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PRACTICE INCLUSIONARY UPZONING



Leveraging Affordable Housing Through Upzoning

By Robert Hickey

Cities and suburbs are finding new ways to enlist private developers as partners in addressing local affordability challenges.

As communities relax height, density, and other zoning restrictions to meet rising demand for urban living, a growing number of localities are adopting policies that link “upzoning” with the inclusion of affordable housing. The strong incentives and focused neighborhood application of many of these policies make them an appealing new housing tool for jurisdictions where political, legal, or market barriers have historically impeded the adoption of inclusionary housing. And in places that have already adopted jurisdiction-wide inclusionary housing, upzoned neighborhoods are proving to be a politically viable context in which to strengthen inclusionary housing requirements or incentives.

This article profiles five localities that have adopted affordable housing incentives or requirements in upzoned areas, referred to here as *inclusionary upzoning*. Each profile discusses how the policy is structured and how effective it has been to date. Drawing on these examples, the article concludes by exploring how market context, zoning context, and policy design may affect the success of inclusionary upzoning policies and their potential for adoption in new areas of the country where inclusionary housing has not yet been implemented.

AN EASIER FIT?

With rents rising faster than incomes in dozens of metro areas, many localities are looking for tools to ensure adequate workforce housing, maintain economic diversity, and answer community concerns about gentrification and displacement. This is fueling growing interest in inclusionary housing (Hickey 2013). Inclusionary housing policies work through the local land-use approvals process to require or

encourage housing developers to include affordable homes for low- or moderate-income households as part of market-rate development. Today nearly 500 jurisdictions in the United States have some form of inclusionary housing, with policies in 27 states and a growing number of localities in the west and south (Hickey et al. 2014).

A large part of the appeal of inclusionary housing is that it expands housing choices for lower-income households in areas favored by the market, where residents can access economic opportunities, healthier living environments, and better schools. Inclusionary housing is increasingly discussed as a critical strategy for unlocking concentrated poverty, affirmatively furthering fair housing, and creating economically inclusive communities.

But despite the proliferation of inclusionary housing over the past two decades, many places are limited in their adoption of inclusionary housing for political, economic, or legal reasons. Some states, such as Oregon and Texas, legally prohibit mandatory inclusionary requirements. In California and Colorado, courts have deemed inclusionary housing to be an impermissible form of rent control, and therefore local towns and cities in these states cannot require affordable rental housing. Many local jurisdictions are unclear whether a mandatory policy is authorized by state statute or not, so they avoid proposing or implementing such policies out of fear of inviting a lawsuit. Still other communities have state legal authorization, but are hesitant to attach affordability requirements in housing markets that have not yet fully recovered from the housing downturn.

Communities that face these constraints may want to look at the experience of the

growing number of localities that are asking developers to offer some degree of affordability when they utilize a major upzoning. Specific area plans, zoning overlays, or citywide ordinances that condition extra development potential on the inclusion of affordable housing can enable places to work around legal restrictions that prohibit mandatory inclusionary housing requirements. Mandatory policies that are applied just to areas that will see new development potential as a result of a rezoning can also offer wary localities a means for testing inclusionary housing in unproven markets.

THREE TYPES OF INCLUSIONARY UPZONING

Inclusionary upzoning policies typically fall into one of three categories. Examples of each type of policy are presented below.

Incentive-Based Policies That Apply Only in Upzoned Areas

Incentive-based inclusionary upzoning typically works through specific area or precise land-use plans, offering enhanced development options if developers volunteer a share of affordable housing. Other forms of voluntary inclusionary upzoning target add-on density bonus incentives in areas that already have been upzoned.

Fairfax County, Virginia. In 2010, Fairfax County adopted a 20-year comprehensive plan to guide major changes to the county’s sprawling commercial center known as Tysons Corner. The plan envisions significantly greater development intensity within walking distance of four new Metrorail stations, which opened in 2014, along with mixed use development, a walkable street grid, and other physical changes that support transit use. To access the

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About the Author

Robert Hickey is a senior research associate with the National Housing Conference and the Center for Housing Policy, where he focuses on inclusionary housing and other land-use and policy strategies that foster inclusive, mixed income communities. Hickey’s research has been featured in the *New York Times*, *Slate* magazine, CNN.com, the *Huffington Post*, and TheAtlantic.com. He holds a master’s degree in city and regional planning from the University of California—Berkeley.

lucrative redevelopment options outlined in the plan, developers are expected to include 20 percent low- and moderate-income housing within residential development or contribute \$3 per square foot to the county’s affordable housing trust fund if they are building commercial or hotel space. By adhering to these guidelines, developers can build to an unlimited floor area ratio (FAR) within a quarter-mile of each Metro station, or up to a FAR of 2.4 or 3.0 elsewhere in each transit district (Fairfax County 2007).

