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After the Downturn: New Challenges and Opportunities for Inclusionary Housing

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SUMMARY

This paper examines how inclusionary housing policies fared during the nation's historic housing downturn, as well as the major issues and opportunities that confront inclusionary housing today, as the housing market begins to recover.

While most inclusionary policies survived the downturn, eight key challenges have come into greater focus over the past five years, affecting inclusionary policies in various parts of the country. These include – among others – new restrictions on applying inclusionary requirements to rental housing, a shift in development patterns toward "infill" settings where developments costs are often higher, and lingering difficulties selling affordable homes produced through inclusionary policies in a number of communities.

At the same time, new opportunities have emerged for communities seeking to establish or expand their inclusionary housing programs. In spite of the downturn, some jurisdictions have added or intensified their policies in areas experiencing significant upzoning and/or major new transit investments. In addition, the U.S. Department of Housing and Urban Development (HUD) has intensified scrutiny of local housing policies that impede fair housing choices, creating new openings for local conversations about the potential of inclusionary housing policies to affirmatively further fair housing. Finally, new difficulties have spawned new creativity, creating opportunities for jurisdictions to learn from one another about new ways to strengthen policies and make them more workable for private developers.

Rick Jacobus

A family stands in front of their inclusionary home under construction by the Housing Land Trust of Sonoma County in Petaluma (CA).

This paper, the first in a series, focuses on key challenges while hinting at creative responses worth further study and experimentation.

Introduction

Across the U.S., hundreds of communities are using inclusionary housing policies to create affordable homes in mixed-income settings. Inclusionary housing policies require or encourage developers to include a modest share of homes for low- or moderate-income households in otherwise market-rate developments. Most inclusionary policies are implemented through the zoning code, as mandatory requirements, accompanied by various forms of regulatory relief to help offset the costs of pricing units affordably. These policies are generally known as "inclusionary zoning" or "IZ." Other policies are voluntary, relying instead on incentives such as density bonuses to produce affordable homes. In each form, inclusionary housing policies seek to create diverse neighborhoods and broaden the array of affordable housing options available to low- and moderate-income households.

Inclusionary housing policies are attractive to many local governments in both the U.S. and abroad because of their ability to harness the energy of the private market to create affordable homes while enabling economic integration and social inclusion. Though not a "panacea" for local affordability problems, as both opponents and supporters are quick to point out, inclusionary housing is distinguished by its ability to locate affordable homes in neighborhoods of opportunity where other state and federal housing programs often struggle to expand affordable housing choices for lower-income households. For example, a recent study by the RAND Corporation found that, "compared to other affordable housing programs, IZ programs provide recipients with greater access to low-poverty neighborhoods, which are often correlated with high-performing schools."[1]

Additional advantages touted by supporters include the ability to produce affordable homes without the need for public subsidies, the ability to generate funding for affordable housing (through cash payments or land dedications made in lieu of including affordable units within new development), and a natural tendency to work best in hot housing markets, precisely where land for affordable homes is hardest to find, and home prices are rising most quickly.

Interest in inclusionary housing accelerated during the first half of the 2000s, as home prices rose rapidly in many communities.[2] Observers now estimate there are over 400 mandatory inclusionary policies nationwide,[3] spread across 17 states plus the District of Columbia.[4] Voluntary policies operate in several additional states.

But over the past five years, a lot has happened that affects inclusionary housing policies in the U.S.:

- **The nation's housing market experienced one of the most significant downturns in the past 120 years.** New construction ground to a halt even in many previously hot markets, and home prices dropped significantly in most places;
- **Local and state affordable housing resources dwindled,** as local revenue sources dried up and funding was cut for the federal HOME program — a block grant to state and local governments for affordable housing;
- **California's *Palmer* court decision in 2009** prompted most of the state's jurisdictions to cease applying inclusionary housing policies to rental developments, just as affordability pressures began to escalate in the rental market;[5]
- **The elimination of Redevelopment Agencies in California** led many jurisdictions in the state to stop enforcing inclusionary policies that were applied only to local redevelopment areas, while significantly decreasing funds for the staff that administer inclusionary housing programs in many municipalities;
- **Cities and high density suburbs grew at a faster rate than the nation's exurbs,**[6] as residential development occurred increasingly in infill locations;[7] and
- **HUD expanded its focus on affirmatively furthering fair housing,** with heightened scrutiny of local housing policies that impede housing choices for persons of color.

These new developments have changed the environment for inclusionary housing significantly. With the housing market finally beginning to recover, this is a good time to take stock of the nation's inclusionary housing policies and assess the new challenges, needs, and opportunities that confront inclusionary housing policies going forward.

This report begins by examining how well inclusionary housing policies have weathered the storm of the past five years. Drawing on an extensive literature review and 35 interviews with practitioners, experts, and local administrative staff, I outline eight major issues that jurisdictions and inclusionary housing policies face at the start of 2013.[8] I conclude with some thoughts about promising directions for addressing these challenges and crafting successful policies in the years ahead.

Taking Stock

Most Policies Remain Intact After the Housing Downturn

The Town of Davidson

A mix of market-rate and inclusionary townhomes in Davidson (NC).

In 2006, the U.S. housing market entered one of its most severe downturns in the last 120 years. Housing production slowed dramatically in most corners of the country. The private development industry saw tremendous job losses. Many local and state governments experienced significant fiscal hardship, as property tax revenues fell and other revenues derived from real estate activity dried up.

Yet in spite of these market difficulties, most of the nation's inclusionary housing policies survived the downturn. Of the roughly 400 mandatory inclusionary policies that existed nationwide in 2007, my research has uncovered only a handful that have been discontinued over the past five years: two in Colorado (Longmont and Lafayette), one in Minnesota (St. Cloud), one in Montana (Bozeman), one in Wisconsin (Madison), one in Florida (the town of Davie), and two in Idaho struck down by legal challenge (McCall and Sun Valley).[9] Since there is no comprehensive up-to-date database of inclusionary housing policies, there may well be other communities that have discontinued their policies, but the small number of abandoned policies are still the exception that proves the rule – most policies remain in place.

In most of the eight cases above, local officials struggled with a weaker housing market than typically exists in jurisdictions with inclusionary policies.[10] Also, in most of these jurisdictions, home prices had declined to such low levels jurisdiction-wide that inclusionary units were being priced at levels comparable to or higher than nearby market-rate homes. Developers were unable to sell their inclusionary units, especially given that these homes came with resale restrictions that were not shared by other homes on the market.[11] Finally, many of these policies were adopted very recently, as a reaction to the housing bubble, leaving them vulnerable to challenge when the bubble burst.[12]

In contrast, in the three states that account for the vast majority of the nation's inclusionary policies – California, New Jersey, and Massachusetts[13] – it does not appear that any policies were eliminated during the market downturn.

Similarly, relatively few local governments appear to have reduced their inclusionary affordability requirements between 2007 and 2012. My research has uncovered only a handful of examples:

- In November 2012, San Franciscans passed Measure C, which reduced the city's on-site affordability requirement from 15 to 12 percent in most areas of the city. The reduction was part of a larger, political compromise that will create a citywide Housing Trust Fund with ongoing, annual allotments of at least $20 million from the city's General Fund.[14]
- Santa Fe temporarily reduced its inclusionary home-ownership requirement from 30 percent to 20 percent. The change is slated to expire, however, in 2014.[15]
- Several jurisdictions in the San Diego region lowered their in-lieu fee requirements, including the city of Oceanside, which had originally planned to terminate its policy but ultimately lowered its fee instead.[16]

Defining Inclusionary Housing

The term "inclusionary housing" is used here to describe policies that either *require* developers to offer lower-priced units in otherwise market-rate developments, or *encourage* their inclusion through incentives. The differences between mandatory and voluntary policies can be thin at times, with some "voluntary" policies effectively acting as requirements, and some "mandatory" policies applying only to special districts or certain development types, essentially giving developers a choice of whether to opt in. Because of the substantial gray area between voluntary and mandatory policies, and because they strive to achieve the same general outcomes, this report uses the term "inclusionary housing" to encompass both approaches.

