Expanding Housing Choices in Raleigh, NC

Inclusionary Zoning as a Solution to the Affordable Housing Shortage

Elina Bravve
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Introduction and Purpose of Research

This study evaluates inclusionary zoning programs nationwide in an effort to guide the design of such a policy in the city of Raleigh, North Carolina. Raleigh, the state capital of North Carolina, is currently finalizing a Comprehensive Plan. The Comprehensive Planning document will shape the future growth and development patterns within the city. The document will impact land use decisions affecting all current and future city residents.

The impetus for the development of a new Comprehensive Plan is the anticipation of rapid growth. The city of Raleigh, according to Comprehensive Plan’s vision, is part of the fastest growing region in the State of North Carolina and the second fastest growing county. “Expanding Housing Choices” is one of the six themes that guide the development of the vision for the City’s new Comprehensive Plan.

The Housing Element of the Comprehensive Plan 2030 Draft states, “Affordable housing is a key factor which ensures community vitality and continued economic growth”. Sustained economic growth will depend on the employment of low-to-moderate income earners across a broad spectrum of sectors likely to include elementary school teachers, police officers, retail salespersons, and medical assistants. If expanding affordable housing options is not addressed within the city of Raleigh, the problems associated with both urban sprawl and concentrated poverty will persist locally. Some low income households will be pushed to the periphery of the city where long commutes contribute to pollution. Other households will find housing in City neighborhoods where poverty, crime and substandard housing is common.

In April of 2008, City Council convened a Task Force to study affordable housing and comment on the Housing Element of the Comprehensive Plan draft. The Task Force began to meet in August of 2008. The members of Task Force identified key tools with the potential to effectively address affordable housing needs in Raleigh. These tools included the creation of a Housing Trust Fund, creating a model community housing and land trust, land banking, and inclusionary zoning.

Inclusionary zoning generated discussion among Task Force members who viewed it as the most promising tool to expand the supply of affordable housing in Raleigh. Inclusionary zoning is implemented by regulating private development patterns. Developers of residential units are required to set aside a specified percentage of units for households in need of affordable housing. However, the program design of inclusionary zoning varies across municipalities. This research project aims to determine an appropriate design for an inclusionary zoning program in Raleigh.

For this project, I begin by substantiating the hypothesis that a need for affordable housing exists in Raleigh. My primary research question will address the potential of inclusionary zoning to tackle the growing need for affordable housing in Raleigh. The key supporting research questions I explore throughout this study are:

1. Why is there a shortage of affordable housing in Raleigh?
2. How have inclusionary zoning programs been structured and administered within other municipalities nationwide?
3. Has inclusionary zoning been implemented successfully in communities that are comparable to the City of Raleigh?
4. When considering an inclusionary zoning policy, what key program design elements should the City of Raleigh adopt to build an effective policy?

The study begins with an overview of research literature on inclusionary zoning. This provides a definition of inclusionary zoning; a review of the legal history of implementing inclusionary zoning ordinances; a history of key legislative moments that pertain to inclusionary zoning and an overview of the key program design elements typically part of inclusionary zoning ordinances.

I then review the need for affordable housing in the City of Raleigh. Using existing data collected by the City Planning Department over time, I review the demographics of the city of Raleigh focusing on population growth and housing patterns. I also utilize a research study on housing completed by external consultants, Bay Area Economics, in 2005. I use this information to identify the primary ways in which housing will be affected by current growth patterns. I also utilize this data to corroborate a case that low-to-moderate income households are not served by the private real estate market.

Expanding on research provided to the Affordable Housing Task Force in Raleigh, I then refocus on models of inclusionary zoning nationwide. After using web based research and reviewing literature on inclusionary zoning, I identify a range of inclusionary zoning programs throughout the United States. For the broad overlook at the scope of national inclusionary zoning programs, an attempt was made to choose a broad range of communities to include jurisdictions of varied sizes and distributed across the country. Ultimately, thirty jurisdictions were reviewed to determine common patterns related to the design of inclusionary zoning programs.

Throughout my research process, I depended on publically available ordinances and information stored on websites. Communities with in-depth data publically available and accessible were chosen for the study. Whenever possible, I confirmed website information through direct contact with planning staff members. I used Lexus-Nexus to gather news coverage of inclusionary zoning programs where they have been most controversial. Finally, I requested research and evaluations completed by select jurisdictions with programs that have been long established.

Then, I shift my focus on the design and development of inclusionary zoning programs in communities comparable to Raleigh, NC. I chose cities of a similar size and with comparable rapid growth patterns. I favored cities with strong education and government sectors.

The search for comparable inclusionary zoning programs lead to in-depth research on programs in Sacramento (CA), Boulder (CO), Madison (WI) and Austin (TX). Sacramento and Boulder have exemplary and established inclusionary zoning programs. Madison’s program has been terminated, and I explored the ineffectiveness of this program. Finally, Austin has an alternative program which does not require
inclusionary zoning, but incentivizes affordable housing. I provided an in-depth look at this program in order to consider an alternative to typical inclusionary zoning policy development.

Finally, I provide a guide to developing an inclusionary zoning ordinance in Raleigh, NC. I identify some of the key issues policymakers have grappled with when designing an inclusionary zoning policy, and then I provide recommendations based upon the best practices identified through in-depth research of existing ordinances and the current demographic conditions in Raleigh.

Chapter 2: Inclusionary Zoning: Background

2.1 Defining Inclusionary Zoning

Inclusionary zoning (IZ), sometimes also called inclusionary housing, is a land use policy which may either require or encourage developers to ensure that a percentage of all new units constructed are priced affordably for a household earning a working wage. Typically, inclusionary zoning integrates affordable housing units into high-growth communities where the majority of new housing consists of expensive, larger homes. Municipalities implement inclusionary zoning policies in order to increase the supply of affordable housing.²

Many communities across the country have implemented inclusionary zoning programs. A survey from 1991 found that about 10% of larger cities in the United States, with a population of 100,000 had an inclusionary zoning policy³.

2.2 Legal History

The first inclusionary zoning ordinance in the nation was passed in Fairfax County, Virginia in 1971⁴. Fairfax is an affluent suburban county just outside of Washington D.C. which could be characterized as a high growth region in the early seventies. However, its zoning ordinance was struck down by the state courts because the court decided that the ordinance constituted a “taking of property without compensation”⁵. The case demonstrated that a municipality must consider local zoning enabling legislation prior to considering inclusionary zoning.

Opponents to inclusionary housing may argue that IZ policies result in regulatory takings which are prohibited by the Fifth Amendment. The Fifth Amendment states that private property cannot be taken

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⁵ Fairfax County. http://www.policylink.org/pdfs/EDTK/IZ/InZon-Fairfax.pdf
for public use without compensation. It still remains unclear whether or not inclusionary zoning, as a land use policy, violates the Takings Clause. However, recent court cases have demonstrated that municipalities can avoid this potential legal challenge by structuring their IZ policy to ensure that developers are essentially compensated for their losses. IZ policies which provide incentives to developers such as density bonuses or provide an opportunity for developers to apply for waivers to the policy are typically not successfully challenged in the court room.

In Fairfax, Virginia, a coalition of advocates began to work to build support for a new ordinance finally passed in 1990. This ordinance was passed due to the successful, educated and well prepared approach undertaken by the coalition. First, the group had to lobby to change the state-enabling legislation. Virginia was a “Dillon’s Rule” state, so legislation had to be changed in order to provide local municipalities with the discretion to pass legislation related to planning and zoning without explicit state permission. Secondly, the new ordinance addressed the issue of “takings”. The mandated ordinance originally designed in the early seventies required developers to essentially give up “reasonable economic use” of a property without being compensated in return by the public entity.

The 1990 ordinance passed in Virginia took care to compensate developers fairly through the use of a density bonus. This allowed developers to offset their losses because density “bonuses can help developers recoup the reduced revenue associated with offering a share of units at below-market rates by increasing the number of units that may be sold at market rates”\(^6\). The use of a mechanism such as a density bonus to compensate developers is necessary to avoid complications if lawsuits on the basis on a “takings” interpretation of law emerge.

A 2001 lawsuit in California challenged a municipality’s right to require inclusionary zoning. The city of Napa, California established an inclusionary zoning policy requiring a ten percent set aside. Developers were, however, entitled to various incentives such as expedited permit processing and density bonuses. In addition, developers were also allowed to make in-lieu payments rather than construct units on site. The Homebuilders of Northern California sued the city of Napa because they attested that the ordinance was a taking of private property. The courts assessed whether this was a legitimate claim by considering whether or not the local IZ regulation advanced a \textit{legitimate state interest} and whether or not the regulation \textit{“denies the property owner all economically viable use of the property”}\(^7\).

The Napa court found that the inclusionary zoning ordinance was legitimate because it advanced the city’s responsibility to provide affordable housing in the community. The court decided that the ordinance did not constitute a taking because the “City has the ability to waive the requirements imposed by the ordinance”.\(^8\) This case demonstrates that an inclusionary zoning policy is more likely to

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\(^8\)
withstand legal challenges if it incorporates incentives to benefit the developers who comply with the policy conditions.

2.3 Legislative History

In the 1980s, two states, California and New Jersey, chose to place pressure on the local municipalities to produce more affordable housing. New Jersey adopted “fair share legislation” after the 1983 Mount Laurel II legal decision which mandated local government to take “action on affordable housing” through affirmative public policies and governmental devices. This legislation emerged from a lawsuit filed by the South Burlington County NAACP which claimed that low to moderate income families were excluded from living in a municipality due to the zoning. As a result of this case, the court held that zoning ordinances which prevent the provision of low income housing were unconstitutional. The decision made addressed a practice through which “small municipalities were zoning open space for 1 and 2 acre minimum residential lots.” This ultimately reduced multi-family housing by ensuring that developers could only build larger, single family properties.

The state of New Jersey made a decision in 1983 that each municipality has to use affirmative governmental devices to produce affordable housing, and the Legislature passed the Fair Housing Act of 1985. Most critically, this act required municipalities to use zoning and other provisions to provide affordable housing. This act also further strengthened the 1983 Mt. Laurel decision by establishing an administrative body with oversight, the Council on Affordable Housing, which devised routes through which participating municipalities could meet affordable housing requirements based upon the state’s calculations on the housing need in that area. Participating in COAH’s system is voluntary, but protects the municipality from further lawsuits.

California General Plan law requires that “all localities adopt a General Plan and that the “Housing Element” in particular requires state approval. The Housing Element is a five year plan which a community uses to measure the housing need within the community and identify sites for housing for different income groups. In the eighties, the administration of Jerry Brown strengthened the Housing Element requirements by framing the determination of need to be based upon the “locality’s share of the regional housing need”. The division of Housing and Community Development also developed a model inclusionary housing ordinance which provided local municipalities with a framework for bringing the Housing Element into compliance with the General Plan law. Finally, a state law also requires that a local government grant density bonuses as incentives to developers incorporating low income housing.


As of March 2003, 107 municipalities adopted inclusionary housing in California.\textsuperscript{13} These programs created over 34,000 new affordable units over thirty years.\textsuperscript{14}

Another state with legislation that promotes affordable housing is Massachusetts. Chapter 40b provides a route for developers to build affordable housing through an expedited permit process. If a developer applies for a permit to construct a project which incorporates affordable units in a community where there is a need for more affordable housing and the permit request is denied, the developer may appeal to a state-level committee. The process is used by non-for-profit organizations which wish to develop affordable projects in communities unfriendly to the idea of affordable housing. In addition, “a review of selected recent master plans suggest that many communities [in Massachusetts] adopt IZ in order to increase production of affordable housing...in a manner perceived as giving more local control than 40b developments”\textsuperscript{15}. Thus, communities are encouraged to create locally based programs to increase affordable housing in order to avoid being subject to development decision making at the state level. Communities which have a reasonable proportion of affordable housing (10\%) are exempt from the 40B law. As of 2004, about half the communities within a 50 mile radius of Boston had some sort of affordable housing incentive program, and just over 1/3 had mandatory” zoning policies.\textsuperscript{16}

\textbf{2.4 Inclusionary Zoning: Benefits for a Community}

Communities have chosen to implement inclusionary zoning policies as a strategy towards increasing the supply of affordable housing for several reasons. First, Local governments are able to provide more affordable housing through the private sector by leveraging a small amount of public funds towards the administrative aspects of an inclusionary zoning program. IZ is viewed as cost effective for a municipality. Inclusionary zoning is a market-driven solution to the need for affordable housing which “harnesses the power of the marketplace to produce affordable homes and apartments without significant outlays of public subsidy” which can allow municipalities to use the limited existing funds earmarked for affordable housing to serve extremely low-income families less likely to be “the main beneficiaries of an inclusionary housing program”.\textsuperscript{17}

Secondly, Inclusionary zoning provides housing for the local workforce. When public sector employees are not able to find affordable housing units in a community, the community is less likely to retain a

\begin{itemize}
\item \textsuperscript{14} California Coalition for Rural Housing. “Inclusionary Housing in California: 30 Years of Innovation”. 2003.
\item \textsuperscript{16} Schuetz, Jenny, Rachel Meltzer and Vicki Been. Pp. 31.
\item \textsuperscript{17} Brunick Nicholas. “The Impact of Inclusionary Zoning on Development”. http://www.bpichicago.org/documents/impact_iz_development.pdf Pp.3
\end{itemize}
talented workforce. In addition, recent research has cited the problem of a spatial mismatch resulting in many communities when there are few affordable housing options for working, moderate income earners. This mismatch has resulted in long cross-regional commutes in some communities which contribute to problems associated with sprawl, such as congestion on major roads.

Finally, inclusionary zoning spreads affordable and moderately priced housing units throughout a community. This increases socioeconomic diversity within a community. Inclusionary zoning is a mechanism used to further integration of communities. Unlike former approaches to affordable housing, inclusionary zoning does not isolate the poor. Inclusionary zoning, thus, is the antithesis of public housing programs typically associated with affordable housing which, historically, furthered ghettoization while also stigmatizing the residents of affordable housing.

Inclusionary zoning proponents argue that the development of market-rate residential units in high growth communities drives a growing need for more affordable housing. This argument suggests the following pattern:

This chart illustrates that the development of market rate residential properties drives an increased demand for a variety of services in a community. New, affluent residents demand more retail options, more beauty salons and more restaurants. Many of these service oriented businesses expand by hiring employees at a relatively low wage. As these employees are hired, they drive a demand for more affordable housing. Alternatively, these service oriented local businesses may not be able to find employees if housing does not exist in the community at an affordable price. While some potential employees may be willing to commute long distances in search of a job, many will choose to look elsewhere. This model, of course, remains contingent on broader economic forces such as the overall state of the economy. However, the basic premise remains that communities must accommodate many housing options in order to sustain growth.

