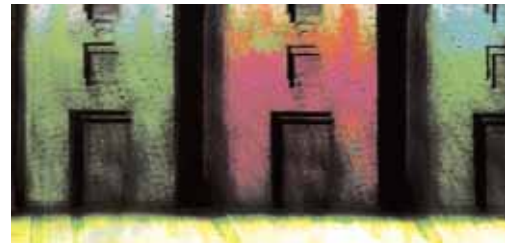
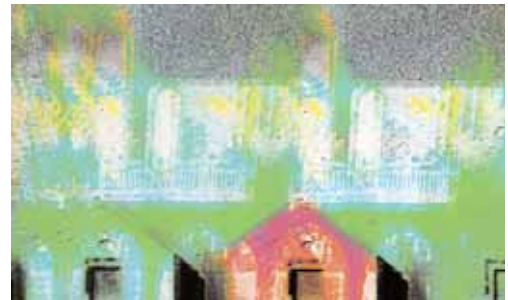
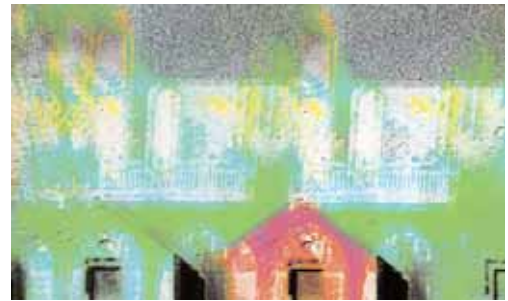
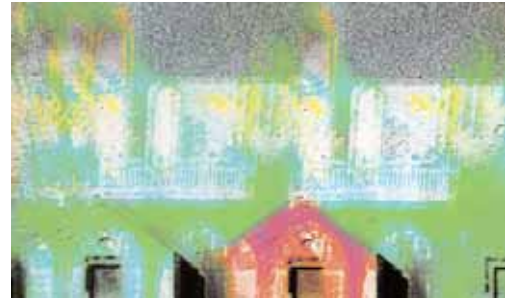


Making Inclusionary Zoning Work

DEBORAH L.
MYERSON

Flexibility and fairness are the keys to success for this valuable—and sometimes controversial—component of affordable housing strategy.



IN MANY PARTS OF THE UNITED STATES, THE INCREASING SCARCITY of affordable housing—especially for moderate-income working households—is a growing problem. Rapidly rising home prices in many metropolitan areas, combined with shrinking public coffers at the state and local levels and reduced federal housing subsidies, have exacerbated the housing crunch. In some communities, land values have risen so high that lower-cost residences are being torn down so that expensive new homes can be built. As a result, many cities experiencing revitalization and affluent suburbs are at risk of becoming exclusive enclaves where residents pay an average home price of \$500,000 or more.

Seeking to address their need for lower-cost housing, hundreds of municipalities across the country have adopted some form of inclusionary zoning. Inclusionary zoning (also known as inclusionary housing) is a locally implemented policy that encourages or obligates



TRACEY SCHONMAKER, CITY OF BURLINGTON

Built in 1996, High Grove Court in Burlington, Vermont, contains 11 condominium units, two of which are inclusionary, in a neotraditional planned community. The infill site is nestled in an older mixed-income residential neighborhood with larger homes with upper-middle-income residents and rental units for college students. It is served by public transit and within walking distance to downtown Burlington and the University of Vermont.



The city of San Mateo, in the greater San Francisco Bay Area, has had 189 affordable units built under its inclusionary housing program since 1996. The townhouses in the Classics at Humboldt Street development, completed in 2003, include a total of 25 two- and three-bedroom units. Three of these units are below market rate, affordable to households whose incomes do not exceed 80 percent of the area median income.

developers to include a specified percentage of affordable housing units in a market-rate residential development, in many cases in exchange for cost offsets or incentives. The generally accepted definition of affordability is for a household to pay no more than 30 percent of its annual gross income on shelter.

Inclusionary zoning policies are typically based on a project threshold that specifies the minimum size of a project (e.g., five units), if any, to which the policy applies, as well as what housing types; and a setaside, to indicate the percentage of units built that must be affordable. This figure is often 10 to 15 percent, but sometimes is as high as 25 percent. The target incomes for inclusionary zoning are usually based on the needs of residents in the local housing market, with the policy specifying that below-market-rate units should be priced to be affordable to households earning no more than a designated percentage of the area median income (AMI).

