Inclusionary zoning

Overview

Inclusionary zoning (IZ) policies create dedicated affordable housing units by requiring or encouraging developers to include a specified share of below-market units as part of market-rate rental or homeowner developments.

IZ policies leverage the private market, generally allowing new affordable units to be created with little or no public subsidy. Depending on how an IZ policy is structured, IZ can also be an effective way to ensure that affordable units are integrated throughout the community, including in low-poverty neighborhoods and resource-rich areas near public transportation, good schools, and high-quality healthcare.

Because the creation of affordable units through an IZ policy depends on the development of market-rate housing, this approach is most likely to yield a significant amount of affordable housing in markets with a robust level of construction activity (or where new development is anticipated). IZ policies work best when they are tailored to the development realities of the city or county to which they apply and regularly revisited to ensure they keep pace with changing market circumstances.

Cities, towns and counties wishing to adopt an IZ policy will need to make a variety of design and implementation decisions related to how the policy is structured, which developments are covered, and who benefits. In this section we walk through the
Mandatory or voluntary

Broadly speaking, IZ policies can be classified as one of two types: mandatory or voluntary. In communities where IZ policies are mandatory, affordable units (or approved alternatives, discussed below) must be included in all proposed projects covered by the policy. Most IZ policies also include “offsets” that compensate owners for the lost revenue associated with the affordable units. In communities with voluntary policies, offsets function as incentives to encourage participation.

Some argue that voluntary programs are less effective than mandatory programs. However, there is less experience with voluntary policies than mandatory policies on which to draw. In general, voluntary programs are more likely to be effective when they provide a strong financial incentive for owners/developers to include affordable units. (See related resources below for more on this issue.)

There is also a debate within the research literature on whether mandatory IZ programs actually undermine affordability by creating circumstances that lead to increases in the cost of market-rate homes and a reduction in the overall production of market-rate housing. Suggestions that IZ raises the price of market-rate homes are based on the argument that affordability requirements function as a “tax” on developers, who pass any added costs on to market-rate consumers. Some critics also argue that the production of market-rate homes may be reduced in a locality with IZ as developers shift activity to jurisdictions that do not have mandatory inclusionary requirements.

Defenders of IZ counter these arguments by noting that effective IZ policies provide offsetting benefits to land owners and developers – such as increased density – that help to reduce or eliminate the increased costs associated with development subject to an IZ ordinance. Defenders also argue that restrictions associated with IZ eventually are reflected in lower land prices, offsetting any added costs.

There is some evidence to support the argument that poorly tailored IZ policies may increase the price and decrease the production of market-rate housing. However, IZ policies vary widely from jurisdiction to jurisdiction, and it is difficult to generalize about the effects of IZ. In general, experience suggests that mandatory IZ programs are likely to have less of an adverse impact on the overall supply of housing when they are tailored to the market realities of a community and include a strong set of offsetting
benefits to compensate owners and developers for the lost revenue associated with below-market units.

**Coverage**

Jurisdictions that adopted an IZ policy will need to provide clear guidance on which developments are covered by the policy, either on a voluntary or mandatory basis. Cities, towns and counties may establish IZ policies that apply to rental properties, homes for purchase, or both. Once this determination has been made, jurisdictions will also need to determine the minimum project size.

Most jurisdictions exempt very small developments from mandatory IZ requirements because of the difficulty of ensuring that small developments remain economically feasible notwithstanding the affordability requirements. Of course, just as development patterns differ from place to place, there is no one-size-fits-all policy that will work for all cities, towns and counties. Analysis of the local housing market and private development activity is very important for identifying trends in your community, determining whether IZ is an appropriate tool, and if so, determining which projects should be subject to it. Smaller jurisdictions where smaller building forms predominate may not have sufficient market capacity for the form of higher density market rate developments where IZ requirements may be most successful. For distressed markets with little development activity, an IZ requirement may not be the most effective route toward developing or preserving affordable housing.

