Expanding Housing Opportunities Through Inclusionary Zoning: Lessons From Two Counties

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Abstract

Inclusionary zoning (IZ), also known as inclusionary housing, has become a popular policy tool that local jurisdictions use to increase the production of affordable housing. IZ ordinances either require or encourage builders of new residential developments to set aside a certain percentage of the housing units for low- or moderate-income residents.

This pilot study examines how effective IZ programs are as a strategy to increase the supply of affordable housing and further other housing- and community-related goals in two study sites: Montgomery County, Maryland, and Fairfax County, Virginia. These programs were selected because they operate in the same metropolitan housing market and have been in place for decades. The design and structure of these programs, however, differ significantly and therefore offer potential insight into how contrasting approaches relate to outcomes. The research team collected data, including IZ ordinances and other relevant documents, program data, interviews with key stakeholders, and local housing-market statistics, to evaluate how well IZ strategies provide affordable housing options for low-income communities over time.

A key observation is that, although inclusionary zoning has increased the supply of affordable housing units in these two sites, IZ requirements must be clear and administered consistently so that developers can effectively predict when it is economically feasible to build projects that require inclusionary housing units. The researchers recommend that future inquiry should focus on how IZ programs perform across various economic and political contexts. They also suggest that more research is necessary to evaluate the costs and benefits of IZ programs, particularly given the variation among programs.

Foreword

During the past 4 years, the Office of Policy Development and Research (PD&R) at the U.S. Department of Housing and Urban Development sponsored a series of research studies in support of PD&R's Sustainable Communities Research initiative. These studies explore how American communities can become more open, diverse, and inclusive. Such research includes examining various approaches and strategies for removing the barriers to affordable housing and expanding housing options for all. Inclusionary zoning is one tool that a number of jurisdictions embraced for achieving those goals, and it is the focus of this report.

Inclusionary zoning, also known as "inclusionary housing," has become a popular way for communities to address critical housing needs by either requiring or encouraging builders of residential developments to reserve a portion of their housing stock for low- and moderate-income residents. In addition to expanding housing affordability, inclusionary zoning programs seek to promote the economic vitality of surrounding neighborhoods, create racial and economic diversity, increase opportunities for families to have greater access to community amenities and to live closer to employment centers, and contribute to the overall quality of life of the entire community.

Inclusionary zoning has a long and varied history, beginning with the historic Moderate Priced Dwelling Unit (MPDU) program established in Montgomery County, Maryland, in 1972. Since then, the number of jurisdictions that have implemented such programs has grown steadily. More than 400 cities, towns, and counties now implement inclusionary zoning programs.

This study, *Inclusionary Zoning and Its Effect on Affordable Housing: Lessons From Two Counties*, begins to examine the degree to which inclusionary zoning programs achieve these goals. This report focuses on Montgomery County, Maryland, and Fairfax County, Virginia—both with inclusionary zoning programs that have been in existence for at least 30 years—and provides a suitable context for gauging success over time. It provides an indepth analysis of the two programs to understand the local context under which such programs are developed and implemented. Discussions with local administrative officials, planners, affordable housing advocates, and other key actors provided valuable insight into how these programs operate to address the affordable housing needs of residents over time.

The analysis provided several important lessons to learn from the experiences of these two varied local inclusionary zoning programs. First, ordinance requirements must be clear and administered consistently so that developers are able to make more informed decisions about where to build inclusionary housing units. Second, the revision of program requirements, which both counties execute every few years or so, may be a disincentive for a builder to pursue inclusionary zoning units because of ordinance complexity. Therefore, requirements should allow for a reasonable degree of flexibility and offer a range of options or incentives to the developer to produce more affordable housing units. Finally, because land values drive the costs of construction and development, local governments that use or consider using inclusionary zoning to expand housing opportunities for low- and moderate-income families should be cognizant of how these costs can shape development decisions.

I am pleased to add this report on inclusionary zoning to the catalog of research that examines local strategies that encourage and enable communities to expand housing choice and opportunity. The study offers insight into how communities, relying on locally devised strategies, can make an important contribution to achieving their affordable housing goals. Although this study is only a starting point in our effort to learn more about these programs, we hope it will offer some insight into how local decisionmakers respond to the increasing demand for affordable housing in response to current economic conditions.

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Executive Summary

Inclusionary zoning (IZ) ordinances have become an increasingly popular means by which state and local governments seek to expand affordable rental and homeownership housing opportunities. Since the mid-1970s, more than 400 jurisdictions have enacted IZ ordinances and the list is growing. IZ supports the development of affordable housing by requiring or providing incentives for developers to reserve a certain percentage of housing units in a market-rate development for low- or moderate-income households (Schuetz, Meltzer, and Been, 2009) or through other means—such as developing affordable units off site or paying a fee in lieu of such development.

Many policymakers consider IZ to be a cost-effective approach to affordable housing provision, inasmuch as the public sector bears only administrative costs while the private sector bears the full financing costs. From a social perspective, IZ ordinances encourage the colocation of affordable and market-rate housing, thereby encouraging mixed-income developments that are hypothesized to result in various social benefits. Given its mission to create strong, sustainable, inclusive communities and quality affordable homes for all, the U.S. Department of Housing and Urban Development (HUD) has substantial interest in understanding the extent to which IZ ordinances expand the supply of affordable housing and meet the needs of low- and moderate-income households. HUD also has an interest in understanding the advantages and disadvantages of IZ from the perspectives of stakeholders.

This report presents case studies of two IZ ordinances that mandate developer provision of affordable housing—the Moderately Priced Dwelling Unit (MPDU) ordinance of Montgomery County, Maryland, and the Affordable Dwelling Unit (ADU) ordinance of Fairfax County, Virginia. These programs were selected for study because they are longstanding (that is, have a track record of unit production) and because they provide interesting contrast and comparison. Both counties are within the Washington, D.C. metropolitan region, are densely populated, have strong housing markets, are among the wealthiest in the nation in terms of household incomes, and have relatively high housing costs. In addition, both ordinances have been amended many times. Interestingly, however, the political environments of the two counties differ, as do the details of program administrative structure, percent of affordable units required in development covered under the ordinances, and the affordability terms that are mandated.

This report considers, case by case, the contexts of the MPDU and ADU ordinances, amendments over time to the ordinances, the relationships among key stakeholders, the involvement of housing developers, the use of in-lieu fees, issues related to occupancy and unit management, the monitoring and enforcement of affordability requirements, effects on consumers, and interactions between the ordinances and other county programs. It concludes with a comparison of and findings from the two programs.

Case studies of the MPDU and ADU programs indicate that they both produce a highly variable number of units annually, depending on housing market conditions and development opportunities. Both ordinances are administratively complex, involving several government agencies and bodies and a range of responsibilities extending beyond compliance. Also, both are dynamic in that they have changed considerably over time in response to changing economic and housing market factors and political pressures. Each ordinance amendment has involved an effort to find a locally workable balance between affordable housing interests and developer profitability interests. Ordinance changes going too far in either direction jeopardize either public benefit or developer participation. Regarding the latter, predictability (that is, administrative consistency and clarity of requirements) is considered by developers paramount for being able to estimate profitability and, therefore, to engage in development within the jurisdiction.

Other key observations and findings are as follows:

- In response to reduced consumer demand for homeownership during the current economic recession and housing market crisis, developers have shifted away from homeownership toward rental production.

- Developers active in Montgomery and Fairfax Counties considered IZ to be merely another matter to factor into their planning and proforma calculations and not a reason to avoid development activities in the counties.

- Incentives, such as density bonuses, appeared relatively ineffective in motivating developers to produce more affordable units than the minimum percent required by each ordinance.

- Allowable in-lieu options included in the MPDU and ADU ordinances were rarely approved, in large part because of the difficulty of setting fees at a level agreeable to both public officials and developers.

- The affordability of IZ-mandated units can be enhanced when purchased by affordable housing agencies or nonprofit organizations that administer their own affordable housing programs.

- County staff involved in administering IZ ordinances reported having had few problems over the years requiring enforcement actions against developers or property managers.

- Consumers have benefited from the IZ ordinance requirements that affordable units be comparable in quality with market-rate units. Requirements that affordable units be dispersed throughout a given development and that all new developments include affordable units have contributed to residential income integration and promotion of housing choice.

- Neither the MPDU nor ADU ordinances appear well integrated with smart growth or transit-oriented development efforts in either county.

Building on what has been initially learned from the MPDU and ADU experiences, the following additional research, including in other jurisdictions, is needed to further understand the potential costs and benefits of IZ ordinances.

- It is important to probe more deeply the sources and types of influences that affect IZ ordinance amendments and the different program structures that have been established to implement IZ ordinances across jurisdictions—including those regarding the question of administrative complexity.

- Regarding developer responses and the nature of developer involvement in ordinance enactment and program design, newer ordinances need to be examined. For example, a multisite study on developer take-up of incentives could identify factors affecting how such incentives are perceived and their likely effects on affordable housing production.

- There is great need for consumer-oriented research involving IZ ordinances, such as that regarding the effect of affordability price controls on realizing the full value of housing appreciation or IZ ordinance effect on mobility and the achievement of other potential benefits—such as access to good-quality schools.

- Additional research is needed on housing agencies' and nonprofit organizations' uses of IZ-produced units to understand how the depth and length of affordability benefits can be sustained over time.

I. Introduction to the Report

Purpose and Background of the Study

The perennial shortage of affordable housing in the United States is especially acute today given the state of the economy and condition of the housing financing system. Notwithstanding a dramatic decline in housing sales prices in most markets, the increased demand for rental units, difficulties obtaining mortgage financing, and reduced household incomes all have served to intensify the need for affordable housing. An increasingly popular approach to addressing the provision of affordable rental and for-sale housing is inclusionary zoning (IZ). As of 2004, an estimated 400 IZ programs were in operation across the United States and the number has grown since then (Porter and Davison, 2009). IZ is a tool used to support the development of affordable housing units by requiring or providing incentives for developers to reserve a certain percentage of housing units in a market-rate development for low- or moderate-income households (Schuetz, Meltzer, and Been, 2009) or by enabling developers to comply with IZ requirements through other ways, such as building affordable units off site or paying a fee in lieu of construction. To compensate for the loss of revenue for developers and avoid accusations of an unconstitutional taking of property, local jurisdictions often offer developers density bonuses, zoning variances, or expedited permitting in exchange for constructing the affordable housing units.

IZ ordinances are an attractive policy instrument to policymakers for two primary reasons. First, they are assumed to be cost effective from the perspective of the public sector. The public sector bears administrative costs, but construction and financing costs are borne entirely by the private sector. Second, IZ ordinances assure that affordable housing units are co-located with market-rate housing, usually in the same building or subdivision, resulting in a mixed-income development. Such mixed-income housing is purported to have a number of ancillary social benefits (Collins, et al., 2005; Kleit, 2001; Levy, McDade, and Dumlao, 2010; Popkin, et al, 2004; Varady, et al., 2005).

IZ programs, however, are not without detractors. According to Emrath (2006), IZ programs represent a tax on new housing construction. As such, IZ programs are hypothesized to raise the cost of housing construction, reduce housing supplies, and favor only the lucky few who are able to obtain an affordable housing unit.

A review of the research literature on IZ programs found considerable gaps in what is known about actual benefits and costs of programs and in how programs are implemented in local jurisdictions (Levy, et al., 2010). Although ordinances provide much detail on elements of IZ programs, they only hint at the fact that many programs are dynamic—changing over time in response to local economic and housing market conditions and stakeholder concerns.

The mission of the U.S. Department of Housing and Urban Development (HUD) is to create strong, sustainable, inclusive communities and quality affordable homes for all. As such, HUD has substantial interest in understanding whether IZ programs expand the supply of affordable housing units and meet the needs of low- and moderate-income households at acceptable costs. HUD also is interested in better understanding the advantages and disadvantages of IZ for stakeholders.

Research Questions and Approach

The Urban Institute and project partners Drs. Vickie Been, Lynn Fisher, Gerrit J. Knaap, Larry Rosenthal, and Mr. Jason K. Sartori began this study by conducting a thorough review of the literature to identify gaps in the knowledge base and develop a research design for the pilot study of two IZ programs. The questions we pursue in this study[1], which emerged

[1] Urban Institute staff, Gerrit Knaap, and Jason Sartori conducted the case study research.

from a review of the literature, pertain to how programs are structured, who is involved in administering and amending ordinances, how particular components of programs work, and how programs are perceived by key stakeholders, including administrative staff, developers and housing advocates. Specific questions include the following questions.

- What is the context within which IZ is implemented (housing market, political and regulatory environment, etc.)?
- How have IZ ordinances changed over time and what has been the effect of the changes?
- What is the nature of the relationships among stakeholders?
- Who builds under IZ and what is the effect of IZ incentives on housing production?
- Who uses in-lieu fee options and why? How are fees collected and spent?
- How are prices set for affordable units, who determines eligibility, and who manages units?
- How is affordability monitored and enforced?
- Do lower income households benefit from IZ? In what ways?
- How do IZ programs interact with other housing and development programs?

This report presents pilot case studies of two mandatory IZ programs—the Moderately Priced Dwelling Unit (MPDU) program in Montgomery County and the Affordable Dwelling Unit (ADU) program in Fairfax County. We have drawn on primary and secondary data sources and public documents for information on the IZ ordinances and amendments and on the economic and housing market conditions in each study site. We conducted structured interviews with program administrators, developers, property managers, affordable housing advocates, and others. The pilot study plan did not include interviews with residents. Interview respondents are cited anonymously in the report.

Report Overview

Section II of the report introduces the two programs and the factors that led to their selection for the pilot case studies. The case studies are presented in sections III (Montgomery County, Maryland) and IV (Fairfax County, Virginia). Each case study begins with an overview of the jurisdiction's housing market and a discussion of the history of the IZ program and major amendments to the program ordinance. The study continues with an examination of program oversight and administration. We then identify issues and challenges facing the programs as identified by stakeholders and researchers, including a discussion of IZ outcomes and intersections between the IZ program and smart growth efforts. Section V presents findings from the case studies, organized by research topic. Section VI concludes the report with a discussion of key findings, the limitations of the research for the pilot case studies, and issues for future research.

II. Case Selection and Program Overview

Exhibit II-1. Map of Montgomery and Fairfax Counties

Source: Greater Washington Initiative, Regional Economic Development, 2011

Site Selection Rationale

We selected the MPDU and ADU programs for pilot case studies according to site selection criteria developed for a larger study, and proximity to Washington, D.C. (see exhibit II-1 for a map of the two case study locations). The criteria include both program-specific factors and contextual factors that could influence the implementation and outcome of IZ programs.

The site selection criteria include program characteristics and program outcomes shown in exhibit II-2.

Exhibit II-2. IZ Program Characteristics and Outcomes

IZ Program Characteristics and Outcomes									
Jurisdiction	State	State, County, or Local Ordinance	Mandatory or Voluntary	Year IZ Adopted	Renter/ Owner Occupied Units	Required Percentage of IZ Units	IZ Units Produced		Affordability Term in Years (R/OO)
							Renter	Owner	
Montgomery County	MD	C	M	1974	R, OO	12.50–15.00	3,956[a]	9,290[a]	99/30
Fairfax County	VA	C	M	1971*, 1990	R, OO	6.25–12.50	1,112[b]	1,336[b]	30/30

Sources: [a] Montgomery County Department of Housing and Community Affairs, 2012a; data through December 2011; [b] Fairfax County Redevelopment and Housing Authority; 2011a; data through December 2011; these data include units data built because of the ordinance, which began in 1990.

* Fairfax County passed its first inclusionary zoning ordinance in 1971, which was overturned, the current ordinance was passed in 1990.

- Both programs originated and are administered at the **county-level**: This similarity enables comparison of the two program's administrative structures.
- Both programs are **mandatory**: Research literature indicates that mandatory IZ programs are significantly more productive than voluntary programs, which can struggle to produce any units. Similarity in type will help identify differences in program that are not attributable to this factor.
- Programs are **seasoned**: Both programs have been implemented long enough to have produced units, passed ordinance amendments, and had units reach the end of their price-control period.
- Programs include **renter- and owner-occupied units**: Both programs require inclusionary zoning units to be built in both renter- and owner-occupied developments.
- Programs differ in the **percentage of affordable housing units required**: The MPDU program requires a higher percentage of affordable units than does the ADU program. Both programs have changed their respective percentage requirements from flat rates to a sliding scale.
- Programs have produced a **number of IZ units**: Because the programs are active, they support the study of program implementation.
- Programs differ in **affordability terms**: Both programs have changed their affordability terms from those in the original ordinance. At present, the MPDU program has a longer price-control period for rental units than the ADU program, although other terms are the same.

We also considered contextual factors (shown in exhibit II-3), which can influence both the implementation and the success of an IZ program.

Exhibit II-3. IZ Contextual Characteristics

IZ Contextual Characteristics										
Jurisdiction	MSA	Population[a]	Race/ethnicity[a]				Median income[b]	Vacancy rates[a]		WRLURI[c]–State Value
			White	African American	Hispanic	Asian		Owner	Renter	
Montgomery County	DC–VA–MD–WV	971,777	58%	17%	17%	14%	$89,155	1.5%	5.4%	0.79
Fairfax County	DC–VA–MD–WV	1,081,726	63%	9%	16%	18%	$103,010	1.1%	5.1%	– 0.19

Sources: [a] U.S. Census Bureau, 2011b; [b] U.S. Census Bureau, 2011a; [c] WRLURI values: > 0.74 indicates a highly regulated state; -0.55 to 0.74 indicates a modestly regulated state; < -0.55 indicates a lightly regulated state

Because the pilot study involves only two sites, we selected sites that were similar to support program comparisons.

- Programs are located in the same **metropolitan statistical area**: Both programs are inner-ring suburbs of the Washington, D.C. Metropolitan Statistical Area.
- Programs are located in counties with large **populations**: Montgomery and Fairfax Counties are highly populated and include high-density, multifamily, mixed-use areas, as well as lower density single-family residential areas.
- Programs are in areas with similar **racial, ethnic, and wealth** characteristics: Both programs are located in racially and ethnically diverse counties with high area median incomes.
- Programs are in areas with similar **housing markets:** Both counties have high housing costs and low vacancy rates for owner and renter units. (See individual case studies for information about the housing markets.)
- Programs have different **regulatory environments**: Montgomery County has been rated as highly regulated whereas Fairfax County has been rated as modestly regulated.

Overview of Programs

Montgomery County has one of the oldest IZ programs in the nation. Established in 1974, the Moderately Priced Dwelling Unit (MPDU) program has produced more than 13,000 affordable housing units, both rental and for-sale units, some portion of which have met the end of their affordability period, which is currently 30 years for for-sale MPDUs and 99 years for rental MPDUs. Although the central features of the program have been in place for more than 40 years, several programmatic and administrative parameters of the program have changed substantially over time.[2] The county is approaching build-out, which raises the question of whether and how the program might be modified to remain relevant for the production of affordable housing units. Although many studies of Montgomery County's MPDU program have been conducted, valuable things remain to be learned, especially details about program structure and implementation.

Fairfax County adopted its IZ ordinance, the Affordable Dwelling Unit (ADU) program, in 1990 and has since produced approximately 2,450 rental and for-sale units. This ordinance too has been amended a number of times.[3] At present, both for-sale and rental units are required

[2] In 1981, the price-control period was extended for both rental and for-sale MPDUs from 5 to 10 years and the percentage of units that are required to be set aside for MPDUs was reduced from 15.0 to 12.5 percent. In 2005, the price-control period extended to 99 years for rental MPDUs and 30 years for for-sale MPDUs.

[3] The original price-control period for both for-sale and rental ADUs was 50 years. In 1998, this was amended to 20 years for rental units and 15 years for for-sale units. In 2006, the price control was extended to 30 years for both.

to remain affordable for 30 years. The program does not require developers to include affordable units in highrise buildings. The county addressed this gap in the affordable housing program by developing the Workforce Dwelling Unit (WDU) program. Much of the new development in the county is near existing and planned transit stations and involves highrise residential properties. Without the WDU program, much of the new development likely would not include affordable units.

Exhibit III-1. Map of Montgomery County, Maryland

III. Montgomery County, Maryland

Montgomery County is a Maryland suburb situated just north of Washington, D.C. (see exhibit III-1 for a map of Montgomery County, MD). Comprising 796 square miles, 96 percent of the county is currently developed, preserved, or undevelopable because of regulatory constraints. With a 2010 population of 971,777, the county is the most populated jurisdiction in Maryland and the second most densely developed jurisdiction, after the city of Baltimore. Population growth has slowed slightly in recent decades; for example, it grew by 11.3 percent, (or nearly 100,000) between 2000 and 2010 compared with 15.4 percent (or 116,314) between 1990 and 2000 (Maryland State Data Center, 2011; U.S. Census Bureau, 2011b). The population is diverse; today more than 50 percent of the population identifies itself as minority or non-White Hispanic, and these populations have increased substantially since 2000 (Maryland State Data Center, 2011; U.S. Census Bureau, 2011b). The county is home to various federal agencies and to a large number of diverse technology companies that employ many of its residents. As of 2010, the median household income in Montgomery County was $89,155, among the highest in the nation, although the nation's median household income was $50,046 and the state's was $68,854 (U.S. Census Bureau, 2011a). In addition, the county population members who are more than 25 years old, who have a bachelor's degree or higher, represent a percentage that is double the national average of 28 percent (U.S. Census Bureau, 2011a). In aggregate, residents of Montgomery County are affluent, well educated, and politically progressive.

The Montgomery County Economy and Housing Market

Because of its affluence, the county's housing market has been and remains relatively strong. As of 2010, 64 percent (or 241,465) of the county's 375,905 housing units were owner occupied, whereas 32 percent (or 115,621) were renter occupied, and 5 percent (or 18,819) were vacant (U.S. Census Bureau, 2011b). In 2010, the median value of an owner-occupied home in the county was $447,200, which is significantly higher than the national median home value of $179,900. The median gross rent in 2010 was $1,466 per month, nearly double the national median of $855 (U.S. Census Bureau, 2011a). Exhibit III-2 demonstrates that Montgomery County has lower vacancy rates and more expensive housing than the United States and Maryland.

Despite its relative affluence and economic stability, the county has not been immune to foreclosure. Its foreclosure rate was at about 2.2 as of March 2011, slightly lower than the Washington, D.C. metropolitan region rate of 2.6 (NeighborhoodInfo DC, 2011). Currently, about 1,400 homes are in foreclosure in the county—down significantly from previous years, but third among all counties in the state in absolute number behind Prince George's County and Baltimore City (RealtyTrac, 2011).

Exhibit III-2. Comparison of key housing statistics for the United States, Maryland, and Montgomery County

	% Units Owner Occupied[a]	% Units Renter Occupied[a]	% Units Vacant[a]	Median Household Income[b]	Median Home Value[c]	Median Gross Rent[d]
United States	58%	31%	11%	$50,046	$179,900	$855
Maryland	61%	30%	9%	$68,854	$301,400	$1,131
Montgomery County	64%	31%	5%	$89,155	$447,200	$1,466
Sources: [a] U.S. Census Bureau, 2011b; [b, c, d] U.S. Census Bureau, 2011a						

In part, because the county's economy and housing markets are relatively strong, housing affordability for low-income residents has been and continues to remain a serious problem. In 2010, 39.0 percent of households paid 30.0 percent or more of their income toward housing (mortgage/rent and utilities) costs, and 42.2 percent paid more than $2,000 in housing costs (U.S. Census Bureau, 2011a). Furthermore, low turnover rates of subsidized housing units limit supply and aggravate the problem of finding affordable housing for low-income households (University of Maryland, 2005).

Housing affordability is exacerbated by regulatory constraints on housing supply, including limitations on the supply of land, lengthy and complicated approval processes, and low-density zoning (Nelson, et al., 2002; University of Maryland, 2005). Partly for these reasons, building permits and construction have not kept up with the demand. In 1980, the county introduced its Agricultural Reserve policy to protect more than 93,000 acres of agricultural land and open space from development. The Montgomery County Planning Department reported that by 2003 the county was close to built out capacity (Greene, 2005). According to the same report, 78 percent of all vacant land currently available is contained in parcels of less than two acres in size. In 2009, only 862 residential permits were issued for construction in the county. This represents an 83-percent decline from the 2000 permit volume of 4,950 units (U.S. Census Bureau, 2012a). In addition to zoning constraints, the county also has an adequate public facilities ordinance that, through development moratoria, further constrains housing development (National Center for Smart Growth, 2006).

The Montgomery County Inclusionary Zoning Program

In 1973, Montgomery County adopted its IZ ordinance that has since served as a model for the rest of the nation. The program has produced more units than any other IZ program in the country (Tecler, 2008). Although the parameters of the program have changed frequently and significantly over time, the essence of the program remains the same: with rare exception, all residential developments in Montgomery County larger than some critical threshold size must include a certain percentage of units that are affordable to low-income citizens.[4]

History and Evolution of Inclusionary Zoning in Montgomery County

The challenge to meet the needs of low- and moderate-income families by providing more affordable housing units is not new to Montgomery County. This challenge first emerged as a public policy concern in the 1930s when rapid growth of the federal workforce expanded the demand for homes in Washington, D.C. suburbs. It intensified during the post-war housing boom. By the 1960s, rapidly increasing housing demand, increasing regulatory constraints on housing development, and increasing public concern about housing issues at all levels of government created pressure for a policy response (University of Maryland, 2005; Tecler, 2008).

[4] The county's MPDU program does not cover the municipalities of Rockville or Gaithersburg, which maintain their own programs.

Montgomery County's pioneering approach to housing affordability had several antecedents. In 1966, the Housing Authority of Montgomery County (HAMC) was created to receive and allocate federal funds for low-income public housing. In the late 1960s, a countywide movement emerged that led to the passage of the Model Fair Housing Ordinance (Rusk, 2000). By 1974, HAMC became the Housing Opportunities Commission (HOC) and its role had expanded to provide housing and financing for households of eligible incomes (Housing Opportunities Commission, 2011).

Several market and regulatory factors created an environment favorable to the adoption of a new affordable housing policy. In 1972, the Washington Suburban Sanitary Commission imposed a moratorium on sewer connections, causing land and housing prices to escalate. Developers responded by building high-end housing, adversely affecting low-income and young families. In response, advocacy groups, such as the League of Women Voters and Suburban Maryland Fair Housing, began pushing the Montgomery County Council to require developers to build affordable housing units. In 1972, with input from developers, political leaders, and others, a bill was introduced that after 1 year of intense debate would pioneer a new approach to providing affordable housing. In 1973, the County Council adopted its IZ ordinance, called the Moderately Priced Dwelling Unit (MPDU) program.

Although support for the program was widespread, the opposition was also significant. Developers and homebuilders argued that the program, as originally proposed, represented an unconstitutional taking of property. In response, the bill was amended to provide density bonuses and the HOC was given the option to purchase or lease up to one-third of all MPDUs constructed through the program. Nevertheless, then county executive James Gleason vetoed the bill, calling it an unfair burden on developers and an administrative burden on the county. In November 1973, the County Council overrode Gleason's veto and the program took effect in 1974.

When originally adopted, the MPDU program required that new developments of 50 or more units include 15 percent of the units as affordable. In return, a developer would get a density bonus of up to 20 percent. The control period for these units was 5 years, and developers could decide if the units would be available for sale or for rent (Montgomery County Department of Housing and Community Affairs, 2005). To qualify for the affordable housing program, households could have an income of 70 percent or less than the area's median income (AMI), adjusted for family size. The HOC was given the opportunity to purchase or lease up to 33 percent of available MPDUs. From the beginning, the program was mandatory, meaning that all builders were compelled to participate. Participation was, and is still, the only way to get a development plan approved. The first MPDUs came on the market in 1976.

Program Goals and Objectives

The goals and objectives of the program are explicit and written into the regulation (Montgomery Council Chapter 25A of the law as amended)[5]. They include providing for a full range of housing choices, conveniently located in a suitable living environment, for all incomes, ages, and household sizes. They also aim to disperse moderately priced housing within each individual subdivision and within the county consistent with the General Plan and Area Master Plans. The program seeks to encourage the construction of moderately priced housing by permitting optional increases in density to reduce land costs and other costs associated with the moderately priced housing. Although the ordinance requires that all subdivisions of 20 or more dwelling units include a minimum number of moderately priced units of varying sizes, it also encourages subdivisions with fewer than 20 units to do the same. The ordinance strives to ensure that private developers constructing MPDUs incur no loss or penalty, and have reasonable prospects of realizing a profit on such units by virtue of the density bonus provision. Finally, the program intends to provide developers of residential units in qualified projects more flexibility to meet the broad objective of building housing for low- and moderate-income households by permitting developers to contribute to the county's Housing Initiative Fund (HIF).

[5] Chapter 25A, Montgomery Priced Dwelling Unit Ordinance amended by Montgomery Council County Bill 38-07, December 11, 2007.

Major Program Revisions Since 1974

Since 1974, the MPDU program has undergone nine major revisions to address changing circumstances and shifting political environments (see Appendix A-1 for a summary of ordinance revisions).[6] Sometimes, the modifications were made to remove ambiguity or close loopholes; on other occasions, they addressed situations that undermined the intent of the law (Destorel-Brown, 2001).

When the MPDU program was initially adopted, developers were required to set aside 15 percent of all units in a development with 50 or more units as MPDUs. In exchange, developers would receive up to a 20-percent density bonus. The price and rent control period were both set at 5 years. In 1978, the program was modified to require the percentage of for-sale MPDUs in a development to match the percentage of market-rate for-sale units in the development. This change was necessitated by developers renting the for-sale units until the control period expired, then making them available for sale at market rates. The County Council wanted to close that loophole. A couple of years later, high mortgage rates were disqualifying many on the county's waiting list from obtaining financing. As a result, the County Council modified the ordinance to include the cost of financing when calculating the income limit, thus qualifying more families for the MPDUs.

By 1981, because the original pricing and rent restrictions only lasted 5 years, many affordable units were lost as their control period expired. Thus, the price-control periods for rental and for-sale units were both increased to 10 years. At the same time, the percent of units required to be set aside for MPDUs was reduced from 15.0 to 12.5 percent. The reduction in the required number of units was changed because developers did not always have the opportunity to use the density bonus that they were permitted, and so they lobbied for a reduction in the amount of units constructed.

In 1988, the price-control period for rentals was increased from 10 to 20 years. Developers were given more flexibility in that a sliding scale was established (between 12.5 and 15.0 percent) based on the density bonus that a developer could actually use. The maximum density bonus was increased from 20 to 22 percent. Developers still had to build 12.5 percent of the units as affordable units; but after those initial units were built, then the density bonus incentive would kick in. Developers could build 1 percent more market-rate units for every 0.10 percent affordable unit produced.

Other important amendments at the time required that any for-sale unit built after 1989, and sold after the control period expired, had to contribute one-half of the profits to the newly created Housing Initiative Fund (HIF).[7] The HIF is a trust fund, administered by the county's Department of Housing and Community Affairs (DHCA), set up to promote housing opportunities in the county for low- and moderate-income households. It receives all its revenues from local county sources. In addition to the resale profits, the HIF receives funding from loan repayments and local tax revenues. The county uses the fund to assist the HOC, nonprofit organizations, and for-profit owners in acquiring, building, or renovating affordable housing units. The HIF funding for FY 2008 was $34 million and for FY 2009 it reached $53 million (Montgomery County Department of Housing and Community Affairs, 2009). The HOC was also given the right of first refusal to purchase any owner-occupied MPDUs after the 10-year control period.

The 1988 bill also established an Architectural Compatibility Price Upgrade to permit an increase of up to 10 percent in an MPDU price in exchange for external architectural improvements making the MPDUs compatible with the market-rate units. For instance, to save construction expenses, developers would use vinyl siding on MPDUs compared with brick façades on market-rate units. To encourage the integration of MPDUs in the community and to help developers market all units equally, the Department of Housing and Community Affairs could now authorize developers to charge more for MPDUs with a brick façade.

In 1994, with intent to prevent abuse of MPDU occupancy requirements, an amendment was passed stating that owners of for-sale MPDUs must occupy their units for the entire control period. The amendment also required that MPDUs in a development project be constructed at the same pace as the market-rate units. This assured that the MPDUs

[6] The primary sources for the history of the MPDU program include Trombka, et al. (2004) and Montgomery County Department of Housing and Community Affairs (2005).

[7] This was only required on the first sale of an MPDU after the control period expired, and was offered as an alternative to requiring permanent price controls for MPDUs.

were not constructed last and helped to integrate the units and their owners in the community. Before these changes, market-rate purchasers would be first to move in to a community, followed by an influx of lower income residents moving in at the end of the development project. This would create a stigma, of sorts, that made it difficult for MPDU residents to fully integrate with the community (MC Confidential Interview Source 5, 2011). Also, according to county planning staff, at least one development project took so long that many other regulations and environmental laws had changed when the project was complete. The developer was required to comply with new impervious surface limits and green space requirements, and, as a result, was unable to complete the agreed upon number of MPDUs (MC Confidential Interview Source 5, 2011).

In 2001, the county Council enacted a bill that restarted control periods on for-sale MPDUs. To maintain the affordable housing stock, any unit with an initial sale after 2002 that resold before the 10-year control period expired, the county would restart the 10-year control period. Other amendments in 2001 also reduced the MPDU requirements in central business districts (CBD) and transit-oriented developments (TOD) in recognition of the high cost of building affordable units in highrise buildings.

In 2002, the county Council lowered the threshold of developments requiring the construction of MPDUs from developments with 50 or more units to those with 35 or more units. This revision subjected more developments to MPDU requirements, which increased the supply of affordable housing units in the county. Although this clearly placed a larger burden on developers—and quite possibly price pressures on the market-rate units—developers were now assured that projects with 35 to 49 units would be permitted at least one bonus market-rate unit.

Amendments in 2005 made the law what it is today. The control period was changed from 10 to 30 years on for-sale MPDUs and from 30 to 99 years for rental MPDUs to help maintain the county's supply of affordable housing units. To again increase the supply of MPDUs, the project threshold requiring MPDUs was lowered from 35 or more units to 20 or more units, thus increasing the likelihood a project would be subject to MPDU requirements in a county with limited development capacity.

Current Features of the Program

Current features of the MPDU program reflect nearly 40 years of program implementation and policy adjustment. Today, the threshold development size for requiring MPDUs is 20 or more housing units. MPDUs must constitute 12.5 to 15.0 percent of the total units approved. Density bonuses are granted only if the development includes more than the required minimum percentage of units, and the maximum density bonus is 22 percent. Of the total MPDUs, 40 percent must be offered for sale to the HOC or other nonprofit housing agencies to sell or lease to low-income households.

Included in the MPDU program are detached and semidetached homes (duplexes), townhouses, garden condominiums, and highrise condominiums and apartments. The program includes both homeowner and rental elements, each with specific eligibility requirements.

The Siding Scale of MPDU Requirement

Whether the developer uses the density bonus or not, 12.5 percent of new units in developments with more than 20 units must be MPDUs. Developers can receive up to a 22-percent density bonus if 15 percent of the units are MPDUs. Neither the share of MPDUs required nor the permissible density bonus varies by building unit type.

Density Bonuses

Density bonuses are intended to help developers achieve both profitability and reduce opposition and legal claims from developers. The density bonuses act as a payment to developers, who would otherwise argue that the diminished profits associated with inclusionary zoning regulations (that prevent them from realizing the full market profit potential of their land) represent an unconstitutional taking of land without just compensation. By definition, a density bonus permits builders to build more units than would be permitted by the zoning ordinance alone. They are intended to offset the cost of building the affordable housing units and provide an incentive for building more MPDUs than the minimum required amount.

Affordability Terms

Rental MPDUs that were built after the 2005 amendment have affordability terms of 99 years, which essentially make the units permanently affordable. For-sale MPDUs have shorter affordability terms of 30 years; however, this price-control period is renewable. Thus, if the unit is sold during the price-control period, the 30-year affordability term restarts at the settlement date of the resale.

Income Limits

In Montgomery County, income limits are based on the AMI and vary by household size, tenure, and unit type. Income limits are updated annually by the Director of the Department of Housing and Community Affairs. To be eligible for the for-sale MPDUs, a household must demonstrate a minimum gross household income of $35,000 each year. Maximum annual household incomes are based on household size. With the exception of single-person households, the maximum income limit to purchase an MPDU through the County is much less than the corresponding median household income, as shown in Exhibit III-3. Maximum annual household income limits for for-sale MPDUs based on the household sizeExhibit III-3:

Exhibit III-3. Maximum annual household income limits for for-sale MPDUs based on the household size

Household Size	Maximum Income[a]	Median Household Income[b]	Limit as Percent of Median
1	$52,500	$49,701	106%
2	$60,000	$100,838	60%
3	$67,500	$110,339	61%
4	$75,000	$130,007	58%
5	$81,500	$116,612	70%

Effective as of January 24, 2012.

