Inclusionary Housing Program Survey

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Administrative Review Draft

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Inclusionary Housing Program Survey

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Table of Contents

Cambridge, MA 1

San Francisco, CA 5

San Jose, CA 13

Santa Monica, CA... 19

Seattle, WA... 26

Cambridge, MA

1) **Program Overview**

Name: Inclusionary Housing Program
Administration: Cambridge Housing Division
Year Adopted: 1998
Production: 840 built or underway as of 2015 (650 rental, 190 for-sale)

2) **Types of Projects Covered by Ordinance**

The Ordinance applies to all residential projects of 10 or more units or 10,000 or more square feet.

3) **Affordability Requirements**

Set-aside Requirements:
The Ordinance requires 15% of units in applicable developments to be affordable to Middle income households for both rental and owner housing.

Income Targeting:

The U.S. Department of Housing and Urban Development (HUD) and most affordable housing programs target specific income categories, defined as a percentage of area median income (AMI) for a given geography. Low income households are defined as earning up to 50% AMI, Moderate income households 50-80% AMI, and Middle income households 80-120% AMI.

Eligible households must earn between 50% and 80% of the area median income (AMI). The target average income is 65% of the AMI, or if the household has access to a rent subsidy, a lower income

Rent for inclusionary units is set for each tenant at 30% of the actual gross income of the tenant household. A utility allowance, based on the Cambridge Housing Authority schedule, is subtracted for any utilities that the tenant will pay directly. For homeownership units, sales prices are set so the affordable housing expense (including mortgage principal and interest, property insurance, real estate taxes, condo/HOA fees and parking fees, where applicable) does not exceed 30% of 65% of the AMI.

Affordability Term:

Specific units are designated as affordable and remain so for the life of the project, to the extent legally possible.

4) **<u>Incentives and Offsets</u>**

A density bonus of 30% FAR is available for providing affordable units. When the bonus is applied, the 15% set-aside requirement results in approximately 11.5% of the total units as affordable.

5) **<u>Compliance Alternatives</u>**

Cambridge's ordinance is unusual in terms of providing virtually no option for alternative compliance, such as in lieu fees or off-site compliance. In addition, Cambridge does not allow the affordable units to be smaller or to have lower quality finishes.

6) **<u>Key Administration Provisions</u>**

Affordable units in an inclusionary project must be generally comparable in size and materials to the other units in the overall project. The City also requires the affordable units to be distributed proportionately throughout the building in terms of floors, the direction they face, number of bedrooms, and other factors.

Prior to the issuance of a building permit for a property, a permanent deed restriction (the Inclusionary Housing Covenant) is required to be recorded. The Covenant identifies the inclusionary units and the other elements of the program, and is the senior interest on the property.

When construction is complete, the City manages tenant and homeowner selection. The City's Community Development Department (CDD) maintains a single point of entry for applicants to apply for affordable inclusionary rental and homeownership units. CDD conducts the marketing and maintains applicant lists. Applicants are screened by the City for eligibility and forwarded for final approvals to property managers for rental units and for mortgage approvals for homeownership units.

Development Requirements:

Cambridge does not allow the affordable units to be smaller units or to have lower quality finishes. One parking space must be provided for each affordable unit unless there is an average of less than one space per unit for the entire development, in which case the parking spaces provided for the affordable units must be in the same proportion as for the market-rate units. The affordable units must be spread throughout the building. CDD staff work with the developer to select the affordable units.

Tenant and Homebuyer Marketing and Selection:

The Housing Division works with developers and owners of inclusionary units to identify and approve eligible tenants and homebuyers for inclusionary units. The Housing Division administers the Rental Applicant Pool (RAP) for households interested in applying for affordable rental housing. Eligible applicants who are approved by the property owner/manager will be offered a unit based on their place in the Rental Applicant Pool.

Rental:

Eligible applicants for inclusionary rental units are referred to property owners or managers for review (credit, CORI and landlord references) and approval using standards applied to other applicants.

For-Sale:

Sales contracts or leases for inclusionary units are executed between the selected applicant and the building owner.

Resale Provisions:

For-sale units must be subject to deed restrictions providing the City with a Right of First Refusal option to repurchase the unit, either by locating an eligible buyer or by designating a non-profit to purchase the unit. Once a buyer informs the City of his/her intent to sell, the City calculating the restricted resale price. The buyer may also receive reimbursement for eligible capital improvements.

Preferences:

The RAP provides preference to Cambridge residents, households with children, households with an emergency housing need, and households who work in Cambridge.

7) Program Issues and Comments

Approximately 50% of inclusionary rental units are filled with tenants with mobile housing vouchers.

City's Community Development Department conducts a survey or asking rents and owner-occupied homes and condos sale prices twice per year. Because the survey only collects information on new and newly available units, the results of these surveys are typically higher than current rents being paid in the City.