2. 5 Major Policy Considerations

Inclusionary zoning programs vary by design. Several important program elements must be considered by administrators and public officials. The initial decision of a community often involves weighing the overall benefits of a mandatory program with the relative ease of garnering support for a voluntary program. Mandatory inclusionary zoning policies are often criticized for driving up the costs associated

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with market-rate housing and driving developers out of a community. This can stifle economic development efforts and limit the creation of new affordable units as development overall slows its pace. However, few voluntary inclusionary zoning programs have managed to effectively produce substantial numbers of affordable housing because few developers are willing to provide affordable housing on a voluntary basis. Voluntary programs require generous incentives to encourage developers which may be expensive and unrealistic to implement. In order to meet the goal of building more affordable units, most communities have chosen to design mandatory policies.

For example, Orange County (California) switched to a voluntary program due to political concerns. This move led to a substantial decline in the production of affordable housing units, as demonstrated in the Table A.

<table>
<thead>
<tr>
<th>Table A: Orange County Production of Affordable Housing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Housing Units Produced: Mandatory Program (1979-1983)</td>
</tr>
<tr>
<td>Housing Units, on Average, per year under Mandatory Program</td>
</tr>
<tr>
<td>Housing Units produced: Voluntary Program (1983-1994)</td>
</tr>
<tr>
<td>Housing Units, on average, per year under voluntary program</td>
</tr>
</tbody>
</table>

Source: Business People and Professional Planning for the Public Interest. [http://www.bpichicago.org/documents/mandatoryv.voluntary5.06.pdf](http://www.bpichicago.org/documents/mandatoryv.voluntary5.06.pdf)

**Set-Aside Requirements**

An inclusionary zoning ordinance typically is designed around a “set-aside” requirement. This requirement indicates the proportion of units in any new development that must be “set-aside” for low-to-moderate income households. This proportion tends to vary from 10% to 20% in various communities. Linking a set-aside requirement to the needs of a community can be done by connecting employment and wage data. This demonstrates the level of need within a community for more affordable housing. This framework can be strengthened by considering the population typically not served by market rate rentals and ineligible for public housing. This segment of the population, typically earning 50% to 80% of the area median income, is most likely to be assisted through inclusionary zoning.

**Geography**

Some municipalities limit the ordinance to specific areas of the municipality or to developments which are a minimum size. A municipality makes a decision related to the coverage area of the policy. Some communities limit IZ to high growth areas. This ensures that affordable housing results from policy implementation, and it also zeroes the policy into the areas of the municipality where prices may be rising sharply. Such a policy reflects the real estate market overall. The community where growth is already apparent is in demand, and low-to-moderate income households are most likely to get priced out. In addition, these areas are lucrative for development. Developers are more likely to be able to incorporate affordable units in rapidly growing, popular neighborhoods because the value of the
surrounding market rate property will ensure a solid profit. Some communities have chosen to limit their IZ policy to downtown neighborhoods.

**Income Targets**

A municipality can design an ordinance to benefit different income levels. Various inclusionary zoning programs have served different income groups. Typically, homes are marketed towards those earning about 50% to 80% of the area median income, though in some areas, households earning up to 120% are eligible to purchase homes. Some communities use a tiered system to target different types of properties to different income levels. For example, rentals are targeted to those earning below 50% exclusively, and for-sale properties are targeted to those making below 80% but above 50% of the AMI. Extremely low income households are rarely targeted by inclusionary zoning programs as these individuals are more often served by other public housing programs. Inclusionary zoning policies are particularly needed in communities where a substantial portion of the population may be income ineligible for subsidized housing and priced out of the real estate market. However, this population may be credit worthy and able to purchase homes through an inclusionary zoning requirement. Typically, these homes are priced to be affordable specifically for those at about 80% of the area median income.

**Incentives**

Most municipalities today provide developers with incentives. Incentives are a necessity because providing such bonuses to developers can soften any political opposition to an Inclusionary Housing program and lessen the risk of a lawsuit stemming from the development community’s perception of economic losses resulting from the implementation of an IZ policy. Incentives can also ensure that developers remain interested in the community and do not simply move their projects across to bordering municipalities. In terms of justifying the inclusionary zoning policy to the development community, incentives can go a long way towards building a cooperative rather than antagonistic relationship with developers.

The most common incentive utilized is the density bonus. This can vary from a 10% bonus to a 25% bonus. A density bonus allows a developer to build more units on a site. For example, a 15% bonus would allow 23 units zoned for a 20 unit development. If the set-aside requirement is 10%, of those 20 units, two would be affordable. Yet, the developer would be also constructing several more market rate units for an extra profit. Theoretically, this allows the developer to construct several more market rate units to make up for the losses in profit stemming from the affordable housing requirement. Typically, communities with a higher set-aside requirement have a more generous density bonus. Some communities, such as Montgomery County, provide a developer with a greater density bonus if more units are made affordable in a development.

More innovative incentives used by municipalities include an expedited permitting process which provides developers with an opportunity to begin construction quickly. The construction and lease-up timeline is critical for developers, and the extra time window provides an opportunity to reduce risk of
losing a site. Other communities have waived fees for developers and relaxed other zoning standards such as the requirement for parking and set-backs from the road to accommodate developers.

**In-Lieu Options and Alternatives**

A municipality is able to provide alternative routes for developer to meet the requirement. These alternatives are termed “in-lieu” options, and they are common because municipalities want to create programs which are adaptable under a variety of circumstances. Programs which are too strict run the risk of ultimately stifle overall development within a municipality.

Many jurisdictions offer the payment of in-lieu fees as an option and alternative to building affordable units off site. These fees are not calculated in any standardized fashion. “When in-lieu fees have been set below the level needed to actually fund new construction, they can undermine the program goals, as it is in the developer’s clear financial interest to simply pay the fee”. The in-lieu fee must be set high enough to allow the public entity or non-profit managing the administration of the revenues from the fee to construct “an equivalent number of affordable units elsewhere”. Successful implementation of an in-lieu fee option requires the municipality to clearly delineate the rules surrounding the use of this alternative policy. For example, a municipality may insist that the in-lieu fee is only allowed under specific circumstances. In Montgomery County, in-lieu fee options have been allowed in specific areas where the planning agency recognizes that extremely high land costs make the integration of affordable housing extremely difficult.

The political realities of adopting a policy or ordinance often pit for profit developers against “social equity” advocates, with developers pushing for maximum flexibility and advocates striving for certainty in terms of an assurance that affordable housing will be built. Yet, flexibility can impact the ability of the policy to meet specific broad goals for the policy. For example, one of the primary goals of an inclusionary zoning policy is to integrate affordable housing evenly across a community. The use of In-lieu fees as a flexible alternative will result in the development of affordable housing off site. This undermines the objective of spreading affordable units throughout the community and may even further the clustering of such housing, perpetuating trends of concentrated poverty and entrenched class divisions by neighborhood.

Other decisions that a policy official designing an inclusionary zoning often considers include the selecting the agency or non-for-profit which will administer the policy. In addition, the policy makers have to regulate the physical design of the inclusionary zoning properties. Finally, the policy must include a standard re-sale property concerning how the property will remain affordable over time.

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19 California Coalition for Rural Housing. “Inclusionary Housing in California: 30 Years of Innovation”. P. 19
20 California Coalition for Rural Housing. “Inclusionary Housing in California: 30 Years of Innovation”. P. 10
2.6 Can Inclusionary Zoning Have Drawbacks?

The primary argument against inclusionary zoning treats the approach as a tax on development. The treatment of an inclusionary zoning policy as a tax is logical in an economic framework. As a tax, the costs must be assumed by developers, landowners, homebuyers, or renters. Under a mandatory inclusionary zoning policy that offers no incentives or alternatives to developers, the developer would lose revenue on the affordable units which would reduce overall profits. Economic models suggest that developers will not build unless they are able to maximize their profit by either raising the prices of market-rate units or acquiring land cheaply. This theoretical model is presented in greater detail in a study completed by the Furman Center for Real Estate and Urban Policy at New York University in 2007. The following chart demonstrates the model:

If the price of market-rate units does indeed rise, the consumers may be less inclined or less able to purchase homes in this municipality. This, in turn, may discourage developers from building within the municipality. Ultimately, this leads to two consequential outcomes for the community: housing prices increase, and development is stifled. The tax is passed on by the developer to the consumer and homebuyer because the developer is likely to raise the price of the housing in order to offset the loss of profit.

The impact of inclusionary zoning in a municipality depends on the structure of the Inclusionary Zoning program. The program’s negative impact on development is more likely to occur if the “set-aside” or share of affordable units is set higher. In addition, the impact is greater if the population targeted to reside in the affordable units is poorer. In fact, there is a greater potential for impact within the housing

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market if “the difference...between prevailing market prices and specified affordable prices” is substantially more marked. In addition, the demand in the housing market can decrease the impact. For example, if demand is inelastic, developers are able to “pass along cost increases to consumers” with ease and development is less likely to suffer in a municipality with an inclusionary zoning policy.22

In strong economic markets where demand for housing is extremely high, demand is less likely to wither if housing prices rise. As such, developers have willingly adapted to the inclusionary zoning policies in communities such as Montgomery County and Palo Alto, California.23

Several studies have assessed the impact of inclusionary zoning on the housing market. A study of IZ programs in three regions (DC, Boston and San Francisco) found varied results. This study looked at data tied to housing permit production and changes in housing prices over the period in time when inclusionary zoning policies were adopted. In suburban Boston, some evidence suggests that IZ “may be constraining housing production and increasing housing prices”, but these results are not controlled for the impact of changing demographics and the impact of other new regulations in those municipalities. In San Francisco and DC, the same study indicated “no evidence of a statistically significant” impact of IZ on both prices and permits24.

David Paul Rosen looked specifically at nearly thirty cities in California over the course of two decades between 1981 and 2002 by collecting data on permits. The pace of housing development was compared in cities with (and without) inclusionary zoning policies. Several economic factors were incorporated into the study including the changes in unemployment, home prices, and interest rates. The study demonstrated that the introduction of an inclusionary zoning policy did not have a negative impact on the production of housing within the municipality25. In fact, in some rapidly expanding communities, housing production increased over time. This indicates that other factors other than inclusionary zoning play a more integral role in determining the pace of housing development in a community. Thus, inclusionary zoning is unlikely, by itself, to depress the housing market in a municipality.

In February 2008, the National Center for Smart Growth conducted another study, funded by the National Association of Home Builders, which assessed the impact of inclusionary zoning in California municipalities with such policies. The study examined the impact of the policies on housing prices and development overall between the years of 1988 and 2005. California was chosen because of the availability of data and the sheer number of municipalities with inclusionary zoning policies. The study attempted to control for other factors that may have affected housing prices and development in order to isolate the impact of inclusionary zoning by itself. In terms of housing construction, inclusionary zoning seemed to have little impact on the development of new residential property. However, the

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24 Schuetz, Jenny, Rachel Meltzer and Vicki Been. Pp. 67
same study did find that inclusionary zoning seemed to increase overall housing prices by 2.2%, and the impact was a bit greater at the upper realm of the housing market.26

Chapter 3: Raleigh: The Local Context

Widely acknowledged as a rapidly growing economic powerhouse, Raleigh, North Carolina has shown resilience during the economic downturn due to employment opportunities in stable governmental, educational and medical sectors. Area unemployment has historically been lower than state and national rates in recent years.27

The state capital continues to attract new residents with the prospect of jobs and affordability. During the period between 1994 and 2003, Wake county employment grew by 33%. Overall, Raleigh grew 37.69% since the decennial census in 2000.28

Several indicators suggest that while the median household income in Raleigh has increased over time, income growth overall has not kept up with the rise of the cost of living in the area. The growth in median household income has actually “remained relatively flat from 1999 to 2004” when discounting for inflation29. However, though the cost of housing has risen as indicated in Chart 1, incomes have not kept up.

![Chart 1: City of Raleigh, Median Sales Price of All Homes](image)

Source: Wake County Revenue Department, City of Raleigh Community Development Department

As Chart 2 demonstrates on the following page, the rising cost of purchasing a home can be felt across different neighborhoods in Raleigh. Along with Falls Lake, an outlying area, the highest increase in prices occurred close to downtown in neighborhoods convenient to entertainment and jobs.

Raleigh’s housing market over the past decade expanded as new households arrived and purchased existed or worked with builders to construct new homes. Much of the growth in Raleigh occurred along the fringe, in areas with many new retail locations such as Brier Creek or the Triangle Town Center. More recent interest in downtown living lead to increasing home values inside the beltline in neighborhoods such as Five Points as well as in downtown. Yet, while the new high rise developments and popularity of Raleigh is exciting, it can also be a cause for concern. Chart 3 demonstrates that few opportunities to purchase a home for under $150,000 exist currently.

Homes priced below $150,000 compose only 20% of the market. Homes priced above $300,000 compose a more substantial portion of the market (25%). According to the Bay Area Economics Housing Needs Assessment, “the current market...does not support the provision of homes under $100,000,
aside from special housing provided by Habitat for Humanity or other non-profit groups”\textsuperscript{30}. The free market simply does not provide homes in this price range as more expensive homes are more profitable. Without explicitly devising policies to encourage the development of more affordable housing units, the supply of affordable housing will continue to shrink in Raleigh.

Renter households are also increasingly cost burdened in Raleigh. Extremely poor households are most vulnerable. Among renters, over 76% of extremely low income households (earning below 30% of AMI) are cost burdened (paying over 30% of their income towards rent). Among those renters earning 30%-50% of AMI, 78% were cost burdened. Among renters in the 51% to 80% AMI income range, 35% were still feeling the pinch of a housing burden.\textsuperscript{31} Working poor households unable to purchase homes at market rates, but also ineligible for public housing programs are often under the most substantial “cost burden” in any community.

Three major trends are contributing to the limited affordable housing market in Raleigh:

- \textit{Gentrification} in urban neighborhoods near downtown: this phenomenon has had an impact on neighborhoods throughout American cities which are rapidly expanding and attracting new residents. In particular, communities with historic but undervalued properties often attract buyers. Over time, the price of housing in a community reaches a point when long time residents can no longer live there. Under some circumstances, landlords adjust rents to meet market demand, thus pushing out long time residents.

  The experience in Raleigh has been captured by the \textit{Christian Science Monitor} in 2005. Journalist Patrik Jonsson described the experience of former New Yorker Jeff DeBellis, who purchased a home in Raleigh’s Martin-Haywood neighborhood in 2001. Encouraged by forgivable home improvement loans, buyers such as DeBellis have chosen to move into southeast Raleigh neighborhoods, which are predominantly African American, poor and have suffered due to years of disinvestment. Yet, many of the city’s “black citizens remain critical and suspicious of the city's motives after its previous attempts to force residents to renovate their homes to meet modern building codes”\textsuperscript{32}. Older residents are reluctant to embrace the uncertainty of neighborhood change because they are not confident that they will benefit from the increased property values or decreased crime rates.

