
Inclusionary Housing Toolkit

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Introduction

Many communities are facing the twin challenges of a lack of affordable housing (especially housing located near job centers) and the political challenge of building or creating more affordable housing, particularly in high-growth, dense and/or mixed-use neighborhoods.

One potential solution to these challenges is to look at the policy of inclusionary housing, also known as inclusionary zoning, which engages the private sector in helping to address this problem. Inclusionary housing is a policy that aims to increase the production of housing that is affordable to moderate and low-income households. It promotes the inclusion of affordable rental and/or ownership units in new residential developments (or rehabilitation projects, condominium conversions, etc).

The following toolkit was developed to provide you with easy to use information about the basics of inclusionary housing as well as the myths and facts surrounding it; a sample PowerPoint presentation you can use to introduce the concept to others; a case study on how inclusionary housing is being used successfully in one community; and model ordinance language you can use to help enact this policy in your community.

We hope you can use this toolkit to explore and potentially implement this policy (with support from relevant partners) as a supplement to your existing work on affordable housing. If you have questions or suggestions for improvement of the toolkit, please contact us at info@sclearningnetwork.org.

Inclusionary Housing

Policy Primer

Housing is the number one expense for most households. Many communities face affordable housing shortages even for middle class households, and those shortages are exacerbated in vibrant, mixed use, walkable neighborhoods that have transit and jobs. The effects of establishing local housing trust funds and complementing federal programs can be augmented with an inclusionary housing policy, which engages the private sector. Inclusionary housing policy is one of many tools that can be to address these shortages.

What is inclusionary housing?

Inclusionary housing, also known as *inclusionary zoning*, is a policy that aims to increase the production of housing that is affordable to moderate and low-income households. It promotes the *inclusion* of affordable rental and/or ownership units in new residential developments (or rehabilitation projects, condominium conversions, etc).

Developers are encouraged or mandated to include some affordable units that must be price-capped and made available to households in specific income bands, and the units must remain affordable for a fixed number of years. Typical affordability periods range from 30 to 99 years and some communities require the units to remain permanently affordable.

To compensate for revenues lost by developers due to the price limits on some of the units, municipalities provide cost-offsets such as density bonuses, design and zoning flexibility, faster approvals, and tax abatement. Hundreds of communities use inclusionary housing as part of their affordable housing and workforce housing strategies.

Defining Affordability

Housing is considered affordable when it costs 30% or less of the gross household income. An inclusionary housing policy specifies which income groups are eligible to rent or purchase housing produced under the policy. The policy also determines the maximum prices that may be charged for affordable units.

Moderate, low, and very low income categories are defined based on the regional area median income (AMI) – the dollar amount where half the population earns less and half earns more. These income bands tend to include nurses, teachers, police, fire fighters, bank tellers, and workers in manufacturing, construction, and service industries. The table below shows sample affordability definitions.

Defining affordability	
Very low income	Below 30% AMI
Low income	50% to 30% AMI
Moderate income	80% to 50% AMI
Workforce households	80% to 120% AMI
Median income	100% AMI

Mandatory or Voluntary?

A *mandatory* program *requires* a portion (generally ranging from 10% to 25%) of the units in housing projects to be affordable, and cost offsets are provided to the developer for providing that affordability. A *voluntary* program provides similar cost offsets as incentives, but allows the developer to decide whether or not to build affordable units in order to access those incentives.

Mandatory programs are far more effective in producing affordable units. Such programs

make sure affordable choices are part of all major new housing projects. Voluntary policies tend to be much weaker programs, often producing very few or no affordable units at all.

Cost off sets for developers

The density bonus is typically the main cost offset offered under inclusionary housing policies. This can allow a few more market units in a project above what is allowed by right, thus increasing the profit potential of the project. Reasonable flexibility in design and zoning guidelines, such as reductions in parking requirements and adjustments of setbacks and height requirements can further result in project savings. Other cost off sets include property or sales tax abatement, land donation by the city, planning or construction grants, and low-interest loans.

In cases where building the affordable units proves to be an extreme cost burden, developers may be provided alternative options. *In-lieu fees* allow the developer to make a payment to the city's housing program for each affordable unit not constructed. Additionally, developers may be allowed to dedicate land to the city or construct the affordable units off site.

