

**Richard Drdla Associates** inc  
affordable housing consultants

# **An Introduction to Inclusionary Housing Programs**

Wellesley Institute

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# Introduction to Inclusionary Housing Programs

## What are inclusionary housing programs?

Inclusionary housing programs are municipal programs directed at providing affordable housing on an on-going, consistent and sustainable basis. These programs are particularly characterised by their reliance upon the development regulations and approval process to have private developers provide some portion of the housing within their new market developments as affordable housing.

### Main Models

There are currently two prominent models for inclusionary housing programs. Both have proved to be effective in producing affordable housing over many years. Both have developed their own distinctive set of rules and procedures, and both are widely used in many jurisdictions.

The first is 'inclusionary zoning' as practised in the US. Introduced in the early 1970s, it is now used in at least 300 communities, and perhaps as many as 400, in over a dozen states.

The second is the 'planning gain' system used in Britain. First introduced by a number of local governments in the 1980s, it is now promoted and supported by national planning legislation in England, Scotland and the other parts of Britain.

No similar country-wide model has been developed in Canada. Montreal, Vancouver and Toronto have enacted their own inclusionary housing policies that share certain characteristics.

Of the two main models, inclusionary zoning would be the one most readily used here because of the close similarity of the planning and regulatory systems in the two countries.

### **American Inclusionary Zoning Model**

Inclusionary zoning is the particular model of inclusionary housing practised across the US. Although inclusionary housing practices have been used in Canada (see below), none have fully replicated this particular approach. There are no inclusionary zoning programs in this country.

The inclusionary zoning model encompasses the following basic practices:

- obliging virtually all new private residential developments to provide affordable housing, excepting possibly relatively small developments, while generally including those built as-of-right within the approved regulations.

- requiring the provision of a fixed and non-negotiable percentage – typically, somewhere between 10% to 20% – of the total units as affordable units.
- delivering affordable housing at a price or rent substantially below that for the corresponding market units available on the market.
- relying on concessions available through the regulatory process – particularly density bonuses – but not financial subsidies, to reduce the cost burden on the developers for providing the affordable housing.
- targeting primarily the provision of affordable units constructed on the same site as the market units, but sometimes allowing other alternatives – like payment of fees-in-lieu and construction on another site – under certain circumstances.
- inter-mixing the affordable units within the market units, and generally building them in a way that makes them largely indistinguishable from the outside.
- locking in the affordability of the affordable units so that the reduced price or rent is passed on to subsequent eligible buyers or renters either “permanently” or for a long period of time.

### **Canadian Affordable Housing Practices**

The inclusionary zoning represents a fundamental departure to how affordable housing has been provided in Canada so far.

#### Social Housing

Affordable housing in this country, first of all, has been provided almost entirely as social housing. Social housing is essentially a product of federal/provincial programs, in which housing is provided under rules and priorities set by the senior governments, and almost entirely through financial subsidies provided by those governments. To date, those programs, which recently have been intermittent at best, have been used to provide exclusively rental housing affordable to low-income households.

In contrast, inclusionary housing programs are municipal programs. They are run by local governments according to their own rules and priorities, and rely upon the incentives and supports that can be made available through the regulatory process

Notably, they are able to operate without funding from senior governments. While some programs on occasion take advantage of this funding, it is typically used on top of – not in place of – the regulatory concessions as a way of achieving an even lower affordability.

Also, inclusionary housing programs have provided mainly, but not entirely, affordable ownership housing for moderate-income households. These typically are

households that do not earn enough to afford appropriate housing on the market, but still too much to be eligible for government housing assistance.

Affordable ownership is largely unknown in Canada. Very few programs have attempted to provide it, and none on a high-volume or sustained basis.

### Inclusionary Housing Policies

Inclusionary housing policies have been enacted by three major Canadian cities – Montreal, Vancouver and Toronto. The first is active, second dormant and third still not fully implemented.

