

Inclusionary Zoning

Inclusionary zoning requires new residential construction projects to contribute to a jurisdiction’s affordable housing stock. Inclusionary zoning can enable jurisdictions to leverage private dollars for affordable housing, bringing affordable units online faster and in greater numbers than relying exclusively on public funding streams. Inclusionary zoning can also help ensure new affordable housing units are developed in the same neighborhoods as new market-rate development, which has the potential to further economic integration and reduce historic patterns of exclusion and segregation.

Legal Context

What Does State Law Require?

[AB 1505 \(2017\)](#) outlines state requirements for a jurisdiction’s inclusionary zoning ordinance. The law requires jurisdictions to allow alternative means to comply with requirements, such as in-lieu fees, building affordable units off-site or dedicating land for the construction of affordable housing. Under certain circumstances, the law also allows HCD to review a local ordinance that requires more than 15% affordable units.

Program Design, Implementation and Evaluation Considerations

The callout box below labeled “TOC Policy Requirements” describes the policy features necessary for a jurisdiction to receive credit toward TOC Policy compliance. All other policy features discussed in this document represent details found in existing policies on the subject and a jurisdiction may want to consider them when adopting or implementing a policy, but nothing is required for TOC Policy compliance unless noted as a requirement in the “TOC Policy Requirements” callout box or the [TOC Policy Administrative Guidance](#).

At-A-Glance

RELEVANT STATE LAWS

[AB 1505 \(2017\)](#)

POTENTIAL FUNDING SOURCE

- Revenue from in-lieu fees
- Annual monitoring fees
- General Funds

COST

Low. May require a feasibility analysis or other studies. Operations can be cost-neutral as they can be funded by monitoring fees assessed on properties.

ADMINISTRATIVE BURDEN

 **Medium**

Staff capacity needed to develop program, conduct feasibility studies if needed and lead public and legislative processes. The feasibility study and oversight of ongoing operations can be contracted out.

EXTRA CONSIDERATIONS

 **Highly effective**

WHICH P?

Production

POTENTIAL PARTNERS


- Community Based Organizations

OPTION FOR TOC POLICY COMPLIANCE?

Yes!

Elements of the Program

- Required percentage of affordable units
- Affordability requirements
- Period of affordability
- Building type and tenure that ordinance applies to
- Alternative means of compliance
- In-lieu fees
- Tenant selection process
- Ongoing monitoring

 **TOC Policy Requirements:** To comply with the TOC policy, inclusionary zoning ordinances must require at least 15% of units be deed-restricted affordable units. Jurisdictions may elect to set requirements higher than 15%. If the inclusionary zoning policy requires less than 15% affordable units, the jurisdiction must provide an analysis showing economic equivalency of the alternative standard (e.g., fewer units at deeper levels of affordability) or a financial feasibility analysis showing that a 15% requirement is not feasible for the jurisdiction's local market conditions. [MTC has developed a spreadsheet to help determine if an alternative standard is economically equivalent to the TOC Policy requirement.](#)

The policy must apply to both rental and ownership units. For rental units, the policy's affordability requirements must require the income mix of affordable units to average out to 80% of AMI or less, with no affordable rental units available to households above 120% of AMI. For ownership units, the policy's affordability requirements must require the income mix of affordable units to average out to 120% of AMI or less, with no affordable ownership units available to households above 150% of AMI. Jurisdictions should require deeper levels of affordability where feasible or by offering additional incentives. The affordability deed restriction must be at

least 55 years for rental housing and at least 45 years for ownership housing.

The policy must apply to newly constructed residential or mixed-use residential projects.

The policy may exempt properties with fewer than 11 units, student housing, 100% affordable housing, senior housing or other special housing types.

Per state law, inclusionary zoning must allow for alternative means of compliance (e.g., paying in-lieu fees to support affordable housing development, building affordable units off-site or dedicating land for the construction of affordable housing).

A jurisdiction with an in-lieu fee that typically results in less than \$100,000 per required onsite affordable unit must provide justification for how the fee will result in at least as many restricted affordable housing units as would be required of a project providing on-site units. [MTC has developed a spreadsheet to help determine whether an in-lieu fee is equivalent to at least \\$100,000 per required onsite affordable unit.](#)

Jurisdictions must establish a management plan for monitoring and implementation that outlines procedures for annual monitoring to ensure that residents are income-eligible, and rents are consistent with program guidelines.

Program Design Considerations

Jurisdictions may want to consider the following:

FEASIBILITY STUDY: Conducting an economic feasibility study to ensure that the requirements do not pose a barrier to new construction. Feasibility studies look at market rents, prices and construction costs to evaluate whether projects that face a given

affordable housing requirement are likely to be financially feasible. They can allow jurisdictions to recalibrate the affordability requirements of inclusionary zoning to match changing market conditions. Additionally, HCD may request a feasibility study for requirements greater than 15%.