- \textit{Teardowns} are another concern for Raleigh residents. In neighborhoods located “inside the beltline”, typically with convenient access to downtown jobs and entertainment as well as an abundance of historic properties, residents have been quarreling over situations where property owners or developers are razing smaller homes and replacing them with new McMansions that do not fit the character of the neighborhood and continue to drive up property values. “In one

stretch of 20 homes, half have been torn down or substantially expanded in the past six years.”.  
Since 2002, the number of teardowns that have occurred in Raleigh grew past 600.  

In response, neighbors have organized to protest that the teardowns impact the neighborhoods negatively and do not take care to preserve historic properties. According to Stephen Melman, an economist with the National Association of Home Builders, the occurrence is similar to “gentrification on steroids”. While homes in gentrifying neighborhoods are often fixed up as new residents purchase and renovate them, under the circumstances surrounding the teardowns, homes are completely replaced with new buildings often much larger in size. This scale of change actually reduces the number of homes available at less expensive price points. While many affordable housing market studies focus on the availability of units subsidized through federal and local government programs, there are many older homes that are affordable still available. However, teardowns reduce the number of affordable units in the unsubsidized market.

- Some subsidized units are at risk of being converted to market rate in the near future. According to a study by Bay Area Economics, 256 units of housing in Raleigh may be converted to market rate prices over the course of several years. Many affordable housing projects financed under the Low Income Housing program are also not affordable in perpetuity. As such, the supply of affordable housing must be replenished over time.

The number of subsidized and assisted units in Raleigh is 11,144. This amounts to less than 7% of the total number of housing units in the city.

- Reduced Availability of Land: According to a Bay Area Economics study of the Raleigh region, while Raleigh experienced considerable growth over the last several decades, “its share of regional development declined from the 1980s. In part, this is a signal that vacant land within the city for new residential development is becoming scarce”. As the population trends indicate continued growth in Raleigh, scarce land suggests that the costs of building will rise. As costs of construction rise, it is likely that the price of renting and purchasing new properties will rise as they adjust to land costs. This will reduce the number of affordable units available on the market.

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The Housing Opportunities Index is published by Wells Fargo and the National Association of Home Builders. In the third quarter of 2008, the Raleigh Cary MSA was ranked 88th most affordable nationally, and 34th most affordable in the south. According to HOI data, 64.8% of homes sold during the third quarter of 2008 were affordable to families earning the median income in the MSA. This data places the Raleigh area on par with Denver (Colorado), Jacksonville (Florida) and Atlanta (GA).

As the table to the right indicates, Raleigh is currently slightly less affordable than Charlotte (NC) and Atlanta (Georgia). A smaller proportion of homes in Raleigh are affordable to households earning the median income.

There is a value inherent in policies which encourage building diverse communities by providing an opportunity for housing choices. Communities which are inclusive, by nature, foster a stronger socio-economic base. New, innovative policies to provide more housing opportunities for this particular segment of the population are much needed in Raleigh. To this end, the Comprehensive Planning Process in Raleigh incorporated an Affordable Housing Task Force to define the future of housing policy for the city. The Task Force was given the task of identifying policies to mitigate the shrinking supply of affordable housing in Raleigh.

### 3.2 The Comprehensive Planning Process

In October of 2007, the Planning Department of Raleigh kick started a new Comprehensive Planning process. This process emphasized civic engagement and public participation. As stated on the City’s webpage, a “key goal of the Comprehensive Plan Update process is to be as open, inclusive, and transparent as possible.” This goal was met throughout the process through community meetings sponsored by existing civic organizations; small group roundtable discussions focused on specific policy issues; and a three phase series of public workshops.

The Comprehensive Planning process intends to address the rapid growth and changes in the Raleigh community currently underway. Addressing housing needs in Raleigh is a key component of the
Comprehensive Plan, and the input of local stakeholders is integral to ensuring that new policies to address housing issues are not overlooked as the plan is finalized. To that end, the city of Raleigh supported the creation of an Affordable Housing Task Force to guide the development of housing policies within the Comprehensive Plan.

### 3.3 Affordable Housing Task Force in Raleigh

In March of 2008, as part of the Comprehensive Planning Process, the city of Raleigh’s Planning Department held a roundtable discussion with residents focused on housing issues. Anita Morrison, a consultant with Bay Area Economics, facilitated the discussion. The department invited twenty five locals with an existing involvement in housing issues. These individuals included members of the Citizens Advisory Council, housing advocates, home builders, non-for-profit leaders and realtors, among others. Participants were invited to write down the issues that mattered most to them on index cards during the meeting. This allowed the planning department to gather feedback regarding the most critical housing issues in the community.

Various concepts were discussed during the meeting. After highlighting the need for affordable housing downtown, roundtable participants composed a list of eighty three points that needed to be addressed by officials. Specifically, some of the topics covered included:

- The need to link public transit options with affordable housing and the interest in transit oriented development.
- The value of mixed income communities instead of areas where poverty is concentrated.
- The need for market based incentives to encourage private development of more affordable housing units.
- Lack of affordable housing units in areas of high growth around the city.
- Demolition of existing market-rate affordable units.
- Regulatory barriers which may prevent more affordable units to be built. Participants cited a lengthy City approval process which should be streamlined.
- High cost of site development prevents affordable housing development.

The discussion then turned to strategies to address the needs mentioned during the meeting. Identified strategies included:

- Mixed income development strategies including inclusionary zoning.
- Strategies to make land banking or land acquisition by the city a possibility.
- Programs to move people out of poverty.
- Strategies to remove development barriers including a fee waiver policy for affordable housing developments.
- Preservation strategies to encourage rehabilitation rather than demolition.
• Community land trust as a strategy to preserve affordability of new units over time.
• Linking affordable housing and transit oriented development patterns.

In November of 2007, Council addressed a recommendation from the Planning Commission to establish a citizen task force to study affordable housing. The Budget and Economic Development Committee approved a motion to create the task force after the Comprehensive Plan was complete. However, in April of 2008, a local organization called the Congregations for Social Justice requested that the City Council appoint an official Affordable Housing Task Force to begin work immediately. The Task force would provide input into the housing aspects of the Comprehensive Plan.

Council approved a motion to organize a Task Force to address housing issues as the Comprehensive Planning Process continued. The Task Force was created to operate temporarily for five to six months. Initially, it was to meet monthly through the end of 2008. This time line was extended after the Task Force began to meet.

The Task Force was responsible for reviewing the housing needs within the city of Raleigh. They reviewed the City of Raleigh’s existing programs and policies to identify missing gaps. They were also expected to review the best practices related to affordable housing within other jurisdictions. After a thorough review of the Draft Comprehensive Plan, the Task Force would submit recommendations to City Council.

The Task Force began meeting in August of 2008. The Mayor of Raleigh, Charles Meeker, welcomed the 18 members of the Task Force. Then, the Assistant Planning Director for the city of Raleigh explained the Comprehensive Planning Process including public workshops focusing on the draft of the plan in November and a period during which revisions would be made over the course of the winter of 2009.

At the second meeting, the chair and vice-chair of the Task Force, appointed by City Council were announced. This meeting focused its effort on establishing subcommittees to study 12 strategies presented in the Community Inventory Report. This report, released in April of 2008, contained background studies being utilized by City Planners to write the updated Comprehensive Plan. It also includes commentary and analysis of the existing comprehensive plan. The report ensures that the updated Plan will be grounded in technical analysis. The Inventory Report identifies key strategies which can address policy issues of importance.

During the September 2008 meeting, Community Development staff members provided information to task force regarding industry terminology revolving around affordable housing. The Task Force was provided with information regarding the median income and rents in the region.

Also in September of 2007, the Community Development department held a breakfast meeting with local developers to discuss policies to encourage mixed income development. Developers noted that the state-level process for allocating affordable housing tax credits did not favor mixed income developments. Several developers voiced the opinion that expedited review and permitting would ease the process substantially for developers.
Throughout the month of October, small sub-committee groups met to discuss further the implications of the recommendations included in the Community Inventory in preparation for a late October Task Force meeting. Towards the end of the meeting, task force members zeroed in on several policies that required further research. The task force identified inclusionary zoning as one of the most pressing issues in need of further research. Two meetings were organized for the month of November to present information on the city’s scattered site policy and inclusionary zoning.

The November 17th meeting of the Affordable Housing Task Force focused specifically on the review of inclusionary zoning. Tyler Mulligan, a lawyer and researcher at UNC – Chapel Hill’s School of Government, presented his own research on inclusionary zoning and the cost burden of housing in Raleigh. Mulligan suggested that the number of cost burdened households was on the rise in Raleigh.

The Task Force decided to continue its work by reflecting upon the information gathered. Community Development staff created a survey tool to assess the perspective of Task Force members on housing actions proposed in the Comprehensive Plan Draft. At the January and February meetings, task force members worked through the action steps proposed in the Comprehensive Plan Draft using a round table discussion format during which the members discussed how they would recommend editing the housing related policies and actions in the Plan. The Task Force utilized an outcome-based framework where their discussion focused on emphasizing actions that were most likely to result in more affordable housing units in Raleigh.

The Task Force recommended a focus on implementing short-term strategies which would increase the number of affordable units dispersed throughout the city evenly. This central tenet could be furthered by an inclusionary zoning program because inclusionary zoning ties the development of affordable housing to areas of growth. An inclusionary housing program would encourage the development of affordable housing outside of poor neighborhoods where such housing tends to concentrate.

Chapter 4: National Models

In order to broadly understand the program design components of inclusionary zoning programs, a sample of thirty programs were chosen for this project. These communities were chosen based upon the availability of data. In addition, an attempt was made to choose a broad range of communities to in terms of size and geographic location. The purpose of this study is to provide a broad overview of inclusionary zoning programs nationally in order to identify standards that work.

In order to identify programs nationally, I used a comprehensive list developed by the National Inclusionary Housing Conference in 2007. This list includes 354 communities with known inclusionary zoning policies across the country. The list was produced by Alan Mallach of the California Coalition for Rural Housing and the NJ Council on Affordable Housing. While extensive, the list underscores that the

great majority of inclusionary zoning programs are located in California and New Jersey. Of all programs cited nationally, 155 are located in California and 162 in New Jersey. Across the country, excluding California and New Jersey, there are about thirty seven inclusionary zoning programs.

I worked from the list of thirty seven programs nationwide by reviewing municipal zoning codes, typically using municode.com, LexisNexis, or American Legal Publishing Corporation as resources. I deleted several communities from the list of thirty seven after I found that they did not actually have an official ordinance and were listed by mistake. I specifically removed Portland (Oregon), Washington (DC) and Madison (WI) from the list as a result. Portland does not have a policy of inclusionary zoning due to state legislation banning such a mandatory program. Washington (DC) is still working out the details related to the administration of the program. Inclusionary zoning should be implemented in the nation’s capital by the fall of 2009. Madison (WI) had an inclusionary zoning program which was abandoned after the program “never produced the results (the mayor) sought”. As part of this study, I will examine Madison’s struggle to implement the IZ program in order to identify the causes for the program’s demise.

The National Inclusionary Housing Conference list of programs is not fully inclusive as it missed several programs that I found in Colorado, according to the state Housing website. Further internet searches of municipal home pages and zoning codes revealed several programs in the state of Washington, of which I chose to study Redmond, Kirkland and Bellevue further as representatives of that region.

A key bill passed by the Washington state legislature in 2006 expanded the ability of local government to use inclusionary zoning, with incentives, to create affordable housing options. The bill, HB 2984, allows cities to explicitly “enact or expand affordable housing incentive programs by providing for the development of low-income housing units through development regulations”. In previous years, local programs were challenged in court by developers who claimed that local affordable housing requirements amounted to a tax on their construction project, in violation of state law. Currently, Seattle is moving towards defining an inclusionary zoning policy as part of the rezoning review process. Seattle does not view inclusionary zoning as a panacea to the critical housing needs of the city, but as part of the overall solution.

I chose to exclude municipalities in New Jersey from further study because until October of 2008, wealthy municipalities could essentially avoid their obligation to provide affordable housing, as mandated by the state, by paying another municipality in the state to build affordable housing on their

40 See http://www.leg.state.or.us/ors/197.html for Revised Statute 197.309
behalf. This policy undermines inclusionary zoning’s critical goal of evenly dispersing affordable housing and directly contributes to concentrating poverty in specific communities.

Ultimately, I reviewed thirty programs nationwide to assess the trends among municipalities currently implementing inclusionary zoning. In order to focus my research, I chose a broad sample from each region or state in the country that has a municipality with an inclusionary zoning policy. I made an effort to choose communities that provided a broad overview of their policy design through a public source by posting materials such as reports and meeting notes online. I also favored well established programs which have defined and clarified their policy design with time.

Through my research I found that inclusionary zoning programs tend to be clustered together. Municipal leadership depends on regional models when choosing strategies and tools for implementing affordable housing strategies. When a community chose to establish an inclusionary zoning program, and the program seemed to work over time, other government leadership in the regional area reacted by enacting similar programs. For example, Montgomery’s success in the DC region encouraged other municipalities in Maryland and Virginia to consider the program. As a result, there is some form of inclusionary zoning in place or under consideration in several counties across the Capital (DC) region.

Similarly, a new cluster is developing in the Chicago region and in Colorado. In Illinois, the Chicago Metropolitan Agency for Planning, responsible for the Regional Comprehensive Plan, assessed inclusionary zoning as a strategy as part of their 2040 outlook for the region. Their website provides a version of the report which summarizes policies across Northeast Illinois, and the prominence of these policies are likely to lead to further consideration by other municipalities in the area. In Colorado, the state Department of Local Affairs and the Division of Housing summarizes inclusionary zoning policies across Colorado and provides further information on each policy. The provision of these details on the state website suggests that the state supports further development of such policies in other municipalities.

4.2 Comparative Overview of National Program Elements

The programs chosen to be reviewed as part of this report are:

<table>
<thead>
<tr>
<th>Burlington VT</th>
<th>Santa Fe (NM)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Boulder CO</td>
<td>Denver, CO</td>
</tr>
<tr>
<td>Walnut Creek, CA</td>
<td>Bellevue WA</td>
</tr>
<tr>
<td>Highland Park, IL</td>
<td>Sacramento CA</td>
</tr>
<tr>
<td>Redmond, WA</td>
<td>Pleasonton, CA</td>
</tr>
<tr>
<td>Kirkland, WA</td>
<td>Davidson, NC</td>
</tr>
<tr>
<td>Longmont, CO</td>
<td>Tallahassee, FL</td>
</tr>
</tbody>
</table>


46 [http://www.dola.state.co.us/cdh/researchers/documents/izo_summary.htm](http://www.dola.state.co.us/cdh/researchers/documents/izo_summary.htm)
Municipalities must consider what percentage of housing should be set aside for affordable housing. Inclusionary zoning policies produce more affordable housing if the set aside percentage is high, but municipalities run the risk of encountering more forceful opposition to the policy if it is deemed too much of a burden on development. By reviewing national programs, I have been able to identify the typical set aside utilized by communities which have been able to implement inclusionary zoning without strong opposition.

