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## **Large Cities and Inclusionary Zoning**

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## **Introduction**

Inclusionary zoning has often been viewed as a policy tool for medium-sized cities or relatively affluent east coast counties. The nation's oldest and most celebrated inclusionary zoning law exists in Montgomery County, Maryland.<sup>1</sup> For nearly three decades, inclusionary zoning grew in popularity across the country, including over 100 communities in both California and Massachusetts. However, until the late 1990s, no large major U.S. city had adopted a mandatory citywide inclusionary zoning law.<sup>2</sup>

Recently, that reality has changed. Large cities such as Boston, Massachusetts; Denver, Colorado; Sacramento, California; San Diego, California; and San Francisco, California, have all adopted mandatory inclusionary zoning laws (see Appendix). This policy brief provides: 1) a summary of the major benefits of inclusionary zoning; 2) a description of some of the unique aspects of the various programs adopted by large cities thus far; and 3) case studies of five large U.S. cities with inclusionary zoning programs.

## **Benefits to Large Cities from Inclusionary Zoning**

Large cities are beginning to realize the many benefits of inclusionary housing:

- 1) **Addressing the Shortage of Affordable Housing.** Inclusionary zoning produces affordable housing. Most major U.S. cities lack sufficient affordable housing for moderate- to low-income families and individuals, seniors, and special needs populations. Inclusionary zoning stands as a proven tool to help address this need.
- 2) **Market-Based Tool Requiring Less in the Way of Public Subsidies.** Inclusionary zoning provides a proven market-driven tool to create affordable housing without large amounts of public subsidy. Large urban centers, despite their relative resurgence in the 1990s, still have difficulty raising sufficient public revenues to serve the extensive needs of their diverse populations. The fiscal capacity of large cities has been hamstrung by the thirty-year retrenchment in federal spending on cities and on housing in general. Poor economic conditions since 2000 and the recent rounds of federal tax cuts have left large urban centers with an even tougher challenge in raising sufficient public revenues to meet all their local needs. Inclusionary zoning provides large cities with a proven tool for producing affordable housing for their working families while using fewer public dollars. This allows large cities to preserve the federal and state housing dollars that they do receive for more vulnerable populations and to preserve more of their own local tax base for other pressing public needs.

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<sup>1</sup> Nearby counties of Fairfax County, Virginia, and Loudon County, Virginia, (also affluent) also have inclusionary zoning programs.

<sup>2</sup> The City of San Diego, California, adopted an inclusionary zoning requirement for a specific part of the city in 1992, requiring a 20% affordable housing set-aside on all developments occurring in that area of the city. In 2003, the city adopted an inclusionary zoning ordinance for the entire city, requiring a 10% set-aside on all developments of 10 or more units. Boston, Massachusetts, adopted an inclusionary zoning program by Executive Order in 2000 with a 10% set-aside. San Francisco adopted an inclusionary zoning ordinance in January of 2002 with a 10% set-aside on developments of 10 or more units. Sacramento adopted an inclusionary zoning ordinance in 2000, requiring 15% affordable units on developments of 9 or more units. Denver adopted an inclusionary zoning ordinance in 2002, requiring a 10% set-aside.

- 3) **Meeting Economic Development and Workforce Housing Needs.** Inclusionary zoning boosts local economic development by creating more workforce housing and by increasing the disposable income of moderate- and low-income households. Many cities lack enough affordable housing for key populations: teachers, firefighters, policemen, child care workers, janitors, entry-level manufacturing workers and technical workers, etc. Without affordable homes for people in these occupations, large cities risk their competitiveness in a global economy that requires a skilled and accessible workforce near jobs. In addition, more affordable housing means that working households spend less of their monthly income on their housing costs, leaving more disposable income to spend on goods and services in the local economy. Inclusionary zoning thus provides a “one-two” punch to aid large cities in their efforts to maintain a strong economic environment.
- 4) **Positively Impacting Patterns of Economic and Racial Segregation.** Inclusionary housing can positively impact the pattern of racial and economic segregation that plagues so many of our nation’s large urban centers. Racial and economic segregation have contributed to increased crime rates, failing schools, and a lack of social stability. Inclusionary housing can mitigate racial and economic segregation by producing low- and moderate-income housing in a healthy, mixed-income fashion with market-rate development.
- 5) **Helping to Prevent Sprawl and Disinvestment.** A lack of affordable housing in large urban centers provides one of the strongest incentives for increased sprawl. If affordable housing cannot be found in the city, developers and citizens will look to the fringe of the metropolitan region, where land costs are lowest, in order to develop and buy housing that is more affordable. Increased sprawl in a large metropolitan region can mean reduced public and private investment in large urban cores. Through an inclusionary zoning program, large cities can use density bonuses and other cost offsets to produce a stock of affordable housing within the city core, thereby helping to reduce the pressure to continually sprawl outward in order to produce affordable housing on the fringe.

