

FEATURES

Inclusionary Zoning: A Key Tool in the Search for Workable Affordable Housing Programs

by David Rusk

Local governments in the country are experiencing an imbalance between housing need and housing supply. Recently, the rise in housing prices has spiked that gap and created serious problems for local governments and their moderate income citizens.

A PIONEER RESPONDS

In the late 1960s, Montgomery County, Maryland, a suburb of Washington, D.C., was faced with dramatic and rapid growth, increased housing costs and a lack of housing available to essential community workers, including teachers, firemen, nurses, retail, and office workers. These vital employees were commuting long distances from other counties (and even other states) to get to their jobs in Montgomery County, and construction workers were camping out in county parks. At the same time, older and substandard communities were being demolished to make way for the growing suburbia, displacing longtime, low-income citizens.

Montgomery County's response provides a model others can emulate. More than 135 communities already have followed that county's lead. In 1974, thanks to the work of a community coalition including area religious congregations, the League of Women Voters, and other "good government" groups, the county council adopted an inclusionary zoning (IZ) ordinance that has, to date, created more than 12,000 moderately priced dwelling units (MPDUs) as integral parts of market rate developments. In the years since, more than 135 communities already have followed Montgomery County's lead.

IZ . . . WHAT IS IT?

Inclusionary zoning relies on the production of housing by private industry. It requires developers to produce a percentage of "affordable" housing units along with the development of market rate units. The local government sets income limits (income targeting) and price limits for the inclusionary units. Developers are provided a density bonus and/or other benefits to offset the cost of development of the IZ units.

For example, if the IZ law requires an IZ "set-aside" of 15 percent but provides a 20 percent density bonus, the developer would be automatically allowed to construct 120 units on a site normally zoned for a maximum of 100 market rate units; 15 percent of those 120 units (18 units) must be affordable, but 102 units are market rate, so the developer gets two extra market rate units.

The density bonus, in effect, provides free land for both the IZ units (significantly lowering their cost) and for the bonus market rate units (significantly enhancing their profitability). Resale and rent control periods are part of most programs. There is usually a period of time specified for affordability (control period). Usually local government has an administrative system to ensure compliance.

TAILORING IZ LAWS TO FIT LOCAL CONDITIONS

Each community tailors its ordinance to its own housing needs and building industry conditions. The key issues for a community to determine are minimum project size, percentage of units required (set-aside of affordable units), income ceiling for eligible households, size of the density bonus and

other cost-offsets, and the length of the control period. To be effective, IZ laws must be mandatory, not voluntary. In virtually all instances where the ordinance is voluntary, IZ units don't get built.

Among existing programs, inclusionary requirements are triggered for housing developments as low as a minimum of five units to as large as a minimum of 50 units. (Montgomery County started with 50 units and recently amended the ordinance to 25.) Almost three-quarters of the communities with IZ programs require setting aside between 10 and 15 percent of the total units in the IZ development as affordable.

Minimum eligible income ceilings range from 30 percent area median income (AMI) to as high as 120 percent AMI. Many communities with IZ ordinances apportion affordable units among different income levels (for example, 25 percent for households at less than 50 percent AMI, 50 percent for between 51 percent and 80 percent AMI and 25 percent between 81 percent and 120 percent AMI). All of the communities targeting 81 percent to 120 percent AMI are in Northern and Southern California and the Boston area...all with sky high housing costs.

One-fifth of the IZ programs target all or a portion of the units for low-income households (50 percent or lower of the AMI). Reaching even lower on the income scale typically requires funneling public subsidies into the program (often public housing funds and housing vouchers). In Montgomery County, the county's Housing Opportunities Commission (HOC), its public housing authority that is also a housing finance agency, must be offered one-third of all MPDUs.

HOC has purchased over 1,700 MPDUs and rents another 1,500 MPDUs throughout the county, using public housing funds and creating tax credit partnerships. The result is extraordinary. Several hundred county subdivisions (many with million dollar homes) include extremely low-income households. This creates dramatic economic integration. The program applies throughout the county to almost every new subdivision, so this economic mix is accepted as fair, since it is part of the development policies affecting the entire county.

Density bonuses, used by 95 percent of all IZ ordinances, are a primary cost offset for homebuilders. Other offsets are fast-track processing, waivers for certain fees, reduction of certain standards (for example, parking requirements) and in 38 percent of the ordinances, cash subsidies.

Resale price and rent control periods vary but are generally quite long in order to maintain a stable, long-term inventory of affordable housing. Only 14 IZ programs have control periods of only 10 to 15 years; 23 IZ programs require the IZ units to be permanently affordable. Some jurisdictions allow builders to "buyout" of the program, requiring significant cash payments in lieu of on-site development or allowing building the affordable units at a different site.

Typically, such loopholes just promote concentrating more affordable housing "on the affordable housing side of town." This defeats the benefits of greater economic integration, particularly for local public schools.

Montgomery County started its program with a five-year control period, soon changed to 10 years and recently changed to 30 years with the control period restarting if there is a resale within the control time period. (It is interesting to note the Montgomery County ordinance has been amended more than 20 times. Each series of amendments has strengthened the program, such as by reducing the minimum number of units triggering the IZ requirement, lengthening the control period, or setting more rigorous standards for governing "buy-outs" and providing off-site MPDUs.

