PAS Essential

INFO PACKET

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Inclusionary Housing

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American Planning Association

Making Great Communities Happen

American Planning Association

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APA Resources

American Planning Association, 2006. *Policy Guide on Housing*.

- See Policy Positions 1A, Housing Stratification; 1D: Best Practices; 2A: Fair Share Distribution of Housing; and 2B, Regulatory Reforms to Achieve Jobs/Housing Balance.

Brunick, Nicholas. 2007. "Case Studies in Inclusionary Housing." *Zoning Practice*, March.

- Examines Chicago's implementation of a package of inclusionary housing policies that use zoning authority selectively in different parts of the city.

Brunick, Nicholas J. 2004. "The Inclusionary Housing Debate: The Effectiveness of Mandatory Programs Over Voluntary Programs." *Zoning Practice*, September.

- Evaluates the effectiveness of recent and long-standing inclusionary housing programs. Includes "Ask the Author" Q&A.

Brunick, Nicholas. 2004. "Inclusionary Housing: Proven Success in Large Cities." *Zoning Practice*, October.

- Looks at successful IZ programs in larger cities, and offers suggestions for smaller communities. Includes "Ask the Author" Q&A.

Curtin, Daniel J., Jr., Cecily T. Talbert, & Nadia L. Costa. 2002. "Inclusionary Housing Ordinance Survives Constitutional Challenge in Post-*Nollan-Dolan* Era: *Homebuilders Association of Northern California v. City of Napa*." *Land Use Law & Zoning Digest*, August.

- California appellate court's 2001 decision made clear that inclusionary zoning could withstand a facial constitutional challenge.

Lubell, Jeffrey, 2006. "Zoning to Expand Affordable Housing". *Zoning Practice*, December,

- Places zoning within a larger family of regulatory strategies to provide workforce housing; includes important considerations for communities considering an inclusionary zoning ordinance.

Morris, Marya, general editor. 2009. "Model Affordable Housing Density Bonus Ordinance." Chapter 4.4 in *Smart Codes: Model Land-Development Regulations*. Planning Advisory Service Report Number 556. Chicago: American Planning Association.

- Model affordable housing ordinance that gives a mandatory alternative and an incentive-based approach to incorporating affordable housing in development.

Ross, Lynn M. 2003. "Affluent Community Sets Precedent with Inclusionary Zoning Ordinance." *Zoning News*, October.

- Overview of Highland Park, IL's precedent-setting IZ ordinance.

Ross, Lynn M. 2003. "Zoning Affordability: The Challenges of Inclusionary Housing." *Zoning News*, August.

- Discusses five challenges of incorporating inclusionary housing programs. Includes "Ask the Author" Q&A.

Reports

Business and Professional People for the Public Interest, 2003. *Opening the Door to Inclusionary Housing: 2003 Condensed Edition.*

- Nuts-and-bolts information on inclusionary housing programs, and case studies of 12 IZ programs from across the US.

Business and Professional People for the Public Interest. n.d. "Policy Tool #1: Developing an Inclusionary Zoning Ordinance." Regional Inclusionary Housing Initiative Policy Tools Series.

- Provides a detailed analysis of issues that need to be considered when creating an inclusionary zoning ordinance.

National Housing Conference and Center for Housing Policy. 2008. "The Effects of Inclusionary Zoning of Local Housing Markets: Lessons from the San Francisco, Washington DC and Suburban Boston Areas." Housing Policy Brief.

- Study looks at the impacts on affordable housing production levels and market-rate housing production of IZ programs in three study areas. This brief summarizes 103-page working paper.

Netter, Edith. 2000. "Inclusionary Zoning Guidelines for Cities and Towns." Boston: Massachusetts Housing Partnership Fund.

- Though written for Massachusetts communities, all communities should find this general guidance helpful.

Non-Profit Housing Association of Northern California. 2006. *Affordable by Choice: Trends in California Inclusionary Housing Programs*. Executive Summary and Key Findings.

- Report finds that inclusionary programs are a proven tool for building diverse housing that meets the needs of all of a community's residents.

Regulations

Baltimore (MD), City of, Department of Legislative Reference. 2007. *Inclusionary Housing Law*. Ordinance 07-474.

- If a project receives "major public subsidy" from the City (defined as below-appraised value land sale, PILOTs, TIF funds, and funding exceeding 15% of total costs), 20% of units must be affordable.

Boulder (CO), City of. 2009. *Boulder Revised Municipal Code*. Title 9, Land Use Code. Chapter 13, Inclusionary Zoning.

- Permanent affordability requirement of 20% for projects of 5+ units; smaller projects must incorporate one of several affordable housing element options. Provides for cash-in-lieu and off-site alternatives.

Cambridge (MA), City of. 2009. *Cambridge Zoning Ordinance*. Article 11.200, Incentive Zoning Provisions and Inclusionary Housing Provisions.

- Affordability requirement of 15% applies to residential and mixed-use projects of 10+ units or 10,000+ SF. Incentives of density bonuses, increased Floor Area Ratio (FAR), and decreased minimum lot areas provided.

Carlsbad (CA), City of. 2008. *Municipal Code.* Title 21, Zoning. Chapter 21.85, Inclusionary Housing.

- Minimum 15% affordability requirement for all development; mandates at least 10% 3+ bedroom units in developments with 10 or more affordable units; allows for in-lieu fee and on-site construction alternatives in certain cases.

Davis (CA), City of. 2009. *City of Davis Municipal Code*. Chapter 18.0.0: Housing. Section 18.05.0, Affordable Housing, Section 18.06.0, Middle Income Housing. Section 18.07.0, Incentive System for the Local Workforce.

- Very low/low/moderate affordability requirement of 25% applies to developments of 5+ units. Provides for density bonus.

- Middle-income affordability requirement requires developments with 26+ units to make 10-20% of units affordable to households.
- Establishes incentive system for the local workforce as part of the city's buyer selection process for affordable units.

Fairfax (VA), County of. 2009. *Fairfax County Zoning Ordinance*. Article 2, General Regulations. Part 8, Affordable Dwelling Unit Program.

- Applies to projects yielding 50+ dwelling units. Affordability requirements range from 6.25% to 12.5% based on size of density bonus.

Fremont (CA), City of. 2008. *Fremont Municipal Code*. Title VIII. Chapter 2. Article 21.7: Inclusionary Housing.

- Includes findings. Affordability requirements of 15% for all developments. Provides incentives. (This ordinance is currently being revised; the new ordinance will replace this version when the update is complete.)

Highland Park (IL), City of. 2009. *Highland Park Zoning Code.* Article XXI: Inclusionary Housing.

- Last updated in 2007. Affordability requirement of 20% of projects with 5+ units. Provides for density bonuses; gives priority to people who live or work in Highland Park.

Irvine (CA), City of. 2008. *Zoning Ordinance.* Division 2, Chapter 2-3: Affordable Housing Implementation Procedure.

- Voluntary program became mandatory in 2003. 15% affordability requirement. "Equivalent Value" menu options provided if fulfillment of affordability requirements is otherwise infeasible.

Montgomery (MD), County of. 2009. *Montgomery County Code.* Chapter 25A: Chapter 25A, Housing, Moderately Priced.

- Includes findings section; applies to developments of 20+ units. Moderately Priced Dwelling Unit (MPDU) requirement ranges from 12.5% to 15% depending on size of density bonus.

Newton (MA), City of. 2007. *City of Newton Revised Ordinances*. Section 30-24(f). Special Permits - Inclusionary Zoning.

- Affordability requirement of 15% applies to all developments with 2+ units; can be met with cash payment for developments of 6 or less units. All affordable units are rentals leased through the Newtown Housing Authority.

Pasadena (CA), City of. 2008. *Zoning Code*. Article 4, Chapter 17.42. Inclusionary Housing Requirements.

- Affordability requirement of 15% applies to all residential projects. Credits provided for very low-income units in lieu of low- and moderate-income units and low–income units in lieu of moderate income units. Provides a number of alternatives to providing affordable units within project.

Pleasanton (CA), City of. 2009. *Pleasanton Municipal Code*. Title 17, Chapter 17.44. Inclusionary Zoning.

- Adopted in 2000. Affordability requirements of 15% for multi-family projects with 15 units or more and 20% for single-family projects of 15 units or more. Commercial, Office, and Industrial development may provide affordable housing in lieu of paying a lower-income housing fee. Incentives provided to increase the feasibility of providing inclusionary units.

Tallahassee (FL), City of. 2009. *Land Development Code.* Chapter 9, Article VI. Subdivisions and Site Plans - Inclusionary Housing. 2008. *City Commission Policy 1103 – Administration and Implementation of the Inclusionary Housing Ordinance.*

- Amended in 2008. Affordability requirement of 10% applies to projects including 50 or more dwelling units. Provides for in-lieu of fees or lot provision and development incentives.

Walnut Creek (CA), City of. 2009. *Municpal Code.* Title 10, Planning and Zoning. Chapter 2, Housing. Article 9, Inclusionary Housing. Article 10, Density Bonus Ordinance.

- Amended in 2009 to include condominium conversions. Requirements depend on total number of units in project, whether the units are rental or owner-occupied, and what level of affordability they are targeted to.

Online Resources:

California Coalition for Rural Housing http://www.calruralhousing.org/

HousingPolicy.org Inclusionary Zoning Toolbox
http://www.housingpolicy.org/toolbox/strategy/policies/inclusionary_zoning.html

PolicyLink Toolkit: Inclusionary Zoning
http://www.policylink.org/site/c.lkIXLbMNJrE/b.5137027/k.FF49/Inclusionary_Zoning.htm

National Inclusionary Housing Conference http://www.inclusionary.org/index.html

APA Resources

American Planning Association
Making great communities happen

Policy Guide on Housing

Adopted by the Legislative and Policy Committee March 21, 2006
Adopted by the Chapter Delegate Assembly April 22, 2006
Adopted by the Board of Directors April 23, 2006

INTRODUCTION

Planners have the skills and ethical responsibility to create communities where diverse housing options are available to existing and future residents. This Housing Policy Guide sets forth specific policies and actions which will help APA, its members, and national partners effectively address this country's housing needs.

STATEMENT OF ISSUES

In order for communities to function, there must be an adequate supply of housing in proximity to employment, public transportation, and community facilities, such as public schools. The housing stock must include affordable and accessible for sale and rental units, not only to meet social equity goals, but in order to ensure community viability. The development of a diverse and affordable housing stock must be carried out without sacrificing sound regulations that are in place to protect the environment and public health.

Professional and citizen planners have a number of tools to shape the direction of housing development: comprehensive and strategic plans, zoning and other land use regulatory techniques, and development incentives. Planners have a key role to play in supporting informed decision making that creates housing options for all people including: low- and moderate-income households, seniors, people with special needs, families with children, and the homeless in both rural and urban areas.

The AICP Code of Ethics strongly and explicitly states that planners have a responsibility to support the needs of underrepresented and disadvantaged people. Land use decisions involving affordable housing may elicit local opposition for a variety of reasons, presenting challenges to planners. A planner who has factual information about the community's housing needs, including housing prices and the condition and availability of the local housing supply will be best able to serve the community and reduce income stratification.

Some of the questions planners should be seeking answers to include: Is there sufficient developable land to meet residential demand in the community? Are housing prices and rents escalating and pricing people out of the for-sale and rental markets? Is affordable rental housing being lost due to age and neglect, or to expiring government subsidies and contracts, or to more attractive higher market rates or conversion to other uses? Which properties are at risk of loss from the affordable housing stock? Is there adequate emergency or transitional housing for the homeless? Is the local housing market being impacted by the quality of neighborhood public schools? Is new housing accessible to persons with disabilities or adaptable so that persons may age in place? Are key community workers such as teachers and police officers able to live in the communities they serve? Are new immigrants or aging baby boomers or the changing composition of households creating a demand for the design of new housing types?

The 1949 Housing Act adopted the goal of "a decent home and suitable living environment for every American family." This goal has become elusive as the number of working families with critical housing needs [1] continues to increase due to the disparity between rising housing costs and stagnating wages

for low-wage jobs. [2] Low-wage jobs anchor a substantial sector of local and regional economies and high rental costs place many low-wage workers one paycheck away from homelessness. [3]

Without appropriate safeguards, gentrification can shut many people out of the neighborhoods where they grew up. With a shrinking supply of low cost rental units and an aging rental stock, finding housing that's affordable may require lengthy commutes between jobs and housing. Other options available to working families to reduce housing costs include living in overcrowded conditions or poor quality housing.

Affordability problems affect both renters and homeowners. Even among people with relatively better paying jobs, higher housing costs precipitate a significant decline in real, spendable income. [4] For both renters and homeowners, housing and transportation costs consume a large share of the household budget. [5] The widespread problem of housing affordability has a profound impact on the quality of life for families, especially children, and on the overall well-being of neighborhoods and communities.

Housing issues transcend jurisdictional boundaries. Communities need to forge cross-jurisdictional partnerships to develop coherent long-term local housing policies that support a shared vision for housing and community development for the entire region. They need to strengthen the policy linkages between housing and transportation, job centers and social services, and the whole spectrum of community needs. Coalition building, working toward consensus, and coordinating housing programs and resources are key tools and building blocks to addressing the housing issue.

FINDINGS

Housing Stock. While the nation's housing supply is computed to be large enough to meet demand, there is a significant disconnect between the supply of the housing units and the location, price, and quality of the housing units. According to the 2004 American Community Survey, the nation contains 122.7 million units for 109.9 million households. [6] The stock has been growing despite a recession elsewhere in the economy and includes 67 percent single unit structures, 26 percent multi-unit structures, and 7 percent mobile homes. An average of 1.9 million units has been built each year from 2000 through 2004. Units are becoming larger, and households are becoming smaller over time. [7] The average household size is now 2.6. More than one-half of the nation's housing stock was built after 1970. [8]

The stock of existing rental units affordable to low-income households is being lost to redevelopment, gentrification, and deterioration. The Joint Center for Housing Studies estimates that there is net loss of over 100,000 low-cost units each year. These units are being replaced, but the replacement units enter the market at very high rents. The National Alliance of HUD Tenants estimates that since 1996 up to 200,000 subsidized units have been lost to conversion. As low-cost units are lost and replacement units cost more, the housing cost burden of renter households rises.

Household Tenure and Composition. There are 73.8 million households who are owners and 36.1 million who are renters. About 29 percent reside in central cities, 49 percent in suburbs, and 22 percent in non-metro areas. Fifty percent of the households are married couple families while 17 percent are other family households. Single person households represent 27 percent of the total households. The number of unmarried partners rose 72 percent between 1990 and 2000. The number of elderly households is growing and is now 22 million according to the 2000 Census. The Census also reports that the number of family households with a disabled member is over 16 million.

Accessibility. The aging of the population creates an increasing need for housing that is accessible for occupants as well as visitors. The Census Bureau reports that the U.S. population 65 years and older is expected to double within 25 years. By 2030, 72 million people (1 out of 5 Americans) will be 65 years and older. Accessibility can be improved with the concept of visitability and even more so with universal design. As of June 2004, 41 states and local jurisdictions have adopted visitability programs. [9] Universal design incorporates features that make homes adaptable to persons who require handicapped access without negatively impacting curb appeal or value. Many universal design features make a home more convenient and mitigate common household safety hazards.

Housing Conditions. Overcrowding is a problem for only a small percentage of the population. Only 3.4 million households (3 percent of total) live with more than 1.0 persons per room, and only about 800,000 households (less than 1 percent) live with more than 1.5 persons per room. [10] Substandard housing condition is a problem for only a small percentage of the population. About 87 million households (82 percent of the total) rate the condition of their home at 7 or better on a scale from 1 to 10, with 10 being the best. Only 6.3 million (6 percent) report severe or moderate problems with the structure of their home. [11]

Farmworker Housing. In many rural communities that depend on food production, including agriculture, mariculture, and fisheries, the need for decent housing for farmworkers is a growing issue. Farmworkers typically have very low incomes and often experience overcrowded and substandard living conditions, many times with their children. [12]

Housing Costs and Household Incomes. The affordability of housing remains the biggest housing challenge confronting the country. Housing costs place a high burden upon the incomes of too many households. A cost burden is defined as paying more than 30 percent of household income on housing, while a severe cost burden is defined as paying more than 50 percent of income on housing costs (including utilities). About 33 million households (31 percent of the total) suffer from this affordability burden. The problem is greatest among the poor with 68 percent of the poorest quartile of the population paying more than 30 percent of income on housing. The national housing wage for 2005 was $15.78. [13] The housing wage is a measure of the hourly wage needed to afford the fair market rent for a two-bedroom apartment. Such a wage is more than three times more than today's minimum wage of $5.15.

Many of the poor cannot enter into housing markets due to a lack of a stable income at a level that permits entry into the market without adopting a high financial burden. More and better jobs are needed along with improved access to jobs by the chronically unemployed and under-employed. Improved incomes can resolve many housing problems.Many of the poor have stable income but the stock of low-cost units is not growing at a pace equal to the expanding need for this type of housing. Parts of this stock are actually shrinking in size while the need for this type of unit is growing. Persons who rely on fixed incomes, such as the elderly and non-elderly persons with disabilities, are especially hard hit by increasing housing costs. Supplemental Security Income (SSI) payments to individuals with disabilities amount to only $564 per month. For persons who rely on SSI as their only income, an affordable housing budget would equal no more than $169 per month.

Newer measures of housing costs, such as the Housing and Transportation Affordability Index developed by the Brookings Institution, examine a broader measure of housing affordability by looking at housing cost burden in combination with the transportation costs associated with the location of the housing. Transportation is the second largest expenditure after housing and can range from 10 to 25 percent of household expenditures. By examining where housing is located and the associated transportation costs, the Affordability Index may provide a better tool to evaluate housing affordability in the future.

Jobs/Housing Balance. Low-income households remain concentrated in central cities while new low-wage jobs are created in suburbs. One of every six urban families lived in poverty in 1999 compared with fewer than one in 10 families in the suburbs. The rate of jobs growth in the fringe counties of metropolitan areas is over twice that of the central counties of metropolitan areas. [14] (*See* Jerry Weitz, *Jobs-Housing Balance*, APA Planning Advisory Service Report No. 516.)

Homelessness. On any given night 800,000 people will be homeless. [15] There is no single homeless population; rather, there are many homeless subpopulations. At one extreme is the chronic homeless who suffer from multiple deficiencies and are unable to maintain an independent household. At the other extreme are the transitional homeless who simply need short-term help during a crisis in life that has caused them to lose a home. Many different groupings of households fall within these extremes. Each subpopulation requires a different remedy. Planners need to assist in the identification of the scale and nature of the problem and assist in the provision of shelter and supportive services for the homeless

(*see* APA Policy Guide on Homelessness, adopted 3/03).

Housing Discrimination. Too many people who are members of racial or ethnic minorities, who are disabled, or who live in non-traditional household types confront discrimination in the housing market. Discrimination is widespread in housing markets across the nation. [16] Due at least in part to this discrimination, the nation's housing markets continue to be highly segregated by race and ethnicity. [17]

Discriminatory practices on the part of the public and private sectors in the past have resulted in segregated public housing which has helped to create enclaves of the poor and perpetuated the creation of segregated neighborhoods. These enclaves have not provided good environments for the poor residing in the projects or for the neighbors living in close proximity to these projects. These projects have hastened the deterioration of neighborhoods. [18]

Housing discrimination against persons with disabilities continues to be a significant issue, both in terms of the private housing market and local regulations. [19] Many communities eliminate housing opportunities for persons with disabilities using restrictive single-family definitions, illegal group home spacing requirements, and unnecessary public hearing requirements. In addition, many communities do not understand or properly enforce federal fair housing laws requiring accessibility, reasonable accommodation, and reasonable modifications. Often, communities simply refuse to permit the development of supportive housing for persons with disabilities due to neighborhood opposition. When found to be in violation of the Fair Housing Act, jurisdictions become liable for financial damages by the U.S. government (*United States v. City of Agawam*, Civil Action No. 02-30149-MAP).

Housing/School Linkages. Public schools in many cities have become re-segregated with student populations that are more than 95 percent non-white. Mayors in Chicago, Harrisburg, and New York have assumed control of their school districts in part to stop the outflow of middle class families to suburban school districts. As many observers note, school policy is housing policy and many housing and community redevelopment efforts and smart growth efforts are creating successful housing/school connections. Many communities, particularly in high growth areas, have created countywide school districts and magnet school programs in order to break the pattern of have and have not schools. Some planning departments are working closely with local school districts due to the fact that the quality of public and private schools are recognized as key indicators of community vitality. [20]

Housing Resources. As federal resources for affordable and supportive housing shrink, the remaining federal resources, such as the Community Development Block Grant, the HOME Investment Partnerships Program, Housing Choice Vouchers, Low-Income Housing Tax Credits, and USDA rural housing programs, become critical and need to be protected. Regional and local governments are increasingly depending on resources such as housing trust funds and housing bonds, to support affordable housing development.

GENERAL POLICY POSITIONS

> **General Policy Position #1**
> **Planners need to support the national goal of providing housing opportunity to households of all ages, races and income levels throughout the housing markets of the nation. Planners should identify and strive to change or eliminate planning policies, regulations, and programs that have a disparate impact on groups identified by race, ethnicity, economic status, or disability.**

Specific Policy Position #1A: Housing Stratification. Planners should use Comprehensive Plans, Housing Elements, and development regulations to reduce housing stratification and spur the development and preservation of affordable housing.

Reason to Support
Housing markets are now stratified by race, ethnicity and income. These stratified markets prevent

some households, especially the poor, from gaining access to jobs, schools, shopping and other services, reducing the quality of life for those excluded households and exacerbating the problems associated with concentrated poverty and minorities. Planners need to break down this stratification. They should strive to provide a wide range of housing opportunities in as many locations as possible. This will help to reduce the societal ills resulting from the rigid stratification now found in today's housing markets.

When the market fails to provide needed affordable housing, it is incumbent upon planners to devise forms of intervention to correct these failures. These interventions need to be carefully designed to be cost effective, non-disruptive, and appropriate to the housing market conditions that prevail. Communities must have updated Comprehensive Plans that include Housing Elements. The Housing Elements determine the housing needs for different households in the community and create strategies to meet those needs.

Specific Policy Position #1B: Barriers to Housing Opportunity. Planners should identify and reform planning policies and zoning regulations at the state and local levels that are barriers to the creation of affordable housing, may exclude supportive housing, and are noncompliant with the Fair Housing Act, as amended. Planners should consider long-term managerial and maintenance issues in the development of new affordable housing. Zoning codes should be updated to address new demographic trends and execute clear and objective standards. Communities need to determine what type of regulations and policies will best expand the range of housing choices for all income groups. Planners should educate and actively encourage local lending institutions to provide funding opportunities for affordable housing developments.

Reason to Support
As long as discriminatory practices continue, society will continue to pay the costs associated with the spatial separation of whole classes of people, great opportunities will be lost, and the full potential of our nation will be unrealized. Traditional zoning and planning and other land use controls may limit the supply and availability of affordable housing, thereby, raising housing prices. The regulatory environment plays a crucial role in housing production. Large lot zoning, restrictive single family definitions, minimum square footage for single family homes, housing location policies, expensive subdivision design standards, prohibitions against manufactured housing, time-consuming permitting and approval processes are some examples of policies and regulations that constrict the development of affordable and supportive housing.

Demographic trends such as an aging baby boomer generation, an increase in minority households, and the changing composition of households will drive the need for new housing configurations.

Affordable housing and supportive housing need to be viewed as integral components of a comprehensive region-wide housing policy and strategy to optimize the potential impact of local housing programs and ensure their effectiveness. Regulatory policies should be reassessed to ensure that they reflect a range of housing choices — a priority to develop more affordable housing linked with essential supportive services.

Specific Policy Position #1C: Planners must educate elected officials and citizens on housing needs and issues and defuse community opposition to housing proposals that is driven by prejudice and fears.

Reason to Support
Planners must work to address legitimate community concerns regarding housing development proposals, but must educate community residents that opposition to affordable housing based on the income of the households is not relevant to issues concerning the appropriateness of land use and density changes.

Specific Policy Position #1D: Best Practices. APA and its divisions should promote examples of state housing laws, local housing elements, policies, and development incentives that facilitate or mandate the development of affordable and accessible housing, such as density bonuses, fee waivers, tax credits, and land trusts and cooperatives. Planners should connect with the development industry, including nonprofit developers, to better understand the opportunities and obstacles to constructing

affordable housing.

Reason to Support
APA should highlight positive examples of policy and regulatory changes that help promote affordable housing and make these success stories visible.

Specific Policy Position #1E: Housing Needs and Development Skills. Planners must become more proficient in understanding the housing development process and housing finance in order to determine housing needs and to implement effective solutions.

Reason to Support
Providing an adequate supply of diverse and affordable housing is critical to a community's long-term health and vibrancy and to meet the diverse demographic profiles of communities. However, many planners who begin to work in housing and community development are not adequately trained with a basic understanding of real estate development, housing finance, or affordable housing strategies.

General Policy Position #2
Planners should promote better balance between the location of jobs and housing.

Specific Policy Position #2A: Fair Share Distribution of Housing. APA and its chapters should support a regional fair share distribution of housing, in general, and affordable housing, in particular, in proximity to employment centers and moderate- and low-wage jobs. APA and its chapters recognize that housing is a regional issue in metropolitan areas, usually requiring inter-jurisdictional dialogue and cooperation.

Reason to Support
Ideally the jobs available in a community should match the labor force skills, and housing should be available at prices, sizes and locations suited to workers who wish to live in the area. Planners must begin to address jobs-housing balance in their communities by investigating the types of mismatches that exist between the types of jobs in an area and the types and cost of housing. While correcting just one jobs-housing balance in a region can have benefits, the result of multiple jobs-housing balancing efforts throughout a region can be shorter commute trips and in sum, a broad reversal of the negative consequences of imbalance.

Specific Policy Position #2B: Regulatory Reforms to Achieve Jobs/Housing Balance. APA and its chapters should identify and encourage zoning provisions and local regulations that encourage better jobs-housing balance. Examples include: Allow more mixture of uses in downtown/commercial areas; require or encourage PUD's to provide mix of residences and employment; review local home occupation regulations; and consider voluntary or mandatory inclusionary housing incentive programs.

Reason to Support
Many zoning ordinances act as impediments to achieving jobs-housing balance. Communities are increasingly realizing that their land use plans and regulations have a major influence on whether workers can arrive at their job location on time and whether workers even have the choice of living close to their jobs. Barriers or obstacles to jobs-housing balanced development practices may need to be removed from local land-use regulations. There is a wide variety of techniques that directly or indirectly support jobs-housing policies and objectives.

S**pecific Policy Position #2C: Coordination with Economic Development**. APA and its chapters should emphasize the importance of having an adequate supply of housing, and especially affordable housing, in economic development strategies. Examples of potential strategies include: (1) Preserving existing housing stock near major employers and transit hubs in order to create housing opportunities in close proximity to new suburban, exurban, and rural employment centers; (2) Performing housing impact studies, in conjunction with large employers, to analyze the availability of affordable housing for their workers in proximity to work locations; (3) Encouraging employers to invest in their workers and

their neighborhoods by supporting employer-assisted housing programs, especially ones that encourage employees to own or rent in the neighborhood adjacent to the employer; and (4) Supporting transportation and transit improvements that allow low-income households in central cities to access jobs in surrounding suburbs.

Reason to Support
Many large employers around the country recognize that affordable housing is an employee hiring and retention issue. Further, many large institutions such as Johns Hopkins University in Baltimore have created homeownership programs for their employees in nearby neighborhoods to create better jobs/housing balance to spur reinvestment in older neighborhoods and enhance community stability.

General Policy Position #3
APA and its chapters support measures to preserve the existing housing stock.

Specific Policy Position #3A: Housing Preservation. Planners should incorporate the preservation of existing housing stock as a core policy objective of a comprehensive and coordinated housing strategy. The preservation of older market-rate owner-occupied and renter-occupied housing, much of which is affordable to low-income households, should be used as a filter whereby land use choices and decisions are made on new development or proposed redevelopment projects. Planners should support, based on local conditions, controls on conversions of rental housing to condominiums where such conversions would impact the availability of affordable rental housing. Planners should examine the impact of land use regulations and building codes on the feasibility of rehabilitating the existing stock of affordable housing with a focus on making the requirements and standards more rehab supportive.

Reasons to Support
Disinvestment and physical deterioration are removing low-cost rentals from the supply. Newly constructed units have simply replaced units lost from the housing stock and serve the upper end of the rent spectrum. There are more people feeling the effects of housing affordability as rising real estate markets have resulted in rapidly increasing rents or a conversion from rental-to-owned. The cost margins to renovating affordable housing are daunting as renovation is less predictable than new construction. Often a gap exists between the costs of renovation and the resources available to finance the renovation. Strict building codes may impose additional costs by requiring that new construction building standards be applied. Other regulatory barriers which may make a project complicated and more costly include: historic preservation regulations, environmental and access provisions, citizen opposition, conflicting codes — such as building code vs. fire code, and a complex approval system.

Specific Policy Position #3B: Preservation of Assisted Housing. Planners should foster an environment that supports the preservation or replacement of assisted housing in the community.

Reason to Support
Preserving existing assisted housing is a cost-effective strategy for keeping affordable housing affordable. The supply of affordable, low-cost rental units continues to dwindle — exacerbated by expiring federal subsidies and contracts as several million government-assisted housing units have and will become available to rent at market rate, or to convert to condominiums or to non-residential use. Low Income Housing Tax Credit properties at the end of their 15-year affordability periods are also affected. Fiscal pressures on the federal government to cut housing assistance programs compound the problem. The populations at primary risk of a loss of government-subsidized affordable housing remain the most vulnerable and least mobile groups in our society — the poor, the elderly, and persons with disabilities.

General Policy Position #4
APA and its chapters recognize the impacts of the housing/school linkage and support strategies to decrease segregation and poverty concentration in public schools as a critical housing issue.

Specific Policy Position #4A: Housing and Schools. APA and its chapters must promote community development or redevelopment efforts that encompass public school reforms. In urban areas, planners must help elected officials and government leaders reduce the incidence of high levels of poverty and segregation in public schools.

Reason to Support:
There are many examples of successful redevelopment efforts around the country that have shown that reinvestment and development of affordable and mixed-income housing can be achieved in concert with improvements to the local public school. Some housing/school collaboration efforts have been associated with large scale reinvestment activities, such as HOPE VI, while others have been spurred by local community development groups. Quality public education, as well as quality private education, will create stability in the neighborhood, will benefit the existing residents and their children, and will help create more integrated communities. Planners have a unique opportunity to reduce housing segregation and poverty concentration if they take a more active role in working with local school systems to improve public schools.

Specific Policy Position #4B: New Public Schools and Affordable Housing. Planners must ensure that new public schools are developed in proximity to affordable housing or else are sited to ensure future affordable housing development.

Reason to Support:
In order to reduce the tendency of schools districts to develop new public schools which are or become surrounded by middle- and upper-income residential development, local governments must master plan new school sites to ensure that affordable housing units will be built in proximity to the new school.

General Policy Position #5
Planners must encourage and implement residential development practices that result in more innovative housing options for diverse populations and which foster sustainable development.

Specific Policy Position #5A: Diverse Housing. Planners need to learn strategies which create affordable and more diverse housing, such as: accessory apartments, cluster housing, elder cottages, manufactured housing, mixed-income housing, shared residences, accessory dwelling units, and single room occupancy (SRO) developments, and provide regulations allowing these strategies.

Reason to Support
Increased knowledge of innovative housing designs and ensuring changes in regulations that enable innovative housing will create more housing opportunities for low-income households as well as households with elderly and disabled members.

Specific Policy Position #5B: Accessibility and Visitability. Planners must enforce multifamily residential developers to comply with the accessibility requirements of federal and state law, including the Fair Housing Act. Planners should adopt visitability and universal design features codes for new single family construction to ensure accessibility in housing design. In addition, housing rehabilitation efforts should include accessibility modifications.

Reason to Support
Accessible housing increases housing opportunities and choices for the elderly and persons with physical disabilities, and enhances convenience for non-disabled persons and children. A continuing issue is the lack of accessibility in single-family detached homes. Although most multifamily housing is now required to comply with the accessibility provisions of the Fair Housing Act, single-family housing and multifamily developments less than four units are not required to be accessible or have adaptable units. Visitability is a housing design strategy to provide a basic level of accessibility for single-family housing, thus allowing people of all abilities to interact with each other. Visitability standards do not require that all features be made accessible. As the population trends toward an older demographic,

visitability and universal design will increase in importance.

Specific Policy Position #5C: Residential Development Practices. Planners must ensure that new residential developments are not isolated from community services and are created to encourage pedestrian mobility and access to public transportation Where applicable, planners should seek to unbundle the cost of parking from basic housing costs.

Reason to Support:
In order to foster sustainable development practices and to enable households to age in place, residential development must be built adjacent to community services or otherwise include community services so as to reduce reliance on automobile transportation. Elderly and disabled residents should be able to live in communities that are integrated with community services and public transportation. Separating the cost of parking improves the affordability of housing by shifting these costs to car owners from all residents.

Specific Policy Position #5D: Energy Efficiency. Planners should incorporate energy efficiency goals and green building standards in guidelines that impact the design and construction of all new residential development or adaptive reuse developments, including affordable housing.

Reason to Support:
Integrating basic building strategies that consider easy access to jobs to minimize commuting, building orientation, water and energy efficient appliances, and appropriate landscaping will help make housing more affordable by increasing savings on transportation, operational, and maintenance costs. Sound green building techniques can produce long term benefits for families who can least afford quality healthcare by ensuring healthier living spaces, by improving the quality of life of its occupants, and by advancing long term sustainability (*see* APA Policy Guide on Energy, adopted 4/04).

General Policy Position #6
Planners must increase coordination among federal, state, and local housing plans and programs. Additionally, planners need to protect as well as help expand existing housing resources, and support the establishment of new housing tools through education and advocacy.

Specific Policy Position #6A: Coordination. Planners should stimulate housing rental production by optimizing the use of existing development programs, such as HUD's Consolidated Plan, with state and local plans, by blending and leveraging cross program funding streams to construct affordable housing. A coordinated approach to financing housing production within the context of a comprehensive community development strategy is a more cost-effective strategy for allocating resources and community reinvestments.

Reason to Support
The federal government's role in housing policy and housing development continues to shrink as the responsibility has essentially devolved to the state and local governments. As state and local governments grapple with crafting strategies to affordable housing production, planners have the skills to facilitate fresh approaches to addressing the housing challenge. By rethinking and assessing the major lessons of decades of housing policy and practice and clearly examining the realities of the housing market and demographic trends, planners can frame a more relevant, coherent, and timely response. They can broaden the conversation by bringing together nontraditional stakeholders to share, coordinate and/or consolidate programs and resources.

Specific Policy Position #6B: Federal Resources. APA and its chapters support the continued reauthorization of federal housing resources, such as the Community Development Block Grant (CDBG), Housing Choice Vouchers, and the HUD Continuum of Care Homeless Assistance Programs. APA and its chapters support the establishment of a National Housing Trust Fund to produce, rehabilitate and preserve housing units.

Reason to Support
CDBG has revitalized neighborhoods and transformed the lives of thousands of low- and very low-income households, including the homeless. It is a vital tool used by local government to implement locally determined community development priorities such as the development of affordable housing. Rental income assistance in the form of vouchers helps families allay housing cost burdens; however, vouchers are in short supply; and, the program constantly faces proposed changes that threaten their availability. The National Housing Trust Fund adds another revenue source to produce new housing, as well as to rehabilitate and preserve existing affordable rental housing stock for low- and extremely low-income households. It is crucial that APA advocates for the retention of successful programs and the establishment of new tools to address the growing challenges of housing affordability.

APPENDIX

Suggested Housing Policy Guide Initiatives

The following initiatives are proposed to assist APA, its Chapters, and its Divisions, in furthering the general and specific policy positions presented in the Housing Policy Guide.

Housing Opportunity

Initiative #1: Partner with existing affordable housing organizations to offer training and technical assistance to planners. Planners should be encouraged to build bridges with experts in the preservation and development of affordable and diverse forms of housing.

Initiative #2: Investigate the feasibility of creating a certification program for housing and community development planners using training that is already available through APA and national groups such as NeighborWorks and Enterprise Community.

Initiative #3: Create a clearinghouse on the APA website of affordable housing best practices, including local, regional, and state policies and land use regulations that require and encourage affordable housing.

Initiative #4: Develop a tool box of model preservation policies, ordinances, processes and successful strategies practiced at local and state levels that promote and ensure the preservation of affordable housing stock.

Initiative #5: Develop a Fair Housing Training Manual for use by planners and planning commissioners.

Initiative #6: Develop a barriers assessment survey (similar to the HUD Questionnaire) for use by local jurisdictions.

Initiative #7: Work with HUD's Regulatory Barriers Clearinghouse staff to explore a strategy for expanding the usability and accessibility of the Clearinghouse database.

Jobs/Housing Balance

Initiative #8: Assemble models of job/housing balance around the county, including employer-assisted housing and housing impact studies.

Housing Preservation

Initiative #9: Work with other stakeholder groups to define, assess, craft, and/or initiate, where appropriate, research opportunities to identify promising strategies to offset the lost of existing rental housing stock.

Residential Development

Initiative #10: Develop an inventory of successful efforts and programs that demonstrate (a)

alternative forms of housing that provide a range of affordability and (b) methods for simplifying their approval process.

Initiative #11: Promote and educate members on visitability standards as a specific practice for ensuring a basic level of accessibility to enable persons with disabilities to visit friends, family, and neighbors with independence. Promote best practices regarding universal design, visitability, and other housing designs that can adapt to the needs of the occupant, regardless of age or disability.

Housing Advocacy

Initiative #12: Develop advocacy strategies to inform elected officials about APA Legislative Priorities, which include protecting CDBG and developing new tools to address affordable housing, such as the National Housing Trust Fund Campaign.

Notes

1. Critical housing need refers to households paying more than half of household income for housing and/or living in dilapidated conditions. Center for Housing Policy. 2005. *The Housing Landscape for America's Working Families,* Vol. 5, No. 1, 15.

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3. Center for Housing Policy, *Something's Gotta Give: Working Families and the Cost of Housing.* Vol. 5, No. 2.

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Case Studies in Inclusionary Housing

By Nicholas Brunick

The City of Chicago has long been known as "the city that works."

Recent articles in *The Economist* and elsewhere have trumpeted Chicago's relative social and fiscal health compared to other Rust Belt cities such as Detroit, Cleveland, and St. Louis. Even though vacant land and disinvestment remain huge challenges in many of Chicago's neighborhoods, the city's relative health is envied by other cities.

However, Chicago's heralded "comeback" has given birth to a new and daunting challenge: a high-cost housing market that threatens to rob the city of working and middle-class families. Without them the city lacks the tax base, social capital, and workforce it needs to stay competitive and livable. To be viable and attractive for living, working, and playing, U.S. cities must find more ways to create and preserve affordable housing for every rung on the economic ladder. One way to do this is through inclusionary housing policies that zone for affordability, which is the focus of this issue of *Zoning Practice*.

Cities can use zoning codes and development approval processes to require, encourage, or negotiate a specified percentage of affordable units in certain types of developments. Often, a developer can pay money or donate land in lieu of including affordable housing in a development.

Unlike other large cities—notably San Diego, San Francisco, and Denver—Chicago has chosen not to pass a citywide inclusionary housing ordinance, but rather implement a package of inclusionary housing policies that use zoning authority selectively in different parts of the city. The city has a policy for developers who receive city assistance (the affordable requirements ordinance (ARO)); a policy for the neighborhoods (the CPAN program); and a policy for downtown development (the downtown density bonus program).

Do these policies represent a savvy approach by the city that recognizes the diversity of its neighborhoods and housing markets and the impossibility of crafting a one-size-fits-all approach, or do these policies create unpredictability and unfairness in the housing market and leave the city without the necessary policies and resources to adequately address its housing crisis? Is this good planning and smart politics or inadequate policy and cleverly disguised injustice? This article will attempt to answer these questions using national examples for comparison and featuring the lessons common to all communities struggling with the need for affordable housing.

During the last decade, many cities and local governments around the country saw unprecedented development activity with historic increases in housing and land prices. Consequently, the need for affordable housing has grown, impacting a broader and growing segment of the population: poor residents, working-class households, and even the middle class; employers who are unable to recruit employees nearby; everyday citizens choking on polluted air and stuck in traffic jams caused in part by workers traveling ever-longer distances for work; and, of course, elected officials who feel the heat from all of these constituencies and thus feel the need to respond.

Solutions to the crisis remain elusive when land and housing costs are so high, when federal funding for housing is at a 30-year low, when state funding for housing has failed to make up the difference, and when local funds are limited. In this environment, zoning for affordability quickly becomes a popular and immediate option. Local governments in California, Colorado, Florida, Illinois, Massachusetts, New Jersey, New Mexico, New York, North Carolina, Vermont, Wisconsin, and even Wyoming have employed inclusionary housing strategies. Many elected officials, like New York City Mayor Michael Bloomberg (a recent convert to inclusionary zoning), have become bullish on inclusionary zoning.

Chicago is no different. Due to a growing housing crisis and the organizing work of smart, sophisticated advocacy groups, Mayor Richard M. Daley and the city council have an inclusionary housing strategy. However, instead of passing an across-the-board policy (e.g., a 15 percent inclusionary housing requirement in all developments of 10 or more units), the city has chosen a three-pronged approach:

Prong #1: Quid Pro Quo—The Affordable Requirements Ordinance

In 2003, the Chicago city council passed the affordable housing requirements ordinance, which applies to developments of 10 or more units, and requires that: 1) If a development receives a write-down on city-owned land it must include 10 percent affordable housing and 2) If a development receives financial assistance from the city (which usually means tax

All photos courtesy of Nicholas Brunick

increment financing (TIF) dollars) it must include 20 percent affordable housing.

Under this program affordable housing is defined for an ownership project as housing where a household earning 100 percent of the area median income (AMI) (adjusted for household size) will not have to spend more than 30 percent of its household income on a mortgage. In a rental project affordable housing is defined as an apartment where a household earning 60 percent of the AMI (adjusted for household size) will not have to spend more than 30 percent of its household income on rent. Under this program, a developer can satisfy the obligation to include affordable housing by paying $100,000

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per affordable unit (adjusted each year for inflation). The funds paid by the developer go to the city's Affordable Housing Opportunities Fund. By ordinance, 60 percent of these funds must be used for the construction or rehabilitation of affordable housing. Forty percent of the funds go to the Chicago Low Income Housing Trust Fund (CLIHTF), which primarily provides funding for a highly successful rental subsidy program that partners with landlords across the city.

Since 2003, the ARO, according to the city, has produced 763 affordable housing units—approximately 220 affordable housing units each year. Some of these 763 affordable housing units were created as part of the Chicago Housing Authority's (CHA) Plan for Transformation developments, which are mixed-income developments containing roughly a third public housing, a third affordable housing, and a third market-rate housing as replacement housing for the demolished public housing high rises. Federal and state housing subsidies, including HOPE VI dollars and Low Income Housing Tax Credits, are already involved in these deals, which means the affordable units were guaranteed even without the city's ARO ordinance. Nevertheless, TIF dollars are often used for residential developments in Chicago, and the ordinance ensures the promise of affordable housing when that happens. The principle behind the ARO is simple: If you want the city's land or money you will do *something* for affordable housing.

(Left) The Phoenix at Uptown Square mixed use redevelopment project in Chicago's rapidly gentrifying Uptown area. CPAN and the ARO ensured that eight of the 37 condos were affordable. (Right) A mixed income development in the University Village/Little Italy/University of Illinois at Chicago neighborhood. It contains 20 percent affordable housing because of the ARO.

Prong #2: Let the Neighborhoods Decide—The Chicago Partnerships for Affordable Neighborhoods Program (CPAN)

The city created the CPAN program to create affordable housing in private developments in city neighborhoods. Under this program, if an alderman—Chicago is governed by 50 locally elected aldermen who, as such, are the gatekeepers for local development—and a developer agree to include some affordable housing in an otherwise private development, the city will provide incentives such as fee waivers and marketing assistance to the developer. The success of the program is attributed to the city council's nearly certain deference to the wishes of the alderman on local land-use matters. For example, a developer's request for a zoning change needs the alderman's support for city council approval. This Chicago tradition of "aldermanic prerogative" is as predictable and as accepted as a summertime refrain of "Wait 'til next year!" from Cubs fans. According to the city, 16 of 50 aldermen have participated in the CPAN program, resulting in the creation of 461 affordable housing units since 2002.

The city advertises this program as purely voluntary. In practice, though, CPAN can also be mandatory or nonexistent, depending on the alderman. If an alderman is a strong affordable housing advocate, the CPAN program may, in effect, operate as a mandatory policy for that ward. If it used on a purely voluntary basis, CPAN might only be used when a developer needs a zoning change and is amenable to doing some affordable housing.

However, if an alderman does not support affordable housing, has a ward with little development, or simply lacks the energy or political will to negotiate tooth-and-nail with developers on specific developments, then it may not be used at all. The program requires development activity and a tremendous commitment of time, energy, and political will from aldermen and community groups. Indeed, each of the 451 affordable units produced by the program is the result of significant effort from both. Unfortunately, only 16 aldermen have used the program.

Although the Chicago approach of project-specific land-use decisions has unique qualities, many cities and towns across the country can draw parallels with it. Local governments and special interest groups have long been known to use community input and opposition to stall, scale back, or prevent developments—especially those that include affordable housing. In the past three decades, community residents and elected officials in local governments from Massachusetts and New Jersey to California have reversed this historical trend by using the development approval process to secure affordable housing in market-rate developments, and the CPAN program is an example of just that.

Prong #3: Where Density is a Good Word—The Downtown Affordable Housing Zoning Bonus

A few years ago, the city underwent a rewrite of its antiquated zoning code. As part of the project, it instituted a number of density bonus provisions that apply to the downtown district, which, under the new code, is an expansive area that reaches beyond the city's famed Loop district. Under these provisions developers can obtain additional density in return for providing community amenities. Under the downtown affordable housing zoning bonus, developers can obtain additional floor area ratio (FAR) if they include affordable housing in their development or if they pay a fee-in-lieu to the city's Affordable Housing Opportunities Fund.

The program is slightly different for developers obtaining additional density within an existing zoning designation versus those seeking a zoning change to a different designation with a higher FAR density level. But, as a general rule, a developer that wishes to access additional FAR must dedicate 25 percent of the bonus floor area achieved through the affordable housing zoning bonus to affordable units. For example, the developer would receive four additional square feet for market-rate housing for every additional square foot dedicated to affordable housing. This provides a significant benefit to the developer.

If the developer chooses to pay a fee in lieu of affordable units, the fee is calculated on the basis of multiplying the additional FAR by the median price of land in the area of downtown with the development. The fee is calculated by multiplying 80 percent of the additional FAR achieved through the affordable housing zoning bonus by the median cost of land per buildable square foot for that section of downtown. The city publishes a schedule of land values for different parts of the downtown district.

The effort is a classic example of a voluntary inclusionary housing program. Developers can choose to build as of right under the baseline zoning requirements. However, if they want additional density (either through a rezoning or a bonus within the existing zoning) they must include affordable units in their project or pay for the additional density.

Applying for the density bonus requires the developer to sign an agreement with the city to produce the affordable units as part of the development or to pay the fee, and to provide the city with cash, a bond, or other security in the amount of the fees that would be paid in lieu of building the affordable units. The builder of the affordable units must also sign an affordable housing agreement with the Chicago Department of Housing and provide a detailed description of the project, including the affordable units. The affordable units must be ready for occupancy before or at the same time as market-rate units. The bond or cash is released after the building inspection and after confirmation by the zoning administrator of the construction of the affordable units. If the developer is paying the fee in lieu, the fees are collected when the city issues building permits for the development.

(Top) The Trump Organization is constructing Trump International Tower in Chicago—the country's tallest building (90 stories when complete) since the Sear's Tower, also in Chicago. With at least 470 residential condominiums and 286 condominium-hotel units, the development was not required to contribute either affordable units or funds. Indeed, fee-in-lieu payments from the development would have doubled the city's rental support program in one fell swoop. (Below) One of many condominium conversions in Chicago's Loop, where the number of new residents since 1990 has grown to the tens of thousands. It remains unclear how many of the 8,000 planned pipeline units will be covered by the city's "voluntary" policies.

Chicago has received $24 million in "commitments" for the Affordable Housing Opportunities Fund to date, and 34 units are in the pipeline to be created as part of market-rate developments. In 2007, the city anticipates that it will collect $13 million of these commitments. Forty percent ($5.2 million) will go to the city's Low Income Housing Trust Fund to expand the highly successful rental support program and to subsidize rental units for extremely low-income households and 60 percent ($7.8 million) will help to subsidize the rehabilitation or construction of affordable housing.

THE CHICAGO WAY

In the classic Chicago film, *The Untouchables,* about Eliot Ness and his efforts to bring down Al Capone, Jimmy Malone (played by Sean Connery) explains to Ness (played by Kevin Costner) that if he wants to "get Capone" he needs to do it "the Chicago way." *Untouchables* fans will recall that the Chicago way accurately reflected the realities of life in the city at that time.

Though less sensational than a gangster classic, the three-pronged approach described in this article reflects the Chicago way. Indeed, when it comes to inclusionary housing, it reflects the goals and philosophies of the Daley administration. First, the administration believes in voluntary approaches using incentives—not mandates—to harness private-market activity and create affordable housing. The administration is careful to not stifle or chill development, which is why the three policies are voluntary. If you want city land at a discount, TIF funds, aldermanic assistance, or a density bonus, you must include affordable housing or pay a fee. Forgoing such benefits means you need not produce affordable housing. Furthermore, the policies offer incentives to developers who agree to produce affordable housing. One could argue that under CPAN the program (in certain wards) is neither voluntary nor laden with strong incentives for the developers, and that it really depends on the alderman. However, developers must go through the aldermen whether the project is an affordable

house, a doghouse, outhouse, luxury house, or pancake house. CPAN will not change that.

Second, the Daley administration is resistant to a citywide inclusionary housing program, either because it believes that some neighborhoods need *any* kind of development right now or because aldermanic allies of the administration believe that affordable housing does not belong in their wards. Consequently, the density bonus program is currently limited to downtown. The ARO kicks in when city land is sold at a discount or involves city dollars (both of which are influenced by the local alderman), and CPAN lets the alderman and community groups determine whether affordable housing will be part of new developments in particular wards.

Finally, the administration is loathe to "force" density on city neighborhoods (although they have floated the idea of expanding the downtown density bonus program along certain transit lines and nodes). Thus, density is used as a generous bonus downtown (where it is more acceptable) and CPAN is used in the neighborhoods, typically without a density bonus. Such is the Chicago way. According to the city's Department of Housing, the Chicago way has produced over 1,200 affordable homes and commitments for $34 million in-lieu payments between 2002 and 2006.

COMPARISONS TO OTHER CITIES

The Chicago way is unique, characterized by policies that are largely voluntary, incentive-based, and targeted for selective use in different parts of the city. Other large cities have: 1) mandatory, citywide approaches; 2) mandatory but targeted approaches; and 3) "voluntary," targeted approaches.

Citywide, Mandatory Inclusionary Housing Ordinances

The Denver, San Diego, and San Francisco inclusionary housing programs require any development of a specified size to include 10 percent affordable housing, regardless of whether city financing, city land, or a zoning change is involved. Denver requires 10 percent affordable housing in all developments with 30 or more units. For ownership developments, the 10 percent component is mandatory. For rental developments (due to a Colorado state law and a Colorado State Supreme Court ruling that prohibits local ordinances that place limitations on rents) the 10 percent component is voluntary. Denver's program has produced over 3,000 affordable units. San Diego and San Francisco both require a 10 percent affordable housing component in any development with 10 or more units. Both San Francisco and San Diego adopted "limited" inclusionary housing policies in the early 1990s and went citywide in 2002 and 2003 respectively. The programs provide a clear, relatively predictable policy for the development community and a housing policy geared to harness and benefit from all developments of 10 or more units.

Mandatory Ordinance with Specific Applications

Boston has a mandatory inclusionary development policy that requires 15 percent affordable housing in any development of 10 or more units that 1) receives assistance from the Boston Redevelopment Authority; 2) uses city-owned land; or 3) receives a zoning change. Boston's policy exists by way of an executive order issued by Mayor Thomas Menino in 2000. The policy originally required 10 percent affordable housing. Due to the success of the program, the city raised the affordable requirement to 15 percent. Developers can pay a fee in lieu of including the affordable housing. The fee is paid to the Inclusionary Development Fund. The fee is $200,000 per affordable unit (up from $97,000 per unit) for rental developments. For ownership developments, the fee is $200,000 per affordable unit or one half of the difference between the average market-rate price in the development and the affordable price, whichever is greater. According to the Boston Municipal Research Bureau, the policy produced 715 units of affordable housing and millions of dollars in affordable housing funds as of May 2006. Although the city's policy does not apply to all developments over a certain number of units (as in Denver, San Francisco, or San Diego), program administrators assert that a significant percentage of new development falls under the purview of the Boston program due to the city's antiquated zoning ordinance.

Targeted Inclusionary Zoning for Large Rezonings

In the mid 1980s, New York City controlled over 10,000 city-owned vacant parcels or properties. Today, fewer than 800 vacant lots of properties remain and over 200,000 homes have been created—the overwhelming majority of them affordable. The city's success at using city-owned property to rebuild neighborhoods, shore up its tax base, and create much-needed affordable housing has precipitated a need for viable new strategies for private land and in private developments. Inclusionary zoning is one housing tool, among many, now considered by the city.

New York's inclusionary housing policy is determined by neither ordinance nor executive order, but rather the strategic employment of inclusionary housing policies on rezonings of specified sizes. For example, as the city rezones large parcels of industrial land to residential use at Hudson Yard (in Manhattan) and at Greenspoint–Williamsburg (in Brooklyn), developers are encouraged to include affordable housing. If they do, they receive a generous package of benefits: a 33 percent density bonus, a 20- to 25-year property tax exemption (previously available to market-rate developers but is now restricted to those who include affordable housing on the rezonings), and access to public subsidies to help pay for the affordable units. According to the Pratt Center for Community Development, the rezonings will create more than 7,000 affordable housing units over the next decade.

> The Daley administration believes in voluntary approaches using incentives to harness private-market activity and create affordable housing.

Many areas of New York City may be subject to large rezonings in the near future (including sections of Jamaica, Sherman Creek, South Park Slope, Bedford-Stuyvesant, and Flushing), and community groups are committed to using Hudson Yard and Greenspoint–Williamsburg as precedent. Furthermore, Mayor Michael Bloomberg has inclusionary zoning (in targeted rezonings) in parts of the city's touted 10-Year Housing Plan. It remains to be seen whether the city will use inclusionary policies (and how aggressively it will do so) in these other areas.

DOES "THE CHICAGO WAY" MEASURE UP?

Chicago's downtown density bonus program and the affordable requirements ordinance are clear and predictable programs that appear to work for the development community. The downtown density bonus represents an innova-

tive and highly successful effort by Chicago to navigate the difficult shoals of density, development, and affordable housing. Proponents of affordable housing should applaud the city for its efforts, which will likely be imitated by other cities. In fact, Seattle has followed Chicago's lead with the adoption of its downtown density bonus program. Similar to New York City, Chicago employs voluntary, targeted approaches to secure the creation of affordable housing. CPAN produces units in a way that meets the variety of housing needs and political desires of the city's diverse neighborhoods and wards.

However, Chicago's programs suffer two major shortcomings. First, the voluntary nature of the programs can create unpredictability for developers and unfairness for neighborhoods and communities. This problem is most evident with CPAN—some neighborhoods participate while others abstain. Some developers have to participate; others do not. When purchasing land, developers may be unaware of whether compliance with CPAN will be required.

CPAN creates unpredictability in the development process, fails to establish a level playing field for developers and neighborhoods, and creates the potential for differential treatment for developers based on political clout. In San Diego, San Francisco, Denver, or even Boston, the inclusionary zoning requirement is clear, predictable, and applied across the board to all developments that meet broad criteria.

Second, the voluntary nature and limited coverage of CPAN, ARO, and the downtown bonus create "missed opportunities." With an inclusive or mandatory program applying to a wider variety of developments, Chicago could generate many more affordable units and more money for successful programs like the city's Low Income Housing Trust Fund.

If Chicago expanded its CPAN program and ARO ordinance to be more of a mandatory, across-the-board policy such as the programs in Denver, San Francisco, San Diego, and Boston (covering all zoning changes, etc.), the city would benefit from increased production and increased predictability in the development process. Under its current voluntary programs, Chicago must be savvy and generous with its incentives to secure participation by developers. And yet, despite being savvy, there are still large and overt missed opportunities. With a mandatory, citywide ordinance in place fom 1998 to 2003, the city would have created over 7,000 affordable homes and apartments.

WHERE DOES CHICAGO GO FROM HERE?

Census figures reveal that from 2000 to 2005 the number of home owners in the City of Chicago paying more than 35 percent of their income for housing increased from about one in every five home owners to a whopping one in every three home owners and the percentage of renters paying more than 35 percent of their income on rent increased from 30 to 46 percent. The data also reveal that the city lost 71,000 rental units after enjoying a slight gain in population from 1990 to 2000. The city is once again losing population to the suburbs as 190,000 people left the city for other locales since 2000. And the out-migration is no doubt due at least in part to the affordable housing crunch. Chicago cannot continue a rebirth, nor cement its place as a world-class city in the global economy, until it deals sufficiently with the problem of providing enough affordable housing for middle- and working-class and poor households. So, what next?

A residential development in the affluent Sheridan Park district of Chicago's Uptown neighborhood. The development includes 10 percent affordable condominimums as a result of the CPAN program, Alderman Helen Schiller's leadership, and work by the Organization of the Northeast.

MAYOR RICHARD M. DALEY'S PROPOSAL

In November 2006, Mayor Daley introduced an ordinance to expand the city's affordable requirements ordinance to cover all zoning changes where the city grants an increase in residential density or allows a residential use not previously allowed, to cover all developments constructed on city land (not just developments that get a discount on the sale of city land), and to cover all developments that go through the planned unit development process (PUD). If passed, the new ordinance would require 10 percent affordable housing (at or below 100 percent of AMI for ownership units; at or below 60 percent of AMI for rental units) in developments of 10 or more units that fit the criteria listed above. This would be a significant expansion consistent with the current Chicago approach and one that city officials believe would create 1,000 affordable units each year. Passing the ordinance would make Chicago similar to Boston (which covers all developments that receive a zoning change).

THE ADVOCATES' PROPOSAL

For the past five years, a coalition of community groups has worked to pass a citywide inclusionary housing ordinance in Chicago that would require 15 percent affordable housing in all new construction, substantial rehabs, and condo conversions of 10 or more units. Under the proposed ordinance, developers would receive cost offsets from a possible menu of benefits (including density bonuses, fee waivers, and reduced parking requirements).

Passing the ordinance would make Chicago the largest city in the nation with a citywide, mandatory inclusionary housing policy (surpassing San Diego). The city has come a long way towards the advocates' suggestion (by passing the three policies described in this article), but remains short of the advocates' ideal. Similar to the Denver, San Diego, San Francisco, and Boston ordinances, a citywide approach would provide developers with greater predictability than they currently have under the CPAN program (where they are subject to the desires of the local aldermen and the community); it would establish a level playing field for all development; and it has tremendous production potential (as demonstrated earlier).

The Daley administration and the development community oppose such a measure. Thus, advocacy groups are calling for strengthening of the mayor's ordinance by proposing three amendments: 1) Similar to Boston, increase the percentage from 10 to 15 percent on all city-owned parcels of land and all PUDs; 2) Similar to the city's existing requirement for TIF funds, increase the per-

centage from 10 to 20 percent on developments where a zoning change that increases residential density is granted; and 3) Diversify the income targeting to reach more working-class people in Chicago. Rather than targeting the affordable homes to households at or below 100 percent of AMI target a third of the homes to households at or below 100 percent of AMI, one-third to households at or below 80 percent of AMI, and one-third to households at or below 60 percent of AMI.

Boston recently began using city median income figures instead of the metro median income figures to accomplish the same objective of making the affordable units "more affordable."

Whatever the outcome, it appears likely that Chicago's inclusionary housing programs will expand to cover more development types. With the passage of the mayor's ordinance as proposed, the Chicago way would now entail an expanded ARO (including city land, increased density, financial assistance, or access to the PUD process); a neighborhood-based program in CPAN; and a downtown density bonus program.

THE LESSONS

The Chicago way and the experience of other large cities provide key lessons about inclusionary housing programs.

No free lunch. With affordable housing, this is universally true—someone must foot the bill. In general, under traditional affordable housing programs or initiatives, it is the taxpayer. They provide the public financing or publicly owned property to subsidize the cost of making housing more affordable.

Under an inclusionary housing program, who pays may be unclear at first. When a city zones for affordability, developers might have to pay through reduced profits; landowners might have to pay through reduced selling prices for land or buildings that now must include some affordable housing; market-rate home buyers might have to pay through increased prices; or the community might have to pay through cost offsets that increase density, waive fees, or reduce off-street parking.

Under a well-crafted ordinance that takes into account local market conditions and is crafted with the genuine input and involvement of all stakeholders (developers and advocates alike), everyone pays a little bit and no one pays too much.

In determining who pays, the politics of development, density, and community control provide the final determination. Of course, no group wants to be the sole payer—not developers, not the community, not landowners, not home buyers. How inclusionary housing programs are designed depends on the level of interest, organization, and relative political clout of the interest groups listed above.

Under a mandatory approach with well-crafted cost offsets, the risk can be born fairly equally. Under a mandatory approach without generous or guaranteed cost offsets, it is the development community, the landowners, and the market-rate homebuyers who assume the risk of paying for the cost of the affordable units. Under a voluntary approach, it is the broader community that will most likely foot the bill (either through overly generous cost offsets or through missed opportunities that fail to produce much-needed affordable housing). In Chicago and New York City, the risk is assumed by the broader community; in Denver, San Diego, Boston, and San Francisco, it shades towards the development community.

In determining who pays, the politics of development, density, and community control provide the final determination.

Be creative. Chicago, New York, and Boston have not embraced a citywide, mandatory approach, but all use some form of inclusionary housing policy. Chicago's downtown density bonus program is a creative response to the political and policy thicket of how to make inclusionary housing work in a diverse city with competing political forces. Chicago should be applauded for this innovation. Cities need to find all viable ways to harness the marketplace for affordable housing.

Be aggressive. Building booms are fleeting. Cities need to be nimble and ready to act fast with prudent policies that will allow them to reap the benefits of the next building boom. Chicago has missed many opportunities for creating and preserving affordable housing. Cities should not be afraid to employ mandatory approaches in a prudent manner to capture as much development as possible.

Memorialize your policies. Negotiated and ad hoc policies will no doubt serve a positive role in many local governments. However, an ordinance, executive order, or even public regulations that provide a clear, predictable policy for the development community is essential. Without them, developers cannot appropriately price land or buildings and incorporate the cost of affordable housing into their pro formas. In addition, the application of one's housing policy may become even more the result of political clout than is already the case in our complicated world. Establishing clear, public, and predictable programs is good government and good development policy.

Do more than zone for affordability. Inclusionary housing or zoning for affordability is not a panacea for the housing crisis or for community and economic development, but it is a very important tool. Cities must look to other tools: securing more federal, state, and city dollars for affordable housing and using city-owned vacant land for affordable housing. Zoning for affordability cannot solve the housing crisis alone, but it can play a very important role.

Cover image by istockphoto; design concept by Lisa Baton

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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

Innovative Housing Institute

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.

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.

PREDICTABILITY FOR COMMUNITIES AND DEVELOPERS

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

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

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

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

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

ARRESTED DEVELOPMENT?

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

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

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

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

Innovative Housing Institute

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.

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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September 2004

Ask the Author

Ask the Author About Inclusionary Housing, Part I

Here are reader questions answered by Nicholas J. Brunick, author of the October 2004 *Zoning Practice* article "The Inclusionary Housing Debate."

Question from Mayor Joy Cooper, City of Hallandale Beach, Florida:
My city is struggling right now with both inclusionary zoning and the issue of how to preserve current future housing stock that is affordable through a trust fund. Do you has any suggestions, regulations, or profiles that may help?

Answer from author Nicholas Brunick:
There are many good profiles of communities from around the country that have successfully tailored inclusionary housing programs to meet their needs for affordable housing. Many of these communities also have a local housing trust fund, which collects revenues (often these revenues include fee in lieu payments from an inclusionary housing program) and then use those revenues to address a wide array of housing needs (rental support, rehab, gap financing, etc.). Good profiles exist in suburban communities (like Montgomery County, Maryland; Fairfax County, Virginia; Newton, Massachusetts; and Lafayette and Longmont, Colorado, etc.); large cities (like San Diego, Denver, and Boston) and mid-sized cities (like Cambridge, Massachusetts; Madison, Wisconsin; and Santa Fe, New Mexico).

The inclusionary housing publication from my organization (Business and Professional People for the Public Interest (BPI)), *Opening the Door to Inclusionary Housing*, includes case studies and ordinances and regulations. You may order the publication here: www.bpichicago.org/rah/pubs/open_door_orderform.pdf.

Question from Kathleen E. Walsh, AICP, President, The Stamford Partnership, Inc., Stamford, Connecticut:
Can you comment on the effectiveness of payments in lieu of providing units? At what rate, over what time lag have units been produced using the payment pools, etc.?

Answer from author Nicholas Brunick:
This is a very good question. Unfortunately, I don't have any hard data to answer your specific question about the time lag between the collections of fees in lieu and the use of those fees to produce hard units. This kind of analysis should be done and what be very useful to elected officials and planners alike. As you might imagine, the effectiveness of the fee in lieu tool is highly dependent upon the specific community and the ability and creativity of the local staff to use funds once they are collected.

As a general matter, communities that do not have much developable land left and wish to address their affordable housing problems as quickly as possible would be well-advised to craft an inclusionary housing program that encourages developers to build the affordable housing units instead of paying the fee. This can be accomplished in a number of ways: (1) making it very clear in an "intent" section of the ordinance that the intent is to produce affordable homes and apartments on site; (2) setting the fee in lieu level as close as possible to the level needed to make a market-rate housing unit affordable; and (3) requiring developers to apply for the right to use the "fee in lieu" option. In many communities, developers can only pay the "fee in lieu" if they can show some form of hardship (e.g. that it is impossible or economically infeasible" to build the affordable units on the development site) or if they can show that the community would benefit more from obtaining the fee in lieu (e.g. that the community could use the fee to create 2x the number of affordable units elsewhere in the community). If a community's top priorities are to produce hard units and to integrate affordable housing within the broader market-rate housing stock, then the fee in lieu option

should be secondary, not primary. It should serve as a flexible option that allows developers to comply with the law in an alternative fashion when it is difficult or impossible to actually build the affordable units or when there are other policy reasons for allowing alternative compliance.

That being said, a creative community can make excellent use of the fee in lieu option to address a range of housing issues. Inclusionary housing is but one tool. It will most likely produce new housing for working-class households. But, many communities face a diverse array of housing needs. By collecting a fee in lieu, a community can build up a local housing trust fund and use those funds in a flexible manner to do many things. The community could create a locally-run rental support program where subsidies are provided directly to landlords in order to make apartments more affordable to low-income families. The City of Chicago has a very successful program (popular with both landlords and extremely low-income tenants alike) that is serving as the model for proposed statewide legislation in Illinois. The community could use the fee in lieu money to acquire land for future affordable development or to "write-down" the cost of existing housing in order to make it affordable. Or, it could be used as an additional incentive to make inclusionary housing units affordable to lower income levels. Or, the fee in lieu money could be used to rehab and improve aging housing stock. The possibilities are endless. But all of these possibilities become potential realities with a flexible pot of money like a trust fund with the fee in lieu payment as a primary source.

Click here to see a simple chart that looks at the characteristics of a few "fee in lieu" payments from communities around the country. I hope this is helpful. I'm sorry that I don't have something more comprehensive. Your question may spur some good future research.

Question from Sheryl Stolzenberg, Planner III, City of Fort Lauderdale, Florida:
The City of Fort Lauderdale City Commission very much wants to require affordable housing as part of new construction in its revitalizing downtown, but the Legal Department is advising the Planning Department that we need a study to demonstrate a "rational nexus" between the downtown development, and the need for affordable housing. The lawyers say this is the case even though the city is not trying to levy an impact fee, just institute a requirement that a percentage of housing in the downtown must be affordable. Can you direct us to a study of this sort or advise us of a basis for arguing that a study is not needed? Thanks for any info!

Answer from author Nicholas Brunick:
As a practical matter, communities require the inclusion of affordable units in new developments all the time without any formal showing of a nexus between the new development and the need for affordable housing. It is important to remember that hundreds of communities now use some form of inclusionary housing — either a voluntary or mandatory ordinance or an informal policy that is applied to some or all of the development in the community. Only two communities in the country that I know of have formal nexus studies.

If you are negotiating with developers in these downtown redevelopments over zoning changes or variances or if you happen to use a form of "Planned Use Development" in the downtown redevelopments, where lots of negotiating and "horse trading" is already occurring, then you can negotiate for and require developers to include affordable housing without passing any formal nexus study. And certainly, if city land or money is involved in any way, you can require affordable housing without any problem.

As an example, in Chapel Hill, North Carolina, the staff and city council informally "require" all developers to include at least 15 percent affordable housing in all new private developments of a certain size. There is no formal ordinance, no cost offsets provided to developers, no formal nexus study; the staff and elected officials just require developers to do it. And developers do it because they want to develop in Chapel Hill. Countless other communities do the exact same thing.

There is a basis for arguing that a "nexus" need not be shown for a broadly applied policy. The first basis (a more practical one) is that if the developers do not have "as of right zoning," then the community can certainly negotiate with them over the inclusion of affordable housing just as they negotiate over other issues. The second, more formal basis stems from a California court decision. In the Napa case, the court clearly ruled that an inclusionary zoning ordinance that applies across the board to all development is general economic legislation and not a potential regulatory taking like an impact fee or extraction.

Here are the major reasons why an inclusionary zoning requirement is NOT like an impact fee and why a rational nexus does not need to be established for IZ:

One, the private owner is not required to turn over land or money for public use — the affordable housing requirement is thus not an extraction of private property, but rather a limitation on the use of private property and thus no different from any other generally applicable zoning regulation. After all, the private owner does not have to turn the housing over to the public — he just has to sell it to eligible households below a certain price. The housing stays in private hands subject to sensible zoning restrictions (these based on affordability) that serve the public health, safety, and welfare.

Two, under the IZ ordinance in Napa, the developer received some form of compensation through density bonuses, an expedited permit process, etc. (this is different from a situation like an impact fee where a developer must pay and receives nothing in return). This is important. If your policy provided some benefits to developers, it would not look at all like a land dedication or impact fee scenario that usually warrants the nexus analysis.

Three, under the IZ ordinance in Napa, all developers were subject to the requirement and not just one. Where only one private owner is subject to a public requirement, the court's suspicion rises because the potential for abuse is greater and thus the more exacting requirement of a nexus is often used. Thus, the more general and broadly applied the policy for requiring affordable housing, the better. However, this doesn't mean that a community couldn't limit the IZ policy to a downtown area by setting a higher unit threshold for covered developments (e.g. 20 units of housing). If the policy or ordinance is written for broad applicability to apply to ALL downtown developers, then the concerns would not be the same. Many unchallenged policies around the country have higher thresholds and have operated successfully without challenge.

However, courts very well could examine an inclusionary zoning requirement on a particular piece of land or a zoning ordinance like an impact fee. In fact, if the affordable housing requirement is applicable only to one or a limited number of properties and does not apply citywide, then the court would be more inclined to examine the affordable housing requirement as if it were an impact fee. The reason, as stated above, is because the court is concerned that the local government is using their zoning power in an arbitrary manner to force one individual to provide affordable housing or land or money and because the developer receives no compensation. Thus, it is still not a bad idea to show the connection or rationale for why new development creates a need for more affordable housing.

Fairly detailed nexus studies were completed for Santa Fe and Cambridge, two communities that now both have inclusionary housing programs. Neither town has faced a legal challenge.

However, as stated above, most communities do not have a nexus study. Most communities do however conduct a basic study of the need for affordable housing and whether the affordable housing problem has worsened over the past 5-10 years. In addition, they study whether new development is helping to meet any of this need or whether the problem seems to be getting worse even as lots of new development occurs. Because new development increases property and land values and makes the community more expensive, because new development itself does not produce new affordable homes, and because all communities face a diminishing amount of developable land, there is a rational basis for requiring new development to include some affordable housing in communities where the affordable housing problem is getting worse. As you can probably imagine, in large cities experiencing lots of new development and more affluent and growing suburbs, the affordable housing problem is worsening even as new development booms. Communities document all of this. Then, in the preamble to their ordinances and in a separate document, they lay out this argument which goes basically as follows:

> 1) The city faces a shortage of affordable housing for households with low and moderate incomes, including key members of the local workforce.
>
> 2) Over the past x years, this shortage has increased as evidenced by a multitude of stats (% of people paying more than 30 percent of income for housing increased; overcrowding increased; median home sales price no longer affordable to those earning median income, etc.).
>
> 3) The city expends local, state and federal dollars to address the need for affordable housing, but these efforts fall far short of meeting the need.

4) Based on a number of reports and analyses of MLS data, it is clear that new development is not affordable to low and moderate income households unless federal or state housing dollars are involved in order to subsidize the creation of such housing.

5) Based on x data, it is clear that new development does not serve low and moderate income households. In fact, the high cost of new construction and rising property values throughout the community are making it more difficult for moderately priced housing to be produced.

6) Without immediate action to require new development of a certain size to contain some % of affordable housing, housing values will continue to rise and the city's affordability problem will worsen, leading to deleterious effects on the health, safety and welfare of the community (as more families spend more money on housing, as seniors are forced to leave, and as employers find it more difficult to find employees, etc.).

7) Since the remaining available land for development in the community is limited, it is prudent to require that some percentage of all new development be priced affordably for low and moderate income households.

This is of course a rough version, but it should give you a sense of the general argument. Most ordinances contain this kind of argument in the preamble (see Highland Park, Illinois, and Denver for general examples). This argument does not approach the formality and extensiveness of the nexus studies completed in Cambridge and Santa Fe, but it helps to provide a reasonable rationale for the requirement.

Question from an anonymous reader:
I am a planner in a suburban area of the country. Like other parts of the country, land and housing costs are very high and affordable or workforce housing has become a hot issue. I understand that property owners and developers want, and have, the right to maximize their profits by providing as many market rate units as possible on a property. I also know that whenever municipalities attempt to pass an ordinance requiring a mandatory affordable housing set aside requirement or a reasonable restriction to total lot yield (e.g., due to constrained development sites), the developers complain that they just can't make the numbers work. In a booming seller's housing market and very high sales and rental prices, is it really that they cannot afford to construct affordable housing or is just that they will make less profit?

In one particular situation that I am aware of, the developer had purchased the land at least 10 years earlier and the value of that land overtime certainly has skyrocketed. I have searched high and low for literature that discusses, let alone demonstrates, that developers cannot make a profit when providing affordable workforce housing. I also cannot find anything that explains the important economic considerations that must be reviewed to come to a fact-based conclusion about costs and profits and where to set mandatory set aside requirements.

Can you provide additional information?

Answer from author Nicholas Brunick:
Your question goes straight to the heart of the major issue faced daily by planners concerned about affordable housing and interested in inclusionary zoning. The short answer to your question is that developers can and do make a profit on developments that include affordable workforce housing. Over 200 communities around the country use some form of voluntary or mandatory inclusionary zoning program. In these communities, developers have continued to build housing and to make money (despite concerns from the housing industry about profitability under affordability requirements). However, the most effective programs do a good job at working to ensure that developers face clear and predictable requirements and receive some "offsets" to help them pay for the cost of producing the affordable homes.

Of course, it is important to acknowledge that whether an inclusionary zoning ordinance restricts or impedes a developer's ability to make a profit is dependent on the facts and circumstances of each particular case. For example, if a clear and predictable requirement to include a certain percentage of affordable housing in a new development exists in a local zoning code, then developers should be able to take that requirement into consideration before they purchase land for a new development (just like they take other zoning and community requirements such as height, density, parking, open space, etc. into consideration). In these situations, the developer will "run the numbers" and bargain for the price of the land accordingly. In short,

he or she will be willing to pay less for the land than if no affordable component were required. Thus, the "cost" of the affordable units is paid for through a modest reduction in land prices over time. If a developer has not yet purchased land and the inclusionary housing requirement is clear, then the developer should not have difficulty meeting the requirement and making a profit because he or she will figure the affordable housing component into the price that they are willing to pay for land.

If a developer already owns the land and the requirement is imposed after the fact, then the analysis changes a bit. You are right to assert that in a hot market, a developer may be able to pay for the cost of providing the affordable housing by modestly raising the market rate prices in the development or by taking a little bit less profit or through some combination of those two measures. In desirable locations, developers are often willing to earn a bit less in profit on a particular development if they know that they can build in that desirable location. In short, the inclusionary housing requirement becomes a cost of doing business in a desirable spot just like any other requirement that a desirable community might impose on a developer (additional architectural requirements, more open space, wrought-iron fencing requirements, etc.). However, even if a developer has already purchased the land, through the use of effective "cost offsets", communities can effectively reduce much of the developer's burden in producing the affordable homes (to the point where the developer may not raise market rate prices or reduce profits). Density bonuses, parking reductions, fee waivers, expedited permit processes, and other offsets can all serve to allow a developer to "break even" or in some cases to "make money" on the affordable units. In fact, some developers from Montgomery County, Maryland, assert that they do make money on the affordable units in certain developments due to the density bonus provided through the county's inclusionary zoning ordinance.

There is a considerable body of literature that looks at this issue of "who pays" in the case of inclusionary housing requirements. Below are some examples of this literature. Most of the literature indicates that developers can and do make a profit when they build developments that include affordable housing. Indeed, the communities with inclusionary housing programs stand as excellent proof that developers can and do make a profit. If they didn't, they would not be building in those communities and the programs would not be producing affordable housing. They are building and the programs are producing.

In your specific example, if the developer purchased the land a long time ago and the value of the land has increased considerably over time, it is certainly conceivable that the developer could sell market-rate units at a high enough level to offset the cost of producing the affordable homes (even if the local community failed to provide anything significant in the way of cost offsets). One would want to produce a pro-forma that looks at the cost of construction for the proposed development (most planning staffs can get their hands on fairly good, ballpark numbers for the cost of construction in the community) on that parcel of land (as currently allowed for the in the city's zoning code), compare those costs to the market-rate prices that the developer could obtain in the community and the affordable prices that the developer would have to charge to meet the community's needs, and then determine whether the developer has earned a return.

A number of communities have gone through the process of looking at "the numbers" and how they work out when different levels of affordability requirements on placed on different types of new development. These "feasibility studies" were conducted in order to help determine whether the community should pass an inclusionary housing program. The City of San Diego did a study that looked at these issues. In fact, the San Diego study, completed shortly after 2000 by the Plan Commission helped to convince skeptical developers that a citywide program (without any cost offsets) should be enacted. David Paul Rosen and Associates completed an extensive analysis for the City of Los Angeles.

In addition, Bay Area Economics (BAE) completed a feasibility study for Salinas, California. In it, they examined how different kinds of inclusionary requirements (e.g. 10 percent, 15 percent, 20 percent, etc.) would impact different types of development (e.g. condo, townhome, single-family home, etc.) and whether developers could still earn a profit on those developments. Denver, Colorado and Madison, Wisconsin also went through extensive processes recently to examine the effect of different proposed programs on development before passing their ordinances in 2002 and 2003. In fact, the "cost offsets" in both communities were generated largely as a result of those processes.

For more specific information on how to analyze or determine whether a developer is truly burdened by a local requirement and prevented from making a profit, I would suggest contacting staff members in the locations mentioned above and in locations like Cambridge, Massachusetts; Montgomery County, Maryland; and Fairfax County, Virginia (there are other possible locations as well).

These three communities are all suburbs and deal with a variety of suburban-type development (Cambridge deals with more high-density and Montgomery County and Fairfax County deal with more subdivision-style development). Their programs are all fairly long-standing and their staffs have extensive experience in working with developers. In addition, the Innovative Housing Institute (IHI), a nonprofit based in Washington, D.C., also has a lot of experience in looking at these specific issues. They could also be a tremendous resource to you. If you are interested, I would be happy to provide you with specific names and contact information for any or all of the groups that I mentioned above. I think the staff people in these communities (as well as others) and at IHI would be well-suited to share with you how they answer developer claims that "they can't make money" when building workforce housing.

In my own city, Chicago, certain local aldermen in Chicago's gentrifying North Side neighborhoods are requiring developers to include affordable housing in new developments anytime a zoning change is needed. In some of these situations, the developers receive no "cost offsets" whatsoever. And yet, developers continue to build. If they weren't making money, they would go elsewhere. Similarly, in San Francisco, San Diego, and Boston, this same pattern has been repeated. Developers in these large cities receive little to nothing in the way of "cost offsets" from these programs and yet they continue to building with the affordability requirements.

Building workforce housing can be done profitably. Do some analysis of your own local market to determine what's feasible and which cost offsets (density, parking, etc.) might be most appropriate and most useful to developers. Then, engage the developers in a discussion about how to do what definitely can be done.

Literature:

Center for Housing Policy. 2000. "Inclusionary Zoning: The Developers' Perspective," in *Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis?* New Century Housing, Vol. 1, Issue 2. Washington, D.C.: Center for Housing Policy, pp. 30-32.

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Dr. Robert W. Burchell and Catherine C. Galley. 2003. "Inclusionary Zoning: Pros and Cons," in *Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis?* New Century Housing, Vol. 1, Issue 2. Washington, D.C.: The Center for Housing Policy, p.7.

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Jerome Rothenberg, George Galster, and J.R. Pitkin. 1991. *The Maze of Urban Housing Markets: Theory, Evidence, and Policy.* Chicago: University of Chicago Press.

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Donald Hagman. 1982. "Taking Care of One's Own Through Inclusionary Zoning: Bootstrapping Low-and Moderate-Income Housing by Local Government." *Urban Law and Policy* Vol. 5, pp. 169-187.

Robert Ellickson. 1985. "Inclusionary Zoning: Who Pays?" *Planning* Vol. 51(8), pp. 18-20.

Arthur Nelson and Mitch Moody. 2003. "Paying for Prosperity: Impact Fees and Job Growth." *Cities and Suburbs Report.* Washington: The Brookings Institution.

Bay Area Economics (BAE). 2003. *City of Salinas Inclusionary Housing Program Feasibility Study.* Berkeley, Cal.: Bay Area Economics.

David Paul Rosen and Associates. 2002. *City of Los Angeles Inclusionary Housing Study: Final Report.* Los Angeles: Prepared by David Paul Rosen and Associates for the Los Angeles Housing Department.

Question from Greg Loy, Planning Director, Kill Devil Hills, North Carolina:

Would it be possible to forward web addresses for good inclusionary housing ordinances and development fee methodology?

Answer from author Nicholas Brunick:
Listed below is a list of web addresses for inclusionary zoning ordinances:

Lafayette, Colorado
www.cityoflafayette.com/Files/Affordable%20Housing%20Guidelines.pdf

Madison, Wisconsin
www.cityofmadison.com/cdbg/iz/docs/IZ_ord_final.pdf

Burlington, Vermont
www.ci.burlington.vt.us/planning/zoning/znordinance/article14.html

Pleasanton, California
www.ci.pleasanton.ca.us/pdf/17.44.pdf

San Diego, California
sandiego.gov/development-services/news/pdf/ahinordinance.pdf

Walnut Creek, California
www.ci.walnut-creek.ca.us/planning/Posted%20Files/Inclusionary%20Ordinance%20SIGNED.pdf

San Leandro, California
www.ci.san-leandro.ca.us/pdf/slcommdevInclusionary.pdf

Tallahassee, Florida
talgov.com/citytlh/planning/curntpln/post/cityinc.pdf

Fremont, California
www.ci.fremont.ca.us/NR/rdonlyres/
e77vfiwmvopqzmp2brhvnzpgx5qybzzzjndqfogwhamlgz5rveijxes5mpg2swdprxao55zew6lw74klhzopk7xevgd/
Ord2493_020303.pdf

Pasadena, California
www.ci.pasadena.ca.us/planninganddevelopment/news/inclusionary/ordinance.pdf

Dublin, California
www.ci.dublin.ca.us/pdf/Dublin_Zoning_Ord_8.68.pdf

Hayward, California
www.bpcnet.com/codes/hayward/_DATA/TITLE10/ARTICLE_17_INCLUSIONARY_HOUSING_OR/index.html

San Luis Obispo, California
www.ci.san-luis-obispo.ca.us/communitydevelopment/download/inclusho.pdf

Boulder, Colorado
www.ci.boulder.co.us/cao/brc/965.html

Denver, Colorado
www.denvergov.org/admin/template3/forms/20020617ord.pdf

Cambridge, Massachusetts
www.cambridgema.gov/~CDD/cp/zng/zord/zo_article11_spec_regulations.pdf

Davis, California
www.city.davis.ca.us/housing/affordable/info.cfm

Fairfax County, Virginia
www.fairfaxcounty.gov/dpz/zoningordinance/amendments/zo_04_368.pdf

Irvine, California
library6.municode.com/gateway.dll/CA/california/4657?f=templates&fn=default.htm&npusername=13239&

nppassword=MCC&npac_credentialspresent=true&vid=default

Longmont, Colorado
bpc.iserver.net/codes/longmont/_DATA/TITLE15/Chapter_15_05__DEVELOPMENT_STANDAR
/15_05_220_Affordable_housing_.html

Montgomery County, Maryland
www.amlegal.com/mcmd_nxt/gateway.dll?f=templates&fn=default.htm&vid=alp:montgomerycounty_md

Newton, Massachusetts
www.ci.newton.ma.us/legal/ordinance/table_of_contents.htm

Sacramento, California
www.lsnc.net/housing/Sac_city_ordinance.pdf

Inclusionary Housing: Proven Success in Large Cities

By Nicholas J. Brunick

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

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

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

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

WHY LARGE CITIES?

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

For more than the poor. Large cities are adopting inclusionary housing programs because of their proven effectiveness in addressing the dearth of affordable housing. In the 1990s, housing costs outpaced income growth for low- and moderate-income households. The extension of the affordable housing crisis to working-class and lower-middle income households has heightened the urgency to address the problem.

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

Through the use of creative cost offsets such as density bonuses, flexible zoning standards, and expedited permitting processes, large cities can create affordable housing while preserving the federal and state housing dollars they receive for more vulnerable populations (extremely low-income, disabled, homeless, etc.) and preserving more of the local tax base for other pressing public needs.

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

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

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

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.

ASK THE AUTHOR JOIN US ONLINE!

During November 15–26, 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.

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

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

LARGE-CITY CASE STUDIES

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

Boston

Background. The economic boom of the 1990s raised income levels for Boston area residents, but housing prices went even higher, soaring at a double-digit pace. As construction and land costs increased, gentrification spread from the central downtown areas to surrounding neighborhoods, displacing moderate-income families. In addition, affordable-housing advocates said the city's unofficial inclusionary housing program was failing to produce affordable units, pointing to two high-profile developments devoid of affordable housing. Boston's tight housing market, and pressure from community-based organizations and housing advocates, led Mayor Thomas Menino to sign an executive order in February 2000 creating an inclusionary housing policy.

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

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

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

Denver

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

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

Susannah Levine

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

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

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

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

Sacramento

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

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

Sacramento provides a density bonus of 25 percent, which follows the density bonus required under California law for certain types of affordable developments. In addition to the density bonus, developers also may receive expedited permit processing for the affordable units, fee waivers, relaxed design guidelines, and priority status for available local, state, and federal housing funds.

LARGE-CITY INCLUSIONARY HOUSING PROGRAM M

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

Sacramento Housing and Redevelopment Agency

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

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

San Diego

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

AM MATRIX

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

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

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

Neither the 1992 FUA inclusionary zoning ordinance or the 2003 citywide ordinance provides developers with incentives or cost offsets for building affordable units. The city opted to not offer cost offsets, such as fee waivers or density bonuses, because developers can easily cover the cost of affordable units through the sale of market-rate units, according to an economic analysis conducted for the housing commission.

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

The results. Under the citywide law, 200 affordable units are in the development pipeline, and $300,000 in fees has been collected. Because of the robust San Diego housing market, the architects of the law were concerned that it might generate substantial fees and little affordable housing, but city staff are thus far pleased with the performance of the ordinance and say it has not stifled development.

San Francisco

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

San Diego Housing Commission

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

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

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

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

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

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

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

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

BENEFITS

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

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

Effect on development and cost offsets. Large-city administrators must not buy into the misconception that inclusionary housing will only work in large-tract, suburban subdivisions, and that inclusionary zoning requirements will drive development out of urban centers, encouraging sprawl and exacerbating affordability problems. Evidence from the five cities profiled in this article, including interviews with planning staff, shows this to be unlikely. City staff in San Francisco report that the overall pace of development has actually accelerated since passage of the mandatory inclusionary housing ordinance—not surprising considering the broad experience of inclusionary housing programs across the country. In fact, analytical studies, anecdotal evidence, and developer and community reaction from communities nationwide indicate that inclusionary housing programs have not caused overall levels of development to slow.

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

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

Who is being served? Inclusionary housing programs in large cities can be a flexible tool serving a wide variety of income levels. A large-city program need not serve only households at or near 100 percent of the median income. Denver, the most productive of the large-city programs, provides for the "deepest" income targeting, primarily serving households at 65 percent of the AMI in rental units and 80 percent of the AMI for owner-occupied units. Similarly, Sacramento targets its program so that two-thirds of the housing units produced will serve very-low-income households (households below 50 percent of the AMI). One-third of the housing units produced serve households at or below 80 percent of the AMI.

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

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

NOT JUST FOR SUBURBS AND SMALL CITIES ANYMORE

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

Photos by Michael Davidson

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

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

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

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

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NEWS BRIEFS

AFFORDABLE HOUSING GETS HUGE BOOST ON LONG ISLAND

By Josh Edwards

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

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

County Supervisor Joshua Horton describes the affordable housing ordinance as "a giant step forward" and notes that Southold and other nearby communities have reached a crisis point as home prices escalate beyond the reach of most prospective residents. The average home price in Southold surpassed $500,000 in 2003. Not surprisingly, vacation homes of wealthy New Yorkers inflate area home values, and encroaching sprawl from the metro area exacerbates the problem. Though development translates into property tax revenues for the affected Long Island towns, it also forces many people to live elsewhere. Town officials say the affordable housing shortage is a threat to the local economy, as workers in lower-paying jobs simply cannot afford to live in the area. Even Horton commutes to work from a nearby town because Southold is too expensive. Officials hope the ordinance will combat gentrification and attract young professionals and families who may not otherwise be able to afford a home in Southhold.

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

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

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

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WEB RESOURCES

(from *Inclusionary Housing*, Part Two, by Nicholas J. Brunick; October 2004)

BUSINESS AND PROFESSIONAL PEOPLE FOR THE PUBLIC INTEREST (BPI)

BPI is a Chicago-based citizen advocacy organization that uses a variety of approaches, including community organizing, litigation, policy advocacy, and collaborations with civic, business, and community organizations to address issues that affect the equity and quality of life in the Chicago region. For more information visit **www.bpichicago.org**.

KNOWLEDGEPLEX

KnowledgePlex is a web resource implemented by the Fannie Mae Foundation. The site is designed to support the efforts of practitioners, grantors, policy makers, scholars, investors, and others involved or interested in the fields of affordable housing and community development. Visitors to the site will find documents, news items, discussion forums, and much more. For more information visit **www.knowledgeplex.org**.

NATIONAL ASSOCIATION OF HOUSING AND REDEVELOPMENT OFFICIALS (NAHRO)

NAHRO is a leading housing and community development advocate for the provision of adequate and affordable housing and strong, viable communities for all Americans-particularly those with low and moderate incomes. NAHRO members administer HUD programs such as Public Housing, Section 8, CDBG, and HOME. For more information visit **www.nahro.org**.

NATIONAL HOUSING CONFERENCE

The National Housing Conference is a coalition of housing leaders from the private and public sectors. For more information visit **www.nhc.org**.

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October 2004

Ask the Author

Ask the Author About Inclusionary Housing, Part II

Here are reader questions answered by Nicholas J. Brunick, author of the November 2004 *Zoning Practice* article "Inclusionary Housing, Part II: Proven Success in Large Cities."

Question from Adam Wolff, Brooklyn, New York:
In New York City, a coalition of community planners, affordable housing advocates and community development professionals have argued for mandatory inclusionary zoning only in areas affected by widespread upzoning policies (mostly from manufacturing to residential) promulgated by city planning. At the core, this argument rests on the notion that affordable housing should be a public benefit derived from public action that produces windfalls for private landowners and developers. It also seems to try to correlate, at least geographically, areas of increasing land value and gentrification, with the need for affordable housing, while leaving other areas of the city unaffected. Could you please comment on this approach to inclusionary zoning. Also, do you think this approach could be replicated in other cities or is it unique to the circumstances of New York City?

Answer from author Nicholas Brunick:
I have heard about your campaign and I think it is very compelling. The case for inclusionary zoning is definitely strengthened in the context of upzoning policies that are significantly increasing the value of land and providing the current owners with an effective "windfall" due to changing governmental policy. In these cases, opponents cannot drag out many of their usual arguments in opposition.

Developers will not be unfairly burdened. Developer often argue that under IZ, they bear the full burden of addressing a social problem. Of course, if an IZ ordinance contains real cost offsets (e.g. density bonuses, fee waivers, etc.), then the burden is shared. However, in the NYC case, If the developer already owns the land, they are receiving what is probably a very significant windfall profit from the upzoning. This windfall profit will be offset to some extent by the inclusionary housing requirement imposed. If the developer purchases the land after it is upzoned with the inclusionary housing requirements in place, they will be aware of the required affordable housing component and will take that zoning regulation into account when they bargain for the price of the land (as they do for any other zoning regulation or requirement). In either scenario, the inclusionary housing requirement is a reasonable request given the public benefit that has been bestowed on the developer. No cost offsets are needed — the upzoning serves as the cost offset.

Landowners will not be unfairly burdened. As stated above, if they already own the land, the rezoning grants them a huge windfall totally unrelated to any improvements that they themselves have made to the property. The inclusionary housing requirement moderates this windfall but does not unfairly deny them an expected return. Again, no offset is needed, the inclusionary housing requirement is "paid for" or "offset" by the public action of upzoning, which increases the value of the land.

Because the inclusionary requirement is only imposed in places where the public (through the zoning change) has provided a significant benefit, any potential legal challenges that the inclusionary zoning policy is a taking are largely eliminated and any policy arguments that the regulation will deter development or harm the property tax base are effectively muted.

In many ways, the New York example is similar to situations in other communities where developers must include some affordable housing when they receive a zoning change or when they receive public subsidies or when they receive a write-down on city-owned land. For example, in Chicago, right now, the city requires developers that receive a write-down on city-owned land to include 10 percent affordable housing in the development and developers with receive Tax Increment Financing dollars to include 20 percent affordable housing in the development. Unfortunately, this provision does not cover many developments and thus does

not generate many units (approximately 100 units last year — not much for a city like Chicago that is experiencing a development boom). Also in Chicago, many aldermen in North Side neighborhoods require developers who need any assistance from the alderman (zoning change, etc.) to include 10 percent or more affordable housing in the development. This practice has created much more affordable housing than the city's broad policy on TIFs and city land, but still falls far short of what an across the board, citywide inclusionary zoning ordinance could produce in the city. Other communities have taken this approach as well. Some of them have taken this approach without passing a formal ordinance or policy.

The New York proposal sounds very promising. If the amount of land to be rezoned is significant, it seems like it could produce quite a lot of affordable housing for the city without any public dollars being spent. That's the beauty of inclusionary housing strategies. At a time when the federal government is abandoning its commitment to affordable housing and almost every state in the Union is struggling to balance its budget, cities must find creative strategies to address the problem without public subsidies. The NYC proposal is a classic example.

It seems to me that the NYC proposal could be replicated in other cities and suburbs. As communities change and the economy changes, land uses eventually have to change as well. And certainly, the redevelopment of warehouse districts and downtown districts in large cities and suburban communities has been occurring for some time. As these changes occur and as local zoning policy changes to accommodate this redevelopment, requiring new affordable homes in developments where an "upzoning" has occurred seems to be a no-brainer.

The success of these upzoning policies could differ widely in different locations. In NYC, it is my impression that you are talking about a significant amount of land, which means a significant amount of affordable housing. Not all communities will have that much land undergoing "upzoning." In addition, in NYC, it is my impression that the land to be upzoned lie in areas ripe for residential development. In cities where the land to be upzoned is located in an area that has trouble attracting any development at all, the requirement to include affordable housing in new development may or may not be a prudent policy to adapt. One would have to take a close look at whether such a requirement would deter development or not. NYC is the only location that I know of where an across the board policy to require affordable housing in all new upzonings has been proposed. Overall, I think it is a very exciting model and one that others should consider.

However, as I understand it, the proposal in NYC has not passed yet even with all of its positive elements. I certainly don't have the knowledge to comment on why specifically passage has not yet occurred. I'm sure that you are in the thick of that battle and I hope that you and your allies will succeed. However, it is a sobering reminder of how difficult it can be to implement inclusionary housing policies even when they make the most policy sense.

Inclusionary Housing Ordinance Survives Constitutional Challenge in Post-*Nollan-Dolan* Era: *Homebuilders Association of Northern California v. City of Napa*

Daniel J. Curtin, Jr., Cecily T. Talbert, and Nadia L. Costa

Inclusionary housing programs[1] have been in effect since the early 1970s, and are growing in popularity today as more jurisdictions view them as innovative ways to increase the supply of affordable housing as well as combat exclusionary zoning practices.[2] In general, localities enact such programs pursuant to their local police power, which are typically effectuated through inclusionary housing ordinances, in zoning codes, policy statements, or a jurisdiction's housing element.[3]

Given the reality that inclusionary housing programs essentially transfer property from developers to less materially advantaged households, it is not surprising that such programs have been challenged in court. Overall, such efforts have been unsuccessful. Indeed, most of the few published decisions have upheld inclusionary housing programs.[4] Because these cases applied a relatively deferential standard of review, their continued viability became uncertain with the adoption of the heightened scrutiny standard enunciated by the U.S. Supreme Court in *Nollan v. California Coastal Commission* [483 U.S. 825 (1987), 39 ZD 226] and *Dolan v. City of Tigard* [512 U.S. 374 (1994), 46 ZD 232]. Recently, a California appellate court squarely addressed this issue, and upheld yet another inclusionary housing program. In *Home Builders Association of Northern California v. City of Napa*,[5] the court refused to apply the heightened standard of judicial review under *Nollan* and *Dolan*, and instead determined that an inclusionary housing ordinance that imposed a ten percent mandatory set-aside requirement on new development was constitutional.

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1. In general, an "inclusionary housing" program is one that requires a residential developer to set aside a specified percentage of new units (often 10 to 15 percent) for very low-, low- or moderate-income households in conjunction with the development of market rate units. However, the term "inclusionary housing" or "inclusionary zoning" can include a variety of methods designed to create more affordable housing. Some examples include density bonuses, reduced development standards, and imposition of fees on developers to fund affordable housing projects. *See* Laura M. Padilla, *Reflections on Inclusionary Housing and a Renewed Look at Its Viability*, 23 HOFSTRA L. REV. 539, 551-52 (1995).

2. In California, by 2000, at least 108 cities and 13 counties had adopted various inclusionary housing programs, a majority of which are mandatory. *See* Nadia I. El Mallakh, "Does the Costa-Hawkins Act Prohibit Local Inclusionary Zoning Programs?" 89 CALIF. L. REV. 1847, 1861-62 (2001). *See also* City of San Diego Planning Department, CALIFORNIA JURISDICTIONS WITH INCLUSIONARY HOUSING PROGRAMS (2001). Moreover, examples of creative inclusionary housing programs can also be found across the nation, in Colorado, Florida, Maryland, Massachusetts, Minnesota, New Jersey, New Mexico, and Virginia. *See* www.inhousing.org/USA%20Inclusionary/USA%20Inclusion.htm. Finally, the inclusionary housing philosophy is also finding support internationally. *See*, *e.g.*, In the Matter of Article 26 of the Constitution and In the Matter of Part V of the Planning and Development Bill 1999, Supreme Court of Ireland, August 28, 2000 (unanimously upholding a national 20 percent affordable housing statute, which allows the local agency, as a condition of approval, to require the developer to enter into an agreement whereby it gives up to 20 percent of the land for affordable housing or provides several sites or houses actually built for such purposes).

3. *See* Padilla, at 551.

4. *But see* Town of Telluride v. Lot Thirty-Four Venture, L.L.C., 3 P. 3d 30 (Col. 2000) (holding town's "affordable housing mitigation" ordinance, which required developers to create affordable housing for 40 percent of the employees generated by the new development, as well as setting a base rental rate, constituted "rent control," thereby violating the state's anti-rent control statute); Board of Supervisors v. De Groff Enterprises, 198 S.E. 2d 600 (Va. 1973) (holding that a mandatory set-aside provision was invalid under state law as well as an improper socio-economic regulation).

5. 90 Cal. App. 4th 188 (2001), 53 ZD 215, *cert. denied*, 122 S. Ct. 1356 (Mar. 25, 2002). *See also* San Remo Hotel LP v. City and County of San Francisco, 27 Cal. 4th 643, 673 (2002), 54 ZD 175.