Inclusionary zoning policies may also apply in circumstances other than new construction, such as buildings undergoing substantial rehabilitation or conversion from non-residential to residential use or from rental units to condos. In these cases, the threshold for coverage may be based on the number of new units created (as with new construction), anticipated costs (per unit or overall), or the share of the total floor area to be renovated or added.

**Affordability and targeting**

The next step is to determine the percentage of units that must be set aside as affordable—either to qualify for voluntary incentives or to comply with a mandatory policy. A higher percentage will yield a greater number of affordable units, but percentages that are too high may reduce participation in voluntary programs. In cities, towns and counties with mandatory IZ programs, very high affordability requirements may have the unintended consequence of discouraging private development, resulting in a reduction in the overall supply of housing and potentially fewer affordable units, or even result in legal challenges.
Many cities, towns and counties establish set-aside levels in the range of 10 to 20 percent of total units, but give developers several ways to meet this target. For example, some communities require a lower set-aside if the affordable units provide “deeper” affordability. In this case, they may require 20 percent of units to be set aside if they will be affordable to households earning up to 60 percent of the area median income, or 10 percent of units to be set aside if they will be affordable to households earning up to 30 percent of the area median income. Alternatively, local officials can provide a formula or menu that offers more incentives for projects that provide a larger share of affordable units or serve households at lower income levels. Finding the right balance and set of options will require careful analysis.

Alternatively, some communities do not establish a set affordability requirement or standardized menu of options, but rather determine the share of affordable units on a case-by-case basis. This approach does not provide as much transparency and predictability, and therefore could have adverse effects on the overall supply of housing; however, it allows for greater flexibility to respond to site-specific conditions. It may also be more suitable in states that limit local authority to regulate home rents.

Communities will also need to identify the income level(s) that will be targeted by the IZ program. In general, most IZ policies that apply to rental housing target households at 60 to 80 percent of AMI, although some require deeper affordability and others include moderate-income housing. Levels for homeownership units are commonly set between 80 and 120 percent of AMI, with resale provisions that ensure homes remain affordable at this level. Again, these thresholds should be carefully tailored to the specific development environment of each community to meet community needs without diminishing incentives to develop new housing units.

Deeper affordability for both rental and homeownership units can be achieved by layering rental assistance from the local public housing authority (PHA) onto a portion of the affordable units. This can be achieved, for example, by authorizing the PHA to purchase a portion of the affordable units to be operated as public housing (see Montgomery Count, MD example below), or by requiring the owner to operate a portion of the units as project-based vouchers in partnership with the PHA.

A final decision to be made in this area is the duration of the affordability requirements. When new affordable units are created through the IZ policy, it is important to maintain affordability for as long as possible in order to serve the greatest number of households. For more guidance on this topic, see the brief: For how long should dedicated affordable housing units remain affordable?
Cost offsets
Cost offsets are a critical component of an IZ policy, whether mandatory or voluntary, and can allow for provisions that require a larger percentage of units to be set aside as affordable. Affordable units take up space that could otherwise be allocated to more profitable market-rate units, and most communities work to compensate owners for some or all of that lost profitability. Although some communities permit developers to use lower quality finishes or fixtures in affordable units, or make other adjustments that reflect the lower value of these units, these allowances do not offset the lost revenue. Offsets are important to ensure that owners continue to have strong incentives to develop new housing, which is necessary to ensure an adequate supply of housing in the market, as well as to produce affordable housing through IZ, since IZ will only produce affordable units if there is market-rate development. Cost offsets can also be important for addressing potential legal concerns and for gaining political approval for an IZ policy.

Density bonuses are the most common form of offset, allowing for construction of a greater number of units than would otherwise be permitted on the site. Other offsets include reduced parking requirements, greater height allowances, reduced development and permitting fees, tax breaks, and relief from certain regulatory requirements. In communities with voluntary IZ programs, these cost offsets function as incentives to encourage participation in the program.