Enforcement, marketing, administration cost

As affordable units are produced, they should be publicized to eligible households and the rules of the program enforced. This requires monitoring of the prices of affordable rental and ownership units. Some communities let development owners manage some aspects of the process, such as household income verification and leasing and sales.

Often, comprehensive web sites list available affordable units and provide the application process are maintained. Such web sites help eligible households learn about options available in different neighborhoods.

The municipality does need to staff the program to ensure enforcement. *PolicyLink*, a national research institute, recommends localities plan for one full-time equivalent staff person for every 150-400 ownership units or 600-1,000 rental units¹.

Establishing a local program

Inclusionary zoning can be enacted through a zoning ordinance, legislation, or executive order, and it must a set very specific rules and regulations to define responsibilities, eligibility, affordability, and other details. It can be a single jurisdiction or regional program. The states of California, Massachusetts, and New Jersey have set housing affordability standards that have prompted hundreds of communities to implement inclusionary housing programs to help them meet those standards. Sample ordinance language is available in this toolkit.

Where is inclusionary housing used?

Hundreds of localities nationwide have inclusionary zoning programs. According to the National Association of Home Builders², thirteen states expressly authorize inclusionary zoning (CT, FL, IL, LA, MD, MA, MN, NV, NH, NJ, RI, VT, and VA), and seven states do not specifically authorize it but have municipalities who have adopted the policy (CA, GA, ID, ME, NM, NY, and WA). Texas and Oregon prohibit inclusionary zoning, and the rest of the 26 states do not expressly authorize or prohibit it. California, Massachusetts, and New Jersey set affordable housing standards that have prompted many of their local communities to adopt inclusionary housing to help meet those standard.

¹ Jacobus, R. (2007). *Delivering on the Promise of Inclusionary Housing: Best Practices in Administration and Monitoring*. PolicyLink. p. 12.

² Hollister, T. et al. (2007). *National Survey of Statutory Authority and Practical Considerations for the Implementation of Inclusionary Zoning Ordinances*. National Association of Home Builders. p. 6-10.

TIPS FOR TALKING ABOUT

Inclusionary Housing

Debunking myths and arguments

It will create big, ugly buildings and hurt property values

Some people worry any affordable housing policy results in unattractive, high-rise public housing that will hurt the neighborhood character. Inclusionary housing actually takes the opposite approach. It requires affordable homes to be mixed in with the market-rate homes. Developers still follow the standard design guidelines and they aim to make their buildings attractive to market buyers, who make up the vast majority of their customers. Other communities have found this not only ensures that the design of affordable and market rate homes is indistinguishable, but that affordable homes are sprinkled throughout the community instead of concentrated in a few neighborhoods.

It's too costly to tax payers

Inclusionary housing is an approach designed to partner with the private sector in the community goal of generating more affordable housing choices. It leverages the municipality's ability to grant things like small density increases to builders in exchange for them including affordable options in their projects. Reasonable flexibility in zoning and design guidelines, faster project permitting, reduced development fees or property and sales tax abatement are additional incentives that end up costing tax payers far less than public construction and management affordable units. Inclusionary housing is one of the more cost efficient approaches for increasing housing choice and it is a critical part of a comprehensive affordable housing program.

It's unfair to developers

A central component of inclusionary housing policy is the *density bonus* – a slight increase in the density that is allowed on a site under by-right zoning regulations that govern allowable height, units per acre, or floor area ratio. Other zoning flexibility can also be offered such as reduction in parking requirements or adjustments in front and rear setback requirements. The flexibility in design and zoning is reasonable in scope so the new project still fits in with the character of the neighborhood. However, it can be a significant pathway to cutting project costs. Namely, it allows developers to build a few more market rate units, which increase the project's profit potential.

Inclusionary housing programs can also grant other incentives to developers such as reduction of development fees, abatement of property or sales taxes for the first few years after the project is completed, reduced land purchase from the municipality, or help in project financing. In those cases where building the affordable units is proven to result in an extreme cost burden, developers may be granted the alternate option of paying a fee to the municipality to support affordable housing; donate other land to the municipality, or build the units on a different site.

Together, these cost offsets and options are meant to allow developers to still make healthy profits while becoming part of the solution to a community's affordable housing shortage.

