look to a growing number of examples to discover that success is possible.

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June 2001 • Volume No. 3

ideas@work

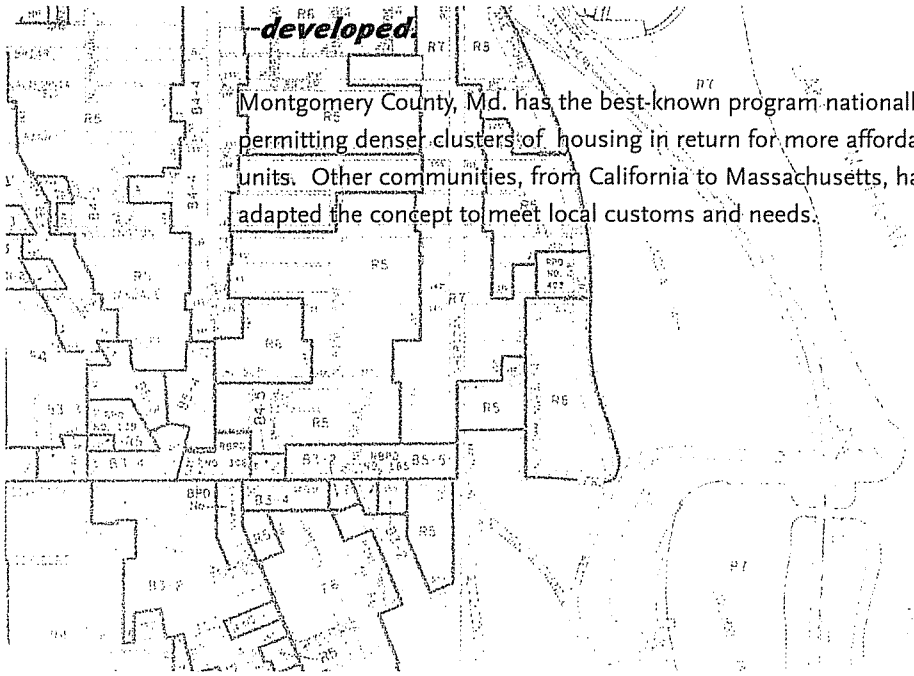
Expanding Housing Options through Inclusionary Zoning

By Paul Fischer and Jo Patton

The widespread shortage of affordable housing is prompting some local governments to rethink conventional zoning in order to expand the variety and availability of their housing stock. One innovative tool is inclusionary zoning. This enables local governments to use their zoning powers to foster development of affordable housing by requiring developers to include affordable options when they build market-rate housing.

Many inclusionary housing programs offer incentives that reduce the developer's project costs. This can be accomplished with such methods as reduced or deferred developer fees, density bonuses, land purchase assistance, bond financing and reduced traffic/parking provisions. In addition, by requiring affordable housing to be built alongside market-rate housing, many inclusionary housing ordinances avoid segregating lower-cost housing.

Since Montgomery County, Md. passed an inclusionary zoning ordinance in 1974, over 10,000 units of affordable housing have been developed.



Montgomery County, Md. has the best-known program nationally, permitting denser clusters of housing in return for more affordable units. Other communities, from California to Massachusetts, have adapted the concept to meet local customs and needs.

Ideas@work is a series developed by the Campaign for Sensible Growth to showcase innovative solutions and best practices, particularly at the local level. The series covers issues such as:

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- transportation alternatives
- techniques for traffic calming
- incentive packages for housing development
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Ordinances

What Is Inclusionary Zoning? The Montgomery County Model

Over the past 25 years, Montgomery County, Md., just north of Washington, DC, has championed a program to address the lack of affordable housing near employment centers. In 1974, the county council passed an inclusionary housing ordinance that required all new subdivisions of 50 units or more to set aside up to 15 percent of the units for low and moderate income families, one-third of which could be purchased by the local housing authority or a non-profit agency.

In return, the developer became eligible for a density bonus of up to 22 percent beyond what the zoning allowed. The 50-unit minimum was chosen to capture at least half the units being built in the county and to be of sufficient scale to successfully integrate a variety of housing types and prices.

Developers choosing not to build affordable housing were required to pay equivalent costs into a county fund, which would ensure that the low-cost units were developed.