The Housing Division sets sales prices of inclusionary homeownership units prior to making them available to income-eligible buyers. Prices are set to be affordable to households making 65% of the area median income paying 30% of their income for mortgage, condominium fees, taxes and insurance costs. Prices vary according to unit size, mortgage interest rates, condominium and other fees for each development.

8) Program Information, Documentation and Resources

http://www.cambridgema.gov/CDD/housing/

San Francisco, CA

1) Program Overview

Name: Inclusionary Housing Program (IH)
Administration: San Francisco Mayor's Office of Housing (MOH)
Year Adopted: 2002
Production: 1,560 as of March 2014 (632 rental, 928 for-sale)

In 2010 the City restructured the program to comply with a State Supreme Court ruling known as the Palmer Decision, which ruled that California state law prohibits the regulation of rents by local governments under inclusionary housing programs unless the owner has entered into an agreement with a public entity to provide affordable housing units in consideration for a direct financial contribution or other form of assistance specified in state law. Among other things, the City responded to this ruling by introducing an Affordable Housing Fee, while also allowing developers to fulfill the fee obligation by providing on-site and off-site affordable housing units.

In June 2016, San Francisco voters approved Proposition C, which imposed higher requirements on developers of 25 or more units. Proposition C also authorized the Board of Supervisors to make future changes to the City's Affordable Housing requirements for private developers of new market-rate housing.

2) Types of Projects Covered by Ordinance

San Francisco's IH program applies to residential developments with 10 or more units.

3) Affordability Requirements

Set-aside Requirements:

For developments of 10-24 units:
On-site (Rental and For-sale): 12 percent citywide. 14.4-17.6 percent in designated plan areas.

Off-site (Rental and For-sale): 20 Percent citywide. 17 percent for buildings 120 feet tall or greater and in designated plan areas. 23-27 percent in designated plan areas.

For developments of 25 or more units:
On-site (Rental and For-sale): 25 percent citywide (15% of the units affordable to low-income households and 10% affordable to middle-income households).

Off-site (Rental and For-sale): 33 Percent citywide (with 20% of the units affordable to low-income households and 13% affordable to middle-income households.

Income Targeting:

Rental: Rents must be affordable to households earning 55 percent AMI or less for on-site and off-site units.

For-sale: Units must be affordable to households earning 90 percent AMI for on-site units and 70 percent for off-site units. For initial sales, maximum household income of a qualified homebuyer is 10 percent above the maximum income level used for establishing the price of the unit.

The program includes a middle-income alternative for projects located in certain areas of the Eastern Neighborhoods Planning Area. Projects with less than 50,000 square feet of developable area may provide for-sale housing affordable to households between 120 percent and 150 of AMI, with an average affordability level of 135 percent for all units provided under the alternative.

Maximum Rents and Sale Prices:

For-sale: MOH calculates the initial sale price according to the following assumptions:

1. The applicable income limits;
2. Total payments of no more than 33 percent of the gross monthly income, including payments for debt service, taxes, insurance, HOA fees and related costs;
3. A mortgage interest rate that is the ten-year rolling average of 30-year interest rate data provided by Freddie Mac; and
4. A ten percent down payment assumption.

Affordability Term: Perpetuity for rental and for-sale.

4) Incentives and Offsets

For projects that provide affordable housing units on-site, the City will reimburse permit and other fees for the portion of the project that is affordable.

5) Compliance Alternatives

Land Transfer	The program provides a land dedication option for projects located in the Eastern Neighborhood Planning Area only. In its review of land dedication proposals, MOH must determine that the proposed land dedication satisfies the following requirements: • The sites will result in at least as many units as the City would require for on-site compliance; • The sites are suitable for development with respect to size, configuration, physical and environmental constraints, access, location, adjacent uses etc.; • The sites include, or will include, necessary infrastructure; • The developer has completed necessary environmental reviews; and • The value of the land, as determined by an appraisal, is equal to or greater than the value of the principal project multiplied by the required land dedication percentage (Inclusionary Procedures Manual, p. 69).
Off-site	As noted above, the off-site option includes higher affordability set-aside requirements. Key off-site compliance provisions include the following: • The units must be located within one mile of the principal project; and • The developer must complete the affordable units and have them ready for occupancy no later than the market-rate units.

Cash-in-lieu Fee	The fee is based on the number of off-site IH units that the City requires under program rules, which is typically 20 percent, multiplied be the fee as established in section 415.5 of the Planning Code. The City calculates the fee using an affordability gap analysis derived from a financial study prepared in 2012 that uses data on the cost of developing residential housing in the area, and adjusting it annually based on the Construction Cost Index (CCI) for San Francisco as published by Engineering News-Record. The fee schedule shown below became effective January 1, 2015. **Unit Size** — **Fee** Studio — $199,698 1 bedroom — $270,441 2 bedroom — $367,711 3 bedroom — $419,621 4 bedroom — $522,545
Waiver	NA

6) Key Administration Provisions

Development Requirements:

- Affordable units must be comparable with the market-rate units in number of bedrooms, exterior appearance and overall quality. Interior features should generally be of the same type as market-rate units, but they need not be of the same quality as long as they are at a level of quality that is consistent with current standards for new housing.
- For on-site compliance, the square footage of the affordable units may be less than comparable market-rate units, provided they are consistent with current standards for new housing.
- For off-site compliance, the total square footage of the affordable units must not be less than the calculation of the total square footage of the market-rate units of the principal project multiplied by the percentage of units that the program would require if the developer elected the on-site compliance option. In addition, average individual unit square footages must not be less than 70 percent of the average principal project unit square footage for corresponding unit types (unless waived by the Zoning Administrator), but in no case less than minimum square footages specified by MOH.

