

INCLUSIONARY ZONING CONSULTATION SUBMISSION

AUGUST 16, 2016



Federation of Rental-housing
Providers of Ontario

The Hon. Chris Ballard
Minister of Housing

Environmental Registry # 012-7617

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INTRODUCTION

It has been well-documented that Ontario is facing a growing crisis of housing affordability, and that families are facing barriers to find housing that they can reasonably afford. This crisis is not limited to the skyrocketing costs of home ownership—families who rely on rental housing are facing significant impediments in finding the rental housing they can afford in locations connected to their work, schools, and other community supports.

According to the Canada Mortgage and Housing Corporation (CMHC), the average annual demand for new rental housing in Ontario is 18,000 units, however the number of new units being made available for rent is less than 5,000 annually. This deficit of over 13,000 rental units every year is what defines the current rental housing crisis, and it continues to get worse.

In the early 1990s, there was an average of over 11,000 units being added annually to the available rental stock to meet the needs of Ontario families. Today we see half that number coming online primarily due to restrictive government policies such as rent control constraints and high development fees that make it uneconomical to build rental housing in the province. There is significant activity in building new rental buildings—however it is happening in other jurisdictions outside of Ontario, primarily in select cities in the United States.

In collaboration with the Ontario government and a number of municipalities, FRPO tabled its most comprehensive action plan in 2015 on how to remove the barriers to building more rental housing in Ontario. This plan was based on evidence, and included Canadian home-grown success stories such as the City of Vancouver's Rental 100 Program, which resulted in the building of 5,000 much needed rental housing units in the city. As part of this initiative, FRPO hosted provincial and municipal elected and staff officials in Toronto in September 2015 to showcase to Ontario government decision makers how the Rental 100 Program delivered on its promise of creating more rental housing in the city.

FRPO was discouraged to see that only one component of its 2015 recommendations were adopted as part of the update to Ontario's *Long Term Affordable Housing Strategy* in March of this year, namely the launch of a pilot initiative of a portable housing benefit for victims of domestic violence in select communities. The evidence available on the success of the implementation of portable housing benefits to removing barriers for low-income families seeking rental housing is overwhelming. In fact, the Region of Peel was successful in reducing its own waiting list by over 8,000 through

CONCLUSIONS FROM OTHER JURISDICTIONS WHERE INCLUSIONARY ZONING HAS BEEN INTRODUCED

- Price controls do not get to the root of the affordable housing problem—it actually makes the situation worse by driving up all housing prices
- Housing shortages are generally caused by government restrictions on supply
- 90% of the difference between physical construction costs and the market price of new homes can be attributed to land use regulation (government intervention)
- Inclusionary zoning restricts families upgrading to newer/better homes by limiting supply due to over regulation, thereby not creating opportunities for families with lower incomes
- The goal of creating more affordable housing can only be achieved by encouraging the production of new housing

the introduction of a portable housing benefit for families who qualify by retooling their funds as a service manager.

From our perspective, this is a significant lost opportunity for Ontario families to not have wider access to this efficient solution for helping needy families find the rental housing they need without having to navigate a costly network of social services support offices.

Another component of the March announcement of the *Long Term Affordable Housing Strategy* was the proposed implementation of *Inclusionary Zoning* legislation that would require any new housing development in the province to contain a prescribed number of units to have a price (purchase or rental rate) set below market levels. The evidence on inclusionary zoning programs implemented in other jurisdictions such as Chicago, New York and San Francisco shows that those jurisdictions did not achieve their targets to increase the supply of affordable housing. It is FRPO's view that the best way to create more affordable housing is to support the creation of new housing overall.

The private sector rental housing industry has the specialized knowledge and financial capital available to invest in the creation of new rental housing in Ontario—what is needed is a stable and positive business environment to encourage the investment of this available capital here in Ontario.

We call upon the Ontario government to re-evaluate its plans to introduce inclusionary zoning into Ontario. The evidence in Ontario suggests restrictive government policies have strongly contributed to the shortage of rental housing at all price levels. The evidence from other jurisdictions where inclusionary zoning has been introduced reveals the policy has not delivered the anticipated affordable rental housing as intended. It has also been found to be a very complicated policy that is difficult to implement and maintain.

Throughout our participation in the public consultation sessions throughout June and July, ministry staff made several assertions that at this time there is no indication that the province would be providing any form of financial subsidies to developers to implement the proposed inclusionary zoning policies. In the inclusionary zoning initiatives implemented in the United States a core component to the program included significant subsidies to provide the necessary incentives to promote new development. Even with those financial incentives, the results in every jurisdiction we reviewed fell short of the development targets. With no financial subsidies and unclear incentives in the proposed Ontario model, it is unclear how this proposed inclusionary zoning policy could be successful.

There are much better solutions available to the Ontario government on ways to help build Ontario up through the creation of much needed new rental housing stock across the province. We believe that there are more effective ways for the public and private sector to work together in support of increasing the availability of housing that families can afford.

FRPO remains committed to working together with the government to meet the housing needs of Ontario's families together.

FRPO RESPONSE TO THE GOVERNMENT'S CONSULTATION PAPER

In the remainder of this document we have provided our evidence-based advice to the questions contained in the consultation document on the potential introduction of inclusionary zoning measures in Ontario. While FRPO continues to maintain the position that inclusionary zoning will not deliver the desired results set out in the paper, we have provided our input on the specific questions put to stakeholders.

I. AN INCLUSIONARY ZONING FRAMEWORK FOR ONTARIO	
FRPO Overview Comments	<p>FRPO has undertaken an inter-jurisdictional scan and a review of the available evidence on the actions and outcomes of other inclusionary zoning programs (a summary of this research can be found in the appendix). FRPO's responses to the government's consultation paper questions draw on this research and evidence.</p> <p>A key component to maximizing any positive benefit from inclusionary zoning programs is local flexibility. This is something that is highlighted in every analysis that we have reviewed on this type of policy.</p> <p>Municipalities need to be able to make local decisions about whether inclusionary zoning will be an effective way to achieve their affordable housing objectives. Should a municipality choose to proceed with an inclusionary zoning bylaw they need the flexibility to design the bylaw in a way that meets their local objectives.</p> <p>Another important consideration is the unique nature of the regional housing markets across the province. Ensuring flexibility will allow rural and northern municipalities the ability to develop bylaws that reflect the needs of their communities.</p> <p>Amending the legislation to allow municipalities to accept cash-in-lieu and offsite buildings would further enable much needed local flexibility. Cash-in-lieu policies have been included in other jurisdictions as a tool to generate affordable housing, most often in the case of smaller developments where implementing inclusionary zoning may be unfeasible.</p> <p>For example, in small rural and northern communities there are few large multi-residential developments. Smaller buildings with fewer units will have greater difficulty meeting unit set aside requirements. Allowing cash-in-lieu or offsite would be a practical solution to these types of challenges.</p> <p>FRPO recommends that Ontario should allow municipalities to collect cash-in-lieu as an alternative to inclusionary zoning, and require those funds to be dedicated to a portable housing benefit for low to moderate income Ontarians.</p> <p>A cash-in-lieu policy which requires municipalities to provide a portable housing benefit would be an extremely effective tool that would directly deliver on the government's objective of integrated mixed income communities.</p> <p>Several municipalities have implemented cash-in-lieu policies to stimulate more affordable housing, including New York City, Vancouver, Chicago and San Francisco.</p>

