# Achieving Lasting Affordability through Inclusionary Housing

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## Executive Summary

Inclusionary housing policies are local land use policies that link approvals for market-rate housing to the creation of affordable homes for low- and moderate-income households. The primary goals of inclusionary housing programs are to expand the supply of affordable housing and promote social and economic integration. The ability to not only produce affordable homes, but also to ensure their long-term affordability, is critical for meeting the housing needs of the lower-income families and individuals that inclusionary housing programs aim to serve. Even as inclusionary housing programs have become more prevalent, there is a lack of information on successful strategies for facilitating lasting affordability.

This paper analyzes a set of 20 inclusionary housing programs to highlight how long affordability periods, strong legal mechanisms, carefully designed resale formulas, dedicated program stewardship, and strategic partnerships can help preserve affordable homes produced through inclusionary housing programs for multiple generations. In addition, this research describes initial findings from a first-of-its-kind, national directory of local inclusionary housing programs.

Inclusionary housing policies can be found today in nearly 500 local jurisdictions across 27 states and Washington, DC, according to the national inventory compiled for this report. A sizeable share of inclusionary housing programs requires long-term affordability periods. For the 307 programs for which affordability period data was available:

- Eighty-four percent of homeownership inclusionary housing programs, and 80 percent of rental programs require units to remain affordable for at least 30 years; and

- One-third of inclusionary housing programs require 99-year or perpetual affordability for rental and/or for-sale housing.

The case study analysis of 20 programs provides additional insights on the evolution of affordability terms over time, and the mechanisms needed to ensure the lasting affordability of inclusionary units. As inclusionary housing programs have matured, local jurisdiction typically lengthened, rather than shortened, affordability periods. In addition, almost all of the programs studied that have less than perpetual affordability periods restart their affordability terms whenever a property is resold within the control period. This requirement is helping to achieve lasting affordability in places that have not adopted “perpetual” affordability periods for legal or political reasons.

But as the 20 case study programs revealed, achieving lasting affordability requires more than simply setting long affordability periods. Strong legal mechanisms, carefully designed resale restrictions, pre-purchase and post-purchase stewardship practices, and strategic partnerships are important for ensuring that inclusionary properties continue to

be sold or rented at affordable prices, and are not lost due to illegal sales, foreclosure, or lax rental management practices.

Key legal mechanisms help jurisdictions stay notified of illegal sales, improper refinancing, over-encumbrance with second loans, and defaults that could jeopardize the continued availability of inclusionary homes. These mechanisms include not only deed covenants, but also deeds of trust, the preemptive right to purchase, the right to cure a foreclosure, the right to purchase a home entering foreclosure, and requirements of notice of default or delinquency.

Resale formulas are being designed to balance the goals of ensuring lasting affordability for subsequent homeowners and promoting wealth-building among homeowners. The most popular resale formula used by case study jurisdictions ties the resale price to the growth in area median income (AMI) over time. But other approaches were reported, including fixed-percentage, appraisal-based, and mortgage-based resale formulas, as well as hybrids of two or more of these approaches.

Monitoring and stewardship activities are critically important for ensuring lasting affordability of inclusionary housing units. Effective stewardship of a program's homeownership inclusionary portfolio includes preparing homebuyers for the responsibilities of homeownership, helping owners avoid pitfalls such as delinquencies or foreclosure, monitoring resale and refinancing activities, encouraging and enabling ongoing investment in property maintenance and repair, and staying in regular communication with homeowners. Effective stewardship of a rental inclusionary portfolio includes regular oversight over the leasing and tenant selection process. In some case study programs, this administration involved regular review and training of property managers, while others used in-house management of a centralized waiting list and tenant selection process.

Despite the acknowledged importance of stewardship, most jurisdictions report having insufficient resources for comprehensive stewardship and many have not adequately planned for long-term monitoring and stewardship of inclusionary housing units. In addition, while many best practices exist for stewardship activities on the homeownership side, there is a need for more guidance on how best to monitor and steward rental units. As rental units become a growing share of the inclusionary housing inventory, local jurisdictions are looking for guidance on the trade-offs between managing rental in-house and partnering with property managers and/or other outside organizations.

Third-party partnerships with nonprofit organizations, such as community land trusts, for-profit administrative agents, local housing authorities, and nonprofit housing developers enable many inclusionary housing programs to improve their stewardship and oversight of for-sale and rental inclusionary units. These partnerships will be key to ensuring lasting affordability of inclusionary housing units where financial resources or staff capacity is low.

This research marks an important advance in the knowledge of the landscape of inclusionary housing programs. Future research is needed to rigorously evaluate which models work best for fostering lasting affordability of affordable homes produced through inclusionary housing programs. In addition, there is more that needs to be understood about the necessary monitoring and stewardship activities associated with rental housing created through inclusionary housing programs. Finally, as inclusionary housing becomes a more common means by which affordable housing is created in communities across the country, there is a general need for better understanding of the program characteristics that are associated with successful programs, particularly in different legal, economic, and political climates. The case study analyses and the national directory of inclusionary housing programs developed for this research mark an important first step in the data collection efforts needed to conduct more evaluative research of inclusionary housing programs.

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## Achieving Lasting Affordability through Inclusionary Housing

## Introduction

Inclusionary housing, also called inclusionary zoning, refers to local land use ordinances that require or encourage developers to include affordable units in new residential developments. Affordability is often achieved through an indirect subsidy to residential developers—including through increased development capacity or other accommodations during the development review process—and therefore the public cost of generating affordable homes can be relatively low. However, ongoing public management and oversight is critical to ensure that homes remain affordable to low- and moderate-income households over the long-term and the investment in affordable housing is retained. This paper analyzes program data from a set of inclusionary housing programs to highlight how policies designed with long affordability periods, strong legal mechanisms, carefully designed resale formulas, and dedicated program stewardship can help preserve the long-term affordability of inclusionary housing units. Partnerships between public agencies and nonprofit organizations are also critical components to achieving lasting affordability.

Inclusionary housing policies were first established four decades ago in suburban communities outside Washington, DC and in California. During the last 15 years, in response to rising home prices and along with a greater tendency for local governments to make developers pay for costs associated with new development (Calavita and Mallach 2009), inclusionary housing has become an increasingly common way for local communities to produce affordable housing. At present, roughly 500 municipalities across the United States have adopted inclusionary housing policies. The primary goals of inclusionary housing programs are to increase the supply of affordable housing[1] and to promote social and economic integration.

The capability for ensuring lasting affordability, in addition to producing affordable homes, is critical for meeting the housing needs of the lower-income families and individuals that inclusionary housing programs aim to serve. Across the universe of inclusionary housing programs, there is substantial variation in the lengths of the required affordability periods, the legal mechanisms by which affordability is guaranteed, the formulas established for reselling homes and the approaches taken to monitor and steward inclusionary housing units over time. The ways programs are designed can have a significant impact on the likelihood that inclusionary housing programs can achieve lasting affordability.

The goals of this paper are: (1) to characterize the current landscape of inclusionary zoning programs in the U.S.; (2) to compare programs' approaches for preserving ongoing affordability; and (3) to evaluate best practices within inclusionary housing policies and programs for achieving long-term affordability.

[1] Housing is considered affordable when a household spends no more than 30 percent of its gross income on total housing costs (e.g. rent or mortgage plus utilities). Some jurisdictions may define affordable housing based on locally determined criteria, but the 30-percent rule is a commonly accepted measure of housing affordability (HUD undated).

## Literature Review

Research on the characteristics and impacts of inclusionary housing programs has been growing; nevertheless, detailed data on the landscape of inclusionary housing programs remains scarce, and analysis of efforts to preserve affordability of housing units over time is even more limited. This literature review describes the studies to date that document the landscape of inclusionary housing programs in the U.S., focusing on findings related to long-term affordability. This section continues with a review of the research on the rationale for ensuring long-term affordability and an assessment of key elements of affordable housing programs that promote lasting affordability.

### Inclusionary Housing Programs

The paucity of available program data has posed challenges for reliably assessing the scale and scope of U.S. inclusionary housing programs and for evaluating program efficacy and outcomes. Few states have developed databases of local inclusionary housing programs; the online database of local programs in California maintained by the California Coalition for Rural Housing is the notable exception (http://www.calruralhousing.org). Up until the date of this report, a national database of local inclusionary housing programs has not existed. Porter (2004) concluded that it would be "impossible" to get a definitive count of all jurisdictions with an inclusionary housing program or an estimate of the number of affordable units produced through the universe of inclusionary housing programs (25).

Much of the difficulty in collecting systematic program data stems from the fact that information about these programs is maintained in many different places—from publicly available official zoning ordinances to informal department policy documents. Because there is no mandate for the types of program and production data that localities must collect (other than in the state of New Jersey), there is significant variation in the quantity and quality of information kept at the local level (Leckington and Gottesman 2010). Furthermore, individual local jurisdictions historically have not carefully tracked their own affordable housing production, and have been particularly inattentive to tracking inclusionary units separate from affordable housing produced through other programs.

Despite these challenges, some research has been done exploring the characteristics of inclusionary housing programs. Fewer studies have measured and evaluated program production levels. Some of the common findings in the literature on the U.S. landscape of inclusionary housing include: (1) program design and implementation vary substantially; (2) affordable housing production and preservation varies considerably; (3) programs contribute to increased economic integration; and (4) economic, political, and legal factors have resulted in changes to programs. Within the current literature, there is very little systematic analysis of programmatic elements related to *preserving* affordability, not just *generating* affordability.

Design and Implementation Vary Significantly by Program

A central finding in studies that have described the characteristics of inclusionary housing programs is the substantial variation in almost all aspects of program design. Many inclusionary housing programs are mandatory while others are voluntary. In some cases, inclusionary housing policies provide exceptions to the affordable housing requirements. For example, small projects with units below a certain threshold may be exempted from the inclusionary mandate. Many localities offer a buyout option, allowing developers to pay an in-lieu fee to an affordable housing fund instead of providing affordable units within the new development. Many jurisdictions offer cost offsets or increased density to incentivize the provision of affordable housing.

In recognition of the inherently local and varied nature of inclusionary housing programs, Mulligan and Joyce (2010) not only catalogued and described variations in inclusionary housing policies but also developed a detailed guide for drafting local inclusionary zoning ordinances. Their book provides local officials with a framework for drafting an ordinance along with examples of ordinance language and practical and legal analysis.

Some of the variation in local inclusionary housing programs is related to state policy, as the ability for local municipalities to implement an inclusionary housing policy rests with the authority granted (or at least not expressly prohibited) by the state (Hollister et al. 2007). However, even within the same state where localities are subject to the same state regulatory and political influences, local jurisdictions adopt different programmatic elements in response to local conditions.

In addition to the many other elements of the program design and implementation, inclusionary housing programs across the country vary substantially in terms of the characteristics that affect prospects for lasting affordability, including lengths of affordability periods, enforcement mechanisms, and resale formulas. However, the current research provides only limited information on these particular elements of inclusionary housing programs. For example, in a 2007 study of inclusionary housing programs in California, the Non-Profit Housing Association of Northern California (NPH) found that while almost all of the state's inclusionary housing programs were mandatory at the time of the report, there were significant differences across programs in terms of targeted income groups and the size of projects that were subject to the affordability requirements. However, relatively little information was reported on the affordability terms, the legal mechanisms for ensuring affordability and the process for monitoring inclusionary units. In Massachusetts, Blaesser et al. (2002) documented substantial variation across 100 local programs in terms of the geographic scope of the programs (e.g. municipality-wide versus particular parts of the city or town), the size and types of projects subject to affordability requirements, and the availability of exemptions and opt-outs for developers. But again, there was little discussion of other elements related to preservation of affordable units.

Levy et al. (2012) summarized the characteristics of the inclusionary housing programs in Fairfax County, VA and Montgomery County, MD, two suburban communities located outside of Washington, DC, and documented differences in terms of the programs'

affordability requirements, length of affordability terms, and oversight and monitoring procedures. While the two counties are located within the same housing market, the differences the authors observed were attributed to separate municipal governance as well as differences in local economic conditions and political environments.

One of the most recent comprehensive assessments of a national sample of inclusionary housing programs was done by Heather Schwartz and colleagues at RAND (2012). Schwartz et al. analyzed the characteristics of 11 inclusionary housing programs across the country, including oft-studied jurisdictions, such as Montgomery County, but also more geographically varied and recent programs (e.g. Santa Fe, NM and Denver, CO). The authors found that the 11 programs they reviewed varied considerably in terms of nearly every programmatic characteristic —including the affordability terms and the procedures in place to monitor the units for long-term affordability.

The current research characterizes the significant variation across inclusionary housing programs; however, much remains unknown about how local economic, political, and regulatory factors affect the design and effectiveness of inclusionary housing policies and how these factors affect prospects for ensuring lasting affordability.

Affordable Housing Production Varies Considerably by Program

One of the main criticisms of inclusionary housing programs is that, while they can create large numbers of affordable units in some communities, overall they have had a relatively small impact on the supply of affordable housing nationwide (Mulligan and Joyce 2010; Rusk 2008). Differences in the production levels of programs appear to be predominantly explained by (1) whether policies are mandatory or voluntary and (2) local housing market conditions. Evidence strongly suggests that mandatory programs are more productive than voluntary programs (Brunick 2003; Mukhija et al. 2010). Additionally, localities that have fostered greater political will to support affordable housing and build acceptance in the development community that providing affordable housing is "the cost of doing business" tend to have more productive programs (Levy et al. 2012). Lastly, "hotter" housing market conditions and strong demand for market-rate housing have produced more affordable units through inclusionary housing programs compared to weaker housing markets (Mintz-Roth 2008).

No national research on the affordable housing production in inclusionary housing programs has been conducted, but production numbers exists for some local programs at different points in time. In a review of inclusionary housing programs in California, NPH (2007) found that about 30,000 inclusionary housing units were produced by approximately one-third of California's inclusionary housing programs between 1999 and 2006, but production varied substantially across localities. In research on inclusionary housing programs in the San Francisco, Washington, DC and Boston metropolitan areas, Schuetz et al. (2008) also found differences in production across regions and localities but generally observed relatively low affordable housing production totals. In both the NPH (2007) and Schuetz et al. (2008) studies, the researchers not only found differences in production levels across jurisdictions,

but they also found significant variability in the availability and quality of production data available from local jurisdictions.

In research investigating how cost offsets and developer incentives affect affordable housing production through inclusionary housing programs, Brunick (n.d.) found that the total number of affordable units produced through inclusionary housing programs in Boston, San Diego and San Francisco amounted to between just two and four percent of all units built. In Chapel Hill, NC, however, the inclusionary units produced between 2002 and 2004 comprised approximately 10 percent of all housing units built. The authors concluded that different features of the inclusionary housing programs, particularly whether the program was mandatory or voluntary and whether developers were allowed to cash out or opt out of the program, primarily explained production differences.

Despite the evidence of limited production in many places, inclusionary zoning programs in some localities have been a relatively substantial source of affordable housing units. For instance, in Montgomery County, the inclusionary zoning program accounted for half of all the affordable housing built between 1974 and 1999 (Brown 2001). In New Jersey, inclusionary housing programs are second only to the Low Income Housing Tax Credit (LIHTC) program in terms of affordable housing production (Calavita and Mallach 2010).

Measuring the *preservation* of affordable inclusionary housing is as important as *production* to understanding the outcomes of inclusionary housing programs, since measuring production alone does not capture the number of affordable inclusionary units that continue to be available in a locality's housing stock. To date, ongoing affordability of units generated by inclusionary housing programs has not been systematically examined in the literature.

Programs Contribute to Increased Economic Integration

Inclusionary housing is an important tool for generating and preserving affordability because it can help create economically and racially integrated communities. Based on a small set of existing research on the social impacts of inclusionary housing, evidence suggests that these policies locate affordable housing in low-poverty, high-opportunity neighborhoods more effectively than other affordable housing programs, including the Housing Choice Voucher and the LIHTC programs (Ellen and Horn 2012).

In a study of Montgomery County, Schwartz (2010) found that children of public housing residents who were living in inclusionary zoning units throughout the county were attending lower poverty schools and had better school performance than children living in public housing in higher poverty neighborhoods. In a later study of 11 localities with inclusionary housing programs, Schwartz et al. (2012) found that inclusionary units are widely dispersed throughout the jurisdictions, located in relatively lower poverty neighborhoods and assigned to relatively lower poverty schools than other housing affordable to very low income households. The results for Montgomery County confirm earlier research by Myron Orfield (2005), which found that the county's inclusionary housing program was successful in promoting racial integration. Additionally, Holmqvist (2009) used Davis, CA as a case study to examine how its inclusionary housing program affected racial and economic integration.

In her analysis of data over the 1980–2000 period, she found that Davis' inclusionary zoning program promoted racial integration in the jurisdiction.

These findings on economic integration are particularly important as local communities become subject to new fair share housing regulations under HUD's Affirmatively Furthering Fair Housing rule. (See http://www.huduser.org/portal/affht_pt.html for details on the proposed rule.) Encouraging the production and preservation of affordable homes through an inclusionary housing program will likely be part of many localities' strategies to meet the new federal affordable housing requirements. Furthermore, maintaining the affordability of inclusionary housing is particularly important for advancing economic and racial integration because new construction can lead to escalating housing costs in fast-growing markets; hence, creating a stock of permanently affordable housing ensures ongoing access to high-opportunity neighborhoods.

Economic, Political and Legal Factors Result in Evolving Policies and Programs

Recent research and commentary on inclusionary housing highlights major shifts in the approaches used to produce and preserve affordable homes through inclusionary housing policies. The evolutionary nature of inclusionary housing provides opportunities to make recommendations to improve programs' capabilities for ensuring lasting affordability.

Hickey (2013) found that in the aftermath of the recession, while very few communities eliminated their inclusionary housing programs during the downturn, several reduced their affordability requirements and many are facing new challenges. One key challenge communities increasingly faced is the difficulty selling (and reselling) inclusionary units in markets that are still recovering from the downturn. In response to these obstacles, some jurisdictions broadened their pool of buyers by expanding eligible household incomes (e.g. from 80 percent to 100 percent of area median income) while keeping the price restrictions in place. Others gave developers the option to rent inclusionary units if they are unable to find an eligible buyer after a certain period of time. Solutions to emerging challenges related to selling and reselling inclusionary units involve program flexibility and proactive stewardship (including asset management, monitoring and enforcement, and residential support) of the inclusionary homes.

Legal challenges have also forced some localities to make changes to their inclusionary housing programs and may have kept others from pursuing mandatory policies. Most notably, the recent *Palmer* decision in California raised questions about the legal status of rental inclusionary zoning programs (Shigley 2009). In response to the *Palmer* decision, many localities in California have excluded rental developments from their inclusionary housing requirements. Furthermore, recent legal challenges in California may make localities in other states more reticent to develop strong policies in case similar legal restrictions are imposed in their state.

The landscape of inclusionary housing programs has also changed as programs have been implemented and expanded in geographically and politically more diverse localities. While inclusionary housing programs had their origins in progressive, suburban communities in

California and the Washington, DC area, the use of inclusionary housing is now common in many large urban centers, including New York, San Francisco, Washington, DC and Chicago (Brunick et al. n.d.). In addition, smaller communities in the southeast have increasingly adopted inclusionary zoning ordinances in response to rising home prices (Mulligan and Joyce 2010). One of the most significant changes in approaches to inclusionary housing programs is in New York City, where Mayor deBlasio recently announced that the city's voluntary inclusionary housing program would become a mandatory program, tied to increases in development capacity and building heights in key parts of the city (Goldman 2014).

The evolving nature of inclusionary housing programs suggests that the time is particularly ripe to modify and implement programs so that they are effective, not only at producing affordable units, but also at ensuring their affordability over the long-term. As a result, it is critically important to evaluate how successful programs are setting affordability periods, structuring legal instruments for affordability requirements, setting resale prices, and monitoring and stewarding units to ensure affordability.

**Permanent Affordability**

In the current research that reviews inclusionary housing programs, there is limited information about affordability periods and preservation mechanisms (Jacobus 2007b; Levy et al. 2012). Even less is known about the effectiveness of the procedures for ensuring inclusionary units remain affordable over the long term.

Despite the lack of comprehensive analysis of long-term affordability strategies, there is ample support for ensuring the lasting affordability of units created through public programs. Affordable housing expert, Rick Jacobus, has written that, "Any lasting solution to the need for affordable homeownership will require an ongoing infrastructure to monitor and administer the public asset that is created through these programs" (Jacobus 2007b, 5). In 2009, the Association for Neighborhood and Housing Development (ANHD) brought together dozens of housing practitioners and consultants to discuss the importance of ensuring permanent affordability. While the conversation was designed to center around federally-subsidized housing units, the presentations and discussions covered the benefits of permanent affordability more broadly. The consensus among practitioners was that ensuring permanent affordability is essential for a number of reasons: It assures the highest return on public investment in affordable housing production, helps meet the growing housing affordability challenges communities are facing, and provides a key mechanism by which affordable units remain affordable when market pressures are increasingly likely to remove them from the affordable housing stock (Johnstone 2009).

Some of the most compelling arguments for the need to ensure permanent affordability have come from analyses of federally-subsidized rental units (e.g. Project Based Rental Assistance). According to an analysis by the National Low Income Housing Coalition (NLIHC), nearly half a million of the nation's 1.4 million federally-assisted rental units are at risk of leaving the affordable stock because of "owners opting out of the program, maturation of the assisted mortgages, or failure of the property under HUD's standards." NLIHC

advocates for the need to preserve these existing units, pointing to research that indicates that it cost 40 percent less to preserve an existing affordable unit than to build a new one (NLIHC).

In a study of federally-subsidized units in Florida, the Shimberg Center presents data showing an increase in the number of assisted units disappearing from the affordable stock and a concurrent rise in the need for affordable housing in the state (Shimberg Center 2008). The Center developed a tool to identify properties most at risk of leaving the affordable housing stock so that local governments, advocates and other organizations could intervene to preserve those affordable homes (see tool at http://flhousingdata.shimberg.ufl.edu/AHI_introduction.html).

Interest is also mounting in the long-term affordability prospects for properties developed with the LIHTC program. Currently, the LIHTC program is the primary means by which affordable rental housing is developed in the U.S. (Cadick 2013). Khadduri et al. (2012) found that more than one million affordable homes developed under the program could leave the affordable inventory by 2020 as a result of expiring affordability terms. The authors recommended targeted efforts by state housing finance agencies to identify tax credit properties nearing the end of their affordability terms and make resources available to current property owners or "preservation purchasers" in order to extend affordability periods (80). Nelson and Sorce (2013) also reviewed the extent of LIHTC properties nearing the end of their affordability periods and stressed the need for changes to state Qualified Action Plans (QAPs) to support permanently affordable housing. While the issue of permanent affordability within the LIHTC program is complex, these studies highlight the growing interest in considering lasting affordability in the development of tax credit properties.

