

# Part III

## PROS & CONS



### THE FACES OF AFFORDABLE HOUSING

#### Margaret Vasquez

*"I am fortunate – the area I live in is quiet, peaceful and safe. My son and I can enjoy the weather, the beaches and the many sports activities for kids."*

Margaret works as a medical billing clerk at a busy local clinic. She was born and grew up in Santa Barbara and is now raising her 12-year-old son there. Her goals are for her son to become a productive and respectful young man and to one day own her own home. She lives at Via Diego, a 24 unit family complex that was developed by the Housing Authority in 1989. It is part of a larger master planned and mixed income housing development known as La Colina Village. There are 22 townhomes and 2 single story, fully accessible units for the disabled. All are two-bedroom units.

*– Housing Authority of the City of Santa Barbara - 2002 Calendar*



## INCLUSIONARY ZONING: PROS AND CONS

*Dr. Robert W Burchell and Catherine C. Galley\**

The fundamental purpose of inclusionary zoning programs are to allow affordable housing to become an integral part of other development taking place in a community. At the local level, this is usually accomplished by a zoning ordinance, mandatory conditions or voluntary objectives for the inclusion of below-market housing in market-level developments. Incentives designed to facilitate the achievement of these conditions or objectives are often included.

A typical ordinance sets forth that a minimum percentage of units within a residential development be affordable to households at a particular income level, generally defined as a percentage of the median income of the area. The share of units allocated to such households is termed a “mandatory set-aside.” The goal is to establish a relatively permanent stock of affordable housing units provided by the private market. This stock of affordable housing units is often maintained for 10 to 20 years or longer through a variety of “affordability controls.” Often these are ownership units that do not require a great deal of community administration, except for the qualification of successive occupants.

In many ordinances, some form of incentive is provided to the developer in return for the provision of affordable housing. These incentives can take the form of waivers of zoning requirements, including density, area, height, open space, use or other provisions; local tax abatements; waiver of permit fees or land dedication; fewer required developer-provided amenities and acquisitions of property; “fast track” permitting; and/or the subsidization or provision of infrastructure for the developer by the jurisdiction.

### EDITOR’S NOTE

*This selection provides a good starting point to examine the pros and cons of inclusionary housing. No planning device is perfect; and a good understanding of the strengths and weaknesses of any planning tool is helpful. This particular selection is the first of two excerpts selected from INCLUSIONARY ZONING: A VIABLE SOLUTION TO THE AFFORDABLE HOUSING CRISIS? (October 2000), published by the Center for Housing Policy as part of its New Century Housing series. The Center for Housing Policy is the research affiliate of the National Housing Conference ([www.nhc.org](http://www.nhc.org)) and brings together practitioners, policy analysts and research professionals to examine core problems of the housing issue.*

*\*Dr. Robert W Burchell is a professor at the Center for Urban Policy Research, Rutgers University and an expert on land-use regulation, development impact analysis and housing policy. Dr. Burchell’s recent research includes lead authorship of “The Costs of Sprawl – Revisited” published by National Academy Press for the Transportation Research Board. Ms. Catherine Galley is a Research Associate at the Center for Urban Policy Research, Rutgers University where she is a doctoral candidate in the Department of Urban Planning and Policy Development. Ms. Galley specializes in the analysis of cultural resources and their economic contributions, both nationally and internationally.*

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## **POSITIVE FEATURES AND OUTCOMES**

### **AFFORDABLE UNITS AT LITTLE OR NO COST TO LOCAL GOVERNMENTS**

Advocates of inclusionary zoning argue that this regulatory tool creates economically diverse communities and allows local governments to create more heterogeneous communities at little or no direct financial cost. Generally, the provision of affordable housing units as part of an inclusionary program does not require significant expenditure of public funds. Inclusionary units are delivered in step with market units through incentives such as density bonuses, fee waivers and/or local tax abatements offered by the local jurisdiction.

Inclusionary zoning relies on a strong residential market to create below-market units. This type of program reached its zenith in the 10-year period from 1975 to 1985. During this time (except for the 1980-82 recession), market housing was built in record numbers, and a share of this housing was allocated to lower-income households.

### **CREATING INCOME-INTEGRATED COMMUNITIES**

The affordable housing enabled by inclusionary programs is not produced as an “island” of the poor but rather is integrated into the development of the overall community in lockstep with market-rate units. The integration of a percentage of low- and moderate-income housing units into market-rate housing developments avoids the problems of over-concentration, ghettoization and stigmatization generally associated with solely provided and isolated affordable housing efforts. Inclusionary programs make possible the integration of populations that traditional zoning segregates – young families, retired and elderly households, single adults, female/male heads of households, minority persons and households of all types.

Suburban and exurban employers further benefit from the presence of this proximate low- and moderate-income work force. Inclusionary zoning significantly reduces the oft-cited spatial mismatch between available suburban jobs and employment-seeking urban households.