Large cities face housing shortages that threaten the economic and social well-being of their communities. Inclusionary zoning provides them with one market-based tool to address the need for a wide range of housing options.

### **Fewer Cost Offsets in Large Cities**

Unlike many of the smaller or medium-sized communities that have pointed the way for nearly three decades, three of the five large cities profiled in this policy brief have chosen to provide little or nothing in the way of “cost offsets” to help the developer pay for the cost of producing the affordable “set-aside” units.<sup>3</sup> City staff interviewed in these cities indicated that “cost offsets” were not necessary because the strength of the local housing market and the ongoing demand from people

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<sup>3</sup> Most inclusionary zoning programs around the country include density bonuses, fee waivers, relaxed development standards, an expedited permitting process, or in some cases, outright subsidies that aid the developer in paying for the production of the affordable units.

to live and build housing in those cities allowed developers to build the “set-aside” units and still make their project work economically. Thus far, city officials in San Diego, San Francisco, and Boston indicate that development has continued apace since passage of inclusionary zoning.<sup>4</sup> In fact, development has increased since passage of the ordinance in San Francisco.

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<sup>4</sup> Interviews with Teresa Ojeda, San Francisco City Planner, August 2003.; Interview of Bill Levin, San Diego Senior Planner, August 2003.; Interview of Susan Tinsky, Chief Policy Officer Adviser for the City of San Diego Housing Commission, August 2003.; Kiely, Meg. “Boston’s Policy Gives Developers Choice,” In: Inclusionary Zoning: Lessons Learned from Massachusetts, NHC Affordable Housing Policy Review, January 2002.

## **Case Studies from Five Large U.S. Cities**

### **Case Study: Boston, Massachusetts**

#### **Background**

Boston, a city of over half a million people, benefited significantly during the economic boom of the 1990s.<sup>5</sup> However, while area incomes increased, they failed to keep pace with housing prices, which soared at a double-digit pace. As construction and land costs increased, gentrification spread from the central downtown areas to surrounding neighborhoods, causing the displacement of moderate-income families. In response to these changes in Boston's housing market and pressure from community-based organizations and housing advocates, Mayor Thomas Menino signed an Executive Order in February 2000 that created an inclusionary housing policy.

#### **The Program**

Under Boston's policy, any residential project that contains 10 or more units and is either financed by the City of Boston or the Boston Redevelopment Authority (BRA), is to be developed on property owned by the City or the BRA, or requires zoning relief, triggers the requirements of the program. Due to the antiquity of the Boston Zoning Code, practically all residential development over nine units is covered by the Executive Order.

The Boston policy requires qualifying developments to set aside 10% of the units as affordable. While the Boston policy does provide for off-site development of the affordable units, a developer who exercises this option must set aside 15% of the units as affordable instead of just 10%. This creates an incentive for developers to construct the affordable units on-site. Boston's program also allows for a fee in-lieu option, in which the developer is required to make a payment to the BRA equal to 15% of the total number of market-rate units multiplied by an affordable housing cost factor. The affordable housing cost factor, initially established at \$52,000, is derived from the average subsidy needed to develop a unit of affordable housing and is adjusted annually.<sup>6</sup> The funds collected from the fee in-lieu option are used to subsidize other affordable housing developments in Boston.

Unlike the vast majority of other municipalities, the Boston policy does not provide a general density bonus for developers. However, developers do qualify for increased height and FAR allowances in the central financial district.

Boston has a higher income-target than most municipalities with an Inclusionary Housing Program. At least half of the set-aside units must be priced affordable for households making less than 80% of area median income (AMI) for the Boston MSA. The remaining set-aside units are priced affordable for households making between 80% and 120% of AMI, provided that on average these higher-tier units are affordable to households earning 100% of AMI.

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<sup>5</sup> U.S. Census Bureau, 2000 Census.

<sup>6</sup> For the process for the annual determination, see City of Boston, Department of Neighborhood Development web site, <http://cityofboston.gov/dnd>.

The units must remain affordable for at least 30 years, with the possibility of extending the affordability period for an additional 20 years, for a total of 50 years.<sup>7</sup> The resale price of the affordable units is also restricted to a maximum increase of approximately five percent per year, adjusted for approved improvements and other miscellaneous fees.

