

Inclusionary Upzoning: Tying Growth to Affordability

By Robert Hickey

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SUMMARY

Cities and older suburbs are growing again. To accommodate rising demand for urban living, localities are relaxing height and other zoning restrictions in transit-served neighborhoods, along old commercial corridors, and in formerly industrial areas, creating valuable new development potential for residential and commercial builders. An increasing number of local governments are linking this growth with affordability expectations. They are creating inclusionary housing policies that condition upzoning on the provision of affordable housing.

This emerging trend is noteworthy for at least two big reasons. First, tying affordability to upzoning can be an effective means for cities and urban suburbs to harness the renewed energy of the housing market to help address growing affordability challenges. Second, the often voluntary nature of these policies may be a way to introduce inclusionary housing policies in places where political, legal, and/or market barriers have historically impeded the policy's broader adoption.


Over the past decade, inclusionary housing policies that have linked affordability requirements to upzoning have been making inroads in new places such as New York City and Washington State. Significantly, these policies are producing (or are poised to produce) significant numbers of affordable housing units – even when designed as *voluntary* policies reliant on incentives.

This paper profiles six localities that have adopted inclusionary housing policies tied to upzoning, referred to here as “*inclusionary upzoning*.” Each profile provides a sketch of how the policy is structured and how effective it has been. Drawing on these examples, the paper explores how neighborhood context, market context, and policy design may affect the success of inclusionary upzoning policies and their potential for adoption in new areas of the country where inclusionary housing has not yet been implemented. The paper concludes with a discussion of areas for future research.



Key findings from case studies:

- Inclusionary upzoning is especially well suited to communities that have hot housing markets, low base zoning restrictions, and districts where residents are supportive of greater development intensity.
- The most impactful inclusionary upzoning policies will apply to a broad geography, and a broad range of development types, including new office and retail uses.
- Even under broad policies, jurisdictions may find it helpful to customize affordability standards and incentives for some neighborhoods.



“New York used to build for the middle class. Today, it seems to build only for the wealthy.... [W]hen neighborhoods are rezoned – unlocking enormous value for building owners – developers should be required to build affordable housing for low- and middle-income families in return....”

–BILL DE BLASIO
New York City Mayor, 2013

Key Terms

Inclusionary Housing – The broad set of policies that encourage or require affordable housing as part of market-rate housing development. Inclusionary housing is often used interchangeably with “inclusionary zoning,” as most inclusionary housing policies are part of the zoning code. But inclusionary housing as used in this paper also includes policies that operate outside of the zoning code, for example in the general land use plan.

Upzoning – Rezoning that permits greater housing or commercial development through such means as density increases, height or bulk increases, parking reductions, or permission to build housing where it was previously prohibited.

Affordable Housing – Housing with monthly costs that are no more than 30 percent of a household’s income.

By-right Zoning – A zone that allows specific forms of development without the need for a discretionary land use permit.

Floor Area Ratio (FAR) – A common measure of development density, consisting of the ratio of built floor space to overall parcel size.

In-lieu Fee – A fee paid by developers to satisfy their inclusionary housing requirement. Many jurisdictions offer this compliance option as an alternative to constructing new affordable homes. Typically, fee revenue is deposited in a housing trust fund and used to facilitate construction of additional units for low- and moderate-income households.

Low Income – Earning between 51 and 80 percent of area median income.

Moderate Income – Earning between 81 and 120 percent of area median income.

Very Low Income – Earning 50 percent of area median income or less.

Introduction

With rents continuing to rise faster than incomes in many metro areas,¹ and communities expressing renewed concerns about gentrification and displacement,² localities are showing growing interest in inclusionary housing as a tool for helping to address local affordability problems.³ Inclusionary housing policies work through the local land use approvals process to require or encourage housing developers to include homes that are affordable to low or moderate-income households as part of market-rate developments. In so doing, these policies directly engage the private sector as partners in addressing local affordability challenges while promoting economically inclusive communities.

Inclusionary housing policies are usually implemented as mandatory requirements, accompanied by various forms of regulatory relief or even subsidies, to help offset the costs to developers of pricing units so that lower-income households can afford them. But sometimes, inclusionary housing policies are optional, relying instead on incentives, such as density bonuses, to encourage developers to produce affordable homes. These policies are often referred to as “incentive zoning” or “voluntary inclusionary zoning.”

Whether mandatory or voluntary, inclusionary housing policies aim to help lower income households access good schools, healthy living environments, and economic opportunities often found in growing areas. For this reason, inclusionary housing is increasingly discussed as a critical strategy for helping to reduce income inequality and concentrated poverty in communities across the United States and to meet federal requirements to affirmatively further fair housing. Among other benefits, inclusionary housing programs have the added appeal of producing affordable homes without the need for as much, or any, direct public subsidy.

Inclusionary housing is far from a panacea, however, as both opponents and supporters are quick to point out. Inclusionary housing policies generally only work well in hot housing markets. And even in these markets, they must be carefully designed to avoid negative impacts on the price and supply of housing in the overall market.⁴ Furthermore, other affordable housing programs have been more successful historically in terms of raw production. Inclusionary housing programs have produced approximately 150,000 affordable homes to date.⁵ This is well below the estimated 2.5 million units built through the Low-Income Housing Tax Credit (LIHTC) program since 1987,⁶ and the 1.8 million households currently served by the Housing Choice Voucher program.⁷



But what distinguishes inclusionary housing, and makes it such an important tool for localities, is its ability to locate affordable homes in neighborhoods of opportunity where state and federal housing programs often struggle to expand affordable housing choices for lower-income households. A 2012 RAND study of 11 inclusionary housing programs found that 76 percent of homes created through these programs were located in dispersed, low-poverty neighborhoods.⁸ Furthermore, 44 percent of these homes were located near low-poverty schools. In contrast, just 7 percent of affordable housing opportunities created through the Housing Choice Voucher program, and 10 percent of homes created through the LIHTC program are located near low-poverty schools.⁹ Traditionally, these resources have been easiest to utilize in lower-cost communities where poverty rates are higher.

