Two inclusionary homes built to resemble one single-family home in Montgomery County, Maryland.
Inclusionary Housing

B A L A N C I N G  G R O W T H  A N D  C O M M U N I T Y  N E E D S

WHAT IS INCLUSIONARY HOUSING?

Inclusionary housing (IH) programs or ordinances, also called inclusionary zoning, require or provide incentives for the creation of affordable and moderately-priced homes in new developments. Communities can use IH and their local zoning powers to counter declining public-sector investment in affordable housing, create housing for their workforce, and enable low- and moderate-income families to benefit from urban reinvestment and new development.

Inclusionary housing ordinances can be either mandatory or voluntary. If mandatory, a density bonus, which allows a developer to build more units (at a higher density), is typically provided to offset the costs to the developers associated with building the affordable units. Voluntary programs provide density bonuses in addition to other development incentives, such as relaxed regulatory standards (such as parking reductions), fee waivers, expedited review, and other incentives.

THE NEED FOR INCLUSIONARY HOUSING

The early years of this decade of strong economic growth brought an alarming increase in home prices in Delaware. Housing costs, especially home prices, rose far faster than incomes, quickly outpacing the budgets of low- and moderate-income families. Further, new development in this time period focused almost exclusively on high-value homes, much of it in newly suburban or rapidly developing rural areas, cut off from other communities and services.

The logic behind inclusionary housing programs rests on three core ideas:

1) New development should include a variety of housing types at a variety of price levels to meet the full range of a community’s housing needs and demand.

2) When being awarded increased density, zoning changes, public services, infrastructure expansion, it is fair for a jurisdiction to require the inclusion of affordably-priced homes in response to community needs. This need not disrupt the overall development plan.

3) Affordable housing should be located strategically to create economically-integrated communities that allow households of modest means access to equal opportunities.

Jurisdictions can use IH as a tool to meet the housing needs of the "workforce households", households with incomes below 120 percent of area median income. IH allows the creation of affordable housing units without isolating low- to moderate-income households into economically segregated communities and without significant direct public cash subsidies.
BENEFITS OF INCLUSIONARY HOUSING

Inclusionary housing programs can expand the supply of affordable housing by encouraging or requiring developers to incorporate affordable units – at affordability levels defined by the jurisdiction, in response to its housing needs and without adversely affecting the profitability of the development - in market-rate residential developments. This technique can benefit the community in the following ways:

Creates mixed-income communities that can help avoid the problem of over concentration, isolation, and stigmatization of affordable housing.

- Mixed income communities enable moderate- to low-wage earning families to buy homes in appreciating housing markets, have access to well-funded schools, livable wage jobs, and strong municipal services.
- IH programs help build a diverse housing market and ensure that residents who work and serve in the community can live there as well. Communities that can provide housing to their employees can better attract and retain businesses and benefit from a resulting reduction in commute times, air pollution, and congestion.
- IH allows the development of affordable housing to become an integral part of other developments taking place in a community.

Inclusionary policies can help to reduce displacement of existing residents unable to afford rising home prices and rent; in appreciating housing markets, moderate- to low-income households are the first to be driven out.

- Senior citizens have the choice to remain in the communities where they have raised their children.
- Young families and first-time homebuyers can buy a home in the community they grew up in.

Does not require the expenditure of Federal, State, and Local tax dollars to fund the construction of affordable housing units.

- Jurisdictions can use IH to bring private residential developers into efforts to share the responsibility of creating affordable housing.
- IH can empower communities with limited financial resources for subsidies to create affordable and moderately-priced housing.
- Furthermore, developing an IH policy can spur collaboration among the private, public, and nonprofit sectors engaged in housing development.

IZ promotes more compact development by raising allowable density, thereby reducing conversion of open space and lessening dependence on automobile travel (Growth Management and Affordable Housing).

- Additionally, by supplying housing that is affordable to people who work in the community allows them to live where they work eliminating long commutes.
- Furthermore, it counters the problems of sprawl.
COMPONENTS OF INCLUSIONARY HOUSING PROGRAMS

Jurisdictions determine the structure of their program and can determine how affordable housing can occur. Developing an IH program for a community requires an understanding of the community’s housing needs and local housing dynamics and trends. A needs analysis can be used to identify populations in the community that cannot afford housing. Once needs are determined, the jurisdiction can establish housing prices that are needed for affordability, then establish an affordable housing goal. The program can be coupled with incentives, density bonuses, and long-term affordability restrictions.