These policies, like inclusionary zoning in the US, are designed to rely on leveraging the development regulation and approval process to oblige private developers to support the provision of affordable housing in mixed-income developments.

Beyond that, these policies use different practices that distinguish them fundamentally from inclusionary zoning. Those differences include the following:

- imposing the affordable housing obligation only on new developments needing a substantial approval – like a change of use, other rezoning or official plan amendment. (Inclusionary zoning is typically imposed on all new developments, including those proceeding as-of-right.)
- imposing the obligation only on new developments large enough to accommodate a separate social housing building. (Inclusionary zoning typically affects developments down to a much small size, while requiring the affordable units be intermixed in the market units.)
- securing the contribution of a developable site at a reduced price for the development of affordable housing, possibly at a later date. (Inclusionary zoning generally requires the concurrent construction of the affordable housing, although allowing the provision of fees-in-lieu or a development site in certain circumstances.)
- providing affordable housing in the form of social housing. (Inclusionary zoning provides “below-market” affordable housing, mainly in the form of ownership housing but possibly also rental.)
- relying upon funding from senior governments to provide the primary subsidy needed to construct the affordable housing. (Inclusionary zoning relies on the cost write-downs that can be achieved through regulatory concessions.)

### Density bonusing

Local governments in Ontario and BC are authorized by legislation to offer density increases in residential developments in return for affordable housing and other

community benefits. In Ontario, these provisions are contained in section 37 of the Planning Act. In BC, very similar provisions are contained in section 904 of its Local Government Act.

The provisions in BC sometimes have been called inclusionary zoning, although they have only a superficial resemblance to those practices.

Similar provisions can be found in many cities across the US, where the practice is generally called 'density bonusing'.

Density bonusing does not provide an effective way of producing affordable housing in an on-going and substantial volume. Wherever it has been tried in both countries, it has failed to produce much, if any, affordable housing.

The reason for this failure is easy to understand. Very few private developers are interested in providing affordable housing in their market developments. Among other reasons, affordable housing is not considered to enhance the developments, and likely reduce their profits. So, given a choice, private developers will nearly always select not to provide the housing.

The s37 provisions particularly also have failed because they are applied in limited circumstances, and under conditions not favourable to producing affordable housing:

- The provisions apply only to sites where developers choose to participate. The developers cannot be required to produce the community benefits; they only can be encouraged to do so by the offer of increased density or relaxed height controls.
- The developers are then also given a large array of other community benefits that can be used to earn the available density increases. The developers – along with local councillors – have consistently shown that they prefer any and all of these other options over affordable housing.
- The density increase that can be used in exchange for the benefits is limited to any density increase granted over and above that already permitted as-of-right. So substantial benefits like affordable housing can only be obtained from those developments obtaining a change of use or a major increase in the permitted density.

### **Main Inclusionary Zoning Lessons**

The American experience with inclusionary zoning represents a good starting point when considering the development of inclusionary housing programs in Canada.

That experience offers the following important lessons:

- Inclusionary zoning programs have proven to be an effective – if not, the most effective – way for local governments to deliver affordable housing when relying on their own powers and resources.
- They are effective only when the provision of affordable housing is mandatory. Voluntary (or incentive-based) programs have generally produced little affordable housing.
- They can operate without the use of conventional funding assistance. This is important because they do not compete with existing programs that rely on this scarce resource.
- There are limits to what these programs can achieve.
  - They have been able to generate a shallow subsidy sufficient to produce below-market housing for moderate-income households, but not the deep subsidy needed to provide conventional social housing affordable to low-income households.
  - They are capable of producing affordable housing in communities when there is strong demand for new development, but not in periods of recession nor in areas of limited or no growth.
  - Because they typically take a percentage of what the developers are building, they typically produce a greater amount of affordable ownership than rental housing.
- For these reasons, the programs probably are best used to serve a different need than social programs. That need is the growing number of households that now earn too little to buy new market homes within their communities, but too much to be eligible for conventional assistance.
- Still, there are ways of using these programs to supporting the rental sector. These include accepting land or cash that can be used for rental construction, or enabling non-profit groups to buy the units at a reduced price for rental.