Support for homeownership programs that produce permanent affordability continues to mount (e.g. Davis 2006; Hackworth 2007; Immergluck 2009; Jacobus 2007c; Jacobus and Abromowitz 2010; Manning 2009). These types of models are commonly referred to as "shared equity homeownership" or "permanently affordable homeownership" (hereinafter shared equity homeownership, SEH). In SEH models, public funds are invested into a property in order to make home purchase affordable for lower income households. The original public investment remains invested in the property and proceeds upon resale are shared between the program and seller. SEH programs differ significantly from more prevalent down payment or closing cost assistance programs used to support lower income homeownership because the public investment remains with the property and benefits multiple homeowners (Grover 2007). SEH may be implemented through a variety of submodels, including: (1) limited equity housing cooperatives; (2) community land trust (CLTs); (3) homeownership programs that utilize long-term deed covenants to provide permanently affordable homes; and (4) shared appreciation loan programs that are designed to keep properties permanently affordable.

At present, research has inadequately addressed whether and how inclusionary housing programs have incorporated lasting affordability into their policies and programs. However, the existing literature on SEH programs more broadly, and CLTs specifically, offers valuable insights on components that are necessary to implement successful programs that create and

preserve the permanent affordability of inclusionary units. This literature indicates four important program features for ensuring that inclusionary housing units retain their affordability: (1) long affordability periods; (2) carefully designed legal instruments; (3) well planned resale formulas; and (4) deliberate and ongoing stewardship of affordable units.

Affordability Periods

Lasting or permanent preservation of the public's investment in affordable housing is not required by federal programs. For example, the LIHTC program, the nation's largest affordable rental housing subsidy program, requires a minimum affordability period of 30 years. In reality, however, many LIHTC projects do not retain their affordability after 15 years since investors are no longer subject to IRS penalties for failure to comply with program rules (Nelson and Sorce 2013). Alternatively, some states require or give preference to projects with longer affordability periods through their Qualified Allocation Plans for awarding LIHTCs. Under HUD's project-based rental assistance program, properties have been required to remain affordability for terms ranging from 15 to 40 years. Under the HOME program, affordability requirements for homeownership units only range from 5 to 15 years (U.S. Department of Housing and Urban Development n.d.).

Ultimately, local inclusionary housing policies frequently preserve the affordability of housing for longer durations than many other affordable housing programs. Based on the findings from one set of research, affordability control periods for inclusionary housing programs can range from just 10 years to 99 years. For some programs, affordability is required "in perpetuity" or as long as permissible by law (Mulligan and Joyce 2010). In California, "permanent affordability" terms were reported in at least 20 percent of the 145 programs reviewed (Calavita and Mallach 2010).

The varied ways in which affordability periods and related legal provisions are designed means there is no universally-accepted definition of "long-term," "lasting," or "permanent" affordability. For owner-occupied units, affordability periods alone do not fully operationalize an inclusionary housing program's intention of ensuring lasting affordability. While longer affordability durations increase the likelihood that an inclusionary unit will remain affordable, some programs have shorter affordability periods due to jurisdictional rules against perpetuities, which frequently limit the durations of deed covenants to no longer than 30 years (Abromowitz 2010). However, programs operating under these state laws that aim to ensure permanently affordability may do so by incorporating additional legal provisions, such as the preemptive option to purchase a property or ability to renew legal contracts (Sherriff 2010). Hence, programs have been considered "permanently affordable" if affordability durations are at least 30 years and additional legal provisions are incorporated that enable the program to preserve affordability over the course of property transfers (Sherriff 2010).

Legal Mechanisms

Generally, SEH programs invest public funds into a property in order to make the purchase of a home affordable for low- or moderate-income households. In return for being able to

purchase a home for a price substantially lower than the property's fair market value, the homeowner will agree to share proceeds upon resale in order to keep the property affordable for subsequent low- or moderate-income buyers. SEH programs utilize various legal mechanisms to impose restrictions on use, occupancy, and transfers. Specifically, these legal documents will stipulate the homeowner's maximum return on their investment, price restrictions for resale, and income-eligibility requirements for the subsequent purchaser.

Three legal mechanisms used by SEH programs to preserve affordability are reviewed below: ground leases, deed covenants, and shared appreciation loans[2]. A thorough review of the relative merits and weaknesses of each legal mechanism is beyond the scope of this paper (see Abromowitz 2010; Sherriff and Lubell 2009). However, each legal mechanism may be used to create permanently affordable homes, and arguably, it is the content and implementation of legal contracts that arguably matters most to the success of SEH programs (Thaden 2014).

*Ground Leases*

Ground leases used for the creation of permanently affordable homes are predominantly utilized by community land trusts (CLTs). CLTs are nonprofit organizations that are committed to community control of land. CLTs often produce permanently affordable rental housing and for-sale housing. Some CLTs also provide cooperative housing, commercial spaces, or urban agriculture projects; some CLTs also conserve natural lands or green spaces.

CLTs most frequently use ground leases to implement their homeownership programs (although some use deed covenants). Owners of homes in CLTs purchase only the improvements (i.e. the built structure or home) and lease the land where the home is located at a nominal monthly fee from the CLT. Hence, the CLT retains ownership of the land, which enables lower income households to purchase homes at prices well below the appraised value of the land and improvements. In return, the homeowner agrees to restrictions on the price for which the home may be sold in the future in order to keep it affordable for subsequent lower income households (see Resale Formulas).

Ground leases tend be perceived as "out of the box" to mortgage lenders and public funders; hence, they can be more challenging to implement. However, ground leases are considered more legally durable and enforceable than the other legal mechanisms described below (Abromowitz 2010).

*Deed Covenants*

Some SEH programs utilize deed covenants (commonly referred to as "deed restrictions") as the legal mechanism to preserve lasting affordability. When deed covenants are utilized, typically a subsidy is provided to make the home affordable to a low- or moderate-income household. Similar to ground leases, the deed covenant will restrict the price for which the

[2] It is worth noting that limited equity housing cooperatives are also a form of shared equity homeownership with distinct legal mechanisms. Because cooperatives development is not prevalent in inclusionary housing programs, they are omitted from this review.

home may be sold to subsequent income-qualified buyers (see Resale Formulas). Due to state regulations against perpetuities, the duration of deed covenants tend to be shorter than ground leases, frequently ranging from 30 to 50 years (Sherriff 2010). As a result, SEH programs utilizing deed covenants will often bolster their ability to keep properties permanently affordable by signing new covenants that reset the affordability period with each new homeowner. Additionally, programs often will have the preemptive option to purchase the property back from the homeowner to ensure the home is resold to another lower income buyer at an affordable price. (Notably, these are best practices for all SEH models and commonly used by CLTs as well).[3]

SEH programs that utilize deed covenants are frequently perceived as more "straight-forward" by mortgage lenders and public funders. Because the title from land and improvements is not separated, there is often greater acceptance from lenders, funders, and homebuyers for deed covenants compared to ground leases. However, deed covenants aimed at producing permanently affordable homes can be deemed less legally durable due to jurisdictional rules against perpetuities and harder to monitor since they lack the ownership stake allotted by ground leases (Abromowitz 2010).

*Shared Appreciation Loans*

A small minority of SEH programs utilize shared appreciation loans as the mechanism to provide lasting affordability. In these programs, homes are made affordable by providing a soft second mortgage loan. Typically, these second loans are structured as 30-year, due-upon-sale loans with 0 percent interest; hence, they operate as a "subsidy" to make the home affordable. Different from the aforementioned legal mechanisms—which sell and resell homes at resale-restricted prices— shared appreciation loan programs typically sell properties at fair market value. Therefore, the homeowner makes affordable monthly mortgage payments on the first mortgage loan, pays off the second mortgage loan upon resale, and shares some portion of the proceeds at resale with the SEH program. Consequently, the program will then issue a new second mortgage loan to the subsequent lower income homebuyer, which will be increased as needed to make the fair market valuable affordable to the next buyer.

Many shared appreciation loan programs will also record a deed covenant in order to stipulate use and occupancy restrictions, a formula for the share of proceeds upon sale, and income-eligibility restrictions. They can also add additional safeguards mentioned above to enable lasting affordability of the properties (i.e. issue new loans upon transfers and establish the preemptive option to purchase).[4]

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[3] Deed covenants are frequently utilized in the housing industry as well as by other affordable housing programs, but they should not be confused with those designed to preserve lasting affordability. Deed covenants are prevalent in the housing industry for planned communities and subdivisions to regulate property modifications. In affordable housing, deed covenants are commonly used to stipulate restrictions in accordance with federal programs, such as requirements relating shorter affordability controls.

[4] SEH programs that utilize shared appreciation loans should not be confused with first mortgage shared appreciation loans that have been offered by poorly-designed and unsuccessful government programs in the United Kingdom and United States (Gandel 2009; Kelly n.d; Kitchin 2008). They should also not be confused with "shared appreciation loan" products provided as first mortgages by for-profit companies, whereby a homebuyer receives an initial amount of capital, which buys down the price of a home to make the monthly mortgage payments more affordable. In these instances, the homebuyer gives

Soft second loan programs maintain the benefit of being common and accepted by lenders and public funders. However, legal concerns have been raised about shared appreciation loan programs designed to create permanently affordable properties since borrowers must be able to pay off indebtedness. Hence, second mortgages must have the option to be repaid, which leaves SEH programs vulnerable to losing a "permanently affordable" home if homeowners opt to pay off the second mortgage (Abromowitz 2010).

Resale Formulas

SEH homeownership programs set the resale price of homes in a variety of ways in order to guarantee that it will remain affordable, including:

- index-based formula, where the resale price is indexed to changes in area median income, cost of living, or some other metric;
- mortgage-based formula, where the resale price is determined by calculating the maximum mortgage financing a buyer at a targeted income level can afford (taking into account mortgage interest rates, property taxes, and insurance rates when the home is resold);
- appraisal-based formula, where the resale price is determined by adding to the original price a percentage of the difference between the home's appraised value at time of purchase and time of resale; and
- fixed-percentage formula, where the resale price is determined by adding to the original price a pre-determined percentage increase each year.

Research on resale formulas in SEH programs suggests that different approaches are more effective depending on the type of market, the incomes of households served, and the overall objectives of the program. A thorough review of the relative merits and weaknesses of different resale formulas is beyond the scope of this paper (see Jacobus and Lubell 2007; National Community Land Trust Network 2011). Ultimately, a well-designed resale formula aims to balance the goals of ensuring lasting affordability for subsequent homeowners and promoting wealth-building among homeowners.

Unfortunately, existing literature provides little guidance on legal mechanisms and effective procedures for preserving affordability of rental units. Despite the assertion that keeping rental units affordable is "rarely a problem" (Brunick et al. 2004), the LIHTC and federal subsidy programs provide evidence that the way in which affordability terms are structured and the options available to property owners at the end of the terms remain important to the long-term affordability of rental homes.

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the lending institution a portion of the property's appreciation at resale. These products have no intention of keeping homes permanently affordable, and they do not have a solid track record of building wealth among low-to-moderate income homeowners (Thaden 2013).

Monitoring and Stewardship

Monitoring and ongoing stewardship of affordable requirements are among the most important elements of an inclusionary housing program (Davis 2006; Jacobus 2007b). A study of inclusionary housing programs in California found that programs experienced fewer losses of both rental and ownership inclusionary units when the program had strong monitoring procedures (Levy et al. 2012). However, in many cases, ongoing monitoring and enforcement of program rules are not built into a locality's inclusionary housing program and localities do not plan for sufficient oversight and stewardship (Jacobus 2007b). One misconception is that inclusionary housing programs will not require significant public oversight or management since they do not involve direct public subsidy, but instead work through the locality's zoning and land use process (Jacobus 2007b).

To date, limited information has been gathered on the stewardship and monitoring activities of inclusionary housing programs (Abrams et al. 2010). In his 2007 report on successful inclusionary housing strategies, Rick Jacobus outlined the tasks necessary for ongoing administration of inclusionary housing units, highlighting different approaches localities have taken. The author suggests nine key elements for promoting long-term affordability of inclusionary homeownership units; several are also important to preserving affordability of rental units (Jacobus 2007b):

- overseeing production (also rental),
- pricing units (also rental),
- educating potential buyers,
- screening and selecting residents (also rental),
- ensuring access to financing,
- monitoring occupancy and payments (also rental),
- managing resales, and
- enforcing other requirements (also rental).

In developing effective inclusionary homeownership programs, program elements such as homebuyer education, monitoring, and resale management should be planned for at the program's implementation to ensure active stewardship of inclusionary units. While costs for administrative activities can be high, without ongoing stewardship inclusionary housing programs cannot be a permanent solution to affordability challenges (Jacobus 2007b).

Additional literature on CLTs provides "best practices" for homeownership programs that aim to preserve affordability in perpetuity. The stewardship practices recommended in the literature for inclusionary homeownership programs and CLTs are quite similar, although CLTs often engage in more intensive contact with homeowners. During the pre-purchase, CLTs typically require homebuyers to complete homebuyer education counseling and CLT-specific education session(s) that review resale-restrictions and homebuyer obligations per the legal contract. The CLT reviews and approves home purchase loans to ensure the property is affordable upon sale and loan terms are sound. Post-purchase, CLTs typically verify owner-occupancy, review and approve refinance and/or home equity loans, provide

referrals or financial support with home maintenance or repairs, manage resales, identify delinquencies (e.g. HOA dues, property taxes, mortgages, ground lease fees), and provide loss mitigation or foreclosure prevention counseling if needed. Additionally, CLTs retain the right to cure delinquencies and preemptive option to purchase the home out of foreclosure from the lender in order to prevent the loss of the unit to foreclosure (Thaden and Davis 2010; Thaden 2012).

The affordability, legal rights, and ongoing stewardship services provided by many SEH programs (especially CLTs) has been shown to effectively preserve affordability over resales and to enable accessibility and sustainability of homeownership for lower income residents resales (Temkin, Theodos and Price 2010). Furthermore, national studies of CLTs found that conventional homeowners across all income levels were much more likely to be in foreclosure proceedings and to be seriously delinquent than lower income owners of CLT homes (Thaden 2011; 2013).

While it is unknown how prevalent these intensive stewardship practices are among inclusionary housing programs, the best practices for monitoring and stewardship found in CLTs may be incorporated into inclusionary housing programs to better preserve affordability or improve resident outcomes.

An important limitation in the existing literature is the focus on homeownership, providing little guidance for ensuring lasting affordability of rental housing produced through inclusionary housing programs (or CLTs, for that matter).[5] In inclusionary housing programs, ensuring rental units have affordable rents and are rented by income-eligible households is often assumed to be the responsibility of the property owner or manager, and therefore requires little public oversight. However, rental housing may actually require *more*, not less, active monitoring and management than is required with homeownership units (Jacobus 2007a). One commonality found across inclusionary housing programs is insufficient documentation of the requirements of developers and property managers to ensure ongoing compliance with affordability requirements (Schwartz et al. 2012).

The research presented below addresses an important gap in the understanding about the current landscape of inclusionary housing programs and the extent to which programs are successfully facilitating lasting affordability. The research findings can help guide housing practitioners who want to develop successful programs and partnerships to meet their local affordable housing challenges and help policy makers adopt effective inclusionary housing policies and programs.

[5] It is worth noting that CLTs have approximately double the amount of rental units than homeownership units in their portfolios; therefore, the dearth of information on stewardship and property management for rentals signals a major gap in the literature.

## Research Methods

This section describes the research design, sample selection, and data collection methods used to build a national directory of inclusionary housing programs and case studies of 20 inclusionary housing programs.

### Research Design

This research study has three main objectives:

1. To characterize the landscape of inclusionary housing programs nationwide, with a particular focus on the degree to which inclusionary housing programs require long-term affordability;

2. To compare how programs implement long-term affordability (e.g. legal instruments, resale procedures, and stewardship strategies); and

3. To evaluate the best practices and challenges of programs that seek to preserve the affordability of their inclusionary housing portfolio over the long term.

To achieve these aims, a first-of-its-kind, nationwide directory of inclusionary housing programs was assembled, and 20 case studies were prepared to describe a sample of these programs in greater detail. Detailed analyses of 20 programs allowed for a closer examination of the programmatic elements that hold the most promise for achieving lasting affordability of inclusionary homes.

For the purposes of this study, "inclusionary housing" is defined as a local policy that works through the development approvals process to require or incentivize the inclusion of income-targeted housing in otherwise market-rate housing developments. The population of inclusionary housing policies considered for this research included policies that apply jurisdiction-wide, as well as overlay zones, district plans, or other policies that apply to limited neighborhoods. This definition excludes policies that foster mixed-income housing through ad hoc negotiations for master-plan, PUD, or similar land use approvals. "Permanent affordability" in this study is defined as programs that have at least 30-year affordability periods coupled with a requirement that the affordability period is reset if the home is resold during the term or the regular use by the local jurisdiction of a preemptive option to purchase at the first sale after the affordability period.

### Data Collection Methods

<u>Nationwide Inventory</u>

A directory of national inclusionary housing programs was developed in an effort to build a more comprehensive set of information about inclusionary housing programs in communities around the country. A basic set of program information was sought for inclusionary housing programs as part of the nationwide inventory:

- Program name,
- Mandatory or voluntary policy,
- Affordability control period,
- Affordability set-aside requirements,
- Income targets,
- The size of developments subject to the policy,
- Year of program adoption, and
- Website and program administrator contact information.

As discussed in the literature review, existing data on inclusionary housing policies and programs is highly fragmented. Accordingly, multiple resources were consulted to develop a comprehensive inventory, starting with:

- the California Inclusionary Housing Policy database, administered by the California Coalition for Rural Housing (http://www.calruralhousing.org);
- survey data gathered by the Innovative Housing Institute (2010);
- Schwartz et al. (2012);
- Mulligan and Joyce (2010);
- Hollister et al. (2007); and
- existing Center for Housing Policy research and data.

These sources were supplemented by:

- details on inclusionary housing programs from the Citizens Housing and Planning Association (CHAPA);
- online municipal code searches for terms such as "affordable housing," "inclusionary housing," and "workforce housing" using Municode.com, Amlegal.com, and eCode360.com;
- data courtesy of the New Jersey Council on Affordable Housing (COAH) and David Kinsey describing inclusionary housing production in New Jersey's municipalities as of 2007;
- Price (2007);
- Rhode Island Statewide Planning Program (2006);
- phone interviews and email correspondence with housing advocates and other housing policy experts in various states;
- an emailed survey from the National Community Land Trust Network to its members regarding known inclusionary housing programs;
- reviews of program and policy documents and ordinances; and
- phone/email conversations with select program administrators.

Finally, program administrators for whom email contact information was available (approximately 100 programs) were given an opportunity to validate and correct program data in the inventory.

Case Study Sample

The 20 case study programs comprise a purposive sample, which reflects a wide range of inclusionary housing programs in the field. To be included in the sample group, programs had to have been operational for five or more years and have produced 50 or more inclusionary housing units (which favored mandatory programs since few voluntary programs have produced 50 or more units). These selection criteria ensured that program administrators could reflect on issues related to ongoing program administration. Programs were then selected to provide diversity across the following categories:

- program vintage: (1) 1980's and earlier, (2) 1990's, (3) 2000s
- region: (1) Northeast; (2) Mid-Atlantic, (3) South, (4) Midwest, (5) Mountain, (6) West
- affordability duration: (1) 0-14 years, (2) 15-29 years, (3) 30+ years
- program type: (1) mandatory, (2) voluntary
- jurisdiction size: (1) large city or county (greater than 250,000 residents), (3) medium city (101,000 to 250,000); (5) small city (25,000 to 100,000); (6) small town (less than 25,000).
- tenure applicability (1) rental and for-sale, and (2) just for-sale, and
- administrative approach (such as administered "in house," or administered with the help of a community land trust, nonprofit, or other third-party partner).

The resulting sample is therefore not representative of the universe of inclusionary housing programs. Four jurisdictions in New Jersey, New York, and California were asked to participate, but declined.

**Table 1. Case Study Programs**

| **Place** | **Year Adopted** | **Size** [(a)] | **Policy Type** |
|---|---|---|---|
| Davis, CA | 1987 | Small city | Mandatory |
| Irvine, CA | 2003 | Medium city | Mandatory |
| San Francisco, CA | 2002 | Large city | Mandatory |
| San Mateo, CA | 1992 | Small city | Mandatory |
| Santa Monica, CA | 1990 | Small city | Mandatory |
| Boulder, CO | 2000 | Medium city | Mandatory |
| Denver, CO | 2002 | Large city | Mandatory/voluntary [(b)] |
| Stamford, CT | 2003 | Medium city | Mandatory |
| Washington, DC | 2007 | Large city | Mandatory |
| Chicago, IL | 2003 | Large city | Voluntary |
| Montgomery Co., MD | 1974 | Large county | Mandatory |
| Cambridge, MA | 1998 | Medium city | Mandatory |
| New Jersey Jurisdictions [(c)] | ~1985 | Variable | Mandatory |
| Chapel Hill, NC | 2000 [(d)] | Small town | Mandatory |
| Davidson, NC | 2001 | Small town | Mandatory/voluntary [(b)] |
| Santa Fe, NM | 1998 | Small city | Mandatory |

| Park City, UT | 1993 | Small town | Mandatory |
| --- | --- | --- | --- |
| Burlington, VT | 1990 | Small city | Mandatory |
| Fairfax Co., VA (ADU policy)<br>(WDU policy) | 1990<br>2010 | Large county | Mandatory<br>Voluntary |
| Redmond, WA | 1994 | Small city | Mandatory |

(a) Large cities or counties have greater than 250,000 residents. Medium city: 101,000 to 250,000 residents. Small city: 25,000 to 100,000 residents. Small town: less than 25,000 residents.

(b) The program is voluntary for rental housing.

(c) The 1985 New Jersey Fair Housing Act prompted many New Jersey communities to adopt inclusionary housing policies. The Act also led to uniform standards for the design and administration of inclusionary housing programs statewide, which makes it possible to treat the state as a case study in its entirety.

(d) Chapel Hill began with a voluntary inclusionary zoning policy in 2000 and then adopted a similar but more formal, mandatory policy in 2010.