Since passage, builders have delivered over 10,000 units of affordable housing, with over 1,600 of those purchased by the county housing authority and/or nonprofit agencies for rental to lower income residents. The ordinance also has benefited employers by expanding housing options for workers. Initial concerns that the ordinance would discourage housing construction went unrealized, and the county has enjoyed one of the strongest housing markets in the country.

Debunking the "Property Values" Myth

Studies show that locating affordable and/or subsidized housing within high-end developments does not undermine housing values, as many claim. One study by the Innovative Housing Institute, which looked at 14 communities with set-aside units, showed no significant difference in price trends between housing in inclusionary developments and the market as a whole.[1] In all cases, the inclusionary housing ordinance is expected to benefit

1) developers, by offering new incentives,

2) the municipality, by providing greater housing options for all residents, and

3) employers, by making housing affordable for workers.

The study helps allay concerns that lower-cost housing will affect property values in the surrounding communities. It found no difference in price behavior between units within 500 feet of a subsidized unit and those further away, and no difference between market-rate units next to subsidized units and those farther away.

Another study, released in September 2000 by the Family Housing Fund of Minneapolis, examined 12 developments containing units subsidized with federal housing tax credits.[2] It found that sales of surrounding market-rate housing exhibited "similar or stronger performance" following construction of the subsidized units.

Anecdotal evidence also abounds: some developers in Montgomery County who were skeptical of the program at its outset are now among its most enthusiastic supporters.

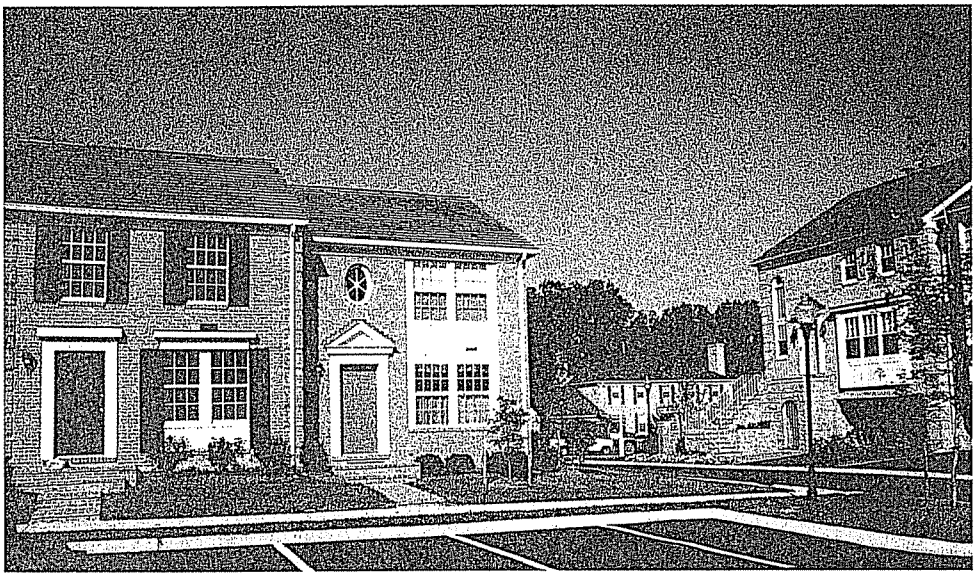

PHOTO COURTESY OF ERIC LARSEN, MONTGOMERY COUNTY DIVISION OF HOUSING.

Results of Montgomery County's inclusionary zoning ordinance. The moderately priced units on the left sell for $88,000 each; the market-rate units on the right and in the background sell for $250,000 each.

Inclusionary Housing Around the Country: Case Studies

Though Montgomery County has the oldest program in the country, many other local governments have adopted inclusionary zoning programs to expand housing opportunities in their communities. In most cases, the goal is to increase the number of affordable housing units while avoiding concentration of housing for lower-income families in any one area.

Some important variables in inclusionary housing programs include:

- *Set-aside requirements*, or the percentages of total units in the development that must be reserved from the market-rate units and sold or rented at an affordable price;
- *Cost offsets/developer incentives*, which are designed to compensate developers for losses associated with the sale or rental of units below market rates. Density bonuses, for instance, allow developers to build more units per acre when affordable housing units are included in the development. Other cost offsets include impact fee waivers, flexible design requirements and expedited permit processing;
- *Target populations* set the household income level (generally expressed as a percentage of the area median income) which determines who is eligible to purchase the affordable units;
- *Affordability control periods*, or mechanisms to maintain the affordability of units developed through inclusionary housing programs over time; and
- *Alternatives to on-site affordable units*, such as affordable housing units at other sites or "in-lieu-of" payments used by other developers to meet the ordinance goals.