Tenant and Homebuyer Marketing and Selection:

For-sale Program: New for-sale units and resale units must be marketed for 21 days. The Procedures Manual contains specific rules for marketing new and resale units. New for-sale units must be marketed in accordance with an approved marketing plan. Among other requirements, sellers must list units on the MOH website.

Interested buyers must submit application materials to the project sponsor/ developer or, in the case of a resale, to the owner/seller. Application materials include an application form and supporting materials. Supporting materials generally consist of documents verifying income, residency and place of employment.

MOH then conducts a lottery among interested prospective buyers who have submitted a complete application by the application deadline and have attended an approved first-time homebuyer education course. The lottery process gives preference to buyers who live or work in San Francisco. MOH draws at least 10 names for each unit, provided there are enough applicants. MOH is responsible for qualifying household income, but it does not review applicants for eligibility until after the lottery has been completed.

Rental Program: New rental units must be marketed for 28 days and re-rentals for seven days, including listing on the MOH website. In order to participate in the lottery, applicants for new rental units must first submit a short-form application, and are only required to submit a complete application and income verification information if selected in the lottery. The owner/management agent is responsible for qualifying household income.

Preferences: The lottery process gives preference to households who live or work in San Francisco. MOH's process of conducting the lottery for rental units is nearly identical the lottery process for for-sale units described above.

Resale Provisions: The maximum resale price must be no greater than the sum of the following:

a) The original purchase price adjusted by the percentage change in AMI from the year of purchase;
b) The cost of eligible capital improvements completed in compliance with the Procedures Manual (maximum cost recovery is 10 percent of the resale price.

Capital improvement costs incurred on properties that are less than 10-years old do not qualify for reimbursement);
c) The cost of special assessments; and
d) The cost of sales commissions, up to five percent of the sale price as adjusted pursuant to a, b and c above.

No resale may occur without MOH authorization.

Other Compliance Measures:

- **Financing Requirements:** The Procedures Manual stipulates homebuyer financing requirements for the for-sale program. Key provisions include:
  - Homebuyers must use MOH-approved lenders;
  - Buyers must use 30-year fixed-rate loans and are prohibited from using adjustable, balloon payment, negative amortizing or interest-only loans;
  - Maximum loan to value is 95 percent;
  - A minimum down payment of five percent. Of the total five percent, three percent must be the buyers own funds;
  - The monthly housing-payment-to-income ratio must be no lower than 28 percent and no higher than 38 percent;
  - MOH reviews the interest rates of all loans for reasonableness; and
  - MOH must approve all refinancing agreements. Owners may be permitted to refinance with MOH-approved lenders up to the original value of their first mortgage plus closing costs in order to obtain lower interest rates or lower monthly payments. Owners may refinance to withdraw cash only in an amount equal to the principal paid on the Below Market Rate (BMR) Unit.

- **City Promissory Note:** Buyers must deliver to the City a promissory note, secured by a deed of trust, in an amount equal to the difference between the appraised value (as determined without regard to affordability restrictions) and the maximum purchase price of that unit at the time of resale or default. The note becomes due and payable upon the sale or transfer of the unit that is not performed in compliance with program rules, or upon an event of default. The note, accordingly, does not specify the amount payable, but contains a formula for calculating the amount that the homeowner will owe when it becomes due and payable.

- **Minimum Household Size**: The size of a household must be compatible with the size of the BMR unit being purchased. A minimum of one person per bedroom is required.

7) **<u>Program Issues and Comments</u>**

Negotiated Affordable Housing Plans:

The City frequently negotiates project-specific affordable housing requirements for large master-planned communities that exceed standard inclusionary requirements. An example of this is the Bayview Waterfront development, a 700-acre waterfront site consisting of two development areas: Candlestick point and Hunters Point Shipyard. The project design calls for over 10,500 residential units, of which approximately 32 percent will be below-market. The project's Disposition and Development Agreement (DDA) with the master developer includes a BHR Housing Plan that provides a framework for achieving these affordable housing goals. Among other things, the DDA obligates the developer to:

- Provide fully improved buildable pads, with requisite infrastructure, to the City at no cost, for 100 percent affordable housing, targeting 50 AMI households;
- Provide $97 million to subsidize the construction of affordable housing;
- Provide inclusionary housing units in market-rate developments, targeting households earning between 80 and 120 percent of AMI;
- Construct "workforce" housing that targets households earning between 140 and 160 percent AMI; and
- Contribute approximately $28.7 million into a housing fund that assists qualified households to purchase homes through down payment assistance and other strategies.