Rather than compete with the LIHTC and housing voucher programs, inclusionary housing policies often complement them by extending their reach into areas of greater opportunity than these programs could have reached on their own. Various inclusionary housing programs allow developers to utilize low-income housing tax credits to meet a portion of their affordable housing obligation.¹⁰ Some actively link housing choice voucher holders to inclusionary units as well.¹¹ In so doing, these inclusionary programs leverage the resources of the LIHTC and voucher programs to further disperse affordable housing options.

“Inclusionary Upzoning” – An Easier Fit in Some Communities

Despite the potential benefits of inclusionary housing, many places are limited in their ability to require affordable housing as part of market-rate developments. Some states, such as Oregon and Texas, legally prohibit mandatory inclusionary requirements. These prohibitions are rooted in concerns about protecting private property rights. In California and Colorado, courts have deemed inclusionary housing

to be an impermissible form of rent control, and therefore local towns and cities in these states cannot require affordable rental housing. In some states, local jurisdictions are unclear whether a mandatory policy is authorized by state statute or not, so they avoid proposing or implementing such policies out of fear of inviting a lawsuit. Still other communities have state legal authorization, but are hesitant to attach affordability requirements in housing markets that have not yet recovered from the housing downturn.

Communities that face these constraints may want to look at the experience of the growing number of localities that are asking developers to offer some degree of affordability when they utilize a major upzoning in their community. Upzoning is happening in growing cities and urban suburbs throughout the United States as these places seek to meet the rising demand for urban living from an expanding millennial and retiree population, as well as increases in their immigrant populations.¹²

Optional inclusionary housing policies that only apply when a neighborhood or property is upzoned can enable places to work around legal restrictions that prohibit certain mandatory inclusionary housing requirements. Mandatory policies that are applied just to areas that will see new development potential as a result of a rezoning can also offer wary localities a means for testing inclusionary housing in unproven markets.

To help illuminate whether inclusionary upzoning can expand the use of inclusionary housing to more communities nationwide, this paper examines three primary ways that localities have linked their inclusionary housing policies to upzonings with a focus on six short case studies. Each case study profile reviews how these policies work and examines their track record to the extent that production has already occurred. In so doing, this paper sheds light on the context in which these policies may work best and, accordingly, their potential for broader application.

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New Take on an Old Principle

Requiring affordability in exchange for greater development potential is not new but deeply rooted in inclusionary zoning history. Since the first inclusionary zoning policies were passed, they have regularly offered density bonuses for developments that comply with mandatory policies. Montgomery County, Maryland, established this approach with its Moderately Priced Dwelling Unit (MPDU) ordinance in 1974. Today, the vast majority of inclusionary housing policies nationwide offer density bonuses.¹³ The rationale for a density bonus is to offset a large share (if not all) of the costs of including affordable housing in residential projects by providing developers the ability to build additional units of market-rate housing without having to acquire additional land.

The exchange of development capacity for affordability plays out differently from state to state. For example, in New Jersey, inclusionary zoning programs allow higher-than-normal densities at specified sites that include 20

percent affordability requirements for low- and very low income households. In Massachusetts localities, inclusionary zoning is often voluntary, with requirements tied to developer requests for zoning changes, special permits, or requests to cluster development on land otherwise reserved as open space. In California, all but a handful of the more than 150 inclusionary zoning policies are mandatory, with roughly 75 percent of them offering a density bonus.¹⁴

Jurisdictions most commonly trade development capacity for affordability when negotiating major land use approvals. Examples include approvals for “master-planned communities” that are built on the urban edge, large-scale redevelopments of existing urban space, and smaller planned unit developments (PUDs) – any instance in which considerable zoning flexibility is needed to make new development possible. Most of the time, however, ad hoc deals are struck that are not governed by a defined policy.

The Silverton in the Silver Spring area of Montgomery County (MD) includes 27 affordable condominiums.



Source: Montgomery County Department of Housing and Community Affairs

Three Types of “Inclusionary Upzoning”

A growing number of inclusionary housing policies tie affordability requirements to the option to build at higher densities or heights or to create housing where it was previously forbidden. These policies tend to fall into one of three categories:

1. Voluntary inclusionary housing policies tied to specific areas where upzoning is offered as an option (examples: New York City; Fairfax County, Virginia; Arlington County, Virginia; Santa Monica, California) In many cases, these policies are built into local land use plans that apply to designated corridors or neighborhoods, and condition specific, additional development opportunities on the provision of affordable housing.

2. Voluntary inclusionary housing policies that apply wherever a developer seeks a zoning change (example: Boston). These policies apply to requests from developers for site-specific zoning changes but are not limited to a particular neighborhood.

3. Mandatory inclusionary housing confined to areas that have been upzoned (example: Redmond, Washington). These policies require developers to include a share of affordable housing in new developments, whether or not they utilize the expanded development potential offered through neighborhood upzoning.

TABLE 1. Examples of Inclusionary Housing Programs Tied to Upzonings

Jurisdiction	Policy Name	Policy Type	Year Adopted	Affordability Requirement ^(a)	Incomes Served	Incentives
Arlington County, VA	Columbia Pike Form Based Code	Voluntary	2013	20-35% of net new development	40-80% AMI ^(b)	3-4 additional stories in some parts of the corridor
Boston, MA	Inclusive Development Policy	Voluntary	2000	13%	70-100% AMI	“Zoning relief” of any sort
Fairfax County, VA	Tysons Area Redevelopment Options	Voluntary	2010	20%	60-120% AMI	Unlimited floor area ratios within a quarter-mile of new Metro stations; 20 percent density bonus plus a FAR of 2.0 to 2.5 for areas between a quarter and a half mile of stations.
New York City	Designated Areas Program	Voluntary	2005	20% ^(c)	<80% AMI	33% density bonus
Redmond, WA	Affordable Housing Zoning	Mandatory	1994	10%	<80% AMI	n/a
Santa Monica, CA	Land Use and Circulation Element	Voluntary	2010	Negotiated	Negotiated	Height bonuses of 15-60 additional feet

