Handbook On:

Developing Inclusionary Zoning

For the Comprehensive
Housing Production and Rehabilitation Act of 2004
Revised November 19, 2004

Harrisville Village
Burrillville, Rhode Island

October 2004

Statewide Planning Program
Rhode Island Department of Administration

www.planning.ri.gov

The **Rhode Island Statewide Planning Program**, Department of Administration is established by *Chapter 42-11 of the Rhode Island General Laws* as the central planning agency for state government. The State Planning Council comprised of state, local, and public representatives, and federal and other advisors, guides the work of the Program.

The objectives of the Program are:

(1) to prepare strategic and systems plans for the state
(2) to coordinate activities of the public and private sectors within this framework of policies and programs
(3) to assist local governments in management, and
(4) to advise the Governor and others concerned on physical, social, and economic topics.

This publication is based upon publicly supported research and may not be copyrighted. It may be reprinted, in part or full, with the customary crediting of the source. Copies of this information are also available in a format for the physically challenged and electronic file on the Statewide Planning World Wide Web site. http://www.planning.ri.gov Contact the Statewide Planning Program, One Capitol Hill, Providence, RI, 02908, and (401) 222-7901 for further information.

The cover images are from the Burrillville Planning Office for the Harrisville Village redevelopment project located in Burrillville, RI. For information on the project contact Thomas Kravitz, Burrillville Town Planner and Economic Development Director, at 401-4300 ext. 130 or look on the web at

http://www.burrillville.org/Public_Documents/BurrillvilleRI_EconDev/Redevelopment_Projects.

PREFACE

The affordability of housing is not a problem restricted to lower-income populations of inner cities and declining urban areas. It is, in fact, an issue for all municipalities, affecting the poor and lower-income as well as a large portion of the middle-income population of every city and town. The cost of land and basic building construction are matters largely beyond the control of local governments, but housing opportunities and affordability can be promoted through land use codes and development controls that reduce development costs.

Factors Limiting Housing Affordability in Rhode Island

- High land costs, aggravated by requirements in excess of environmental or social need
- High construction costs
- High rents or sales prices
- High median household income and low vacancy rates
- Deterioration of older housing stock
- Elimination of housing stock by demolition or conversion to other uses
- Marginal funding of federal and state housing programs
- Unemployment and under-employment
- Attraction of employment opportunities without consideration of housing supply availability and cost for workers
- Municipal development moratoria, time-consuming procedures and permit limits, and fees
- Lack of municipal facilities and services for potentially suitable housing and development sites
- Failure to use federal, state or private programs designed to enhance housing opportunity and availability
- Local opposition to affordable housing development

This handbook examines the use of inclusionary zoning to promote affordable housing. This handbook was developed to provide Rhode Island communities with a set of guidelines for the drafting of inclusionary zoning provisions in order to promote affordable housing in the State. It is intended to assist municipalities in developing actions for compliance with the *Comprehensive Housing Production and Rehabilitation Act* of 2004 (R.I. Gen. Law 42-128.8.1).

The Act finds that the "state in partnership with local communities must remove barriers to housing development". It goes on to require "affordable housing plans" to be prepared and adopted by cities and towns to satisfy the requirements of the *Low and Moderate Income Housing Act* (R.I. Gen. Law 45-53.) The Act also calls for the development of a strategic plan by each community for housing that establishes guidelines for higher density development including inclusionary zoning.

The handbook is organized into five sections. The first and second sections provide a brief explanation and general introduction to inclusionary housing. The third section contains excerpts from national, regional, and local case studies that deal with established inclusionary housing ordinances. The fourth section looks at provisions to think about when considering inclusionary provisions and the fifth section looks at the writing of such provisions. This part of the handbook contains excerpts of inclusionary housing ordinances from around the country to illustrate the techniques in use. The Reference Section at the end of the handbook contains the citations, world-wide-web addresses and a list of additional resources should the reader wish to find more information on the topics.

ACKNOWLEDGEMENTS

In recognition of the adoption of the *Comprehensive Housing Production and Rehabilitation Act of 2004* (R.I. Gen. Law 42-128.8.1) this handbook was prepared by RI Statewide Planning Program to help municipal officials begin to address expanding opportunities for affordable housing in their community. The handbook represents a sum of efforts contributed by numerous individuals of the Program. The following individuals assisted with the writing of this handbook:

RI Statewide Planning Program:

John O'Brien, Chief
Nancy Hess, Principal Environmental Planner
Rachel Lauter, Planning Intern
Derwent Riding, Principal Planner

In addition to the individuals above, the Statewide Planning program would like to thank a number of persons who took time to read and provide valuable comments on the handbook content as it was developed. Statewide Planning would like to acknowledge and thank the following readers for their assistance and generous contribution of their time to this handbook:

Katia Balassiano, Planning & Community Development Director, Town of Cumberland
Annette Mann Bourne, Technical Assistance Coordinator, RI Housing and Mortgage Finance Corporation
Amy Rainone, Policy and Planning Manager, RI Housing and Mortgage Finance Corporation
Peter D. Ruggiero, Esquire, Ruggiero, Orton & Brochu
Andrew Teitz, Esquire, Ursillo, Teitz & Ritch, Ltd
Dan Varin, Associate Director, Division of Planning (Retired)

TABLE OF CONTENTS

	Page #
Part 1: **Introduction**	1
Part 2: What is Inclusionary Zoning?	2
Part 3: **Case studies**	3
A. National Case Study	3
B. Regional Case Studies	4
C. Rhode Island Case Studies	5
Part 4: Items to Consider	7
1. Municipal Plans	7
2. Mandatory or Voluntary	7
3. Threshold Size	8
4. Set-Aside	8
5. Income Groups to be Served	8
6. Type of Housing Stock	9
7. Timing of Development	9
8. Cost-offsets / Incentives	9
9. Sustaining Affordability	10
10. Controls on Sales	10
11. In-Lieu Payments	10
12. Off-site Construction	11
Part 5. Developing An Ordinance	12
1. Findings	12
2. Statement of Purpose	14
3. Definitions	15
4. Standards – Threshold Size and Applicability	15
5. Standards – Set-Asides	16
6. Standards – Design and Building Requirements	16
7. Standards – Timing of Construction	17
8. Cost Offsets	18
9. Density Bonus	18
10. Certifying Buyers and Renters	21
11. Maintaining Affordability	23
12. Fee In Lieu	24
13. Housing Agency Right to Purchase	24
	26
References and More Information	vi

Part 1: Introduction

This handbook is intended to be a guide for municipal governments to use in order to address the issue of affordable housing in their community. This handbook does not attempt to outline all the possible options concerning affordable housing but rather is intended to be a tool to be used when creating an inclusionary housing section for their zoning ordinance. It is a compilation of existing work condensed for use by Rhode Island communities. Each community will have to draft its own text, and use the type of provisions for affordable housing that will work for them based on the advice presented herein and the requirements of the Comprehensive Housing Production and Rehabilitation Act of 2004.

The handbook is divided into five sections. The first and second sections provide a brief explanation and general introduction to inclusionary housing. The third section contains excerpts from national, regional, and local case studies that deal with established inclusionary affordable housing programs. The fourth section looks at items to consider before starting and the fifth part concludes with the technical aspects of writing of such ordinance provisions. This part of the workbook contains excerpts of inclusionary housing ordinances from around the country to illustrate the various techniques in use. The Reference Section at the end of the handbook contains the citations, world-wide-web addresses and a list of additional housing resources should the reader wish to find more information on the topics. Access is provided purely as a public service. The State of Rhode Island does not endorse any of the linked sites or any products or services found at the linked sites.

This handbook is not a substitute for legal advice.

A municipality seeking to draft and implement inclusionary housing ordinance provisions should consult with their legal counsel prior to advertising such provisions for adoption. The handbook is to be used as a reference by municipalities as they craft an inclusionary housing section for their ordinance that fits the needs and staffing levels of their own community. It is not a guideline on how to write a general ordinance. Specifically, this is an outline of those items to be considered along with legal counsel concerning inclusionary zoning for affordable housing. Inclusionary zoning is not a cure-all for Rhode Island's housing problems; it is one of many tools available to local agencies to develop affordable housing units in their communities.

Part 2: What is Inclusionary Zoning?

The fundamental purpose of inclusionary zoning is to allow the development of affordable housing to become an integral part of other kinds of development taking place in a community. Inclusionary housing provisions promote the production of affordable housing by requiring developers to set aside a certain percentage of the housing units in a proposed development to be priced affordable to low- and moderate-income households. It is to the benefit of the public that a minimum percentage of affordable units be constructed to meet the affordable housing needs of the community that adopts the ordinance. The goal of such a process is to establish a relatively permanent stock of affordable housing units provided by the private market. Typically, inclusionary provisions require that new developments include "mandatory set-asides" of affordable units, which are made available to low and moderate-income households within future market-level developments. According to recent studies by the American Planning Association[1], mandatory programs have produced the most affordable housing units across the United States.