Interviews with program staff and/or contracted administrators were conducted during March and April 2014 to explore the 20 programs in greater depth. In addition to participating in an hour-long interview, program administrators were sent a follow-up survey asking for detailed information on program design and stewardship practices.[6] In return for their participation in the telephone interview and survey, local program administrators were offered a free annual membership, free conference registration and travel scholarship by the National Community Land Trust Network to attend its April 2014 conference.

A semi-structured interview protocol was designed to foster consistency in the interviews. While some interviews explored certain questions more deeply than others, the interviews were generally organized around questions pertaining to program requirements, program evolution, inclusionary housing production, affordability terms, legal instruments, stewardship and retention practices, partnerships, and key administrative challenges.

## Findings

### Results from the Nationwide Inventory

#### Extent of Inclusionary Housing Nationwide

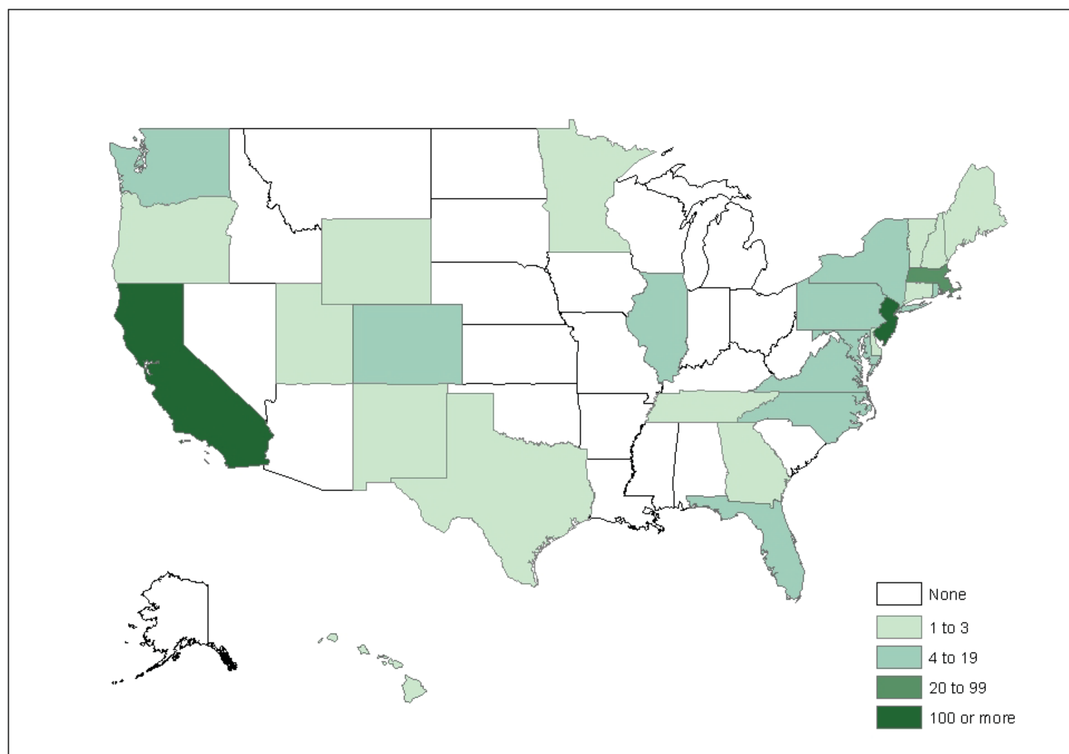
Inclusionary housing policies have been adopted in more states and places than commonly thought. The nationwide scan conducted for this research identified 507 inclusionary housing programs in 482 local jurisdictions. As evidenced by the totals, some jurisdictions have multiple inclusionary housing policies. Often this includes one policy that applies jurisdiction-wide and a second that applies to a specific neighborhood or district, such as a neighborhood or corridor in which intensive redevelopment is occurring. Programs were found in 27 states and the District of Columbia. Of the 507 programs, 36 percent was located

[6] The survey was modified from the "Inclusionary Housing Program Assessment," which was created by Cornerstone Partnership, a program of NCB Capital Impact, based in part on works developed by the National Community Land Trust Network. The Assessment is licensed under a Creative Commons Attribution-Share Alike 3.0 United States License.

in New Jersey and 29 percent was located in California. Approximately 83 percent of identified programs were mandatory and 17 percent were voluntary.[7]

Inclusionary programs are found predominantly in New Jersey, California, and Massachusetts, where state laws incentivize or require localities to create a definable share of affordable housing. But a surprising number of mandatory and voluntary inclusionary housing policies are now found in other areas of the country, including the Midwest, southeast, Rocky Mountain West, and every coastal state besides South Carolina. Furthermore, inclusionary housing has also established a critical mass in states such as New York, Colorado, Rhode Island, and North Carolina, where inclusionary housing policies can be found now in ten or more localities. Voluntary inclusionary housing policies have been introduced in states such as Minnesota, Georgia, and Tennessee where it had been difficult to generate political will for mandatory programs.

**Figure 1. Location of Inclusionary Housing Programs (n = 507)**




[7] These figures are approximate as sometimes the line between a mandatory and voluntary program is blurry. In this survey, to meet the definition of a voluntary program, development of a property must be theoretically possible without meeting the terms of the program. But in multiple jurisdictions where zoning is highly constrained, redevelopment rarely occurs without the developer using the nominally optional incentives provided through the voluntary inclusionary housing policy. These programs, while categorized as voluntary, may more closely resemble mandatory programs.

Prevalence of Long-Term Affordability Controls

Data on affordability control periods were obtained for 330 of the inclusionary housing programs identified in the national policy scan (65 percent of 507 total programs). Of these programs, more than one-third requires perpetual affordability for either rental units, for-sale units, or both (Table 2). Without additional information, it is unclear how many programs may be designed to create units with lasting affordability through supplemental legal mechanisms. However, it is clear that only a small share of programs have affordability terms of less than 15 years for rental units (12 percent of programs) or for owner-occupied homes (15 percent of programs). Long-term affordability is more frequently required of rental units than for-sale units, but not by a sizeable margin. Hence, these findings confirm that inclusionary housing programs are preserving affordability for longer durations than federal affordable housing programs.

**Table 2. Affordability Terms for Inclusionary Housing Programs in the U.S.[(a)]**

| Affordability Term Length (years) | Rental | % | For-sale | % |
|---|---|---|---|---|
| 0 to 14 | 37 | 12% | 49 | 15% |
| 15 to 29 | 24 | 8% | 31 | 9% |
| 30 to 49 | 69 | 23% | 100 | 31% |
| 50 to 98 | 66 | 22% | 38 | 12% |
| 99 or perpetual | 110 | 36% | 109 | 33% |
| Total | 306[(b)] | 100% | 327[(b)] | 100% |

[(a)] Includes 330 programs for which there is affordability term length data.

[(b)] 24 programs only apply their requirements to homeownership units, and 3 programs only apply them to rental units.

Program data was available inconsistently on other characteristics, such as affordability set-aside requirements, income targets, the size of developments subject to the policy, and year of program adoption. For this reason, these characteristics are not discussed.[8]

**Results from Case Studies**

The section below focuses on five features of program design that fundamentally affect the availability of inclusionary homes over time: (1) affordability periods; (2) legal mechanisms; (3) resale controls; (4) stewardship practices; and (5) administrative partnerships. For each program element, this section reviews findings from the interviews, surveys, and document reviews. Additionally, each section reviews common challenges and potential solutions for promoting lasting affordability based upon best practices identified by practitioners. Table 3 presents a summary of program characteristics by inclusionary housing program. Appendix A presents profiles detailing additional information on the 20 case studies.

[8] Inquiries about the national directory should be directed to the National Community Land Trust Network: 503-493-1000 or info@cltnetwork.org.

**Table 3. Detailed Program Features**

| | Affordability Period (in years) | | | | | | Total Inclusionary Housing Production [a] | | |
|---|---|---|---|---|---|---|---|---|---|
| **Jurisdiction** | **Rental** | **For-Sale** | **Homeownership Program's Legal Mechanism** | **Resale Formula** | **Requires Homebuyer Education** | **Who administers** | **Total** | **Rental** | **Sale** |
| Boulder | Perpetuity | Perpetuity | Deed covenant | Fixed-percentage | No | Rental: Boulder housing authority and nonprofit agencies; For-sale: in-house | ~ 750 | ~ 625 | ~ 125 |
| Burlington | 99 | 99 | Deed covenant or ground lease | Appraisal-based | No | Rental: in-house; For-sale: mostly Champlain Housing Trust (CLT) | 212 | 87 | 125 |
| Cambridge | Perpetuity | Perpetuity | Deed covenant | "Return on Equity" [b] | Yes | In-house | 527 | 334 | 193 |
| Chapel Hill | N/A | 99 | Ground lease | Appraisal-based | No | Community Home Trust (CLT) | 190 | N/A | 190 |
| Chicago | 30 | 99 | Deed covenant | Appraisal-based | Yes | Rental: in-house; For-sale: Chicago Community Land Trust (CLT) | ~ 850 | | |
| San Mateo | Life of building | 45 | Deed covenant | Index-based | No | In-house | 325 | 196 | 129 |
| Davidson | 99 | 99 | Deed covenant | Index-based | Yes | In-house | 64 | 8 | 56 |
| Davis | Perpetuity | Perpetuity | Deed covenant | Fixed-percentage | Yes | In-house | ~ 2,000 | ~ 1200 | ~ 800 |
| Denver | 15 | 15 | Deed covenant or ground lease | Index-based | Yes | In-house; Colorado | 77 | 0 | 77 |

| | | | | | | Community Land Trust (CLT) | | | |
|---|---|---|---|---|---|---|---|---|---|
| Fairfax County | Affordable Dwelling Unit (ADU) policy: 30 Workforce Dwelling Unit (WDU) policy: 50 | ADU policy: 30 WDU policy: 30 | Deed covenant | Index-based | Yes | In-house; Fairfax County Redevelopment & Housing Authority (FCRHA) | ADU: 2,560 WDU: 162 | ADU: 1,200 WDU: 162 | ADU: 1,360 WDU: 0 |
| Irvine | 30 | 30 | Deed covenant or ground lease | Index-based | Yes | Irvine Community Land Trust (CLT) | 417 | 404 | 13 |
| Montgomery County | 99 | 30 | Deed covenant | Index-based | No | In-house; Housing Authority (HOC); nonprofits | 14,029 | 4,468 | 9,561 |
| New Jersey | 30 [c] | 30 [c] | Deed covenant | Index-based | Yes[d] | In-house, property developers, for-profit firms | 18,256 (as of January 2007) | | |
| Park City | 40 [e] | 40 [e] | Deed covenant | Fixed-percentage | No | In-house | 137 | 45 | 92 |
| Redmond | Life of building | 50 [f] | Deed covenant | Index-based | No | ARCH (nonprofit) | ~ 308 | ~ 283 | ~ 25 |
| San Francisco | Perpetuity | Perpetuity | Deed covenant | Index-based | Yes | In-house | 1,560 | 632 | 928 |
| Santa Fe | 10 | Perpetuity | Shared appreciation loan | Appraisal-based | Yes | In-house | 154 | 38 | 116 |
| San Mateo | Life of building | 45 | Deed covenant | Index-based | No | In-house | 325 | 196 | 129 |
| Santa Monica | 55 | 55 | Deed covenant | Mortgage-based [g] | No | In-house | ~ 1000 | 998 | 2 |
| Stamford | Perpetuity | Perpetuity | Deed covenant | Index-based | No | In-house | 449 | 347 | 102 |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| Washington DC | Perpetuity | Perpetuity | Deed covenant | Index-based | Yes | In-house | 53 | 47 | 6 |

(a) As of March 2014, unless otherwise indicated. Figures reflect total units built to meet program requirements on-site, off-site, or through land dedication. These figures do not include affordable units supported with the support of in-lieu fees.

(b) Formula allows for an annual return based on annual principal payments multiplied by a rate tied to a federal Treasury Bill. The return is calculated annually without compounding and added to the original purchase price.

(c) As of 2006, ordinances must be designed with affordability restrictions that continue “until the municipality elects to release the unit from such requirements,” which can be no sooner than 30 years from initial purchase. In practice this amounts to default, perpetual affordability requirements.

(d) Applicant households are required to homeownership counseling if monthly housing expenses for the home will be more than 33 percent of monthly income.

(e) After 40 years, the city has the option of extending the affordability term for another 10 years.

(f) For homes sold after the control period, the city recaptures any proceeds from sales in excess of the designated affordable price.

(g) The resale price is determined by calculating the maximum mortgage financing a buyer at a certain income level can afford at a targeted household level (taking into account mortgage interest rates, property taxes, and insurance rates when the home is resold).

Affordability Periods

Many inclusionary housing programs have implemented long-term and perpetual affordability terms to maximize the benefit of the inclusionary housing subsidy and ensure that future households can benefit from inclusionary units. Where perpetual affordability has not been possible—either because of state statute or local opposition—many jurisdictions have made use of supplemental legal mechanisms that allow programs to preserve ongoing affordability. As programs have evolved, the trend has overwhelmingly been towards longer, rather than shorter affordability periods, often in response to losses of inclusionary units from the affordable housing inventory.

Montgomery County, MD, Davis, CA, San Francisco, CA, Davidson, NC and Chicago, IL all had shorter terms when they were first implemented but moved to perpetual affordability requirements as their programs matured. Montgomery County and Chicago each extended their affordability periods after experiencing a loss of previously built inclusionary housing units. Of the 14,000 inclusionary homes that have been built in Montgomery County over the past 40 years, approximately 9,400 have reverted to market rates due to expiring control periods. At the program's outset the affordability term was only five years. In 1981, the affordability period was increased to 10 years. It was not until the mid-2000s that county officials took more aggressive steps to preserve its inclusionary housing units, increasing affordability periods to their current levels—99 years for rental housing and 30 years for ownership units.

Similarly, Chicago initially allowed inclusionary homeowners to sell units on the open market after five years, resulting in the loss of many of the first homeownership units built through the city's inclusionary housing program. To prevent future losses, the city created the quasi-public Chicago Community Land Trust in 2006 to improve the stewardship of affordable homeownership units, prevent foreclosure, and retain units' affordability in perpetuity. Generally, all new for-sale inclusionary homes must be placed in the CLT, which requires homeowners to agree to a 99-year deed restriction.

Two programs in the set of case study programs reduced their required affordability terms—Fairfax County, VA and Santa Fe, NM—and each had mitigating circumstances. Fairfax County's Affordable Dwelling Unit (ADU) program, which was started in 1990 with 50-year terms, was reduced to 15-20 years in 1998 in the face of pressure from developers. The affordability period was then increased to 30 years in 2006. The county retains a preemptive option to purchase homes that have reached the end of the affordability period and are for sale on the open market (discussed further below). Also, if the county opts not to purchase the home, the seller must share half of the proceeds made in excess of what would have been an affordable resale price in order to make future investments in affordable housing. In 2007, the county adopted a supplemental inclusionary housing policy, known as its Workforce Dwelling Unit (WDU) policy. Under this policy, the county chose 50-year

affordability periods for rental units while preserving the 30-year period for owner-occupied units.

Santa Fe reduced its affordability term for rental units from 20 years to 10 years. According to staff, this decision was driven primarily by the city's interest in encouraging more market-rate rental housing in the city. Santa Fe maintains perpetual affordability requirements for homeownership units.

Several places established their program with perpetual affordability requirements from the outset. A motivation commonly cited by staff was the need to extend the impact of scarce affordability resources. Stamford, CT, for example, adopted its program in 2003 at a time when the city had just prepared an analysis projecting a shortage of 8,000 affordable housing units in the city. It was determined that, as a relatively small city, Stamford would need every single affordable unit to last. As the city's program director said "If we allowed these units to expire after 30 years, which was the conventional HUD affordability term, we'd start losing units as fast as we produced them, and it would be a futile program."

Similarly, Cambridge, MA administrators were motivated by their recent experience with the expiration of the city's federally-subsidized affordable housing units at a time when affordability needs were growing. Officials in Cambridge also reasoned that the affordability term should be permanent since the bonus density provided to the landowner as part of the inclusionary housing agreement would also be permanent. This latter argument was the primary motivation for Washington, DC's choice of perpetual affordability.

*Programs with Less than "Perpetual" Affordability Periods Take Other Steps to Achieve Lasting Affordability*

Some program administrators shared reservations about perpetual affordability requirements. Staff in several jurisdictions cited developer concerns about the marketability of for-sale homes with perpetual affordability restrictions. Others mentioned legal concerns about perpetual durations. For several profiled jurisdictions, this problem was solved by simply changing the term used. Davidson, Chapel Hill, NC, Burlington, VT, San Mateo, CA, and Redmond, WA all chose to define their affordability term as "the life of the building" or 99 years, rather than "in perpetuity."

Another way that programs get around concerns about "perpetual affordability" is to adopt control periods of 30 or more years and require that these terms restart for the next homebuyer if the home is resold within the control period. The administrators of programs in Montgomery County, Fairfax County, and San Mateo believe, plausibly, that this reset requirement will have the same impact as "perpetual" affordability requirements, because most homes tend to be sold within 30 years.

Fairfax County uses its preemptive option to purchase homes at the first sale of the home after the control period expires. The preemptive purchase option is another way

to protect inclusionary housing units and to extend their affordability in perpetuity; however, the jurisdiction must purchase the home at market price and then subsidize it to make it affordable, which can be very expensive and therefore reduces the impact of the original subsidy.

Yet another approach employed by jurisdictions with non-perpetual affordability periods is to recapture a portion of sales proceeds in excess of the affordable price when a home reaches the end of the affordability period and is sold on the open market. Montgomery County and Fairfax County capture half of these proceeds if the home sells after the completion of the 30-year affordability term. Jurisdictions in New Jersey capture 100 percent of the difference between the affordable price and market price, but this is calculated as the difference that existed at the time of initial sale. In other words, these townships capture 100 percent of the original affordability subsidy. The city of Redmond captures 100 percent of excess proceeds after the conclusion of a 50-year affordability term.

Strong Legal Mechanisms

Local jurisdictions establish affordability requirements through some type of legal instrument. For homeownership units, the most common tool is a deed covenant. However, in many cases, the deed covenant has not provided adequate structure to sufficiently monitor inclusionary units and to keep them in the affordable inventory. Foreclosures and illegal sales, in particular, can be difficult to identify and manage if only a deed covenant is utilized. As a result, many jurisdictions supplement the deed covenant with additional legal instruments to further preserve ongoing affordability.

*Deeds of Trust*

Despite the recordation of deed covenants on inclusionary units, many programs have had homes in their portfolio sold on the open market at unrestricted prices or to ineligible households because affordability restrictions were overlooked by title companies and subsequent homebuyers. To combat this practice, at least six jurisdictions supplement their deed covenant with a deed of trust on the property. With a deed of trust, legal title to the property is transferred to the municipality, which holds it as security for the "debt" that is owed by the inclusionary homebuyer for receiving the property at below-market-rate. This mechanism improves notification to the city of potential illegal resales and improper refinancing or second loans. Furthermore, if an illegal sale is made before the jurisdiction is able to prevent it, the program has better legal recourse to recapture the affordability subsidy provided to the homeowner.

San Mateo began using a deed of trust years after its program was first implemented. The city discovered in the mid-2000s that title companies were overlooking resale restrictions contained in the deed covenant. In addition, when inclusionary homebuyers refinanced, financial institutions often underwrote loans as if the properties were market-rate, without taking into account the resale restrictions. The

San Mateo program decided to add a promissory note and deed of trust to inclusionary for-sale homes at the point of initial sale. The deed of trust is recorded for an amount equal to the difference between the fair market value of the home and the affordable price—that is, the affordability subsidy provided to the inclusionary homeowner. City staff has found that this "security interest" in the property helps them be better notified of attempts to improperly refinance or sell homes.

*Preemptive Right of Purchase (Right of First Refusal) at Resale*

Each of the programs included in the case study analysis retains a preemptive right to purchase inclusionary units at resale, with the exception of Davidson. Seven profiled jurisdictions reported using this right in more than 90 percent of resales (Fairfax County, San Mateo, Burlington, Davis, Cambridge, Boulder, and San Francisco). By exercising the right to purchase homes at resale, programs gain greater control and oversight over the resale process by inserting themselves in the chain of sale. For example, Cambridge uses its right of first refusal to ensure that homeowners are chosen properly from the city's resale pool of income-eligible households. The program also performs any necessary maintenance on the home to ensure it is in good condition before it is resold. Similarly, Fairfax County uses this option to ensure that homes are properly marketed in conformance with fair housing laws, and prospective homeowners are chosen in accordance with the county's selection plan from the county's waitlist. By acting as the intermediate buyer, as the county program's administrator said, "we know for a fact that the home is staying in the program."

Perhaps the most potent use of the right of first refusal is the ability to place a new, updated deed covenant on the inclusionary unit—with the latest affordability control period and program requirements—before selling it to a new household. In Fairfax County, which has changed its affordability periods over time, the option to purchase at resale gives the county the ability to bring units with 15-year affordability terms up to 30 years, simplifying the administration of what is otherwise a heterogeneous inclusionary housing portfolio.

Rather than actually taking ownership of the home, many programs including San Francisco and San Mateo assign their preemptive option to purchase to an income-qualified homebuyer, who then purchases the home from the previous homeowner at the designated affordable price.

*Preemptive Right to Cure a Foreclosure or to Purchase a Home that has Entered Foreclosure*

Each case study site requires that the jurisdiction has the right to cure first mortgage delinquencies on behalf of homeowners and the right to purchase homes from the lending institution in the event of foreclosure or assignment in-lieu of foreclosure. For example, in Fairfax County, mortgage lenders agree to give the Fairfax County Redevelopment and Housing Authority (FCRHA) 90 days to cure any default and 90 days to exercise a right to acquire the inclusionary property if it enters foreclosure. If

acquired by the county prior to a foreclosure sale, the lender agrees to sell the home to the FCRHA at the affordable price specified by the program. The county also retains a first right to purchase the home at the foreclosure sale. Such a purchase can often require substantial financial resources, which is why the right to cure a loan or purchase the home prior to foreclosure sale is so valuable.

*Notice of Default or Delinquency*

Several programs require that lenders notify them if inclusionary homeowners are delinquent on mortgage payments or in default, so that the program may work with the homeowner before reaching the point of foreclosure. The city of Redmond, for example, mandates that a "Third-Party Notification" document be recorded whenever a homeowner purchases an inclusionary home. This document requires that notices of delinquency are sent to the jurisdiction. Other localities have struggled, however, to get lenders to agree to these notifications. Lenders often state that these third party notification requirements are too burdensome to administer (especially since servicing and loan origination may be done by separate institutions). A lien or deed of trust may be of use in this situation; for example, San Mateo reports being notified of default or foreclosures due to being a junior lien holder.