### **The Political Landscape**

Prior to Mayor Menino's Executive Order, Boston had an informal inclusionary housing requirement. In 1999, affordable housing advocates investigated the enforcement of this requirement and discovered that two high-profile luxury developments had been approved that year without any affordable housing set-asides. Housing advocates pressured the Mayor to implement and enforce a formal inclusionary zoning policy. Soon thereafter, Mayor Menino issued his Executive Order.<sup>8</sup>

The Executive Order's off-site construction and fee in-lieu payment options reflect the policy preferences of many affordable housing advocates in Boston. Many advocates are more concerned about the quantity of affordable housing in Boston than the dispersal of the units among market-rate homes. In fact, many advocates expressed a preference for having the units in neighborhoods, rather than downtown, where much of the new residential development is occurring. Since many advocates were more concerned about the quantity of affordable units, there was a push for strong off-site and fee payment options, as these options could produce a larger number of units.<sup>9</sup>

Boston benefited from a receptive Mayor, a supportive City Council, positive media, a lack of an organized effort by developers, and the examples of nearby towns that already had successful inclusionary housing policies. These factors created the positive political environment for the creation of an inclusionary housing program.

### **The Impact of the Executive Order**

In the initial year of implementation of the Executive Order, eight privately financed housing developments fell under the requirements of the policy. These developments were predominantly high-end luxury developments. As of January of 2002, developers have contracted to contribute over \$4 million for affordable housing construction. Over 200 affordable units have been constructed as a result of the policy, with many more in the pipeline.<sup>10</sup> At the same time, new housing development continues to boom in Boston, and development projects continue to be quite lucrative, even with the affordable unit set-aside requirement.<sup>11</sup>

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<sup>7</sup> Kiely, Meg. "Boston's Policy Gives Developers Choice," *Inclusionary Zoning: Lessons Learned in Massachusetts*, NHC Affordable Housing Policy Review, VI. 2, Issue 1, January, 2002.

<sup>8</sup> Interview of Tom Callahan, Director of the Massachusetts Affordable Housing Alliance (MAHA), April, 2002.

<sup>9</sup> Interview of Tom Callahan, Director of the Massachusetts Affordable Housing Alliance (MAHA), April, 2002.

<sup>10</sup> Kiely, Meg. "Boston's Policy Gives Developers Choice," *Inclusionary Zoning: Lessons Learned in Massachusetts*, NHC Affordable Housing Policy Review, VI. 2, Issue 1, January, 2002.

<sup>11</sup> Interview of Tom Callahan, Director of the Massachusetts Affordable Housing Alliance (MAHA), April, 2002; Interview of Tim McGurthy, Special Assistant to the Director of the Boston Redevelopment Authority (BRA), March, 2001.

## **Case Study: Denver, Colorado**

### **Background**

Denver, a city of 554,636 people, has one of the newest inclusionary housing programs in the country.<sup>12</sup> Passed by the City Council in 2002, the ordinance is quite detailed in its requirements and incentives. The Housing and Zoning codes were amended to create a “moderately priced dwelling unit” (MPDU) program.

### **The MPDU Program**

Unlike many local inclusionary zoning ordinances that do not cover rehabilitation work, Denver’s new program covers not only new residential construction, but also existing buildings that are being substantially rehabilitated or remodeled to provide dwelling units. “Substantial” is defined as the rehabilitation or remodeling of more than 50% of the existing building. The program is mandatory for for-sale developments of 30 or more units but is voluntary for rental developments, since limitations on rent levels on private residential property is not permitted under Colorado state law.<sup>13</sup>

For-sale developments are required to set aside 10% of the units in the development as affordable for households earning 80% of Area Median Income (AMI) or below. However, if the development is to be greater than three stories, has an elevator, and has over 60% of its parking as structured, the affordable units are to be priced affordable for households earning 95% AMI or below. Rental developments can voluntarily set aside 10% of the units as affordable to households earning 65% AMI, less a utility allowance. If the rental development is greater than three stories, has an elevator, and has over 60% of its parking as structured, the rental set-aside units should be priced affordable for households making 80% of the AMI.

### **The Incentives**

In addition to the usual incentives provided by municipalities, Denver also provides a cash subsidy to developers for the affordable units.<sup>14</sup> Developers of for-sale units can receive a \$5,000 reimbursement for each affordable unit produced, up to 50% of the total units in the development. Developers of rental units can receive a \$10,000 reimbursement per affordable unit if the units are priced for households making 50% AMI or below, less a utility allowance. However, only developments that provide at least the minimum number of affordable units required by the ordinance can receive the cash subsidies. Further, these cash subsidies are only available if funding exists in the “special revenue fund.” This special revenue fund is funded by fee in-lieu payments and allocations by the City Council.