	<p>Finally, FRPO also strongly supports the restriction of Section 37 of the <i>Planning Act</i> for inclusionary zoning projects. Requiring units to be rented at less than market rents impacts the financial feasibility of a development. Restricting Section 37 will partially offset financial impacts of inclusionary zoning by helping to reduce the costs of development for new rental housing.</p> <p>Currently, Section 37 fees represent approximately 17 percent of the cost of a new multi-residential unit in the City of Toronto. The provincial government should seek to improve transparency and consistency how development fees are imposed under Section 37.</p> <p>If Section 37 fees are imposed, in addition to inclusionary zoning, it will make the cost of building new affordable rental housing in Ontario economically unfeasible.</p>
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2. PROGRAM TARGETS

FRPO Position on Proposal	
<p>I. Should there be provincial direction to further specify the target groups for inclusionary zoning, or should this be left to each municipality to determine? If you think direction is needed, who should be addressed based on the PPS definition of “affordable”?</p>	<p>FRPO recommends that inclusionary zoning policies should target moderate income households with an ability to pay a lower than average monthly rent.</p> <p>Affordable rent should be defined as 80 percent of average market rent in a community. This proposal is in line with other jurisdictions who have implemented inclusionary zoning, including New York City, Boston and Chicago who required income targets of 80 to 100 percent of average median income.</p> <p>Both New York City and Vancouver’s housing policies have sought to address moderate income households who are unable to afford average market rent due to the high costs of housing. A similar policy in Ontario would target families that need some support and help them to transition into full market participation over the long term.</p> <p>Due to current market conditions, and the high costs of development in Ontario, it would be unfeasible for rental housing builders to create housing for the lowest income populations without significant funding support from the public sector.</p> <p>Finally, FRPO feels very strongly that rent increases, for inclusionary zoned units, should be maintained at 80 percent of average market rent in a community. As long as the 80 percent of market rent is maintained there is no need to apply the annual rent increase guideline which would add complicated administrative burden and negatively impact the housing provider’s ability to operate and maintain a high quality rental building. If appropriate program candidates are identified, then maintaining the unit rent at 80 percent of market rent should not be a problem.</p> <p>The application and expansion of Ontario’s Rent Increase Guideline to new rental housing developments would be a significant disincentive to building new rental housing.</p>

3. PRICE AND RENT

FRPO Position on Proposal	
2. Should there be provincial direction on how price and rent would be determined in an inclusionary zoning by-law when inclusionary zoning units are sold or leased? If so, what approach would you recommend?	<p>This question has been addressed in our previous response. However, to summarize:</p> <p>Affordable rent should be defined as 80 percent of average market rent in a community. This proposal is in line with other jurisdictions who have implemented inclusionary zoning, including New York City, Boston and Chicago who required income targets of 80 to 100 percent of average median income.</p> <p>FRPO feels very strongly that rent increases, for inclusionary zoned units, should be allowed to maintain monthly rent at 80 percent of average market rent in a community. As long as the 80 percent of market rent measure is maintained there is no need to apply the annual rent increase guideline which would add complicated administrative burden and negatively impact the housing provider's ability to operate and maintain a high quality rental building. If appropriate program candidates are identified, then maintaining the unit rent at 80 percent of market rent should not be a problem.</p> <p>The application and expansion of Ontario's Rent Increase Guideline to new rental housing developments would be a significant disincentive to building new rental housing.</p>

4. UNIT SET-ASIDE

FRPO Position on Proposal	
3. Should minimum and/or maximum unit set aside be specified province-wide or should this be left to each municipality to determine? If you think that a specified number or percentage of units should be applied province-wide, what would you recommend?	<p>FRPO recommends that the province should set a maximum set aside limit of 10 percent for high rise and 5 percent for low rise. This is consistent with many other jurisdictions that have implemented inclusionary zoning including Denver (10%), Chicago (10%), and San Francisco (12%). The lower value for low rise buildings provides for a more appropriate level of integration in buildings with a smaller overall floorplate.</p> <p>In order to encourage the development of new rental housing in Ontario, there must be a limit on the maximum set aside. A higher threshold would make it economically unfeasible to support new development, further causing the demand for rental housing to outweigh supply resulting in higher price pressure on average rents.</p> <p>We believe this is a fair target for Ontario and local municipalities to balance the need for new market housing, and affordable housing.</p>

5. AFFORDABILITY PERIODS

FRPO Position on Proposal	
4. Should there be provincial direction for a minimum or	<p>Municipalities should have the ability to set the affordability period based on the state of the local market, demand and cost of housing.</p> <p>However, the province must require that the affordability period match the term of the inclusionary zoning program incentives.</p> <p>It is important to recognize the long-term investment horizon that is required</p>

<p>maximum affordability period that would apply to inclusionary zoning programs province-wide, or should this be left to each municipality to determine? If you think a province-wide affordability period should be specified, what would you recommend (e.g. 20 years, 30 years, no time limitation)?</p>	<p>to build new rental housing. Rental housing developers must have the confidence and desire to invest in Ontario and this requires regulatory stability and a supportive, stable business and economic climate.</p>
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6. THRESHOLD SIZE

FRPO Position on Proposal	
<p>5. Should there be provincial direction for a minimum and/or maximum threshold size that would apply to inclusionary zoning programs province-wide, or should this be left to each municipality to determine? If you think the threshold size should be specified province-wide, what would you recommend?</p>	<p>Municipalities should be able to determine a threshold size that best meets their community's needs, however the province should set a minimum threshold size of 100 units for a multi-family development. Incentives provided as part of the inclusionary zoning program are as, or more important, than the threshold size and should also be linked.</p> <p>The province should also consider the unique needs of small, rural, and northern municipalities where smaller projects may not be able meet a threshold. To address these types of implementation challenges other alternatives should be allowed such as cash-in-lieu and offsite buildings.</p> <p>Many other jurisdictions including New York City, Vancouver, Chicago and San Francisco have recognized the challenges of implementing inclusionary zoning and have allowed cash-in-lieu or offsite inclusionary zoning policies to stimulate more affordable housing.</p> <p>FRPO recommends that Ontario should allow municipalities to collect cash-in-lieu as an alternative to inclusionary zoning, and require those funds to be dedicated to a portable housing benefit for low to moderate income Ontarians.</p> <p>We believe that a cash-in-lieu policy with funds dedicated to a portable housing benefit would be an extremely effective tool that would directly deliver on the government's objective of integrated mixed income communities.</p> <p>The government should also consider offsite inclusionary zoning. New or existing rental buildings within an inclusionary zone could have units identified to be part of the inclusionary zoning program. This would still meet inclusionary zoning policy objectives but could address implementation challenges resulting from project size or neighbourhood.</p>