The *amended Zoning Enabling Act*, R.I. Gen. Law 46-24-46.1, requires that an inclusionary housing section of a zoning ordinance must address the following:

1. Affordable housing, as defined by the Act in subsection 42-128.81(d), be constructed.

2. A minimum of 10 % of the total units in the development must comply with the above-cited affordable definition of the Act.

3. The affordable units must remain affordable for a period of not less than 30 years from initial occupancy enforced through a land lease and/ or deed restriction.

The types of housing that are required can vary from community to community as well as within a municipality and will relate to the specific needs as defined in the approved Affordable Housing Plan. Some inclusionary zoning programs include a payment in lieu of construction of affordable units option. These payments may support a dedicated fund such as a housing trust fund that would finance future affordable units. Some programs include incentives such as density bonuses, allowing a developer to create more units on a parcel of land, the relaxation of development regulations, or the reduction or waiver of fees to encourage more affordable housing than the minimum percentage mandated.

[1] *Zoning Practice*, Issue Number Nine, September 2004, American Planning Association

Part 3: Case Studies

There is a range of programs in use around the country as providing affordable housing is a national issue all communities face today. This part reviews several programs that have adopted procedures through zoning ordinances to provide for affordable housing. These programs vary and have been adopted to fit local housing needs and market conditions and many use a combination of providing affordable housing units along with market rate units to produce affordable housing.

A. NATIONAL CASE STUDY

Montgomery County, Maryland

Inclusionary zoning started in the Washington, D.C. metropolitan area. In 1973, Montgomery County, Maryland, instituted countywide mandatory inclusionary zoning, known as the Moderately Priced Dwelling Unit (MPDU) ordinance. Montgomery County is the leading national example of the use of this technique at the county level. According to the Innovative Housing Institute, the Montgomery County program has produced nearly 10,000 units of affordable housing. Most jurisdictions can trace some aspect of their inclusionary zoning ordinances to the Montgomery County program.[1]

The MPDU ordinance requires that developments of 50 units or more include 15% MPDUs. Of that 15%, two-thirds are sold to moderate-income homebuyers and the remainder is offered to housing commissions and non-profits for use in their affordable housing programs (many of which retain rental units). Developers receive a density bonus of up to 22% through this program.[2] Throughout the program's history, nearly 10,600 affordable units have been created. However, roughly 6,800 units are no longer governed by inclusionary zoning requirements or any other affordability regulations. According to the ordinance, rental units must be regulated under the inclusionary zoning provisions for 20 years and owner-occupied units for 10 years.[3] Montgomery County's program targets households earning 65% or less of the area median income of $82,800 in the fiscal year 2000.[4]

One of the greatest challenges facing the Montgomery County program is that the first units built by the program are quickly becoming unregulated and the development of new affordable units is slow. Many policy think tanks and housing advocates, including the Brookings Institution, suggest that one way to remedy the situation is to make it easier for non-profits and housing authorities to purchase the units once the affordable price regulations expire. Perhaps by extending the non-profit agency's right of first refusal so that they may pre-empt private developers from purchasing the affordable units.[5]

[1] Burchell, Robert W and Catherine C. Galley Inclusionary Zoning: Pros and Cons, The Center for Housing Policy, October 2000.
[2] Brown, Karen Destorel. "Expanding Affordable Housing Through Inclusionary Zoning: Lessons from the Washington Metropolitan Area." The Brookings Institution Center on Urban and Metropolitan Policy. The Brookings Institution. October 2001.
[3] Ibid
[4] Ibid.
[5] Ibid.

B. REGIONAL CASE STUDIES

Massachusetts

Federal and state low and moderate-income housing programs have created more than eight % of Massachusetts's housing stock. The creation of new affordable units, however, has slowed due to scarce developable land, opposition to development in general, and the reputation of large affordable housing projects.[6] In 1975 Massachusetts enacted a state zoning act authorizing the use of incentives for the development of low and moderate-income housing. While more than a third of the communities in Massachusetts have adopted zoning incentives for affordable developments, very few units are generally created.[7] The zoning statute, Chapter 40B commonly known as the "anti-snob" zoning ordinance, exempts developers of affordable units from certain zoning regulations if 20-25% of units in municipalities have affordability restrictions. The restrictions include being affordable for households earning less than 80% of the area's median income and must remain affordable for 30 years.[8] Much of land use control is local in Massachusetts, so depending on the community, inclusionary zoning programs may or may not be directly influenced by 40B.[9] The following are two different examples of the impact of Chapter 40B, and the successes and failures of inclusionary zoning.

Barnstable, Mass.

In an attempt to address the state's 10 % affordability requirement, the town of Barnstable, Massachusetts on Cape Cod drafted an Inclusionary Housing Ordinance that charged developers a fee that was placed in an Inclusionary Housing Fund to purchase land and develop affordable units. A suit was brought against the town, claiming that the fee was an illegal tax. A Superior Court ruled in favor of the plaintiff in Dacey v. Town of Barnstable. A part of the inclusionary ordinance was struck down when the court ruled that the Town's imposition of an Inclusionary Housing Fee on developers whose projects were not covered under the ordinance constituted an exaction.[10] ***The lesson learned from Barnstable is that an inclusionary zoning program can be implemented in several different ways, and that it is important to find a program that suits an individual town.*** In the case of Barnstable, the courts ruled that imposing an exaction places the burden of developing affordable units on developers only. Rather, an inclusionary zoning program should be viewed as a community program. The Comprehensive Permit Law in Massachusetts (under Chapter 40B) expedites the permitting process for developers building affordable units, thus providing incentives for private development- making it the better option to achieve affordable housing goals.

Newton, Mass.

Newton, Massachusetts is an older suburb of Boston with a population of 85,000. In 1977, Newton drafted its own inclusionary zoning ordinance, which has since provided 225 units of affordable housing over a thirty-year period. In addition, almost 450 units have been constructed in the community under the mandate of Chapter 40B. Newton's ordinance mandates that all units

[6] Phillip B. Herr & Associates. "Zoning for Housing Affordability." A study prepared for The Massachusetts Housing Partnership Fund.
[7] "Inclusionary Zoning: Lessons Learned in Massachusetts." National Housing Conference. NHC Affordable Housing Policy Review. Volume 2. Issue 1. January, 2002.
[8] Ibid.
[9] Phillip B. Herr & Associates. "Zoning for Housing Affordability." A study prepared for The Massachusetts Housing Partnership Fund.
[10] Dacey v. Town of Barnstable (MA), superior Court, Civil Action No. 00-53 (October 18, 2000).

created have to be rental and leased through the Newton Housing Authority. Other options for developers such as off-site units and cash payments in lieu of construction are available, although tightly regulated. Newton's program also contains strict regulation in the design of affordable units. The units must be equal in character to market rate units, in order to avoid stigmatization.

One of the challenges of the Newton program is that there is a fee for developments under 10 units that do not come under the town ordinance. Therefore, many developers choose to pay the fee and under-develop. However, the Newton Housing Authority does not have an effective method to allocate funds received by the fee and in lieu payments. This case study shows the difficulty in creating many cash payment loopholes for developers. One remedy would be to mandate the construction of affordable units in all developments in return for a density bonus.[11]

C. RHODE ISLAND CASE STUDIES

Rhode Island's municipal affordable housing provisions within existing zoning ordinances are widely varied. In Rhode Island at this time, only East Providence and Tiverton have mandatory inclusionary zoning in use. There are 8 other municipalities that have some sort of an incentive zoning provision in the local zoning ordinance relating to affordable housing. These municipalities are Barrington, Burrillville, East Greenwich, Hopkinton, New Shoreham, North Kingstown, Richmond, and South Kingstown. This section provides a brief summary of the various incentive zoning techniques currently in use. The local ordinance citations follow each summary with a web link to the homepage of the municipality where on-line information is available for more information about each community and the ordinance cited.

- **Barrington:** density bonus in an Elderly Housing District as part of a zoning ordinance amendment, with a 30-year affordability provision, but there is no provision for a percentage of low/moderate income family units. [Section 185-139-B] http://www.ci.barrington.ri.us/

- **Burrillville:** In Village Planned Development Districts flexibility in siting units is permitted by the Planning Board for all dimensional requirements but the 12,000 square feet minimum lot size. [Section 11-8.9.4] http://www.burrillville.org/

- **East Greenwich**: density bonus to a maximum of six units per acre provided that 10% of the units within the development are affordable in Mixed Use Planned Development Districts. [Article VIII, 6.3] http://www.eastgreenwichri.com/

[11] Information on Barnstable and Newton taken from: "Inclusionary Zoning: Lessons Learned in Massachusetts." National Housing Conference. NHC Affordable Housing Policy Review. Volume 2. Issue 1. January, 2002.