The affordability guidelines in the Tysons plan exceed the requirements of the county’s baseline inclusionary housing policy, which exempts taller, steel-and-concrete-based residential buildings and otherwise requires 5 to 12.5 percent affordability for multifamily housing (Fairfax County §§2-801–820).

Given the strong expected demand for housing near the new transit stations and dramatically increased allowable density under the comprehensive plan, private developers have shown a high level of interest in building, notwithstanding the plan’s affordability

expectations. As of late 2013, the county had received development applications for most of the available development space in the Tysons plan area, and all of these applications have chosen to take advantage of the plan’s affordability-linked redevelopment options (Fairfax County Planning Commission 2013).

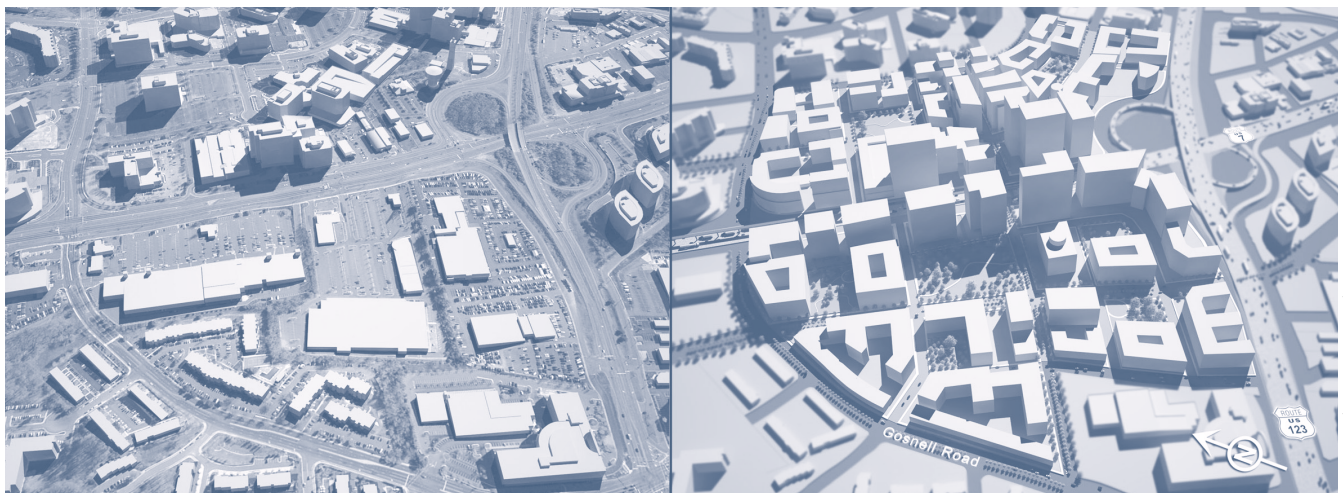
To date, the policy has produced 120 below-market-rate units. County staff estimates that if existing development proposals are fully built out they will include a total of nearly 2,300 below-market-rate units for households earning between 81 and 120 percent of area median income (AMI) and another 1,500 affordable units for households at less than 70 percent of AMI (Fairfax County Planning Commission 2014). These housing units will be required to stay affordable for 50 years if rented and 30 years if owner-occupied (Hickey et al. 2014).

The 17 million square feet of commercial and hotel space under construction or in the pipeline in Tysons Corner is expected to also generate tens of millions of dollars in contributions to the county’s affordable housing trust fund—all of which must be spent in the Tysons plan area (Fairfax County Planning Commission 2014; Fairfax County Planning Commission 2013).