### **LESS SPRAWL**

Findings from the County Council of Montgomery County, Maryland, indicate that the inadequate supply of housing for persons of low- and moderate-income results in large-scale commuting from outside the

County to places of employment within the County, thereby overtaxing existing roads and transportation facilities, significantly contributing to air and noise pollution, and engendering greater than normal personnel turnover in the businesses, industry and public agencies of the County, all adversely affecting the health, safety and welfare of and resulting in an added financial burden on the citizens of the County. Yet another argument advanced by the proponents of inclusionary zoning is that it provides the critical mass necessary to create a town center and reduce the proliferation of sprawled bedroom subdivisions.

From a regional perspective, density bonuses often make possible residential environments of a variety of housing types. They enable developments to be built more densely than those of primarily single-family zones, which helps to reduce the sprawl that would otherwise be created by single-purpose residential zones. A large development containing inclusionary zoning often allows for mixed-use and transit-oriented development, while protecting surrounding open spaces.

## **NEGATIVE FEATURES AND OUTCOMES**

### **THE SHIFT OF THE COST OF PROVIDING AFFORDABLE HOUSING TO OTHER GROUPS IN SOCIETY**

Critics claim that inclusionary zoning changes the financial characteristics of real estate developments and reduces the saleable value of the development upon completion. They equate inclusionary zoning mandates with a tax on new development – especially when there are no compensating benefits provided to developers to cover the full cost of providing affordable housing. Opponents of inclusionary programs assert that developers cannot make money on affordable housing and thus are saddled with the burden of economically integrating neighborhoods that have been demographically homogeneous for decades. Developers become scapegoats for problems beyond their control but quickly pass this burden onto the new occupants of the housing that they develop.

Who pays for inclusionary zoning? The requirement of subsidized housing has the same effect as a development tax. The developer makes zero economic profit with or without inclusionary zoning, so the implicit tax is passed on to consumers (housing price increases) and landowners (the price of vacant land decreases). In other words, housing consumers and landowners pay for inclusionary zoning.

Another deficiency of the inclusionary zoning strategy is that it is based on a market-supply equation that relies primarily upon a developer's ability to sell market-level units – as an example, eight market units for every two affordable units produced. This reliance on the private sector to finance affordable housing based on the sale of market units is not necessarily a major issue when the economy flourishes, but it is a very serious one when the economy falters.

Finally, “shift” criticisms of inclusionary zoning have become focused on the very structure of the inclusionary zoning technique. Inclusionary programs that are mandated without compensation were challenged constitutionally in the 1990s as a taking.

### **BREAKING UP POCKETS OF THE POOR**

A lingering criticism of inclusionary zoning is that it “distills” the most upwardly mobile poor from central neighborhoods and artificially transports the citizens who could do the most for reviving central city neighborhoods to the suburbs. The “best” of the poor are enticed outward by a write-down on the cost of housing there. While this is certainly a valid concern, and the more economically mobile residents may move out, leaving the less mobile behind, such is the nature of residential choice; it has existed in housing markets since time immemorial.

Similarly, in-kind housing subsidies are nontransportable devices that may not significantly improve the welfare of recipient families. These programs may provide individual economic benefits that are difficult to “cash out.” For example, affordable housing units usually carry with them affordability controls that typically limit the sales price increase on such housing to a small multiple of the rate of inflation.

### **MORE DEVELOPMENT/INDUCED GROWTH**

In instances where density bonuses are provided as part of the inclusionary solution, criticisms about “massing” have emerged. Some argue that increased density represents an unwanted and unplanned-for glut of development that burdens both the overall environment and the public service capacity of local governments.

## CONCLUSIONS AND FUTURE DIRECTIONS

Inclusionary zoning is simple to understand and apply, and coupled with density bonuses and other incentives, allows higher-income communities to achieve a balanced economic composition. Inclusionary zoning also helps limit sprawl by concentrating more development in a single location.

Inclusionary zoning works best when combined with developer incentives. It has delivered the greatest numbers of units when the populations “included” are closest to median income. Inclusionary zoning is the by-product of expensive housing markets that have been spawned by either raw demand or exclusionary zoning controls. Typically, these have been in northeastern and western United States housing markets and today are likely to extend to specific locations in southeastern and southwestern U.S. housing markets.

Inclusionary zoning has been criticized for shifting the burden of affordable housing provision to other groups, for distilling the upwardly mobile poor from the remainder of central city residents and for causing undue growth in locations that would not otherwise experience it. These criticisms, while warranted and substantive, pale by comparison to the roster of benefits attributable to inclusionary housing programs.

Inclusionary zoning will continue to be sought in tight and expensive housing markets where there is socially responsible interest in providing both housing opportunity and economic balance. The technique must be implemented cautiously, however, with sensitivity to the locality paying for it and the population benefiting from it.





## INCLUSIONARY ZONING: A VIABLE SOLUTION TO THE AFFORDABLE HOUSING CRISIS? A HOME BUILDER'S POLICY VIEW ON INCLUSIONARY ZONING

*Kent Conine\**

Home builders are justifiably proud of the part they have played in our nation's strong economy and the recent achievement of the highest homeownership rate in modern American history. But we recognize that not all households have benefited from the current wave of prosperity; in fact, many families may be experiencing a housing affordability gap as the housing industry needs to maintain a sharp focus on providing housing that is affordable for those at the lower end of the income distribution.

