

Voluntary versus mandatory examples

▪ **California experience** - of 107 jurisdictions using inclusionary zoning, 101 are mandatory and 6 are voluntary according to a 2003 report by the Nonprofit Housing Association of Northern California (www.nonprofithousing.org/index.atomic).

The 6 voluntary programs have produced little affordable housing. One "voluntary" program in Morgan Hill produced 300 units over 26 years - but is functionally mandatory because the program uses a tight growth management policy to make it difficult for developers to obtain permits without including affordable housing.

By comparison, the 15 top producing jurisdictions in California (including Santa Barbara County, Monterey County, and Roseville, have produced over 16,000 units of affordable housing through mandatory requirements.

The different results achieved between voluntary and mandatory programs have caused some jurisdictions with voluntary programs to amend ordinances to become mandatory programs as a result of low production (Cambridge, Massachusetts and Boulder, Colorado).

- **Boulder, Colorado experience** - the city adopted a voluntary program in 1980. The program produced 1 private development project with affordable units. The city changed to a mandatory policy in 2000. Since then, private developers have built 150 on-site affordable units and another 150 through in-lieu fees.
- **Cambridge, Massachusetts experience** - the city adopted a voluntary program from 1988-1998 with density bonuses for affordable housing in select zoning districts. No affordable housing units were produced. The city shifted to a mandatory program in 1999 and has since realized construction of 131 units with another 130 in the permitting stages.

Cost offset examples

- **Density bonus** - Santa Fe, New Mexico varies its set-aside and therefore, its density bonus between 11-16% depending on the character of the market-rate units.
- **Unit size reduction** - Burlington, Vermont requires that inclusionary units be no smaller than 750 square feet for 1-bedroom, 1,000 square feet for 2-bedroom, etc.
- **Relaxed parking requirements** - Denver waives 10 required parking spaces for each additional affordable unit up to a total of 20% of the total original parking requirement.

Inclusionary zoning (IZ)

How jurisdictions structure an inclusionary zoning (IZ) policy depends on development patterns in the community, the affordable housing needs of residents, and political feasibility. There are trade-offs between different components of an IZ policy - tailoring it to meet local needs is the hallmark of its effectiveness. Following is an outline of major variables:

Voluntary versus mandatory

Voluntary or incentive-based programs allow developers to "opt-in" while mandatory programs require developers to build affordable housing units in exchange for development rights. While voluntary programs have been received more favorably by the development community, mandatory programs have produced more affordable units in the communities that have adopted inclusionary zoning. National program analysis has determined that voluntary programs only produce affordable units if they offer substantial subsidies to the developer, or function as a mandatory policy by making it difficult for developers to obtain discretionary building permits without including affordable units in the projects.

Developer compensation

Effective inclusionary zoning programs usually offer developers a range of cost offsets to achieve a double bottom line - affordable housing for residents **and** a reasonable, overall return for developers. Minimum profitability is critical to ensure developers and their investors will actually build housing projects.

Jurisdictions typically conduct an economic feasibility analysis to determine the various aspects of development costs - such as land costs, construction costs, fees, normal profit margins, etc - and the jurisdictions housing needs and goals.

Subsidies are rarely used as cost offsets, rather various jurisdictions have employed a variety of cost-offset methods to make projects economically feasible.

Cost offsets - typically include the following:

- **Density bonus** - allowing developers to build to a greater density and thereby avoid additional land costs for the affordable units. Density bonuses typically equal the mandatory affordable housing set-aside.
- **Unit size reduction** - allowing developers to build smaller or differently configured affordable units compared with market rate units in order to reduce construction and land costs. Most programs that allow unit size reduction also establish a minimum affordable unit size.
- **Relaxed parking requirements** - allowing developers to reduce the number or size of spaces or even tandem parking.
- **Design flexibility** - allowing reduced setbacks from the street or property line, or waived minimum lot size requirement in order to maximize land use efficiency.