California, New Jersey, and Massachusetts each provide a strong policy backstop at the state level for local inclusionary policies that help protect these policies from being overturned.

Why Weren't More Policies Weakened or Eliminated?

Given the housing market slowdown, one might have expected private developers to convince more local officials to rescind local inclusionary housing policies, or at least to suspend requirements. Why didn't this happen? To the extent we can answer this, it may provide important insights into how inclusionary housing policies can be preserved and strengthened going forward.

The most straightforward explanation for inclusionary housing's resilience during the downturn is that most policies tend to be based in relatively strong housing markets. Certainly a strong economy has buoyed inclusionary policies in places like Montgomery County (MD), where private development never ceased during the economic downturn. Developers there have produced more than 700 inclusionary units since 2008 – roughly half rental, and half ownership.[17]

Inclusionary housing also tends to be located in places with strong, local constituencies. Their support fortified policies in even weak markets over the past five years. For example, the Florida jurisdictions of Palm Beach County and Tallahassee saw median home prices cut in half during the downturn and new production slow to a trickle. Nonetheless both jurisdictions left their policies unchanged after local advocates mustered a strong counter-weight to efforts to overturn them.[18] A new policy in Baltimore survived a similar challenge in 2011.[19]

The flexibility of many inclusionary housing policies may have provided further insulation from challenges during the housing downturn. Many policies allow alternatives to the on-site construction of affordable units in certain situations. Options include payment of an "in-lieu" fee, building affordable units off-site, or dedicating land. Some policies also allow developers to waive out of requirements altogether in cases of severe financial hardship. Jurisdictions can also adjust these options as market conditions change, as in the case of Oceanside discussed above. Arguably, this flexibility, especially when combined with cost-offsets (such as density bonuses and relaxed zoning standards), has helped to reduce the grounds for concern with ordinances, helping them endure through the housing downturn.

Finally, California, New Jersey, and Massachusetts each provide a strong policy backstop at the state level for local inclusionary policies that help protect these policies from being overturned. Eliminating inclusionary requirements in any of these states simply means that a given jurisdiction will have to come up with other tools for generating housing for below-median-income households – such as raising local funds to subsidize affordable units – in order to stay compliant with state housing laws. Oftentimes these alternatives are more politically difficult than adopting an inclusionary housing policy.

The recent experience in the city of Folsom (CA) is illustrative. California Housing Element law requires that jurisdictions create realistic opportunities for meeting regionally determined affordable housing targets. Historically, inclusionary housing policies have been a popular tool for complying with this law.[20]

In 2011, Folsom's City Council voted to end its inclusionary housing policy. But in June 2012, the Superior Court of Sacramento County ruled that Folsom could not drop its inclusionary housing ordinance (IHO) without adopting a new housing strategy to replace it. In the decision, the judge stated:

> The Court is persuaded that the city's action to sunset the IHO is inconsistent with the city's housing element because it (1) discontinued a program ostensibly responsible for nearly half (405 units) of the city's quantified objective for affordable housing, without identifying any replacement program; and (2) interfered with the Housing Element's goals to promote the development of affordable housing. Therefore, the City's Sunset Ordinance should be invalidated.[21]

To date, Folsom's inclusionary policy remains on the books.

It would be overly simplistic to solely credit state housing law for the perpetuation of so many policies in California, given that many policies were created as a response to real, local affordability concerns.[22] Furthermore, the major, recent drop in state public subsidy for affordable housing has made inclusionary housing all the more appealing for some California communities. But arguably state housing law has made it a bit more difficult to eliminate inclusionary policies without legal consequence.

Similarly, the perpetuation of inclusionary housing policies in New Jersey reflects the strength of New Jersey's Fair Housing Act. This landmark law recognized inclusionary set asides, coupled with higher-density rezoning, as essential steps for creating "realistic opportunities" for the development of a municipality's fair share of affordable housing. Accordingly, these mechanisms have become important[23] means by which a municipality can gain certification from the New Jersey Council on Affordable Housing for its local housing plan.[24] This certification, in turn, grants a local government valuable immunity from "builder's remedy" lawsuits filed by developers.[25]

Inclusionary housing also interfaces in important ways with state housing policy in Massachusetts. Under the state's Comprehensive Permit Law (often referred to as 40B), municipalities can obtain temporary "safe harbor" from appeals by developers to override local zoning if the jurisdiction can get its Housing Production Plan certified by the state Department of Housing and Community Development (DHCD) and make regular progress toward achieving a 10 percent affordable housing stock.[26] Inclusionary housing has provided a means to work toward this 10 percent goal, though the Massachusetts DHCD has not been as explicit in its support for mandatory inclusionary housing policies as New Jersey or California.[27]

Colorado provides an interesting contrast to these three states. There is no similar policy at the state level that creates an incentive for local jurisdictions to adopt an inclusionary housing policy. This may have left local policies more vulnerable to elimination or change in recent years. Indeed, policies in the cities of Longmont and Lafayette were among the handful of ordinances nationwide that were overturned during the past five years. And while the city of Denver's policy is still on the books, it faces serious challenges from developers and local elected officials concerned about problems that arose during the downturn, such as foreclosures of some poorly monitored inclusionary units and resale difficulties in certain neighborhoods.[28] Without a strong state backstop that requires local efforts to provide affordable housing, the outcome of these discussions is uncertain.

Inclusionary Policies Survived, but Most Inclusionary Production Stalled During the Market Downturn

While most policies survived the housing downturn nationwide, few saw much inclusionary housing production over the past five years. This exposes one of the key weaknesses of inclusionary housing as an affordable housing production strategy — its dependence on market-rate development. When private housing development comes to a halt, so does inclusionary production.

We can find exceptions in the strongest housing markets where market-rate development continued during the recession, albeit at a slower pace. Policies in the Washington, DC, metropolitan area and New York City together produced more than 1,200 inclusionary units during the national housing downturn.[29] But the resumption of inclusionary housing production has been more tentative in moderately strong markets, and has been largely confined to municipalities that apply their policy to rental development, which excludes many California and Colorado communities, as discussed in greater detail below.

Business and Professional People for the Public Interest

Battle Road Farm is a 120-unit, mixed-income condominium development in Lincoln (MA). Forty percent of the homes are deed-restricted at below-market prices in perpetuity. The town assisted by providing land at reduced cost.

Key Challenges Affecting Policies Going Forward

As the housing market emerges from the downturn of the past five years, inclusionary housing policies face a new set of challenges – some, but not all, related to the downturn. Below I identify eight pressing issues that confront jurisdictions at the start of 2013. With one exception – the loss of redevelopment in California – each of these issues echoes in various parts of the U.S.

1. The Growing Difficulty of Applying Inclusionary Housing to Rental Properties

The most significant change to the nation's inclusionary housing landscape over the past five years was triggered not by the collapsing market or resulting pressure from private developers, but by a California legal decision rendered in 2009.