Homeownership has proven to be an important step for building equity and creating family wealth that can be passed to the next generation and lift a family to the middle class. While not everyone may be in an economic position to become a homeowner, it is in the public interest to expand homeownership opportunities to moderate- and low-income families.

Since the 1970s, a few local governments have fostered affordable homeownership through the imposition of inclusionary zoning, which mandates that builders construct a certain percent of affordable homes in a new development. Some of these programs provide density bonuses as a way to compensate builders for complying with inclusionary requirements.

These programs have two laudable goals: to create more affordable homeownership opportunities and to integrate affordable units throughout a jurisdiction. Where inclusionary zoning requirements have been

### EDITOR'S NOTE

*In this selection, author Kent Conine begins to lay out some of the concerns that developers and others have with inclusionary housing programs. Mr. Conine concludes that although there may be a role for inclusionary housing as a planning tool, it should not be relied upon to the exclusion of other programs that may be more effective at increasing levels of homeownership. This is the second selection from INCLUSIONARY ZONING: A VIABLE SOLUTION TO THE AFFORDABLE HOUSING CRISIS? (see Selection 4).*

*\*Kent Conine is the Vice President and Secretary of the National Association of Home Builders. He is also President of Conine Residential Group, Inc., which specializes in multifamily development, single family homebuilding and single family subdivision development. Since 1981, he has been responsible for the building, management and development of over 3,000 apartment units as well as the development of several residential communities consisting of over 1,000 single family lots. Prior to the establishment of the Conine Residential Group, Mr. Conine was involved in the development and management of multifamily projects in the Dallas area as Vice President of Metroplex Associates.*

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imposed, they have resulted in the construction of significant amounts of affordable housing without any government subsidy. In a 1992 report, the San Diego Housing Commission found more than 20,000 affordable dwellings had been built in California in the previous ten years without government subsidy.

Home builders have reacted in a variety of ways to the inclusionary mandates. Some view the mandates as the cost of doing business in a profitable, high-cost area. Some believe that if density bonuses are provided, the builder can break even on the affordable units or even realize a profit. Other builders maintain that the requirements impose significant costs and regulatory burdens on the building industry and further increase the cost of market-rate housing in already costly areas, thereby making housing even less affordable for many families who are not eligible for the units built under the requirements.

Whatever builders may think, inclusionary housing requirements raise some important public policy questions. Do programs impose a cost, and if so, who bears that cost – the builder or the purchaser of the market-rate homes? If there is a cost to the builder (even if only in more work or regulatory complications), is it fair for the builder to shoulder the cost of providing a needed social good? If there is a cost to the purchaser of the market-rate units, is it sensible housing policy to use a technique that further raises home prices in already high-cost areas? Are housing prices for the majority of homebuyers made higher in return for lower prices for a few?

Some of these questions may be difficult to answer without significant research. The more important and more immediate policy question is whether inclusionary zoning is the best method of government intervention to achieve the goals of affordability and inclusion for the largest number of people. A legitimate criticism of inclusionary zoning programs is that, in spite of the amount of affordable homes built over two decades, the number of households that benefit from the programs is relatively small compared to the need. In most instances, applicants so outnumber available units that lotteries are used to select homebuyers. And several observers have noted that the programs have been of greatest benefit to the children of the middle class rather than helping families from low-income backgrounds attain middle-class status. Perhaps a different approach – one that addresses the larger issue of how growth occurs and is regulated – could bring benefits to a greater number of families.

Of course, most states can already point to proven models of the government-sponsored low-rate mortgages for low- and moderate-income purchasers (funded by mortgage revenue bonds). Other programs provide down payment assistance to buyers. These approaches benefit those at the margins of achieving homeownership, but the impact of such assistance is limited and does not address the issue of the high cost of homes.

To increase homeownership significantly among lower-income households, a more comprehensive approach is called for. The Smart Growth policy adopted by the National Association of Home Builders supports such a comprehensive approach. Elements include planning adequately for growth; providing the infrastructure needed to accommodate growth; and providing revitalization of central cities and older suburbs with a strong housing component.

1. ***Planning for growth.*** Each jurisdiction should plan for growth by making available an ample supply of land for all types of residential uses, in addition to planning for commercial and industrial development and open space. Land costs are an especially large part of the cost of housing in high-income areas, and any regulations that restrict the developable land supply contribute greatly to the housing affordability problem. Zoning should permit reasonably high densities in appropriate places, and zoning districts should be flexible enough so that they do not restrict development to one particular type of housing. If zoning allows different housing types and lot sizes in each neighborhood, builders will more likely respond with a wider range of housing products and prices.
2. ***Planning and constructing infrastructure.*** Communities need to find fair and broad-based sources of funding to pay for needed roads, schools, and utilities. When new infrastructure is not available for an adequate amount of new development, land already served by infrastructure escalates in price, making housing less affordable.
3. ***Urban revitalization.*** Builders and local governments should work together to revitalize inner-city and older suburban areas. Incentives provided by cities can be tailored to support the building of affordable infill housing. For example, several cities make vacant city-owned land available to builders at low or no cost in return for building affordable homes.

