Davis CA: *Affordable Housing Program*

Davis, a small city of 65,000 in northern California, is known for its progressive planning and environmental policies. This program is notable for its efforts to provide a fuller range of housing types, including a variety of affordable ownership and rental housing as well as the dedication of land for social and special needs housing.

INTRODUCTION

The city of Davis, with a population of roughly 65,000, is a university town and a bedroom community for nearby Sacramento. The city is well-known for its commitment to progressive planning and environmental policies.

It passed its first mandatory inclusionary zoning program – the *Designated Low-Price Housing Program* – in 1977. This was replaced by a new program – the *Affordable Housing Program* – first as a policy in 1987, and then through an ordinance in1990. (The adoption of the ordinance had the effect of changing the provisions from guidelines to regulations that were more detailed and less flexible and open to interpretation.) This ordinance was substantially revised in 2005.

In 2004, the city introduced a parallel program, called its *Middle Income Housing Program*, to serve a different income band and to provide housing mainly for the local workforce. This program was suspended in mid -2009 until at least 2011, when it will be re-assessed. It was suspended because in the current economic downturn the market prices have dropped so much that this program is no longer needed. Although suspended, the program is still described in the following text because it illustrates another way to use inclusionary practices.

The ordinance for the affordable housing program is found in the city's Municipal Code. The program is administered by the city's Community Service Department.

State legislation in California does not mention inclusionary zoning, nor explicitly require or enable local governments to use it. Nevertheless, it is accepted that the legislation provides ample implicit authority for the local jurisdictions to use inclusionary zoning, both voluntary and mandatory.

Support for inclusionary zoning can be found in various housing measures adopted piecemeal over the years. One of the key provisions is the "density bonus law" that requires municipalities to provide increased density and other local incentives for affordable housing in mixed-income developments. Taken in its entirety, this legislation strongly compels local jurisdictions to use their resources and powers (but not necessarily inclusionary zoning) to affirmatively provide for – not just to plan for – their affordable housing needs.

Inclusionary zoning is widely used in the state. According to a 2006 survey, at least 170 local governments in the state have adopted inclusionary zoning. Out of this total, approximately 75% are mandatory.

PROVISIONS

Subject Developments

The affordable housing program requires all new residential – both ownership and rental – developments of 5 or more units to provide affordable housing or land dedicated to affordable housing.

The middle-income housing program affected all residential ownership developments of 25 or more units.
An exemption from these middle-income requirements was made for condo developments where 75% or more of the total residential units were stacked units without separate ownership parcels. The intent of this exemption was to encourage this particular form of development, in part for its inherent affordability.

Housing Obligation

<u>Affordable Housing</u>

All new developments of 5 or more units must provide 25% of the units (or their equivalent) as affordable units. The one exception is for rental developments of 20 or more unit, which must provide 35%.

The affordable housing obligation must be met either by construction on site or dedication of land, depending upon the size of the development (see the attached table).

The dedicated land must be economically feasible and physically suitable for developing the required number of affordable units. For purposes of calculating the land required, a density of 15 units/acre is used for ownership developments and 20 units/acre for rental.

The dedicated land is used for a range of potential housing listed in the ordinance, and all typically involving some form of funding assistance. These include various types of non-profit as well as public, limited equity co-op, land trust, student and self-help housing.

The initial ordinance sought to achieve a mix of housing in somewhat different way. Each development was expected to provide a standard mix of 10% through on-site construction, 10% through the land dedications, and 5% through lots for self-help housing. While this precise mix was seldom achieved, it did provide the basis for a negotiated package tailored to each development.

This approach was dropped in 2005 for at least two reasons. With smaller developments, the 10% for land dedication too often led to parcels that were too

Housing Obligation by Housing Type & Development Size

Number of Units	Required Set-Aside	Required Housing Provision	Income Range (% of AMI)
Affordable Ownership			
5-75	25%	on-site construction	80% to 120%
75-200	25%	land dedication	50% to 80%
200+	25%	50% on-site construction + 50% land dedication	
Affordable Rental			
5-19	25%	on-site construction	50% & 80%
20+	35%	on-site construction or land dedication	50% & 80%
Middle-Income Ownership			
25-35	10%	on-site construction	120% to 180%
36-49	15%	on-site construction	120% to 180%
50+	20%	on-site construction	120% to 180%

small for effective use. Also, self-help housing had not been developed for many years and ever since state funding had been curtailed. (Self-help housing is a form of affordable housing, in which a team of homeowners collectively built their own homes under the supervision by a local non-profit agency funded by the state.) Only Habitat for Humanity had continued to take advantage of these sites.

