



# The 8th Annual Hudson Valley Affordable Housing Summit

# Building the Future: Practical Strategies to address Affordable Housing

### May 15, 2025 8:00 a.m.–12:30 p.m.

This year we will highlight the revolutionary work of affordable housing practitioners who are integrating community culture and sustainability, reviewing practices and finance structures for affordable homeownership, and finding new innovations that meet housing needs. The Summit will bring together elected officials, housing and community development leaders, financial lenders, business professionals, activists and others to identify and work toward affordable housing solutions. The Summit will invite us all to imagine how we build a housing future for all.

# AGENDA

8:00 a.m8:30 a.m.	Breakfast & Networking
8:30 a.m8:45 a.m.	Transition into Room
8:45 a.m9:00 a.m.	<b>Welcome &amp; Introduction</b> Tiffany B. Zezula, Esq., <i>Staff Consultant, Housing Action Council and Deputy</i> <i>Director, Land Use Law Center</i> Kenneth W. Jenkins, W <i>estchester</i> County Executive
9:00 a.m9:50 a.m.	<b>Session 1: Zoning for Housing</b> That National Zoning Atlas is digitizing, demystifying, and democratizing information about the country's ~30,000 local zoning codes. A zoning code analyst and project manager will describe the zoning results from Westchester and the surrounding Counties.
	Devon Chodzin, Project Manager, National Zoning Atlas Jessica A. Bacher, Esq., Executive Director, Land Use Law Center
	The Original Civic Research & Action (OCRA) program at Mamaroneck High School is a 4-year program that helps students become civic entrepreneurs by guiding them as they identify needs in their community and develop and implement community-based civic action projects with the assistance of local mentors and experts. Brought together by a shared interest in the national affordable housing crisis, the OCRA affordable housing team's research focuses on the assessment of inclusionary zoning as one tool in the toolbox for creating affordable housing and its application in the three municipalities that comprise the Mamaroneck Union Free School District.
	Joseph Liberti, Founder and Director, Original Civic Research & Action (OCRA), Mamaroneck High School

Anna Blanco, Original Civic Research & Action (OCRA), Mamaroneck High School Alex Gross, Original Civic Research & Action (OCRA), Mamaroneck High School Hannah Hehler, Original Civic Research & Action (OCRA), Mamaroneck High School

Tyler Prozes, Original Civic Research & Action (OCRA), Mamaroneck High School

**Moderator:** Peter Feroe, AICP, *Vice President, Planning and Land Development, AKRF* 

# 9:50 a.m.-10:40 a.m. Session 2: Aligning Community Goals: Housing, Sustainability and Conservation

This session will describe the key linkages between housing, sustainability and conservation efforts. Learn from various panelists about green development, green housing financing and funding, and integrative efforts to break down silos in conservation and affordable housing development to create sustainable communities.

Rebecca G. Crimmins, Senior Vice President of Real Estate and Development, Institute for Community Living and Co-Convener, Hudson Valley Alliance of Housing and Conservation Andrew Germansky, Senior Vice President, Real Estate, Westhab, Inc. Maulin Mehta, AICP, New York Director, Regional Plan Association (RPA) Samantha Pearce, VP of Sustainability, Office of Housing Preservation, New York State Homes & Community Renewal Tiffany B. Zezula, Esq., Deputy Director, Land Use Law Center

#### 10:40 a.m.-11:30 a.m. Session 3: Affordable Homeownership.... It's Back!

In an era of housing scarcity and an affordability crisis, developers and governments are finding ways to bridge the affordability gap for homeownership. Skilled practitioners will discuss ways in which public/private partnerships developed for housing stability and equity pathways to homeownership.

Jessica A. Bacher, Esq., Executive Director, Land Use Law Center Orisha Jennings-Hudgins, MPA, *Director of Housing, City of New Rochelle* Christina Lazarus, *Manager, Benefits, Northwell Health* Alexander E. Roithmayr, *Director of Government Affairs, Hudson Gateway Association of Realtors, Inc.* James R. Wendling, *Chief Operating Officer, WBP Development LLC* 

#### 11:30 a.m.- 12:20 p.m. Session 4: Community Preferencing Legal challenges have arisen in various jurisdictions. In New York City, the "community preference" policy, which reserves a portion of affordable housing units for local residents, was the subject of a lawsuit alleging it perpetuated racial segregation. The case was settled in 2024 without a definitive legal resolution, leaving questions about the legality of such preferences unresolved. Learn more from panelists regarding whether local resident preferences are allowed under the Fair Housing Act.

Michelle Cafarelli Kabat, Esq., *Associate, Nixon Peabody LLP* Harry J. Kelly, Esq., *Partner, Nixon Peabody LLP* 

Moderator: Jason Labate, Esq., Partner, Goldstein Hall PLLC

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# The 8th Annual Hudson Valley Affordable Housing Summit

# Building the Future: Practical Strategies to address Affordable Housing

May 15, 2025 8:00 am- 12:30 pm

# **SPEAKER BIOS**

# Jessica A. Bacher

Land Use Law Center, Elisabeth Haub School of Law at Pace University



Adjunct Professor Jessica Bacher is the Executive Director of the Land Use Law Center. Established in 1993, the Land Use Law Center is dedicated to fostering the development of sustainable communities and regions through the promotion of innovative land use strategies and dispute resolution techniques. As the Executive Director, Professor Bacher's responsibilities include development and implementation of projects relating to local land use practice, energy siting, distressed property remediation, sustainable communities, land use responses to sea level rise, and affordable housing, as well as providing strategic assistance to

numerous municipalities.

Most recently, Professor Bacher led the City of Newburgh, NY, in the development of a distressed property remediation implementation plan that focuses on the development of a land bank. Additionally, she serves as a trainer for the Center's award-winning Land Use Leadership Alliance Training Program that has educated over 2,500 local leaders in land use strategies, consensus building, and regional stewardship. Professor Bacher also the immediate past chair the American Bar Association's Section of State and Local Government Law. At Haub Law, Professor Bacher serves as an Adjunct Professor, teaching Land Use Law, Sustainable Development Survey, and the Advanced Land Use and Sustainable Development Seminar.

Professor Bacher also administers the Center's academic programs and guides student research. In addition, she is a Lecturer and project supervisor at Yale School of the Environment, where she manages the school's Land Use Clinic. She authors regular land use features in New York and national publications and has edited numerous small books in the fields of Land Use and Real Estate Law, including Breaking Ground and Planning and Building in Priority Growth Districts. She also presents at regional and national conferences and served on the New York State Climate Action Plan Land Use and Local Government Working Group, Climate Smart Communities Standards Committee, Master Plan for Aging Task Force, and the Sea Level Rise Task Force Legal Work Group. Professor Bacher was selected by the American Bar Association to receive the Jefferson B. Fordham Award, an award presented to a young practitioner who has shown great promise through her contributions to the field. Professor Bacher received her JD summa cum laude from Haub Law in 2003, along with a certificate in Environmental Law.

# Michelle Cafarelli Kabat

Nixon Peabody LLP



Michelle Cafarelli Kabat is an associate in Nixon Peabody's Affordable Housing and Real Estate group. She works with nonprofit and for-profit developers, landowners, and investors in all aspects of multifamily affordable housing real estate transactions. Her practice focuses on representing purchasers and developers in the acquisition, construction, rehabilitation, and financing of multifamily affordable housing properties, including developments financed with loans insured by the Federal Housing Administration (FHA). As part of this representation, she works with clients to obtain regulatory approvals from the Department of Housing and Urban

Development (HUD) and other federal and state/local agencies.

# **Devon Chodzin**

National Zoning Atlas



Devon Chodzin has worked on the National Zoning Atlas' central team as a zoning code analyst and project manager since 2024. With the central team, he has analyzed zoning regulations in New York, Pennsylvania, Massachusetts, Colorado, Florida, and New Mexico. He now oversees the completion of zoning atlas projects from start to finish while improving data quality and supporting research projects within the organization and with research partners.

Prior to working with the central team, Devon worked as an analyst with the Hawaii Zoning Atlas, which was completed in early 2024. Prior to working on zoning analysis, he worked in program management for two CDCs in his hometown of Cleveland, OH. He earned his master's in city planning from the University of Pennsylvania Weitzman School of Design in 2024 and is based in Pittsburgh, PA.

# **Rebecca G. Crimmins**

Institute for Community Living, Inc.



Rebecca Gillman Crimmins has worked on the financing and development of affordable and supportive housing, as well as planning and policy in government and community development nonprofit organizations, for 15 years. She joined ICL in 2021 as the Senior Vice President of Real Estate and Development, where she currently oversees supportive and affordable housing development, asset management, and leasing.

Previously, Ms. Crimmins was an Assistant Vice President at New York State Homes and Community Renewal, financing affordable housing with tax exempt bonds and subsidies across the State, and a Senior Policy Analyst, working on housing issues

within the Land Use Division at the New York City Council. She holds a Bachelor of Arts degree from Sarah Lawrence College and a Master of Science degree in City and Regional Planning from Pratt Institute. In her spare time, she enjoys being outdoors and convening open space and affordable housing groups as part of the Hudson Valley Alliance for Housing & Conservation to develop a holistic, equitable and proactive approach to housing, climate change, and land conservation.

# **Peter Feroe, AICP**

AKRF, Inc.



Peter is a Vice President and a leader of AKRF's New York Hudson Valley municipal and land planning practice for public and private clients focused on single- and mixeduse land development. His work includes land-use planning, zoning, master planning, comprehensive planning, environmental reviews, and GIS-based mapping. He manages some of the firm's most complex assignments involving multi-jurisdictional geographic boundaries and he is a skilled navigator of the SEQRA environmental review process from both the municipal and private sector perspectives. Peter is a member of the Westchester Municipal Planning Federation's Board of Directors, the Westchester County Association's Real Estate Task Force, and the Village of

Tarrytown's Housing Affordability Task Force, as well as a former member of the Board of Directors of the American Planning Association-New York Metro Chapter. Peter has proudly presented at previous LULC conferences and LULA trainings, as well as at events for the NYS Association of Towns, Hudson Valley Pattern for Progress, New York Planning Federation, Capitol District Regional Planning Council, Westchester Municipal Planning Federation, NYS Municipal Administrator's Association, and the Urban Land Institute's Westchester/Fairfield chapter.

# **Andrew Germansky**

Westhab, Inc



Andrew Germansky is the Senior Vice President of Real Estate at Westhab, Inc. He joined the organization in December of 2017 and is responsible for managing all phases of real estate development, including site identification and pipeline development, design coordination, financing, and construction management, and property and asset management. Since joining Westhab, Andrew has financed and overseen large-scale affordable/supportive housing and transitional shelter developments in Westchester and New York City with a total transaction value of \$575 million. Most recently, he completed construction Westhab's Dayspring Campus project, a community center hub and adjacent 63-unit affordable housing

complex in Nodine Hill, Yonkers. Andrew has spoken at conferences and on panels about the importance of investing in community development.

Prior to working at Westhab, he worked for seven years at Omni New York LLC as the Assistant Vice President of Development. Andrew was part of a team that acquired and renovated/constructed 8,200 low-income affordable housing apartment units with a total transaction value of \$970 million and construction costs totaling \$340 million. Before joining Omni, Andrew worked for Forsyth Street Advisors, a real estate and public finance consulting firm for affordable housing.

# **Orisha Jennings-Hudgins**

City of New Rochelle



Orisha Jennings-Hudgins serves as the Director of Housing for the City of New Rochelle, where she leads the city's affordable housing initiatives, including the New Rochelle Down Payment Assistance Program. Her dedication to helping residents facing housing challenges is further enhanced by her efforts in developing educational programs focused on housing and financial empowerment. Since joining the city in 2021, Ms. Jennings-Hudgins has accumulated over 17 years of experience from her positions with the City of New York, mainly within the Finance Department of the New York City Housing Authority (NYCHA). Now in her third year with the City of New Rochelle, she has consistently demonstrated a strong commitment to

improving housing conditions and accessibility for residents. Her vision and innovative strategies have led to numerous successful initiatives during her tenure. Ms. Jennings-Hudgins holds a Bachelor of Arts in Urban Studies from Columbia University and a Master of Public Administration in Public Policy from Long Island University, Brooklyn. She is pursuing an Executive MBA in Strategic Leadership from Quantic School of Business and Technology's Valar Institute, with an anticipated graduation in Fall 2025.

# Harry J. Kelly

Nixon Peabody LLP



Harry Kelly's practice focuses on transactional and litigation aspects of housing, fair housing, reasonable accommodations, and accessible design, government contracts, financial institutions, and bankruptcy law. He counsels owners of firms—particularly those active in real estate and housing—with respect to issues related to the operations of their businesses and assists them in litigation and enforcement matters. He also advises government contracts clients on transactional and regulatory issues and litigates claims against government agencies. Harry's practice focuses on issues arising from the operation and

management of multifamily housing, including affordable housing properties. He represents a diverse array of clients, such as owners, developers, lenders, regulators, and investors and provides guidance to maximize profitability, trouble-shoot operational and transactional issues and resolve disagreements before they become legal disputes.

# Jason Labate

Goldstein Hall PLLC



Jason's practice areas include real estate and community development, nonprofit formation and governance and real estate and project finance. He also provides legal expertise for the Joint Ownership Entity (JOE NYC), a "first-of-its-kind" nonprofit collaboration of New York City affordable housing community development corporations for which Jason and the Goldstein Hall team were awarded the prestigious NYU Grunin Prize for Law and Social Entrepreneurship. Jason also co-authored an article on JOE NYC, which was published in The Journal of Affordable Housing and Community Development Law. Recently, Jason closed on JOE NYC's multi-building solar

project, which is expected to create approximately 700,000 kW/h of clean energy per year and lower operating costs.

Jason has been integral in developing the Firm's Faith-Based Practice Group, which works with faith-based organizations to protect assets, evaluate options, and maximize real property. He is a frequent panelist and guest speaker on faith-based and nonprofit issues, presenting at, among other venues, the Manhattan Borough President's Religious Facilities Task Force and leading the Firm's collaboration with the New York State Council of Churches' (NYSCC) Who is My Neighbor seminars. Jason was also one of three recipients of this year's NYSCC's Community Development Award and serves as co-chair of Bricks and Mortals, an association, and soon to be incorporated nonprofit, that fosters education and collaboration among faith-based organizations, community stakeholders and real property experts. He led the Firm's participation in the LISC NYLOP predevelopment grant program for Mission Driven Organizations and is working with the Interfaith Affordable Housing Collaborative to help establish its structure and predevelopment grant process and resources.

Jason oversees the New Rochelle office and led the Firm's partnership with the Pace Land Use Law Center in offering the Hudson Valley Affordable Housing Summit, which has run since 2016. Jason has established relationships with new clients in the Hudson Valley and helped existing clients expand their work into Westchester County.

# **Christina Lazarus**

Northwell Health



Christina is the Benefit Manager at Northwell Health, New York State's largest healthcare provider and private employer, with more than 85,000 employees. Named a Best Place to Work by both Fortune and Glassdoor, and one of Fortune's 100 Best Places to Work for Diversity and Best Workplaces in Health Care and Biopharma.

As a Benefits Manager, Christina oversees the department responsible for assisting first time home buyers on Long Island for the past eleven years. Her background is in Human Resources, where she has worked for 21 years in both the corporate and operational setting. Her bachelor's degree is from Concordia College in Business Administration, minoring in Social Work and master's degree from Manhattanville College in Human Resources and Organizational Theory. Since managing the

program, it has more than doubled in size in order to assist more employees on Long Island. Recently the program expanded to both Staten Island and Westchester counties as a pilot program, and is expected to open again shortly.

# Maulin Mehta

Regional Plan Association



Maulin is RPA's New York Director and is responsible for leading RPA's research, planning and advocacy activities in the state. His work includes researching and building support for a broad range of projects and campaigns to improve equity in land-use, transportation and health in our region.

Prior to this, he worked with non-profits in New York and New Jersey overseeing projects to address economic development, resiliency, and real estate challenges. He helped improve neighborhoods through placed-based strategies including participatory planning and affordable housing development centered on community

values and goals. He also worked at NYC Parks helping to solve inter-agency issues for open space and infrastructure projects throughout the City.

There he helped improve transparency and predictability of the permitting process, and worked across agencies and departments to build consensus in the best interest of the City. Maulin is a member of the American Institute of Certified Planners. He holds a Master of Urban Planning from New York University and a Bachelor of Arts in Economics from Rutgers University.

# Samantha Pearce

New York State Homes & Community Renewal



Samantha Pearce is a Housing and Sustainability professional with over a decade of experience in sustainable development and energy management. Having held key roles as the Director of Housing Development and Sustainability at Selfhel and the Director of Energy Management Services at Bright Power, Samantha joined New York State Homes and Community Renewal in 2021. In her current capacity as Vice President of Sustainability, she oversees critical programs including the Weatherization Assistance Program, the Clean Energy Initiative program, and the Climate Friendly Homes Fund. Her work focuses on aligning agency sustainability standards with New York State's Climate Leadership and Community Protection Act.

Samantha's focus is on supporting operators and owners to reduce utility and operations costs through onsite training, data analysis, and technical field support. She is a LEED Accredited Professional (AP), Associate AIA member, and NASCSP Board Member

# Alexander E. Roithmayr

Hudson Gateway Association of REALTORS, Inc.



**Alexander Roithmayr** is a public affairs strategist and community advocate with a background in government, local politics, and housing policy. He worked in the NYS Assembly for the better part of 10 years, where he helped shape legislative priorities, advised on public outreach, and worked to connect constituents with critical services.

In addition to his work in state government, Roithmayr ran for the NYS Assembly in 2020 with a focus on affordability, smart growth, and public accountability—

bringing attention to the everyday challenges facing working families in the Hudson Valley. Roithmayr is currently Director of Government Affairs for the Hudson Gateway Association of Realtors.

# James R. Wendling

WBP Development LLC



James Wendling sources new multi-family deals, oversees ground-up developments from inception to completion, including the planning stage, governmental approval, construction, marketing, and financing, and helps shape the growth of WBP. Jim holds a Bachelor's Degree in History as well as a Markets and Management Certificate from Duke University, where he attended on a baseball scholarship. He also has been certified by the U.S. Green Building Council (USGBC) as a Leadership in Energy and Environmental Design Accredited Professional (LEED AP).

# Tiffany B. Zezula

Land Use Law Center, Elisabeth Haub School of Law at Pace University Housing Action Council



Tiffany B. Zezula, Esq. is the Deputy Director for the Land Use Law Center at Pace University School of Law in White Plains, NY and a staff consultant for the Housing Action Council. She is the primary trainer and national coordinator for the Center's award-winning Land Use Leadership Alliance Training program for local officials, environmentalists, religious leaders, planners, and developers. The Training Program has been modeled and transferred to over six states and has been tailored to tactical numerous land use issues, including fair and affordable housing. The program has trained over 3500 leaders in the Hudson Valley Region alone, including over 400 leaders in the Hudson Valley on the specific topic of fair and affordable housing. The

fair and affordable housing training programs have been supported by numerous entities including Westchester County, the Ford Foundation, the NY Community Trust, and banking institutions.

Ms. Zezula works closely with the Housing Action Council in the Housing Collaborative Partnership to provide strategic assistance to municipalities in furthering affordable housing in the Hudson Valley region. She works in select communities in the creation of affordable housing committees advocating for affordable housing policy reform and education of citizens on the topic. She has also worked closely with the New York Council of Churches and the Attorney General's Office supported Mission-Based Housing Partnership to assist religious leaders with the repurposing and revitalization of church and mission-based property into affordable housing. Her work currently includes the administration of the ADU Plus One program for the Village of Dobbs Ferry, Hastings, Irvington, Town of Bedford, Town of Cortlandt, Village of Croton, and Town of Yorktown. She has worked on numerous Housing Action Plans for local municipalities.

Ms. Zezula also provides strategic assistance to local governments on comprehensive planning, revitalization, streamlining and general land use matters. Ms. Zezula also works closely with a variety of planning firms in the region in the development of public engagement outreach and facilitation. This included conversations with a variety of stakeholders and municipal staff officials, including efforts to obtain input from senior citizens, high school students, business leaders, cultural organizations, financial institutions, anchor institutions, and developers. The engagement efforts involved multiple and creative engagement techniques, including neighborhood block parties, neighborhood tours, pop-up Popsicle events at local municipal pools, high school classroom participation, and roundtable discussions with stakeholders. All efforts culminate in a final report delivered to the administration regarding the citizen's vision for future revitalization and cultural and economic services.

Finally, Ms. Zezula oversees and coordinates an affordable housing summit bringing industry leaders, municipal officials, syndicates, and lawyers together to discuss trends and solutions to affordable housing.

Ms. Zezula is a frequent national speaker on collaborative governance and local decision-making. She is also a frequent guest presenter at the Yale School of Forestry and an adjunct professor at Pace University School of Law on Environmental Dispute Resolution and Sustainable Development Law. She received her J.D. cum laude from Pace Law School in 2003 along with a certificate in Environmental Law. She is a certified mediator in the State of New York. Ms. Zezula also is the 2023 recipient of the Habitat for Humanity Housing Justice Advocate Award, the 2021 New York Council of Churches: Excellence in Affordable Housing and Community Development, and the 2024 American Institute of Architecture Hudson Valley Chapter Community Beacon Award.

# **National Zoning Atlas**

### DIGITIZING, demystifying, & democratizing the country's zoning codes.

The National Zoning Atlas makes zoning data actionable and accessible to improve how America uses its land.

https://www.zoningatlas.org/



# **Averting Crisis**

Zoning to Create Resilient Homes for All

This report offers insights into the necessary scope of zoning reform and supporting policies needed to address the twin housing and climate adaptation needs in New York City and the suburban communities.



For a full version of this report with interactive features, additional charts, and citations, scan QR, click here, or visit rpa.org

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#### Overview

- Findings and Recommendations Summary
- 1. Flood Exposure and Loss
- 2. Current and Prospective Housing Needs
- 3. Zoning Capacity and Deficit Analysis
- 4. Recommended Goals and Policies Conclusion

Communities nationwide are facing a severe housing crisis marked by soaring costs, limited housing options, and stagnant construction.<sup>®0</sup> This crisis is largely driven by restrictive zoning regulations that impose onerous procedural requirements, ban multi-family housing, and create numerous technical hurdles. Even in the tri-state metropolitan region, the National Zoning Atlas shows that around 85% of residentially zoned land is zoned only for single-family housing—and half of that land requires a minimum of a half-acre parcel before a home can be built.<sup>®0</sup>

Unfortunately, climate hazards, especially flooding, will continue to exacerbate the housing shortage. The growing risk of climate-driven flooding jeopardizes both existing and future housing developed in flood zones. Meanwhile, adaptation measures in coastal regions meant to protect communities are slow, narrow in scope, and unable to deliver fundamental transformations.<sup>00</sup> <sup>00</sup> Nearly 1 million houses and multifamily buildings in the tri-state area of New York, New Jersey, and Connecticut are at high risk of flooding.<sup>00</sup> Nationwide, the number of affordable housing units at risk from coastal flooding and rising sea levels is projected to triple by 2050.<sup>00</sup> With global emissions worsening, extreme weather events—aggravated by rising sea levels—will only grow more severe, frequent, and damaging over time.<sup>00</sup> <sup>00</sup>

#### This report was produced in partnership with:

#### NATIONAL ZONING ATLAS

Zoning lies at the intersection of these two crises. Zoning laws determine how land can be used and what types of buildings can be constructed in specific areas.<sup>®0</sup> Over time, zoning has been implemented to favor sprawl while limiting compact development. As a result, our current zoning exacerbates both our housing and climate crises. The same zoning regulations that constrain compact housing development are subjecting

residents to increasing and more severe climate hazards.<sup>80</sup> <sup>80</sup> In this report, Regional Plan Association (RPA) offers insights into the necessary scope of zoning reform and supporting policies needed to address these twin housing and climate adaptation needs in New York City and the suburban communities of Nassau, Suffolk, and Westchester Counties (the "study area").

This pattern of sprawl has an outsized effect in our suburbs and rural areas, which is evident when looking at this report's study area.<sup>®0</sup> On average, households in Long Island and the suburban areas of Westchester produce twice the greenhouse gas emissions of New York City because sprawling land use patterns require residents to drive.<sup>®0</sup> These counties have also lost around 14,300 acres of forest land since 2001, with 90% of the loss linked to sprawl.<sup>®0</sup> Of the many climate hazards threatening the study area, flood risks may have the most impact, as approximately 77,300 acres of residential-zoned land (10.5%) could face future flooding, and by the year 2040, up to 82,000 housing units could be lost due to permanent, chronic, and coastal flooding.<sup>®0</sup> In many municipalities in Westchester and especially Long Island, locally controlled zoning often restricts residential development in locations with good transportation access, job opportunities, and *limited* flood exposure. Despite being close to New York City, suburbs on Long Island and in Westchester County ban multifamily development on over 95% of their residential land.<sup>®0</sup> More than half of the commuter rail stations in these suburbs, often suitable for transit-oriented development, are situated in predominantly White, usually affluent neighborhoods with restrictive zoning that severely limits or prohibits multifamily buildings.<sup>®0</sup> This dynamic exacerbates the trend of developing in hazardous areas, worsens the housing crisis, and widens socioeconomic and demographic disparities.<sup>®0</sup>



Together, these issues suggest the need for a more integrated approach to land use planning and policy initiatives to create safe, resilient, and affordable communities.

There is also a need to foster new thinking about the ways that climate-related factors should be incorporated into housing assessments and local and regional planning, and to improve public understanding of the relationships between zoning, housing production, and flood risk. By comparing housing needs against zoning capacity, this report's analysis quantifies the extent to which zoning creates a housing deficit (the "net deficit"). Utilizing a first-of-its-kind database of zoning laws created by the National Zoning Atlas, RPA analysis shows that the **current residential zoning development capacity allows less than half (45%) of the total housing needed by 2040, leaving a net deficit of approximately 680,000 units.** <sup>60</sup> To meet both current and future needs, including losses related to flooding, zoning development capacity would need to increase by a factor of 2.2 (the "deficit ratio"). <sup>60</sup> Residential zoning capacity – the number of residential units likely to be built under current regulations – can be increased by broadening the geographic scope of multifamily districts and creating more flexible regulations that govern building treatments, density, parking requirements, and other dimensional criteria.

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Subregion	Needs Through 2040 (DUs)	Zoning Capacity (DUs)	Net Deficit (DUs)	<b>Deficit Ratio</b>
Long Island	256,843	102,252	-154,591	2.5
Westchester County	112,712	94,811	-17,901	1.2
New York City	895,230	386,576	-508,653	2.3
Study Area	1,264,784	583,638	-681,146	2.2

#### **Incremental Housing Units Needed vs Current Zoning Capacity**

Analysis considers the incremental housing stock unlocked by the adopted reforms from "City of Yes Housing Opportunity." Regional Plan Association based on National Zoning Atlas (Long Island and Westchester), New York City Department of City Planning (MapPluto 2023), City of Yes Final Environmental Assessment Statement (CEQR # 24DCP033Y), 2020 Decennial Census, American Communities Survey Table DP04 2023 1-Year, New York Panel Climate Change (NPCC), FEMA Hazus Flood Loss, Urban Footprint Base Canvas, and RPA Gateway and the Post-Covid Economy (2022).

The scale of the deficit provides insights into the necessary scope of zoning reform and additional policies needed to address housing and climate adaptation needs in the study area. By contextualizing this gap at the local level, the report also documents relevant policies and planning tools to be leveraged and prioritized based on the built environment, infrastructure, and flood hazard conditions of neighborhoods and localities across the region.



Deficit Ratio by Locality with Flood Exposure by 2040

The ratio between housing needs and zoning capacity. An estimate of how many times zoned capacity has to increase to meet housing needs fully. Residential zoning capacity can be increased by broadening the geographic scope of multifamily districts and creating more flexible regulations that govern building treatments, density, parking requirements, and other dimensional criteria. For more detailed information, visit this link to the web map version.

#### **Key Terminology**

- Study Area: New York City, Long Island, and Westchester County. Estimates have been disaggregated by community districts in New York City and municipalities in the suburbs.
- Housing Needs: Refers to the requirement for housing that meets individuals' and households' current and prospective needs. To quantify needs within the study area, this report utilized estimates of overcrowded households, vacancy rates, and the temporarily sheltered population, along with projections to the year 2040 for household formation, dilapidation rates, and units lost to flooding.
- Zoning Capacity: Potential additional residential units allowed under current <u>zoning regulations</u> and <u>as-of-right</u> conditions. This estimated build-out was based on parcellevel analysis and applicable zoning regulations, including recent reforms implemented in New York City under the City of Yes Housing Opportunity proposal.
- Net Deficit: The difference between housing needs and zoning capacity (build-out), measured in number of dwelling units (DU).

- Deficit Ratio: The ratio between housing needs and zoning capacity. An estimate of how many times zoned capacity has to increase to meet housing needs fully. Residential zoning capacity can be increased by broadening the geographic scope of multifamily districts and creating more flexible regulations that govern building treatments, density, parking requirements, and other dimensional criteria.
- Smart Growth: Planning approach to create more livable, sustainable, and equitable communities by focusing on compact, mixeduse development, walkable neighborhoods, and diverse transportation options.
- Flood Exposure: Represents the potential for damage based on a property's location and population's vulnerability to flooding. Estimates are based on storm surge and sealevel rise projections for 2040 and 2070.
- Flood Loss: Refers to the actual damage and non-replacement of housing stock incurred due to a flood event. For housing flood loss to occur, exposure must be frequent and/or severe enough to result in significant damage.

# **Findings and Recommendations Summary**

All statistics are based on New York City, Long Island, and Westchester County (study area).

#### **Flood Exposure and Loss**

- By 2040, as many as 1.6 million people in the study area could live in an area exposed to flooding, with 1 million in the urban core and regional downtown centers (63%). In the coming years, more than 1 million jobs could be located in areas with future flood exposure, with approximately 726,000 in higher-density urban locations.
- Around 77,300 acres of residential-zoned land in New York City and its surrounding suburbs may face flooding by 2040. This at-risk area amounts to 10.5% of the zoned land allowing for some form of residential use on an as-of-right basis.
- The study area could lose as many as 82,000 housing units due to flooding by 2040, and the number could double to 160,000 by 2070. These housing losses could occur in 78% of municipalities in the study area suburbs (124 out of 159) and 60% of community districts in New York City (30 out of 55).

#### **Current and Prospective Housing Needs**

- The region's total housing needs (current and prospective) could reach 1.26 million additional units by 2040, representing a needed increase of 24% from the current stock.
- 362,000 housing units are required to address current needs, including overcrowding, the temporarily sheltered population, and low vacancy rates. Another 895,000 units could be required by 2040 to address prospective needs, such as flood loss, dilapidation, and household formation.

#### **Zoning Capacity and Deficit**

 The study area's potential zoning capacity (build-out under current zoning regulations) represents approximately 580,000 units, with 390,000 in New York City and 190,000 between Long Island and Westchester.

- The zoning capacity represents less than half (45%) of the total housing needed by 2040, leaving a net deficit of approximately 680,000 units. To accommodate current and prospective needs of 1.26 million additional units by 2040 and to account for flood-related losses of up to 82,000 housing units, zoning development capacity would need to increase by a factor of 2.2 (the "deficit ratio").
- Nearly all residentially zoned land permits single-family residences on an as-of-right basis: 100% in NYC, and 98%, and 96% on Long Island and in Westchester County, respectively. Despite their proximity to New York City, Suffolk and Nassau Counties (which makeup Long Island) ban multifamily residential development on 96% and 93% of their residential land, respectively.
- Lot size requirements are a significant impediment to development in the suburbs. Approximately 45% of underdeveloped properties in the study area suburbs cannot be developed because they do not meet the required minimum lot sizes.
- Zoning reforms adopted in New York City under the "City of Yes" Housing Opportunity could add 82,000 additional housing units to the city's housing stock, which brought a 758,000 gap in the study area down to 676,000, or an 11% decrease, a modest improvement in addressing the housing deficit within the study area.

### **Recommended Policies and Tools**

- Housing and resiliency goals must acknowledge needs that are both regional in scale and dynamic in time. Efforts to minimize flood risk and close the housing deficit should also consider local flood exposure conditions and attributes that favor "smart growth" through compact, walkable, and transit-oriented development which takes advantage of both our urban mass transit and our extensive suburban rail network.
- Neighborhoods and areas with lower anticipated flood exposure and greater potential for smart growth development should facilitate transit-oriented development, mixed-use multifamily buildings, and infill development. Sustained investments will also be required to enhance the capacity and resilience of services and infrastructure.
- Areas facing significant risks from future flooding and a high potential for smart growth development will require comprehensive planning to promote growth while protecting existing communities and infrastructure through flood-resilient design and other adaptive measures.

- Neighborhoods and localities that are highly exposed to future flooding and have relatively low potential for smart growth may require different strategic approaches, such as managed retreat and reprogramming existing land use, including restrictions on certain types of residential development.
- Areas with low levels of future flood loss and low potential for smart growth development can benefit from targeted interventions to enhance livability and sustainability while avoiding sprawl through adaptive reuse and middle-density buildings.

# **Flood Exposure and Loss**

The devastation caused by wildfires in LA and flooding in North Carolina recently underscored how climate change hazards can exacerbate housing scarcity and affordability. Rising sea levels and more frequent and intense storms are creating new challenges to already constrained regional housing markets.

#### - FLOOD EXPOSURE

1

# Related Report Oct 2017 Coastal Adaptation A Framework for Governance and Funding to Address Climate Change

Policymakers and planners usually focus on population growth and affordability when deciding how many homes a community or region needs. But what if the land we plan to build on is prone to flooding? These climate-related factors must be integrated into our housing needs assessments to ensure we're building safe, resilient, and sustainable communities for the future.

By 2040, around 77,300 acres of residential-zoned land in New York City and the study area suburbs – or 10.5% of such land – may face flooding.<sup>00</sup> Suffolk County has the largest acreage of residential districts exposed to future flooding, with approximately 37,800 acres or 10% exposed. New York City follows, with approximately 20,900 acres of residential districts exposed to flooding, representing 15% of the city's total. By 2040, up to 10% of the people in the study area might reside in areas prone to future flooding. With more than 1 million people at risk in the urban core and regional downtowns, 63% of the potentially affected population could be living in higher-density urban areas. An additional 1 million jobs could be situated in zones vulnerable to future flooding, with approximately 726,000 in the urban core and regional downtown regions areas. Hazards include storm surge, riverine flooding, and sea level rise projections based on New York Panel Climate Change (NPCC) 16" of sea level rise by 2040 (75th percentile).<sup>00</sup>





#### - FLOOD LOSS

Flood exposure represents the *potential for damage* based on a property's location and vulnerability to flooding. In contrast, flood loss refers to the *actual damage* or financial loss incurred due to a flood event. For residential loss to occur, exposure must be frequent and/or severe enough to result in significant damage. Aside from the degree of exposure, socioeconomic conditions, building regulations, and insurance policies can influence whether a housing unit is lost.<sup>60</sup>

According to the RPA estimates, communities in New York City, Long Island, and Westchester (the study area) could lose up to 82,000 housing units due to permanent, chronic, and coastal flooding, doubling to 160,000 by 2070. These estimates are focused only on flooding, but a more complete assessment should have a multihazard perspective (e.g., extreme rainfall or wildfires).<sup>00</sup>

Housing losses by the year 2040 could occur in 78% of municipalities in the suburbs (124 out of 159) ) and 60% of community districts in New York City (30 out of 55). The most flood-prone areas where the largest losses may occur are the towns of Hempstead, Babylon, Islip, Brookhaven on Long Island and cities in Westchester County along the Long Island Sound. Each could lose over 6,000 units by 2040. Neighborhoods in New York City like Rockaways, South Ozone Park, and Canarsie could also be significantly impacted, with each area losing over 2,000 units.<sup>00</sup>

# For this analysis, RPA considered lost housing resulting from two types of hazards: sea-level rise and storm-related flooding.