It cannot be denied that in the few places where it has been adopted, inclusionary zoning has succeeded in producing affordable housing and provided homeownership for those who otherwise may not have achieved it. However, the small number of places that have adopted these

requirements suggests that much of the public is concerned with the troublesome policy questions these requirements raise. Rather than rely on the particular tool of inclusionary zoning to bring affordable homeownership to more Americans, we should be rethinking the planning, zoning and housing policies that have the greatest impact on the price of housing. As communities throughout the country focus on Smart Growth, they should develop policies and tools that comprehensively foster greater homeownership opportunities for all Americans.

## BENEFITS OF INCLUSIONARY HOUSING

*PolicyLink\**

Inclusionary housing requires or encourages that a percentage of housing units in new residential developments be made available for low and moderate income households. The fundamental purpose of inclusionary housing is to tie the creation of affordable housing to the larger residential development process, and foster mixed-income communities – diverse, stable, and supportive.

Inclusionary housing can take many forms. Some inclusionary housing programs are mandatory, while others are voluntary or incentive-driven. Some jurisdictions require developers to construct affordable units within the development, while others allow affordable units to be constructed in another location. Some require developers to build the units, while other communities allow developers to contribute to an affordable housing fund.

While approaches differ, inclusionary housing policies share a common thread. Inclusionary housing requires and/or encourages developers to contribute to affordable housing stock in exchange for benefits, such as zoning variances, development rights and other permits. Inclusionary housing is a flexible strategy with a proven track record of meeting a community's affordable housing needs while allowing builders to profit from housing developments. To date, inclusionary housing policies have been most effective in areas that are experiencing growth, since the creation of affordable units is a function of residential development that is occurring in the community.

This tool provides an overview of inclusionary housing and considers the key issues related to implementing inclusionary housing. While the focus of this tool is inclusionary housing, inclusionary housing programs will also be referenced and discussed.

### EDITOR'S NOTE

*This selection answers the question of “why inclusionary housing?” by describing the policy goals and benefits provided by such programs. Perhaps most convincingly, PolicyLink identifies that inclusionary housing programs are “doable” for most local agencies because they can easily be blended with existing programs. This selection also helps to make the point that many nonprofit organizations are creating resources that can be helpful in designing inclusionary housing programs and drafting findings in support of such programs.*

*\*PolicyLink is a nonprofit research and advocacy organization based in Oakland that works to achieve social equity by connecting diverse methods and constituencies to create lasting results and system change. Policylink's Web site ([www.policylink.org](http://www.policylink.org)) offers an equitable development tool kit from which selection is taken. In addition to addressing the affordable housing issue, the Web site also offers useful resources on a number of related subjects, including code enforcement, rent control and retaining subsidized housing.*

### THE MARYLAND EXPERIENCE

Passed in 1974, Montgomery County's (Maryland) inclusionary housing program requires 12.5 to 15 percent of new housing developments of 50 or more units be households in the lowest one-third of the county's income bracket. Between 1976 and 2001, 13,000 affordable housing units have been developed throughout the county.

## WHY USE INCLUSIONARY HOUSING?

For decades, various land use policies have contributed to urban sprawl, concentrated poverty, lack of affordable housing, and gentrification with its attendant displacement. Inclusionary housing is a regulatory strategy that strives to insert equity into land use policies by integrating the creation of affordable housing with the larger development process.

As such, inclusionary housing policies are an effective tool for maintaining affordability in housing markets. In communities facing displacement or experiencing significant new investment, the housing market is often the most acutely impacted. As higher income individuals move into a neighborhood, housing prices rise, displacing low- to moderate-income residents. Furthermore, in areas where new housing development consists of "market-rate" or "higher end" units, affordability is further compromised. In communities planning for new investment or already experiencing this pattern of displacement, inclusionary housing policies promote balanced housing development by ensuring that some portion of new housing development is affordable. When coupled with other mechanisms to preserve and increase the stock of affordable housing, inclusionary housing policies are an effective component of an equitable development strategy. In redevelopment efforts, inclusionary housing is an effective mechanism to promote a balanced housing supply, one in which affordable units are created in concert with higher end residential units.

Inclusionary housing has most often been used in communities with high-cost or escalating housing markets, in areas where communities want to preserve open space, or where exclusionary zoning is visibly evident (for example, Washington, D.C., New York metropolitan areas, and California). Inclusionary housing draws upon municipal authority over land use to require developers to dedicate a percentage of units for moderate-, low-, very low-, or extremely low-income families. Innovative communities use inclusionary housing to ensure mixed-income housing and housing near jobs, and to counter declining public-sector investment in affordable housing.

## BENEFITS OF INCLUSIONARY HOUSING

- *Creation of Mixed Income, Diverse, Integrated Communities.* Inclusionary housing policies contribute to the development of economically and racially integrated communities. In order to achieve this goal, inclusionary housing policies must require developers to build

the affordable housing units within the larger development, as opposed to developing the units elsewhere. The benefits of mixed income communities are manifold. For example, studies have shown that low-income children who live in mixed-income communities have higher test scores and improved educational achievement over students of similar economic status in schools with concentrated poverty.