JUDICIAL TREATMENT OF INCLUSIONARY HOUSING PROGRAMS

There are few published decisions considering the legality of inclusionary housing programs. The first court to address the issue was the case of *Board of Supervisors v. De Groff Enterprises* [198 S.E. 2d 600 (Va. 1973)]. In that decision, despite acknowledging the "urgent need for housing units for lower and moderate income families," the Virginia Supreme Court invalidated a mandatory inclusionary housing ordinance requiring that 15 percent of multifamily units be affordable. *Id.* It did so based on the grounds that the ordinance exceeded the locality's police power, as well as constituted a taking under the Virginia State Constitution. *Id.* at 602.

> GIVEN THE REALITY THAT INCLUSIONARY HOUSING PROGRAMS ESSENTIALLY TRANSFER PROPERTY FROM DEVELOPERS TO LESS MATERIALLY ADVANTAGED HOUSEHOLDS, IT IS NOT SURPRISING THAT SUCH PROGRAMS HAVE BEEN CHALLENGED IN COURT.

Subsequent cases, however, have not followed suit. The seminal case of *Southern Burlington County N.A.A.C.P. v. Township of Mt. Laurel ("Mt. Laurel I")* [336 A.2d 713 (N.J. 1975) 27 ZD 282] was the first decision to explicitly recognize the importance of inclusionary housing programs as a means to combat exclusionary zoning practices. In *Mt. Laurel I*, the plaintiffs, representing minority, low-income residents, attacked a local zoning ordinance that had both the intent and effect of excluding low- and moderate-income residents from the municipality.[6] The New Jersey Supreme Court found this exclusionary zoning ordinance unconstitutional, violating basic principles of fairness. *Id.* at 731-732. In so doing, the court imposed on all "developing" municipalities, through their land-use regulations, an affirmative obligation to provide a realistic opportunity for affordable housing. *Id.* at 174.

In a later decision, *Southern Burlington County N.A.A.C.P. v. Mt. Laurel Township ("Mt. Laurel II")*, [456 A.2d 390 (N.J. 1983), 35 ZD 90], the court made clear that it would not back away from this position. Rather, it extended this obligation to *all* municipalities, and advocated mandatory set-aside programs as one way for localities to fulfill their *Mt. Laurel* obligations. *Id.* at 443. It flatly rejected the argument that such programs constituted an impermissible taking, concluding that "the builder who undertakes a project that includes a mandatory set-aside voluntarily assumes the financial burden, if there is one, of that condition." *Id.* at 446.

Several years later, the question arose whether the imposition of fees on developers as a condition of approval, which would be dedicated to an affordable housing trust fund, was proper. Stressing the affirmative obligation upon municipalities to provide realistic housing opportunities for all income levels, the New Jersey Supreme Court in *Holmdel Builders Association v. Township of Holmdel* [583 A.2d 277 (N.J. 1990), 42 ZD 167] found the requirement permissible under state law.[7] The court did not directly reach the question whether the ordinance was unconstitutional. Nevertheless, the court emphasized that such arguments, with respect to a facial challenge, lacked merit. *Id.* at 292.

A Ninth Circuit decision addressed the question left unanswered by *Holmdel*—whether such ordinances could survive constitutional challenge. In *Commercial Builders of Northern California v. City of Sacramento*, [941 F.2d 872 (9th Cir. 1991)] the court held that an ordinance, which conditions certain types of non-residential building permits upon the payment of a fee dedicated to an affordable housing trust fund, did not amount to an unconstitutional taking. The plaintiff, Commercial Builders, did not argue that the city lacked a legitimate interest in increasing the supply of affordable housing. Rather, citing *Nollan*, it argued that the ordinance constituted an impermissible means of advancing that interest, because it placed a burden of paying for low-income housing on non-residential development without establishing a sufficient nexus between such development and the need for the affordable housing. *Id.* at 873. The court was not persuaded, however. Refusing to require a direct causal relationship,[8] it held that *Nollan* did not materially change the level of scrutiny here. And because the ordinance was implemented only after a detailed study revealed a substantial connection between development and the problem to be addressed, this nexus was sufficient to pass constitutional muster. [Id. at 874-75].

Despite the increasing prevalence of various kinds of inclusionary housing programs, the above decisions represented the world of case law on this point for some time. While some questions had been answered, no case had faced the issue of how *Nollan* and *Dolan* affected the constitutional analysis. Then, in June 2001, a California appellate court in *Napa* made clear that inclusionary housing ordinances could withstand a facial constitutional challenge.

Napa's Inclusionary Housing Ordinance

In an effort to address escalating problems resulting from a lack of affordable housing within the City of Napa and surrounding areas, the city enacted an inclusionary housing ordinance.[9] The primary mandate imposed was a require-

6. The ordinance accomplished this goal by: (1) permitting only single-family detached dwelling units in residentially zoned areas; and (2) requiring significant minimum lot sizes and floor areas. *See id.* at 719-721.

7. The ordinance at issue created an affordable housing trust fund and imposed a mandatory development fee on all new commercial and residential development as a condition for receiving a certificate of occupancy. *Id.* at 281.

8. This case took place prior to the *Dolan* decision; therefore, the court did not have to face the question of "how close a fit" is required.

ment that ten percent of all newly constructed units be "affordable," as that term was defined in the ordinance.

The ordinance also offered developers two alternative means of compliance. First, developers of single-family homes could, at their option, satisfy the inclusionary requirements through an "alternative equivalent proposal," such as the dedication of land or the construction of affordable units on another site. Developers of multi-family units also could satisfy the ten percent requirement through a similar mechanism, but only if the city council determined that the proposed alternative would result in affordable housing opportunities equal to or greater than those created by the basic inclusionary requirement.

> WHILE ACKNOWLEDGING THAT THE ORDINANCE IMPOSES SIGNIFICANT BURDENS ON DEVELOPERS, THE COURT FOUND RELEVANT THAT IT ALSO PROVIDES BENEFITS TO THOSE COMPLYING WITH ITS TERMS. . . . THE ORDINANCE CONTAINED AN ADMINISTRATIVE RELIEF CLAUSE, ALLOWING FOR A COMPLETE WAIVER OF ITS REQUIREMENTS.
>
> —CITY OF NAPA [90 CAL.APP.4TH AT 194]

As a second alternative, a residential developer could choose to satisfy the inclusionary requirement through payment of an "in-lieu" fee. Developers of single-family units could choose this option by right, while developers of multi-family units were permitted this option only if the city council approved. All fees generated were required to be deposited into a housing trust fund, and could be used only to increase and improve the supply of affordable housing in Napa.

The ordinance also contained an administrative relief clause, permitting city officials to reduce, modify, or waive the requirements contained in the ordinance "based upon the absence of any reasonable relationship or nexus between the impact of the development and . . . the inclusionary requirement." [Napa Mun. Code § 15.94.080]

In September 1999, the Home Builders Association of Northern California (HBA), an association of professionals involved in the residential construction industry, sued the City of Napa, contending that the ordinance was facially invalid because it was an impermissible taking under both state and federal law, and violated the Due Process Clause of the U.S. Constitution. After the trial court entered judgment in favor of the city, HBA appealed. In ruling for the city, the Ninth Circuit court affirmed the trial court's decision and upheld the ordinance against the facial constitutional challenges.

9. *See generally* Napa Municipal Code, § 15.94.

With respect to the takings claim, while acknowledging that the ordinance imposes significant burdens on developers, the court found relevant that it also provides benefits to those complying with its terms. [90 Cal.App.4th at 194]. Moreover, the court found dispositive the fact that the ordinance contained an administrative relief clause, allowing for a complete waiver of its requirements. "Since City has the ability to waive the requirements imposed by the ordinance, the ordinance cannot and does not, on its face, result in a taking."[10]

Further, because the ordinance substantially advanced a legitimate state interest, it did not result in a taking. First, the court noted that both the California Supreme Court and the state legislature had recognized that creating affordable housing for low- and moderate-income families was a legitimate governmental purpose. [90 Cal.App.4th at 195]. Second, the court stated that it was "beyond question" that the city's ordinance would substantially advance this important governmental interest. "By requiring developers in City to create a modest amount of affordable housing (or comply with one of the alternatives) the ordinance will necessarily increase the supply of affordable housing." *Id.* at 195-96.

HBA's principal constitutional claim was that the city's ordinance was invalid under the heightened scrutiny standard required by *Nollan* and *Dolan*. HBA contended that there was no "essential nexus" or "rough proportionality" between the exaction required by the ordinance, and the impacts caused by development of property.

The court rejected this argument, however, holding that *Nollan* and *Dolan* were inapplicable to the facts of this case. The court stated that the standard of judicial scrutiny formulated by the U.S. Supreme Court in *Nollan* and *Dolan* was intended to address land-use "bargains" between property owners and regulatory bodies—those in which the local government imposes project-specific conditions on approved future land uses to purportedly offset the impact of the proposed development. "It is in this paradigmatic permit context—where the individual property owner-developer seeks to negotiate approval of a planned development—that the combined *Nollan* and *Dolan* test quintessentially applies." [90 Cal.App. 4th at 196-197, quoting *Ehrlich v. City of Culver City*, 12 Cal. 4th 854, 868 (1996), 48 ZD 183]. The court held that since the ordinance was generally applicable to all development in Napa, the more deferential standard of scrutiny applied "because the heightened risk of the 'extortionate' use of the police power to exact unconstitutional conditions is not present." *Id.* at 197.

The court also rejected HBA's due process challenge. In so doing, it stated that such a claim is tenable only if the regulation will not permit those who administer it to avoid an unconstitutional application of its terms. If such provi-

10. The court also rejected HBA's argument that the waiver provision violated *Dolan* by improperly placing the burden on the developer to prove that a waiver would be appropriate when the city had not established a justification for exactions mandated by the ordinance. The court emphasized that the burden shifting under *Dolan* does not apply when evaluating generally applicable zoning regulations.

sions exist to allow for the exercise of discretion by the authorities, the court must presume that those implementing the regulations will exercise their authority in conformity with the Constitution. Thus, when an ordinance contains provisions that allow for administrative relief, a claim of facial constitutional invalidity must fail. *Id*. at 199.

Here, the city's ordinance contained exactly the type of opportunities for administrative relief that preclude an assumption that the ordinance will be unconstitutionally applied. Because it included a provision that gave the city the authority to completely waive the developer's obligations in the absence of any reasonable relationship between a project's impacts and the ordinance's affordable housing requirements, the court held that it must presume that the city would, in fact, exercise that authority in such a way as to avoid unconstitutional application of the ordinance. In the event the city subsequently applied the ordinance in violation of a particular individual's constitutional rights, the applicant's recourse at that time would be to bring an as-applied challenge.

THE FUTURE OF INCLUSIONARY HOUSING ORDINANCES

The *Napa* court's sound rejection of HBA's arguments reaffirms the continuing viability of inclusionary housing ordinances when confronted with facial takings and due process challenges. Moreover, it creates a framework within which city and county legislatures can formulate additional new and creative means of addressing the affordable housing issue, as well as ensuring that their current ordinances can withstand constitutional attack. Inclusionary housing ordinances, such as in *Napa*, are legislative acts entitled to deference from the courts. Therefore, the challenger bears the heavy burden to establish that the law is arbitrary or capricious. If a locality has properly adhered to all procedural requirements in enacting an inclusionary housing ordinance, it will likely pass constitutional muster.

There are several ways to enhance the legal defensibility of such ordinances. First, establish clear policy bases for the ordinance, which are supported by a well-developed factual record. Second, adopt generally applicable rather than ad hoc requirements.[11] Third, provide benefits to the developer such as density bonuses, expedited processing, fee deferrals, and loans or grants. And finally, consider providing some flexibility by including an administrative relief provision.[12] Although this type of provision is not necessary to uphold an inclusionary ordinance, it lends further support for the argument that the requirements do not constitute an impermissable taking.

11. *See* Thomas Jacobson, Inclusionary Housing Requirements: An Overview, American Planning Association, National Conference, April 2002.

12. Ibid.

Zoning to Expand Affordable Housing

By Jeffrey Lubell

Despite a recent slowdown in home sales, working families continue to struggle to find affordable homes—both rental and for sale—in communities around the country.

Homeowner's Rehab, Inc.

Auburn Court, a mixed income multifamily development in Cambridge, Massachusetts.

The problem has grown to the point where it is no longer of concern only to the affected families, but also to the communities in which they live or wish to live.

Communities that cannot provide affordable homes for teachers, nurses, fire fighters, police officers, and other essential workers are at a competitive disadvantage in attracting dedicated workers for these positions. Similarly, employers will be less likely to stay in or relocate to communities that cannot provide an adequate supply of homes that are affordable to their workers.

Providing affordable homes is a major challenge that requires multiple responses by a variety of actors at the federal, state, and local levels. While city planners, zoning board officials, and others involved in the zoning process cannot solve this problem alone, there are a number of steps they can take to make a material difference in increasing the availability of homes affordable to working families.

This issue of *Zoning Practice* highlights three zoning tools used by communities to increase the availability of affordable homes:

- Revising zoning policies to make more land available for residential use and increase allowable densities within residential zones.
- Adopting zoning policies that support a diversity of housing types, including multifamily, accessory dwelling units, and manufactured homes.
- Establishing inclusionary zoning requirements or incentives.

To set these tools in context, we start by reviewing the scope of the affordable housing challenge facing working families and the range of policy options available to state and local leaders seeking to address it. Following this overview, the article examines the potential of each of the three zoning policies to increase the availability of homes affordable to working families. The article concludes with brief suggestions on how to build on these policy proposals to launch a comprehensive and coordinated effort to meet a community's need for affordable homes.

HOUSING CHALLENGES FACING WORKING FAMILIES

According to Barbara J. Lipman, author of *The Housing Landscape for America's Working Families*, a publication of the D.C.-based Center for Housing Policy, five million working families nationwide had critical housing needs in 2003—an increase of 60 percent since 1997. For purposes of this calculation, "working families" are defined as families with earnings equal to at least full-time minimum wage work but less than 120 percent of area median income. These tabulations of data from the 2003 American Housing Survey are the most recent available. Updated tabulations will be available in early to mid-2007. The vast majority of these families spent half or more of their monthly incomes on the costs of owning or renting a home. Others had critical housing needs because they lived in homes with severe physical problems, such as lack of reliable plumbing or heating.

Millions of additional working families have moderate housing cost burdens or can only afford to live far from their places of work, forcing them to endure long commutes and spend much of their housing cost savings on

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About the Author
Jeffrey Lubell is executive director of the Center for Housing Policy, a nonprofit research organization affiliated with the National Housing Conference and based in Washington, D.C. This article is based on a broader examination of promising state and local housing policies by the same author titled *Increasing the Availability of Affordable Homes: A Handbook of High-Impact State and Local Solutions* (and an accompanying analysis), published and copyrighted jointly by the Center for Housing Policy and Homes for Working Families. Those documents are available at www.homesforworkingfamilies.org and www.nhc.org.

transportation, according to Lipman's 2006 report for the Center For Housing Policy, *A Heavy Load: The Combined Housing and Transportation Burdens of Working Families.* These problems undermine the well-being of both the affected families and the communities in which they live or wish to live. Families that cannot afford the costs of their homes may be only one paycheck away from foreclosure or eviction. They also may have insufficient income left over to afford necessary food, health, and education expenses, leading to adverse nutrition, health, and education outcomes for their children. Such problems are compounded by the stress of continually struggling to meet unaffordable housing costs and the high cost and lost time with family associated with lengthy commutes.

For many communities, the high cost of homes makes it difficult or impossible for police officers, fire fighters, and other essential workers to live in the communities they serve, reducing their capacity to respond promptly to emergency situations and to participate in community life after 5 p.m. The high cost of homes also makes it difficult for communities to attract teachers, nurses, and other valuable community servants and for employers to attract the workers they need to sustain and grow their businesses.

These are serious problems. But fortunately, there is a wealth of experience in how to address them. While in earlier decades the federal government may have taken the lead in developing solutions, the focus of decision making today is at the state and local level. Many promising strategies exist for municipal leaders—including a number of policies that rely on the zoning process—to expand the availability of affordable homes for working families.

OPTIONS FOR STATE AND LOCAL GOVERNMENTS

State and local governments can choose from six principal options to increase the availability of affordable homes.

Expand the availability of sites for the development of affordable homes. In most communities where homes are fiscally out of reach for working families, land is expensive. By making publicly owned land and tax-delinquent properties available for the development of affordable homes, local governments can neutralize this obstacle. Local governments also can expand the supply of sites for new development through changes in zoning rules or maps that make new areas available for development or expand the number of homes that can be built in existing residential areas.

For many communities, the high cost of homes makes it difficult or impossible for police officers, fire fighters, and other essential workers to live in the communities they serve.

Reduce red tape and other regulatory barriers to affordable homes. In the development world, time is money. The longer it takes to gain the necessary approvals to build a home, and the more uncertainty involved in the approval process, the higher the costs of newly built or renovated homes. By expediting the approval process for affordable homes and addressing the regulatory barriers that drive up costs, such as overly restrictive zoning rules and building codes and regressive fees, state and local governments can cut through the red tape and expand the supply of affordable homes.

Harness the power of strong housing markets. The greatest housing challenges are found in hot housing markets where the costs of buying or renting a home increase much faster than incomes. Fortunately, state and local governments can take steps to capitalize on strong markets to expand the supply of affordable homes. These policies include strategies for tapping the increased tax revenue associated with increases in property values and an active real estate market, as well as incentivizing or requiring the development of a modest number of affordable homes as part of the process of developing more expensive homes.

Generate additional capital for affordable homes. While successful efforts to reduce regulatory barriers can help expand the supply of affordable homes, in many communities additional resources will be needed to bring the price of homes within reach of working families. There is a range of promising approaches for generating revenue for this purpose, including leveraging additional federal funds through the four percent low-income housing tax credit program, supporting the issuance of general obligation bonds for affordable homes, and tapping employer interest in providing homes for their workers.

Preserve and recycle resources for affordable homes. Given the limited availability of public funds for affordable homes, it is essential that funding be used in a cost-effective

HIGH-IMPACT STATE AND LOCAL HOUSING SOLUTIONS

Expand the Availability of Sites for Affordable Homes
- Make publicly owned land available for affordable homes.
- Facilitate the reuse of vacant, abandoned, tax-delinquent properties.
- Expand the supply of homes through rezonings that make more land available for residential use and increase allowable densities within residential zones.

Reduce Red Tape and Other Regulatory Barriers to Affordable Homes
- Ensure that zoning policies support a diversity of housing types, including multifamily, accessory dwelling units, and manufactured homes.
- Adopt expedited permitting and review policies.
- Revise impact fee structure to reduce the burden on families occupying smaller, less-expensive homes.
- Adopt building codes that facilitate rehabilitation of existing structures.

Harness the Power of Strong Housing Markets
- Utilize tax increment financing to fund affordable homes.
- Stimulate rental home construction and rehabilitation through tax abatements.
- Create or expand dedicated housing trust funds.
- Establish inclusionary zoning requirements or incentives.
- Use cross-subsidies to support mixed income housing.

Generate Additional Capital for Affordable Homes
- Expand utilization of four percent low-income housing tax credits.
- Provide pre-development, acquisition, and working capital financing.
- Support housing bond issues.
- Ensure that housing finance agency reserves are used for affordable homes.
- Tap and foster employer interest in affordable homes for their workers.

Preserve and Recycle Resources for Affordable Homes
- Preserve affordable rental homes.
- Recycle downpayment assistance.
- Use shared equity mechanisms to create and preserve a housing stock affordable to families with a mix of incomes.

Empower Residents to Purchase and Retain Private Market Homes
- Expand home ownership education and counseling, including credit counseling.
- Help moderate income home owners avoid forecloser and equity loss.

manner designed to produce the maximum benefits for the minimum cost. Providing funds to help preserve existing affordable homes that might otherwise deteriorate due to neglect or be lost from the affordable inventory through gentrification is one particularly cost-effective strategy. Others include recycling down payment assistance by providing assistance in the form of loans rather than grants and the use of "shared equity" strategies that help preserve the buying power of government subsidies for homeownership in markets with rapidly appreciating home prices.

Empower residents to purchase and retain private-market homes. As a group, the policies described in the first five roles have focused overwhelmingly on expanding the supply of homes. But there is also a "demand" side to the equation. To the extent that families have adequate incomes and credit to afford private-market homes, the need for government intervention to provide affordable homes is greatly reduced. One demand-side strategy within the domain of housing policy is to invest in home ownership education and counseling that help families navigate the complicated home buying process and improve their credit and debt profile so they can access more private-market mortgage capital at reasonable rates. Given the rise of foreclosures in certain markets, it is important to marry this "pre-purchase" strategy with a "post-purchase" one designed to help existing home owners retain their home ownership status in the face of confusing mortgage products, rising interest rates, and rising property taxes.

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 Wynncrest 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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CHAPTER 4.4

Model Affordable Housing Density Bonus Ordinance

PRIMARY SMART GROWTH PRINCIPLE ADDRESSED:

- Create a range of housing choices

Many communities today are adopting inclusionary zoning ordinances with the intent of increasing the supply of affordable housing. These ordinances either require or encourage the provision of affordable housing in market-rate development, typically by the provision of density bonuses and other incentives. The ordinances include:

- Definitions, including those defining "affordable housing" and "low- and moderate-income households";
- Procedures for the review of affordable housing developments;
- A requirement that the developer of housing enter into development agreements that ensure that the affordable housing, whether for sale or for rent, remains affordable;
- Designation of an officer or body to review and approve applications for developments that include affordable housing; and
- Provisions for enforcement.

Princeton Community Housing

Figure 4.4.1. *The mandatory alternative for affordable housing requires some amount of affordable housing in every residential development. Griggs Farm in Princeton, New Jersey, contains half affordable housing and half market-rate housing.*

Some communities with such ordinances have made a political commitment to such housing, recognizing that, in some real estate markets, affordable housing would not be produced without governmental intervention. Others have adopted such ordinances to respond to state-established housing goals. In addition, such ordinances ensure that critical governmental service workers (e.g., teachers, firefighters, and police officers) can afford to live in communities where they work despite their low pay. Numerous monographs and studies have described the operation and success of such programs in both suburban areas and central cities. For a good overview, see Morris (2000), Ross (2003), and Brunick (2004a and 2004b).

The following model ordinance for affordable housing provides two alternatives: (1) a mandatory alternative in which affordable housing is required, in some manner, in all development that produces new residential units, either through new construction or through rehabilitation and conversion of existing units or commercial space; (2) an incentive-based approach in which a density bonus of one market-rate unit for each affordable unit is offered as of right. In either case, the affordable housing density bonus is offered for all types of residential construction. The model ordinance uses the U.S. Department of Housing and Urban Development definitions of low and moderate income to establish eligibility criteria for purchase or rental of affordable units.

An applicant for an affordable housing development would be required to submit an affordable housing development plan and enter into a development agreement with the local government. The development agreement would fix the responsibilities of the respective parties with regard to the provision of affordable housing. Under this model, affordable housing units need not only be those subsidized by the federal or state government. Rather, they can be subject to private deed restrictions to ensure they remain affordable for a period of time, typically for 30 years. In the case of for-sale affordable units, purchasers would have to be income-qualified, and appreciation of the dwelling unit would be calculated on the basis of certain listed factors to ensure that the unit remains affordable in the case of resale. In the case of for-rent affordable units, the development agreement would establish an income-qualification process to ensure that the affordable units are rented to eligible households. The model ordinance also describes the creation of an affordable housing trust fund that can be used for a variety of purposes, including waivers of permit and tap-in fees.

101. Purpose

The purposes of this ordinance are to:

(a) Require the construction of affordable housing [or payment of fees-in-lieu] as a portion of new development within the community;

[*or*]

(a) Create incentives for the provision of affordable housing as a portion of certain new development within the community;

(b) Implement the affordable housing goals, policies, and objectives contained in the comprehensive plan;

(c) Ensure the opportunity of affordable housing for employees of businesses that are located or will be located in the community; [and]

(d) Maintain a balanced community that provides housing for people of all income levels; and

(e) Implement planning for affordable housing as required by [cite to applicable state statutes].

102. Definitions

As used in this ordinance, the following words and terms shall have the meanings specified herein:

Affordable housing. Housing with a sales price or rental amount within the means of a household that may occupy moderate- and low-income housing. In

the case of dwelling units for sale, affordable means housing in which mortgage, amortization, taxes, insurance, and condominium or association fees, if any, constitute no more than [30] percent of such gross annual household income for a household of the size that may occupy the unit in question. In the case of dwelling units for rent, affordable means housing for which the rent and utilities constitute no more than [30] percent of such gross annual household income for a household of the size that may occupy the unit in question.

Affordable housing development. Housing subsidized by the federal or state government, or any housing development in which at least [20] percent of the housing units are affordable dwelling units.

Affordable housing development agreement. A written agreement between an applicant for a development and the [city or county] containing specific requirements to ensure the continuing affordability of housing included in the development.

Affordable housing development plan. A plan prepared by an applicant for an affordable housing development under this ordinance that outlines and specifies the development's compliance with the applicable requirements of this ordinance.

Affordable housing dwelling unit. A dwelling unit subject to covenants or restrictions requiring such dwelling units to be sold or rented at prices preserving them as affordable housing for a period of at least [30] years.

Affordable housing trust fund. A pool of money created by the [city or county] pursuant to Section 109 of this ordinance.

Affordable housing unit. A dwelling unit subsidized by the federal or state government or an affordable dwelling unit.

***Comment*:** *Note that an "Affordable Housing Unit" can be either federally or state subsidized or subject to covenants and deed restrictions that ensure its continued affordability.*

Conversion. A change of a residential rental development or a mixed use development that includes rental dwelling units to a development that contains only owner-occupied individual dwelling units, or a change of a development that contains owner-occupied individual units to a residential rental development or mixed use development.

Density bonus. An increase in the number of market-rate units permitted on a site, provided as an incentive for the construction of affordable housing pursuant to this ordinance.

Development. One or more dwelling units on a particular lot or contiguous lots including, without limitation, a planned unit development, site plan, or subdivision.

Lot. The basic development unit for determination of a parcel's area, width, depth, and other dimensional variations; or, a parcel of land whose boundaries have been established by some legal instrument, such as a recorded deed or recorded map, and that is recognized as a separate legal entity for purposes of transfer of title.

Low-income housing. According to the U.S. Department of Housing and Urban Development, housing that is affordable, for either home ownership or rental, and that is occupied, reserved, or marketed for occupancy by households with a gross household income that does not exceed 50 percent of the median gross household income for households of the same size within the [region or county] in which the housing is located.

Median gross household income. The median income level for the [region or county], as established and defined in the annual schedule published by the secretary of the U.S. Department of Housing and Urban Development, adjusted for household size.

Moderate-income housing. According to the U.S. Department of Housing and Urban Development, housing that is affordable, for either home ownership or rental, and that is occupied, reserved, or marketed for occupancy by households with a gross household income that is greater than 50 percent but does not exceed 80 percent of the median gross household income for households of the same size within the [region or county] in which the housing is located.

Renovation. A physical improvement that adds to the value of real property but that excludes painting, ordinary repairs, and normal maintenance.

103. Scope of Application; Density Bonus

[*Alternative 1: Mandatory Affordable Units*]

(1) All of the following developments that result in or contain five or more residential dwelling units shall include sufficient numbers of affordable housing units in order to constitute an affordable housing development as determined by the calculation in paragraph (2), below:

(a) New residential construction, regardless of the type of dwelling unit

(b) New mixed use development with a residential component

(c) Renovation of a multiple-family residential structure that increases the number of residential units from the number of units in the original structure

(d) Conversion of an existing single-family residential structure to a multiple-family residential structure

(e) Development that will change the use of an existing building from nonresidential to residential

(f) Development that includes the conversion of rental residential property to condominium property

Developments subject to this paragraph include projects undertaken in phases, stages, or otherwise developed in distinct sections.

(2) To calculate the minimum number of affordable housing units required in any development listed in paragraph (1) above, the total number of proposed units shall be multiplied by 20 percent. If the product includes a fraction, a fraction of 0.5 or more shall be rounded up to the next higher whole number, and a fraction of less than 0.5 shall be rounded down to the next lower whole number.

(3) Any development providing affordable housing pursuant to paragraph (1) above shall receive a density bonus of one market-rate unit for each affordable housing unit provided. All market-rate units shall be provided on-site, except that in a development undertaken in phases, stages, or otherwise developed in distinct sections, such units may be located in other phases, stages, or sections, subject to the terms of the affordable housing development plan.

(4) Any development containing four dwelling units or fewer shall comply with the requirement to include at least 20 percent of all units in a development as affordable housing by:

(a) Including one additional affordable housing dwelling unit in the development, which shall constitute a density bonus;

(b) Providing one affordable housing dwelling unit off-site; or

(c) Providing a cash-in-lieu payment to the [city's or county's] affordable housing trust fund proportional to the number of market-rate dwelling units proposed.

Comment: *Under (4)(c), the proportion of the in-lieu fee would be computed as follows. Assume an affordable unit in-lieu fee of $120,000. In a four-unit development, the fee would be four-fifths of the $120,000, or $96,000; in a three-unit development, the fee would be three-fifths, or $72,000, and so on.*

[*Alternative 2: Incentives for Affordable Units*]

Any affordable housing development or any development that otherwise includes one affordable housing dwelling unit for each four market-rate dwelling units shall receive a density bonus of one market-rate unit for each affordable housing dwelling unit provided on-site.

104. Cash Payment in Lieu of Housing Units

Comment: *This section would be required only under a mandatory affordable housing alternative.*

(1) The applicant may make a cash payment in lieu of constructing some or all of the required housing units only if the development is a single-family detached development that has no more than [10] dwelling units. In the case of an in-lieu payment, the applicant shall not be entitled to a density bonus.

(2) The [legislative body] shall establish the in-lieu per-unit cash payment on written recommendation by the [planning director or city or county manager] and adopt it as part of the [local government's] schedule of fees. The per-unit amount shall be based on an estimate of the actual cost of providing an affordable housing unit using actual construction-cost data from current developments within the [local government] and from adjoining jurisdictions.

At least once every three years, the [legislative body] shall, with the written recommendation of the [planning director or city or county manager], review the per-unit payment and amend the schedule of fees.

(3) All in-lieu cash payments received pursuant to this ordinance shall be deposited directly into the affordable housing trust fund established by Section 109 below.

(4) For the purposes of determining the total in-lieu payment, the per-unit amount established by the [legislative body] pursuant to paragraph (2) above shall be multiplied by 20 percent of the number of units proposed in the development. For the purposes of such calculation, if 20 percent of the number of proposed units results in a fraction, the fraction shall not be rounded up or down. If the cash payment is in lieu of providing one or more of the required units, the calculation shall be prorated as appropriate.

105. Application and Affordable Housing Development Plan

(1) For all developments [in which affordable housing is required to be provided *or* in which the applicant proposes to include affordable housing], the applicant shall complete and file an application on a form required by the [local government] with the [city or county department responsible for reviewing applications]. The application shall require, and the applicant shall provide, among other things, general information on the nature and the scope of the development as the [local government] may determine is necessary to properly evaluate the proposed development.

(2) As part of the application required under paragraph (1) above, the applicant shall provide to the [local government] an affordable housing development plan. The plan shall be subject to approval by the [local government] and shall be incorporated into the affordable housing development agreement pursuant to Section 106 below. An affordable housing development plan is not required for developments in which the affordable housing obligation is satisfied by a cash payment in lieu of construction of affordable housing units. The affordable housing development plan shall contain, at a minimum, the following information concerning the development:

(a) A general description of the development, including whether the development will contain units for rent or for sale;

(b) The total number of market-rate units and affordable housing units;

(c) The number of bedrooms in each market-rate unit and each affordable unit;

(d) The square footage of each market-rate unit and of each affordable unit measured from the interior walls of the unit and including heated and unheated areas;

(e) The location in the development of each market-rate and affordable housing unit;

(f) If construction of dwelling units is to be phased, a phasing plan stating the number of market-rate and affordable housing units in each phase;

(g) The estimated sale price or monthly rent of each market-rate unit and each affordable housing unit;

(h) Documentation and plans regarding the exterior appearances, materials, and finishes of the affordable housing development and each of its individual units; and

(i) A proposed marketing plan to promote the sale or rental of the affordable units within the development to eligible households.

106. Criteria for Location, Integration, Character of Affordable Housing Units

An affordable housing development shall comply with the following criteria:

(a) Affordable housing units in an affordable housing development shall be mixed with, and not clustered together or segregated in any way from, market-rate units.

(b) If the affordable housing development plan contains a phasing plan, the phasing plan shall provide for the development of affordable housing units concurrently with the market-rate units. No phasing plan shall provide that the affordable housing units built are the last units in an affordable housing development.

(c) The exterior appearance of affordable housing units in an affordable housing development shall be made similar to market-rate units by the

Alan Mallach

Figure 4.4.2. *Affordable housing units should not be differentiated from market rate units by exterior appearance; in the upscale suburban community of Cranbury, New Jersey, affordable multifamily units are designed to look like large, single-family homes.*

provision of exterior building materials and finishes substantially the same in type and quality.

Comment: *Some of the affordable housing ordinances reviewed by APA contained minimum-square-footage requirements for dwelling units or suggested that there be a mix of units with different numbers of bedrooms, especially to ensure that for-rent projects contain sufficient numbers of bedrooms for larger families. While minimum-square-footage requirements, especially for bedroom sizes, are customarily found in housing codes, rather than zoning codes, it is possible to amend this model to include such minimums.*

107. Affordable Housing Development Agreement

Comment: *A development agreement between the local government and the developer of the affordable housing project is necessary to officially record the commitments of both parties, thus eliminating ambiguity over what is required regarding maintaining the affordability of the units and establishing and monitoring the eligibility of those who purchase or rent them.*

(1) Prior to the issuance of a building permit for any units in an affordable housing development or any development in which an affordable unit is required, the applicant shall have entered into an affordable housing development agreement with the [city or county]. The development agreement shall set forth the commitments and obligations of the [city or county] and the applicant, including, as necessary, cash in-lieu payments, and shall incorporate, among other things, the affordable housing plan.

(2) The applicant shall execute any and all documents deemed necessary by the [city or county] in a form to be established by the [law director], including, without limitation, restrictive covenants, deed restrictions, and related instruments (including requirements for income qualification for tenants of for-rent units) to ensure the continued affordability of the affordable housing units in accordance with this ordinance.

(3) Restrictive covenants or deed restrictions required for affordable units shall specify that the title to the subject property shall be transferred only with prior written approval by the [city or county].

108. Enforcement of Affordable Housing Development Agreement; Affordability Controls

(1) The [planning director] shall promulgate rules as necessary to implement this ordinance. On an annual basis, the director shall publish or make available copies of the U.S. Department of Housing and Urban Development household income limits and rental limits applicable to affordable units within the local government's jurisdiction, and determine an inflation factor to establish a resale price of an affordable unit.

(2) The resale price of any affordable unit shall not exceed the purchase price paid by the owner of that unit with the following exceptions:

(a) Customary closing costs and costs of sale;

(b) Costs of real estate commissions paid by the seller if a licensed real estate salesperson is employed;

(c) Consideration of permanent capital improvements installed by the seller; or

(d) An inflation factor to be applied to the original sale price of a for-sale unit pursuant to rules established pursuant to paragraph (1) above.

(3) The applicant or his or her agent shall manage and operate affordable units and shall submit an annual report to the [city or county] identifying which units are affordable units in an affordable housing development, the monthly rent for each unit, vacancy information for each year for the prior year, monthly income for tenants of each affordable unit, and other information as required by the [city or county], while ensuring the privacy of the tenants. The annual report shall contain information sufficient to determine whether tenants of for-rent units qualify as low- or moderate-income households.

(4) For all sales of for-sale affordable housing units, the parties to the transaction shall execute and record such documentation as required by the affordable housing development agreement. Such documentation shall include the provisions of this ordinance and shall provide, at a minimum, each of the following:

(a) The affordable housing unit shall be sold to and occupied by eligible households for a period of 30 years from the date of the initial certificate of occupancy.

(b) The affordable housing unit shall be conveyed subject to restrictions that shall maintain the affordability of such affordable housing units for eligible households.

(5) In the case of for-rent affordable housing units, the owner of the affordable housing development shall execute and record such document as required by the affordable housing development agreement. Such documentation shall include the provisions of this ordinance and shall provide, at a minimum, each of the following:

(a) The affordable housing units shall be leased to and occupied by eligible households.

(b) The affordable housing units shall be leased at rent levels affordable to eligible households for a period of 30 years from the date of the initial certificate of occupancy.

(c) Subleasing of affordable housing units shall not be permitted without the express written consent of the [planning director].

109. Affordable Housing Trust Fund

Comment: *This section establishes a housing trust fund into which monies from cash in-lieu payments and other sources of revenues will be deposited. Because of the variation in how such funds could be established and the differences in state law, no model language is provided.*

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Zoning News

Affluent Community Sets Precedent with Inclusionary Zoning Ordinance

By Lynn M. Ross

The City of Highland Park, Illinois, recently approved a precedent-setting inclusionary zoning ordinance. Although nearby communities, including Evanston, Chicago, and Oak Park, have considered inclusionary housing, Highland Park will be first in the state to implement such regulations.

As is the case in many Chicago suburbs, this affluent North Shore community of 32,000 has experienced a rapid decline in affordable housing. Existing rental properties were either converted to condominiums or demolished. Newly constructed single-family homes regularly sell at or around $1 million, and existing homes have skyrocketed to a median sales price of over $400,000. The median household income for Highland Park residents is $157,861. However, 80 percent of the locally employed work in the retail and service sectors and have an average annual salary of less than $35,000.

Maintaining an economically diverse citizenry and encouraging the production of affordable housing have long been priorities of Highland Park city officials. In fact, the Housing Commission of Highland Park was created in 1973 specifically to address those priorities. In both the 1976 comprehensive plan and in the 1997 update, community goals for the provision of affordable housing are explicitly stated. In 1998, the city council directed the Housing Commission to prepare an affordable housing element, which resulted in the 2001 adoption of the *Affordable Housing Needs and Implementation Plan*. One of the key action steps recommended in the plan was the development of an inclusionary housing program within the relatively short timeframe of two years.

The new regulations for the program apply to all residential developments—new construction, renovations, conversions — that result in five or more units. Developments covered under the ordinance are required to set-aside 20 percent for affordable units. For example, in a 15-unit development the builder would set aside three units for the program. While the city prefers that affordable units be constructed on-site, developers of smaller single-family projects may opt out by making a cash payment of $100,000 per affordable unit to a housing trust fund. The payment represents the cost to the developer of making a market-rate unit affordable. Single-family units and condominiums that are on the market must retain permanent affordability. Rental units are required to retain affordability for 25 years.

The ordinance states that adequate dispersal of affordable units throughout covered developments is required. In addition, the exteriors of the affordable units are required to be similar to those of the market-rate units in the same development. It also states that ". . .external building materials and finishes shall be substantially the same in type and quality." Builders are given some leeway on the interior of the affordable units, but they must have the same bedroom mix and energy efficiency improvements as market-rate units. Affordable units are also required to meet minimum size requirements based on the number of bedrooms and unit type (attached or detached).

Builders of covered developments are required to submit an inclusionary housing plan during the permit process in order to illustrate that the project meets program requirements. Developers also must submit a phasing plan to ensure that affordable units are built in a timely manner. In exchange for participating in the program, developers become eligible for a variety of incentives, including fee waivers. Developers can also take advantage of a density bonus granting one additional market-rate unit per affordable unit provided.

One of the more interesting features of the Highland Park program is its target population. In keeping with traditional inclusionary zoning programs, the ordinance is intended to assist low- and moderate-income

individuals and families. What is unique about this program is that once the income eligibility requirement is met, priority will be given to families currently residing in the city and to families where the head of household, spouse, or domestic partner works for the Highland Park government. Priority then will be given to families where the head of household, spouse, or domestic partner works for any other employer located within the city. The adoption of both a resident and worker preference within an inclusionary program is precedent setting.

The ordinance, approved by a unanimous city council vote on August 25, amends the *1997 Highland Park Zoning Code*. A related resolution was also approved to allow for the cash-in-lieu payments. The new regulations take effect October 1, 2003.

ZONING News

AUGUST 2003

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Zoning Affordability:

The Challenges of Inclusionary Housing

By Lynn M. Ross

Fairfax County Department of Housing and Community Development

(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.

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.

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

Municipality	Year	Units Produced to Date	Applicability	Set-aside	Control Period	Density Bonus	Additional Developer Incentives	In-Lieu-of Payment/Off Developme
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 a offsite allowed developments units and less • Half of owne units; many to constructed of more flexibility rental units
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 in lieu based o design feasibil • Offsite not permitted
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 fee lieu allowed
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 allow on a case-by-ca basis • Fees in lieu allowed
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 an offsite allowed special circumstances
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 an offsite allowed in "exceptional cases" at the discretion of th director
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

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 FactsSer

Mary 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

Lynn Ross is a research associate for APA.

PROGRAMS

f fsite ent	Population (2000)	Median Household Income (2000)	Median Home Value (2000)	Median Rent (2000)
nd for four er be fsite; y for	94,673	$44,748	$304,700	$818
fees on ity	969,749	$81,050	$233,300	$998
es in	143,072	$72,057	$316,800	$1,272
ed ase	71,093	$51,174	$177,900	$769
d for	401,762	$48,305	$265,800	$776
d only l ne	873,341	$71,551	$221,800	$914
l	62,203	$40,392	$182,800	$707

vlet.

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.

ASK THE AUTHOR

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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

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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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Reports

BUSINESS AND PROFESSIONAL PEOPLE
FOR THE PUBLIC INTEREST

Opening the Door to Inclusionary Housing

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INTRODUCTION

Where we live has a significant effect on the quality of our lives. What community we live in affects our access to job opportunities, the quality of the schools our children attend, our use of public transportation, and the amount of involvement we have with our surrounding neighborhood. Many cities and municipalities around the country have started to see for themselves how rapidly rising real estate values can push out or keep out the working families and individuals that make their community diverse and robust: school teachers, police officers, and fire fighters, to name a few.

In an era of constricting state and federal resources, cities and municipalities have had to be creative in addressing the demand for affordable housing. Turning to their own local government policy tools, many cities and municipalities have used their zoning powers to create requirements and incentives to promote the development of affordable housing within the private market. The resulting Inclusionary Housing Programs have become models for other communities across the country.

What is Inclusionary Housing?

- Inclusionary Housing Programs promote the production of affordable housing by requiring residential developers to set aside a specified percentage of housing units in a proposed development and price them at a level that is affordable to low- and moderate-income households.

- The program can be either a mandatory requirement on developers to create a certain number of units, or a voluntary goal with built-in incentives to encourage developers to include affordable units in their developments. Inclusionary Housing Programs are usually citywide and apply to almost every new residential development.

The purpose of Inclusionary Housing Programs is to not only increase the supply of affordable housing in municipalities, but to disperse the affordable units throughout the community. Inclusionary Housing Programs enable low- and moderate-income families to live in homes indistinguishable from, and adjacent to, market-rate housing, and to live in communities with better access to employment and educational opportunities. Inclusionary Housing Programs produce benefits across communities:

- Businesses find it easier to hire and retain employees who are able to live within a reasonable commuting distance.

- Senior citizens have the choice to remain in the communities where they have raised their children.

- Younger parents and single-parent families can find homes in communities with good schools, parks and services.

The Basic Elements of an Inclusionary Housing Program

While Inclusionary Housing Programs vary from city to city and are created to meet the housing needs of each specific community, these programs share some common elements. The following are characteristics of nearly every Inclusionary Housing Program.

- **Set-Aside Requirement**
  The set-aside requirement is the percentage of units within a proposed development that a developer is required to price as affordable. Cities have set-aside requirements that range from as low as five percent to as high as 35%.
- **Developer Incentives**
  In exchange for setting aside a certain percentage of units as affordable, municipalities give developers certain benefits in order to compensate the developer for pricing some units below market rates. One of the most popular developer incentives used by municipalities is the density bonus, where the developer is permitted to construct additional market-rate units beyond what is allowed under the current zoning ordinance. Other incentives given are expedited permit processes, relaxed design standards, and waivers of certain municipal fees, all designed to decrease the developer's cost of construction.
- **Income Targeting**
  Municipalities must decide what income range they want to target the affordable units. Most municipalities target the units based upon a percentage of the area median income. For example, a municipality might decide that affordable units must be priced affordable for families with an income between 50 and 80% of the area median income.
- **Period of Affordability(Control Period)**
  Each municipality can decide how long the affordable units must be required to stay affordable—five years, 20 years, even for perpetuity. Certain legal mechanisms, such as deed restrictions and covenants, can be used to guarantee that the units stay affordable for that time period.
- **Monitoring and Enforcement**
  Once a program is in place, a municipality must have an administrative system to make sure that the program is being followed and that eligible families are being housed in the affordable units. Some municipalities use their local housing authority to administer the program; others use community development departments or even create a separate administrative agency.

Most municipalities also conduct a housing market study to determine the affordable housing needs of the community. The study should examine the demand for housing in the community, the availability and cost of land, the number and type of development projects that are already in the pipeline, the present development opportunities, and the possible effects of an Inclusionary Housing Program on future development.[1]

[1] Netter, Edith. "Inclusionary Zoning: Guidelines for Cities and Towns," prepared for the Massachusetts Housing Partnership Fund, September, 2000.

THE NUTS AND BOLTS: The Development Process

Is inclusionary housing voluntary or mandatory?
The current trend in inclusionary housing programs is toward mandatory inclusionary housing. Municipalities attracted to mandatory inclusionary housing are driven in large part by two forces (1) the effectiveness of mandatory programs at generating both low- and moderate-income housing, and (2) the uniform and predictable nature of a mandatory program.

What types of developments are covered?
The vast majority of Inclusionary Housing Programs apply to new construction. A municipality will also have to determine if it wants to treat for-sale and rental developments differently under an Inclusionary Housing Program. While some municipalities treat for-sale and rental units exactly the same under their programs, several municipalities have different periods of affordability for for-sale and rental units, different in-lieu of options, different density bonuses and other developer incentives, and different income targeting.

What is the threshold number of units to trigger the Inclusionary Housing Program?
Threshold unit numbers range across municipalities. Some trigger points are as low as five units in a development to as high as 50 unit subdivisions. In Boulder, Colorado, for example, the Inclusionary Housing Program applies to all developments, regardless of size. For developments of five units or more, the developer must set aside 20% of the units as affordable. For developments under five units, the developer can either set aside one unit as affordable on-site, one affordable unit off-site, dedicate land off-site for affordable housing development, or pay a cash in-lieu payment.

What is a "set-aside" and how high should it be?
A "set-aside" is the percentage of units in a development that an Inclusionary Housing Program requires the developer to price as affordable. For example, a "10% set-aside" means a developer is required to construct one affordable unit for every ten market-rate units. The percentage of housing units that a municipality decides to require a developer to set aside as affordable is a critical decision in developing an Inclusionary Housing Program. For example, the percentage set aside strongly affects the cost determinations of potential developments, negotiations over fee in-lieu payments and off-site development, the strength and type of developer incentives that may be offered, and the quantity of affordable units that will eventually be developed.

Should incentives be given to developers? If so, what kind?
The vast majority of municipalities provide some combination of incentives to developers as "carrots" to complement the "stick" of the Inclusionary Housing Program. Developer incentives have different benefits. The incentives can help soften the political opposition of developers to an Inclusionary Housing Program, especially if they address a specific concern of the developers. Incentives, such as relaxed development standards or decreased minimum lot size requirements, also ensure that an ordinance will not act as a disincentive to development. Some of these incentives include:

- Density bonuses
- Expedited permit processes
- Fee waivers
- Relaxed design standards and requirements

The table below outlines the different developer incentives used by 12 municipalities.

Developer Incentives in Various Municipalities

Boston, Massachusetts	--increased height or FAR[2] allowance
Boulder, Colorado	--waiver of development excise taxes
Cambridge, Massachusetts	--30% density bonus (15% market-rate, 15% affordable) --increased FAR for affordable units[3] --decreased minimum lot area requirements --no variances required to construct affordable units
Davis, California	--25% density bonus (California state law) --one-for-one density bonus for on-site for-sale affordable units --15% density bonus for affordable rental units --relaxed development standards
Denver, Colorado	--10% density bonus --cash subsidy --reduced parking requirement --expedited permit process
Fairfax County, Virginia	--20% density bonus for single-family units --10% density bonus for multi-family units
Irvine, California	--25% density bonus (California state law) --reduced parking requirement --reduced fees --reduced park land set-aside requirement --expedited permit processing
Longmont, Colorado	--negotiated density bonus --expedited development review process --relaxed development standards --fee waivers --marketing assistance
Montgomery County, Maryland	--up to 22% density bonus --fee waivers --decreased minimum lot area requirements --10% compatibility allowance
Newton, Massachusetts	--up to 20% density bonus
Sacramento, California	--25% density bonus (California state law) --expedited permit process for affordable units --fee waivers --relaxed design guidelines --priority for subsidies
Santa Fe, New Mexico	--11–16% density bonus --fee waivers --relaxed development standards

[2] FAR is defined as Floor Area Ratio, the ratio of gross floor area (the sum, in square feet, of the gross horizontal areas of all floors in a building) to the total area of the lot.

[3] By increasing the FAR for affordable units, developers are allowed to increase the density of the development.

When should the affordable units be constructed?
Under an Inclusionary Housing Program, the affordable set-aside units in a development should be constructed simultaneously with the market-rate units. By requiring simultaneous construction, not only will the affordable units be available for rental or purchase at the same time as market-rate units, but municipalities can prevent developers from abandoning projects prior to constructing the affordable units.

What should the affordable units look like?
In order to promote the goal of economic integration, most municipalities require that the affordable units be relatively similar in size and external appearance as the market-rate units. Similar look and size between the market-rate and affordable units not only avoids stigmatization of the households in the affordable units, it eases the fears of market-rate owners that the affordable units will affect property values.[4]

Should the affordable units be developed on or off-site?
If one of the goals of the Inclusionary Housing Program is not only to promote economic diversity within the municipality, but to create economically integrated neighborhoods, this goal can be attained only if the affordable housing is built throughout the market-rate development. This integration is achieved by requiring affordable units to be constructed on the same site as the market-rate units.

What is a Fee In-Lieu and how does it work?
A "fee in-lieu," also known as a "buyout," is when a municipality allows a developer to make a cash payment instead of constructing the required affordable units within the development. Usually these payments are deposited in an affordable housing trust fund or a similar instrument to fund the construction of other affordable units within the municipality.

Some municipalities like the flexibility of a fee in-lieu option because it allows municipalities to mold developments to the needs of the community. However, unless strictly administered, a significant amount of money in fees may be collected by a municipality, but affordable units may never be built, undermining the whole purpose of an Inclusionary Housing Program.[5] Municipalities that do have fee in-lieu options create them to address specific issues. For example, fee in-lieu options may be beneficial for extremely small developments, such as three-flats, where the inclusion of an affordable unit may not be economically feasible.[6] Many municipalities that have a fee in-lieu option only allow it in certain "exceptional circumstances," in order to make the use of this option more difficult and to provide a stronger incentive for the construction of affordable units within proposed developments.

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[4] See Siegel, Joyce. *The House Next Door.* Innovative Housing Institute, 1999, finding no significant difference in price trends between market-rate units in inclusionary developments and the market as a whole.
[5] Ray, Ann. "Inclusionary Housing: A Discussion of Policy Issues," prepared for the Alachua County Department of Planning and Development, Gainsville, Florida. June 15, 2001.
[6] Netter, Edith. "Inclusionary Zoning: Guidelines for Cities and Towns," prepared for the Massachusetts Housing Partnership Fund, September, 2000.

THE NUTS AND BOLTS: The Benefiting Families

At what income levels should affordable units be targeted?
Each municipality must decide who should be eligible to rent or own the set-aside affordable units. Some municipalities that want to target moderate-income households for its affordable units, such as municipal employees, have set higher income targeting for affordable units--such as 80% or 100% of area median income (AMI). Municipalities committed to creating affordable units for the poor have created lower income tiers, such as 50% of area median income and below.

How do municipalities structure the income targeting for affordable units?
Municipalities with Inclusionary Housing Programs have used two basic methods for setting the sale or rental price for the set-aside affordable units: income tiering and income averaging. The majority of municipalities with Inclusionary Housing Programs utilize the income tiering method. *Income tiering* is when a municipality creates categories of income levels for which affordable units must be appropriately priced (e.g. below 80% of the Area Median Income). *Income averaging* is when a municipality states that the affordable units in a development must be priced so that the **average** price of a unit is affordable to a certain predetermined income level (e.g. 65% of the Area Median Income).

How does a municipality determine if a household is income eligible for an affordable unit?
Once a municipality determines the qualifying household income levels for affordable units under an Inclusionary Housing Program—such as 0 to 50% of area median income (AMI) or incomes averaging 65% AMI—a process must be created to verify the incomes of families applying for the affordable units. Also, it must be determined who will collect income-eligibility information—the developer or the municipality. Most municipalities use the supporting regulations for their Inclusionary Housing Programs to outline the documentation required to determine income-eligibility for the affordable units.

How do municipalities set the initial prices for affordable units?
Virtually all municipalities price both the affordable for-sale and the rental units such that a household in the designated income category would spend no more than 30% of their monthly gross income towards the mortgage or rent, and other associated and designated costs. Municipalities differ in what additional costs to include in the calculation, and the formulas to create the final price. Monthly costs such as insurance and property taxes are included in the for-sale calculation for most municipalities. Rental prices for affordable units can take into account monthly costs such as utilities or insurance. Some municipalities also take into account one-time costs in for-sale units such as closing costs and brokerage fees.

How do municipalities determine the resale price of affordable units?
Most municipalities with Inclusionary Housing Programs calculate the resale price of an affordable unit through a formula that sets an affordable resale price plus the rate of inflation over time and other transaction costs. Some municipalities with Inclusionary Housing Programs not only want to keep units affordable for eligible buyers, but they also want the eligible sellers of the affordable units to be able to financially benefit from at least a portion of the market appreciation of their unit over the time they have lived there. Therefore, in calculating the resale price, these municipalities allow the sellers to retain some of the value of the appreciation of the unit.

THE NUTS AND BOLTS: The Long-term Impact of the Program

How long do the affordable units stay affordable?
The length of time a unit stays affordable under an Inclusionary Housing Program varies across the country. Some municipalities have affordability periods as short as ten years while others require the units to stay affordable in perpetuity. A significant lesson can be learned from municipalities that have had Inclusionary Housing Programs in place over many years: the longer the affordability period, the better.

How do you keep affordable units affordable over time?
The vast majority of inclusionary housing ordinances use some sort of resale restriction to preserve the affordability of the set-aside for-sale units over time. The purpose of these restrictions is to keep the units produced under the ordinance affordable for an extended period of time, thus promoting the goal of creating a continuing supply of affordable units in the housing market. Resale restrictions can take many forms: deed restrictions, covenants that run with the land, contractual agreements, and land trust arrangements. Another form of resale restriction used by municipalities to preserve the affordability of units is second mortgage liens on affordable units.

Who owns and manages the affordable rental units?
While some municipalities actually purchase or rent affordable units and then manage the affordable rental units themselves, others leave the ownership and the management of the affordable rental units to the developers and the property managers. Some of the larger and older Inclusionary Housing Programs are structured so that the municipal housing authority purchases or leases the affordable units, and then leases the units to eligible families, thus administering the program themselves. Other municipalities choose not to purchase and manage affordable units and instead require the developers, owners and landlords of the affordable units to report on a regular basis to the municipality the number of affordable units and the income levels of the owners or renters.

How are affordable units treated within a condominium complex?
Condominium complexes usually charge a monthly assessment fee to unit owners to cover the costs of common elements in the building, such as lighting in the hallways, trash pick-up, building insurance, etc. When determining the sale price for the affordable unit, the proposed condominium assessment fee is taken into account in the pricing formula, along with the other factors of pricing (mortgage payment, utilities, etc). One rationale for considering the condominium assessment fee in the pricing of the affordable unit is to avoid stigmatizing the households within the affordable units. Another issue with affordable units in condominium complexes is that of special assessments; advocates recommend that owners of affordable units not be required to pay for capital improvements they cannot afford.

What enforcement mechanisms do municipalities have under Inclusionary Housing Programs?
Municipalities take advantage of several enforcement mechanisms, ranging from revoking building permits or plan approvals to fines and legal action. Penalties can be either civil or criminal. Municipalities also use different methods when addressing the actions of developers versus landlords versus families attempting to become eligible for affordable units. Mechanisms such as the denial of building permits and site plan approval are popular "sticks" used to make sure developers are involved before the development even starts.

THE NUTS AND BOLTS: The Legal Issues

What is a "nexus study"?
A nexus study is an analysis done by a municipality to show the connection between the municipality's interest in providing affordable housing for its residents and the Inclusionary Housing Ordinance. Specifically, the nexus study provides data to show how the continued construction of market-rate housing creates a need for affordable housing in the municipality and how the Inclusionary Housing Ordinance will meet this need. A municipality will usually compile the study as part of its effort to implement the Ordinance, and will usually publish its findings in an attached memo or an appendix to the Ordinance or the comprehensive plan of the municipality. The nexus study should highlight the specific needs of the municipality and should take into account the diverse reasons why a community would want an Inclusionary Housing Ordinance, with emphasis on the particular goals the municipality wishes to achieve through the Ordinance itself.

What is a "taking" and what effect does it have on Inclusionary Housing?
The Fifth Amendment of the Constitution provides that no private property can be taken for public use without just compensation; this provision is known as the "Takings Clause." Opponents to Inclusionary Housing Programs sometimes argue that the application of an Inclusionary Zoning Ordinance can result in a regulatory taking.

Challenging the Takings Argument
There are three takings arguments that objectors to inclusionary zoning could use to challenge an Inclusionary Housing Program. The first argument focuses on economic viability of the land, specifically that the set-asides required under inclusionary zoning ordinances diminish the economic value of private land to such an extent that it constitutes a taking. The second argument is that the set-asides do not have the required "nexus" in that they do not substantially advance a legitimate state interest. The third argument focuses on the "rough proportionality" test in *Dolan*, arguing that the required set-aside is not roughly proportionate to the impact of the development. This claim reasons that the lack of affordable housing was an already existing problem and not a need created by the planned development.

What legal challenges have there been to Inclusionary Zoning Ordinances?
Since 1973, four different Inclusionary Zoning Ordinances have been challenged in different state courts – Virginia, New Jersey, Massachusetts, and California. Two of the cases held the statutes invalid, and two of the cases held the statutes valid. Each of these cases was strongly influenced by the particular state's enabling statute. A municipality should examine the law in its state and confer with legal counsel when drafting an Inclusionary Zoning Ordinance. First, the inclusion – or lack – of incentives or cost off-sets for developers who comply with the ordinance played an important part in the courts' determination of the validity of each ordinance. Second, these cases illustrate how important it is that a municipality demonstrate the connection between the need for affordable housing and the set-aside requirement; the findings of a municipality's "nexus study" can be used for this purpose. Finally, the cases show that it is important that an Inclusionary Zoning Ordinance be applied across the board, so that the burden of affordable housing is not shouldered by only one developer or only a group of developers.

THE CASE STUDIES: Boston, Massachusetts

Political Landscape and Policy

In response to critical changes in the housing market of Boston and pressure from community-based organizations and housing advocates, Mayor Thomas Menino signed an Executive Order in February 2000 that created an inclusionary development policy.

Highlights of the Program

Under Boston's policy, any residential project that contains 10 or more units and is either financed by the City of Boston or the Boston Redevelopment Authority (BRA), is to be developed on property owned by the City or the BRA, or requires zoning relief, triggers the requirements of the program. Due to the antiquity of the Boston Zoning Code, practically all residential development over nine units is covered by the Executive Order.

The Boston policy requires qualifying developments to set aside 10% of the units as affordable. While Boston does provide for off-site development of the affordable units, a developer who exercises this option must provide even more affordable units—five percent more for a total of 15% of the total number of market-rate units. Boston also allows for a fee in-lieu option, where the developer is required to make a payment to the BRA equal to 15% of the total number of market-rate units times an affordable housing cost factor. The affordable housing cost factor, initially established at $52,000, is derived from the average subsidy needed to develop a unit of affordable housing and is adjusted annually.[7] The funds collected from the fee in-lieu option are used to subsidize other affordable housing developments in Boston. Unlike the vast majority of other municipalities, Boston does not provide a density bonus for developers. However, developers do qualify for increased height and FAR allowances.

Boston has a higher income-target than most municipalities with an Inclusionary Housing Program. At least one-half of the set-aside units must be priced affordable for households making less than 80% of area median income (AMI) for the Boston MSA. The remaining set-aside units are priced affordable for households making between 80 and 120% of AMI, provided that on average these higher-tier units are affordable to households earning 100% of AMI.

The affordable units are required to remain affordable for at least 30 years, with the ability to extend the affordability period for an additional 20 years, for a total of 50 years.[8]

Impact

In the initial year of implementation of the Executive Order, eight privately financed housing developments – mostly luxury developments – fell under the requirements of the policy. As of January of 2002, developers have contracted to contribute over $4 million for affordable housing construction and over 177 affordable units have been constructed as a result of the policy, with many more in the pipeline.[9]

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[7] For the process for the annual determination, see City of Boston, Department of Neighborhood Development web site, http://cityofboston.gov/dnd.

[8] Kiely, Meg. "Boston's Policy Gives Developers Choice," *Inclusionary Zoning: Lessons Learned in Massachusetts*, NHC Affordable Housing Policy Review, Vl. 2, Issue 1, January, 2002.

THE CASE STUDIES: Boulder, Colorado

Political Landscape and Policy

During the 1980's and 1990's, Boulder, a city of almost 95,000, had a voluntary inclusionary housing ordinance in effect. In the late 1990's, in response to growing housing costs and the ineffectiveness of the voluntary program, Boulder began to explore other policy options to address the affordable housing issue through a public planning process.

Highlights of the Program

The Boulder Inclusionary Zoning Ordinance is extremely comprehensive. The Ordinance applies to all residential development in the city, regardless of type or number of units. If the proposed development has four or fewer units, the developer has to create either one affordable unit on-site, one affordable unit off-site, dedicate land for one affordable unit, or pay a cash in-lieu payment. The money generated from these cash in-lieu payments fund the Affordable Housing Fund for the city. If the developer proposes five or more units in the development, the developer must set aside 20% of the units as affordable.

If a developer wants to construct the affordable units off the site of the market-rate development and has met the above standard, the developer has three options: (1) the developer can take a unit that he or she already owns at another site and convert that unit to an affordable unit, (2) the developer may contribute a cash in-lieu payment to the Affordable Housing Fund, or (3) the developer may provide land that is equivalent in value to the cash in-lieu payment plus an additional 50% to cover transaction costs.

The only incentive Boulder provides developers is a waiver of development excise taxes. Boulder also has a minimum unit size.

In order to determine the "average" price for the affordable units in a development, the developer submits the following information to the City Manager for each affordable unit: the legal description; the total square footage; the number of bedrooms and bathrooms; the price; the targeted income; the estimated construction schedule; and the title commitment within 30 days of the restrictive covenant. Prices for the for-sale affordable units are calculated on a quarterly basis to take into account interest rate changes, while rental prices are calculated annually when HUD publishes new area median income (AMI) figures.

Boulder requires the following for each affordable unit: the record of a deed restriction or covenant against the property that includes the qualifying household income to purchase or rent the unit, the method to determine the maximum affordable price for the units, the amount the resale or rent price can increase each year, the affirmative marketing requirements, and the enforcement remedies.

Impact

The City Council drafted and enacted an Inclusionary Zoning Ordinance that went into effect in the year 2000. To date, this ordinance has led to the creation of 150 units of affordable housing, with a much larger number in the construction pipeline.[10]

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[9] Kiely, Meg. "Boston's Policy Gives Developers Choice," *Inclusionary Zoning: Lessons Learned in Massachusetts*, NHC Affordable Housing Policy Review, Vl. 2, Issue 1, January, 2002.
[10] City of Boulder, HHS Department, November, 2002.

THE CASE STUDIES: Cambridge, Massachusetts

Political Landscape and Policy

Housing prices have increased drastically in Cambridge over time, outpacing increases in income. Advocates and residents grew concerned that Cambridge would become a community of only wealthy homeowners, thus decreasing the diversity of this dynamic municipality. To address this growing affordability crisis, the Cambridge City Council created an Inclusionary Housing Program in 1999.

Highlights of the Program

The Cambridge program applies to developments that contain ten or more units. The city's ordinance mandates that for-sale developments above ten units automatically receive a 15 percent market-rate density bonus contingent upon a 15 percent affordable unit set-aside. The same 15% density bonus applies to rental developments. Cambridge's zoning ordinance applies only to new construction and conversions.

From the outset, Cambridge pressured developers to build affordable units on-site.[11] The ordinance generally does not permit off-site construction. Cambridge also provides a variety of other incentives besides the density bonus. The minimum lot area requirement may be decreased for affordable units in order to permit up to two additional units on the lot for every affordable unit, which significantly decreases land costs. Also, the FAR may be increased by up to 30% for the affordable units and the developer does not need to seek a variance for the construction of the affordable units.

Cambridge targets the affordable units to moderate-income families. The total income for a family seeking an affordable unit cannot exceed 80% of the area median income (AMI) for the Boston MSA. Cambridge uses the income-averaging method to determine income targets for affordable units within developments. In order to create an incentive for a range of incomes and to not have all the affordable units priced at the 80% AMI income limit, Cambridge requires that the price points for the affordable units within a development must be affordable, *on average*, to a household making 65% AMI. The affordable rental units that are constructed under the program are made affordable for 50 years, while the affordable for-sale units are permanently affordable through a deed restriction and a second mortgage on the property held by the city.

Impact

Developers have exerted little opposition to the ordinance, due to the desirability of development in Cambridge and the city's efforts to minimize developers' burden in complying with the ordinance. Some homeowners have identified the inclusion of affordable units in their development as an incentive for purchasing a unit, due to their commitment to living in a diverse community. The Cambridge program can be credited with the creation of 131 units of affordable housing as of 1999.[12]

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[11] Herzog, Roger and Darcy Jameson. "Cambridge Law Came After End of Rent Control," in *Inclusionary Zoning: Lessons Learned in Massachusetts*, NHC Affordable Housing Policy Review, Vl. 2, Issue 1, January, 2002.

[12] Telephone Interview with Chris Cotter, Cambridge Community Development Department, November, 2002.

THE CASE STUDIES: Davis, California

Political Landscape and Policy

Davis, California is a city of only 62,200 people. Its Inclusionary Housing Program was implemented in 1990 and has been very successful.

Highlights of the Program

The Davis Ordinance applies to both for-sale and rental developments with five or more units. The set-aside requirements in Davis are some of the highest percentages in the country.[13] Developers also have flexibility under the program, where they can meet the set-aside requirement through a combination of on-site development, off-site development, fee in-lieu payments, and land dedication.

In rental developments with 20 or more units, 35% of the units must be set aside as affordable. Income-tiering occurs in rental units as well, for that 35% is split between units priced for low-income households[14] and units priced for very-low-income households.[15] At least 25% of the market-rate units must be set aside to be priced affordable for low-income households, and at least 10% of the market-rate units must be set aside to be priced affordable for very-low-income households. In for-sale developments, 25% of the units must be set aside as affordable.

For rental developments, all affordable units must be constructed on-site. For-sale developments have a bit more flexibility. Also, fee in-lieu payments are allowed in Davis for developments that have under 30 units or if the developer can demonstrate a "unique hardship." Davis gives developers a one-for-one density bonus in for-sale developments. For rental developments, developers receive a 15% density bonus.

In determining a price for an affordable for-sale or rental unit, Davis uses specific formulas. The sale price of an affordable for-sale unit is determined by a mortgage payment that would be 30% of the gross monthly income of an eligible family, less insurance and property taxes, adjusted for family size. While there is not an affordability control period for affordable for-sale units, the rental units are permanently affordable, creating a permanent supply of affordable rental housing.

Impact

Davis has created **over 1500 units of affordable housing** since the implementation of its Inclusionary Housing Program in 1990. A combination of Davis' income-averaging scheme for the pricing of affordable units, plus the significant percentage of set-aside units required, has resulted in a significant percentage of affordable units priced for very-low-income households, a phenomenon not seen in other municipalities. Over 70% of the multi-family affordable units created in Davis are affordable to very-low-income households.[16]

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[13] California Coalition for Rural Housing Project, "Creating Affordable Communities: Inclusionary Housing Programs in California," November, 1994.
[14] Davis defines low income as 50-80% of area median income.
[15] Davis defines very-low income as 50% of area median income or below.
[16] California Coalition for Rural Housing Project, "Creating Affordable Communities: Inclusionary Housing Programs in California," November, 1994.

THE CASE STUDIES: Denver, Colorado

Political Landscape and Policy

Denver, a city of 554,636 people, has one of the newest Inclusionary Housing Programs in the country. The City Council passed the ordinance in August of 2002.[17] While regulations are yet to be drafted, and the program has not yet been implemented, the Ordinance itself is detailed in its requirements and incentives.

Highlights of the Program

Denver's new program covers not only new residential construction, but also existing buildings that are being substantially rehabilitated or remodeled to provide dwelling units. The program is mandatory for for-sale developments of 30 or more units but is voluntary for rental developments.

For-sale developments are required to set aside 10% of the units in the development to be priced affordable for households earning 80% of Area Median Income (AMI) or below. However, if the development is to be greater than three stories, has an elevator, and has over 60% of its parking as structured, the affordable units are to be priced affordable for households earning 95% of AMI or below. Rental developments can voluntarily set aside 10% of the units as affordable to households earning 65% AMI, less a utility allowance.

In addition to the usual incentives provided by municipalities, Denver also provides a cash subsidy to developers for the rental and for-sale affordable units. Denver also reduces the parking requirements up to 20% of the required zoned parking if the developer produces at least one additional affordable unit for every 10 parking spaces reduced. Denver provides an expedited review process, allowing developers to have their review by the Community Planning and Development Agency (CPDA) completed within 180 days. Finally, Denver provides a density bonus of 10% to developers.

Both the affordable for-sale and rental units are required to stay affordable for 15 years. The Denver Ordinance also creates a formula for the City to receive some of the market proceeds from the affordable unit, after the end of the control period, once the unit is sold on the open market.

Denver has several tools for enforcement for the various stages of development. If the developer violates the ordinance in any way, including failure to construct the required affordable units, the city may deny, suspend or revoke any and all building or occupancy permits. The city can also withhold subsequent building permits until the affordable units are built. If the ordinance is violated by the unauthorized sale of an affordable unit, the Director of the CPDA can enjoin or void any transfer of the affordable unit and require the owner to sell the unit to an eligible household.

Impact

The Denver program is responsible for 804 planned units.

[17] U.S. Census Bureau, 2000 Census.

THE CASE STUDIES: Fairfax County, Virginia

Political Landscape and Policy

Fairfax County is a wealthy, fast-growing county. As of 2000, Fairfax County was the wealthiest county in the country, with a median household income of almost $91,000. Fairfax County is also the most populous county in the Greater Washington, D.C. area, growing over 18% in the last ten years to over 900,000 people.[18]

Highlights of the Program

The program applies to new residential construction and condominium conversions that are developments of 50 units or more and are subject to a rezoning, special exemption, site plan, or subdivision plat application. However, multi-family buildings of four stories or more with at least one elevator are exempt from the Program.

In single-family detached or attached developments, the developer must reserve up to 12.5% of all units as affordable. In non-elevator multi-family developments or elevator multi-family developments under three stories, a developer must reserve up to 6.25% of all units as affordable. The affordable units are priced for households making 70% of area median income (AMI) or below. The period of affordability is 15 years for for-sale units and 20 years for rental units.

In multi-family developments, the affordable units must be comparable in bedroom number and amenities to the market-rate units. However, in single-family developments, the affordable units do not have to be comparable.

Developers can request a fee in-lieu of constructing the affordable units in "exceptional cases." In order to be granted a fee in-lieu, the developer must show that the construction of the affordable units on-site are physically and/or economically infeasible; the overall public benefit from not constructing the units outweighs the benefit of the developer actually constructing the affordable units on-site; and the fee in-lieu will still achieve the objective of providing a broad range of housing opportunities in Fairfax County.

Developers of single-family units may receive up to a 20% density bonus, while developers of multi-family units may receive up to a 10% density bonus. No other incentives are provided.

The sales price for the for-sale affordable units is set by the Fairfax County Executive. The prices are set such that the developer will not suffer an "economic loss" as a result of building the affordable units.

Impact

Fairfax County implemented its inclusionary housing program in 1990. Since that time, this program has produced 1,746 units of affordable housing with 2,000 more anticipated.

[18] U.S. Census Bureau, 2000 Census.

THE CASE STUDIES: Irvine, California

Political Landscape and Policy

In the spring of 2003, Irvine's voluntary inclusionary housing policy changed to a mandatory inclusionary housing ordinance. Irvine is one of the nation's largest planned urban communities with a population of over 143,000.[19] Since its adoption in the late 1970s, the City of Irvine had treated its Housing Element Goal, which outlined the voluntary inclusionary zoning policy, as a requirement. The Irvine Company, which owns 90% of the land in Irvine, was willing to meet the city's goal. According to Irvine City Planner Barry Curtis, the city ran into problems with compliance to voluntary inclusionary housing in recent years when developers other than the Irvine Company brought forth proposals.

Developers initiated the change to a mandatory inclusionary zoning ordinance to clarify the city's expectations and to establish uniform requirements across the board for all developers. A mandatory ordinance provides predictability in the zoning process and allows developers to determine a project's fiscal feasibility early in the development process.[20]

Highlights of the Program

Irvine's new mandatory inclusionary zoning ordinance requires proposals for residential developments of five or more units to set aside a minimum of 15% of the units as affordable. The ordinance targets 5% of the units for households earning less than 50% of the County Median Income (CMI); 5% of the units must be affordable for households earning 51-80% of the CMI; and 5% of the units must be affordable to households earning 80-120% of the CMI.[21] The tri-level income targeting is to promote economic integration within the development. Projects of less than five units are required to pay a fee in-lieu of providing affordable units.

In Irvine, the city provides the developer with a "menu" of options as cost offsets for meeting the city's affordable housing requirement. This menu includes both financial and processing incentives, such as modifications for setbacks or building heights, fee waivers, density bonuses, and expedited permit processing.[22]

Impact

From the late 1970s to the late 1990s, the voluntary program produced 3,400 units of low- and moderate-income housing under a 15% set-aside goal for affordable units in new developments. Although California passed a density bonus law in 1979 that required municipalities to provide developers of affordable housing a 25% density bonus, developers in Irvine have relied more on local incentives such as fee waivers and expedited permitting.

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19 U.S. Census Bureau, 2000 Census.

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

21 Chapter 2-3, Section 4, "Affordable Housing Requirements Defined," Affordable Housing Implementation Procedure for the City of Irvine.

22 Chapter 2-3, Section 6, "Role of Financial and Processing Incentives," Affordable Housing Implementation Procedure for the City of Irvine.

THE CASE STUDIES: Longmont, Colorado

Political Landscape and Policy

Longmont, a city of 71,093 people, experienced a tremendous population boom between 1960 and 1980. In the 1990s, the town began to grapple with the problems of an increasingly expensive housing market that was putting housing out of reach for long-time residents and workers at local facilities. In 1995, the City Council passed the Annexation Program, Longmont's inclusionary housing program.

Highlights of the Program

The Annexation Program requires that all for-sale and rental residential development on land annexed by the city, regardless of the number of units in the development, set aside 10% of the developed units as affordable. The Program also requires that all new for-sale residential development of five or more units anywhere in Longmont must set aside 10% of the developed units as affordable.

The affordable for-sale units must be priced affordable for households making 80% of Area Median Income (AMI) for the Boulder-Longmont area, adjusted for household size. The affordable rental units must be priced affordable for households making 60% AMI, adjusted for household size. Prices and rents are set by the Colorado Housing and Finance Authority. The affordable for-sale units must stay affordable for at least 10 years and the affordable rental units must stay affordable for at least 20 years. Longmont also has requirements for developers as to the type and phasing of the affordable units. The 10% set-aside requirement applies across housing types.

Longmont does allow for developers to construct the affordable units off the site of the market-rate units, but only on a case-by-case basis. The off-site location must be approved by City Council, and the affordable units must be constructed concurrently with the development of the market-rate units on the other site.

On a case-by-case basis, a developer may be able to pay a fee in-lieu of constructing the affordable units. The fee funds Longmont's Affordable Housing Fund. Longmont sets fee amounts based upon the type of market-rate units in the development.

If a developer constructs more than the required 10% set-aside for affordable units, or if the developer targets the units to households making lower than the 80% and 60% AMI income-targets, a developer may receive expedited development review processing; modified development standards (such as reduced lot size requirements, setback requirements, etc.); increased fee waivers; assistance in marketing; and a negotiated density bonus. However, the amount of each of these incentives is negotiated on a case-by-case basis.

Impact

To date, 545 affordable units have been created under the program, with 444 more units proposed.[23]

[23] Interview with Kathy Fedler, Affordable Housing Programs Manager & Community Development Block Grant Coordinator for Longmont, November, 2002.

THE CASE STUDIES: Montgomery County, Maryland

Political Landscape and Policy

Montgomery County, with more than 800,000 residents, is the most populous county in Maryland.[24] During the 1970s and 1980s, Montgomery County grew from a Washington, D.C. bedroom community to the region's second largest employment center. Now more than 60% of residents work and live in the County.

Highlights of the Program

Montgomery County's inclusionary housing program, implemented in 1974, applies to every new subdivision or high-rise with 50 or more housing units. At least 12.5% of the units in these developments must be set aside as affordable, but up to 15% can be set aside with a sliding-scale density bonus given as an incentive. The affordable units are targeted toward households making under 65% of area median income (AMI). The county's public housing authority, the Housing Opportunities Commission (HOC), has a right to purchase one-third of the affordable housing units.

Montgomery County has a sliding-scale density bonus connected to the set-aside in order to create an economic incentive for developers to construct more affordable units. For every tenth of a percentage point increase in the set-aside by the developer, the density bonus increases by one percent, to a maximum density bonus of 22%. Also, in order to promote the integration of the affordable units in the market-rate development, Montgomery County allows for a 10% compatibility allowance.

In "exceptional cases," a developer has three alternatives to constructing the affordable units on the site of the market-rate development: (1) the developer can either build significantly more affordable units at one or more other sites in the same or an adjoining planning area; (2) convey land in the same or adjoining area that is suitable in size, location, and physical condition and that can contain significantly more affordable units than the market-rate site; or (3) contribute to the Housing Initiative Fund an amount that will produce "significantly" more affordable units than would have been developed at the market-rate site.

The period of affordability is ten years for for-sale units and 20 years for rental units. However, if the home is sold before the 10-year control period is over, it begins anew with the new owner.

The price of for-sale units must be affordable to households making 65% of the area median income, including closing costs and brokerage fees. For rental units, the resulting rent must be affordable to households making 65% AMI and must include the cost of parking, but excludes utilities when they are paid by the tenant. Prices for the affordable units are set every five years and are increased in the intervening years by the Consumer Price Index.

Impact

Montgomery County's ordinance – the first major inclusionary zoning program in the country – is responsible for creating integrated neighborhoods by racial and ethnic group, and by income. Over 11,500 affordable units have been developed since the program was implemented.

[24] U.S. Census Bureau, 2000 Census.

THE CASE STUDIES: Newton, Massachusetts

Political Landscape and Policy

Newton is an upper-income suburb of Boston with a population of about 83,000 people.[25] Most of Newton has been built up and is of a single-family character. In fact, only 12.5% of the land in Newton is zoned as multi-family. However, at the same time, Newton is known for its liberal politics and began an informal inclusionary housing policy as early as the 1960s. This policy was formalized in an ordinance in 1977.[26]

Highlights of the Program

The Newton Ordinance applies to all residential new construction and rehab that requires a special permit. Under Newton's zoning ordinance, all developments with greater than two units require a special permit. The developer must set aside 25% of the units as affordable, and under this process, a developer can receive up to a 20% density bonus.

All the affordable units created under the program are rental units, regardless of whether or not the market-rate units are rental or for-sale. The affordable units are leased through the Newton Housing Authority, who then leases the units to eligible households. If the Housing Authority does not have adequate funds to lease the units, the Board of Aldermen for the City of Newton may purchase the affordable units or ask the developer to pay a fee. The affordable units are required to be equal in size, quality and characteristics to the market-rate units.

If a development is below 10 units, a developer can make a fee in-lieu payment. However, since the payment level is low and is not indexed to inflation, the fee is less burdensome than building the affordable units on-site. The result of this policy is many nine-units-and-under developments, and only $600,000 in funds over the 26 years of the program.[27]

The period of affordability is 40 years, and discussions are currently underway to expand that period of affordability again. To date, 50 of the 225 units created have aged out of the system and have been sold on the open market.

The affordable units created under the program are priced for households making at or below 50% of the area median income, one of the lowest income-targeting guidelines in the country. Newton used the Section 8/Housing Choice Voucher rent guidelines to determine rents for eligible families.

Impact

To date, the Newton Ordinance is responsible for the creation of 225 affordable units.

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[25] U.S. Census Bureau, 2000 Census.
[26] Engler, Robert. "An Inclusionary Housing Case Study: Newton, Massachusetts," *Inclusionary Zoning: Lessons Learned in Massachusetts*, NHC Affordable Housing Policy Review, vl. 2, Issue 1, January, 2002.
[27] Engler, Robert. "An Inclusionary Housing Case Study: Newton, Massachusetts," *Inclusionary Zoning: Lessons Learned in Massachusetts*, NHC Affordable Housing Policy Review, vl. 2, Issue 1, January, 2002.

THE CASE STUDIES: Sacramento, California

Political Landscape and Policy

Sacramento, a city of over 400,000, saw significant growth in the 90's in residential and commercial development on the outer-edges of the city.[28] While the commercial development created new jobs at a variety of income levels, the majority of the residential development was geared towards upper-income households. In order to provide housing affordable to low- and moderate-income families near or within these job-rich areas, the City Council explored an inclusionary housing program. Eventually, through the work of a broad coalition of affordable housing advocates, labor unions, neighborhood associations, environmental groups, minority communities, the faith community, and the Chamber of Commerce, the Sacramento City Council passed the Mixed-Income Housing Ordinance in the year 2000.

Highlights of the Program

The Mixed-Income Housing Ordinance applies to all residential development over nine units in "new growth areas," i.e. large undeveloped areas of land at the city's margins, newly annexed area, and large interior redevelopment project areas. The set-aside requirement under the Mixed-Income Housing Ordinance is 15% of all units. However, the affordable units can be single-family or multi-unit. This flexibility in the type of units helps developers determine a cost-effective way to construct the affordable units.[29]

The Mixed-Income Housing Ordinance specifically tiers the affordable units to create more units targeted to the lowest-income families. Of the affordable units that are produced within the development, one-third of the units must be priced for households making between 50 and 80% of area median income (AMI), while the remaining two-thirds of the units must be priced for households making less than 50% AMI. The affordable units must remain affordable for 30 years.

Sacramento provides a density bonus of 25%, which tracks the density bonus required under California state law.[30] Besides the density bonus, developers may also receive expedited permit processing for the affordable units, fee waivers, and relaxed design guidelines. Also, developers of inclusionary projects may apply and receive priority for all available subsidy funding, including funds from the city's housing trust fund, tax increment funds from redevelopment areas, and federal and state subsidies.

If the proposed development is an exclusively single-family development, the developer can dedicate land off-site or build the affordable units off-site only if there is insufficient land zoned multi-family at the development site. However, the alternative land or placement of the affordable units must be within the "new growth" area.

Impact

The Sacramento ordinance is responsible for the creation of 254 units, with hundreds more in the pipeline.

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[28] U.S. Census Bureau, 2000 Census.

[29] Interview with David Jones, Sacramento City Council Member, March, 2001.

[30] California state law entitles developers to a 25% density bonus if 20% or more of the total units of a housing development are affordable to lower income households or 10% are affordable to very low-income households.

THE CASE STUDIES: Santa Fe, New Mexico

Political Landscape and Policy

Santa Fe is a city of 62,000 people that is feeling the growth effect of being designated a hot tourist destination and retirement location.[31] The Santa Fe City Council adopted an inclusionary housing program, the Housing Opportunities Program (HOP) in 1998.

Highlights of the Program

While the HOP Program applies to all new developments, the level of obligation on the development to produce affordable units is based upon the "type" of development proposed. Santa Fe divides new developments into four categories: Types A, B, C, D.

"Type A" developments already have at least 75% of the proposed units priced affordable to households with incomes below 80% of Area Median Income (AMI). Type A developments have no mandatory set-aside requirements. The developments only have to verify that they sold the units to income-eligible households. Type A developments receive a 16% density bonus.

"Type B" developments have all of their units priced affordable to households with incomes under 120% AMI. Type B developments do not receive a density bonus.

"Type C" developments have one or more of the units priced for households with incomes greater than 120% AMI, and the average price of an affordable unit is for households that are less than 200% AMI. Type C developments must set aside 11% of the units in the development as affordable for households with incomes at or below 80% AMI. Type C developments will receive an 11% density bonus if they provide the required set-aside units and designate all affordable units for-sale.

"Type D" developments have an average price for a unit priced for households with incomes above 200% AMI. Type D developments must set aside 16% of the units in the development as affordable to incomes at or below 80% AMI. Type D developments receive a 16% density bonus if they provide the required set-aside units and have all affordable units for-sale.

The HOP Program only imposes affordable housing obligations on Type C and D developments. The HOP Program imposes a 30 year period of affordability. However, the effect of the affordability period is permanent because the 30-year period starts anew with each new occupant of the unit.

Developers receive either an 11% or a 16% density bonus, based upon the type of development. The density bonus is directly proportional to the set-aside requirement. Developers may also request waivers of Plan Submittal Fees for annexation, rezoning or subdivision fees, or building permit fees for the affordable units, though these are relatively minor fees. Developers may request variances to decrease their obligations to provide minimum setbacks, landscaping, and other similar requirements.

Impact

12 affordable units have been created, and another 100 units are in the pipeline.

[31] U.S. Census Bureau, 2000 Census.

GLOSSARY

Affordability Controls
Affordability controls are mechanisms used by municipalities to ensure that the for-sale or rental prices of the set-aside units stay affordable to households making a certain percentage of area median income. These controls remain in effect for a specified period of time. Examples of affordability controls include deed restrictions and covenants.

Affordable Housing
Under an Inclusionary Housing Program, a municipality determines what it considers to be "affordable housing." Most municipalities define affordable housing as units that are affordable to households earning a certain percentage of area median income. For example, a municipality may define "affordable housing" as units that are affordable to households making at or below 80% of the area median income (AMI).

Area Median Income (AMI)
The Area Median Income is the median income level for the Metropolitan Statistical Area (MSA) or the Primary Metropolitan Statistical Area (PMSA) as defined by the U.S. Department of Housing and Urban Development (HUD). HUD lists each U.S. municipality's MSA or PMSA in the Income Limit Area Definitions tables located at the HUD website at www.huduser.org.

Condominium Conversion
A condominium conversion is a change from a rental building with one owner to individually owned condominium units. Most municipalities have ordinances that directly address the steps a developer must take in order to change a building from a rental building to a condominium building.

Covenant
A covenant is an agreement or promise in writing that is recorded with the deed of the property. It applies to all future owners of the property or for a specified time period. Municipalities use covenants to enforce affordability controls. These covenants require that a property only be sold or rented to households that meet the income eligibility criteria of the municipality's Inclusionary Housing Program. Covenants should "run with the land," or follow each successive owner of the land.

Deed
A deed is a legal document signed by the seller of the property that transfers the title of the property from the seller to the buyer.

Deed Restriction
A deed restriction is a restriction or requirement that must be met by both the buyer *and* the seller before the property can be transferred to the buyer. Municipalities use deed restrictions to enforce affordability controls. These deed restrictions say that the property can only be rented or sold to households that meet the income eligibility criteria of the municipality's Inclusionary Housing Program.

Density Bonus
A density bonus is a developer incentive. It is the percentage of units that the municipality permits the developer to construct above and beyond what the zoning designation for that piece of property would otherwise allow.

Design Standard
Design standards are standards within a municipality's zoning code that control appearance. Examples of design standards include landscaping requirements, requirements for the distance a building must be from the street, and minimum side yard requirements.

Developer Incentives
Developer incentives, such as bonuses, waivers, and cash subsidies, are given to developers to either entice them to build affordable units within their development, or to compensate them for selling the set-aside units for below market price. Examples of developer incentives include density bonuses, expedited permit processes, fee waivers, and relaxed design standards and requirements.

Executive Order
An executive order is a directive by the mayor of a municipality made within the governing powers of that mayor. An executive order is in contrast to an ordinance that is voted on and passed by a city council or a similar legislative body, then signed into law by the mayor.

Expedited Permit Process
An expedited permit process allows a municipality to review and process a developer's application for building permits, zoning permits, etc., on a faster time schedule than usual. A municipality may offer an expedited permit process to a developer if that developer includes affordable units within their development.

Fee in-lieu
Municipalities may permit a developer to make a fee in-lieu, or cash payment, instead of constructing the required set-aside affordable units within the proposed development. Usually these payments are deposited in an affordable housing trust fund or a similar instrument to fund the construction of other affordable units within the municipality.

Fee Waiver
Municipalities may waive certain municipal fees for developers, such as fees for infrastructure development, municipal services, etc., in exchange for the construction of a certain number of affordable units as part of the proposed development.

Floor-to-Area Ratio (FAR)
The FAR is the ratio of gross floor area of a building (the sum, in square feet, of the gross horizontal areas of all floors of a building) to the total area of the lot. The FAR is used to measure the density of a project.

For-sale Unit
A for-sale unit is a unit that a household can purchase to own and be the sole name on the deed and title.

Gentrification
Gentrification occurs when a municipality, or an area of a municipality, experiences a sudden increase in construction and rehabilitation of residential units. This increase causes a substantial rise in housing prices and property values beyond normal market conditions. Gentrification can also result in the displacement of families currently living in the area due to a decrease in the amount of rental housing and an increase in home ownership.

Inclusionary Housing
Inclusionary housing programs require residential developers to set aside a certain percentage of the housing units in a proposed development to be priced affordable to low- and moderate-income households. An Inclusionary Housing Program can be either a mandatory requirement on developers to create a certain number of units, or a voluntary goal with built-in incentives to encourage developers to include affordable units in their developments.

Income-Averaging
Income-averaging is a tool used to determine affordable prices. Affordable units within a development are priced so that the average price of a unit is affordable to a certain income level; for example, to a household earning 65% of area median income.

Income-Targeting
The income target is the household income level targeted to benefit from the pricing of the affordable units. Most municipalities determine the income level target by looking at the needs and demands within the community. For example, a municipality may determine there is a need for housing for moderate-income level households, such as municipal employees, and thus income target the affordable units to households that make 80% of area median income.

Income-Tiering
Income-tiering occurs when a municipality creates *categories* of income levels for which affordable units must be appropriately priced. For example, a municipality may decide that the set-aside affordable units in a development must be priced affordable for households that earn between 50% and 80% of area median income.

Market Rate
The "market rate" is the price that a residential unit would sell for on the open real estate market without any subsidies or price restrictions.

Off-site Construction
Off-site construction is the construction of affordable units at a different physical location than the market-rate residential units in a proposed development.

On-site Construction
On-site construction is the construction of affordable units at the same physical location as the market-rate residential units in a proposed development.

Period of Affordability
The period of affordability is the length of time a set-aside affordable unit is required to be sold or rented at a price affordable to the income level determined by the municipality. Periods of affordability are usually outlined and enforced through affordability controls, such as deed restrictions or covenants.

Price Point
The price point is the price, or range of prices, a developer determines a unit would sell for on the open real estate market, based on design, location and size.

Rehab / Gut Rehab
Rehab or gut rehab occurs when a developer purchases an existing residential building and updates the interior aspects of the building, such as the electricity, water, lighting, and appliances, then resells the units in the building for a higher price.

Rental Unit
A rental unit is a unit owned by an entity and then leased to a household.

Resale Restriction
A resale restriction is a requirement on the title of the property that must be met before the property is sold to another owner. Resale restrictions are used as an affordability control tool; for example, the sale of a unit might be restricted unless the new owner meets certain requirements outlined in the municipality's Inclusionary Housing Program.

Right of First Refusal
The "right of first refusal" prevents the sale of a residential property until a designated party has been offered the opportunity to purchase the property first. For example, if a municipality has the right of first refusal, then an affordable unit cannot be sold unless the municipality has been offered the opportunity to purchase the property first.

Second Mortgage Lien
A second mortgage lien is a claim or charge on a property for payment on a debt that is second in priority to the first mortgage. Some municipalities use second mortgages to enforce affordability controls, so if the owner attempts to sell the affordable unit to ineligible households, the municipality can enforce the lien and recapture the property.

Set-Aside Requirement
A set-aside requirement in an Inclusionary Housing Program calls for a developer to "set aside" a percentage of units in a development to be priced as "affordable." For example, a "10% set-aside" means a developer is required to construct one affordable unit for every ten market-rate units within a proposed development.

Taking
A "taking" occurs when private property is taken away from a private owner for public use without just compensation from the public entity.

Variance
A variance is permission from the municipality to depart from the literal requirements of a zoning ordinance.

Zoning Ordinance
A zoning ordinance divides a municipality into districts and outlines a set of enforceable regulations regarding the structure, design, and use of buildings within each district.

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Examples of Inclusionary Housing Program Characteristics

	Affordable Units Produced	Threshold Number of Units	Set-aside Requirement	Control Period	"In lieu of" payment/ Off-site Development	Density Bonus	Other Developer Incentives
Boston, Massachusetts (2000)	177	Development 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	Increased height and FAR allowances
Boulder, Colorado (1999)	150	No threshold #--applicable to all residential development	20% low-income in for-sale and rental developments	Permanent affordability by deed restriction	Fee permitted for smaller developments; Half of for-sale units may be built off-site; Developers have flexibility with rental unit obligation	None	Waiver of development excise taxes
Davis, California (1990)	1502	Development exceeding 5 units	25% in for-sale developments 25-35% in rental developments	Permanent affordability for rental units No control period for for-sale units	In lieu of payment permitted for developments under 30 units, or other demonstration of "unique hardship"	One-for-one in for-sale developments 15% in rental developments	Relaxed development standards
Denver, Colorado (2002)	804 anticipated	For-sale exceeding 30 units. Voluntary for rental.	10% for-sale at 80% AMI or below. 10% rental at 65% AMI or below	15 years	Off-site development allowed. A fee in-lieu of 50% of the price per affordable unit is permissible.	10%	Cash subsidy, reduced parking requirements, expedited review process
Fairfax County, Virginia (1991)	1746 produced 2000 anticipated	Development exceeding 50 units	Sliding scale requirement--cannot exceed 12.5% for single family developments; 6.25% for multi-family	15 years for for-sale housing 20 years for rental housing PHA may purchase 1/3 of all units to keep affordable	May request approval to make in lieu of payment based on design infeasibility	20% for single family units 10% for multi-family units	None
Irvine, California (1978)	3415	No threshold #--applicable to all residential development	Mandatory; 15% of all units	30-40 years; determined case-by-case depending on financing	In lieu of payments and other alternatives to on-site units permissible	25%	None currently offered
Longmont, Colorado (1995)	450 of 934 anticipated	No threshold #	10% of all units in annexation areas	10 years for for-sale units 20 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
Montgomery County, Maryland (1974)	Over 11,500	Development exceeding 35 units	12.5-15% of all units Of these, PHA may purchase 33%, and qualified not-for-profits may purchase 7%	10 years for for-sale units 20 years for rental units	May request approval to make in lieu of payment or build affordable units off-site in contiguous planning area if low and moderate income residents will not be able to pay expected housing costs	Up to 22%	Waiver of water, sewer charge and impact fees. Offer 10% compatibility allowance and other incentives
Sacramento, California (2000)	465	Development exceeding 9 units	15% of all units. 1/3 priced affordable to households between 50-80% of AMI.	30 years	May build single-family development off-site if there is insufficient land zoned multi-family.	25%	Expedited permit process, fee waivers, relaxed design standards.
Santa Fe, New Mexico (1998)	12 produced 100 anticipated	No threshold #	11% in developments targeted over 120% AMI 16% in developments targeted over 200% AMI	30 years for all units; 30 year period starts over with each new occupant	Not permitted, except in case of economic hardship	Bonus equals set-aside %. 16% in developments targeted under 80% of AMI	Waiver of building fees

Regional Inclusionary Housing Initiative
Policy Tools Series

POLICY TOOL #1
DEVELOPING AN INCLUSIONARY ZONING ORDINANCE

Inclusionary housing programs can effectively create affordable housing in a variety of communities. The most common route to creating an inclusionary housing program is through a zoning ordinance that sets the specific requirements linking the development of new residential units with the creation of affordable housing units. This Policy Tool provides a brief overview of inclusionary housing and a detailed analysis of issues that need to be considered when developing an inclusionary zoning ordinance.

What is Inclusionary Housing? Inclusionary zoning requires residential developers to set aside a portion of the homes they build as affordable for low- and moderate-income families. In addition to increasing the supply of affordable housing, inclusionary zoning disperses affordable housing throughout the growth areas of a region. It enables low- and moderate- income families to live in homes indistinguishable from, and adjacent to, market-rate housing, and to live in communities with better access to employment and educational opportunities. Inclusionary zoning has been implemented in a variety of locales, ranging from older cities, such as Boston, to growing towns like Longmont, Colorado.

What are the benefits of Inclusionary Housing? Inclusionary housing programs help municipalities serve the needs of local employers, including business, schools, and the municipalities themselves:

- Businesses find it easier to hire and retain employees who are able to live within a reasonable commuting distance
- Municipal governments, school districts, fire and police departments benefit from employees living in the communities they serve because they are more invested in its future.

Inclusionary housing helps meet the needs of current and future residents:

- Senior citizens have the choice to remain in the communities where they have raised their children.
- Younger parents and single parent families can find homes in communities with good schools, parks and services.

Inclusionary housing is effective in a variety of housing market conditions:

- In gentrifying communities, the affordable units created through an inclusionary program can help offset the displacement of residents.
- In new and growing suburban communities, the inclusionary units can broadly disperse affordable housing needed by area jobholders and prevent exclusive communities.

ISSUES TO CONSIDER IN DEVELOPING AN INCLUSIONARY ZONING ORDINANCE

The development of an inclusionary zoning ordinance requires consideration of a range of variables. The local decision making process that tailors the ordinance to local conditions is critical. There is no perfect inclusionary zoning ordinance but rather a range of options that need to be viewed separately and then evaluated in terms of how they work together. The following report addresses each variable and options to be weighed in developing an effective ordinance. It should be used as a guidebook through these issues, not as a magic recipe.

#1 Findings

Many ordinances begin with findings about the need for affordable housing and planning study results. The section would summarize any planning process the community has undertaken, trends in housing stock, the need for and benefits of affordable housing, and the benefits anticipated by enactment of an inclusionary zoning ordinance. Findings sections are often lengthy. Below is language based on Sacramento's ordinance.

The City Council makes the following findings:

- It is a public purpose of the City to achieve a diverse and balanced community with housing available for households of all income levels. Economic diversity fosters social and environmental conditions that protect and enhance the social fabric of the City and are beneficial to the health, safety, and welfare of its residents.
- The City is experiencing an increasing shortage of housing affordable to low income households. New residential development does not provide housing opportunities for low income households due to the high cost of newly constructed housing in the City. As a result, low income families are *de facto* excluded from many neighborhoods, creating economic stratification detrimental to the public health, safety, and welfare. An increasing number of low income persons live in overcrowded or substandard housing and devote an overly large percentage of their income to pay for housing.
- The amount of land in the City available for residential development is limited by City General Plan policies and principles embodied in state law pertaining to general plans and annexation. Scarce remaining opportunities for affordable housing would be lost by the consumption of this remaining land for residential development without providing housing affordable to persons of all incomes.
- Therefore, to implement the City General Plan, to carry out the policies of state law, and to ensure the benefits of economic diversity to the residents of the City, it is essential that new residential development in the remaining new growth areas of the City contain housing opportunities to low income households, and that the City provide a regulatory and incentive framework which ensures development of an adequate supply and mix of new housing to meet the future housing needs of all income segments of the community. (Sacramento)

#2 Statement of Purpose

Purpose Statements typically are broad policy directives. The first purpose statement below is based on language from Fairfax County, Virginia's ordinance, and the second statement is based on language from Boulder, Colorado.

This program is established to assist in the provision of affordable housing for persons of low and moderate income. The program is designed to promote a full range of housing choices and to require the construction and continued existence of dwelling units affordable to households whose income is 115% or less than the median income for the Chicago Standard Metropolitan Statistical Area. (Fairfax County)

The purposes of this chapter are to:

(a) Implement the housing goals of the City Master Plan;
(b) Promote the construction of housing that is affordable to the community's workforce;
(c) Retain opportunities for people that work in the City to also live in the City;
(d) Maintain a balanced community that provides housing for people of all income levels; and
(e) Insure that housing options continue to be available for very low-income, low-income, and moderate-income residents, for special needs populations and for a significant proportion of those who both work and wish to live in the City. (Boulder)

#3 Definitions

The terms that follow are typical of those that are defined in inclusionary zoning ordinances:

Affordable Housing Price	Eligible Homebuyer	Median Income
Affordable Rent	Eligible Renter	Moderate Income
Affordable Dwelling Unit	Extreme Hardship	Permanently Affordable
Control Period	Housing Commission	Residential Project
Developer	Housing Trust Fund	Very Low Income
Development Agreement	Low Income	
Dwelling Unit	Market Unit	

#4 Threshold Size

Some ordinances limit their application to developments exceeding a threshold size. The first example below is based on language from Boulder's ordinance. In one sentence, it sets a threshold size, a set-aside percentage, and a period of affordability. The second is based on Burlington, Vermont's ordinance, and is notable because it applies to rehabilitation projects and the threshold level is applicable to development on more than a single site. Either example could be abbreviated to simply state what size developments trigger application of a set aside requirement.