Sources: [a] Montgomery County Department of Housing and Community Affairs, 2012b; [b] U.S. Census Bureau, 2011a.

To be eligible for the rental program, a household must demonstrate a minimum annual household income of $30,000. Current maximum annual household incomes are shown in exhibit III-4 that follows.

Exhibit III-4. Maximum annual household income limits for rental MPDUs based on the household size and type of unit

House-hold Size	Maximum Income: Garden Apart-ments[a]	Maxi-mum Income: Highrise Apart-ments[b]	Median House-hold Income[c]	Limit as Percent of Median (Garden/ Highrise)
1	$49,000	$52,500	$49,701	99%/106%
2	$56,000	$60,000	$100,838	56%/60%
3	$63,000	$67,500	$110,339	57%/61%
4	$70,000	$75,500	$130,007	54%/58%
5	$75,500	$81,500	$116,612	65%/70%

Sources: [a, b] Montgomery County Department of Housing and Community Affairs, 2012c; [c] U.S. Census Bureau, 2011a Effective as of January 24, 2012.

Prices

Prices of MPDUs are set by the DHCA to be affordable to households earning the maximum income for the household size. The formula prices rental MPDUs not including utilities at 25 percent of the maximum permissible income divided by 12, and rental MPDUs including utilities at 30 percent of the maximum permissible income divided by 12. Exhibit III-5 shows maximum monthly rents by apartment type.

Exhibit III-5. Maximum monthly rent based on the maximum income limits

Number of Bedrooms	Maximum Rent Without Utilities: Garden Apartments	Maximum Rent With Utilities: Garden Apartments	Maximum Rent Without Utilities: Highrise Apartments	Maximum Rent With Utilities: Highrise Apartments
0 (Efficiency)	$1,025	$1,225	$1,095	$1,315
1 BR	$1,095	$1,315	$1,175	$1,410
1 BR + 1 Den	$1,170	$1,400	$1,250	$1,500
2 BR	$1,315	$1,575	$1,410	$1,690
2 BR + Den	$1,390	$1,665	$1,490	$1,790
3 BR	$1,520	$1,820	$1,640	$1,965
Source: Montgomery County, MD, 2012 Effective as of January 2012.				

For-sale MPDUs are also set by a formula by DHCA, which takes into account the costs of building the unit and the unit size. Units can be significantly cheaper than their market-rate counterparts. As an example, a for-sale, three-bedroom townhouse MPDU in Silver Spring was listed on the county's MPDU website at $151,108 in December 2011.[8] A comparable, although slightly larger, market-rate unit in the same development was listed at $377,000.

Program Oversight and Administration

Program administration, implementation, and oversight of Montgomery County's MPDU program are complex and involve several government policy bodies, administrative agencies, quasigovernmental organizations, and for-profit and nonprofit organizations. The role of for-profit firms is addressed in the next section. Each organization has distinct responsibilities and has helped shape the program over time. Both substantive policy and administrative elements have changed frequently in response to programmatic issues and changing political environments. The administration of an IZ program has involved flexibility, coordination, and long-term commitment from all parts of government and the larger affordable housing community.

Montgomery County Council

The Montgomery County Council is the legislative branch of county government. It has nine members, all elected at the same time by the voters of Montgomery County for 4-year terms. The county Council established the MPDU program overriding the veto of the county executive in 1973. Since then, the county Council has provided continuous oversight over the program, primarily by way of its Planning, Housing, and Economic Development Committee. The county Council has commissioned several studies on the program, many of which led to changes in various parameters of the program, as described previously.

Maryland-National Capital Park and Planning Commission and the Department of Planning

The Maryland-National Capital Park and Planning Commission (M-NCPPC) was established by the state of Maryland in 1927 to maintain and administer a regional system of parks and to plan for the growth and development of Montgomery and Prince George's Counties. Members of the Commission from Montgomery County also function as a separate planning board (hereafter Planning Board) to facilitate, review and administer matters that affect growth and development in Montgomery County (M-NCPPC, 2011). Master and Sector Plans are approved by the county Council and adopted by the Planning Board. By setting the framework for land use policies in specific parts of the county, Master and Sector Plans also have influence on the implementation of the MPDU program.

[8] The county maintains a current list of MPDUs offered for sale on its website at http://www.montgomerycountymd.gov/APPS/DHCA/mpdu_status/MPDUPropList.asp.

The Montgomery County Department of Planning serves as staff to the Planning Board. As such, both the Planning Board and the Department of Planning play important roles in the administration of the MPDU program. Their primary responsibilities include:

- *Preparation of Reports.* Planning Department staff prepare reports on preliminary plans of subdivisions, sites and projects. These reports are submitted to the Planning Board for its consideration and usually include information about MPDUs in the projects. The reports show the location of MPDUs within the development on a drawing or map. The reports also address the design standards for the units, especially when the standards differ from the market-rate units. In multiphase projects, staff prescribe when each MPDU will be built. Planning staff also make sure MPDUs are placed on site by preparing the conditions of approval.

- *Approval of Resolutions.* The Planning Board approves all forms of preliminary, site and project plans through resolutions. The resolutions often incorporate most of the information contained in staff reports. The Planning Board also approves the Certified Site Plans, which are large plans and drawings associated with the resolutions and include detailed information about MPDUs.

- *Review of Requests.* The Planning Department Director, as a member of Alternative Review Committee, reviews requests from developers to comply with the MPDU law under the Optional Method Standards. These standards permit variations in unit type, set back, and lot-size requirements to facilitate the construction of MPDUs, especially in single-family zones. Depending on lot configuration, the Optional Method Standards can significantly increase permitted density. Details are specified in *Site Plan Guidelines for Projects Containing MPDUs* (Rubin and Trombka, 2007).

Development Review Committee

The Montgomery County Code requires that the Planning Board establish a subdivision review committee (Montgomery County, MD, 2012b: Section 50-35(c)). At present, this committee is known as the Development Review Committee (DRC). The DRC consists of members of various county departments and agencies, Maryland state agencies, and public utilities representatives. The director of the county's Planning Department chairs this committee and has primary responsibility for reviewing all preliminary projects, plans, and site plans before they reach the Planning Board. Comments from the meetings are made part of each applicant's file.

Department of Permitting Services

The Department of Permitting Services (DPS) issues building permits. The DPS will not issue permits until the applicant complies with all the requirements of the MPDU law, as specified in the applicant's Agreement to Build with the Department of Housing and Community Affairs. If an Agreement to Build has been executed, but the developer does not comply with its specifications, the DPS will withhold permits for the later stages of the subdivision.

Department of Housing and Community Affairs

The Department of Housing and Community Affairs (DHCA) has primary responsibility for the administration of the MPDU program. The DHCA has a staff of approximately 6.5 full-time equivalents (FTEs) focused on the MPDU program. Besides the Planning Department Director, these positions include a full-time program manager, a senior planner, a program assistant, a program staff member, and an administrative assistant. The DHCA is responsible for executing a developer's Agreement to Build MPDUs and the MPDU Offering Agreement after the units are made available for sale or for rent. The DHCA also determines whether to permit in-lieu land transfers or fees (alternative payment) for a particular project, considers requests to provide MPDUs in an alternate location, and approves all waivers or individual exceptions to the rules of the program. In addition, for the for-sale program, the DHCA provides the following services.

- Establishes guidelines for homebuyer eligibility.
- Establishes guidelines for eligibility of the units/projects.
- Establishes MPDU pricing policies.
- Establishes rules by which units are resold and assists with that effort.
- Signs agreements with developers to build the MPDUs.
- Reviews requests for modifications known as "alternative compliance measures."
- Maintains a list of available MPDUs and markets the availability of units.
- Accepts and processes homebuyer applications.
- Conducts a lottery for units and awards MPDUs to eligible households.
- Enforces and conducts site inspections.
- Approves the release of MPDU units for sale.
- Provides orientation information to future MPDU residents.
- Certifies and recertifies MPDU tenants.
- Monitors compliance with occupancy, resale restrictions, and profit-sharing regulations.
- Monitors MPDU compliance after the site is approved.
- Tracks applicants and MPDUs over time.[9]

The director of DHCA has considerable authority in administering the MPDU program. Any exceptions to the rules require the approval of the director, including all buyout agreements, which permit a developer to pay into the Housing Initiative Fund in lieu of building MPDUs. As a result, certain changes to the program over the years are the result of agency policy changes rather than legislated amendments. In recent years, despite remaining a legal option, not a single buyout has been approved.

Housing Opportunities Commission

The Housing Opportunities Commission (HOC), formerly the Housing Authority of Montgomery County, was established in 1974, the same year as the MPDU program. Like other housing authorities, HOC manages rental and ownership programs including public housing, the federal voucher program, and several other programs for very low-, low-, and moderate-income households (Housing Opportunities Commission, 2012).

In every development, the HOC is given the right of first refusal to purchase 33 percent of all MPDUs built.[10] The HOC buys MPDUs—at the same prices they are offered to eligible MPDU homebuyers—and then places them in one of two programs, depending on funding availability: the HOC Homeownership Program (HOC/HOP), or a scattered-site rental program. All units purchased by the HOC through the MPDU program are subject to restrictive covenants including price controls. The HOC is the largest purchaser of MPDUs in the county. Since its inception, the HOC has used a variety of local, state, and federal affordable housing funds to purchase approximately 1,500 units (Schwartz, 2011).

Nonprofit Housing Organizations

Nonprofit housing organizations also play an important role in the administration of the MPDU program. The county has close to 30 nonprofit housing organizations, of which about 12 have participated in the MPDU program (MC Confidential Interview Source 4, 2011). Although nonprofit housing organizations engage in a range of activities, many buy and rent housing units to low-income residents. For many of the organizations that do so, the MPDU program provides a significant source of affordable housing units. For example, a director of one nonprofit housing organization commented: "If there was not an MPDU program, it would drastically reduce the number of properties that we acquire" (MC

[9] To facilitate the administration of the program the DHCA has produced several reports and guidelines, which include: "Procedures for the MPDU Alternative Review Process," "MPDU Pricing Standards," "Minimum Specification for MPDUs," and "Calculating Rental Rates for MPDUs." All of these guidelines and forms can be easily found at http://www.montgomerycountymd.gov/apps/dhca/.

[10] Up to 40 percent of MPDUs are available for purchase by HOC and other certified nonprofit organizations. After HOC takes its share (up to 33 percent), the remaining units (up to the 40 percent of the development's total units) are offered to the nonprofit organizations.

Confidential Interview Source 6, 2011). On occasion, nonprofit housing organizations resell MPDUs. In those cases, MPDUs are subject to the same regulations as individual MPDU homeowners. Most MPDUs purchased by nonprofit groups, however, are offered for rent.

Although several nonprofit housing organizations provide housing for all low-income residents, several focus their efforts on particular segments of the population, such as people who are elderly, mentally ill, disabled, very poor, and other people with special needs. These providers have unique issues versus general low-income community providers, such as providing access for disabled residents and catering to the special needs of mentally ill residents. Many of the issues are the same, however, and are pervasive for all mixed-income housing providers. These issues include the difficulty of managing properties at disparate locations, the difficulty of participating in HOAs, and other difficulties that pertain to mixed-income housing (MC Confidential Interview Source 6, 2011).

Costs of the MPDU Program

Because MPDU administration and implementation draws on many governing bodies, the costs of administering the program are difficult to estimate. Although the DHCA has the most direct and explicit responsibility for program administration, the administrative costs of the DHCA alone clearly do not include the full administrative costs of the program to the county. Estimating the costs of the program would need to include costs to the HOC, developers, property managers, and so on.

Program Implementation and Effect on the Private Sector

The private sector also plays a key role in implementing Montgomery County's MPDU program. MPDUs are produced only when private-sector builders and developers produce housing. Builders and developers must get projects approved, sell or rent MPDUs, and meet reporting requirements. Because the program is mandatory, this entire process has become an integral part of the housing development process in Montgomery County. In the county, if a developer wants to build more than 20 housing units at one time, he or she builds MPDUs or does not build.

MPDU Housing Production

By most measures, Montgomery County's MPDU program has been extremely productive. In part, because the program is long standing and the county is large—the program has produced more housing units than any other IZ program in the nation. From 1976 through December 2011, the program produced more than 13,000 units, approximately 9,300 for-sale units and 4,000 rental units. Exhibit III-6 summarizes MPDU production and overall residential construction in Montgomery County. Because of the relatively short control period in the early years of the program, however, the DHCA estimates that approximately 2,361 MPDUs remained under price controls by the end of 2010.[11] In 1993, nearly twice as many (4,499) MPDUs had been under price controls (Housing Opportunities Commission of Montgomery County, MD, 2008).

Like demand for market-rate units, demand for MPDUs varies over the course of the business cycle. In a strong and growing economy, demand for ownership units rises whereas demand for rental units falls. The opposite happens when the economy is weak, as it is now. One developer, whose company includes a property management arm, explained that in the current market environment it will continue to pursue projects in the county on the rental side, but not on the for-sale side. The demand for both ownership and rental units is sensitive to price and location. Demand for MPDUs is strong in more desirable locations where the relative price of an MPDU is low, and weak in less desirable exurban locations where the relative price is high and access to jobs is low.

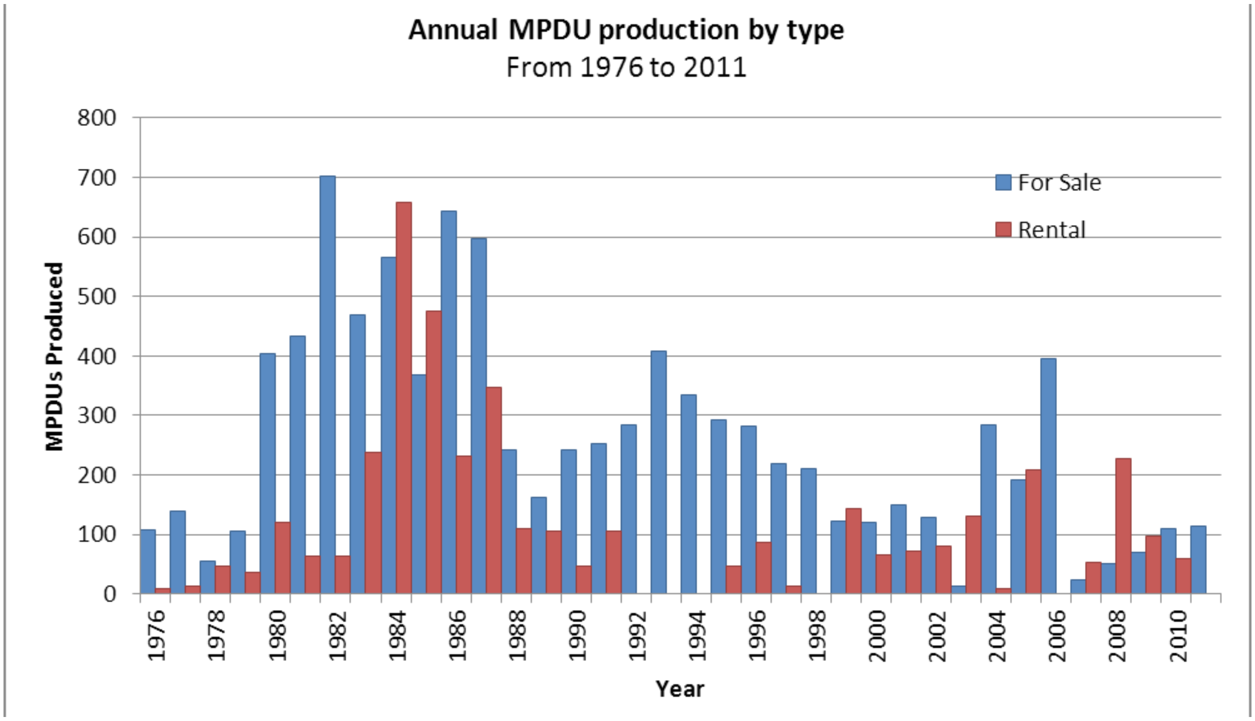
[11]This total includes only units under private ownership and not those MPDUs owned by the Housing Opportunities Commission.

Exhibit III-6. Summary of MPDU production and all residential construction activity in Montgomery County

	MPDUs[a]			All Building Permits[b]	Percent MPDUs[12]
	For Sale	Rental	Total		
Total Since 2000	1,652	998	2,650	40,291	6.6%
Average Annual Since 2000	138	83	221	3,358	
Total Since 1990	4,297	1,438	5,735	78,854	7.3%
Average Annual Since 1990	195	65	261	3,584	
Total since 1976	9,290	3,956	13,246	N/A	N/A
Average Annual Since 1976	258	110	368	N/A	
Sources: [a] Montgomery County Department of Housing and Community Affairs, 2012a; [b] U.S. Census Bureau, 2012a					

Production has averaged 368 units per year but has varied over the business cycle. As shown in exhibit III-7, MPDU production peaked at more than 1,200 units in 1984 and fell to a low of 77 units in 2007. In relative terms, however, the productivity of the MPDU program is low. For instance, from 2000 to 2011, 40,291 building permits were issued in the county (U.S. Census Bureau, 2012a). During that same time, 2,650 MPDUs were built in the county, representing only 6.6 percent of all building permits issued.[13]

Exhibit III-7. Annual MPDU production in Montgomery County by type, through 2011



Source: Montgomery County Department of Housing and Community Affairs, 2012a

[12] We note that the number of residential building permits issued in a given year does not equate to the number of residential units constructed in that year; whereas, the annual MPDU data indicate the number of units constructed in that year. At a summary level, however, we still think this percentage fairly demonstrates the relative MPDU share of residential construction in the county.

[13] Exhibit III-7 indicates the general decline in the production of MPDUs through most of the 1990s and early 2000s. The trend is likely the result of an MPDU construction threshold (50 units) that was too high for the type of construction occurring in a fairly built-out county. In 2002, the threshold was lowered to 35 units, which may explain the noticeable increase in MPDU production seen in 2004 through 2006. In 2005, the threshold was further lowered to 20 units, but by the time that could have started having an effect on the ground, the housing market had burst.

Spatial Distribution

Because the construction of the units is tied to market-rate residential construction, the spatial distribution of MPDUs largely resembles growth patterns in the county of the past several decades. Many MPDUs today are located in the exurban communities of Clarksburg and Germantown, where much of the construction in Montgomery County has occurred in the past 10 years.

Approval Process

The Planning Board sets the MPDU requirements for a subdivision and the applicant (developer or builder) then enters into an Agreement to Build with the DHCA for no less than the required number of MPDUs. Among other things, the agreement must detail pertinent information about the development project, including the final approved site plan highlighting the locations of each MPDU, and the anticipated pace of market-rate and MPDU production. The developer cannot apply for any building permits in the subdivision until the Agreement to Build is executed. Developers claim, and other county stakeholders do not dispute, that addressing MPDU requirements adds length and complexity to the development review process.

Unless a project has fewer than 20 units, meeting MPDU requirements has become a routine part of the development approval process. For a typical project, developers must decide whether to construct MPDUs using the Optional Development Standards in the county zoning ordinance. These standards provide more flexibility regarding unit types, lot size, setback, and other factors than under the base-zoning ordinance. The developer must also decide whether to provide the minimum percentage of MPDUs, to request alternative arrangements (such as a buyout), or to provide additional MPDUs in exchange for a density bonus.

Before MPDUs in a development become available for sale or for rent, the builder must submit an Offering Agreement to DHCA. The Offering Agreement provides details on the MPDUs, including their addresses, floor plans, pricing, and expected delivery dates. It also specifies the starting date of a 90-day priority offering period, during which time the MPDUs are available only to people who hold eligibility certificates from the county. HOC and other approved nonprofit housing organizations have 3 weeks from the start of the priority-offering period to determine if they will purchase any MPDUs.

Deciding Where and What to Build

Although developers in Montgomery County agree that the MPDU ordinance increases the cost of doing business in Montgomery County, they view it as exactly that—one part of the cost of doing business in the county. As David Rusk (2002: 2) noted, mandatory inclusionary zoning, like the MPDU program in Montgomery County, becomes part of the "routine 'rules of the game.'" Because MPDUs are required in nearly all developments and subdivisions in Montgomery County,[14] developers think it is fair. In the end, developers report, they look at the bottom line when deciding whether to move forward with a residential development project in Montgomery County. According to one developer, the MPDU requirement changes the underwriting, as it is one of the things that they take into consideration to make their decisions. He remarked, "MPDUs can make a project not work pretty quickly… you lose money on every one of them" and the market-rate units end up subsidizing the MPDUs (MC Confidential Interview Source 7, 2011). Some developers go somewhere else, like Howard County or Anne Arundel County, but others view Montgomery County as very attractive to buyers and will therefore continue to build there. [15]

The most pervasive criticism of IZ programs is that they can increase the cost of housing development and reduce overall housing supply. Developers and other stakeholders in Montgomery County agree that both of these reactions probably occur. Given the history and continuous support for the program in Montgomery County, however, the current debate is not about whether the program should be terminated, but rather, how to minimize adverse supply effects. Montgomery County staff state, for example: "The success of the MPDU program depends on creating an environment where the private

[14] The only general exceptions are development projects with fewer than 20 total units and those built on septic systems.

[15] For developers, it comes down to the bottom line. A project must be profitable for them to undertake it. The costs associated with the MPDU program contribute to the bottom line; however, developers cited many of the county's other regulations and development fees (impact fees, permitting fees, etc.) as contributing to the higher cost of developing in Montgomery County. At least one developer in the county has consciously decided to shift some of its development focus to other jurisdictions because of these other regulations and fees.

sector can integrate affordable housing into market rate development without economic hardship. The program must continue to achieve balance among the number of MPDUs required, density bonuses, flexible development standards, and sales and rental pricing" (George, Sesker, and Taylor, 2008: 3).

Alternatives and Options

Chapter 25A section 25A.00.04 of the IZ ordinance provides developers with options for delivering fewer than the required number of MPDUs. Options include the following:

- The transfer of land or finished lots to the county to fulfill the MPDU requirement.
- A full or partial waiver of the MPDU requirement.
- The provision of MPDUs at an alternative location within the same planning policy area, as identified in the county's Annual Growth Policy.
- An alternative payment to the county or to its Housing Initiative Fund.

Most of these options need to be approved by the director of DHCA. The director may approve an alternative, if the cost of mandatory resident services or environmental constraints would render the project economically infeasible, or if the public benefit of the alternative would exceed the value of the MPDU requirement. Exceptional cases tend to involve developments with high HOA and condominium association fees. Alternative Review Committee members state that these cases require balance and judgment. Sometimes it is better to allow for the buy-out because even if the MPDUs are built, the MPDU owners will not be able to afford the high HOA or condominium association fees.

No opt-out options have been approved, however, since 2005. According to county staff, buyouts had become fairly common in the early part of the decade, until the County Council took issue with the amount the developers were asked to pay and the formula, or seemingly lack thereof, used to calculate the buyout. It was reported that the amount paid was somewhere between $20,000 and $25,000 per unit (MC Confidential Interview Source 1, 2010; MC Confidential Interview 5, 2011). County officials believed that the amount deposited into the HIF was not enough to produce an equal affordable unit at another site. Furthermore, a change in administration occurred in 2006 that changed the philosophy of the program strongly against permitting buyouts and alternatives.

The developers we interviewed did not view buyouts or other alternative arrangements as worthy of consideration in the current political climate, except perhaps in the case of highrise developments. They do not believe such requests will be approved.

Density Bonus

County policymakers and staff (George, Sesker, and Taylor, 2008) have extensively considered the merits and efficacy of density bonuses. From 1989 to 2004, more than one-half of all developments with MPDUs contained no or minimum density bonuses; whereas, nearly one-fourth achieved the full 22-percent density bonus (Trombka, et al., 2004). Of 16 projects that included MPDUs between April 2005 and April 2007, one-half of the projects had no or minimal density bonuses and the other one-half was near the full 22-percent maximum level. Based on a proforma analysis of the existing density bonus schedule, George, Sesker, and Taylor (2008: 9) conclude that there is "little economic benefit to developers in building to bonus density under the MPDU program." The developers we interviewed concur with this assessment, especially given other opportunities, such as providing green space, to achieve density bonuses.

Selling and Renting MPDUs

The process by which developers offer MPDUs for sale or for rent is clearly expressed in the county's MPDU regulation, Montgomery County Code (Montgomery County, MD, 2012b) Chapter 25A.

Over the life of the program, the selling and renting of MPDUs has never been a serious problem. The DHCA staff indicate that the county's waiting list for for-sale MPDUs typically includes between 100 and 200 households. The HOC and nonprofit housing agencies report waiting lists of upwards of 250 housing applicants for rental MPDUs. The HOC maintains its own waiting list based on resident eligibility requirements that are distinct from the county qualification process. Nevertheless, issues with the selling and renting of units have arisen from time to time. For example, one developer reported recently having difficulties selling MPDUs in communities with high HOA or condominium association fees (MC Confidential Interview Source 7, 2011).

Leasing Rental MPDUs

To be eligible for the rental program, a household must demonstrate a minimum household income of $30,000 per year and not exceed the maximum annual household income established by the Director of the DHCA. In addition, households must have at least as many people in the household as the number of bedrooms in the unit, a credit rating that is acceptable to the apartment management, and be able to afford the monthly rent payments for the MPDU rental property. After a household demonstrates that it can meet all of the requirements, the developer is required to send a copy of the signed lease to DHCA within 14 days of lease ratification. The developer must also report the tenant's name, income, and household number, and certify that all information is correct and that the tenants meet the eligibility criteria. This information must be provided on an annual basis, each time the lease is renewed. MPDU rental property managers claim, and others do not dispute, that dealing with all these requirements is costly and time consuming (MC Confidential Interview Source 6, 2011; MC Confidential Interview Source 7, 2011).

Most MPDUs purchased by the HOC, however, are leased (and managed) by the HOC to qualified tenants (Schwartz, 2011). On occasion, the HOC will also sign a master lease for rental MPDUs, and in turn, it subleases to eligible residents. The HOC is selective about the MPDUs it purchases. Its goal is income integration and affordability. For this reason, it has tried to avoid purchasing units with high HOA or condominium fees and units with poor transportation access (MC Confidential Interview Source 4, 2011).

Selling For-sale MPDUs

To be eligible for the homeowner program, a household must not own a house or have owned a house anywhere in the past 5 years. Households must have a minimum household income of $35,000 per year and not exceed the maximum annual household income established by the Director of the DHCA. MPDU buyers must qualify for a mortgage of at least $120,000. To prove that they qualify, buyers must obtain a mortgage prequalification letter from an HOC participating mortgage lender. In addition, MPDU buyers must have funds to cover a downpayment on the MPDU, settlement fees, and closing costs. They must also be able to afford all monthly housing costs, including mortgage payment, utilities, all home improvements, and HOA and condominium association fees. The HOC can help buyers obtain the necessary financing to assist them with closing costs and down payments.

After households are determined as eligible, they are provided certificates and then entered into a lottery. The lottery is conducted at the beginning of the priority offering period by the DHCA to determine purchasing priority. The lottery list is then provided to the developer to contact prospective purchasers. Before settlement on an MPDU, the developer must submit documentation to the DHCA highlighting the sales agreement and demonstrating the purchaser's eligibility. Within 45 days after the date of settlement, the developer must submit copies of the final closing documents to the DHCA. At that point, the developer is relieved of all reporting requirements.

In Montgomery County, when an MPDU is not sold to a certified eligible household within the 90–day priority offering period, the DHCA can authorize the sale of the unit to the general public. In this situation, all program rules and regulations remain in effect (including the price control), with the exception of the income requirements.

Under HOC's HOC/HOP program, it will sell MPDUs to eligible first-time homebuyers who already live in one of its rental properties. The advantage to homebuyers of going through HOC, as opposed to directly through the MPDU program, is that they become eligible for better financing programs offered only through the HOC. These flexible financing options permit the HOC to offer lower income eligibility standards than are required by the county. In some cases, the HOC buys the private mortgages of its low-income purchasers (Schwartz, 2011).

Resale of For-sale MPDUs

For-sale MPDU price controls, which restrict the resale price of a unit for a certain period of time, are currently 30 years long in Montgomery County, although some previously built MPDUs are under control for only 10 or 15 years. During the control period, owners can sell their unit only for the current MPDU price and only to approved MPDU buyers. If a unit is sold after the control period, and therefore market pricing, the seller must give one-half of the windfall profit to the county's Housing Initiative Fund. Restrictive covenants include the condition that buyers must occupy their own unit, which means they cannot rent the property to others. They cannot refinance the property either, especially for its market value.

Monitoring MPDUs

The county requires owners of development to provide MPDU tenant information on an annual basis, each time its lease is renewed. Information must include the tenant's name, income, and household number, as well as certification that all information is correct and that the tenant meets the eligibility criteria.

Violations

Violations occur on a regular basis, but the DHCA works with residents and developers to remedy the situation. On rare occasions, a homeowner or developer resists and may face civil and criminal charges (Ruoff, 2011).

Current Issues and Challenges

Although MPDUs have become an integral part of the development process in Montgomery County, and there is little evidence that this integration will end anytime soon, the program continues to face issues and challenges. Some challenges are perhaps temporary, such as the current depression in housing construction, although others are long standing and likely to grow in significance.

External Conditions

The current state of the economy, the lack of developable land in Montgomery County, and the resulting emphasis on highrise and infill development are all external conditions that impact MPDU production.

Current Economy

Because the construction of MPDUs is directly tied to market-rate construction, the production of MPDUs has fallen dramatically in recent years. In addition, although a waiting list of candidates still exists for both for-sale and rental units, some MPDUs have been difficult to sell in this period of weak demand—especially those in less desirable locations, and far from employment centers. Whether demand for these units will return when the market strengthens is difficult to tell. Like market-rate homebuyers, MPDU homebuyers will consider all costs, including transportation costs, distance from amenities, HOA fees, and other costs in their purchase decisions.

Land Supply

Currently, only 4 percent of Montgomery County's land is available for development. Although Montgomery County is nearly built to capacity in terms of acres and construction, it is not built up to the full capacity that zoning permits. The capacity problems result from the historical allowance of large residential zones that produce low-density housing. It is very hard to build MPDUs in these areas because the units are hard to construct affordably while making the MPDU compatible with surrounding development.

Highrise and Infill Construction

Because land supplies in the county are limited by stable public policies, all stakeholders recognize that the future of growth in the county is in high-density and infill development. All stakeholders recognize however that high-density development, especially highrise development, presents challenges for the MPDU program. Section 25A-7 of the Montgomery County Code (Montgomery County, MD, 2012b) states:

> Different rents also may be set for high-rise rental units, but those rents must not apply unless the Director finds that no other reasonable means is available to finance the building of all required MPDUs at a specific development.

The lack of appropriate cost offset for construction of MPDUs in both rental apartments and multistory condominiums creates a financial challenge for developers. No density bonuses can really be offered in this area because the county cannot permit more floors to be built in a highrise building. Fixed-height limits make the county's job of compensating the developer (who has a fixed-footprint limit) that much more difficult, and any lost profit not offset by the county would most likely be recovered through an increase in the market-rate housing price.

Policy Parameters

As nearly 40 years of history has shown, the policy parameters of Montgomery County's MPDU program change periodically because of changing external conditions and political dynamics. Controversy regarding the percent of units that must be MPDUs, the length of control periods, and the threshold development size appear to have been settled, at least for now. Incremental changes to these parameters over the years have developers cautious. The major policy parameters that remain unsettled include the density bonus schedule and the pricing policy of for-sale units.

Percentages, Thresholds, and Control Periods

Initially, Montgomery County's MPDU program required 15 percent of all units in a subdivision with 50 or more total units be built as MPDUs. In exchange, developers were given a 20-percent density bonus to compensate for the lost revenue associated with the construction of those MPDUs. The MPDUs would remain under price control for only 5 years.

Today's program, however, is quite different from the county's initial MPDU program due to incremental changes made to the program over the years. Developers are now required to build 12.5 percent MPDUs on all projects with 20 or more total units. The density bonus is no longer automatic; it is achieved only if developers build more than the 12.5 percent required. Rental MPDUs remain under control for 99 years. For-sale MPDUs are price controlled for 30 years and the control period resets anytime the MPDU is sold during the control period.

Whereas the original ordinance had support from many developers, it is highly unlikely that the MPDU program would be adopted today as it currently exists (MC Confidential Interview Source 3, 2011). As one person we interviewed suggested, "developers are at their threshold of pain with the current system" in terms of modifications they can accept (MC Confidential Interview Source 2, 2010). The incremental changes have primarily favored requiring more from developers and compensating them less. As one developer indicated, "where at one point [the MPDU program] was revenue neutral, it's starting to get very expensive for us" (MC Confidential Interview Source 3, 2011).

Developers have been less supportive of changes to the unit threshold (the number of total units at which construction of MPDUs is required). According to county staff, the changes were necessary to prevent developers from eluding the requirement by simply building one unit less than the threshold (MC Confidential Interview Source 5, 2011). Developers counter that each decrease in the threshold adds very few MPDUs, but makes it much less profitable to developers to take on smaller projects (MC Confidential Interview Source 3, 2011).

Density Bonus Schedule

One developer expressed concern that dwindling land supplies will decrease MPDU production, and, thus, the county is contemplating methods to increase production without imposing additional cost burdens (MC Confidential Interview Source 7, 2011). One method is to increase the density bonus schedule to increase the incentive to build larger percentages of MPDUs in every development.

The current density bonus schedule permits developers to increase density by as much as 22 percent by increasing the share of MPDUs to 15 percent. One analysis by county planning staff (George, Sesker, and Taylor, 2008: 6) demonstrates the following:

> The per-unit loss on each additional MPDU more than offsets the gain from bonus market-rate units. The result is profits that decline from base density through the bonus density scale. Rates of return decline much more steeply than profits.

Thus the density bonus, in its current form, does not provide much of an incentive to build additional MPDUs. This lack of incentive is especially true, according to one county planner, when other opportunities to receive a density bonus (such as providing more green space and other amenities) cost less to the developer than adding more MPDUs (MC Confidential Interview Source 5, 2011). Changing the density schedule to increase the MPDU incentive was one of the recommendations of the planning staff memo.

MPDU Integration with Market-rate Units

Factors that affect all mixed-income developments affect MPDU developments as well. Units that are designed with high-quality materials and placed to fit in with the market-rate units sell and rent faster than units not so carefully constructed. Developers expressed concerns about very low-income renters, especially when they are concentrated within the subdivision. Developers also identified problems when MPDUs are completed sooner than the market-rate units and rented to very low-income households.[16] When the MPDUs are occupied first, developers have had difficulties selling or renting the market-rate units.

MPDU Price Policy

While developers concede that the percent of units that must be MPDUs, the price-control period, the minimum project size, the flexibility of development standards, and the ability to buy-out are all issues that matter to them, their prevailing major concern is with the pricing of the units. According to one developer, the DHCA has always based the price of the units partly on the cost of construction and partly on the ability of residents to pay, but he sees the county shifting the emphasis to the latter.

At the time of this study, the county was considering an amendment to the MPDU regulation that would set the MPDU price based on what the potential purchasers can afford. Such a policy shift would base the price of an MPDU on factors such as prevailing interest rates, which are unknown to developers when they are making a decision to move forward with a project. According to one developer, this decision can occur up to 4 years before the first MPDU is ready for occupancy. Thus, the ability to pay can vary greatly by the time an MPDU is sold, greatly affecting the profitability of a project. Introducing so much uncertainty in the bottom line has the developers we interviewed saying the change is a nonstarter, with one stating that it sends a message the county does not "care anymore what [a developer's] costs are—[only] what a person can afford" (MC Confidential Interview Source 3, 2011).

[16] Although the MPDU program targets moderate-income households, the HOC and the nonprofit housing organizations can lease the units they purchase to households with lower incomes.

Minor Policy Parameters

Several minor policy parameters remain unsettled and under consideration. These parameters include requirements that address the design and location of MPDUs within subdivisions, the staging of MPDU production with subdivisions, the extent of profit sharing by MPDU owners after the price-control period has been reached, buyout payment amounts and enforcement. All of these issues have been addressed in recent reports and some have been addressed in guidelines prepared by the DHCA. None of these issues, however, has been completely resolved (Trombka, et al., 2004; Rubin and Trombka, 2007; Suarez, 2008).

