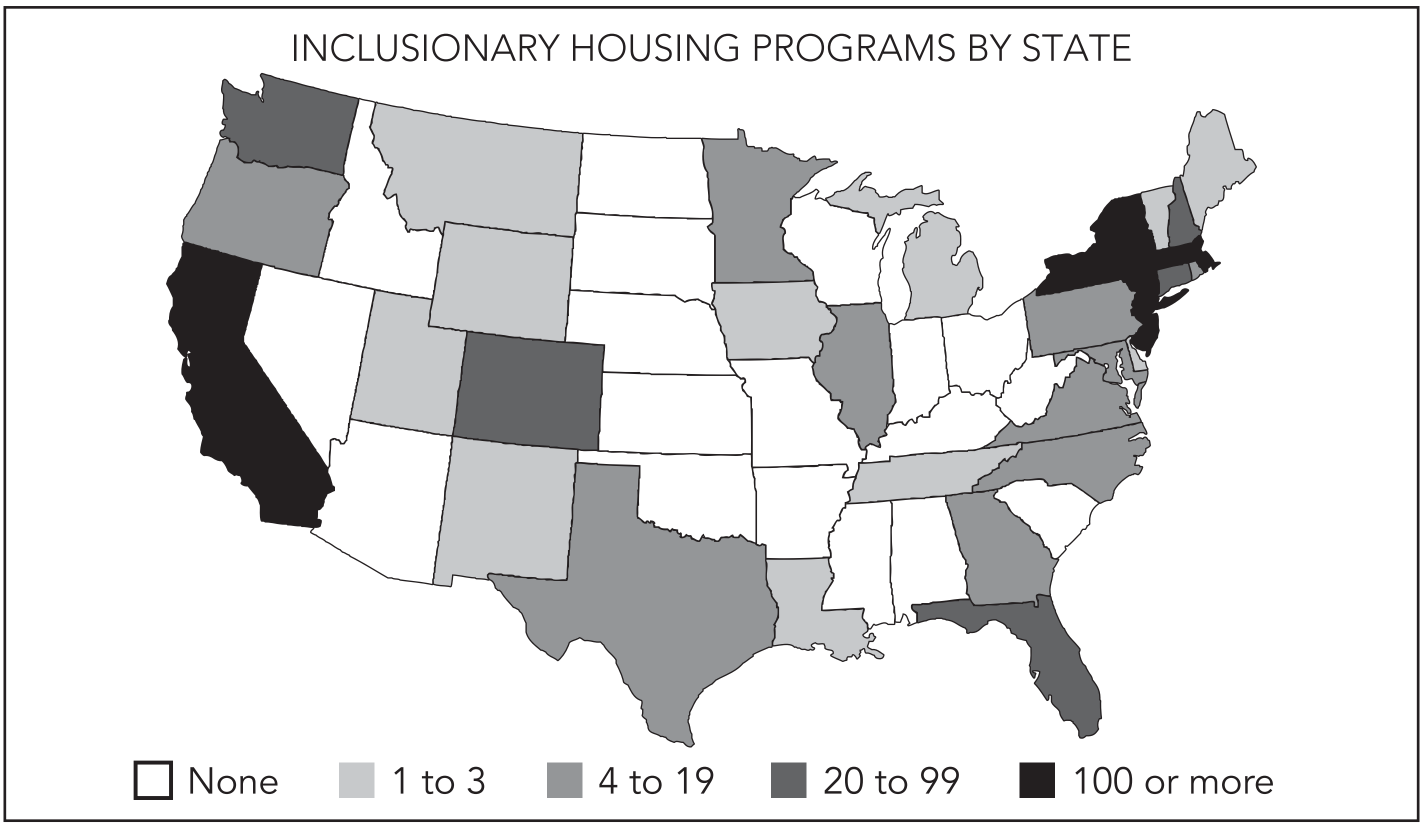
Inclusionary Housing Policies

By Stephanie Reyes, State & Local Policy Manager, Grounded Solutions Network

Inclusionary housing policies tie the creation of affordable homes for low- and moderate-income households to the construction of market-rate housing or commercial development. As housing prices rise, so does the value of land. Inclusionary policies seek to capture a portion of the increased land value for affordable housing by requiring or incentivizing developers to include affordable units in developments that would otherwise be entirely market-rate. In its simplest form, an inclusionary housing program might require developers to sell or rent 10 to 30% of new residential units to lower-income residents.

HISTORY

Inclusionary housing policies have existed for nearly half a century. Fairfax County, Virginia, which has the oldest policy in the U.S., passed its first inclusionary zoning ordinance in 1971. Montgomery County, Maryland, established the Moderately Priced Dwelling Unit program in 1974. Since then, more than 1,540 inclusionary housing programs have been adopted by over 900 jurisdictions across 31 states and the District of Columbia. Jurisdictions with inclusionary housing programs are found predominantly in New Jersey, Massachusetts, and California, where state laws incentivize or require localities to create a definable share of affordable housing.



