Inclusionary Housing Policies

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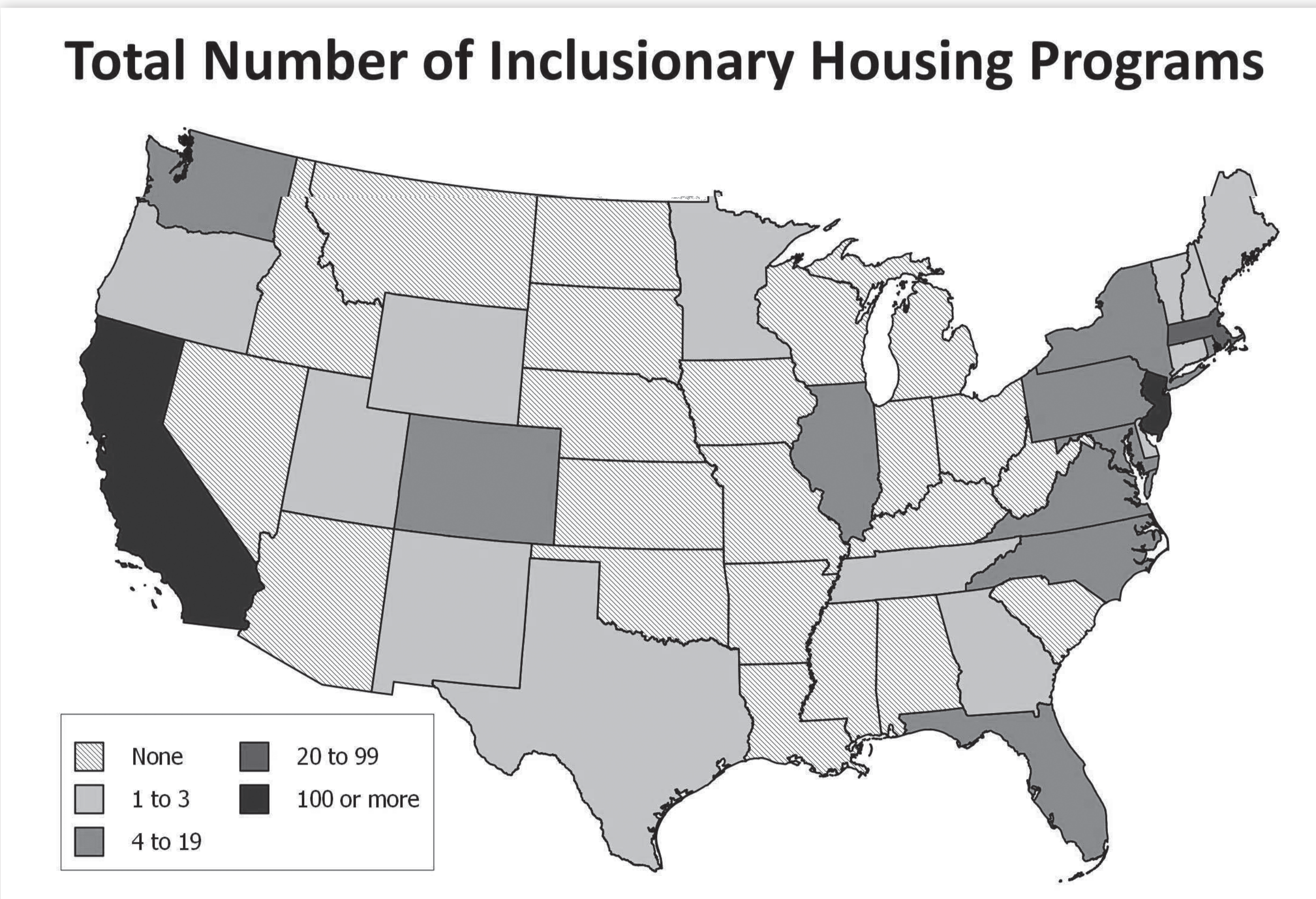
Inclusionary housing (often referred to as "inclusionary zoning") refers to the use of zoning law to encourage or require the development of affordable housing alongside market-rate housing. This is done by including a requirement in an area's zoning code that a certain percentage of new housing units must be made affordable to households at certain income thresholds. Any developer that is interested in building new housing in the neighborhoods subject to these codes becomes subject to this requirement. This ties the production of affordable housing to the development of traditional, market-rate housing. New development often brings with it improved amenities and an improved quality of life for residents; inclusionary housing programs help to spread these benefits more widely across a community by reserving space for low- and moderate-income households.