Cost offset examples

- **Design flexibility** - Boston allows for greater floor-to-area ratios. Sacramento allows varied road widths, lot coverage, and minimum lot size.
- **Fast track permitting** - Sacramento expedites inclusionary zoning projects within 90 days compared to 9-12 months resulting in an average savings of about \$250,000 per project.
- **Fee waivers or reductions** - Longmont, California waives up to 14 fees of a value of about \$3,250 for single family and \$2,283 for apartment units if more affordable units (or units at deeper levels of affordability) are provided.

Income targets

- **Montgomery County, Maryland** - asks developers to produce units at 65% of AMI then authorizes its housing authority to purchase up to 33% of those.
- **Cambridge** - requires that 50% of all units created by inclusionary zoning go to Housing Choice Voucher Holders (Section 8). The Cambridge Community Development Department and Housing Authority provide managers of inclusionary units with prospective tenants that have already been screened and approved for the Section 8 program. As a result, Cambridge inclusionary zoning program regularly reaches households earning between 10-30% of AMI. The remaining 50% goes to a waiting list of income-verified households who are prioritized by: 1) having children or 2) facing an emergency housing need such as eviction, living in overcrowding units, or paying more than 50% of income on housing.
- **Fairfax, Virginia** - couples inclusionary zoning with homebuyer assistance using funds from the state Housing Development Authority. The Authority loans households that meet minimum credit criteria and make less than 70% of AMI 3.5% interest rate mortgages covering 100% of housing - costs (ie., no down payment is required). The program makes homeownership accessible to very low and even extremely low-income households. About 30% of Fairfax County's inclusionary zoning homebuyers earned less than 40% AMI and 5% earned less than 30% AMI.

- **Fee waivers or reductions** - where the fees support infrastructure development and municipal services. The offset fees, however, must be made up by other municipal governmental funds.
- **Fee deferrals** - allows delayed payment of impact and/or permit fees until occupancy to reduce finance carrying costs.
- **Fast track permitting** - streamlines the permitting process reducing finance carrying costs.

Set-asides

The percentage set-aside can vary but is typically from 10-25%. Some jurisdictions have set-asides that vary based on the incomes targeted.

In California redevelopment areas, for example, 6% must serve very-very-low-income households, 3% low income, and 6% moderate income.

Project trigger

Some jurisdictions apply inclusionary zoning based on project size - beginning at 5, 10, or 20 unit projects or buildings.

Some jurisdictions apply inclusionary zoning to all new developments within the community, requiring that larger developments project units while smaller developments pay a fee in-lieu of construction.

Income targets

Inclusionary zoning policy achieves affordable housing in 2 ways: 1) defining the income target(s) at which the developer must produce housing and 2) authorizing housing authorities to purchase units to serve even lower-income households.

Jurisdictions with affordability challenges across income categories often tier income targets to serve diverse needs - such as 50% of the units at 50% of AMI, 50% at 80% of AMI, etc.

Target income levels should be guided by housing needs and goals and must be balanced with the ability for the developer to make a profit. Nationally, inclusionary zoning has been most successful when requiring developers to deliver affordable housing units at 50-120% of AMI in combination with public resources that acquire and make units available to households between 0-50% of AMI.

There are 3 ways jurisdictions can achieve deeper levels of affordability:

- Mandate some proportion of inclusionary units go to housing choice voucher holders (Section 8),
- Offer homebuyer assistance to purchasers of IZ for-sale units, and
- Enable public agencies or non-profit organizations to purchase and further subsidize inclusionary units.

Acquiring and renting inclusionary units also saves the voucher and homebuyer assistance program monies as well as the units are cheaper than if they were built

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Reinvestment - California has a mandatory, statewide inclusionary zoning policy in place for redevelopment areas where private developers are required to have a 15% set-aside and public agencies a 30% set-aside.