*Participating Lender Agreements*

Several programs require participants to seek mortgage loans only from designated lenders that have agreed to one or more of the legal stipulations reviewed above. Montgomery County maintains a list of Participating Mortgage Companies that have agreed to comply with these requirements. A one-page document provided to prospective buyers of inclusionary homes lists the names and phone numbers of lenders at seven qualified lending institutions.

Resale Formulas

Each of the programs studied use resale restrictions to ensure that, whenever a home is resold during the affordability period, it is sold at an affordable price. But programs differ considerably in their choice of resale formula. Most programs seek to balance two goals—allowing the homeowner to benefit from some price appreciation in order to accumulate wealth and keeping resale prices affordable for subsequent low- and moderate-income homebuyers. Different programs give different priority to wealth accumulation and affordability preservation, depending on local market conditions and the characteristics of targeted households and/or neighborhoods. Additionally, some jurisdictions prioritize, above all else, the ease and simplicity of a resale formula to be transparent to buyers and lenders.

Among the case study jurisdictions, the most popular approach to setting a resale price is the index-based formula. Typically the program will set the resale price equal to the original affordable purchase price plus a set rate of appreciation tied to changes in area median income (AMI) or the consumer price index (CPI). Washington, DC

calculates the change in AMI based on a 10-year rolling average, which helps prevent a situation in which a homeowner would have to sell at a loss due to a short-term dip in AMI or sell at a price that is unlikely to allow the subsequent homeowner any price appreciation because of a short-term spike in AMI. The AMI-based appreciation model is one of the most intuitive approaches from a long-term affordability perspective, as it ensures that the home price will still be affordable to the same targeted income group in the future. The AMI-based index formula does not, however, ensure that basic homeownership cost assumptions will remain constant over time. For example, interest rates or down payment minimums may go up, reducing the purchasing power of a future homebuyer earning a given percentage of median income below what would be necessary to afford the AMI-adjusted home price.

To achieve resale prices that take these variables into consideration, the city of Santa Monica uses a mortgage-based resale formula. The resale price is determined by calculating the maximum mortgage financing that a buyer at the targeted income level can afford (taking into account mortgage interest rates, property taxes, and insurance rates when the home is resold). While more certain to be affordable to the subsequent, targeted-income household, this resale formula has fallen out of favor in the broader field of shared equity homeownership programs. Depending upon the interest rates upon resale, the seller could realize very poor returns or potentially owe more on their mortgage than the price for which they can sell the home (a major concern for lenders). It is significant that Santa Monica has only one for-sale inclusionary unit.

Three jurisdictions use a fixed-percentage formula whereby the resale formula is determined by adding a pre-determined percentage increase to the original purchase price each year. This approach has the appeal of being simpler to explain to potential homebuyers. It also affords homeowners greater certainty about what to expect at the point of resale. The city of Davis allows 3.75 percent appreciation per year, except in its Southfield Park community, where it permits 5.5 percent annual appreciation. Park City, Utah allows an annual appreciation rate of three percent, though if market values in the city appreciate less than three percent annually, the inclusionary homeowner is limited to the rate of citywide market appreciation.

Boulder uses a hybrid approach in an attempt to strike the right balance in their community. The program ties the resale price to an annual appreciation factor based on whichever index—the AMI or CPI—grew at a lower rate over the ownership period, but it also caps the price increase at 3.5 percent.

Burlington, Chicago, Santa Fe, and Chapel Hill use an appraisal-based (market-appreciation) formula. Under this structure, the resale price is set based on the original price plus a percentage of the difference between the home's original appraised value and the appraised value at the time of resale. Hence, this formula is most tied to the market. Localities often set limits on the maximum allowable appreciation. In Burlington, for example, the resale price can be increased by 25 percent of the home's market appreciation (as determined by appraisals).

In most cases, programs also allow the homeowner to increase the resale price to reflect the value of major repairs or other permitted improvements made by the homeowner during ownership. Programs have found that incentivizing repairs and improvements helps to maintain the quality and condition of the affordable housing stock. Certain closing costs can also be recouped during resale in some programs.

It is not always easy to predict what prices will result from a particular formula and how those resale formulas will affect wealth creation opportunities for current homeowners and affordability for subsequent homebuyers. Local housing market conditions can play a major role in how resale formulas set home prices. Over time, some jurisdictions have found that under certain resale formulas, such as Park City and Montgomery County, the calculated maximum resale price has risen too close to market prices, at least in certain neighborhoods. Competition with market-rate homes can result in homeowners being unable to sell for the maximum resale price (and, therefore, realize inadequate financial returns), or homeowners may experience difficulty selling because prospective homebuyers can purchase a similar home without affordability restrictions. This problem was compounded during the housing downturn in communities where home prices plummeted, as well as in jurisdictions where the initial affordable price was already close to market-rate prices.

Jurisdictions may find it helpful to monitor and adjust the resale price formula periodically to ensure they are striking the right balance between wealth accumulation and ongoing affordability. Some programs may also find that they need to set the initial affordable home price at a level well below market-price, so that there is an adequate pool of income-qualified buyers and the homes remain below market-rate. In instances when prices appreciate above affordable levels, some jurisdictions such as Burlington have simply stepped in and used their right of first refusal to purchase the home, and then invest local resources to subsidize the price so that it can be sold again at an affordable level. Diligent analysis and ongoing analysis of resale formulas can help to prevent the need for additional subsidization in order to keep properties affordable over time.

Stewardship Practice

The case study analysis provides unprecedented insight into the ways local jurisdictions handle stewardship as part of their inclusionary housing programs. Monitoring inclusionary housing units and engaging residents, developers, lenders and other partners are essential for ensuring lasting affordability. Despite evidence of best practices from other housing programs, such as CLTs, there is wide variation in local jurisdictions' approaches to stewardship—both the value placed on stewardship and the specific stewardship activities used. A common theme across programs was a lack of sufficient resources to sufficiently monitor and steward properties and homeowners. Local jurisdictions have also seen their inclusionary housing inventory evolve and become more diverse—with more rental units, varying affordability terms, and multiple partners—which makes stewardship more challenging to implement.

While many jurisdictions retain monitoring and stewardship activities in-house, trends indicate more programs are partnering with external organizations to provide these services.

*Homeownership Programs*

Effective stewardship of a program's for-sale inclusionary portfolio includes multiple activities related to monitoring inclusionary properties over time and supporting participating households so that they achieve financial success and avoid pitfalls, such as delinquencies or foreclosure. Five commonly cited issues are discussed below, drawing on promising solutions that emerged during the interviews.

1. Keeping homeowners out of default and foreclosure

Many inclusionary housing programs have developed pre-purchase and post-purchase activities and requirements to prevent defaults from occurring in the first place. These educational activities are important not just for keeping the homeowner out of default and foreclosure but also for retaining inclusionary homes. Loss mitigation and foreclosure prevention activities become even more important when programs do not have affordability controls that survive foreclosure (a trend reported by case study sites caused by mortgage lending institutions wanting to ensure that they can sell foreclosed properties without restrictions, fee simple).

One of the ways that homeowners can become vulnerable to foreclosure is by refinancing the home for more than the affordable property is worth or by assuming an unsupportable second mortgage. As discussed above, programs have several legal tools at their disposal to improve notification in these situations. But with notification remaining inconsistent, many programs have undertaken additional activities to promote sustainable homeownership for participating households:

> *Homebuyer education.* Half of the programs profiled require homebuyers to complete pre-purchase counseling with a HUD-certified organization. Just over half of programs also require each homebuyer to attend an orientation session that includes basic elements of the program and, in many cases, a careful explanation of the resale formula.
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> *Standards and approvals for mortgage loans.* Half of the case study programs set underwriting standards for loans assumed by homeowners. San Mateo began this practice after multiple homebuyers during the mid-2000s took on mortgages that were improperly underwritten or unsustainable. In 2010, the city clarified requirements for home purchase and refinance loans assumed by the homeowner to promote the sustainability of homeownership. All but one program in the case study set requires that homeowners receive approval from the program in order to refinance or obtain a home equity line of credit.

*Annual reminders and certifications of compliance with program requirements.* Seven of the programs send out annual reminders of program requirements. San Mateo has also found it helpful to require its homeowners to complete annual certification forms affirming that they are in compliance with permissible types of home loans that can be assumed and the underwriting standards required for refinancing.

*Proactive outreach.* Several programs keep in touch with homeowners on a regular basis, such as mailings or annual invitations to trainings and events, which remind homeowners to contact the program if any financial difficulties arise. The sooner programs become aware of a potential foreclosure situation, the easier it is for them to help cure it or facilitate a work-out solution.

*Fees as early warning systems.* As described below, some programs assess homeowners a stewardship fee to help cover the costs of retaining inclusionary homes over time. Other inclusionary housing programs place homes in a land trust, whereby the land is owned by the CLT and leased to the homeowner for a nominal monthly ground lease fee. The CLTs closely monitor delinquencies on ground lease fees as early warnings of potential financial difficulties; they use the detection of ground lease payment delinquency to intervene with homeowners at risk of delinquency on mortgages, property taxes, or HOA dues.

2. Ensuring that homes remain in good shape for future occupants and are properly maintained over time.

A few jurisdictions expressed concern that properties may not be well maintained over time. A lack of proper maintenance could put inclusionary homes at a disadvantage when owners seek to sell them in the future, and ultimately, lead to their loss from the affordable housing stock. Park City has already experienced this as a problem. Two of its earliest inclusionary housing properties created in 1996 and 1998 have begun to show wear due to deferred maintenance. The owners are now struggling to sell the properties, in part due to the poor condition of the buildings.

To ensure ongoing investment in for-sale inclusionary housing properties, some jurisdictions provide financial support for maintenance and upkeep. For example, Chapel Hill provides periodic subsidies to its CLT, Community Home Trust, to conduct necessary renovations or maintenance work on homes before they pass from one homeowner to the next.

Another approach to ensuring properties are maintained is to require reserves for individual homeowners to prevent deferred maintenance. Park City, for example, is considering requiring that the homeowners' associations of properties with inclusionary homes report to the city annually about their reserve levels. The city is also considering a requirement that individual inclusionary homeowners set aside reserves for home upkeep over time. The Community Home Trust in Chapel Hill assesses a monthly homeowner repair/replacement reserve fee, which owners can

access to replace carpeting, HVAC, or similar appliances. In Burlington, the Champlain Housing Trust assists homeowners with financial assistance for major home repairs and general upkeep. New Jersey jurisdictions draw on local housing trust funds supported by in-lieu fee payments to repair existing units.

3. Making sure income-qualified households are occupying the units and preventing illegal renting.

Several jurisdictions struggle to prevent illegal renting of inclusionary homeownership units. While none describe this as a major problem, those that mentioned it indicated that they were not able to completely stamp it out.

To address this problem, some jurisdictions send out annual occupancy verification forms and closely monitor those that are not returned. Montgomery County, for example, works with its code enforcement division to inspect homes that raise this type of red flag. San Mateo conducts an annual review of tax records to see where property tax information is being sent. Some programs also make it easy for neighbors to report illegal occupancy of inclusionary units by circulating program contact information.

4. Ensuring residents can afford the high and rising cost of condominium fees.

Condominium fees can increase substantially over time, making the overall costs of homeownership unsustainable for low- and moderate-income households. Rising condominium fees are a growing problem for many municipalities that are seeing their new for-sale inclusionary homes primarily built as condominiums, including Washington, DC, Fairfax County, and Cambridge. Program administrators can set the initial affordable home price low enough to offset high initial condominium fees but, increases in these fees over time for new amenities or building repairs, can in some cases rival mortgage payments on below-market-rate units, leading to high overall housing costs, potential default, or homeowners being forced to sell their units.

Two promising solutions emerged through the research:

> *Keep condo fees manageable through proper initial pricing that also anticipates a rise in condo fees over time.* Shortly after Washington DC adopted its inclusionary zoning program in 2007, there were several cases where high homeowners' association (HOA) and condo fees were compromising the overall affordability of affordable homeownership units created through a separate city program. This prompted the city to survey condo fees citywide to compare its cost assumptions about fees in its affordable homeownership program to prevailing practice. Having discovered that its fee assumptions were too low, the city lowered its standard affordable inclusionary home price in 2012 by 11 percent to better reflect prevailing condo fees in the monthly cost of the home and provide room for fees to rise over time.

*Require that condo fees be proportional to the lower home values of inclusionary ownership units*. Not all states authorize localities to require lower HOA or condominium fees for lower-value properties, but some do. The city of Cambridge takes advantage of this legal permission. It requires that developers and HOAs assess fees based on the reduced value of the inclusionary home to ensure that owners of affordable units are not paying fees as high as market-rate owners. Fee increases must also be proportional. Staff works to proactively address concerns about ad valorum assessments from condominium associations by educating them about what the owners of the affordable condominiums are giving up by agreeing to restricted resale prices.

5. Keeping track of units over time

Several programs acknowledged that they do not know exactly how many units they have produced through their inclusionary housing program. Often the lack of data on housing production is the result of lax stewardship practices and inadequate systems for monitoring during the early years of the program. In addition, difficulties with tracking inclusionary units over time occur because some programs manage portfolios of units with variable terms and affordability periods as a result of program requirements changing over time, which can complicate administrative and monitoring activities.

Some jurisdictions have found it helpful to utilize specialized computer software to track not just their large and growing inclusionary portfolio, but also the varying affordability periods, resale restrictions, and regular notifications involved with the constituent properties. Staff at the cities of Cambridge and San Mateo, for example, use Homekeeper software to help manage their for-sale portfolio. To monitor the city's rental portfolio, Cambridge uses Emphasys software commonly used by housing authorities.

*Rental Programs*

Almost all of the inclusionary housing programs studied have experienced rapid growth in rental housing in recent years. Roughly half now have portfolios that are predominantly comprised of rental housing, as shown in Table 3 above. Hence, the challenge of efficiently managing affordable rental housing is taking on growing importance. Typically, affordability requirements for rental units are established during the development process and managed by rental property managers. Many of the case study jurisdictions report that the challenges involve the number of rental units that need monitoring and the need to work with an increasing number of property managers in scattered locations throughout the jurisdiction to ensure enforcement.

With declining resources for staffing and the tendency for most third-party stewards to only handle homeownership units at present time, solutions for monitoring and stewarding rental units are few. As program director Brian Pine of Burlington said:

“This is what keeps me up at night.” Staff in Fairfax County spoke of being nervous about the “exploding” rental portfolio generated through their new WDU program.

Though there is still uncertainty about the best way to manage rental units in an inclusionary housing program, there is some guidance from the case study jurisdictions. Programs vary in how they approach the challenge of monitoring and stewarding rental units:

1. Some programs have found greater efficiencies by managing the rental property tenant selection and income verification process “in-house.”

Some jurisdictions with moderate-sized rental portfolios have shifted to handling the tenant selection and income verification process in-house. These jurisdictions report that a centralized, in-house approach is more efficient than working with dozens of property managers throughout the jurisdiction. In these instances, on-site property managers typically only retain the responsibility of annual income verification for tenants.

San Mateo, for example, found that property managers turn over so quickly that many were not handling tenant selection and income qualification properly. The city shifted to managing a master waitlist for all inclusionary rental units in the city. When a vacancy occurs in an inclusionary rental property, the city provides the property manager the names of the first five people on the waitlist. If the property manager elects not to select a particular individual on the list, s/he must provide the city with an explanation. According to program manager, Sandy Council, “This has been so much easier for everyone. Applicants don’t have to get on 15 waiting lists, and the city doesn’t have to constantly train a whole bunch of people.” The cities of Cambridge and Park City also administer their rental inclusionary housing programs in this way.

2. Other jurisdictions farm out the responsibility to property managers and rely on periodic audits to ensure ongoing program compliance.

A majority of case study jurisdictions delegate the responsibility of marketing and income qualification to the rental property managers and conduct regular trainings to ensure program requirements are being met. A few localities couple this decentralized approach to monitoring with periodic auditing to ensure greater quality control over the process. Some jurisdictions conduct random, surprise inspections of leasing records to stretch their enforcement capabilities without needing more staff.

No program, however, has solved the problem of monitoring a rapidly growing rental inclusionary portfolio. Accordingly, several jurisdictions discussed an interest in outsourcing the stewardship of the rental inclusionary housing portfolio to a third-party administrator. These types of partnership are discussed below.

Partnerships

Most program administrators report that they have insufficient staff to administer their programs effectively. Many places have faced major financial cuts in recent years. The strain of reduced financial resources has been especially acute in California, where the recent elimination of redevelopment agencies has eradicated funding previously used to partially support inclusionary housing administration. In Davis, CA, for example, the number of staff supporting the inclusionary housing program was reduced from 5.5 to 1.75 full-time employees during the past seven years. The city has had to rely on declining CDBG and HOME funding to cover the costs of its reduced staff. As the inventories of inclusionary housing units grow with the recovery of the housing market—particularly the resurgent rental market—few places have the necessary resources to increase program capacity.

*Third-Party Stewards and Administrators*

A handful of case study programs have found they have been able to reduce administrative and stewardship costs or improve administration by partnering with third-party stewards. Burlington, Irvine, Chapel Hill, and Denver all work with a separate CLT, which is responsible for administration and stewardship of some or all of the program's for-sale inclusionary housing units. In Burlington, for example, transferring the stewardship and administration of for-sale homes to the Champlain Housing Trust has enabled the city to reduce its program administration workload to approximately 10 percent of one full-time employee.

In Chapel Hill and Burlington, all new owner-occupied homes are placed with the CLT, though this is not explicitly required by policy. Burlington, however, does offer the Champlain Housing Trust first right of refusal for purchasing all for-sale inclusionary homes. Rental units are monitored in-house by the two cities, though Burlington is considering asking the Champlain Housing Trust to assume more rental stewardship activities as well, as the CLT has significant property management capacity. In Irvine, many new affordable homeownership homes are stewarded by the Irvine CLT.

In Denver, all of the for-sale inclusionary homes produced in the Lowry master planned community were placed with the Colorado Community Land Trust (CCLT). CCLT works extensively with homeowners to preserve units in jeopardy of foreclosure. CCLT can access a line of credit from Colorado Housing Finance Authority to buy back homes facing foreclosure and then resell the unit to eligible buyers. During the economic downturn, the foreclosure rate among Lowry inclusionary homes was zero, while in the other two master-planned communities in the city's inclusionary housing portfolio, foreclosure rates were 6 and 25 percent respectively.

In Redmond, the nonprofit organization, A Regional Coalition for Housing (ARCH), administers the entirety of the city's program, along with those of multiple other

jurisdictions in King County. Davis similarly partners with NeighborWorks of Sacramento to administer its inclusionary for-sale homes.

In New Jersey, most jurisdictions work with for-profit firms or nonprofit agencies to administer the entirety of their local inclusionary zoning programs.

In Redmond, Davis, and New Jersey, the regional scale at which third-party stewards operate allows for greater efficiencies than might be possible with single program administration. Furthermore, partnerships with high-capacity affordable housing organizations can result in better and more consistent program administration.

In addition to relieving stress on public agencies, third-party stewards are also able to more easily generate funds for stewardship through monitoring or administration fees. For example, the Champlain Housing Trust assesses a six percent fee on resales which it uses to cover the costs of programming. In Chapel Hill, the Community Home Trust charges homeowners a monthly $12-24 covenant fee. As mentioned above, fees such as these can serve also as early indicators for when homeowners may be at risk of mortgage delinquency.

*Partnerships with Mission-Driven Affordable Housing Developers and Housing Authorities*

Many inclusionary housing programs nationwide allow alternative ways of complying with affordability requirements, including off-site development and land dedication. These options can facilitate the development of affordable housing by mission-driven affordable housing developers, who then assume ongoing management responsibilities. Many of these developers not only specialize in managing affordable housing communities, but also bring a commitment to lasting affordability.

In Boulder, for example, all of the city's inclusionary rental housing is managed by one of a few nonprofit affordable housing developers or by the Boulder housing authority (known as Boulder Housing Partners). This is a result of the city's response to a 2000 Colorado State Supreme Court decision, which made it illegal to set affordability terms on rental properties. As a result, the city began to require market-rate developers to work with the housing authority or another nonprofit agency to produce their inclusionary housing rental set-aside requirement. The impact has been to significantly reduce the city's rental administrative burden. These types of partnerships are also common, while voluntary, in other case study jurisdictions, such as San Francisco.

Montgomery County has partnered extensively with its housing authority (the Housing Opportunities Commission, or HOC) to preserve and deepen the affordability of its inclusionary housing portfolio. Early in the program's history, HOC was granted a first right of refusal for purchasing for-sale inclusionary housing

units at initial sale and resale. HOC currently holds approximately 1,450 inclusionary units—roughly one third of the county's existing inclusionary housing portfolio.

Ultimately, CLTs, nonprofits, certain for-profit firms, and affordable housing developers, property managers, or housing authorities offer a variety of capacities and expertise to inclusionary housing programs that can improve outcomes, including the lasting preservation of units.

## Conclusion

Local inclusionary housing programs play an increasingly important role in the production and preservation of affordable housing. Declining federal funding for affordable housing programs will shift greater responsibility to states and localities to find innovative ways to meet local housing challenges. At the same time, new federal fair housing requirements will compel localities to look for new ways to increase the diversity of housing in their communities. Finally, the proliferation of inclusionary housing programs in recent years—in geographically and politically diverse places—will increase awareness and acceptance of affordability requirements tied to new development.

It is important to protect the public investment used to create affordable homes through inclusionary housing programs by developing strategies to ensure the long-term affordability of the housing units and preserve affordable homeownership and rental opportunities for future generations. The time is particularly ripe to promote inclusionary programs designed not only to produce but also to sustain affordable housing. The results of this case study analysis suggest several key conclusions about successful and innovative strategies to help ensure lasting affordability:

- Inclusionary housing programs can only be successful in meeting affordable housing needs if they are both producing and preserving units.

- Without the upfront commitment to long-term affordability, inclusionary housing programs will not be able to meeting ongoing affordability challenges.

- Long affordability periods that reset offer a compelling alternative to "perpetual" affordability periods and go a long way towards achieving lasting affordability.

- Supplemental legal tools beyond deed restrictions will be needed to improve notification of defaults, potential illegal resales and burdens encumbered by homebuyers through second mortgages and refinancing. Inclusionary housing programs should also have in place legal mechanisms that strengthen the program's ability to cure or purchase homes in foreclosure.