"Every community has a broad spectrum of housing needs. We have tried with inclusionary zoning to serve people who are not well served by the market, but who are also not at the bottom of the income spectrum," says Brian Pine, assistant director of the Department of Housing and Neighborhood Revitalization for the city of Burlington, Vermont.

He indicates that eligibility for Burlington's for-sale inclusionary units starts at 75 percent of the AMI (about \$52,000 a year for a four-person household), while inclusionary rental units are priced for households earning 65 percent or less of the AMI.

Inclusionary zoning offers multiple benefits to communities, including:

- Housing for low- to moderate-income working households, such as those headed by teachers, police officers, retail clerks, firefighters, senior citizens, young families, and others who would otherwise be priced out of expensive residential markets.
- A market-based solution to leverage affordable housing, especially during a period of declining public resources.
- Reduced sprawl and traffic congestion by providing the means for people to live closer to where they work and, for public sector employees, in the communities they serve.
- More mixed-income, racially integrated neighborhoods, as inclusionary zoning disperses affordable housing throughout a community.
- Predictability for developers, who must all follow the same inclusionary zoning policy and procedures.

A Generation of Inclusionary Zoning

Inclusionary zoning was first established in the Washington, D.C., metropolitan area in the 1970s, when Montgomery County, Maryland, and Fairfax County, Virginia, sought to preserve access to affordable housing amid rapid growth. In the 1980s, many local

governments in California and New Jersey adopted inclusionary zoning policies in response to pressures from state-initiated affordable housing measures. In the 1990s, more local governments around the country continued to add inclusionary zoning programs to their efforts to provide affordable housing.

Today, there are an estimated 200 local mandatory inclusionary zoning policies in California, New Jersey, Massachusetts, Connecticut, Vermont, Maryland, Virginia, North Carolina, Colorado, and New Mexico, according to J. Hunter Schofield and Anita R. Brown-Graham, authors of *Locally Initiated Inclusionary Zoning Programs: A Guide for Local Governments in North Carolina and Beyond*. They estimate that 100,000 affordable homes across the country have been produced under these programs.

Identifying Housing Needs and Strategies

Many municipalities start to consider inclusionary zoning after conducting an assessment of their housing needs, which can reveal a lack of affordability for people with low and moderate incomes who work in the community. Many workers in low-paying jobs do not earn enough to afford even a modest one-bedroom rental unit anywhere in the country, according to a report titled *The State of the Nation's Housing: 2004*. "No one is building for the middle of the marketplace," explains Doug Shoemaker, deputy director of the San Francisco-based Non-Profit Housing Association of Northern California.

Recognizing that the marketplace is not serving all housing needs, many communities are looking to public policy to provide moderate-income housing. A number of cities have found a solution with inclusionary zoning. "More than 150 permanently affordable housing units exist in Burlington today solely because of the adoption of the [inclusionary zoning] ordinance," Pine notes.

In an effort to ensure the availability of housing for a wide range of incomes locally, the city of Livermore, California, designates a preference for teachers, police officers, and firefighters as occupants of its inclusionary housing units, according to Eric Uranga, housing and human services manager for Livermore. Teachers' salaries are around \$40,000 a year, but the median home price there is \$500,000. Inclusionary housing "allows the school system to recruit teachers, which works very well," Uranga says.

The scarcity of affordably priced housing is not limited to new construction, as rising real estate values are also reducing the supply of existing lower-priced housing. "A lot of affordable housing units have been lost as a result of redevelopment," notes Betsy Lassar, a housing planner for the Department of Community Development in Highland Park, Illinois, an affluent suburb of Chicago. In 2002, median prices for new construction in the town exceeded

\$1 million, while the least expensive home that year sold for \$550,000. In August 2003, Highland Park became the first municipality in the state to pass an inclusionary zoning ordinance.

The local housing strategy can be said to reflect a community's self-image. In Petaluma, California, inclusionary zoning works because it reflects the values of the community, explains Bonne Gaebler, housing administrator for the city. "We do not want to have an exclusionary community where only the rich can live," she says.

Best Practices in Inclusionary Zoning

What does it take to make an inclusionary housing policy most effective? While many details must be fine-tuned on a case-by-case basis, certain key components are common to the most productive policies. Gaebler sums up the best inclusionary housing policies based on her 15 years of experience in Petaluma: "Simple, flexible, and enforceable."

Make it mandatory. A variety of studies have established that mandatory inclusionary zoning requirements are more productive than voluntary policies. In fact, in recent years cities such as Cambridge, Massachusetts; Pleasanton, California; and Boulder, Colorado, have switched to mandatory policies from voluntary programs that had produced few or no affordable units. "Asking a developer if inclusionary zoning really works is like judging a dentist by how much her patients enjoyed their root canals," says Pine. "I view inclusionary zoning as a necessary response to a private real estate market that does not serve the housing needs of low- and moderate-income residents."