Denver also reduces the parking requirements up to 20% of the required zoned parking if the developer produces at least one additional affordable unit for every 10 parking spaces reduced. Denver provides an expedited review process, allowing developers to have their review by the

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<sup>12</sup> U.S. Census Bureau, 2000 Census.

<sup>13</sup> The Local Control of Rents Prohibited Statute, Section 38-12-301, 10 C.R.S. (1999), precludes Colorado municipalities from “enact[ing] any ordinance . . . which would control rents on private residential property.” The Colorado Supreme Court struck down a municipal ordinance that required economic developers to mitigate the effects of that development by generating affordable rental housing units for 40% of the new employees created by the development. The Supreme Court found that the ordinance violated Section 38-12-301. *Town of Telluride v. Lot Thirty-Four Venture, L.L.C.*, 3 P.3d 30 (2000).

<sup>14</sup> Denver provides cash subsidies for affordable units because the law does not permit the city to provide fee waivers to developers.

Community Planning and Development Agency completed within 180 days. Finally, Denver provides a density bonus of 10% to developers.

***Off-Site Development***

The Denver ordinance permits off-site development, though the standard is somewhat vague. The ordinance states that the Director of Denver’s Community Planning and Development Agency (CPDA) may allow a developer to build the affordable units off-site if the developer builds “more” affordable units than originally required. However, “more” is not defined in the ordinance.

Instead of constructing the affordable units, developers may also contribute an in-lieu fee to the “special revenue fund” in an amount equal to 50% of the price per affordable unit not provided. The price of the affordable unit is the maximum sales price provided by the CPDA without homeowners’ association fees.

***Income Verification***

Households interested in the affordable units must provide documentation of income eligibility to the CPDA. Households must provide a copy of the proposed sales contract; a copy of the proposed settlement cost document; “all documentation necessary for CPDA to determine eligibility of the buyer”; and affidavits from the buyer and the seller on the truth of the documents, as well as a signed memo of acceptance of the affordability covenants. The CPDA then reviews these documents and verifies the income levels of the household and their eligibility for an affordable unit.

***Period of Affordability***

The set aside for-sale and rental units must remain affordable for 15 years. The ordinance requires that a covenant be recorded against the property that binds the owners and all other parties with interest to the property for the entire control period. The CPDA still has a right to purchase at the fair market rate if the unit is placed on the market within ten years of the end of the control period.

The Denver Ordinance also creates a formula for the city to receive some of the market proceeds from the affordable unit once it is sold on the open market at the end of the control period. When an owner of an affordable unit sells it after the end of the control period, the owner must pay the special revenue fund one-half of the excess of the total resale price over the sum of: the prior maximum sales price; a percentage of the affordable unit’s prior purchase price with the cost of living increase since last sold; the fair market value of documented capital improvements; and a reasonable sales commission. If the amount remaining is less than \$20,000, the amount due to the special revenue fund will be adjusted so the seller receives \$10,000. If the amount is less than \$10,000, the seller will receive the entire amount.

***Enforcement***

Denver has several tools for enforcement for the various stages of development. If the developer violates the ordinance in any way, including not constructing the required affordable units, the city may deny, suspend, or revoke any and all building or occupancy permits. The city can also withhold any additional building permits until the affordable units are built. If the ordinance is violated by the sale of an affordable unit, the Director of the CPDA can enjoin or void any transfer of the affordable unit and require the owner to sell the unit to an eligible household.



## **Case Study: Sacramento, California**

### **Background**

Sacramento, a city of over 400,000, saw significant growth in the 90's in residential and commercial development on the outer-edges of the city.<sup>15</sup> While the commercial development created new jobs at a variety of income levels, the majority of the residential development was geared towards upper-income households. In order to provide housing affordable to low- and moderate-income families near or within these job-rich areas, the City Council explored an inclusionary housing program. Eventually, through the work of a broad coalition of affordable housing advocates, labor unions, neighborhood associations, environmental groups, minority communities, the faith community, and the Chamber of Commerce, the Sacramento City Council passed the Mixed-Income Housing Ordinance in the year 2000.

### **The Program**

The Mixed-Income Housing Ordinance applies to all residential development over nine units in “new growth areas,” i.e. large undeveloped areas of land at the city’s margins, newly annexed area, and large interior redevelopment project areas. The set-aside requirement under the Mixed-Income Housing Ordinance is 15% of all units. However, the affordable units can be single-family or multi-unit. This flexibility in the type of units helps developers determine a cost-effective way to construct the affordable units.<sup>16</sup>

The Mixed-Income Housing Ordinance specifically tiers the affordable units to create more units targeted to the lowest-income families. Of the affordable units that are produced within the development, one-third of the units must be priced for households making between 50 and 80% of area median income (AMI), while the remaining two-thirds of the units must be priced for households making less than 50% AMI. The affordable units must remain affordable for 30 years.