^(a) % of total units unless otherwise indicated

^(b) Area median income

^(c) Affordability requirement is 20 percent of total floor area

1. Voluntary Inclusionary Housing in Areas that Have Been Upzoned

In recent years, localities have used one of several mechanisms to allow greater heights and densities if a developer commits to providing a share of affordable housing in targeted areas. Depending on the location, this might be accomplished through an overlay zone, a specific area plan, a targeted zoning initiative/program, or revisions to the general land use plan. In some cases, voluntary policies condition only part of the greater development potential being created through upzoning on affordable housing, while others condition all of the access on affordable housing. For example, in many of the designated neighborhoods in New York City that have been recently rezoned, including several former industrial areas, developers can build housing at greater scale than before without any affordability expectations, but they are able to access still greater density bonuses if they provide 20 percent affordable housing. In contrast, in Fairfax and Arlington counties and the city of Santa Monica, existing development options remain very limited in rezoned areas unless the developer offers a share of affordable housing. Each policy is producing (or appears poised to produce) a significant share of affordable housing in connection with growth.

Profile: New York City

Between 1987 and 2005, voluntary inclusionary zoning in New York City was confined to high density, “R-10” zones in Manhattan.¹⁵ In 2005, the city added a second inclusionary housing program that applies to “designated areas” around the city that are being rezoned and redeveloped. Between 2005 and 2013, the expanded program was layered on top of more than 30 rezonings initiated by the city, including upzonings in Greenpoint-Williamsburg, Hudson Yards, and West Chelsea.¹⁶ In May of 2014, Mayor Bill de Blasio announced a plan to make the program mandatory for future upzoned and redeveloped neighborhoods.¹⁷

In its current voluntary form, the designated areas program offers density bonuses of up to 33 percent in exchange for 20 percent affordability.¹⁸ Homes must be permanently affordable for households with incomes up to 80 percent of area median income (AMI). Since 2005, more than 2,800 affordable units have been produced through the designated areas program.¹⁹ Together, the designated areas and R-10 programs have created over 4,400 affordable units as of 2013.²⁰

Developers may utilize city and state loan programs, tax-exempt bonds, low-income housing tax credits, or property tax exemptions to finance the development of the inclusionary units. The city’s property tax exemption

Scope of New York City’s Designated Areas Inclusionary Program (as of July 2013)



Sources: Furman Center for Real Estate and Urban Policy; New York City Department of City Planning

program, for example, exempts property taxes on the net value created through new construction for 20 to 25 years and applies to all the units in the building, including the market-rate units. But if this or other forms of public assistance are used, the inclusionary units must be built on site. Otherwise, developers have the option of building the affordable units off site. There is presently no in-lieu fee option.²¹

Most developers take advantage of the density and financial incentives available from the city. Uptake rates vary by borough and neighborhood, however, as shown in the table below. In Brooklyn’s designated areas, for example, inclusionary affordable units represent 15 percent of housing permitted since the start of the program. If all housing developers took advantage of the density bonus, the affordability percentage would be 20 percent. In Queens, a smaller share of total residential development has been affordable (8 percent), while Manhattan and the Bronx have achieved or exceeded the 20 percent affordability threshold.²²

Palmer's Dock and Edge Community Apartments provide affordable housing units within the Greenpoint-Williamsburg inclusionary housing designated area.

One possible reason for variable rates of developer participation is that baseline height and density limits vary by neighborhood. In neighborhoods of intermediate density, such as areas of Brooklyn and Queens, it may not be helpful to access a density bonus that allows taller heights because that shift could make construction of the entire building more expensive by necessitating a shift from wood to steel construction.²³ In the city's highest density areas like Manhattan, however, developers are already building with steel and concrete, so accessing the density bonus need not change overall construction costs for the building.

Another likely reason for variable participation rates is that developers can build housing at greater densities in many rezoned areas without any affordability expectations. The 20 percent affordability requirement only applies if the developer seeks a still greater 33 percent density bonus. Finally, property tax exemptions play an important role in encouraging developers to utilize the density bonus incentives of the designated areas program, but these exemptions are most valuable in areas where new housing will have the highest value.

In spite of high overall uptake rates for the city's R-10 and designated areas incentives, the 4,400 affordable units created through these two programs represent just 2.7 percent of the approximately 163,000 units built citywide since 2004, according to data from Alan Mallach.²⁴ This would suggest that significant housing development has occurred during this time in areas that were not rezoned comprehensively and therefore subject to the designated areas program.



Source: New York City Department of City Planning

Mayor Bill de Blasio seeks to leverage greater affordable housing from market-rate development by shifting to a mandatory designated areas policy. He sees a stronger, mandatory inclusionary housing policy as a crucial element of enabling the city to achieve the administration's overall goal of preserving or creating 200,000 affordable units over the next 10 years.²⁵

Indeed, a mandatory policy is likely to produce greater results. Unlike the present voluntary designated areas program, which offers supplemental density incentives after a site has been rezoned, a mandatory policy would condition all of the new development potential provided through a site's upzoning on affordable housing.

But based on the data presented above, the city's inclusionary housing policy will need to apply to many more areas of the city to reach its full potential. In fact, such an expansion might be the most impactful change that the administration could make to its inclusionary housing program.