## **Appendix: Summary of Inclusionary Zoning Practices in the US**

The following describes the basic or predominant regulatory practices that evolved in recent years in the inclusionary zoning programs in the US.

All of these programs cover the same broad regulatory topics, while containing different and often innovative variations in the regulatory details.

These practices are not being put forward as a recommended approach for Canada. Different priorities and mechanisms can be expected to emerge here. In any case, some of the features of the US programs cannot be readily imported to this country.

Nevertheless, considering that these practices have been proven to be successful, and many have been tried and tested for well over 30 years, this experience represents a valuable starting point when developing corresponding programs in this country.

### **Key Regulations**

#### **Housing Set-Asides**

The developers are required to provide a fixed percentage of the total units in a residential development as affordable units. The required set-aside typically falls within the range from 10% up to 20%. Sometimes an alternative lower requirement is used to encourage the provision of particular types of housing, like housing for lower incomes or for rent.

In most cases, the programs simply take a share of whatever the developer is otherwise building. The programs typically do not require a certain mix of units nor set minimum unit sizes. As a consequence, the affordable housing has been provided mostly as affordable ownership rather than rental.

#### **Targeted Incomes**

The affordable housing must be provided at a price (or rent) affordable to households earning below a specified income threshold. The thresholds are based on a percentage of the local median income adjusted by household size.

The income thresholds range from 60% to 120% or more, with the higher thresholds generally seen in the more expensive jurisdictions. The federal government annually provides the necessary income data for every jurisdiction in the country.

The thresholds are set at a level that ensures the affordable housing is made available at a price or rent substantially below that for the equivalent market units in the development and generally on the market.

These thresholds are mostly set at what might be considered an intermediate level of affordability. They are directed at providing housing for households earning too little to afford market housing but too much to be eligible for social housing assistance.

### Subject Developments

The requirements are applied to all private developments, but with two common exceptions:

- developments providing the equivalent or better in affordable housing in other approved ways; and
- small developments.

The cut-off for small developments typically is between 10 and 50 units. The rationale for exempting them is that the affordable housing requirements would affect the small developments too adversely.

Alternatively, many programs do not exempt any developments, except those of a single unit, while taking fees-in-lieu as the affordable housing contribution from the small developments.

### Compliance Alternatives

All of the programs are directed, first and foremost, at securing affordable units constructed on-site. This is fundamental objective of inclusionary programs.

At the same time, most programs also allow alternatives, most commonly payment of fees-in-lieu and construction on another site. Often, these alternatives are permitted only at the discretion of the municipality, and then only when they provide a greater benefit (such as, more units or greater affordability) for the housing needs of the community.

The fees-in-lieu are generally set at a rate that reflects the value of the cost writedown that would have been achieved by on-site construction. In some cases, a higher rate is charged in order to ensure a greater benefit is achieved, or discourage the developers from using this option.

Although the use of fees-in-lieu might appear to contradict inclusionary principles, it has at least two notable benefits. It enables the municipalities to exact contributions in a equitable way from small projects. It also provides a source of funds that can be used to provide housing for households not well served by inclusionary developments.

### Cost Offsets

Virtually all programs offer regulatory concessions directed at off-setting entirely or partially the losses incurred by the developers in providing the affordable units.

Density increases are the most common and generally most effective form of cost offsets. Others typically include fee reductions or waivers, fast-tracked approvals, and/or relaxed development standards (like lower parking requirements, and more flexible setback, coverage and height limits).

These cost offsets notably do not include financial subsidies. No inclusionary programs rely on financial subsidies to provide affordable housing. Those few programs that do utilize financial subsidies use them to achieve additional or more affordable units than otherwise required.