Any development on a site larger than 10 acres or containing 50 or more dwelling units shall include at least twenty percent of the total number of dwelling units within the development as permanent affordable units. (Boulder)

The following residential development projects shall be Covered Projects and shall be subject to the requirements of this Article: all development of residential property larger than 10 acres or containing 50 or more dwelling units taking place through the construction of new structures or through the substantial rehabilitation of existing structures. Covered Projects shall include all development of residential property in excess of 10 acres or containing 50 or more dwelling units in the City by the same responsible party in any calendar year. (Burlington)

#5 Set-Aside—Targeted

A critical decision in developing a inclusionary zoning ordinance is the percentage of housing units required to be set aside as affordable. Often the set aside requirements are linked to specific income eligibility targets. Two examples of affordable housing set-asides targeted to specific income tiers follow below. The first example is based on language from Sacramento's ordinance. The second example, based on provisions of Davis, California's ordinance applicable to rental housing, also targets affordable housing to different income tiers, but varies the target percentages based on the size of the project. (Davis's numbers and percentages are used for ease of understanding.)

> In developments covered by this section, the inclusionary housing component shall consist of affordable units leased or sold as follows: x% to very low income families (earning no more than 50% of area median income); x% to low income (earning more than 50% of area median income but no more than 80% of area median income); and x% to moderate income families (earning more than 80% of area median income but no more than 115% of area median income). (Sacramento)

> A developer of multifamily rental developments containing 50 or more units shall provide at least 25% of the units affordable to low income households (earning more than 50% of area median income but no more than 80% of area median income) and at least 10% percent of the units affordable to very low income households (earning no more than 50% of area median income). A developer of multifamily rental developments containing between five and nineteen units, inclusive, shall provide 15% percent of the units to low income households and 10% percent to very low income households. (Davis)

#6 Housing Commission Right to Purchase

Some ordinances give the municipality and not-for-profit entities a right to purchase a fixed percentage of affordable units when they are first offered for sale or rent, so that they can keep the units permanently affordable. The first example below is based on language from Montgomery County, Maryland's ordinance, and the second is based on Fairfax County, Virginia's ordinance. (The percentages identified are Montgomery County's and Fairfax County's, respectively.)

> The Housing Commission and any other not-for-profit corporation designated by the Commission has the option to buy or lease, for its own programs or programs administered by it, up to 40% percent of all affordable units. The Commission may buy or lease up to 33%. Any other designated corporation may purchase or lease any affordable units in the first 33% that the Commission has not bought or leased, and the remainder of the 40%. Units purchased or leased under this option shall be assigned to very-low or low-income persons. The Commission shall establish standards for designating not-for-profit corporations which shall require the corporations to demonstrate their ability to operate and maintain affordable units satisfactorily on a long-term basis. (Montgomery County)

> The Housing Commission shall have an exclusive right to purchase up to one-third of the for sale affordable dwelling units within a development for a 90 day period beginning on the date of receipt of written notification from the developer advising the Housing Commission that a particular affordable dwelling unit is or will be completed and ready for purchase. The

remaining two thirds of the for sale affordable units within a development and any units which the Housing Commission does not elect to purchase shall be offered for sale exclusively for a 90 day period to persons who meet the income criteria established by the Housing Commission. After the expiration of 60 days of the 90 day period referenced above, the affordable dwelling units not sold shall be offered for sale to nonprofit housing groups, as designated by the Housing Commission, subject to the established affordable dwelling unit prices. (Fairfax County)

#7 Design and Building Requirements

Most ordinances require that affordable units be visually compatible with market rate units in the same development. The language below illustrates how this preference is drafted into an ordinance. The first example is based on Burlington's ordinance, the second is based on Sacramento's, and the third is based on Fairfax County's.

Affordable inclusionary units may differ from the market units in a Covered Project with regard to interior amenities and gross floor area, provided that:

(i) these differences, excluding differences related to size differentials, are not apparent in the general exterior appearance of the Project's units; and

(ii) these differences do not include insulation, windows, heating systems, and other improvements related to the energy efficiency of the Project's units;

(iii) the gross floor area of the affordable inclusionary units is not less than minimum requirements established by the City.

(Burlington)

Inclusionary Units shall be visually compatible with Market Rate Units. External Building materials and finishes shall be the same type and quality for Inclusionary Units as for Market Rate Units. Upon application by the developer to the City, the City may, to the maximum extent appropriate in light of project design elements as determined by the Planning Director, allow builders to finish out the interior of Inclusionary Units with less expensive finishes and appliances. (Sacramento)

The Housing Commission shall develop specifications for the prototype affordable housing products both for sale and rental, which shall be structured to make the units affordable to very low-, low-, and moderate-income households. All building plans for affordable dwelling units shall comply with such specifications. Any applicant or owner may voluntarily construct affordable dwelling units to a standard in excess of such specifications, but only 50 percent of the added cost for exterior architectural compatibility upgrades (such as brick facades, shutters, bay windows, etc.) and additional landscaping on the affordable dwelling unit shall be included within recoverable costs, up to a maximum of 2 percent of the sales price of the affordable dwelling unit, with the allowance for additional landscaping not to exceed one half of the above-noted 2 percent maximum. (Fairfax County)

#8 Timing of affordable unit construction

Most municipalities require affordable units to be built concurrently with market units to ensure integration of affordable and market units, and to prevent developers from abandoning projects prior to completing the affordable units. The first example below is from Burlington's ordinance, and the second is from Montgomery County's.

> Inclusionary units shall be made available for occupancy on approximately the same schedule as a Covered Project's market units, except that certificates of occupancy for the last ten percent of the market units shall be withheld until certificates of occupancy have been issued for all of the inclusionary units. A schedule setting forth the phasing of the total number of units in a Covered Project, along with a schedule setting forth the phasing of the required inclusionary units, shall be established prior to the issuance of a building permit for any development subject to the provisions of this Article. (Burlington)

> The affordable dwelling unit agreement must include the number, type, location, and plan for staging construction of all dwelling units and other such information as the Commission requires to determine the applicant's compliance with this Chapter. The affordable dwelling unit staging plan must be consistent with any applicable land use plan, subdivision, plan, or site plan. The staging plan included in the affordable dwelling unit agreement for all dwelling units must be sequenced so that:
>
> (1) no or few market rate dwelling units are built before any affordable units are built;
> (2) the pace of affordable unit production must reasonably coincide with the construction of market rate units; and
> (3) the last building built must not contain only affordable units.
>
> (Montgomery County)

#9 Fee In Lieu Formula

Some municipalities permit developers to pay a fee in lieu of developing hard affordable units. While some municipalities permit payment as a right, others require developers to show that constructing hard units would constitute a unique hardship, or that a fee would produce a greater benefit.[1] Because the fee paid is typically linked to the cost of producing a hard unit, fee in lieu formulas are necessarily dependent upon the local housing market. The first example below is based on the Boston Executive Order, and the second is based on Boulder's ordinance. The third and fourth examples, based on Montgomery County's and Brookline, Massachusetts' ordinances, respectively, authorize

[1] The following are summaries of the requirements that developers must satisfy to qualify to pay a fee in lieu of development in some municipalities:

> Montgomery County: Developers may pay a fee in lieu if they can show that a resident's housing expenses for a hard unit would exceed what a participant in the affordable housing program could pay. A developer must justify why fees for facilities and services should not reasonably be excluded or reduced for affordable unit occupants. A fee paid must be sufficient to produce more units or units that are more affordable to low and moderate income families. The County has allowed fees in lieu of development on only 11 occasions.

> Boulder: Fees in lieu of half of the required affordable units is permitted as a right. Developers may only pay fees in lieu of a larger percentage of units if a developer can demonstrate that payment of a fee would accomplish more benefit to the City than construction on site.

> Santa Fe: Developers may pay a fee in lieu of developing hard units if they show that as a direct consequence of the inclusionary zoning ordinance they (1) are deprived of all economically viable use of their property as a whole, or (2) would lose money on the development as a whole and can demonstrate to the Housing Opportunity Program administrator's satisfaction that the loss is an unavoidable consequence of the affordable housing requirement.

a fee in lieu of development and provide that procedures for implementing such a fee shall be determined by administrative regulations.

> Subject to the approval of the head of the relevant City agency, developers may also propose to achieve these affordable housing obligations by making a dollar contribution to an affordable housing fund calculated by multiplying the total number of dwelling units in the proposed residential development by 0.15, and by multiplying the result by the Affordable Housing Cost Factor, currently standing at $52,000. This Affordable Housing Cost Factor is defined as the average total public subsidy per new construction affordable housing unit permitted in the City for the previous calendar year, and will be adjusted annually on July 1 of each year in an amount commensurate with the cost of producing affordable housing. (Boston)

> Whenever this chapter permits a cash-in-lieu contribution as an alternative to the provision of a single permanently affordable housing unit, the cash-in-lieu contribution shall be as follows:
>
> (a) For each unrestricted detached dwelling unit, the cash-in-lieu contribution shall be the lesser of $13,200.00, or $55.00 multiplied by twenty percent of the total floor area of the unrestricted unit.[2]
>
> (b) For each unrestricted attached dwelling unit, the cash-in-lieu contribution shall be the lesser of $12,000.00, or $50.00 multiplied by twenty percent of the total floor area of the unrestricted unit
>
> The city manager is authorized to adjust the cash-in-lieu contribution on an annual basis to reflect changes in the median sale price for detached an attached housing, using information provided by County Assessor records for the City. (Boulder)

> In exceptional cases, instead of building the required number of affordable dwelling units, a developer may offer to contribute to the Housing Initiative Fund an amount that will produce significantly more affordable dwelling units. The procedures for considering and implementing contribution offers must be established by executive regulation. To implement an offer, the developer must sign an agreement with the Director of the Department of Housing and Community Development not later than a time provided in the regulations.
> (Montgomery County)

> At the option of the City, the requirements of this Section may be met through a cash payment to the City or its designee in an amount based on the guidelines adopted as per (f) below if the cash payment is found by the City, in its discretion, to be advantageous to the City in creating or preserving affordable housing. Cash contributions shall be used only for purposes of providing affordable housing for very low, low, and moderate income persons. . . .
> (f) The Planning Commission, in consultation with the Housing Commission and after public notice and hearing, shall adopt guidelines to aid in the interpretation and determination of the requirements of this Section. (Brookline)

#10 Cost Offsets

As is contemplated in the language below, some municipalities allow developers to request waivers from development standards such as set-back requirements, parking and landscaping requirements, or building material requirements, which reduce the cost of constructing affordable units. These cost offsets allow a municipality to decrease the

[2] The 20% floor area calculation reflects Boulder's 20% set-aside. The fee is based on 20% of the floor area of a development rather than 20% of the number of units. To determine the amount of the fee, Boulder conducted a study to determine the gap between the allowable sales price of an affordable unit and the actual cost to construct a unit; the gap figure was then lowered to a politically feasible amount.

burden placed on developers of affordable housing, and minimize the possibility of a developer showing that inclusionary zoning causes an excessive loss such that it effects a taking. The offsets in the examples below are incorporated into the ordinances, but municipalities may implement cost offsets in a variety of ways. For example, Brookline does not include offsets in its set-aside ordinance, but provides for an offset—a floor area bonus—in a separate ordinance. Though I am not aware of a municipality which has done so, an ordinance could generally authorize cost offsets which would be detailed in administrative regulations.[3] The first example below is based on the Santa Fe ordinance, and incorporates cost offsets mentioned in the Highland Park Affordable Housing Plan. The second is based on provisions in the Sacramento ordinance, and lists offsets from that ordinance to provide a sense of the range of offsets available.

> Impact fees, building permit fees, and tap-on fees (or portions thereof) may be waived for affordable units, subject to agreement of the entities receiving revenues from such fees. Any developer of affordable units may submit a request for a waiver of other City development standards, and the City shall respond within thirty calendar days of its receipt. The City shall approve a waiver if each of the following requirements are met:
>
> (a) The proposed waiver will make the housing more affordable. The developer must show how real costs will be reduced and how the savings will be passed on affordable home buyers or renters.
>
> (b) The proposed waiver does not compromise health, safety or welfare as determined by the City.
>
> (c) Vehicular and pedestrian circulation, storm drainage and utilities are provided for adequately.
>
> (Santa Fe)

> Upon application as provided herein, (1) the City shall make available to a Residential Project Developer a program of waiver, reduction or deferral of development fees, administrative and financing fees for affordable units; (2) the City may modify for affordable units, to the extent feasible, in light of the uses, design, and infrastructure needs of the Development Project, standards relating to road widths, curbs and gutters, parking, lot coverage, and minimum lot sizes; and (3) the City may, to the maximum extent appropriate in light of project design elements, allow builders to finish out the interior of affordable units with less expensive finishes and appliances. The Planning Director may issue Special Permits for Inclusionary Projects, and shall develop further procedures for streamlining and priority processing which relieve affordable units of permit processing requirements to the maximum extent feasible consistent with the public health, safety, and welfare. The developer may apply to the City's Housing Trust Fund for assistance in the financing and development of the affordable units in a development. (Sacramento)

#11 Density Bonus

A number of municipalities grant a density bonus—permission to develop more units than zoning would otherwise allow. Like other cost offsets, density bonuses may decrease the likely success of a taking claim by mitigating the economic impact of developing affordable housing. Though some communities tout density bonuses as the most effective cost offsets, others that do not desire denser development avoid them

[3] Such a provision could look much like the Montgomery County and Brookline provisions which authorize fees in lieu of development, but leave determination of a fee formula or amount to administrative regulations.

altogether. Some municipalities automatically award a density bonus to developers of affordable housing, while others permit smaller developments as of right without any set-aside, and set up larger developments with increased density as a desirable variance, to which an affordable housing set-aside is attached. The first example below, based on Cambridge, Massachusetts' density bonus, follows the former strategy, and permits developers to split the additional density between affordable and market rate units. The bonus is structured so that the developer's profit on additional market units directly offsets the loss on affordable units. The second example is based on Somerville, Massachusetts' ordinance, and follows the latter strategy. In Somerville, up to 7 units may be developed as of right, but development of 8 or more units requires a special permit and a concomitant obligation to set aside 12.5% of all units as affordable. Some argue that structuring a density bonus as a variance with an accompanying affordable housing set-aside may prevent the set-aside from being labeled an exaction—a land use decision conditioning approval of development on the dedication of property to public use. This is advantageous because exactions are more vulnerable to taking claims than zoning of general application.

> To facilitate the objectives of this Section, modifications to the dimensional requirements in any zoning district shall be permitted as of right for an Inclusionary Project, as set forth below:
>
> (i) The Floor Area Ratio[4] (FAR) normally permitted in the applicable zoning district for residential uses shall be increased by 40% percent, and at least 50% of the additional FAR should be allocated for the Affordable Units required by this Section. In a Mixed Use Development, the increased FAR permitted in this paragraph (i) may be applied to the entire lot; however, any gross floor area arising from such increased FAR shall be occupied by residential uses, exclusive of any hotel or motel use.
>
> (ii) The minimum lot area per dwelling unit normally required in the applicable zoning district shall be reduced by that amount necessary to permit up to 2 additional units on the lot for each 1 affordable unit required by this Section.[5]
>
> (Cambridge)

> The affordable housing requirements of this Article shall apply to all residential developments seeking special permits with site plan review to develop 8 or more dwelling units, whether new construction, substantial rehabilitation, or adaptive reuse. Developments shall not be segmented or phased in a manner to avoid compliance with these provisions. Developers providing more than 12.5% of the total units in the development as affordable units may apply for an additional density bonus under the terms of this Article. Bonuses may be awarded on the basis of a 2 to 1 ratio of market rate units to affordable housing units. For every additional unit provided beyond the 12.5.% required, 2 additional market rate units may be authorized.
>
> (Somerville)

[4] Floor Area Ratio is the ratio of gross floor area (the sum, in square feet, of the gross horizontal areas of all floors of a building) to the total area of the lot.

[5] Implementation of a density bonus under this section would work as follows: Assume a 50 unit development, and a 20% set-aside. Thus, 10 of the 50 units must be affordable. Paragraph (ii) of the density bonus above awards a bonus of two market units for every one affordable unit, so 70 units would be permitted. In addition, paragraph (i) would permit a 40% increase in the lot's FAR, which corresponds to the 40% increase in units over the original 50. If considered in reference to the base number of units, the developer essentially gets 10 additional market units to offset the 10 required affordable units.

#12 Marketing

Some ordinances and regulations provide extensive instructions for marketing to and certifying buyers and renters of affordable units. The first example below is based on Santa Fe's ordinance pertaining to for-sale units, and provides broad guidance with regard to marketing. The second example is based on Santa Fe detailed regulations which implement the ordinance.

A. Developers shall market affordable homes in accordance with the requirements set forth in the administrative procedures. There shall be an efficient matching of the incomes of prospective affordable unit buyers to specific affordable unit prices. There shall be a reasonable matching of the household sizes of prospective affordable unit buyers to the sizes and types of affordable units. Any marketing materials shall clearly state the policies of the affordable housing program with regard to the pricing of affordable units and buyer eligibility.
B. In marketing affordable units the City or seller shall give preference to individuals who are citizens of the City or are presently employed or under contract with an employer within the City.
C. The City or its agent shall maintain and make available lists of prospective affordable unit buyers who have passed preliminary prequalifications for financing. For affordable developments for which the city expects immediate effective demand to outstrip supply, the city or its agent, at the city's sole discretion, may establish and maintain an equitable process for allocating rights to purchase the homes. For developments other than those described above, the developer shall establish and maintain an equitable process of marketing homes, including waiting lists where demand exceeds supply.
D. Prior to executing a purchase contract for any affordable unit, the prospective affordable unit buyer shall be certified as meeting affordable housing program requirements by the City or its agent. The certification process shall be set forth in the administrative procedures. Developers and affordable unit buyers may execute only purchase agreements that are approved as to form by the City and include language provided by the City which shall require that an appropriate disclosure form be provided to and explained to the affordable unit buyer prior to execution of the contract. The disclosure form shall explain any deed restrictions, restrictive covenants and/or liens that are placed on the affordable unit to ensure long-term affordability. (Santa Fe ordinance)

Developers shall market affordable homes in accordance with the following requirements:

(1) There should be an efficient matching of the incomes of prospective affordable home buyers to specific home prices, as follows:

Household income of a buyer should not exceed the price level of a home by more than five percent. For example, only households with incomes at or below 65 percent of median income should be allowed to buy a home made affordable to households at 60 percent of median income. Thus, lower priced homes will be reserved for lower-income households. Alteration of this requirement may be based only on the unavailability of a qualified buyer with the required level of income for a period of 30 days or more after the home was legally ready for occupancy (assuming good-faith marketing efforts by the developer to find a qualified buyer).

(2) There should be reasonable matching of the household sizes of prospective affordable homebuyers to the sizes/types of affordable homes as follows:

3 BR, 1.5 BA ------- Minimum household size = 4
4 BR, 2 BA ------- Minimum household size = 5

The City shall not market or sell an affordable home to a household which is smaller than the household sizes indicated, unless the City approves in writing fewer persons based on the unavailability of a buyer of the proper household size for a period of 30 days or more after the home was legally ready for occupancy

(assuming good-faith marketing efforts by the developer to find a qualified buyer), or the demonstrated need of a household for a dwelling unit with more bedrooms than allowed in this section.

(3) In marketing affordable homes the City or seller shall give preferences to individuals who are citizens of the City or are presently employed or under contract with an employer within the City.

(4) Brochures, advertisements and other marketing materials shall clearly state the policies of the affordable housing program with regard to the pricing of affordable units and buyer eligibility.

(5) The City or its agent may maintain lists of prospective affordable homebuyers who have passed preliminary pre-qualifications for financing. Such lists will be made available to developers for marketing purposes.

(6) For developments for which the City expects immediate effective demand to outstrip supply, the City or its agent, at the City's sole discretion, may establish and maintain an equitable process for allocating rights to purchase the homes. For example, the City could require a lottery or use of a ranked waiting list.

(7) Prior to executing a purchase contract for any affordable home, a prospective buyer must be certified by the City or its agent as meeting program requirements. The certification must have been made within 90 calendar days immediately prior to the full execution of the purchase contract. Developers may sign purchase contracts with non-certified prospective buyers, conditional upon certification within 10 working days, if the developer is reasonably certain that he prospective buyer can be certified.

(8) Developers and buyers of affordable units may execute only purchase contracts that are approved for form by the City and include language provided by the City, which will require that an appropriate disclosure form be provided to and explained to the buyer prior to execution of the contract. The disclosure form will explain any deed restrictions, restrictive covenants, and/or liens that are placed on home to insure long-term affordability.

(Santa Fe regulations)

#13 Administration of Affordability Control

Original sales prices and rental rates for affordable units are typically regulated so that that a low- or moderate-income purchaser or renter need not spend more than 30% of his or her income on housing expenses. Most municipalities also impose price restrictions which keep units affordable when they pass to new occupants. The first three examples below deal with the resale pricing of for-sale affordable housing. The first example is from Highland Park's Central Avenue Senior Development, and the second is based on the Boulder and Montgomery County ordinances. The third example is based Santa Fe regulations, and provides only general guidance on the subject of resale pricing. The last example, based on language from the Sacramento and Santa Fe ordinances deals with maintaining affordability of rental units, and is less complicated.

The resale price shall be the lower of:

(a) the then-fair market value of the unit as determined by an appraisal performed by an appraiser approved by the Housing Commission taking into account applicable use and occupancy restrictions which may be binding on the unit; and

(b) the purchase price under the agreement by which the unit owner purchased the unit, increased by an amount equal to the lesser of (i) three percent (3%) for each year (or part thereof) after the closing date during which the unit owner resided in the unit and (ii)

inflation as measured by the Consumer Price Index (All Urban Consumers, All Cities average, residential real estate) for the period of time that the unit owner resided in the unit.

(Highland Park, IL)

The resale price of any permanently affordable housing unit shall not exceed the purchase price paid by the seller of that unit plus:

(a) A percentage of the unit's original purchase price equal to the increase in the cost of living since the unit was purchased by the seller, as determined by the Consumer Price Index;
(b) The fair market value of improvements made to the unit by the seller[6];
(c) Customary closing costs and costs of sale; and
(d) Costs of a real estate commission paid by the seller if a licensed real estate agent is employed.

(Boulder/Montgomery County)

The City requires that developers impose resale controls which are designed to achieve the following purposes:

(a) reducing the potential for windfall profits by an owner-occupant;
(b) recapturing any such windfall profits for use in an approved housing trust fund;
(c) providing incentives for owner-occupants to resell to lower-income households, which are most in need of affordable housing;
(d) maintaining the affordability of affordable units to subsequent buyers to a reasonable extent, while considering the sellers' rights to reasonable returns on equity; and
(e) preventing speculative profits on affordable units by renting them to another household.

(Santa Fe)

The owner of affordable rental units shall be responsible for certifying the income of eligible tenants to the Housing Commission at the time of initial rental and annually thereafter. Rental rates shall be in accordance with the formula set forth in the administrative procedures.[7] This requirement shall be made applicable to successors in title, if any, by means of a deed restriction. (Santa Fe/Sacramento)

Municipalities typically maintain affordability through deed restrictions or covenants recorded against the property. These affordability controls often specify that a unit must be sold or rented to an income eligible buyer at an affordable price; others give the municipality a right of first refusal to purchase affordable units. For a discussion of the validity and permissible duration of such affordability controls, please see the attached memorandum from BPI intern, Rebecca Onie.

[6] In evaluating whether to allow sellers to recoup the value of capital investments in their homes, municipalities weigh a desire to provide sellers with some of the benefits of ownership against a desire to keep the sale price of the unit affordable. Some ordinances, such as Montgomery County's, Fairfax County's, and Santa Fe's do not impose restrictions on the capital expenditures homeowners may recover upon the sale of their homes. In contrast, Davis, California, in its lone for-sale development with resale restrictions, does not allow homeowners to recoup capital investments. (Davis is rethinking this issue with regard to future developments.) Boulder requires homeowners to obtain city approval for capital improvements, and limits recovery of expenditures to approximately $1000 for each year the homeowner has owned the property. (Boulder's 2001 Homeownership Capital Improvements Policy is attached.)

[7] Both ordinances target rental rates at 30% of a family's income less an allowance for tenant-paid utilities.

#14 Other Issues for Consideration

Land Dedication

Another possibility that may interest some municipalitites is allowing a developer, at the City's discretion, the option to satisfy some of his affordable housing obligation via dedication of land to the City's contemplated land trust. For example, under Boulder's ordinance developers may satisfy their affordable housing obligation either by:

(1) conveying land to the City of equivalent value to the fee-in-lieu contribution that would otherwise be required, plus an additional fifty percent, to cover costs associated with holding, developing, improving, or conveying the land; or

(2) conveying land to the City that is of equivalent value to land upon which the required affordable units would otherwise have been constructed. Such land must be zoned to allow construction of at least as many affordable units as would otherwise have been required.

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HOUSING POLICY BRIEF

The Effects of Inclusionary Zoning on Local Housing Markets: Lessons from the San Francisco, Washington DC and Suburban Boston Areas

Inclusionary zoning (IZ) is an affordable housing tool that links the production of affordable housing to the production of market-rate housing. IZ policies either require or encourage new residential developments to make a certain percentage of the housing units affordable to low- or moderate-income residents. In exchange, many IZ programs provide cost offsets to developers, such as density bonuses that allow the developer to build more units than conventional zoning would allow, or fast-track permitting that allows developers to build more quickly.

There is tremendous diversity in the structure and goals of inclusionary zoning programs throughout the country: some IZ programs are voluntary while others are mandatory; they are triggered by different sizes and types of market-rate developments; they target the affordable units to different income levels; they have different rules about whether the affordable units must be located within the market-rate development or may be located off-site; and they impose the affordability restriction for different lengths of time.

Since the first program was established in 1972, the number of jurisdictions that have adopted inclusionary zoning policies has grown steadily, with a significant number of jurisdictions adopting programs in the last decade. While it is difficult to identify an exact number, well over 300 jurisdictions – cities, towns and counties – have an inclusionary zoning ordinance on the books.

Arguments For and Against IZ

Despite, or perhaps because of, the rapid spread of inclusionary zoning across the nation, IZ programs often generate significant controversy. Among supporters, IZ is heralded as an important evolution in affordable housing policy because it requires less direct public subsidy than traditional affordable housing programs, and therefore is considered more fiscally sustainable. Proponents also argue that IZ programs that require affordable and market-rate units to be located in the same development promote economic and racial integration.[1] While proponents recognize that developers may lose money on the affordable units, they believe that developers can recoup lost profits through incentives such as density bonuses.

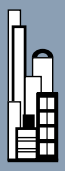
Critics, on the other hand, argue that IZ programs, particularly mandatory ones, will constrict development of market-rate housing by causing developers to build instead in jurisdictions that don't require developers to sell or rent a portion of the units at below-market levels. By constraining the supply of housing, the argument follows, IZ programs will cause the prices of market-rate housing in the jurisdiction to rise, ultimately reducing rather than increasing affordability. Opponents also argue that it is unfair to place the entire burden of providing affordable units on the developers and purchasers of new market-rate housing units; to the extent the community believes affordable housing is an important good, the whole community ought to pay for it.

What Do We Know About the Impacts of IZ Programs?

In spite of its popularity among housing advocates and policymakers and steady opposition from critics, we know relatively little about the effects of inclusionary zoning policies. At the center of the debate over IZ are two empirical questions. First, have IZ programs had the effect of restricting the supply of market-rate housing and increasing its costs in the jurisdictions adopting IZ? Second, have IZ programs been successful at producing affordable units? Unfortunately, few researchers have tried to answer these questions, and many of the studies that have been completed suffer from significant data and methodological limitations. It is difficult to obtain accurate data on the

Poinsettia Station, Carlsbad, CA, BRIDGE Housing.

[1] Not all IZ programs require the affordable units to be produced on-site; some allow developers to build the affordable units elsewhere in the community, and some allow developers to pay an in-lieu fee that the jurisdiction can use to build affordable housing wherever it chooses.



adoption and characteristics of inclusionary zoning programs across jurisdictions and over time, and to track the number of units produced under these programs.

Recognizing the need for objective, rigorous analysis to help inform the academic and policy debate about IZ, the Center for Housing Policy asked NYU's Furman Center for Real Estate and Urban Policy to conduct an in-depth, longitudinal analysis of the effects of IZ.[2] Our research addresses three primary questions:

1) **What kinds of jurisdictions have adopted IZ?**

2) **How much affordable housing has been produced in different IZ programs, and what factors have influenced production levels?**

3) **What effects has IZ had on the price and production of market-rate housing?**

To answer these questions, we selected three metropolitan areas in which IZ programs are fairly prevalent and well-documented, and for which the data about housing supply and prices are available: the San Francisco area, suburban Boston,[3] and the Washington D.C. region. Due to data constraints, we were not able to completely and definitively answer each of these questions for each of the regions we studied. In particular, the small number of jurisdictions in the D.C. area prevented us from conducting statistical analysis on that region. Despite these challenges, our findings significantly advance the current understanding of the effects of IZ policies and have important implications that advocates, critics, and jurisdictions considering adopting an IZ program should bear in mind.

Variation Among IZ Programs and Regions

The design of inclusionary zoning programs varies tremendously across jurisdictions. This variation reflects a number of key differences among the jurisdictions themselves, including the composition of their population and housing stock and their political goals. For example, some jurisdictions place a higher priority on achieving economic integration through IZ while others are more concerned with maximizing the number of affordable housing units produced. The diversity also reflects differences in the larger regulatory framework in which the jurisdictions work: some states allow jurisdictions a great deal of freedom to enact new forms of land use legislation, while others are more restrictive of local controls.

The IZ programs in our three study areas reflect this diversity. Table A provides an overview of some key elements of the IZ programs in these regions. Please note that these statistics reflect the data we used in our study; more recent data may now be available from each region. Because IZ programs may take some time to have an impact, we were not able to evaluate the impacts of the most recently adopted IZ policies.

Table A illustrates significant differences among the programs in our study areas. IZ programs in the San Francisco area were established earlier, are more likely to be mandatory, and are more broadly applicable to different types and sizes of developments than the programs in suburban Boston.

[2] This policy brief presents a summary of our findings; the entire study can be found at: http://furmancenter.nyu.edu/publications/index.html or http://www.nhc.org/housing/iz.

[3] While the City of Boston has an IZ program, it was not included in the database that forms the basis of our study because Boston has different authority over land use regulations than other jurisdictions in the state.

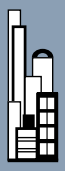


Table A: Variation Among IZ Programs in Our Three Study Areas

	San Francisco Area (as of 2004)	Suburban Boston (as of 2004)	Washington D.C. Area (as of 2000)
Prevalence of IZ (# of all jurisdictions adopting)	7/10 counties 48/104 cities/towns[4]	99/187 cities/towns	5/23 counties
Year program was adopted:			
Median	1992	2001	1992
Range	1973-2004	1972-2004	1974-1996
% of programs that are mandatory	93%	58%	80%
Breadth of applicability to different types and sizes of developments	Broad	Narrow	Fairly Broad
% of programs providing density bonus	67%	71%	100%
% of programs allowing developers to pay fees in lieu of building units	86%	38%	100%
% of units that must be affordable			
Median	15%	10%	8.13%
Range	5-25%	5-60%	6.25-15%
Incomes targeted for affordable units	Very low to moderate	Low to moderate	Low to moderate
How long units must remain affordable	The median length of affordability is 45 yrs.	One-third of the programs require permanent afford-ability; half don't specify.	For owners, range is from 5-15 years; for renters range is 5-20.

Source: This table combines data from various sources, including: Calavita & Grimes (1998); Brown (2001); CCRH and NPH (2003); Fox & Rose (2003); Vandell (2003), adapted from Rusk (2003); Pioneer Institute for Public Policy and the Rappaport Institute for Greater Boston Local Housing Regulation Database (2004); CCRH Inclusionary Housing Policy Database (2007); NPH (2007); and a supplemental telephone survey of the San Francisco and D.C. areas, conducted by the Furman Center in June, 2007. Because each of these data sources used a different survey methodology and because the content of IZ programs varies greatly, the data across jurisdictions are not always comparable. Our analysis excludes newer programs that have not existed long enough to produce measurable results. Data for the San Francisco region and suburban Boston cover programs enacted through 2004, and data for the Washington D.C. area include programs adopted prior to 2000. See reference list for full citations.

[4] In order to assess the impacts of IZ on housing prices and permits, our study used data on IZ programs in the San Francisco area as of 2004. According to NPH (2007), there are now 77 jurisdictions in the San Francisco area with IZ.

Programs in the San Francisco area also are more likely to allow developers to satisfy requirements by paying in-lieu fees rather than building the units themselves. In Washington D.C., most programs are mandatory, but the requirements are limited only to larger developments, rather than the broader set of developments subject to IZ in the San Francisco area. In the D.C. region, programs require the units to remain affordable for less time than in either of the other study areas. In addition to this variation across regions, there is also significant variation in the structure of IZ programs within each region.

Table A does not reveal the complicated regulatory structure within which each of these regions operate, which may affect the likelihood of adoption of IZ, the form in which IZ takes, and the ultimate impacts of an IZ policy. State or regional regulatory regimes may enhance or impede the formation and success of local IZ programs in a number of ways. For example, California grants local governments broad authority over land use decisions but also has a number of statewide affordable housing policies. Similarly,

Palmer's Dock, Brooklyn, NY, L&M Equity Participants and Dunn Development Corp. Photo: Courtney Wolf.

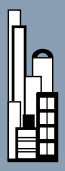
Massachusetts has a strong tradition of local self-governance, and towns and cities (but not counties) have a tremendous amount of authority over land use decisions. The Massachusetts state law known as Chapter 40B, which requires cities to provide expedited permitting and other benefits to developments that set aside a specified percentage of affordable units, complicates the incentives a jurisdiction has to adopt IZ. Some municipalities may adopt IZ to help them respond to 40B, while others may find 40B to be a sufficient mechanism for producing affordable housing on its own, and accordingly think they do not need an IZ program. Our study was unable to unpack these complicated incentives and constraints, but it is worth noting that state regulations play a significant and somewhat unpredictable role in jurisdictions' decisions to adopt IZ.

Which Jurisdictions Adopt IZ and How Does it Affect Their Housing Markets?

What kinds of jurisdictions adopt IZ?

Our analysis of jurisdictions in the San Francisco area and suburban Boston helps us understand some of the characteristics that predict whether a jurisdiction is likely to adopt an IZ program.[5] We find that larger, more affluent jurisdictions are more likely to adopt IZ. Those near other jurisdictions with IZ also are more likely to adopt IZ. For example, in suburban Boston, we find that the probability of adopting an IZ program increases as the number of other jurisdictions in the same county with IZ

[5] Because of the small number of jurisdictions in the Washington D.C. area with IZ, we were unable to perform a regression analysis for this region. Accordingly, most of the findings summarized in this brief are based only on data from the San Francisco and suburban Boston areas. However, the full report contains detailed information on IZ programs in the Washington D.C. area, as well as findings on IZ production and other observations on the effects of IZ in this area.



increases. This makes sense; if neighboring jurisdictions already have an IZ program in place, it may be less likely that IZ will scare development to other locations. It also may indicate that jurisdictions learn from the experiences of their neighbors, or that there is a "bandwagon" effect for promising or trendy policies. Finally, in suburban Boston, we find that jurisdictions with growth management policies and cluster zoning are more likely to adopt IZ.[6]

Our interviews with program administrators revealed that some jurisdictions adopt IZ programs because of a desire to satisfy state regulations or expectations, rather than out of a desire to adopt a progressive affordable housing policy. These differing motives may impact the amount of housing produced. If the program is adopted solely to satisfy external requirements, it may be written, implemented or enforced in a different way than if it resulted from more local political pressure. Specifically, one might think that communities that adopted IZ merely to satisfy a state mandate may have adopted policies that are less effective or less carefully crafted; additional research would be needed to test this hypothesis.

KEY FINDINGS ON IZ ADOPTION

Jurisdictions are more likely to adopt an IZ program when they:

Are larger and more affluent

■

Have more neighboring jurisdictions that have IZ

■

Have adopted other land use regulations (specifically cluster zoning or growth management)

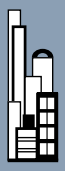
What influences how much affordable housing has been produced under IZ?

We find that the strongest predictor of how many affordable units a jurisdiction's IZ program has produced is the length of time the program has been in place. This makes sense for a number of reasons: projects that trigger the IZ program are likely to take several years to be completed and generate new IZ units, developers and administrators undoubtedly need some time to become more familiar with the program and work out any kinks, and the production of affordable units through IZ adds up over time.

We also find evidence that programs in the San Francisco region that exempt smaller projects or provide density bonuses tend to produce more units, indicating that more flexible programs may result in greater production.

While nearly all IZ programs in the San Francisco area have produced some affordable units, some 43% of the jurisdictions in suburban Boston with an IZ program on the books have not produced any units, and over one-third are unable to report how many units have been produced. This may indicate that jurisdictions in the Boston area have adopted IZ programs for reasons other than producing affordable housing, such as creat-

[6] Cluster zoning provisions allow developers more flexibility than conventional zoning allows, such as reductions in the minimum lot size or other dimensional requirements, in exchange for setting aside protected open space. Many of the suburban Boston IZ programs are designed as part of cluster zoning, allowing developers to receive increases in the total allowable units in return for producing affordable housing (or some other form of community benefit). The prevalence of IZ programs among jurisdictions with growth management policies, such as annual caps on building permits, may suggest that those communities are concerned both with the pace of residential growth and pressures on housing affordability.



KEY FINDINGS ON IZ PRODUCTION

The longer IZ programs have been in place,
the more affordable units they have produced

■

In the Washington D.C. area, IZ programs have produced
a total of 15,252 affordable units (as of 2003).

▪ *Nearly three-quarters of the units come from Montgomery County which adopted one of the first IZ programs in the country, dating back to 1974.*

■

In suburban Boston:

▪ *As of 2004, 43% of jurisdictions with IZ had not produced any affordable units.*

▪ *Precise counts are not available, but surveys suggest that IZ programs have produced relatively few affordable units, probably in part because so many IZ programs in the area were enacted relatively recently.*

■

In the San Francisco area:

▪ *Almost all jurisdictions report having produced some affordable units.*

▪ *The median annual production across all programs is 9 affordable units/year.*

▪ *For the region as a whole, IZ programs have produced 9,154 affordable units (as of 2004).**

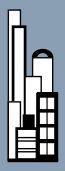
▪ *Programs with density bonuses and exemptions for smaller projects have produced more affordable units.*

* Updated production numbers are available in NPH's 2007 report, *Affordable by Choice: Trends in California Inclusionary Housing Programs* available at: http://www.nonprofithousing.org/.

ing a mechanism to satisfy the requirements of state law 40B. It also may be a function of the fact that IZ programs are a relatively new phenomenon in the region, and these jurisdictions simply have not yet brought their programs to scale. Another explanation for the low production could be that many of the Boston-area programs are voluntary and apply to a narrow range of developments.

What effects have IZ programs had on the price and production of market-rate housing?

The final question we try to answer is the most important, and the most difficult, of the issues surrounding the debate over IZ: how do IZ programs impact housing prices and production? In order to get a better understanding of the underlying issues, it is helpful to consider a simplified theoretical model to predict developers' behavior.



The amount of revenue a developer can gain by selling or renting a unit required to be affordable by a mandatory IZ policy is generally lower than the costs of developing that unit, so unless developers can offset these losses, IZ programs may cause developers to earn lower profits. Economic models predict that developers are likely to react in a number of ways to mandatory IZ programs that do not provide meaningful benefits to offset developers' revenue losses. First, developers may build or invest in other jurisdictions that do not have IZ programs. Second, they may try to make up the lost revenues by raising the prices they charge for market-rate units. Third, they may lower the prices they are willing to pay for land. Their ability to do any of these options will depend on a number of market factors, but under each scenario, the production of housing in the jurisdiction is likely to fall. If the number of new housing units produced in the area falls, and demand and other market factors remain constant, housing prices will likely increase due to the law of supply and demand. The theoretical models predict that the size of the impact on housing production and prices will depend upon many factors, including the extent to which the IZ programs offer cost offsets such as density bonuses, the stringency of the IZ requirements, the dynamics of housing supply and demand, the extent to which other types of supply constraints have been adopted in the community and broader area, and the extent to which neighboring jurisdictions have adopted IZ.

Previous studies have tried to test these theoretical models and gauge the impact of IZ programs on prices and production, but the methodologies and data used in those studies are widely questioned.[7] We use well-accepted regression analysis techniques to isolate the effects of IZ programs on jurisdictions' housing markets. Specifically, we control for variations in the jurisdictions' characteristics that may contribute to changes in housing prices and production, such as population size, density, and demographic composition, including race, age and education levels.

KEY FINDINGS ON IZ'S IMPACT ON PRODUCTION AND PRICES OF MARKET-RATE HOUSING

In the San Francisco area, there is no evidence that IZ impacts either the prices or production of single-family houses.

■

In suburban Boston, IZ seems to have resulted in small decreases in production and slight increases in the prices of single-family houses.

Our analysis finds no evidence that IZ programs have had an impact on either the prices or production rates of market-rate single-family houses in the San Francisco area.[8] In suburban Boston, however, we see some evidence that IZ has constrained production and increased the prices of single-family houses. The number of affordable housing units produced under the suburban Boston IZ programs, and the estimated size of the programs' impact on the supply and

[7] Previous studies include Powell and Stringham (2004a) and Powell and Stringham (2004b); for critiques of those studies, see, e.g., Basolo and Calavita (2004).

[8] We chose to use single-family permits because they make up the overwhelming majority of all housing permits issued in all three areas during the period from 1980 to 2005. In any given year, single-family permits average over 90 percent of total permits, and between 50 and 90 percent of jurisdictions in our sample issued no permits for multifamily housing.

price of housing are both relatively modest. These results reflect the most appropriate analysis of the best available data. Because of limitations in the scope and quality of the available data, however, both the San Francisco and the suburban Boston results should be interpreted with caution.[9]

Given the variation among the programs in the two regions, it is not surprising that our analysis of the two regions produced different results. As we cautioned earlier, IZ is not a one-size-fits-all tool. Not only can the design and scope of a program vary greatly, but its impacts may depend on many variables specific to the jurisdiction. The different results from the San Francisco and suburban Boston analyses are an important reminder that IZ policies come in many shapes and sizes and need to be thought of as a piece of the larger regulatory framework, not a stand-alone solution. The impact of an IZ policy may be affected by the specific design of the IZ program and the effectiveness of its cost offsets, a jurisdiction's reliance on other affordable housing tools, its reasons for adopting IZ, the nature and strength of its housing market, and the state regulatory framework in which it operates.

15 Quincy, Brooklyn, NY, BFC Partners and Pratt Area Community Council. Photo: Courtney Wolf.

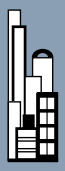
What are the Implications for IZ Policies?

The findings from our research suggest a number of points that policymakers should bear in mind as they consider whether to adopt – and if so, how to structure – inclusionary zoning policies:

Each individual ordinance should be considered on its own merits. We found tremendous variation in the details of IZ policies from one jurisdiction to the next. This suggests that IZ is not a single policy but rather an umbrella term for describing many different but related housing policies, each of which may well have different effects on the number of affordable housing units produced and on the price and supply of market-rate homes. In light of this variation, broad generalizations about IZ would seem to be less helpful than case-by-case analysis of particular proposals or ordinances.

Many IZ policies produce affordable units, but IZ is not a panacea for solving a community's housing challenges. The IZ policies that we examined had varied success in producing affordable units. Some have produced very few or no affordable units, while others have produced thousands of units, making a significant contribution to the availability of affordable homes. Even those ordinances that have produced the most affordable housing units, however, have not solved the community's housing challenges. This suggests that communities should think of IZ as one piece of a broader and more comprehensive housing strategy, rather than as a stand-alone policy response.

[9] Please consult the full study for a discussion of the data limitations.



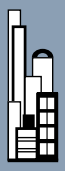
More flexible IZ policies may lead to greater production of affordable units. Our analysis of the IZ programs in the San Francisco metro area found that more flexible IZ policies – those that grant density bonuses or exempt smaller projects – were associated with a greater production of affordable units. The study was not able to determine why policies that provide density bonuses and exempt smaller projects produced more affordable housing units, but one possible explanation is that this flexibility contributed to (or was a manifestation of) a regulatory climate that encouraged new development.

In considering whether to adopt, and if so how to structure, IZ policies, the potential impacts on the price and supply of market-rate housing should be considered. Both our theoretical analysis and our analysis of IZ policies in suburban Boston suggest that in some settings, IZ programs may lead to impacts on the price and supply of market-rate housing that reduce its affordability. While the average size of the price increases and supply decreases of market-rate housing across all jurisdictions in the Boston sample were fairly small, they were nevertheless significant and could be larger in some communities.

On the other hand, we found no evidence that IZ caused an increase in the price or a decrease in the supply of market-rate housing in the San Francisco area, despite the fact that 93 percent of those programs were mandatory. These results suggest that adverse price and supply effects are not inevitable outcomes of IZ. As explained more fully in the next point, it seems likely that the details of the policies – particularly the inclusion of effective cost offsets – matter considerably.

IZ policies that provide meaningful and achievable density bonuses or other benefits to offset the profits lost on affordable units should be less likely to impact adversely the price and supply of market-rate housing. Data limitations prevented us from separately analyzing how different types of IZ ordinances impacted the price and supply of market-rate housing. However, our theoretical analysis suggests that adverse impacts on the price and supply of market-rate homes can be mitigated or even avoided entirely by providing benefits to developers that fully compensate them for losses associated with selling or renting IZ units at below-market prices. The most common compensatory benefit included in the IZ ordinances we studied was an increase in allowable density. Other compensatory benefits include fast-track permitting (which decreases the time and costs of new development) and reduced parking requirements (which reduce the amount of land needed per unit). To the extent that such benefits allow developers to realize the same or similar profit under an IZ policy as might have been achieved without one, we would expect that there would be fewer impacts on the price and supply of market-rate homes.

Different cost offsets may be needed in different communities and in different market cycles. The economics of the development process vary significantly from community to community. They also vary significantly over time, even within a single community. For this reason, it is likely that different communities will need to adopt different offset policies to ensure that IZ policies fully compensate for losses associated with below-market units. These policies also will need to be reviewed over time to ensure they remain meaningful and effective.



Cost offsets need to work in practice, and not just on paper. Practitioners report that in many communities, density bonuses or other offsets that are provided in an IZ ordinance are not in fact realizable because of opposition from community members, planning department staff, and others, or because other policies – such as height caps – prevent developers from building the additional units. To the extent that promised offsets do not materialize in particular communities, developers may become less inclined to build there, or may need to raise the price of housing for market-rate customers.

Broad-based consultations with stakeholders may be helpful in designing effective policies and monitoring their implementation. To ensure that IZ policies are truly effective in offsetting the costs associated with below-market units, it may be helpful to engage a broad range of stakeholders, including both for-profit and nonprofit developers. These stakeholders can help communities develop policies that take into account the realities of construction costs and market dynamics and provide invaluable feedback on how the policies are working once they are implemented. These stakeholders also can help advise jurisdictions on whether there are particular types of housing or particular areas of the community in which IZ policies may not be needed, may be counterproductive, or may need to be more flexible to work effectively.

Related Housing Policies

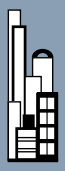
The following are two housing policies that are closely related to IZ that communities may wish to consider as part of a comprehensive housing strategy;

Reductions in Regulatory Barriers to Development. There are many regulations and other practices at the local level that make it difficult or expensive to develop new housing and do not produce sufficient benefits to justify those extra expenses. Other research suggests that these regulatory barriers are driving up housing prices by constraining the ability of the market to respond effectively to demand. Reducing those barriers can help to expand the supply of housing, moderating home prices, and mitigating concerns that IZ might constrain new development. By increasing the amount of new development, such policies also might increase the number of affordable units produced through an IZ ordinance.*

Shared equity homeownership. Units produced through IZ policies may be affordable when originally produced, but will likely become much less affordable once any affordability restrictions expire. Through community land trusts and other shared equity homeownership strategies, communities can ensure that affordable units produced through IZ stay affordable over time, while still providing residents with an opportunity to build assets.** Similar policies can be applied to retain the affordability of rental units over time, though ongoing operating subsidies may be needed in some cases.

* For more information, see HUD's Regulatory barriers clearinghouse (www.huduser.org/rbc), the Center for Housing Policy's online guide to state and local housing policy (www.housingpolicy.org) and the following publications: Glaeser et. al. (2005) and Schuetz (2007).

**For more information, see the Center for Housing Policy's suite of materials on shared equity homeownership at http://www.nhc.org/housing/sharedequity.



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Complete acknowledgements may be found in the working paper draft, available online at www.nhc.org/housing/iz or http://furmancenter.nyu.edu/publications/index.html. All opinions, errors or omissions, however, are those of the Furman Center alone.

Fairbanks Ridge, San Diego, CA, Chelsea Investment Corporation. Photo: Lynn Schmid.

The Furman Center for Real Estate and Urban Policy is a joint research center of the New York University School of Law and the Robert F. Wagner Graduate School of Public Service at NYU. Since its founding in 1995, the Furman Center has become the leading academic research center in New York City dedicated to providing objective academic and empirical research on the legal and public policy issues involving land use, real estate, housing and urban affairs in the United States, with a particular focus on New York City. More information about the Furman Center can be found at www.furmancenter.nyu.edu.

The Center for Housing Policy is the research affiliate of the National Housing Conference (NHC). In partnership with NHC and its members, the Center works to broaden understanding of the Nation's housing challenges and to examine the impact of policies and programs developed to address these needs. Combining research and practical, real-world expertise, the Center helps to develop effective policy solutions at the national, state and local levels that increase the availability of affordable homes. More information on the Center is available at: www.nhc.org/housing/chp-index.

INCLUSIONARY ZONING
GUIDELINES FOR CITIES & TOWNS

Prepared for the Massachusetts Housing Partnership Fund
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September 2000

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The **Massachusetts Housing Partnership Fund** is a quasi-public state agency that was established in 1985 to support affordable housing and neighborhood development across Massachusetts. MHP is the only public agency in the United States that uses mandatory lines of credit from the banking industry to provide long-term loans for affordable housing and neighborhood development. Established by an act of the Legislature in 1985, MHP has helped more than 4,500 families buy their first home, financed the rehabilitation or new construction of almost 10,000 affordable housing units and helped the majority of cities and towns in the state to form local housing partnerships. Since 1992, MHP has utilized over $200 million in funding from banks and provided financing or technical services in 260 out of the Commonwealth's 351 cities and towns, including every major city in Massachusetts.

Additional information on inclusionary zoning events and publications sponsored by MHP is available by visiting www.mhpfund.com.

INTRODUCTION

Following a May 31, 2000 conference on inclusionary zoning sponsored by the Massachusetts Housing Partnership Fund (MHP), it was clear that Massachusetts communities wanted ongoing guidance on how to draft inclusionary zoning ordinances and by-laws. These guidelines, drafted for MHP by Edith Netter, a land-use attorney, seeks to assist municipal officials by posing key questions and providing useful answers that address the various steps of drafting, implementing and ensuring maximum benefit from inclusionary zoning.

These guidelines are divided into three parts:

1.) What policy questions do you need to consider before you begin work on an ordinance or bylaw?
2.) What technical issues should you consider before drafting the ordinance or bylaw?
3.) What will be required to successfully implement the bylaw/ordinance?

Although these guidelines are limited to inclusionary zoning programs, the same questions can be applied to linkage programs, which require or encourage commercial developers to provide fees for affordable housing or to build affordable housing. These guidelines are not intended to be a substitute for the assistance of legal counsel.

Often, the literature, the court cases and the public discussion around inclusionary housing programs has grouped all zoning approaches under the heading "inclusionary zoning." This effort to use a single simple term has resulted in some confusion that seems most easily remedied by using more precise terms – "inclusionary zoning" and "incentive zoning."

Inclusionary zoning mandates that residential developers make some of their housing affordable. Incentive zoning provides that developers seeking special permits may obtain favorable zoning treatment, such as increases in density, in exchange for providing affordable housing. Inclusionary zoning is less common than incentive zoning.

The two fundamental legal questions that must be considered when creating these programs are whether they are authorized by statute (and whether they need to be so-authorized) and whether they are constitutional. The Massachusetts Zoning Act expressly authorizes incentive zoning. It is silent as to inclusionary zoning. Massachusetts is a home rule state, so such explicit authorization for inclusionary zoning may not be necessary.

Changes in the U.S. Supreme Court's interpretation of the constitutional issue known as the "taking issue" have made it advisable to create backup ("nexus") studies to document why inclusionary zoning programs are necessary. The "taking issue" refers to a judicial determination of whether land use regulations are so restrictive that government has unconstitutionally "taken" land without payment of just compensation.

The most important practical consideration, because it is so often overlooked, is how inclusionary housing programs are implemented. Carefully drafted local decisions, effective monitoring systems and the legal documentation to support long-term affordability are key elements of a program's success.

BEFORE YOU DRAFT THE BYLAW OR ORDINANCE

IS THERE A HOUSING MARKET STUDY?

- ☐ Is the real estate market strong enough to support an inclusionary or incentive zoning program and what type of program could it support?
- ☐ If the real estate market is weak, additional requirements will increase disincentives to development. As a result, the program probably won't create very much housing.

An analysis should be made of your town's residential real estate market to determine:

(1) What is the housing demand?
(2) How much land is available and at what cost?
(3) What housing projects are in the pipeline?
(4) What development opportunities would exist if there were no zoning restrictions?
(5) At what point would inclusionary or incentive zoning requirements impede development in your community?

IS THERE AN ECONOMIC BASIS FOR YOUR PROGRAM?

- ☐ It may be useful to prepare a study for an inclusionary zoning program or for an incentive zoning program that involves fees.
- ☐ It is less important to prepare a study for an incentive zoning program that requires a housing set-aside only.

A community must be able to demonstrate the impacts of market-rate housing on the availability of housing for lower-income households. In addition, a community must be able to show the relationship between these impacts and what the developer is being required to provide. Frequently, communities prepare a study (loosely referred to as a "nexus" study) to develop the inclusionary or incentive zoning programs and to assist the community in successfully withstanding constitutional challenges to it.

HAS A STRATEGY BEEN DEVELOPED FOR CREATING LOCAL POLITICAL SUPPORT FOR AN INCLUSIONARY OR INCENTIVE ZONING PROGRAM?

- ☐ It is important to determine who your initial supporters will be, who can be persuaded as to the merits of the program, and who or what entity will spearhead the efforts to create community consensus on the program.

Programs that meet all legal and technical requirements may fail because of a lack of town meeting or city council support.

DRAFTING THE BYLAW OR ORDINANCE

SHOULD THE PROGRAM BE INCENTIVE OR INCLUSIONARY ZONING?

- An incentive zoning program is one where a residential developer is developing pursuant to a special permit. Typically, the developer receives increases in density and/or reductions in regulatory requirements such as parking, in exchange for providing affordable housing.

- An inclusionary zoning program is one where a developer must create affordable housing if he chooses to develop a market-rate housing project.

DO YOU NEED TO GET LEGISLATIVE APPROVAL FOR YOUR PROGRAM?

- The legal authority for incentive zoning ordinances/bylaws is clear. Section 9 of the Zoning Act provides that communities that provide density bonuses or the like shall require the provision of affordable housing or other amenities as a condition of granting the special permit. (M.G.L. c.40A§9)

- Inclusionary zoning ordinances/bylaws (whether they are enacted pursuant to zoning or subdivision) are not expressly authorized by statute.

In the special permit context, the Massachusetts Zoning Act clearly authorizes, and in fact requires, a public amenity such as affordable housing to be provided in exchange for a density bonus. Some people take the position that affordable housing may be required as a special permit condition even where a density bonus is not provided.

There is an argument to be made that statutory authority is not required for mandatory inclusionary zoning; these programs may be enacted pursuant to "home rule." However, it should be noted that the Massachusetts courts have not determined whether express statutory authority is or is not required.

SHOULD INCLUSIONARY AND INCENTIVE ZONING PROGRAMS ALLOW PAYMENT OF FEES IN LIEU OF HOUSING?

- The arguments in favor of requiring housing are obvious. The developer is required to provide the site for the housing and build it.

- There are circumstances, however, where a "buy-out" (fees in lieu of housing) might be a good alternative. One example is where a project is too small to provide housing. Another is when fees can be leveraged by a local nonprofit organization, ultimately resulting in more affordable housing than would otherwise have been the case.

Most incentive and inclusionary zoning programs require affordable housing. Some allow fees in lieu of housing ("buy-outs"). If there is a fee requirement or option, it is important to earmark the funds for affordable housing and document that the fee is proportionate to the project's impacts. If fees are part of a program, it is important that drafters carefully read the recent Appeals Court decision in Greater Franklin Developers Association, Inc. v. Town of Franklin, striking down school impact fees.

DRAFTING THE BYLAW OR ORDINANCE

SHOULD ALL RESIDENTIAL DEVELOPMENT PROJECTS BE INCLUDED IN AN INCENTIVE OR INCLUSIONARY ZONING PROGRAM?

- Some projects are so small that providing affordable housing (or fees in lieu of affordable housing) may not be financially feasible. Additionally, it might be necessary to exclude smaller projects to obtain the support necessary to pass political muster.

WHAT TYPE OF MARKET-RATE PROJECTS SHOULD BE SUBJECT TO THE ORDINANCE/BYLAW?

- Typically, incentive and inclusionary zoning ordinances/bylaws apply to new residential construction.
- In other parts of the country, communities have created "housing replacement" regulations that apply to situations where housing units are lost through demolition or conversion to nonresidential uses.

DO INCENTIVE AND INCLUSIONARY ZONING PROVISIONS HAVE TO "STAND ALONE" OR CAN THEY BE INCORPORATED INTO OTHER TYPES OF REGULATIONS?

- Incentive and inclusionary zoning provisions can be incorporated into any type of regulation that includes market-rate housing.

Examples include mixed-use planned unit development regulations, regulations designed to protect open space by encouraging smaller lots, regulations designed to encourage development in village centers and regulations designed to promote first floor shops and second floor housing.

SHOULD THERE BE A REQUIRED PERCENTAGE OF AFFORDABLE UNITS?

Communities can require certain types of affordable housing based on need. For example:

- In some communities there is a shortage of affordable housing for families with children.
- In others, there is a shortage of apartments available for rental.

Typically, incentive and inclusionary zoning regulations establish a ratio between market-rate and affordable units. For example, a "ten percent set-aside" would mean one affordable unit is required for ten market-rate units.

DRAFTING THE BYLAW OR ORDINANCE

SHOULD THE AFFORDABLE UNITS BE ON- OR OFF-SITE?

- An argument in favor of the "on-site alternative" is that it disperses affordable housing throughout a community, increases choice in location and prevents income-based concentration.

- An argument in favor of the "off-site alternative" is that if land is cheaper off-site, you might be able to require more affordable units . Also, separate sites can accommodate different types of housing. For example, a community needing affordable, rental family housing might find a separate site more desirable if the market-rate component is luxury condominiums for seniors.

This question is particularly relevant in a community where land values in one area are very different from those in another.

IF THE AFFORDABLE UNITS ARE ON-SITE – ARE THEY TO BE DISPERSED THROUGHOUT THE PROJECT? SHOULD THEY BE INDISTINGUISHABLE FROM THE MARKET-RATE UNITS?

- Usually the affordable units are required to be dispersed throughout the project and indistinguishable (at least from the exterior) from the market-rate units.

WHEN SHOULD THE AFFORDABLE UNITS BE PROVIDED? WHEN SHOULD THE FEES BE PAID?

- Communities can require that the affordable units be phased in during the construction process (i.e., for every 5 units of market-rate housing built, there shall be 1 affordable unit) or that the affordable units be built upon completion of the market-rate units. Fees can be required at various junctures, such as at building permit or certificate of occupancy.

DRAFTING THE BYLAW OR ORDINANCE

WHAT IS THE REQUIRED DURATION OF AFFORDABILITY?

- Some housing subsidy programs require only a short period of affordability (15-30 years).
- Other communities may require a longer period – such as in perpetuity (up to 99 years).

Factors to be weighed when deciding on the appropriate length of time include: (1) ensuring the unit is available to lower income households for as long as legally possible, (2) ensuring that the units count toward a community's "ten percent" standard (required by the Anti-Snob Zoning Act, also known as Chapter 40B or Chapter 774), and (3) allowing for neighborhood change over time. The question to be asked is, "what happens to the affordable units, where a neighborhood is in flux, perhaps changing from residential to commercial?" Will these units continue to be adequately maintained over time? Will long-term resale controls hamper the process of change?

WHAT IS THE INITIAL SALES OR RENTAL PRICE OF THE UNIT AND HOW IS IT SET?

- One way initial sales prices may be set is by determining how much a household earning less than 80% of the median income can spend, assuming that housing costs no more than 30% of the household's income.

WHAT IS THE MAXIMUM INCOME FOR A HOUSEHOLD ELIGIBLE TO OCCUPY THE AFFORDABLE UNITS?

- Should all households earning below a specified income (i.e. 80% of the area median income) be eligible? If so, is household income to be adjusted for household size or number of bedrooms in the affordable unit?

SHOULD THERE BE ONE INCOME LIMIT OR A RANGE OF INCOME LIMITS?

- One alternative is to require some of the units to be available to households below one income limit (i.e. 50% of median income) and other units to be available to households below another income limit (i.e. 80%).

WHAT GEOGRAPHIC AREA IS TO BE USED TO SET INCOME LIMITS?

- Consideration should be given to whether area (metropolitan statistical area) median income, county median income, or any other definition should be used.

IMPLEMENTING THE BYLAW OR ORDINANCE

WHO (OR WHAT ENTITY) WILL BE RESPONSIBLE FOR CHOOSING PURCHASERS OR TENANTS, MONITORING AND ENSURING THE LONG-TERM AFFORDABILITY OF THE UNITS, AND MANAGING THE "BUY-OUT" FUND?

- Sometimes the municipality chooses to monitor and administer these programs.
- More typically, the local housing authority, an affordable housing trust fund or a housing consultant, working on behalf of the community performs these tasks.

This decision is critical - responsible and effective administration, monitoring and enforcement are the "make or break" factors in these programs.

Cambridge has an Affordable Housing Trust Fund that receives public and private money, advises the city on housing policy, and monitors and administers the Cambridge Inclusionary Zoning Program. The town of Norwell has hired a housing consultant, to work on behalf of its housing authority, to administer its affordable housing units.

IS THERE LEGAL DOCUMENTATION CONCERNING THE MONITORING PROCESS?

- This documentation could be in the form of a "regulatory agreement" between the developer and the municipality or if the bylaw or ordinance involves a special permit process, the monitoring provisions could be in the special permit decision.

WHAT FORMULA IS TO BE USED TO DETERMINE MAXIMUM RESALE PRICE?

- There are different formulas that may be used to cap resale prices. One example of such a cap is the lesser of a specified percentage of the appraised value of the unit or no more than 30% of that which a lower-income household earns. A key consideration is whether to include the cost or value of capital improvements in these calculations.

IF THE PROJECT IS A CONDOMINIUM, DO THE CONDOMINIUM DOCUMENTS ADEQUATELY PROTECT THE OWNERS OF THE AFFORDABLE UNITS?

- The condominium documents should, at a minimum, ensure the owners of the affordable units will not be required to pay for capital improvements they cannot afford, and that they, in general, have sufficient voting rights.

IMPLEMENTING THE BYLAW OR ORDINANCE

WHAT ARE THE MECHANISMS FOR ENFORCEMENT OF THE RESALE AND USE RESTRICTIONS?

- Typically, developers provide municipalities (or housing authorities or affordable housing trust funds) with an option to purchase or a right of first refusal at resale. This ensures an opportunity for continued participation by the community in the resale process (and an opportunity to monitor resale prices).

IS THERE A DEED RIDER ENSURING LONG-TERM AFFORDABILITY?

- A deed rider should be attached to the deed of each affordable unit, setting forth affordability parameters including how the maximum resale price is to be determined and what entity has a right of first refusal or an option to purchase the affordable unit at resale.

WHO SHOULD DRAFT INCENTIVE OR INCLUSIONARY ZONING DECISIONS?

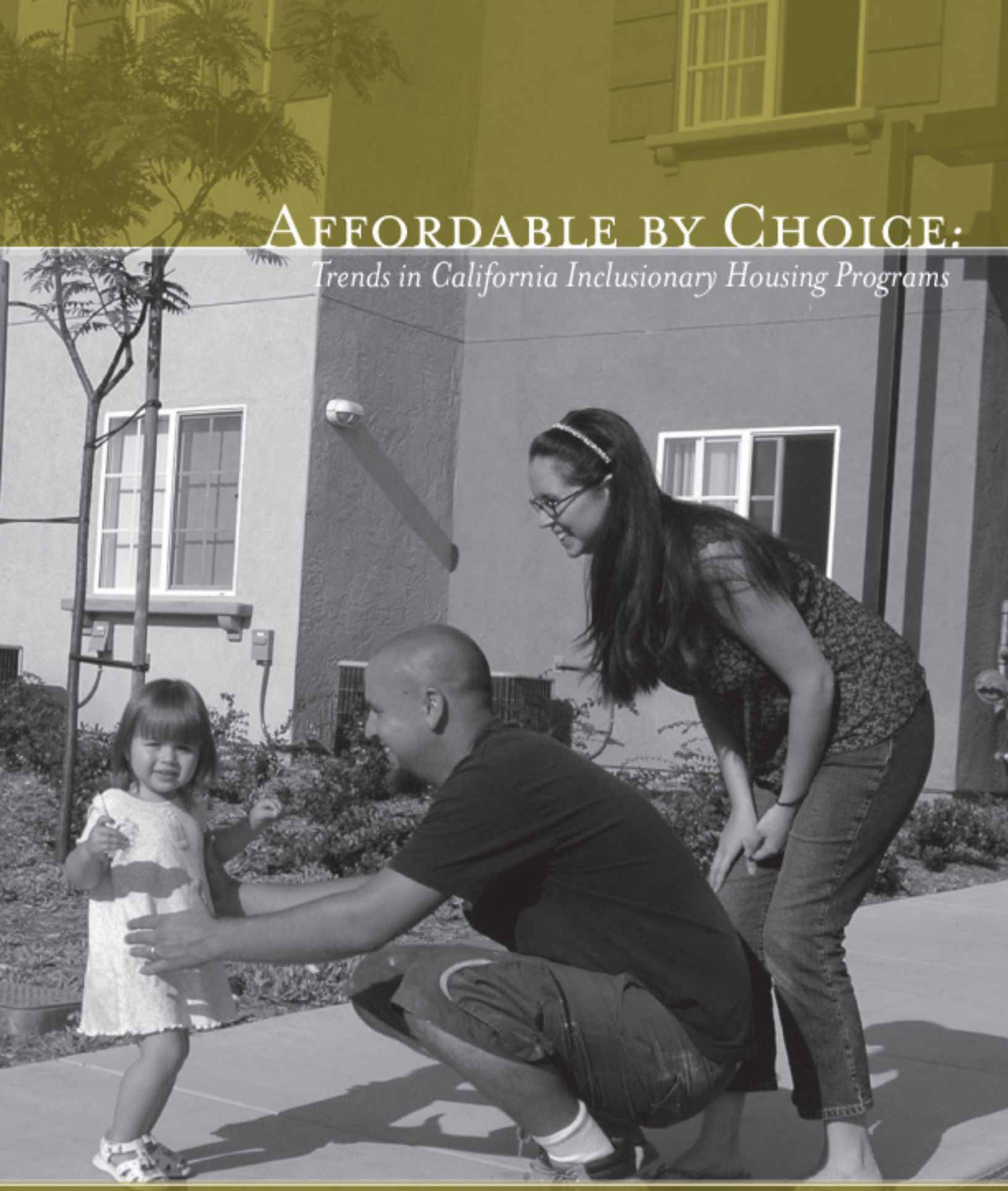
- The board or official that approves the project should draft the decisions unless legal counsel is available to assist. Legal counsel, knowledgeable in this field, should review decisions to ensure the affordable units remain affordable over time and in the event of condominium projects, to ensure that owners of the affordable units will be treated fairly.

WHAT TOPICS SHOULD BE COVERED IN AN INCLUSIONARY ZONING DECISION?

- The answers to many of the questions listed in these guidelines should be included in the decisions on particular development projects. This is in addition to the basic requirements of any well-drafted decision, which includes a project description, summary of the public hearing process, findings, decision, and conditions.

Affordable by Choice:

Trends in California Inclusionary Housing Programs



NPH

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Executive Summary & Key Findings

This report represents the most ambitious effort in California – and probably the nation – to examine the impact of inclusionary housing policies statewide. The single most important conclusion is that inclusionary programs are putting roofs over the heads of tens of thousands of Californians. These homes, in turn, are building mixed-income neighborhoods where houses considered "affordable" are often indistinguishable from those at market-rate. High school teachers, clergy, health care workers, day care providers – people who are considered lower-income – can now open their front doors and say, "welcome to my home" as a result of inclusionary housing programs. Rising housing costs and shrinking public funds are prompting more local governments to use inclusionary programs. While not a magic bullet for all affordable housing needs, inclusionary programs are a proven tool for building diverse housing that meets the needs of all of a community's residents. It is not surprising, then, that a record number of cities and counties are adopting inclusionary housing programs at increasing rates.

Building on Past Research

This study was commissioned by the Non-Profit Housing Association of Northern California (NPH), which serves as the lead agency of the Bay Area Inclusionary Housing Initiative, along with the California Coalition for Rural Housing (CCRH), the Sacramento Housing Alliance (SHA) and the San Diego Housing Federation (SDHF).

In 1994, CCRH conducted the first statewide survey on inclusionary housing and found that 12% of statewide jurisdictions had an inclusionary program. In 2003, CCRH and NPH collaboratively conducted a follow-up survey, which revealed that the number of jurisdictions with inclusionary housing had jumped to 20%. The 2003 survey generated interest in obtaining more precise production data on the types of housing built and the income levels served. In 2006, a new study was launched to determine the growth in inclusionary programs statewide, and provide a detailed snapshot of the housing that is being produced by these programs. This report details the findings of those surveys.

Key Findings

The study looked at housing produced through inclusionary programs from January 1999 through June 2006 and found that:

1. Nearly One-Third of California Jurisdictions Now Have Inclusionary Programs
   A surprising number and variety of cities, towns and counties in California have adopted inclusionary housing policies. These 170 jurisdictions account for about one-third (32%) of the state; a significant number of these programs were adopted in the past few years alone.

2. More Than 80,000 Californians Have Housing Through Inclusionary Programs
   At least 80,000 people – roughly the population of the city of Livermore, in Alameda County – live in housing produced as a result of inclusionary programs, which since 1999 have created an estimated 29,281 affordable units statewide.[1]

3. Most Inclusionary Housing Is Integrated Within Market-Rate Developments
   A majority of housing created through inclusionary policies is built along with – and indistinguishable from – market-rate units, creating socially and economically integrated communities affordable to a wider range of families. As a result, teachers shop in the same grocery stores as the parents of their students, and the elderly are finding safe apartments close to their children and grandchildren.

4. Inclusionary Housing Provides Shelter For Those Most In Need
   Nearly three-quarters of the housing produced through inclusionary programs is affordable to people with some of the lowest incomes. These findings shed new light on the popular perception that inclusionary policies create ownership units mostly for moderate-income families.

5. Lower-Income Households Are Best Served Through Partnerships
   When market-rate developers work with affordable housing developers to meet their inclusionary requirement, the units are more likely to serve lower-income households. Joint ventures play a particularly important role in developing units for households most in need. One-third of all the housing built through inclusionary programs resulted from such partnerships.

Recommendations: Where Do We Go From Here?

It is clear from the variation among inclusionary programs that one size does not fit all. Cities and counties adopting inclusionary programs or revisiting older policies should tailor programs to their own circumstances and incorporate flexibility and incentives as much as possible.

An impressive track record is being established by the California jurisdictions that are using inclusionary housing as a tool to meet the housing needs of all residents. However, there is room for improvement. An affordable home for every Californian is within reach if even more communities include a strong inclusionary housing program as one of many strategies to address the statewide housing crisis.

Mesquite Manor and *Gabilan Hills Townhomes* in Salinas:
A young resident of *Mesquite Manor*, left, sits in the living room of her family's home, which is part of a 52-unit inclusionary project in Salinas. About half of the homes, built with assistance from farm workers and their families, are owned by farm workers who earn 80 % or less of the Area Median Income. The other half are for local families earning 120 % or less of the Area Median Income. At the right are two pictures of *Gabilan Hills Townhomes*, another Salinas project that offers 100 apartments for low-income families. Both were developed by Community Housing Systems and Planning Association (CHISPA).

The following recommendations, based on the findings in this study, will help increase inclusionary housing – and affordable housing production – throughout the state:

1. Adopt a Policy and Make It Mandatory

   This report shows that mandatory inclusionary housing policies produce much-needed housing in all kinds of communities across California. To bring the benefits of inclusionary housing to the 68% of cities and counties that still don't have an inclusionary policy, every jurisdiction should adopt a mandatory inclusionary program. Given the diverse needs and different economic conditions throughout the state, these programs should be designed carefully to give developers flexible options for providing homes to lower-income individuals and families.

2. Provide Stronger Incentives and Flexibility

   The most successful programs offer developers a variety of options for meeting their inclusionary requirements, along with a range of incentives — such as density bonuses, fee reductions and fast-track permitting — to offset the costs to developers. By providing flexibility and incentives, cities and counties can facilitate the development of affordable homes to match the needs of all local residents.

3. Provide Stronger Oversight For the In-Lieu Fee Option

   Some jurisdictions make effective use of in-lieu fees to build new affordable homes and foster stronger and more economically stable communities. But many of the most productive jurisdictions are requiring developers to directly develop the inclusionary units, partner with a non-profit developer who builds the units, or make land dedications. Generally, in larger projects, the in-lieu fee option should be the option of last resort and commensurate with the true cost of producing the units that would have resulted from inclusionary development. Additionally, this survey shows that a minority of jurisdictions either do not spend their in-lieu fees or do not specifically track how the in-lieu funds are used. To make inclusionary housing programs work, in-lieu fees should be spent on building new affordable homes within a defined time frame, and cities and counties should track and report on how the funds are being used on a regular basis.

4. Track the Numbers

   The state of California does not track inclusionary housing production or the collection of in-lieu fees, even though inclusionary housing programs are becoming an important and popular tool to deliver affordable homes to low- and moderate-income people. To ensure the continued effectiveness of inclusionary housing programs and demonstrate long-term results, the state of California should begin to monitor inclusionary housing production and in-lieu fee collection as part of the Housing Element update process that occurs every few years.

5. Support Partnerships

   This survey shows that partnerships between for-profit and affordable housing developers are particularly effective at building housing for lower-income Californians who are most in need. Communities should provide in their inclusionary policies the incentives and flexibility needed to support these important joint ventures.

Affordable By Choice: Trends in California Inclusionary Housing Programs was produced by NPH in cooperation with:

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See CCRH's free and searchable database of California inclusionary housing policies for summaries of each city and county with inclusionary programs:
www.calruralhousing.org/housing-toolbox/inclusionary-housing-policy-search

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Sample Ordinances

INCLUSIONARY HOUSING LAW

{AS ENACTED BY ORDINANCE 07-474}

Prepared by
BALTIMORE CITY DEPARTMENT OF LEGISLATIVE REFERENCE
Avery Aisenstark, Director
2007

11/21/07

ARTICLE 13
HOUSING AND URBAN RENEWAL

SUBTITLE 2B
INCLUSIONARY HOUSING REQUIREMENTS

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INCLUSIONARY HOUSING REQUIREMENTS

CITY CODE ARTICLE 13, SUBTITLE 2B

INTRODUCTORY NOTE: Ordinance 07-474 enacted this subtitle with a general effective date of July 19, 2007. Per Section 9 of Ord. 07-474, the Ordinance "will remain effective for 5 years, and at the end of that period, with no further action by the Mayor and City Council, this Ordinance will be abrogated and of no further effect". For the effective dates of various specific provisions, *see* Editor's Note at the end of this subtitle.

Part I. Definitions; General Provisions

§ 2B-1. Definitions – General.

(a) *In general.*

In this Subtitle, the following terms have the meanings indicated.

(b) *Board.*

"Board" means the Inclusionary Housing Board established by this subtitle.

(c) *Developer.*

"Developer" means any person, firm, partnership, association, joint venture, corporation, or other entity or combination of entities that undertakes a residential project.

(d) *Housing Commissioner.*

"Housing Commissioner" means the Commissioner of Housing and Community Development or the Commissioner's designee.

(e) *Housing funds.*

"Housing funds" means Federal, State, or City funds designated explicitly for the purpose of providing affordable housing.

(f) *Includes; including.*

"Includes" or "including" means by way of illustration and not by way of limitation.

(g) *Major public subsidy.*

(1) *In general.*

"Major public subsidy" means the provision by the City or any of its agents or contractors of funds, resources, or financial assistance for a residential project that needs these funds, resources, or assistance to proceed.

(2) *Inclusions.*

"Major public subsidy" includes:

(i) the sale or transfer of land substantially below its appraised value;

(ii) payment in lieu of taxes;

(iii) tax increment financing;

(iv) grants or loans that equal or exceed 15% of total projected project costs; or

(v) except as specified in paragraph (3) of this subsection, installation or repair of physical infrastructure directly related to the residential project and with value equal to or exceeding 5% of total projected project costs.

(3) *Exclusions.*

"Major public subsidy" does not include:

(I) infrastructure repairs or improvements undertaken as part of a regularly planned program; or

(ii) housing funds.

(h) *Neighborhood.*

"Neighborhood" means an area delineated by commonly accepted boundary, as determined by the Planning Director.

(i) *Planning Director.*

"Planning Director" means the Director of the Department of Planning or the Director's designee.

(j) *Residential project.*

"Residential project" means any new construction or any substantial renovation of an existing building that is designed, in whole or in part, to provide residential units.

(k) *Significant land use authorization.*

"Significant land use authorization" means the adoption of a Planned Unit Development or a legislatively approved amendment to a Planned Unit Development, either of which increases the permissible number of residential units by 30 or more units above the number permitted before adoption of the Planned Unit Development or amendment.

(l) *Significant rezoning.*

"Significant rezoning" means any rezoning that permits residential units where none were permitted previously.

(m) *Substantial renovation.*

"Substantial renovation" means a renovation to a vacant dwelling that is needed to bring the dwelling into compliance with applicable local laws and regulations.

(n) *Vacant dwelling*.

"Vacant dwelling" means residential real property that:

(1) has been vacant or abandoned for 1 year, as cited on a violation notice issued under the Building, Fire, and Related Codes of Baltimore City; or

(2) has been owned by the Mayor and City Council of Baltimore City for 1 year and is in need of substantial renovation.

(Ord. 07-474.)

§ 2B-2. Definitions – Mandatory, prohibitory, and permissive terms.

(a) *Mandatory terms.*

"Must" and "shall" are each mandatory terms used to express a requirement or to impose a duty.

(b) *Prohibitory terms.*

"Must not", "may not", and "no ... may" are each mandatory negative terms used to establish a prohibition.

(c) *Permissive terms.*

"May" is permissive.

(Ord. 07-474.)

§ 2B-3. Definitions – Affordability standards.

(a) *In general.*

In this Subtitle, the following terms relating to affordability standards have the meanings indicated.

(b) *Affordable housing cost: Extremely low, very low, low, and moderate.*

(1) An "extremely low" housing cost equals an amount not more than 1/12 of 30% of 30% of the AMI, adjusted for household size.

(2) A "very low" housing cost equals an amount greater than 1/12 of 30% of 30% of the AMI, but not more than 1/12 of 30% of 60% of the AMI, adjusted for household size.

(3) A "low" housing cost equals an amount greater than 1/12 of 30% of 60% of the AMI, but not more than 1/12 of 30% of 80% of the AMI, adjusted for household size.

(4) A "moderate" housing cost equals an amount greater than 1/12 of 30% of 80% of the AMI, but not more than 1/12 of 30% of 120% of the AMI, adjusted for household size.

(c) *Affordable unit.*

"Affordable unit" means a residential unit that is required by this subtitle to be provided at an extremely low, very low, low, or moderate affordable housing cost.

(d) *AMI.*

"AMI" means the area median income for the metropolitan region that encompasses Baltimore City, as published and annually updated by the United States Department of Housing and Urban Development.

(e) *Eligible household.*

"Eligible household" means:

(1) for a unit provided at an extremely low housing cost, a household having an income at or below 30% AMI;

(2) for a unit provided at a very low housing cost, a household having an income greater than 30% but not more than 60% AMI;

(3) for a unit provided at a low housing cost, a household having an income greater than 60% but not more than 80% AMI; and

(4) for a unit provided at a moderate housing cost, a household having an income greater than 80% but not more than 120% AMI.

(f) *Housing cost.*

"Housing cost" means:

(1) for ownership units, a sales price that requires a monthly payment, including mortgage principal and interest, taxes, insurance, homeowner association fees, and other assessments; and

(2) for rental units, a monthly payment for lease, sublet, let, or other rights to occupy a residential unit.

(g) *Market rate*.

"Market rate" means not restricted to an affordable rent or affordable ownership cost. *(Ord. 07-474.)*

§ 2B-4. Findings and policy.

(a) *In general.*

The Mayor and City Council of Baltimore finds as follows.

(b) *Benefits of economic diversity*.

Economic diversity in our neighborhoods, anchored by a strong and stable middle class and including homes for the full range of the City's workforce, as well as for seniors and others on fixed incomes, will stimulate economic investment, promote neighborhood stability, and increase public safety for all.

(c) *Limitations of private sector*.

The private sector, as the primary source of housing and economic development activity in Baltimore City, is not solely, through its individual development actions, able to create economically diverse neighborhoods or developments or to develop housing for the broad range of incomes that will lead to economic diversity.

(d) *Capabilities of City.*

(1) Baltimore City can provide benefits to the private sector, to promote economic diversity and housing for a broad range of incomes in neighborhoods and residential developments, in a manner that recognizes the central role that private investment must play for the continued growth and well-being of the City, including the opportunity to earn reasonable and customary levels of profitability.

(2) These benefits include:

(i) the disposition of publicly owned land;

(ii) the expenditure of public funds, including state and federal funds under the City's control;

(iii) tax relief; and

(iv) the adoption of land use standards that promote the inclusion of affordable homes.

(e) *City policy.*

It is the policy of Baltimore City to encourage economic diversity and balanced neighborhoods by promoting the inclusion of housing opportunities for residents with a broad range of incomes in all residential projects that contain 30 or more residential units.

(f) *No additional financial burdens*.

This subtitle is not intended to impose additional financial burdens on a developer or a residential project. Rather, the intent of this subtitle is that the cost offsets and other incentives authorized under it will fully offset any financial impact resulting from the inclusionary requirements imposed.

(Ord. 07-474.)

§ 2B-5. Rules of construction.

(a) *In general.*

In this subtitle, the following rules of construction apply.

(b) *More stringent provisions apply.*

For residential projects subject to federal, state, or other local affordable housing requirements imposing an affordability restriction, if the terms of this subtitle regarding the length of a restriction or the level of affordability are more stringent than the applicable federal, state, or other local requirements, the terms of this subtitle apply.

(c) *Applying percentages.*

In applying percentages referred to in this subtitle:

(1) any portion of a percent less than one-half is disregarded; and

(2) any portion of a percent one-half or greater is rounded up to the next whole number.

(Ord. 07-474.)

§ 2B-6. Scope and applicability.

(a) *Incentives not made available*.

If cost offsets and other incentives are not made available to a residential project in accordance with this subtitle, the residential project is not subject to the requirements of this subtitle.

(b) *City's obligations*.

(1) Whenever a residential project is granted a waiver or is otherwise exempt from this subtitle, the City is not required to provide resources to the project or to the Inclusionary Housing Offset Fund.

(2) This subtitle does not obligate the City to expend or commit any funds beyond that which may be appropriated through the annual Ordinance of Estimates.

(c) *Incentives insufficient to offset financial impact.*

Notwithstanding any other provision of this subtitle, if the Housing Commissioner determines that the cost offsets or other incentives available to a residential project are insufficient to offset the financial impact on the developer of providing the affordable units required by this subtitle:

(1) the Housing Commissioner shall either:

(i) exempt the residential project from this subtitle; or

(ii) modify the number of affordable units required so that the cost offsets or other incentives available are sufficient to offset the financial impact; and

(2) neither the developer nor the Housing Commissioner need obtain the approval of the Board of Estimates for a modification or waiver under this subtitle.

(d) *Subsidized project.*

A residential project is exempt from this subtitle if:

(1) it is subsidized by a public program; and

(2) it satisfies the affordability requirements of § 2B-21(b) of this subtitle.

(Ord. 07-474.)

§ 2B-7. Rules and regulations.

(a) *In general.*

The Housing Commissioner, in consultation with the Inclusionary Housing Board and the Planning Commission, must adopt rules and regulations to carry out the provisions of this subtitle.

(b) *Scope – General.*

These rules and regulations may include provisions for:

(1) defining, clarifying, or construing terms used in this subtitle;

(2) setting or refining standards for modifications or waivers;

(3) determining eligibility to purchase or rent affordable units; and

(4) setting standards for sale or rental prices for affordable units.

(c) *Scope – Requiring timely response.*

(1) The rules and regulations must

(i) require the Inclusionary Housing Board, the Housing Commissioner, and the Planning Department to provide timely and definitive responses to all submissions required from a developer under this subtitle; and

(ii) assure to the greatest extent practicable that the completion of residential projects is not delayed by implementation of this subtitle.

(2) Determinations by the Housing Commissioner regarding the sufficiency of potential cost offsets and other incentives must be made within 45 days from submission by a developer, in accordance with this subtitle, of a residential project to the Housing Commissioner, Planning Department, or other body, as required.

(d) *Scope – Written commitments.*

The rules and regulations must assure that the City evidences in writing its decisions to provide cost offsets or other incentives to a developer or residential project under this subtitle.

(e) *Advertising for comment.*

(1) A notice of the proposed adoption of all rules and regulations under this subtitle must be advertised in a newspaper of general circulation at least 45 days before their proposed adoption.

(2) The advertisement must include:

(i) a summary of the proposed rules and regulations; and

(ii) information on how a person can:

(A) obtain a copy of the proposed rules and regulations; and

(B) submit comments on them before their adoption.

(f) *Filing with Legislative Reference.*

A copy of all rules and regulations adopted under this section must be filed with the Department of Legislative Reference before they become effective.

(Ord. 07-474.)

§§ 2B-8 to 2B-10. *{Reserved}*

Part II. Inclusionary Housing Board

§ 2B-11. Board Established.

There is an Inclusionary Housing Board.
(Ord. 07-474.)

§ 2B-12. Composition.

(a) *In general.*

The board comprises the following 11 members:

(1) 9 members appointed by the Mayor and confirmed by the City Council in accordance with City Charter article IV, § 6;

(2) the Housing Commissioner; and

(3) the Planning Director.

(b) *Qualifications – General.*

Of the 9 members appointed by the Mayor:

(1) 1 must be a representative of a nonprofit entity that provides housing services in the City.

(2) 1 must be a neighborhood association leader.

(3) 1 must be a civil engineer practicing in the City.

(4) 1 must be an architect practicing in the City.

(5) 1 must be a lender experienced in lending practices for residential projects.

(6) 1 must be a builder or developer in the City of single-family detached or attached dwellings.

(7) 1 must be a builder or developer in the City of multiple-family dwellings.

(8) 1 must be a representative of a nonprofit entity that advocates for affordable housing in the City.

(9) 1 must be a representative of a labor union that represents municipal or other workers in the City.

(c) *Qualifications – Residency*.

(1) All of the members must be residents of the City.

(2) At least 1 member must be a member of an extremely low or very low income household.

(Ord. 07-474.)

§ 2B-13. Board officers; expenses.

(a) *Chair*.

(1) The Mayor designates 1 of the appointed members to be the Chair of the Board.

(2) The Board may appoint a Vice-Chair and other officers as necessary or appropriate.

(b) *Compensation.*

The members of the Board:

(1) receive no compensation for services rendered as members of the Board; but

(2) are entitled to reimbursement for necessary and proper expenses incurred in performing their duties as a member.

(Ord. 07-474.)

§ 2B-14. Meetings; quorum; voting.

(a) *Meetings.*

The Board meets on the call of the Chair as frequently as required to perform its duties.

(b) *Quorum.*

A majority of the members constitutes a quorum for the transaction of business.

(c) *Voting.*

An affirmative vote of at least a majority of a quorum is needed for any official action.

(Ord. 07-474.)

§ 2B-15. Staff.

The Department of Housing and Community Development must provide staff for the Board.

(Ord. 07-474.)

§ 2B-16. Annual Report.

(a) *Required.*

On or before October 31 of each year, the Board must submit a report to the Mayor and the City Council and to the Planning Commission that assesses efforts during the preceding fiscal year to create and sustain inclusionary housing in the City.

(b) *Contents generally*.

The report must include:

(1) the total number and proportion (as to the total of all housing units developed) of affordable housing units generated under this subtitle;

(2) the number and proportion generated under each of the various provisions of this subtitle (e.g., major public subsidy or significant rezoning);

(3) the number and proportion generated at various affordable costs;

(4) a list and description of all waivers, modifications , or variances requested, granted, and denied under this subtitle, with a summary of the reasons for granting or denying each request;

(5) an estimate of the percent of units in the City that are occupied;

(6) the amount and percent of residential property tax-base increase;

(7) the percent of households that the City has retained;

(8) an estimate of the growth in City households;

(9) the number of units for which the City or eligible housing providers had a right of first refusal under § 2B-34 {"Right of first refusal"} or § 2B-52(c) {"Resales during affordability period – First refusal"}, and the number of those units on which that right was exercised;

(10) recommendations made by the Board under § 2B-66B {"Administration: Board to advise"} on priorities for which Inclusionary Housing Offset Fund money is best used; and

(11) a summary of all information for the fiscal year that the Inclusionary Housing Offset Fund submits to the Board under § 2B-67 {"Reporting to Board"}.

(c) *Targets.*

For each of the measures listed in subsection (b) of this section, the Report may also specify targets that the City should seek to achieve in ensuing fiscal years.

(Ord. 07-474.)

§ 2B-17. Duties.

In addition to the other duties specified elsewhere in this subtitle, the Board is responsible for:

(1) reviewing requests for modifications or waivers under § 2B-21 {"Project receiving major public subsidy"}, § 2B-22 {" Project benefitting from significant land use authorization or rezoning"}, and § 2B-23 {"Other projects – 30 or more units"} and advising the Housing Commissioner within 20 days of referral by the Commissioner, in a manner determined by the Board; and

(2) advising the Housing Commissioner and the Planning Director in the performance of their respective duties under this subtitle.

(Ord. 07-474.)

§§ 2B-18 to 2B-20. *{Reserved}*

Part III. Inclusionary Requirements

§ 2B-21. Project receiving major public subsidy.

(a) *Applicability of section.*

This section applies to any residential project that:

(1) provides 30 or more residential units; and

(2) receives a major public subsidy.

(b) *Affordable units required.*

(1) In every residential project subject to this section, at least 20% of all residential units must be affordable units.

(2) (i) For rental units:

1. at least 30% must be provided to eligible households at an extremely low rental cost;

2. at least 25% must be provided to eligible households at or below a very low rental cost;

3. at least 25% must be provided to eligible households at or below a low rental cost; and

4. the remainder must be provided to eligible households at a rental cost that does not exceed 1/12 of 30% of 100% of the AMI.

(ii) For ownership units:

1. at least 25% must be provided to eligible households at a very low ownership cost;

2. at least 50% must be provided to eligible households at a low ownership cost; and

3. the remainder must be provided to eligible households at a moderate ownership cost.

(c) *Cash subsidies*.

If the Housing Commissioner determines that the major public subsidy is insufficient to offset the financial impact on the developer of providing the affordable units required by this subtitle, the City may grant a cash subsidy to the developer from the Inclusionary Housing Offset Fund or other available sources in an amount sufficient to offset the financial impact.

(d) *Modifications or waivers – Housing Commissioner*.

If the Housing Commissioner determines that the major public subsidy or cash subsidies available to a residential project are insufficient to offset the financial impact on the developer of providing the affordable units required by this subtitle:

(1) the Housing Commissioner shall either:

(i) exempt the residential project from this subtitle; or

(ii) modify the number of affordable units required so that the major public subsidy or cash subsidies available are sufficient to offset the financial impact; and

(2) neither the developer nor the Housing Commissioner need obtain the approval of the Board of Estimates for a modification or waiver under this subsection.

(e) *Modifications or waivers – Board of Estimates*.

(1) In addition to the modifications and waivers provided for in subsection (d) of this section, the Housing Commissioner, with approval from the Board of Estimates, may grant a modification of or a waiver from the requirements of subsection (b) of this section if the findings required by paragraph (3) of this subsection are made.

(2) The Housing Commissioner must state the reasons that he or she believes that granting the modification or waiver would further the goal of increasing inclusionary housing in Baltimore City.

(3) The Housing Commissioner and the Board of Estimates may grant the modification or waiver if they find that:

(i) homes will be provided for families in a mixed-income setting at lower affordability levels than those required under this section;

(ii) because of limited City resources, more affordable units in mixed-income housing will be created over a 2-year period than would be created if the modification or waiver were not granted;

(iii) more effective use of public programs or sources of subsidy will better address mixed-income housing in Baltimore City; or

(iv) the modification or waiver will promote the creation of units that are more expensive to construct than typical units because they are specially designed and designated for people with disabilities or built to be substantially more energy efficient than customary units.

(4) The Housing Commissioner must:

(i) issue a written decision on the application within 45 days of its receipt; and

(ii) post a copy of the decision on the City's website.

(f) *Investment Threshold*.

(1) "Additional cost" means the difference in the amount of major public subsidy for an entire development between what would be required to make the development feasible with the affordable units required by this subsection compared to the amount of major public subsidy that would be required to make the development feasible if it did not include the affordable units required by this subsection.

(2) In this subsection, "investment threshold" per unit means the additional cost per affordable unit of creating inclusionary units at a given income tier as detailed below:

(i) for Rental Development:

Units at or Below Extremely Low Cost	$125,000
Units at or Below Very Low Cost	$100,000
Units at or Below Low Cost	$ 50,000
Units at or Below Moderate Cost	$ 25,000

(ii) for Ownership Development:

Units at or Below Very Low Cost or Extremely Low Cost	$125,000
Units at or Below Low Cost	$100,000
Units at or Below Moderate Cost	$ 50,000

(3) If the Housing Commissioner determines that the additional cost per affordable unit exceeds the basic investment threshold, the Housing Commissioner shall, except by mutual agreement of the City and the developer:

(i) exempt the residential project from the requirement to provide affordable units; and

(ii) require the developer to deposit into the Inclusionary Housing Offset Fund an amount equal to the lesser of the following amounts, but only if the major public subsidy has been increased to fully offset the cost to the developer of making the deposit:

(A) the basic per unit investment threshold as indicated in this subsection; or

(B) 20% of the additional cost that would have been required to achieve the affordability targets specified in § 2B-21(b)(2) of this subtitle.

(Ord. 07-474.)

§ 2B-22. Project benefitting from significant land use authorization or rezoning.

(a) *Applicability of section.*

This section applies to any residential project that:

(1) provides 30 or more residential units; and

(2) is wholly or partially on property for which there has been:

(i) a significant land use authorization; or

(ii) a significant rezoning.

(b) *Affordable units required.*

(1) In every residential project subject to this section, at least 10% of all residential units must be affordable units.

(2) Of these affordable units:

(i) at least half must be provided to eligible households at or below a low affordable cost for ownership units or at or below a very low affordable cost for rental units; and

(ii) the others may be provided to eligible households at a moderate affordable ownership cost or moderate affordable rent.

(c) *Density Bonuses*.

The residential project may apply to the Board of Municipal and Zoning Appeals to receive bonus units up to 20% of the units otherwise allowed in the residential project, computed as set forth in Zoning Code § 3-206, but only if the Housing Commissioner first determines that the residential project:

(1) would not be economically feasible if it provided the number of inclusionary units required by this subtitle, but

(2) would be economically feasible if it provided the number of inclusionary units required by this subtitle and received the density bonus described in this subsection.

(d) *Exemption*.

(1) A residential project is exempt from the requirements of this subtitle if:

(i) the Board of Municipal and Zoning Appeals denies the density bonus described in subsection (c) of this section; or

(ii) the Housing Commissioner determines that the project would not be economically feasible if it provided the number of inclusionary units required by this subtitle, even if the project received the density bonus described in subsection (c) of this section.

(2) Neither the developer nor the Housing Commissioner need obtain the approval of the Board of Estimates for an exemption under this subsction.

(e) *Modifications or waivers*.

(1) In addition to the exemption provided for in subsection (d) of this section, the Housing Commissioner, with approval from the Board of Estimates, may grant a modification of or a waiver from the requirements of subsection (b) of this section if the Housing Commissioner finds that:

(i) homes will be provided for families at lower affordability levels in a mixed-income setting than those required under this section;

(ii) the development would not be economically feasible given existing market conditions with the number of inclusionary units required under this section, additional density bonuses are not available, and granting a modification or waiver would create more affordable units in mixed-income housing over a 2-year period than would be created if the modification or waiver were not granted; or

(iii) the modification or waiver will promote the creation of units that are more expensive to construct than typical units because they are specially designed and designated for people with disabilities or built to be substantially more energy efficient than customary units.

(2) The Housing Commissioner must:

(i) issue a written recommendation to the Board of Estimates within 45 days of the application's receipt; and

(ii) provide a copy of that recommendation to:

(A) the Inclusionary Housing Board;

(B) the Planning Director; and

(C) the City Council.

(3) When the Board of Estimates issues its decision, the Housing Commissioner must:

(i) provide a copy of that decision to:

(A) the Inclusionary Housing Board;

(B) the Planning Director; and

(C) the City Council; and

(ii) post a copy of the decision on the City's website.

(Ord. 07-474.)

§ 2B-23. Other projects – 30 or more units.

(a) *Applicability of section.*

This section applies to any residential project that:

(1) provides 30 or more residential units; and

(2) is not otherwise subject to § 2B-21 {"Project receiving major public subsidy"} or § 2B-22 {" Project benefitting from significant land use authorization or rezoning"}.

(b) *Affordable units required*.

(1) In every residential project subject to this section, 10% of all residential units must be provided to eligible households at or below a moderate affordable cost.

(2) The residential project is entitled to a certain cost-offsets, as provided in this section, subject to the availability of City funds to provide these cost offsets.

(3) (i) The extent to which funds are available shall be determined by the Housing Commissioner.

(ii) The developer of a project subject to this section shall be informed no later than the time of a Pre-Development Meeting with the Planning Department whether the City has the funds available in the Inclusionary Housing Offset Fund to provide cash subsidies under this section.

(c) *Cost offsets*.

(1) If all of the affordable units provided under this section are at or below a low affordable housing cost, the residential project may apply to the Board of Municipal and Zoning Appeals for bonus units equal to 20% of the units otherwise allowed in the residential project, computed as set forth in the City Zoning Code, § 3-206. In that case, the number of affordable units required is 10% of all units, including bonus units.

(2) If the Board of Municipal and Zoning Appeals denies the density bonus described in paragraph (1) of this subsection or the Housing Commissioner determines that the bonus units provided under paragraph (1) of this subsection are insufficient to offset the financial impact on the developer of providing the affordable units required by this subtitle, the City may provide cash subsidies to the developer from the Inclusionary Housing Offset Fund or other available sources in an amount sufficient to offset the financial impact.

(d) *Modifications or waivers – Housing Commissioner*.

If the Housing Commissioner determines that the density bonus and cash subsidies available to a residential project are insufficient to offset the financial impact on the developer of providing the affordable units required by this subtitle:

(1) the Housing Commissioner shall either:

(i) exempt the residential project from this subtitle; or

(ii) modify the number of affordable units required so that the density bonus or cash subsidies available are sufficient to offset the financial impact; and

(2) neither the developer nor the Housing Commissioner need obtain the approval of the Board of Estimates for a modification or waiver under this subsection.

(e) *Modifications or waivers – Board of Estimates*.

(1) In addition to the exemption provided for in subsection (d) of this section, on application by a developer to the Housing Commissioner, the Commissioner with approval from the Board of Estimates may grant a modification of or a waiver from the requirements of subsection (b) of this section if they find that:

(i) even if with available cost offsets, the economic return to the developer for the entire development would be less than it would be absent a requirement for affordable units;

(ii) exceptionally high ongoing occupancy costs make it infeasible to include affordable units on the site; or

(iii) in a neighborhood that comprises primarily low- and moderate-cost housing and for which a development plan for mixed-income (including affordable) housing has been adopted by the Planning Commission, the developer's project fulfills that part of the plan that calls for market-rate housing.

(2) The Housing Commissioner must:

(i) issue a written decision on the application within 45 days of its receipt;

(ii) provide a copy of that decision to:

(A) the Inclusionary Housing Board;

(B) the Planning Director; and

(C) the City Council; and

(iii) post a copy of the decision on the City's website.

(f) *Investment threshold*.

(1) If the cost offsets that would need to be provided under this section exceed the per unit investment threshold amounts specified below, the Housing Commissioner, in his or her discretion, may opt not to require affordable units in the development.

(2) Investment Threshold for Rental Development:

Units at or Below Very Low Cost	$115,000
Units at or Below Moderate Cost	$ 40,000

(3) Investment Threshold for Ownership Development:

Units at or Below Low Cost	$110,000
Units at or Below Moderate Cost	$ 50,000

(Ord. 07-474.)