It will discourage new development

The *Business and Professional People for the Public Interest* organization conducted a review of several studies about the development impact of inclusionary housing. They found inclusionary housing does not stifle the development market, even in places that provided more limited cost off sets. Prices on market rate housing did not rise due to inclusionary housing policies; housing development did not decrease; and developer profit did not decrease. Some studies found it was more likely that developers would incorporate the cost of building affordable units into their projects early on and negotiate lower land prices to ensure their target profit margins¹.

It won't work

Tens of thousands of affordable homes have been produced nationwide as a direct result of inclusionary housing policies. For example, over 12,000 affordable units have been produced in Montgomery County (MD) – the oldest program in the nation; 1,800 in Davis (CA), 200 in Burlington (VT), 1,000 in Chicago. This program is widely utilized by large and small communities and by built-out communities and those with lots of development potential. It has been demonstrated to be effective when designed and administered well and made part of a comprehensive housing program. The evidence shows it can work here.

It won't do anything to help the middle class

Inflated housing prices have put large burdens on many middle class households. Nurses, firefighters and police officers, bank tellers, service industry workers, teachers, and many blue-collar workers in the manufacturing and construction industries are priced out of the neighborhoods they work in. New residential projects often lean toward high-end and luxury developments with the highest profit returns.

Families, young couples, and seniors earning in the lower half of the regional income scale are left with fewer and fewer choices. In our area, that's an annual income of less than \$_____ [specify local AMI] for a household of two and less than \$_____ [specify local AMI] for a family of four. It is the middle class that suffers during unpredictable or sustained housing bubbles, not only the very low-income groups. Inclusionary housing seeks to work with the private sector to increase options for both types of households.

It is an “illegal taking” of property

There have been a few challenges to inclusionary housing policies over the years. Generally, the policy is acknowledged as a legitimate use of zoning power to protect the public good. It is important to structure the policy correctly to fit local and state laws. For example, courts struck down a 1999 challenge by the *Home Builders Association of Northern California* because the city of NAPA offered *fair* cost off sets to developers. The case was not appealed. Today, hundreds of communities have implemented some form of inclusionary housing with over 100 programs each in California and Massachusetts; over 200 in New Jersey; and several dozen in North Carolina, Florida, Wisconsin, Virginia, Colorado, and Vermont².

¹ Brunick, N., 200_, *The Impact of Inclusionary Zoning on Development*, Business and Professional People for the Public Interest, p 4-5. http://www.bpichicago.org/documents/impact_iz_development.pdf.

² Ibid. p 2

Inclusionary Housing

Case Study: MONTGOMERY COUNTY, MD

Political Background

Montgomery County, MD had a 2011 population closing in on 1 million and is comprised of suburban communities inside and outside the Capital Beltway in the Metropolitan Washington region. In the early 1970s as young families flocked to Montgomery County, a major shortage in low and moderate-income housing choices developed. High demand to live in Montgomery caused home prices to inflate beyond the reach of working families and moderate-income professionals.

Advocacy groups such *Suburban Maryland Fair Housing* and the *League of Women Voters* began campaigning for affordable housing policies. The Montgomery County Council took on the task of writing the bill, but faced stiff opposition. Builders complained an affordable set aside mandate amounted to an unconstitutional taking of property without compensation.

The Council included a provision in the bill that gave compliant developers a density bonus to offset the revenue loss resulting from making some of the units available below market value. Still, developers preferred a voluntary program instead of mandatory. Property owners worried the neighborhood look and feel would change and real estate values would drop with the density bonuses. The County Executive vetoed the bill.

Advocates organized a coalition of teachers and municipal employees who couldn't afford to live where they worked; parents whose adult children could not afford to live where they grew up; and civil rights groups interested in economically and racially integrated communities.¹

In 1974, the Montgomery County Council overrode the veto and enacted the nation's first inclusionary housing policy, which is now known as the *Moderately Priced Dwelling Units (MPDU)* program. Since then, the program has undergone nine major revisions. Originally, it applied to



MetroPointe apartments include 52 affordable units located at the Wheaton Metro subway station, a minute's walk from shopping, a grocery store and jobs.