- **East Providence:** a density bonus of up to 10% may be permitted according to the number of affordable units developed.[Article VIII, Section 19-456] **East Providence:** a density bonus of up to 10% may be permitted according to the number of affordable units developed.[Article VIII, Section 19-456] Also the new Waterfront Development District (WWD) requires that all new residential development or property conversions resulting in 5 or more parcels or new dwelling units must supply a minimum of 10% of low to moderate income housing units as part of the development. An In-Lieu fee option is allowed per the rules and regulations of the East Providence Waterfront Special Development District Commission. [Article 9,(j), Affordable Housing] http://www.eastprovidence.com/

- **Hopkinton:** a density bonus of up to 10% may be permitted by the Planning Board according to the number of affordable units developed in cluster developments. [Section 14(A)(2)]

- **New Shoreham:** density bonus of 100% may be granted to accommodate affordable units by the Zoning Board as a special-use permit. [Section 405]

- **North Kingstown**: 10% density bonus may be granted for 10% of all dwelling units to be marketed at a moderate price in a Planned Unit Development by the Planning Commission. [Section 21-487(m)] http://www.northkingstown.org/

- **Richmond:** 20% affordable units in subdivisions (if the Planning Board determines that the development meets critical needs), the development is exempt form Growth Rate Control [Section 18.72.020(C), and affordable units are also exempt from impact fees. [Section 18.33.040(A)] http://www.richmondri.com/

- **South Kingstown –** Affordable Housing is exempted from the Fair Share Development Fee. [Section 1101 D 1] http://www.southkingstownri.com/T

- **Tiverton –** A mandatory alternative concept plan for all major land developments showing a 20% set-aside for low or moderate income housing is required. Planning Board will endorse or reject concept plan. A density bonus up to 30% over allowed density for additional units of low or moderate housing may be granted at the discretion of the Planning Board. [Article XXI, Section 9, a & b]

Part 4: Items to Consider

Developing an inclusionary housing section for a zoning ordinance is difficult, and many components of such an ordinance must be taken into consideration before the section can be written. Before proceeding, it is critical to familiarize oneself with the Rhode Island General Laws establishing the planning framework for housing development and zoning in general, along with the requirements of the *Comprehensive Housing Production and Rehabilitation Act of 2004* and the associated amendments to 7 other related enabling acts concerning affordable housing. The following 12 items are considered essential for communities to address concerning inclusionary housing and were adopted from an Enterprise Foundation Brief.[1]

A good World Wide Web site to review the RI planning and development laws is located at:

http://www.rilin.state.ri.us/Statutes/TITLE45/INDEX.HTM

To view the House and Senate bills related to the *Comprehensive Housing Production and Rehabilitation Act of 2004 see:*

H-8574A, S-3148

1. How does the ordinance provision relate to adopted Municipal Plans?

When drafting inclusionary provisions for a zoning ordinance, a nexus needs to be established between the approved Affordable Housing Plan of the municipality and the purpose of the ordinance. The ordinance sections concerning Findings and Purpose should restate the community need for affordable housing, environmental and infrastructure constraints, and recommendations from the approved Affordable Housing Plan and the Housing Element of the Comprehensive Plan.

2. Will the inclusionary requirement be mandatory or voluntary?

The decision to make your requirement mandatory or voluntary is an important one. It seems most inclusionary zoning ordinances are voluntary. Voluntary programs are harder to challenge in court, but they should have incentives included to be successful. Mandatory programs, on the other hand, are obviously easy to enforce and evidence supports that they produce more units. The combination of approaches is probably best. Included within regulatory strategies usually are

[1] Werwath, Peter. "Program Design Considerations." An Enterprise Foundation Issue Brief. The Enterprise Foundation, 1994.

requirements to insure that developments mitigate the impacts of their projects on the community's need for affordable housing and incentives for developers to volunteer to provide affordable housing.

3. What will be the development threshold size for applicability?

The threshold size describes how large a development will trigger an affordability requirement. [2] In the examples that follow in Part 5, there is a low of 5 units to a high of 30 (Denver, CO). In the Burlington example, a redevelopment of project of 10 acres or 50 or more units or a development using more than 10 acres or 50 or more units will also trigger an affordability requirement.

4. What "set aside" of affordable units must be included?

It is important to gauge your community's needs (by referencing your municipality's Affordable Housing Plan) and determine a percentage of the total development's units that will be deemed as a "set aside." Certain inclusionary zoning ordinances either only include for-sale housing or rental housing. It appears that including both types of housing stock would benefit because the ordinance could target both low and moderate-income households. Some inclusionary programs have found that a key to success is an appropriate mix of affordable units coupled with a density bonus for market units. **Keep in mind that under the recent changes to the *Zoning Enabling Act*, any inclusionary housing zoning must provide that at least 10% of the total units in a development satisfy the affordable definition of the Act.**

5. What income groups are to be served?

A statement of the income group to be served must be drafted. Income eligibility standards are adjusted by family size, and most ordinances have a system for certifying income eligibility by an agreed-to standard. An ordinance may include a tiered income standard to aid developers: a lower percentage of affordable units can be built if the units are lower priced. Every ordinance should have some type of system to verify and certify incomes, or other special characteristics (such as disabilities).[3] The system will have to adjust for varying incomes and family sizes. Whose regulations will you use to target a specific income group? In some communities, nonprofit organizations qualify homebuyers and renters for inclusionary developments, and they may also regulate trust fund monies, and other monies. It is important to establish who will supervise and enforce your inclusionary zoning ordinance.

[2] "Issues to Consider in developing an Inclusionary Zoning Ordinance", Business and Professional People for the Public Interest

6. What types of housing stock will be developed?

Another element to take into consideration is the style and design of affordable housing units. Some ordinances include strict design regulations. It would be beneficial for the community if the affordable units were compatible and similar to market rate design construction in the community.[4]

7. When will the affordable units be developed?

A sensitive issue for the developer and the municipality involves the timing of the affordable unit construction. While a developer may argue that s/he needs revenues from the market-rate units in order to feasibly construct the affordable units, a common goal is to have both types built concurrently to avoid any community controversy or having the developer leave the affordable units unbuilt. A compromise solution that appears in a number of ordinances is a phased construction of the affordable rate units at an agreeable ratio to the market-rate construction (e.g., one affordable unit for every five market-rate units constructed). Additionally, fees would be paid at the appropriate juncture (Netter, 2000).[5]

8. What type of cost- offsets and / or incentive(s) will you provide the developer?

There are ways of reducing the costs of a development to enable the construction of affordable housing such as the waiving of certain review fees or the amount of parking to be provided. (See Part 5 for more details.) These cost offsets allow a municipality to decrease the costs developers would incur for affordable housing, and minimize the possibility of a developer showing that mandatory inclusionary zoning causes an excessive loss such that it effects a taking. The cost offsets give developers certain benefits to compensate the developer for pricing some units below market rates.

One of the most common incentives for an inclusionary zoning ordinance is to provide density bonuses to developers. Density bonuses allow developers to increase the number of units allowed on a piece of property if they agree to make some percentage of those units affordable. Developers use additional cash flow from these bonus units to offset the revenue lost from the affordable units.[6]

---

[3] Werwath, Peter. "Program Design Considerations." An Enterprise Foundation Issue Brief. The Enterprise Foundation, 1994.
[4] Siegel, Joyce. "Inclusionary Zoning Around the Country." March 2, 2000
[5] Netter, Edith. *Inclusionary Zoning: Guidelines for Cities and Towns.* (Boston, MA: Massachusetts Housing Partnership Fund, September 2000).
[6] "Considerations for Density Bonus Ordinances" Breakthroughs: Successful Local Strategies for Affordable Housing. Regulatory Barriers Clearinghouse. Vol.2, 4

9. How will the municipality sustain an ongoing inclusionary program?

It is important to ensure a total program when adopting an inclusionary zoning ordinance. If developers create affordable units without long-term affordability controls (30 year minimum in RI) or site units close too far from community and social services then the program will fail. This is important to consider as the community may want to stipulate special conditions for preserving the affordable housing created above and beyond the provisions required by the housing program funders. Special siting factors such as proximity to employment and other public services are necessary for affordable units. For example, one siting requirement may be that affordable units be located close to major employers and or public transportation routes where possible.

10. What will be the type of controls on rental and for-sale housing?

A successful inclusionary zoning ordinance must include explicit restrictions on the future rental or sale of affordable units. Again, this is important to consider as the community may want to stipulate special conditions for preserving the affordable housing created above and beyond the provisions required by the housing program funders. The ordinance must require the units to remain affordable for a minimum of thirty years, and it may also specify that the affordable units must continue to be available to income-qualified occupants. Restricting income levels and rents for rental units is simple- the jurisdiction can specify rent limits and require verification of new tenant's incomes as they move into the development. Maintaining affordability on for-sale housing is more complicated. The ordinance may require that homeowners sell their unit to income-qualified buyers at a price that incorporates inflation and the cost of home improvement, but remains affordable. One compromise would be that homeowners could sell their home with affordability restrictions and donate a certain percentage of the profits to a housing trust fund.[7] The ordinance should take into consideration inflation and the cost of living adjustments over time and who will be qualified in later years. See Part 5, numbers 10 & 11 for more details.