7. MEASURES AND INCENTIVES

FRPO Position on Proposal	
<p>6. Should measures and incentives be required on a province-wide basis through regulation, or should this be left up to municipalities? If you think the province should provide direction, what would you recommend??</p>	<p>FRPO recommends that municipal measures and incentives must be required by regulation on a province-wide basis in order to stimulate the development of new rental housing development. Without incentives, or funding, the development of new affordable rental housing will become economically unfeasible and the government will be unable to achieve its objectives. The rate of return must be considered in the financial business case for any new development. The financial tools and incentives provided need to offset the variance between the market rent units and the inclusionary zoning units.</p> <p>In the majority of jurisdictions where inclusionary zoning has been implemented, there has been significant government funding, or incentives, or both, to encourage and support the private sector's investment in new rental housing development.</p> <p>Examples of where government funding has been provided to support inclusionary zoning projects include New York City, Montreal, and Vancouver.</p> <p>Under the Rental 100 program in Vancouver, developers were provided with incentives such as reduced on development charges, expedited approvals, capital grants, and parking reductions. Montreal also offered land to developers at a reduced market rate in order to improve the affordability of new construction.</p> <p>In New York City, housing subsidies, tax incentives and public financing programs were offered in order to stimulate new development. Exemptions for small developments and a "hardship waiver" were also implemented as a means to ensure that property owners would receive a reasonable return on their investment.</p>

8. REQUIREMENTS AND STANDARDS

FRPO Position on Proposal	
<p>7. Should there be provincial direction to specify minimum requirements and standards for inclusionary zoning units or should these be left up to each municipality to determine? If you think requirements or standards should be specified province-wide, what would you recommend?</p>	<p>One of the key components identified in any inclusionary zoning initiative in other jurisdictions is the need for the local municipality to configure the program design in a way to meet local needs. This has often resulted in different requirements and program parameters within the same municipality in the case of a larger urban centre.</p> <p>The inclusionary zoning units must be comparable to other units in the same development – this would be consistent with the approach to approving any type of development. Including inclusionary zoning units in a development cannot increase the building costs (e.g. by altering the building's floorplan/footprint). For example, if a multi-residential building plan supports only bachelor and 1 bedroom units, the developer cannot be required to provide 2 bedroom units due to a provision in the inclusionary zoning by-law.</p> <p>Any regulation or requirement that increases building costs beyond the developer's initial plan would risk causing an entire project to be deemed economically unfeasible, and it would not proceed.</p>

9. AGREEMENTS

FRPO Position on Proposal	
<p>8. Should there be provincial direction on inclusionary zoning agreements? If so, what would you recommend?</p>	<p>No comments except to again reference FRPO's position on the application of Ontario's Rent Increase Guideline to inclusionary zoned units.</p> <p>FRPO feels very strongly that rent increases, for inclusionary zoned units, should be allowed to maintain monthly rent at 80 percent of average market rent in a community. As long as the 80 percent of market rent is maintained there is no need to apply the annual rent increase guideline which would add complicated administrative burden and negatively impact the housing provider's ability to operate and maintain a high quality rental building. If appropriate program candidates are identified, then maintaining the unit rent at 80 percent of market rent should not be a problem.</p> <p>The application and expansion of Ontario's Rent Increase Guideline to new rental housing developments would be a significant disincentive to building new rental housing.</p>

10. ADMINISTRATION, MONITORING AND REPORTING

FRPO Position on Proposal	
<p>9. Should there be provincial direction on requirements for ongoing administration of units and ensuring affordability over the control period? If so, what types of requirements would you recommend?</p>	<p>The province must provide oversight and guidance to municipalities in order to ensure consistent implementation across the province. Responsibility for the management and administration of inclusionary zoning programs must be delegated to municipalities.</p> <p>The province should also delegate responsibility to the municipality to determine initial and ongoing program eligibility, income threshold, and ability to pay, in order to minimize the administrative burden on rental housing property managers.</p> <p>There must be a process established should a tenant no longer be eligible under the inclusionary zoning program (e.g. tenant income level exceeds program eligibility). For example, if a rental housing provider is required, according to their agreement, to maintain 10 percent of units as part of the inclusionary zoning program, how would a tenant who is no longer eligible under the program be handled. If that tenant began to pay market rent, then another comparable unit in the building could be identified to be part of the program. However, the rental housing provider would only be able to make a comparable unit available at turn over and could not be found in violation of their agreement in the interim.</p>
<p>10. Should there be provincial direction on mandatory requirements for municipal monitoring procedures? If so, what mandatory requirements would you recommend?</p>	<p>Property owners and managers would need to maintain their ability to review prospective tenant applications, perform background checks, and conduct reference checks. This is essential to be able to ensure the safety and security of the building for other tenants and to ensure compliance with other programs. The rental housing provider is responsible under the <i>Residential Tenancies Act</i> (RTA) to ensure the reasonable enjoyment of all tenants and can be held liable under the RTA.</p>
<p>11. Should there be provincial direction on municipal reporting of inclusionary zoning units (e.g. reports must be</p>	<p>The province must clearly outline the reporting requirements for municipalities which must include progress against inclusionary zoning program targets. Furthermore, annual municipal reporting should be mandatory and must be made publicly available.</p>

publicly available; reports must be provided annually to municipal council)? If so, what would you recommend?	
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11. USE WITH SECTION 37 (HEIGHT AND DENSITY BONUSING)

FRPO Position on Proposal	
12. In what circumstances would it be appropriate to require inclusionary zoning units as well as community benefits in exchange for additional height and density?	<p>FRPO also strongly supports the restriction of Section 37 of the <i>Planning Act</i> for inclusionary zoning projects. Requiring units to be rented at less than market rents impacts the financial feasibility of a development. Restricting Section 37 will partially offset financial impacts of inclusionary zoning by helping to reduce the costs of development for new rental housing. It is imperative that a municipality be prevented from imposing both Inclusionary Zoning requirements in addition to the application of further Section 37 requirements on any new development plan.</p> <p>Currently, Section 37 fees represent approximately 17 percent of the cost of a new multi-residential unit in the City of Toronto. The provincial government should seek to improve transparency and consistency how development fees are imposed under Section 37.</p>
13. Should conditions or restrictions apply to these circumstances, and if so, what would you recommend?	<p>If Section 37 fees are imposed, in addition to inclusionary zoning, it will make the cost of building new affordable rental housing in Ontario economically unfeasible.</p>

12. TRANSITIONAL MATTERS

FRPO Position on Proposal	
14. Do you think that planning applications commenced prior to enactment of the proposed legislative process should be grandfathered?	<p>FRPO recommends that planning applications that were submitted prior to the adoption of a municipal inclusionary zoning bylaw should be exempt.</p> <p>Significant due diligence and financial modeling is completed by a housing developer prior to submitting a planning application. As the specific impacts of an inclusionary zoning policy cannot be known until a municipality by-law is passed, developers should be allowed to continue with the application under the rules in place at the time of submission.</p>
15. Do you think that planning applications that commence prior to municipal adoptions of official plan policies and/or zoning by-laws should be exempted?	

CONCLUSION

FRPO and the provincial government have long shared the common objective of seeking out ways to encourage the building of new rental housing in Ontario. The current rental housing stock levels are not meeting the needs of Ontarians across all income levels, not just those who are deemed low-income households. Where we stand apart is on what the best policies are that will help deliver on this important objective of providing the housing that families can afford.

Building more rental housing in Ontario will create more affordable housing. The cost of building rental housing today is higher than in decades past—the cost of land, rising development charges and property taxes, energy, and the cost of materials to comply with new building standards all contribute to the need to charge higher rents. For those families who can afford the choice to move into the new units, the units they previously vacated become available, and will command lower rents than the new units, thereby providing new opportunities for families at lower income levels.

