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Inclusionary Housing: A Primer

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Introduction

Housing is a basic human need and a perennial concern of government as well as private groups that dedicate themselves to the wellbeing of their fellow citizens. Some governments consider it a matter of course to build and maintain public housing. In the United States, we have been moving away from that model for some years, employing in its place subsidies such as housing vouchers for disadvantaged families and tax credits for developers who build projects affordable to those toward the lower end of the income scale.

Inclusionary housing policies are another form of subsidy. But rather than money, they offer developers relief from various regulatory burdens (most prominently, restrictions on the number of housing units that can be built on a given parcel of land). In return, a certain percentage of the units in the development must be affordable to people in a specific income range.

Although widely used in other sections of the country, broad-based inclusionary housing policies (often encompassing an inclusionary zoning component) are unknown in Texas. Indeed, Texas law appears to forbid local governments from requiring builders to include affordable units in new developments.

This paper is intended to present only a brief overview of the issue. It ends with a list of other, more in-depth resources for exploration.

North Texas faces a shortage of affordable housing

More than 250,000 households in the Dallas–Plano–Irving Metropolitan Division meet HUD's classification of low income, including roughly 64,000 households in the city of Dallas. Many of them struggle to afford decent housing, and they are not alone. In many North Texas cities, affordable housing is in short supply for workers with moderate incomes, including police officers, teachers, and nurses.

In 2003, a mayoral task force documented the need for an additional 30,000 units of housing affordable to low-income and working-class residents of the city of Dallas.

From 2002 to 2005, the percentage of renters living in the city of Dallas who spent more than 30% of their household income on housing-related costs increased from 45% to 50%. The percentage of homeowners in the Dallas Metropolitan Statistical Area who spent more than 30% of their household income on housing-related costs increased from 33% to 42%.

According to a Texas A&M study, 4.5 million households in Texas cannot afford to purchase a home priced higher than $125,000. Yet, in 2006, the median price for a home in Texas was $142,300.

In 2005, homeownership was 61% in the Dallas–Plano–Irving MD, well below the national average of 69%. This gap has far-reaching implications, because homeownership contributes not only to family well-being but to the stability of neighborhoods and the creation of wealth, especially among racial and ethnic minorities.

Some roots of the problem

The trend in the housing market over the past two decades has been towards larger, more expensive homes. Builders responded to changing consumer tastes, as buying power increased in an era of loose credit and relaxing of lending standards. However, the growth in housing priced for low- and moderate-income families was not commensurate with that of housing priced for middle- and high-income families.

Many cities, especially suburban ones, have long practiced exclusionary zoning—for instance, through minimum lot-size requirements far in excess of those necessary to safeguard public health and safety. The result is pervasive economic segregation, with low- and moderate-income residents effectively confined to central cities such as Dallas and the inner ring suburbs.

Residents themselves often exert pressure to keep out lower-income households by resisting proposals to build apartments, developments supported by low-income tax credits, and the like. This "Not In My Backyard" sentiment (NIMBYism) may deter some developers from even proposing to build housing targeted to moderate- and low-income residents.

Additionally, governments at all levels have significantly curtailed spending on various programs designed to assist low-income families in securing housing. The deplorable conditions that once existed in many publicly-owned housing projects have fed a general distaste for large-scale, concentrated public housing. That distaste may be well-founded, but in many cities no viable alternative has emerged, with the result that growing numbers of residents are forced to cut back on spending for other basic necessities in order to shelter themselves.

One potential solution: inclusionary housing

Inclusionary housing policies are designed to achieve several public purposes:

- Increasing the stock of quality ownership and/or rental housing that is affordable to low- and moderate-income residents;
- Promoting home ownership and wealth accumulation among those populations;
- Creating mixed-income communities, thus counteracting economic segregation and its attendant ills; and
- Creating a better spatial match between jobs and workers, with the attendant economic and environmental benefits.