11. Can the developer make in-lieu-of payments?

A town may determine that the developer not be required to build affordable units if he pays a fee-in-lieu of development either (a) in cash or (b) by dedication of land. This fee is usually dedicated to a land trust or land bank for future affordable housing for the town, which may need to be established if none exists. A dedication of land may be advantageous to a community that has prioritized conservation along with affordable housing as a complementary goal. The community should specify whether the developer has the option of a fee-in-lieu by right, or require that the developer demonstrate that building the units as required presents a financial hardship.

[7] Ray, Anne. "Inclusionary Housing: A Discussion of Policy Issues." Alachua County Department of Planning & Development. Gainesville, Florida. June 15, 2001

In deciding the amount of a fee-in-lieu the ordinance needs to consider what the developer's costs might be to produce a unit of affordable housing, including current land costs, the need for infrastructure, current construction costs, etc. The object is to create a fee that is not too low so as to make it economically advantageous for the developer to opt out of building affordable units and high enough to make a reasonable gain by the community's affordable housing trust fund or land bank if they choose to allow the developer to opt out.

12. Can the developer build affordable units off-site?

Allowing developers the flexibility of delivering affordable housing off-site can help them economically. For example, if they are developing on expensive land, they can build more affordable units on other land. Also, affordable units may have special needs such as proximity to transportation and employment. Alternatively, while a municipality may allow the developer to build the affordable units off-site; however, this practice is less favored since one of the goals of inclusionary zoning is to promote the mixture of affordable units among market-rate housing to soften opposition to the construction as well as for the beneficial socio-economic impact. If off-site building is permitted, it is recommended that the units still be serving the same geographic locality.

Part 5: Developing An Ordinance

During the development of an inclusionary housing section for the zoning ordinance, it is critical to tailor the section to local housing conditions and needs as defined by the local approved Affordable Housing Plan. There is no one perfect zoning ordinance. There are a range of options that need to be viewed separately and then evaluated in terms of how they work together with local housing conditions, needs, the local municipal governmental structure and staffing levels.

This handbook is a reference tool not a model ordinance.

The following items address variables and options to be weighed in developing an effective ordinance section. This part should be used as a guide for communities through the issues appropriate to their needs, not as a magic, one-size fits all solution. A municipality seeking to draft and implement an inclusionary zoning ordinance provision should consult with their legal counsel. It is not a model ordinance that endorses one-size fits all guidelines that do not take into account the differences among communities. Some have large populations; some do not. Some are growing rapidly; others are not. Some have public infrastructure; some do not. Housing issues in ocean front communities are different from communities farther inland. The proper use of this handbook will give local governments the flexibility to tailor planning to meet local needs. Local governments should undergo a scoping process to determine the level, or the types of ordinance that will best suit their community. This section is laid out with general ordinance items presented first and proceeds to the specific items concerning affordable housing as standard for inclusion in part of a municipal zoning ordinance.

The 13 items listed below are standard items for a community to include when drafting an inclusionary ordinance provision. They were adopted from a multitude of sources and a regional housing educational publication by the Business and Professional People for the Public Interest.[1] An explanation of each item is presented and actual ordinance language is presented to illustrate the use of each item. Excerpts of the ordinances appear in a smaller font and italics. The source of the language precedes each excerpt. Zoning examples are included from other states and the use of any language drafted should be checked for consistency with Rhode Island law by legal counsel.

#1 Findings[2]

An ordinance section on inclusionary housing should begin with findings stating the need for affordable housing in the community as cited in the approved Affordable Housing Plan done by each community. Typically this is the section that would summarize the planning process the community has undertaken, trends in housing stock, the need for and benefits of affordable housing, the constraints to be addressed and the benefits anticipated by enactment of an inclusionary zoning ordinance provision.

[1] *Issues to Consider in developing an Inclusionary Zoning Ordinance,* Business and Professional People for the Public Interest
[2] Ibid

The first findings below are citied from the newly adopted *Comprehensive Housing Production and Rehabilitation Act of 2004* (*RI Gen. Law* 42-128-8.1). Writing a findings section would mirror the statewide findings in addition to any local findings from an approved Affordable Housing Plan. Additional sample findings follow the RI State provisions and are from other places using inclusionary housing provisions in their zoning ordinances.

42-128-8.1. Housing production and rehabilitation.

(a) Short title. This section shall be known and may be cited as the "Comprehensive Housing Production and Rehabilitation Act of 2004."

(b) Findings. The general assembly finds and declares that:

(1) The state must maintain a comprehensive housing strategy applicable to all cities and towns that addresses the housing needs of different populations including, but not limited to, workers and their families who earn less than one hundred twenty percent (120%) of median income, older citizens, students attending institutions of higher education, low and very low income individuals and families, and vulnerable populations including, but not limited to, persons with disabilities, homeless individuals and families, and individuals released from correctional institutions.

(2) Efforts and programs to increase the production of housing must be sensitive to the distinctive characteristics of cities and towns, neighborhoods and areas and the need to manage growth and to pace and phase development, especially in high growth areas.

(3) The state in partnership with local communities must remove barriers to housing development and update and maintain zoning and building regulations to facilitate the construction, rehabilitation of properties and retrofitting of buildings for use as safe affordable housing.

(4) Creative funding mechanisms are needed at the local and state levels that provide additional resources for housing development, because there is an inadequate amount of federal and state subsidies to support the affordable housing needs of Rhode Island's current and projected population.

(5) Innovative community planning tools, including, but not limited to, density bonuses and permitted accessory dwelling units, are needed to offset escalating land costs and project financing costs that contribute to the overall cost of housing and tend to restrict the development and preservation of housing affordable to very low income, low income and moderate income persons.

(6) The gap between the annual increase in personal income and the annual increase in the median sales price of a single -family home is growing, therefore, the construction, rehabilitation and maintenance of affordable, multi-family housing needs to increase to provide more rental housing options to individuals and families, especially those who are unable to afford homeownership of a single -family home.

(7) The state needs to foster the formation of cooperative partnerships between communities and institutions of higher education to significantly increase the amount of residential housing options for students.

(8) The production of housing for older citizens as well as urban populations must keep pace with the next twenty-year projected increases in those populations of the state.

(9) Efforts must be made to balance the needs of Rhode Island residents with the ability of the residents of surrounding states to enter into Rhode Island's housing market with much higher annual incomes at their disposal.

To view the House and Senate bills related to the *Comprehensive Housing Production and Rehabilitation Act of 2004 see:*

H-8574A, S-3148

(Sacramento, CA*)* *The City Council makes the following findings:*

• It is a public purpose of the City to achieve a diverse and balanced community with housing available for households of all income levels. Economic diversity fosters social land environmental conditions that protect and enhance the social fabric of the City and are beneficial to the health, safety, and welfare of its residents.

• The City is experiencing an increasing shortage of housing affordable to low income households. New residential development does not provide housing opportunities for low-income households due to the high cost of newly constructed housing in the City. As a result, low- income families are de facto excluded from many neighborhoods, creating economic stratification detrimental to the public health, safety, and welfare. An increasing number of low-income persons live in overcrowded or substandard housing and devote an overly large percentage of their income to pay for housing.

• The amount of land in the City available for residential development is limited by City General Plan policies and principles embodied in state law pertaining to general plans and annexation. Scarce remaining opportunities for affordable housing would be lost by the consumption of this remaining land for residential development without providing housing affordable to persons of all incomes.

• Therefore, to implement the City General Plan, to carry out the policies of state law, and to ensure the benefits of economic diversity to the residents of the City, it is essential that new residential development in the remaining new growth areas of the City contain housing opportunities to low income households, and that the City provide a regulatory and incentive framework which ensures development of an adequate supply and mix of new housing to meet the future housing needs of all income segments of the community.

#2 Statement of Purpose[3]

Purpose statements typically explain the purpose of the section and are broad policy directives.

(Boulder, Co) *The purposes of this chapter are to:*

(a) Implement the housing goals of the City Master Plan;

(b) Promote the construction of housing that is affordable to the community's workforce;

(c) Retain opportunities for people that work in the City to also live in the City;

(d) Maintain a balanced community that provides housing for people of all income levels; and

(e) Insure that housing options continue to be available for very low-income, low-income, and moderate-income residents, for special needs populations and for a significant proportion of those who both work and wish to live in the City.