As chart 5 demonstrates, the largest proportion of programs set aside between 11-15% of all housing for affordable units. In some communities, such as Burlington (Vermont), the set aside varies depending on the median sales price of homes within a particular development. Developments with a higher sales price must set aside a larger proportion of homes as affordable units. Other communities offer more generous incentives to those developers who voluntarily choose to exceed the minimum requirements. Longmont, Colorado places another spin on their policy by setting a lower set aside requirement for those developments that include units that serve a lower income population than required by the program overall.

Typically, inclusionary zoning programs do not apply to small developments of less than 10 units. In some communities, the requirement does not apply to any developments where there are less than fifty

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47 http://www.cedoburlington.org/housing/inclusionary_zoning.htm
units being built. Such a policy limits the effectiveness of inclusionary zoning as fewer units are produced since the policy does not apply to all development. However, the high threshold typically is incorporated into policies in communities where large scale, single unit developments have been common. Often, communities with high thresholds are located on the edge of urbanized areas such as Loudoun County in Virginia, which consists of distant bedroom suburban communities where residents commute to Washington DC.

There is debate about the income group that an inclusionary zoning program should target. Some programs allow those earning just above the median income to participate, thus targeting affordable housing towards moderate income earners. Other programs target those at the lower end of the income range, earning 30-50% of the area median income. The programs targeting the lower end of the income range are rare because it is more difficult to build units for those at the lower end of the income range without significant public subsidy.

As chart 6 demonstrates, the greatest proportion of inclusionary zoning programs target those earning about 80% of the area median income.

Households earning 80% of the area median income are typically ineligible for public housing assistance but are also unable to fully access the housing market. Few programs allow those earning about 120% of the area median income to qualify as these households should be able to obtain housing through market means. A fair number of programs, approximately a third, do allow those earning about 80% of the AMI but below 120% to remain eligible for housing through inclusionary zoning programs. The rationale is that these earners are priced out of the housing market in some communities with an extremely high cost of living. The communities which have included those earning above 80% of AMI to remain eligible for housing through inclusionary zoning include cities in California such as West Hollywood, San Diego, Davis and Irvine. In addition, suburbs of Chicago and Boston had followed a similar policy. These cities all share the characteristic of extremely high housing costs which may remain out of reach for those earning above 80% of the AMI.
Officials must also consider the types of incentives to offer to developers to offset the cost of constructing affordable housing units. While it has been established that the use of incentives is critical, municipalities have a varied approach to determining what specific types of incentives to provide developers. I identified the key incentives typically used and reviewed the rate of recurrence among the thirty programs. My intention is to identify the most frequently used incentives as well as those emerging as alternatives.

As chart 7 demonstrates, a variety of incentives are utilized by the cities sampled. Density bonuses are used across the board, though these vary widely. Most offer generous incentives which provide a bonus of up to 25% over the base density allowed according to code. Chart 8 demonstrates the distribution of density incentive programs across the nation. Beyond density bonuses, fee waivers are becoming more common incentives offered to developers. The types of fees waived vary widely but encompass a variety of development fees, impact fees and, on rare occasion, taxes. Communities typically do offer some level of design flexibility to developers who incorporate affordable housing by allowing less expensive interior finishes and smaller unit sizes. Typically, exterior finishes must be compatible with the rest of the neighborhood. Often, communities enact design standards for inclusionary units to guarantee high quality construction.

### Chart 7: Incentives Incorporated into Inclusionary Zoning Programs

<table>
<thead>
<tr>
<th>Incentive</th>
<th>Percentage of Selected IZ Policies Offering Incentive</th>
</tr>
</thead>
<tbody>
<tr>
<td>Design Flexibility</td>
<td>40.00%</td>
</tr>
<tr>
<td>Growth Control Exemption</td>
<td>6.67%</td>
</tr>
<tr>
<td>Subsidies</td>
<td>20.00%</td>
</tr>
<tr>
<td>Fee Waiver/Reduction</td>
<td>50.00%</td>
</tr>
<tr>
<td>Expedited Permits</td>
<td>30.00%</td>
</tr>
<tr>
<td>Density Bonus</td>
<td>93.33%</td>
</tr>
</tbody>
</table>

### Chart 8: Maximum Density Bonus Benefit for Developers of Affordable Housing

- Up to 20%: 11%
- Up to 25%: 33%
- Up to 30%: 28%
- Up to 35%: 28%
Subsidies are rarely utilized by municipalities to entice developers. Instead, the new trend seems to be providing expedited permitting routes to development. Municipalities realize that developers value a rapid, consistent and efficient development review process. By providing a “special” route through the development review process as part of the inclusionary zoning policy, municipalities are able to offer something of tangible value to developers who comply with the requirements.

Policy makers often find that flexible policies of any nature work more effectively in the long term as they can be adapted to specific circumstances. In some communities, in lieu fees are utilized as an alternative to on-site construction of affordable housing to build up a trust fund designated for affordable housing needs. However, such policies undermine the purpose of inclusionary zoning: incorporating affordable units into upscale development in order to create mixed income communities that reflect socio-economic diversity. Among the surveyed inclusionary zoning programs, most programs welcomed the payment of lieu-fees from developers instead of affordable units. The fees would go towards construction of affordable units or preservation of affordable units elsewhere.

The majority of municipalities did not allow these alternatives to be used widely. In-Lieu fees allow municipalities to determine where local funds for affordable housing should be directed, and these fees are often available as options. Typically, developers must apply for a variance to use alternative options, and few municipalities define the criteria clearly for allowing exceptions to the inclusionary zoning requirements. Often, municipalities place the burden of proof on the developer who must demonstrate that their project is financially infeasible without an alternative option.

While in-lieu fees are commonly utilized, the fees vary among municipalities. They range from approximately $4000 - $130,000 per unit. In-lieu fees are occasionally calculated using square footage of properties, and often calculated based upon the construction costs locally for building a new unit or the sales price of a unit. Those cities that use a calculation based upon square footage typically have much lower fees overall.
4.3 An In-Depth Look at Inclusionary Zoning in Communities Comparable to Raleigh

In order to provide a more in depth perspective on the experience of designing, implementing and evaluating inclusionary zoning programs nationwide, I identified three model programs based upon their longevity and the availability of documentation related to evaluating the effectiveness of each program. I define effectiveness as the ability to produce units of affordable housing. First, I will present the case of Montgomery County, Maryland. This is the predominant model upon which many inclusionary zoning programs across the nation are based. It has longevity and a proven record of producing affordable housing.

Next, I chose two communities with inclusionary zoning programs which, demographically, shared characteristics with Raleigh, NC. I specifically sought out communities with a strong economic foundation as well as rapid population growth. I also sought out communities where there was a strong government presence as well as proximity to institutions of higher education. In essence, I focused on cities where the housing, employment and population trends mirror Raleigh’s current circumstances. As such, I felt that Sacramento (CA) and Boulder (CO) could serve as applicable models of inclusionary zoning.

Then, I reviewed the Madison (WI) model. Madison implemented an inclusionary zoning which failed to produce affordable units, antagonized the local development community and ultimately failed to last over time. Finally, I will present an alternative to inclusionary zoning utilized in Austin (TX), where inclusionary zoning is not legalized by the state legislature. Austin's program offers a concrete example of a policy which promotes incorporating housing affordability into a broader city planning agenda without mandating the production of affordable housing.

4.3.1 Montgomery County, Maryland: A National Model

Montgomery County is the model Inclusionary Zoning program. Over the course of thirty years, the program has produced more than 12,000 units of affordable housing. In the early 1970s, the county began to grow at a rapid rate, driven by increased employment opportunities in cities such as Silver Spring and Bethesda. Prior to the 1970s, Montgomery County remained an affluent suburban community of commuters to Washington D.C. In order to manage growth, the county created policies which limited the ability of developers to divide land into residential lots. These policies severely limited the housing opportunities available, and as the population continued to grow, the availability of market rate affordable and moderate priced housing shrunk.

In the seventies, advocacy groups including the League of Women Voters and the Suburban Maryland Fair Housing Council recommended the idea of a set aside where builders would provide affordable housing.

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housing as part of all future development projects in the county. As a response to this suggestion, the County Council introduced a bill that would ultimately pass as the Moderately Priced Housing Program. Devising the bill took over a year, and Council decided to provide density bonuses in order to avoid the legal battle that mandating affordable housing could amount to an illegal taking of property.

The County Executive vetoed the legislation as he believed that it would become too “difficult to administer” and was “invasive”. Yet, in November of 1973, the Council overrode the veto and the law became effective in January of 1974.49

In response to the Executive veto, Councilmember Kramer explained the Council’s opinion in opposition to the County Executive: “We realize that we are testing a new approach to an ancient problem, and as many people resist chance, some may be dubious about our MPDU legislation; however, they are a small minority as comments on this legislation have been generally optimistic. The entire State, and indeed, many communities across the county are watching our actions this morning”.50 Montgomery County officials knew that they were piloting an important new program, and that it had the potential to change the way that communities across the county approached affordable housing policy.

The legislation was justified by the County by a dozen cited reasons, including the rapid population growth driving the need for labor to fill low-paid service jobs as well as moderate income public sector positions. In addition, the county cited “large scale commuting” into the county by those working within Montgomery County, contributing to local air pollution. Finally, the County specifically indicated that past efforts had been made to “encourage moderately priced housing construction through zoning incentives” but “very little moderately priced housing had resulted”. The mandatory legislation overcame the ineffectiveness of voluntary zoning legislation.51

The program evolved over time. Housing staff and County Council evaluated the program in 1988, when several major changes were put into effect. The density bonus was increased. The set-aside was decreased to 12.5%. A voluntary, higher set aside rate was established if a builder requested a higher density bonus. Builders were allowed to increase the MPDU maximum sales price marginally in order to be able to match the design of the MPDU units to surrounding property. Finally, at this point, the County provided a route for developers to pay an in-lieu fee to the Housing Initiative Fund or build units of site under specific circumstances.52 Furthermore, in 2005, the control period under which for-sale units remained affordable was lengthened to thirty years. The rental control period was extended to 99 years. Finally, in 2005, the inclusionary zoning MPDU program policy began to be applied to smaller developments with twenty or less units.

51 2003 Montgomery County MPDU Study. P. 3-5.
52 If the development had extremely high homeowner’s association fee or had high development costs associated with a high-rise, the developer could request building units off-site or paying an in-lieu fee.
Montgomery's MPDU Program Today:

Set-Aside Requirement: Varieties between 12.5 and 15%. 12.5% is the minimum requirement, however if a developer chooses to provide more affordable units, they are eligible to take advantage of a more substantial density bonus. The density bonus can be up to 22%.

Income Targets: The MPDU program serves households earning at or below 70% of the area median income. The MPDU program “generates housing for moderate income households earning up to $38,000 per year for an individual or $56,000 for a household of five)\(^{53}\).

Administration: The County’s Department of Housing and Community Affairs manages the program. The program is funded through the County’s general operating budget.

When a family has an interest in participating in the MPDU program, they must attend a homebuyer’s class sponsored by Housing and Community Initiatives (HCI). HCI is a local non-profit organized in 1982 by the Montgomery County Board of Realtors. Families must also attend a MPDU Orientation Seminar, typically held once a month. Afterwards, participants may fill out an application which is reviewed at an in-person meeting. At this meeting, the family must have a mortgage pre-qualification letter as well as proof of residency and tax return information.

The Department of Housing and Community Assistance uses a random selection drawing. Eligible participants with an interest in a particular home listed for sale through the MPDU website register their interest in the home. All eligible registered participants are ranked. Individuals are prioritized based upon the time they have lived and/or worked in the county as well as the length of time they have been approved as a participant in the MPDU program.

Each developer must execute an Agreement to Build Moderately Priced Dwelling Units or an Alternative Compliance Agreement (described below) with the DHCA. This agreement must be signed prior to the issue of building permits. The Agreement must include a copy of the site plan indicating where the MPDU units will be located. It must also specify the number of MPDU which will be built, and the size and dimensions of each unit. The Agreement also ensures that the developer builds the MPDU units at the same pace as the market rate units.

When the units are available for sale, the builder must sign an offering agreement with DHCA. This agreement contains a completed price calculation worksheet for each unit. The worksheet has been developed by DHCA. Essentially, this step in the process sets the unit pricing and is primarily tied to the size and style of the unit. DHCA staff then notifies local non-profits and the Housing Authority, who have the first opportunity to purchase the units. Then, the DHCA works with sales agents to market and sell the unit.

Re-Sale Process: The owner is required, during a control period of thirty years, to sell their home at a capped resale price to another approved and income eligible household. If the owner sells the home

\(^{53}\) 2004 Montgomery County MPDU Study. 2-4.
after a control period has expired, the owner is able to keep half of the appreciation. The county is able to reinvest the rest of the appreciation value in the Housing Opportunities Initiative fund.

The resale price is based upon the initial price of the home, adjusted by the change in the consumer price index over time. The price is also adjusted for improvements made to the property by the homeowner over time. The MPDU office is responsible for marketing the property. After sixty days, if the property remains unsold, then the property owner may use a private market realtor. In such a case, the price may be adjusted to allow for a basic real estate commission.

**Challenges:** The MPDU program relies on a strong housing market. More units are produced when developers are building more housing overall. Production tends to fall during economic slowdowns, often a period of time when demand for affordable housing options rises. Furthermore, as Montgomery County becomes increasingly build out, there will be fewer opportunities for large scale development projects that tended to contribute to the overall affordable housing portfolio.

The number of MPDUs in Montgomery County steadily declined throughout the 1990s because some of the older units produced through the program had a shorter price control period which has since expired. In addition, and perhaps more significantly, the production of new units has fallen as development has slowed in the County.

In addition, the “bonus density does not provide enough incentive to construct apartment projects” without additional subsidies of low-income housing tax credits or bond financing. The County has had to use the Housing Initiative Fund to work with non-profits to build new rental projects, but this has been a particularly difficult undertaking with limited funds.54

One last policy related challenge facing Montgomery County officials involves calculating a formula for buyouts or alternative payments. A regulatory policy which requires all developers to provide all MPDU units on site ensures that affordable housing is evenly spread across the entire county. However, in-lieu payments to the County’s Housing Fund allows the County to “build or buy a greater number of affordable units” instead of placing a couple of moderate-income targeted units within a luxury high rise55. Policy makers have struggled to decide whether to prioritize dispersing affordable or maximizing production of units.

