

Burlington VT: *Inclusionary Zoning Ordinance*

INTRODUCTION

The City of Burlington is a community of roughly 40,000 located in northern Vermont on the edge of Lake Champlain.

The city is acclaimed for the many affordable housing initiatives that it has adopted since the early 1980s. Through these, it has done more to support affordable housing by its own powers and resources than most cities much larger in size. Among its notable efforts were two pioneering organizations: a community land trust and a housing trust fund.

The inclusionary zoning ordinance was first adopted in 1990 and then once amended at the end of 2008. The provisions are found in Article 9 of the city's Code of Ordinances.

The program was adopted without explicit authority from the state. It was adopted under the implied authority given by state planning legislation that requires the municipalities to plan for meeting the comprehensive housing needs of their communities.

This changed in 2005, when the state passed legislation that expressly gave the municipalities the power to use inclusionary housing, as part of a series of various measures directed at affordable housing. These measures were in response to various reports that identified a growing state-wide need for affordable housing, and linked the future economic development and job growth of the state to having adequate affordable housing.

The city's inclusionary provisions have never been challenged. The city remains the only jurisdiction in the state using a mandatory approach. Others use a voluntary approach.

The program is administered by the city's Housing Department in the Community and Economic Development Office; and the Home Ownership Unit of the Champlain Housing Trust. The later replaced the Burlington Community Land Trust in 2006.

PROVISIONS

Subject Developments

The program applies to all new residential developments of 5 or more homes, and all converted non-residential structures that result in 10 or more new units.

Housing Obligation

The required affordable housing set-aside ranges from 15% to 25% for both rental and sale housing. In the initial provisions, the set-aside ranged from 10% to 25%.

The rate depends upon the household income being served by the average sales price of the market-rate homes, with the higher percentages placed on the more expensive developments. The specific rates are as follows:

- 15% on developments with an average sales price serving 139% of median income or below;
- 20% with an average at 140-179%; and
- 25% with an average at 180% or over.

There is an exception for the city's lakefront area, the city's most desirable housing area, where the city wishes to provide a mix of incomes. In this case, all developments have a 25% obligation regardless of income served.

Targeted Incomes

The inclusionary units must be marketed for purchase or rent to households earning less than the local median income.

The calculation of the maximum permitted sales price must be based upon a price affordable a household earning 75% of the median income adjusted for size. The corresponding calculation for the maximum rents must be based upon 65%.

Compliance Alternatives

The city is strongly committed to ensuring that the inclusionary units are built on site, but in 2008 it allowed two options: the construction of the affordable units on another site within the city, and the payment of fees-in-lieu.

Both options are allowed only under strict conditions. The decision to permit these options rests entirely with the city. They are permitted only where the sites have "unique, difficult and/or challenging conditions", but not on sites in the lakefront area. In both cases, they also must provide the equivalent of 50% more units than required on site.

The fees-in-lieu were initially set at \$100,000 per unit; this will be adjusted according to CPI. This figure is based upon an estimated average of the price differential between inclusionary units and market units. The intent is to recover the loss value of the unbuilt affordable units. The fees will go to the city's housing trust fund and be used to support affordable housing.

The initial regulations did not allow for these alternatives. The city reluctantly decided to permit these options under clear and formal rules only after it had been forced to allow them without any rules.

Cost Offsets

Inclusionary developments are able to apply for increased densities and lot coverage up to these maximums related to the existing permitted density:

- 25% for low density areas (defined as 7 to 8.75 units/acre);
- 20% for medium density (21 to 25); and
- 15% for high density (40 to 46).

'Planned urban developments' (PUDs) are not eligible for the density increases.

Other possible concessions given for the inclusionary units are these:

- a reduction in the required parking spaces (from 2 spaces/unit down to a minimum of 1); and
- a waiver for part of the impact fees (50% of US\$2500/1000 ft² of living space).