Sacramento provides a density bonus of 25%, which tracks the density bonus required under California state law.<sup>17</sup> Besides the density bonus, developers may also receive expedited permit processing for the affordable units, fee waivers, and relaxed design guidelines. Also, developers of inclusionary projects may apply and receive priority for all available subsidy funding, including funds from the city’s housing trust fund, tax increment funds from redevelopment areas, and federal and state subsidies.

If the proposed development is an exclusively single-family development, the developer can dedicate land off-site or build the affordable units off-site only if there is insufficient land zoned multi-family at the development site. However, the alternative land or placement of the affordable units must be within the “new growth” area.

### **Impact**

The Sacramento ordinance is responsible for the creation of 254 units, with hundreds more in the pipeline.

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<sup>15</sup> U.S. Census Bureau, 2000 Census.

<sup>16</sup> Interview with David Jones, Sacramento City Council Member, March, 2001.

<sup>17</sup> California state law entitles developers to a 25% density bonus if 20% or more of the total units of a housing development are affordable to lower income households or 10% are affordable to very low-income households.

## **Case Study: San Diego, California**

### **Background**

In 1992, voters in the City of San Diego imposed an inclusionary housing requirement in the North City Future Urbanizing Area (FUA), a developing section of the city with no rental or affordable housing. The requirement reserves 20% of all new rental and for-sale dwelling units for households earning 65% of the Area Median Income (AMI). The FUA's inclusionary zoning program, which does not offer developers the option to pay an in-lieu fee, generated 1,200 affordable units in the last decade. City planners estimate that the inclusionary zoning ordinance will result in a total of 2,400 affordable units by the time the FUA is built out.<sup>18</sup>

The political process to pass a citywide inclusionary zoning ordinance started in 2000 when the city began updating its Housing Element as required by state law. The Plan Commission, interested in adopting an inclusionary zoning ordinance, recommended the creation of a working group to explore the potential of a citywide ordinance. Initially, developers adamantly opposed an inclusionary zoning ordinance, but they became more cooperative as the two-year process unfolded. Developers ultimately worked closely with the city's Housing Commission on certain provisions, meeting on a weekly basis for several months. A detailed economic analysis of the potential impact of inclusionary zoning proved to be the most effective tool in convincing developers to support the ordinance.<sup>19</sup>

San Diego, now a city of over 1.2 million people, adopted a citywide inclusionary zoning ordinance in July 2003. The effort to pass the ordinance was based on the FUA program's success, the rising demand for affordable housing, and the recommendation of the inclusionary zoning working group. Inclusionary zoning is one tool the city is promoting to address a lack of affordable housing that forces employees "to live in less than adequate housing within the city, pay a disproportionate share of their incomes to live in adequate housing within the city, or commute ever-increasing distances to their jobs from housing located outside the city."<sup>20</sup> Unlike the FUA ordinance, the citywide ordinance offers developers the option to pay a fee in lieu of building affordable units on-site. Prime housing market conditions in San Diego create a financial incentive to pay a fee in lieu of building units on-site. Thus, it remains uncertain whether the new inclusionary zoning law will generate a large supply of integrated affordable housing.

### **The Program**

#### *Set-Aside Requirements*

San Diego's city-wide inclusionary zoning ordinance requires all residential developments of ten or more units to set aside 10% of the units as affordable to households at or below 65% of the area median income (AMI) for rental units and at or below 100% of the AMI for owner-occupied units. The FUA is exempt from the citywide ordinance and will continue to adhere to the 1992 FUA inclusionary zoning framework, which has a higher developer set-aside requirement of 20%.

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<sup>18</sup> Interview of Bill Levin, San Diego Senior Planner.

<sup>19</sup> Interview of Susan Tinsky, Chief Policy Officer Advisor for the City of San Diego Housing Commission, August, 2003.

<sup>20</sup> San Diego Ordinance Number O-2003-135, page 3.

### *Developer Incentives*

Neither the 1992 FUA inclusionary zoning ordinance nor the 2003 citywide ordinance provides developers with incentives or cost off-sets for building affordable units. The city opted not to offer cost off-sets, such as fee waivers or density bonuses, because developers can easily cover the cost of affordable units through the sale of market-rate units, according to an economic analysis conducted by a private firm for the Housing Commission.<sup>21</sup>

### *On-site Construction*

The ordinance requires that on-site affordable units be comparable to the market-rate units in bedroom mix, design, and overall quality of construction with the exception that the affordable units do not have to exceed three bedrooms. Allowances are also made for the interior features and square footage of the affordable units.