In *Palmer/Sixth Street Properties, L.P. vs. the City of Los Angeles*, a California appellate court found that an inclusionary requirement requiring affordable rental units in Los Angeles was inconsistent with state law prohibiting rent control.[30] Since this decision, most California jurisdictions have ceased applying their inclusionary policy to market-rate rental developments to stay clear of legal trouble. This is significant because California is home to almost half of the nation's inclusionary policies[31] and because most new development in California is presently being built as multifamily rentals. Also, the inability to generate inclusionary rental units comes at a time when many California towns and cities are seeing rent levels nearing all-time highs, and fiscally strapped state and local governments have cut or fully spent public funds that subsidize affordable rental housing.

The *Palmer* decision, combined with a slow recovery in the new for-sale home market, has elevated the nationwide importance of finding new ways to address legal impediments to rental inclusionary housing, as the issue affects not just California but other states such as Colorado, Wisconsin, and North Carolina.

Jurisdictions in California have generally responded in one of three ways to prohibitions on inclusionary rental units:

- **No longer applying inclusionary requirements to rental developments.** This appears to be the case for a majority of California jurisdictions with existing inclusionary policies.
- **Applying rental requirements only to developers that request some form of "assistance," such as zoning modifications or upzonings.** In this case, the municipality conditions its assistance on voluntary compliance with inclusionary rental requirements. This approach is less impactful in places that have recently upzoned desirable development areas – since developers no longer need special approval for higher density – and in places that have made attractive zoning terms available "by right" – for example in the city of Emeryville. No rental housing developers have yet sought assistance in Emeryville because of its already favorable zoning terms, thereby evading inclusionary requirements altogether (and virtually all of the city's development proposals currently are for rental housing).[32]
- **Shifting to a fee-based policy (sometimes with the option to waive out of the fee by providing units).** Rather than require inclusionary units to be built as part of new market-rate development, several jurisdictions are instead assessing an affordable housing fee on new rental development. Some jurisdictions offer developers the option to produce units on site as an alternative to paying the fee – in essence, the opposite of a traditional inclusionary zoning policy with the option to pay a fee in lieu of including affordable units. In San Francisco, a relatively high fee has made voluntary, on-site compliance relatively attractive for many developers as an alternative to paying the fee. San Diego takes a similar approach by exempting developers from the fee if they provide 10 percent affordable units on site. In Mountain View, the fee is only applicable to rental development.

As jurisdictions continue to experiment with workarounds to the *Palmer* decision, finding an effective solution has become all the more urgent.

The most significant change to the nation's inclusionary housing landscape over the past five years was triggered not by the collapsing market or resulting pressure from private developers, but by a California legal decision rendered in 2009.

2. The Elimination of Redevelopment in California Undermined Many Inclusionary Housing Policies

In late 2011, California governor Jerry Brown set in motion the elimination of redevelopment agencies statewide. With their disappearance came not just the loss of approximately $1 billion in local funds supporting affordable housing, but also the loss of inclusionary requirements that were tied specifically to redevelopment areas.[33] This has had a major (though less documented) impact on the inclusionary housing landscape in California.

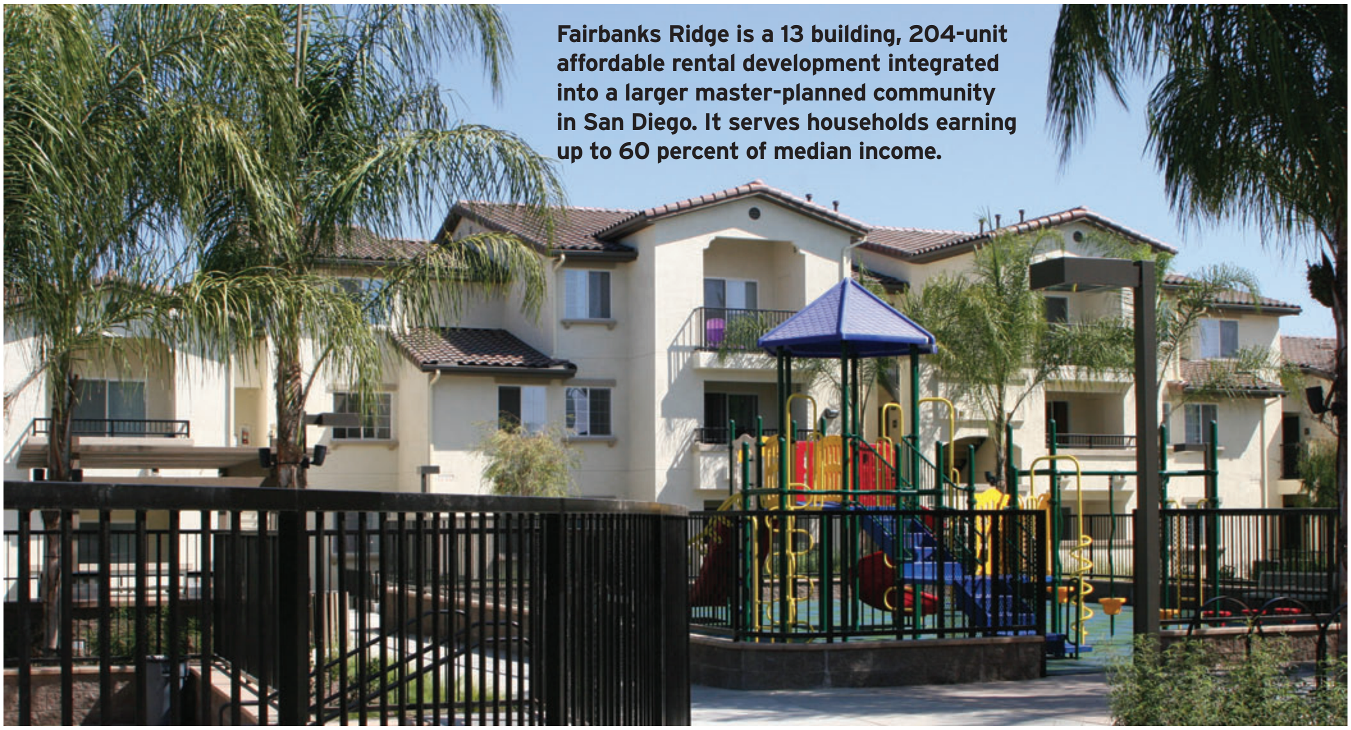
Under state law, redevelopment agencies were required to ensure that 15 percent of all new homes in redevelopment areas were affordable to low- and moderate-income households. While jurisdictions were given a choice of how to achieve this threshold, many mandated inclusionary housing in their redevelopment areas and/or required affordability from private developments seeking redevelopment assistance.

State law is unclear on whether the 15-percent, area-wide affordability requirements remain in effect.[34] As a result, many jurisdictions are backing away from the inclusionary requirements they used to meet this standard, according to advocates.[35] Furthermore, the State Department of Finance has taken the position that these requirements no longer apply. It is also up to the successor agencies that are winding down ongoing debt repayment and other contractual obligations for the redevelopment agencies to decide whether to enforce affordability covenants on existing below-market-rate homes within redevelopment areas.[36]

For approximately 289 California municipalities, redevelopment-area-wide affordability requirements were the only policies tying affordable homes to new market-rate development within the local jurisdiction.[37] Their loss therefore leaves a big hole in the state's patchwork of inclusive housing policies, especially in conservative municipalities.