- The preemptive right of purchase can help strengthen a program's control of the resale process and proactively keep inclusionary units in the affordable inventory. It can also be a helpful tool for increasing the affordability periods of units built under previous, shorter-term requirements.

- Local jurisdictions need to be responsive to local housing market conditions and household demographics when designing resale formulas and should evaluate the efficacy of their design over time to ensure affordability is being preserved.

- Inclusionary housing programs must actively monitor and steward inclusionary units, either in-house or through external partnerships. The programs highlighted in this case study analysis often made good decisions about setting up affordability periods and legal mechanisms with the goal of promoting lasting affordability. However, critical activities around monitoring and stewardship are often inadequately implemented. Successful programs should look to develop partnerships with organizations that have strong stewardship practices—including CLTs—in order to ensure that the affordable housing created through a well-designed inclusionary housing programs remains affordable to future owners and renters.

- Tapping local housing trust funds, which can be supported through in-lieu fees, is a practical way to support repair and crucial ongoing maintenance of inclusionary housing units.

The in-depth analysis of these 20 inclusionary housing programs has provided unprecedented information about program elements fostering lasting affordability. However, additional research evaluating which models work best for preserving affordable units under different conditions is needed. For example, are there some program requirements that are more successful in encouraging the development and preservation of inclusionary housing units during market downturns? Do some supplemental legal mechanisms work better to ensure lasting affordability in states where perpetual affordability terms are prohibited? To what extent does partnering with a CLT or other third-party entity for stewardship activities result in greater preservation and increased efficiencies for the inclusionary housing program?

There is also more that needs to be understood about the necessary monitoring and stewardship activities associated with rental housing created through inclusionary housing programs. To date, much of the enforcement and monitoring of rental units has been the responsibility of property managers with relatively little oversight from local governments. Additional research is needed to identify best practices around rental stewardship. For instance, are property managers enforcing affordability terms? Does in-house monitoring of rental units increase compliance and compliance with fair housing laws?

As inclusionary housing becomes a more common means by which affordable housing is created in communities across the country, there is a general need for better understanding of the program characteristics that are associated with meeting affordable housing needs, particularly in different legal, economic, and political climates. The national directory of inclusionary housing programs that was developed for this research marks an important first step in the data collection efforts needed to conduct more evaluative research of inclusionary housing programs. Future work should build out the national dataset with additional data on affordable housing production and preservation in order to advance knowledge in the field and provide guidance to practitioners and policy makers on best practices for meeting housing challenges and creating lasting affordability through inclusionary housing programs.

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## Appendix A: Case Study Profiles

The following profiles of inclusionary housing policies and programs were based upon the information gathered during the interviews and, in most cases, follow-up conversations with administrators. Different procedures and practices are highlighted in the profiles to varying degrees of depth and breadth. If a particular profile does not mention a certain procedure or practice, it should not be inferred that the program or its administrators does not use set procedure or practice.

## Davis, California

*Place Overview*
**2013 Population Estimate (Census)**: 66,205
**Population change from 2000 to 2013 (Census)**: 10%
**Location**: Sacramento-Roseville-Arden-Arcade metro area

*Policy at a Glance*
**Name**: Municipal Code Section 18.05: Affordable Housing
**Year adopted**: 1987 as a General Plan Policy and 1990 as a Code Section
**Policy type:** Mandatory
**Production as of March, 2014**: Approximately 2,000 (1,200 rental, 800 for-sale)
**Geographic scope**: Citywide
**Affordable housing set-aside**: 25-35% (rental), 10-25% (for-sale)
**Incomes targeted**: ≤80% of area median income (rental); ≤120% (homeownership)
**Development size applicability**: 5 or more units
**Alternatives to construction**: in-lieu fee, land dedication

*Evolution*
Davis's original affordable housing policy of the 1970s and 1980s focused on home design. The thought was that encouraging smaller dwelling units would mean the construction of affordable units. Over time, city officials realized that this approach was not sufficient, as local demand eventually made smaller units unaffordable to working class households. Moreover, smaller for-sale units were more prone to being purchased by investors and converted into rental units, thereby reducing the supply for affordable for-sale homes.

From this realization, local homebuilders, nonprofits, and the public sector coalesced around an inclusionary housing policy in the late-1980s. In recent years, the city has made certain revisions. First, the 2007-2009 recession resulted in: (1) a greater focus on obtaining in-lieu fees from developers, as those resources provide greater flexibility for where to locate affordable housing, and (2) increased options and a sliding scale percentage requirement to acknowledge denser development with greater constraints. Second, lax resale restrictions in the original policy motivated more stringent resale restrictions in the form of a 3.75% annual appreciation cap. Last, the loss of redevelopment funds from the state has caused the city to rely more on other sources (e.g. HOME and local Housing Trust Fund dollars) to help finance projects with solely affordable units.

*Affordability Duration*
**Rental control period**: Perpetuity
**For-sale control period**: Perpetuity
**Rationale:** With limited housing stock and affordable housing resources, it has become more and more critical to preserve affordable housing into the unforeseeable future.

*Homeownership Program*

**Administrator:** Predominantly in-house.
**Legal mechanism:** Deed covenant.
**Homebuyer education**: Two non-profit organizations, Community Housing Opportunities Corporation (previously named Davis Community Housing) and NeighborWorks Sacramento provides homebuyer education classes if required by funding sources.
**Marketing and homebuyer selection**: NeighborWorks Sacramento facilitates marketing and homebuyer eligibility verification. NeighborWorks advertises resales and certifies interested potential homebuyers. The city will conduct a lottery of qualified households who apply for housing. The city also implements a set of preferences for different household types, including local employees, seniors, and persons with disabilities.
**Are there guidelines for permitted mortgage loans**: No.
**Annual reminder of program terms**: No, aside from monitoring of owner occupancy.
**Post-purchase support:** None.
**Resale process**: The city holds the right of first refusal for inclusionary units that might be resold. Within a 60-day window, the city will find a qualified buyer from its waiting list and present that buyer to the unit seller. In the event that there is not a qualified buyer on the waiting list, and the city does not have the right of first refusal for a particular unit, the unit can be sold to a non-income qualified owner-occupant buyer after 60 days.
**Resale formula**: Fixed-percentage formula, 3.75-to-5.5% appreciation cap.

*Rental Program*

**Marketing and tenant selection**: Same as above.
**Income verification**: On an annual basis, the city reviews the rent and household incomes for affordable rental units. City staff will conduct a more thorough audit of 10% of each project's information.

*Program Highlights/Ongoing Issues*

**Land Dedication**. Land dedication has allowed a variety of affordable housing types, including a domestic violence shelter, senior housing, family housing, housing for individuals leaving homelessness, transitional housing, and housing for those with developmental disabilities.

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## Irvine, California

*Place Overview*
**2013 Population Estimate (Census)**: 236,716
**Population change from 2000 to 2013 (Census)**: 66%
**Location**: Los Angeles-Long Beach-Anaheim metro area

*Policy at a Glance*
**Name**: Affordable Housing Implementation Procedure
**Year adopted**: 2003
**Policy type:** Mandatory
**Production as of March, 2014**: 417 (404 rental, 13 for-sale)
**Geographic scope**: Citywide
**Affordable housing set-aside**: 15%
**Incomes targeted**: ≤60% of area median income (rental and for-sale)
**Development size applicability**: 50 or more units
**Alternatives to construction**: In-lieu fee; off-site conversion of market rate to affordable housing; and credit transfer between properties. The credit transfer option is available whenever a developer builds more than the required number of affordable units on a given site; when constructing a future project, the developer can count difference between what is required and what is provided on the first project.

*Evolution*
Irvine was one of the early adopters of inclusionary housing, having implemented its original policy in the 1970s. Irvine has a major company that owns the vast majority of its land, which was willing to comply with voluntary housing goals before 2003. However, the original policy did not have any resale controls, thereby allowing most of the original units to be lost from the affordable housing stock. The program became mandatory in 2003.

*Affordability Duration*
**Rental control period**: 30 years
**For-sale control period**: 30 years required by policy; 99-years for units in Irvine CLT.
**Rationale:** The current version of the policy specifies a 30-year control period for both rental and for-sale units. Affordability durations tend to vary by projects and funding sources. For instance, projects that utilize low income housing tax credits are required to be affordable for 55 years. For homeownership units that are developed by or placed into the Irvine CLT, affordability is preserved for 99 years. The city developed the Irvine Community Land Trust as a way to retain affordability of for-sale homes in perpetuity.

*Homeownership Program*
**Administrator:** In-house or Irvine Community Land Trust.
**Legal mechanism:** Deed covenant; ground lease for future homes in Irvine CLT.

**Homebuyer education**: Potential homebuyers are required to go through pre-purchase counseling with a non-profit partner organization. Developers are made aware of these counseling services and refer potential buyers to homebuyer education.
**Marketing and homebuyer selection**: Housing developers are required to submit an affordable housing plan to the city. This plan will outline how they will comply with the ordinance, namely the option they plan to follow to fulfill the ordinance's intent (e.g. provide on-site units, pay a fee, dedicate land off-site). The plan will specify the developer's marketing strategy, which must be established 120 days before a building's lease-up.
**Are there guidelines for permitted mortgage loans**: Yes.
**Annual reminder of program terms**: No.
**Post-purchase support:** The program monitors insurance and owner-occupancy. Additional support may be offered by Irvine CLT for future homeownership units.
**Resale process**: Partially due to the relatively small number of for-sale units produced, the city has not experienced as resale as of March 2014. Its policy states that it will review and approve all resales. The city maintains the right of first refusal on any inclusionary unit that is up for resale.
**Resale formula**: Index-based formula that establishes the maximum resale price, which equals the initial purchase price plus an increase based on the AMI plus the value of approved capital improvements.

*Rental Program*
**Marketing and tenant selection**: Property managers handle the marketing of units and screening of tenants for both new units and vacancies.
**Income verification**: The project developer is responsible for verifying incomes of prospective buyers or tenants. The city monitors the rental properties by periodically making site visits and ensuring that the households are following the program requirements, especially those that pertain to tenant incomes.

*Program Highlights/Ongoing Issues*
**Credits program poses challenges:** The credits program is very difficult to understand and it reduces the overall number of affordable housing units produced. Staff would prefer to do away with the credits program; however, they anticipate that developers would not support this modification.
**Reselling affordable units with down payment assistance is no longer available**: As of March 2014, the city was working with its first set of re-sale homes. To make the homes more affordable, the initial buyers accessed down payment assistance loans from the city's redevelopment agency. However, since the state redevelopment agencies were dissolved due to the loss of state-level support for redevelopment, the down payment assistance loans are no longer available for subsequent buyers. The affordability of these homes is therefore compromised and poses challenges for finding future buyers at target income levels who cannot access down payment assistance. The lesson here is that affordable pricing needs to ensure that homes are affordable for initial and subsequent buyers, regardless of whether they can access down payment assistance.

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## San Francisco, California

*Place Overview*
**2013 Population Estimate (Census)**: 805,235
**Population change from 2000 to 2013 (Census)**: 4%
**Location**: San Francisco–Oakland–Hayward metro area

*Policy at a Glance*
**Name**: Inclusionary Housing Program
**Year adopted**: 2002
**Policy type:** Mandatory
**Production as of March, 2014**: 1,560 affordable homes (632 rental; 928 for-sale)
**Geographic scope**: Citywide
**Affordable housing set-aside**: 12%
**Incomes targeted**: ≤ 55% area median income (rental); ≤ 90% (for-sale)
**Development size applicability**: 10 or more units
**Alternatives to construction**: "Inclusionary fee"; land dedication; off-site construction. The affordability requirement increases to 20% for developments that choose to build off-site, dedicate land, or pay the Inclusionary fee.

*Evolution*
San Francisco adopted a "loose" version of its current inclusionary zoning policy in 1992. It applied only to Planned Unit Developments (PUDs) and developments seeking conditional use permits. It required 10 percent affordability and provided no alternatives to on-site construction. The policy generated approximately 300 inclusionary housing units. In 2002, the policy was expanded to all new residential developments, including those allowed "by right" as well as previously exempted live-work lofts. The policy added off-site and in-lieu fee compliance options. In 2006, the affordability requirement was increased to 15 percent. In 2008, the city increased its affordability requirements in areas of the city that were being significantly "upzoned."

In 2010, the city fundamentally changed the structure of its policy to comply with a new State Supreme Court decision known as the *Palmer* decision, which has cast doubt on the legality of mandatory inclusionary housing for rental units statewide. The city's policy is now based on an affordable housing fee, but grants developers the option of meeting their fee obligation through on-site units, off-site units, or land dedication. Given high Inclusionary fees, and the 20 percent requirement that applies to developments that pay the fee, roughly half of developers choose to build rental inclusionary units rather than pay the fee. In 2012, the city reduced its inclusionary housing requirements across the board to current levels but retained the structure of slightly higher requirements for neighborhoods that had been recently upzoned.

*Affordability Duration*
**Rental control period**: Perpetuity.
**For-sale control period**: Perpetuity.

**Rationale:** The policy adopted in 2002 had an affordability term of 50 years. The city moved to perpetual requirements in 2007 because housing advocates wanted greater assurance that the city would be able to hold onto affordable units over time.

*Homeownership Program*

**Administrator:** In-house.
**Legal mechanism:** Deed covenant.
**Homebuyer education**: Mandatory. The course involves 8 hours of one-to-one training. Homebuyers are also required to attend an orientation session about basic elements of the program.
**Marketing and homebuyer selection**: The developer will hire an agent to develop and implement a marketing plan. The city provides income-qualified applicants.
**Are there guidelines for permitted mortgage loans**: Yes.
**Annual reminder of program terms:** Yes. Program staff will also check on an annual basis to make sure the homeowner is still living in the unit and paying insurance, HOA fees, and the mortgage.
**Post-purchase support:** The program provides some educational classes and financial counseling post purchase.
**Resale process**: Resales are handled through agents. The city reviews and must approve all resales.
**Resale formula**: The resale price is determined by adding to the original price a pre-determined percentage increase each year.

*Rental Program*

**Marketing and tenant selection**: The city holds ongoing lotteries to fill vacancies in all rental inclusionary units.
**Income verification**: Conducted annually by the property manager and must be forwarded to the city.

*Program Highlights/Ongoing Issues*

**Ensuring notification when a homeowner refinances.** In addition to its deed restriction, the city records a "note in deed" with the property, essentially a lien for the difference between the affordable price and fair market value. Staff report that this has been a great tool for being notified if a homeowner is trying to refinance or sell the home at an unrestricted price.
**Increasing efficiency in the face of reduced administrative funding.** In 2007, the city added a great deal more structure to its policy, with clearer policies and a new monitoring and procedures manual. This has proven to be very helpful for managing the city's high volume of inclusionary housing units, especially its for-sale homes, in the absence of administrative funding previously received from the redevelopment agency (redevelopment agencies across the state were dissolved in 2012).
**Rental administrative challenges.** Staff report that rental inclusionary units involve more ongoing, administrative work than for-sale inclusionary units, particularly during the re-leasing process.

**Paying for monitoring.** The city adds a 5% fee to the overall closing costs of inclusionary home sales to support some of the costs of the city's for-sale monitoring.

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**San Mateo, California**

*Place Overview*
**2012 Population Estimate (Census)**: 99,670
**Population change from 2000 to 2010 (Census)**: 5%
**Location**: San Francisco-Oakland-Fremont metro area

*Policy at a Glance*
**Name**: Below Market Rate Program
**Year adopted**: 1992
**Policy type:** Mandatory
**Production as of March, 2014**: 325 affordable homes (196 rental; 129 for-sale)
**Geographic scope**: Citywide
**Affordable housing set-aside**: 10-15%[9]
**Incomes targeted**: 50-80% of area median income (rental); ≤ 120% (for-sale)
**Development size applicability**: 5 or more units
**Alternatives to construction**: Off-site construction (but only if applicant demonstrates that on-site construction is infeasible and the city approves. To date, no applicant has made this case.

*Evolution*
The city's inclusionary housing program was created through a height referendum. A developer was proposing a 10-story building as part of a major development downtown, where height were generally restricted to 3-to-4 stories. Residents concerned about excessive heights placed a measure on the ballot that included a 10 percent inclusionary requirement along with a height limit compromise. The ballot measure was successful. Later, in the early 2000s, the city increased its set aside requirement to 15 percent (or 10 percent with deeper affordability).

*Affordability Duration*
**Rental control period**: Life of building.
**For-sale control period**: 45 years
**Rationale:** City decision-makers wanted perpetual affordability for rental units because they did not want affordability to expire. For-sale inclusionary units do not receive city assistance so the program sought to match affordability requirements with Redevelopment Agency standards. However, the affordability period is reinstated every time a home resells so staff were confident that, for the majority of the units, the affordability is effectively permanent.

*Homeownership Program*
**Administrator:** In-house.
**Legal mechanism:** Deed covenant.

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[9] 10 percent if rental units are affordable for very low-income households, or for-sale units are affordable for lower-income households. Otherwise 15 percent.

**Homebuyer education**: Not required. But homebuyers are required to participate in a one-on-one orientation session about basic elements of the program and the resale process.
**Marketing and homebuyer selection**: The city hires a realtor to coordinate sales and resales. This includes maintaining a waiting list, coordinating the sales agreement, escrow, and closing, and conducting income verifications.
**Are there guidelines for permitted mortgage loans**: Yes.
**Annual reminder of program terms:** Yes. Program staff also sends homeowners an annual certification form, confirming that they are in compliance with all program requirements. This is a new feature of the city's monitoring program and began seven years ago after the city discovered that some homeowners had taken out second loans that were improperly underwritten, over-encumbered their properties, and led to foreclosure proceedings. Staff also regularly checks for junior liens and records a request of notice of default by other lien holders. Annually, staff also checks property tax records, which can help detect non-compliance with owner-occupancy requirements (if the address on file is different than the inclusionary home).
**Post-purchase support:** No. As part of the annual certification, the city sends out program compliance reminders on topics such as how to sell your home, tracking capital improvements, refinance process, etc.
**Resale process**: The program reviews and must approve all resales. The city also has a preemptive option to purchase units at resale at the established affordable price and uses this option regularly, assigning the right to purchase to an income-eligible buyer. The homeowner selling the inclusionary home is required to pay for inspection prior to resale.
**Resale formula**: Index-based. The resale price is determined by adding to the original price the percentage change in area median income.

*Rental Program*
**Marketing and tenant selection**: City staff manages a centralized waiting list, income-qualifies tenants, and selects tenants for all rental inclusionary units. Whenever there is a vacancy, the city provides the property manager with the names of the first five households on the waiting list that match the vacated unit size.
**Income verification**: Property managers conduct annual income verification and submit annual reports.

*Program Highlights/Ongoing Issues*
**Greater enforcement through a deed of trust.** Initially the city's program solely used a deed covenant to establish resale restrictions. But leading up to the housing downturn, staff found that owners were refinancing improperly and recorded resale restrictions were being ignored by title companies. The city then switched to requiring a note and deed of trust. This is a lien placed against the property equivalent to fair market value less the affordable price, sometimes referred to as the "Excess Sales Proceeds." The city is now notified when improper liens are placed on an inclusionary property. Staff also pointed out that if an illegal sale occurs, the city will at least be paid the excess sales proceeds rather than the seller collecting a windfall by selling at a price above the restricted price.

**In-house rental management has been more efficient.** Property managers used to handle the marketing, income qualification and tenant selection process for inclusionary units in their properties, using separate waiting lists. City staff was only responsible for training property managers in program requirements. But staff found that property managers turned over so frequently that units were being filled improperly and the administrative burden to train so many property managers was too great. The city decided to take on the administration of managing a master waiting list for all its rental inclusionary properties and handle the tenant selection and initial income qualification process. Staff report that "this has been so much easier for everyone," including applicants who no longer have to place their names on up to 15 separate waiting lists. Property managers still conduct annual income verifications and file compliance reports. City staff will also conduct a random site visit once every couple of years.

**Large unit incentives.** The city's policy provides an incentive for larger, family-sized units by allowing developers to count one three-bedroom affordable unit as equivalent to two smaller units.

*Contact Info*

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## Santa Monica, California

*Place Overview*
**2013 Population Estimate (Census)**: 92,472
**Population change from 2000 to 2013 (Census)**: 10%
**Location**: Los Angeles-Long Beach-Anaheim metro area

*Policy at a Glance*
**Name**: Affordable Housing Production Program (AHPP)
**Year adopted**: 1998
**Policy type:** Mandatory
**Production as of March, 2014**: Approximately 1,000 (2 for-sale, all others are rental)
**Geographic scope**: Citywide
**Affordable housing set-aside**:

> **Rental**: 5% of units for extremely low income households; 10% of units for very low income households; or 20% of units for low income households. If a project is in a non-residential zone, 100% of the set-aside must be for moderate-income households
> **For-sale projects**: 4-15 units, 20% of units for moderate-income households; 16 or more units, 25% of units for moderate-income households

**Incomes targeted**: ≤60% of area median income (rental); ≤100% (homeownership)
**Development size applicability**: Two or more units
**Alternatives to construction**: Off-site new construction (must be within ¼ mile radius of the market-rate units), land dedication, in-lieu fees. Off-site construction option requires 25% more affordable housing than would be required on-site option.

*Evolution*
In 1990, Santa Monica voters passed Proposition R, requiring that 30% of new multifamily units be affordable homes. Starting in 1998, the AHPP became the program to implement Proposition R. In the more than 20 years since Proposition R was passed, approximately 34% of new multifamily units have been created as affordable units.

*Affordability Duration*
**Rental control period**: 55 years
**For-sale control period**: 55 years.
**Rationale:** City staff initially preferred a 99-year or perpetual affordability term, but decided to use California redevelopment law, which requires 55 years, as a guide instead,.

*Homeownership Program*
**Administrator:** In-house.
**Legal mechanism:** Deed covenant.
**Homebuyer education**: The AHPP does not require prospective homebuyers to attend an education session nor a general orientation to the program.

**Marketing and homebuyer selection**: Initial marketing is the responsibility of the developer. In cases where demand for the units is expected to be high, the City may require that the developer work with the City to hold a lottery.
**Are there guidelines for permitted mortgage loans**: Yes.
**Annual reminder of program terms**: No.
**Post-purchase support:** No.
**Resale process**: The city reviews and approves all resales. The city does not currently inspect the home upon resale, nor does it require the homeowner to make needed repairs before resale.
**Resale formula**: Mortgage-based formula.