### *Income Targets*

San Diego's inclusionary zoning ordinance targets households at or below 65% of the Area Median Income (AMI) for rental units and at or below 100% of the AMI for owner-occupied units. The new inclusionary zoning ordinance exempts a residential development or a portion of a residential development that is sold to households earning less than 150% of the AMI.<sup>22</sup> The City Council insisted on this provision to encourage the development of condominiums within this price range.<sup>23</sup>

### *Period of Affordability*

The new citywide ordinance requires rents to remain affordable for 55 years. For-sale units do not have a required period of affordability, but the ordinance states that equity from the sale of the affordable unit should be split between the city and the homeowner. The city devised an incremental system by which equity is shared. A homeowner is entitled to a larger share of the equity for each year of ownership. For example, if a unit is sold after two years, the owner is entitled to 21% of the equity, whereas a unit sold after ten years entitles an owner to 69% of the equity. All funds collected by the city from the shared equity agreement are deposited in the Inclusionary Housing Fund to support affordable housing projects. The city is also entitled to first right of refusal on any affordable for-sale unit.

### *In-Lieu Options*

Developers can opt to make a fee in-lieu payment, which is calculated based on the square footage of an affordable unit compared to the gross square footage of the entire project. The fee is phased in over a three-year period and rises from \$1.00 per square foot the first year to \$2.50 per square foot the third year.<sup>24</sup> Unlike the citywide ordinance, the FUA ordinance does not offer any fee in-lieu option. The large number of on-site affordable units created under the FUA ordinance is attributable to the absence of any in-lieu fee option.<sup>25</sup>

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<sup>21</sup>Interview of Bill Levin, San Diego Senior Planner, August 2003.

<sup>22</sup>San Diego Ordinance Number O-2003-135, 142.303, c2.

<sup>23</sup>Interview of Susan Tinsky, Chief Policy Advisor for the City of San Diego Housing Commission, August 2003.

<sup>24</sup>San Diego Ordinance Number O-2003-135, 142.1310 d.

<sup>25</sup>Interview of Bill Levin, San Diego Senior Planner, August 2003.

### *Off-site Development*

The inclusionary housing requirements can also be satisfied by providing the same number of units at another site within the same Community Planning Area. In contrast to most ordinances in the nation, San Diego's ordinance does not require a higher affordable housing set-aside for units constructed off-site. Developers may provide affordable units through a combination of on-site and/or off-site construction and a fee in-lieu payment.

Developers must seek a variance from the Planning Commission to build affordable units off-site within a different Community Planning Area. Variance requests only exempt developers from adhering to portions of the ordinance and are subject to a Plan Commission decision with appeal to the City Council. To acquire a variance, a developer must demonstrate a special circumstance unique to that development; that the development would be infeasible without a modification; or that a substantial financial hardship would result from adherence to the ordinance.<sup>26</sup>

The City Council may exempt a developer from the ordinance through a waiver. Requests for a waiver must satisfy the same criteria as an application for a variance, but a waiver request is subject to a higher degree of scrutiny than a variance. The San Diego Housing Commission processes all waivers, but final approval must come from the City Council.

### *Administration*

The Inclusionary Housing Program is administered by two city agencies: the Development Services Department and the San Diego Housing Commission. The Chief Executive Officer of the San Diego Housing Commission is responsible for determining targeted rental and ownership affordability, resident qualifications, and monitoring the program.

## **The Impact of Inclusionary Zoning**

The ability of inclusionary zoning to produce 1,200 affordable units in the FUA was a key factor in the decision to adopt a citywide ordinance. According to San Diego senior planner Bill Levin, the pace of development in the FUA did not slow after passage of an inclusionary zoning requirement.<sup>27</sup> This provided the development community with tangible assurance that inclusionary zoning does not have a negative impact on their industry. San Diego's Planning Department does not anticipate that the citywide ordinance will produce as many on-site affordable units as the FUA ordinance because the citywide ordinance provides developers with the option to pay an in-lieu fee. Due to the strong housing market in San Diego, planners project that the in-lieu fee will not be able to keep pace with the price of building on-site. Thus paying an in-lieu fee will be a less expensive option than building units on-site.

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<sup>26</sup>San Diego Ordinance Number O-2003-135, 142.1304 d.

<sup>27</sup> Interview with Bill Levin, San Diego Senior Planner.

