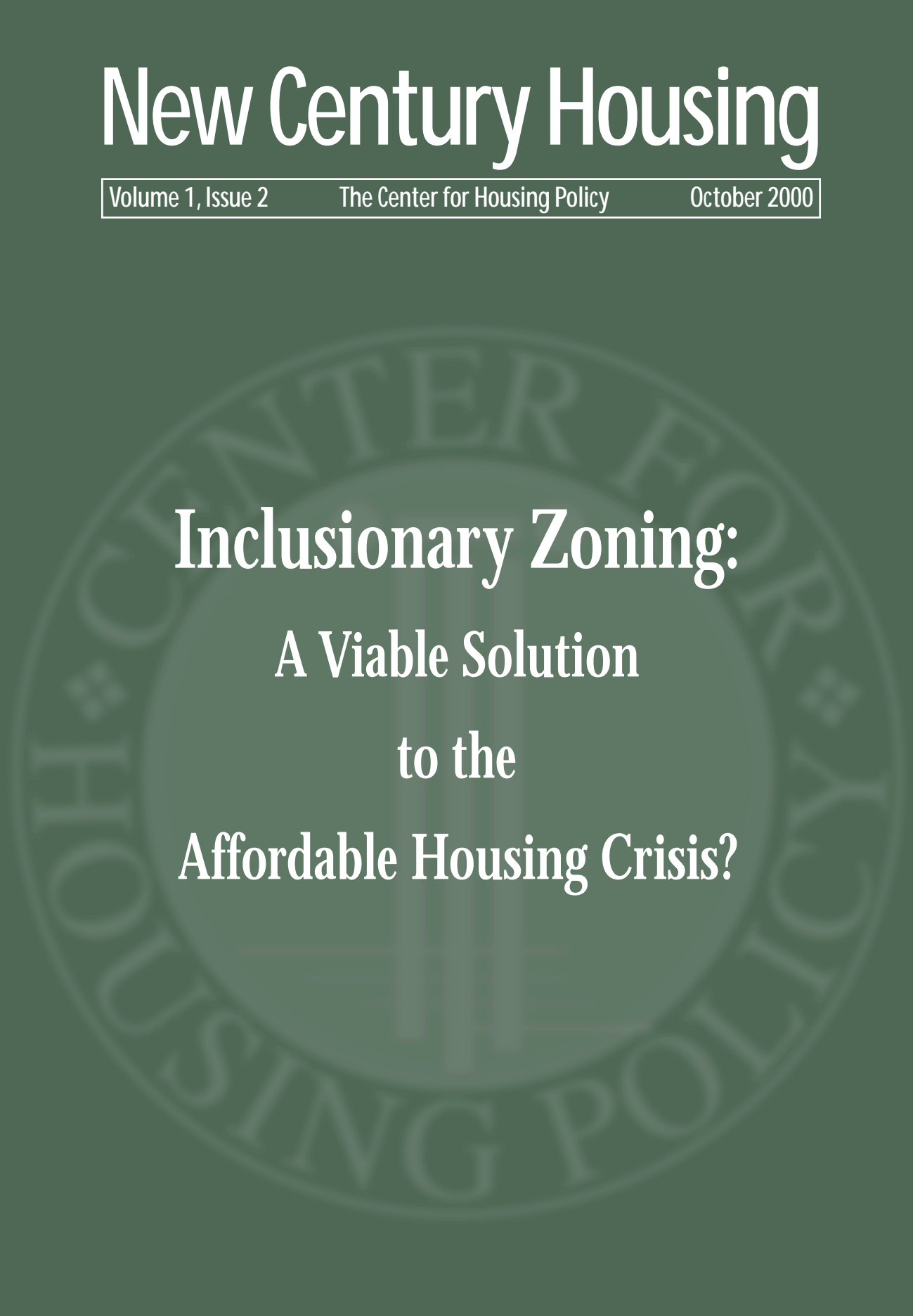


# New Century Housing

Volume 1, Issue 2

The Center for Housing Policy

October 2000



## Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis?

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# New Century Housing

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## Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis?

by

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# The Center for Housing Policy

*New Century Housing* is published by the Center for Housing Policy, a nonprofit research affiliate of the National Housing Conference (NHC). The Center for Housing Policy is devoted to rethinking the fundamentals of our national housing policies and creating approaches that are integrated into larger social and economic goals.

*New Century Housing* presents housing and community development issues that have significant public policy implications in a way that will attract and hold the attention of those who will ultimately influence public policy. Some issues will be controversial. In those cases, *New Century Housing* will strive to present all sides of an issue in a fair and unbiased manner.

## Acknowledgments

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There are four Montgomery County townhouses, but only the two in the middle are Moderately Priced Dwelling Units.



This house holds two Moderately Priced Dwelling Units. Note the front entrance (left) and side entrance (right).

# Preamble

*“Working families with critical housing needs are found in many places—old urban neighborhoods, older inner suburbs, the newer suburbs, and in rural areas—anywhere teachers, police officers, firefighters, and service workers are needed. These communities have their own mix of needs and their own prescription for meeting them which may include inclusionary zoning . . .”*

*—“Housing America’s Working Families”  
June 2000*

On June 2, 2000 the National Housing Conference (NHC) released a groundbreaking new study, commissioned by its research affiliate, the Center for Housing Policy, entitled "Housing America’s Working Families". The report indicates that over 14 million families in this country have critical housing needs. Three million of those families have at least one head of household working at a level above minimum wage yet these same families find themselves either paying more than fifty percent of their income for housing or living in substandard housing conditions.

This journal on inclusionary zoning is a follow up to that report and the articles contained herein are intended to stimulate a continuing dialogue concerning the variety of ways we can, as a nation, meet our affordable housing needs. NHC believes that the time to produce new affordable housing is long past due. Implementation of inclusionary zoning policies such as those in this report, which have been used with great success in Montgomery County, Maryland for over twenty years, is one way to encourage new production of affordable housing.

NHC also believes that we must begin to focus on the various ways that we can encourage and reward local and state efforts to produce and preserve affordable housing.

*“We can’t forget that it is local taxing, planning, and zoning decisions that really determine what is done or not done about affordable housing. The challenge is to fashion the right kind of incentives that will encourage those communities to recognize and support the production and preservation of affordable housing. Proven tools exist—inclusionary zoning . . .”*

*—Testimony of Ann Schnare  
NHC Executive Committee Member and President,  
Center for Housing Policy  
Before the U.S. Senate Subcommittee on Housing and Transportation  
June 20, 2000*

This report is one of several that will be produced to highlight and encourage the use of tools currently available to produce affordable housing. Future issues will highlight additional production tools such as housing trust funds, employer assisted housing, Government Sponsored Enterprises (GSE’s) and the Federal Housing Administration (FHA).

Additional efforts to encourage inclusionary zoning across the country, which are not addressed here, may also be examined in future *New Century Housing Journals*.

Our readers are welcome to comment on the issues raised in this report. Contact us through our web site ([www.nhc.org](http://www.nhc.org)) or write to: *New Century Housing*, c/o NHC/CHP, 815 Fifteenth St., NW, Suite 538, Washington, DC 20005. We will publish representative comments on our web site and/or in the next issue of *New Century Housing*.