*Rental Program*
**Marketing and tenant selection**: The city maintains a list of applicants from which they select households whenever a new unit is available. Once households are selected, they are referred to the development whereby property managers show them the available units and verify their income eligibility.
**Income verification**: On an annual basis, the developers file an online report indicating the compliant incomes of their affordable unit tenants. The city then audits the reports to see the documentation on which the developers relied to compile the reports.

*Program Highlights/Ongoing Issues*
**Nearly all inclusionary units are rental**: The dynamics of the local housing market have produced almost all rental inclusionary units. According to program administrators, condo developers will nearly always opt to pay the in-lieu fee instead.
**High share of affordable properties**: Partially due to the production of the AHPP, almost 10% of all existing multifamily properties in Santa Monica have deed covenants with affordability controls.

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**Boulder, Colorado**

*Place Overview*
**2013 Population Estimate (Census)**: 103,166
**Population change from 2000 to 2013 (Census)**: 9%
**Location**: Denver-Aurora metro area

*Policy at a Glance*
**Name**: Inclusionary Housing
**Year adopted**: 2000
**Policy type:** Mandatory
**Production as of May, 2014**: approximately 750 (625 for-sale, 125 rental).[10]
**Geographic scope**: Citywide
**Affordable housing set-aside**: 20%
**Incomes targeted**: ≤ 80% area median income and 81% to 113% AMI (for-sale); ≤ 60% area median income (rental).
**Development size applicability**: 1 or more units
**Alternatives to construction**: In-lieu fee; land dedication; off-site construction; buying down and deed-restricting existing market-rate properties.

*Evolution*
The city of Boulder's inclusionary housing policy began as a voluntary policy in 1980, but two versions of this voluntary policy have produced virtually no units.[11] In 2000, the city converted to a mandatory policy resembling its current form today. Initially developers were required to meet at least half of their inclusionary housing obligations through on-site housing but in 2010 this requirement was eliminated, allowing greater use of the option to build off-site or pay an in-lieu fee.

*Affordability Duration*
**Rental control period**: Perpetuity.
**For-sale control period**: Perpetuity.
**Rationale:** City staff and council members were intent from the start on ensuring that the inclusionary housing policy would have the longest impact possible.

*Homeownership Program*
**Administrator:** In-house.
**Legal mechanism:** Deed covenant.
**Homebuyer education**: Required. Homebuyers must complete a HUD-approved homeownership training class and participate in a city-sponsored orientation session that explains the program and affordability restrictions.
**Marketing and homebuyer selection**: Mandatory 30-day open marketing and fair selection for permanently affordable homes. City collaborates with stakeholders and

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[10] Approximately 500 additional affordable units have been leveraged with the help of over $33 million in cash-in-lieu payments. Of these units, approximately 75 percent have been rental, and 25 percent homeownership.

[11] Schwartz, et al. (2010).

other housing providers on program marketing efforts. City certifies buyers and conducts lotteries.
**Are there guidelines for permitted mortgage loans:** Yes.
**Annual reminder of program terms**: Yes.
**Post-purchase support:** The city provides education to homeowner associations and funds the Boulder County Housing and Community Education program, which provides post-purchase counseling. The city also offers a home repair program for low-income homeowners.
**Resale process**: The city determines the maximum resale price based on the covenant formula and monitors and approves all resales. The city also qualifies buyers, confirming income and asset eligibility and readiness for homeownership. City assessment of the condition of affordable homes is required. The city requires that homeowners make needed repairs before resale or has the right to reduce the maximum resale price by the cost of repairs.
**Resale formula**: Index-based. The resale price is equal to the original purchase price plus an annual increase tied to the change in the area median income (AMI) or the consumer price index (CPI), whichever is smaller, up to a maximum percentage change of 3.5%. The maximum resale price also includes capital improvement credit, closing cost credit and a shared realtor commission of 2.5% of the affordable price.

*Rental Program*
**Marketing and tenant selection**: Conducted by the property manager.
**Income verification**: Conducted by the property manager.
**Other**: A 2000 Colorado State Supreme Court decision[12] made it illegal for Colorado municipalities to require developers to restrict the price of rental inclusionary housing units, because such practice was found to be inconsistent with state law forbidding rent control. But the city of Boulder has found a way to generate rental inclusionary housing by utilizing an exemption granted in state rent control law to housing authorities or "similar agencies." The city requires developers to work with a housing authority or "similar agencies" to create rental units. The housing authority or similar agency must own the affordable rental units, all or in part, and be responsible for ensuring affordability requirements for marketing, tenant selection, and income verification requirements are met over time.

*Program Highlights/Ongoing Issues*
**Challenges with off-site construction:** Offsite locations are reviewed on a discretionary basis based on a set of general criteria. Generally the city would prefer to see more inclusionary housing produced in places where affordable housing is presently limited. But neighborhood opposition has occasionally stymied approvals for some off-site locations.
**HOA fees:** High HOA and condo fees are becoming a growing affordability challenge.
**Reducing income targets for rental housing:** In recent years, market-rate rents in Boulder have dropped to levels affordable to households earning close to 60% of

[12] *Town of Telluride v. Lot Thirty-Four Venture, L.L.C.* (2000).

AMI, but program requirements still permit inclusionary rents to be priced at levels affordable for 60% of AMI.
**Long-term condition of inclusionary units**: The city requires inspections and some repairs to for-sale inclusionary homes prior to resale. However, in light its perpetual affordability requirements, the city is exploring ways to financially support the major repairs that will be necessary deeper into the lifecycle of for-sale inclusionary homes.

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**Denver, Colorado**

*Place Overview*
**2013 Population Estimate (Census)**: 649,495
**Population change from 2000 to 2013 (Census)**: 17%
**Location**: Denver-Aurora metro area

*Policy at a Glance*
**Name**: Inclusionary Housing Ordinance (IHO)
**Year adopted**: 2002
**Policy type:** Mandatory, for-sale housing only (developers may voluntarily set aside units for affordable rental housing)
**Production as of March, 2014**: 77 (all for-sale)
**Geographic scope**: Citywide
**Affordable housing set-aside**: 10% (only applies to for-sale housing)
**Incomes targeted**: 50-80% of area median income (can rise to 95% of AMI for "high-cost" structures[13])
**Development size applicability**: 30 or more units
**Alternatives to construction**: In-lieu fee, off-site construction

*Evolution*
Prior to adoption of the IHO, the city negotiated for affordable housing on a project-by-project basis with each developer. In the late 1990s, the city negotiated for large numbers of affordable units from three new, master-planned communities on the eastern edge of the city—Stapleton, Lowry, and Green Valley Ranch. These large-scale redevelopments have generated 1,056 affordable rental and for-sale homes (excluded from the production number listed above). Though these affordability agreements preceded the IHO, they are now referred to as the city's "Large IHO" program, because the incomes served and affordability durations of these homes closely resemble the requirements of the IHO. This affordable housing portfolio also includes rental housing.[14]

The IHO adopted in 2002 sought to provide greater predictability, as requested by private developers and the public, and to produce affordable for-sale housing units at a rate consistent with population and economic growth. Additionally, the IHO was motivated by concerns about rapidly rising home prices and gentrification in certain Denver neighborhoods. Production under this policy has been modest with 77 affordable for-sale homes generated since 2002. This is in part because the city has had few large-scale redevelopments since the policy's adoption. Accordingly, the actual IHO program is now referred to as the "Small IHO" program.

A 2006 effort initiated by a new department director streamlined the IHO to make it easier for all parties to understand and for city officials to update as needed. Another

[13] Developments in which buildings are greater than three stories tall, elevators are provided, and over 60% of the parking is in a garage.
[14] *2011 Inclusionary Housing Ordinance (IHO) Status Report*, August 11, 2011.

significant update came in 2013, when city officials allowed for affordable units to be sold to non-income-qualified households, so long as the maximum resale price adhered to ordinance requirements.

*Affordability Duration*
**Rental control period**: 15 years
**For-sale control period**: 15 years. If unit is sold 15-25 years after original purchase, the unit can be sold at market price, but the city receives half of any market appreciation.
**Rationale**: The for-sale control period was seen as a compromise between those supporting affordable home ownership opportunities and those concerned with household asset development. The 15-year period followed by ten additional years for recapturing shared appreciation was the compromised reached by both parties.

*Homeownership Program*
**Administrator:** In-house or Colorado Community Land Trust.
**Legal Mechanism:** Deed covenant or ground lease.
**Homebuyer education**: Recent amendments to the IHO require prospective homebuyers to complete pre-purchase counseling with a HUD- or city-approved organization.
**Marketing and homebuyer selection**: Project developers are required to submit an affordable housing plan to the Community Planning and Development Department and the Office of Economic Development. The plan must specify—among other things—how the developer will market the affordable units. The city will often suggest that developers separately list and describe the affordable units on their website or any other listing, in order to highlight their unique requirements.
**Are there guidelines for permitted mortgage loans**: No.
**Annual reminder of program terms**: No.
**Post-purchase support:** The city provides post-purchase education classes for homeowners.
**Resale process**: The current owner of a unit must provide 30-days notice to the city of his intent to sell the unit. From the date of receiving the notice, the city has 30 days to indicate if it wishes to purchase the unit and—if electing to do so—must purchase it within 60 days of the notice.
**Resale formula**: For units created before May 30, 2010: appraisal-based formula. For units created on or after June 1, 2013: index-based formula.

*Rental Program*
Due to a State Supreme Court decision in 2000 that declared mandatory rental inclusionary housing to be a form of impermissible rent control, the city has not produced rental units under its "Small IHO" program. It is not clear what role the city plays in monitoring rental units produced through the "Large IHO" program.

*Program Highlights/Ongoing Issues*
**Foreclosures were a significant problem during the downturn, but not for those stewarded by the Colorado Community Land Trust (CCLT) in the Lowry**

**community.** CCLT owns the land upon which each home is built; this model ensures long-term affordability by limiting a home's resale price but also allows the current owner to at least partially benefit from the home's appreciation. Additionally, CCLT works extensively with homeowners to preserve units in jeopardy of foreclosure. CCLT can access a line of credit from Colorado Housing Finance Authority to buy back homes facing foreclosure and then resell the unit to eligible buyers. The homeowner avoids foreclosure and CCLT keeps an affordable unit in its portfolio. During the economic downturn, foreclosure rates at the other two master-planned communities ranged from 6- 25%; the rate at Lowry was zero.[15]

**Long affordability terms remain contentious**. Denver's 15-year affordability terms are relatively short compared with other profiled jurisdictions.

**In-lieu fees are producing limited affordable housing.** Both the large-scale and small-scale IHO policies provide a cash subsidy of approximately $5,500 per affordable unit to partially offset the costs of meeting IHO requirements. The subsidy is paid out of the city's Housing Incentive Fund. Consequently, many in-lieu fees collected through the Small IHO program have been used to cover promised subsidy payments in the Large IHO program.

**Calibrating in-lieu fees based on neighborhood.** City officials are considering modified incentives and fees for certain neighborhoods. High cost neighborhoods would have higher in-lieu fees but also more generous cost offsets (public subsidies), whereas low cost neighborhoods would have lower fees and offsets.

**Negotiations with large developments**. The city's IHO policy does not preclude staff from negotiating different affordability requirements in large-scale redevelopments. Indeed, city staff indicated that they are willing to negotiate *smaller* set-aside shares for large developments, as long as they are able to produce at least 200 affordable units. Staff acknowledges that—while these negotiations produce differences between projects—the benefit of gaining many affordable units outweighs the downside of a slightly smaller set-aside.

*Contact Info*

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[15] *2011 Inclusionary Housing Ordinance (IHO) Status Report*, August 11, 2011.

## Stamford, Connecticut

*Place Overview*
**2013 Population Estimate (Census)**: 126,456
**Population change from 2000 to 2013 (Census)**: 3%
**Location**: New York-Newark metro area

*Policy at a Glance*
**Name**: Below Market Rate (BMR) Housing Program
**Year adopted**: 2003
**Policy type:** Mandatory
**Production as of March, 2014**: 449 (347 rental, 102 for-sale)
**Geographic scope**: Citywide
**Affordable housing set-aside**: 10%
**Incomes targeted**: ≤50% of area median income (rental and for-sale homeownership)
**Development size applicability**: Multifamily projects with 10 or more units
**Alternatives to construction**: In-lieu fee, land dedication, off-site construction

*Evolution*
Prior to 2003, there were unsuccessful attempts at implementing policies that created affordable housing via market-rate developments. For example, the city considered a proposal to establish a linkage fee for commercial properties to provide affordable housing to partially offset the housing demand generated by the jobs created, but these requirements proved to be unsuccessful. The zoning board eventually turned to inclusionary housing requirements for market-rate residential projects. The BMR program was created through a series of zoning amendments. Over time, various modifications have been added to the BMR program. For example, rising construction and land costs motivated the city to raise the original in-lieu fee; the current fee is equal to a certain percentage of the area median income, with a higher fee charged in-lieu of units meant for lower incomes.

*Affordability Duration*
**Rental control period**: Perpetuity
**For-sale control period**: Perpetuity
**Rationale:** The program was adopted when the city had just prepared an analysis projecting a shortage of 8,000 affordable housing units in the city. It was determined that as a relatively small city, Stamford needed every single affordable unit to last. The program administrator indicated that a conventional 30-year affordability term would allow affordable units to be lost at the same rate at which they were being built.

*Homeownership Program*
**Administrator:** In-house.
**Legal mechanism:** Deed covenant.
**Homebuyer education**: Homebuyer education is not required. A potential homebuyer can, however, elect to attend training via a local organization (the

Housing Development Fund) to help them qualify for a mortgage or access a down payment grant.
**Marketing and homebuyer selection**: The city uses a waiting list of persons interested in for-sale units. Selected households for a property may refuse an available BMR unit one time and remain on the waiting list. Upon a second refusal, the households are removed from the waiting list.
**Are there guidelines for permitted mortgage loans**: No.
**Annual reminder of program terms**: No.
**Post-purchase support:** None.
**Resale process**: Before a resale, the city requires that the seller complete any needed repairs. The city then requires inspection of the home upon resale.
**Resale formula**: Index-based formula.

*Rental Stewardship*
**Marketing and tenant selection**: Developers and property managers are responsible for marketing the affordable units, certifying the incomes of prospective tenants, and leasing the units. The waiting list mentioned above is also used for rental units.
**Income verification**: City staff reviews an annual report for each building, which indicates the tenants in each affordable unit and the eligibility of their incomes. At times, city staff audits more detailed records and responds to complaints from neighbors. City staff can also assess an administration fee, although they have not yet implemented one. While city officials have discussed contracting this work to a nonprofit organization, they have not yet chosen to do so.

*Program Highlights/Ongoing Issues*
**Multiple waiting lists make for administrative burdens**: Program administrators estimate that dozens of waiting lists exist for rental units, making the selection of prospective renters a complicated process.
**Limited income-group targeting**: The BMR program currently addresses primarily the housing needs of only one income range (50% of AMI) and needs to expand to serve multiple household incomes (25%, 50%, 60% and even 70% AMI).

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**Washington, District of Columbia**

*Place Overview*
**2013 Population Estimate (Census)**: 646,449
**Population change from 2000 to 2013 (Census)**: 13%
**Location**: Washington-Arlington-Alexandria metro area

*Policy at a Glance*
**Name**: Inclusionary Zoning (IZ)
**Year adopted**: 2007, implemented in 2009
**Policy type:** Mandatory
**Production as of March, 2014**: 53 (47 rental, 6 for-sale)
**Geographic scope**: Zone specific (mid- and high-density zones)
**Affordable housing set-aside**: Greater of 8-10% of residential floor area or 50-75% of bonus density
**Incomes targeted**: 50-80% of area median income
**Development size applicability**: New developments with 10 or more units, or renovations that increase the building floor area by 50% or more and add 10 or more units
**Alternatives to construction**: Off-site construction

*Evolution*
The precursor to the DC IZ program is the Affordable Dwelling Unit program, whereby city officials negotiate with developers of individual projects to set aside a certain share of units as affordable, generally in exchange for zoning relief, tax incentives, public financing and/or the right to purchase or lease District-owned land. In 2006, the DC Zoning Commission published zoning regulations while the city council passed enabling legislation that codified this one-off inclusionary housing program into a formalized IZ program (which became effective in March 2007). The IZ program was fully implemented in 2009 after the final administrative rules and the purchase price/rent schedule were published.

*Affordability Duration*
**Rental control period**: Perpetuity
**For-sale control period**: Perpetuity
**Rationale**: When the inclusionary program was being developed, city staff originally proposed a 20-year affordability term that reset upon resale (assuming the resale occurred within that 20-year term). However, the Zoning Commission pushed back on this proposal and instead opted for perpetual affordability; the Commission concluded that, as long as the resultant bonus density would last in perpetuity, so too should the affordability of the inclusionary units.

*Homeownership Program*
**Administrator:** In-house.
**Legal mechanism:** deed covenant.

**Homebuyer education**: Homebuyers are required to attend both a program orientation (to generally learn about the inclusionary program) as well as a pre-purchase counseling session with a HUD-certified organization.
**Marketing and homebuyer selection**: The DC Department of Housing and Community Development (DHCD) is initially responsible for marketing the units to households selected from a lottery list. The selected households are referred to the developer, who in turn shows the units to the households. If the developer cannot fill the units with household selected from the lottery list, they can do their own outreach to fill the units with income-eligible households. Available units are listed on the city's website of affordable housing options.
**Are there guidelines for permitted mortgage loans**: No.
**Annual reminder of program terms**: Yes.
**Post-purchase support:** No; however, the city has a network of counseling agencies that provide support upon request.
**Resale process**: DHCD reviews and approves all resales. DHCD does not currently inspect the home upon resale, nor does it require the homeowner to make needed repairs before resale.
**Resale formula**: Index-based formula, using ten-year compound annual growth rate of the area median income plus the value of eligible capital improvements, replacements, and repairs to the home.

*Rental Program*
**Marketing and tenant selection**: DHCD draws prospective, rental households from its lottery list. Once households are selected, they are referred to the development whereby property managers show them the available units and verify their income eligibility.
**Income verification**: The property managers for buildings with inclusionary units conduct annual income verifications.

*Program Highlights/Ongoing Issues*
**Detecting and preventing foreclosures**. Staff reports that the Federal Housing Administration (which provides access to FHA-insured mortgages, a critical source of mortgage financing) will not allow resale restrictions to survive foreclosure. The city maintains a preemptive option to purchase properties in foreclosure, but without advanced notifications of delinquencies and foreclosure proceedings, staff is concerned that they will have inadequate time to exercise their right to purchase in order to prevent the loss of an affordable unit from the inclusionary housing portfolio.
**Home prices (especially for rental units) are too close to market rate**s. In some instances, the calculated home prices (particularly monthly rents) are relatively close to the market rate for similar homes. This could be the result of rents for those at 80% of AMI actually *being* the market rate in particular neighborhoods.
**Condo fees**. To help inclusionary homeowners with high condo fees, especially in buildings with high-end amenities, staff has set the initial sales price formula so that it factors in a realistic, estimated condo fee, along with room for this fee to increase over time.

*Contact Info*

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## Chicago, Illinois

*Place Overview*
**2013 Population Estimate (Census)**: 2,718,782
**Population change from 2000 to 2013 (Census)**: -6%
**Location**: Chicago-Naperville-Elgin metro area

*Policy at a Glance*
**Name**: Affordable Requirements Ordinance (ARO)
**Year adopted**: 2003, expanded in 2007
**Policy type:** Voluntary (applies if a developer requests a zoning change that increases density or allows a residential use not previously allowed, receives city land or financial assistance, or pursues a Planned Development in downtown)
**Production as of March, 2014**: approximately 850
**Geographic scope**: Citywide
**Affordable housing set-aside**: 10%[16]
**Incomes targeted**: ≤60% of area median income (rental); ≤100% (homeownership)
**Development size applicability**: 10 or more units
**Alternatives to construction**: In-lieu fee

*Evolution*
Between 2003 and 2007, the city's ARO policy applied only to developments built with financial assistance, or built on discounted city land. In 2007, the policy was significantly expanded to require affordable units on all land sold by the city (not just discounted land), for Planned Unit Developments, and for projects in which a zoning change increased allowable floor area.

*Affordability Duration*
**Rental control period**: 30 years
**For-sale control period**: Units must be placed with the city's community land trust, which requires 99-year affordability.
**Rationale:** The for-sale affordability term used to be 5-30 years with a recapture mortgage, whereby the city would capture the difference between the affordable and market-rate price. But the city grew concerned that large number of homes quickly termed out of the program.

*Homeownership Program*
**Administrator:** Chicago Community Land Trust.
**Legal Mechanism**: Deed covenant.
**Homebuyer education**: Homebuyers purchasing condos must receive condo ownership training, and all homeowners must receive 8 hours of pre-purchase homebuyer education from a HUD-certified counseling agency. Homebuyers also must participate in a meeting at which the program requirements and resale formula are explained by staff.

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[16] 20% if developer receives city financial assistance (e.g. TIF)

**Marketing and homebuyer selection**: Initial marketing is the responsibility of the developer. In cases where demand for the units is expected to be high, the City may require that the developer work with the City to hold a lottery.
**Are there guidelines for permitted mortgage loans**: Yes.
**Annual reminder of program terms**: Yes.
**Post-purchase support:** Integration of the Chicago CLT with the ARO program has allowed the city to substantially increase its post-purchase support to inclusionary homeowners. Staff hosts annual events to get to know owners and encourages them to contact staff if they are experiencing financial challenges. The CLT contacts homeowners annually to confirm that they are still in compliance with program requirements. The CLT also provides post-purchase educational classes and financial counseling. Additionally, the CLT administers a $25 monthly stewardship fee, which helps pay for stewardship activities while also serving as an early indicator of potential financial trouble. Fee delinquencies alert staff to the possibility that homeowners may be experiencing larger financial challenges that may threaten mortgage payments.
**Resale process**: The city is required to be notified at time of resale and income-qualifies the new buyer.
**Resale formula**: The resale price is determined by adding to the original price a percentage of the difference between the home's appraised value at time of purchase and time of resale.

*Rental Program*
**Marketing and tenant selection**: Property managers handle the marketing of units and screening of tenants for both new units and vacancies. The City's Homeownership Center and Compliance Division verifies tenants' information prior to approving the sign-off of the initial lease.
**Income verification**: The Department of Planning and Development monitors rental program compliance.

