

Inclusionary Zoning: Best Practices

Brian Augusta, California Rural Legal Assistance Foundation
Anya Lawler, Western Center on Law and Poverty

Inclusionary Zoning: Brief Overview

Over 170 local governments in California have adopted inclusionary policies.

Valuable tool for creating affordable housing and inclusive communities.

Helps create diverse communities with a range of housing types.

Market rate construction helps drive production of affordable housing.



Inclusionary Zoning: Brief Overview

Policies have withstood various legal attacks.

Following recent legal and policy developments, inclusionary policies are on firm legal footing in California.

Today's presentation will discuss best practices for creating a successful inclusionary program.

Key Elements of a Well-Designed Inclusionary Ordinance

Crafted with input from a wide range of community stakeholders.

Detailed and specific in order to:

- Meet legal requirements.

- Provide clarity and certainty for the development community.

- Ensure that the ordinance can realistically achieve its goals.

Backed by data and research.

Components of a Well-Designed Inclusionary Ordinance

1. Findings
1. General Requirements
1. Standards for Inclusionary Units
1. Incentives and Concessions Available to Developers
1. Alternative Compliance Options
1. Waivers and Enforcement

1. Findings

Form the legal foundation of the inclusionary requirement.

Establish the need for the policy and provide a clear statement of goal.

Serve as a basis for the choices laid out in the ordinance.

2. General Requirements

How many affordable units are required and to whom should they be affordable?

- Typical percentages
- Typical affordability levels

Which projects have to comply with the inclusionary requirement?

- Size
- Location
- Tenure

2. General Requirements

Should there be different rules in different neighborhoods?

Broad application generally advisable.

Specific plan an option in large jurisdiction with vastly different submarkets.

Transit-specific policies have been used in some places.

How long should the inclusionary units remain affordable?

Rental units: as long as possible but at least 55 years.

For-sale units: 35-45 years is typical.

Equity sharing considerations

Resale restrictions

Should the requirements change over time?

Periodic review useful in adjusting unit mix, other requirements to match current local needs.

3. Standards for Inclusionary Units

Affordable indistinguishable from market-rate.

Similar mix of unit types.

Dispersed throughout.

Access to amenities.

Concurrent construction.

4. Incentives and Concessions Available to Developers

Density increases.

Waivers of development standards.

Reduction in or waiver of minimum parking requirements.

Expedited permit processing or by right treatment.

Waiver, reduction, or deferral of development fees.

Direct financial subsidies.

5. Alternative Compliance Options

In Lieu Fees

Potential pitfalls:

- No guarantee of a site for construction of affordable units.
- Fees set too low frustrate the achievement of the ordinance's goals.
- Fair housing issues.

Potential benefits:

- Revenue to leverage state and federal funds.
- Flexibility to produce needed units that the inclusionary requirement is not producing, such as extremely low-income units.
- Funding to preserve existing affordable housing with expiring deed restrictions.
- Allows for production of rental units in places where the inclusionary requirement is primarily creating for-sale units or vice versa.
- Allows for the development of affordable units in parts of the city where development is not happening and thus the inclusionary requirement is having no impact.

5. Alternative Compliance Options

In Lieu Fees, continued...

Key questions:

Will the in lieu fee enable production of AS MANY or MORE affordable units as would have been required on site?

Will those units be distributed in a way that is inclusive and consistent with fair housing obligations?

If in lieu fee option is provided:

Set amount carefully.

Plan for the expenditure of funds to ensure affordable housing units are produced in a timely manner.

Consider where fees can be spent in order to further the goal of creating more economically integrated neighborhoods throughout the community.

Plan for changing the fee over time to reflect inflation, construction cost changes, etc.

5. Alternative Compliance Options

Off-Site Construction

Units should be produced nearby, or, if not possible, distributed equitably.

Off-site construction usually involves cost savings, so more units should be required.

Construction before or concurrent with the market-rate units that triggered the inclusionary requirement.

Land Donation

Useful option in communities where affordable housing developers have difficulty finding sites.

Can be used for needed types of housing that might not otherwise get built, such as special needs or permanent supportive housing.

Important parameters:

- Equivalent or greater value to the affordable units that otherwise would have been produced on site.

- Ready for development at the time of donation.

- Consider allowable geography so affordable units are equitably distributed throughout the community.

6. Waivers and Enforcement

Need legal escape valve.

Have clear standards and procedures for seeking waiver.

Need enforcement and monitoring procedures:

- Verification of eligibility.

- Monitoring of covenants.

- Waitlists.

- Resale rules and procedures.

Feasibility Studies

Not required to adopt, but a best practice.

Helps ensure that an inclusionary requirement is right-sized for local conditions: not too low, not too high.

Opportunity to analyze local market conditions and the economics and tradeoffs of various policy options to ensure an ordinance delivers needed affordable units and meets other policy goals.

Provides a data-driven basis for the requirement to help overcome opposition.

Informs conversations with HCD during housing element review or if new AB 1505 review is triggered.

NOT a nexus study to establish rough proportionality. Inclusionary requirements are land use regulations, not exactions.

Q & A

What did we miss?