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The Center for Housing Policy  
*New Century Housing*  
*Inclusionary Zoning: A Viable Solution*  
*to the Affordable Housing Crisis?*  
Volume 1, Issue 2

**Table of Contents**

**Introduction**.....1  
By Ann B. Schnare

**Inclusionary Zoning: Pros and Cons** .....3  
By Bob Burchell and Catherine Galley.  
*Burchell and Galley outline the positive aspects of inclusionary zoning including the production of affordable housing at little cost to local government, the creation of income-integrated communities and the lessening of sprawl. The authors also cite the negative aspects of inclusionary zoning including shifting the cost of providing affordable housing, segmenting the upwardly mobile poor and inducing growth.*

**Inside Game/Outside Game: The Emerging Anti-Sprawl Coalition** .....13  
By David Rusk  
*Renowned author and consultant David Rusk interprets how urban sprawl, race and concentrated poverty have interacted to shape metropolitan America in his new book, "Inside Game/Outside Game."*

**Arguments Against Inclusionary Zoning You Can Anticipate Hearing**.....17  
By Bernard Tetreault  
*Tetreault frames the arguments against and answers typical questions about inclusionary zoning.*

**Inclusionary Zoning and Affordable Housing** .....21  
By Richard Tustian  
*Richard Tustian addresses the applicability of various inclusionary zoning proposals nationwide and the impact they can have on the lack of affordable housing.*

**A Home Builder's Policy View on Inclusionary Zoning** .....27  
By Kent Conine  
*National Association of Home Builders, Vice President/Secretary, Kent Conine discusses the policy implications of inclusionary zoning.*

**Inclusionary Zoning: The Developer's Perspective**.....30  
Interview conducted by NHC Staff  
*Montgomery County, Maryland developers elaborate on the benefits and difficulties of building affordable units under one of America's first inclusionary zoning ordinance programs.*

**Appendix**.....33



# Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis

## Introduction

*By Ann B. Schnare*

America's housing problems are moving up the income ladder. Despite unprecedented economic growth, one out of seven American households pays more than half of its income on housing or lives in a severely dilapidated unit.

As documented in the June 2000 issue of *New Century Housing*, there are more than 14 million households with critical housing needs. Families who find themselves in this situation come from all walks of life. Twenty-seven percent are elderly, 30 percent are on welfare, and another 21 percent are households that are only marginally attached to the labor force. But the remaining 22 percent are working families earning more than the equivalent of a full time job at the minimum wage-and their numbers are increasing rapidly.

The three million working families with severe housing needs defy the stereotypes that too often accompany discussions of housing policies. For example, half are homeowners. The number in the suburbs is roughly comparable to the number in the central cities. They include police officers, firefighters, and teachers, as well as service workers.

The reasons behind this growing problem undoubtedly vary from place to place. As a result, solutions must be crafted at the local level. But it is clear that housing policy needs to be broadened to better address the needs of America's working families. Communities cannot sustain a viable economic base if their workers cannot be housed.

This issue of *New Century Housing* focuses on a practice known as "inclusionary zoning," which is one of several potentially powerful tools that could be implemented at the state or local level to address affordable housing needs. The articles contained herein highlight the implementation of inclusionary zoning policies in Montgomery County Maryland.

Inclusionary zoning policies have been in effect in a number of communities across the country for much of the past decade. While approaches differ, developers are typically asked or required to contribute to

the community's affordable housing stock in exchange for development rights or zoning variances. Some programs are mandatory, while others provide incentives. Some involve cash contributions to an affordable housing fund, while others involve the construction of affordable units within the development. All are designed to make the production of affordable housing acceptable to the community and financially viable for housing developers.

The authors contributing to this issue represent some of the best minds on the topic of inclusionary zoning. They include academics, local program administrators, as well as housing developers. In providing their differing perspectives, we have tried to present a balanced view of the strengths, weaknesses and limitations of this approach.

# Inclusionary Zoning: Pros and Cons

*By Dr. Robert W. Burchell and Catherine C. Galley*

## Introduction and Definitions

The fundamental purpose of inclusionary zoning programs is to allow the development of affordable housing to become an integral part of other development taking place in a community. At the local level, this is accomplished by zoning ordinance, mandatory conditions or voluntary objectives for the inclusion of below-market housing<sup>1</sup> in future market-level developments. Incentives designed to facilitate the achievement of these conditions or objectives are often included (Stegman and Holden 1987, 50).

A typical inclusionary zoning ordinance will set forth a minimum percentage of units to be provided in a specific residential development affordable to households at a particular income level, generally defined as a percentage of the median income of the area. The share of units allocated to such households is termed a “mandatory set-aside.” The goal of such a process is to establish a relatively permanent stock of affordable housing units provided by the private market. This stock of affordable housing units is often maintained for 10 to 20 years or longer through a variety of “affordability controls” (Mallach 1984, 11). Often these are ownership units that do not require a great deal of community administration, except for the income qualification of successive occupants.

In many ordinances, some form of incentive is provided by the county or municipality to the developer in return for the provision of affordable housing. These incentives can take the form of waivers of zoning requirements, including density, area, height, open space, use or other provisions; local tax abatements; waiver of permit fees or land dedication; fewer required developer-provided amenities and acquisitions of property; “fast track” permitting; and/or the subsidization or provision of infrastructure for the developer by the jurisdiction (Calavita and Grimes 1998; Minnesota Housing Partnership 1999; Land Use Law Center 1999).

---

<sup>1</sup>The term affordable housing usually applies to below-market housing in a particular geographic location. It often relates to the median price of housing in an area. For the purpose of this article, affordable housing includes housing valued between 40 and 120 percent of a statewide median. This is a somewhat different range than HUD Section 8 income requirements wherein low-income is defined as between 50 and 80 percent of median and very low-income is defined as below 50 percent of median. Most states term HUD’s two income categories of low income and very low income as moderate and low income, respectively.

## Historical Background

Inclusionary zoning programs are the mirror image of exclusionary zoning ordinances. They originate in areas where exclusionary zoning is visibly present or where housing costs are overly high despite more liberal zoning practices. Thus, it is not surprising that proactive inclusionary zoning took root in the Washington, D.C. metropolitan area, in California and in the New York metropolitan area (including New Jersey).

In the Washington, D.C., metropolitan area, the inclusionary zoning technique was first employed in 1971 in Fairfax County, Virginia. A mandatory zoning ordinance required that developers of more than 50 multifamily dwelling units provide 15 percent of their units within an affordable range, determined to be between 60 and 80 percent of median income. This ordinance requirement was overturned by the Virginia Supreme Court in 1973 on the grounds that it involved a “taking” [surrendering property rights without just compensation] (*Board of Supervisors of Fairfax County et al. v. DeGross*) (Rubinowitz 1974, 56). A voluntary program reemerged two decades later. Beginning at about the same time (1973) and still in existence today, 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 (Burchell et al. 1995). The program requires developers of more than 50 residential units to set aside 12.5 to 15 percent MPDUs, dispersed throughout their subdivisions. Since its inception, the Montgomery County program has produced nearly 10,000 units of affordable housing in that county (Innovative Housing Institute 1999a). In Montgomery County, affordable housing at 50 to 80 percent of median is approximately \$85,000 to \$125,000 per unit.

The State of California has a 15-year old statute that allows municipalities to incorporate inclusionary provisions into their zoning ordinances (Burton 1981; Schwartz and Johnston 1983, 5). Thirty-eight of 72 inclusionary housing programs identified throughout the United States in 1982 were operative in California communities (Mallach 1984, 201).

In the New York metropolitan area, with the exception of New Jersey, inclusionary housing programs are both scattered and relatively modest in scale. In New Jersey, most of the communities currently before the New Jersey Council on Affordable Housing (about 250 of 566 communities) have a de facto inclusionary housing requirement to meet affordable housing need with new construction. From 1986 to 1999, approximately 12,000 inclusionary units have been developed in New Jersey at about \$75,000 each, or one-third the cost of new housing (Bishop 1999). Nationally, other locations of inclusionary

zoning programs include Highland Park, Illinois; King County, Washington; Boulder, Colorado; Bellevue, Washington; and a growing number of communities in the states of Connecticut, Florida, Massachusetts, Oregon, Rhode Island, Virginia and Washington (Mallach 1984, 259; Taub 1990, 678).