Other Issues and Comments:

- Staff review of the promissory note helps ensure that the City is notified if the owner tries to refinance or sell a home at a price that exceeds the amount permitted under the regulations.
- The City recently revised the form of the promissory note in order to address Fannie Mae concerns and to better ensure that the note amount does not result in an increase in property taxes by overstating the true purchase price of the home.
- The rental units require more program staff administrative oversight, particularly in instances where management agents have limited affordable housing compliance experience. Increasingly, owners of larger projects have contracted with management agents with affordable housing experience to separately manage affordable unit compliance-related tasks.
- Staff believe that compliance administration would be easier if the program rules for calculating income and assets, and maximum rents and sale prices aligned with federal and state rules for programs such as HOME, Low Income Housing Tax Credits, Mortgage Credit Certificates and Mortgage Revenue Bonds.
- The program includes a detailed Monitoring and Procedures Manual, which according to staff has significantly improved the operational efficiency of the program.

8) Program Information, Documentation and Resources

San Francisco Planning Code Section 415
http://www.amlegal.com/nxt/gateway.dll/California/planning/planningcode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1

City and County of San Francisco Inclusionary Affordable Housing Program: Monitoring and Procedures Manual
http://sf-moh.org/modules/showdocument.aspx?documentid=6606

San Jose, CA

1) **Program Overview**

Name: Inclusionary Housing Ordinance
Administration: San Jose Department of Housing
Year Adopted: Adopted 2010; Effective Jan. 1, 2013
Production: While the Ordinance became effective in 2013, it was on hold due to legal challenges until February 2016. According to San Jose staff, the first revenue and/or units are still at least a year away.

2) **Types of Projects Covered by Ordinance**

The Ordinance applies to all new, market-rate developments with twenty or more residential units on a contiguous property under common ownership and control.

3) **Affordability Requirements**

Set-aside Requirements:

On-site (Rental): At least 15% onsite units must be affordable, of which at least 9% of rental units must be affordable to Moderate Income households and at least 6% of rental units must be affordable to Very Low Income households.

On-site (For-sale): At least 15% of owner units must be affordable to Moderate Income households.

Off-site (Rental): If the developer elects to build the inclusionary rental units off-site, then the inclusionary requirement is increased to 20%, of which 12% must be affordable to Lower Income households (rather than moderate income households) and 8% must be affordable to Very Low Income households.

Off-site (For-sale): If the developer elects to build the inclusionary owner units off-site, then the inclusionary requirement is increased to 20%. Note that the City's definition of Moderate Income households eligible to purchase is different for on-site and off-site owner housing. Refer to Income Targeting below.

When building inclusionary units on-site as part of for-sale development, developers have the option to construct inclusionary rental units where inclusionary for-sale units would otherwise be required.

Income Targeting:

Rental: San Jose uses California's definition of Very Low Income, households earning less than 50% of AMI. 40% of the inclusionary units in a development must be affordable to Very Low Income households (equals 6% of the total rental units in the development for on-site and 8% of total rental units if inclusionary units are located off-site).

For on-site units, the remaining 60% of inclusionary units must be affordable to Moderate income households, defined as 120% of AMI. For off-site rental units, the remaining 60% of inclusionary units must be affordable to Lower income households, defined as 80% of AMI.

For-sale: Owner units must be affordable to Moderate Income households, defined as earning less than 110% of AMI. However, for on-site units, the inclusionary for-sale units may be sold to households earning as much as 120% of AMI.

Affordability Term: The City's minimum term of affordability is defined by the California Health and Safety Code sections 33413(c)(1) and (2). A longer term of affordability may be required if the Residential Development receives a subsidy that requires a longer term of affordability

Rental: Minimum of 55 years

For-sale: Minimum of 45 years

4) **<u>Incentives and Offsets</u>**

Incentives are only available to developments where inclusionary units are provided on-site. Developers may apply for one of more of the following incentives, unless the incentive would cause a specific adverse impact to the public health, safety and welfare.

Density bonuses are stipulated by the California Government Code. By meeting the minimum on-site inclusionary housing percentage for Very Low Income households, the develop can qualify for a 22.5% density bonus.

Other incentives include flexible parking standards, reduction in minimum setback, alternative unit type, alternative interior design standards, City process assistance, and financial subsidies. Alternative unit types must have the same bedroom count and percentage distribution among the units as the market-rate units. Inclusionary units may have different, but functionally equivalent, amenities than the market-rate units. As an additional incentive, developers may also apply for financial subsidy from City-administered funds for the difference in costs that results if the developer provides more inclusionary housing units than required.