Sea-level rise refers to gradual, permanent, or chronic inundation. Using the projections developed by the New York Panel on Climate Change (NPCC) and a bathtub model, RPA calculated the number of housing units exposed to monthly high tides and considered them lost. We developed a range of estimates based on the NPCC's 25th and 75th percentiles and projections for 2040 and 2070.<sup>60</sup>

In addition to sea-level rise, RPA also factored storm-related flooding, which refers to acute, random, and temporary flooding. We used FEMA's basic Hazus-generated depth grids for damage analysis over multiple return periods (10, 50, 100, and 500-year storm events). When a portion of a building was likely to receive substantial damage (>50%) in the time interval, RPA considered them destroyed. We assumed 50% of substantially damaged homes would be replaced under the low scenario and 0% replacement of substantially damaged homes under the high scenario. As with the sea-level rise estimates, we produced projections for 2040 and 2070.



RPA analysis based on New York Panel Climate Change (NPCC), FEMA Hazus Flood Loss, 2020 Decennial Census, and American Communities Survey Table DP04 2023 1-Year

#### **Housing Flood Loss Estimates by Subregion and Decade**

By Decade and Scenario Range	2040		2070	2070	
	low	high	low	high	
Total Housing Units Lost	49,977	82,224	72,237	160,017	
New York City	9,887	19,293	16,702	52,493	
Long Island	33,219	50,568	46,838	88,478	
Westchester County	6,871	12,363	8,697	19,046	

RPA analysis based on New York Panel Climate Change (NPCC), FEMA Hazus Flood Loss, 2020 Decennial Census, and American Communities Survey Table DP04 2023 1-Year





Flood Hazards and Land Use Types



2/3 → Flood Hazards in the Study Area



# **Current and Prospective Housing Needs**

Housing development within the region has been insufficient to meet residents' needs. As housing supply has become constrained, available homes for workers, young people, and low and moderate-income households have declined. The region's failure to build enough homes has resulted in overcrowded apartments, increasing homelessness, rising rents, and home prices growing faster than income and inflation.

Climate hazards are just starting to aggravate the already severe lack of affordable housing. As global emissions continue to rise, the effects of climate change will intensify and occur more often.<sup>60</sup> If these issues are not tackled, many communities will face even more significant challenges with affordability and housing insecurity. Those with existing vulnerabilities will be impacted in disproportionate ways.<sup>60</sup>

The demand for housing is immense.

2

# RPA estimates that by 2040, needs in New York City and nearby suburbs could require roughly 1,260,000 additional units.

Fully addressing this need would require a 24% increase in the current housing stock, a scale of construction not seen since the decades that followed WWII. <sup>®0</sup>

To meet immediate needs—like overcrowding, the temporarily sheltered population, and low vacancy rates —about 362,000 housing units are necessary. Looking ahead, up to 82,000 housing units will likely be lost to flooding by 2040.<sup>60</sup> Sustained investments will be required to maintain and renovate another 150,000. An additional 660,000 units could be needed to accommodate expected household formations in the next 15 years.<sup>60</sup>



Regional Plan Association analysis of 2020 Decennial Census, American Communities Survey Table DP04 2023 1-Year, New York Panel Climate Change (NPCC), FEMA Hazus Flood Loss, and RPA "The Affordability Squeeze" (2024).

#### Housing Units by County: Existing in 2023 vs Cumulative Needed Through 2040

RPA analysis based on ACS Table DP04 2023 1-Year, New York Panel Climate Change (NPCC), FEMA Hazus Flood Loss, Gateway and the Post-Covid Economy (2022), and McKinsey Co. Affordability Squeeze (2024).

County / Region	Existing Units (2023)	Total Needed (2040)	Incremental Need	Percent Increase
Nassau	476,982	615,141	138,159	29.0%
Suffolk	578,977	697,661	118,684	20.5%
Westchester	389,146	501,858	112,712	29.0%
Brooklyn	1,110,671	1,387,745	277,074	24.9%
Queens	917,300	1,160,624	243,324	26.5%
Manhattan	928,727	1,105,133	176,406	19.0%
Bronx	564,905	737,147	172,242	30.5%
Staten Island	184,959	211,143	26,184	14.2%
NY Suburbs	1,445,105	1,814,660	369,555	25.6%
New York City	3,706,562	4,593,730	887,168	23.9%
Study Area	5,151,667	6,408,390	1,256,723	24.4%

#### ···· CURRENT HOUSING NEEDS

RPA estimates that about 362,000 additional housing units are necessary to meet immediate needs in New York City, Long Island, and Westchester. To define current housing needs, RPA considered vacancy rates (for rent and sale), overcrowded households, and temporarily sheltered populations.

- Low vacancy rates are strongly associated with higher costs for both renters and prospective home-owners.<sup>®0</sup> To address the region's low vacancy rates, an estimated 132,000 units are required.<sup>®0</sup> In New York City, apartments available for rent dropped to a minuscule 1.4% in 2023. Vacancy rates in the Metro area range between 1% for sale and 2.9% for rental units. Respectively, these figures are well below the 3.5% and 5% rates that represent a well-functioning buyer and rental housing market.<sup>®0</sup>
- Overcrowded units represent roughly half the current needs in the study area.<sup>00</sup> According to census estimates, 370,800 households in the study area are overcrowded, 314,000 in NYC (85% of the share).<sup>00</sup> Overcrowding also disproportionately affects workers and low—and moderate-income families, which provides insights into the scale of the current need for affordable housing.
- Homelessness is also strongly connected to market conditions and, as such, serves as another critical indicator to consider when assessing housing needs. There are approximately 150,000 homeless people

within the study area; 130,000 are in the NYC shelter system, and over 20,000 live on Long Island and in Westchester County. In recent years, homeless families have grown as a share of the overall sheltered population, now accounting for more than 2/3 of the temporary sheltered. Permanently housing this population would require between 40,000 and 50,000.00



#### **Current Housing Units Needed by County and Category**

RPA analysis of 2020 Decennial Census, ACS Table DP04 2023 1-Year, and NYC Housing Vacancy Survey 2023.

#### --- PROSPECTIVE HOUSING NEEDS

RPA estimates that another 895,000 additional units could be required by 2040 to address prospective needs. This figure accounts for dilapidation rates and changes in household formation, and includes the number of units estimated to be lost to flooding, as described in the previous section of this report.

- Dilapidation refers to housing stock falling into disrepair or units deemed uninhabitable (for example, if they did not have access to a bathroom or had an active vacate order in effect). A low rate of dilapidated housing reflects sustained investments dedicated to maintaining and preserving properties, and the lack of these investments will result in higher rates of dilapidation.<sup>60</sup> A yearly dilapidation rate of 2.4% would represent about 150,000 units by 2040 (108k in NYC and 42k in the suburbs).00
- Household formation refers to changes in the number of households over time. This process results from population growth and variations in household composition (size), making it a crucial factor in determining housing demand. The study area could see an additional 660,000 households by 2040 (with 460k in NYC and almost 200k in the suburbs). To estimate population change, we used projections that assumed relatively modest increases in working from home (lower dispersion) coinciding with robust job and population growth.<sup>60</sup> To estimate formation, we examined trends in household size by tenure and county between 2010 and 2023 and projected these trends into 2040.00

• As noted in the previous section, communities in the study area could lose as many as 82,000 housing units due to flooding by 2040, and the number could double to 160,000 by 2070.<sup>60</sup> These housing losses could occur in 78% of municipalities in the study area suburbs (124 out of 159) ) and 60% of community districts in New York City (30 out of 55).

Related Report
Nov 2017
Build affordable housing in all communities across the
region
A Fourth Regional Plan Recommendation



Regional Plan Association analysis of 2020 Decennial Census, American Communities Survey Table DP04 2023 1-Year, New York Panel Climate Change (NPCC) FEMA Hazus Flood Loss, and RPA "The Affordability Squeeze" (2024).

The following maps show the distribution of housing needs by NYC neighborhoods and for suburbs in the study area. By contrasting needs by category, the maps also show how each locality has a unique housing profile, with the mix between current, prospective, and flood loss-related needs varying depending on location. Generally, suburban localities have a profile where prospective housing needs represent a more significant proportion of their total. Municipalities in Long Island show a higher share of flood loss-related needs when compared to New York City and Westchester counties. In contrast, areas in the urban core show a profile where the proportion between current and prospective housing needs is more even.











Current and Prospective Housing Needs, Including Flood Loss

# **Zoning Capacity and Deficit Analysis**

As communities in America confront the pressing issues of high housing costs, underutilized land, and deteriorating neighborhood conditions, an increasing number of local officials are acknowledging that zoning regulations contribute to these problems – and that zoning reforms can help solve them. Even though villages, towns, and locally elected officials across the region may seem to have little control over global emission trends and their related hazards, they greatly influence zoning regulations. These local stakeholders hold a key policy lever in maintaining zoning rules that control where we can build or retreat from, with significant implications for climate mitigation and adaptation efforts. In aggregate, the existing land use rules remain overly prescriptive, disjointed, and insufficient to address the challenges of a regional housing market facing a severe deficit and increasing flooding exacerbated by climate change.<sup>60</sup>

#### HOUSING DEFICIT

Using a first-of-its-kind database of zoning laws produced by the National Zoning Atlas, RPA estimated the zoning development capacity within Long Island and Westchester. We also estimated the development capacity of New York City, including the recent reforms implemented under the City of Yes Housing Opportunity initiative and using the city's Primary Land Use Tax Lot Output (MapPluto) dataset. We then produced a gap analysis by comparing this build-out against housing needs, including prospective and flood loss-related.

The analysis reveals that the current residential zoning development capacity allows less than half (45%) of the total housing needed by 2040, leaving a net deficit of approximately 680,000 units. To meet both current and future needs, including losses related to flooding, zoning development capacity would need to increase by a factor of 2.2 (the "deficit ratio").

The following table and maps illustrate the distribution of the housing deficit across community districts in New York City and suburban localities within the study area. Although neighborhoods in the urban core typically have greater zoned capacity, the housing needs in these areas are also significantly larger. Consequently, the net deficit is concentrated in the urban core. However, the spatial distribution of the deficit ratio (number of times zoned capacity has to increase to meet housing needs) highlights a critical need to significantly increase capacity in the inner suburbs, particularly in Nassau County, and in some instances by a factor much higher than current zoning regulations.

#### **Deficit: Incremental Housing Units Needed vs Current Zoning Capacity**

Analysis factors the incremental housing stock unlocked by the adopted reforms from "City of Yes Housing Opportunity." RPA based on National Zoning Atlas, New York City Department of City Planning (MapPluto 2023), City of Yes Final Environmental Assessment Statement (CEQR # 24DCP033Y), 2020 Decennial Census, American Communities Survey Table DP04 2023 1-Year, New York Panel Climate Change (NPCC), FEMA Hazus Flood Loss, Urban Footprint Base Canvas, and RPA Gateway and the Post-Covid Economy (2022).

Subregion	County	Needs Through 2040 (DUs)	Zoning Capacity (DUs)	Net Deficit (DUs)	<b>Deficit Ratio</b>
Long Island	Nassau	138,159	57,969	-80,190	2.4
	Suffolk	118,684	44,283	-74,401	2.7
Hudson Valley	Westchester	112,712	94,811	-17,901	1.2
New York City	Kings	277,074	100,687	-176,386	2.8
	Queens	243,324	82,447	-160,877	3.0
	New York	176,406	89,900	-86,506	2.0
	Bronx	172,242	97,269	-74,973	1.8

This gap is based on the potential build-out under current zoning, which could allow as many as 580,000Å housing units on an as-of-right basis. This includes 390,000 units in New York City and 190,000 across LongÅ Island and Westchester. The estimates also assume that all underdeveloped properties are built to the Ånaximum allowed density. The buildout capacity was based on parcel-level analysis and applicable zoning Åegulations, including recent reforms implemented in New York City under the City of Yes Housing Åpportunity initiative.

#### - ZONING AND RESIDENTIAL LAND

As a whole, zoning in the region is permissive for sprawl but very restrictive for multifamily development. Suburbs (particularly those in Long Island) prohibit multifamily development within most zoning districts. Single-family residences are permitted on an as-of-right basis on nearly all residentially zoned land: 100% in NYC, 98%, and 96% in Long Island and Westchester, respectively. While multifamily buildings with four units or more are allowed on 61% of New York City's residentially zoned land, they are allowed on less than 5% of the land in the suburbs. Despite their proximity to New York City, Suffolk and Nassau Counties ban multifamily residential development on 96% and 93% of their residential land, respectively. Restrictive zoning that does not allow for multifamily housing—even moderately sized makes it much more challenging to address the housing crisis experienced in the region and beyond.

#### **Zoning Treatment and Residential Land: 4+ Family**



Share of residential districts area allowing multifamily development (4 units or more)

Zoning Treatment and Residential Land: 1-Family Share of residential districts area allowing single-family development

#### - NEW YORK SUBURBS: ZONING CAPACITY ANALYSIS

RPA estimates that as-of-right residential zoning in Long Island and Westchester allows a potential build-out of approximately 190,000 units. This assumes that all viable underdeveloped properties (i.e., soft sites) are built to their maximum allowed density.

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To arrive at this estimate, RPA first linked the NZA zoning attributes to parcel-level data, starting with 470,000 parcels in the suburbs. These parcels were based on non-residential and residential underdeveloped lots, then subjected to a multi-step screening process to identify likely development sites (i.e., soft sites). The screening involved several tests based on zoning regulations and parcel attributes (e.g., does the parcel meet the minimum lot size requirement? Is the allowable density much larger when compared to the existing?). Of the initial 470,000 parcels evaluated, approximately 49,500 passed the tests and were considered part of the build-out calculation.

For the parcels that remained after the screening process (49,500 lots), we calculated the maximum number of dwelling units (DUs) allowed on an as-of-right basis, as determined by the corresponding building treatments. For multifamily districts (allowing four or more units), we used lot size information, allowed DUs per Acre, and maximum Floor Area Ratio (FAR) to estimate the maximum number of units allowed per site. In addition, we conducted a series of building envelope studies based on the bulk control regulations applicable to multifamily districts (four or more units). Wherever necessary, we adjusted residential density to reflect instances where the maximum of DUs per Acre was not achievable due to other constraints and dimensional criteria (i.e., lot coverage or height limitations). The residential build-out estimates were produced on a parcel level and then aggregated to their corresponding locality.

#### Screening Results from Soft Sites in Suburban Areas



Notes: RPA Analysis based on National Zoning Atlas, ACS 1 Year Estimates, and CoreLogic.

#### **Potential Soft Sites in Suburban Areas**

#### **Envelope Study Example**

An illustrative example of an envelope study for a soft site where, according to the zoning ordinance, the maximum allowable density is 44 DU/acre, but the resulting achievable density is 36 DU/acre once all other zoning requirements are met. The site has an 18% reduction in achievable residential density compared to what is indicated in the zoning ordinance.

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Allowable Dwelling Units per Acre	Achievable Dwelling Units per Acre	DU/Acre Change	
44	36	18% less	

New YORK CITY: ZONING CAPACITY AFTER CITY OF YES HOUSING OPPORTUNITY The as-of-right residential zoning in New York City allows for approximately 386,000 housing units (as of January 2025). This estimate is based on the City of Yes Environmental Assessment Statement and the final version of the adopted text amendment (modified by the council). Using a similar methodology to the one described above, we determined the spatial distribution of the estimated zoning capacity among community districts using parcel-level analysis based on NYC Department of City Planning data sources.

As with the suburbs, the starting set of underdeveloped sites was based on non-residential and residential lots (28,000 non-residential and 72,000 residential). We then screened parcels to identify potential development sites by comparing existing building types against their zoning allowances (i.e., soft sites). RPA calculated the maximum achievable number of units with those that passed the multi-

### step screening tests.

Regional Plan Association | Averting Crisis | April, 2025

We also factored in the adopted provisions of New York City's City of Yes Housing Opportunity expected to result in new housing. These include the expansion of zoning incentivizes to include a certain percentage of affordable housing units in new developments (Universal Affordability Preference program), Transit Oriented Development (greater density and reduced parking requirements for certain lots in proximity to transit), and Town Center provisions (allowing residential uses along commercial corridors). In addition, we factored in the reduced parking requirements and the corresponding geographic tiers. Finally, we included the provisions that enabled Accessory Dwelling Units (ADUs) in specific locations.

#### Zoning Capacity and Housing Needs in N&wrk City Before and After Cityes Area **Units Needed No-Action (Prior** With-Action Through 2040 to City of Yes) (City of Yes) Zoning Capacity **Zoning Capacity** Net Deficit Deficit Zoning Net Deficit Deficit (DUs) (DUs) (DUs) Ratio Capacity (DUs) Ratio (DUs) New York City 304,000 304,000 -583,000 2.9 386,000 -501,000 2.3 195,000 195.000 -175.000 Westchester, Nassau, 195,000 -175,000 1.9 1.9

The analysis considers the incremental housing stock unlocked by the adopted reforms from "City of Yes Housing Opportunity." RPA based on National Zoning Atlas (Long Island and Westchester), New York City Department of City Planning (MapPluto 2023), City of Yes Final Environmental Assessment Statement (CEQR # 24DCP033Y), ACS Table DP04 2023 1-Year, New York Panel Climate Change (NPCC), FEMA Hazus Flood Loss, and Gateway and the Post-Covid Economy (2022).





**Recommended Goals and Policies** 

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Achieving meaningful housing and resilience goals will require regional thinking. However, the policies and tools needed to advance these objectives will be implemented in specific neighborhoods and localities. Therefore, understanding localized characteristics related to potential growth and flood risk while maintaining a regional perspective will be crucial for both minimizing exposure to flood risk and reducing the housing deficit. This chapter identifies four types of communities – Smart Growth Haven, Resilient Refuge, Adaptive Retreat, and Stable Support – and offers recommendations for goals and strategies for each.
#### Growth and Flood Exposure by 2040 in Study Area

RPA used land use place types at a 0.25 square mile grid scale to estimate the future regional distribution of population and jobs





Low Growth & Low Dispersion, Scenario B

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Some places already have infrastructure and built-form conditions that encourage growth in compact, walkable, and transit-oriented development, while others do not display these characteristics. <sup>00</sup> Certain locations have relatively low exposure to future flooding, whereas others are highly vulnerable. By comparing local attributes associated with flood risk and smart growth potential. <sup>00</sup> RPA defined four "area types," each with a distinct combination of the two variables. These four area types can be used to categorize the various neighborhoods and localities throughout New York City and its suburbs, identifying respective policy priorities to address regional needs.



Increasing Flood Risk

**Smart Growth and Flood Risk Matrix** 

#### **Smart Growth and Flood Risk Matrix**

The following area types do not represent forecasts or prescribe policy. Whether a neighborhood or locality falls into any of these categories will depend on the choices made in the coming years and decades, the extent of collaboration between public and private entities, evaluation of needs and acceptable degree of risk, and the level of coordination at the local, state, and federal levels.<sup>®®</sup> These types are based on the challenges and opportunities presented by a location's built and natural environment and provide an overview of potential planning interventions and policies aimed at minimizing risk and addressing the housing deficit. Depending on conditions, these policies and programs could be deployed across the full range of growth and risk profiles depicted in the diagrams. However, the following policies should not be considered exclusive to a given type. Depending on conditions, these policies and programs could be deployed across the full range of growth and risk profiles depicted in the diagrams.

#### - SMART GROWTH HAVEN (LOW RISK - HIGH GROWTH)

This category includes neighborhoods and areas with lower anticipated flood exposure and greater potential for smart growth development. These communities are generally well-suited for implementing transitoriented development, mixed-use multifamily buildings, and infill development. Sustained investments to enhance the capacity and reliability of services and infrastructure will be required to ensure that communities are healthy, welcoming, and enjoyable places to live, as well as affordable. Housing production in Smart Growth Havens addresses both local and regional housing needs.

#### **Related Report**

Mar 2024

Homes on Track Building Thriving Communities Around Transit



#### **Smart Growth Area Type Current & Future Conditions**

#### **Goals and Policy Priorities:**

- Housing need assessments: Evaluate and determine current and future housing requirements at the local and regional levels. Consider immediate needs such as overcrowding, temporary sheltered population, and vacancy rates. In addition, evaluate future demand resulting from household formation, dilapidation rates, and flood loss.
- Housing action plan: Establish goals and prioritize actions based on comprehensive need assessments. Identify land use actions, policy changes, and site-specific interventions to facilitate growth in proportion to regional housing needs.
- Zoning capacity: Expand residential zoned capacity proportionately to regional housing needs and future demand.
- Housing types and uses: Broaden the geographic scope of zoning districts that allow for multifamily development and residential middle-density typologies.
- Transit-Oriented Development: Promote TOD and other forms of infill by utilizing special districts, overlays, and building treatment regulations in relation to transit proximity.

- Approval processes: Expedite public and environmental review procedures for multifamily and infill development.
- Bulk and use regulations: Implement flexible zoning and land use regulations that govern building treatments, density, parking requirements, and other dimensional criteria (lot coverage, setbacks, height, etc.).
- Financing and funding: Prioritize and leverage financing and discretionary funding programs (e.g., the New York Pro-Housing Community, Downtown Revitalization, and NY Forward programs) to promote sustained growth,
- Affordable housing: Encourage affordable housing by implementing inclusionary zoning and other strategies.
- Infrastructure: Make sustained investments to enhance and expand the capacity of infrastructure, services, and utilities.

Policies that affect Smart Growth Havens should focus on removing obstacles to housing development and building necessary programs and infrastructure to support that growth. Local authorities must actively boost capacity through upzoning and adaptable regulations. State and federal governments can also establish goals and benchmarks by performing regional housing assessments, simplifying public and environmental review processes for specific projects, and assisting in aligning land use changes with incentives and funding priorities. Development should follow established good urban design principles, contributing to a healthy and beautiful built environment.<sup>60</sup>

Decision-makers in Smart Growth Havens must also prioritize maintaining and enhancing supporting infrastructure while making it more resilient. This involves securing sufficient funding for operations and maintenance, investing in robust public transit, expanding public utilities' capacity, and upgrading sewer systems, among other initiatives. These improvements should occur alongside or in anticipation of residential development.

#### ···· RESILIENT REFUGE (HIGH RISK - HIGH GROWTH)

This category identifies areas with compounding adaptation needs: significant risks from future flooding and a high potential for smart growth development. These locations will require comprehensive planning to promote growth while protecting existing infrastructure and communities through flood-resilient design and other adaptive measures.



#### **Resilient Refuge Area Type Current & Future Conditions**

#### **Goals and Policy Priorities:**

- Housing need and climate risk assessments: Assess and quantify potential housing needs and climate risks. Establish goals and actions based on forward-looking needs assessments within a regional context.
- Zoning capacity: Expand residential zoned capacity proportionately to regional housing needs and demands.
- Capital budgeting: Align budget scope and priorities with growth and adaptation needs. Prioritize and secure community investments and funding where growth can be encouraged and accommodated. Improve and expand infrastructure and services, such as transit, sewers, and resiliency projects, to address current and future needs.
- Special districts: Develop districts with incentive-based zoning (e.g., Waterfront Access Zoning), assessment fees, or tax increment financing mechanisms to help pay for adaptation projects and infrastructure maintenance.
- Building standards for resilience: Update codes to ensure that buildings can withstand and recover from adverse events and extreme weather while reducing exposure in surrounding areas.
- Shore-based measures: Protect the coast from erosion, flooding, sea level rise, and damage to coastal communities and infrastructure. Depending on the location and specific needs, these measures can include hard engineering solutions like sea walls, revetments, land elevation, and levees, or soft

engineering techniques and natural processes, such as beach nourishment and the restoration or creation of dunes and wetlands.

- Sewer systems: Expand or retrofit the capacity of the sewer network, pumping stations, and other structures that collect, move, and treat wastewater and stormwater.
- Green infrastructure: Expand natural systems and engineered solutions into the built environment to manage stormwater, mitigate coastal flooding, and enhance climate resilience.

Resilient Refuge locations face the dual challenge of managing significant climate risks while accommodating substantial housing growth. To effectively tackle this complexity, these areas must prioritize policies that integrate climate resilience with housing development. Comprehensive risk and needs assessments should be conducted to inform strategic investments in resilient infrastructure and development. Capital budgets and reliable sources of resilience funding should align with both growth and adaptation needs, providing targeted support for vulnerable communities. These areas can lead efforts at the intersection of climate change and the housing crisis, serving as examples of sustainability.

Key policy levers to encourage housing growth include upzoning, creating special districts or overlays, and offering development incentives. Integrating affordable housing into new developments will benefit current residents and vulnerable populations. Environmental design standards should be developed to incorporate sustainable systems into buildings.

Investing in public transit and existing infrastructure is vital for maintaining essential network services. Shore-based measures, along with storm surge barriers in some cases, will be critical for reducing flood risks. Strategically designing green infrastructure and open spaces can effectively manage flooding while enhancing urban landscapes.<sup>00</sup> These improvements should be implemented alongside or in anticipation of residential development.

#### - ADAPTIVE RETREAT (HIGH RISK - LOW GROWTH)

This typology represents neighborhoods and localities that are highly exposed to future flooding and have relatively low potential for smart growth.



#### **Goals and Policy Priorities:**

- Managed retreat: Implement strategies that support the purposeful, coordinated, and voluntary movement of people and residential buildings away from risks over time. This may involve the movement of individuals, infrastructure (e.g., building or road), or community. Include incentives that keep residents within the same town or county. Areas highly exposed to flooding can be reprogrammed to facilitate low-risk uses, such as community centers and open spaces with active and passive recreation options.
- Buyout programs: Implement programs for voluntary acquisitions that require permanently removing properties from high-risk areas. After a structure is removed, strict land use management measures are typically imposed. Develop programs to support low-income homeowners and renters, including bonuses to keep residents within the town or county. Create buyout programs for both single- and multi-family properties that are effective, equitable and address the needs of both owners and renters.
- Special districts/flood risk zones and overlays: Create districts where flood risk zoning/building codes and development standards apply. Facilitate transfer of development rights (TDRs) using special districts or credits.
- Shore-based measures: Safeguard the coastline against erosion, flooding, rising sea levels, and damage to coastal communities and infrastructure. Leverage opportunities to restore the coastal edge, delivering natural protective benefits and economic advantages of ecotourism. Facilitate wetland migration where suitable.
- Green infrastructure: Expand natural systems and engineered solutions into the built environment to manage stormwater, mitigate coastal flooding, and enhance climate resilience. Pair widespread green infrastructure with hard infrastructure to aid in long-term resiliency as well as add a sense of "place" and nature.

Adaptive Retreat communities in this category must prioritize addressing risk and safety concerns related to flood hazards. Instead of focusing solely on disaster recovery, they should reframe timelines and design for long-term adaptation. Localities should utilize land use authority to discourage residential development and assist homeowners and renters in relocating away from flood hazards. Areas highly exposed to flooding can be reprogrammed to facilitate low-risk uses, such as community centers and open spaces with active and passive recreation options. Transparent and consistent communication between authorities and residents is essential for equitable planning within adaptive retreat areas.

Proactive movement away from hazards can be achieved through acquisition programs, managed retreat plans, special districts and overlay zones, and, in cases of very serious risk, using eminent domain. Managed retreat plans should comprehensively understand which specific areas of a locality are at risk and which areas could be targeted for growth, ideally including incentives to retain residents within the locality. Special districts/flood zones and overlays can facilitate the transfer of development rights and establish zones where strict building codes, development standards, and zoning restrictions apply. Applicable ranges of risk should be accurately conveyed to homeowners and developers through the stringency of building codes and the cost of property insurance to deter development in higher-risk areas.

In addition to relocating from hazards, these areas must also focus on mitigating future risks. Shore-based strategies and green infrastructure can create opportunities to restore a coastal or riverine edge that offers both ecological benefits and flood protection. Residents who choose to remain should not experience a decline in their quality of life. The transformation of these areas into regional open spaces or park networks centered around ecotourism should be considered.

#### STABLE SUPPORT (LOW RISK - LOW GROWTH)

The Stable Support category encompasses areas with low levels of future flood loss and low potential for smart growth development. These areas can benefit from targeted interventions to enhance livability and ... sustainability while avoiding sprawl through adaptive reuse and middle-density buildings.



**Stable Support Area Type Current & Future Conditions** 

#### **Goals and Policy Priorities:**

Adaptive reuse: Facilitate mixed-use development and adaptive reuse of underutilized/vacant properties, whether commercial, vacant, or parking lots. Facilitating this can also help compatible uses to be near each other and for housing to be added, especially along existing commercial or transit hubs.

Middle density: Gradually increase housing density in existing neighborhoods, adding more homes (e.g., Accessory Dwelling Units (ADUs), duplexes, and triplexes) without disrupting the neighborhood's character.

Housing fund contributions: Create funds to incentivize affordable housing that can be credited elsewhere. Create funding obligations to subsidize non-profit and for-profit developers to build or substantially rehabilitate multi-family apartments within a certain jurisdiction.

First- and last-mile connections: Improve the final segment of a person's journey between the main transit system (e.g., the bus or train network) and the rider's final destination.

Fair share: Adopt legal requirements for municipalities to provide a fair share of affordable housing for their region. Calculations are usually based on population size, jobs, income, and underdeveloped land. Allocate and build affordable housing units for vulnerable populations and various income levels.

Stable Support communities should prioritize land-use changes along existing transit and commercial corridors to encourage mixed-use development, increase density, and enhance connectivity within their built environment. The most appropriate approach for these areas is incremental development at a moderate density paired with gradual transit improvements.

Specific policy tools, such as adaptive reuse<sup>®0</sup>, middle density<sup>®0</sup>, parking reductions, fair share housing allocations, and contributions to housing funds, are recommended to support this incremental housing development approach. Additionally, localities should concentrate on expanding and enhancing the connectivity of public transit and active transportation networks to improve accessibility and mobility.



Illustrative Future Area Types within Matrix

### Conclusion

Housing and resilience goals must acknowledge needs that are both regional in scope and change over time. Flooding does not adhere to political boundaries or agency jurisdictions. Similarly, housing shortages and increasing costs reflect regional housing conditions rather than local jurisdictional boundaries.

Climate adaptation involves anticipating and preparing for future environmental changes. Proactive climate adaptation projects are among the most expensive efforts we will need to pursue in the coming generation. However, we primarily currently fund them by depending on federal resources allocated after natural disasters cause damage. This reactive approach is already unsustainable and needs to be replaced with initiatives that reduce risk before a disaster occurs.

Efforts to tackle housing scarcity and affordability are equally lacking. New housing options arising from zoning changes and land use reforms will take years to develop, as they depend on real estate development cycles that typically span a decade or more. However, the housing assessments intended to guide land use reform — if they are conducted at all — mainly concentrate on current and past conditions. By failing to consider future circumstances, such as shifts in population, household size, deteriorating housing, and flood losses, many of these assessments rely on outdated benchmarks, underestimating the goals they seek to achieve.

Climate-related factors must be integrated into proactive regional housing assessments and paired with supportive land use planning and policies to cultivate more environmentally sustainable, economically vibrant, and affordable communities. Efforts to close the gap between zoned capacity and overall housing needs should consider localized and regional flood risk conditions, along with elements that encourage compact, walkable, and transit-oriented neighborhoods.

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PRODUCED WITH





# HCR SUSTAINABILITY GUIDELINES: NEW CONSTRUCTION



Kathy Hochul, Governor RuthAnne Visnauskas, Commissioner/CEO

hcr.ny.gov **2023** 



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### INTENT OF GUIDELINES

HCR is working to put current and future affordable housing projects on the path to meeting New York State's Climate Leadership and Community Protection Act ("Climate Act"), which mandates at least a 40% reduction in greenhouse gas emissions by 2030 and at least 85% reduction by 2050, compared to New York State's 1990 carbon emission levels.

For buildings, this will mean dramatically improving building efficiency by enhancing the building envelope performance and removing or significantly reducing onsite carbon emissions from fossilfuel burning appliances. HCR developed these Sustainability Guidelines as a step towards meeting the State's climate goals.

HCR's Sustainability Guidelines are designed to produce high quality housing across the State of New York to provide low-income tenants with improved health, safety and well-being.

The Guidelines include criteria that advance these goals including energy efficient building shells, systems and equipment, reduction or removal of fossil fuel based sources, increased indoor environmental quality and resiliency measures. New York State's goals for Greenhouse Gas Emissions Reductions

# 40% by 2030 85% by 2050



#### **INTENT** Continued

#### SUSTAINABILITY STANDARDS ROADMAP



Reduction or removal of fossil fuel based sources from buildings (i.e., electrification) not only aligns with the carbon-reduction goals of the CLCPA, it also has many benefits to tenants including reduced risk of fire, improved indoor air quality, and elimination of potential carbon monoxide exposure. In conjunction with electrification, it is imperative that buildings reduce their heating and cooling loads by addressing the efficiency of the building shell, which can reduce the energy demands of a building while dramatically improving comfort for tenants. HCR's priority is delivering building envelopes that are well sealed and insulated, while also addressing the need for delivery of fresh air into spaces. Addressing these priorities can result in reduced operational costs and creation of living environments that are healthier and more comfortable to live in.



#### IMPLEMENTATION OF NEW YORK'S CLIMATE ACT IS ON TRACK AND MOVING FORWARD EXPEDITIOUSLY.

### APPLICATION OF SUSTAINABILITY GUIDELINES

The **HCR Sustainability Guidelines** are applicable to certain projects applying for financing through HCR. The list of **Applicable Financing Programs** are outlined in this section. Projects shall follow the Sustainability Guideline section(s) that apply to their project based on the financing and construction type outlined in the Application Matrix below.

#### **APPLICATION MATRIX**

#### **Applicable Financing Programs:**

- HTFC/DHCR 9% LIHTC RFP
- HFA 4% LIHTC Tax-exempt Bond Financing
- HCR Subsidy Financing

Project Type		New Construction Sustainability Guidelines	Existing Buildings Sustainability Guidelines	Preservation Guidelines: A Guidebook for Best Practices in Sustainability
Project applying for financing with HCR through <b>Applicable</b> <b>Financing Programs</b>	Residential New Construction			
	Residential Adaptive Reuse Rehabilitation			
	Residential Substantial/ Gut Rehabilitation			
	Residential Moderate Rehabilitation			
	Mix of Residential New Construction and Residential Rehabilitation Buildings in Project	Note 1	Note 1	
	Mix of Residential New Construction and Residential Rehabilitation in a Single Building		Note 2	
	Commercial and/or Community Service Facility	Note 3	Note 3	
Projects under regulation with HCR	Rehabilitation and/or Replacement work			

#### **Footnotes**

Note 1: Utilize Guidelines matching building scope for each building

Note 2: Follow Adaptive Reuse Guidelines

Note 3: Incorporate comparable energy efficiency strategies as those required for residential projects to achieve similar energy savings

#### **APPLICATION** Continued

#### **CONSTRUCTION TYPES**

The following construction types relate solely to the application of these Guidelines and shall not be used to define project requirements or scopes outside of the criteria defined in these Guidelines.

- **New Construction:** Ground-up construction of a new building or buildings.
- Adaptive Reuse Rehabilitation: A substantial renovation that occurs in a building or space that undergoes a change of use to Residential occupancy, as defined by the applicable building code.
- Substantial Rehabilitation: A renovation where the majority of the interior walls, finishes, systems and MEP infrastructure are demolished and a new scope of work is constructed within the existing building shell. These projects are also sometimes referred to as "gut" rehabilitations.
- Moderate Rehabilitation Level 1: A renovation where the dwelling unit demising walls, most interior walls and MEP infrastructure remain, and the new scope of work is built within the existing dwelling unit compartment. This type of rehabilitation often includes replacement of fixtures, finishes and equipment (FF&E) and roofing. It may include window replacement, siding replacement and additional roofing scopes.
- Moderate Rehabilitation Level 2: A renovation where the dwelling unit demising walls and most of the interior walls remain. This type of rehabilitation includes many of the scoping items of a Level 1 Moderate Rehabilitation, but also includes replacement of mechanical, electrical and plumbing (MEP) infrastructure and equipment, either in part or in full.