It continues to be unrealistic to expect government policies such as rent control and inclusionary zoning that keep rents artificially low to also incent developers to make further investments in a market that offers insufficient investment returns. For the last several decades, many housing developers based in, or with ties to, Ontario are building new rental housing—they unfortunately are just not building it here.

When we look at the experience in other jurisdictions where inclusionary zoning has been introduced, they have consistently failed to deliver on the initial program targets, which calls into question the appropriateness of the policy.

FRPO has provided the government with its best advice on how to tackle the shortage of rental housing in the province by supporting and maintaining a policy environment that will encourage private sector builders and managers of rental housing communities to direct investment into Ontario. This advice, provided by those who make the decisions on where to make new rental housing investments, is contained in FRPO's June 2015 report entitled *Removing Barriers to New Rental Housing in Ontario*, which can be found on FRPO's website at www.frpo.org.

On a final note, according to the Center for Housing Policy of the National Housing Conference in the United States, there are five key factors that are associated with inclusionary zoning programs that have come the closest to achieving the program targets. When considered against the current proposal being considered for Ontario, this analysis does not offer much hope that inclusionary zoning will be successful here either.

1. **Inclusionary zoning works best in strong housing markets**—When there is no market rate construction already taking place, there is no affordable housing development either.
2. **Mandatory programs tend to work better than voluntary programs**—83% of the inclusionary zoning programs in the US are mandatory, and while mandatory

programs were found to be more successful than voluntary programs, none of the programs actually delivered on the program targets.

3. **Effective inclusionary zoning programs include incentives that offset the cost to developers**—the proposed model for Ontario does not currently include any allowance for incentives, which would suggest the program will ultimately have little positive effect.
4. **Predictable programs with clear guidelines are most effective**—throughout these consultations there has been little in the way of a baseline model put forward by the government for stakeholders to evaluate, suggesting that policies will continue to evolve during the years following program introduction. The lack of predictability in provincial government policy when it comes to rental housing is one of the key issues identified by rental housing providers as to why they are not making investments in Ontario.
5. **Successful inclusionary zoning programs have flexible compliance options**—the current consultation document has sought input from stakeholders on different mechanisms to design and enforce compliance requirements. As reflected in our specific comments in this paper, we would strongly encourage the government to ensure there is maximum flexibility provided to developers on how to comply with any program requirements so that the development plan can appropriately reflect local conditions and requirements.

FRPO remains committed to engaging with the provincial government on ways to achieve our shared goal of increasing the amount of rental housing in Ontario. We are even more eager to consider options that offer a much higher success potential than we believe is possible through inclusionary zoning. We remain optimistic that we can identify the right forum with the right people at the table to deliver the best results possible for Ontario families.

APPENDIX A

INDUSTRY RESEARCH & EVIDENCE

I. AN INCLUSIONARY ZONING FRAMEWORK FOR ONTARIO

Montreal

The existing legislated powers in the province do not allow the city to require all residential development to include affordable housing as in a full mandatory program.

This was a major issue during the consultative process for the strategy. Housing advocates pushed for the stronger mandatory approach, but the city foresaw that there would be major delays and difficulties in obtaining the necessary changes to the city's charter and the provincial legislation.

So, the city opted for a more limited approach that will still be effective, but could be implemented more quickly within its current powers and resources. The city also committed to monitor the effectiveness of the strategy, and then depending on the results, to revisit its decision about pursuing mandatory powers.

This strategy is described by city officials and documents as voluntary, but this is true only in a very narrow sense. The strategy is voluntary only because the city cannot impose it directly, but rather must work through the development control powers of the individual boroughs. When the boroughs are on side, their ability to deny development approval makes the affordable housing obligation effectively mandatory for the selected developments to which it applies.

(<http://inclusionaryhousing.ca/2010/01/20/case-study-montreal-qc/>)

New York

- Payment-in-lieu option for buildings of between 11 and 25 units
- Requirements could be reduced or waived through BSA where they would make development infeasible (legal requirement for hardship relief)

(http://www1.nyc.gov/assets/planning/download/pdf/plans-studies/mih/mih_presentation_0915.pdf)

- 2016: Specifying in the zoning text that payments into the affordable housing fund, where available as an option for smaller developments, are reserved for 10 years for use in the same Community District, and thereafter can only be used in the same borough

(<http://www1.nyc.gov/site/planning/plans/mih/mandatory-inclusionary-housing.page>)

Vancouver - The option to receive payments-in-lieu of the affordable housing was introduced in 1993. This allows the city to cash-in the city-held value of undeveloped optioned sites, and then use the monies to support the provision of affordable housing in other ways.

Under this option, in return for the cash payment, the city has released the developer from building the affordable units and allowed them to build the equivalent number as market-rate units. The payment has been based upon the difference between the market value of the site without the obligation, and price the city would have paid under its option-to-purchase agreement.

Payments-in-lieu have been approved for at least six sites. In most cases, the money was used to buy outright one or more optioned sites within the same neighbourhood. In one case, it was used to buy a site immediately outside the area, and in another, to subsidize construction on another optioned site. In the most recent example, in early 2008 the city received \$5.1 million in return for allowing 226 affordable units to be built for market-rate units on a site in Concord Pacific Place.

In False Creek North, where payments-in-lieu have been used most often, 680 affordable units have been lost out of the 1964 affordable units initially approved for development there. This means that the initial 20% obligation has been reduced to 13%. There is a potential for further losses, because the development of three optioned sites (with a capacity of 328 units) still remains uncertain.

(<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyVancouver.pdf> pg. 3)

Chicago

In lieu of providing affordable units, developers are permitted to make payments to the Affordable Housing Opportunity Fund. The payments are based upon \$100,000 for each affordable unit not produced, adjusted annually by the CPI. There has been no change to this rate so far. Out of these monies, 60% goes to the construction or rehabilitation of affordable housing, and 40% for rental assistance administered by the city's Housing Trust. (<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyChicago.pdf> pg. 3)

San Francisco - The fees-in-lieu are based on what the city calls the “affordability gap”, which is defined as the difference between the cost of producing a unit and the ability to pay for it.

Since 2007, the city sets the fees annually according to the difference between the total development cost and permitted affordable sales price for each unit type (see the following table). The fees are charged according to the mix of units provided in the onsite market units. The total development costs are adjusted annually according to the changes in the local construction cost index.

The collected fees go to the Citywide Affordable Housing Fund and are used to support affordable housing. A limited part can be tapped by MOH to conduct various specified program reviews. Also, an amount is dedicated specifically to supporting the acquisition and rehabilitation of existing small residential buildings of 25 units or less. (<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudySanFrancisco.pdf> pg. 4)

Davis, CA - In the case of the affordable housing, fees-in-lieu are accepted as alternative for onsite construction, but only in narrow circumstances – specifically, only for small developments (up to 30 units and 10 acres in size) that can demonstrate that providing the affordable units would create a “unique hardship”.

The current rate is \$37,500 per unit. The fees are adjusted to reflect increases in building costs. The fee was initially set in 1989 at \$18,000/unit. This fee is based on half of the average subsidy per unit that the city has contributed to support the provision of an affordable unit. (It does not reflect the subsidies that come from other sources.)

The fees go to the city's housing trust fund, and are used for loans to affordable housing developments, primarily on the dedicated lands.

