INCLUSIONARY ZONING

BACKGROUND BRIEF

LPRO: LEGISLATIVE POLICY AND RESEARCH OFFICE

Inclusionary Zoning (IZ) policies incentivize or mandate developers to create a certain percentage of affordable housing units in a new or improved residential development. IZ policy frameworks vary by jurisdiction, but often include: a requirement that every unit have a private bathroom, minimum habitable square footage standards, outward appearance similarity standards, and requirements for shared common spaces with market-rate units.[1] This background brief describes Oregon and other jurisdictions' IZ policies as well as the research on the efficacy of those policies.

OREGON LAW

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In 1999, the Oregon Legislative Assembly enacted House Bill 2658, which prohibited metropolitan service districts, cities, or counties from adopting land use policies that effectively established the sales price of a housing unit or residential parcel but authorized those jurisdictions to provide voluntary incentives for developers to increase the supply of low- or moderate-cost housing units. Oregon law defines low-income household to mean a household with less than or equal to 80 percent of the area median income (AMI). Moderate-Income household is defined as a household with income between 80 and 120 percent of AMI.[2] This policy was amended in 2007 to give cities and counties the option to adopt mandatory IZ policies.[3]

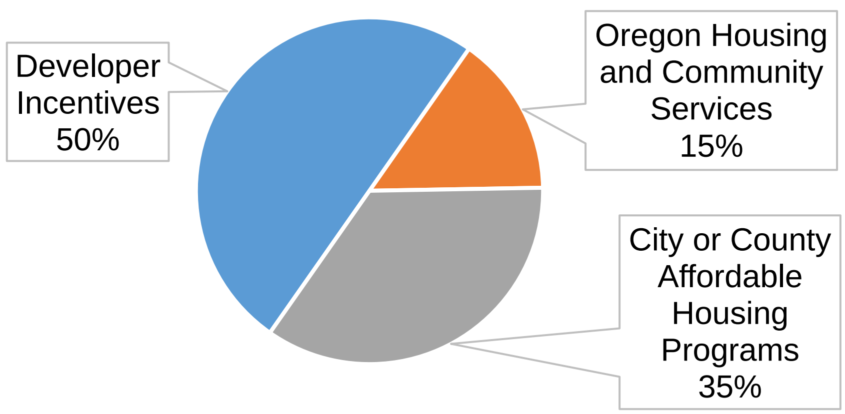
Oregon law currently allows cities and counties to adopt land use policies requiring that a specified number of units under development be designated for sale or rent as affordable housing. Affordable housing requirements are limited to multi-family structures containing at least 20 housing units and the adopted requirements may not exceed 20 percent of those units. Eligible developers have the option to pay a fee in

[1] Cliffe Dekker Hofmeyr, *Real Estate Alert: The City of Johannesburg Inclusionary Housing Policy, 2019*, https://www.cliffedekkerhofmeyr.com/export/sites/cdh/en/news/publications/2019/Real/downloads/Real-Estate-Alert-18-March-2019.pdf, March 18, 2019
[2] Section 2, Chapter 848, Oregon Laws 1999
[3] Section 2 (5), Chapter 691, Oregon Laws 2007

place of creating the required quantity of affordable units. For developers of multi-family structures that create affordable housing units, cities and counties are required to offer incentives such as waivers or reductions in fees or system development charges, finance-based incentives, and/or full or partial exemption from ad valorem property taxes. To fund developer incentive programs, the city or county may impose a construction tax on improvements that add units or living space to residential real property. Following an administrative fee deduction not to exceed four percent, the remaining revenue from the construction tax is to be allocated as shown in Figure 1:

- 50 percent to developer incentive programs;
- 15 percent to Oregon Housing and Community Services (OHCS) to fund homeownership programs that provide down payment assistance; and
- 35 percent for programs and incentives of the city or county related to affordable housing as defined by that body.

Figure 1: Allocation of Construction Tax Revenue



Source: Legislative Policy and Research Office

Oregon law also permits a person to create an affordable housing covenant as a condition of giving or receiving a subsidy during ownership or upon conveyance of real property. The covenant may limit the sale or rental price; limit equity appreciation; grant a right of first refusal; restrict the class of persons to whom real property may be sold, leased, or rented; require the property to be used as a primary residence; or other limitations that affect the affordability of real property for low- and moderate-income households. These covenants are enforceable even when they are not of a character traditionally recognized as common law, and courts may not use a comparative economic test as a basis for determining whether a covenant is in the public interest.[4]

[4] Section 3, Chapter 691, Oregon Laws 2007

IMPLEMENTATION

IZ policies have been implemented in several U.S. cities as well as a few cities around the world. Appendix 1 shows examples of IZ policies in seven U.S. cities as compiled by the City of Burlington, Vermont.