Mandatory policies function best when applied unilaterally to both rental and owner-occupied housing, multifamily as well as detached homes. "It's critical that when communities require or encourage a setaside, that they do so across the board, to apply to a variety of housing types," says Edith M. Netter, a Waltham, Massachusetts-based land use attorney specializing in mixed-income housing.

Establish local support for the policy. Support for inclusionary zoning from residents, developers, and public officials is critical to successful implementation. Even the most carefully drafted policy will be a lost cause without commitment from local leaders.

"For communities with a strong commitment to meeting their populations' housing needs, inclusionary zoning is one of several techniques," explains Shoemaker. However, where support is weak, policy is likely to be ineffective, he adds. It is especially important for city staff to have clear support from elected officials for the inclusionary zoning policy, he says.

By the same token, a policy with widespread commitment can be a powerful force. According to Gaebler, political will has been a key component to the success of Petaluma's policy. "We have always

had political will. I've been here 15 years, and in that time I've only had one 'no' vote from the city council in 1,500 units in 25 different communities," she says. "We really have become partners with building industry; they have become my best supporters. They have become part of the solution."

Ensure that what is good for the developer also suits local government. Although not every inclusionary zoning policy includes cost offsets for developers, many do, in the form of a density or height bonus, fee waivers, or tax abatements. It is important, however, for the city to ensure that incentives be consistent with its other development requirements. For example, under Highland Park's recent policy, "One thing that we are seeing is that it is difficult to use the full density bonus," explains Lassar. "To do so, we might have to relax some other zoning requirements."

Alternatives to satisfying inclusionary zoning requirements also vary. Most communities prioritize the construction of mixed-income projects, with affordable units dispersed among the market-rate units. However, policies often allow that obligation to be fulfilled in other ways. Alternatives may include off-site construction, in-lieu payment to the city's housing fund, or the donation of land. However, fees in lieu of construction can also be a liability for cities when they are not high enough to produce needed housing, while the donation of land does not provide any funds at all. To ensure an effective policy, it should be the city's decision as to how the developer satisfies the inclusionary zoning requirement.

In one exception to the typical preference for mixed-income construction, Gaebler comments that she often favors an in-lieu fee, "because I can leverage it. It's remarkable how much money can be leveraged with outside dollars—as high as a 15:1 ratio."

Adapt to a changing market. Inclusionary zoning policies should be flexible to work most effectively even as market demand shifts. The community should be able to continue to realize its affordable housing goals steadily, even amid fluctuations in the rental or for-sale market. And since inclusionary zoning is typically a strategy to increase the supply of affordably priced housing in new developments, it may be necessary to reconfigure the local housing plan as the amount of developable land dwindles. "The opportunity to build might be an issue in five to ten years" in Livermore, notes

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Inclusionary Zoning: Where to Go from Here?

Inclusionary zoning programs to date show less than robust results. Even in states that require local governments to promote and accept affordable housing, only a minority of communities aggressively pursue inclusionary programs. Most communities have generated just a few dozen up to a few hundred affordable units and have tended to favor existing community residents as occupants. Clearly, also, ethnic segregation and income disparities in housing markets have proven difficult to overcome—especially in the nation's suburbs.

Two approaches could improve this record: increasing proactive state leadership in prodding local governments to adopt inclusionary programs, and broadening the application of programs to tap the wide variety of housing development taking place in most communities.

State Leadership: States could do more to support inclusionary programs, despite the modest success of state provisions for planning and zoning “override” opportunities at the local level. Evaluating the four New England states’ override statutes, Western New England College of Law professor Sam Stonefield, writing in the *Western New England Law Review*, finds that the “state override tool has only limited ability to increase the supply of suburban affordable housing and to enhance opportunities for mobility.” The builder’s remedy in the New England statutes, he says, “creates only a private right, not a public (state and local) obligation” to produce affordable housing. Instead of imposing and/or financing construction requirements, states “chose an indirect, nondirective, and nonfinancial tool that has been . . . limited in its effectiveness.” According to

Stonefield, states took this route because public support for integrated and affordable housing was thin and divided, too weak to overcome opposition to a strong, more effective program.