John P. Taylor Apartments: Troy, NY

#### **APPLICATION** Continued

#### WAIVERS

Minor deviations from these requirements will be allowed via Design Waiver Request if necessary to avoid costly structural changes in rehabilitation projects or if they result in a superior design solution. Requests to waive a requirement will be reviewed on a case-by-case basis by the Vice President of Sustainability, the Vice President of the Design Construction & Environmental Unit (DC&E) and/ or the respective DC&E Unit Director. Other offices of the Agency will be consulted when necessary. Evaluations of waiver requests will include the determinations of the appropriateness of the proposed



alternative with emphasis on:

- Alignment with the HCR Sustainability Standards Roadmap
- Impacts on operating costs/efficiency
- Impact to the residents
- Cost-effectiveness
- Functional appropriateness
- Durability and operating appropriateness

All waiver requests must be submitted via the Design Waiver Request Form and must be received 30 calendar days prior to each required submission. The Design Waiver Request Form can be obtained online at http://www.hcr.ny.gov.

Waivers are applicable for 18 months from date of issuance. If a project does not submit a formal application to HCR within 18 months, a new waiver must be submitted to HCR for review and approval against HCR's latest guidance and standards.

Potential applicants and design professionals needing technical assistance on the criteria outlined in these Guidelines should contact the HCR Sustainability Team, the Design, Construction & Environmental Unit, or the program managers of the applicable funding sources.

#### **PROJECTS WITH NYC HPD INVOLVEMENT**

All projects located within New York City that involve the City of New York Department of Housing Preservation and Development (HPD)

Mount Hope Walton Apartments: Bronx, NY

#### **APPLICATION** Continued

funding, the more restrictive Guideline shall apply. All Sustainability Guideline criteria that is not met due to conflicts with the HPD criteria, must be presented to and approved by HCR as a Design Waiver Request.

#### **DESIGN COMMITMENT**

To ensure that the design is coordinated with other applicable submission criteria and program requirements, project applicants and architects should also refer to publications applicable to the funding sources for the project. HCR publications can be obtained online at <a href="http://www.hcr.ny.gov">http://www.hcr.ny.gov</a> or from applicable program staff.

A project's design and construction shall comply with and may not vary from what is represented in the application for funding unless a change is specifically directed or recommended by HCR. Constructed projects shall not be diminished in quality, including aesthetics, choice of materials, or systems from that proposed and represented in the application for funding unless specifically altered by HCR at award. The applicant is responsible for ensuring that the project's scope of work, as represented by the plans, specifications and other pertinent documents are well defined and coordinated with the cost estimate.

The Guidelines do not exclude compliance with other criteria that may be required by the project funding source(s) or required by applicable codes, laws or regulations.



Lewisboro Commons: Lewisboro, NY

# NEW CONSTRUCTION

FDC

The HCR New Construction Sustainability Guidelines are applicable to all New Construction Projects applying for financing with HCR under the Applicable Financing Programs. A list of the Applicable Financing Programs can be found in the Application of Sustainability Guidelines section of this booklet. New Construction Projects are defined as projects that include the ground-up construction of a new building or buildings. They can also include portions of a project that include new additions to existing buildings.

For projects that include a mix of New Construction and Rehabilitation, please see the *Application Matrix* included in this booklet.

### STRUCTURE SUSTAINABILITY GUIDELINE REQUIREMENTS

This booklet is divided into three sections:



Section 1: Core Sustainability Requirements



Section 3: Additional Sustainability Requirements

Each section addresses a specific set of goals or standards that HCR has established as a baseline for all New Construction Projects to meet. These are referred to as **Baseline Requirements**. Each section also contains a number of **Stretch Goals** which all development teams are encouraged to meet, as they set the precedent for future baseline standards.

#### TERMINOLOGY: BASELINE REQUIREMENTS AND STRETCH GOALS

BASELINE REQUIREMENTS	STRETCH GOALS
Baseline Requirements outline <b>mandatory</b> criteria that are required on every project.	Stretch Goals are <b>not mandatory</b> , but projects should consider all Stretch Goals outlined in this document unless meeting those goals proves to be cost prohibitive to the project. Stretch standards can be met in whole or in part, meaning a developer can chose to achieve some Stretch Goals in one section but not another. Competitive projects can receive additional points for achieving some or all of the stretch standards as outlined in the applicable RFP.

#### **STRUCTURE** Continued

#### COMPLIANCE PATHS FOR NEW CONSTRUCTION SUSTAINABILITY GUIDELINES:

#### **Section 1: Core Sustainability Requirements**

Projects choosing to meet the **Baseline Requirements** in Section 1 must also comply with the **Baseline Requirements** in Section 2 and Section 3. Projects may choose to meet the **Stretch Goals** in any Section. Projects that commit to compliance with criteria in the **Stretch Goals** in Section 1 of these Guidelines must meet the **Baseline Requirements** outlined in Section 2D HVAC. Projects pursuing **Stretch Goals** in Section 1 shall be considered automatically in compliance with all other **Baseline Requirements**. All projects must comply with all **Baseline Requirements** in Section 3 of these Guidelines.

#### Section 2: Building Performance Requirements

Projects that selected a **Baseline Requirement** in Section 1, will be required to meet the **Baseline Requirements** and may choose to comply with some or all of the **Stretch Goals** in this section. Projects that commit to compliance with criteria in the **Stretch Goals** in Section 1 of these Guidelines must meet the **Baseline Requirements** outlined in Section 2D HVAC. Projects pursuing **Stretch Goals** in Section 1 shall be considered automatically in compliance with all other **Baseline Requirements** in this section.

#### **Section 3: Additional Sustainability Requirements**

All projects must comply with the **Baseline Requirements** in Section 3. Projects may choose to meet some or all of the **Stretch Goals** outlined in this section.

The graphic (below) illustrates the possible compliance paths for meeting the HCR New Construction Sustainability Guidelines.



### SECTION 1 CORE SUSTAINABILITY REQUIREMENTS

Section 1 of the New Construction Sustainability Guidelines outlines core project requirements and eligible third-party certification programs that must be met by all projects.

At a minimum, projects must meet the all-electric standard and comply with one of the **Baseline Requirement** third-party certifications. Projects are encouraged to select a third-party certification from the **Stretch Goal** section, while still meeting the all-electric standard. Projects that commit to compliance with criteria listed in the **Stretch Goals** in Section 1 of these Guidelines must meet the **Baseline Requirement** outlined in Section 2D HVAC. Projects pursuing **Stretch Goals** in Section 1 shall be considered automatically in compliance with all other **Baseline Requirements** in Section 2. All projects must comply ith **Baseline Requirements** in Sectoin 3 of these Guidelines.

#### GENERAL CONSIDERATIONS

Code compliance takes precedence for all building systems and design. If a conflict exists between building/energy codes or HCR sustainability requirements, a design waiver should be requested from HCR.

Please be advised that energy code requirements and the corresponding energy efficiency strategy must be considered when planning a Project's development schedule. Projects will be responsible, without any additional cost to HCR programs, to comply with the applicable energy efficiency standard and all energy code requirements.

Nonresidential projects, or nonresidential spaces in a mixeduse project, shall incorporate comparable energy efficiency strategies as those required for residential projects to achieve similar energy savings.

#### **Baseline Requirements:**

A. All Electric: All projects must utilize high-performance all-



Selkirk Landing: Oswego, NY

electric heating/cooling and domestic hot water equipment and other in-unit or shared appliances such as dryers and cooktops, ovens or ranges, and;

- **B.** Third-party Standard Certification: Select one of the following third-party certification programs to certify the project to:
  - 1. Low Carbon Buildings Criteria Under Climate Bond Initiatives (CBI), which include<sup>1</sup>
    - Energy Star Multifamily New Construction (MFNC) ASHRAE Pathway achieving 30% energy savings, pre-photovoltaic (PV)
    - b. Energy STAR MFNC ERI pathway achieving:
      - i. For Multifamily Buildings: Maximum ERI performance of 0.75 x MFNC c11 ERI target, pre-PV
      - ii. For Townhomes: Maximum ERI performance of 45, pre-PV
    - c. Passive House Certification through either PHI or PHIUS
  - 2. 2020 Enterprise Green Communities Certification
    - c. Projects in NYC should utilize the NYC overlay
  - 3. LEED Residential Silver or higher:
    - a. LEED v4
    - b. LEED v4 with LEED 4.1 credit substitutions
    - c. LEED 4.1
  - 4. WELL or Fitwel Building Certification
  - 5. ICC/ASHRAE 700 2020 National Green Building Standard Silver or higher

If a project team believes there is a third-party rating or certification system that is equivalent to the options listed in the Sustainability Guidelines, the project team can submit a waiver request, with clear justification. The Waiver Request Form can be found online at <u>hcr.ny.gov</u>. Should the rating system be deemed equivalent, a project specific waiver would be made available.

#### Stretch Goals:

- **A.** Third-party Standard Certification <sup>2</sup>: Select one of the following third-party certification programs to certify the project in lieu of the programs listed in the Baseline Requirements:
  - 1. LEED Zero Energy<sup>3</sup> AND:

<sup>&</sup>lt;sup>1</sup> All projects applying for Multifamily Finance 4% HFA Tax-exempt Bond and Subsidy Financing are required to achieve this standard.

<sup>&</sup>lt;sup>2</sup> All projects choosing a Stretch Third-party Standard must still comply with the baseline All-Electric Requirement.

<sup>&</sup>lt;sup>3</sup> HCR does not currently specify a required path for compliance under LEED Zero Energy 3, provided the proposed solution complies with the LEED Zero Energy requirements. The project team is responsible for securing funding sources to cover the purchase of procuring off-site renewable energy as HCR and CEI funds will not cover those expenses. The project team should include their approach to LEED Zero Energy in the application as well as funding sources. If a project team believes there is a third-party rating or certification system that is equivalent to the options listed in the Sustainability Guidelines, the project team can submit a waiver request, with clear justification.

- a. LEED v4 BD+C with a rating of Gold or higher OR
- b. LEED v4.1 BD+C with a rating of Gold or higher
- 2. 2020 Enterprise Green Communities Plus
- 3. Passive House PHI/PHIUS or equal

#### **Exceptions to All-Electric Requirement**

Projects who can provide evidence to any of the following may, at HCR's sole discretion, be granted a waiver from the requirement to have all-electric heating/cooling and domestic hot water equipment:

- a. An electric load letter from grid demonstrating there is not sufficient electrical service to construct a new all-electric building.
- b. Use of on-site emergency back-up power generation with fossil fuel is acceptable; high-efficiency fossil fuel generators are permitted. Projects should provide a letter stating that onsite generators will only be used in no load tests/exercise and for emergency purposes when the electric grid power fails.



### SECTION 2 BUILDING PERFORMANCE REQUIREMENTS

Section 2 applies to those projects who chose the Baseline Requirements compliance path in Section 1. Projects that commit to compliance with criteria listed in the **Stretch Goals** in Section 1 must meet the **Baseline Requirements** outlined in Section 2D HVAC. Projects pursuring **Stretch Goals** in Section 1 shall be considered automatically in compliance with all other **Baseline Requirements** in this Section. All projects must comply with **Baseline Requirements** in Section 3 of these Guidelines.

#### A. APPLIANCES

This section applies to all cooking and clothes drying appliances included in the project. Baseline Requirements: Projects must meet all the following requirements:

- All refrigerators, dishwashers, and clothes washers included in the project or supplied by vendors must meet or exceed Energy Star or CEE Tier 1 certification where available. Commercial washing machines may be non-ENERGY STAR rated provided they meet or exceed the energy efficiency, quality, and reduced operational costs associated with ENERGY STAR rated appliances.
- 2. All ranges, cooktops, ovens and clothes dryers included in the project or supplied by vendors shall be all-electric. This provision extends to commercial and community kitchens.

**Stretch Goals:** Projects should consider incorporating the following into the project:

 All appliances are Energy Star Most Efficient or CEE Tiers 2,3,4 or Advanced

#### **B. LIGHTING**

This section applies to all interior and exterior lighting fixtures and bulbs included in the project.

**Baseline Requirements:** Projects must meet all the following requirements:

 All interior and exterior lighting shall be LED and Energy Star Certified or provide the equivalent in energy savings and quality.



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Sustainability Design Booklet: New Construction | www.hcr.ny.gov

- 2. All exterior lighting fixtures shall be DarkSky approved or meet the intent of DarkSky label, meaning fixtures that:
  - a. Are fully shielded to restrict upward light ;and
  - b. Emit no light above the horizontal plane; and
  - c. Are warm toned (max 3000K) white light or filtered LED light sources.
- 3. All exterior lighting shall have either motion sensor controls, photosensors, or astronomic time-clock operation to limit lighting when there is adequate daylight.
- Interior common area lighting shall be controlled by occupancy sensors or automatic bilevel lighting controls. Exemptions are permitted in areas where 24-hour consistent light levels are required by code and in mechanical and utility rooms.

**Stretch Goals:** Projects should consider incorporating the following into the project:

- 1. Living spaces and/or common areas shall be designed to optimize natural daylighting, minimize glare and minimize excessive heat gain during cooling months.
- Interior common area lighting shall be controlled by occupancy sensors or automatic bi-level lighting controls. Exemptions are permitted in areas where 24-hour consistent light levels are required by code and in mechanical and utility rooms.
- 3. Integrated photovoltaic cells on exterior light fixtures.

#### C. BUILDING ENVELOPE

This section applies to the project's envelope, or the physical barrier between the conditioned and unconditioned environment of a building.



**Baseline Requirements:** Projects must meet all the following requirements:

- Provide a building-wide UA calculation that demonstrates the proposed building envelope is at least 15% better than 2020 NY State Energy Conservation Construction Code (ECCC). Calculations can be submitted in the form of DOE COMcheck or REScheck reports or other supplemental calculation.
- Provide thermal isolation between residential use spaces and separately leased commercial spaces, as defined in the Design Guidelines (if applicable). Commercial spaces should be considered as exterior spaces and thermal envelope assemblies meeting 2020 NYS ECCC prescriptive envelope requirements must be provided.

**Stretch Goals:** Projects should consider incorporating the following into the project:

 Provide a building-wide UA calculation that demonstrates the proposed building envelope is at least 30% better than 2020 NYS ECCC. Calculations can be submitted in the form of DOE COMcheck or REScheck reports or other supplemental calculations.

#### D. HVAC

This section applies to the project's heating, ventilation, and air conditioning systems. Please refer to each subsection for baseline requirements and stretch goals.

#### **Heating and Cooling**

**Baseline Requirements:** Projects must meet all the following requirements:

 All HVAC equipment must be all high-efficiency, allelectric, and carry an ENERGY STAR certification or provide the equivalent in energy savings, quality and

#### HEATING & COOLING TERMINOLOGY

COP (Coefficient of Performance): Coefficient of Performance is the relationship between the power (kW) that is drawn out of the heat pump (cooling or heat), and the power(kW) that is supplied to the compressor.

Cold Climate Air-Source Heat Pumps (ccASHP): Air-Source Heat Pumps that are suitable for cold climates and specifically designed to efficiently extract heat from outdoor air at very low, outdoor air temperatures and transfer that energy to indoor spaces through a reverse air-conditioning process.

Reference the Northeast Energy Efficiency Partnerships (NEEP) cold climate heat pump list to identify compliant ASHP products: ashp.neep.org

Ground Source Heat Pump

(GSHP): Ground Source Heat Pumps uses the year-round relatively constant temperature of the earth to transfer heat, even in winter months. GSHPs typically achieve higher COPs than ASHPs.

New York State is a leader in adopting clean heat and energy efficiency measures, committing more than \$6.8 billion to reduce the carbon footprint of New York's building stock.

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operational costs.

- Equipment shall be either ground source heat pumps OR cold climate air source heat pumps. Cold climate air source heat pumps must be either:
  - a. Listed on the <u>Northeast Energy Efficiency Partnership (NEEP)</u> <u>Cold Climate Air Source Heat Pump Product List</u> OR
  - b. Meet <u>NEEP's Cold Climate Air Source Heat Pump</u> Specificiation (Version 4.0 effective January 1, 2023)
  - c. Acceptable equipment includes equal to or better efficiency than the following (either ducted or ductless distribution):
    - Variable Refrigerant Flow (VRF) with Heat Recovery (simultaneous heating and cooling). VRF with Heat Recovery must be thermally zoned to take advantage of heat recovery between spaces and realize nameplate efficiencies.
      - VRF systems without heat recovery will be permissible if the project demonstrates the system is thermally zoned to account for climate variations (exterior wall exposures, internal heat gain, etc).
         Project must also provide details on the operational mode switchover strategy (manual switchover, outdoor air sensor, thermostat mode, etc).
    - ii. All VRF systems (with or without heat recovery) must be appropriately thermally zoned. The project team must include thermal zoning strategy in the application. Design of thermal zones shall include analysis of unbalanced solar heat gains and internal heat gains considering exposure and potential occupant load. Cold Climate Miniand Multis-plit units.
    - iii. Cold Climate Packaged Terminal Heat Pumps (PTHPs) provided that the project demonstrates/includes all of the following:
      - Thermal break details that mitigate thermal bridging from PTHP sleeve







Ithaca Housing Authority: Ithaca, NY

- Air sealing details around PTHP penetrations
- Deductions in the project's UA calculations or COMcheck/REScheck reports to account for minimized thermal performance at PTHP openings<sup>4</sup>
- If a project is pursuing Passive House certification, the project's energy consultant must provide written confirmation on company letter head confirming that the project is pursuing the alternate compliance pathway for PTHPs
- Sample air leakage test/mock-up
- b. Cold Climate Air to Water Heat Pumps (AWHP)

Alternate high-performance decarbonized solutions may be acceptable, at the sole discretion of HCR, if a proposer provides a waiver request and substantial justification to support an alternative HVAC system or design that supports decarbonization. Areas such as stair towers, and vestibules with no access to a central system can use lower efficiency electric heating

components, such as electric resistance heating units, which should only be considered in limited quantities.

- HVAC systems shall meet the following requirements as applicable:
  - a. System shall utilize compressor inverter technology efficiently to at least 0 degrees Fahrenheit, without reliance on electric resistance heat.
  - Heat pumps with back-up electric resistance heating must include controls to limit operation above 0 degrees Fahrenheit.
  - c. Distribution systems must be designed to provide adequate conditioned heating/ cooling to each habitable space within the dwelling unit.
  - d. VRF Multi-Split Air Conditioner and Heat
     Pump equipment must meet the Air
     Conditioning, Heating and Refrigeration

<sup>&</sup>lt;sup>4</sup> Project team can use a higher thermal performance value if sufficient documentation is provided to the HCR Sustainability Unit from the manufacturer showing added insulation within the PTHP assembly.

Institute (AHRI) standard 1230 - 2021 with the AHRI label affixed to the equipment.

- e. For central VRF-type systems, provide BACnet connection between the heating distribution systems to allow for monitoring capability of the temperature setpoints within units. The installed system must be capable of monitoring temperature setpoints and transmitting data to an external interface. Front-end Building Management System is not required.
- f. Heat pumps must provide heating and cooling. Owner can submeter cooling as needed.
- Refrigerant pipes for VRF systems must be properly protected during installation and installed, tested, insulated, and charged per Energy Code and manufacturer's requirements.
  - Refrigerant piping must be protected during construction to prevent debris contamination by either capping or covering the ends of piping during installation.
  - Nitrogen pressure testing and system vacuum evacuation per manufacturer's testing procedures must be included and must be completed prior to system charging.
  - Refrigerant pipe insulation must be installed per 2020 NYS ECCC requirements and any insulation exposed to the exterior must be provided with PVC or aluminum jacketing to protect pipe insulation.
  - System refrigerant charging must be performed per manufacturers' requirements and must be calculated based on as-built refrigerant pipe lengths. Final charge weight should be documented in start-up documentation, O&M manuals, and/or on the equipment itself.
- 4. HVAC systems shall meet the following design considerations as applicable:
  - a. Ducted systems should be used to the greatest extent feasible.
  - Surface mounted units, when used, must be coordinated between Architectural and Mechanical, Electrical, and Plumbing divisions to avoid loss of usable wall space within unit



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while complying with manufacturer's requirements for clearance.

- c. Exterior mounted condensers shall be placed in a suitable inconspicuous location that does not interfere with exiting path used by the residents and is not directly visible through windows of dwelling units. If the condensers are roof mounted, the installation shall be such that it does not damage the roofing system nor detract from the exterior view of the building.
- 5. Thermostats shall meet the following requirements:
  - a. All apartments shall be treated as individual heating zones controlled by a wall-mounted programmable thermostat in each apartment capable of maintaining different temperature set points at different times of the day. In buildings with common heating systems, provide either programmable thermostats in each apartment or building system set-back controls, as allowable by the applicable building codes.
  - b. In common areas, remote wall thermostats accessible to the public should be in a locked enclosure and controlled by the building operations team.
- 6. All HVAC equipment must be commissioned prior to occupancy following one of the below standards, whichever is most stringent:
  - a. ASHRAE/IES Standard 202 OR
  - b. A third-party certification standard
  - c. Local or state building code (such as 2020 NYS ECC). All balancing/commissioning reports must be submitted to the project Energy Consultant for review and approval.

#### Stretch Goals:

1. Provide central control capability of heating units through BACnet infrastructure or other equal.

#### **Domestic Hot Water**

Baseline Requirements: Projects must meet all the following requirements:

- All projects must utilize high-efficiency electric domestic hot water systems. Acceptable domestic hot water systems include the following:
  - a. Cold Climate Air to Water Heat Pumps
  - b. Heat pump Water Heaters
    - In-unit heat pump water heaters must include enough clearance to ensure proper airflow for heat extraction and to prevent cold drafts that impact tenant comfort. Project must also provide details to mitigate noise concerns.
    - Multiple HPWHs in a central configuration serving multiple units are not permitted unless sufficient design detail is provided in a design waiver, subject to HCR's approval.

- c. Electric resistance storage water heaters that provide hot water to distribution loop serving a single zone or a single floor, whichever is smaller in terms of linear feet of piping. Water heaters must be insulated per 2020 NYS ECCC Requirements.
- d. In-unit electric resistance water heaters. Electric resistance storage water heaters must be insulated per 2020 NYS ECCC requirements.

#### **Exceptions:**

Project can demonstrate any of the "Exceptions to All-Electric Standard" listed in Section 1 of this booklet may be exempt from this requirement.

Stretch Goals: Projects should consider incorporating the following into the project:

- Solar thermal systems designed to pre-heat domestic hot water. These systems are often paired with heat pumps or instantaneous hot water heaters to bring water up to temperature.
- 2. Ground source heat pumps that either operate on their own or are in conjunction with heat pumps or instantaneous hot water heaters.

#### Ventilation

Baseline Requirements: Projects must meet all the following requirements:

- 1. Meet the ventilation criteria required by the third-party certification program in Section 1.
- 2. Provide Energy Recovery Ventilation (ERV) or Heat Recovery Ventilation (HRV) for public spaces, such as community rooms, corridors, etc. per 2020 NYS ECCC requirements.

Stretch Goals: Projects should consider incorporating the following into the project:

- Provide mechanical ventilation using Energy Recovery Ventilation (ERV) or Heat Recovery Ventilation (HRV) in dwelling units to increase indoor air quality. In-unit ERVs must include properly located access panels to clean louvers/grilles.
- 2. Proper Passive Ventilation: Utilize proper passive ventilation. Design the project to account for building mass, pressure differentials, and fresh air/natural ventilation (not just operable windows) to generate sufficient natural ventilation flows to reduce energy consumption and operate in whole or in part even during power outages. Advanced design should consider directing natural air flows through filtration systems.

#### E. WATER EFFICIENCY

**Baseline Requirements:** Projects must meet all the following requirements:

1. All fixtures listed below must meet the following requirements:

- a. Toilets WaterSense or equal AND 1.28 GPF, or dual flush (1.28 GPF max, 0.8 GPF min)
- b. Showerheads WaterSense or equal AND 1.75 GPM max
- c. Kitchen Faucets 1.5 GPM, or dual flow (2.2 GPM max, 1.0 GPM min)
- d. Bathroom lavatory faucets and all other fixtures in dwelling units WaterSense or equal AND
  1.0 GPM max

Stretch Goals: Projects should consider incorporating the following into the project:

- 1. Utilize water fixtures that are more efficient than the baseline requirements listed above.
- 2. Incorporate grey water systems such as on-site filtration, grey water reuse for non-potable uses and water cisterns, where appropriate.
- 3. Install a water monitoring system that is capable of transmitting data to a website or external interface AND monitors water consumption in the following areas of the building:
  - Each cold-water branch from the apartment line riser for each dwelling unit.
  - Each cold-water riser and domestic hot water and cold-water feed in the building.
  - Common laundry room (if applicable).
  - Outdoor water lines.
  - Cold water lines in non-residential spaces of the project (if applicable and if property owner is responsible for water utilities).



# SECTION 3 ADDITIONAL SUSTAINABILITY REQUIREMENTS

Section 3 applies to all New Construction Projects. At a minimum, all projects are required to meet the **Baseline Requirements** for each category listed in Section 3. Although not required, projects should consider some or all of the **Stretch Goals** listed in Section 3.

#### A. INDOOR ENVIRONMENTAL QUALITY PRACTICES

**Baseline Requirements:** Projects must meet all the following requirements:

- 1. Low VOC Building Materials:
  - a. All interior paints, coatings and primers shall have a VOC content less than or equal to the thresholds provided by the most recent version of SCAQMD 1113 available at time of product specification. VOC emissions shall be verified as compliant with CDPH Standard Method for all wall finish paints. All wallpaper shall be phthalate free.
  - b. All interior adhesives and sealants shall have a VOC content less than or equal to the thresholds provided by the most recent version of SCAQMD 1168, available at time of product specification, for all interior adhesives and sealants.
  - c. All flooring products must comply with CDPH emission requirements, including carpeting and hard surfaces. Flexible PVC with phthalates is prohibited, regardless of whether the phthalates were intentionally added or added via recycled content.
  - d. Fiberglass or mineral wool batt insulation must be formaldehyde-free.
  - e. Spray foam insulation shall be applied by applicators certified by the manufacturer, the American Chemistry Council, or other recognized industry standards. The application of spray foam shall be in accordance with such certification to limit harmful off-gassing after the curing period. Scheduling of spray foam applications shall be done in a manner that allows sufficient ventilation to occur to dissipate any residual offgassing prior to the spray foam insulation becoming enclosed by other materials.



Lewisboro Commons: Lewisboro, NY



Tremont Residence: Bronx, NY

f. Composite Wood in products such as cabinets and doors shall have formaldehyde emissions less than or equal to the thresholds provided by CARB Phase 2 and/ or TSCA Title IV for plywood, particleboard and MDF. For any other composite wood products not covered by CARB/TSCA requirements, but used in interior spaces, these must at minimum be NAUF (have no added urea formaldehyde).

#### 2. Integrated Pest Management:

All projects are to incorporate integrated pest management during construction that includes sealing all openings, cracks and joints to prevent the infestation of insect and animal pests from entering the building or migrating from one apartment or common area to another. After occupancy, the building management shall incorporate environmentally friendly pest management strategies and extermination practices that are safe for the health of the residents and the environment. A service contract or documentation should be provided as part of the project close out binder.

3. Ventilation Requirements – During and Post Construction: In all dwelling units, seal all heating, cooling, and ventilation return and supply floor ducts and returns throughout construction to prevent construction debris from entering. Flush all dwelling units with a MERV 13 filter or better after completion of construction and prior to occupancy for either 48 hours or with at least 14,000 ft3 per ft2 of floor area, then replace all air handling equipment filters.

#### **B. SUSTAINABLE CONSTRUCTION PRACTICES**

**Baseline Requirements:** Projects must meet all the following requirements:

1. Develop and implement a construction waste management

plan that reduces non-hazardous construction and demolition waste through recycling, salvaging, or diversion strategies; maintain documentation on diversion rate for each selected strategy.

**Stretch Goals:** Projects should consider incorporating the following into the project:

- Projects are encouraged to select one of the following advanced construction waste management strategies to pursue:
  - a. Provide a construction waste management plan that diverts at least 75% of construction waste away from the landfill; or
  - b. Implement a construction waste management plan such that the total construction waste sent to landfill or incinerator is less than 2.5 lbs/SF of building.

#### C. OPERATIONS:

**Baseline Requirements:** Projects must meet all the following requirements:

- Energy and Water Benchmarking: Projects over 25,000 square feet, upload whole building (owner and tenant paid) energy and water performance data into online utility benchmarking platform annually and share with HCR. For details on HCR Benchmarking requirements see: https://hcr.ny.gov/steps-hcr-benchmarking-program
- 2. Building Operations and Maintenance: Provide HCR with a digital copy of an Operator's Manual prepared by the project's Energy Management Consultant that includes the following:
  - a. Overview of how mechanical systems are operated, including:
    - i. Ideal set points



- ii. Summarized warranty information
- iii. Retro commissioning reports
- iv. Summarized mechanical systems manufacturers information. Please reach out to HCR if you require a sample document.
- b. Maintenance schedule/key contact for maintenance

#### 3. Emergency Management Manual

a. Develop an Emergency Plan for building management and residents, including evaluation plans with specific instructions for a flood event, if applicable.

#### 4. Resident Manual

- a. List of sustainability features in the community spaces and resident units
- b. Provide residents with key equipment manual information
- c. Work order request process
- d. Where applicable, control manuals with key set points

#### 5. Training and Walkthroughs for Building Staff

- a. Building operators should be present for system start up
- b. General contractor should provide at least one mechanical systems on-site training with building management and operators prior to resident occupancy
- 6. Establishment of maintenance log for key building system including but not limited to, when and who services equipment, including annual service and emergency repair/work.



#### D. SITE

**Baseline Requirements:** Projects must meet the following requirement:

- Provide at least one Level 2 electric vehicle (EV) charging station for every twenty parking spaces provided in a project. EV charging stations shall be equitably distributed throughout the project to allow residents equal convenience in accessing the EV charging stations.
  - Projects shall not be required to provide more than five EV charging stations in total.
  - Projects that do not provide parking in a lot are exempt from this requirement.
- Projects with individual driveways for dwelling units should provide a dedicated branch circuit that is not less than 40-ampere and 208/240-volt assigned for electric vehicle supply equipment terminating in a receptacle located adjacent to the driveway for EV charging capabilities.



Windsor Terrace: Schenectady, NY

#### **Stretch Goals:**

- Provide at least one Level 2 electric vehicle (EV) charging station for every ten parking spaces provided in a project. EV charging stations shall be equitably distributed throughout the project to allow residents equal convenience in accessing the EV charging stations.
- Sites should include considerations for raised planter beds to accommodate resident gardens. All resident gardens shall be located on an accessible route and include at least one accessible planting area. Resident gardens shall also be located in close proximity to a spigot for access to water.
- 3. Sites should include considerations for walking trails or other outdoor fitness areas for adults and adolescents.

#### E. SOLAR CONSIDERATIONS

HCR requires that all projects pursuing solar energy, or any other alternative energy sources must incorporate the design, operating cost and development cost assumptions associated with those measures into the project by the time an application is submitted for funding. Any changes to the energy

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New Yorkers consume less total energy per capita than the residents than all but two other states, California and Rhode Island.

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efficiency strategy or green building practices after application submission will not be allowed.

Baseline Requirements: Projects must meet the following requirement:

 All NYC projects must evaluate the project for solar feasibility. The solar feasibility study should include proposals for potential locations such as rooftops and other locations throughout the site, identification of preliminary solar components and basic electricity production estimates. The study should also include a cost benefit analysis, including the estimated payback period for the solar installation.

Stretch Goals: Projects should consider incorporating the following into the project:

- All non-NYC projects should evaluate the project for solar feasibility. The solar feasibility study should include proposals for potential locations such as rooftops and other locations throughout the site, identification of preliminary solar components and basic electricity production estimates. The study should also include a cost benefit analysis, including the estimated payback period for the solar installation.
- 2. If solar photovoltaic systems (PV) are not included in the project, include solar ready design to allow for future installation of solar PV. Design considerations should include:
  - a. Panel Location and Orientation:
    - i. Space reserved on site or on building roof that is free of shade including trees, buildings and building parapets/penthouses.
    - ii. Potential for south-facing exposure for solar PV panel array.
  - b. Solar Ready Zones:



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- Solar-ready zones shall be designated on the roofs and comply with the provisions outlined in Section CA103.2-CA103.8 or Section RA103.2-RA103.8 of the 2020 Energy Conservation Construction Code of New York State, as applicable per project type.
- ii. Roofing warranty shall allow for future installation of solar PV panels without voiding warranty.
- Design the building with passive solar design principles including orientation and shading. Specifically consider the followings:
  - a. Shade buildings by incorporating landscaping elements.
  - b. Incorporate brise soleil or other architectural shading devices into the façade where appropriate.

#### F. RESILIENCY

This section applies to the project's ability to adapt and provide protection from the adverse effects of climate change.

**Baseline Requirements:** Projects must meet the following requirements:

- 1. Conduct a resiliency assessment:
  - a. If pursuing Enterprise Green Communities certification, conduct a resiliency assessment equivalent to the assessment listed in criterion 1.6 "Resilient Communities: Multi-Hazard/

Vulnerability Assessment." Projects should

demonstrate how the building is being designed to address the risks identified in the resiliency assessment.

- b. If not pursuing Enterprise Green Communities certification provide a report and supporting narrative describing if applicable: Applicable hazards to the project as identified on FEMA's National Risk Index map (<u>https://hazards.fema.gov/nri/map</u>). Steps the project will take to mitigate the identified risks.
- Elderly Projects (Senior Housing) and projects providing housing to Persons with Special Needs, in at least 50% of the dwelling units, must provide the following:
  - a. Adequate back up power generation to:
    - i. At least one elevator in the building (if



La Mora Senior Apartments: Yonkers, NY

applicable) that incorporates resilient design features, and;

- ii. The building's water pump system to provide residents with potable water in the event of a power outage.
- A community room at least 15 square feet per bedroom in size that could serve as a shelterin- place location for residents. The community room must include back up power generation that would last at least 4 days to the following:
  - i. Electrical outlets,
  - ii. At least one refrigerator, kitchen sink and microwave or range,
  - iii. At least one accessible bathroom,
  - iv. Heating and cooling, and
  - v. Domestic hot water

Additionally, other residential common areas may be combined with the Community Room to meet the area requirement, as long as those spaces are also provided with back-up power generation.

Projects may utilize either a solar energy system with battery storage or an efficient, low-emission generator to provide power. Fossil fuel back up power is exempt from the all-electric building requirement. Projects should document how long the backup power generation will be able to carry the loads selected and at time of CO, include copy of their refueling contract that includes provisions during periods of power outages.

#### Stretch Goals:

Projects should consider incorporating the following into the project:

- For projects located in Urban Areas (UAs) as designed by the U.S. Department of Commerce, U.S. Census Bureau, design the project to mitigate the impacts of urban flooding.
  - a. Enhanced Stormwater Management: Urban flooding is defined as the inundation of stormwater infrastructure due to rainfall that overwhelms the capacity of the stormwater/ sewer systems. Projects should include additional stormwater management techniques to reduce the volume of stormwater runoff and to mitigate unintended effects to the building and tenants during extreme weather scenarios. Projects should consider utilizing the USEPA Storm Water Management Model (SWMM) or the Green Infrastructure Flexible Model (GIFMod) to help inform enhanced storm water management.