Los Angeles. Los Angeles does not have citywide inclusionary housing, unlike many jurisdictions in California. Prospects for inclusionary housing dimmed further when the California Supreme Court delivered its famous *Palmer* decision in 2009, ruling that the city’s rental affordability requirement for one of its specific plan areas was an impermissible form of rent control.

But in 2013, the city incorporated a voluntary approach to inclusionary housing in its new, transit-oriented land-use plan for an up-and-coming industrial area of the city where the Los Angeles River and Arroyo Seco converge. The *Cornfield Arroyo Seco Specific Plan (CASP)* offers significantly higher density for predominantly residential developments that include a percentage of affordable housing. The *Los Angeles Times* recently characterized the plan as “a model for how L.A. can spur more affordable housing” (*Los Angeles Times* 2015).

The original draft of the *CASP* increased maximum densities without any affordability incentives. This concerned a coalition of local

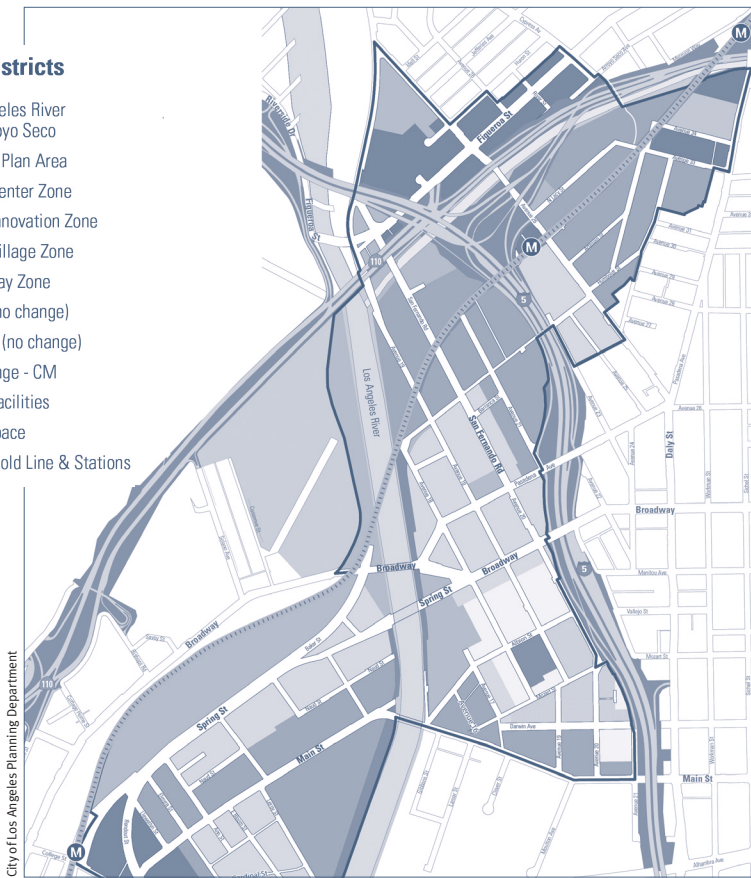


➡ This simulation depicts the transformation envisioned for one area of Tysons Corner in Fairfax County, Virginia.

Fairfax County Office of Community Revitalization

Zoning Districts

- Los Angeles River and Arroyo Seco
- Specific Plan Area
- Urban Center Zone
- Urban Innovation Zone
- Urban Village Zone
- Greenway Zone
- RD2-1 (no change)
- RD1.5-1 (no change)
- No Change - CM
- Public Facilities
- Open Space
- Metro Gold Line & Stations



➔ The CASP Planning Area in Los Angeles.

and citywide organizations led by the Southeast Asian Community Alliance and Public Counsel. The groups saw the enhanced development options, nearby transit stations, a streamlined environmental review process, and planned city investments in greenways and parks as likely to lead to economic displacement of existing residents in the surrounding Chinatown and Lincoln Heights neighborhoods. Most residents within and immediately bordering the CASP plan are renters with a median income of approximately \$25,000 (Trinh 2014).