TABLE 2. Inclusionary Housing Units as a Share of Total Development in New York City's Designated Areas (as of July 2013)

Community District	Number of Units in Buildings Issued Permits Within Designated Area	Total Affordable Units Produced Through Inclusionary Housing	Affordable Units as % of Total Units Permitted in Designated Areas
Brooklyn	7,342	1,092	14.9%
Bronx	206	40	19.4%
Manhattan	7,342	1,723	23.5%
Queens	420	33	7.9%
New York City Total	15,310	2,888	18.9%

Source: New York City Department of City Planning (www.nyc.gov/html/dcp/html/ih_production/index.shtml)

Profile: Fairfax County, Virginia

In 2010, Fairfax County adopted a 20-year comprehensive plan to guide major changes to the county's sprawling commercial center known as Tysons Corner. The plan envisions significantly greater development intensity within walking distance of four new Metrorail stations, which opened in 2014, along with mixed-use development, a walkable street grid, and other physical changes that support transit use. The plan requires developers to include 20 percent low- and moderate-income housing²⁶ in exchange for lucrative redevelopment options at sites within a half-mile of the new Metro transit stations. Within a quarter mile of each Metro station, developers can build to an unlimited floor area ratio (FAR) with the provision of affordable housing. Elsewhere in each transit-oriented development (TOD) district (within a half-mile of the Metro stations), developments can access a FAR of up to 2.4 or 3.0, depending on whether office space is included, by meeting the affordability requirements.²⁷

Office, retail, and hotel developments that take advantage of higher density must make contributions to the county's affordable housing trust fund. Developers can make one-time contributions at \$3.00 per square foot or annual payments of \$0.25 per square foot for 16 years.

The affordability requirements for developers choosing redevelopment options in Tysons Corner are significantly greater than those applied to developments in other areas of the county. Fairfax County's general inclusionary zoning policy, known as its Affordable Dwelling Unit (ADU) program, exempts taller, steel-and-concrete-based residential buildings²⁸ and otherwise requires 5 to 12.5 percent affordability for multifamily housing.²⁹

Given the strong expected demand for housing near the new transit stations and sharply higher allowable density under the comprehensive plan, private developers have shown a high level of interest in building notwithstanding the affordability requirements. As of October 2013, the county had received redevelopment applications for most of the available development space subject to the affordability requirements. All of these rezoning applications have chosen to take advantage of the redevelopment options allowed through the Tysons Corner comprehensive plan, electing to build the required affordable units on site, within the same housing development as the market-rate units. As of late 2013, over 1,000 total housing units were under construction, with an additional 13,640 units approved for development.³⁰ If existing development proposals are fully built out, county staff estimates they will create more than 2,500 affordable units serving households earning less than 120 percent of AMI, and an additional 1,680 units serving households at less than 70 percent of AMI.³¹ These housing units will be required to be affordable for 50 years if rented and 30 years if owner-occupied.³²

Approximately 36,000 square feet of retail space, 1.2 million square feet of commercial space, and 250,000 square feet of hotel space are also under construction in Tysons Corner. Another 20 million square feet of non-residential space has been either approved or proposed. If these plans are fully built, staff estimates they will generate at least \$64.5 million in contributions to the county's affordable housing trust fund – all of which must be spent in the new Tysons Corner area.³³

This simulation depicts the transformation envisioned for one area of Tysons Corner.



Source: Fairfax County Office of Community Revitalization

Profile: Arlington County, Virginia

In late 2013, Arlington County adopted a new, optional, form-based zoning code for residential neighborhoods along the Columbia Pike corridor - a major county thoroughfare that will host a new streetcar line. Property owners retain the right to develop under the existing zoning code. But under the form-based code, developers can build at greater heights and densities if they meet affordability requirements.

Current zoning along Columbia Pike generally allows development to be no taller than three to four stories. Under the new form-based code, housing development in many areas of the corridor will be able to reach up to six to eight stories (and even higher in some cases). Somewhat lower parking requirements of 1.125 parking spaces per unit are also available.

To access this new development potential, developers are required to set aside between 20 and 35 percent of net new units as affordable housing. The exact affordability requirement is tied to the additional development potential provided at a given site. As the ratio of new-to-existing development increases, so does the affordability percentage.³⁴ For example, if a developer were to propose doubling the size of an existing 50-unit multifamily building under the new form-based code, 20 percent of the additional 50 units would need to be affordable (i.e. 10 affordable units,

which is 10 percent of the overall development). If the same site were to be torn down and redeveloped as a 150-unit development, 30 percent of the additional 100 units would need to be affordable (30 affordable units, or 20 percent of the total development). Homes must be affordable to households with incomes between 40 and 80 percent of AMI for 30 years.³⁵

The Columbia Pike residential form-based code is an important part of the county's efforts to spur revitalization of this once struggling but newly resurgent corridor, while avoiding the displacement of existing lower-income residents. Columbia Pike is home to the majority of the county's affordable rental stock, which has declined substantially over the past decade. Between 2000 and 2012, the number of homes affordable to households earning up to 60 percent of area median income (AMI) decreased by 14,000 units (a decline of 70 percent). As the corridor redevelops, the county is committed to preserving 100 percent of Columbia Pike's existing affordable units (6,200 in total for households earning up to 80 percent of AMI).³⁶ The affordability incentive built into the residential form-based code is one of the county's core strategies for preserving and increasing the supply of affordable housing along the corridor.³⁷

Given the code's recent adoption, no development has as yet taken place under it, though as of July 2014, developers had submitted preliminary applications for three sites.³⁸

Commercial and residential development are transforming Columbia Pike.



Profile: Santa Monica, California

The city of Santa Monica has a mandatory inclusionary zoning program that generally requires 5 to 20 percent affordability.³⁹ But when the city adopted a new Land Use and Circulation Element (LUCE) as part of its general plan in 2010, it established a “performance zoning” framework that allows developments along the city’s commercial corridors to access greater heights and densities in exchange for additional affordable housing beyond what the city’s inclusionary policy requires. The goals of the plan are to achieve community benefits – such as affordable housing, historic preservation, streetscape improvements, open space, and/or social and cultural facilities – while channeling new, mixed-use, pedestrian-oriented development into the city’s commercial corridors, some of which will soon have new light rail service.

The LUCE establishes by-right heights of 32 to 36 feet⁴⁰ along the city’s commercial corridors, and a tiered review process through which new development can exceed these heights. The city will allow developers to obtain a “tier 2” height bonus through a conditional use permit, and taller (“tier 3”) height bonuses through a development agreement. In both instances, community benefits are required for developments seeking greater than base heights. The first priority community benefit is affordable housing for households earning no more than 180 percent of median income. The LUCE does not define exact affordability targets, nor for how long homes must remain affordable, leaving these terms to specific plans, development agreement negotiations, or, in the case of tier 2 bonuses, forthcoming revisions to the zoning code.⁴¹

For many developments seeking a tier 2 or tier 3 height bonus, the city prepares a “value enhancement” analysis to quantify the boost in land value generated by city permission to increase the scale of the development. This study provides context for the city’s decision-making over what level of community benefits should be requested as part of granting a bonus.