It is generally recognized that these cost offsets do not cover the cost to the developer of providing the inclusionary units at the reduced price. Furthermore, in many cases, the developers are not able to take full advantage of the potential density increase because the density increases are opposed by the nearby residents in the local review process.

Development Standards

The bedroom mix of the inclusionary units in any development must be in the same as that for the market units.

The interior amenities and gross floor area of the inclusionary units may differ from the market units, provided the differences are not apparent on the outside, nor affect the insulation, windows, heating systems and any other features related to energy efficiency.

The inclusionary units can be smaller than market units, but not less than the following gross floor area minimums:

- 750 ft² for one bedroom;
- 1000 ft² for two bedrooms;
- 1100 ft² for three bedrooms; and
- 1250 ft² for four bedrooms.

The units also must have an efficient floor plan – meaning that less 5% of the floorspace is devoted to circulation – and the bedrooms must be at least 144 ft² in size.

The inclusionary units must be made available on approximately the same schedule as the market units. Occupancy permits for the last 10% of the market units will not be issued until issued for all of the inclusionary units.

Affordability Controls

The basic affordability restrictions are established by the city's ordinance, but these are supplemented by additional regulations from Champaign Housing Trust (CHT), which is responsible for ensuring the long-term affordability of these units (see later).

Control Period

According to the ordinance, the inclusionary units must remain affordable for a period of no less than 99 years.

The developers can apply for reducing this period to as low as 40 years where they can establish that this is necessary to render the project feasible.

Legal Agreements

The ordinance requires that the long-term affordability be ensured through legally binding agreements and/or deed restrictions satisfactory to the city. The developers are free use their own agreements, provided they are approved by the city. Most avail themselves of the agreements prepared by CHT. The city has not prepared its own model documents.

When engaged in the resale of the units, CHT imposes one of two types of agreements: a ground lease on single-family units and a "housing subsidy" covenant (a type of restrictive covenant) on condo units.

Initial Sales Price

The initial sales price is based upon a price that is affordable for a household with an annual income at 75% of the local median income adjusted for household size. The calculation used in determining this price must include the following:

- the available fixed-rate thirty-year mortgage;
- a downpayment of no more than 5%;
- annual property taxes;
- homeowner insurance; and
- homeowner association fees or condo fees.

The mortgage rate is based upon a blend of the rates offered by the local banks and the state housing finance agency. Developers can use a lower rate if it can be guaranteed for all of the required inclusionary units.

Resale Process

The affordability of the inclusionary units, in practice, has been controlled principally by the city or its delegated agency exercising a first option to purchase.

In the early years, the city retained this right for all of the inclusionary units sold within the control period, but assigned that right to one of various non-profit agencies that were then responsible for finding an eligible buyer. This process was used in about 60% of the resales. (The remainder was not lost; the seller was still responsible for selling to an income-eligible buyer approved by the city.)

More recently, the CHT (or its predecessor) have held this option, and have exercised it by assigning the right to an eligible buyer.

Resale Price

Under the initial developer agreements, the maximum permitted resale price is governed by what is affordable at 75% on median household income.

Under the subsequent CHT agreements, the maximum permitted resale price allows the seller to take a limited equity appreciation of 25% of the increase in the inclusionary unit's value, as determined by the difference between the fair market value at initial purchase and the fair market value at resale. Adjustments are made for the capital improvements made by the seller and the costs associated with the sale.

In using this approach, CHT is attempting to find a balance between providing a reasonable equity gain to the homeowner, but while also maintaining the permanent Affordability of the inclusionary units. A study recently completed for CHT shows that so far they have been able to retain the affordability of the units.

Eligibility Criteria

The ordinance only requires that the units be made available to households at or below the targeted income thresholds. This is the only criterion affecting the first sale by the developers.

Through the resale process, CHT imposes these additional conditions on the buyers:

- They cannot have assets of more than \$60,000;
- They must have completed CHT's homebuyer course;
- They must be certified as "mortgage ready"; and
- They must have a minimum personal savings of \$1,500 and be able to pay for closing costs of \$4000-6000.