Depending on which goals are paramount, the programs differ in myriad ways, but certain features are more or less universal:

- A stipulation that a certain percentage of units in each new housing development be affordable to residents who fall within a given income range;
- An exemption for developments with fewer than a certain number of units;
- Some offsetting benefit to developers, most typically density bonuses, waiver of other regulations, reduced fees, and/or expedited permitting; and
- A requirement that units remain affordable for a specified period of time.

Features that vary widely from jurisdiction to jurisdiction include:

- Whether the program is mandatory or voluntary, with most being mandatory;
- The percentage of units that must be affordable, with 10% and 15% being the most common figures;
- The definition of "affordable," with most programs targeting families that make 80% or less of the area median income (AMI), but some targeting those between 80% and 120% and some targeting families between 50% and 80% or even lower;
- Whether the program applies to for-purchase units, rental units, or both;
- The number of units that triggers the requirement (with smaller developments being exempt);
- The nature and extent of give-backs designed to compensate builders for any loss of income;
- Whether builders are given the option of paying

an "in lieu of" fee (generally paid into a housing trust fund), rather than build the affordable units;

- Whether the affordable units can be built at a location separate from the market-rate units; and
- The length of time units must remain affordable and the mechanisms used to balance wealth creation among buyers and ongoing affordability (for instance, land trusts and other shared-equity agreements).

Figure 1 summarizes inclusionary programs enacted by five major cities from coast to coast.

Figure 1. Characteristics of Inclusionary Housing Ordinances in Five Cities.

	Boston, MA	Denver, CO	Sacramento, CA	San Diego, CA	San Francisco, CA
Affordable Units Produced	246 units between year 2000 and 2004	3,395 units between year 2002 and 2004	649 units between year 2000 and 2004	1,200 units between year 1992 and 2003	128 units between 1992 and 2000; 450 units between 2002 and 2004
Income Target	Half of affordable units for 80% AMI or less and remaining units for 80-120% AMI	80% AMI for for-sale units and 65% AMI for rental units	One third for 50-80% AMI and two thirds for less than 50% AMI	100% AMI for for-sale units and 65% AMI for rental units	120% AMI for for-sale units and 80% AMI for rental units
Requirements	• 10% of units • Threshold: 10+ units • Control period: maximum period as allowed by law	• 10% of for-sale units and a voluntary 10% of rental units • Threshold: 30+ units • Control period:15 years	• 15% of units • Threshold: 9+ units • Control period: 30 years	• 10% of units • Threshold: 10+ units • Control period: 55 years	• 10% of units • Threshold: 10+ units • Control period: 50 years
Incentives	Increased height allowances and FAR allowances permitted in the financial district	20% density bonus for single family residents and 10% for multifamily residence; $5,000 reimbursement for each for-sale unit, up to 50 percent of total units; expedited permit process; parking reductions	25% density bonus; expedited permit process, fee waivers; relaxed design guidelines; may receive priority for subsidy funding	None	Refunds available on both environmental review and permit fees for affordable units
In-lieu fee/ off-site requirements	Fee: 15% of total number of market-rate units times an affordable housing cost factor 15% affordability requirement for off-site housing	Fee: 50% of price of affordable units not built Off-site allowed if affordable units are built in the same general area	Off-site allowed if there is insufficient land zoned but affordable units must be in new growth areas	Fee: Calculated based on square footage of an affordable unit. Off-site development not allowed	Fee: Determined by several factors including project value of on-site affordable houses 15% set-aside required for off-site units

Source: Brunick, N. (Oct, 2004). Inclusionary Housing: Proven Success in Large Cities. *Zoning Practice*, *10*.

History of inclusionary housing policies

In 1971, Fairfax County, Virginia, enacted the nation's first inclusionary housing law. However, it fell afoul of the state's constitution and was overturned by a legal challenge.

Montgomery County, Maryland, created what it called a Moderately Priced Dwelling Unit (MPDU) program in 1973. That ordinance, which has resulted in the creation of roughly 13,000 units, is the nation's most successful inclusionary housing effort.