- b. Building Design: Buildings should be designed to mitigate the potential for stormwater damage or mitigate the loss of services to the building during extreme weather scenarios by incorporating one or more of the following strategies:
  - i. Do not locate dwelling unit spaces below grade
  - ii. Elevate key mechanical, electrical and control gears above grade or flood proof any equipment that cannot be elevated.
  - iii. Install backwater control plugs in floor drains and backwater valves on house sewer lines.
- 2. Install sump pumps in the lowest levels of the basement floor, where applicable.
- 3. Projects located in the 500-year floodplain or in levee-protected or dam breakage inundation areas should design the project as follows:
  - a. Locating key mechanical, electrical and control gears above the 500-year flood level or flood proof any equipment that cannot be elevated.
  - b. Utilize flood resistant construction for all areas below the 500-year flood level.
  - c. Locate habitable building space above the 500-year flood level.
  - d. Install backwater control plugs in floor drains and backwater valves on house sewer lines.
  - e. Install sump pumps in the lowest levels of the basement floor, where applicable.
- 4. Projects should design buildings to **maximize active resiliency** by incorporating the following where feasible:
  - Renewable PV with battery storage or efficient fossil fuel backup generator to power critical loads. Project should select three or more of the following critical loads:
    - i. Heating systems
    - ii. Operation of water pumps if needed to make potable water available to occupants
    - iii. Lighting and Electric load
      - Plug load in common area spaces or offices
      - Adequate lighting for common area spaces for a shelter-in-place scenario
    - iv. Operation of a fan sufficient to provide emergency cooling if mechanical air conditioning equipment cannot operate
    - v. Ventilation systems
    - vi. Sufficient power for operation of critical medical equipment for residents
    - vii. Operation of cable modem and wireless router or other means of providing online access within the building, if applicable
    - viii. Operation of one elevator in building, if applicable

- b. Community Shelter or Place of Refuge: include a common space designated as an emergency shelter area for building occupants, or formal place of refuge. Consider providing the following in the community shelter-in-place of refuge with back-up power generation to provide the following:
  - i. Electrical outlets,
  - ii. At least one refrigerator, kitchen sink and microwave or range,
  - iii. At least one accessible bathroom,
  - iv. Heating and cooling, and
  - v. Domestic hot water
- Design the building with a rainscreen and windows that can withstand hurricane force winds and rain in coastal areas or special wind regions as defined in NYS Residential/ Building Code.
- 5. Where active resiliency is not utilized, projects should design buildings to maximize passive survivability in the event of an extreme weather event or power loss. Projects should incorporate the following considerations into the building design where feasible:
  - Passive survivability of indoor spaces via highly-efficient building envelopes by maximizing the number of hours that a building stays within comfortable and survivable temperatures without heating or cooling equipment.
  - b. Natural ventilation techniques that allow fresh/filtered air ventilation to occur even in the event of power loss.
  - c. Maximize natural lighting so that living, common spaces and stairwells all use natural daylighting to the maximum amount feasible.



#### Cover Photo Images (Clockwise):

Veddersburg Apartments: Amsterdam, NY Edna Craven Apartments: Rochester, NY Williamsbridge Gardens: Bronx, NY

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## **EMPLOYER ASSISTED HOUSING PROGRAM**

Effective September 1, 2024

## **Revised Program Criteria\***

## CATEGORY I (80%)

	CATEGOR	CATEGORY II (120%)	
<b>Guidelines</b> *When combining programs, most restrictive criteria applies	Nassau / Suffolk HOME Funds OPTION (B)	New York State AHC Funds OPTION (A)	New York State AHC Funds
Employee income for eligibility	Up to 80% AMI	Up to 80% AMI	80% to 120% AMI
Employer "NET" Contribution	Minimum \$3,000-\$5,000- \$10,000 max.	Minimum \$3,000-\$5,000- \$10,000 max.	Minimum \$3,000-\$5,000- \$10,000 max.
Maximum Home Prices * (Varies by jurisdiction)	Nassau \$608,000* Suffolk \$551,000 *	Nassau \$608,000* Suffolk \$551,000*	Nassau \$810,000* Suffolk \$660,000*
<b>Type of Home</b> (Must be Principal Residence, no rental unit allowed)	New and pre-existing Single family, Condos, Co-ops and Manufactured	<u>NO</u> New – <u>Only</u> pre-existing Single family, Condos, Co-ops and Manufactured	<u>NO</u> New – <u>Only</u> pre-existing Single family, Condos, Co-ops and Manufactured
First Time Homebuyer Limit	No	No	No
Housing Counseling	Yes	Yes	Yes
DPA Grant Assistance	\$12,000- Suffolk County \$25,000- Nassau County	\$14,000	\$9,000
<b>Rehabilitation Grant</b>	0	\$24,000	\$14,000
Net Grant Assistance for Down Payment and Rehab	\$12,000- Suffolk County \$25,000- Nassau County	\$38,000	\$23,000
Terms of Grant Forgiveness	5 years- Suffolk County 10 years-Nassau County	10 years	10 years LIHP

## **Chapter 9-7 AFFORDABLE HOUSING REGULATIONS**

### ARTICLE I. AFFORDABLE RENTAL HOUSING REGULATIONS

#### Sec. 9-7-1. Statement of policy.

The City of White Plains finds that having housing that is affordable to a range of income groups is necessary in order to ensure the continued social and economic diversity of its population, which is one of its defining characteristics. The City finds that Fair Market Rents are unaffordable to low and moderate income households, and that there is a shortage of affordable housing due to the high cost of existing housing, land, and construction in the region.

In the interest of reducing the number of cost-burdened households (those spending more than 30% of gross income on housing costs), the City has established a policy requiring that Affordable Rental Housing be a component of the development of multi-family or mixed-use residential rental developments greater than ten (10) dwelling units, including the conversion of existing non-residential buildings to residential, or substantial renovation of vacant residential structures.

(Ord. of 3-4-19, § 1; Ord. of 4-1-19, § 1; Ord. of 5-6-19, § 1)

#### Sec. 9-7-2. Definitions.

- (A) AFFORDABLE RENTAL HOUSING: Rental housing for which the monthly rent is established using Westchester County Rent Limits published annually by the US Department of Housing and Urban Development (HUD) which is rented to an Income Eligible Household.
- (B) AFFORDABLE RENT: Monthly rent, based on income limits for Westchester County published annually by the US Department of Housing and Urban Development (HUD), which is adjusted for unit-size, utilities, and amenities.
- (C) AFFORDABLE RENTAL HOUSING PROGRAM (ARHP): The program established by the City of White Plains to assist families with incomes between 50% and 99% of Area Median Income (AMI) to obtain rental housing in ARHP Applicable Rental Projects. The ARHP shall be administered by the White Plains Department of Planning, or other agency approved by the Common Council, and operated under the oversight of the Commissioner of Planning.
- (D) AFFORDABLE HOUSING ASSISTANCE FUND (AHAF): A fund held and maintained by the City of White Plains which may be used for: down payment assistance; land acquisition or project construction expenses for the development or rehabilitation of affordable housing; program administration costs; and other actions taken for the furtherance of increasing affordable housing city-wide.
- (E) AFFORDABLE UNITS: Dwelling units that are designated for rental to income qualified Households pursuant to these regulations.
- (F) ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING CHOICE (AI): A document published regularly by the Planning Department in compliance with HUD requirements, to further fair housing objectives. It analyzes impediments to fair housing, and it identifies strategies to reduce the effect of those impediments.
- (G) APPLICANT: The person(s) under whose name the apartment will be leased.

- (H) AREA MEDIAN INCOME (AMI): The middle of the income distribution, with equal parts falling below and above the median income. The Area Median Income (AMI) is defined herein as 100% of Westchester County Area Median Income as reported annually by the US Department of Housing and Urban Development (HUD) and adjusted for Household size.
- (I) ARHP ADMINISTRATIVE AGENT: City of White Plains Planning Department or other agency contracted by the City of White Plains to administer the ARHP, with oversight retained by the Commissioner of Planning.
- (J) ARHP APPLICABLE RENTAL PROJECT: Any multi-family rental or mixed-use development that includes ten (10) or more residential rental units including new construction, conversion of non-residential structures to residential use, or substantial renovation of vacant residential structures.
- (K) HOUSEHOLD: Related and/or unrelated persons living together in a rental unit as a single housekeeping unit, sharing rent and unit amenities, as permitted under the Maximum Permitted Occupancy for the unit.
- (L) HOUSEHOLD ASSETS: Monies in savings or checking accounts, certificates of deposit, trusts, stocks and bonds, and the value of any real property, less outstanding debt.
- (M) HOUSEHOLD INCOME: The total income from all sources of all persons in the Household over eighteen (18) years of age and not registered full time at an accredited college, university or trade school.
- (N) INCOME ELIGIBLE HOUSEHOLD: A Household with an annual income between 50% and 99% of the AMI for Westchester County, as adjusted annually by the US Department of Housing and Urban Development (HUD).
  - (1) Household Income between 50% and 59% of AMI will qualify for an Affordable Unit that has rent based on 50% of the AMI.
  - (2) Household Income between 60% and 79% of AMI will qualify for an Affordable Unit that has rent based on 60% of the AMI.
  - (3) Household Income between 80% and 99% of AMI will qualify for an Affordable Unit that has rent based on 80% of the AMI.
  - (4) An Applicant may rent an ARHP unit in a higher rent designation as long as the rent does not exceed 39% of the gross monthly Household Income.
  - (5) Applicants with rental subsidies may qualify for an ARHP unit with an annual Household Income below the required AMI levels provided the combination of income and subsidy is sufficient to cover the monthly Affordable Rent.
- (O) IN-LIEU HOUSING FEE: Fee paid to the Affordable Housing Assistance Fund (AHAF) in lieu of providing Affordable Units in an ARHP Applicable Rental Project.
- (P) MARKET RATE UNIT: Any housing not restricted to low- and moderate-income households that may rent at any price.
- (Q) MAXIMUM PERMITTED OCCUPANCY: The maximum number of people that can occupy a dwelling unit as determined by the Commissioner of Building based on the White Plains Building and Fire Prevention Code.
- (R) PLANNING DEPARTMENT: The City of White Plains Department of Planning.
- (Ord. of 3-4-19, § 1; Ord. of 4-1-19, § 1; Ord. of 5-6-19, § 1)

#### Sec. 9-7-3. Affordable housing requirements.

(A) Affordable Housing Obligation by Project Size.

(Supp. No. 76 Update 2)

(1) ARHP Applicable Rental Projects approved after September 1, 2019<sup>1\*</sup> are required to provide Affordable Units in accordance with the following table. Projects containing 15 or more units may select either the 8% or 12% set-aside requirement.

Total Units in Development	Number/Percentage of required ARHP units	Percentage of units at designated AMI Level	AMI Level
1-9	None	—	
10-14	1	100%	60% AMI
15+	12%	100%	80% AMI
	8%	80%	60% AMI
		20%	50% AMI

- (2) When selection of the 8% set-aside option results in an affordable housing requirement of less than 5 units, all units must be provided at the 60% AMI level.
- (3) If calculating the number of required Affordable Units results in a decimal of 0.5 or greater, the number of affordable dwelling units required shall be the next greater whole number.
- (B) Term of Affordability. The dedicated ARHP Affordable Units must remain affordable in perpetuity, for the life of the project.
- (C) Affordable Unit Allocation by Size and Percent of AMI.
  - (1) Affordable Units must be provided onsite and allocated by unit size (bedroom count) in the same proportion as the Market Rate Units.
  - (2) Affordable Units shall be distributed throughout the building(s), except that for any building ten (10) or more stories in height, the top four floors may be reserved for Market Rate Units.
  - (3) Each Affordable Unit in a development shall be designated as a 50% unit, a 60% unit, or an 80% unit, and it shall retain that designation regardless of whether tenant income fluctuation results in changes to Affordable Rent.
- (D) Marketing. The marketing of Affordable Units shall be the responsibility of the developer and/or owner, and shall be in compliance with Federal Fair Housing Laws and in consideration of the recommendations and strategies of the City's Analysis of Impediments to Fair Housing ("AI").
- (E) Dwelling Unit Size and Quality.
  - (1) The Affordable Unit(s) shall be of comparable square footage to the Market Rate Units.
  - (2) Affordable Units must be maintained and updated on the same schedule and in the same manner as Market Rate Units.
  - (3) All tenants in the Affordable Units shall have access to the same amenities as the tenants in Market Rate Units.

<sup>&</sup>lt;sup>1\*</sup> ARHP Applicable Rental Projects providing affordable housing pursuant to a site plan approval granted prior to September 1, 2019, remain subject to the terms and conditions of the resolution approving the project. For subsequent amendments to site plans granted prior to September 1, 2019, the regulations herein will be applied to any increase in dwelling units beyond the previously approved plan.

- (F) Occupancy. An ARHP Affordable Unit must be the primary residence of the Household. Only persons listed on the ARHP application or recertification form shall occupy an ARHP unit. Any change to Household composition must be reported to the ARHP Administrative Agent. Affordable Units may not be sublet.
- (G) Timing of Construction. The Affordable Units shall be constructed and issued certificates of occupancy concurrently with, or prior to, the Market Rate Units in the development. If a project has phased construction, Affordable Units shall be provided on a pro rata basis.
- (H) Methods of Meeting the Affordable Housing Obligation. The affordable housing requirement may be satisfied through one or both of the following methods:
  - (1) Inclusion of Affordable Units within an ARHP development as described in Section C above; or
  - (2) Payment of a fee-in-lieu of providing Affordable Units within the ARHP development. A buy-out of up to 25 Affordable Units is permitted. The per unit fee, regardless of unit size (bedroom count) or AMI designation shall be 1.25 times (1.25X) the HUD Westchester County AMI for a Household of four for the year in which the project is approved. Any remaining Affordable Units required within the project must be allocated at a pro-rata basis with respect to unit size (bedroom count) and AMI designation.

Applicants seeking a buy-out of their entire affordable housing obligation must calculate their Affordable Unit requirement at 12% of total project units. Applicants selecting the 8% set-aside option may choose to buy-out a portion of their affordable housing obligation provided a minimum of 5 ARHP Affordable Units are constructed within the project.

Fee-in-lieu payments shall be made prior to the issuance of the first Certificate of Occupancy for the development and will be deposited into the Affordable Housing Assistance Fund. If a project has phased construction, payments for Affordable Units shall be provided on a pro-rata basis.

Projects approved prior to the adoption of this section that have yet to receive a Certificate of Occupancy (temporary or permanent) may opt to buy-out of up to half of their affordable rental unit obligation without requiring an amendment to existing site plan approval. The per unit fee for retroactive buy-out shall be 1.25 times (1.25x) the HUD Westchester County AMI for a Household of four for the year in which the fee-in-lieu payment is made. Remaining Affordable Units must be provided within the development at a pro-rata share of the full Affordable Unit requirement designated in the site plan approval regarding unit size (bedroom count) and AMI.

Projects receiving a residential density bonus in exchange for the inclusion of Affordable Units within the development per Section 5.3 Schedule of Dimensional Regulations of the Zoning Ordinance may not buy-out of any portion of their affordable housing obligation.

#### (I) Rental Terms.

- (1) ARHP tenants are subject to the same leasing qualifications as those required for market rate tenants.
- (2) Application fees charged by the developer or management agency (including the charge for any credit check) shall not exceed 5 percent of the monthly rent of the applicable ARHP Affordable Unit. Except for a security deposit, additional up-front fees shall not exceed 20 percent of the monthly rent.
- (3) The monthly rental rate for the ARHP Affordable Units shall not be more than the Monthly Housing Cost Limits published by HUD for Westchester County, as adjusted annually and should not be higher than the rent for Market Rate Units. Rent will be adjusted annually, based on Westchester County Rent Limits published annually by HUD.
- (4) Tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. Tenants may be charged fees for optional services they choose, such as pet or parking fees associated with the rental in the same manner as other tenants of the building. However, any mandatory fees shall be considered a part of the rent and there will be a corresponding reduction in

the ARHP monthly rent. No additional fees or charges shall be added to the Affordable Rent without the express written approval of the Commissioner of Planning.

- (5) A written lease is required for each ARHP rental unit, and a copy shall be provided to the ARHP Administrative Agent. The lease shall state which utilities are the tenant's responsibility, if any.
- (6) All Household members 18 years and older must sign the lease.
- (7) Under no circumstances shall the Affordable Unit premises be occupied by, subleased, or boarded to anyone other than the lease holder(s).
- (8) Renewal of a lease shall be subject to the terms and conditions of the original lease and to the conditions of Federal, State, or Westchester County provisions that may be imposed by the terms of the original funding agreements for the development, and the determination of continued eligibility by the ARHP Administrative Agent.

(Ord. of 3-4-19, § 1; Ord. of 4-1-19, § 1; Ord. of 5-6-19, § 1)

#### Sec. 9-7-4. Rental unit assignments and occupancy.

(A) Rental Unit Assignments. Within each ARHP Project, individual Affordable Units will be designated for occupancy by a Household that is income qualified, as follows:

	Rental Unit Designation		
Household Income	50%	60%	80%
50% - 59% AMI	*		
60% - 79% AMI		*	
80% - 99% AMI			*

- (1) Household Income between 50% and 59% of AMI will qualify for an Affordable Unit that has rent based on 50% of the AMI.
- (2) Household Income between 60% and 79% of AMI will qualify for an Affordable Unit that has rent based on 60% of the AMI.
- (3) Household Income between 80% and 99% of AMI will qualify for an Affordable Unit that has rent based on 80% of the AMI.
- (4) An Applicant may rent an ARHP Unit in a higher rent designation as long as the rent does not exceed 39% of the gross monthly Household Income.
- (5) Applicants with rental subsidies may qualify for an ARHP Affordable Unit with an annual Household Income below the required AMI levels provided the combination of income and subsidy is sufficient to cover the monthly Affordable Rent.
- (B) Occupancy. ARHP tenants will be assigned a unit size based on the number of persons in the Household, as follows:

Household Size	Studio	One Bedroom	Two Bedrooms	Three Bedrooms
1	*	*		
2	*	*	*	
3		*	*	*
4			*	*
5 or more				*

(Ord. of 3-4-19, § 1; Ord. of 4-1-19, § 1; Ord. of 5-6-19, § 1)

#### Sec. 9-7-5. Qualification, application, and recertification.

- (A) Income and Asset Qualification. The ARHP Administrative Agent determines income eligibility for participation in the Program. Lease offerings to eligible Applicants are subject to the discretion of the building owner, and shall be based on the same criteria as applied to Applicants for Market Rate Units.
  - (1) Income Sources. All Households applying to the White Plains ARHP must have an annual income that falls between 50% and 99% of the Area Median Income level for the appropriate Household size listed in the Westchester County Income Limits published annually by the HUD. Applicants with rental subsidies may qualify for an ARHP unit with an annual Household Income below the required AMI levels provided the combination of income and subsidy is sufficient to cover the monthly Affordable Rent.
  - (2) Household Asset Limits. The combined value of Household Assets must not exceed the 100% AMI for that Household size, as reported annually by US Department of Housing and Urban Development (HUD). Retirement and dedicated education savings accounts will not be counted toward assets.

(Supp. No. 76 Update 2)

#### (B) Application.

- (1) Applications for the ARHP can be obtained from City of White Plains Website at: www.cityofwhiteplains.com/ARHP or at the Planning Department Office.
- (2) All Applicants must submit a completed application and the following income documentation for each person 18 years and older who will reside in the apartment:
  - (a) Most recent Federal and State Income Tax Returns;
  - (b) Copy of forms reporting unearned income (child support, alimony, SSI, SSD, investment income, dividends, etc.);
  - (c) Copy of three (3) most recent bank statements;
  - (d) Copies of pay check stubs covering two months prior to application submission;
  - (e) Copy of Pension Award statement, if any;
  - (f) Copy of Social Security Statement, if any;
  - (g) Enrollment verification from an accredited school for any full-time student over age 18; and
  - (h) An Employment Verification Form completed by the Employer of each Household member over 18 years old.

An application will not be accepted until all of the above-listed documents have been submitted.

The ARHP Administrative Agent reserves the right to request additional information to verify/confirm any information required above.

Completed applications and supporting documents can be mailed, emailed, hand delivered, or faxed to the Planning Department.

- (3) Applications submitted to the Department of Planning will be date and time-stamped.
- (4) The ARHP Administrative Agent will examine each application in the order received to determine preliminary program eligibility, Household size, and unit size qualification.
- (5) The ARHP Administrative Agent will notify each Applicant of their eligibility.
  - (a) Those determined ineligible for the White Plains ARHP will be notified that they are ineligible and the reason for such determination.
  - (b) Those determined eligible for the participation in the ARHP will be notified of their eligibility for a specified unit size. When a unit of appropriate size becomes available, the Applicant will be notified by the ARHP Administrative Agent.
- (C) Recertification of Eligibility for Continued Participation in the ARHP. Recertification of eligibility will occur every two years. At least 60 days prior to the recertification date, the ARHP Administrative Agent will notify the tenant to complete a recertification form and submit all required documentation in order to determine continued income eligibility for participation in the program.
  - (1) Changes to Income and/or Household Size.
    - (a) Tenants have up to one year to move to a smaller or larger unit due to a change in Household size.
    - (b) If Household Income has increased to a higher AMI category, the rent will be based on the higher AMI category.

- (c) If Household Income has decreased to a lower AMI category, the rent will remain in the same AMI category as the most recent recertification.
- (d) If Household Income is 100% AMI or greater, the tenant will be determined ineligible for continued participation in the ARHP.
- (2) Determination of Ineligibility. If an ARHP tenant is determined ineligible upon recertification, the tenant must vacate the ARHP unit within 90 days.
- (D) Rent Adjustments. Rents will be adjusted annually. Adjustments to rent and utility allowances shall be made by the City for the new lease term, based on the HUD rent limits and utility allowances established for Westchester County.
- (E) Landlord Notification. Based on tenant recertification, the landlord shall be notified in writing by the ARHP Administrative Agent of any changes to tenant eligibility and changes to rent.

(Ord. of 3-4-19, § 1; Ord. of 4-1-19, § 1; Ord. of 5-6-19, § 1)



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# **TECHNICAL REPORT**

# Is Inclusionary Zoning Inclusionary?

# A Guide for Practitioners

Heather L. Schwartz • Liisa Ecola • Kristin J. Leuschner • Aaron Kofner





Environment, Energy, and Economic Development

This report was sponsored by the John D. and Catherine T. MacArthur Foundation and was conducted in the Environment, Energy, and Economic Development Program within RAND Infrastructure, Safety, and Environment, a division of the RAND Corporation.

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Inclusionary zoning (IZ) has become an increasingly popular tool for providing affordable housing in an economically integrative manner. IZ policies typically require developers to set aside a proportion of units in market-rate residential developments to be made affordable for lower-income households in exchange for development rights or zoning variances. These policies are considered "inclusionary" because they are intended to allow lower- and moderateincome households to buy or rent property in middle- and upper-income communities. Although IZ policies have been implemented in many states and localities, little research has been conducted to determine whether these policies are having the intended inclusionary effect for IZ recipients.

This report examines IZ programs across 11 jurisdictions to determine whether IZ policies succeed in providing its recipients access to low-poverty neighborhoods and homes that are residentially assigned to high-performing schools. This would be notable, since a recent national study reveals that exclusionary zoning yielding low-density housing increases the likelihood that low-income households are priced out of homes that are located in neighborhoods with high-scoring schools (Rothwell, 2012). The purpose of this study is also to highlight the key features of IZ policies and the ways in which they might affect program success. Detailed summaries of each of the IZ programs and maps of IZ locations are provided in the appendixes.

The report should be of interest to city planners and municipal officials from housing and education departments as they consider policies to provide affordable housing within their jurisdictions and means to give children from families earning lower incomes access to lowpoverty or high-performing schools.

This research was conducted in the Environment, Energy, and Economic Development Program (EEED) within RAND Infrastructure, Safety, and Environment (ISE). The mission of RAND Infrastructure, Safety, and Environment is to improve the development, operation, use, and protection of society's essential physical assets and natural resources and to enhance the related social assets of safety and security of individuals in transit and in their workplaces and communities. The EEED research portfolio addresses environmental quality and regulation, energy resources and systems, water resources and systems, climate, natural hazards and disasters, and economic development, both domestically and internationally. EEED research is conducted for government, foundations, and the private sector.

Questions or comments about this report should be sent to the project leader, Heather Schwartz (Heather\_Schwartz@rand.org). Information about the Environment, Energy, and Economic Development Program is available online (http://www.rand.org/ise/environ). Inquiries about EEED projects should be sent to the director at the following address: iv Is Inclusionary Zoning Inclusionary?

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2.3.	Comparison of Neighborhoods With and Without IZ Units (2005–2009)	16
Inclusionary zoning (IZ) is a land-use policy intended to enable some lower- and moderateincome households to live in middle- and upper-income communities. IZ policies either mandate or encourage real estate developers to incorporate into their market-rate developments a proportion of homes that are sold or rented at below-market prices in exchange for development rights or zoning variances.

IZ policies have been implemented in many states and localities within the United States and internationally. Most of the literature on IZ has attempted to assess how many IZ units have been produced and the effect of IZ on housing prices and on the production of market- and below-market-rate homes. However, little research has examined the socially inclusive aspect of these policies. Two factors in particular—the characteristics of neighborhoods in which IZ homes are located and the characteristics of schools to which IZ homes are assigned—presumably predetermine the potential for IZ programs to have their intended inclusionary effect. However, the simple adoption of an IZ policy within a high-cost housing market does not guarantee the production of IZ homes, the targeting of those homes to low-income recipients, or the location of IZ homes in high-cost neighborhoods or within catchment areas for highperforming schools.

To test the assumption that IZ policies inherently promote social inclusion, we examined 11 IZ programs across the United States to determine the extent to which these policies serve lower-income families and provide IZ recipients with access to low-poverty neighborhoods and residentially assign them to high-performing schools. We also considered ways in which IZ policies vary and how different design features might affect the success of the programs in promoting affordable housing and social inclusion.

Since exclusionary zoning increases the likelihood that low-income households are priced out of homes in neighborhoods with high-scoring schools (Rothwell, 2012), IZ programs could theoretically mitigate this trend by introducing affordable housing into jurisdictions that otherwise lack it, thereby promoting the academic achievement and educational attainment of children of IZ recipients. The long-standing and widening income achievement gap in the United States (Reardon, 2011) underscores the potential policy importance of IZ, since there is evidence that low-income students benefit from attending higher-scoring (often lower-poverty) schools (Rumberger and Palardy, 2005; Schwartz, 2012).

The study does not address whether IZ programs increase residents' access to low-poverty settings relative to the absence of IZ, improve children's and adults' outcomes such as academic achievement, or impact the overall production of housing within a jurisdiction. While these are highly important aspects of IZ to understand, the study addresses a question that precedes these outcomes: Do IZ policies have the potential to promote IZ recipients' social inclusion through residential access to the amenities that many low-poverty neighborhoods and schools provide?

#### Success in Providing Lower-Income Families with Access to Low-Poverty Neighborhoods and Schools

Although the 11 programs studied vary considerably, overall, the IZ policies provide access to low-poverty schools and neighborhoods.

**IZ homes tend to serve low-income people**. Six of the 11 programs we studied serve only households making 80 percent or less of the Area Median Income (AMI), and three of the six target households earning as little as 30 percent of the AMI for rental IZ units. The other five programs reserve a portion of the IZ homes for households earning up to 100 or 120 percent of the AMI.

The programs tend to serve owners rather than renters. Seventy-eight percent of the IZ homes in this study were for sale, and only one of the IZ programs exclusively provided rentals. The vast majority of the for-sale homes were sold to low-income households that would otherwise qualify for federally subsidized rental housing on the basis of their income. The primacy of ownership partly reflects the fact that most IZ laws require that IZ units have the same tenure as non-IZ market-rate units, which in suburban locations are primarily intended for ownership. The ten jurisdictions selling IZ homes made them affordable to low-income households by selling them at substantially discounted prices or with subordinate financing (or both). For example, IZ homes in Burlington, Vermont; Chicago, Illinois; and Fairfax County, Virginia, were priced at an average of 39 percent, 26 percent, and 17 percent less than their assessed market prices.

IZ homes tend to be dispersed throughout jurisdictions. One concern about the provision of affordable housing is the clustering of low-income families in what can thereby become high-poverty neighborhoods zoned into high-poverty schools. In contrast to other supply-side affordable housing programs that tend to concentrate within a few neighborhoods in a municipality (e.g., public housing), IZ units were located in one out of every ten census block groups in the 11 localities and one out of every five census tracts as of 2005–2009. IZ homes were residentially assigned to one in four elementary schools in the neighborhoods.

**IZ** homes are located in low-poverty neighborhoods. Across the 11 localities, the typical IZ unit is located in a census block group (or tract) where 7 percent of households lived in poverty as of 2005–2009. This is lower than the average poverty rate among the block groups without IZ homes in the same jurisdictions (16 percent) and the typical U.S. census block group nationally for the same years (14 percent). Further, 75 percent of the IZ units examined in this study are located in a low-poverty census block group or tract, compared with estimates ranging from 8 to 34 percent for other forms of affordable housing (Ellen et al., 2009; Newman and Schnare, 1997). The typical IZ unit is located in a neighborhood where, as of 2005–2009, the vast majority of adults of working age were employed (94 percent), the majority of adults aged 25 and older had a college degree, and more than half of the neighborhood population (57 percent) was white. Very few IZ homes (2.5 percent) in the study were in high-poverty neighborhoods, defined as those where 30 percent or more of households are in poverty.

**IZ homes are assigned to relatively low-poverty public schools.** Across the 11 localities, the typical IZ unit is located within an elementary-school catchment area that had a lower

proportion of students that qualify for free or reduced-price meals than among elementary schools with no residentially assigned IZ homes (44 versus 64 percent) in school years 2006–2010. This also compares favorably to the average elementary school nationally, where nearly one out of every two students (49 percent) qualified in those school years. Forty-four percent of IZ dwelling units are assigned to low-poverty schools, defined here as elementary schools where less than one in five students qualifies for free or reduced-price meals.

IZ homes are assigned to schools performing better than schools in the same jurisdiction that do not serve IZ homes. Across the 11 localities, the typical IZ unit was located in a residential catchment area for an elementary school that ranked in the third quintile (i.e., the 40th to 60th percentile among all elementary schools in the state) on statewide tests in math and English Language Arts (ELA) over school years 2006–2010. Within the same jurisdictions, elementary schools without residentially assigned IZ homes ranked in the second quintile (i.e., the 20th to 40th percentile) among other elementary schools within their states.

#### Features of IZ Programs That Influence Their Potential to Provide Affordable Housing and Promote Social Inclusion

Based on the extensive information each of the 11 localities provided about their ordinances and program structures, we identified seven program-design aspects that shape the potential to meet the goals of providing affordable housing to low-income households and promoting social inclusion for IZ recipients:

- How the IZ policy defines eligibility for recipients;
- Whether the IZ policy includes rental and ownership opportunities;
- Whether developers are required to comply with IZ set-asides as a condition of permit approval;
- The size of developments to which the IZ policy applies and the proportion of homes that must be set aside as affordable;
- The types of cost offsets and opt-outs provided to developers;
- The continued affordability of the homes after initial resale or leasing; and
- The ability to monitor compliance with the IZ program regulations.

These aspects of IZ policies affect not only how many homes are built, but also who may live in them, how long they are available to income-eligible households, and their inclusion in market-rate neighborhoods. We found substantial variation in designs along each of these seven dimensions.

#### Conclusion

While IZ programs serve relatively more-advantaged families than other affordable housing programs generally do, the degree of access IZ provides to low-poverty places is still remarkable. However, in serving primarily homeowners, the IZ programs are not typically designed to serve households at the lowest income levels or those with extensive needs for support, for whom clustered affordable housing might be a more efficient means of disseminating social

services. There are exceptions, however, where IZ programs have explicitly built in means to house the lowest-income renters—for example, by allowing a locality's public housing authority to purchase and operate some IZ homes for occupancy by federally subsidized renters.

IZ policies offer something that other economically integrative housing programs largely do not—namely, to the extent that IZ policies include long-term affordability requirements, they have the potential to provide low-income recipients with extended exposure to lowpoverty settings. This is important, since research indicates that a significant amount of time is required (in some cases, generations) for low-income populations to reap the benefits of lowpoverty settings. However, care should be taken in developing program features, because these features influence the degree to which IZ policies can increase the supply of affordable housing and include participating families in their communities. We gratefully acknowledge the MacArthur Foundation, which provided the grant that funded this work. We also thank the many individuals in the 11 localities who provided data to us about their IZ provisions and reviewed their program profiles. They made the study possible.

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### Abbreviations

ACS	American Community Survey
AMI	Area Median Income
CDBG	Community Development Block Grant
GIS	Geographic Information System
HOME	Home Investment Partnerships
HUD	Department of Housing and Urban Development
IZ	inclusionary zoning
LIHTC	Low-Income Housing Tax Credits
MSA	Metropolitan Statistical Area
NCES	National Center for Education Statistics

Inclusionary zoning (IZ) is a land use policy that is intended to make it possible for some lower- and moderate-income households to live in middle- and upper-income communities. These policies are termed "inclusionary" because they either mandate or encourage real estate developers to incorporate into their market-rate developments a proportion of homes that are sold or rented at below-market prices. In exchange, most U.S. IZ programs offer ways to cover the financial losses developers incur on the IZ homes, for example, by allowing developers to increase the overall size of a development or by providing other zoning variances (Calavita and Mallach, 2010).

IZ is a relatively recent policy for providing affordable housing; it first came into use in the United States during the 1970s (Calavita and Mallach, 2010). The oldest continuously running IZ program started in 1974 in Montgomery County, Maryland. It is also the largest IZ program, having led to the construction of more than 13,000 IZ homes (Department of Housing and Community Affairs, 2011). Data about IZ programs are generally scarce, but most of the programs are thought to be much smaller than the Montgomery County program, typically having produced dozens to hundreds of IZ homes per jurisdiction (Rusk, 2009). Over the past 40 years, IZ policies have spread, both in the United States and internationally; the best available estimates indicate that at least nine countries worldwide have IZ policies, while more than 500 localities in the United States have adopted IZ in some form (Calavita and Mallach, 2010).

Statutory authority for IZ can be provided at the state or local level. Thirteen states explicitly or implicitly authorize the use of IZ by local governments (Hollister, McKeen, and McGrath, 2007). Two states, Texas and Oregon, prohibit IZ. The remaining states offer no guidance to localities regarding the legality of IZ, although IZ programs exist in at least eight states (Hollister et al., 2007). IZ has been alternately characterized as an exaction (i.e., a requirement that part of the land being developed be dedicated to public use) and a land-use regulation (Mallach and Calavita, 2010). Mallach and Calavita (2010) note that the question of how IZ is defined according to state law is of pivotal importance, because it affects the level of scrutiny IZ programs must withstand in the courts if challenged.<sup>1</sup>

<sup>&</sup>lt;sup>1</sup> If IZ is characterized as an exaction, federal and state laws require that it must pass a test of rough proportionality between the costs of development and the size of the impact fee or exaction. If IZ is characterized as a land-use regulation, the level of scrutiny is less strict, and a municipality defending an IZ ordinance defined as a land-use regulation must merely prove that the policy is grounded in a public purpose and is within a municipality's power to regulate. IZ has typically been defined by courts as a land-use regulation and, as such, has withstood scrutiny. The New Jersey Supreme Court came to this conclusion in its landmark Mount Laurel II case, as did California courts in *Homebuilders of Northern California vs. Napa* in 2002.

It is difficult to estimate how much affordable housing has been created in the United States as a result of IZ. Based on their review of the literature, Mallach and Calavita (2010) estimate that in the four decades IZ has been in existence, it may have resulted in the development of 129,000 to 150,000 affordable units, most of which are in three states and the Washington, D.C., metropolitan area.