There were no compliance alternatives for the middle-income housing; all of the inclusionary units were required on-site. (<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyDavis.pdf>, pg 4-5)

Montgomery - The program is directed at securing on-site construction of the affordable units, but the regulations also allow for various alternative compliance measures: the provision of land, construction on another site, payments in fees-in-lieu, and a reduction or waiver of the affordable housing obligation. The granting of these alternatives is at the discretion of various county officials or a special review board. They are generally allowed only under these conditions:

- when the alternative provides a greater benefit than building on site, and it better serves the policy objective of providing a broad range of housing opportunities throughout the count, and/or
- when the development of the affordable units on site is not economically feasible.

The latter condition expressly covers cases where high condo or homeowner association fees make the inclusionary units unaffordable, and the services cannot be eliminated or modified for the inclusionary homeowners.

Under the latest ordinance, the fees-in-lieu must be based on the following:

- 10% of the sales price of the market-rate units that were built instead of affordable units in high-rise developments; and
- up to 30% of the sales price for the corresponding units in all other housing developments. (Presumably, the regulations are meant to spell out how “up to 30%” relates to different forms of housing.)

This is said to equal 125% of the estimated land value for each of these units.

The fees must be used in the same planning area as the on-site development. The payments go to the county’s Housing Initiative Fund, where the money is used to support various lower-income housing needs. (<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyMontgomery.pdf> pg 4)

Boston - The current program is now open to both the payment of fees-in-lieu and the construction of the affordable units off-site. BRA, while still retaining the discretion to approve these options or not, has approved them when they serve the city’s housing policies and needs better than on-site construction. In both options, the developers must provide for the same number of affordable units as required on-site.

The fees-in-lieu are determined in one of two ways. The developer must pay the higher of these two: \$200,000/unit, or half the difference between the market prices and affordable prices of the units. In effect, \$200,000/unit is the minimum charge. In the high-priced downtown area, the alternative has produced payments of \$500,000/unit or more. (<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyBoston.pdf> pg. 4)

2. PROGRAM TARGETS

San Francisco - In addition to meeting the household income limits, these additional conditions must be met:

- The homebuyer must be a first-time homebuyer.
- One member of the household must live or work in the city.
- The size of the household must be compatible with the unit size.
- The homebuyer must have completed an approved first-time homebuyer education workshop.
- The homebuyer must be pre-qualified for a mortgage.

First-time homebuyer restriction rules out households with a member who has owned an interest in

any property in the three years prior to application. (<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudySanFrancisco.pdf>, pg 7)

Montreal – The affordable housing provided under the strategy is intended for households earning less than 120% of the regional median income. This income threshold is used primarily for determining the top price or rent of the affordable ownership and affordable rental units. The income threshold is not used to control the income eligibility of the households buying or renting these units.

The strategy is also portrayed as serving these two particular income groups:

- households with low incomes (generally those earning below \$35,000 per year) that have difficulty in finding apartments in the city with affordable rents; and
- households with moderate incomes (earning roughly \$35,000 to \$50,000) that aspire to become homeowners but cannot find homes in the city with affordable prices.

<http://inclusionaryhousing.ca/2010/01/20/case-study-montreal-qc/>

New York - Developments taking advantage of the full 33 percent bonus must devote at least 20 percent of their residential floor area to housing that will remain permanently affordable to lower-income households. Qualifying affordable units must be affordable to households at or below 80 percent of Area Median Income (AMI).

On March 22, 2016, the City Council approved the Mandatory Inclusionary Housing text amendment with modifications, including: Modification of income bands and set-asides

Within Option 1, adding requirement for a minimum of 10% of housing to be affordable at 40% AMI (\$31,080 for a household of three)

Establishment of a new Deep Affordability Option requiring 20% of housing to be affordable at an average of 40% AMI (\$31,080 for a household of three), with subsidies allowed only where they are necessary to support more affordable housing

Modification of the Workforce Option to reduce the average income requirement from 120% AMI to 115% AMI (\$89,355 for a household of three), require 5% each at 70% AMI (\$54,390 for a household of three) and 90% AMI (\$69,930 for a household of three), establish that this option will sunset 10 years after it is adopted in any MIH area

<http://www1.nyc.gov/site/planning/plans/mih/mandatory-inclusionary-housing.page>

Chicago - The developments generally are required to set aside 10% of the total units as affordable housing. Whenever financial assistance from the city is involved, the obligation is increased to 20%.

Ownership housing must be affordable to households earning at or below 100% of the area median income, while rental must be at or below 60%.

The 10% set-aside requirement can be reduced when the ownership units are made available for incomes at or below 80%. In this case, the required number of units is left for determination, but in principle the fewer units must be “substantially equivalent” in value to the 10% obligation at 100% of area median income.

<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyChicago.pdf>

Boston - At least half of the affordable ownership units must be affordable to households earning at

or below 80% of the local area median household income, and the remainder to households at or below 100%. In addition, the average of the prices must be affordable at least at 90%. The rental units must be affordable at or below 70%.

Originally, the upper threshold for the ownership units was set at 120% (rather than 100%) and the average of 100%. Also, the same thresholds were used for the rental units.

<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyBoston.pdf>

Vancouver - The city introduced its inclusionary housing program in 1988 through a policy initially called its '20% core need housing policy', but now more commonly its 'non-market housing policy'.

The purpose of the policy was to ensure that housing was provided in all new neighbourhoods for low and modest-income households, and especially those with children.

It was designed to work with the then current federal funding, which targeted social housing for 'core need households'. (These were defined as households who otherwise would have to pay more than 30% of their gross income for suitable housing.)

<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyVancouver.pdf>

3. PRICE AND RENT

Davis, CA - The on-site affordable ownership units must be affordable to households earning between 80% to 120% of the county median income, and with an average at 100%, as adjusted by unit size.

The on-site rental units must be affordable to incomes at 80% and 50%. Those in developments of 20 or more units must provide at least 25% for households at 80% of the median income, and 10% at 50%. Those in developments with 5-19 units must provide 15% and 10% respectively for these income targets.

The dedicated lands must be used for housing serving incomes ranging from 50% to 80%, and with an average of 65%.

The on-site middle-income ownership units must be provided at a range of prices affordable to households between 120% and 180% of the county median income, and with the average at 140%.

<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyDavis.pdf>, pg 4 + 7)

New York -

Mandatory Inclusionary Housing area

- 25% of residential floor area must be for affordable housing units for residents with incomes averaging 60% AMI (\$46,620 per year for a family of three), or
- 30% of residential floor area must be for affordable housing units for residents with incomes averaging 80% AMI (\$62,150 per year for a family of three)

<http://www1.nyc.gov/site/planning/plans/mih/mandatory-inclusionary-housing.page>

Housing subsidies should be made available as appropriate to support new affordable housing where it would be necessary to support the feasibility of new development. This is especially true in weaker

markets, where these subsidies, rather than Inclusionary Housing requirements, will drive the income levels that can be reached in new housing.