*Program Highlights/Ongoing Issues*
**For-sale stewardship via municipal community land trust**: In 2006, the city created a quasi-public CLT, Chicago CLT, to improve its tracking, retention, and stewardship of for-sale inclusionary affordable units. All new for-sale inclusionary units must be placed in city's CLT. Interest in a municipal CLT's ability to steward ownership units over time grew after the housing downturn, when a small number of for-sale inclusionary homes were lost to foreclosure. There are presently 69 homes in Chicago CLT. Only one for-sale home placed in the CLT has been lost to foreclosure. The CLT does not, however, accept rental units.
**Condo fees**: Staff struggle with how to help inclusionary homeowners with high condo fees.
**99-year vs. 30-year renewable affordability terms**: Staff is considering changing to a 30-year affordability term that resets whenever a home is sold within the control period, in place of the current 99-year term for ownership units placed in the CLT. It believes this might be less "frightening" to prospective homebuyers.

*Contact Info*

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**Montgomery County, Maryland**

*Place Overview*
**2013 Population Estimate (Census)**: 1,016,677
**Population change from 2000 to 2013 (Census)**: +17%
**Location**: Washington-Arlington-Alexandria metro area

*Policy at a Glance*
**Name**: Moderately Priced Dwelling Unit (MPDU) Program
**Year adopted**: 1974
**Policy type:** Mandatory
**Production as of January, 2014**: 14,029 (4,468 rental, 9,561 for-sale)
**Geographic scope**: Countywide
**Affordable housing set-aside**: 12.5% minimum; up to 15% with density bonus (rental and for-sale)
**Incomes targeted**: ≤65% of area median income (garden apartment rentals); ≤70% (homeownership)
**Development size applicability**: 20 or more units (voluntary under 20 units)
**Alternatives to construction**: In-lieu fee; land transfer; off-site new construction or conversion of existing market units

*Evolution*
Montgomery County's MPDU program is the oldest continuously running inclusionary zoning program in the United States. Over the 40-year history of the program, various requirements have been amended. The original program applied to larger developments and required shorter control periods than are found in the current program. The MPDU set-aside requirement has varied between 12.5% and 15%, and the related maximum density bonus has varied between 20% and 22%. The maximum set-aside and density bonus may be even higher in certain incentive-based zones that were recently adopted, which require provision of public benefits under the optional method of development.

*Affordability Duration*
**Rental control period**: 99 years
**For-sale control period**: 30 years
**Rationale:** For the first three decades of the MPDU program, affordability terms were relatively short. The control period for both rental and for-sale MPDUs was set initially at five years, and the control period for for-sale MPDUs did not reset if the MPDU was sold during the control period. The control period was increased to 10 years in 1981 for both rental and for-sale MPDUs (still with no reset requirement on for-sale MPDUs). In 1989, the MPDU rental control period was increased to 20 years, and in 2002, a reset provision was added to the 10-year for-sale control period. It was not until the mid-2000s that county officials took more aggressive steps to preserve MPDUs by increasing control periods to their current levels—99 years for rental housing and 30 years for ownership units. These changes were motivated by the need to prevent so many MPDUs from terming out. Of the 14,000 inclusionary homes that

have been built in Montgomery County over the past 40 years, approximately 9,400 have reverted to market rates due to expiring control periods.

*Homeownership Program*

**Administrator:** In-house or Housing Opportunities Commission (the housing authority, or HOC).

**Legal mechanism:** Deed covenant.

**Homebuyer education**: Prospective owners must attend a first-time homebuyer class, an MPDU orientation seminar, and an MPDU application session.

**Marketing and homebuyer selection**: The county will conduct a computerized drawing, choosing from a list of eligible applicants that are weighted according to factors including county residency, county employment, and length of time in the program. The county will share the list of selected applicants with the builder, at which point the builder markets the units to these applicants. Applicants to the MPDU programs are required to get pre-qualified for a mortgage loan through a program-certified "Participating Lender" to be accepted into the program. If the 90-day priority marketing period passes without finding a qualified buyer, the builder may request permission to sell the MPDU to a non-income qualified household.

**Are there guidelines for permitted mortgage loans**: No.

**Annual reminder of program terms**: No.

**Post-purchase support:** None.

**Resale process**: An MPDU home must be sold directly to another income-eligible household, at the designated affordable price. The HOC and non-profit organizations have a right of first refusal to purchase an MPDU that is being resold, although this right is exercised for less than 10% of resales (according to program administrators).

**Resale formula**: Index-based formula, using the growth in the Consumer Price Index plus the cost of eligible capital improvements.

*Rental Program*

**Marketing and tenant selection**: The County lists MPDU rental properties on its website. Prospective tenants, however, are responsible for applying at each of the particular properties (not through the County). If the 90-day marketing period passes without finding a qualified renter, the landlord may request permission to rent the MPDU to a non-income qualified household.

**Income verification**: Property managers are responsible for verifying the income of prospective and current tenants. County staff travels to the MPDU rental properties to monitor compliance with the requirements of the MPDU rental program.

*Program Highlights/Ongoing Issues*

**Preemptive option to purchase for the housing authority and non-profit agencies has aided housing preservation.** The county's housing authority (HOC) and designated nonprofits have the first opportunity to purchase or master-lease up to 40 percent of the MPDUs in a property for both for-sale and rental developments. This has enabled the county to deepen the affordability of these units by layering in housing choice vouchers or other subsidies. It has also preserved a considerable share of the county's current inventory of MPDUs that would have otherwise become

unaffordable. HOC currently holds approximately 1,450 MPDUs that are offered either as first-time homeownership opportunities for residents of HOC properties and recipients of HOC rental assistance or as deeply affordable rental housing. This is roughly one third of the county's existing inclusionary housing portfolio.

**Recapture clause at the end of the control period.** In addition to having affordability control periods that reset for the next homebuyer whenever a home is sold within the 30-year control period, the MPDU program captures half of any excess proceeds above the affordable price for homes that are sold after 30 years. These funds are then used to support the program and its existing portfolio or to create additional affordable housing.

**Keeping prices affordable for subsequent homebuyers.** In some cases, program administrators have observed that the program's resale formula produces a maximum resale price that exceeds affordability levels for income-qualified households, or even market-rate prices, compromising the affordability and ability to sell the MPDU unit. This was exacerbated during the recent housing downturn, when prices in certain neighborhoods dropped significantly, creating competition for MPDU units from market-priced homes. County law allows MPDU homeowners to sell to a non-income qualified household if they are unable to sell the home to an income-qualified purchaser after 60 days.

*Contact Info*

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**Cambridge, Massachusetts**

*Place Overview*
**2013 Population Estimate (Census)**: 107,289
**Population change from 2000 to 2010 (Census)**: 6%
**Location**: Boston-Cambridge-Newton Metro Area

*Policy at a Glance*
**Name**: Inclusionary Housing Policy
**Year adopted**: 1998
**Policy type**: Mandatory
**Production as of March, 2014**: 527 affordable homes (334 rental; 193 for-sale)
**Geographic scope**: Jurisdiction-wide
**Affordable housing set-aside**: 15%
**Incomes targeted**: 50 to 80 percent of city median income[17]
**Applicability**: 10 or more units
**Alternatives to construction:** In-lieu fee (but must show financial hardship; no one has yet)

*Evolution*
Prior to 1998, the city operated a voluntary policy based on a density bonus, but it failed to produce any affordable housing. As of 2008, the city's inclusionary housing portfolio was evenly split between rental and for-sale units but is now predominantly rental housing due to increased rental housing construction in the city.

*Affordability Duration*
**Rental control period**: Perpetuity
**For-sale control period**: Perpetuity
**Rationale**: The city was concerned about expiring, subsidized affordable housing in the face of growing affordability needs and persuaded by the argument that the affordability term should match the permanence of the density bonus offered by the program.

*Homeownership Program*
**Administrator:** In-house
**Legal mechanism:** Deed covenant
**Homebuyer education***:* Required. Homebuyers also must participate in a meeting at which the resale formula and other program requirements are explained by staff.
**Marketing and homebuyer selection**: When a new for-sale property is built, the city reviews applications and holds separate lotteries for each new inclusionary unit.
**Are there guidelines for permitted mortgage loans**: Yes.
**Annual reminder of program terms:** No.
**Post-purchase support:** The city makes various financial counseling and homeowner education classes available to inclusionary homeowners. Financial support for home repair is also available through a separate city program.

[17] May be less if households possess a housing choice voucher. Prices set at 65 percent of city median income.

**Resale process**: In most cases the city uses its preemptive option to purchase to buy back homes at resale. It then sells the home at an affordable price to an income-eligible household. The city makes use of this right to strengthen its control over the resale process, to ensure homeowners are chosen properly from the city's resale pool of income-eligible households, and to do any necessary maintenance on the home to ensure it is in good condition before it is resold.
**Resale formula**: "Return on Equity" formula. The maximum resale price is equivalent to the original purchase price plus an annual non-compounding rate of return based on annual principal payments multiplied by a rate tied to a federal Treasury bill.

*Rental Program*
**Marketing and tenant selection**: City staff handles the marketing of units and screening of tenants for both new units and vacancies. It then forwards selected names to property managers, who may conduct their own credit checks. The city used to hold lotteries for each new rental project but moved to a single rolling application process in 2010. Property managers are required to notify the city whenever a unit will be vacated.
**Income verification**: The city determines and verifies the income eligibility and annual recertifications of all tenants.

*Program Highlights/Ongoing Issues*
**Managing rising condo fees:** To ensure that condo fees don't undermine long-term affordability, the percentage interest of the inclusionary unit in the condo documents is approved by the city. It is based on value and is, therefore, lower than the percentage interest of market rate units. The condo fee is set using this lower percentage interest for the affordable units. Fee increases also use the lower percentage interest and therefore condo fees are kept affordable. .
**Identical affordable and market-rate units**: Relative to other profiled programs, the Cambridge program rigorously requires that the affordable units have the same features and finishings as the market-rate units. Moreover, city staff chooses which units in a development will be the affordable units. Both of these points differ from other programs profiled, which a) permit similar but less expensive finishings and equipment and b) allow the developer to choose where the affordable units are located.

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**State of New Jersey**

*Place Overview*
**2013 Population Estimate (Census)**: 8,791,894
**Population change from 2000 to 2013 (Census)**: 4%

*Policy at a Glance*
**Name**: Inclusionary Housing Programs (as governed by the state's Uniform Housing Affordability Controls)
**Year adopted**: 1985-present
**Policy type**: Mandatory
**Production**: 18,256 (as of January 2007)
**Affordable housing set-aside**: 15-20% (specific set-aside is chosen by particular municipality)
**Incomes targeted**: ≤ 80% of median regional income for rental[18]; ≤ 80% of median regional income for ownership, but excluding incomes ≤ 35%
**Development size applicability**: Determined by the local jurisdiction
**Alternatives to construction**: Determined by the local jurisdiction

*Evolution*
In 1975, the New Jersey Supreme Court ruled in its *Mount Laurel* decision that communities must use their zoning powers to provide realistic opportunities for the production of housing affordable to low- and moderate-income households. The ruling motivated the passage of the 1985 Fair Housing Act, which created affordable housing requirements for local jurisdictions throughout the state, and created the Council on Affordable Housing (COAH) to provide oversight. Jurisdictions are required to produce their "fair share" of affordable housing through inclusionary housing or similar policies and zoning practices. Over time, COAH has provided increasing specificity about how inclusionary housing policies must be structured, how programs must be administered, and how long units must remain affordable in order to receive "credit" toward meeting the municipality's fair share. This specificity is provided through the state's Uniform Housing Affordability Controls (UHAC), which has help to standardized inclusionary housing programs in the state.

*Affordability Duration*:
**Rental control period**: At least 30 years (low-poverty Census tracts[19]); at least 10 years (high-poverty Census tracts[20]).
**For-sale control period**: At least 30 years (low-poverty Census tracts); at least 10 years (high-poverty Census tracts).

[18] COAH requires that at least half of the units be available to low-income households; that 10 percent of the units be available to those earning 35 percent or less than the regional median income; and that the remainder be devoted to moderate-income households.

[19] Low-poverty census tract is defined as having a Census-determined poverty rate of less than 25 percent.

[20] High-poverty census tract is defined as having a Census determined poverty rate of more than 25 percent.

*Homeownership Program*

**Administrator:** Varies among jurisdictions. Jurisdictions will choose between in-house administration and out-sourcing it to an external partner.

**Legal mechanism:** Deed covenant.

**Homebuyer education**: Applicant households are required to attend housing counseling if the monthly housing expenses for a specific for-sale home are above UHAC standards (i.e. 33 percent of monthly income).

**Marketing and homebuyer selection**: Local jurisdictions must adopt an Affirmative Marketing Plan in order to attract households who are least likely to apply for affordable housing and to target households throughout the entire housing region in which the units are located. This plan is approved by COAH. COAH requires that the marketing plan include a newspaper advertisement, a broadcast advertisement, and at least one additional marketing method, such as an organizational newsletter or advertisement through an employer. The marketing must begin at least four months before a given unit is complete. Jurisdictions are required to maintain an applicant pool from which potential residents are selected. UHAC rules require that households are randomly selected for available housing units, with no preference besides matching household size. There is, however, an allowance for jurisdictions to give preferences to applicants that live or work in their COAH housing region. While jurisdictions can go about this random selection process in whichever manner they prefer, the process itself must be outlined in the Affirmative Marketing Plan.

**Are there guidelines for permitted mortgage loans**: Yes.

**Annual reminder of program terms**: Yes.

**Post-purchase support**: About 30% of municipal housing trust funds, supported by in-lieu fee payments, must be used to assist on-going affordability. Some localities use fund dollars to help defray unaffordable condo fees, pay for overdue utility bills, and fund emergency repairs.

**Resale process**: An owner will submit a completed "Notice of Intent to Sell" to the jurisdiction. The jurisdiction's affordable housing administrator will review the unit and eligible capital improvements to calculate the maximum resale price. If a pool of income-certified households is available, the administrator will use a random selection process to choose a household and notify them of the available home. If a pool is not available, the administrator will market the unit according to the Affirmative Marketing Plan. The first selected, eligible household makes an offer on a home, after which the buying and selling household execute a typical contract of sale. The jurisdiction's affordable housing administrator will ensure that the associated legal documents (e.g. deed, recapture mortgage) are included with the contract. For homes sold after the control period ends, sellers must provide jurisdictions with 100 percent of the difference between the initial market-rate and affordable sales price.

**Resale formula**: Index-based. The maximum resale price is determined using COAH's Resale Price Calculator, which is based on COAH's Annual Regional Income Limits Chart.

*Rental Progrm*

**Marketing and tenant selection**: Jurisdictions will generally follow the same process as outlined above. UHAC states that a certified household is not permitted to lease restricted rental units that would require more than 35 percent of the verified household income (40 percent for age-restricted units) to pay rent and utilities.

**Income verification**: State-level requirements do not require annual verification of tenant income nor household size. Therefore, both can increase without forcing the tenant to leave the affordable unit.

*Program Highlights/Ongoing Issues*:

**Strong professionalization of administrative partners**: COAH requirements are imposed on jurisdictions. The lack of capacity or expertise in some jurisdictions has led to a rise in jurisdictions contracting program administration to third-party affordable housing administrative entities. These entities are generally non-profit or for-profit organizations. They will take on the portfolios of many jurisdictions and conduct a full range of stewardship activities, such as income confirmation, affirmative marketing, and annual occupancy verifications. This group of administrative entities has become so professionalized they have their own member-based organization (Affordable Housing Professionals of New Jersey) for education, networking, and advocacy.

**Ensuring that developers steward the units in a correct manner**: Housing developers are permitted to take on some of the unit stewardship tasks, such as annual income certification of their rental tenants. In some instances, developers might follow state-mandated rules, whether it be from lack of experience, lack of institutional knowledge (from staff turnover), or—worse yet—a desire to avoid the rules. Some cited mistakes include no affirmative marketing plan, mistakes during income certification, incorrect unit pricing and size distribution, and incorrectly raising the rents. The aforementioned administrative entities have been framed as one way to address the stewardship shortcomings that are sometimes committed by developers.

**Inclusionary housing on hold for several years**: A dispute between the Governor and the state courts has kept inclusionary housing, and COAH, in limbo for several years. It appears however that COAH will create a new round of fair share requirements in 2014 and renew the state's affordability requirements for localities, encouraging localities to continue their inclusionary housing programs.

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**Santa Fe, New Mexico**

*Place Overview*
**2013 Population Estimate (Census)**: 69,976[21]
**Population change from 2000 to 2013 (Census)**: 12.50%
**Location**: Santa Fe metro area

*Policy at a Glance*
**Name**: Santa Fe Homes Program
**Year adopted**: 1998
**Policy type:** Mandatory
**Production as of March, 2014**: 154 (38 rental, 116 for-sale)
**Geographic scope**: Citywide
**Affordable housing set-aside**: 15% (rental), 20% (for-sale)
**Incomes targeted**: 50-80% of area median income (rental); 65-100% (homeownership)
**Development size applicability**: Two or more units. For projects of 2-10 units, a fee is paid; for 11 or more units, affordable homes are produced.
**Alternatives to construction**: Off-site construction, land dedication, in-lieu fees.

*Evolution*
Santa Fe's inclusionary housing program evolved from an ad hoc initiative to a requirement that developers include affordable housing if they wished for their land to be annexed by the city (thereby making the land eligible for actual development). After being challenged on the legal nexus between the affordable requirements and the annexation allowance, the city codified this practice into the Housing Opportunity Program (HOP) in 1998. It required 11-16 percent of units in market rate housing to be priced affordably. In 2005, the program was re-designed and implemented as the Santa Fe Homes Program, with a 30% requirement for for-sale projects and a 15% requirement for rental projects. In 2011, the program was amended to reduce the requirement to 20% for for-sale projects.

*Affordability Duration*
**Rental control period**: 10 years
**For-sale control period**: Perpetuity (although shared appreciation loan has 30-year term).
**Rationale**: The rental affordability term has been reduced to 10 years (from 20 years) largely from the belief that other programs are meeting the needs of low-income renters.

*Homeownership Program*
**Administrator:** In-house.
**Legal mechanism:** Shared appreciation mortgage loan. A mortgage lien is recorded on the home equal to the difference in dollars between the subsidized sales prices and

[21] The city annexed an additional 20,000 residents in January, 2014. These residents are not reflected in the total.

95% of the appraised value (in order to give the homebuyer some equity at the start of the transaction).
**Homebuyer education**: Prospective homebuyers are required to complete HUD-approved homebuyer training, to be income-certified, and receive financial counseling as needed, during which they are oriented to the SFHP and their obligation under the program.
**Marketing and homebuyer selection**: Initial marketing is the responsibility of the developer. In cases where demand for the units is expected to be high, the City may require that the developer work with the City to hold a lottery.
**Are there guidelines for permitted mortgage loans**: Yes.
**Annual reminder of program terms**: No.
**Post-purchase support**: No. Similar to other jurisdiction, nonprofit homebuyer counseling agencies are accessible for homeowners who need help after purchasing their homes with financial counseling, refinancing, or foreclosure prevention assistance.
**Resale process**: While the city reviews and approves all resales, it does not require an inspection of the home at sale nor does it require the seller to make any necessary repairs before sale. When a current inclusionary homeowner wishes to sell, (s)he is required to submit an intent-to-sell letter to the city. For the next 90 days, the seller will find an income-certified buyer. If the seller finds an income-eligible buyer, the lien recorded against the home (described above) is passed onto the new owner. If the seller cannot find an income-eligible buyer, the home can be sold at market price. The lien will then be repaid to the city, which in turn uses that amount to help with down payment assistance programs.
**Resale formula**: The resale price is determined by adding to the original price a percentage of the difference between the home's appraised value at time of purchase and time of resale.

*Rental Program*
**Marketing and tenant selection**: The developer is obligated to market the units and determine income eligibility according to typical HUD standards and practices; the city monitors compliance on an annual basis.
**Income verification**: The city is responsible for verifying the incomes of prospective renters.

*Program Highlights/Ongoing Issues*
**Fees calibrated to different areas of the city**. In order to reflect the differing development and housing costs in different parts of the city, the program has four different in-lieu fee amounts, one for each quadrant of the city.
**Instances in which fees are more appropriate then on-site housing**. Program administrators indicated that new market-rate housing might be developed in areas that are not helpful for low- or moderate-income households, such as peripherally-located, large-lot developments that are removed from transit networks. In those instances, a fee paid in-lieu of one inclusionary unit can fund multiple down payment assistance loans and help households buy in locations that better serve their needs.

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**Chapel Hill, North Carolina**

*Place Overview*
**2013 Population Estimate (Census)**: 59,635
**Population change from 2000 to 2013 (Census)**: 22%
**Location**: Raleigh-Durham-Chapel Hill metro area

*Policy at a Glance*
**Name**: Inclusionary Zoning
**Year adopted**: 2000 (voluntary); revised in 2010 as a formal, mandatory program
**Policy type:** Mandatory
**Production as of March, 2014**: 190 (all for-sale)
**Geographic scope**: Jurisdiction-wide
**Affordable housing set-aside**: 10-15%
**Incomes targeted**: ≤80% of area median income
**Development size applicability**: 5 or more units
**Alternatives to construction**: In-lieu fee, off-site construction, land dedication, and converting existing, market-rate units into affordable units

*Evolution*
In 2000, the town council adopted a Comprehensive Plan strategy that took the form of a voluntary inclusionary housing program. The program stipulated that—in the case of a developer requesting a rezoning—15% of constructed housing units were to be affordable. This program required council approval of every rezoning request and—to the concern of some developers—allowed for the council to deviate from the 15% requirement. In response to an increasing desire for a standard, predictable program, the town created the current mandatory inclusionary housing program in 2010. The original program was not retired as a result of the new, mandatory program. Instead, the town refers to this policy whenever a rental project voluntarily agrees to set-aside units as affordable.

*Affordability Duration*
**For-sale control period**: 99 years.
**Rationale:** When the CLT was established in 1999 it was determined that the ground lease would be 99 years. Since the Town Council thought the CLT was the best mechanism for implementing the inclusionary policy, they adopted the 99 year restriction.

*Homeownership Program*
**Administrator:** Community Home Trust (CHT), a community land trust.
**Legal mechanism:** Ground lease.
**Homebuyer education**: While CHT does not require buyers to go through counseling from a HUD-approved organization, it does require that they attend an orientation on the program. CHT also requires both 8 hours of homebuyer education, and applicants must meet with the organization's financial counselor before purchasing a home.

