

Inclusionary Housing Policies

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Inclusionary housing requires or provides incentives for the development of affordable housing as part of the development of market-rate housing. In most cases, this takes the form of a local ordinance or policy that requires all developments of a certain size (for example, 10 or more homes) to include some percentage of affordable housing. Because it is dependent on market-rate production of homes, there has been little activity across the country since the national housing crisis; that downturn has led to program suspensions and retrenchment in some areas. Now that the housing market is emerging from the crisis there is an increase in interest and inclusionary activity in stronger housing markets.

Inclusionary housing policy adoption is a matter of local and state self-determination. The authority to implement it stems from “police power,” the capacity of the states to regulate behavior and enforce order for the betterment of the general welfare. It is typically administered on a local level through coordination between local housing departments and planning authorities.

HISTORY AND PURPOSE

Since the 1970s, more than 400 local governments and a number of states have implemented inclusionary housing programs resulting in the production and preservation of hundreds of thousands of affordable homes. Because of the relationship of these affordable homes to market-rate development, many of these homes have been built in very desirable locations near jobs and opportunity, and in affluent communities where federal and state housing subsidies have not typically been used. Because inclusionary programs typically rely on zoning incentives and development waivers, the creation of these homes has not required a new public funding source for the affordable housing. These incentives can take the form of: up-zoning, where a given piece of land is rezoned to allow for more development, thereby increasing its value; density bonuses which allow the developer to build more homes if affordable homes are also provided; and, development waivers, such as parking reductions, which make it easier or less expensive to build homes. A number of communities also offer specific financial contributions to help make the affordable homes possible, or to serve lower income households in the affordable homes.

PROGRAM SUMMARY

Most people are familiar with exclusive communities and neighborhoods. These are areas where the homes are very expensive, where there may be gates or guards to keep unwanted people out, and where there may be unspoken preferences as to who is able to live there. Inclusionary housing policy turns exclusivity on its head. It seeks to include all those who work in a community or who aspire to live there.

What is important to know is that inclusionary housing policy adoption is a matter of local and state self-determination. The ability to plan a community and decide what kind of community people want is usually a matter of local political decision making when master plans are adopted, new development is planned, or when rezoning occurs. This is where advocacy for inclusionary housing can make a difference.

Inclusionary housing programs contribute to the creation of mixed-income, diverse, and integrated communities by requiring developers to incorporate affordable homes within the context of a larger development. Sometimes, rather than build affordable homes as part of a market-rate development, developers are able to build or rehabilitate homes nearby, or to make financial contributions to an affordable housing development fund to be used within that same jurisdiction. Because active participation of the private sector developer is a key ingredient in the inclusionary program, program requirements often permit alternative methods of providing affordable homes.

Although some jurisdictions have voluntary inclusionary programs, the vast majority of jurisdictions require compliance. Most programs mandate that 10-20% of the homes developed be affordable. The homes provided

may be either for sale or rental. Income eligibility varies widely, but most programs serve households with incomes that range from low to moderate income levels (50%-120% of area median income, AMI). Prices and rents are usually established by the program manager at a level affordable to households within this range.

In most jurisdictions, households interested in an inclusionary home apply and are qualified through the local program manager. Typically this is the local housing and community development agency, but sometimes this function is performed by a community land trust or other nonprofit. A few jurisdictions are able to serve extremely low income households by enabling purchase by housing agencies or nonprofits, which in turn can apply additional subsidies.

Maintaining the affordability of an inclusionary home over a substantial period of time is an important element of program management. Having the ability to resell or re-rent an affordable home to another qualified household maintains a stock of affordable housing in a community. Most jurisdictions require the homes to remain affordable for the long term; 30 to 50 years is not uncommon, and some jurisdictions mandate affordability in perpetuity. This requires a robust administrative function and continuous education and support to the households who are beneficiaries of the program.

FUNDING

One of the great advantages of inclusionary programs is that there is not a significant dollar cost for the creation of the affordable home. This is because inclusionary programs trade on the power of the market and provide incentives and regulatory waivers to builders and developers who produce market-oriented homes. The corollary is that inclusionary housing works best where the housing market is strong; that is, where private builder developers want to build because they believe there is strong market potential and that people will buy or rent the homes they build.

It is important to note, however, that program administration requires a set of skills that are sometimes not present in local government. In implementing and running a program, communities must be willing to invest resources in good staff who can handle the wide range of duties associated with a successful program. Funding for ongoing program administration is also important.