§ 2B-24. Other projects – Less than 30 units.

A developer of a project with less than 30 residential units may request the Housing Commissioner to provide cost offsets under § 2B-23 {"Other projects – 30 or more units"} if the developer voluntarily includes affordable housing in the project in accordance with subsection (b) of that section.

(Ord. 07-474.)

§§ 2B-25 to 2B-30. *{Reserved}*

Part IV. Standards for Affordable Units

§ 2B-31. Comparable design.

(a) *In general.*

The affordable units required by this subtitle:

(1) must be complementary to the market rate units in the same project as to their exterior appearance ;

(2) must be comparable to the market rate units in the same project as to:

(i) number of bedrooms; and

(ii) overall quality of construction; and

(3) may vary in size and finish, consistent with standards set forth in the Housing Commissioner's rules and regulations.

(b) *Variance.*

(1) The developer may request a variance from the requirements of subsection (a) of this section by submitting a written request to the Housing Commissioner.

(2) The Housing Commissioner may approve a request if the Commissioner determines, in her or his sole discretion, that the affordable units are of good quality and consistent with contemporary standards for new housing.

(3) The Housing Commissioner must issue a written decision on the request within 45 days of its receipt.

(4) The Housing Commissioner must periodically report to the Inclusionary Housing Board on all applications made under this subsection and their disposition.

(Ord. 07-474.)

§ 2B-32. Placement.

(a) *In general.*

The affordable units required by this subtitle must be dispersed throughout the residential project.

(b) *Variance.*

(1) The developer may request a variance from the requirements of subsection (a) of this section by submitting a written request to the Housing Commissioner to cluster affordable units within the project.

(2) Within 45 days of the request, the Housing Commissioner must, in his or her sole discretion, provide a written determination as to whether the proposal adequately demonstrates that:

(i) the proposed design meets the goals of this subtitle; and

(ii) a variance should be allowed.

(3) The Housing Commissioner must periodically report to the Inclusionary Housing Board on all applications made under this subsection and their disposition.

(Ord. 07-474.)

§ 2B-33. Simultaneous offering.

(a) *In general.*

The affordable units required by this subtitle must be constructed and completed in the same time frame as the market rate units in the project.

(b) *Variance.*

(1) The developer may request a variance from the requirements of subsection (a) of this section by submitting a written request to the Housing Commissioner.

(2) The Housing Commissioner may approve a request if:

(i) the Commissioner determines, in her or his sole discretion, that the provision of affordable units will not be adversely affected or delayed by the variance; or

(ii) affordable units are to be provided off-site under Part V of this subtitle.

(3) The Housing Commissioner must issue a written decision on the request within 45 days of its receipt.

(4) The Housing Commissioner must periodically report to the Inclusionary Housing Board on all applications made under this subsection and their disposition.

(Ord. 07-474.)

§ 2B-34. Right of first refusal.

(a) *In general.*

The City and designated housing providers have a right of first refusal to purchase or rent up to one-third of affordable units provided in a residential project under this subtitle.

(b) *Designated housing providers*.

(1) From time to time, the Housing Commissioner may designate housing providers authorized to purchase or rent affordable units under this section, according to regulation and procedures adopted by the Commissioner .

(2) The City or designated housing providers may rent or resell units acquired under this section to eligible households.

(c) *Time for exercise*.

The City or designated housing provider must decide whether to exercise its right of first refusal within 45 days of submission by a developer, pursuant to the rules and regulations adopted under this subtitle, of an offer to sell the affordable units.

(Ord. 07-474.)

§ 2B-35. Eligibility to purchase or rent.

(a) *In general.*

The rules and regulations adopted by the Housing Commissioner under this subtitle must include provisions for determining eligibility to purchase or rent affordable units.

(b) *Counseling*.

These provisions must require appropriate housing counseling from a HUD qualified counseling agency in a manner determined by the Housing Commissioner.

(c) *First preference for neighbors, etc.*

These provisions shall attempt, consistent with other governing requirements, to provide special priority for otherwise-qualified individuals who:

(1) were displaced by the project; or

(2) reside within the same neighborhood in which the residential project is located.

(Ord. 07-474.)

§ 2B-36. Owner-occupancy of ownership units.

An affordable unit that is sold under this subtitle to an eligible household must be owner-occupied.

(Ord. 07-474.)

§ 2B-37. Management of rental units.

An affordable rental unit provided under this subtitle must be managed under the same management standards as all market-rate rental units in the development.

(Ord. 07-474.)

§§ 2B-38 to 2B-40. *{Reserved}*

Part V. Off-Site Substitution

§ 2B-41. "Off-site" defined.

In this Part V, "off-site" means outside the metes and bounds of the property on which a residential project is located.

(Ord. 07-474.)

§ 2B-42. In general.

The developer of a residential project may apply to provide off-site affordable residential units in whole or partial substitution for the units required by § 2B-22 {"Project benefitting from significant land-use authorization or rezoning"} or § 2B-23 {"Other projects – 30 or more units}, as the case may be.

(Ord. 07-474.)

§ 2B-43. Application.

(a) *In general.*

The application for off-site units must be made to the Housing Commissioner.

(b) *Accompanying report.*

The application must be accompanied by a report that includes:

(1) conditions affecting the project that prevent the developer from meeting the requirements of § 2B-22 {" Project benefitting from significant land use authorization or rezoning"} or § 2B-23 {"Other projects – 30 or more units}, as the case may be;

(2) independent data, including appropriate financial information, that support the developer's position that constructing the required affordable units on site is not feasible; and

(3) an analysis of how the off-site substitution will further mixed-income housing opportunities in the neighborhood in which the residential project is located.

(Ord. 07-474.)

§ 2B-44. Minimum criteria.

Off-site units may be allowed under this Part V only if:

(1) they will be provided at another location in the same neighborhood or comparable contiguous geographic area as the residential project to which they are being credited, as determined by the Planning Director, or in a residential project approved by the Housing Commissioner within 2,000 feet of a rapid transit stop; and

(2) in the aggregate, the off-site units and any affordable units provided on-site at the residential project are no fewer than the number of affordable units required by § 2B-22 {"Project benefitting from significant land use authorization or rezoning"} or § 2B-23 {"Other projects – 30 or more units}, as the case may be.

(Ord. 07-474.)

§ 2B-45. Review.

The Housing Commissioner, with approval by the Board of Estimates, may approve a request if the requested variance will promote mixed-income housing opportunities in Baltimore City to an extent equal to or greater than compliance with this subtitle.

(Ord. 07-474.)

§§ 2B to 2B-50. *{Reserved}*

Part VI. Continued Affordability

§ 2B-51. Rental units.

(a) *Affordability period.*

Every affordable rental unit subject to this subtitle must remain at an affordable rent, as provided in this section, for a period of not less than 30 years from the date of its initial occupancy.

(b) *Lease and sublease restrictions.*

During the affordability period, the owner of the rental property may not rent or lease any affordable unit and a tenant may not sub-rent or sublease the unit except to an eligible household at a rent that does not exceed an affordable rent applicable to that unit.

(c) *Rent increases.*

(1) During the affordability period, rent increases may be imposed only as provided in this section.

(2) The percentage increase in annual rent may not exceed:

(i) the percentage increase in the cost of living, based on an appropriate inflator index as determined by the Housing Commissioner; or

(ii) a greater amount to the extent:

(A) necessitated by documented hardship or other exceptional circumstances; and

(B) approved in writing by the Housing Commissioner.

(d) *Owner's maintenance.*

The owner of an affordable rental unit:

(1) at all times must comply with all building, fire, safety, and other codes applicable to rental units; and

(2) in providing maintenance and other services to rental units in the residential project, may not discriminate in any way against affordable units.

(e) *Reports to Commissioner.*

(1) Owners of affordable rental units subject to this subtitle must periodically report to the Housing Commissioner on their compliance with the requirements of this section.

(2) These reports must be made in the form and with the frequency that the Housing Commissioner requires.

(Ord. 07-474.)

§ 2B-52. Ownership units.

(a) *City's right of first refusal.*

The City has the right of first refusal to purchase at market rate any affordable unit initially provided under this subtitle.

(b) *Identifying public investment.*

(1) At the time of initial sale, the Housing Commissioner shall identify the amount of public investment in the unit.

(2) For units benefitting from significant rezoning or bonus units, the public investment is deemed to be an amount equal to the owner's initial purchase price.

(c) *Allocation of proceeds.*

At the time of any subsequent sale, the proceeds of the sale shall be allocated as follows:

(1) The owner receives the initial purchase price paid by the owner plus the value of documented improvements.

(2) The City receives an amount equal to its public investment in the affordable unit, but only to the extent that the proceeds of the sale exceed the initial purchase price and the values of documented improvements.

(3) Any proceeds of sale beyond the purchase price and the initial City investment shall be allocated to the owner and the City in the same proportion as the owner's initial purchase price compared to the initial public investment. However, if the sale occurs within 10 years of the owner's purchase, the owner's share of these proceeds is limited to 10% of the owner's proportional share for each full year of the owner's ownership.

(d) *Affordable Housing Agreement.*

The Housing Commissioner's rules and regulations must include provisions for the execution and filing in the land records of affordability housing agreements that embody the requirements of this section.

(Ord. 07-474.)

§§ 2B-53 to 2B-60. ***{Reserved}***

Part VII. Inclusionary Housing Offset Fund

§ 2B-61. Fund established.

(a) *In general.*

There is a Baltimore City Inclusionary Housing Offset Fund.

(b) *Nature of Fund.*

The Baltimore City Inclusionary Housing Offset Fund is a continuing, nonlapsing fund established by authority of City Charter Article I, § 10.

(Ord. 07-474.)

§ 2B-62. Revenue sources.

The Offset Fund comprises:

(1) money appropriated to the Offset Fund in the annual Ordinances of Estimates, and

(2) grants or donations made to the Offset Fund.

(Ord. 07-474.)

§ 2B-63. Use of Fund – General.

Money deposited in the Offset Fund, along with any interest earned on that money, may be used only for the following purposes:

(1) to finance the implementation and administration of this subtitle, including the provision of cost offsets under this subtitle; and

(2) otherwise to promote economically diverse housing in City neighborhoods, including:

(i) providing assistance, by loan, grant, or otherwise, for the planning, production, maintenance, or expansion of affordable housing in the City;

(ii) providing assistance, by loan, grant, or otherwise, to persons unable to obtain affordable housing; and

(iii) otherwise increasing housing opportunities for working families and other persons of low and moderate income.

(Ord. 07-474.)

§ 2B-64. Use of Fund – Administration.

No more than 5% of the money in the Offset Fund may be used in any fiscal year for personnel or other costs of administering the Offset Fund.

(Ord. 07-474.)

§ 2B-65. Use of Fund – Public assistance.

At least half of the households that receive assistance from the Offset Fund must have earnings of not more than 60% of the AMI.

(Ord. 07-474.)

§ 2B-66. Administration.

(a) *Commissioner may prescribe procedures.*

The Housing Commissioner may prescribe procedures for administering the Offset Fund.

(b) *Board to advise.*

The Inclusionary Housing Board advises the Housing Commissioner through its annual report and as requested by the Commissioner on the activities and priorities for which Offset Fund money is best used to promote economically diverse housing in the City.

(Ord. 07-474.)

§ 2B-67. Reporting to Board.

(a) *In general.*

The Housing Commissioner must provide the Inclusionary Housing Board, on a regular basis, information on the uses and impact of the Offset Fund.

(b) *Inclusions.*

The information must include:

(1) expenditures from the Offset Fund;

(2) a list of projects funded through the Offset Fund;

(3) the number and income levels of households assisted by the Offset Fund;

(4) funds leveraged by Offset Fund funds;

(5) number of affordable units produced or preserved;

(6) information as to how Fund money may be used for development efforts assisting the homeless; and

(7) other information that the Board requests about the Offset Fund's impact.

(Ord. 07-474.)

§§ 2B-68 to 2B-70. *{Reserved}*

Part VIII. Administrative and Judicial Review

§ 2B-71. Administrative appeals.

(a) *Right of appeal.*

Any person aggrieved by a decision or ruling of the Housing Commissioner under this subtitle may appeal that decision or ruling to the Board of Estimates.

(b) *How and when taken.*

The appeal must be taken in writing within 15 days from the date of notice of the decision or ruling.

(c) *Hearing and decision.*

The Board:

(1) must hold a hearing on the appeal as soon as practicable; and

(2) may affirm, modify, or reverse the action from which the appeal was taken.

(Ord. 07-474.)

§ 2B-72. Judicial and appellate review.

(a) *Judicial review.*

A party aggrieved by a final decision of the Board of Estimates under § 2B-71 {"Administrative appeals"} of this subtitle may seek judicial review of that decision by petition to the Circuit Court for Baltimore City in accordance with the Maryland Rules of Procedure.

(b) *Appellate review.*

A party to the judicial review may appeal the court's final judgment to the Court of Special Appeals in accordance with the Maryland Rules of Procedure.

(Ord. 07-474.)

EDITOR'S NOTE: Ordinance 07-474 contained the following special provisions dealing with the applicability / effectiveness of various provisions:

Section 2. That, within 120 days of the effective date of this Ordinance, the Commissioner of Housing and Community Development shall adopt rules and regulations to implement this Ordinance.

Section 5. That Article 13, § 2B-21 {"Projects receiving major public subsidy"} ... does not apply if the subsidy in question:

(1) is a transfer of land for which the request for proposals, invitation to bid, or similar document was issued before the adoption of rules and regulations to implement this Ordinance;

(2) is a payment in lieu of taxes or tax increment financing for which the authorizing legislation was introduced before the adoption of rules and regulations to implement this Ordinance; or

(3) is a grant or loan for which the notice of funding availability or similar notice was published before the adoption of rules and regulations to implement this Ordinance.

Section 6. That Article 13, § 2B-22 {" Project benefitting from significant land use authorization or rezoning"} ...does not apply if:

(1) the significant land use authorization or rezoning in question was approved within 18 months after the effective date of this Ordinance; or

(2) the development has had a Pre-Development Meeting with the Department of Planning before the adoption of rules and regulations to implement this Ordinance.

Section 7. That:

(a) (1) Article 13, § 2B-23 {"Other projects – 30 or more units} and § 2B-24 {"Other projects – Less than 30 units"}, as enacted by this Ordinance, do not take effect until 120 days after the Housing Commissioner certifies that, in the previous year, ¾ of arms-length home sales (excluding homes sold for minimal sales price) had a sales price greater than the level affordable to a household at 80% AMI.

(2) Within 60 days of the end of the calendar year, the Commissioner shall publish this certification online and by report to the City Council and the Inclusionary Housing Board.

(3) For the first calendar year after the effective date of this Ordinance "minimal sales price" means $50,000. The "minimal sales price" may be adjusted by the Commissioner in subsequent years to a larger amount that corresponds to the average sales price of homes requiring major rehabilitation to be habitable. This adjustment will be made according to methodology determined and published by the Commissioner.

(b) Article 13, § 2B-23 {"Other projects – 30 or more units} and § 2B-24 {"Other projects – Less than 30 units"}, as enacted by this Ordinance, do not apply to any development that has had a Pre-Development Meeting with the Department of Planning before:

(1) the taking effect of those sections; or

(2) the adoption of rules and regulations to implement this Ordinance.

RELATED STATUTES

ZONING CODE

Title 3. General Rules for Use, Bulk, and Other Regulations

Subtitle 2. Bulk Regulations

§ 3-206. Inclusionary housing adjustment.

For a residential project that, under City Code Article 13, § 2B-22(c) {"Project benefitting from significant land use authorization or rezoning"} or § 2B-23(c)(1) {"30 or more units: Cost-offsets"}, is entitled to bonus units, the lot area per dwelling unit otherwise required by this article is reduced to the extent needed to accommodate those bonus units.

(Ord. 07-474.)

Title 8. Overlay Districts

Subtitle 5. Inclusionary Housing Overlay

§ 8-501. Design.

(a) *In general.*

The Inclusionary Housing Overlay classification is designed to formally designate those parcels that benefit from significant rezoning, as defined in City Code Article 13, § 2B-1. The overlay classification terminates automatically on the repeal of Article 13, Subtitle 2B .

(b) *Public notice.*

The intent of the designation is to provide a formal method of public notice that residential development on the property could be subject to the requirements of City Code Article 13, Subtitle 2B {"Inclusionary Housing Requirements"}.

(Ord. 07-474.)

§ 8-502. Classification.

All properties that are the subject of significant rezoning, as defined in City Code Article 13, § 2B- 1,for whatever purpose, retain their new zoning classification with the addition of the suffix "I".

(Ord. 07-474.)

§§ 8-503 to 8-505. ***{Reserved}***

§ 8-506. Developer on notice.

The purchaser or developer of property with an Inclusionary Housing Overlay classification is on notice that residential development on the property could be subject to and limited by the requirements of City Code Article 13, Subtitle 2B {"Inclusionary Housing Requirements"}.
(Ord. 07-474.)

Title 9. Planned Unit Developments

Subtitle 2. Residential Planned Unit Developments

§ 9-210. Gross density premiums.

(a) *In general.*

To the extent specifically provided in the approved Development Plan, the maximum gross densities specified in § 9-209 {"Gross density"} of this subtitle may be increased by:

(1) up to 25% in accordance with one or more of the following subsections; and

(2) an additional 20% for a residential project that provides at least the number of affordable units required by City Code Article 13, § 2B-22{"Inclusionary Housing Requirements: Projects benefitting from significant land use authorization or rezoning"}.

(b) *Near park land.*

For a Residential Planned Unit Development that is adjacent to a public park of at least 15 acres, a premium may be added of up to 10%.

(c) *Near rapid transit.*

For a Residential Planned Unit Development that is within 1/8 mile of a rapid transit station facility or interchange, a premium may be added of up to 5%.

(d) *With dedicated recreational and educational sites.*

For a Residential Planned Unit Development that has dedicated public recreational and educational sites, as recommended in the Master Plan, a premium may be added that is equal to the number of dwelling units that would otherwise have been permitted on the land so dedicated.

(e) *With unique design features.*

For a Residential Planned Unit Development that provides unique design features requiring unusually high development costs and achieving an especially attractive and stable development, a premium may be added of up to 5%.

(f) *Open space in certain districts.*

In R-7, R-8, R-9, and R-10 Districts, for a Residential Planned Unit Development that provides at grade permanent open space developed for recreational use, terraces, sculptures, reflecting pools, fountains, and similar uses, a premium may be added of a percentage equal to 2 times the percentage of the Planned Unit Development so devoted to permanent open space uses.

(City Code, 1976/83, art. 30, §12.0-2b3.) (Ord. 99-547; Ord. 07-474.)

Subtitle 3. Office-Residential Planned Unit Developments

§ 9-310. Gross density premiums.

(a) *In general.*

To the extent specifically provided in the approved Development Plan, the maximum gross densities specified in § 9-309 {"Gross density"} of this subtitle may be increased by:

(1) up to 25% in accordance with one or more of the following subsections; and

(2) an additional 20% for a residential project that provides at least the number of affordable units required by City Code Article 13, § 2B-22{"Inclusionary Housing Requirements: Projects benefitting from significant land use authorization or rezoning"}.

(b) *Near park land.*

For an Office-Residential Planned Unit Development that is adjacent to a public park of at least 15 acres, a premium may be added of up to 10%.

(c) *Near rapid transit.*

For an Office-Residential Planned Unit Development that is within 1/8 mile of a rapid transit station facility or interchange, a premium may be added of up to 5%.

(d) *With dedicated recreational and educational sites.*

For an Office-Residential Planned Unit Development that has dedicated public recreational and educational sites, as recommended in the Master Plan, a premium may be added that is equal to the number of dwelling units that would otherwise have been permitted on the land so dedicated.

(e) *With unique design features.*

For an Office-Residential Planned Unit Development that provides unique design features requiring unusually high development costs and achieving an especially attractive and stable development, a premium may be added of up to 5%.

(f) *Open space in certain districts.*

In O-R-2, O-R-3, and O-R-4 Districts, for an Office-Residential Planned Unit Development that provides at grade permanent open space developed for recreational use, terraces, sculptures, reflecting pools, fountains, and similar uses, a premium may be added of a percentage equal to 2 times the percentage of the Planned Unit Development so devoted to permanent open space uses.

(City Code, 1976/83, art. 30, §12.0-3b3.) (Ord. 99-547; Ord. 07-474.)

Subtitle 4. Business Planned Unit Developments

§ 9-410. Gross density premiums.

(a) *In general.*

To the extent specifically provided in the approved Development Plan, the maximum gross densities specified in § 9-409 {"Gross density"} of this subtitle may be increased by:

(1) up to 25% in accordance with one or more of the following subsections; and

(2) an additional 20% for a residential project that provides at least the number of affordable units required by City Code Article 13, § 2B-22{"Inclusionary Housing Requirements: Projects benefitting from significant land use authorization or rezoning"}.

(b) *Near park land.*

For a Business Planned Unit Development that is adjacent to a public park of at least 15 acres, a premium may be added of up to 10%.

(c) *Near rapid transit.*

For a Business Planned Unit Development that is within 1/8 mile of a rapid transit station facility or interchange, a premium may be added of up to 5%.

(d) *With dedicated recreational and educational sites.*

For a Business Planned Unit Development that has dedicated public recreational and educational sites, as recommended in the Master Plan, a premium may be added that is equal to the number of dwelling units that would otherwise have been permitted on the land so dedicated.

(e) *With unique design features.*

For a Business Planned Unit Development that provides unique design features requiring unusually high development costs and achieving an especially attractive and stable development, a premium may be added of up to 5%.

(f) *Open space.*

For a Business Planned Unit Development that provides at grade permanent open space developed for recreational use, terraces, sculptures, reflecting pools, fountains, and similar uses, a premium may be added of a percentage equal to 2 times the percentage of the Planned Unit Development so devoted to permanent open space uses.

(City Code, 1976/83, art. 30, §12.0-4b3.) (Ord. 99-547.)

ARTICLE 28. TAXES

Division II. Property Tax

Subtitle 9. Exemptions

§ 9-6. Affordable and inclusionary housing.

(a) *Definitions.*

(1) *In general.*

In this section, the following terms have the meanings indicated.

(2) *Affordable rent.*

"Affordable rent" means rent that does not exceed 30% of a household's income.

(3) *Area median income.*

"Area median income" means the median household income, adjusted for household size, for the metropolitan region encompassing Baltimore City, as published and annually updated by the United States Department of Housing and Urban Development.

(4) *Qualifying development.*

"Qualifying development" means:

(i) a redevelopment project of 30 or more residential rental units that will set aside 10% or more of the development's total units to be rented at an affordable rent to a household earning not more than 60% of the area median income; or

(ii) a new residential rental development project that:

(A) is new construction or is a conversion of a nonresidential structure that will provide 30 or more units of housing;

(B) has a combined private capital investment of equity and debt of at least $10,000,000;

(C) sets aside at least 10% of the development's total units to be rented at an affordable rent to a household earning not more than 60% of the area median income; and

(D) has not obtained site plan approval on or before June 30, 2007.

(5) *Site plan approval*.

"Site plan approval" means approval from the Planning Commission of the land development proposal of a qualified development to ensure its consistency with land development policies and regulations and accepted land design practices.

(b) *Rules and regulations*.

(1) *In general*.

The Director of Finance, after consultation with the Housing Commissioner, must adopt rules and regulations to carry out the provisions of this section.

(2) *Filing with Legislative Reference*.

A copy of all rules and regulations adopted under this section must be filed with the Department of Legislative Reference before they become effective.

(c) *Exemption granted.*

A redevelopment project or new residential rental development project is exempt from Baltimore City real property taxes if, in accordance with the rules and regulations adopted under this section:

(1) the owner or owners of the project have filed an application for the exemption within the time period specified by the rules and regulations adopted under this subtitle;

(2) the City determines that the project is a qualifying development meeting the requirements of this section;

(3) the City determines that the exemption is necessary to offset the owner's or owners' additional costs of providing affordable units at the qualifying development;

(4) the owner or owners of the qualifying development satisfy a financial review administered by the City that includes:

(i) a detailed description of the project and the development budget for the project, including the identification of all sources of debt and equity financing;

(ii) a multiyear pro forma cash flow analysis of the project detailing all incoming and outgoing cash flow including revenues, operating expenses, debt service, taxes, capital expenditures, and any other cash outlays;

(iii) the projected return on investment for the owner or owners;

(iv) the amount of potential revenue that may be lost through the provision of affordable housing; and

(v) any additional information specified in the rules and regulations adopted under this section; and

(5) the owner or owners of the qualifying development and the City enter into an agreement, approved by the Board of Estimates, that:

(i) provides that the owner or owners of the qualifying development must pay to the City a negotiated amount in lieu of the payment of City real property taxes;

(ii) specifies an amount that the owner or owners must pay to the City each year in lieu of the payment of City real property taxes during the term of the agreement that is not less than 75% of the annual property taxes that would otherwise be due to the City for the qualifying development in the initial year of the agreement; and

(iii) is limited to a term of not more than 10 years.

(d) *Extensions of the agreement.*

(1) *In general.*

At the completion of the term of the agreement, the qualifying development may seek, and the Board of Estimates may grant, an extension of the agreement.

(2) *10-year limit.*

Each extension is limited to a term of not more than 10 years.

(e) *Maximum aggregate tax reduction.*

The Board of Estimates may not approve an agreement for payment of a negotiated amount in lieu of taxes under this section if the agreement would cause the total reduction in property tax revenues from all agreements entered into under this section to exceed $2,000,000 in any taxable year.

(f) *State authorization.*

The property tax exemption granted by this section is contingent on the enactment and continuation of State legislation that authorizes the exemption.

(Ord. 07-474.)

TABLE OF CONTENTS

TITLE 9

LAND USE CODE

Chapter 13 Inclusionary Zoning[1]

9-13-1 Findings.

(a) A diverse housing stock is necessary in this community in order to serve people of all income levels. Based upon the review and consideration of recent housing studies, reports and analysis, it has become clear that the provisions of this chapter are necessary in order to preserve some diversity of housing opportunities for the city's residents and working people.

(b) The program defined by this chapter is necessary to provide continuing housing opportunities for very low-, low- and moderate-income and working people. It is necessary to help maintain a diverse housing stock and to allow working people to have better access to jobs and upgrade their economic status. It is necessary in order to decrease social conflict by lessening the degree of separateness and inequality. The increasingly strong employment base in this region, combined with the special attractiveness of Boulder, its increasing University related population and its environmentally sensitive urban service boundaries, all combine to make the continued provision of decent housing options for very low-, low- and moderate-income and working people in Boulder a difficult but vital objective. The regional trend toward increasing housing prices will, without intervention, result in inadequate supplies of affordable housing here for very low-, low- and moderate-income and working people. This in turn will have a negative effect upon the ability of local employers to maintain an adequate local work force.

(c) It is essential that appropriate housing options exist for University students, faculty and staff so that the housing needs of University related populations do not preclude non-University community members from finding affordable housing.

(d) A housing shortage for persons of very low-, low- and moderate-income is detrimental to the public health, safety and welfare. The inability of such persons to reside within the city negatively affects the community's jobs/housing balance and has serious and detrimental transportation and environmental consequences.

(e) Because remaining land appropriate for residential development within the city is limited, it is essential that a reasonable proportion of such land be developed into housing units affordable to very low-, low- and moderate-income residents and working people. This is particularly true because of the tendency, in the absence of intervention, for large expensive housing to be developed within the city which both reduces opportunities for more affordable housing and contributes to a general rise in prices for all of the housing in the community, thus exacerbating the scarcity of affordable housing within the city.

(f) The primary objective of this chapter is to obtain on-site, privately owned, permanently affordable units. Some provisions of this chapter provide for alternatives to the production of such on-site units. Those provisions recognize the fact that individual site and economic factors can make on-site production less desirable than the alternatives for particular developers. However, the intent and preference of this chapter is that wherever possible, permanently affordable units constructed pursuant to these provisions be located on-site and be privately produced, owned and managed.

9-13-2 Purpose.

The purposes of this chapter are to:

(a) Implement the housing goals of the Boulder Valley Comprehensive Plan;

(b) Promote the construction of housing that is affordable to the community's workforce;

(c) Retain opportunities for people that work in the city to also live in the city;

(d) Maintain a balanced community that provides housing for people of all income levels; and

(e) Insure that housing options continue to be available for very low-income, low-income, and moderate-income residents, for special needs populations and for a significant proportion of those who both work and wish to live in the city.

9-13-3 General Inclusionary Housing Requirements.

(a) Scope of Chapter: No person shall fail to conform to the provisions of this chapter for any new development which applies for a development approval or building permit for a dwelling unit after the effective date of this chapter. No

building permit or certificate of occupancy shall be issued, nor any development approval granted, which does not meet the requirements of this chapter.

(b) Prohibitions: No person shall sell, rent, purchase, or lease a permanently affordable unit created pursuant to this chapter except to income eligible households and in compliance with the provisions of this chapter.

(c) Asset Limitations for Income Eligible Households: Income eligible tenants and purchasers of affordable units shall be subject to reasonable asset limitations set by the city manager. The city manager will establish maximum asset limitation requirements for tenants and purchasers of affordable units in order to accomplish the purposes of this chapter. The standard that the city manager will use to set the asset limitation is that the housing be available to people who, without assistance, would have difficulty marshaling the financial resources to obtain appropriate housing within the city.

(d) Permanently Affordable Ownership Units: Except as otherwise provided in this chapter, permanently affordable units that are required for developments that are intended for owner occupancy shall be provided as follows:

(1) On-Site: Permanently affordable units that are required to be constructed on-site shall be owner occupied in the same proportion as the dwelling units intended for sale as owner occupancy that are not permanently affordable within the development.

(2) Off-Site: Permanently affordable units that the developer may be allowed to provide off-site shall also be owner occupied in the same proportion as the dwelling units intended for sale as owner occupancy that are not permanently affordable within the development.

(e) Transition to Inclusionary Zoning Requirements: Developments of the type described in this subsection shall be permitted to develop utilizing no more than one of the following provisions:

(1) Developments Approved Prior to 1995: Developments which received development plan approvals prior to October 5, 1995, shall conform to the provisions of this chapter or, in the alternative, may develop in compliance with the conditions of their previously issued development plan approvals so long as the construction of dwelling units are completed by December 31, 2001.

(2) City Subsidized Developments: Developments subject to agreements with the city executed prior to the effective date of this chapter in order to receive Community Housing Assistance Program, HOME or Community Development Block Grant funds may either:

(A) Develop in compliance with affordable housing and restricted housing agreements executed prior to the effective date of this chapter and provide restricted units as required pursuant to ordinances in effect at the time such developments were approved;

(B) Enter into a new agreement with the city manager to allow the development to retain funding pursuant to the earlier agreements, provide permanently affordable units as required pursuant to the earlier agreements and law, be relieved of all obligations to provide restricted units, and provide ten percent additional permanently affordable units as such units are defined by this title; or

(C) Refund all monies received pursuant to such agreements and agree that contracts providing for the provision of such funding shall be void. The development shall then develop in compliance with the provisions of this chapter.

(3) Development With Reservation Agreements: Developments for which reservation agreements have been entered prior to the effective date of this chapter may develop in compliance with the affordable housing and restricted housing conditions contained in those agreements if building permits for the dwelling units are applied for by December 31, 2001.

(4) Developments Subject to Annexation Agreements: Developments subject to affordable housing requirements imposed by annexation contracts entered into prior to the effective date of this chapter may develop in conformity with those contract provisions.

(5) Developments With Pending Project Approval Applications: Developers of developments for which applications were filed prior to the effective date of this chapter may request that the city manager vary the standards of this chapter to allow for development in conformity with the approvals. The city manager will grant such variance requests by finding that the proposed variance will result in benefits to the city that are equivalent to the benefits that would otherwise have been created by the application of the provisions of this chapter.

(6) Moderate Income Housing Program: Any development subject to Ordinance 4638, "Moderate Income Housing," as amended, and which has not entered into a separate agreement with the city manager to fulfill those requirements prior to the effective date of this chapter shall be relieved of its obligations under Ordinance 4638, as amended, and shall be subject to the requirements of this chapter.

(f) Permanently Affordable Unit Types: The distribution of dwelling unit types that meet the permanently affordable unit requirements of this section shall be as follows:

(1) Single-Family: In single-family detached dwelling unit developments, the required on-site permanently affordable units shall also be single-family detached units.

(2) Mixed Unit Type: In developments with the included single-family detached units, attached units, multi-family apartment type units, or other dwelling unit types, the required on-site permanently affordable units shall be comprised of the different unit types in the same proportion as the dwelling units that are not permanently affordable within the development.

(3) Alternative Distribution Ratios: The city manager is to approve different unit distributions among the permanently affordable unit types if doing so would accomplish additional benefits for the city consistent with the purposes of this chapter, or if approved pursuant to a site review pursuant to section 9-2-14, "Site Review," B.R.C. 1981, results in a better design than not using the distribution of units provided for in this section.

(g) Reference Information: Whenever this chapter refers to information generated by HUD but no such information is generated by or available from that agency, the city manager shall generate appropriate information which can be utilized in the enforcement of the provisions of this chapter.

Ordinance No. 7212 (2002)

9-13-4 Inclusionary Obligation Based Upon Size of Project.

(a) Developments of Five or More Dwelling Units: Any development containing five or more dwelling units is required to include at least twenty percent of the total number of dwelling units within the development as permanently affordable units.

(b) Developments Containing Four Dwelling Units or Less: Any development containing four dwelling units or less may comply with the obligations of this chapter either by including one permanently affordable unit within the project, by dedicating an off-site permanently affordable unit, by dedicating land that meets the requirements set forth in section 9-13-6, "Off-Site Inclusionary Zoning Option," B.R.C. 1981, or by providing a cash-in-lieu financial contribution to the city's affordable housing fund established by section 9-13-5, "Cash-in-Lieu Equivalent for a Single Permanently Affordable Unit," B.R.C. 1981.

(c) Minimum Sizes for Permanently Affordable Units: The minimum size for permanently affordable units shall be as follows:

(1) The average floor area of the detached permanently affordable units in a development shall be a minimum of forty-eight percent of the average floor area of all the non-permanently affordable units which are part of the same development up to a maximum average size of one thousand two hundred square feet of floor area.

(2) The average floor area of the attached permanently affordable units in a development shall be a minimum of eighty percent of the average floor area of all the non-permanently affordable units which are part of the same development up to a maximum average size of one thousand two hundred square feet of floor area.

(3) The city manager will permit a decrease in size of the finished floor area, set forth in paragraph (c)(1) of this section, if the dwelling unit is increased in size by two square feet of unfinished and potentially habitable space for each square foot of finished square foot of floor area that is decreased, up to a maximum of four hundred unfinished square feet, upon finding that the unfinished space will be designed and configured in such a way as to allow for a simple conversion of the space at some future time. The factors that the city manager will consider to determine whether a simple conversion is possible include, without limitation, an adequate foundation, sound structural components, floor to ceiling heights, weather resistant roofs, appropriate exits, and window placement.

(4) The city manager is authorized to enter into agreements allowing permanently affordable units to constitute a smaller percentage of the total floor area contained within non-permanently affordable units at a given project if doing so would accomplish additional benefits for the city consistent with the purposes of this chapter or

to prevent an unlawful taking of property without just compensation in accordance with section 9-13-10, "No Taking of Property Without Just Compensation," B.R.C. 1981.

9-13-5 Cash-in-Lieu Equivalent for a Single Permanently Affordable Unit.

(a) Cash-in-Lieu Equivalent: Whenever this chapter permits a cash-in-lieu contribution as an alternative to the provision of a single permanently affordable unit, the cash-in-lieu contribution shall be as follows:

(1) Detached Dwelling Units: For each unrestricted detached dwelling unit, the cash-in-lieu contribution for the calendar year of 2000 shall be the lesser of $13,200.00 or $55.00 multiplied by twenty percent of the total floor area of the unrestricted unit. The cash-in-lieu contribution will be adjusted annually as set forth in subsection (c) of this section.

(2) Attached Dwelling Units: For each unrestricted attached dwelling unit, the cash-in-lieu contribution for the calendar year of 2000 shall be the lesser of $12,000.00 or $50.00 multiplied by twenty percent of the total floor area of the unrestricted unit. The cash-in-lieu contribution will be adjusted annually as set forth in subsection (c) of this section.

(b) Contribution-in-Lieu Provisions Affecting Certain Developments Containing a Single Dwelling Unit: A lot owner that intends to construct a single dwelling unit that will be the primary residence of the owner for not less than one year immediately following the issuance of a certificate of occupancy shall meet the standards set forth in section 9-13-4, "Inclusionary Obligation Based Upon Size of Project," B.R.C. 1981, or meet the following standards:

(1) Designation of Home as a Permanently Affordable Unit: The owner shall make the unit a permanently affordable unit, except that such initial owner does not have to meet income or asset qualifications imposed by this chapter. The income and asset limitations shall apply to subsequent owners of the affordable unit.

(2) Alternative Method of Paying Cash-in-Lieu Contribution: If the owner of a unit described in this subsection chooses to comply with inclusionary zoning obligations imposed by this chapter by making an in-lieu contribution as set forth in section 9-13-4, "Inclusionary Obligation Based Upon Size of Project," B.R.C. 1981, the owner shall have the option of deferring payment of that contribution until such time as the property is conveyed to a subsequent owner, subject to the following:

(A) The amount of the cash-in-lieu contribution shall be increased or decreased to reflect the percentage of change, if any, between the actual valuation determined by the Boulder County Assessor of the property upon which the unit is constructed following completion of such construction and the most recent actual valuation determined by the Boulder County Assessor of the same property at the time of transfer of title to a subsequent owner.

(B) The owner executes legal documents, the form and content of which are approved by the city manager, to secure the city's interest in receipt of the deferred cash-in-lieu contribution.

(3) Alternative Methods of Compliance: If the owner of a unit described in this subsection chooses to comply with the inclusionary zoning obligations imposed by this chapter by utilizing an in-lieu contribution approach, the city manager shall have discretion to accept in-lieu consideration in any form so long as the value of that consideration is equivalent to or greater than the cash-in-lieu contribution required by this chapter and the city manager determines that the acceptance of an alternative form of consideration will result in additional benefits to the city consistent with the purposes of this chapter.

(4) Waiver of Inclusionary Zoning Obligation for Certain Size-Restricted Developments: The owner of a lot who constructs a single dwelling unit upon that lot may elect to be exempted from the inclusionary zoning requirements imposed by this chapter if all of the following conditions are met:

(A) Limitation on Eligible Lots: The dwelling unit is a single detached dwelling unit built on a lot created prior to October 5, 1995;

(B) Primary Residence of Lot Owner: The dwelling unit is intended to be the primary residence of the owner and, following completion of the unit, the lot owner lives in the unit continuously for no less than one year immediately following the issuance of a certificate of occupancy;

(C) Maximum Size: The floor area of the single detached residential unit does not exceed one thousand six hundred square feet;

(D) Restriction on Size: Restrictive covenants or other legal documents, the form and content of which are acceptable to the city manager, are executed to ensure that the single detached residential unit remains size restricted in perpetuity to a floor area not exceeding one thousand six hundred square feet; and

(E) One-Time Exemption: No person shall be permitted to use the exemption set forth in this subsection more than one time.

(c) Annual Escalator: The city manager is authorized to adjust the cash-in-lieu contribution on an annual basis to reflect changes in the median sale price for detached and attached housing, using information provided by Boulder County Assessor records for the City of Boulder.

(d) Affordable Housing Fund Established: The city manager shall establish an affordable housing fund for the receipt and management of permanently affordable unit cash-in-lieu financial contributions. Monies received into that fund shall be utilized solely for the construction, purchase, and maintenance of affordable housing and for the costs of administering programs consistent with the purposes of this chapter.

Ordinance No. 7212 (2002)

9-13-6 Off-Site Inclusionary Zoning Option.

(a) On-Site and Off-Site Inclusionary Zoning Requirements: Except as otherwise provided in this chapter, in developments that require more than one permanently affordable ownership unit, the developer must construct a minimum of one-half of the required permanently affordable units on-site.

(b) Variance to On-Site Construction Requirement: The city manager is authorized to enter into agreements to allow a greater percentage of the required permanently affordable unit obligation to be satisfied off-site if the city manager finds:

(1) Securing such off-site units will accomplish additional benefits for the city consistent with the purposes of this chapter; or

(2) If zoning, environmental, or other legal restrictions make a particular level of on-site compliance unfeasible.

(c) Requirements for Fulfilling Obligation Off-Site: To the extent that a developer is authorized to fulfill some portion of the permanently affordable housing obligation off-site, the developer may satisfy that obligation through any combination of the following alternate means:

(1) In-Lieu Contribution: To the extent permitted by this chapter, developers may satisfy permanently affordable unit obligations by making contributions to the city's affordable housing fund in an amount that is calculated according to the standards set forth in subsection 9-13-5(a), B.R.C. 1981.

(2) Land Dedication: To the extent permitted by this chapter, permanently affordable unit obligations may be satisfied by dedication of land in-lieu of providing affordable housing on-site. Land dedicated to the city or its designee shall be located in the City of Boulder. The value of land to be dedicated in satisfaction of this alternative means of compliance shall be determined, at the cost of the developer, by an independent appraiser, who shall be selected from a list of certified appraisers provided by the city, or by such alternative means of valuation as to which a developer and the city may agree. The land dedication requirement may be satisfied by:

(A) Land At Equivalent Value: Conveying land to the city or its designee that is of equivalent value to the cash-in-lieu contribution that would be required under section 9-13-5, "Cash-in-Lieu Equivalent for a Single Permanently Affordable Unit," B.R.C. 1981, plus an additional fifty percent, to cover costs associated with holding, developing, improving, or conveying such land; or

(B) Land to Construct Equivalent Units: Conveying land to the city or its designee that is of equivalent value (as of the date of the conveyance) to that land upon which required units would otherwise have been constructed (upon completion of construction). Land so deeded must be zoned such as to allow construction of at least that number of units for which the obligation of construction is being satisfied by the dedication of the land.

(C) Dedication of Existing Units: To the extent permitted by this chapter, permanently affordable unit obligations may be satisfied by restricting existing dwelling units which are approved by the city as suitable affordable housing dwelling units through covenants, contractual arrangements, or resale restrictions, the form

and content of which are acceptable to the city manager. Off-site units shall be located within the City of Boulder. The restriction of such existing units must result in the creation of units that are of equivalent value, quality, and size of the permanently affordable units which would have been constructed on-site if this alternative had not been utilized. Where a proposed development consists of ownership units, units created under this section shall be ownership units. The value of dwelling units created pursuant to this section as a way of meeting the permanently affordable unit requirement shall be determined, at the expense of the developer, by an appraiser who shall be selected by the developer from a list of certified appraisers provided by the city or by such alternative means of valuation as to which a developer and the city may agree.

9-13-7 Affordable Housing Requirements for Rental Projects.

(a) Manner of Compliance: For developments containing rental units, permanently affordable unit obligations for such units shall be met in the following manner:

(1) On-Site or Off-Site Units Permitted: All permanently affordable unit obligations of rental housing projects may be met through on-site units, off-site units, or by any combination of on-site and off-site units, which satisfy such permanently affordable unit obligation. Off-site units shall be equivalent in size and quality of on-site units that otherwise would be required by this chapter.

(2) Conversion of Rental Developments to Ownership Units: A rental housing project that is not owned by the Housing Authority of the City of Boulder or its agents or in which the city does not have an interest through the Housing Authority of the City of Boulder or a similar agency consistent with section 38-12-301, C.R.S., that chooses to fulfill its permanently affordable unit obligations off-site shall enter into a covenant or agreement with the city. The covenant or other agreement shall be in a form acceptable to the city manager and shall insure that the number of permanently affordable units that would have been provided if the project was an ownership development with off-site units used to meet the total inclusionary zoning requirements will be provided in the event that the proposed rental development converts to an ownership development within five years of the final unit in the development receiving a certificate of occupancy. Such covenant or agreement shall provide for the appropriate adjustment to the inclusionary zoning requirements of this chapter.

(3) Variance to Permanently Affordable Housing Requirement for Rental Projects: The city manager may enter into agreements with the developers of rental housing projects such that permanently affordable unit obligations are satisfied in ways other than those listed in this chapter upon a finding by the city manager that such alternative means of compliance would result in additional benefits to the city which would further the objectives of this chapter.

(b) Determination of Rental Rates for Permanently Affordable Units: If a developer of a rental housing project chooses to meet the permanently affordable unit requirements imposed by this chapter through the provision of on-site or off-site affordable rental housing, affordability of rental units shall be determined as follows:

(1) Maximum Rent: Rents charged for permanently affordable units in any one project must, on average, be affordable to households earning ten percentage points less than the HUD low-income limit for the Boulder PMSA, with no unit renting at a rate which exceeds affordability to a household earning more than the HUD low-income limit for the Boulder PMSA.

(2) Maximum Income for Tenants: No single household in a permanently affordable unit project shall have an income which exceeds the HUD low-income limit for the Boulder PMSA.

Ordinance No. 7212 (2002)

9-13-8 Affordable Housing Requirements for Ownership Units.

(a) Maximum Sales Price for Permanently Affordable Units: The maximum sale price for an affordable ownership unit shall be set by the city on a quarterly basis.

(b) Average Price Within a Development: The prices charged for permanently affordable units in any one project shall average a price affordable to a household earning the HUD low-income limit, with no unit exceeding a price affordable to a household earning ten percentage points more than the HUD low-income limit for the Boulder PMSA.

(c) Maximum Income for Purchasers of Ownership Units: An ownership unit shall be sold to, or purchased by an income eligible household that meets the asset limitations established pursuant to this chapter.

(d) Approved Purchasers for Permanently Affordable Units: A developer or owner shall select a low-income purchaser after completing a good faith marketing and selection process approved by the city manager. Upon request, the city may provide the developer or owner of a permanently affordable unit with a list of households certified by the city as eligible to purchase the unit. However, a developer or property owner may select a low-income purchaser who is not on a furnished list so long as the city can verify the purchaser's income and asset eligibility and the unit is sold at an affordable price as described in this chapter.

(e) Purchasers of Permanently Affordable Units Required to Reside in Those Units: A purchaser of a permanently affordable unit shall occupy the purchased unit as a primary residence, except subject to rental restrictions for permanently affordable ownership units.

(f) Rental Restrictions for Permanently Affordable Ownership Units: No person shall rent a permanently affordable ownership unit, except as follows:

(1) Unit Initially Occupied: The owner shall initially reside in the permanently affordable ownership unit for a period of not less than five years.

(2) Notice: The owner shall provide notice to the city prior to renting of the permanently affordable ownership unit of its intent to rent the unit.

(3) Limitation on Lease Period: The owner shall not rent or lease the entirety of the affordable unit for one or more periods aggregating not more than one year out of every seven-year period.

(4) Lease Documentation: Any lease or rental agreement for the lease or rental of a permanently affordable ownership unit pursuant to this section shall be in writing.

(5) Prior Approval: Before the date upon which it becomes effective, a copy of any lease or rental agreement for a permanently affordable unit shall be provided to the city, along with those documents which the city finds to be reasonably necessary in order to determine compliance with this section.

(6) Scope: The provisions of this section shall apply to all rental or lease arrangements under which any person, other than the owner, his or her spouse, his or her domestic partner and dependent children or parents, occupies any part of the property for any valuable consideration, whether that agreement is called a lease, rental agreement, or something else.

(7) Rental of a Bedroom Permitted: At all other times, the only part of a permanently affordable unit which an owner may rent or lease is a bedroom, subject to all requirements of city ordinances concerning the renting of residential property.

(g) Resale Restrictions Applicable to Permanently Affordable Units: All permanently affordable ownership units developed under this chapter shall be subject to the following resale restrictions:

(1) Approved Purchasers for Resale of Permanently Affordable Units: A seller of a permanently affordable unit must select a low-income purchaser by a method that complies with the good faith marketing and selection process approved by the city manager. At the request of an applicant, the city will provide the seller with the description of a process that meets this requirement. Upon request, the city may provide a potential seller of a permanently affordable unit with a list of households certified by the city as eligible to purchase the unit. All purchasers of permanently affordable units shall be part of income eligible households.

(2) Resale Price for Permanently Affordable Units: The resale price of any permanently affordable unit shall not exceed the purchase price paid by the owner of that unit with the following exceptions:

(A) Customary closing costs and costs of sale;

(B) Costs of real estate commissions paid by the seller if a licensed real estate agent is employed and if that agent charges commissions at a rate customary in Boulder County;

(C) Consideration of permanent capital improvements installed by the seller; and

(D) The resale price may include an inflationary factor or shared appreciation factor as applied to the original sale price pursuant to rules as may be established by the city manager to provide for such consideration. In developing rules, the city manager shall consider the purposes of this chapter, common private, nonprofit, and governmental lending practices, as well as any applicable rules or guidelines issued by

federal or state agencies affecting the provision or management of affordable housing. In the event that the city has not adopted rules that contemplate a particular arrangement for the use of an inflationary factor or shared appreciation factor, the city manager is authorized to approve a resale price formula that is consistent with the purposes of this chapter, common private, nonprofit, and governmental lending practices, as well as any applicable rules or guidelines issued by federal or state agencies affecting the provision or management of affordable housing.

(3) No Special Fees Permitted: The seller of a permanently affordable unit shall not levy or charge any additional fees or any finder's fee nor demand any other monetary consideration other than provided in this chapter.

(4) Deed Restriction Required: No person offering a permanently affordable unit for sale shall fail to lawfully reference in the Grant Deed conveying title of any such unit, and record with the county recorder, a covenant or Declaration of Restrictions in a form approved by the city. Such covenant or Declaration of Restrictions shall reference applicable contractual arrangements, restrictive covenants, and resale restrictions as are necessary to carry out the purposes of this chapter.

Ordinance No. 7212 (2002)

9-13-9 Requirements Applicable to All Required Permanently Affordable Units.

(a) Construction Timing: The construction of required permanently affordable units in any development shall be timed such that they may be marketed concurrently with or prior to the market-rate units in that development. However, the city manager is authorized to enter into other phasing agreements if doing so would accomplish additional benefits for the city consistent with the purposes of this chapter.

(b) Residents Eligible for Permanently Affordable Units: No person shall sell, lease or rent a permanently affordable unit except to income eligible households.

(c) Required Agreements: Prior to approval of any development review pursuant to sections 9-2-14, "Site Review," and 9-2-15, "Use Review," B.R.C. 1981, or a subdivision pursuant to chapter 9-12, "Subdivision," B.R.C. 1981, applicants for residential development projects shall have entered into permanently affordable housing agreements with the city. Such agreements shall specify the number, type, location, approximate size, and projected level of affordability of permanently affordable units. Prior to application for a building permit for a residential development project, developers shall execute such restrictive covenants and additional agreements, in a form acceptable to the city, as are necessary to carry out the purposes of this chapter. No development review application or subdivision application shall be approved in the absence of proof of the execution of required agreements and covenants. No building permit application shall be accepted in the absence of proof of the execution of required agreements and covenants.

(d) Good Faith Marketing Required: All sellers or owners of permanently affordable units shall engage in good faith marketing efforts each time a permanently affordable unit is rented or sold such that members of the public who are qualified to rent or purchase such units have a fair chance to become informed of the availability of such units. Every such seller or owner shall submit a public advertising plan targeting the appropriate income range for approval by the city manager.

9-13-10 No Taking of Property Without Just Compensation.

(a) Purpose: It is the intention of the city that the application of this chapter not result in an unlawful taking of private property without the payment of just compensation.

(b) Request for Review: Any applicant for the development of a housing project who feels that the application of this chapter would effect such an unlawful taking may apply to the city manager for an adjustment of the requirements imposed by this chapter.

(c) City Manager Review: If the city manager determines that the application of the requirements of this chapter would result in an unlawful taking of private property without just compensation, the city manager may alter, lessen or adjust permanently affordable unit requirements as applied to the particular project under consideration such that there is no unlawful uncompensated taking.

(d) Administrative Hearing: If after reviewing such application, the city manager denies the relief sought by an applicant, the applicant may request an administrative hearing within which to seek relief from the provisions of this

chapter. Any such hearing shall be conducted pursuant to the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. At such hearing, the burden of proof will be upon the applicant to establish that the fulfillment of the requirements of this chapter would effect an unconstitutional taking without just compensation pursuant to applicable law of the United States and the State of Colorado. If it is determined at such administrative hearing that the application of the requirements of this chapter would effect an illegal taking without just compensation, the city manager shall alter, lessen or adjust permanently affordable unit requirements as applied to the particular project under consideration such that no illegal uncompensated taking takes place.

9-13-11 Administrative Regulations.

To the extent the city manager deems necessary, rules and regulations pertaining to this chapter will be developed, maintained and enforced in order to assure that the purposes of this chapter are accomplished.

9-13-12 Monitoring.

Prior to July 1, 2002, the city manager will present sufficient information to the city council so that it can effectively review the operation of this chapter and determine whether any of the provisions of this chapter should be amended, adjusted or eliminated. Such information should be sufficient to allow the city council to evaluate the following:

(a) The effectiveness of this chapter in contributing to the purposes of this chapter;

(b) Any demographic trends affecting housing affordability indicating the need for amendments or alterations to the provisions of this chapter;

(c) The level of integration of the provisions of this chapter with other tools being utilized by the city as part of a comprehensive approach toward obtaining the goals of this chapter.

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[1] Adopted by Ordinance 7476.

Cambridge, City of. 2009. *Zoning Ordinance.*

ARTICLE 11.000 SPECIAL REGULATIONS

11.200 Incentive Zoning Provisions and Inclusionary Housing Provisions.

Purposes. The purposes of this Section 11.200 are to promote the public health, safety and welfare by encouraging the expansion and upgrading of the City's housing stock while accommodating the expansion of housing and commercial opportunities in the City; to provide for a full range of housing choices throughout the city for households of all incomes, ages and sizes in order to meet the City's goal of preserving diversity; to mitigate the impacts of commercial and residential development on the availability and cost of housing and especially housing affordable to low and moderate income households; to increase the production of affordable housing units to meet existing and anticipated housing and employment needs within the City; to provide a mechanism by which commercial and residential development can contribute in a direct way to increasing the supply of affordable housing in exchange for a greater density or intensity of development than that otherwise permitted as a matter of right; and to establish standards and guidelines for the use of such contributions from the application of incentive zoning and inclusionary housing provisions.

11.201 Definitions.

Affordable Housing Trust shall mean the entity established by Chapter 482 of the Acts of 1991.

Affordable Unit shall mean any dwelling unit for which the rent (including utilities) does not exceed thirty (30) percent of the income of the renting household or for which the mortgage payment (including insurance, utilities and real estate taxes) does not exceed thirty (30) percent of the income of the purchasing household or other 11-10 standards as may be established pursuant to any city, state or federal housing program designed to assist low and moderate income households.

Converted Dwelling Unit shall mean a dwelling unit that has been converted from a non-housing use to a housing use in connection with the construction of an Inclusionary Project.

Developer shall mean any individual, corporation, business trust, estate trust, partnership or association, or any other entity or combination thereof.

Eligible Household shall mean any household whose total income does not exceed eighty (80) percent of the median income of households in the Boston Standard Metropolitan Statistical Area adjusted for family size, or such other equivalent income standard as may be determined by the Board of Trustees of the Affordable Housing Trust Fund.

Median Income shall mean the income set forth in or calculated from regulations promulgated by the United States Department of Housing and Urban Development, pursuant to Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development Act of 1974 or such other equivalent income standard as determined by the Board of Trustees of the Affordable Housing Trust Fund.

Mixed Use Development shall mean a development that contains a combination of residential development and any other use.

Project, Incentive, shall mean that portion of projects containing uses listed in Sections 4.33c, 4.34, 4.35, 4.36, and 4.56 d 1 subject to the provisions of the special permits listed in Section 11.202.1.

Project, Inclusionary, shall mean any residential or mixed use development containing or creating ten or more new or converted dwelling units, including phased projects; or where fewer than ten new or converted dwelling units are created including phased projects, a residential development containing 10,000 square feet or more of gross floor area, in which case each 1,000 square feet shall be considered a dwelling unit.

Project, Phased, shall mean any residential or mixed use development or developments at one site or two or more adjoining sites in common ownership or under common control within a period of five years from the first date of application for any special or building permit for construction on the lot or lots, or for the twelve months immediately preceding the date of application for any special or building permit, where a total of no less than ten new or converted units are built.

Project, Voluntary Inclusionary, shall mean any residential or mixed use development containing less than ten new or converted dwelling units, including phased projects where the developer chooses to comply with the provisions of Section 11.203.2.

Residential Development shall mean single, two family and multi-family homes, townhouse development, elderly oriented congregate housing and lodging and rooming house dwellings as set forth in Section 4.31 a-h, and i(3).

11.202 Applicability.

11.202.1 *Applicability of Incentive Zoning Provisions.* Where a developer chooses to seek to obtain a special permit pursuant to the sections listed below, which special permit authorizes an increase in the permissible density or intensity of a particular use in the proposed development, the developer shall be subject to the applicable provisions of this Section 11.200 et al. Increases in density or intensity of use shall include an increase in gross floor area or height, a reduction or waiver of parking requirements, or a change in dimensional requirements or the addition of uses that result in an increase in density or intensity of use.

Section 6.35 Reduction in required parking for nonresidential development
Section 20.108 Divergence from dimensional requirements, North Massachusetts Avenue Overlay District
Section 20.54.2(2) Additional height, Harvard Square Overlay District
Section 20.54.4(2) Waiver of parking and loading requirements, Harvard Square Overlay District
Section 20.54.5(2) Exemption from yard requirements, Harvard Square Overlay District
Section 20.63.7 Divergence from dimensional requirements, Parkway Overlay District
Section 20.95.1 Maximum Floor Area Ratio
Section 20.95.2 Maximum Permitted Height

Section 20.95.34 Waiver of Yard Requirements
Section 20.95.4 Dwelling Unit Density
Section 20.304.2(2), (3) Additional height, Central Square Overlay District
Section 20.304.4 Waiver of setback requirements, Central Square Overlay District
Section 20.304.6 Waiver of parking requirements, Central Square Overlay District
Section 17.13.1(b) Additional FAR, Special District I
Section 17.17 Transfer of Development Rights, Special District I
Article 13.00 PUD Districts, all permits.

11.202.2 *Applicability of Inclusionary Housing Provisions.* The provisions of this Section 11.200 shall apply to any Inclusionary Project and may be applied to any Voluntary Inclusionary Project. These provisions shall apply with respect to developments in all zoning districts of the city except those governed by the provisions of Article 15.000.

11.203 Requirements

11.203.1 *Requirements for Incentive Zoning Contributions.* A developer of an Incentive Project shall either make a Housing Contribution in accordance with this Section 11.203.1 (a) or shall create or cause to be created housing, in accordance with this Section 11.203.1 (b).

(a) Housing Contribution. For any project that is in whole or in part an Incentive Project, and that is, in total, less than thirty thousand (30,000) square feet of gross floor area, no contribution shall be required.

For any project of thirty thousand (30,000) square feet of gross floor area or more, the developer shall contribute four dollars and twenty-five ($4.34) [Note: current adjust figure as of 6/28/07] for every square foot of gross floor area over two thousand five hundred (2500) square feet of that portion of the project authorized by the Special Permit that is an Incentive Project.

Before the Superintendent of Buildings issues the first occupancy permit for the Incentive Project the developer of the Incentive Project shall deliver the Housing Contribution to the then Managing Trustee of the Affordable Housing Trust or its designee.

The amount of the Housing Contribution shall be subject to review and recalculation three (3) years after the effective date of this provision and every three (3) years thereafter by the Cambridge City Council based on a consideration of current economic trends including but not limited to development activity, commercial rents per square foot, employment growth, and housing trends measured in terms of, but not limited to, vacancy rates, production statistics, and prices for dwelling units. The Board of Trustees for the Affordable Housing Trust may adjust the amount annually based on CPI or a similar standard to reflect changes in inflation rates.

(b) Housing Creation Option. The Developer of an Incentive Project required to make a Housing Contribution in Subsection 11.203.1 (a) above may create or

cause to be created affordable units for occupancy exclusively by eligible households, or may donate land to be used exclusively for the development of affordable units. These units or land donation, must be of equivalent benefit toward addressing the City's affordable housing need as the housing contribution otherwise required.

When this option is chosen a Developer shall obtain a report from the Board of Trustees of the Affordable Housing Trust, which report shall accompany the special permit application and shall advise the special permit granting authority as to whether the proposed Housing Creation conforms to the intent and purposes of this Section 11.200 et al. The report shall also recommend such conditions, if any, as the Trustees may find appropriate to the issuance of the special permit to assure full compliance with the intent of this Section 11.200.

The special permit granting authority shall give due consideration to the report of the Board of Trustees in granting any special permit subject to this Section 11.200 et al., and, in its discretion may approve the developers use of the Housing Creation Option.

11.203.2 *Requirements for Inclusionary Housing.*
(a) Any Inclusionary Project shall provide 15% percent of the total number of dwelling units up to the maximum allowed as of right as Affordable Units. Where the 11-13 application of that formula results in a fractional dwelling unit, a fraction of one half of a dwelling unit or more shall be considered as one Affordable Unit. Each Affordable Unit shall meet the standards established in Section 11.204.

(b) To facilitate the objectives of this Section 11.200, modifications to the dimensional requirements in any zoning district, as set forth in Section 5.30, shall be permitted as of right for an Inclusionary Project, as set forth below:

(i) The FAR normally permitted in the applicable zoning district for residential uses shall be increased by thirty (30) percent for Affordable Units as set forth in Section 11.203.2 (a) above, and at least fifty percent of the additional FAR should be allocated for the Affordable Units. In a Mixed Use Development, the increased FAR permitted in this paragraph (i) may be applied to the entire lot; however, any gross floor area arising from such increased FAR shall be occupied only by residential uses, exclusive of any hotel or motel use.

(ii) The minimum lot area per dwelling unit normally required in the applicable zoning district shall be reduced by that amount necessary to permit up to two additional units on the lot for each one Affordable Unit required in Section 11.203.2 (a) above. The additional units on a lot permitted by this paragraph (ii) shall not be considered in determining the threshold by which a special permit is required in Section 4.26 - Multifamily Special Permit Applicability and Section 11.10 - Townhouse Development of the Zoning Ordinance.

(c) For any Inclusionary Project that includes a total number of dwelling units that exceeds the maximum allowed as of right, the number of affordable units shall be no less than 15% percent of the total number of dwelling units in the project; however, the number of additional units permitted under Section 11.203.2 (b) (ii) above shall not be further increased.

(d) For any Voluntary Inclusionary Project that proposes to provide one Affordable

Unit, the provisions of Section 11.203.2 (b) (i) and (ii) may be applied after the issuance of a special permit from the Planning Board. In issuing a special permit the Planning Board shall find that the additional dwelling units or gross floor area permitted will not create a development significantly different in scale, density, or placement on the lot than can be found on adjacent lots or in the surrounding neighborhood; or if the development is significantly more dense, larger in scale or closer to the lot lines than can be found on adjacent lots, the Board shall find that the size or shape of the lot, the characteristics of development on abutting lots, and the nature of the design proposed on the subject lot mitigate any negative impact that such additional development may impose. In making its findings the Planning Board shall consider the other kinds of dimensional relief that the development may require and the extent to which such relief varies from the requirements of the zoning district.

(e) Affordable Units required by this Section 11.203.2 shall be provided on-site. However, approval for alternate means of compliance may be granted by the Planning Board in certain exceptional circumstances. In granting such approval, the Planning Board must find that the property owner has demonstrated that building the required affordable units on-site would create a significant hardship. A significant hardship shall be defined as being of such significance that the property can not physically accommodate the required affordable units and/or related requirements, such as height, setbacks, or parking. To have such a request considered, the burden of proof shall be on the property owner, who must make full disclosure to the Planning Board of all relevant information. Any request for alternate means of compliance shall be reviewed by the Affordable Housing Trust, which shall then forward its recommendation on the request to the Planning Board. The Affordable Housing Trust's recommendation shall be based upon whether the alternate means of compliance shall be of comparable value to the affordable unit that would have otherwise been provided in a comparable Inclusionary Project. The Planning Board's approval of the request shall be based upon the Affordable Housing Trust's recommendations, and the demonstration of hardship made by the property owner. The Planning Board may, in its sole discretion, use other information to determine the validity of the property owner's request. Approval of alternate means of compliance shall be only for payment of a sum equivalent to the value of the provision of an onsite Affordable Unit, which payment shall be made to the Affordable Housing Trust.

11.204 Standards for Construction and Occupancy of Affordable Units.

The following standards are intended to provide guidance to the special permit granting authority in instances where the Housing Creation Option is chosen to meet the requirements of this Section 11.200, to the Board of Trustees of the Trust in making any report it may make to the special permit granting authority or in authorizing the expenditure of any Housing Contribution funds, and to the Developer of any Inclusionary Project or Voluntary Inclusionary Project. In granting any special permit the special permit granting authority may allow for deviations from, or further define, these standards consistent with the purpose of this Section 11.200.

(a) Affordable Units in an Incentive Project shall be generally comparable in size and materials to dwelling units in the neighborhood or in the projection which it is located.

(b) To ensure livability, Affordable Units in an Inclusionary Project shall be generally

comparable in size and materials to the other units in the overall project and consistent with local needs for affordable housing as approved by the Trust For Inclusionary Projects or Incentive Projects where appropriate exteriors of affordable units shall closely resemble the exteriors of other units in a project, and shall be reasonably distributed throughout the project.

(c) The Affordable Units shall, to a reasonable extent, serve eligible households of diverse incomes, including very low income, and diverse sizes throughout the city.

(d) The Affordable Units shall be subject to deed restrictions providing that they shall:

1) be occupied by eligible households.

2) be conveyed subject to restrictions, which to the extent legally possible shall guarantee the permanent availability of the Affordable Units to eligible households. Such restrictions shall include but not be limited to limited equity deed restrictions. In general, to meet this requirement, affordable rent levels shall be maintained for a minimum of 50 years from the date of initial occupancy in accordance with current practices of the City. With for-sale units, the City's current system of deed restrictions controlling resale prices shall be observed.

3) to the extent possible, give preference to eligible households who are Cambridge residents.

4) be rented or sold to Eligible Households, using marketing and selection guidelines customarily employed by the Community Development Department in selecting tenant and homeowner households under other City, state or federal housing assistance programs.

(e) The rental or ownership of affordable units shall mirror the project as a whole. For example, affordable units should be sold, not rented, where a majority of units will be offered for sale.

(f) The affordable units shall be affordable to households having a target income of 65% of the area median income, or if the household has access to a rent subsidy, a lower income. The Trust shall have the discretion to approve a mix of higher and lower rents or sale prices, the average of which approximates an affordable price for a household at the target income level.

(g) The intent of the Inclusionary Housing provisions is that the Affordable Units required hereunder not use public funds to create; these provisions however, are not intended to discourage the use of public funds to generate a greater number of affordable units than are otherwise required.

(h) One parking space for each Affordable Unit in an Inclusionary Project shall be provided. If there is fewer than one parking space provided for each unit in the development, then the number of parking spaces provided for the Affordable Units shall be in the same proportion as the number provided to the market rate units. If there is no parking fee for the market rate units in an Inclusionary Project, then there shall be no parking fee for the Affordable Units. If there is a parking fee for the market rate units in an Inclusionary Project subject to Section 11.200, then the maximum parking fee for the Affordable Units shall not exceed the lesser of the following:

1) That fee which is in the same proportion of parking fee to rent as for those market rate units of equivalent size to the Affordable Units and having the lowest

rent in the Inclusionary Project, or

2) That fee which, when combined with the maximum rent permitted of an Affordable Unit as defined in Section 11.201, does not exceed thirty three (33) percent of the Eligible Household's income.

11.205 Affordable Housing Trust.

Pursuant to the provisions of Chapter 482 of the Acts of 1991, an Affordable Housing Trust Fund was established. To facilitate the implementation of the provision of this Section 11.200, the Affordable Housing Trust Fund receives funds generated by this Section 11.200 and specifically Section 11.203.1(a), as well as other funds generated from other sources.

11.205.1 *Uses of the Affordable Housing Trust.* The Trust property may be made available for, but shall not be limited to, the following uses.

1. Creation of Affordable Units. To encourage the development of Affordable Units through a variety of means, including, but not limited to, the provision of favorable financing terms or direct write down of costs for either nonprofit or for profit developers or to subsidize the purchase of sites, existing structures, or affordable units within a larger development.

2. Multifamily Rehabilitation Programs. To finance the substantial rehabilitation of deteriorated properties in a manner that preserves the affordability of units through interest rate subsidies, loan guarantees or write down of project costs. Multifamily housing owned by nonprofit entities that ensure maximum long-term affordability shall receive priority-funding consideration.

3. Limited Equity Cooperative or Condominium Conversion. For acquisition and rehabilitation of potential cooperatives or condominiums through low interest blanket loans, share loans or direct cost write down.

11.205.2 *Administration of the Affordable Housing Trust and its Activities.* The Trust property may be made available to fund reasonable administrative expenses necessary to support Trust activities, including but not limited to consulting services such as legal, appraising or engineering, as well as other project related expenses. The Community Development Department shall provide the Board of Trustees with technical and administrative assistance.

11.205.3 *Board of Trustees of Affordable Housing Trust*. The City Manager shall appoint and chair a nine (9) member Board of Trustees of the Affordable Housing Trust. The Board of Trustees shall be composed of representatives from different sectors of the community with housing policy, and may include members of City Boards and agencies, nonprofit housing organizations and community representatives. The trustees, with concurrence of the City Manager, shall establish regulations for the operations of the Trust and Board of Trustees, and procedures for the implementation of this Subsection 11.205.

1) The Board of Trustees shall manage and administer the Affordable Housing Trust Fund including the disbursement of all funds, units and land conveyed to the City of Cambridge.

2) The Board of Trustees shall review and approve or disapprove proposals submitted for use of the Housing Trust Fund. The Board shall develop policies and standards appropriate to and consistent with the Incentive Zoning and Inclusionary Housing provisions, section 11.200.

3) The Board shall explore the feasibility of and assist in the establishment of new programs designed to meet Cambridge affordable housing needs. These programs may include a city wide Land Bank program and Home Mortgage Pool.

4) The Board of Trustees shall provide assistance and necessary reports where appropriate to any special permit granting authority authorized to issue a special permit for any development making use of funds from the Affordable Housing Trust or subject to any provisions under this Section 11.200.

11.206 Enforcement

The Community Development Department shall certify in writing to the Superintendent of Buildings that all conditions of this Section 11.200, including any conditions that may be established by the special permit granting authority in issuing a special permit under this Section 11.200, have been met before issuance of the first building permit for any Incentive Project, Inclusionary Project, or Voluntary Inclusionary Project. Before the issuance of the first Certificate of Occupancy for such development the Trust shall certify in writing to the Superintendent of Buildings that all documents have been filed and actions taken that are necessary to fulfill the conditions of this Section 11.200 and any special permit authorized herein.

Carlsbad (CA), City of. 2008. *Municipal Code*.
Title 21. Zoning.
Chapter 21.85 Inclusionary Housing.

21.85.010 Purpose and intent.

The purpose and intent of this chapter is as follows:

A. It is an objective of the city, as established by the housing element of the city's general plan, to ensure that all residential development, including all master planned and specific planned communities and all residential subdivisions provide a range of housing opportunities for all identifiable economic segments of the population, including households of lower and moderate income. It is also the policy of the city to:

1. Require that a minimum of fifteen percent of all approved residential development be restricted to and affordable to lower-income households; subject to adjustment based on the granting of an inclusionary credit;
2. Require that for those developments which provide ten or more units affordable to lower-income households, at least ten percent of the lower-income units shall have three or more bedrooms;
3. Under certain conditions, allow alternatives to on-site construction as a means of providing affordable units; and
4. In specific cases, allow inclusionary requirements to be satisfied through the payment of an in-lieu fee as an alternative to requiring inclusionary units to be constructed.

B. It is the purpose of this chapter to ensure the implementation of the city objective and policy stated in subsection A.

C. Nothing in this chapter is intended to create a mandatory duty on the part of the city or its employees under the Government Tort Claims Act and no cause of action against the city or its employees is created by this chapter that would not arise independently of the provisions of this chapter.
(Ord. NS-794 § 2, 2006; Ord. NS-535 § 1 (part), 2000)

21.85.020 Definitions.

Whenever the following terms are used in this chapter, they shall have the meaning established by this section:

A. "Affordable housing" means housing for which the allowable housing expenses paid by a qualifying household shall not exceed a specified fraction of the county median income, adjusted for household size, as follows:

1. Extremely low-income, rental or for-sale units: the product of thirty percent times thirty percent of the county median income, adjusted for household size;
2. Very low-income, rental and for-sale units: the product of thirty percent times fifty percent of the county median income, adjusted for household size;
3. Low-income, for-sale units: the product of thirty percent times seventy percent of the county median income, adjusted for household size; and
4. Low-income, rental units: the product of thirty percent times sixty percent of the county median income, adjusted for household size.

B. "Affordable housing agreement" means a legally binding agreement between a developer and the city to ensure that the inclusionary requirements of this chapter

are satisfied. The agreement establishes, among other things, the number of required inclusionary units, the unit sizes, location, affordability tenure, terms and conditions of affordability and unit production schedule.

C. "Allowable housing expense" means the total monthly or annual recurring expenses required of a household to obtain shelter. For a for-sale unit, allowable housing expenses include loan principal and interest at the time of initial purchase by the homebuyer, allowances for property and mortgage insurance, property taxes, homeowners' association dues and a reasonable allowance for utilities as defined by the Code of Federal Regulations (24CFR982). For a rental unit, allowable housing expenses include rent and a utility allowance as established and adopted by the city of Carlsbad housing authority, as well as all monthly payments made by the tenant to the lessor in connection with use and occupancy of a housing unit and land and facilities associated therewith, including any separately charged fees, utility charges, or service charges assessed by the lessor and payable by the tenant.

D. "Affordable housing policy team" shall consist of the community development director, planning director, housing and redevelopment director, administrative services director/finance director and a representative of the city attorney's office.

E. "Combined inclusionary housing project" means separate residential development sites which are linked by a contractual relationship such that some or all of the inclusionary units which are associated with one development site are produced and operated at a separate development site or sites.

F. "Conversion" means the change of status of a dwelling unit from a purchased unit to a rental unit or vice versa.

G. "Density bonus" shall have the same meaning as defined in Section 21.86.020(A)(7) of this title.

H. "Extremely low-income household" means those households whose gross income is equal to or less than thirty percent of the median income for San Diego County as determined by the U.S. Department of Housing and Urban Development.

I. "Financial assistance" means assistance to include, but not be limited to, the subsidization of fees, infrastructure, land costs, or construction costs, the use of redevelopment set-aside funds, community development block grant (CDBG) funds, or the provision of other direct financial aid in the form of cash transfer payments or other monetary compensation, by the city of Carlsbad.

J. "Growth management control point" shall have the same meaning as provided in Chapter 21.90, Section 21.90.045 of this title.

K. "Incentives or concessions" shall have the same meaning as defined in Section 21.86.020(A)(7) of this title.

L. "Inclusionary credit" means a reduction in the inclusionary housing requirement granted in return for the provision of certain desired types of affordable housing or related amenities as determined by the city council.

M. "Inclusionary housing project" means a new residential development or conversion of existing residential buildings which has at least fifteen percent of the

total units reserved and made affordable to lower-income households as required by this chapter.

N. "Inclusionary unit" means a dwelling unit that will be offered for rent or sale exclusively to and which shall be affordable to lower-income households, as required by this chapter.

O. "Income" means any monetary benefits that qualify as income in accordance with the criteria and procedures used by the city of Carlsbad housing and redevelopment department for the acceptance of applications and recertifications for the tenant based rental assistance program, or its successor.

P. "Low-income household" means those households whose gross income is more than fifty percent but does not exceed eighty percent of the median income for San Diego County as determined annually by the U.S. Department of Housing and Urban Development.

Q. "Lower-income household" means low-income, very low-income and extremely low-income households, whose gross income does not exceed eighty percent of the median income for San Diego County as determined annually by the U.S. Department of Housing and Urban Development.

R. "Market-rate unit" means a dwelling unit where the rental rate or sales price is not restricted either by this chapter or by requirements imposed through other local, state, or federal affordable housing programs.

S. "Offsets" means concessions or assistance to include, but not be limited to, direct financial assistance, density increases, standards modifications or any other financial, land use, or regulatory concession which would result in an identifiable cost reduction enabling the provision of affordable housing.

T. "Residential development" means any new residential construction of rental or for-sale units; or development revisions, including those with and without a master plan or specific plan, planned unit developments, site development plans, mobile home developments and conversions of apartments to condominiums, as well as dwelling units for which the cost of shelter is included in a recurring payment for expenses, whether or not an initial lump sum fee is also required.

U. "Target income level" means the income standards for extremely low, very low and low-income levels within San Diego County as determined annually by the U.S. Department of Housing and Urban Development, and adjusted for family size.

V. "Total residential units" means the total units approved by the final decision-making authority. Total residential units are composed of both market-rate units and inclusionary units.

W. "Very low-income household" means a household earning a gross income equal to fifty percent or less of the median income for San Diego County as determined annually by the U.S. Department of Housing and Urban Development.
(Ord. NS-794 § 3, 2006: Ord. NS-535 § 1 (part), 2000)

21.85.030 Inclusionary housing requirement.
The inclusionary housing requirements of this chapter shall apply as follows:

A. This chapter shall apply to all residential market-rate dwelling units resulting from new construction of rental and "for-sale" projects, as well as the conversion of apartments to condominiums.

B. For any residential development or development revision of seven or more units, not less than fifteen percent of the total units approved shall be constructed and restricted both as to occupancy and affordability to lower-income households.

C. For those developments which are required to provide ten or more units affordable to lower-income households, at least ten percent of the lower-income units shall have three or more bedrooms.

D. This chapter shall not apply to the following:

1. Existing residences which are altered, improved, restored, repaired, expanded or extended, provided that the number of units is not increased, except that this chapter shall pertain to the subdivision of land for the conversion of apartments to condominiums;
2. Conversion of a mobile home park pursuant to Section 21.37.120 of the code;
3. The construction of a new residential structure which replaces a residential structure that was destroyed or demolished within two years prior to the application for a building permit for the new residential structure, provided that the number of residential units is not increased from the number of residential units of the previously destroyed or demolished residential structure;
4. Any residential unit which is accessory as defined in Section 21.04.020 of this code; or
5. Second dwelling units not constructed to fulfill inclusionary housing requirements and developed in accordance with Section 21.10.015 of this code;
6. Any project or portion of a project which is a commercial living unit as defined in Section 21.04.093 of this code; and
7. Those residential units which have obtained affordable housing approvals prior to the effective date of the ordinance codified in this chapter, as set forth in Section 21.85.160 of this chapter. (Ord. NS-535 § 1 (part), 2000)

21.85.035 New master plans or specific plans.

New master plans and specific plans shall submit an inclusionary housing plan as follows:

A. All master plans and specific plans approved on or after the effective date of the ordinance codified in this chapter are required by this chapter to provide an inclusionary housing plan within the master plan or specific plan document. This inclusionary housing plan will include appropriate text, maps, tables, or figures to establish the basic framework for implementing the requirements of this chapter. It shall establish, as a minimum, but not be limited to, the following:

1. The number of market-rate units in the master plan or specific plan;
2. The number of required inclusionary units for lower-income households over the entire master plan or specific plan;
3. The designated sites for the location of the inclusionary units, including but not limited to any sites for locating off-site inclusionary housing projects or combined inclusionary housing projects;

4. A general provision stipulating that an affordable housing agreement shall be made a condition of all future discretionary permits for development within the master or specific plan area such as tentative maps, parcel maps, planned unit developments and site development plans. The provision shall establish that all relevant terms and conditions of any affordable housing agreement shall be filed and recorded as a restriction on the project as a whole and those individual lots, units or projects which are designated as inclusionary units. The affordable housing agreement shall be consistent with Section 21.85.140 of this chapter.

B. The location and phasing of inclusionary dwelling units may be modified as a minor amendment to the master plan pursuant to Section 21.38.120 of this title if the city council authorizes such modifications when approving the master plan.

C. All existing master plans or specific plans proposed for major amendment, pursuant to Section 21.38.120 of this code, shall incorporate into the amended master plan or specific plan document an inclusionary housing plan, consistent with this section of this chapter.
(Ord. NS-535 § 1 (part), 2000)

21.85.040 Affordable housing standards.
The affordable housing standards are as follows:
A. All residential developments are subject to and must satisfy the inclusionary housing requirements of this chapter, notwithstanding a developer's request to process a residential development under other program requirements, laws or regulations, including but not limited to Chapter 21.86 (Residential Density Bonus) of this code. If an applicant seeks to construct affordable housing to qualify for a density bonus in accordance with the provisions of Chapter 21.86 (Residential Density Bonus), those affordable dwelling units that qualify a residential development for a density bonus are in addition to, and do not count toward satisfying, the inclusionary housing requirements of this chapter.

B. Whenever reasonably possible, inclusionary units should be built on the residential development project site.

C. The required inclusionary units shall be constructed concurrently with market-rate units unless both the final decision-making authority of the city and developer agree within the affordable housing agreement to an alternative schedule for development.

D. Inclusionary rental units shall remain restricted and affordable to the designated income group for fifty-five years. In addition to the income of a targeted group, limitations on assets may also be used as a factor in determining eligibility for rental or for-sale units. Notwithstanding anything to the contrary in this chapter, no inclusionary unit shall be rented for an amount which exceeds ninety percent of the actual rent charged for a comparable market unit in the same development, if any.

E. After the initial sale of the inclusionary for-sale units at a price affordable to the target income level group, inclusionary for-sale units shall remain affordable to subsequent income eligible buyers pursuant to a resale restriction with a term of thirty years or for-sale units may be sold at a market price to other than targeted households provided that the sale shall result in the recapture by the city or its designee of a financial interest in the units equal to the amount of subsidy necessary

to make the unit affordable to the designated income group and a proportionate share of any appreciation. Funds recaptured by the city shall be used in assisting other eligible households with home purchases at affordable prices. To the extent possible, projects using for-sale units to satisfy inclusionary requirements shall be designed to be compatible with conventional mortgage financing programs including secondary market requirements.

F. Inclusionary units should be located on sites that are in proximity to or will provide access to employment opportunities, urban services, or major roads or other transportation and commuter rail facilities and that are compatible with adjacent land uses.

G. The design of the inclusionary units shall be reasonably consistent or compatible with the design of the total project development in terms of appearance, materials and finished quality.

H. Inclusionary projects shall provide a mix of number of bedrooms in the affordable dwelling units in response to affordable housing demand priorities of the city.

I. No building permit shall be issued, nor any development approval granted for a development which does not meet the requirements of this chapter. No inclusionary unit shall be rented or sold except in accordance with this chapter.
(Ord. NS-794 § 4, 2006; Ord. NS-535 § 1 (part), 2000)

21.85.050 Calculating the required number of inclusionary units.
Subject to adjustments for an inclusionary credit, the required number of lower-income inclusionary units shall be fifteen percent of the total residential units, approved by the final decision-making authority. If the inclusionary units are to be provided within an off-site combined or other project, the required number of lower-income inclusionary units shall be fifteen percent of the total residential units to be provided both on-site and/or off-site. Subject to the maximum density allowed per the growth management control point or per specific authorization granted by the planning commission or city council, fractional units for both market rate and inclusionary units of 0.5 will be rounded up to a whole unit. If the rounding calculation results in a total residential unit count which exceeds the maximum allowed, neither the market rate nor the inclusionary unit count will be increased to the next whole number.

Example 1: Total residential units = fifteen percent inclusionary units plus eighty-five percent market-rate units. If the final decision-making authority approves one hundred total residential units, then the inclusionary requirement equals fifteen percent of the "total" or fifteen units (100 x .15 = 15). The allowable market-rate units would be eighty-five percent of the "total" or eighty-five units.

Example 2: If the inclusionary units are to be provided off-site, the total number of inclusionary units shall be calculated according to the total number of market-rate units approved by the final decision-making authority. If one hundred market-rate units are approved, then this total is divided by .85 which provides a total residential unit count (100 ÷ .85 = 117). The fifteen percent requirement is applied to this "total" (one hundred seventeen units) which equals the inclusionary unit requirement (117 × .15 = 17.6 units).
(Ord. NS-794 § 5, 2006: Ord. NS-535 § 1 (part), 2000)

21.85.060 Inclusionary credit adjustment.

Certain types of affordable housing are relatively more desirable in satisfying the city's state-mandated affordable housing requirement as well as the city's housing element goals, objectives and policies, and these may change over time.

To assist the city in providing this housing, developers may receive additional (more than one unit) credit for each of such units provided, thereby reducing the total inclusionary housing requirement to less than fifteen percent of all residential units approved. A schedule of inclusionary housing credit specifying how credit may be earned shall be adopted by the city council and made available to developers subject to this chapter.

(Ord. NS-794 § 6, 2006: Ord. NS-535 § 1 (part), 2000)

21.85.070 Alternatives to construction of inclusionary units.

Notwithstanding any contrary provisions of this chapter, at the sole discretion of the city council, the city may determine that an alternative to the construction of new inclusionary units is acceptable.

A. The city council may approve alternatives to the construction of new inclusionary units where the proposed alternative supports specific housing element policies and goals and assists the city in meeting its state housing requirements. Such determination shall be based on findings that new construction would be infeasible or present unreasonable hardship in light of such factors as project size, site constraints, market competition, price and product type disparity, developer capability, and financial subsidies available. Alternatives may include, but not be limited to, acquisition and rehabilitation of affordable units, conversion of existing market units to affordable units, construction of special needs housing projects or programs (shelters, transitional housing, etc.), and the construction of second dwelling units.

B. Second dwelling units constructed to satisfy an inclusionary housing requirement shall be rent restricted to affordable rental rates, and renters shall be income-qualified, as specified in the applicable affordable housing agreement. In no event shall a developer be allowed to construct more than a total of fifteen second dwelling units in any given development, master plan, or specific plan, to satisfy an inclusionary requirement.

C. Contribution to a special needs housing project or program may also be an acceptable alternative based upon such findings. The requisite contribution shall be calculated in the same manner as an in-lieu fee per Section 21.85.110.

(Ord. NS-535 § 1 (part), 2000)

21.85.080 Combined inclusionary housing projects.

An affordable housing requirement may be satisfied with off-site construction as follows:

A. When it can be demonstrated by a developer that the goals of this chapter and the city's housing element would be better served by allowing some or all of the inclusionary units associated with one residential project site to be produced and operated at an alternative site or sites, the resulting linked inclusionary project site(s) is a combined inclusionary housing project.

B. It is at the sole discretion of the city council to authorize the residential site(s) which form a combined inclusionary housing project. Such decision shall be based on

findings that the combined project represents a more effective and feasible means of implementing this chapter and the goals of the city's housing element. Factors to be weighed in this determination include: the feasibility of the on-site option considering project size, site constraints, competition from other projects, difficulty in integrating due to significant price and product type disparity, and lack of capacity of the on-site development entity to deliver affordable housing. Also to be considered are whether the off-site option offers greater feasibility and cost effectiveness, particularly regarding potential local public assistance and the city's affordable housing financial assistance policy, location advantages such as proximity to jobs, schools, transportation, and services, diminished impact on other existing developments, capacity of the development entity to deliver the project, and satisfaction of multiple developer obligations that would be difficult to satisfy with multiple projects.

C. All agreements between parties to form a combined inclusionary housing project shall be made a part of the affordable housing agreement required for the site(s), which affordable housing agreement(s) shall be approved by council.

D. Location of the combined inclusionary housing project is limited to sites within the same city quadrant in which the market-rate units are located, or sites which are contiguous to the quadrant in which the market-rate units are proposed.
(Ord. NS-535 § 1 (part), 2000)

21.85.090 Creation of inclusionary units not required.
Inclusionary units created which exceed the final requirement for a project may, subject to city council approval in the affordable housing agreement, be utilized by the developer to satisfy other inclusionary requirements for which it is obligated or market the units to other developers as a combined project subject to the requirements of Section 21.85.080.
(Ord. NS-535 § 1 (part), 2000)

21.85.100 Offsets to the cost of affordable housing development.
The city shall consider making offsets available to developers when necessary to enable residential projects to provide a preferable product type or affordability in excess of the requirements of this chapter. Offsets will be offered by the city to the extent that resources and programs for this purpose are available to the city and approved for such use by the city council, and to the extent that the residential development, with the use of offsets, assists in achieving the city's housing goals. To the degree that the city makes available programs to provide offsets, developers may make application for such programs. Evaluation of requests for offsets shall be based on the effectiveness of the offsets in achieving a preferable product type and/or affordability objectives as set forth within the housing element; the capability of the development team; the reasonableness of development costs and justification of subsidy needs; and the extent to which other resources are used to leverage the requested offsets. Nothing in this chapter establishes, directly or through implication, a right to receive any offsets from the city or any other party or agency to enable the developer to meet the obligations established by this chapter. Any offsets approved by the city council and the housing affordability to be achieved by use of those offsets shall be set out within the affordable housing agreement pursuant to Section 21.85.140 of this chapter or, at the city's discretion in a subsequent document. Furthermore, developers are encouraged to utilize local, state or federal assistance, when available, to meet the affordability standards set forth in Sections 21.85.030 and 21.85.040 of this chapter.
(Ord. NS-794 § 7, 2006: Ord. NS-535 § 1 (part), 2000)

21.85.110 In-lieu fees.

Payment of a fee in lieu of construction of affordable units may be appropriate in the following circumstances:

A. For any residential development or development revision of less than seven units, the inclusionary requirements may be satisfied through the payment to the city of an in-lieu fee.

B. The in-lieu fee to be paid for each market-rate dwelling unit shall be fifteen percent of the subsidy needed to make affordable to a lower-income household one newly constructed, typical attached-housing unit. This subsidy shall be based upon the city council's determination of the average subsidy that would be required to make affordable typical, new two-bedroom/one bath and three-bedroom/two-bath for-sale units and rental units, each with an assumed affordability tenure of at least fifty-five years.

C. The dollar amount and method of payment of the in-lieu fees shall be fixed by a schedule adopted, from time to time, by resolution of the city council. Said fee shall be assessed against the market-rate lots/units of a development.

D. All in-lieu fees collected hereunder shall be deposited in a housing trust fund. Said fund shall be administered by the city and shall be used only for the purpose of providing funding assistance for the provision of affordable housing and reasonable costs of administration consistent with the policies and programs contained in the housing element of the general plan.

E. At the discretion of the city council, where a developer is authorized to pay a fee in lieu of development, an irrevocable dedication of land or other non-monetary contribution of a value not less than the sum of the otherwise required in-lieu fee may be accepted as an alternative to paying the in-lieu fee if it is determined that the non-monetary contribution will be effectual in furthering the goals and policies of the housing element and this chapter. The valuation of any land offered in-lieu shall be determined by an appraisal made by an agent mutually agreed upon by the city and the developer. Costs associated with the appraisal shall be borne by the developer.

F. Where a developer is authorized to pay a fee in lieu of development of affordable housing units, any approvals shall be conditioned upon a requirement to pay the in-lieu fee in an amount established by resolution of the city council in effect at the time of payment.

G. As an alternative to paying an in-lieu fee(s), inclusionary housing requirements may be satisfied either through a combined inclusionary housing project, pursuant to Section 21.85.080 of this chapter or new construction of inclusionary units subject to approval of the final decision-making authority.

(Ord. NS-535 § 1 (part), 2000)

21.85.120 Collection of fees.

All fees collected under this chapter shall be deposited into a housing trust fund and shall be expended only for the affordable housing needs of lower-income households, and reasonable costs of administration consistent with the purpose of this chapter.

(Ord. NS-535 § 1 (part), 2000)

21.85.130 Preliminary project application and review process.

The preliminary project application/review process shall be as follows:

A. A developer of a residential development not subject to a master plan or specific plan, proposing an inclusionary housing project shall have an approved site development plan prior to execution of an affordable housing agreement for the project. The developer may submit a preliminary application to the housing and redevelopment director prior to the submittal of any formal applications for such housing development. The preliminary application shall include the following information if applicable:

1. A brief description of the proposal including the number of inclusionary units proposed;
2. The zoning, general plan designations and assessors parcel number(s) of the project site;
3. A site plan, drawn to scale, which includes: building footprints, driveway and parking layout, building elevations, existing contours and proposed grading; and
4. A letter identifying what specific offsets and/or adjustments are being requested of the city. Justification for each request should also be included.

B. Within thirty days of receipt of the preliminary application by the planning director for projects not requesting offsets or inclusionary credit adjustments, or ninety days for projects requesting offsets or inclusionary credit adjustments, the department shall provide to an applicant, a letter which identifies project issues of concern, the offsets and inclusionary credit adjustments that the community development director can support when making a recommendation to the final decision-making authority, and the procedures for compliance with this chapter. The applicant shall also be provided with a copy of this chapter and related policies, the pertinent sections of the California codes to which reference is made in this chapter and all required application forms.

(Ord. NS-794 § 8, 2006; Ord. NS-535 § 1 (part), 2000)

21.85.140 Affordable housing agreement as a condition of development.

This chapter requires the following:

A. Developers subject to this chapter shall demonstrate compliance with this chapter by executing an affordable housing agreement prepared by the city housing and redevelopment director and submitted to the developer for execution. Agreements which conform to the requirements of this section and which do not involve requests for offsets and/or an inclusionary credit, other than those permitted by right, if any, shall be reviewed by the affordable housing policy team and approved by the community development director or his designee. Agreements which involve requests for offsets and/or an inclusionary credit, other than those permitted by right, shall require the recommendation of the housing commission and action by the city council as the final decision-maker. Following the approval and execution by all parties, the affordable housing agreement with approved site development plan shall be recorded against the entire development, including market-rate lots/units and the relevant terms and conditions therefrom filed and subsequently recorded as a separate deed restriction or regulatory agreement on the affordable project individual lots or units of property which are designated for the location of affordable units. The approval and execution of the affordable housing agreement shall take place prior to final map approval and shall be recorded upon final map recordation or, where a map is not being processed, prior to the issuance of building permits for such lots/units. The affordable housing agreement may require that more specific project and/or unit restrictions be recorded at a future

time. The affordable housing agreement shall bind all future owners and successors in interest for the term of years specified therein.

B. An affordable housing agreement, for which the inclusionary housing requirement will be satisfied through new construction of inclusionary units, either on-site or off-site, shall establish, but not be limited to, the following:

1. The number of inclusionary dwelling units proposed, with specific calculations detailing the application of any inclusionary credit adjustment;
2. The unit square footage, and number of bedrooms;
3. The proposed location of the inclusionary units;
4. Amenities and services provided, such as daycare, after school programs, transportation, job training/employment services and recreation;
5. Level and tenure of affordability for inclusionary units;
6. Schedule for production of dwelling units;
7. Approved offsets provided by the city;
8. Where applicable, requirements for other documents to be approved by the city, such as marketing, leasing and management plans; financial assistance/loan documents; resale agreements; and monitoring and compliance plans;
9. Where applicable, identification of the affordable housing developer and agreements specifying their role and relationship to the project.

C. An affordable housing agreement, for which the inclusionary housing requirement will be satisfied through payment to the city of any in-lieu contributions other than fee monies, such as land dedication, shall include the method of determination, schedule and value of total in-lieu contributions.

D. An affordable housing agreement will not be required for projects which will be satisfying their inclusionary housing requirement through payment to the city of an in-lieu fee.
(Ord. NS-794 §§ 9, 10, 2006; Ord. NS-535 § 1 (part), 2000)

21.85.145 Agreement processing fee.
The city council may establish by resolution, fees to be paid by the developer at the time of preliminary project application to defray the city's cost of preparing and/or reviewing all inclusionary housing agreements.
(Ord. NS-535 § 1 (part), 2000)

21.85.150 Agreement amendments.
Any amendment to an affordable housing agreement shall be processed in the same manner as an original application for approval, except as authorized in Section 21.85.035(B). Amendments to affordable housing agreements initially approved prior to the effective date of the ordinance codified in this chapter shall be entitled to consideration under the ordinance provisions superseded by the ordinance codified in this chapter.
(Ord. NS-535 § 1 (part), 2000)

21.85.155 Expiration of affordability tenure.
The city or its designee shall have a one-time first right of refusal to purchase any project containing affordable units offered for sale at the end of the minimum tenure of affordability for rental projects. The first right of refusal to purchase the rental project shall be submitted in writing to the housing and redevelopment director.

Within ninety days of its receipt, the city shall indicate its intent to exercise the first right of refusal for the purpose of providing affordable housing.
(Ord. NS-535 § 1 (part), 2000)

21.85.160 Pre-existing approvals.
Any residential developments for which a site development plan for the affordable housing component of the development was approved prior to the effective date of the ordinance codified in this chapter shall be subject to the ordinance in effect at the time of the approval.
(Ord. NS-535 § 1 (part), 2000)

21.85.170 Enforcement.
Enforcement provisions are as follows:
A. The provisions of this chapter shall apply to all developers and their agents, successors and assigns proposing a residential development governed by this chapter. No building permit or occupancy permit shall be issued, nor any entitlement granted, for a project which is not exempt and does not meet the requirements of this chapter. All inclusionary units shall be rented or owned in accordance with this chapter.

B. The city may institute any appropriate legal actions or proceedings necessary to ensure compliance with this chapter, including but not limited to actions to revoke, deny or suspend any permit or development approval.

C. Any individual who sells or rents a restricted unit in violation of the provisions of this chapter shall be required to forfeit all monetary amounts so obtained. Such amounts shall be added to the city's housing trust fund.
(Ord. NS-535 § 1 (part), 2000)

21.85.180 Savings clause.
All code provisions, ordinances, and parts of ordinances in conflict with the provisions of this chapter are repealed. The provisions of this chapter, insofar as they are substantially the same as existing code provisions relating to the same subject matter shall be construed as restatements and continuations thereof and not as new enactments. With respect, however, to violations, rights accrued, liabilities accrued, or appeals taken, prior to the effective date of the ordinance codified in this chapter, under any chapter, ordinance, or part of an ordinance shall be deemed to remain in full force for the purpose of sustaining any proper suit, action, or other proceedings, with respect to any such violation, right, liability or appeal.
(Ord. NS-535 § 1 (part), 2000)

21.85.190 Separability of provisions.
If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the remainder of the chapter and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.
(Ord. NS-535 § 1 (part), 2000)

18.05.0 AFFORDABLE HOUSING

18.05.0 AFFORDABLE HOUSING

18.05.010 Purposes of article; findings. (2)

The City Council finds and determines:

(a)The city has a goal to provide a range of housing for its local workers and has chosen to take action to ensure that affordable housing is constructed and maintained within the city of Davis.

(b)Housing purchase prices in Davis are generally higher than the rest of the region, particularly Woodland and West Sacramento.

(c)Rents in Davis have been rising and the majority of new apartments are four bedroom units which are not suitable for most families. Small, very-low income households have trouble finding affordable unassisted housing, and larger households of any income level have difficulty finding affordable units.

(d)Federal and state funds for the construction of new affordable housing are limited.

(e)In order to meet the city's fair share of the regional housing need for very low, low and moderate-income households, the city included implementing policies within the housing element of the general plan to provide for such housing.

(f)General plan implementing policies require that, to the extent feasible, twenty-five percent of ownership units be affordable by very low income households, low income households and moderate income households. General plan policies also require that affordable ownership units include a means for sustained affordability, maintaining them as affordable units into the unforeseeable future.

(g)General plan implementing policies also require that, to the extent feasible, rental housing developments with five to nineteen units shall provide fifteen percent of the units to low income households and ten percent to very low income households; and in rental housing developments with twenty or more units that twenty-five percent of the units be affordable to low income households and ten percent of the units be affordable to very low income households. General plan policies also require that affordable rental units remain affordable in perpetuity.

18.05.020 Definitions. (3)

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

(a) **"Affordable housing"** means affordable ownership housing or affordable rental housing.

(b) **"Affordable ownership housing"** is housing affordable, based upon mortgage payments or carrying charges paid by a member of a limited equity housing cooperative, to low, very low or moderate income households. No more than thirty-five percent of the targeted household income shall be applied to housing expenses, which shall include mortgage principal and interest, taxes, insurance, assessments, and homeowner fees, as applicable and adjusted for household size. In the case of the limited equity cooperative, the total monthly carrying charges for its members shall not exceed thirty-five percent, and the carrying charges shall include all monthly housing costs minus utilities.

(c) **"Affordable rental housing"** is housing affordable, based upon monthly rent, to low, very low or

moderate income households, adjusted for household size. Affordable rental housing payments are approximately thirty percent of gross monthly target income less utilities.

(d) **"Community based nonprofit-controlled rental housing"** means rental housing owned and operated by an organization with 501(c)(3) status, that is either based in Yolo County, or has a Board of Directors that includes a minimum of 30% representation of Yolo County Residents.

(e) **"Community based mutual housing association"** means a nonprofit tax exempt corporation that may develop, own or manage housing units. Association membership includes nonresident and community members. Resident members shall constitute a majority of the shareholders of the corporation. Each member has one shareholder vote. The corporation is governed by an elected volunteer Board of Directors representative of the association membership. Members shall have no equity interest in the project. Residents pay a one-time membership fee to be used to defray the cost of constructing the housing units. This fee is refundable with nominal interest when residents leave the association. Residents must be members of the association, pay the membership fee and meet resident selection criteria established by the association.

(f)**“Complete environmental review”** means that the land has had all environmental reviews completed on the site to satisfy local requirements, state CEQA requirements, and the national NEPA requirements; resulting in no significant findings that could inhibit development on the site. Any reported findings on the site must be cleared prior to deeding the site for land dedication to the City.