5) Compliance Alternatives

Off-site	If the developer elects to build the inclusionary owner units off-site, then the inclusionary requirement is increased to 20%.
Cash-in-lieu Fee	If the developer chooses the in lieu fee option, the fee will apply to 20% of the units being build. **For-sale units:** The in lieu fee is updated annually as the difference between the median sales price of an attached market-rate unit in the prior 36-month reporting period and the affordable housing cost for a household of 2.5 persons earning no more than 110% of AMI. The fee also includes an application fee and a nominal 2% increase to compensate for the delay between paying the fee and when the new affordable housing will be available. **The 2016-17 in lieu fee is $85,572 per unit.** **Rental units:** The in lieu fee is updated annually based on the City's average subsidy required in the previous 12 months for construction of new rental units affordable to lower income households. If there are fewer than three new City-subsidized develops in the previous 12 months, the fee is updated based on an index of regional construction cost increases. The City Council has the authority to reduce the in lieu fee for developments that have 10 or more floors of residential use, however the reduction can only be applied to specified areas of the City, not individual developments. When the calculation of the number of required units results in a fractional unit, the fraction is rounded to the nearest whole number.

Land Transfer	Sites may be dedicated to the City or an affordable housing developer approved by the City. Land parcels must meet the following minimum characteristics: ▪ **Land Value.** The value of the site is equal to or greater than the in lieu fee multiplied by the number of otherwise required inclusionary units. ▪ **Zoning.** The site must be zoned for a density that will accommodate the required units. ▪ **Site Characteristics.** The site is: o Suitable for residential development. o Served by required infrastructure. o Free from geological hazards and/or hazardous materials, or has been appropriately mitigated.
Credits/ Transfers	The inclusionary housing requirement may be satisfied by the purchase of credits for inclusionary units from a developer of inclusionary housing in lieu of constructing inclusionary units within the development if approved by the City Manager.
Acquisition/ Rehabilitation of Existing Units	The inclusionary housing requirement may be satisfied by the acquisition and rehabilitation of existing market-rate units for conversion to units affordable to Lower or Very Low Income households only if the value of the rehabilitation work is 25% or more than the value of the unit prior to rehabilitation (including land value) and two units are rehabilitated in lieu of each single Inclusionary unit required.
Waiver	Limited waivers for moderate income units are granted when the affordable housing cost is within 5% of the market-rate value of the unit. Inclusionary requirements may also be waived, adjusted, or reduced if "an Applicant shows, based on substantial evidence, that there is no reasonable relationship between the impact of a proposed Residential Development and the requirements... [or] would take property in violation of the United States or California Constitutions."

6) Key Administration Provisions

Development Requirements:

Inclusionary units must be built and made available concurrently with market-rate units. For each building permit issued for an inclusionary unit, no more than six may be issued for market-rate units. When inclusionary units do not require a building permit, no more than five permits may be issued for market-rate units. Certificates of occupancy cannot be granted for any market-rate units until at least 20% of the inclusionary units are authorized for occupancy. The City cannot issue building permits for more than 90% of market-rate units until all inclusionary units have been issued building or occupancy permits.

Inclusionary units must be dispersed thought the development and cannot create a "geographic concentration of inclusionary units." The exterior design and quality of inclusionary units must be consistent with market-rate units and have equivalent parking. Interior finished may be different, so long as they are "functionally equivalent" to market-rate units. Inclusionary units must have access to the same development amenities as market-rate units.

Inclusionary units must have the same proportion of unity types as market-rate units except for the following:

1. Single-family detached residential projects may include single-family attached inclusionary units; and
2. Single-family detached inclusionary units may have smaller lots than market-rate units.

Tenant and Homebuyer Marketing and Selection:

Developers are responsible for accepting and vetting applications of eligible households. Once selected, Department of Housing staff review and approved the applicants.

Resale Provisions:

Affordability documents for for-sale, owner-occupied inclusionary units must include subordinate shared appreciation documents permitting the City to capture at resale the difference between the market-rate value of the inclusionary unit and the affordable housing cost, plus a share of appreciation realized from an unrestricted sale in amounts deemed necessary to replace the Inclusionary Unit.

7) **Program Issues and Comments**

San Jose's Inclusionary Housing Ordinance became the basis for a national debate on inclusionary housing. In 2015, the California Supreme Court upheld San Jose's IHO in *California Building Industry Association (CBIA) v. City of San José* and in 2016, the U.S. Supreme Court upheld the lower court's ruling by declining to review the case. *CBIA v. San Jose* reaffirm a municipality's police powers to impose inclusionary housing requirements. DRA provided litigation support to the City in its landmark defense of this inclusionary housing ordinance.

Although the IHO is nominally an inclusionary housing program, City staff report that approximately 95% developers opt for the in lieu fee on for-sale housing. And because of the legal delays imposed on the rental inclusionary program, the City has instead relied on a housing impact fee.

Palmer still makes rental inclusionary uncertain.

8) **Program Information, Documentation and Resources**

https://www.sanjoseca.gov/index.aspx?nid=3979

Santa Monica, CA

1) Program Overview

Name: Affordable Housing Production Program (AHPP)
Administration: Housing Division
Year Adopted: 1998
Production: Approximately 1,000 units (all but 2 are rental) as of March 2014

2) Types of Projects Covered by Ordinance

All new multifamily housing developments of two or more units, including multi-family housing that is part of commercial or other development.