### Development Standards

The programs typically require that the affordable units meet a limited number of additional development requirements beyond those in the conventional standards.

The affordable units typically must be inter-mixed with the market-rate units.

They must be built at the same time, and to the same overall construction standards (including specifically energy-efficiency).

They must look the same on the outside, but differences in finishes and amenities are allowed inside.

In most programs, the floorspace must be the same, but in some programs, a reduction is allowed down to prescribed limits.

### Affordability Controls

The affordability and occupancy of the units are controlled to ensure that the affordable units are occupied only by households meeting income and other eligibility criteria for a long period of time.

The inclusionary ownership units are generally subject to restrictive covenants registered on the title of the property. These restrictions are passed on to all subsequent owners whenever the units are resold during the control period. In this way, the initial price reduction achieved is locked in and passed on to other eligible buyers (after appropriate inflationary adjustments).

There has been a strong trend towards making these units “permanently affordable”. Most new programs, and many older programs have been amended to, set the controls for at least 30 years. Even longer restrictions – for perpetuity or the life of the building – are becoming more common.

## **Other Important Considerations**

### Mandatory vs Voluntary Programs

The inclusionary programs in the US can be divided into two types:

- Mandatory programs require the developers to provide affordable housing as a condition of development approval, and then typically provide some form of regulatory concessions in return.
- Voluntary (or incentive-based) encourage the developers to provide the affordable housing by using regulatory concessions as incentives.

The two are fundamentally different. In the mandatory, the developers have no choice but to provide the affordable housing if they wish to build, while in the voluntary they have the choice to build but without the incentives.

Although the available evidence is not absolutely conclusive, there is ample and convincing support for saying that the voluntary programs don't work. So, simply put, inclusionary programs must be mandatory if they are to be productive.

### Negotiable vs Fixed Regulations

In the US inclusionary programs, most – if not all – of the key regulations. That means that the rules regarding what and how much affordable housing must be provided are applied uniformly across-the-board and are not open to negotiation. Even where there is some discretion, the choices are generally limited by established rules and conditions. So, the scope of negotiations is very circumscribed.

This approach is considered necessary to ensure that all developers will be treated equitably and transparently. In order to be fair to all developers, the regulations as much as possible should known in advance and applied uniformly. No developer should be given an unfair advantage by being able to negotiate a special (and confidential) deal.

Nevertheless, a different practice has recently emerged over one particular set of regulations only, namely those related to density increases and the other regulatory concessions. The predominant “greenfield” programs – those associated mainly with low-density suburban-type developments in smaller towns and on the edge of cities – continue to fix all of the key regulations. On the other hand, the more recent “big-city” programs typically allow for tailoring through negotiation the regulatory concessions offered to each project.

This approach can be seen as recognizing the big-city reality. The majority of developments in already built-up areas typically require re-zoning, and so they would be involved in negotiation even if there was no inclusionary requirement.

Furthermore, the negotiations allow local government the flexibility first to determine what (if any) density increases and other regulatory changes are appropriate and

acceptable in each particular situation. Granting density increases and other changes in an automatic and predetermined way in built-up areas would undermine good planning. In any case, anywhere there was active community oversight, public pressure would likely not permit it.

#### As-of-Right vs Re-Zoned Developments

The standard and predominant practice in the US has been to require all developments to provide affordable housing (except perhaps small developments). This notably includes those going ahead under the “as-of-right” zoning provisions. Recently, “big-city” programs have introduced another change. They target only developments seeking a rezoning or similarly special approval conferring additional development rights.

The rationale for targeting those developments is that they are receiving additional and often considerable economic benefit through the special approvals. So, the municipality as a condition of that approval should be able to recover some part of that benefit for the public good in the form of affordable housing.

The later approach remains an effective approach in big-cities where a large majority of developments typically need additional special approvals. In other communities where most developments proceed as-of-right, however, it might considerably reduce the production of affordable housing.