To ensure that existing residents could participate in the benefits of redevelopment spurred by the CASP, the coalition mounted a successful, citywide campaign to amend the draft plan to include strong incentives for rental and for-sale affordable housing. The CASP sets baseline FAR limits of 1.5 for predominantly residential developments with more than 15 units, but increases the maximum FAR in most areas to 3.0 or 3.15 (depending on the district) if the developer reserves five percent of the units for households earning less than 30 percent of AMI, 11 percent for households earning

less than 50 percent of AMI, or 20 percent for households up to 80 percent of AMI (Los Angeles Department of City Planning 2013).

This incentive structure was motivated by a third-party pro-forma analysis that found that density bonuses built off of a base FAR of 1.5 would create significant value, but that density incentives applied to higher baseline FARs would be unappealing for developers because once FARs reach 4.0 or greater the shift to expensive, high-rise construction generates negative returns (Trinh 2014).

No developments have been built yet since the CASP's implementation in August 2013, but senior city planner Claire Bowin reports that as of January 2015, two mixed-income projects were moving forward with plans that included affordable housing.

New York City. In 2005, New York City created an incentive zoning program that applies to “designated areas” in the city that have been recently rezoned. Presently, the terms of the rezoning are offered to developers by right, but developers can access greater density than allowed under the new zoning terms—up

to 33 percent greater FAR—by contributing 20 percent affordable units. Homes must be permanently affordable for households with incomes up to 80 percent of AMI (New York City Department of City Planning 2014).

Developers may utilize property tax exemptions, city and state loan programs, tax-exempt bonds, and low-income housing tax credits to finance the development of the inclusionary units. The policy offers on- and off-site development options, but no in-lieu-fee alternative (U.S. HUD 2013).

Since 2005, more than 4,240 affordable units have been produced through the designated areas program, according to Howard Slatkin of the New York City Department of City Planning. An analysis by city planning staff suggests that most developers building in designated areas opt to provide 20 percent affordability. However, it is unclear whether developers are including affordable housing to access the density bonus or the property tax exemptions that are also available to developers that provide 20 percent affordability. Also, the affordable units created through the program represent far less than 20 percent of the more than 163,000 units that have been built citywide since 2004 (Mallach 2014). This would suggest that significant housing development has occurred since 2004 in areas that were not rezoned comprehensively and therefore not subject to the designated areas program.

To achieve the inclusion of affordable housing in more market-rate developments without having to rely on property tax exemptions or other financial incentives, Mayor Bill de Blasio is leading an effort to create a mandatory inclusionary zoning requirement that would require affordable housing as a precondition for any major residential rezoning. The mayor sees a stronger, mandatory inclusionary upzoning policy as a crucial tool for preserving or creating 200,000 affordable units over the next 10 years (City of New York 2014).

The city began testing this framework in its early 2015 rezoning approval for a 1,732-unit development in Queens known as Astoria Cove. The land-use approvals agreed to by the developer require 27 percent affordability (460 below-market-rate homes), suggesting a new mandatory policy linking rezoning to affordability could have considerable impact.

Incentive-Based Policies that Apply Wherever a Developer Seeks Zoning Changes

Some localities apply a standard inclusionary

housing requirement to all rezoning requests, rather than negotiate on a case-by-case basis or limit the policy to designated areas that have been rezoned comprehensively. This has some advantages, such as simpler administration, greater predictability for developers, and broader application. A potential limitation is that it allows for less tailoring to specific rezoning or neighborhood circumstances. However, as illustrated by the case of Boston below, a citywide policy tied to rezoning requests need not preclude additional affordability expectations in specific areas that have been comprehensively rezoned.

Boston. In 2000, former Mayor Thomas Menino signed an executive order creating the city's Inclusionary Development Policy (IDP). The policy applies to any residential development of 10 or more units seeking zoning relief and requires 13 percent affordable housing. The policy also applies to any residential development built on public land or with public financial assistance (City of Boston 2009).

Developers have the option of building the affordable units within the proposed development, constructing them off-site, or paying a "buyout fee." Buyout fee revenues are deposited in a city fund that supports affordable housing citywide. A minimum of half of these funds must be spent in neighborhoods where the percentage of affordable housing is less than the citywide average (Boston 2009).

Half of for-sale affordable units must be affordable for households earning less than

80 percent of AMI and half for households earning between 80 and 100 percent of AMI. Rental inclusionary units must be affordable for households earning less than 70 percent of AMI. Rental units must remain affordable for 50 years. For-sale homes have a 30- to 50-year affordability term (Boston 2009).