- ***Deconcentration of Poverty.*** Communities of color are the most likely to live in concentrated poverty. In his book, *The Inside/Outside Game*, (Brookings Institution Press, 1999) David Rusk notes that only one of four poor whites live in neighborhoods characterized by concentrated poverty, compared to three of four poor blacks. Inclusionary housing can lessen the concentration of poverty in communities of color and create greater access to education and job opportunities in the larger region. In order to achieve the goal of poverty deconcentration, inclusionary housing policies must focus on reaching very low-income families and require affordable units be built into the larger development. This goal of deconcentration of poverty is best achieved if all jurisdictions in a region adopt commensurate policies.
- ***Smart Growth, Less Sprawl, Preservation of Open Space.*** Many inclusionary housing policies offer developers density bonuses in exchange for the creation of affordable housing units. Optimal density can be an important element of a region's smart growth strategy. Inclusionary housing is a strategy that simultaneously meets the goals of housing advocates, environmentalists and smart growth proponents.
- ***Housing for a Diverse Labor Force.*** A healthy community requires a diverse labor pool, including professionals, service sector employees, public servants, and others. In escalating housing markets, lower-paid employees are the first to be driven out. Inclusionary housing helps build a diverse housing market, ensuring that lower income individuals, whose housing needs are not met through the market, can live in the community where they work.
- ***Satisfaction of Fair Share Requirements.*** Fair share requirements hold jurisdictions accountable for producing their "fair share" of affordable housing. Inclusionary housing is one strategy to satisfy these requirements. In 1979, Orange County, California implemented a mandatory inclusionary housing requirement after a lawsuit challenged the county's housing element for lack of compliance with state fair share requirements. Through their inclusionary housing policy, Orange County today has produced the required number of affordable units, bringing them into compliance.

#### INCLUSIONARY HOUSING HELPS PREVENT GENTRIFICATION

When coupled with other mechanisms to preserve and increase the stock of affordable housing, inclusionary policies are an effective component of an anti-displacement strategy.

In Montgomery County, Maryland, inclusionary housing has been an important mechanism for distributing below market-rate housing throughout the county. Since the adoption of their Moderately Priced Dwelling Units (MPDU) program, the distribution of affordable housing units reflects the county's growth patterns. For example, Germantown has experienced a lot of residential development in the last 20 years and also has the highest percentage of MPDU units.

- ***Doable Strategy.*** Creating inclusionary housing does not require a massive overhaul of existing land use law. Since it was first adopted in 1974 by Montgomery County, many jurisdictions nationally have successfully implemented inclusionary housing to increase the stock of affordable housing. Feasibility, however, should not be equated with ease – getting an inclusionary housing ordinance adopted may require a vigorous campaign to demonstrate community support to elected officials.



## INCLUSIONARY ZONING ISSUES BRIEFING PAPER

*California Association of REALTORS® (Unofficial)\**

With more pressure from the state to provide affordable housing, and fewer government dollars to subsidize such housing, more local governments have turned to inclusionary zoning programs that place the primary burden for affordable housing on the private development community. In its most recent list, compiled in 1996, the Governor's Office of Planning and Research identified over 120 cities and counties with some form of inclusionary housing policy. This number represents a steady increase over the previous decade. Although C.A.R. has been historically opposed to inclusionary zoning, some local Associations have made a departure from this position and supported inclusionary policies in their area.

### FORMS OF INCLUSIONARY ZONING

Inclusionary ordinances can vary in a number of ways. However, they typically contain some or all of the following features:

- an inclusionary set-aside, usually ranging from 10 to 25 percent of the project's units;
- an exemption from inclusionary zoning requirements for small projects, most often for projects of less than five or ten units;
- affordability criteria based on a percentage of median income and/or median home prices;
- provisions for in-lieu fees which allow the developer to pay a fee to the locality instead of building the units;
- restrictions on the resale of affordable units
- ordinances may be either voluntary or mandatory.

#### EDITOR'S NOTE

*The following selection is from a background discussion paper that was written for the California Association of REALTORS® (CAR) and posted on the CAR Web site. It does NOT represent CAR's official policy. Indeed, this paper has NOT been considered by any of the committees that would need to approve it before it became policy, including CAR's Local Governmental Relations Committee, the Housing Affordability Committee, the Land Use and Environmental Committee, the Executive Committee or the Board of Directors. Despite this selection's unofficial status, we include it in this collection because it describes many of the drawbacks associated with inclusionary housing policies and outlines issues that should be reviewed when considering whether or not to adopt an inclusionary housing program. Indeed, there is value in fully understanding all the drawbacks associated with an option before adopting it.*

*This selection was posted on the Web site of the California Association of REALTORS®. It does NOT represent an official policy position (See Editor's Note). For additional information, please contact C.A.R.'s Public Policy Division at (213) 739-8375, or send an e-mail to Rick Laezman at richard\_laezman@car.org.*

## **MANDATORY INCLUSIONARY PROGRAMS**

Ordinances that require a specified percentage of affordable units in all new construction projects constitute the majority of inclusionary programs. Almost all mandatory ordinances contain a threshold at which the inclusionary requirement kicks in. A few cities have a very low or no threshold, in order to discourage developers from downsizing their projects to avoid the inclusionary requirements. Some cities also have a low threshold because a lack of developable land has resulted in a majority of construction permits being issued to small projects.