Colorado & California

The following case studies illustrate the flexibility of inclusionary housing programs in addressing the needs of very distinct municipalities.

Case Study #1

Longmont, Colorado

Longmont is located in Boulder County almost 40 miles from Denver. The town experienced a tremendous population boom between 1960 and 1980 and continues to grow, fueled by job growth in high-tech firms locating in the region. In the 1990s, Longmont began to confront the problems of an increasingly expensive housing market that was moving beyond the reach of longtime residents and local workers.

In 1995, the Longmont City Council approved an annexation program that requires 10 percent of all housing to be built on land approved for annexation be affordable to households at or below 80 percent of the area median income ($74,000 for a family of four). Rentals must be affordable to households at or below 60 percent of the area median income ($44,400 for a family of four). Each phase of the development is required to include 10 percent affordable units to avoid concentration in one section of the development. This provision also precludes deferral of the construction of affordable units until the end of the construction process. In some cases, constructing affordable housing at a different site can satisfy the requirement, but, once again, the construction must be concurrent with that of the market-rate units. Longmont also provides an option to developers for in-lieu-of payments that the city uses to develop affordable housing.

Developers in the annexation program are eligible for cost offsets, including smaller setback requirements and reduced parking requirements. Longmont does not set an affordability control period for the for-sale units. However, it does require that rental units remain at affordable levels for a minimum of five years.

Five years into the program, 352 affordable units were either under construction or completed, and another 35 had been proposed.

Case Study #2

Irvine, California

Irvine is one of the nation's largest planned communities, with an estimated population in 1998 of more than 130,000 residents. Irvine's inclusionary housing policy grew out of the settlement of a lawsuit. It required the Irvine Company, which controls virtually all of the land available for development in the city, to construct 700 units of affordable housing. The policy is credited with producing 3,400 units of low and moderate income housing by setting a 15 percent set-aside goal for affordable units in all new developments.

Although California has a Density Bonus Law, passed in 1979, that requires municipalities to provide developers of affordable housing a 25 percent density bonus, developers in Irvine relied more on local incentives such as fee waivers and expedited permitting. The Irvine program provides for an affordability control period of 20 to 30 years, depending on financing.

Longmont, Colo.'s five-year-old annexation program is credited with creating 352 affordable units. Irvine, Calif.'s three-year-old program has created 3400 units.

Case Study #3

Boston, Massachusetts

Boston launched an inclusionary housing program in February 2000 by mayoral executive order. Housing options for low and middle income Boston residents had shrunk during the 1990s as gentrification drove housing prices up.

Mayor Thomas Menino signed an executive order requiring that 10 percent of any development of more than 10 units be affordable. This order applies to developments seeking any zoning relief, built on property owned by the city, or financed by the city. It requires an in-lieu-of payment, now set at $52,000 per unit of affordable housing. A developer also has the option of developing affordable housing at a separate site, but the number of affordable units is then set at 15 percent of the total market-rate units.

Case Study #4

Highland Park, Illinois

A North Shore Chicago suburb that prides itself on its history of religious pluralism and tolerance, Highland Park has seen a significant decline in the diversity of its housing and residents in recent decades. These trends accelerated in the 1990s with a significant increase in the median sale price for homes and a decline in the number of rental units. In response to this trend, the Highland Park City Council began to assess the need for affordable housing and identify options for increasing the availability of such housing. As part of that process, five groups of people were identified as needing affordable housing:

- workers employed in Highland Park but unable to afford living there;
- seniors living on fixed incomes;
- single-parent families;
- young residents, many of whom grew up in Highland Park, seeking starter homes; and
- people with disabilities, who need both affordable and accessible housing.

As the final stage in the planning process, the council recently voted to add an affordable housing plan to its master plan. The plan identifies a range of strategies to promote the development of more affordable housing, including creating a land trust, promoting employer-assisted housing and adopting inclusionary zoning initiatives. The inclusionary zoning recommendation proposes that developers set aside a percentage of units as affordable in developments above a threshold size. Additionally, a provision allows these developers to pay a fee instead of constructing affordable units.