## **Case Study: San Francisco, California**

### **Background**

In 1992, San Francisco, a city of almost 800,000 people, adopted a limited inclusionary housing program to address the shortage of affordable housing for very-low- and low-income residents. The California State Legislature requires all local governments to develop a comprehensive, long-term general plan that encourages the development of a variety of housing types for all income levels. Inclusionary zoning is a popular policy tool in California, where it has been adopted in over 100 municipalities. The 1992 ordinance only applied to planned unit developments (PUDs) and projects requiring a conditional use permit, neither of which affected a substantial amount of residential development in the city.<sup>28</sup> Most of San Francisco is built out, and the city lacks vacant lots that are large enough for PUDs. In addition, most projects in San Francisco do not require a conditional use permit.

The majority of housing built in the mid- to late 1990s consisted of live/work units. According to city planner Teresa Ojeda, live/work units were initially anticipated to provide cheap or relatively inexpensive housing for artists by allowing them to work in the same complex where they live. By the mid-1990s, live/work units were in high demand for vocations other than artists. This increased demand drove up housing costs in working-class neighborhoods.<sup>29</sup> Live/work units that started at about \$300,000 in the mid-1990s reached \$700,000 by the end of the decade.<sup>30</sup> During the 1990s, live/work units were zoned as commercial development and were exempt from the inclusionary housing requirement, as well as other building standards and fees normally imposed on residential development.

In January 2002, the inclusionary zoning ordinance was expanded from applying only to PUDs and projects requiring conditional use permits to all residential projects of ten units or more, including live/work units. The program's expansion came in response to the continuing affordable housing crisis and opposition from community groups to the displacement of low-income households as a consequence of rising property values and the increase in unattainable live/work units.

### **The Program**

#### *Set-Aside Requirements*

Under the new ordinance, 10% of the units in a residential development of ten or more units must be set aside as affordable. The set-aside requirement jumps to 15% if the units are provided off-site. PUDs and developments that require a conditional use permit are subject to a 12% set-aside requirement, which increases to 17% if the affordable units are built off-site.

#### *Developer Incentives*

San Francisco offers minimal developer incentives. Such incentives are limited to receiving refunds on the environmental review and on the building permit fees for the portion of the housing project that is set aside as affordable.

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<sup>28</sup>Interview of Teresa Ojeda, San Francisco City Planner, August 2003.

<sup>29</sup>Ibid.

<sup>30</sup>Ibid.

### *On-site Construction*

The affordable units must be comparable in number of bedrooms, size, exterior appearance, and overall quality to market-rate units.<sup>31</sup> The ordinance makes allowances for square footage and interior features, which do not have to meet the same standards as the market-rate units.

### *Income Targets*

For rental units, the inclusionary zoning ordinance targets households earning 80% of the area median income (AMI). For owner-occupied units, the ordinance applies to households earning up to 120% of the area median income. San Francisco's area median income calculation includes the wealthy counties of San Mateo and Marin. As a result, the AMI is substantially higher than other US cities. The AMI for a family of four is \$91,500, and the AMI for a single-person household is \$62,050. Therefore, a household of four at 80% of the AMI earns a maximum annual salary of \$73,200, and a household of four at 120% of the AMI earns a maximum annual income of \$109,800.<sup>32</sup>

### *Off-site and In-Lieu Options*

Developers can elect to construct affordable units off-site but are discouraged from doing so by a requirement that increases the affordable unit set-aside to one and one half more affordable units than are required for on-site construction. In-lieu fee payments are made to the Citywide Affordable Housing Fund and are appropriated for affordable housing. The amount of the fee is determined by several factors including the projected value of the affordable units had the developer constructed them on-site.

### *Period of Affordability*

San Francisco's inclusionary zoning ordinance requires that both rental and for-sale units remain affordable for 50 years.<sup>33</sup> All housing projects must record a Notice of Special Restriction with the Recorder of the City and County of San Francisco that incorporates affordability restrictions. If an affordable rental unit is converted to an ownership unit, the ordinance requires that it remain affordable and continue to adhere to the affordability control period. The San Francisco Planning Commission and Planning Department monitor affordability controls.

### *Administration*

The Mayor's Office of Housing and the Plan Commission administer the inclusionary zoning program. The ordinance requires that the Mayor's Office of Housing conduct a study every five years to determine the relationship "in nature and amount between the production of market-rate residential housing and the availability and demand for affordable housing in San Francisco."<sup>34</sup> The studies will be used to determine whether to increase affordability levels.

### **The Impact of Inclusionary Zoning**

Since the adoption of comprehensive inclusionary zoning in 2002, the program has generated 90 affordable units through projects totaling 920 units. Currently, proposed housing projects under planning review total about 7,485 units, which could result in approximately 745 affordable units.<sup>35</sup>

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<sup>31</sup>San Francisco Zoning Ordinance, section 315.4 c.