WORKING WITH BUILDERS AND THE COMMUNITIES WHERE THEY BUILD

Zoning ordinances need to be flexible to enable builders to meet the requirements. Different densities, setbacks and design must be allowed. For example, in upscale communities in Potomac, one of the wealthiest areas in Montgomery County (the USA's 13th wealthiest county in 2000) million dollar single family homes about high-end townhomes and smaller IZ townhouses. In some communities it is almost impossible to distinguish the affordable units as innovative builders have

designed IZ duplexes and four-plexes wrapped inside exteriors that look almost identical to neighboring mansions. It is in the builder's interest to make all of the units attractive as they are in close proximity.

Program choices cannot be just picked out of the air. The most successful ordinances represent collaboration among local officials, affordable housing advocates, and builders, running the numbers to find out what is fair to builders while meeting community needs. For-profit builders produce 95 percent of all new housing in America. An effective IZ program must be fair to the builder's bottom line.

A NATIONAL MOVEMENT

More than 13 million people (about 5 percent of the U.S. population) live in the 135 cities, towns, and counties that have enacted inclusionary zoning ordinances where local government mandates mixed-income housing.

IZ jurisdictions ranges in population size from giant Fairfax County, Virginia (954,717), to the tiny town of Isleton, California (818). Some 107 counties and municipalities in California have enacted IZ laws (about one-fifth of all local governments in that state), but there are other clusters of IZ communities in the Denver, Washington, D.C., and Boston regions.

In September 2003, Highland Park, a suburb of Chicago, passed the first IZ law in the Midwest. Madison, Wisconsin, adopted the Midwest's second inclusionary ordinance in January 2004. A new state law in Illinois now requires all 2,824 local governments to have at least 10 percent affordable housing. Communities falling short of that standard can get state approval for their compliance plan by enacting an IZ ordinance with a 15 percent set-aside.

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Across the country, building industry opponents often threaten that if inclusionary requirements are "imposed" on them they'll just pull up stakes and move their business to a neighboring locality. The threat sounds plausible, but it's never happened. (Certainly, no community has repealed its IZ law faced not with that threat, but with that reality.)

But, if the opponents' fear is the first local law will be the proverbial "camel's nose" under the regional "tent," there is plenty of evidence for that result. Local governments have adopted IZ laws in at least 32 counties. The 32 pioneers averaged only 17 percent of their county's population at the time they adopted their area's first IZ law. Additional neighbors, however, have followed suit and a dozen county governments have enacted IZ laws covering unincorporated land so that, on average, IZ requirements now cover over half (54 percent) of the 32 counties' populations.

Pleasanton, California, for example, was less than 5 percent of the population of Alameda County when it adopted its IZ ordinance in 1978. However, similar laws enacted by San Leandro (1980), Berkeley (1986), Livermore (1986), Emeryville (1990), Dublin (1996), Union City (2001), Fremont (2002) and Alameda County itself (2000) have raised IZ coverage to 55 percent of that East Bay county's population.

BENEFITS OF IZ

Inclusionary zoning is no panacea and rarely the total answer to filling a community's affordable housing gap, but it can play an effective role in addressing a significant part of the problem. If it's a fair law and each neighborhood is covered, it is more likely to be accepted than the development of relatively large clusters of low income housing. In fact, one of the greatest benefits of IZ is that it

helps communities avoid concentrations of low income households and the concurrent community problems those concentrations produce.

Studies show low income students who are integrated into schools serving a majority of middle and upper income students do better at school. If schools want to improve academic achievement, they can reach their goal by encouraging local governments to change housing patterns. Studies show the difference between a poor child's attending a school where 80 percent of class mates are also poor and attending a school where 80 percent of classmates are middle class would, on average, be a 13 to 15 percentile improvement in the poor child's test scores.

Housing policy has proven to be education policy as well. Inclusionary zoning creates genuine "opportunity-based housing"-access to growing suburban job centers and higher quality schools. And, there is no argument that all citizens benefit when all children receive access to quality education.

IZ'S POTENTIAL

Here is a "what-if" scenario for the USA's 100 largest metropolitan areas. What if mandatory IZ laws had been in effect in these areas for the past 20 years, assuming a 15 percent set-aside and a trigger point of 10 or more units (which would cover about 80 percent of all new construction)?

Where to Find More Information on Inclusionary Zoning

Innovative Housing Institute

(www.inhousing.org)

Policy Link (www.Policylink.org)

National Housing Conference

(www.nhc.org)

Business and Professional People in the Public Interest

(www.bpichicago.org)

Between 1980 and 2000, 21.8 million new housing units were built in these 100 metro areas. IZ would have yielded 2.6 million inclusionary units, almost twice as many affordable homes as were built using low income housing tax credits (that HUD says helped finance 90 percent of all affordable housing built). That would have met about 40 percent of the affordable housing need, according to the National Housing Conference.

Furthermore, if all of these communities implemented Montgomery County's policy of purchasing one-third of IZ units for rental to low income households (less than 50% of the AMI), levels of economic segregation would have been reduced by 37 percent. In hot housing markets with relatively low concentrations of poverty, such as Charlotte, Las Vegas, Orlando, Raleigh-Durham, and West Palm Beach, economic segregation could have been totally eliminated.

The true bottom line, however, is the answer to a simple question of fairness raised at the 1973 Montgomery County public hearing the night the country's first and most successful IZ ordinance was passed-the culmination of six years of community advocacy. It was almost midnight, after a long, heated public hearing. The final witness, a youngish woman, rose. She spoke quietly. "I teach third grade at Potomac Elementary School. What I would like the county council to know is that those previous speakers (who opposed the proposed IZ ordinance) entrust me with the education of their children, but they don't want me living in the neighborhood."

And, that's the true bottom line. . . the answer to that simple question of fairness raised by that Montgomery County school teacher back in 1973: Isn't anyone who is good enough to work in a community good enough to live in that community?

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