Source: Grounded Solutions Network Inclusionary Housing Database (based on a survey conducted in 2016 and database updates thereafter). For more information about the database, visit the *Inclusionary Housing Database Map*.

LEGAL CONSIDERATIONS

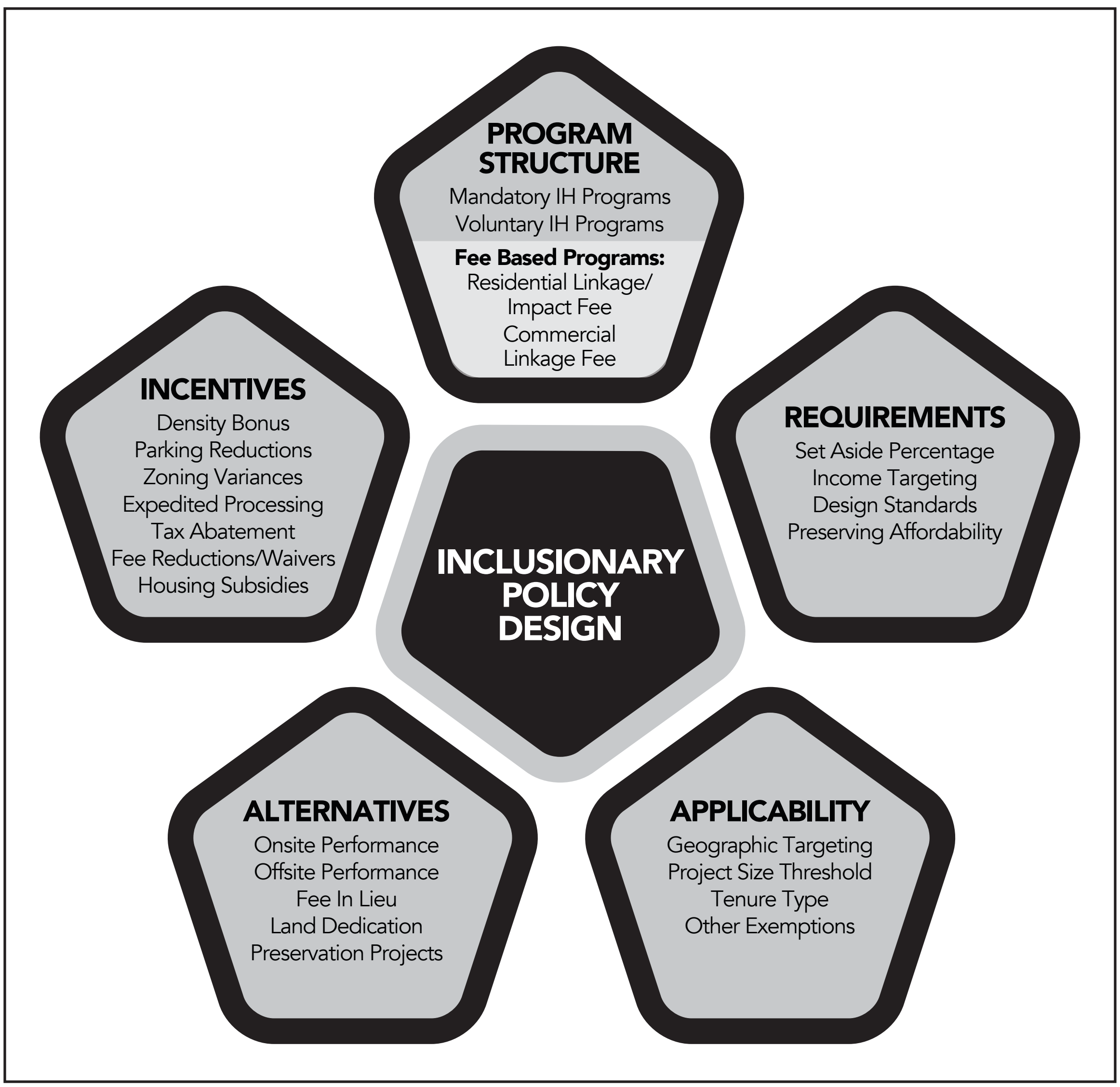
Inclusionary housing programs generally rely on local governments' power to regulate land use. While the right of zoning power granted to governments has been established and upheld for generations, this is still a rapidly evolving area of law. Recent federal court decisions have limited zoning power in ways that do not prohibit inclusionary housing programs but can influence how they are designed.

In addition to federal legal considerations, state law can impact the design of inclusionary housing in significant ways. For instance, in some states, there are statutory limitations on local policies that control rents on private property. In a subset of those states, such laws have been interpreted by courts as rendering mandatory inclusionary policies for rental housing illegal. A few states have adopted legislation that either explicitly permits or preempts (prohibits or limits) local inclusionary housing policies. States also have different legal frameworks regarding municipal authority to enact local legislation; these differences in municipal authority also impact the ability of local jurisdictions to adopt inclusionary housing policies.