Mandatory vs. Voluntary Inclusionary Programs

Mandatory inclusionary housing programs require developers to build affordable units in exchange for development rights. Voluntary programs are incentive-based and allow the developer to voluntarily participate in the program and receive incentives in exchange for setting aside units for sale or rent below market rate.

National experience suggests that voluntary programs usually only produce affordable units if they offer substantial subsidies to the developer. Studies have shown that mandatory, rather than voluntary, inclusionary zoning programs are more effective at generating a larger supply of affordable housing.

Developer Incentives/Cost Offsets: A jurisdiction can provide developers with certain benefits to compensate for the production of units priced at below market rate. These can be used in either voluntary or mandatory programs. Density bonuses are the most popular, but incentives can also include:

- Variances in landscaping, parking, buffers and other requirements;
- Expedited permit process; and
- Waiving fees that are associated with the development process.

Set-Aside Requirements: A set-aside is the percentage of units within a development that a developer is required to price as affordable. Around the country, set-asides range from 5-35%. For example:

- Montgomery County, MD specifies that 15% of the units for sale in each subdivision of 50 or more units be made affordable to moderate-income residents.
- Boulder, CO specifies that 20% of the units for sale on a site larger than 10 acres or containing 50 or more dwelling units be made affordable to moderate-income residents.

Income Targets: A key decision in the program planning process is identifying the target population. This will affect many other issues, such as whether rental and/or homeownership should be included and requirements for the size or type of units. Jurisdictions interested in creating housing for moderate-income households, often referred to as workforce housing, typically set an income target between 80%-120% Area Median Income (AMI).

Some jurisdictions set their target income households between 50%-80% AMI for lower-income wage earners. The jurisdiction can determine the target income level by housing needs and goals in the community, but needs a balance with maintaining developer profit. To reach lower income households, a community may reduce the number of required affordable units or increase the cost offsets to the developers.
Inclusionary Housing

Programs typically target homeownership units to households at 80 – 120% of AMI and rental units to households with incomes of 50 – 80% of AMI. To reach even lower income households (0-50% of AMI), several programs successfully combine their units with other public resources. This can be effective for homeownership programs as well, such as downpayment and settlement assistance programs for buyers of IH units.

**Period of Affordability:** While no actual public dollars are typically spent to make IH units affordable, the jurisdiction is in most cases making some concessions — the cost offsets, density bonuses, etc. — that have often great value. Preserving that investment is vital, and thus most IH programs require that affordable units remain affordable to subsequent buyers and renters for an extended period of time. This may range from 10 years on the lower end to permanent affordability. Ensuring there is a term of affordability on the units will allow future generations to have the opportunity of homeownership even as prices continue to rise. Furthermore, having a term of affordability can avoid "flipping" for quick gains. Municipalities can apply resale restrictions to the affordable units to enable them to stay affordable for a long period of time or in perpetuity, for example:

- Community Land Trusts;
- Contractual agreements (recorded in the land records); and
- Deed restrictions on the property (also called covenants).

**Coupling Inclusionary Zoning with other housing assistance programs:** Additional assistance from homebuyer programs allows households earning less than the AMI target to be eligible for IH units. For example:

- First Time Homebuyer Program;
- Second Mortgage Assistant Loan Program;
- Employer Assisted Program;
- Community Land Trusts; and
- Enable public agencies or nonprofit organizations to purchase and further subsidize inclusionary units.

**Design Standards:** Towns can choose to actively control housing design using zoning and building design standards that mandate how housing units should be built and placed within communities. Municipalities can choose the requirements for how the affordable units may be designed. Some cases require that affordable units be identical to market-rate units in square footage and design guidelines, others programs may set a minimum square footage and guidelines for affordable units. Developers may also choose to create more livable and sustainable housing, catering to new demographic groups like young professionals, aging baby boomers or others who desire more compact units that are affordable to their incomes.

**In-Lieu:** An in-lieu fee can be an alternative option for a developer to pay the community a predetermined sum of money “in-lieu” of constructing the physical affordable housing units on site. These monies are typically put into a segregated account for the community’s future to support development of affordable housing units (Financing Affordable Housing). Many communities direct in-lieu fees to local housing trust funds. It is important to note that fees must be high enough to discourage use and fully compensate for the cost of an affordable unit; many communities impose restrictions on when in-lieu fees can be used. Communities should make sure that in-lieu fees cannot be used as an easy or cheap way to avoid producing affordable or moderately-priced homes as required by the ordinance.
Here is an example of “Affordable Housing In-lieu Fees” from the City of Davis, CA:

- **Eligibility:**
  - Projects subject to the Affordable Housing Ordinance (development of five or more units);
  - Projects of 30 or fewer units and 10 acres or less as of January 1, 1989; and
  - Must demonstrate unique hardship due to size of the project, subject to the satisfaction of the Planning Commission of City Council.