(g) **"Density bonus"** means entitlement to build additional residential units above the maximum number of units permitted pursuant to existing general plan, applicable specific plan and zoning designations. Density bonus units may be constructed only in the development where the units of affordable housing are located. "City density bonus" means a bonus of units awarded to a developer pursuant to this Article. "State density bonus" means a bonus of units awarded to a developer pursuant to Government Code section 65915 et seq.

(h)**"Developer"** means the owner of record and his or her successors in interest.

(i)**"Development"** means one or more projects or groups of projects of residential units constructed in a contiguous area. A development need not be limited to an area within an individual parcel, or subdivision plat.

(j)**"Family"** means an individual or group of two or more persons occupying a dwelling unit and living together as a single housekeeping unit in which each resident has access to all parts of the dwelling and where the adult residents share expenses for food or rent.

(k)**"Feasible"** means capable of being financed, demonstrating the required financing (if any) meets lenders investment standards with respect to the project's Loan to Value (LTV), Debt Coverage Ratio (DCR), and Return on Asset (ROA), based on the prevailing interest and discount rates supported in the required appraisal for a like property. Feasible projects should be sustainable projects, taking into account the cost of construction and ongoing maintenance of the project, in addition to the site’s essential services.

(l)**“Ownership units"** means housing units which provide an ownership opportunity including, but not limited to, single-family units, condominiums, land trusts, and cooperatives, except in circumstances

where the unit is converted to rental use.

(m) **"Household"** means "family" as defined in this section. This article shall not apply to households in which any member is claimed as a dependent for federal income tax purposes by a person or persons residing outside of the household unit unless such person or persons who reside outside the household qualify as very low, low or moderate income persons or families.

(n) **"Limited equity housing cooperative"** means a housing cooperative organized pursuant to California Health and Safety Code section 33007.6 and Business and Professional Code section 11003.4. A limited equity housing cooperative is owned by a nonprofit corporation or nonprofit housing sponsor. Resident-owners own the cooperative as an undivided whole, rather than individual units, but each has the exclusive right to occupy a specific unit within the cooperative.

(o) **"Low income"** means a household earning a gross income of no greater than eighty percent of the median income for Yolo County, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development and affirmed by the Davis City Council annually.

(p) **"Low target income"** means that the average income of residents of low income units will be sixty-five percent of median income for Yolo County, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development and affirmed by the Davis City Council annually.

(q) **"Moderate income"** means a household earning a gross income of no greater than one hundred twenty percent of the median income for Yolo County, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development and affirmed by the Davis City Council annually.

(r)**"Moderate target income"** means that the average income of residents of moderate income units will be one-hundred percent of median income for Yolo County, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development and affirmed by the Davis City Council annually.

(s)**"Permanently affordable"** means affordable in perpetuity and subject to an agreement between the developer and the city to maintain affordability. Such agreement shall be recorded to the property.

(t)**"Rental units"** means housing units which provide a rental opportunity including, but not limited to, multifamily units (excluding condominiums and cooperatives), duplexes (two units on one lot), triplexes, or four-plexes on single-family residential zoned property. Single-family units may be converted to rental units for the purposes of this article.

(u)**"Resident controlled nonprofit housing corporation"** means a housing corporation established to manage for-sale or rental housing projects designated for very low, low or moderate income households in which the majority of households have formed a nonprofit housing corporation. Residents need not have equity interest in such projects.

(v)**"Target income levels"** means the income levels based on standards for very low, low and moderate income levels within Yolo County derived from the U.S. Department of Housing and Urban Development and adjusted for family size. These figures are provided to the city on a yearly basis.

(w)**“Self-help housing”** means mutual self-help housing constructed for very low, low, and moderate income families in which a group of prospective homebuyers shall provide labor to assist in the construction of their units. The intent of this program is to transform the hours of labor into equity (“sweat equity”) to reduce the purchase price of the unit.

(x)**"Student housing cooperative"** means a nonprofit housing organization owned and/or controlled by students.

(y)**“Sustained affordability”** means that the affordable housing obligation being produced to meet the requirements of this ordinance is done so in a manner that maintains the affordability provided into the unforeseeable future, with minimal loss in affordability.

(z)**"Very low income"** means a household earning a gross income of no greater than fifty percent of the median income for Yolo County, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development and affirmed by the Davis City Council annually.

(aa)**"Very Low target income"** means that the average income for residents of very low income unites will be forty percent of median income for Yolo County, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development and affirmed by the Davis City Council annually.

(Ord. No. 1567, § 1 (part); Ord. No. 2199)

18.05.030 Applicability of article. (4)

This article is enacted pursuant to the general police power of the city and is for the purpose of providing affordable housing in Davis consistent with the general plan. (Ord. No. 1567, § 1 (part); Ord. No. 2199)

18.05.040 Provision of affordable housing. (5)

(a)**Affordable Housing Plan.** The developer shall submit, concurrently with or prior to the submission of an application for the first discretionary approval for a project, an application as provided by the city describing the proposed affordable housing plan, in accordance with this ordinance and the intended method for implementing such a program. A developer may submit an application under this ordinance at any time subject to staff, the planning commission, or the city council's discretion to deny the application on the sole basis of lack of timeliness. Any application resubmitted by a developer to amend a program after it has been approved by the city shall be deemed a new application for the project. Before any agreements between parties or transfer of land is made, all agreements and the affordable housing project’s overall plan and budget shall be approved by the City, in order to ensure that the affordable housing project will be economically sustainable over time, in accordance with the project’s required duration of affordability. This review will allow for updated construction cost changes at the time of construction, which will again require review and approval by staff. These reviews also provide the City opportunity to act as an active partner to projects where local funds are requested.

(b)**Approval Process of Affordable Housing Plans.** The approval process for affordable housing plans will include the following steps:

a.Submission of the affordable housing plan as part of the project application submitted to the Community Development Department. Staff shall then refer the affordable housing plan to the Social Services Commission.

b.The Social Services Commission will hold a duly noticed public hearing, where the plan shall be considered. The Commission will review the plan for compatibility with the following: the affordable housing ordinance as written in Sections 18.05.010-18.05.070 of the City Municipal Code, adopted city affordable housing goals, and currently identified city housing needs.

c.After motion for approval or denial is given by the Social Services Commission regarding the proposed affordable housing plan, it is then heard publicly before the Planning Commission and reviewed for their motion on the plan, if the planning entitlements requested by the project require this step. If the planning entitlements being requested do not require this step, then the Social Services Commission's decision on the affordable housing plan is final, but, as is true with decisions of the Planning Commission, can be appealed to the City Council through the city's appeal process as outlined in Section 40.35 of the City's Municipal Code.

d.If the project is requesting planning approvals that require a City Council hearing, the recommendations of both the Social Services Commission, as well as the Planning Commission shall be included in the report to the City Council.

(c)**Building Permit Issuance.** No building permit shall be issued for any new residential unit unless such construction has been approved in accordance with the standards and procedures provided for by this article. The location and type of proposed affordable housing in a development shall be disclosed in writing by each seller to each subsequent purchaser of lots or units within the development, until all the affordable housing units are completed.

(Ord. No. 1567, § 1 (part); Ord. No. 1728, § 3.)

(d)**Competitive Contracting.** In circumstances where local, state, or federal funds are being used to assist in the development of the project, an open bidding process shall be carried out that adequately addresses the requirements of all funding sources involved. In agreement with this requirement, the project developer shall be aware of regulations accompanying all funding sources used for the project, and shall comply with the regulations from pre-construction and throughout the life of the project. Copies of all contracts that are requested for viewing by the City shall be submitted in a timely manner. The City may request evidence of open procurement and compliance with any and all government funding regulations on a project at any time. If the City believes the project to be out of compliance with the intent of this article and/or the regulations of the project's funding sources, the City has the ability to sanction the project developers for their conduct, including fining the project or withdrawing funding.

(e)**Development Agreement.** The City shall use the development agreement of the project to ensure that the project developer adheres to the requirements and intent of this article by detailing within the agreement the sanctions involved if the developer does not comply with the requirements of this article during the construction process.

(f)**Rounding Provisions.** Where the total affordable units required by this ordinance call for a one-half affordable unit or greater portion, it shall require the provision of one full affordable unit (for example, a requirement of 1.5 shall actually require 2 units). The results of such rounding shall also be used in the calculation for in-lieu fee payments, where provided as an option.

(g)**Buyer/Tenant Selection and Screening.** Buyer/Tenant selection and screening shall be carried out by the developer, owner, City, or by the designated responsible party, at the sole expense of the developer. Included in the affordable housing plan submitted by the developer, shall be a proposed marketing plan with an estimated timeline of events, which must be approved by the City and shall adhere to the City's Buyer/Tenant Selection and Screening Guidelines.

The City of Davis will monitor the Buyer Selection and Screening Process through required monthly reports, and through the ability to review any and all files regarding the process at any time that city staff requests to do so. The City of Davis will possess the ability to halt any sale or break any lease of an affordable unit at its discretion, for reasons to include, but not restricted to, the following: if the buyer selection and screening process was not strictly adhered to, or if the buying household is found not to meet the guidelines of qualification, as specified in the guidelines.

(Ord. No. 1567, § 1 (part); Ord. No. 1728, § 3; Ord. No. 2199)

18.05.050 Ownership unit affordable housing standards. (6)

A developer of residential ownership developments consisting of five or more units shall provide in each development, to the extent feasible, an amount equivalent to twenty-five percent of the total units for very low, low and moderate income households, after the inclusion of the density bonus for the project. Depending on the total number of units in the development as provided in Section (a) below, some of the required affordable units may be rental units and some for sale units. Residential projects consisting of fewer than five market rate units will not be required to produce affordable units.

The approval process for Affordable Housing Plans will adhere to that which is required by Section 18.05.040 (b).

The price of all affordable ownership housing units will be based on payments that make up no more than thirty-five percent of the gross monthly target income level designated for a specific unit and shall include mortgage principal and interest, taxes, insurance, assessments, and homeowner fees, as applicable and adjusted for household size. Percentages allowed for the qualifying of the mortgage loan shall be determined by the lender or lenders involved with the income-qualified household.

Ownership affordable units that are converted into rental units, meet the requirements of this section, pursuant to state law, if the rents meet the affordable housing standards for rental units in this article, and as adopted by the city.

To the maximum extent feasible, each developer must meet the twenty-five percent ownership affordable unit requirement as it pertains to the project, as set forth below:

(a) Standard Ownership Affordable Housing Requirements

All requirements listed under the respective category, as well as Section 18.05.040, must be adhered to and included within the project's affordable housing plan.

1.Projects with fewer than five units for purchase

a. No affordability requirements.

2.Projects totaling five to seventy-five units for purchase

a.A number equivalent to twenty-five percent of the total units being developed, after the inclusion of the density bonus for the project, must be developed as affordable units, as directed in this section.

b.The complete amount of required affordable units must be constructed on-site.

c.The on-site construction shall be in conformance with all that is stated in Section (A), entitled On-Site Construction of Affordable Units for Purchase.

3.Projects totaling seventy-six to two-hundred units for purchase

a.A number equivalent to twenty-five percent of the total units being developed, after the inclusion of the density bonus for the project, must be developed as affordable units, as directed in this section.

b.The developer shall make an irrevocable offer to the city of sufficient land, without abnormalities (shape and terrain) and with complete environmental review that can accommodate the affordable housing requirement for the project in its entirety.

c.The land dedication shall be in conformance with all that is stated in Section (B), entitled Land Dedication.

4. Projects totaling two-hundred and one or greater units for purchase

a.A number equivalent to twenty-five percent of the total units being developed, after the inclusions of the density bonus for the project, must be developed as affordable units, as directed in this section.

b.Half of the affordable housing requirement for the project, a number equivalent to twelve and one-half percent of the total units being developed, shall be developed on-site by the developer, in conformance with all that is stated in Section (A), entitled On-Site Construction of Affordable Units for Purchase

c.Half of the affordable housing requirement for the project, a number equivalent to twelve and one-half percent of the total units being developed, shall be developed through a land dedication(s) by the developer to the City of Davis, in conformance with all that is stated in Section (B), entitled Land Dedication.

5.Project Individualized Program

a.The developer may meet the city's affordable housing requirement with a project individualized program that is determined to generate an amount of affordability equal to or greater than the amount that would be generated under the standard affordability requirements.. The affordable units must, at a minimum, meet the same income targets specified in the standard ownership affordable housing provisions.

i.A project individualized program shall be developed by the developer and city staff, taken action on by the Social Services Commission, and if the main project application requires, heard before the Planning Commission for decision.

ii.If the main project is requesting planning entitlements that require City Council approval, it shall then be heard before the City Council for final decision.

iii.If the main project does not require a City Council hearing, the Planning Commission's or the Social Services Commission’s determination may be appealed to the City Council by any member of the public.

b. The Project Individualized Program is not intended to allow exception to a public input and review process. The Project Individualized Program is intended to be viewed thoroughly and scrutinized in public forums, allowing for input and competition from the public, other community-based non-profits, staff, and at a minimum, the Social Services Commission. The public hearing at the Social Services Commission shall be noticed to all community-based housing non-profits in the area, to the greatest extent possible, regardless of their involvement in the project. This public hearing shall scrutinize the project based on the following criteria:

i.Need for government subsidy

ii.Sustainability of the project and its services

iii.Community need of the project type based on recent needs assessments and recent projects completed

iv.Uniqueness/innovation of the proposed project

v.Overall benefits and drawbacks of the project

vi.Project's compliance with the standards as outlined within the Affordable Housing Sections 18.05.010-18.05.070 of the City's Municipal Code

These meetings shall be carried out without any finite contracts in place between the parties involved, allowing for the potential direction to the developer to change the project. If the Social Services Commission finds that the proposed project does not satisfy one or all of the criteria listed above, it may choose to direct the developer to fulfill his/her affordable housing requirement through a land dedication process. This decision may be altered at either the Planning Commission or City Council public hearing, if the project requires review by either of these deciding bodies. Decision at either the Social Services Commission or the Planning Commission to direct the developer to do a land dedication to meet his/her affordability requirement, may be appealed to the City Council.

(A)On-Site Construction of Affordable Units for Purchase.

The units shall be constructed in conformance with all that required in this article.

(a)Density Bonus. A one-for-one city density bonus shall be awarded for construction of on-site affordable units.

(b) Housing Mix. The developer must provide a mix of two and three bedroom units, with a minimum of fifty-percent of the units as three bedroom units and in a combination of unit types as approved within the Affordable Housing Plan through the appropriate review process. Smaller and larger unit sizes shall be provided as an option, based on local housing needs and project character, as approved during the affordable housing plan review process.

(c) Price of Units. The units will be affordable to moderate-income households, households with incomes ranging from 80% of Area Median Income to 120% Area Median Income, with the average affordability targeted at households with incomes at 100% of Area Median Income, the moderate target income.

The Community Development Department Director shall determine the maximum sales price for these units on an annual basis. The Community Development Director shall propose annual adjustments to

the maximum purchase prices based on changes in the Area Median Income, as determined by the U.S. Department of Housing and Urban Development. This price shall be reviewed annually for adoption by the City Council.

(d)Buyer Selection and Screening. Please refer to Section 18.05.040(g) for the guidelines of this section.

(e)Owner-Occupancy Restrictions. Any person who purchases a designated affordable unit pursuant to this article shall occupy that unit as his or her principal personal residence for as long as he/she owns the affordable unit. Such occupancy shall commence within six months following completion of the purchase. The purchases shall comply with the provisions of sections 18.04.020 through 18.04.060, inclusive, of this Code. (Ord. No. 1567, § 1 (part); Ord. No. 1651; § 1; Ord. No. 1728 §§ 4--7.)

(f)Sustained Affordability. Restrictions shall be placed on the affordable housing obligation fulfillment, in order to ensure a measure of sustained affordability. In an effort to maintain the greatest number of units as affordable for the greatest period of time, one of the following restrictions shall be adhered to:

1. Appreciation Capped at Three Percent per Year plus a Three-Quarters of a Percent Maintenance Credit for Necessary Maintenance Costs of the Unit: The unit appreciates based on the average increase in Yolo County Area Median Income—3 %, plus an additional 0.75% percent as a credit for maintenance costs of the unit. This restricts the total appreciation of the unit to a maximum of 3.75%, compounded annually.

2. Alternative Proposal: Any other program that proves its ability to provide for sustainable affordability, as approved by staff, the Social Services Commission, and other public governing bodies as required by the individual project. Proposing an alternative method for sustained affordability must be justified based on current market trends and/or other prevailing circumstances.

(g)Right of First Refusal. All affordable for-sale units constructed after January 1, 2005, shall deed to the City of Davis a permanent Right of First Refusal on the property, allowing the City the ability to either purchase the unit, or designate an appropriate buyer for the unit at its resale. The deed restriction shall allow the City to designate a third party to carry out its Right of First Refusal, and shall also allow for a one percent fee to be taken from the real estate transaction in order to pay for the costs of carrying out the Right of First Refusal.

(h)Resale Report. The owners of all affordable for-sale units that include a resale restriction or were constructed after January 1, 2005, shall be required to clear all resale reports completed on these units prior to the close of escrow on the resale of each unit. The findings of the resale inspection that are required to be addressed cannot be transferred to the household purchasing the affordable unit.

(B)Land Dedication.

The developer shall make an irrevocable offer to the city of sufficient land, without abnormalities (shape and terrain) and with complete environmental review, which can accommodate the land dedication requirement for the project in its entirety. The land dedicated shall be of sufficient size to make the development of the required affordable units economically feasible, no less than one acre. The density of development for the purpose of calculating the acreage to be dedicated under this section shall be fifteen units per acre. The proposed use of such land must be consistent with the general plan. The city may approve, conditionally approve, or reject such an offer of dedication. If the

city rejects such an offer of dedication, the developer shall be required to meet the affordable housing obligation by other means set forth in this article and approved by the city.

The dedicated site shall be economically feasible to develop, of sufficient size to build the required number of affordable units, and physically suitable for development of the required affordable units prior to dedication of the land. The dedicated site shall also have appropriate General Plan designation and zoning to accommodate the required units, be fully improved with infrastructure, frontage improvements (i.e., curb, gutter, walk), paved street access, utility (i.e., water, gas, sewer, and electric) service connections stubbed to the property lines, and other such off-site improvements as may be necessary for development of the required affordable units or required by the City.

The developer must identify the land to be dedicated at the time the developer applies for a pre-zoning or zoning amendment, but in no event later than the application for the tentative subdivision map. Building permits shall not be issued prior to identification of land to be dedicated under this section.

(a)Density Bonus. A one-for-one city density bonus shall be awarded for land dedication on the basis of fifteen units per net acre.

1.

(b)Housing Types on Dedicated Land. Housing built on land provided by dedication for affordable housing shall be permanently affordable. The city shall adopt a resolution establishing a process whereby property dedicated to the city pursuant to this section may be conveyed to third parties who shall enter into an agreement with the city to produce affordable housing within a specified period of time. The city shall consult with the Social Services Commission, nonprofit corporations, affordable housing organizations, and developers in designing this process. Housing on land dedicated pursuant to this section may consist of any of the following:

(i)Resident controlled nonprofit housing corporation.

(ii) Community based mutual housing association.

(iii) Community based nonprofit controlled rental housing.

(iv)Student housing cooperative.

(v)Limited equity housing cooperative.

(vi)Public housing

(vii)Land trust

(viii)Self-Help Housing

(ix)Other forms of nonprofit housing containing a permanent affordability provision.

(c)Price of Units. The average affordable price for each size category of units on land dedication sites shall not exceed the low target income, 65 percent of median income. The maximum income level served shall not be greater than 80 percent of area median income. A variety of unit sizes must be offered to income groups at all levels within the targeted group. For example, if three bedroom units are offered to families at eighty percent of median income, the same number of three bedroom units must be offered to households at fifty percent of area median income, making the average rent for the unit type 65 percent of area median income.

(d)Buyer/Tenant Selection and Screening. Please refer to Section 18.05.040(g) for the guidelines of this section.

(e)Owner-Occupancy Restrictions. Any person who purchases a designated affordable unit pursuant to this article shall occupy that unit as his or her principal personal residence for as long as he/she owns the affordable unit. Such occupancy shall commence within six months following completion of the purchase. The purchases shall comply with the provisions of sections 18.04.020 through 18.04.060, inclusive, of this Code. (Ord. No. 1567, § 1 (part); Ord. No. 1651; § 1; Ord. No. 1728 §§ 4--7.)

(C)Options for Small Developments. Small developments of fifteen ownership units or fewer, and totaling no greater than 38 bedrooms in the project, that are located within the Core Area and are found to meet a specified community goal, can request to fulfill the twenty-five percent affordable housing requirement through one of the following options, as approved during the review process of the project's affordable housing plan:

(a)Construction Subsidy. City staff will work with the developer to provide financial assistance to be used in the construction of the affordable unit(s) required on-site, in order to assist in ensuring the project's feasibility. The developer shall present a proforma (for the affordable units) to staff showing the necessary amount of construction assistance needed through supplemental city funds, in order to make the project economically feasible. The project will require the standard review process, and the necessary funding approval from the City Council.

(b)Combination of On-Site Construction and In-lieu Fees. The affordability requirement may be fulfilled through a combination that includes the on-site development of a portion of the required affordable units, with the remaining amount of the affordability requirement fulfilled through in-lieu fees. The exact split of the combination shall be determined during the review of the project's affordable housing plan, based on the developer's stated ability to provide affordable units on-site.

(c)In-lieu Fees. In the event that the developer cannot accommodate options (a) and (b) within the proposed project, the affordability requirement may be fulfilled through the payment of in-lieu fees pursuant to an adopted fee schedule to be revised on an annual basis. A payment plan may be approved by the Social Services Commission in the event that the developer does not have the necessary funds available for payment; however, the majority of in-lieu fees shall be paid prior to the issuance of the certificate of occupancy on any of the market rate units. In addition to the standard in-lieu fee, the City maintains the right to adopt an in-lieu fee for use in future resource-pooled projects. This special in-lieu fee would apply to projects within a specific project area where the fee is intended to be used towards a planned resource-pooled project. (Ord. No. 1567, § 1 (part); Ord. No. 1651; § 1; Ord. No. 1728 §§ 4--7; Ord. No. 2199)

18.05.060 Rental development affordable housing standards. (7)

A developer of multifamily rental developments containing twenty or more units shall provide, to the maximum extent feasible, at least twenty-five percent of the units affordable by low income households and at least ten percent of the units affordable by very low income households. A developer of multifamily rental developments containing between five and nineteen units, inclusive, shall provide, to the maximum extent feasible, fifteen percent of the units to low income households and ten percent to very low income households. Residential projects consisting of fewer than five market rate units will not be required to produce affordable units. Such housing shall be provided either by the construction of units on-site or by land dedication.

The approval process for Affordable Housing Plans will adhere to that which is required by Section

18.05.040 (b).

Affordable rental units shall rent to low income households at not more than thirty percent of eighty percent (thirty percent of eighty percent is twenty-four percent) of area median income, and to very low income households at not more than thirty percent of fifty percent of area median income, adjusted for family size.

To the maximum extent feasible, each developer must meet the affordability requirement as it pertains to the project, as set forth below:

(a)**Standard Rental Affordable Housing Requirements**

All requirements listed under the respective category must be adhered to and included within the project's affordable housing plan.

1.Projects with fewer than five units for rent

a. No affordability requirements

2.Projects totaling five to nineteen units for rent

a.A number equivalent to fifteen percent of the total units being developed, after the inclusion of the density bonus for the project, shall be developed and made affordable to low-income households, households with gross incomes at or below eighty-percent of Area Median Income for Yolo County.

b.A number equivalent to ten percent of the total units being developed, after the inclusion of the density bonus for the project, shall be developed and made affordable to very low-income households, households with gross incomes at or below fifty-percent of Area Median Income for Yolo County.

c.The complete number of required affordable units must be constructed on-site.

d.The on-site construction shall be in conformance with all that is stated in Section (A), entitled On-Site Construction of Affordable Units for Rent.

3.Projects totaling twenty or greater units for rent

a. A number equivalent to twenty-five percent of the total units being developed, after the inclusion of the density bonus for the project, shall be developed and made affordable to low-income households, households with gross incomes at or below eighty-percent of Area Median Income for Yolo County.

b. A number equivalent to ten percent of the total units being developed, after the inclusion of the density bonus for the project, shall be developed and made affordable to very low-income households, households with gross incomes at or below fifty-percent of Area Median Income for Yolo County.

c. This requirement may be fulfilled through either On-Site Construction as stated in Section (A) below or Land Dedication detailed in Section (B), as long as the minimum amount of land is provided to make the site economically feasible.

4.Project Individualized Programs for Rental Housing

a. The developer may meet the city's affordable housing requirement with a project individualized program that is determined to generate an amount of affordability equal to or greater than the amount that would be generated under the standard affordability requirements. The affordable units must, at a

minimum, meet the same income targets specified in the standard ownership affordable housing provisions.

i.A project individualized program shall be developed by the developer and city staff, taken action on by the Social Services Commission, and if the main project application requires, heard before the Planning Commission for decision.

ii.If the main project is requesting planning entitlements that require City Council approval, it shall then be heard before the City Council for final decision.

iii.If the main project does not require a City Council hearing, the Planning Commission's or the Social Services Commission’s determination may be appealed to the City Council by any member of the public.

b. The Project Individualized Program is not intended to allow exception to a public input and review process. The Project Individualized Program is intended to be viewed thoroughly and scrutinized in public forums, allowing for input and competition from the public, other community-based non-profits, staff, and at a minimum, the Social Services Commission. The public hearing at the Social Services Commission shall be noticed to all community-based housing non-profits in the area, to the greatest extent possible, regardless of their involvement in the project. This public hearing shall scrutinize the project based on the following criteria:

i.Need for government subsidy

ii.Sustainability of the project and its services

iii.Community need of the project type based on recent needs assessments and recent projects completed

iv.Uniqueness/innovation of the proposed project

v.Overall benefits and drawbacks of the project

vi.Project’s compliance with the standards as outlined within the Affordable Housing Sections 18.05.010-18.05.070 of the City’s Municipal Code

These meetings shall be carried out without any finite contracts in place between the parties involved, allowing for the potential direction to the developer to change the project. If the Social Services Commission finds that the proposed project does not satisfy one or all of the criteria listed above, it may choose to direct the developer to fulfill his/her affordable housing requirement through a land dedication process. This decision may be altered at either the Planning Commission or City Council public hearing, if the project requires review by either of these deciding bodies. Decision at either the Social Services Commission or the Planning Commission to direct the developer to do a land dedication to meet his/her affordability requirement, may be appealed to the City Council.

(A)On-Site Construction of Affordable Units for Rent. A developer of a development containing twenty or more units may meet the rental affordable housing requirement by constructing twenty-five percent of the total number of units on-site to be permanently affordable to low income households and ten percent of the total number of units on-site to be permanently affordable to very low income households. A developer of a development containing between five and nineteen units, inclusive, may meet the rental affordable housing requirement by constructing fifteen percent of the total number of units on-site to be permanently affordable to low income households and ten percent of the total number of units on-site to be permanently affordable to very low income households.

(a)Criteria for On-Site Construction. Affordable housing units constructed on-site shall include a mix of unit sizes, dispersed throughout the entire development, as approved by the director of the department of community development, based on the local housing needs of unit sizes. Affordable housing units shall not be clustered together in any building, complex or area of the development. Affordable housing units constructed on-site shall be constructed using the same building materials and including equivalent amenities as the market rate units.

1.

(b)Affordability Agreement. In order to qualify as affordable units pursuant to this section, such units shall be maintained in perpetuity as affordable units. The developer shall enter into an agreement with the city to ensure the continued affordability of all affordable rental housing units in perpetuity. This agreement shall be recorded.

1.

(c)Density Bonus. A one-for-one city density bonus shall be awarded for the construction of on-site affordable units.

1.

(d)Annual Monitoring. Affordable units must be managed by the developer or his or her agent. Each developer shall submit an annual report to the city identifying which units are affordable units, the monthly rent, vacancy information for each affordable unit for the prior year, gross annual incomes for the households of each affordable unit during the prior year, and other information as required by city staff. This annual monitoring shall include the inspection of ten-percent of the on-site units. Inspection reports created by an acceptable third party and completed within the same city fiscal year will be accepted in-lieu of city staff performing the on-site inspection, for that given monitoring year.

1.

(e)Affordable Rents. Affordable rents shall be determined annually on a city-wide basis by city staff based upon the Area Median Income and Utility Allowances for Yolo County, as determined by the federal Department of Housing and Urban Development, the state Department of Housing and Community Development, and the Yolo County Housing Authority. If these agencies do not provide the information, the City of Davis will determine monthly rent amounts based on thirty-percent of the targeted household's gross monthly income.

1.

(f)Tenant Selection and Screening. Please refer to Section 18.05.040(g) for the guidelines of this section.

(B)Land Dedication. A developer may make an irrevocable offer of dedication to the city of sufficient land to meet the total affordable rental housing units required pursuant to this section.

(a)Credit. The density of development for the purpose of calculating the acreage to be dedicated under this section shall be 20 units per net acre for multifamily residential use.

1.

(b)Procedure; General Plan Consistency. The developer shall identify the land to be dedicated at the time the developer applies for a pre-zone or zoning amendment, but in no event later than the application for tentative subdivision map. Building permits shall not be issued prior to identification of land to be dedicated under this section. The proposed land use of such land must be consistent with the general plan. The city may approve, conditionally approve or reject such offer of dedication. If the city

rejects such offer of dedication, the developer shall be required to meet the affordable housing obligation by other means set forth in this section and identified by the city.

1.

(c)Characteristics and Minimum Size. The developer shall make an irrevocable offer to the city of sufficient land, without abnormalities (shape and terrain) and with complete environmental review, which can accommodate the land dedication requirement for the project in its entirety. The land dedicated shall be of sufficient size to make the development of the required affordable units economically feasible, no less than one acre.

1.

(d)Density Bonus. A one-for-one city density bonus shall be awarded for dedication under this section on the basis of twenty units per net acre.

1.

(e)Housing on Dedicated Land. Housing built on land dedicated for affordable housing shall be permanently affordable. The city shall adopt a resolution establishing a process whereby property dedicated to the city pursuant to this section may be conveyed to third parties who shall enter into an agreement with the city to produce affordable housing within a specified period of time. The city shall consult with the Social Services Commission, nonprofit corporations, affordable housing organizations and developers in designing this process. Housing on land dedicated pursuant to this section may consist of any of the housing types listed in section 18.05.050(B)(b) of this article.

(C)Options for Small Developments. Small developments of fifteen rental units or fewer, and totaling no greater than 38 bedrooms in the project, that are located within the Core Area and are found to meet a specified community goal, can request to fulfill the twenty-five percent affordable housing requirement through one of the following options, as approved during the review process of the project's affordable housing plan:

(a)Construction Subsidy. City staff will work with the developer to provide financial assistance to be used in the construction of the affordable unit(s) required on-site, in order to assist in ensuring the project's feasibility. The developer shall present a proforma (for the affordable units) to staff showing the necessary amount of construction assistance needed through supplemental city funds, in order to make the project economically feasible. The project will require the standard review process, and the necessary funding approval from the City Council.

(b)Combination of On-Site Construction and In-lieu Fees. The affordability requirement may be fulfilled through a combination that includes the on-site development of a portion of the required affordable units, with the remaining amount of the affordability requirement fulfilled through in-lieu fees. The exact split of the combination shall be determined during the review process for the project's affordable housing plan, based on the developer's stated ability to provide affordable units on-site.

(c)In-lieu Fees. In the event that the developer cannot accommodate options (a) and (b) within the proposed project, the affordability requirement may be fulfilled through the payment of in-lieu fees pursuant to an adopted fee schedule to be revised on an annual basis. A payment plan may be approved by the Social Services Commission in the event that the developer does not have the necessary funds available for payment; however, the majority of in-lieu fees shall be paid prior to the issuance of the certificate of occupancy on any of the market rate units. In addition to the standard in-lieu fee, the City maintains the right to adopt an in-lieu fee for use in future resource-pooled projects. This special in-lieu fee would apply to projects within a specific project area where the fee is intended to be used towards a planned resource-pooled project. (Ord. No. 1567, § 1 (part); Ord. No. 1651, § 2; Ord. No. 1801, §; Ord. No. 2199)

18.05.070 Fees. (8)

The city council may, by resolution, establish fees and deposits for processing of applications as required by this article. (Ord. No. 1651, § 3; Ord. No. 2199)

18.05.080 Exemptions from Affordable Housing Requirements. (9)

(a)Residential projects consisting of fewer than five units will not be required to produce affordable units.

(b)The requirements of this Article may be adjusted or waived if the Developer demonstrates to the satisfaction of the City Council that there is not a reasonable relationship between the impact of a proposed Residential Project and the requirements of this Article, or that applying the requirement of this Article would take property in violation of the United States or California Constitutions.

To receive an adjustment or waiver, the Developer must request it when applying for first approval of the Residential Project. The matter shall be considered before the City Council within thirty days. In making the finding or determination, the City Council may assume the following: (1) the Developer is subject to the inclusionary housing requirements in this Article; (2) availability of any incentives, affordable financing, or subsidies; and (3) the most economical affordable housing product in terms of construction, design, location, and tenure. For purposes of a taking determination, the Developer has the burden of providing economic and financial documentation and other evidence necessary to establish that application of this Article would constitute a taking of the property without just compensation.

If it is determined that the application of the provisions in this Article would constitute a taking, the inclusionary requirements for the Residential Project shall be modified to reduce the inclusionary housing obligations to the extent and only to the extent necessary to avoid a taking. If it is determined that no taking would occur by application of this Article, the requirements of the Article remain applicable and no approvals for the Residential Project shall be issued unless the Developer has executed an Affordable Housing Plan pursuant to the requirements of this Article.

18.06.0 MIDDLE INCOME HOUSING

18.06.0 MIDDLE INCOME HOUSING

18.06.010 Purpose and findings. (2)

The purpose of this article is to implement a General Plan policy to require developments with 26 or more residential units for purchase to provide units that are affordable to middle income households.

The City Council hereby finds as follows:

1. The State of California Government code sections 65580 and 65589.5 state the following findings and goals for housing:

a. The availability of decent housing and a suitable living environment for every Californian is a vital statewide goal. The attainment of this goal requires efforts to accommodate the housing needs of Californians of all economic levels.

b. Local governments have a responsibility to use the powers vested in them to provide for the housing needs of all economic segments of the community considering economic, environmental, and fiscal factors and community goals set forth in the general plan. Each locality is best capable of determining what efforts are required by it to contribute to the attainment of the state housing goal.

c. California housing has become the most expensive in the nation. Among the consequences are discrimination against low income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

d. The premature and unnecessary development of agricultural lands for urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. It is the policy of the state that development should be guided away from prime agricultural lands and that jurisdictions should encourage in-filling existing urban areas to the maximum extent practicable.

2. The establishment of a middle income housing ordinance by the City of Davis is consistent with the state legislature’s housing goals and intent in that:

a. The city of Davis is interested in providing housing that is affordable to its local workforce as well as other underserved households. A study of middle income housing needs, impacts, and options completed for the City of Davis found that the Davis housing market is not providing adequate ownership housing opportunities for middle income households. Middle income households cannot afford to purchase even the least expensive market rate housing being developed and cannot qualify for affordable housing units provided for low and moderate income households.

b. The city of Davis is using its vested powers to provide for the housing needs for all economic segments of the community and the local workforce in particular.

c. Public funds for the construction of middle income housing units are not available.

d. The City Council has considered the community goals set forth in the general plan and the economic factors related to a middle income housing requirement, including impact on development feasibility. The study of middle income housing needs, impacts and options found that the requirement for middle income units would involve reduced opportunity profits for the housing developer but would not

require a construction subsidy.

e. The City Council has considered the potential environmental effects from the middle income ordinance project and finds that the project would not have a significant effect on the environment or a cumulatively considerable environmental effect in that the project. The project will not affect the amounts or allowable densities of residential development in the General Plan. The project would have cumulatively beneficial effect by providing housing opportunities for the local workforce. Workforce housing would reduce traffic congestion and air pollution by Davis workers who otherwise would live outside Davis and commute longer distances to work. City Council approves Negative Declaration #03-05 for this project.

f. The City Council finds that the middle income housing requirement project would not discriminate against protected classes including minorities, disabled, elderly and families with children. The effect of the project would be to divert housing production that most likely would have been affordable to higher income households and instead require developers to restrict the sales of those housing units to households qualifying as “middle income.” Discrimination based on income is acceptable when it serves a public purpose such as facilitating the ability of households to afford decent, safe, and sanitary housing that otherwise could not. The data in a study of middle income housing needs, impacts and options shows that:

(1) Shifting some of the housing supply from the above middle income level to middle income level through a middle income inclusionary requirement would most likely not have a significant impact on non-white households, households with disabled persons, and households with children because there are more households of these categories in the middle income level than the above-middle level in Davis, Yolo County, and the Sacramento / Yolo CMSA; and

(2) There is a slightly higher concentration of elderly households in the $100,000 and above income categories than in the $60,000 to $99,999 income range which closely resembles the “middle” income range. This could mean that if the City implements a program to require middle income units, there would be a lower proportion of elderly households who would qualify for the housing versus the proportion of elderly households in the higher income categories who would be able to afford more expensive housing. The higher income elderly households, however, would generally be able to find decent housing compared to lower income households.

g. The projects will not change the city’s existing housing programs and requirements for very low, low and moderate income households.

h. The project will provide greater housing opportunities for middle income households as the Davis housing market has not been providing adequate ownership housing opportunities for middle income households.

i. The city of Davis is attempting to provide middle income housing to support the community’s growth in employment by providing employee housing, retain a balance of jobs and housing, provide mobility, and preserve air quality. The city of Davis is attempting to avoid urban sprawl and excessive commuting.

j. The city of Davis is attempting to balance housing programs with agricultural land preservation programs which purchase conservation easements, including mitigation requirements for the conversation of agricultural land by urban development.

3. The establishment of a middle income housing ordinance by the City of Davis is consistent with the city’s general plan policies which call for a mix of housing types that meet a variety of needs. These policies include:

a. Policy LU A.2: Require a mix of housing types, densities, prices and rents, and designs in each new development area.

b. Policy HOUSING 1.1: Encourage a variety of housing types that meet the housing needs of an economically and socially diverse Davis.

c. Policy HOUSING 4.2 (new): Provide affordable housing opportunities for the local workforce in the Davis area.

d. Standard HOUSING 4.2a (new): A development with 26 or more residential units for purchase shall provide units which are affordable to middle income households. Middle income households consist of households earning a gross income of no greater than 180 percent of the median income for Yolo County adjusted for household size. The number of middle income units shall be equivalent to 10% for projects totaling 26 to 35 ownership units, 15% for projects totaling 30 to 49 ownership units, and 20% for projects totaling 50 or more ownership units.

e. Standard HOUSING 4.2b (new): Units built under the middle income requirement shall be made affordable to households with gross incomes of 120 percent to 180 percent of the median income for Yolo County, with an average affordability for households at 140 percent of the median income for Yolo County.

f. Policy HOUSING 4.3 (new): Promote a linkage between new ownership housing and the local workforce.

g. Action HOUSING 4.3a (new): Implement an incentive system for the local workforce, such as a lottery, as part of the city's buyer selection process for low/moderate income and middle income affordable ownership units. The system shall provide the highest number of lottery tickets to households with a member of the local workforce.

4. The public purposes served by providing housing opportunities for middle income households and the local workforce include:

a. Helping the city and school district better serve the public with vital services;

b. Helping businesses by facilitating greater employee productivity and morale;

c. Enhancing recruitment and retention efforts, and increasing service levels;

d. Reducing traffic congestion and air pollution by people who otherwise would live outside of Davis and commute longer distances to work;

e. Improving the quality of life for Davis employees by bringing them closer to their place of work.

(Ord. No. 2234, Added 01/10/2006)

18.06.020 Definitions. (3)

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

1. "Density bonus" means entitlement to build additional residential units above the maximum number of units permitted pursuant to existing general plan, applicable specific plan, and zoning designations. Density bonus units are granted and may be constructed only in developments where units of affordable housing built under the city's low-moderate income ordinance are located.

2. "Developer" means the owner of record and his or her successors in interest.

3. "Development" means one or more projects or groups of projects that include residential units constructed in a contiguous area. A development need not be limited to an area within an individual parcel, or subdivision plat.

4. “Exempt condominiums” are residential ownership units in a condominium development that is predominantly composed of stacked air space units not having separate ownership parcels. Townhouse or single family developments are not considered “exempt condominiums” under this definition, even if they are structured as condominium units.

5. "Family" means an individual or group of two or more persons occupying a dwelling unit and living together as a single housekeeping unit in which each resident has access to all parts of the dwelling and where the adult residents share expenses for food or housing.

6. "Feasible" means capable of being financed, demonstrating the required financing (if any) meets lenders investment standards with respect to the project's Loan to Value (LTV), Debt Coverage Ratio (DCR), and Return on Asset (ROA), based on the prevailing interest and discount rates supported in the required appraisal for a like property. Feasible projects should be sustainable projects, taking into account the cost of construction and ongoing maintenance of the project, in addition to the site’s essential services.

7. "Household" means "family" as defined in this section. This definition shall not apply to households in which any member is claimed as a dependent for federal income tax purposes by a person or persons residing outside of the household unit unless such person or persons who reside outside the household qualify as very low, low, moderate or middle income persons or families.

8. "Middle income" means a household earning a gross income of no greater than one hundred eighty percent of the median income for Yolo County, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development and affirmed by the Davis City Council annually.

9. “Middle income ownership units” are ownership housing units at prices affordable to middle income households based on the requirements of this article.

10. "Moderate income" means a household earning a gross income of no greater than one hundred twenty percent of the median income for Yolo County, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development and affirmed by the Davis City Council annually.

11. “Middle target income” means that the average pricing of middle income units will be affordable to households at one hundred forty percent of median income for Yolo County, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development and affirmed by the Davis City Council annually.

12. “Ownership units" means housing units that can be sold individually and function on their own utilities, while providing an ownership opportunity. Ownership units would include, but are not limited to, single-family units, condominiums, and land trusts, except in circumstances where the unit is

converted to rental use.

13. "Target income levels" means the income levels required to be served by middle incomeunits produced under this ordinance, based on the set standards for median income levels within Yolo County annually derived from the U.S. Department of Housing and Urban Development, adjusted for household size.

(Ord. No. 2234, Added 01/10/2006)

18.06.030 Applicability of article. (4)

This article is enacted pursuant to the general police power of the city and is for the purpose of providing middle income housing in Davis consistent with the general plan. This article shall apply to all projects consisting of newly constructed ownership units totaling twenty-six units or greater. (Resolution No. 05-27A)

(Ord. No. 2234, Added 01/10/2006)

18.06.040 Process for provision of middle income housing. (5)

1. **Middle income housing plan**.

The developer shall submit, concurrently with or prior to the submission of an application for the first discretionary approval for a project, an application as provided by the city describing the proposed middle income housing plan, in accordance with this ordinance, as well as the affordable housing plan required by the city's low-moderate affordable housing ordinance, that includes the intended method for implementing the project's middle income and affordable housing requirements. A developer may submit an application under this ordinance at any time subject to the planning commission or city council's discretion to deny the application on the sole basis of lack of timeliness. Any application resubmitted by a developer to amend a middle income housing plan after it has been approved by the city shall be deemed a new application for the project. Before any final agreements between parties or transfer of land is made, the project's middle income housing plan shall be approved with other required development entitlements such as general plan amendment or zoning approvals. The middle income housing plan shall adhere to the requirements of this ordinance and affordable housing plan shall adhere to the requirements of the low-moderate affordable housing ordinance. Both shall meet the housing needs of the city and its residents. No contracts shall inhibit the city's ability to make changes to any middle income housing plan in order to improve the plan and its provision of middle income housing units.

2. **Approval process of middle income housing plans**.

The approval process for middle income housing plans will include the following steps:

a. Submission of the middle income housing plan as part of the project application submitted to the Community Development Department. Staff shall then refer the middle income housing plan to the Social Services Commission.

b. The Social Services Commission will hold a duly noticed public hearing, where the plan shall be considered. The Commission will review the plan for compatibility with this article, adopted city affordable housing goals, and current city housing needs.

c. After a recommendation is given by the Social Services Commission regarding the proposed middle

income housing plan, it is then heard at a public hearing before the Planning Commission. If the project is requesting planning approvals that do not require a City Council hearing, then the Planning Commission's decision is final, but can be appealed to the City Council.

d. If the project is requesting planning approvals that require a City Council hearing, the recommendations of both the Social Services Commission and the Planning Commission shall be included in the report to the City Council.

3. **Building permit issuance**.

No building permit shall be issued for any new residential ownership unit unless such construction has been approved in accordance with the standards and procedures provided for by this article. The location and type of proposed middle income housing in a development shall be disclosed in writing by each seller to each subsequent purchaser of lots or units within the development, until all of the middle income housing units are completed.

4. **Rounding provisions**.

Where the total middle income units required by this ordinance call for a one-half middle income unit or greater portion, it shall require the provision of one full middle income unit (for example, a requirement of 1.5 shall actually require 2 units).

5. **Buyer selection and screening**.

Buyer selection and screening shall be carried out by the developer, owner, City, or by the designated responsible party, at the sole expense of the developer. Included in the middle income housing plan submitted by the developer, shall be a proposed marketing plan with an estimated timeline of events, which must be approved by the City and shall adhere to the City of Davis Buyer/Tenant Selection and Screening Guidelines.

The City of Davis will monitor the Buyer Selection and Screening Process through required monthly reports, and through the ability to review any and all files regarding the process at any time that city staff requests to do so.

The City of Davis will possess the ability to halt any sale of a middle income unit at its discretion, for reasons to include, but not restricted to, the following: if the buyer selection and screening process was not strictly adhered to, or if the buying household is found not to meet the guidelines of qualification, as specified in the guidelines.

(Ord. No. 2234, Added 01/10/2006)

18.06.050 Standard middle income housing requirements. (6)

A developer of a residential ownership development consisting of twenty-six or greater units shall provide, to the extent feasible, units offered to middle income households as required in this section. All required middle income units must be constructed on-site and sold as middle income ownership units, as described in this section. Ownership projects consisting of fewer than twenty-six units are not required to provide middle income units.

The required middle income housing units shall be constructed on the development project site in compliance with the requirements in this section and the process requirements in Section 18.06.040.

The project's middle income housing plan shall comply with these requirements.

1. **Project percentage requirements.**

To the maximum extent feasible, each developer must meet the middle income housing requirement as it pertains to the project, as set forth below:

a. Projects with fewer than twenty-six units for purchase. No middle income affordability requirements.

b. Projects totaling twenty-six to thirty-five units for purchase. A number equivalent to ten percent of the project's total ownership units being developed, including market rate units, low-moderate affordable units, and any density bonus units resulting from the low-moderate affordability requirement, must be developed as middle income units, as directed in this section.

c. Projects totaling thirty-six to forty-nine units for purchase. A number equivalent to fifteen percent of the project's total ownership units being developed, including market rate units, low-moderate affordable units, and any density bonus units resulting from the low-moderate affordability requirement, must be developed as middle income units, as directed in this section.

d. Projects totaling fifty units or greater units for purchase. A number equivalent to twenty percent of the project's total ownership units being developed, including market rate units, low-moderate affordable units, and any density bonus units resulting from the low-moderate affordability requirement, must be developed as middle income units, as directed in this section.

e. Projects with exempt condominiums. A development project with 75% or more of its total residential units proposed to be "exempt condominiums" (as defined in Section 18.06.020) shall be exempt from the project percentage requirements in this section. The intent of this exemption is to encourage the construction of such projects because of their contributions to the community in terms of infill development, the production of housing options, and inherent housing affordability.

2. **Density bonus.**

No density bonus shall be awarded for the construction of middle income units.

3. **Unit types.**

The developer must provide a mix of two and three bedroom units, with a minimum of fifty-percent of the units as three bedroom units and in a combination of unit types as approved within the Middle Income Housing Plan through the appropriate review process. Smaller and larger unit sizes may be provided as an option, based on local housing needs and project character, as approved during the middle income housing plan review process.

Middle income units shall reflect differences from low-moderate income units to reflect the different prices. Such differences may include the size of the house and garage, features, materials, and interior finish. The differences shall be described as part of the Middle Income Housing Plan and made part of the design review plans for the housing units.

4. **Unit prices.**

Middle income units shall be affordable to middle income households with incomes equal to or less than 180% of Yolo County area median income (AMI), adjusted for household size. The middle target income shall be households with incomes at 140% of AMI, adjusted for household size.

Middle income units shall be provided with a range of prices that are affordable to households with incomes between 120% and 180% of AMI. Prices shall be distributed in affordability among the following income brackets: (1) up to 140% of AMI; (2) over 140% and up to 160% of AMI; and (3) over 160% and up to 180% of AMI. A range of prices is required but the average price shall be affordable to a household with an income at 140% of AMI.

The prices of middle income housing shall be based on the following percentages of targeted gross household income applied to housing expenses: no more than 35.0% of household income shall be used for units priced for household incomes up to 140% AMI; no more than 37.5% of household income shall be used for units priced for household incomes over 140% and up to 160% of AMI; and no more than 40.0% of household income shall be used for units priced for household incomes over 160% and up to 180% of AMI. Household expenses shall include mortgage principal and interest, taxes, insurance, assessments, and homeowner association fees, as applicable. Percentages allowed for the qualifying of the mortgage loan shall be determined by the lender or lenders chosen by the income-qualified household.

The Housing Programs Manager shall determine the maximum sales price for these units on an annual basis. The Housing Programs Manager shall propose annual adjustments to the maximum purchase prices based on changes in the Area Median Income, as determined by the U.S. Department of Housing and Urban Development. These prices shall be reviewed annually for adoption by the City Council.

5. **Incentive system.**

The middle income housing units created by this article shall be subject to Article 18.07, Incentive System for the Local Workforce.

6. **Co-signers not permitted.**

No co-signers shall be permitted in the sale of middle income ownership units in order to ensure that households within the target income group are served by the middle income units that this ordinance produces.

7. **Owner-occupancy restrictions.**

All person(s) who purchase and own a designated middle income unit pursuant to this article shall occupy that unit as his/her/their principal personal residence for as long as he/she/they own(s) the middle income unit. Such occupancy shall commence within no greater than six months following completion of the purchase. All purchases and occupancy of the unit shall comply with the provisions of Article 18.04, Owner Occupancy.

8. **Long-term affordability.**

In order to retain units built under the city's middle income housing requirement as below-market units into the future, one of the following restrictions shall be adhered to:

a. Appreciation capped at five percent per year. The middle income unit is restricted to appreciate at a maximum of five percent each year, compounded annually. This amount is based on the average increase in Yolo County Area Median Income of 3.0 %, a 0.75% credit for maintenance costs of the unit, and an additional equity return of 1.25% to the owner of the middle income unit.

b. Alternative proposal. Any other program that proves its ability to provide for long-term

affordability, as approved by the Social Services Commission, Planning Commission, and City Council, as required by the individual project's planning entitlements. Proposing an alternative method for long-term affordability must be justified based on current market trends and/or other prevailing circumstances.

9. **Right of first refusal.** All middle income ownership units shall deed to the City of Davis a permanent Right of First Refusal on the property, allowing the City the ability to either purchase the unit, or designate an appropriate buyer for the unit at its resale or transfer. The deed restriction shall allow the City to designate a third party to carry out its Right of First Refusal, and shall also allow for a one percent administrative fee to be taken from the real estate transaction in order for the City to pay for the costs of carrying out the Right of First Refusal.

10. **Resale report.** The owners of all middle income ownership units shall be required to clear all city resale reports completed on these units prior to the close of escrow on the resale of each unit. The findings of the city resale inspection that are required to be addressed cannot be transferred to the household purchasing the middle income unit unless the costs of reconciling those items are taken out of the maximum sales price and accepted by the buyer.

(Ord. No. 2234, Added 01/10/2006)

18.06.060 Project individualized program. (7)

The developer may meet the city's middle income housing requirement with a project individualized program that is determined to generate an amount of affordability equal to or greater than the amount that would be generated under the standard middle income affordability requirements. The middle income housing units must, at a minimum, meet the same income targets specified in the standard middle income housing requirements.

1. A project individualized program shall be developed by the developer and city staff, taken action on by the Social Services Commission, and if the main project application requires, heard before the Planning Commission for decision.

2. If the main project is requesting planning entitlements that require City Council approval, it shall then be heard before the City Council for final decision.

3. If the main project does not require a City Council hearing, the Planning Commission's or the Social Services Commission's determination may be appealed to the City Council by any member of the public.

The Project Individualized Program is intended to be reviewed thoroughly and scrutinized in public forums, allowing for input from the public, other developers, staff, and at a minimum, the Social Services Commission. The public hearing at the Social Services Commission shall be noticed widely. This public hearing shall scrutinize the project based on the following criteria:

1. Long-term affordability of the middle income units.

2. Community need of the project type based on recent needs assessments and recent projects completed.

3. Uniqueness/innovation of the proposed project.

4. Overall benefits and drawbacks of the project.

5. Project's compliance with the standard middle income housing requirements.

These meetings shall be carried out without any finite contracts in place between the parties involved, allowing for the potential direction to the developer to make changes to the project. If the Social Services Commission finds that the proposed project does not satisfy one or all of the criteria listed above, it may choose to direct the developer to fulfill his/her middle income housing requirement based on the standard requirements of Section 18.06.050 of the Municipal Code.

(Ord. No. 2234, Added 01/10/2006)

18.06.070 Fees. (8)

The City Council may, by resolution, establish fees and deposits for processing of applications as required by this article. (Ord. No. 1651, § 3.)

(Ord. No. 2234, Added 01/10/2006)

18.06.080 Exemptions and modifications from middle income housing requirements. (9)

Residential projects consisting of fewer than twenty-six units are not required to produce middle income units.

The requirements of this Ordinance may be adjusted or waived if the Developer demonstrates to the satisfaction of the City Council that there is not a reasonable relationship between the impact of a proposed residential project and the requirements of this Ordinance, or that applying the requirement of this Ordinance would take property in violation of the United States or California Constitutions.

1. **Proposed middle income housing plan**

In order for an exemption or modification to be considered by City Council prior to construction, the Developer must request such exemption / modification with the first application for approval of the residential project and the middle income housing plan. The matter shall be considered before the City Council at a public hearing. In making the finding or determination, the City Council may consider the following:

a. The Developer is subject to the inclusionary housing requirements in this Ordinance.

b. The Council is able to provide incentives.

c. The Developer may build the most economical middle income housing product in terms of construction, design, location, and tenure. For the purposes of a taking determination, the Developer has the burden to provide economic and financial documentation and other evidence necessary to prove that the application of this Ordinance would constitute a taking of the property without just compensation.

If it is determined that the application of the provisions in this Ordinance would constitute a taking or that there is not a reasonable relationship between the impact of the proposed project and the requirements of the Ordinance, the inclusionary requirements for the Residential Project shall be modified to reduce the inclusionary housing obligations to the extent and only to the extent necessary to avoid a taking or unreasonable relationship. If it is determined that no taking would occur by application of this Ordinance, the requirements of the Ordinance remain applicable and no approvals

for the residential project shall be issued unless the Developer has executed a Middle Income Housing Plan pursuant to the requirements of this Ordinance and approved by City Council.

2. **Approved middle income housing plan**

Should the Developer seek an exemption or modification after a middle income housing plan is approved (such as during construction or after construction of the project), the Developer must request an exemption / modification to the approved middle income housing plan. The matter shall be considered before the City Council in the same manner as an exemption / modification for a proposed middle income housing plan. The Developer shall have the additional burden of demonstrating how conditions have changed since the approval of the middle income housing plan that justifies the exemption / modification. The Developer must demonstrate to the satisfaction of the City Council that the middle income units cannot be sold subject to the provisions of the middle income housing plan and that specific exemptions or modifications are needed.

(Ord. No. 2234, Added 01/10/2006)

18.07.0 INCENTIVE SYSTEM FOR THE LOCAL WORKFORCE

18.07.0 INCENTIVE SYSTEM FOR THE LOCAL WORKFORCE

18.07.010 Purpose and findings. (2)

The purpose of this article is to implement a General Plan policy to establish an incentive system for the local workforce, such as a lottery, as part of the city's buyer selection process for low-moderate and middle income ownership units. The system is intended to provide the highest number of lottery tickets to households with a member of the local workforce.

The City Council hereby finds:

1. The State of California Government code sections 65580 and 65589.5 state the following findings and goals for housing:

a. Local governments have a responsibility to use the powers vested in them to provide for the housing needs of all economic segments of the community considering economic, environmental, and fiscal factors and community goals set forth in the general plan. Each locality is best capable of determining what efforts are required by it to contribute to the attainment of the state housing goal.

b. California housing has become the most expensive in the nation. Among the consequences are lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

2. The establishment of an incentive system for the local workforce by the City of Davis is consistent with the state legislature's housing goals and intent in that:

a. The city of Davis is interested in providing housing which is affordable to its local workforce as well as other underserved households.

b. The city of Davis is using its vested powers to provide for the housing needs for all economic segments of the community and the local workforce in particular.

c. The city of Davis is attempting to provide housing for the local workforce to support the community's growth in employment, retain a balance of jobs and housing, provide mobility, and preserve air quality. The city of Davis is attempting to avoid urban sprawl and excessive commuting.

3. The establishment of an incentive system for the local workforce by the City of Davis is consistent with the city's general plan policies which call for a mix of housing types that meet a variety of needs. These policies include:

a. Vision 2 (new): Base residential growth on internal housing needs, primarily the needs of the local workforce.

b. Policy HOUSING 4.2 (new): Provide affordable housing opportunities for the local workforce in the Davis area.

c. Policy HOUSING 4.3 (new): Promote a linkage between new ownership housing and the local workforce.

d. Action HOUSING 4.3a (new): Implement an incentive system for the local workforce, such as a lottery, as part of the city's buyer selection process for low-moderate income and middle income

affordable ownership units. The system shall provide the highest number of lottery tickets to households with a member of the local workforce.

4. The Davis housing market is not providing adequate ownership housing opportunities for the city's local workforce. The city's goal is to provide a range of housing for its local workforce and has chosen to take action to ensure that affordable housing is constructed and maintained within the City of Davis. The City Council directed staff to research mechanisms for providing such housing.

5. The implementation of a incentive system for the local workforce within a lottery does not exclude any household from the affordable ownership opportunities within the City of Davis and allows structural opportunity within the system for the city to compensate for any disparate impacts to protected groups, such as seniors and persons with disabilities.

6. The City Council finds that the incentive system for the local workforce would not discriminate against protected classes including minorities, persons with disabilities, seniors, and families with children.

The incentive system would not discriminate against racial minorities considering the "planning area" where employees are given a preference in the lottery system. The racial and ethnic make-up of the employees within the "planning area" (including the city of Davis, UC Davis and the parts of unincorporated Yolo County within the "planning area") is similar to that of the employment in the larger Yolo-Sacramento Consolidated Metropolitan Statistical Area (CMSA).

In general, persons with disabilities and seniors tend to have a lower labor force participation rate than the general adult public. Therefore, it is likely that under a local employee incentive system the persons with disabilities and seniors may have proportionately fewer opportunities to obtain housing than the rest of the community's households. This occurrence has been corrected by the inclusion of additional categories for both seniors and persons with disabilities that provide these groups with additional tickets in the lottery, regardless of their participation in the local workforce.

In is difficult to characterize the potential impact of a local employee incentive system on households with children. Households with children, however, are more likely to have a member in the workforce than the public at large, in which case it is unlikely that a local employee incentive system would adversely affect households with children.

7. Protected classes would have reasonable opportunities to obtain housing in Davis and not be excluded from housing due to the local employee incentive system. The vast majority of new homes available for sale would not be subject to the local employee incentive system and would be available to any household able to pay purchase price. There are ample opportunities in the resale of existing homes in the community that would not be subject to the local employee incentive system. The incentive system will provide one lottery ticket to interested persons who are not local employees. Rental housing opportunities are not affected by the incentive system.

8. The public purposes served by providing housing opportunities for the local workforce include:

a. Helping the city, school district, and local hospital to better serve the public with vital services;

b. Helping businesses by facilitating greater employee productivity and morale;

c. Enhancing recruitment and retention efforts, and increasing service levels;

d. Reducing traffic congestion and air pollution by people who otherwise would live outside Davis and commute longer distances to work;

e. Improving the quality of life for Davis employees by bringing them closer to their place of work.

9. The City Council has considered the potential environmental effects from the incentive system for the local workforce to buy housing units produced under the City's inclusionary requirements and finds that the project would not have a significant effect on the environment or a cumulatively considerable environmental effect in that the project. The incentive system would not affect the amounts or allowable densities of residential development in the General Plan. The project would have cumulatively beneficial effect by providing housing opportunities for the local workforce. Workforce housing would reduce traffic congestion and air pollution by Davis workers who otherwise would live outside Davis and commute longer distances to work. City Council approves Negative Declaration #03-05 for this project.

(Ord. No. 2242, Added 02/07/2006)

18.07.020 Definitions. (3)

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

1. "Affordable ownership housing" is housing affordable, based upon mortgage payments or monthly carrying charges, to very low, low, moderate, and middle income households. This term includes all ownership units constructed in order to meet the requirements of Articles 18.05 and 18.06 of the Davis Municipal Code.

2. "General public" is a category that includes households that do not fit into any of the other categories provided within the incentive system.

3. "Local workforce" is a category that includes households with an adult who works a minimum and an average of thirty hours per week and has done so for the past six months at a business or other organization that is located within the Davis Planning Area, as shown in the "Planning Area" map found in the Davis General Plan. This incentive shall exclude workforce members of other incorporated cities within the "Planning Area" map. In order to qualify, the individual must have been a member of the workforce of a local business or other organization for a minimum of 6 months, as evidenced at the time of application for the affordable ownership housing unit.

4. "Persons with disabilities" is a category that includes households consisting of a head of household, spouse, domestic partner, or sole member who has a physical or mental impairment that limits one or more major life activities, as defined in the Fair Employment and Housing Act (FEHA) of California Government Code section 12926(i)(1), (2), and 12926(k)(1), (2).

5. "Senior" is a category that includes households consisting of a head of household, spouse, domestic partner, or sole member that is at least 62 years of age.

(Ord. No. 2242, Added 02/07/2006)

18.07.030 Applicability of article. (4)

This article is enacted pursuant to the general police power of the city and is for the purpose of connecting affordable ownership housing opportunities in Davis with the city's local workforce, due to the assessed advantages of doing so. Advantages of having members of the local workforce also reside within the city have been identified in the analysis prepared for the City of Davis to address the needs and impacts of middle income housing. This article shall apply to all affordable ownership units completed after March 8, 2005 (Resolution No. 05-27A).

(Ord. No. 2242, Added 02/07/2006)

18.07.040 Lottery system. (5)

1. **Lottery system.**

A lottery system shall be used to incorporate the city's adopted incentive system for the local workforce into the city's buyer selection process. This lottery shall be held in compliance with the City of Davis Buyer/Tenant Selection and Screening Guidelines. Applications for the lottery of affordable ownership units shall include the request for information regarding whether the household fits into one of the incentive system's defined categories: local workforce, persons with disabilities, or seniors. The application shall also require verification of such a household characteristic, as detailed in the City of Davis Buyer/Tenant Selection and Screening Guidelines.

2. **Incentive system category verification.**

Each of the categories defined by the incentive system shall require verification submitted with the household's application to be placed into the lottery. The verifying documents for each category shall be defined within the City of Davis Buyer/Tenant Selection and Screening Guidelines. These verifying documents shall only be used to determine a household's incentive category in the lottery, and will not be provided as public record.

3. **Incentive system monitoring.**

The City of Davis shall have the right to review any and all verifying documents for applicants within this incentive system.

4. **Lottery ticket distribution.**

Based on the information provided within the household's application and the determination of the household's appropriate category after review of the required verifying documents, the following ticket amounts shall be distributed for each category (per the definitions in Section 18.070.020):

Local workforce: 4 tickets to a household with an adult who is a member of the local workforce.

Persons with disabilities: 2 tickets to a household with a head of household, spouse, domestic partner, or sole member who has a disability.

Seniors: 2 tickets to a household with a head of household, spouse, domestic partner, or sole member who is a senior.

General public: 1 ticket to a household that does not fit into one of the other categories.

The Community Development Director shall determine the appropriate number of lottery tickets that

shall be assigned in special circumstances, where the qualification of the applying household into one of the specified categories is unclear. Any person aggrieved by such a determination, may file a written appeal to the City Clerk within 10 days of the final determination. The appeal shall be heard by the City Council for final decision.

5. **Maximum number of tickets per household.**

Should a household qualify for more than one of the above categories, the highest qualification shall be used. Therefore, the maximum number of tickets permitted for a single household will be 4 tickets and the minimum will be 1 ticket.

6. **One application per household.**

Any persons who have or intend to apply as a household for the purposes of qualifying for a mortgage loan, shall also be treated as one household for the purposes of determining the maximum number of lottery tickets for the applying persons of that household. Persons who qualify for a mortgage as one household must apply as one household, under one application for units within the city's affordable housing program (low, moderate, and middle income units).

Details regarding this restriction are provided in the City of Davis Buyer/Tenant Selection Guidelines.

(Ord. No. 2242, Added 02/07/2006)

18.07.050 Exemptions from incentive system for the local workforce. (6)

1. All very low, low, moderate, and middle income affordable ownership units shall be subject to the requirements of this article, unless the project can prove to the City Council that doing so would negatively impact the overall feasibility of the project.

2. The requirements of this article may be adjusted or waived pursuant to the exemption process specified in Sections 18.05.080 and 18.06.080 of the low-moderate and middle income ordinances.

(Ord. No. 2242, Added 02/07/2006)

PART 8 2-800 AFFORDABLE DWELLING UNIT PROGRAM

2-801 Purpose and Intent

The Affordable Dwelling Unit Program is established to assist in the provision of affordable housing for persons of low and moderate income. The program is designed to promote a full range of housing choices and to require the construction and continued existence of dwelling units affordable to households whose income is seventy (70) percent or less of the median income for the Washington Standard Metropolitan Statistical Area. An affordable dwelling unit shall mean the rental and/or for sale dwelling unit for which the rental and/or sales price is controlled pursuant to the provisions of this Part. For all affordable dwelling unit developments, where the dwelling unit type for the affordable dwelling unit is different from that of the market rate units, the affordable dwelling units should be integrated within the developments to the extent feasible, based on building and development design. In developments where the affordable dwelling units are provided in a dwelling unit type which is the same as the market rate dwelling units, the affordable dwelling units should be dispersed among the market rate dwelling units.

2-802 Applicability

1. The requirements of the Affordable Dwelling Unit Program shall apply to any site or portion thereof at one location which is the subject of an application for rezoning or special exception or site plan or subdivision plat submission which yields, as submitted by the applicant, fifty (50) or more dwelling units at an equivalent density greater than one unit per acre and which is located within an approved sewer service area, except as may be exempt under the provisions of Sect. 803 below. For purposes of this Ordinance, "site or portion thereof at one location" shall include all adjacent undeveloped land of the property owner and/or applicant, the property lines of which are contiguous or nearly contiguous at any point, or the property lines of which are separated only by a public or private street, road, highway or utility right-of-way or other public or private right-of-way at any point, or separated only by other land of the owner and/or applicant, which separating land is not subject to the requirements of this Part.

   Sites or portions thereof at one location shall include all land under common ownership and/or control by the owner and/or applicant, including, but not limited to, land owned and/or controlled by separate partnerships, land trusts, or corporations in which the owner and/or applicant (to include members of the owner and/or applicant's immediate family) is a partner, beneficiary, or is an owner of one (1) percent or more of the stock, and other such forms of business entities. Immediate family members shall include the owner and/or applicant's spouse, children and parents. However, in instances in which a lending institution, such as a pension fund, bank, savings and loan, insurance company or similar entity, has acquired, or acquires an equity interest by virtue of its agreement to provide financing, such equity interest shall not be considered in making determinations of applicability.

2. At the time of application for rezoning or special exception and at the time of site plan or subdivision plat submission, the owner and/or applicant shall submit an affidavit which shall include:

A. The names of the owners of each parcel of the sites or portions thereof, as such terms are defined in Par. 1 above.

B. The Fairfax County Property Identification Map Number, parcel size and zoning district classification for each parcel which is part of the site or portion thereof.

3. An owner and/or applicant shall not avoid the requirements of this Part by submitting piecemeal applications for rezoning or special exception or piecemeal site plan or subdivision plat submissions for less than fifty (50) dwelling units at any one time. However, an owner and/or applicant may submit a site plan or subdivision plat for less than fifty (50) dwelling units if the owner and/or applicant agrees in writing that the next application or submission for the site or portion thereof shall meet the requirements of this Part when the total number of dwelling units has reached fifty (50) or more. This written statement shall be recorded among the Fairfax County land records and shall be indexed in the names of all owners of the site or portion thereof, as such terms are defined in Par. 1 above.

4. The County shall process site plans or subdivision plats proposing the development or construction of affordable dwelling units within 280 days from the receipt thereof, provided that such plans and plats substantially comply with all ordinance requirements when submitted. The calculation of the review period shall include only that time the plans or plats are in for County review, and shall not include such time as may be required for revisions or modifications in order to comply with ordinance requirements.

5. Affordable dwelling units may be provided, at the developer's option, in any residential development in the R-2 through R-30 and P Districts which is not required to provide affordable dwelling units pursuant to the provisions of this Part. Such development shall be subject to the applicable zoning district regulations for affordable dwelling unit developments and shall be in accordance with the following:

A. For single family detached and single family attached dwelling unit developments, there may be a potential density bonus of up to twenty (20) percent, provided that not less than twelve and one-half (12.5) percent of the total number of dwelling units are provided as affordable dwelling units, subject to the provisions of this Part.

B. For multiple family dwelling unit structures that do not have an elevator, or have an elevator and are three (3) stories or less in height, there may be a potential density bonus for the development consisting of such structures of up to ten (10) percent, provided that not less than six and one-quarter (6.25) percent of the total number of dwelling units are provided as affordable dwelling units, or a potential density bonus for the development consisting of such structures from greater than ten (10) percent up to twenty (20) percent, provided that not less than twelve and one-half (12.5) percent of the total number of dwelling units are provided as affordable dwelling units, subject to the provisions of this Part.

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C. For multiple family dwelling unit structures that have an elevator and are four (4) stories or more in height, there may be a potential density bonus for the development consisting of such structures of up to seventeen (17) percent, provided that not less than six and one-quarter (6.25) percent of the total number

of dwelling units are provided as affordable dwelling units, subject to the provisions of this Part for multiple family dwelling developments with fifty (50) percent or less of the required parking provided in parking structures. For such multiple family developments with more than fifty (50) percent of the required parking provided in parking structures, there may be a potential density bonus of up to seventeen (17) percent, provided that not less than five (5) percent of the total number of dwelling units are provided as affordable dwelling units, subject to the provisions of this Part.

D. The affordable dwelling units shall be of the same dwelling unit type as the market rate units constructed on the site.

E. The Affordable Dwelling Unit Advisory Board shall have no authority to modify the percentage of affordable dwelling units required under this provision, nor to allow the construction of affordable dwelling units which are of a different dwelling unit type from the market rate units on the site.

6. For independent living facility special exceptions, affordable dwelling units shall be required in accordance with Sect. 9-306 and the administration of such units shall be subject to the provisions of this Part.

2-803 Developments Exempt From the Affordable Dwelling Unit Program

Notwithstanding the provisions of Sect. 802 above, the requirements of this Part shall not apply to the following:

1. Any multiple family dwelling unit structure which is constructed of Building Construction Types 1, 2, 3 or 4, as specified in the Virginia Uniform Statewide Building Code (VUSBC).

2. Special exception applications or rezoning applications or amendments thereto approved before July 31, 1990 or rezoning applications or amendments thereto approved before January 31, 2004 for elevator multiple family dwelling unit structures that are four (4) stories or more in height and constructed of Building Construction Type 5 (combustible) as specified in the Virginia Uniform Statewide Building Code (VUSBC), which either:

A. Include a proffered or approved generalized, conceptual, final development plan or development plan, or special exception plat which contains a lot layout; or

B. Include a proffered or approved total maximum number of dwelling units or FAR; or

C. Include a proffered or approved unit yield per acre less than the number of units per acre otherwise permitted by the applicable zoning district regulations; or

D. Fully satisfy the provisions of Sect. 816 below.

3. Proffered condition amendment, development plan amendment, and special exception amendment applications filed after July 31, 1990 which deal exclusively with issues of building relocation, ingress/egress, storm water drainage, or other engineering or public

facilities issues, or the preservation of historic structures, child care facilities or changes in the size of units, a reduction in the number of units, a change in dwelling unit type which proposes no increase in density over the previously approved density or which request the addition of a special exception or special permit use. In addition, notwithstanding the definition of "site or portion thereof at one location" set forth in Par. 1 of Sect. 802 above, proffered condition amendment, development plan amendment and special exception amendment applications filed after 12:01 AM March 31, 1998, which propose to add land area to a previously exempt development, provided, however, that such additional land area shall be subject to the provisions of this Part. The land area subject to the original zoning or special exception for which an amendment is sought shall remain in substantial conformance with such approved zoning or special exception.

4. Conversion to condominium of developments which were built pursuant to site plans filed or preliminary subdivision plats approved on or before July 31, 1990.

5. Site plans filed and preliminary subdivision plats approved on or before July 31, 1990; provided such site plan is approved within twenty-four (24) months of the return of the initial submission to the applicant or agent, a building permit(s) for the structure(s) shown on the approved site plan is issued in accordance with Par. 1 of Sect. 17-110 of this Ordinance and provided further that the structure(s) is in fact constructed in accordance with such building permit(s); and provided such preliminary plat is approved and a final plat is approved and recorded in accordance with the provisions of Chapter 101 of The Code, Subdivision Ordinance.

   Site plans filed or preliminary subdivision plats approved on or before July 31, 1990 for developments not exempt under Paragraphs 2, 3 or 4 above may, at the owner's option, be revised or resubmitted, as the case may be, in order to comply with the requirements of this Part. Such revision or resubmission shall be processed expeditiously by the Department of Public Works and Environmental Services in accordance with the provisions of Par. 4 of Sect. 802 above.

6. Site plans for elevator multiple family dwelling unit structures that are four (4) stories or more in height and are to be constructed of Building Construction Type 5 (combustible) as specified in the Virginia Uniform Statewide Building Code (VUSBC) filed on or before January 31, 2004, provided such site plan is approved within twelve (12) months of the return of the initial submission to the applicant or agent, the site plan remains valid, a building permit(s) for the structure(s) shown on the approved site plan is issued and provided further that the structure(s) is in fact constructed in accordance with such building permit(s).

2-804 Affordable Dwelling Unit Adjuster

1. For rezoning and special exception applications approved after 12:01 AM March 31, 1998, or for proffered rezoning applications approved prior to 12:01 AM March 31, 1998, which specifically provide for the applicability of an amendment to this Part:

   A. Which request approval of single family detached dwelling units or single family attached dwelling units, the lower and upper end of the density range set forth in the adopted comprehensive plan applicable to the application property shall be increased by twenty (20) percent for purposes of calculating the potential density which may be approved by the Board of Supervisors. The provision of affordable

dwellings units or, in the case of a modification approved by the ADU Advisory Board, the conveyance of land, contribution to the Fairfax County Housing Trust Fund or combination thereof, as provided for in Par. 3 of Sect. 815 below, shall satisfy the development criteria in the adopted comprehensive plan which relate to the provisions of affordable housing. For the purposes of administration of this Part, where the adopted comprehensive plan does not specify a density range in terms of dwelling units per acre, the density range shall be determined in accordance with Par. 8 below.

B. Which request approval of non-elevator multiple family dwelling unit structures; or elevator multiple family dwelling unit structures which are three (3) stories or less in height, the lower and upper end of the density range set forth in the adopted comprehensive plan applicable to the application property shall be increased by ten (10) percent for purposes of calculating the potential density which may be approved by the Board of Supervisors. However, at the applicant's option, the upper end of the density range set forth in the adopted comprehensive plan shall be increased by twenty (20) percent for purposes of calculating maximum potential density. The provision of affordable dwellings units or, in the case of a modification approved by the ADU Advisory Board, the conveyance of land, contribution to the Fairfax County Housing Trust Fund or combination thereof, as provided for in Par. 3 of Sect. 815 below, shall satisfy the development criteria in the adopted comprehensive plan which relate to the provision of affordable housing. For the purposes of administration of this Part, where the adopted comprehensive plan does not specify a density range in terms of dwelling units per acre, the density range shall be determined in accordance with Par. 8 below.

2. Affordable dwelling units required pursuant to Par. 1 above shall be provided in accordance with the following:

A. If the total number of dwelling units approved by the Board of Supervisors or if the total number of dwelling units shown on the subsequent site plan or subdivision plat is less than the total number approved by the Board, provides for a density which is at or below the low end of the density range specified in the adopted comprehensive plan prior to application of the bonus density permitted for affordable dwelling developments, then no affordable dwelling units shall be required and the applicable zoning district regulations for affordable dwelling unit developments shall not apply.

B. If the total number of dwelling units approved by the Board of Supervisors or if the total number of dwelling units shown on the subsequent site plan or subdivision plan is less than the total number approved by the Board, provides for a density which is above the low end of the density range specified in the adopted comprehensive plan prior to application of the bonus density permitted for affordable dwelling unit developments, affordable dwelling units shall be provided in accordance with the following formulas:

(1) For developments for which a 20% bonus has been applied:

$$\frac{\text{Approved Density minus Low End of Density Range}}{}$$

{High End of Adjusted Density Range minus Low End of Adjusted Density Range} X 12.5

(2) For multiple family dwelling unit developments for which a 10% density bonus has been applied and for the multiple family dwelling unit component of a mixed unit development for which a 10% density bonus has been applied:

Approved Density minus Low End of Density Range
{High End of Adjusted Density Range minus Low End of Adjusted Density Range} X 6.25

In no event shall the requirement for affordable dwelling units exceed 6.25% for those developments for which a 10% increase in density has been applied to the density range specified in the adopted comprehensive plan or 12.5% for those developments for which a 20% increase in density has been applied to the density range specified in the adopted comprehensive plan.

Examples of the foregoing sliding scale affordable dwelling unit requirement and calculation of the affordable dwelling unit requirement for mixed unit developments where a 10% density increase has been applied to the multiple family component are provided at the end of this Part and should be used for illustrative purposes only.

Description of terms used in affordable dwelling unit formulas:

Approved Density = the dwelling units per acre approved by the Board of Supervisors or as shown on the approved site plan or subdivision plat.

Low End of Density Range = the lower limit of the density range specified in the adopted comprehensive plan for the development site or as determined in accordance with Par. 8 below prior to application of the permitted density increase for affordable dwelling unit developments.

High End of Adjusted Density = the upper limit of the adopted comprehensive plan density range determined after application of the permitted density increase for affordable dwelling unit developments.

Low End of Adjusted Density = the lower limit of the adopted comprehensive plan density range determined after application of the permitted density increase for affordable dwelling unit developments.

The numbers 5.0, 6.25 and 12.5 in applicable formulas represent absolute numbers, not percentages.

3. For developments which were rezoned prior to July 31, 1990:

A. For single family dwelling unit developments which are not otherwise exempt under Sect. 803 above, the total maximum number of dwelling units permitted under the approved density applicable to such property, exclusive of additional units allowed pursuant to this paragraph, shall be increased by up to twenty (20) percent. Provided that a twenty (20) percent increase in density is obtained, not less than twelve and one-half (12.5) percent of the adjusted total maximum

number of dwelling units shall be affordable dwelling units. In the event of density increase of less than twenty (20) percent is the resulting maximum density increase, then the percentage of affordable dwelling units required shall be reduced to maintain a 20 to 12.5 ratio between the density increase and the affordable dwelling units. In the event that no density increase is achieved on the property, no affordable dwelling units shall be required.

B. For developments consisting of non-elevator multiple family dwelling unit structures, or elevator multiple family dwelling unit structures which are three (3) stories or less in height, which are not otherwise exempt under Sect. 803 above, the total maximum number of dwelling units permitted under the approved density applicable to such property, exclusive of additional units allowed pursuant to this paragraph, shall be increased by up to twenty (20) percent.

If a twenty (20) percent increase in density is obtained, not less than twelve and one-half (12.5) percent of the adjusted total maximum number of dwelling units shall be affordable dwelling units. In the event a density increase of less than twenty (20) percent is the resulting maximum density increase, then the percentage of affordable dwelling units required shall be reduced to maintain a 20 to 12.5 ratio between the density increase and the affordable dwelling units. In the event that no density increase is achieved on the property, no affordable dwelling units shall be required.

4. For rezoning applications approved after January 31, 2004 which request approval of elevator multiple family dwelling unit structures, that are four (4) stories or more in height and are to be constructed of Building Construction Type 5 (combustible) as specified in the Virginia Uniform Statewide Building Code (VUSBC), the lower and upper end of the density range set forth in the adopted comprehensive plan applicable to the application property shall be increased by seventeen (17) percent for purposes of calculating the potential density which may be approved by the Board of Supervisors. The provision of affordable dwelling units or, in the case of a modification approved by the ADU Advisory Board, the conveyance of land, contribution to the Fairfax County Housing Trust Fund or combination thereof, as provided for in Par. 3 of Sect. 815 below, shall satisfy the development criteria in the adopted comprehensive plan which relate to the provision of affordable housing. For the purposes of administration of this Part, where the adopted comprehensive plan does not specify a density range in terms of dwelling units per acre, the density range shall be determined in accordance with Par. 8 below. Affordable dwelling units required pursuant to this paragraph shall be provided in accordance with the following:

A. If the total number of dwelling units approved by the Board of Supervisors or if the total number of dwelling units shown on the subsequent site plan or subdivision plat is less than the total number approved by the Board, provides for a density which is at or below the low end of the density range specified in the adopted comprehensive plan prior to application of the bonus density permitted for affordable dwelling developments, then no affordable dwelling units shall be required and the applicable zoning district regulations for affordable dwelling unit developments shall not apply.

B. If the total number of dwelling units approved by the Board of Supervisors or if the total number of dwelling units shown on the subsequent site plan or subdivision

plat is less than the total number approved by the Board, provides for a density which is above the low end of the density range specified in the adopted comprehensive plan prior to application of the bonus density permitted for affordable dwelling unit developments, affordable dwelling units for which the rental and/or sales price is controlled pursuant to the provisions of this Part shall be provided in accordance with the following formulas:

(1) For developments with fifty (50) percent or less of the required parking for multiple family dwelling units provided in the above- or below-surface structures:

$$\frac{\text{Approved Density minus Low End of Density Range}}{\{\text{High End of Adjusted Density Range minus Low End of Adjusted Density Range}\}} \times 6.25$$

(2) For developments with more than fifty (50) percent of the required parking for multiple family dwelling units provided in above- or below-surface structures:

$$\frac{\text{Approved Density minus Low End of Density Range}}{\{\text{High End of Adjusted Density Range minus Low End of Adjusted Density Range}\}} \times 5.0$$

The terms uses in these formulas shall be as defined in Par. 2 above. In no event shall the requirement for affordable dwelling units exceed either 6.25% in accordance with Par. 4B(1) above or 5.0% in accordance with Par. 4B(2) above, as applicable, for those development in which a 17% increase in density has been applied to the density range specified in the adopted comprehensive plan.

C. If the provision of affordable dwelling units and bonus market rate dwelling units requires a change from Building Construction Type 5 to Types 1, 2, 3 or 4, as specified in the Virginia Uniform Statewide Building Codes (VUSBC), as demonstrated by the applicant and confirmed by the County, then the affordable dwelling unit provisions shall not be applicable.

5. For developments, which were rezoned prior to January 31, 2004 and are not otherwise exempt under Sect. 803 above, for elevator multiple family dwelling unit structures that are to be four (4) stories or more in height and constructed of Building Construction Type 5 (combustible) as specified in the Virginia Uniform Statewide Building Code (VUSBC), the total maximum number of dwelling units permitted under the approved density applicable to such property, exclusive of additional units allowed pursuant to this paragraph, shall be increased by up to seventeen (17) percent.

For developments with fifty (50) percent or less of the required parking for multiple family dwelling units provided in above- or below-surface structures, and if a seventeen (17) percent increase in density is obtained, not less than six and one-quarter (6.25) percent of the adjusted total maximum number of dwelling units shall be affordable dwelling units. In the event a density increase of less than seventeen (17) percent is the resulting maximum density increase, then the percentage of affordable dwelling units required shall be reduced to maintain a 17 to 6.25 ratio between the density increase and the affordable dwelling units. In the event that no density increase is achieved on the property, no affordable dwelling units shall be required.

For developments with more than fifty (50) percent of the required parking for multiple family dwelling units provided in above- or below-surface structures, and if a seventeen (17) percent increase in density is obtained, not less than five (5.0) percent of the adjusted total maximum number of dwelling units shall be affordable dwelling units. In the event a density increase of less than seventeen (17) percent is the resulting maximum density increase, then the percentage of affordable dwelling units required shall be reduced to maintain a 17 to 5.0 ratio between the density increase and the affordable dwelling units. In the event that no density increase is achieved on the property, no affordable dwelling units shall be required.

6. For developments where affordable dwelling units are being voluntarily provided, such units shall be provided in accordance with Par. 5 of Sect. 802 above.

7. When the requirement for affordable dwelling units, as calculated in accordance with the above paragraphs, results in a fractional unit of less than 0.5, the number shall be rounded down and any fractional unit of 0.5 or greater shall be rounded up to produce an additional affordable dwelling unit.

8. For the purposes of administration of this Part, where the adopted comprehensive plan does not specify a density range in terms of dwelling units per acre, the following shall apply:

   A. Where the adopted comprehensive plan specifies an upper density limit in terms of dwelling units per acre, but there is no lower density limit, then the low end of the density range shall be fifty (50) percent of the upper density limit set forth in the adopted comprehensive plan.

   B. Where the adopted comprehensive plan specifies a maximum number of dwelling units for an area, but no density range in terms of dwelling units per acre is specified, the density range shall be determined as follows:

      (1) The upper density limit shall be equal to the maximum number of dwelling units specified in the adopted comprehensive plan divided by the land area covered by the adopted comprehensive plan recommendation, and

      (2) The lower density limit shall be equal to fifty (50) percent of the upper density limit calculated above.

   C. Where the adopted comprehensive plan specifies a square footage or floor area ratio (FAR) range for residential uses for a specific area, but no density range in terms of dwelling units per acre, the dwelling unit per acre density range for single family dwelling unit developments and multiple family dwelling unit developments that do not have an elevator, or have an elevator and are three (3) stories or less in height shall be determined by dividing the residential square footage specified in the adopted comprehensive plan by an average dwelling unit size for the proposed dwelling unit type within the development.

      For multiple family dwelling unit developments consisting of four (4) stories or more with an elevator, the dwelling unit per acre density range shall be determined by multiplying the residential square footage specified in the adopted comprehensive plan by eighty-five (85) percent, and dividing that product by an

average dwelling unit size for the proposed dwelling unit type within the development.

In all of the above, when the adopted comprehensive plan specifies only a maximum square footage or FAR, the density range shall be determined as follows:

(1) The upper density limit shall be equal to the maximum number of dwelling units calculated above divided by the land area covered by the adopted comprehensive plan recommendation, and

(2) The lower density limit shall be equal to fifty (50) percent of the upper density limit calculated above.

Note: FAR is converted into square footage by multiplying the FAR by the acreage of the development by 43,560.

2-805 Bulk Regulations, Unit Type, Open Space, Lot Size Requirements and Other Regulations

Any development which provides affordable dwelling units on site and/or which includes bonus market rate dwelling units on site pursuant to the provisions of this Part, shall comply with the respective zoning district regulations which apply to affordable dwelling unit developments.

2-806 Designation of Affordable Dwelling Units on Approved Plans

Approved site plans and record subdivision plats shall designate the specific lots or units which are the affordable dwelling units required pursuant to this Part. However, in the case of a multiple family development which is under single ownership, and is a rental project, the affordable dwelling units need not be specifically identified. However, for all multiple family developments, the number of affordable dwelling units by bedroom count and the number of market rate dwelling units by bedroom count shall be noted on the approved site plan and building plan, which notation shall be a condition of the approved site plan and building plan. In a multiple family dwelling development, the number of bedrooms in affordable dwelling units shall be proportional to the bedroom mix of market rate units, unless the owner elects to provide a higher percentage of affordable dwelling units with a greater bedroom count. Affordable dwelling units which are included on approved site plans and recorded subdivision plats shall be deemed features shown for purposes of Section 15.2-2232 of Va. Code Ann. and, as such, shall not require further approvals pursuant thereto in the event the Fairfax County Redevelopment and Housing Authority shall acquire or lease such units.

For multiple section developments where all the required affordable dwelling units are not to be provided in the first section of the development, the site plan and/or record subdivision plat for the first section and all subsequent sections shall contain a notation identifying in which section(s) the affordable dwelling units will be or have been provided and a total of all affordable dwelling units for which such site plan(s) and/or subdivision plat(s) have been approved.

2-807 Condominium Developments

1. If a development is initially built as a condominium and such development is subject to the requirements of this Part, then the affordable dwelling units required pursuant to this

Part shall be specifically identified on the approved site plan, building plans and designated as part of the recorded condominium declaration.

2. If a development is initially built as a rental project under single ownership and such development was subject to the requirements of this Part and then should subsequently convert to a condominium, then:

   A. The provisions of Sect. 804 above shall apply to such condominium development.

   B. The affordable dwelling units required pursuant to this Part shall be specifically identified by unit number as part of the recorded condominium declaration.

   C. The sales price for such affordable dwelling units being converted shall be established by the County Executive pursuant to this Part. If the owner of such condominium conversion elects to renovate the affordable dwelling units, the Affordable Dwelling Unit Advisory Board shall consider the reasonable cost of labor and materials associated with such renovation, which costs shall be factored into the Advisory Board's recommendation to the County Executive respecting the permissible sales prices for such renovated affordable dwelling units.

   D. For any condominium conversion development for which an application for registration of a condominium conversion was filed with the Virginia Real Estate Commission pursuant to Sect. 55-79.89 of the Code of Virginia, as amended, after February 28, 2006, the affordable dwelling units may not be retained as rental units within a condominium conversion development if such units are also subject to condominium conversion. The term of sales price control for affordable dwelling units located within a condominium conversion development for which the initial sale of individual units occurred on or after February 28, 2006, shall be for a period of thirty (30) years and the units shall be priced in accordance with the provisions of this Part. However, upon any resale and/or transfer to a new owner of such affordable dwelling unit within the initial thirty (30) year period of sales price control, the sales prices for each subsequent resale and/or transfer for each such affordable dwelling unit to a new owner shall be controlled for a new thirty (30) year period commencing on the date of such resale or transfer of the affordable dwelling unit. Each initial thirty (30) year control period and each subsequent thirty (30) year control period may be referred to as the renewable sale price control period or control period.

   E. For any condominium conversion development for which an application for registration of the condominium conversion was filed with the Virginia Real Estate Commission pursuant to Sect. 55-79.89 of the Code of Virginia, as amended, on or before February 28, 2006, the affordable dwelling units may be retained as rental units within the development. The condominium declaration and an amended covenant associated with the affordable dwelling units shall specifically set forth:

      (1) The term of sales price control for affordable dwelling units located within a condominium conversion development for which the initial sale of individual units occurred before February 28, 2006, shall be for a period of

twenty (20) years from the date of issuance of the first Residential Use Permit for the affordable dwelling units required for the development.

(2) All rental affordable dwelling units within the development shall be transferred to the same entity or individual.

(3) The affordable dwelling units shall be rented in accordance with the rental provisions of the ADU Program, including but not limited to, pricing and monthly reporting, and no additional condominium or homeowner association fees shall be assessed to the tenants of the affordable dwelling units.

(4) Parking for the affordable dwelling units shall be provided in accordance with the applicable provisions of the Zoning Ordinance with at least the minimum number of required spaces retained and made available for use by the affordable dwelling unit tenants.

(5) The affordable dwelling units shall be provided in substantially the same bedroom mix as the market rate units in the development.

(6) The tenants of the rental affordable dwelling units shall have access to all the site amenities that were provided when the affordable dwelling units were originally established in the development.

(7) All other covenants set forth in the original covenants and all regulations set forth in the Zoning Ordinance shall remain in full force and effect.

F. The rental tenant occupants of the affordable dwelling units subject to the condominium conversion shall have the right to purchase the dwelling unit they occupy at the sales price established by the County Executive pursuant to this Part. Subsequently, the Fairfax County Redevelopment and Housing Authority shall have the right to purchase any or all of the affordable dwelling units that are not purchased by such rental tenant occupants at the sales price established for such units by the County Executive pursuant to this Part. Such units shall be offered to the Fairfax County Redevelopment and Housing Authority and purchased by it in accordance with the provisions of Par 2B of Sect. 812 below.

2-808 Limitations on Building Permits and Residential Use Permits

1. In any development, except for one that is comprised solely of rental multiple family units, building permits may be issued for all of the dwelling units in the development; however, Residential Use Permits (RUPs) shall not be issued for more than seventy-five (75) percent of the total number of units in the development until such time as RUPs have been issued for at least seventy-five (75) percent of the affordable dwelling units in the development. Additionally, in accordance with Sect. 810 below, the required Notice of Availability and Sales Offering Agreement shall be submitted prior to the issuance of the first RUP for any affordable dwelling unit in the development.

2. A development which is comprised solely of rental multiple family units shall not be subject to the limitations on the issuance of Residential Use Permits contained in this

Section, except in accordance with Sect. 811 below, which requires execution of a Notice of Availability and Rental Offering Agreement prior to the issuance of the first RUP for the development.

2-809 Affordable Dwelling Unit Specifications

1. The Fairfax County Redevelopment and Housing Authority (FCRHA) shall develop specifications for the prototype affordable housing products both for sale and rental, which specifications shall be reviewed and approved by the Affordable Dwelling Unit Advisory Board before becoming effective. All building plans for affordable dwelling units shall comply to such specifications. Any applicant or owner may voluntarily construct affordable dwelling units to a standard in excess of such specifications, but only fifty (50) percent of any added cost for exterior architectural compatibility upgrades (such as brick facade, shutters, bay windows, etc.) and additional landscaping on the affordable dwelling unit lot shall be included within recoverable costs, up to a maximum of two (2) percent of the sales price of the affordable dwelling unit, with the allowance for additional landscaping not to exceed one-half (1/2) of the above-noted two (2) percent maximum.

2. In the administration of the Affordable Dwelling Unit Program, the design and construction specifications established in both rental and sales prices shall be structured to make the units affordable to households whose incomes do not exceed seventy (70) percent of the median income of the Washington Standard Metropolitan Statistical Area.

2-810 Administration of For Sale Affordable Dwelling Units

l. The sale of affordable dwelling units shall be regulated by the Fairfax County Redevelopment and Housing Authority. The Housing Authority may adopt reasonable rules and regulations to assist in the regulation and monitoring of the sale and resale of affordable dwelling units, which may include giving a priority to persons who live or work in Fairfax County.

2. The Fairfax County Redevelopment and Housing Authority shall have an exclusive right to purchase up to one-third (1/3) of the for sale affordable dwelling units within a development for a ninety (90) day period beginning on the date that a complete Notice of Availability and ADU Sales Offering Agreement, submitted by the owner, is executed by the Redevelopment and Housing Authority. The notice shall advise the Redevelopment and Housing Authority that a particular affordable dwelling unit or units are or will be completed and ready for purchase. The notice shall be in the form prescribed by the Redevelopment and Housing Authority and include specific identification of the unit or units being offered; the number of bedrooms, floor area and amenities for each unit; the approved sales price for each unit and evidence of issuance of a building permit for the units. Such written notice may be sent by the owner at any time after the issuance of a building permit for the affordable dwelling unit and approval of the sales price for the unit by the County Executive, but shall occur prior to the issuance of the first Residential Use Permit for any affordable dwelling unit in the development. If the Redevelopment and Housing Authority elects to purchase a particular affordable dwelling unit, the Redevelopment and Housing Authority shall so notify the owner in writing and an all cash closing shall occur within thirty (30) days from the end of the respective ninety (90)

day period, provided a Residential Use Permit has been issued for the unit prior to closing.

3. The remaining two-thirds (2/3) of the for sale affordable dwelling units within a development and any units which the Fairfax County Redevelopment and Housing Authority does not elect to purchase shall be offered for sale exclusively for a ninety (90) day period to persons who meet the income criteria established by the Redevelopment and Housing Authority, and who have been issued a Certificate of Qualification by the Redevelopment and Housing Authority. This ninety (90) day period shall begin on the date that a complete Notice of Availability and ADU Sales Offering Agreement, submitted by the owner, is executed by the Redevelopment and Housing Authority. The notice shall advise the Redevelopment and Housing Authority that a particular affordable dwelling unit or units are or will be completed and ready for purchase. The notice shall be in the form prescribed by the Redevelopment and Housing Authority and include the information described in Par. 2 above. In addition, the owner shall provide marketing materials concerning the units and the development to be used in the sale of the units. Such written notice may be sent by the owner at any time after the issuance of a building permit for the affordable dwelling unit and approval of the sales price for the unit by the County Executive. Notwithstanding the foregoing, after the first thirty (30) days of the ninety (90) day period referenced in this paragraph, the Redevelopment and Housing Authority may elect to purchase up to one-half (1/2) of the affordable dwelling units offered pursuant to this paragraph by giving written notice of its election to do so for those units then available within the ninety (90) day period, which notice shall provide for an all cash closing within thirty (30) days from the end of the ninety (90) day period, provided a Residential Use Permit has been issued prior to closing.

4. After the expiration of the sixty (60) days of the ninety (90) day period(s) referenced in Paragraphs 2 and 3 above, the affordable dwelling units not sold shall be offered for sale to nonprofit housing groups, as designated by the County Executive, subject to the established affordable dwelling unit prices and the requirements of this Part. The nonprofit housing groups shall have a thirty (30) day period within which to commit to purchase the units. This thirty (30) day period shall begin on the date of receipt of written notification from the owner, sent by registered or certified mail, advising them that a particular affordable dwelling unit is or will be ready for purchase. The notice shall state the number of bedrooms, floor area and amenities for each unit offered for sale. Such written notice may be sent by the owner any time after the commencement of the ninety (90) day period referenced in Paragraphs 2 and 3 above. If a nonprofit housing group elects to purchase a particular affordable dwelling unit, they shall so notify the owner in writing and an all cash closing shall occur within thirty (30) days from the end of the thirty (30) day period, provided a Residential Use Permit has been issued for the unit prior to closing.

5. After the expiration of the time period(s) referenced in Paragraphs 2, 3, and 4 above, the affordable dwelling units not sold may be offered to the general public as for sale units subject to established affordable dwelling unit prices and the requirements of this Part or may be offered as rental units subject to the requirements of this Part to persons who meet income requirements hereunder.

6. A schedule of County-wide cost factors and the cost calculation formula used to determine sales prices shall be established initially and may be amended periodically by

the County Executive, based upon a determination of all ordinary, necessary and reasonable costs required to construct the various affordable dwelling unit prototype dwellings by private industry in Fairfax County, after consideration by the County Executive of written comment from the public, the Fairfax County Redevelopment and Housing Authority and the Affordable Dwelling Unit Advisory Board, and other information which may be available, such as the area's current general market and economic conditions.

7. Sales prices shall include, among other costs, a marketing and commission allowance of one and one-half (1 1/2) percent of the sales price for the affordable dwelling unit, provisions for builder-paid permanent mortgage placement costs and buy-down fees, and closing costs, except pre-paid expenses required at settlement, but shall not include the cost of land.

8. There shall be a semiannual review and possible adjustment in affordable dwelling unit sales prices which shall be applied to the affordable dwelling unit sales prices initially established by the County Executive adjusted according to the percentage change in the various cost elements as indicated by the U.S. Department of Commerce's Composite Construction Cost Index and/or such other comparable index or indices selected by the County Executive and recommended by the Affordable Dwelling Unit Advisory Board.

9. The sales prices for affordable dwelling units within a development shall be established such that the owner/applicant shall not suffer economic loss as a result of providing the required affordable dwelling units. "Economic loss" shall mean that result when the owner or applicant of a development fails to recoup the cost of construction and certain allowances as may be determined by the County Executive for the affordable dwelling units pursuant to this Part, exclusive of the land acquisition cost and cost voluntarily incurred, but not authorized under this Part, upon the sale of an affordable dwelling unit.

2-811 Administration of Rental Affordable Dwelling Units

1. The Fairfax County Redevelopment and Housing Authority may adopt reasonable rules and regulations to assist in the regulation and monitoring of the rental of affordable dwelling units, which may include giving a priority to persons who live or work in Fairfax County.

The Redevelopment and Housing Authority or its designee shall have an exclusive right to lease up to one-third (1/3) of the rental affordable dwelling units within a single family detached or attached dwelling unit development during the control period.

For the initial rentals of units within a single family detached or attached dwelling unit development or multiple family dwelling development, the owner shall send the Redevelopment and Housing Authority a Notice of Availability and ADU Rental Offering Agreement in a form prescribed by the Redevelopment and Housing Authority, to advise that a particular affordable dwelling unit or units are or will be completed and ready for rental. Such Notice of Availability and ADU Rental Offering Agreement shall be submitted to and executed by the Redevelopment and Housing Authority prior to the issuance of the first Residential Use Permit for any dwelling within the development. The notice shall state the number of bedrooms, floor area, amenities and rent for each unit offered for rental. Such written notice may be sent by the owner at any time after the issuance of a building permit for the affordable dwelling units which are being offered

for rental. If the Redevelopment and Housing Authority elects to assume control for a particular affordable dwelling unit, the Redevelopment and Housing Authority shall so notify the owner in writing within thirty (30) days from the execution of the notice by the Redevelopment and Housing Authority.