3) Affordability Requirements

Rental projects: As detailed in the chart below, rental projects that serve lower income tiers have lower set-aside requirements. Affordability requirements are the same for on-site and off-site compliance.

Rental Projects	
Set-aside Percentage—On-site and Off-site	**Percent AMI Rent and Income Restrictions**
5%	30%
10%	50%
20%	80%
100%	100% if project is in a non-residential zone

For-sale projects: As indicated in the chart below, all for-sale units must be sold to, and priced such that they are affordable to, households at or below 100 percent AMI. Set-aside requirements vary by project size and are 25 percent higher if the developer elects off-site compliance.

Condominium Projects			
Set-aside Percentage On-site (Off-site = On-site Requirement +25%)		**Percent AMI Rent and Income Restrictions**	
4-15 Units	**16+ Units**	**4-15 Units**	**16+ Units**
20%	25%	Units Sold: 100% Units Rented: 60%	Units Sold: 100% Units Rented: 60%

The maximum sale price is the price at which the monthly housing costs do not exceed 38 percent of the monthly median income, adjusted for household size.

Affordability term: 55 years for rental and for-sale.

4) <u>**Incentives and Offsets**</u>

Housing developments that provide on-site affordable units are entitled to a density bonus and other development incentives. The density bonus ranges between 5-35 percent depending on the percentage of units that are affordable and the affordability tier of the units. As we summarize in the grid below, any combination of more affordable units or lower affordability tiers will result in a larger density bonus.

Minimum % of project that must be affordable to be eligible for bonus

Minimum Guaranteed Density Bonus (no combining of categories allowed)

% OF UNITS THAT	DENSITY BONUS*			ADDITIONAL BONUS**
ARE AFFORDABLE	VERY LOW INCOME	LOW INCOME	MODERATE INCOME	LAND DONATION
FOR RESIDENTIAL ZONES				
5%	20.0%			
6%	22.5%			
7%	25.0%			
8%	27.5%			
9%	30.0%			
10%	32.5%	20.0%	5.0%	15.0%
11%	35.0%	21.5%	6.0%	16.0%
12%	35.0%	23.0%	7.0%	17.0%
13%	35.0%	24.5%	8.0%	18.0%
14%	35.0%	26.0%	9.0%	19.0%
15%	35.0%	27.5%	10.0%	20.0%
16%	35.0%	29.0%	11.0%	21.0%
17%	35.0%	30.5%	12.0%	22.0%
18%	35.0%	32.0%	13.0%	23.0%
19%	35.0%	33.5%	14.0%	24.0%
20%	35.0%	35.0%	15.0%	25.0%
21%	35.0%	35.0%	16.0%	26.0%
22%	35.0%	35.0%	17.0%	27.0%
23%	35.0%	35.0%	18.0%	28.0%
24%	35.0%	35.0%	19.0%	29.0%
25%	35.0%	35.0%	20.0%	30.0%
26%	35.0%	35.0%	21.0%	31.0%
27%	35.0%	35.0%	22.0%	32.0%
28%	35.0%	35.0%	23.0%	33.0%
29%	35.0%	35.0%	24.0%	34.0%
30%	35.0%	35.0%	25.0%	35.0%
31%	35.0%	35.0%	26.0%	35.0%
32%	35.0%	35.0%	27.0%	35.0%
33%	35.0%	35.0%	28.0%	35.0%
34%	35.0%	35.0%	29.0%	35.0%
35%	35.0%	35.0%	30.0%	35.0%
36%	35.0%	35.0%	31.0%	35.0%
37%	35.0%	35.0%	32.0%	35.0%
38%	35.0%	35.0%	33.0%	35.0%
39%	35.0%	35.0%	34.0%	35.0%
40%	35.0%	35.0%	35.0%	35.0%

As detailed in the following grid, a project's affordability profile also determines a developer's right to receive development incentives/concessions with respect to side yard set-backs, rear yard set-backs and parcel coverage.

Number of Incentives/ Concessions	**Percentage of Units That are Restricted Affordable (Before Density Bonus)**		
	Very Low Income	Low Income	Moderate Income
1	5%	10%	10%
2	10%	20%	20%
3	15%	30%	30%

Finally, any project that receives a density bonus also qualifies for reduced parking requirements.

5) <u>Compliance Alternatives and Relief Provisions</u>

Land Transfer	Sites may be dedicated to the City or an eligible nonprofit affordable housing developer. Land parcels must meet the following minimum characteristics: ▪ **Zoning.** The parcel must be located in a City multi-family housing, commercial or industrial district in which multi-family housing is a permitted use. ▪ **Land Value.** The fair market value of the parcel(s) must be at least equal to the amount of the Affordable Housing Production Fee (the cash-in-lieu fee) that would otherwise apply were the market rate project applicant to elect that option. The estimate of value must be supported by an appraisal, subject to the City's review. ▪ **Site Characteristics.** The site must satisfy the following minimum criteria: o 6,000 square feet. o Can support at least 4 dwelling units. o Free of characteristics that would make it difficult to develop (i.e., irregular shape, environmental contamination, adjacent to incompatible land use). A Phase 1 environmental report must be provided prior to consideration of any proposed conveyance.