Most inclusionary zoning ordinances apply to projects of five or more units, and may have a threshold of ten. Cities usually target the larger projects because they are seen as being strong enough financially to be able to sustain the lower profit margin that results from including the below market-rate units.

Mandatory inclusionary ordinances also require a specified number of affordable units to be built in the project. This requirement is a percentage of the total number of units being built. The percentage can be as low as 10 percent, or as high as 30 percent in new multi-family projects. The percentage sometimes reflects an overall goal for affordable housing which the local government wants to reach.

## **VOLUNTARY PROGRAMS**

Some local governments do not require developers to build affordable units, but they offer builders the option of receiving one or more concessions in exchange for setting aside affordable units on their own volition. These concessions may be given in the form of an increase in the number of units provided or lower parking lot requirements, for example, which can lower the developer's costs and may make the project more profitable. In many cases, units provided under voluntary inclusionary programs must also be placed under resale restrictions.

## **INCLUSIONARY EXACTIONS ON COMMERCIAL DEVELOPMENTS - LINKAGE PROGRAMS**

Most inclusionary programs apply strictly to residential projects. However, some cities also require exactions from commercial and/or industrial developers. These exactions are usually for an in-lieu fee that is placed in an affordable housing fund to help finance future projects. These requirements are often referred to as linkage programs because they

assume that a link exists between the construction of a new commercial or industrial project and an increase in affordable housing needs in the community, presumably from the new workers that the project brings.

## INCLUSIONARY ZONING AND GROWTH CONTROL

In order to counter allegations that growth controls exclude low- and moderate-income buyers from a community's housing market, many cities that have such ordinances have incorporated an inclusionary component.

### OPPOSITION TO INCLUSIONARY ZONING ORDINANCES

- ***Unfair Burden on Developers.*** It is unfair to place the burden of providing affordable housing solely on developers. The lack of affordable housing is a societal problem, and as such, all of society should share the responsibility for addressing it.
- ***Does Not Address Factors That Cause High Housing Costs.*** Inclusionary zoning does not address the factors – such as high land costs, lack of available sites, developer fees and exactions and cumbersome permitting processes - that contribute to the high cost of market-rate housing. Moreover, inclusionary zoning adds new costs to the development of market-rate housing.
- ***Inclusionary Zoning Places Financial Hardships on Developers.*** Ultimately, developers will no longer be able to provide housing in the community because the costs are too high, or they will pass the costs on to market-rate buyers, thus making homes more expensive.
- ***Resale Controls are Economically Inefficient.*** Resale price controls eliminate homeowners' ability to realize a reasonable profit on the resale of their homes. It also acts as a disincentive to maintain the home and property. This makes it harder to resell inclusionary units, which hurts the real estate market.
- ***High Implementation Cost.*** The cost of implementing an inclusionary zoning ordinance for a local government entity is significantly high. Most local governments cannot afford the staff resources and experience necessary to implement and administer an effective program.
- ***More Effective Alternatives Available.*** Local government can best provide housing that is affordable for its constituents at all income levels by making it easier for developers to build such housing. Incentives such as reduced land costs and land restrictions, increased availability of housing sites, and reduced fees make the development process less costly and time consuming.
- ***Tax on Homeowners.*** Because market-rate homeowners and renters ultimately bear the cost of in-lieu fees, implementing such fees constitutes a tax on homeowners and renters.
- ***In Lieu Fee Programs Not Effective.*** Many jurisdictions collect in-lieu fees, but do not leverage the revenues to build more affordable housing. Instead, in some cases, the money is not spent to produce new affordable housing.

## **A CRITICAL LOOK AT THE BASICS OF INCLUSIONARY ZONING**

This section examines these features and reveals some fundamental weaknesses in the concept of inclusionary zoning based on common problems that have occurred in the cases that were chosen for this study.

### **RESALE CONTROLS**

In order to ensure that inclusionary units remain affordable, most inclusionary ordinances contain resale restrictions for ownership units. These provisions, which typically come in the form of a deed restriction, require ownership units to be sold to another qualified low- or moderate-income buyer at a restricted price. The restriction applies to units that are sold within a certain time frame, usually 30 years.

Resale restrictions include various enforcement mechanisms. Several cities and counties, for example, have the right of first refusal when an inclusionary unit is resold. In this case, a city may have 60 days to buy the unit after an owner decides to put the unit up for sale. The city will purchase the unit at its appraised value or a value based on the original purchase price plus an amount tied to the increase in the Consumer Price Index (CPI) during the time the seller owned the unit, whichever is less.

In other localities, affordable units can only be resold to someone who falls into the same low- or moderate-income category as the original buyer. If after one year the owner cannot find a buyer in his/her income category, the local government may allow the home to be sold to someone at a higher income level.

A city may also buy back units when owners cannot find buyers who qualify under low- and moderate-income guidelines. Since sellers do not want to go through the trouble to find buyers who qualify under the city's guidelines, the city may use money from in-lieu fees to purchase the units. Other cities require an equity recapture as opposed to resale controls.