Another consequence of the elimination of redevelopment agencies has been reduced funding for the administration of citywide inclusionary policies. This is because funds raised by redevelopment agencies through tax increment financing and other mechanisms provided at least partial support to many inclusionary housing administrative staff.[38] The city of Fremont, for example, has had to lay off its entire housing staff, severely impacting the management of its inclusionary housing policy. In other cities, staff formerly responsible for managing just the local inclusionary program have now had to take on successor agency responsibilities as well, because these agencies are not allowed to allocate tax increment funds for their own administration.[39]

Reduced staffing for inclusionary programs decreases not just the ability of a town or city to work closely with developers to help them meet inclusionary requirements, but also staff's ability to monitor inclusionary properties over time to ensure that they continue to be offered at affordable prices. In the past, such limited oversight has led to jurisdictions losing a significant portion of their inclusionary housing stock, on account of illegal sales or even foreclosures.[40]



Fairbanks Ridge is a 13 building, 204-unit affordable rental development integrated into a larger master-planned community in San Diego. It serves households earning up to 60 percent of median income.

Lynn Schmid, Courtesy of Chelsea Investment Corporation

3. New Inclusionary Housing Policies Have Become Harder to Pass

While most inclusionary policies remain on the books, the market decline has made it more difficult for advocates promoting inclusionary housing to pass new policies – particularly in areas that are not experiencing major upzonings or new transit investments. (These settings may actually make it easier to pass new policies, as discussed later under "New Opportunities.")

Concerns about the strength of the housing recovery also appear to have undermined efforts to build momentum in California for a legislative "fix" to the *Palmer* decision since it was issued in 2009. A state senate bill designed to override the *Palmer* decision (SB 184) failed to make it through the Senate this past year. The California Building Industry Association (CBIA), the California Apartment Association, and other opponents were able to convince even moderate Democrats to vote against it.[41]

Challenges to new inclusionary policies also have a legal dimension in California. As discussed above, the *Palmer* decision upended efforts to pass a new inclusionary policy in Los Angeles. Furthermore, a second recent decision – *Building Industry Association of Central California vs. City of Patterson (2009)* – has created some confusion about what kind of study is necessary to justify fee-centered or other inclusionary requirements, and has given litigants a new angle for challenging new or recently amended policies.[42] For example, the CBIA successfully sued the city of San Jose in 2012, preventing it from rolling out a new inclusionary policy set to begin in 2013. The lower court's decision has been appealed, but the outcome is uncertain.[43]

EAH Housing

Edgewater Place in Larkspur (CA) is a 28-unit, 100 percent affordable rental development built by EAH Housing on land dedicated by an adjacent condo developer. The dedication allowed for double the number of affordable units required under the policy by combining the land with funding from other sources, including the county's housing trust fund.

At issue are the higher per-unit costs of many infill locations and the different set of cost-offsets that may be necessary to keep policies workable for developers in these new environments.

4. As Development Continues to Shift Toward Infill Settings, Policies Written for Greenfield Developments May Need Adjusting

Many of the nation's inclusionary housing policies were written for undeveloped, "greenfield" settings in affluent suburbs. These policies were conceived for communities in which land was relatively plentiful, and low densities were feasible. While suburbs remain the predominant location for new housing construction, development patterns are shifting toward compact, transit-served neighborhoods closer to the regional core – a trend found in nearly three quarters of the nation's large metropolitan areas, according to recent research.[44] To the extent this shift continues, older policies may need adjusting to remain workable for developers and newly developed policies may need to be adapted to the realities of infill development.

At issue are the higher per-unit costs[45] of many infill locations (see below), and the different set of cost-offsets that may be necessary to keep policies workable for developers in these new environments.

There are several reasons why it can be more challenging for private developers to include affordable units in denser, infill settings than in lower density suburbs:

- **Land prices tend to be higher in infill areas.**
- **Structured parking is usually needed to accommodate cars in infill areas**, at an average cost of $15,000-$20,000 per space, according to one study. Underground parking can cost $25,000-$35,000 per space.[46]
- **Once buildings reach five-to-six residential stories, they are required to add elevators and shift from wood-frame to steel/concrete construction,** increasing per-unit costs significantly. At heights of over 100 feet, buildings also take on additional "life/safety" costs for features such as sophisticated fire alarm systems, pressurized exit stairs, and other fire safety provisions.[47]
- **Inclusionary units are more likely to be built in the same building as market-rate units** (rather than in separate buildings elsewhere on site), making it more difficult to build the inclusionary units at a lower cost than the market-rate units.[48]
- **Developers often take on more risk with high-rise developments** because they cannot be built incrementally in response to market demand, unlike "horizontal" developments in lower-density settings.[49]

Density Bonuses Are More Valuable in Some Settings than Others

Because of the higher cost of development associated with taller buildings that require steel or concrete framing, elevators, or various other safety features, the primary cost-offset favored by traditional inclusionary policies – the density bonus – can sometimes trigger these more expensive construction requirements in an infill setting, complicating efforts to use density as the offset for inclusionary policies.

Where density limits are low, such as in greenfield settings, a density bonus can enable a developer to produce more housing units without having to acquire additional land. This can be very lucrative and help offset losses incurred by offering inclusionary units at below-market prices.

But when prevailing densities already allow for four-or-more stories, accessing density bonuses may necessitate moving into the high-rise portion of the cost curve where per-unit costs become more expensive.

In New York City, density bonuses have had mixed appeal for developers in certain neighborhoods for this very reason. In the city's highest density areas – where developers can already build well over six stories – and in areas where former industrial/commercial sites are being converted to residential uses, New York City has had nearly 100 percent participation in the city's voluntary inclusionary program, which trades higher density for affordability. But in neighborhoods of intermediate density, such as parts of Brooklyn, there has been much lower participation because accessing density bonuses would require higher, per-unit construction costs, but height limits impede tall enough construction to offset these higher costs with significantly more revenue-generating units.[50]

To foster mixed-income developments in infill areas of intermediate density – where a density bonus might trigger higher-cost construction requirements

– it is worth taking a closer look at other ways that jurisdictions may be able to offset higher per-unit development costs, in addition to the venerable density bonus. Promising ideas include:

- **streamlining the entitlement process to reduce risks** (for example, the risk that a hoped-for zoning variance may not be granted);
- **relaxing lot coverage, public space, and parking requirements** in these settings;
- **facilitating off-site construction of inclusionary units** within a mile or less of the market-rate development;
- **allowing slightly higher rent payments and/or higher income targeting for inclusionary units** in these settings;
- **reducing the inclusionary requirements for tall buildings;** and
- **providing property tax abatement and other financial assistance** for these developments.

The applicability of each offset will certainly vary from place to place, as high market prices and tall height limits in some communities may allow developers to absorb higher per-unit costs more easily than in other communities.