Off-site	The alternative site for the off-site affordable units must be located within a quarter-mile radius of the market rate parcel, and within the boundaries of the City. The quarter-mile radius requirement may be waived be the City Planning Commission based on evidence that a proposed site outside of the quarter-mile radius better accomplishes the City's affordable housing goals and the goals of its zoning and planning regulations.
Cash-in-lieu Fee	The fee option is not available for ownership projects of four or more units in the City's multifamily residential zones. AHPP refers to the cash-in-lieu payment as an "Affordable Housing Fee" or "Affordable Housing Production Fee." The amount of the fee is equal to the floor area of the project multiplied by the "base fee." The base fee is currently \$29.70 per sq. ft. for rental projects and \$34.80 per sq. ft. for condominium projects. The City adjusts the base fees annually using the Engineering News Records Construction Cost Index. When the calculation of the number of required units results in a fractional unit of less than 0.75, AHPP allows developers to pay a cash-in-lieu payment for the fractional unit.
Waiver	A developer may request an adjustment or waiver of the affordability requirements based on a showing that applying the requirements would effectuate an unconstitutional taking of property or otherwise have an unconstitutional application to the property.

6) Key Administration Provisions

Development Requirements:

Tenant and Homebuyer Marketing, Selection and Verification of Eligibility:

The City maintains a list of qualified households from which owners can select tenants for affordable units. In developing the list, the City adheres to the following priorities:

First Priority: Households who have been permanently displaced or face permanent displacement as a result of various causes including condo conversions, natural disaster, funding reductions in the Santa Monica housing voucher program, and government actions such as code enforcement and mobile home park closures.

Second Priority: Persons who are residents of Santa Monica or working in Santa Monica at least 36 hours per week.

In maintaining and updating the waiting list the City follows written guidelines that include public notice procedures and other procedures and requirements for maintaining the list.

- **Rental Program:** The City requires owners of rental properties to fill vacant affordable units by selecting tenants from the City-developed list of income-qualified households. If there are no qualified households on the City's list, the project owner may select income-qualified households subject to eligibility certification by the City.

- **For-sale Program:** Project owners may themselves select income-qualified households subject to eligibility certification by the City.

Referral Procedures: At least 90 days prior to the issuance of a certificate of occupancy or within 5 days of notice of tenant vacation of an existing IH unit, the owner must notify the City of the number and types of available units and the household income tiers the units will be available to.

Within 20 business days of notice by the owner, the City provides the owner with a referral form, for each household drawn from the eligibility list, providing at least three names for each unit available.

Owners contact the persons on the referral forms and must give applicants at least five days to submit a completed application. Owners who are not able to fill vacant units from the referral forms provided may request additional names from the City. Owners then conduct all further screening and selection of applicants.

Resale Provisions:

The calculation of maximum resale price is the same as the calculation used for the initial sale. There are no provisions for capital improvements paid by the owner or for-sale transaction costs. The City has a purchase option on all resales. Owners wishing to sell their units must notify the City at least 60 days before they offer the unit for sale, and the City has 60 days to notify the seller of its intent to exercise its option. Given the limited production of for-sale housing under the program, the City has not, to date, been presented with an option to purchase a unit, nor has it formulated a policy regarding the use of this option.

Other Compliance Measures:

- Any fractional affordable housing unit that is less than 0.75 can be satisfied by the payment of an affordable housing fee for that fractional unit only pursuant to Section 9.56.070(a)(4) or by constructing all the mandatory on-site affordable units with three or more bedrooms.

- In comparison to market rate units, affordable units may be smaller and have reduced amenities.

- Affordable units must have at least two bedrooms, unless at least 95 percent of the units in the proposed project are studios or one-bedroom units, in which case the affordable units may be respectively studios or one-bedroom units, reflecting the composition of the market-rate units.

7) Program Issues and Comments

There has been very little for-sale production under this program. Annual reports show that most of the condominium development in the City occurs in projects that are exempt from inclusionary requirements because they contain fewer than four units. It is likely that many developers opt to develop smaller projects in order to avoid program requirements.

The formula for determining the maximum resale price does not allow sellers to recover capital improvement expenditures or sale transaction costs. In addition, any increase in HOA dues would result in a reduction in the maximum purchase price. These provisions increase the likelihood that owners will realize losses on the sales of their homes.

