

## **What are inclusionary housing programs?**

Inclusionary housing programs are municipal programs that rely upon the development regulations and approval process to have private developers provide some portion of the housing within their new market projects as affordable housing.

### **Comparison with social housing programs**

The policies represent a fundamentally different way to providing affordable housing from the conventional social housing programs used to date in this country. While not all affordable housing programs are the same, in the main they adhere to the following characteristics:

- providing housing affordable on a permanent basis to a wider mix of incomes in all new residential developments and, thereby, a more affordable range of housing across the entire community.
- engaging the private developers to build and provide the units at a price or rent well below what the market would otherwise provide.
- establishing fixed and non-negotiable rules regarding the affordable housing obligation so that all developers are treated in a consistent and equitable way.
- relying on concessions available through the regulatory process (like density bonuses and fee rebates) – and not financial subsidies – to reduce the cost burden on the developers for providing the affordable housing.

### **Models**

There are currently two prominent models for inclusionary housing programs. Both have proved to be effective in producing affordable housing. Both have developed a distinctive set of rules and procedures, and both are widely used in many jurisdictions.

The first is ‘inclusionary zoning’ as practised in the US. Introduced in the early 1970s, it is now used in at least 300 communities, and perhaps as many as 400, in over a dozen states.

The second is the ‘planning gain’ system used in Britain. First introduced by a number of local governments in the 1980s, it is now promoted and supported by national planning legislation.

No comparable Canadian model has emerged. Some cities – namely, Vancouver, Montreal and Toronto – have programs (or incipient programs) to support the development of mixed-income communities, but these are more limited in scope and effectiveness than the American and British models. Also, nothing like a common country-wide model has been developed.

Local governments in BC are authorized by legislation to use practices that are sometimes called inclusionary zoning. Those practices are almost the same as those

authorized in Ontario under the s37 provisions. At best, both have a weak resemblance to inclusionary zoning as used in the US.

### **Mandatory vs Voluntary**

Inclusionary programs can be divided into two types: mandatory and voluntary (or incentive-based). Mandatory programs require the developers to provide affordable housing as a condition of development approval, and then typically provide some form of regulatory concessions in return. Voluntary programs encourage the developers to provide the affordable housing by using regulatory concessions as incentives. Simply put, in the mandatory, the developers have no choice but to provide the affordable housing if they wish to build, while in the voluntary they have the choice of building without the incentives.

Although the available evidence is not absolutely conclusive, there is ample and strong support for saying that the voluntary programs don't work. Most voluntary programs have produced little affordable housing. Those few that have produced have done so because other policies or regulations – like growth management policies – have established an obligation to provide affordable housing.

### **Key Features**

All of the inclusionary programs in the US address more or less the same broad regulatory topics, but they often also vary significantly in their regulatory details.

The following is an attempt to describe the basic or predominant regulatory practices that evolved in recent years in the US programs.

These practices are not being put forward as a recommended approach for Canada. Different priorities and mechanisms can be expected to emerge here. In any case, some of the features of the US programs cannot be readily imported. Nevertheless, considering that these practices have been tried and tested for well over 30 years, this experience should be used as a valuable starting point when developing corresponding programs in this country.

### **Housing Set-Asides**

The developers are required to provide a fixed percentage of the total units in a residential development as affordable units. The required set-asides typically range from 10% up to 20%. Sometimes an alternative lower requirement is used to encourage the provision of particular types of housing, like housing for lower incomes or for rent.

In most cases, the programs simply take a share of whatever the developer is otherwise building. The programs do not require a certain mix of units nor set minimum unit sizes. As a consequence, the affordable housing has been provided mostly as affordable ownership rather than rental.

### **Targeted Incomes**

The affordable housing must be provided at a price (or rent) affordable to households earning below a specified income threshold. The thresholds are based on a percentage of the local median income according to household size. The income thresholds range from 60% to 120% or more, with the higher thresholds seen in the more expensive jurisdictions. The federal government annually provides the necessary income data for every jurisdiction in the country.

The thresholds are used to ensure that the affordable housing is made available at a price or rent substantially below that for the equivalent market units in the development and generally on the market.

These thresholds are set at what might be considered an intermediate level of affordability. They are directed at providing housing for households earning too little to afford market housing but too much to be eligible for social housing assistance.

### **Subject Developments**

The requirements apply to virtually all private developments, but with two common exceptions. An exception is made for developments providing the equivalent or more affordable housing in other approved ways.

The other main exception is for small developments. Many programs do not apply to development below a certain size. The cut-off can range from 10 or 50 units. The rationale behind these provisions is that the requirements would affect the small developments too adversely.

Alternatively, other programs apply the requirements to developments of 2 or more units, but take fees-in-lieu as the affordable housing contribution from the small developments.

### **Compliance Alternatives**

All of the programs are directed first and foremost at securing affordable units constructed on site. This is fundamental to inclusionary principles.

At the same time, most programs also allow alternatives, most commonly payment of fees-in-lieu and construction on another site. Often, but not always, these alternatives are permitted only at the discretion of the municipality, and then only when they better serve the housing needs of the community.