Photo from Torti Gallas and Partners
<http://tinyurl.com/MetroPointe>

¹ Anderson, M., Business and Professional People for the Public Interest, *Opening the Door to Inclusionary Housing* workbook (2003), pp 89-93. www.bpichicago.org/rah//pubs/opening_the_door.pdf.

projects of 50 or more units, and the price and rent control period was only five years. Today, residential projects of 20 or more units must include affordable units, and the price control period is 30 years for ownership units and 99 years for rental units.

Developers have accepted the ordinance as a cost of doing business in the County, rarely pursuing available opt-out options such as in-lieu fees. Development has not been hindered and both the residential and commercial real estate markets have remained strong.

Results

According to Montgomery County staff, the program has produced 13,475 affordable units (9,442 for ownership and 4,033 for rent), increasing economic and racial diversity in neighborhoods throughout the County. The waiting list for for-sale units hovers between 100 and 200, and it is even longer for rental units, which have a wait list of upwards of 250 applicants.

Program structure

Subdivisions and high rise buildings with more than 20 residential units must make 12.5% to 15% of the units affordable to renters or buyers who earn less than 70% AMI. Developers receive density bonuses of up to 22%, based on the number of affordable units they provide.²

On a case by case basis, projects that can prove extreme burden may be allowed to forego building the affordable units in exchange for a) transferring land to the County, b) construction of affordable units on a different site, or c) a fee paid in-lieu of constructing the units and based on current market costs of housing.

Rental units must remain affordable for 99 years and *ownership units* for 30 years. Once the affordability period expires, the owner and the County split the profit when the unit is sold at market rate to support the *Housing Initiative Fund*, which is dedicated to affordable housing.

Recognized nonprofits and the County *Housing Opportunities Commission* may purchase up to 40% of moderately priced units and make them available at an even more affordable cost to very low-income household (less than 50% AMI).

MPDU Program	
Applicable projects	Subdivisions and high rise buildings with more than 20 residential units
Mandatory affordable set aside	12.5% to 15% of total units built
Target AMI	≤ 70% AMI
Developer Cost offsets	Up to 22% density bonus
Affordability period	99 years for rental units 30 years for ownership units
Opt out scenarios (case by case basis)	<ul style="list-style-type: none"> • Transfer land to the County • Build affordable units off site • Pay fee in-lieu of building the units
Special provisions	
<ul style="list-style-type: none"> • After 30 year, equity profits from affordable units sold at market rate split between owner and the County • Nonprofits, County may purchase up to 40% of moderately priced units and redistribute at an even more affordable cost 	

² "Montgomery County – MPDU program" web site, accessed 4/1/2013.
http://www6.montgomerycountymd.gov/dhctmpl.asp?url=/content/dhca/housing/housing_p/mpdu/Summary_new.asp

Inclusionary Housing

A Model Ordinance

The following model ordinance from the American Planning Association (APA) provides a template for local legislation to establish an inclusionary housing policy. An outline is below, and the ordinance is attached and available at: www.planning.org/research/smartgrowth/pdf/section44.pdf

Model Affordable Housing Density Bonus Ordinance

Developed by the American Planning Association

101 Purpose

102 Definitions

(E.g., low/moderate income, affordable unit, affordable housing trust fund, density bonus)

103 Scope of Ordinance and Density Bonus

- Types and size of developments subject to ordinance requirements
- Calculation of affordable units required and density bonus allowance

104 Cash Payment in Lieu of Housing Units

- Establishes rules for fee in lieu alternative to building the affordable units

105 Application and Affordable Housing Development Plan

- Requires the developer to submit a written plan specifying number/location of market/affordable units, marketing plan, estimated sales and rental prices, etc.