8) Program Information, Documentation and Resources

http://www.smgov.net/Departments/HED/Housing_and_Redevelopment/Housing/Production_Program_(Inclusionary)/AHPP.asp

Seattle, WA

1) **Program Overview**

Name: Mandatory Inclusionary Housing (MIH) Program
Administration: Seattle Office of Housing
Year Adopted: Proposed for adoption by September 2017 (may be adopted earlier in some areas of the City as upzoning is completed).
Production: N/A

The proposed Mandatory Inclusionary Housing Program would not go into effect until the adoption of additional zoning capacity (see Incentives and Offsets below). Detailed provisions of the program are not yet available.

2) **Types of Projects Covered by Ordinance**

The MIH applies to rental and ownership multifamily housing, including new structures, an addition of units to an existing structure, alterations within an existing structure that results in more units, and a change of use that results in an increase in the total number of units. There is no minimum project size.

3) **Affordability Requirements**

Set-aside Requirements: The set-aside requirements will be determined at the time of each upzoning and will vary by market area (low-, medium- and high-rent/cost areas) and zoning category:

- For zones with 65 foot or lower height restrictions, the requirement is expected to be be 7% for high cost/price market areas, 6% for medium, and 5% for low.

- For high-rise zones such as Downtown and South Lake Union, the requirement is expected to be between 2% and 5%.

Income Targeting:

Rental: At initial occupancy, the maximum income is 40% of AMI for rental units with a net unit area of 400 square feet or less, and 60% of AMI for all other units. At the time of annual certification, the maximum income is 60% of AMI for rental units with a net unit area of 400 square feet or less, and 80% of AMI for all other units.

For-sale: The maximum income is 80% of AMI and households must meet a reasonable limit on assets (to be determined).

Affordability Term:

The term of affordability is 75 years from time of occupancy for rental and ownership units.

Maximum Rents and Sale Prices:

Rental: Monthly rent, including a utility allowance for utilities paid by the tenant, must not exceed 30 percent of 60 percent of AMI, or for a unit of 400 square feet or less, 30 percent of 40 percent of AMI.

Owner: TBD.

4) <u>Incentives and Offsets</u>

- For low-rise and mid-rise areas, additional FAR will be added across most zones at or below 85 feet. In addition, single-family zoned land in Urban Villages and along corridors would be changed to low-rise zoning.
- For high-rise areas, residential buildings would be allowed an extra 1,000 square feet of building area per floor (the City has maximum floor plate restrictions). Developments would be charged for the incremental square feet at the rate currently charged under the existing Incentive Zoning Program (which is $25.72 per gross square foot in 2016). The Department of Planning and Development (DPD) would grant relief from other dimensional code requirements to accommodate additional capacity in most cases, or the fee would be adjusted downward to reflect the loss.
- An affordable unit may be used to satisfy the requirements of both the MIH and the Multifamily Tax Exemption (MFTE) program but would have to demonstrate deeper affordability as approved by the Office of Housing.
- Affordability requirements and fees will apply whether or not the developer uses the additional density provided by the proposed upzoning.

5) Compliance Alternatives

In Lieu Fee	The payment-in-lieu option will be set at the capitalized value of the loss of net operating income with an additional charge of 10% to account for the delay and inflation involved with building units off site.
Off-Site	Off-site performance will be allowed, as approved by the Office of Housing
Lower Affordability	The requirement can be met with fewer units at deeper income targeting, if they result in a comparable value. Requires approval by the Office of Housing.

6) Key Administration Provisions

Development Requirements:
Inclusionary units must be completed at the same time or at an earlier time than the market-rate units.

Inclusionary units must be generally distributed throughout each structure in the development containing units.

Inclusionary units must be comparable to other units in terms of the status as a dwelling unit, live-work unit or congregate residence sleeping room; the number of bedrooms and bathrooms; net unit area by square feet; access to amenity areas; functionality and term of the lease. Bedroom and bathroom sizes must be generally comparable to those in market-rate units.

Annual Review:
The performance of the MIH will be reviewed annually including:

- The amount of in lieu fee payments collected, the number of units produced with such payments, and the number of units constructed through the performance option;
- A comparison of the change in the CPI with changes in multifamily rents and other housing market variables. If the CPI lags or exceeds rents or other variables, an alternative measure or index for updating program requirements will be considered; and

- An assessment of whether developers building outside of the Downtown and South Lake Union Urban Centers would be economically indifferent to performance versus payment options, given market conditions at the time. If it is determined that projects favor the payment option, the Council will consider raising payment amounts to avoid a bias toward payment.

Amendments:
Amendments may be considered if:

- After five years from the effective date of the ordinance there is a failure to meet expectations for program performance (i.e., the production of 6,000 units of housing affordable to households with incomes no greater than 60% of AMI);
- There are significant positive or negative changes in real estate development market conditions; and/or
- There is a need to adjust the relationship between the amounts for the payment option and the performance option.

7) Program Issues and Comments

Payment and performance amounts will be determined at the time development capacity is increased during the initial implementation phase. The City Council intends to consider whether to include higher performance and payment amounts, subject to statutory limits, for those areas where the increase in development capacity would be likely to increase displacement risk.

8) Program Information, Documentation and Resources

http://www.seattle.gov/hala/whats-happening