Integration with Smart Growth Policies

Because the MPDU program explicitly or implicitly affects the density and location of development, the implementation of the program must be considered in the context of other county development policies—including those that promote smart growth. Most housing stakeholders do not think that the smart growth initiatives of today are connected to the MPDU ordinance. When asked about the connection between the two, they answered that they see no connection. MPDUs are compatible with smart growth initiatives, however, because they help limit sprawl by increasing densities and concentrating more development in a single location (Downs, 1991). In Montgomery County, however, the density bonus permitted with MPDUs is not being achieved. In addition, one county planner did question whether the MPDU program would encourage future large lot development on septic systems because they do not fall under the MPDU construction requirements (MC Confidential Interview Source 5, 2011).

Several people interviewed raised concerns about MPDUs being constructed in far-away areas with no public transportation. One of the HOC staff expressed the dilemma of deciding to buy these units this way: "we have to question whether that is really affordable [housing] when there is no [public] transportation…but on the other side, it might be good to buy those MPDUs now while we still can" (referring to the fact that the areas are still relatively inexpensive and as they become more developed housing prices will likely go up) (MC Confidential Interview Source

4, 2011). According to one developer, a county policy to require workforce housing near transit station areas has been all but abandoned by the county by making it optional (MC Confidential Interview Source 7, 2011). A formal policy for promoting MPDUs in transit station areas has yet to be developed.

The smart growth policy that has been explicitly addressed relative to MPDUs is the transferable development rights (TDR) program. The TDR program is designed to reduce development densities in sending areas and increase them in receiving areas. To increase densities in receiving areas, developers must buy development rights from sending areas. The question has arisen, however, as to whether development rights must be purchased for MPDUs in receiving areas. At present, no guidelines or statutes address this issue and in practice the Planning Board has addressed the application of the TDR and MPDU issue concurrently. Whether more formal guidelines or statutes should be adopted remains an open question.

IZ Outcomes

Perceived Effect on Consumers

Everyone interviewed agreed that the MPDU program's initial 5-year control period was too short. A longer control period helps to ensure a more continuous supply of affordable housing options in a county with limited development potential. The effects of longer control periods, however, are not all positive. With shorter control periods, one opportunity provided by the program was for MPDU homeowners to reap the benefits of increased value if they sold the home after the control period expired. The homeowner could then use the program to transition—to move up to the next level of housing. Now, MPDU homeowners need to hold onto their MPDU for 30 years to realize the capital gain associated with the move to market pricing (MC Confidential Interview Source 7, 2011).

Perceived Effect on Developers

All stakeholders also agree, however, that because the program imposes additional development costs, the program raises the cost of market-rate units and thus perhaps decreases the overall housing supply. Affordable housing advocates and Montgomery County staff believe the benefits of the program exceed the costs. Developers do not adamantly disagree.

The percent of MPDUs required has not changed much over the years. One developer, however, relayed a story about a proposed project on county-owned land that had fallen through, primarily because of the current economic conditions. A contingency of the sale of the land to the developer would have been to require 30 percent of the units be MPDUs. The developer indicated that such a requirement would be very difficult to make a project profitable, if at all (MC Confidential Interview Source 7, 2011). Another developer suggested that radically increasing the requirement to the 30- to 35-percent range would very likely stop his company from doing business in Montgomery County altogether (MC Confidential Interview Source 3, 2011).

Some developers have even expressed pride in their involvement with the MPDU program. They agree that MPDUs are valuable and they enjoy the challenge of making development profitable and MPDUs compatible with the market-rate units. They believe that it is important that the MPDUs are distributed throughout the development so that no division is established between the MPDU residents and the market-rate residents. Some have become creative at integrating the MPDUs into the development.

Summary

Montgomery County is nationally recognized as having the premier IZ program in the nation, and, by most measures, the Montgomery County MPDU program has been one of the most successful IZ programs in the nation. The program has produced more than 13,000 affordable housing units that have been sold or rented to low- and moderate-income households. Although only about 1,200 of the for-sale units remain under price controls, all stakeholders agree that these units remain relatively affordable. The MPDU program also has perhaps been better integrated in county development policies than in any other jurisdiction.

The administration of the program is complex and involves a large number of government, quasigovernment, and for-profit and nonprofit organizations. Parameters of the program have changed in response to changing external conditions and political environments. Developers and builders have grown accustomed to the program and view it as part of the cost of doing business in the county. All involved recognize that the program increases the cost of development and perhaps decreases the rate of market-rate housing production; but most believe the benefits outweigh the costs.

Although the availability of density bonuses, in-lieu fees, and alternative arrangements for providing affordable units are important programmatic elements that have made the program politically viable from its inception in 1974 through today, these options have been used very little, especially in recent years. Even without density bonuses, 12.5 percent of all units in developments with more than 20 units must be provided as MPDUs. Requests and approvals for in-lieu fees and other alternative arrangement are increasingly rare. Developers, like all other housing stakeholders in Montgomery County, have come to accept MPDUs as a regular part of the development process, and although it is likely that this additional regulatory burden has contributed to increased costs, it has clearly not ended residential development in the county.

counties at about $103,010, which is significantly higher than the state median of $60,674, and more than double the national median of $50,046. Of the county's population who are 25 years and older, 58 percent have earned a bachelor's, graduate or professional degree. This rate is double the national average of 28 percent (U.S. Census Bureau, 2011a). Most people in the current population (63 percent) are White, 18 percent are Asian, 16 percent are Hispanic, and 9 percent are African American (U.S. Census Bureau, 2011b).

IV. Fairfax County, Virginia

Fairfax County, Virginia, is located west of Washington, D.C., and across the Potomac River (see exhibit IV-1 for a map of Fairfax County).

Exhibit IV-1. Map of Fairfax County, Virginia

The county, with a total area of about 391 square miles, has a population of 1,081,726 people (U.S. Census Bureau, 2011b). Its population continues to grow although the growth rate has declined in the past decade. From 1990 to 2000, its population grew by 16 percent; however, from 2000 to 2010, it grew only by 10 percent (Fairfax County Department of Systems Management for Human Services, 2004; U.S. Census Bureau, 2011a).

Overall, Fairfax County has an affluent and well-educated population compared with the population of the nation as a whole. The median household income is one of the highest among U.S.

The Fairfax County Economy and Housing Market

As of 2010, roughly 408,079 housing units existed throughout Fairfax County, about 67 percent (or 272,224) of which were owner occupied, 28 percent (or 117,191) were renter occupied, and 5 percent were vacant (U.S. Census Bureau, 2011a). Home values are high. The median home value of $462,000 is considerably higher than the state median of $249,100 and the national median of $179,900 (U.S. Census Bureau, 2011b). The county's foreclosure rate was about 1.6 percent as of March 2011, which is less than the Washington, D.C. metropolitan region rate of 2.6 percent (NeighborhoodInfo DC, 2011).

Exhibit IV-2. Comparison of key housing statistics for the United States, Virginia, and Fairfax County

	% Units Owner Occupied[a]	% Units Renter Occupied[a]	% Units Vacant[a]	Median Household Income[b]	Median Home Value[c]	Median Gross Rent[d]
United States	57%	30%	13%	$50,046	$179,900	$855
Virginia	60%	29%	11%	$60,674	$249,100	$1,019
Fairfax County	67%	28%	5%	$103,010	$462,000	$1,504
Sources: [a] U.S. Census Bureau, 2011b; [b, c, d] U.S. Census Bureau, 2011a						

Because the housing market has remained strong overall, Fairfax County renters pay significantly more in rent compared with the rest of the state and the nation as a whole. For example, the median gross rent, which includes rent and utilities, in Fairfax County was about $1,504 compared with the state's median of roughly $1,019 and the national median about $855 (U.S. Census Bureau, 2011a). Approximately 44 percent of renters in Fairfax County are rent burdened, paying more than 30 percent of income toward rent each month. About one-half of renters (50.3 percent) pay more than $1,500 in rent each month (U.S. Census Bureau, 2011a).

A similar pattern emerges with ownership costs. Homeowners with a mortgage have relatively high monthly costs. Fairfax County homeowners with a mortgage pay a median of $2,468 each month compared with a state median of $1,728 and a national median of $1,496. Among these homeowners, 32 percent pay more than 30 percent of their monthly income toward their mortgage (U.S. Census Bureau, 2011a). Of homeowners, 68 percent report paying more than $2,000 a month in owner (mortgage and utilities) costs (U.S. Census Bureau, 2011a).

The Fairfax County Inclusionary Zoning Program

History and Evolution of the Affordable Dwelling Unit Program

In 1971, Fairfax County passed the first IZ ordinance in the country. This original ordinance had a flat, mandatory requirement that 15 percent of all units in multifamily projects with more than 50 units be set aside as affordable to households earning between 60 and 80 percent of area median income (AMI) in the Washington, D.C. metropolitan region. The Virginia Supreme Court overturned the ordinance 2 years later, arguing that the county did not provide just compensation for the affordable housing production; the requirement was considered a "taking"—an appropriation of private property by regulation without offering just compensation. Furthermore, because Virginia is a "Dillon Rule" state in which local government authority extends only to the rights expressly granted it by the state legislature and state constitution, the county needed legislative permission to adopt such a policy and it had not done so.

In 1989, after an intensive lobbying effort by a Fairfax-based coalition called Affordable Housing Opportunity Means Everyone (AHOME), the state passed an amendment in 1989 that specifically permitted local jurisdictions to pass IZ ordinances (Brown 2001). The County Board of Supervisors officially enacted the Affordable Dwelling Unit (ADU) program in 1990 with the aim of providing affordable housing choices for low- and moderate-income households across the county. The Fairfax County Redevelopment and Housing Authority (FCRHA) manages the program and the Department of Housing and Community Development staffs the program. The program does not affect development in five areas of the county where the local municipal governments have authority for their own zoning decisions. These municipalities include the town of Clifton, the city of Falls Church, the city of Fairfax, the town of Herndon, and Vienna, which together represent 6.9 percent (or 74,158) of the county's population of 1,081,726 people and 6.7 percent (27,262) of its total 407,998 housing units (U.S. Census Bureau, 2011b).

The program requires developers of both for-sale and rental properties to set aside a calculated share of units for households earning between 50 and 70 percent of the Washington Metropolitan AMI in exchange for a density bonus. The ordinance permits developers to opt out of building ADUs if they can prove that building the units would cause an economic hardship, and in return, the developer can dedicate land or funds to FCRHA.

Rental ADUs can either be rented to tenants directly by a property owner, for which the price is controlled for a 30-year period, or leased to tenants by the FCRHA—which can result in permanent affordability. FCRHA places the rental units it has leased or purchased into the Fairfax County Rental Program (FCRP). The First-Time Homebuyers program (FTHB) is the for-sale component of the ADU program, which offers affordably priced townhomes and condominiums, both new and resale, to first-time homebuyers earning no more than 70 percent of AMI. For-sale ADUs can either be sold directly to qualified FTHB buyers with a renewable 30-year price-control period, or can be sold to the FCRHA, which in turn, can sell units to qualified FTHB buyers. Units sold to FCRHA can also be incorporated into the FCRP; these rental units would then become permanently affordable.

Although significant changes have been made to the ADU program since it began, these changes were not sudden and took place because of a transparent process. The body charged with advising the County Board of Supervisors on what changes should be made to the ordinance, the Affordable Dwelling Unit Task Force, includes a variety of stakeholders representing a range of interests in the ADU program, from developers to housing advocates. Thus, all parties have a say in terms of what changes are made to the ADU program.

Interviews with builders and developers active in the county suggest that developers have grown accustomed to the ADU program in the past 20 years and understand the rules they must follow to work in accordance with the ordinance. The ordinance is detailed and explains the rules clearly. Moreover, the Affordable Dwelling Unit Advisory Board (ADUAB), which advises the county executive on setting prices for ADUs and determines whether or not a builder can opt out of building ADUs, has been consistent in the way they administer the rules laid out in the ordinance. As a consequence, developers find the program to run smoothly, and, more importantly, they find the program to be predictable. (FC Confidential Interview Source 3, 2011.)

Changes in Ordinance over Time and Effect on Affordable Housing Preservation

Since 1990, the county has modified the ordinance a number of times in ways that have affected the share of ADUs required, affordability terms, and the tools to preserve affordability (see Appendix A-2 for an outline of ordinance amendments). The changes have been based on the recommendations of stakeholders who participate in the ADU Task Force. Stakeholders think that the diversity of interests represented on the task force means that a range of opinions about changes made to the ordinance are heard (FC Confidential Group Interview Source 1, 2011; FC Confidential Interview Source 2, 2011). During the past 20 years, the changes made to the ordinance reflect this balance of interests. Some changes tend to increase the provision of affordable housing units or improve the quality of the affordable housing units provided, often at the cost of developers and owners; although, others decrease the provision of affordable housing to respond to developers' concerns.

Shifting the ADU Requirement to a Sliding Scale

A major change to the ordinance was the 1998 amendment that shifted the calculation of the number of ADUs required from a fixed rate to a sliding scale. Originally, the fixed rate varied only by building unit type. All single-family developments, including attached and detached, owned or rented, were required to provide 12.5 percent ADUs. All multifamily developments, condominiums or rental units, which took a 10 percent density bonus, were required to have 6.25 percent ADUs; those that took a 20 percent bonus were required to have 12.5 percent ADUs.

After the amendment, these flat-rate ADU requirements became the maximum rates required only when developers received the full density bonus. The 1998 amendment was adopted at the behest of developers who thought they were penalized for building at the lower end of the approved density range. One developer explained, "It used to be that the density bonus wouldn't always get you much. You would be rezoning on the lower end of the density permitted in the Master Plan, and you would end up with a density still within the range of what you were already supposed to get" (FC Confidential

Interview Source 3, 2011). For example, if a developer were working in an area where the density range established by the Comprehensive Plan was between four to five dwelling units per acre, the developer who planned not to use the density bonus and build single-family detached units at 4.1 dwelling units per acre would have to set aside the same share of units (12.5 percent) as the developer who wanted to use the full 20-percent density bonus and build 6 units per acre.

With the sliding scale, developers building at the lower end of the approved density range are required to set aside a smaller share of ADUs compared with those building at the higher end of the approved range. The percent of ADUs required increases until the percent reaches the maximum specified in the ordinance of 12.50, 6.25, or 5.00 percent, depending on the building structure, as the developer builds at higher levels of densities. Taking the example mentioned previously under the amended requirement, the developer building at 4.1 dwelling units per acre would have to set aside 1.04 percent of ADUs; whereas, the developer building at six units per acre would need to set aside 12.50 percent of ADUs.

Although this change to the ordinance reduced costs for developers, a planner estimated that it has resulted in about a one-third reduction in the required number of affordable units (FC Confidential Group Interview Source 1, 2011). As such, in an attempt to increase fairness to developers, this change in the ordinance resulted in a decrease in the number of affordable housing units provided through the ADU program.

Decreasing then Increasing the Affordability Term

The price-control period for ADUs has changed twice. In the original ordinance, both for-sale and rental ADUs had price-control periods of 50 years. In 1998, the county amended these controls to 20 years for the rental ADUs and 15 years for the for-sale ADUs at the recommendation of the ADU Task Force. In addition, many existing owners took advantage of a provision in the amendment, which permitted them to reduce the price-control periods of 50 years on their units to the new 15-year period (FC Confidential Group Interview Source 1, 2011). At the time, the FCRHA recommended to the Board of Supervisors that the price-control period not be reduced to 20 and 15 years, as it would, and did, result in a decrease in the sustainability of affordable housing in Fairfax County, but the Board chose to follow the recommendation of the task force.

In 2006, after a new task force was created to consider additional changes to the ADU ordinance, the price-control period was extended to 30 years for both rental and for-sale units, in part to match the length of a typical mortgage loan. A recommendation to extend affordability to perpetuity did not gain sufficient support. County staff supported the change to a 30-year affordability term because they thought the shorter terms in place at that time were not providing a sufficient number of affordable housing units.

Although the ordinance does not require affordability terms in perpetuity for either for-sale or rental units, in practice some units are permanently affordable because the FCRHA is able to purchase both for-sale and rental ADUs and maintain them as affordable over time. This feature of the program is discussed later in program implementation.

Dispersal and Integration of ADUs

In 2002, the ordinance was changed to require integration and dispersion of ADUs across a development. This change came about because developers were placing ADUs in the least desirable areas of developments, sometimes grouping them on their own street or placing all of them near power lines (FC Confidential Group Interview Source 1, 2011). Consequently, the Board of Supervisors created a policy that required ADUs to be integrated and dispersed throughout a development. This policy was formalized when the ordinance was amended to reflect this requirement. As discussed in later sections, this change consequently did result in some additional costs to developers. The ordinance does permit an exception for detached, single-family home developments, which can be built as townhomes and placed next to each other to make the inclusion of ADUs feasible.

Increased Focus on Preservation

Several modifications have also been made that improve the ability of the FCRHA to preserve and fund affordable housing opportunities in the county. A 2004 amendment required that one-half of the proceeds from a foreclosure sale of certain ADUs be deposited in the county's Housing Trust Fund to support affordable housing efforts. In 2006, another ordinance amendment granted the FCRHA the right to buy any ADUs offered for resale. Units purchased by the FCRHA are placed in the Fairfax County Rental Program (FCRP), which is discussed in detail in a later section.

Filling the ADU Program Gap in Highrise Buildings Near Transit

To fill the gaps in the ADU program, which excludes highrise buildings more than four stories with elevators from the ADU requirement, the Board of Supervisors adopted the Workforce Dwelling Unit program in 2007. This program is also administered by the Department of Housing and Community Development (HCD), but is separate from the ADU program. The purpose of the WDU program is to encourage the development of affordable housing options in high-density areas near transit, such as Tysons Corner, which likely would not otherwise include affordable units. Buildings in such areas tend to be highrise developments, which are not covered by the ADU program. Highrise buildings were exempt from ADU requirements because the powerful development lobby in the state argued that affordable units were too costly for developers (FC Confidential Group Interview Source 1, 2011). Although developers initially fought the idea of including WDUs in new highrise redevelopments, housing advocates fought to have them included.

Unlike the ADU program, the WDU program is, technically, voluntary. The county's current Comprehensive Plan requires that 12 percent of new housing units and 20 percent of new housing units in Tysons Corner be set aside for ADUs and WDUs, respectively. As such, developers not required to build ADUs are still required to set aside 12 percent of new units for affordable housing needs, which could include WDUs or ADUs or a mixture thereof. Similar to ADUs, in exchange for offering WDUs, developers can receive a density bonus up to 20 percent. WDUs target higher income households than ADUs, from 80 to 120 percent of AMI, but have similar requirements in terms of unit designation, unit specifications, and program oversight. The high-income range targeted has led some to question whether or not the housing is truly affordable, especially given Fairfax County's high AMI. The WDU program and the challenges it faces are further discussed in sections that follow.

Current Features of the Program

The ADU program is mandatory for any developer of for-sale or rental properties that require rezoning, a special exception, a site plan, or a subdivision plat application. Under the current ordinance, a developer is required to include affordable units in any development with 50 or more units, with the exception of developments with densities of less than one dwelling unit per square mile or highrise buildings with more than four floors and an elevator. In exchange, developers receive a density bonus, which permits the developers to build more units than would be permitted in the Comprehensive Plan.

The Sliding Scale of ADU Requirement

Fairfax County currently uses a sliding scale to determine the number of affordable units required in a development. In return for the calculated number of ADUs, builders receive a density bonus of up to 20 percent. The current ordinance requires fewer ADUs from developers who are building at the lower end of the density range set forth in the Comprehensive Plan, because they would not be able to take advantage of the density bonus to the same extent as developers building at the higher end of the density range. Shown in exhibit IV-3, builders of single-family developments can receive up to a 20-percent density bonus if at least 12.5 percent of the units are affordable. Developers of multifamily buildings with fewer than four stories and no elevators have the option of up to a 10-percent density bonus for providing 6.25 percent of units as ADUs or up to a 20-percent bonus for providing 12.5 percent of units as ADUs.

Developers of multifamily buildings consisting of four or more floors and an elevator can receive up to a 17-percent density bonus if they include 5 to 6.25 percent of ADUs, depending on the amount of parking space, but this is an optional offer; they are not required to provide any affordable units. In effect, with the exception of units that fall under the WDU requirement discussed previously, the ADU program becomes voluntary for developers of such buildings.

Exhibit IV-3: Affordable Dwelling Unit requirements and density bonus levels by unit type

Unit Type	Density Bonus	ADUs Required	ADUs Voluntarily Provided
Single-Family Attached/Detached	Up to 20%	12.5%	—
Multifamily without elevator and < 4 stories	Up to 10%	6.25%	—
	Up to 20%	12.5%	
Multifamily with elevator and ≥ 4 stories and ≤ 50% parking in structure	Up to 17%	—	5%
Multifamily with elevator and ≥ 4 stories and < 50% parking in structure	Up to 17%	—	6.25%

Dispersal and Integration of ADUs

The ADU program requires ADUs to be comparable with their market-rate counterparts although they are not required to be the same. When affordable units are the same as the market-rate units, ADUs must be dispersed across the development. When the affordable units are comparable but not the same, units must be integrated with the overall development design. Thus, a developer cannot cluster all of the ADUs in the least desirable section of the development. Moreover, an outsider should not be able to distinguish an ADU from a market-rate unit because they look drastically different.

To ascertain that the developer does not cluster the ADUs, the county requires that the lots or units set aside for ADUs must be specified in an approved site plan, with the exception of multifamily rental developments, for which the plan can simply identify the number of units by bedroom count. For multifamily rental developments, the ordinance permits ADUs to float—a unit initially identified as an ADU can subsequently be rented as a market-rate unit and vice versa. This permits the management company some flexibility in switching which unit is an ADU. As a consequence, if an ADU renter's income increased to greater than the threshold, the renter's unit could become a market-rate unit and another unit could become the ADU. Whether affordable units float or are fixed is left to the each development's property management plan.

Density Bonus Incentivizes Increased Supply of Affordable and Market-rate Housing Units

Although the program is mandatory, developers are offered the incentive of a density bonus in exchange for providing more affordable housing units. Because of the sliding scale discussed previously, developers receive a larger density bonus if they produce more ADUs. As a consequence, the county incentivizes developers to build slightly more housing units than they would otherwise. Thus, the density bonus is intended to incentivize the building of both affordable housing and market-rate housing units that would not have been permitted without the density bonus.

Affordability Terms for Sustainability

Units with an initial sale or rental date after February 28, 2006, have the same affordability period of 30 years. Affordability terms vary slightly by tenure.

The price-control period is renewable for the for-sale ADUs, such that for any unit resold before the end of the initial 30 years the clock restarts for another 30-year period. The result of this control is, essentially, permanent affordability because Fairfax County is a highly mobile area where many owners do not stay for the full 30 years (FC Confidential Group Interview Source, 2011).

Rental units also have a 30-year affordability term that begins with the initial rental. Unlike the for-sale units, however, the price-control period for rental ADUs is not renewable; if a new tenant moves in, the 30-year price-control period does not begin again. Consequently, the unit does not need to remain affordable after 30 years. The county supported this method, because after 30 years, a landlord will likely need to make major repairs on the unit (FC Confidential Group Interview Source, 2011).

Income Limits Vary by Tenure

Household income limits vary by tenure of unit, ranging from 50 to 70 percent of AMI. To purchase a unit, a household's income cannot exceed 70 percent of AMI. Income requirements for rental units are slightly more complex, as shown in exhibit IV-4 that follows. For any given ADU project, one-third of its ADUs are restricted to households with incomes that are less than 50 percent of AMI; although the remaining two-thirds are set aside for households whose incomes are less than 70 percent of AMI. Thus, rental ADUs provide for deeper affordability than would be possible with for-sale ADUs.

Exhibit IV-4: ADU income limits for rental units

ADU Program Income Limits MAXIMUM HOUSEHOLD INCOME LIMITS		
	70% of MSA AMI	50% of MSA AMI
	(All For-Sale and 2/3 Rental Units)	(1/3 Rental Units)
Household Size	Maximum Income	Maximum Income
1	$51,950	$37,150
2	$59,400	$42,450
3	$66,800	$47,750
4	$74,250	$53,050
5	$80,200	$57,300
6	$86,150	$61,550
Effective June 13, 2011. Source: Fairfax County Redevelopment and Housing Authority, 2011a		

Affordable Prices that Enable Developers to Break Even

Prices of rental and for-sale ADUs are set by a formula approved by the county executive and administered by the FCRHA. The Affordable Dwelling Unit Advisory Board is responsible for advising the county executive on price setting for both for-sale and rental ADUs. The sales and rental prices of affordable dwelling units are set at a level to ensure the developer does not realize a financial loss from providing the units.

Prices of for-sale ADUs are based on a formula that includes the number of bedrooms, the number of bathrooms, the size of the unit, the dwelling unit type (attached or detached, single-family or multifamily), and a few other building costs. A developer can receive a higher price for upgrading the unit, but this higher price is limited to 2 percent of the sales price, as the unit must remain affordable to households with incomes that are at or less than 70 percent of AMI. Prices usually range between $100,000 and $200,000. For example, a new two-bedroom, two and one-half bathroom condominium ADU in Centreville, Virginia, sold for nearly $135,000 in 2010. Comparable market-rate units in the same development had asking prices of just under $300,000.[17]

Rental prices are adjusted in accordance with a semiannual review by the county executive. The most recent set of maximum rent levels are shown in exhibit IV-5. Although rent prices for the one-third of ADUs set aside for households earning less than 50 percent are established based on the 50-percent maximum, the rent prices for the two-thirds of ADUs set aside for households earning less than 70 percent are established based on 65 percent of AMI.

[17] The county maintains a current list of ADUs offered for sale on its website at http://www.fairfaxcounty.gov/rha/homeownership/listings.htm.

Exhibit IV-5: Maximum rents for ADUs

ADU Rental Program Rent Prices MAXIMUM RENTS (Excluding Utilities)		
	Based on 65% of MSA AMI	**Based on 50% of MSA AMI**
Efficiency	$1,006	$774
1 Bedroom	$1,149	$884
2 Bedrooms	$1,293	$992
3 Bedrooms	$1,437	$1,105
Effective June 13, 2011 Source: Fairfax County Redevelopment and Housing Authority, 2011b		

Program Oversight and Administration

A number of governing bodies are involved in administering, implementing and overseeing the ADU ordinance and its operations. They include: the Board of Supervisors, the county executive, the Fairfax County Redevelopment and Housing Authority (FCRHA), the Departments of Housing and Community Development, Planning and Zoning, and Public Works and Environmental Services (DPWES), the ADU Advisory Board, the ADU Task Force, and certain nonprofit organizations. Each is discussed in more detail in the following section with respect to its role under the ADU program.

Board of Supervisors

Fairfax County's Board of Supervisors is composed of nine members and a chairman. Elected supervisors must reside or be qualified voters of the district they are representing and elected by voters living in the district; the chairman is elected at-large. The Board appoints the vice chairman from among its members. Elected board members serve 4-year terms for as many times as they are elected. Their chief roles include "passing resolutions and ordinances (within the limits prescribed by the Virginia General Assembly), approving budgets, setting local tax rates, approving land use plans and making appointments to various positions" (Fairfax County Board of Supervisors, 2011). All of these actions, with the exception of legal and personnel issues, which are exempt by the Virginia Freedom of Information Act, take place in open meetings. County residents are encouraged to attend and participate in these open discussions.

The Board of Supervisors is charged with adopting a Consolidated Plan every 5 years and a 1-Year Action Plan every year, both of which are also prepared through intensive citizen engagement, under the leadership of the Consolidated Community Funding Advisory Committee (CCFAC). The Consolidated Plan outlines the county's needs in terms of "gaps in service and priorities for affordable housing, community service, homeless assistance, community development, neighborhood preservation and revitalization, employment and economic opportunity services, as well as lists the resources and strategies to be used to meet these needs" (Fairfax County Board of Supervisors, 2010: 8). The One Year Action Plan describes how it plans to use several large federal grants, including HUD's CDBG and HOME grants, to meet the needs and priorities in the Consolidated Plan.

Regarding the ADU program, the Board of Supervisors has all authority to enforce ordinance provisions and approve regulations and amendments.

County Executive

The county executive, appointed by the Board of Supervisors, serves as the administrative head of the county government and as the secretary and executive director of the Fairfax County Redevelopment and Housing Authority (FCRHA). His or her key role is to administer all county affairs, including executing all resolutions and orders of the Board of Supervisors, preparing the county's annual budget, facilitating strategic planning, fostering partnerships with county residents and community leaders, and ensuring and valuing excellence in public service. The Board of Supervisors has authority to control any of the executive's responsibilities.

Under the ADU program, the county executive is charged with (1) determining the maximum sales price limits of for-sale ADUs and maximum rents for rental ADUs; (2) devising a list of eligible nonprofit organizations that can purchase for-sale ADUs that FCRHA did not purchase or can acquire on certain terms upon a pending foreclosure; and (3) receiving Declaration of Covenants, which outline financing documents required of the lender and written notices of any delinquency or other event of default under a mortgage.

Fairfax County Redevelopment and Housing Authority

The Fairfax County Redevelopment and Housing Authority (FCRHA) is a political subdivision of the Commonwealth of Virginia, created by the Board of Supervisors and approved by county voters in November 1965. It started operations the next year. The powers of the FCRHA are vested in 11 Commissioners appointed by the Board of Supervisors. The Officers include: Chairman, Vice-Chairman, Secretary/Executive Director, and Assistant Secretaries. The county executive serves as the Secretary and Executive Director. The county Director of Finance serves as Treasurer, and the county Attorney serves as General Counsel. The FCRHA appoints staff members from the Department of Housing and Community Development (HCD) as Assistant Secretaries. Although the FCRHA is structured as a county agency, its technical and administrative support functions are principally funded by the FCRHA from revenues it receives directly.

The FCRHA's mission is to "initiate and provide opportunities for Fairfax County residents to live in safe, affordable housing and to help develop, preserve, and revitalize communities through fiscally responsible and open processes" (Fairfax County Redevelopment and Housing Authority, 2011c). The FCRHA implements three plans to guide its work: Strategic Plan, 5-Year Plan for Public Housing and Housing Choice, and Annual Plan for Public Housing and Housing Choice, for all of which community input is solicited through the Resident Advisory Council (RAC).

FCRHA has primary responsibility for administering the ADU program. Its involvement includes accepting and approving applications from prospective ADU renters and homebuyers, managing FCHRA rental ADUs, and collecting certification and annual certification documents from homebuyers and monthly reports and certification documents from property managers, among other tasks.

Department of Housing and Community Development

Unlike most redevelopment and housing authorities, which are completely separate from the local government and employ their own staff, FCRHA relies on other county government departments to carry out all aspects of its program. Its staff are provided by the county's Department of Housing and Community Development. In addition to administering FCRHA programs and federal grants such as HUD's Community Development Block Grant (CDBG) and HOME Investment Partnership (HOME), HCD staff administer the county's affordable housing and community revitalization programs, such as Housing Choice Vouchers, Public Housing, Tenant Based Rental Assistance, among others. Each year, they are required to provide a report to the county executive and the Board of Supervisors, which summarizes and analyzes the county's affordable housing programs and funding sources.[18]

Staff from the Departments of Planning and Zoning and from Public Works and Environmental Services (DPWES) work together with FCRHA, HCD, and HCD's Homeownership Division at various stages of the ADU implementation process—from zoning and permitting to inspections and upgrading to purchasing, leasing and selling units. HCD staff have devised guidelines and documents to assist builders/developers,[19] appraisers/owners[20] and prospective ADU renters and buyers.

[18] See http://www.e-ffordable.org/documents/1008IN07%20FY%202008%20Program%20Matrix_Attachment.pdf for the most recent report in 2008.

[19] See http://www.fairfaxcounty.gov/rha/adu/aduprogram.htm.

[20] See http://www.fairfaxcounty.gov/rha/fthbadu.htm.

Affordable Dwelling Unit Advisory Board

The Affordable Dwelling Unit Advisory Board (ADUAB) consists of nine members serving 4-year terms. Members are appointed by the Board of Supervisors and include engineers and architects, bankers and staff from other lending institutions, developers, staff from HCD and either DPWES or Planning and Zoning. It is responsible for considering and deciding upon requests for modifying ADU requirements for a specific project. Its decision to adjust the ADU requirement for a project is based on the developer's ability to prove that providing the required number of units poses an economic hardship. The ADUAB also considers the reasonable costs of labor and materials associated with ADU renovations in its recommendation to the county executive for permissible sales prices. In addition, the ADUAB approves the "Specifications for Prototype ADUs" developed by FCRHA.

Affordable Dwelling Unit Task Force

The ADU Task Force consists of government planners, developers, land-use lawyers, housing advocates, and bankers, who represent a diversity of interests. The task force is distinguished from the ADUAB because the task force considers and decides upon ordinance modifications.

Nonprofit Organizations

Eligible nonprofit organizations, which are identified by the Board of Supervisors, have the opportunity to purchase ADUs that the FCRHA does not purchase, or acquire, on certain terms upon a pending ADU foreclosure.

Costs of the ADU Program

County government provides funding for program operations, such as staff negotiations with developers about site plans, deliberations with sellers, discussions and orientations with prospective renters and homebuyers, and monitoring of ADUs. In the past, funds from HUD's HOME and CDBG supported elements of the ADU program. The county's American Dream Downpayment Initiative Program (ADDI)[21] and the Sponsoring Partnerships and Revitalizing Communities Program (SPARC)[22] supported closing costs and downpayments for for-sale ADUs. At present, the program is not supported by CDBG or HOME funds because CDBG and HOME do not have additional funds to allocate towards the ADU program. It is also not currently supported by the ADDI and SPARC programs, which have not been reallocated funding since 2006 and 2010, respectively. Staff are working to identify funding opportunities for county housing assistance programs—such as ADDI and SPARC—to assist prospective ADU first-time homebuyers.

Program Implementation and Effect on the Private Sector

ADU Housing Production

From 1992 to 2011, 2,448 ADUs have been produced, which consist of 1,336 for-sale units and 1,112 rental units. Exhibit IV-6 summarizes the annual ADU production by type through 2011. Of the 1,336 for-sale units, 1,181 units were sold to first-time homebuyers, 147 units are owned by FCRHA, and 8 units were sold to nonprofit organizations. Of the 1,112 rental units, 371 units are set aside for households with

[21] ADDI provides downpayment assistance to first-time homebuyers who are buying in Fairfax County. This assistance is in the form of a second mortgage loan with a 15-year term at a 5-percent simple interest rate. However, payments are deferred and the loan is forgiven at the end of the 15-year term. Sale before the end of the 15-year term requires repayment of the outstanding principal and interest. As of October 13, 2006, Fairfax County's entire allocation of ADDI funds was committed. As of this writing, the county has not allocated more funds towards this program. See more about program requirements at http://www.fairfaxcounty.gov/rha/homeownership/addi.htm.