5. Rising Homeownership Association and Condominium Fees

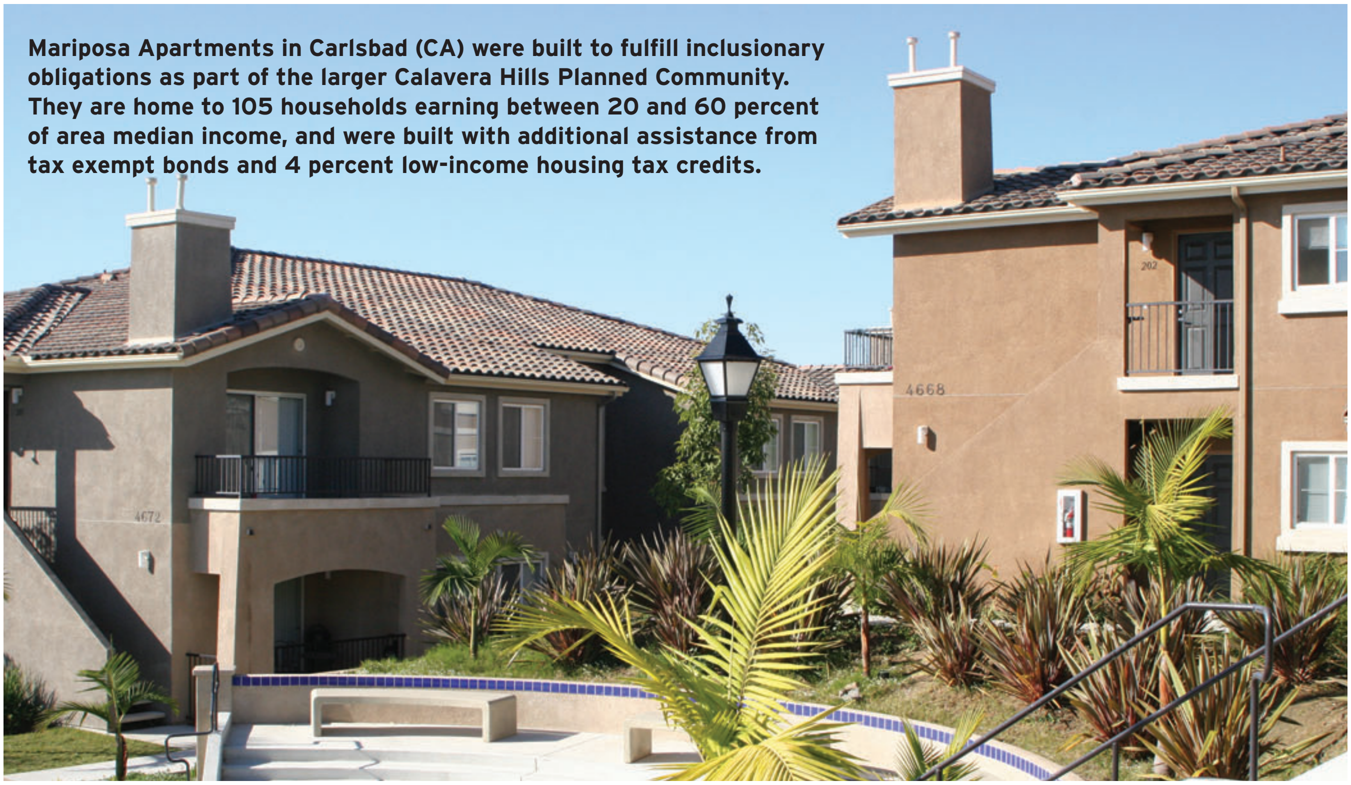
A related challenge to the higher costs of infill development is the rising cost of homeownership association (HOA) fees and special assessments in multifamily buildings.

A growing number of high-amenity, luxury developments are being built in urban settings. Multiple jurisdictions have had problems with HOA fees in these and other properties rising beyond what owners of inclusionary units can afford. Often the challenge is not so much that fees are prohibitively high at the initial point of sale, since fees are often part of the overall price calculation for inclusionary for-sale units, and accordingly must be affordable for targeted income brackets. The bigger challenge is that HOA and condo associations will increase fees and assessments once the developer is out of the picture. Inclusionary owners get outvoted and find themselves shouldering substantial fees that can sometimes rival mortgage payments.

Rising fees and special assessments undercut the affordability of inclusionary units for both existing owners and future homebuyers. Jurisdictions struggle to prevent or even just stay apprised of these cost increases. And for jurisdictions committed to maintaining the affordability of their inclusionary housing stock – ownership as well as rental – the cost of offsetting higher fees can be exorbitant, compromising a municipality's ability to promote affordability elsewhere in its jurisdiction.[51]

The recently completed Wesmont Station community in Wood-Ridge (NJ) is walking distance to a new transit station under construction, and includes 15 percent of homes affordable to low and very low income households.

AvalonBay Communities, Inc.



Mariposa Apartments in Carlsbad (CA) were built to fulfill inclusionary obligations as part of the larger Calavera Hills Planned Community. They are home to 105 households earning between 20 and 60 percent of area median income, and were built with additional assistance from tax exempt bonds and 4 percent low-income housing tax credits.

Lynn Schmid, Courtesy of Chelsea Investment Corporation

6. Many Policies Will Need to Be More Creative to Serve Very Low- and Extremely Low-Income Households

The *Palmer* decision's recent prohibition of rental inclusionary requirements will make it harder to reach very low-income households in California earning 50 percent or less of the area median income. Generally it has only been the rental units of inclusionary housing policies that have served very low-income households. Ownership inclusionary units are rarely priced for households earning this little. A recent California survey, for example, found that only 11 percent of for-sale units were available to households with incomes at or below 50 percent of area median income. A majority were priced for households earning between 81 and 120 percent of the median.[52]

Many polices allow market-rate developers to meet their inclusionary requirements by dedicating funds or land to affordable housing developers to produce the required affordable units either on-site or nearby. With the help of additional public subsidies, affordable housing developers can build on these contributions to provide even deeper levels of affordability than originally required by the ordinance. These partnerships are relatively common in states like California, where they were responsible for nearly one-third of inclusionary homes between 1999 and 2006 and 68 percent of inclusionary homes for extremely low income households (a total of 611 units).[53]

However, many local and state governments have made significant cuts to affordable housing funding in recent years, and the federal government has cut funding for the federal HOME program substantially.[54] This loss of funding may impede the ability of mission-driven affordable housing developers to leverage inclusionary requirements for deeper affordability going forward.

Given this loss of funding, along with new restrictions on rental inclusionary housing, local governments may need to adopt new approaches to ensure that very low-income and extremely low-income households are included in newly developing communities. Potentially promising ideas include:

- **Providing public land at discounted cost** to support inclusionary partnerships that serve very low- and extremely low-income households;
- **Offering first-right-of-refusal for purchasing inclusionary for-sale homes to housing authorities or nonprofits** that can use public housing or Section 8 voucher subsidies to manage the units as deeply affordable rentals;[55]
- **Lowering the required affordability set-aside when developers meet deeper income targeting standards;** and
- **Conditioning particularly valuable cost offsets on providing deeper levels of affordability.**

7. It May Get Harder to Support Inclusion Through In-Lieu Fees

Most communities with inclusionary housing policies allow developers the option of satisfying their inclusionary requirements by paying an "in-lieu fee," rather than constructing new affordable homes. Often, fee revenue is deposited in a housing trust fund and is used to facilitate construction of units elsewhere for low- and moderate-income households, or to achieve other affordable housing goals.

Often, the in-lieu fee is set low enough that developers prefer to pay the fee rather than produce the inclusionary units themselves. Various problems can follow.

The primary issue with an overreliance on in-lieu fees is that it can work against the goal of creating inclusive communities, particularly if fees are used to support affordable housing outside the area where new market-rate development is occurring.

The challenge of using in-lieu fees to further the goals of inclusivity is compounded in infill settings, where new development is increasingly focused. Infill areas often have a limited number of available sites at which a separate, affordable housing developer could use lieu-fee revenues to produce affordable homes.[56] And when sites are available, they are less likely to be priced affordably, given heightened competition from other developers.

A second challenge is that in-lieu fees are sometimes set too low to produce an equal number of affordable units elsewhere in the community – regardless of the setting.[57]

A third issue is that some communities lack local, affordable housing developers with the capacity to use fee revenues to produce new affordable homes. As a result, it is not uncommon for fee revenues to be used for downpayment assistance or other forms of housing support that are less geographically targeted, less directed toward lower-income households, and often accompanied by shorter affordability terms than inclusionary housing programs.

When sites are hard to find, fees are set too low, local capacity is constrained, or political support is lagging, inclusionary fee revenues can linger unspent for years. This has been a particular problem in New Jersey, for example. Since 1990, the state's municipalities have collected more than $442 million in fees-in-lieu, but only 15 percent of these funds have been spent on new affordable housing development. More than a quarter of municipalities collected fees but never expended a single dollar. A majority of the remaining jurisdictions have spent their fee revenues, but not on affordable housing construction.[58]

Pacific Marketing Associates

SOMA Grand was built in 2007 with 246 luxury condominiums. Located in San Francisco, it includes 29 below-market-rate units sold to households earning at or below median income.