For multiple family dwelling developments, for thirty (30) days subsequent to execution of the notice described above by the Redevelopment and Housing Authority, up to one-third (1/3) of the rental affordable dwelling units, which units shall be of proportional bedroom count to the market rate units in the multiple family development, shall be made available to households meeting owner's normal rental criteria, other than income, having state and/or local rental subsidies, and certified as eligible by the Redevelopment and Housing Authority at rents affordable to households with incomes up to fifty (50) percent of the Washington Standard Metropolitan Statistical Area median income. If the name of a qualifying tenant is not made available to the owner by the Redevelopment and Housing Authority, at the end of the thirty (30) day notice period, the owner may rent the unit(s) to households with income up to fifty (50) percent of the median income for the Washington Standard Metropolitan Statistical Area at a rent affordable to such a household.

At the owner's option, the Redevelopment and Housing Authority may lease additional rental units at the affordable dwelling unit or market rent as appropriate. The remaining two-thirds (2/3) of the for rental affordable dwelling units within a development, which units shall be of proportional bedroom count to the market rate units in the multiple family development, shall be offered to persons who meet the established income criteria.

2. Any affordable dwelling units required pursuant to this Part which are not leased by the Fairfax County Redevelopment and Housing Authority shall be leased for a minimum six (6) month period with a maximum term of lease for one (1) year to tenants who meet the eligibility criteria established by the Fairfax County Redevelopment and Housing Authority. The lease agreements for such units shall include conditions which require the tenant to occupy the unit as his or her domicile, which prohibit the subleasing of the unit, which require continued compliance with the eligibility criteria established by the Housing Authority, and which require the tenant to annually verify under oath, on a form approved by the Fairfax County Redevelopment and Housing Authority, his or her annual income and such other facts that the landlord may require in order to ensure that the tenant continues to meet the eligibility criteria established by the Housing Authority.

3. Eligible tenants must continue to meet the income criteria established by the Fairfax County Redevelopment and Housing Authority in order to continue occupancy of the affordable dwelling unit. However, a tenant who no longer meets such criteria may continue to occupy an affordable dwelling unit until the end of the lease term. Affordable dwelling units not leased by the Fairfax County Redevelopment and Housing Authority may not be subleased.

4. By the end of each month, the owner of a development containing rental affordable dwelling units leased to individuals other than the Fairfax County Redevelopment and Housing Authority shall provide the Housing Authority with a statement verified under oath which certifies the following as of the first of such month:

   A. The address and name of the development and the name of the owner.

B. The number of affordable dwelling units by bedroom count, other than those leased to the Housing Authority, which are vacant.

C. The number of affordable dwelling units by bedroom count which are leased to individuals other than the Housing Authority. For each such unit, the statement shall contain the following information:

(1) The unit address and bedroom count.

(2) The tenant's name and household size.

(3) The effective date of the lease.

(4) The tenant's (household) income as of the date of the lease.

(5) The current monthly rent.

D. That to the best of owner's information and belief, the tenants who lease affordable dwelling units meet the eligibility criteria established by the Fairfax County Redevelopment and Housing Authority.

E. The owner shall provide the Housing Authority with a copy of each new or revised annual tenant verification obtained from the renters of affordable dwelling units pursuant to Par. 2 above.

5. For single family detached or attached dwelling units, County-wide rental prices shall be established initially by the County Executive, based upon a determination of all ordinary, necessary and reasonable costs required to construct and market the required number of affordable dwelling rental units by private industry in the area, after consideration by the County Executive of written comments from the public, the Fairfax County Redevelopment and Housing Authority and the Affordable Dwelling Unit Advisory Board, and other information which may be available, such as the area's current general market and economic conditions. In establishing rental prices, consideration shall be given to reasonable and customary allowances in the rental industry for construction, financing and operating costs of the rental units.

6. For multiple family dwelling units, County-wide rental prices shall be established by the County Executive in accordance with the following:

A. Two-thirds (2/3) of the affordable units in multiple family dwelling unit structure developments, which are not otherwise exempt under Sect. 803 above, shall be established according to the following formula which shall be based on sixty-five (65) percent of the median income for the Washington Standard Metropolitan Statistical Area. This base figure shall be adjusted by the following factors for different multiple family dwelling unit sizes based on the number of bedrooms in the dwelling unit:

Number of Bedrooms	**Adjustment Factor**
Efficiency (0 bedroom)	70%

1 Bedroom	80%
2 Bedroom	90%
3 Bedroom	100%

The result of this calculation for each size multiple family dwelling unit shall then be divided by twelve (12), then multiplied by twenty-five (25) percent and rounded to the nearest whole number to establish the rent for the unit, excluding utilities.

B. One-third (1/3) of the affordable units in multiple family dwelling unit structure developments, which are not otherwise exempt under Sect. 803 above, shall be established according to the following formula which shall be based on fifty (50) percent of the median income for the Washington Standard Metropolitan Statistical Area. This base figure shall be adjusted by the same factors set forth in Par. A above and the results of this calculation for each size dwelling unit shall then be divided by twelve (12), then multiplied by twenty-five (25) percent and rounded to the nearest whole number to establish the rent for the unit, excluding utilities.

C. Rental prices for affordable dwelling units in independent living facility projects which have a monthly charge which combines rent with a service package shall be established on a case by case basis after consideration of written comments from the public, the Fairfax County Redevelopment and Housing Authority and the Affordable Dwelling Unit Advisory Board.

7. Rental prices for affordable dwelling units shall be established such that the owner/applicant shall not suffer economic loss as a result of providing rental affordable dwelling units.

8. There shall be a semiannual review and possible adjustment in affordable dwelling unit rental prices which shall be applied to the affordable dwelling unit rental prices initially established by the County Executive, adjusted according to the percentage change in the various cost elements as indicated by the U. S. Department of Commerce's Composite Construction Cost Index and/or such other comparable index or indices that are selected by the County Executive and recommended by the Affordable Dwelling Unit Advisory Board. In setting adjusted rental prices, the County Executive may establish different rental classifications and prices which reflect the age and condition of the various rental developments within Fairfax County. Rental prices for multiple family dwelling units shall be adjusted in accordance with the formulas set forth in Par. 6 above.

2-812 Covenant, Price and Financing Control of Affordable Dwelling Units

1. Except as qualified by this Section, subsequent price control of affordable dwelling units shall be as follows:

A. For affordable dwelling units for which the initial sale and/or rental occurred prior to March 31, 1998, the prices for subsequent resales and rerentals shall be controlled for a period of fifty (50) years after the initial sale and/or rental transaction for the respective affordable dwelling unit, provided that the control period may be amended upon recordation of a revised covenant in accordance with

Par. 2 below; or

B. For affordable dwelling units for which the initial sale/rental occurred on or after March 31, 1998, and before February 28, 2006, the prices for subsequent resales shall be controlled for a period of fifteen (15) years and rerentals shall be controlled for a period of twenty (20) years after the initial sale and/or rental transaction for the respective affordable dwelling unit; or

C. For affordable dwelling units for which the initial sale occurred on or after February 28, 2006, the price for subsequent resales shall be controlled for a period of thirty (30) years after the initial sale. However, upon any resale and/or transfer to a new owner of such affordable dwelling unit within the initial thirty (30) year period of control, the prices for each subsequent resale and/or transfer to a new owner shall be controlled for a new thirty (30) year period commencing on the date of such resale or transfer of the affordable dwelling unit. Each initial thirty (30) year control period and each renewable subsequent thirty (30) year control period may be referred to as a sales price control period. For any affordable dwelling unit that is owned for an entire 30 year control period by the same individual(s), the price control term shall expire and the first sale of the unit after such expiration shall be in accordance with Par. 5 below; or

D. For affordable dwelling units for which the initial rental occurred on or after February 28, 2006, the prices for subsequent rerental shall be controlled for a period of thirty (30) years after the initial rental.

2. In developments containing affordable dwelling units offered for sale, Affordable Dwelling Unit Program covenants, which are applicable to the affordable dwelling units and which run in favor of and are in the form prescribed by the Fairfax County Redevelopment and Housing Authority, shall be recorded simultaneously with the recordation of the final subdivision plat or, in the case of a condominium, recorded simultaneously with the condominium declaration. All such initial and any subsequent or revised Affordable Dwelling Unit Program covenants thereafter recorded shall expressly provide all of the following:

A. The dwelling unit may not be resold during any sales price control period set forth herein for an amount that exceeds the limits set by the County Executive and, prior to offering the dwelling unit for sale, the sales price shall be approved by the Department of Housing and Community Development.

B. Each time the unit may be offered for resale during any sales price control period set forth herein it shall first be offered exclusively through the Fairfax County Redevelopment and Housing Authority. The owner of each such unit to be resold shall provide the Fairfax County Redevelopment and Housing Authority with written notification sent by certified mail that the affordable dwelling unit is being offered for sale. The Fairfax County Redevelopment and Housing Authority shall have the exclusive right to purchase such unit at a purchase price that shall not exceed the control price of the unit at that time as established in accordance with this Part. The Fairfax County Redevelopment and Housing Authority shall notify the owner in writing within thirty (30) days after receipt of the written notification from the owner advising whether or not the Fairfax County Redevelopment and

Housing Authority will enter into a contract to purchase the unit on the form approved by the Fairfax County Redevelopment and Housing Authority and subject to certain conditions, such as acceptable condition of title and acceptable physical and environmental conditions. An all cash closing shall occur within ninety (90) days after receipt by the Fairfax County Redevelopment and Housing Authority of the written notification of the owner offering the unit for sale, in the event that all such conditions of the contract are satisfied. The Fairfax County Redevelopment and Housing Authority may either take title to the affordable dwelling unit and amend and restate the covenants applicable to that unit to make the covenants consistent with the then current provisions of this Part or may assign the contract of purchase to a qualified homebuyer with a condition of the assignment being that such amended and restated covenants would be recorded and effective as express terms of the deed of resale. Affordable dwelling units so acquired/contracted for purchase by the Fairfax County Redevelopment and Housing Authority shall be resold to qualified homebuyers in accordance with the Affordable Dwelling Unit Program.

C. For the initial sale of an affordable dwelling unit after the expiration of any sales price control period set forth herein, it shall first be offered exclusively to the Fairfax County Redevelopment and Housing Authority for sixty (60) days. In all instances, whether or not the Housing Authority purchases the unit, one-half (1/2) of the difference between the net sales price paid by the purchaser at such sale and the owner's purchase price (as adjusted in accordance with Par. 4 below) shall be contributed to the Fairfax County Housing Trust Fund to promote housing affordability in Fairfax County.

D. The unit is subject to the provisions of the Affordable Dwelling Unit Program as set forth in the Fairfax County Zoning Ordinance.

E. For the initial and revised covenants recorded before July 2, 2002:

(1) the covenants shall be senior to all instruments securing permanent financing, and that the covenants shall be binding upon all assignees, mortgagees, purchasers and other successors in interest. However, the covenants shall provide that, in the event of foreclosure, the covenants shall be released.

(2) the covenants shall state that any or all financing documents shall require the lender to provide to the County Executive and the Fairfax County Redevelopment and Housing Authority written notice of any delinquency or other event of default under a mortgage and that the Fairfax County Redevelopment and Housing Authority shall have the right for a sixty (60) day period to cure such a default.

F. For any individual affordable dwelling unit initially conveyed between July 2, 2002 and February 28, 2006 and the resale of any individual affordable dwelling unit conveyed between July 2, 2002 and February 28, 2006, regardless of whether the covenants applicable to any such initial conveyance or resale conveyance were recorded prior to July 2, 2002, and for initial and revised covenants recorded between July 2, 2002 and February 28, 2006:

(1) the covenants shall be senior to all instruments securing financing, and the covenants shall be binding upon all assignees, mortgagees, purchasers and other successors in interest, except that the covenants shall be released in the event of foreclosure by an Eligible Lender, as such term is defined in Par. 8B below, as and only to the extent provided for in Par. 8B below.

(2) the covenants shall state that all financing documents shall require every Eligible Lender and every other lender secured by an individual for sale affordable dwelling unit to provide to the County Executive and the Fairfax County Redevelopment and Housing Authority written notice of any delinquency or other event of default under the deed of trust or mortgage and that the Fairfax County Redevelopment and Housing Authority shall have the right to cure such delinquency or other event of default within a period of ninety (90) days immediately after receipt by the Fairfax County Redevelopment and Housing Authority of such notice.

(3) no sale, transfer or foreclosure shall affect the validity of the covenants except as expressly set forth in the provisions of the Affordable Dwelling Unit Program as set forth in this Part.

(4) each Eligible Lender and any other lender secured by an interest in the affordable dwelling unit shall be required prior to foreclosure to provide the County Executive and the Fairfax County Redevelopment and Housing Authority at least ninety (90) days prior written notice thereof.

(5) the covenants shall state that the unit is subject to all of the provisions set forth in Par. 8B below and shall state those provisions.

(6) the total aggregate amount of principal and accrued interest for all financing secured by an individual for sale affordable dwelling units shall not exceed the owner's purchase price (as adjusted in accordance with Par. 4 below). Any financing in excess of the owner's purchase price (as adjusted in accordance with Par. 4 below) shall not be secured by any interest in the applicable individual for sale affordable dwelling unit.

G. For any individual affordable dwelling unit initially conveyed on or after February 28, 2006, the resale during the sales price control period of any individual affordable dwelling unit conveyed on or after February 28, 2006 and for the conversion of rental affordable dwelling units to condominiums on or after February 28, 2006, regardless of whether the covenants applicable to any such initial conveyance or resale conveyance were recorded prior to February 28, 2006, and for initial and revised covenants recorded on or after February 28, 2006:

(1) the covenants shall be senior to all instruments securing financing, and the covenants shall be binding upon all assignees, mortgagees, purchasers and other successors in interest, except that the covenants shall be released in the event of foreclosure by an Eligible Lender, as such term is defined in Par. 8B below, as and only to the extent provided for in Par. 8B below.

(2) the covenants shall state that all financing documents shall require every Eligible Lender and every other lender secured by an individual for sale affordable dwelling unit to provide to the County Executive and the Fairfax County Redevelopment and Housing Authority written notice of any delinquency or other event of default under the deed of trust or mortgage and that the Fairfax County Redevelopment and Housing Authority shall have the right to cure such delinquency or other event of default within a period of ninety (90) days immediately after receipt by the Fairfax County Redevelopment and Housing Authority of such notice.

(3) no sale, transfer or foreclosure shall affect the validity of the covenants except as expressly set forth in the provisions of the Affordable Dwelling Unit Program as set forth in the Fairfax County Zoning Ordinance.

(4) each Eligible Lender and any other lender secured by an interest in the affordable dwelling unit shall be required prior to foreclosure to provide the County Executive and the Fairfax County Redevelopment and Housing Authority at least ninety (90) days prior written notice thereof.

(5) the covenants shall state that the unit is subject to all of the provisions set forth in Par. 8B below and shall state those provisions.

(6) the total aggregate amount of principal and accrued interest for all financing secured by an individual for sale affordable dwelling units shall not exceed the owner's purchase price (as adjusted in accordance with Par. 4 below). Any financing in excess of the owner's purchase price (as adjusted in accordance with Par. 4 below) shall not be secured by any interest in the applicable individual for sale affordable dwelling unit.

(7) the covenants shall specifically state that upon any resale and/or transfer to a new owner of such affordable dwelling unit within the initial thirty (30) year control period, the prices for each subsequent resale and/or transfer to a new owner shall be controlled for a new thirty (30) year period commencing on the date of such resale or transfer of the affordable dwelling unit.

At the time of the initial sale of an individual affordable dwelling unit, which sale occurs on or after March 31, 1998, the owner/applicant shall provide in the sales contract for each affordable dwelling unit offered for sale a copy of the recorded covenant running with the land in favor of the Redevelopment and Housing Authority. The owner/applicant shall include in the deed for each affordable dwelling unit sold an express statement that the affordable dwelling unit is subject to the terms and conditions of the Affordable Dwelling Unit Program covenants recorded pursuant to this Part with a specific reference to the deed book and page where such covenants are recorded. At the time of the initial sale and any resale of an individual affordable dwelling unit, which sale or resale occurs on or after July 2, 2002, the owner/applicant shall also include in the deed for each affordable dwelling unit sold an express statement that the total aggregate amount of indebtedness that may be secured by the affordable dwelling unit is limited and that other terms and conditions apply, including, but not limited to, a right for the Fairfax County Redevelopment and Housing Authority or a nonprofit agency designated by the County Executive to acquire the affordable dwelling unit on certain terms in the

event of a pending foreclosure sale, as set forth in the Affordable Dwelling Unit Program covenants and/or in the Affordable Dwelling Unit Program set forth in the Fairfax County Zoning Ordinance, as it may be amended.

For individual affordable dwelling units conveyed prior to 12:01 AM March 31, 1998, the owner may modify the existing covenant recorded with such conveyance by recording a revised covenant in the form prescribed by the Redevelopment and Housing Authority. If the recordation of such modified covenant occurs prior to February 28, 2006, the fifteen (15) year control period with respect to for sale units and the twenty (20) year control period with respect to rental units shall be deemed to have commenced on March 31, 1998. If the recordation of such modified covenant occurs on or after February 28, 2006, the renewable sales price control period of thirty (30) years shall apply with respect to for sale units and the thirty (30) year control period with respect to rental units shall apply and shall be deemed to have commenced on March 31, 1998. Any revised covenants hereafter recorded that reduce the control period from fifty (50) years shall expressly provide that the terms and conditions of other previously recorded covenants shall continue to apply, as amended to provide that the terms thereof shall set forth terms and conditions in accordance with the terms herein.

3. The owner of each such unit to be resold during any sales price control period and, subject to the provisions of Par. 2E of Sect. 807 above, for the conversion of rental affordable dwelling units to condominium affordable dwelling units shall provide the Fairfax County Redevelopment and Housing Authority with written notification sent by certified mail that the affordable dwelling unit is being offered for sale. The Fairfax County Redevelopment and Housing Authority shall have the exclusive right to purchase such unit at a purchase price that shall not exceed the control price of the unit at that time as established in accordance with this Part and such owner shall sell the unit to the Fairfax County Redevelopment and Housing Authority. The Fairfax County Redevelopment and Housing Authority shall notify the owner in writing within thirty (30) days after receipt of the written notification from the owner advising whether or not the Fairfax County Redevelopment and Housing Authority will enter into a contract to purchase the unit on the form approved by the Fairfax County Redevelopment and Housing Authority and subject to certain conditions, such as acceptable condition of title and acceptable physical and environmental conditions. An all cash closing shall occur within ninety (90) days after receipt by the Housing Authority of the written notification of the owner offering the unit for sale, in the event that all such conditions of the contract are satisfied. The Fairfax County Redevelopment and Housing Authority may either take title to the affordable dwelling unit and amend and restate the covenants applicable to that unit to make the covenants consistent with the then current provisions of this Part or may assign the contract of purchase to a qualified homebuyer with a condition of the assignment being that such amended and restated covenants would be recorded and effective as express terms of the deed of resale. Affordable dwelling units so acquired/contracted for purchase by the Fairfax County Redevelopment and Housing Authority shall be resold to qualified homebuyers in accordance with its Affordable Dwelling Unit Program.

If the Fairfax County Redevelopment and Housing Authority does not elect to purchase an available affordable dwelling unit, for the first sixty (60) days individual affordable dwelling units are offered for resale, the units shall first be offered exclusively through the Fairfax County Redevelopment and Housing Authority to persons who meet the Redevelopment and Housing Authority's criteria, and who have been issued a Certificate of Qualification by the Redevelopment and Housing Authority. Upon the

expiration of the sixty (60) day period, the unit may be offered for sale to the general public to persons who meet income requirements hereunder and at the current controlled price as set pursuant to Sect. 810 above.

4. Units offered for sale during any control period shall not be offered for a price greater than the original selling price plus a percentage of the unit's original selling price equal to the increase in the U. S. Department of Labor's Consumer Price-Urban Area Index or such other index selected by the County Executive following consideration of the recommendation by the Affordable Dwelling Unit Advisory Board, plus the lesser of the current fair market value or the actual original cost of certain improvements as determined by the Fairfax County Redevelopment and Housing Authority in accordance with its regulations to be (a) substantial and appropriate replacements or improvements of existing housing components and/or (b) structural improvements made to the unit between the date of original sale and the date of resale, plus an allowance for payment of closing costs on behalf of the subsequent purchaser which shall be paid by the seller. Those features deemed to be substantial and appropriate replacements or improvements of housing components and structural improvements are as set forth by the Fairfax County Redevelopment and Housing Authority. No increase in sales price shall be allowed for the payment of brokerage fees associated with the sale of the unit, except that with respect to units purchased and resold by the Fairfax County Redevelopment and Housing Authority, an increase of one and one half (1 1/2) percent of the resale price shall be allowed for marketing and transaction costs, and with respect to resales by other owners, an increase of one and one-half (1 1/2) percent of the sales price shall be allowed as a fee to be paid to a real estate broker or agent licensed to conduct residential real estate transactions in the Commonwealth of Virginia who meets the qualifications determined by the Redevelopment and Housing Authority and who serves as a dual agent for both the qualified buyer and the seller in the resale of the affordable dwelling unit in accordance with sales procedures approved by the Housing Authority. The one and one-half (1 1/2) percent fee shall be paid to such real estate broker or agent by the seller at the time of settlement of the resale of the affordable dwelling unit as part of the disbursement of settlement proceeds.

5. For the initial sale of an affordable dwelling unit after the expiration of any control period, the Fairfax County Redevelopment and Housing Authority shall be offered the exclusive right to purchase the unit. The owner of each such unit shall provide the Redevelopment and Housing Authority with written notification sent by registered or certified mail that the unit is for sale. If the Redevelopment and Housing Authority elects to purchase such unit, the Authority shall so notify the owner in writing within thirty (30) days of receipt of the written notification from the owner and the all cash closing shall occur within sixty (60) days thereafter.

   In all instances, whether or not the Redevelopment and Housing Authority elects to purchase such unit, one-half (1/2) of the amount of the difference between the net sales price paid by the purchaser at such sale and the owner’s purchase price plus a percentage of the unit’s selling price equal to the increase in the U.S. Department of Labor’s Consumer Price-Urban Area Index or such other index selected by the County Executive following consideration of the recommendation by the Affordable Dwelling Unit Advisory Board, plus the lesser of the current fair market value or the actual original cost of certain improvements as determined by the Redevelopment and Housing Authority in accordance with its regulations to be (a) substantial and appropriate replacements or improvements of existing housing components and/or (b) structural improvements made

to the unit between the date of the owner's purchase and the date of resale shall be contributed to the Fairfax County Housing Trust Fund to promote housing affordability in Fairfax County as part of the disbursement of settlements proceeds. Such equity interest of the Fairfax County Housing Trust Fund shall apply to each affordable dwelling unit. Notice of such equity interest of the Fairfax County Housing Trust Fund may be evidenced by a document recorded among the land records of Fairfax County, Virginia encumbering any affordable dwelling unit. Net sales price shall exclude closing costs such as title charges, transfer charges, recording charges, commission fees, points and similar charges related to the closing of the sale of the property paid by the seller. All amounts necessary to pay and satisfy any and all liens, judgments, deeds of trust, or other encumbrances on the unit, other than the equity interest of the Fairfax County Housing Trust Fund, shall be paid by the seller out of proceeds of the seller from such sale, as determined in accordance with this paragraph, or shall be paid otherwise by the seller. In no event shall any such amounts required to be paid by the seller reduce the amount, as determined in accordance with this paragraph, which is to be contributed to the Fairfax County Housing Trust Fund pursuant to this paragraph.

6. In the case of a rental project having received zoning approval before February 28, 2006, where such approval includes a proffered condition or approved development plan that addresses affordable dwelling units in accordance with this Part, prior to the issuance of the first Residential Use Permit for the development and the offering for rent of any affordable dwelling units, the owner shall record a covenant running with the land in favor of the Fairfax County Redevelopment and Housing Authority which provides that for twenty (20) years from the date of issuance of the first Residential Use Permit for the affordable dwelling units required under this Part, which date shall be subsequently specified in the covenant, that no such unit may be rented for an amount which exceeds the limits set by the County Executive, that the project is subject to the provisions of the Affordable Dwelling Unit Program as set forth in the Fairfax County Zoning Ordinance, that the covenant shall be senior to all instruments securing permanent financing, and that the covenant shall be binding upon all assignees, mortgagees, purchasers and other successors in interest.

In the case of a rental project that receives zoning approval on or after February 28, 2006, or received zoning approval before February 28, 2006 where such approval does not include a proffered condition or approved development plan that addresses affordable dwelling units in accordance with this Part, prior to the issuance of the first Residential Use Permit for the development and the offering for rent of any affordable dwelling units, the owner shall record a covenant running with the land in favor of the Fairfax County Redevelopment and Housing Authority which provides that for thirty (30) years from the date of issuance of the first Residential Use Permit for the affordable dwelling units required under this Part, which date shall be subsequently specified in the covenant, that no such unit may be rented for an amount which exceeds the limits set by the County Executive, that the project is subject to the provisions of the Affordable Dwelling Unit Program as set forth in the Fairfax County Zoning Ordinance, that the covenant shall be senior to all instruments securing permanent financing, and that the covenant shall be binding upon all assignees, mortgagees, purchasers and other successors in interest.

For initial and revised covenants recorded before July 2, 2002, the covenants shall provide that in the event of foreclosure, the covenants shall be released. For initial and revised covenants recorded between July 2, 2002 and February 27, 2006, the covenants shall terminate in the event of the foreclosure sale of a rental project by an Eligible

Lender, in accordance with Par. 8B below. For initial and revised covenants recorded on or after February 28, 2006, the covenants shall remain in full force and effect in the event of the foreclosure sale of a rental project by an Eligible Lender, in accordance with Par. 8B below. Additionally, prior to the issuance of the first Residential Use Permit for any of the dwelling units within the development, the owner shall provide the Notice of Availability and Offering Agreement required by Par. 1 above.

7. Rentals subsequent to the initial rental during the twenty (20) or thirty (30) year control period, as applicable, shall not exceed the rental rate established by the County Executive pursuant to Par. 8 of Sect. 811 above.

8. The financing of affordable dwelling units provided pursuant to this Part shall comply with the following:

   A. For initial and revised covenants recorded before July 2, 2002:

      (1) the covenant shall be senior to all instruments securing permanent financing, and the covenant shall be binding upon all assignees, mortgages, purchasers and other successors in interest. However, the covenants shall provide that, in the event of foreclosure, the covenants shall be released.

      (2) the covenants shall state that all financing documents shall require the lender to provide to the County Executive and the Fairfax County Redevelopment and Housing Authority written notice of any delinquency or other event of default under a mortgage and the Fairfax County Redevelopment and Housing Authority shall have the right for a sixty (60) day period to cure such a default.

      (3) any and all financing documents shall provide that, in the event of foreclosure of projects and units subject to the requirements of this Part that are comprised of rental or for sale affordable dwelling units, the lender shall give written notice to the Fairfax County Redevelopment and Housing Authority of the foreclosure sale at least thirty (30) days prior thereto and in the case of individual for sale affordable dwelling units, the Housing Authority shall have the right to cure the default.

   B. For any individual affordable dwelling unit initially conveyed on or after July 2, 2002 and the resale of any individual affordable dwelling unit conveyed on or after July 2, 2002, regardless of whether the covenants applicable to any such initial conveyance or resale conveyance were recorded prior to July 2, 2002, and for initial and revised covenants recorded on or after July 2, 2002:

      (1) the covenants shall be senior to all instruments securing financing, and the covenants shall be binding upon all assignees, mortgagees, purchasers and other successors in interest, except that the covenant shall be released in the event of foreclosure by an Eligible Lender, as and only to the extent provided for in Par. 8B(5) below.

      (2) all financing documents shall require every Eligible Lender and every other lender secured by an individual for sale affordable dwelling unit to provide

to the County Executive and the Fairfax County Redevelopment and Housing Authority written notice of any delinquency or other event of default under the deed of trust or mortgage and that the Fairfax County Redevelopment and Housing Authority shall have the right to cure such delinquency or other event of default within a period of ninety (90) days immediately after receipt by the Fairfax County Redevelopment and Housing Authority of such notice.

(3) no sale, transfer or foreclosure shall affect the validity of the covenants except as expressly set forth in the provisions of the Affordable Dwelling Unit Program as set forth in this Part.

(4) the total aggregate amount of principal and accrued interest for all financing secured by an individual for sale affordable dwelling unit shall not exceed the owner's purchase price (as adjusted in accordance with Par. 4 above). Any financing in excess of the owner's purchase price (as adjusted in accordance with Par. 4 above) shall not be secured by any interest in the applicable individual for sale affordable dwelling unit.

(5) an Eligible Lender is defined as an institutional lender holding a first priority purchase money deed of trust on a rental project or on an individual for sale affordable dwelling unit or a refinancing of such institutionally financed purchase money deed of trust by an institutional lender, provided that such refinancing does not exceed the outstanding principal balance of the existing purchase money first trust indebtedness on the unit at the time of refinancing. An Eligible Lender shall have the right to foreclose on a rental project or an affordable dwelling unit and the covenants on the rental project or affordable dwelling unit shall terminate upon such foreclosure by the Eligible Lender in the event that the rental project or the affordable dwelling unit is sold by a trustee on behalf of the Eligible Lender to a bona fide purchaser for value at a foreclosure sale and all the requirements of the Affordable Dwelling Unit Program as set forth in this Part, the covenants, and applicable regulations with respect to such foreclosure sale are satisfied. Such requirements include, but are not limited to, the Eligible Lender with respect to an individual for sale affordable dwelling unit having provided the County Executive and the Redevelopment and Housing Authority written notice of the foreclosure sale proposed and having provided the Right to Cure and the Right to Acquire, as such terms are defined in Par. 8B(6) below. An Eligible Lender with respect to a rental project shall not be required to provide the Right to Cure and the Right to Acquire.

(6) each Eligible Lender with respect to an individual for sale affordable dwelling unit shall also provide a right to cure any delinquency or default (Right to Cure), and a right to acquire an individual for sale affordable dwelling unit subject to the foreclosure notice given pursuant to Par. 8B(8) below (Right to Acquire). The Right to Cure and/or the Right to Acquire, as applicable, may be exercised by the Fairfax County Redevelopment and Housing Authority, or by a nonprofit agency designated by the County Executive in the event the Redevelopment and Housing Authority elects not to exercise its right, at any time during such ninety (90) day period after the

Redevelopment and Housing Authority has received notice of the delinquency or default or of the proposed foreclosure up to and including at such foreclosure sale. An affordable dwelling unit so acquired shall be acquired for the purpose of resale of such unit to persons qualified under the Affordable Dwelling Unit Program and not for conversion of the affordable dwelling unit to a rental unit. The Right to Acquire shall entitle the Redevelopment and Housing Authority or the nonprofit agency designated by the County Executive to acquire the affordable dwelling unit at or before any foreclosure sale for which such notice has been given upon payment in full of the outstanding indebtedness on the affordable dwelling unit owed to the Eligible Lender including principal, interest, and fees that together in the aggregate do not exceed the amount of the owner's purchase price (as adjusted in accordance with Par. 4 above), and other reasonable and customary costs and expenses (the Outstanding First Trust Debt), with no owner, prior owner or other party, whether secured or not, having any rights to compensation under such circumstances.

(7) in the event that neither the Fairfax County Redevelopment and Housing Authority nor the nonprofit agency designated by the County Executive exercises the Right to Acquire and the individual for sale affordable dwelling unit is sold for an amount greater than the Outstanding First Trust Debt, one-half (1/2) of the amount in excess of the Outstanding First Trust Debt shall be paid to the Fairfax County Housing Trust Fund to promote housing affordability in Fairfax County as part of the disbursement of settlement proceeds.

(8) each Eligible Lender and any other lender secured by an interest in a rental project or an individual for sale affordable dwelling unit shall be required prior to foreclosing to provide the County Executive and the Fairfax County Redevelopment and Housing Authority at least ninety (90) days prior written notice thereof.

(9) all financing documents for financing secured by an individual for sale affordable dwelling unit shall state that the Eligible Lender's financing provides the Right to Cure and Right to Acquire which may be exercised by the Fairfax County Redevelopment and Housing Authority, or by a nonprofit agency designated by the County Executive in the event the Fairfax County Redevelopment and Housing Authority elects not to exercise its rights, at any time during such ninety (90) day period after the Fairfax County Redevelopment and Housing Authority has received notice, as applicable, of the delinquency or default or of the proposed foreclosure up to and including at such foreclosure sale.

9. Notwithstanding the above, for multiple family dwelling rerentals that were initially rented before February 28, 2006, all of the relevant provisions of this Part shall apply for the 20 year control period except that after the initial 10 years and after provision of 120 day written notice to the Housing Authority and the tenants of the affordable dwelling units, the owner may elect to file a rezoning application and comply with whatever requirements result there from, or may elect to pay to the Fairfax County Housing Trust Fund an amount equivalent to the then fair market value of the land attributable to all

bonus and affordable dwelling units and provide relocation assistance to the tenants of the affordable dwelling units in accordance with the requirements of Article 4 of Chapter 12 of The Code. Thereupon, the units previously controlled by this Part as affordable dwelling units shall be released fully. For multiple family dwelling rerentals that were initially rented on or after February 28, 2006, all of the relevant provisions of this Part shall apply for the thirty (30) year control period; provided, however, that the provision for an early release of the covenants after the initial ten (10) years set forth above in this paragraph shall not apply.

10. The provisions set forth in Paragraphs 2F and 8B above shall apply and the applicable covenants shall be deemed to incorporate such provisions, whether or not expressly set forth in such covenants, to any individual affordable dwelling unit initially conveyed on or after July 2, 2002 and the resale of any individual affordable dwelling unit conveyed on or after July 2, 2002, regardless of whether the covenants applicable to any such initial conveyance or resale conveyance were recorded prior to July 2, 2002.

11. In the event of a foreclosure sale of any affordable dwelling unit after September 14, 2004 the following shares of the proceeds of such foreclosure sale shall be paid to the Fairfax County Housing Trust Fund to promote housing affordability in Fairfax County:

    A. For any individual affordable dwelling unit initially conveyed on or after July 2, 2002 and any individual affordable dwelling unit resold and conveyed on or after July 2, 2002, regardless of whether the covenants applicable to any such initial conveyance or resale conveyance were recorded prior to July 2, 2002, and for initial and revised covenants recorded on or after July 2, 2002, in the event that the individual for sale affordable dwelling unit is sold at the foreclosure sale for an amount greater than the Outstanding First Trust Debt, as such term is defined in Par. 8B(6) above, one-half (1/2) of the amount in excess of the Outstanding First Trust Debt shall be paid to the Fairfax County Housing Trust Fund as part of the disbursement of settlement proceeds.

    B. For all other individual affordable dwelling units, in all instances, one-half (1/2) of the amount of the difference between the net sales price paid by the purchaser at such sale and the foreclosed owner's purchase price plus a percentage of the unit's selling price equal to the increase in the U.S. Department of Labor's Consumer Price-Urban Area Index or such other index selected by the County Executive following consideration of the recommendation by the Affordable Dwelling Unit Advisory Board, plus the lesser of the current fair market value or the actual original cost of certain improvements as determined by the Redevelopment and Housing Authority in accordance with its regulations to be (1) substantial and appropriate replacements or improvements of existing housing components and/or (2) structural improvements made to the unit between the date of the foreclosed owner's purchase and the date of resale (the “Housing Trust Fund Share”) shall be contributed to the Fairfax County Housing Trust Fund as part of the disbursement of settlement proceeds. Net sales price shall exclude closing costs such as title charges, transfer charges, recording charges, commission fees, points and similar charges related to the closing of the sale of the property paid by the seller. All amounts necessary to pay and satisfy any and all liens, judgments, deeds of trust, or other encumbrances on the unit, other than the equity interest of the Fairfax County Housing Trust Fund, shall be paid out of proceeds of the foreclosure sale that are

not the Housing Trust Fund Share, as determined in accordance with this paragraph, or shall be otherwise paid by the foreclosed owner. In no event shall any such amounts required to be paid by the foreclosed owner reduce the Housing Trust Fund Share, as determined in accordance with this paragraph, which is to be contributed to the Fairfax County Housing Trust Fund pursuant to this paragraph.

2-813 Occupancy of Affordable Dwelling Units

1. Before an individual may purchase an affordable dwelling unit, he or she must obtain a Certificate of Qualification from the Fairfax County Redevelopment and Housing Authority. Before issuing a Certificate of Qualification, the Housing Authority shall determine that the applicant meets the criteria established by the Housing Authority for low and moderate income persons.

2. Before an individual may rent an affordable dwelling unit, he or she must meet the eligibility criteria established by the Fairfax County Redevelopment and Housing Authority for persons of low and moderate income. The landlord/owner shall be responsible for determining that the tenant meets the eligibility criteria.

3. Except for circumstances referenced in Par. 5 of Sect. 810 and Par. 3 of Sect. 812 above, it shall be a violation of this Ordinance for someone to sell an affordable dwelling unit to an individual who has not been issued a Certificate of Qualification by the Fairfax County Redevelopment and Housing Authority.

4. Except as provided for in Par. 3 of Sect. 811 above, it shall be a violation of this Ordinance for someone to rent or continue to rent an affordable dwelling unit to an individual who does not meet or fails to continue to meet the income eligibility criteria established by the Fairfax County Redevelopment and Housing Authority.

5. Purchasers or renters of affordable dwelling units shall occupy the units as their domicile and shall provide an executed affidavit on an annual basis certifying their continuing occupancy of the units. Owners of for sale affordable dwelling units shall forward such affidavit to the Fairfax County Redevelopment and Housing Authority on or before June 1 of each year that they own the unit. Renters shall provide such affidavit to their landlords/owners by the date that may be specified in their lease or that may otherwise be specified by the landlord/owner.

6. In the event the renter of an affordable dwelling unit fails to provide his or her landlord/owner with an executed affidavit as provided for in the preceding paragraph within thirty (30) days of a written request for such affidavit, then the lease shall automatically terminate, become null and void and the occupant shall vacate the unit within thirty (30) days of written notice from the landlord/owner.

7. Except as provided for in Par. 3 of Sect. 811 above, in the event a renter of an affordable dwelling unit shall no longer meet the eligibility criteria established by the Fairfax County Redevelopment and Housing Authority, as a result of increased income or other factor, then at the end of the lease term, the occupant shall vacate the unit.

8. In the event a renter fails to occupy a unit for a period in excess of sixty (60) days, unless such failure is approved in writing by the Fairfax County Redevelopment and Housing Authority, a default shall occur. The lease shall automatically terminate, become null and void and the occupant shall vacate the unit within thirty (30) days of written notice from the landlord/owner.

9. Notwithstanding the provisions of Paragraphs 6, 7 and 8 above, if the landlord/owner shall immediately designate an additional comparable unit as an affordable dwelling unit to be leased under the controlled rental price and requirements of this Part, the renter of such unit referenced in Paragraphs 6, 7 and 8 above may continue to lease such unit at the market value rent.

2-814 Affordable Dwelling Unit Advisory Board

l. The Affordable Dwelling Unit (ADU) Advisory Board shall consist of nine (9) members appointed by the Board of Supervisors. Members shall be qualified as follows:

A. Two members shall be either civil engineers and/or architects, each of whom shall be registered or certified with the relevant agency of the Commonwealth, or planners, all of whom shall have extensive experience in practice in Fairfax County.

B. One member shall be a representative of a lending institution which finances residential development in Fairfax County.

C. Four members shall consist of:

(1) A representative from the Fairfax County Department of Housing and Community Development.

(2) A residential builder with extensive experience in producing single family detached and attached dwelling units.

(3) A residential builder with extensive experience in producing multiple family dwelling units.

(4) A representative from either the Fairfax County Department of Public Works and Environmental Services or the Department of Planning and Zoning.

D. One member shall be a representative of a nonprofit housing group which provides services in Fairfax County.

E. One member shall be a citizen of Fairfax County.

F. At least four members shall be employed in the private sector.

2. Each member of the ADU Advisory Board shall be appointed to serve a four-year term. Terms shall be staggered such that the initially constituted Board shall consist of four

members appointed to four-year terms; three members appointed to three-year terms; and two members appointed to two-year terms.

3. The ADU Advisory Board shall advise the County Executive respecting the setting of the amount and terms of all sales and rental prices of affordable dwelling units.

4. The ADU Advisory Board shall be authorized to hear and make final determinations or grant requests for modifications of the requirements of the Affordable Dwelling Unit Program, except that the ADU Advisory Board shall not have the authority to:

   A. modify or reduce the Affordable Dwelling Unit Adjuster required pursuant to Sect. 804 above,

   B. modify the unit specifications established by the Fairfax County Redevelopment and Housing Authority pursuant to Par. 1 of Sect. 809 above,

   C. modify the eligibility requirements for participation in the ADU Program,

   D. modify any proffered condition, development condition or special exception condition specifically regarding ADU's,

   E. modify the zoning district regulations applicable to ADU developments,

   F. hear appeals or requests for modifications of affordable dwelling unit sales or rental prices,

   G. modify the provisions of Par. 5 of Sect. 802 above regarding the percentage of affordable dwelling units required or to allow the construction of affordable dwelling units which are of a different dwelling unit type from the market rate units on the site, or

   H. modify the provisions of Paragraphs 2D and 2E of Sect. 807 above regarding the conversion of rental developments to condominium and the establishment of new condominium developments.

5. The ADU Advisory Board shall elect its Chairperson and may adopt rules and regulations regarding its formulation of a recommendation regarding the amounts and terms of sales and rental prices of affordable dwelling units and the procedures to be followed by an applicant seeking a modification of the requirements of the Affordable Dwelling Unit Program.

6. Any determination by the ADU Advisory Board shall require the affirmative vote of a majority of those present. A quorum shall consist of no less than five (5) members. All determinations and recommendations shall be rendered within ninety (90) days of receipt of a complete application.

2-815 Modifications to the Requirements of the Affordable Dwelling Unit Program

1. Requests for modifications to the requirements of the Affordable Dwelling Unit Program as applied to a given development may be submitted in writing to the ADU Advisory

Board. Such application shall include an application fee as provided for in Sect. 18-106 and the applicant shall specify the precise requirement for which a modification is being sought and shall provide a description of the requested modification and justification for such request. In the case of a modification request filed pursuant to Par. 3 below, the applicant shall demonstrate in detail how such request complies with the required findings by the ADU Advisory Board for such modification and why the requirements of this Part cannot be met on the applicant's property.

2. An applicant shall promptly provide such additional information in support of the request for a modification as the Affordable Dwelling Unit Advisory Board may require.

3. In addition, in exceptional cases, instead of building the required number of affordable dwelling units, the ADU Advisory Board may permit an applicant to:

   A. Convey the equivalent amount of land within the development for which a modification is sought to the Fairfax County Redevelopment and Housing Authority which would be necessary to provide the required number of affordable dwelling units. In such instances, the total number of dwelling units which the applicant may build on the remainder of the site shall be reduced by the number of affordable dwelling units required pursuant to Sect. 804 above; or

   B. Contribute to the Fairfax County Housing Trust Fund an amount equivalent to the fair market value for the lot on which the affordable dwelling unit would otherwise have been constructed; or

   C. Provide any combination of affordable dwelling units, land, or contribution to the Fairfax County Housing Trust Fund.

   Permitting an applicant to meet the requirements of the Affordable Dwelling Unit Program by providing either land or contributions to the Fairfax County Housing Trust Fund is not favored. However, such modifications may be allowed upon demonstration by the applicant and a finding by the ADU Advisory Board that (1) the provision of all the affordable dwelling units required is physically and/or economically infeasible; (2) the overall public benefit outweighs the benefit of the applicant actually constructing affordable dwelling units on the particular site; and (3) the alternative will achieve the objective of providing a broad range of housing opportunities throughout Fairfax County.

4. The ADU Advisory Board shall act on requests for modifications within ninety (90) days of receipt of a complete application. The ninety (90) day time period shall be tolled during the time it takes the applicant to provide information requested pursuant to Par. 2 above.

5. The ADU Advisory Board may approve, deny, or may approve in part a request for a modification filed pursuant to this Section.

6. Persons aggrieved by the affordable dwelling unit for sale and rental prices established by the County Executive pursuant to the provisions of this Part to include decisions pursuant to Par. 2C of Sect. 807 above may appeal such prices to the Board of Supervisors. Such appeal shall be filed with the Clerk to the Board of Supervisors and shall specify the grounds upon which aggrieved and the basis upon which the applicant

claims the established for sale or rental prices should be modified. The Board of Supervisors shall act within ninety (90) days of receipt of a complete application for appeal. An appeal to the Circuit Court is provided in Sect. 818 below.

7. The time limits set forth in Sections 15.2-2258 through 15.2-2261 of Va. Code Ann. shall be tolled during the pendency of an application filed pursuant to Paragraphs 1 or 7 above.

2-816 Compliance with Federal, State and Other Local Laws

1. A development which provides, pursuant to federal, state or other local programs, the same or more number of affordable dwelling units as the number of affordable dwelling units required under Sect. 804 above, subject to terms and restrictions equivalent to the requirements of this Part, shall satisfy the requirements of the Affordable Dwelling Unit Program.

2. A development which provides, pursuant to federal, state or other local programs, a fewer number of affordable dwelling units required under Sect. 804 above, subject to terms and restrictions equivalent to the requirements of this Part, shall provide the additional number of affordable dwelling units necessary to make up the shortage.

3. The rents and sales prices for affordable dwelling units provided pursuant to federal, state or other local programs shall be in accordance with the rules and regulations governing such programs and these units shall be marketed in accordance with such rules and regulations provided rents and sale prices shall not exceed those set pursuant to this Part.

2-817 Violations and Penalties

In addition to the provisions set forth in Part 9 of Article 18, the following shall apply whenever any person, whether owner, lessee, principal, agent, employee or otherwise, violates any provision of this Part, or permits any such violation, or fails to comply with any of the requirements hereof:

1. Owners of affordable dwelling units who shall fail to submit executed affidavits or certifications as required by this Part shall be fined fifty (50) dollars per day per unit until such affidavit or certificate is filed, but only after written notice and a reasonable time to comply is provided. Fines levied pursuant to this paragraph shall become liens upon the real property and shall accumulate interest at the judgment rate of interest.

2. Renters of affordable dwelling units who shall fail to submit executed affidavits or certifications as required by this Part, shall be subject to lease termination and eviction procedures as provided in Sect. 813 above.

3. Owners and renters of affordable dwelling units who shall falsely swear or who shall execute an affidavit or certification required by this Part knowing the statements contained therein to be false shall be guilty of a misdemeanor and shall be fined $1,000.00.

   A. Fines levied against owners pursuant to this paragraph shall become liens upon the real property and shall accumulate interest at the judgment rate of interest.

B. Renters of affordable dwelling units who shall falsely swear or who shall execute an affidavit or certification required by this Part knowing the statements contained therein to be false shall also be subject to lease termination and eviction procedures as provided in Sect. 813 above.

C. Owners of individual affordable dwelling units who shall falsely swear that they continue to occupy their respective affordable dwelling unit as their domicile shall be subject to mandamus or other suit, action or proceeding to require such owner to either sell the unit to someone who meets the eligibility requirements established pursuant to this Part or to occupy such affordable dwelling unit as a domicile.

2-818 Enforcement and Court Appeals

1. The Board of Supervisors or designee shall have all the enforcement authority provided under its Zoning and Subdivision Ordinances to enforce the provisions of the Affordable Housing Dwelling Unit Program.

2. Notwithstanding the provisions of Section 15.2-2311 of Va. Code Ann., any person aggrieved by a decision of the ADU Advisory Board or by the Board of Supervisors in the case of a decision made by the latter regarding an appeal of affordable dwelling unit for sale and rental prices, or by any decision made by an administrative officer in the administration or enforcement of the Affordable Dwelling Unit Program, may appeal such decision to the Circuit Court for Fairfax County by filing a petition of appeal which specifies the grounds upon which aggrieved within thirty (30) days from the date of the decision.

3. Any petition of appeal properly filed pursuant to Par. 2 above shall not constitute a de novo proceeding and shall be considered by the Circuit Court in a manner similar to petitions filed pursuant to Section 15.2-2314 of Va. Code Ann.

2-819 Deleted by Amendment #98-306, Adopted March 30, 1998, Effective March 31, 1998, 12:01 AM

2-820 Provisions for Mobile Home Parks

To encourage the redevelopment of mobile home parks to house low and moderate income families in Fairfax County, in conjunction with the review and approval of a rezoning application and proffered generalized development plan, the Board of Supervisors may grant an increase in the number of mobile homes or dwelling units per acre permitted in the R-MHP District by a factor of fifty (50) percent. Where deemed necessary, in granting such increase in density for the provision of moderately-priced housing units, the Board may waive other regulations of the R-MHP District and the provisions of Par. 2 of Sect. 308 above as such provisions apply to lots comprised of marine clays.

2-821 Deleted by Amendment #98-306, Adopted March 30, 1998, Effective March 31, 1998, 12:01 AM

FAIRFAX COUNTY ZONING ORDINANCE

SLIDING SCALE REQUIREMENT FOR AFFORDABLE DWELLING UNITS

The following examples demonstrate the sliding scale percentage of affordable dwelling units required at various development density levels for two sample comprehensive plan density ranges: 4-5 dwelling units/acre and 5-8 dwelling units/acre. These examples are provided for illustration only and do not represent all possible development density levels or density ranges specified in the adopted comprehensive plan. These figures were calculated in accordance with the provisions Sect. 2-804 and have been rounded to two decimal points for ease of illustration only. In applying the applicable formula to a proposed development, the actual number of affordable dwelling units required should be rounded in accordance with Sect. 2-804.

EXAMPLE 1: Adopted Comprehensive Plan Density Range: 4 to 5 dwelling units per acre
Adjusted Density Range Providing for a 20% Increase: 4.80 to 6.00 dwelling units per acre

Approved Density du/a=dwelling units/acre	% of ADUs Required When a 20% Density Bonus has been Applied to the Adopted Comprehensive Plan Density Range
0.00 to 4.00 du/a	0.00%
4.10 du/a	1.04%
4.20 du/a	2.08%
4.30 du/a	3.12%
4.40 du/a	4.17%
4.50 du/a	5.21%
4.60 du/a	6.25%
4.70 du/a	7.29%
4.80 du/a	8.33%
4.90 du/a	9.38%
5.00 du/a	10.42%
5.10 du/a	11.46%
5.20 du/a	12.50%
5.30 du/a	12.50%
5.40 du/a	12.50%
5.50 du/a	12.50%
5.60 du/a	12.50%
5.70 du/a	12.50%
5.80 du/a	12.50%
5.90 du/a	12.50%
6.00 du/a	12.50%

EXAMPLE 2:Adopted Comprehensive Plan Density Range: 5 to 8 dwelling units per acre
Adjusted Density Range Providing for a 10% Increase: 5.50 to 8.80 dwelling units per acre
Adjusted Density Range Providing for a 20% Increase: 6.00 to 9.60 dwelling units per acre

Approved Density du/a=dwelling units/acre	% of ADU Required When a 10% Density Bonus has been Applied to the Adopted Comprehensive Plan Density Range	% of ADU Required When a 20% Density Bonus has been Applied to the Adopted Comprehensive Plan Density Range
0.00 to 5.00 du/a	0.00%	0.00%
5.10 du/a	0.19%	0.35%
5.20 du/a	0.38%	0.69%
5.30 du/a	0.57%	1.04%
5.40 du/a	0.76%	1.39%
5.50 du/a	0.95%	1.74%
5.60 du/a	1.14%	2.08%
5.70 du/a	1.33%	2.43%
5.80 du/a	1.52%	2.78%
5.90 du/a	1.70%	3.13%
6.00 du/a	1.89%	3.74%
6.10 du/a	2.08%	3.82%
6.20 du/a	2.27%	4.17%
6.30 du/a	2.46%	4.51%
6.40 du/a	2.65%	4.86%
6.50 du/a	2.84%	5.21%
6.60 du/a	3.03%	5.56%
6.70 du/a	3.22%	5.90%
6.80 du/a	3.41%	6.25%
6.90 du/a	3.60%	6.60%
7.00 du/a	3.79%	6.94%
7.10 du/a	3.98%	7.29%
7.20 du/a	4.17%	7.64%
7.30 du/a	4.36%	7.99%
7.40 du/a	4.55%	8.33%
7.50 du/a	4.73%	8.68%
7.60 du/a	4.92%	9.03%
7.70 du/a	5.11%	9.38%
7.80 du/a	5.30%	9.72%
7.90 du/a	5.49%	10.07%

FAIRFAX COUNTY ZONING ORDINANCE

Approved Density du/a=dwelling units/acre	% of ADU Required When a 10% Density Bonus has been Applied to the Adopted Comprehensive Plan Density Range	% of ADU Required When a 20% Density Bonus has been Applied to the Adopted Comprehensive Plan Density Range
8.00 du/a	5.68%	10.42%
8.10 du/a	5.87%	10.76%
8.20 du/a	6.06%	11.11%
8.30 du/a	6.25%	11.46%
8.40 du/a	6.25%	11.80%
8.50 du/a	6.25%	12.15%
8.60 du/a	6.25%	12.50%
8.70 du/a	6.25%	12.50%
8.80 du/a	6.25%	12.50%
8.90 du/a	6.25%	12.50%
9.00 du/a	6.25%	12.50%
9.10 du/a	6.25%	12.50%
9.20 du/a	6.25%	12.50%
9.30 du/a	6.25%	12.50%
9.40 du/a	6.25%	12.50%
9.50 du/a	6.25%	12.50%
9.60 du/a	6.25%	12.50%

EXAMPLE CALCULATIONS FOR A MIXED DWELLING UNIT DEVELOPMENT:

At the developer's option, a 10% density bonus may be applied to the multiple family dwelling unit portion and a 20% density bonus may be applied to the single family attached dwelling unit portion. In such cases, calculation of the required number of ADU shall be as follows:

Assumptions: 300 unit development, of which 100 single family attached dwelling units and 200 multiple family dwelling units are to be constructed on 24.1 acres and the Adopted Comprehensive Plan Density Range is 8-12 dwelling units/acre (du/a)

The adjusted density range for the multiple family portion is 8.8-13.2 du/a
The adjusted density range for the single family attached portion is 9.6-14.4 du/a

Proposed density is 12.45 du/a

Calculation of Required Affordable Dwelling Units:

Multiple Family, in accordance with Par. 1C(2)(a) of Sect. 2-804:

$\frac{12.45 - 8}{13.2 - 8.8}$ X 6.25 = 6.32% ADU requirement, however, the maximum ADU requirement for multiple family uses where a 10% bonus has been applied is 6.25%

200 du X 6.25% = 12.50 ADUs

Single Family, in accordance with Par. 1C(2)(b) of Sect. 2-804:

$\frac{12.45 - 8}{14.4 - 9.6}$ X 12.5 = 11.59% ADU requirement

100 du X 11.59% = 11.59 ADUs

Total ADUs required in this sample development: 12.50 + 11.59 = 24.09 ADUs rounded to 24 ADUs

Fremont (CA), City of. 2009. *Municipal Code*.
Title VIII. Planning and Zoning.
Chapter 2. Zoning.
Article 21.7. Inclusionary Housing*
[See note at end of ordinance.]

Sec. 8-22170. Basis and purposes.
In enacting this ordinance, the city finds as follows:

(a) Rental and owner-occupied housing in the city has become steadily more expensive. Housing costs have gone up faster than incomes for many groups in the community.

(b) Many persons who work in the city, who have grown up or have family ties in the city, who already live in the city but must move, or who wish to live in the city for other reasons, cannot afford housing in the city.

(c) Federal and state government programs do not provide nearly enough affordable housing or subsidies to satisfy the housing needs of moderate, lower or very low income households.

(d) Rising land prices have been a key factor in preventing development of new affordable housing. New housing construction in the city which does not include affordable units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land. This reduces the supply of land for affordable housing and increases the price of remaining residential land. At the same time new housing contributes to the demand for goods and services in the city, increasing local service employment at wage levels which often do not permit employees to afford housing in the city. Providing the affordable units required by this Article will help to ensure that part of the city's remaining developable land is used to provide affordable housing.

(e) The city wishes to retain an economically balanced community, with housing available to very low income, lower income and moderate income households. The city's general plan implements the established policy of the State of California that each community should foster an adequate supply of housing for persons at all economic levels.

(f) An economically balanced community is only possible if part of the new housing built in the city is affordable to households with limited incomes. Requiring builders of new housing to include some housing affordable to households at a range of incomes is fair, not only because new development without affordable units contributes to the shortage of affordable housing but also because zoning and other ordinances concerning new housing in the city should be consistent with the community's goal to foster an adequate supply of housing for persons at all economic levels.

(g) In general, affordable units within each housing development would serve the goal of maintaining an economically balanced community. Construction of required units off-site may be appropriate in some cases, but should be allowed only where a project sponsor demonstrates satisfaction of the criteria set forth in this article.

(h) The limited production of rental housing and the displacement of rental housing units through conversions to ownership condominiums reduce the city's rental housing supply which causes increased rental housing costs and decreased housing affordability. The provision of inclusionary units within condominium conversion projects represents housing ownership opportunities that help offset the loss of affordable rental units.
(Ord. No. 2493, § 1, 11-26-02; Ord. No. 19-2006, § 3, 10-3-06; Ord. No. 5-2008, § 18, 4-1-08.)

Sec. 8-22171. Definitions.
(a) Affordable ownership cost. Average monthly housing payments, during the first calendar year of a household's occupancy, including interest, principal, mortgage insurance, property taxes, homeowners insurance, property maintenance and repairs, a reasonable allowance for utilities, and homeowners association dues, if any, which are equal to or less than one-twelfth of thirty-five percent of the maximum annual household income allowed for the affordable unit, adjusted for assumed household size based on unit size. The assumed household size shall be one person in a studio apartment, two persons in a one bedroom unit, three persons in a two bedroom unit and one additional person for each additional bedroom thereafter.

(b) Affordable rent. Monthly housing expenses, including all fees for housing services and a reasonable allowance for utilities, not exceeding the following;

(1) Very low income households: Fifty percent of the area median, adjusted for assumed household size based on unit size, multiplied by thirty percent and divided by twelve.

(2) Low income households: Sixty percent of the area median income, adjusted for assumed household size based on unit size, multiplied by thirty percent and divided by twelve.

The assumed household size shall be one person in a studio apartment, two persons in a one bedroom unit, three persons in a two bedroom unit, and one additional person for each bedroom thereafter.

(c) Affordable units. Living units which are required under this chapter to be rented at affordable rents or available at an affordable housing cost to specified households.

(d) Area median income. Area median income as published pursuant to California Code of Regulations, Title 25, Section 6932 (or its successor provision).

(e) Construction cost index. The Engineering News Record San Francisco Building Cost Index. If that index ceases to exist, the community development director shall substitute another construction cost index which in his or her judgment is as nearly equivalent to the original index as possible.

(f) Consumer Price Index. The U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers for the San Francisco-Oakland-San Jose Metropolitan Statistical Area or if that index is discontinued, a successor index selected by the community development director.

(g) Eligible household. A household whose household income does not exceed the maximum specified in section 8-22175 for a given affordable unit.

(h) First approval. The first of the following approvals to occur with respect to a residential project: planned district approval, subdivision approval, conditional use permit, building permit.

(i) For-sale project. A residential project, or portion thereof, which is intended to be sold to owner-occupants upon completion.

(j) Household income. The combined adjusted gross income for all adult persons living in a living unit as calculated for the purpose of the Section Program under the United States Housing Act of 1937, as amended, or its successor.

(k) Living unit. One or more rooms designed, occupied, or intended for occupancy as separate living quarters, with cooking, sleeping, and bathroom facilities.

(l) Market rate units. New living units in residential projects which are not affordable units under subdivision (c) of this section.

(m) Published standard. The standard for a specified income level for Alameda County, as published pursuant to California Code of Regulations, Title 25, Section 6932 (or its successor provision).

(n) Rental project. A residential project, or portion thereof, which is intended to be rented to tenants upon completion.

(o) Residential project. Any planned district, subdivision map, conditional use permit or other discretionary city land use approval which authorizes seven or more living units or residential lots, or living units and residential lots which total seven or more in combination. In order to prevent evasion of the provisions of this chapter, contemporaneous construction of seven or more living units on a lot, or on contiguous lots for which there is evidence of common ownership or control, even though not covered by the same city land use approval, shall also be considered a residential project. Construction shall be considered contemporaneous for all units which do not have completed final inspections for occupancy and which have outstanding, at any one time, any one or more of the following: planned district, subdivision map, conditional use permit or other discretionary city land use approvals, or building permits, or applications for such an approval or permits. A condominium conversion under section 8-22135 is considered a residential project and is subject to this chapter.
(Ord. No. 2493, § 1, 11-26-02; Ord. No. 20-2004, § 1, 7-27-04; Ord. No. 8-2005, § 2, 4-26-05; Ord. No. 19-2006, § 4, 10-3-06.)

Sec. 8-22172. Basic requirement.
(a) At least fifteen percent of all residential units in any residential project shall be made available at affordable rents or affordable housing cost as prescribed in section 8-22175 and shall be approved and completed not later than the times prescribed in section 8-22174, unless one of the alternative actions set forth in section 8-22177 is performed. For purposes of calculating the number of affordable units required by this section, any additional units authorized as a density bonus pursuant to California Government Code Section 65915(b)(1) or (b)(2) shall not be counted as part of the residential project. For fractions of units in residential projects which contain more than twenty living units, where the fraction is .6 or greater, the owner of the property must construct the next higher whole number of affordable units, and where the fraction is less than .6, the owner may construct the next lower whole

number of affordable units. For fractions of units in residential projects which contain twenty units or less, the fraction shall be disregarded in calculating the number of affordable units required.

(b) This chapter is not intended to authorize the city to require affordable units or other measures to further affordable housing beyond those specified by its provisions. The city may require additional affordable units or additional measures to further affordable housing, but only to the extent it has authority to do so without respect to this chapter.

(c) Notwithstanding any other provision of this chapter, the requirements of this chapter shall be waived, adjusted or reduced if the applicant shows that there is no reasonable relationship between the impact of a proposed residential project and the requirements of this chapter, or that applying the requirements of this chapter would take property in violation of the United States or California Constitution. To receive a waiver, adjustment or reduction under this subsection (c), the applicant must make a showing under this subsection when applying for a first approval for the residential project, and/or as part of any appeal which the city provides as part of the process for the first approval.
(Ord. No. 2493, § 1, 11-26-02.)

Sec. 8-22173. Incentives.
Residential projects which comply with this article and do not request a density bonus pursuant to article 21.8 may receive the following incentives:

(a) Subject to approval of the community development director or designee, for-sale affordable units may have different interior finishes and features than market rate units in the same residential project, so long as the finishes and features are durable, of good quality and consistent with contemporary standards for new housing, and may be smaller in aggregate size than market rate units in the same residential project. Notwithstanding the above, all such units shall meet the criteria set forth in section 8-22175(c).

(b) In a residential project which contains single-family detached homes, affordable units may be attached living units rather than detached homes, and in a residential project which contains attached multi-story living units, affordable units may contain only one story.

(c) As stated in section 8-22172(a), in calculating the number of affordable units required by this chapter, any additional units authorized as a density bonus pursuant to California Government Code Section 65915(b)(1) or (b)(2) shall not be counted as part of the residential project.

Residential projects which comply with this article and request a density bonus pursuant to article 21.8 may receive incentives as specified in article 21.8.
(Ord. No. 2493, § 1, 11-26-02; Ord. No. 8-2005, § 2, 4-26-05; Ord. No. 19-2006, § 5, 10-3-06.)

Sec. 8-22174. Time performance required.
(a) No building permit shall be issued for any market rate unit until the permittee has obtained permits for affordable units sufficient to meet the requirements of section 8-22172, or received certification from the community development director or the director's designee that the permittee has met, or made arrangements

satisfactory to the city to meet, an alternative requirement of section 8-22177. No final inspection for occupancy for any market rate unit shall be completed until the permittee has constructed the affordable units required by section 8-22172, or completed corresponding alternative performance under section 8-22177. The time requirements set forth in this subsection for issuance of building permits for market-rate units and for final inspections for occupancy for market-rate units may be modified to accommodate phasing schedules, model variations, or other factors in a residential project, if the city determines this will provide greater public benefit and an inclusionary housing regulatory agreement acceptable to the community development director or the director's designee pursuant to section 8-22176 so provides.

(b) Conditions to carry out the purposes of this chapter shall be imposed on the first approval for a residential project. Additional conditions may be imposed on later city approvals or actions, including without limitation planned district approvals, subdivision approvals, conditional use permits and building permits.
(Ord. No. 2493, § 1, 11-26-02; Ord. No. 20-2004, § 2, 7-27-04; Ord. No. 19-2006, § 6, 10-3-06.)

Sec. 8.22175. Requirements for affordable units.

(a) The affordable units which are constructed in rental projects shall be offered for rent at affordable rents exclusively to households whose income does not exceed the published standard for lower income households, adjusted for household size. Of these affordable units in rental projects, sixty percent of the required fifteen percent, or nine percent of the total units in the project, shall be offered at affordable rents exclusively to households whose income does not exceed the published standard for very low income households, adjusted for household size, provided that where this requirement for very low income units would result in a fraction of a very low income unit, the number of very low income units shall be rounded down and the number of lower income units which need not be very low income units shall be rounded up.

(b) The affordable units which are constructed in for-sale projects shall be sold at affordable housing cost for owner-occupancy to households whose income does not exceed one hundred and ten percent of area median income, adjusted for household size, or offered for rent pursuant to the terms of section 8-22177(a), provided that such units may be sold at affordable housing cost for owner-occupancy to households whose income does not exceed one hundred and twenty percent of area median income when the community development director, or the director's designee determines that is necessary to secure households able to qualify for mortgages to purchase the units.

(c) Subject to section 8-22177(a), affordable units shall be comparable in overall number of bedrooms, proportion of units in each bedroom category, quality of exterior appearance and overall quality of construction to market rate units in the same residential project. Overall unit size may be somewhat smaller but should be generally representative of the unit sizes within the market rate portion of the development and acceptable to the community development director or designee. Interior features and finishes in affordable units shall be durable, of good quality and consistent with contemporary standards for new housing. Affordable units shall be dispersed throughout the residential project in a manner acceptable to the city.
(Ord. No. 2493, § 1, 11-26-02; Ord. No. 19-2006, § 7, 10-3-06.)

Sec. 8-22176. Continued affordability; city review of occupancy.

(a) Regulatory agreements acceptable to the community development director or the director's designee and, if the affordable units are designated for owner occupancy, resale restrictions, deeds of trust and/or other documents acceptable to the community development director or the director's designee, all consistent with the requirements of this chapter, shall be recorded against affordable owner occupied units and residential projects containing affordable rental units. These documents shall, in the case of affordable units which are initially rented, be for a term of ninety-nine years (or, if shorter, for so long as the project remains standing) and in the case of affordable units which are initially sold, be for a term of thirty years. In the case of affordable owner-occupied units which are transferred during the required term, renewed restrictions shall be entered into on each change of ownership, with a thirty year renewal term. The forms of regulatory agreements, resale restrictions, deeds of trust and other documents authorized by this subsection, and any change in the form of any such document which materially alters any policy in the document, shall be approved by the community development director or the director's designee prior to being executed with respect to any residential project.

(b) In the case of units which are initially owner-occupied, the documents required by subsection (a) may not authorize subsequent rental occupancy on terms other than those provided in section 8-22175(a), except in hardship cases as provided in an inclusionary housing regulatory agreement acceptable to the community development director or the director's designee pursuant to section 8-22176. For rented affordable units, the documents required by subsection (a) shall provide for continued occupancy for limited periods by households occupying the units, whose incomes increase during their occupancy so that they exceed the maximum otherwise permitted for the unit.

(c) The maximum sales price permitted on resale of an affordable unit designated for owner-occupancy shall be the lower of: (1) fair market value or (2) the seller's lawful purchase price, increased by the lesser of (A) the rate of increase of area median income during the seller's ownership or (B) the rate at which the consumer price index increased during the seller's ownership. The documents required by subsection (a) may authorize the seller to recover the market value at time of sale of capital improvements made by the seller and the seller's necessary costs of sale and may authorize an increase in the maximum allowable sales price to achieve such recovery. The resale restrictions shall allow the city a right of first refusal to purchase any affordable owner-occupancy unit at the maximum price which could be charged to a purchaser household, at any time the owner proposes sale.

(d) No household shall be permitted to begin occupancy of a unit which is required to be affordable under this chapter unless the city or its designee has approved the household's eligibility, or has failed to make a determination of eligibility within the time or other limits provided by a regulatory agreement or resale restrictions. If the city or its designee maintains a list of, or otherwise identifies, eligible households, initial and subsequent occupants of affordable units shall be selected first from the list of identified households, to the maximum extent possible, in accordance with rules approved by the community development director or the director's designee. If the city has failed to identify an eligible buyer for initial sale of an affordable unit which is intended for owner-occupancy ninety days after the unit receives a completed final inspection for occupancy, upon ninety additional days' notice to the city and on satisfaction of such further conditions as may be included in city-approved restrictions (which may include a further opportunity to identify an eligible

buyer), the owner may sell the unit at a market price, and the unit shall after such a sale not be subject to any requirement of this chapter.
(Ord. No. 2493, § 1, 11-26-02; Ord. No. 20-2004, § 3, 7-27-04; Ord. No. 19-2006, § 8, 10-3-06.)

Sec. 8-22177. Alternatives to on-site construction.
An applicant may elect, in lieu of building affordable units within a residential project, if the criteria stated in the relevant subsection below are satisfied in connection with and as part of the first approval for the residential project, to either:

(a) Rental units in for-sale projects. Where owner-occupied affordable units are required by section 8-22175(b), instead construct as part of the residential project the same or a greater number of rental units, affordable to lower and very low income households and at rents as prescribed in section 8-22175(a). Substitution of rental units shall be allowed under this subsection only if either: (1) the rental units are at least equal in number of bedrooms to the owner-occupancy units which would have been allowed, or (2) any comparative deficiency in bedrooms is compensated for by additional units and/or affordability to households with lower incomes.

(b) Off-site construction. Construct, or make possible construction by another developer of, units not physically contiguous to the market-rate units (or units that are physically contiguous to the market-rate units if the city determines this will provide greater public benefit and if an inclusionary housing regulatory agreement acceptable to the community development director or the director's designee pursuant to section 8-22176 so provides) and equal or greater in number to the number of affordable units required under section 8-22174. Off-site construction pursuant to this subsection shall be approved only if:

(1) Approval has been secured for the off-site units not later than the time the residential project is approved and completion of the off-site units is secured by a requirement that final inspections for occupancy for the related market-rate units be completed after those for the affordable units, provided that the time requirements set forth in this subsection for final inspections for occupancy for market-rate units may be modified to accommodate phasing schedules, model variations, financing requirements, or other factors in a residential project for the off-site units, if the city determines this will provide greater public benefit, and if an inclusionary housing regulatory agreement acceptable to the community development director or the director's designee pursuant to section 8-22176 so provides;

(2) The off-site units will be greater in number, larger or affordable to households with lower incomes than would otherwise be required in section 8-22172;

(3) Financing or a viable financing plan is in place for the off-site units; and

(4) In the event the off-site units receive any public assistance, the developer of the residential project will contribute to the off-site units' economic value equivalent to the value of making on-site units in the developer's residential project affordable. The city may require that completion of off-site units shall be further secured by the developer's agreement to pay an in-lieu fee in the amount due under subsection (d) in the event the off-site units are not timely completed.

(c) Land dedication. Dedicate without cost to the city, a lot or lots within or contiguous to the residential project, sufficient to accommodate at least the required affordable units for the residential project. An election to dedicate land in lieu of compliance with other provisions of this chapter shall be allowed only if:

(1) The value of the lot or lots to be dedicated is sufficient to make development of the otherwise required affordable units economically feasible, and financing or a viable financing plan is in place for at least the required number of affordable units and;

(2) The lot or lots are suitable for construction of affordable housing at a feasible cost, served by utilities, streets and other infrastructure and there are no hazardous material or other material constraints on development of affordable housing on the lot or lots; and

(d) In-lieu fee. To the extent the residential project consists of for-sale units on lots whose average size is ten thousand square feet or more, on a site designated residential low density, residential very low density or open space by the general plan, pay an in lieu fee.

(1) Fees shall be paid upon issuance of building permits for market-rate units in a residential project. If building permits are issued for only part of a residential project, the fee amount shall be based only on the number of units then permitted.

(2) The initial fee schedule shall be set by the city fee resolution or other action of the city council so that the fee amounts are sufficient to make up the gap between: (i) the amount of development capital typically expected to be available based on the amount to be received by a developer or owner from affordable housing cost or affordable rent, and (ii) the anticipated cost of prototypical affordable units.

(3) The city council may annually review the fee authorized by this subsection (d) by resolution, and may, based on that review, adjust the fee amount. For any annual period during which the council does not review the fee authorized by this subsection, fee amounts shall be adjusted once by the community development director or the director's designee based on the construction cost index. Where payment is delayed, in the event of default or for any other reason, the amount of the in-lieu fee payable under this subsection (d) shall be based upon the fee schedule in effect at the time the fee is paid.

(4) No final inspection for occupancy shall be completed for any corresponding market-rate unit in a residential project unless fees required pursuant to this chapter shall have been paid in full to the city.

(Ord. No. 2493, § 1, 11-26-02; Ord. No. 20-2004, § 4, 7-27-04; Ord. No. 19-2006, § 9, 10-3-06.)

Sec. 8-22178. Use and expenditure of fees.

(a) All fees collected under this chapter shall be deposited into a separate account to be designated the City of Fremont Housing Trust Fund.

(b) The fees collected under this chapter and all earnings from investment of the fees shall be expended exclusively to provide or assure continued provision of affordable housing in the city through acquisition, construction, development assistance, rehabilitation, financing, rent subsidies or other methods, and for costs of

administering programs which serve those ends. The housing shall be of a type, or made affordable at a cost or rent, for which there is a need in the city and which is not adequately supplied in the city by private housing development in the absence of public assistance.
(Ord. No. 2493, § 1, 11-26-02.)

Sec. 8-22179. Enforcement.
(a) The city attorney shall be authorized to enforce the provisions of this chapter and all regulatory agreements and resale controls placed on affordable units, by civil action and any other proceeding or method permitted by law.

(b) Failure of any official or agency to fulfill the requirements of this chapter shall not excuse any applicant or owner from the requirements of this chapter.
(Ord. No. 2493, § 1, 11-26-02.)

*This ordinance is currently being revised to reflect a policy shift from supplying for-sale housing for moderately low income levels to focusing on in-lieu fees to allow the City to provide supportive services for very low and low income housing. When updated, the new version of this ordinance will be added to this EIP.

ARTICLE XXI. INCLUSIONARY HOUSING

SECTION

Sec. 150.2100 Policy.

The purpose of this Article is to promote the public health, safety, and welfare by promoting housing of high quality located in neighborhoods throughout the community for households of all income levels, ages and sizes in order to meet the City's goal of preserving and promoting a culturally and economically diverse population in the City. Based upon the review and consideration of reports and analyses of the housing situation in the City, it is apparent that the diversity of the City's housing stock has declined as a result of increasing property values and housing costs and a reduction in the availability of affordable housing; that demolition of certain existing dwellings has led to a reduction in the diversity of the City's housing stock and affordable housing opportunities, and that subsequent redevelopment has in many cases contributed to property value increases that further the difficulty of providing affordable housing in the City; and that, with the exception of housing developed in partnership with the City or its Housing Commission, the privately developed new residential housing that is being built in the City generally is not affordable to low- and moderate-income households. The City recognizes the need to provide affordable housing to low- and moderate-income households in order to maintain a diverse population and to provide housing for those who live or work in the City. Without intervention, the trend toward increasing housing prices will result in an inadequate supply of affordable housing for City residents and local employees, which will have a negative impact upon the ability of local employers to maintain an adequate local work force and will otherwise be detrimental to the public health, safety, and welfare of the City and its residents. Since the remaining land appropriate for new residential development within the City is limited, it is essential that a reasonable proportion of such land be developed into housing units affordable to low- and moderate-income households and working families.

While this Article provides specific alternatives to the production of on-site affordable housing units, the intent and preference of this Article is for the provision of permanently affordable housing units constructed on-site and privately produced, owned, and managed.

The provisions of this Article may be supplemented by a set of Administrative Guidelines adopted pursuant to Section 150.2115 of this Article. (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

Sec. 150.2101 Covered Development Projects.

(A) General. The provisions of this Article shall apply to all developments that result in or contain five or more residential dwelling units. The types of development subject to the provisions of this Article include, but are not limited to, the following:

(1) A development that is new residential construction or new mixed-use construction with a residential component.

(2) A development that is the renovation or reconstruction of an existing multiple family residential structure that increases the number of residential units from the number of units in the original structure.

(3) A development that will change the use of an existing building from non-residential to residential or that will change the type of residential use. (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(4) A development that includes the conversion of rental property to private ownership of individual housing units. (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(B) Development on Multiple Parcels. For purposes of this Article, a development that occurs on adjacent parcels under common ownership shall be considered one development. (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

Sec. 150.2102 Percentage of Affordable Housing Units Required.

(A) General Requirement. Except as otherwise specifically provided in Subsection (C) below and Section 150.2108 of this Article, 20 percent of the total number of residential units within any covered development shall be affordable housing units and shall be located on the site of the covered development.

(B) Calculation. To calculate the number of affordable housing units required in a covered development, the total number of proposed units shall be multiplied by 20 percent. If the product includes a fraction, a fraction of .5 or more shall be rounded up, and a fraction of less than .5 shall be rounded down.

(C) Cash Payment In-Lieu of Housing Units.

(1) General Applicability. The applicant may make a cash payment in lieu of constructing some or all of the required affordable housing units if, and only if, the covered development is a single-family detached development that has no more than nineteen units.

(2) Amount and Use of Cash in Lieu. The per unit payment amount shall be determined by the City Council and set forth in the City's annual fee resolution. The per unit amount shall be based on an estimate of the cost of providing an affordable housing unit and shall be reviewed and modified periodically by the City Council. All cash payments received pursuant to this Article shall be deposited directly into the Affordable Housing Trust Fund for purposes authorized under Section 33.1133 of this Code.

(3) Calculation. For purposes of determining the total in lieu payment amount, the per unit amount established by the City pursuant to Paragraph (C)(2) of this Section shall be multiplied by 20 percent of the number of units proposed in the covered development. For purposes of such calculation, if 20 percent of the number of proposed units results in a fraction, the fraction shall not be rounded up or down. If the cash payment is in lieu of providing one or more but not all of the required units, the calculation shall be prorated as appropriate.

Sec. 150.2103 Application and Inclusionary Housing Plan.

(A) Application. For all covered development projects, the Applicant shall file an application for approval thereof on a form provided and required by the City. The application shall require, and the Applicant shall provide, among other things, general information about the nature and scope of the covered development, as well as such other documents and information as the Director of the City's Department of Community Development, or his or her designee (***"Director"***), may require. The Director shall also have the authority to require, as part of the application submittal, such portions of the inclusionary housing plan required under Subsection (B) of this Section as the Director shall deem necessary to properly evaluate the proposed covered development under the requirements and provisions of this Article.

(B) Inclusionary Housing Plan. As part of the approval of a covered development project, the Applicant shall present to the Housing Commission and the City Council an inclusionary housing plan that outlines and specifies the covered development's compliance with each of the applicable requirements of this Article, in accordance with the following: (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(1) Required Submittals for Inclusionary Housing Plan. The plan shall specifically contain, at a minimum, the following information regarding the covered development project;

(a) Preliminary Plan.

(i) A general description of the development, including whether the development will contain rental units or individually owned units, or both;

(ii) The total number of market rate units and affordable units in the development;

(iii) The total number of attached and detached residential units; (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(iv) The number of bedrooms in each market rate unit and each affordable unit;

(v) The square footage of each market rate unit and each affordable unit;

(vi) The location within any multiple-family residential structure and any single-family residential development of each market rate unit and each affordable unit.

(vii) Floor plans for each affordable unit; (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(viii) The amenities that will be provided to and within each market rate unit and affordable unit; and (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(ix) The pricing for each market rate unit and each affordable housing unit.

(b) Final Plan.

(i) All of the information required for the preliminary Inclusionary Housing Plan pursuant to Section 150.2103(B)(1)(a) of this Article; (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(ii) The phasing and construction schedule for each market rate unit and each affordable unit;

(iii) Documentation and plans regarding the exterior and interior appearances, materials, and finishes of the development and each of its individual units;

(iv) A description of the marketing plan that the applicant proposes to utilize and implement to promote the sale or rental of the affordable units within the development; and

(v) A description of the specific efforts that the applicant will undertake to provide affordable housing units to households pursuant to the priorities set forth in Section 150.2110 of this Article.

(2) Review Procedure.

(a) Preliminary Plan.

(i) Housing Commission Review. Within 60 days after the filing of a complete preliminary Inclusionary Housing Plan, the Housing Commission shall review the Inclusionary Housing Plan, and shall recommend either the approval (with or without modifications) or the rejection of the Inclusionary Housing Plan. The Housing Commission shall transmit its findings of fact and recommendation to the City Council. The failure of the Housing Commission to provide a recommendation within such 60 day period, or such further time to which the applicant may, in writing, agree, shall be deemed a recommendation against the approval of the Inclusionary Housing Plan. (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(ii) City Council Consideration.

(A) Upon receipt of the Housing Commission recommendation pursuant to Section 150.2103(B)(2)(a)(i) of this Article, the City Council may, by resolution duly adopted, approve or reject the Preliminary Inclusionary Housing Plan. (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(B) Approval of the preliminary Inclusionary Housing Plan by the City Council shall neither: (1) be deemed or interpreted as obligating the City Council to approve a final Inclusionary Housing Plan; nor (2) vest any right to the applicant other than the right to submit a final Inclusionary Housing Plan for the proposed Covered Development Project. (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(b) Final Plan.

(i) Housing Commission Review. Within 60 days after the filing of a complete final Inclusionary Housing Plan, the Housing Commission shall review the Inclusionary Housing Plan, and shall recommend either the approval (with or without modifications) or the rejection of the Inclusionary Housing Plan. The Housing Commission shall transmit its findings of fact and recommendation to the City Council. The failure of the Housing Commission to provide a recommendation within such 60 day period, or such further time to which the applicant may, in writing, agree, shall be deemed a recommendation against the approval of the Inclusionary Housing Plan. (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(ii) City Council Consideration. Upon receipt of the Housing Commission recommendation pursuant to Section 150.2103(B)(2)(b)(i) of this Article, the City Council may, by ordinance duly adopted, approve or reject the Inclusionary Housing Plan. Any ordinance approving a final Inclusionary Housing Plan shall include, without limitation, the following: (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(A) All standards, conditions, or restrictions deemed necessary or applicable by the City Council to effectuate the proposed development and protect the public interest, health, safety and welfare; and (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(B) A provisions requiring the execution and recordation by the applicant of a development agreement, as required pursuant to Section 150.2104 of this Article. (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(c) Concurrent Review of Preliminary and Final Plans. Notwithstanding any provision of this Article to the contrary, the Housing Commission and City Council shall review the preliminary and final Inclusionary Housing Plans concurrently for all Covered Development Projects that are not Planned Developments, pursuant to the final Inclusionary Housing Plan review procedure set forth in Section 150.2103(B)(2)(b) of this Article. (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(3) Standards of Review. The Housing Commission shall not recommend the approval of a preliminary or final Inclusionary Housing Plan, and the City Council shall not approve a preliminary or final Inclusionary Housing Plan, except upon making the following findings: (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(a) That the applicant has demonstrated that the proposed affordable housing units are designed to accommodate the needs of the target households; (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(b) That the location, floor plan, fixtures and finishes, and amenities of each proposed affordable housing unit satisfy the applicable provisions of this Article and are suitable for the needs of the target households; (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(c) That each affordable housing unit is designed to accommodate family living needs for common space and dining areas; and (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(d) That the proposed affordable housing units, and the development as a whole, conform to the applicable standards and requirements of this Chapter. (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

Sec. 150.2104 Development Agreement and Other Documents.

Prior to issuance of a building permit for any covered development, the applicant shall have entered into a development agreement with the City regarding the specific requirements and restrictions regarding affordable housing and the covered development. The applicant shall execute any and all documents deemed necessary by the City, including without limitation, restrictive covenants and other related instruments, to ensure the continued affordability of the affordable housing units in accordance with this Article. The development agreement shall set forth the commitments and obligations of the City and the applicant and shall incorporate, among other things, the inclusionary housing plan. The development agreement shall also contain the agreements and decisions regarding the applicability of any one or more of the alternatives to the provision of on-site affordable housing units as set forth in Section 150.2108 of this Article.

Sec. 150.2105 Development Cost Off-Sets.

An applicant that fully complies with the requirements of this Article shall, upon written request, receive from the City, with regard to the affordable housing units in the covered development, a waiver of all of the otherwise applicable application fees, building permit fees, plan review fees, inspection fees, sewer and water tap-on fees, demolition permit fees, the demolition tax, and such other development fees and costs which may be imposed by the City; provided, however, that this waiver shall not apply to third-party legal, engineering, and other consulting or administrative fees, costs, and expenses incurred or accrued by the City in connection with the review and processing of plans for the covered development. The waiver of fees and costs under this Section shall only apply to the affordable units. All applicable fees and costs under this Code shall apply to all market rate units. To the extent that there are impact fees

attributable to the affordable housing units, those impact fees shall be paid from funds in the Affordable Housing Trust Fund. (Ord. 45-07, J. 33, p. 251-253, passed 6/11/07)

Sec. 150.2106 Density Bonuses.

(A) Bonus Units for Affordable Housing Provided. For all covered developments under this Article, a density bonus shall be provided equal to one market rate unit for each affordable housing unit that is required and provided under this Article. The density bonus set forth in this Section 150.2106(A) shall be provided regardless of whether the affordable housing unit or units are provided on-site pursuant to Section 150.2102 of this Article, or off-site pursuant to Section 150.2108(B)(3) of this Article. (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(B) PUD Discretionary Bonus. If an applicant is required or chooses to utilize the Planned Unit Development process as outlined in Article V of this Chapter and provides affordable housing units on the site of the covered development in accordance with this Article, then the applicant may, as part of the Planned Unit Development process, seek a density bonus in addition to the density bonus authorized under Subsection (A) of this Section. The additional density bonus under this Subsection may be authorized up to 0.5 market rate units for each affordable housing unit required under this Article that is provided within the Development, but only upon the recommendation of the Plan Commission and the approval of the City Council, in accordance with and pursuant to the standards and procedures for Planned Developments, as set forth in Article V of this Chapter. (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(C) No Density Bonuses with Payment of Fee-In-Lieu. No density bonus shall be provided pursuant to this Section 150.2106 for any development for which a cash payment in lieu of construction of the required affordable units is made pursuant to Section 150.2103 of this Article. (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

Sec. 150.2107 Integration of Affordable Housing Units.

(A) Location of Affordable Housing Units. Affordable housing units shall be dispersed among the market rate units throughout the covered development.

(B) Phasing of Construction. The inclusionary housing plan and the development agreement shall include a phasing plan that provides for the timely and integrated development of the affordable housing units as the covered development project is built out. The phasing plan shall provide for the development of the affordable housing units concurrently with the market rate units. Building permits shall be issued for the covered development project based upon the phasing plan. The phasing plan may be adjusted by the Director when necessary in order to account for the different financing and funding environments, economies of scale, and infrastructure needs applicable to development of the market rate and the affordable housing units. The phasing plan shall also provide that the affordable housing units shall not be the last units to be built in any covered development.

(C) Exterior Appearance. The exterior appearance of the affordable housing units in any covered development shall be visually compatible with the market rate units in the development. External building materials and finishes shall be substantially the same in type and quality for affordable housing units as for market rate units.

(D) Unit Amenities: Amenities that are provided with a market rate unit shall also be provided, with the affordable units. For purposes of this Subsection (D), “amenities” shall include, without limitation, basements, front porches, storage lockers, balconies, roof decks,

outdoor patios, off-street parking, enclosed parking, appliances, and similar unit features and additions. (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(E) Interior Appearance and Finishes. Affordable housing units may differ from market rate units with regard to interior finishes and gross floor area, provided that:

(1) The bedroom mix of affordable units shall be in equal proportion to the bedroom mix of the market rate units.

(2) The differences between the affordable housing units and the market rate units shall not include improvements related to energy efficiency, including mechanical equipment and plumbing, insulation, windows, and heating and cooling systems.

(3) The interior gross floor area for the affordable housing units shall be no less than the lesser of (a) 75 percent of the gross floor area of market rate units with a comparable number of bedrooms, or (b) the minimum size requirements outlined in the table below; provided, however, that interior gross floor area shall not include areas devoted to vertical circulation, basements, off-street parking, lockers and similar storage areas, and mechanical rooms. (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

	Unit Type	
Number of Bedrooms	**Single Story Dwelling Units**	**Multi-Story Dwelling Units**
Studio	450 square feet	--
1	750 square feet	--
2	950 square feet	1,000 square feet
3	1,175 square feet	1,350 square feet
4	1,350 square feet	1,600 square feet

(**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

Sec. 150.2108 Alternatives to On-Site Affordable Housing Units.

(A) Applicability. In lieu of the provision of affordable housing on the site of the covered development as otherwise required by Section 150.2102 of this Article, the City Council, following consideration by and a recommendation from the Housing Commission, may approve one or more of the three alternatives for affordable housing as set forth in Subsection B of this Section. Utilization and the requirements of the provisions of this Section shall be specifically set forth in the affordable housing development agreement for the covered development. This Section shall not be utilized unless the applicant demonstrates to the satisfaction of the City Council that the alternate means of compliance will further affordable housing opportunities in the City to an equal or greater extent than compliance with the otherwise applicable on site requirements of this Article.

(B) Available Alternatives. Any one or more of the following affordable housing alternatives may be utilized in lieu of all or part of the otherwise applicable on site requirements set forth in Section 150.2102 of this Article: (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(1) A cash payment to be deposited directly into the Affordable Housing Trust Fund for purposes authorized under Section 33.1133 of this Code in an amount not less than the per unit payment established pursuant to Section 150.2102(C)(2) of this Article; (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(2) A dedication of land to the Highland Park Housing Commission or the Commission's not-for-profit designee; or

(3) The provision of affordable housing units at another site within the City.

Sec. 150.2109 Target Income Levels for Affordable Housing Units.

(A) For-Sale Affordable Housing Units. In covered development projects that contain for-sale units, at least one affordable housing unit and no less than 50 percent of the affordable housing units shall be sold to low-income households at a price, as determined pursuant to Subsection (C) of this Section, that, on average, is affordable to a household with an annual income that is 65 percent of area median income. Any remaining affordable units shall be sold to moderate-income households at a price, as determined pursuant to Subsection (C) of this Section, that, on average, is affordable to a household with an annual income that is 100 percent of area median income. The owner shall execute and record any documents required by Section 150.2104 of this Article to ensure compliance with this Subsection.

(B) Rental of Affordable Housing Units. In covered development projects that contain rental units: (i) no less than 33 percent of the affordable housing units shall be rented or leased to households with gross incomes from zero percent to 50 percent of the Chicago area median income at a price, as determined pursuant to Subsection (C) of this Section, that, on average, is affordable to a household with an annual income that is 45 percent of area median income; (ii) no less than 33 percent of the affordable housing units shall be rented or leased to households with gross incomes between 51 percent and 80 percent of the Chicago area median income at a price, as determined pursuant to Subsection (C) of this Section, that, on average, is affordable to a household with an annual income that is 65 percent of area median income; and (iii) no more than 33 percent of the affordable housing units shall be rented or leased to households with gross incomes between 81 percent and 120 percent of the Chicago area median income at a price, as determined pursuant to Subsection (C) of this Section, that, on average, is affordable to a household with an annual income that is 100 percent of area median income. If fewer than three affordable units will be provided, such units shall be rented or leased to low-income households at a price, as determined pursuant to Subsection (C) of this Section, that does not exceed what is affordable to a household with an annual income that is 65 percent of area median income.

(C) Pricing Schedule. The City, through the Director of Community Development, shall publish a pricing schedule of rental and sales prices for affordable housing units ("Pricing Schedule"), which Pricing Schedule shall be updated at least once every 12 months. The Director of Community Development may, in his or her discretion, include the Pricing Schedule within administrative guidelines adopted pursuant to Section 150.2115 of this Article. (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

Sec. 150.2110 Eligibility of Households.

(A) For-Sale Affordable Housing Units. Only eligible households shall be permitted to purchase an affordable housing unit for purposes of this Article. Priority will be given first to households who live in Highland Park or households in which the head of the household or the spouse or domestic partner works in Highland Park as part of employment by the City of Highland Park, the Highland Park Library District, the Park District of Highland Park, the Lake County Forest Preserve District, the County of Lake, Moraine Township, West Deerfield Township, School Districts 112 or 113, the Northern Suburban Special Education District, the North Shore Sanitary District, or the South Lake County Mosquito Abatement District, and then to households in which the head of the household or the spouse or domestic partner works in

Highland Park for any other employer. At the applicant's request, the City or its not-for-profit designee shall select eligible households for the affordable housing units at an additional charge to the applicant at an amount to be determined by the City. If, during possession, the gross income of the eligible household increases above the eligible income levels, set forth in Section 150.2109 of this Article, the eligible household may continue to own the affordable housing unit. The owner shall execute and record any documents required by Section 150.2104 of this Article to ensure compliance with this Subsection. (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(B) Rental Affordable Housing Units. Only eligible households shall be permitted to rent an affordable housing unit for purpose of this Article. Priority will be given first to households who live in Highland Park or households in which the head of the household or the spouse or domestic partner works in Highland Park as part of employment by the City of Highland Park, the Highland Park Library District, the Park District of Highland Park, the Lake County Forest Preserve District, the County of Lake, Moraine Township, West Deerfield Township, School Districts 112 or 113, the Northern Suburban Special Education District, or the South Lake County Mosquito Abatement District, and then to households in which the head of the household or the spouse or domestic partner works in Highland Park for any other employer. At the applicant's request, the City or its not-for-profit designee shall select eligible households for the affordable housing units at an additional charge to the applicant at an amount to be determined by the City. If, during possession, the gross income of the eligible household increases above the eligible income levels, set forth in Section 150.2109 of this Article, the eligible household may continue to lease the unit and may renew the lease as well. The owner shall execute and record any documents required by Section 150.2104 of this Article to ensure compliance with this Subsection. (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

Sec. 150.2111 Marketing of the Affordable Housing Units.

(A) Good Faith Marketing Required. All sellers and lessors of affordable units are responsible for marketing the affordable units, and shall engage in good faith marketing efforts to inform members of the public who are qualified to purchase or rent affordable units of the availability of such units for sale or rent. Prior to the initiation of public marketing efforts to sell or lease an affordable housing unit, the seller or lessor thereof shall submit to the Director of Community Development a description of the marketing plan that the applicant proposes to utilize and implement to promote the sale or rental of the affordable units within the development to the appropriate income groups. (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(B) City Assistance with Marketing. At the applicant's request, the City or its designee shall assist the applicant in marketing the affordable housing units to eligible households, for an additional charge to be determined by the City. (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

Sec. 150.2112 Period of Affordability.

(A) Sale of Affordable Housing Units. In covered developments that contain for-sale units, affordable housing units shall be resold to low and moderate income households in perpetuity or as long as permissible by law. The owner shall execute and record any documents required by Section 150.2104 of this Article to ensure compliance with this Subsection.

(B) Rental of Affordable Housing Units. In developments that contain rental units, affordable housing units shall be rented to low and moderate income households in accordance with Section 150.2110 of this Article for 25 years from the date of the issuance of the certificate of occupancy for the respective unit. The owner shall execute and record any documents required by Section 150.2104 of this Article to ensure compliance with this Subsection.

(1) In the event that the owner of a covered rental development sells the development before the end of the 25-year affordability period, the new owner shall be required to continue to provide the affordable housing units in accordance with Section 150.2110 of this Article for the remainder of the 25-year period.

(2) If the owner of a covered rental development converts the development to condominiums or other form of individual unit ownership, the development shall be subject to the for-sale development requirements set forth in Subsection 150.2109(A) of this Article. (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(3) The Housing Commission or its designee shall have the right, but not the obligation, to purchase any for-sale affordable housing units in the development pursuant to Section 150.2113 of this Article.

Sec. 150. 2113 Affordability Controls.

(A) For-Sale Affordable Housing Units.

(1) Housing Commission Purchases. The Housing Commission, or a not-for-profit agency designated by the Housing Commission, shall have the pre-emptive option and right, but not an obligation, to purchase each of the for-sale affordable housing units prior to any sale of any such unit. If the City, or the designated not-for-profit, exercises the option and purchases the affordable housing unit, the affordable housing unit shall be subject to such documents deemed necessary by the City, including, without limitation, restrictive covenants and other related instruments, to ensure the continued affordability of the affordable housing units in accordance with this Article. Such documentation shall include the provisions of this Article and shall provide, at a minimum, each of the following: (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(a) The calculated maximum resale price is an upper limit, but shall not be construed as a guarantee that the unit will be resold at that price. (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(b) Market conditions, and characteristics of the affordable housing unit, may result in the sale of an affordable housing unit at a price lower than the calculated maximum resale price. (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(2) Private Party Purchases. In all other sales of for-sale affordable housing units, the parties to the transaction shall execute and record such documentation as required by Section 150.2104 of this Article to ensure the provision and continuous maintenance of the affordable housing units. Such documentation shall include the provisions of this Article and shall provide, at a minimum, each of the following:

(a) The affordable housing unit shall be sold to and occupied by an eligible household.

(b) The affordable housing unit shall be conveyed subject to restrictions that shall permanently maintain the affordability of such affordable housing units for eligible households.

(c) Preference for the affordable housing units shall be given to eligible households pursuant to the priorities set forth in Section 150.2110 of this Article. (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(d) The calculated maximum resale price is an upper limit, but shall not be construed as a guarantee that the unit will be resold at that price. (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(e) Market conditions, and characteristics of the affordable housing unit, may result in the sale of an affordable housing unit at a price lower than the calculated maximum resale price. (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(B) Rental Affordable Housing Units. For covered rental developments that contain affordable housing units, the owner of the development shall execute and record such documentation as required by Section 150.2104 of this Article to ensure the provision and continuous maintenance of the affordable housing units. Such documentation shall include the provisions of this Article and shall provide, at a minimum, each of the following:

(1) The affordable housing units must be leased and occupied by eligible households.

(2) The affordable housing units must be leased at rent levels affordable to eligible households for a period of 25 years from the date of the initial certificate of occupancy.

(3) Preference for the affordable housing units shall be given to eligible households pursuant to the priorities set forth in Section 150.2110 of this Article.

(4) The calculated maximum rental price is an upper limit, but shall not be construed as a guarantee that the unit will be rented at that price. (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(5) Market conditions, and characteristics of the affordable housing unit, may result in the rental of an affordable housing unit at a price lower than the calculated maximum rental price. (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(C) Subleasing Prohibited. Subleasing of affordable units shall not be permitted without the express written consent of the Director. (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

Section 150.2114 Departures from Requirements.

The Housing Commission may recommend, and the City Council may approve, departures from any of the standards set forth in this Article, upon making each of the following findings: (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(A) Due to specific and unique circumstances, undue hardship would be caused by the literal enforcement of the standards and requirements set forth in this Article; (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(B) By virtue of excellence in design, the proposed departure from the standards does not result in a diminished or lower quality affordable dwelling unit, but provides a functionally equivalent dwelling unit; and (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(C) The proposed affordable housing units otherwise meet the purpose and intent of this Article. (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

Section 150.2115 Administrative Guidelines.

The City Director of Community Development shall have the right, but not the obligation, to adopt, and to amend from time to time, administrative guidelines to assist in the effective implementation of this Article by participants in the Inclusionary Housing Program; provided, however, that any administrative guidelines adopted or amended pursuant to this Section 150.2115 shall not be inconsistent with this Article, and that in the event of a conflict between the administrative guidelines and this Article, this Article shall control (**Ord. 16-09, J. 35, p. 32-48, passed 2/9/09**)

(Article 21 added by Ord. 52-03, J. 29, p. 174-185, passed 8/25/03)

Irvine (CA), City of. 2008. *Zoning Ordinance*.
Division 2. Administration.
Chapter 2-3. Affordable Housing Implementation Procedure.

Sec. 2-3-1. Intent.

The affordable housing implementation procedure is a means for fulfilling the affordable housing requirements for certain developments or planning areas, as set forth in the General Plan Housing Element (hereinafter the "Housing Element"). The implementation procedure describes the requirements for submitting the affordable housing plan to the City and to ensure that General Plan requirements are met. Except as otherwise provided in the Housing Element, nothing herein is intended, nor does it place any obligation on the City to provide financial incentives or offset the cost of providing affordable housing.
(Ord. No. 04-15, § 3, 12-14-04; Ord. No. 07-11, § 3, 4-24-07)

Sec. 2-3-2. Applicability.

The provisions of this Chapter shall be applicable to all residential development proposals, regardless of zoning, within the City of Irvine. However, unless stated otherwise in this Chapter, the terms "applicant," "application," "project," and "development" relate only to residential developments of 50 or more units. For the purposes of this Chapter, the term "Applicant" shall mean and, depending on context, shall include the owner(s), lessee(s) or developer(s) of property, or their authorized agents, with regard to any application for residential property development permits or approvals from the City of Irvine.
Projects with less than 50 units may utilize one of the menu options listed in Section 2-3-5.B.3, in-lieu of providing affordable units.
(Ord. No. 04-15, § 3, 12-14-04; Ord. No. 07-11, § 3, 4-24-07)

Sec. 2-3-3. Submittal requirements.