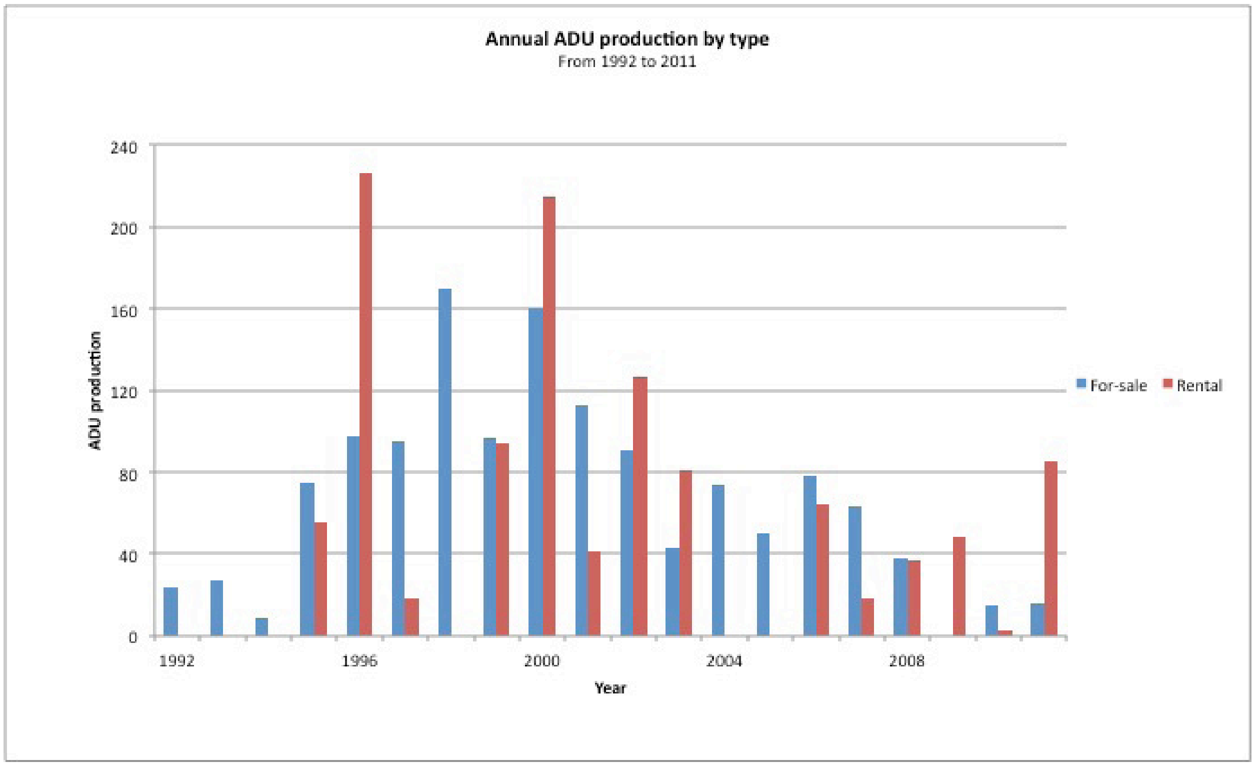
[22] SPARC is a low-interest mortgage program available to FTHB using a VHDA loan product for their first trust mortgage. The VHDA has provided HCD $12.5 million of funding to be used to help eligible FTHB purchase homes in Fairfax County. One-half of these funds, 6.25 million, is available for loans at 0.50-percent less than the current VHDA rate. The remaining 6.25 million is available at the prevailing FHA Plus rate for the VHDA. FHA Plus is a VHDA-financed, FHA-insured home loan program designed to assist qualified borrowers who need downpayment and closing costs assistance. As of July 2010, no SPARC funds were available. Another allocation round of SPARC funds has yet to be determined. See more about program requirements at http://www.fairfaxcounty.gov/rha/homeownership/sparc.htm.

incomes that are less than 50 percent of AMI, and the remaining 741 are set aside for households with incomes that are less than 70 percent of AMI.

On average, about 122 ADUs are produced each year. From 1992 through 1994, the annual average of ADUs produced was 20, and in 2000, ADU production peaked at 375 ADUs. With the real estate boom and overall development slowing, however, ADU production fell to a low of 18 units in 2010, the second lowest production level since the early years when the ADU program was adopted.

FCRHA staff indicated that an additional 826 ADUs are in the pipeline, which consists of 447 rental ADUs and 379 for-sale ADUs. ADUs in the pipeline have been approved and are either currently under construction or pending construction.

Exhibit IV-6. Annual ADU production in Fairfax County by type, through 2011



Approval Process

A multitiered process is used to obtain building permits in the county. It can take at least 15 to 18 months before a developer can break ground on a project, and most developments take between 24 and 36 months from the time the developer submits an application to the time residents occupy the building. Both county staff and developers agree that little, if any, difference exists between the time it takes an ADU and a non-ADU project to receive approval (FC Confidential Group Interview Source, 2011). Because developers already know what is expected of them, for a developer who follows the rules of the ordinance and does not challenge the ADU requirement, the ADU program does not create an impediment to projects or delay the permit process (FC Confidential Interview Source 3, 2011).

One developer recounted that he had heard of developers using the county's interest in affordable housing to their advantage. By including affordable units in a project, they might gain zoning approval that otherwise might not be forthcoming (FC Confidential Interview Source 3, 2011).

Deciding Where and What to Build

When deciding which housing projects to pursue, developers in Fairfax County treat the ADU requirements as one among a number of factors in the financial analysis of a project's feasibility. It does not appear that the ADU requirement, alone, is ever the reason why a developer would decide not to pursue a project in Fairfax County, and thus providing ADUs does not act as a disincentive to build in the county (FC Confidential Interview Sources 3 and 4, 2011).

Because they can calculate in advance the number of ADUs that will be required for a given project and the density bonus they will receive, developers are able to take into account the number and design of the ADUs required when deciding how much to spend on a piece of land. Thus, in this way, part of the cost of the ADU program is distributed to landowners.

Although the ADU program is mandatory, developers do have a degree of flexibility in the number of affordable units to include, which will affect the density bonus they receive. If the density bonus does not add much value to the project, the developer likely will choose to take a lower or no density bonus and build fewer affordable units. Likewise, if the density bonus adds values to a project, the developer will build more ADUs to receive the higher density bonus (FC Confidential Interview Sources 3 and 4, 2011).

Alternatives and Options

As written, the ADU ordinance does permit alternatives to including affordable units in a project, but only if the developer can prove that providing the ADUs onsite results in an economic hardship. If permitted, in place of building, developers can dedicate a land parcel elsewhere to the county, pay in-lieu fees, or combine the inclusion of some affordable units with one of the alternative options. For a developer to make use of one of the alternatives, the Affordable Dwelling Unit Advisory Board (ADUAB) must approve the request.

It is rare for a developer to gain approval to use an alternative. Because the county gains more through the building of units than it does through the alternatives, the criteria laid out in the ordinance for gaining permission to use alternatives is stringent. Only two modification requests have been made in the past 10 years. Developers consider such requests to be a waste of time and money as they have come to understand that it is rare for the ADUAB to grant permission (FC Confidential Interview Source 3, 2011).

Accounts of the use of ADU alternatives are presented in the following section.

Option #1: Land Dedication

According to planning and zoning staff, no applicant has dedicated land to the county instead of building ADUs onsite.

Option #2: Payment of In-lieu Fees

This option has not been used thus far.

Option #3: Combination of Some ADU Development with Land Dedication and Payment of In-lieu Fees

This option is a combination of providing some of the required ADUs with one or both of the first two options. County staff recalled two instances where developers requested to buy out of building some of the required ADUs. The first, which took place nearly a decade ago, was a development that required nine ADUs. The developer built eight townhouses that, from the front, looked like one very large house and bought out of the last required ADU. In this case, county staff and ADUAB approved use of the in-lieu fee for aesthetic purposes of the development and were pleased with the way the development turned out. The second instance was a development that required three ADUs. The developer, a new company, built two of the required units and paid a fee in lieu of the third unit.

Costs to Developers

Because of the predictability of the ADU program, developers are able to build in a way that minimizes the costs of the program. The only added development costs for ADUs are from legal fees, which is "not a significant amount of money" (FC Confidential Interview Source 4, 2011). A developer has minimal risk to not break even on the ADUs, partly because it is easy to find buyers and renters of the units and partly because the prices are set in a way intended to make the program cost-neutral for developers (FC Confidential Interview Sources 3 and 4, 2011). In addition, as one developer pointed out, because the prices are based on Fairfax County's high AMI, the targeted incomes for, and sales and rental prices of, market-rate units and ADUs often are not so different (FC Confidential Interview Source 3, 2011).

One developer did say that costs can be higher when building ADUs in single-family housing developments because of the square footage minimum and the challenges of building affordable units in a way that integrates them with the rest of the development (FC Confidential Interview Source 3, 2011). Nonetheless, developers will go beyond the minimum requirements for the ADUs to maintain the same quality across the development. For example, one developer built look-a-like duplexes as ADUs in a single-family detached housing development. Another developer used the same finishes in affordable units as they do in market-rate units. Thus, although it might seem like an additional cost to integrate the ADUs with the rest of the development, not doing so runs the risk of diminishing the value of the market-rate units (FC Confidential Interview Sources 3 and 4, 2011).

Selling and Renting ADUs

County staff and developers have said that it has not been difficult to find buyers and renters for ADUs. County staff market the ADU program on its website, through its Public Access channel, and through brochures circulated at a variety of community events. The county also markets the First-Time Homebuyers Program (FTHB) and the Fairfax County Rental Program (FCRP) on its website[23] and in the office, and maintains and updates lists of available units for those programs on its website.

County and property management staff said that rental ADUs do not require much marketing. Prospective renters usually hear about units through word of mouth. On occasion, prospective renters will contact County staff to learn about ADUs in the pipeline to get a jumpstart in submitting an application (FC Confidential Group Interview Source 1, 2011).

Although the county will not market the units for private property managers, they do not always advertise the existence of affordable units, as they have never had any major issues leasing them. ADUs are easily filled through the general marketing of market-rate units or through the county's referrals. Therefore, property managers have not found a reason to put extra effort in specifically marketing ADUs (FC Confidential Interview Source 5, 2011). Prospective renters only find out units are in the ADU program after they express interest in renting and discuss their circumstances with management staff. If an ADU unit is available, property managers provide information about the ADU program's eligibility and lease requirements. On a few occasions, property managers have had applicants come in who were aware the property included ADUs (FC Confidential Interview Source 5, 2011). Although active in the oversight of income compliance, county staff do not oversee marketing practices of property management companies.

Leasing Rental ADUs

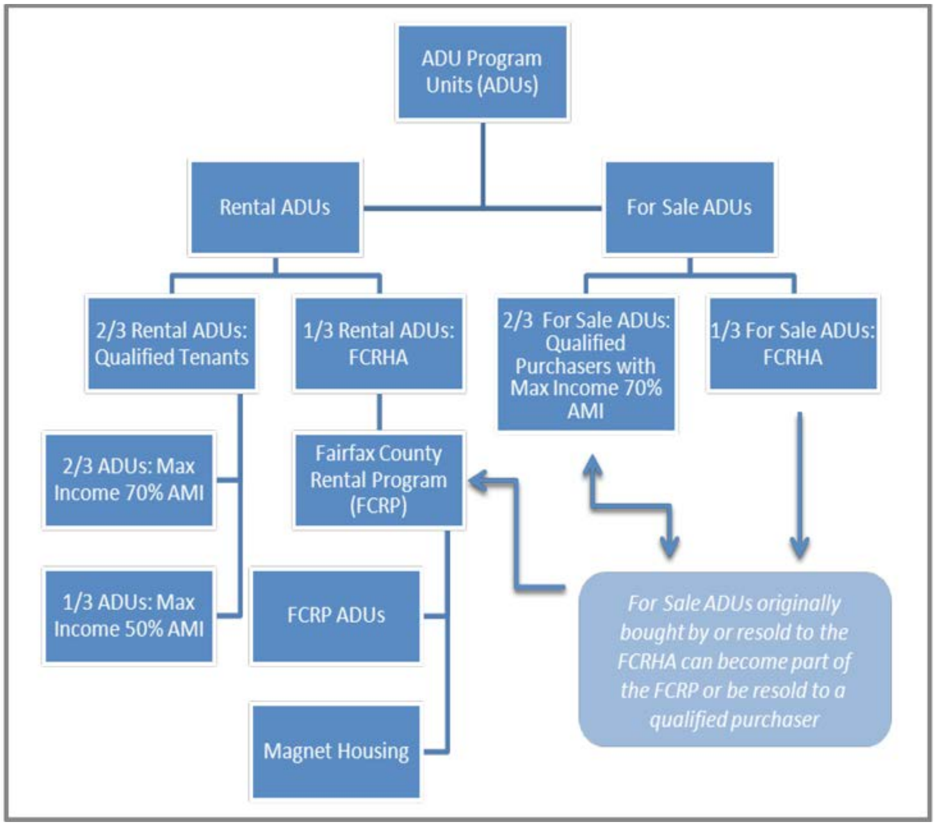
Income limits for rental ADUs target both low- and moderate-income households in Fairfax County. At least one-third of rental ADUs must be leased to households earning 50 percent of AMI, and the remaining two-thirds must be leased to households earning up to 70 percent of AMI. See exhibit IV-4 for 2011 income thresholds.

The Fairfax County Redevelopment and Housing Authority has the right to lease up to one-third of the rental ADUs in any given development. All units leased by FCRHA are placed under the Fairfax County Rental Program (FCRP) that is directly managed by HCD. These units essentially remain affordable to perpetuity. A subset of FCRP ADUs is set aside for the Magnet Housing Program, which is discussed in more detail in the following section. Exhibit IV-7 illustrates the flow of rental and for-sale ADUs. Prospective renters of FCRP ADUs (including Magnet housing units) are kept on a waiting list of prospective renters, whose position is determined by the date of application and the number of bedrooms needed. After a prospective renter's application reaches the top of the list, county staff review information provided on the preapplication form and notify the applicant by mail to schedule an interview to determine eligibility. Units rented under the FCRP are generally rented to households earning less than 50 percent of AMI (FC Confidential Group Interview Source 1, 2011). Thus, the FCRP enables Fairfax County to provide deeper affordability than the ADU program provides on its own.

The Magnet Housing Program units are restricted to new recruits and trainees within the Fairfax County Departments of Fire and Rescue, Police, Sheriff's Office, Government Human Resources, county public schools, and Inova Health Services earning between specified minimum and maximum household income limits for each of the properties. Employees can rent these units for a maximum period of 2 years, with the exception of county public school employees, who can remain in the units as long as their household income is less than the maximum income limit. This program essentially sets aside ADUs for individuals working in the local public service sector.

[23] See http://www.fairfaxcounty.gov/rha/rentalhousingprograms/fcrp.htm for the listing of ADUs under the Fairfax County Rental Program.

Exhibit IV-7. Flow of rental and for-sale ADUs



To assure that renters meet the income criteria and to assure that no affordable units are lost because of vacancy problems, the county closely monitors the leasing of rental ADUs.

Property managers follow ADU program rules regarding the income requirement, as bending ADU rules is not worth the effort "to cheat out another couple of dollars" (FC Confidential Interview Source 4, 2011) and they have not had trouble filling vacant units. Market demand has been relatively stable, with about a 90-percent occupancy rate among market-rate units and a 95-percent occupancy rate among the ADUs (FC Confidential Interview Source 5, 2011). Fairfax County staff also reported no vacancy problems with ADUs and in cases where a management company has a problem filling non-FCRHA rental ADUs, the county will refer eligible households until available units are filled so that affordable units are not lost.

Prospective renters of non-FCRP rental ADUs apply directly to the management of the property with available units. Leasing agents must adhere to the ADU eligibility criteria. Depending on the development, property managers may or may not maintain waiting lists for their units. After the applicant is approved and a unit is available, applicants complete the required documentation mentioned in the following section (FC Confidential Interview Source 5, 2011).

For both FCRHA and non-FCRHA ADUs, property managers or landlords are required to submit three documents related to leasing ADUs–an Income Certification form, a Lease Restrictions Addendum, and an Occupancy Affidavit.[24] The day-to-day management of ADU and market-rate units is the same, and the only difference between the two is the reporting requirements associated with the affordable units, which are minimal (FC Confidential Interview Source 5, 2011).

Selling for-sale ADUs

The FCRHA has the right to purchase up to one-third of the ADUs for sale in a development within

[24]See http://www.fairfaxcounty.gov/rha/adu/aduprogram.htm for samples of the Income Certification form, the Lease Restrictions Addendum, and the Occupancy Affidavit.

the first 90 days after the Notice of Availability. These units can be placed into the Fairfax County Rental Program (FCRP) or they can be resold to qualified First-Time Homebuyers (FTHB). Units bought by the county and placed in the FCRP become permanently affordable, and because the county owns the units, the county can provide these units at a deeper affordability than would be possible with other ADUs.

The remaining two-thirds of the units, plus any additional units the FCRHA does not choose to purchase, are offered to persons in the county's First-Time Homebuyers Program who have been issued a Certificate of Eligibility by the FCRHA. The FCRHA has the chance to buy additional units not sold to qualified buyers. If, after this process, ADUs are still available, nonprofit organizations have the opportunity purchase before the units are made available to the general public.

Under the FTHB program, prospective buyers must meet the following criteria:

- Be a first-time homebuyer (has not owned a home in 3 years).
- Have a minimum income of $25,000.
- Meet specific income requirements based on household size (income requirements are adjusted annually based on the current AMI).
- Be able to obtain a conditional approval letter for a mortgage (and obtain a mortgage) after being offered a home to purchase.

After meeting these criteria, prospective homebuyers must receive a Certificate of Eligibility by attending a FTHB orientation and a homeownership education class, meeting with a lender before getting a conditional loan approval, and participating in a group application session. The county provides orientation, homeownership education and application sessions at a number of locations.

The county maintains a list of certified first-time homebuyers. The list prioritizes residents and workers in Fairfax County and households with dependents. For a prospective buyer to be eligible to purchase a home of interest, the buyer must attend an open house and bring a copy of their current certificate, which verifies household size and purchase limit required to purchase the home. At that point, the prospective buyer is screened to make sure she/he has been preapproved for a mortgage loan equal to or greater than the sales price of the home and has a household size appropriate for the unit. The buyer is then allocated priority points that are assigned for meeting the following preferences.

- Living or working in Fairfax County (5 points).
- Having one or more dependent children under the age of 18 or one or more dependents with disabilities in the household (1 point).
- Listed on the First-Time Homebuyers Eligible Homebuyers List—(1 point for each year on the list up to 3 years).

The applicant with the most priority points is placed at the top of the list, which is posted on the FTHB webpage.[25] The household ranked first has the first opportunity to purchase the home. If they refuse, the household ranked second has the opportunity to purchase, and so on. Refusing to purchase a home does not penalize a household for future drawings.

Any ADUs offered for resale during the price-control period must be offered to the FCRHA first before it is made available to the general public. Any ADUs offered for resale after the end of the price-control period also must be offered first to the FCRHA. This requirement gives the county the opportunity to keep units affordable that might otherwise be lost.

Resale of For-sale ADUs

If the FCRHA decides to purchase these units, they will either turn into FCRP units or they can be resold to a new qualified FTHB. Units sold within the price-control period cannot be sold for more than the original price, adjusted for inflation and improvements. In any instance of resale after

[25] Homes that are offered with accessibility features are the only exception. Households having one or more persons with a physician-certified handicap or physical disability limiting mobility are given a "mobility" priority. Households with the mobility priority are promoted to the top of the list regardless of their number of priority points. If multiple households with the mobility priority apply for the same unit, priority points are considered within the group of mobility priority households followed by the households without the mobility priority. To claim a mobility priority, a completed physician signed First-Time Homebuyers Program Accessibility Preference Form (PDF) must be submitted.

the price-control period, one-half of the difference between the net sales price paid by the new purchaser and the owner's original purchase price is contributed to the Fairfax County Housing Trust Fund. These funds are then used for affordable housing purposes in the county.

Monitoring ADUs

Oversight Process of Non-FCRHA Rental ADUs

The county requires owners of developments with rental ADUs to submit monthly reports on the status of the affordable units (not including any units leased to the FCRHA). The report must include a cover letter, an owner certification form, and a tabulation of ADU statuses.[26] County staff permit owners to use the forms provided on the county website, or to use their own generated reports that provide the following information.

- The address and name of the development and the name of the owner.
- The number of vacant ADUs by size (bedroom count) other than those leased to the FCRHA.
- The number of occupied ADUs by size, other than those leased to the FCRHA. For each occupied unit, the report must provide the following information.
    - Unit address and bedroom count.
    - Tenant name and household size.
    - Effective date of the lease.
    - Tenant (household) income as of the date of the lease.
    - Current monthly rent.

Along with this information, the report must include copies of the required leasing documents and recertification documents, where applicable.

The procedures for monthly reporting are clearly spelled out by the county, and the county is very involved in checking for compliance (FC Confidential Interview Source 4, 2011). By providing clear criteria and upfront involvement, county staff can ensure that residents of ADUs meet the income requirements. The property management staff with whom we spoke understand the procedures—monthly reporting, leasing documents, annual recertification—and the purposes of each—verifications that both the property managers and renters are compliant. The staff, who represented two properties, said the monthly reporting requirements are not complicated or burdensome (FC Confidential Interview Source 5, 2011).

When a household's income increases beyond the ceiling permitted for ADUs, which has happened a number of times, the action taken depends on whether a property has ADUs that float or are fixed. If fixed, the household cannot renew its lease and must leave or move into an available market-rate unit when their lease expires. In developments which have fixed ADUs, noncompliant households are notified ahead of time that they must vacate the unit at the end of the lease; however, most people know they must move and have already begun planning for it (FC Confidential Interview Source 5, 2011). In the case of floating ADUs, a household could remain in their unit and the next vacant unit that is similar would become affordable. Because households recertify annually, they can remain in their unit in the event of an income increase until the next income certification period.

Oversight Process of For-sale ADUs

After units are sold, county staff conduct annual compliance checks, which include annual occupancy certification of all ADU purchasers, as well as reviews of land records to validate both the stated residency and the potential purchase of other residential property. The purpose for checking property records is to ensure compliance with the residency requirement. Although an ADU owner may purchase other property, the ADU must be his or her primary residence and cannot be rented to another household.

Penalties

The ordinance includes penalties for noncompliant ADU property managers. Such violations are considered zoning ordinance violations. In these cases, county staff provide documentation to Zoning Enforcement. County staff have yet to impose penalties for any violation of ADU requirements. Staff once pursued and forced judgments on a noncompliant ADU owner. In the end, the county did not have to

[26] See http://www.fairfaxcounty.gov/rha/adu/aduprogram.htm for samples of the Income Certification form, the Lease Restrictions Addendum, and the Occupancy Affidavit.

impose fines. Instead, county staff worked it out with the owner to be compliant. Over the years, county staff believe they have improved the monitoring of ADU homebuyers' compliance. Still, its main objective is to get the house in the program and not impose fines (FC Confidential Group Interview Source 1, 2011).

Penalties are also incurred for developers who do not meet the rezoning provisions, and the provision of ADUs falls under the provisions. These requirements are enforced through the county attorney.

Current Issues and Challenges

Loss of Units Before the End of the Affordability Compliance Period

Because the county is so involved in monitoring the compliance of the ADU program, ADUs are rarely lost before the end of the affordability period. Most of the losses of ADUs before the end of their affordability period were because of foreclosures. Some losses took place mid-construction during a foreclosure period in the early 1990s. Others have been lost during the current economic downturn. In some cases, the foreclosed units converted to market rates and in others, the lenders assumed ownership. Staff are presently discussing how best to prevent loss of affordable units because of foreclosure. Lawsuits have been filed in regard to foreclosure regulations and the ADU program, but so far, no case has made it to court. The lack of clarity regarding what happens to ADUs in foreclosure suggests the need for review and clarification of the laws and regulations involved (FC Confidential Group Interview Source 1, 2011).

Loss of Units Because of Expiration of Affordability Compliance Period

Fairfax County expects to see its first set of ADUs expire in waves, starting March 2013. County staff have been paying close attention to those units that are approaching expiration. The FCRHA has purchased some of these units, reset them to 30-year controls, and then resold them to qualified homebuyers. The county has been fairly successful at purchasing these units and resetting their affordability periods, and, in cases where the county did not purchase and reset the affordability of a unit, a nonprofit organization has often done so (FC Confidential Interview Source 2, 2011).

County staff mentioned that they do not purchase every unit they are eligible to buy. Instead, they prioritize units based on the area's need for affordable housing at a particular time. For example, the county will not purchase all available units located in areas with a good stock of affordable units or that do not have great need. County staff also believe that it does not make sense to preserve single units dispersed throughout the county, preferring to purchase groups of ADUs in communities. They also prefer purchasing larger ADUs to address the greater need for affordable housing among households of large families (FC Confidential Group Interview Source 1, 2011).

Current Economy

The current economic climate has had a substantial effect on the ADU program. New housing production has substantially decreased in recent years, and, as a consequence, the production of new ADUs has also substantially decreased, potentially by as much as one-half (FC Confidential Interview Source 3, 2011).

In particular, a marked decrease has occurred in the production of for-sale units, and, in particular, the production of condominiums, in response to lower demand for for-sale units. In addition, potential homebuyers are having a harder time qualifying and securing home loans. Lenders are requiring larger downpayments, which is particularly hard for low-income households.

On the other hand, demand for rental properties has increased and developers have responded; the county is receiving more applications for rental developments, especially along new Metro lines. Another consequence of the shift in housing demand is that the practice of converting rentals to condos, which was common in the early part of the 2000s, has stopped.

Planning and zoning staff spoke about challenges stemming from the poor economic climate that affects both market-rate and affordable housing units, such as lenders' requirement for a higher downpayment amount, which limits prospective buyers' access to mortgage loans.

Staff Capacity for Program Monitoring

According to the housing advocate, some developers fought against the Workforce Dwelling Unit program when it was under consideration. Because it was approved, however, developers have had to figure out how to make it happen, and they have done so. A concern exists about the county's ability to monitor the anticipated large number of WDU units that are expected to come on line in the next 5 years (FC Confidential Interview Sources 2 and 4, 2011). Whereas policies and procedures are well defined for the ADU program and the monitoring process is clear, the developer said that the WDU program is not as straightforward. Instead, each project can be different, which could make overseeing the development of WDUs and monitoring them after being built quite a challenge and one that could require additional staff as the number of WDUs increases.

External Threats

Beyond operational challenges that the existing ADU program faces, are the possible challenges to the continued existence of the ADU and the WDU programs. No one we spoke with expressed concern that either the ADU or the WDU program was facing stiff political opposition. Nonetheless, recent attention in the media frames the programs as providing luxury housing to lower income households (Kunkle, 2011; Thompson, 2011).

This new attention was raised by Fairfax County Supervisor Pat Herrity in response to two reports: a report by the Thomas Jefferson Institute concerning the inclusion of million-dollar homes as part of the affordable housing stock and a report by the Office of Financial & Program Audit, which shows that the county paid $1.47 million in condo fees on the affordable housing units it owns (Thompson, 2011; Fairfax County Office of Financial and Planning Audit, 2011). Supervisor Herrity has since advocated for a reevaluation of the ADU requirement, generally, and in Tysons Corner, specifically, as he believes the county is losing potential tax dollars on these units and furthermore, is spending unnecessary money to house low- and moderate-income households in luxury units. He also makes the case that, given the drop in housing prices in the past couple of years, the county's housing is more affordable than it once was, and households making annual incomes of nearly $75,000 (slightly more than 70 percent of AMI for a family of four) should be able to find affordable housing in the county (Herrity, 2011).

In response, the Chairman of the Fairfax County Board of Supervisors, Sharon Bulova, argued that such costs are necessary for the program to be successful in partnering with the private market to provide affordable housing units that are dispersed throughout the county, including the wealthiest parts of the county, which often have such higher end housing (Kunkle, 2011). A change in the policy would risk the creation of pockets of poverty.

Nonetheless, the concern that the program is less necessary as housing prices have decreased in the past couple years is shared by others when it comes to the First-Time Homebuyers Program (FC Confidential Group Interview Source 1, 2011). Because prices have decreased substantially, and, consequently, prices of market-rate units and ADUs can be very similar, the county has noticed that households who can afford to will choose to buy market-rate units rather than ADUs to avoid the restrictive covenant (FC Confidential Group Interview Source 1, 2011).

Use of IZ with Smart Growth Initiatives

Considerable housing development is occurring in a number of areas within Fairfax County, including near Metro transit stations. Because much of the development underway and in the proposal stage is for highrise buildings, it is not covered by the ADU program, which exempts highrise buildings more than four stories with an elevator. To address this gap in the ADU program and to ensure that new and redeveloped highrise buildings include some number of affordable housing units, the county passed a voluntary Workforce Dwelling Unit (WDU) program that targets households with incomes ranging between 80 and 120 percent of AMI.

In Tyson's Corner, the county adjusted the Comprehensive Plan to guide development in the area as the area is redeveloping in response to the Metro rail line under construction. In addition to the rezoning of the area around the new Metro to permit greater density, the Comprehensive Plan requires that new developments include 20 percent of ADUs and WDUs. Developers can fulfill this requirement through either ADUs or WDUs. Thus, although the WDU program is technically voluntary, developers will often choose to build WDUs as they target higher incomes than the ADU program. Presently, developers in Tysons

Corner have followed these new requirements; each of the seven applications currently under review for highrise residential projects includes the 20-percent offer. The same thing will occur in Reston around the Metro station where the new Metro line will end (FC Confidential Group Interview Source 1, 2011).

Another example is the development taking place in Merrifield, which will include about 900 units affordable to households with incomes in the range of 80 to 120 percent of AMI (FC Confidential Interview Source 2, 2011). ADUs and WDUS are in that area. Other areas experiencing high-density growth include Bailey's Crossroads and Columbia Pike. With the shift in military operations that is bringing more jobs to Fort Belvoir, advocates are keeping an eye on development activities in case they need to push the county to take action to ensure any high-density development will include affordable units.

A concern with the WDU program is that it does not serve households with incomes that are less than 80 percent of AMI, where need is greater. With more development around Metro stations, developers are more likely to choose to build WDUs rather than ADUs, which ushers the risk that fewer of the more deeply affordable units will be built. A housing advocate wants to figure out how housing can be developed in dense, higher cost areas in ways that will benefit households with less income, while still being fair to developers.

IZ Outcomes[27]

Perceived Effect on Housing Prices and Supply

Developers and the county staff do not believe that the ADU program has had an effect on housing prices so far for either market-rate for-sale or rental units. As noted earlier, home prices and rental prices in Fairfax County continue to be high relative to the Washington Area and the nation as a whole (FC Confidential Interview Sources 3 and 4 and FC Confidential Group Interview 1, 2011).

We did not find support for the criticism of IZ ordinances that argues that IZ decreases housing supply. On the contrary, developers we spoke with think the ADU and WDU programs have or will lead to a small increase in the housing supply because of the density bonus. In particular, one developer predicted a slight increase in the number of multifamily housing units in the next 5 years as the county permits higher density development to get more affordable units built. Nonetheless, no one expressed concern that such an increase in housing supply would lead to an oversupply of units, however, because of the strong demand for housing in the county.

Perceived Effect on Consumers

Although data were not collected on the benefits of the ADU program for consumers, those interviewed provided anecdotal evidence of several potential benefits of the program. Nonetheless, because of the number of affordable units produced through the ADU program is currently so small relative to the total number of housing units produced, these benefits are not considered to be too widespread or deep.

The primary benefit of the program is the increase in the number of housing units that are affordable to low- and moderate-income households across the county. Because the ADU program is mandatory, affordable housing units are available in more areas in the county than would otherwise be the case, enabling at least some people greater choice in where they live. Moreover, the units available through the ADU program are often of higher quality than the occupant would otherwise be able to afford. As one developer put it, the program provides an "opportunity to live in a location and a product that is not representative of [the ADU resident's] income level relative to other [households] living in that project." Although the ADU, and now the WDU, programs have been able to distribute affordable units across the county, higher income pockets remain in newer areas that have yet to receive many such units (FC Confidential Interview Source 2, 2011). In addition, as a developer and a property manager pointed out, the number of affordable units produced in any one project can be quite small. We heard different perspectives on whether the ADU program improves access to higher performing schools. County planning staff believe that some ADU households with children have attended such schools because of the program, and specifically, families have favored a particular housing unit because of the school district. Still, not all developments with ADUs were intended for families. One developer involved in projects that

[27] Questions about program outcomes were added after most interviews were completed in Montgomery County.

are high-density developments located near metro stations has not seen many households with children among the residents. For these projects, the effect on school access is believed minimal at best.

Because of its ability to disperse affordable housing units across the county, the ADU program has been able to provide transportation-related benefits for households by lowering the time and cost of commuting for residents who work in the county (FC Confidential Interview Source 3, 2011 and FC Confidential Group Interview Source 1, 2011). The units, often located in relatively job-rich areas, may increase access to employment opportunities and working access for employers (FC Confidential Group Interview Source 1, 2011).

The housing advocate shared anecdotal information about a drawback of the homeownership component of the ADU program. When the economy and the housing markets were strong, some prospective buyers did not want to participate in the program because of the limit placed on the resale price and the requirement to share equity with the county (FC Confidential Interview Source 2, 2011). Whether prospective buyer's opinions of the program had changed because the economic downturn was not discussed. County planning staff did say that homeowners in ADUs pay lower property taxes. That fact, along with stability of mortgage payments, staff believe, are considerable benefits to owners who likely would not be able to own a home were it not for the program. County planning staff identified a related benefit for households interested in purchasing an ADU home. Prospective homebuyers on the waiting list can participate in home buying and ownership classes to better position themselves (FC Confidential Group Interview Source 1, 2011).

Summary

The consistency in what we heard about Fairfax County's ADU program from the people we spoke to was striking. County staff, developers, property managers, and a housing advocate all spoke of the clarity of program requirements, monitoring practices, and overall management. Respondents also spoke about how the program has developed over time in ways that have acknowledged developer concerns, market shifts, and public interests. Processes are in place to gather input and make changes to the ordinance when necessary.

Awareness and acceptance appear to have increased about the differences in perspective that people will have of the program based on their interests. An advocate spoke about developer opposition to the program early on yet said that she would not expect developers to have been in support of it. A developer spoke about the differences in perspective and motivation related to affordable housing policies among advocates, developers, and government staff. For this developer, ADU was merely a cost of doing business, not his calling in life. He said it was comparable with the funds he gives to build fields or to make transportation improvements—'it is just another line item in the budget.' Were it not required, he would not build the affordable units (FC Confidential Interview Source 4, 2011).

Because much of the development activity in the county increasingly takes place near Metro stations, the percentage of affordable units produced could shift more toward WDUs. If that turns out to be the case, the county may want to retool the ADU ordinance or the Comprehensive Plan to address the reduction in more affordable units.

V. Findings

Case studies of Montgomery County's MPDU and Fairfax County's ADU programs shed considerable light on several IZ issues, about which the extant literature is relatively silent. The fact that these programs are longstanding means that consideration of these issues should be of interest to policymakers nationwide. Nevertheless, it is important to state that some of the details and findings of each case are likely to be particular to these counties' programs, both of which are implemented in the same metropolitan region and in jurisdictions with comparatively high housing costs and average household incomes.

The findings are organized around the questions that guided the research, drawing major points from both case studies and highlighting details from one or the other when appropriate. The questions address affordable housing production, program context, ordinance changes, relationships among stakeholders, housing developers, in-lieu fees, occupancy, monitoring and enforcement, consumers, and IZ interactions with other programs.

Affordable Housing Production

The number of affordable housing units produced in any given year can vary considerably. For example, the number of affordable units produced annually in Montgomery County has ranged from 77 to more than 1,200 units and the number of units produced in Fairfax County has ranged from 18 to 375 units. The variation reflects economic and housing market conditions and opportunities that affect housing production in general. Relying on the private market to provide affordable housing comes with the risk that relatively few units will be added to the affordable housing stock in a given year.

Program Context

State and local economic, regulatory, and political contexts help to shape both the initiation of IZ ordinances and their effectiveness over time. Because the MPDU and ADU programs have been in existence for many years (nearly 40 in the case of Montgomery County and 20 in the case of Fairfax County), we chose to explore contextual factors that influence the effect of the program in the current period rather than factors that influenced ordinance initiation or program development in the past.

Economic Conditions

As expected, the current economic recession and housing market crisis has had an effect on the development of IZ properties in Montgomery and Fairfax Counties, as it has on housing more broadly. With consumer demand for homeownership down, developers have shifted production toward rental units. Even in the relatively strong economy of the greater Washington, D.C. metropolitan region, housing demand and production has followed suit. Based on the case studies of programs located in a region with strong housing markets, we cannot say how production would fare under weak housing conditions. We would anticipate, however, that it would follow other housing development trends in weak markets and be lower, which suggests that IZ might work best in stronger housing markets.

Political Environment

The state political environments of Maryland and Virginia differ from one another as do, to a degree, those of Montgomery and Fairfax Counties. Yet, interestingly, details of the current IZ programs in the two counties are remarkably similar. Where they are different, such as with respect to the nature of some ordinance changes that have occurred, contextual differences appear between the two in political influence, government leaning, or both. For example:

- Montgomery County's MPDU requirement to include affordable units in all building types, the extension of affordability terms, and the proposed change in pricing that would deepen unit affordability in the face of developer opposition suggest a relatively higher priority placed on consumer benefits;

- Fairfax County's ADU program's exclusion of certain building types and change in the density bonus structure as a way to reduce program costs to developers, although the change is understood to have reduced the number of affordable units being built, suggest a relatively higher priority placed on controlling costs to developers.

State Law

No obvious effect of state structure differences has occurred in the two counties' IZ programs. Fairfax County's initial effort to pass an IZ ordinance was struck down in part because it had not received state legislative permission to adopt such a policy, as required in a Dillon's Rule state. Any other effects of state structure that might have been evident in the early years of the two programs are not apparent today.

Ordinance Changes

Not much has been written about the extent and process of change to IZ ordinances over time, which is noteworthy given how much change can occur. The fact that both of the counties' IZ programs have changed considerably since they began is itself an interesting finding. The programs have in no way been static.

Change Process

Ordinance changes in both Montgomery and Fairfax Counties, have been motivated by a number of factors. These factors include political shifts, interests in addressing program goals more effectively, and changes in development context. Administrative structures are in place in each county to consider when ordinance changes might be warranted and what changes might be passed. In both counties, the process to consider and pass ordinance amendments involves a range of stakeholders.