<sup>32</sup>Interview of Teresa Ojeda, San Francisco City Planner, August 2003.

<sup>33</sup>San Francisco Zoning Ordinance, section 315.7 (a).

<sup>34</sup>San Francisco Zoning Ordinance, section 315.8 e.

<sup>35</sup>Interview of Teresa Ojeda, San Francisco City Planner, July 2003. Calculations based on the 2003 San Francisco affordable rental housing guidelines.

**Large Cities with Inclusionary Housing Programs**

	<b>Affordable Units Produced</b>	<b>Threshold Number of Units/ Income Target</b>	<b>Set-Aside Requirement</b>	<b>Control Period</b>	<b>In lieu-fee Payment/ Off-site Development</b>	<b>Density Bonus</b>	<b>Other Developer Incentives</b>
<b>Boston, MA</b> (2000) Population: 589,141	200 inclusionary units since 2000	<i>Threshold:</i> 10 or more units <i>Income Target:</i> at least one-half of affordable units for households earning less than 80% of the AMI; remaining affordable units for households earning between 80-120% of the AMI, with an average of 100% of the AMI	10% set-aside	“Maximum allowable by law”	<i>Fee:</i> must be equal to 15% of the total number of market-rate units times an affordable housing cost factor <i>Off-site:</i> may build off- site, but set-aside requirement increases to 15%	None	No citywide developer incentives, but increased height and FAR allowances permitted in the financial district
<b>San Francisco, CA</b> (1992, expanded in 2002) Population: 776,733	128 units completed between 1992 and 2000; 90 units since 2002; 745 units in the pipeline	<i>Threshold:</i> 10 or more units <i>Income Target:</i> for rental units, households earning 80% or less of the AMI; for for-sale units, households earning 120% of the AMI	10% set-aside	50 years for rental and for-sale units	<i>Fee:</i> determined by several factors including the projected value of on-site affordable units; in-lieu payments are made to the Citywide Affordable Housing Fund <i>Off-site:</i> Developers can elect to build affordable units off-site, but the set-aside requirement increases to 15%	None	Refunds available on the environmental review and building permit fees that apply to the affordable units

	<b>Affordable Units Produced</b>	<b>Threshold Number of Units/ Income Target</b>	<b>Set-Aside Requirement</b>	<b>Control Period</b>	<b>In lieu-fee Payment/ Off-site Development</b>	<b>Density Bonus</b>	<b>Other Developer Incentives</b>
<b>Denver, CO</b> (2002) Population: 554,636	804 planned units since 2002	<i>Threshold:</i> 30 units or more <i>Income Target:</i> 65% of the AMI for rental units and less than 80% of the AMI for for-sale units	10% of for-sale units or a voluntary set-aside of 10% for rental units	15 years	<i>Fee:</i> 50% of the price per affordable unit not built <i>Off-site:</i> allowed if developer builds “more” affordable units than required on-site	Up to 20% for single-family units; up to 10% for multi-family units	\$5,000 reimbursement for each for-sale unit, up to 50% of the total units in the development; \$10,000 reimbursement for each affordable rental unit if unit is priced for households at 50% of the AMI or below
<b>San Diego, CA</b> (1992, expanded in 2003) Population: 1,223,341	1,200 units completed between 1992 and 2003	<i>Threshold:</i> 10 or more units <i>Income Target:</i> rental units are set aside for households earning at or below 65% of the AMI; for-sale units are set aside for households earning at or below 100% of the AMI	10% set-aside	55 years for rental and for-sale units	<i>Fee:</i> calculated based on the square footage of an affordable unit. Fee increases between 2003 and 2006 from \$1.00 per square foot to \$2.50 per square foot <i>Off-site:</i> Developers can opt to build off-site (set-aside does not increase)	None	None
<b>Sacramento, CA</b> (2000) Population: 407,075	465 units completed, hundreds more in the pipeline	<i>Threshold:</i> Any development over 9 units <i>Income Target:</i> 15% of the units must be set aside as affordable. Of the affordable units that are produced in the development, one-third of the units must be priced for households making between 50% and 80% of the AMI. Remaining two-thirds must be priced for households making less than 50% of the AMI	15% set-aside	30 years	Can dedicate land off-site or build off-site if: <ul style="list-style-type: none"> <li>there is insufficient land zoned as multi-family on-site</li> <li>Alternative land or units must be in “new growth” areas</li> </ul>	25%	Expedited permit process for affordable units; fee waivers; relaxed design guidelines; may receive priority for subsidy funding