## **Current Use**

A survey of programs compiled in the early 1980s by Mallach (1984) identified inclusionary programs in 72 local jurisdictions across the country. Inclusionary housing programs were operative in the states of California (38); New Jersey (16); Colorado (5); Massachusetts, Illinois and New York (2 each); and Connecticut, Delaware, Florida, Maryland, Oregon, Virginia and Washington (1 each). Mallach described this now 15-year-old survey as neither definitive nor complete (Mallach 1984, 256). In a more recent 1990 survey, Mary Nenno identified some 50 local inclusionary programs nationally, again with a disproportionate number in California (Nenno 1991, 484). Similar to Mallach's findings, Nenno noted that her listing was illustrative of the inclusionary programs existing in the United States at that time, not exhaustive. According to a survey by Edward Goetz (1991, 341), of 133 U.S. cities with a population of more than 100,000, only about 10 percent (12 cities) had inclusionary provisions in their zoning ordinances. This is about the same percentage of those cities that required linkage fees, replacement of demolished units, rent control or other means of facilitating low-income housing. Thus, a city with an inclusionary housing program also was likely to implement other affordable housing activities. Finally, in the early 1990s, a California survey identified more than 50 inclusionary programs in that state that had produced over 20,000 affordable units during their histories (San Diego Housing Commission 1992; Newman 1993). Thus, even though no definitive source or comprehensive national survey of these efforts exists, the literature indicates that there are 50 to 100 jurisdictions nationally that employ one or more, or a variant, of these programs.

## **The Positive Features and Outcomes of Inclusionary Zoning**

### *The Provision of Affordable Housing at Little or No Financial Cost to Local Governments*

Advocates of inclusionary zoning argue that this regulatory tool creates economically diverse communities and allows local governments to create more heterogeneous communities at little or no direct financial cost (Hill 1984; Smith et al. 1996, 170; Parrott 1999). Generally, the provision of affordable housing units as part of an inclusionary program does not require significant

expenditure of public funds. Inclusionary units are delivered in step with market units through incentives to developers such as density bonuses, fee waivers and/or local tax abatements offered by the local jurisdiction (Municipal Research and Service Center of Washington 1999).

Inclusionary zoning relies on a strong residential market to create below-market units. This type of program reached its zenith in the 10-year period from 1975 to 1985. During this time (except for the 1980-82 recession), market housing was built in record numbers, and a share of this housing was allocated to lower-income households.

### *The Creation of Income-Integrated Communities*

The affordable housing enabled by inclusionary programs is not produced as an “island” of the poor but rather is integrated into the development of the overall community in lockstep with market-rate units. The integration of a percentage of low- and moderate-income housing units into market-rate housing developments thus avoids the problems of overconcentration, ghettoization and stigmatization generally associated with solely provided and isolated affordable housing efforts (Innovative Housing Institute 1999a; Municipal Research and Service Center of Washington 1999). Inclusionary programs make possible the integration of populations that traditional zoning segregates—young families, retired and elderly households, single adults, female/male heads of households, minority persons and households of all types.

Suburban and exurban employers further benefit from the presence of this proximate low- and moderate-income work force (Downs 1992). The oft-cited spatial mismatch between available suburban jobs and employment-seeking urban households is significantly reduced by inclusionary zoning.

“Inclusionary zoning is a compromise that I support to ensure that more housing is closer to places of employment, social services, and public transportation; allowing certain privileges in return for affordable housing will enable local business to prosper while awarding [sic] residents with these advantages (Sheila T. Russell, Cambridge, MA, Councilor 1995).”

### *Less Sprawl*

Yet another argument advanced by the proponents of inclusionary zoning is that it provides the critical mass necessary to create a town center and reduce the proliferation of sprawled bedroom subdivisions (Downs 1992; Innovative Housing Institute 1999a). Findings from the County Council of Montgomery County, Maryland, indicate that the inadequate supply of housing in the County for persons of low- and moderate-income results in large-scale

commuting from outside the County to places of employment within the County, thereby overtaxing existing roads and transportation facilities, significantly contributing to air and noise pollution, and engendering greater than normal personnel turnover in the businesses, industry and public agencies of the County, all adversely affecting the health, safety and welfare of and resulting in an added financial burden on the citizens of the County (Innovative Housing Institute 1999b).

From a regional perspective, density bonuses often make possible residential environments of a variety of housing types. They enable developments to be built more densely than those of primarily single-family zones, which helps to reduce the sprawl that would otherwise be created by single-purpose residential zones. A large development containing inclusionary zoning often allows for mixed-use and transit-oriented development, while protecting surrounding open spaces (Burchell et al. 2000).

## **The Negative Features and Outcomes of Inclusionary Zoning**

### *The Shift of the Cost of Providing Affordable Housing to Other Groups in Society*

Critics claim that inclusionary zoning changes the financial characteristics of real estate developments and reduces the saleable value of the development upon completion. They equate inclusionary zoning mandates with a tax on new development—especially when there are no compensating benefits provided to developers to cover the full cost of providing affordable housing. Opponents of inclusionary programs assert that developers cannot make money on affordable housing and thus are saddled with the burden of economically integrating neighborhoods that have been demographically homogeneous for decades (Innovative Housing Institute 1999a). Developers become scapegoats for problems beyond their control (Breckenfield 1983) but quickly pass this burden onto the new occupants of the housing that they develop (Mallach 1984; Ellickson 1985; O’Sullivan 1996; Johnson 1997; Calavita and Grimes 1998).

Who pays for inclusionary zoning? The requirement of subsidized housing has the same effect as a development tax. . . The developer makes zero economic profit with or without inclusionary zoning, so the implicit tax is passed on to consumers (housing price increases) and landowners (the price of vacant land decreases). In other words, housing consumers and landowners pay for inclusionary zoning (O’Sullivan 1996, 294).

Another deficiency of the inclusionary zoning strategy is that it is based on a market-supply equation that relies primarily upon a developer’s ability to sell

market-level units—as an example, eight market units for every two affordable units produced. This reliance on the private sector to finance affordable housing based on the sale of market units is not necessarily a major issue when the economy flourishes, but it is a very serious one when the economy falters.

Finally, “shift” criticisms of inclusionary zoning have become focused on the very structure of the inclusionary zoning technique. Inclusionary programs that are mandated without compensation were challenged constitutionally in the 1990s as a taking.

### *Breaking Up Pockets of the Poor*

A lingering criticism of inclusionary zoning is that it “distills” the most upwardly mobile poor from central neighborhoods and artificially transports the citizens who could do the most for reviving central city neighborhoods to the suburbs. The “best” of the poor are enticed outward by a write-down on the cost of housing there. While this is certainly a valid concern, and the more economically mobile residents may move out, leaving the less mobile behind, such is the nature of residential choice; it has existed in housing markets since time immemorial (Burchell et al. 1995).

Similarly, in-kind housing subsidies are nontransportable devices that may not significantly improve the welfare of recipient families (Ellickson 1985). These programs may provide individual economic benefits that are difficult to “cash out.” For example, affordable housing units usually carry with them affordability controls that typically limit the sales price increase on such housing to a small multiple of the rate of inflation.

### *More Development/Induced Growth*

In instances where density bonuses are provided as part of the inclusionary solution, criticisms about “massing” have emerged. Some argue that increased density represents an unwanted and unplanned-for glut of development that burdens both the overall environment and the public service capacity of local governments (Innovative Housing Institute 1999a).

In New Jersey, New Jersey Future (a conservation and State Plan advocacy group) brought suit against the New Jersey Council on Affordable Housing (a legally mandated affordable housing oversight agency known as COAH) because housing need in agricultural preservation or environmentally sensitive areas would be met primarily by inclusionary programs operating outside a State Plan-designated center. Development would require a density bonus, thus producing an overall greater number of units outside the center because affordable housing would be provided at the developer’s expense. The New Jersey Future lawsuit caused COAH to acknowledge inclusionary programs in non-center areas contributed too much growth (Bishop 1999).

## Conclusions and Future Directions

Inclusionary zoning is simple to understand and apply, and coupled with density bonuses and other incentives, allows higher-income communities to achieve a balanced economic composition. Inclusionary zoning also helps limit sprawl by concentrating more development in a single location.

Inclusionary zoning works best when combined with developer incentives. It has delivered the greatest numbers of units when the populations “included” are closest to median income. Inclusionary zoning is the by-product of expensive housing markets that have been spawned by either raw demand or exclusionary zoning controls. Typically, these have been in northeastern and western United States housing markets and today are likely to extend to specific locations in southeastern and southwestern U.S. housing markets.