Direction of Change

As noted previously, the two county's programs have changed over time in ways that have made them similar to one another. Still, some enacted and proposed amendments suggest that developers in Fairfax County have relatively more influence or, perhaps, that developers' and program administrators' interests are more aligned than in Montgomery County, where changes appear more focused on consumer benefit.

Degree of Change

Because IZ programs are not static, it is possible to achieve (or lose) gains in the number of affordable housing units through changes made to price-control periods, by lengthening (or shortening) the affordability term, or through changes in unit requirements, by increasing (or decreasing) the percent of affordable units required. As noted by a Montgomery County stakeholder, the current form of the MPDU program might not be enacted if it were voted on today, but changes over time have made the current program possible.

Relationships Among Stakeholders

Little research has been done to date to identify the various parties involved in IZ programs and the relationships among them. Both the MPDU and ADU programs proved very interesting in this regard, especially because of their complexity.

Administrative Structure

The MPDU and ADU programs are administratively complex. Both programs involve multiple government agencies and advisory bodies that are specially formed to help fulfill the programs. The program is enriched by the involvement of housing advocates and developers who participate on advisory committees or otherwise offer input into the programs, but advisory bodies also add to administrative complexity. The range of stakeholders brought together by IZ helps to focus attention on the need for affordable housing and mechanisms for providing it. It should be noted, however, that this complexity makes it challenging to explore the issue of the administrative costs of IZ.

Relationships

None of the stakeholders interviewed for the case studies indicated that tense relationships existed among parties that represent different interests. It was notable in Fairfax County that both an affordable housing advocate and a developer spoke of the consideration different parties give to other stakeholders' interests. Although stakeholders in Montgomery County also indicated relatively good stakeholder relations, developers think the current proposal to amend how units are priced gives insufficient weight to their concerns. If the amendment moves forward, developers say it could lead them to build elsewhere given the anticipated negative effect regarding profit estimations.

Stakeholders

Nonprofit organizations appear to be more involved in Montgomery County than in Fairfax County. Nonprofit organizations are able to purchase affordable units produced under both the MPDU and the ADU programs, thereby increasing their own stock of affordable units for sale or for rent and expanding the reach of IZ programs. We did not explore this difference or what it might mean over time regarding sustaining IZ unit affordability.

Developers

Both the MPDU and ADU programs are mandatory; if developers wish to work in Montgomery or Fairfax counties they are required to follow IZ requirements. We began the case studies interested in understanding whether and how decisions to build are affected by IZ and whether program incentives are effective in motivating developer participation.

Decision to Build

The Montgomery and Fairfax County experiences suggest that the presence of a mandatory IZ program does not necessarily lessen the likelihood a developer will build in a jurisdiction. Developers interviewed in both counties knew, and accepted the fact, that they had to include affordable units in their projects; neither they, nor other developers of whom they were aware, chose not to build because of IZ. In essence, IZ was considered merely another matter that had to be factored into planning and proforma calculations. Decisions rest on whether a project pencils out. Although IZ has apparently not been a deterrent to housing development to this point, however, Montgomery County developers claimed that if a currently proposed pricing amendment passes, it could negatively affect their ability to estimate profits and, therefore, result in decisions not to build.

Cost

The effect of IZ on developer costs differs between the two counties. ADU program administrators said their program was designed so that developers would break even, and developers agreed that such is the case. In Montgomery County, developers said they generally begin new housing projects knowing they will not break even on IZ-mandated units and rely on their market-rate units to subsidize the affordable units. The fact that developers are willing to work under such circumstances is due, in part, to program predictability.

Predictability

Developers in Montgomery and Fairfax Counties spoke of the importance of predictability in their calculations. IZ program requirements in both counties are clear and the method used to set unit prices enables developers to estimate their costs and profits up front. It is the possible loss of this ability to estimate profits that is at stake in the proposed MPDU pricing amendment that would change the way affordable units are priced to an approach based on what a household can afford. Loss of predictability and consequent uncertainty could prove to be the line in the sand that developers will not cross.

Incentives

Neither Montgomery nor Fairfax County provided evidence that the density bonuses effectively encouraged the production of affordable housing units. What matters to developers is that IZ is mandatory. Developers in both counties indicated they built the minimum number of affordable units required. The value of the bonuses was not considered sufficient to make building more than the minimum necessary number of units worthwhile.

In-lieu Fees

Very little is known about who takes advantage of buyout options, how fees are managed, and what affordable housing outcomes are achieved. Unfortunately, the two programs explored in this study shed minimal light on this topic because the option, although available under regulations, is rarely approved.

Fee Amount

Both MDPU and ADU program administrators believe the fee amounts generated from their program buyout options are too small to cover the costs of building affordable units elsewhere. The approval bar is set high enough such that developers do not bother to request buyouts except in rare instances when they are able to make a strong case that a project would be economically infeasible if required affordable units were included. The case studies suggest that it can be difficult to set fee levels that appeal to both developers and public officials.

Occupancy

IZ ordinances establish terms for pricing affordable units and determining household eligibility for sales and rental housing. The Montgomery and Fairfax County case studies show how pricing and affordability can be more complex than a simple reading of the ordinances would suggest.

Homeowner Association Fees

Because homeowners' association (HOA) fees can increase over time, a household that can afford a home at the time of purchase might not be able to cover subsequent increasing fees. The challenge HOA fees present over time can increase the risk of foreclosure. HOA fees also affect county agency and nonprofit organizations' decisions regarding which units to purchase for their own programs. Fees can increase the public cost of affordable units, which is the case in Fairfax County where agencies pay fees on IZ housing purchased for rental units.

Changing Affordability

Affordability can be enhanced when housing units are purchased by affordable housing agencies and nonprofit organizations. Such entities can set household income requirements lower than what is permitted by IZ programs. They can set longer terms of affordability as well, helping to maintain the stock of affordable units beyond the years required by the MPDU and ADU programs.

Monitoring, Reporting, and Enforcement

IZ programs can result in the development of affordable for-sale or rental units, but, if the housing is not monitored over time to ensure that affordability requirements are sustained, the benefits can atrophy. Therefore, the structure and effectiveness of monitoring, reporting, and enforcement requirements can be very important to affordable housing outcomes.

Reporting

Reporting requirements for rental property managers appear similar across Montgomery and Fairfax Counties. Perceptions of their burden level differ, however. Fairfax County property managers indicated that the substance and frequency of ADU reporting was relatively minimal, although Montgomery County managers believed MPDU reporting was relatively burdensome. The number of interviews and interview questions dealing with this topic, however, was too few to draw firm conclusions regarding this issue.

Enforcement

County staff from both the MDPU and ADU programs reported having few problems over the years requiring them to take enforcement actions. It appears that enforcement has not been a significant public cost.

Consumers

One of the least researched aspects of IZ involves its effect on housing consumers. Although the scope of this study did not include interviewing renters or homeowners who obtained units developed under IZ, possible consumer benefits of IZ programs were explored.

Housing Supply and Cost

It would take a different research approach than undertaken here to determine whether a county's IZ program has, in fact, affected housing prices and supply. What can be reported, however, is that Montgomery County stakeholders believe that market-rate housing prices would be lower and supply would be higher in the absence of an MPDU program. This perspective is parallel with developers' views that market-rate units are subsidizing affordable units. Fairfax County stakeholders consistently reported that they did not believe the ADU program has affected housing prices or supply with the exception of affordable housing units.

Fairfax County developers report that the supply of affordable housing units is greater because of the ADU program than would have been the case without the program. The developers indicated they would not build such units if it were not mandatory to do so. That having been said, the IZ program has not turned out large numbers of units. Changing from a flat to a sliding scale for density bonuses is also believed to have reduced the number of affordable housing units produced by the ADU program.

Housing Quality and Choice

Consumers of the affordable housing units built in both Montgomery and Fairfax Counties have benefited from the programs' requirement that affordable units must be comparable in quality with market-rate units. Also, the programs' requirement that affordable units be dispersed throughout a given development and the requirement that all new developments include affordable units throughout the areas covered by the ordinances can benefit broader goals of income integration and housing choice. Both goals can be further supported by the purchase of units by agencies and nonprofit organizations, enabling the program to serve households that otherwise could not meet program eligibility requirements or that have other special needs.

Wealth Accumulation

The shift to a longer affordability control period for ownership units extends the time an owner must reside in a home before realizing the full capital gain upon selling. The extended period benefits a subsequent buyer, but can negatively affect a household's ability to gain wealth as early as was previously possible under shorter control periods. This benefit is especially true in Montgomery County where the price-control period increased from 5 to 30 years. In Fairfax County, program staff view the 30-year control period as effectively making owner-occupied units affordable on a permanent basis because of the high mobility rate in the county.

IZ and Other Programs

IZ is one component of an area's affordable housing landscape. Already noted are the ways in which IZ can be a source of affordable units for other housing agencies and nonprofit organizations. Of interest, then, is whether and how IZ interacts with other housing or land use policies and programs.

Smart Growth

The MPDU program and smart growth efforts have not been well integrated in Montgomery County. For example, a requirement for WDUs near transit stations is optional. Consequently, little connection has been made between the MPDU program and transit-oriented development efforts. Further, the MPDU program has proven difficult to implement in very high-density, in-fill projects.

Workforce Dwelling Housing

Fairfax County developed its WDU program to address a gap in the ADU program, which does not require developers to include affordable units in highrise buildings. WDU ensures that some moderately affordable housing units will be included in highrise developments. Because of the significant amount of development that is now occurring near transit stations in Fairfax County, the county stands to gain a substantial number of additional WDU units.

VI. Conclusion

The wide-ranging case studies of Montgomery County's MPDU program and Fairfax County's ADU program serve to increase understanding of IZ program implementation and factors affecting both implementation and outcomes. In this conclusion, we present key findings drawn from the more detailed findings in section V and then discuss limitations of the research. The report concludes with suggestions of issues to pursue in future research.

Key Findings

Case studies of the IZ programs of Montgomery and Fairfax Counties support five key observations and findings:

7. Because of the annual variability in the number of affordable housing units built through IZ programs, some years have relatively few new units added to the affordable housing stock.

8. Both programs are administratively complex. Program administration involves a number of government agencies and bodies and a range of responsibilities that extend beyond ensuring compliance with ordinance requirements at the front end of a project.

9. IZ programs can and do change considerably over time, and not necessarily in a straight-line trajectory (for example, affordability control terms can be decreased and later increased). As models for other programs, the MPDU and ADU programs offer lessons in ordinance evolution.

10. Related to the previous point is the finding that programs change over time in ways that seek a locally workable balance between affordable housing goals and developer interests. Changing an ordinance too far in either direction can put public benefit or developer participation at risk.

11. The most important factor identified by developers for working in an IZ environment is program predictability. Requirements need to be clear and administered consistently so that developers can reliably estimate their profit. If predictability is lost, it could negatively affect developers' willingness to build in an area.

Research Limitations

Three limitations of the pilot case study research are important to note:

1. The number of interviews conducted at each site was small. Less consistency in the responses of developers may have occurred had a larger sample of them been interviewed. Additional interviews with property managers would have offered the chance to explore differences in perceived burden of each county's IZ reporting requirements.

2. The case studies provide a breadth of information regarding each program, but not as much depth as a more narrowly designed research plan would offer. Our approach has helped tease out issues worthy of further study.

3. The study did not include interviews with residents of affordable or market-rate units and, therefore, we were able to touch only the surface of issues related to consumers.

Future Research

Based on our observations and findings, we recommend additional research into administrative issues, developer involvement, consumer effect, and housing agency and nonprofit organization involvement.

Administrative Issues

Examining program administration in greater detail would increase understanding of the relationships among the many parties involved, including the source and type of influences and pressures affecting different programs. Inclusion of newer programs would enable researchers to examine the role of relationships in the initial development of an ordinance and program.

In addition, studying a range of program types, mandatory, voluntary, and newer programs, would help policymakers and researchers understand whether administrative complexity is common to most programs, a feature that changes over time, or one option among others for program design.

A cost-benefit study of IZ that focused on public costs would be valuable, although especially challenging in light of the administrative complexity that the two pilot studies highlight.

Developer Involvement

Studies focused on newer programs would enable examination of developer responses to proposed ordinances and the degree of influence the developers have on the process and outcome of ordinance debate. Studies of young programs also would provide insight into developer activity before and after passage of an ordinance.

A multisite study could focus on incentive effectiveness in different contexts, such as weaker and stronger housing markets. Where incentives do lead developers to build more than the minimum percentage of affordable units that fall under mandatory programs, researchers could examine how the incentives are structured and what factors are most important for developer takeup. Similarly, researchers could identify effective incentives used by voluntary IZ programs.

Consumer Effects

Consumer-focused research could examine the effect of price controls on homeowners' profits, taking into consideration profit limitations and housing appreciation in different contexts. Research could also examine the effect of IZ on households' housing choice (or mobility), housing quality, and household finances because of renting or buying an affordable unit. Studies could focus on other potential benefits to households, such as access to good-quality schools, employment networks, and social networks.

Housing Agency and Nonprofit Organization Involvement

Research into housing agencies' and nonprofit organizations' use of IZ-produced units would be valuable for understanding how the depth and length of IZ affordability can be sustained and extended. Any study of the sustainability of IZ unit affordability would need to factor in the disposition of units purchased by housing agencies and nonprofit organizations.

Appendixes

Appendix A-1. Summary of Major Changes to the MPDU Program Since 1974

Year	Amendment(s)	Justification(s)
1974	In lieu transfer of land was enacted.	To provide developers with flexibility.
1976	HOC has the option to buy or lease up to 1/3 of all MPDUs.	Increase the portfolio of affordable housing units owned or leased by the county.
1978	All MPDUs in for-sale developments were required to be for-sale units themselves.	This change came about because developers were renting out for sale units until the control period expired and the county wanted to close that loophole.
1981	The price-control period for rental and for-sale units was increased to 10 years. The percent of units required to be set aside for MPDUs was reduced to 12.5 percent. Income limit for families will now include the cost of financing.	The units built were quickly losing their affordability as the control period expired. Developers did not always have the opportunity to use the density bonus that is allotted and so they lobbied for a reduction in the amount of units constructed. Intended to qualify more families for the units.
1988	Price control for rentals was increased to 20 years. A sliding scale was established for MPDUs. Developers would build between 12.5 and 15 percent MPDUs. Any unit built after 1989 and sold after the control period expired had to contribute one-half of the profits to the Housing Initiative Fund. The Housing Opportunity Commission was given the right of first refusal to purchase any units after the 10-year control period expired. "Architectural Compatibility Price Upgrade" was enacted. Limited cash contributions and other in lieu alternatives to constructing MPDUs.	To extend control period and retain affordability of units. Based on the actual density bonus that a developer could use. To recapture part of the profit after the control period expires. This right enabled HOC to augment its portfolio of affordable housing units. To pay for improvements in the design of MPDUs and make them more compatible with market-rate housing. DHCD had to make determinations as to whether cash contributions will achieve more affordable units.

Continued on the next page

Year	Amendment(s)	Justification(s)
1994	Clarify that owners of an MPDU must occupy the unit for the entire control period. MPDUs in a development project must be constructed at the same time as the market-rate units.	To prevent abuse of the MPDU occupancy requirements. To prevent abuses of requirements and guarantee that MPDUs were built in pace with the market-rate units.
2001	Any unit originally put for sale after 2002, which was resold before the control period of 10 years expired, would have the control period restarted for 10 more years. The MPDU requirements in central business districts and transit-oriented developments were decreased.	To maintain the county's supply of affordable housing units. Recognized the high cost of developing in these areas.
2002	MPDU construction would be required on developments with 35 or more units.	To increase the construction of new MPDUs.
2005	The control period was changed to 30 years for for-sale MPDUs and 99 years for rental MPDUs. MPDUs need to be constructed in all developments of 20 or more units.	To maintain the county's supply of affordable housing units. To increase the construction of new MPDUs.

Sources: Trombka, et al. (2004); Montgomery County Department of Housing and Community Affairs (2005).

Appendix A-2: History of the ADU Program

ZO 89-186—The original ADU Program was adopted on December 11, 1989, with an effective date of July 31, 1990. This amendment set forth the program in Sect. 2-800 of the Zoning Ordinance.

ZO 90-193—This amendment set forth the implementation regulations of the ADU Program in the specific zoning districts. It was adopted on July 23, 1990, with an effective date of July 31, 1990 (which coincides with ZO 89-186).

ZO 98-306—On March 30, 1998, the Board adopted ZO 98-306, which made substantial changes to the ADU program, including the following changes.

1. Development of a sliding scale requirement for ADUs to replace the flat rate requirement of the original program. This scale resulted in a reduction of approximately one-third of the ADUs generated by the Zoning Ordinance requirement.
2. A reduction in the term of price control for rental units from 50 to 20 years and for for-sale units from 50 to 15 years.
3. An allowance for limited changes to previously approved developments without triggering an ADU requirement for the entire development.
4. Inclusion of a sales commission and a unit compatibility upgrade allowance to help facilitate sales of ADUs.
5. A number of other changes were made to clarify and smooth out the process.

ZO 02-345—When the Board adopted the changes in 1998, they directed that the program be reevaluated in 2 years to determine if additional changes were warranted. The task force was reconvened in 2000 to consider a number of issues and on July 1, 2002 ZO 02-345 adopted the following changes.

1. To enable voluntary participation in the program in exchange for the right to use the less stringent bulk regulations applicable to ADU developments.
2. Modifications to the documentation required and the timing of submission of these documents.
3. Provided the Redevelopment and Housing Authority and nonprofit organizations the right to cure a default or acquire a unit that has defaulted on a mortgage, to increase the notice period for default or foreclosure, to limit lending authorities for which a foreclosure triggers the release of the ADU covenants, to limit indebtedness secured by the ADU and other covenant changes.
4. Other more administrative changes that were needed to clarify certain provisions.

ZO 03-351—Elderly Housing amendment—changed the rate of ADUs to 15 percent for developments that are not 100-percent affordable and the only density bonus is the multiplier. For developments that are 100-percent affordable, a density bonus occurs at 20 percent more than the multiplier.

ZO 03-352—The ADU Task Force continued to evaluate the prospects of requiring ADUs in midrise and highrise multiple family developments, which unit types were then exempt from the ADU program. ZO 03-352, called the Midrise amendment, was adopted on May 19, 2003 with an effective date of January 31, 2004. This amendment made the following changes.

1. A formula was developed to enable midrise multiple family projects to participate in the ADU Program with the use of up to 17-percent density bonus in exchange for up to 6.25 percent of ADUs for surface parked projects or up to 5 percent of ADUs for

projects with more than one-half the parking provided in structures. This change and other changes related to midrise developments were incorporated into the Zoning Ordinance.

2. Highrise developments could not be so readily resolved and this issue was deferred from further consideration to enable the midrise proposal to move forward more readily. It was the intent to reconsider highrise developments at a later date.

ZO 04-368—In September 2004, an administrative changes amendment was adopted by the Board of Supervisors to offer clarity where needed and to address some program needs that had been previously unaddressed. The following changes were made by ZO 04-368.

1. Enable midrise developments to voluntarily opt into the ADU program.

2. Establish a deadline for certain required documents.

3. Require that 50 percent of the proceeds from a foreclosure sale of certain ADUs be contributed to the Housing Trust Fund.

4. Permit brokerage fees for the resale of ADUs, not merely for the initial sale.

5. Allow certain increases in sales prices based on improvements made to the dwelling unit.

ZO-06-377—This amendment was adopted 2/27/06 and effective on 2/28/06. The following changes were adopted.

1. Extends the control period from 15 years for for-sale units and 20 years for rental units to 30 years for both types of units, with the for-sale units having a renewable term for each resale that occurs within a control period.

2. Conversion of rental affordable dwelling units to for-sale affordable dwelling units, including factors related to the control period, ownership of the units, parking, use of amenities, mix of units and administration.

3. Grants the Fairfax County Redevelopment and Housing Authority the right to purchase any ADU that is offered for resale and establish a 1.5-percent marketing and transaction allowance for units purchased and resold by the Fairfax County Redevelopment and Housing Authority.

4. Eliminates the option for new developments to buy out of the affordable dwelling unit program after 10 years in the rental program.

5. Excludes the floor area for affordable and market-rate bonus units from the floor area ratio calculations in the PRM district.

ZO-07-396—This amendment was adopted on March 26, 2007 and effective on March 27, 2007. The following changes were adopted.

Allowing all building permits to be issued within an ADU development, but restricting Residential Use Permit issuance to 75 percent of the total number of units until at least 75 percent of the ADUs have been issued Residential Use Permits. This applies to all types of developments, except for multifamily rental units.

RELATED: ZO-07-403 WORKFORCE DWELLING UNITS—Amends the Planned Development Districts to accommodate any additional density associated with the provision of workforce dwelling units and adds new Part 11 to Article 2 to facilitate bulk and other regulations in workforce dwelling unit developments. **Adopted 10/15/07; Effective 10/16/07**

Appendix A-3: Cost-Benefit Impact of Inclusionary Zoning Programs

Interview Guides

The four protocols include the topic areas and questions that guided interviews with key stakeholders. At each of the two study sites, discussions were held with five or more people, such as:

- The Director of the Planning Department and other appropriate staff
- Developers active in the jurisdiction; preferably one that participates in IZ and one that does not
- One or more property managers with IZ developments
- One or more community housing advocates

Researchers first reviewed background information on each site, including the inclusionary zoning or housing ordinance and basic community information available on the city's or county's website. Using information from the background review, researchers tailored each guide to local circumstances prior to an interview. Interviews with Planning and other city staff took place before those with other stakeholders; information from this first interview was used to tailor the subsequent interviews as well. All questions on a guide were not asked of each respondent but all questions were covered over the course of the interviews in each study site.

Appendix A-4: Cost-Benefit Impact of Inclusionary Zoning Programs

Site Visit Discussion Guide - Planning Staff

Date of Interview

Interviewer

Name of Jurisdiction

Name and Title of Respondent

Name of Agency, Department or Organization

Phone / E-mail / Address

How long have you been at the [Planning Dept]?

Section I: Background on Jurisdiction

Is [jurisdiction] best characterized as urban, suburban, rural, or mixed?

What is the jurisdiction's size in square miles?

What is the jurisdiction's population?

> Is the population growing or declining? What is the annual growth rate?

What is the median household income (2009)?

What percentage of the population falls below the poverty level (2009)?

How would you characterize current market demand for both rental and for-sale housing development in your jurisdiction? (strong, weak, in flux, etc.)

What is the median housing value (2009)?

What is the median gross rent (2009)?

Section II: Ordinance Adoption & Modification

In what year was the Inclusionary Zoning/Housing ordinance adopted in your jurisdiction?

> Is the program mandatory or voluntary? [confirm]

FOR CITIES

> Does the ordinance apply to the entire city?
>
> [IF NO: Please explain where it applies]

FOR COUNTIES

> Does the county have zoning authority exclusively or is authority mixed, with some municipalities making their own zoning decisions?
>
> How many municipal governments in the county are required to abide by the inclusionary zoning / housing ordinance?

Ordinance History *[ask this set of questions if ordinance is relatively new OR if current staff are well versed in IZ history]*

Who initiated and drove ordinance development and adoption?

> [Probe: planning staff, community housing advocates, etc.]
>
> Did the ordinance stem from local/county or state-level efforts to pass IZ?

What was the initial motivation behind efforts to adopt IZ? What was IZ intended to achieve?

> [Probe: What were the goals for the IZ program?]
>
> How have those goals changed over time?

How would you characterize the housing market, rental and for-sale, at the time of IZ adoption?

> Was the housing market stronger or weaker then than now? Please explain.

How would you characterize the regulatory environment at the time of adoption?

> Were there more or fewer building-related regulations than now? Please explain.

How would you describe the political environment at the time of IZ adoption?

> Was political support for IZ stronger or weaker than now? Please explain.

Around the time of ordinance adoption, was there opposition to IZ?

> Who opposed it?
>
> What were the primary obstacles to adoption of IZ?

How was opposition addressed or overcome?

> Were there negotiations over ordinance details among stakeholders during the process of ordinance development meant to gain support for adoption? Please describe.

Ordinance Modifications

Since its adoption in [year], has the IZ ordinance been amended? When?

> What changes have been made to the ordinance?

How has ordinance modification affected the housing production?

> Have more or fewer housing units been built since the ordinance was modified in [year]?
>
> Have more or fewer *affordable* units been built since the ordinance was modified in [year]?

Who initiated the changes?

Why were the changes made?

> What issues were the modifications intended to address?

Was the strength of the housing market a factor in the ordinance modifications? Please explain.

What about political support? Was a change in the level of support for IZ a factor in the modifications? Please explain.

**Are there current efforts to (further) modify the IZ ordinance?

> Please explain the changes that might occur and why the changes are supported by some.
>
> What do you think would be the impact on affordable housing production if this modification were made?

Are there any legal challenges to IZ underway at the present time? Please describe.

> If the challenge were successful, what do you think would be the impact on affordable housing production?

Ordinance Overview

SEE: *IZ Information Sheet* to confirm or collect information on ordinance details

Section III: Ordinance Implementation

Production

How many housing units have received *building permits* under IZ since adoption in [year]? *Exclude units built with in-lieu fees.*

Rental Units	Market Rate:
	Affordable:
For-sale Units	Market Rate:
	Affordable:

How many units have been *built*?

Rental Units	Market Rate:
	Affordable:
For-sale Units	Market Rate:
	Affordable:

What is the average length of time it takes to complete the typical review of residential project applications in your jurisdiction? (the time from when an application is deemed complete to issuance of the building permit)

> Is there a difference in the time it takes for an IZ project to receive approval compared to a non-IZ project? (shorter, the same, longer)

In what ways has the strength / state of the rental and for-sale housing markets affected IZ implementation (the number of building permits filed; the production of affordable housing units; the demand for affordable units)?

> Has the economic downturn affected housing production under IZ differently than it has affected production that does not fall under the IZ ordinance? In what ways?

Has the level of support for IZ in general among key stakeholders (government staff, developers and builders, community housing advocates) affected implementation (the number of approved building permits; the production of affordable housing units)?

Has the impact of IZ support or opposition on implementation varied over time? In what ways?

What do you think had caused the changes over time?

In general, how would you characterize the relationships among government staff, developers and builders, and community housing advocates in your jurisdiction?

In what ways have these relationships helped or hurt efforts to produce affordable housing?

What about the regulatory environment? Has that been a positive or negative factor in the implementation of IZ?

Are there regulations that have proven useful to IZ production?

Proven to be impediments?

Has that changed over time?

In what ways?

Are there other factors, besides the housing market, stakeholder support, and regulatory environment, that have led to changes in how IZ has been implemented over time?

What are these factors and how have they affected implementation?

What have been the *primary obstacles*, if any, to implementation of IZ?

(Probe: community opposition, developer opposition, local government processes, lack of funding, scarcity of land, other)

Which types of developers/builders pursue projects that fall under the purview of IZ requirements?

(Probe: large or smaller developers; more/less experienced developers; those with a diverse portfolio / those that focus on moderate-to-lower cost housing; etc.)

Which IZ cost offsets or incentives seem most effective in garnering developer participation?

Why are those offsets or incentives of greatest interest or value to developers?

Are there offsets or incentives developers have requested that are not allowed under the jurisdiction's IZ ordinance?

What are they? Why are they disallowed?

Have the offsets or incentive options changed since ordinance adoption?

Which ones have been dropped or added?

Why were these changes made?

Have the changes affected developer participation? Please explain.

**How would you describe the areas where IZ units are built in terms of racial and ethnic diversity? Core / periphery areas? Access to jobs? Proximity to quality schools? Transportation options? Crime zones?

Is the location of affordable units affected by the use of opt-out or buy-out options?

In-lieu Fees & Other Options

[SEE *IZ Information Sheet* and confirm which buy-out and opt-out options are available to developers under the IZ ordinance]

What is the current in-lieu fee per affordable unit?

How is the fee calculated?

About what portion of developers opts out of building required affordable units by paying the fee?

How have in-lieu fees been collected?

(Probe: Can you walk me through the collection process?)

How are fee-collection and fee expenditures tracked?

About how much money has been collected through in-lieu fees since [date]?

How has fee income been spent?

How many affordable units have been created through in-lieu fees since [date]?

Are fees used for purposes other than new construction?

Have any developers taken advantage of the option to dedicate land to the city in place of building required affordable units?

About how many have done so?

How much land was dedicated and how has it been used?

What challenges, if any, have there been in the use of the land dedication option?

(Probe: ensuring developers follow-through; disposing of parcel within the terms and intent of IZ; etc.)

Have any developers taken advantage of the option to build affordable units off-site from the primary development location?

About how many have done so?

Have the off-site units been built?

Where have the units been built (distance from primary site; poverty and race characteristics of the area)

What challenges, if any, have there been in the use of the off-site option?

(Probe: ensuring developers follow-through; locating appropriate off-site parcels; etc.)

Marketing and Occupancy

How do prospective renters and homebuyers find out about affordable units?

Who is responsible for marketing the affordable rental and for-sale units built under IZ?

Is there any city/county oversight of marketing practices?

Please describe the oversight process.

Who sets the rent price for the affordable rental units?

What are key challenges to setting fair prices?

(construction costs v. affordability levels? Etc.)

Are initial and subsequent rent prices monitored by the city/county?

Please describe the monitoring process.

Who determines household eligibility and selects tenants?

Please describe the process of assessing eligibility and selecting tenants.

Does the city/county provide any oversight of these processes?

Please describe the oversight process.

What about selling affordable units? What are the challenges to setting sales prices? Who sets the initial sales price? Who determines subsequent sales prices?

Who determines eligibility and approves prospective buyers? How is this done?

Are there waiting lists for renters and homebuyers?

Are lists maintained centrally or by each development?

Who maintains the lists?

For rental properties, who serves as the landlord or manager of the affordable units (who collects rent, addresses any tenant concerns or problems with tenants)?

Does this vary by project? Please provide examples.

About what percent of IZ units are owned by nonprofit organizations?

SEE: *IZ Information Sheet* to confirm/collect information on target households

Have there been challenges renting or selling units to households that meet the income requirements? Please describe. (location of units; total cost if fees are charged; etc.)

> Does location of units affect who tends to buy or rent them?
>
> For example, are some locations more attractive to nonprofits than to individual households?

Have there been experiences with a developer not meeting the household income requirements for affordable units?

> How was this situation discovered?
>
> What actions were taken, if any, with the developer/owner?
>
> What is the scope of this problem?

Does the IZ ordinance allow an affordable unit to be rented or sold to a household with income above the target income range?

> Please explain how this works.
>
> Approximately what percent of affordable units are rented or sold initially at market rates?

Monitoring and Enforcement

Has your jurisdiction established processes for monitoring IZ unit affordability both in terms of monitoring rent/sales price and income of residents? Please describe.

> (Probe: Who or what entity is responsible for monitoring affordability compliance for rental units? For for-sale units? How does the monitoring take place? How often does it occur? Please give an example.)

What penalties exist if developers or owners do not comply with IZ affordability requirements?

> How many times have penalties been applied?
>
> How did the affected developers or owners respond?

If an affordable rental or owner-occupied unit turns over before the end of the affordability period, what methods are stipulated in the ordinance to ensure units are rented or purchased by someone whose income meets the requirements?

> (Probe: deed restrictions, resale controls, recapture mechanisms, other, no such requirements)

What penalties exist if an owner does not comply with IZ affordability requirements at the point of subsequent rental or sale?

> How many times have penalties been applied?
>
> How did the affected developers or owners respond?

(See: IZ Information Sheet for affordability requirements)

[If not already discussed] Has the length of affordability ever been changed since IZ adoption? Please describe the change.

> What considerations led to this change?

Has the affordability of IZ units lasted as long as expected in most cases?

> That is, have some affordable rental or for-sale units converted to market-rate units prior to the end of the affordability term?
>
> Approximately what percent of affordable units have converted before they were expected to do so?
>
> > What lead to the conversion?

Have affordability restrictions expired for any units built under IZ?

> How many previously affordable units are no longer restricted due to expiration of the restrictions?

Is there a way to prolong affordability beyond the initial term for rental and for-sale units? Please describe.

> Has this ever been done? Please describe.

Section IV: IZ and Smart Growth *Intersections*

Has IZ been used in conjunction with other affordable housing or smart growth initiatives? Please provide examples.

Has IZ been coupled with transit-oriented development (TOD) efforts?

How are they used together?

What challenges there have been?

Have the two efforts been successful? Please provide examples.

Has IZ been used along with urban growth boundaries?

How are they used together?

What challenges there have been?

Have the two efforts been successful? Please provide examples.

Has IZ been used in tandem with other 'smart growth' efforts?

How are they used together?

What challenges there have been?

Have the two efforts been successful? Please provide examples.

Section V: Outcomes

Do you think IZ has affected home prices in the county? In the areas near IZ properties? Please explain.

Do you think IZ has affected housing supply in the county? Please explain.

Based on the location of IZ units and income requirements, has IZ served to integrate lower-income households into relatively higher-income areas?

Do you know if any economic integration has led improved lower-income children's access to higher performing schools?

Are you aware of any other possible benefits from IZ for residents?

Section VI: Wrap-up

What changes would make IZ in your jurisdiction more effective in promoting affordable housing development?

What changes would make the IZ ordinance more effective in [meeting other goals identified in Q xx]?

What challenges do you think IZ will face during the next five years?

Particular changes to the ordinance?

Reduction in available land parcels?

Reduction in all construction due to the recession?

Have any studies been carried out by the jurisdiction or any other public or private agency or group to analyze the benefits and impact of your IZ program?

Can we get a copy of the report or summary conclusions?

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Expanding Housing Opportunities through Inclusionary Zoning: Literature Review: to Inform Assessment Of Inclusionary Zoning Programs

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U.S. Department of Housing and Urban Development
Office of Policy Development and Research

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I. Introduction

Inclusionary zoning (IZ) is a tool that state or local jurisdictions can employ to motivate developers to produce affordable housing units, for rent or ownership, as part of their private-market projects. IZ first developed as a response to exclusionary zoning laws that severely limited the development of affordable housing units (Mallach, 1984). IZ can support public efforts to address the demand for affordable housing without relying solely on government resources. Although developers typically receive some form of incentive to include affordable units in an otherwise market-rate project, the public cost of the incentive is minimal compared with what the cost would be were jurisdictions to provide the units directly.

IZ ordinances vary considerably. For example, they can be voluntary or mandatory, the details can differ significantly from one location to another, and they can change over time. IZ's flexibility is one of its strengths, but it is a strength that presents challenges to researchers and policymakers trying to understand how IZ works in different contexts and which factors are most important for the successful production of affordable housing units. Another challenge to the study and understanding of IZ is that what one experiences as a benefit or cost of IZ can differ depending on one's position. The concerns of consumers of IZ units can differ from those of developers, and a jurisdiction's interest in IZ can vary over time depending on a range of factors. No single vantage point exists from which to evaluate IZ ordinances and their effects.

With all the variability, it is no surprise that although numerous IZ studies have been published, many questions yet remain. A number of scholars have examined certain issues, such as IZ's effects on property values, whereas the research community has so far given scant attention to others. Even for issues that have been studied extensively, questions remain. What is clear, however, is that the number of states, cities, and counties adopting IZ ordinances is growing. As a policy tool that can support the production of affordable housing units, IZ is of great interest to the U.S. Department of Housing and Urban Development (HUD).

The Urban Institute, in conjunction with its research partners, has reviewed the IZ literature to provide insight into what is known about important contextual variables that can affect IZ implementation and success, IZ costs and benefits for different stakeholder groups, and significant gaps in the research about IZ ordinances/programs. Following from the research questions identified for this study, this review is organized into the following sections:

- The Context of IZ Adoption.
- IZ Goals and Goal Achievement.
- Costs and Benefits Associated With IZ.
    - Consumers of IZ Units.
    - Developers.
    - Neighbors and Neighborhoods.
    - Local Governments.
- Sustaining IZ Benefits.
- Related Issues—IZ and Smart Growth.

The literature review concludes with an overview of research gaps. The research team and HUD considered the gaps during a March 2010 meeting to discuss specific research questions and research design considerations for case studies of IZ programs.