A. An applicant whose proposal is subject to meeting affordable housing requirements shall submit an affordable housing plan to the Housing Division as follows:

1. Affordable housing plans for an entire planning area(s) shall be submitted in conjunction with the first residential map. No application subject to this section shall be deemed complete without submittal of an affordable housing plan. The plan shall be reviewed and approved by the Planning Commission as part of the entitlement process for a proposed project.
2. Other residential projects shall submit an affordable housing plan in conjunction with an application for a general plan amendment or zone change, or with the conditional use application if no general plan amendment or zone change is proposed. No application subject to this section shall be deemed complete without submittal of an affordable housing plan. The plan shall be reviewed and approved by the Planning Commission as part of the entitlement process for a proposed project.

B. The plan shall include the following components:

1. A description of the affordable housing units to be provided, including type of occupancy, unit mix, income level served by the affordable housing units, and location of the units.
2. A description of how the affordability of the units will be maintained for the period required by law. The minimum period of affordability for a newly constructed or converted affordable unit is 30 years. The minimum period of

affordability for the extension of affordability of an existing affordable unit is 40 years.

3. Whether or not affordable credits are being requested. Guidelines for the Affordable Credits Program are included in Section 2-3-6 of this Chapter.

C. In conjunction with the submittal of an affordable housing plan, the applicant shall submit a written request to the City for any specific financial and/or processing incentives requested as a subsidy for the provision of affordable units. Financial and/or processing incentives that the City may provide include, but are not limited to, U.S. Department of Housing and Urban Development (HUD) funds, in-lieu fee proceeds, and the waiver of processing fees.

1. If the applicant is seeking financial, processing or other assistance from the City of Irvine or the Irvine Redevelopment Agency, as such assistance is defined in the Housing Element, the following additional information shall be provided:

a. The type and level of financial, processing and/or other assistance being requested.

b. An explanation of why the assistance is being requested.

c. A justification for the type and level of assistance being requested. Such justification shall be in a format acceptable to the City to allow it to determine the validity of the justification.

d. A list of any and all other non-City or non-Redevelopment Agency sources for assistance the applicant has received or applied for in conjunction with the project.

e. A list of any and all other non-City or non-Redevelopment Agency sources for assistance the applicant has reviewed and a detailed explanation of why each of the other sources is not being used.

D. The applicant shall make a good faith effort to obtain funding sources to achieve the affordable housing goal. In the event the proposed funding sources are not available or funding is limited for the development within the planning area, satisfaction of the affordable housing goal shall be achieved through selection of alternatives in the menu option defined in Section 2-3-5 B 2.

E. The City will participate, when possible, in financial partnerships with applicants of affordable housing projects as a means of assisting the applicant's endeavor to secure subsidies and financing for the development of Income I, II and III rental or ownership housing. An applicant receiving financial incentives for affordable housing development projects shall be required to comply with the program monitoring guidelines as defined in Section 2-3-6.

(Ord. No. 04-15, § 3, 12-14-04; Ord. No. 07-11, § 3, 4-24-07)

Sec. 2-3-4. Affordable housing requirements defined.

Residential projects shall provide a minimum of 15 percent of their total units as affordable units, as defined in the Housing Element and herein, unless otherwise required by this Chapter. The 15 percent affordable units shall be allocated in accordance with the following percentages:

A. Income Levels I and II, as defined in the Housing Element. Five percent of the actual number of dwelling units shall be affordable as rental or ownership units to households earning less than 50 percent of the County median income as annually defined by the California State Department of Housing and Community Development (Incomes I and II as defined in the Housing Element).

1. To the degree ownership units are provided to Income II households, a 2:1 credit will be attributed toward the achievement of the Income II goal.
2. To the degree Income I units are provided, a 1.6:1 credit is available. However, the number of Income I units in a specific project is subject to approval by the City.
3. To the degree 3-bedroom Income I or II units are provided, a 1.4:1 credit will be attributed toward the achievement of the Income II goal.
4. To the degree 4-bedroom Income I or II units are provided, a 1.6:1 credit will be attributed toward the achievement of the Income II goal.

B. Income Level III, as defined in the Housing Element. Five percent of the actual number of dwelling units shall be affordable as either rental or ownership units, with the emphasis on ownership units, to households earning 51 percent to 80 percent of the County median income as annually defined by the California State Department of Housing and Community Development. (Income III as defined in the Housing Element).

1. To the degree ownership units are provided to Income III households, a 2:1 credit will be attributed toward achievement of the Income III goal.
2. To the extent that the affordable units referenced under Section 2-3-4 A, above, are provided with the use of financial and processing incentives in excess of the five percent goal, a 2:1 credit will also be attributed toward the achievement of this goal.
3. To the degree three-bedroom Income III units are provided, a 1.4:1 credit will be attributed toward the achievement of the Income III goal.
4. To the degree four-bedroom Income III units are provided, a 1.6:1 credit will be attributed toward the achievement of the Income III goal.

C. Combined income levels I, II, and III, as defined in the Housing Element (Alternative to meeting Sections 2-3-4 A and B, above). In order to allow projects to compete for County affordable housing funds and because this approach provides a greater overall level of affordability, the City will regard the following as meeting the combined affordability goals for Incomes I, II, and III, as set forth in Sections 2-3-4 A and 2-3-4 B of this Chapter:

1. Projects which provide a minimum of ten percent of the proposed units affordable to households earning 60 percent or less of the County median income as annually defined California State Department of Housing and Community Development.
2. The Planning Commission shall have, on a case-by-case basis, the discretion to consider and approve ratios other than the currently required five percent ratios if the Commission determines that a proposal will provide equivalent or enhanced affordability.

D. Income Level IV, as defined in the Housing Element. Five percent of the total number of dwelling units shall be affordable as rental or ownership units, with emphasis on ownership units in projects offering ownership housing, to households earning 81 percent to 120 percent of the County median income as annually defined by the California State Department of Housing and Community Development. (Income IV as defined in the Housing Element).
(Ord. No. 04-15, § 3, 12-14-04; Ord. No. 07-11, § 3, 4-24-07)

Sec. 2-3-5. Provision of affordable units; menu option.

A. Location of affordable units.

1. Unless an applicant is qualified to utilize the menu option listed under Section 2-3-5 B, affordable units must be located within the planning area or on the site of the proposed project. Any affordable units to be developed outside of the planning area shall be proposed and identified as part of the affordable housing plan submitted for the overall development proposal. Provision of units outside of the subject planning area shall count toward the affordable housing goals of the subject planning area, not the planning area receiving the units.

2. The affordable housing units shall be distributed to prevent a concentration of lower income households in a neighborhood that already has a disproportionately high number of lower income households. This prohibition also applies to any excessive concentration of housing provided for a single income level (e.g., an over-concentration of income level I housing in a neighborhood). However, in order to expand the applicant's opportunities to obtain financial assistance for the provision of affordable housing, a project with up to 100 percent affordability will be considered, and may be approved, by the City. A project application offering to provide affordable housing excess of the requirements set forth in this Chapter, or the Housing Element, may only be denied in accordance with the terms of Government Code Section 65589.5(d).

B. Menu option alternatives.

1. Intent of menu option. The menu option is an alternative to the on-site affordable housing requirements set forth in Sections 2-3-4 and 2-3-5 A 1 of this Chapter. The menu option is designed to provide to the City affordable housing benefits that are equal in value to the actual provision of on-site units in the quantity and quality that would otherwise be provided. Equivalent values will be determined by taking into account an applicant's ability to reasonably secure financial incentives (leveraging) for the development of affordable units.

2. Applicability of the menu option. An applicant may only use the menu option if the fulfillment of its affordable housing obligations under this Chapter are otherwise infeasible. The City will consider the fulfillment of affordable housing requirements set forth in Sections 2-3-4 and 2-3-5 A 1 of this Chapter to be "infeasible" under the following circumstances:

a. The applicant proposes development in the hillside Planning Areas 1, 2, 6, 17, 18, 22, or 27 where development of affordable housing is impacted by the increased cost of development in hillside areas; or

b. The applicant proposes a zone change and/or general plan amendment to change the land use designation from high, medium, or medium-high residential density to low or estate density which would bring the percentage of residential land in the planning area designated for low or estate density to 75 percent or more; or

c. The planning area meets all the following criteria:

(1) The planning area is predominately (over 75 percent of the entitlement) developed.

(2) The planning area does not have a City-approved affordable housing program.

(3) The undeveloped residential areas have a zoning designation of estate, low, and/or medium density; or

d. Financial or processing incentives are not available to bridge the gap of developing affordable housing within the planning area. In order to determine whether or not financial and/or processing incentives are available to bridge the gap of developing affordable housing within the project area, the applicant shall

submit the following items to the Director of Redevelopment, who will subsequently provide a written determination regarding the project's ability to utilize the menu option:

(1) A list of any and all other non-City or non-Redevelopment Agency sources for assistance the applicant has reviewed and a detailed explanation of why each of the other sources is not being used.

3. Menu options. Applicants who qualify to choose a menu option may choose from one of the following "equivalent value" options:

a. Convert existing market rate housing to affordable housing for a period of at least 30 years.

b. Extend the term of affordability for affordable units for a period of at least 40 years.

c. Payment of in-lieu fees.

d. Transfer control of units to a nonprofit housing agency.

e. Transfer of off-site credits for affordable units not provided on the site.

f. Provision of alternative housing.

g. Dedication of land for affordable housing.

h. An alternative option acceptable to the City.

An applicant may use one or more options to satisfy the affordable housing requirement.

4. Annual study. To ensure comparable equivalent value of selected menu options in exchange for not providing units within the planning area, the City shall conduct an annual reevaluation of the variables used in the in-lieu fee matrix.

5. Implementation of menu options. Should the menu option be utilized in achieving the affordability goal, the following criteria shall be utilized to implement each option as respectively listed in Section 2-3-5 B 3:

a. Convert market rate housing to affordable housing: The purchase cost of owner occupied or the rent for rental units shall be reduced to provide the same number of units at the same income levels as outlined in Section 2-3-4 for a period of at least 30 years.

b. Extend the term of affordability of existing program affordable units: For bond units or other program affordable units whose affordability will expire within five years of the approval of the affordable housing plan, the existing level of affordability for the designated income households shall be extended for a period of at least 40 years from the existing expiration date for an equivalent or greater number of units than required in Section 2-3-4.

c. Payment of in-lieu fees: The applicant may pay an in-lieu fee, based on the total number of units being developed, as determined by City Council resolution and based on the in-lieu fee formula. The in-lieu fee shall be determined at the time building permits are issued for development of a project. Applicants may pay an affordable housing in-lieu fee of $17,000 per unit if an application for a general plan amendment in the Irvine Business Complex (Planning Area 36) was filed prior to January 1, 2007 and the in-lieu fees are paid and a building permit is pulled by December 31, 2009. Menu option items are designed to generate a value in furtherance of affordable housing that is equivalent or

comparable to the actual value of providing such housing in the planning area as defined in Section 2-3-5 B 1.

Fees collected under the in-lieu fee program will be placed in the City's Affordable Housing Fund (AHF) and will be used to fund projects implementing the City's Housing Element Needs Assessment and/or serving households earning 80 percent or less of the Area Median Income (AMI), as annually defined by the California State Department of Housing and Community Development.

d. Transfer control of units to a nonprofit housing agency: Dedicate applicant-owned units to nonprofit organizations in the same ratio and at the same income levels as required in Section 2-3-4.

e. Transfer of credits for affordable units provided elsewhere in the City: If an applicant has provided affordable housing above the required number of units, the excess units can be used as credit for satisfaction of affordable housing requirements off-site or can be sold to applicants who do not provide sufficient affordable units on-site, subject to the Affordable Housing Credits Program guidelines outlined in Section 2-3-6 of this chapter.

f. Provision of alternative housing: The applicant may propose to provide alternative housing, such as special needs housing, single room occupancy hotels, or resident shelters. The number of units, rooms, or beds provided in alternative housing shall be credited on a one-to-one ratio to the total number of units required for the affordable housing needs goal. The same ratio may be applied to alternative housing provided within the planning area. To the degree Income I units are provided, a 1.6:1 credit is available. Menu option items are designed to generate a value in furtherance of affordable housing that is equivalent or comparable to the actual value of providing such housing in the planning area as defined in Section 2-3-5 B 1.

g. Dedication of land for affordable housing: Transfer control of land to the City, Redevelopment Agency, or a City-approved non-profit agency to be used for affordable housing projects. The value of land dedication will be the same as the value of the number of affordable units with income levels as defined in Section 2-3-4 which are not provided in the proposed project. The value shall be calculated based on a City-approved appraisal of the land. Menu option items are designed to generate a value in furtherance of affordable housing that is equivalent or comparable to the actual value of providing such housing in the planning area as defined in Section 2-3-5 B 1.

h. Other programs: Alternative programs which provide affordable housing in a manner not specifically described above may be considered by the City provided the requirement of Section 2-3-4 is met either through the provision of units or through the value of the alternative. Multiple credits may be allowed if such programs provide affordable housing in excess of the goals either in terms of the degree of affordability, in the amount of affordable units or both. Such programs may be approved at the discretion of the City as specified in an affordable housing implementation program. Menu option items are designed to generate a value in furtherance of affordable housing that is equivalent or comparable to the actual value of providing such housing in the planning area as defined in Section 2-3-5 B 1.

(Ord. No. 04-15, § 3, 12-14-04; Ord. No. 07-11, § 3, 4-24-07)

Sec. 2-3-6. Affordable housing credits guidelines.

A. Introduction. The purpose of the Affordable Credits ("Credits") Program is to promote the construction of affordable housing units within the City by establishing a system of credits that can be earned by applicants of residential projects which include higher percentages of affordable units than are currently required by the City's Inclusionary Housing Program and in turn sold or transferred to applicants of other residential projects.

Separate credit programs are established for the three categories of affordable homes (Income Levels I/II, III and IV), so that a project can fulfill its affordable requirements on-site at one income level, while using credits to cover its requirement at another income level. The City will maintain a database to keep track of existing credits so that applicants of market-rate projects can be informed of the availability of such credits.

B. Defined terms. The following defined terms are utilized in these guidelines:

Affordable housing credits agreement means an agreement required for any residential development project that is involved in the purchase or sale of credits.

Affordable housing in-lieu fees means fees payable by an applicant of a market-rate project or a mixed project with affordable shortfalls, in lieu of the actual construction of affordable units on the project site.

Affordable project means a residential project that includes only affordable units.

Affordable unit means a residential dwelling unit that is affordable to and rented or sold to a household with an income of below 120 percent of the County of Orange median income. An affordable unit may be designated as falling into one of four income categories (Income Levels I--IV), based on the highest household income that is qualified to purchase or rent that unit.

Agreement means an affordable housing credits agreement.

Applicant shall mean and, depending on context, shall include the owner(s), lessee(s) or developer(s) of property, or their authorized agents, with regard to any application for residential property development permits or approvals from the City of Irvine.

City means the City of Irvine.

County median income means the current median income in Orange County as determined by the U.S. Department of Housing and Urban Development.

Credits means affordable housing credits.

Excess affordable units means the number of affordable units in a residential project that fall within a given income level category that exceeds the required affordable component for that income level.

Income level I means a household income of not more than 30 percent of the county median income, as adjusted for household size.

Income level II means a household income of over 30 percent but not more than 50 percent of the county median income, as adjusted for household size.

Income level III means a household income of over 50 percent but not more than 80 percent of the county median income, as adjusted for household size.

Income level IV means a household income of over 80 percent but not more than 120 percent of the county median income, as adjusted for household size.

In-lieu fees means affordable housing in-lieu fees.

Market-rate project means a residential project that only includes market-rate units.

Market-rate units mean residential dwelling units that are not affordable units.

Mixed project means a residential project that includes both affordable units and market-rate units.

Mixed project with excess affordables means a mixed project in which there are excess affordable units at one or more income levels. (Please note that it is possible that a mixed project with excess affordables for one income level category may have a shortage of affordable units at other income level categories).

Mixed project with affordable shortfall means a mixed project in which there is a shortage of affordable units at one or more income levels. (Please note that it is possible that a mixed project with affordable shortfall at one income level category may have sufficient affordable units or excess affordable units at other income level categories).

Program means the City Affordable Housing Credits Program.

Required affordable component means, for any residential project within the City, the percentages of dwelling units that are required to be affordable to households in each of the three income level categories listed below:

Income levels I and II: Five percent of project
Income level III: Five percent of project
Income level IV: Five percent of project

C. Guidelines. The Program shall be administered by the City according to the following guidelines:

1. An agreement must be executed prior to the issuance of building permits for those units in a market-rate project or mixed project with affordable shortfall that will be satisfying their required affordable component through the use of credits. The purchaser of credits, the seller of credits and the city shall all be signatories to the agreement. The agreement shall state the number of credits involved, and must identify the specific residential projects that will be generating the credits and will be receiving the credits. Information on the purchase price or payment arrangements for the credits shall not be required to be disclosed within the agreement.

2. Affordable credits generated by excess affordable units shall become available for use by a market-rate project or mixed project after:

(i) Building permits for the excess affordable units have been issued, and

(ii) The applicant of the affordable project or mixed project with excess affordables has posted a bond to assure the construction of the excess

affordable units or a certificate of occupancy has been issued for the excess affordable units.

3. Separate affordable credits shall be issued for excess affordable units in each of the three income level categories (i.e., income levels I/II, III and IV).

4. Affordable projects and mixed projects that agree to satisfy the required affordable component for one or more income level categories on-site shall not be required to pay in-lieu fees or provide affordable credits for the income level categories anticipated to be provided on-site. Said agreement will be enforced through a condition of the discretionary approval of the project.

5. Until credits become available, even after the agreement is executed, the applicant of any residential project that is not providing its required affordable component for a given income level category on-site must pay in-lieu fees at the time of building permit issuance for any market-rate units or affordable units not yet covered by credits for that income level category. These in-lieu fees shall be reimbursed to the applicant of the market-rate project and/or the mixed project, without interest, upon availability of the credits listed in the agreement (see guideline #2).

6. One credit for any income level category shall release 19 dwelling units in a market-rate project or a mixed project with affordable shortfall from their required affordable component for that same income level category.

7. The following guidelines for granting credits and combining credits for affordable units are summarized in table 1 below:

a. Units that are priced for, sold to and occupied by households in income level categories I, II and III shall receive 2.0 Credits in the corresponding income category.

b. 1.6 income level I/II credits shall be granted for each rental excess affordable unit that satisfies the income level I category requirement.

c. 3.2 income level I/II credits shall be granted for excess affordable units that satisfy income level I category requirements and are priced for, sold to and occupied by households in the income level I category.

d. 1.4 income level II and III credits shall be granted in the corresponding income level category for rental excess affordable units that include three bedrooms, and 1.6 income level II and III credits shall be granted in the corresponding income level category for rental excess affordable units that include four bedrooms.

e. 2.24 income level I/II credits shall be granted for rental excess affordable units in the income level I category that include three bedrooms, and 2.56 income level I/II credits shall be granted for rental excess affordable units in the income level I category that include four bedrooms.

f. 2.8 income level II and III credits shall be granted for excess affordable units in the corresponding income level categories that include three bedrooms and are priced for, sold to and occupied by households in the corresponding income level category.

g. 3.2 income level II and III credits shall be granted for excess affordable units in the corresponding income level categories that include four bedrooms and are priced for, sold to and occupied by households in the corresponding income level category.

h. 4.48 income level I/II credits shall be granted for excess affordable units in the income level I category that includes three bedrooms and are priced for, sold to and occupied by households in the income level I category.
i. 5.12 income level I/II credits shall be granted for excess affordable units in income category I that include four bedrooms and are priced for, sold to and occupied by households in the income level I category.

8. All applicants of market-rate projects or mixed projects with affordable shortfalls utilizing the program shall pay for their share of the administration costs related to the application of credits to their project through hourly fees charged by the City. Any administrative costs not covered by the hourly fees shall be paid to the City by the applicant of the market-rate project or mixed project with affordable shortfall prior to the acceptance of the credits for the specific project by the city.

9. Credits shall be assigned to applicants of affordable projects or mixed projects with excess affordables, based on the guidelines listed above, for:
(i) The conversion of existing market-rate units to affordable units for a period of at least 30 years,
(ii) The extension of the term of affordability of existing affordable units by an additional 40 years, and
(iii) The construction of second units that meet the City's affordability guidelines.
Credits may be assigned to property owners and applicants in return for the dedication of land for affordable housing use and the construction of special needs housing, with the number of credits assigned based on the City's determination of the value of these types of assistance.

10. Affordable projects or mixed projects with excess affordable that have received affordable housing in-lieu fees from the City shall have their credits reduced based on the proportion of their affordable units that have been fully or partially assisted with the affordable housing in-lieu fees. The Director shall make all determinations regarding the number of affordable units assisted in this manner.

11. A database shall be prepared and maintained by the City to keep track of the use and availability of affordable credits within the City. A list of uncommitted excess affordable credits shall also be kept on file by the City to be made available to applicants of market-rate projects and mixed projects with affordable shortfalls who are interested in purchasing Credits.
(Ord. No. 04-15, § 3, 12-14-04; Ord. No. 07-11, § 3, 4-24-07)

Sec. 2-3-7. Role of financial and processing incentives.
Pursuant to the Housing Element, the purpose of financial and processing incentives is to bridge the gap between the actual cost of construction of a market rate unit and the value of an affordable unit. If financial incentives are not available for on-site construction of affordable units, satisfaction of the affordable housing goal shall be achieved through the selection of alternatives in the menu options outlined in this Section. Nothing herein is intended nor does it place any obligation on the City to provide financial incentives or offset the cost of providing affordable housing as required by the Housing Element.

A. Financial incentives defined. Financial incentives mean monetary assistance to the project for the purpose of subsidizing the cost of providing affordable units. The City, the Redevelopment Agency or another public, private or non-profit source may provide financial assistance.

B. Processing incentives defined. Processing incentives are any changes to existing land use policies which will increase the applicant's ability to provide affordable housing, such as modifications for setbacks or building height, fee waivers, and density bonuses granted according to Government Code regulations.
(Ord. No. 04-15, § 3, 12-14-04; Ord. No. 07-11, § 3, 4-24-07)

Sec. 2-3-8. Monitoring.
The applicant of an affordable housing development project shall comply with the program monitoring guidelines set forth herein.

A. The applicant shall provide the City with an annual report detailing compliance with the adopted affordable housing plan for the project.

B. Failure to comply with the terms of the adopted affordable housing plan may result in the revocation of a conditional use permit for the project or similar exercises of the City's enforcement powers.
(Ord. No. 04-15, § 3, 12-14-04; Ord. No. 07-11, § 3, 4-24-07)

Sec. 2-3-9. Affordable housing plan requirements for planning areas.
When a project entails the development of an entire planning area, the applicant shall designate the sites on which affordable housing units shall be developed. The designation of affordable housing sites shall be made in conjunction with the submittal of the first subdivision map for the planning area. The applicant may submit a site plan or a letter indicating the sites designated for affordable housing.

A. The affordable housing sites shall be distributed to prevent undue concentration of affordable housing in any one area.

B. In order to expand the applicant's opportunities to obtain financial assistance for the provision of affordable housing, a project with up to 100 percent affordability will be considered, and may be approved, by the City. A project application offering to provide affordable housing in excess of the requirements set forth in this Chapter, or the Housing Element, may only be denied in accordance with the terms of Government Code Section 65589.5(d).

The owner(s) of any of the parcels indicated as a site for affordable housing shall be required to inform any potential purchaser/applicant that this site is to be used to fulfill the City's affordable housing requirements.
(Ord. No. 04-15, § 3, 12-14-04; Ord. No. 07-11, § 3, 4-24-07)

Sec. 2-3-10. Residential density bonus standards.
A. Purpose and Intent. The purpose of the provisions of this section is to comply with State Density Bonus standards, which are intended to provide incentives for the production of housing for very low income, low, and moderate income households, or senior households in accordance with Sections 65915 through 65918 of the California Government Code, as may be amended from time to time or any successor density bonus statute. In enacting this Section, it is the intent of the City of Irvine to

facilitate the development of affordable housing and to implement the goals, objectives and policies of the City's Housing Element.

B. Implementation. The City shall grant requests for a Density Bonus and Incentives as set forth in Subsection 2-3-10(D), and in accordance with California Government Code Sections 65915-65918, as may be amended from time to time or any successor density bonus statute.

C. Development Standards. Target Units should be constructed concurrently with Market Rate Units unless both the City and the applicant agree within the Density Bonus Housing Agreement, required pursuant to Subsection 2-3-10(F), to an alternative schedule for development.

In determining the maximum Affordable Rent or Affordable Sales Price of Target Units the following household and unit size assumptions shall be used, unless the Housing Development is subject to different assumptions imposed by other governmental regulations:

SRO (single room) unit	75% of 1 person
0 bedroom (studio)	1 person
1 bedroom	2 person
2 bedroom	4 person
3 bedroom	6 person
4 bedroom	8 person

Target units should be built on-site wherever possible and, when practical, be dispersed within the Housing Development. Where feasible, the number of bedrooms of the target units should be equivalent to the bedroom mix of the market rate units of the Housing Development; except that the applicant may include a larger proportion of target units with a higher bedroom counts. The design and appearance of the target units shall be compatible with the design of the total Housing Development. Housing Developments shall comply with all applicable development standards, except those which may be modified as provided by this Subsection 2-3-10(D).

Circumstances may arise in which the public interest would be served by allowing some or all of the target units associated with one Housing Development to be produced and operated at an alternative development site. Where the applicant and the City form such an agreement, the resulting linked developments shall be considered a single Housing Development for purposes of this Section. Under these circumstances, the applicant shall be subject to the same requirements of this Section for the target units to be provided on the alternative site.

A density bonus housing agreement shall be made a condition of the discretionary planning permits (e.g., tract maps, parcel maps, site plans, planned development or conditional use permits, etc.) for all Housing Developments pursuant to this Section. The agreement shall be recorded as a restriction on the parcel or parcels on which the target units will be constructed. The agreement shall be consistent with Subsection 2-3-10(F).

D. Development incentives. Development incentives shall be granted by the City in accordance with California Government Code Sections 65915-65918, as may be amended from time to time or any successor density bonus statute.

Criteria that may be used to evaluate whether an incentive is sufficient to make the affordable units economically feasible may include, but are not limited to, one or more of the following:

1. A development pro forma outlining the capital costs, operating expenses, return on investment, revenues, loan-to-value ratio and the debt-coverage ration including the contribution provided by any applicable subsidy programs, and the economic effect created by the 30-year use and income restrictions of the affordable housing units.
2. An appraisal report indicating the value of the density bonus and of the incentive(s) and of the value of any other incentives.
3. Sources and use of funds statement identifying the projected financing gap of the project with the affordable housing units that are the basis for granting the density bonus and incentive(s). The applicant shall establish how much of the gap would be covered by the density bonus, leaving a remainder figure to be covered by additional incentives.

E. Application requirements and review. An application pursuant to this Section shall be processed concurrently with any other application(s) required for the Housing Division. Final approval or disapproval of an application shall be made by the Planning Commission. The approval or disapproval of the proposed development may be subject to the provisions of Government Code Section 65589.5, which requires certain findings where the City proposes to:

1. Disapprove, or approve with conditions rendering the affordable housing development infeasible, or
2. Disapprove, or approve at a lesser density, a housing development proposal which complies with the applicable general plan, zoning, and development policies in effect at the time the project's application is deemed complete.

F. Density bonus housing agreement. Applicants requesting a density bonus, shall (draft and) agree to enter into a density bonus housing agreement with the City. The terms of the draft agreement shall be reviewed and revised as appropriate by the director of redevelopment. Following execution of the agreement by all parties, the completed density bonus housing agreement, or memorandum thereof, shall be recorded and the resulting conditions filed and recorded on the parcel or parcels designated for the construction of target units.

The approval and recordation shall take place prior to final map approval, or, where a map is not being processed, prior to issuance of building permits for such parcels or units. The density bonus housing agreement shall be binding to all future owners and successors in interest.

The density bonus housing agreement shall include at least the following:

1. The total number of units approved for the housing development, including the number of target units.
2. A description of the household income group to be accommodated by the housing development, as outlined in Subsection 2-3-10(A) and the standards for determining the corresponding affordable rent or affordable sales price and housing cost.
3. The location, unit sizes (square feet) and number of bedrooms of target units.
4. Tenure of use restrictions for target units of at least 30 years, in accordance with Government Code Sections 65915-65918, as may be amended from time to time or any successor density bonus statute.

5. A schedule for completion and occupancy of target units.
6. A description of the incentive(s) being provided by the City.
7. A description of remedies for breach of the agreement by either party (the City may identify tenants or qualified purchasers as third party beneficiaries under the agreement).
8. Other provisions to ensure implementation and compliance with this section.

In the case of for-sale housing developments, the density bonus housing agreement shall provide for the following conditions governing the initial sale and use of target units during the applicable use restriction period:

1. Target units shall, upon initial sale, be sold to eligible very low, low or moderate income households at an affordable sales price and housing cost, or to qualified residents (i.e., maintained as senior citizen housing) as defined in Government Code Sections 65915-65918, as may be amended from time to time or any successor density bonus statute.
2. Target units shall be initially owner-occupied by eligible very low, low or moderate income households, or by qualified residents in the case of senior citizen housing.
3. The initial purchaser of each target unit shall execute an instrument or agreement approved by the City restricting the sale of the target unit in accordance with this chapter during the applicable use restriction period. Such instrument or agreement shall be recorded against the parcel containing the target unit and shall contain such provisions as the City may require to ensure continued compliance with this ordinance and the state density bonus law.

In the case of rental housing developments, the density bonus housing agreement shall provide for the following conditions governing the use of target units during the use restriction period:

1. The rules and procedures for qualifying tenants, establishing affordable rent, filling vacancies, and maintaining target units for qualified tenants;
2. Provisions requiring owners to verify tenant incomes and maintain books and records to demonstrate compliance with this Section.
3. Provisions requiring owners to submit an annual report to the City, which includes the name, address, and income of each person occupying target units, and which identifies the bedroom size and monthly rent or cost of each target unit.

In the case of housing developments that utilize the density bonus provisions associated with child care facilities, the applicant shall comply with Government Code Sections 65915-65918, as may be amended from time to time or any successor density bonus statute.

(Ord. No. 04-16, § 3, 12-14-04; Ord. No. 07-11, § 3, 4-24-07)

Montgomery County Code
Part II. Local Laws, Ordinances, Resolutions, Etc.
Chapter 25A. Housing, Moderately Priced.

The County Council hereby finds that a severe housing problem exists within the County with respect to the supply of housing relative to the need for housing for residents with low and moderate incomes. Specifically, the County Council finds that:

(1) The County is experiencing a rapid increase in residents of or approaching retirement age, with consequent fixed or reduced incomes; young adults of modest means forming new households; government employees in moderate income ranges; and mercantile and service personnel needed to serve the expanding industrial base and population growth of the County;

(2) A rising influx of residents into higher priced housing in the County with resultant demands for public utilities, governmental services, and retail and service businesses has created an increased need for housing for persons of low and moderate income who are employed in the stated capacities;

(3) The supply of moderately priced housing was inadequate in the mid-1960's and has grown since then at a radically slower pace than the demand for such housing;

(4) The inadequate supply of housing in the County for persons of low and moderate income results in large-scale commuting from outside the County to places of employment within the County, thereby overtaxing existing roads and transportation facilities, significantly contributing to air and noise pollution, and engendering greater than normal personnel turnover in the businesses, industry and public agencies of the County, all adversely affecting the health, safety and welfare of and resulting in an added financial burden on the citizens of the County;

(5) A careful study of market demands shows that approximately one-third of the new labor force in the County for the foreseeable future will require moderately priced dwelling units;

(6) Demographic analyses indicate that public policies which permit exclusively high-priced housing development discriminate against young families, retired and elderly persons, single adults, female heads of households, and minority households; and such policies produce the undesirable and unacceptable effects of exclusionary zoning, thus failing to implement the Montgomery County housing policy and the housing goal of the general plan for the County;

(7) Experience indicates that the continuing high level of demand for more luxurious housing, with a higher profit potential, discourages developers from offering a more diversified range of housing; and the production of moderately priced housing is further deterred by the high cost of land, materials, and labor;

(8) Actual production experience in the County indicates that if land costs can be reduced, houses of more modest size and fewer amenities can be built to be sold at a profit in view of the existing ready market for such housing;

(9) Every indication is that, given the proper incentive, the private sector is best equipped and possesses the necessary resources and expertise required to provide the type of moderately priced housing needed in the County;

(10) Rapid regional growth and a strong housing demand have combined to make land and construction costs very high and to have an effect on the used housing market by causing a rise in the prices of those units;

(11) In past years efforts have been made to encourage moderately priced housing construction through zoning incentives permitting greater density and through relaxation of some building and subdivision regulations. Very little moderately priced housing had resulted; and

(12) In some instances existing housing for persons of low and moderate income is substandard and overcrowded.

Sec. 25A-2. Declaration of public policy.

The County Council hereby declares it to be the public policy of the County to:

(1) Implement the Montgomery County housing policy and the general plan goal of providing for a full range of housing choices, conveniently located in a suitable living environment, for all incomes, ages and family sizes;

(2) Provide for low- and moderate-income housing to meet existing and anticipated future employment needs in the County;

(3) Assure that moderately priced housing is dispersed within the County consistent with the general plan and area master plans;

(4) Encourage the construction of moderately priced housing by allowing optional increases in density in order to reduce land costs and the costs of optional features that may be built into such moderately priced housing;

(5) Require that all subdivisions of 35 or more dwelling units include a minimum number of moderately priced units of varying sizes with regard to family needs, and encourage subdivisions with fewer than 35 units to do the same;

(6) Ensure that private developers constructing moderately priced dwelling units under this Chapter incur no loss or penalty as a result thereof, and have reasonable prospects of realizing a profit on such units by virtue of the MPDU density bonus provision of Chapter 59 and, in certain zones, the optional development standards; and

(7) Allow developers of residential units in qualified projects more flexibility to meet the broad objective of building housing that low- and moderate-income households can afford by letting a developer, under specified circumstances, comply with this Chapter by contributing to a County Housing Initiative Fund.

Sec. 25A-3. Definitions.

The following words and phrases, as used in this Chapter, have the following meanings:

(a) Applicant means any person, firm, partnership, association, joint venture, corporation, or any other entity or combination of entities, and any transferee of all or part of the land at one location.

(b) At one location means all adjacent land of the applicant if

(1) The property lines are contiguous or nearly contiguous at any point; or

(2) The property lines are separated only by a public or private street, road, highway or utility right-of-way, or other public or private right-of-way at any point; or

(3) The property lines are separated only by other land of the applicant which is not subject to this Chapter at the time of any permit, site plan, development or subdivision application by the applicant.

(c) Available for building development means all land:

(1) Owned by, or under contract to, the applicant;

(2) Zoned for any type of residential development to which an optional density bonus provision applies;

(3) Which will use public water and sewerage; and

(4) Which is already subdivided or is ready to be subdivided for construction or development.

(d) Closing costs means statutory charges for transferring title, fees for obtaining necessary financing, title examination fees, title insurance premiums, house location survey charges and fees for preparation of loan documents and deed of conveyance.

(e) Commission means the Housing Opportunities Commission of Montgomery County.

(f) Consumer Price Index means the latest published version of the Consumer Price Index for All Urban Consumers (CPI-U) of the U.S. Department of Labor for the Washington metropolitan area, or any similar index selected by the County Executive.

(g) Control period means the time an MPDU is subject to either resale price controls and owner occupancy requirements or maximum rental limits, as provided in Section 25A-9. The control period is 30 years for sale units and 99 years for rental units, and begins on the date of initial sale or rental. If a sale MPDU is sold to an eligible person within 30 years after its initial sale, and if (in the case of a sale MPDU that is not bought and resold by a government agency) the unit was originally offered for sale after March 1, 2002, the unit must be treated as a new sale MPDU and a new control period must begin on the date of the sale.

(h) Date of original sale means the date of settlement for purchase of a moderately priced dwelling unit.

(i) Date of original rental means the date the first lease agreement for a moderately priced dwelling unit takes effect.

(j) Department means the Department of Housing and Community Affairs.

(k) Director, except as otherwise indicated, means the head of the Department of Housing and Community Affairs, or the Director's designee.

(l) Dwelling unit means a building or part of a building that provides complete living facilities for one family, including at a minimum facilities for cooking, sanitation and sleeping.

(m) Eligible person means a person or household whose income qualifies the person or household to participate in the MPDU program, and who holds a valid certificate of eligibility from the Department which entitles the person or household to buy or rent an MPDU during the priority marketing period.

(n) Housing Initiative Fund means a fund established by the County Executive to achieve the purposes of Section 25B-9.

(o) Low income means levels of income within the income range for "very-low income families" established from time to time by the U.S. Department of Housing and Urban Development for the Washington metropolitan area, under federal law, or as defined by executive regulations.

(p) Moderate income means those levels of income, established in executive regulations, which prohibit or severely limit the financial ability of persons to buy or rent housing in Montgomery County.

(q) Moderately priced dwelling unit or MPDU means a dwelling unit which is:

(1) offered for sale or rent to eligible persons through the Department, and sold or rented under this Chapter; or
(2) sold or rented under a government program designed to assist the construction or occupancy of housing for families of low or moderate income, and designated by the Director as an MPDU.

(r) Optional density bonus provision means any increase in density under Chapter 59, in a zoning classification that allows residential development, above the amount permitted in the base or standard method of development density, whether by exercise of the optional provisions of Chapter 59 or by any special exception.

(s) Planning Board means the Montgomery County Planning Board.

(t) Priority marketing period is the period an MPDU must be offered exclusively for sale or rent to eligible persons, as provided in Section 25A-8.

Sec. 25A-4. Income and eligibility standards.

(a) The County Executive must set and annually revise standards of eligibility for the MPDU program by regulation. These standards must specify moderate-income levels for varying sizes of households which will qualify a person or household to buy or rent an MPDU. The Executive must set different income eligibility standards for buyers and renters. The Executive may set different income eligibility standards for buyers and renters of higher-cost or age-restricted housing, as defined by regulation.

(b) In establishing standards of eligibility and moderate-income levels, the Executive must consider:

(1) the price established for the sale or rental of MPDUs under this Chapter,
(2) the term and interest rate that applies to the financing of MPDUs,
(3) the estimated levels of income necessary to carry a mortgage on an MPDU, and
(4) family size and number of dependents.

(c) A person who rents an MPDU and lawfully occupies it when the unit is offered for sale may buy the unit, regardless of the person's income at the time of sale, if the person met all eligibility standards when the person first rented the unit.

(d) To be eligible to buy or rent an MPDU, a person and members of that person's household must not have owned any residential property during the previous 5 years. The Director may waive this restriction for good cause.

Sec. 25A-5. Requirement to build MPDU's; agreements.

(a) The requirements of this Chapter to provide MPDU's apply to any applicant who:

(1) submits for approval or extension of approval a preliminary plan of subdivision under Chapter 50 which proposes the development of a total of 20 or more dwelling units at one location in one or more subdivisions, parts of subdivisions, resubdivisions, or stages of development, regardless of whether any part of the land has been transferred to another party;
(2) submits to the Planning Board or to the Director of Permitting Services a plan of housing development for any type of site review or development approval required by law, which proposes construction or development of 20 or more dwelling units at one location; or
(3) with respect to land in a zone not subject to subdivision approval or site plan review, applies for a building permit to construct a total of 20 or more dwelling units at one location.

In calculating whether a development contains a total of 20 or more dwelling units for the purposes of this Chapter, the development includes all land at one location in the County available for building development under common ownership or control by an applicant, including land owned or controlled by separate corporations in which any stockholder or family of the stockholder owns 10 percent or more of the stock. An applicant must not avoid this Chapter by submitting piecemeal applications or approval requests for subdivision plats, site or development plans, or building permits. Any applicant may apply for a preliminary plan of subdivision, site or development plan, record plat or building permit for fewer than 20 dwelling units at any time; but the applicant must agree in writing that the applicant will comply with this Chapter when the total number of dwelling units at one location reaches 20 or more.

(b) Any applicant, in order to obtain a building permit, must submit to the Department of Permitting Services, with the application for a permit, a written MPDU agreement approved by the Director and the County Attorney. Each agreement must require that:

(1) a specific number of MPDUs must be constructed on an approved time schedule;
(2) in single-family dwelling unit subdivisions, each MPDU must have 3 or more bedrooms; and
(3) in multi-family dwelling unit subdivisions, the number of efficiency and one- bedroom MPDUs each must not exceed the ratio that market-rate efficiency and one-bedroom units respectively bear to the total number of market-rate units in the subdivision.

The Director must not approve an MPDU agreement that reduces the number of bedrooms required by this subsection in any MPDU.

(c) When the development at one location is in a zone where a density bonus is allowed; and

(1) is covered by a plan of subdivision,
(2) is covered by a plan of development or a site plan, or
(3) requires a building permit to be issued for construction, the required number of moderately priced dwelling units is a variable percentage that is not less than 12.5 percent of the total number of dwelling units at that location, not counting any workforce housing units required under Chapter 25B. The required number of MPDUs must vary according to the amount by which the approved development exceeds the normal or standard density for the zone in which it is located. Chapter 59 permits bonus densities over the presumed base density where MPDUs are provided. If the use of the optional MPDU development standards does not result in an increase over the base density, the Director must conclude that the base density could not be achieved under conventional development standards, in which case the required number of MPDUs must not be less than 12.5 percent of the total number of units in the subdivision. The amount of density bonus achieved in the approved development determines the percentage of total units that must be MPDUs, as follows:

Achieved DensityBonus	MPDUs Required		Achieved Density Bonus	MPDUs Required
Zero	12.5%		Up to 11%	13.6%
Up to 1%	12.6%		Up to 12%	13.7%
Up to 2%	12.7%		Up to 13%	13.8%
Up to 3%	12.8%		Up to 14%	13.9%
Up to 4%	12.9%		Up to 15%	14.0%
Up to 5%	13.0%		Up to 16%	14.1%

Up to 6%	13.1%		Up to 17%	14.2%
Up to 7%	13.2%		Up to 18%	14.3%
Up to 8%	13.3%		Up to 19%	14.4%
Up to 9%	13.4%		Up to 20%	14.5%
Up to 10%	13.5%		Up to 22%	15.0%

(d) (1) Notwithstanding subsection (c), the Director may allow fewer or no MPDUs to be built in a development with more than 20 but fewer than 50 units at one location if the Planning Board, in reviewing a subdivision or site plan submitted by the applicant and based on the lot size, product type, and other elements of the plan as submitted, finds that achieving a bonus density of 20 percent or more at that location:

(A) would not allow compliance with applicable environmental standards and other regulatory requirements, or
(B) would significantly reduce neighborhood compatibility.

(2) If the Planning Board approves a density bonus of at least 20 percent for a development which consists of 20 or more but fewer than 50 units at one location, the number of MPDU's required must be governed by subsection (c) unless the formula in subsection (c) would not allow the development to have one bonus market rate unit. In that case, the Board must reduce the required number of MPDU's by one unit and approve an additional market rate unit.

(e) The Director may approve an MPDU agreement that:

(1) allows an applicant to reduce the number of MPDUs in a subdivision only if the agreement meets all requirements of Section 25A-5A; or
(2) allows an applicant to build the MPDUs at another location only if the agreement meets all requirements of Section 25A-5B.

(f) (1) An applicant may satisfy this Section by obtaining approval from the Director to transfer land to the County before applying for a building permit. The applicant must sign a written land transfer agreement approved by the Director and by the County Attorney. For the Director to consider the request and take timely action, a written notice of the applicant's intent to submit an agreement should be served upon the Director at least 90 days before the application for a building permit is filed. The land transfer agreement must covenant that so much of the land, designated in the approved preliminary plan or site plan as land to which the optional zoning provisions for MPDUs apply, as is necessary in order to construct the number of MPDUs required by subsection (a) will be transferred, as finished lots, to Montgomery County or to the County's designee before the building permit is issued, so that the County might cause MPDUs to be constructed on the transferred land. After the submission of supporting documentation and review and approval by the County for the transfer of finished lots, the County must reimburse the applicant for the costs the applicant actually incurred, which are directly attributable to the finishing of the MPDU lots so transferred. Reimbursable costs include but are not

limited to engineering costs; clearing, grading, and paving streets, including any required bonds and permits; installation of curbs, gutters and sidewalks; sodding of public right-of-way; erection of barricades and signs; installation of storm sewers and street lighting; and park and other open space and recreational development directly benefiting the MPDU lots transferred. The County must not reimburse an applicant for the cost or value of the transferred lots.

(2) If an applicant transfers land to the County under this subsection and no funds have been appropriated to reimburse the applicant for his finishing costs, the County may accept from the applicant undeveloped land rather than finished lots, or the applicant may transfer the finished lots to the County without requiring payment for finishing the lots.

(3) Notwithstanding any other provisions of the subsection, the County may reject an election by an applicant to transfer land to the County in whole or in part whenever the public interest would best be served thereby. Any rejection and the reasons for the rejection may be considered by the Planning Board or the Director of Permitting Services in deciding whether to grant the applicant a waiver of this Chapter under Section 25A-7(b).

(4) Any transfer of land to the County hereunder is not subject to Section 11B-33, and any land so transferred is not property subject to Section 11B-31A regulating the disposal of surplus land. The Director may dispose of the lots in a manner that furthers the objectives of this Chapter.

(g) The MPDU agreements must be signed by the applicant and all other parties whose signatures are required by law for the effective and binding execution of contracts conveying real property. The agreements must be executed in a manner that will enable them to be recorded in the land records of the County. If the applicant is a corporation, the agreements must be signed by the principal officers of the corporation individually and on behalf of the corporation. Partnerships, associations or corporations must not evade this Chapter through voluntary dissolution. The agreements may be assigned if the County approves, and if the assignees agree to fulfill the requirements of this Chapter.

(h) The Department of Permitting Services must not issue a building permit in any subdivision or housing development in which MPDUs are required until the applicant submits a valid MPDU agreement which applies to the entire subdivision or development. The applicant must also file with the first application for a building permit a statement of all land the applicant owns in the County that is available for building development. In later applications, the applicant need only show additions and deletions to the original landholdings available for building development.

(i) The MPDU agreement must include the number, type, location, and plan for staging construction of all dwelling units and such other information as the Department requires to determine the applicant's compliance with this Chapter. The MPDU staging plan must be consistent with any applicable land use plan, subdivision plan, or site plan. The staging plan included in the MPDU agreement for all dwelling units must be sequenced so that:

(1) MPDUs are built along with or before other dwelling units;
(2) no or few market rate dwelling units are built before any MPDUs are built;

(3) the pace of MPDU production must reasonably coincide with the construction of market rate units; and
(4) the last building built must not contain only MPDUs.

This subsection applies to all developments, including any development covered by multiple preliminary plans of subdivision.

(j) If an applicant does not build the MPDUs contained in the staging plan along with or before other dwelling units, the Director of Permitting Services must withhold any later building permit to that applicant until the MPDUs contained in the staging plan are built.

(k) The applicant must execute and record covenants assuring that:

(1) The restrictions of this Chapter run with the land for the entire period of control;
(2) The County may create a lien to collect:
(A) that portion of the sale price of an MPDU which exceeds the approved resale price; and
(B) that portion of the foreclosure sale price of an MPDU which exceeds the approved resale price; and
(3) The covenants will bind the applicant, any assignee, mortgagee, or buyer, and all other parties that receive title to the property. These covenants must be senior to all instruments securing permanent financing.

(l) (1) In any purchase and sale agreement and any deed or instrument conveying title to an MPDU, the grantor must clearly and conspicuously state, and the grantee must clearly and conspicuously acknowledge, that:

(A) the conveyed property is a MPDU and is subject to the restrictions contained in the covenants required under this Chapter during the control period until the restrictions are released; and
(B) any MPDU owner, other than an applicant, must not sell the MPDU until:
(i) the owner has notified the Department under Section 25A-8 or 25A-9, as applicable, that the unit is for sale;
(ii) the Department and, where applicable, the Commission, have notified the owner that they do not intend to buy the unit; and
(iii) The Department has notified the owner of the unit's maximum resale price.

(2) Any deed or other instrument conveying title to an MPDU during the control period must be signed by both the grantor and grantee.

(3) When a deed or other instrument conveying title to an MPDU is recorded in the land records, the grantor must cause to be filed in the land records a notice of sale for the benefit of the County in the form provided by state law.

(m) Nothing in this Chapter prohibits an applicant from voluntarily building MPDUs, as calculated under subsection (c), in a development with fewer than 20 dwelling units at one location, and in so doing from qualifying for an optional method of development under Chapter 59. A development with fewer than 20 dwelling units where an applicant voluntarily builds MPDUs must comply with any procedures and

development standards that apply to a larger development under this Chapter and Chapter 59. Sections 25A-5A, 25A-5B, and 25A-6(b) do not apply to an applicant who voluntarily builds MPDU's under this subsection and in so doing qualifies for an optional method of development.

Sec. 25A-5A. Alternative payment agreement.

(a) The Director may approve an MPDU agreement that allows an applicant, instead of building some or all of the required number of MPDUs in the proposed subdivision, to pay to the Housing Initiative Fund an amount computed under subsection (b), only if an Alternative Review Committee composed of the Director, the Commission's Executive Director, and the Director of Park and Planning, or their respective designees, by majority vote finds that:

(1) either:

(A) an indivisible package of services and facilities available to all residents of the proposed subdivision would cost MPDU buyers so much that it is likely to make the MPDUs effectively unaffordable by eligible buyers; or

(B) environmental constraints at a particular site would render the building of all required MPDUs at that site economically infeasible; and

(2) the public benefit of additional affordable housing outweighs the value of locating MPDUs in each subdivision throughout the County, and accepting the payment will further the objective of providing a broad range of housing opportunities throughout the County.

(b) Any payment to the Housing Initiative Fund under this Section must equal or exceed 125% of the imputed cost of land for each unbuilt MPDU. Except as further defined by Executive regulation, the imputed land cost must be calculated as 10% (for high-rise units) or up to 30% (for all other housing units) of the actual sale price charged for each substituted unit. If the substituted unit will be a rental unit, the Director must calculate an imputed sale price under applicable regulations, based on the rent actually charged.

(c) Any payment to the Housing Initiative Fund under this Section may be used only to buy or build more MPDUs in the same planning policy area (as defined in the County Growth Policy) as the development for which the payment was made, and must not be used to reduce the annual County payment to the Fund.

(d) Any subdivision for which a payment is made under this Section is not eligible for any density bonus for which it would otherwise be eligible under Chapter 59.

Sec. 25A-5B. Alternative location agreement.

(a) The Director may approve an MPDU agreement that allows an applicant for development of a high-rise residential building, instead of building some or all of the required number of MPDUs on-site, to provide at least the same number of MPDUs at another location in the same planning policy area, only if the Director finds that:

(1) the public benefit of locating MPDUs at the proposed alternative location outweighs the value of locating MPDUs in each subdivision throughout the County; and

(2) building the MPDUs at the proposed alternative location will further the objective of providing a broad range of housing opportunities throughout the County.

(b) To satisfy the requirements of this Section, an applicant may:

(1) build, or convert from non-residential use, the required number of new MPDUs at a site approved by the Director;
(2) buy, encumber, or transfer, and rehabilitate as necessary, existing market rate housing units that meet all standards for use as MPDUs; or
(3) return to MPDU use, and rehabilitate as necessary, existing MPDUs for which price or rent controls have expired.

(c) Each agreement under this Section must include a schedule, binding on the applicant, for timely completion or acquisition of the required number of MPDUs.

Sec. 25A-6. Optional zoning provisions; waiver of requirements.

(a) Optional zoning provisions. The County Council, sitting as a District Council for the Maryland-Washington Regional District within the County, to assist in providing moderately priced housing has enacted zoning standards in Chapter 59, establishing in certain zones optional density bonus provisions which increase the allowable residential density above the maximum base density of the zoning classification and permit alternative dwelling unit types other than those allowed under the standard method of development. Land upon which the applicant must build MPDUs may, at the applicant's election, be subject to optional zoning provisions. If the applicant elects the optional density provisions, permitting the construction of an increased number of dwelling units, the requisite percentage and number of MPDUs must apply to the total number of dwelling units as increased by application of the optional density provisions or by the approval of a special exception that increases the density above the otherwise permitted density of the zoning classification in which the property is situated.

(b) Waiver of requirements. Any applicant who presents sufficient evidence to the Director of Permitting Services in applying for a building permit, or to the Planning Board in submitting a preliminary plan of subdivision for approval or requesting approval of a site or other development plan, may be granted a waiver from part or all of Section 25A-5. The waiver must relate only to the number of MPDUs to be built, and may be granted only if the Director of Permitting Services or the Board, after consulting with the Department of Housing and Community Development Affairs, finds that the applicant cannot attain the full density of the zone because of any requirements of the zoning ordinance or the administration of other laws or regulations. When any part of the land that dwelling units cannot be built on for physical reasons is used to compute permitted density, the applicant's inability to use the optional density bonus provisions is not in itself grounds for waiving the MPDU requirements. Any waiver must be strictly construed and limited.

Sec. 25A-7. Maximum prices and rents.

Moderately priced dwelling units must not be sold or rented at prices or rents that exceed the maximum prices or rents established under this Section.

(a) Sales.

(1) The sale price of any MPDU, including closing costs and brokerage fees, must not exceed an applicable maximum sale price established from time to time by the County Executive in regulations adopted under method (1).
(2) The County Executive in issuing MPDU sale price regulations must seek appropriate information, such as current general market and economic conditions and the current minimum sale prices of private market housing in the County, and must consult with the building industry, employers, and professional and citizen groups to obtain statistical information which may assist in setting a current maximum sale price. The County Executive must, from time to time, consider changes in the income levels of persons of low and moderate income and their ability to buy housing. The County Executive must also consider the extent to which, consistent with code requirements, the cost of housing can be reduced by the elimination of amenities, the use of cost-reducing building techniques and materials, and the partial finishing of certain parts of the units.
(3) The County Executive must issue maximum sale prices for MPDUs which continue in effect until changed by later regulation. The maximum sale prices must be based on the necessary and reasonable costs required to build and market the various kinds of MPDUs by private industry. The sale prices for any succeeding year must be based on a new finding of cost by the County Executive, or on the prior year's maximum MPDU price adjusted by the percentage change in the relevant cost elements indicated in the Consumer Price Index.
(4) The County Executive may make interim adjustments in maximum MPDU sale prices when sufficient changes in costs justify an adjustment. Any interim adjustment must be based on the maximum MPDU sale prices previously established, adjusted by the percentage change in the relevant cost elements indicated in the Consumer Price Index.
(5) If the Director finds that other conditions of the design, construction, pricing, or amenity package of an MPDU project will lessen the ability of eligible persons to afford the MPDUs, the Director, under executive regulations, may restrict those conditions that will impose excessive mandatory homeowner or condominium fees or other costs that reduce the affordability of the MPDUs.
(6) The Director may let an applicant increase the sale price of a MPDU when the Director, under executive regulations, finds in exceptional cases that a price increase is justified to cover the cost of modifying the external design of the MPDUs when a modification is necessary to reduce excessive marketing impact of the MPDUs on the market rate units in the subdivision. The Director must approve the amount of any increase for this purpose, which must not exceed 10 percent of the allowable base price of the unit.

(b) Rents.

(1) The rent, including parking but excluding utilities when they are paid by the tenant, for any MPDU must not exceed a maximum rent for the dwelling unit set by Executive regulations. Different rents must be set for units when utility costs are paid by the owner and included in the rent. Different rents may be set for age-restricted units. Different rents also may be set for high-rise rental units, but those rents must not apply unless the Director finds that no other reasonable means is available to finance the building of all required MPDUs at a specific development.

(2) The County Executive, in setting the maximum rent, must consider the current cost of building MPDUs, available interest rates and debt service for permanent financing, current market rates of return or investments in residential rental properties, operating costs, vacancy rates of comparable properties, the value of the MPDU at the end of the control period, and any other relevant information. The County Executive must consult with the rental industry, employers and professional and citizen groups to obtain statistical information and current general market and economic conditions which may assist in setting a current maximum rent. The County Executive must consider the extent to which, consistent with County codes and housing standards, the cost of rental housing can be reduced by the elimination of amenities. The County Executive must also consider from time to time changes in the income levels of persons of low and moderate income and their ability to rent housing.

Sec. 25A-8. Sale or rental of units.

(a) Sale or rental to general public.

(1) Every moderately priced dwelling unit required under this Chapter must be offered to the general public for sale or rental to a good-faith purchaser or renter to be used for his or her own residence, except units offered for sale or rent with the assistance of, and subject to the conditions of, a subsidy under a federal, state or local government program, identified in regulations adopted by the County Executive under method (1) whose purpose is to provide housing for persons of low or moderate income.

(2) Before offering any moderately priced dwelling units, the applicant must notify the Department of the proposed offering and the date on which the applicant will be ready to begin the marketing to eligible persons. The notice must set forth the number of units offered, the bedroom mix, the floor area for each unit type, a description of the amenities offered in each unit and a statement of the availability of each unit for sale or rent, including information regarding any mortgage financing available to buyers of the designated unit. The applicant must also give the Department a vicinity map of the offering, a copy of the approved development, subdivision or site plan, as appropriate, and such other information or documents as the Director finds necessary. The Department must maintain a list of eligible persons of moderate income and, in accordance with procedures established by the County Executive, must notify eligible persons of the offering.

(3) After receiving the offering notice, the Department must notify the Commission of the offering. If the Department finds that the offering notice is complete, it must decide whether the offering of the units to eligible persons will be administered by lottery or by another method that will assure eligible persons an equitable opportunity to buy or rent a MPDU. The Department must notify the applicant of the method and when the 90-day priority marketing period for the MPDUs may begin.

(4) The Executive may by regulation establish a buyer and renter selection system which considers household size, County residency, employment in the County, and length of time since the person was certified for the MPDU program. Each eligible person must be notified of the availability of any MPDU which would meet that person's housing needs, and be given an opportunity to buy or rent an MPDU during the priority marketing period in the order of that person's selection priority ranking.

(5) The priority marketing period for new units ends 90 days after the initial offering date approved by the Department. The priority marketing period for resold or rerented units ends 60 days after the Department notifies the seller of the approved resale price or vacancy of the rental unit. The Department may extend a priority marketing period when eligible persons are interested in buying or renting a unit.

(6) Moderately priced dwelling units, except those built, sold, or rented under a federal, state, or local program designated by regulation, must not be offered for rent by an applicant during the priority marketing period, except in proportion to the market rate rental units in that subdivision as follows:

(A) In a subdivision containing only single-family dwellings, the proportion of rental MPDUs must not exceed the proportion of market rate rental units to all market rate units.

(B) In a subdivision containing both single-family and multiple-family dwellings, the proportion of rental single-family MPDUs to all one-family MPDUs must not exceed the proportion of market rate rental single-family units to all market rate single-family units; and the proportion of rental multiple-family MPDUs to all multiple-family MPDUs must not exceed the proportion of market rate rental multiple-family units to all market rate multiple-family units.

(C) The Director may allow an applicant to offer a higher proportion of multiple-family MPDUs for rent in a subdivision if the Director finds that:

(i) offering more rental MPDUs in that subdivision would advance the purpose of the County housing policy and the objectives of any applicable land use plan, be consistent with local housing market conditions, and avoid excessive mandatory condominium or homeowners association fees or other costs that would reduce the affordability of sale MPDUs; and

(ii) the applicant is qualified to manage rental housing and has submitted an effective management plan for the rental units in that subdivision.

Applicants must make a good-faith effort to enter into contracts with eligible persons during the priority marketing period and for an additional period necessary to negotiate with eligible persons who indicate a desire to buy or rent an MPDU during that period.

(7) Every buyer or renter of an MPDU must occupy the unit as his or her primary residence during the control period. Each buyer and renter must certify before taking occupancy that he or she will occupy the unit as his or her primary residence during the control period. The Director may require an owner who does not occupy the unit as his or her primary residence to offer the unit for resale to an eligible person under the resale provisions of Section 25A-9.

(8) An owner of an MPDU, except the Commission or a housing agency or nonprofit corporation designated by the Director, must not rent the unit to another party unless the Director finds sufficient cause to allow temporary rental of the unit under applicable regulations, which may include maximum rental levels. Any MPDU owner who is allowed to rent a unit temporarily must agree to amend the applicable MPDU covenants to extend the control period for a time equal to the temporary rental period.

(9) Any rent obtained for an MPDU that is rented without the Director's authorization must be paid into the Housing Initiative Fund by the owner within 90 days after the Director notifies the owner of the rental violation.

Any amount unpaid after 90 days is grounds for a lien against the unit, and the Director may obtain a judgment and record the lien.

(10) An applicant must not sell or lease any unit without first obtaining a certificate of eligibility from the buyer or lessee. A copy of each certificate must be furnished to the Department and maintained on file by the Department. Before the sale by an applicant or by the Commission or a designated housing agency or nonprofit corporation to any buyer of any MPDU who does not possess a certificate of eligibility, the applicant, the Commission, or the agency or corporation must ask the Department whether the certificates on file show that the proposed buyer had previously bought another MPDU. A person must not buy a second MPDU unless no first-time buyer is qualified to buy that unit. The Director may waive this restriction for good cause.

(11) If an MPDU owner dies, at least one heir, legatee, or other person taking title by will or by operation of law must occupy the MPDU during the control period under this Section, or the owner of record must sell the MPDU as provided in Section 25A-9.

(b) Sale or rental to government agencies or nonprofit corporations.

(1) In view of the critical, long-term public need for housing for families of low and moderate income, the Department, the Commission, or any other housing development agency or nonprofit corporation designated by the County Executive may buy or lease, for its own programs or programs administered by it, up to 40 percent of all MPDUs which are not sold or rented under any other federal, state, or local program. The Department or Commission may buy or lease up to 33 percent of the MPDUs not sold or rented under any other federal, state, or local program. Any other designated agency or corporation may buy or lease (A) any MPDU in the first 33 percent that HOC has not bought or leased, and (B) the remainder of the 40 percent. This option may be assigned to persons of low or moderate income who are eligible for assistance under any federal, state, or local program identified in regulations adopted by the Executive. The Executive must, by regulation, adopt standards and priorities for designating nonprofit corporations under this subsection. These standards must require the corporation to demonstrate its ability to operate and maintain MPDUs satisfactorily on a long-term basis.

(2) The Department must notify the Commission or other designated agency or corporation promptly after receiving notice from the applicant under subsection (a) of the availability of MPDUs. If the Department, the Commission, or any other designated agency or corporation exercises its option, it must submit to the applicant, within 21 calendar days after the Department notifies the Commission under subsection (b), a notice of intent to exercise its option for specific MPDUs covered by this option. Any MPDUs not bought or leased under this subsection must be sold or rented only to eligible persons under subsection (b) during the priority marketing period for eligible persons to buy or lease.

(3) In exercising this option, the Department, the Commission, and any designated agency or corporation must designate the units by reference to number, type, size and amenities of the units selected if the designation does not result in any type of unit exceeding by more than 40 percent the total units of that type which are sold or rented under this Section, unless the applicant agrees otherwise. The notice required under subsection (b)(2) must state which MPDUs are to be offered for sale and which are to be offered for

rent, and the Department, the Commission, and any designated agency or corporation may buy only units which are offered for sale and may lease only units which are offered for rent. The Department, the Commission, and any designated agency or corporation must decide whether it will exercise its option within 45 days after it receives the original notice.

(4) If more than one government agency or nonprofit corporation files a notice of intent under subsection (b)(2) with respect to a particular MPDU:

(A) the Department prevails over any other buyer or renter;

(B) The Commission prevails over any buyer or renter other than the Department;

(C) any other government agency prevails over any nonprofit corporation;

(D) the first government agency to file a notice prevails over any later agency; and

(E) the first nonprofit corporation to file a notice prevails over any later corporation.

Sec. 25A-9. Control of rents and resale prices; foreclosures.

(a) Resale price and terms. Except for foreclosure proceedings, any MPDU constructed or offered for sale or rent under this Chapter must not be resold during the control period for a price greater than the original selling price plus:

(1) A percentage of the unit's original selling price equal to the increase in the cost of living since the unit was first sold, as determined by the Consumer Price Index;

(2) The fair market value of improvements made to the unit between the date of original sale and the date of resale;

(3) An allowance for closing costs which were not paid by the initial seller, but which will be paid by the initial buyer for the benefit of the later buyer; and

(4) A reasonable sales commission if the unit is not sold during the priority marketing period to an eligible person from the Department's eligibility list.

The resale price of an MPDU may be reduced if the physical condition of the unit reflects abnormal wear and tear because of neglect, abuse, or insufficient maintenance. Any personal property transferred in connection with the resale of an MPDU must be sold at its fair market value. In calculating the allowable resale price of an MPDU which was originally offered for rent, the Department must estimate the price for which the unit would have been sold if the unit had been offered for sale when it was first rented.

(b) Resale requirements during the control period.

(1) Any MPDU offered for resale during the control period must first be offered exclusively for 60 days to the Department and the Commission, in that order. The Department or the Commission may buy a unit when funds are available. The Department may buy a unit when the Director finds that the Department's or a designated agency or corporation's buying and reselling the unit will increase opportunities for eligible persons to buy the unit. If the Department or the Commission does not buy the unit, the

Department must notify eligible persons of the availability of a resale MPDU. The unit may be sold through either of the following methods:

(A) The Department may by lottery establish a priority order under which eligible persons who express interest in buying the unit may buy it at the approved resale price.

(B) The Department may notify the MPDU owner that the owner may sell the unit directly to any eligible person under the resale provisions of this Chapter.

(2) A resale MPDU may be offered for sale to the general public only after:

(A) the priority marketing period expires; and

(B) all eligible persons who express an interest in buying it have been given an opportunity to do so.

(3) The Executive by regulation may adopt requirements for reselling MPDUs. The regulations may require a seller to submit to the Department for approval:

(A) a copy of the proposed sales contract, including a list and the price of any personal property included in the sale;

(B) a signed copy of the settlement sheet; and

(C) an affidavit signed by the seller and buyer attesting to the accuracy of all documents and conditions of the sale.

(4) A transfer of an MPDU does not comply with this Chapter until all required documents and affidavits have been submitted to and approved by the Department.

(c) First sale after control period ends.

(1) If an MPDU originally offered for sale or rent after March 21, 1989, is sold or resold after its control period ends, upon the first sale of the unit the seller must pay to the Housing Initiative Fund one-half of the excess of the total resale price over the sum of the following:

(A) The original selling price;

(B) A percentage of the unit's original selling price equal to the increase in the cost of living since the unit was first sold, as determined by the Consumer Price Index;

(C) The fair market value of capital improvements made to the unit between the date of original sale and the date of resale; and

(D) A reasonable sales commission.

The Director must adjust the amount paid into the fund in each case so that the seller retains at least $10,000 of the excess of the resale price over the sum of the items in (A)--(D).

(2) The Director must find that the price and terms of a sale covered by subsection (c)(1) are bona fide and accurately reflect the entire transaction between the parties so that the full amount required under subsection (c)(1) is paid to the fund. When the Director finds that the amount due the fund is accurate and the Department of Finance receives the amount due, the Department must terminate the MPDU controls and execute a release of the restrictive covenants.

(3) The Department and the Commission, in that order, may buy an MPDU at any time during the control period, and may resell the unit to an eligible person. A resale by the Department or Commission starts a new control period.

(4) The Commission and any partnership in which the Commission is a general partner need not pay into the Housing Initiative Fund any portion of the resale price of any MPDU that it sells.

(d) Initial and later rent controls. Unless previously sold under subsection (c)(1), MPDUs built or offered for rent under this Chapter must not be rented for 99 years after the original rental at a rent greater than that established by Executive regulations. Any MPDU (other than those built, sold, or rented under any federal, state, or local program offered by the Commission) offered for rent during the control period must be offered exclusively for 60 days to one or more eligible persons, as determined by the Department, for use as that person's residence, and to the Commission. The Commission may assign its right to rent such units to persons of low or moderate income who are eligible for assistance under any federal, state, or local program identified in Executive regulations.

(e) Foreclosure or other court-ordered sales. If an MPDU is sold through a foreclosure or other court-ordered sale, a payment must be made to the Housing Initiative Fund as follows:

(1) If the sale occurs during the control period, any amount of the foreclosure sale price which exceeds the total of the approved resale price under subsection (a), reasonable foreclosure costs, and liens filed under the Maryland Contract Lien Act, must be paid to the Housing Initiative Fund. If the remaining balance under the original first deed of trust or mortgage exceeds the resale price under subsection (a), then the difference between the foreclosure sales price and the balance of the original first deed of trust (plus reasonable foreclosure costs) must be paid to the Fund.
(2) If the sale occurs after the control period, and the unit was originally offered for sale or rent after March 20, 1989, the payment to the Fund must be calculated under subsection (c).
(3) If the MPDU is a rental unit, the resale price under subsections (a) and (c) must be calculated using the maximum sales price in effect when the unit was originally offered for rent.
(4) If the MPDU is sold subject to senior liens, the lien balances must be included in calculating the sale price.

All MPDU covenants must be released after the required payment is made into the Housing Initiative Fund.

(f) Waivers. The Director may waive the restrictions on the resale and re-rental prices for MPDUs if the Director finds that the restrictions conflict with regulations of federal or state housing programs and thus prevent eligible persons from buying or renting units under the MPDU program.

(g) Bulk transfers. This section does not prohibit the bulk transfer or sale of all or some of the sale or rental MPDUs in a subdivision within 30 years after the original rental or offering for sale if the buyer is bound by all covenants and controls on the MPDUs.

(h) Compliance. The County Executive must adopt regulations to promote compliance with this section and prevent practices that evade controls on rents and sales of MPDUs.

Sec. 25A-10. Executive regulations; enforcement.

(a) The Department must maintain a list of all moderately priced dwelling units constructed, sold or rented under this Chapter; and the County Executive may, from time to time, adopt regulations under method (1) necessary to administer this Chapter.

(b) This Chapter applies to all agents, successors and assigns of an applicant. A building permit must not be issued, and a preliminary plan of subdivision, development plan, or site plan must not be approved unless it meets the requirements of this Chapter. The Director of Permitting Services may deny, suspend or revoke any building or occupancy permit upon finding a violation of this Chapter. Any prior approval of a preliminary plan of subdivision, development plan or site plan may be suspended or revoked upon the failure to meet any requirement of this Chapter. An occupancy permit must not be issued for any building to any applicant, or a successor or assign of any applicant, for any construction which does not comply with this Chapter.

(c) Any violation of this Chapter or regulations adopted under it is a class A violation.

(d) The Director may take legal action to stop or cancel any transfer of an MPDU if any party to the transfer does not comply with all requirements of this Chapter. The Director may recover any funds improperly obtained from any sale or rental of an MPDU in violation of this Chapter, plus costs and interest at the rate prescribed by law from the date a violation occurred.

(e) In addition to or instead of any other available remedy, the Director may take legal action to:

(1) enjoin an MPDU owner who violates this Chapter, or any covenant signed or order issued under this Chapter, from continuing the violation; or
(2) require an owner to sell an MPDU owned or occupied in violation of this Chapter to the County, the Commission, or an eligible person.

Sec. 25A-11. Appeals.

(a) Any person aggrieved by any denial, suspension or revocation of a building or occupancy permit or denial, suspension or revocation of approval of a preliminary plan of subdivision, development plan, or site plan may appeal to the official, agency, board, Commission or other entity designated by law to hear such appeal.

(b) Any person aggrieved by a final administrative action or decision under this Chapter may appeal to the Circuit Court for the County in accordance with the Maryland Rules of Procedure for a review of such action or decision.

Sec. 25A-12. Annual report.

Each year by March 15 the Director must report to the Executive and Council, for the previous calendar year:

(a) the number of MPDUs approved and built;

(b) each alternative payment agreement approved under Section 25A-5A or alternative location agreement approved under Section 25A-5B, and the location and number of MPDUs that were involved in each agreement;

(c) each approval of a different rent for a high-rise rental unit under Section 25A-7(b)(1); and

(d) the use of all funds in the Housing Initiative Fund that were received as a payment under Section 25A-5A.

Sec. 25A-13. Applicability.

(a) This Chapter applies to all applicants and housing units developed by applicants, regardless of when an MPDU was originally offered for sale or rent, except as provided in subsections (b) and (c).

(b) Section 25A-9(c) does not apply to any MPDU originally offered for sale or rent on or before March 21, 1989.

(c) Section 25A-9(e) does not apply to any MPDU owned or transferred by the Commission directly or through a partnership and originally offered for sale or rent on or before March 21, 1989.

The biosafety committee shall serve as an advisory body to the board of aldermen with regard to the additional health and safety findings required by section 30-24(e).

The biosafety committee's findings on the above criteria (1) through (4) shall be deemed presumptively valid unless the board of aldermen makes contrary written findings. The committee may make recommendations relating to the above criteria, and shall render its report within a time to be specified by the board of aldermen.

(f). *Inclusionary Zoning*

Purposes: The purposes of this section 30-24(f) are to promote the public health, safety, and welfare by encouraging diversity of housing opportunities in the City; to provide for a full range of housing choices throughout the City for households of all incomes, ages, and sizes in order to meet the City's goal of preserving its character and diversity; to mitigate the impact of residential development on the availability and cost of housing, especially housing affordable to low and moderate income households; to increase the production of affordable housing units to meet existing and anticipated housing needs within the City; to provide a mechanism by which residential development can contribute directly to increasing the supply of affordable housing in exchange for a greater density of development than that which is permitted as a matter of right; and to establish requirements, standards, and guidelines for the use of such contributions generated from the application of inclusionary housing provisions.

(1) Definitions.

a) "Eligible Household" shall mean: for rental housing, any household whose total income does not exceed 80 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of rental of Inclusionary Units and adjusted for household size; and in the case of for-sale housing, any household whose total income does not exceed 120 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of marketing of Inclusionary Units and adjusted for household size, which is defined as the number of bedrooms plus one.

b) "Inclusionary Unit(s)" shall mean any finished dwelling unit required to be for sale or rental under section 30-24(f) of the zoning ordinances.

i) For Inclusionary Units that are rented to Eligible Households, the monthly rent payment, including utilities and parking, shall not exceed 30 percent of the monthly income of an Eligible Household, assuming 1.5 persons per bedroom, except in the event of an Eligible Household with a Section 8 voucher in which case the rent and income limits established by the Newton Housing Authority, with the approval of the U.S. Department of Housing and Urban Development, shall apply.

ii) For Inclusionary Units that are sold to Eligible Households, the sales price of an Inclusionary Unit shall be affordable to a household earning 70 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of marketing of the Inclusionary Unit and adjusted for household size. The sales price shall then be determined from a calculation which limits the monthly housing payment for mortgage principal and interest, private mortgage insurance, property taxes, condominium or homeowner's association fees, insurance, and parking to not more than 30 per cent of the monthly income of an appropriately sized household at the time of marketing of the Inclusionary Unit.

iii) Where fewer than three Inclusionary Units are provided in a development under section 30-24(f)(3), Inclusionary Units required to be offered for sale shall be provided to Eligible Households with median incomes of not more than 80 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of marketing of Inclusionary Units and adjusted for household size.

iv) Where three or more Inclusionary Units are provided in a development under section 30-24(f)(3), two-thirds of the Inclusionary Units required to be offered for sale shall be provided to Eligible Households with median incomes of not more than 80 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of marketing of Inclusionary Units and adjusted for household size. One-third of the Inclusionary Units required to be offered for sale shall be provided to Eligible Households with median incomes of not more than 120 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of marketing of Inclusionary Units and adjusted for household size.

v) Where two or more Inclusionary Units are provided in a development under section 30-24(f)(3), Inclusionary Units required to be offered for rental shall be provided to Eligible Households such that the mean income of Eligible Households in the development does not exceed 65 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of rental of Inclusionary Units and adjusted for household size. Where one Inclusionary Unit is provided in a development under section 30-24(f)(3), the Inclusionary Units required to be offered for rental shall be provided to an Eligible Household with a median income of not more than 80 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of rental of Inclusionary Units and adjusted for household size.

(2) Scope. Where a special permit is required under these Ordinances for residential development or for a business or mixed-use development that includes residential development beyond that allowable as of right or where the development is proposed to include or may include new or additional dwelling units totaling more than two households whether by new construction, rehabilitation, conversion of a building or structure, or an open space preservation development, the development shall be subject to the inclusionary zoning provisions of this section. This inclusionary zoning section does not apply to accessory units under section 30-8 (d) and 30-9(h) or to a conventional subdivision of land under G.L. c.41, §§ 81K *et seq*. other than an open space preservation development under section 30-15(k).

(3) Inclusionary Units. Where a special permit is required for development as described in section 30-24(f)(2), 15 per cent of the units proposed for the development shall be Inclusionary Units and shall be reserved for sale or rental to Eligible Households. In the case of an existing residential property subject to determination by the Newton Historical Commission under section 22-44 or any successor ordinance, the inclusionary requirement shall be 15 per cent of the net new units to be created on the property. For purposes of calculating the number of Inclusionary Units required in a proposed development, any fractional unit of 0.5 or greater shall be deemed to constitute a whole unit. At the discretion of the Applicant, a development may include more than 15 per cent of its units as Inclusionary Units. Inclusionary Units shall be offered for sale or rental in the same proportion of the total units as the offer for sale or rental of Market Rate units in the development.

(4) Cash Payment. Where the total number of dwelling units proposed in the development will not exceed six

units, the Applicant may make a cash payment equal to 3 percent of the sales price at closing of each unit as verified by the planning and development department or if rental housing, the cash payment shall be equal to 3 percent of the estimated, assessed value of each unit as determined by the city assessor, in lieu of Inclusionary Units as provided in section 30-24 (f)(3). Certificates of Occupancy for the property shall not be issued until the cash payment has been made as verified by the planning and development department. This payment shall be made to an inclusionary housing development fund established by the board of aldermen. Proceeds from the fund shall be distributed equally to the Newton Housing Authority and the planning and development department and shall be used exclusively for construction, purchase, or rehabilitation of housing for Eligible Households. The comptroller shall annually review payments to the fund and use of the proceeds and shall certify to the board of aldermen that proceeds have been used for the purposes stated herein.

(5) Off-Site Development. Where an Applicant has entered into a development agreement with a non-profit housing development organization, Inclusionary Units otherwise required to be constructed onsite and within the development may be constructed or rehabilitated off site, the Applicant and the non-profit housing development organization must submit a development plan for off-site development for review and comment by the planning and development department prior to submission to the board of aldermen. The plan must include at a minimum, demonstration of site control, necessary financing in place to complete the off-site development or rehabilitation, an architect's conceptual site plan with unit designs and architectural elevations, and agreement that the off-site units will comply with subsections a), b), and c) of section 30-24(f)(6). As a condition of granting a special permit for the Applicant's development, the board of aldermen shall require that off-site Inclusionary Units shall be completed no later than completion of the Applicant's Market Rate Units. If the off-site Inclusionary Units are not completed as required within that time, temporary and final occupancy permits shall not be granted for the number of Market Rate Units equal to the number of off-site Inclusionary Units which have not been completed. Where the board of aldermen determines that completion of off-site Inclusionary Units has been delayed for extraordinary reasons beyond the reasonable control of the Applicant and non-profit housing developer, the board of aldermen may, in its discretion, permit the Applicant to post a monetary bond and release one or more Market Rate Units. The amount of the bond shall be sufficient in the determination of the planning and development department to assure completion of the off-site Inclusionary Units.

(6) Design and Construction. In all cases, Inclusionary Units shall be fully built out and finished dwelling units. Inclusionary Units provided on site must be dispersed throughout the development and must be sited in no less desirable locations than the Market Rate Units and have exteriors that are indistinguishable in design and of equivalent materials to the exteriors of Market Rate Units in the development, and satisfy the following conditions:

a) Inclusionary Units shall have habitable space of not less than 650 square feet for a one bedroom unit and an additional 300 square feet for each additional bedroom or 60 percent of the average square footage of the Market Rate Units with the same number of bedrooms, whichever is greater; provided that Inclusionary Units shall not exceed 2,000 square feet of habitable space;

b) the bedroom mix of inclusionary units shall be equal to the bedroom mix of the Market Rate Units in the development. In the event that Market Rate Units are not finished with defined bedrooms, all Inclusionary Units shall have three bedrooms;

c) the materials used and the quality of construction for Inclusionary Units, including heating, ventilation, and air conditioning systems, shall be equal to that of the Market Rate Units in the development, as reviewed by the planning and development department; provided that amenities such as so-called designer or high end appliances and fixtures need not be provided for Inclusionary Units.

(7) Habitable Space Requirements. The total habitable space of Inclusionary Units in a proposed development shall not be less than 10 percent of the sum of the total habitable space of all Market Rate Units and all Inclusionary Units in the proposed development. As part of the application for a special permit under section 30-24(f), the Applicant shall submit a proposal including the calculation of habitable space for all Market Rate and Inclusionary Units to the planning and development department for its review and certification of compliance with this section as a condition to the grant of a special permit.

(8) Inclusionary Housing Plans and Covenants. As part of the application for a special permit under section 30-24(f), the Applicant shall submit an inclusionary housing plan that shall be reviewed by the Newton Housing Authority and the planning and development department and certified as compliant by the planning and development department. The plan shall include the following provisions:

a) a description of the Inclusionary Units including at a minimum, floor plans indicating the location of the Inclusionary Units, number of bedrooms per unit for all units in the development, square footage of each unit in the development, amenities to be provided, projected sales prices or rent levels for all units in the development, and an outline of construction specifications certified by the Applicant;

b) A marketing and resident selection plan which includes an affirmative fair housing marketing program, including public notice and a disinterested resident selection process; provided that in the case of a marketing and selection for sale of Inclusionary Units to Eligible Households, the marketing and selection plan shall provide for "income blind" selection of Eligible Households and shall then provide for a preference order, to the extent permitted by law, first to City of Newton employees and then to residents of or workers in the City of Newton. In lieu of submitting a marketing and resident selection plan under this subsection, the Applicant may use a standard form marketing and resident selection plan developed by the planning and development department.

c) Agreement by the Applicant that residents shall be selected at both initial sale and rental and all subsequent sales and rentals from listings of Eligible Households in accordance with the approved marketing and resident selection plan; provided that the listing of Eligible Households for inclusionary rental units shall be developed, advertised, and maintained by the Newton Housing Authority while the listing of Eligible households for inclusionary units to be sold shall be developed, advertised, and maintained by the planning and development department; and provided further that the Applicant shall pay the reasonable cost to develop, advertise, and maintain the listings of Eligible Households.

d) Agreement by the Applicant to develop, advertise, and provide a supplemental listing of Eligible Households to be used to the extent that Inclusionary Units are not fully subscribed from the Newton Housing Authority or the planning and development department listings of Eligible Households;

e) Agreement that any special permit issued under section 30-24(f) shall require the Applicant to execute and record a covenant in the Middlesex Registry of Deeds or the Land Court Registry of Deeds for Middlesex County as *the* senior interest in title for each Inclusionary Unit and enduring for the life of the residential development, as follows:

i) for purchase units, a covenant to be filed at the time of conveyance and running in favor of the City of Newton, in a form approved by the city solicitor, which shall limit initial sale and subsequent re-sales of Inclusionary Units to Eligible Households in accordance with provisions reviewed and approved by the planning and development department which incorporate sections 30-24(f)(1)b)(ii), (f)(8)b), (f)(8)c), (f)(8)d), and (f)(8)e); and

ii) for rental units, a covenant to be filed prior to grant of an occupancy permit and running in favor of the City of Newton, in a form approved by the city solicitor, which shall limit rental of Inclusionary Units to Eligible Households in accordance with provisions reviewed and approved by the Newton Housing Authority which incorporate sections 30-24(f)(1)b)(i), (f)(8)b), (f)(8)c), (f)(8)d) and (f)(8)e);

(9) Public Funding Limitation. The intent of section 30-24(f) is that an Applicant is not to use public funds to construct Inclusionary Units required under this section; this provision however, is not intended to discourage the use of public funds to generate a greater number of affordable units than are otherwise required by this subsection. If the Applicant is a non-profit housing development organization and proposes housing at least 50 per cent of which is affordable to Eligible Households, it is exempt from this limitation.

(10) Elder Housing with Services. In order to provide affordable elder housing with services on-site, the following requirements shall apply exclusively when an Applicant seeks a special permit for housing with services designed primarily for elders such as residential care, continuing care retirement communities, assisted living, independent living, and congregate care. The services to be provided shall be an integral part of the annual rent or occupancy related fee, shall be offered to all residents and may include in substantial measure long term health care and may include nursing, home health care, personal care, meals, transportation, convenience services, and social, cultural, and education programs. This section shall not apply to a nursing facility subject to certificate of need programs regulated by the Commonwealth of Massachusetts Department of Public Health or to developments funded under a state or federal program which requires a greater number of elder units or nursing beds than required here.

a) Maximum Contribution The Applicant shall contribute 2.5 percent of annual gross revenue from fees or charges for housing and all services, if it is a rental development or an equivalent economic value in the case of a non rental development. The amount of the contribution shall be determined by the director of planning and development, based on analysis of verified financial statements and associated data provided by the Applicant as well as other data the director may deem relevant.

b) Determination. The board of aldermen shall determine, in its discretion, whether the contribution shall be residential units or beds or a cash payment after review of the recommendation of the director of planning and development. In considering the number of units or beds, the director may consider the level of services, government and private funding or support for housing and services, and the ability of low and moderate income individuals to contribute fees. The Applicant shall provide financial information requested by the director. If the petitioner or Applicant is making a cash contribution, the contribution shall be deposited in accordance with section 30-24(f)(4).

c) Contributed Units or Beds Contributed units or beds shall be made available to individuals and households whose incomes do not exceed 80 percent of the applicable median income for elders in the Boston Municipal Statistical Area, adjusted for household size.

d) Selection The Applicant or manager shall select residents from a listing of eligible persons and households developed, advertised, and maintained by the Newton Housing Authority; provided that the Applicant shall pay the reasonable costs of the Newton Housing Authority to develop, advertise, and maintain the listing of eligible persons and households. Should the Applicant or manager be unable to fully subscribe the elder housing with services development from the Newton Housing Authority listing, the Applicant or manager shall recruit eligible persons and households through an outreach program approved by the director planning and development. The Applicant or manager shall certify its compliance with this section 30-24(f)(9) annually in a form and with such information as is required by the director of planning and development. To the extent permitted by law, Newton

residents shall have first opportunity to participate in the elder housing with services program set out here.

e) Residential Cash Balances If, after calculation of the number of units or beds to be contributed under this section 30-24(f), there remains an annual cash balance to be contributed, that amount shall be contributed as set out in subparagraph b) above. Any such contribution shall not reduce the contribution required in future years.

(11) Hotels. Whenever an application for a special permit seeks to increase the density of residential development for a hotel, the board of aldermen shall require a cash payment as a condition of any such grant. The amount of the payment shall be determined as 10 per cent of the number of rooms in excess of that which existed on January 1, 1989 multiplied by the estimated per room valuation following construction, as determined by the assessing department. Payment shall be made in accordance with section 30-24(f)(4).

(12) No Segmentation. An Applicant for residential development shall not segment or divide or subdivide or establish surrogate or subsidiary entities to avoid the requirements of this section 30-24(f). Where the board of aldermen determines that this provision has been violated, a special permit will be denied. However, nothing herein prohibits phased development of a property.

(13) No Effect on Prior or Existing Obligations. This amendment to section 30-24(f) shall have no effect on any prior or currently effective special permit, obligation, contract, agreement, covenant or arrangement of any kind, executed or required to be executed, which provides for dwelling units to be made available for sale or rental to or by the City, the Newton Housing Authority, or other appropriate municipal agency, or any cash payment so required for affordable housing purposes, all resulting from a special permit under section 30-24(f) applied for or granted prior to the effective date of this amendment.

(14) No Effect on Accessory Apartments. This section 30-24(f) shall not apply to accessory apartments regulated under sections 30-8(d) and 30-9(h).

(15) Severability, effect on other laws. The provisions of section 30-24(f) are severable. If any subsection, provision, or portion of this section is determined to be invalid by a court of competent jurisdiction, then the remaining provisions of this section shall continue to be valid.

(g) Natural resources and energy. All applications for a special permit authorizing proposed building(s) and/or structure(s) or additions to existing building(s) and/or structure(s), if those proposed building(s), structure(s), or additions contain individually or in the aggregate 20,000 or more square feet in gross floor area, shall submit evidence that the site planning, building design, construction, maintenance, or long-term operation of the premises will contribute significantly to the efficient use and conservation of natural resources and energy.

(h) Conditions of Approval. The board of aldermen shall not approve any application for a special permit unless it finds that said application complies in all respects with the requirements of this ordinance. In approving a special permit, the board of aldermen may attach such conditions, limitations, and safeguards as it deems necessary to protect or benefit the neighborhood, the zoning district and the City. Such conditions may include, but are not limited to, the following:

(1) requirement of front, side or rear yards greater than the minimum required by this ordinance;

(2) limitation of the number of occupants, size, method of time of operation, or extent of facilities;

Pasadena, CA
***Zoning Code*. 2008.**
Article 4 – Site Planning and General Development Standards
Chapter 17.42 - Inclusionary Housing Requirements

17.42.010 - Purpose of Chapter

This Chapter establishes standards and procedures to encourage the development of housing that is affordable to a range of households with varying income levels. The purpose of this Chapter is to encourage the development and availability of affordable housing by ensuring that the addition of affordable housing units to the City's housing stock is in proportion with the overall increase in new housing units.

17.42.020 - Applicability and Exempt Projects

The requirements of this Chapter shall apply to all new residential projects, all subdivisions maps approved after the date of this Ordinance, and all single room occupancy projects, except as noted in Subsection B. The requirements of this Chapter shall apply to all developers and their agents, successors-in-interest, and assigns proposing a residential project. All inclusionary units required by this Chapter shall be sold or rented in compliance with this Chapter and the City's regulations for the implementation of this Chapter (see Subsection A).

1. Additional regulations. The Council shall by resolution establish regulations for the implementation of this Chapter. (These regulations were first adopted by the Council on September 10, 2001 and are entitled "City of Pasadena Inclusionary Housing Regulations.") All references to "Director" in said regulations shall mean the City Manager or the Assistant City Manager.

2. Exempt projects. The following are exempt from the requirements of this Chapter.

    1. Project with discretionary approvals. A residential project that has obtained:

        1. Discretionary approval (e.g., a Conditional Use Permit, Variance, or Design Review approval) in compliance with this Zoning Code before the effective date of this Chapter; and
        2. A Building Permit in compliance with the discretionary approval within 12 months of the effective date of this Chapter; and
        3. A Certificate of Occupancy in compliance with the same discretionary approval.

    2. Exempt by State law. A residential project that is exempt from this Chapter by State law, including a project for which the City enters into a development agreement.

    3. Project with Redevelopment Agreement. A residential project for which the Community Development Commission has executed a Redevelopment Agreement, provided that the Redevelopment Agreement is effective at the time the residential project would otherwise be required to comply with the requirements of this Chapter, and there is no uncured breach of the Redevelopment Agreement before issuance of a Certificate of Occupancy for the project.

17.42.030 - Definitions

All of the terms used in this Chapter are defined in Article 8 (Glossary of Specialized Terms and Land Use Types) under the term "Affordable Housing Definitions."

17.42.040 - Inclusionary Unit Requirements

1. Minimum number of units required. A minimum of 15 percent of the total number of dwelling units in a residential project shall be developed, offered to, and sold or rented to households of low and moderate-income, at an affordable housing cost, as follows.
    1. Units for sale. If the project consists of units for sale, a minimum of 15 percent of the total number of units in the project shall be sold to low or moderate-income households.
    2. Rental units. If the residential project consists of rental units, a minimum of 10 percent of the units shall be rented to low-income households and five percent of the units shall be rented to low or moderate-income households.

2. Exception to minimum number required. For a period of 12 months from the effective date of this Chapter, a residential project that obtains discretionary approval, or if no discretionary approval is required, obtains a Building Permit within that period, shall develop, offer to, and sell the following number of units to low and moderate-income households at an affordable housing cost, instead of the 15 percent required by Subsection A.

    1. Units for sale. If the project consists of units for sale, a minimum of six percent of the total number of units shall be sold to low or moderate-income households.
    2. Rental units. If the project consists of rental units, a minimum of four percent of the total number of units shall be rented to low-income households and two percent of the total number of units shall be rented to low or moderate-income households.

3. Allowable credits. The inclusionary unit requirements of Subsections A. and B. may be reduced as follows.

        1. Very low-income units in lieu of low-income units. If very low-income units are provided in lieu of the required low-income units, the project shall receive a credit of 1.5 affordable units for each unit actually provided.
        2. Very low-income units in lieu of moderate-income units. If very low-income units are provided in lieu of required moderate-income units, the project shall receive a credit of two units for each unit actually provided.
        3. Low-income units in lieu of moderate-income units. If low-income units are provided in lieu of required moderate-income units, the project shall receive a credit of 1.5 units for each unit actually provided.

4. Rounding of quantities in calculations. In calculating the required number of inclusionary units, fractional units of 0.75 or above shall be rounded-up to a whole unit if the residential project consists of 10 to 20 units; and fractional units of 0.50 or above shall be rounded-up to a whole unit if the project consists of 21 or more units.

17.42.050 - Alternatives to Units within Project

As an alternative to developing required inclusionary units within an affected residential project in compliance with Section 17.42.040 (Inclusionary Unit Requirement), the requirements of this Chapter may be satisfied through one or more of the following alternatives, in compliance with the City's regulations for the implementation of this Chapter (see Section 17.42.020.A).

1. In lieu fee. The developer may choose to pay a fee in lieu of providing all or some of the inclusionary units, as follows.
    1. Amount of fee. The amount of the fee shall be as required by the Council's Fee Resolution.
    2. Special adjustment for first 12 months. For 12 months from the effective date of this Chapter, the fee shall be 40 percent of that required by the Council's Fee Resolution.
    3. Timing of payment. One-half of the in-lieu fee required by this Subsection shall be paid (or a letter of credit posted) before issuance of a Building Permit for any part of the residential project. The remainder of the fee shall be paid before a Certificate of Occupancy is issued for any unit in the project.
    4. Housing Trust Fund. Fees collected in compliance with this Section shall be deposited in the Inclusionary Housing Trust Fund.

2. Off-site units. Upon application by the developer and at the discretion of the City Manager or the Assistant City Manager, the developer may satisfy the inclusionary unit requirements for the project, in whole or in part, by constructing or substantially rehabilitating the required number of units on a site other than that of the affected residential project.

3. Land donation. Upon application by the developer and at the discretion of the City Manager or the Assistant City Manager, the developer may satisfy the project inclusionary unit requirements, in whole or in part, by dedicating land to the City for the construction of the inclusionary units.

4. On-site inclusionary units required when very low, low, and/or moderate income households are displaced. Any other provision of this chapter, notwithstanding, any project subject to this chapter which results in the displacement of very low, low, and/or moderate income household(s) shall be required to provide on-site inclusionary units as required by this chapter.

17.42.060 - Housing Plan and Housing Agreement Required

1. Submittal and execution. The developer shall comply with the following requirements at the times and in compliance with the standards and procedures in the City's regulations for the implementation of this Chapter (see Section 17.42.020.A).
    1. Housing Plan. The developer shall submit an Inclusionary Housing Plan for approval by the City Manager or the Assistant City Manager detailing how the provisions of this Chapter will be implemented for the proposed project.
    2. Housing Agreement. The developer shall execute and cause to be recorded an Inclusionary Housing Agreement, unless the developer is complying with this Chapter as provided in Sections 17.42.050.A. (In lieu fee) or C. (Land donation).

2. Discretionary approvals. No discretionary approval shall be issued for a residential project subject to this Chapter until the developer has submitted an Inclusionary Housing Plan.

3. Issuance of Building Permit. No Building Permit shall be issued for a residential project subject to this Chapter unless the City Manager or the Assistant City Manager has approved the Inclusionary Housing Plan, and any required Inclusionary Housing Agreement has been recorded.

4. Issuance of Certificate of Occupancy. A Certificate of Occupancy shall not be issued for a residential project subject to this Chapter unless the approved Inclusionary Housing Plan has been fully implemented.

17.42.070 - Standards

1. Location within project, relationship to non-inclusionary units. All inclusionary units shall be:
    1. Reasonably dispersed throughout the residential project;
    2. Proportional, in number, bedroom size, and location, to the market rate units; and
    3. Comparable with the market rate units in terms of the appearance, base design, materials, and finished quality.

2. Timing of construction. All inclusionary units in a residential project shall be constructed concurrent with, or before the construction of the market rate units. If the City approves a phased project, the required inclusionary units shall be provided within each phase of the residential project.

3. Time limit for reserving units. All required inclusionary units shall be reserved for low and moderate-income households at the applicable affordable housing cost for the following minimum time periods.
    1. Units for sale - 45 years. A unit for sale shall be reserved for the target income level group at the applicable affordable housing cost for a minimum of 45 years.
    2. Rental units - Reserved in perpetuity. A rental unit shall remain reserved for the target income level group at the applicable affordable housing cost in perpetuity.

4. Recapture of financial interest. Notwithstanding Subsection C. 1., above, inclusionary units for sale may be sold to an above-moderate-income purchaser in compliance with the City's regulations for the implementation of this Chapter (see Section 17.42.020.A); provided that the sale shall result in a recapture by the City, or its designee, of a financial interest in the unit equal to:
    1. Difference between price and value. The difference between the initial affordable sales price and the appraised value at the time of the initial sale; and
    2. Proportionate share of appreciation. A proportionate share of any appreciation.

5. Preference and priority system. The preference and priority system set forth in the City’s Inclusionary Housing Regulations shall be used for determining eligibility among prospective beneficiaries for inclusionary units created through this Chapter.

17.42.080 - Enforcement

1. Forfeiture of funds. Any individual who sells or rents an inclusionary unit in violation of this Chapter shall be required to forfeit all money so obtained. Recovered funds shall be deposited into the Inclusionary Housing Trust Fund.

2. Legal actions. The City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this Chapter, including actions:
    1. To disapprove, revoke, or suspend any permit, including a Building Permit, Certificate of Occupancy, or discretionary approval; and
    2. For injunctive relief or damages.

3. Recovery of costs. In any action to enforce this Chapter, or an Inclusionary Housing Agreement recorded hereunder, the City shall be entitled to recover its reasonable attorney's fees and costs.

17.42.090 - Takings Determination

1. Determination of a taking of property without just compensation.
    1. Initiated by request from developer. Commencing upon the approval or disapproval of the Inclusionary Housing Plan by the City Manager or the Assistant City Manager, in compliance with the City's regulations for the implementation of this Chapter (see Section 17.42.020.A), and within 15 days thereafter, a developer may request a determination that the requirements of this Chapter, taken together with the inclusionary incentives as applied to the residential project, would legally constitute a taking of property of the residential project without just compensation under the California or Federal Constitutions.
    2. Burden on developer. The developer has the burden of providing economic information and other evidence necessary to establish that application of the provisions of this Chapter to the project would constitute a taking of the property of the proposed project without just compensation.
    3. City Manager or the Assistant City Manager's determination subject to appeal. City Manager or the Assistant City Manager shall make the determination, which may be appealed in compliance with Chapter 17.72 (Appeals) except that the Council shall serve as the applicable review authority.

2. Presumption of facts. In making the taking recommendation or determination, the review authority shall presume each of the following facts:
    1. Application of requirements. Application of the inclusionary housing requirement to the residential project;
    2. Incentives. Application of the inclusionary incentives;
    3. Product type. Utilization of the most cost-efficient product type for the inclusionary units; and
    4. External funding. External funding where reasonably likely to occur.

3. Modifications to reduce obligations. If it is determined that the application of the provisions of this Chapter would be a taking, the Inclusionary Housing Plan shall be modified to reduce the obligations in the inclusionary housing component to the extent, and only to the extent necessary, to avoid a taking. If it is determined no

taking would occur though application of this Chapter to the residential project, the requirements of this Chapter remain applicable.

17.42.100 - Inclusionary Housing Trust Fund

There is hereby established a separate fund of the City, to be known as the Inclusionary Housing Trust Fund. All monies collected in compliance with Subsections 17.42.050 A. (In lieu fee), 17.42.080 D. (Recapture of financial interest), or 17.42.090 (Enforcement), above, shall be deposited in the Inclusionary Housing Trust Fund.

17.42.110 - Administrative Fees

The Council may by resolution establish reasonable fees and deposits for the administration of this Chapter.

17.42.120 - Appeal

Within 15 calendar days after the date of the City Manager or the Assistant City Manager's decision, an appeal may be filed in compliance with Chapter 17.72 (Appeals and Calls for Review).

Article 8 — Glossary

Chapter 17.80 - Glossary of Specialized Terms and Land Use Types

17.80.020 - Definitions

Affordable Housing Definitions. The following terms and phrases are defined for the purposes of Chapter 17.42 (Inclusionary Housing Requirements) and Chapter 17.43 (Density Bonus, Waivers and Incentives).

1. Adjusted for Household Size Appropriate for the Unit. A household of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

2. Affordable Housing Cost. The total housing costs paid by a qualifying household, which shall not exceed a specified fraction of its gross income, adjusted for household size appropriate for the unit, as follows:

    1. Very low-income households, rental units. Thirty percent of 50 percent of the Los Angeles County median income.
    2. Low-income households, rental or for-sale units. Thirty percent of 80 percent of the Los Angeles County median income.
    3. Moderate-income households, for-sale units. Forty percent of 110 percent of the Los Angeles County median income.
    4. Moderate-income households, rental units. Thirty percent of 120 percent of the Los Angeles County median income.