San Diego State Professor Emeritus Nico Calavita describes the process used in Santa Monica for reviewing these bonus requests as a “land value recapture” approach to upzoning negotiation. Calavita argues that linking affordable housing requirements to rezoning in this way is not just politically appealing in some situations, but justified in light of the windfall gains in land value that accrue to landowners once their properties are upzoned. The gains created through relaxed zoning should be partially shared with the larger community – especially if there is some risk that there may be some dis-amenities that come with upzoning.⁴²



Source: PlaceWorks

Conceptual illustrations of the 20-year transformation envisioned for Nebraska Avenue near the Bergamot Expo Station.

Bergamot Area Plan

The Bergamot Area Plan provides an example of Santa Monica’s use of performance zoning and land value recapture in the context of a large redevelopment. It also illustrates the challenges of generating affordable housing through upzoning in communities where large-scale mixed-use developments are contentious.

In 2013, the Santa Monica City Council approved the Bergamot Area Plan to help transition 142.5 acres of former industrial land into a “walkable, sustainable, and innovative complete neighborhood” that will include residential and mixed-use development.⁴³ Under the plan, developers can build up to 32 to 39 feet by right, at a maximum FAR of 1.75. Additional affordable housing beyond what is required by the city’s inclusionary zoning policy, along with other community benefits offered by developers, enables access to heights of 60 to 86 feet.⁴⁴

In February 2014, a developer sought city council approval for a major redevelopment in the Bergamot area consistent with the incentives of the Bergamot Area Plan. This large-scale, mixed-use development known as the Bergamot Transit Village was to include 498 apartments and more than 400,000 square feet of office, restaurant, and retail space, spread across five buildings. The developer proposed heights of 6 to 7 stories, with an average FAR of 2.46.

The value enhancement study prepared by the city's consultant found that increasing heights and FAR as requested by the developer would boost the value of the land by \$36.5 million compared to the development scenario permitted under the LUCE by right.⁴⁵ Based on these findings, the city gave initial approval to the development proposal in exchange for 93 affordable units (18.5 percent of the total development). This included 25 units affordable to households earning less than 30 percent of AMI per the city's existing inclusionary zoning requirements and an additional 68 "workforce" housing units affordable to households with incomes up to 150 percent of AMI. The developer would have also contributed another \$11 million to early childhood education programs and invested more than \$3 million in bike sharing and traffic reduction programs.⁴⁶

Ultimately, however, the council rescinded its approval in response to opposition from Santa Monica residents who had gathered enough petition signatures to put the council's initial approval up for citywide referendum. Opponents expressed concerns about the traffic impacts and parking space shortages that might result from the large increase in commercial space proposed by the developer, and the limited parking provided on site.⁴⁷ It

is unclear whether the sponsor of the Bergamot Transit Village will return to the city council with a revised proposal.

Many smaller projects, however, have obtained city council approval to use height and density bonuses through the new LUCE framework. One example is 1318 2nd Street – a four-story, mixed-use development near the city's downtown comprised of 53 residential units and ground floor commercial space. Under the city's jurisdiction-wide inclusionary housing policy, the development was required to provide five very low-income affordable units. But to gain permission to increase the building height from 32 to 45 feet, the developer provided an additional three affordable units for low-income households, in addition to other community benefits. The property is expected to begin construction soon.⁴⁸

As more developments are initiated under the tiered review process of the LUCE in Santa Monica, and as more development is channeled to the city's commercial corridors where light rail service is already up and running, it will be instructive to track whether large-scale, mixed-use developments that provide additional affordable housing will be able to win community support.

1318 2nd Street in Santa Monica is a mixed-use development that was able to add a floor of height in exchange for additional affordable housing. It was approved in 2013.



2. Voluntary Inclusionary Housing Policies That Apply Wherever a Developer Seeks a Zoning Change

Some localities apply a standard inclusionary housing requirement to all rezoning requests, rather than negotiate on a case-by-case basis or limit the policy to designated areas that have been rezoned comprehensively. This has some advantages, such as simpler administration, greater predictability for developers, and broader application. A potential limitation is that it allows for less tailoring to specific rezoning or neighborhood circumstances. However, as illustrated by the case of Boston below, a citywide policy tied to rezoning requests need not preclude additional affordability expectations for specific areas, such as those that have been comprehensively rezoned.

Profile: Boston

In 2000, former Mayor Thomas Menino signed an executive order creating the city's Inclusionary Development Policy (IDP). The policy applies to any residential development of 10 or more units seeking zoning relief and requires 13 percent affordable housing.⁴⁹ The policy also applies to any residential development built on public land or with public financial assistance.



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In addition to building the affordable units within the proposed development, developers have the option of building the units off site or paying an in-lieu fee, referred to in Boston as the buyout fee. Buyout fee revenues are deposited in a city fund that supports affordable housing citywide. A minimum of half of these funds must be spent in neighborhoods where the percentage of affordable housing is less than the citywide average.⁵⁰

Half of for-sale affordable units must be affordable for households earning less than 80 percent of AMI and half for households earning between 80 and 100 percent of AMI. Rental inclusionary units must be affordable for households earning less than 70 percent of AMI.⁵¹ Rental units must remain affordable for 50 years. For-sale homes have a 30 to 50 year affordability term (the Boston Redevelopment Authority can add 20 years to the term after the first 30 years).⁵²

As of September 2012, the Boston IDP had produced 1,070 affordable units. It had also generated at least \$36.3 million in fees-in-lieu.⁵³ Of these totals, 152 affordable units and \$22.6 million in buyout payments have been generated since 2009.

The vast majority of affordable housing produced through the city's IDP policy is triggered by a request for zoning relief (as opposed to the provision of financial assistance or public land to a developer).