106 Criteria for Location, Integration, Character of Affordable Housing Units

- Requires affordable units to be built concurrently with market units
- Disallows clustering of affordable units

107 Affordable Housing Development Agreement

- Requires written agreement between municipality and the developer delineating commitments of both parties

108 Enforcement and Affordability Controls

- Establishes affordability period
- Sets rules for resale of for-sale units and leasing of rental units
- Authorizes municipal agency to administer and enforce the program

109 Affordable Housing Trust Fund

- Establishes a housing trust fund where fees in-lieu will be deposited

4.4 MODEL AFFORDABLE HOUSING DENSITY BONUS ORDINANCE

Many communities today are adopting inclusionary zoning ordinances with the intent of increasing the supply of affordable housing. These ordinances either require or encourage the provision of affordable housing in market-rate development, typically by the provision of density bonuses and other incentives. The ordinances include:

- ◆ Definitions, including those defining “affordable housing” and “low- and moderate-income households”;
- ◆ Procedures for the review of affordable housing developments;
- ◆ A requirement that the developer of housing enter into development agreements that will ensure that the affordable housing, whether for sale or for rent, remains affordable;
- ◆ Designation of an officer or body to review and approve applications for developments that include affordable housing; and
- ◆ Provisions for enforcement.

Some communities with such ordinances have made a political commitment to such housing, recognizing that, in some real estate markets, affordable housing would not be produced without governmental intervention, and others have adopted such ordinances to respond to state-established housing goals. In addition, such ordinances ensure that critical governmental service workers (e.g., teachers, firefighters, and police officers) can afford to live in communities where they work despite their low pay. Numerous monographs and studies have described the operation and success of such programs in both suburban areas and central cities. For a good overview, see Morris (2000), Ross (2003), and Brunick (2004a and 2004b).

The following model ordinance for affordable housing provides two alternatives: (1) a mandatory alternative in which affordable housing is required, in some manner, in all development that produces new residential units, either through new construction or through rehabilitation and conversion of existing units or commercial space; (2) an incentive-based approach in which a density bonus of one market-rate unit for each affordable unit is offered as of right. In either case, the affordable housing density bonus is offered for all types of residential construction. The model ordinance uses the U.S. Department of Housing and Urban Development definitions of low- and moderate-income to establish eligibility criteria for purchase or rental of affordable units.

An applicant for an Affordable Housing Development would be required to submit an Affordable Housing Development Plan and enter into a development agreement with the local government. The development agreement would fix the responsibilities of the respective parties with regard to the provision of affordable housing. Under this model, affordable housing units need not only be those subsidized by the federal or state government. Rather, they can be subject to private deed restrictions to ensure they remain affordable for a period of time, typically for 30 years. In the case of for-sale affordable units, purchasers would have to be income-qualified, and appreciation of the dwelling unit would be calculated on the basis of certain listed factors to ensure that the unit remains affordable in the case of resale. In the case of for-rent affordable units, the development agreement would establish an income-qualification process to ensure that the affordable units are rented to eligible households. The model ordinance also describes the

creation of an affordable housing trust fund that can be used for a variety of purposes, including waivers of permit and tap-in fees.

Primary Smart Growth Principle Addressed: Range of housing choices.

Secondary Smart Growth Principle Addressed: Not applicable

101. Purpose

The purposes of this ordinance are to:

(a) Require the construction of affordable housing [or payment of fees-in-lieu] as a portion of new development within the community;

[Or]

(a) Create incentives for the provision of affordable housing as a portion of certain new development within the community;

(b) Implement the affordable housing goals, policies, and objectives contained in the [insert name of local government's] comprehensive plan;

(c) Ensure the opportunity of affordable housing for employees of businesses that are located in or will be located in the community; [and]

(d) Maintain a balanced community that provides housing for people of all income levels [; and]

[(e) Implement planning for affordable housing as required by [cite to applicable state statutes]].

102. Definitions

As used in this ordinance, the following words and terms shall have the meanings specified herein:

“Affordable Housing” means housing with a sales price or rental amount within the means of a household that may occupy moderate- and low-income housing. In the case of dwelling units for sale, affordable means housing in which mortgage, amortization, taxes, insurance, and condominium or association fees, if any, constitute no more than [30] percent of such gross annual household income for a household of the size that may occupy the unit in question. In the case of dwelling units for rent, affordable means housing for which the rent and utilities constitute no more than [30] percent of such gross annual household income for a household of the size that may occupy the unit in question.

“Affordable Housing Development Agreement” means a written agreement between an applicant for a development and the [name of local government] containing specific requirements to ensure the continuing affordability of housing included in the development.

“Affordable Housing Dwelling Unit” means any affordable housing subject to covenants or restrictions requiring such dwelling units to be sold or rented at prices preserving them as affordable housing for a period of at least [30] years.