The *Inclusionary Housing Database Map* summarizes the state legal framework relevant to local inclusionary housing policies for each of the 50 states.

POLICY CONSIDERATIONS

No two inclusionary housing policies are exactly the same. Policymakers in each community must consider several distinct questions. Key policy design questions include: Will the policy be mandatory or voluntary? Will it apply city-wide or only to certain geographies or neighborhoods? Will developers be offered incentives to help offset the cost of compliance? Will there be alternative methods of compliance beyond building the affordable units on site?



Every policy addresses each of these questions, though the specific answers differ considerably from place to place depending on local conditions. More details on these policy considerations can be found here.

PROGRAM CONSIDERATIONS

Passing a policy is only the first step in making inclusionary housing successful. Inclusionary housing programs cannot be successful unless they are well run and adequately staffed, and they must secure sufficient funding for ongoing administrative costs. Communities also need to be able to track program data in order to evaluate outcomes and make needed changes over time. Key program elements include supporting builders to comply with policy, monitoring rental units, and stewarding homeownership units. More details on program implementation can be found here.

FORECAST FOR 2019

At the local level, inclusionary housing policies tend to be popular when the housing market is strong (i.e., housing prices are high and there is sufficient new housing construction). However, there is usually a delay from the time at which an inclusionary housing policy is first considered to the time it is adopted, which can sometimes mean that by the time a policy is adopted the housing market may already have begun to turn down. This is one of many reasons it may make sense to adopt an inclusionary housing policy before the market heats up. Inclusionary housing is also appealing during periods of low federal and state funding because it leverages the profitability of new development to pay for affordable housing without significant public subsidy.

At the state level, there has been an increasing trend toward state preemption of local inclusionary housing policies, with Tennessee and Wisconsin passing new laws preempting inclusionary housing in 2018. Advocates for local policies in states without a history of inclusionary housing policies should assess the potential risk of triggering a preemptive backlash at the state level.

WHAT TO SAY TO LEGISLATORS

The article, *Ten Ways to Talk About Inclusionary Housing Differently*, from the Grounded Solutions Network offers tips to help communicate about inclusionary housing in ways that circumvent common misperceptions and create a new narrative for policymakers in moderate markets and more conservative political climates.

Some of the key benefits of inclusionary housing that may be compelling to legislators include:

1. Sharing the benefits of growth. As housing and land costs increase, a relatively small number of landowners receive most of the benefit while, often, the lowest-income residents bear much of the burden in the form of higher rents and displacement pressure. Inclusionary housing leverages the profitability of new development to pay for new affordable housing units and support the creation of more economically diverse and inclusive communities.

2. Economic integration. Inclusionary housing policies were first developed to specifically counteract a history of exclusionary zoning policies that reinforced economic and racial segregation. A wealth of recent research has convincingly demonstrated that concentrated poverty is a cause of many of our worst social problems and is especially damaging to children. Inclusionary housing has been successful in creating sustainable mixed-income communities.

3. Conservation of scarce public resources. Public funding for housing has been declining for decades, and in the current political climate, will probably continue to shrink. New affordable housing development can require over $200,000 of local investment per unit. Inclusionary

housing is one of the few ways to create reasonably priced housing without significant public subsidy. Jurisdictions can adopt inclusionary housing without draining the general fund.

Policymakers are often concerned that inclusionary housing requirements will become a barrier to housing development. While there is not much evidence of this outcome occurring at any significant level in real programs, this is an appropriate concern that plays a central role in the debate whenever any community considers affordable housing requirements.

There is evidence that it is possible to set affordable housing requirements so high that they prevent developers from wanting to build or landowners from wanting to sell. If this happens it can result in a reduced supply of housing and ultimately higher housing prices. However, data suggest that programs that provide incentives and flexibility can successfully require significant affordable housing without any impact on market supply or prices. Economic feasibility analyses can analyze the extent to which local market-rate housing development projects can realistically support a set-aside of lower cost units without slowing or deterring construction.

Policymakers may also be concerned that the costs of inclusionary housing requirements will be passed on to market-rate renters and homeowners. This is highly unlikely to happen for two main reasons:

1. Market rate is market rate. Developers can't "pass along" the costs of inclusionary housing policies to market-rate renters and buyers because those renters and buyers will only pay what the market will bear. If developers and property owners could charge more, they would already be doing so.
2. The costs of inclusionary housing requirements are generally borne by landowners. One common concern is that if affordable housing requirements are set too high, developers may not be able to make sufficient profits, and they will choose not to build or to build in another community with fewer requirements. But because landowners can't move to another community, they will have to lower land prices to attract developers, meaning that landowners are the ones whose profits ultimately drop.

This page, *Will Inclusionary Housing Prevent Development?,* addresses these concerns in more detail, and includes an easy-to-understand video.

FOR MORE INFORMATION

InclusionaryHousing.org.

Inclusionary Housing Database Map (https://inclusionaryhousing.org/map/).

Inclusionary Housing Calculator (https://inclusionaryhousing.org/calculator/).