This is not to say that fee options are inherently unhelpful. To the contrary, in-lieu fee revenues can help jurisdictions address diverse housing needs that would otherwise go unmet through inclusionary housing. By working in partnership with affordable housing developers, in-lieu revenues can be combined with other public funds to support larger-unit developments for families, service-enriched housing for people with special needs, or homes for extremely low-income households – all of which are rare and challenging in mixed-income developments.[59] And fee revenues can be used to create affordable rental units in jurisdictions where these types of homes are not being produced by inclusionary housing – for example in states like California and Colorado, where it is now illegal to require developers to price-control rentals directly. Fees used to support off-site affordable rental housing furthermore leverage the expertise that affordable housing developers have in managing affordable rentals.[60]

The challenge in the years ahead will be to find ways to ensure that in-lieu revenues are used to meet a broad range of housing needs while still supporting mixed-income communities, rather than creating a deeper pattern of segregated affordable housing.

8. It Is Still Difficult to Sell Inclusionary Ownership Units in Some Places

During the downturn, developers and homeowners struggled to sell (or re-sell) inclusionary homes in many communities, leading to pressure on local governments to ease policies and resale restrictions. As discussed earlier, this was the primary reason that a handful of municipalities discontinued their policies during the housing downturn. This issue has also been a challenge in jurisdictions that still have inclusionary policies.[61] The reasons for these difficulties vary, however.

One of the chief reasons that many "affordable" units produced through inclusionary housing policies are failing to sell is that market-rate home prices in many neighborhoods have dropped to levels comparable to inclusionary prices. Owners struggle to sell inclusionary units that are even slightly lower in price than comparable market-rate homes, because resale restrictions that cap future equity gains make the inclusionary units less attractive.[62] As a result, some inclusionary homeowners and developers have had to accept losses to sell their homes, or even face foreclosure – similar to other homeowners and developers whose homes are not restricted.

It remains to be seen whether this problem is a one-time issue related to the historic and mostly unprecedented housing market crash. If so, market-rate competition may be less of a problem going forward as the market recovers. This problem also may be the product of unrealistic expectations as much as a problem with underlying policies. After all, homeowners of all incomes lost money and experienced difficulty finding buyers during the housing crash and foreclosure crisis. While the below-market purchase prices of inclusionary units provide some protection from modest housing price downturns, there are still risks involved in purchasing these units and one can argue that the purchasers of affordable homes have experienced significantly fewer problems than purchasers of market-rate homes.

There are also some challenges, however, that affect the sales of inclusionary homes more than market-rate homes:

- **Tightened mortgage standards.** Multiple jurisdictions report difficulty in finding lower-income buyers that can qualify for mortgage financing. Following the onset of the housing downturn, banks now require much stronger credit and larger downpayments than in the past, leading many applicants to fall short of qualifying for a loan. This has been reported as a major problem even in strong markets, such as San Francisco, Montgomery County (MD), and Fairfax County (VA). Sellers therefore find themselves facing a much smaller buyer pool for inclusionary units than in previous years.
- **FHA unwillingness to insure loans for homes whose price restrictions will survive foreclosure.** This issue has become prominent in the past five years, and has had a marked impact on the initial sale of inclusionary homes, especially in places with relatively new programs, such as Washington, DC, and localities in Washington State. Because other sources of financing have dried up in many locations, few lending products may be available for applicants in these areas. The concern for FHA (and others such as Freddie Mac) is that resale restrictions on inclusionary units may impede the resale of homes should they be foreclosed upon, preventing the lender from fully recouping its loan. Some jurisdictions seek to get around this problem by allowing affordability restrictions to expire upon foreclosure, thereby obtaining an FHA waiver, while taking proactive steps to intercept units before foreclosure occurs (or by working to prevent foreclosure through better monitoring and homebuyer education). However, some jurisdictions find it challenging to get lenders to notify inclusionary administrative staff of imminent defaults, and not all jurisdictions have the resources to acquire units that have gone into default.[63]
- **Restrictions on renting out ownership inclusionary homes.** Some jurisdictions prohibit inclusionary homeowners or developers from easing their financial situation by renting out their homes.

Effectively addressing the challenge of selling inclusionary units requires clarifying what factors most impact salability and working to address these problems. To rectify the issue of competition from market-rate units, a possible solution would be to require a lower initial pricing of inclusionary ownership units by future developers, while at the same reducing the set-aside requirement. But this does not address – and may in fact compound – the problem of a limited pool of qualified applicants. To broaden the pool of eligible buyers, it may also be necessary in some places to raise income restrictions for prospective buyers (while keeping prices still affordable for lower-income households), as Montgomery County does for developers who are unable to find qualified buyers within 90 days.[64] Alternatively a jurisdiction may wish to consider changing its inclusionary requirements to allow developers or owners to rent out the homes in the event they try but are unable to sell them after a reasonable period of time. Jurisdictions also may wish to allow developers to convert ownership units to rentals on a more permanent basis in the event a sale at the target price is infeasible.

The underlying challenge for the field is that many policies lack the flexibility to adapt to changing market conditions. Not all policies for example allow existing homeowners or developers to rent out inclusionary ownership units, even under defined circumstances or for specified time periods. Strengthening policies to be more dynamic in the face of unexpected price dips (or spikes) is a key area where policies can improve in the coming years.

Sound stewardship practices can also help to minimize problems associated with changes in market conditions or buyer circumstances. Some affordable homeownership programs have an entity charged with staying in touch with buyers of affordable homes to answer their questions, help them access assistance in the event that problems arise, and monitor long-term affordability provisions.[65] There is some evidence that this type of stewardship may help anticipate and address problems before they lead to a crisis. For example, a survey of community land trusts — a form of affordable homeownership that places a particular emphasis on ongoing stewardship — found that the severe delinquency and foreclosure rates of their homebuyers were far below market levels despite the fact that the homebuyers had low incomes.[66] While some inclusionary programs offer strong stewardship of inclusionary units, others do not, and are thus less able to provide the type of ongoing support some low-income homeowners may need to weather a crisis.

Montgomery County Department of Housing and Community Affairs

A mix of moderately priced and market-rate condominiums in Montgomery County (MD).

New Opportunities

The story of inclusionary housing in America today is not solely one about new challenges. There have been multiple interesting new developments in inclusionary housing over the past five-to-six years that may lead to stronger policies.