Johannesburg, South Africa

The City of Johannesburg, South Africa adopted a policy in February 2019 that mandates developments of 20 or more units reserve at least 30 percent of those units as affordable. Developer incentives for the IZ units include variations on an increase in floor area ratio, increase in density, and a decrease in parking requirements.[5]

Burlington, Vermont

The City of Burlington, Vermont implemented IZ policies in 1995 to target households earning 75 percent of area median income (AMI). The program applies to all new developments of five or more homes and to any converted residential structures that result in at least 10 homes. The policy requires between 15 and 25 percent affordable units within the development. Developers do not have the option for payment in lieu of units, but they are permitted to produce housing off-site at 125 percent of the on-site obligation. Affordable units are rented at 65 percent of AMI, but they can be individually rented for higher as long as the average price of IZ units is sold or rented at or below the target household income. Additionally, IZ units are subject to price controls for 99 years.[6]

Portland, Oregon

The City of Portland adopted inclusionary housing ordinances in 2018. The goal is to increase the number of housing units available to households earning 80 percent or less of the median family income with an emphasis on households earning 60 percent or less. The code provides financial incentives and standards for developers to provide affordable units and requires those units to remain affordable for 99 years. Developer incentives include:

- a ten-year property tax exemption;
- a construction excise tax exemption;
- system development charge exemptions; and
- fee-in-lieu options.[7]

Monmouth, Oregon

The City of Monmouth, Oregon has four residential zoning distinctions: low density, medium density, high density, and mixed density.[8] This last zone, though not designed as an inclusionary zone, shares a similar purpose and function with inclusionary zoning.

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[5] Cliffe Dekker Hofmeyr, *Real Estate Alert: The City of Johannesburg Inclusionary Housing Policy, 2019*, https://www.cliffedekkerhofmeyr.com/export/sites/cdh/en/news/publications/2019/Real/downloads/Real-Estate-Alert-18-March-2019.pdf, March 18, 2019

[6] The City of Burlington, *Inclusionary Zoning*, http://www.burlingtonvt.gov/CEDO/Inclusionary-Zoning (last visited August 20, 2019)

[7] Portland City Code 30.01.120

[8] Monmouth City Code, *Title 18: Zoning*

One specified purpose is to provide a supply of affordable homes for each income level though it lacks any specific mandates or incentives for developers.[9]

The Edwards Addition development, in a region of southeast Monmouth that is zoned for mixed density residential use, showcases a developer-initiated housing development that includes elements of IZ policy target outcomes.[10] The Edwards Addition has completed five of seven phases of development within this zone. Homes range in size from 700 square-foot tiny homes to over 3,000 square-foot multi-generational homes. Figure 2 shows a map of the Edwards Addition in Monmouth.[11]

Figure 2: Edwards Addition Development in Monmouth, Oregon

Source: Olsencommunities.com/home/olsen-communities/edwards-addition/

RESEARCH

Research conclusions on the effectiveness of IZ vary. Often the differing results align with the researchers' measure of what is considered a successful outcome of IZ policies. Research proposing to evaluate the effectiveness of IZ policies has taken a variety of angles. Some researchers consider the evidence from an economic development perspective while others consider the evidence from the perspective of racial and socio-economic equity.

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[9] Monmouth City Code Chapter 18.65: Mixed Density Residential (MX) Zone
[10] City of Monmouth, *Official Zoning Map: City of Monmouth*, https://www.ci.monmouth.or.us/files/documents/MonmouthZoningMap1741071133043019PM.pdf June 18, 2013
[11] Olsen Design & Development, *Edwards Addition*, http://www.olsencommunities.com/home/olsen-communities/edwards-addition/ (last visited August 20, 2019)

In 2015, the City of Burlington, Vermont commissioned an evaluation of the IZ policy. The evaluation found that the location of IZ development has helped counteract income segregation and concentrated poverty by generating patterns of income and housing diversity. Though more mixed-income development has occurred, Burlington's housing market struggles to keep up with demand, but the study stated that variables beyond the IZ policy that also contribute to insufficient development activity. These variables include:

- land scarcity and its relationship to land pricing;
- construction costs in Vermont;
- financing costs;
- profitability thresholds; and
- the unpredictability of development review.

The evaluation also found that cost off-sets for developers appear to have failed in practice, especially with respect to density bonuses which were available but rarely used. The report recommended solutions to technical and adaptive challenges designed to be implemented in tandem to make the IZ policy more successful.[12]

Flexible Policy Options

IZ policies vary widely from one jurisdiction to another suggesting the term *inclusionary zoning* is an umbrella term for describing various housing policies that affect that housing market in different ways. When analyzing IZ programs in the San Francisco area, researchers found that more flexible IZ policies often generated a greater number of affordable units.