To address the challenges of feasibility in the mid-market condition, an option that provides permanently affordable housing for moderate-income households should be explored

within areas likely to experience such housing conditions, where housing at this income level would promote neighborhood economic diversity.

http://www1.nyc.gov/assets/planning/download/pdf/plans-studies/mih/mih_report.pdf (Page 78)

San Francisco - The maximum permitted first sales prices for the initial are annually established by the MOH for each unit size. The calculations are based on these considerations:

- 1) the targeted income limits according to household size;
- 2) the payment of 33% of gross household income for the total housing costs, including taxes, insurance, and homeowners or associations fees;
- 3) a mortgage interest rate based on the ten-year rolling average for a 30-year interest rate as provided by nationally recognized mortgage lending institution; and
- 4) a down payment set by MOH. (Formerly, this was set at 10% by the ordinance.)

(<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudySanFrancisco.pdf> pg. 8)

Montgomery - The program is also said to target households earning a “moderate” income. This is defined as household earning no more than 70% of median income for sales units and 65% for rental, both adjusted for household size. The program initially targeted households earning at or below 60% of the median income, with half of those being at or below 50%. In practice, these income thresholds are not strictly applied. The project-by-project process used to determine the permitted sales prices often results in prices that exceed what is affordable at the “moderate” income levels

(<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyMontgomery.pdf> pg. 3)

4. UNIT SET-ASIDE

Boston – Voluntary adoption, 15% set aside for inclusionary housing

Chicago – Voluntary adoption, 10% set aside for inclusionary housing

Denver – Combination adoption, 10% set aside for inclusionary housing

Los Angeles – Mandatory adoption, 15% set aside for inclusionary housing

San Francisco – Mandatory adoption, 12% onsite and 20% offsite set aside for inclusionary housing

Seattle- Voluntary adoption, .5% set aside for inclusionary housing

(http://www1.nyc.gov/assets/planning/download/pdf/plans-studies/mih/mih_report.pdf pg. 69)

New York - To support the feasibility of development, the program should recognize the tradeoff that exists between reaching lower incomes and achieving a larger set-aside of affordable housing – i.e., the lower the incomes reached, the less feasible it is to achieve a larger set-aside. For instance, in neighborhoods where reaching households at the lowest income levels is a priority, a Mandatory

Inclusionary Housing requirement may specify a lower set-aside with a greater proportion of affordable units at very low incomes, while in other neighborhoods, a higher set-aside may be applied that allows more units at moderate incomes

http://www1.nyc.gov/assets/planning/download/pdf/plans-studies/mih/mih_report.pdf (Page 78)

Montreal - The strategy establishes a guideline that all new large residential developments provide a minimum of 30% of the new units as affordable housing. This guideline is further broken down into two parts:

- 15% in social housing; and
- 15% in affordable rental or affordable ownership.

This inclusionary set-aside is framed as a guideline rather than a requirement because its implementation is dependent on the boroughs. Therefore, the strategy recognizes it could vary in response to the local conditions. (<http://inclusionaryhousing.ca/2010/01/20/case-study-montreal-qc/>)

Chicago - The developments generally are required to set aside 10% of the total units as affordable housing. Whenever financial assistance from the city is involved, the obligation is increased to 20%. (<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyChicago.pdf> pg. 2)

San Francisco - Developments using the as-of-right approval process must set aside 15% of the units as affordable. Developments receiving “special development rights” must set aside 17% as affordable.

These include the following:

- developments obtaining a zoning amendment (called „conditional use permits“ in the regulations);
- developments using a comprehensive development approval process (called planned unit developments or PUDs); and
- developments providing live-work units.

(<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudySanFrancisco.pdf> pg. 2)

Montgomery - The requirement to provide inclusionary units now applies to new developments of 20 or more units. The required set-aside of inclusionary units’ ranges from 12.5% to 15% of the total units in the development, according to the permitted density increase:

- Developments using at the base as-of-right density and receiving no density increase are required to provide 12.5%.
- Developments receiving a density increase above the base density are required to provide 0.1% more units for every 1% increase in density, up to the maximum 15% increase in the units for a maximum permitted density increase of 22%.

(<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyMontgomery.pdf> pg. 2)

Boston - These developments are required to provide affordable housing equal to 15% of the market units. This rate is equivalent to 13.04% of the total units of the project, which is how the set-aside

requirement is most commonly set. (<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyBoston.pdf> pg. 2)

Vancouver – (1988 Policy) As a condition of development approval (new privately owned developments), these developments have been required to provide a site or sites capable of accommodating a minimum of 20% of the units as social housing, specifically for core-need households. Half of those units also must be for families or, in the words, have 2 or more bedrooms (<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyVancouver.pdf> pg. 2)

5. AFFORDABILITY PERIODS

Boston- Voluntary, 50 years affordability duration

Chicago- Voluntary, 30 or 99 years affordability duration

District of Columbia – Mandatory, Perpetuity

Denver – Combination, 15 years affordability duration

Los Angeles – Mandatory, 30 years or life

San Francisco – Mandatory, Perpetuity affordability duration

Seattle – Voluntary, 50 years affordability duration

(http://www1.nyc.gov/assets/planning/download/pdf/plans-studies/mih/mih_report.pdf, pg. 69)

Vancouver - After the purchase, the city has leased the site to the non-profit sponsor for at least a 60-year term. The developer has then proceeded to build the project and transferred the building to the sponsor when completed. The sponsor is responsible for the ongoing management of the project. (<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyVancouver.pdf> pg. 2)

Davis, CA - The affordability of the units from both the affordable and middle-income programs, and on-site and on the dedicated lands, must be maintained in perpetuity. (<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyDavis.pdf> pg. 6)

Montgomery - The affordability of ownership units is currently controlled for 30 years and rental for 99 years. The 30-year period for the ownership is now renewable each time the affordable ownership unit is sold within the control period. (<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyMontgomery.pdf> pg. 5)

Boston - The affordability of the affordable units is controlled for 30 years, with a subsequent extension of 20 more years at the discretion of BRA, for an effective total of 50 years. This two-step approach was used to circumvent restrictions in state law. During this time, the affordable units can be resold only to another corresponding eligible household or to BRA. If the units are sold after 50 years, they can be sold on the open market and without any recovery of windfall. (<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyBoston.pdf> pg. 5)

6. THRESHOLD SIZE

New York – Applies to developments, enlargements or conversions larger than 10 units (http://www1.nyc.gov/assets/planning/download/pdf/plans-studies/mih/mih_presentation_0915.pdf pg. 9)

To address unusual conditions under which a Mandatory Inclusionary Housing requirement may make development difficult, accommodations should be incorporated in the program, including an exemption for small developments on small existing sites, and a hardship waiver to ensure that property owners can realize a reasonable economic return on investment in their property.

http://www1.nyc.gov/assets/planning/download/pdf/plans-studies/mih/mih_report.pdf (Page 78)

Montreal - The strategy applies to developments of 200 and more units. Research found that developments of this size were capable of viably accommodating a mix of housing. More particularly, given the 15% target, it provides for 30 units of social housing, which was considered to be generally the smallest desirable project for this type of housing.

(<http://inclusionaryhousing.ca/2010/01/20/case-study-montreal-qc/>)

Vancouver - It has been applied to privately-owned developments on large sites applying for a change of use to residential. Typically, it affects only developments of more than 200 units because they are capable of accommodating a separate site for a social housing project of a reasonable size (that is, at least 40 units in size). While some programs do exclude small developments, the cut-off is commonly at 10 to 50 units. (<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyVancouver.pdf> pg. 2 + 7)

Chicago – 10 or more units, but only if developments meet specific mandates like city funding, applying for a zoning change to increase density or switch from residential to non-residential, also must be within previously designated “planned development” downtown zoning districts.