- **Payment:**
  - $23,737 per affordable unit;
  - Fees are pro-rated, not averaged;
  - Fee adjusted annually based upon building valuation data; and
  - Fees generally paid upon Certificate of Occupancy for first market units.

- **Use:**
  - In-lieu fees are deposited into the City’s Housing Trust Fund;
  - Monies are used for loans to affordable housing projects, primarily developments on dedicated land; and
  - Loan repayments are returned to the Fund and recycled.

For more information on the City of Davis visit: [www.cityofdavis.org](http://www.cityofdavis.org)

### COSTS OF INCLUSIONARY ZONING

#### Costs to the Jurisdiction

Inclusionary housing programs do not generally require the expenditure of local tax dollars and bear few “hard costs” for jurisdictions beyond the costs of administering the program. It is important to note, however, that inclusionary housing programs do require administration and long-term affordability and other restrictions require enforcement. Larger cities and counties with active IH programs and large inventories of affordable homes and/or rental units may have multiple staff members in program administration. It is important that communities considering inclusionary housing policies fully plan for their implementation and administration. Costs that can occur might be lost revenue by providing offsets to the builders, such as fee waivers. However, studies have shown that the majority consent of jurisdictions have found IH to be a viable and cost-effective strategy for producing affordable housing.

#### Costs to the Developer

The builder receives compensation for building the units by allowing increased density per acre or forms of other incentives or cost offsets from the jurisdiction. Most IH ordinances have set compensations at a level that allows builders to profit or break even from the construction of affordable units.
COMMUNITY CONCERNS
Like many affordable housing initiatives, IH can encounter opposition from some groups. There are solutions and compromises that can help mitigate community concerns. Some commonly noted issues include:

IH levies an indirect tax on developers, a "taking".
- Well-designed programs will include sufficient cost offsets to ensure that developers still make a profit, or at the very least break even on IZ units.

IH policies will slow down the housing market and prevent development.
- Studies have shown that communities with established IH programs have not indicated a slow down in the housing market. Furthermore, demand can be improved because people who were displaced from the market will now have opportunities to find housing.

Prospective homeowners in IH communities have contended that property values will be reduced if new communities include a mix of housing types and affordability levels.
- Studies have shown no effect of inclusionary housing or other affordable or moderately-priced housing on neighboring property values. These arguments are often rooted in simple NIMBYism.

NATIONAL EXAMPLES OF INCLUSIONARY HOUSING PROGRAMS
There are hundreds of inclusionary zoning ordinances/programs nationwide, often forming in groups where state or regional policies and politics have supported their development. There are particular concentrations of programs in New England, New Jersey, California, and the Washington, DC metropolitan area and suburbs. Some key features of sample programs are included in the table below.

<table>
<thead>
<tr>
<th>Location</th>
<th>Affordable Units Produced</th>
<th>Threshold Size</th>
<th>Affordable Units</th>
<th>Incomes</th>
<th>Incentives</th>
<th>Fee/Site Options</th>
<th>Affordability Control Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Boulder, CO</td>
<td>300</td>
<td>All development</td>
<td>20%</td>
<td>&lt;80% AMI</td>
<td>No bonus; development impact fee waived</td>
<td>Fee In-Lieu; Land Dedication; Dedicate Existing Units. Must Construct ½ of required units</td>
<td>Permanent</td>
</tr>
</tbody>
</table>