Instead, he advocates a stronger state requirement: to direct every local government to plan and zone for a fair share of affordable housing—the approach taken by New Jersey and California. And yet many of New Jersey’s and California’s suburban governments have continued to erect roadblocks to adequate construction of affordable housing. State mandates can go only so far in persuading local governments to establish a positive context for production of affordable housing. And direct state efforts to intervene in local housing markets by building affordable housing are an unrealizable dream. (Stonefield cites the efforts in the 1960s by New York state’s Urban Development Corporation to build affordable housing without local approval in suburban Westchester County. The effort failed in the first instance and helped to ensure the demise of the corporation soon after.)

But Stonefield suggests that states could exert their powers to encourage production of affordable housing by imposing financial sanctions (i.e., loss of certain state program funds) for communities not meeting fair-share production goals or, more positively, by offering program incentives for communities that do—an approach used by many states for other aspects of growth management. States can adopt legislation specifically enabling inclusionary zoning, prepare a model local ordinance and supporting materials describing the economic and legal rationale for inclusionary zoning, and provide technical assistance to communities interested in inclusionary programs. Beyond direct assistance to individual communities, states can establish policies to counter regional or metropolitan disparities in affordable housing production, including establishment of re-

gional and local production targets, housing trust funds, and other measures. States’ leadership in using their agency and financial resources can establish a positive climate for affordable housing production to support and sustain local efforts.

Broader Application: Opportunities for broadening inclusionary zoning programs to include a wide range of housing development could improve production. Most programs focus on mid- to large-scale new developments of medium density in suburban jurisdictions. Few have experimented with applying inclusionary requirements to other kinds of development, especially projects typical in older cities and suburbs. Examples include:

- Conversions and adaptive use of existing nonresidential buildings (which has been successful in Denver, for example);
- Rehabilitation of existing units, especially rental units, which is taking place in many cities without the benefit of mandating inclusion of affordable units due to the perception that they would degrade the value of luxury-priced units;
- Requiring lower-cost units in construction of high-rise buildings, which, because they are significantly more expensive to build and require monthly fees, are viewed as incapable of incorporating many subsidized units; and
- Low-density, high-end subdivisions on the outskirts of urbanizing areas.

That many programs avoid these types of housing is explained by the difficulties they can raise for incorporating affordable units. For example, conversions or rehabilitation of existing buildings often involves fewer units than the project thresholds established by inclusionary programs. If thresholds are lowered, developers still may find it impractical to shoehorn affordable units into existing buildings and density increases may be limited by site constraints, zoning restrictions, and neighborhood op-



position. Some of these obstacles can be overcome by shrinking sizes of affordable units and waiving or reducing yard and parking requirements. Another solution is to require that in-lieu fees be paid into a housing trust fund.

Conversions of rental units to for-sale condominiums offer another set of problems. Lower-income renters often cannot afford the step up to homeownership, especially if the condominium units have been substantially upgraded and priced accordingly. In addition to basic income limitations that affect their ability to purchase a unit and pay the monthly fee, renters may lack a satisfactory credit history.

Inclusionary programs can help make it possible for at least some proportion of renters to buy into a condominium conversion. As in other inclusionary projects, unit sizes and equipment can be pared to reduce costs. In no circumstances should a lower-income purchaser be denied amenities by forgoing condominium fees. However, housing agencies can establish household income limits after combining monthly fees with unit prices to determine the asset basis of affordable units. Public and nonprofit subsidy programs can be used to reduce unit prices and mortgage costs. It is important, however, that agencies assisting renters to purchase condominium units be totally familiar with state and local legal and financial requirements regarding such conversions.

Most inclusionary zoning programs focus on single-family and townhouse units rather than high-rise buildings. High-rise construction raises unit construction costs and generates steep prices, especially in luxury buildings. Some builders believe that inclusion of lower-income households not only widens gaps in unit costs to the point of infeasibility but also lowers potential purchaser interest in market-rate units. The fallback in such cases can be allowing developers to pay an in-lieu fee or construct affordable units elsewhere on less expensive sites. Yet communities may place a high value on housing

a diverse population in the nodes and centers in which high-rise buildings are usually clustered and where transit and other services are readily accessible.

But inclusionary zoning requirements can work in high-rise buildings if developers view inclusionary projects as a whole rather than insist on analyzing comparative costs of market-rate and affordable units. Costing out the total project usually reveals that affordable units do not present an overwhelming proportion of development costs. Affordable units can be downsized and equipped less lavishly than market-rate units. The building can be designed to group them efficiently in sections or floors. A modest density (building height) increase can be offered to provide added space for them. Full or partial waivers on development fees, tax payments, and parking requirements can offset costs.