IZ programs generally have two goals: (1) to increase the supply of affordable housing, often for the stated reason of housing lower-income workers in high-cost housing markets, and (2) to promote social inclusion and integration. In this study, we interpret the latter goal to mean offering low-income households the opportunity of social inclusion by providing affordable homes in low-poverty neighborhoods (i.e., where 10 percent or fewer of households live in poverty) with access to low-poverty schools where less than 20 percent of students qualify for free or reduced-price meals and high-performing schools (i.e., schools with average test scores at the 50th percentile or above among schools within the state). Little information is available about whether IZ programs actually achieve these goals. A largely untested assumption behind IZ is that communities that have adopted IZ programs gain or retain families that might otherwise be priced out of the local housing market, and that IZ recipients thereby benefit from the increased access to the resources and amenities found in higher-income neighborhoods, including better services, jobs, and schools.

IZ may not promote inclusion at all if the production of IZ homes increases market prices or reduces the number of homes built. However, the evidence points to mixed, weak effects of IZ policy adoption on housing production and prices (Knapp, Bento, and Lowe, 2008; Schuetz, Meltzer, and Been, 2011). Further, a number of features of IZ policies might diminish their ability to meet their goals even for direct beneficiaries. IZ policies may be voluntary; may include opt-out provisions allowing developers to build IZ homes off-site or to contribute land or money in lieu of IZ units; and may serve households above low- or moderate-income ranges. Some IZ policies do not require IZ homes to remain at below-market rates after the first occupants move out. Other program features, such as the proportion of homes in a housing development that must be set aside, whether IZ units are to be rented or owned, and the type and size of developments to which IZ requirements apply, also affect the extent to which IZ programs succeed in increasing the supply of affordable housing and promoting social inclusion.

Although IZ typically is not designed for the most disadvantaged households and thus is not directly comparable to other affordable housing programs that do target these households, it would nevertheless be a substantial achievement if IZ households enjoyed access to lowpoverty neighborhoods and schools, since less than one-third of homes among the three largest U.S. affordable housing rental programs—Low-Income Housing Tax Credits (LIHTC), Housing Choice vouchers, and public housing—provide such access.

This study attempts to shed light on these issues by examining the following questions:

- To what extent do IZ policies serve low-income households and offer beneficiaries access to low-poverty neighborhoods and high-performing schools?
- How do IZ policies vary in design and how might these features affect the success of programs in meeting the goals of promoting affordable housing and social inclusion?

#### Approach of This Study

To answer these questions, we reviewed the available literature on IZs; selected 11 U.S. jurisdictions that operate IZ programs and collected data from each; supplemented the data with information about the characteristics of neighborhoods and schools in those jurisdictions; and analyzed the degree to which IZ homes provide low-income persons access to low-poverty neighborhoods and high-performing and low-poverty schools.

Table 1.1 lists the 11 locations from which we gathered IZ program data. Most of these locations operate a number of affordable housing programs, including IZ. We selected affordable housing programs that mandated developers to set aside a minimum proportion of newly constructed or renovated market-rate homes to be made affordable. The programs are relatively large and geographically diverse; at least one program was selected from each of the five regions in the United States. We also sought to include both well-established IZ programs such as those in Montgomery County and Fairfax County and newer programs in urban locations such as Denver and Chicago.

Although each of the selected locations is considered a high-cost housing market in the sense that a household earning the Area Median Income (AMI) as of 2006 could not incomequalify for a median-priced home in the market as of that year, the simple existence of an IZ policy does not guarantee that the program meets socially inclusive goals. Of central concern to this project is whether IZ programs provide low-income households access to low-poverty neighborhoods, low-poverty schools, and high-performing schools.

Location	Region	Year Current Version of IZ Policy Enacted	Number of IZ Homes Built (as of 2010)
Boulder, Colorado	West	2000	364
Burlington, Vermont	Northeast	1990	~ 200
Cambridge, Massachusetts	Northeast	1998	~ 460 <sup>a</sup>
Chicago, Illinois	Midwest	ARO enacted in 2003 and revised substantially in 2007; CPAN enacted in 2001	1,235 <sup>a</sup>
Davidson, North Carolina	Southeast	2001	54
Denver, Colorado	West	2002	77
Fairfax County, Virginia	Southeast	1990	2,338
Irvine, California	West	2003	183
Montgomery County, Maryland	Southeast	1973	13,133 <sup>a</sup>
Santa Fe, New Mexico	Southwest	2005	602
Santa Monica, California	West	1990	862

#### Table 1.1 IZ Program Locations in the Study

SOURCES: Data obtained by authors from local administrators of IZ programs.

NOTE: The numbers of homes built are the city or county's best estimates. ARO = Affordable Requirements Ordinance; CPAN = Chicago Partnership for Affordable Neighborhoods.

<sup>a</sup> The number of addresses we obtained did not match city estimates. We obtained fewer addresses in cases where the data are incomplete, developments did not get built, or addresses were once IZ units but were converted out of the program by resale. In each case, we queried local officials about the discrepancies.

In Table 1.2, we provide definitions for these terms as well as others used in this report.

In our study, we performed the tasks described below. Additional detail about our methods is provided in Appendix A.

To determine whether IZ programs served low-income populations and provided access to both low-poverty neighborhoods and low-poverty, high-performing schools, we gathered the IZ household-income eligibility requirements from each of the 11 localities and, where available, incomes of households living in IZ homes. We then identified the geographic coordinates for each IZ address (i.e., geocoded the address) to assess the demographic characteristics of neighborhoods with and without IZ homes in each jurisdiction, as well as the academic performance and demographic characteristics of public schools that, by virtue of residential assignment to schools, would serve children living at those addresses. We obtained a total of 15,659 unique IZ addresses from the 11 localities, of which 15,626 (99.2 percent) were successfully geocoded. The geographic coordinates for each address allowed us to merge public information from the Census, local school districts, state departments of education, and the federal Department of Education to identify the demographic characteristics of the neighborhoods and schools associated with the addresses.

Term	Definition	Source
Extremely low-income household	A household earning up to 30 percent of the AMI	U.S. Department of Housing and Urban Development (HUD)
Very low-income household	A household earning up to 50 percent of the AMI	HUD
Low-income househo <b>l</b> d	A household earning up to 80 percent of the AMI	HUD
Low-poverty neighborhood	A census block group with up to 10 percent of households in poverty	A conservative estimate based on the literature (e.g., Quercia and Galter, 2000)
Moderate-poverty neighborhood	A census block group with 10 to 30 percent of households in poverty	Defined by choice for low- and high-poverty definitions
High-poverty neighborhood	A census block group with 30 percent or more of households in poverty	Based on the literature (e.g., Galster, 2002; Kingsley and Pettit, 2003)
Low-poverty school	A school in which up to 20 percent of students qualify for free or reduced-price meals (income qualification standards are 130 percent of the federal poverty line for a free meal and 185 percent for reduced-price meals)	Based on Schwartz, 2012
High-performing school	Performance at the 50th percentile or higher among schools within the same state, as determined by within- state rankings of schools on standardized math and English Language Arts (ELA) tests	Authors' choice
Promotion of social inclusion	Providing low-income households with the opportunity to access the amenities associated with low-poverty neighborhoods and high-performing schools through the provision of affordable homes	Authors' interpretation

# Table 1.2Key Definitions Used in the Study

To identify characteristics such as the poverty level of the neighborhoods with and without IZ homes in each of the 11 jurisdictions, we drew on the most current Census data available at the time, the 2005–2009 American Community Survey (ACS) 5-Year Estimates. Since our primary interest was the neighborhood in the immediate vicinity of an IZ address, we report neighborhood characteristics at the census block group level, which is the smallest geographic area at which key demographics (e.g., income, educational attainment, housing values) are publicly available. The five-year estimates represent the average characteristics of households in a given census block group in 2005–2009. Since these data are multiyear estimates rather than point-in-time estimates, they do not capture rapid changes in neighborhood characteristics; rather, they reflect longer-term trends within an area (U.S. Census Bureau, 2008).

To enable us to identify the specific schools to which IZ units were residentially assigned, the nine school districts with residential school attendance boundaries provided their school attendance zone boundary files.<sup>2</sup> Although we requested historical boundary files for 2000–2008, we could uniformly obtain attendance boundary files only as of school year 2007–2008. We used these files to identify the specific elementary, middle, and high schools to which the IZ units were assigned. We assumed for this study that residential school assignments in each of the 11 districts were constant during school years 2005–2006 through 2009–2010.<sup>3</sup>

Using data from the National Center for Education Statistics (NCES) Common Core of Data, we then linked schools to the characteristics of the student body, such as the percentage of students who qualify for free or reduced price meals and the racial and ethnic composition in each of school years 2005–2006 (hereafter referenced as 2006) through 2009–2010 (hereafter referenced as 2010). We selected these years to best align with the ACS's rolling, multiyear data-collection calendar of January 2005–December 2009.

Finally, we downloaded from each of the nine state education agency web sites publicly available school performance data to rank each school on statewide standardized tests in math and ELA in each of school years 2006–2010. We then developed a single ranking for each school that averaged its rank over the five school years considered.<sup>4</sup> Although standardized test scores were the best information available about the schools, a single metric like the weighted average of students who score proficient or above on math and ELA tests is a crude yardstick for school quality. Partly for that reason, we separated schools into five categories—bottom quintile up through the top quartile among elementary, middle, and high schools within a given state—to provide a proxy for the general performance of the schools without placing undue weight on a specific percentile rank.

 $<sup>^2</sup>$  The Cambridge, Burlington, and Montgomery County school districts use systems of parental choice rather than residential assignment for a certain number of their schools. Since home addresses do not determine school assignment in these cases, we used districtwide school characteristics for the grade levels (i.e., elementary, middle, and high) at which school choice applies.

<sup>&</sup>lt;sup>3</sup> For approximately half of the districts, we were successful in directly contacting persons familiar with the generation of the district maps, and they confirmed that they were not aware of recent changes.

 $<sup>^4</sup>$  To develop these rankings, we first derived the weighted average of the percentage of all students who scored proficient or above in math and the percentage scoring proficient or above in ELA on statewide standardized tests. (Unequal numbers of students may take the math and ELA tests within the same school, thus necessitating a weighted average.) These ranks are specific to each state and to each year. Within each state and school year, we separately ranked elementary, middle, and high schools, since we often found systematic discrepancies in proficiency rates across these school levels. For schools that include grades at multiple levels (e.g., K–8 or K–12 schools), we averaged the elementary, middle, and high-school ranking as applicable to come up with a single ranking for each school.

To understand the design features used in IZ programs and the population(s) served, we asked each jurisdiction for information on IZ units, as well as demographic information about current and past IZ residents. For units, we requested information on the type of unit (single-family or multifamily, rental or ownership), date built, and appraised market price and below-market price (as applicable). To document the characteristics of the IZ dwellers, we requested such information as the number of adults and children per household, total household income, the date the household moved into the home, and the gender, age, race, and employment status of the head of household. For ownership units that had sold at least once, we requested the most recent resale price and the length of time the previous owner lived in the unit.

#### **Organization of This Report**

Chapter Two discusses the extent to which IZ policies in the jurisdictions studied have appeared to succeed in providing lower-income families with increased access to low-poverty neighborhoods and low-poverty, high-performing schools. Chapter Three considers the design options available for IZ programs and the ways in which different features might affect the success of the programs. Chapter Four concludes with some considerations for localities that may wish to develop IZ programs.

# Benefits and Limitations of Inclusionary Zoning Policies and the Households They Serve

This chapter discusses the extent to which IZ policies succeed in providing lower-income families with increased access to low-poverty neighborhoods and their resources (e.g., high-performing schools). We first describe the potential limitations of IZ policies and benefits of IZ for program participants, based on prior research. Then we report the findings from our analysis of IZ homes in the 11 jurisdictions studied. To answer the question concerning whom IZ programs serve, we first catalogue the incomes of families living in IZ homes in the 11 cities and counties. To document whether those programs are socially inclusive, we describe the neighborhoods where IZ homes are located and the characteristics of the schools to which the IZ units are zoned. Maps showing the distribution of IZ homes throughout their communities and the levels of poverty in those neighborhoods are provided in Appendix C.

#### Potential Benefits and Limitations of IZ Policies

A recent national study reveals that exclusionary zoning that yields low-density housing increases the likelihood that low-income households are priced out of homes in neighborhoods with high-scoring schools (Rothwell, 2012). The author estimates that eliminating minimum lot size restrictions would reduce that gap in average scores of schools that low- and higher-income students attend. Since there is evidence that low-income students benefit from attending higher-scoring (which are often lower-poverty) schools (e.g., Schwartz, 2012, discussed below), reducing or mitigating exclusionary zoning practices could help to reduce the already large and growing income achievement gap within the United States (Reardon, 2011). Specifically, if inclusionary zoning programs introduced affordable housing into jurisdictions that otherwise largely lack it, IZ could promote the academic achievement and educational attainment of children of IZ recipients.

IZ policies are intended to add to the supply of affordable housing, but they tend to produce small numbers of homes, potentially at substantial cost. To date, IZ programs have played a relatively small role in meeting the nation's need for affordable housing. It is estimated that IZ programs nationwide have led to the creation of approximately 150,000 units over several decades (Calavita and Mallach, 2010). In contrast, HUD's largest rental assistance program—Housing Choice Vouchers—serves approximately two million households, while the LIHTC program has created more than two million affordable homes. Low production obviously limits the potential of IZ to promote social inclusion for low-income recipients. Despite the relatively small numbers of IZ units, at least *within* some areas, IZ compares favorably to housing creation programs such as LIHTC, in which developers sell credits to investors to raise funds for affordable housing. Brown found that IZ played a large role in the construction of affordable units in the Washington, D.C., area, particularly in Montgomery County, where it accounted for more than half of all affordable housing construction between 1974 and 1999 (Brown, 2001). Similarly, a study of IZ programs in Los Angeles County and Orange County in California found that IZ compared favorably to LIHTC, in some cases outperforming it in terms of total units constructed (Mukhija et al., 2010).

Perhaps the most serious limitation of IZ policies is that the creation of IZ homes depends on the requirements of the policy in relation to local housing-market conditions. Some localities may have an IZ law on the books for years yet produce no IZ homes. The market-driven nature of IZ makes it unlike other affordable housing programs that provide direct subsidies to increase the supply of affordable housing, regardless of local housing-market conditions. Further, the presence of such policies can potentially reduce the production of housing overall or raise housing prices. However, the evidence points to mixed, weak effects of IZ policy adoption on housing production and prices (Bento et al., 2009; Schuetz, Meltzer, and Been, 2011).<sup>1</sup>

Precisely because IZ programs are intended to provide affordable housing within highcost housing markets, they can require large cost offsets to developers or direct subsidies to IZ dwellers (or both). The size of the price discount decreases as the income-eligibility of the target IZ population increases. This trade-off has direct implications for the potential of IZ programs to target low-income recipients and to promote social inclusion. Jurisdictions with high demand for market-rate housing may be able to offset the substantial loss a developer would incur on an IZ home that is sold at, say, 40 percent of market value to a low-income purchaser by offering a substantial benefit such as a large density bonus. Indeed, for IZ programs to produce homes, they must offset developers' potential losses or even enhance the overall profitability of the housing project (Calavita and Mallach, 2010).

The potential of IZ programs to promote social inclusion for direct beneficiaries is shaped largely by the design of a jurisdiction's IZ policy, an issue that is discussed further in Chapter Three. For example, lowering the income eligibility of IZ recipients to reach the most economically needy households lowers the prices of IZ homes, which could in turn require either creating fewer IZ homes (e.g., by reducing the proportion of homes that must be set aside in the development), offering developers lower-cost alternatives such as contributing to an affordable housing fund or building IZ homes off-site that are not necessarily included in market-

<sup>&</sup>lt;sup>1</sup> We identified three studies that examine the effects of IZ on housing-market construction or prices, using a comparative design: Bento et al., 2009; Mukhija et al., 2010; and Schuetz et al., 2011. These studies yield mixed, limited evidence. On the number of housing starts, Schuetz et al. found a statistically significant negative effect of IZ policies on housing construction, but only in one of two cities studied. Mukhija et al. did not find a significant effect of IZ on the total number of new housing permits issued between 1980 and 2005 in either of two California localities, compared with the almost 100 cites without IZ programs. Bento et al. suggested that IZ may encourage developers to build more multifamily housing than single-family housing but had a statistically insignificant effect on total housing starts. The evidence on prices is a bit stronger; the studies that examined the effect of IZ on home prices (Bento et al., 2009; Schuetz et al., 2011) found statistically significant but small to moderate increases in prices associated with IZ. Bento et al. found that IZ increases the price of higher-priced homes but reduces the price of lower-priced homes, since the set-aside of otherwise market-rate homes decreases the supply of the former while concomitantly increasing the supply of the latter. But Schuetz et al. found that these price effects are not uniform and depend on market conditions. Finally, Bento et al. suggest that developers may attempt to recoup some of the cost of selling below market by decreasing the size of IZ units. For more discussion of the debate around the economic merits of IZ, see Mallach and Calavita (2010).

rate developments, or offering subsidies directly to IZ recipients in the form of subordinate mortgages or rent subsidies such as Housing Choice Vouchers. A common requirement of IZ policies is that IZ homes must be visually compatible with their market-rate counterparts. But to maximize the supply of IZ homes, the laws can allow developers to lower the cost of construction by creating smaller IZ homes with less-expensive finishes inside (with the option for an IZ occupant to upgrade with a price increase). A requirement that IZ homes be physically indistinguishable from their market-rate counterparts both inside and out would raise the cost of IZ homes, which again could either reduce the supply, direct the supply into lower-cost alternatives, or require infusion of direct subsidies to IZ occupants. The precise nature of the trade-offs is determined by prevailing housing-market conditions, the amount of financing a municipality can offer to IZ recipients (such as through HOME Investment Partnerships or Community Development Block Grant [CDBG] dollars or through the direct purchase of IZ homes to operate with federal affordable housing subsidies), the political conditions within the locality, and the demographic needs for affordable housing (such as family versus elderly households).

Research about the effects of poverty in neighborhoods and schools suggests that IZ recipients have better life chances to the degree that IZ policies provide low-income persons access to low-poverty neighborhoods and high-performing schools. However, as Mallach and Calavita (2010) note, there is a dearth of research on the effects of IZ on occupants of housing constructed under these programs, mostly due to the lack of data with which to measure these effects. We are aware of only one study that examines the direct impacts of IZ on recipients.<sup>2</sup> Schwartz (2012) tracked the schooling outcomes of children living in public housing in Montgomery County, where approximately 700 out of 1,000 public-housing apartments were scattered among market-rate developments through a provision of the county's IZ program. The housing authority randomly assigned families to the public-housing apartments, which permitted an objective comparison of public-housing children's outcomes in low- and moderatepoverty schools within the county. By the end of elementary school, children living in public housing and attending low-poverty schools outperformed children living in public housing who attended schools where the incidence of poverty was higher, substantially in math and moderately in reading (however, for reading the difference was not statistically significantly at a 5-percent confidence level). The largest gains occurred among students living in public housing who attended schools where fewer than one in five students qualified for free or reduced-price meals relative to elementary schools with moderate poverty levels ranging up to 60 to as high as 80 percent.<sup>3</sup>

In the absence of a broader base of evidence about the effects of IZ on recipients, we can only recapitulate the expectations about how providing low-income IZ recipients the opportunity for social inclusion would promote their socioeconomic opportunities. Research about poverty in schools and neighborhoods indicates that residential context can have a large effect

 $<sup>^2</sup>$  A few studies have examined the characteristics of residents served in particular IZ programs. Brown (2001) reports that programs in Montgomery and Fairfax counties served racially diverse and economically needy populations and that the affordable units constructed through IZ were dispersed. A survey of IZ programs in California found that the majority of affordable units created in the state served very low-income or low-income populations, with some units serving moderateincome or extremely low-income populations (California Coalition for Rural Housing and the Non-Profit Housing Association of Northern California, 2007).

<sup>&</sup>lt;sup>3</sup> Children from families making less than 185 percent of the poverty line qualify for reduced-price meals, while those from families making less than 130 percent of the poverty line qualify for free meals.

over the long term on both children and adults. This suggests that if economically integrative housing policies such as IZ succeed in integrating families into low-poverty settings over a period of years, such policies would likely have positive and substantive impacts on academic achievement, cognitive ability, and health.

Of course, simply offering a family an affordable home within a low-poverty neighborhood served by a low-poverty school does not guarantee that the family will reap a benefit. Physical proximity does not dictate that non-poor neighbors include IZ dwellers in day-today social interactions, nor does it imply a change in the attitudes, beliefs, and experiences of either IZ recipients or their neighbors. Rather, research identifies strong correlations between low-poverty places and positive conditions that can promote one's life chances, such as lowered rates of crime, increased access to jobs, and increased access to high-performing schools (see, for example, Ellen and Turner, 1997, and Sastry, forthcoming).

The reasons most commonly proposed to explain how concentrated poverty in neighborhoods affects residents include greater stress, less access to employment opportunities, fewer neighborhood resources for children and adults, a contagion effect from antisocial behavior and low-attaining peers, harmful social norms (including punitive parenting styles and lower levels of communication and trust among neighbors, which can depress social cohesion), and a language environment that offers children less exposure to standard English. Not only might these factors affect a resident directly, they might also filter through his or her social network, which can, in turn, influence health, behavior, and educational outcomes (Anderson, 1999; Ellen and Turner, 1997; Fischer, 1982; Fu et al., 2007; Hardig et al., 2010; Luke and Harris, 2007; Sastry, forthcoming).

The neighborhood context is also believed to play a critical role in the quality of local schools. A contextual factor such as the poverty level of the student body can potentially affect the quality of schooling through five mechanisms:

- *Teacher quality*, since teachers are sensitive to the student composition of the school and are more likely to transfer or exit when placed in high-poverty schools (Boyd et al., 2005; Hanushek et al., 2004; Jacob, 2007; Scafidi et al., 2007).
- *School environment*, primarily because high-poverty schools experience greater turnover in staffing and students as well as higher levels of confrontation (Committee, 2010; Parr and Townsend, 2002; Rumberger and Larson, 1998).
- *Parent involvement*, since middle-class parents tend to establish a norm of parental oversight by customizing their children's school experiences (Horvat et al., 2003; Lareau and Horvat, 1999).
- *Teacher-student interactions*, since teachers calibrate their pedagogical practice to the perceived levels of student skills and preparedness (Hauser-Cram et al., 2003; Lareau, 1987; Lasky, 2000).
- *Peer interactions*, since peers form the reference group against which children compare themselves and they model behavior and norms (Chorzempa and Graham, 2006; Wilkinson, 2002).

While far from conclusive, research has generally found that the socioeconomic composition of the school has larger effects on children's academic achievement than the socioeconomic composition of the neighborhood (Jargowsky and El Komi, 2009; Orr et al., 2003). And some research suggests that the effects of the socioeconomic status of schools on student achievement might even be as large an influence as that of the student's own family income level, which is highly correlated with educational attainment and achievement (Ho and Willms, 1996; Rumberger and Palardy, 2005).

But recent evidence indicates that neighborhood poverty has a long-term influence on both adults' and children's mental and physical health and cognitive ability (e.g., Ludwig et al., 2011; Sampson et al., 2008; Sharkey and Elwert, 2011). There is some indication that the effects are lagged and cumulative for both schools and neighborhoods. For example, Sharkey and Elwert (2011) find continuity across generations in neighborhood conditions and provide evidence that the environments parents experienced can have a large impact on the cognitive ability of their children. Long-term results from Moving to Opportunity reveal statistically significant and large reductions in extreme obesity and diabetes in households that had moved to low-poverty census tracts ten to 16 years prior to the survey on which the study was based (Ludwig et al., 2011). The large and positive school achievement results for children living in public housing in Montgomery County accrued over five to seven years (Schwartz, 2012), as did the outcomes in Gautreaux.<sup>4</sup> These findings imply that sustained access to low-poverty places could have positive intergenerational effects.

#### Households the IZ Programs Serve

Several ways low-income families could benefit from programs like IZ have been proposed. We must first ask, however, whether IZ programs actually serve low-income families. As the initial step in our analysis of the 11 localities that provided us with IZ data, we investigated which populations are being served by the IZ programs.

Unlike other affordable housing programs such as Housing Choice Vouchers, public housing, and LIHTC, the 11 IZ programs predominately serve owners rather than renters. Seventy-eight percent of the IZ homes in this study were for sale, and only one of the IZ programs focused exclusively on rentals. The vast majority of the for-sale IZ homes were sold to low-income households that would otherwise qualify for certain federally subsidized rental housing on the basis of their income. The predominance of ownership is primarily due to many IZ programs' requirement that the IZ units share the tenure of the market-rate homes within the same subdivision.

The jurisdictions that sold IZ homes generally made them affordable to low-income households by first allowing them to be lower-cost than market-rate homes because they had less square footage or lower-cost interior finishes and then selling them at discounted prices or with subordinate financing (or both). For example, Burlington, Chicago, and Fairfax County's IZ homes sold for an average of 39 percent, 26 percent, and 17 percent less than their assessed market prices, respectively. Santa Fe, on the other hand, typically sold IZ homes at market

<sup>&</sup>lt;sup>4</sup> The idea that adults and children derive substantial benefits from living and attending schools in economically integrated neighborhoods first gained credibility with the extremely positive results stemming from the 1970s Gautreaux court case, which caused the relocation of some Chicago public-housing families to affluent suburban settings (Ellen and Turner, 1997). Research on the Gautreaux families suggested that poor children typically required a period of one to six years to make gains, but after seven years there were substantial positive effects on the children's school outcomes and adult employment (Rosenbaum, 1991). Follow-up studies also found substantial employment benefits for the mothers who moved to low-poverty neighborhoods. The most recent follow-up surveys of these families, however, failed to confirm a suburban advantage in adults' economic independence (DeLuca et al., 2010).

prices but provided a majority of purchasers with subordinate financing. Qualifying households obtained, on average, an amount equal to 29 percent of the purchase price. Low-income purchasers of IZ homes in ten jurisdictions could seek to qualify for closing-cost or downpayment assistance through state or local programs, but in all cases, these programs were not specific to IZ.

Demand for IZ homes well exceeds supply in virtually all of the jurisdictions. However, few of the jurisdictions operate centralized waiting lists or collect waiting-list information from property managers, which would allow for systematic documentation of demand. In most cases, IZ homes are first-come, first-serve. Often, they are administered by property managers, which means that a household wishing for an IZ home must apply directly to the property manager rather than to a central municipal office. As discussed in Chapter Three, a lack of clear procedures for data collection and reporting by property managers to municipalities about the IZ units stymies the collection of data about IZ recipients and applicants.

Six of the IZ programs in this study exclusively serve low-income households earning less than 80 percent of the AMI. The other five programs reserve only a minority of IZ units for households earning between 80 and 100 percent of the AMI or up to 120 percent (in Irvine and Davidson). Irvine, Cambridge, and Montgomery County also targeted a portion of their IZ rental programs to extremely low-income households. Table 2.1 shows the characteristics of the IZ units and the households served.

#### Table 2.1

Location	Number of Geocoded IZ Addresses	Percentage of IZ Homes for Sale	Average Income of IZ Residents upon Moving In
Boulder	364	86	Max. income, owners: 81% of AMI (equivalent to \$52,001) Max. income, renters: 71% of AMI (equivalent to \$45,686) <sup>a</sup>
Burlington	199	50	63% of AMI (equivalent to \$37,209)
Cambridge	385	45	\$44,634 (equivalent to 49% of AMI, 2010)
Chicago	1,225	99 <sup>b</sup>	\$42,591 (equivalent to 57% of AMI, 2010)
Davidson	54	94	\$38,459 <sup>c</sup> Max. income: 50–120% of AMI (equivalent to \$26,875–\$64,500)
Denver	77	100	Max. income: 80% of AMI (\$48,600) <sup>a</sup>
Fairfax County	2,318	56	Max. income: 70% of AMI (equivalent to \$57,950) <sup>a</sup>
Irvine	183	7	\$26,731 (equivalent to 31% of AMI, 2010)
Montgomery County	9,286	88	Max. income, renters: \$55,000 (equivalent to 65% of AMI) Max. income, owners: \$59,500 (equivalent to 70% of AMI) <sup>a</sup>
Santa Fe	575	100	\$33,100 (equivalent to 49% of AMI, 2010)
Santa Monica	862	0	Max. income: 90% of AMI (equivalent to \$59,625) <sup>a</sup>
Totals	15,528	77	30–120% of AMI

## **Characteristics of IZ Units and Recipients**

SOURCES: Data obtained by the authors from local administrators of IZ programs. Where possible, we obtained the actual incomes of IZ households at the time they first moved into the home. Where data were not provided for a household for each unit, we calculated the average based on available data. Where no household-level actual income data were available, we reported the minimum and maximum income levels from the IZ law.

<sup>a</sup> Actual incomes (or actual AMIs of recipients) were not provided. Instead, eligibility income caps are shown. Maximum household income is expressed as a percentage of the AMI, and then equivalent income for a twoperson household as of 2010 is shown.

<sup>b</sup> The other IZ units are lease-to-own.

<sup>c</sup> Data were available for only approximately half of the units.

As Table 2.1 indicates, these programs primarily serve low-income households, according to HUD's definition of that term. However, by serving homeowners rather than renters, the IZ programs target a generally less-disadvantaged segment of the low-income population. Further, several apply minimum income or asset criteria or apply income tests such as eligibility for first mortgages of a minimum amount.

Several IZ programs have built in ways for low-income families to rent IZ homes. Montgomery County, Cambridge, and (in the past) Fairfax County have explicitly targeted some of their IZ homes for occupancy by federally subsidized low-income renters. The IZ law in Montgomery County, for example, allows its housing authority the right to purchase up to one-third of the IZ homes in a subdivision. The housing authority has purchased approximately 700 IZ homes scattered within market-rate communities throughout the county and operates them as public-housing homes.

#### **Characteristics of IZ Neighborhoods**

We next investigated whether the IZ homes tended to be located in low-poverty neighborhoods and whether they were clustered within a small geographic part of a locality or widely dispersed throughout it.

As of 2005–2009, the majority of IZ homes—76 percent of the 15,526 units—were located in low-poverty neighborhoods. However, the percentage varied substantially by locality, as shown in Figure 2.1. In Davidson, Fairfax County, Irvine, and Montgomery County, the majority of IZ units were in low-poverty neighborhoods, while in several other cities such as Cambridge, Santa Fe, and Santa Monica, a large share of the IZ units were located in neighborhoods with moderate poverty rates (i.e., 10 to 30 percent).



Figure 2.1. Percentage of IZ Units Located in Low-Poverty Neighborhoods, 2005–2009

NOTE: Neighborhood defined as census block group and low poverty defined as less than or equal to 10 percent of households living in poverty.

As expected, very few IZ homes (2.5 percent) were in *high-poverty* neighborhoods where 30 percent or more of the households were in poverty. This is notable since 17 percent of the block groups across the 11 jurisdictions were high-poverty neighborhoods. Half of the IZ homes in high-poverty neighborhoods were in Chicago, one-quarter were in Boulder, and the rest were spread across five other jurisdictions. Although the absolute number of IZ homes in high-poverty neighborhoods was small, their relative proportion was sometimes high in jurisdictions with small IZ programs. For example, in Denver, as many as 31 percent of the 77 IZ homes were located in high-poverty neighborhoods as of 2005–2009, while in Burlington and Boulder, 21 and 26 percent of the IZ units were in high-poverty block groups, respectively. The jurisdictions with IZ homes in high-poverty neighborhoods also had off-site provisions, meaning that IZ homes could be located in places separate from market-rate developments.

The typical IZ unit was located in a neighborhood where the vast majority of adults of working age were employed (94 percent), the majority of adults 25 years of age and older had a college degree, and more than half of the population was white (57 percent). Table 2.2 confirms that within all 11 jurisdictions, the household income and rates of college-educated households in the neighborhoods where IZ units were located exceeded national averages.<sup>5</sup>

The second row of Table 2.2 shows that in some locations, IZ units were clustered within a small number of neighborhoods (in cases where few developments had IZ units), while in other locations, IZ units were found in hundreds of neighborhoods. In the relatively new IZ programs in Denver, Irvine, and Chicago, IZ homes were located in less than 5 percent of neighborhoods, while in the majority of the programs, one-quarter to one-half of the neighborhoods housed at least one IZ unit.

Within the same jurisdiction, neighborhoods with IZ units tended not to differ systematically from neighborhoods with no IZ homes. As shown in Table 2.3, in seven of the jurisdictions, there is no statistically significant difference in the median household income for neighborhoods with and without IZ units. Median household income in IZ neighborhoods is lower in Fairfax County, Montgomery County, and Santa Monica relative to non-IZ neighborhoods. Only in Chicago are IZ neighborhoods more affluent (as measured by median household income) than non-IZ neighborhoods. In ten of the jurisdictions, residents of neighborhoods with one or more IZ homes tend to be more racially diverse than those in neighborhoods without IZ homes (although the differences between them are statistically significant in only four locations).

To test systematically whether IZ homes were placed in the less-advantaged neighborhoods within a given jurisdiction—a phenomenon that would lessen potential social inclusion—we performed statistical tests of whether the demographics of IZ neighborhoods systematically differed from those of non-IZ neighborhoods. We report the average values in median income, education level, and racial composition as of 2005–2009 in Table 2.3. Values that are statistically significantly different from one another are shown in boldface. In most instances, IZ neighborhoods did not differ from their non-IZ counterparts in terms of income, education levels, or race. However, there is evidence that the populations within IZ neighborhoods were less advantaged than those in non-IZ neighborhoods in Burlington, Fairfax County,

<sup>&</sup>lt;sup>5</sup> As of 2005–2009, in the average neighborhood nationally, 92 percent of adults 16 and older were employed, and 25 percent of adults 25 and older had a college degree.