MANDATORY OR VOLUNTARY: While most inclusionary zoning ordinances are mandatory, some are voluntary, providing valuable incentives to developers to include affordable units in their projects.

AFFORDABILITY REQUIREMENTS: Setting the required percentage of affordable units. This percentage may vary by construction type or geography within the jurisdiction.

INCOME TARGETS: Developing inclusionary housing affordability requirements in response to housing needs identified in the jurisdiction's Housing Element or related affordable housing plan. Jurisdictions can encourage deeper levels of affordability where feasible or by offering additional incentives. Some jurisdictions provide incentives for projects to elect to serve lower-income households.

HOMEOWNERSHIP: Applying inclusionary requirements to for-sale projects, typically at a higher AMI than rental units. Programs can specify what happens to an ownership unit at resale if the resale is prior to the expiration of the term of affordability, keeping in mind how the sales proceeds are divided between the city and seller and whether a new affordable term begins upon sale to the new owner. Many jurisdictions renew the affordability term upon sale to the new owner.

BUILDING TYPE: Defining the types of projects that are subject to the inclusionary requirements - usually this includes setting a minimum project size in terms of units or gross square feet.

GEOGRAPHY: Most inclusionary policies apply city-wide. However, some jurisdictions apply different inclusionary rates to distinct parts of their cities, for example higher rates in the downtown core.

ALTERNATIVE MEANS OF COMPLIANCE: Offering additional compliance alternatives such as building affordable units off-site and dedicating land for the construction of affordable housing. Some jurisdictions with an off-site alternative require that off-site affordable units be completed prior to, or alongside, the primary development and/or near the market rate project when feasible to foster mixed-income neighborhoods and reduce segregation. These alternative means of compliance provide valuable flexibility for developers, allowing them to be more cost-effective and ensuring units come online more quickly.

IN-LIEU FEES: Structuring fees to lead to outcomes that are at least equivalent to the inclusionary requirement. Jurisdictions can include the formula used to calculate the fee in the ordinance, thus enabling annual fee updates to reflect the changing costs of construction. Many jurisdictions include their inclusionary fees in their annual fee schedules.

TIMING OF IN-LIEU FEES: Identifying a specific time in the development process to collect in-lieu fees. Later fee collection can improve the financial feasibility of an in-lieu fee, while earlier fee collection enables affordable housing development to closely trail market rate development.

PERIOD OF AFFORDABILITY: Requiring income restrictions for 55 years, 99 years or for the life of the project. Affordability terms also sometimes vary by housing tenure.

INCENTIVES: Providing meaningful incentives to provide inclusionary units rather than paying fees. Most jurisdictions offer a density bonus to allow developers to build additional market-

rate units to offset reduced revenue. Density bonuses are typically given as an increase in allowed dwelling units per acre (DU/A) or floor area ratio (FAR).

TENANT SELECTION: Establishing a fair and transparent tenant selection process, such as random lotteries. Some jurisdictions develop a master waitlist for inclusionary rental units in the city. When a vacancy occurs, the jurisdiction provides the property manager with the names on the waitlist.

TENANT PREFERENCE POLICY: Giving priority to certain applicants in the lottery process (for example, households displaced by disasters or eviction). Preferences add significant complexity to the screening and selection process and should be used only when they support clear and important public policy goals. Preference policies should be designed with careful attention to fair housing goals. Policies that offer a preference based on local residency are often adopted only after completion of a fair housing analysis that ensures that the policy will not have a ‘disparate impact’ on any racial group.

REGULATORY AGREEMENTS: To ensure long-term affordability of inclusionary units, regulatory agreements can be recorded on the property title. These agreements may include the following elements:

- Recitals outlining the basis for affordability requirements, such as inclusionary zoning provisions, density bonus terms, or other relevant entitlements, along with the legal description of the property.
- Identification of affordable units, including the number of units, unit sizes, and bedroom counts.
- Affordability period and detailed rent calculation methodology, including provisions for annual rent increases, income certification requirements, and policies for over-income tenants.

- Required lease terms, with a focus on fair housing compliance
- Property management requirements, such as marketing, maintenance responsibilities and record-keeping standards.
- Procedures for managing changes, including the expiration of affordability terms, condominium conversions, or defaults.
- Process of amending the agreement, if necessary.

DESIGN AND LOCATION: Requiring that inclusionary units are comparable to market rate units in terms of unit size, number of bedrooms, amenities and other key features. Generally, jurisdictions require that inclusionary units be evenly distributed throughout the project. Jurisdictions can avoid exacerbating any existing segregation patterns by requiring that offsite units are located near a project’s market-rate units and meet similar design standards.