**Impact of MPDU Program:** The program produces about 280 units annually. An additional 200 units are resold annually. Through 2005, over 12,000 units have been produced. MPDU units compose 3% of the total housing stock in the county. 51% of those purchasing homes through the MPDU program have been minority lead households.

4.3.2 Sacramento, CA: A Flexible Inclusionary Zoning Model

Demographics

Sacramento, the capital city of California, has implemented an inclusionary zoning ordinance and has recently studied the impact of the ordinance. The city is currently considering a variety of amendments to the ordinance to further the city’s goal of providing a diverse array of housing options. Sacramento is an ethnically diverse city defined by the presence of state government jobs as well as a legacy of jobs in the agricultural, transportation and mining sectors of the economy. Government jobs compose 43% of the employment in the city. Between 1990 and 2007, the city of Sacramento experienced a 26.5% growth in population. This growth matches overall patterns in the state of California. Between 2000 and 2007, the population grew 14.8% which exceeds the 11% population growth in the state overall.\(^{56}\)

Sacramento is a diverse city with a growing Asian and Hispanic population. The Hispanic population is currently 25% of the total population, and Asians compose 20% of the population. In addition, there is an African American population of 18%.\(^ {57}\) The median household income in 2005 in Sacramento was $44,867. Median household income grew 21% since 2000. 18.9% of households are considered low income in Sacramento, earning between 50% and 80% of the area median income. An additional 13.6% of the population is very low income, earning between 30% and 50% of the income. Finally, 17.5% of the population is extremely low income earning below 30% of the median.\(^ {58}\)

Housing Affordability

Overall, 43% of all city households pay more than 30% of their income towards housing costs. However, this figure has declined from 58% in 2000, and it is possible that this can partially be attributed to programs such as mixed income inclusionary zoning which have offered low income households a route towards accessing more affordable units.\(^ {59}\)

Sacramento has demonstrated a clear commitment to constructing affordable housing to meet the needs of city residents. In 2006, the City of Sacramento constructed more affordable housing units than any other city in California. Overall, Sacramento constructed 10% of all new affordable units in the state of California built in 2006.\(^ {60}\) Sacramento is a relatively affordable community in the state of California. In comparison to other adjacent counties in the region, Sacramento had more affordable home sales prices than every single county with the exception of one.\(^ {61}\) Sacramento has also been seriously

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\(^{57}\) American Community Survey, 2005.


\(^{60}\) Bay Area Economics. http://www.shra.org/Content/Commission/StaffReport/ExhibitA_1.pdf P. 32

\(^{61}\) The Sacramento region includes six counties: El Dorado, Placer, Sacramento, Sutter, Yolo and Yuba.
affected by the struggling housing market in comparison to neighboring municipalities. Between January of 2006 and January of 2008, the median home price in Sacramento County fell 27%. However, median sales prices remained relatively high overall. The median sales price of all sales completed between August 2007 and January 2008 was $318,500 for single family homes. In the areas designated as high growth by the city, new homes listed for sale have an average price of $367,200.

Over the course of 2008, Bay Area Economics conducted an analysis for the City of Sacramento which involved an assessment of affordability. The study found that the “for-sale housing market serves primarily households at the moderate income level”. Most lower income households must turn to the rental market. Specifically, in North Natomas, a high growth neighborhood within the city, only 13% of homes for sale in the market are affordable to those earning 51% to 80% of the AMI. This relatively low percentage justifies a need for inclusionary zoning in Sacramento neighborhoods with housing characteristics and growth rates that mirror the circumstances in North Natomas. In such neighborhoods, economic growth is driving the development of residential neighborhoods. However, low income households are not served by the market rate construction in these communities. Inclusionary Zoning, as a tool, can ensure that the neighborhood serves a wide range of income levels thus facilitating a mixed income community.

In terms of rental property, Bay Area Economics reports that the Sacramento rental market serves households “between 81 and 120 percent of AMI relative well”, but is not able to accommodate very low income households. Sacramento has a very strong rental market, with occupancy rates of 93.6% in 2007. Occupancy rates were higher between 1999-2002, but many new units arriving on the market in 2003 created a higher supply and the time elapsed has not been enough to absorb all the new units. However, rents have continued to rise over 2006 and into 2007. Since 1999, rents rose 41%.

In terms of rental housing, the following chart presents the current costs of renting an apartment, at variable sizes, in Sacramento. Rents have remained steady overall in Sacramento, rising an average 1.9% between 2005 and 2006 and another 1.6%, on average, between 2006 and 2007. An average family of four may need a three bedroom unit. The average rent, in 2007, for a three bedroom unit was $1278 a month. While a low income family of four may be able to find a market priced unit affordable to them and priced slightly below the average price, a very low income family will not be able to obtain a unit affordable to them. A very low income family of four must identify a unit renting for $716 dollars a month, and they are unlikely to find a unit at this price level available in the Sacramento market.

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62 Bay Area Economics provided data to the SHRA gathered from Hanley Wood Market Intelligence and County Assessor’s Records.
63 Bay Area Economics. [http://www.shra.org/Content/Commission/StaffReport/ExhibitA_1.pdf](http://www.shra.org/Content/Commission/StaffReport/ExhibitA_1.pdf) P. 40
64 Zip codes 95832 and 95835
65 Bay Area Economics. [http://www.shra.org/Content/Commission/StaffReport/ExhibitA_1.pdf](http://www.shra.org/Content/Commission/StaffReport/ExhibitA_1.pdf) P. 43
66 Bay Area Economics. [http://www.shra.org/Content/Commission/StaffReport/ExhibitA_1.pdf](http://www.shra.org/Content/Commission/StaffReport/ExhibitA_1.pdf) P. 37
67 Data provided by RealFacts, inc to Bay Area Economics. Retrieved from p. 43 of Bay Area Economics Report.
Sacramento’s Inclusionary Zoning Policy

In October of 2000, the City Council of Sacramento (CA) adopted a mixed-income housing ordinance with the primary goal of achieving “economic integration and the dispersal of affordable housing units to prevent segregated communities”. The ordinance was adopted after a Mixed Income Housing Policy was incorporated into the Housing Element of the city General Plan in June of 2000. The ordinance was developed to implement the goals of the policy. The ordinance was structured to encourage the placement of affordable housing near jobs in areas of the city defined as high growth. This strategy aimed to address the economic and environmental consequences of long commutes caused by a lack of affordable housing in high growth neighborhoods.

The Mixed Income ordinance applies only to New Growth areas. These areas include redevelopment opportunities areas, any newly annexed areas and newly developed communities. Developers must comply with the ordinance if their development plan includes 10 or more units. The affordable units can be single family or multi-family. They may be sold or rented to eligible families.

Eligible families earn below 80% of the area median income, adjusted for family size. Very low income households are eligible if their annual incomes are below 50% of the area median. Estimated maximum rent and/or mortgage payments are based upon the rationale that households should use approximately 30% of their income to satisfy their housing need.

The ordinance aimed to provide housing units for a variety of income levels. In specific areas designated as high growth, 10% of all new units would have to available at an affordable price level for very low income households. An additional 5% of all units had to available at an affordable level for low income households. The city provided a generous package of incentives for developers, and alternatives to on-site development are an option.

http://www.cityofsacramento.org/planning/policies-and-programs/mixed-income/
Sacramento has structured the administration of the Mixed Income program by requiring the developer to submit a drafted Inclusionary Housing Plan with the developer’s application for “first legislative entitlement”. This includes a submission of the PUD or community plan guidelines, a parcel map, zonings and other key development features. The draft states the developer’s intent to provide affordable units and includes the number of units that will be built as well as their location and pricing.

This plan is reviewed by the Sacramento Housing and Redevelopment Authority first, and then forwarded to the City’s Department of Planning with recommendations. The city has developed a checklist for developers to utilize when submitting their plan.

The Inclusionary Housing Plan is a legally binding agreement between the City and the developer. The agreement also outlines the specific incentives, and in particular, the City's commitment of local subsidy dollars, that will be offered to the developer. The agreement is negotiated at the same time as the application for project approval. The project approval is not issued until the Inclusionary Housing Agreement is signed.

The city has placed an emphasis on avoiding concentration of affordable housing through the mixed income policy. To meet this goal, a building where more than half the units have been built through inclusionary zoning requirements cannot be located adjacent to another such building.

The city has implemented a set of incentives to offset the price of constructing affordable units. The developer applies directly to the city and the Sacramento Housing and Redevelopment Agency to receive these incentives. These incentives include:

- **Fee waivers and deferrals**
  - Up to $4000 per unit in fees are reduced for each individual very low income housing unit constructed, and another $1000 per unit in fees can be reduced for every unit of low income housing constructed. The city has a set amount of money set aside for the subsidies which are allocated on a first-come, first-serve basis. Essentially, developers who apply early are able to reserve fee waivers.
  - The city assists the developer to obtain reimbursements for school facility fees and regional sanitation fees. The school facility fee reduction is administered by the California Housing Finance Agency which. The Regional Sanitation fees are administered by the county, and the county allows the fee to be waived for 200 units per year.

- **Priority processing**
  - The city Planning Director is able to issue special permits for residential projects in order to streamline the process.

- **Unit size reduction variances as well as design modifications which allow the developer to use less expensive interior finishes and appliances.**
- **Density bonus of up to 25%**
- **Design modifications including lot sizes, lot coverage, location, road widths, curbs, and parking are possible.**
• Access to local public funding through the Sacramento Housing and Redevelopment Authority such as tax-exempt mortgage revenue bonds and mortgage assistance for low income households.
  o The developer may apply to the SHRA for assistance with homebuyer financing. The developer is also welcome to work with the SHRA to apply for low income housing tax credits, mortgage revenue bonds or other sources of funding. In addition, the developer can work with the city to use Housing Trust Fund or HOME funds, as well as redevelopment TIF funds set aside for housing to assist with the project’s development.

Alternative options to building affordable units off site are available, and the developer can take advantage of these options if they are able to meet specific expectations. For example, developers who would like construct their affordable units off – site must demonstrate that the off-site location has an advantage such as access to public transportation. In addition, the developer must already own the site in order to ensure that the affordable units will be built at the same time as the market rate units. Developers who choose to dedicate land instead of building units must make an irrevocable offer to the SHRA prior to negotiating their inclusionary housing agreement. The land must be located within the developer’s own residential development, rather than offsite.

Inclusionary units must be phased during construction to be built at the same pace as the market rate units. The actual schedule is negotiated within the Inclusionary Housing Plan. The units must be designed to fit the rest of development project by using the same materials and finishes. The inclusionary units must also provide an adequate mixture of bedroom sizes in order to serve different family sizes and types.

Units remain affordable for thirty years. An owner of an inclusionary unit must notify the Sacramento Housing and Redevelopment Authority in writing prior to proceeding to place the property on the market. If units are for-sale, they will be governed by a Sacramento Housing and Redevelopment Authority thirty year note which will include a provision that the SHRA has the responsibility to take 120 days to find another income-eligible buyer for the house after notification of sale. However, if a buyer is not found, the property can be sold at a market price. SHRA, however, recaptures the difference between the market value sales price and its affordable housing price. The seller does receive their initial equity and a portion of the appreciated value as defined by the ordinance.

In 2007, the Sacramento Housing and Redevelopment Agency completed a comprehensive study of the mixed-income program to date. This evaluator document assessed the success of the ordinance since adoption and considered further broadening the ordinance in order to produce more units in the future.

The study reviewed the effectiveness of the program by assessing:

• The number of affordable units produced over time
  o The size of the units as well as the type of units produced
• Contribution of the policy in terms of meeting Regional Housing Allocation Needs (RHNA)
Since 1969, the state of California has mandated a Housing Element for general plans developed by local government\textsuperscript{69}. The Regional Housing Needs Plan allocates to cities in California their fair share of the regions housing needs. Every five years, each region must adopt an update of the plan. Each city and county in the region receives a RHNA (Regional Housing Needs Allocation) for which it must plan for within a 7.5 year time period.\textsuperscript{70}

- Development options typically selected by the developer
- The incentives and subsidies typically offered to the developer
- Neighborhood compatibility and feedback
- Developer feedback

Utilizing city and SHRA records, the planning staff reviewed past affordable housing plans and talked with developers who had participated in the program.

The study found that a total of 1190 rental units had been produced, and an additional 363 affordable for-sale units had been constructed. In addition, 1447 more units are currently either under construction or have been proposed\textsuperscript{71}. Overall, 77% of all units produced under the inclusionary zoning requirement have been rentals. Staff surmise that developers have chosen to develop ownership units less frequently because the gap between the typical price of these units is substantially high and “no financial assistance is available to these developments”.\textsuperscript{72} Rental development can take advantage of low income housing tax credits. In order to increase homeownership opportunities, staff believes that the ordinance must be amended to allow higher income households to become eligible for the program. Providing affordable housing for these households would be feasible for developers.

In terms of developers using alternative options to providing on-site units, no developers have applied to offer land instead of units to the SHRA. SHRA believes that many market rate developers have chosen to work with affordable housing developers to provide on-site units because they wanted to retain “some control over the construction of the affordable units”\textsuperscript{73}. The developer preferred this option to the possibility of SHRA constructing affordable units within their development. The option to construct units off site has been utilized by approximately thirty percent of single family residential developers. This option remains more commonly utilized by developer due to ease of implementation.

\textsuperscript{69} State Housing Element Law. http://www.hcd.ca.gov/hpd/hrc/plan/he/heoverview.pdf
\textsuperscript{71} Assessment of the Mixed Income Housing Ordinance. Sacramento Housing and Redevelopment Agency. Report to City Council of Sacramento. May 1 2007. P. 18
\textsuperscript{73} Assessment of the Mixed Income Housing Ordinance. Sacramento Housing and Redevelopment Agency. Report to City Council of Sacramento. May 1 2007. P. 23
In 2004, the ordinance was amended to provide an alternative for condominium developers. Specifically, because condo developers are not able to utilize financial subsidies through Low Income Housing Tax Credits, and because of the city’s goal of encouraging high density development, the city decided to adjust the obligation for condominium developers by allowing them to provide 10% of their units to low income households and 5% to very low income households. As a result, condominium developers are able to target their affordable units to a slightly more wealthy demographic.

Similarly, single family development projects which were small, and less able to absorb the costs associated with constructing affordable units, were eligible to target only the low income demographic rather than the mix of low and very low income households applicable to other large developments. However, the developer of such properties is unable to take advantage of off-site placement.

The SHRA offers gap loans to residential developers of multi-family housing and is able to leverage mortgage revenue bonds and low income tax credits. Thus far, ten multi-family rental apartment projects have been built with affordable units and these projects received tax credits and mortgage revenue bonds. Eight of the ten complexes also received a local gap loan. In addition, five of the ten inclusionary rental projects were able to acquire their land for free by working with the city of Sacramento.