**Marketing and homebuyer selection**: CHT buys the affordable units from the developer and resells the homes to income-qualified buyers.
**Are there guidelines for permitted mortgage loans**: Yes.
**Annual reminder of program terms**: No.
**Post-purchase support:** CHT offers post-purchase educational classes and financial counseling to its owners. Homeowners also contribute monthly to a stewardship fund for repairs and replacements, which helps owners maintain their homes.
**Resale process**: When a home is resold, CHT requires an inspection of the home and the homeowner to make needed repairs. Some of these repairs are supplemented by grants from the town to CHT. To find a new buyer, CHT markets the home to applicants on its waiting list and to local employers, realtors, etc.
**Resale formula**: Fixed-rate formula, with a maximum annual appreciation rate of 1.0%.

*Rental Program*
Chapel Hill's mandatory policy does not apply to rental housing and has not generated any rental inclusionary homes. State legal decisions have linked mandatory, rental inclusionary zoning to rental control, which is outlawed in North Carolina.

*Program Highlights/Ongoing Issues*
**The town and the Community Home Trust have formed an effective partnership.** The town relies heavily on CHT to sell, steward, and eventually resell the units produced through the program. The arrangement works well for both the town and CHT, as they each can focus on their particular strengths (policy creation for the former, stewardship and preservation for the latter).
**Property upkeep is a priority.** The town occasionally provides funding to CHT to make needed repairs so that homes remain in good condition for subsequent generations of homeowners.

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**Davidson, North Carolina**

*Place Overview*
**2013 Population Estimate (Census)**: 11,750
**Population change from 2000 to 2013 (Census)**: 65%
**Location**: Charlotte-Concord-Gastonia metro area

*Policy at a Glance*
**Name**: Affordable Housing Ordinance
**Year adopted**: 2001
**Policy type:** Mandatory for ownership, voluntary for rental
**Production as of March, 2014**: 56 for-sale units, 8 rentals
**Geographic scope**: Citywide
**Affordable housing set-aside**: 12.5%
**Incomes targeted**: ≤120% of area median income (for-sale),less than 80% rental
**Development size applicability**: 2 units
**Alternatives to construction**: In-lieu fee

*Evolution*
Between 1995 and 1999, community leaders began to notice a trend towards the construction of exclusive, higher-priced communities. This trend, in conjunction with the town's limited land availability from its lakefront location, inspired leaders to brainstorm ways in which the community could maintain and grow its stock of affordable homes. By 2001, the city settled on and implemented its inclusionary housing program. The program's initial version allowed for developers to construct affordable homes on-site, donate land, or pay an in-lieu fee. City officials were happy to receive land donations but found that they did not have the funds to develop the land; hence, a 2006 program revision removed land donation as an alternative compliance method. A 2007 revision raised the eligible income to 150% of the area median income, but it was subsequently removed in 2010 because the town had very few, if any, persons at higher income levels who were interested in purchasing an resale-restricted home. In 2007, the affordability term was expanded from 30 to 99 years.

*Affordability Duration*
**Rental control period**: 99 years
**For-sale control period**: 99 years
**Rationale**: Thirty years did not seem long enough considering the limited availability of land. The city also thought it unfair for one household to receive a windfall at the end of a relatively short affordability period and to not pass on the public investment to other households.

*Homeownership Program*
**Administrator:** Predominantly in-house.
**Legal mechanism:** Deed covenant.

**Homebuyer education**: Prospective homebuyers are required to attend a pre-purchase counseling session with a partner organization (the Davidson Housing Coalition).
**Marketing and homebuyer selection**: The Davidson Housing Coalition administers an eligibility process, whereby household incomes are verified to ensure that they meet the program requirements. The developer is required to market the affordable housing properties similar to the marketing provided for the market rate homes.
**Are there guidelines for permitted mortgage loans**: No.
**Annual reminder of program terms**: Yes.
**Post-purchase support:** Limited.
**Resale process**: The program administrator will work with local nonprofits to identify income-eligible households who might be interested in purchasing inclusionary units that are up for sale.
The city also has the right of first refusal to purchase the home, which has been exercised once in order to avoid a foreclosure. If the seller cannot find an eligible household, s/he can sell to a household with an income that exceeds the affordability requirement. The home is still sold at the restricted price and the deed restrictions remain with the property.
**Resale formula**: Index-based formula. The resale price includes the original purchase price plus the following: closing costs; costs of sale initially paid by the seller; real estate commission costs; capital improvement costs; and an inflationary factor equal to the percentage increase in the area median income over the term of ownership.

*Rental Program*
**Marketing and tenant selection**: Rental properties are advertised on the town website. All applicants must have income verification and background checks.
**Income verification**: The Davidson Housing Coalition verifies incomes of prospective rental households.

*Program Highlights/Ongoing Issues*
**Reactions to the expanded affordability term**: The town has increased the affordability term from 30 to 99 years. Some builders and developers think this is too daunting, and some potential homeowners shy away from buying an inclusionary unit partially (or wholly) from a concern about having this long term restriction placed on the resale price.
**Resale formula pushing the maximum resale price beyond an affordable level**: In some instances, the aggregation of all aforementioned formula elements has pushed the price beyond an affordable level. While the seller is appropriately adhering to the resale restrictions, the type of buyer the program intends to help may not be able to afford the higher prices.
**Limited number of households to purchase resale**: According to the program administrator, the waiting list is very small. With few households on the waiting list, sellers have fewer eligible households immediately available for quick resales. Building the waiting list remains a challenge.

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**Park City, Utah**

*Place Overview*
**2013 Population Estimate (Census)**: 7,962
**Population change from 2000 to 2013 (Census)**: 8%
**Location**: Salt Lake City metro area

*Policy at a Glance*
**Name**: Affordable Housing Guidelines
**Year adopted**: 1993
**Policy type:** Mandatory
**Production as of March, 2014**: 137 (45 rental, 92 for-sale)
**Geographic scope**: Zone-specific (master-planned communities and annexed land)
**Affordable housing set-aside**: 15% (rental and for-sale); commercial developments required to construct affordable units for 20% of expected employees
**Incomes targeted**: Park City does not have income limits but instead prices the units for particular income levels: 100% of the median Park City workforce wage (rental); 150% of the median Park City workforce wage (homeownership)
**Alternatives to construction**: Off-site construction, converting existing market-rate units to affordable units, land dedication

*Affordability Duration*
**Rental control period**: 40 years, with opportunity for city to extend the period for an unlimited number of 10-year terms
**For-sale control period**: 40 years, with opportunity for city to extend the period for an unlimited number of 10-year terms
**Rationale:** The opportunity to extend the control period stems from the city's desire to have the flexibility to determine at the end of a control period if more affordable homes are needed.

*Homeownership Program*
**Administrator:** In-house.
**Legal mechanism:** Deed covenant.
**Homebuyer education**: None required.
**Marketing and homebuyer selection**: Park City's program does not have any income qualifications. In essence, the three percent annual appreciation cap (described below) deters people who can afford to purchase on the open market, as they will likely have a higher rate of return on their market-rate purchase. Without having to verify the incomes of prospective buyers, city staff less to administer.
**Are there guidelines for permitted mortgage loans**: No.
**Annual reminder of program terms**: Yes.
**Post-purchase support:** None.
**Resale process**: The city maintains the preemptive option to purchase. Even though the city does not use it regularly, current owners must notify the city when they intend to sell.

**Resale formula**: Park City uses a modified version of an appraisal-based formula. The home can increase in value at a rate proportionate to the rest of the market, but the increase is capped at three percent per year.

*Rental Stewardship*

**Marketing and tenant selection**: Rental units are marketed by city staff.
**Income verification**: Rental properties will submit annual reports to the city that indicate the income of their tenants.

*Program Highlights/Ongoing Issues*

**Concerns that the resale prices reach unaffordable levels**. City staff pointed to two properties in particular that—after 16-18 years of allowable annual price growth of three percent—has pushed the resale prices beyond affordable levels.
**Condition of properties**. Some of the program's older properties have deferred maintenance, and existing replacement reserves are not sufficient to cover these costs. City staff is considering requiring that homeowner associations report their reserve levels to ensure that any necessary maintenance can be funded. Staff is also considering requiring homeowners to set aside reserves for home repairs to ensure that homes are well maintained.
**Small town setting requires the use of a different affordability standard**. The HUD-defined area median income for all of Summit County is considerably less than the median income of Park City. Therefore, city staff has decided to use local data to set income targets. To further align the program's income targeting with local affordability needs, the city calculates the median "workforce wage" (currently $56,000) to ensure it is providing workforce housing.

*Contact Info*

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**Burlington, Vermont**

*Place Overview*
**2013 Population Estimate (Census)**: 42,284
**Population change from 2000 to 2013 (Census)**: 9%
**Location**: Burlington-South Burlington metro area

*Policy at a Glance*
**Name**: Inclusionary Zoning
**Year adopted**: 1990
**Policy type:** Mandatory
**Production as of March, 2014**: 212 (87 rental, 125 for-sale)
**Geographic scope**: Citywide
**Affordable housing set-aside**: 15-25%
**Incomes targeted**: ≤65% of area median income (rental); ≤75%, or ≤80% if no buyer is found at 75% (homeownership)
**Development size applicability**: 5 or more units
**Alternatives to construction**: In-lieu fee, off-site construction (required to build 150% of the units that they would have been required to build on site)

*Evolution*
Burlington's inclusionary zoning ordinance resulted from a five-year process in the late-1980s. A coalition was formed to advocate for expanded affordable housing opportunities. This coalition spanned political principles, with many participants attracted to the ordinance's proposal to grant bonus density for compliant developments. Another consensus building feature of the policy was allowing developers to opt out of on-site construction by paying an in-lieu fee or constructing the required affordable housing off site.

*Affordability Duration*
**Rental control period**: 99 years
**For-sale control period**: 99 years
**Rationale**: The 99-year affordability term was at least partially inspired by reactions to HUD-financed, privately-constructed affordable housing. When developers were allowed to convert these affordable units to market rates after 20 years, citizens grew frustrated that this taxpayer-funded program would not ensure longer-term affordability. The development community also supported a 99-year affordability term, as they deemed as fiscally sensible.

*Homeownership Program*
**Administrator:** Predominantly Champlain Housing Trust (CHT), a community land trust.
**Legal mechanism:** Ground lease or deed covenant.
**Homebuyer education**: Prior to purchasing a home, homebuyers are required to attend a program orientation. Homebuyer counseling, however, is not required by the inclusionary housing program but is required by CHT.

**Marketing and homebuyer selection**: The Champlain Housing Trust (CHT) is largely responsible for marketing the for-sale units and selecting the homebuyer. A developer will contact CHT to indicate how many affordable units will be completed on which date. CHT will find income-eligible buyers. CHT will also conduct a simultaneous closing between CHT and the developer and between the CHT and the buyer. Doing so allows for CHT to be a part of the chain of title.
**Are there guidelines for permitted mortgage loans**: Yes.
**Annual reminder of program terms**: Yes.
**Post-purchase support**: CHT assists homeowners with financial assistance for major home repairs and maintenance.
**Resale process**: Since nearly all for-sale units are placed with CHT, CHT will find another income-eligible buyer to whom a unit can be resold. When a unit is for-sale, both the city and CHT have the right of first offer and first refusal. Even for those few units that were not placed into the CHT portfolio, CHT will help the seller with the process by identifying an income eligible buyer.
**Resale formula**: Fixed-percentage formula. The seller can add 25% of the increase in the affordable unit's market rate value onto the original purchase price.

*Rental Program*
**Marketing and tenant selection**: The city and the rental building developer share responsibility for verifying the incomes of prospective tenants.
**Income verification**: Handled by property managers.

*Program Highlights/Ongoing Issues*
**For-sale stewardship by local community land trust**: The city works with the CHT to administer the inclusionary zoning ordinance for ownership units and steward most these homes over time. Outsourcing this work has enabled the city to only devote an estimated 10% of one full-time employee to administration. CHT charges a fee (six percent of the resale cost) to help pay for the cost of its stewardship work. Another revenue source is the city itself, which uses some federal grant money and revenues from the city's housing trust fund to support CHT.
**Monitoring rental units**: City staff indicates that the most time-consuming activity is monitoring its rental inclusionary units. Properties with rental inclusionary units tend to be in scattered locations. Monitoring these units requires working through different property managers, which can be inefficient. CHT has not played a role in administering the rental units. City staff is considering raising the applicability trigger so that there are fewer instances of single affordable rental units being produced whenever a relatively small development occurs. It is also exploring the possibility of engaging CHT to administer inclusionary rental properties.
**Concerns about the impact on inclusionary zoning on downtown housing production**. In recent years, the development community has softened in its traditional support of inclusionary zoning in Burlington and raised concerns that the policy is dampening downtown housing production. These claims were underscored in a May 2014 Downtown Housing Strategy Report, which found that relatively little market-rate housing had been built in the past decade, and that significant demand for housing coupled with limited production was adding to affordability crisis. The city is

working on ways it can modify the policy or provide better cost-offsets/incentives to spark more market-rate construction while also generating affordable units.

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**Fairfax County, Virginia**

*Place Overview*
**2013 Population Estimate (Census)**: 1,130,924
**Population change from 2000 to 2013 (Census)**: 17%
**Location**: Washington-Arlington-Alexandria metro area

*Policies at a Glance*
**Names**: Affordable Dwelling Unit (ADU) Program; Workforce Dwelling Unit (WDU) Program
**Year adopted**: 1990 (ADU); 2007 (WDU)
**Policy type:** Mandatory (ADU); Voluntary (WDU)
**Production as of March, 2014**: ADU – 2,560 (1,200 rental, 1,360 for sale); WDU – 162
**Geographic scope**: County-wide
**Affordable housing set-aside**: 5–12.5% (ADU, rental and for-sale), 12–20% (WDU, rental and for-sale)
**Incomes targeted**: ADU: 50–65% of AMI for rental; ≤ 70% AMI with for-sale; WDU: 60–120%[22] (rental or for-sale).
**Development size applicability**:

> ADU ordinance: Applies to developments with 50 or more units that are also "construction Type 5" (i.e. wood-framed and do not have podium parking).
> WDU policy: Applies to developments of all types that are proffered in conjunction with a rezoning.

**Alternatives to construction**: In-lieu fees and land dedication; however, they are not encouraged and rarely have been approved for the ADU program. The WDU policy allows off-site construction; however, no developer has done so to date.

*Evolution*
Until 2007, the county did not have an inclusionary housing policy that applied to taller, steel-and-concrete-based residential buildings. The WDU program, adopted in 2007, provided an incentive-based policy for taller (non-type 5) buildings that was acceptable to the development community and responded to their concerns about the financial challenges of including affordable housing in high-rise buildings. The WDU policy creates "a proffer-based incentive system designed to encourage the voluntary development of new housing affordable to a range of moderate-income workers in Fairfax County's high-rise/high-density areas."[23] Developers must comply with the WDU program to take advantage of "redevelopment options" created through new specific plans that increase development potential in a given area. The program has been especially active in areas that are currently served by transit or in soon-to-be

[22] The county asks for WDUs to be priced at various tiers within this range. For example, in the Tysons area, 2% of units must be priced for households at 60% of AMI; 3% at 70% of AMI; 5% at 80% of AMI; 5% at 100% AMI; and 5% at 120% AMI.

[23] Fairfax County. "Fairfax County Comprehensive Plan and Related Inclusionary Zoning Affordable Housing Provisions." Not dated.

served areas like Tysons (in which the policy requires 20% of all new housing to be affordable). As the county becomes increasingly urban, county staff is noticing inclusionary housing production trending toward WDU units rather than ADU units.

*Affordability Duration*
**Rental control period**: 30 years (ADU); 50 years (WDU)
**For-sale control period**: 30 years (ADU); 30 years (WDU)
**Rationale**: The first units produced by the ADU program had 50-year affordability terms. By the late-1990s, developers and individual homeowners were arguing that the term was too long. In 1998, the county reduced the term for rental units to 20 years (with a 10-year buyout option for developers, in which they could be released from the program if they paid a fee to the county for the value of the land, and bonus units granted through the program). That year, the county also reduced the for-sale term to 15 years. In 2006, the affordability terms were increased to the current 30-year term; rental developers are no longer allowed to buy out of the affordability term.
**Do affordability terms restart for the subsequent homeowner if the property is sold within the control period?** Yes.

*Homeownership Program*
**Administrator:** In-house and Fairfax County Redevelopment and Housing Authority (FCRHA).
**Legal mechanism**: Deed covenant
**Homebuyer education**: ADU homebuyers are required to attend an orientation on the program, a homeownership education course through Virginia Housing Development Authority (VHDA), an application session and a pre-purchase counseling session prior to contract signing.
**Marketing and homebuyer selection**: FCRHA can purchase up to one-third of ADU and WDU units. All other units not purchased by FCRHA are sold through the county's First-Time Homebuyers Program (FTHB). Households seeking a unit through the ADU or WDU program will apply to be on the drawing list for the FTHB. A drawing for a given for-sale unit will first screen the applicant households for: a) having pre-approval for a mortgage loan and b) having the appropriate household size and age (relative to the unit size and potential location in a senior/adult community). After screening the applicants, a points-based preference system is used, whereby households who live and work in Fairfax County, households with dependents, and households who recertify each year (up to three years) on the FTHB list are given preference.
**Are there guidelines for permitted mortgage loans**: Yes.
**Annual reminder of program terms**: Yes.
**Post-purchase support:** None.
**Resale process**: The program makes regular use of its preemptive option to purchase inclusionary units at resale (i.e. a right of first refusal), doing so for more than 90 percent of resales. The program also requires an inspection of the home at resale and requires that the seller makes any needed repairs. If a home is sold after the 30-year control period, the appreciation is split between the seller and the FTHB.

**Resale formula**: Index-based formula.

*Rental Stewardship*

**Marketing and tenant selection**: Property managers are entirely responsible for leasing and managing both ADU- and WDU-created units.
**Income verification**: Property managers are required to file monthly reports with the county and submit annual income re-certifications.

*Program Highlights/Ongoing Issues*

**Different affordability terms can add to administrative burdens**: As indicated above, ADU units have one of three different affordability terms, depending on when a given unit was constructed. Changes in affordability terms over time create different requirements for staff to track.
**Long-term affordability via resetting control periods and county purchase option**: While the control periods are relatively short compared to other case studies, the county has built in opportunities to extend them by a) maintaining the exclusive right to purchase a resold ADU, and b) resetting the period if a unit is sold with the period to another private owner.
**Monitoring and stewarding an "explosion" of rental WDUs.** As of early 2014, there were approximately 4,200 WDUs approved and in the pipeline. A large share is expected to be rental housing. As these units come online over the next several years, there will be need for additional staff to monitor the programs.

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**Redmond, Washington**

*Place Overview*
**2013 Population Estimate (Census)**: 57,530
**Population change from 2000 to 2013 (Census)**: 27%
**Location**: Seattle-Tacoma-Bellevue metro area

*Policy at a Glance*
**Name**: Redmond Zoning Code Section 21.20: Affordable Housing
**Year adopted**: 1994
**Policy type:** Mandatory
**Production as of March, 2014**: Approximately 308 (283 rental and 25 for-sale)
**Geographic scope**: Zone-specific (areas that undergo a neighborhood plan update)
**Affordable housing set-aside**: 10%
**Incomes targeted**: ≤80% of area median income (rental and for-sale)
**Development size applicability**: 10 or more units
**Alternatives to construction**: None

*Evolution*
In the early 1990s, a task force in eastern King County (WA) concluded that the growing problems surrounding housing affordability were not contained to a single city. Concurrently, the Washington State Growth Management Act was placing new expectations on local governments to manage their growth in a more comprehensive way. These two developments motivated the creation of inclusionary housing policies in many King County jurisdictions (Redmond being one) and the founding of A Regional Coalition for Housing (ARCH), a local government partnership devoted to supporting affordable housing creation and preservation efforts of its member jurisdictions. Central to its work is administering the inclusionary housing policies of the member jurisdictions. Redmond was the first of these members to implement such a policy, having done so when its downtown district was rezoned in the mid-1990s. So long as developers in the downtown district could build to higher densities, they had to include affordable housing in their developments. This theme of requiring affordable housing in rezoned (often up-zoned) neighborhoods has continued to the present. ARCH plays a supporting role in working with developers and monitoring the affordable units.

*Affordability Duration*
**Rental control period**: Perpetuity
**For-sale control period**: 50 years

*Homeownership Program*
**Administrator:** A Regional Coalition for Housing (ARCH), a partnership of East King County Cities and the County.
**Legal mechanism:** Deed covenant.
**Homebuyer education**: Homebuyers are referred to local non-profit organizations which are endorsed by the Washington State Housing Financing Commission. These

organizations deliver the homeowner education that are available to but not required of prospective buyers.
**Marketing and homebuyer selection**: ARCH maintains a list of eligible buyers and will notify prospective buyers before the property's marketing efforts begin. The developer is responsible for marketing the units. ARCH will review and approve the developer's marketing materials.
**Are there guidelines for permitted mortgage loans**: No.
**Annual reminder of program terms**: No.
**Post-purchase support:** None.
**Resale process**: Whenever a for-sale unit is being resold, the city maintains the right of first refusal. According to the terms in the covenant, the city can assign this right to a government agency or non-profit organization. The resold unit will then be assigned to a buyer with a qualifying income. If a unit is sold beyond the affordability term (therefore to a buyer on the open market), any extra value beyond the affordable resale price is captured by the city. This extra value is invested in a housing trust fund. Before any resale, the city can require a home inspection and require the seller to make any needed repairs.
**Resale formula**: Index-based formula.

*Rental Program*

**Marketing and tenant selection**: Property managers handle the marketing of units and screening of tenants for both new units and vacancies.
**Income verification**: Property managers submit an annual income verification of their affordable unit tenants. The covenant used for inclusionary rental buildings allows for affordable unit tenant incomes to rise up to 20 percentage points above the affordability threshold (i.e. allows a household income to rise as high as 100% of AMI). If tenant income rises above 20 percentage points, the tenant can remain in the unit but must pay the market rate. The property manager will then designate another unit as affordable.

*Program Highlights/Ongoing Issues*

**Standardized monitoring activities from a single organization**: ARCH is a crucial entity in standardizing the processes and documents for the member jurisdictions in eastern King County. When a single organization monitors the units and produces common legal documents, the entire process is more efficient for all involved, including developers who work in multiple jurisdictions. This standardization is a key ingredient for getting buy-in from the developer community. This outsourcing of monitoring responsibilities also helps city staff create thorough new policies, as ARCH can indicate to them the practices that have and have not work in other communities. Notably, ARCH also plays a critical role in community planning and enabling the adoption of best practices for producing and preserving affordable housing in neighborhoods and cities.

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