(<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyChicago.pdf> pg 2)

San Francisco - The inclusionary requirements apply to all residential developments of 5 or more units. This threshold was introduced in 2007; before it was 10 or more units. Although this change was determined to affect only about 6% more housing units, it was considered appropriate in order to treat developments more equitably. <http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudySanFrancisco.pdf> pg. 2)

Davis, CA - The affordable housing program requires all new residential – both ownership and rental – developments of 5 or more units to provide affordable housing or land dedicated to affordable housing. The middle-income housing program affected all residential ownership developments of 25 or more units.

An exemption from these middle-income requirements was made for condo developments where 75% or more of the total residential units were stacked units without separate ownership parcels. The intent of this exemption was to encourage this particular form of development, in part for its inherent affordability.

All new developments of 5 or more units must provide 25% of the units (or their equivalent) as affordable units. The one exception is for rental developments of 20 or more units, which must

provide 35%.

(<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyDavis.pdf> pg 2)

Boston - The program applies to residential developments with 10 or more units in these two categories:

1) those requiring zoning relief; and

2) those financed by the city or one of its agencies, or developed on land owned by them.

(<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyBoston.pdf> pg 2)

7. MEASURES AND INCENTIVES

Montreal - The city and individual boroughs are expected to assist by selling their lands at below-market value to the non-profit developers.

The boroughs also are called upon to use their regulatory and planning tools to support affordable housing. These can include offering regulatory concessions, promoting or allowing lower-cost types of units, and using cost-saving standards or other measures. One borough offers a fast-tracked approval process.

The city also pays for infrastructure improvement costs and decontamination costs where necessary.

The developers are expected to provide land for the social housing at a reduced price. In the case of the affordable ownership units that they construct, they are able to build units of smaller size and lower amenity as a way of cutting costs. (<http://inclusionaryhousing.ca/2010/01/20/case-study-montreal-qc/>)

Vancouver –

- Rental 100: Secured Market Rental Policy: <http://vancouver.ca/people-programs/creating-new-market-rental-housing.aspx>
 - Development Cost Levy waiver for the residential floor space of the project; and
 - Relaxation of unit size to a minimum of 320 sq. ft. provided that the design and location of the unit meets the liveability criteria as defined in the Zoning and Development By-law
 - Parking reductions as described in the Vancouver Parking Bylaw
 - Capital grants or other forms of City equity
- (<http://council.vancouver.ca/20140708/documents/rr2.pdf> pg. 2)

Chicago - The ordinance does not explicitly offer any cost offsets, such as density increases or any other regulatory incentives. The lack of explicit offsets has not been an issue because all of the subject developments already involve increased density, financial assistance or land. Furthermore, it is a well-established practice in the city that the developers are able to negotiate for increased density and other regulatory concessions as part of the development approval process for any substantial project.

Downtown Density Bonus - This program, started in 2002, allows increased density in downtown residential buildings in return for contributing to the Affordable Housing Opportunity Fund. The additional housing built by the developers need not be affordable housing as in the case of inclusionary housing programs. The fees represent the affordable housing benefit as they are used through the fund to support housing for low-income and working families. The fees are set in fixed and

non-negotiable rates, set in \$/ft² that vary for four different downtown areas. From 2001 to mid-2007, the downtown density bonus generated \$24 million.

(<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyChicago.pdf> pg. 3 + 6)

Davis, CA - The program provides a density bonus of one additional market unit for every affordable unit, rental or ownership, provided on-site. A corresponding density bonus is also given to developments providing dedicated land. The density bonus is assessed on the basis of 15 units/acre for ownership units, and 20 units/acre for rental. These density bonuses are given automatically; they are not negotiated. No density bonuses were provided for the middle-income units. The city also allows for reduced development standards – like lower parking requirements and more flexible setbacks – to be negotiated case-by-case. It does not offer fee waivers.

(<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyDavis.pdf> pg 4)

Montgomery - Density bonuses are offered, but only as incentives to provide more affordable housing above the basic 12.5% set-aside requirement. Also, these density increases are not automatic. The developers must apply for them, and they must be approved by the planning board after a public review. As a consequence, they are not always fully achieved because of physical constraints on the site or other considerations, as well as pushback from the local residents. The bonuses are generally available in all residential zones, except in 'planned unit developments' (PUDs), which are subject to a different approval process.

The only concessions offered the developers are waivers for the regional sanitary sewer charges and the development impact charges specific to the inclusionary units. The owners benefit from lower property tax assessments on the inclusionary units.

(<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyMontgomery.pdf> pg. 3)

8. REQUIREMENTS AND STANDARDS

San Francisco - The developers are able to build the affordable units on-site or off-site, or pay fees-in lieu, or use some combination of the three. The developers have the right to choose the option; the city cannot dictate it. The off-site and fees-in-lieu alternatives are subject to various additional conditions. In both cases, the housing obligation is increased to 20%.

According to the ordinance, the affordable units – whether built on-site or off-site – must be comparable in the number of bedrooms, exterior appearance and overall quality of construction to the market-rate units. The interior features need not be the same, provided they are good quality and consistent with the current standards for new housing. Variations in the square footage by unit type are also permitted.

Off-Site Units - The ordinance adds a supplementary requirement for these units. The square footage of the off-site units on average must be no less than the average of the on-site market rate units. The procedures manual sets an array of additional requirements. It requires that offsite units be comparable in the number of bathrooms. It also sets minimum floor space requirements, as well as a detailed and long list of requirements regarding the bathrooms, kitchens, laundries, closets, finishes, and other amenities and features.

On-Site Units - The tenure of the affordable housing units on-site must be same as, or in the same

proportion as, the market-rate units. It is not possible to provide affordable rental units in otherwise ownership developments, or vice versa.

(<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudySanFrancisco.pdf> pg. 5 + 6)

Davis, CA - The ordinance itself contains few regulations specific to the physical development of the affordable inclusionary units:

- In the case of the rental units, they must include a mix of unit sizes, based on housing need. These units cannot be clustered together in any building or area of the development; they must be dispersed throughout the entire development. These units must be constructed using the same building materials and providing equivalent amenities as those for the market-rate rental units.
- In the case of the ownership units, they only must be provided in a mix of 2- and 3- bedroom units, with a minimum of 50% as 3-bedroom in the case of the affordable units and 55% for the middle-income. Smaller and larger units can be provided as an option.

Although not mentioned by the regulations, the city as a standard practice has required the inclusionary ownership units to be dispersed among the market-rate units. It also allows more modestly-size units to be provided for the affordable units, including attached units in otherwise single-family estates. (<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyDavis.pdf> pg 5)

Montgomery - The inclusionary units must be mixed within the market units, and also built at least at the same time and rate as those units. The inclusionary units can be provided through smaller and different unit types than the market units, but within these limits:

- Only up to 40% of the units in otherwise single-family subdivisions can be attached.
- In single-family developments, all of the affordable units must have three or more bedrooms.
- In multi-family developments, the percentage of studios and one-bedroom units among the affordable units must no higher than their percentage among the market units.

There are also minimum floor space standards for the various types of inclusionary units that are imposed through the pricing system.