II. The Context of IZ Adoption

The emerging stylized fact about inclusionary zoning policies is that they are incredibly varied in goals and structure (Schuetz, Meltzer, and Been, 2009). Calavita and Grimes (1998) argued from their experience in California that the "variation reflects the highly political nature of any public policy response to the affordable housing shortage" (Calavita and Grimes, 1998: 157). Indeed, the context of adoption is expected to affect the motivation for adoption, the goals and specific rules—including private-sector incentives to build housing—and the political vulnerability and longevity of programs. Therefore, to assess the costs and benefits of various IZ policies and programs, it is important to understand the context in which these policies are adopted and implemented. Contextualizing adoption and implementation may enable us to say *why* certain programs are observed to be effective or ineffective and to transfer this knowledge across jurisdictions. Failure to do so can misrepresent the costs and benefits of rules adopted in a particular place. In particular, the observable contextual features affecting IZ adoption may be correlated with characteristics of programs, like whether developer participation is mandatory versus voluntary or whether density bonuses are used as a cost-offset mechanism. In addition, the context of adoption may help us understand some of the unobservable or hard-to-document features of how programs are implemented in practice by providing us insights into local motivation and challenges that may not be apparent from simply enumerating the regulatory features of a particular program.

Context refers to existing housing, land use, and economic development policy and regulation in a local jurisdiction, as well as economic and housing market conditions. It also refers to the relationship between state and local governments, the involvement of state courts, the planning capacity of local governments, and the existence and power of local and state interest groups.

Although rising house prices and decreasing affordability in each housing cycle typically motivate general interest in IZ policies, the specific reasons for local IZ adoption are quite varied. Calavita and Grimes (1998), among others, asserted that a "major objective of [inclusionary housing], in addition to increasing the supply of affordable housing, is to foster greater economic and racial residential integration" (Calavita and Grimes, 1998: 152). The question of adoption is especially interesting because *inclusionary* zoning is a supposed antidote to *exclusionary* zoning. A natural question, then, is why do local governments adopt inclusionary measures when the newly adopted regulations appear to override or even contradict existing rules on the "books," and how does this context affect the regulations that are ultimately adopted?

The literature on land use regulation offers several insights about motivations behind IZ adoption. First, it should be noted that land use regulation in the United States is primarily handled at the local level, and its adoption is a political process. Fischel (2005) coined the phrase "homevoters" to describe an important group affecting land use outcomes in local politics. Homevoters are property owners who coalesce around their largest financial asset, their homes, and seek to protect home values by limiting new development. Fischel hypothesized that this protective stance, in turn, leads in some circumstances to exclusionary zoning through efforts to reduce housing development density (Fischel, 2005). In this model, adoption of IZ policies hinges on the existence of at least one interest group or state entity that challenges the entrenched interests of the local homevoter bloc.

The literature posits several mechanisms whereby interest groups affect local housing policy. The first, and simplest, is the formation of local interest groups other than the homevoters. Whereas small, homogenous communities are expected to produce mainly powerful homevoter groups, larger jurisdictions may field other interest groups because of the presence of more heterogeneous population and business interests and greater returns to organizing (Fischel, 2005).

A second posited mechanism comes at the state government level, where interest groups, especially developers, advocate for state intervention in local land use planning (Calavita and Grimes, 1998; Knaap, 1990; Krefetz, 2001; Pendall, 2007). The role of the state is important because "state and local governments serve different constituencies on land use issues" (Knaap, 1990: 44).

State courts may also play an important role in shaping incentives for local governments to adopt IZ policies. This role is most clearly demonstrated by the famous Mount Laurel cases in New Jersey, which initiated a builder's remedy to challenge local governments directly (see Payne, 2008). The indirect influence of courts on local incentives is also apparent, however, in the way in which places such as Virginia, Oregon, and California enforce state and local laws (Calavita and Grimes, 1998; Calavita, Grimes, and Mallach, 1997; Knaap, 1990). Finally, Pendall (2007) and Calavita and Grimes (1998) suggested that a professionalized housing planning infrastructure or the ingenuity of staff can help build and sustain IZ programs.

A complicating feature of this political model of adoption is the fact that additional policy goals can emerge beyond the policy responses to exclusionary zoning. For example, IZ programs may also address policy goals to provide housing for those unable to afford private-sector housing, even under the best of market conditions (say, because of income or disability). One such example is an IZ policy requiring developers to provide housing with rents affordable to very low-income households. Such goals—relieving the supply impact of exclusionary zoning and providing housing to very low-income households—may be solved optimally by different means, but equally apparent is that the political process by which IZ is adopted may link advocacy for both goals within an IZ policy context. Therefore, identifying the interest and advocacy groups involved in the adoption process can help clarify policy goals and motivate program features.

In addition to the role of interest groups, Pendall (2007) argued that IZ programs must be evaluated in the context of other housing and development policies and regulations. For example, if

> mandatory programs like IZ and linkage fees add a layer of regulation in already complex and discouraging development environments, they are likely further to discourage development rather than produce much new affordable housing. If local governments adopt housing programs within the framework of land-use policies that encourage housing production more generally, on the other hand, mandatory programs can make a big contribution (Pendall, 2007: 13).

The extant literature particularly stresses the importance of state incentives for local governments to adopt IZ policies. Among other factors, "state housing policy sets the stage" for encouraging adoption and reinforcing these programs over time (Pendall, 2007: 31). First and foremost, local governments differ in their legal authority to adopt IZ. Read (2009) and Hollister et al. (2007) identified 14 states that expressly allow local IZ adoption.[1] Most localities, however, rely on the principles of home rule, independent of explicit state sponsorship, to justify their authority (Read, 2009). On the other hand, local governments in Dillon's rule states, where local government authority extends only to the rights expressly granted it by the state legislature and state constitution, may need state permission to adopt IZ. Famously, the state supreme court struck down Fairfax County, Virginia's, inclusionary statute in 1973, citing Dillon's rule (Brown, 2001; Calavita, Grimes, and Mallach, 1997).

Regarding other sources of state influence, Knaap (1990) found that state housing policies in Oregon provide strong incentives for local governments to adopt inclusionary housing policies.[2] Pendall (2007), in his review of policies in California, Massachusetts, and Florida, likewise contended that "[l]ocal governments don't adopt (de)regulatory strategies or spend money to promote housing affordability in response only, or even mainly, to local constituencies; indeed, they are often forced or induced to take on affordable housing programs by their state governments" (Pendall, 2007: 6). Calavita

[1] Those states are Connecticut, Florida, Illinois, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, Rhode Island, Vermont, and Virginia (Hollister et al., 2007; Read, 2009).

[2] To be clear about the definition of "inclusionary" in this statement, at the time of Knaap's writing, Oregon merely encouraged localities to "remove land use constraints on the construction of low-income housing" (Knaap, 1990: 42). In 2006, Oregon passed legislation that prohibited local communities from establishing prices or rents (Hollister et al., 2007).

and Grimes (1998) argued that, in California, inclusionary housing policies are largely a means to implement local housing elements required by California General Plan Law. As a further example, Massachusetts' Comprehensive Permit Law compels local governments to allow affordable housing production (Krefetz, 2001); however, Dillman and Fisher (2009) argued that the structure of this law does not provide incentives for local governments to adopt local housing plans or IZ. On the other hand, New Jersey's Fair Housing Act explicitly provides incentives for localities to adopt inclusionary housing plans (Payne, 2008).

Evidence suggests that most IZ policies change over time, in part because of challenges raised by interest groups and by changing edicts from the state (Calavita and Grimes, 1998; Krefetz, 2001; Payne, 2008; Pendall, 2007).[3] Calavita and Grimes (1998) documented three shifts in state government policy affecting local IZ programs in California. They argued that the most recent state view of IZ as a tax on housing development has resulted in local programs that almost universally include cost offsets and flexibility to developers in satisfying inclusionary requirements.

Payne (2008) summarized how the Fair Housing Act of 1985 in New Jersey and the creation of the Council on Affordable Housing (COAH) have led to the politicization and complexity of fair-share rules, which diminish local incentives to produce affordable housing.[4] In particular, Payne noted that the largest bloc of COAH seats was allocated to officials from municipal governments, the very entities the state set COAH up to regulate, which has predictably watered down the intent of the Mount Laurel decisions over time. By contrast, Knaap (1990) asserted that local citizens have little representation in the politics affecting state housing policy in Oregon, perhaps augmenting the power of the Land Conservation and Development Commission, which enforces state housing policy, to withstand local influence. Pendall (2007) also suggested that California and Massachusetts have gone the way of New Jersey, whereby either state courts or legislation have gradually allowed planning as opposed to production to alleviate the threat of builder lawsuits.

Regarding why external incentives may be instrumental in promoting the adoption of IZ or particular types of IZ, Pendall (2007) and Dillman and Fisher (2009) speculated that local governments are loath to lose control over land use decisions. If they can retain local control by complying with state requirements, they may do so. Dillman and Fisher (2009) provided evidence that, within New Jersey—where local plan adoption, including IZ features, reinstates local control over development—adoption depends not only on local economic conditions, including development pressure, but also on the characteristics of the local demographics that may shift demand for control. Furthermore, they argued that the Massachusetts Comprehensive Permit Law fails to provide communities fully with control over local land use outcomes while they work toward their affordable housing goals, leading to lower levels of local IZ plan adoption.[5]

Research Gaps

Despite recent advances in documenting characteristics of IZ programs around the country (Pendall, Puentes, and Martin, 2006; Schuetz, Meltzer, and Been, 2009), assessing exactly how these programs are implemented in practice and understanding the full range of existing market, policy, and regulatory conditions that interact with IZ programs remain difficult. Therefore, understanding the relationship between local incentives to adopt IZ and housing outcomes may be useful in understanding program efficacy across jurisdictions.

Although some literature provides exemplary descriptions of how and why local IZ policies come into being in particular places and how those programs change over time, only a handful of articles in the reviewed research attempt to make systematic assessments about the context of adoption across jurisdictions and its significance (see Calavita,

[3] Developers recently have won legal challenges to IZ ordinances in Los Angeles and San Jose, and additional lawsuits have been filed in other jurisdictions; the IZ ordinance in Rancho Cordova has been repealed (http://www.p4sc.org/articles/all/inclusionary-zoning-faces-hurdles; accessed 5/8/12). A law firm advising local governments on IZ ordinances has issued an alert to cities and counties to amend their ordinances to address the decision in the Los Angeles case (http://goldfarblipman.com/wp-content/uploads/2010/03/800473_1-Law-Alert-Oak.pdf; accessed 5/25/10).

[4] COAH was disbanded in August 2011.

[5] It is only recently (2002) that planning is a real alternative in Massachusetts. Regardless, developers can still challenge local zoning while the planning process is under way, and obtaining a state-certified plan only provides a 2-year reprieve from developer challenges unless real progress toward housing goals is shown.

Grimes, and Mallach, 1997; Dillman and Fisher, 2009; Pendall, 2007). A research opportunity to build a framework and provide empirical evidence could connect variation in the context of adoption to variation in program outcomes, as Pendall (2007) recently attempted. The existing evidence suggests that *both* state and local contexts are important. Whereas dramatic differences in incentives to adopt IZ sometimes occur across states, other evidence suggests wide variation in adoption within states (Dillman and Fisher, 2009; Pendall, Puentes, and Martin, 2006). Pendall (2007) concluded that incentives provided by state laws, the nature of local housing constituencies, the presence of a professional staff, and the extent of existing development restrictions influenced the adoption of IZ policies and mattered for the success of the programs in the three cases that he studied. Extending his approach to additional communities could be especially fruitful.

How the forces influencing adoption shift over time, and how these changes influence IZ program outcomes, demand careful attention. Pendall (2007) suggested that helping reinforce local policies over time is an important role of state policy. Calavita and Grimes (1998), however, suggested that changes in state policies induce changes in local policies. An additional question for future research, then, is the extent to which IZ programs are vulnerable to repeal and modification, conditional on the circumstances of their adoption.

As a final note, the extant literature exhibits a tension throughout regarding the variety of goals that IZ programs attempt to address, the range of which is discussed in the next section. These goals matter for the measurement of outcomes. Careful attention to incentives and interest groups involved in the adoption process may help clarify the intent and goals of IZ programs and their structure and provide insights as to *what* these programs produce. In particular, whether these programs deregulate or undo exclusionary practices, or whether they layer in additional regulation or expand the discretion of developers or local governments vis-a-vis one another, are important functional distinctions that the study of adoption can discern.

III. IZ Goals and Goal Achievement

This section is divided into four parts, the first of which reviews the stated goals and objectives of inclusionary zoning ordinances across the country. The second part focuses on programmatic requirements, and the third examines the extent to which goals have been achieved. Finally, this section concludes by identifying gaps in the literature related to goals and goal achievement.

Stated Goals and Objectives

Each of the estimated 350 to 400 IZ ordinances adopted by 2004 was designed and is administered by a local unit of government to provide affordable housing units for low- and moderate-income (and, in a handful of cases, very low-income) households. Some IZ proponents also have suggested that it be used to accomplish objectives beyond that of simply creating affordable housing. What follows is a discussion of the various goals and objectives that have been advocated for, or included in, one or another IZ ordinance across the country, as reported in the literature.

IZ ordinances often have been adopted in response to housing crises. Where that has been the case, one goal has been to lessen the risk that low- and moderate-income households will be priced out of local housing markets. IZ also can support goals specific to different types of jurisdictions. Brunick, Goldberg, and Levine (2003) and Brunick (2004) advocated that large cities, in particular, should aim to use IZ to build affordable housing to attract and keep entry-level workers with low and moderate incomes whom the city needs, such as teachers, firefighters, policemen, janitors, and childcare workers. Such households might not be able to afford to move to and stay in these large cities otherwise.

These authors also suggested that large cities could use density bonuses and other cost offsets that many IZ ordinances include to encourage investment in the city, as opposed to the suburbs, thereby supporting the goal of decreasing sprawl. Other studies cited the goal of decreasing sprawl: Lerman (2006), CCRH/NHANC (2003), and Burchell and Galley (2000), who suggested that by providing affordable housing in areas with high job growth, cities can shorten households' commutes, making residents less likely to seek housing in the outer suburbs. Consequently, IZ can support efforts to lessen the spatial mismatch between available jobs and available affordable housing (Burchell and Galley, 2000; CCRH/NHANC, 2003; Dillman and Fisher, forthcoming; Wish and Eisdorfer, 1997).

Another goal, promoted by some advocates and adopted into some IZ ordinances, is to support racial and socioeconomic integration (Boger, 1997; Brunick 2004, Goldberg, and Levine, 2003; Burchell and Galley, 2000; Calavita, Grimes, and Mallach, 1997; Lerman, 2006; Wish and Eisdorfer, 1997). Brown (2001) suggested that to further this goal, localities give careful consideration to the location of new units. For example, when affordable units are built in highly distressed, segregated neighborhoods, such a location eliminates residents' access to a host of economic and social opportunities. Conversely, when affordable units are constructed in diverse and thriving communities, the location can increase residents' access to high-quality, full-time jobs, social services, and physically attractive, safe, and healthier neighborhoods. Strategically placing affordable housing in relatively more affluent communities not only might help support the integration of various economic, racial, social, and cultural groups but also might afford lower income households the opportunity to live in communities they might not otherwise be able to afford.

Porter and Davison (2009) found that certain ordinances, such as those in Montgomery County, Maryland, and Pasadena, California, in addition to strategically placing units within the context of the jurisdiction, require that affordable units be strategically dispersed within a development itself and appear similar in design to market-rate units. This strategy aims to deter developers from segregating affordable units in one part of the development.

Goals and objectives are sometimes specific to the types of people particular IZ ordinances aim to help. For example, Burchell and Galley (2000) suggested that inclusionary programs can support integration beyond that of race and income by targeting young, retired, and elderly people and single parents. Lerman (2006) also suggested that one of the goals for IZ should be to preserve housing for long-time residents who might otherwise be priced out of their current neighborhoods.

Finally, Herr (2002) noted that another purpose for an IZ ordinance could be merely to avoid costly litigation; the ordinance can serve as a document to which jurisdictions can point to show that they have made an effort to create affordable housing. "To be sure, in each of the states studied, some of the adopted provisions are weak tokens while others—such as exemptions of affordable housing from growth timing rules—were sometimes motivated to ward off litigation" (Herr, 2002: 4).

In sum, the literature identifies the following goals and objectives that either IZ ordinances attempt to achieve or researchers suggest as appropriate for IZ programs[6]:

- Creating more affordable housing opportunities.
- Responding to housing crises.
- Increasing the racial or socioeconomic diversity of neighborhoods.
- Increasing opportunities for workers to live in the cities in which they work.
- Attracting entry-level workers to communities.
- Encouraging investment in cities and reducing sprawl.
- Increasing mobility options of low- and moderate-income households.
- Satisfying courts.

[6] Although some research has looked specifically at how governments can use IZ to create mixed-income neighborhoods, none has looked specifically at how IZ can be a vehicle for providing families with access to valuable community amenities or enhancing resident mobility, both of which can be goals for IZ.

Programmatic Requirements

Requirements of IZ ordinances vary considerably from one jurisdiction to the next. These requirements set forth the percentage of units in a development that must be set aside as affordable and the length of time those units must remain affordable. Exhibits 1, 2, and 3 summarize various jurisdictions' programmatic requirements and affordable housing production. Because the available data are uneven, the communities these exhibits include represent those for which the research literature includes metrics. The exhibits list programs chronologically by the order in which they were adopted. Some observations the exhibits list account for individual IZ programs, whereas others account for multiple programs combined (for example, the San Francisco Bay Area in California has 55 IZ programs).

Exhibit 1 summarizes the percentage of rental and ownership units that each program requires to be affordable. As of 2007, the nearly 55 IZ programs in the San Francisco Bay Area had affordable unit requirements ranging from a low of 5 to a high of 25 percent. Affordable unit requirements in the suburban Boston area ranged from 5 to 60 percent (Schuetz, Meltzer, and Been, 2007). On average, however, the median share of units required to be at below-market rent or sales prices was 15 percent in both the Bay Area and suburban Boston. A more stringent program in Bridgewater, New Jersey, has required for many years that 40 percent of its new housing units be affordable (Pendall, 2009).

The Moderately Priced Dwelling Unit (MPDU) program in Montgomery County requires developers to set aside 12.5 to 15 percent of units for less than market rent or sales prices. A sliding scale determines both the percentage of affordable units and the corresponding density bonus. Ordinances in Prince George's County, Maryland, and Fairfax and Loudoun Counties, Virginia, are even less stringent; the requirement is 10 percent for Prince George's County and 6.25 percent for Fairfax and Loudoun Counties.

The duration of affordability terms varies considerably among IZ programs, as shown in Exhibit 2. For example, Boulder, Colorado's city IZ ordinance requires permanent affordability for ownership units (Porter and Davison, 2009). Schuetz, Meltzer, and Been (2007) found in their study that programs in the Bay Area generally have become more stringent than other IZ programs by requiring deeper and longer affordability terms. For instance, in Pleasanton and Santa Monica, California, IZ ordinances required that units remain affordable for 99 years. The same was true for rental units in Burlington, Vermont. Palo Alto and Watsonville California, also had relatively stringent affordability requirements of 59 and 40 years, respectively.

Shorter terms of affordability existed in Fairfax and Loudoun Counties, where rental units must have remained affordable for at least 20 years and ownership units had a 15-year requirement. Shorter still was the requirement in Prince George's County that both rental and ownership units had to remain affordable for 10 years.

Exhibit 1. Percent of Affordable Units

Location	Number of IZ Programs	Timeframe	*Duration of Affordability (Years)*	
			Rental	Ownership
Boston, MA	99	1972–2004	Varies[a]	
Washington, DC Region[b]	9	1974–2003	Varies[c]	
Montgomery County, MD	1	1974–1999	12.5–15	12.5–15
Mount Laurel, NJ	-	Mid-1970s–2006	-	-
Los Angeles and Orange Counties, CA[d]	13	1977–2004	Varies[c]	
San Francisco Bay Area, CA	55	Late 1970s–2003	Varies[f]	
Fairfax County, VA	1	1990–1999	6.25	12.5
Prince George's County, MD	1	1991–1999	10	10
Loudoun County, VA	1	1993–1999	6.25	6.25
Pasadena, CA	1	2000–2007	6–15	
Boulder City, CO	1	2000–2007	n/a[g]	20
Uptown Chicago, IL	1	2001–2003	-	-
Springfield, MA	-	-	20	20
Bridgewater, NJ	1	-	40	

IZ = inclusionary zoning. n/a = data not available.

[a] Thirty-nine percent of IZ programs require 1 to 10 percent of units to be affordable, 18 percent require 11 to 15 percent of units to be affordable, 15 percent require 16 or more percent of units to be affordable, and 27 percent do not define affordability requirements.

[b] This area includes Montgomery, Prince George's, Fairfax, and Loudoun Counties

[c] Forty-four percent of IZ programs require 1 to 10 percent of units to be affordable, 44 percent require 11 to 15 percent of units to be affordable, and 11 percent do not define affordability requirements.

[d] This area includes 13 cities: Agoura Hills, Brea, Huntington Beach, Irvine, Laguna Beach, Long Beach, Monrovia, Pasadena, Rancho Palos Verdes, San Clemente, San Juan Capistrano, Santa Monica, and West Hollywood.

[e] The percentage of affordable units to be set aside ranges from 4 to 30. The average in the 13 jurisdictions is 13 percent.

[f] Forty-five percent of IZ programs require 1 to 10 percent of units to be affordable, 33 percent require 11 to 15 percent of units to be affordable, 20 percent require 16 or more percent of units to be affordable, and 2 percent do not define affordability requirements.

[g] A state law prohibits the city from controlling rents.

Sources: Brown (2001); Davis (2006); Pendall (2009); Porter and Davison (2009); Powell and Stringham 2004b; Schuetz, Been, and Meltzer (2007)

Exhibit 2. Depth and Duration of Affordability

Location	Number of IZ Programs	Timeframe	*Duration of Affordability (Years)*	
			Rental	Ownership
Boston, MA	99	1972–2004	Varies[a]	
Greater Washington, DC[b]	9	1974–2003	Varies	
Montgomery County, MD	1	1974–1999	20	10[c]
Mount Laurel, NJ	-	Mid-1970s–2006	30	30
Los Angeles and Orange Counties, CA[d]	13	1977–2004	n/a	n/a
San Francisco Bay Area, CA	55	Late 1970s–2003	Varies	
Pasadena, CA	1	2001–2007	-	45
Boulder City, CO	1	2000–2007	n/a[e]	Permanent
Fairfax County, VA	1	1990–1999	20	15
Prince George's County, MD	1	1991–1999	10	10
Loudoun County, VA	1	1993–1999	20	15
Uptown Chicago, IL	1	2001–2003	-	-
Burlington, VT	1	-	99	n/a
Palo Alto, CA	1	-	n/a	59
Watsonville, CA	1	-	n/a	40

IZ = inclusionary zoning. n/a = data not available.

[a] One-third of IZ programs require permanent affordability; other programs do not specify the duration of affordability.

[b] This area includes Montgomery, Prince George's, Fairfax, and Loudoun Counties

[c] Amended in 2005 to 30 years, including a provision to restart the 30-year clock for any unit reselling within the origninal control period.

[d] This area includes 13 cities: Agoura Hills, Brea, Huntington Beach, Irvine, Laguna Beach, Long Beach, Monrovia, Pasadena, Rancho Palos Verdes, San Clemente, San Juan Capisttrano, Santa Monica, and West Hollywood.

[e] A state law prohibits the city from controlling rents

Sources: Brown (2001); Davis (2006); Pendall (2009); Porter and Davison (2009); Powell and Stringham 2004b; Schuetz, Been, and Meltzer (2007)

Although IZ advocates and practitioners largely praise Montgomery County's MPDU program for producing a significant share of affordable housing units, the short duration of affordability requirement—20 years for rental units and 10 for ownership units—was one initial downside to the program. Consequently, at present, only 3,805 out of 10,600, or 36 percent, of the affordable units produced through 1999 are still governed by IZ price and rent levels (Brown, 2001). The remaining units have exited the affordable housing inventory. In 2005, the term of affordability for ownership units increased from 10 to 30 years. The ordinance amendment also included a provision requiring the 30-year clock to reset for units sold again within the initial 30-year period (Davis, 2006).

The mandates for affordability periods are strikingly vague in the Boston area; for example, nearly 48 percent of IZ programs have unknown or undefined affordability duration requirements. Nearly 34 percent, however, have affordability requirements that extend more than 59 years (Schuetz, Meltzer, and Been 2007).

Calavita, Grimes, and Mallach (1997) pointed out that because IZ rental units tend to serve households with lower incomes compared with those of households that purchase IZ units, measuring the depth of affordability partly depends on the mix of rental and ownership units built. They noted that in California and New Jersey, developers' preferences for ownership as opposed to rental units resulted in fewer affordable housing opportunities for low-income households than moderate-income households.

Goal Achievement

The existing literature does not address whether each new development has provided the required percentage of affordable units. Without such information, it is difficult to know whether IZ has been an effective tool for creating affordable housing. That said, the following section summarizes what is known about the extent to which IZ goals have been achieved.

Creating More Affordable Housing

The number of affordable housing units produced through IZ varies widely from one jurisdiction or program to the next, primarily because of variations in the ages of programs, programmatic characteristics, and contextual characteristics of jurisdictions and time periods. Exhibit 3 summarizes the number of affordable units produced across a range of IZ programs.

Montgomery County's MPDU program has produced a significant share of the county's affordable housing units over the course of three decades. Porter and Davison (2009) found that from 1975 to 2005, Montgomery County produced more than 12,000 affordable units, 8,527 ownership and 3,520 rental units. By far, Montgomery County has produced the largest share of affordable units for a single county compared with Los Angeles County, Orange County, and the nine counties in the Bay Area. Tombari (2005) and Pendall (2009) found that, in more recent years, Montgomery County has experienced a significant slowdown in affordable housing production, largely because of the fewer developable parcels of available land. Pendall (2009) suggested that, like New York City, Montgomery County has approached "buildout," a state in which no more (or very limited) developable land remains.

In December 2009, New Jersey, with an estimated population of nearly 8.7 million, had produced or rehabilitated 72,874 units under IZ. Another 33,690 new and rehabilitated units were under construction or in the proposal process at that time (COAH, 2009). Mount Laurel alone had produced approximately 9,670 affordable, ownership units in the 20 years of the program.

Exhibit 3. Number of Affordable Units Produced

Location	Number of IZ Programs	Timeframe	Total Number of Years	Number of Units Produced
Boston, MA	99	1972–2004	32	Unknown
Greater Washington, DC[a]	9	1974–2003	29	15,252
Mount Laurel, NJ		Mid-1970s–1999	25 +	9,670 (ownership)
Montgomery County, MD	1	1976–2005	29	12,047 (8,527 ownership, 3,520 rental)
Los Angeles and Orange Counties, CA[b]	13	1977–2004	27	6,379
San Francisco Bay Area, CA	55	Late 1970s–2003	25 +	9,154
Burlington, VT	1	1984–2006	22	384
Brookline, MA	1	1987–2005	18	89
Fairfax County, VA	1	1990–1999	9	582
Prince George's County, MD	1	1991–1999	8	1,600
Loudoun County, VA	1	1993–1999	6	208 (126 ownership, 82 rental)
Boulder City, CO	1	2000–2007	7	306 (241 ownership, 65 rental)
Pasadena, CA	1	2001–2007	6	466[c]
Uptown Chicago, IL	1	2001–2003	2	179
New Jersey	—	Through 2009	—	72,874 completed; 33,690 in production or proposed

[a] This area includes Montgomery, Prince George's, Fairfax, and Loudoun Counties

[b] This area includes 13 cities: Agoura Hills, Brea, Huntington Beach, Irvine, Laguna Beach, Long Beach, Monrovia, Pasadena, Rancho Palos Verdes, San Clemente, San Juan Capistrano, Santa Monica, and West Hollywood.

[c] This total includes units produced and units approved for development.

Sources: Brown (2001); Davis (2006); Pendall (2009); Porter and Davison (2009); Powell and Stringham 2004b; Schuetz, Meltzer, and Been (2007)

The Bay Area—a metropolitan region encompassing 9 counties, 101 cities, and 7,000 square miles, with an estimated population of 7.4 million—has produced nearly 9,154 affordable units across 55 IZ programs over 25 years for a median annual production of approximately 40 units per county and 3 units per city or town (Schuetz, Meltzer, and Been, 2008). Opponents of IZ have observed that although the Bay Area is home to the highest concentration of IZ programs in the United States, the programs have not produced an adequate share of affordable units to satisfy the need. One IZ proponent, however, has pointed out that the Bay Area has produced a relatively sizeable number of affordable units in the midst of an economic downturn during which federal and state subsidies for affordable housing production have declined (Schuetz, Meltzer, and Been, 2007).

Los Angeles and Orange Counties, which have a combined estimated population of 12.9 million, also have been criticized for their failure to produce a significant share of affordable units through multiple IZ programs over the last two decades. With nearly 13 participating jurisdictions, over 27 years, Los Angeles and Orange Counties produced 6,379 units. Controlling for the time since ordinance adoption in each site, the annual average rate of production has been approximately 34 units per jurisdiction (Powell and Stringham, 2004b). Pasadena, the sixth largest city in Los Angeles County (with a population of nearly 150,185), has produced or granted approval for the development of 466 affordable housing units over a 7-year period, for an average of about 66 units annually (Porter and Davison, 2009).

The Washington, D.C. region contains at least nine IZ programs (Pendall, 2009). The area produced nearly 15,252 affordable units over about three decades, of which Montgomery County produced the most (11,400), Fairfax County 582, Loudoun County 208, and Prince George's County 1,600. Brown (2001) found that IZ alone, as an affordable housing program, generated 11,362 units in Fairfax, Loudoun, and Montgomery Counties, whereas other affordable housing programs—such as the Low-Income Housing Tax Credit (LIHTC) Program, Section 236 and 221(d) 3 Units, and project-based Section 8—combined to produce 14,837 units. Of the total affordable housing units produced as of 1999, IZ alone made up 43 percent and the three other programs combined made up 57 percent. Brown believed that, in this respect, IZ plays a vital role in the production of the Washington, D.C. region's affordable housing supply.

Some studies have reported on the number of housing units produced in relation to the age of IZ programs—that is, how long they have been in effect—and other factors related to market conditions—that is, development boom. For example, Webster (2005) suggested that Denver, Colorado, with a population of 554,636, produced a significant number of affordable housing units within a short period of time during the market's development boom. Through requiring production of affordable housing units on two specific large redevelopments, Denver's IZ ordinance produced or was in the process of producing 3,395 affordable units between 2002 and 2004, most of which were rental units targeted to households earning less than 60 percent of Area Median Income (AMI). Tombari (2005) suggested that Denver produced affordable units in response to the development boom associated with the airport relocation from Stapleton to the Denver International site. This move left the old airport site and surrounding area vacant and available for new development.

At the other end of the spectrum of units produced, Brookline, Massachusetts, has one of the least productive IZ programs in the country. Over a period of 18 years, Brookline, with a population of about 54,809, created only 89 affordable units (Tombari, 2005), an average of 5 units per year. Uptown Chicago, Illinois, has only 179 affordable units produced through IZ, although in this case, the IZ program is relatively new (adopted in 2001) and the number of units produced accounts for only 3 years (2001 through 2003).

Another important distinction in the goal achievement literature involves the type of unit produced. Most IZ programs produce both rental and ownership housing. Based on the available information Exhibit 3 presents, programs producing both types of units appear to build more for sale than for rent. For example, 79 percent of the units built in Boulder County were ownership units, as were 71 percent of the units produced in Montgomery County and 61 percent of the units produced in Loudoun County. Newton, Massachusetts, and the city of Boulder, Colorado, are two of a few places that include only ownership units in their IZ ordinances. Porter and Davison (2009) observed that Boulder County falls into this group because of a state law that prohibits cities from regulating rents in housing developments.[7] Pleasanton is an example of a jurisdiction that shifted its IZ ordinance away from the production of ownership housing to focus solely on rental housing. For the most part, the ownership units covered by IZ ordinances across the country target moderate-income families, whereas rental units target low- and very low-income households.

Bento, Lowe, and Knaap (2009) found that the strength of the housing market can play an important part in the number and type of affordable units produced through IZ. In California cities with IZ programs, Bento, Lowe, and Knaap observed a "marginally significant" increase (nearly 7 percent) in the housing starts of multifamily homes during the period 1998 to 2005. The authors suggested considering this finding in the context of California's housing market at the time. During 1999, when California and the rest of the nation were recovering from the 1991 recession, housing markets began to expand at a rapid rate. With the stringent regulations IZ imposed, constructing single-family units became more burdensome. As a result, single-family starts began to decline. Conversely, constructing multifamily

[7] Although the city of Boulder's IZ program only affects for-sale housing developments, developers can purchase and rehabilitate units and sell them to the Boulder Housing Authority for rental as Housing Choice Voucher Program units or public housing. The 241 for-sale units and 65 rental units represent units built through onsite or offsite construction (Porter and Davison, 2009).

units was less burdensome and, therefore, multifamily housing starts and production rose.

Bento, Lowe, and Knapp (2009) concluded that IZ requirements are likely to have stronger effects on housing starts, particularly on multifamily development, in less robust housing markets than in more robust ones. They were not, however, able to measure if the supply of affordable housing increased, IZ had any measurable effects on the social welfare of residents, or the production of affordable housing served the targeted populations—very low-, low-, and moderate-income households

Serving Intended Households

Across IZ programs, one must meet various requirements to be eligible to rent or buy. Some programs, but not all, require those who buy an IZ unit to be first-time homebuyers. Income eligibility, however, is a requirement among all IZ programs. Typically, household income must be 80 percent or less of AMI to qualify for an IZ unit, but eligibility guidelines vary. The income ceiling in dollar terms appears quite high in certain places. For example, 80 percent of the median household income in Palo Alto was about $94,059 a year compared with $56,205 and $57,241 in the city of Boulder and Montgomery County, respectively (Tombari, 2005). In Boulder, a household's income cannot exceed 68.5 percent of AMI for it to be eligible to purchase an IZ unit (Porter and Davison, 2009). In Montgomery County, eligible households must have an income at or below 60 percent of AMI (Porter and Davison, 2009). Pasadena instituted levels of income eligibility. To qualify as a very low-income household, household income can be no greater than 15 percent of AMI. To qualify as a low-income household, income can be no greater than 24 percent of AMI. For moderate-income households, income can be no greater than 44 percent of AMI (Porter and Davison, 2009). Whereas considerable literature summarizes the income eligibility requirements of IZ ordinances, much less is known about the actual income of families living in affordable IZ units.

Many IZ programs give preference to specific types of people. For example, programs in the city of Boulder and Montgomery County give preference to households living and working in the jurisdiction (Porter and Davison, 2009). Larsen (2003) speculated that, in 2003, most of the owners and tenants of Montgomery County's MPDU units were blue-collar employees of service industries. Although some public service workers, such as teachers, police, and fire personnel, lived in MPDU units, he did not believe many lived there, because a large share of county employees have earnings that exceed the income limits. Brown's (2001) research was one of the few studies that mentioned the extent to which IZ programs are attracting entry-level workers as part of their implementation. She found that in Loudoun County, residents of affordable units primarily consisted of teachers, custodians, computer and data workers, secretaries, and county employees.

Responding to Housing Need

Rather than focus on only the number of units produced by an individual IZ program to evaluate its effectiveness, practitioners are considering other factors, such as comparing the number of units produced with current housing market conditions and needs. Tombari (2005) found that the Bay Area, based on the number of jobs created by the expanding local economy, needs approximately 24,217 affordable housing units per year to house workers whom the economy has added. Over the course of 30 years, however, 27 municipalities with IZ programs in the Bay Area were able to produce only 28 percent (6,840 units) of the *annual* affordable housing need. Similarly, Tombari estimated that the Los Angeles area would need 12,460 new affordable housing units per year based on the number of jobs created and the number of workers who would need housing. Over the course of 27 years, IZ programs were able to produce only 51 percent (or 6,379) of the *annual* affordable housing need. From this perspective, Tombari argued that the San Francisco Bay and Los Angeles areas have "deeply failed" to meet their affordable housing need "over multiple decades and have produced only a fraction of affordable units needed each year" (Tombari, 2005: 12).