In summary, inclusionary zoning has been criticized for shifting the burden of affordable housing provision to other groups, for distilling the upwardly mobile poor from the remainder of central city residents and for causing undue growth in locations that would not otherwise experience it. These criticisms, while warranted and substantive, pale by comparison to the roster of accomplishments and benefits attributable to inclusionary housing programs.

Historically, there has been no equivalent to this mechanism that enables a community to retain its character while accommodating affordable housing. Adopting an inclusionary zoning ordinance does not require basic zones in the community to be altered significantly. The standards that govern development there remain intact. When certain conditions are met (for example, the developer delivers 25 percent of his units as affordable), the builder is granted an increase in density in the zone. Additional conditions that must be satisfied as part of the permitting process include buffering the development from other existing and future development in the zone and providing a traffic mitigation plan to control traffic congestion that occurs beyond that expected to occur in the absence of inclusionary zoning. Other development in the zone proceeds at its original density. The inclusionary provisions differ markedly from the typical community-wide review of densities and housing types allowed in each zone, and the subsequent revision of these provisions to accommodate affordable housing.

Inclusionary zoning will continue to be sought in tight and expensive housing markets where there is socially responsible interest in providing both housing opportunity and economic balance. The technique must be implemented cautiously, however, with sensitivity to the locality paying for it and the population benefiting from it.

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# Inside Game/Outside Game: The Emerging Anti-Sprawl Coalition

*By David Rusk*

*David Rusk explains in his book Inside Game/Outside Game, how urban sprawl, race and concentrated poverty have interacted to shape metropolitan America.*

Over 25 years ago, wealthy Montgomery County, Maryland, outside Washington, DC, adopted its Moderately Priced Dwelling Unit (MPDU) ordinance. The “MPDU” mandate was the nation’s first *inclusionary* zoning law.

In any new housing development of 50 or more units, the county council ruled that at least 15 percent of the housing must be affordable for the lowest one-third of the county’s households. As compensation, developers could receive a density bonus of up to 22 percent. By law, the county public housing authority could buy one-third of the affordable units.

In the decades after the advent of the ordinance, for-profit homebuilders produced almost 11,000 MPDUs—two-thirds purchased by young teachers, police officers, retail and service workers. Over 1,500 MPDUs, scattered in more than 200 middle class subdivisions, were purchased by the housing authority.

The result? Montgomery County became one of the nation’s more racially and economically integrated communities. Ensuring housing for a diversified labor force also was key to successfully diversifying the county’s job base.

## A Different Philadelphia Story

Let us imagine what a major metropolitan area—Greater Philadelphia, for example—would be like today if, by some political magic, a similar inclusionary zoning policy had been applied 25 years ago to its 339 cities, boroughs, towns and townships (spread across eight counties in two states). During that period, developers built about 575,000 new homes—85 percent in the suburbs of Philadelphia, Chester and Camden. Under a Montgomery County-type formula, 38,000 new units would have been affordable for working class households. Another 19,000 new units would have been bought or rented by a regional network of housing authorities.

With federal HOPE VI subsidies, every public housing project in Greater Philadelphia could have been redeveloped as mixed-income housing, reducing overall unit densities by one-third in the process. Two-thirds of the new residents could have been market rate owners or renters; only one-third would have been public housing households (including low-income senior citizens). The city's high-poverty ghettos would have been reborn as mixed-income neighborhoods. Some 17,000 public housing families, displaced from their former projects, could have moved (in small numbers) into scattered site units throughout the city's suburbs, as required by the regional mixed-income housing rule. Philadelphia's suburbs would be more integrated by race and income.

High concentrations of poverty would have vanished. Poverty rates could have been brought below 30 percent in every one of 70 high poverty census tracts in Greater Philadelphia.

The region's crime rate would have dropped dramatically. Attending low poverty suburban schools, poor children's test scores would have jumped 10 to 15 percentage points. Unemployment among their parents would have dropped (perhaps by one-third, one study suggests) in job-rich suburbs. Relieved of a heavy burden of poverty-related costs and acquiring a more economically balanced population, the city's fiscal distress would have been alleviated. City neighborhoods and schools would become feasible choices for more middle-class families (both white and black).

With no high poverty neighborhoods expelling remaining middle class residents from the core, growth pressures on the periphery would probably ease. Rather than consuming land at six times the rate of regional population growth, the Greater Philadelphia area's rate of sprawl might even drop to only twice the rate of population growth even without stringent regional growth management controls.

## **Inside Game/Outside Game**

How urban sprawl, race and concentrated poverty have interacted to shape metropolitan America are the central themes of my new book, "Inside Game/Outside Game" (The Century Foundation/Brookings Institution Press). The dramatically different Greater Philadelphia illustrates what might have been the impact of changing the public "rules of the game," particularly as they affect land development and housing markets.

"Inside Game/Outside Game" draws on extensive analysis of census data and my experiences as a speaker and consultant on urban policy in over 90 metropolitan areas during the 1990s. The title conveys the book's principal finding: the downward course of poverty-impacted urban neighborhoods and declining central cities is rarely reversed by solely playing the "inside game"

(policies and programs targeted solely within the boundaries of such neighborhoods and cities). Reversing urban decline requires playing and winning the “outside game” as well (policies that deal with regional trends beyond the target communities’ boundaries).

Key elements of the “outside game” are:

- regional land use planning and growth management (to combat suburban sprawl and urban abandonment);
- regional “fair share” low- and moderate-income housing (to reverse rising economic segregation); and
- regional tax base sharing (to offset widening fiscal disparities).

“Inside Game/Outside Game” profiles outstanding examples of each policy, devoting separate chapters to Portland’s urban growth boundary, Montgomery County, Maryland’s mixed-income housing policies and the Twin Cities Fiscal Disparities Plan. Each plan has been in existence for a quarter-century (time enough to evaluate its long-term impact). Each has been effective—but rarely imitated.

## Changing the “Rules of the Game”

Changing these “rules of the game” is primarily a task for state legislatures. Some state laws provide for relatively few local governments. Maryland’s dominant, “big box” county governments, for example, have both legal and political ability to adopt county-wide growth management and mixed-income housing rules.

However, most metropolitan areas feature a multiplicity of “little box” local governments that resist voluntary compacts on tough, controversial issues. Only changes in state or federal law can set different region-wide requirements. And although federal writ follows federal dollars, it is state legislatures that draw up the rules regarding what local governments can do and how they do it.

No policy would have a greater impact than mandating “fair share” mixed-income housing as a modest proportion of all new developments. Across metropolitan America there are twice as many poor whites as there are poor blacks or poor Hispanics. Poor whites, however, rarely live in poverty-impacted neighborhoods. Only one of four poor whites lives in a neighborhood where poverty rates exceed 20 percent (and 1 of 20 in neighborhoods with poverty rates higher than 40 percent).

By contrast, the numbers are reversed for poor minorities. Three of four poor blacks (and half of poor Hispanics) live in poverty-impacted neighborhoods—and one-third of poor blacks live in high-poverty neighborhoods.

This racially skewed concentration of poverty drives up crime rates, drives down local school test scores, depresses local property values and often drives up tax rates of fiscally stressed city governments.

Yet research demonstrates that “mainstreaming” poor minorities into middle class communities (as most poor whites are) slashes crime and delinquency, boosts school performance, narrows the “segregation tax” that minority homeowners pay in the value of their homes and eases fiscal burdens on city governments.

Mixed-income housing proposals, however, run into many Americans’ deepest fears about race and class and are hardest to achieve politically. “Inside Game/Outside Game” argues that urban sprawl is the issue around which the most potent coalition can be built.

## **New Coalitions for Regional Reforms**

Farmland preservation and environmental groups have long pressed for state growth management laws. But sprawl’s impact has been greater on social geography than natural geography.