Middle-Income Housing

All new ownership developments of 25 or more units formerly were also required to provide on-site 10% to 20% of the total units as middle-income units, depending on the size of the development (see the attached table).

This set-aside requirement in this case was based upon a % of the total units, which included the market-rate units and affordable units plus the density-bonus units resulting from the affordable housing program.

Targeted Income

The income targeted by the two programs depends upon the type of development.

The on-site affordable ownership units must be affordable to households earning between 80% to 120% of the county median income, and with an average at 100%, as adjusted by unit size.

The on-site rental units must be affordable to incomes at 80% and 50%. Those in developments of 20 or more units must provide at least 25% for households at 80% of the median income, and 10% at 50%. Those in developments with 5-19 units must provide 15% and 10% respectively for these income targets.

The dedicated lands must be used for housing serving incomes ranging from 50% to 80%, and with an average of 65%**.**

The on-site middle-income ownership units must be provided at a range of prices affordable to households between 120% and 180% of the county median income, and with the average at 140%.

Cost Offsets

The program provides a density bonus of one additional market unit for every affordable unit, rental or ownership, provided on-site.

A corresponding density bonus is also given to developments providing dedicated land. The density bonus is assessed on the basis of 15 units/acre for ownership units, and 20 units/acre for rental.

These density bonuses are given automatically; they are not negotiated.
No density bonuses were provided for the middle-income units.

The city also allows for reduced development standards – like lower parking requirements and more flexible setbacks – to be negotiated case-by-case. It does not offer fee waivers**.**

Compliance Alternatives

In the case of the affordable housing, fees-in-lieu are accepted as alternative for on-site construction, but only in narrow circumstances – specifically, only for small developments (up to 30 units and 10 acres in size) that can demonstrate that providing the affordable units would create a “unique hardship”.

The current rate is $37,500 per unit. The fees are adjusted to reflect increases in building costs. The fee was initially set in 1989 at $18,000/unit. This fee is based on half of the average subsidy per unit that the city has contributed to support the provision of an affordable unit. (It does not reflect the subsidies that come from other sources.)

The fees go the city's housing trust fund, and are used for loans to affordable housing developments, primarily on the dedicated lands.

There were no compliance alternatives for the middle-income housing; all of the inclusionary units were required on-site.

Development Standards

Many of the development and design matters are settled in the course of negotiating and approving an 'affordable housing plan' that must be submitted for each development and are subject to a public review process.   They cover such matters as the composition, design, phasing, location and amenities of the affordable units as well as how they will be marketed.

The ordinance itself contains few regulations specific to the physical development of the affordable inclusionary units:

- In the case of the rental units, they must include a mix of unit sizes, based on housing need. These units cannot be clustered together in any building or area of the development; they must be dispersed throughout the entire development. These units must be constructed using the same building materials and providing equivalent amenities as those for the market-rate rental units.

- In the case of the ownership units, they only must be provided in a mix of 2- and 3-bedroom units, with a minimum of 50% as 3-bedroom in the case of the affordable units and 55% for the middle-income. Smaller and larger units can be provided as an option.

Although not mentioned by the regulations, the city as a standard practice has required the inclusionary ownership units to be dispersed among the market-rate units. It also allows more modestly-size units to be provided for the affordable units, including attached units in otherwise single-family estates.

The city also has consistently required a high level of design for all housing construction, including the affordable unit.
The city is open to alternative ways of providing the housing, provided it at least matches the requirements set out in the ordinance.

Affordability Controls

<u>Control Period</u>

The affordability of the units from both the affordable and middle-income programs, and on-site and on the dedicated lands, must be maintained in perpetuity.   This requirement was introduced for the ownership units only in 2004; until then, they were controlled only to the first resale. Perpetual affordability of the rental units has been required since the outset of the program.

<u>Legal Agreements</u>

The affordability controls on the ownership units are maintained through restrictive covenants recorded on the property.

In addition, they are subject to two additional legal provisions:

- a deed restriction that secures a lien on the property in favour of the city for the difference between the permitted resale price and the initial sale; and

- a permanent right of first refusal that enables the city either to buy the units whenever resold or transferred, or to designate a third party to exercise that right.

The latter provision was introduced on units built after the start of 2005 The city can charge a 1% administrative fee to be taken from the real estate transaction in order to pay for the cost of executing the right.

A local non-profit organization has bee designated to exercise this right on all resales. It does this by assigning an eligible buyer to buy the unit.

<u>Eligibility Criteria</u>

Eligibility for purchasing an affordable (and middle-income) ownership units is tied solely to the relevant income thresholds and certain associated asset limits.