Burlington, VT: High Grove Court

Montgomery County, MD
<table>
<thead>
<tr>
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<th>Affordable Units Produced</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Cambridge, MA</td>
<td>131</td>
<td>10 units or projects &gt;10,000 sq. ft.</td>
<td>15% of units if &gt;10 units or 15% of sq. ft.</td>
<td>Must avg to &lt;65%AMI; maximum 80% AMI</td>
<td>30% Density bonus (50% market/50% affordable)</td>
<td>Off-site prohibited and in-lieu fee allowed only under special circumstances</td>
<td>Maximum allowed by law</td>
</tr>
<tr>
<td>Boston, MA</td>
<td>184</td>
<td>10 units for projects using zoning variance or city financing</td>
<td>10%, 15% if off-site</td>
<td>½ &lt;80% AMI, ½ 80–120% AMI</td>
<td>Increase in height or FAR; tax abatement</td>
<td>Fee In-Lieu</td>
<td>30 years</td>
</tr>
<tr>
<td>Fairfax County, VA</td>
<td>1,655</td>
<td>50 units for projects with lots less than one acre and excluding elevator buildings</td>
<td>12.5% for single-family; 6.25% for multi-family</td>
<td>&lt;70% AMI for-sale; 50% AMI for rental</td>
<td>20% Density bonus for single-family; 10% for multi-family</td>
<td>No off-site units, in-lieu fee for hardship</td>
<td>For-sale units 30 years; rental units 30 years</td>
</tr>
<tr>
<td>Montgomery County, MD</td>
<td>12,500</td>
<td>Subdivision of 20 or more units.</td>
<td>Sliding scale from 12.5%–15%</td>
<td>70% AMI for-sale; 65% AMI rental</td>
<td>Density bonus up to 22%; fee waivers, decreased lot area</td>
<td>In exceptional cases, off-site allowed in contiguous areas and in-lieu fee allowed</td>
<td>For-sale units 30 years; rental 99 years</td>
</tr>
<tr>
<td>Burlington, VT</td>
<td>97</td>
<td>&gt;5 units new construction or rehab; &gt; 10 units nonresidential conversion</td>
<td>15–25% based on market-rate units</td>
<td>75% AMI for-sale; 65% AMI rental</td>
<td>15–25% density bonus based on zoning district</td>
<td>Off-site at 1.25 of required affordable units, no in-lieu fee</td>
<td>Permanent</td>
</tr>
</tbody>
</table>

Source: Growth Management and Affordable Housing, The Brookings Institute Press, City and County websites

DELAWARE EXAMPLES OF INCLUSIONARY HOUSING PROGRAMS

Delaware is also home to three jurisdictions with inclusionary housing programs:

**Sussex County Moderately-Priced Housing Unit (MPHU) Program**

Sussex’s MPHU program was enacted in 2006. A voluntary program, it targets the creation of homeownership units for workforce households, defined as households with incomes from 80 – 125% of the county median. Households must live and work in the county, and developments must be in county growth areas served by public utilities. Cost offsets include a density bonus weighted on the number and affordability of units proposed and expedited review. Homeownership units carry a 20-year recurring resale restriction to ensure that they remain affordable to future workforce households. Through two RFP rounds, the county has 547 proposed affordable units, some of which are expected to break ground in 2010. For more information, visit the County’s website at [http://www.sussexcountyde.gov/dept/communitydev/](http://www.sussexcountyde.gov/dept/communitydev/).
Sussex County Rental Program

In 2008, Sussex County passed a rental program complementary to the existing MPHU homeownership program. Like MPHU, the rental program is voluntary and offers density bonuses and expedited review to developers who include affordable rental units in new proposed developments. The target population is households with incomes of 30 – 80% of the county median. For more information, visit the County’s website at http://www.sussexcountyde.gov/dept/communitydev/.

New Castle County Workforce Housing Program

In 2007, New Castle County created its Workforce Housing Program, part of several housing strategies outlined in its Comprehensive Plan. This voluntary program targets the creation of homeownership units affordable to moderate-income households. Incentives for participation include generous density bonuses, building permit fee waivers, and some reductions in site requirements such as required open space, setbacks, lot sizes, height limits and landscaping. Developments must be served by public sewer and located in growth or redevelopment zones.

In addition, fees associated with the program (a per unit fee as well as potential in-lieu fees) are directed to a new county Housing Trust Fund to support the creation of units for very low income households. A frequently asked questions document on the Workforce Housing Program is available at http://www2.nccde.org/landuse/documents/PlanningFAQDocuments/Workforce%20FAQ.pdf

Town of Bridgeville

The Town of Bridgeville also created an inclusionary housing program in 2006. This program, which is mandatory for all new annexations, targets the creation of homeownership units priced below $225,000 for moderate-income households. Current residents of Bridgeville, employees of Bridgeville businesses or institutions, or organizations providing emergency services in Bridgeville all have priority for units. As cost offset, the town waives the wastewater fee. Ten year resale restrictions on the units are required. Currently, participating projects are all large-scale developments with lengthy build-out times. There are an estimated 250-300 units in the pipeline for creation.