The RAND Corporation, a nonprofit, nonpartisan think tank, concluded that there are seven design features that have the highest impact on the success rate of an IZ policy including:

- who is eligible to own, lease, or rent an IZ home;
- whether the program permits ownership, renting, or both;
- whether a program is mandatory for developers;
- the types of development within a jurisdiction covered by IZ provisions and the number of units set aside for below-market pricing;
- cost off-sets for developers such as in-lieu payments, density bonuses, fee waivers or reductions, reductions in parking space requirements, options to build IZ units off-site (with provisions ensuring populations are not being intentionally segregated), or accelerated permitting;
- continued affordability for long-term access to affordable units; and
- a mechanism for collecting data and monitoring compliance by developers and landlords.[13]

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[12] CZB, *Evaluation of the City of Burlington's Inclusionary Zoning Ordinance*, https://www.burlingtonvt.gov/sites/default/files/u308/IZDRAFTReportJanuary2017.pdf, January 2017

[13] Heather Schwartz, Liisa Ecola, Kristin Leuschner, and Aaron Kofner, *Is Inclusionary Zoning Inclusionary*, https://www.rand.org/pubs/technical_reports/TR1231.html, 2012 page 21

Of these, the least flexible option seems to be whether the program is mandatory or voluntary. The City of Cambridge, Massachusetts implemented a voluntary program giving density bonuses to projects that created affordable units, but, after a decade, no units were produced.

As seen in Burlington, Vermont the economic rationale to develop mixed-income housing doesn't exist without public intervention. After 25 years of mandatory IZ policies, the City of Burlington has mixed-income developments that would not have happened otherwise.[14]

[14] CZB, *Evaluation of the City of Burlington's Inclusionary Zoning Ordinance*, https://www.burlingtonvt.gov/sites/default/files/u308/IZDRAFTReportJanuary2017.pdf, January 2017 page 10

Appendix 1: IZ Policies in Select U.S. Cities

City, State	Voluntary or Mandatory	Threshold for Compliance	IZ Units Set Aside	Income Targets / Ceilings	Off-Site Option	Payment in Lieu	Cost Off-sets	Product Similarity	Duration
Burlington, VT	Mandatory	5 units	15 – 25 percent	Rental: 65 percent AMI Owner: 75 percent AMI	Yes	$115,000 per unit	Fee waivers, density bonus, parking reduction	Minimum square footage requirement	Permanent
Annapolis, MD	Mandatory	10 units	Rental: six percent Owner: 12 percent	100 percent AMI	-	Four percent of total project cost or donation of land suitable for affordable housing	Density Bonus	Dispersal; consistency with market-rate design and mix	Rental: 20 years Owner: 10 years (period starts over if sold to eligible buyer within 10 years)

City, State	Voluntary or Mandatory	Threshold for Compliance	IZ Units Set Aside	Income Targets / Ceilings	Off-Site Option	Payment in Lieu	Cost Off-sets	Product Similarity	Duration
Boulder, CO	Mandatory	1 unit	20 percent	Rental: 60 percent AMI Owner: 80 percent AMI	Yes	Varies by average unit size; option to dedicated land for affordable housing	-	Dispersal; similar bedroom mix	Permanent
Cambridge, MA	Mandatory	10 units or 10,000 sq. ft.	-	65 percent AMI	-	-	Density Bonus	Consistency with market-rate design and unit mix	Permanent
Chapel Hill, NC	Mandatory	5 units	15 percent	65 – 80 percent AMI	Yes	$85,000 per unit	Density and fee waivers	Consistency with market-rate design and unit mix	99 years

City, State	Voluntary or Mandatory	Threshold for Compliance	IZ Units Set Aside	Income Targets / Ceilings	Off-Site Option	Payment in Lieu	Cost Off-sets	Product Similarity	Duration
Davis, CA	Mandatory	5 units	10 – 25 percent	Rental: 50 – 80 percent AMI Owner: 80 – 120 percent AMI	Yes	See fee schedule	Density bonus	Rental: Dispersal and variety in unit size Owner: 50 percent of units must have 3 bedrooms	Permanent
Evanston, IL	Mandatory	5 units near transit stations; 10 units elsewhere	10 percent if previously funded; 20 percent if subsidized	Rental: 50 – 80 percent AMI Owner: 80 – 120 percent AMI	-	$100,000 per unit near transit stations; $75,000 per unit elsewhere	Expedited application, fee waivers, density bonus, parking reduction	Minimum square footage requirement	Rental: 25 years Owner: Permanent

Source: Legislative Policy and Research Office
Data: Evaluation of the City of Burlington's Inclusionary Zoning Ordinance, page 36

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