Frustrated suburbanites, stuck in traffic, are currently the most visible recruits to the anti-sprawl movement, but other groups are signing on. Mainstream business organizations, like the Silicon Valley Manufacturers Group, Chicago’s Commercial Club, the Greater Baltimore Committee and the Atlanta Chamber of Commerce have become growth management converts. University researchers, like the Ohio Housing Research Network, are increasingly assessing sprawl’s costs and providing fuel for grassroots organizers.

But the most politically potent new force will be new coalitions of churches forming—black, white and Hispanic; Protestant and Catholic; central city and older suburb. Coordinated by the Chicago-based Gamaliel Foundation, groups like Northwest Indiana’s Interfaith Federation, Metropolitan Congregations United for St. Louis, BOLD of Lorain-Elyria, Ohio, and Detroit’s M.O.S.E.S. are mobilizing core area residents to battle against the constant outward expansion that is sapping the vitality of their older neighborhoods. Catholic leaders such as Chicago’s Francis Cardinal George and Cleveland Bishop Anthony Pilla have taken strong growth management and affordable housing stands.

The civil rights movement changed the nation’s racial rules (our stewardship to each other). The environmental movement changed the nation’s environmental protection rules (our stewardship to nature).

Now civil rights and environmental activists are tentatively reaching toward each other to change the rules that divide American society by space and class.

# Arguments Against Inclusionary Zoning You Can Anticipate Hearing

*By Bernard Tetreault*

## **Argument I: Inclusionary Zoning Amounts To a Government “Taking” Under The Constitution**

This brings to mind the old saying that when one has the facts on his side, argue the facts; that when one has the law, argue the law; and when one has neither, argue the Constitution. Nevertheless, this is a serious objection to inclusionary zoning that requires a serious rebuttal. Fortunately, there is one.

A paper on “Inclusionary Zoning” developed by the National Association of Home Builders, which is, at best, skeptical about the concept, states: “most inclusionary zoning laws do not completely deprive the developers of a reasonable economic use (one of the Supreme Court’s criteria) and often seek to provide incentives and bonuses as partial compensation.”

Although I am not a lawyer, it would appear that several steps are key in this process:

1. Provide compensation to the developers (the Montgomery County, Maryland method, which has never been challenged, is to provide a density bonus).
2. Care in the drafting of the legislation, although not so much care that the more conservative lawyers discover reasons that “it can’t be done is vital.” (We are experiencing this in a Virginia jurisdiction where we are consulting with the local government).

The Home Builders’ paper mentions two other legal issues—violation of private property rights through zoning and equal protection (which asks whether it is constitutional to place a threshold—in Montgomery County 50 units—under which a developer can escape inclusionary zoning requirements). The paper seems to dismiss these arguments, but this goes to the issue of careful drafting.

## **Argument II: Density Bonuses are a Bad Idea**

There are two versions to this argument, neither of which, in the Montgomery County experience, has proven very strong. The first, for want of

a better term, is environmental. That is, increasing the number of units allowed on land zoned for single family or less dense development taxes the environment and resources of local government. Furthermore, requiring people to live so densely adds to social problems created by “overcrowding.” If moderate-priced housing is needed, the most likely alternative—one used in countless jurisdictions—is to provide it beyond the normal growth boundaries, creating the sprawl that taxes government resources and the environment far beyond what inclusionary zoning would require. Secondly, the density required to make mandatory inclusionary zoning work is well within acceptable standards, considerably less than multifamily zones for example, and in the areas where it has been implemented there is no evidence of the social problems envisioned.

The second argument related to density bonuses is somewhat stronger: increased density requires that developers build different types of housing (i.e. townhouses in single-family detached zones), thus adversely affecting the marketability of these single-family detached homes. Generally speaking, in a high-demand housing market (like Montgomery County) this should not pose a difficulty as the demand overcomes the “intrusion” of these other housing types (this has certainly been the case in Montgomery County). Creative and attractive community design can overcome the remaining “adverse impact.” One of the lessons learned in Montgomery County is to provide allowances for developers to construct units that mix well within their particular community. It may cost a little more to build the unit with a brick facade rather than an aluminum facade, but if that is what it takes to make it compatible with the surrounding market-rate units, then the developer should be allowed to do it. Furthermore, it has been noted that inclusionary units in Montgomery County have been helpful to developers during an economic downturn, inasmuch as they built these units (which have a ready market in any economic situation) first and waited out a sluggish real estate market.

### **Argument III: Inclusionary Zoning Is A Form of Discredited Social Engineering**

This is an ideological argument: government attempts to income-integrate households are a bad idea. The answer is both ideological and practical. First, zoning by its very nature is social engineering. For example, low density large lot zoning will income-segregate households, not necessarily an undesirable objective in that it is generally low-impact and high-revenue producing for the local government. Income-integration through inclusionary zoning, however, can have equally desirable outcomes: the provision of housing to the low- and

moderate-income workers every community needs, planned growth that limits sprawl, and significantly, the successful integration of households of varying incomes, which is a civic good in the eyes of many (though it is not the only reason to support inclusionary zoning).

### **Argument IV: Developers Cannot Make Money on Inclusionary Units**

This is an area of much dispute in the Montgomery County development community. There are developers who contend that it is, at best, a break-even proposition. There are others who contend that the Moderately Priced Dwelling Units (MPDUs), because of the density bonus, can be their most profitable units. Much of the discussion appears to revolve around how infrastructure costs are allocated. The basic answer to the argument, however, is that with appropriate density bonuses, the units should not cost the developer extra and, in fact, can lead to additional profit.

### **Argument V: Developers Should Not Have the Burden of Curing a Community's Social/Affordable Housing Problems**

No, they should not. But, like all segments of the community they have a role to play. And given that they produce the housing stock, and that the density bonuses alleviate any economic harm, the affordable housing requirement (like similar infrastructure and amenity requirements) is not an undue burden.

### **Argument VI: The Program Should be Voluntary, Not Mandatory**

Communities have very real economic development needs that depend, to a large degree, on the development of a balanced housing supply. There are many jurisdictions that have voluntary, or incentive-based, inclusionary zoning ordinances. The problem is that most of them, because of their voluntary nature, produce very few units. By contrast, the nation's most successful inclusionary zoning ordinance has produced 10,000 units in Montgomery

County. The Montgomery County program is mandatory for subdivisions greater than 50 units. With the exception of a few small municipalities within the county, inclusionary zoning is the way of doing business in the 500 square mile planning area of Montgomery County. The mandatory nature of the program has been instrumental in its success.

# Inclusionary Zoning and Affordable Housing

*By Richard Tustian*

*Below is a modified transcript of a speech delivered by  
by Richard Tustian, at NHC's Fall Policy Conference. Mr. Tustian  
addressed the applicability of various inclusionary zoning proposals  
nationwide and the impact they can have  
on the lack of affordable housing.*

In my former role as Planning Director of Montgomery County, Maryland for over 20 years, I was responsible for administering the Moderately Priced Dwelling Unit (MPDU) law. This law was adopted in 1973 and has produced 10,000 MPDUs in 20 years, making it the largest inclusionary zoning program in the nation and arguably the most successful.

The term inclusionary zoning is best understood by considering its opposite—exclusionary zoning. To do this, let us go back to first principles—what is zoning really? Prior to 1926, the concept of government regulating the use of private property was considered beyond the scope of government's proper exercise of the police power of the state. But beginning about 1850 there evolved a social and moral reaction to the negative impact of the industrial revolution on life in industrial cities. This fueled a quest for a solution that found focus in the City Beautiful movement of 1900, giving birth around 1920 to a new profession called city planning. Zoning was adapted from precedents in Germany and was believed to be the major new tool that could implement bold city plans to remake the ugly and unjust industrial city into a beautiful, utopian place. In 1926, the U.S. Supreme Court ruled that the concept of regulating land uses by separating them into districts was within the constitutional power of state government, and a new era began. But it was an era of debate over the use of this new power of government. It is a debate that continues to this day.