“Affordable Housing Development” means any housing subsidized by the federal or state government, or any housing development in which at least [20] percent of the housing units are affordable dwelling units.

“Affordable Housing Development Plan” means that plan prepared by an applicant for an Affordable Housing Development under this ordinance that outlines and specifies the development’s compliance with the applicable requirements of this ordinance.

“Affordable Housing Trust Fund” means the fund created by the [name of local government] pursuant to Section 109 of this ordinance.

“Affordable Housing Unit” means either a housing unit subsidized by the federal or state government or an affordable dwelling unit.

Comment: *Note that an “Affordable Housing Unit” can either be federally or state subsidized or subject to covenants and deed restrictions that ensure its continued affordability.*

“Conversion” means a change in a residential rental development or a mixed-use development that includes rental dwelling units to a development that contains only owner-occupied individual dwelling units or a change in a development that contains owner-occupied individual units to a residential rental development or mixed-use development.

“Density Bonus” means an increase in the number of market-rate units on the site in order to provide an incentive for the construction of affordable housing pursuant to this ordinance.

“Development” means the entire proposal to construct or place one or more dwelling units on a particular lot or contiguous lots including, without limitation, a planned unit development, site plan, or subdivision.

“Lot” means either: (a) the basic development unit for determination of area, width, depth, and other dimensional variations; or (b) a parcel of land whose boundaries have been established by some legal instrument, such as a recorded deed or recorded map, and is recognized as a separate legal entity for purposes of transfer of title.

“Low-Income Housing” means housing that is affordable, according to the U.S. Department of Housing and Urban Development, for either home ownership or rental, and that is occupied, reserved, or marketed for occupancy by households with a gross household income that does not exceed 50 percent of the median gross household income for households of the same size within the *[insert name of housing region or county]* in which the housing is located.

“Median Gross Household Income” means the median income level for the *[insert name of housing region or county]*, as established and defined in the annual schedule published by the Secretary of the U.S. Department of Housing and Urban Development, adjusted for household size.

“Moderate-Income Housing” means housing that is affordable, according to the federal Department of Housing and Urban Development, for either home ownership or rental, and that is occupied, reserved, or marketed for occupancy by households with a gross household income that is greater than 50 percent but does not exceed 80 percent of the median gross household income for households of the same size within the *[insert name of housing region or county]* in which the housing is located.

“Renovation” means physical improvement that adds to the value of real property, but that excludes painting, ordinary repairs, and normal maintenance.

103. Scope of Application; Density Bonus

[Alternative 1: Mandatory Affordable Units]

(1) All of the following developments that result in or contain five or more residential dwelling units shall include sufficient numbers of affordable housing units in order to constitute an Affordable Housing Development as determined by the calculation in paragraph (2) below:

- (a) New residential construction, regardless of the type of dwelling unit
- (b) New mixed-use development with a residential component
- (c) Renovation of a multiple-family residential structure that increases the number of residential units from the number of units in the original structure

- (d) Conversion of an existing single-family residential structure to a multiple-family residential structure
- (e) Development that will change the use of an existing building from nonresidential to residential
- (f) Development that includes the conversion of rental residential property to condominium property

Developments subject to this paragraph include projects undertaken in phases, stages, or otherwise developed in distinct sections.

(2) To calculate the minimum number of affordable housing units required in any development listed in paragraph (1) above, the total number of proposed units shall be multiplied by 20 percent. If the product includes a fraction, a fraction of 0.5 or more shall be rounded up to the next higher whole number, and a fraction of less than 0.5 shall be rounded down to the next lower whole number.

(3) Any development providing affordable housing pursuant to paragraph (1) above shall receive a density bonus of one market-rate unit for each affordable housing unit provided. All market-rate units shall be provided on site, except that, in a development undertaken in phases, stages, or otherwise developed in distinct sections, such units may be located in other phases, stages, or sections, subject to the terms of the Affordable Housing Development Plan.

(4) Any development containing four dwelling units or fewer shall comply with the requirement to include at least 20 percent of all units in a development as affordable housing by:

- (a) Including one additional affordable housing dwelling unit in the development, which shall constitute a density bonus;
- (b) Providing one affordable housing dwelling unit off site; or
- (c) Providing a cash-in-lieu payment to the [name of local government's] affordable housing trust fund proportional to the number of market-rate dwelling units proposed.