Households with assets of more than \$60,000 are not necessarily ruled out, but before considering them eligible to buy an affordable unit, CHT will typically assess if they are able to purchase a unit on the market.

CHT does not maintain a waiting list. From its past experience, it is difficult to maintain an up-to-date waiting list because the many factors affecting availability and eligibility are always changing.

Its current practice is to advertise the units when they come on the market, develop a list of interested eligible buyers using the above criteria, and then select a nominated buyer from this list according to various indicators of need and urgency.

Occupancy Standards

The ownership units can be rented, but only with the prior permission of CHT, for six months and a rent affordable to a household earning 100% of the local median income.

ADMINISTRATION

The responsibility for administering this program is shared by the city's Housing Department in the Community and Economic Development Office, and the Home Ownership Unit of the Champlain Housing Trust.

The housing department is responsible for ensuring that developers satisfy the inclusionary zoning requirements. The staffing requirements are estimated to take roughly 15% of one person.

CHT is responsible for protecting the permanent affordability of the units. It takes over mainly when the units are offered for resale. Using its first option to purchase, it transfers ownership to another eligible owner and ensures that the affordability covenant is passed to the next buyer.

There is an overlap in responsibility only at the time for first sale. Most developers have turned to the CHT or its predecessor to assist them in finding suitable buyers. When that happens, they are required to use the standard sales documents developed by them. Alternatively, they can find the buyers on their own. In this case, the housing department will be called upon to verify their eligibility and also to vet the sales documents.

CHT was formed in 2006 through the merger of the city's community land trust and a regional non-profit housing development corporation. It is an independent and non-profit organization supported by funding from the local governments and non-Government agencies, as well as revenue from its own operations. It serves a population of roughly 200,000 in the three counties in northern Vermont, including the city of Burlington. It controls about 2,000 affordable units, including 465 condo or single-family homes, about 1,400 rental apartments, five housing co-ops with more than 115 homes as well as some SROs. It has a staff of 80, of which 5 are employed in the Home Ownership Unit.

PRODUCTION

The program through 2006 has produced 200 affordable units: 121 condos (60%), 64 rental (32%), 14 co-ops (7%) and 1 single family (½%). This distribution of the inclusionary units by type matched that of the market units.

These came out of new developments containing a total of 1260 units. So, the inclusionary units represented 16% of that total. (Another 355 market units were also built during this time, but were not subject to the inclusionary requirement as they had received approvals prior to the enactment of the program.)

All of the units, except those in one development, were built on site. The one development paid fees-in-lieu at \$40,000 per unit for 10 units.

Through the resale process used by CHT and its predecessor, the inclusionary ownership units when resold are retained as affordable ownership units rather than purchased and converted to affordable rental. These organizations have taken control all of the inclusionary units resold during their tenure. Roughly 30 inclusionary units are now under their control.

OBSERVATIONS

The Burlington program represents a good model program that draws upon and incorporates many of the best practices seen elsewhere.

The program also has been innovative. It was the first to relate the set-aside requirement to the price of the market-rate homes in the development, and then impose a higher obligation on the more expensive developments. It also was among the first to emphasize permanent affordability, and to lock-in affordability almost in perpetuity. Permanent affordability now has been adopted widely.

The use of an outside agency like CHT to maintain long-term affordability also remains relatively unique. Most local governments continue to administer this aspect in-house. In the case of Burlington, it makes sense because it consolidates under one agency the administration for affordable ownership units produced by a number of programs. This organization is also able to provide other support services for the owners.

The ground lease agreement used by CHT produces a particular form of affordable home ownership associated with community land trusts in the US. Under these agreements, the homebuyer buys the house and related buildings on the land at their market price, but leases the land in perpetuity at a nominal rate – typically, related to the cost of administering the agreement. In this way, the land is permanently maintained in a public trust, while the housing is provided at a deeply affordable level.