1. Some Jurisdictions Actually Strengthened or Expanded Their Policies During The Market Downturn

These cities and counties are part of a nationwide trend toward instituting new or expanded policies in areas experiencing significant upzoning and/or major new transit investments:

- In 2006, Washington State legalized mandatory inclusionary housing in situations where a change in zoning or other requirements increases the development capacity of an area. Where an area is upzoned, a city can require developers to include affordable units – even if developers don't take full advantage of the larger building envelope/greater development potential.[67] Thus far, the municipalities of Kirkland, Redmond, and Sammamish have established new mandatory policies tied to upzoned areas.[68]
- In 2008, San Francisco increased its affordability requirements for newly upzoned industrial areas beyond the typical requirements of its inclusionary policy (from 15 percent to 18-22 percent).[69]
- In 2010, Fairfax County (VA) adopted the Tysons Comprehensive Plan, which requires developers to include 20 percent workforce and lower-income housing in exchange for lucrative redevelopment options at sites near the county's new Metro transit stations. Elsewhere in the county, the affordability requirement is 6.25-12.5 percent. Given the strong expected demand for housing near the planned stations, and sharply higher allowable density, private developers have shown a high level of interest in building, notwithstanding the affordability restrictions:
  - The area has seen rezoning applications for 40 of the 47 million square feet of existing uses in the area.
  - 18,000 new dwelling units have been proposed.
  - 2,390 total units have been approved since June 2010.
  - One project is already under construction. It will provide 400 units (80 of them workforce units).[70]
- New York City's "designated areas" voluntary inclusionary policy, though passed before the downturn, provides further evidence of this trend. Created in 2005, the city's policy offers density bonuses of up to 33 percent in newly redeveloping areas in exchange for 20 percent affordability. Since that time, it has created and preserved approximately 1,800 below-market-rate units.[71] A large share of these homes was produced during the national economic downturn. One example is Williamsburg Community Apartments, which opened in May of 2011. It is home to 347 inclusionary rental apartments that are part of a larger condominium development located along the Brooklyn waterfront.[72]

These new policy additions reflect a growing willingness nationwide to ask for greater affordability where major zoning changes or transit investments have created significant new value for developers.[73] This may create an opening for jurisdictions seeking ways to ask for affordability from rental developments by way of incentives rather than mandates, to avoid legal complications. Similarly, they may point a way forward for jurisdictions seeking to establish workable new policies in places concerned about negative economic consequences.

Exchanging affordability for expanded development potential becomes more challenging, however, in places that have already adopted form-based codes, which lock in the maximum building envelope, or in places that have recently loosened restrictions on "by-right" densities and now lack extra zoning privileges to offer. Denver, for example, recently adopted a form-based code that increased by-right densities, but did not ask for greater affordability in return. It now finds itself in a weaker position to ask developers to include affordable rental units within new development, or to produce more affordable units on site.[74]

These new policy additions reflect a growing willingness nationwide to ask for greater affordability where major zoning changes or transit investments have created significant new value for developers.

2. HUD Has Brought Renewed Attention to Fair Housing Concerns

Over the past four years, HUD has asked jurisdictions to pay renewed attention to their legal obligation to affirmatively further fair housing. This heightened scrutiny comes on the heels of HUD's settlement with New York's Westchester County, in which the county was required to:

- Draft an analysis of impediments and action plan to address racial segregation.
- Spend $51.6 million to build 750 units of affordable housing in the 32 jurisdictions with the lowest percentages of minority residents.
- Take legal action against local communities within its boundaries that refuse to eliminate exclusionary zoning.[75]

HUD reportedly plans to come out with a new rule on affirmatively furthering fair housing in 2013. The rule will provide important opportunities for advancing affordable housing and mobility goals, but could be contentious. There is a need to educate stakeholders about the new rule and the opportunities and challenges it presents and to create a space for dialogue about potential concerns so they can be constructively addressed.

3. The Challenges in California Have Spurred New Creativity

Many jurisdictions are experimenting with new ways to tap market capital to create inclusive communities without requiring affordable rental developments per se. As we have seen, some jurisdictions have restructured inclusionary policies as a fee, with developers given the opportunity to waive out of the fee by voluntarily constructing affordable rentals. Other local governments are looking more closely at how they can leverage community-wide rezonings to promote affordability, particularly where these zoning changes create significant new value for developers and/or landowners.

In light of the growing need for creativity in jurisdictions across the U.S., along with new support from HUD for fair housing, this may be a particularly strategic time to consider new inclusionary housing tools and approaches.

Interviewees

This paper benefited significantly from interviews with local housing staff, researchers, and other experts in the field. Their ideas and insights greatly informed my research. I wish to thank:

Michelle Allen
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Kristen Clements
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Melissa Dailey
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Chandra Egan
City of San Francisco (CA)

Conrad Egan
Fairfax County (VA) Affordable Housing Advisory Committee

Kathy Fedler
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Catherine Firpo
City of Emeryville (CA)

Charlene Fuhrman-Schulz
Fairfax County (VA)

Adam Gordon
Fair Share Housing Center

Sasha Hauswald
City of San Francisco (CA)

Rick Jacobus
Cornerstone Partnership at NCB Capital Impact

Sarah Karlinsky
SPUR

Matt Ladd
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Michael Lane
Non-Profit Housing Association of Northern California

Janet Lewis
Montgomery County (MD)

Patrick Maier
Innovative Housing Institute

Mary Beth Lonergan
Clarke Caton Hintz

Alan Mallach
Metropolitan Policy Program, The Brookings Institution

Tammy Mayer
Citizens Planning and Housing Association

Amy Mullay
City of Irvine (CA)

Brian Pine
City of Burlington (VT)

Melinda Pollack
Enterprise Community Partners

Mike Rawson
The Public Interest Law Project/ California Affordable Housing Law Project

Cindy Reid
Town of Davidson (NC)

Susan Riggs Tinsky
San Diego Housing Federation

Art Rodgers
City of Washington, DC

Jaimie Ross
Florida Housing Coalition

Lisa Schwartz
Montgomery County (MD)

Howard Slatkin
City of New York City (NY)

Evelyn Stivers
Non-Profit Housing Association of Northern California

Arthur Sullivan
A Regional Coalition for Housing (ARCH)

Brad Weinig
Enterprise Community Partners

Mike Westlake
City of San Diego (CA)

Mike Wiener
California Coalition for Rural Housing

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Endnotes

1. Schwartz et al. (2012).

2. See for example: NPH (2007). The Non-Profit Housing Association of Northern California found that 63 new inclusionary housing policies were added in California between 2003 and 2007 — a 59 percent increase.

3. The precise number of inclusionary housing policies nationwide is elusive, given varying definitions and the inclusion of voluntary policies in some surveys. Brunick and Maier (2010) cite the research of David Rusk in estimating that there are roughly 400 mandatory policies nationwide. Calavita and Mallach (2010) estimate a total of 500 policies, including voluntary policies.

4. This list, assembled from various sources, includes: California, Colorado, New Mexico, Wyoming, Illinois, Florida, North Carolina, Virginia, Maryland, Massachusetts, Connecticut, New Jersey, Vermont, Washington (state), Hawaii, New York, Delaware, and Washington, DC. Sources include: Burchell et al. (2000); BPI (2003); Matthews (2006); Hollister et al. (2007); Brunick and Maier (2010); Calavita and Mallach (2010); and interviews by the author.

5. Over the past few years, the supply of rental properties has failed to keep pace with demand in many parts of the country as recently foreclosed homeowners, would-be homeowners, and a growing number of households in their 20s and 30s chose renting over buying, causing rents to escalate to some of their highest levels. Meanwhile, unemployment and underemployment persisted, causing incomes to fail to keep up with rising rents, leading to growing affordability problems in the rental market. See Williams (2012.)

6. Frey (2012).

7. EPA (2012). Between 2005 and 2009, infill development actually accounted for a majority of all new residential construction in multiple metropolitan areas, including the San Francisco Bay Area, San Jose-Sunnyvale, New York-New Jersey, and Los Angeles-Long Beach.

8. See pages 16 and 17 for a list of interviewees and references.

9. NAHB Land Development Services (2011); Interview with Michelle Allen, housing planner, city of Boulder (3/30/12).

10. The median home price in these communities for the three year period of 2009 to 2011 ranged from a low of $150,700 (in St. Cloud) to a high of $258,900 (in Bozeman). By contrast, the median home prices for the entire states of California, New Jersey, and Massachusetts (where most policies are located) averaged $370,400, $337,800, and $332,800 respectively. Source: U.S. Census (2012).