3. Concessions or Other Incentives. Concessions or other incentives include a reduction in a site development standard or modification of another Zoning Code requirement or design requirement that results in an identifiable, financially sufficient, and actual cost reduction; or, approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial,

or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located; or other concession or regulatory incentive that results in an identifiable, financially sufficient, and actual cost reduction, as determined by the City in its sole discretion. A concession or other incentive does not include additional density beyond that allowed in Chapter 17.43.

4. Density Bonus. A density bonus is an increase in density above the otherwise maximum allowable residential density under this Title and the Land Use Element of the General Plan as of the date the development application for the project is deemed complete. The amount of the density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable dwelling units meets the percentage established in the following section. When calculating the number of density bonus units allowed, any fraction of a residential unit shall be counted as a whole unit. An applicant may elect to accept a lesser percentage of density bonus units. An applicant may not seek a density bonus greater than that provided in Chapter 17.43 or by State law.

5. Developer. Any association, corporation, firm, joint venture, partnership, person, or any entity or combination of entities, which seeks City approval for all or part of a residential project.

6. Development Standard. For Chapter 17.43 (Density Bonus, Waivers and Incentives), a development standard includes a site or construction condition that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter amendment, or other local condition, law, policy, resolution, or regulation. A development standard subject to waiver does not include additional density beyond that allowed in Chapter 17.43.

7. Inclusionary Housing Agreement. A legally binding agreement between a developer and the City, in a form and substance satisfactory to the City Manager or Assistant City Manager and City Attorney, containing those provisions necessary to ensure that the requirements of this Chapter, whether through the provision of inclusionary units or through an alternative method, are satisfied.

8. Inclusionary Housing Plan. The plan referenced in Section 17.42.070 A. (Procedures), and further described in the City's regulations for the implementation of Chapter 17.42 (Section 17.42.020.A), which identifies the manner in which the requirements of Chapter 17.42 will be implemented for a particular residential project.

9. Inclusionary Housing Trust Fund. Shall have the meaning identified in Section 17.42.100 (Inclusionary Housing Trust Fund), below.

10. Inclusionary Unit. A dwelling unit that will be offered for sale or rent to low- and moderate-income households, at an affordable housing cost, in compliance with this Chapter.

11. Low-Income Households. Households whose gross income does not exceed 80 percent of the median income for Los Angeles County as determined annually by the U.S. Department of Housing and Urban Development.

12. Low-Income Units, Moderate-Income Units, and Very Low-Income Units. Inclusionary units restricted to occupancy by low, moderate, or very low-income households, respectively, at an affordable housing cost.

13. Market Rate Units. Those dwelling units in a residential project that are not inclusionary units.

14. Moderate-Income Households. Households whose gross income does not exceed 120 percent of the median income for Los Angeles County as determined annually by the U.S. Department of Housing and Urban Development.

15. Redevelopment Agreement. An Owner Participation Agreement, Disposition and Development Agreement, or similar agreement entered into between the Community Development Commission and a developer.

16. Regulations. The regulations adopted by the Council in compliance with Section 17.42.020.A for the implementation and enforcement of the provisions of Chapter 17.42.

17. Residential project. A subdivision resulting in the creation of 10 or more residential lots, the new construction of a project consisting of 10 or more multi-family units, 10 or more single-room occupancy units, or 10 or more single-family units for which a PD approval is obtained.

18. Substantial Rehabilitation or Substantially Rehabilitated. The rehabilitation of a dwelling unit(s) that has substantial building and other code violations, and has been vacant for at least 180 days, in that the unit is returned to the City's housing supply as decent, safe, and sanitary housing, and the cost of the work exceeds $40,000.00 per dwelling unit, as that amount may be adjusted for inflation in compliance with the City's regulations for the implementation of Chapter 17.42 (Section 17.32.020.A).

19. Total Housing Costs. The total monthly or annual recurring expenses required of a household to obtain shelter. For a rental unit, total housing costs shall include the monthly rent payment and utilities. For an ownership unit, total housing costs shall include the mortgage payment (principal and interest), homeowner's association dues, mortgage insurance, taxes, utilities, and any other related assessments.

20. Very low-Income Households. Households whose gross income is equal to 50 percent or less of the median income for Los Angeles County as determined annually by the U.S. Department of Housing and Urban Development.

Pleasanton Municipal Code
Title 17 Planning and Related Matters
Chapter 17.44 Inclusionary Zoning
Article I. General Provisions

17.44.010 Title.

This chapter shall be called the "Inclusionary Zoning Ordinance of the City of Pleasanton."

17.44.020 Purpose.

The purpose of this chapter is to enhance the public welfare and assure that further housing development attains the city's affordable housing goals by increasing the production of residential units affordable to households of very low, low, and moderate income, and by providing funds for the development of very low, low, and moderate income ownership and/or rental housing. In order to assure that the remaining developable land is utilized in a manner consistent with the city's housing policies and needs, 15 percent of the total number of units of all new multiple-family residential projects containing 15 or more units, constructed within the city as it now exists and as may be altered by annexation, shall be affordable to very low and low income households. For all new single-family residential projects of 15 units or more, at least 20 percent of the project's dwelling units shall be affordable to very low, low, and/or moderate income households. These requirements shall apply to both ownership and rental projects.

17.44.030 Definitions.

For the purposes of this chapter, certain words and phrases shall be interpreted as set forth in this section unless it is apparent from the context that a different meaning is intended.

"Affordable housing proposal." A proposal submitted by the project owner as part of the city development application (e.g., design review, planned unit development, etc.) stating the method by which the requirements of this chapter are proposed to be met.

"Affordable rent." A monthly rent (including utilities as determined by a schedule prepared by the city) which does not exceed one-twelfth of 30 percent of the maximum annual income for a household of the applicable income level.

"Affordable sales price." A sales price which results in a monthly mortgage payment (including principal and interest) which does not exceed one-twelfth of 35 percent of the maximum annual income for a household of the applicable income level.

"Amenities." Interior features which are not essential to the health and safety of the resident, but provide visual or aesthetic appeal, or are provided as conveniences rather than as necessities. Interior amenities may include, but are not limited to, fireplaces, garbage disposals, dishwashers, cabinet and storage space and bathrooms in excess of one. Amenities shall in no way include items required by city building codes or other ordinances that are necessary to ensure the safety of the building and its residents.

“Applicant.” Any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks city permits and approvals for a project.

“City.” The city of Pleasanton or its designee or any entity with which the city contracts to administer this chapter.

“Commercial, office, and industrial project.” For the purposes of this chapter, any new nonresidential (commercial, office, or industrial) development or redevelopment greater than 10 gross acres 250,000 square feet of gross building area, whichever is less.

“Dwelling unit.” A dwelling designed for occupancy by one household.

“HUD.” The United States department of housing and urban development or its successor.

“Household.” One person living alone; or two or more persons sharing residency whose income is considered for housing payments.

“Household, low income.” A household whose annual income is more than 50 percent but does not exceed 80 percent of the annual median income for Alameda County, based upon the annual income figures provided by the U.S. department of housing and urban development (HUD), as adjusted for household size.

“Household, moderate income.” A household whose annual income is more than 80 percent but does note exceed 120 percent of the annual median income for Alameda County, based upon the annual income figures provided by HUD, as adjusted for household size.

“Household, very low income.” A household whose annual income does not exceed 50 percent of the annual median income for Alameda County, based upon the annual income figures provided by HUD, as adjusted for household size.

“Inclusionary unit.” A dwelling unit as required by this chapter which is rented or sold at affordable rents and/or affordable sales prices (as defined by this chapter) to very low, low, or moderate income households.

“Inclusionary unit credits.” Credits approved by the city council in the event a project exceeds the total number of inclusionary units required in this chapter. Inclusionary unit credits may be used by the project owner to meet the affordable housing requirements of another project subject to approval by the city council.

“Income.” The gross annual household income as defined by HUD.

“Life of the inclusionary unit.” The term during which the affordability provisions for inclusionary units shall remain applicable. The affordability provisions for inclusionary units shall apply in perpetuity from the date of occupancy, which shall be the date the city of Pleasanton performs final inspection for the building permit.

“Lower income housing fee.” A fee paid to the city by an applicant for a project in the city, in lieu of providing the inclusionary units required by this chapter.

“Median income for Alameda County.” The median gross annual income in Alameda County as determined by HUD, adjusted for household size.

“Off-site inclusionary units.” Inclusionary units constructed within the city of Pleasanton on a site other than the site where the applicant intends to construct market rate units.

“Ownership units.” Inclusionary units developed as part of a residential development which the applicant intends will be sold, or which are customarily offered for individual sale.

“Project.” A residential housing development at one location or site including all dwelling units for which permits have been applied for or approved.

“Project owner.” Any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which holds fee title to the land on which the project is located.

“Property owner.” The owner of an inclusionary unit, excepting a “project owner.”

“Recapture mechanisms.” Legal programs and restrictions by which subsidies provided to inclusionary units will be controlled and repaid to the city and/or other entity upon resale, to ensure the ongoing preservation of affordability of inclusionary units or to ensure funds for inclusionary units remain within the city’s affordable housing program.

“Rental units”: Inclusionary units which the applicant intends will be rented or leased, or which are customarily offered for lease or rent.

“Resale restrictions.” Legal restrictions which restrict the price of inclusionary units to ensure that they remain affordable to very low, low, and moderate income households on resale.

“Residential project, multiple-family.” A residential project consisting of condominiums, apartments, and similar dwellings attached in groups of four or more units per structure and including multiple units located on a single parcel of land under common ownership.

“Residential project, single-family.” A residential project consisting of detached and attached single-family homes, including paired single-family, duets, duplexes, townhomes, and similar unit types where each unit is located on a separate parcel of land.

“Unit type.” Various dwelling units within a project which are distinguished by number of bedrooms and/or the type of construction (e.g., detached single-family, duets, townhomes, condominiums).

Article II. Zoning Requirements
17.44.040 General requirements/applicability.

A. Residential Development. For all new multiple-family residential projects of 15 units or more, at least 15 percent of the project's dwelling units shall be affordable to very low, and/or low income households. For all new single-family residential projects of 15 units or more, at least 20 percent of the project's dwelling units shall be affordable to very low, low, and/or moderate income households. These dwelling units shall be referred to as "Inclusionary Units". Special consideration will be given to projects in which a significant percentage of the inclusionary units are for very low and low income households. The specific mix of units within the three affordability categories shall be subject to approval by the city.

The inclusionary units shall be reserved for rent or purchase by eligible very low, low, and moderate income households, as applicable. Projects subject to these requirements include, but are not limited to, single-family detached dwellings, townhomes, apartments, condominiums, or cooperatives provided through new construction projects, and/or through conversion of rentals to ownership units.

The percentage of inclusionary units required for a particular project shall be determined only once on a given project, at the time of tentative map approval, or, for projects not processing a map, prior to issuance of building permit. If the subdivision design changes, which results in a change in the number of unit types required, the number of inclusionary units required shall be recalculated to coincide with the final approved project. In applying and calculating the 15 percent requirement, any decimal fraction less than or equal to 0.50 may be disregarded, and any decimal fraction greater than 0.50 shall be construed as one unit.

B. Commercial, Office, and Industrial (COI) Development. In lieu of paying the lower income fee as set forth in city Ordinance No. 1488, COI development may provide affordable housing consistent with this chapter. As a result, new COI developments are strongly encouraged to submit an affordable housing proposal as set forth in Section 17.44.090 of this chapter. Upon submittal of the affordable housing proposal, city staff will meet with the developer to discuss the potential for providing incentives to encourage on-site construction of affordable housing units and alternatives to constructing affordable units as set forth in this chapter. In the event a developer requests incentives or alternatives as a means of providing affordable housing in connection with a COI development, the affordable housing proposal will be reviewed as set forth in Section 17.44.090 of this chapter. COI development not pursuing the inclusion of affordable housing shall be subject to the lower income fees as set forth in city ordinance 1488. (Ord. 1818 § 1, 2000)

17.44.050 Inclusionary unit provisions and specifications.

A. Inclusionary units shall be dispersed throughout the project unless otherwise approved by the city.

B. Inclusionary units shall be constructed with identical exterior materials and an exterior architectural design that is consistent with the market rate units in the project.

C. Inclusionary units may be of smaller size than the market units in the project. In addition, inclusionary units may have fewer interior amenities than the market rate units in the project. However, the city may require that the inclusionary units meet certain minimum standards. These standards shall be set forth in the affordable housing agreement for the project.

D. Inclusionary units shall remain affordable in perpetuity through recordation of an affordable housing agreement as described in Section 17.44.060 of this chapter.

E. All inclusionary units in a project shall be constructed concurrently within or prior to the construction of the project's market rate units.

F. For purposes of calculating the affordable rent or affordable sales price of an inclusionary unit, the following household size assumptions shall be used for each applicable dwelling unit type:

Unit Size	HUD Income Category by Household Size
Studio unit	1 person
1 bedroom unit	2 persons
2 bedroom unit	3 persons
3 bedroom unit	4 persons
4 or more bedroom unit	5 or more persons

G. The city's adopted preference and priority system shall be used for determining eligibility among prospective beneficiaries for affordable housing units created through this inclusionary zoning ordinance.

17.44.060 Affordable housing agreement.

An affordable housing agreement shall be entered into by the city and the project owner. The agreement shall record the method and terms by which a project owner shall comply with the requirements of this chapter. The approval and/or recordation of this agreement shall take place prior to final map approval or, where a map is not being processed, prior to the issuance of building permits for such lots or units.

The affordable housing agreement shall state the methodology for determining a unit's initial and ongoing rent or sales and resale price(s), any resale restrictions, occupancy requirements, eligibility requirements, city incentives including second mortgages, recapture mechanisms, the administrative process for monitoring unit management to assure ongoing affordability and other matters related to the development and retention of the inclusionary units.

In addition to the above, the affordable housing agreement shall set forth any waiver of the lower income housing fee. For projects which meet the affordability threshold with very low and/or low income units, all units in the project shall be eligible for a waiver of the lower income housing fee. For single-family residential projects which meet the affordability threshold with moderate income units, or multiple-family residential projects which do not meet the affordability threshold, only the inclusionary units shall be eligible for a waiver of the lower income housing fee except as otherwise approved by the city council.

To assure affordability over the life of the unit, the affordable housing agreement shall be recorded with the property deed or other method approved by the city attorney. In the event an inclusionary unit is affordable by design the affordable housing agreement shall stipulate the method for assuring that the units retain their affordability as the housing market changes.

The director of planning and community development may waive the requirement for an affordable housing agreement for projects approved prior to the effective hereof and/or for projects that have their affordable housing requirements included in a development agreement or other city document.

17.44.070 Incentives to encourage on-site construction of inclusionary units.

The city shall consider making available to the applicant incentives to increase the feasibility of residential projects to provide inclusionary units. Incentives or financial assistance will be offered only to the extent resources for this purpose are available and approved for such use by the city council or city manager, as defined below, and to the extent that the project, with the use of incentives or financial assistance, assists in achieving the city's housing goals. However, nothing in this chapter establishes, directly or through implication, a right of an applicant to receive any assistance or incentive from the city.

Any incentives provided by the city shall be set out in the affordable housing agreement pursuant to Section 17.44.060 of this chapter. The granting of the additional incentives shall require demonstration of exceptional circumstances that necessitate assistance from the city, as well as documentation of how such incentives increase the feasibility of providing affordable housing.

The following incentives may be approved for applicants who construct inclusionary units on-site:

A. Fee Waiver or Deferral. The city council, by resolution, may waive or defer payment of city development impact fees and/or building permit fees applicable to the inclusionary units or the project of which they are a part. Fee waivers shall meet the criteria included in the city's adopted policy for evaluating waivers of city fees for affordable housing projects. The affordable housing agreement shall include the terms of the fee waiver.

B. Design Modifications. The granting of design modifications relative to the inclusionary requirement shall require the approval of the city council and shall meet all applicable zoning requirements of the city of Pleasanton. Modifications to typical design standards may include the following:

Reduced setbacks;
Reduction in infrastructure requirements;
Reduced open space requirements;
Reduced landscaping requirements;
Reduced interior or exterior amenities;
Reduction in parking requirements;
Height restriction waivers.

C. Second Mortgages. The city may utilize available lower income housing funds for the purpose of providing second mortgages to prospective unit owners or to subsidize the cost of a unit to establish an affordable rent or an affordable sales price. Terms of the second mortgage or subsidy shall be stated in the affordable housing agreement. The utilization of these incentives shall not be the sole source of providing the inclusionary units and they are intended to augment the developer's proposal.

D. Priority Processing. After receiving its discretionary approvals, a project that provides inclusionary units may be entitled to priority processing of building and engineering approvals subject to the approval of the city manager. A project eligible for priority processing shall be assigned to city engineering and/or building staff and processed in advance of all nonpriority items.

17.44.080 Alternatives to constructing inclusionary units on-site.

The primary emphasis of this inclusionary zoning ordinance is to achieve the inclusion of affordable housing units to be constructed in conjunction with market rate units within the same project in all new residential projects. However, the city acknowledges that it may not always be practical to require that every project satisfy its affordable housing requirement through the construction of affordable units within the project itself. Therefore, the requirements of this chapter may be satisfied by various methods other than the construction of inclusionary units on the project site. Some examples of alternate methods of compliance appear below. As housing market conditions change, the city may need to allow alternatives to provide options to applicants to further the intent of providing affordable housing with new development projects.

A. Off-Site Projects. Inclusionary units required pursuant to this chapter may be permitted to be constructed at a location within the city other than the project site. Any off-site inclusionary units must meet the following criteria:

1. The off-site inclusionary units must be determined to be consistent with the city's goal of creating, preserving, maintaining, and protecting housing for very low, low, and moderate income households.

2. The off-site inclusionary units must not result in a significant concentration of inclusionary units in any one particular neighborhood.

3. The off-site inclusionary units shall conform to the requirements of all applicable city ordinances and the provisions of this chapter.

4. The occupancy and rents of the off-site inclusionary units shall be governed by the terms of a deed restriction, and if applicable, a declaration of covenants, conditions and restrictions similar to that used for the on-site inclusionary units.

The affordable housing agreement shall stipulate the terms of the off-site inclusionary units. If the construction does not take place at the same time as project development, the agreement shall require the units to be produced within a specified time frame, but in no event longer than five years. A cash deposit or bond may be required by the city, refundable upon construction, as assurance that the units will be built.

B. Land Dedication. An applicant may dedicate land to the city or a local nonprofit housing developer in place of actual construction of inclusionary units upon approval of the city council. The intent of allowing a land dedication option is to provide the city or a local nonprofit housing developer the free land needed to make an inclusionary unit development feasible, thus furthering the intent of this chapter.

The dedicated land must be appropriately zoned, buildable, free of toxic substances and contaminated soils, and large enough to accommodate the number of inclusionary units required for the project. The city's acceptance of land dedication shall require that the lots be fully improved, with infrastructure, adjacent utilities, grading, and fees paid.

C. Credit Transfers. In the event a project exceeds the total number of inclusionary units required in this chapter, the project owner may request inclusionary unit credits which may be used to meet the affordable housing requirements of another project. Inclusionary unit credits are issued to and become the possession of the project owner and may not be transferred to another project owner without approval by the city council. The number of inclusionary unit credits awarded for any project is subject to approval by the city council.

D. Alternate Methods of Compliance. Applicants may propose creative concepts for meeting the requirements of this chapter, in order to bring down the cost of providing inclusionary units, whether on- or off-site. The city council may approve alternate methods of compliance with this chapter if the applicant demonstrates that such alternate method meets the purpose of this chapter (as set forth in Section 17.44.020 of this chapter).

E. Lower Income Housing Fee Option. In lieu of providing inclusionary units in a project, an applicant may pay the city's lower income housing fee as set forth in Chapter 17.40 of this title.

Article III. Miscellaneous
17.44.090 Administration.

An applicant of a project subject to this chapter shall submit an affordable housing proposal stating the method by which it will meet the requirements of this chapter. The affordable housing proposal shall be submitted as part of the applicant's city development application (e.g., design review, planned unit development, etc.) to the planning department in a form approved by the city manager. The director of planning and community development may waive the requirement for submittal of an affordable housing proposal for projects approved prior to the effective date hereof and/or for projects that have undergone considerable public review during which affordable housing issues were addressed.

The affordable housing proposal shall be reviewed by the city's housing commission at a properly noticed meeting open to the public. The housing commission shall make recommendations to the city council either accepting, rejecting or modifying the developer's proposal and the utilization of any incentives as outlined in this chapter. The housing commission may also make recommendations to the planning commission regarding the project as necessary to assure conformance with this chapter.

Acceptance of the applicant's affordable housing proposal is subject to approval by the city council, which may direct the city manager to execute an affordable housing agreement in a form approved by the city attorney. The city manager or his or her designee shall be responsible for monitoring the sale, occupancy and resale of inclusionary units.

17.44.100 Conflict of interest.

The following individuals are ineligible to purchase or rent an inclusionary unit: (a) city employees and officials (and their immediate family members) who have policymaking authority or influence regarding city housing programs; (b) the project applicant and its officers and employees (and their immediate family members); and (c) the project owner and its officers and employees (and their immediate family members).

17.44.110 Enforcement.

The city manager is designated as the enforcing authority. The city manager may suspend or revoke any building permit or approval upon finding a violation of any provision of this chapter. The provisions of this chapter shall apply to all agents, successors and assigns of an applicant. No building permit or final inspection shall be issued, nor any development approval be granted which does not meet the requirements of this chapter. In the event that it is determined that rents in excess of those allowed by operation of this chapter have been charged to a tenant residing in an inclusionary unit, the city may take appropriate legal action to recover, and the project owner shall be obligated to pay to the tenant, or to the city in the event the tenant cannot be located, any excess rents charged.

17.44.120 Appeals.

Any person aggrieved by any action or determination of the city manager under this chapter, may appeal such action or determination to the city council in the manner provided in Chapter 18.144 of this code.

Tallahassee (FL) *Land Development Code*. 2009.
Chapter 9. Subdivisions and Site Plans.
Article VI. Inclusionary Housing.

Sec. 9-240. Purpose and intent.
The regulations and requirements of this article are intended to:
(a) Promote the health, safety and general welfare of the citizens of the city through the implementation of the goals, objectives and policies of the Tallahassee-Leon County Comprehensive Plan Housing Element;
(b) Increase affordable home ownership opportunities within the city,
(c) Stimulate the private sector production of housing available to families within the range of 70 percent to 100 percent of the area median income, or lower;
(d) Facilitate and encourage development that includes a range of housing opportunities through a variety of residential types, forms of ownership, and home sales prices; and
(e) Encourage the even and widespread distribution of affordable housing opportunities throughout all portions of the community, including within new developments in fastest growing areas of the community.

Sec. 9-241. Definitions.
In addition to the definitions and rules of construction in section 1-2 of this Code, the following words, terms and phrases, when used in this section, shall have the meanings ascribed to them as set forth below, except where the context clearly indicates a different meaning:

Area median income (AMI) means the median family income for the Tallahassee Metropolitan Statistical Area, as published by the US Bureau of the Census and the US Department of Housing and Urban Development, unless otherwise specified.

Average sales price (ASP) means the price at which all inclusionary housing units in a single development must average. The current ASP is $159,379.00. The ASP shall be reviewed annually by the city commission, and reset if necessary.

Eligible households shall be defined as those households composed of residents of the city earning 70 percent--100 percent of Tallahassee Metropolitan Statistical Area (TMSA), adjusted for size, based upon the most recently published Census or HUD data. In addition, eligible households shall include the following:
(1) Households earning less than 70 percent of the area median family income but able to secure a first institutional mortgage wherein the lender is satisfied that the household can afford principal and interest mortgage payments in excess of 27 percent of its income, shall be deemed eligible households for purposes of owner-occupied housing provided pursuant to requirements of this article;
(2) Households earning less than 70 percent of the area median family income but willing to pay rent in excess of 30 percent of its income, shall be deemed eligible households for purposes of rental housing provided pursuant to requirements set out in this article; and
(3) Households earning less than 70 percent of the area median income when available housing units considered affordable to that income group by first institutional mortgage lenders are available through a development.

Fee in-lieu means the fee paid by the developer/owner of any primary development as an alternative to providing required inclusionary housing for sale within the primary development.

Inclusionary unit means a newly constructed dwelling unit offered to an eligible household at or below the maximum purchase price (MPP) such that the average sales price of all the required inclusionary units within the development are at or below the average sales price (ASP) established by this article.
Market-rate unit means a dwelling unit in a residential development that is not an inclusionary unit.

Maximum affordable rent means the maximum monthly rent that may be charged for an inclusionary rental unit provided in lieu of owner-occupied inclusionary housing provided within the primary development.

Maximum purchase price (MPP) means the highest price allowed for the purchase of an inclusionary housing unit as established in the city's local housing assistance plan adopted by the city commission.

Metropolitan Statistical Area (MSA) means a geographic entity defined by the federal office of management and budget for use by federal statistical agencies, based on the concept of a core area of a city with 50,000 or more inhabitants, or the presence of an urbanized area, as defined by the office of management and budget, and a total population of at least 100,000, plus adjacent communities having a high degree of economic and social integration with that core. The Tallahassee MSA (TMSA) consists of the city, Leon County, Gadsden County, Jefferson County, and Wakulla County, Florida, and all inclusive local governments.

Off-site unit means an inclusionary unit that will be built at a different location than the primary development.

On-site unit means an inclusionary unit that will be built as part of the primary development.

Primary development means a subdivision or site plan including 50 or more housing units intended for sale and owner-occupancy, required to provide inclusionary housing within its physical confines or to provide those in-lieu comparables as authorized by this section.

Selected census tracts means those census tracts where the median family income is greater than the countywide median, based upon the most recently published Census or HUD data.

Sec. 9-242. Applicability.
(a) The requirements of this section shall apply to new development within the urban services area, located within selected census tracts as defined herein, zoning districts that implement the planned development future land use category, and developments of regional impact (DRIs) with 50 or more residential dwelling units intended for owner occupancy. Developments subject to the requirements of this section providing no less than ten percent and as much as 100 percent of the total number of residential dwelling units in the primary development as inclusionary housing units shall be eligible for development incentives as provided in accordance with section 9-246.

(b) Sales price methodology. Any inclusionary housing development project shall meet the following requirements:

(1) All housing units produced to satisfy the requirements of this article shall be sold for no more than the maximum purchase price established by this article, as it may be amended from time to time; and
(2) The average sales price of all units produced to satisfy the requirements of this article shall not exceed the average sales price established by this article, as it may be amended from time to time.

(c) City commission review of average sales price (ASP). The city commission review of the ASP shall consider analysis of housing economic information, including supply-side factors, demand-side factors, and financing factors, not limited to the following: consideration of ASP computed through the formula used to set the initial ASP; Florida Housing Authority (FHA) single-family home mortgage limits; consumer price index (CPI), area median income, prevailing mortgage rates, Florida Housing Finance Corporation (FHFC) first-time home buyers bond limit, construction materials costs and other information as may be deemed relevant. The formula used to set the initial ASP shall consider published HUD income limits and the current interest rate based on the average interest rate of the most recent six months (30-year, fixed-, non-jumbo rate) as published by the Federal Housing Finance Board. The city commission through the passing of a resolution can amend the ASP.

(d) Developments not subject to subsection (a), and located within selected census tracts that provide no less than ten percent and as much as 100 percent of the total number of residential dwelling units in the primary development as inclusionary housing units shall be eligible for those development incentives as provided in accordance with section 9-246.

(e) For the purposes of this section, two or more developments shall be aggregated and considered as one development, if they are no more than one-quarter-mile apart and any two of the following criteria are met:
(1) There is a common interest in two or more developments;
(2) The developments will undergo improvements within the same five-year period;
(3) A master plan exists, submitted to a governmental body, addressing all developments;
(4) All developments share some infrastructure or amenities; or
(5) A common advertising scheme addresses all development.

Sec. 9-243. Vested rights.
Those provisions set out in this article requiring of new development the provision of inclusionary housing units or in in-lieu comparables shall not apply to the development of any property authorized by and consistent with any of the following development orders approved or prior to the effective date of the inclusionary housing ordinance or in application prior to the effective date of the inclusionary housing ordinance and subsequently approved without major modification during the application period: preliminary plat approval; site plan approval; PUD concept plan approval; development agreement, approved pursuant to Chapter 163, Florida Statutes; or, DRI development order approval. In those instances where the property owner of a vested property applies for a new development order, that if approved, would constitute a major modification of the previous development order, that property may lose its vested status as it relates to the provisions of this article. Any modification to a previously approved development order resulting in the addition of 50 or more dwelling units than previously allowed in the development order approved prior to April 13, 2005 (the adoption date of this ordinance), that were not previously mitigated, shall be subject to the provisions of this article for the

increased number of residential dwelling units. Determination as to whether a change to the development order would be constitute a major modification shall be made by the director of the growth management department or his/her designee, based upon applicable criteria in this code and Chapter 163, Florida Statutes, as may be applicable. Any property owner may instead request that the city commission make this determination or may appeal staff's determination to the city commission for reconsideration. In rendering its determination as to vested rights status, the city commission shall consider staff's recommendation and whether the affected property already complies with this article; has been "built out" in terms of residential development capacity; or, substantially complies with this article. If the city commission determines that the property substantially complies with this article, it shall also specify those inclusionary housing requirements that thereafter apply to its further development, if any.

Sec. 9-244. Exemptions.

The following shall be exempt from the requirements of this article:

(a) Multifamily and multi-unit residential units constructed for rental purposes shall not be subject to requirements to provide inclusionary housing; however, multifamily and multi-unit residential units constructed for rental purposes may be provided to satisfy certain requirements for inclusionary housing, as provided herein; condominium residential units intended for owner-occupancy are not exempt and shall be subject to these regulations;

(b) Nursing homes, residential care facilities, assisted care living facilities, and retirement homes;

(c) Dormitories and group quarters, as defined by the US Census;

(d) Manufactured homes shall not be subject to requirements to provide inclusionary housing and may not be provided to satisfy any requirements set forth herein.

(e) All developments within the Southern Strategy Area, as established in the Tallahassee-Leon County Comprehensive Plan, except for those included within planned development zoning district, or developments of regional impact (DRIs); and

(f) All developments within areas designated lake protection on the future land use map.

Sec. 9-245. Requirements for inclusionary housing.

The following requirements shall apply:

(a) *Number of inclusionary units required.* Subdivisions and site plans including 50 or more dwelling units shall provide a minimum of ten percent of the units at prices no greater than the maximum purchase price and with purchase prices averaging not greater than the average sales price. For purposes of this section accessory apartment units shall not be construed as a dwelling or residential unit, either for purposes of determining the number of inclusionary units required or the number of inclusionary units provided.

(b) *Calculation of required number of units.* The following standards shall be utilized in the calculation of number of inclusionary units required to be provided:

(1) *Density bonus units:* For purposes of calculating the number of inclusionary units required by this section, any additional units provided through use of the density bonus incentives of this article will not be counted in determining the required number of inclusionary units.

(2) *Fractional unit requirements:* In determining the number of whole inclusionary units required, any fractional requirement shall be rounded up to the nearest whole number.

(c) *Location of inclusionary units.* Required inclusionary housing units shall be provided within the primary development, at an alternative location within the same census tract or, in a contiguous selected census tract, so long as the off-site location is within the urban service area; the option of providing inclusionary housing at an off-site location shall not be available for developments within planned development zoning districts, nor within DRIs.

(d) *Waiver of inclusionary housing requirements.* The city commission may grant waivers of requirements for inclusionary housing if the commission finds the following:
(1) The application of the requirement would produce a result inconsistent with the goals and objectives of the Tallahassee-Leon County Comprehensive Plan pertaining to the development of the community; or,
(2) If the primary development is part of a larger development, that development furthers the intent of this section through means other than strict compliance with the regulations set out in this section.

(e) *Developer financial responsibility.* At the time of the approval of any site plan or preliminary plat for any primary development required to provide on-site or off-site, owner-occupied or rental, inclusionary housing units, or buildable lots, as authorized by this section, the applicant shall post a bond or submit a letter of credit or other acceptable instrument equivalent to the fee in-lieu of providing the required inclusionary housing. The city shall retain the bond money in escrow in an interest-bearing account for a period of no less than three years, or other time period agreed upon by the applicant and the city, or until the city has documented that the required inclusionary housing or in-lieu comparables have been provided. Upon documentation that the inclusionary housing requirement has been met in part or in full, the city shall remit that portion of the bond money and interest proportionally equivalent to portion of the inclusionary housing requirement satisfied to the applicant or their assigns. If, after a period of three years, or other time period agreed upon by the applicant and the city, the applicant has not demonstrated compliance with the requirement, the bond shall be forfeited and the bond money and interest shall be transferred to the inclusionary housing trust fund, and may thereafter be utilized for purposes of providing inclusionary housing. In those instances where the applicant has agreed in advance to pay a fee in-lieu of all or a portion of the required inclusionary housing, no bond shall be required to be posted for that amount of the requirement to be satisfied through payment of the fee in-lieu. This provision shall not be available for developments within planned development zoning districts, nor within DRIs.

(f) *Fee in-lieu of providing inclusionary units.* As an alternative to providing inclusionary housing units, the owner/developer may a pay a fee in-lieu to the city. The fee rate shall be as follows:
(1) For those developments where the average sales price of all housing units is greater than 100 percent of the average sales price (ASP) but less than 110 percent of ASP: $10,000.00 per required inclusionary unit not constructed;
(2) For those developments where the average sales price of all housing units is greater than 110 percent of ASP and less than or equal to 175 percent of ASP: $15,000.00 per required inclusionary unit not constructed;

(3) For those developments where the average sales price of all housing units is greater than 175 percent of ASP and less than or equal to 225 percent of ASP: $20,000.00 per required inclusionary unit not constructed; and
(4) For those developments where the average sales price of all housing units is greater than 225 percent of ASP: $25,000.00 per required inclusionary unit not constructed.
This provision shall not be available for developments within planned development zoning districts, nor within DRIs.

(g) *Multifamily rental housing in-lieu of providing inclusionary units.* As an alternative to providing inclusionary owner-occupancy housing units, the owner/developer may provide 1 1/2 multifamily rental units per each owner-occupancy unit not otherwise provided. Rental units provided in lieu of owner-occupancy units shall be provided on-site within the primary development, at an alternative location within the same census tract or, in an adjacent selected census tract, so long as the off-site location is within the urban service area. Rents charged for these rental units shall not exceed the current US HUD's High HOME rent limit by bedroom size in the Tallahassee Metropolitan Statistical Area (TMSA). The option of providing off-site multifamily rental housing in-lieu of providing inclusionary units shall not be available for developments within planned development zoning districts, nor within DRIs.

(h) *Residential lots in-lieu of providing inclusionary units.* As an alternative to providing inclusionary owner-occupancy housing units, the owner/developer may provide to the city or its designated agent, one residential lot per each owner-occupancy unit not otherwise provided. Lots so provided shall be located on-site within the primary development and each lot shall have sufficient area devoid of environmental constraint to allow construction of a residential unit thereupon. The city or its designated agency shall assume responsibility for the development of all lots so provided with inclusionary units.

(i) *Establishment of the required number of inclusionary units at time of plan approval.* The number and location of inclusionary units required in conjunction with a particular primary development will be determined at the time of preliminary plat or site plan approval. Any of the following changes in the location of any on-site inclusionary housing unit after preliminary plat or site plan approval shall constitute a major modification to the original development order and shall be reviewed accordingly:
(1) Relocation contiguous to vacant property outside the primary development;
(2) Relocation contiguous to property outside the primary development developed with less intensive residential use; or
(3) Relocation contiguous to property inside the primary development, developed with less intensive residential use and not previously intended as the location of inclusionary housing.
Determination as to whether the contiguous property is considered less intensive residential use shall be made by the land use administrator.

Sec. 9-246. Incentives for provision of inclusionary housing.
The following incentives shall be available to developments constructing the required number of inclusionary housing units within the primary development:

(a) *Additional development density.* Any development providing inclusionary housing pursuant to this section shall be entitled to a 25 percent increase in

allowable density above that otherwise established by the zoning district in which the development is located. The density bonus provided herein shall only be effectuated consistent with policy 2.1.14 of the Land Use Element of the Tallahassee-Leon County Comprehensive Plan. To qualify for this bonus, the applicant must include a narrative in the development application describing how the design and orientation of the development seeking the density bonus is compatible with the surrounding land use character, particularly with any low density residential neighborhoods. This narrative shall address building size and massing, site layout and design, architectural characteristics, and landscaping, as well as any other aspects of development that the applicant deems appropriate.

(b) *Design flexibility.* The developer of inclusionary housing developments shall be eligible to obtain greater flexibility in development design through application of the following:
(1) *Choice of housing type.* Inclusionary housing units required by this section as well as any provided through density bonus incentive may be provided as single family, duplex, townhouse units, or cluster development within the RP-1, RP-2, and RP-MH zoning districts, and as single family, duplex, triplex, or townhouse units or as units intended for owner occupancy in a condominium, or multifamily residential structure, in other zoning districts provided that the height, setbacks, massing and exterior appearance of the inclusionary units are consistent with other residential units within the development in which they are located.
(2) *Alleviation of setback and lot size requirements internal to the development.* Housing units (inclusionary and "non-inclusionary") shall not be subject to yard setback requirements, except for yards adjacent to boundary of the primary development and other property. Housing units (inclusionary and "non-inclusionary") shall not be subject to minimum lot size requirements, except where lots are located adjacent to property outside of the primary development.
(3) *Alleviation of buffering and screening requirements internal to the development.* Inclusionary housing units shall not be subject to requirements for the provision of buffering and screening for purpose of mitigating incompatibility within the primary development. Where adjacent to property outside of the primary development, inclusionary housing units shall be subject to those buffering and screening requirements as set out in this Code as may be applicable.

(c) *Expedited review.* The developer of an inclusionary housing development shall be eligible for expedited development review. The developer shall inform the growth management department at the pre-application stage that the development will include inclusionary housing; thereafter, the growth management department shall expedite the review of the application to the fullest extent permitted by law and shall notify other reviewing departments/agencies that the application is required to receive expedited review. Expedited applications are to be reviewed prior to other applications filed on the same date or in the same application period, except for other applications including inclusionary housing or affordable housing, pursuant to Chapter 420.9076, Florida Statutes. Any development order application not directly pertaining to or required for the development of inclusionary housing units shall not be entitled to expedited review.

The director of the growth management department shall serve as the city's liaison to expedite the review and approval process. This provision shall apply to site and development plan applications, subdivision applications, environmental permits, as well to individual building permits for individual inclusionary units.

(d) *Deviations to development standards for primary developments incorporating inclusionary housing.* The developer of inclusionary housing seeking deviation(s) to development standards not addressed in subsection (2) above, shall submit a request for the deviation(s), along with the development application, to the entity with authority to approve the development application. There shall be no fee charged to the developer of inclusionary housing for requested deviations in conjunction with the development of the inclusionary housing. Deviations requested pursuant to this section shall not be required to comply with requirements of section 9-233 of this chapter for the granting of a deviation. Instead, requests for deviation under this section shall be subject to demonstrate compliance with the following criteria:
(1) The request for deviation shall specify the standard(s) to be deviated, the extent of deviation, and where the deviation will apply (requests for deviations to setbacks should be expressed in terms of linear feet and, requests for deviations to lot sizes should be expressed in square footage; requests may provided on a graphic plan);
(2) The deviation shall not result in an increase in gross residential density for the development in excess of the density bonus provided by this section;
(3) The deviation shall not result in conditions detrimental to the public's health, safety, or welfare; and,
(4) The granting of this deviation shall be consistent with the intent and purpose of this section and the Tallahassee-Leon County Comprehensive Plan.
Upon a finding in the affirmative, the entity with authority to approve the application shall grant the requested deviation(s).
(e) *Transportation concurrency exemption.* Within any and all developments wherein inclusionary units are provided under this article, any inclusionary units provided, less than or equal to the requirement for inclusionary units, as well as any provided electively through density bonus, shall be exempt from transportation concurrency requirements.

(f) *Additional incentives.* A developer of inclusionary housing may request additional incentives. The city commission may grant such additional incentives through approval of a development agreement pursuant to Section 163.3220, Florida Statutes ("163 Development Agreement") or planned unit development concept plan, so long as the commission finds the following:
(1) The application of the incentive would not produce a result inconsistent with the goals and objectives of the Tallahassee-Leon County Comprehensive Plan; and,
(2) The provision of the incentive furthers the intent of this section.

Sec. 9-247. Compliance procedures.
(a) *General.* Approval of an inclusionary housing plan and implementation of an approved inclusionary housing agreement is a requirement of any site plan and preliminary plat subject to the requirements of the inclusionary housing section. An inclusionary housing plan is not required where the requirements are satisfied by provision of residential lots or payment of a fee in-lieu of provision of inclusionary units. The inclusionary housing plan must include:
(1) A site plan that includes the location of the inclusionary units (or lots or areas set aside for inclusionary units), setbacks and lot sizes for inclusionary housing units and other proposed development;
(2) The structure type of inclusionary units (may be a range of types) to be provided;
(3) The proposed tenure (owner-occupancy or rental) of inclusionary units to be provided;

(4) The structure size (may be a size range) of the inclusionary units to be provided;
(5) The mechanisms that will be used to assure that the units remain affordable, per city commission policy, such as resale and rental restrictions, and rights of first refusal and other documents;
(6) For inclusionary units to be provided off-site: the location (including parcel identification number(s)), structure type of inclusionary units and, proposed tenure; and,
(7) Any other information as may be necessary to demonstrate that the development complies with the provisions of this section.

(b) *Pertinent information to be recorded.* The method of compliance with this section, including, as applicable, the number and location of inclusionary housing units, shall be established within the final development order and incorporated through appropriate annotation on the approved site plan or preliminary plat and in an inclusionary housing letter of agreement, signed by all parties, and recorded by the county clerk of courts. Where inclusionary requirements are satisfied through the provision of units off-site, the development orders for the primary and off-site development may be issued concurrently or sequentially; however, the site plans or preliminary plats for both developments shall reflect the method the compliance and shall as well be incorporated through appropriate annotation in an inclusionary housing letter of agreement, signed by all parties, and recorded by the county clerk of courts.

Sec. 9-248. Appeals of subdivision and development orders for developments with on-site inclusionary housing.
(a) *Appeals.* Appeal of a decision by the city commission to approve, approve with conditions, or deny a subdivision final plat, or any other development order authorizing the development of inclusionary housing shall be considered by the circuit court. A party with standing shall have the right to seek review in circuit court by petition for writ of certiorari within 30 days from final action on any application.

(b) *Attorney's fees and related costs.*
(1) In any civil litigation resulting from the city's approval of inclusionary housing as part of a development order, the prevailing party may receive his or her reasonable attorney's fees and costs from the nonprevailing party. For the purposes of this section, civil litigation shall include administrative proceedings before the Tallahassee-Leon County Planning Commission, the division of administrative hearings, county circuit court, and any appellate proceedings before the first district court of appeal and state supreme court.
(2) The attorney for the prevailing party shall submit a sworn affidavit of his or her time spent on the case and his or her costs incurred in the civil litigation for all the motions and hearings, including appeals, to the circuit court having jurisdiction or the administrative law judge who presided over the civil litigation.
(3) The circuit court having jurisdiction or administrative law judge may award the prevailing party the sum of reasonable costs incurred in the action plus a reasonable legal fee for the hours actually spent on the case as sworn to in an affidavit.
(4) Any award of attorney's fees or costs, to the extent allowed by law, shall become a part of the judgment or final order and subject to execution as the law allows.

Sec. 9-249. Monitoring and sunset review.

The inclusionary housing implementation provisions in this Code shall be monitored to ensure effective and equitable application. The city manager will present status report to the city commission on the implementation of this article every two years or as needed.

Sec. 9-250. Administration.

The housing provisions of this section shall be administered jointly by the department of neighborhood and community services and the growth management department, or their successors in interest, in consultation with the Tallahassee-Leon County Planning Department. These departments shall be authorized to provide interpretations regarding the implementation and administration of this section.

City Commission Policy 1103 - Administration and Implementation of the Inclusionary Housing Ordinance

DEPARTMENTS: Economic & Community Development Department; Planning Department; Growth Management Department; Public Works Department; Utilities

DATE ADOPTED: April 13, 2005

DATE OF LAST REVISION: August 20, 2008

1103.01 Authority: The City Commission

1103.02 Scope and Applicability: This policy shall be used in the administration and implementation of the inclusionary housing provisions in the Land Development Code under Section 9-111, Required improvements, Division 3, Article II, Subdivisions, Chapter 9; Section 9-152, Site plan review process, Division 2, Review and Approval, Article III, Site Plans, Chapter 9; and Article VI, Inclusionary housing, Chapter 9, of the City of Tallahassee Land Development Code.

1103.03 Policy Statement:

1. The developer of inclusionary housing shall not be precluded through the application or implementation of the inclusionary housing provisions of the Land Development Code from obtaining financial assistance for the inclusionary housing component of a new development in the form of loans, grants, or other assistance as may be available from the City, County, State of Florida, United States Department of Housing and Urban Development, quasi-governmental entities, private lenders, or other non-governmental organizations.

2. Homeowners' association or condominium association fees applied within a residential development that includes inclusionary housing units shall not be applied in a manner that distinguishes between inclusionary and non-inclusionary housing units. [Residents of inclusionary housing units shall pay an equal share of homeowners' association fees or similar costs as non-inclusionary housing units.]

3. Compliance with the inclusionary housing provisions of the Land Development Code shall constitute compliance with the minimum requirements for affordable housing in all Developments of Regional Impact with 50 or more residential units, and in all zoning districts that implement the Planned Development future land use category.

1103.04 Definitions: Words and terminology used here shall have the same meaning as defined within the Land Development Code. In addition, the following term, as used in the Policy is herewith defined: **Reserved**

1103.05 Responsibilities:

1. **Determination of eligibility for purchase, rental, and occupancy of Inclusionary Units.** The Economic and Community Development Department shall verify eligibility of households to rent or purchase an inclusionary housing unit. For inclusionary rental units, the Economic and Community Development Department or its designee shall annually verify that each tenant household's income at the time of initial rental and annually thereafter is within the range established in the definition for "eligible households" as appears in the inclusionary housing provisions of the Land Development Code.

2. **Determination and collection of value of fee in-lieu of inclusionary Units.** The Growth Management Department shall establish the amount of fees owed to the City

when the applicant elects to pay a fee in-lieu of providing inclusionary housing unit(s). The Growth Management Department shall assure that the payment made by the applicant is for the correct amount. Should it be determined upon the construction and sale of housing units within the applicant's on-site development that the fee paid was insufficient, the Growth Management Department shall suspend any and all future permits until the balance of the required payment has been received. Should it be determined upon the construction and sale of housing units within the applicant's on-site development that the fee paid was in excess of that owed, the Economic and Community Development Department/Growth Management Department shall inform the City's Treasurer-Clerk who shall remit the excess balance, along with any associated interest accrued, to the applicant.

3. **Collection and disposition of inclusionary housing fees and bond monies.** Inclusionary housing in-lieu fees and developer financial responsibility bonds due at the time of development order approval shall be paid to the City Growth Management Department. The Growth Management Department shall furnish a receipt as proof of payment to the payer. Copies of the receipt shall be furnished to the City Utilities for authorization for utility service connection for the development. Copies of the receipt shall also be provided and maintained in the City's official file containing the development order.

   Developer financial responsibility bonds shall be tendered in the form of irrevocable surety bonds, irrevocable letters of credit, or other alternative, irrevocable redeemable instrument acceptable to the City. The City shall retain the bond or other instrument for a period of three years, or other time period agreed upon by the applicant and the City. If, within a period of three years, or other time period agreed upon by the applicant and the City, the applicant provides documentation that the requirements for inclusionary housing or in-lieu comparables have been satisfied, the City shall release the bond or instrument to the applicant or their assigns. If after a period of three years, or other time period agreed upon by the applicant and the City, the applicant has not demonstrated compliance with the requirement, the bond or other instrument shall be forfeited and converted to currency and transferred to the Inclusionary Housing Trust Fund, and may thereafter be utilized for purposes of providing inclusionary housing as provided in this policy.

4. **Oversight of the Inclusionary Housing Trust Fund.** The Economic and Community Development Department shall oversee the Inclusionary Housing Trust Fund. All disbursements from this fund shall be approved by the director the Economic and Community Development Department or his/her designee according to City Policy.

5. **Maintenance of residential lots provided in-lieu of inclusionary units.** The Economic and Community Development Department shall maintain and dispose of all residential lots provided in-lieu of inclusionary units. The Economic and Community Development Department shall assume responsibility for the development of these lots with inclusionary units.

6. **Maintenance and disposition of residential units if purchased by the City.** The Economic and Community Development Department or its designee shall maintain and dispose of all inclusionary housing units purchased by the City. As a condition of sale/transfer, these housing units shall be maintained as inclusionary housing units.

7. **Assisting the inclusionary housing provider and eligible households in the marketing of available inclusionary housing units.** The Economic and Community Development Department or its designee may assist sellers and landlords of inclusionary housing units and eligible households seeking inclusionary housing opportunities through providing information on availability of inclusionary housing opportunities and eligible

households. When inclusionary housing units are offered for resale on the market after a period of ownership of no less than three years from the date of original purchase, the Economic and Community Development Department or designee retains the right to arrange and facilitate the purchase of these units by eligible households.

8. **The City maintains right of first resale purchase of City-assisted inclusionary housing units.** The City or its designee shall maintain the right to purchase any inclusionary unit wherein the City or its designee provided direct financial assistance to the developer, builder, or owner of that unit, including any waivers or reductions of utility fees or charges. If the City or its designee purchases an inclusionary unit pursuant to this provision from the developer or builder prior to first sale to an eligible household, the purchase price shall not exceed the sales price proposed for an eligible home owner pursuant to the criteria established by the inclusionary housing provisions of the Land Development Code. If the City or its designee purchases an inclusionary unit at any time subsequent to its first sale to an eligible household, the purchase price shall not exceed the Average Sales Price at time of resale or the initial sales price of the house inflated over the period of ownership at a rate no more than 2% per annum for that period plus 50% of the value of any eligible improvements made to the property, whichever is greater. In those instances where units are purchased by the City or its designee, they shall be maintained for sale or purchase to other eligible households at prices or rents at or below the Maximum Purchase Price or maximum affordable rent, as defined in the inclusionary housing provisions of the Land Development Code in accordance with subsections 1103.063 and 1103.064, below. Eligible improvements, as defined below, will include all eligible improvements as evidenced by receipts for each eligible improvement or a cost estimate for each eligible improvement discounted by the percentage resulting from subtracting the Consumer Price Index, South Urban, all items, not seasonally adjusted, as published by the U.S. Department of Labor, Bureau of Labor Statistics (CPI), at the end of the month of completion of such eligible improvement from the latest available CPI available at the time of execution of transfer of the property or the Property ceases to be the Grantee's homestead. Eligible improvements will include each capital improvement that increases the value of the home and has a value in excess of $5,000. Eligible improvements will not include maintenance and repair items such as but not limited to, interior or exterior painting, new appliances, window treatments, plumbing repairs, nor will it include luxury items such as but not limited to, swimming pools, spas, and specialty items. The annual date of the CPI index will that date closest to the completion of the improvement as evidenced by receipts or certificates of occupancy for such eligible improvement.

9. **Penalty for violation. The Economic and Community Development Department shall be responsible for citation of any violations of the inclusionary housing provisions of the Land Development Code.** When necessary to ensure compliance, the Economic and Community Development Department shall inform other Departments, such as the City Attorney's Office and the Growth Management Department, to take appropriate action, as described below.

10. **Establishment of a designee agency.** The City may establish one or more agencies to act on its behalf with regard to the administration of any part of this policy.

11. **Establishment of a fast-track review/assistance team for inclusionary housing developments.** The City shall offer technical assistance and expertise to assist the developer to complete the application and review process quickly and successfully, including, assistance with the design of the development and inclusionary housing units. This team is composed of, at a minimum, the following staff: a planner from the Planning Department, a development coordinator from the Growth Management Department, an environmental permitting specialist from the Growth Management Department, a member of the Public Works Department staff, a development coordinator from the City Utilities,

and a housing specialist or planner from the Economic and Community Development Department.

1103.06 Procedures:

1. **Eligibility for inclusionary units.**

   a. General eligibility. No household may occupy an inclusionary unit unless the City or its designee has first verified the household's eligibility. If the City or its designee maintains a list or identifies eligible households, initial and subsequent occupants will be selected first from the list of identified households, to the maximum extent possible. Eligibility verification shall include review of documents that demonstrate the prospective renter's or owner's total income, such as income tax returns, W-4, or W-2 tax forms for the previous calendar year, documentation of employment along with pay stubs from their current employer, and submit such information on a form approved by the City or City's agent/designee.

   b. Occupancy. Any household who occupies a rental inclusionary unit or purchases an inclusionary unit must occupy that unit as a principal residence.

2. **Limitations and restrictions on eligibility and rent.** The City Commission hereby establishes that rental inclusionary housing units be restricted to occupancy by eligible households and rented at a rate not exceeding the maximum affordable rent for a period of no less than 10 years; thereafter, these units may be rented to any person and at any rent.

3. **Limitations and restrictions on eligibility and sales price.** The City Commission hereby establishes that owner-occupied inclusionary housing units be restricted to purchase by eligible households for a period of no less than 10 years from the date of sale to the original eligible household; thereafter, these units may be sold to any person and at any price.

   a. General. Owners of inclusionary housing units that must sell their unit before the termination of the 10-year period of sales price limitation may do so. Notice of intent to sell owner-occupied housing after ownership of less than 10 years shall be provided in writing to the City Economic and Community Development Department or other specified assigns or designated agency no less than two weeks prior to offering the unit for sale.

   b. Remuneration of direct assistance to the City. At the time of sale, or at such point in time as is previously established in contract between the seller and the City, the seller shall remit to the City the total amount of any direct financial assistance provided to them by the City for purposes of enabling purchase of the inclusionary housing unit, including, but not limited to "down-payment assistance." For purposes of this provision, the amount of remittance shall be equivalent to the "face-value" of the assistance at the time it was provided and shall not include any interest.

   c. Sales within three years of the initial date of purchase. All such sales of inclusionary housing units within three years of the initial date of purchase shall be to another eligible household, as defined in the inclusionary housing provisions in the Land Development Code. Electively, the City or their assigns/designated agency may purchase such housing units for purpose of recycling housing to other eligible households. The sales price shall not exceed the Average Sales Price at the time of resale or the initial sales price of the

house inflated over the period of ownership at a no more than 2% per annum for that period plus 50% of the value of any improvements made to the property, whichever is greater.

d. Sales within the period of three to ten years from the initial date of purchase. Units sold after three years of the initial date of purchase but before the termination of the 10-year period of sales price limitation may be sold to any purchaser; however, the City or their assigns/designated agency shall have first right to consummate such sale to another eligible household as well as to purchase such housing units for purpose of recycling housing to other eligible families at affordable sales prices. The sales price shall not exceed the Average Sales Price at the time of resale or the initial sales price of the house inflated over the period of ownership at a no more than 2% per annum for that period plus 50% of the value of any improvements made to the property, whichever is greater.

e. Sales after ten years from the initial date of purchase. Units sold after 10 years from the date of original purchase may be sold to any person at any price.

f. Assets acquired by the City. Units acquired from buy-back by the City or their assigns/designated agency should be kept as affordable housing stock, and sold to other eligible households, as may be available. If it is not possible to resell such units to eligible households at or below the Maximum Purchase Price, these units should be sold to other households that the City has recognized as requiring assistance, at as low a price as practicable. Should that not be possible, the City or its assigns/designated agency may sell these units to any person at any price. The revenues from all sales of units bought back by the City or their assigns/designated agency shall be placed in the Inclusionary Housing Trust Fund.

4. **Rental units.** Rental units will be offered to eligible households at a rent of less than or equal to the amount equal to 100% of High HOME Rent for the Tallahassee Metropolitan Statistical Area, as established by HUD, and published periodically. The owner or managing entity in control of the rental inclusionary housing units shall annually furnish the Economic and Community Development Department or its designee information to be used for the purpose of certifying the eligibility of tenant. The property owner must obtain and review documents that demonstrate the prospective renter's total income, such as income tax returns, W-4, or W-2 tax forms for the previous calendar year, documentation of employment along with pay stubs from their current employer, and submit such information on a form approved by the City or City's agent/designee.

a. Selection of Tenants. The owners of rental inclusionary units may fill vacant units by selecting income-eligible households from a waiting list prepared by the City or their designee. In those instances where the rent for inclusionary rental housing is less than or equal to the amount equal to 100% of High HOME Rent for the Tallahassee Metropolitan Statistical Area, as established by HUD, the Section 8 Housing Choice Voucher Waiting List can be used for this purpose. Alternatively, owners may fill vacant units through their own selection process, so long as rents do not exceed 100% of High HOME Rent and provided that rents they publish notices of the availability of these units according to guidelines established by the City. These guidelines may require the owner to identify or describe available units offered for rent to eligible households, state income requirements, indicate where applications are available, state when the application period opens and closes and contact information for additional information. The guidelines can also designate specific newspapers and other media in which a unit's availability may be advertised.

b. Notification of vacancy. The owners of rental inclusionary units shall notify the City or its designee of any vacancy of rental inclusionary units.

c. Annual Report. The owner shall submit to the City's Economic and Community Development Department or its designee an annual report summarizing the occupancy of each inclusionary unit for the year, demonstrating the continuing income-eligibility of the tenant. The City may require additional information pertaining to the efficiency and effectiveness of the rental aspect of the inclusionary housing strategy. In the case that the City utilizes a designee to administer some or all of aspects of the inclusionary housing strategy pertaining to monitoring renter eligibility and occupancy status, the designee(s) shall forward all reports as required by this section to the City's Economic and Community Development Department for annual review.

d. Subsequent rental to income-eligible tenant. The owner shall apply the same rental terms and conditions to tenants of inclusionary units as are applied to all other tenants, excepting any that would preclude compliance with the inclusionary housing provisions of the Land Development Code (for example, rent levels, occupancy restrictions and income requirements) or with other applicable government subsidy programs. Discrimination against persons receiving housing assistance is prohibited.

e. Changes in tenant income. If, after moving into a rental inclusionary unit, a tenant's household income exceeds the limit for that unit, the tenant household may remain in the unit as long as the household income does not exceed 140% of the income limit. Once the tenant's income exceeds 140% of the income limit, the following shall apply: The tenant shall be given one year's notice to vacate the unit. If within that year, another unit in the development is vacated, the owner may, at the owner's option, allow the tenant to remain in the original unit and raise the tenant's rent to market-rate and designate the newly vacated unit as an inclusionary rental unit affordable at the income-level previously applicable to the unit converted to market rate. The newly vacated unit must be comparable in size (for example, number of bedrooms, bathrooms, square footage, etc.) as the original unit.

f. Conversion of rental to owner-occupied units. Rental units provided to implement inclusionary housing requirements may be converted to be sold as owner-occupied units. These owner-occupied units shall be sold to eligible households and the sales price restricted to the Maximum Purchase Price, as provided by the inclusionary housing provisions of the Land Development Code and subject to those term periods and limitations established for owner-occupied inclusionary housing units, and the restrictions upon the sales price and eligible household income of homeowners set forth herein, including that converted owner-occupied inclusionary housing units be restricted to being sold to eligible households at the sales price established by the inclusionary housing provisions of the Land Development Code for a period of years equal to 10 minus the number of years it had been rented to eligible households at no greater than the maximum affordable rent.

5. **Inclusionary housing units unable to be sold on the market.** In those instances where a property developer has endeavored in good faith to consummate the first sale of an inclusionary housing unit to an eligible household by marketing the unit for sale for a period of no less than 180 days, the property owner may sell the unit to City or its designee at its originally listed price, so long as that price meets the inclusionary housing provisions of the Land Development Code and the Average Sales Price (ASP) of all the

units within the development are not above the ASP established by the inclusionary housing provisions of the Land Development Code and is supported by an appraisal by an independent real estate appraiser licensed to do business in the state of Florida.

6. **Phasing of required inclusionary units for developments of more than 100 units allowed.** Developments of more than 100 dwelling units wherein the development requires final approval in two or more site plans or preliminary plats, may meet the requirements for each phase, plat, or site plan separately so long as at the time of the approval of the initial master plan development order (e.g., PUD, DRI) the applicant posts a bond equivalent to the fee in-lieu of 100% of the inclusionary housing requirement for the entire development.

7. **Disposition of In-Lieu Fees.**

   a. Inclusionary housing in-lieu fees shall be transferred to the Inclusionary Housing Trust Fund. The Inclusionary Housing Trust Fund shall be used exclusively for either of the following purposes:

      i. The construction of low- or moderate-income housing within selected census tracts, as defined in the inclusionary housing provisions of the Land Development Code, zoning districts that implement the Planned Development future land use category, or within DRIs with 50 or more residential units; or,

      ii. Monetary assistance to eligible households, as defined in the inclusionary housing provisions of the Land Development Code, in terms of reducing downpayment or "cash required at closing" for housing located within selected census tracts.

   b. For purposes of implementing the inclusionary housing provisions of the Land Development Code, the following activities shall be considered as examples of appropriate uses of fee in-lieu revenues:

      i. Purchase land and/or buildings for other affordable housing within selected census tracts, zoning districts that implement the Planned Development future land use category, or within DRIs with 50 or more residential units that would be provided to persons that meet the eligibility criteria for inclusionary housing;

      ii. If approved by the City Commission, payment in full or part of any fees imposed by the City, directly attributable to the development of inclusionary housing units.

      iii. Provide settlement expense, down payment and mortgage write-down assistance to eligible persons or households;

      iv. Purchase and/or rehabilitation of rental housing units for conversion to homeownership within selected census tracts, zoning districts that implement the Planned Development future land use category, or within DRIs with 50 or more residential units that would be provided to persons that meet the eligibility criteria for inclusionary housing;

      v. Purchase and/or rehabilitation of owner-occupied units within selected census tracts, zoning districts that implement the Planned Development future land use category, or within DRIs, with 50 or more residential units

that would be provided to persons that meet the eligibility criteria for inclusionary housing;

vi. Provision of funds to match other state, federal, or other non-governmental homeownership programs that expand homeownership for eligible households within zoning districts that implement the Planned Development future land use category or DRIs with 50 or more residential units; and,

vii. Contracting with nonprofit developers for development of housing units to be sold at prices established by the inclusionary housing provisions of the Land Development Code or rented at or below maximum affordable rent to eligible households within selected census tracts, zoning districts that implement the Planned Development future land use category, or within DRIs with 50 or more residential units.

8. **Use of a combination of compliance methods.** Where in-lieu comparables may be provided to comply with the inclusionary housing requirements, the developer/applicant may utilize a combination of compliance methods, including provision of any portion of the required number of inclusionary housing units and provision of one or more in-lieu comparable compliance method, so long as the method of compliance is approved by the entity with authority to grant development order approval.

9. **Restrictions on resale price and rental rates of inclusionary housing imposed by other than the.** In those instances where the owner, developer, or resident of any unit receives assistance from entities other than the City, the resale sales price or rental rate of an inclusionary housing unit may be further restricted through contractual requirement or obligation imposed by the lender, underwriter, or other party to the contractual agreement, for purposes of maintaining the unit as affordable housing stock for other eligible households. Applicable restrictions, if any, shall be specified in the terms of the contract. It shall not be the obligation of the City to monitor and enforce such terms.

10. **Expedition of review of inclusionary housing applications.** Any application including inclusionary housing shall have a brightly colored cover sheet affixed to it (all copies of the application) that specifies in no less than 3-inch bold face lettering that the application includes inclusionary housing and is to be expedited. In addition, this cover sheet shall specify the date the application was taken into the official review section; what the legally established deadlines are for that application (such as any dates for publishing notice, meeting/hearing dates, agenda item due dates, permit issuance dates); and contact information for staff (from the Planning and the Economic and Community Development Departments) able to provide technical assistance regarding inclusionary housing requirements. In addition, upon receipt of any such applications, the Growth Management Department shall inform the Department director (or chief of staff) of all other applicable development review Departments/Agencies of the application that will be coming to their staff review and that this review shall be expedited. This information is to be conveyed via e-mail followed by hard-copy memorandum.

11. **Penalty for violation.** The City may institute any appropriate legal actions or proceedings necessary to ensure compliance with the inclusionary housing provisions of the Land Development Code, including:

a. Actions to revoke, deny or suspend any permit, including a building permit, certificate of occupancy, or discretionary approval;

b. Actions to recover from any violator of the inclusionary housing provisions of the Land Development Code civil fines, restitution to prevent unjust enrichment from a violation and/or enforcement costs, including attorneys fees;

c. Revocation of business license;

d. Eviction or foreclosure; and

e. Any other appropriate action for injunctive relief or damages.

Failure of any official or agency to fulfill the requirements of the inclusionary housing provisions of the Land Development Code shall not excuse any person, owner, household or other party from the requirements set forth in the Land Development Code.

1103.07 Exceptions: Waivers of some or all of the requirements of the inclusionary housing provisions of the Land Development Code may be granted by the City Commission, pursuant to the provisions for waiver, provided in the inclusionary housing provisions of the Land Development Code.

1103.08 Effective Date: This Policy shall become effective upon adoption of the inclusionary housing ordinance by the City of Tallahassee, as amended from time to time.

REVISIONS:
August 20, 2008

Article 9 Inclusionary Housing

Sec. 10-2.3.901. Purpose.

The purpose of this Article is to facilitate the development and availability of housing affordable to a broad range of households with varying income levels within the City. It is intended in part to implement state policy that declares that local governments have a responsibility to exercise their powers to facilitate the development of housing to adequately provide for the housing needs of all economic segments of the community, as stated in Government Code section 65580. It is also intended to implement the Housing Element of the General Plan which calls for the adoption of an inclusionary housing program to require either production of affordable housing at moderate, low, and very low-income levels or payment of in-lieu fees, where applicable, toward affordable housing development. The goal of this Article is to have a minimum percentage of very low, low and/or moderate-income units built within each new residential development. *(§4, Ord. 2025, eff. 3/18/04)*

Sec. 10-2.3.902. Definitions.

The definitions contained in section 10-2.1.303 shall apply to the provisions of this Article.
Notwithstanding the foregoing, the following definitions shall apply only to this Article:

A. Condominium Conversion: A "condominium conversion" means the conversion of the ownership of the units in a Rental Project from a single ownership to an ownership in which the Dwelling Units may be sold individually. Such Condominium Conversions may include, but are not limited to, the conversion of existing multiple unit Residential Development Projects to any of the following, all as defined in Civil Code section 1351: (a) a community apartment project; (b) a condominium project; and (c) a stock cooperative.

B. Residential Development Project: Any project that either: (1) includes the construction of one or more Dwelling Units, or (2) includes a Condominium Conversion. *(§4, Ord. 2025, eff. 3/18/04 and §1, Ord.2077 eff. 5/8/09)*

Sec. 10-2.3.903. Inclusionary Units or Fee Required.

A. Requirement. All Residential Development Projects shall either include the number of Inclusionary Units required under section 10-2.3.904 or, if applicable, pay the in-lieu fee required under section 10-2.3.905. No application for a rezoning, tentative map, parcel map, conditional use permit, design review, or building permit shall be approved, nor shall any such Residential Development Project be constructed or Condominium Conversion approved, without compliance with this Article.

B. Exemptions. This Article shall not apply to the reconstruction of any Dwelling Units that were destroyed by fire, flood, earthquake or other act of nature, or a project of one dwelling unit.
(§4, Ord. 2025, eff. 3/18/04 and §2, Ord.2077 eff. 5/8/09)

Sec. 10-2.3.904. Number of Inclusionary Units.

A. Basic Requirement. The required number of Inclusionary Units included in a Residential Development Project shall depend upon the total number of Dwelling Units in the

Project, whether the Dwelling Units are rental or owner-occupied and the type of Inclusionary Units being included (i.e. whether they are made affordable to Moderate Income, Low Income or Very Low Income Households). The developer of the Residential Development Project may choose which type of Inclusionary Units to include which, in turn, will partially determine the number of Inclusionary Units that must be included.

1. Projects of 2 to 9 Units. The developer of a Rental or Ownership Project (other than a Condominium Conversion) shall, at the developer's option, either (a) include one Inclusionary Unit targeted to Low-Income if Rental, or Moderate-Income if Ownership, or (b) pay the in-lieu fee specified in section 10-2.3.905.

2. Projects of 10 or more Units.

a. Rental Projects. The Rental Project shall include either: (1) 10% of the Dwelling Units as Low Income Rental Units, or (2) 6% of the Dwelling Units as Very Low Income Rental Units, Notwithstanding section 10-2.3.904(B), a minimum of one Inclusionary Dwelling Unit shall be provided per Project.

b. Ownership Projects. The Ownership Project (other than a Condominium Conversion) shall include either:

(1) 10% of the Dwelling Units as Moderate Income Ownership Units;
(2) 6% of the Dwelling Units as Low Income Ownership Units; or
(3) 4.5% of the Dwelling Units as Very Low Income Ownership Units, Notwithstanding section 10-2.3.904(B), a minimum of one Inclusionary Dwelling Unit shall be provided per Project.

Table I: Options for Projects of 10 or more units

	Moderate	Low	Very Low
Rental Units		10%	6%
Owner Units	10%	6%	4.5%

c. Condominium Conversions: The Condominium Conversion shall include either 15% of the Dwelling Units as Low Income Ownership Units or 11% of the Dwelling Units as Very Low Income Units as selected by the applicant, or, if Project is fewer than 10 units, pay a fractional fee for Low Income Ownership Units as specified in Section 10-2.3.905.

A. Fractional Units. When the application of the percentages specified above results in a

number that includes a fraction, the fraction shall be rounded up to the next whole number if the fraction is .7 or more. If the result includes a fraction below .7, the Developer shall have the op0tion of rounding up to the next whole number and providing the inclusionary unit on-site, or paying a fee in lieu of providing an additional Inclusionary Unit. The in lieu fee shall be calculated in accordance with section 10-2.3.905 below.

C. Blended Targeted Income Levels. The Developer may request that the project include Inclusionary Units that are targeted to a mix of income levels (Moderate, Low and Very-Low) instead of just to one income level. The final decision regarding the mix of targeted income levels shall be made by the decision-making body pursuant to section 10-2.3.909(C).

D. Unit Mix. The unit mix (i.e. the number of bedrooms per unit) of the Inclusionary

Units shall be in the same proportion as the unit mix of the market rate units. For example, if a project has 10 two-bedroom units and 20 one-bedroom units and is required to include 3 Inclusionary Units, then the Inclusionary Units must consist of 1 two-bedroom unit and 2 one-bedroom units. If only one Inclusionary Unit is required and the other units in the project have various numbers of bedrooms, the Developer may select the number of bedrooms for that unit. If Inclusionary Units cannot mathematically be exactly proportioned in accordance with the Market Rate Units, the unit mix shall be determined by the decision-making body pursuant to section 10-2.3.909(C).

E. Location of Inclusionary Units. Except as provided in Section 10-2.3.906(A), all Inclusionary Units shall be built on the same site as the remainder of the project.

F. Replacement Units. If a proposed Residential Development Project would result in the demolition or elimination of existing dwelling units that have (or within the twelve months prior to submittal of the application had) rent levels affordable to Low-Income Households, and these dwelling units were built less than 30 years ago, the affordable dwelling units must be replaced on a one-for-one basis affordable to Low-Income Households. If the number of required Inclusionary Units is less than the number of low-income units being eliminated, then Developer shall either (1) include a number of Inclusionary Units affordable to Low Income Households in an amount equal to the number of low-income units being eliminated or (2) provide the number of Inclusionary Units required based upon project size (or pay the in lieu fee if permitted by this Article), and pay the Low-Income per unit in-lieu fee for each Replacement Unit over the Inclusionary Unit amount.

This Section (F) does not apply to Condominium Conversions. *(§4, Ord. 2025, eff. 3/18/04 and §3-4, Ord.2077 eff. 5/8/09)*

Sec. 10-2.3.905. In-Lieu Fees

A. As provided in section 10-2.3.904, a fee may be paid in lieu of providing (a) Inclusionary Units in a Residential Development Project of 2-9 units; or (b) fractional Inclusionary Units below .7 units. The City Council shall, from time to time, adopt a resolution setting forth the amount of the fee. In-lieu fees shall be paid by the Developer prior to issuance of the building permit for the project or as determined by the project's adopted Conditions of Approval. For projects constructed in phases, in-lieu fees shall be paid prior to issuance of each building permit in the proportion that the phase bears to the overall project. The in-lieu fees shall be paid into a separate fund earmarked for the City's Affordable Housing Program.

B. A Developer that is proposing to construct a Residential Development Project of 10 or more units may apply for payment of a fee in lieu of providing Inclusionary Units in situations where the City Council finds that the project provides a public benefit not otherwise obtainable through the application of existing regulations. The fee shall be determined and paid as provided in section 10-2.3.905.A. *(§4, Ord. 2025, eff. 3/18/04 and §5, Ord.2077 eff. 5/8/09)*

Sec. 10-2.3.906. Alternatives

The Developer may propose an alternative means of compliance with this Article instead of provision of on-site Inclusionary Units or payment of an in-lieu fee according to the following provisions.

A. Off Site Construction of Inclusionary Units. Inclusionary Units may be constructed off-site only upon a determination by the City that on-site construction is infeasible. If this option is chosen, then the off-site Inclusionary Units must be constructed prior to or concurrently with construction of the on-site project. The Inclusionary Unit size and count must meet the same requirements as if the Inclusionary Units were constructed on-site. No

Certificate of Occupancy will be issued for any corresponding Market Rate Unit prior to Inclusionary Unit construction completion or payment of required in-lieu fees.

B. Land Dedication. In lieu of building Inclusionary Units, the Developer may dedicate to the City land within the City that the City determines is suitable for the construction of Inclusionary Units and is of equivalent or greater value than is produced by applying the City's current in-lieu fee to the Inclusionary obligation. *(§4, Ord. 2025, eff. 3/18/04)*

Sec. 10-2.3.907. Credit for Additional Affordable Units.

If the Developer completes construction of a greater number of Inclusionary Units in the project than required by this Article, the additional units may be credited toward meeting the requirements of this Article by a future project. Upon completion of the additional Inclusionary Units, the Director shall issue a Certificate of Inclusionary Unit Credit documenting the credits. The Developer may use the credits in a future project or transfer the credits in writing to another developer. Credits will only be counted toward required Inclusionary Units with the same bedroom count, the same tenure (rental or ownership), equivalent affordability targets, and in the same area of the City (i.e. within the Core Area, or outside the Core Area). The Credits must be used within 10 years of issuance. Projects which have obtained a Density Bonus or which are government subsidized shall not be eligible for credits. *(§4, Ord. 2025, eff. 3/18/04)*

Sec. 10-2.3.908. Inclusionary Unit Standards

A. Design. Inclusionary Units must be dispersed throughout a Residential Development Project and be comparable in construction quality and exterior design to the Market Rate Units. The Inclusionary Units must have access to all on-site amenities.

B. Timing. All Inclusionary Units must be constructed and occupied concurrently with or prior to the construction and occupancy of Market Rate Units or development. In phased developments, Inclusionary Units may be constructed and occupied in proportion to the number of units in each phase of the Residential Development Project.

C. Terms of Affordability. Rental Inclusionary Units must remain affordable for 55 years, as documented through an affordable housing agreement recorded against the property. Ownership Inclusionary Units must remain affordable for 45 years pursuant to an affordable housing agreement recorded against the property. *(§4, Ord. 2025, eff. 3/18/04)*

Sec. 10-2.3.909. Inclusionary Housing Agreement

A. Agreements Required. Applications for Residential Development Projects shall be approved only concurrently with the approval of an Inclusionary Housing Agreement pursuant to this section. This section shall not apply (1) if the Developer of a Residential Development Project of 2 to 9 units chooses to pay an in-lieu fee pursuant to section 10-2.3.904(A)(1); or (2) if the City Council approves the request of a Developer to pay an in-lieu fee pursuant to section 10-2.3.905(B).

B. Information in Application. Applications for Residential Development Projects shall include the following information in addition to information otherwise required under this Code:

a) The location, structure, proposed tenure (rental or ownership) and size of the proposed Market Rate and Inclusionary Units;
b) The calculations used to determine the number of required Inclusionary Units;
c) A floor plan or site plan depicting the location of the Inclusionary Units;
d) The income level targets for each Inclusionary Unit;

e) The mechanisms that will be used to assure that the Inclusionary Units remain affordable for the required term;

f) for phased developments, a phasing plan;

g) a description of any requested incentives as allowed in Section 10-2.3.909(D);

h) a marketing plan for the process by which qualified households will be reviewed and selected to either purchase or rent affordable units; and

i) Any other information requested by the Community Development Director.

C. Approval. An Inclusionary Housing Agreement between the Developer and the City shall be required by the applicable decision-making body as a condition of approval of any tentative map, parcel map, conditional use permit subject, or design review to this Article. If the foregoing approvals are not required, an Inclusionary Housing Agreement in a form approved by the Community Development Director shall be executed prior to issuance of a building permit. The Inclusionary Housing Agreement shall provide for the implementation of the requirements of this Article. All Inclusionary Housing Agreements must include, at minimum, the following:

a) Description of the development, including whether the Inclusionary Units will be rented or owner-occupied;

b) The number, size and location of the Inclusionary Units, or any approved alternative;

c) Inclusionary incentives by the City (if any);

d) Provisions and/or documents for resale restrictions, deeds of trust, rights of first refusal or rental restrictions that shall be recorded against the property;

e) Provisions for monitoring the ongoing affordability of the units, and the process for marketing units, and qualifying prospective residents household for income eligibility;

f) Deed Restriction acceptable to the City.

D. Incentives.

1. In approving an Inclusionary Housing Agreement, the decision-making body may, in its sole discretion, include one or more of the following incentives:

a. Unit Size Reduction. The size of the Inclusionary Units may be smaller than the Market Rate Units, consistent with all other provisions herein.

b. Second Family Unit. Projects consisting of single-family detached units may meet the Inclusionary Unit requirement by providing a second family unit**,** subject to Article 5 (Second Family Residential Units) of Chapter 2 of Title 10 of this Code, or any successor provisions instead of an Inclusionary Unit on a one-for-one basis.

c. Interior Finishes. Inclusionary Units may have different interior finishes and features than Market Rate Units so long as the interior features are durable, of good quality and consistent with current State building code standards for new housing.

2. A Developer may apply for a Density Bonus and other incentives if the project includes lower, very low and/or senior housing units at levels beyond those required by this Article to the extent permitted by Government Code section 65915. *(§4, Ord. 2025, eff. 3/18/04)*

Sec. 10-2.3.910. Adjustments.

The requirements of this Article may be adjusted or waived if the Developer demonstrates that applying this Article would take property in violation of the United States and/or California Constitutions. The Developer shall submit a request for an adjustment or

waiver together with the Application and such additional information as may be required by the Community Development Director to make a determination. *(§4, Ord. 2025, eff. 3/18/04)*

Article 10. Density Bonus Ordinance

Sec. 10-2.3.1001. Purpose.

The purpose of this chapter is to provide incentives for the production of housing for very low income, low income, moderate income, and senior households in accordance with Government Code sections 65915-65918 (State Density Bonus Law). In enacting this chapter, the City's intent is to facilitate the development of affordable housing and to implement the goals, policies, and actions of the housing element of the City's General Plan. *(§2, Ord. 2076, eff. 4/3/09)*

Sec. 10-2.3.1002. Title.

This Article shall be known and cited as the "Density Bonus Ordinance of the City of Walnut Creek" or "Density Bonus Ordinance." *(§2, Ord. 2076, eff. 4/3/09)*

Sec. 10-2.3.1003. Density Bonus Entitlement.

A. Eligibility.

1. The City shall grant a Density Bonus and one or more incentives or concessions, as specified in this section, to any Housing Development consisting of five or more Dwelling Units that will include at least one of the following:

(a) Five percent (5%) of the total Dwelling Units for Very Low Income Households; or

(b) Ten percent (10%) of the total Dwelling Units for Low Income Households; or

(c) Ten percent (10%) of the total Dwelling Units of a Common Interest Development for Moderate Income Households, provided that all Dwelling Units in the development are offered to the public for purchase.

2. The City shall grant a Density Bonus to any Housing Development consisting of five or more Dwelling Units that either:

(a) Constitutes a Senior Citizen Housing Development as defined in 10-2.3.1003(B)(1)(c); or

(b) Includes a donation of land pursuant to Government Code section 65915(h) and section 10-2.3.1006 of this Article.

B. Amount of Density Bonus.

1. The amount of Density Bonus to be granted for a Housing Development that meets the criteria of this section shall be calculated as follows:

(a) Very Low Income Households.

A Housing Development that contains five percent (5%) of the total Dwelling Units for Very Low Income Households shall receive a twenty percent (20%) Density Bonus. For each one percent (1%) increase above five percent (5%) in the percentage of Dwelling Units affordable to Low Income Households, the Density Bonus shall be increased two and one-half percent (2.5%) up to thirty-five percent (35%).

Percentage Very Low Income Dwelling Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

(b) Low Income Households.

A Housing Development that contains ten percent (10%) of the total Dwelling Units for Low Income Households shall receive a twenty percent (20%) Density Bonus. For each one percent (1%) increase above ten percent (10%) in the percentage of Dwelling Units affordable to Low Income Households, the Density Bonus shall be increased one and one-half percent (1.5%) up to thirty-five percent (35%).

Percentage Low Income Dwelling Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
16	29
17	30.5
18	32
19	33.5
20	35

(c) A Senior Citizen Housing Development shall receive a twenty percent (20%) Density Bonus. For the purposes of this section, a Senior Citizen Housing Development shall mean a single-family or multifamily residential development of at least 35 dwelling Dwelling Units where 100 percent (100%) of the Dwelling Units are reserved for Senior Citizen households where at least one resident is 55 years old and as further described in Civil Code section 51.3.

(d) Moderate Income Households.

A Common Interest Development that contains ten percent (10%) of the total Dwelling Units for Moderate Income Households shall receive a five percent (5%) Density Bonus. For each one percent (1%) increase above ten percent (10%) in the percentage of Dwelling Units affordable to Moderate Income Households, the Density Bonus shall be increased one percent (1%) up to thirty-five percent (35%)..

Continues on next page

Percentage Moderate Income Dwelling Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

D. Calculation of Density Bonus.

1. The amount of Density Bonus to which a Developer is entitled shall vary according to the amount by which the percentage of Restricted Units provided exceeds the applicable minimum percentage established in this section. Density Bonuses from more than one affordability category may not be combined, except that Density Bonuses for a donation of land pursuant to section 10-2.3.1006 of this Article, up to a maximum of thirty-five percent (35%), and an additional square footage Density Bonus for Child Care Facilities pursuant to section 10-2.3.1007, may be granted. A Developer may request a lesser percentage of Density Bonus.

2. Density Bonus units shall not be included when determining the number of Restricted Units required to qualify for a Density Bonus.

3. When calculating the number of Restricted Units required to qualify for a Density Bonus, any calculations resulting in fractions of units shall be rounded to the next whole number. When calculating the number of Density Bonus units to which a Housing Development may be entitled, any calculations resulting in fractions of units shall be rounded up to the next whole number.

4. If a Developer agrees to provide a Housing Development that will include at least fifty percent (50%) of the total Dwelling Units for Very Low Income Households or at least seventy-five percent (75%) of the total Dwelling Units for Low Income Households, the Developer may seek approval of a Conditional Use Permit for a Density Bonus that exceeds thirty-five percent (35%). If the City grants and the Developer accepts such additional Density Bonus, the additional Density Bonus shall be considered an additional incentive or concession as specified in section 10-2.3.1004 of this Article.

5. If a Developer agrees to construct a Housing Development that will contain less than the percentage of Restricted Units required pursuant to section 10-2.3.1003 of this Article, the Developer may seek approval of a Conditional Use Permit for a Density Bonus that is proportionally lower than the minimum density specified in section 10-2.3.1003.

6. With the exception of the additional Density Bonuses for a donation of land, as provided in section 10-2.3.1006 of this Article, or a Child Care Facility, as provided in section 10-2.3.1007, each Housing Development is entitled to only one Density Bonus.

7. Any Dwelling Unit that would otherwise qualify as a Restricted Unit that is required to be maintained as an affordable unit pursuant to the City's Inclusionary Housing Ordinance shall not be considered a Restricted Unit for purposes of determining whether the Housing Development qualifies for a Density Bonus. To qualify for a Density Bonus, all Restricted Units must be provided in addition to the inclusionary housing requirements of the City's Inclusionary Housing Ordinance.

8. Any Density Bonus or incentive or concession awarded pursuant to this Article shall generally apply only to the particular Housing Development for which the Density Bonus or incentive or concession is awarded. A Density Bonus or incentive or concession may be transferred, credited, or applied to a different Housing Development only if the City and the Developer agree pursuant to an approved Density Bonus Housing Agreement

9. The approval of a Density Bonus shall not, in and of itself, preclude a Housing Development from receiving other government subsidies for affordable housing.

10. The approval of a Density Bonus shall not be interpreted, in and of itself, to require a General Plan amendment, zoning change, or other discretionary approval. *(§2, Ord. 2076, eff. 4/3/09)*

Sec. 10-2.3.1004. Incentives or concessions.

A. Eligibility.

1. Upon the written request of the Developer of a Housing Development that qualifies for a Density Bonus under section 10-2.3.1003 of this Article, the City shall provide the number of incentives or concessions specified in this section, unless the City makes written findings, based on substantial evidence, of either of the following:

(a) The incentive or concession is not required in order to provide for affordable housing costs or rents for the Restricted Units.

(b) The incentive or concession would have a specific adverse impact upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to Low Income Households and Moderate Income Households.

2. Number of Incentives or Concessions.

The number of incentives or concessions to be granted for a Housing Development that qualifies for a Density Bonus under section 10-2.3.1003 of this Article shall be as follows:

(a) One (1) incentive or concession for Housing Developments that include at least five percent (5%) of the total Dwelling Units for Very Low Income Households; or at least ten percent (10%) of the total Dwelling Units for Low Income Households; or at least ten percent (10%) of the total Dwelling Units in a Common Interest Development for Moderate Income Households.

(b) Two (2) incentives or concessions for Housing Developments that include at least ten percent (10%) of the total Dwelling Units for Very Low Income Households; or at least twenty percent (20%) of the total Dwelling Units for Low Income Households; or at least twenty percent (20%) of the total Dwelling Units in a Common Interest Development for Moderate Income Households.

(c) Three (3) incentives or concessions for Housing Developments that include or at least fifteen percent (15%) of the total Dwelling Units for Very Low Income Households; or at least thirty percent (30%) of the total Dwelling Units for Low Income Households; or at least thirty percent (30%) of the total Dwelling Units
in a Common Interest Development for Moderate Income Households.

B. Incentives or Concessions Summary Table.

Affordability Category	**One Incentive or concession**	**Two Incentives or concessions**	**Three Incentives or concessions**
Very Low Income Households	5% Restricted Units	10% Restricted Units	15% Restricted Units
Low Income Households	10% Restricted Units	20% Restricted Units	30% Restricted Units
Moderate Income Households	10% Restricted Units	20% Restricted Units	30% Restricted Units

C. Types of Incentives or Concessions.

An incentive or concession granted pursuant to this section may consist of any one of the following:

1. A reduction in site development standards or a modification of zoning code or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission and local building standards, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.

2. Approval of mixed-use zoning in conjunction with the Housing Development if commercial, office, industrial, or other land uses will reduce the cost of the Housing Development and if the commercial, office, industrial, or other land uses are compatible with the Housing Development and the existing or planned development in the area where the proposed Housing Development will be located.

3. Other regulatory incentives or concessions proposed by the Developer or the City, including but not limited to expedited permit processing, that result in identifiable, financially sufficient, and actual cost reductions.

4. A Density Bonus that exceeds the amount specified in section 10-2.3.1003 of this Article.

5. Nothing in this section requires the City to provide direct financial incentives for a Housing Development, including the provision of publicly owned land by the City or the waiver of fee or dedication requirements.

6. The granting of an incentive or concession shall not be interpreted, in and of itself, to require a General Plan amendment, zoning change, or other discretionary approval. *(§2, Ord. 2076, eff. 4/3/09)*

Sec. 10-2.3.1005. Waiver or Modification of Development Standards.

A Developer may seek a waiver or modification of development standards that will have the effect of precluding the construction of a Housing Development that qualifies for a Density Bonus at the densities or with the incentives or concessions permitted by section 10-2.3.1004 of this Article. The Developer must make such request in writing and show that the waiver or modification is necessary to make the Dwelling Units economically feasible.

Notwithstanding the foregoing, the City shall not be required to approve any request for a waiver or modification of development standards if the waiver or modification would have a specific adverse impact upon health, safety, or the physical environment for which there is no feasible method to satisfactorily mitigate or aviod the specific adverse impact or if the waiver or modification would have an adverse impact on any real property that is listed in the California Register of Historical Resources. *(§2, Ord. 2076, eff. 4/3/09)*

Sec. 10-2.3.1006. Density Bonus for Land Donation.

A. Eligibility.

In addition to any Density Bonus awarded pursuant to section 10-2.3.1003 of this Article, the Developer of a Housing Development that donates land located within the incorporated City limits to the City for the construction of Dwelling Units affordable to Very Low Income Households shall be entitled to a fifteen percent (15%) Density Bonus.

B. Amount of Density Bonus.

For each one percent (1%) increase above the required minimum ten percent (10%) land donation, the Density Bonus shall be increased one percent (1%), up to a maximum combined Density Bonus of thirty-five percent (35%).

Percentage Very Low Income Dwelling Units	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32
28	33
29	34
30	35

C. All Density Bonus calculations resulting in fractions of units shall be rounded up to the next whole number.

D. A donation of land that qualifies a Housing Development for an additional Density Bonus must be provided in addition to the City's parkland dedication ordinance, Inclusionary Housing Ordinance, or any other legally required land dedication.

E. No incentives or concessions may be granted for a donation of land.

F. A Developer shall be eligible for an additional Density Bonus for a donation of land only if all of the following conditions are met:

1. The Developer donates and transfers the land no later than the date of approval of the parcel map, final map, or the Housing Development application.

2. The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of Dwelling Units affordable to Very Low Income Households

in an amount not less than ten percent (10%) of the number of Dwelling Units of the proposed Housing Development.

3. The transferred land is at least one-acre in size or of sufficient size to permit development of at least forty Dwelling Units, unless the City approves a smaller parcel size that will permit development of fewer than forty Dwelling Units, has the appropriate General Plan designation, is appropriately zoned for development as affordable housing, and is or will be served by adequate public facilities and infrastructure. The land shall have appropriate zoning and development standards to make the development of the affordable units feasible. No later than the date of approval of the parcel map, final map, or of the Housing Development, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the Very Low Income Dwelling Units on the transferred land, except that the City may subject the proposed Housing Development to subsequent design review to the extent authorized by Government Code section 65583.2(i) if the design is not reviewed by the City prior to the time of transfer.

4. The transferred land and the affordable Dwelling Units shall be subject to a deed restriction ensuring continued affordability of the units, consistent with Government Code section 65915(c)(1)-(2), which shall be recorded on the transferred land at the time of dedication.

5. The land is transferred to the City or to a housing Developer approved by the City. The City may require the Developer to identify and transfer the land to the approved Developer.

6. The transferred land shall be within the boundary of the proposed Housing Development or, if the City agrees, within one-quarter mile of the boundary of the proposed Housing Development. *(§2, Ord. 2076, eff. 4/3/09)*

Sec. 10-2.3.1007. Density Bonus for Child Care Facilities.

A. When a Developer proposes to construct a Housing Development that qualifies for a Density Bonus under section 10-2.3.1003 of this Article and the qualifying Housing Development includes a Child Care Facility that will be located on the premises of, as part of, or immediately adjacent to, the Housing Development, the City shall grant either of the following if requested by the Developer in writing:

1. An additional Density Bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the Child Care Facility.

2. An additional incentive or concession that contributes significantly to the economic feasibility of the construction of the Child Care Facility.

B. As a condition of approving the Housing Development, the City shall require both of the following to occur:

1. The Child Care Facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the Restricted Units are required to remain affordable.

2. Of the children who attend the Child Care Facility, the children of Very Low Income Households, Low Income Households, or Moderate Income Households shall equal a percentage that is equal to or greater than the percentage of Dwelling Units that are required for Very Low Income Households, Low Income Households, or Moderate Income Households pursuant to section 10-2.3.1003 of this Article.

C. Nothing in this section shall require the City to provide a Density Bonus or incentive or concession for a Child Care Facility if the City finds, based upon substantial evidence, that the community has adequate Child Care Facilities. *(§2, Ord. 2076, eff. 4/3/09)*

Sec. 10-2.3.1008. Revised Parking Standards.

A. Upon the written request of the Developer of a Housing Development that qualifies for a Density Bonus under section 10-2.3.1003 of this Article, the City shall permit vehicle parking ratios, inclusive of handicapped and guest parking, in accordance with the following standards:

1. One parking space for 0-1 bedroom units.
2. Two parking spaces for 2-3 bedroom units.
3. Two and one-half parking spaces for 4 or more bedrooms.

If the total number of parking spaces required for a Housing Development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this section a Housing Development may provide on-site parking through tandem parking, uncovered parking, or other parking solutions, but not through on-street parking. *(§2, Ord. 2076, eff. 4/3/09)*

Sec. 10-2.3.1009. Affordability Requirements.

A. The owner's obligation to maintain Restricted Units as affordable housing shall be evidenced by a Density Bonus Housing Agreement, which shall be recorded as a deed restriction on any parcels on which the Restricted Units will be constructed and be binding upon all successors in interest.

All Restricted Units shall remain affordable for a minimum period of 30 years or such other term approved by the City, consistent with State Density Bonus Law. A longer period of time may be specified if required by any construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program applicable to the Housing Development and/or the Restricted Unit. The required affordability time limit for each Restricted Unit shall commence upon the issuance of a certificate of occupancy for such Restricted Unit. *(§2, Ord. 2076, eff. 4/3/09)*

Sec. 10-2.3.1010. Development Standards and Limitations

A. Restricted Units shall be constructed concurrently with Non-Restricted Units as specified in the Density Bonus Housing Agreement, unless the City and the Developer otherwise agree pursuant to a schedule included in the Density Bonus Housing Agreement.

B. Restricted Units shall be built on site and dispersed evenly throughout the Housing Development, unless the City and the Developer otherwise agree pursuant the terms of the Density Bonus Housing Agreement. Restricted Units may only be located in one portion of the Housing Development or situated within one building of a Housing Development that contains multiple buildings if City and the Developer otherwise agree pursuant to an approved Density Bonus Housing Agreement. The number of bedrooms of the Restricted Units should be proportional to the number of bedrooms in the non-Restricted Units of the Housing Development. The exterior design and appearance of the Restricted Units shall be compatible with the design and appearance of the overall Housing Development. Restricted Units may be

smaller by a maximum of thirty percent (30%) in aggregate size and have different interior finishes and features than Non-Restricted Units, so long as the interior finishes and features are durable, of good quality, and consistent with contemporary standards for new housing. Housing Developments shall comply with all applicable development standards, except those that may be modified as provided by this Article.

C. Density Bonus units may be located in geographic areas of the development site other than the areas where the Restricted Units are located, and may be located only on parcels for which the Density Bonus was granted.

D. The entry into and execution of a Density Bonus Housing Agreement shall be a condition of any application for a discretionary land use permit, including but not limited to subdivision maps, site plans, and conditional use permits, for a Housing Development proposed under this Article. The Density Bonus Housing Agreement shall be recorded at the Developer's expense as a restriction on the parcel or parcels on which the Restricted Units will be constructed and shall run with the land and be binding on all successors in interest. *(§2, Ord. 2076, eff. 4/3/09)*

Sec. 10-2.3.1011. Density Bonus Application Procedure

A. An application for a Density Bonus, incentive, concession, waiver, modification, or revised parking standard pursuant to the Density Bonus Ordinance shall be submitted with the first application for approval of a Housing Development and processed concurrently with all other applications required for the Housing Development. If any requested incentive, concession, waiver, modification, or revised parking standard requires a separate land use application, including but not limited to a variance or conditional use permit, the separate land use application shall be submitted with the Housing Development application for concurrent processing. Consideration of a Density Bonus, incentive, concession, waiver, modification, or revised parking standard after submittal of the first application for approval of a Housing Development shall be at the sole discretion of the Community Development Director or his or her designee.

B. The Community Development Director or his or her designee shall prepare and maintain a list of supplemental application materials for Density Bonus, incentive, concession, waiver, modification, or revised parking standard requests under this Article, which materials shall be submitted together with and as part of the project application.

C. The application shall be submitted on a form prescribed by the City and shall include at least the following information:

1. Site plan showing total number of Dwelling Units, including the number and location of Non-Restricted Units, the number and location of Restricted Units, and the number and location of proposed Density Bonus units.

2. Level of affordability of Restricted Units and plans for ensuring affordability.

3. Description of any requested incentive, concession, waiver of modifications of development standards, or modified parking standards. For any incentive and concession except mixed-use development, the application shall include evidence that the requested incentive and concession results in identifiable, financially sufficient, and actual cost reductions. At a minimum, the application shall include an itemized accounting of projected costs and revenues of the Housing Development, both with and without the incentives or concessions. Project revenues shall include monies from the sale or rental of all Dwelling Units, including the Density Bonus units. Housing Development costs shall not include the amount that would have

been generated had the Restricted Units been rented or sold at market rate. Housing Development costs may include items that are required solely as a result of the inclusion of the Density Bonus units and would not have been required without such units. For waivers or modifications of development standards, the application shall show that the waiver or modification is necessary to make the Dwelling Units economically feasible and that the development standards will have the effect of precluding the construction of a Housing Development that qualifies for a Density Bonus at the densities or with the incentives or concessions permitted by this Density Bonus Ordinance.

4. If a Density Bonus is requested for a donation of land, the application shall show the location of the land to be dedicated and provide evidence that all of the conditions included in section
10-2.3.1006 of this Article are satisfied.

5. If a Density Bonus or incentive or concession is requested for a Child Care Facility, the application shall show the location and square footage of the Child Care Facility and provide evidence that each of the findings included in section 10-2.3.1007 of this Article can be made.

D. The Community Development Director or his or her designee may direct that an independent analysis be conducted, at the Developer's expense, of the Housing Development's costs, revenues, and property value in order to determine the necessity for any requested Density Bonus, incentive, concession, waiver, modification, or revised parking standard.*(§2, Ord. 2076, eff. 4/3/09)*

Sec. 10-2.3.1012. City Review of Density Bonus Application

A. Upon submittal of an application for a Density Bonus, incentive, concession, waiver, modification, or revised parking standard, the Community Development Director or his or her designee shall determine if the application is complete and conforms to the provisions of this Density Bonus Ordinance. No application for a Housing Development that requests a Density Bonus, incentive, concession, waiver, modification, or revised parking standard may be deemed complete for purposes of Government Code section 65920 *et seq*. unless and until the City gives preliminary approval of the form and content of a Density Bonus Housing Agreement that conforms to the provisions of this Density Bonus Ordinance.

B. An application for a Density Bonus, incentive, concession, waiver, modification, or revised parking standard pursuant to the Density Bonus Ordinance shall be considered by and acted upon by the approval body with authority to approve the Housing Development. Any decision regarding a Density Bonus, incentive, concession, waiver, modification, or revised parking standard may be appealed to the Planning Commission and from the Planning Commission to the City Council. In accordance with State Density Bonus Law, neither the the granting of a Density Bonus nor the granting of an incentive or concession shall be interpreted, in and of itself, to require a General Plan amendment, zoning change, variance, or other discretionary approval. *(§2, Ord. 2076, eff. 4/3/09)*

Sec. 10-2.3.1013. Density Bonus Housing Agreement

A. Any Developer requesting a Density Bonus shall agree to enter into a Density Bonus Housing Agreement with the City. The Density Bonus Housing Agreement shall be made a condition of the discretionary planning permits for all Housing Developments pursuant to this Article and shall be recorded as a deed restriction on any parcels on which the Restricted Units will be constructed.

B. The Density Bonus Housing Agreement shall be recorded prior to the approval of any parcel map or final map or, where the Housing Development does not include a map, prior to issuance of a building permit for any structure in the Housing Development. The Density Bonus Housing Agreement shall run with the land and be binding upon all future owners and successors in interest.

C. The Density Bonus Housing Agreement shall include, but not be limited to, the following terms:

1. The total number of units approved for the Housing Development and the number, location, unit size, and level of affordability of Restricted Units.

2. Standards for determining affordable rent or affordable ownership cost for the Restricted Units.

3. Provisions to ensure affordability of the Restricted Units.

4. A schedule for completion and occupancy of Restricted Units in relation to construction of Non-Restricted Units.

5. A description of any incentive, concession, waiver, modification, or revised parking standard being provided by the City.

6. A description of remedies for breach of the agreement by either party. The City may identify tenants or qualified purchasers as third party beneficiaries under the agreement.

7. Procedures for qualifying tenants and prospective purchasers of Restricted Units.

8. Other provisions to ensure implementation and compliance with this Article. *(§2, Ord. 2076, eff. 4/3/09)*

Sec. 10-2.3.1014. Public Hearing

Public hearings shall be held pursuant to **Section 10-2.4.301** for any Density Bonus, incentive, concession, waiver, modification, or revised parking standard applied for under the provisions of this Density Bonus Ordinance. Density Bonuses shall be approved by the highest approval body required to review and approve the requested application. Other reviewing bodies in advisory roles shall provide comments and recommendations to the approving body. *(§2, Ord. 2076, eff. 4/3/09)*