In the intervening years, more than 200 jurisdictions nationwide have enacted some form of inclusionary policy. Such programs are most common in the very high-priced, land-locked housing markets of California and the Northeast, but they are not confined to those regions.

For a number of years, most programs were enacted by medium-sized cities, but several large cities have adopted inclusionary policies in the past decade, including Boston, Chicago, Denver, San Diego, and Washington, D.C.

Critics claim that such programs have yielded few units and may even have suppressed the production of housing in jurisdictions enacting them. However, advocates say that more than 30,000 affordable units have been built in California alone since 1999 as a result of inclusionary policies. They also say production is increasing as both cities and builders become more adept at using the programs to their advantage. Denver, in particular, stands out as a success story, having produced 3,400 units in the program's first 3 years.

Legal issues

Opponents of inclusionary housing policies have challenged them on the grounds that they violate the constitutional guarantee of due process or constitutes an impermissible government "taking" from private parties. Those assaults have almost always failed as long as the challenged programs included certain basic features:

- A demonstrable relationship between the program's requirements and a legitimate public need or purpose;
- Density bonuses and other give-backs that provide meaningful compensation for a builder's potential loss of income;
- Some sort of "in lieu of" option that allows builders to select an alternative way of satisfying the requirement (generally paying a fee); and
- An appeals process that allows builders to receive an exemption if they can show that they would suffer a real hardship.

California, Massachusetts, New Jersey, Illinois, and Minnesota have adopted laws specifically enabling jurisdictions to create inclusionary housing ordinances. Various states require each municipality to project what its future population will look like, demographically speaking, and to adopt policies designed to ensure appropriate housing for that population.

Texas, conversely, has passed a law apparently designed to proscribe or discourage cities from adopting any mandatory inclusionary housing program. Section 214.904 of the Local Government Code, enacted in 2005, says: "(a) A municipality may not adopt a requirement in any form, including through an ordinance or regulation or as a condition for granting a building permit, that establishes a maximum sales price for a privately produced housing unit or residential building lot."

Voluntary programs, which offer builders incentives for including affordable units, are specifically permitted under the statute. However, the experience of other states strongly indicates that voluntary programs are less successful than mandatory programs at producing affordable units. In fact, several cities that began with voluntary programs have switched to mandatory ones.

Arguments against inclusionary housing policies

Most builders and developers and some economists and elected officials oppose inclusionary housing mandates. Where proponents of inclusionary housing prevail, they have typically invested several years' worth of intensive coalition building, educational campaigns, and political maneuvering.

In general, opponents rely on the following arguments:

- The best tool for producing affordable housing is increasing the overall production of housing, as aging housing stock is vacated by more affluent owners and becomes available to those with fewer financial resources;
- Inclusionary housing programs are counterproductive because they discourage builders from erecting new housing in jurisdictions that adopt them;
- Like regulation of housing markets generally, inclusionary programs tend to inflate prices overall, contributing to the very lack of affordability they purport to address; and
- Mandatory inclusionary programs violate constitutional guarantees of due process and protection from uncompensated "takings" by government.

As mentioned above, most thoughtfully designed programs have withstood constitutional challenges. As to the practical arguments, which rest on claims that inclusionary housing mandates stifle housing production and/or drive up prices, the scholarly literature is rather thin.

One of the studies most commonly cited by opponents of inclusionary programs was issued in 2004 by the Reason Public Policy Institute. It concluded that inclusionary programs had depressed housing production in the San Francisco area. But a study by David Paul Rosen and Associates, which analyzed two decades' worth of data in 28 California cities with inclusionary programs, found the opposite: that production stayed steady or even increased following the adoption of mandates.

A Fannie Mae Foundation "Facts & Findings" analysis of inclusionary policies reported that "[p]lanning officials and local monitors of the programs in San Diego, Sacramento, Boston, San Francisco, Denver, Chapel Hill, Cambridge, and Boulder have not seen development activity in their communities lessen since they implemented inclusionary housing programs. In addition, studies of, analytical reports about, and community and developer reaction to inclusionary housing programs nationwide indicate that mandatory inclusionary zoning programs in a wide variety of locations are not stifling development."