	Units (2005–
	vith IZ
	of Neighborhoods w
Table 2.2	Characteristics (

Characteristics of Neighborhoods	with IZ Ur	its (2005–2	(600								
Characteristic	Boulder	Burlington	Cambridge	Chicago	Davidson	Denver	Fairfax County	Irvine	Montgomery County	, Santa Fe	Santa Monica
Number of IZ units	364	199	385	1,225	54	77	2,318	183	9,286	575	860
Neighborhoods with 1+ IZ units	19	15	20	107	ū	9	81	m	167	44	40
Percentage of all neighborhoods with 1+ IZ units	29	56	25	4	100	<del>~</del>	15	Ω	30	49	50
Median household income (\$)	71,197 (27,923)	54,994 (19,582)	78,304 (20,645)	75,438 (47,313)	132,430 (45,578)	45,548 (13,933)	122,201 (42,065)	109,862 (6,277)	126,342 (41,905)	67,647 (21,583)	63,414 (32,031)
Percentage of heads of households with a BA or higher degree	54 (17)	45 (12)	62 (13)	50 (28)	72 (14)	46 (12)	62 (13)	60 (2)	56 (15)	34 (18)	54 (19)
Percentage of household heads who were white	88 (6)	92 (4)	69 (16)	46 (30)	89 (13)	81 (6)	57 (13)	46 (9)	54 (17)	76 (7)	70 (14)
Percentage of household heads who were black	- (-)	(3) (3)	10 (13)	35 (37)	8 (14)	10 (9)	11 (8)	0 (E)	20 (14)	1 (1)	6) (6)
Percentage of household heads who were Hispanic	19 (15)	2 (1)	8 (4)	15 (19)	2 (2)	23 (25)	10 (9)	22 (6)	12 (10)	61 (20)	20 (17)
Racial heterogeneity of households	0.28 (0.12)	0.14 (0.7)	0.46 (0.10)	0.41 (0.23)	0.18 (0.16)	0.38 (0.11)	0.58 (0.10)	0.64 (0.06)	0.59 (0.13)	0.40 (0.06)	0.48 (0.19)
Percentage of households employed (tract)	96 (2)	95 (2)	95 (3)	85 (17)	95 (71)	94 (2)	97 (2)	93 (1)	95 (2)	93 (2)	93 (2)
Percentage foreign-born (tract)	15 (7)	10 (2)	28 (6)	14 (11)	6 (1)	13 (7)	30 (9)	43 (3)	30 (6)	18 (11)	27 (4)
SOURCE: Authors' computations using Tract-level data are shown for areas wh	IZ address here measu	data matche ires were not	d to 2005–20 available at	009 ACS 5 the block	-Year Estim k-group lev	iates at th el.	ie census l	olock grou	up level unless	otherwise I	noted.
NOTE: Standard deviations are shown i typical IZ occupant. About two-thirds c	in parenthe of the IZ ho	sses. Average mes are in n	s are weight eighborhood	ted by IZ i ds that fa	unit locatio Il within plu	ns to repr us or minu	esent the us the star	average I Idard dev	neighborhood iation	l characteris	tics of a

Benefits and LImitations of Inclusionary Zoning Policies and the Households They Serve 15

Table 2.3 Comparison of Neighborhooc	ls With an	d Without IZ	: Units (2005	-2009)					
tem	Boulder	Burlington	Cambridge	Chicago	Davidson	Denver	Fairfax Countv	rvine	Montg Cou

ltem	Boulder	Burlington	Cambridge	Chicago	Davidson	Denver	Fairfax County	Irvine	Montgomery County	Santa Fe	Santa Monica
Neighborhoods with 1+ IZ homes	19	15	20	107	ъ	9	81	m	167	44	40
Neighborhoods with no IZ homes	47	12	60	2,359	0	464	451	105	385	46	6E
Total neighborhoods	99	27	80	2,466	5	470	532	108	552	06	79
Median household income (\$)	69,666 85,470	46,456 69,195	72,130 89,900	65,432 60,604	132,430	41,235 65,331	129,986 148,948	103,126 113,391	124,409 139,352	74,748 71,838	83,852 133,635
Percentage of adults with a BA or higher degree	61 73	39 58	65 75	41 26	72	45 39	60 58	60 61	55 57	42 33	59 65
Percentage of residents who are white	88 91	92 94	67 74	47 37	89	83 76	58 71	54 62	56 66	79 78	76 79
Racial heterogeneity of residents	0.25 0.15	0.14 0.10	0.44 0.40	0.38 0.29	0.18	0.34 0.36	0.57 0.45	0.58 0.49	0.56 0.49	0.37 0.33	.35 .34
SOURCE: Authors' computations uthese data are publicly available).	using IZ add	ress data mat	ched to 2005-	-2009 ACS	data at the	census blo	ck group le	ivel (the sm	allest geograp	hic unit for	which

one value is reported in each cell for that jurisdiction. For the 40 comparisons shown here, the level of statistical significance has been adjusted using the Benjamin Hochberg step-up method to control at 0.05 the proportion of false positives identified among the total set of statistically significant differences. NOTE: Within each cell, the mean for neighborhoods with IZ units is reported on top, followed by the corresponding mean value among neighborhoods without IZ units. Mean statistics in bold are statistically significantly different from one another. Since IZ units are located in all five block groups within Davidson, only

Montgomery County, and Santa Monica, since the median household income in IZ neighborhoods in these locations was lower than that in non-IZ neighborhoods. Chicago was the only city in which we found that IZ neighborhoods had *more* markers of advantage than non-IZ neighborhoods—an indication that new residential development within the city (of which IZ units were a small share) was typically marketed to attract new households with higher incomes.

Finally, the maps in Appendix C show what the statistics confirm: within many localities, IZ units are widely dispersed throughout the locality. They were located in one out of every ten census block groups in the 11 localities and one out of every five census tracts as of 2005–2009.

#### Assignment of IZ Units to High-Performing Schools

Poverty rates within schools are highly correlated with the average performance of the schools' students. For example, in 2008–2009, more than one-half of fourth and eighth graders who attended high-poverty schools failed the national reading test, compared with fewer than one in five students from the same grade levels who attended low-poverty schools.<sup>6</sup> Given the strong correlation between school poverty and scores on standardized academic assessments, we present results for both as proxies for school quality. For this discussion, schools to which one or more IZ homes are residentially assigned is termed an "IZ school," while those schools to which no IZ homes are assigned is a "non-IZ school."

IZ units were residentially assigned to schools that had lower poverty rates and performed slightly above average within their state. They also had lower poverty rates than national norms. Across all 11 jurisdictions, the typical IZ unit was located within an elementary-school catchment area that had lower proportions of students who qualified for free or reduced-price meals than elementary schools with no residentially assigned IZ homes (44 versus 64 percent) in school years 2006–2010. This also compares favorably to the average elementary school nationally, where one out of every two students (49 percent) qualified over school years 2005–2006 to 2009–2010. Forty-four percent of IZ dwelling units are assigned to low-poverty schools, defined here as elementary schools where less than one in five students qualifies for free or reduced-price meals.

Figure 2.2 shows that the elementary-school poverty rates in IZ schools closely tracked those in non-IZ elementary schools within the same jurisdiction. This finding comports with the neighborhood demographic comparisons described above, which generally revealed parity among IZ and non-IZ neighborhoods. Nevertheless, there are differences within some of the 11 localities. In Santa Monica and Boulder, for example, IZ units were located in neighborhoods having schools with statistically significantly higher poverty rates. In Denver and Montgomery County, by contrast, IZ schools had slightly lower (but not statistically significantly different) poverty rates than non-IZ schools.

<sup>&</sup>lt;sup>6</sup> High-poverty schools are defined as those with 75 percent or higher concentrations of students who qualify for free or reduced-price meals. Fifty-five percent of fourth graders and 47 percent of eighth graders in high-poverty schools scored "below basic" on the National Assessment of Educational Progress in 2009, whereas 17 percent of fourth graders and 13 percent of eighth graders from schools at which less than 20 percent of students qualified for free or reduced-price meals scored "below basic" (Aud et al., 2010).



Figure 2.2 Poverty Rates in Elementary Schools With and Without IZ Units (2006–2010)

NOTE: Cambridge and Burlington have citywide controlled choice plans, so IZ and non-IZ rates are the same. In Davidson, IZ units are zoned into the one elementary school (additional charter school excluded). RAND TR1231-2.2

To test whether IZ homes provide children access to high-performing (and not just lowpoverty) schools, we also examined the ranking of each school within its state on standardized math and ELA tests. These rankings are shown in Figure 2.3.





NOTE: Cambridge and Burlington have citywide controlled choice plans and Montgomery County has choice for middle schools, so IZ and non-IZ rates are the same. RAND TR1231-2.3

On average, IZ units were located in attendance zones of public schools performing in the third quintile, or the 40th to 60th percentile in their state. This was slightly better than the average performance of schools to which no IZ units were assigned; non-IZ schools performed at an average of the 20th to 40th percentile within their state. Again, we found substantial variation among the 11 localities. In Chicago, IZ elementary schools (like most non-IZ elementary schools) were in the bottom quartile of Illinois elementary schools. This is not surprising, since school poverty highly correlates with school performance, and the large majority of students in any given year in Chicago qualify for free or reduced-price meals (e.g., 85 percent of students in 2007–2008, compared with 38 percent in the average public school in the rest of the state). In Irvine and Davidson, both of which are affluent, the IZ schools were in the top quartile within their states. On the whole, however, IZ and non-IZ schools' rankings were quite similar.

#### Summary

Although the 11 programs studied varied considerably in design, we found that, on the whole, the IZ homes

- *Serve low-income people.* Six of the programs exclusively serve households making 80 percent or less of the AMI, and three target households earning as little as 30 percent of the AMI for rental units. The other five reserve a portion of the IZ homes for households earning up to 100 or 120 percent of the AMI.
- *Predominately serve owners rather than renters.* Seventy-eight percent of the IZ homes in this study were for sale, and only one of the IZ programs exclusively operated a rental program. The vast majority of the for-sale homes were sold to low-income households that would otherwise qualify for federally subsidized rental housing on the basis of income.
- Are widely dispersed throughout jurisdictions. IZs were located in one out of every ten census block groups in the 11 localities and one out of every five census tracts as of 2005–2009. IZ units were also zoned into one out of every four schools across the 11 jurisdictions.
- Are located in low-poverty neighborhoods. The typical IZ unit is located in a census block group (or tract) where 7 percent of households lived in poverty as of 2005–2009. This is lower than the poverty rate in the typical U.S. census block group nationally in the same year (14 percent). Further, 75 percent of the IZ units in this study are located in a low-poverty census block group or tract compared with estimates ranging from 8 to 34 percent for other forms of affordable housing (Ellen et al., 2009; Newman and Schnare, 1997).
- Are assigned to relatively low-poverty public schools. The typical IZ unit is located within an elementary-school catchment area in which one out of every three students (34 percent) qualified for free or reduced-price meals compared with the average elementary school nationally, where one out of every two students (49 percent) qualified as of the 2006–2010 school years; 44 percent of IZ dwelling units are assigned to low-poverty schools, defined here as elementary schools where less than one in five students qualify for free or reduced-price meals.
- Are assigned to schools performing slightly above average. The typical IZ unit is located in an elementary-school catchment area that ranked at the 40th to 60th percentile on national tests in math and ELA among the elementary, middle, or high schools within the state.

#### 20 Is Inclusionary Zoning Inclusionary?

Our findings indicate that, overall, the IZ policies studied provide access to low-poverty schools and neighborhoods—something other affordable housing policies have struggled to achieve (Deng, 2007; Newman and Schnare, 1997; Pfeiffer, 2009). On the whole, the IZ policies offer the potential, if not the promise, of social inclusion for recipients.

Although many IZ programs have similar objectives, the programs examined in this study had large differences in outcomes, which are partly explained by differences in the way they are structured combined with local demand for new construction. This chapter highlights the breadth of design choices available for IZ policies and the impacts they might have on the programs. Details of the 11 programs' designs are given in Appendix B.

All IZ ordinances are predicated on two aspects of the local market: (1) there must be sufficient demand in the private market for market-rate housing and (2) the IZ requirements, which often include incentives to offset costs, must not be so onerous as to render a development unprofitable (Mallach and Calavita, 2010). As a consequence of the first condition, IZ policies tend to be found in high-cost housing markets. It is generally assumed, therefore, that IZ is indeed inclusionary. However, a number of program features can diminish the potential of IZ inclusiveness for its recipients—e.g., being voluntary, or requiring that a small proportion of homes be set aside for IZ, or having no continued affordability requirements upon occupant turnover. Thus, the simple existence of an ordinance does not guarantee the construction of IZ homes in the first place, let alone the inclusion of below-market-priced homes in affluent neighborhoods.

Seven design features appear to have the most substantial impact on the potential supply and inclusiveness of IZ homes in a jurisdiction:

- *Eligibility*—the populations eligible for participation in IZ programs;
- *Tenure*—whether IZ rentals or ownership is permitted;
- *Mandatory status*—whether the program is mandatory or voluntary for developers;
- *Supply*—the types of development within a jurisdiction that are covered by the IZ provisions and how many units must be set aside for below-market pricing;
- *Cost offsets and opt-outs*—whether developers can make use of in-lieu options such as payments into an affordable housing fund or cost offsets such as density bonuses or accelerated permit reviews;
- *Continued affordability*—whether the program contains long-term-affordability provisions for the IZ homes; and
- A mechanism for collecting data and monitoring compliance—whether the IZ ordinance provides for the ongoing collection of data and oversight of continued compliance.

#### Populations Eligible to Participate in IZ Programs

A key issue in designing an IZ program is determining who will be eligible to participate. This criterion, combined with the tenure (rental or sale) of homes, determines the degree to which an IZ program can meet the goal of supplying affordable housing for low-income populations. In general, IZ programs that include rental units can reach lower-income households than programs geared solely to homeowners. Some programs require units to be affordable by households at 100 to 120 percent of the AMI, others target those at 50 percent of the AMI, and others target households with incomes as low as 30 percent of the AMI (Mallach and Calavita, 2010). Many programs establish varied levels of affordability within a single IZ ordinance.

The programs in our study showed a wide range of eligibility requirements, as indicated in Table 2.1 above. The average income of IZ residents upon move-in ranged from 30 percent of the AMI in Irvine to 120 percent of the AMI in Davidson.

Usually, the income-eligibility criteria for recipients indirectly determine the amount of loss a developer incurs on a home, since the IZ ordinance sets the price of the home (whether in the form of rent or mortgage payments) equal to 30 to 40 percent of an eligible recipient's monthly income.

#### **Program Focus on Rental or Ownership**

Eligibility is also affected by whether the IZ program focuses on rentals or ownership. As shown in Table 2.1, one of the programs in this study exclusively serves renters, while others exclusively serve homeowners. Most of the programs make at least 50 percent of the IZ homes available for sale. Since many IZ laws stipulate that IZ homes have the same tenure as the market-rate homes in the development, both market demand and local zoning stipulations regarding multifamily dwellings and tenure determine whether IZ homes are for sale.

The degree of inclusion afforded by an IZ program depends on the extent to which lowincome households are able to take advantage of the program. While homeownership is desirable, programs that focus on ownership of IZ units generally target higher-income tenants than those that focus on rentals. An interesting hybrid is the program in Montgomery County, which offers both rental and ownership opportunities, and the county ensures affordability for extremely low-income families by allowing the public housing authority to purchase up to onethird of the IZ homes in a subdivision. The housing authority has exercised this right and has sold some of its IZ homes to low-income purchasers, but it rents the large majority to extremely low- and very low-income households using state and federal housing subsidies.

#### **Mandatory or Voluntary Programs**

Whether or not a program is mandatory can have the determining effect on the extent to which it is implemented. Voluntary programs may not be widely used, even if incentives are offered. For example, beginning in the 1980s, the City of Cambridge, Massachusetts, had a voluntary provision through which a developer could obtain a density bonus for a project that created affordable housing. However, over the course of a decade, the program failed to produce a single unit. In 1998, the city enacted a mandatory IZ ordinance, which had produced

385 affordable rental and for-sale homes as of 2010. The change to mandatory status has been cited as the reason for the current program's success (Brunick, Goldberg, and Levine, 2004). The ordinance does retain voluntary provisions for projects that do not trigger the mandatory IZ requirement.

At least three studies have concluded that mandatory programs generally yield more units than voluntary programs: Brunick, 2004a; California Coalition for Rural Housing and the Non-Profit Housing Association of Northern California, 2003; and Mukhija, et al., 2010.

#### Types of Development Covered by IZ Provisions and Numbers of Units Set Aside

The number of IZ units created depends in part on the types of development covered by IZ provisions and the required set-asides. Set-aside percentages in California range from 4 to 35 percent of the total homes in a development (California Coalition for Rural Housing and the Non-Profit Housing Association of Northern California 2007), and other examples in our study indicate a similar range. Some programs require that developments that exceed the minimum size threshold set aside as little as 10 percent of total homes built to be made affordable through IZ, while some require that as much as 30 percent be set aside. The IZ policies we studied applied to developments with as few as five homes or as many as 50 homes. A few programs required developments with fewer than five or ten homes to either provide one affordable unit or make an in-lieu payment.

In Chicago, projects that obtain financial assistance from the city must set aside 20 percent of units as affordable, while projects not requiring city assistance must set aside 10 percent. The City of Irvine requires at least 15 percent of units in all developments with more than 50 units to be made affordable. Montgomery County requires all new subdivisions with 20 or more dwelling units to set aside between 12.5 and 15 percent of the units as affordable.

#### In-Lieu Options and Cost Offsets Available to Developers

The types of incentives provided to developers can affect their willingness to participate in voluntary IZ programs, and some forms of incentives can affect the extent to which the programs succeed in promoting social integration. Schuetz et al. (2011) found that in the San Francisco metropolitan area, IZ programs that granted density bonuses and had larger minimum project sizes generated more units, suggesting that programs with incentives whose value equals or exceeds the loss a developer would incur on the IZ homes are more successful. Of course, the underlying housing-market conditions also drive developers' choices—strong housing markets with high demand for market-rate dwellings are much more conducive to acceptance of moredemanding IZ design criteria such as smaller incentives, fewer opt-outs, lower minimum project sizes, and higher set-aside provisions.

The most common form of incentive provided to developers is a density bonus, which allows them to build more square feet than would otherwise be permitted under zoning provisions. Other common incentives include fee waivers, reductions in parking spaces required by zoning and building codes, and expedited permitting (Mallach and Calavita, 2010). Two other types of incentives are the availability of alternative means of compliance (e.g., paying a fee rather than building IZ units) and the option to build the IZ units off-site. For example, the IZ ordinance in Boulder allows developers to pay in-lieu fees (\$119,922 per unbuilt unit or \$100 multiplied by 20 percent of the total floor area of market-rate units) rather than build IZ units. The goal is to have 50 percent of the ownership units built on-site, while affordable rental units can be constructed either on- or off-site, provided they meet size requirements.

The IZ ordinance of the City of Irvine provides a "menu" of alternative compliance options, including converting market-rate units or extending the affordability period on existing affordable units, in-lieu fees, transfer of existing units to a nonprofit housing agency, transfer of off-site credits for affordable units (i.e., a developer can provide more than the minimum number of units at one site and count those against another site), alternative housing (e.g., special needs, single-room occupancy, shelters), and land dedication for affordable housing. Developers can also fulfill affordable housing goals by trading credits with other building sites.

The types of opt-out offerings, if any, should be aligned with program goals. If the intent is to enforce the maximum degree of social inclusion, in-lieu options are less likely to be effective. If the intent is to maximize the supply of affordable housing in the jurisdiction, regardless of specific locations, opt-out provisions could be useful.

#### Long-Term-Affordability Provisions

The lasting effect of IZ programs may depend on whether they are required to provide affordable housing only for an initial set of tenants or will continue to do so for many years. One study found that the period of affordability (enforced through mechanisms such as deed restrictions) in programs in the San Francisco, Boston, and Washington, D.C., areas varied from less than 20 years to as many as 99 years (Schuetz et al., 2011). Municipalities may also require that a certain portion of the profit resulting from the resale of an affordable unit be absorbed into a local affordable housing trust fund (Brown 2001). To ensure long-term affordability of homeownership units, the future resale price of IZ homes is typically based on the original purchase price plus an annual return on equity based on the buyer's down payment and principal payments on the mortgage, as well as allowances for eligible capital improvements.

Some of the programs in our study set relatively short periods of affordability. For example, Denver's inclusionary housing ordinance requires for-sale units constructed under the program to be made affordable for 15 years. Chicago and Irvine have set the period of affordability for their programs at 30 years. Other locations, such as Davidson and Burlington, require units to remain affordable for 99 years. Cambridge requires homes constructed under its IZ ordinance to remain affordable for the life of the building.

The oldest continuously running IZ program in Montgomery County sheds some light on the loss of the supply of affordable homes over time resulting from limited affordability periods. Of the 13,133 IZ units constructed in the county since 1974, only 9,369 appear in the current roster of IZ homes. A county official explained that the primary reason for this discrepancy is that some properties have passed their period of required affordability and are thus no longer part of the IZ pool. Secondary reasons include the fact that early units were recorded on paper and were never transferred to computer databases and data were retained in several formats over the life of the program, making it difficult to compile a single list.

#### Procedures for Monitoring IZ Program Compliance

Perhaps the greatest commonality among the 11 localities in our study was a lack of funding for and clarity about the oversight of developers' and property managers' ongoing compliance with IZ stipulations and data collection. Several factors contributed to this, some of which could be remedied in future amendments and adoptions of IZ ordinances. These include the lack of dedicated funding within IZ policies for government administrators to collect data and the diffuse administrative structure whereby property managers (rather than a single city department) qualify IZ residents by income and send (or do not send) annual reports about the recipients to city officials, using their own report formats and with no expectation of audits, given a lack of staff within the city or county department to carry them out.

When requesting data for this study, we asked each jurisdiction for information on IZ units as well as demographic information about current and past IZ residents.<sup>1</sup> No jurisdiction had all of the information we requested, and none kept electronic historical data on each occupant of IZ homes; in other words, no jurisdiction regularly tracked demographic information and sales prices or rents across successive occupants of IZ units. All 11 jurisdictions kept address lists, but not all were complete.

Almost all jurisdictions faced data-tracking challenges. A majority of jurisdictions were able to provide the project names of the residential developments, the date or year a unit was built, its tenure, and, for ownership units, the most recent sales price. Fewer than half of the jurisdictions were able to provide market sales prices for units, and very few of those with rental units were able to provide the market or actual monthly rent to establish the difference between IZ rental prices and market-rate prices.

Information about IZ unit types and locations was more readily available than data about households occupying the IZ units. Four sites were unable to provide any demographic information about IZ occupants. A fifth was able to provide only aggregated information about the proportion of units occupied by resident category (e.g., 20 percent of the heads of households in a given IZ residential subdivision were between the ages of 20 and 30). The other six sites had some combination of data about the number of people in a household and their income when they moved in. For example, four had some information about the number of children, the gender and race of the primary householder, the household type (e.g., single, married couple with children), and the first mortgage or other types of financial assistance provided. However, a great deal of information was typically missing within each of these categories, rendering the summary information of limited use.

There is a pressing need, both locally and nationally, for better information about the populations served by IZ and about how long residents remain in place. More-standardized forms of data collection across IZ programs would better enable national and even interna-

<sup>&</sup>lt;sup>1</sup> For each unit, we requested the street address, type of unit (single-family or multifamily, rental or ownership), whether the unit was created on- or off-site, date built, date that the current resident moved in, market price and affordable price (for ownership or rental units), and the target AMI for the occupying household. Demographic information we requested about each occupying household within a home included the number of adults and children per household; their income; the date they moved into the home; the gender, age, race, and employment status of the head of household; and for ownership units, the amounts of their mortgage(s) and whether they received additional financial assistance. For ownership units that had sold at least once, we requested the most recent resale price and the length of time the previous owner lived in the unit. We asked for this information from as far back as the jurisdiction collected data.

tional analyses. One possible remedy would be the explicit inclusion of forms of data reporting and collection (and a financial mechanism for supporting these activities) within IZ statutes.

#### Summary

Using the information each of the 11 localities shared about its ordinances and program structure, we identified seven aspects of program design that affect the potential to meet the goals of providing affordable housing to low-income households and promoting social inclusion for IZ recipients: (1) how the IZ policy defines eligibility for recipients; (2) whether the policy includes rental and ownership opportunities; (3) whether developers are required to comply with set-asides as a condition of permit approval; (4) the size of developments to which the IZ policy applies and the proportion of homes that must be set aside as affordable; (5) the types of incentives and opt-outs provided to developers; (6) the continued affordability of the homes after initial resale or leasing; and (7) the ability to monitor compliance with the program.

The 11 IZ policies we examined varied greatly along each of these dimensions, since they have been tailored to meet local housing-market conditions and political contexts. Appendix B provides more detail on the range of options the programs have pursued. The key aspects of IZ policies affect not only how many homes are produced, but also who may live in them, how long they are available to income-eligible households, and whether or not they are included in market-rate neighborhoods. Thus, they should be of critical concern when municipal officials set out to design or modify an IZ policy to meet their goals.

This report provides criteria to consider when designing an IZ policy and an overview of the available evidence about IZ program efficacy. The strength of the local housing market and the way an IZ program is designed and carried out determine the degree to which the program provides affordable homes in a manner that could promote social inclusion. The variety seen in the structures of the 11 IZ programs in this study illustrates how different policy choices affect program success.

On the whole, the 11 IZ programs have largely fulfilled the goal of supplying some affordable housing to low-income populations, although the number of units is small. The programs have also supplied some of the ingredients required to fulfill the goal of promoting social inclusion. Across, but not necessarily within, each locality, the typical IZ home is located in a low-poverty neighborhood and assigned to a school that has performed slightly above average within its state and where fewer students qualify for free or reduced-price meals than schools nationally.

IZ programs locate a far greater proportion of IZ units in low-poverty neighborhoods than other affordable housing programs in the United States. But IZ programs are not directly comparable to programs such as public housing, LIHTC, or Housing Choice Vouchers, which tend to serve more-disadvantaged households. The primacy of ownership over rental units in most IZ programs and the minimum-income requirements in some ordinances mean that IZ households are among the less-disadvantaged households served by affordable housing programs.

While IZ programs serve relatively more-advantaged families than other subsidized housing programs, the degree of access IZ provides to low-poverty neighborhoods is still remarkable. The typical IZ unit in the jurisdictions we studied is located in a neighborhood where 7 percent of the population was in poverty as of 2005–2009, compared with 19.5 percent for housing-voucher recipients in 2004 (Galvez, 2011) and 16-percent neighborhood poverty rates for poor households generally within the same metropolitan areas. Seventy-five percent of the IZ units we examined were located in neighborhoods where less than 10 percent of the population is below the poverty line, compared with 34 percent of LIHTC units (Ellen et al., 2009) and 8 percent of public-housing and 28 percent of housing-voucher recipients (Newman and Schnare, 1997, from 1990 Census data).

The characteristics of most of the IZ programs indicate that IZ is not likely to primarily serve either households at the lowest income levels or those with extensive needs for support, for whom clustered affordable housing may be a more efficient means of disseminating social services. However, the IZ policies offer something that other economically integrative housing programs largely have not offered: to the extent that IZ includes long-term affordability
requirements (which IZ policies increasingly do, although some of those we studied do not), it has the potential to provide low-income families with *extended* exposure to low-poverty settings. This is important, since research indicates that a significant amount of time is required (in some cases, generations) for low-income populations to reap the benefits of low-poverty settings.

While there is significant potential for IZ programs to be an effective vehicle for improving low-income populations' lives, IZ policy design choices can mitigate that potential. In particular, provisions for the continued affordability of IZ homes and their inclusion within market-rate developments heavily influence the degree to which supply and inclusionary goals can be achieved. Those who design or revise IZ programs should carefully consider the effects their design choices can have on the ultimate outcomes of the beneficiaries of those programs. We asked each jurisdiction for information on IZ units and on current and past IZ residents.<sup>1</sup> The 11 localities provided a total of 15,659 IZ addresses, of which 15,528 were successfully geocoded.<sup>2</sup>

To assess changes to IZ neighborhoods over time, we matched the geographic coordinates of the addresses to publicly available data about the employment, education, earnings, race, and ethnicity of households at the census-tract and census-block-group level from the 2000 decennial Census and from the 2005–2009 ACS 5-Year Estimates. The 5-year estimates provide the average characteristics of households in a given census block group over the period.

Although census tracts are commonly used as an operational definition of neighborhood in research on neighborhood effects, we define neighborhoods as census block groups, because our primary interest is in the immediate vicinities of IZ addresses, and census block groups are the smallest geographic area for which key demographics such as income, educational attainment, and housing values are publicly available. Census block groups vary in size and population. The typical block group in our study had approximately 3,000 households in 2005–2009, compared with approximately 7,700 per tract in the same years. The use of census block groups rather than tracts resulted in some missing data in cases where the Census Bureau suppressed statistics to protect the confidentiality of respondents. However, the reported results do not differ substantively when analyzed at the tract level.

To determine the schools with which IZ units were associated, we requested and obtained Geographic Information System (GIS) school attendance zone boundary files from the nine districts that have residential school attendance boundaries. The Cambridge, Burlington, and Montgomery County school districts operate systems of parental choice rather than residential assignment for a certain number of their schools. In Cambridge, all parents of children in grades K–8 (there is only one high school) must indicate their top three preferred schools, and the district then attempts to meet those preferences while retaining a balance of student characteristics across schools. Burlington also has a controlled-choice program for its schools, while

<sup>&</sup>lt;sup>1</sup> We requested each unit's street address, type (single-family or multifamily, rental or ownership), whether it was created on- or off-site, date built, date the current resident moved in, market price and affordable price (for ownership or rental units), and target AMI for the occupying household. We requested demographic information for as far back as the jurisdiction collected data about each occupying household within a home—the number of adults and children per household, their income, the date they moved into the home, the gender, age, race, and employment status of the head of household, and for ownership units, the amounts of mortgages and whether the household received additional financial assistance. For ownership units that had sold at least once, we requested the most recent resale price and the length of time the previous owner lived in the unit.

<sup>&</sup>lt;sup>2</sup> The proportion of geocoded addresses ranged from 96 to 100 percent per locality.

Montgomery County has a school-choice system for its middle schools. Since home addresses do not determine school assignment in these cases, we used districtwide school characteristics for the levels (i.e., elementary, middle, high) where school choice applies. This is a limitation of the data, because districtwide averages mask some school-level heterogeneity; however, these districts seek to limit segregation across schools through a controlled choice plan.

We next linked the schools to student characteristics such as the percentage who qualify for free or reduced-price meals and their racial and ethnic composition in each of the school years 2005–2006 to 2009–2010 (selected to align with ACS years), using data from the NCES Common Core of Data.

Publicly available school performance data from the departments of education in each of the nine states where the 11 jurisdictions are located provided the basis for ranking the schools on 2005–2006 through 2009–2010 statewide standardized tests in math and ELA.<sup>3</sup> Given the substantial variation in proficiency rates by levels of schools (elementary, middle, and high) and across states (each of which uses its own statewide standardized tests for accountability determinations), we created within-state and within-level (i.e., elementary, middle, and high school) rankings for schools. In most cases, states' school-level test data were disaggregated within a school by grade, subject, and student subgroup. After classifying schools into three non-exclusive categories based on their grade ranges (using NCES definitions), we developed a single weighted average of the percentage of students within each school who scored proficient or above in math and in ELA for the band of grades within the elementary, middle, and highschool levels. All schools with elementary-grade proficiency rates were ranked and categorized for reporting purposes as being within the bottom, second, third, or top quartile of elementary proficiency rates within its state. We employed the same process for middle and high-school levels.

These data have several important limitations. First, the analysis examines the *access* an IZ resident has to low-poverty neighborhoods and schools. In all but one case, data from IZ administrators do not indicate whether children live at the IZ addresses, and in no case did the IZ administrative entity track the schools IZ youth attend. If children of IZ households attend private schools or public schools (such as charter schools<sup>4</sup>) outside their residentially assigned zone, their place of residence does not accurately indicate the schools they attend. These scenarios, however, are likely to hold for only a minority of IZ occupants.

A second limitation is the failure of school districts to provide historical school attendance zone boundary files. We requested the attendance boundaries for 2000–2010, but in all nine cases (we did not request them for Cambridge and Burlington, because of their school choice policies), the districts either did not have this information or there had been no boundary changes. The working assumption in this report, then, is that the school to which an IZ unit was assigned as of 2007–2008 is the same as that for the 2005–2006 through 2009–2010 school years. Finally, underreporting of meal eligibility is chronic in middle and high schools (see, for example, Pogash, 2008), and consequently we rely on that statistic for elementary schools only.

<sup>&</sup>lt;sup>3</sup> Maryland data are from the 2010–2011 school year, because the state redacted archived data to comply with the Family Educational Right to Privacy Act (FERPA) rules to prevent the identification of individual students in earlier years' files. As of the writing of this report, redacted versions of prior years of data had not been reposted.

<sup>&</sup>lt;sup>4</sup> Charter schools are excluded from our analysis in cases where they were not included in school districts' geographic boundary files, which they rarely are, since they are generally not solely assigned students by neighborhood and may not be under the aegis of the local school district.

# **Boulder, Colorado**

### Overview

Boulder passed its first IZ ordinance in 1980, but it was a "loosely structured" program that produced virtually no units (Benson, 2010, p. 761). A 1991 change led to a voluntary ordinance, which was no more successful, and in 2000 the ordinance was made mandatory (Benson, 2010, pp. 760–761). The current ordinance authorizing the inclusionary housing program was adopted in February 2010. This ordinance changed the name to "inclusionary housing," set annual adjustments for in-lieu payments to developers, and clarified the land-dedication option but otherwise continued with the structure of the original inclusionary policy (City of Boulder, 2010).

Boulder's inclusionary housing ordinance requires that 20 percent of ownership and rental units be affordable (City of Boulder Land Use Code, Chapter 13, Section 9-13-3). As of December 2009, 364 units of affordable housing had been produced under the ordinance— 50 rental and 314 ownership units. Of these, 224 were built directly by developers under the terms of the ordinance, and 140 were built on-site, with additional funding from the city, by developers who exceeded the minimum IZ requirements on their sites (Long, 2011).

In addition to the 364 units, the city produced 118 units under similar programs. Of these, 39 were rental units built before the ordinance passed, and 79 were ownership units produced through annexation agreements (see below) (Long, 2011).

In 2010, Boulder secured permanent-affordability covenants on an additional 62 units produced under the ordinance, although not all of these units had been built as of this writing. All of the covenants were for ownership units, but one project may be converted to rental (Long, spreadsheet, 2010c).

The City of Boulder administers all of the ownership units, while Boulder Housing Partners, the city's public housing authority, and several nonprofits administer the inclusionary rental units.

### Applicability and Set-Aside Provisions

Under Boulder's current inclusionary housing ordinance, units are marketed under the Home-Works program. The ordinance applies to both new construction and units that are demolished and rebuilt (with exceptions for units destroyed by a natural disaster or "other calamity," and a limited exception for properties with four or fewer units (9-13-3 (e))). The ordinance also applies in a limited form to persons building their own residences. If a lot owner builds a house of less than 1,600 square feet and lives in it for at least one year, the ordinance does not apply. However, larger houses or those sold within a year are subject to cash in-lieu contributions upon sale, or they must be made affordable upon sale (9-13-6).

The ordinance requires that 20 percent of units be affordable. For ownership developments of five or more units, the goal is to have at least 50 percent of the affordable units built on-site, although exceptions can be made. Developments of four or fewer units should provide one affordable unit (9-13-9). However, cash in-lieu payments are also allowed for them, and thus far all developers of such units have elected to make in-lieu payments (Long, interview, 2010b).

Affordable rental units can be constructed either on- or off-site, provided they meet the size requirements described below. Either a developer or a housing authority can build them, or the developer can make an in-lieu cash contribution (9-13-4 (b)).

Affordable units are provided in the same proportion as market-rate units (that is, if half the market-rate units are for sale, half the affordable units should be as well). If market-rate units are detached single-family homes, the affordable units should be as well (9-13-5 (a)). The proportion of affordable unit sizes should also be similar to that of market-rate units (9-13-5 (b)). For detached housing, the affordable units must be at least 48 percent the size of the market-rate units, up to a maximum average of 1,200 square feet. For attached housing, the ratio is 80 percent and 1,200 square feet. Limited exceptions can be granted if unfinished space that can easily be converted to finished space is included (9-13-5 (c)).

Alternative means of compliance include in-lieu cash fees, construction of off-site units, and land dedication (9-13-9). In-lieu fees for detached units are either \$119,922 per unbuilt unit or \$100 multiplied by 20 percent of the total floor area of the market-rate units, whichever is less. For attached units, the formulas are \$100,178 or \$92 multiplied by 20 percent of the floor area. In-lieu fees can be adjusted by the city manager by up to 7 percent per year, up to 75 percent of the "affordability gap" for developments of more than five units, or 50 percent for smaller developments. The affordability gap is defined as the difference between the market rate for a unit and the amount affordable for a household earning the Department of Housing and Urban Development (HUD) low-income limit for the Boulder Primary Metropolitan Statistical Area (PMSA). The city manager calculates this gap annually (9-13-9 (a)).

In addition to the inclusionary housing ordinance, any annexation agreement must provide for a certain percentage of affordable units to be constructed. The target for these developments is about 45 percent, but more of the units can be made available at higher income levels. Each annexation agreement is drafted individually, so percentages can vary (Long, interview, 2010b).

## Eligibility

**Ownership Units.** Maximum sales prices are set on a quarterly basis (9-13-3 (i)). The city manager sets the prices based on what would be affordable to a household earning "HUD plus 10 percent," currently defined as 80.7 percent of the AMI (City of Boulder, Overview, undated, and City of Boulder, AMI, undated). For 2010, the Boulder PSMA median family income was \$89,600.