Inclusionary zoning benefits

- **Creates mixed-income, diverse, integrated communities** - particularly where developers build the affordable units on-site and provide external comparability between affordable and market-rate units.
- **Partners with the private sector to meet affordable housing needs** - by providing non-monetary compensation in the form of density bonuses, deferred and waived fees schedules, fast track permitting, and other incentives.
- **Protects against displacement when new investment occurs** - maintaining affordability as areas and districts or redeveloped and reinvested.

Costs can be more substantial when a jurisdiction supplements inclusionary zoning with purchase or rental subsidies. However, even when coupled, the final cost of providing housing for low and very low-income households is still below what it would cost the jurisdiction to produce the units otherwise.

Cost to developer

To be effective, inclusionary zoning programs must set a developer's compensation at a level that allows a profit or break even from the construction of affordable units if developers are to participate in the program.

Policy options to consider

▪ **Mandate inclusionary zoning in areas of reinvestment and redevelopment** - areas undergoing reinvestment often plan for market-rate development as a strategy to re-infuse the tax base and build mixed-income communities. However, if only market rate housing is developed the impacts can cause an upward pressure on costs that eventually displaces current residents through gentrification or creates significant housing disparities where the choices result in new market rate units or dilapidated affordable units.

▪ **Require inclusionary zoning in mixed-use developments** - to demonstrate best practices of smart growth and equity by placing a range of jobs and housing in close proximity.

Common misconceptions

▪ **Inclusionary zoning discourages private development** - a recent study by Paul Rosen & Associates of the impact of inclusionary zoning housing programs in California from 1981-2000 for 28 cities found that inclusionary housing programs had no negative effect on housing production. The study compared the programs to the effects of other variables including changes in the prime rate, the 30-year mortgage rate, the unemployment rate, the area median home prices, and the 1986 Tax Reform Act, among others, and found inclusionary zoning had no negative affect outside of these variables.

▪ **Inclusionary zoning commits an illegal "taking"** - since the requirement to build affordable units diminishes profits. The Home Builders Association of Northern California vs Napa found that the incentives offered by the city in the inclusionary zoning ordinance (as well as the possibility of a waiver in case of extreme hardship) provided enough benefits and options to developers that the ordinance did not constitute a taking. The various forms of compensation granted to developers under the program off-set the cost associated with producing affordable units.

▪ **Inclusionary zoning promotes over-development and congestion** - presumes the density bonus can overwhelm the underlying neighborhood compared to what the project(s) would do if built to allowable density instead. Density bonuses must be reasonable

and limited to areas that can accommodate the increased number of aggregated households.

- **Private developers are not responsible for producing affordable housing** - the argument being this is a public responsibility that should be resolved by the public sector. Inclusionary zoning is a public policy that compensates developers accordingly for their production of housing units.

Other criticisms (Reason Institute)

- **Inclusionary zoning produces few overall housing units** - concern being that inclusionary zoning imposes major burdens on developers and potential buyers of market rate housing without producing many affordable units.

The total number of inclusionary housing units that are produced is determined by the number produced in the overall market in the area and is subject to the same factors as the overall market - such as population growth, land supply, mortgage rates, etc.

The ratio of affordable to market rate units within any project is determined by public policy which considers the ratio of affordable needs and the incentives that can be offered to offset the cost to the developer of producing such a ratio.

Inclusionary zoning is one tool that can be used to provide affordable housing, but can not be considered or depended upon to be the only tool.

- **Inclusionary zoning has high costs** - by forcing developers to sell market rate housing at a reduced price to meet affordable housing quotas.

Inclusionary ordinances allow more housing to be built than would be otherwise with set-aside bonuses that allow for increased density, reduced unit and lot sizes, reduced parking requirements, waived or deferred fees, and other measures that lower the production cost of affordable units over market rate housing.

Consequently, the developer is not paying the same cost to build affordable housing units as the developer is to build market rate housing - and is therefore, not providing or pricing an affordable unit at the same cost and price compared to a market rate unit.

Most ordinances also compute the cost of the affordable unit production to make sure the developer realizes some profit return on the affordable units built.