[3] Ibid

#3 Definitions

This part provides explanations to clarify certain specific terms used in the ordinance. Any housing, planning, or zoning terms that are not commonly used should be included in this section. Knowledge of existing definitions as established by the various Rhode Island General Laws concerning housing development is necessary for this section. Definitions are already provided in the legislation for many terms relevant to an inclusionary zoning ordinance provision such as:

- Affordable Housing
- Approved Affordable Housing Plan
- Moderate Income Household
- Seasonal housing
- Year-round Housing
- Low and Moderate Income Housing

RI planning and development laws:

http://www.rilin.state.ri.us/Statutes/TITLE45/INDEX.HTM

#4 Standards - Threshold Size and Applicability[4]

The standards section is the part where stipulations for the requirements for complying with the ordinance are to be spelled out. A threshold size is a trigger established by the ordinance that when crossed requires the provisions of the ordinance to be complied with. Some ordinances limit their application to developments exceeding a certain threshold size appropriate to their community based upon prior planning studies completed and local housing needs. The language usually sets a threshold size by simply stating what size developments trigger application of a set-aside requirement.

A statement of the income group to be served must be drafted. Income eligibility standards are adjusted by family size, and most ordinances have a system for certifying income eligibility. Also, be sure to check with Rhode Island Housing and Mortgage Finance Corporation so that the local ordinance does not conflict with housing funding specific minimum requirements when writing this section. The Comprehensive Housing Production and Rehabilitation Act of 2004 mandates that affordable housing means residential housing that has a sales price or rental amount that is within the means of a household that is moderate income or less. A moderate income household is defined by the Act as a single person, family, or unrelated persons living together whose adjusted gross income is more than 80 % but less than 120 % of the area median income, adjusted for family size.

> ***(Boulder, CO)*** *Any development on a site larger than 10 acres or containing 50 or more dwelling units shall include at least twenty percent of the total number of dwelling units within the development as permanent affordable units.*
>
> ***(Burlington, VT)*** *The following residential development projects shall be Covered Projects and shall be subject to the requirements of this Article: all development of residential property larger than 10 acres or containing 50 or more dwelling units taking place through the construction of new structures or through the substantial rehabilitation of existing structures. Covered Projects shall include all development of residential property in excess of 10 acres or containing 50 or more dwelling units in the City by the same responsible party in any calendar year.*

[4] Ibid

#5 Standards - Set-Asides[5]

A critical decision in developing an inclusionary zoning ordinance provision is determining the percentage of housing units required to be set-aside. The set-aside requirement is the percentage of units within a proposed development that a developer is required to price affordable. The most common use of affordable housing set-asides is targeted to specific income tiers. Municipalities must decide what income range they want to target for the affordable units and balance the requirements so that the projects have economic feasibility. The ordinance language should also address if it is applicable to rental housing construction. Nationally set-aside requirements range from as low as five percent to as high as 35%.

There is no one-size-fits-all set-aside that can be used. **The Comprehensive Housing Production and Rehabilitation Act of 2004 mandates that inclusionary zoning set-asides must be at least 10 % of the total units proposed for development.** A set-aside percentage should be established through the planning process the community has undertaken. The local trends in housing stock, the need for and benefits of affordable housing, and the benefits anticipated by enactment of an inclusionary zoning ordinance provision should indicate to each community what this set-aside should be over and above the minimum 10 %. The set-aside should be related directly to the Findings Section for ordinance consistency.

> ***(Sacramento, CA)*** *In developments covered by this section, the inclusionary housing component shall consist of affordable units leased or sold as follows: x% to very low income families (earning no more than 50% of area median income); x% to low income (earning more than 50% of area median income but no more than 80% of area median income); and x% to moderate income families (earning more than 80% of area median income but no more than 115% of area median income).*
>
> ***(Davis, CA)*** *A developer of multifamily rental developments containing 50 or more units shall provide at least 25% of the units affordable to low income households (earning more than 50% of area median income but no more than 80% of area median income) and at least 10% percent of the units affordable to very low income households (earning no more than 50% of area median income). A developer of multifamily rental developments containing between five and nineteen units, inclusive, shall provide 15% percent of the units to low income households and 10% percent to very low income households.*

#6 Standards - Design and Building Requirements[6]

It is important to establish the specific site design and architectural standards to be used for affordable housing that will be constructed under an inclusionary ordinance provision. Most ordinances require that affordable units be visually compatible with market rate units in the same development.

> ***(Burlington,VT)*** *Affordable inclusionary units may differ from the market units in a Covered Project with regard to interior amenities and gross floor area, provided that:*
>
> *(i) these differences, excluding differences related to size differentials, are not apparent in the general exterior appearance of the Project's units; and*
>
> *(ii) these differences do not include insulation, windows, heating systems, and other improvements related to the energy efficiency of the Project's units;*

[5] Ibid
[6] Ibid

(iii) the gross floor area of the affordable inclusionary units is not less than minimum requirements established by the City.

(Sacramento, CA) *Inclusionary Units shall be visually compatible with Market Rate Units. External Building materials and finishes shall be the same type and quality for Inclusionary Units as for Market Rate Units. Upon application by the developer to the City, the City may, to the maximum extent appropriate in light of project design elements as determined by the Planning Director, allow builders to finish out the interior of Inclusionary Units with less expensive finishes and appliances.*

(Fairfax County, VA) *The Housing Commission shall develop specifications for the prototype affordable housing products both for sale and rental, which shall be structured to make the units affordable to very low-, low-, and moderate-income households. All building plans for affordable dwelling units shall comply with such specifications. Any applicant or owner may voluntarily construct affordable dwelling units to a standard in excess of such specifications, but only 50 percent of the added cost for exterior architectural compatibility upgrades (such as brick facades, shutters, bay windows, etc.) and additional landscaping on the affordable dwelling unit shall be included within recoverable costs, up to a maximum of 2 percent of the sales price of the affordable dwelling unit, with the allowance for additional landscaping not to exceed one half of the above-noted 2 percent maximum.*

#7 Standards - Timing of construction[7]

It is important to establish when the affordable units shall be constructed. Most municipalities require affordable units to be built concurrently with market units to ensure integration of affordable and market units, and to prevent developers from abandoning projects prior to completing the affordable units. This section can be used to stipulate when phasing is used how many affordable units are to be constructed as part of each phase.

(Burlington, VT) *Inclusionary units shall be made available for occupancy on approximately the same schedule as a Covered Project's market units, except that certificates of occupancy for the last ten percent of the market units shall be withheld until certificates of occupancy have been issued for all of the inclusionary units. A schedule setting forth the phasing of the total number of units in a Covered Project, along with a schedule setting forth the phasing of the required inclusionary units, shall be established prior to the issuance of a building permit for any development subject to the provisions of this Article.*

(Montgomery County, MD) *The affordable dwelling unit agreement must include the number, type, location, and plan for staging construction of all dwelling units and other such information as the Commission requires to determine the applicant's compliance with this Chapter. The affordable dwelling unit staging plan must be consistent with any applicable land use plan, subdivision, plan, or site plan. The staging plan included in the affordable dwelling unit agreement for all dwelling units must be sequenced so that:*

(1) no or few market rate dwelling units are built before any affordable units are built;

(2) the pace of affordable unit production must reasonably coincide with the construction of market rate units; and

(3) the last building built must not contain only affordable units.

[7] Ibid

#8 Cost Offsets[8]

There are ways of reducing the costs of a development to enable the construction of affordable housing. Municipalities may implement cost offsets in a variety of ways. Some methods are to allow developers to request waivers from development standards such as set-back requirements, parking and landscaping requirements, or building material requirements, which reduce the cost of constructing affordable units. These cost offsets allow a municipality to decrease the costs developers would incur for affordable housing, and minimize the possibility of a developer showing that inclusionary zoning causes an excessive loss such that it effects a taking. The cost offsets give developers certain benefits to compensate the developer for pricing some units below market rates.

> ***(Santa Fe, NM)*** *Impact fees and building permit fees may be waived for affordable units, subject to agreement of the entities receiving revenues from such fees. Any developer of affordable units may submit a request for a waiver of other City development standards, and the City shall respond within thirty calendar days of its receipt. The City shall approve a waiver if each of the following requirements are met:*
>
> > *(a) The proposed waiver will make the housing more affordable. The developer must show how real costs will be reduced and how the savings will be passed on to affordable home-buyers or renters.*
> >
> > *(b) The proposed waiver does not compromise health, safety or welfare as determined by the City.*
> >
> > *(c) Vehicular and pedestrian circulation, storm drainage and utilities are provided for adequately.*
>
> ***(Sacramento, CA)*** *Upon application as provided herein, (1) the City shall make available to a Residential Project Developer a program of waiver, reduction or deferral of development fees, administrative and financing fees for affordable units; (2) the City may modify for affordable units, to the extent feasible, in light of the uses, design, and infrastructure needs of the Development Project, standards relating to road widths, curbs and gutters, parking, lot coverage, and minimum lot sizes; and (3) the City may, to the maximum extent appropriate in light of project design elements, allow builders to finish out the interior of affordable units with less expensive finishes and appliances. The Planning Director may issue Special Permits for Inclusionary Projects, and shall develop further procedures for streamlining and priority processing which relieve affordable units of permit processing requirements to the maximum extent feasible consistent with the public health, safety, and welfare. The developer may apply to the City's Housing Trust Fund for assistance in the financing and development of the affordable units in a development.*

#9 Density Bonus[9]

One of the most popular developer incentives used by municipalities is the density bonus. This is a stated procedure where the developer is allowed to construct a certain number of additional market rate units beyond what is normally allowed under the current zoning ordinance in exchange for providing a stipulated number of affordable units. Though some communities tout density bonuses as the most effective cost offsets, others that do not desire denser development avoid them. Again, the ordinance should reflect what is appropriate for each community as determined by the local approved Affordable Housing Plan.