In terms of the homebuyers in the Sacramento market, most purchased their home using financing from the SHRA. Specifically, nearly all the units were financed using an SHRA first time homebuyer subordinate loan. The incomes ranged from 54% of AMI to 77% of AMI, with the average family earning approximately 68% of the local AMI. After purchasing their first home, most buyers were spending approximately 33% on housing including principle, interest, insurance and association fees.

**Future of Inclusionary Zoning**

In order to study further the fiscal impact of the inclusionary housing requirement, the Sacramento Housing and Redevelopment Agency hired a consultant, Bay Area Economics, to conduct a thorough economic impact analysis in February of 2009. The analysis served to examine the feasibility of expanding the inclusionary zoning requirement beyond the currently served New Growth neighborhoods. The findings did not recommend expansion until a market recovery began. The study also served to examine the possibility of shifting the income levels targeted by the program, and the possibility of instituting an in-lieu fee structure.

Sacramento is currently one of the few communities that does not allow an alternative option of in-lieu fees. BAE assessed the impact of implementing an in-lieu fee option where developers would be allowed to pay the city rather than build actual units of affordable housing. BAE identified several options of structuring this fee. The fee could be based on land costs, but in this scenario, the city would still have to subsidize the costs of constructing units elsewhere as the fee would not cover the entire cost. A second formula suggested structuring the in-lieu fee based upon the cost of developing an affordable unit in Sacramento. A third formula would base the fee on the average sales price of an affordable unit subtracted from the development and construction total cost.
The in-lieu fee, if established, could feed into Sacramento’s Housing Trust Fund, established in 1989. The Trust Fund currently consists of funds derived from fees on non-residential development. The rationale for this fee is that the jobs created from retail and office development can be linked to an increased need for affordable housing. The trust fund is used to construct such units in the city. An in-lieu fee option could increase the capacity of the city to use the trust fund to construct affordable housing units near places of employment. However, using an in-lieu fee would shift the burden of actually constructing affordable units from the developer to the city.

4.3.3 Boulder, Colorado: A Stringent Inclusionary Zoning Model

Demographics

Boulder is located in a rapidly expanding region, but the city itself is not projected to grow quickly due to policies limited residential growth established by officials. The city’s population grew by 15,781 residents between 1990 and 2000. The growth rate was 18.9% between 1990 and 2000, exceeding the national rate of growth. This pace of growth represents the largest gain since 1970. The 2003 population of Boulder was 101,500. The city of Boulder itself is nearly built out with few vacant land parcels, and future plans for increased density and mixed use development are in the works.

![Chart 11: Boulder: Population Growth Over Time](chart.png)

The largest employer in Boulder is the University of Colorado. In fact, nearly a third of the city’s adult population is between the ages of 18-24, reflecting the presence of the University. However, IBM, Ball Aerospace, and the University Corporation for Atmospheric Research are also major employers in the area. Other key industries are tech related, and include aerospace, bioscience, organic science, renewable energy and software development. Clusters of technology related jobs are evident in the Boulder area, and a high percentage of local residents are highly educated. 70% of residents hold a bachelor’s degree. Boulder has an abundance of well paid positions which have attracted new residents.

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A final economic characteristic of Boulder is its ability to attract tourists. The tourism sector employs many low-wage workers in the region, and these residents are often most burdened by increasing housing prices. Often, low wage workers face increased competition for housing units from students.

In 2000, Boulder had an overwhelmingly white population which composed 88.3% of the overall total. However, the percentage of Hispanic residents increased at a rate of 94% between 1990 and 2000. In 2000, Hispanic residents represented 8.2% of the total population. 52% of all public housing residents are currently Latino.

**Housing Affordability**

Between 1990 and 2000, home prices in Boulder increased at twice the rate as income. By 2008, the median price for a single family home was over $550,000. Among all housing units in the city, the median value was $455,900. Nearly half (49%) of units are owner occupied. The median sales price of single family homes increased 37% between 2001 and 2007. Currently, 30% of city homeowners spent more than 30% of their income on housing. Furthermore, only 8% of the single family housing stock available in Boulder remains affordable to households earning the area median income, in comparison to over 75% of the single family housing stock in the neighboring city of Longmont. Boulder is one of the more expensive communities to purchase a home in the region.

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79 [http://bouldertomorrow.com/wrap/files/AffordableHousingFindings/Affordable%20Housing%20Report](http://bouldertomorrow.com/wrap/files/AffordableHousingFindings/Affordable%20Housing%20Report) p. 8
The median rent in the city of Boulder is $948/month. Renters in the city face a substantial burden affording the cost of housing as over 60% of households renting pay more than 30% of their total income towards rent.

**Boulder’s Inclusionary Zoning Policy**

Boulder’s initially voluntary inclusionary zoning policy failed to generate a substantial number of units. In 1998, a citizens group began to meet to develop a policy alternative. City Council members and Planning Board members worked with the citizens group to submit a Comprehensive Housing Strategy Report to City Council over the same time. The report called for the appointment of a Task Force to further address housing needs.

Boulder’s Affordable Housing Task Force, an eleven member team organized by the City Manager in 1999, found that 30% of households within the cities were facing “housing affordability challenges”. The Task Force established a goal for the city to ensure that 10% of the housing stock would be affordable by 2010. The task force encouraged the development of higher density, mixed use projects to add units to the Boulder stock of housing. The work culminated in the establishment of a mandatory IZ policy was approved by city council in 2000.

In Boulder since 2000, 150 on-site affordable units were produced and another 150 units were created using in-lieu collected fees.\(^80\) All units created on site by the developer are for – sale due to a state statute preventing rent control. Developers of rental properties must contribute in-lieu fees to fulfill the inclusionary zoning requirement.

Residential growth in Boulder is limited to 1% annually. As a result, there is a demand for growth permits. This particular characteristic of the local housing market and local politics have created a climate conducive to an inclusionary zoning policy. Because the Boulder housing market is lucrative and limited, developers are more willing to ascribe to policies such as IZ in order to develop anything at all. Furthermore, developments which have 35% or more units designated as affordable are exempt from the regional growth management allocation system entirely.\(^81\)

The Boulder Inclusionary Zoning policy currently in place requires developments of more than five units to incorporate 20% affordable units. These units remain affordable in perpetuity. At resale, the base price may be increased if improvements have been made to the property. In addition, an annual adjustment based upon the change in AMI for Boulder is applied to the sales price. Finally, the owner is able to keep a portion of appreciation, limited specifically to the change in the AMI or the Consumer Price Index over time. A coordinator with the city determines the maximum resale value. The homes are listed with the realtor or with the city’s website (www.boulderaffordablehomes.com). Surveying the


homes available for sale in February of 2009, the majority are two bedroom units, priced between $120,000 and $170,000 dollars. The units were split evenly between new construction and resale.

The Boulder Division of Housing manages the administration of the inclusionary zoning program. Applicants must complete a city orientation and homebuyer class series. These sessions are held across the city on a monthly basis, and are offered at lunch time as well as in the evening. All applicants must work at least 30 hours a week and have a work history of at least a year. In addition, applicants must be able to secure a first mortgage and contribute to closing costs. The Division of Housing in Boulder coined the name “HomeWorks” as the title to the program through which the city sells permanently affordable homes to income eligible buyers. Preference is given to those who live and work in the city of Boulder. Applicants must, upon becoming income certified to participate, enter a lottery to purchase homes.

When a developer is unable to develop affordable units on site, they are able to dedicate land instead of providing a cash-in-lieu payment. As of 2007, the cash-in-lieu requirement is $24,143 per unit for single family units and $20,315 for multi family units. This amount is amended over time, and is a substantial increase from the initial cash-in-lieu requirement established by the mandatory program of $13,200 for single family homes. The increase over time reflects the changes over time in the median sales prices of homes in the city of Boulder according to assessment records kept by the county.

Developers are also able to dedicate land to the City of Boulder. The land must be appraised independently. In addition, it must be valued at the same price as the current cash-in-lieu contribution required by the city, plus an additional fifty percent to cover the city’s costs of development.

Funding in Boulder comes from several sources, including an appropriation from the General Fund of $500,000 and approximately $730,000 annually from payments in-lieu from developers who do not provide affordable units on site. In addition, Boulder has a housing excise tax on new development which provides another source of funding. This tax, which applies to all new residential and commercial development, ranges between 21 cents – 45 cents per square foot depending on the type of development. The tax funds the Community Housing Assistance program which provides grants to developers who provide housing for those earning below 60% of the area median income.

Future of Inclusionary Zoning

Currently, the city of Boulder’s Department of Housing and Human Services is evaluating its affordable housing programs. In April of 2009, staff will present options to modify the existing inclusionary zoning ordinance to the Planning Board and City Council. Throughout the winter of 2009, the staff will review the current cash-in-lieu requirement. In addition, staff is considering the possibility of incorporating demolition of property into the inclusionary zoning program by requiring redevelopment projects,

82 General Introduction to Inclusionary Zoning. 
including infill, to incorporate affordable housing. Staff is considering incorporating inclusionary zoning into the site review process. Finally, staff is considering serving a wider range of incomes including middle income residents.

4.3.4 Austin, Texas: An Alternative to Inclusionary Zoning

**Demographics**

Over the period between 1990 and 2000, the population in Austin grew 16.8%. The city grew an additional 14% between 2000 and 2008. The demographic composition of the Austin metropolitan area is relatively diverse. As of 2004, the population was 36% Hispanic and 49.7% White.

The economy of Austin has been driven traditionally by the public sector as well as the University of Texas. However, the economy grew more diverse with time as healthcare and technology have become prominent economic sectors.

**Housing Affordability**

Household incomes, reflecting trends in Raleigh, have remained relatively stagnant, while the sales price of homes has risen 17% between 2003 and 2007. The cost burden is most substantial for renters in Austin. More than 47% of all renters currently pay more than 30% of their income towards rent (as of 2005). Some neighborhoods have been hit by gentrification. East Austin in particular has been affected by rising sales prices.

The state of Texas prohibits mandatory affordability regulations or legislation at the local level. Yet, the city of Austin has tried to creatively address the issue of affordability through their SMART housing program. As part of the Consolidated Plan written for the city to plan for 2000-2005, the city hired a consultant to provide a housing market study. The 1999 study, *Through the Roof*, “served as a catalyst for change” by bringing the affordable housing issue to the top of the agenda for city policy makers.

**An Alternative to Inclusionary Zoning in Austin**

In April of 2000, Austin city council passed the SMART (Safe, Mixed Income, Accessible, Reasonably Priced and Transit Oriented) housing resolution. Most significantly, the program is entirely voluntary, but produced affordable housing units. Participants can participate in the SMART housing permitting process by providing green and transit oriented units, or by constructing affordable housing. Developments that meet SMART standards are eligible to participate in a special review process that coordinates participation from several key agencies (Watershed Protection, Fire, Water, Austin Energy). Ultimately, the department of Neighborhood Housing and Community Development serves as the main

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84 “SMART Housing: A Strategy for Producing Affordable Housing at the Local Level”. ICMA Best Practices 2005.
contact between the developer and the development review team. This process results in a consistent and “fast track” review process. By comparison, while standard review of site plans can take 60 days, SMART review takes only 30 days. This is a substantial enough benefit to cultivate interest among developers.

The SMART Housing program furthers the goal of providing affordable housing through a sliding scale of fee waivers depending on the number of affordable housing units that are incorporated into new development. Up to 100% of all fees can be waived if 40% of the total number of units in a development are affordable. Affordable units were priced to serve those earning up to 80% of the median family income (MFI) in the city.

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<th>If builder provides:</th>
<th>The city of Austin offers a fee waiver of:</th>
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<td>10%</td>
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During the first three years of the program, the city waived about 3.5 million dollars worth of fees. The city aims to offset the losses from these fee waivers through the property taxes collected once the units are developed.

Remarkably, of 11,000 SMART housing units completed to date, 7000 affordable housing units have been added to the Austin housing stock. Developers have not shied away from providing affordable units, and the incentive of fee waivers seems to have worked. As a result, between 2001 and 2004, the number of units city-wide affordable to those earning below 60% of the median family income (MFI) increased by 25%. 78% of all SMART housing units completed are reasonably priced. More developers have participated in the program over time. The percentage of building permits provided through the SMART housing program increased from 10% of all citywide building permits for single family homes issued in 2001 to 21% of all permits issued in 2004.

One national builder with a presence in Austin, KB Homes, has participated more actively in the SMART Housing program over time. Voluntarily, KB Homes has incorporated more affordable units into their developments over time. In 2001, approximately 15% of KB newly constructed units served those earning less than 80% of the median family income. By 2004, nearly 60% of all newly constructed units were serving those earning less than 80% of the median family income. Using KB Homes as an example, it is clear that national, private builders have voluntarily chosen to participate in the program,
and that they have chosen to take advantage of the benefits associated with constructing affordable units over time.

The success of the program has been attributed to the commitment of those with power in city government. City Council and the city manager prioritized the program. In addition, the program requires the coordination of several departments and Austin has successfully managed the coordination process. Finally, part of the SMART Housing policy requires developers to engage with community members in conversation in order to avoid an outpouring of resistance from neighbors not willing to allow affordable housing developments in their backyards. This step ensured overall support for the development of affordable units from the community.

4.3.5 Madison, Wisconsin: A Struggle to Implement Inclusionary Zoning

Madison adopted an inclusionary zoning program in 2004. It was spearheaded by Mayor Dave Cieslewicz. However, the program faced severe opposition from the development and property management community. They formed a strong coalition that wrote opinionated editorials to local newspapers and made their perspective well known. Ultimately, Madison’s policy was terminated in January of 2009. Madison’s experience presents several lessons to policy makers attempting to further an inclusionary zoning program.

The program was designed to provide developers with flexibility. There was a 15% inclusionary zoning requirement, which was lower than other comparative communities. This applied to developments with 10 units or more, so the “trigger” threshold was relatively low and the law applied to most developments. A 10% density bonus was available, and developers could also apply for various subsidies, typically TIF financing, from the city if the requirement made their project financially infeasible. Between February 2004 and September 2005, 24 projects brought in 360 new affordable units.88

However, by 2005, a minority of city council members were already calling for the law’s repeal89. By the end of 2008, the program expired due to non-renewal among some controversy. When the law expired, a new task force was created to look at alternative options for creating affordable housing opportunities. While the law worked along the perimeter of the city, where land was cheaper, it stifled downtown developers who claimed that incorporating affordable housing downtown was difficult because many of their sites required “demolition, environmental cleanup, underground parking.”90


Locals such as Susan Schmitz, who leads non-profit Downtown Madison, Inc, believes that the density bonuses offered as incentives did not offset the costs of providing affordable units for builders considering downtown\textsuperscript{91}. The Zoning Code in Madison is several decades old. It did not work well downtown with the inclusionary zoning requirements. Downtown zoning requirements and neighborhood plans in Madison limited building heights downtown, so density bonuses were ineffective incentive mechanisms. When a developer tried to submit a project with more density, it was rejected by the Urban Design Commission\textsuperscript{92}. Yet, building downtown under the inclusionary zoning ordinance was financially infeasible without density bonuses.