FORECAST FOR 2014

In 2013 we continued to see slow improvement in the housing market though many are still suffering from the most drawn-out and devastating housing slumps since the Great Depression. Most industry experts project continued growth in the housing sector in 2014 with the National Association of Home Builders estimating a 25% increase in housing starts. Improvement has also been seen in home prices with an estimated rise of 20% over the past two years. While all of this is great news for the overall economy, uneven income growth means those at the lower end of the income spectrum don't experience the full benefit of the housing growth. This presents opportunities for both study and improvement.

It presents opportunities to learn from the lessons of this man-made catastrophe and to advocate for positive changes. One lesson is that low and moderate income households were not well-served by being encouraged to take on more mortgage debt than they could handle. Too many families lost homes, had their credit destroyed, and experienced the stress of financial disaster to repeat the mistakes of the last decade. To avoid repeating these mistakes, regulatory and administrative changes have been made to mortgage loan qualification that make it more difficult for low and moderate income families to purchase a home. Therefore, the ability to buy or rent a home in a good, safe community continues to be denied to many lower income households because of the effective income segregation and lack of affordable housing that continues in many parts of the country; the tightened mortgage eligibility requirements compound this problem. This is where an inclusionary policy offers a positive alternative – a modest home at a reasonable price in a good community.

As housing advocates review their policies in the current environment, it is important to support and work to strengthen existing inclusionary policies around the country. Opponents of inclusionary policy are actively working to undermine and eliminate existing laws, claiming that housing affordability is a problem of the past.

The national stage for inclusionary housing advocacy is somewhat uneven at this point. The recent election of New York Mayor Bill DeBlasio could be very positive for the inclusionary housing community. Mayor DeBlasio has tasked his administration with the creation and preservation of 200,000 affordable housing units in the next decade, and he has publicly stated he would like to use inclusionary housing policies to advance this goal. A successful program in New York could set the stage for a strong argument in other metropolitan areas.

Unfortunately, a court decision in California could have an equally negative effect on advocacy efforts, especially for inclusionary rental housing. In 2009, a California court ruled that inclusionary housing requirements violate state law regarding establishment of rental rates. This ruling has local jurisdictions scrambling to identify ways to increase the supply of affordable housing in higher income communities.

Advocates should know that inclusionary housing can serve very low and extremely low income households. This is possible by taking the affordable home created by the market-oriented developer and further subsidizing it by project basing vouchers or by using HOME funds or state and local housing trust funds. This results in a new home that is very affordable at significantly less cost than creating it through just the expenditure of public subsidies. And it is more likely to be in an opportunity-rich location. Most existing inclusionary housing programs do not take this next step to serve very low and extremely low income households, but they should be encouraged to do so, and low income housing advocates' knowledge of this possibility will expand the usefulness of the program.

Changing land use law and planning an inclusionary housing ordinance that will work in a community takes time and political strength. Coalitions should include all parts of the community: employers, unions, religious organizations, students, and those who provide essential services. In some states, the power to change local land use laws is restricted at the state level; successful coalitions would have to operate at the state level to gain authority for local adoption of inclusionary policies.

WHAT TO SAY TO LEGISLATORS

The federal former Sustainable Communities Regional Planning Grant Program supported metropolitan and multi-jurisdictional planning efforts that integrate housing, land use, economic and workforce development, transportation, and infrastructure investments. This program promoted social equity, inclusion, and access to opportunity. One of the housing strategies suggested by the program was the use of inclusionary zoning. While this program was funded at \$150 million for FY10 and \$100 million for FY11, funding for it was cut beginning in FY12 and in every budget since. The FY14 appropriation was only \$75 million.

The Administration's FY15 budget proposal seeks \$75 million for Integrated Planning and Investment (IPI) grants, within a proposed separate, larger \$56 billion Opportunity, Growth, and Security Initiative. However, HUD's Office of Economic Resilience (formerly the Office of Sustainable Housing and Communities) still operates.

The current fiscal environment creates an environment where all housing programs are fighting for every penny of allocation they can get. Inclusionary housing advocates must ensure their voices are heard along-side advocates for all other housing programs. Advocates should contact Members of Congress to urge them to reinstate this element of HUD's budget. The metropolitan planning efforts that result from this funding may help change the dynamic of regions separated by race and class and promote fair housing choice for all income levels.

FOR MORE INFORMATION

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