---

[8] Ibid
[9] Ibid

(**Cambridge, MA**) *To facilitate the objectives of this Section, modifications to the dimensional requirements in any zoning district shall be permitted as of right for an Inclusionary Project, as set forth below:*

(i) The Floor Area Ratio (FAR) normally permitted in the applicable zoning district for residential uses shall be increased by 40% percent, and at least 50% of the additional FAR should be allocated for the Affordable Units required by this Section. In a Mixed Use Development, the increased FAR permitted in this paragraph (i) may be applied to the entire lot; however, any gross floor area arising from such increased FAR shall be occupied by residential uses, exclusive of any hotel or motel use.

(ii) The minimum lot area per dwelling unit normally required in the applicable zoning district shall be reduced by that amount necessary to permit up to 2 additional units on the lot for each 1 affordable unit required by this Section.

> *Implementation of a density bonus under this section would work as follows: Assume a 50-unit development, and a 20% set-aside. Thus, 10 of the 50 units must be affordable. Paragraph (ii) of the density bonus above awards a bonus of two market units for every one affordable unit, so 70 units would be permitted. In addition, paragraph (i) would permit a 40% increase in the lot's FAR, which corresponds to the 40% increase in units over the original 50. If considered in reference to the base number of units, the developer essentially gets 10 additional market units to offset the 10 required affordable units.*

(**Somerville, MA**) *The affordable housing requirements of this Article shall apply to all residential developments seeking special permits with site plan review to develop 8 or more dwelling units, whether new construction, substantial rehabilitation, or adaptive reuse. Developments shall not be segmented or phased in a manner to avoid compliance with these provisions. Developers providing more than 12.5% of the total units in the development as affordable units may apply for an additional density bonus under the terms of this Article. Bonuses may be awarded on the basis of a 2 to 1 ratio of market rate units to affordable housing units. For every additional unit provided beyond the 12.5.% required, 2 additional market rate units may be authorized.*

(Bellevue, WA)

A. Purpose. The purpose of this section is to offer dimensional flexibility and density bonuses to encourage construction of housing affordable to low and moderate income households.

B. General. The provisions of this section are available, at the sole discretion of the property owner, as incentives to encourage the construction of affordable housing in new multifamily residential development.

> *1. Multifamily Development. One bonus market rate unit is permitted for each affordable unit provided, up to 15 percent above the maximum density permitted in the underlying zoning district.*
>
> *2. Duration. An agreement in a form approved by the City must be recorded with King County Department of Records and Elections requiring affordable housing units which are provided under this section to remain as affordable housing for the life of the project. This agreement shall be a covenant running with the land, binding on the assigns, heirs and successors of the applicant.*
>
> *3. In zoning districts where density limitation is expressed as floor area ratio (FAR), density bonuses will be calculated as an equivalent FAR bonus.*

C. Dimensional Standard Modification. The following requirements of the Land Use Code may be modified through the procedures outlined in paragraph D of this section, to the extent necessary to accommodate affordable housing units and bonus units on-site.

1. Lot Coverage. The maximum percent of lot coverage may be increased by up to five percent of the total square footage over the maximum lot coverage permitted by the underlying zoning district for those properties or lots containing affordable housing units.

2. Parking Requirements. For those buildings containing affordable housing, the percent of compact parking stalls may be increased up to 75 percent of the total required parking in non-Downtown Zoning Districts and up to 85 percent of the total required parking in Downtown Zoning Districts. Tandem parking stalls are permitted to the extent feasible to satisfy required parking ratios.

3. Building Height. Except in Transition Areas, the maximum building height in R-10, R-15, R-20 and R-30 Zoning Districts may be increased by up to six feet for those portions of the building(s) at least 20 feet from any property line.

4. Lot Area. Lots which contain affordable housing units in single-family subdivisions may be reduced by up to 20 percent of the minimum lot area required by the underlying zoning district; provided, that the density in the subdivision does not exceed 15 percent above the maximum permitted by the underlying zoning district.

5. Open Space. The Open and Recreation Space Requirement within a residential planned unit development containing affordable housing may be reduced to 35 percent of gross land area. All other requirements of LUC 20.30D.60 shall continue to apply.

(Snohomish, WA)

14.37.020 Eligibility. *A low-income housing density incentive may be granted to multiple-family projects being developed within land use designations Multifamily Residential 12, Multifamily Residential 18 and Multifamily Residential 24 as regulated by SMC Title 14. This chapter shall amend the permitted density provisions of these land use designations such that multifamily residential developments may be granted a 10 percent unit density incentive if all of the following criteria are met:*

A. The property owner is either a governmental agency or a non-profit corporation, incorporated pursuant to Chapter 24.03 RCW, which will manage the development of project to meet the housing needs of low-income persons as defined by the federal or state low-income standards.

B. The owner will covenant with the City of Snohomish to manage the development for low-income housing purposes for a minimum of thirty years.

C. The owner will enter into a binding covenant with the City, which covenants site and building design, and other conditions required to grant the density incentive.

D. The density incentive will not be permitted for projects with a pre-incentive development containing more than forty units upon any given site, or within any given development. To qualify for a density incentive, a development must be no more than forty units, and any development shall be separated from other developments qualifying for density incentive by an unrelated land use, under separate ownership, other than a public or private street, easement, or buffer strip. However, where a 10 percent density bonus is requested for projects between twenty and forty units, the 10 percent density bonus may be denied or reduced if shopping opportunities are not available within reasonable proximity and if neighborhood parks are not within reasonable proximity or recreational opportunities are not provided on site.

E. The project proponent will demonstrate through occupancy studies that the Snohomish Municipal Code (Update October 2001) 14.37-2 increase in density will not result in a significant increase in the on-street parking, traffic, park and utility impacts in the neighborhood over those which would be expected by a project developed at the pre-incentive density.

(Tiburon, CA)

(a) Pursuant to Government Code Section 65915 et seq., the town shall provide density bonuses of twenty-five percent for projects which provide twenty percent of the total units of a residential development for lower income households, ten percent of the total units of a residential development for very low income households, or fifty percent of the total units of a residential development for people 62 years of age or older, or 55 years of age or older in a senior citizen housing development; or the town shall provide a density bonus of ten percent for condominium projects which provide twenty percent of the total units for moderate income households, in addition to the other incentives described in sections 6.03 (g), (h), (i) and (j).

(b) Applicants who propose residential development which complies with the affordability requirements described in section (a) may submit to the town a proposal for the specific incentive described in sections 6.03(g), (h), (i) and (j). The town shall award the incentive unless either of the following written findings is made based upon substantial evidence:

(1) The incentive is not required in order to provide for affordable housing costs, or

(2) The incentive would have a specific adverse impact upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low and moderate income households.

(c) The town shall grant density bonuses, which allow the re-establishment of developments containing affordable housing units when such developments are destroyed by fire, earthquake, or similar disaster, even when such developments may exceed current allowable densities.

#10 Certifying Buyers and Renters

An ordinance can provide regulations with extensive instructions for marketing to and certifying buyers and renters of affordable units. The decision to include such a section in an ordinance will be based upon local staff and enforcement capability.

*(**Santa Fe, NM**) A. Developers shall market affordable homes in accordance with the requirements set forth in the administrative procedures. There shall be an efficient matching of the incomes of prospective affordable unit buyers to specific affordable unit prices. There shall be a reasonable matching of the household sizes of prospective affordable unit buyers to the sizes and types of affordable units. Any marketing materials shall clearly state the policies of the affordable housing program with regard to the pricing of affordable units and buyer eligibility.*

B. In marketing affordable units the City or seller shall give preference to individuals who are citizens of the City or are presently employed or under contract with an employer within the City.

C. The City or its agent shall maintain and make available lists of prospective affordable unit buyers who have passed preliminary prequalifications for financing. For affordable developments for which the city expects immediate effective demand to outstrip supply, the city or its agent, at the city's sole discretion, may establish and maintain an equitable process for allocating rights to purchase the homes. For

developments other than those described above, the developer shall establish and maintain an equitable process of marketing homes, including waiting lists where demand exceeds supply.