The formula that sets housing prices is based on this income limit, but it also assumes that a household will spend no more than 28 percent of its income on housing, receive a 30-year mortgage, pay 18 percent in taxes and insurance, obtain an interest rate based on the market 18-month trailing average, and pay homeowner association dues. There is no minimum income requirement, but in assessing eligibility, the city does take the household's debt load into account (Long, interview, 2010b).

Assets are also taken into consideration for eligibility. The level of assets is set by the city manager (9-13-3 (l)). Allowable levels vary by household type (retired, disabled, recently divorced), size (an additional \$15,000 per household member), and age (older applicants are allowed to have higher balances in a retirement account). Retirement assets such as 401(k) accounts are considered separately from other asset types (City of Boulder, 2010a).

**Rental Units.** Average rents are based on what is affordable for households earning 10 percent less than the HUD low-income limit for the Boulder PMSA. No single unit can exceed affordability at that limit, and tenants cannot earn more than that limit (9-13-8 (b)). For 2009, the HUD low-income limit was 70.7 percent (City of Boulder, AMI, undated). However, as rental units are all owned by nonprofits, they generally target households at 50 percent of the AMI (Long, interview, 2010b).

#### Long-Term Affordability Restrictions

Affordable units are permanently maintained as affordable (9-13-1 (f)). An owner who wishes to resell an ownership unit must sell it to another eligible household for the same purchase price. Higher purchase prices are allowed if they include closing costs and real estate commissions, property improvements, and an appreciation factor determined by the city manager (9-13-7 (c)). The annual appreciation factor varies between 1 and 3.5 percent, depending on the change in the AMI or the consumer price index (CPI), whichever is smaller (City of Boulder, 2010b).

It is difficult to create long-term affordable rental units under the program, because Colorado forbids mandating rent control under the state Supreme Court's "Telluride Decision" of 2000. To comply with the ordinance, developers building a rental project will either make a portion of the units ownership units or will sell them to the housing authority or a nonprofit that is willing to voluntarily maintain them as affordable (Long, interview, 2010b).

If rental units are later converted to for-sale units, the owner must enter an agreement with the city to continue providing affordable units (9-13-8 (a)). However, this provision was instituted with the February 2010 update of the ordinance and has not yet been applied (Long, interview, 2010b).

#### **Cost Offsets**

Developers can apply for a waiver of the development excise tax (3-8-7 (e)), but the ordinance does not provide for density bonuses or other incentives (Benson, 2010). The city does not offer density bonuses because the height of all buildings is limited to 55 feet (9-7-5).

#### Subordinate Financing and Down-Payment Assistance

The City of Boulder does not provide subordinate financing to homebuyers through the inclusionary housing ordinance. It has a program called the "3% Solution," which offers 3 percent of the purchase price to assist with closing costs for an inclusionary housing unit. However, funds are limited, and only 10 or 15 applicants use the program in a typical year. Boulder has several other down-payment assistance programs that do not apply to inclusionary units (Long, interview, 2010b).

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### **Burlington, Vermont**

#### Overview

Since 1990, when Burlington first adopted IZ, its ordinance has led to the creation of about 200 inclusionary homes. The zoning restrictions apply to both for-sale and rental properties and have on- and off-site provisions. Developers are required to build the specified number of IZ units, with case-by-case exceptions in which developers can make a payment in lieu of construction.<sup>1</sup> The off-site option has been exercised four times, and today about 60 percent of IZ homes are in the subdivisions and about 15 percent are off-site (information on the remaining units was not available). Developers who exercise the off-site provision must construct 150 percent of the units they would have been required to build on-site.

The IZ program is administered by the City of Burlington, which ensures that developers set aside the appropriate number of IZ units at the time they obtain permits. Champlain Housing Trust, a community land trust that works throughout northwest Vermont, administers some of the for-sale units created under the program. It ensures that purchasing households have a qualifying income before moving into the IZ homes, and it also enforces the deed restriction for long-term affordability of the homes. However, no funds are set aside for the ongoing administration of the program.

#### **Applicability and Set-Aside Provisions**

The ordinance requires that all newly constructed market-rate developments with five or more units and any conversions of non-residential buildings that produce ten or more units make 15 to 25 percent of the units affordable. The more expensive the market-rate units in a given development, the higher the proportion of IZ units must be. For example, for subdivisions where the sale price is affordable only to households earning 180 percent of the AMI, developers must set aside the maximum share of IZ units (25 percent of the total). All properties located within a waterfront zoning district are also subject to a 25-percent IZ requirement, and there is no off-site or payment-in-lieu option. Units must meet minimum size requirements: a one-bedroom unit must be at least 750 square feet in area and a four-bedroom must be 1,200 square feet.

#### Eligibility

Income eligibility for Burlington's IZ for-sale program is set at 75 percent or less of the AMI (which equated to \$55,350 for a family of four in 2010), and the rental program is set at 65 percent of the AMI. If eligible buyers at 75 percent cannot be found, units can be sold to households with 80 percent of the AMI. The average income of families moving into IZ homes is 63 percent of the AMI.

### Long-Term Affordability Restrictions

Affordability controls must be kept in place for 99 years. In the case of for-sale units, equity appreciation for the original buyer is limited to 25 percent, adjusted for any homeowner improvements and closing costs. Rents can be increased only by the annual percentage changes

<sup>&</sup>lt;sup>1</sup> Following a 2008 revision to the ordinance, the city now requires \$100,000 in-lieu payments per IZ units, and this payment is indexed for inflation.

in median household income. Very few homes have been resold since the inception of the program.

## **Cost Offsets**

To compensate developers for losses realized on the IZ units, Burlington offers fee waivers and density and lot-coverage bonuses. The density bonus can be applied toward commercial space in mixed-use developments. Depending on the zoning district, new developments can build up to 25 percent more units on a site (for example, in low-density residential areas, density can increase from 7 to 8.75 units per acre; in high-density areas, from 40 to 46 units per acre). In some downtown areas, provision of each additional 5 percent of inclusionary units will allow an additional 10 feet of building height. In addition, the number of required parking spaces can be reduced by up to 50 percent, and impact fees can be decreased. The density bonus, however, is not by right, and consequently not all developments obtain it, even though the IZ set-asides still apply.

## Subordinate Financing and Down-Payment Assistance

Subordinate financing is not provided to homebuyers. Down-payment assistance is on rare occasions provided to homebuyers by the Champlain Housing Trust, but not by the city.

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### Cambridge, Massachusetts

### Overview

The City of Cambridge approved in March 1998 a mandatory IZ ordinance, which had produced 385 affordable rental and for-sale homes as of 2010. Nearly 55 percent of the units are rentals and the balance are for sale.<sup>2</sup> The high ratio of rental IZ homes relative to other IZ programs in this study distinguishes the Cambridge program. The IZ homes comprise about 6 percent of the city's total stock of almost 7,000 affordable units (CDD, 2010).

In the decade preceding 1998, Cambridge had a voluntary provision in several zoning districts through which a developer could obtain a density bonus if the project created affordable housing. However, the program did not produce a single unit. The change to a mandatory program has been cited as the reason for the program's production of affordable homes (Brunick, Goldberg, and Levine, 2004). The IZ ordinance does, however, retain voluntary provisions for projects that do not trigger the mandatory IZ requirement.

The city's official goal, as stated in its Five-Year Strategic Plan, is to create an additional 400 affordable units between 2011 and 2015. It is anticipated that 150 of these units—75 rental and 75 for-sale—will be created as a result of IZ (CDD, 2010).

The City Community Development Department (CDD) administers the program. City staff work closely with developers to set up the inclusionary program for each project. CDD staff conduct the marketing and buyer/tenant screening for the inclusionary units. For rental units, CDD maintains a Rental Applicant Pool (RAP) of potential tenants. The staff determine applicant eligibility and refer eligible applicants to the developer for final approval. For homeownership, new units are marketed and CDD administers a homeownership resale pool to match eligible households to resold IZ homes. In addition, an independent nine-member City board, the Cambridge Affordable Housing Trust, provides policy advice regarding affordable housing and approves policies for the inclusionary housing program (City of Cambridge, FY 2009).

#### **Applicability and Set-Aside Provisions**

Under the ordinance, any new or converted development of more than ten units must make 15 percent of the units affordable (CDD, 2010). In residential developments with fewer than ten units, affordable units must be provided if the total area exceeds 10,000 square feet (at a rate of one unit per 1,000 square feet). Affordable units may be sold or rented, depending on the development (CDD, 2010).

For both rental and homeownership projects, the inclusionary units must mirror the building as a whole, with IZ units located throughout the building. Aspects of unit location, size, type, amenities, and layout are thoroughly considered to ensure that the inclusionary units are representative of the building.

Units are to be provided on-site, but developers can request a hardship determination to be allowed to make a payment to the Affordable Housing Trust instead of providing units. However, the burden of proof is on the developer to show that providing affordable units on-

 $<sup>^2</sup>$  These figures are based on data provided to the research team by the City of Cambridge. The Strategic Plan for Fiscal Years 2011–2015 states that "more than 459" IZ units have been permitted in the same time frame (CDD, 2010, p. 73). We were unable to resolve this discrepancy definitively; the difference may represent the distinction between permitted units and those actually built.

site would be a hardship. The amount to be paid to the Affordable Housing Trust is equivalent to the value of providing a unit on-site (City of Cambridge, 2010). No developer has yet requested a hardship determination as of the date of this writing.

# Eligibility

*Affordable* is defined as a rent or mortgage payment that does not exceed 30 percent of the income of the household that lives in the unit (City of Cambridge, 2010). Income eligibility is capped at households earning less than 80 percent of the AMI for both the rental and ownership portions of the IZ program. The rental program requires a minimum income of 50 percent of the AMI except for those renters who use a housing voucher, in which case the affordability of the inclusionary units can be deepened to accommodate very low-income households. The homeownership program establishes sales prices to be affordable to households with incomes at 65 percent of the AMI. Although there is no strict minimum income for homeownership, buyers must be able to qualify for financing for the purchase of the unit. The CDD screens both renters and purchasers for eligibility and gives preference to residents of Cambridge and to families with children. In the rental program, the CDD also gives preference to households with emergency housing needs.

# Long-Term Affordability Restrictions

A permanent deed restriction ensures the long-term affordability of a development. The restriction is for the life of the building (CDD, 2010). To ensure long-term affordability of homeownership units, the future resale price of an IZ home is based on the original purchase price plus an annual return on equity based on the buyer's down payment and principal payments on the mortgage, as well as allowances for eligible capital improvements.

# Cost Offsets

In exchange for the mandatory set-aside, developers can receive an increase in allowable density of up to 30 percent, as calculated by an increase in the allowable floor area ratio (FAR). At least half of the additional FAR must be used for the affordable units. In addition, the units created through the inclusionary bonus must equal one affordable unit for every market-rate unit created. In mixed-use developments, the additional FAR applies to the entire lot, but it can be used only for residential development (City of Cambridge, 2010).

## Subordinate Financing and Down-Payment Assistance

The City of Cambridge provides financial assistance for buyers of affordable units, including units created through IZ. The funds may be used for closing costs and down payments. Buyers of inclusionary units are reviewed for participation in this program. The city also provides pre- and post-purchase education and counseling to homebuyers to guide them through the purchase process.

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# Chicago, Illinois

## Overview

Chicago has a number of affordable housing programs in place, two of which involve developers creating affordable units in new construction. The Affordable Requirements Ordinance (ARO) is mandatory in certain circumstances, and the Chicago Partnership for Affordable Neighborhoods (CPAN) is voluntary.

The Chicago City Council passed the ARO in 2003 and expanded it in 2007. The main change was expanding the ordinance to all residential developments of ten or more units that receive a zoning change, purchase land, or receive financial assistance from the city, rather than only units that received financial assistance from the city (DCD fact sheet, undated). As of the end of 2009, the ARO had created 815 units of affordable for-sale housing. (Several dozen of the units were created prior to the ARO but were subject to similar restrictions and continue to be monitored by the ARO program.) Most of these units have been sold, although because of the downturn in the housing market, some remain on the market and others have been foreclosed.

The CPAN was created in 2001 as the Planned Purchase Price Assistance Program. The original program did not address the creation of affordable units; rather, it provided financial assistance to low-income homebuyers (Committee on Housing and Real Estate, 2005). The City Council changed the program several times, most recently in November 2006, to create incentives for developers to build affordable for-sale units (Committee on Housing and Real Estate, 2006). In its current form, CPAN provides affordable condominiums within market-rate developments for first-time homebuyers. It also provides purchase-price assistance of up to \$30,000 for income-qualified CPAN purchasers. CPAN had created about 420 units of affordable housing through the end of 2009.

While the ARO applies to both for-sale and rental housing, the city does not maintain information on the number of rental units produced. Additional units beyond the totals shown above have been mandated under both programs since 2009, but not all have been built.

Twelve ARO units and 27 CPAN units have been sold—and will continue to be monitored—by the Chicago Community Land Trust (CCLT), which was created in 2006. The CCLT is a nonprofit corporation but is staffed with Chicago Department of Housing and Economic Development personnel (Frantz and Smith, 2010).

The long-term affordability of the non-CCLT units is monitored through the use of a recapture/junior mortgage recorded against each unit. In most cases, the junior mortgage must be repaid—or the unit must be sold to another income-qualified buyer at an affordable price—when the original buyer wants to sell.

## **Applicability and Set-Aside Provisions**

The ARO is mandatory for projects of ten units or more that involve the following:

- Any land purchase from the city
- Any zoning change that results in higher density or allows residential construction where it was not previously allowed
- Units that are part of a "planned development," unless they are not downtown
- Financial assistance from the City (DCD, undated-b).

In projects that obtain financial assistance from the city, 20 percent of units must be affordable; in the others, 10 percent is required (CHP and NHC, undated).

CPAN is a voluntary program that pertains only to for-sale developments. The goal is to make at least 10 percent of units in a participating development affordable, and those units must be sold for at least \$25,000 less than comparable units in the same development (where the developer lowers the price in exchange for waived developer fees). The city's Housing & Economic Development Commissioner can approve a figure below 10 percent if affordability can be increased that way (for example, if units can be sold to households with less than 80 percent of the AMI) (Committee, 2006, pp. 89915–89916).

### Eligibility

The ARO provides for some interplay between the number of units and affordability provisions. The percentage of affordable units can be reduced if for-sale units are targeted at households with less than 80 percent of the AMI. Otherwise, the target-household maximum income levels are 60 percent of the AMI for rental and 100 percent for ownership (CHP and NHC, undated). If Tax Increment Financing (TIF) funding is involved, the homeownership AMI may be 80 percent (DCD, undated a andb). Chicago's AMI for a family of four is \$75,100; 60 percent of the AMI is \$45,060, and 80 percent is \$60,080.

Under CPAN, eligible homebuyers cannot earn more than 100 percent of the AMI (Committee, 2006, p. 89916). To be eligible for purchase-price assistance from the city, the homebuyer may not earn more than 80 percent of the AMI.

In-lieu fees are permitted under both the ARO and CPAN; the level was set at \$100,000 per unbuilt unit in 2003. The expansion of the ARO in 2007 indexes this fee to inflation (CHP and NHC, undated, 2010), but the CPAN fee remains at \$100,000 (Breems, 2011).

#### Long-Term Affordability Restrictions

Under the ARO and CPAN, for-sale and rental (ARO only) units must be maintained as affordable for 30 years (Ordinance 2-44-010.f). Sellers of both ARO and CPAN units may buy their way out of the affordability restrictions if they repay the recapture mortgage, which is filed at the time of closing in an amount that is the difference between the purchase price and the market price at the time of purchase, plus 3-percent interest (2-44-010.i.2).

Units in the CCLT are kept affordable via a 99-year restrictive covenant requiring the home to be sold to the CCLT (which has the right of first refusal) or to a low-income purchaser. There is also a maximum resale price, which is equal to the original purchase price plus a percentage of the market appreciation (Frantz and Smith, 2010).

#### Cost Offsets

Under the ARO, developer "incentives" such as city land or zoning changes trigger the affordability requirements (CHP and NHC, undated). Because CPAN is voluntary, incentives are used to encourage developers to participate. If a developer's CPAN application is approved, a number of fees can be waived by the city, including building-plan review and permit fees, water and sewer fees, and open-space impact fees. The total amount of all applicable fees is waived up to a limit of \$10,000 per unit created. Developers can also request city reimbursement of up to 50 percent of third-party permit-review costs, up to \$3,000 per unit or \$50,000 total (Committee, 2006, pp. 89919–89921). Developers who are subject to the ARO can apply for the CPAN fee waivers only if they meet both sets of affordability requirements. If developers must make 10 percent of their units affordable under the ARO, they must produce additional units to qualify for CPAN (Committee, 2006, pp. 89921–89922).

## Subordinate Financing and Down-Payment Assistance

Under CPAN, the city can provide a purchase-price subsidy with funds from the federal HOME Investment Partnership Program. Homebuyers who earn less than 60 percent of the AMI can receive up to \$30,000; those with incomes from 61 to 80 percent of the AMI can receive up to \$20,000 (Committee, 2006, p. 89918). Down-payment assistance is not provided to homebuyers under either the ARO or CPAN, although eligible buyers in both programs can access down-payment assistance provided by the State of Illinois and administered by partner housing counseling agencies.

Purchasers of ARO or CPAN homes must complete homeownership counseling by a HUD-certified housing counseling agency, and purchasers of condominium units must receive condominium-specific homeownership training. The CCLT also requires and provides CCLT-specific homeownership counseling to all its homebuyers before they can purchase a CCLT home. The CCLT provides training and post-purchase support to educate homeowners on the responsibilities/opportunities that accompany homeownership, including foreclosure prevention, budgeting, home repair, and estate planning (Frantz and Smith, 2010).

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### Davidson, North Carolina

#### Overview

The Davidson Town Board adopted an affordable housing ordinance in 2001, to which amendments were made in 2005, 2007, and 2008 to specify guidelines and standards (Town of Davidson, 2009). By May 2011, the ordinance had produced 54 units of affordable housing. Of these, three were rental units and the rest were ownership units (Reid, 2010).

As part of the master-plan approval process, developers are required to indicate how many residential units are included in a development. According to master plans that have been approved by the Town Board, more than 200 affordable units have been identified. However, approval does not mean that a project will go forward. Many projects have been indefinitely delayed or reduced in scope because of changed economic conditions. Developers are required to submit a detailed affordable housing plan prior to preliminary plat approval, and the final plat will indicate which lots or units are to be constructed as affordable units (Reid, 2011).

All of the units created are administered by the Town of Davidson's affordable housing coordinator. Applicants who wish to purchase or rent a home under the program must participate in an eligibility process provided by the Davidson Housing Coalition, a nonprofit housing agency (Reid, 2011).

#### **Applicability and Set-Aside Provisions**

Developments with seven or fewer units can either provide one affordable unit or make a prorated payment to the town's affordable housing fund (Town of Davidson, 2009; Planning Ordinance, 6.3.1). Developments with eight units or more must make 12.5 percent of the units affordable (Town of Davidson, 2009).

While it is preferable to have units built on-site, developers can make an in-lieu payment of \$69,400 per unit to the town's affordable housing fund. The payment amount is based on the sales price of a unit that is affordable by a household of four whose income does not exceed 50 percent of the AMI (Planning Ordinance, 6.3.2).

Farmhouse clusters, low-impact subdivisions, and conservation-easement subdivisions are exempt from the affordability requirements (Planning Ordinance, 6.3).

#### Eligibility

Affordable units must be distributed among various income categories ranging from less than 50 percent of the AMI up to 120 percent.<sup>3</sup> In 2010, the AMI was \$67,200 for a family of four, meaning that eligible household incomes could range from less than \$33,500 to \$75,265. A unit is considered affordable by a household if the annual principal and interest on a 30-year mortgage in the amount of 95 percent of the purchase price, with an interest rate equal to the prime rate, does not exceed 23 percent of household gross income. The monthly principal and interest plus the estimated annual payments of private mortgage insurance, homeowner-association dues, property taxes, and hazard insurance may not exceed 28 percent of the household gross income (Planning Ordinance, Section 23, Definitions).

At least 30 percent of the affordable units created must be available to households earning no more than 50 percent of the AMI (Planning Ordinance, 6.3). After meeting this criterion, only 20 percent of the remaining units can be made available to households earning 80 to

<sup>&</sup>lt;sup>3</sup> An eligibility category of 120 to 150 percent of the AMI was eliminated in November 2010 (Reid, 2011).

120 percent of the AMI. The rest should be affordable by households making between 50 and 80 percent of the AMI (Reid, 2011).

## Long-Term Affordability Restrictions

Long-term affordability is maintained through a deed restriction containing resale and rental limitations. Affordability must continue for 99 years (Town of Davidson, 2009).

## Cost Offsets

No cost offsets are provided to developers.

## Subordinate Financing and Down-Payment Assistance

Subordinate financing is available to homebuyers through the North Carolina Housing Finance Agency and other programs offered by various lenders (Reid, 2011). Down-payment assistance is available from a variety of sources, including the North Carolina Housing Finance Agency, Federal Home Loan Bank, and a grant from the Town of Davidson.

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# Denver

## Overview

Denver passed an inclusionary housing ordinance in August 2002 (Webster, 2005). Prior to this, developers who were rezoning land to residential use were generally required to provide affordable units, depending on the project (City and County of Denver, Affordable Housing History, undated). Since 2002, 77 for-sale units have been developed through the Moderately Priced Dwelling Unit (MPDU) program. Participation is voluntary for rental projects; it is required for for-sale projects. No affordable housing rental units have been built.

The Denver Office of Economic Development's Business and Housing Services (BHS) administers the inclusionary housing ordinance, working with developers to ensure compliance, verifying income-eligible households, calculating maximum resale prices, tracking compliance, and keeping records. Households deemed eligible by BHS may view available affordable units at www.coloradohousingsearch.com. Developers, in turn, must offer a fair process for household selection (either a lottery or first-come, first-serve basis) for households that wish to buy an MPDU home.

The ordinance is mandatory for ownership units, but alternative compliance options are available subject to the MPDU director's discretion. If the director deems the alternatives unacceptable, affordable units must be provided on-site. Options include

- Building more MPDUs in the same or an adjoining statistical neighborhood, as defined and approved by the director
- Building more MPDUs at one or more other sites within 0.5 mile of the light rail or commuter rail station, as approved by the director
- Contributing to the special revenue fund an amount equal to 50 percent of the price per MPDU not provided but required under the ordinance.

### **Applicability and Set-Aside Provisions**

The ordinance requires for-sale projects of 30 or more units to make at least 10 percent of the units affordable (LivedowntownDenver.com), so the information below applies only to ownership units unless otherwise specified. Developers of smaller projects (fewer than 30 units) can choose to voluntarily comply with the MPDU program and thus gain access to its development incentives. The 10-percent set-aside is mandatory unless the developer can propose an alternative plan that would provide additional MPDUs at the same locations or a cash-in-lieu agreement for the units that would otherwise be required through the on-site provision.

## Eligibility

Generally, households must earn a minimum of 50 percent of Denver's AMI (\$37,950 for a household of four in 2010) and a maximum of 80 percent (\$60,700 for a household of four as of 2010), depending on household size. If a household does not meet the minimum threshold, it may demonstrate that it has assets that make the MPDU home affordable, which means that the monthly payment (principal, interest, taxes, and insurance) and association dues do not exceed 40 percent of the owner's income. All buyers must demonstrate earned income and the ability to afford the unit. Developments with three or more stories, elevators, and structured parking units may be offered to households earning 95 percent of the AMI (Livedowntown-

Denver.com). For voluntary compliers, units may be made affordable by households with a slightly higher income cap (100 and 110 percent of the AMI) (IHO Rules, 2010).

## Long-Term Affordability Restrictions

For-sale units constructed under the current program are made affordable for 15 years. During this period, units can be sold only to another income-eligible household. The maximum price for which a home can sell is established by the average home-sales price in the Denver metropolitan area, as published in Standard and Poor's Case-Shiller Index. After 15 years, the city has the right of first refusal on any affordable unit that is for sale. If the city does not purchase it, the unit can be sold on the open market. However, during the 10 years after the 15-year control period expires, half of the "excess profit" must be paid to the city's Housing Incentive Program Fund. The calculation of "excess profit" is as follows: one-half of the excess of the total resale price over the sum of the prior purchase price, a percentage of the prior purchase price equal to an increase in the Consumer Price Index for Urban Consumers (CPI-U), to adjust for inflation, eligible capital improvements, and a reasonable real estate commission. If the amount after the calculation is less than \$20,000, the amount due to the special revenue fund must be adjusted in each case so that the seller will retain either \$10,000 or the entire amount of the excess of the final MPDU sales price, whichever is less.

The restrictions on units produced under the previous rezoning program vary from project to project. That program produced both rental and for-sale affordable units, many of which remain available as affordable housing but under varying restrictions (City and County of Denver, Affordable Housing History, undated). Those units' period of affordability can range from five to 20 years (City and County of Denver, FAQ, undated).

## **Cost Offsets**

Developers receive a \$5,550 rebate for each MPDU they provide (which is increased to a \$10,000 rebate for for-sale MPDUs sold to households earning less than 60 percent of the AMI or rented to households earning less than 50 percent of the AMI). In addition to the cash incentive, developers can apply for one or more of the following: up to a 10-percent density bonus, up to a 20-percent decrease in parking maximums, and a 180-day expedited review process (IHO Rules, 2010).

## Subordinate Financing and Down-Payment Assistance

Subordinate financing is not provided to homebuyers ("Housing FAQs," undated). Several nonprofit housing organizations that receive awards from the city provide down-payment assistance. Seller-financed down-payment assistance is prohibited (City and County of Denver, FAQ, undated).

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## Fairfax County, Virginia

#### Overview

Fairfax County, a suburb of Washington, D.C., has had its current IZ ordinance in place since 1990. It was established to serve households whose income is 70 percent or less of the AMI for the Washington Standard Metropolitan Statistical Area (SMSA). Known as the Affordable Dwelling Unit (ADU) program, it had created 2,361 affordable units by the end of 2010, and there are approximately 850 additional affordable units in the pipeline (units that have been committed to as part of rezoning but have not been delivered). The ADU program, as established through the zoning ordinance, is intended to create affordable dwelling units that are integrated, as much as is reasonable, within each residential development. The units are required to mirror the tenure of the market-rate units within the development.

Of the 2,361 affordable units created through 2010, 1,320 (or 55.9 percent) were for-sale units. By ordinance, the Fairfax County Redevelopment and Housing Authority (FCRHA) can purchase up to one-third of the for-sale units at the established affordable-dwelling-unit price. To date, the FCRHA has purchased 147 units, or 11.1 percent of the for-sale units. All but 24 of these were placed into either the county's Magnet Housing program or the Fairfax County Rental Program (FCRP), both of which serve low- to moderate-income households whose income may not exceed 70 percent of the AMI. In addition, nonprofit housing providers purchased eight of the units, which also serve low- to moderate-income households. The 24 remaining units were removed from the ADU program and placed into the federal Public Housing program.

The other 1,165 for-sale units were placed into the First-Time Home Buyers (FTHB) program and were sold to qualified households whose income did not exceed 70 percent of the AMI. These households are required to meet a number of requirements, including procurement of a mortgage.

In addition to the for-sale units, the ADU program created 1,041 rental units. As provided for in Section 2-800 of the county's zoning ordinance, the rents are set as follows: one-third of the units have rents based on households earning up to 50 percent of the AMI, and the remaining two-thirds have rents based on households earning up to 65 percent of the AMI. All of these units are in privately owned rental properties and are managed by the property owner, not the FCRHA. The owners of the units are, however, responsible for filing monthly reports and annual income certification of the ADU tenants to the FCRHA to ensure compliance with the parameters of the program as provided for in Section 2-800 of the zoning ordinance.

The first for-sale units produced under Fairfax County's IZ program became available in 1992. The 24 units all went into the FTHB program. In 1993, 27 more for-sale IZ ADU units came online, 18 of which went into the FTHB program and nine of which were purchased by the FCRHA.

When the FCRHA exercises its right to purchase up to one-third of the for-sale units produced under the ADU program, it generally uses county funds, private financing, and/or federal grants. The county does a pro forma check at the time of purchase to ensure that the rents cover the operating and maintenance costs. The rents and county funds are also used to pay for any condominium- and homeowner-association fees for the properties. The units are generally placed into the county's Magnet Housing Program and the FCRP programs and will remain as affordable units.

The for-sale portion of the ADU program is administered by the FCRHA, which, in its administration of the FTHB program, certifies purchasers' eligibility and oversees affordable housing purchases created by the ordinance.

A nine-member Affordable Dwelling Unit Advisory Board (ADUAB), made up of engineers, architects, land-use planners, lending institutions, builders, and county staff, represents the FCRHA and the Fairfax County Department of Planning and Zoning (DPZ). ADUAB's role is to review applications in which the owner has requested a modification of the ADU program requirements. Requests typically concern whether additional fees may be charged for ADUs that are provided in independent living/senior housing. The ADUAB's powers do not allow it to modify the provisions of the zoning district or the number of ADUs required. The ADUAB also serves as an advisory body to the County Executive (Fairfax County Zoning Ordinance, Section 2-815).

Fairfax County passed one of the country's first IZ ordinances in 1971; it required 15 percent of units to be affordable in all projects with more than 50 units. However, it was struck down by the Virginia Supreme Court, which deemed that it was an unconstitutional taking and, because Virginia is a "Dillon's Rule" state (meaning that local government can undertake actions only expressly allowed by the state), the county acted without state approval. A 1989 amendment to the Virginia state code allows local jurisdictions to adopt IZ (Center for Housing Policy and National Housing Conference, undated).

The 1990 Fairfax County zoning ordinance required a fixed proportion of ADUs, depending on the type of unit being constructed (i.e., single-family detached, single-family attached, garden style, or low-rise multifamily), and in exchange, it provided for bonus density to remunerate developers for the mandatory set-aside. Whether or not the builder used all of the bonus density, the builder was required to provide the fixed number of ADUs in accordance with the provisions of the ordinance at that time.

On March 30, 1998, the ADU provisions in the zoning ordinance were amended, and a sliding scale of density bonuses to remunerate developers for the provision of ADUs was adopted. Under the sliding scale, the builder of single-family detached, single-family attached, and low-rise multifamily units is required to provide 12.5 percent of the units as ADUs in return for a 20-percent bonus. The builder of midrise multifamily developments with at least 50-percent surface parking is required to provide 6.25-percent of the units as ADUs and receives a bonus of 17 percent. In midrise multifamily developments where the parking is mostly structured, the developer is required to provide 5 percent of the units as ADUs in exchange for a 17-percent bonus.

## Applicability and Set-Aside Provisions

The ADU ordinance generally applies to developments with 50 or more units that are stickbuilt or partially stick-built. High-rise developments of building construction Types 1, 2, 3, and 4 are exempt from the ordinance; however, during the rezoning process, ADUs may be proffered (voluntary agreements between the builder and the county, which then become a condition of the rezoning). In addition, there remain a few areas in the county where the allowed development density is less than one unit per acre or that are not within an approved sewer-service area. In these cases, the ordinance does not apply.

As stated above, the ADU program requires developers of single-family detached, single-family attached and low-rise multifamily units to provide 12.5 percent of the units as affordable housing. For midrise multifamily with at least 50-percent surface parking, the requirement is 6.25 percent. Where the parking is mainly structured, the requirement is 5 percent. In exchange for these units, the developer is granted additional density at the time the development is built.

In "exceptional cases," such as demonstrated economic hardship, the ADU Advisory Board can allow a land donation, a payment to the Housing Trust Fund (determined by the fair market value of the lot that the affordable unit would have been built on), or a combination of the two instead of providing units. However, the Board cannot change eligibility requirements or modify the number of affordable units to be built in a development.

## Eligibility

**Ownership Units.** To be eligible to purchase for-sale units, households can earn no more than 70 percent of the AMI. In 2010, the AMI for a family of four was \$103,500. As shown in the table below, the maximum income allowed under the program for a family of four is \$72,450. In addition to a maximum income, the household must have a minimum income of \$25,000, irrespective of family size, to participate in the program.

Household Size	2010 Income Limits at 70 Percent of AMI (Rounded) (\$)
1 person	50,700
2 persons	57,950
3 persons	65,200
4 persons	72,450

Purchasers of affordable units must be first-time homebuyers and must have completed an approved homeownership class (Fairfax County Redevelopment and Housing Authority, 2009).

The developer works with the FCRHA to price the unit, and the final sales price is approved by the County Executive. The formula for determining the sales price is based on adjusted construction costs and financing costs. Adjustments for amenities, such as additional bedrooms or bathrooms, end-unit location, and roughed-in plumbing, are taken into account when pricing the units. There are also minimum requirements that the builder must meet. Worksheets and minimum standards are provided at http://www.fairfaxcounty.gov/rha/adu/aduprogram.htm.

**Rental Units.** Rents for units built under the ADU program are set by a formula that results in one-third of the units having rents based on households earning up to 50 percent of the AMI and the remaining two-thirds have rents based on households earning up to 65 percent of the AMI. In addition, rents are adjusted on the basis of unit size.

## Long-Term Affordability Restrictions

All affordable units created prior to March 1998 were subject to a control period of 50 years. However, when the county amended the ordinance in April 1998, the majority of the first-time homebuyers converted to the new 15-year control period. The control period for for-sale units created between April 1998 and February 2006 is 15 years, and the period for rental units is 20 years, with a buyout provision after 10 years. All units created since March 2006 are controlled for 30 years.

The program provides for shared equity in for-sale units by the owner and the county when the units are sold. If a unit is sold during the control period, it stays in the county's pool of affordable units and is resold to another eligible buyer. If the control period has expired, half of the difference between the purchase price and the sales price (as may be adjusted) goes to the Fairfax County Housing Trust Fund.

The units purchased by the FCRHA are placed into the county's Magnet Housing program and the FCRP programs and will remain as affordable units.

In addition to the county's ADU program, a significant number of units throughout the county that the FCRHA owns and operates are part of the federal public housing program.

#### **Cost Offsets**

The zoning ordinance currently provides for a sliding scale of density bonuses to remunerate developers for the provision of ADUs. The builders of single-family detached, single-family attached, and low-rise multifamily developments are required to provide 12.5 percent of the units as ADUs in return for a 20-percent bonus. The builders of midrise multifamily developments with at least 50-percent surface parking are required to provide 6.25 percent of the units as ADUs, with a bonus of 17 percent. In midrise multifamily developments where the parking is mostly structured, the developer is required to provide 5 percent of the units as ADUs in exchange for a 17 percent bonus.

### Subordinate Financing and Down-Payment Assistance

The county does not arrange for subordinate financing for ADU homebuyers. First-time homebuyers have been able to access first-trust mortgages through the Virginia Development and Housing authority when funds have been available. Down-payment and closing-cost assistance has also been provided to homebuyers when funds have been available. For new developments, the control price includes a contribution by the builder of up to three percent of the sales price, which goes toward closing costs.

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# Irvine, California

## Overview

Irvine was one of the early adopters of an IZ ordinance. The ordinance resulted from a lawsuit in the 1970s alleging that new office development would create a severe jobs-housing imbalance, especially for moderate-income households (Jacobus and Brown, 2007). However, the ordinance had no resale controls, and few of the 1,600 units created have remained affordable (Calavita and Grimes, 1998).

In 2003, Irvine adopted the current version of its affordable housing requirements (Brunick et al., 2004), which has some stricter requirements than the original ordinance, such as a 30-year affordability restriction. The current ordinance is mandatory for all newly constructed developments in Irvine having 50 or more units (Irvine Zoning Ordinance, 2.3.2). This requirement produced 183 affordable units between 2003 and 2010 (Mullay, 2011; City of Irvine, Finding Affordable Housing, 2011), the vast majority of which (93 percent) are for rent; the other units are for sale. Individual property managers, not the City of Irvine, administer the rental-unit affordability restrictions.