Such zoning relief may take any form, though typically the triggering event is a request for additional height and/or density. Most developers need additional height and/or density to create new housing in the city⁵⁴ because the zoning code in most areas of the city has not been

updated for decades and allows only low-scale buildings by right.⁵⁵ With little remaining vacant land, developers find that adding new housing necessitates building up. Accordingly, most of the housing built in the past few decades has required zoning relief of some form.⁵⁶

In addition to being triggered by developer-initiated zoning requests, the IDP also applies whenever developers elect to take advantage of greater heights or densities enabled by a city-initiated, comprehensive neighborhood rezoning. Sometimes, a new neighborhood plan and comprehensive rezoning will stipulate that developers provide greater than 13 percent affordability to access the newly permitted heights and densities. The new Fenway neighborhood zoning, for example, requires 20 percent affordability.⁵⁷

Boston provides an example of a city that applies its inclusionary upzoning policy broadly, and that enhances its affordability requirements on a neighborhood-by-neighborhood basis through comprehensive rezonings. In both instances, these "requirements" remain technically voluntary, though prevailing low-height zoning restrictions make these policies functionally mandatory in most cases.

3. Mandatory Inclusionary Housing in Upzoned Areas

Some jurisdictions have established new mandatory inclusionary housing policies in neighborhoods that have undergone a major upzoning as part of a community planning process. As with similar voluntary policies, the rationale is that the community at large should share with the developer in the value being created by relaxed zoning. For localities that want to ensure they produce affordable housing, but are wary of developing a mandatory policy that is too restrictive, this approach of only requiring affordable housing in areas that have been rezoned may be an appealing third way.

Profile: Redmond, Washington

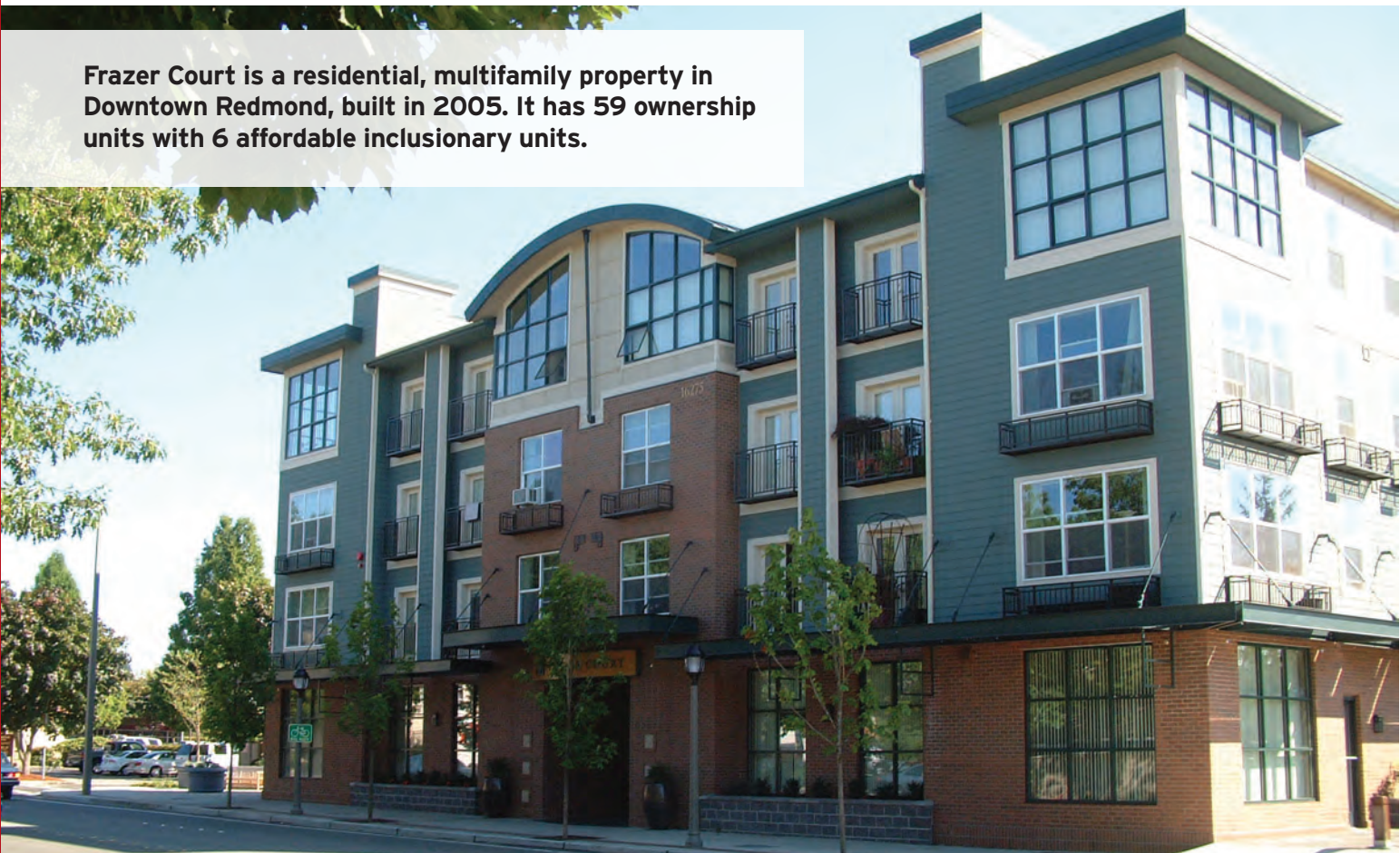
The city of Redmond is one of a handful of small King County jurisdictions that have adopted a mandatory inclusionary housing policy restricted to upzoned neighborhoods. The city's policy, known as Affordable Housing Zoning, was adopted in 1994 and has been implemented on a neighborhood-by-neighborhood basis as communities adopted neighborhood plans with higher allowable densities. The policy currently applies to the downtown area and the neighborhoods of Bear Creek, Willows/Rose Hill, Grass Lawn, Education Hill, Overlake, and North Redmond.⁵⁸ In each neighborhood,

new developments with 10 or more units must provide 10 percent of units at affordable prices for low-income households earning no more than 80 percent of AMI.