D. Prior to executing a purchase contract for any affordable unit, the prospective affordable unit buyer shall be certified as meeting affordable housing program requirements by the City or its agent. The certification process shall be set forth in the administrative procedures. Developers and affordable unit buyers may execute only purchase agreements that are approved as to form by the City and include language provided by the City which shall require that an appropriate disclosure form be provided to and explained to the affordable unit buyer prior to execution of the contract. The disclosure form shall explain any deed restrictions, restrictive covenants and/or liens that are placed on the affordable unit to ensure long-term affordability.

*(**Santa Fe, NM**) Developers shall market affordable homes in accordance with the following requirements:*

(1) There should be an efficient matching of the incomes of prospective affordable home buyers to specific home prices, as follows:

Household income of a buyer should not exceed the price level of a home by more than five percent. For example, only households with incomes at or below 65 percent of median income should be allowed to buy a home made affordable to households at 60 percent of median income. Thus, lower priced homes will be reserved for lower-income households. Alteration of this requirement may be based only on the unavailability of a qualified buyer with the required level of income for a period of 30 days or more after the home was legally ready for occupancy (assuming good-faith marketing efforts by the developer to find a qualified buyer).

(2) There should be reasonable matching of the household sizes of prospective affordable homebuyers to the sizes/types of affordable homes as follows:

3 BR, 1.5 BA ------- Minimum household size = 4
4 BR, 2 BA ------- Minimum household size = 5

The City shall not market or sell an affordable home to a household which is smaller than the household sizes indicated, unless the City approves in writing fewer persons based on the unavailability of a buyer of the proper household size for a period of 30 days or more after the home was legally ready for occupancy (assuming good-faith marketing efforts by the developer to find a qualified buyer), or the demonstrated need of a household for a dwelling unit with more bedrooms than allowed in this section.

(3) In marketing affordable homes the City or seller shall give preferences to individuals who are citizens of the City or are presently employed or under contract with an employer within the City.

(4) Brochures, advertisements and other marketing materials shall clearly state the policies of the affordable housing program with regard to the pricing of affordable units and buyer eligibility.

(5) The City or its agent may maintain lists of prospective affordable homebuyers who have passed preliminary pre-qualifications for financing. Such lists will be made available to developers for marketing purposes.

(6) For developments for which the City expects immediate effective demand to outstrip supply, the City or its agent, at the City's sole discretion, may establish and maintain an equitable process for allocating rights to purchase the homes. For example, the City could require a lottery or use of a ranked waiting list.

(7) Prior to executing a purchase contract for any affordable home, a prospective buyer must be certified by the City or its agent as meeting program requirements. The certification must have been made within 90 calendar days immediately prior to the full execution of the purchase contract. Developers may sign purchase contracts with non-certified prospective buyers, conditional upon certification within 10 working days, if the developer is reasonably certain that the prospective buyer can be certified.

(8) Developers and buyers of affordable units may execute only purchase contracts that are approved for form by the City and include language provided by the City, which will require that an appropriate disclosure form be provided to and explained to the buyer prior to execution of the contract. The disclosure form will explain any deed restrictions, restrictive covenants, and/or liens that are placed on home to insure long-term affordability.

#11 Maintaining Affordability[10]

The ordinance provisions must have a system to make sure that eligible families are being housed in the affordable units over the long-term. The Comprehensive Housing Production and Rehabilitation Act of 2004 mandates that the minimum time period for affordability maintenance shall be 30 years. The local trends in housing stock, the need for and benefits of affordable housing, and the benefits anticipated by enactment of an inclusionary zoning ordinance provision should indicate to each community what the affordability period should be over and above the minimum 10 % for each community. Certain legal mechanisms such as deed restrictions and covenants can be used to guarantee the units remain affordable for that time period.

The methods involved will vary by the staffing and enforcement capabilities of each community. Most ordinances impose price restrictions that keep units affordable when they pass to new occupants. Requirements need to be provided on the subject of resale pricing and maintaining the affordability of the housing units. Typically affordability is maintained through deed restrictions or covenants recorded against the property. These affordability controls often specify that a unit must be sold or rented to an income eligible buyer at an affordable price. Another issue to address is whether to allow sellers to recoup the value of capital investments in their homes. The community should balance the need to provide sellers with some of the benefits of ownership against the need for keeping the sale price of the unit affordable.

*(**Boulder, CO**) The resale price of any permanently affordable housing unit shall not exceed the purchase price paid by the seller of that unit plus:*

(a) A percentage of the unit's original purchase price equal to the increase in the cost of living since the unit was purchased by the seller, as determined by the Consumer Price Index;

(b) The fair market value of improvements made to the unit by the seller;

(d) Customary closing costs and costs of sale; and

(d) Costs of a real estate commission paid by the seller if a licensed real estate agent is employed.

[10] Ibid

*(**Santa Fe, NM**) The City requires that developers impose resale controls which are designed to achieve the following purposes:*

(a) reducing the potential for windfall profits by an owner-occupant;

(b) recapturing any such windfall profits for use in an approved housing trust fund;

(c) providing incentives for owner-occupants to resell to lower-income households, which are most in need of affordable housing;

(d) maintaining the affordability of affordable units to subsequent buyers to a reasonable extent, while considering the sellers' rights to reasonable returns on equity; and

(e) preventing speculative profits on affordable units by renting them to another household.

*(**Sacramento, CA**) The owner of affordable rental units shall be responsible for certifying the income of eligible tenants to the Housing Commission at the time of initial rental and annually thereafter. Rental rates shall be in accordance with the formula set forth in the administrative procedures. This requirement shall be made applicable to successors in title, if any, by means of a deed restriction.*

#12 Fee In Lieu[11]

In some cases it is not possible to construct the required affordable units for a variety of reasons. An ordinance may allow the option for the developer to pay a fee in lieu of developing affordable units. Several methods exist for the use of fee in lieu of construction. Such fees can be established that permit payment as a right. An alternative is to require developers to show that constructing units would constitute a unique hardship, or that a fee would produce a greater benefit. The fee paid is typically linked to the cost of producing a unit. The fee is going to vary in every community. Such formulas are dependent upon the local housing market. The following are several summaries on such fees from the Business and Professional People for the Public Interest.

(**Boulder, CO**) *Fees in lieu of half of the required affordable units is permitted as a right. Developers may only pay fees in lieu of a larger percentage of units if a developer can demonstrate that payment of a fee would accomplish more benefit to the City than construction on site. Whenever this chapter permits a cash-in-lieu contribution as an alternative to the provision of a single permanently affordable housing unit, the cash-in-lieu contribution shall be as follows:*

(a) For each unrestricted detached dwelling unit, the cash-in-lieu contribution shall be the lesser of $13,200.00, or $55.00 multiplied by twenty percent of the total floor area of the unrestricted unit.

(b) For each unrestricted attached dwelling unit, the cash-in-lieu contribution shall be the lesser of $12,000.00, or $50.00 multiplied by twenty percent of the total floor area of the unrestricted unit

(**Santa Fe, NM)** *The city manager is authorized to adjust the cash-in-lieu contribution on an annual basis to reflect changes in the median sale price for detached and attached housing, using information provided by County Assessor records for the City.*

[11] Ibid

Developers may pay a fee in lieu of developing hard units if they show that as a direct consequence of the inclusionary zoning ordinance they (1) are deprived of all economically viable use of their property as a whole, or (2) would lose money on the development as a whole and can demonstrate to the Housing Opportunity Program administrator's satisfaction that the loss is an unavoidable consequence of the affordable housing requirement. A fee in lieu of development procedures for implementing such a fee shall be determined by administrative regulations.

(**Boston, MA**) *Subject to the approval of the head of the relevant City agency, developers may also propose to achieve these affordable housing obligations by making a dollar contribution to an affordable housing fund calculated by multiplying the total number of dwelling units in the proposed residential development by 0.15, and by multiplying the result by the Affordable Housing Cost Factor, currently standing at $52,000. This Affordable Housing Cost Factor is defined as the average total public subsidy per new construction affordable housing unit permitted in the City for the previous calendar year, and will be adjusted annually on July 1 of each year in an amount commensurate with the cost of producing affordable housing.*

(**Tiburon, CA)**

Exhibit A

(For illustration purposes only, variable values subject to determination by the Planning Director of Housing Authority)

1. Cost to construct a modest single-family dwelling unit of 1500 square feet
   Assumptions:

A. land and site development costs	$250,000
B. construction costs @ $125 per sq. ft.	$187,500
C. total of A and B above	$437,500

2. Moderate income purchase price affordability calculation
   Assumptions:

4-person household at 80% of median income=	$ 39,000

9.5% fixed rate mortgage, 90% loan to value,10% down-payment
25% for mortgage payment

mortgage payment equates to:	$831
Loan amount equates to:	$98,800
Affordable purchase price:	$109,800

3. In-Lieu housing fee calculation (using these variables)

A. total construction cost	$437,500
B. affordable purchase price	$109,825
C. in-lieu housing fee (per unit)	$327,675

#13 Standards - Housing Agency Right to Purchase[12]

Where appropriate, some ordinances give the municipality and / or designated not-for-profit entities a right to purchase a fixed percentage of affordable units. This can be required when the units are first offered for sale or rent, so that the units will stay permanently affordable. Again, the local trends in housing stock, the need for and benefits of affordable housing, and the staff capability of each community should dictate if this is appropriate to include.