The program supports, but does not actually require, that the inclusionary units look like the market units. The developers typically are strongly in favour of this condition because they feel that reduces sales resistance from the market-unit buyers. The pricing system allows for price adjustments for external up-upgrades to the inclusionary units that make them look like the others.

(<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyMontgomery.pdf> pg 5)

Boston - The program requires the affordable units to be comparable in size and quality to the average of all market-rate units in the development. There are no regulations regarding timing and distribution of the units. (<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyBoston.pdf> pg. 8)

New York - Locations of affordable units

- On-site, same building as market-rate units, spread on at least half of the building's stories, with a common street entrance and lobby
- On-site, separate building, completely independent from the ground to the sky; would not stigmatize residents of affordable units

- Off-site, different zoning lot located within the same Community District or within ½ mile (http://www1.nyc.gov/assets/planning/download/pdf/plans-studies/mih/mih_presentation_0915.pdf pg.9)

9. AGREEMENTS

Vancouver – Rental 100 Program: The rental units will be secured for a term of 60 years or life of the building, whichever is greater, through legal agreements, (e.g. Housing Agreement pursuant to section 565.2 of the Vancouver Charter, including no stratification and no separate sales covenants), or any other legal mechanism deemed necessary by the Director of Legal Services and the Managing Director of Social Development.

Chicago - The city for sometime has been using secondary recapture mortgages to control the affordability of affordable ownership units generated by various programs. At the time of purchase, the city records a 30-year lien for the difference between the unit's market price and its affordable price. If the owner resells to an income-eligible buyer at an affordable price, this lien stays with the home. If the owner sells to a non-income-eligible buyer or sells at a price above affordable level, the seller must repay the lien from the sale proceeds.

Recently, the city changed its policy and begun to impose 99-year agreements. To do so, it established in 2006 a new organization, Chicago Community Land Trust (CCLT) both to develop and then administer the necessary legal documents.

Units under the control of CCLT will be subject to a 99-year restrictive covenant with a maximum resale price. The maximum resale price will be the original purchase price plus a percentage of the market appreciation, and in most cases will be a below-market price. Homes must be resold to the CCLT or to an income-qualified buyer. (<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyChicago.pdf> pg. 4)

Davis, CA - The affordability controls on the ownership units are maintained through restrictive covenants recorded on the property. In addition, they are subject to two additional legal provisions:

- a deed restriction that secures a lien on the property in favour of the city for the difference between the permitted resale price and the initial sale; and
- a permanent right of first refusal that enables the city either to buy the units whenever resold or transferred, or to designate a third party to exercise that right.

The latter provision was introduced on units built after the start of 2005 The city can charge a 1% administrative fee to be taken from the real estate transaction in order to pay for the cost of executing the right. A local non-profit organization has been designated to exercise this right on all resales. It does this by assigning an eligible buyer to buy the unit. (<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyDavis.pdf> pg. 6)

Montgomery - The affordability controls are set out in a covenant registered on the title of the unit. The developers are able to use their own documents, provided they contain the content required by the county. (<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyMontgomery.pdf> pg. 5)

Boston - The affordability controls are enforced through covenants registered both on the title of the property and the mortgage. The developers must use a standard legal agreement developed by

BRA. The legal agreement also gives BRA the first right of purchase whenever the inclusionary units are sold within the control period.

Registering the agreement on the mortgage is seen as providing two benefits. BRA is warned of any default, and can move to buy the unit in advance of foreclosure. Also, it is notified whenever the owners seek to re-mortgage, and can intervene to protect owners from predatory or over-extended lending. (<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyBoston.pdf> pg. 4)

10. ADMINISTRATION, MONITORING AND REPORTING

Vancouver - Staff have completed their analysis of the optimal legal form and structure with the assistance of professional third party advisors and it is proposed that the Housing Agency will be a separate corporate entity and act as an “Agent” for the City with clear delegated authorities. The Agency will be a separate legal entity, with the City as the sole shareholder and a Board which combines City oversight with independent directors who bring key skills to the Agency.

The City of Vancouver Council will appoint the Board of the Vancouver Affordable Housing Agency. The City Manager (CM) and Chief Housing Officer (CHO) will bring forward to Council a panel of suggested external Board members for consideration and for appointment of the Chair who will be external. The Agency’s Board of Directors will be operationally independent of City Council but clearly aligned with Council priorities. They will be made up of a minimum of seven voting Directors and the Chief Executive Officer who will sit as a non-voting member (“ex-officio”). The Board will include three senior members of City of Vancouver staff and four external Directors.

(<http://council.vancouver.ca/20140708/documents/rr2.pdf> pg 8)

Chicago - The program is administered by two organizations:

- The Development Services Division of the Department of Community Development (DCD) is responsible for ensuring that the developers meet the affordable housing obligations of the ordinance. In this capacity, it is principally engaged in reviewing and approving the development agreements reached with the developers of the subject developments.
- The Chicago Community Land Trust is responsible for maintaining the permanent affordability of the affordable ownership units. (Another division of DCD holds the corresponding role for the affordable rental units generated by this and other city programs.)

(<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyChicago.pdf> pg. 4)

San Francisco - The developers are responsible for the marketing and selling of the inclusionary units. The developers are expected to sell to buyers drawn from the general public as well as the city’s waiting list. The selection of the potential buyers must be determined by a lottery process supervised by MOH. Just recently MOH has started applying priorities to the potential buyers. It now gives preferences to

- 1) households displaced by renewal activities and
- 2) those that already live and/or work in the city

The developers through their agents are responsible for collecting all of the relevant eligibility documentation and pre-screening the buyers. MOH checks the documentation and eligibility before approving the sale.

(<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudySanFrancisco.pdf> pg. 8+9)

Davis, CA - The program is administered by the city's Community Services Department. It is run by a staff of 3½, excluding the legal staff involved in enforcement and the planning staff engaged in the affordable housing plans. To monitor occupancy, the owners must annually respond to a letter certifying that they are living in the unit. The department has found that the neighbours frequently report absentee owners.

The office has contracted out many of the administrative duties. A local non-profit agency is used to execute the right of first refusal; that agency also keeps its own waiting list for that purpose. A non-profit agency or approved mortgage brokers are used to verify the income eligibility and lottery status of the initial buyers. In the case of households seeking rental accommodation, they are expected to contact the managers of the individual existing developments.

(<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyDavis.pdf> pg. 9)

Montgomery - The program is administered by the Moderately Priced Housing Section of the county's Department of Housing and Community Affairs.

(<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyMontgomery.pdf> pg 8)

Boston - The Boston Redevelopment Authority is responsible for administering this program. This includes developing and revising the actual regulations within the broad framework established by the mayor's executive orders. BRA's principle on-going responsibilities are these:

- setting annually the maximum initial sale prices by unit size;
- determining case-by-case the maximum permitted resale price;
- validating the eligibility of the potential buyers;
- vetting the sales agreements and financing (and re-financing) arrangements.
- monitoring the occupancy of the units; and
- enforcing the regulations

When the city acquires a unit, it sells through a lottery. In the process, it can adjust the price of unit to an affordable level for the targeted income. (<http://www.wellesleyinstitute.com/wp-content/uploads/2010/03/CaseStudyBoston.pdf> pg 7)

11. USE WITH SECTION 37 (HEIGHT AND DENSITY BONUSING)

- research covered in earlier sections

12. TRANSITIONAL MATTERS

N/A