As of early 2015, the Boston IDP has produced 1,718 affordable units and generated an additional \$32.3 million in buyout fees, according to Nick Martin of the Boston Redevelopment Authority.

According to Boston's deputy director of economic development, Dana Whiteside, the vast majority of affordable housing produced through the city's IDP policy is triggered by a request for zoning relief (as opposed to the provision of financial assistance or public land to a developer). Such zoning relief may take any form, though typically the triggering event is a request for additional height or density. Most Boston developers need additional height or density to create new housing because the zoning code in most areas of the city has not been updated for decades and allows only small-scale buildings by right (Wellesley Institute 2010). For nearly all developers, then, the IDP policy is technically voluntary but functionally mandatory.

In addition to being triggered by developer-initiated zoning requests, the IDP also applies whenever developers elect to take advantage of greater heights or densities enabled by a city-initiated neighborhood rezoning. Some-

times, a new neighborhood plan and comprehensive rezoning will stipulate that developers provide greater than 13 percent affordability to access the newly permitted heights and densities. The new Fenway neighborhood zoning, for example, requires 20 percent affordability, according to Whiteside.

Mandatory Requirements in Upzoned Neighborhoods

Some jurisdictions have established new mandatory inclusionary housing policies in neighborhoods that have undergone a major upzoning as part of a community planning process. These policies require developers to include a share of affordable housing in new developments, whether or not they utilize the expanded development potential offered through neighborhood upzoning.

Redmond, Washington. The city of Redmond is one of a handful of small King County jurisdictions that have adopted a mandatory inclusionary housing policy for upzoned neighborhoods. The city's policy, known as Affordable Housing Zoning, was adopted in 1994 and has been implemented on a neighborhood-by-neighborhood basis as communities adopted neighborhood plans with higher allowable densities. The policy currently applies to the downtown area and the neighborhoods of Bear Creek, Willows/Rose Hill, Grass Lawn, Education Hill, Overlake, and North Redmond (Redmond 2014). In each neighborhood, new developments with 10 or more units must provide 10 percent of units at affordable prices for low-income households earning no more than 80 percent of AMI.

According to Redmond senior planner Sarah Stiteler, AICP, as of March 2015 the city's inclusionary housing policy had produced 334 affordable homes (274 rental and 60 for sale). The rental units are required to be affordable in perpetuity. For-sale inclusionary units are subject to a 50-year affordability control period. Most of the affordable homes are located in the city's downtown, where the policy was first applied during a rezoning that began in 1994. Starting in 2002, additional neighborhood rezonings occurred one after the other. All but one neighborhood has agreed to include affordability requirements in their rezoning.

For a small city of 56,000 people, 334 new affordable housing units is a significant accomplishment. But the impact of Redmond's inclusionary housing policy appears to have been diminished by its incremental expansion



New York City Department of City Planning

⊕ These residential buildings offer affordable units in New York City's Greenpoint-Williamsburg inclusionary housing designated area.

over time. The 334 affordable units produced through the policy since 1994 total less than 10 percent of the total new households that the city has added since 2000, suggesting the policy has not applied to the entirety of the city's growth since the policy's inception (U.S. Census Bureau 2000; U.S. Census Bureau 2010). Had the city's Affordable Housing Zoning applied to more areas of the city from the start, it might have produced more inclusionary homes over the past 20 years. One advantage to Redmond's incremental approach, however, has been that the policy enjoys robust political support, having been affirmed neighborhood by neighborhood in successive community plans.

CONTEXT AND POLICY DESIGN AFFECT IMPACT

These examples of inclusionary upzoning provide some insight into factors that may affect its success.

Inclusionary upzoning is most likely to be adopted in strong housing markets. The examples of inclusionary upzoning discussed earlier are all located in housing markets where prices and rents have been on the rise and housing demand has been strong. The lack of policies currently found in weaker markets is not surprising given that density and height bonuses tend to be most valuable in areas with high land prices and high housing demand. The CASP policy in Los Angeles, however, suggests that inclusionary upzoning can be appealing in weak-housing-market areas of strong-market cities.

