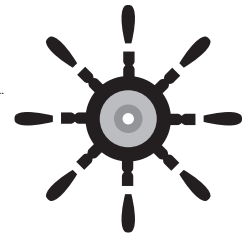


# Inclusionary Housing Policies



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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 was little activity during the depths of the housing bust. 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 that 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, a 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 mandatory compliance. Most programs require 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). 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 throughout 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. Perpetual affordability 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 builders/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

The national homeownership rate for the first quarter of 2015 fell below 64%, the lowest level in approximately two decades.<sup>1</sup> Homeownership rates fell for all age cohorts except those older than 65.

As noted by the *Wall Street Journal*, “For the first time U.S. builders last year sold slightly more homes priced above \$400,000 than those below \$200,000.”<sup>2</sup> For younger households starting out in their careers and those that have not accrued the savings necessary to make a 10-20% down payment the doors to homeownership are mostly closed. “With fewer potential customers, builders have largely abandoned the entry-level market.”<sup>3</sup> Many are still suffering from the most drawn-out and devastating housing slump since the Great Depression. However, new rental apartment construction is booming, nearing a level that it last reached in 1989<sup>4</sup>. Although the growth in construction of rental housing is good news for the overall economy, uneven income growth means those at the lower end of the income spectrum are often unable to afford the new rental housing that is being built.

One lesson from the housing bust is that low and moderate income households were not well-served by being encouraged to take on more mortgage debt than they could handle. 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

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1 Joint Center for Housing Studies of Harvard University

2 *Wall Street Journal Two Tier Economy Reshapes Contours of U.S. Markets*, January 29, 2015

3 *Ibid.*

4 *Ibid.*

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. An important new resource is available to advocates of inclusionary housing: *Inclusionary Housing: Creating and Maintaining Equitable Communities* by Rick Jacobus, published by the Lincoln Institute for Land Policy. This is a comprehensive guide to the issues that must be considered in the design and adoption of an inclusionary policy, and it provides real world examples from around the U.S.

The national stage for inclusionary housing advocacy has been strengthening throughout the past year. New York Mayor, Bill de Blasio—in his State of the City Address on February 3, 2015—called for the provision of 200,000 affordable homes over the course of the coming decade: 80,000 from new construction, and 120,000 from the preservation of existing affordable homes. Strengthened mandatory inclusionary housing policies will account for the bulk of the 80,000 new unit goal. In Chicago, the Affordable Requirements Ordinance amendments have been adopted by the City Council. These changes increase inclusionary requirements for on-site provision of affordable homes, and substantially increases in-lieu fees that support other affordable housing, if developers do not build inclusionary homes on site.

These and other actions at the local government level signify a renewed recognition of the obligation of local governments to address pressing housing needs using the tools at their disposal, principally the regulation of land use, to garner affordability for their low and moderate income residents. In every case, these gains would not have been possible without strong public advocacy that demanded public action.

In an important 2015 decision that strengthens the legal underpinning of inclusionary housing, the California Supreme Court—in the case *CBI v. City of San Jose*—supported the local inclusionary law unanimously. The California Building Industry

Association challenged a San Jose ordinance that required inclusionary housing obligations from housing developers.

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. Those efforts result in a new home that is very affordable at significantly lower cost than creating it solely through 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

Your duty to Affirmatively Further Fair Housing can be addressed in part by adopting local inclusionary housing laws, and creating the program mechanisms that will ensure that low and very low income households benefit from the homes or contributions engendered by these laws.

## FOR MORE INFORMATION

Innovative Housing Institute, 410-332-9912, [www.inhousing.org](http://www.inhousing.org)

National Housing Conference and Center for Housing Policy, 202-466-2121, [www.nhc.org](http://www.nhc.org) ■