Identifying the appropriate set of offsets will require an understanding of the local housing market and development costs and trends. For example, reduced parking requirements will be of minimal value in car-dependent areas with limited public transit. Similarly, there may be practical limits that prevent developers from utilizing added density. For example, developers may not be able to make full use of density bonuses in neighborhoods characterized by 4- or 5-story buildings if, based on their knowledge of the local housing market, they determine that it will be difficult to attract homebuyers or renters to a development of this height or if the development review board refuses to allow development at the maximum allowable density.

When selecting offsets in communities with voluntary IZ policies, consideration should also be given to whether the offsets are large enough to create a meaningful financial incentive for developers to include affordable units. In communities with mandatory IZ policies, offsets should be robust enough to reduce the likelihood of litigation over whether the affordability requirement constitutes an unlawful taking and ensure adequate political support for the policy to be adopted and maintained.\[1\]
Monitoring and oversight

Once the affordable units have been created, communities need to consider what role the local government or its nonprofit partners will play in ensuring compliance with the IZ policy. There are a number of circumstances in which ongoing involvement in the operation of an IZ program by local housing department staff or non-profit partners will be useful or even necessary to avoid the premature loss of affordable units.

For example, communities will need to establish processes for selecting residents of rental and ownership units that comply with affirmative marketing requirements necessary to ensure fair housing. Some cities, towns and counties use a lottery system or draw from a waiting list managed by the local housing department, referring eligible households to the property owner or manager as units become available. Others ask the owner or manager to find and qualify applicants on their own. In the latter case, some level of oversight will be required to confirm that actual residents meet the program’s income and other eligibility requirements, and that the owner or manager has complied with applicable Fair Housing laws. Some communities require residents of affordable rental units to recertify their income on an annual basis, ensuring the program serves the target population but also introducing a layer of administrative complexity. Local jurisdictions will also want to make sure that rental properties developed under the inclusionary zoning program are well-maintained and remain in good condition for future renters.

In communities where inclusionary zoning policies apply to homeowner units, ongoing monitoring is also needed to confirm that occupants are complying with program requirements (such as using the residence as a primary dwelling) and that affordability covenants are enforced and subsequent home sales are completed in accordance with program regulations that ensure they remain affordable to future buyers. The periodic but ongoing engagement of a housing counselor can also be helpful in promoting the sustainability of an affordable homeownership program. Counselors can prepare prospective buyers for homeownership, and can also work with them post-purchase to identify and quickly resolve any problems that could lead to default or foreclosure.

For these and other activities, cities, towns and counties can remain engaged in the day-to-day operations of IZ programs or they may encourage partnerships between for-profit and mission-oriented developers. Organizations that have experience administering affordable housing programs may be better-equipped to ensure compliance with the additional requirements associated with IZ policies, and can help to ensure successful delivery and management of the affordable units.
Alternatives to on-site construction

Rather than providing affordable units on-site, some communities allow developers to satisfy all or a portion of their inclusionary requirements in other ways. For example, developers may be able to pay a fee in lieu of developing affordable units. This approach has the advantage of generating additional resources that can be used to support affordable housing activities, but fails to promote the development of mixed-income communities. Another issue is that many communities set in-lieu fees at levels that are insufficient to develop a new affordable housing unit for every lost inclusionary unit, resulting in lower production of affordable units.

Other communities permit developers to build the required affordable units at another location, often within a certain distance from the market-rate project. This approach may call for developers to build a larger number of units than would otherwise be required under the IZ policy, or to make those units affordable to households at lower income levels. Communities that adopt such policies may wish to stipulate that the units developed off-site be in a neighborhood of similar quality or higher along metrics associated with economic opportunity, such school quality or the poverty rate. For more guidance on this topic, see the brief, *Balancing trade-offs between the quantity, quality, and location of affordable housing.*

Other considerations

- **Legal challenges.** Inclusionary zoning policies have been subject to lawsuits for a variety of reasons. Some lawsuits allege that requirements to include affordable housing constitute a “taking” of private property. Other challenges to IZ policies argue that they violate state laws that restrict cities’, towns’ or counties’ authority to limit home rents. Cities, towns and counties interested in adopting an IZ policy should consult applicable state law and then consider involving a broad range of stakeholders—including homebuilders and developers—early in the policy development process to address concerns that may lead to legal challenges.