IMPLEMENTING INCLUSIONARY HOUSING

[This checklist was written by Peter Werwath of The Enterprise Foundation, under a contract with the City of Santa Fe, New Mexico, in 1994 and updated in 2004. Copyright 1995 The Enterprise Foundation]

A Program Design Checklist

1. Will the program be mandatory or “voluntary”?

2. To what class or residential developments will the program apply?

- Single-family
- Multi-family
- Mobile home
- Threshold number of units
3. What income group(s) will benefit from the affordable housing?
   - 100% of Area Median Income
   - 80% of Area Median Income
   - 50% of Area Median Income
   - 30% of Area Median Income
   - Different % to deliver depending upon category? (such as: 5% affordable if <30%; 15% affordable if <100% etc.)

4. How will these income limits be adjusted for family size?

5. How will income limits be updated over time?

6. What formulas and factors will be used to derive affordable rentals and sales prices?
   - Percent of income considered affordable
   - Rent
   - Mortgage payment
   - Will utilities be included in any calculation?
   - What standards will be used for an interest rate?
   - Will “affordable prices” be calculated and published on a periodic basis or will they be calculated deal-by-deal?

7. What system will be used to qualify and select residents of affordable housing?

8. What types of “affordable housing” may be delivered?
   - For-sale homes
   - Rental housing
   - Group homes
   - Shelters
   - Other

9. How can the city assure a high quality program vs. just dwelling units delivered?
   - Review and approval of property management and service plans
   - Require involvement of nonprofits in homebuyer training
   - Encourage joint ventures with qualified nonprofits

10. Will there be any mechanism for the city to control the bedroom sizes or other basic characteristics of the housing offered? Is so, what?

11. What percentage of affordable housing must be delivered?
   - Set percentage
   - More if near market prices
   - Less if very low priced
12. Can the housing be provided off-site?

13. Can the developer make in-lieu contributions?
   - Land
   - Money
   - Other in-kind
   - What is the formula for deriving the value of the “buy-out”?

14. When are affordable units or in-kind contributions to be delivered?
   - Up-front?
   - Staged pro-rata with rest of development?
   - How is the time value of money accounted for?

15. What minimum standards will the city have for an “affordable housing unit”?
   - Square footage
   - Amenities

16. What will be the duration of affordability controls on rental housing?
   - Number of years
   - Will there be a regulatory agreement?
   - How will it be monitored and enforced?

17. What will be the duration of affordability controls on for-sale housing?
   - “Soft” second mortgages
   - Rights of first refusal
   - Equity sharing
   - Land leases/land trusts
   - If some mechanisms require an intermediary owner, is that OK?

18. Can the city use third parties?
   - In any part of the negotiations?
   - To monitor compliance?
   - To hold and administer liens?

19. Will the program administrator be given discretion in any of the following areas:
   - To analyze the internal economics of each proposal?
   - To assess and take into account the economic impact on landowner/developers?
   - To analyze the impact of “outside” subsidies?
   - To analyze the “efficiency” of requirements as applied on-site, off-site or in-lieu and to have the discretion to dictate which should be provided?
• To take into account the desirability of social and economic integration?
• To analyze the desirability of the site for proposed affordable housing use? (such as services, transportation, etc.)
• To have the discretion to dictate the “type” of housing delivered: for-sale, rental, group home, shelter, and unit size?
• To have the discretion to dictate for percentage of affordable housing units to be delivered in various price classes?

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REFERENCES


City of Burlington, VT Department of Community & Economic Development. http://www.cedoburlington.org/housing/inclusionary_zoning.htm


Inclusionary Housing


RESOURCES

Business and Professional People for the Public Interest, a Chicago-based public interest law and policy center, has numerous publications on inclusionary housing programs and best practices in their development and administration. http://www.bpichicago.org

PolicyLink, a national research, advocacy and social justice organization, includes inclusionary housing programs in its Equitable Development Toolkit and has provided technical assistance in several large-scale inclusionary housing campaigns nationally. Its materials in the Toolkit cover many topics closely related to inclusionary housing, such as developer incentives, transit-oriented development, and preserving affordability. http://www.policylean.org

The Innovative Housing Institute, a national inclusionary housing advocacy organization, organizes a semi-annual national conference on IH, provides technical assistance and research to the field. Numerous publications are on its website. http://www.inhousing.org

The Nonprofit Housing Association of Northern California has been involved in many local and county-level campaigns for inclusionary housing programs and their development. Its website is a helpful portal to the large world of inclusionary housing programs in California, home to over 150 inclusionary housing policies. http://www.nonprofithousing.org