Alderman Zach Brandon, of Madison, suggested that the zoning code was not be amended to make inclusionary zoning work in Madison due to a lack of “political will” among key figures.\textsuperscript{93} The zoning code was not amended prior to the expiration date, January 2009, of the IZ policy, so inclusionary zoning ended as the new year arrived. The primary lesson to be drawn from Madison’s experiment with inclusionary zoning is that policy makers must formulate a policy where inclusionary zoning complements, rather than conflicts, with pre-existing zoning policies.

Furthermore, establishing an inclusionary zoning policy may be most prudent at a time when other key planning policies are being amended. Incorporating a new inclusionary zoning policy may work more effectively when the city is already undergoing a comprehensive plan overhaul during which planning policies overall are examined. As such, implementing a new inclusionary program as part of zoning changes resulting from the Comprehensive Plan in Raleigh makes more sense than proposing such a program at another point in time.

**Chapter 5: Developing a Policy: Recommendations for Raleigh**

Inclusionary zoning (IZ) programs serve several purposes related to the provision of affordable housing. First, by encouraging the development of moderately priced units, the policy can ease the stress that arises when low-to-moderate income families rent units that are not within their price range simply because more affordable housing units are not available where they would like to reside. Inclusionary zoning provides more housing options and opportunities so that fewer local families pay more than a third of their income towards rent and/or their mortgage. When families are paying more than 30% of their income, they face a housing burden because their budget is unable to stretch to accommodate other needs such as transportation or allow room to build savings.

Secondly, inclusionary zoning programs are able to address exclusionary trends that emerge in the real estate market which limit low income families to specific neighborhoods or parts of the community and prevent a mixed income community from forming. While the city of Raleigh has tried to actively address

such trends through the city’s Scattered Site Policy, market factors have continued to contribute to the lack of affordable housing units in many of the city’s affluent communities. In fact, many of these neighborhoods have grown more exclusive over time as redevelopment efforts near areas such as North Hills have made parts of the city more attractive to affluent buyers and have placed an upwards pressure on the prices of existing housing stock. Inclusionary zoning requires the most sought after communities to develop affordable housing as they expand. As such, neighborhoods become more inclusive rather than exclusive over time.

In order to develop an inclusionary housing program or policy, policy officials must identify the outcome and critical goals for the program. Inclusionary zoning programs are designed to produce more affordable housing units in a community, but a secondary goal for many programs is to use inclusionary zoning as a method for dispersing affordable units throughout a community. This contributes towards creating an inclusive and mixed income municipality.

If one of the primary goals of inclusionary zoning is to disperse affordable housing units, then the policy should be designed to discourage the construction of units off site. Developers should have fewer options available to them to fulfill their requirement without actually providing new affordable units incorporated into newly developed residential neighborhoods. However, if the city’s primary purpose is to use inclusionary zoning to raise additional funding for affordable housing and the city would like to have more control over designing affordable units, then the city can use in-lieu fees and other alternative options to the primary route of compliance.

Another issue of importance is that inclusionary zoning is often used to further an affordable housing agenda by creating a private sector solution. However, when developers are able to comply with regulations by paying the city or local municipality instead of building units, the responsibility to develop and construct new affordable units returns back to the public sector.

Essentially, providing various loopholes and alternative measures of compliance to developers can undermine the purpose of the inclusionary zoning program. If the primary purpose of the local policy is to create a funding stream directed towards affordable housing development, a flexible inclusionary zoning program can be effective. If the primary purpose of the local policy is to ensure that more affordable units are in the immediate production pipeline in Raleigh, then a more firm policy is needed to ensure that developers can not simply pay to fulfill their obligation.

**Mandatory vs. Voluntary**

Voluntary programs have proved to be rather ineffective in terms of producing affordable housing units. For a voluntary program to succeed, the political will must exist in the city to aggressively market the program. Often, the only successful voluntary programs are “treated in practice as mandatory requirements”. A prime example is Chapel Hill, North Carolina where an expectation rather than a mandatory ordinance compels local developers to provide affordable units because town staff and Town
Council have made it clear that rezoning requests will not pass if the developer does not plan to incorporate affordable housing units.\textsuperscript{94}

Several communities have initially adopted voluntary inclusionary zoning with the intent of eventually phasing in mandatory requirements. The voluntary phase was utilized to test out the quirks of the program and gather support for the program from constituents, residents and other stakeholders. Communities in Florida, such as West Palm Beach and Tallahassee, have taken such an approach because of strong local opposition to regulatory measures related to affordable housing development.\textsuperscript{95}

Other communities, such as Boulder (Colorado) and Cambridge (Massachusetts) have switched from a voluntary to a mandatory program after a voluntary policy failed to produce affordable housing units. Simply put, the city could not put together a strong enough set of incentives to coerce or entice developers to voluntarily incorporate affordable housing units into their mix.

Raleigh has a strong development and home builders’ coalition. It is prudent to work with this group to gain support and input. As a result, it may be necessary to initially implement a voluntary program in order to pilot the concept and provide local stakeholders, and program administrative staff with the time to get used to the policy’s implementation process. This period will also allow program staff to work out any necessary issues with the program’s design. This will require evaluative steps to be taken to examine the program’s implementation initially and recommend improvements prior to creating a mandatory structure.

**Determining the Set-Aside Requirement**

The set aside varies from 10% to 20% in most jurisdictions. Determining the requirement will require further study of the housing need in the city of Raleigh. This study requires an essential nexus to be established which links an increasing need for affordable housing to the development of market rate housing. The assumption behind the study is that the production of market rate homes drives an increased demand for public services and private services. This leads to an increase in public and private sector employment, and a proportion of the new jobs created will be filled by individuals who earn below the area median income and will need new affordable housing units. Essentially, the rationale behind the inclusionary housing program is established by arguing that economic growth in a community requires the support of low-to-moderate income workers who need affordable housing units. As a community expands, it will need to provide housing options at different price points. An essential nexus study can provide a link that demonstrates the specific set-aside needed in Raleigh.

Comparing Raleigh to other similar jurisdictions with inclusionary zoning policies can provide insight into the appropriate set-aside level, as well. Raleigh is a community which does not face the extreme

\textsuperscript{94} Brunick, Nicholas and Lauren Goldbert. “Voluntary or Mandatory Inclusionary Housing?”. November 2003. Business and Professional People for the Public Interest. www.bpichicago.org

housing shortage at the lower to moderate income level that is faced by workers in the Bay Area or in the Boston metropolitan area. Raleigh is more comparable to communities in Colorado where growth is strong, but housing prices remain in check due to land availability. Denver and Longmont (Colorado) have a 10% requirement, and Bellevue (Washington) also has a 10% requirement. Boulder (Colorado) has a higher requirement, but they are able to enforce this requirement due to the limited number of building permits available in the city of Boulder due to growth management policies.

The city of Raleigh should consider a 10% affordable housing requirement. However, this requirement can be creatively amended by providing developers who provide more affordable units than the requirement with a more substantial bonus. For example, Montgomery County’s density bonus varies depending on the set-aside requirement. Similarly, I would recommend that Raleigh institute an incentive to exceed the requirement. The policy should not act as a cap on the percentage of affordable housing that a developer incorporates, but as a base level set-aside. As an example, Raleigh’s base policy could require a set-aside of 10%. Developers would be compensated with a density bonus provision. However, if a developer chooses to provide more units of affordable housing by setting aside 15% or 20% of their units as affordable, they may become eligible for additional benefits such as development fee waivers.

**Geographic Considerations**

While many jurisdictions apply inclusionary zoning across the entirety of the community, other programs have applied the policy initially to specific high growth areas where development is already underway. City planning officials have data available to them which makes it simple to identify areas of high growth. Focusing inclusionary zoning specifically on these communities ensures that new residential development provides housing options for all income levels.

Recognizing that inclusionary zoning works to produce more units of affordable housing when applied to areas of high growth, focusing a policy specifically on neighborhoods and parts of the city where growth is already occurring makes sense. Aligning the policy with growth is a smart decision because more units are produced when inclusionary zoning is applied to neighborhoods or jurisdictions where growth is happening at a rapid rate. Applying inclusionary zoning in a community where growth has stalled will produce no new affordable housing units. For example, Highland Park (IL) recently adopted an inclusionary housing program, yet this program has not produced affordable units due to the economic ramifications and current conditions as building and development has entirely stalled locally.

Inclusionary zoning works most effectively in communities where building and development is profitable. Montgomery County’s program has been successful due to the overall growth and strong economic climate. Developers seek out permits to build in Montgomery County because homes in the area attract affluent buyers, so development projects are typically profitable. As such, inclusionary zoning has not fazed developers who have continued to seek out building permits for new projects in the area rather than choosing to develop along the periphery of the metropolitan area and in neighboring municipalities in order to avoid IZ requirements.
Raleigh’s current growth patterns suggest that an appropriate inclusionary zoning policy should be applied directly to areas where the recent Comprehensive Plan strategically encourages growth. In particular, transit nodes and downtown would be best suited for an inclusionary zoning program. These particular areas are likely to be developed in the future, and focusing an inclusionary zoning policy on these particular development hotspots guarantees that affordable housing will be incorporated into future development patterns in Raleigh.

**Who Should Benefit?**

One of the most complicated debates that arises when designing an inclusionary zoning program is setting an appropriate income target or cap. Most housing need assessments, including Bay Area Economics’ study of Raleigh, demonstrate an intense need for housing among the hard-to-serve population, earning below 30% of AMI. However, most inclusionary zoning programs serve low-to-moderate income households earning between 50% and 80% of the AMI. Increasingly, the income cap can range up to 120% of the AMI. The reasoning behind this setup is twofold: many inclusionary zoning programs provide homeownership opportunities, and it is irrational to prepare those who cannot afford a mortgage payment for homeownership and steer them into a financial situation that stretches their income. Most homes produced nationally through inclusionary zoning are placed on the market for sale, rather than rented out, because of the structure of programs. Typically, unless the city wishes to purchase the homes and rent them out, it is financially a challenge for the developer to rent them out and act as a long-term property manager. Few resources are available to subsidize affordable rentals, which require a subsidy over a long period of time. Furthermore, developers are typically in the business of constructing and selling property and do not have the capacity to manage property.

A second reason that inclusionary zoning typically targets moderate income households is that these households are not served by other housing programs such as the Section 8 Voucher program. These families typically are priced out of the market, but remain ineligible for standard public housing assistance. Cities have served those earning at the median household income in communities when housing prices have skyrocketed due to high demands on the housing market. In the Bay Area, even those earning the median household income are unable to purchase a home without stretching their budgets remarkably.

One solid approach to serving several income groups through an inclusionary zoning program is the establishment of a tiered policy. Such a policy is utilized in Sacramento (CA). Developers can be required to split their inclusionary zoning requirement between two different income groups. For example, if the total requirement is 10%, 5% of new units must serve those earning between 50% and 80% of the median household income, while another 5% can serve those earning up to 100% or 120% of the AMI.

One substantial caveat is that it is more expensive for developers to build housing units that are affordable to those with lower incomes because these households are able to pay a fraction of the market rate for a property. As a result, Sacramento has instituted a policy where developers are eligible
for more substantial fee reductions per unit when they construct units affordable to lower income groups.\(^96\)

In order to serve a broad population in Raleigh, it is worth considering who is in need of affordable housing units within the city. A substantial proportion of those earning below 80% of the AMI face housing problems in Raleigh, while those earning below 50% of AMI are most likely to be paying more than they can afford towards housing. Housing challenges level off among those earning above 80%.\(^97\) This can be attributed to a fair number of units available on the market to those earning approximately the median income in the area. Raleigh’s housing prices are moderate in nature, relative to national housing costs. In 2003, the sale of homes costing between $100,001 and $200,000 composed 60.3% of total sales\(^98\). This suggests that a fair number of homes affordable to those earning a moderate income between $30,000 and $70,000 are available. Yet, there are few homes on the market priced below $100,000. There is a need for more housing options for those seeking housing in this price range.

The median household income in Raleigh is $51,123\(^99\). An inclusionary zoning policy in Raleigh can be designed to target those earning between 60% and 80% of the AMI. These households, with incomes ranging between $30,000 and $40,000 annually, may be qualified to purchase homes ranging from $90,000 to $120,000. Few such homes are available on the market, and those which are available often need substantial repairs. An inclusionary zoning program which can increase the number of quality-built, new homes in this price range will do quite a bit to satisfy the needs of low-to-moderate earning households in the city of Raleigh.

Furthermore, unlike other municipalities outside of North Carolina, the city of Raleigh should not construct a zoning ordinance which may be interpreted in the courtroom as rent control. Rent control is not lawful in the state of North Carolina according to state General Statute.\(^100\) As a result, inclusionary zoning ordinances in North Carolina should focus on homeownership. Homeownership requires a steady and moderate income, so an income target for an inclusionary zoning program in Raleigh should be set appropriately at a moderate income level such as 60% - 80% of the AMI.

**Building Partnerships with Non-for-Profits**

While some municipalities have chosen to administer the inclusionary zoning program through the community development or housing office, others have worked with local organizations or have spurred the development of new non-for-profits. Administering the program through a partnership with a non-profit alleviates the public agency of the administrative task at hand. Rather, the public agency is able to primarily serve as the vehicle to design and later evaluate the program.

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\(^98\) Bay Area Economics, p. 65

\(^99\) City of Raleigh Growth and Development Report, Fall 2008. P. 3.

\(^100\) Chapter 42. Landlord and Tenant. [http://law.justia.com/northcarolina/codes/chapter_42/gs_42-14.1.html](http://law.justia.com/northcarolina/codes/chapter_42/gs_42-14.1.html)
Chapel Hill, Burlington (VT), Redmond (WA), and Irvine (CA) are all examples of municipalities which work with local non-for-profits to manage the inclusionary zoning program. Burlington partners with the Champlain Housing Trust to “minimize administrative staff time for the program” so that only 10% of one full time employee working for the city commits their time directly to the program. The nonprofit provides the support needed to monitor the sales process for the homes. In Burlington’s arrangement, the city provides for a proportion of operating costs in exchange for the land trust’s role in terms of running the program. The Champlain Housing Trust is a community land trust model where the homes remain affordable for 99 years as the Land Trust is able to purchase the properties from homeowners if and when they choose to sell. Homeowners are able to keep a portion of the appreciation value (in this case, 25%), but the value of the home is otherwise capped. The Land Trust is able to have a consistent portfolio of homes available regardless of the local home building climate. Administering the resale of properties requires staff commitment, so the partnership with the local Housing Trust in Burlington facilitates the necessary work.