See the related resources below for links to more detailed guidance on these and other considerations related to adoption of an IZ policy.

Examples

- The Moderately Priced Dwelling Unit (MPDU) Program in Montgomery County, MD is one of the oldest IZ policies in the country, and has been amended several times in the 40+ years since it was adopted. The program applies to both rental and owner-occupied developments, and requires that new subdivisions set aside between 12.5 percent and 15 percent of new homes as MPDUs. Of those affordable units, 40 percent must be made available to the Housing Opportunities Commission
(the county’s public housing agency) or other non-profit housing agencies for use by low- and moderate-income families. See here for more details.

- **Chicago’s Affordable Requirements Ordinance** applies to developments with 10 or more units that (a) receive financial assistance from the city, (b) involve city-owned land, (c) are granted a zoning change that increases project density or allows a residential use in an area not previously zoned for residential development, or (d) are “planned developments” in the downtown area. Sponsors of these developments must set aside 10 percent of units at affordable prices (at or below 100 percent of AMI for for-sale units or 60 percent of AMI for rentals). Rental units must stay affordable for at least 30 years, and for-sale units are placed in the city’s community land trust to remain affordable for at least 99 years. See here for more details.

**Related resources**

**Policy design and implementation**

- [InclusionaryHousing.org](https://www.inclusionaryhousing.org), Grounded Solutions Network – Provides an extensive overview of inclusionary housing, guidance in designing a policy, and strategies for successful implementation.
- **The Economics of Inclusionary Development**, Urban Land Institute Terwilliger Center for Housing (2016) – Describes factors that influence development feasibility, the impact of IZ policies, and the cost offsets that may be most effective in various development scenarios.
- [Inclusionary Zoning Primer](https://www.nahb.org), National Association of Home Builders (2016) – Describes circumstances where IZ may be feasible and provides examples of communities that discontinued or reshaped their programs. Describes details that should be included in any IZ ordinance.
- [Inclusionary Housing: Creating and Maintaining Equitable Communities](https://www.lincolninstitute.org), Lincoln Institute of Land Policy (2015) – Thorough overview of the many considerations involved in developing an IZ program, including impacts on developers and new development, strategies to build support for policy adoption, key factors to guide policy development, and legal concerns.

**Housing market impacts**

characteristics of IZ programs in three housing markets and assesses the impact of those programs on the production and price of market-rate housing in San Francisco and suburban Boston.

**General resources**

- **Field Guide to Inclusionary Zoning**, National Association of Realtors (updated 2016) – Compilation of materials related to inclusionary zoning, including sample ordinances and case studies, links to relevant news articles, and a bibliography of research reports.
- **CityLab University: Inclusionary Zoning**, CityLab (2018) – CityLab has created a comprehensive, yet understandable primer on inclusionary zoning – including its history, policy examples, case studies, and more.
- **Inclusionary Housing Database Map**, Grounded Solutions Network – This interactive map allows users to explore the prevalence of certain inclusionary housing programs across the nation, as well as learn more about each individual program.

**Case studies**

- **Inclusionary Upzoning: Tying Growth to Affordability**, Center for Housing Policy (2014) – Profiles six localities that have adopted mandatory and voluntary inclusionary zoning policies tied to upzoning (the practice of allowing increased density in specified zones).

1. Takings challenges are based on the Fifth Amendment of the U.S. Constitution, which states: “Nor shall private property be taken for public use without just compensation.” Courts assess the merits of takings claims on the basis of (1) whether the action substantially advances a legitimate state interest; or (2) whether it denies the property owner all economically viable use of the property. For more details, see **Inclusionary Zoning: Legal Issues**, December 2002. California Affordable Housing Law Project and Western Center on Law & Poverty.

**See also:**

- Zoning changes to allow for higher residential density
- Reduced parking requirements for qualifying developments
Density bonuses