

INCLUSIONARY ZONING IN CALIFORNIA: LEGAL QUESTIONS AND ISSUES

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The quest to increase the supply of affordable housing has been an important public policy goal in California for decades.[1] That goal, however, has proven to be elusive. Even during times of recession and depressed housing markets, housing in many parts of California has remained prohibitively expensive to moderate and lower income households.[2] State and local governments have experimented with a wide variety of approaches intended to address this problem.[3] One of the most prevalent of these is “inclusionary zoning.”

“Inclusionary zoning” is the common term for a distinct response by some local governments to the affordable housing conundrum, requiring new residential developments to include a specified percentage of new homes to be provided for rent or sale on restricted terms deemed “affordable” to households of below-average or moderate incomes.[4] Advocates champion inclusionary zoning as a means to increase the number of new affordable housing units in a community without increasing financial burdens on municipal budgets and without asking the community at large to provide the subsidies that might otherwise be necessary to make new homes “affordable.”[5]

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[1] *E.g.*, CAL. GOV'T CODE § 65913 (1980): "The Legislature finds and declares that there exists a severe shortage of affordable housing"; *see also Knight v. Hallstammar*, 29 Cal.3d 46, 52 (1981) ("The California Legislature has long recognized the dearth of affordable housing in this state," and has declared that addressing this shortage of affordable housing is a subject of "vital, statewide importance. . . .").

[2] *See, e.g., Priced Out: Persistence of the Workforce Housing Gap in the San Francisco Bay Area* (Urban Land Institute), Feb. 2010, at 4 ("Housing in the S.F. Bay Area is persistently and pervasively unaffordable despite the recent housing and market downturn."); *see also* Deborah Myerson, *Is There Still a Need for Workforce Housing?*, LAND DEVELOPMENT, Fall 2009, at 35-40 (Despite a sharp drop in median housing prices (nearly 35 % in San Francisco metro area 2007-2008), there is still a significant need for subsidized workforce housing.); *California's Deepening Housing Crisis* (Cal. Dep't of Housing & Cmty. Dev.), Feb. 15, 2006 (showing a decrease from 2004 to 2005, from 19% to just 14%, in the percentage of households able to afford a median-priced detached home in California); *Locked Out 2004: California's Affordable Housing Crisis* (Cal. Dep't of Housing & Cmty. Dev.), Jan. 2004.

[3] By 1987, the Legislature had enacted "no less than 19 different sets of laws and programs [illustrating] efforts to both increase the housing available to Californians and to help make it affordable." *Wilson v. City of Laguna Beach*, 6 Cal. App. 4th 543, 545 (1992). *See also* CAL. GOV'T CODE § 65582.1, in which the Legislature listed 13 statutory "reforms and incentives to facilitate and expedite the construction of affordable housing," ranging from requiring "density bonus" incentives to developers who voluntarily include "affordable" units in their projects to requiring cities to allow "granny units" on residential lots.

[4] "An 'inclusionary zoning' or 'inclusionary housing' ordinance is one that requires a residential developer to set aside a specified percentage of new units for low or moderate income housing." Laura M. Padilla, *Reflections on Inclusionary Housing and a Renewed Look at its Viability*, 23 HOFSTRA L. REV. 539, 540 (1995) (quoted in *Home Builder's Ass'n v. City of Napa*, 90 Cal. App. 4th 188, 192 n.1 (2001)).

[5] *See, e.g.,* Richard A. Judd & David Paul Rosen, *Inclusionary Housing in California: Creating Affordability Without Public Subsidy*, 2 A.B.A. J. OF AFFORDABLE HOUSING AND COMMUNITY DEV. L. 4 (Fall 1992) [hereinafter Judd & Rosen]; *see also* Daniel R. Mandelker, *The Effects of Inclusionary Zoning of Local Housing Markets: Lessons from the San Francisco, Washington D.C., and Suburban Boston Areas*, A.L.I.-A.B.A. LAND USE INST., August 2008 ("Among supporters, IZ ["inclusionary zoning"] is heralded as an important evolution in affordable

housing policy because it requires less direct public subsidy than traditional affordable housing programs”; Brian R. Lerman, *Mandatory Inclusionary Zoning – The Answer to the Affordable Housing Problem*, 33 B.C. ENVTL. AFF. L. REV. 383, 386 (2006) (“The advantage of an inclusionary system to a community is that it helps provide affordable housing without a major public financial commitment.”); Paul S. Quinn, Jr., *Inclusionary Zoning and Linkage: Land Use Planning Techniques in an Age of Scarce Public Resources*, 1 U. FLA. J. L. & PUB. POL’Y 21 (1987).