Low base zoning creates the potential for compelling incentives. In the Tysons area of Fairfax County, baseline zoning standards typically allow only small-scale residential and commercial development. The new height and density allowances are substantially greater than what developers could achieve by right. Given these new development opportunities and strong housing demand, it is not surprising that developers have already submitted proposals for most of the sites where new affordable housing incentives apply. Boston's policy has a high rate of utilization and success for similar reasons. The example from Los Angeles further illustrates how a low starting point for base zoning permissions can ensure that density bonuses are appealing rather than counterproductive.

Broad geographic applicability may produce more affordable units. Inclusionary requirements tied only to specific upzoned neighborhoods may miss opportunities to include affordable housing in other areas of a locality where the market is building. The designated areas program in New York City, for example, may have produced more affordable housing to date had it encompassed development in non-designated areas. A more effective policy is likely to be one that is implemented broadly. Such is the case in Boston, where the policy applies to zoning relief requests throughout the city, as well as to comprehensively upzoned communities

where affordability requirements are often enhanced. Fairfax County achieves broad applicability in a different way: with a jurisdiction-wide, mandatory inclusionary housing policy that is supplemented by the voluntary policy in Tysons Corner. This dual policy structure allows supplemental policies tied to specific area plans to customize local incentives or requirements according to neighborhood affordability needs and local market strength, while also ensuring some form of affordability incentives or requirements apply wherever development patterns shift.

Commercial development in upzoned areas can be asked to contribute to affordable housing as well. Fairfax County's application of its Tysons inclusionary housing policy to commercial properties will generate millions of dollars in revenue that must be spent on affordable housing in the Tysons plan area. A policy that applies to commercial as well as residential uses spreads the obligation to contribute to workforce housing over a broader share of the development community, which may appeal from a fairness perspective as well.

CONCLUSION

Inclusionary upzoning can take various forms. It can be mandatory or voluntary. It can apply jurisdiction-wide or in designated neighborhoods or corridors. Ultimately, it can be customized to local context. This flexibility and

EXAMPLES OF INCLUSIONARY HOUSING PROGRAMS TIED TO UPZONINGS

Jurisdiction	Policy Name	Policy Type	Year Adopted	Affordability Set-Aside Percentage	Incomes Served	Incentives
Boston	Inclusive Development Policy	Voluntary	2000	13%	70–100% AMI	“Zoning relief” of any sort
Fairfax County, Virginia	Tysons Area Redevelopment Options	Voluntary	2010	20%	60–120% AMI	Unlimited floor area ratios within a quarter-mile of new Metro stations; 20 percent density bonus plus a FAR of 2.0 to 2.5 for areas between a quarter and a half mile of stations.
Los Angeles	Cornfield Arroyo Seco Specific Plan (CASP)	Voluntary	2013	11–20% ^(b)	50–80% AMI	Increase in FAR from 1.5 to 3.0 or 4.0
New York City	Designated Areas Program	Voluntary	2005	20% ^(a)	<80% AMI	33% density bonus
Redmond, Washington	Affordable Housing Zoning	Mandatory	1994	10%	<80% AMI	n/a

(a) Affordability requirement is 20 percent of total floor area

(b) Alternate set-aside options follow a sliding scale that extends as low as five percent if units are made affordable for extremely low-income households (less than 30 percent of AMI)

the linkage of affordability to zoning that offers significant new development potential increases the odds that inclusionary upzoning will appeal in places that have historically struggled to adopt inclusionary housing.

Many of the inclusionary upzoning policies profiled here are too new to show results. But early developer interest in the affordability incentives of newer policies, and the experi-

ence of places with longer-term policies, including Boston and Redmond, suggest that inclusionary upzoning holds considerable promise for helping to address local affordability challenges.

Broad applicability and strong affordability incentives, if not requirements, will be crucial to success. In particular, height, density, and other zoning changes tied to affordability

standards will need to offer true economic value in the context of existing neighborhood zoning. But with demand for housing continuing to rise in highly accessible urban and transit-served settings, the conditions are ripe for many more cities and urbanizing suburbs to offer compelling, inclusionary upzoning policies of their own.

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IS UPZONING THE KEY TO
EXPANDING INCLUSIONARY
HOUSING?

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