### **IN-LIEU FEES**

As stated earlier, most mandatory programs also have an option to pay in-lieu fees instead of building the required number of affordable units. While average housing prices in California certainly vary from region to region, the amount charged for in-lieu fees varies more dramatically.

Fees may be based on a percentage of the cost of land in the city, or they may be calculated from a formula that is based on the difference between the cost of producing the units and the price at which median-income families can afford to buy them. Other formulas include: a percent of the gross sales value of the total number of units, or simply a flat rate per unit.

Many jurisdictions prefer that developers build the required number of units under the inclusionary ordinance as opposed to paying the fee. However, because paying the fees is less expensive for developers than building, if given the choice, developers will often opt to pay the fee. To prevent this, many jurisdictions have adopted strict guidelines as to when the in-lieu fee option can be used. Several cities do not allow in-lieu fees. Others only allow certain projects to pay fees.

## **DENSITY BONUSES AND OTHER INCENTIVES**

Because developers sustain a loss of profit when building below market-rate units, cities and counties that have inclusionary zoning ordinances provide incentives to encourage developers to participate. A common incentive is the density bonus. The density bonus allows the developer who builds a certain percentage of affordable units to include a certain percentage of market-rate units in addition to what would otherwise be permitted under the zoning restrictions for that particular planning area. This provides the builder with an opportunity to recoup the loss he takes by participating in the inclusionary program. One problem that local governments experience with the density bonus is neighborhood opposition.

The state requires all local governments to provide a density bonus to developers who provide a certain percentage of affordable units. The state requires all cities and counties to provide a 25 percent density bonus to any developer whose project includes 20 percent low-income units, 10 percent very low-income units, or 50 percent senior units.

## **ADMINISTRATIVE COSTS**

Perhaps the most significant drawback to inclusionary zoning programs is the administrative liability. Inclusionary zoning ordinances require a great deal of staff supervision in order to make them effective. As one county official explained, “inclusionary zoning programs are not self-administering.”

The greatest demand for program supervision probably comes from resale controls and other mechanisms for ensuring long-term affordability. Resale controls involve many complicated legal and title issues, and they require enforcement.

## CONCLUSION

After examining all of the above examples, several observations can be made about inclusionary zoning programs. While these programs are designed to address communities' affordable housing needs, they present many problems as well. Localities frequently cite problems with such provisions as threshold requirements, fees, qualifying buyers, meeting all of the affordable housing needs of the community, legal and technical issues with resale controls, enforcement, and administrative time.

Cities and counties that are considering adopting an inclusionary zoning ordinance must ask themselves if the proposed ordinance will produce enough affordable housing units and meet enough of the affordable housing needs of the community to justify their existence. REALTORS® who are involved in discussions of this issue must consider all of the above when determining their own position and when confronting local officials on the matter.

Should REALTORS® choose to oppose an inclusionary zoning proposal in their community, they must be prepared to offer alternatives for meeting the local population's affordable housing needs. Their suggestions should reflect the specific circumstances of the local community.

## INCLUSIONARY HOUSING: SOME DOUBTS

*Michael Pyatok\**

As an architect I have worked with many nonprofit corporations, some community-based, some working citywide, some regional in scale. As I assembled the book *Good Neighbors*, I had a chance to touch base with hundreds of other affordable housing projects nationwide that had been executed by nonprofits, for-profits, and public housing authorities. Obviously, there are many strategies for achieving results and each has its place. But I want to make it clear why “inclusionary housing,” while it has a place in some circumstances, is harmful in others.

It arose as a strategy in suburban communities and small towns where there has been a long history of de facto segregation by class and race, and where there was no network of nonprofit affordable housing producers, except for maybe a local housing authority. Forcing private developers to do it seemed like a good way to get communities to “bear their fair share.” But when applied to communities where there is a long tradition of racially and culturally cohesive lower income neighborhoods with their own community-based development corporation, it can be very inappropriate. Let me explain through a series of actual case studies.

### FIRST EXAMPLE

In a predominantly white upper-middle-class town in southern California, a Latino neighborhood, with help of an attorney, sued the city for not producing its fair share of affordable housing. The city offered inclusionary housing as one idea. But the Latino community said absolutely not for the following reasons:

- a) they wanted their people to live together in a cohesive community in which they can maintain their cultural tradition;

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### EDITOR'S NOTE

*This selection provides a unique critique of the use of inclusionary housing as a planning tool. Mr. Pyatok makes the point that while the goal of creating economically integrated communities may be laudable, in some instances it may have the effect of breaking up traditional ethnic communities. The article was published in August 2000 issue of Designer-Builder magazine, a bi-monthly publication that is dedicated to social justice as an underlying principle of architecture and the built environment ([www.designerbuilder.com](http://www.designerbuilder.com)).*

- b) they wanted the political clout in town that they could have by remaining geographically cohesive; and
- c) they wanted to form their own development corporation and develop their own housing themselves so they could build their own economic capacity and development savvy.

In short, they wanted to determine their own destinies. None of this was possible if private developers did it all for them. In the end, they would merely be a 20 percent minority presence in someone else's culture and economy.