Arguments in support of inclusionary housing policies

The arguments in favor of inclusionary programs are varied and complex. In general, they rest on contentions that inclusionary programs:

- Address a real and growing shortage of affordable units that market mechanisms patently have failed to correct;
- Are effectively a non-cash subsidy, using density bonuses and other perks rather than money to compensate developers, thus giving cash-strapped cities an innovative way to increase their stock of affordable units;
- Are a necessary and effective response to decades' worth of exclusionary housing policies, especially in the suburbs, which had tended to concentrate poverty in certain neighborhoods within central cities;
- Promote smart growth by creating a closer match between job centers and housing centers, reducing traffic congestion, air pollution, and transportation outlays;
- Support sustainable economic growth by ensuring that cities can attract workers across the income scale, especially in critical trades such as teaching, nursing, and public safety; and
- Not only create affordable housing but ensure that it is spread over a variety of neighborhoods, helping lessen the ill effects of concentrated poverty.

Conceptually, perhaps the most comprehensive way of framing the case for inclusionary policies is that, in 21st century urban America, housing is infrastructure. Just as an adequate transportation system is essential to a region's economic health, sufficient housing stock, in the right places and at the right price points, is essential to sustainable growth. Therefore, responsible public officials will explore all the tools at their disposal to spur the creation of that housing stock.

Practical considerations and next steps

In Texas, some progress has been made towards developing more inclusionary housing practices through small, local projects, particularly those utilizing HUD's HOPE VI program. Thus far, the broad-based inclusionary housing policies that have become common in some regions of the country have remained unknown in Texas. Therefore, extensive study, outreach, and discussion are necessary first steps if any campaign on behalf of broader inclusionary policies is to succeed—and if the policies put forth are to prove effective.

Here are some critical issues that must be addressed:

Is there a real appetite for inclusionary housing in North Texas?

To succeed, any campaign will need broad-based support from community residents, nonprofit housing developers, social justice organizations, public officials, and, ultimately, at least some for-profit developers. The discussion, and any coalition resulting from it, should happen regionally, because the housing market is a regional entity, not bounded by political jurisdictions. Without engagement by stakeholders across the region, any action is likely to prove fruitless. It would seem that the necessary exploratory conversations would best occur under the auspices of a task force representing an array of key regional stakeholders.

If a large number of players are interested, what is their primary aim?

Some inclusionary policies aim to maximize the production of new units. Some are more concerned with deconcentrating poverty and racial segregation. Most policies are designed to promote home ownership, but others apply to rental housing. In addition, some policies stress wealth creation by allowing buyers to realize 100 percent of the appreciation of their homes; others favor keeping units affordable over time through some sort of equity-sharing. Discussions should encompass—though they need not resolve—these questions of fundamental intent.

Will inclusionary policies work here, given the dynamics of the North Texas housing market?

With a few exceptions, existing inclusionary programs are on the East and West Coasts, where land is in extremely short supply and housing prices are, consequently, extremely high. Logic suggests that density bonuses, which are the predominant tool for cushioning affected developers against a loss of revenue, will be most effective in markets where land costs are a very large share of total development costs. That is less true in North Texas than in, say, Boston or San Francisco. Thus it would seem prudent to commission an in-depth analysis of how inclusionary mandates might play out in this market.

What is the real effect of current Texas law?

The statute quoted on page 4 appears to preclude any mandatory inclusionary programs. A legal analysis is in order. In addition, given the current state of Texas law, a hard look at the merits of voluntary vs. mandatory programs is called for. Most of the literature dismisses voluntary programs as ineffective, but, given the Legislature's historic dedication to protecting private enterprise and property rights, searching for ways to make voluntary programs effective is certainly warranted.

Inclusionary Housing Resources

Websites

National Inclusionary Housing Conference, www.inclusionary.org

Policy Link, www.policylink.org

Regional Equity '08, www.regionalequity08.org

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