- **Inclusionary zoning makes market-priced housing more expensive** - assuming the cost of producing and discounting the price of affordable units is added to the costs of market rate housing in a project in order for the developer to recover costs and some profit.

See response above - the developer is not paying the same cost to build affordable housing units as the

California experience

Inclusionary zoning has not been found to restrict or stimulate the production of housing units in California markets any more or less than other market variables including the supply of land (particularly within densely developed market areas, mortgage rates, and other external variables.

California experience

Inclusionary zoning off-sets allow affordable units to be 1) smaller, 2) without land costs, 3) with density, parking, fee waivers, and other incentives, and in some instances, with in some ordinances, 4) added market-rate density bonuses means that affordable units do not cost the same to produce as market rate units and therefore do not need to be priced the same in order for the developer to make a profit.

California experience

A statewide survey of inclusionary zoning ordinances in California showed 95% included automatic density bonuses. Most or all provided density bonuses at least equal to the inclusionary set-aside and most provided higher density market-rate bonuses that yield additional units as well. The marginal cost of land is therefore 0 and the marginal cost for any bonus market-rate units is 0 greatly increasing the developer's profitability.

developer is to build market rate housing - and is therefore, not providing or pricing an affordable unit at the same cost and price compared to a market rate unit.

The sale or rental price for an affordable unit, once offset bonuses are calculated, is the same as the production cost including some developer profit and is not transferred onto the cost of the market rate units in the project.

Developers will continue to build in a community so long as there is market demand, a predictable development process, and a profit to be made. An effective inclusionary zoning policy should be predictable, equitable, and ensure some profitable return.

▪ **Inclusionary zoning restricts the supply of new homes** - by driving away developers and making landowners less interested in selling. While inclusionary zoning may change the rules or regulations that govern land development, it does not change the overall marketplace.

Landowners will sell property so long as there is a value to be made in the land - inclusionary zoning actually allows more units to be built than would be otherwise making the land more valuable.

In fact, were public housing authorities and non-profit organizations to build units on market rate housing land without any market rate units, there would be more of an actual loss in tax revenue compared to the inclusionary zoning approach.

▪ **Inclusionary zoning costs government revenue** - by building lower value housing units and requiring such units to remain affordable for 30-45 years, or in some instances, into perpetuity.

Inclusionary zoning bonus allowances allow more units to be built than would be otherwise, actually producing more units with a combined value and therefore, tax revenue, higher than the market would produce otherwise on the same property or total marketplace.

Some affordable units may be purchased and rented by public housing authorities and non-profit organizations that will not generate tax revenues. However, since these units are generally in addition to what would be produced by market rate projects without inclusionary zoning, there may be no net loss.

▪ **Price controls do not address the cause of the affordability problem** - causing the market to produce less not more housing and deflating the value (even as it increases the price) of what is built. The solution should be to increase market production allowing the trickle-down principle to free up older housing stock for those in most need.

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Inclusionary zoning policies do not institute price controls or added price burdens onto market rate housing. Nor does inclusionary zoning restrict the supply or value of land or lessen the demand for housing production - see previous responses and definitions.

New housing production, finance, operating and other cost trends are pricing an increasing percent of all households out of the ability to purchase or rent in the marketplace regardless of how many units are built. Producing more units at prices that local households can not afford is not a solution, particularly if the developers of such units reach a point of diminishing

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However, older housing stock per se will not meet the needs of all low-income households, particularly those with special needs. The ratio of households with special needs or limited incomes that can not afford or fit into existing older stock will continue to increase commensurate with overall population growth and will not be accommodated by simply growing more supply if the supply is beyond the means of most, and particularly, moderate to very low-income households.

returns and the ability of the marketplace to absorb the product.

Older housing stock is the most affordable, and in most instances, in most danger of being lost to redevelopment or deterioration if not protected. Affordable housing programs must provide measures that will protect and retain existing housing units.

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