Within less than three years after getting the money from the city and hiring a consultant and myself, they had a mixed-use housing development with almost 100 units. Since then they have gone on to produce hundreds more affordable units, a teen recreation center and child care. All of this never would have been possible under the inclusionary model.

## SECOND EXAMPLE

In a town in western Washington, four different language groups of southeast Asian immigrants were organized by a nonprofit corporation to get affordable housing to meet their needs. They were offered an inclusionary opportunity within a suburban subdivision and they agreed on one condition: they would co-exist within the predominantly white suburb only if their housing were developed exclusively by a nonprofit organization that serves Asian immigrant needs and not by the developer of the rest of the subdivision. They wanted this for several reasons:

- a) the codes, covenants and restrictions that accompanied the larger white middle-class subdivision disallowed many behaviors that typify the cultures of the four language groups – no exposed laundry drying in the sun, no hanging food stuffs from porches to dry in the sun, no large unkempt community vegetable gardens in public view, no religious rituals in open public spaces, no combining of houses for large family clans;
- b) they wanted the architectural character to reflect their cultural tradition, not at all like the typical suburban subdivision that surrounded them;
- c) they wanted their nonprofit to gain the expertise in developing this type of housing.



They now have a fifty-three-unit development with a 6,000-square-foot vegetable garden, front and back porches designed to allow for hanging clothes and food, and a pig-roasting area. The housing is designed so that these activities do not face the surrounding white suburb, and the surrounding community exerted control only over the colors of the buildings.

### **THIRD EXAMPLE**

In a city in Washington, a group of African-Americans, either recent or descendant from West African immigrants of several nationalities, wants affordable housing for families like themselves in the Pacific Northwest. These are very large families of eight to twelve people, with proud cultural and religious traditions, and no developers are providing them with what they need, either in price, size, or freedom from regulation controlling their behavior.

They have said that inclusionary housing is simply out of the question for them: they want to maintain their traditions and build their economic strength as a minority within the larger community, but not as unequal minorities living in someone else's housing, passive residents under house rules made by others. They want to run their own home-based industries, which are messy, and no condo or homeowners' association or developer-owned rental development will ever allow such enterprises to flower on site. So they are now well on their way as a nonprofit, with the use of various local and federal subsidies, to developing their own community within a suburb of Seattle (where the land is cheaper).

### **CONCLUSIONS**

I have many more such stories about how the absence or avoidance of inclusionary housing helped to spawn local self-determination. I am particularly sensitive to this argument about the value of "mixed-income" housing because I see how it is being used to actually reduce the amount of housing affordable to very-low-income households.

Personally, I was born into a single-parent family that started on welfare, and I attended public school in Brooklyn. I had a scholarship opportunity to attend a private junior high in a middle-income neighborhood about a mile away. There, I encountered shocking displays by my peers of arrogance, disrespect for authority, spoiled and self-centered attitudes and a flaunting of their economic rank. I considered myself lucky when I could walk back into the tenements among the factories where I was living with "real people" - so much for mixing the children of welfare with the children of doctors, dentists, and lawyers. Maybe this is why to this day I still feel more

comfortable living in a lower-income neighborhood of East Oakland rather than the wealthier North Oakland or Berkeley.

Oakland is a city of very proud and capable minority and lower-income communities. Up to now, the available subsidies have spawned a network of neighborhood and citywide nonprofit organizations. They are not perfect, but they have been responsible for nearly all of the affordable housing and other neighborhood-related projects produced in Oakland in the last twenty years, many receiving national attention for the quality of their programs and designs. It is this local self-determination that gets undermined when the limited supply of subsidies gets funneled into the hands of for-profit developers. Except for a very few, for profit developers working in Oakland merely produce units as a measure of success, while the nonprofits work to rebuild communities and revitalize neighborhoods. The for-profit development community in Oakland consistently fought to undermine these local grassroots efforts. They fought against producing housing in the downtown when office buildings were all the craze. They fought against the introduction of rent control, even though new construction was exempt.

This fuel for self-determination in the neighborhood and capacity-building in the nonprofit sector should not be siphoned off to assist the for-profit sector. If there is to be inclusionary housing, it should be funded from developer profits. The for-profit developers are not silver bullets who will slay the dragon of unaffordable housing. They take as much time, if not longer, to produce their housing because they and their investors fear even the slightest of risks.

We have to be very honest about whom we are going to bed with here: to get inclusionary housing it must be buried within risk-free market-rate housing, and to get the risk-free market-rate housing, we will watch these same developers conspire to shut down single resident occupancy buildings and remove the homeless shelters. The limited subsidies needed for such populations should be reserved primarily for nonprofit developers; let the private developers bear their fair share from their profits.

I think that affordable housing advocates should be using their energy and political capital to work with others to raise those subsidies that will be needed by nonprofit developers. Without their ample availability, neither the private nor the nonprofit sector will be productive, because without them, affordable housing advocates will continue to beat up the private developers, slowing them down or chasing them away. To waste time and energy on inclusionary zoning ordinances only hurts the overall effort to get more affordable housing. Instead, efforts should be focused on working in concert to increase the overall subsidy pool that will be needed by all developers to meet the need.