The fees-in-lieu are generally set at a rate that reflects the value of the cost written down that would have been achieved by on-site construction; or put another way, the cost to the municipality of supporting the construction of equivalent affordable units on another site. In some cases, a higher rate is charged in order to ensure a greater benefit is achieved, or discourage the developers from using this option.

Although the use of fees-in-lieu appears to contradict inclusionary principles, it has at least two notable benefits. It enables the municipalities to exact contributions in an equitable way from small projects. It also provides a source of funds that can be used to provide housing for households not well served by inclusionary developments.

### **Cost Offsets**

Most programs offer regulatory concessions directed at off-setting either entirely or partially the losses incurred by the developers in providing the affordable units.

Density bonuses are the most common and generally most effective form of cost offsets. Others include fee reductions or waivers, fast-tracked approvals, and relaxed development standards (like lower parking standards, reduced setback and coverage requirements, and higher height limits).

These cost offsets notably do not include financial subsidies. Those few programs that do utilize financial subsidies use them to achieve additional or more affordable units than otherwise required. No inclusionary programs rely on financial subsidies to provide affordable housing.

### **Affordability Controls**

The affordability and occupancy of the units are controlled to ensure that the affordable units are occupied only by households meeting income and other eligibility controls for a long period of time.

The inclusionary ownership units are nearly all controlled through restrictive covenants registered on the title of the property. These restrictions are passed on to all subsequent owners whenever the units are resold during the control period. In this way, the initial price reduction achieved in “locked-in” and passed after allowing for some inflationary adjustment to other eligible buyers.

There has been a very apparent trend toward making these units “permanently affordable”. Most new programs, and many older programs have been amended to, set the controls for at least 30 years. Even longer restrictions – such as, for perpetuity or the life of the building – are becoming more common.

Provisions that make the controls renewable whenever the units are sold within the control period are also being used more frequently to extend the affordability.

### **Development Standards**

The programs typically require that the affordable units are mixed with the market-rate units, and look the same on the outside. They also require that they are built more or less at the same time, and to the same standard and size, but allow some differences in the interior finishes, fixtures and appliances.

### **Other Important Options**

Until recently, inclusionary zoning has been a greenfield phenomenon; it has been associated mainly with low-density suburban-type developments in smaller towns and on the edge of cities, but not in the cities themselves. This has changed only in the last ten years, which has seen a number of big and prosperous cities adopt these programs and still others are actively explore.

The big-city programs take a different approach to their green-field counterparts in two related ways: 1) how the cost offsets (if any) are set, and 2) what developments are subject to the requirements.

### **Fixed vs Negotiated Offsets**

It is important to note that all of these programs – greenfield and big-city – fix the required affordable housing. To be specific, the amount of housing and its delivery price or rent are fixed in the regulations and not open to negotiation.

The greenfield programs also typically fix the other side of the equation. In return for the required affordable housing, these programs offer a non-negotiable and standard package of density increases, fee waivers and other cost offsets.

The big-city programs take a different tack. They allow for negotiating the cost offsets on a case-by-case basis.

This approach can be seen as simply recognizing the big-city reality. The majority of developments in these cities typically require re-zoning, and so would be subject to negotiation even if there was no inclusionary requirement.

The approach has an important benefit. Granting density bonuses on an automatic and predetermined basis is likely to face strong public resistance in any built-up area. Using a flexible negotiated approach allows the municipality to determine what is appropriate for the particular context and conditions for every site.

### **As-of-Right vs Re-Zoned Developments**

Big-city programs make a distinction between those developments going ahead under the “as-of-right” zoning provisions, and those needing a zoning amendment. They then apply either the affordable housing requirements only to the re-zoned developments, or a higher requirement to those developments.

The rationale behind this approach is that these developments are receiving additional and often considerable private economic benefit through the development approval process, and the municipality as a condition of that approval should recover some part of that benefit for the public good.

The success of this approach depends on how much development proceeds through the re-zoning process. In most big cities, the majority of development goes through this process, and so these programs do apply to most developments.

## Main Lessons

The American experience with inclusionary housing programs offers a number of important lessons:

- The programs have proven to be an effective– if not, the most effective – way for local governments to deliver affordable housing when relying on their own powers and resources.
- They are effective only when the provision of affordable housing is mandatory. Programs where the provision is voluntary or incentive–based have produced little affordable housing.
- There are limits to what the programs can achieve.
  - They have been able to generate a shallow subsidy sufficient to produce below–market housing , but not the deep subsidy needed to provide conventional social housing.
  - They are capable of producing affordable housing in communities when there is strong demand for new development, but not in periods of recession nor in areas of limited or no growth.
  - Because they take a percentage of what the developers are building, they typically produce much more affordable ownership than rental housing.
- The programs can operate without the use of conventional funding assistance. This is important because they do not compete with existing programs reliant on scarce resources.
- For all of these reasons, the programs probably are best used to serve a different need than conventional social programs. This is the growing number of moderate–income households no longer able to buy new homes in their communities.
- Nevertheless, there are ways of supporting the rental sector within these programs. These include accepting land or cash that can be used for rental construction, or enabling non–profit groups to buy the ownership units at a reduced price for rental.

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