MARKETING: Requiring a marketing plan that describes how the units will be marketed to tenants or buyers and how tenant and buyer qualifications will be verified. Jurisdictions can define a review and approval process for marketing plans. Policies can also require developers of inclusionary units to list all vacancies on the Bay Area Housing Finance Authority (BAHFA)’s Doorway Housing Portal to ease the burden of finding openings for potential applicants. Jurisdictions can require developers to affirmatively further fair housing goals by marketing units to diverse racial and ethnic groups by sharing listings in the jurisdiction’s commonly spoken languages, and by multiple methods of publication, such as websites, social media and flyers.

Program Implementation, Administration and Enforcement

Inclusionary zoning policies are generally implemented via ordinance. Before and after policy adoption, jurisdictions can conduct outreach about the importance of investing in affordable housing and mixed-income communities and engage community partners, such as real estate developers, in the process.

Jurisdictions may entrust property managers with the responsibility of performing annual income verification and providing explanations when individuals on the waitlist are not selected. Alternatively, jurisdictions may partner with a third-party administering agent, who can market units, ensure tenants are eligible and support/monitor property management companies. By working with a nonprofit or other third-party partner, jurisdiction staff will have more capacity to focus on other responsibilities. For instance, the nonprofit Housing Land Trust of Sonoma County manages the inclusionary ownership housing for many Sonoma County jurisdictions. Through this partnership, inclusionary units go directly into the land trust's portfolio, making the units permanently affordable. Jurisdictions can identify which tasks could be accomplished in-house, which tasks can be delegated to property managers, and which can be contracted to a third-party administering agent or nonprofit.

Jurisdictions can collect annual monitoring fees from rental and ownership projects to ensure that the jurisdiction maintains and grows capacity to effectively monitor long-term affordability as the portfolio of below market rate units grows.

Program Evaluation

To evaluate the effectiveness of inclusionary zoning programs, jurisdictions can consider the following questions:

- How many affordable units have been created and are they onsite or offsite?
- How much money has been collected in fees? How has that money been spent?
- If the program is producing BMR homeownership units, do those units remain affordable to the same income groups over time?
- Does the pool of applicants reflect the full racial diversity of the broader local housing market?
- Do the demographics of the residents of inclusionary units reflect the diversity of the applicant pool?
- What percent of projects are selecting the fee option compared to onsite?
- Is the current fee enough to allow the jurisdiction to fund at least one affordable unit for each unit that would otherwise have been provided onsite?

Complementary Policies

AFFORDABLE HOUSING OVERLAY ZONE:

Affordable housing overlay zones provide additional incentives for affordable housing development in specified geographic areas.

Other Resources

EXAMPLES*

[City of San Mateo - BMR \(Inclusionary\) Ordinance](#)

[City of Belmont - Inclusionary Zoning Ordinance](#)

[City of Hayward - Affordable Housing Ordinance](#)

[City of Richmond - Inclusionary Zoning and Affordable Housing Linkage Fees](#)

SAMPLE RFPS

[City of Alameda - Rental and Ownership Program RFP](#)

[City of Emeryville - Affordable Housing Program RFP](#)

NEXUS AND FEASIBILITY STUDIES

[City of Hayward - Analysis and Feasibility Study](#)

[City of Santa Rosa - Residential Impact Fee Nexus and Feasibility Study](#)

[City of Hayward - Inclusionary Zoning Feasibility Study](#)

[City of Santa Cruz - Inclusionary Zoning Feasibility Study](#)

OTHER RESOURCES

[Grounded Solutions Network - Inclusionary Zoning Design Worksheet](#)

[Grounded Solutions Network - Program Assessment for Inclusionary Housing Policies](#)

[Lincoln Land Institute - Inclusionary Zoning: Creating and Maintaining Equitable Communities](#)

[Inclusionary Housing.org, powered by Grounded Solutions Network](#)

[Local Government Commission - Meeting California's Housing Needs: Best Practices for Inclusionary Housing](#)

[Association of Bay Area Governments - Inclusionary Housing: Designing a Policy](#)

[Metropolitan Transportation Commission - Survey of Existing Policies](#)

[Metropolitan Transportation Commission - Production Policy 1: Inclusionary Zoning](#)

[Metropolitan Transportation Commission - TOC Inclusionary Zoning Resources](#)

**Note that examples have not been vetted for full TOC Compliance.*

This document is intended to provide general information and does not constitute legal advice. Additional facts, facts specific to a particular situation, or future developments may affect the subjects discussed in this document. Seek the advice of your jurisdiction's legal counsel before acting or relying upon this information. For specific questions regarding TOC compliance, please reach out to TOCpolicy@bayareametro.gov.