11. NAHB Land Development Services (2011).

12. Interview with Jaimie Ross, affordable housing director, Florida Housing Coalition (12/13/12). For example, Davie's policy was adopted in 2008, Bozeman's policy in 2007, Madison's in 2004, and Lafayette's also in 2004.

13. See Brunick and Maier (2010).

14. The reduction was also designed to encourage greater on-site production on the heels of the city's transition to a fee-based requirement. This transition was prompted by the Palmer court case, which limits the ability of California cities to apply inclusionary requirements to rental properties, as described in greater detail starting on page 6. Sources: correspondence with Sarah Karlinsky, deputy director, San Francisco Planning + Urban Research (11/16/12); correspondence with Sasha Hauswald, public policy manager, San Francisco Mayor's Office of Housing (11/20/12).

15. Interview with Melissa Dailey, housing special projects manager, city of Santa Fe (7/11/12).

16. Interview with Susan Riggs Tinsky, executive director, San Diego Housing Federation (2/5/13).

17. Montgomery County Department of Housing and Community Affairs (2012).

18. Interview with Jaimie Ross, affordable housing director, Florida Housing Coalition (12/13/12).

19. Interview with Tammy Mayer, director of community engagement, Citizens Planning and Housing Association, (5/11/12).

20. Calavita (2004); NPH and CCRH (2003).

21. *Sacramento Housing Alliance v. City of Folsom* (Superior Court of California, June 15, 2012).

22. See, for example, Calavita (2004).

23. Calavita, Grimes, and Mallach (1997) described these mechanisms as "virtually obligatory" (p.126). But some municipalities are reported now to be favoring plans that achieve their fair share obligations through 100-percent affordable developments, rather than inclusionary housing, so as to achieve affordability with minimal new growth. Interview with Mary Beth Lonergan, senior associate, Clarke Caton Hintz (6/4/12). See also: Calavita and Mallach (2010).

24. See also: Calavita and Mallach (2010) and Brunick (2007).

25. There may be other forces at work in New Jersey as well. Historically, inclusionary housing has enjoyed support from developers because these policies have been the primary means for accessing higher densities in suburban jurisdictions, because inclusionary requirements are typically coupled with higher densities. This is unlike California, where state density bonus law already enables developers to increase the intensity of housing developments by 5-35 percent over base requirements, and to access other zoning modifications, depending on how many affordable units are included in their market-rate developments.

26. CHAPA (2011); interview with Sean Caron, policy director, CHAPA (3/30/12).

27. See Calavita, Grimes, and Mallach (1997); and Massachusetts DHCD (2012).

28. Interview with Rick Jacobus, director, Cornerstone Partnership at NCB Capital Impact (5/21/12).

29. This includes 728 units in Montgomery County (MD), at least 159 in Fairfax County (VA), and at least 347 in New York City, based on interviews with staff in each jurisdiction.

30. Palmer/Sixth Street Properties, L.P. vs. City of Los Angeles, 175 Cal. App. 4th 1396 (2009). See also: Shigley (2009).

31. Brunick and Maier (2010).

32. Interview with Catherine Firpo, housing coordinator, city of Emeryville (11/28/12).

33. Interview with Michael Lane, policy director, NPH (11/29/12).

34. Goldfarb & Lipman L.L.P. (June 2012).

35. Interview with Michael Lane, policy director, NPH (11/29/12).

36. Goldfarb & Lipman L.L.P. (January 2012).

CENTER FOR HOUSING POLICY

As the research affiliate of the National Housing Conference (NHC), the Center for Housing Policy specializes in developing solutions through research. In partnership with NHC and its members, the Center works to broaden understanding of the nation's housing challenges and to examine the impact of policies and programs developed to address these needs. Combining research and practical, real-world expertise, the Center helps to develop effective policy solutions at the national, state, and local levels that increase the availability of affordable homes.

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37. Analysis by the Center for Housing Policy, 2012.

38. Many small and mid-sized jurisdictions don't have housing divisions. Often redevelopment dollars were used to support staff members who were splitting their time between administering redevelopment area affordable housing programs and administering the jurisdiction's inclusionary housing policy.

39. Interview with Michael Lane, policy director, NPH (12/12/12).

40. Rick Jacobus (2007); interview with Rick Jacobus, director, Cornerstone Partnership at NCB Capital Impact (5/21/12).

41. Interview with Michael Lane, policy director, NPH (12/12/12).

42. California Affordable Housing Law Project of the Public Interest Law Project (2010).

43. Correspondence with Mike Rawson, director, the Public Interest Law Project/California Affordable Housing Law Project (11/14/12).

44. EPA OSC (2012). See also: Frey (2012); McIlwain (2010); Kannan (2010).

45. Here I am referring to costs for developers, rather than municipalities or regions as a whole. If we were to factor in the complete costs of infrastructure and externalities such as pollution in comparing infill versus other settings, this cost equation would be different.

46. Litman (2012).

47. Strategic Economics and Hixson & Associates (2008).

48. Trombka et al. (2004). This is not to suggest that there are no cost saving opportunities in infill settings. Walkable, transit-rich communities make it possible to serve residents with fewer parking spaces, for example. And many policies allow inclusionary units to use more modest finishes and appliances. But the placement of inclusionary units in the same building as market-rate units makes it more difficult to save costs through other important means, such as reducing the size of inclusionary units, using different materials for the building's exterior, or limiting common-area amenities.

49. Trombka et al. (2004).

50. Interview with Howard Slatkin, director of sustainability, NYC Department of City Planning (5/14/12).

51. HousingPolicy.org Forum (2008-2011).

52. NPH (2007).

53. NPH (2007).

54. NLIHC (2012).

55. This has been successful in Montgomery County (MD) and Fairfax County (VA).

56. Interview with Susan Riggs Tinsky, executive director, San Diego Housing Federation (5/17/12).

57. NPH and CCRH (2003). Massachusetts Association of CDCs (2006). Interview with Melinda Pollack, vice president, solutions, Enterprise Community Partners (4/13/12). Interview with Susan Riggs Tinsky, executive director, San Diego Housing Federation (5/17/12).

58. Calavita and Mallach (2010). This has prompted New Jersey to recently pass a "Use it or Lose it" law, which requires municipalities to either spend locally collected funds within four years or forfeit them to a state affordable housing fund. It is not yet clear, however, whether this will ensure that all collected funds are invested in affordable housing, particularly in areas of growing opportunity.

59. Calavita and Mallach (2010).

60. Interview with Rick Jacobus, director, Cornerstone Partnership at NCB Capital Impact (5/21/12).

61. See for example Denver, Davidson (NC), San Francisco, and Montgomery County (MD).

62. One jurisdiction reports that inclusionary prices need to be as much as 30 percent lower than market prices before buyers become motivated to purchase inclusionary units. See Center for Housing Policy and the Lincoln Institute of Land Policy (2009).

63. Interview with Art Rodgers, senior housing planner, Washington, DC (4/4/12).

64. Interview with Lisa Schwartz, senior planning specialist, Montgomery County (MD) (5/1/12).

65. Jacobus (November 2007).

66. Thaden (2011).

67. The Housing Partnership (2007).

68. Interview with Arthur Sullivan, program manager, A Regional Coalition for Housing (5/21/12).

69. Interview with Chandra Egan, senior community development specialist II, city of San Francisco (4/13/12).

70. Fairfax County Office of Community Revitalization and Reinvestment (October 2011).

71. New York City Department of City Planning (February 17, 2009).

72. HUD (July 2011).

73. Calavita and Mallach (2009).

74. Interview with Melinda Pollack, vice president-solutions, Enterprise Community Partners (4/13/12).

75. Hannah-Jones (November 2, 2012).