> (**Montgomery County, MD**) *The Housing Commission and any other not-for-profit corporation designated by the Commission has the option to buy or lease, for its own programs or programs administered by it, up to 40% percent of all affordable units. The Commission may buy or lease up to 33%. Any other designated corporation may purchase or lease any affordable units in the first 33% that the Commission has not bought or leased, and the remainder of the 40%. Units purchased or leased under this option shall be assigned to very-low or low-income persons. The Commission shall establish standards for designating not-for-profit corporations which shall require the corporations to demonstrate their ability to operate and maintain affordable units satisfactorily on a long-term basis.*
>
> **(Fairfax County, VA)** *The Housing Commission shall have an exclusive right to purchase up to one-third of the for sale affordable dwelling units within a development for a 90 day period beginning on the date of receipt of written notification from the developer advising the Housing Commission that a particular affordable dwelling unit is or will be completed and ready for purchase. The remaining two thirds of the for sale affordable units within a development and any units which the Housing Commission does not elect to purchase shall be offered for sale exclusively for a 90 day period to persons who meet the income criteria established by the Housing Commission. After the expiration of 60 days of the 90 day period referenced above, the affordable dwelling units not sold shall be offered for sale to nonprofit housing groups, as designated by the Housing Commission, subject to the established affordable dwelling unit prices.*

[12] Ibid

References and More Information

Brown, Karen Destorel. "Expanding Affordable Housing Through Inclusionary Zoning: Lessons from the Washington Metropolitan Area." The Brookings Institution Center on Urban and Metropolitan Policy. The Brookings Institution. October 2001

Burchell, Robert W and Catherine C. Galley Inclusionary Zoning: Pros and Cons, The Center for Housing Policy, October 2000. Accessed on July 20,2004
http://www.inhousing.org/NHC-Report/NHC-2.htm

Brunick, Nick and Lauren Goldberg and Susannah Levine. "Voluntary or Mandatory Inclusionary Housing? Production, Predictability, and Enforcement." Business and Professional People for the Public Interest. Chicago. November, 2003

"Considerations for Density Bonus Ordinances" Breakthroughs: Successful Local Strategies for Affordable Housing. Regulatory Barriers Clearinghouse. Vol.2,4 accessed on June 1,2004 @
http://www.huduser.org/rbc/newsletter/vol2iss4more.html

"Housing-Inclusionary Zoning." Center for Policy Alternatives. Stateaction Organization Policy Summary, 2003. accessed on June 1,2004 @
http://www.stateaction.org/issues/inclusionaryzoning/inclusionaryzoning.doc

"Inclusionary Zoning: Lessons Learned in Massachusetts." National Housing Conference. NHC Affordable Housing Policy Review. Volume 2. Issue 1. January, 2002

"Issues to Consider in developing an Inclusionary Zoning Ordinance", Business and Professional People for the Public Interest, accessed on June 15, 2004
http://www.bpichicago.org/rah/rihi_pubs.html#inclusionary

Inventory of Local Zoning Ordinances and Land Development Regulations, Statewide Planning Program, Technical Paper 148, May 2001

Jordan, Jennifer. "Special zoning eyed to promote low cost houses." Providence Journal, July 25, 2002

Lauter, Rachel, Statewide Planning Research Intern-Brown University, *Inclusionary Zoning Ordinance Workshop*, research paper, May 3, 2004

Massachusetts, Commonwealth of. Superior Court Civil Action No. 00-53, Brian Dacey vs. Town of Barnstable, Memorandum of Decision and Order on Plaintiffs' Motion for Judgment on the Pleadings. Accessed on July 26, 2004 http://www.mhp.net/termsheets/dacey_vs_barnstable.pdf

Netter, Edith. *Inclusionary Zoning: Guidelines for Cities and Towns.* (Boston, MA: Massachusetts Housing Partnership Fund, September 2000). accessed on July 26, 2004
http://www.mhp.net/termsheets/inclusionaryzoning.pdf

Phillip B. Herr & Associates. "Zoning for Housing Affordability." A study prepared for The Massachusetts Housing Partnership Fund

Ray, Anne. "Inclusionary Housing: A Discussion of Policy Issues." Alachua County Department of Planning & Development. Gainesville, Florida. June 15, 2001

Siegel, Joyce. "Inclusionary Zoning Around the Country." March 2, 2000. accessed on June 1,2004 @ http://www.inhousing.org/USA%20Inclusionary/USA%20Inclusion.htm

Werwath, Peter. "Program Design Considerations." An Enterprise Foundation Issue Brief. The Enterprise Foundation, 1994

Zoning Practice, Issue Number Nine, September 2004, American Planning Association

Rhode Island State Agency World Wide Web Pages:

RI Statewide Planning Program http://www.planning.state.ri.us/

RI Housing and Mortgage Finance Corporation http://rihousing.com/

Rhode Island Government www.ri.gov

Rhode Island General Laws http://www.rilin.state.ri.us/Statutes/TITLE45/INDEX.HTM

World Wide Web Pages of Various Case Studies & Sample Ordinances

Barrington, RI http://www.ci.barrington.ri.us/

Barnstable, MA www.capecodcommission.org/bylaws/affordhous.html

Bellevue, Wa http://www.mrsc.org/mc/blvuluc/Bluc2020.html#20.20.128

Boulder, CO http://www.ci.boulder.co.us/

Boston, MA http://www.cityofboston.gov/

Burlington, VT http://www.ci.burlington.vt.us/

Burrillville, RI http://www.burrillville.org/

Cambridge, MA http://www.cambridgema.gov/index.cfm

Davis, CA http://www.city.davis.ca.us/

East Greenwich, RI http://www.eastgreenwichri.com/

East Providence, RI http://www.eastprovidence.com/

Fairfax County, VA http://www.co.fairfax.va.us/

Massachusetts	http://www.state.ma.us/dhcd/components/hac/zone.htm
Montgomery County, MD	www.inhousing.org/InclusionaryZoning/zonelaws.htm
North Kingstown, RI	http://www.northkingstown.org/
Richmond, RI	http://www.richmondri.com/
Sacramento, CA	http://www.cityofsacramento.org/
Santa Fe, NM	http://www.santafenm.gov/index.asp
Snohomish, WA	http://www.ci.snohomish.wa.us/code/14-37LowIncomeHousingIncentives.PDF
Somerville, MA	http://www.ci.somerville.ma.us/
South Kingstown, RI	http://www.southkingstownri.com/
Tiburon, CA	http://www.ci.tiburon.ca.us/

Links

If you are looking for additional housing-related information, you may want to visit one of the following sites. Access is provided purely as a public service. The State of Rhode Island does not endorse any of the linked sites or any products or services found at the linked sites.

Citizens' Housing and Planning Association
www.chapa.org

Enterprise Foundation
www.enterprisefoundation.org

Fannie Mae www.fanniemae.com

Federal Home Loan Bank of Boston
www.fhlbboston.com

Freddie Mac www.freddiemac.com

Grow Smart Rhode Island
http://www.growsmartri.com/affordablehousing.html

Harvard University Joint Center for Housing Studies
www.jchs.harvard.edu

HUD www.hud.gov

LISC www.liscnet.org

Minority Business Enterprise Commission
www.rimbe.org

National Association of Housing & Redevelopment Officials www.nahro.org

National Association of Realtors www.realtor.com

National Association of Home Builders
www.nahb.com

National Coalition for the Homeless
www.nationalhomeless.org

National Council of State Housing Agencies
www.ncsha.org

National Housing Conference www.nhc.org

National Low Income Housing Coalition
www.nlihc.org

Neighborworks www.nw.org

Research Institute for Housing America
www.housingamerica.org

Rhode Island Association of Realtors
www.riliving.com

RI Builders Association www.ribuilders.org

RI Chapter of the American Planning Association
www.riapa.org

RI Coalition for the Homeless www.rihomeless.com

RI Housing Resources Commission
www.hrc.state.ri.us

Statewide Housing Action Coalition www.shac-ri.org

Massachusetts Housing Partnership Fund
http://www.mhp.net/termsheets/inclusionaryzoning.pdfT