As of early 2014, the city's inclusionary housing policy had produced 308 affordable homes (283 rental and 25 for sale). The rental units are required to be affordable in perpetuity. For-sale inclusionary units are subject to a 50-year affordability control period. Most of the affordable homes are located in the city's downtown, where the policy was first applied during a rezoning that began in 1994. Starting in 2002, additional neighborhood rezonings occurred one after the other. All but one neighborhood has agreed to include affordability requirements in their rezoning.⁵⁹

For a small city of 56,000 people, 308 new affordable housing units is not an insignificant accomplishment. But the impact of Redmond's inclusionary housing policy appears to have been diminished by its incremental expansion over time. The 308 affordable units produced through the policy over 20 years is less than 10 percent of the 3,448 new households that the city added over just 10 of those years, suggesting the policy has not applied to the entirety of the city's growth since the policy's inception.⁶⁰ Had the city's Affordable Housing Zoning applied to more areas of the city from the start, it might have produced more inclusionary homes over the past 20 years.

Frazer Court is a residential, multifamily property in Downtown Redmond, built in 2005. It has 59 ownership units with 6 affordable inclusionary units.



Source: City of Redmond

Context and Policy Design Affect Impact

It is too soon to evaluate fully some of the programs described above, as several are relatively new and have not yet produced affordable homes. But some **initial conclusions** can be drawn about program features and community contexts that impact the generation of affordable units:

- **Inclusionary upzoning works best in hot housing markets.** The examples of inclusionary upzoning discussed above are all located in housing markets where prices and rents have been on the rise and housing demand has been strong. Places with weaker housing markets will have less success with policies that trade affordability for upzoning. This makes sense, as density and height bonuses tend to be most valuable in areas with high land prices and high housing demand. If the market is not strong enough to support high rents or home prices for new market-rate units, the additional market-rate units enabled through upzoning may not be sufficient to adequately cross-subsidize the cost of the affordable inclusionary units.
- **Low base zoning creates the potential for compelling incentives.** In the Tysons area of Fairfax County, base zoning allows relatively limited residential and commercial development. The new height and density allowances are substantially greater than what developers could achieve by right. Given these new development opportunities and strong housing demand, it is not surprising that developers have already submitted proposals for most of the sites where new affordable housing incentives apply. Boston's policy has a high rate of utilization and success for similar reasons. In New York City, the designated areas program has had uneven participation, especially in some Brooklyn neighborhoods where it appears that profitable redevelopment can happen without the density incentives. This may be because moderate-scale, multi-unit housing can already be built by right in these neighborhoods. Also, as discussed above, the density bonuses offered in these neighborhoods actually may be counterproductive, because the additional units could entail higher, per-unit construction costs for the entire development.
- **Inclusionary upzoning necessitates community buy-in.** Inclusionary housing policies tied to upzonings will work best in neighborhoods where taller and denser development can be designed to fit within the local context. It also helps if greater development scale is needed for achieving neighborhood goals such as economic revitalization, and is supported by transit

investments and other infrastructure that enable less car congestion—particularly if new development will include commercial as well as residential uses.

- **Access to public assistance may strengthen the appeal of trading affordability for height and density bonuses.** For the first nine years of New York City's designated areas program, participating developers could receive a density bonus and still access 20-25-year property tax exemptions. They can also apply for state low-income housing tax credits and city financial assistance supported by bond revenues, which can help further bridge the financial gap between construction costs and affordable rents or sales prices. If the city did not offer this financial assistance to market-rate housing developers, it is not clear whether the density bonus incentive offered through the voluntary designated areas program would have produced 2,880 affordable units. In fact, city staff reports that such assistance is an important part of the appeal of the voluntary program. Access to public subsidies and other assistance, therefore, may be worth consideration in other jurisdictions seeking to increase voluntary developer participation.
- **Commercial development in upzoned areas can also be asked to contribute to affordable housing.** Fairfax County's application of its Tysons inclusionary housing policy to commercial properties will generate millions of dollars in revenue that must be spent on affordable housing in the Tysons plan area. For jurisdictions looking to enhance their incentive zoning program by allowing access to public subsidies or to simply increase the impact of their inclusionary upzoning program, these commercial development contributions may prove highly valuable. A policy that applies to commercial as well as residential uses spreads the obligation to contribute to workforce housing over a broader share of the development community, which may appeal from a fairness perspective as well.
- **Broad geographic applicability produces more affordable units.** Where development will happen can be hard to predict. Inclusionary requirements tied only to certain neighborhoods can miss opportunities to achieve affordable housing through development that can occur in unpredictable locations. For example, Redmond may have been able to produce more than 300 units in 20 years had the policy applied more broadly at the time of its inception. Most of the jurisdictions profiled are similar to Redmond in that the area subject to new inclusionary incentives is a small minority of total land area. In some jurisdictions, such as Santa Monica, these areas truly



Source: Greensboro Park Property Owner LLC.

A conceptual drawing of Greensboro Park Place, located near the Greensboro Metro station in Tysons.

may be the only places where new growth will occur. But a more effective policy is likely to be one that is implemented broadly. Such is the case in Boston, where the policy applies to zoning relief requests throughout the city, as well as to comprehensively upzoned communities where affordability requirements are often enhanced. Fairfax County and Arlington County achieve broad applicability in a different way: each has a jurisdiction-wide, mandatory inclusionary housing policy that is supplemented by the voluntary policies in Tysons Corner and Columbia Pike respectively. As in Boston, some form of affordability requirements will apply to most new development in these jurisdictions, even if development trends and the locus of redevelopment shift.

- **Voluntary inclusionary upzoning may be more effective if requirements are tailored to the financial value of upzoning at a particular site or in a given neighborhood.** Arlington County's new form-based zoning overlay, for example, increases the required affordability percentage in step with the scale of new development permitted through the overlay. Santa Monica takes a more intensive approach and prepares land-value enhancement studies for larger developments seeking to access bonus heights permitted through the city's new

LUCE. The city then uses these studies to inform negotiations with developers about the provision of additional affordable housing. While it is too soon to evaluate the impact of either of these policies, the approach is intriguing.