Comment: Under (3)(c), the proportion of the in-lieu fee would be computed as follows. Assume an affordable unit in-lieu fee of \$120,000. In a four-unit development, the fee would be 4/5s of the \$120,000, or \$96,000, in a three-unit development, the fee would be 3/5s, or \$72,000, and so on.

[Alternative 2: Incentives for Affordable Units]

Any Affordable Housing Development or any development that otherwise includes one affordable housing dwelling unit for each four market-rate dwelling units shall receive a density bonus of one market-rate unit for each affordable housing dwelling unit provided on-site.

104. Cash Payment in Lieu of Housing Units

Comment: *This section would be required only under a mandatory affordable housing alternative.*

(1) The applicant may make a cash payment in lieu of constructing some or all of the required housing units only if the development is a single-family detached development that has no more than [10] dwelling units. In the case of an in-lieu payment, the applicant shall not be entitled to a density bonus.

(2) The [legislative body] shall establish the in-lieu per-unit cash payment on written recommendation by the [planning director or city or county manager] and adopt it as part of the [local government's] schedule of fees. The per-unit amount shall be based on an estimate of the actual cost of providing an affordable housing unit using actual construction cost data from current developments within the [local government] and from adjoining jurisdictions. At least once every three years, the [legislative body] shall, with the written recommendation of the [planning director or city or county manager], review the per-unit payment and amend the schedule of fees.

(3) All in-lieu cash payments received pursuant to this ordinance shall be deposited directly into the affordable housing trust fund established by Section 109 below.

(4) For the purposes of determining the total in-lieu payment, the per-unit amount established by the [legislative body] pursuant to paragraph (1) above shall be multiplied by 20 percent of the number of units proposed in the development. For the purposes of such calculation, if 20 percent of the number of proposed units results in a fraction, the fraction shall not be rounded up or down. If the cash payment is in lieu of providing one or more of the required units, the calculation shall be prorated as appropriate.

105. Application and Affordable Housing Development Plan

(1) For all developments [in which affordable housing is required to be provided *or* in which the applicant proposes to include affordable housing], the applicant shall complete and file an application on a form required by the [local government] with the [name of local government]

department responsible for reviewing applications]. The application shall require, and the applicant shall provide, among other things, general information on the nature and the scope of the development as the [local government] may determine is necessary to properly evaluate the proposed development.

(2) As part of the application required under paragraph (1) above, the applicant shall provide to the [local government] an Affordable Housing Development Plan. The plan shall be subject to approval by the [local government] and shall be incorporated into the Affordable Housing Development Agreement pursuant to Section 106 below. An Affordable Housing Development Plan is not required for developments in which the affordable housing obligation is satisfied by a cash payment in lieu of construction of affordable housing units. The Affordable Housing Development Plan shall contain, at a minimum, the following information concerning the development:

- (a) A general description of the development, including whether the development will contain units for rent or for sale
- (b) The total number of market-rate units and affordable housing units
- (c) The number of bedrooms in each market-rate unit and each affordable unit
- (d) The square footage of each market-rate unit and of each affordable unit measured from the interior walls of the unit and including heated and unheated areas
- (e) The location in the development of each market-rate and affordable housing unit
- (f) If construction of dwelling units is to be phased, a phasing plan stating the number of market-rate and affordable housing units in each phase
- (g) The estimated sale price or monthly rent of each market-rate unit and each affordable housing unit
- (h) Documentation and plans regarding the exterior appearances, materials, and finishes of the Affordable Housing Development and each of its individual units
- (i) A marketing plan the applicant proposes to implement to promote the sale or rental of the affordable units within the development to eligible households

106. Criteria for Location, Integration, Character of Affordable Housing Units

An Affordable Housing Development shall comply with the following criteria:

- (a) Affordable housing units in an Affordable Housing Development shall be mixed with, and not clustered together or segregated in any way from, market-rate units.
- (b) If the Affordable Housing Development Plan contains a phasing plan, the phasing plan shall provide for the development of affordable housing units concurrently with the market-rate units. No phasing plan shall provide that the affordable housing units built are the last units in an Affordable Housing Development.
- (c) The exterior appearance of affordable housing units in an Affordable Housing Development shall be made similar to market-rate units by the provision of exterior building materials and finishes substantially the same in type and quality.