The details of how many units are made affordable and the income limits vary from program to program, and is subject to local political and economic constraints. Some inclusionary programs cover an entire city, while others are limited to particular neighborhoods, or even particular blocks with neighborhoods.

Inclusionary housing programs are often classified as either mandatory or voluntary; however, these categories blur when the details are considered. Mandatory programs may have an explicit requirement that a particular percentage of



Source: Robert Hickey, Lisa Sturtevant, and Emily Thaden. 2014. Achieving Lasting Affordability through Inclusionary Housing. Lincoln Institute of Land Policy.

any new units are made affordable to low- and middle-income households, but these programs often come with some kind of cost offset for developers. Voluntary programs provide incentives to developers to include affordable units, such as density bonuses or tax incentives. They are also more responsive to changes in the house market. Inclusionary housing is tied to market activity, and providing a voluntary program might reduce the barriers to development enough that more units are built than would otherwise be. Using a voluntary program in a weak market may not produce many units; having mandatory requirements in the same context may discourage development completely.

While inclusionary housing programs mostly began as mandatory programs, they have developed over time to incorporate incentives for developers (density bonuses, fee waivers, tax incentives) and alternative means of satisfying the affordability requirements (off-site development, fee-in-lieu of construction). Alternative forms of development are also part of an inclusionary housing strategy. Allowing the construction of accessory dwelling units (ADUs) can reduce housing prices by increasing density. Because ADUs are separate units built alongside existing housing on a single lot, this method can increase the density of neighborhoods without significantly altering its character. There can also be more technical dimensions to inclusionary housing, such as reduced parking requirements or accelerated permitting processes. Providing an array of incentives and alternatives expands the potential participation of developers, and along with it, the potential number of affordable units.

HISTORY

The history of inclusionary housing is commonly traced back to 1974 and the introduction of Moderately Priced Dwelling Units (MPDUs) in Montgomery County, Maryland. Since then, more than 500 inclusionary housing programs have been created across 27 states and the District of Columbia. Many of these are concentrated in California and New Jersey, which have particularly robust support for affordable housing programs. However, they are also found in less typical states like Tennessee and Wyoming (see map).

Inclusionary housing has also been the source and the product of various legal challenges around affordable housing. The series of Mount Laurel decisions in New Jersey led to municipalities being required to produce their "fair share" of affordable housing. In 2015, the California Supreme Court affirmed that inclusionary housing programs did not represent a form of unconstitutional "exactions" (closely related to the concept of "takings"), and that municipalities were within their rights to enforce laws that provided for the common benefit.

FUNDING

Because inclusionary housing uses the market to provide affordable units, the dollar costs to a jurisdiction for these programs tend to be low in comparison to programs that provide direct subsidies. When additional affordable housing is included in market-rate development plans, the immediate costs are shifted off the jurisdiction and into the price of land and/or the units. The cumulative cost of administering units created by the programs (and the cost of any financial incentives provided to developers) expands in direct proportion to how successful the program is in creating units. These administrative costs are generally far less than those directly subsidizing rental production.

Building partnerships with local organizations is an important element of many inclusionary housing programs. Working with nonprofits to manage the units created through inclusionary housing programs can help manage efficiently the costs of administering these units, and helps build relationships between the public and private sector. Some localities partner with local community development corporations (CDCs), community land trusts, or other forms of community development organizations to augment their stewardship capacity.

PROGRAM SUMMARIES

Inclusionary housing programs look different depending on the needs and priorities of communities and jurisdictions. This section outlines three different programs in three different cities.

The city of Davis, California, has a relatively straightforward mandatory inclusionary housing program. It requires that developers set aside between 25 and 35 percent any new rental development and between 10 and 25 percent for owner-occupied development to be affordable. The income thresholds for these units are 80 percent and below of area median income for rental units and 120 percent and below for owner-occupied units. There are two alternatives to building units: a fee-in-lieu or land dedication. These alternatives allowed Davis more flexibility in distributing resources. Units created through Davis' program are made affordable in perpetuity.