Despite their generally high prices, large homes on large lots in suburban or semirural locations often escape the imposition of inclusionary requirements. The ostensible reason is that such locations are inadequately served by facilities benefiting lower-income households, such as transit and social services, potentially leaving lower-income residents stranded in unsuitable living conditions. An underlying reason may be the reluctance of builders and neighboring residents to accommodate lower-income households in their pristine residential environments. Again, the fallback solution would be payment of an in-lieu fee or construction on another, less expensive site.

But inclusionary requirements need not place affordable units in inconvenient or unfriendly neighborhoods. First, developers and public agencies can find ways to provide social and transportation services to areas designed to incorporate affordable units, and developments can be designed to enhance those opportunities. Second, some developers and communities have packaged two to four affordable units in buildings that appear much like

adjacent large single-family homes, thereby alleviating fears that lower-cost units will degrade the neighborhood. Third, studies of inclusionary projects have demonstrated that the presence of affordable units does not affect values of nearby housing and, in fact, may raise values through the increased quality of life of the community in which they are located.

Use of in-lieu fees and off-site locations as alternatives to on-site construction of affordable units has been referred to in the preceding paragraphs as a "fallback" solution. Ordinances in many communities allow such alternatives, although their use frequently requires special permission. They are viewed as less desirable than on-site construction because (1) fees established during the adoption of inclusionary programs may not reflect true costs of affordable units, (2) fees must build up over time to reach a level at which undertaking a development with these funds is feasible, (3) finding suitable alternative sites may be difficult and politically risky, and (4) organizing and/or monitoring fee-based or off-site mixed-income developments requires skills and staff time not always available in public or nonprofit housing agencies. In short, communities managing inclusionary programs often consider the use of fees and off-site alternatives bothersome and less productive than on-site development.

Nevertheless, examples of all these applications can be found in communities today. What is needed is greater resolve of local officials to seek out and design inclusionary approaches that will be most equitable and productive over the long term.—**Douglas R. Porter**, *president of the Chevy Chase, Maryland-based Growth Management Institute. (This article is an excerpt from Inclusionary Zoning for Affordable Housing, ULI, 2004.)*



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Uranga, observing that built-out communities naturally produce fewer units. Some cities, such as Burlington, have found a solution with inclusionary zoning policy that applies to residential rehabilitation projects as well as new construction.

Maintain affordability. Communities with inclusionary zoning policies must consider how long to ensure that affordable units remain affordable, and how affordability will be maintained for rental and owner-occupied housing. "Maintaining affordability is a key issue. When communities create their policies, they often don't think about the long-term affordability issues," Netter says.

It is usually a straightforward task to manage the affordability of rental units, which can be regulated so that a low- or moderate-income renter pays no more than 30 percent of his or her household income on shelter.

Maintaining the affordability of owner-occupied units is more complicated, but generally focuses on controls on their resale price. To maintain affordability of owner-occupied inclusionary units over a 55-year period, the city of Livermore holds a silent second mortgage. If the unit is sold at market rate during that time period, the city collects the difference between the market price and the affordable price to build more housing, explains Uranga.

Prescribe design. Inclusionary policies should require that on-site affordable units be aesthetically indistinguishable from the market-rate units in the same development. This requirement helps subsidized units blend in with market-rate homes, creating a more cohesive appearance and avoiding the possible stigma associated with the affordable units.

Only One Piece of the Housing Pie

Inclusionary zoning is only one affordable housing strategy among many. A market-based approach to housing production that can create mixed-income developments that are affordable to working households is becoming more attractive to many local governments. "Communities around Burlington are embracing [the notion] that we all need to share the burden of housing. They are starting to ask whether they should adopt inclusionary zoning," says Pine. But, he cautions that it is only one of a broad spectrum of initiatives that communities can undertake to meet their housing needs: "Don't look at inclusionary zoning as a panacea for solving housing problems."

"Inclusionary housing is important, but it's not everything," agrees Uranga, noting that Liv-

ermore also has an extensive downpayment assistance program, rental housing assistance, and other initiatives to make housing more affordable for many households.

To pursue a successful policy, communities must identify local housing needs, establish goals, determine which priorities inclusionary housing can help meet, and tailor the program to the reality of the community. Even then, it may take some time to fine-tune the implementation. Lassar recalls one of the most empowering pieces of advice from a land use consul-

tant advising Highland Park during its extended review of the city's proposed inclusionary zoning ordinance: "You're not going to get it right the first time. You have to make your best judgment—and be ready to change it." ■

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