From 1974 to 1999, 1,814,669 housing permits were issued in the six county Chicago region. Had an inclusionary zoning program been in place, 136,000 of those units might have been set aside for lower-income households.

The Chicago Region: a Shrinking Supply of Affordable Housing

In 1998 the Metropolitan Planning Council (MPC) released a study, *Housing for a Competitive Workforce: Homeownership Models that Work*, that showed that homeownership costs in the region's high job-growth corridors were well beyond the reach of the local workforce.[3]

In 1999, MPC published a *Regional Rental Market Analysis*, which further demonstrated that the rental market no longer provided a backup for families unable to purchase homes. The study cautions that "the rental inventory is shrinking, rent increases are exceeding the consumer price index, and the overall market, as measured by the 4.2 percent vacancy rate, is tight." Despite rapid population and employment growth in the collar counties (the five counties surrounding Cook County), 79 percent of the region's 1,066,800 rental units are in the City of Chicago (602,000) or suburban Cook County (238,600).[4]

The low vacancy rate in the region as a whole masks significant differences among areas of the region that have profound racial and class implications. Most of the tightest rental markets are in affluent and predominantly white communities. Northern Cook, Lake, DuPage and McHenry counties, as well as Chicago's North Side, were at or under 4.3 percent. The highest vacancy rates were found on the South and West sides of Chicago – low-income areas with large African-American populations. Vacancies also ran above average in Will and Kane Counties on the periphery of the metropolitan area.[5]

Why apply the principles of inclusionary zoning in the Chicago area?

Traditional theories of supply and demand would suggest that a market with a growing demand for rental housing would be rapidly producing a new supply. But while forecasts estimate demand for approximately 40,000 new units per year in metropolitan Chicago, the region has been adding only about 31,000 units per year, almost all of it housing for purchase. As a result, in a decade in which population expanded by 500,000, the private rental stock shrank by 52,000 units, and the public housing stock shrank by 13,000 units.

Studies identify community resistance to affordable housing and stereotypes about tenants in affordable housing as the primary market-distorting barriers to its development. This resistance is often reflected in local zoning ordinances that limit development of multifamily housing. Inflexible building codes, lengthy permit review periods and high land costs also contribute to the shortage. Together, these barriers are often referred to as "exclusionary zoning."

PHOTO COURTESY OF ERIC LARSEN, MONTGOMERY COUNTY DIVISION OF HOUSING.

This Montgomery County, Md. duplex unit shares a garage and has another entrance on the side.

What if the Montgomery County approach to inclusionary zoning had been implemented in the Chicago metropolitan area over the past 25 years? Would the rental market still be so tight, with a significant shortage of housing affordable to lower-income households? Or would there be fewer rent-burdened families, a less segregated market and less distance between affordable housing and available jobs?

In the six county Chicago metropolitan area, 1,814,669 housing permits were issued from 1974 to 1999. If 50 percent of those had been covered under a region-wide Montgomery County-type inclusionary housing requirement, then approximately 907,000 units would have been subject to the ordinance. If Montgomery County requirements were then applied, the Chicago region would have gained some 136,000 affordable units, 45,000 of which could have been bought by local public housing authorities.

During that same 25-year period, the City of Chicago issued 262,333 permits, or roughly 15 percent of the available rental housing.

The Future

An inclusionary housing ordinance could provide significant new housing options to individuals and families. However, adopting inclusionary housing policies in the Chicago area will be a challenging task. Montgomery County wields zoning and land-use regulatory power over 90 percent of the county. The Chicago region, by contrast, is governed by six counties that regulate land only in unincorporated areas and by more than 260 municipalities that control zoning and land use in most of the region. Therefore, to adopt a Montgomery County-type strategy in the Chicago region would involve a locally coordinated effort. Such an effort would need to involve government officials, housing developers, affordable housing advocates, major employers and community groups. Communities would need to see the benefits of such a policy – from providing housing for the workforce, to reduced traffic congestion and travel times if workers lived closer to jobs.