Increasing Racial and Socioeconomic Diversity of Neighborhoods

Wish and Eisdorfer (1997) found that despite the integrationist goals of New Jersey's Mount Laurel policy, as of the spring of 1996, Mount Laurel housing was not reaching all of its intended populations. Using data from the New Jersey Affordable Housing Management Service, Wish and Eisdorfer studied the characteristics of those who applied for, and of those who received, affordable housing to find out if New Jersey was achieving its goals of providing opportunities for low-income urban residents to housing in suburban areas and of ameliorating racial and ethnic segregation. Taking into account the number who are eligible and the number who applied, they found that White residents were more successful at finding and occupying affordable housing units in general and even more successful at occupying suburban affordable housing units. African-American and Latino residents were much more likely to occupy urban affordable housing units. This finding led them to conclude that New Jersey was not successfully creating more racially integrated communities through the Fair Housing Act. They also observed that African-American and Latino urban households did not move from impoverished inner cities to the suburbs, they mostly found affordable housing in urban areas. Likewise, suburban households generally found housing in suburban areas. Many White residents of urban areas, however, were finding and occupying affordable housing in the suburbs, thus maintaining racial segregation. Boger (1997) speculated that part of the reason why New Jersey had been unsuccessful at moving families out of inner cities is a lack of advertising suburban Mount Laurel units in the inner cities. He also suggested that the location of many Mount Laurel units in the outer suburbs might discourage inner-city households from taking advantage of the units, which could push them more toward inner-suburban housing options.

Wish and Eisdorfer (1997) also examined the extent of socioeconomic diversity resulting from families moving into the Mount Laurel housing. They found that moderate-income households tended to have more successful applications for Mount Laurel units than did low-income households. Elderly people were more likely to succeed in finding affordable housing than those younger than 30, and single parents had little success finding affordable housing. Thus, it seemed that Mount Laurel achieved only limited socioeconomic diversity; young, single-parent, and lower income households are significantly less successful than relatively better off and older households in occupying Mount Laurel housing.

Brown (2001) and Porter and Davison (2009) analyzed racial and ethnic integration in the Washington, D.C. region. Brown found that in a 1998 demographic profile of affordable homeowners in Montgomery County, 45 percent were Asian, 23 percent were African American, 20 percent were White, and 11 percent were Latino. The racial and ethnic diversity was similar among IZ homebuyers in Fairfax County between 1993 and 2000 (Brown, 2001). Porter and Davison (2009) conducted a similar study 10 years later in the Washington, D.C. region and found similar results—nearly 44 percent of occupants were Asian, 27 percent were African American, 17 percent were White, and 5 percent were Latino.

Regarding economic diversity, IZ purchasers in Montgomery County came from varied economic backgrounds; 16 percent earned between $36,001 and $49,000 a year, 64 percent earned between $24,001 and $36,000, and 20 percent earned less than $24,000. In Fairfax County, the average family income of IZ purchasers was $34,742. Single-parent households made up nearly one-fourth of the purchasers, and 15 percent of those single-parent households had been living in public housing or were Section 8 participants. In Loudoun County, the average income of IZ households was $34,721 and the average income of households on the waiting list for rental units in June 2000 was $35,400.

Dillman and Fisher (forthcoming) looked at the locations of units produced through Chapter 40B in the Boston area. They found that 40B rental units are located in better educated and wealthier towns with easier access to the city and jobs than both other public housing and all non-40B housing.[8]

Brown (2001) found that in the Washington, D.C. region, affordable units were dispersed fairly well throughout participating counties and, as a result, promoted economic, racial, and social integration. One of the leading concerns with affordable housing is that it is often placed in pockets throughout a locality where poverty is already heavily prevalent. Such was not the case, however, in Fairfax County. In fact, county officials found that the 582 affordable IZ units produced were distributed among each of the county's nine magisterial districts. The US Route 1 corridor in southeast Fairfax County, however, did not have affordable units. This area had undergone revitalization before the ordinance's enactment, and officials wanted to direct new IZ units to areas of low poverty and expected growth.

[8] Chapter 40B of Massachusetts state law allows developers who include affordable housing units in their projects to avoid certain zoning regulations.

Brown also found that Prince George's County strategically placed a sizeable portion of its affordable units outside of centralized communities of high poverty. For example, from 1991 to 1996, the county's IZ program produced 1,600 units of affordable housing, none of which were situated in the county's high-poverty areas. This finding, Brown suggested, "supports one of the premises of IZ, which is that when affordable units are part of market-rate developments, they will be located in economically healthy areas" (Brown, 2001: 16).

One of the concerns with the IZ program of the city of Boulder, raised by Porter and Davison, is that a sizeable portion of the housing produced has been small condominiums unsuitable for families and apartments built near the University of Colorado campus intended for students (Porter and Davison, 2009).

Encouraging Investment in Cities and Reducing Sprawl

Dillman and Fisher (forthcoming) found that in the Boston area, Chapter 40B condominiums and rental units tended to be in more built-out towns than non-40B units. Thus, these units do not tend to add to sprawl as much as other new developments, which are more likely to be in lower density areas farther from transportation.

Satisfying Courts

Wish and Eisdorfer's (1997) research appears to be one of the few case studies that examined goal achievement regarding satisfying courts. They found that New Jersey's Fair Housing Act of 1985 grew out of a lawsuit against exclusionary housing ordinances. Although cities in New Jersey are not required to provide their fair share of affordable housing, those that do have immunity from such litigation for 6 years.

Counterfactuals

Some researchers have argued that number of units, alone, is not enough to assess accurately the contribution of IZ to affordable housing within a jurisdiction. Numbers do not provide insight into other important questions, such as whether affordable housing would have been built regardless of the IZ ordinance, and whether the number of IZ units built aligns with the need for affordable housing. Researchers have taken up the question of what other information is needed to show that IZ is or is not meeting the goal of providing affordable housing.

Boger (1997), in his study of New Jersey's Mount Laurel cases, suggested comparing the Mount Laurel production with the number of units produced with public-sector funds. He argued that looking at the raw number of units is not enough to judge the success of the program. He also argued that comparing the number of units produced with the affordable housing need is also misleading, although others use this approach.

Powell and Stringham (2004a, 2004b, 2005) compared the number of affordable units produced with the affordable housing need of jurisdictions in California; they found that IZ cannot meet the affordable housing needs of residents in the Bay Area or Los Angeles and Orange Counties. Powell and Stringham (2004a, 2004b, 2005) also seemed to suggest evaluating the number of units produced in comparison with what the overall affordability of the total housing market would be if the area did not have such ordinances. They, along with Ellickson (1981), argued that New Jersey's Fair Housing Act IZ imposes an effective tax on new market-rate units, resulting in a decrease in the supply of new housing units in these areas. This decreased supply further increases the market-rate price of new housing units in these areas, making housing even less affordable overall. Powell and Stringham (2005) also argued that the decrease in new housing units caused by this tax decreases the number of wealthier families moving into new housing and their homes filtering down to those household who would not be able to afford new housing.

Responding to such arguments, Basolo and Calavita (2004) advocated for a different counterfactual. Rather than comparing the overall affordable housing needs, they argued for comparing the number of units produced through inclusionary housing with the number of affordable units produced in similar cities without inclusionary housing ordinances. They also argued that researchers ought to consider market conditions and housing trends when assessing the number of affordable units produced through IZ. The building of fewer units would be expected during economic downturns, for example, than during periods marked by economic and housing-market strength. They did not complete this analysis, however. Although this might be difficult to do, one could argue that a fair comparison should account for similar contextual characteristics such as housing trends and local market conditions, which may have large effects on outputs and outcomes.

Research Gaps

Much of the existing research literature covers the variety of IZ programs across jurisdictions and housing markets and the regulations of each program. A handful of empirical studies have looked at the number of affordable units produced by each program and whether IZ has helped achieve racial and socioeconomic integration. The literature related to goal achievement includes a number of gaps, however. For example, only a handful of studies have examined the number of rental units produced compared with the number of ownership units produced. Calavita, Grimes, and Mallach (1997) noted that this subject is important, because ownership units often target higher income households than do rental units. Also, little to no research has examined the income of households that actually purchase or rent IZ units, although a large body of research summarizes the income eligibility requirements. In addition, no study appears to have examined whether IZ programs actually set aside the number of affordable units required by ordinances and whether the terms of affordability are met over time.

In addition, little is known about if IZ programs have succeeded in attracting entry-level workers, reducing sprawl, furthering the mobility of low- and moderate-income residents, satisfying courts, and meeting their percentage and depth of affordability requirements.

Boger (1997) argued that research is needed not only on the characteristics of those who apply for and those who attain affordable housing but also on their motivations for applying. Such studies would shed light on whether outcomes for programs that have been unsuccessful in achieving hoped-for racial and economic integration, such as the Mount Laurel program, stem from residents' location preferences or from staff behavior when working with prospective renters and homebuyers.

IV. Costs and Benefits Associated With IZ

This section reviews the evidence on the benefits and costs associated with inclusionary zoning for key stakeholders. It considers four categories of stakeholder: housing consumers, developers, neighbors and neighborhoods, and local governments.

Consumers of IZ Units

This subsection covers the benefits and costs for households who rent or purchase IZ units. The considerable gap in research in this area is presented at the end of the subsection.

Benefits—Consumers' Perspectives

The benefits of IZ believed to accrue to consumers of affordable housing can extend beyond affordability alone to include increased access to more affluent neighborhoods, more diverse communities, housing that is more accessible to work, and neighborhoods with good-quality schools and lower crime rates. Nonetheless, the number and the depth of benefits will vary from one IZ program to the next.

First, consumers of IZ-produced affordable housing do benefit from the lower price of housing. The affordable units can be priced significantly lower than market-rate units. For example, in the city of Boulder, Colorado, market-rate units in new developments sell for between $390,000 and $430,000, whereas affordable IZ units in those same developments are priced significantly lower, between $112,000 and $185,000 (Webster, 2005).

The extent to which those prices are lower than comparable market-rate units will vary from program to program, as some programs target lower income households than others, as noted in the previous section. Using their own formula, Powell and Stringham (2004b) estimated the variation of sales prices of affordable homes in Los Angeles and Orange Counties, California, built as a result of IZ ordinances.[9] In Los Angeles County, they estimated prices targeting very low-income households would be $91,837, whereas prices targeting moderate-income households would be $215,265. In Orange County, they estimated the prices for very low- and moderate-income households to be $123,101 and $295,379, respectively. Thus, the depth of this benefit varies not only by the income targeted but also by the economic characteristics of the jurisdiction.

The opportunity to live in more affluent and diverse communities can also be beneficial to these households. Using data from the Moving to Opportunity demonstrations, researchers found that families who moved to areas of lower poverty experienced less fear, better health outcomes, lower rates of violent juvenile crime, and higher school test scores (Goering, 2003; Goering, Feins, and Richardson, 2002; Ludwig et al., 2008). To the extent that IZ succeeds at providing households with an opportunity to move from areas of concentrated poverty to more affluent neighborhoods, IZ may similarly benefit consumers of affordable housing by improving such quality-of-life indicators. Nonetheless, no such study on the quality-of-life changes to consumers of IZ units has been carried out, and few studies have examined whether those who move into IZ units are also moving into better neighborhoods, better school districts, or communities with greater access to parks and recreation. One such study conducted in Montgomery County, Maryland, did find that IZ had a significant positive impact on educational outcomes. Families moving into public housing were randomly assigned to regular units located in high-poverty neighborhoods or to IZ-built units located in lower poverty neighborhoods. Children in the IZ units attended low- or moderate-

[9] Powell and Stringham (2004b) assumed homes would be financed with 0 percent down, a 30-year fixed-rate mortgage, and a 7-percent interest rate. They also assumed that 4 percent of income would be used to pay real estate taxes and homeowner costs and that 26 percent of income will pay mortgage payments. They used that formula to estimate what a moderate-income household (up to 120 percent of Area Median Income [AMI]), a low-income household (up to 80 percent of AMI), and a very low-income household (up to 50 percent of AMI) could afford.

poverty schools in their neighborhoods and, over time, narrowed the achievement gap with their higher income peers (Schwartz, 2010).

IZ ordinances might benefit consumers of affordable housing in terms of locating housing near jobs. As the previous section notes, Dillman and Fisher (forthcoming) found that Chapter 40B units, particularly rental units, in the Boston, Massachusetts, area were located in areas with ample access to jobs and transit. They also noted that Chapter 40B units were better located than public housing units. Providing affordable housing in such communities provides workers access to more vibrant economic communities, creating more job choice and better commutes. Dillman and Fisher also suggests that Chapter 40B units are built in areas of greater educational attainment; those same areas tend to have better quality schools, as well.

Costs—Consumers' Perspectives

Researchers have examined the costs of IZ ordinances for consumers to an even lesser extent than the benefits. Some of those costs occur only to the extent that IZ units are built in areas that keep affordable housing isolated from other market-rate units. For example, through in-lieu options and the ability to build off site, developers can still isolate and concentrate affordable housing units in a segregated area.

van Kempen (1997) suggested that living in areas of concentrated poverty has a negative effect on the "life chances" of such individuals. She argued that living in areas of concentrated poverty decreases access to job markets, negatively affects the socialization of individuals, and results in the stigmatization of individuals living in such neighborhoods. Education in such neighborhoods is often poor, resulting in fewer economic opportunities later in life. Jobs have been moving to the suburbs. Individuals are isolated from the rest of society and stigmatized because "people are socially positioned by the neighborhood in which they live" (van Kempen, 1997: 437). Thus, moving to higher opportunity neighborhoods should have positive effects on these individuals, as noted previously. On the other hand, to the extent that IZ ordinances permit developers to avoid building affordable housing in higher opportunity neighborhoods and to use options such as in-lieu fees or offsite building, which can further concentrate and isolate affordable housing in specific areas, consumers of such affordable housing can face the costs associated with living in these high-poverty neighborhoods.

Some studies also argue that costs to the consumer stem from components of IZ ordinances meant to extend affordability over time. Those who bought IZ units also can face costs in terms of resale restrictions.[10] Although these restrictions do not affect renters of IZ units, they can limit the amount of equity built through ownership of IZ homes. Powell and Stringham pointed out,

> One of the main benefits of homeownership is building equity in a home that can appreciate in value. Inclusionary zoning removes this benefit because it controls resale prices. Because appreciation is limited, owners of price-controlled units often cannot build up the necessary equity to afford a down payment on a larger market-rate home (Powell and Stringham, 2004a: 26).

This circumstance also means that IZ owners who make improvements to their unit might not be able to recoup their investment upon resale. In addition, both Powell and Stringham (2004a) and Ellickson (1981) argued that such restrictions decrease incentives for owners to invest in the proper maintenance of the property, "…because owners of restricted units are not permitted to sell at market price, much of the incentive to maintain the property is taken away. This makes it more likely that price-controlled units will deteriorate over time" (Powell and Stringham, 2004a: 27). This passage suggests that subsequent owners of IZ units might face poor housing quality and high repair costs. Although having these resale restrictions is important for the sustainability of affordable housing, it could come at a potential cost to current and future owners of IZ units.

[10] Nonetheless, some would argue that resale restrictions are not a cost, because owners of inclusionary zoning (IZ) units might not have been able to afford homeownership without IZ. Also, because appreciation will vary in accordance with the real estate market, owners in a poor real estate market might not realize significant profits upon resale regardless of such restrictions.

Research Gaps

Although significant research has dealt with goal achievement, particularly regarding the number of units built, significantly less research has examined the costs and benefits of those who rent or own IZ units. Little research has questioned whether occupants of IZ units have realized any of the hypothesized benefits. Do occupants report more work opportunities? Are children in communities other than Montgomery County doing better in school? Do occupants feel connected to their new communities? Beyond resale restrictions, did the occupant incur unforeseen costs? Little research has examined the actual prices of affordable units created through IZ, as well. How much does it cost to rent an IZ unit? How much does that rent vary from jurisdiction to jurisdiction? How much does the price of ownership units vary from jurisdiction to jurisdiction? How many built units are targeted to very low-, low-, and moderate-income households? Such questions are important to address to increase understanding of the costs and benefits to consumers of IZ units.

Developers

The second category of stakeholders is that of housing developers. This subsection presents what is known about the benefits and costs of IZ to developers and concludes with a consideration of research gaps.

Benefits—Builders' Perspectives

Builders with the inclination, expertise, and wherewithal to navigate the IZ process may enjoy genuine financial and other business benefits. Builders adapting and thriving under IZ may view ordinance requirements as just another "cost of doing business" in high-cost housing markets; such builders identify financial feasibility and even profit opportunity where sufficient density bonuses are available (Conine, 2000). How many builders hold this view is uncertain. Moreover, the mere fact of density bonuses and the attendant permission to exploit land value at greater levels of intensity economically do not guarantee that greater profits will result. Some construction costs increase with density, so the bonus may not always deliver the promised benefit to the builder (Tombari, 2005).

Municipal contributions that enhance incentives for market-rate builders to comply with inclusionary development can take many forms beyond density bonuses. For example, (1) permit processing-time streamlining, (2) relaxation of other regulatory constraints and exactions, (3) reasonable time limits for below-market sales prices, after which developers are free to sell to higher bidders, and (4) direct cash subsidy and bond financing applied toward affordability. IZ advocates and for-profit firms seem to agree that such preferential treatment for participating builders constitutes best practice for IZ (NPH/HBANC, 2005).

In addition, one must count among the beneficiaries of IZ those firms—nonprofit and otherwise—that ultimately receive in-lieu fees for the development of affordable units. Quite a few municipalities deposit fee payments into affordable housing trust funds, from which grants typically go toward "gap financing" needed in projects utilizing the low-income housing tax credit (see SCAG, 2005). For those firms already committed to building units for low- and moderate-income households, inclusionary regulations do not so much constrain as promote their existing lines of business.

A more organic point can be made here, as well. The purpose of IZ is to incentivize new affordable construction, and success requires motivated builders. Developers complaining that IZ is a deterrent may be signaling that such laws are poorly designed. Historically, the IZ device was born, in the first instance, of the desire *to induce* builders to provide lower cost units they would not otherwise seek to construct. Invented as a way to implement New Jersey's Mount Laurel "fair share" judicial decisions in the 1970s and early 1980s, the "builder's remedy" provided legal means to acquire building permits from recalcitrant, exclusionary suburbs exploiting their zoning power to bar residential development for low-income households and racial minorities (Schuck, 2002). New Jersey's courts, and later its legislature, recognized that creating legal rights for builders against parochial land-regulators would be necessary, but not sufficient, to boost the supply of lower cost units.

What is now most often conceived as an inclusionary *set-aside* (say, 20 percent of total built units in a project being income-restricted) began as a proportionate *reward* for market-rate builders willing to help enforce fair-share construction standards (equivalently in that system, four market-rate units for every one required affordable unit). In towns with no-growth or slow-growth policies embedded in their planning and zoning, the builders' remedy rewarded participating developers with rights to move forward with their projects, so long as the specified proportion of units were affordable to lower income households. In a booming construction economy, such remedies can create a kind of bonanza for builders (Kirp, Dwyer, and Rosenthal, 1995). IZ systems that most use this compensatory logic—the provision of real rewards to builders for participating in the form of density bonuses, permit-processing streamlining, and other incentives—may be the most sustainable.

Cost—Builders' Perspectives

Like other forms of development regulation, mandatory IZ ordinances may introduce new costs that residential projects must bear. The risk of added cost attends all land use regulation, from zoning and planning to fees, exactions, and infrastructure-phasing requirements (Quigley and Rosenthal, 2005). IZ is practiced amid existing regulatory regimes, not separate from them. Parsing IZ effects from those of other building restrictions that a given jurisdiction may already have on its books is a pervasive problem in the study of individual regulatory components, like IZ, and their cost effects. Where subsidy offsets additional construction or operating costs, or commensurately reduced returns, developer impacts are muted. Another key factor, of course, is whether a builders' compliance with IZ requirements is compensated by a "density bonus" allowing more units per acre (and per land investment dollar) than can otherwise be constructed (Clapp, 1981). IZ programs might also offer developers "fast-track" treatment of building applications as an additional form of compensation (Schuetz, Meltzer, and Been, 2007). The presence of subsidy, density bonuses, and fast tracking vary greatly by locality and project.

Nonetheless, general points can be made concerning the cost-inducing features of development regulation from the builders' perspective. Previous research has identified three essential ways such regulations can increase cost: (1) direct application of fees and exactions ("regulatory cost"), (2) extending the time necessary to secure entitlements ("regulatory delay"), and (3) lack of clarity and stability in the terms of regulation ("regulatory uncertainty") (Calfee et al., 2007). Each variety of cost is briefly described in the following paragraphs.

Regulatory cost of IZ ordinances, although not precisely estimated in the empirical literature to date, comprises any building expenditure (such as the in-lieu fees many jurisdictions exact in exchange for relieving builders of the inclusionary obligation) that reduces a developer's bottom-line return on investment. Such expenditures might include the increased architectural fees to include mixed-income units of varying amenity packages and the lost economies of scale available when product type is more uniform within a given development. Where IZ requirements are simply too onerous for any developer to meet, the regulated areas are effectively withdrawn from the land-supply chain, increasing the price of land regionally (see Downs, 1991). In-lieu fees, as a local policy option, have advantages in this regard. When set appropriately, in-lieu fees provide developers a buyout option at lower overall cost than onsite provision of IZ units. In this way, in-lieu fees may increase compliance (Calavita, Grimes, and Mallach, 1997).

Regulatory delay occasioned by IZ ordinances—which varies depending on factors such as the professional capacity of local enforcement staff and developer willingness to comply—may be a separate source of added cost for affected builders. Extended construction timelines cost real resources; delays unforeseen when conducting preinvestment financial analyses add interest cost, taxes, inflation, and overhead expense (see Mayer and Somerville, 2000). Project delay may postpone construction past the developer's optimal time of investment, sometimes resulting in abandonment of otherwise feasible projects. When abandonment happens, the policy goal of increased housing production is frustrated. In addition, wherever an ordinance's provisions regularly lead toward extended negotiation and, in effect, midstream rules changes, the slowing of the entitlement process gives the regulator unfair leverage and creates inefficiency. In such cases, an applicant's proposal and investment can be held hostage at the regulator's caprice and whim (Heckathorn and Maser, 1987).

Regulatory uncertainty is essentially a form of investment risk for developers. The clearer and more predictable the rules, the better those risking financial resources can assess the fluctuating investment value of project commitments. A 2007 survey of Northern California residential builders identified such "entitlement risk"—namely, the likelihood a given investment purchase of residential land rights might fail to obtain a construction permit—as one important factor in developers' overall cost experience (Quigley, Raphael, and Rosenthal, 2009). Analysis of IZ ordinances in this regard should explore not only the clarity of legislative language but also the practical consistency with which such requirements are enforced.

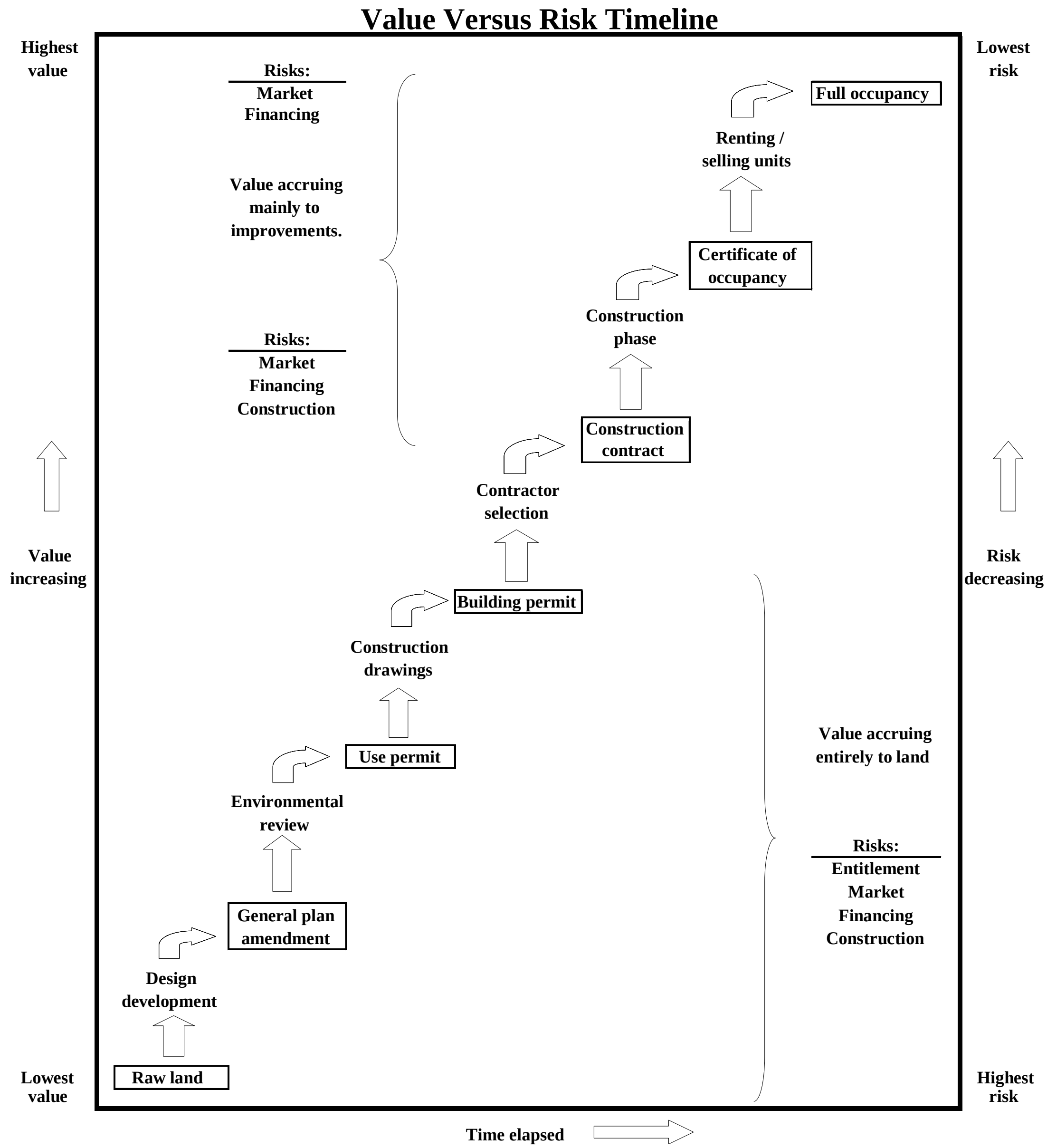
Exhibit 4 shows how, given market and regulatory uncertainties, early phase project investments in land, development, and design are highest risk and lowest reward from the builders' perspective. Where IZ ordinances impose high compliance cost, create undue delay, and pose risk as to the exact nature of requirements, they may reduce development returns on investment. Estimating the extent to which IZ reflects these cost features is not easy; considerable variability exists across jurisdictions in terms of the specificity of requirements, the uniformity of application across projects, the adequacy of staffing, and numerous other factors (see NPH, 2007). Such variability has received praise as a key factor in the successful implementation of IZ regimes; in that regard, the variation in practice is denoted as "flexibility" (see, for example, Schuetz, Meltzer, and Been, 2007). The more flexible a regime is, however, the less predictable its effect on a given project and developer.

Because the cost effect of IZ for developers depends on local factors, single city or region studies can be informative. One example is an analysis conducted by Keyser Marston Associates, Inc., concerning proposed IZ enactments for San Francisco, California, relating to increases in onsite compliance and in-lieu payment levels, and a decrease in income levels used to calculate affordability (Keyser Marston, 2006). Proceeding as a comparison of construction prototypes, the Keyser Marston analysis considered cost in the broader context of financial feasibility, often referred to in the building profession as the determination of whether a pro forma "pencils out." Feasibility can be measured as the internal rate of return on investment for the firm, which must exceed the basic cost of capital to generate project-based profits. In that instance, a feasibility analysis determined three of four prototype projects were no longer feasible, given the discrepancy between cost-recovery price levels per unit and affordability caps on the effective prices permitted. The study concluded that substantial moderation in the compliance or fee increases, the affordability caps, or both would be necessary to make new construction in the affected product categories financially feasible.

Research Gaps

The literature on IZ benefits flowing to builders is largely theoretical and normative. Describing and assessing the magnitude of these benefits, or characterizing the type and location of firms capturing them, have received little systematic attention. Regulators know little concerning how builders adjust to varying IZ environments, both across supply-demand circumstances in the shelter economy and in the broader conditions of boom and bust in the macroeconomy. A methodological challenge confronts all such exploration of private construction firms; namely, that the firm often considers necessary information on project-specific financial details proprietary and therefore rarely discloses it to researchers (Calfee et al., 2007). Even when firms disclose this information, they do so anecdotally and at insufficient sample sizes to enable the knowledgeable generalizing or modeling of findings. Further examination of IZ in this regard would attempt to characterize those firms that avail themselves of the explicit and implicit incentives for boosting the construction of affordable units and, in turn, the magnitude of the incentive necessary to induce greater participation and compliance

Exhibit 4. Value-Risk Timeline for Residential Construction



Source: Wright (2007)

Another key question is whether the in-lieu fees supporting tax-credit construction would cease to deliver such benefits to firms and end-use residents were the federal tax-credit to be reduced or to become less efficacious given market conditions in that sphere.

Work concerning IZ costs among builders is also theoretical for the most part and faces similar methodological challenges. More systematic surveying of audited financials for completed buildings, ideally with organized interests in the homebuilding industry encouraging such disclosure, would enhance research capacity to assess true cost across varying regulatory systems in IZ.

Improved modeling, of the sort seen in low-income construction literature on incremental wage regulation (for example, Dunn, Quigley, and Rosenthal, 2005), is quite difficult, however. In that circumstance, the publicly available audited ledgers of affected projects and an easily identified control group can be directly compared for labor-cost differences and bottom-line effects. By contrast, obtaining audited financials of IZ and non-IZ projects is more difficult. Moreover, the causal path by which IZ might increase cost is far less direct than that of prevailing wage regulation, in which the requirement can be traced to specific line items in the audited budget. It would be necessary to garner a sample of projects unaffected by IZ (or outside such jurisdictions entirely) while controlling for all other cost-influencing differences in the regulatory and other circumstances influencing cost. The demands of such research design, data gathering, and analysis are onerous indeed, and the state of the literature reflects it.

Neighbors and Neighborhoods

This subsection of the review focuses on the effects IZ has on housing markets and neighborhoods. The distinction made here is more a matter of how effects are transmitted than of geography. The examination of effects on housing markets focuses on the effects of IZ on housing prices, production, and composition. Conceptually, the geographic range of such effects depends on the size of "the" market and the degree of interaction between "the" market and other markets. The examination of the effects on neighborhoods focuses on the effects of IZ on property values, poverty rates, and other neighborhood characteristics. Conceptually, these effects are a function of proximity to the IZ project. In the analysis of both market effects and neighborhood effects, however, the geographic units of analysis and the geographic extent of effects vary from study to study, although market effects are generally assumed to occur over larger geographic scales than neighborhood effects.

The breadth and depth of research on market effects is relatively thin; no research deals with the neighborhood effects of IZ. Fortunately, the literature on the effects of other forms of affordable housing policy is much more extensive. Thus, it is perhaps possible to gain insights into the neighborhood effects of IZ from research on the effects of similar programs.

Housing Market Effects

The theoretical foundation on which critics of IZ frame its effect on housing markets is based on standard microeconomics. In that framework, IZ can be illustrated as an increase in the cost of housing production or an upward shift in supply. This upward shift causes housing starts to fall and housing prices to rise (Tombari, 2005). Proponents of IZ offer an alternative framing. They argue that increasing the production of affordable units increases the supply of housing, causing a fall in prices and an increase in starts. Until recently, the empirical evidence to support either point of view was thin.

Housing Production

In a study for the Reason Public Policy Institute, Powell and Stringham (2004a) provided empirical support for the standard argument. Specifically, using data from the San Francisco Bay Area, they provided evidence to suggest that IZ makes market-priced homes more expensive, restricts the supply of new homes, and produces few affordable units. This study has been widely criticized, however, because of its methodology and certain assumptions the authors made. In particular, Basolo and Calavita (2004) noted the study's failure to compare jurisdictions with and without IZ programs. The study's focus on San Francisco—a housing market with very high prices, regardless of public policy—also limited its findings.

A large volume of case study research produced opposite conclusions. Multiple case studies in California and New Jersey by Calavita (Calavita and Grimes, 1998; Calavita, Grimes, and Mallach, 1997) and his colleagues concluded that IZ is a viable strategy for increasing the supply of affordable housing and mixing low- and high-income residents. The National Housing Conference (2002) drew similar conclusions in case studies conducted in Massachusetts.

Meanwhile, others have found IZ to have no effects on housing production. Using data from on annual housing starts, David Paul Rosen & Associates (2002) found no correlation between the adoption of an inclusionary housing policy and housing starts in 28 California cities. Similarly, Knaap, Bento, and Lowe (2008) found that IZ programs in California have no significant effect on the number of permits issued for either single- or multifamily housing units. They showed the share of multifamily housing, however, to increase in jurisdictions that adopted IZ programs. Knaap, Bento, and Lowe concluded that stricter IZ programs (those with lower project-size thresholds and those that require greater shares of affordable units) placed a greater burden on single-family development than on multifamily development, thus causing a significant increase in the share of multifamily housing development despite not affecting total housing starts.

Housing Prices

Researchers at the Furman Center for Real Estate and Urban Policy at New York University and at the National Center for Smart Growth at the University of Maryland simultaneously explored the effect of IZ on market-rate housing prices.

The Maryland study (Knaap, Bento, and Lowe, 2008) used data from 369 cities in California (including 65 with IZ programs) over the period from 1988 to 2005. Controlling for spatial and temporal conditions, the study found that the price of single-family houses increased in jurisdictions with IZ programs. These effects were greater in higher priced housing markets than in lower priced markets, and greater during robust housing markets (like those of California during the 1990s). The researchers, similar to Powell and Stringham (2004a, 2004b), concluded that developers passed the increase in production costs associated with IZ requirements on to market-rate homebuyers.

The Furman Center research (Been et al., 2008; Schuetz, Meltzer, and Been, 2009, 2007) produced results quite similar to those of the National Center for Smart Growth. The Furman Center researchers used data from the San Francisco metropolitan area and suburban Boston to analyze the amount of affordable housing produced by IZ programs and the effects of these programs on the prices and production of market-rate housing.

These studies found that any negative effects on housing prices and production have been relatively slight but that IZ programs have produced only modest amounts of affordable housing. They also found that fluctuations in the regional housing market influenced the effect of IZ on housing markets. During periods of price appreciation in suburban Boston, IZ contributed to increased housing prices and lower rates of production. In the San Francisco area, IZ had the effect of decreasing prices in slower regional markets.

Neighborhood Effects

No studies appear to have focused explicitly on the effects IZ projects have on the neighborhoods in which the projects are located. Considerable research has focused on the neighborhood effects of other affordable housing programs, however. Although these studies of similar programs offer insights, their results are often mixed or contradictory. Nevertheless, it is important to consider how the different contexts (political, demographic, economic, and so on) within which these programs are implemented can influence the observed neighborhood effects as compared with the contexts within which IZ programs are implemented. For instance, the HOPE VI and LIHTC programs primarily aim at revitalizing seriously depressed communities, whereas IZ is focused on integrating lower income housing into stable or thriving neighborhoods. As a result, the effect each program has on a neighborhood's median income, for example, will vary depending on whether the neighborhood is starting as low income. Furthermore, differences in program elements, including issues of design, might also alter neighborhood effects.

Property Values

Considerable research exists on the effects of affordable housing on neighboring property values. Galster (2002a) reviewed the existing literature on this topic in 2002 and found no consistent effect of federally assisted housing on nearby residential property values.[11] Instead, Galster argued, the effects are contingent on context, concentration, and scale, including the characteristics of the neighborhood in question, the concentration of assisted housing units, and the scale of the assisted housing facility.

In a 1993 study of six high-quality affordable housing projects near the Bay Area, Cummings and Landis (1993) found proximity to the projects to have no adverse effect on neighboring single-family home values. Their study further suggested that the characteristics of the projects, not the income characteristics of the projects' residents, have the greatest potential to influence the surround neighborhood:

> Poorly designed, poorly maintained, and poorly managed projects can affect neighborhood property values—regardless of whether they are affordable or market rate. Conversely, well-designed, well-managed, and well-maintained projects should not affect neighborhood

[11] Housing advocates, such as Habitat for Humanity International, argue that property values are based on individual property characteristics and macro forces, but not based on proximity to affordable housing. See http://www.habitat.org/how/propertyvalues.aspx for a list of studies supporting this viewpoint. A more balanced summary of literature, prepared by the California Department of Housing and Community Development, is at http://www.hcd.ca.gov/hpd/property_values0805.pdf.

> property values, regardless of whether they are affordable or market rate. (Cummings and Landis, 1993: 17)

Briggs, Darden, and Aidala (1999) examined the effects of seven scattered-site public housing developments that had faced hostile and widely publicized neighborhood opposition from the otherwise highly segregated city of Yonkers, New York. Despite the controversy, Briggs, Darden, and Aidala noted a lack of household withdrawal or "flight" from the neighborhoods. They also found that none of these public housing sites showed generalized effects on neighborhood home prices.