Comment: *Some of the affordable housing ordinances reviewed by APA contained minimum-square-footage requirements for dwelling units or suggested that there be a mix of units with different numbers of bedrooms, especially to ensure that for-rent projects contain sufficient numbers of bedrooms for larger families. While minimum-square-footage requirements, especially for bedroom sizes, are customarily found in housing codes, rather than zoning codes, it is possible to amend this model to include such minimums.*

107. Affordable Housing Development Agreement

Comment: *A development agreement between the local government and the developer of the affordable housing project is necessary to reduce to writing the commitments of both parties, thus eliminating ambiguity over what is required regarding maintaining the affordability of the units and establishing and monitoring the eligibility of those who purchase or rent them.*

(1) Prior to the issuance of a building permit for any units in an Affordable Housing Development or any development in which an affordable unit is required, the applicant shall have entered into an Affordable Housing Development Agreement with the [local government]. The development agreement shall set forth the commitments and obligations of the [local government] and the applicant, including, as necessary, cash in-lieu payments, and shall incorporate, among other things, the Affordable Housing Plan.

(2) The applicant shall execute any and all documents deemed necessary by the [local government] in a form to be established by the [law director], including, without limitation, restrictive covenants, deed restrictions, and related instruments (including requirements for income qualification for tenants of for-rent units) to ensure the continued affordability of the affordable housing units in accordance with this ordinance.

(3) Restrictive covenants or deed restrictions required for affordable units shall specify that the title to the subject property shall only be transferred with prior written approval by the [local government].

108. Enforcement of Affordable Housing Development Agreement; Affordability Controls

(1) The director of [*name of responsible local government department*] shall promulgate rules as necessary to implement this ordinance. On an annual basis, the director shall publish or make available copies of the U.S. Department of Housing and Urban Development household income limits and rental limits applicable to affordable units within the local government's jurisdiction, and determine an inflation factor to establish a resale price of an affordable unit.

(2) The resale price of any affordable unit shall not exceed the purchase price paid by the owner of that unit with the following exceptions:

(a) Customary closing costs and costs of sale

(b) Costs of real estate commissions paid by the seller if a licensed real estate salesperson is employed

(c) Consideration of permanent capital improvements installed by the seller

(d) An inflation factor to be applied to the original sale price of a for-sale unit pursuant to rules established pursuant to paragraph (1) above

(3) The applicant or his or her agent shall manage and operate affordable units and shall submit an annual report to the [local government] identifying which units are affordable units in an Affordable Housing Development, the monthly rent for each unit, vacancy information for each year for the prior year, monthly income for tenants of each affordable units, and other information as required by the [local government], while ensuring the privacy of the tenants. The annual report shall contain information sufficient to determine whether tenants of for-rent units qualify as low- or moderate-income households.

(4) For all sales of for-sale affordable housing units, the parties to the transaction shall execute and record such documentation as required by the Affordable Housing Development Agreement. Such documentation shall include the provisions of this ordinance and shall provide, at a minimum, each of the following:

(a) The affordable housing unit shall be sold to and occupied by eligible households for a period of 30 years from the date of the initial certificate of occupancy.

(b) The affordable housing unit shall be conveyed subject to restrictions that shall maintain the affordability of such affordable housing units for eligible households.

(5) In the case of for-rent affordable housing units, the owner of the Affordable Housing Development shall execute and record such document as required by the Affordable Housing Development Agreement. Such documentation shall include the provisions of this ordinance and shall provide, at a minimum, each of the following:

(a) The affordable housing units shall be leased to and occupied by eligible households.

(b) The affordable housing units shall be leased at rent levels affordable to eligible households for a period of 30 years from the date of the initial certificate of occupancy.

(c) Subleasing of affordable housing units shall not be permitted without the express written consent of the director of [*name of responsible local government department*].

109. Affordable Housing Trust Fund

[This section establishes a housing trust fund into which monies from cash in-lieu payments and other sources of revenues will be deposited. Because of the variation as to how such funds could be established and the differences in state law, no model language is provided.]

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