Inclusionary Housing Programs Around the Country

	Affordable Units Produced	*Threshold Number of Units*	*Affordable Set-aside Requirement*	*Control Period*	*In-Lieu-of Payment/ Off-site Development*	*Density Bonus*	*Other Developer Incentives*
Boston, Massachusetts 2000	–	Developments exceeding 10 units	10% of on-site units	Maximum allowable by law	May build off-site if 15% of all units affordable; in-lieu-of payment permitted	None	Tax break for developer
Boulder, Colorado 1999	–	No threshold number – applicable to all residential developments	20% in for-sale and rental developments (depending on project size)	Permanent affordability by deed restriction	Half of for-sale units may be built off-site. Developers have flexibility with on/off-site mix of rental units	None	Waiver of development excise taxes
Davis, California 1990	1,474	Developments exceeding 5 units	25% in for-sale developments; 25% in rental developments (depending on project size)	Permanent affordability for rental units; No control period for for-sale units	In-lieu-of payment permitted for developments under 30 units or demonstration of "unique hardship"	25%	None
Fairfax County, Virginia 1991	1,723	Developments exceeding 50 units (fee charged on projects with fewer than 50 units)	12.5% in single-family home developments; 6.5% in multifamily developments	15 years for for-sale housing; 20 years for rental housing; local housing authority may purchase 33% of all units to keep affordable	Not permitted	20% for single-family units; 10% for multifamily units	None
Irvine, California 1978	More than 3,400	No threshold number – applicable to all residential development	Voluntary goal: 15% of all units	20 – 30 years; determined case-by-case depending on financing	In-lieu-of payments and other alternatives to on site-units permissible	25%	None currently offered (parking, fees and permitting incentives may be reintroduced)
Longmont, Colorado 1995	104 of 352 anticipated	No threshold number – applicable on all annexed land	10% of all units in annexation areas	No control period for for-sale units; 5 years for rental units	May make in-lieu-of payment to affordable housing fund; case-by-case consideration of off-site construction	Yes	Relaxed regulatory requirements on parking, setbacks, landscaping, etc.
Montgomery County, Maryland 1974	More than 10,000	Developments exceeding 50 units	12.5–15% of all units. Of these, local housing authority may purchase 33%; qualified non-profit organizations may purchase 7%.	10 years for for-sale units; 20 years for rental units	In-lieu-of payments not permitted; may request approval to build affordable units off-site in contiguous planning area	Up to 22%	Waiver of water/sewer development charge and development impact fees; 10% compatibility allowance and other incentives
Santa Fe, New Mexico 1998	1	No threshold number – applicable to developments with any unit targeted to over 120% of area median income (sale price over $240,000)	11% in developments with homes priced $240,000 - $400,000; 16% in developments with homes priced over $400,000	30 years for all units; 30 year period starts over with each new occupant	Not permitted, except in case of economic hardship	Bonus equivalent to set-aside percentage; 16% in developments targeting under 80% of area median income (sale price $150,000)	Waiver of building fees

ideas@work

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Endnotes

1 Siegel, Joyce, *The House Next Door,* Innovative Housing Institute, 1999. http://www.inhousing.org/housenex.htm

2 Maxfield Research Inc., *A Study of the Relationship Between Affordable Family Rental Housing and Home Values in the Twin Cities* (Minneapolis: Family Housing Fund, Sept. 2000). http://www.fhfund.org

3 Schubert, Michael, *Housing for a Competitive Workforce: Homeownership Models That Work* (Chicago: Metropolitan Planning Council, 1998). http://www.metroplanning.org

4 *For Rent: Housing Options in the Chicago Region.* (Chicago: Metropolitan Planning Council, 1999), 47. http://www.metroplanning.org

5 *Ibid.*

Resources

City of Boulder: A chronicle of the city's considerations in deciding whether to adopt a Comprehensive Housing Strategy
http://www.ci.boulder.co.us/clerk/previous/list/990216/12.html

Innovative Housing Institute
http://www.inhousing.org/

The Enterprise Foundation
http://www.enterprisefoundation.org/

The HUD Home Page
http://www.hud.gov/

National Association of Housing and Redevelopment Officials
http://www.nahro.org/

Siegel, Joyce. *The House Next Door.* Innovative Housing Institute, 1999.
http://www.inhousing.org/housenex.htm

"Mixed-Income Housing, In Memory of Donald Terner." Cityscape: A Journal of Policy Development and Research. Vol. 3, No. 2, 1997.

Doerr and Siegel. Mixed-Income Housing, The Payoffs of a Risky Business. Urban Land, 1990.

Paul Fischer is Professor, Department of Politics, Lake Forest College. Jo Patton is Policy Analyst, Business and Professional People for the Public Interest.

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