In contrast, in New York City, the same affordability requirement is applied to developments regardless of how valuable the height or density bonus may be for a given neighborhood. Local planning staff reports that taller height allowances in certain neighborhoods are not always appealing from a developer's feasibility perspective due to the higher costs of constructing tall buildings (over approximately six stories). This appears to have limited the appeal of the voluntary designated areas program in Brooklyn and Queens. In Tysons in Fairfax County, the same affordability requirements apply whether the proposed development is located within a quarter mile of a new metro station or elsewhere in each TOD area where lesser density incentives apply. So far this has not appeared to dampen developer interest in redeveloping these areas of the county. But it is important to note that the Tysons redevelopment options are tailored to a relatively small area of the county, unlike in New York City where the same affordability requirements apply across multiple boroughs.

Conclusion and Suggestions for Additional Research

Inclusionary upzoning policies can take various forms. They can be mandatory or voluntary. They can apply jurisdiction wide or only in designated neighborhoods or corridors. They can act as stand-alone policies or supplement existing inclusionary housing programs in specified, upzoned neighborhoods. Ultimately, they can be customized to local context.

The policies described in this report vary in their impact, but as a whole offer encouraging results. Collectively, New York City, Boston, and Redmond have generated over 4,000 affordable homes through inclusionary upzoning. The newer policies of Fairfax County, Arlington County, and Santa Monica are starting to show results as well.

Inclusionary upzoning will be an easier fit than traditional inclusionary housing in some jurisdictions. It can be the basis for an incentive-based policy in places that face legal barriers to mandatory inclusionary housing. Or it can offer a way to test inclusionary housing in unproven markets, by limiting the policy to neighborhoods where upzoning will increase development potential.

In either context, there is a compelling logic to these policies. When localities relax zoning restrictions, they often create considerable new value for landowners in the form of greater development potential. It stands to reason that some of this new value should be shared with the community at large in the form of public benefits, especially new affordable housing.

The effectiveness of inclusionary upzoning may vary, however, depending on market and neighborhood context. The policies profiled in this report suggest that inclusionary upzoning is especially well suited to communities that have hot housing markets, low base zoning restrictions, and districts where residents are supportive of greater development intensity.

The most impactful inclusionary upzoning policies will apply to a broad geography, and a broad range of development types, including new office and retail uses. However, broad application need not mean using the same affordability standard or incentives everywhere. For example, a jurisdiction can have a standard affordability requirement that applies to requests for zoning variances, and adjust the affordability requirements in areas where comprehensive upzoning, additional public investments, and/or policy and planning objectives make higher affordability requirements

appropriate. Voluntary policies in particular will need to offer density or height bonuses that are economically valuable in the context of existing zoning permissions and neighborhood context. The best of these policies will tailor incentives by area or neighborhood without becoming prohibitively complicated to administer or introducing too much discretion and therefore uncertainty to appeal to developers.

Additional research is needed to better answer whether inclusionary upzoning can be successful in new areas of the country. Research on the following questions would benefit the field:

- What share of the millions of new housing units needed between now and 2050 will necessitate rezoning? What share of new commercial development will necessitate rezoning?
- Which of the large cities nationwide that are experiencing sizeable housing demand have not yet made major changes to increase permissible heights or densities through their zoning code? Are these places ripe for inclusionary upzoning policies?
- In places where inclusionary housing policies can only be voluntary for legal, political, or market reasons, what can be done to make inclusionary incentives more appealing? Does it ever make sense for a jurisdiction to allow “double dipping” – i.e. to offer financial subsidies such as property tax exemptions in addition to upzoning benefits – in order to increase voluntary participation in inclusionary housing?
- Can increases in land value related to upzoning be more easily or systematically quantified so that inclusionary requirements can be adjusted based on the value of the upzoning provided, without creating prohibitively heavy administrative burdens?
- Could the principle of voluntary inclusionary upzoning be applied successfully to conversions of farmland and open space to single-family housing?
- Given the importance of location in inclusionary housing policies, will inclusionary upzoning adequately distribute affordable housing throughout a jurisdiction, especially in areas with high performing schools, access to jobs, and healthy living environments? Or will it just increase the availability of affordable homes in central cities and suburban downtowns where schools may not be as strong and other opportunities may be lacking?

A large, dark brown sign with white text that reads "Spring Hill" and "Wiehle-Reston East" is mounted on a concrete structure. The sign is part of a modern transit station. In the background, there are several multi-story buildings with blue and white facades under a clear blue sky.

Spring Hill
Wiehle-Reston East

“By 2050, the population is projected to reach about 400 million—a 28 percent increase. As a nation, we will have to build more than 30 million new housing units to accommodate this growth, and millions more to replace older housing units that are abandoned or torn down. We have to choose whether to build these new units in the same fragmented, segregated patterns as in past decades, or whether we will begin to move towards a society in which there is less socioeconomic differentiation between communities. The decisions we make or fail to make about metropolitan development will go a long way to determining whether all citizens will have access to quality housing, safe neighborhoods, economic opportunity, and quality education for their children.”

—PAUL JARGOWSKY
Professor of Public Policy, Rutgers University, 2013

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Formed in 1931, the nonprofit National Housing Conference is dedicated to helping ensure safe, decent and affordable housing for all in America. As the research division of NHC, the Center for Housing Policy specializes in solutions through research, working to broaden understanding of America's affordable housing challenges and examine the impact of policies and programs developed to address these needs. Through evidence-based advocacy for the continuum of housing, NHC develops ideas, resources and policy solutions to shape an improved housing landscape.



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Center for Housing Policy, a division of the National Housing Conference

1900 M Street, NW | Suite 200
Washington, DC 20036
Phone: (202) 466-2121
Email: chp-feedback@nhc.org
Website: www.nhc.org
Twitter: @nhcandcenter

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