In 2016, the state of Oregon passed Senate Bill 1533, which lifted a pre-emption on municipal inclusionary housing programs. After the pre-emption was lifted, the city of Portland was the first municipality in the state to take advantage of the removal of the rule. The City Council unanimously approved an inclusionary housing measure. The program requires that any new developments of 20 units or more reserve 20 percent of those units for households at 80 percent of the area median income, or 10 percent for households at 60 percent of area median income. To offset the costs of building these units, the city provides certain incentives, including tax waivers, density bonuses, and tax exemptions. The requirement can be met by developers by building the units on-site, off-site, or by paying a fee-in-lieu to an affordable housing fund.

New York City's R10 program and the use of Inclusionary Housing designated areas is an example of geographically targeted inclusionary housing. These programs are applied in specific districts that are defined according to zoning (R10 is the highest density zoning available in New York). The R10 program is voluntary and uses density bonuses to incentivize the construction of affordable units. Depending on how the affordable housing is built (square footage, on-site or off-site, etc.), buildings in eligible districts receive a density bonus up to 20 percent of the existing maximum floor area ratio. The Inclusionary Housing designated areas program expands on the R10 program, and gives density bonuses for creating affordable housing in selected areas in particular neighborhoods.

For more information on what other inclusionary housing programs look like, see the report produced by the National Housing Conference in collaboration with the Lincoln Institute of Land Policy.

FORECAST FOR 2017

Inclusionary housing programs are most effective when there is a lot of rental housing construction. When demand for rental housing is high and developers are eager to fill that demand, it can be easier to finance and incorporate additional affordable apartments in new developments. Since inclusionary requirements require a minimum initial appropriation of funds, they are also appealing during periods of low federal funding.

As inclusionary housing is tied to market-rate development, the forecast for inclusionary housing is heavily influenced by the speed and vigor of the recovery of the housing market. It is also a very local type of program; most inclusionary programs are administered by cities or counties. This means that any forecast of their success (or failure) depends largely on local political and economic conditions.

There are signs that support for affordable housing is becoming a more important issue at the state and local level. In November 2016, voters passed 36 of the 41 local and statewide ballot measures that were up for consideration. Many of these measures were passed in jurisdictions that have great need for affordable housing and strong inclusionary programs already, such as Boston and San Francisco.

WHAT TO SAY TO LEGISLATORS

State and local legislators can introduce and pass inclusionary housing policies. First, find out whether state law allows inclusionary zoning—Oregon, as mentioned above, recently changed a long-standing state-level prohibition on inclusionary zoning. If state law already allows localities to pass inclusionary policies, focus on the local level. Make the case that inclusionary policies are very low cost to the locality, since they work with existing development imperatives to create affordable housing. They can also be an easy way to help create more integrated neighborhoods; inclusionary housing, when built on-site, helps foster communities with a wide range of incomes.

Federal legislators can be allies and supporters of inclusionary policies even if they cannot pass them directly. Inclusionary housing programs help stretch federal funding further by creating additional affordable housing in places of high residential demand. In some localities, inclusionary apartments can become permanent supportive housing when combined with additional rental subsidy and supportive services. Inclusionary policies also are a way for state and local jurisdictions to help contribute to solve the lack of affordable housing, rather than simply relying on scarce federal subsidies. Furthermore, allowing state and local governments to choose their preferred form of inclusionary policies helps find the best fit to local neighborhood its economic needs.

As a general comment to any public official, one should point out that inclusionary housing policies can be one tool among many to help states and localities meet fair housing obligations. Communities that want to offer residents more choices of where to live, inclusionary policies can be a low-cost way to reduce barriers to mobility and maintain affordability in rapidly changing communities.

FOR MORE INFORMATION

The National Housing Conference has a number of resources on inclusionary housing programs, including a report based on a first-of-its-kind nationwide database published in collaboration with the Lincoln Institute of Land Policy. This report has detailed summaries of inclusionary housing programs from around the country.