From its inception, zoning has been an exclusionary device. Its essence is the protection of residential uses from the negative impacts of commercial and industrial uses—and the imposition of density and bulk limits on building forms to prevent overcrowding, congestion, lack of light and air, etc. Under the zoning concept the single family residential use is (historically) the highest value to be protected.

Over time, especially as the suburbs developed after World War II,

residential zoning not only produced large areas of low-density, single family detached housing with absolutely no commercial or work places anywhere near them. It also separated houses from each other on ever larger lot sizes ( $1/2$  acre plus) and reinforced the stereotype that denser housing (such as townhouses or garden apartments) would have a negative impact on the quality of life in single family residential neighborhoods.

The reaction to this excessive degree of separation of uses began in the 1960s and continues to this day. We may call this reaction (in a very broad conceptual way) the birth of the notion of “inclusionary zoning.” Initially, it involved just a movement to allow clustering of single family detached houses—the so-called Planned Unit Development (PUD) movement. Then it began to allow attached houses (townhouses) in the clusters—often based on the argument that this allowed saving open space and natural features. Then it began to allow a mixture of residential and commercial uses—the so-called mixed-use zones.

By the early 1970s, the idea had progressed to include not just the density of the housing and the mix of it—but also the price of the housing. Thus the term “inclusionary housing” today often can have two meanings:

1. Any zoning action that works to increase housing quantity or density (with the inference that a market by-product of this action will be a reduction in the price of the units—the key goal of all concerned for social justice,) and
2. Any zoning action that requires a reduction in the market price of housing units.

Let us consider these separately. But first let us remind ourselves of the even more fundamental nature of both the police power and the purse power of government.

In our constitutional democracy with its protection of private property rights and reliance on the market as the preferred instrument of socio-economic regulation, government is not supposed to intervene in the operation of the market—except to provide public goods (for which it is authorized to collect taxes) and ameliorate the so-called negative externalities of the economic market model. The latter includes side effects such as inadequate affordable housing for the poor.

The Supreme Court ultimately decides whether government has overstepped its constitutional limits. But it is important to note that, government, in my opinion is given greater latitude by the courts to raise taxes than to regulate land use. Hence the topic of this panel (how to use affordable housing tools beyond those associated with taxes)—and my topic, inclusionary zoning—requires a thorough understanding of the legal principles and court decisions regarding land use regulation.

# Court Cases and Legal Principles of Inclusionary Zoning

Let us return to the two aspects of the use of inclusionary zoning to improve affordable housing: 1) to increase housing quantity/density, and 2) to reduce market price. Sometimes these are separate, sometimes combined. Keep these two ideas in mind as we survey the national scene through a selected set of examples.

1. New Jersey gave birth to one of the major tools of inclusionary zoning, not because of pressure from concerned citizens or legislators as much as from the courts. The so-called Mt. Laurel I and II state court decisions were a judicial reaction to what an earlier judge called “zoning the poor into the Atlantic Ocean.” This judge was referring to the widespread practice by which the many small municipalities into which the state is divided were zoning all their remaining open space for 1 and 2 (or more) acre minimum residential lots. The outcome was a mechanism we may call the “Housing Fair Share Zoning Override” method of inclusionary zoning.

Under this method, a state level commission analyzes the affordable housing needs of the state, then assigns a portion of this need to every municipality in the state (its “fair share”). After assigning need, the commission then adopts a legal presumption that, if the municipality does not demonstrate in its plans and actions how it will meet its fair share obligation, the legal burden of proof in a rezoning request for higher density housing will shift from the local government to the developer. As you can see, this is a method that forces the local government to initiate action under the threat of losing control over the location of land uses in its jurisdiction. Obviously, this has been litigated. But, it has produced 15,000 housing units (plus or minus) over the last 15 years.

2. A variation of this is the so-called “Anti Snob Zoning Override” that has its origin in Massachusetts and spread through New England in the 1980s. There have been no lawsuits brought against this method, which consists of a state law requiring all local jurisdictions to maintain 10 percent of the housing units in their jurisdiction as affordable (generally defined as below 80 percent of median income).

Unlike the New Jersey situation, there is no calculation of need and no allocation of a “fair share” to separate municipalities—it is just a simple tool that seeks to keep a minimum proportion of total housing affordable.

3. The Cape Cod Commission (a relatively new regional entity: 1990) goes beyond this to require all new residential projects to provide 10 percent

of the units at prices affordable by those earning below 80 percent of median income. It is flexible—the developer can provide land or money equivalent to the difference between market value and the affordable price—or buy a unit elsewhere. But all this flexibility requires intensive staff work to evaluate all the alternatives.

4. **Linkage Programs.** A number of central cities have adopted this—a zoning requirement that links new commercial uses to affordable housing. For example, in Boston to get a special permit or variance to develop commercial uses in the city, a developer must build housing equivalent to a fee of \$5.00 per square foot of new space for projects over 50,000 square feet of building mass. No lawsuits so far.
5. **Price-Based Programs.** In California, many municipalities have adopted affordable housing ordinances—primarily in San Francisco and Southern California areas facing high growth and prices.
  - Most of these programs are mandatory—not voluntary.
  - Majority require 10-15 percent of new residential units to be affordable.
  - Minimum project size typically is 10 units.
  - Most do not require MPDU and market units to be identical—just similar in outward appearance.
  - Most require that the MPDUs be spread throughout the development.
  - Most permit the developer to pay a fee in lieu of construction (from \$600 per unit to \$36,000).
  - Nearly all programs provide for both low income (50-80 percent of median income) moderate income (80-120 percent of median income) and about 50 percent require very low income (50 percent of median income).
  - Most require restrictions on price to remain for 30 years.

Collectively, these programs have produced 24,000 low income units over 20 years (I do not have the figure on moderate-income units). These programs were developed in the context of two important state laws.

The first requires local plans to have a housing component (i.e., each municipality must prepare a plan to meet its “fair share needs” as set by the regions Council of Governments), and the second requires zoning to be consistent with the plan. However, the difficulty of getting the community to plan areas for affordable housing/low-income housing has resulted in many

municipalities deciding that the easiest way out is to set a mandatory percent for affordable housing of all new projects. This removes the NIMBY obstacle. This is a variation of the New Jersey system, but is legislatively driven, and produces its result by local governments rather than by a state allocation system.

## Oregon

An Oregon author says New Jersey, California, Massachusetts and Oregon lead the inclusionary zoning movement—but Oregon’s programs do not include price designations. They just “remove land use constraints on density of low cost.” The result has been an increase in affordable housing due largely to higher density housing (i.e., lower cost per housing unit) inside the Urban Growth Boundary. As the supply of housing units goes up, the price per unit goes down. In North Carolina, we have townhouses at high density selling now for \$700,000.

## The Montgomery County Model

The Montgomery County model has most all the features of the California models but an important extra feature specially permits the right of purchase of up to one-third of the affordable housing units (15 percent of the total) by the Housing Authority. This Montgomery County ordinance and the one like it in neighboring Fairfax County, VA, adopted in 1991, are the only ones in the nation to do this.

This is why David Rusk, in his new book “Inside Game/Outside Game,” concludes that this is the best model for the nation to use as the primary tool for avoiding further concentration of the poor in central ghettos, because it gives protection to the Housing Commission to use public funding to subsidize units in scattered sites without the “not-in-my-backyard” location battle.

Montgomery County’s MPDU law has produced 10,000 affordable housing units over 20 years—and has never been challenged legally. Developers get a 20 percent density bonus, which we believe is adequate legal protection to offset any argument that this zoning is a “taking” of private property without compensation. It not only helps satisfy the problem of quantity of affordable housing, it also helps the social and economic integration of the community—a secondary social justice goal. Finally, it is a mandatory program with no fee in lieu of construction. By making it mandatory, the burden is on the developer to be efficient in cost—probably the most effective way to make affordable housing new construction cost-efficient and good looking at the same time.

To conclude, the entire concept of zoning as an essentially exclusionary device is undergoing philosophical revision today as we move out of the

industrial era into the information era. Where it will end up I am not sure. However, one of the harbingers of change is the set of concepts in New Urbanism, which shifts the focus from land use to land form.