In Washington, ARCH Community Housing was created from an Affordable Housing Task Force which supported cooperation between local governments to more effectively further the goal of creating more affordable housing units by coordinating both planning efforts and financial resources. Currently, 15 cities and King County in Washington area involved. ARCH administers a trust fund which provides loans and grants to developments which include affordable housing units. The jurisdictions contribute CDBG block grant funds, as well as revenues from payments in lieu tied to inclusionary zoning policies, land and in-kind donations to the Trust Fund. ARCH manages the sales of inclusionary zoning properties. ARCH and city staff work together to communicate with developers in order to finalize agreements.

Ultimately, there are clear benefits to partnerships. Working with a local non-profit, city administration efforts can focus on defining policy and evaluating the program over time. The day to day administration of the program can be implemented through the work of a non-profit. Typically, local governments have partnered with existing non-profits that have an understanding of local housing issues. Such organizations currently exist in Raleigh, and it is worth exploring their willingness to work with the city to manage such a program.

**Developing Standards**

The Raleigh inclusionary zoning standards should require that the affordable units blend into the neighborhood. Such an effort can alleviate the stigma of purchasing an affordable home and ensure a smooth transition into the neighborhood for the low-to-moderate income household. Furthermore, neighborhoods may protest the anticipated development of affordable homes on the grounds that these homes do not fit the character of the neighborhood. In order to address such needless displays of NIMBYism, requiring developers to build units which fit in within the neighborhood seamlessly can prevent substantial protest on the part of neighbors with an interest in maintaining exclusivity.

However, developers should be able to make certain adjustments to the affordable housing units they build. For example, many municipalities allow developers to make their affordable units smaller in size. In addition, developers are able to typically use less expensive finishes and appliances within the
affordable units. Without these measures, the developers are more likely to object the requirements. Finally, municipalities should take care that developers do not take cost-cutting measures that reduce the overall quality of the affordable units. Any cost-cutting measures that developers are allowed to take should be clearly defined.

Within the city of Raleigh, an inclusionary housing program can require developers to build to certain standards to ensure that the affordable units are of a high-quality. One standard already in place is Advanced Energy’s SystemVision program. This was launched in 2001, and is a voluntary program which provides affordable housing developers with subsidies through the NCHFA when they implement technical building science techniques that result in high energy efficient homes. These steps result in a modest yet affordable home. The building strategies incorporated into SystemVision are not elaborate or expensive measures, but are simple steps to ensure that the structure and insulation of a home is built to specification that ensures efficiency.\(^\text{101}\)

**Maintaining Affordability over Time**

Maintaining a portfolio of affordable homes over time is important. This ensures that affordable homes are available on the market even when building and development slows. In order to further this goal, many communities have implemented measures to cap resale values on homes built and sold through inclusionary zoning programs. However, resale caps deprive the seller of the ability to build wealth through homeownership by benefiting from the appreciation value of a property. Designing an inclusionary zoning policy which promotes long term affordability but still encourages homeowners to build wealth is a critical challenge.

Often, programs will mandate that the seller must inform the city of intention to sell. The appreciation of the home is then limited to inflation rates or the consumer price index and the value of any improvements made to the home. However, these price limitations or resale controls often require further administrative staff time.

Another option utilized by some communities allows the seller to keep a proportion of the appreciation, while the rest is placed in an Affordable Housing Trust Fund to build more affordable units. This approach requires the constant replenishment of the affordable housing portfolio through new development.

A third option would allow the seller to retain a proportion of the appreciation based upon the length of time they have lived in a property. This would encourage long term homeownership. For families that remained in a property over a period of time, they would be able to retain a higher proportion of appreciation upon sale. However, the price appreciation would still be capped in order to target a moderate income buyer.

Raleigh’s inclusionary zoning policy can maintain the affordability of homes while still allowing sellers to gain a proportion of appreciation through the development of a shared equity formula. In order to

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design a less complex program that is simple to understand and process, a percentage can be established whereas a seller can increase the sales price of their home based upon the change in the consumer price index over time, plus an additional percentage of any increased value of appreciation.

**Integrating Inclusionary Zoning with Broader Planning and Zoning Policies**

As Madison’s experience demonstrates, constructing a program which fits with broader planning goals as outlined in the Comprehensive Plan makes sense. Otherwise, an inclusionary zoning program is more likely to fail. Madison’s program failed partially because the density bonuses offered as an incentive conflicted with other zoning regulations that restricted the benefit of such bonuses in areas of downtown where development was happening.

Raleigh should consider the housing element of the Comprehensive Plan rewrite currently underway when developing an inclusionary zoning program. The Comprehensive Plan encourages the development of transit friendly, mixed use and dense development. As the Plan is implemented, applicable zoning measures will be designed to promote and regulate development around transit nodes.

When designing an inclusionary zoning program, officials should take care to consider elements of the Comprehensive Plan and build the set of incentives (such as density bonuses) around the goals of the Plan. For example, as the plan encourages development in specific areas across the city, it makes sense to apply inclusionary zoning regulations specifically to areas likely to be hot development corridors and couple the regulations with incentives to focus development efforts around those particular nodes.

The Comprehensive Plan focuses on the development of downtown Raleigh. Creating a larger supply of affordable and workforce housing units located downtown is noted in the Plan. This will require working with the city’s Planning Department to update development regulations and working with organizations such as the Downtown Raleigh Alliance to promote downtown living as an affordable and attractive option. As the city reviews regulations related to development, standards can be implemented to incentivize inclusionary housing in the downtown first, as a pilot program.

### 5.1 Final Summary: Designing an Effective Inclusionary Zoning Policy in Raleigh

Ultimately, planning officials planning to take on the challenge of implementing an inclusionary housing program should draft a clear legislative policy that provides oversight and evaluates the inclusionary program over time to allow for adjustments to be made as needed. Inclusionary zoning should not be viewed as a remedy to address the entire breadth of need related to housing in the Raleigh community.

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Rather, it should be used as one tool to complement a broader comprehensive affordable housing strategy.

An inclusionary zoning program should focus on specific, attainable goals that the city must establish early in the planning and program design process. The program must reflect the context of growth as it pertains to Raleigh. Considerations of importance include the demographics of the city as well as the scope of housing need. In addition, considering the economic foundation of the city as well as the areas where growth is occurring is critical.

Raleigh's population, employed in the public and higher education sectors, is often touted as well paid and well educated. This is certainly the case, but many public sector jobs and support services positions in higher education provide a moderate, yet stable, income. These households have the capacity to purchase a home, but affordable homes in their price range are few, and may be in poor condition. More housing options are much needed.

Inclusionary zoning in Raleigh can expand the availability of quality, new homes available for purchase at an affordable price. The table on the following pages summarizes policy recommendations as they apply to the city of Raleigh:
<table>
<thead>
<tr>
<th>Policy Design Element</th>
<th>Options</th>
<th>Recommendation</th>
<th>Rationale</th>
</tr>
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<tbody>
<tr>
<td><strong>Mandatory vs. Voluntary</strong></td>
<td>1. Mandatory programs are strictly applied to all development&lt;br&gt;2. Voluntary programs encourage the development of affordable housing, but do not coerce developers to provide units</td>
<td>Piloting a voluntary program which transitions which is evaluated after a set period of time of six months when the program is finalized and automatically transitions into a mandatory policy.</td>
<td>Voluntary programs have not effectively produced affordable housing units. Yet, building support for a mandatory program is extremely challenging due to developer resistance. A pilot program allows time for support to be built.</td>
</tr>
<tr>
<td><strong>Set Aside</strong></td>
<td>1. 10%&lt;br&gt;2. 15%&lt;br&gt;3. 20%</td>
<td>10%, more incentives offered if developers exceed requirement</td>
<td>Developers should be encouraged to exceed standard rather than meet a basic standard.</td>
</tr>
<tr>
<td><strong>Geography</strong></td>
<td>1. Apply city wide&lt;br&gt;2. Apply to strategic areas within the city</td>
<td>Apply to downtown Raleigh and other areas prioritized within Comprehensive plan for development</td>
<td>Value of coordinating inclusionary zoning policy with overarching planning goals. Maximizing number of affordable units by complementing present and anticipated development patterns.</td>
</tr>
<tr>
<td>Policy Design Element</td>
<td>Options</td>
<td>Recommendation</td>
<td>Rationale</td>
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<tr>
<td>Income Target</td>
<td>1. Target specific income group based upon area median income</td>
<td>Set up tiered system.</td>
<td>Ensure that a broader population served by program. Prevent developers from building housing only affordable to the highest income allowed by policy.</td>
</tr>
<tr>
<td></td>
<td>2. Create a tiered system</td>
<td></td>
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<tr>
<td>Administrative Design</td>
<td>1. Administer within planning department</td>
<td>Identify a community based partner to administer program.</td>
<td>Planning officials should focus on program evaluation.</td>
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<tr>
<td></td>
<td>2. Work with external agency or non-for-profit</td>
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<tr>
<td>Design Standards</td>
<td>1. Exterior appearance must be comparable to market rate units, but interior adjustments in terms of size and finishes is allowable</td>
<td>Units should be dispersed throughout the development. Developer should submit design for affordable units to review board. The units should be comparable, but do not have to be identical to market rate units. Smaller units in terms of square footage should be allowed, but developers should provide an adequate number of bedrooms to serve families.</td>
<td>Affordable units should blend into community.</td>
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<tr>
<td></td>
<td>2. Exterior and interior should remain comparable.</td>
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<td></td>
<td>3. No standards put in place.</td>
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<tr>
<td>Re-sale Process</td>
<td>1. Shared equity</td>
<td>Shared equity. Home owner retains equity and portion of appreciated value over time based upon length of time at residence.</td>
<td>Promote the ability of building wealth through homeownership. Promote neighborhood stability by encouraging long term residence.</td>
</tr>
<tr>
<td></td>
<td>2. Limit equity</td>
<td></td>
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<tr>
<td>Policy Design Element</td>
<td>Options</td>
<td>Recommendation</td>
<td>Rationale</td>
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<tr>
<td>Incentives for</td>
<td>1. Density Bonus</td>
<td>Package of benefits.</td>
<td>Incentivize exceeding the requirement while ensuring that developers are adequately compensated through a density bonus.</td>
</tr>
<tr>
<td>Developers</td>
<td>2. Design flexibility</td>
<td>Density bonus available to all in compliance, and greater bonus to those exceeding requirement.</td>
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<tr>
<td></td>
<td>3. Subsidies</td>
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<td>4. Fee waivers</td>
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<td></td>
<td>5. Expedited permits</td>
<td>Expedited permits provided to all in compliance.</td>
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<tr>
<td>Alternative</td>
<td>1. In Lieu Fees</td>
<td>In Lieu Fees, clear process established for determining the fee and the circumstances under which the developer is eligible.</td>
<td></td>
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<tr>
<td>Compliance</td>
<td>2. Dedication of Land</td>
<td></td>
<td>Goal of program should be to promote the development of affordable units integrated into market rate developments on site. However, developers who face extremely high financial risk should remain eligible for in-lieu fees if necessary.</td>
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<tr>
<td></td>
<td>3. Building Units off Site</td>
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<td></td>
<td></td>
<td></td>
<td>In-lieu fees can be used to build an affordable trust fund to target lower income households.</td>
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</tbody>
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Works Cited


Copic, Gina. Smart Housing Development Manager, Austin Texas Elina Bravve. 2009.


## Appendix A: City Webpage Sources Utilized to Research and Compare Programs

<table>
<thead>
<tr>
<th>City</th>
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<td>Sacramento CA</td>
<td><a href="http://www.cityofsacramento.org/planning/policies-and-programs/mixed-income/">http://www.cityofsacramento.org/planning/policies-and-programs/mixed-income/</a></td>
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<td>Pleasanton, CA</td>
<td><a href="http://www.ci.pleasanton.ca.us/community/housing/">http://www.ci.pleasanton.ca.us/community/housing/</a></td>
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<td>Davis, CA</td>
<td><a href="http://cityofdavis.org/cmo/citycode/chapter.cfm?chapter=18#05">http://cityofdavis.org/cmo/citycode/chapter.cfm?chapter=18#05</a></td>
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<td>Irvine, CA</td>
<td><a href="http://www.ci.irvine.ca.us/depts/cd/housing_development/default.asp">http://www.ci.irvine.ca.us/depts/cd/housing_development/default.asp</a></td>
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<td>San Diego, CA</td>
<td><a href="http://www.sdhc.net/giaboutus1.shtml">http://www.sdhc.net/giaboutus1.shtml</a></td>
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<td>Longmont, CO</td>
<td><a href="http://www.ci.longmont.co.us/cdbg/housing/dev.htm">http://www.ci.longmont.co.us/cdbg/housing/dev.htm</a></td>
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<td>Denver, CO</td>
<td><a href="http://www.milehigh.com/housing/homeownership-opportunities/affordable-housing">http://www.milehigh.com/housing/homeownership-opportunities/affordable-housing</a></td>
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<td>Tallahassee, FL</td>
<td><a href="http://www.talgov.com/planning/af_inch/af_inchouse3.cfm">http://www.talgov.com/planning/af_inch/af_inchouse3.cfm</a></td>
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<td>Palm Beach Co</td>
<td><a href="http://www.pbcgov.com/hcd/programs/workforce.htm">http://www.pbcgov.com/hcd/programs/workforce.htm</a></td>
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<td>Highland Park, IL</td>
<td><a href="http://www.ci.highland-park.il.us/pdf/comdev/izp.pdf">http://www.ci.highland-park.il.us/pdf/comdev/izp.pdf</a></td>
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<td>Lake Forest, IL</td>
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<td>Somerville, MA</td>
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<td><a href="http://www.ci.newton.ma.us/housingdevelopment/programs.htm">http://www.ci.newton.ma.us/housingdevelopment/programs.htm</a></td>
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<td>Davidson, NC</td>
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<td>Santa Fe (NM)</td>
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<td>Kingstown, RI</td>
<td><a href="http://www.southkingstownri.com/code/plan_groupmembers.cfm?grpID=54">http://www.southkingstownri.com/code/plan_groupmembers.cfm?grpID=54</a></td>
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<td>Fairfax County (VA)</td>
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<td>Burlington, VT</td>
<td><a href="http://www.cedoburlington.org/housing/inclusionary_zoning.htm">http://www.cedoburlington.org/housing/inclusionary_zoning.htm</a></td>
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<td>Redmond, WA</td>
<td><a href="http://www.redmond.gov/insidecityhall/citycouncil/20080527pdfs/VB.pdf">http://www.redmond.gov/insidecityhall/citycouncil/20080527pdfs/VB.pdf</a></td>
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