## **Applicability and Set-Aside Provisions**

Irvine requires that at least 15 percent of units in all developments with more than 50 units be made affordable. Developments with fewer than 50 units are allowed to use alternative means (described below) to fulfill their affordable housing obligations (Irvine Zoning Ordinance, 2.3.2). If developers of 50-unit projects cannot assemble sufficient financing—some of which may be provided by the city—they are also allowed to use alternative means to fulfill their commitments (2.3.3.C). Other exceptions include developments in certain areas of the city (e.g., where the terrain is hilly, which raises development costs), developments with proposed downzoning, and areas with less than 25 percent developable land (and that also have no approved affordable housing plan and are zoned at lower densities) (2.3.5.B.2).

Alternative means of compliance with the zoning ordinance, known as the "menu option alternatives," include converting market-rate units or extending existing affordable units, inlieu fees, transferring existing units to a nonprofit housing agency, transferring off-site credits for affordable units (i.e., a developer can provide more than the minimum units at one site and count those against another site), alternative housing (such as special-needs housing, single-room occupancy, or shelters), and land dedication for affordable housing (2.3.5.B.3). The perunit in-lieu fee is roughly 11 percent of the average value of the land needed for one affordable unit (the value of an acre of land divided by the average density of affordable housing). The 11 percent assumes that nine market-rate units support one affordable unit. Currently, the fee is about \$16,700 per unit (City of Irvine, "In-Lieu Fee for Affordable Housing," undated).

Developers can fulfill their affordable housing requirements by trading credits between building sites. Credits are not one-to-one; they are granted in a series of categories based on income levels, unit size, and rental versus for-sale. Credits are kept separate across income levels (details are given in the section of the ordinance on Eligibility Rules). For example, 1.4 credits are granted in the income level II and III categories for three-bedroom rental units, while 5.12 income level I and II credits are granted for four-bedroom units sold to eligible level I buyers (2.3.6).

### Eligibility

A minimum of 15 percent of units must be affordable at a mix of income levels, as defined in the Housing Element of the General Plan and shown in the following table.

Targeted Income Bracket	Assigned Tier Number	Percent of AMI	Annual Income for a Two- Person Household (\$)
Extremely low income	I	0–30	0–20,460
Very low income	II	31–50	20,460–34,100
Low income	Ш	51–80	34,100–54,560
Moderate income	IV	81–120	54,560-81,840

SOURCE: Housing Element, p. C-33.

Of the 15 percent, 5 percent must be affordable as rental or for-sale units to income levels I and II, 5 percent to level III, and 5 percent to level IV. As an alternative, 10 percent of the units can be affordable at the 60 percent of AMI level, and the remaining 5 percent can be available to households at income level IV. The Planning Commission can also accept different ratios if they meet the city's general goals.

#### Long-Term Affordability Restrictions

Newly built units are required to remain affordable for 30 years. The City of Irvine enforces this through regulatory agreements and covenants (Mullay, 2011), which must be specified in the developer's affordable housing plan (2.3.3.B). For-sale units have a restrictive covenant that runs with the land. Rental affordability is enforced through annual monitoring and annual compliance reports made by the individual property managers (2.3.8).

Units maintained by the Irvine Land Trust have a 99-year ground lease (Irvine Community Land Trust, undated).

### **Cost Offsets**

Developers must submit a written request to the city for financial and processing incentives to cover the cost of providing affordable homes (2.3.3.C). The incentives include density bonuses, which are negotiated with the developer based on a financial pro forma report showing the financial impacts of providing affordable units (2.3.10.D). Other incentives include marketing of for-sale units, financial assistance for excess affordable units, and reductions in overall inclusionary requirements if a large number of lower-income units are provided (City of Irvine, "IZO Fact Sheet," undated). They also include development-fee waivers and HUD funds (Sec. 2.3.7).

#### Subordinate Financing and Down-Payment Assistance

Subordinate financing is provided to homebuyers through the Irvine Community Land Trust, but not through the city (Mullay, 2011). Down-payment assistance is available through several nonprofit groups and the Irvine Community Land Trust (City of Irvine, "Finding Affordable Housing," 2011). The City of Irvine previously offered down-payment assistance but does not do so presently and is not expected to begin again (City of Irvine, First Time Homebuyers, web site, 2011).

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### Montgomery County, Maryland

#### Overview

Montgomery County operates the oldest continuously running and largest IZ program in the United States. In 1973, the Montgomery County Council adopted a Moderately Priced Dwelling Unit (MPDU) ordinance, one of the first such ordinances in the country. From 1974 through 2010, the MPDU program created 13,133 units of affordable housing (Montgomery County, undated). Of these, approximately 70 percent were for sale and the rest were rentals.

A singular aspect of the program is that the county's public housing authority and certain nonprofit entities have the first right to purchase or master-lease up to 40 percent of the IZ homes in a subdivision (Ordinance, 25A-8 (b)). (The housing authority may purchase or master-lease up to one-third of the homes for itself.) This has resulted in income tiers such that the IZ units are priced or rented at levels affordable by moderate-income households through the general program, and some recipients receive layers of subsidy (such as through the Housing Choice Voucher program) that provide affordability for very low-income households.

The Department of Housing and Community Affairs (DHCA) is primarily responsible for the administration of the MPDU program. It certifies eligible purchasers and monitors income certification by rental complexes, conducts mandatory homeowner training classes, maintains a waiting list, hosts random-selection drawings for certified MPDU participants to enter online to purchase a home in a given subdivision, and monitors the program. The public housing authority performs these functions for the approximately 1,500 IZ homes it has purchased, and the nonprofit entities do the same for theirs.

#### Applicability and Set-Aside Provisions

The MPDU ordinance requires that all new subdivisions in Montgomery County with 20 or more dwelling units set aside between 12.5 percent and 15 percent of them (whether rental or for-sale) as affordable. The actual percentage depends on the density bonus provided; with no density bonus, the minimum affordable percentage is still 12.5 percent. At the maximum, if a developer makes 15 percent of the units affordable, the applicable density bonus can reach 22 percent (Ordinance, 25A-5 (c)). The original 1973 ordinance covered all developments with more than 50 units. In 2005, the threshold was changed to 20 units.

The affordable units must be provided at certain ratios. For example, in multifamily projects, the ratio of affordable studio and one-bedroom units to larger units is required to be the same as the ratio of the market-rate units. In addition, for single-family-house developments, all affordable units must have at least three bedrooms (Ordinance, 25A-5(b)).

The county does allow land donation to fulfill the affordable unit requirements (Ordinance, 25A-5 (f)). In-lieu fees can also be approved if the facilities provided at the site or environmental remediation are so expensive as to make the affordable units unaffordable at the specified rates (Ordinance, 25A-5A). Off-site units can be approved for high-rise buildings, provided they are built in the same planning policy area of Montgomery County (Ordinance, 25A-5B).

### Eligibility

The maximum incomes a participant can earn and still qualify for the MPDU ownership and rental programs are 70 percent and 65 percent of the AMI, respectively (the caps are adjusted by household size). The 2011 minimum income was set at \$30,000 for renters and \$35,000 for

owners, regardless of household size (Montgomery County, undated). MPDU purchasers must not have owned a home within the last 5 years.

The prices of for-sale units are based on a formula established by the county that takes into consideration the cost of lot development, construction costs per square foot, other extras that may be provided, and various fees. If the construction costs are too high for the units to be affordable by households with specified income levels, the builders may use various approved techniques to make them less expensive. For example, the units can be smaller, have lessexpensive interior finishes, be attached even when the market-rate units are detached, and be partially unfinished (Montgomery County, undated).

While the sale prices for homes vary, they generally range from \$115,000 to \$200,000, and all eligible MPDU purchasers must obtain a prequalification letter from a lender for a mortgage of at least \$120,000. Garden-apartment rental units must be affordable by house-holds that have 65 percent of the AMI for the Washington, D.C., Metropolitan Statistical Area (MSA) that includes Montgomery County, and high-rise rental units must be affordable by households with 70 percent of the AMI. The current AMI for a four-person household is \$103,500; 65 percent of the AMI is \$67,500, and 70 percent of the AMI is \$72,500. Unit affordability is based on 25 percent of income (not including utilities), and this ratio is used by the county to set allowable rents (Executive Regulation, 25A.00.05.2).

## Long-Term Affordability Restrictions

The control period for MPDUs first sold or rented after 2005 is 30 years for ownership units and 99 years for rentals (Ordinance, 25A-3 (g)). The number of years for price restrictions has increased from former iterations of the MPDU policy. If an ownership MPDU is sold at any time within the control period, the control period is extended such that the 30-year period starts anew. Units can be sold only at prices established by the county, which are adjusted based on the CPI for the Washington, D.C., region. When units are put up for sale during the control period, the county has a 60-day right-of-first-refusal period (25A-9(b)). If the owner sells after the control period ends, the seller has to pay into the county's affordable housing fund one-half of the excess proceeds, defined as the sales price minus the purchase price, with adjustments for inflation, home improvements, and closing costs (Ordinance, 25A-9(c)). If after 60 days of marketing, the home has not sold to DHCA or to an eligible certificate holder on the random selection drawing list, it may be marketed to the general public.

## Cost Offsets

In addition to density bonuses, developers can request expedited processing and waivers of some development fees. As part of the development process, the developer must identify all land under its control in the county, to ensure that the MPDU set-aside requirement is not circumvented by breaking projects into 19-unit components in multiple, non-contiguous locations (Montgomery County, undated).

## Subordinate Financing and Down-Payment Assistance

Subordinate financing is not provided to homebuyers through the MPDU program. Downpayment assistance is provided by nonprofits, but not by the county (Montgomery County, undated).

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# Santa Fe, New Mexico

### Overview

Since the inception of its IZ affordable housing program in the late 1990s, Santa Fe has created 593 affordable homes. The current ordinance, the Santa Fe Homes Program (SFHP), was adopted in late 2005. Prior to 2005, the city ran the Housing Opportunity Program, which mandated inclusionary housing. The program was changed primarily to simplify the structure—the Housing Opportunity Program allowed four different ways to meet the affordability requirements—and to correct for the need for greater oversight over the creation and ongoing administration of housing units (Dailey, 2010b).

All of the 593 homes are for sale, although rentals are permissible in the SFHP. The ordinance includes both conventional housing units and manufactured homes (both for sale and rental). While Santa Fe County has its own IZ program for areas outside the city of Santa Fe, the SFHP produces units only within the city (Geisler, 2011).

Creation of the units is overseen by the city's Office of Affordable Housing, with support from the Land Use Department in cases that involve density bonuses or other development incentives. Program administration is carried out by two nonprofit organizations, Homewise and the Housing Trust. These organizations certify purchasers and renters, market affordable housing, and conduct homebuyer training courses (Dailey, 2010b). A nonprofit that is involved in the development of IZ units will generally administer them afterward, but there is no hard and fast rule about which nonprofit will be involved (Geisler, 2011).

### **Applicability and Set-Aside Provisions**

All developments with ten or more residential units are subject to the SFHP ordinance. The regulation covers a wide variety of development types, including new development, annexation, rezoning, subdivision plats, increases in density, conversions from rental to ownership, and vacation timeshares (Resolution 2010-49, Admin Procedures, 5.1).

In ownership projects, 30 percent of the units must be affordable. However, to provide economic stimulus, this provision has been temporarily reduced to 20 percent. The 20-percent requirement is in effect from June 2011 through June 2014. For rental units, the requirement is 15 percent (unchanged) (SFHP fact sheet, 2011).

If applying these percentages results in a fraction, the whole number of units is required and the remainder is accounted for with a "fractional unit fee." The fraction remaining is multiplied by 50 percent of the price of a three-bedroom unit for which eligibility requires a household income of 50 percent of the AMI or less. The fractional unit fees are deposited in a housing trust fund (Admin Procedures, 8.9).

Units are subject to minimum-square-footage requirements ranging from 750 square feet for a studio to 1,250 square feet for a four-bedroom unit, as well as a minimum number of bathrooms. Exceptions are made for rental conversions or in cases where the market-rate homes are smaller than these minimums (Admin Procedures, 8.10.1). At least 25 percent of the total units must be four-bedroom and 50 percent must be three-bedroom, but the city can grant exceptions based on demand (Admin Procedures, 8.11).

Developers can apply for a waiver from the requirements if other means would also fulfill the spirit of the ordinance. Such other means include off-site construction, dedication of land on which more units could be constructed, and in-lieu cash payments. In-lieu cash payments vary with the city quadrant; they currently range from \$160,000 per unit in the southwest to \$240,000 in the northeast and southeast (Admin Procedures, 11). However, the in-lieu provisions are rarely used, and to date no other waivers have been granted (Dailey, 2010b).

#### Eligibility

Affordability is defined as income ranges in four tiers, based on the HUD AMI for the Santa Fe MSA (\$66,900 in 2010). If the HUD AMI and the HUD Program Income Limits are not the same, the AMI will be the higher of the two (Ordinance, 6). The income ranges are shown in the table below.

Income Range	Percentage of AMI	Annual Household Income (\$)
1	50 or less	33,450
2	50–65	33,450–43,485
3	65–80	43,485–53,520
4	80–100	53,520-66,900

Sales prices and rental rates for housing units and for manufactured-housing lots are updated annually, based on changes in the AMI (Admin Procedures, 8.3.1). The formulas that determine the prices can be adjusted every two years, if needed (Admin Procedures, 8.3.3). Prices were adjusted in 2010 based on the decrease in mortgage interest rates (Dailey, 2010b).

**Ownership Units.** One-third of the 30 percent of affordable units under the program are affordable at income ranges 2, 3, and 4 (10 percent each) (Admin Procedures, 8.8). With the temporary reduction to 20 percent, half are affordable to income range 2 and half are affordable to income range 3 (SFHP Information Sheet, undated).

Eligibility within these income ranges is determined by income as well as liquid assets. If a prospective homebuyer has more than \$25,000 in cash or cash equivalents (including stocks, bonds, or real estate, but not retirement accounts or personal property), 20 percent of the amount exceeding \$25,000 is counted as income (10 percent for homebuyers over 65 who are purchasing manufactured-home lots) (Admin Procedures, 8.1). Minimum household sizes also apply to housing units—three-bedroom units can be sold or rented only to households of two persons or more (Admin Procedures, 8.1 and 9.1). No household size requirements apply to manufactured homes.

Homebuyer training courses are required for eligibility (Admin Procedures, 6). Certain types of employees—primarily in public safety, education, and nursing—can be declared eligible to purchase houses that are affordable to income range 4 if their income is between 100 and 120 percent of the AMI (Admin Procedures, 8.1.5). Until 2010, purchasers had to be first-time homebuyers, but this requirement was eliminated in the recent changes to the program. However, homebuyers cannot own more than one house (SFHP fact sheet, undated).

In 2010, the price of housing units ranged from \$84,750 (a studio in income range 1) to \$210,250 (a four-bedroom unit in income range 4) (Admin Procedures, 8.2.1). Manufactured homes ranged from \$29,563 (income range 2) to \$47,313 (income range 4) (Admin Procedures, 8.7.2). Prices must be adjusted downward if the development requires additional monthly fees (Admin Procedures, 8.2.2). Prices can also be adjusted upward if buyers request upgraded features or energy-efficient features (Admin Procedures, 8.2.5 and 8.2.6).

**Rental Units.** One-third of the 15 percent of affordable rental units are affordable at income ranges 1, 2, and 3 (5 percent each) (Admin Procedures, 8.8). In 2010, rental rates ranged from \$346/month (for a studio or one-bedroom in income range 1) to \$1,073 (for a four-bedroom unit in income range 3). The units must include utilities, and renters cannot be required to pay additional fees (Admin Procedures, 9.2). Minimum unit sizes are the same as those for ownership housing (Admin Procedures, 9.10.1). Rents for manufactured homes range from \$134/month (income range 1) to \$290/month (income range 3) (Admin Procedures, 9.7.2).

## Long-Term Affordability Restrictions

To retain long-term affordability of the IZ homes, the city or its agent has a right of first refusal and a requirement that the seller share a portion of the appreciation on the home (if any) to the liens it provides to purchasers. When a purchaser chooses to sell the home, which triggers the requirement to repay the loan, the city or its agents have the right of first refusal to repurchase the home for a sales price set by a formula (Ordinance, Section 12.2). In most cases, the city facilitates the sale to another eligible buyer, giving the seller the allowable share of the profit. The city also retains a second mortgage and a shared-appreciation requirement. However, in some circumstances, the city may allow the unit to convert to the market rate. Generally, this would occur if the unit had appreciated in value so much that it would be difficult for the city to absorb the cost of providing a large lien for the next buyer (Dailey, 2010b).

Rental units must remain affordable for 20 years (Admin Procedures, 9-16).

## **Cost Offsets**

Developers can apply for impact-fee waivers and density bonuses on affordable units, unless the units are outside the city limits and the developers are requesting extension of utilities. The maximum density bonus is 15 percent more than the number of units allowed in the zoning district, rounded to the nearest unit (Admin Procedures, 13.2). Development, buildingpermit, and impact fees can be waived or reduced by the Office of Affordable Housing (Admin Procedures, 13.1).

## Subordinate Financing and Down-Payment Assistance

To retain ownership units and lots as affordable, the city holds a second mortgage lien on IZ for-sale homes. The amount of the lien is the difference between the initial sales price and 95 percent of the appraised value. The difference between the lien and the sales price divided by the amount of the lien results in the city's share of the appreciation if the unit is sold at a higher price. Owners can deduct the cost of improvements from the appreciation (Admin Procedures, 12.2).

Down-payment assistance is provided by nonprofits but not by the city. However, the city brokers many other types of financial assistance for homebuyers, including cash subsidies, amortizing loans, and reverse mortgages.

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# Santa Monica, California

### Overview

Since 1990, Santa Monica has operated an IZ program called the Affordable Housing Production Program. As of the end of fiscal year 2009, the program had created 862 units of affordable housing (Khajadourian, 2010), which is 27 percent of all units created in the city during that period (Agle, 2010). A distinguishing feature of the program is that fewer than a half-dozen are ownership units; the vast majority are rental units (Khajadourian, 2011). At least half of the affordable units were built on-site, but information was not available on the locations of all units.

Once created, affordable units are managed by the property owner, who is required to certify applicants for income eligibility and submit annual reports to the Santa Monica Housing Division, which monitors compliance (Khajadourian, 2011).

### **Applicability and Set-Aside Provisions**

Since 2006, Santa Monica's affordable housing program has applied to all newly constructed condominiums with two or more units and to all newly constructed apartment buildings. The percentage of units that must be set aside and the affordability requirements for those units depend on the size and type of the project. The set-asides are more strict for ownership units, whereas developers of apartment buildings have more ways to comply with the law.

**Ownership Units.** The affordability restrictions apply only to newly constructed condominiums of at least two units that are built in multifamily zones. Condominiums with only two or three units can pay an affordable housing fee (currently \$31.69 per square foot); 4- to 15-unit projects must sell 20 percent of the units at established affordable prices; and projects with more than 16 units must set aside 25 percent of the units to be sold at those prices. The affordable units may be created either on- or off-site, but the number of units provided off-site must be 25 percent greater than the number provided on-site (City of Santa Monica, 2010). If the formula results in a fractional number under 0.75, the developer may pay into an affordable housing fund at a current rate of \$284,802 per unit instead of building that fractional unit. This rate can be adjusted annually based on changes in construction and land costs (City of Santa Monica, 2009).

**Rental Units.** The set of options for complying with the ordinance for rental units is larger than that for condominiums. However, the ordinance applies to all newly constructed apartment buildings regardless of zoning. Units can be provided on- or off-site, or developers can pay an in-lieu fee or donate land. If units are provided, whether on- or off-site, 30 percent must be affordable. However, the ordinance factors in more-stringent criteria for most off-site options to create an incentive for developers to provide affordable units on-site. Rental units must be two-bedroom unless at least 95 percent of the project consists of one-bedroom or studio apartments (City of Santa Monica, undated).

If rental developers opt to pay an in-lieu fee, the calculation depends on the zoning district. For multifamily residential districts, the fee is the base fee (\$27.14 per square foot) times the floor area of the residential portion. On vacant parcels in those districts, the fee is 75 percent of the multifamily-district calculation. For projects in industrial or commercial districts, the fee is half of the calculation. The base fee was set in 2006 and can be adjusted every five years (City of Santa Monica, undated).

#### Eligibility

For condominiums, affordability provisions are capped at prices affordable by families earning 100 percent of the AMI for ownership units. In 2010, the Santa Monica AMI for a family of four was \$82,800.<sup>4</sup> The IZ affordable units can be sold only at prices that result in the owner's total monthly housing costs (principal and interest payments, taxes, insurance, and condominium fees) being between \$2,163 and \$2,491 for a two-bedroom home (City of Santa Monica, undated).

For-sale IZ homes are set at prices affordable by very low up to moderate-income households (100 percent of AMI), whereas rent limits are established to reach very low and lowincome households (i.e., those with up to 60 percent of the AMI).<sup>5</sup> The rent limits are set according to the number of bedrooms and can equal no more than one-third of a family's income. Developers can choose to rent at least 10 percent of the apartments to very low-income households (charging \$983/month for a two-bedroom apartment to those who earn no more than 50 percent of the AMI) or at least 20 percent of the apartments to low-income households (charging \$1,180/month to households that earn no more than 60 percent of the AMI) (City of Santa Monica, undated).

### Long-Term Affordability Restrictions

Regardless of whether the IZ home is for sale or for rent, it must remain affordable for 55 years. The developer is responsible for retaining the units as affordable for this period of time (City of Santa Monica, 2008, 9.56.130). For the ownership units, the deed restriction is applied to the unit, but in a few cases, only the original occupant has the deed restriction. Owners of affordable rental units report annually to the city on the income certification of their tenants (Khajadourian, 2011).

### **Cost Offsets**

Compliance with the inclusionary housing code on- or off-site (depending on the tenure of the homes) provides developers with an automatic qualification for a density bonus. The amount of the allowable bonus varies depending on the percentage of units made affordable at various levels. For very low (50 percent of the AMI) and low-income units (60 percent of the AMI), the bonus ranges from a 20- to 35-percent increase in the allowable number of units. For moderate-income units (100 percent of the AMI), the bonus ranges from a 5- to 35-percent increase in the number of units. Developers can also receive a density bonus for donating land, but the combined density bonus is capped at 35 percent (City of Santa Monica Density Bonus Table, 2007).

Developers with density-bonus projects can request additional incentives, including reductions in the number of parking spaces, which vary with the size of the units; deviations from side- and back-yard setbacks and parcel-coverage requirements; FAR discounts; and elimination of restrictions on the number of stories and private open space (within the allowable FAR) (City of Santa Monica, 2008).

<sup>&</sup>lt;sup>4</sup> Generally, the AMI is calculated for an MSA, and Santa Monica is part of the Los Angeles MSA. However, the AMI for the Los Angeles MSA is \$68,200, so Santa Monica has a considerably higher baseline.

<sup>&</sup>lt;sup>5</sup> The exception is rental buildings in non-residential zones, where all the units must have rent limits and must serve households earning no more than 100 percent of the AMI.
#### Subordinate Financing and Down-Payment Assistance

Neither subordinate financing nor down-payment assistance is provided to homebuyers or renters.

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# APPENDIX C Maps of the 11 Jurisdictions' Inclusionary Zoning Units

Figure C.1 Boulder, Colorado: Poverty Level of Census Tracts and Locations of IZ Units





Figure C.2 Burlington, Vermont: Poverty Level of Census Tracts and Locations of IZ Units



Figure C.3 Cambridge, Massachusetts: Poverty Level of Census Tracts and Locations of IZ Units



Figure C.4 Chicago, Illinois: Poverty Level of Census Tracts and Locations of IZ Units



Figure C.5 Davidson, North Carolina: Poverty Level of Census Tracts and Locations of IZ Units



Figure C.6 Denver, Colorado: Poverty Level of Census Tracts and Locations of IZ Units



Figure C.7 Fairfax County, Virginia: Poverty Level of Census Tracts and Locations of IZ Units



Figure C.8 Irvine, California: Poverty Level of Census Tracts and Locations of IZ Units



Figure C.9 Montgomery County, Maryland: Poverty Level of Census Tracts and Locations of IZ Units



Figure C.10 Santa Fe, New Mexico: Poverty Level of Census Tracts and Locations of IZ Units



Figure C.11 Santa Monica, California: Poverty Level of Census Tracts and Locations of IZ Units

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# Ten Ways to Talk About Inclusionary Housing Differently

Inclusionary housing policies require or incentivize market-rate developers to set aside a small percentage of the apartments or homes within their new developments. The developers must rent or sell those units at a lower price to low- or moderate-income households.



# Sasha Hauswald, Director of State & Local Policy

Sasha leads our housing policy work with municipalities nationwide. She is passionate and engaged in fair and equitable housing issues, particularly in her home town of San Francisco. Inclusionary housing is in a new era. In the 70s, 80s and 90s, inclusionary housing (also called inclusionary zoning) policies were adopted by hundreds of municipalities across the country. Most early adopters of inclusionary housing were similar in three ways. One, these communities had high housing costs and robust development activity. Two, they were relatively progressive, usually with a democrat-majority voting public. Three, most of these programs were adopted in states that have laws to incentivize inclusionary housing policies and mixed-income housing development - including California, Massachusetts and New Jersey.

Today's political and economic context for inclusionary housing adoption is different. Affordable housing used to be part of the social safety net for those in dire need, like food stamps or Medicaid. But as more and more middleincome earners find themselves struggling to afford a decent home, affordable housing policies are no longer primarily anti-poverty strategies. In hot markets like San Francisco, even families who earn as much as 200 percent of the area median income can't afford housing. And in more typical markets like the Twin Cities, families with average salaries still struggle to buy their first homes – and many simply can't.

> Baltimore, Pittsburgh, Buffalo, Minneapolis, Newark and Detroit are all currently examining potential inclusionary policies.

— Sasha Hauswald, Grounded Solutions Network

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### A growing interest

Policymakers in moderate and softer markets are turning to inclusionary with curiosity. City leaders in Baltimore, Pittsburgh, Buffalo, Minneapolis, Newark and Detroit are all currently examining potential inclusionary policies. They represent a growing interest among cities that have traditionally been able to offer affordable homeownership opportunities to their blue-collar resident base without any special policies.

These cities delivered, for many years, on the promise of the American dream. Then the industrial jobs left, economies slowed and workers left. In the decades of decline, housing values and costs also dramatically dropped. Although foreclosure, abandonment, blight and disinvestment were common to these cities, high housing costs were not. Now, between the flight of young families from super-expensive hot-market cities, an influx of millennial renters drawn to the urban core, losses of homeownership during the foreclosure crisis, and deterioration of the single family home stock due to abandoned and REO properties, the rents and homes for-sale have become—for the first time in memory unaffordable for "regular" people.

City leaders in Nashville, New Orleans, Miami, Atlanta, Bloomington and Durham are also examining potential inclusionary policies. They represent a trend amongst politically moderate cities within more conservative states that traditionally lacked the political will to impose restrictions or requirements on business activity, including development. As it becomes cost prohibitive for young people to buy, or even rent, near their relatives, inclusionary housing has become palatable to a broader swath of the political spectrum in Southern and Midwestern cities.

# **Skeptics and myths**

Times have changed, but many people haven't adjusted the way they talk about affordable and inclusionary housing to fit with today's circumstances. As a result, in many cities, growing interest in inclusionary housing policies has been met with widespread misperceptions and resistance. Recent curiosity in inclusionary housing barely gained momentum before skeptics and powerful opponents began to dominate the discourse and shut down efforts for adoption. In the past two years, statewide preemption against local adoption of inclusionary housing policies has been proposed in Indiana, Louisiana, Tennessee and Arizona.

Critiques of inclusionary housing are often based on widespread myths, such as:

- It's not fair for developers to shoulder the burden of providing affordable housing.
- Inclusionary housing, just like other bureaucratic impediments to development and restrictive zoning rules, ultimately raise housing costs for everybody.
- Inclusionary housing requirements will make new housing developments financially infeasible, thereby killing the fragile but recovering housing market.

Grounded Solutions Network, as well as RAND, the National Housing Conference, the Furman Center, the Lincoln Institute of Land Policy, and numerous academic institutions, produce research that rebut these myths (see page 39 for links). However, resistance to inclusionary housing adoption remains strong.

# **Changing the Narrative**

We need to talk about inclusionary housing in a different way that circumvents common misperceptions and creates a new narrative for policymakers in moderate markets and more conservative political climates.

Here are 10 messages to help frame the way you talk about inclusionary housing differently. Not every message is right for every community; advocates and policymakers should tailor these messages to their circumstances.

#### 1) Use a different name.

The words "inclusionary housing" or "inclusionary zoning" raise red flags in many communities. Call it something else. Name examples include moderately priced dwelling unit program, reasonably priced housing program, smart housing mix policy, mixed income housing, SMART Housing, workforce housing, and density bonus policy. These are a few of the names that have been adopted by cities, but be creative, choose something that will connect with your local audience.

#### 2) A trade.

Inclusionary housing is a value exchange between the local jurisdiction and developers. Viewed this way, it is a fair deal for developers. Developers are expected to produce housing aligned with community interests in a variety of ways: by building homes that fit in, by ensuring adequate parking and greenspace, and by contributing to the need for reasonably priced homes (not just luxury apartments).

In exchange for meeting community needs, developers are granted the right to do business and often many other benefits. Inclusionary benefit packages typically include incentives like additional height or density, reduced parking requirements, fast-tracked processing, fee waivers or tax benefits. These benefits reduce the overall cost per unit to build.



#### 3) Place matters.

Research consistently shows that children do better when they grow up in a mixed-income community rather than a high-poverty one. In fact, your zip code is a better determinant of your future than your genetic code (Chetty and Hendren, 2017). Unfortunately, most naturally occurring affordable housing (NOAH), as well as most government supported affordable housing, is in lowincome neighborhoods. Inclusionary housing is one of the only policies proven to create lower-cost housing in high-opportunity neighborhoods with good schools. (RAND Institute, 2012). Inclusionary policies give more kids realistic access to the American dream.

#### 4) Streamline barriers to development.

Many jurisdictions have zoning code requirements that are so complex that it is nearly impossible to build anything without lengthy and unpredictable approval processes. Inclusionary done right can reduce procedural barriers to new development. Affordable housing requirements are often adopted in combination with areawide up-zoning or enhanced flexibility to build, "by-right", a reasonably profitable multifamily building. In these cases, inclusionary housing programs can actually increase development activity. Most importantly, inclusionary housing policies establish clear and predictable expectations that local developers can plan around.

#### 5) Housing near jobs and transit.

Policymakers and organizations who are passionate about housing should align efforts with the local business community, environmentalists or public-transit enthusiasts. Inclusionary is a great tool to create workforce housing near job centers and transit corridors. Messages that inclusionary housing policies reduce greenhouse gas emissions from commuting, retain a stable base of local employees, and increase transit ridership can build alliances across policy silos. Beyond the realm of issuefocused policymakers and advocates, this message also reinforces the idea that inclusionary housing does not merely benefit a few lucky families, it benefits everyone in the community.

#### 6) Missing middle housing.

Most inclusionary housing programs serve renters between 50 percent and 80 percent of median income and homeowners between 80 percent and 120 percent of median income. These families and individuals do not typically qualify for federally or locally supported housing programs, and they do not earn enough to afford market-rate housing prices either. Inclusionary housing is one of the few ways to create "missing middle" housing.

#### 7) Conservation of scarce public resources.

Public funding for housing has been declining for decades, and in the current political climate, will probably continue to shrink. New affordable housing development can require over \$200,000 of local investment per unit. Inclusionary housing is one of the few ways to create reasonably priced housing without significant public subsidy. Jurisdictions can adopt inclusionary housing without draining the general fund.

#### 8) One tool in the toolbox.

Inclusionary housing should be implemented as one tool in the toolbox. Alone, it cannot solve local affordability challenges, but it does offer unique value and complements other local housing policies and strategies. Additionally, inclusionary housing policies are most effective in stronger housing markets —very soft markets should look to other tools first. It is important to acknowledge the limitations of inclusionary and not frame it as a panacea.

#### 9) Customizable.

Inclusionary housing is one of the most highly customizable housing policies that exist. It can be tailored to work across a large region or a specific commercial corridor. It works to create units in very hot markets and in moderate and mixed markets. It can meet the needs of middle-income families or low-income singles. Yet, with the ability to tailor inclusionary also comes a challenge. Inclusionary must be carefully calibrated to work in the context of local market conditions and existing policies. Inclusionary housing policies that are sloppily designed backfire. They fail to produce units and give inclusionary a bad name.

#### 10) Built-in neighborhood stability.

As moderate- and mixed-market cities begin to see areas with new development activity, and our population continues to grow, these burgeoning neighborhoods are likely to become more expensive over time. By implementing inclusionary housing policies early (but not too early), policymakers bake-in affordability and economic diversity for the long-run. It is important (and also a common national practice) to ensure that inclusionary housing units have long terms of required affordability, like 50 or even 99 years, to ensure that the policy can work as a bulwark against future displacement.

## **Myth-Busting Resources**

#### Will Inclusionary Housing Prevent Development?

Grounded Soutions Network - InclusionaryHousing.org

# <u>Separating Fact from Fiction in Research on</u> <u>Inclusionary Housing Programs</u>

Lisa Sturtevant - LisaSturtevant.com

Learn more about the advantages and challenges of Inclusionary Housing on our new resource website - InclusionaryHousing.org

# New Inclusionary Housing Research

Grounded Solutions Network has undertaken the largest study of inclusionary housing policies to date. The study identifies 886 jurisdictions with inclusionary housing programs in 25 states and the District of Columbia.

Here are a few highlights:

Nearly half—45.26%—of inclusionary housing programs or policies are in New Jersey, while 26.75% are in Massachusetts and 16.82% are in California. These places have state-wide inclusionary housing policies or state policies that promote the local adoption of inclusionary housing policies.

Preliminary findings indicate that a total of \$1.7 billion in impact and/or in-lieu fees was reported by 373 jurisdictions.

Jurisdictions reported creating a total of 173,707 units of affordable housing, which excludes additional units

created with the \$1.7 billion in fees collected for the production of affordable housing.

443 jurisdictions reported creating 49,287 affordable homeownership units.

581 jurisdictions reported creating 122,320 affordable rental units.

164 jurisdictions reported an additional 2,100 affordable homes.

Many jurisdictions did not report on their fees or units, and some only partially reported this data. As a result, these numbers substantially underestimate totals for the entire inclusionary housing field. Additional findings on program characteristics and national trends will be published in a working paper by Emily Thaden, Ph.D. and Vince Wang, Ph.D. at the Lincoln Institute of Land Policy later this year.



• Municipalities with an Inclusionary Housing Policy or Policies

UNITED

MÉXICO

• Counties with an Inclusionary Housing Policy or Policies (including Washington D.C.)

Esri, HERE, DeLorme, MaymyIndia, © OpenStreetMap contributors, and the GIS user community

# Vince Wang, Research Manager

Vince leads our research activites on permanently affordable housing. He is passionate about ensuring families have access to housing in opportunityrich neighborhoods. Emily Thaden, Director of National Policy & Sector Strategy

Emily directs our national policy activities and drives our sector strategy. She is actively involved in housing issues in Nashville, where she serves on the MDHA Board of Commissioners.

Connect with Vince <u>NOW</u>>

## Connect with Emily <u>NOW</u>>

### **Community Preferencing**

Legal challenges have arisen in various jurisdictions. In New York City, the "community preference" policy, which reserves a portion of affordable housing units for local residents, was the subject of a lawsuit alleging it perpetuated racial segregation. The case was settled in 2024 without a definitive legal resolution, leaving questions about the legality of such preferences unresolved. Learn more from panelists regarding whether local resident preferences are allowed under the Fair Housing Act.

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Winfield v. City of New York/ Noel v. City of New York

<u>Vargas v. Town of Smithtown</u>

<u>U.S. v. Town of Oyster Bay</u>

Fair Housing Justice Center, Inc., et al v Town of Bedford et al