In the meantime, the Montgomery County model seems to be one that has worked well for 25 plus years, is legally defensible and can be transferred to anyplace with the political will to enact it. It works best in the context of a planning program that allows flexible zoning—Montgomery County had this. It avoids concentrations of poverty that people want to move away from (crime, schools and lower property values).

# A Home Builder's Policy View on Inclusionary Zoning

*By Kent Conine*

Home builders are justifiably proud of the part they have played in our nation's strong economy and the recent achievement of the highest homeownership rate in modern American history. But we recognize that not all households have benefitted from the current wave of prosperity; in fact, many families may be experiencing a housing affordability gap as the housing industry needs to maintain a sharp focus on providing housing that is affordable for those at the lower end of the income distribution.

Homeownership has proven to be an important step for building equity and creating family wealth that can be passed to the next generation and lift a family to the middle class. While not everyone may be in an economic position to become a homeowner, it is in the public interest to expand homeownership opportunities to moderate- and low-income families.

Since the 1970s, a few local governments have fostered affordable homeownership through the imposition of inclusionary zoning, which mandates that builders construct a certain percent of affordable homes in a new development. Some of these programs provide density bonuses as a way to compensate builders for complying with inclusionary requirements.

These programs have two laudable goals: to create more affordable homeownership opportunities; and to integrate affordable units throughout a jurisdiction. Where inclusionary zoning requirements have been imposed, they have resulted in the construction of significant amounts of affordable housing without any government subsidy. In a 1992 report, the San Diego Housing Commission found more than 20,000 affordable dwellings had been built in California in the previous ten years without government subsidy.

Home builders have reacted in a variety of ways to the inclusionary mandates. Some view the mandates as the cost of doing business in a profitable, high-cost area. Some believe that if density bonuses are provided, the builder can break even on the affordable units or even realize a profit. Other builders maintain that the requirements impose significant costs and regulatory burdens on the building industry and further increase the cost of market-rate housing in already costly areas, thereby making housing even less affordable for many families who are not eligible for the units built under the requirements.

Whatever builders may think, inclusionary housing requirements raise some important public policy questions. Do programs impose a cost, and if so, who

bears that cost- the builder or the purchaser of the market-rate homes? If there is a cost to the builder (even if only in more work or regulatory complications), is it fair for the builder to shoulder the cost of providing a needed social good? If there is a cost to the purchaser of the market-rate units, is it sensible housing policy to use a technique that further raises home prices in already high-cost areas? Are housing prices for the majority of homebuyers made higher in return for lower prices for a few?

Some of these questions may be difficult to answer without significant research. The more important and more immediate policy question is whether inclusionary zoning is the best method of government intervention to achieve the goals of affordability and inclusion for the largest number of people. A legitimate criticism of inclusionary zoning programs is that, in spite of the amount of affordable homes built over two decades, the number of households that benefit from the programs is relatively small compared to the need. In most instances, applicants so outnumber available units that lotteries are used to select homebuyers. And several observers have noted that the programs have been of greatest benefit to the children of the middle class rather than helping families from low-income backgrounds attain middle-class status. Perhaps a different approach—one that addresses the larger issue of how growth occurs and is regulated—could bring benefits to a greater number of families.

Of course, most states can already point to proven models of the government-sponsored low-rate mortgages for low- and moderate-income purchasers (funded by mortgage revenue bonds). Other programs provide downpayment assistance to buyers. These approaches benefit those at the margins of achieving homeownership, but the impact of such assistance is limited and does not address the issue of the high cost of homes.

To increase homeownership significantly among lower-income households, a more comprehensive approach is called for. The Smart Growth policy adopted by the National Association of Home Builders supports such a comprehensive approach. Elements include planning adequately for growth; providing the infrastructure needed to accommodate growth; and providing revitalization of central cities and older suburbs with a strong housing component.

1. **Planning for growth.** Each jurisdiction should plan for growth by making available an ample supply of land for all types of residential uses, in addition to planning for commercial and industrial development and open space. Land costs are an especially large part of the cost of housing in high-income areas, and any regulations that restrict the developable land supply contribute greatly to the housing affordability problem. Zoning should permit reasonably high densities in appropriate places, and zoning districts should be flexible enough so that they do not

restrict development to one particular type of housing. If zoning allows different housing types and lot sizes in each neighborhood, builders will more likely respond with a wider range of housing products and prices.

2. **Planning and constructing infrastructure.** Communities need to find fair and broad-based sources of funding to pay for needed roads, schools, and utilities. When new infrastructure is not available for an adequate amount of new development, land already served by infrastructure escalates in price, making housing less affordable.
3. **Urban revitalization.** Builders and local governments should work together to revitalize innercity and older suburban areas. Incentives provided by cities can be tailored to support the building of affordable infill housing. For example, several cities make vacant city-owned land available to builders at low or no cost in return for building affordable homes.

It can't be denied that in the few places where it has been adopted, inclusionary zoning has succeeded in producing affordable housing and provided homeownership for those who otherwise may not have achieved it. However, the small number of places that have adopted these requirements suggests that much of the public is concerned with the troublesome policy questions these requirements raise. Rather than rely on the particular tool of inclusionary zoning to bring affordable homeownership to more Americans, we should be rethinking the planning, zoning, and housing policies that have the greatest impact on the price of housing. As communities throughout the country focus on Smart Growth, they should develop policies and tools that comprehensively foster greater homeownership opportunities for all Americans.

# Inclusionary Zoning: The Developers' Perspective

*NHC staff interviewed Richard Dubin, President of The Dubin Company, David Flanagan, President and Chief Operating Officer of Elm Street Development, and Eric Larsen, MPDU Program Manager of the Montgomery County Department of Housing and Community Affairs for this article.*

## Comments of Eric Larsen

The Moderately Priced Dwelling Unit (MPDU) ordinance provides homeownership housing for households with incomes at approximately 60% of the area median income. County residents and those who work in the county are given first priority.

According to Eric Larsen, the County Department of Housing and Community Affairs has a cost control pricing formula with which developers price the units. The County reviews construction and individual development costs periodically and publishes new pricing standards when necessary.

The ordinance requires the building of between 12.5–15 percent of affordable units in developments of 50 or more units on properties zoned  $\frac{1}{2}$  acre or smaller. Developers get a density bonus of up to 22 percent for providing the units.

A real-life example would render the following breakdown of units. “In a subdivision where you could normally build 100 units, with MPDUs you may build 122. Nineteen of those 122 would be MPDUs. The Montgomery County Housing Opportunity Commission (HOC) could buy six of the 19, and a nonprofit housing provider could buy one. Twelve units would be sold to private individuals and the developer would be able to build three extra market rate units,” Larsen says. Forty percent of the MPDUs are reserved for HOC or nonprofits to purchase. These units are normally routed to lower-income households.

MPDUs must be owner occupied for the first 10 years, according to Larsen. “They can sell during the 10-year price control period, but resale price is limited to what the person paid for the unit plus the increase in inflation from time purchased to the time sold, plus the fair market value of any improvements they make to the house. At the end of 10 years, it may be sold to the HOC or a private buyer at the market price”, Larsen says. One-half of the

excess profit is split between the county and the owner, with the owner getting the first \$10,000 in excess profit.

## Comments of Richard Dubin

“If one developer did it, he would be looked down on as bringing low-income people to your neighborhood,” says Richard Dubin. Dubin, a Boston native who has built 7,000 rental and ownership units throughout Maryland, is one of a pioneering group developing MPDUs in Montgomery County.

Among Dubin’s MPDU developments are Grosvenor House, Grosvenor Townhouses and Fallstone. Grosvenor House, a high rise of 404 units, has 101 affordable rental units. One bedrooms for very low-income families in Grosvenor House start at \$729, while a market rate one bedroom is \$1,160-\$1,550. In another development, Grosvenor Townhouses, 28 affordable townhouses, flank 259 \$250,000-\$300,000 townhouses. The affordable townhouses sell for \$50,000. Fallstone, where \$300,000 townhouses grace the landscape, includes 18 affordable units nestled in the middle of the 287 total units.