Analyzing home sales from 1989 through 1991, Lee, Culhane, and Wachter (1999) examined the effects of federally assisted housing programs on nearby property values in Philadelphia. When controlling for neighborhood characteristics, the researchers found modest to slightly negative effects of public housing and Section 8 rental assistance on local property values. They showed FHA-insured housing, Section 8 new construction, and public housing homeownership programs, however, to have positive effects.

Enacted in conjunction with the Tax Reform Act of 1986, the LIHTC Program offers tax incentives for development projects that set aside a portion of their housing units for low- to moderate-income renters. Green, Malpezzi, and Seah (2002) examined the effects of LIHTC developments in Wisconsin on neighboring single-family property values. With one exception, Green, Malpezzi, and Seah found no evidence that LIHTC developments caused neighborhood property values to fall. In Milwaukee County, although the magnitude of the effect was small, properties farther from the developments exhibited more rapid appreciation in value. Properties *near* LIHTC developments in Madison, meanwhile, were found to appreciate more rapidly.

In his review of more than 800,000 LIHTC units built in the 1990s, Freeman (2004) found similar results. LIHTC neighborhoods experienced larger declines in poverty and larger increases in home values than did other metropolitan neighborhoods. Despite these findings, Freeman identified considerably higher poverty rates and considerably lower income levels and home values in LIHTC neighborhoods than in other neighborhoods.

Pollakowski, Ritchay, and Weinrobe (2005) examined the effects of mixed-income, multifamily rental housing developments on single-family housing values in the Boston metropolitan area. Specifically, Pollakowski, Ritchay, and Weinrobe looked at developments built under Chapter 40B of state law, which enables developers to circumvent certain local zoning regulations if they build communities that incorporate affordable housing. Looking only at large multifamily 40B projects that were integrated into existing residential neighborhoods (that is, projects thought most likely to have negative effects), they found no negative effect on the sales price of nearby single-family homes. More specifically, Pollakowski, Ritchay, and Weinrobe found no significant differences when comparing single-family housing price changes over time in the 40B neighborhoods with price changes elsewhere in the town.

Other Effects

The benefits of deconcentrating affordable housing generally accrue to the families who reside in those houses (Feins, 2003; van Kempen, 1997). The effects on neighborhoods receiving such housing are less well known, however. Even small groupings of assisted households may create problems for the immediately surrounding area, possibly justifying some fears of opponents of deconcentration (Galster et al., 2003).

Whereas Cummings and Landis (1993) placed more emphasis on the quality of lower income development affecting the surrounding neighborhood, others have attributed the effects to the characteristics of the lower income residents. Galster (2002b), in an examination of the social costs and benefits of deconcentrating low-income populations, suggested that doing so also creates potential negative income and behavioral effects on receiving neighborhoods. Although little is known about the relationship between the poverty level in a neighborhood and measures of neighborhood condition, limited evidence suggests the relationship may be nonlinear and characterized by thresholds (Brooks-Gunn, Duncan, and Aber, 1997; Friedrichs, 1998; Galster, 2005). According to Galster,

> Where fewer than 15 percent to 20 percent of the population live below poverty it appears that problems associated with poverty may not significantly and negatively affect the neighborhood's condition. Above this threshold, the problems with increased poverty may rise significantly. A second threshold appears to exist in the range of 30 percent to 40 percent of the population in poverty. Above this level the negative effects of concentrated poverty may have taken their toll and even greater concentrations of poverty may have no additional negative effects. (Galster, 2005: 92)

In his research on 52 LIHTC projects built in Miami-Dade County between 1990 and 2000, Deng (2009) assessed the effects of the LIHTC investments on eight neighborhood indicators: unemployment rate, poverty rate, percentage of households receiving public assistance, median household income as a percentage of metropolitan median household income, median gross rent as a percentage of metropolitan median gross rent, median housing value as a percentage of metropolitan median housing value, number of units built in the last 10 years, and single-family mortgage approval rate. Using cluster analysis, Deng compared the LIHTC neighborhoods with control neighborhoods within the same cluster that did not have LIHTC projects. He found that the following:

- 10 LIHTC neighborhoods changed more positively than the control groups on 7 or 8 indicators.
- 22 changed more positively on 4 to 6 indicators.
- 14 changed more positively on 2 or 3 indicators.
- 6 changed more positively on zero or only 1 indicator (usually the number of units built).

The effects of the LIHTC developments seem to be based largely on the context of the broader community. Deng found that high-poverty neighborhoods were most likely to experience more positive effects. By contrast, middle-class neighborhoods showed more positive changes in the *control* groups on almost all indicators. Meanwhile, most working-class LIHTC neighborhoods demonstrated a mix of both positive and negative changes relative to their control groups.

Baum-Snow and Marion (2009) analyzed data on 24,504 LIHTC developments and their neighborhoods. They found that LIHTC developments significantly increased the turnover of ownership households within 1 kilometer of the project site. They also estimated that each 100 additional LIHTC units resulted in a 0.8-percent decrease in the neighborhood's median household income. The combination of these factors, along with evidence of little overall change in the number of ownership units in these neighborhoods, led the researchers to identify negative peer effects or the stigma of living near LIHTC projects as a cause for changes in median income.

Other neighborhood effects of affordable housing programs include the effects on racial segregation. Early assisted or public housing efforts were noted to have contributed to racial segregation in urban areas across the country, based on siting decisions (Massey and Denton, 1993). In their study on recent changes in the siting of affordable housing, Rohe and Freeman (2001) found that although race seems to contribute less to these decisions, and more integration occurs as a result, it remains a factor.

As they did to racial segregation, the public housing programs of decades past contributed to the concentration of poverty in inner cities. Numerous studies have linked the spillover effects of public housing projects to increased levels of poverty in the surrounding neighborhoods (Carter, Schill, and Wachter, 1998; Holloway et al., 1998; Massey and Kanaiaupuni, 1993; Schill and Wachter, 1995). Using data from Boston, Schill, and Wachter (1995) found that affordable housing programs continue to foster the concentration of low-income families in inner-city neighborhoods and that the concentrations of public housing and subsequent increases in neighborhood poverty rates are positively correlated.

By contrast, Freeman (2003) found no relationship between the existence of an assisted housing development and concentrations of poverty. Whereas earlier studies performed on aggregate data showed a relationship between the two, Freeman found that the relationships generally disappeared when he controlled for individual and macro-level neighborhood characteristics.

Research Gaps

Recent research by the Furman Center indicated that the effect of an IZ program is, in large part, based on the features of the program (for example, cost offsets and development thresholds) and other variables specific to the jurisdiction (for example, strength of housing market and regulatory framework) (Schuetz, Meltzer, and Been, 2007). Likewise, CCRH/NHANC (2003) found significant variation in the characteristics of IZ programs in California. Their research consisted of a survey on the prevalence and components of these programs and concluded that the effects of the programs depend, in part, on such programmatic details.

These details likely explain the varied—and sometimes contradictory—results seen in previous studies on the effects of affordable housing programs. For instance, federal subsidized housing programs that focused on revitalizing low-income, inner-city neighborhoods, understandably resulted in higher neighborhood property values (Schwartz et al., 2006) and other improved conditions (Deng, 2009). By contrast, IZ results in the development of a limited number of lower priced units in otherwise overwhelmingly market-rate neighborhoods.

Future research should attempt to control for these program characteristics and other neighborhood contexts. Also, a major gap exists in research on the specific neighborhood effects of IZ, as distinct from state or federal subsidized housing programs. These affordable housing programs are quite different in their targets, goals, and implementation. As such, local housing agencies would benefit from a better understanding of the effect inclusionary housing projects have on neighborhood property values and from comparing and contrasting these findings with those of previous studies on other affordable housing programs. Furthermore, knowledge gaps still exist regarding the neighborhood effects of IZ (and even other affordable housing programs) on many quality-of-life measures, such as crime levels and school quality. Future research can explore these relationships as well.

Local Governments

In addition to the effects that IZ may have on builders, consumers, and neighboring property owners and residents, IZ may have several effects on the jurisdictions adopting the IZ policy.

Discouraging Development Within the Jurisdiction Adopting IZ

First, the adoption of an IZ policy could have the effect of discouraging development within the jurisdiction. Where IZ is mandatory (or is tied to zoning so restrictive that the IZ policy is functionally mandatory), the requirement operates as a tax on new residential development (Been, 1991; Clapp, 1981; Ellickson, 1981). To avoid the tax, developers may choose not to build in the jurisdiction, or may choose to build either types of residential development not subject to the IZ or forms of nonresidential development rather than develop forms of housing subject to IZ (Been, 1991; Ihlanfeldt and Burge, 2006; Schuetz, Meltzer, and Been, 2011). The extent to which a developer will build elsewhere or substitute other forms of development within the jurisdiction will depend on such factors as the relative elasticities of supply and demand for the various forms of development and the various jurisdictions (Been, 2005).

The elasticity of supply depends on such standard supply-side variables as physical or regulatory constraints on developable land and the relative cost of nonresidential development, including land costs, zoning, and the appropriateness of location (Clapp, 1981; Katz and Rosen, 1987). The elasticity of demand will depend on income and preferences of new households, particularly their willingness to pay to live in a particular jurisdiction (Dietderich, 1997). Homebuyers may be more willing to pay the tax to live in areas with location-specific amenities or institutions (Ellickson, 1981). Moreover, the prevalence of IZ, other affordable housing production programs, and other land use regulations in neighboring jurisdictions will affect the ability of both developers and households to substitute away from jurisdictions with IZ (Been, 2005; Schuetz, Meltzer, and Been, 2011).

To the extent that competition from other forms of development or other jurisdictions discourages the development of residential housing in jurisdictions that impose IZ, the jurisdiction will suffer a loss of any net benefits of development. These lost benefits include, for example, the value of the jobs and local purchasing created by development, the increased value of the property developed, and the value of increased availability of housing within the jurisdiction, minus any costs the development imposes.

The net cost a jurisdiction would bear if imposing IZ resulted in less development within the adopting jurisdiction depends on the housing market, the jurisdiction's taxing and infrastructure finance systems, and many other factors. Quantifying the cost would be difficult because of that variation, but also because the empirical evidence on the effect of jurisdictional competition on development activity is mixed (Sterk, 1992). Furthermore, some evidence suggests that impact fees result in increased building activity in a jurisdiction by lowering opposition to the development (Burge and Ihlandfeldt, 2006; Ihlanfeldt and Burge, 2006). If IZ lowers opposition to market-rate development by addressing concerns opponents of that housing have about the jurisdiction's need for affordable housing, it similarly might result in increased building activity (although it might also trigger opposition to affordable housing).

Effect on Tax Revenues

A jurisdiction imposing IZ might see several different effects on its tax revenues. First, to the extent that IZ raises the cost of market-rate housing—as some research suggests it might, at least in appreciating real estate markets (Knaap, Bento, and Lowe, 2008; Schuetz, Meltzer, and Been, 2011)—jurisdictions may realize increased tax revenues because of the higher values of the housing. Those increased revenues may be offset, however, if IZ results in less market-rate development within the jurisdiction, as discussed previously. Furthermore, to the extent that developers avoid the tax IZ imposes, by passing the tax back to the landowner in the form of lower payments for the land, the jurisdiction may suffer some offsetting decrease in property tax revenue from the landowner (and possibly in decreased transfer taxes) (Ihlanfeldt and Shaughnessy, 2004).

IZ also might impose opportunity costs on the jurisdiction if the affordable IZ housing uses land that would otherwise have been developed for higher cost housing (and would, in turn, produce greater property tax revenues for the jurisdiction). If the jurisdiction has sufficient other land available for higher cost housing, however, no such opportunity cost may arise.

Finally, to the extent that developers react to IZ by building in other jurisdictions, the local government may incur an opportunity cost in the foregone property tax revenue from the development, foregone sales tax revenue on goods and services associated with the development, and foregone income taxes on workers employed by the development or new residents who would have moved to the jurisdiction to live in the housing. Of course, not all jurisdictions receive sales or income tax revenue from activity within their borders; in those that do not, opportunity costs associated with development that moved to other jurisdictions will fall on higher levels of government, which may receive offsetting taxes from the development substituted elsewhere within their jurisdiction.

Effects on Infrastructure and Service Provision Costs

To the extent that either market-rate housing or affordable housing imposes more costs on the local government than it brings in tax revenues, those costs will increase if IZ results in more such housing or decrease if it results in less (as long as any substitute developments do not impose higher relative costs on the jurisdiction). Housing built pursuant to IZ may compel the jurisdiction to provide infrastructure such as roads, sewer systems, and school buildings and to provide services such as schooling, police and fire protection, and infrastructure maintenance. Jurisdictions may pay for such infrastructure through impact or other fees imposed on development and for ongoing services by property taxes or user fees imposed on residents of the development. If development costs the jurisdiction more than it brings in through taxes or fees, however, IZ may increase a jurisdiction's costs if it results in more building.

Effects on Other Costs

Administration of an IZ program likely will impose costs on the jurisdiction, which will have to hire administrators, inspectors, and enforcement officers to oversee the development of the IZ units, oversee the expenditure of any in-lieu fees, and possibly staff whatever system is used to market and allocate the IZ units (although the developer may also assume that function).

Finally, to the extent that the structure of the IZ program triggers requirements (such as prevailing wage laws) that increase the costs of building affordable housing and that the local jurisdiction is helping to finance the affordable housing through bonds, LIHTC, or other financing mechanisms, those additional costs may reduce the funds available for other affordable housing projects.

Research Gaps

Too little is known about the extent to which land use regulations in general, or IZ in particular, affect the decisions developers make about whether, when, and what to build in a particular community. In addition, few researchers have tried to quantify the effects IZ might have on local governments' income or expenditures. Such assessments would be extremely difficult to generalize because of the tremendous variation among IZ programs and land use regulation schemes of different jurisdictions. Nevertheless, more attention to the effect of IZ programs on the adopting jurisdictions' development patterns, tax receipts, and infrastructure and service outlays would be helpful.

V. Sustaining IZ Benefits

The primary goal of inclusionary zoning programs, as discussed in Section III, is to increase the availability of affordable housing units. Determining the number of units produced has long been part of the efforts to assess the effect of IZ. Although tracking how many units of affordable housing IZ programs have produced is important, knowing the number alone is insufficient for understanding the value IZ might offer for enhancing affordable housing opportunities and providing the other benefits attributed to IZ programs. In addition to the count, examining the duration of affordability and factors that can affect duration is important. A review of relevant literature indicates that previous research has focused less on retention than on production of affordable housing units. Research has documented affordability requirements and changes to them over time and sheds some light on the numbers of units lost, but no study has taken as its central purpose an examination of the retention of IZ-produced affordable housing units and the risks to retention. The literature does highlight issues to consider related to sustaining benefits, including a number of factors that can lead to unit loss and a variety of approaches to retaining affordability over time.

Terms of Affordability

The literature shows considerable variation in the terms of affordability across IZ programs, as detailed previously, with requirements ranging from a minimum of 10 years to a maximum of permanent affordability. Terms differ in many jurisdictions by type of unit; rental units tend to have longer affordability periods than ownership units. Brown's (2001) comparison of IZ ordinances in the Washington, D.C. region found regulation periods ranging from 10 to 20 years for rental units and from 10 to 15 years for ownership units. In their study of IZ in three metropolitan areas, Schuetz, Meltzer, and Been (2009) found much longer periods of affordability among the programs in the San Francisco Bay Area in California and in suburban Boston, Massachusetts. In the Bay Area, 19 percent of IZ programs had affordability requirements that extended 80 years or longer, including permanent affordability. Of the suburban Boston programs, 34 percent had requirements of 80 years or longer. A statewide survey study of IZ programs in California found the median duration of affordability restrictions to be 42 years for rental units and 34 years for ownership units (CCRH/NHANC, 2003). Schuetz, Meltzer, and Been (2009) reported, however, that affordability terms for one-fourth of the programs in the Bay Area and nearly one-half of those in suburban Boston (48 percent) were unknown or not defined.

Affordability requirements tend to be similar within regions. For example, requirements in the Washington, D.C. region, which are shorter in duration than those in the Bay Area and suburban Boston, are similar across jurisdictions. Brown (2001) showed a 20-year affordability requirement for rental units in three of the four counties she studied and 10- to 15-year terms for ownership units. Schuetz, Meltzer, and Been's (2009) research found that no program in the Washington, D.C. region had longer than a 30-year requirement, the longest being 25 years for rental units in one county. By contrast, most of the suburban Boston programs for which the researchers had affordability requirement data had long terms—34 percent of programs had affordability terms of 80 years or longer. Bay Area programs, by contrast with both the Washington, D.C. and suburban Boston regions, had a more evenly distributed range of affordability terms. Slightly less than three-fourths of the Bay Area programs (72 percent) had affordability requirements of between 21 and 59 years. Each 10-year increment of this span (for example, 21 to 30 years, and so on) accounts for 18 percent of the total number of IZ programs.

The variations in affordability requirements, by program and region, indicate the timeframes in which a jurisdiction is likely to experience a reduction in its affordable housing stock. Along with the likely loss of affordable units, associated benefits, such as income diversity and, possibly, racial and ethnic diversity, also will be at risk. Brown (2001) documented that, by 1999, in Montgomery County, Maryland, about 6,800 of the 10,600 affordable housing units that had been produced were no longer affected by any affordability restrictions. Data reported in the literature suggest that the number of units built subsequently in the Washington, D.C. region does not replace, much less increase, the number of units lost in this one county alone. Brown showed a total of 12,990 IZ units produced in the Washington, D.C. region as of 1999. Schuetz, Meltzer, and Been (2009) reported that, by 2003, 15,252 units had been created. The additional 2,262 affordable housing units were only about one-third of the total lost as of 1999, and that does not take into account additional units lost since 1999. Brown estimated that between 1999 and 2009, an additional 2,000 units would be lost.

Although suburban Boston has longer affordability terms than other jurisdictions with IZ, the total number of affordable units produced as of 2004 was unknown, so the percentage of all IZ units covered by the long-term affordability requirements is unclear. That most units produced under IZ in that region will remain affordable for longer periods of time seems plausible, especially in comparison with units in the Washington, D.C. region that have much shorter term requirements, but that is simply a guess based on the percentage of programs with requirements of considerable length. Like units in the Washington, D.C. region, those under shorter affordability requirements could be lost much sooner.

The Bay Area presents a different scenario for the loss of units related to expiring affordability requirements. Schuetz, Meltzer, and Been (2009) provided data on term requirements that suggest the possibility that the loss of units, among the 9,154 produced as of 2003, will occur gradually because affordability expirations of the 55 programs appear to be more evenly spread across time. This assumption is similar to the one made for units in suburban Boston, however, because the study did not provide the percentage of *units* associated with each individual Bay Area program.

The literature includes some discussion that differences in features and amenities between market-rate and affordable IZ sales units could help extend affordability beyond the expiration of requirements (Brown 2001). Affordable units tend to have fewer amenities. As Brown points out, however, little to no evidence supports or rejects this possibility.

Other Retention Threats

In addition to expiring affordability requirements, another risk to affordability can affect units before initial occupancy. As Brown (2001) detailed, some IZ programs enable the lease or sale of units to households regardless of income if the unit is not occupied by an income-eligible household within a specified period of time. For example, Brown reported that developers can offer an affordable unit in Montgomery County not assigned to an income-eligible household within 90 days to an interested party regardless of household income.[12] In what appears to be an even greater risk to affordable units than the rule in Montgomery County, the IZ ordinance in Loudoun County, Virginia, enables a developer to convert a housing unit from affordable to market-rate if it is not sold in 120 days from the issuance of the building permit. Brown stated, "[u]nits could be converted to market-rate months, and sometimes even a year, before they are even constructed" (Brown, 2001: 22). Such units might show up in counts of units built, yet never serve lower income households. It is unclear how many units such rules have affected in the Washington, D.C. region, and how many affordable units across the country have been lost, either temporarily or permanently, because of similar rules.

Insufficient or lack of monitoring also can lead to a loss of affordable units. Survey results from a study that gathered data from 92 percent of the known IZ programs in California found monitoring quality to be an important factor for maintaining affordable units over time (CCRH/NHANC 2003). Survey respondents reported fewer losses among rental units, attributing this finding to the relative ease of calculating rents that meet the affordability requirements and eligible household income levels. In addition, respondents indicated that management of rental units by nonprofit organizations bound by use agreements and deed restrictions also helped ensure better monitoring. Ownership units were harder to monitor. The study found that ownership units could more easily lose affordability at the point of subsequent

[12] Brown did not specify whether this rule pertains to both rental units and ownership units, but elsewhere in the article, she discusses the loss of ownership units. Also, whether a subsequent renter or buyer would have to meet the affordable income requirements if the unit turned over while the affordability requirement remained in effect is unclear. The article did not say whether the rule was original to the IZ ordinances or added at a later date.

sales because ensuring requirements for sales price and equity sharing were met was difficult. The report described as "stunning" the loss of ownership units in Irvine. Before 2001, the IZ program had no system in place to monitor resale. Consequently, nearly all of the 1,610 units built before 2001 have been lost as units were sold at market rates.

The literature identifies two additional risks to sustaining IZ benefits related to the future production of affordable housing units rather than the retention of units already built. The first is an overall decline in construction. Production of affordable units under IZ programs depends on new construction or major rehabilitation of existing structures and, therefore, on the availability of developable land parcels and housing demand.[13] If the supply of available housing construction sites, whether vacant land parcels or existing buildings, diminishes, housing starts will slow for all types of units. If consumer demand for housing falls, for whatever reason, builders' motivation to construct new housing will decline, as well. "Inclusionary zoning relies on a strong residential market to create below-market units" (Burchell and Galley, 2000: 3).

A second risk stems from pressure to stop or reduce production of additional affordable units in an area. Such pressure can come from neighbors arguing that their area has more than its fair share of affordable units or that density bonuses serve to increase the height of multiunit buildings in such a way that negatively affects nearby properties, or from other reasons (Pendall, 2009; Schofield and Brown-Graham, 2004). If public pressure is able to reduce political support for IZ programs, it could reduce the number of new affordable units available in the future.

Taken together, these risks to affordable housing units built (and not yet built) through IZ programs raise questions about the longer term prospects of IZ as an important source of affordable housing in some jurisdictions.

Efforts To Retain Affordable Units

The literature includes some discussion of approaches to slow or limit the loss of affordable housing units produced through IZ programs. Methods include selling units to entities that will ensure extended periods of affordability, bringing units into community land trusts, modifying IZ ordinances' affordability regulations, and strengthening program monitoring systems.

Brown (2001) cited the Montgomery County program's effort to maintain the availability of affordable IZ units by enabling the public housing agency to purchase affordable ownership units and rent or sell those units to qualifying households. In addition, qualified nonprofit organizations may purchase units the housing agency does not acquire. The public housing agency and qualified nonprofit organizations may purchase up to 40 percent of the affordable housing units produced through IZ. Units the agency or nonprofit organizations purchase will be held in perpetuity as rental housing for very low- and low-income households. In Fairfax County, Virginia, the housing authority may purchase up to one-third of new units during the initial marketing period, during which eligible households also may buy a home. After this initial period, nonprofit organizations may buy units. The housing authority also has the first option to buy a unit when it first comes up for resale after affordability regulations expire.[14] The IZ ordinance in the city of Boulder, Colorado requires developers to offer affordable rental units to the housing authority or a nonprofit housing organization (Davis, 2006).

A similar retention method involves selling ownership units to a community land trust. After a housing unit is brought into a land trust, the homeowner may sell the building but not the underlying land, the ownership of which is retained by the land trust itself (Davis 2006). Owners are not allowed to sell their home for more than a sales-price ceiling that the trust establishes. Davis stated that bringing affordable ownership units into a community land trust can be a good option for a developer working in the context of an IZ program with permanent affordability requirements. Community land trust organizations

[13] Some IZ ordinances cover rehabilitation and new construction. For example, the city of San Diego's Condominium Conversion Ordinance requires conversion projects that meet certain conditions to adhere to the IZ ordinance (HUD, 2009). New York City's IZ includes rehabilitation of rental apartment buildings in areas approaching buildout (Pendall, 2009).

[14] Brown did not address how housing agencies and approved nonprofit organizations are notified of units going up for sale the first time after affordability regulations expire. Although she cited evidence from both counties of public agencies buying affordable units when they were for sale initially, whether any units had been purchased at the time of resale was unclear.

that have purchased affordable units built through IZ initiatives include those in Boulder and in Burlington, Vermont.

IZ ordinances are not static, as this literature review discusses throughout. Affordability requirements are one element of programs that can change over time. Schuetz, Meltzer, and Been (2009) and Pendall (2009) found that changes to the terms of affordability tend to extend rather than shorten them. The literature suggests that the changes affect housing units produced after the ordinance modification; previously built units remain governed by the original affordability requirements. Whereas examples Schuetz, Meltzer, and Been (2009) discussed from the Bay Area and suburban Boston involved modifications to the affordability requirement alone, Pendall (2009) discussed the case of Pleasanton, California, where the change to a 99-year affordability period was enacted along with a change in emphasis from production of ownership units to that of deeply affordable rental housing. A statewide study in California found that one-half of the reporting jurisdictions had modified their ordinances during the 5 years before the study and that many of the changes involved increasing the affordability requirements to terms from 55 years up to permanent affordability (CCRH/NHANC, 2003). Davis (2006) reported that the IZ ordinance in Montgomery County changed so that, as of April 2005, the period of affordability on new rental units would last 99 years and that for new ownership units, 30 years. For units resold within the initial 30-year period, another 30-year period would go into effect.[15]

As discussed previously, a lack of monitoring can lead to the loss of affordable housing units. Active monitoring can be an important tool for helping to sustain IZ benefits. Based on a review of the literature and practitioner interviews, Davis (2006) reported that jurisdictions increasingly have turned over the tracking, monitoring, and enforcement of resale provisions on affordable housing units with deed restrictions, such as those produced through IZ programs, to nonprofit organizations or other public agencies because of past problems. The California study found that although most jurisdictions have systems in place to maintain affordability over time (deed restrictions, resale controls, rental contracts), many respondents failed to answer survey questions related to the monitoring and tracking of housing production and retention (CCRH/NHANC 2003). The report noted that even jurisdictions responding to monitoring questions did not make it clear if efforts have been effective in retaining IZ affordability benefits. The report concluded with a call for field research on the effectiveness of monitoring and affordability restrictions, especially for ownership housing.

[15] The article did not address whether or how the additional term of affordability is enforced.

Research Gaps

The literature raises important concerns regarding the retention of affordable housing units produced through IZ, although no extant research on sustaining IZ benefits appears to exist. For the most part, any discussion of affordability requirements appears as one of many features of IZ programs that vary across jurisdictions and can vary across time. From the gaps in research on sustaining benefits, a number of concerns and questions for additional research arise.

No work has examined whether jurisdictions have monitoring systems in place to track outcomes of the affordable IZ units themselves. Consequently, the mechanisms used to monitor the production of new units and retention of existing affordable IZ units are little understood. Furthermore, the extent to which monitoring systems are effective in ensuring the expected number of units is built and preventing the loss of units before the expiration of affordability regulations is unknown. Also, although the loss of affordable units because of expiring affordability regulations is expected, the number of units that have converted to market rate for this reason is not known. Existing research has raised an additional question about unit loss: how many IZ units built to be affordable never have been leased or sold to income-targeted households? Work that counts units produced does not go far enough to capture the actual number of affordable units in practice.

In addition to studying the retention of units during the affordability period through monitoring practices, more work examining the full range of efforts to retain units for longer periods of time is needed. For example, the literature shows that some ordinances give public housing agencies and approved nonprofit organizations the right of first refusal to purchase affordable housing units, which can then remain affordable for a longer period of time than otherwise required. Issues to pursue include understanding how an ordinance comes to include such clauses, how widespread the inclusion of such clauses is, whether and why agencies and organizations have taken advantage of the option, and how many units these clauses have affected.

Research on ordinance modification is another gap related to sustainability of affordable IZ units. Some evidence suggests that modifications have lengthened affordability terms, but no focused effort on this issue exists. Specifically, knowing whether most changes are serving to lengthen or shorten the terms, and what the motivations for changes have been, would be helpful.

VI. Related Issues—IZ and Smart Growth

Little research published to date has addressed the possible relationship between inclusionary zoning and smart growth development, although IZ has been referred to as "a principal tool of smart growth" (Smart Growth Gateway, n.d.).[16] Gray defined smart growth as "more compact land development that offers a variety of housing and transportation options" (Gray, 2009: 5). What references the research literature makes to IZ and smart growth suggest a complicated interaction. Brown (2001) noted that, in an effort to attract the development of affordable housing near transit sites, Montgomery County, Maryland's IZ program lowered the number of affordable units required and began offering a density bonus, thereby reducing the primary IZ benefit to attract housing production near transit sites.

Two other IZ programs Brown (2001) examined placed restrictions on their IZ programs to manage growth. The Prince George's County, Maryland, program pertained only to developments with 50 or more units that would be located in designated low-density districts. The jurisdiction wanted to steer new construction away from areas considered too dense and used IZ as a tool to do so. In Loudoun County, Virginia, considerable growth during the 1990s led to concerns about the preservation of rural areas. As part of broader efforts to slow construction starts and protect rural areas, county officials reduced by one-half the density bonus incentive developers could receive and the number of affordable units required under IZ.

Brown described changes to IZ programs that support Schofield and Brown-Graham's (2004) findings—that opposition to new IZ development can stem from concerns over the effect of growth (smart or otherwise) on local services, infrastructure, and the environment rather than from opposition (at least explicitly) to new affordable housing.[17] The use of density bonuses, in particular, can fuel opposition, which, the researchers noted, can be "fierce."

Research Gaps

The literature suggests that the relationship between IZ and smart growth is not straightforward. Jurisdictions can use IZ to support transit-oriented development (TOD) by offering developers incentives to build near transit-rich locations. In other contexts, they can use IZ programs as one means to slow growth in areas deemed too dense or at risk of becoming so by reducing incentives offered developers, especially density bonuses.

Given the paucity of research that has examined interactions between IZ and smart growth, future work could begin by documenting the number of jurisdictions using IZ in conjunction with TOD and other smart growth initiatives and those jurisdictions' experiences. Such work could include an examination of the differences in uses of IZ in urban, suburban, and more rural contexts and the role of community support or opposition to shaping particular projects.

[16] Additional policy tools that fall under the umbrella of smart growth, such as form-based codes—which provide an alternative to use-based zoning codes by focusing on physical form (http://www.formbasedcodes.org/)—and the Complete Streets initiative—which supports development of street systems that lead to a safer environment for all users (http://www.completestreets.org/)—might intersect well with IZ. No research appears to have been published yet that explores IZ's intersection with these tools, however.

[17] Stever, Jr. (1986) argued that opposition to IZ based on environmental concerns might serve as cover to concerns about increasing the number of lower income, possibly racial minority, households in certain areas.

VII. Conclusion: Research Gaps and Future Work

The draft version of this literature review set the stage for a meeting of the research team and U.S. Department of Housing and Urban Development advisors in early March 2010. Participants discussed a number of the gaps identified herein as the first step toward developing a research design. This section organizes those research gaps by the key issues the team identified as viable to pursue through case study research. Among the gaps highlighted, a few represent limitations of existing research; for example, questions remain about the relationship between the context of ordinance adoption and program outcomes. Most issues highlighted in this section, however, are actual gaps or holes in past research efforts. For example, little to no research has examined the oversight and enforcement of inclusionary zoning regulations governing the allocation of units or whether units remain affordable for the intended period of time. This section does not include all of the gaps identified in the literature review; although important, some gaps are less amenable to a case-study approach than others, and addressing certain gaps would require a level of effort precluded by the project scope.

IZ Ordinance Development and Adoption

To better understand the challenges and successes of IZ program implementation, having a grasp of the ordinance development and adoption process is important. Program goals are clarified or confused during adoption, deals are struck between concerned parties, and ordinances are shaped in response to a broad range of circumstances. Examining the process, motivations and contextual factors that give shape to IZ can be crucial to understanding implementation and program outcomes over time. These issues are not background noise to IZ programs, but important factors in what happens and how.

Interrelated gaps are associated with the context of IZ ordinance adoption. The first involves understanding the relationship between the state and local context of ordinance adoption and program outcomes. Site-specific research in this area exists, but additional work could support efforts to develop a more systematic examination of the significance of contextual factors for eventual program outcomes.

A second, related, issue is whether and how changes in the initial circumstances under which an ordinance is adopted affect the ordinance itself over time. Do contextual changes make ordinances vulnerable to modification or repeal? This unanswered question represents a gap in existing research; including it in the case study project could broaden understanding of how and why ordinances change over time in a way that could be useful to policymakers and practitioners.

Finally, a gap exists in understanding relationships among key stakeholders involved in the development and adoption of IZ ordinances; their interests, incentives, and deal-making; and the goals, structures, and outcomes of IZ programs. A better understanding of the relationships among key parties during ordinance development could help explain at least a portion of the variation in unit production across programs.

IZ Implementation

A second cluster of gaps concerns IZ implementation. Specifically, the set of implementation issues the research team identified as suitable to a case-study approach includes IZ relationships, programmatic changes over time, builder participation in IZ, implementation of the in-lieu fees option, the allocation of affordable IZ housing units, and enforcement of affordability provisions.

Little work focuses on the nature and significance of relationships among stakeholders during the course of IZ implementation. Examining how local government, builders and developers, and nonprofit organizations negotiate their interests during the course of an IZ project would increase the understanding of how costs and benefits are identified and allocated, how prices are set, how many affordable units get produced, and where they are located.

The existing literature also pays little attention to relationships between IZ programs and smart growth initiatives. Where and under what circumstances IZ and initiatives such as transit-oriented development are used together is little known. Also unknown are the challenges that might arise from joining two housing development tools that might support each other, but might not because of differences in each initiative's core purpose.

Like the state of research on changes to the context of the adoption of IZ ordinances, interest exists in, yet very little research exists on, changes in IZ implementation over time. Program goals and outcomes likely will change in response to a number of factors, including political and economic conditions. In addition to exploring how contextual changes affect the ordinance itself, studying how implementation shifts in response to the broader context and how changes affect the production and supply of affordable housing units is also important.

Whereas a considerable amount of research has dealt with IZ effects on house values, little work has focused on builders themselves and how ordinances might affect their activities. Little is known about which builders and developers participate in IZ programs, which do not, and the factors motivating either decision. Neither is much known about which incentives are most effective in garnering IZ program participation among builders and developers.

Little to no research has examined the use of in-lieu fees as an opt-out for developers under some IZ ordinances. In particular, little is known about where and why IZ programs offer an in-lieu fee option to developers and the portion of developers who take advantage of this opt-out. Details on how the in-lieu fee options work in practice are scarce as well. A study that includes how fees are collected and who actually pays the fees would be informative, as would one that examines the management of fee collection and eventual use of fee income. In addition, research into the effect of the in-lieu fee option on the number of affordable IZ units built and their location relative to diverse and safe neighborhoods, good-quality schools, and job opportunities is important to understanding IZ outcomes and goal achievement.

Ordinances should make clear how many affordable units they require participating developers to build and the degree of affordability. The existing research does not address whether ordinances spell out how affordable units are to be allocated, who determines income eligibility and how, and who manages IZ units (sets rent and sales prices, screens renters and buyers, selects occupants, supervises rent collection, and so on). In short, the structure and practice of daily management of affordable IZ rental units and the initial and subsequent disposition of units for sale have been little studied. A related question is whether affordable units actually serve target households.

Closely related to issues of unit allocation are those of enforcement. Whether ordinances detail the management structure or not, examining actual enforcement efforts related to affordability provisions is important. Concerns include whether a tracking and monitoring system is in place to determined whether affordability provisions are followed. Similarly crucial is knowing if affordable units serve intended households as long as expected or whether units fall out of IZ programs earlier than planned because of inadequate monitoring and enforcement of program requirements. Examining enforcement would greatly increase understanding of the extent to which IZ programs meet affordable housing goals *over time*, not just on paper or in the short term.

Summary

At least two themes emerge from those research gaps highlighted previously related to ordinance adoption and implementation—change over time and IZ in practice. Most extant studies document programs at a point in time and limit the discussion of change to factual information (for example, that an ordinance has been modified). Despite showing program diversity and complexity, studies have not been as effective in answering questions related to why and how programs change and the implications of changes for program outcomes. Research also provides information on implementation in terms of what is written in ordinances; it has shed little light on the practice of IZ and any differences between program goals or ordinance requirements and the reality on the ground. Efforts to understand IZ stand to benefit greatly from research that engages with IZ as practiced over time.

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