Households with net assets above $250,000 are ineligible for the affordable housing program, and above $300,000 were ineligible for the middle-income program. For households below these asset limits, their household income is increased on the basis of 3.75% of their net assets.

Households already owning a home are not disqualified, but they must sell the property before buying an affordable unit, and the equity they receive will be considered as part of their assets.

<u>Sales Process</u>

The developers are responsible for the marketing and selling of the new affordable units.

The process is subject to various marketing protocols established by city. Among other things, the developers must advertise by placing ads in the local newspaper, various specified newsletters, and local radio and community television stations.

The developers must use agents approved by the city – either a local non-profit and designated mortgage brokers – to screen the eligibility of the purchasers.

The developers must use purchase or lease agreements approved by the city.

Since early 2005, they also must use a lottery to select the buyers for the ownership units – affordable and middle-income – and give preference to households with an adult working in the city, households with a disabled person, and seniors. The first category is called housing for the "local workforce", and is the main priority for this lottery system.

The preferences are expressed by giving the following number of "tickets" (up to a maximum of 4) for each of these categories:

- 4 for local workforce;
- 2 for the disabled;
- 2 for seniors; and
- 1 for the general public.

Initial Sales Price

The city annually sets the maximum initial sales price for these units based on changes in the county's median income adjusted by household size.

In the case of the affordable ownership units, the calculations are based upon the households paying no more than 35% of the gross monthly income for housing expenses, including mortgage principal and interest, taxes, insurance, assessments and homeowner fees as applicable. A higher percentage, ranging from 35% to 40%, is used for the middle-income housing.

Resale Price

The increase in the resale price for the affordable units is capped at a maximum of 3.75% per year, compounded annually. This figure allows 3% toward the price increase and 0.75% toward maintenance costs. The 3% was based an average of the historical increase in the median income for the county.

The resale price formerly was limited to an increase of 5½% per year.

The middle-income units are capped at 5% per year, compounded annually. This allows for the above-mentioned factors plus an additional equity return of 1.25%.

Occupancy Controls

The owners must occupy the unit as their principal residence throughout their ownership. Initially, the purchasers of the affordable units were only required to live in them for two years.

ADMINISTRATION

The program is administered by the city's Community Services Department. It is run by a staff of 3½, excluding the legal staff involved in enforcement and the planning staff engaged in the affordable housing plans.

The department's main responsibilities are these:

- providing input into the approval process for the affordable housing plans;
- setting annually the maximum permitted new sales prices;
- supervising or running the lotteries;
- checking that the standard sales documents and terms have been used;
- monitoring occupancy of the ownership units;
- approving any change in the financing; and
- enforcing the regulations.

To monitor occupancy, the owners must annually respond to a letter certifying that they are living in the unit. The department has found that the neighbours frequently report absentee owners.

The office has contracted out many of the administrative duties. A local non-profit agency is used to execute the right of first refusal; that agency also keeps its own waiting list for that purpose. A non-profit agency or approved mortgage brokers are used to verify the income eligibility and lottery status of the initial buyers. In the case of households seeking rental accommodation, they are expected to contact the managers of the individual existing developments.

PRODUCTION

The affordable housing program from 1987 to late 2009 has produced 1708 units in 17 ownership subdivisions and 35 rental projects. Nearly 40% (678) are affordable ownership units, and remainder rental. About a quarter of the rental units have been built on-site by private developers, and the remainder on the dedicated lands using funding from a variety of government sources.

All of the rental units are under permanent affordability controls, but only about 70 affordable ownership units. Most of the remaining ownership units have been probably lost to the open market because they were subject to the earlier and much less effective controls.

The affordable ownership units serve households earning incomes 80 to 120% of the area median income. The rental units serve predominantly those in the 30 to 80% bracket.

The affordable units represent approximately 16% of the all of the new housing units built in the city during that time.

Approximately $150,000 in fees-in-lieu also has been collected.

No income middle-income units were ever produced.

COMMENTS

This program is notable for its efforts to create a wide array of affordable housing for different needs and incomes. This has been achieved by requiring the following:

- affordable ownership and rental units at a range of prices, and not just at one price point as most commonly done;
- dedicated land that can be used by the city to support the development of rental, special needs and other housing; and
- middle-income housing primarily for the “local workforce” at a range of prices higher than that for the affordable ownership units.

As a consequence, the program has produced a variety of ownership – single-family, attached, condo and self-help – as well as rental units. In addition, the dedicated lands particularly have been used for a number of other needs – seniors housing, an artists co-op, a group home, various shared living or "co-housing" projects, and homes for victims of domestic violence, the developmentally disabled and the homeless.

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