“The jurisdiction has to regulate that everybody that builds property must have a certain percentage of affordable units,” Dubin says. Policemen, firemen and teachers are some of the most common purchasers of MPDUs. “Their lives are enriched by living in a better part of town near their work. It serves a purpose to have public servants near their work.”

“A developer has to be creative to integrate the units into a development with the best land use possible and that fits architecturally within the surrounding community,” Dubin says. If the surrounding townhouses are brick, the MPDU can’t be all siding. For instance, if the surrounding townhouses have shutters, the MPDUs must have shutters, too.

One innovative way to fit extra units into the same space is called piggyback units. Piggyback units consist of two different configurations. One configuration is three townhouses built into the space of two: the top two floors are two townhouses and the third townhouse occupies the basement and has a side entrance. The other is four townhouses that fit into the space of two. From the front there are two doors but from the back one can differentiate four different levels.

The Innovative Housing Institute is a nonprofit entity that assists local housing agencies and governments in cutting-edge methods and techniques necessary to develop and manage affordable and high quality housing products. Dubin, along with The Enterprise Foundation, has constructed a web site: [www.inhousing.org](http://www.inhousing.org). Interested developers and local government officials can download documents to begin MPDU programs in their own counties.

## Comments of David Flanagan

David Flanagan heads Elm St. Development which develops its own sites, and provides several models of townhouses that other companies can buy to build in their own MPDU developments.

Flanagan explains that flexibility in the product type and sales price have helped Elm St. Development make MPDUs look a lot better. “If you have some flexibility you can really blend them in,” he says. Another way of achieving greater density is by building two duplexes back to back. Flanagan says, “although it contains two residences, when driving by it looks like one house,” Flanagan affirmed Dubin’s sentiment that it is difficult to convince people on an individual basis to have MPDUs in their subdivisions, but if it is mandated for everyone it is not as important to them.

Because the MPDU ordinance applies to all developers in Montgomery County, no one is allowed to buy their way out of the requirement with cash, for example. Critics of an automatic buyout right express the view that such an option would decrease rather than increase the number of affordable units in the county. When asked whether developers should be responsible for social problems that might occur in a development, Flanagan says “ developers are in some way responsible for setting it (a development) in the right direction, after that we can’t do anything about it.”

# Appendix

# Appendix

## Basics of the Montgomery County Inclusionary Zoning Law

The Montgomery County law took effect in 1974. It requires between 12.5 and 15% of the units to be produced at prices affordable to moderate-income households. Builders receive a density bonus which, along with the production of Moderately Priced Dwelling Units (MPDUs) allows for production of some additional market rate units. There are MPDUs in almost 400 different subdivisions in Montgomery County. There is a 15 year control on resale and a recapture of some “windfall profits” with the proceeds going into a Housing Initiative Fund to assist development and retention of affordable housing. The law requires one third of the MPDUs to be offered to the local housing agency. The Housing Opportunities Commission (HOC) which has purchased more than 1,000 units with the intention of retaining most as rental properties with public housing funds, Tax Credit Partnerships, a state program and other financing mechanisms.

## Mixed Income Housing and Property Values

“The House Next Door,” a study conducted by the Innovative Housing Institute, examined trends in the resale prices of 1,012 market rate dwellings sold between 1992 and 1996 within or next to 14 subdivisions with subsidized housing.

Two of the nation’s most affluent suburbs—Fairfax County, Virginia—with its own inclusionary zoning program creating Affordable Dwelling Units (ADUs)—and Montgomery County, Maryland—were the sites for the study. The study compared trends in median selling prices of all nonsubsidized houses with nonsubsidized houses at varying distances from the MPDUs. The trends in median selling prices of nonsubsidized units were also compared with the prices of all homes sold in the same year within that particular zip code.

The MPDU program has received broad general support in the County. In 1998 The Innovative Housing Institute undertook a study, funded by the Meyer Foundation, of the effect of proximity to MPDUs on resale values of market rate units. After looking at all resales (1,012 sales over a three year period) in fourteen subdivisions with inclusionary zoning in Montgomery County, Maryland and Fairfax County, Virginia (which also has an inclusionary zoning law) the following results were noted:

- Overall, there was no significant difference in price trends between nonsubsidized homes in the subdivisions with subsidized units and the market as a whole--whether measured at the zip code or county-wide level.

- Furthermore, there was no difference in price behavior between nonsubsidized houses located within 500 feet of subsidized housing and those farther away in the same or an adjacent subdivision.
- Even the price trends of those nonsubsidized homes located immediately adjacent to a subsidized dwelling (either next door, back-to-back, across the street or within 25 feet) were unaffected by their proximity.
- In sum, the presence or proximity of subsidized housing made no difference in housing values as measured by relative price behavior in a dynamic market.
- Finally, there was no significant difference between the two counties in these respects.

The study can be found on the web at [www.inhousing.org](http://www.inhousing.org).

# Recommended Site Plan Guidelines for Projects Containing MPDUs in Montgomery County

## *Guidelines for Unit Types*

*Below are site plan guidelines for projects containing MPDUs from the Maryland-National Capital Park and Planning Commission:*

1. Encourage a variety of MPDU unit types. Promote, but do not require, duplexes or single family detached MPDUs in a single family detached only section of a subdivision. Encourage more than one MPDU unit type in subdivisions with three or more market-rate unit types. MPDU unit types and market-rate unit types need not be the same.
2. Prohibit back-to-back townhouse MPDUs unless it can be demonstrated that no other unit type is suitable to the site [and] that the disadvantages associated with that unit type are eliminated in the site design and the MPDUs are scattered among market rate back-to-back units.
3. Encourage innovative site and building configurations for townhouses, piggybacks, quadriplexes (houses that look like two houses from the road), triplexes, duplexes, small-lot detached units and apartments. Solicit comments from agencies most familiar with the market, delivery and life of MPDUs prior to preparation of site plans for review.

## *Guidelines for MPDU Locations and Site Plan Features*

1. Discourage location of more than 16 back-to-back or piggyback MPDUs or 30 nongarage townhouse MPDUs adjacent to or confronting each other. Quantities larger than this should be separated from other MPDUs of these two types by market-rate buildings. Garage townhouse, duplex and detached MPDUs would be exempt from limits on aggregation.
2. Permit townhouse-type buildings containing only MPDUs.
3. Encourage, but do not require, MPDUs and market-rate units on a single garden-apartment stairwell. If an individual stairwell has only MPDUs, then the remainder of the building must contain some or all (both) market rate (and MPDU) units.
4. Encourage distribution of any MPDU-only apartment stairwells among the market-rate stairwells.

5. Continue to advocate siting of MPDUs to facilitate access to public facilities.
6. Permit enough clustering of single family detached and duplex MPDUs to take advantage of production and marketing efficiencies (typically, at least 10 to 12 units).
7. Continue to give special attention to site plans for MPDUs in order to provide usable open space, play and congregating areas near units, age-appropriate recreation, adequate parking for residents and guests, and adequate provision for storage and garbage collection.
8. Ensure that open space and recreational facilities which are required for site plan approval are equally available to all residents, regardless of income or unit type.
9. Continue to require close proximity for MPDUs to open space and recreation facilities required for site plan approval; where off-site recreation facilities are allowed, locate MPDUs nearby unless additional, age-appropriate facilities are located near the MPDUs.
10. In townhouse and garden apartment areas where residents lack individual private and defensible yards, continue to require open space areas which are adjacent and usable; steep slope and inaccessible open space areas are insufficient.
11. Require phasing plan contained in site plan to conform to Section 25A-5(I) of the Montgomery County Code.
12. Clearly identify MPDUs on all site plan applications and signature set drawings.
13. Clearly state on the record plat that the site provides MPDUs, the locations of which are shown on the (approved) site plan.









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